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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ITALY**

-- 2012 --

*This report is submitted by Italy to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 30-31 October 2013.*

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## Executive Summary

1. The activity of the Italian Competition Authority (ICA), also for 2012, must be assessed in the broader context of the ongoing efforts to improve the economic performance of the country.

2. The Authority played an important role in advocating reforms that would sustain economic recovery. Removing restrictions to competition is, in fact, an important part of the reforms aimed at fostering economic growth. In particular, the Authority sent to the Government and the Parliament two general reports advocating reforms that should be included in the Annual Law on Competition.

3. In January 2012, the Competition Authority sent to the Government and the Parliament a Report advocating reforms in major sectors of the economy in order to open markets and stimulate economic growth. Many suggestions were accepted and introduced in the reform packages adopted by the Government. The most significant measures concerned ownership unbundling in the natural gas sector, elimination of minimum fees in the liberal professions, the creation of an independent regulatory authority for the transport sector and strengthening competition in local public services.

4. In October the Italian Authority issued a new Report addressing a wide range of sectors and issues where further intervention was encouraged. In the Report the Authority underlined that implementation plays a crucial role in making effective the reforms already undertaken.

5. Besides these general advocacy interventions, the Italian Competition Authority continued its use of advocacy powers addressing more than 100 reports to the Government and the Parliament, whereby it outlined regulatory restrictions in a wide range of sectors.

6. The ICA's opinions have mainly focused on the local public services sector, which can play a key role in fostering economic growth in Italy, in view of its considerable economic importance (which involves local public transport, management of urban waste, management of parking areas, public lighting). In Italy, the provision of these services is often monopolistic, with either an in house provider or a private or public concessionaire. However, not all these markets are natural monopolies. Therefore the ICA has suggested that public authorities should not be allowed to give an exclusive concession for the provision of services unless they have verified, through a market analysis, that the services cannot be provided under competitive conditions. Moreover, providing such services in house should be allowed only when the market analysis shows that this can yield clear and direct benefits when compared with the award of the operation of the services by competitive tendering. Further competitive concerns highlighted by the ICA relate to the initial planning of the services (e.g., with reference to the design of the optimal territorial areas) and too broad granting of exclusivity rights. The Authority's efforts to promote competition were supplemented with vigorous enforcement policy.

7. In March 2012 the ICA fined a secret cartel that shipping agents and trade associations of the sector had engaged in for over 5 years. The ICA resolved to fine, for more than 4 million, 15 different companies operating in the service sector of shipping agencies along with two trade associations, Assagenti (the main trade association for shipping agencies) and Spediporto (the most representative trade association for the forwarding agencies operating on national territory). Maersk Italia (a member of the Danish group under the same name) submitted a leniency application and was exempted from fines, which were reduced by 50% for Hapag Lloyd Italy, the second leniency applicant.

8. In October 2012 the Authority fined 7 producers of guardrails that established an agreement restricting competition in order to alter the competitive dynamics in the awarding of contracts and in the supply of metal crash barriers to installation services. According to the evidence collected in the course of the investigation, the seven companies exchanged information and coordinated their activities during meetings of the Consorzio Manufatti Stradali Metallici (Comast - Consortium for Metal Roadway

Products) from 2003 to at least May 2007, sharing the market for roadway crash barrier sales and securing the best pre-set sales price for consortium members on multiple occasions.

9. Cartels are a priority in the ICA's enforcement policy but they prove more and more difficult to tackle. Under this respect, leniency programs play a crucial role but better coordination between the criminal and civil proceedings might be needed in order to achieve better results in the area of bid rigging. Therefore, the Authority advocated for such better coordination in one of its Report, namely to grant leniency applicants full immunity from criminal actions and partial immunity from follow-on claims for damages.

10. The Authority, in 2012, also tackled several cases of abuse of dominant position. In particular two cases concerned sectors (railways and telecommunication) where incumbents' conduct risked undermining liberalization efforts.

11. In April 2012, the ICA reassessed Alitalia's position on the air transport market following the merger with Air One in 2008, which had been suspended and had to be reassessed after three years (DL.). The Authority ascertained that the Alitalia-AirOne 2008 concentration created a monopoly on the Linate-Fiumicino route persisted and, therefore, demanded that Alitalia released eight of its slots on the Linate-Fiumicino route to Easy jet to allow a competitor's entry on the route.

12. Deterrence is a very important element of competition policy and the Authority intends to strengthen its efforts to achieve results in this area. While the use of commitments decisions allows to obtain, in some cases, immediate benefits for consumers, the Authority deems that vigorous enforcement action remains the main instrument to promote consumer welfare, especially with respect to cartels.

## **1. Changes to competition laws and policies**

13. On January 24, 2012 the Italian Government adopted Decree Law no. 1/2012, as converted into law by Law No. 27/2012, which contains changes in the legal framework and new powers endorsed to the Italian Competition Authority (ICA).

14. In the area of merger review an important change is the one envisaged in Article 5 bis, amending the rules for merger notification. As of January 2013, the two turnover thresholds provided by Art. 16 of the Law 287 of 1990 (aggregate turnover of all the undertakings involved in the merger and turnover of the target undertaking) are no longer considered alternative but cumulative. As a consequence, corporations have to notify a merger only if and when both the thresholds provided by the law are achieved. Mergers filing fees have been abolished, as of January 2013.

15. It is worth noting that Law Decree n. 1/2012 introduced a new system of funding for the Italian Competition Authority (effective in 2013).

16. The Decree introduced a mandatory contribution (.08 per thousand) for companies incorporated in Italy whose turnover exceeds a threshold of 50 million euros. The revenues from this contribution replace all previous forms of funding (merger fees and public budget).

17. New powers were endorsed to the ICA with respect to vertical relationships within the agricultural food chain and by Article 62 designed to prevent unfair conducts in case of significant imbalance of contractual power (*Discipline of commercial relations relating to the sale of agricultural and food products*). The provision entrusts the ICA with surveillance and fining powers. For the provision to be applicable, a dominant position is not required: it suffices that the retailer holds a certain degree of buyer power. It also identified a number of prohibited conduct in trade relations between the operators, such as the imposition of unfair, retroactive and discriminatory contractual conditions.

18. New powers in areas different from competition law were also entrusted to the Italian Competition Authority with Law Decree 1/2012. Article introduced the so-called legality rating (based on indicators of compliance to the law in view of attributing a score) for companies operating Italy and entrusts the ICA with the task of: (i) reporting to Parliament on the rules necessary in order to "promote the introduction of ethical behaviour in business" and (ii) developing, in connection with the Ministries of Justice and Interior, the legality ratings of the firms, that will be relevant "in the granting of public funds by public administrations and in access to bank credit".

19. Furthermore, Article 5 of the Decree established that the Authority is responsible to ensure protection against unfair contractual clauses in business to consumer agreements and it may impose fines up to € 50,000. Finally, Article 7 of the Decree extended the ICA's powers in the enforcement of the unfair commercial practices rules to protect not only consumers but also small enterprises (with less than 10 employees and a turnover of less than € 2 million).

20. Article 4 of Decree 95/2012 (known as Decree on the spending review) introduced an obligation for public administrations to dismiss (with a public tender) shares directly and indirectly held in subsidiaries that, in 2011, provided more than 90 percent of their services in favor of the administration itself. The obligation, however, is subject to some exceptions when - for economic, social, environmental and geomorphological reasons – the recourse to the market is not possible. In this case, these bodies must submit a request for a compulsory and binding opinion to the Authority, followed by an analysis of the market. The Authority will issue its opinion within sixty days. The analysis should demonstrate, through appropriate and objective elements, the inability to obtain on the market more favorable conditions for the provision of the services offered by the company concerned.

## 2. Enforcement of competition laws and policies

### 2.1 Summarized data

21. In 2012, the implementation of antitrust laws involved the examination of 459 mergers, 4 agreements, 10 alleged abuses of dominant position.

#### Proceedings concluded in 2012, divided by type and outcome

	Non-infringement of the law	Infringement of the law, conditional authorization, modification of agreements, acceptance of commitments	No jurisdiction or inapplicability of the law	Total
Agreements		4	-	4
Abuses of dominant position	2	8	-	10
Mergers of independent enterprises	446	5	8	459

#### 2.1.1 Agreements

22. In 2012, the Authority concluded 4 investigations concerning agreements.<sup>1</sup> In all 4 cases the proceedings confirmed the infringement of the prohibition to enter into agreements restricting competition:

<sup>1</sup> Agreement in the market of crash barriers, maritime services, Municipality of Casalmaggiore-Call for tenders for the entrusting of fuel supply services, repower Italia-price for the supply of electricity in the centre-south of Italy.

2 cases concerned the infringement of article 101 of the Treaty on the Functioning of the European Union,<sup>2</sup> while the other 2 cases concerned the infringement of article 2 of Law n. 287/90.<sup>3</sup>

23. In consideration of the seriousness of the infringements, the undertakings were sanctioned with a fine amounting to a total of 42,981,269.38 Euros.

24. On 31<sup>st</sup> December 2012, 11 proceedings were still underway, 6 of which pursuant to article 101 of TFEU,<sup>4</sup> and 5 pursuant to article 2 of Law n. 287/90.<sup>5</sup>

**Agreements examined in 2012, divided by economic sectors (proceedings concluded)**

<b>Main sector involved</b>	
ENE – Electricity and gas	2
SID – Iron and steel industry, Metallurgic industry	1
TRA – Transportation and hiring of means of transport	1
<b>Total</b>	<b>4</b>

*2.1.2 Abuses of dominant position*

25. In 2012, the Authority concluded 10 investigations concerning abuses of dominant position.<sup>6</sup>

26. In 5 cases, the proceedings confirmed the infringement of the prohibition to carry out abuse of dominant position: 4 cases concerned the infringement of article 102 of the TFEU,<sup>7</sup> while 1 case concerned the infringement of article 3 of Law n. 287/90.<sup>8</sup>

27. In 2 cases, the Authority found that there was no restriction of competition.<sup>9</sup>

28. In the remaining 3 cases, pursuant to article 14-ter, paragraph 1, of Law n. 287/90, the Authority resolved to accept the commitments submitted by one of the parties, making them binding, without ascertaining the infringement.<sup>10</sup>

<sup>2</sup> Agreement in the market of crash barriers, maritime services.

<sup>3</sup> Municipality of Casalmaggiore-Call for tenders for the entrusting of fuel supply services, Repower Italia-price for the supply of electricity in the centre-south of Italy.

<sup>4</sup> Mondadori Electa-réunion des Musées Nationaux/Jvco, tariffs of Farries to/from Sardinia, call for tenders in the motor-vehicle liability insurance sector for local public transport, Councils of the register of lawyers/denial to practice as lawyer, Hindrances for the access on the market of a new mobile telephone operator, Strategic agreement Impregilo/Salini.

<sup>5</sup> Register of lawyers of Brescia, board of notaries of Lucca/controls on the implementation of the tariff, board of notaries of Milan/resolution N. 4/2012, board of notaries of Bari/conformity to the resolution N.4/2012, board of notaries of Verona-resolution dated 9 February 2012.

<sup>6</sup> Italian market for the wholesale supplying of natural gas, Arenaways-Hindrances for the access on the market of passenger railway transportation services, Telecom Italia-Call for tenders for the entrusting of landline services and IP connectivity, Entrusting of the integrated management service of urban solid waste in the Municipality of Messina, Selecta/Poste Italiane, Municipality of Prato-estra Reti Gas, Ratiopharm/Pfizer, Esselunga/Coop Estense, Esselunga/Unicoop Tirreno-Unicoop Firenze, Gargano Corse/Aci.

<sup>7</sup> Arenaways-Hindrances for the Access on the Market of Passenger Railway Transportation Services, Entrusting of the Integrated Management Service of Urban Solid Waste in the Municipality of Messina, Municipality of Prato-Estra Reti Gas, Ratiopharm/Pfizer.

<sup>8</sup> Esselunga/Coop Estense.

<sup>9</sup> Esselunga/Unicoop Tirreno-Unicoop Firenze, Gargano Corse/Aci.

29. In consideration of the seriousness of the infringements (i.e. the five cases infringing article 102 of the TFEU and article 3 of Law n. 287/90), the undertakings were sanctioned with a fine amounting to a total of 15,970,734 Euros.

**Abuses examined in 2012, divided by economic sectors (proceedings concluded)**

<b>Main sector involved</b>	
ENE – Electricity and gas	2
FAR – Pharmaceutical industry	1
GDO – Large-scale retail trade	2
POS – Postal services	1
RIF – Waste disposal	1
SPO – Recreational, cultural and sports activities	1
TLC - Telecommunications	1
TRA – Transportation and hiring of means of transport	1
<b>Total</b>	<b>10</b>

30. Lastly, the Authority re-assessed 3 cases and relevant sanctions imposed on undertakings for a previously ascertained infringement.<sup>11</sup> On 31<sup>st</sup> December 2012, 6 proceedings were still underway, 4 of which pursuant to article 102 of the TFEU,<sup>12</sup> and 2 pursuant to article 3 of Law n. 287/90.<sup>13</sup>

### 2.1.3 Mergers

31. In 2012 the Authority examined 459 mergers. In 446 cases the Authority found there was no infringement of the law, whereas 8 cases were closed for lack of jurisdiction or for inapplicability of the law. In 6 cases, the Authority carried out investigatory proceedings pursuant to article 16 of Law n. 287/90:<sup>14</sup> in 5 cases the mergers were authorized upon the adoption of remedies,<sup>15</sup> while the other case was concluded without ascertaining the infringement.<sup>16</sup>

32. The Authority also examined the impact on the market of a previous merger occurred in compliance with the law.<sup>17</sup> Moreover, the Authority carried out 6 investigations concerning non-compliance with the obligation to preventively communicate merger operations.<sup>18</sup> In all 6 cases the

<sup>10</sup> Italian Market for the Wholesale Supplying of Natural Gas, Telecom Italia-Call for Tenders for The Entrusting of Landline Services and IP Connectivity, Selecta/Poste Italiane.

<sup>11</sup> International Logistics - Villanova; International Logistics Albini & Pitignani; International Logistics – Italsempione.

<sup>12</sup> Selective Procedures Lega Calcio 2010/11 and 2011/12, Wind-Fastweb/Behaviours Telecom Italia, Rti/Sky-World Championship, Application of Vat on Postal Services.

<sup>13</sup> Assofort/Adr-Airport Services, Akron-Management Cellulosic Urban Waste.

<sup>14</sup> Bolton Alimentari/Simmenthal, Bolton Group International/Luis Calvo Sanz, Compagnia Italiana di Navigazione/Branch of Tirrenia di Navigazione, Unipol Gruppo Finanziario/Unipol Assicurazioni-Premafin Finanziaria-Fondiarria Sai-Milano Assicurazioni, Conad del Tirreno /Nine Branches of Billa.

<sup>15</sup> Bolton Alimentari/Simmenthal, Compagnia Italiana di Navigazione/Branch of Tirrenia di Navigazione, Unipol Gruppo Finanziario/Unipol Assicurazioni-Premafin Finanziaria-Fondiarria Sai-Milano Assicurazioni, Conad del Tirreno /Nine Branches of Billa; Alitalia-Compagnia Aerea Italiana – Branch of Wind Jet.

<sup>16</sup> Bolton Group International/Luis Calvo Sanz.

<sup>17</sup> Monitoring After Merger –Italian Airline Company–Alitalia Italian Airlines–Airone.

<sup>18</sup> Società Italiana Acetilene e Derivati Siad/Branches of Martinelli-I.G.C.-Stella Gas-Zanutto, Rivoira/Branches of Brennero Gas-Nincheri-Blugas, Life & Luxury/Olli Resorts, Enel Green Power & Sharp Solar Energy/Altomonte fv, Baulé/Branch of Eximium, Società Italiana Acetilene e Derivati Siad/Branche of Parodi Saldatura.

proceedings confirmed the infringement of article 19, paragraph 2, of Law n. 287/90, and the parties were sanctioned with a fine amounting to a total of 60,000 Euros.

33. On 31<sup>st</sup> December 2012, 3 proceedings were still underway for non-compliance with the obligation to preventively communicate merger operations, pursuant to art. 19, paragraph 2, of Law n. 287/90.<sup>19</sup>

#### 2.1.4 *Fact-finding inquiries*

34. In the period of reference, the Authority concluded a fact-finding inquiry pursuant to article 12 of Law n. 287/90.<sup>20</sup> On 31<sup>st</sup> December 2012, 9 fact-finding inquiries were still underway.<sup>21</sup>

#### 2.1.5 *Reporting and advisory activities*

35. Pursuant to articles 21 and 22 of Law n. 287/90, with regard to competition restrictions deriving from laws in force or upcoming legislation, the Authority reported 74 cases. The opinions adopted pursuant to article 21-*bis* of Law n. 287/90, were 18. Besides, the Authority issued 18 opinions pursuant to art. 4 of Decree Law n. 138/2011. As in the past years, the Authority's interventions concerned a wide range of economic sectors.

#### **Reporting and advisory activities, divided by economic sectors (number of interventions carried out)**

<b>Sector</b>	<b>2012</b>
ALI - Food and drinks industry	1
ASS – Insurance and retirement funds	1
CIN - Cinema	1
EDI – Publishing and printing	2
ENE – Electricity and gas	8
FAR – Pharmaceutical industry	2
FIN – Financial services	8
GDO – Large-scale retail trade	3
MTR – Transport	1
PET – Oil industry	5
POS – Postal services	2
PRO – Professional and entrepreneurial activities	4
RIF – Waste disposal	8
RIS – Catering	2
SER – Sundry services	20
SPO – Recreational activities	3
TLC - Telecommunications	12
TRA – Transportation and hiring of means of transport	23
TUR - Tourism	2
TV - Radio and television	1
VAR - Other	1
<b>Total</b>	<b>110</b>

<sup>19</sup> Puma/Dobotex, Marfin-Acosta/Investment Services, Sorgenia-Enerman.it/Eolica Bisaccia.

<sup>20</sup> Independent fuel stations.

<sup>21</sup> State of the liberalization of the electricity and natural gas sectors, local public transportation, hospital healthcare sector, services of negotiation and post-trading, fact-finding inquiry in the audiovisual sector, procedure of direct compensation and competitive arrangements in the car insurance sector, organized large-scale retail trade sector, fact-finding inquiry on the costs of bank services, district heating sector.



## 2.2 *Significant Cases*

- 733 - Maritime services

In March 2012 the ICA fined a secret cartel that shipping agents and trade associations of the sector had engaged in for over 5 years. The ICA resolved to fine, for more than 4 million, 15 different companies operating in the service sector of shipping agencies along with two trade associations, Assagenti (the main trade association for shipping agencies) and Spediporto (the most representative trade association for the forwarding agencies operating on national territory). Maersk Italia (a member of the Danish group under the same name) submitted a leniency application and was exempted from fines, which were reduced by 50% for Hapag Lloyd Italy, the second leniency applicant.

The agreement, which lasted from February 2004 through December 2009, concerned the price fixing for agency services (preparation and issue of documents, such as bills of lading for exported goods and 'delivery orders' for imported goods), known as 'fixed duties,' in violation of article 101 of the TFUE.

According to the ICA, a complex but unitary agreement with both a horizontal and a vertical profile. During a series of meetings of the Port Commission the companies in question coordinated the price fixing of fixed duties and the associated loyalty discount applied to forwarding agents (horizontal profile of the agreement). Furthermore, Assagenti and Spediporto took charge of incorporating the companies' arrangement into the agreements of 2004 and 2007, issuing a series of memorandums to "recommend" compliance with the agreements (vertical profile of the agreement).

The cartel had a significant impact on the market for maritime transport: while most of the operators involved in the meetings were based in the Port of Genoa, many of the documents gathered during the investigation revealed how the fixed prices acted as agreed 'reference' values with regard to the transactions taking place in other Mediterranean ports, such as Gioia Tauro, La Spezia and the Italian port system in general. The ICA has recently appealed before the Council of State the judgement of the TAR annulling the decision in question

- I723 - Agreement in the market of crash barriers

In October 2012 the Authority fined 7 producers of guardrails that established an agreement restricting competition in order to alter the competitive dynamics in the awarding of contracts and in the supply of metal crash barriers to installation services. The proceeding had been opened by the ICA on the basis of information provided by Special Units of the Guardia di Finanza (Italian Tax Police).

According to the evidence collected in the course of the investigation, the seven companies exchanged information and coordinated their activities during meetings of the Consorzio Manufatti Stradali Metallici (Comast - Consortium for Metal Roadway Products) from 2003 to at least May 2007, sharing the market for roadway crash barrier sales and securing the best pre-set sales price for consortium members on multiple occasions. In addition, these companies shared and applied a price list for different types of road barriers in order to fix the prices for individual sales orders, co-ordinated their participation in public calls for tender and adopted practices intended to obstruct their competitors both directly and indirectly.

- a426 - Telecom Italia – Call for tenders in the landline and IP connectivity sectors

In June 2012 the Authority decided to accept the commitments presented by Telecom Italia, within the context of an investigation into a possible abuse of dominant position designed to obstruct the participation of competitors in tenders for telephony services.

In the Authority's view, Telecom refused to supply technical-economic information that Fastweb, its competitor, deemed necessary for formulating its own offers.

The commitments expand the data set and services made available to Telecom's competitors (i.e. OLO, Other Licenced Operators) in order to enable them to formulate their own bids for the tenders fielded by large public and private customers and to supply various new guarantees in the field of internal-external equality of treatment.

Therefore, the Authority made the commitments binding and closed the investigation without establishing a violation.

- A436 - Arenaways – Barriers hindering the access to the market of rail transportation services

In July 2012 the Authority closed an investigation into the abusive conduct by State Railways (FS), through its subsidiaries RFI (Rete Ferroviaria Italiana - Italian Railway Network) and Trenitalia, in the national railway infrastructure access market, blocking entry of new candidate Arenaways. According to the evidence gathered by the Authority, the FS Group, through a series of actions under their control, succeeded in their aim of impeding Arenaways from offering its services on the Turin-Milan line.

The infringement was committed in a completely unique context, characterised by the entering into force between 2009 and 2010 of legislation that aimed to balance the needs of liberalising the rail transport market with preserving the economic balance in the service contracts drawn up for the provision of subsidised services. Despite the seriousness of the Group's actions, the Authority decided to impose a fine of 300,000 Euros, in consideration of the recent changes in the legislative framework.

### 2.3 *Mergers*

- C11799 - Bolton Alimentari / Simmenthal

In December 2012, the Authority concluded an in depth (Phase II) investigation into the acquisition of the Simmenthal business unit (belonging to the Kraft group) by the Bolton group (owner of the Manzotin brand). The merger was cleared with conditions.

In particular, the operation concerned the following distinct markets: i) the production and marketing of preserved beef with and without aspic (so-called *corned beef*) and ii) the production and marketing of preserved tripe with sauce. Both markets were deemed to have a national dimension also in consideration of the specific tastes and habits of the consumers.

The analysis showed that the merger would create a dominant position in the preserved meat market, with the merged entity holding market shares from 60 to 80% depending on the distribution channel.

The results of the investigation highlighted that, in the absence of remedies, the operation could have conferred to the new entity a structural position of absolute prominence in the relevant markets. The merger would have also enabled Bolton to broaden its range of renowned brands in contiguous markets, increasing its contractual power with the large-scale retail trade, with the risk of imposing less advantageous economic conditions.

For such reasons, the Authority authorized the merger upon Bolton's compliance with a series of measures, among which:

- the transfer of the branch Manzotin - composed of: i) intellectual property rights on the brand; ii) production contract currently in force with INALCA; iii) possible warehouse and iv) all the commercial information concerning the brand - to a third party with an autonomous productive capacity at the moment of sale;

- the maintenance of a separate sale division as regards the “Simmenthal” products for an established period of time.

The remedies were considered sufficient and proportional in order to eliminate the structural effects of the operation. The alienation of the brand, accompanied by an autonomous productive capacity (the transfer of the actual supply contract in force with Cremonini/INALCA), would enable the purchaser to operate on the market immediately, should it not dispose of its own plants. The maintenance of a sale department distinguished for the brand “Simmenthal” would determine a separate negotiation of the brand as regards Bolton’s other brands in contiguous sectors (tuna fish), thus re-dimensioning the negotiating power of the new entity with the large-scale retail trade.

- C9812B – Post merger assessment – CAI-Alitalia/Airone

In April 2012, the ICA reassessed Alitalia’s position on the air transport market following the merger with Air One in 2008. The Authority’s decision was taken on the basis of the special procedure provided by Decree Law no. 134 of 28<sup>th</sup> August 2008, which had suspended the Authority’s authorization powers for this concentration and provided for a reassessment of the effects of the merger after three years. The Authority ascertained that the Alitalia-AirOne 2008 concentration created a monopoly on the Linate-Fiumicino route that had persisted and must be removed.

The analysis carried out by the Authority showed that for the route in question Alitalia- faced no competitive pressures from other airlines because of specific regulations and administrative rules making it impossible for other companies to obtain slots for the Linate airport. The Authority considered in its analysis that the introduction of high-speed rail transport service between Rome and Milan, in 2009, represented an important development, connecting the two cities in less than three hours. However, the Authority considered that this was not sufficient to undermine Alitalia’s dominant position by shifting a meaningful portion of the demand from air to rail or by reducing ticket prices to the benefit of the passengers. The Authority therefore demanded that Alitalia released eight of its slots on the Linate-Fiumicino route to Easy jet to allow a competitor’s entry on the route. The Authority appointed Nexia International as a monitoring trustee for the remedies. The Authority’s decision was upheld by the Council of State.

### **3. The role of the competition authority in the formulation and implementation of other policies: advocacy and market studies**

#### **3.1 *Advocacy interventions***

36. In January 2012, the Competition Authority sent to the Government and the Parliament a Report advocating reforms in major sectors of our economy in order to open markets and stimulate economic growth. Many suggestions were accepted and introduced in the reform packages adopted by the Government. The most significant measures concerned ownership unbundling in the natural gas sector, elimination of minimum fees in the liberal professions, the creation of an independent regulatory authority for the transport sector and strengthening competition in local public services.

37. In October the Italian Authority issued a new Report addressing a wide range of sectors and issues where further intervention was encouraged. In the Report the Authority underlined that implementation plays a crucial role in making effective the reforms already undertaken.

38. Besides these general advocacy interventions, the Italian Competition Authority continued its use of advocacy powers addressing more than 100 reports to the Government and the Parliament, whereby it outlined regulatory restrictions in a wide range of sectors.

39. The ICA’s opinions have mainly focused on the local public services sector, which can play a key role in fostering economic growth in Italy, in view of its considerable economic importance (which

involves local public transport, management of urban waste, management of parking areas, public lighting). In Italy, the provision of these services is often monopolistic, with either an in house provider or a private or public concessionaire. However, not all these markets are natural monopolies. Therefore the ICA has suggested that public authorities should not be allowed to give an exclusive concession for the provision of services unless they have verified, through a market analysis, that the services cannot be provided under competitive conditions. Moreover, providing such services in house should be allowed only when the market analysis shows that this can yield clear and direct benefits when compared with the award of the operation of the services by competitive tendering. Further competitive concerns highlighted by the ICA relate to the initial planning of the services (e.g., with reference to the design of the optimal territorial areas) and too broad granting of exclusivity rights.

40. The ICA has also made a number of suggestions regarding services in the private sector, the most important of which concern the abolition of minimum tariffs in liberal professions. In particular, the ICA highlighted several critical provisions introduced in 2012 by the “*New regulations for the forensic profession*”. The ICA observed that the new regulation seemed to reintroduce unjustified restrictive measures in competition among professionals, already overcome by a recent reform. Notably, the regulation limited and constrained the use of advertising to promote lawyers’ services. Moreover, the ICA criticised a provision stating that the professionals’ remuneration, in case of non-consensual determination, should be determined on the basis of parameters established by the Ministry of Justice. The ICA highlighted a risk of re-introducing uniform prices, in case the ministerial parameters were interpreted by the professionals as “tariffs” from which they should not diverge.

41. Other important suggestions put forward by the ICA concern the fuel distribution network. The ICA encouraged the introduction of an institutional databank listing prices applied on car fuel by each point of sale in Italy, consistently with the successful experience in other European countries and as already provided for by article 51 of Law n. 99 of 2009. The ICA argued that such databank would represent a strong competitive stimulus, insofar as it would reduce informative asymmetries and costs of research for consumers.

42. With regard to telecommunications, in February 2012, following a request submitted by the Ministry of Economic Development, Infrastructure and Transport, the ICA issued an opinion on the Code of electronic communications. The Authority took a positive view about the assignment to the Communications Regulatory Authority (AGCom) of the powers to oblige – under specific conditions – vertically integrated undertakings to offer wholesale supply of products for network access through a commercially independent entity (the so-called functional separation). The ICA also expressed a positive opinion about the introduction of a specific discipline for the assessment of the effects deriving of voluntary separation by vertically integrated undertakings. With reference to the provisions concerning the radio spectrum, the ICA highlighted the importance of introducing principles of technological and service neutrality, notably as regards frequency trading among operators.

43. The ICA also addressed competitive issues related to the assignment of postal services. With reference to delivery services, almost completely liberalized, the ICA urged public administrations to carry out calls for tenders to select the best deliverer. As regards services prior to delivery, the ICA found out that, when designing the call for tenders, contracting authorities often took choices which unduly limited the participation of consolidators, thus favouring large vertically integrated operators, such as Poste Italiane SpA.

44. The Authority issued several opinions concerning the assignment of insurance and brokerage services. While recognising a more recurrent use of public procedures by public administrations for the assignment of insurance and brokerage services, the ICA highlighted some outstanding issues, including the need to prepare informative documents enabling to fully evaluate the risks to assume, the opportunity to design flexible calls for tenders that include a rescission clause, the need to respect the principle of proportionality when setting the requirements for bidders and to ensure publicity.

### 3.2 *Interventions pursuant to Art. 21-bis of Law n. 287/90*

45. Article 35 of decree law n. 201 of 6 December 2011 introduced the new article 21-*bis* in law n. 287/90, which empowers the ICA to appeal administrative acts that infringe competition rules. More precisely, art. 21-*bis* of law n. 287/90 provides that the ICA can issue reasoned opinions about “*general administrative acts, regulations and administration provisions*” which distort competition. Unless the receiving administration takes into account the ICA’s indications within 60 days, the ICA can appeal the acts to the administrative judge within the following 30 days.

46. In 2012, the ICA issued 18 opinions and lodged 4 claims before the administrative judge pursuant to article 21-*bis*. The acts involved in the opinions were various: resolutions of municipal, provincial or regional councils; calls for tenders; ministerial decrees; managerial decisions and decrees; denial of authorizations or concessions.

### 3.3 *Market Studies*

47. In December 2012 the Authority published the results of an extensive market study into the national fuel retail sector<sup>22</sup>. This in depth analytical effort was prompted by the observation that prices of road fuel in Italy were particularly high, especially when compared with average prices at the European level.

48. The purpose of the study was to better understand the competitive dynamics of the sector and to better understand the competitive mechanisms underlying all stages of the supply chain (from refining to retail distribution) and, in particular, to assess the effect on prices of the reforms it had advocated to ease entry by independent and supermarket retailers.

49. The market study focuses on data from 2010 to 2012. The data were collected with the help of the financial police (Guardia di Finanza) and through surveys sent to independent and supermarket retailers, since no official data were available on independent retailers.

50. According to the study, the Italian fuel retail market is still dominated by the seven vertically integrated oil companies, controlling 22 000 fuel stations. There are around 2000 independent retailers and 82 retailing stations owned by supermarkets. It is interesting to notice, however, that the number of independent retailers has significantly increased in the last few years (in 2005 they were estimated to be around 1100).

51. Average throughput of supermarket retailers appears to be significantly higher than average throughput of vertically integrated stations. The throughput is 7.2 million litres for supermarket retailers, 1.6 for independent retailers and 1.4 for branded vertically integrated stations.

52. Retailing price analysis, conducted on prices between 2010 and 2011 showed that prices by supermarket retailers were significantly lower than those of other retailers (between 9 and 13 cents lower than branded retailers and between 1.5 and 5 cents lower than those of independent retailers).

53. Branded networks, which are all vertically integrated but substantially dissimilar in their refinery, logistics and fuel stations endowments, differed in their pricing strategies only marginally (2% maximum). The dominant operators (ENI and ESSO) accommodated their less efficient competitors on pricing policies instead of exploiting their efficiencies to which relative high retail pricing policies.

54. Geographical differences emerged from the analysis. In particular prices were lower in the North where the number of supermarket and independent retailers is higher.

<sup>22</sup> ICA, Ic44 – Road Fuel Independent Retailers, published on 19 December 2012 available (in Italian) at <http://www.agcm.it/indagini-conoscitive/db/open/c12564ce0049d161/70648cb604f1d844c1257aec0044dfba.html>

55. Some important results emerge from the study, in particular with respect to the effects of the liberalization process, started in 2008 and boosted in 2012, that eliminated several barriers to entry in fuel retail distribution (such as quantitative restrictions, minimum distances, limitations on the number of hours a day a manned station could remain open).

56. According to the inquiry, entry fostered by the liberalization is one of the main elements that might determine a shift into a new competitive equilibrium in the fuel retail sector in Italy. According to the findings, entry of aggressive and efficient operators, such as independent retailers and especially supermarket retailers, could put a competitive pressure on vertically integrated companies thus undermining their collusive equilibrium.

57. The market study observes that in the summer of 2012 ENI, one of the vertically integrated oil companies, promoted a very aggressive pricing campaign that was followed by the other companies, with a positive effect on prices benefitting consumers. The data also showed a significant response of consumers to ENI's discount campaign (which involved a 20 eurocent discount per litre on the average national price at self-service stations over 12 week-ends).

58. The ICA's at the conclusion of the market study suggested that the following steps could sustain increased competition in the road fuel market:

- Promoting market entry of independent retailers, namely in the centre-southern areas of the country, where their competitive pressure is still too weak;
- Fostering further entry of supermarket retailers, whose competitive pressure has been very effective in some geographical areas;
- Improving access to logistics services, through entry of independent operators, thus allowing for increased efficiencies for non-integrated retailers;
- Fostering the development of an organised wholesale market.

#### **4. Resources**

##### **4.1 Annual Budget**

59. The overall budget for 2012 was 58.8 €/mil. There was an increase of 1 €/mil compared to the previous year's budget.

60. It is worth noting that Law Decree n. 1/2012 introduced a new system of funding for the Italian Competition Authority (effective in 2013).

61. The Decree introduced a mandatory contribution (.08 per thousand) for companies incorporated in Italy whose turnover exceeds a threshold of 50 million euros. The revenues from this contribution replace all previous forms of funding (merger fees and public budget).

##### **4.2 Number of employees**

62. The total staff of the Authority, at the end of 2012, was 262 (this includes all human resources, also in non-competition areas - e.g. consumer protection, conflict of interest, etc.).

63. Approximately 106 of the Authority's staff work on competition (23 support staff and 83 non administrative). The non-administrative staff is composed of 48 lawyers, 34 economists and 1 statisticians.