AUTORITÀ GARANTE DELLA CONCORRENZA E DEL MERCATO

ANNUAL REPORT
2000

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ITALY

Summary of activity

In applying Italy's antitrust law, in 2000 the Authority evaluated 525 concentrations, 52 agreements and 22 possible abuses of dominant positions.

The Authority's activity

	1999	2000	January-March 2001
Agreements	30	52	11
Abuses of dominant positions	15	22	9
Concentrations	423	525	157
Fact-finding inquires	1	-	-
Non-compliance with orders	-	2	-
Opinions submitted to the Bank of Italy*	43	50	10
Football rights (Law no. 78/1999)	1	1	-

* This entry refers to the opinions published in the Bulletin during the reference period.

Distribution of proceedings completed in 2000 by type and outcome

	Outcome			
	No violation of the law	**Violation of the law, conditional authorization or changes in terms of agreement leading to compliance**	**Cases beyond the scope of the Authority's powers or to which the law was not applicable**	**Total**
Agreements	41	10	1	52
Abuses of dominant positions	16	6	-	22
Concentrations	488	4	33	525

As regards the investigations of agreements between firms, in 2000 the Authority found that the ban on agreements restricting competition had been violated in nine cases: in eight cases the violation concerned Article 2 of Law no. 287/1990, while in the last case it concerned Article 81 of the Treaty establishing the European Community. In the first three months of 2001 the Authority granted one exemption from the ban.

Turning to abuses of dominant positions, in 2000 in most of the cases examined the Authority was able to exclude the existence of abusive behaviour without having to open a fact-finding investigation. In four cases the behaviour of the parties was deemed to violate Article 3 of Law no. 287/1990, while in two cases it was considered to violate Article 82 of the Treaty establishing the European Community.

In 2000 the Authority examined 525 concentrations, the largest number since the entry into force of Law no. 287/1990. In four cases the Authority authorized the operation after the parties had made undertakings. In the first three months of 2001 it examined another 113 concentrations, two of which it authorized after the firms involved had adopted corrective measures. In one case the Authority prohibited the concentration because it deemed that it was likely to lead to a dominant position that would cause a substantial and lasting reduction in competition.

In view of the seriousness of the violations, the Authority imposed administrative financial penalties amounting to 1,206.87 billion lire on companies that had violated the ban on agreements restricting competition and to 19.9 billion lire on companies that had failed to give advance notice of concentrations.

The Authority submitted 20 reports pursuant to Articles 21 and 22 of Law no. 287/1990, concerning restrictions of competition arising from existing or proposed laws or regulations; eighteen of the reports were submitted in 2000 and the other two in the first three months of 2001. As in the past, the reports covered a wide range of economic sectors.

Competition advocacy reports and opinions
(number of interventions: January 2000 - March 2001)

Sector	2000	January-March 2001
Electricity, water and gas	1	
Non-metallic minerals	1	
Building and construction	1	
Agriculture	1	
Pharmaceuticals	2	
Transport and renting transport equipment	1	1
Publishing and printing	1	1
Telecommunications	5	
Cinema	1	
Sundry services	3	
Retail trade	1	
TOTAL	**18**	**2**

AGRICULTURE AND MANUFACTURING

AGRICULTURAL AND FOOD PRODUCTS

PARMALAT-CARNINI

In December 2000 the Authority concluded its fact-finding investigation into the acquisition by Parmalat Spa of Carnini Spa and two subsidiary companies producing and

marketing fresh milk in Lombardy, with the decision that there were no grounds for further proceedings.

The product market in question was the production and sale of fresh milk, with due account taken of the different perishability rates of fresh and UHT milk and their different taste and nutritional qualities. Since fresh milk is a perishable product the Authority observed that producers were constrained by the need to distribute the milk within a very few hours of bottling and by the legislative framework which envisages a sell-by date of no more than four days from the date of bottling. The geographical market for this product was therefore deemed to be local and in the case under consideration the fact that Carnini sold its fresh milk almost entirely in Lombardy meant that the geographical market was limited to that region.

The Authority opened its investigation into this concentration because it considered that it had the potential to create or strengthen a single dominant position for Parmalat in the fresh milk market in Lombardy, or a position held jointly with Granarolo, the other Italian fresh milk producer operating, like Parmalat, on a national basis.

The authority's evaluation was based on several factors, starting with the fact that as a result of the operation Parmalat would have held a significant share of the market in question (between 40% and 45%), comparable with that held by Granarolo (about 30%). The remaining fresh milk supply would have come from smaller producers with much lower market shares, while potential competitors did not appear to be in a position to influence the equilibrium that would have been created in the market as a result of the operation, since entry was obstructed by substantial barriers connected with the way the production, distribution and sale of fresh milk was organized. Finally, with regard to the competitive balance between Parmalat and Granarolo, the Authority noted that the latter was the only Italian milk producer in a position to compete nationally with Parmalat in terms of size and structure.

Parmalat announced during the investigation that in consideration of the objections raised by the Authority it was withdrawing its notification of the concentration.

REPORT ON THE RULES FOR THE PROTECTION AND PROMOTION OF BERGAMOT

In July 2000 the Authority sent the Calabria Regional authorities and the Government a report on the distortion of competition deriving from Regional Law no. 1 of 14 February 2000 containing "Rules for the protection and promotion of bergamot".

This law makes it obligatory for growers to join the Consorzio del Bergamotto, an entity established under public law to extract bergamot essence, which is used mainly by the perfume industry. The Authority noted that by enabling the Consortium to carry out the transformation process on an exclusive basis, the law had the potential to eliminate competition between growers and exclude other essence extraction firms from the market. In the Authority's opinion such a distortion of competition was disproportionate to the public interest objectives of promoting the product and safeguarding quality that were set out in the regional law in question.

OIL PRODUCTS

FUEL SUPPLY AGREEMENTS

In October 1999, following reports submitted by associations representing consumers, distributors and road haulage operators, the Authority opened an investigation into eight oil companies for a presumed violation of the ban on restrictive agreements. During the investigation the Authority found that these oil companies, all belonging to the Unione Petrolifera (the relevant trade association), had created a complex horizontal agreement that was implemented through so-called "colour agreements" between the companies and their fuel distribution networks. From 1995 on, these "colour agreements" had set the discounts per litre (or margins) applied by the various oil companies for service stations in their ordinary road and motorway networks. The inquiry revealed that, following the same criteria applied in the "colour agreements", the oil companies had adopted an identical mechanism to set the margin for service stations, which acted as a disincentive for the stations to diverge from the recommended price levels. As a result, the recommended price had all the characteristics of an imposed price. The Authority also noted that the oil companies had used additional measures to ensure that service stations were actually applying the recommended price, particularly with reference to the different systems for checking and monitoring *ex post* whether this was the case. These measures were applied both to service stations taking part in "discount campaigns" on final consumer prices, and service stations directly applying discounts authorized by the oil companies.

The horizontal concerted action involved all the competing firms operating in the reference market (distribution and sale of fuel on the national road and motorway networks). The conduct in question had continued from February 1994 at least until the opening of the proceedings. This was a particularly significant period, during which the competition dynamics in the market in question had been substantially altered at the initial phase of the liberalization of fuel prices.

In view of the gravity of the violations, the Authority imposed fines on the companies amounting in total to 480 billion lire, the equivalent of 3.5% of each company's sales revenues in the market in question. However, a lower fine, amounting to 2% of sales revenue, was applied to Anonima Petroli Italia, since it emerged from the proceeding that although this company had taken part in the agreed horizontal coordination, it had not gone on to sign the "colour agreements".

AGIP PETROLI-ESSO ITALIANA

In December 1999 AgipPetroli Spa and Esso Italiana Srl gave the Authority advance notice of their intention to create a joint oil refinery. AgipPetroli and Esso would have transferred their Sicilian refineries at Priolo and Augusta to the joint venture. The agreements between the parties also envisaged the reorganization of their respective storage activities, for example by sharing the storage depots used to supply the Sicilian markets; mechanisms for periodic exchanges of information relating to the output, revenue and costs involved in the joint venture; and a system to exchange some of the intermediate products of the refining process.

AgipPetroli and Esso are the two biggest oil companies operating in Italy, with an overall refining capacity of over 50% of the national total and with joint shares of between 40 and 70% of various downstream oil product markets. In the Authority's opinion the joint use of the refining plants, together with a substantial reduction of production capacity and output and the sharing of technologies, know-how, logistical structures and investments, could have acted as a constraint on AgipPetroli's and Esso's future industrial and commercial policies and considerably reduced the incentives to adopt truly competitive strategies and conduct in downstream markets. In the light of the Authority's objections, the two companies withdrew the notification.

PHARMACEUTICALS

BRACCO-BYK GULDEN ITALIA-FARMADES-NYCOMED AMERSHAM SORIN-SCHERING

In November 2000 the Authority concluded an investigation into an agreement restricting competition between five pharmaceutical companies (Bracco Spa, Byk Gulden Italia Spa, Farmades Spa, Nycomed Amersham Sorin Srl and Schering Spa). The investigation was opened following a complaint lodged by a local health agency to the effect that in a tender for the supply of non-ionic contrast media for radiological use in 1997, the firms in question had presented identical bids and that similar conduct had already been noted in the previous four years.

Non-ionic contrast media are used to carry out radiological diagnostic investigations to visualize the structures and organs of various parts of the body. Although these products contain different active principles, they are designed for the same use and their other specific characteristics do not differ substantially. In geographical terms, the case concerned the national market, since individual countries each have their own specific health policies and systems for access to the market (the arrangements for patents and sales licenses).

It emerged during the investigation that from 1995-1999 the companies had aligned the reference prices in their bids to supply health agencies, both in tenders and in exclusive negotiations. This was done by submitting bids at price corresponding to the price of the product with the lowest price for sale to the public, less the 50% discount envisaged by law for supplies to hospitals. In the Authority's view, the application of this mechanism in tenders could not be the consequence of spontaneous parallel pricing resulting from conduct decided on independently by the individual companies, but was only of conduct agreed by competing companies, since bids formulated in this way did not provide any guarantee of winning the contract in question. With regard to supply contracts resulting from exclusive negotiations, the Authority considered the fact that identical prices had been applied by all the companies to be equally anomalous since each company was the only one providing the required active principle and would therefore have been in a position to impose a different – higher – price. The inquiry also revealed that the different pharmaceutical companies' production costs varied considerably, which meant that a spontaneous alignment of prices was not plausible and confirmed that the companies had acted in a concerted way. Lastly, the Authority ascertained that the companies had coordinated their informational and promotional activity, and had exchanged substantial amounts of information on sales volumes.

The conduct that emerged from the investigation took place continuously, in a highly concentrated oligopolistic market, from 1995 to 1999. In view of the gravity and duration of the conduct, the Authority imposed a fine on each of the companies equal to 5.5% of revenues

from the sale of the non-ionic contrast media in the Italian market, for a total of about 8.5 billion lire.

OPINION ON MEASURES RELATING TO THE PHARMACEUTICAL SECTOR

In December 2000 the Authority notified Parliament and the Government of the potential competition-distorting effects of two provisions relating to the pharmaceutical sector that were contained in the Financial Law for 2001 and subsequently approved by Parliament.

The first provision required the National Health Service to reimburse only the part of the price of non-patented drugs that corresponded with the weighted average price of drugs with prices equal to or lower than the maximum price applied under the current legislation to the generic form of the same product, which amounts to 80% of the average European price. In the Authority's opinion, this provision had the potential to restraint competition among pharmaceutical companies with regard to the sales price of drugs whose patents had expired by inducing the companies to set a uniform price equal to the maximum reimbursable price. The Authority suggested in its report that the reimbursement should refer to the price of the "lowest-priced" drug. This would encourage the development of the market for generic drugs, which is smaller in Italy than in the major European countries.

The second provision called on the Health Ministry, together with the Ministry for Industry, to establish, after consulting the representatives of pharmaceutical companies and pharmacies, "the criteria to define more precisely… the price competition mechanisms" for self-administered medicines. The Authority pointed out that this provision did not abolish the requirement to apply a single countrywide price for these medicines and did not allow pharmacies to sell self-administered medicines at prices lower than the manufacturers' recommended price, as shown on the package.

CONSTRUCTION PRODUCTS, CEMENT AND CONCRETE

REPORT ON THE HYDRAULIC SAFETY OF THE TERRITORY OF THE PO BASIN

In July 2000 the Authority sent Parliament and the Ministry of Public Works a report on a legislative provision concerning the "hydraulic safety of the territory of the Po Basin", in which it pointed out specific areas where the provision did not comply with competition principles. In particular, the provision authorized completion lots to be assigned to the same firms as had carried out previous lots.

The Authority observed that the failure to impose obligatory public tender procedures introduced unjustified distortions of competition that would ensure a privileged position for the companies that had carried out the previous works and unjustifiably restrict the opportunities for market access. The Authority underlined the contradiction between the provision in question and the EU regulations on tenders for public works, on the basis of which, as laid down in Article 7 of Directive no. 93/37,[1] the contracting administrations must award contracts for such works through public tendering procedures, whether these be open or restricted. Private negotiations should only be countenanced in exceptional circumstances and should in any case be limited to the three years following the completion of the tender.

[1] Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, in OJ L 199/54 of 9 March 1993.

Lastly, the Authority observed that since Article 7 of Directive no. 93/37 was clear, precise and unconditional, it had a direct effect, which requires the non-application of the domestic provisions that fail to comply with the Directive.

OTHER MANUFACTURING ACTIVITIES

CONSORZIO INDUSTRIE FIAMMIFERI

In July 2000 the Authority completed an investigation that had been opened pursuant to Articles 81 and 82 of the EC Treaty, into the Consorzio Industrie Fiammiferi (Consortium of Match Producing Industries – CIF), individual consortium member companies, the Swedish company Match S.A., the Magazzini di Generi di Monopolio (Monopoly Goods Warehouses) and the Consorzio Nazionale Attività Economico Distributiva Integrata (National Consortium for Integrated Distribution – CONAEDI). The CIF is a consortium grouping together all Italian match-producers. Its tasks include the marketing and sale of matches and the payment of production taxes to the tax authorities. The Magazzini di Generi di Monopolio distribute monopoly products to authorized retailers, while the CONAEDI is a consortium set up in 1994 to coordinate the activities of the individual consortium members, who include most of the Magazzini Generi di Monopolio. The investigation was opened after a German match-producing company, KM Zundholz International Karl Muller GmbH, had complained about the difficulty it was having in entering the Italian market for match distribution even though it had obtained the relevant licenses and permits.

In the course of the investigation the Authority found that some forms of the operators' conduct originated, more or less directly, in the legislative framework, while others were the result of autonomous business decisions. More specifically, the Authority found that the regulatory framework that had been in place until 1994 required companies to implement a restrictive agreement, as it obliged them to form a consortium and gave this consortium the powers to allocate match-production quotas among members. From 1994 onwards the new legislative framework removed the requirement for companies to join the CIF, but still allowed the CIF to continue to act as the centralized structure through which match production and sales quotas were allocated in Italy. The Authority deemed that these two sets of legislative provisions did not comply with the combined effect of Articles 3(g), 10 and 81 of the EC Treaty, by virtue of which Community Member States may not adopt or maintain in force measures, including those of a statutory or regulatory nature, that might in practice undermine the competition rules applying to companies.

With regard to the conduct of the CIF, it emerged from the investigation that the production quotas assigned to each company, which by law should have been decided by a special Commission, were actually laid down by the CIF through internal agreements. The consortium member firms also swapped production and the quotas assigned to them by the Consortium in order to bring their allocated production levels into line with their actual requirements. The Consortium therefore enjoyed a considerable degree of discretion in fulfilling its obligations. The Authority found that the CIF and its member firms had acted outside the provisions of the law and that their conduct constituted an autonomous violation of Article 81.1 of the Treaty.

It also emerged from the investigation that the CIF had undertaken to distribute in Italy a quantity of matches produced by the principal European producer, Swedish Match, which was the equivalent of a set quota of the entire national consumption. Swedish Match had in turn

undertaken not to engage directly in retail sales in Italy in direct competition with the CIF. This agreement was considered to be a violation of Article 81.1 of the Treaty.

Lastly, the Authority found that the CIF had pursued a policy designed to reinforce its commercial relations with the distribution network of the Magazzini di Generi di Monopolio by drawing up a framework agreement with the CONAEDI to guarantee its exclusive right to this distribution channel. As this agreement was liable to obstruct the entry of other firms, especially foreign ones, to the Italian market, it too was considered by the Authority to constitute a violation of Article 81.1 of the Treaty.

OTIS-KONE ITALIA-SCHINDLER

In May 2000 the Authority concluded an investigation into irregular conduct by the lift production companies Otis Spa, Kone Italia Spa and Schindler Spa which took the form of refusing to provide independent service firms with spare parts for repairing their lifts. The investigation also ascertained a restrictive agreement designed to coordinate the sales prices of lifts. This agreement had been reached, within the relevant trade association (Assoascensori), by the three companies and other twelve producers of lifts.

With regard to the refusal by Otis, Kone Italia and Schindler to provide original spare parts for their lifts, by means that included unjustified delays in supply, the Authority found that for the maintenance firms to carry out their work effectively and rapidly it was absolutely essential for them to have full access to all the original spare parts of each of the companies in question, since many of the Otis, Kone and Schindler original spare parts were not easily interchangeable with those of other makes. In addition to explicitly refusing to provide original spare parts, the companies also adopted the practice of dispatching orders after a delay of 60-90 or even 120 days, since the fact that it was impossible for independent maintenance firms to intervene promptly discouraged final customers from entering into maintenance contracts with them.

The investigation also revealed that Otis, Kone Italia and Schindler, the other twelve lift production companies and Assoascensori, had agreed on a set of uniform general contractual conditions for the supply and installation of lifts. In particular, the parties had agreed to include specific clauses in contracts to allow sales prices to be brought into line with any changes in production costs that emerged during the period of the contract. The Authority considered these forms of conduct to be agreements designed to restrict competition.

In view of the gravity and duration of these breaches of the competition rules, the Authority imposed a fine for abuse of a dominant position equal to 2% of revenues from the maintenance of lifts by Otis Italia, Kone Italia and Schindler, for a total of 12.3 billion lire. With regard to the agreement, the Authority imposed a fine equal to 2% of the revenues earned by Otis, Ceam, Kone Ascensori and Schindler and to 1% of the revenues earned by the other lift production companies, for a total of 5.3 billion lire, the difference in the size of the fines reflected the different decision-making responsibilities of the different companies within Assoascensori.

ELECTRICITY AND NATURAL GAS

ENEL-FRANCE TELECOM/NEW WIND

In February 2001 the Authority completed an investigation into the acquisition by Enel Spa and France Telecom SA of Infostrada Spa, a telecommunications operator. The acquisition had initially been notified to the European Commission as falling within the scope of the Merger Regulation. At the request of the Authority, the Commission subsequently referred the case to the national authority for the evaluation of the possible effects of the concentration on the market for the supply of electricity to eligible clients. The concentration was to be carried out in two stages, with Enel acquiring exclusive control of Infostrada in the first, followed in the twelve subsequent months by the amalgamation of Infostrada and Wind Telecomunicazioni Spa, a telecommunications company controlled jointly by Enel and France Telecom, with the creation of New Wind, which would also be controlled jointly by Enel and France Telecom.

In evaluating the possible effects on the market for the supply of electricity to actual and potential eligible clients, the Authority took account not only of the close economic relationship between the liberalized market for the supply of electricity, where Enel is present with Enel Trade Spa, and the electricity generating market, where it is present with Enel Produzione Spa and Erga Spa, but also of the dominant position of the Enel Group in both markets. The Authority also considered the acquisition of Infostrada in the context of the Enel Group's strategy of increasing its role in the joint provision of a range of public utility services.

The investigation showed that the Enel Group would be able to maintain its present dominant position in the national generating market even after the disposal, required by law, of the three companies to which Enel had transferred 15,000 MW of generating capacity. In fact, Enel's post-disposal of mid-merit and peak-load generating capacity will still allow it to determine the wholesale price of electricity, especially during the hours of peak demand. Enel also has a reserve margin equal to more than one third of total Italian net available generating capacity. Lastly, nearly all the alternative sources of electricity that Enel's competitors use to supply their eligible clients are inflexible, with little scope for adapting them to hourly and seasonal changes in demand, so that the related supply is more rigid and less profitable. Even after the introduction of the electricity pool market, Enel's ability to determine the wholesale price of electricity will remain basically unchanged, while its competitors, forced to buy electricity in the market to cover the part of demand they cannot meet with their generating capacity, will have to pay a price determined by Enel.

In view of these findings, the Authority deemed that the acquisition of Infostrada was likely to strengthen the dominant position Enel already held in the market for the supply of electricity to eligible clients and cause a substantial and lasting reduction in competition in that market. In fact, Infostrada's clients include a sizable proportion of the consumers of electricity who, at the latest in April 2003, will be free to choose their supplier. The concentration would accordingly have allowed Enel to increase its portfolio of customers by allowing them to exploit the advantages associated with the joint provision and management of electricity and telecommunications services. On the basis of these considerations, the Authority authorized the concentration subject to Enel disposal of at least 5,500 MW of additional generating capacity in accordance with a series of conditions with regard to the timing and nature of the disposals.

NATURAL GAS

REPORT ON THE COMMUNITY RULES FOR THE INTERNAL GAS MARKET

In April 2000 the Authority sent Parliament and the Government its observations on the draft legislative decree implementing Directive 98/30 concerning common rules for the internal market in natural gas. In its report the Authority expressed a generally favourable opinion on the draft legislation and its potential for contributing to the creation of truly competitive conditions in the market for natural gas. The Authority nonetheless had some reservations, especially as regards the provisions on imports and storage, transport and distribution, the ways of determining transport and sales costs, and the protection and promotion of competition.

As regards the activities of importing and storing natural gas, the Authority's objections concerned the provision of the draft legislative decree that introduced an administrative authorization for importing natural gas from non-EU countries, to be issued subject to a series of conditions, including the availability of strategic storage facilities in Italy. In view of the limited availability in Italy of new sites to be used for that purpose and the fact that Eni currently controls more than 99% of the available capacity, compliance with the "strategic storage requirement" for imports from non-EU countries could result in a significant restriction in competition in the supply phase. The general interest in the regularity and security of supplies could be protected just as well by requiring the importing firm to have an adequate strategic storage capacity in other EU member states. Moreover, in the Authority's view, the ownership of the activity of storage should be completely separated from that of the activities of supply and sale, so as to guarantee that all firms have an adequate possibility of accessing and using the existing storage capacity on the basis of fair and non-discriminatory criteria.

The Authority took a similar line with regard to the desirability of separate ownership of the transport of natural gas. On this point, the Authority reiterated its belief that separating the ownership of the natural monopoly activities of Snam (the transport network) from that of the activities of a potentially competitive nature (supply and sale to final customers) is indispensable in order to achieve at a sufficiently competitive structure for the natural gas market in Italy.

As regards the conditions for access to the transport network, the Authority, in conformity with the principles and guidelines established in Community law, expressed the hope that the relevant charges would be established in accordance with criteria that were objective, correctly related to costs, non-discriminatory, simple, transparent and foreseeable. The aim of this recommendation was to ensure the effective promotion of competition both in the upstream market for the supply of gas and in the downstream market for its sale to final customers.

The Authority also agreed with the proposal contained in the draft legislative decree for distribution, considered a public service, to be assigned exclusively by means of auctions. In this way it is possible, even in markets characterized by conditions of natural monopoly, for there to be competition in the phase preceding the assignment of the service.

Lastly, with reference to the provisions of the draft legislative decree concerning the development of competition, the Authority considered that the pro-competitive effect of the ceilings intended to make it easier to overcome the sector's quasi-monopolistic structure (respectively 50% of national consumption for the volume of sales of gas in Italy and 70% of

national consumption for the volume of gas imported or produced in Italy) was reduced in practice by the percentages being calculated net of losses and, above all, of direct and indirect self-consumption.

WHOLESALE AND RETAIL TRADE

SVILUPPO DISCOUNT-GESTIONE DISCOUNT

In April 1999 Sviluppo Discount Spa, a discount retailer, notified the Authority of a complex transaction that would have brought Sviluppo Discount under the joint control of some companies belonging to the Coop consortium (an organization of consumer cooperatives) and the Conad consortium (an organization of retailers' cooperatives). The parties intended to use the jointly-owned company to operate their respective discount outlets.

The Authority, however, considered the transaction as having the nature of a cooperative joint venture since the controlling companies were to remain independently active in product markets adjacent to that in which the jointly-owned company was to operate. In the investigation the Authority evaluated the effects of the transaction with reference to: i) the management of discount outlets; ii) the management of other types of food distribution outlets subject to spill-over risk, in which each parent company was to operate independently.

In the first respect, the Authority ascertained that the jointly-owned company Sviluppo Discount would have generally had a share of less than 5% of discount business in the local markets. As to the risk of coordination of the commercial policies of the other types of modern distribution, it was found that the jointly-owned company in question was not likely to generate a coordination effect owing to the differences between the management of discount stores and the management of supermarkets, especially as regards logistics and relations with suppliers. Furthermore, the Authority took account of the fact that the activities of Sviluppo Discount constituted a marginal part of the parent companies' overall business.

For the above reasons the Authority found that the formation of the jointly-owned company was not likely to restrict competition significantly.

COOP ITALIA-CONAD/ITALIA DISTRIBUZIONE

In March 2001 the Authority authorized an agreement between the Coop and Conad consortia for the creation of Italia Distribuzione, a joint venture to be entrusted with negotiating the terms of purchases by the companies belonging to the two consortia with suppliers of food products and other wide consumption articles.

The change in demand conditions in the supplying markets was evaluated taking account of the agreement's likely consequences in the local outlet markets, in view of the interdependence existing between these two phases of activity. With reference to the supply-side markets, which are national in scale, Coop is currently the leading operator and Conad ranks fifth. The joint venture Italia Distribuzione will have a purchasing potential of around 20% in such markets (Coop 11.8% and Conad 8.9%), almost double that of the second-largest purchasing centre in Italy.

Considering the retail markets (the hypermarket, supermarket and superette segments, which have a local dimension), the first finding was that the two distributive chains would enjoy less autonomy in defining their respective pricing policies, as they would largely have

the same supply costs, which account for a high proportion of total costs in modern distribution. Secondly, to the extent that Italia Distribuzione would handle the collective negotiation of performance-based discounts for the Coop and Conad chains (for example, discounts dependent on the inclusion in orders of a minimum number of assorted items), Coop and Conad would have less discretion in managing their respective selection and promotional policies. In the various local retail markets, Coop Italia and Conad hold a combined share of more than 40%, in some cases even exceeding 90%. In addition, these markets are characterized by administrative entry barriers and a high degree of transparency of information concerning prices and promotional campaigns. Against this background, the agreement that was notified to the Authority appeared likely to favour coordination of the competitive conduct of the Coop and Conad chains.

In the light of the Authority's objections, the parties modified the agreement by limiting the scope of Italia Distribuzione's activity. As amended by the parties, the agreement was considered likely to permit efficiency gains to be achieved in the organization of purchases, *inter alia* in the form of a wider variety of items selection and an improvement in the quality of products bearing their house brand, to the benefit of final consumers. The Authority therefore granted an individual exemption up to 31 December 2004.

CE.DI.PUGLIA-CE.DIS.-STANDA COMMERCIALE

In July 2000 the Authority concluded an inquiry into a concentration consisting in the acquisition by Ce.Di. Puglia (a retailers' consortium for the distribution of food and wide consumption products in Puglia, Basilicata and Calabria) of eleven supermarkets, one hypermarket and the company Ce.Dis.Srl, a wholesaler of food and wide consumption products.

The transaction concerned the modern retail distribution sector for food and other wide consumption products, where several categories of outlet can be distinguished: hypermarkets, supermarkets, superettes and discount stores. The differences in the quality and level of services offered by the various types of outlet limits their substitutability to the immediately adjacent size segments. In the case in question, considering that the transaction would have involved the transfer to Ce.Di.Puglia of outlets of various sizes, the Authority found that the following product markets would be affected by the operation: i) the hypermarket segment (hypermarkets and supermarkets of more than 1,500 square metres); ii) the supermarket segment (superettes, supermarkets and hypermarkets); and iii) the superette segment (superettes and outlets of less than 1,500 square metres).

Geographically, the Authority adopted different definitions according to the type of outlet involved. For hypermarkets, it considered that the relevant geographical market comprised the entire territory of a province, in view of the size of the individual outlets' service area. For supermarkets and superettes, it was deemed appropriate to consider smaller geographical markets because of the lower mobility of demand.

Concerning the effects of the operation, the Authority found that it might have a significant impact on the hypermarket market in the province of Lecce, where it would have resulted in the acquirer obtaining a 60.7% market share that was likely to constitute a dominant position. However, in the course of the investigation Ce.De.Puglia undertook to dispose of several of the outlets that it would have acquired in the market in question, thereby reducing its market share to around 40-45%. In view of this commitment and considering the

presence of a qualified competitor (Coop), which held a comparable market share (around 39%) and the imminent entry into the market of other competitors already in possession of the necessary licences, the Authority authorized the transaction.

SVILUPPO COMMERCIALE-IPERPIÙ

In March 2001 the Authority concluded an inquiry into a concentration consisting in the acquisition by Sviluppo Commerciale Srl of Iperpiù, a real estate company that owned a hypermarket in the province of Cosenza. Sviluppo Commerciale is a Carrefour Group company active in modern retail distribution.

Since Iperpiù owned a hypermarket, i.e. an outlet having a relationship of substitutability only with major supermarkets in view of its floor space, price positioning and extensive range of products offered, the relevant product market was determined to be that of hypermarkets, comprising the latter and supermarkets of more than 1,500 square metres. Geographically, the Authority considered it appropriate to limit the relevant market to the "commercial area of gravity of Cosenza".

The Authority found that the concentration was likely to result in Sviluppo Commerciale having a dominant position. Sviluppo Commerciale is already present in the Cosenza area with a hypermarket of its own under the *Carrefour* name, which has a 50% market share. The acquisition of Iperpiù would have enabled it to manage the only two hypermarkets in the area and thus to control around 83% of the market. The residual share would have been held by only two operators, which, however, managing much smaller supermarkets, would have been unable to bring significant competitive pressure on the company resulting from the concentration.

In the course of the inquiry the parties declared they were willing to enter into an undertaking for Sviluppo Commerciale to dispose, within 12 months, of the hypermarket to be acquired or, alternatively, of the hypermarket it already managed. The Authority deemed this commitment unlikely to solve the competitive problems resulting from the transaction. In fact, both solutions proposed by the parties would have involved, from the point of view of the market's structure, the restoration of the situation preceding the concentration, but with a time lag of at least 12 months. In that time Sviluppo Commerciale would have been able to exercise market power capable of substantially reducing the already weak competition existing in the relevant market. The Authority therefore prohibited the concentration.

OPINION ON DRAFT PROVISIONS GOVERNING SALES BELOW COST

In December 2000 the Authority transmitted to Parliament and the Government an opinion on several provisions of the draft Presidential Decree of 16 June 2000 governing sales below cost. The Authority observed, firstly, that operators who might be damaged by sales below cost were already guaranteed adequate protection by the existing legal instruments and that it was not necessary to introduce new regulatory measures. According to the Authority, domestic and Community antitrust legislation already prohibited sales at prices lower than cost where effected by a company in a dominant position and where such sales showed predatory features but in other cases did not deem such action to be punishable. By contrast, the draft degree introduced a generalized limitation on the possibility of effecting sales below

cost even for commercial businesses not holding market power. Moreover, the Authority emphasized that the draft provisions did not consider that sales below cost were not only a powerful tool of competition between large chains but could also be used by businesses of more modest size to defend their competitiveness against their closest rivals. The Authority therefore called for the elimination of the rule in question. However, the final version of the decree did not take account of the Authority's recommendations.

TRANSPORT

AIR TRANSPORT AND AIRPORT SERVICES

AEROPORTI DI ROMA-GROUNDHANDLING RATES

In September the Authority concluded an inquiry, pursuant to Article 82 of the Treaty, into some instances of conduct on the part of Aeroporti di Roma that were likely to restrict competition in the market for groundhandling services at Fiumicino-Rome airport.

The airport groundhandling market has recently undergone extensive liberalization following the incorporation into Italian law Italy of Directive 96/67/EC[2] by Legislative Decree no. 18 of 13 January 1999. The decree established that, from its entry into force (5 February 1999), there would be free access to the groundhandling market for service providers satisfying certain eligibility requirements at airports with annual traffic of less than 3 million passengers and that carriers would be free to provide their own groundhandling services at all airports open to commercial traffic. However, even following the entry into force of this legislative decree, Aeroporti di Roma maintained a dominant position in the groundhandling market at Fiumicino airport as well as in the market for infrastructure-related services at the airport, of which the company is sole concessionaire.

In the course of the investigation the Authority found that features of the system for setting handling rates adopted in 1998 by Aeroporti di Roma, based on discounts related to the quantities acquired and the duration of supply contracts, were likely to obstruct the access of competitors to the liberalized groundhandling market. However, the Authority considered that, with regard to quantity discounts, the rate system had actually been applied only for a limited period of time, largely preceding the sector's liberalization, and had not conditioned the commercial choices of carriers in a market still characterized by monopoly. Moreover, the duration discounts had never been applied, since no multi-year agreements had been signed with carriers. In the light of these considerations and taking account of the substantial changes introduced in the discount system by Aeroporti di Roma during the investigation, the Authority found that there had been no violation of Article 82 of the Treaty.

The second instance of conduct on the part of Aeroporti di Roma examined during the investigation concerned its having allegedly obstructed, through unjustifiably dilatory behaviour, the provision by Aviation Services Spa of ramp supervision and aircraft trimming services on behalf of its parent company, the carrier Meridiana. The Authority found that, by impeding Meridiana's exercise of the right of self-production pursuant to Article 9 of Law 287/1990, Aeroporti di Roma, in violation of Article 82 of the Treaty, had abused its dominant position in ramp supervision and aircraft trimming services.

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[2] Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports, in OJ L 272/36 of 25 October 1996.

ROAD TRANSPORT

OPINIONS ON CROSS-SUBSIDIES IN LOCAL PUBLIC TRANSPORT

In February 2001, following the receipt of numerous reports concerning cross-subsidization between local public transport and other transport services, the Authority issued an opinion pursuant to Article 22 of Law 287/1990 with the aim of calling the attention of regional, provincial and municipal governments to the competitive distortions arising from the use of public funds earmarked for local public transport services to subsidize other transport services provided under competitive rules.

In its opinion, the Authority first specified that where funding was to be provided to public transport services, the mechanisms for approving and allocating such spending had to be devised in such a way that the subsidies could only be used in connection with the services for which they were earmarked and a specific restriction of use had to be explicitly established. Secondly, the Authority stated that the introduction of competitive bidding for concessions for local public transport services from 2003 onwards, pursuant to the legislation in force, could reduce the risk of cross-subsidization considerably, provided that the service put up for bidding and the criteria of award were defined so as to minimize the subsidies necessary for the performance of the public service. Finally, the Authority expressed the view that, in order to limit the risk of competitive distortions in the markets adjacent to the public service, it was necessary to ensure greater transparency in the attribution of costs and revenues by providing for effective separation between the management of local public transport services and that of other services, or at least accounting separation between the two, where they were performed by the same persons.

TELECOMMUNICATIONS

TISCALI/ALBACOM-TELECOM ITALIA

In July 2000 the Authority concluded an investigation of Telecom Italia Spa for abuse of a dominant position in the market for calls directed to other fixed networks and that of the supply of telecommunications networks to Internet Service Providers.

The investigation had been opened following submissions by Tiscali Spa and Albacom Spa, complaining that Telecom Italia had imposed penalizing economic conditions in their respective reverse interconnection contracts. Reverse interconnection relates to the fees received by Other Licensed Operators for terminating calls originated by Telecom Italia customers. In practice, Telecom Italia pays OLOs a share of the revenues from telephone traffic for calls originated by public switched network subscribers to numbers assigned to fixed networks managed by other operators.

The Authority assessed the first type of conduct in relation to the market in the termination of calls to fixed telecommunications networks, where Telecom Italia was considered to hold a dominant position on the demand side inasmuch as OLOs could sell the termination services only to Telecom Italia, which had command over almost all of the subscribers to national telephony service. With regard to the other conduct, the Authority found that Telecom Italia held a dominant position in the market for supplying switched telecommunications networks to Internet Service Providers, considering the high market share held by Telecom Italia in terms of Internet access traffic and the fragmentation of the services

supplied by OLOs, as well as the fact that Telecom Italia possessed the largest national network infrastructure.

Concerning the conduct examined in the first market, the investigation found that from March 1999 onwards Telecom Italia had required OLOs to renegotiate the interconnection contracts they had concluded in the second half of 1998, imposing economic conditions based on the division of the public switched network into telephone districts and thereby reducing the average level of payments to OLOs for the termination services rendered on their networks by 25-30%. The Authority found that such conduct constituted abuse of a dominant position.

As to Telecom Italia's conduct in the Internet access market, the Authority found that the move by Telecom Italia to squeeze the fees for termination services on the networks of OLOs while simultaneously increasing the telephony revenues paid to ISP that subscribed to the switched telephony network was aimed at monopolizing the termination of Internet access traffic, thereby obstructing the development of networks for Internet access traffic alternative to Telecom Italia's. On the basis of the foregoing, the Authority concluded that such conduct also constituted abuse of a dominant position.

In the course of the investigation Telecom Italia offered a series of commitments designed to remove the abuses described above. More specifically, for call termination on fixed telecommunications networks serving for the supply of services by OLOs, Telecom Italia proposed a new standard offer for termination on OLOs' networks. In addition, it declared its willingness to contribute to the development of OLOs' network infrastructure, provided there was a progressive reduction of the number of districts without an interconnection point. Finally, Telecom Italia offered to create an interconnection model that would permit the development of Internet access services by all fixed network operators. The Authority judged that these undertakings were likely to put an end to Telecom Italia's abuse of its dominant position.

TELECOM ITALIA — SEAT PAGINE GIALLE

In July 2000 the Authority concluded its investigation of the acquisition by Telecom Italia Spa of exclusive control of Seat Pagine Gialle Spa. The Authority found that the transaction would mainly affect the following markets: i) supply of Internet access services; ii) distribution of telecommunications products and services; iii) sale of advertising space in the telephone directory and yellow pages; iv) sale of on-line advertising space; v) supply of electronic commerce services. Geographically, these markets were defined as national in scale, considering that the necessary administrative authorizations are valid only for Italy, the necessity of having network infrastructure situated in Italy for the supply of such services, and, within that context, the homogeneous nature of the conditions of supply to the public.

With regard to the market in Internet access services, the Authority first ascertained that Telecom Italia held a dominant position considering its significant market share (more than 50%, in contrast with the substantial fragmentation of its competitors' supply), the widespread diffusion of its own networks in Italy, the existence of a dominant position in the upstream markets of dial-up connections and supply of direct circuits, its simultaneous presence in all the segments of Internet services, and its possession of a widely-known brand name and massive technological and financial resources. In this context, the Authority found

that the acquisition of Seat would strengthen the dominant position that Telecom Italia already held in the market.

As to the market in advertising in telephone directories and yellow pages, the transaction would have resulted in the permanent and definitive integration of Telecom Italia's rights in respect of the database on public telephone service subscribers with the activities of Seat, the dominant company in the markets based on the commercial exploitation of that database, thereby creating a competitive distortion to the detriment of the leading competitor, Pagine Italia, and potential new entrants.

As to the effects of the planned concentration in the market for the sale of on-line advertising space, the Authority found that the transaction was likely to strengthen Telecom Italia's dominant position in view of its high aggregate market share (45-55%), the possibility of selling advertising space through the three most important and frequently visited portals in Italy, control of the leading on-line directory, and the influence of the vertical integration between Telecom Italia and Seat in determining the conditions of access by competitors to the database containing the information on telephone service subscribers.

In the course of the investigation Telecom Italia and Seat submitted to the Authority a series of commitments aimed at removing the problems that had emerged concerning the possible anti-competitive effects of the transaction. These commitments regarded, *inter alia*: the disposal of shareholdings; an undertaking by the parties to allow the marketing of competitors' telecommunications products; a commitment by Telecom Italia to offer the entire database (business and residential users, except for "reserved" customers) free of charge on-line to certain categories of persons, including other licensed operators and Internet service providers, without any restriction of use; a commitment by the parties to accept bids for the sale of advertising in the official directory of Telecom Italia subscribers from 1 January 2008 onwards. These undertakings were considered likely to eliminate the potential anti-competitive effects of the transaction. In addition, with the aim of reducing the effects of integration of the activities carried on by the two companies in the distribution of telecommunication products and services in particular, the Authority deemed it appropriate to supplement the proposed commitments by the parties with an order to maintain separation between the distribution structures of Telecom Italia and Seat and between the related brands for a period of three years.

MONETARY AND FINANCIAL INTERMEDIATION

INSURANCE AND PENSION FUNDS

MOTOR VEHICLE LIABILITY INSURANCE

In July 2000 the Authority concluded a complex inquiry into the motor vehicle insurance sector concerning the practice, followed by many companies, of providing insurance for fire and theft only in conjunction with mandatory car liability insurance and the exchange of information between insurance companies.

The conduct in question was evaluated with reference to two significant markets: mandatory car liability insurance and other motor vehicle insurance, particularly for fire and theft. Geographically, both markets were defined as national, inasmuch as the conduct examined was perpetrated directly by the companies supplying insurance policies and influenced the entire national market.

With regard to the practice investigated, during the inquiry an absolute parallelism of conduct was found between insurance companies, consisting in tying the sale of insurances for fire and theft to the sale of mandatory car liability insurance. From the evidence gathered in the investigation it was possible to ascertain the absence of plausible explanations, other than a concerted action, for the companies' parallel conduct. The Authority considered the following circumstances in this regard: i) the two types of risk covered are fundamentally different and statistically independent, even though they refer to the same good; ii) the characteristics of the insured relevant for the evaluation of mandatory car liability insurance (for example, age, occupation, sex, driving experience, etc.) have no bearing on the evaluation of fire or theft insurance; iii) the two types of insurance are governed by very different rules (only car liability insurance is compulsory) and their prices are determined using different criteria. On this basis, the Authority found that the degree of complementarity of the demand for the two products was very limited and not such as to justify forcing customers to buy joint coverage.

As to the exchange of information between insurance companies, the information gathered showed that the conduct of the insurance companies constituted a complex horizontal agreement for the exchange of sensitive commercial information. The understanding was achieved by means of a single information circuit based on the principle of reciprocity, with each company transmitting its own data to a consulting firm in order to receive the data of its competitors. The Authority found that the mechanism put in place by the parties constituted an institutionalized system for the exchange of sensitive data (rates, discounts, risk assumption procedures, contractual conditions, collections, claims and operating costs) designed to make it easier to foresee the conduct of competitors, with the consequence of creating an artificial transparency in the market.

The conduct found was considered a particularly serious infraction, involving a large number of companies and hence such as to reduce competition significantly in the relevant markets. The Authority therefore imposed a substantial fine on the companies that had been parties to the restrictive agreement, in an amount ranging from 1% to 3.8% of the companies' turnover in the relevant markets, according to their responsibility, for a total of almost 700 billion lire.

PROFESSIONAL AND BUSINESS SERVICES

ASSOCIATION OF SURGEONS AND DENTISTS

In September the Authority concluded a fact-finding inquiry regarding violation of the ban on restrictive agreements by the National Federation of the Associations of Surgeons and Dental Surgeons, 37 Provincial Associations of Surgeons and Dental Surgeons, and the provincial sections for Trento of the National Association of Italian Dentists and the Italian Association of Dental Surgeons. The inquiry was begun to check the compatibility with the competition rules of two resolutions adopted by the National Federation, one in 1985 and one in 1997, and subsequently adopted by the Provincial Associations involved. These resolutions governed the terms on which doctors were to sign conventions with public health care agencies. Specifically, under the criteria laid down in the 1985 resolution, doctors were to provide their services only to members of supplementary health care agencies that agreed: i) to give preference to direct economic relations between doctors and patients; ii) to adhere to the principle of open lists whereby the agencies pledged to admit to the public service convention all doctors so requesting; iii) to follow the fee schedule set by the Association;

and iv) to leave to the Association the choice of the doctors to admit to the convention. Subsequently, with the 1997 resolution, the first two of these points were confirmed; the other two were partly attenuated, it being provided that the agencies could carry out checks of the quality of services, albeit only with the participation of the Association, and that they were required to allow patients free choice of doctor.

The Authority concluded that these resolutions were intended to restrict competition among doctors in their dealings with supplementary health care agencies. Essentially, the object and the effect of the resolutions was an unjustified restriction of the choice of the health care agencies, eliminating all possible competition between doctors in the qualitative differentiation of their services and, at least until 1997, in the fees charged. The Authority further ascertained that the 1985 and 1997 resolutions of the National Federation had substantially restricted competition in each of the local markets for medical and dental services in Italy, in that they were capable of affecting the conduct of all the health care professionals operating in those markets. As to the conduct of the Provincial Medical Associations, they made the content of the resolutions adopted at national level by the National Federation operative at the local level.

The Authority concluded that the only serious restriction on competition was the agreement attributable to the National Federation, which, in view of its nationwide impact, had an unquestionable influence on the decisions of the various provincial Associations. The Authority accordingly condemned the National Federation of the Association of Doctors and Dentists to a fine of 123 million lire, or 1.5 per cent of its subscription fees.

REPORT ON THE RULES GOVERNING AUTHORIZED CENTRES OF AGRICULTURAL ASSISTANCE

In June 2000 the Authority communicated to the Government its opinion on the possible distortions of competition deriving from the rules governing "Authorized Centres of Agricultural Assistance". The Authority called attention to the rule providing for the institution of such Centres by farmers' associations, which were delegated to perform the functions of assistance to the members together with important duties of formal checks of regularity of applications for Community, national and regional farm subsidies.

The limitation of authorization to form a Centre to farmers' associations belonging to the National Economic and Labour Council and with at least ten years of existence could have restricted competition in the market for assistance to farm enterprises. Another restrictive aspect was the assignment to the Centres of the task of assisting farmers in filling out subsidy applications, in that to save time and expense farmers would rely on a single body both for this assistance and for checking their applications. The Authority thus recommended that the criteria for selecting the persons authorized to form Centres should be objective, such as to ensure selection based on standards of efficiency. The Council of Ministers accepted these observations and amended the definitive text of the regulation accordingly.

REPORT ON FEES FOR PRIVATE SECURITY SERVICES

In July 2000 the Authority recommended revision of a Ministry of the Interior circular concerning approval by the prefects of fees for private security services. The circular outlined a system for monitoring the prices charged by private security agencies consisting in the

identification by the prefects of price levels for the various security services that would presumably cover the costs sustained in order to comply with the legal requirements plus fluctuation bands within which each agency could set its own fees.

While acknowledging the purposes of security and public order that justify prior control on the security agencies, the Authority observed that compliance with the legally set charges and fluctuation bands was not such as to ensure automatic compliance with all legal requirements. To prevent the formation of unjustified restrictions of competition between private security agencies, the Authority accordingly argued the need for a time limit on the system of legal fees, which should be restricted to the period strictly necessary to draft and implement more effective tools for the oversight of the private security agencies.

LEISURE, CULTURE AND SPORTS

BROADCASTING

STREAM-TELEPIÙ

In June 2000 the Authority concluded an inquiry opened in March 1999 following a complaint lodged by Stream Spa against alleged abuse of a dominant position by Telepiù Spa. Stream and Telepiù are both pay-TV operators in Italy.

The Authority initiated the proceeding under Article 82 of the Treaty in view of the importance of the Italian pay-TV market in the framework of the Common Market and the likelihood that the alleged conduct of Telepiù would affect intra-Community trade, in that it would make the market entry of other operators, including those from other member states, more difficult and more costly.

The Authority first ascertained the existence of Telepiù's dominant position in the Italian pay-TV market, as indicated by its market share (the entire market through 1997, 93 per cent of all subscribers at the end of 1998 and 82 per cent at the end of September 1999), the unequal terms for access to movie and sports rights, and its substantial independence with respect to the actions of competitors, customers and suppliers.

The Authority concluded that Telepiù had violated Article 82 of the Treaty, first of all by signing long-term contracts (for periods longer than three years) for exclusive encoded broadcasting rights to a significant portion of Italian A and B League soccer matches, including the home matches of the most popular teams. It was found that the acquisition of exclusive rights to top sports events for a lengthy period, just at the time when the conditions for effective competition in pay TV were being established (entry of a new operator, the approaching expire of Telepiù's exclusive rights to league matches), reinforced its dominant position and raised the already high barriers to entry into the relevant market. The Authority also deemed Article 82 of the Treaty to be violated by the clause according a right of pre-emption to Telepiù or its subsidiaries for acquisition of exclusive rights for the period following the expire of the initial rights, as this would enable the dominant firm to further prevent competitors from gaining access to the most important program contents. Lastly, the Authority judged as an infringement the inclusion, by Telepiù and its subsidiaries, of clauses in their contract with Stream for cable transmission of programs and soccer packages carrying the Telepiù logo, in that by limiting competition between Telepiù and Stream in the pay-TV market such clauses helped to consolidate Telepiù's dominant position, discouraging entry by other competitors, both national and Community.

SEAT PAGINE GIALLE-CECCHI GORI COMMUNICATIONS

In January 2001 the Authority authorized the purchase by Seat Pagine Gialle of 75 per cent of the equity of Cecchi Gori Communications. This concentration forms part of the ongoing convergence between the telecommunications and broadcasting industries. With the takeover, the Telecom group, to which Seat belongs, broadens the range of its products and services to include two unencoded television chains, TMC and TMC2, broadcasting nationwide.

The effects of the concentration were examined mainly for the following markets: i) unencoded television broadcasting and the related advertising market; ii) pay-TV; iii) access to local telecommunications networks; iv) Internet access services; v) advertising in telephone books and yellow pages; vi) on-line advertising; vii) the new markets deriving from convergence of telecommunications and broadcast television.

It was found that the Telecom group dominates the market for access to local telecommunications networks and is the leading Italian supplier of Internet access services. Telecom's former legal monopoly enabled it to transfer to Seat exclusive rights to advertising in the telephone book (white pages) and to gain a dominant position in the market for advertising in the yellow pages (both paper and on-line). Telecom also operates in the pay-TV market via its Stream subsidiary.

Given Telecom's position in the relevant markets, the effects of the takeover of Cecchi Gori Communications, and in particular of the TMC and TMC2 TV broadcasting units, were evaluated considering that vertical integration would enable the Telecom group to exploit to the full, and more than its competitors, a series of synergies that could produce a restriction of competition in those markets. That is, Telecom is the only operator possessing a local access network that can reach final users and infrastructure, consisting in spare cable capacity, extending over the entire national territory. Thanks to this endowment, Telecom is the only firm capable of providing final user services requiring a band broad enough for multimedia and interactive content, both via Internet and via TV. In order to provide such services to their subscribers, Telecom's competitors would have to construct a network of their own or else hook into the telephone net locally ("last mile" access). Thus control of the local network together with its infrastructure endowment would give Telecom a unique advantage, with the possibility of moving promptly into all the markets deriving from the convergence between TV and telecommunications and to provide multimedia content requiring broad band transmission capacity.

The Authority concluded that the announced concentration could strengthen the dominant position of the Telecom group in on-line advertising, telephone book and yellow pages advertising and Internet access, and create a dominant position in the new markets deriving from TV-telecommunications convergence capable of eliminating or causing a substantial and lasting reduction in competition in these markets. The Authority accordingly resolved to allow the concentration providing the following conditions were met: i) beginning 1 June 2001, for all operators so requesting, access, for the purpose of laying optical fibre cables for multimedia and interactive services, to all the infrastructure facilities Telecom is entitled to utilize on non-discriminatory terms and at a price reflecting costs; ii) inclusion under the general conditions of contract for TV advertising of a ban on advertisers on TMC and TMC2 referring viewers to Seat's yellow pages; iii) a three-year ban, from the date of authorization of the concentration, on clauses providing exclusive rights in contracts between

the Telecom group and the Cecchi Gori group for the acquisition of content for distribution via the Internet; iv) any testing or marketing of interactive TV services only on the condition that Telecom make the same transmission band capacity effectively available to competitors.

PUBLISHING

RULES ON FIXED PRICES OF BOOKS

The Authority intervened twice concerning the rules governing the fixing of book prices: in November 2000 in respect of draft legislation and in February 2001 in respect of the second draft approved by the Chamber of Deputies. The draft bill on which the Authority submitted its first opinion provided that book prices were to be fixed by the publisher or the importer and that sale to the final consumer at more than a 10 per cent discount was prohibited. Exemptions were envisaged for books for collectors, art books, used books, old or rare editions, out-of-print and off-catalogue books, etc. Also, by way of derogation from the 10 per cent discount cap, the bill allowed retailers to make discounts of up to 20 per cent at special events of regional, national or international importance and on sales to libraries, public archives and museums, non-profit organizations, scientific institutions and schools and universities, as final consumers.

The Authority noted that the introduction of fixed prices, preventing promotional activities, could result in a general increase in the final prices of books and curb the dissemination of books to occasional readers, who are more price-sensitive and who constitute nearly half of the Italian book market. The opinion observed that during the nineties Italian book demand displayed considerable price sensitivity: economical and super-economical book sales increased by 64.4 per cent between 1990 and 1997, while those of books with cover prices of more than 20,000 lire increased by only 12.2 per cent. The Authority further pointed out that the great price elasticity of book demand was also shown by the sharp increase in sales at major retail chains, with their well-known policy of more pronounced price promotion by comparison with traditional bookshops.

The amended draft approved by the Chamber of Deputies differed from the earlier version essentially in setting an even narrower limit of 5 per cent on discounts for school textbooks. In its February opinion the Authority expressed deep concern over the adverse social and competition effects of a tighter limitation on textbook discounts. Such a strict limit on schoolbook discounts would essentially eliminate price competition in a sector where the scope for differentiation of supply in terms of assortment and customer assistance are marginal, since the purchase of schoolbooks is not an independent choice on the part of the consumer. Finally, the Authority stressed that the introduction of rules governing book prices would infringe the combined effect of Article 3(g), 10 and Article 81 of the EC Treaty, which require member states to refrain from adopting measures that could jeopardize the fulfillment of the purposes of the Treaty and render the competition rules ineffective.