

Annual Report

Presented by President
Mr. Antonio Catricalà

Rome, 21st June 2011

Authorities, Ladies and Gentlemen

In large areas of the European continent economic recovery is unsatisfactory and is being put to the test by market turbulence.

The new and stringent rules on fiscal coordination and macroeconomic surveillance adopted by the member States chart the course towards the goal of stability in public finance, an essential condition for adequate economic and employment expansion to be achieved in the long term.

The biased notion that the single market constitutes a threat to national social systems can hinder the achievement of this goal.

Therefore regulatory, social and cultural constraints preventing the exercise of free competition must be removed.

The Antitrust Authority is duty bound to point out that economic freedom has ensured prosperity in Europe for over fifty years and is an essential pillar of sustainable and inclusive growth.

The course to be followed is based on the Community values reaffirmed in the Treaty on Union: the promotion of development through a highly competitive social market economy.

In the general context, Italy is faced with greater difficulties than other eurozone countries. Indeed, the structural problems which have led to a major drop in the competitiveness of our production system continue to exist.

This Authority has worked with determination to stimulate political circles to make up for the delays and has activated all possible means to facilitate the opening up of the different markets; it has acted in the belief that competition is not a luxury to be enjoyed only in upward economic

cycles but is instead, during difficult times, a fundamental tool to support recovery and defend consumers.

In the Board we have always been united in considering the market as the means and not the end of our actions.

And, we have countered the lure of neo-statism revived in Europe by the recent crises: we do not believe an enlightened bureaucracy can be entrusted with holding the reins of the economy.

Protecting competition

Our purpose is to promote real change in corporate behaviour. For this reason, during the period of reference, decisions involving a commitment, adopted in 17 out of 30 preliminary inquiries, have proved to be the best way to obtain tangible results.

The Authority has focused on the energy sector which is crucial to the competitiveness of the entire economic system and to consumer wellbeing.

This year, thanks to the Antitrust Authority's actions, five vertically integrated corporate groups involved in electricity and gas distribution and retail selling, submitted commitments to make it easier for their customers to transfer to new suppliers. This brought down the costs which had made too costly for competitors to enter the market.

We also intervened upstream of the setting of electricity retail prices: the commitments submitted by Enel and Edipower made it possible to reduce the gap between the wholesale market price in Sicily and in other areas of continental Italy, with a positive impact on the differential which went down from 25% to 12%.

The commitment procedure was also used productively in the Google preliminary inquiry.

The Italian Antitrust Authority, before any other, investigated the complex issues currently under consideration by the European Commission: the measures adopted in our country make it possible for publishers to select and remove their content from Google News without for this reason being damaged in terms of search engine visibility; finally, the quotas for sharing of proceeds which indicate the profitability of advertising space can be known and the ban on click detection for businesses advertising on a specific platform has been lifted.

This case has brought the question of copyright to the forefront. The Antitrust Authority sent Parliament and Government a request to revise the copyright law in response to the web's technological and economic innovations. A national law is needed to define a system of intellectual property rights able to encourage forms of cooperation between exclusive right holders and providers of innovative services. There is a real imbalance between the value generated by publishing for the internet system as a whole and the proceeds which *on line* publishers are able to collect. Given the supranational nature of this environment, the Italian Institutions must promote new rules and regulations also in the appropriate international quarters, starting with the implementation of the EU action plan on intellectual property presented on May 24th this year.

In the banking sector, the Authority accepted commitments submitted by the Italian Banking Association (ABI) and Consorzio Bancomat which generated cuts in inter-bank fees of up to 36%. The credit system is now bound to a process that must lead to further cuts using economic efficiency analysis. Lower charges over the four-year period 2007-2010 amount to 500 million euros. To assess the effects of price reductions on consumers we have launched an second inquiry on current account costs.

The initial data from the preliminary inquiry into automobile liability insurance policies have highlighted major differences between different geographical areas in the country: policy holders in the South pay a much higher premium than anyone else, up to 20% higher. Nationally, there has been a substantial increase in insurance premiums in 2010, up to plus 25% for cars and plus over 35% for motorcycles.

This is our problem only. Within the eurozone, especially in France, the increases have been less significant.

It is true that average damage claims in Italy have also gone up but the result is a market where insurance companies transfer higher costs caused by inefficiency to consumers.

The bitter conclusion is that the direct indemnity mechanism has not been a success and therefore the system must be reformed to revive competition between insurance companies.

Fuel prices are still high and continue to rise. We have suggested some measures on distribution to Government and we are investigating the sector to establish, also, whether the Platts index is truly transparent and not distorting.

The Authority has persevered in its fight against cartels.

Secret agreements between large multinational corporations have been uncovered and punished: one involved LPG gas cylinders, one was a cartel agreement amongst the most important international cosmetics companies and another an unlawful agreement among the top Italian shipping agents.

In the case of the Mastercard credit card company, a number of agreements which limited competition were discovered and their aim was to apply a higher interbank fee which would then be passed down to shops or businesses and ultimately to buyers.

Fines issued this year to protect competition totalled 200 million euros.

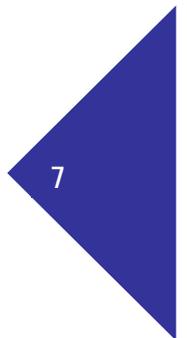
Two ongoing investigations are examining the difficulties gas distributors have created for municipalities planning to hold a competition to allocate these services. The investigations confirm the importance of selections involving the highest possible number of participants: this is a fundamental factor for the liberalisation process upheld by lawmakers to be fully achieved.

The preliminary inquiry involving Auditel has clearly indicated the need for television ratings to be collected appropriately and as far as possible comprehensively. This is in everyone's interest: broadcasters, advertisers and Auditel itself whose legitimacy is based precisely on the reliability of the data collected.

The issue of networks is still topical. Exclusive right holders have a special responsibility but the monopolists give the impression of wanting to avoid it: Gruppo Ferrovie has been charged with one case of alleged abuse of dominant position, Telecom with two and Poste Italiane with two.

Protecting consumers

The Antitrust Authority's activities, as a whole, take their inspiration from a firm belief in the centrality of the individual. The market makes sense only if widespread economic sovereignty, the indication of real civil liberty, is assigned to citizens. The work carried out by consumers' associations is commendable and we thank them for having productively



stimulated and helped the Authority. There is still much to be done in our country to consolidate a real consumer culture. It will be necessary to convince many businesses that virtuous commercial practices which combine fair profit and customer satisfaction, are the key to success for any entrepreneurial initiative. The large number of proceedings, 339, during the period of reference bears witness to the Institute's determination in ensuring that even the weakest enjoy the dignity of market players. Fines have amounted to 25 million euros.

Our experience since the start of the crisis suggests that too many enterprises, nowadays, appear to be more interested in gaining their counterparts' short-term approval than in establishing a lasting relationship through better product and service quality.

Increasingly often relationships between enterprises and consumers are brokered by agents, promoters and call centre operators to whom businesses entrust their contact management activities. These organisational processes are dictated by an understandable need for flexibility but if the providers of these services are unskilled, there is a risk of opportunist behaviour. This is confirmed by the extent and frequency of reported cases of un-requested goods and services being provided or of contracts drawn up without any informed consent having been given. The Authority, supported by the administrative tribunals, has declared the direct responsibility of enterprises towards their customers.

As regards advertising, too many messages are not as clear as they should be: it is unacceptable for consumers to be deprived of essential information when they purchase food stuffs, obtain a loan, choose where to spend their holidays and even when they are asked to vote by phone.

Some types of commercial impropriety run across different industries: this is the case of barriers to withdrawal from contracts and mobility

between competing providers. Some enterprises are currently, at last, adopting codes of conduct to avoid delays.

In the electronics market, the investigations which have led to commitments on the part of twelve large-scale distribution chains have made it possible for us to implement efficiently the protection provided for in the consumers' code, which businesses had systematically ignored. Vendors must now ensure that the products they sell are in good working order, must replace or repair them within a reasonable and definite amount of time and can no longer refer the customer back to the manufacturer. As regards on-line purchases, full implementation of the right of withdrawal is now ensured. With the support of the financial police, we are supervising such implementation and will penalize anyone who does not comply with the commitments they have made.

I feel duty-bound to tell you that we are also investigating a number of banks which we believe require customers to take out extremely expensive life insurance policies before they will grant them a mortgage loan.

An overview

Given that my mandate expires next March, this is the last time I shall be presenting the Antitrust Authority's report to Parliament: I therefore feel obliged to illustrate the results of the experience I have been honoured to share with the other Board members.

In our first annual report, we outlined the competition policy approach which then guided the Institute's actions. The economic system which was still weak in our country in terms of the general structure rather than the entrepreneurial tradition, was to be stimulated to become more efficient without being harassed by endless sanctions and an increased bureaucratic

burden. The competition process had to be rekindled through persuasion and cooperation with enterprises was to be made easier.

This approach was favourably received by the market and favourably viewed by lawmakers who provided us with a useful tool: the option to close a case by accepting a commitment on the part of the party under investigation.

There have been tangible benefits. Although this is not a comprehensive list it is useful to mention: the entry into our markets of mobile virtual operators; the granting of licences to generic drugs manufacturers for the production of active ingredients; the increased distribution of self-service petrol pumps with the resulting larger discounts; the development of storage capacity and gas licences to providers other than the incumbent. The commitments tool is now being used unreservedly by the European Commission itself, by a number of competition authorities and by other regulators. It has become the emblem of a new way of administering based on cooperation with private individuals or businesses.

In 2005 we introduced a pre-notification of concentrations procedure aimed at giving enterprises assistance to make it easier for them to fulfil requirements to provide information, reducing the bureaucratic burden.

At the end of 2005, Parliament assigned to us full *antitrust* competence over banks and this at the time of a very strong move towards aggregation.

The Authority, in connection with monitoring concentrations, for the first time in the history of supervisory activities, promoted the elimination of profit sharing agreements and of cross and personal shareholdings which could damage competition in the national financial environment.

In 2006, the leniency programmes and precautionary measures were completed.

The former, typical of the United States' experience, made it possible to uncover and punish major horizontal agreements.

Urgent action was needed to make it possible for consumers to withdraw, free of any charge, from banking agreements and for a real liberalisation of over the counter medicines. The practice of having customers pay for arrears for which they were not responsible when taking over an electricity contract required a speedy reaction.

In the course of these years, the Authority has felt that consumers' real freedom of choice and competition between enterprises are two sides of the same coin. This is a fact which cannot be ignored in the course of the market supervision activities civil society imagines and wants. We have given those aspirations practical answers.

For a timely implementation of our new powers in terms of consumer protection, in 2007 the Board established a directorate-general and its first major investigation involved enterprises that charged users for telephone calls originating from internet connections of which they were not aware. This was just one of the absurd claims that nowadays seem to belong to another era, and yet just four years ago it was tolerated as normal. To give you another example, on a number of markets requests for refunds for credit on expired pre-paid cards were never granted.

Nowadays, no one can have any doubt concerning the duties of diligence and good faith of professionals who have an obligation to protect the consumer's interest in terms of the service they provide and to establish an appropriate and correct relationship before, during and after any agreement and regardless of it.

This is a new dimension to the rights of private individuals which the Antitrust Authority has promoted into its decision-making procedures. We

have uncovered deception in the field of repairs, lotteries, healthcare, marriage bureaus, second-hand cars; we have given classified ads on the internet special attention given that they can reach a vast and indefinite number of users, as was the case of Easy-download.

To improve relations with citizens we have set up a specific help-line, with a toll-free number.

We insisted with legislators on the need for a reform of distorting economic regulations. On occasion successfully: I am referring to the radical change in the *ius variandi* discipline in banking relations, mortgage portability, the introduction of an albeit somewhat muddled class action procedure, liberalisation of important production sectors in the national economic life, such as trade and professions.

The Institute has been strengthened in terms of competences and procedural tools.

However, during this last period, the process of reform has ground to a standstill with liberalisations sliding off the political agenda's list of priorities. The Authority has had to report on dangerous attempts of markets to close down, because of special interests, in particular in sectors like pharmacies, insurance, some professions, transport.

The first bill on competition has never come into being. This delay is a serious matter; it slows down the country's modernisation process; causes investors who would like to challenge monopoly holders and the supervisory bodies themselves to lose confidence.

We have to make up for lost time.

Railways, motorway and airport management, banking and insurance governance are all areas in which the introduction of the real competition which could support economic growth is an absolute priority.

The Antitrust Authority must state clearly that, without competition, the economic system's already weakened vitality is at risk. Too often our

appeals for legislative action have been ignored, as in the case of the six years of implementation of the conflict of interest Act.

The *referendum* on privatising water services has also swept away the liberalisation of other local public services: the legislature's only *pro* market reform. This cannot be viewed as an authorisation to local political power to take over definitively, through public utilities, all economic sectors: the principles of good management and effectiveness in administration are not being questioned. And state-run companies must comply with such principles. In the case of inefficiency and waste, the only possible solution lies in the market and the European Treaty rules on tenders to select the best contractor still apply.

The “Statuto delle Imprese” is now to become law. The functions the Antitrust Authority is about to take on will provide protection for small and medium-sized enterprises, the country's productive sector which is often praised but rarely given practical support. We ourselves had asked for these additional duties and are looking forward to them out of a willingness to be of service.

And this is a service we have sought to offer citizens and businesses over these past years, in the belief that a technical independent authority's legitimacy is based on its real usefulness to the taxpayer.

We have no direct jurisdiction over prices and tariffs. However, an Antitrust analysis has found that, between 2006-2010 alone, our actions in four specific sectors have generated savings for over one billion euros: 73 million relate to our investigation of sales of over-the-counter medicines; 130 million to the proceedings involving “pasta”; 280 million to the investigation of milk powder for babies; 530 million in savings are ascribable to the Tunisian gas pipeline inquiry.

We did not have the means to extend the analysis to my whole term as president and to other important areas in which we took action, but the above bears witness to our very strong commitment.

As to the outcomes, you can judge.

The Commissioners, the Secretary General and I thank our sister Authorities, the State Legal Advisory Service and the Financial Police's Market Protection Unit, our valuable ally.

In previous annual reports we have not praised our technical-administrative staff because we believe that a public official's main duty is to do his/her job professionally. Allow us, today, to credit the women and men who work in the Antitrust Authority with a competence and a commitment which makes them a resource for the country.

We thank you all for your attention.