AGCM
AUTORITÀ GARANTE DELLA CONCORRENZA
E DEL MERCATO

ANNUAL REPORT

1996

ACTION TAKEN BY THE AUTHORITY: A SUMMARY

In 1996 and in the first three months of 1997, the Authority's workload was considerably higher than in previous years, with rulings on 27 agreements, ten alleged cases of abuse and 425 mergers between independent companies. Nineteen of the 27 agreements were found to restrict competition on the basis of section 2 of the Antitrust Act, and in seven cases the Authority found the alleged abuse of dominant position in violation of section 3. None of the mergers examined by the Authority during the year was prohibited. In three cases the mergers, considered restrictive in the form originally notified, were subsequently authorised on receipt of undertakings by the parties to remove the identified restrictions. The Authority also issued 66 opinions to the Bank of Italy and the Broadcasting and Publishing Authority under section 20 of the Act. Moreover, a general fact-finding survey was conducted into the process of formation of vehicle fuel prices in Italy.

Decisions taken by the Authority
(number of cases)

	1994	**1995**	**1996**	**Jan-Mar 1997**
Agreements	25	31	24	3
Abuse	14	31	10	-
Mergers	342	282	357	68
Opinions	78	54	51	15
Misleading advertising	213	244	423	147

Breakdown by type and outcome of proceedings completed
(January 1996-March 1997)

	Non violation	**Non-violation after amendments to the agreement**	**Violation**
Agreements	4	4	19
Abuse of dominant position	3	-	7
Mergers	425	3	-
Misleading advertising	196	-	374

One of the Authority's particularly relevant activities was reporting and providing consultancy under sections 21 and 22 of the Antitrust Act to identify the measures in statutory provisions, regulations and draft legislation that introduce or are likely to place unjustified restrictions on competition. In 1996 and early 1997, 26 reports and opinions were issued under these sections of the Act. The reports related to a number of different sectors (food, energy, transport). Some opinions were specifically requested in relation to industries where a process of deregulation is taking place, such as telecommunications.

Lastly, 570 reports of alleged violations of Legislative Decree No. 74 of 25 January 1992 were examined, and in 374 cases the advertisement was considered to be misleading.

Reporting and consulting activities
(number of actions: January 1996-March 1997)

Area	Total
Agriculture and manufacturing	3
Electricity and gas	1
Transport and allied services	4
Telecommunications	6
Other sectors	12
Total	26

AGRICULTURE AND FOOD PRODUCTS

AGREEMENTS IN THE "PROTECTED DENOMINATION OF ORIGIN" HAM INDUSTRY

In June 1996, the Authority completed its investigation on the voluntary Consortia among producers of San Daniele and Parma ham, which supervise and control the quality of their respective products.

Each Consortium had adopted a production schedule for 1995, setting a ceiling on total production and dividing it among the member companies on the basis of their "historical" market shares. The Authority considered that the definition of production ceilings and quotas were agreements that restricted competition under section 2 of the Act. The fact that the law instituting the system for protecting denominations of origin empowered the Consortia to draw up production schedules and that the schedules were later approved by the relevant Ministries did not appear relevant facts for excluding the restrictive behaviour from the application of the antitrust law. In fact the ministerial approval was merely a subsequent control of the schedules,

in no way altering their nature of contractual agreements concluded freely and independently by the members of the Consortia themselves.

However, at the request of the Consortia, the Authority granted for a period of a year a waiver for the agreements under section 4 of the Act. It was pointed out that since other less restrictive instruments for controlling production quality provided by the denomination protection legislation had not yet become operational, quantitative controls over production could be used for another year until other less restrictive instruments for quality control would become operational.

AGREEMENTS IN THE "PROTECTED DENOMINATION OF ORIGIN" PARMESAN CHEESE INDUSTRY

In November 1996 the Authority concluded its investigation into the two Consortia protecting Parmigiano Reggiano and Grana Padano Parmesan cheese. The two voluntary Consortia have statutory function of promoting the products they oversee and protect, and also of programming and control production and marketing. On the basis of their tasks, the Consortia planned production quantities by establishing production schedules indicating the maximum total production target for each specific year, and the individual production quotas for each member.

The Authority reaffirmed that competition legislation applies whenever there is autonomy in the decision making of the Consortia. Since production schedules were discretionary established by the Consortia, the agreements were deemed as restricting competition.

In the wake of the remarks made by the Authority regarding the system of quality control, the Consortia decided to change the regulations to bring them into line with competition law. These changes were designed to convert the planning system based on quantities into one under which the Consortia would retain the right to ascertain whether the cheese has the required quality.

EXCLUSIVE ICE CREAM DISTRIBUTION CONTRACTS

This investigation was completed in December 1996, and referred to distribution contracts containing exclusive purchase clauses between Italy's main industrial ice cream producers (Unilever Italia, Nestlé Italiana, Sammontana and Gelati Sanson) and a great number of retail outlets.

When analysing the market, the Authority drew a preliminary distinction on the basis of demand-side substitutability between ice cream bought on impulse which is consumed immediately after purchase close to the point of sale, and ice cream bought for home consumption. Taking account of the degree of substitutability of the different products from the viewpoint of the consumers, the Authority ruled that impulse-bought ice-cream should also be sub-divided into two distinct markets: industrial ice cream and shop-made ice cream.

The agreement regarded the industrial impulse-bought ice cream market. The supply structure of this market is highly concentrated: the two largest industrial ice cream-makers account for 70 per cent of sales in terms of volume, while the largest four companies directly involved in this proceeding account for 89 per cent. The market is also characterised by significant entry barriers. In addition to the huge advertising investment needed to launch products and the very

high distribution costs involved, a major barrier to entry arises from the widespread practice adopted both by the large and small manufacturers to loan freezers to retailers, free of charge, to be used exclusively for the manufacturers' range of products *(freezer exclusivity)*.

In this context, the four main industrial ice cream manufacturers concluded exclusive distribution contracts with about 70 per cent of all ice cream retailers in the country. The exclusive purchase and the provision of high penalties in the event of breach of the agreement were ruled to be an infringement of section 2(2) of the Act. The changes to the contracts as proposed by the parties during the course of the investigation to shorten their validity from five to three years and to reduce the penalties in the event of failure to honour the exclusivity agreement were deemed insufficient to remove the anti-competitive elements.

CONCENTRATION BETWEEN HEINEKEN AND MORETTI

In May 1996 the Authority examined a merger under which the Heineken Italia company, a subsidiary of the Netherlands-registered Heineken Nv company, took over the Birra Moretti company. Heineken would have become Italy's leading brewery.

Considering consumers' preferences and the different types of distribution channels, two distinct relevant markets were identified: take-away beer consumed at home, primarily sold through shops (traditional retailers or retail chains), and beer consumed on licensed premises (bars or restaurants). With regard to the marketing of beer for consumption on licensed premises, since draught and high quality beers account for a substantial share of the beer sold, the openness of the market to foreign breweries was considered a powerful element of competitive pressure. However, on the retail take-away market, imports only accounted for a small proportion of the beer sold and were limited to the upper price range and the lower price range (which requires no investment in advertising). In the market for take-away beer, following the operation Heineken would obtain the 37 per cent of the market; the second operator, Peroni, has a share of 30 per cent. Furthermore, it was fairly unlikely that a new competitor could enter the Italian market by building new breweries, because of the high initial investment, the long time taken by it to be recovered (15-20 years) and the fact that the market is now mature.

In order to overcome the objections relating to possible competition restraint as a result of the merger, Heineken undertook to sell a brewery in Italy with a production capacity of not less than five per cent of the market to an existing or potential competitor with a market share of not more than 20 per cent. Under these conditions the Authority authorised the merger.

PETROLEUM PRODUCTS

AGREEMENTS BETWEEN OIL COMPANIES

This proceeding, which began in March 1996, examined a number of bilateral agreements concluded in 1993 and 1994 by Agip Petroli with other oil companies (Shell Italia, Tamoil Italia, Kuwait Petroleum Italia, Anonima Petroli, ERG Petroli, SOM) for the exchange of fuel

distribution outlets with the ostensible intention of rationalising the distribution activities of each company involved.

As far as the markets at issue were concerned, the Authority drew a distinction between fuel distribution stations on and off the highways. Account was taken of the fact that even though fuel prices on the highways are usually higher than prices charged on regular roads, it is not generally an economically convenient solution for individual drivers to leave the highway simply to fill up with cheaper fuel. The geographic extension of the relevant markets for the non-highway network was identified with the territory of each province; for the highway network with adjacent stations on the same stretch of road.

At the end of the investigation, which was completed in October 1996, the Authority found that the agreements examined, which were designed to geographically reallocate the fuel distribution facilities on a concerted basis, did in fact limit competition. However, considering the small number of swap operations actually completed and their sporadic and exceptional nature, the Authority ruled that the agreements were not in themselves likely to significantly interfere with competition on the relevant markets.

AGREEMENT BETWEEN AGIP PETROLI AND KUWAIT PETROLEUM ITALIA

Agip Petroli and Kuwait Petroleum Italia notified the Authority under section 13 of the Act their intention to conclude a number of agreements, in relation to refining and logistics.

With regard to refining, the agreement provided for both companies to hold a 50-50 share in the Raffineria di Milazzo company which was previously wholly owned by Agip. The purpose of the agreement, according to the parties, was to increase the refinery's production capacity and competitiveness. Under the logistics agreement the infrastructure facilities owned by both parties in the Naples area would be rationalised, and Kuwait would be able to use Agip's logistical facilities in the Port of Livorno, and perhaps also in the Marghera area. They also planned to conclude contracts for exchanging final products, setting the quantities each year.

The Authority found that the obligations created between the parties by this agreement would make it extremely difficult for them to act independently on the market. The parties therefore submitted a new version of the agreement to the Authority after removing the mutual obligation to exchange products. This new agreement was deemed by the Authority to be unlikely to restrict competition to any substantial degree.

FACT-FINDING SURVEY AND REPORT ON VEHICLE FUEL PRICES

In October 1996 the Authority completed the fact-finding survey begun in April of the same year on the process of formation of fuel distribution prices. The results of the survey showed that the restrictions on competition in the fuel distribution market are due both to present legislation and the behaviour of the companies

Fuel prices in Italy, after deducting taxes, have grown uniformly over the past five years, especially during the two-year period when government controls had been relaxed (1994-1995).

Although the structures of the companies' operating costs differ enormously in terms of level and yearly rates of change, the retail prices charged by each company were substantially uniform. Companies with lower costs had therefore failed to exploit this advantage by fixing lower prices as an attempt to increase their market share. With respect to other European countries, the Italian market is characterised by the absence of companies not vertically integrated into the petroleum industry (particularly supermarket chains) which elsewhere are playing a major role in stimulating price competition.

As far as legislation is concerned, the abolition in the spring of 1994 of any form of regulation on prices was not accompanied by the elimination of other statutory constraints which continue to restrict market entry. The severe statutory constraints on the opening or enlargement of petrol stations have discouraged companies from pursuing new commercial and investment strategies, hampering any spontaneous restructuring of the network through the reduction in the number of fuel distribution stations.

The Authority has emphasised that unjustified regulatory entry barriers should be dismantled. Moreover, the Authority asked for the elimination of the provision that links the permission for enlarging or improving an existing petrol station (adding other fuels, or installing a self-service system) to the closing down of another distribution station. Furthermore the Authority asked for an extension of the range of products that fuel distribution stations are currently allowed to sell and for the removal of the existing constraints on opening hours.

With regard to corporate behaviour, the fact-finding survey showed that the dependence of all oil-companies on Agip's logistical systems has prevented the adoption of an independent and non-co-operative behaviour on the distribution market. The Authority suggested to retrench Agip's dominant position in logistics through divestments by Agip before its privatisation, or by assigning to a specific joint venture the storage facilities of all existing oil companies. In the latter option the participation to the joint venture should be open to new competitors, in order to facilitate market entry and make storage services available to any operator on a non discriminatory basis.

CHEMICALS AND PHARMACEUTICALS

REPORT ON THE SUPPLY OF ADHESIVE MATERIALS FOR MEDICINAL SPECIALITIES

In November 1996 the Authority submitted a report on possible distortions to competition resulting from a Decree issued by the Minister of Health and concerning the adoption of self-adhesive computer-readable labels for medicinal specialities. In particular, the Decree provides that, for safety and security reasons, pharmaceutical companies must acquire their self-adhesive labels exclusively from the State Press company (Poligrafico dello Stato), which can sub-franchise the production, with a great deal of discretion, to a number of reliable companies.

Recalling the principle of Community directives on public procurement, under which security reasons alone are not sufficient to justify the non-application of tendering rules, the Authority noted that there were other less anticompetitive ways of preventing fraudulent acts. In particular, it would be sufficient for the State Press company to make an initial selection of

supplier companies, merely ensuring that they met all the safety and security requirements, and award the contracts through subsequent competitive tenders.

CEMENT AND CONCRETE

AGREEMENTS IN THE CONCRETE MARKET OF SARDINIA

In March 1997 the Authority ruled that the agreements concluded between four companies (Unicalcestruzzi, Calcestruzzi, Calcestruzzi Dau and Italcalcestruzzi), under which the allocation of sales quotas and the fixing of concrete prices on different markets in Sardinia were decided, breached competition law.

The degree of competition on the concrete market turned out to be strongly influenced by the competitive situation in the upstream cement market. In order to prevent any threat by competing firms importing cement into Sardinia, the incumbent cement manufacturer had implemented defence policies, which included control over the sale of concrete. After having managed to discourage cement imports, the cement companies, acting through the controlled concrete manufacturers, had been actively pursuing collusive strategies.

Considering the gravity and the duration of these practices as well as the different roles played by the companies in the agreement, Italcalcestruzzi and Unicalcestruzzi were fined 857 and 36 million lire, respectively (five per cent of the turnover), and Calcestruzzi was fined 598 million lire (three per cent of the turnover). No fine was imposed on Dau, whose dependence on cement supplies from Italcementi and Unicem (the cement companies controlling, respectively, Italcalcestruzzi and Unicalcestruzzi), was such as to significantly restrain the autonomy of its market behaviour.

OTHER MANUFACTURING ACTIVITIES

REPORT ON THE CURRENT RULES AND REGULATIONS GOVERNING IGNITION DEVICES

The report referred to current ignition device legislation, which prohibits the manufacture, import, distribution, assignment and sale of cigarette lighters for publicity purposes. Considering that matches and cigarette lighters fall within the same market, because of their substitutability, the Authority emphasised that these statutory provisions created a substantial difference of treatment between companies which manufacture and distribute cigarette lighters and companies which manufacture and market matches, which, on the contrary, may freely bear emblems, logos or trademarks for publicity purposes.

ELECTRICITY AND GAS PRODUCTION AND DISTRIBUTION

AGREEMENTS ON THE MARKET FOR THE INSPECTION AND MAINTENANCE OF HEATING SYSTEMS IN THE PROVINCE OF SIENA

In July 1996 the Authority recognised that a consortium company (Gas-Int), which held the exclusive franchise for the provision of non-industrial gas in several municipalities in the province of Siena, and a co-operative society of technicians and tradesmen specialised in plant engineering and heating systems maintenance (Co.S.I.S.) were acting anti-competitively.

The agreement between the parties had been formalised in a contract under which Co.S.I.S. was given exclusive rights to inspect and maintain gas heating systems in the municipalities supplied by the Gas-Int company, charging the customer on the gas bills in instalments. The Authority found that the agreement limited competition, biasing it in favour of operators working in Co.S.I.S., since other operators could not enjoy the same treatment.

TRANSPORTATION SERVICES

AGREEMENT ON THE SCHOOL BUS HIRING MARKET

In October 1996 the Authority completed an investigation into some consortia and companies providing school bus services. It was alleged that they had agreed to share between them the school bus market in the municipality of Rome.

The results of the investigation showed that the parties firstly did not submit tenders to the Rome city authorities for the school transport service and subsequently did not bid against each other when the contracts were defined under private negotiations. It was ascertained that the parties exchanged a great deal of information between them on costs and prices. Furthermore, during private negotiations, the only way of explaining the absence of any competitive bids was that each of the bidders knew the intentions of the others in advance. Any bus company with the necessary production capacity would otherwise have submitted bids for the areas adjacent to those traditionally serviced, at least as a precautionary measure to reduce the risk of being excluded from the market altogether.

In consideration of the severe anticompetitive effects, the Authority decided to impose fines, proportionate to the role of each company in the agreements. CIPAR, the leader of the agreement, was fined 226 million lire, (two per cent of its turnover), while to CIAT, Rossi Autoservizi and Corsi & Pampanelli parties were imposed a fine of 52,9 and nine million lire, respectively (one per cent of turnover).

ABUSE BY BRINDISI PORT COMPANY

In July 1996 the Authority concluded its investigation into the co-operative society of the workers in the port of Brindisi (Brindisi Port Company) to ascertain whether it had restricted competition for the supply of cargo handling services in the port of Brindisi.

In recent years all harbour and port activities have been experiencing a process of liberalisation, culminated in the regulation that makes it possible for any company authorised by the Harbour Authorities to operate port services. However, as a transitional provision whenever an authorised company does not have sufficient manpower to meet its operational requirements, there is the obligation to recruit new personnel from the former "port companies" which - as in the case of Brindisi - are also authorised to provide port services.

In this transitional framework, Brindisi Port Company in the first instance refused to supply its own labour force to a competing company, BIS (Brindisi Imbarchi Sbarchi Srl), and subsequently delayed the completion of hold-cleaning operations of the same company, supplying personnel without the proper qualifications and skills. Considering the statutory monopoly for the supply of labour held by the Port Company, the Authority found no objective justification for refusing to supply the workers requested by BIS, and therefore considered the conduct of the Port Company an abuse of dominant position.

In view of the serious nature of the company's conduct, the Authority fined the Brindisi Port Company one per cent of its turnover (37 million lire).

ABUSE IN THE BUNKERING SERVICE MARKET

In November 1995 the Authority began an investigation into Compagnia Italpetroli, the proprietor of a pipeline-oil storage system in Civitavecchia harbour, following a report by Fina Italiana alleging abuse of a dominant position by Italpetroli in its refusal to grant access to the pipeline that permits to supply fuel to ships berthed in the port.

Italpetroli is the franchisee in the port of Civitavecchia to occupy State-owned land to operate a coastal oil depot and an oil pipeline linking the oil depot to the quay in order to provide diesel and fuel oil to ships berthed in the port or at the roadstead (bunkering services). Before the pipeline became operational, the bunkering services were mainly provided using tanker trucks.

In October 1995 the Civitavecchia Harbourmaster's Office announced that for safety reasons under current legislation, once the Italpetroli pipeline became operational ships could no longer be bunkered using tanker trucks. Thus, in order to market their products within the area of Civitavecchia, for the oil companies port it was essential to have access to that pipeline.

Considering that the various technical reasons submitted by Italpetroli could not justify its refusal to grant access to Fina to its infrastructure, the Authority ruled that Italpetroli was committing an abuse.

REPORT REGARDING THE EXCLUSIVE RIGHTS OF THE PORT COMPANIES

Despite the deregulation of all port and harbour operations under Law no. 84/94, the transitional phase in the statutory framework for harbour and port services continued throughout 1996.

The Authority submitted two reports to the Government and the Parliament in June 1996 and in February 1997, emphasising that as a result of the transitional measures the on-going market

liberalisation process was being hampered. The companies supplying cargo handling services must frequently use temporary external port workers, which necessarily requires them to take on labour supplied exclusively by the former port companies, which are also their competitors. This situation is likely to restrict free competition between the companies authorised to operate in the port so long as the monopoly for the supply of port labourers is used to prevent the competitive supply of cargo handling services. The Authority therefore expressed the hope that the transitional system would be abolished.

ABUSE OF DOMINANT POSITION BY ALITALIA

In November 1996 the Authority completed an investigation on the Alitalia company, which was alleged to have abused its dominant position through the discriminatory use of its power to allocate takeoff and landing slots, reacting to competitors moves by resetting its own schedules anticipating by a few minutes those of competing companies, forcing them out of the market. Furthermore Alitalia had been sending notices to travel agents in Puglia and Calabria to persuade them not to issue tickets of competing airlines.

The Community Regulation No. 95/93, governing the allocation of slots for takeoff and landing, explicitly refers to the principle that the Co-ordinator supervising the allocation of slots (airport clearance) must be able to act with total impartiality as a third party. In Italy, however, the implementation of Community regulations is incomplete, since Alitalia was given the role of clearance co-ordinator for all national airports. The Authority found that in performing its duties of co-ordinator Alitalia had adopted strategies to conserve and consolidate its own position on the domestic market by obstructing the entry of new competitors. However in the course of the investigation Alitalia gave up its role as clearance co-ordinator.

With regard to the overlapping in some routes of Alitalia's departure times with those of the new competitors Aliadriatica and Meridiana, the inquiry showed that both these competitor airlines had suffered significant economic damage to the extent of being forced to give up some of the routes. Moreover, examination of relations between Alitalia and the travel agents showed that when Aliadriatica had begun flying on certain routes, Alitalia had sent notices warning the travel agencies not to issue tickets for the competitor company using the Alitalia mechanical or manual ticketing systems. Since the travel agencies only possessed tickets carrying the Alitalia identification code, these instructions prevented Aliadriatica from expanding its service, which was highly damaging both to the company and to its customers.

The Authority concluded that Alitalia had abused its dominant position violating section 3 of the Act. Considering the gravity and the duration of the offences, it fined the company 450 million lire (one per cent of turnover).

OPINION ON THE AIRPORT CLEARANCE SYSTEM

In November 1996 the Authority issued an opinion on the institutional changes demanded by Regulation No. 95/93/EC on slot allocations. Regarding the entity entrusted with slot allocation tasks, the Community regulation did not provide any preferred model, with the result that they

could be performed either by a public entity or by a private entity, with the participation of all the parties concerned.

The Authority also noted that competition protection could not be adequately guaranteed either by continuing to allow the national airline to keep a decisive role in the airport clearance, or by setting up entities controlled by the airport management companies. The neutrality of the airport clearance co-ordinator could be better guaranteed by setting up a neutral agency in which the interests of the national, international and new entrant airlines and airport management companies were harmonised.

ANCILLARY TRANSPORT ACTIVITIES

AGREEMENT AND ABUSE OF DOMINANT POSITION IN THE HIGHWAY ANCILLARY SERVICES MARKET

In November 1996 the Authority ruled that Autostrade, a company controlling either directly or through its subsidiaries a great part of the national highway network, had abused its dominant position, and had concluded an anticompetitive agreement with the Autogrill company.

Franchisees of highway sections, like Autostrade, are empowered to issue franchises to use the highway service areas to provide ancillary services. This gives the Autostrade company a dominant position on both the network management market and the highway ancillary services market, which includes the highway retailing, catering and refreshment services market.

The Authority found that some of the clauses in the agreement governing relations between the Autostrade company and the franchisees for catering, refreshment and retailing services had *de facto* distorted competition on these markets. In particular Autostrade undertook not to build new service areas to be put in competition with existing ones, except where the latter were incapable of meeting the demand, and granted the right of pre-emption over any new service area to the franchisees of adjacent areas, hindering the entrance of potential competitors. This was ruled to be an offence under section 3 of the Act.

ABUSE BY AUTOSTRADE IN THE MARKET FOR TOE AWAY CARS

In July 1996, the Authority issued a ruling in relation to alleged anti-competitive behaviour by the Autostrade company on the emergency breakdown service market. Since 1964, the Autostrade company had given the Italian Automobile Club Company (ACI) the exclusive right to provide emergency breakdown services throughout the whole of its highway network under an annual contract which was tacitly renewed upon expiry.

The inquiry showed that the Autostrade company had abused its dominant position by refusing to authorise any emergency breakdown service suppliers to its highway network other than ACI, thereby excluding any possible competition on the highway emergency services market.

As a result of this decision, in November 1996 the Autostrade company proposed to introduce a series of new measures to encourage the entry of new companies into the emergency breakdown service market on its highway network.

LOCAL PUBLIC SERVICES

REPORT ON THE ORGANISATION OF WASTE DISPOSAL SERVICES IN THE LATIUM REGION

This report regarded the anti-competitive effects of some of the provisions of the Latium Region's Waste Disposal Law Act.

The Authority pointed out that reserving an exclusive right to the municipal authorities to build and manage waste disposal facilities, either directly through special municipal-owned companies or through joint stock companies in which the municipality is a shareholder, limited market access by private companies, and substantially restricted competition as a result.

REPORT REGARDING TENDERS FOR THE COLLECTION, STORAGE AND DISPOSAL OF HOSPITAL WASTE

In November 1996 the Authority expressed an opinion on the procedures under which hospitals invite tenders for the provision of hospital waste collection and disposal services.

In the regulations governing the collection and disposal of toxic and special waste in hospitals, if certain categories of waste can be collected and treated either by public entities or by licensed private companies, other categories can be handled exclusively by the municipal authorities. Consequently, private companies cannot tender for all waste disposal activities in hospitals unless they are associated to a municipalised company, or participate in a joint venture together with a municipal authority. In view of these statutory constraints, the specifications for tenders relating to all waste disposal activities result in the identification of only one operator, namely, the municipalised company able to bid for all the services, eventually associated to a private company, with negative repercussions not only on the prices charged but also on the quality of the service provided.

TELECOMMUNICATIONS AND INFORMATION TECHNOLOGY

DEVELOPMENTS IN ITALIAN LEGISLATION AND THE STATE OF COMPETITION

During the past year, both the Government and Parliament have taken a number of important steps towards telecoms liberalisation. The rapid succession of Community deadlines for deregulation, and the approaching total opening-up to competition in this industry have made it urgent for Italy to adjust its own legislation to the new competitive scenario.

In Law no. 650 of 23 December 1996, Parliament enacted three major Community directives regarding the liberalisation of cable television networks (Directive 95/51/EC), the regime for supplying voice telephony with an ONP open network (Directive 95/62/EC) and the total liberalisation of the telecommunications industry (Directive 96/19/EC). The Government also issued Legislative Decree No. 55/96 to implement Directive 94/46/EC for the liberalisation of satellite communications and terminals. This Decree lays down procedures for requesting authorisation to manage satellite communications networks and provide satellite communications services, taking account of some of the observations submitted by the Antitrust

Authority in a January 1996 report, particularly with regard to conditions of access to earth stations belonging to the public carrier in the transition period from monopoly to competition.

In 1996 the second operator in the GSM cellular phone market started its operation competing vigorously with the former monopolist and bringing substantial benefits to consumers in terms of pricing, quality and range of commercial services supplied.

OPINION ON THE PROPOSAL TO REFORM THE COMMUNICATIONS INDUSTRY

In September 1996 the Authority submitted an opinion to the Parliament and the Government regarding two Government Bills: one regulating the communications system, and the other instituting the Communications Authority.

Endorsing the stated objectives pursued by these two Bills, i.e. introducing a comprehensive reform of all regulations governing communications, the Authority expressed the hope that this reform would fully take on board without any further delay the principles of liberalisation and deregulation, according to EC directives.

With regard to giving market access to new operators, the Authority pointed out that in the Telecommunications Reform Bill, the liberalisation of telecommunications infrastructure seemed to be partly hampered by the requirement that new infrastructure facilities could only be installed under government franchise, while the full exercise of the right to free enterprise should require that all telecommunications carriers be only subject to the issue of a permit.

With reference to connection conditions, the Authority expressed the hope that the right to a connection would be expressly acknowledged, and that the public telecommunications infrastructure managers would notify the economical and technical conditions for connections according to Community legislation.

As far as universal service obligations are concerned, the Authority emphasised the need to introduce into the Bill a more specific indication regarding the features and the substance of the universal service. It noted, furthermore, that in any event the financing of universal service should be proportional to the revenues of each network operator, avoiding introducing any mechanism which might *de facto* hamper market entry. Moreover, new market entrants and operators already supplying a public universal service using innovative technologies should not be required to finance universal service. Lastly, it emphasised the need for the public carrier to introduce an accounting system that would identify any additional costs connected with the provision of universal service and enable the regulatory authorities to verify them.

REPORTS REGARDING THE DECT TECHNOLOGY SERVICES

In October 1996 and January 1997 the Authority submitted a report to Parliament and the Government regarding the potential obstacles to the proper development of competition on the mobile and personal communications services market using the pan-European DECT *(Digital Enhanced Cordless Telecommunications)* standard technology.

Telecom Italia held the statutory monopoly over the fixed land-line telephone market and another company belonging to the same group, Telecom Italia Mobile, held the statutory monopoly over the TACS cellular telephone market and occupied a dominant position on the duopolistic GSM cellular telephone market. The Authority was therefore concerned that the introduction of DECT by Telecom as the first and, for the time being, sole operator, in the absence of any regulation of access, could hamper the development of competition. This applied to both the mobile telephone market, which had now been fully liberalised by Community Directive 96/2/EC, and the voice telephone market, for which Community Directive 96/19/EC required total liberalisation by 1 January 1998.

The Authority hoped that open, transparent and non-discriminatory procedures would rapidly be introduced in order to provide access to the frequency band reserved to the DECT technology. Even though the services associated with the DECT technology had been expressly liberalised since February 1996 when Directive 96/2/EC came into force, Italy had failed to incorporate such provisions into Italian legislation, and had never implemented the liberalisation of alternative networks that EC Directive 96/19/EC required to become effective as from July 1996. As a result, private operators were prevented from experimenting with or providing the services.

Particularly important was to guarantee that operators could be linked to the public network with tariffs aligned to costs, to ensure the provision by the switched public network of certain functions to all DECT operators (including transmission speed conversion, call routing and charging) with transparent costs and to oblige the public carrier to provide separate accounts for services based on DECT technology.

ALLEGED AGREEMENT BETWEEN MOTOROLA AND TELECOM

In June 1996 the Authority concluded an investigation into the Telecom Italia, Telecom Italia Mobile and Motorola Italia companies which had been started to see whether these companies had committed offences under sections 2 and 3 of the Act. The procedure began as a result of a complaint, from a number of TACS mobile telephone users, that Motorola Italia had stopped marketing its own TACS handset which was fitted with an internal telephone answering system. Such a refusal was benefiting Telecom Italia Mobile, who was also a distributor of Motorola handsets, because cellular phone customers would have to purchase the answering machine services from Telecom Italia Mobile itself.

During the investigation it emerged that the internal telephone answering function was liable to damage the TACS cellular telephone network and breach privacy. The agreement between Telecom and Motorola to temporarily halt marketing of handsets with an internal telephone answering system was therefore considered not to be anti-competitive.

THE CONSTITUTION OF TELECOM ITALIA MOBILE'S GSM DEALERS' NETWORK

In May 1996 the Authority completed its investigations to ascertain whether the exclusive rights and other loyalty clauses in the distribution contract between Telecom Italia Mobile (TIM) with

the network of dealers for subscriptions to the GSM service were likely to infringe competition law.

In the course of the investigations, the Authority found that TIM held a dominant position on the GSM mobile telephone market, with a large market share (over 80 per cent), in addition to its statutory monopoly over the adjacent and even broader market of TACS analogue mobile service. It therefore ruled that the organisation of an exclusive distribution system, and the conditioning in the subscription of TACS distribution contracts on acceptance by the dealer to distribute TIM's own GSM service exclusively, increasing market access costs to competing service providers, was an abuse of dominant position.

Moreover, the Authority, after having ascertained that the GSM subscriber distribution contracts were agreements between independent parties, declared these agreements to be anti-competitive because they were likely to prevent access by TIM's competitors to the distribution channels and rejected TIM's application for a section 4 waiver.

THE ACQUISITION BY TELECOM ITALIA OF VIDEO ON LINE

In June 1996 the Authority resolved not to oppose the acquisition by Telecom Italia of the Video On Line (VOL) business for the supply of Internet access services and ancillary services such as e-mail services to households and small firms. This decision was preceded by specific commitments undertaken by Telecom Italia.

The Authority had ruled that as originally notified the acquisition might have interfered with competition on the computer network services market, particularly the Internet, mainly because of the twin role played by Telecom Italia on the deregulated services market as the public carrier and sole supplier of leased lines, and the supplier of telecommunications services in competition with other operators. Telecom Italia's undertakings were the following: to give advance notice to all the other providers regarding the development of the telecommunications public network to enable them to programme their own activities; to maintain all the connection agreements concluded by VOL; to ascertain with totally independent organisations the feasibility of a connection system, which would be open to all market operators; to ensure separate accounting for the Internet access services.

FINANCIAL SERVICES

CARINORD JOINT VENTURE

In January 1997 the Authority submitted an opinion to the Bank of Italy regarding a project to set up a joint venture by Cariplo and the Fondazioni Cassa di Risparmio di Alessandria, Cassa di Risparmio di Carrara and Cassa di Risparmio della Spezia. This joint venture, to be called Carinord Holding, was to be given control over the Cassa di Risparmio di Alessandria, Cassa di Risparmio di Carrara and Cassa di Risparmio della Spezia banks.

Since the main purpose and effect of the operation was not to co-ordinate the founding companies, because only Cariplo was acting as a bank, the Authority evaluated it as a merger.

Particular attention was devoted to the effects that the operation might have on the bank deposit markets in the provinces of La Spezia and Massa Carrara whose savings banks accounted for a very high market share (49 per cent and 30 per cent, respectively) and which would have reached 57 per cent and 35 per cent, respectively, following the merger.

While noting that the territorial areas concerned were attractive to possible new entrants or other banks wishing to further extend their area of influence, in the opinion expressed to the Bank of Italy, the Authority emphasised the need to take steps to prevent a dominant position on the relevant markets from being created or strengthened. The Bank of Italy authorised the operation on condition that Cariplo and Carinord did not set up any new branches in the province of La Spezia for a period of five years.

INSURANCE SERVICES

AGREEMENT IN THE HAIL DAMAGE CROP INSURANCE MARKET

In 1996, the Authority continued to investigate the hail damage crop insurance market. In 1994 it had taken action against Consorzio Italiano Rischi Agricoli Speciali - CIRAS, which is a mandatory consortium to which virtually all the hail damage insurers belong. It had found that even though recent legislation removing monopoly rights from the market was being honoured, in that several mandatory consortia for this same purpose had been established, the commercial co-ordination of the associated insurance companies' behaviour carried out by CIRAS was thwarting the liberalisation process in the industry, substantially restricting competition in violation of section 2(2) of the Act. The Authority, however, considered that CIRAS should be given a one-year waiver because the restriction on competition seemed to be closely connected with the transitional nature of the statutory situation at the present time.

In 1995 CIRAS had requested the Authority to renew the waiver, on the grounds that it was still waiting for the sector to be reformed. In its April 1996 decision, the Authority firstly pointed out that CIRAS's previous operations had restricted competition without any tangible improvement in the conditions of supply or any substantial benefits to consumers. Furthermore, it stressed that the law governing the hail damage insurance market has changed substantially, since it was no longer requested to insurance companies to work through mandatory consortia. Therefore, the Authority ruled that there were no reasons for renewing the waiver.

RECONSTITUTION OF CIAG

In March 1997 the Authority completed its investigation into CIAG, a voluntary consortium of hail damage insurance companies, in order to see whether it had concluded agreements restricting competition by co-ordinating the conduct of the member companies relating to central aspects of the insurance business.

The structure of the hail damage insurance market seemed to have changed considerably since the liberalisation that had encouraged two other competitor companies to join CIAG and another operating consortium on the relevant market. Despite this, the CIAG consortium still held a

particularly large market share in 1996, accounting for almost 66 per cent of total premiums paid for hail damage insurance.

CIAG introduces itself to the member companies as a "services consortium", supplying at the request of its members, certain services which include the computerised management of all their insurance documents, a loss and damage adjustment service and administrative services for them. The investigation showed that some provisions of the consortium's internal regulations, contributing towards the standardisation of the commercial behaviour of member companies, were in violating section 2(2) of the Act. Therefore, the Authority required CIAG to change these provisions, but it decided not to impose any fines on it because, since both the consortium's Statute and internal regulations had recently been changed, they had been in force only for a short period of time.

RECREATIONAL, CULTURAL AND SPORTS ACTIVITIES

AGREEMENT BETWEEN THE ASSOCIATION OF ITALIAN BOOKSELLERS AND SEVERAL BOOK PUBLISHERS

The Authority began investigating a protocol agreement concluded in June 1995 between the association of booksellers "Associazione Librai Italiani" (ALI) and the main four publishing companies - with an aggregate market share in excess of 50 per cent of the Italian book market, excluding school text books - to curb the practice of discounting the book cover prices. The agreement required the publishers to stop supplying any books to chain stores which offered price reductions beyond a certain limit and also cancelled any favourable conditions (in terms of discounts, payment terms and the return of unsold books) for any bookshops offering discounts.

To ensure compliance with the agreement, ALI undertook to take disciplinary actions against any of its bookshop members that failed to comply with the pricing conditions imposed under this protocol agreement. The policing of the multiple retailing companies to ensure compliance with the terms of the agreement fell mainly to the wholesale book distribution company, Mach 2 Libri, which was controlled by the four publishing companies with exclusive distribution rights over their own publications through the chain retailing network.

The Authority considered that these agreements substantially restricted competition between the four publishing companies, encouraging the co-ordination of their marketing policies. In particular, the grant to Mach 2 of exclusive rights was likely to remove any form of competition in the supply of the multiple retailing outlets. Furthermore, the agreements in the protocol limiting discounts that retailers might wish to offer prevented competition between the retailers, including small bookshops and the retailing networks.

In the final phase of the proceedings, which were completed in 1996, Associazione Librai Italiani, the four publishing companies and the Mach 2 company cancelled all of the above mentioned agreements between them and the wholesale distribution companies competing with Mach 2 were no longer denied direct access to the four publishing companies' supplies. Since these anticompetitive practices had been voluntarily removed by the parties before the conclusion of the proceedings, the Authority did not impose any fines upon them.

AGREEMENT IN THE SCHOOL TEXT BOOKS MARKET

In March 1997 the Authority completed its investigations to see whether the market for the printing and sale of school textbooks had been subject to co-ordinated commercial strategies by the publishing companies associated to Associazione Italiana Editori (AIE) in such a way as to constitute an infringement of the ban on agreements restricting competition.

According to the evidence, AIE had set up, starting from the early Eighties, a School Textbook Commission responsible for analysing cost developments in the industry and refer back to its members one month before the new price lists were drawn up by the publishers. As a result of this exchange of information, average cost increases were identified and the percentage price increases for school books were set accordingly, to ensure profitability to all publishers.

The Authority observed that the decisions adopted by AIE were designed to standardise different aspects of the commercial behaviour of member companies, by deciding on the percentages of price increases, determining the price structure and setting the profit margin earned by booksellers. Moreover, AIE's members made up some two-thirds of all the publishing houses operating in Italy, and the publishers following the Association's instructions had more than 70 per cent of the market share for school textbooks. The Authority therefore ruled that the agreements examined had substantially restricted competition on the school textbook market in violation of section 2(2) of the Act.

OPINION ON THE ADOPTION OF SCHOOL TEXTBOOKS

In June 1996 the Ministry of Education requested the Authority for an opinion regarding the compatibility with Competition Law of a number of measures contained in a Ministerial letter relating to the procedure to be used for the adoption of textbooks in secondary schools. The circular specified that when choosing textbooks it was not only necessary to assess their educational character, such as the quality and comprehensiveness of the contents, but also such factors as the weight (in order to minimise the burden for the carrying students) and the price. In particular, the letter invited teachers to choose less expensive text books having an equivalent educational value, and to drop a particular textbook if the selling price had been raised since its adoption.

In its opinion delivered in July 1996, the Authority firstly emphasised the particular features of the school textbook market. Whereas the list of textbooks for adoption in the schools was drawn up by the teachers, the textbooks were actually purchased by the students. Two different parties were therefore involved in choosing the books and paying for them. This being so, the Authority considered that the provisions of the Ministerial circular induced the teachers to prefer cheaper books, of the same quality, which is exactly what consumers do in terms of their budgetary constraints, without thereby placing any unjustified restrictions on competition. The other provision, namely, to strike off textbooks adopted if the prices were subsequently raised was not considered to be in contrast with competition protection, because teachers were rightly given the possibility to change their original choices if the quality-price mix worsened. The Authority therefore considered that the Ministerial letter did not contain any provisions that unduly restricted competition.

EXCLUSIVE AGREEMENT FOR THE USE OF SOCCER PLAYERS' IMAGES

The proceeding, which was completed in October 1996, related to two agreements, concluded in 1992 and 1995, between the Panini Spa company and the Associazione Italiana Calciatori (AIC), the trade association of the professional soccer players taking part in Italian championships. According to the two agreements, AIC had assigned to Panini the exclusive right to use of the images of the soccer players wearing their team colours by publishing and marketing them on self-adhesive stickers, together with albums for stickers and other published items for collection.

The relevant market, after a thorough analysis, was identified as the soccer players' picture collection market. Assessing the economic impact of the agreements, the Authority noted that, since AIC holds the exclusive right to use the soccer players' pictures in their team colours, it could exercise a substantial market power. Consistently with Community case law, it stated that competition rules apply to the exercise of intellectual property rights. Evaluating that the assignment to one single entity of the exclusive right over the images of soccer players items was not justified by the need to guarantee a full remuneration of any creative effort or of other investments, and considering the very limited effect of the incentives on the parties involved, the Authority ruled that both the 1992 and 1995 contracts were to be considered prohibited agreements under section 2(2) of the Act.

MERGER IN THE HORSE-RACE BETTING MARKET

In January 1996 Snai Servizi notified the Authority that it intended to acquire control of the Trenno company through the company San Siro, specifically constituted for this purpose. Snai Servizi, to which 281 horse-racing betting shops belong, accounting for about 50 per cent of the total racing betting market, is the carrier for the television signal for horse races to be shown in race betting centres throughout the country. Trenno's main activity is to acquire and manage participations in racecourses, and to organise and run racing events and competitions. The company manages the San Siro and Montecatini Terme racecourses, and possesses minority interests in the companies managing the Roma Capannelle and Pisa San Rossore racecourses.

The Authority focused particularly on the effects of this merger on the horse-race betting market and the market for the organisation and management of horse shows and events. On the horse-racing betting market, Snai Servizi has a 62 per cent share of all bets placed, compared with 20 per cent by Sisal and the remaining 18 per cent by several other companies. As far as the organisation and management of horse shows and events are concerned, the fact that one single company would be able to choose the races to be transmitted by television and at the same time would own two main national racecourses - San Siro and Montecatini - seemed likely to encourage discriminatory behaviours that might interfere with the distribution of the bets.

During the investigation, Snai Servizi notified the Authority that it wished to implement specific measures to limit its ability to make strategic use of the television signal. More specifically, it undertook to lease the broadcasting studios, the direction of the broadcasts and television signal management to a third party characterised by independence and impartiality. The Authority considered that the changes made to the operation with these undertakings by Snai Servizi were

sufficient to remove any risks that competition might be restricted as a result of the merger, and therefore closed the proceedings.

REPORT ON THE PROCEDURES FOR AWARDING THE MANAGEMENT OF LOTTERY BETTING

In July 1997 the Authority submitted a report to the Minister of Finance relating to the procedures used to assign the management of the Enalotto betting system. Under current practice, the Ministry of Finance was responsible for managing games of skill, football pools and other lottery-type betting systems. It could do it directly, or commission it to other natural or juridical persons. The Authority emphasised the need to interpret this in the light of the latest developments in legislation governing public service contracts under Directive 92/50/EC which Italy had incorporated into national legislation by Legislative Decree No. 157/95.

According to public service contract legislation, when selecting the person or legal entity to which to entrust the management of the Enalotto betting system, the Finance Ministry should have followed an open tendering procedure so that all the interested parties could compete for the service. The Authority expressed the hope that a competitive invitation to tender would be published for the award of that service.

REPORT ON SKI COACHING

The subject of the report were the regional and provincial laws and bills relating to ski coaching. The Authority pointed out the distortions to competition caused by provisions imposing territorial limits on ski coaching and the compulsory fees charged by ski instructors. As far as access to the profession was concerned, regional legislation not only required ski instructors to be registered on the regional or autonomous province-authorised list for the territory in which they intended to work, but also made provision for instructors to be struck-off whenever they transferred to the list of another region or autonomous province. In other words, ski instructors could only work on a permanent basis in one single territorial area. This was likely to make it impossible to rapidly match supply and demand conditions, and limiting the territorial mobility of ski instructors could raise entry barriers and ultimately distort the market.

On the subject of the regional laws setting compulsory fees, the Authority ruled that laying down mandatory fees further restricted possible competition between ski instructors. It then suggested that the prices for the services provided by ski instructors should be left to negotiation between the parties, so that users could choose ski instructors on the basis of quality and prices.

REPORT ON THE OPENING OF NEW MOVIE THEATRES

This report related to the procedures for the opening up of new movie theatres. It pointed out that the changes recently introduced into the Italian legislation had not completely removed the statutory restrictions on competition in the film theatre market. The law continued to subject the construction, transformation and conversion of buildings to be used as cinemas and arenas for cinematographic entertainment, and the extension of those already in operation, to authorisation from the competent authorities, after ascertaining compliance with certain criteria demand

oriented. These included, in particular, keeping a specific ratio between the number of cinemas operating in a particular municipal territory and its resident population, and the guarantee of a minimum distance between one theatre and the next.

The Authority pointed out that a structural regulation on the supply side had no real economic justification and as the market was presently evolving any restriction on the opening of new cinemas or the conversion of those already in operation could only encourage the creation of dominant positions, impeding competition.

OPINION ON TOUR GUIDE SERVICES

In January 1997 the Authority pointed out the restrictions on competition imposed by a number of provisions in regional legislation governing the profession of tour guide, including fee-setting and procedures for obtaining a license to practise.

As far as fees were concerned, in some cases regional legislation laid down both the minimum and the maximum fees, while others only laid down the maximum fees. Most regional authorities set the fees in the form of an administrative measure, after hearing the opinions of the professional associations; in other Regions, however, the fees were laid down directly by the professional associations themselves. With regard to access to the profession, regional legislation provided that the profession should be subject to a license to practise issued by the municipality of residence, after ascertaining certain eligibility criteria and on the basis of an examination before a regional or provincial commission. Some Regions also made it possible to balance supply and demand at the administrative level in advance.

The Authority emphasised the fact that the only possible reason to justify the regulation of the profession was to guarantee a high quality of service and professional competence by guides. However, minimum fee-setting obviously do not prevent poor quality services from being supplied and maximum fee-setting usually induce the service providers to align their charges to the maximum. Regional legislation requiring prices to be set not by some public authority but directly by the local associations of tour guides would at all events be prohibited as restraint on competition under section 2 of the Act.

With regard to the entry to the tour guide profession, the Authority emphasised that any rapid matching of supply and demand might be jeopardised if examinations for future candidates were not held at brief intervals, above all when market entry was predetermined. Barriers to entry, easing competition pressure, would discourage tour guides to improve the quality and price of their services.

OTHER AREAS OF ACTIVITY

AGREEMENT BETWEEN ADVERTISING AGENCIES

In December 1996 the Authority completed its investigation into the main associations of advertising, public relations and communications companies (ASSAP, OTEP, AIPAS, ASSODIRECT, ASSOREL and ASP), the Association of companies which purchase

advertising services (UPA), and the Federazione Italiana della Comunicazione, to see whether there were any agreements restricting competition designed to co-ordinate prices and tendering.

On price co-ordination, the Authority ruled that the charges set by the associations were prohibited agreements because they were likely to encourage co-ordination between the agencies regarding remuneration for their services. It also reiterated the fact that any agreement designed to set minimum prices constituted a restriction on competition, whether or not the suggested prices were binding.

As far as tendering was concerned, the Authority found evidence of rules of conduct regarding tendering for private users in violation of competition rules, with which the member companies were required to comply. No sanctions were imposed because, being the parties Associations of enterprises, they have no actual turnover.

AGREEMENT IN THE MARKET OF SECURITY GUARD SERVICES IN SARDINIA

In December 1996 the Authority completed an investigation into the four main security guard companies operating in the province of Cagliari which had a market share of over 94 per cent of the security guard services in the Cagliari province, to ascertain possible violations of section 2(2) of the Act.

The evidence that emerged showed that none of these companies had exerted any competitive pressure in tendering for any of the contracts awarded in the period 1990-1995. Over time, it was found that there was a total client stability among the leading security guard companies. Moreover, comparing the invitations to tender for contracts of similar value, the Authority found that for those contracts awarded to other companies, each company had submitted higher bids than those usually charged. Lastly, it emerged that two leading companies, Sicurezza Notturna and Vigilanza Sardegna, when competing against smaller companies, had offered prices below cost to prevent these smaller competitors from being awarded the contracts.

The Authority pointed out that this price-setting conduct could not have been the result of an autonomous choice by the single company. Considering the gravity and the duration of these restrictions on competition the Authority fined Vigilanza Sardegna and Sicurezza Notturna 1.5 per cent of their turnover, and Sicurvis and Cannas the equivalent of one per cent of their turnover, totalling 476 million lire. The difference in the percentage of the fine was based on the different ways in which these security guard companies had taken part in the agreement.

REPORT ON REGULATIONS REGARDING THE DEVELOPMENT AND PRINTING OF PHOTOGRAPHS

This report related to a number of statutory obstacles to developing and printing photographic film. The law currently requires a license for developing and printing photographic films. Even shops which do not directly develop and print film themselves but merely collect films for subsequent developing and printing in outside laboratories are required to apply for a license, regardless of the fact that they already posses a standard license for the sale of photographic materials.

The Authority found that the licensing requirement for shops which are not equipped to develop and print photographic material in order to use outside film developing laboratories was a form of public control over market entry, which could not be justified by the pursuit of any general interest.