AGCM
AUTORITÀ GARANTE DELLA CONCORRENZA
E DEL MERCATO

ANNUAL REPORT
2008

1. Antitrust enforcement in 2008

1.1 Summary

1. In 2008, the Italian Competition authority assessed 842 mergers, 12 agreements, and 13 alleged abuses of dominant positions.

Activity of the Authority	2007	2008
Agreements	26	12
Abuse of dominance	9	13
Concentrations	864	842
Separation obligations	16	11
Sector inquiries	2	2
Non compliance	1	1

Proceedings concluded in 2008

	Non-violation	Violations, commitment decisions	Outside the scope of the law	Total
Agreements	1	6	5	12
Abuse of dominance	-	10	3	13
Concentrations	814	2	26	842

1.1.1 Agreements

2. In 2008 the Authority concluded six proceedings concerning agreements.[1]

3. In three cases, the Authority found an infringement of competition law (the legal basis was the violation of article 81 of the EC Treaty in one case[2], and the violation of article 2 of Law no. 287/90in two cases)[3].

[1] Inail-Contracting of banking services; Federitalia/Italian Federation of Equestrian Sports (Federazione italiana sport equestri - FISE); Highway assistance services; Federfarma Teramo; School books Market; Bread price list.

[2] Inail-Contracting of banking services.

[3] Federfarma Teramo; Bread price list.

4. In three other cases, the proceedings led to decisions pursuant to article 14-*ter*, paragraph 1, of Law no. 287/90, with the Authority accepting the commitments proposed by the parties and making them binding without the ascertainment of a violation[4].

5. Considering the seriousness of the three cases involving violations of article 81 of the EC Treaty and article 2 of Law no. 287/90, the Authority imposed fines to the companies totaling EUR1,665,630.00 .

6. On December 31st, 2008, twelve different proceedings were in progress - 10 pursuant to article 81 of the EC Treaty,[5] and 2 pursuant to article 2 of Law no. 287/90[6].

Agreements examined in 2008, by sector (number of completed proceedings)	
Sector	
Food and beverage	1
Credit	1
Publishing	1
Pharmaceuticals	1
Other services	1
Recreational, cultural and sports activities	1
Total	**6**

1.1.2 Abuses of dominant position

7. In 2008 the Authority completed ten proceedings concerning abuses of a dominant position[7].

8. In two cases, the Authority found an infringement of article 82 of the EC Treaty imposing fines totaling EUR 3,217,900.00[8].

9. In the other eight cases, the Authority accepted the commitments proposed by the parties pursuant to article 14-*ter* paragraph 1 of Law no. 287/90 and making them binding without finding an infringement[9].

4 Federitalia/Italian Federation of Equestrian Sports (FISE); Highway assistance services; School books Market

5 Costa Container Lines/Sintermar-Terminal darsena Toscana; Pasta price list; Organization of maritime services in the Gulf of Naples; Recycling of dead batteries; Retail sales of cosmetic products; MAV checks-Interbank commissions; Auction houses; FVH-Liquigas-Butangas-Quiris/I.PE.M; Gargano corse/ACI; Soccer league/Chievo Verona

6 Price of GPL for heating in the Region of Sardinia; Order of medical surgeons and dentists in the Province of Bolzano.

7 Airports of Rome-Airport fees; SEA-Airport fees; Federitalia/Italian Federation of Equestrian Sports (FISE); Italian Postal Service-Postal service agencies; Rail Traction Company/Italian railway network-State Railways (Ferrovie dello Stato); Exploitation of privileged commercial information; Acquedotto Pugliese; Highway assistance services; Pace strade/Toscana gas; Previous delays in payments by Telecom.

8 Airports of Rome-Airport fees; SEA-Airport fees.

Abuses examined in 2008, by sector (number of completed proceedings)	
Sector of primary interest	
Water	1
Electricity and gas	1
Postal Services	1
Telecommunications	2
Transport	3
Recreational, cultural and sports activities	1
Other services	1
Total	**10**

10. On December 31st, 2008, 6 proceedings concerning alleged abuses of a dominant position pursuant to article 82 of the EC Treaty were pending[10].

1.1.3 Mergers

11. In 2008, the Authority assessed 842 mergers. In 814 cases a formal decision has been adopted pursuant to article 6 of the Law n. 287/90, while in 26 cases the Authority found that there was no ground for action. In two cases the Authority carried out an in-depth investigation pursuant to article 16 of Law n. 287/90, and the authorization for the mergers have been made dependent upon the undertakings' compliance with specific conditions[11]. In one case, the Authority modified the conditions of a previously authorized merger operation[12]. In yet another case, the Authority prescribed obligatory measures for a merger pursuant to regulations on the industrial restructuring of large insolvent enterprises[13].

12. The Authority also concluded a proceeding pursuant to article 19, paragraph 1 of Law n. 287/90, for non-compliance with a previous decision imposing merger remedies[14].

13. Lastly, the Authority conducted eight proceedings for non-compliance with the obligation of prior notification of mergers[15], finding in all cases an infringement and imposing fines totaling EUR

9 Federitalia/Italian Federation of Equestrian Sports (FISE); Italian Post Office-Postal service agents; Rail Traction Company/Italian railway network-State Railways; Exploitation of privileged commercial information; Acquedotto Pugliese; Highway assistance services; Pace strade/Toscana gas; previous delay s in payments by Telecom.

10 Gargano corse/ACI; Soccer league/Chievo Verona; La nuova meccanica navale/Cantieri del Mediterraneo; Conto TV/SKY Italia; NTV/RFI-Access to the Naples junction; Exergia/Enel-Safeguarding service.

11 Intesa San Paolo/Cassa di risparmio di Firenze; Banca monte dei paschi di Siena/Banca Antonveneta.

12 Alitalia/Volare.

13 Compagnia Aerea Italiana/Alitalia Linee Aeree Italiane - Airone

14 Parmalat/Eurolat.

62,000. On December 31st, 2008, one proceeding on non-compliance with prior notification obligations was pending[16].

1.1.4 Separation obligations

14. In 2008, the Authority carried out four proceedings concerning the alleged non-compliance with the duties of prior notification laid down by article 8, paragraph 2-*ter* of Law n. 287/90[17]. One proceeding was closed due to inapplicability of the law, and the other three were concluded with the ascertainment of an infringement and the imposition of fines totaling EUR 27,000.

15. On 31st, 2008, one investigation was pending in this area[18].

1.1.5 Sector inquiries

16. In 2008, the Authority concluded two sector inquiries pursuant to article 12 of Law no. 287/90 in the field of corporate governance of banks and insurance companies and of waste of matrial packaging[19]. On 31st, 2008, 9 sector inquiries were in progress[20].

1.1.6 Competition advocacy

17. In 2008 the Authority issued 55 reports concerning possible restrictions and distorsions of competition flowing from existing or envisaged regulations, pursuant to articles 21 and 22 of Law n. 287/90. As in previous years, a wide range of different economic sectors were involved.

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15 C.V.A. Compagnia Valdostana delle acque/Deval energie; Alliance medical/Newima-Studio radiologico cento cannoni; Alliance Medical/Centro medico sette re; Alliance Medical/Linea medica; BCC Private Equity S.G.R./Ad maiora-Hydro service penta-CBS-Sigma; Veolia Proprieté/Bartin recycling; Consiagas-Intesacom/Estra energia, servizi, territorio, ambiente; Manutencoop/Manutencoop fAcility management.

16 Iride acqua gas/Idrocons.

17 AEM Distribuzione gas e calore; A2A; Agam; Azienda servizi Val Trompia.

18 Trambus/Attività autobus di linea GT.

19 Market of packaging material waste; The corporate governance of banks and insurance companies.

20 The state of the liberalization of the electric energy and natural gas sector; Local public transportation; Hospital healthcare services sector; Post-trading and negotiation services; Fact-finding survey in the sector of daily newspapers, periodicals and multimedia publishing; Fact-finding survey on pre-paid cards; Market for the storage of natural gas; SMS, MMS and other mobile services; Fact-finding survey in the sector of professional orders.

Advocacy reports by sector	
Sector	**2008**
Water	3
Food and beverages	2
Insurance and pension funds	2
Credit	1
Constructions	1
Television	1
Publishing	1
Electricity and gas	5
Pharmaceuticals	1
Financial services	1
Real estate	2
Oil products	1
Professional services	4
Waste services	5
Restaurant	1
Health services	2
Other services	7
Recreational services	3
Telecommunications	3
Transport	8
Other	1
Total	**55**

2. Agriculture and manufacturing activities

2.1 Food and Agricultural products

2.1.1 Agreements

Bread price list

18. In June 2008 the Authority concluded an investigation, pursuant to article 2 of Law n. 287/90, establishing that the Bakers' Association of Rome and Province (*Unione Panificatori di Roma e provincia*) had implemented a competition-restricting agreement involving the preparation and diffusion of fixed prices for the types of bread sold by the bakeries in the territory and the preparation and diffusion of the cost analysis for the main types of bread, used to determine the relative final prices. This proceeding was launched following a report by the *Associazione Altroconsumo*.

19. In terms of product, the Authority identified bread production and sales as the relevant market. The Authority considered the boundaries of this market to coincide with the province of Rome, due to typical consumer habits of buying bread in bakeries close to home.

20. During the investigation, the Authority determined that the Bakers' Association of Rome and Province had implemented an agreement to circulate minimum bread prices, both retail and wholesale, throughout the province of Rome. In September 2007, for instance, this information was supplied through a price list that included: *i)* "recommended" price ranges for the two primary and most typical types of bread sold in the province; *ii)* recommended price increase ranges for all other types of bread. The listed values were obtained through an analysis of the average costs sustained by bakers and the calculation of a generalized unit-cost value, known as the "index of bread-making." The price list was distributed at a public assembly to which all the bakers from the province of Rome were invited, and through interviews of the association's President given to the press and the television.

21. The Authority further ascertained that the association had also disseminated sales-price indications based on "index of bread-making" analysis during the period between April 2003 and September 2007. Although the circulation of price indications was more limited during this period, since the indications were given exclusively to the member bakers in the context of local assemblies and meetings, it was equally clear that the association's primary goal was to communicate "minimum threshold" values.

22. As to the extent of this agreement's impact, the Authority determined that approximately 40% of active bakers of the relevant market belonged to the Bakers' Union of Rome and Province association. The potential restrictions on competition (at least in relation to the association's most recent price indications), however, had an influence that surely extended well beyond the association's official members. The investigation proved, in fact, that these indications reached a much broader audience than the association members themselves, having been publicized through the press as well as through a television interview with the Union's President.

23. Considering the seriousness and duration of this infraction, the Authority imposed on the Bakers' Union of Rome and Province fines totaling EUR 4,430.

2.2 Pharmaceutical products

2.2.1 Agreements

Federfarma Teramo - Discount prices for the public

24. In May 2008 the Authority completed an investigation, pursuant to article 2 of Law n. 287/90, establishing that Federfarma Teramo, an association of pharmacy owners in the province of Teramo, had implemented a competition-restricting agreement on the pricing of non-prescription pharmaceuticals (NPPs) sold by pharmacies in the province. The proceeding started upon learning that Federfarma Teramo had sent an announcement to all associated pharmacy owners indicating the maximum discounts to be applied to public sales prices for a series of NPPs.

25. In terms of product category, the Authority defined the relevant market as the retail distribution of NPPs. The market's geographical boundaries were defined as the province of Teramo, given that the directive of Federfarma Teramo was addressed to all pharmacy owners in this province.

26. During the investigation, the Authority established that Federfarma Teramo had distributed a memorandum to its associated members in November 2006, and that this memorandum contained a list of maximum sales-price discounts for NPPs. This memorandum was intended to limit the discounts that pharmacies could apply on these types of pharmaceuticals, whose sales had recently been liberalized by Law no. 248/06, allowing pharmacies the freedom to set their own discount rates. Furthermore, evidence gathered during the investigation revealed that the Association's price indications had in fact succeeded in producing substantial limitations on the discounts offered by the pharmacies in the province of Teramo. A closer look at the discounts being offered at the time of the memorandum's distribution and during the six following months revealed a 10% discount over this relatively short time period. By reducing the size of the discounts offered, the Federfarma Teramo memorandum held final prices at a level that was artificially higher than the level which could otherwise have been reached in the period immediately after competitive pricing in the sector was first liberalized. As for the duration of the infraction, the investigation revealed that it began in November 2006 and lasted at least through the end of December 2007.

27. The Authority considered this infraction as a serious violation of competition law, considering its nature as a horizontal price agreement and the particular period of time in which it occurred, i.e., a few months after Law n. 248/06 entered into force and liberalized competition among pharmacies. Considering the seriousness and duration of the infraction, the Authority imposed on Federfarma Teramo fines totaling to EUR 11,200.

3. Electricity and natural gas

3.1 Natural gas

3.1.1 Abuses of a dominant position

Pace Strade - Toscana Gas

28. In October 2008 the Authority concluded an investigation, pursuant to article 3 of Law n. 287/90, into Toscana Energia. The proceeding arose from the complaint of the Pace Strade company relating to the fact that Toscana Energia, a gas distribution company for multiple municipalities in the Region of Tuscany, was restricting competition in the market for the planning and installation of civil and industrial engineering projects on private lots. More specifically, Toscana Energia had made the provision of connection services between private networks and the pre-existing public network (an activity for which it was the only provider) conditional on its own provision of methane gas pipe installation services on private property (a competition-based activity).

29. During the investigation, Toscana Energia proposed the following commitments: *i*) within one month from the commitments' approval, a company Memorandum would be distributed internally to re-orient personnel attitudes by explaining that Toscana Energia does not have exclusive rights for gas pipe installation on private property and by clarifying the applicable terms, conditions and costs of the connection service to the public network of parts of network in the newly-developed areas, currently under its monopoly; *ii*) within the same period, the operational principles and rules described in the Memorandum would be summarized in the form of Parceling Regulations to be circulated externally (to corporations and private customers) and published on the company's website. The Memorandum and the Regulations introduce the right for subjects interested in installing gas distribution networks in private lots to request a preliminary technical estimate from Toscana Energia, which is to provide this estimate free of charge within two months of receiving the request.

30. Toscana Energia later supplemented these commitments with modifications derived from *market testing* and advice from the Authority of Electric Energy and Gas, such as the introduction of a mechanism that comes into effect should private parties fail to receive the technical estimate within the two-month time limit, granting tacit consent for gas-pipe installation work to be performed by a company of the private party's choice. In addition, Toscana Energia undertook to communicate, within the same time period, a detailed description of the safety regulations to be followed by third party contractors during the installation of gas distribution networks in new areas.

31. The Authority deemed that the commitments proposed by Toscana Energia and their subsequent modifications were apt to resolve the problematic issues addressed by the proceedings, having successfully clarified the distinction between the monopolistic activities of the gas distributor and competition-based economic activities. The Authority resolved to close the proceeding against Toscana Energia, and to make the proposed commitments obligatory pursuant to article 14-*ter* of Law no. 287/90.

4. Water services and waste management

4.1 Water services

4.1.1 Abuses of a dominant position

Acquedotto pugliese (Puglia waterworks)

32. In October 2008 the Authority concluded an investigation into Acquedotto Pugliese, pursuant to article 82 of the EC Treaty. The investigation was launched after a group of consumers reported the fact that Acquedotto Pugliese, the administrator of integrated water services as part of Optimal Territory Environment (Ambito Territoriale Ottimale - ATO) Puglia, had made the provision of drinking water and the sewage management conditional on its own assumption of the works of connection to the water and/or sewer system and on the payment in advance of such services. The Authority pointed out that the connection work to the water and/or sewer systems was not included among the integrated water service and system management services entrusted to the legal monopoly of Acquedotto Pugliese. The company activities, therefore, may be considered as an abusive conduct through which the company aimed at extending unlawfully the area reserved to it by the law, by inhibiting the development of a competitive market for the installment of branch connections.

33. Acquedotto Pugliese proposed the following commitments pursuant to article 14-*ter*, paragraph 1, of Law n. 287/90: *i*) to request to the Optimal Territory Environment Authority to modify its public service duties by the end of 2008, permitting the autonomous installation of water and sewer system connections by users; *ii*) to cease the practice of requiring payment in advance in order to finalize the supply contract for new connections to the water or sewer system, and to insert these fees directly in the first consumption invoice; *iii*) to allow the entire payment due for connections installed by Acquedotto Pugliese to be paid through installments; *iv*) to not apply the option provided for in article 20, paragraph 10 of the regulation, which allows connection costs to be increased by 15% as reimbursement of expenses; *v*) to develop and activate *on-line* contract procedures order to simplify communications with users, and set up information desks in municipal offices to facilitate access to these services, and launch press campaigns to inform users about the new service activation procedures.

34. The Authority ruled that the proposed commitments were sufficient to reduce the anti-competitive profile addressed by the investigation.

5. Transport

5.1 Air transport and airport services

5.1.1 Abuses of a dominant position

Airports of Rome - Airport fees

35. In October 2008 the Authority concluded an investigation into Airports of Rome Spa (*Aeroporti di Roma* - AdR), pursuant to article 82 of the EC Treaty, with regard to an abuse of a dominant position consisting of a) the application of excessive fees in the market of airport infrastructures for refueling services; b) the application of excessive fees to the market of airport infrastructures for cargo *handling*; c) the application of a tariff system, resulting in the exclusion of competitors in the cargo *handling* market. AdR, as exclusive administrator of the Fiumicino and Ciampino airports, has a legal monopoly on the management and provision of all airport infrastructures and, therefore, on all the markets related to these services.

36. During the proceedings, the Authority ascertained that the *airport fee* applied by AdR for access to infrastructures had never been in line with the costs sustained by the administrator for providing the services, but was instead calculated in a way that resulted in much higher prices. This practice, which came into being between 2004 and 2005, was deemed as excessive pricing performed by a subject holding a dominant position. With respect to the provision of infrastructures and services for cargo *handling* activities, the Authority ascertained that for the sub-contracting of work space at Fiumicino, AdR had imposed on cargo *handlers* fees that were more than twice higher than cargo carrier rates, which presumably reflect the actual economic value of the service in question, a conduct deemed as excessive pricing by a firm holding a dominant position. Lastly, the Authority ascertained the abusive nature of the fees applied to *cargo handlers* by AdR. The evidence gathered in the investigation proved, in fact, that the tariffs system adopted implied an increase in cargo assistance fees whenever AdR's competitors were involved, resulting in exclusion of competitors through a *margin squeeze* strategy designed to undermine its competitive ability and limit the development of competition. The application of this tariffs system until July 2006 was deemed abusive pursuant to article 82 of the EC Treaty.

37. Considering the seriousness and duration of these infractions, the Authority issued AdR with fines totaling EUR 1,668,000.

SEA - Airport fees

38. in October 2008 the Authority concluded an investigation into SEA Spa, pursuant to article 82 of the EC Treaty, with the ascertainment of an abuse of dominant position consisting of: a) the application excessive fees on the market of infrastructures for refueling services; b) the application of excessive fees on the market of infrastructures for *catering* assistance; c) the application excessive fees on the market of infrastructures for cargo *handling*. SEA, as exclusive administrator of the Linate and Malpensa airports, has a legal monopoly in the management and provision of all airport infrastructures and, therefore, in all the markets related to these infrastructures.

39. During this investigation, the Authority ascertained that SEA had applied unilaterally fixed fees that were not cost-oriented and that resulted in excessive gains in light of the actual costs associated with various activity sectors in: 1) the market for access to centralized infrastructures and related services, and 2) various markets for the provision of goods for the common and exclusive use of special user categories (*handler* operators for refueling services, *caterers*, cargo *handlers*). During the course of these proceedings, the Authority ascertained that SEA had abused its dominant position the above markets.

40. Upon consideration of the seriousness and duration of these infractions, the Authority issued SEA with fines totaling EUR 1,549,000.

6. Telecommunications

6.1 Abuses of a dominant position

6.1.1 Exploitation of privileged commercial information

41. In December 2008 the Authority concluded an investigation into Telecom Italia Spa ,pursuant to article 82 of the EC Treaty. This proceeding was launched following reports by Telecom's competitors Fastweb and Wind, which complained that Telecom Italia was engaging in abusive conduct through practices designed to *win back* customers that had been won over by the new entrants, and to *retain* customers in a transitional phase, once they decided to change over to competing operators. Both of these practices also involved the exploitation of privileged information previously gathered by Telecom Italia, when it still had a legal monopoly in the voice-based telephone communications sector.

42. The Authority claimed that the promotion of offers selectively targeted at former customers who had changed over or were in the process of migrating to other operators constituted abusive conduct by Telecom Italia and produced exclusory effects in relation to its competitors. During the course of the proceedings, Telecom Italia proposed a series of commitments pursuant to article 14-*ter*, paragraph 1 of Law no. 287/90 with the intent of overcoming the anti-competitive effects that had been identified by the Authority. As to the use of privileged information regarding its own and other companies' customers, Telecom Italia decided to hire an independent third party to control the procedures for the formation of *marketing* lists of users to be contacted during the promotion of telephone lines and related services and to ensure, among other things, that such lists contain no data from the *databases* of Telecom Italia's Network and Wholesale divisions. Telecom Italia would also modify its current contracts with its own agents and commercial partners in order to reinforce existing provisions concerning the use of legitimately acquired lists.

43. As to activities designed to win back or retain customers who had changed over or were in the process of migrating to other operators, Telecom Italia borrowed from analogous international experiences with the application of the so-called *win-back rule*, undertaking to refrain from activating services for former clients for a period of 4 months after they change over to competing operators, with the exception of spontaneous, unsolicited requests by the customers themselves. In addition, its own promotional offers would be applied without discriminating between its own customers and the customers of other operators to ensure that all special offers are applied equally to all Telecom customers who signed up for such offers without requiring any special requests.

44. With respect to agent-oriented incentives and denigration, Telecom Italia undertook to maintain the same sales force reward mechanisms for the acquisition of customers from other operators and for the activation of new systems, and to reinforce the prohibitions on the denigration of competing operators.

45. The Authority closed the proceeding by accepting the commitments proposed by the party, pursuant to article 14-*ter*, paragraph 1, of Law n. 287/90, and making them binding.

7. Postal Services

7.1 Abuses of a dominant position

7.1.1 Poste Italiane (Italian Postal Service) – Postal service agents

46. In February 2008 the Authority conclude an investigation into Poste Italiane Spa (Italian Postal Service), pursuant to article 82 of the EC Treaty. The investigation was launched following reports by several major associations of Italian postal delivery agents, which complained that Poste Italiane Spa was involved in anti-competitive practices with respect to relationships with *ex*-concessionaire subjects for the contracting of various postal services that fell within the legal reserve of Poste Italiane Spa pursuant to articles 4 and 23 of Legislative Decree no. 261/99.

47. The proceeding focused on the service provision agreements entered into by the Poste Italiane Spa with delivery agencies during the period of December 2000-January 2007 and the subcontracting of various postal services through a call for tender issued in May 2007. The Authority found that the conditions of the service contracts offered by Poste Italiane Spa were likely to undermine actual and future competitive conditions in the provision of postal services by reducing the competitive capacity of ex-concessionaires and raising economic barriers to the entry to new competitors in view of full liberalization of the market, which is scheduled for 2011. In addition, the Authority found that the call for tender included a series of clauses that could be particularly burdensome for *ex*-concessionaires. The Authority concluded, therefore, that the combination of practices established by this company was liable to constitute a comprehensive strategy intended to extend and reinforce its dominant position in service markets that had already been liberalized or that were soon to be liberalized.

48. To overcome the restrictions that had been identified, Poste Italiane Spa proposed the following commitments pursuant to article 14-*ter*, paragraph 1, of Law no. 287/90: a) to issue a new invitation to tender and b) to halt all plans for the immediate internalization of activities entrusted to delivery agencies on the basis of existing contracts, and to adopt schedules adapted to each individual agency's needs for the gradual internalization of their activities beginning on December 31st, 2007. The Authority closed the proceeding by accepting the commitments proposed by the party, pursuant to article 14-*ter*, paragraph 1, of Law n. 287/90, and making them binding.

8. Television broadcasting rights, publishing and Advertising

8.1 Agreements

8.1.1 Market for scholastic publications

49. In April 2008 the Authority concluded a proceeding, pursuant to article 2 of Law no. 287/90, into the Italian Association of Editors (hereinafter AIE) and several major publishing houses - Casa Editrice Giuseppe Principato Spa, De Agostini Edizioni Scolastiche Spa, Edizioni Il Capitello Spa, Edumond Le Monnier Spa (now Mondatori Education Spa), Giunti Scuola Srl, Pearson Paravia Bruno Mondatori Spa, RCS Libri Spa, Società Editrice Internazionale per azioni - SEI and Zanichelli Editore SpA.

50. The purpose of the proceeding was to determine whether a restrictions to competition existed in the market for the production and distribution of schoolbooks for lower and upper middle schools. In particular, the Authority found that a variety of elements had interacted to create a nearly static competitive framework characterized by: the sector's high concentration, the stability of market shares over the last five years and the presence of a derivative schoolbook demand with inelastic prices. Other elements,

furthermore, concerned how publishers could monitor their competitors' behavior through the Italian Association of Editors' *database*, which was accessible to every operator in the market (both members and non-members). This *database* contained detailed information about product types and price conditions, and ensured a high degree of transparency in the market. The information contained in the *database*, however, was not accessible to teachers, whose choices were instead guided by the promotional activities of individual publishers operating through networks of promoters, agents and sub-contractors.

51. Following the opening of the proceeding, the parties proposed a wide range of commitments, pursuant to article 14-*ter* of Law n-. 287/90. AIE's commitments involved providing all teachers in first and secondlevel secondary schools with free access (via password controlled log-in) to the list of textbooks being marketed in each subject, including information about the author, title, number of pages, price, year of publication and publisher. The publishers' commitments involved: *i*) the supply, with the support of public administration initiatives, of innovative didactic tools for students to use on loan at scholastic institutions; *ii*) the offer of *light plus* textbooks at lower prices than traditional textbooks; *iii*) the development, realization and marketing of innovative digital contents and a series of reduced price textbooks; *iv*) the promotion of the rental and loaning of schoolbooks and the reduction of library expenses by integrating texts with printed and multi-media supplements.

52. The Authority closed the proceeding by accepting the commitments proposed by the parties, pursuant to article 14-*ter*, paragraph 1, of Law n. 287/90, and making them binding.

9. Financial services

9.1 Credit and financial services

9.1.1 Agreements

INAIL (National Institute for Insurance against Industrial Accidents) - Contracting of banking services.

53. In December 2008, the Authority concluded investigatory proceedings, pursuant to article 81 of the EC Treaty regarding the case of the Unicredit Spa, Intesa Sanpaolo Spa, Banca Monte dei Paschi di Siena (BPMS) and Banca Nazionale del Lavoro (BNL) banks. These proceedings confirmed the existence of a co-ordinated approach to participation in four calls for tenders by INAIL for the provision of banking services between 1996 and 2005. The investigation was opened in May 2007 in response to notification from INAIL to the effect that it had still been unable to award the contract after three full calls for tender.

54. Banking services consist in the provision of financial services based on and in accordance with mutually agreed and pre-established conditions. These services normally encompass a whole range of operations related to the financial management of an organization, such as collection of deposits, payment of expenses and management of stocks and securities. More generally, it also includes the fulfillment of the bank's financial obligations as defined in the contract agreed with the organization. In the case of INAIL's banking services, the object of the investigation, these services consisted of the following activities: credit limit management; deposits and management of securities and stocks; centralized payments; branch office activities. In terms of product category, the Authority established that the relevant market coincided with INAIL's calls for tenders for contracting its general banking services. The market was deemed to be national in scope.

55. During the proceedings, the Authority ascertained that Unicredit, IntesaSan Paolo, BMPS and BNL had made a complex arrangement that initially took the form of an agreement, but which later involved forms of collusion that could be classified as concerted practices. More specifically, the Authority

discovered that these four enterprises engaged in a 'temporary regrouping of enterprises' (*Raggruppamento Temporaneo di Imprese* - RTI) as the basis of an agreement intended to eliminate all competition and win the call for tenders issued by INAIL in 1996 for the five-year contract for banking services. In the calls for tenders that were examined, the Authority confirmed that the subdivision of activities among the key members of this temporary regrouping of enterprises could not be justified in terms of the provision of services, the achievement of more competitive economic offers than third parties or the complementary nature of geographic coverage. On the contrary, the companies used this contractual form as an instrument to impede the execution of a genuinely competitive call for tenders that targeted operators with the technical capacity to provide their services through aggressive economic offers, which would be in the best interest of INAIL as the issuer of the calls for tenders. The Authority, therefore, ruled that this temporary regrouping of enterprises constituted a restrictive agreement intended to artificially share the market and to eliminate all competition for contracting of the service.

56. The Authority also established that the RTI created in 1996 was not dismantled after the first contract expired five years later, but it was actually maintained much longer than foreseen in the first agreement. It was repeatedly extended until October 1st, 2007, in fact, the date on which INAIL, having failed to conclude the three successive calls for tender it issued during the interval, entered into a new agreement.

57. The concerted limitation of participation in the calls for tenders succeeded in eliminating any chance of competitive confrontation, so that the three successive calls for tenders issued by this public organization went unanswered and the services were extended to the same regrouping by default. Considering the particular gravity of the infraction as well as its duration, the Authority imposed on Unicredit (the *leader* of the regrouping) fines totaling EUR 1,500,000, and imposed fines of EUR 50,000 on each of the remaining participants - Intesa SanPaolo, BNL and BMPS.

9.1.2 Mergers

Intesa Sanpaolo – Cassa di risparmio di Firenze

58. In January 2008 the Authority concluded investigatory proceedings, pursuant to article 6 of Law no. 287/90, for Intesa Sanpaolo Spa's acquisition of a controlling interest in Cassa di Risparmio di Firenze Spa.

59. The product market identified by the Authority was that for savings and deposits, lending to consumer families and lending to small and medium sized enterprises. The operation also had effects in the markets for the distribution of fund management services and the consumer credit sector, especially in the markets for direct credit and credit cards.

60. Evidence gathered during the investigation revealed that the capacity and the territorial concentration that would be acquired in the province of La Spezia, Terni and Pistoia were likely to bolster the risk that Intesa Sanpaolo would consolidate a dominant position in the market for savings and deposits. The operation, in fact, would make Intesa Sanpaolo the dominant firm in the savings and deposit market in each of these provinces, with much greater market shares (ranging from 35% to 65%) than the next largest operators. In addition, the operation would cause significant increases in concentration indexes of the markets in question. In the lending sector, the operation would create a considerable overlap effect in the lending markets for consumer families in the provinces of La Spezia and Terni, and in lending to small and medium sized enterprises in the provinces of La Spezia, Terni and Pistoia. In these provinces-, the merger would result in the creation of a dominant firm with much greater market shares (ranging from 35% to 55%) than the next largest operators. The Authority reached similar conclusions for the managed funds sector, where the merger would undermine competition in the distribution markets for mutual funds

and asset management in the provinces of Terni, Pistoia and La Spezia. In particular, the Authority found that Intesa Sanpaolo would attain a market share in excess of 50% and become the largest operator in each of these provinces, and that the operation in these provinces would result in especially high levels of market power, given that the acquired firm had been a major competitor.

61. The investigation also sought to predict the effects of the merger on the consumer credit sector. The Authority determined the merger would create an organization with a prominent market share in both direct credit markets (at the regional level) and targeted credit markets (at the national level). The conclusion reached by the Authority, therefore, was that the merger would constitute or reinforce a dominant position only in the direct credit market in the regions of Veneto, Piedmont and Lombardy.

62. In light of the investigation's findings, the Authority subordinated its authorization for the merger to several conditions. First, the Authority established that Intesa San Paolo/CARI Firenze had to dismiss 29 branch offices to third parties in the geographic markets affected by the merger (closure of 15 branch offices in the province of La Spezia, 11 branch offices in Terni and 3 in Pistoia) .The Authority also prescribed the divestment of Intesa Sanpaolo's entire interest in Agos to produce a significant reduction in the degree of overlap in the consumer credit sector.

Banca dei Paschi di Siena/Banca Antonveneta

63. In May 2008 the Authority concluded a proceeding, by pursuant to article 6 of Law no. 287/90, for Monte dei Paschi di Siena's (MPS) acquisition of a controlling interest in the Antonveneta group.

64. In the context of the province level market for savings and deposits, the investigation found that the capacity and territorial concentration to be acquired by MPS would constitute or reinforce a dominant position in five provinces mainly located in Tuscany (Siena, Grosseto, Arezzo, Vercelli, Mantua). The merger, in fact, would make MPS the dominant firm in the markets for savings and deposits in these provinces, with considerably greater market shares (ranging from 30% to 60%) than the next largest operator. The merger would also cause significant increases in the concentration indexes of the markets in question and exert an even greater impact due to the geographical contiguity of these provinces.

65. In the lending sector, the merger would create significant overlaps in the market for consumers' lending in the provinces of Siena, Grosseto, Biella and Vercelli, and for business' lending in the provinces of Siena, Grosseto, Arezzo, Florence, Lucca, Biella, Mantua and Perugia. In these markets, the merger would create a firm with much larger market shares (above 30%) than the next largest operator. The merger would also produce effects on competition in the mutual fund distribution markets of the provinces of Grosseto, Siena and Mantua. MPS would become the top operator with a sizeable market share (ranging between 40% and 70%) in each of these provinces.

66. In the insurance sector, the merger would considerably affect the links among competitors in the production and distribution phases. In light of these findings, the Authority concluded that this operation could create influential connections among operators from the life insurance divisions of major competitors, and that this could weaken the dynamics of competition in insurance related markets. It would constitute or reinforce, therefore, a dominant position in the Tuscan provinces of Siena, Grosseto and in the province of Mantua, where MPS would enjoy considerably greater market shares (above 40%) than its next largest competitors.

67. The findings of the investigation led the Authority to subordinate the merger's authorization to conditions that were intended to prevent MPS from constituting or reinforcing a dominant position that would eliminate or significantly reduce competition on a lasting basis. First, the Authority arranged for the post-merger organization to relinquish 110-125 branch offices to third parties in the geographic markets

affected by the merger, so as to reduce any restrictive effects deriving from the merger. The Authority also required MPS to: dissolve and forego renewal of its *joint venture* (which operates through Quadrifoglio Vita) with the Unipol group; divestment of all interests in Finsoe, with dissolution of the related corporate agreement and prohibition of its renewal; prohibition of the renewal of the bank-insurance agreement, which scheduled to expire in July 2009, between Banca Antonveneta and the Allianz group (which operates through a *joint venture* between Antoniana Veneta Popolare Vita and Antoniana Veneto Popolare Assicurazioni); and lastly, to do everything in its power to ensure, beginning with MPS's next board of directors elections, that no board members serve simultaneously on the boards of directors, management board or supervisory board of competitor banks that are not part of the BMPS group and that are active in the markets for savings and deposits and/or ordinary credit practices in Italy. The last of these measures has already been implemented through specific modifications to MPS's articles of incorporation.

9.1.3 Sector inquiries

Corporate governance of banks and insurance companies

68. In December 2008, the Authority concluded a sector inquiries on the relationship between competition and *corporate governance* in the finance sector, focusing on the corporate governance structure of banks, insurance companies and savings management companies (both public and private) operating in Italy's financial markets. The survey involved in-depth examinations of four different areas of analysis:

- models of *governance*, with special attention to the ways in which strategic executive functions are subdivided among corporate divisions, the procedures for selecting *management* level personnel, the relationship between managers and shareholders, and the empirical analysis of shareholders' actual participation in company life;

- connections between competitors, especially shareholders, deriving from shareholders' agreements and the personal ties of *interlocking directorates*;

- banking institutions, as bridges between public property and private assets and as the most prominent shareholders in the banking world today;

- cooperative banks and cooperative credit banks (BCC) which, among other things, are characterized by specific regulations derogating from the general principle of *one share/one vote*.

69. The picture that emerged from this inquiry was extremely complex: the degree of concentration among bank shareholders in the form of joint-stock companies was very high for publicly traded companies, too, and was circumscribed at the top by a fairly stable core of shareholders, which were sometimes interconnected by shareholders' agreements. It is through this type of agreement that the shareholder nucleus can influence critical aspects of corporate life, such as the appointment of *management* level personnel. Furthermore, the sector inquiry revealed a critical need for clear *governance* models in this complicated context which, on the one hand, shows the positive stability of the Italian financial sector and, on the other, its inherent drawbacks in the effects that personnel and shareholder links have on competition/contestability itself, which is especially tenuous when numerous financing/financed subjects from multiple banking competitors are involved.

70. As regards personnel links, the study found that the *governance* bodies of 80% of the organizations under examination included subjects that held simultaneous positions within competing organizations. This phenomenon showed up very rarely in the firms quoted on other European Stock Exchanges and appears to be peculiar to Italy. Ties based on shareholdings proved to be problematic as

well, with approximately 42.3% of the sample's active portion revealing the presence of *competitors* among the shareholders of a variety of companies in the finance sector.

71. The inquiry's findings reveal the need for new regulation, self-regulation and articles of association modification process aimed at ensuring: *i*) decision-making transparency, *ii*) clarity in the assignment of functions and responsibilities of different entities/committees, *iii*) the removal of bunching of roles and positions across multiple competitors, and a more precise definition of the prerequisites for important figures, such as independent administrators, *iv*) full disclosure of the shareholders structure, especially when cross-participation by competitors is involved (2% is the present CONSOB upper limit on influential participation), *v*) clarification of the procedures (appointment processes, approval of the balance sheet, selection of investments) employed by critical shareholders, such as banking institutions, *vi*) real incentives, like mutual funds, for the development of institutional investors, *vii*) regulatory modifications in the legal representation of cooperative banks (especially publicly-traded ones) in regards to voting rights, participation limits and acceptance clauses.

72. From an *antitrust* perspective, the current financial crisis draws even more attention to the issues of *corporate governance* under examination by the Authority. As suggested in the investigation's concluding statement, the present crisis requires (especially in the Italian context) pursuing more detailed investigations into the implicit risks deriving from shareholders' linkage and *interlocking*. On the one hand, the instability of some shareholders can damage the capital-holding enterprises through a sort of domino effect, especially when competing companies are involved. On the other hand, if control profiles and incentives for market *disclosure* are sufficient to clarify the asset structures and risks involved, this may diminish the appeal of "interwoven" and less linear interests that are shared by financees and financers and by subsidiary subjects and shareholders. Finally, while state interventions appear to be necessary to support the banking sector in the short term, the findings of this investigation show how to overcome the system-wide collapse of trust and credibility: new reputation, in fact, will never be built without new forms of *governance*.

10. Entrepreneurial and professional activities

10.1 Agreements

10.1.1 Federitalia/Federazione Italiana Sport Equestri (FISE)

73. In May 2008 the Authority concluded an investigation into Federazione Italiana Sport Equestri (Italian Federation of Equestrian Sports - FISE) by pursuant to articles 81 and 82 of the EC Treaty. The purpose of this proceeding was to determine whether FISE had established restrictions on competition in the market for the organization of equestrian shows and events as well as other recreational, social and rehabilitative activities involving the use of horses. The Authority had determined, in fact, that several provisions of the FISE articles of association were designed to close entry in the market by forbidding affiliates and members, upon penalty of disciplinary sanctions and exclusion from the federation, from joining other associations or national organizations that engage in recreational or sports activities in the equestrian field.

74. During the course of the investigation, FISE proposed commitments pursuant to article 14-*ter* of Law 287/90 with the intent to overcome restrictions on competition . With respect to exclusivity in the regulation of recreational activities, FISE proposed modifications to its own federal articles of association that would eliminate the exclusivity and limit exclusive competence to purely competitive activities involving its own members and affiliates.

75. The Authority closed the proceeding by accepting the commitments proposed by the parties, pursuant to article 14-*ter*, paragraph 1, of Law n. 287/90, and making them binding.

10.2 Reports

10.2.1 business hours of commercial activities in Italy

76. In October 2008 the Authority, pursuant to article 21 of Law no. 287/90, formulated several observations regarding local and regional regulations on the business hours of retail commercial enterprises, having recognized the proliferation of provisions that unjustifiably restrict competition and contradict the national level prescriptions of legislative decree no. 114/1998, that had liberalized business hours.

77. First, the Authority reasserted, pursuant to article 12 of the decree, that all commercial activities located in municipalities with prevalently tourist economies or 'art cities' are to be allowed to stay open during national holidays and Sundays throughout the year, and are free to determine their own hours of business. This provision gave the Regions 180 days from the date on which the decree entered into force to identify, in the context of the regulation in question, the municipalities with prevalently tourism-based economies and the art cities with major tourist flows. Article 13 also establishes that activities dealing primarily or exclusively in certain specified goods (including newspapers, beverages, books, flowers, furniture, delicatessens and pastry shops) are free to decide, irrespective of their location, whether to stay open on national holidays and Sundays throughout the year. A subsequent memorandum issued by the Minister for Industry declared that a commercial activity shall be classified as dealing primarily in the goods indicated in article 13 whenever the activity's turnover for these types of goods exceeds 50% of the activity's total turnover.

78. In consideration of these observations, the Authority identified several problematic issues that were confirmed by a variety of notifications and findings. With respect to the business days for commercial activities in municipalities with “prevalently tourism-based economies” and “art cities,” it was discovered that many regional regulations and municipal resolutions prohibit business activities during national holidays and on Sundays (with some exceptions in special circumstances), thus effecting limitations on the liberalizations introduced by article 12.

79. As regards the identification of areas and zones covered by the liberalization introduced through article 12, the Authority discovered frequent and distorted applications of this power by regions and municipalities which, for example, prohibited small-sized commercial activities in semi-central zones of the city from opening for more than a few Sundays each year, while at the same time allowed the broader liberalization of large shopping centers and other centrally-located activities, which were allowed to stay open every Sunday. The Authority also observed that the initial intent of this provision, which was to introduce retail commerce to first grade competition, needs to be reinterpreted in light of newly emerging competitive dynamics characterized by the expansion of medium- and large-scale distribution (especially in the immediate vicinity of medium- and large-sized cities) and by higher and more significant demand levels that can be attributed to greater mobility (especially on Sundays). Lastly, the controls conducted on the recognition of the prevalence prerequisite for application of article 13 revealed that some local authorities were limiting this liberalization policy by adding extra requirements. On this matter, the Authority reemphasized that the only applicable criterion is the one contained in the Ministerial memorandum. The Authority advocated that any and all territorial authorities that have adopted unjustifiably restrictive regulations on the matter will reexamine their respective regulations on the basis of the observations expressed in the report.