



International
Competition
Network

ANTI-CARTEL ENFORCEMENT TEMPLATE

CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques

ITALY

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ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

1. Information on the law relating to cartels

A. Law(s) covering cartels:	<p>Law no. 287 of October 10th, 1990 - The Competition and Fair Trading Act (link)</p> <p>Presidential Decree no. 217 of April 30th 1998 - Regulation on investigation procedures (procedural regulation) (link)</p> <p>Homepage address: www.agcm.it</p> <p>Languages: Italian, English</p>
B. Implementing regulation(s) (if any):	<p>Presidential Decree no. 217 of April 30th 1998 - Regulation on investigation procedures (procedural regulation) (link)</p> <p>Languages: Italian, English</p>
C. Interpretative guideline(s) (if any):	<p>Notice on Commitments (Delibera AGCM 6 settembre 2012, n. 23863 - Procedure di applicazione dell'articolo 14 ter della legge 10 ottobre 1990, n. 287) (link)</p> <p>Liniency Notice (Comunicazione sulla non imposizione e sulla riduzione delle sanzioni ai sensi dell'articolo 15 della legge 10 ottobre 1990, n. 287, come modificata dalla delibera n. 24219 del 31 gennaio 2013, pubblicata nel bollettino n. 11 del 25 marzo 2013 e dalla delibera n. 24506 del 31 luglio 2013, pubblicata nel bollettino n. 35 del 9 settembre 2013) (link)</p>
D. Other relevant materials (if any):	<p>Decisions (languages: Italian)</p> <p>Press release (languages: Italian and English)</p> <p>Annual report (languages: Italian and summary in English)</p> <p>Weekly Bulletin (languages: Italian)</p> <p>Informative booklet (languages: Italian and English)</p>

	<p>Working paper (languages: Italian) www.agcm.it</p> <p>Court decisions: www.giustizia-amministrativa.it (languages: Italian)</p>
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2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”?</p> <p>If not, please indicate the term you use instead.</p>	<p>Art. 2: "agreements and/or concerted practices between undertakings, and any decisions, even if adopted pursuant to their Articles or Bylaws, taken by consortia, associations of undertakings and other similar entities. Agreements are prohibited between undertakings which have as their object or effect appreciable prevention, restriction or distortion of competition within the national market or within a substantial part of it".</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas¹) and other types of “cartels”?</p>	<p>The Italian legislation, similarly to article 101 of the EU Treaty, does not distinguish expressly between very serious cartel behaviour and other types of cartel. In article 15, concerning fines, it states that: "in the most serious cases the Authority may decide, depending on the gravity and the duration of the infringement, to impose a fine up to ten per cent of the turnover of each undertaking or entity during the prior financial year".</p> <p>In the case law, price fixing, market sharing, bid rigging and production or sales quotas have always been considered very serious cartel behaviour.</p>
<p>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors.]</p>	<p>No exclusions, exceptions or defence to hardcore cartels prohibition.</p>
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>?</p>	<p>Yes</p>
<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p>	<p>It is an administrative offence.</p>

¹ In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

3. Investigating institution(s)

A. Name of the agency, which investigates cartels:	Italian Competition Authority
B. Contact details of the agency:	Autorità Garante della Concorrenza e del Mercato Piazza G. Verdi, 6/A, 00198 Roma - Italia Tel: +39.06.85.82.11 Fax: +39.06.85.82.12.56 e-mail: protocollo.agcm@pec.agcm.it
C. Information point for potential complainants:	See above
D. Contact point where complaints can be lodged:	The complaint may be filed to the certified e-mail address protocollo.agcm@pec.agcm.it
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	During on-site inspections, the Authority can ask for the cooperation of the Customs and Excise Police that can exercise its power provided for by tax legislation.

4. Decision-making institution(s)² [to be filled in only if this is different from the investigating agency]

A. Name of the agency making decisions in cartel cases:	
B. Contact details of the agency:	
C. Contact point for questions and consultations:	
D. Describe the role of the investigating agency in the process leading to	

² Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

the sanctioning of the cartel conduct.	
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	Investigations in cartel cases are generally initiated on the basis of a complaint, a leniency application or ex officio.
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?	The complaint shall be lodged in writing and not anonymously but no formal criteria are required. The complaint is free of charge.
C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]	No legal requirements for lodging a complaint.
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?	All complaints are acknowledged. All relevant complaints receive a written answer. The ICA has discretion in taking the decision on the opening of a formal proceeding.
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	If the ICA does not intend to pursue a complaint, it addresses a formal letter to the sender of the relevant complaint explaining its reasons.
F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?	No

6. Leniency policy³

A. What is the official name of your leniency policy (if any)?	Non-imposition and reduction of fines under section 15 of law no. 287 of 10 October 1990 (Non imposizione e riduzione delle sanzioni ai sensi dell'articolo 15 della legge 10 ottobre 1990, n. 287)
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	Yes
C. Who is eligible for full leniency?	Immunity from fines will be granted to the undertaking who is the first to submit voluntarily information or evidence, provided that in the opinion of the authority such information or evidence is decisive for the finding of an infringement, possibly through a targeted inspection, and the authority did not already have sufficient information or evidence to prove the alleged infringement (see par. 2 and 3 of the Leniency Programme)
D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation? In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?	Yes Yes
E. Who can be a beneficiary of the leniency program (individual / businesses)?	Undertakings only (not individuals as such)
F. What are the conditions of availability of full leniency:	Pursuant to par. 7 of the Leniency Program, the applicant must end its involvement in the alleged cartel immediately following its application save to the extent that its continued involvement would, in the authority's view, be reasonably necessary to

³ For the purposes of this template the notion of 'leniency' covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like 'leniency' 'amnesty' and 'immunity' are considered as synonyms.

	<p>preserve the integrity of the authority's inspections. Moreover, the applicant shall cooperate genuinely, fully and on a continuous basis from the time of its application with the authority until the conclusion of the case. Finally, the applicant has an obligation not to reveal (directly or indirectly) the fact or any of the content of its leniency application before the ICA has notified its objections to the parties.</p>
G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):	<p>Pursuant to par. 4 of the Leniency Programme, partial leniency is granted to undertakings which provide evidence that represents, in the ICA's view, significant added value, provided that the conditions laid down in par. 7 are satisfied (see answer to Q. F, above).</p> <p>The ICA will take into account the time at which the evidence was submitted (including whether the applicant was the first, second or third, etc.).</p> <p>The reduction of fines shall normally not exceed 50%, but it is not excluded that it may be higher. In addition, if an applicant for a reduction submits compelling evidence which the ICA uses to establish additional facts which have direct bearing on the amount of the fine, this will be taken into account when setting any fine to be imposed on that undertaking ("de facto" partial immunity).</p>
H. Obligations for the beneficiary after the leniency application has been accepted:	
I. Are there formal requirements to make a leniency application?	<p>It is required that the applicant provides an explicit application to benefit from immunity and/or a reduction of fines. Applications can be made both in writing or orally. Before making a formal application the applicant may approach on an anonymous basis the ICA to seek informal guidance on the application of the leniency program.</p>
J. Are there distinct procedural steps within the leniency program?	
K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?	<p>The ICA takes its final position on the grant of immunity at the end of the investigation. The ICA informs the undertaking in writing in case its immunity application is rejected, if the evidential threshold is not met. The ICA should deal with an application in a manner that ensures a high degree of legal certainty for the applicant.</p>
L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?	<p>Immunity and/or a reduction in fines are granted in the final decision on the case adopted by the Board of the ICA, upon proposal of the case-manager, pursuant to Art. 15 of the Competition Act (Law n. 287/1990).</p>

M. Does your legislation have a marker system? If yes, please describe it.	Yes. A marker protects the applicant's place in the queue for a given period of time and allows it to gather necessary information and evidence to qualify for immunity The ICA may decide in what situation to grant a marker: e.g. in certain types of situations or in every case. Where a marker is granted, the ICA determines the period (usually, 2-4 weeks) within which the applicant has to 'perfect' the marker, i.e. to submit the information and evidence required to meet the relevant evidential threshold for immunity.
N. Does the system provide for any extra credit⁴ for disclosing additional violations?	No
O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	Pursuant to par. 10bis of the Leniency Programme, access to the "corporate statements" (the oral or written declarations which contain the identity of the leniency applicants) is postponed until the statement of objections.
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	Yes. The final relevant decision of the ICA can be appealed before the Tribunale Amministrativo del Lazio (Regional Administrative Court of Latium). Second instance appeals can be brought before the Consiglio di Stato (the Supreme Administrative Court).
Q. Contact point where a leniency application can be lodged:	Autorità Garante della Concorrenza e del Mercato Piazza G. Verdi, 6/a 00198 Roma protocollo.agcm@pec.agcm.it fax no: +39 0685821.177 Informal guidance on the application of the leniency program can be sought at +39 06.85821.872
R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?	Leniency is granted conditionally by the ICA pursuant to par. 12 of the Leniency Programme and only confirmed/revoked at the end of the proceedings in the final decision. In particular, pursuant to par. 13 and 14 leniency can be revoked by the ICA, if the applicant does not comply with the conditions for immunity or reduction of fines laid down in par. 7 (see answer to Q. F, above).
S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?	No

⁴ Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

7. Investigative powers of the enforcing institution(s)⁵

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁶, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>Article 14.2 of the Competition Act provides that: "The Authority may, at any stage in the investigation, request undertakings, entities and individuals to supply any information in their possession and exhibit any documents (defined as any graphic, photographic or cinematographic, electro-magnetic or any other kind of representation of the contents of documents, including internal and unofficial documents, which have been produced and are used for the purposes of the undertaking's operations, independently of the level of responsibility or rank as representative of the undertaking of the author of the document, as well as any other document that is produced by or is stored on a computer medium) of relevance to the investigation; it may conduct inspections of the undertaking's books and records and make copies of them, availing itself of the cooperation of other government agencies where necessary; it may produce expert reports and economic and statistical analyses, and consult experts on any matter of relevance to the investigation." In the course of the investigations, the Authority may also employ the services of the Guardia di Finanza (Customs and Excise Police), that can exercise its power provided for by tax legislation. For the exercise of the Authority's investigative powers is not required any court warrant. However, the powers of investigation may be exercised by the Authority from the date on which notice is given on the opening of the investigation and may take place simultaneously with the notification.</p>
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	<p>Art. 10. 5 of Presidential Decree n. 217/98 (procedural regulation) provides that the officials charged to perform an inspection are vested with the following powers:</p> <ul style="list-style-type: none"> a) to demand access to all premises, land and vehicles of the party under inspection, excluding their place of residence or domicile which are extraneous to the operations of the undertaking which are being investigated; b) to check any document (as defined by the law) and to make copy of it; d) to request information and explanations to be given verbally. <p>The proceeding intended to ascertain an infringement to competition law has an administrative character and the Competition Authority, which is an administrative body, has not the power to require a court warrant for searching, raiding or inspecting private locations and persons.</p>
<p>C. May evidence not falling under the scope of the authorisation allowing</p>	<p>According to the Italian law, no court warrant is required for the investigative measures decided by the Competition Authority.</p>

⁵ "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

⁶ "Searches/raids" means all types of search, raid or inspection measures.

the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?	As regards the possibility of using evidence not falling under the scope of the inspection ordered, the Authority cannot use it as direct proof in another case, but may consider it as circumstantial evidence to evaluate the opening of a new investigation.
D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.	See 7/C

8. Procedural rights of businesses / individuals

A. Key rights of defence in cartel cases:	<p>The party and the undertakings concerned shall be notified of the Authority's resolution to initiate the investigation. (This act shall indicate the essential elements relating to alleged infringements, the deadline for completing the proceeding, the name of the person responsible for the proceeding, the office where the case files may be accessed, and the deadline within which the undertakings and other interested persons may exercise the right to make representations).</p> <p>The party on whom notice of commencement of the investigation has been given and persons representing public or private interests, and association representing consumers that might be directly, immediately and presently damaged by an infringement forming the subject matter of investigation or by any measures adopted as a result of it, may participate in the proceedings. The subjects taking part in the proceedings may:</p> <ul style="list-style-type: none"> i) produce submissions, documents, arguments and opinions; ii) have access to documents produced or permanently retained by the Authority in the course of the proceedings. <p>Those who have been notified of the opening of the investigation may make representations to the Authority. In the course of the hearings, the interested parties may be represented by their legal representative or by a person holding a special power of attorney for the purpose. They may also be assisted by consultants of their choice, even though this shall not entail the suspension of the hearing.</p> <p>The parties have the right to be notified of the date set for the closure of the investigation and its results, at least 30 days before the date.</p> <p>The parties may make written submissions and submit documents up to 5 days prior the date of closure of the investigation indicated in the notice.</p>
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	<p>The undertakings and entities concerned have the right to be questioned and to question, upon request, the Board, which may also hear other parties to the proceedings when they have submitted a reasoned request to be heard.</p>
<p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation?</p>	<p>There is no difference between business secrets on the basis of their way of collection. The Italian law makes difference between commercial secrets and personal, commercial industrial and financial information of a confidential nature.</p> <p>Relevant provisions in the subject of business secrets and access to the file:</p> <p>When the documents produced or permanently retained by the Authority in the course of the proceedings contain personal, commercial, industrial and financial information of a confidential nature relating to the individuals or to the undertakings involved in the proceedings, right of access is permitted, wholly or partly, to the extent that is strictly necessary to enable them to make representations in respect thereof.</p> <p>Access is not allowed to documents containing commercial secrets. Whenever these constitute evidence of the infringement of the law or contain essential information for the defence of the undertaking concerned, access may be granted to them but only in respect of such essential information for defence purposes.</p> <p>In these cases account shall be taken and all the necessary precautions taken to safeguard the interests of the individuals and the undertakings concerned against the divulgation of the confidential information or the commercial secrets in question.</p> <p>Any parties wishing to safeguard the confidentiality or secrecy of information supplied shall submit a specific request to this end to the offices, containing details of the documents or parts of the documents from which they consider access should be withheld, specifying the reasons for the request. Whenever the office deems that insufficient grounds exist in respect of confidentiality or secrecy to justify the request, it shall notify the party concerned in a reasoned opinion.</p> <p>When communications, notices, information, statements or requests are submitted individually or jointly by one or more undertakings, the information covered by company or industrial secrecy may be submitted separately in a schedule or annex. Similar precautions may also be requested by undertakings in respect of any joint hearings that may be held and of the minutes or records of such hearings.</p> <p>The office may, giving reasons therefore, defer access to the documents requested until it has been ascertained that they are relevant for the purposes of acquiring evidence of infringements, but not beyond the date of the service of notice of the results of the investigation.</p> <p>Right of access shall be exercised by submitting a reasoned request in writing, which the official responsible for the case shall act upon within 30 days, notifying the Board thereof.</p>

	The Board shall resolve on the procedures for exercising the right of access and on the costs of reproducing the documentation, the resolution for which shall be published in the bulletin.
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9. Limitation periods and deadlines

A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?	No limitation is provided by the law.
B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?	No specific deadline is established for the completion of an investigation or to make a decision in the merits. However, the Authority's decision to open an investigation shall indicate, among the essential elements, the deadline for completing the proceeding.
C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?	<p>As a general rule, the decision to open an investigation and the statement of objections can be challenged only when appealing the final decision, although in exceptional circumstances they could be appealed on grounds of lack of power.</p> <p>The deadline to challenge before the administrative court an Authority's decision concluding the proceeding is 60 days since the notification of such a decision.</p>

10. Types of decisions

A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.	<p>At the closure of the proceeding in cartel cases the Authority may adopt the following type of decision:</p> <p>a) may establish that the conduct investigated is lawful;</p> <p>b) when it finds that there is an infringement, it may prohibit the continuation of the conduct and set a deadline within which the undertakings and entities concerned are to remedy the infringements.</p> <p>c) in the most serious cases it may decide, depending on the gravity and the duration of the infringement, to impose a fine.</p>
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B. Please list which types of decisions on the merits of the case can be made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).	The same decisions listed in 10/A
C. Can interim measures⁷ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both⁸.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?	Pursuant to Section 14-bis of Law no. 287/90, in cases of urgency due to the risk of serious and irreparable damage to competition, the Authority, acting on its own initiative may order interim measures by decision, on the basis of a prima facie finding of infringement. Such a decision may not be renewed or extended.

11. Sanctions for procedural breaches (non-compliance with procedural obligations)⁹

A. Grounds for the imposition of procedural sanctions / fines:	The Authority may fine anyone who refuses or fails to provide the information or exhibit the documents requested without justification, in an amount up to 25.000 euro which is increased up to 50.000 euro in the event that they submit untruthful information or documents, in addition to any other penalties provided by current legislation
B. Type and nature of the sanction (civil, administrative, criminal, combined):	Administrative
C. On whom can procedural sanctions be imposed?	On the parties and other subjects (undertakings, entities and individuals) requested to supply information in their possession and exhibit documents of relevance to the investigation

⁷ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

⁸ Only for agencies which answered “yes” to question 2.C. above

⁹ In some jurisdictions non-compliance with procedural obligations (e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.) can be sanctioned.

D. Criteria for determining the sanction / fine:	No specific criteria is indicated by the law.
E. Are there maximum and / or minimum sanctions / fines?	See above 11/A

12. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined): On whom can sanctions be imposed?	Administrative Fines can be impose on every subject which can be qualified 'undertaking' according competition law (undertaking, associations of undertakings, companies, individuals, public bodies exercising an economic activity.)
B. Criteria for determining the sanction / fine:	The amount of the fine shall be established taking into account the gravity and the duration of the infringement.
C. Are there maximum and / or minimum sanctions / fines?	The maximum fine shall be 10% of the turnover of each undertaking or entity during the prior financial year. No minimum fine is provided by the law.
D. Guideline(s) on calculation of fines:	None. In its practice, however, the ICA relies on the European Commission's 2006 Fining Guidelines and the ECJ's case-law, as well as the Administrative Sanctions Act (Legge n. 689/1981).
E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?	It has no such effect. The suspension of a decision imposing a fine may be requested by the party at the same time the decision of the Competition Authority on the merits of the case is challenged before the administrative court. As criteria required for obtaining the suspension, the party has to demonstrate a serious and irreparable damage caused by the execution of the decision challenged during the time necessary for obtaining the definitive decision on the merits of the cause.

13. Possibilities of appeal

A. Does your law provide	
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<p>for an appeal from a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</p>	<p>Yes. The Italian law provides for an appeal from an Authority's decision which ascertains a violation of a prohibition of cartels. The Court may only survey defects concerning matter of law (legitimacy control) and cannot replace the Authority's evaluations on the merits of the case with its own. Full review is however admitted on the fines imposed by the ICA – i.e. the Court can annul, confirm, increase or decrease the fines imposed in the ICA's final decision.</p>
<p>B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]</p>	<p>Decisions taken by the Competition Authority may be appealed before the Tribunale Amministrativo del Lazio (Latium Regional Administrative Tribunal). Second instance appeals can be brought before the Consiglio di Stato (the Supreme Administrative Court).</p>