AGCM
AUTORITÀ GARANTE DELLA CONCORRENZA
E DEL MERCATO

ANNUAL REPORT
1997

TABLE OF CONTENTS

STATUTORY CHANGES

In communications, similarly to what happened in 1995 in the gas and electricity industries, regulatory tasks previously carried out by the Ministry have been transferred, by Act no. 249 of July 31st 1997, to a sectorial independent regulatory agency, called "Autorità per le garanzie nelle comunicazioni".

For telecommunications, Act no. 249/97 simply confirms the functional division of tasks provided by the Competition Act no. 287 of October 10th, 1990 (the Act), giving the communications agency only regulatory tasks while the Antitrust Authority remains competent to apply competition rules. For publishing and broadcasting, the Act no. 249/97 modifies the previous institutional structure, giving the Antitrust Authority the power, previously assigned to the former Publishing and Broadcasting Authority, to enforce competition law in these sectors.

ENFORCEMENT OF COMPETITION LAW

ACTION TAKEN BY THE AUTHORITY: A SUMMARY

In 1997 and in the first three months of 1998, the Authority ruled on 12 agreements, 5 cases of alleged abuse of a dominant position and 358 concentrations between independent companies. Eight agreements were found to restrict competition in violation of Section 2 of the Act, and in four cases of alleged abusive behaviour the Authority found an infringement of Section 3 of the Act. A merger was prohibited, and six other concentrations were considered lawful only following changes introduced by the parties to the original plans. The Authority also submitted 64 opinions to the Bank of Italy and to the Broadcasting and Publishing Authority under Section 20 of the Act.

Moreover, the Authority completed six general fact-finding investigations, in port and harbour services, natural gas, vehicle fuel distribution, pharmaceuticals, professional associations and corporate financial services.

The workload associated with competition advocacy was considerably higher than in previous years. In 1997 and in the first 3 months of 1998, the Authority submitted 52 reports and opinions to Parliament and the Government, under Sections 21 and 22 of the Act, identifying statutory and regulatory provisions as well as draft legislation that created or were likely to create unjustified restrictions on competition. The reports related to a variety of different sectors, particularly transport, telecommunications, professional services and retailing.

Lastly, the Authority ruled on 725 complaints about alleged cases of misleading advertising, and in 430 cases the advertisements were found to be in violation of Legislative Decree No. 74 of 25 January 1992.

Action taken by the Authority

(number of cases)

	1995	1996	1997	Jan-March 1998
Agreements	31	24	12	0
Abuse	31	10	5	0
Mergers	282	357	292	66
Misleading advertising	244	423	582	143

Breakdown of proceedings by type and outcome

(January 1997 -March 1998)

	Non violation	Non violation after amendment of the original proposal	Violation
Agreements	2	2	8
Abuse of dominant position	-	11	4
Mergers	351	6	1
Misleading advertising	295	-	430

Competition advocacy reports and opinions to Parliament and the Government

(January 1997-March 1998)

Sector	
Food and tobacco	2
Publishing	1
Electricity, gas and water	1
construction	2
Retailing	6
Transport	8
Telecommunications	6
Insurance and pension funds	3
Professional and business services	7
Education, healthcare and social services	2
Waste disposal	3
Others	8
Total	49

AGRICULTURAL AND FOOD PRODUCTS

CIRIO-CENTRALE DEL LATTE DI ROMA

In October 1997 the Authority completed its investigation into the acquisition by Cirio Spa of a control stake in Centrale del Latte di Roma Spa. Both companies are producers and distributors of milk and dairy products. Following the operation, the market share held by Cirio on the fresh milk market in the Lazio region would have increased from 25% to 66%. The retail trade structure in Lazio is highly fragmented, being dominated by traditional shops, and the maximum shelf life for fresh milk is, by law, of only four days. Therefore, an extremely widespread distribution network is needed in order to guarantee continuity, reliability and quality to the fresh milk delivery service, and competition from producers outside the region was unlikely to affect Cirio's market power significantly.

In light of the Authority's observations, Cirio undertook to sell off one of its own distinctive trademarks, together with a production capacity equivalent to the one relevant for that trademark, to another qualified competitor. Considering these undertakings sufficient to prevent a substantial lessening of competition, the Authority authorised the merger.

REPORT ON MILK QUOTAS LEGISLATION

In December 1997 the Authority submitted a report to Parliament and the Government regarding the provisions of Italian law regulating the transfer, between producers, of milk quotas individually assigned in accordance with European Agricultural Policy. In cases where the quotas are not transferred together with production facilities, transfers must take place before the beginning of the production season and between producers of the same region. The Authority remarked that these restrictions raise additional and unjustified obstacles to competition and to the growth of the most efficient undertakings on a market whose structure is already rigidly defined by Community policy through the assignment of national milk quotas.

OPINION ON CERTIFICATION BODIES FOR PROTECTED DENOMINATION OF ORIGIN OF AGRICULTURAL AND FOOD PRODUCTS

In March 1998 the Authority submitted an opinion to Parliament and the Government in relation to draft legislation (Bill No. 1780-C) governing the protection of denomination of origin for agricultural and food products. The Bill provided that every agri-food product with a protected name should be controlled by one certification body, that the consortia set up to protect these names should notify the Ministry for Agricultural Policy of the certification body they had chosen, and that private undertakings wishing to operate in the certification business should obtain a special authorisation from the Ministry for Agricultural Policies.

The Authority observed that, in any case, the chosen certification body had to be one of those accredited under current international legislation. Therefore, the imposition to consortia members of a single certification body was not justified on technical grounds or for the purposes of guaranteeing quality and did not seem consistent with EC Regulation No. 2081/92. Moreover, the requirement, for private undertakings, of a special authorisation to carry on the certification business in Italy, even if they were already accredited to do so by international law, was deemed to impose unjustified discrimination between public and private undertakings.

OIL PRODUCTS

OPINION ON THE LEGISLATIVE DECREE FOR THE RATIONALISATION OF THE FUEL DISTRIBUTION SYSTEM

In December 1997 the Authority submitted an opinion to Parliament and the Government on a draft legislative decree for the rationalisation of the fuel distribution system. The draft decree, which replaced the existing administrative franchise system for the opening of new service stations with a permit system, based on objective criteria, marked a major step forward towards a liberalisation of market access in the sector. However, a transitional period was provided, until December 1, 2000, in which, while entry was still restricted, incumbent companies would have proceeded to a concerted restructuring of the network. Because of the possible anticompetitive

consequences of these provisions, the Authority expressed its preference for the network to be restructured at the same time as the full liberalisation of market access.

CHEMICAL PRODUCTS

MINE EXPLOSIVE OPERATORS

In June 1997 the Authority completed an investigation into a horizontal agreement between the nine leading mine explosives manufacturers. The companies had agreed to market their products solely through the Italesplosivi Spa company; sales quotas were allocated between the parties and prices were fixed through a Pricing Committee. This agreement, settled in 1973, was renewed in 1984.

Taking the significant market shares of the parties into account, the Authority ruled that the agreement had substantially restricted competition, leading to a reduction in the range of available products and to higher prices on the market. In view of the seriousness of the offence and considering the different roles played by the companies with respect to the agreement, fines ranging from 3% to 2% of the companies' turnover (for a total of 1,406 million lire) were imposed. No fines, however, were imposed on the complainant company, since it had voluntarily ceased breaking the law before the Authority had taken action, and played a decisive role in the discovery of the agreement.

SOLVAY-SODI

In April 1997 the Authority completed its investigation on the acquisition by the Belgian company Solvay Sa of 60% of the equity of Sodi p.l.c. Devnja, a Bulgarian-registered company previously controlled by the Bulgarian government. The relevant market was defined as the market for sodium carbonate (soda). Soda may be obtained synthetically or by mining natural deposits. Synthetic production is more costly and results in a lower quality product; however, it is the only production form which is possible in Europe. Also due to increasing returns of scale, the industry structure is highly concentrated. In 1997, Solvay, which is the only company with production plants in Italy, had market shares of approximately 50% in Europe and above 85% in Italy. Sodi was the second largest company on the Italian market, with a market share below 10%. In addition to Sodi’s imports, other soda imports came to Italy from Turkey and Romania. Before 1994, in Italy as indeed in the rest of Europe, a great deal of sodium carbonate of natural origin was imported from the United States. When the European Community imposed anti-dumping duties on the United States, this supply channel was shut off.

The Authority considered that the acquisition of Sodi would have enabled Solvay to further strengthen its dominant position on the Italian market by taking over one of its most dynamic competitors. In the light of the Authority’s observations, Solvay concluded an agreement with the Turkish company Šišecam giving it the right to market 25% of Sodi's output. Moreover, together with other European producers holding an overall share of production in excess of 75% within the EU, Solvay notified the Directorate General (DG) I of the European Commission that

it withdrew its support for the maintenance of duties on soda imports from the US. With the changes proposed by Solvay and the prospect of lifting the anti-dumping duties on soda imports from the United States, the Authority ruled that the operation was not likely to eliminate or restrict competition on a substantial and lasting basis.

HENKEL-LOCTITE

In May 1997 the Authority concluded its investigation on the acquisition of control of Loctite Corporation by Henkel Spa. Both companies operate in the adhesives and sealant industry, for which there are two main types of customer: industrial customers, and retailers for domestic or professional use. The Authority was concerned of the consequences of the operation on the retail channel. In the light of the high advertising costs that must be sustained, the availability of a wide range of different products is a major strategic factor in placing each product with retailers. Henkel already held a 44% market share in the retail channel and with the acquisition of Loctite would have obtained an extraordinary concentration of leading trade marks, a much wider range of products to sell and an enhanced sales network; in the Authority's view, the acquisition would have given Henkel a dominant position.

Following the Authority's remarks, Henkel undertook to assign to a competitor the license to use some of its trade marks, to cease marketing certain adhesive products on behalf of other manufacturers, to stop using the Bostik trade mark for the marketing of adhesives for home use, and lastly to give, to all competitors that might request it, the license to use the Bostik trade mark and the know-how for the production of certain adhesive products. The Authority considered Henkel's undertakings sufficient to prevent a dominant position from being created, and on that basis authorised the acquisition.

PHARMACEUTICALS

BAXTER-CLARK

In December 1997 the Authority completed its investigation into the acquisition by the United States Baxter International Inc. group of the controlling interest in the Clark Srl company. Both companies operate in the pharmaceuticals and health and medical products industry. On the Italian market this operation would have given Baxter almost three times the market share of its main competitor for solutions for peritoneal dialysis, and three-and-a-half times that of market for lines and machinery used for this treatment. After analysing the state of competition in the industry the Authority found that between 1990 and 1997, Baxter's market shares in Italy for peritoneal dialysis treatments had declined significantly as a result of the action of its main competitors. It therefore ruled that the operation did not enable the company to act significantly independently of its competitors and customers, and therefore closed the investigation.

FACT-FINDING SURVEY INTO THE PHARMACEUTICALS INDUSTRY

In November 1997 the Authority completed a general fact-finding survey into the pharmaceuticals industry in Italy. As far as the competitive structure of the industry is

concerned, markets are, in general, highly concentrated (with CR4 above 80%) and market shares change very rapidly as a result of product innovation.

Between November 1995 (when prices were deregulated) and August 1997, the prices of about half of the medicinal specialties not subject to price controls increased significantly. Moreover, companies often applied parallel price increases; so far, price liberalisation does not seem to have led to a strongest price competition. On the other hand, the prices of drugs which the National Health Service refunded wholly or partially cannot rise above what is known as the "European average price" for similar products sold within the European Union.

The Authority observed that the rule according to which refunds are only granted for the cheapest drugs containing the same active ingredient may penalise innovative products for which higher prices are justified by the need to recover R&D expenses. The adoption of a refund system based on a benchmark price which would require the patient to pay the difference between the actual price and the refund price, would provide a less restrictive solution.

In Italy, pharmacists have the statutory obligation to charge the same prices on medecines not eligible for refunds nationwide. The Authority suggested lifting the obligation because this would enhance competition both between retailers and between manufacturers. This would also encourage the sale of non-prescription drugs in outlets other than pharmacies. Moreover, the Authority suggested abolishing the obligation on wholesaler distributors to stock at least 90% of all the authorised medicinal specialties, because this discourages competition between the manufacturers of different drugs with similar therapeutic features.

Lastly, the Authority also expressed the hope that the Government would rapidly introduce favourable conditions to encourage more widespread use of generic drugs which could make a substantial contribution to creating greater price competition between manufacturers.

CEMENT AND CONCRETE

ITALCALCESTRUZZI-CALCESTRUZZI

In June 1997 the Authority completed its investigation into the acquisition by the Italcementi group of the control of Calcestruzzi Spa. The acquiring undertaking is not only a concrete manufacturer, but also happens to be Italy's largest cement producer. The acquired company is by far the largest national concrete producer.

The Authority expressed its concern for the increased market power that Italcementi would have acquired on several regional cement markets due to its integration with a leading cement purchaser. In particular in Sicily and Sardinia, where the cement market was suffering from structural production overcapacity, Italcementi had a very large market share and could meet all the demand itself. On these markets, greater integration downstream would result in a significant independence of Italcementi from its competitors behaviour.

In light of the remarks made by the Authority, Italcementi undertook to sell-off the facilities purchased from Calcestruzzi operating in Sardinia and in certain provinces in Sicily, and also to

sell off its equity interests held jointly with other cement manufacturers in certain companies. Under these conditions, the Authority authorised the acquisition.

OTHER MANUFACTURING ACTIVITIES

GLASS CONTAINERS

In June 1997, the Authority completed its investigation into alleged agreements between the main producers of glass containers for food, resulting from a complaint by several industrial associations in the food industry.

The Authority found that all the producers of glass food containers belonging to the Assovetro industrial association had laid down, for 1996 contracts, a standard clause obliging purchasers of glass containers to buy also the packaging used to transport them (wooden shelving and plastic packaging materials). The introduction of this clause substantially increased the costs to purchasers.

It also emerged that since 1993 there had been, through the Assovetro association, an intense exchange of information between the four main producers of glass containers, on every aspect of corporate strategies. The exchange of information through regular meetings, and the evidence of an alignment of prices and other contractual clauses applied by the four companies were considered by the Authority evidence of an agreement restricting competition. Fines equivalent to 3% of their turnover were imposed on the four companies, amounting to 38 billion lire.

GAS PRODUCTION AND DISTRIBUTION

FACT-FINDING INVESTIGATION INTO THE NATURAL GAS INDUSTRY

In November 1997 the Authority completed its fact-finding investigation into the natural gas industry in Italy. Eni Spa, with its controlled companies Agip Spa, Snam Spa and Italgas Spa, holds a monopoly or at all events a dominant position in every phase of the production process, ranging from gas supplies, transport through high pressure pipelines, storage and transmission, to primary distribution and secondary distribution to non-industrial end-users.

Given the advantages granted to Snam under current legislation, especially in relation to the transport phase, the Authority deemed a restructuring of the Eni group necessary in order to guarantee effective access to transport facilities to potential competitors. In particular, in order to offer non-discriminatory access conditions to the transport infrastructure to national or foreign potential distributors, Snam should be split into two separate companies, one to manage the transport infrastructure and storage facilities, and the other to manage imports and primary distribution.

The Authority also expressed the hope that the selling price of natural gas in the primary distribution phase would reflect real supply costs, instead of being based on comparisons with

the prices of alternative fuels as is currently the case in contracts initialled by Snam with the industrial associations.

Lastly, the Authority argued that Eni competitive advantage stemming from the particularly favourable tax treatment of natural gas compared with other energy products, should be eliminated.

CONSORZIO PER IL NUCLEO DI INDUSTRIALIZZAZIONE CAMPOBASSO-BOIANO/SOCIETÀ GASDOTTI DEL MEZZOGIORNO

In July 1997 the Authority completed an investigation into an alleged abuse of dominant position by the Gasdotti del Mezzogiorno Spa (SGM) company, which transports and distributes natural gas to prime users (industrial and non-industrial customers) in certain areas of central and southern Italy. The complainant (Consorzio per il Nucleo di Industrializzazione di Campobasso e Boiano) had installed a natural gas distribution network serving the Consortium members, which was supposed to be linked to a neighbouring high pressure gas pipeline belonging to SGM. The reason for the complaint to the Authority was SGM's repeated refusal to link the supply pipeline to its own gas pipelines unless SGM was also entrusted with the management of the Consortium's own distribution network. The Consortium had, instead, given the management of the network to another company.

The investigation showed that SGM had a dominant position on the natural gas supply market for industrial uses in the Molise region. The refusal to link the Consortia's pipelines to SGM own gas pipeline in order to prevent a competitor from entering the market for the distribution of gas to the industrial users belonging to the Consortium, was considered by the Authority an abuse of dominant position. Before the investigation was closed, the company agreed to link the Consortium's pipeline to its own, leaving to the competing firm the management of the Consortium's distribution network. Moreover, it undertook to charge the same price that would have been paid under current contractual conditions by a consumer of a quantity of gas equal to the sum total of the consumption of all the members of the Consortium (with benefits to each individual member of the Consortium, who would otherwise have paid higher prices). The Authority ruled that SGM's new policy had put an end to the previous abusive behaviour. SGM was fined 1% of its turnover (247 million lire).

AGIP-TMF-ENERGON

In December 1997 the Authority completed an investigation into the acquisition by Agip Spa of a concession to exploit hydrocarbons in the "Bonaccia" natural deposit and of a permit to prospect in an area off the Adriatic coast. This operation would have increased Agip's share of the national production of natural gas from 90% to 92%, and would have also had an impact on the downstream market of primary distribution. Agip's original project was also designed to assign all the gas extracted from the Bonaccia field to its subsidiary, Snam, which holds a dominant position in the transport and primary distribution of natural gas in Italy.

The licence for “Bonaccia” deposit exploitation was previously held by the Centro Energia company, a major purchaser of natural gas. According to the original plan, Centro Energia was to purchase the gas directly from Snam, as the owner of the network. The Authority considered that this relationship was likely to hamper future competition in the industry, particularly in view of the prospect of incorporating into Italian law the European directive enabling users, such as Centro Energia, to freely choose their own supplier within the European Union and requiring the network owner to supply the gas acquired from the point of delivery to the point of consumption.

During the investigation, Agip undertook to sell to Centro Energia a certain quantity of gas directly "on the beach". Having obtained the gas, Centro Energia would have been able to send it to its Ferrara power station under a routing contract concluded with Snam. The Authority considered that these undertakings were likely to eliminate any possible future negative impact of the operation on competition between gas producers, and therefore authorised the acquisition.

RETAIL TRADE

REPORT ON THE REFORM OF RETAIL TRADE REGULATION

On 31 March 1998 the Council of Ministers approved Legislative Decree No. 114, containing a widespread reform of retail trade regulation in Italy. Already in 1993 the Authority, in a detailed report to the Government, had strongly advocated the removal of the unjustified regulatory constraints in this sector. In March 1998, the Authority submitted an opinion to Parliament and the Government containing specific remarks with respect to the preliminary draft of the legislative decree.

The draft legislative decree, which took up many of the suggestions expressed by the Authority in the 1993 report, marked a major step forward in the direction of a more market-oriented regulation of retailing. In particular, it made entry conditions significantly easier, liberalising the opening, extension and transfer of small retail shops and simplifying the permit system provided for large retail surfaces.

In its report, however, the Authority pointed out the provisions of the draft decree that could usefully be amended to foster competition. In particular, it observed that the regional governments' lawmaking and planning powers should be more clearly defined, in order to prevent highly discretionary interpretations by the regional and local authorities, which could be inconsistent with the whole purpose of the reform. The final version of the decree partially took up the wishes of the Authority, defining the powers of regional and municipal governments more specifically and clearly, and restricting the scope for discretionary intervention.

GENERALE SUPERMERCATI-STANDA-IL GIGANTE/SUPERCENTRALE

In April 1997, the Authority completed an investigation into a joint purchasing agreement between Generale Supermercati (GS) Spa, Standa Spa and Il Gigante Spa. These companies, which operate retail chain stores, had given a joint-venture between GS and Standa, called

"Supercentrale", the task of negotiating favourable purchasing conditions on their behalf; on such basis, the three retailers would have subsequently made their own independent purchases.

The Authority evaluated the agreement with reference to its impact both on competition among large retailers of grocery products and on suppliers of such products to retailers. With respect to the impact on suppliers, it was pointed out that Supercentrale held only modest purchasing market shares, equivalent to the ones held by other joint-purchasing entities; moreover, the counterparts were generally large suppliers, with a significant negotiating power. With reference to the effect on the markets for retailing services, the Authority ascertained that the joint purchasing agreement had not led to more homogeneous commercial policies, and most of all to more uniform selling prices, by the three retailers. Moreover, the parties showed that in general, after the joint purchasing arrangement, they applied more competitive prices than they did before. The Authority ruled that the joint purchasing arrangement did not appreciably restrict competition on the relevant markets.

TRANSPORT

Road transport

REPORT ON LOCAL PUBLIC TRANSPORT

In February 1998 the Authority submitted an opinion to Parliament and the Government on the reform of local public transport services in Italy. Legislative decree no. 422/97 vested regional governments with responsibility for programming and financing expenditure decisions. The Authority emphasised that, in this context, the invitation of public tenders was the most efficient instrument for selecting service providers. It also expressed its preference, from a competition protection viewpoint, for a less frequent recourse to the use of public franchises for local transport services in favour of a system of licenses or permits. Moreover, in markets where competitive equilibria are not feasible, incentive methods should be introduced, based on a regular comparison of the performance of the local monopolist with the performance of other service-providers elsewhere in Italy. Lastly, it was emphasised that the promotion of intermodal integration, fostered by the legislative decree no. 422/97, should not lead to a strengthening of the dominant position currently held by the national railway company, Ferrovie dello Stato Spa.

Shipping, harbour and port services

FACT-FINDING INQUIRY INTO THE PORT SERVICES INDUSTRY

In October 1997 the Authority completed its general fact-finding investigation into harbour and port services in Italy. Widespread regulatory barriers to competition in the industry have been partially lifted by Law No. 84/94, which established the principle of separation of regulatory bodies from providers of port services and required the port companies to convert from their current status as "corporazioni" to become incorporated companies; the law also entails the liberalisation of prices of port and harbour services. As far as cargo handling is concerned,

privatisation completely solved the problem of having public and private functions performed by one and the same entity. For general interest services, on the contrary, law no. 84/94 allows port regulatory authorities to be shareholders in the companies providing the services, with a high risk of abuse of the resulting dominant position on the relevant markets. In this situation, any regulatory decision by port authorities designed to limit competitors' scope of action could be viewed, in principle, as an abuse of dominant position. Therefore, the Authority expressed the hope that the provision of general interest services be awarded on the basis of a public tender; the responsibility for these services should be given to port authorities only if no other company puts in a bid for them.

Other anti-competitive effects stemmed from measures preventing competitors of port companies from providing temporary labour and highly labour-intensive services. Despite the fact that port companies are now recognised as commercial enterprises, they nevertheless monopolise the supply of manpower to their competitors. The Authority investigated several cases of alleged abuses of dominant position in this area.

The fact-finding survey also examined the technical maritime services (piloting, towing, berthing and bunkering), for which a regulatory monopoly system remains. The Authority emphasised that a prior definition of safety and security standards, leaving the optimum number of parties involved to be determined by the dynamics of the market, might make it possible to develop competition without lowering safety standards. The Authority also reiterated the need to guarantee shipping and port companies the right to self-produce their own technical/maritime services. These companies should be merely required to comply with certain minimum safety standards and, in this context, be free to decide whether or not to have recourse to internal production.

Moreover, the Authority pointed out that the existing price regulation for technical/maritime services, being rigidly based on the costs of services as calculated by the companies, tends to widen the natural information gap existing between the regulator and the regulated parties. Lastly, the present regulatory system, providing for consultation with service users only through their professional associations, discriminates against users that are not members of associations.

Air transport and airport services

REPORT ON THE LIBERALISATION OF AIRPORT GROUND HANDLING SERVICES

In February 1998 the Authority submitted a report to Parliament and the Government pointing out the discrepancies existing between the Community Directive 96/67 on airport ground handling services and a number of provisions in the Italian Community Bill for the years 1995-97, which limited the scope of the liberalisation process. In particular, the Bill did not identify the services for which the number of providers could be limited and the procedures with which the latter were to be selected in accordance with Community law. Moreover, the Bill did not lay down any provisions for companies wishing to provide their own handling services; on this aspect, the Authority expressed the hope that explicit reference should be made allowing airlines and their subsidiaries to provide their own handling services.

Auxiliary transport activities

REPORT ON CONSULTANCY SERVICES REGARDING VEHICULAR TRANSPORT

In October 1997 the Authority submitted a report to Parliament and the Government reiterating its position regarding the regulation of vehicular transport consultancy services. For several years, the general legal framework governing the sector has prevented any new operators from entering the market. At present, competition is still restricted, without any public interest justification, by regulatory ceilings to the number of permits, by measures banning other operators such as vehicle distributors from providing consultancy services and by the regulatory setting of minimum and maximum consultancy fees. The Authority also pointed out the anti-competitive effects of mixing private services (vehicular transport consultancy services) and public services (the collection of the road tax and managing the Public Vehicles Register); both kinds of services are provided by the network of automobile clubs belonging to the Italian Automobile Club ACI.

REPORT ON THE SALE OF TRAVEL DOCUMENTS AT POST OFFICES

In December 1997 the Authority submitted a report to Parliament and the Government regarding distortions to competition resulting from the statutory authorisation given to the Italian Post Office (Ente Poste Italiane) to sell travel documents and tickets in Italian post offices, as from January 1st, 1998. The general law governing the sale and distribution of travel documents and tickets in Italy lays down strict statutory constraints, at both the national and regional level, on any other operators wishing to enter the market. The Authority therefore pointed out that authorising the Ente Poste Italiane to sell travel documents throughout Italy would not distort competition only if the rules governing the distribution and sale of tickets were the same for every undertaking. It therefore expressed the hope that the authorisation issued to the Ente Poste Italiane would form part of new legislation which, without discriminating between companies, laid down objective eligibility requirements for the sale of travel documents. The special treatment given to Ente Poste Italiane, despite the Authority's intervention, was nevertheless retained when the Bill was enacted into law.

TELECOMMUNICATIONS

Regulations implementing community directives

The Authority played an active role in preparing the Regulation issued by Presidential Decree no. 318/97 implementing six Community directives regarding the harmonisation and liberalisation of telecommunications services[1] In particular, the Authority expressed its opinion regarding the rules governing licences and permits, mobile telephony services, frequency allocation, interconnection, telephone numbering and the universal service.

With reference to the rules governing licences and permits, the Authority pointed out that, according to Community law, companies should not be required to fulfil any further obligations

than those necessary to meet "fundamental requirements" (network security, data protection, etc.).

With regard to mobile services the Authority reiterated the need to extend the frequency bands allocated to the two GSM service providers and to allocate adequate bands to introduce new services based on the DCS 1800 and the DECT technologies. The Authority expressed its dismay that the draft Regulation made no provision for the prompt definition of a new national frequency allocation plan.

With regard to interconnections between networks, the Authority hoped that in order to avoid any further delay in the liberalisation process, interconnection conditions should be published before 1 July 1997, as required by Community law, and that these conditions should be defined for each individual item, so that any company being interconnected would only be required to pay the charges for the services actually used, therefore guaranteeing equality of treatment for large customers and competitors.

The rules governing telephone numbering were also required to be issued by 1 July 1997, in accordance with Community directives, in order to allow market access by new competitors. Moreover, in view of the extreme importance for users to have portable telephone numbers, the Authority urged the Government to bring the date forward for the introduction of specific obligations on the network carriers.

The Authority also pointed out that, in the initial phase, the definition of the obligation to provide a universal service set out in the implementing Regulation should merely reiterate the Community definition, in order to avoid imposing charges on the public for services they did not require and to introduce competitive mechanisms. The Authority therefore emphasised the need that the definition of the universal service kept pace with technology developments. It also pointed out that the Regulation ought to make it possible for new providers to undertake the obligation to provide universal services only partially, either nationally or in specific local areas. Lastly, the Authority suggested that the whole tariff structure should be rebalanced as a matter of maximum urgency, and should be completed by no later than December 31st, 1999 as the European Commission had indicated, which would also ensure that the cost of the universal service was not artificially raised. In this regard the Authority expressed the hope that tariffs would be realigned to the actual costs incurred by the public telecommunications carrier to supply the various services.

OPINION REGARDING INDIVIDUAL LICENCES

In November 1997 at the request of the Ministry of Communications, the Authority issued an opinion regarding a draft measure containing "provisions for the issue of individual licences in the telecommunications sector". The Authority reiterated that the right to provide telecommunications services should only require general authorisation, so that the obligation to obtain a specific individual licence should be limited only to undertakings subject to particular rights or duties, or to cases of scarcity of resources. In particular, the Authority considered that there was no justification for issuing individual licences to assign alternative infrastructure to third parties to offer telecommunications services to the public.

The Authority also made a few observations regarding the development of DECT services. In order to avoid distorting competition, the existing regime applying to Telecom Italia should not be automatically extended and all providers should be subject to the same system of permits. This suggestion was taken up by the Ministry, which in December 1997 gave Telecom Italia a specific DECT licence. The Authority also pointed out that the draft proposal requiring Telecom Italia to set up an autonomous division to manage the DECT service was not enough to prevent cross-subsidisation between the services provided under a monopoly and the liberalised services. As the Authority had already pointed out on many occasions in the past, and as the European Commission itself had also reiterated, a mere accounting separation is not the most effective solution for guaranteeing a level-playing field, particularly where the public service provider has clear advantages in terms of timing and operational conditions on the DECT market. On the basis of these considerations the Authority expressed the hope that the national telecommunications carrier would be required to supply DECT-based technology services through a completely separate company.

INTERCONNECTION PROCEDURES AND TARIFFS

In February 1998 the Authority delivered an opinion to the Ministry of Communications regarding a proposal by Telecom Italia, concerning connection conditions to the switched telephone network. In the Authority's view, this proposal did not comply with Community guidelines and was likely to impose unjustified technological, commercial and economic constraints on new competitors. These constraints were represented by technical limitations on new entrants to get links to the network, by limitations on the services they were allowed to offer and, more generally, by competition-distorting conditions already in the initial phase of competition. Furthermore, connection charges appeared to be unjustifiably high. On this regard, the Authority recalled the Directive 97/33/EC on interconnections, which obliges Member States to ensure that the national telephony carriers provide connections to their voice telephony services and to their switched public networks to any company which is authorised to provide the same services, based on the principles of non-discrimination, proportionality and transparency.

ALBACOM-SERVIZIO EXECUTIVE

In May 1997 the Authority completed its investigation of an alleged abuse of dominant position by Telecom Italia Spa on the liberalised market for voice telephony services for Closed User Groups. Telecom operated on this market through the so-called Servizio Executive. The investigation showed that, under the Servizio Executive discounts scheme, Telecom had reduced the charges on the provision of a monopoly service (for traffic generated in the switched public network) only to its customers of the liberalised service, upon reaching a given volume of traffic, and had refused to allow competitors to offer their own customers the same discounts. The Authority evaluated this practice as an abuse of dominant position designed to hamper market access.

Following the observations made by the Authority, Telecom undertook to offer its competitors the same discounts that were available to its own customers, as from July 1st, 1997 and to guarantee them the best possible conditions in terms of quality standards and promptness in

bringing lines into operation. The Authority considered that these undertakings were sufficient to put an end to the abuse.

ALBACOM-TELECOM ITALIA-DEDICATED CIRCUITS

In October 1997 the Authority ascertained that Telecom had abused its dominant position in the provision of dedicated circuits (or leased lines). One abuse consisted of the fact that Telecom Italia did not differentiate the tariff of intermediate speed transmission circuits according to capacity demanded by its competitors, strongly increasing the cost of entry for competitors demanding medium capacity circuits. Telecom also abused its dominant position by supplying high capacity lines only to its own final customers without publicising this option, *de facto* preventing competitors from gaining access to this service. Finally, Telecom had used a cheaper system of transmission, alternative to dedicated lines, without informing competitors of this possibility. In view of the seriousness of all these violations, the Authority ordered Telecom to pay a fine (950 million lire) equivalent to 1% of the relevant annual turnover.

TELECOM ITALIA-INTESA

At the end of an investigation completed in November 1997 the Authority prohibited Telecom Italia Spa from acquiring control of the company Intesa Spa, which was formerly jointly controlled by Fiat and IBM. Intesa provides data transmission services to corporate customers, with special reference to value-added network services and application services, both in Italy and abroad.

Since Intesa is the second-largest Italian competitor after Telecom Italia, this acquisition would have strengthened the already dominant position held by Telecom Italia on the markets for basic data transmission services and the supply of direct circuits, and would have created a dominant position on the market for personalised data transmission services. Furthermore, by acquiring control over its main competitor in the corporate data transmission services market, Telecom Italia would have become further vertically integrated for the supply of application services. In view of these considerations the Authority prohibited the acquisition.

Computers and Information Technology

COMPLAINTS AGAINST INFOCAMERE CERVED

In November 1997 the Authority completed an investigation to ascertain whether the Infocamere company, because of its special relations with the Italian Chambers of Commerce, had abused of a dominant position on the market for services providing on-line access to the data banks owned by the Chambers of Commerce themselves. The Chambers of Commerce had entrusted Infocamere with the *de facto* exclusive nationwide management of their archives containing information on Italian companies. Infocamere is responsible for setting the archives up and guaranteeing the supply of information from the data banks to public entities and to private users.

The investigation showed that Infocamere had abused its dominant position, by requesting to undertakings interested in on-line access to the Chambers' archives a minimum guaranteed turnover of 5 billion lire, and by adopting a special discount policy. In so doing, Infocamere discriminated in favour of a controlled company, Cerved, against new entrants on the markets for value added services based on the information contained in the Chambers' archives. As a result of the observations made by the Authority, Infocamere drew up a new standard contract regulating access to the Chambers' data banks, eliminating the clauses which had an anticompetitive impact.

FINANCIAL SERVICES

Insurance and pension funds

MILAN CITY COUNCIL LIABILITY INSURANCE

In September 1997 the Authority completed an investigation into an alleged agreement between insurance companies in relation to a public tender to supply the Milan City Council with insurance services. The investigation showed that, following the invitation to tender, insurance companies had made various contacts and held meetings to constitute a group of companies to submit a tender to the Milan City Council on a co-insurance basis.

Five of the largest Italian insurance groups, with an aggregate market share in excess of 50% in loss and damage insurance, and even larger in individual insurance branches, were parties to this co-insurance agreement. The Authority observed that in this particular instance, co-insurance substantially restricted competition between potential tenderers, to the detriment of the contracting administration. In fact, the co-insurance scheme had been contrived quite deliberately by insurance companies whose market position, technical and financial capacity, and specific competence in the sector would have enabled them to compete individually against each other, or which could have set competing co-insurance groups. The agreement was therefore deemed to be an infringement of Section 2 of the Act.

The investigation also revealed the existence of another agreement between the Assitalia and Zurigo insurance companies, leading to concertation of their individual public tendering conduct. Zurigo had agreed not to bid for the Milan City Council tender, in exchange for Assitalia's agreement to do likewise in the case of other major public tenders. In view of the serious nature of this conduct the Authority fined each company the equivalent of 3% of the premium which Assitalia had obtained for the tender issued by the Milan City Council (220 million lire).

ASSOCIAZIONE NAZIONALE DEI CONSORZI DI DIFESA

In 1997 an investigation was conducted to ascertain whether there had been infringements of the Competition Act by a number of Consortia created to protect crops against atmospheric hazards and by their national association, AS.NA.CO.DI. Current legislation makes provision for a government contribution to farmers who take out hail insurance, provided that they are members

of one of the aforementioned Consortia. Considering that the legislation does not make provision for any other such consortia to be set up, the existing Consortia hold a monopoly position over the payments of government contributions. During the investigation the Authority ascertained that after concluding agreements with some insurance companies, the Consortia had only paid out the government subsidy to members who had taken out policies with those particular companies, unlawfully denying the members that had chosen their own insurance company from obtaining the grants. The Authority deemed that this conduct on the part of the consortia was an abuse of dominant position.

ASSICURAZIONI GENERALI-UNICREDITO

In May 1997 the Authority completed the investigation of a co-operation agreement between the insurance company Assicurazioni Generali Spa and Unicredito, a banking group operating in Italy through 477 branches, concentrated particularly in the Veneto region. The agreement covered the distribution of life insurance policies through the Unicredito bank branches and the constitution of the joint venture Casse e Generali Vita Spa.

The practice to use exclusive distribution systems is widespread in the insurance sector in Italy. New companies wishing to enter the market are therefore confronted with the difficulty of finding retail distribution channels. The agreement between Generali and Unicredito did not include an exclusivity clause; however, the contractual relation between the two companies was strengthened by the existence of the joint venture Casse e Generali Vita. In this market situation, the Authority deemed that the agreement was likely to contribute substantially to the market foreclosure effect on the insurance production and distribution markets. This effect was particularly relevant in the provinces of Belluno, Treviso and Vicenza, where Generali was the largest life insurance company and Unicredito the leading local banking network. In view of these considerations the Authority ruled that the agreement was an infringement of Section 2 of the Act.

LA VENEZIA ASSICURAZIONI-CASSE DEL TIRRENO

In June 1997 the Authority began investigating an agreement between La Venezia Assicurazione Spa, a life insurance company belonging to the Generali group, and the Casse del Tirreno banking group which operates mainly in the Tuscany Region. The agreement as originally notified provided the exclusive distribution, for a period of three years, of La Venezia insurance policies using the branches of the Casse del Tirreno group. During the investigation the parties withdrew the notified agreement. They subsequently notified the Authority of a new agreement which removed the exclusive rights clause and reduced the duration of the agreement to two years. This new agreement was deemed compatible with the Act.

ASSICURAZIONI GENERALI-CASSA DI RISPARMIO DI RAVENNA

In October 1997 the Authority began investigating a five-years exclusive distribution agreement notified by Assicurazione Generali Spa and Cassa di Risparmio di Ravenna Spa. Under the agreement, the Generali group agreed not to conclude any agreements for the distribution of its

insurance policies through the banking channel with any other banks in the provinces of Bologna, Ravenna and Forlì, in exchange for which the Cassa di Risparmio di Ravenna undertook to distribute only Generali group insurance products. During the investigation the parties withdrew the notified agreement. They subsequently notified a new agreement, for two years, which did away with the exclusive rights. This agreement was deemed to be compatible with the Act.

EULER-SIAC

In February 1998 the Authority completed its investigation into the acquisition by the Assurances Générales de France (AGF) group of the majority equity interest in Società Italiana Assicurazione Crediti-SIAC Spa. AGF was already operating, through La Viscontea company, on the market for credit insurance services in Italy. On this market, customers are generally entrepreneurs who take out insurance against the risk of insolvency of all or some of their debtors. Following the acquisition, the market share held by AGF would have risen from 10% to about 76%. The Authority also remarked that significant barriers to entry existed, because of the need to have both an effective distribution network and huge information on debtors.

This being so, the operation seemed to be likely to constitute or strengthen a dominant position on the national credit insurance market by the AGF group. During the investigation, however, the parties notified the Authority that the AGF group intended to sell-off its controlling interest in La Viscontea company. The Authority therefore decided to authorise the acquisition because, under these conditions, no change would occur in the existing degree of concentration on the market.

REPORT ON THE PURCHASE OF INSURANCE SERVICES BY GOVERNMENT AGENCIES

In December 1997 the Authority submitted a report to the Government, the presidents of the Regional governments and the president of the insurance sector supervisory agency (ISVAP) regarding the distortions to competition caused by the procedures used by public entities, and particularly by local government bodies, to purchase insurance services. First of all, the Authority noted that the public tender had not yet become the ordinary method for acquiring insurance services. There was a widespread practice of automatically renewing insurance contracts by direct negotiations between the public body and the insurance company whose policy was about to expire.

Further concern was raised by the excessive rigidity of the criteria for preselecting the insurance companies when tenders were invited. Often the invitations to tender required prospective bidders to have reached a given nationwide turnover threshold for eligibility. The Authority remarked that this practice constituted an unjustified discrimination against the smaller companies, since turnover is not a reliable means of monitoring the financial solidity of an insurance company.

It was also pointed out that the public bodies often did not have adequate information on the handling of their insurance business. However, this information is vital for insurance companies when putting in their bids; the insurer of a policy about to expire, that has such information

available, is therefore at a considerable advantage with respect to its competitors who do not have access to the same information. The Authority therefore expressed the hope that the public bodies putting out insurance policies to tender should ensure that the insurance companies supplying the services guarantee a constant flow of information.

The Authority also found that a very large number of insurance policies taken out by public entities are drawn up in the form of co-insurance. Being so widespread a practice, co-insurance may foster collusive behaviour in tenders. The report therefore emphasised the need for the public bodies concerned to pay particular attention when issuing invitations to tender, to ascertain whether or not it is really necessary to have co-insurance to cover the risks in question.

Lastly, the Authority noted that in the invitations to tender it is still a widespread practice to include a preemption or preference clause giving the INA-Assitalia group companies the right to provide insurance services even in cases in which their bid fails to win the tender. This practice is in contrast with the principles under which equal conditions must be applied to all competing companies in a public tender.

REPORT ON THE OBLIGATION TO EMPLOY THE EMPLOYEES OF COMPULSORY WOUND-UP INSURANCE COMPANIES

In December 1997 the Authority submitted a report to Parliament and the Government regarding a measure governing the compulsory transfer of employees of insurance companies being compulsorily wound-up, requiring both the portfolio and the personnel of such companies to be shared between the companies operating in the same branch of insurance, whenever it is not possible for the company's customer portfolio to be voluntarily transferred. The Authority pointed out that this would appear to infringe the Community directives which have now been incorporated into Italian law regarding freedom of establishment and the freedom to provide insurance services. More specifically, since it is only companies with a stable structure in Italy that can be subject to the provision on compulsory transfer, this disparity of treatment could give undue advantages to other competitors.

Financial services

FACT-FINDING INQUIRY INTO THE CORPORATE FINANCIAL SERVICES SECTOR

In September 1997 the Authority completed a general fact-finding investigation into the corporate financial services sector in Italy. The investigation has been carried out jointly with the Bank of Italy. The original reason for the survey was that the features of this sector in Italy differed in many respects from what is found in the other main industrial countries. The Authority's attention was drawn in particular to such aspects as the high level of concentration in the supply of services, the small number of foreign competitors operating on the Italian market, and the small role played by the stock exchange as a source of financial resources for undertakings. It was felt that these particular features might have a negative impact on the competitive offering of efficient corporate financial services.

The survey focused on four markets: i) consultancy services for mergers and acquisitions; ii) consultancy/lead management services for initial public offerings on the Italian stock exchange; iii) consultancy/lead management services for equity issues by companies already quoted on the Italian stock exchange; iv) assistance for debt restructuring.

On the last two markets, the survey showed that one company, Mediobanca, was holding a dominant position. The market for services concerning equity issues by companies already listed on the Italian stock exchange is quite small. The competitive advantage held by Mediobanca over other financial intermediaries was put down to three factors: its vast experience thanks to the high number of operations carried through in the past; the ability to carry through large-scale operations successfully, thanks to its capacity to organise share issues because of its long-standing relations with major Italian banks; its well-entrenched customer relations with several large private industrial groups requesting corporate financial services, often enhanced by the fact of having a direct equity interest in such groups and sometimes a presence in the controlling agreement.

As far as debt restructuring was concerned, the authorities' attention focused on the consultancy services for drafting the restructuring plan in non judicial arrangements, therefore excluding bankruptcy proceedings. Mediobanca appeared to be the only bank able to guide and assist the debt restructuring operations of large crisis-stricken industrial groups. Once again, this was due to the specific capabilities and experience developed by the bank, but also to its network of relationships with Italy's leading banks, which are generally the creditors most deeply involved in restructuring plans.

The investigation helped to point out a number of dynamic factors which may affect competition in the sector. First of all, as European integration proceeds the choices of companies and intermediaries will be increasingly less restricted to a purely domestic dimension. Moreover, the development of large national and foreign collective investors, driven by demographic developments and the reform of the public pension systems, will lessen the importance of the retail distribution capacity of banks equipped with a wide-ranging network of branches. Furthermore, as institutional investors increase in importance, the demand for securities may also rise, encouraging companies to resort to the stock exchange to acquire capital, thereby enhancing the demand for corporate financial services. One major contribution towards developing the demand of such services in recent years has also come from the sell-off of publicly owned corporations.

From a competition standpoint, the aforementioned positive developments on both the demand and the supply sides, would be consolidated by the entry of new Italian and foreign competitors on the relevant markets. With specific reference to operations regarding the restructuring of crisis-stricken companies, the Authority and the Bank of Italy drew attention to the complexity and inefficiency of the judicial procedures existing in Italy. Therefore, the hope was expressed that a reform would be introduced to reduce the costs and increase the efficiency of judicial solutions, so as to make it possible to establish the cost of non-judicial solutions more transparently.

Opinions issued by the Authority to the Bank of Italy regarding bank mergers

Last year saw a sharp increase in the number of mergers and acquisitions in the financial sector; some of them took place between large banks. In 1997 and the first three months of 1998, the Authority issued 57 opinions to the Bank of Italy regarding the effects of mergers and acquisitions on the competitive conditions of the markets for bank deposits and lending. In most cases, the Authority deemed that the concentrations were not like to result in a dominant position in view of the fact that there were other operators on the market able to effectively compete with the bank resulting from the merger. Only in the case of the merger between Cariplo and Carinord, did the Authority identify the risk of creating or strengthening a dominant position on some local markets.

Opinions of the Authority regarding agreements and abuse of a dominant position

GRUPPO BANCO DI SARDEGNA -CASSE COMUNALI DI CREDITO AGRARIO

In December 1997 the Authority submitted an opinion to the Bank of Italy on an alleged abuse of dominant position by Banco di Sardegna. The Bank of Italy investigation was set in motion by a plan for the reorganisation of the territorial network of Banco di Sardegna in the Sardinia region, in which 206 branches of the Casse Comunali di Credito banks, already controlled by the Banco di Sardegna, were to be converted into branches of the bank and 44 new branches were to be opened. The scope of the investigation was later broadened to evaluate the impact on competition of the minority interest possessed by Banco di Sardegna in Banca Credito Industriale Sardo which is the second largest lending bank in the region.

In the opinion submitted to the Bank of Italy, the Authority remarked that the competitive situation on the Sardinian bank lending and deposits markets was already seriously threatened by the dominant position acquired by the Banco di Sardegna as a result of concentrations which had been authorised in the past. Normally, the opening of new branches and internal reorganisation choices should not be viewed as abusive conduct.

In the course of the investigation conducted by the Bank of Italy, however, Banco di Sardegna proposed a number of changes to its original expansion plan; in particular, it gave up the idea of opening any new branches for three years and undertook to sell-off its minority interest in Credito Industriale Sardo.

PROFESSIONAL AND ENTREPRENEURIAL SERVICES

FACT FINDING SURVEY OF THE PROFESSIONAL ASSOCIATIONS

In October 1997 a fact-finding survey of the professional associations was completed, which focused in particular on those associations to which the law attributes regulatory powers (“Ordini e collegi professionali”). The survey revealed that in Italy the professions are more

strictly regulated than in other European countries. In particular, the Authority pointed out certain restrictions of competition which do not seem necessary for the purposes of protecting the general interest.

In most professions a period of apprenticeship is required, by law, before taking the State qualifying examination. This means that all the practical training depends essentially on the willingness of other professionals, who frequently only delegate their trainees to do simple, routine procedures. The Authority therefore expressed the hope that more specialisation schools would be set up throughout the country as an alternative to practical apprenticeship, or more radically still, that university courses might be reorganised to provide the practical training needed.

As for the main instrument used for regulating access to the professions, namely the State qualifying examination, the Authority noted that the paramount role of incumbent competitors (representatives of professional associations) in Examination Commissions might unduly limit access to the market. Moreover, for some professions qualifying examinations are only for a set number of professionals. This system, backed up by restrictions placed on the geographic scope of activity, limits competition, whereas the whole purpose of guaranteeing a nationwide distribution of services that are deemed to be essential could be pursued by laying down a minimum rather than a maximum number of posts.

As far as the restrictions on the practice of the professions are concerned, the Authority emphasised that laying down minimum or fixed tariffs and charges was not in itself sufficient to guarantee the standard of quality of the service provided.

The survey also examined the problem of the requests of the new professions to be regulated. The Authority pointed out that where no specific public interests had to be protected, any attempt to set up certification systems to guarantee the quality of the services offered to consumers was not necessarily achieved by the statutory recognition of some professional associations or by making certain activities the exclusive preserve of the members of such associations. Along the lines of what occurs in other European countries, a system could be instituted based upon the co-existence of several non-regulated professional associations.

The survey also dealt with the issue of professional partnerships. The Authority expressed the hope that Parliament would enact legislation to give professionals sufficient flexibility to choose the organisational form they wished for the provision of the services, making it possible to set up partnerships between persons belonging to different categories of protected professions and also between protected and non-protected professionals (including foreign professionals). It also suggested that professionals should be able to set up limited liability companies. In this respect legislation, as occurs in other European countries, may be needed to safeguard the specific features of each profession.

Furthermore, professionals are currently prohibited from advertising, which does not seem to be in the general interest. The Authority emphasised that advertising information, based upon factual data, fees and other aspects of the services provided would reduce the costs to consumers incurred in making their own inquiries about the features of the services offered.

In conclusion, the examination carried out by the Authority showed that by imposing restrictions that are often unnecessary or disproportionately burdensome, the present regulations place Italian professionals at a disadvantage with respect to their foreign colleagues who are given greater flexibility. It therefore hoped that the whole system regulating the professions would be revised with a much broader application of competition principles.

REPORT ON THE RESTRICTION OF THE NUMBER OF DRIVING SCHOOLS

In June 1997 the Authority submitted a report to Parliament and the Government concerning legislative provisions that limit the number of driving schools. The existing regulation provides that new permits can only be issued when a number of specific conditions are met, expressed in the form of the ratio between the number of driving schools and the number of residents within a particular municipality or inter-municipal territory. In its report, the Authority observed that structural regulation of the number of driving schools has no justification in terms of the general interest. Moreover, full competition would foster better price and service quality conditions.

REPORT ON THE REGULATION OF PRIVATE SECURITY GUARDS

In May 1997 the Authority submitted to the Ministry for Home Affairs a report regarding the regulation of the private security guard services to protect real estate and valuables. The report focused on the restrictions to market access, on the limits put on production capacity of individual firms and on administrative price fixing.

While agreeing that some form of control of market access and some constraints on the scope of the operations of security firms could be in the general interest of security and public order, the Authority used the same grounds for rejecting the imposition of exclusive rights over particular territorial areas. It also emphasised that restrictions on the number of guards that may be employed by an individual company distorted competition on the relevant markets. The report also pointed out that laying down minimum tariffs by the Prefect, as occurred in most Italian provinces based upon circulars from the Ministry, was not required by any primary law. Moreover, an administrative minimum pricing system, contrary to what was stated in the ministerial circulars, does not in itself prevent security firms from providing poor quality services or failing to comply with the tasks assigned by law, such as the duty to pay social security contributions. Following the Authority's report, the Minister for Home Affairs issued instructions to abolish, as from June 1st, 1998, minimum security guard service charges.

OPINION ON THE INSTITUTION OF NEW REGULATED PROFESSIONAL ASSOCIATIONS

In December 1997 the Authority submitted a report to Parliament and the Government regarding the many bills directed at regulating a wide range of trades and professions through the institution of statutory recognised associations with regulatory powers and professional registers. These bills generally laid down market access restrictions and limitations on the right to perform activities, which did not seem necessary to protect consumers, because they referred to services for which there is already sufficient information available on a competitive market to ensure adequate consumer protection. In the case of the new professions, the need to protect

consumers may be met by using quality certification systems based upon less restrictive mechanisms. As far as fees are concerned, the Authority reiterated the principle that the statutory imposition of procedures for laying down compulsory fixed or minimum tariffs did not guarantee service quality or good practice on the part of the professionals. On the basis of these considerations the Authority concluded that the proliferation of parliamentary bills to set up statutory recognised professional associations with regulatory powers was not in the public interest and could substantially reduce competition in many areas of activity.

RECREATIONAL, CULTURAL AND SPORTS ACTIVITIES

REPORT ON NEW LEGISLATION GOVERNING DAILY AND PERIODICAL PRESS SALES OUTLETS

In September 1997 the Authority submitted to Parliament and the Government a report on a bill amending the current system for planning sales outlets for newspapers and magazines. The bill laid down an experimental period of 18 months for dailies and periodicals to be sold in retail outlets other than in the permanent news-stands, and specifically in bookshops, tobacconists, fuel distributors, bars, department stores and specialised shops.

In its report, the Authority said that while the bill could help to extend the newspaper sales network, it also contained a number of provisions that might actually restrict its pro-competitive impact. In particular, the bill provided that sales outlets other than news-stands taking part in the trial period should ensure equality of treatment to all newspapers and periodicals. In other words, they should place on sale all the titles that requested them to. This provision would drastically reduce the incentives for the retail outlets not specialised in selling printed matter to take part in the trial phase, because the space set aside for newspapers and periodicals is inevitably restricted. Lastly, the report focused on the provisions in the bill which provided that, during the reorganisational phase, access by non-specialised retail outlets should be limited taking population density, the urban and social features of the areas in question, the volume of newspapers sales over the past two years, and the existence of other non-exclusive sales outlets into account. In this regard the Authority emphasised that the issue of permits to sell newspapers and periodicals should not be made conditional on compliance with parameters on the demand laid down by the authorities and hoped that the identification of an optimum number of outlets would be left to free market forces.

REPORT ON THE DIGITAL PLATFORM

In July 1997, the Italian Antitrust Authority expressed its opinion on a provision contained in a draft version of law no. 249/97 providing for the creation of a common digital platform by way of the setting up of a joint-venture involving the three main undertaking operating in free television (RAI Spa., RTI Spa and CGC Spa), TelePiù Spa and Telecom Spa.

The Antitrust Authority, while recognising the importance of common technological standards for infrastructure, in order to permit the rapid development of a new product, clearly highlighted the risks of a restriction of competition resulting from the joint participation to the same corporation of the main operators in broadcasting and telecommunications.

In particular, the Authority underlined the risk of horizontal co-ordination among the free-tv broadcasters deriving by such corporate structure with regard to their commercial activity in the supply of pay television. Such commercial co-operation could have led to significant distortion of competition.

The creation of the common digital platform would have also determined the raising of further barriers to entry in the market and would have impeded the development of an effective competition for pay-tv.

When the law no. 249/97 was enacted, the provision relating to the creation of a common digital platform was maintained. The law requires, however, that open access to the platform should be granted on a transparent, competitive and non discriminatory basis. The regulatory Authority was assigned the task of monitoring that the conduct of the participants is consistent with these principles.

REPORT ON THE BROADCASTING OF PARLIAMENTARY PROCEEDINGS

In March 1998 the Authority expressed an opinion on a bill changing the regulations governing the broadcasting of parliamentary proceedings to ensure that the licence for the service is awarded by competitive tender between the nation-wide broadcasting companies. The Authority expressed its doubts on a provision which incorporated firms' size, in addition to the ability to cover most of the national territory and technical capability, as a criterion for assessing the suitability of competing tendering companies. This criterion was likely to give an unjustified competitive advantage to the largest broadcasting companies. Lastly, the Authority expressed the hope that even for the current year, the share of the RAI licence fee to finance the parliamentary network would be cancelled, because under the new statutory system there was no longer any justification for it.

Other Recreational, Cultural and Sports Activities

ASSOCIAZIONE VENDOMUSICA - CASE DISCOGRAFICHE MULTINAZIONALI - FEDERAZIONE INDUSTRIA MUSICALE ITALIANA

In October 1997 the Authority completed its investigation into a number of Italian subsidiaries of the leading multinational recording companies (known as the "majors"), namely, Warner Music Italia Spa, Polygram Italia Srl, EMI Italiana Spa, BMG Ricordi Spa, Sony Music Entertainment Spa as well as Federazione Industria Musicale Italiana (FIMI). The purpose of the investigation was to ascertain whether the majors had concluded price-fixing agreements.

The relevant market, which was identified as the production and wholesaling of musical recordings in Italy, is highly concentrated: the majors control 76% of the whole market. As far as the conduct of individual companies was concerned, the investigation showed that all the components of the price charged to retailers were the same for every major recording company, even though their costs varied considerably. During the proceeding it emerged that the fact that the prices offered were virtually the same was not due to any automatic consequence of the market structure, but was the result of systematic exchanges of information both through the

FIMI and between the companies directly. Furthermore the investigation showed that in addition to co-ordinating their prices, the majors had also co-operated on other aspects of their commercial policy such as the acquisition of artists, procedures for using alternative distribution channels (newspaper stands or by mail order) and relations with department stores.

The Authority considered that these conducts were the result of a concerted practice aiming at restricting competition. Considering the serious nature of the infringements, the Authority decided to impose a fine on BMG, Polygram, Sony and Warner equivalent to 1.5% of their turnover and a fine equivalent to 1% of the turnover in the case of EMI because, before receiving the statement of objections, the company had undertaken major commitments to put an end to the restrictive agreement. Overall, the fines amounted to 7,694 million lire.

Tenders for Public Works

REPORT ON THE FRAMEWORK LAW GOVERNING PUBLIC WORKS

In September 1997 the Authority submitted a report to Parliament and the Government on a number of provisions of a bill amending the Public Works Act (Law No. 109/94). While endorsing the intention to complete the statutory provisions governing public works and co-ordinate them with legislation governing tenders in "excluded sectors" (water, energy, transport and telecommunications), it nevertheless pointed out that certain provisions might distort the competitive process.

Firstly, the bill abolished the obligation to contract-out to third parties any contracts awarded to companies jointly owned by public and private entities working in non-competitive sectors, to franchise-holders for public infrastructures and to public service franchisees holding special or exclusive rights, which they did not directly provide themselves. The Authority pointed out that the change provided by the bill would subtract major economic activities from competitive tender. It therefore suggested that the obligation to contract out to third parties work not directly provided by these subjects should be retained.

With reference to design activities, the Authority emphasised that the procedure setting absolute minimum prices hampered competition between companies; moreover, it criticised the provision excluding engineering companies from tendering for contracts worth more than 200,000 Ecu, since it unjustifiably prevented their development.

Furthermore, the bill introduced a specific criterion to identify abnormally low tenders, which would be automatically excluded for contracts worth less than the Community threshold. The Authority remarked that such automatic exclusion systems encouraged collusion and jeopardised potential competition. Since it is the very notion of an anomalous tender that encourages collusion, it suggested adopting a system under which all tenders would be accepted, provided that appropriate guarantees were given.

Regarding the choice of companies to be invited to tender for smaller contracts on the basis of private bidding, the bill laid down a criterion for a system of rotation to be used between companies that had previously indicated a general interest in submitting offers through the

private bidding. In the Authority's opinion, this method was based on mutual aid principles which are not likely to lead to choosing the most efficient company and the overall best offer. Emphasising the importance of evaluating the offer on the basis of considerations other than price alone, such as completion time and delivery date, the Authority suggested that private tendering should be conditional upon the use of the criterion of the economically most attractive bid, while also permitting companies to propose variations to the final project in the tendering phase, which would make it possible to more fully and thoroughly evaluate the tender.

Subsupplies

REPORT ON THE LAW GOVERNING PRODUCTION SUBSUPPLIES

In February 1998 an opinion was submitted to Parliament regarding draft legislation containing "Provisions on subsupplies in production activities" which, among other things, introduced the prohibition of "abuse of economic dependency" in the Antitrust Act. The Authority pointed out that the prohibition of abuse of economic dependency contemplated by this draft legislation was a specific rule governing contractual relations between parties, with purposes for which the impact on competition may be irrelevant. The Authority also recalled that Section 3 of the Antitrust Act, as well as Article 86 of the EC Treaty, already made it possible for the Authority to take effective action against abusive behaviour by companies in a dominant position on the market, in the interests of protecting competition.

When the law on production subsupplies (no. 192/98) was finally enacted, the prohibition of abuse of economic dependence was kept outside the Antitrust Act and its enforcement was assigned to the courts and to the arbitration procedures.

Waste Disposal Services

CONSORZIO OBBLIGATORIO OLI USATI

In a report to the Government, the Authority notified that since 1993 the Compulsory Consortium for the Waste Collection of Oil Products had conferred each waste collection company exclusive rights over a specific geographical area. This territorial division had substantially restricted the activity of the waste collectors, by eliminating any possibility for competition between several waste collection companies working in the same area. The Authority therefore expressed the hope that these constraints would be removed.

REPORT ON THE RE-USE OF BIOMASS FOR ENERGY PRODUCTION

Ministerial Decree no. 12/95 governing the re-use of biomass and other residues from agriculture, textiles and timber production for energy purposes, classifies these residues as recyclable materials for energy production. However, they are at the same time an important raw material for other production processes. Companies selling energy produced from renewable and equivalent sources to Enel, the national electricity company, are offered

particular public benefits and incentives and can therefore absorb any extra costs involved in acquiring wood-based raw materials. In a report to the Government, the Authority pointed out that these incentives pushed up the prices of these materials and interfered with the conditions under which companies working in other industries were able to obtain their inputs. In order to correct the distortions in the prices of wood-based raw materials, the Authority suggested that these types of products should be removed from the list of recyclable materials for energy production contained in Ministerial Decree no. 12/95.

Local Public Services

REPORT ON LOCAL PUBLIC SERVICES

In November 1997, the Authority issued a report on various provisions contained in a bill on the reform of local government. In particular, local governments were required to choose the way in which they intended to manage services "of economic and entrepreneurial relevance" by comparing the following alternatives: a semi-public company, a franchise to third parties or a local public enterprise. Since there was no explicit indication of the criteria by which these three alternatives were to be compared, the Authority advised following "management cost-effectiveness" as the criterion to be adopted and to make any choice on the direct commissioning of services conditional upon demonstrating the benefits of the choice in comparison with an alternative procedure based on competition.

The bill also provided that companies in which several local authorities constituted the majority shareholders could be assigned the task to provide the services for which they were incorporated directly, without any competitive tender. The Authority considered that these procedures should not be used for semi-public companies, which should be governed by the same rules as companies that have no relations with the local authorities. Competitive tenders should be submitted for managing the service and not for identifying the private shareholder in semi-public companies.

Other Services

REPORT ON THE STATUTORY PROVISIONS GOVERNING THE OPERATIONS OF THE MINT AND STATE STATIONERY OFFICE (ISTITUTO POLIGRAFICO E ZECCA DELLO STATO)

Law no. 559/66 entrusts the Mint and State Stationery Office with the task of meeting the needs of all government departments for paper, graphic materials, publications and printed matter. The prices are set by a Committee, which is not required to apply any specific criteria but merely consider "also" market price trends.

Having examined different prices for the same categories of products, the Authority found that the prices charged by the State Stationery Office to supply government departments were higher than the market prices. Also payment terms under current legislation gave the State Stationery Office a privileged treatment. In a report submitted in February 1998 to Parliament and the Government, the Authority noted that, in view of the vast amount of resources generated by

government demand, the current system distorts the markets on which the Mint and State Stationery Office competes with other companies. Moreover, for paper, printed and graphical materials and publications, which represent most of the supplies concerned, no technical reasons existed to justify the existence of exclusive rights. The Authority therefore asked for law no. 559/66 to be amended abolishing the exclusive rights vested in the Mint and State Stationery Office.

NOTE

[1] Directive 95/62/EC of 13 December 1995 on the rules governing the supply of a network open to voice telephony; Directive 97/13/EC of 10 April 1997 on general authorisation and individual licences; Directive 97/33/EC of 30 June 1997 to guarantee the universal service and inter-operability by applying the principles for the supply of an open network; Directive 95/51/EC of 18 October 1995 amending Directive 90/388/EEC for the removal of restrictions on the use of cable television networks to supply telecommunications services already liberalised; Directive 96/2/EC of 16 January 1996 amending Directive 90/388/EEC governing mobile and personal communications; Directive 96/19/EC of 13 March 1996 amending Directive 90/388/EEC to open up the telecommunications market to full competition.