ANNUAL REPORT

2004

ACTIVITIES CARRIED OUT ACCORDING TO LAW 287/90: OVERVIEW

In 2004, the Authority evaluated 612 concentrations, 60 agreements and 24 possible abuses of dominant position.

The Authority's activity

	2003	2004	January-March 2005
Agreements	54	60	2
Abuses of dominant positions	14	24	2
Concentrations	577	612	117
Corporate separations in public utilities services	18	14	7
Fact-finding inquiries	2	3	1
Non-compliance with orders	-	3	1
Opinions submitted to the Bank of Italy	37	21	6

Distribution of the proceedings concluded in 2004 by type and outcome

	No violation of the law	Violation of the law, conditional authorization or compliance following changes to agreements	Cases beyond the scope of the Authority's powers or to which the law was not applicable	Total
Agreements	26	12	22	60
Abuses of dominant positions	23	1	-	24
Concentrations	521	-	91	612

Twelve investigations of agreements were concluded in 2004. *[Revenue Guard Corps -Italian Federation of Professional Real Estate Agents; Enel Produzione-Endesa Italia; Italian Federation of Newspaper and Periodical Publishers-Italian Federation of Newspaper Distributors; Philip Morris Italia-Tobacco Retailers; Concrete market; Fiavet Emilia Romagna-Marche-Bluvacanze-Fiavet Lombardia; CartaSì-American Express; Grana Padano Consortium; Lottomatica-Sisal; Anfima-Impress-Cavioni Fustitalia-Falco-Limea Fisma; Ras-Generali/Iama Consulting; Italian Bankers Association.]* In six of these cases, the proceedings ended with the finding of a violation of the law (according to Art. 2 of Law 287/90 *[Revenue Guard Corps -Italian Federation of Professional Real Estate Agents; Concrete market; Fiavet Emilia Romagna-Marche-Bluvacanze-Fiavet Lombardia; Lottomatica-Sisal; Anfima-Impress-Cavioni Fustitalia-Falco-Limea Fisma; Ras-Generali/Iama Consulting.]*). Fines totaled €55 million. *[Revenue Guard Corps- Italian Federation of Professional Real estate agents; Concrete market; Fiavet Emilia Romagna-Marche-Bluvacanze-Fiavet Lombardia; Grana Padano*

Consortium; Lottomatica-Sisal; Anfima-Impress-Cavioni Fustitalia-Falco-Limea Fisma.] Following changes made by the parties to notified agreements, two cases ended with the finding of non-violation. *[Philip Morris Italia-Tobacco Retailers; Italian Bankers Association.]* In four cases, the Authority granted an individual exemption from the rule prohibiting restrictive agreements, as allowed by Art. 4 of Law 287/90. *[Enel Produzione-Endesa Italia; Italian Federation of Newspaper and Periodical Publishers-Italian Federation of Newspaper Distributors; CartaSì-American Express; Grana Padano Consortium.]*

In most of the cases of suspected abuses of a dominant position, it was possible to rule out the existence of unlawful practices without starting an investigation. In the only investigation concluded in 2004, the Authority found a violation of Art. 3 of Law 287/90 and imposed a fine of €152 million. *[Anticompetitive practices by Telecom Italia.]* The Authority also conducted an investigation concerning a case of non-compliance with an order to remedy infringements found in earlier proceedings and imposed a fine of €4.5 million. *[Blugas-Snam.]*

In 2004, 612 concentrations were examined. In 521 cases, formal decisions were taken according to Art. 6 of Law 287/90, whereas in 91 cases the Authority concluded that there were no grounds for further proceeding. In one case, the Authority conducted an investigation under Art. 16 of Law 287/90 and authorized the concentration. *[RAI Radio Televisione Italiana-Rami d'azienda.]* The Authority also carried out investigations into two cases of non-compliance with the prohibition of a concentration. *[Edizione Holding-Autostrade concessioni e costruzioni autostrade; Emilcarta-Agrifood Machinery.]* In both cases, the Authority found a violation of Art. 19.1 of Law 287/90 and imposed fines totaling about €102 million.

In the first quarter of 2005, 117 additional mergers were examined. In one case, the Authority conducted an investigation under Art. 16 of Law 287/90, authorizing the merger. *[Parmalat-Carnini.]* The Authority also concluded an investigation into a case of non-compliance with the prohibition of a concentrations *[Parmalat-Eurolat.]* and imposed a fine of about €11 million.

The Authority submitted 16 advocacy reports under Articles 21 and 22 of Law 287/90 regarding restrictions on competition deriving from current laws, regulations or proposed legislation. Of these, 12 were issued in 2004 and 4 in 2005. In the same period, the Authority concluded three general fact-finding investigations. *[Television sector; report on the liberalization of the electricity and natural gas sectors; Distribution of daily newspapers and periodicals.]*

Reporting and advisory activities by sector of economic activity
(number of actions: January 2004-March 2005)

Sector	**2004**	**January-March 2005**
Electricity, gas and water	1	
Oil industry	1	
Construction		1
Food and drinks industry	1	
Large-scale retail trade	1	

Other manufacturing activities	1	
Transportation and vehicle rental	2	
Financial services	1	
Recording industry	1	
Education	1	
Professional and entrepreneurial activities	2	
Catering		1
Recreational, cultural and sports activities		1
Tourism		1
Total	**12**	**4**

AGRICULTURAL AND MANUFACTURING ACTIVITIES

Philip Morris Italia-Tobacco retailers

In June 2004 the Authority concluded an investigation concerning a model contract, voluntarily notified by Philip Morris Italia, regarding the exclusive acquisition of data on the volume of cigarettes sold daily by retail outlets, differentiated by brand and product type.

The aim of the investigation was to determine whether the model contract would have put Philip Morris, the leading operator in the Italian cigarette market, in a unique position to gain extremely detailed and timely information on the performance of its competitors and deduce their future competitive strategies with a high degree of probability. This was in view of the inclusion of an exclusivity clause in the model contract and the systematic, regular (monthly) and highly detailed nature of the data to be acquired. Moreover, the notified agreement regarded a highly concentrated market, characterized by a high degree of price transparency, in which the two leading operators held a joint share equal to or above 90%. In these circumstances, the contract could potentially lead to a further reduction of uncertainty on the operators competitive strategies.

During the investigation, Philip Morris notified the Authority of the elimination of the exclusivity clause from the model contract. In light of this change, the Authority concluded that the possible obstacles to competitors to obtain similar data, in terms of both quantity and quality, had been removed and that the agreement was therefore not restrictive

Consortium for the protection of Grana Padano cheese

In June 2004 the Authority completed an investigation into the Consortium for the Protection of Grana Padano cheese (established on a voluntary basis by roughly 200 producers of the cheese located in the traditional production area). The investigation followed the notification of an agreement among Consortium's members regarding the repositioning of the Grana Padano D.O.P. (Denomination of Protected Origin). The proceeding was extended also to two resolutions adopted by the Consortium in 2001 aimed at providing incentives, through subsidies, for the sale of milk for uses other than the production of Grana Padano.

The Authority concluded that these resolutions constituted anticompetitive agreements, insofar as they were likely to limit the production of Grana Padano and keep wholesale prices at artificially high levels. In view of the gravity of the offence, the Authority imposed a fine of €120,000 on the Consortium.

As regards the agreement notified in 2003, containing measures aimed at guaranteeing output of higher quality and increasing the investment in advertising to reposition the product on the market, to be financed through a progressive contribution mechanism, the Authority concluded that: *i*) the measures aimed at promoting higher quality standards were not in and of themselves liable to restrict competition; and *ii*) the measures pertaining to the contribution mechanism were anticompetitive in that they were likely to discourage increases in production by Consortium members with respect to their hystorical production

levels. However, in view of the improvement in the conditions of supply subsequent to the repositioning of the product, the Authority granted an exemption from the prohibition of restrictive agreements for a period of six months, up to December 2004.

Parmalat-Eurolat

In January 2005 the Authority concluded an investigation concerning the failure of Parmalat to comply with an order issued by the Authority in July 1999 authorizing the company's merger with Eurolat subject to the fulfilment of certain conditions. These conditions regarded, in particular: *i*) the divestment by Parmalat of six brands and four production plants and the withdrawal from the Lazio Region of the Parmalat fresh milk brand; and *ii*) the financial and operational resources of the buyer, which had to be such as to make it a truly credible competitor. The Authority deemed that in the absence of these prerequisites, the transaction would have strengthened the new operator's position in the various markets concerned (fresh milk, UHT milk, fresh cream, UHT cream, béchamel, yogurt and butter).

During the investigation, the Authority verified that Newlat, the buyer of the divested assets, could be traced back to the "Parmalat portfolio". This was proved by: the existence of close personal relations between the managers of Newlat and the Parmalat group; the failure by Newlat to make any payment to Parmalat following the transfer of the latter's assets; the circumstance of Newlat's total dependence on Parmalat for supplies, production and distribution. Parmalat's decisive influence over Newlat was further confirmed by the existence of co-packing agreements in favour of Parmalat, concluded after the Authority's order of 1999, which should have ceased within one year of the transfer of the assets to Newlat.

The Authority therefore considered that the commercial relations of Parmalat and Newlat had constituted and continued to constitute a situation of real and effective economic dependence that could be considered as a decisive element for Parmalat's control of Newlat. In view of these circumstances, the Authority deemed that Parmalat had failed to comply with the conditions attached to the earlier authorization of the Parmalat-Eurolat concentration and imposed a fine of about €11 million.

Parmalat-Carnini

In January 2005 the Authority concluded an investigation into the acquisition by Parmalat of Carnini, a company that produces and sells milk and milk by-products. The Authority deemed that by acquiring Carnini, Parmalat had substantially increased its competitive potential in the Lombardy region, in terms of both production plants and brands. Including sales of Carnini products, Parmalat came to hold a share of approximately 40-45% of the fresh milk market in the Lombardy Region, while Granarolo was found to be the second largest operator with a 35% share. However, since the conclusion of the transaction, Parmalat and Carnini have lost ground significantly, while the position of Granarolo has strengthened, above all as regards modern distribution channels.

The Authority ruled out the possibility that the concentration could result in Parmalat holding a dominant position or in Parmalat and Granarolo holding a collective dominant position. Despite accounting collectively for 60 to 70% of the supply of fresh milk in the Lombardy region, the Authority found that the two operators

in fact held asymmetrical market shares and pursued different competitive strategies. In the absence of evidence of an incentive for the two oligopolists to act in concert way or their being able to do so, the Authority authorized the concentration.

Opinion on the setting of a minimum retail selling price for cigarettes

In December 2004 the Authority submitted an opinion to Parliament and the Government in relation to the possible anticompetitive effects of a proposal for a minimum retail selling price for cigarettes. The Authority highlighted several recent judgments of the Court of Justice confirming violations of Community law by Member States that had adopted laws which, by fixing minimum selling prices for cigarettes, were contrary to the principle of free determination of prices by producers. *[Judgment of 19 October 2000 of the Court of Justice, Commission v Hellenic Republic, case C-216/98; judgement of the Court of Justice of 27 February 2002, Commission v Republic of France, case C-302/00.]* In particular, the Court clarified that similar measures could not be justified by the aim of discouraging the consumption of tobacco products in the interests of safeguarding public health; this objective could instead be adequately attained by other means, as through increased taxation within the limits established by Community legislation on tax harmonization. The Authority therefore recommended the elimination of the proposal in order to avoid restrictions on competition that could not be justified by public interest objectives.

OIL PRODUCTS

Report on the rules for the distribution of motor vehicle fuels

In November 2004 the Authority sent Parliament, the Government and the Regions a report on the market for the distribution of motor vehicle fuels in Italy. First, the Authority stressed that the persistent restrictions on the entry conditions into the market for companies that are not vertically integrated has led to an unsatisfactory degree of modernization of the distribution network (still characterized by a particularly large number of service stations, an average output per pump substantially inferior to the European average and a very low percentage of self-service facilities), high prices and more generally an insufficient degree of competition in the market, at the expense of consumers.

Referring to domestic legislation, the Authority emphasized that rules to harmonize opening hours, besides from limiting consumer choice, penalized precisely those firms that invest in new and more modern service stations, as well as large-scale commercial distributors, who are forced to comply with different and inconsistent regulations (the legislation on the distribution of motor vehicle fuels and that on commercial distribution). The Authority called for the greater coordination of legislation in both areas, stressing the importance of adopting a single law for the authorization of firms intending to build a new shopping center equipped with a service station. Moreover, the Authority pointed out that the legal definitions of catchment areas, mandatory minimum distances between pumps and minimum areas designated for commercial activities erect de facto barriers to the opening of new retail outlets with modern and automated structures and discriminate against large-scale distributors that intend to install a service point in their commercial complex.

CONSTRUCTION PRODUTCS, CEMENT AND CONCRETE

The concrete market

In July 2004 the Authority concluded an investigation into eleven companies operating in the concrete market, including some of the biggest domestic concrete producers, vertically integrated with the most important operators in the cement market.

The investigation revealed the existence of a horizontal agreement between the concrete manufacturers aimed at sharing the supply of premixed concrete to construction firms in Lombardy, in particular in the province of Milan but also in some neighbouring provinces (Lodi, Como, Pavia and Varese), and increasing list prices. As to how the horizontal agreement was implemented, the market had been divided by determining the market shares attributable to each producer for the purposes of supplying concrete to construction firms in the Milan area. The already anticompetitive agreement was made even more restrictive by the strict control mechanisms put in place, consisting in on-site inspections to check production levels and accounting documents, and by an intensive exchange of confidential information on building sites and supplies, handled on a regular centralized basis by one of the companies participating to the agreement.

In view of the gravity and duration of the agreement (which lasted from 1999 to at least the end of 2002), the Authority fined the parties amounts that differed in relation to the varying ability of the participating firms to undermine competition, the size of the group to which they belonged and the relations of vertical integration with the cement sector. The fines totaled approximately €40 million.

OTHER MANUFACTURING ACTIVITIES

Anfima-Impress-Cavioni Fustitalia-Falco-Limea Fisma

In July 2004 the Authority confirmed the existence of two anticompetitive agreements between the Italian Metal Packaging Manufacturers Association (ANFIMA) and its members. The aim of the agreements was to coordinate pricing policies in metal packaging markets primarily devoted to the packaging of varnishes, paints, enamels, food and non-food oils (known as *general line*) and to the packaging used for food products (known as *open top*).

From the investigation, it emerged that the firms belonging to the general line group had established a series of procedures (meetings, communications) aimed at fixing the percentage increase in packaging prices, as well as other contractual conditions to be applied to clients, such as the terms and conditions of payment. This was also achieved by exchanging information on costs and price strategies and through the continuous monitoring of individual firms' compliance with the association's indications on price increases. The Authority held that such conducts constituted the pursuit of the same anticompetitive aims on a continuous basis from December 1990 to June 2003, consisting in the alignment of price strategies, in violation of Art. 2 of Law 287/90.

With regard to open-top packaging, the investigation found that letters had been sent by ANFIMA to member firms encouraging them to adopt uniform strategies for price increases, also through production limitation and the application of homogenous payment terms and conditions to clients. The Authority deemed that this conduct, constituting a single and complex agreement, which continued from 2000 to 2003, was also likely to restrict competition, insofar as it aimed to provide member firms with indications on strategies for recouping increases in raw material costs.

In view of the gravity and duration of the offences (the nature of the agreement, the importance and representativeness of the association, the number of firms involved, the impact on the market and the geographical scope of the agreement), the Authority imposed fines on the firms for a total of approximately €5 million.

Emilcarta-Agrifood Machinery

In July 2004 the Authority concluded an investigation into Tetra Pak International that confirmed the latter's failure to comply with its order prohibiting a concentration and imposed a fine of €95 million. In particular, in August 1993 the Authority had prohibited the acquisition by the Tetra Pak Group of the company Italpack, as the transaction would have strengthened the Tetra Pak Group's dominant position in the EU markets for carton containers for aseptic and non-aseptic packaging of liquid and semi-liquid foodstuffs.

Following on-site controls carried out at Tetra Pak Italia, Tetra Pak Carta, Italpack and Eaglepack Italia, in April 2004 the Authority initiated proceedings against the Tetra Pak Group for having acquired, through the company Eaglepack, the control of Italpack, thereby violating the order prohibiting the concentration issued in August 1993. The exercise of control by Tetra Pak was confirmed by a series of circumstances,

including: the long-standing contractual relations between Italpack and the Italian and foreign companies of the Tetra Pak Group (supply agreements, Italpack's use of equipment and machinery belonging to the Tetra Pak Group, the centralized handling of orders from clients of the Tetra Pak Group, the coordination of the two companies' computer systems, Italpack's failure to create an autonomous sales network); the substantially exclusive nature of its commercial relations with Tetra Pak (roughly 90% of Italpack's output was absorbed by Tetra Pak); the influence Tetra Pak exerted in the appointment of Italpack's management (staff transfers from one company to another).

ELECTRICITY, NATURAL GAS AND WATER SUPPLY SERVICES

Enel production-Endesa Italia

In June 2004 the Authority concluded an investigation into the following companies: Enel Produzione, Enel Green Power, Endesa Italia, Edipower and Tirreno Power. The investigation aimed to determine whether the ways in which these companies coordinated the sale of electricity to Enel Distribuzione, first under the Team Energy Management (TEM) system and subsequently under the Temporary System for the Sale of Electricity (STOVE), amounted to a restrictive agreement. In particular, in June 2002 Enel Produzione and Endesa Italia voluntarily notified the Authority an agreement relating to a temporary procedure for the scheduling of the production of electricity for non-eligible customers (TEM); subsequently, Edipower and Tirreno Power, buyers of production capacity sold by Enel (the so-called gencos), adhered to the agreement.

As a result of the investigation, it emerged that the TEM procedure took the form of a horizontal agreement aimed at sharing the supply of electricity for non-eligible clients among the participating entities. Having taken into account that the TEM system was discontinued in June 2003, that the agreement had therefore been of a brief duration and that the unlawful conduct took place in a context in which some of the institutions envisaged under the legislation for the liberalization of the electricity sector had not yet been activated (the Sole Acquirer and Energy Market Exchange) – institutions that the TEM was meant to substitute – the Authority deemed it appropriate not to impose fines.

In July 2003 following an intervention by the regulatory authority, the TEM procedure was substituted by STOVE, a new mechanism for coordinating among producers the dispatch of electricity to non-eligible customers. Unlike TEM, the data flows within STOVE were no longer addressed to Enel, but rather to a third party, the national transmission grid operator (GRTN). Nevertheless, within STOVE the producers continued to coordinate their activities through a specific technical Committee, within which some practices were effectively defined autonomously with respect to the rules set by the regulatory authority, with particular reference to the procedure for selecting offers of energy for the scheduling of production plants. The Authority authorized the agreement for six months, from 1 April 2004, the date on which the dispatch system connected with the electricity exchange was to come into operation, until 1 October 2004, considering that in this period the STOVE system served as a safeguard in the event of emergencies due to malfunctioning of the centralized market.

Blugas-Snam

In October 2004 the Authority concluded an investigation into ENI's failure to comply with an order to eliminate violations ascertained in an earlier investigation. In particular, in November 2002 the Authority had ruled that some practices adopted by ENI constituted an abuse of a dominant position in violation of Article 82 of the EC Treaty. The abusive conduct consisted in having sold abroad, to Italian operators, quantities of gas coming from ENI's own take-or-pay contracts (known as "innovative sales") sufficient to guarantee coverage until 2007 of the whole of the remaining third-party quota, as well as having guaranteed these same operators priority long-term access to the national network of gas pipelines owned

by its subsidiary Snam Rete Gas. The order fixed a deadline of 90 days within which ENI was required to present a report detailing the measures it intended to take to eliminate these violations.

In March 2003 ENI presented a report in which it undertook, in particular, to increase the capacity of its own international pipelines importing Russian gas through Austria (TAG) and Algerian gas through Tunisia (TTPC) in favour of third-party operators, beginning in 2008. Subsequently, however, ENI reported that the proposed measures had become financially unsustainable due to a possible excess supply of gas on the Italian market and revoke its plans, announcing its intention to adopt alternative measures. In April 2004 ENI submitted these new measures to the Authority, which found that they effectively eliminated the ascertained infringements. In particular, ENI agreed to sell predetermined quantities of gas, on a multi-year basis and at a specific price and conditions. At the end of the non-compliance proceeding, the Authority deemed that ENI, which had unjustly delayed the implementation of measures to remove the violation found in November 2002, had greatly curtailed the possibility for independent importers to import natural gas on the Italian market, and imposed a fine of €4.5 million.

Opinion on the sole ownership and management of the national electricity grid

In April 2004 the Authority formulated an opinion on the reunification project between the owner of the grid, TERNA, and its operator, GRTN (wholly owned by the Ministry of the Economy). The Authority welcomed the planned reunification, judging that it would have led to greater incentives to invest in the infrastructure of the national electricity grid and adapt its supply to the growing domestic demand for electricity. The Authority also called for a complete separation between the ownership of the national electricity grid and the operators in the electricity sector active in the upstream phase of generation and the downstream phase of distributing and selling.

General fact-finding inquiry into the liberalization of the electricity sector

In February 2005 the Authority and the Electricity and Gas Authority jointly approved the results of a general fact-finding investigation into the degree of liberalization of the electricity sector, more than five years after the entry into force of the related legislation. The inquiry provided, first and foremost, an updated picture of the supply of electricity on the domestic market. In particular, it emerged that Enel is the leading operator in terms of its stock of net operational generating capacity with a share in excess of 55%. Furthermore, Enel's power plants typically belong to the mid-merit and peak-load category, guaranteeing it a significant competitive advantage in the definition of prices, especially when demand is at peak. Finally, as regards the geographical location of its plants, the investigation revealed that Enel was the only operator with plants located throughout Italy, while the majority of the other operators' plants tended to be more concentrated, primarily in the North. From an analysis of the structure of demand according to geographical location and type of plant, it emerged that the sale of generation companies (the so-called gencos), which was required by the sectorial liberalization legislation, was insufficient to create effective competitors of ENEL.

In order for the wholesale domestic electricity market to evolve in a way that is less conditioned by the former monopolist, Enel, the two Authorities have proposed that:

a) priority to be given to interventions on the national transmission grid aimed at minimizing the risks of congestion between the various zones and ensuring that the additional generating capacity to be installed in the coming years, primarily in the North (an area that already exports to the rest of the country), represents a real competitive opportunity with respect to the supply of the dominant operator;
b) the transmission lines linking Italy with foreign countries be strengthened in a manner consistent with the development of the national transmission grid;
c) new production poles by operators other than Enel be encouraged in market zones where demand currently outstrips supply;
d) in the transitional period prior to the achievement of a competitive supply structure, measures be taken with a view to ensuring that possible abusive conducts be eliminated or minimized.
Turning to provisions aimed at ensuring a competitive development of the electricity market, the two Authorities further proposed:

a) the strengthening of measures aimed at developing a stable market, in which firms also operate on the basis of medium and long-term contracts;
b) the retention of the market's zonal structure, at least until a sufficient level of competition has been developed in all of Italy's zones, since this provides price signals that reveal the critical points of the system;
c) the pursuit of solutions aimed at preventing the dominant firm from reaping undue benefits through the adoption of "linked" strategies in different parts of Italy.

General fact-finding inquiry into the liberalization of the natural gas sector

In June 2004 the Authority and the Electricity and Gas Authority jointly approved the results of a general fact-finding investigation into the degree of liberalization of the natural gas sector. The investigation confirmed the dominant position of ENI, in the market for the supply of natural gas in both imports and domestic production. Despite the adoption of legislation aimed at reducing, by 2010, the share of gas that ENI can release for consumption, at the present time its dominant position seems capable of strongly influencing the evolution of the market. Moreover, since it manages all the gas pipelines and the only LNG terminal currently in existence, ENI controls all the international transport infrastructures used to import gas in Italy, either directly or through controlled companies. It is therefore able to influence the competitive dynamics of the downstream sales market and determine the strategies related to the development of foreign infrastructures, conditioning other operators' access to traditional import channels.

The two Authorities have proposed a series of measures aimed at achieving a truly competitive market, both upstream for the supply of natural gas and downstream for its sale to final customers. Above all, the Authorities stressed that the construction of new supply infrastructures is both indispensable and urgent. The construction of new terminals would make it possible to increase and diversify the supply of natural gas. At the same time, for the quota of new regasification capacity that has not been set aside for the investors, new terminals would permit more flexible forms of supply leading to short-term access to the market, without the rigidities linked to the take-or-pay clause. An essential condition for the entry of new operators can be set in relation to the adoption by ENI of measures to strengthen the existing import infrastructures.

In order to prevent ENI from influencing the competitive structure of the downstream market through opportunistic practices in the upstream segments, in which it holds a monopoly (international transport, domestic transport and storage), the Authorities called for the separation of sales activities on the domestic market from international transport activities so that no company would engage in both. They further urged the definition of rules for the launch of a centralized market for the exchange of natural gas, which would be integrated with other European markets, to encourage two way flows of gas between Italy and Europe and the creation of a Mediterranean gas hub able to compete with North-European hubs. Finally, ahead of the installation of new infrastructures and the development of existing ones, the Authorities urged the immediate adoption of a measure designed to support the creation of new industrial operators active in the sale of gas to final customers. This would require the release by the dominant operator of sufficient

quantities of gas for an appropriate number of years at condition close to supply cost and without restrictions on final customers.

COMMERCIAL DISTRIBUTION

Report on the rules on retail distribution in the region of sicily

In July 2004 the Authority submitted to the Government and the Region of Sicily a report on two aspects of the regional regulation that set out the criteria for assessing requests for the authorization to open, relocate or expand major retail outlets. In particular, the region established a threshold equal to one third of the market, above which the firm's request for authorization could not be granted. The Authority highlighted the fact that such a rule risked leading to unjustifiable competitive distortions, preventing the growth of firms and the achievement of economies of scale which, in situation characterized by the presence of qualified competitors, can lead to benefits for consumers.

The second aspect of the report regarded the existence of limits on the number of new licences that could be granted, deriving from the setting of maximum ceiling to the expansion of the overall surface of major retail outlets, expressed in percentage terms. The Authority affirmed that the achievement of market equilibria by controlling the supply structure creates obstacles to the development of the market and unjustified competitive distortions.

TELECOMMUNICATIONS

Abusive practices by Telecom Italia

In November 2004 the Authority concluded an investigation into abusive practices by Telecom Italia regarding the formulation of commercial offers for fixed network telecommunications services for business customers. The investigation revealed that these abusive conducts by Telecom Italia formed part of a single strategy, consisting in two distinct types of behaviour:

i) the application, in offers to business end-users, of contractual conditions containing exclusivity clauses, penalties for the failure to reach spending objectives and clauses equivalent to English clauses, in order to make it more difficult or impossible for competing telecommunications companies to offer fixed network telephony services, and to handle even a part of the traffic of the customers in question. In light of the exclusionary nature of these practices, adopted by a company in a dominant position, the Authority deemed that Telecom Italia had violated Art. 3b of Law 287/90;

ii) the offering of financial and technical conditions to business customers that were less favourable than those offered to its own commercial divisions, and which competitors could not replicate because of the costs and technical conditions laid down in the regulations for the offering of telephone network services. This strategy involved a variety of offers directed at major users as well as smaller public and private customers. Of particular note, both in terms of the size of the tender and the strategic importance of the client, was the offer presented by Telecom Italia for the public tender held in 2002 by CONSIP, the government central purchasing agency, for the provision of fixed network telecommunications services and Internet connections to the Italian public administrations. The Authority deemed that by offering financial and technical conditions to customers that competitors could not replicate, Telecom Italia had violated Art. 3b) and 3c) of Law 287/90, discriminating in the markets for intermediate services in favour of its own commercial divisions in order to exclude competitors.

In calculating the amount of the fine (€76 million for each infringement; totaling €152 million) the Authority took account of the very serious nature of the violations that had been ascertained, the fact that Telecom Italia had abused its dominant position in order to exclude competitors on several previous occasions, but also of the Communications Regulatory Authority's partial appreciation of the commitments made by Telecom Italia.

Opinion on the procedures for the allocation of frequencies for public access mobile radio

In November 2004 the Antitrust Authority published the opinion it submitted to the Communications Regulatory Authority, concerning proposed legislation on *"Rules for the procedures to allocate frequencies for Public Access Mobile Radio (PAMR)"*. In particular, regarding the possibility for consortia or temporary groupings of firms to participate in the competitive selection procedures, the Authority pointed out that this should only be admissible in cases in which this is necessary in order to increase the number of entities able to participate in the selection procedures (therefore only for operators who, due to their limited technical, operational or financial capacity, are unable to participate in the tender on an individual basis), to avoid providing any incentive for the creation of collusive situations among participants. Lastly, the Authority

reaffirmed that the external body in charge of drawing up the aforementioned public procedures should be truly a third party.

RADIO, TELEVISION AND PUBLISHING RIGHTS

Italian federation of newspaper publishers-National association of press distributors

In April 2004 the Authority concluded an investigation into the Italian Federation of Newspaper Publishers (FIEG) and the National Association of Press Distributors (ANADIS) – Italy's foremost professional associations in their respective sectors. The investigation aimed to ascertain whether a Convention and nine implementing agreements entered into by the two parties, which had been voluntarily notified to the Authority, were likely to restrict competition. According to the parties thereto, the aim of the notified agreement was to regulate several aspects of relations between publishers and local distributors in a systematic manner, with particular reference to the creation of a mechanism for calculating the remuneration of distributors for returned copies, databank systems for the publishing distribution sector and the standardization of contracts.

From the investigation, it emerged that the exchange of information, such as that on minimum and maximum commissions paid by publishers to distributors could dampen competition in the publishing and distribution markets. Accordingly, the Authority held that the agreement was liable to facilitate forms of horizontal coordination between the two categories, with particular reference to the setting of part of the fees paid to distributors, and thus constituted a violation of Article 2.2a) of Law 287/1990.

The Authority went on to assess whether there were any grounds for an exemption from the prohibition of agreements restricting competition. The investigation had revealed significant inefficiencies in the distribution system, whereby the quantity of products supplied often fell short of demand. In this respect, the Authority found that the system agreed on by the associations would correct the existing disequilibria and guarantee an improved allocation of publications to the over 40,000 retail outlets present in Italy, making it easier for customers to purchase their publication of choice. It therefore held that the application of the aforementioned method for calculating commissions and the exchange of information between the parties were indispensable instruments for improvements in the distribution system. On this basis, it concluded that there were grounds for granting an individual exemption, valid until 31 December 2008.

RAI Radiotelvisione–New divisions

In April 2004 the Authority authorized the acquisition by Italy's public broadcasting network, RAI, of 11 new business divisions, comprising a total of 84 television transmission plants and the related frequencies. The aim of these transactions was to test the digital transmission of programmes and services on terrestrial frequencies.

The Authority opened an investigation in order to determine whether the concentration could create and/or strengthen a dominant position for RAI in the domestic digital terrestrial television broadcasting market and the television broadcasting infrastructure market. The domestic market for digital terrestrial television emerged as distinct from, but closely linked to, that of analogue broadcasting. This last market was particularly concentrated (indeed the frequencies and infrastructure controlled by the two leading operators, RAI and Mediaset, assure both broadcasters the use of three television networks covering almost the entire domestic territory and population). This was due to the high economic and regulatory entry

barriers that have frozen the structure of the market, leaving it substantially unaltered over the past fifteen years.

This scenario risked repeating itself for digital networks, in view of the fact that digital terrestrial television represents the future of analogue broadcasting. However, the Authority deemed that the acquisition of stakes in local broadcasters by RAI did not appear to create a dominant position in the domestic markets for broadcasting networks and infrastructures for terrestrial television broadcasting. The Authority reached this conclusion for the following reasons: *i*) the process of reallocating and redistributing the range of frequencies related to the closing down of plants and frequencies used for analogue transmissions should be completed by 2006. The process will free up substantial resources that can be made available, through market mechanisms, to the actual competitors of the two major operators as well as to new market entrants; *ii*) the availability of frequencies controlled by local operators, which new operators may acquire in order to establish further digital terrestrial networks. Therefore, in accordance with the opinion of the Communications Regulatory Authority, the Authority authorized the concentration, concluding that it would not lead to RAI holding a dominant position liable to reduce competition appreciably and on a lasting basis.

General fact-finding inquiry into the distribution of the daily and periodical press

In July 2004 the Authority concluded a general fact-finding investigation into the distribution of the daily and periodical press. The Authority found that the distribution of the daily press is subject to excessive regulation, ostensibly for the purpose of protecting the plurality of information, but having the effect of protecting current market operators, especially those that work in the retail sector. In particular, Parliament intervened to protect pluralism in the daily press by setting maximum limits of 20% that each publisher may reach in respect of the overall circulation of newspapers, at both national and inter-regional level. The Authority also found that the fixing of these thresholds clearly distorts competition by preventing efficient firms from exceeding the 20% limit, which from an antitrust perspective, is not be considered as equivalent to the holding of a dominant position.

The principal distortion in the retail market was found to be administrative barriers to the entry of new operators: the opening of exclusive and non-exclusive sales outlets is subject to authorization by local municipalities granted on the basis of highly discretionary assessments. The Authority suggested that the legislation currently in force be amended in order to fully liberalize access to the market, by eliminating the licence system. The inquiry also revealed how the majority of Regions have imposed further restraints on the sale of publications, such as supply quota systems (setting out the maximum number of sales outlets in each zone or minimum distances between each outlet) that restrict competition in the sector.

The investigation went on to highlight several other restraints on competition that limit sales activities. In particular, the decree obliging all retail outlets, be they exclusive or non-exclusive, to adopt the price policy set by the publisher, thus preventing retailers from accepting lower profit margins by undercutting cover prices. Moreover, under the terms of the current estimate-based contract, which sanctions the right to return all unsold goods, retailers do not bear any cost for returns. They therefore have an incentive to request quantities over and above what publishers and distributors would normally agree to handle, yet cannot exploit profit margins because by law printed media must be sold at the same price in all sales

outlets. The Authority suggested that Parliament remove the obligation to sell daily papers at the same price and introduce greater flexibility in agreements between distributors and retailers so that even those sales outlets unable to guarantee adequate sales can sell at less than the cover price or bear, at least in part, the risk associated with unsold goods.

General fact-finding inquiry into the television sector

In November 2004 the Authority concluded a general fact-finding inquiry into the television sector and, more particularly, the related television advertising market. The market is controlled by a small group of firms and is highly concentrated. The dominant operator, Fininvest, accounts for 65% of television advertising while RAI accounts for almost all the rest (29%). The high concentration is, moreover, a special characteristic of the television advertising market in so far as advertising in daily papers, periodicals and on the radio has a broadly competitive structure.

From the investigation it emerged that structural factors, specific to the Italian context, were responsible for restricting competition. In particular, the fact that six networks are controlled by the two major television groups (in a context of limited availability of frequencies), enables them to implement strategies aimed at hindering market access and blocking the growth of new operators, thereby limiting the entry and growth of competitors in the television advertising market. It was further emphasized how the scarcity of alternative transmission systems to analogue terrestrial transmission and the resulting weakness of inter-platform competition had greatly limited the space available for advertising by new entrants. The vertically integrated structure of the two major television operators also contributed to guaranteeing their broad coverage of the market: in addition to advertising the two companies traditionally control analogue transmission signals (broadcasting) and the supply of content.

The Authority proposed several interventions aimed at promoting an effective competitive environment in the domestic television advertising market, inter alia in view of the completion of the switchover to digital television broadcasting, scheduled for 2006. First, the Authority called for a review of the current legislation on public radio and television services, in order to guarantee public service requirements and to maintain adequate competitive pressure in the domestic advertising market. In particular, the Authority stressed the need to establish two separate companies, one with public service obligations to be financed exclusively through taxation; the other, of a commercial nature, to be financed through advertising. For this second company, which would have to compete with other operators in the advertising market, the Authority suggested that it be floated promptly on the stock-exchange market. Secondly, the Authority suggested that the range of frequencies assigned to radio and television services be reallocated through market mechanisms, so that the future digital terrestrial market does not replicate the same distribution of frequencies as that of the current analogue transmission system. In this regard, measures to vertically separate the ownership of network operators would be beneficial. Finally, the Authority emphasized the usefulness of measures to encourage the development of a plurality of transmission media, such as terrestrial platforms, satellite, cable and x-DSL technologies, safeguarding the principle of technological neutrality to promote inter-platform competition among different operators in the television-advertising sector.

MONETARY AND FINANCIAL INTERMEDIATION

Ras-Generali-Iama Consulting

In September 2004 the Authority concluded an investigation into a number of insurance companies operating in the life insurance market, finding a violation of Article 2 of Law 287/1990. The inquiry was initiated following the voluntary notification by RAS and Generali of two agreements for the acquisition from Iama Consulting of a databank on life insurance products denominated *Aequos*. The databank contained information on prices and other conditions of life insurance and general insurance practiced by all the market operators.

The documents gathered during the investigation enabled the Authority to prove the existence of a structured exchange of information between the insurance companies, achieved through the underwriting of bilateral contracts for the acquisition of the *Aequos* databank from Iama Consulting. The Authority held that from an antitrust perspective, the information shared for processing by the databank was traditionally regarded as sensitive market data, such as that on prices and contractual conditions of the various products offered by individual insurance companies. Furthermore, these data were extremely detailed and issued on a regular basis (at least once a month), enabling firms to acquire real-time information on competitors' products. The Authority also stressed the failure of *Aequos* to benefit customers by increasing market transparency. Indeed, data on insurance products were exchanged solely between the associated companies without any increase in the information available to consumers.

On these grounds, the Authority concluded that *Aequos* was the result of an exchange of sensitive, detailed information, shared between competitors regularly, in the context of a market characterized by profound information asymmetries to the detriment of consumers. It also appeared to offer added value with respect to any direct research for the same market data by individual companies. Taken together, these elements led to the Authority's conclusion that the agreement restricted competition by favouring the achievement of collusive equilibria.

FINANCIAL SERVICES

The Italian banking association

In October 2004 the Authority concluded an investigation into two model contracts voluntarily notified by the Italian Banking Association (ABI). The first of these, denominated "Investment services", contained clauses defining rights to withdraw and unilaterally amend contracts for portfolio management services, and the related procedures for notifying customers; the second, denominated "General conditions for the use of credit cards" defined contractual rules governing relations between banks that issue or place credit cards and clients.

First of all, the Authority observed that insofar as they standardized conditions applied to customers, the model contracts constituted a form of horizontal coordination. Although ABI's indications were not binding, they were nonetheless a point of reference, which by reducing the level of uncertainty over the behaviour of market competitors could homogenize aspects of the commercial strategies adopted by each operator. In particular, the Authority felt that competition was restricted by: the clause regulating unilateral changes in financial conditions by banks (*ius variandi*), contained in both of the model contracts notified; the rules on financial transactions carried out by banks in situations of conflict of interests set out in the model contract on investment services; the clauses aimed at introducing an artificial tie-in between independent services, also present in both the model contracts.

Turning to the *ius variandi* clause, the Authority felt that the opportunity for banks, provided in the model contracts as originally notified, to change the economic conditions of contracts to the detriment of customers, at any time and without having to explain the reasons for such changes, restricted competition by standardizing practices and hindering client mobility.

The Authority went on to highlight the fact that the clauses regulating how intermediaries could operate in a situation of conflict of interests with respect to individual portfolio management services also contained elements of horizontal coordination,. Authorization to operate in such scenarios was granted by the investor on a once only basis and not on a case-by-case basis as and when individual sales transactions were carried out. The Authority judged that information provided to customers on this aspect was entirely generic and inadequate, in view, on the one hand, of the absence of any obligation on the bank to clearly describe situations of conflict of interests, and on the other, of the impossibility for investors to revoke the authorization to carry out operations in the event of any change in the conflict of interest situation.

The Authority took a similarly negative view of clauses limiting the range of choices available to customers, whereby clients who requested an intermediary to carry out individual portfolio management or broker-dealing services were obliged to hold a deposit account with that intermediary as well as a securities safekeeping account.

During the course of the investigation ABI made significant changes to the model contracts as originally notified. In particular, the clauses relating to the *ius variandi* rule were eliminated from both models. As regards conflicts of interests, the new contracts include a separate form that every single bank must make

available, containing specific information on the nature of each conflict, and on the possibility for customers to revoke, even during the life of the contract, the authorization to continue providing services in such scenarios. Finally, customers would be allowed to open deposit and securities accounts with two different intermediaries. Given the significance of the changes, the Authority ruled that ABI's new model contracts did not restrict competition.

CartaSì-American Express

In July 2004 the Authority concluded an investigation into an agreement voluntarily notified by CartaSì and American Express Services Europe. The agreement regarded the establishment of a cooperative joint venture, called Iconcard Spa, for the issue and management of credit cards belonging to the American Express circuit directed at a higher-income clientele and small and medium-sized enterprises, and for their distribution through the CartaSì banking network.

Italy's credit card market is characterized by a particularly high degree of concentration, with the four major operators holding a total market share of over 82%. More specifically, CartaSì is Italy's market leader, both in the card issue sector and for service agreements, with shares equal to 57% and 39% respectively. Amex is the second largest operator in the card issue sector, with a share of 12.5% and the third largest in terms of service agreements, with a share of 12.3%.

Turning to the notified agreement, the Authority noted that the setting up of a production and distribution joint venture by the leading market operators with the intention of sharing strategic and commercial choices, as well as profits, would have led to the coordination of an important and potentially growth segment of the credit card market, with consequences for the whole range of activities of CartaSì and Amex. To remedy the criticisms raised by the Authority, the parties introduced several changes to the agreement, reducing the scale of the joint venture's activities to make it more oriented towards the distribution end of the market rather than the definition of characteristics and prices. In view of the substantial amendments made to the agreement and the positive effect on competition deriving from the access of another operator to the banking distribution network (i.e. Amex), the Authority authorized the agreement, for a period of 3 years.

Turning to service agreements with retail outlets, the Authority confirmed that this would produce significant collusive effects between Amex and CartaSì. The Authority observed that the circumstance of Amex permitting its competitor CartaSì, the market leader, to play a role in developing its own network, was in itself liable to restrict competition between the two major operators, in violation of Article 2 of Law 287/90. The conditions for exemptions did not apply.

Report on the anticompetitive effects of the "framework law on public works"

In July 2004 the Authority submitted a report to Parliament and the Government concerning a provision in the project-financing sector making the certification of business and financial plans the exclusive preserve of banks. The Authority stressed that the activity of certifying, in as much as it is aimed at defining the risks related to financing a public work, the timeframe for completion and the scale of the project, is an activity which, despite requiring knowledge and technical skills in the financial sector, does not require significant financial assets. It could therefore be carried out by entities other than banks. The Authority went on to

confirm that the use of regulatory instruments that limit, in the absence of demonstrable needs of a general nature, competition between firms authorized to operate in a given sector, creates distortions in the market, bringing about unjustified gains to those that have been granted the exclusivity.

PROFESSIONAL AND ENTREPRENEURIAL ACTIVITIES

Opinion on the measures concerning non-medical healthcare professions

In December 2004 the Authority submitted an opinion to Parliament and the Government concerning the possible anticompetitive effects of provisions contained in draft legislation on non-medical health professions: nursing, obstetrics, rehabilitation and preventive medicine. In particular, the draft law delegates the Government to issue one or more legislative decrees to establish professional orders for these professions, and envisages the transformation of the current professional collegiate bodies into professional orders. The performance of these professions would be subject to mandatory enrolment in the respective professional registers, following the confirmation of qualifications by public examination.

The Authority found that while some form of consumer protection in relation to the professional capacity of the service provider was necessary, the establishment of a professional order for these professions was not. Such orders, in fact, do not simply certify the professional capacity of those who are enrolled but, once established, introduce unjustifiable limits on competition, such as minimum fees and a ban on advertising. Therefore, the Authority suggested that consumers be safeguarded through the introduction of a mandatory university-level degree.

RECREATIONAL, CULTURAL AND SPORTS ACTIVITIES

Lottomatica-Sisal

In November 2004 the Authority concluded an investigation into several practices adopted by Lottomatica Spa and Sisal Spa in the lottery games and betting market. From the investigation, it emerged that Lottomatica and Sisal, the two leading operators with market shares equal to 46.8% and 19.8% respectively in terms of the overall bet collection, had divided the entire lottery and betting market between them, defending their acquired positions both from actual and potential competition. This aim was primarily pursued by maintaining control of the distribution network, in order to deny third parties access to the management of products distributed by betting shops, and by preventing the development of an alternative network of betting shops to those run by Sisal and Lottomatica. The two companies also abstained from competing directly through their respective leading products, Lotto and Superenalotto, in order to maintain their market positions.

In the same market sharing perspective, aimed at safeguarding the main games run under a licence, Sisal and Lottomatica pursued a strategy aimed at achieving the joint and coordinated management of other minor betting shop games, so as to effect mutual control over each other, inter alia by sharing marketing strategies and discouraging any development likely to affect the market shares of the products managed exclusively. Considering the very real barrier to entry that control over the companies' sales outlets represented, the subdivision of the market shares and subsequently of the sales outlets enabled the companies to maintain the status quo and prevented third-party operators from creating a network of betting shops capable of generating competitive pressure on the Sisal and Lottomatica networks.

The Authority deemed that the sharing of strategies for the distribution network, the decision not to compete for the main Lotto and Superenalotto products, and the joint management of minor games, were all elements of the same market-sharing and exclusionary aim. In view of the particular gravity of the offence (the practices pursued amounted to a horizontal market-sharing practice, commonly found among the most serious restrictions on competition; the strategy had been devised by the two biggest operators in the market, the only companies whose networks stretched across the whole of Italy; and finally, the duration of the collusive strategy, from October 2001 until 2004), the Authority imposed fines of €8 million and €2.8 million respectively on Lottomatica and Sisal.

Report on the legislation on record companies and remuneration for private non-profit recordings

In June 2004 the Authority transmitted a report to Parliament regarding legislation on the management of royalties owed to creative and performing artists. In particular, under the current legislation royalties for creative and performing artists are paid to the *Istituto Mutualistico Interpreti ed Esecutori* (IMAIE) by record producers or by their professional associations. Moreover, IMAIE is obliged to guarantee the collection of the remuneration owed to creative and performing artists, and to pursue the aims of promoting, training and providing professional support for artists.

In this respect the Authority found that while the existence of a body charged with collectively managing these royalties can be justified by the general need to ensure an adequate level of protection for the royalty

holders, IMAIE's mandatory intermediation system, with respect to which creative and performing artists have no freedom to choose autonomously if and to which intermediary to assign the exercise of their rights, was excessive. The current legislation therefore appeared to give IMAIE an unjustified pre-eminent position. In light of these considerations, the Authority called for a review of the legislation with a view to ensuring it does not unfairly restrict competition.

Opinion on the procedures for gaining access to the bet collection market

In January 2005 the Authority expressed its opinion on distortions of competition arising from the collection of bets following the renewal for 5 years of the licence granted to Sisal to manage the collection of Supernalotto bets. Originally issued in 1996, the licence had already been previously renewed. Moreover, the rules governing the concession excluded any further extension of the definitive expiry date, fixed at 31 March 2005.

In the opinion, the Authority pointed out that the licence attributed a position of privilege to the licence-holder and that, in order to attenuate the resulting anticompetitive effects, the licence should be granted following public procedures, aimed at identifying licence-holders on the basis of objective criteria.

CATERING

Edizione Holding- Autostrade concessioni e costruzioni autostrade

In November 2004 the Authority completed an investigation concerning Edizione Holding's failure to comply with conditions set for the authorization of a concentration. More specifically, the Authority had authorized Edizione Holding, which already controlled Autogrill, to acquire Autostrade Concessioni e Costruzioni Autostrade subject to certain measure, including the commitment that at 31 December 2003, the expiry date of the licenses granted for catering services, to entrust the supply of such services to third parties by means of adequately publicized competitive, transparent and non-discriminatory procedures. In view of the number of licenses involved, the tenders for those expiring on 31 December 2003 were of decisive importance for the process of opening up the Italian motorway catering market. In fact the 2003/2004 tenders involved 40.7% of the total motorway catering turnover generated in the service areas of the Autostrade Group and 50% of the total number of catering licenses granted for the group's network.

On the basis of the information acquired during the investigation, the Authority found that the tender procedures initiated by Autostrade in October 2003 for catering service licenses for the network run by the group were organized so as to advantage Autogrill. In particular, for a large number of service areas, participants in the tenders for catering service licenses had to find an oil partner (integrated oil/non-oil tenders) before participating to the tender. Therefore in a number of tendering procedures Autogrill joined with the oil producer, having the license assigned outside of any tendering procedures.

Furthermore, the tendering procedures allowed oil companies a right of preemption, so that Autogrill, associating with that oil producer, would keep the license protected from any competitive offer. These mechanisms gave Autogrill privileged access to about 30% of the catering turnover put out to tender.

During the investigation Edizione Holding cancelled 18 completed tenders.. The other tenders not yet completed were held under different rules. The Authority imposed a fine on Edizione Holding of €6.79 million, equal to 1.2% of the company's turnover.

TOURISM

Fiavet Emilia Romagna-Marche-Bluvacanze-Fiavet Lombardia

In October 2004 the Authority concluded an investigation into the association of travel agents in the Emilia Romagna and Marche regions in relation to two anticompetitive agreements. The agreements concerned, in particular: *i*) the fixing and distribution of price lists relative to agency fees to be applied to customers for the provision of various services; and *ii*) the inclusion in the Code of Conduct adopted by the association of clauses requiring member agencies to refer to prices fixed by tour operators for the sale of tourist packages and banned the application of discounts.

The Authority stated that the issuing of price lists and the clauses of the Code of Conduct banning discounts constituted agreements of an intrinsically restrictive nature, liable to restrict price competition and significantly limit the decision-making autonomy of members. Aside from the association's measures aimed at guaranteeing the effective application of the various guidelines by members, the recommendations on prices for the provision of services influenced the operators' behaviour, by guiding members with respect to the definition of prices. The Authority emphasized that the anticompetitive nature of the price agreements was not minimized by the fact that the price indications were not binding on the associated firms, nor could it be justified by the desire to guarantee an adequate quality of the services provided. The existence of minimum prices risked, instead, being translated into inferior quality and a lower quantity of services offered.

In order to assess the gravity of the agreements, in addition to its nature (i.e. horizontal coordination of price strategies), the Authority also took into account the high degree of representation of the association, as well as the prolonged duration of the practices, which began at least as early as the entry into force of Law 287/1990 and continued until the opening of the investigation and throughout almost its entire duration. It fined the association €5,000 for the agreement related to agency fees and €2,500 for the ban on discounts.

Report on the Veneto regional law on tourism

In February 2005 the Authority pointed out the anticompetitive effects deriving from some regional laws on tourism, and in particular with reference to the imposing of minimum stays at some categories of accommodation. Several regional laws prevent properties from being rented for less than one week; for residences, the rental period may not be less than three days.

The Authority found that similar legislative measures, by imposing limits on the use of accommodation, altered the competition in the tourist sector, leading to a restriction in the supply of tourist accommodation facilities (other than hotels), as well as a distortion of competition in favour of the latter. Indeed, in view of the minimum stay requirements imposed by law, the customer requesting shorter stays cannot be satisfied by other

operators in the tourist accommodation market by renting residences or apartments. Accordingly, the Authority called for a review of the regional laws in order to guarantee a truly competitive environment for the various categories of operator in the tourist accommodation sector and better satisfaction of the needs of final customers.

PUBLIC PROCUREMENT

Report on the selection criteria for businesses involved in the manufacturing of adhesive labels for pharmaceutical products

In November 2004 the Authority sent a report to the Ministry of Health on: *i)* the procedures for identifying suppliers of special purpose paper used to make adhesive labels for medicines distributed by the National Health Service (SSN); and *ii)* the choice of firms for the manufacture and printing of adhesive labels for pharmaceutical products. In particular, in order to prevent possible tax fraud or fraudulent practices detrimental to public health, the relevant legislation grants the exclusive right to supply labels to pharmaceutical companies to the State Printing Office, which can, for this purpose and under its own responsibility, use the services of external firms.

In its report, the Authority stressed that in the absence of any public procedures the direct award of contracts for the supply of special paper for the manufacturing of adhesive labels, as well as the selection of firms for their production, were incompatible with Community and national legislation on public tenders for supply contracts. The Authority added that public safety requirements are not in and of themselves sufficient to exclude the application of procedures compatible with competition rules, pointing out the necessity of adopting procedures, which, on the basis of an initial selection carried out by the State Printing Office, would envisage a second phases of competition among those companies that met all the objective requirements and were able to satisfy public safety needs.

Report on the identification of websites for the publication of calls for tenders

In February 2005 the Authority sent Parliament and the Government a report on the failure to adopt a ministerial decree aimed at identifying websites for the publication of calls for tenders by public administration. The Authority stressed that the failure to adopt that decree hindered transparent and user-friendly access to information on public tenders, preventing the establishment of a truly competitive environment in the sector. The situation was clearly detrimental both to firms, which were not put in the condition of being informed of all the existing opportunities, but also to purchasing parties which, due to a more limited participation in tenders, see their chances of procuring better services/products at lower prices diminished.