

AGCM Annual Report Summary for OECD Year 2023

Introduction and Executive Summary

This report covers the enforcement and advocacy activities performed in the past calendar year (1 January 2023 to 31 December 2023) by the Italian Competition Authority (hereinafter ‘the Authority’ or ‘the AGCM’), which is the agency responsible for enforcing competition law in Italy. Where appropriate, it also highlights significant policy developments up to April 2024.

In 2023, 20 formal proceedings were concluded: eight concerned restrictive agreements, seven abuses of dominant position, one merger requiring an in-depth assessment, one sector inquiry and three addressed other matters. In particular, the AGCM sanctioned three cartel cases and authorized three non-cartel agreements subject to conditions; it ascertained an abuse of dominance in one case imposing a sanction, while accepting commitments in three other abuse investigations and in one abuse of economic dependence probe. As for merger control, the Authority reviewed 77 operations, conducting an in-depth analysis in one case. On the advocacy front, the AGCM issued 63 opinions and recommendations and completed a market study on fuel distribution.

Throughout 2023, the AGCM launched five new proceedings for suspected breaches of article 101 TFEU, three of which stemmed from the Authority’s whistleblowing platform, ten new investigations pursuant to article 102 TFEU and one probe under the framework of abuse of economic dependence by digital platforms. The Authority also opened an inquiry on pricing algorithms for air passengers on routes to and from the main Italian islands.

The AGCM's enforcement and advocacy efforts were particularly concentrated in sectors vulnerable to inflation, such as **fuel distribution and energy**, which experienced significant cost structure increases. In the fuel distribution sector, the Authority uncovered a cartel on retail fuel prices and initiated an investigation into a suspected cartel among major oil companies regarding the "bio component" of automotive fuels. Furthermore, it conditionally approved a merger between two oil companies to prevent the establishment of a dominant position and potential issues in various markets. The AGCM also concluded a market study on significant price increases in the national automotive fuel market in 2023. In the energy sector, three investigations were launched into excessively high prices in the district heating sector.

In 2023, the AGCM continued to **monitor digital markets**, focusing on platforms’ practices in acquisition and sharing of user data with third parties. The Authority terminated an antitrust investigation by accepting commitments from Google aimed at facilitating user data exportation to third parties, thus favouring the launch of innovative data services. The AGCM also opened an article 102 TFEU investigation concerning Apple’s alleged discriminatory policy to obtain consent from users to third-party tracking. For the first time, the Authority applied the new provision on abuse of economic dependence in digital markets, by opening an investigation to ascertain whether Meta had exploited its superior bargaining position against SIAE, the main copyright collecting society. At the same time the AGCM sought interim measures by requiring Meta to resume the negotiations with SIAE, make again available SIAE protected music content on Meta platforms (Instagram and Facebook). On the policy front, an important development was the AGCM formal designation as the national competent authority responsible for assisting the European Commission in the implementation of the DMA.

In 2023, the Authority provided its contribution to the transition towards a more **sustainable economy** by initiating three investigations into abuses of dominant position, one of which focuses on the eco-friendly collection, recovery, and recycling of waste, activities essential for the development of a healthy circular economy. The other two ongoing investigations target emerging markets crucial for ecological transition, such as electric bicycles and the management of charging stations for electric

vehicles nationwide, addressing potential barriers to entry for new operators or the exclusion of existing ones. The Authority's experience has outlined that competition principles and sustainability goals are more closely aligned than actually perceived. Enhanced competition in sectors such as waste management and e-mobility can lead to more sustainable outcomes.

In 2023 the Authority continued **promoting competition principles** in the Italian legal and economic system and culture. Italy's Government and Parliament considered most of the Authority's proposals to enhance competition in key sectors in the context of the National Recovery and Resilience Plan, an EU-funded instrument aimed to help post-pandemic economic recovery of EU Member States. In particular, the AGCM's measures to attract new investments in the energy infrastructure, minimize the administrative costs, promote smart meters and align electromagnetic limits to EU standards have been approved in Law no. 214/2023.

In the course of 2023 the **toolbox** of the Authority has been further expanded. First, the AGCM has been designated as the national competent authority to cooperate with the European Commission for the implementation of the Digital Markets Act (DMA). Second, the Authority has been granted the power to impose structural and behavioural remedies to alleviate competition distortions identified in the course of market studies, absent any violations of competition law. On the merger front, the duration of the in-depth review period for concentrations has been extended from 45 to 90 calendar days, thus aligning the Italian legal framework to international standards. Furthermore, the Authority has already used its new power to call-in below-threshold mergers in some cases. An important policy development also took place in February 2023, with the introduction of an antitrust whistleblowing platform and an update to the merger notification procedures.

Finally, in order to increase **transparency and accountability of its activities** and measure its contribution to social welfare, in 2023 the Authority continued to carry out an assessment of the expected benefits that consumers derive from its antitrust and merger decisions, following an OECD methodology. Over the entire period under consideration (2015-2023), total consumer savings exceeded 8.4 € billion. Over the last three years, the annual savings for the national economy stemming from competition law enforcement amounted to an average of 1.1 €billion.

1. REGULATORY AND POLICY DEVELOPMENTS

One of the milestones envisaged by Italy's National Recovery and Resilience Plan (NRRP) for the year 2023 is the adoption of a law containing pro-competitive reforms, often referred to as the "annual law on competition"¹. This law is based on the recommendations submitted by the Authority in a specially prepared advocacy opinion².

The annual law on competition for the year 2023 (Law no. 214/2023) primarily focuses on the electricity sector, with a specific emphasis on modernizing its infrastructure and encouraging investments (see section 3.2.1). However, it also encompasses significant amendments to the Competition Act (Law No. 287/90). These amendments designate the AGCM as the national

¹ This provision predates the advent of the NRRP. Article 47(2) of Law 99/2009 states that "*the Government, acting on a proposal from the Minister for Economic Development [...] taking into account any recommendations submitted by the Authority [...] shall submit the annual bill on markets and competition to Parliament.*" Therefore, since 2010, the AGCM has submitted every year to the government a report including all its advocacy proposals. In 2021, this instrument was adopted as the main legislative vehicle for implementing pro-competitive reforms the Government committed to implement under the NRRP in order to obtain the EU funds.

² For a description of the reforms approved in the 2022 annual law on competition (Law no. 118/2022), see the [AGCM 2022 annual report](#).

competent authority for the implementation of the Digital Markets Act (DMA)³, and extend the duration of the in-depth review period for concentrations from 45 to 90 calendar days.

A legislative initiative (Law-decree no. 104/2023) granted new powers to the Authority to impose structural or behavioural measures as a result of market studies. Other important policy developments concern the introduction of an antitrust whistleblowing platform, a settlement procedure and a procedure to assess sustainability agreements in the agricultural sector; moreover, the AGCM has updated the merger notification template. The details of all these changes are described more fully below.

1.1. Cooperation in the implementation of the Digital Markets Act

Article 18 of the annual law on competition for the year 2023 (Law no. 214/2023) designates the AGCM as the national competent authority responsible for cooperating with the European Commission in the enforcement of the European Regulation 2022/1925 on contestable and fair markets in the digital sector, commonly known as the Digital Markets Act (DMA)⁴.

Article 18 of Law no. 214/2023 stipulates that the Authority, in carrying out the tasks assigned by the DMA, shall employ the same investigative and sanctioning powers provided by the Competition Act for national antitrust proceedings. Furthermore, the Authority shall adopt procedural notices to regulate the administrative proceedings related to the DMA.

Additionally, the same provision allows the AGCM to utilize the findings of DMA investigations to initiate subsequent proceedings for alleged abuses of a dominant position or abuses of economic dependence.

1.2. Changes to the AGCM powers when conducting market studies

Article 1, paragraph 5 of Decree-Law No. 104 of August 10, 2023, supplements and expands the powers of the AGCM in conducting market studies as outlined in Article 12, paragraph 2, of the Competition Act⁵. Specifically, if the Authority identifies competitive issues that hinder or distort the proper functioning of the market to the detriment of consumers as a result of a market study, it may impose structural or behavioural measures on the concerned undertakings. These measures aim to eliminate the identified distortions or recommend appropriate legislative/regulatory changes to improve the functioning of the markets.

The Authority is granted the same investigative (except for home inspections), decision-making, and sanctioning powers as set forth in the Competition Act for antitrust proceedings. This includes sanctions in case of non-compliance with the measures accepted or adopted by the Authority. Indeed, undertakings may submit commitments aimed at eliminating the competition issues identified in the findings of the AGCM market study.

This is a rather significant strengthening of the instrument of market studies which will be applied by the Authority with the utmost caution. In March 2023, the AGCM launched a public consultation on a proposed process and procedure for regulating the various stages, including the remedial phase.

³ European Regulation 2022/1925 on contestable and fair markets in the digital sector, commonly referred to as the Digital Markets Act (“DMA”).

⁴ Article 38 of the DMA outlines several mechanisms for cooperation and coordination between the European Commission and national competent authorities. These mechanisms aim to facilitate the implementation of the DMA and the enforcement of EU and domestic competition rules on the undertakings subject to the DMA regulation.

⁵ The so-called Asset Decree on “Urgent provisions to protect users, on economic and financial activities and strategic investments”, converted with amendments by Law No. 136 of October 9, 2023. The Asset Decree mandates the AGCM to apply these new fact-finding powers in the context of the domestic airline passenger sector in response to high price levels registered during the summer of 2023. See section 3.3.

This initiative follows the principles of transparency, predictability, fairness, and meaningful engagement.

1.3. The launch of a whistleblowing platform

In adherence to international best practices, the Authority launched an antitrust whistleblowing platform on its website in February 2023. This platform is designed to facilitate anonymous reporting of suspected competition violations, particularly those related to cartels, by anyone with pertinent information. The tool is especially intended for individuals who possess privileged information about antitrust infringements due to their work and for whom anonymity is a crucial prerequisite for reporting such information.

Information regarding cartel formation may originate not only from employees within the accused company but also from competitors, suppliers, or buyers of the cartel participants. The need for anonymity may also extend to these individuals, who wish to protect existing relationships and avoid potential commercial retaliation.

A key feature of the platform is the provision for confidential interaction between the whistleblower and the Authority. This is ensured through an encrypted portal that allows messages to be sent and received without revealing the whistleblower's identity, thereby maintaining complete anonymity.⁶

During the initial 10 months of operation, the platform received 118 anonymous reports, a significant number of which were subject to subsequent preliminary investigations. The tool has proven effective in combating cartels, prompting consideration of whether it might become more prevalent than leniency programs in contexts where a culture of competition is less prevalent. Additionally, the tool has demonstrated its utility in assessing other practices pertinent to competition and consumer protection.

To provide a more detailed breakdown, out of the 118 reports, 3 led to investigation proceedings for suspected violations of Article 101 of the TFEU. Additionally, 5 reports provided additional evidence to ongoing investigations, and numerous others triggered comprehensive investigations to scrutinize potential abuses of dominant positions, economic dependencies, sub-threshold concentration operations causing competition concerns, and alleged breaches of the Consumer Code.

Furthermore, the Authority engaged in anonymous interactions with complainants on several occasions, gathering crucial information for the examination of reported conduct.

Following the transposition of the EU Whistleblowing Directive⁷, Italy's Anti-corruption Authority (ANAC) approved its own Guidelines envisaging specific mutual transmission obligations between the AGCM and ANAC for whistleblowing reports falling outside their competences, in order to enhance the efficiency of their respective platforms and strengthen enforcement against reported violations.

1.4. Changes to the merger review system

Another novelty introduced by the annual law on competition for year 2023 (Law no. 214/2023) affects merger control. Article 17 extends the so-called Phase II period for reviewing a concentration from 45 to 90 calendar days, thus aligning the Italian legal framework to international standards. The

⁶ To submit an anonymous report, visitors to the Authority's website can easily navigate to the dedicated antitrust whistleblowing page and complete a form detailing the parties involved, the location, and the alleged unlawful conduct. The system also enables the attachment of relevant files and documents. Upon submission of the complaint, an identifier is generated, allowing the whistleblower to reconnect to the system, receive communications from the Authority, and transmit additional elements or information, all while preserving their anonymity.

⁷ Legislative Decree No. 24 was enacted on March 10th, focusing on the implementation of [Directive \(EU\) 2019/1937](#) of the European Parliament and Council (dated October 23, 2019) concerning the protection of individuals reporting violations of Union law and national regulations.

extended period will facilitate a more thorough assessment of the transaction as well as a greater extent for the exercise of the rights of defence by the parties.

In March 2024, the AGCM released a new merger notification form⁸ which has been updated to account for several legislative changes introduced in 2022⁹, and in particular a review mechanism for below-thresholds mergers, as well as the Authority's recent internal practice. The new form will be in use starting from May 1, 2024.

Among the most significant updates, the distinction between extended and simplified forms has been eliminated, making way for a single, comprehensive notification form. Regarding the definition of affected markets, a new category has been introduced to capture the innovative efforts of the parties to account for the notification of below-threshold concentrations. The new form features sections dedicated to efficiency claims and the cooperative effects of joint ventures. Moreover, it explicitly requires merging parties to provide internal documents to substantiate their statements. Information on the impact of potential competitors, new entrants, innovators, and R&D activities must also be included. The theme of common ownership is also addressed in the new form. For each shareholder of the parties whose share exceeds 10%, a list of additional stakes held in companies operating in the affected markets is required.

Another significant policy development involves the AGCM's update of procedural aspects for reviewing mergers falling below certain thresholds, as outlined in its January 2023 Notice and revisited in February 2024¹⁰. The revisions focus on several key areas:

- Implementation of a deadline for voluntarily informing the AGCM about a potential candidate concentration for review. This deadline is set at two months following the completion of the deal, providing the Authority with an additional four months to decide on whether to initiate a review.
- Provision for parties to request an extension of the 30-day deadline for notifying the Authority of a concentration, following the AGCM's decision to initiate a review.
- Introduction of stricter requirements for parties intending to voluntarily notify concentrations, aimed at preventing unnecessary notifications. The updated Notice necessitates parties to thoroughly justify and provide full explanations for their belief that there are *prima facie* tangible risks to competition in the Italian market (or a relevant segment thereof).

1.5. Introduction of a settlement procedure

The annual law on competition for year 2022 (Law no. 118/2022) had introduced a **settlement procedure** under the new article 14-*quarter* of the Competition Act, which can be used in the application of EU and national rules concerning cartels, other anticompetitive agreements and abuses of dominant position.

⁸ The new form is available at the following link:

https://www.agcm.it/dotcmsdoc/formulario/p31089_Comunicazione_operazioni_concentrazione.pdf

⁹ Article 32 of Law n. 118/2022 amended Article 16 of the Competition Act by introducing, in a new paragraph (1-bis), a regime for reviewing transactions falling below the applicable thresholds. Important changes introduced by Law no. 118/2022 concern the substantive assessment of mergers and align the national framework to the EU Merger Regulation (EUMR). First, the dominance test has been replaced by the so-called SIEC test ("significant impediment to effective competition"), as set out in the EUMR. Second, all full-function joint ventures will be subject to merger control rules, regardless of their 'concentrative' and 'cooperative' nature. Third, efficiency gains as a factor to consider that might offset the anti-competitive effects of a merger is now explicitly mentioned in the Competition Act. Finally, the calculation of the turnover of credit and other financial institutions for merger control purposes have been aligned to the ones set out in the EUMR.

¹⁰ AGCM Resolution No. 31090 of 27 February 2024 – "[Communication on the application of Article 16\(1-bis\) of Law No. 287 of 10 October 1990](#)".

In May 2023, the AGCM published a notice laying out the implementing rules and the extent of the fine reduction in the event of successful conclusion of a settlement procedure¹¹.

After the opening of a formal investigation (and the expiration of the terms for submitting commitments), the Authority may set a 15-day deadline within which the undertakings under scrutiny may express their willingness to participate in discussions in order to settle with the AGCM¹².

In the event of a successful outcome of such discussions, the Authority may set a deadline of no less than 15 days within which the undertakings concerned may commit to enter into the settlement procedure by submitting settlement proposals. The Authority may decide at any time to discontinue settlement discussions altogether, with regard to one or more specific parties, if it considers that the effectiveness of the procedure is otherwise undermined. The Authority is not obliged to consider settlement proposals received after the expiry of the deadline.

Parties seeking to settle proceedings must provide a settlement proposal that meets some minimum content requirements¹³. Once submitted, the settlement proposal is irrevocable by the parties.

The AGCM will not explore the parties' interest in launching settlement discussions before the expiry of the 3-month deadline after the opening of proceedings during which the parties can propose commitments aimed at alleviating the competition concerns identified in the decision opening the investigation.

Upon receiving the settlement proposal, the Authority issues its statement of preliminary findings. If the statement aligns with the content of the settlement proposal, the parties merely acknowledge in writing the correspondence between their proposal and the statement, reaffirming their commitment to the settlement procedure. Subsequently, the AGCM can finalize its decision, and the proceeding will conclude without additional procedural steps.

In the event of a successful settlement proceeding, the Authority may reduce fines by 20% for all antitrust cases and by 10% for secret cartels, without prejudicing further reductions outlined in the leniency programs.

However, notwithstanding the settlement proposal, the AGCM retains the discretion to issue a communication of preliminary findings or a final decision that diverges from the submitted settlement proposal. In such instances, standard procedural rules will apply, and any admissions made by the parties in the settlement proposal will be considered withdrawn, ensuring compliance with their procedural rights of defence, and may not be utilized as evidence against any party involved in the proceedings.

1.6. Introduction of a procedure for assessing sustainability agreements in the agriculture sector

¹¹ See AGCM decision no. 30629, 16 May 2023 "[Comunicazione relativa all'applicazione dell'articolo 14-quater della legge 10 ottobre 1990, n. 287](#)"

¹² The Authority may inform these interested parties about: i) the allegations it intends to raise against them and the evidence used to support the allegations; ii) a non-confidential version of any accessible document within the case-file, in order to enable the investigated party to ascertain its position regarding a particular period of time or any other particular aspect of the alleged infringement; iii) the range of the fine potentially being imposed. Such information shall not be disclosed to third parties, unless the AGCM has explicitly authorized its disclosure.

¹³ Including: i) an unequivocal acknowledgment of the parties' responsibility for the infringement; ii) a specified maximum amount of the fine that the parties anticipate and are willing to accept within the settlement procedure; iii) confirmation by the parties of being adequately informed of the objections raised by the AGCM and having had sufficient opportunity to present their perspectives; iv) a waiver of the parties' rights to access the proceeding's file, submit pleadings, and request a hearing.

In December 2023, the European Commission adopted guidelines¹⁴ on how to design sustainability agreements in the field of agriculture using a novel exclusion from EU competition rules introduced by the recently reformed Common Agricultural Policy¹⁵, in a new provision of the Regulation concerning the common organization of agricultural markets (Article 210a of the CMO Regulation)¹⁶. This new provision excludes the application of Article 101 TFEU to agreements that are indispensable to achieve sustainability objectives in this sector of the economy: this provision states that agreements aimed at achieving a set of sustainability objectives by applying standards higher than what is mandatory under EU and/or national laws are allowed, provided that any restrictions of competition that result from such agreements are indispensable for the achievement of those objectives.

Pursuant to Article 210a (7) of the CMO Regulation, the national competition authority has the possibility to scrutinise ex post sustainability agreements with national relevance where there is a risk that their implementation leads to (i) the exclusion of competition from the market or (ii) to the undermining of the objectives of the Common Agricultural Policy (as set out in Art. 39 of the TFEU). Moreover, the national competition authority has the power to order the interruption of the agreement or indicate the measures necessary to remedy it; only subsequently, in the event of repeated continuation of the agreement, can the Authority open an investigation for breach of the rules protecting competition.

In April 2023, the AGCM published its procedural rules¹⁷ to implement Art. 201a (7) of the CMO Regulation by adopting the procedural rules and safeguards which mirror those for antitrust investigations¹⁸. If the AGCM finds that competition is being excluded or the objectives of Article 39(1) TFEU are at risk, it may take the following actions:

- (a) If a sustainability agreement has been made but not yet implemented and cannot be adjusted to comply with the exclusion criteria in Article 210a, the Authority may issue a decision preventing the implementation of the agreement.
- (b) If the sustainability agreement has already been put into effect, the Authority may require the parties to either: (i) amend the agreement if such changes would adequately address the competition exclusion or the undermining of the objectives of Article 39(1) TFEU; or (ii) terminate or rescind the agreement if amendments would not sufficiently remedy these issues.

¹⁴ See [Commission guidelines on the exclusion from Article 101 of the Treaty on the Functioning of the European Union for sustainability agreements of agricultural producers pursuant to Article 210a of Regulation \(EU\) No 1308/2013, \(C/2023/1446\)](#).

¹⁵ The new exclusion is contained in Regulation 2021/2117.

¹⁶ See [Regulation \(EU\) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations \(EEC\) No 922/72, \(EEC\) No 234/79, \(EC\) No 1037/2001 and \(EC\) No 1234/2007](#).

¹⁷ See the AGCM notice "[COMUNICAZIONE RELATIVA ALL'APPLICAZIONE DELL'ARTICOLO 210 BIS, PARAGRAFO 7, DEL REGOLAMENTO \(UE\) N. 1308/2013 IN MATERIA DI ACCORDI DI SOSTENIBILITÀ DEI PRODUTTORI AGRICOLI](#)", published on the AGCM Bulletin no. 14/2024.

¹⁸ In deciding whether to apply Article 210a (7), the Authority may act ex-officio or rely on submissions from any individual or entity with information about the alleged sustainability agreement under Article 210a. After a preliminary analysis, when further information can be acquired, the Authority may decide to open formal proceedings where one of the two conditions set out in Article 210a(7) of the Regulation is presumed to be met: in this event, the Authority shall notify the undertakings and entities concerned of the opening of the investigation and shall inform the European Commission. In the course of the formal investigation, the Authority may at any time request undertakings and entities in its possession to provide information and produce useful documents within a reasonable time limit indicated in the request. At the end of the fact-finding activity, the Authority shall send the statement of objections to the parties, indicating a deadline for the closing of the investigation, at least twenty days before the latter expires. The Parties may submit written pleadings and documents up to five days before the time limit for the closing of the investigation set forth in the statement of objections. The Parties are free to continue implementing the sustainability agreement between the opening of the investigation and the issuance of a final decision.

In case of alleged non-compliance with the above decisions, the Authority may open an investigation to ascertain the implementation of the sustainability agreement after that date. Such proceedings may result in the imposition of a fine.

2. ENFORCEMENT OF COMPETITION LAWS AND POLICIES

2.1 *Action against anti-competitive practices, including agreements and abuse of dominant position*

2.1.1 *Summary of activities*

During 2023, 20 formal proceedings were concluded: eight concerned restrictive agreements, seven abuses of dominant position, one merger requiring an in-depth assessment, one sector inquiry and three addressed other matters such as redetermination of the pecuniary sanctions and non-compliance with merger information requirements (see tables 1 and 2).

Table 1 - Activity of the Authority in 2023	2023
Anti-competitive agreements (incl. cartels)	8
Abuses of dominant position	7
Merger operations examined (in phase two)	1
Procedural infringements in merger review	2
Redetermination of sanctions	1
Sector inquiry	1
TOTAL	20

Table 2 - Proceedings concluded in 2023, divided by type and outcome

	Non-infringement of the law	Infringement of the law, acceptance of commitments, revision of commitments	No jurisdiction or inapplicability of the law	Total
Anti-competitive agreements (incl. cartels)	2	6	-	8
Abuse of dominant position	2	5	-	7
	Clearance	Prohibition, authorisation subject to remedies	No jurisdiction or inapplicability of the law, revision of remedies	Total
Concentrations of independent undertakings	69	1	7	77

In 2023, the Council of State (the Supreme Administrative Court) fully upheld on the merits 1 out of 4 Authority's decisions and confirmed the other 3 while the TAR Lazio (Administrative Court of First Instance) confirmed 5 of 8 decisions on the merits.

Anti-competitive agreements including cartels

In 2023, the AGCM closed five cartel investigations, finding infringement and imposing fines in three cases for an overall amount of 12.8 € million, while terminating the proceedings in the remaining cases for insufficient evidence gathered. As for non-cartel conduct, the AGCM closed two investigations accepting commitments and concluded another one in which commitments previously imposed were revised on request of the parties. These cartel and non-cartel agreements concerned sectors such as pay-TV services, ship maintenance and sports. For more information on some of the above cases see section 2.1.2 below.

During 2023, the AGCM launched five additional proceedings for suspected breaches of article 101 TFEU, three of which prompted by reports filed to the Authority's whistleblowing platform. These concern cases regarding biofuel pricing for motor vehicles (I864)¹⁹, agreements between foundries (I866)²⁰, and one related to price increases for hollow glass (I867)²¹.

Abuse of dominant position

In 2023, the AGCM closed seven investigations, issuing an infringement decision in one case, accepting commitments in three cases, dismissing two cases for lack of sufficient evidence and verifying compliance with prior commitments in another case. The infringement decision²² concerns the intersection between competition law and intellectual property law: the ACM sanctioned for over €15 million the exclusionary conduct implemented by Roxtec with the intention of preventing or restricting competitors, particularly Wallmax, from producing and selling modular cable/pipe sealing systems. One of the commitment decisions concerns data portability rights of users of Google services: the AGCM intervention led to the implementation by Google of an automated procedure to allow users to more easily export data towards third-party operators. These cases are further discussed in section 2.1.3 below.

In 2023, the AGCM launched ten new investigations into abuse of dominant position. In one case²³, the investigation concerns an alleged abuse of dominant position by Apple regarding the apparently discriminatory methods of obtaining user consent for tracking their browsing data for privacy purposes. Specifically, Apple seems to emphasize the possibility of refusing consent for tracking of user data only for third-party apps, not developed directly by Apple. This emphasis potentially disadvantages app developers or social networks that finance their activities through data collection

¹⁹ See AGCM case no. [I864 - PREZZO DEL BIOCARBURANTE PER AUTOTRAZIONE](#), opening decision no. 30705 of 11/07/2023, published in the AGCM Bulletin no. 28/2023. The investigation is about an alleged price coordination among the main oil operators (ENI, Esso, Saras, Kuwait, Tamoil, Repsol, IP and Iplom), which led to simultaneous price increases in relation to a component of the retail price of automotive fuel (bio-component cost).

²⁰ See AGCM case no. [I866 - ACCORDI TRA FONDERIE](#), opening decision no. 30773 of 12/09/2023, published in the AGCM Bulletin no. 37/2023. The investigation is about an alleged cartel of seven foundries for having coordinated their list price increases of cast iron to their customers over the same period of time.

²¹ See AGCM case no. [I867 - AUMENTI DEI PREZZI DEL VETRO CAVO](#), opening decision no. 30847 of 31/10/2023, published in the AGCM Bulletin no. 43/2023. The proceedings are aimed at verifying whether simultaneous and similar increases of price lists of wine glass bottles are the result of a horizontal agreement and/or other form of coordination among the parties involved. In this case, the AGCM received also two non-anonymous complaints.

²² See case No. A524 in section 2.1.3 below.

²³ See AGCM case no. [A561 - APP TRACKING TRANSPARENCY DI APPLE](#), opening decision no. 30620 of 02/05/2023 and published in the AGCM Bulletin no. 18/2023.

for advertising purposes. In another case²⁴, the AGCM initiated an investigation against Enel group companies active in the e-mobility sector. The proceedings focus on an alleged margin squeeze conduct against not vertically integrated operators active in providing electric recharging services to end customers. Another investigation in the mobility sector concerns the alleged refusal of interoperability by the e-bike producer Bosch between its drive systems and the Anti-lock Braking System (ABS) for e-bikes produced by other competitors²⁵. In the air transport sector, the Authority launched an investigation against the main air carrier Ryanair²⁶. The investigation addresses the alleged attempt to extend its market power also to the offer of other tourist services. This extension potentially disadvantages travel agencies and customers who use them to purchase these services.

Three investigations for excessively high prices were opened in the heating sector. These investigations were initiated due to tariff increases that do not appear to be prima facie justifiable by increases in the cost of raw materials²⁷²⁸²⁹. Finally, in 2023, the AGCM launched two Art. 102 investigations addressing competition in the organization of sports events for non-professional athletes³⁰.

Other legislations: abuse of economic dependence

The AGCM is competent to apply the abuse of economic dependence legislation (Art. 9, para 3-bis, of Law 192/1998) when an abuse is relevant for the protection of competition in the market³¹. In 2023, the Authority closed one investigation with commitments aimed at restoring balance in the contractual relationships between the clothing company Benetton and its franchisees (see section 2.1.3).

Law n. 118/2022 amended the provision on abuse of economic dependence to account for the intermediation power of digital platforms. A **rebuttable presumption of economic dependence** is now in place for those operators dealing with digital platforms offering intermediation services when the latter represents a key gateway in reaching end users and/or suppliers³².

²⁴ See AGCM case no. [A557 - ENEL X WAY ED EWIVA/CONDOTTE ABUSIVE NEL MERCATO DEI SERVIZI DI RICARICA ELETTRICA](#), opening decision no. 30576 of 04/04/2023 and published in the AGCM Bulletin no. 15/2023.

²⁵ See AGCM case no. [A567 - MERCATO DEGLI ABS NELLE E-BIKE](#), opening decision no. 30765 of 05/09/2023 and published in the AGCM Bulletin no. 35/2023

²⁶ See AGCM case no. [A568 - AGENZIE DI VIAGGIO/PRENOTAZIONI VOLI RYANAIR](#), opening decision no. 30772 of 14/09/2023 and published in the AGCM Bulletin no. 36/2023

²⁷ See AGCM case no. [A563 - IREN/PREZZO DEL TELERISCALDAMENTO](#) opening decision no. 30646 of 23/05/2023 and published in the AGCM Bulletin no. 24/2023.

²⁸ See AGCM case no. [A564 - HERA/PREZZO DEL TELERISCALDAMENTO](#) opening decision no. 30679 of 28/06/2023 and published in the AGCM Bulletin no. 27/2023

²⁹ See AGCM case no. [A565 - A2A/PREZZO DEL TELERISCALDAMENTO](#) opening decision no. 30659 of 13/06/2023 and published in the AGCM Bulletin no. 24/2023.

³⁰ See AGCM cases no. A562 and A570 described in Box 1 of the [AGCM contribution](#) to the 2023 OECD Roundtable on Competition and Sports.

³¹ Under Article 9 of Italian Law n. 192/1998 (a discipline on subcontracting), economic dependence exists where a company can impose an “excessive imbalance of rights and obligations” in its commercial relationship with another company, taking into account “the effective possibility for the party suffering the abuse to find satisfactory alternatives on the market”. In 2001 the AGCM to apply the power to apply Art. 9 provisions to situations “in which the Authority itself finds that an abuse of economic dependence has relevance to the protection of competition and the market” (Art. 9, para 3-bis, of Law 192/1998). Since then, the Authority has enforced this legislation only those limited cases where the abuse of economic dependence is capable of excluding a competitor from the market, whether through arbitrary termination of contractual relations or the imposition of unfair contractual terms.

³² Furthermore, the amendments include a list of non-exhaustive abusive conducts such as: providing insufficient information or data regarding the scope or quality of the service provided; demanding undue unilateral benefits not justified by the nature or content of the activity performed; and adopting practices that inhibit or hinder the use of different providers for the same service, including through the application of unilateral conditions or additional costs not provided for in existing contractual agreements or licenses.

In 2023, for the first time the AGCM applied the newly amended provision by opening an investigation against Meta³³. The investigation addresses the alleged abuse of the economic dependence of the Italian Authors' and Publishers' Association (SIAE), which is the main copyright collective management organization. Meta interrupted the negotiations for renovating the expired contract with SIAE and removed from its platforms all musical content of artists represented by SIAE, thus preventing its use by consumers. According to the Authority, Meta could have exploited its bargaining advantages by requesting SIAE to accept an unfair economic offer without providing to SIAE the relevant information to assess the economic fairness of the offer.

By imposing interim measures, for the first time in the context of an abuse of economic dependence, the Authority ordered Meta to:

- Immediately resume negotiations with SIAE in good faith and fairness. This action aims to ensure protected music content would be made available on Meta's platforms, such as Facebook and Instagram, in a timely manner and for as long as necessary for the conclusion of negotiations.
- Provide SIAE all the information needed to restore a more balanced commercial relationship with Meta. This provision envisages a third-party independent trustee to resolve any dispute between the two parties³⁴.

The main investigation, focusing on whether Meta allegedly exploited its bargaining advantages by requesting SIAE to accept an unfair economic offer without providing the relevant information to assess the offer's economic fairness, is still ongoing.

2.1.2 Description of significant cases regarding anticompetitive agreements and concerted practices

Case No. I857 – Agreement TIM-DAZN football league 2021/2024³⁵

In June 2023, the Authority imposed a sanction of almost 1 €million on TIM S.p.A. and over 7 € million on DAZN Limited and DAZN Media Services S.r.l. (collectively referred to as DAZN) for breaching Article 101 TFUE. This infringement related to certain clauses in their distribution and technological support agreement (Deal Memo Distribution).

The AGCM considered the following relevant markets: (i) the market for pay-TV services (pay-TV market); (ii) the wholesale market for access to fixed broadband and ultra-wideband networks; and (iii) the retail market for telecommunications services over fixed broadband and ultra-wideband networks. All of these markets had a national geographic scope.

The Authority found that the clauses contained in the "Deal Memo Distribution" were likely to have a detrimental effect on the competitive dynamics taking place in the markets concerned. The agreement between TIM and DAZN related to the broadcasting of Serie A football matches for 2021-2024. The agreement provided for exclusivity in favour of Tim and the prohibition for DAZN to engage in partnerships with TIM's competitors. The Authority stated that the agreement was suitable

³³ See AGCM case no. [A559 – META/SIAE](#) opening decision number 30570 of 04/04/2023 and published in the AGCM Bulletin no. 14/2023.

³⁴ Meta appealed the Authority's interim measures. The Court of First Instance (TAR Lazio) confirmed the AGCM's intervention, highlighting that the negotiations for the renewal of the agreements would have suffered an impasse that would have caused serious harm not only to SIAE which, in addition to economic loss, would have risked losing authors to other collective managers, but also to the artists it protects, who would not have been able to disseminate their content to users of the social networks owned by Meta.

³⁵ See AGCM case no. [I587 – ACCORDO TIM-DAZN SERIE A 2021/2024](#), infringement decision no. 30699 published on the AGCM Bulletin no 27/2023.

to affect competition in the telecommunications sector, in the markets for connectivity services and the retail sale of pay-TV services, insofar as TIM could market a bundled, non-replicable offer comprising the contents held by TIM and DAZN and the connectivity service..

The Authority observed that the anti-competitive effects of the contested contractual provisions were "neutralized" as a result of the voluntary measures adopted by the Parties. These measures replaced the original agreement with a new contract (Distribution Agreement). The revised Agreement eliminated exclusivity between TIM and DAZN and enabled all communication providers to establish partnerships with DAZN.

Consequently, the AGCM determined that TIM and DAZN had engaged in anti-competitive behaviour by implementing an agreement that temporarily restricted competition, thus infringing Article 101(1) TFUE.

*Case No. 1847 – Bid-rigging cartel in the supply of ships maintenance services*³⁶

In July 2023, the AGCM ascertained a bid-rigging cartel affecting a set of public tenders launched in 2018 for the supply to the Italian Navy of maintenance services for ships stationed in its base in Taranto and a wide range of services for the administration itself. The Authority imposed an overall sanction of about 500 €thousand on 14 parties.

The collusive strategy involved an agreement between competitors on market allocation for the award of the different tenders for services of interest to the Italian Navy during 2018. To create the appearance of a real competitive bidding process, companies coordinated their respective participation strategies in the tenders. This cartel involved the development of cross-bidding schemes, submission of token bids, and abstention from bidding altogether. The artificial adjudication of tenders between the cartelists was facilitated by the formation of temporary associations of undertakings, which, while legally permissible, were utilized for anti-competitive purposes. Consequently, the AGCM determined that this agreement hindered competition and infringed Article 101(1) TFUE.

*Case No. 1861 – Excessive restrictions of sporting contracts in volleyball*³⁷

In May 2023, the AGCM accepted and made binding the commitments presented by the Italian Federation Volleyball (Federazione Italiana Pallavolo – FIPAV) within the relevant market of events organised by sports clubs and associations for non-professional athletes active in the volleyball, beach volleyball, and sitting volleyball sports.

The Authority identified competition concerns related to certain provisions within the Federal Statute. These provisions contained excessive and unjustified limitation of the transfer rules of non-professional athletes among clubs or sports associations under FIPAV, often referred to "sport bonds", imposing long affiliation periods for athletes (up to 10 years). The Authority deemed these restrictions on transfer rules as potentially detrimental to athletes' freedom and overall competition among clubs and associations in attracting them.

To prevent potential anticompetitive concerns, the commitments accepted by the Authority require amending the Federal Statute in order to eliminate multi-year sports bonds and replace them with "memberships" lasting for the duration of the sporting year (1 July - 30 June). Through these

³⁶ See AGCM case no. [1847 – GARE D'APPALTO DELL'ARSENALE MARINA MILITARE DI TARANTO](#), infringement decision no.30740 published on the AGCM Bulletin no 31/2023.

³⁷ See AGCM case no. [1861 – FEDERAZIONE ITALIANA PALLAVOLO – VINCOLO SPORTIVO](#), commitment decision no 30676 published on the AGCM Bulletin no 26/2023.

measures, the AGCM sought to address competition concerns while fostering fair and equitable conditions for athletes and sports entities within the volleyball sector³⁸.

2.1.3 Description of significant cases regarding abuse of dominant position and abuse of economic dependence

*Case No. A538 – Multi-metre sealing systems for cables and pipes (Roxtec)*³⁹

In July 2023, the AGCM imposed a sanction of over 15 €million on Roxtec AB and Roxtec Italia S.r.l. for violating Article 102 TFUE. The relevant market in question involves the manufacturing and sale of modular cable/pipe sealant systems. The investigation revealed an exclusionary conduct implemented by Roxtec with the intention of preventing or restricting competitors, particularly Wallmax, from producing and selling modular cable/pipe sealing systems.

Roxtec had patented its technology in 1990, although the patent's coverage expired in 2010. The investigation found that the company held around 80% of the European market from 2014 to 2021. The AGCM determined that Roxtec had implemented a complex strategy aimed at hindering the activities of Wallmax, the main competitor capable of challenging Roxtec's dominant position.

The strategy included various interconnected actions, such as pursuing trademark registrations to safeguard its technology post-patent expiration, initiating legal proceedings against Wallmax for alleged unfair competition and trademark infringements, and disseminating biased or inaccurate information to discredit Wallmax in the eyes of customers.

*Case No. A552 – Google's data portability restrictions*⁴⁰

In July 2023, the AGCM concluded an investigation into an alleged abuse of dominant position by Alphabet Inc., Google LLC, Google Ireland Limited, and Google Italy S.r.l. (collectively referred to as Google). The Authority made the proposed commitments binding, effectively closing the investigation.

The initial investigation focused on Google's refusal to grant interoperability to other platforms, particularly with the Weople App managed by Hoda. The latter highlighted that the only service available to users for requesting and obtaining a copy of their personal data, called Takeout, was extremely complex. This complexity allegedly prevented users from exercising their right of data portability established by Article 20(2) of the GDPR, stifling competition and limiting alternative operators' ability to innovate in personal data usage like Hoda's new services via the Weople app: by signing up, users authorize Hoda, in accordance with Article 20 of the GDPR, to collect, process, and monetize on personal data on their behalf to businesses for client targeting, data collection, and other purposes. The alleged abusive conduct by Google involved obstacles to interoperability in data sharing with other platforms, thus impeding the development of a new market.

To address the alleged anticompetitive restrictions under investigation, Google submitted a package of three commitments. Two of these commitments proposed supplementary solutions to Takeout, aiming to facilitate the export of data to third-party operators. The third commitment offered authorized third-party operators the opportunity to test a new solution in development, allowing direct

³⁸ For more information on the AGCM's intervention on athletes' transfer rules and in the sports sector more generally, see the [AGCM contribution](#) to the 2023 OECD Roundtable on Competition and Sports.

³⁹ See AGCM case no. [A538 – SISTEMI DI SIGILLATURA MULTIDIAMETRO PER CAVIE TUBI](#), infringement decision no. 30737 published on the AGCM Bulletin no. 31/2023.

⁴⁰ See AGCM case no. [A552 – GOOGLE-OSTACOLI ALLA PORTABILITA' DEI DATI](#), commitment decision no 30736 published on the AGCM Bulletin no 29/2023.

data portability from service to service without involving an intermediary, as requested by end-users. These commitments seek to mitigate the anticompetitive effects identified during the investigation while fostering a more competitive and innovative environment within the data market.

Case No. A543 – Contractual clauses imposed by Benetton on its franchisees⁴¹

In January 2023, the AGCM concluded formal proceedings against Benetton S.r.l and Benetton Group S.r.l. (collectively referred to as Benetton) by accepting their commitments. The investigation aimed to ascertain a potential abuse of economic dependence against one of its franchisees pursuant to Art. 9, para 3-bis, of Law 192/1998 (see section 2.1.1.).

When opening the investigation, the AGCM alleged that Benetton had adopted an abusive conduct facilitated by contractual clauses which granted the franchisor excessive discretion in managing business relations, potentially undermining the franchisees' entrepreneurial autonomy. These clauses included discretionary management of product volumes destined for the outlet, complex ordering mechanisms, automatic merchandise assortment operations. The contract used by Benetton also tied the performance of the franchise relationship to the payment of debts inherent in previous contractual relationships. In view of Benetton's prominent position (it ranks fifth in terms of turnover in the clothing sector in Italy), these clauses could have generated a potentially significant impact on all franchisees, to the detriment of the competitive dynamics in the market concerned.

To address these concerns, Benetton submitted commitments aimed at amending its franchise agreement. In particular, Benetton committed to: 1) eliminate from the contractual model any reference to the acknowledgment of past debts, both concerning future and ongoing contracts; 2) revise the clauses related to automatic goods re-assortment mechanisms; and 3) transparently and promptly streamline the order mechanisms and regulate any breaches of contract.

The AGCM acknowledged that these commitments aim to overcome the identified criticalities and foster a more balanced and competitive relationship between Benetton and its franchisees.

2.2 Mergers and acquisitions

2.2.1 Statistics

As regards mergers, the Authority reviewed 77 transactions: one required an in-depth investigation in Phase II (see section 2.2.2); 69 were authorised in Phase I; seven were dismissed with no grounds for action due to the inapplicability of the merger law.

Moreover, in 2023 the Authority applied for the first time the new below-threshold merger review system (art. 16.1bis of Competition Act): this provision allows the Authority to request the notification of a concentration within six months of its completion to evaluate potential risks to competition in the national market or a significant portion thereof. In 2023, the AGCM had requested the notification in some cases, two of which completed the Phase I review process by March 2024: in one case⁴², the Authority requested the notification of the acquisition by IGPD of Clear channel,

⁴¹ See AGCM case no. [A543 – RAPPORTI CONTRATTUALI TRA BENETTON E I SUOI RIVENDITORI](#), commitment decision no. 30472 published on the AGCM Bulletin no. 8/2023.

⁴² See AGCM case no. [C12583 - IGPDECAUX/CLEAR CHANNEL ITALIA](#) decision of non-initiation decision no. 31062 of 13/02/2024 and published in the AGCM Bulletin no. 9/2024.

companies active in out-of-home (OOH) advertising, which was cleared⁴³; in another case⁴⁴, the Authority requested notification of the acquisition by IM&C of TSG, a company operating exclusively through a terminal dedicated to maritime cargo traffic located in the Port of Genoa, and opened an in-depth investigation (phase II) to assess the risk for the transaction to significantly impede effective competition in the market for terminal services for rolling stock and in certain vertically related markets for the maritime transport of goods on rolling stock.

In 2023, the AGCM applied the newly amended provision, enabling turnover-based sanctions (rather than fixed amounts) for procedural infringements during the merger review process⁴⁵. Specifically, these sanctions were applied for the first time in two occasions in which the companies failed to provide the requested information or documents, or provided untrue information or documents without a justifiable reason⁴⁶.

2.2.2 Summary of significant merger cases

Case No. C12535 – Merger in the fuel distribution markets⁴⁷

In August 2023, the Authority conditionally approved a concentration between Italiana Petroli S.p.A. (IP) and Esso Italiana S.r.l. (ESSO), two of the primary oil groups active in the Italian territory. The relevant markets affected by the operation include: (i) off-network distribution markets for oil products at wholesale (B2B) and retail levels (B2C), broken down according to the specific oil product marketed; and (ii) markets for motor fuel distribution on ordinary and highway road networks. The geographical scope of off-network markets was deemed to be local due to transportation and shipment costs.

Following an intense investigative activity that involved analysing approximately 4,000 local markets for fuel distribution on the network, 200 off-network local markets, and a survey of over 2,000 consumers, the AGCM identified significant competitive effects of the operation. These effects included the strengthening of dominant position and the lessening of competition in various off-network and network markets. In particular, the post-merger entity would: (i) operate as a vertically integrated player across all supply chain stages; and (ii) control two major brands in Italy's fuel distribution, becoming the largest operator in terms of network size (29% of installations compared to the second largest operator, 18%) and volumes (almost 25%), with widespread territorial presence.

The Authority authorized the operation subject to IP implementing the following corrective measures to address the identified competition concerns: (a) providing transit and storage capacity for oil products to non-vertically integrated third-party operators at fair and non-discriminatory rates for fifteen years starting January 1, 2024; (b) offering certain product quantities to third-party operators at cost-oriented prices for five years starting January 1, 2024; (c) publishing these measures and offering conditions on IP's website in a transparent manner; (d) removing exclusivity in Esso-branded distribution facilities in local markets with highest concentration levels post-transaction. In the

⁴³ The concentration is not subject to prior notification as required by Article 16(1) of Law No 287/1990, since the combined total turnover of all involved undertakings did not exceed €532 million at the national level in the last financial year. However, each of the undertakings concerned individually exceeded the threshold of EUR 32 million in national turnover, which is one of the thresholds mentioned in Article 16(1-bis) of Law No 287/1990.

⁴⁴ See AGCM case no. [C12586 - IGNAZIO MESSINA & C./TERMINAL SAN GIORGIO](#) opening decision no. 31066 of 27/02/2024 and published on the AGCM Bulletin no. 9/2024.

⁴⁵ Up to 1 percent of the total turnover achieved globally during the previous fiscal year.

⁴⁶ Cases no. C12476A (3,000 €) and C12476B (30,000 €).

⁴⁷ See AGCM case no. [C12535 – IP ITALIANA PETROLI/ESSO ITALIANA](#), final decision no. 30745, published on the AGCM Bulletin no. 30/2023.

AGCM view, these measures aim to maintain competitive dynamics within the relevant markets while ensuring fair and non-discriminatory access to essential facilities and services.

2.3 Estimation of expected benefits

The Authority carries out a periodic assessment of the benefits that consumers derive from its antitrust and merger decisions, following an OECD methodology⁴⁸. This exercise is aimed at increasing transparency and accountability of its activities and measure its contribution to social welfare.

The tables below show the results of the analysis of the impact of the AGCM enforcement activity from 2015 to 2023. The data refer to the investigations closed each year for restrictive agreements, abuses of dominant position and concentrations, even if launched in previous years.

Over the entire period under consideration, total consumer savings exceeded 8.4 €billion. In the last three years, the annual savings for the national economy amounted to 1.1 €billion (see Table 3).

Table 3 – Estimation of consumer savings from competition law enforcement: three-year moving averages (million €)

	2015-2017	2016-2018	2017-2019	2018-2020	2019-2021	2020-2022	2021-2023	2015-2023
Cartels and other anticompetitive agreements	436	379	702	550	686	297	371	4,071.8
Abuses	111	187	186	274	475	576	408	4,362.8
Mergers	58	38	95	293	373	390	310	
Total	606	604	984	1,117	1,534	1,262	1,089	8,434.6

Over the entire period under consideration, slightly less than half of consumer savings comes from the fight against cartels, while the rest from abuses and mergers (see Table 4). In terms of trends, it is worth noting the increasing contribution of the merger review activity and the contrast to abuses of dominant position.

Table 4 – Estimation of consumer savings from competition law enforcement: three-year moving averages (% breakdown)

	2015-2017	2016-2018	2017-2019	2018-2020	2019-2021	2020-2022	2021-2023	2015-2023
Cartels and other anticompetitive agreements	72%	62.7%	71.4%	49.3%	44.7%	23.5%	34,1%	48.3%
Abuses	18.4%	31.0%	18.9%	24.6%	31.0%	45.6%	37.4%	51.7%
Mergers	9.6%	6.3%	9.7%	26.1%	24.3%	30.9%	28,5%	

3. THE ROLE OF THE COMPETITION AUTHORITY IN THE FORMULATION AND IMPLEMENTATION OF OTHER POLICIES

⁴⁸ See OECD, [Guide for helping competition authorities assess the expected impact of their activities](#), April 2014.

3.1 *Opinions and recommendations*

The AGCM issued 63 opinions/recommendations in 2023. In 36 cases, the Authority highlighted restrictions of competition arising from existing or draft legislation, urging for amendments⁴⁹. The AGCM also addressed administrative acts by local authorities in 22 occasions, while highlighting its power to challenge them before the Administrative Tribunal if the local administrations were not to comply with AGCM's recommendations⁵⁰. Moreover, five opinions were issued pursuant to other legislations⁵¹. Overall, the AGCM advocacy activity mainly addressed competition restrictions in the public procurement (tender design and participation requirements), obstacles hindering the opening of markets to competition and administrative limitations on the exercise of business activity. The AGCM also held several hearings before the Parliament on various topics including fuel distribution, energy and air passenger transport.

The Authority's regular monitoring of competition advocacy showed that 69% of the opinions issued in 2021 and 2022 were successful, insofar as they spurred amendments intended to remove the relevant competition concerns. Compared to the previous two-year period, 2020-2021, the overall compliance rate is growing overall (it was 66%)⁵².

3.2 *Description of significant advocacy interventions*

3.2.1 *Advocacy for the annual law on pro-competitive reforms for year 2023*

In accordance with a national legislation from 2009⁵³, the Government is required to present an annual bill on competition to Parliament, incorporating any recommendations put forward by the Authority (referred to as the "annual law on competition"). Consequently, starting from 2010, the AGCM has been submitting annual reports to the government containing its advocacy proposals for the annual law on competition⁵⁴. Furthermore, as part of the National Recovery and Resilience Plan (NRRP), Italy is required to enact pro-competitive reforms by passing the annual law on competition in 2021, 2022, and 2023.

The annual competition law for the year 2023 (Law no. 214/2023) aims to modernize the regulatory framework of specific markets, with the dual objective of enhancing competitiveness and efficiency

⁴⁹ Pursuant to art. 21 of Law no 287/1990, the AGCM may notify Parliament, the Prime Minister, other relevant ministers, and the relevant local authorities of distortions arising as a result of existing legislative measures. At the same time, pursuant to art. 22 of Law no 287/1990, the Authority may express opinions on draft legislation or regulations and on problems relating to competition and the market whenever it deems this appropriate or whenever requested to do so by the government departments and agencies concerned.

⁵⁰ Pursuant to art. 21-bis, the AGCM may challenge before the Administrative Court any acts of the public administration sector which are incompatible with the competition law and the competition principles embedded in the primary legislation.

⁵¹ Specifically: i) Art. 3 of Legislative Decree 142/2020, whereby regulatory bodies, in the context of their analysis of the impact of regulatory or administrative acts introducing new provisions that restrict access to regulated professions or their exercise or amend existing ones, shall carry out a proportionality assessment of such provisions and before their final adoption shall transmit a draft to the AGCM for an opinion; ii) Art. 6, para 6, of Legislative Decree 9/2008, whereby Italian premier soccer leagues are required to seek the AGCM on the tender procedures for the commercialization of the soccer broadcasting rights.

⁵² See the English version of the [December 2023 report](#).

⁵³ Article 47(2) of Law 99/2009 states that "*the Government, acting on a proposal from the Minister for Economic Development [...] taking into account any recommendations submitted by the Authority [...] shall submit the annual bill on markets and competition to Parliament.*"

⁵⁴ In August 2017, the Parliament adopted a law on pro-competitive reforms, for the first time complying with the 2009 legislation, on the basis of the 2014 AGCM proposal.

while promoting social justice. Many of its provisions stem directly from suggestions and recommendations put forth by the Authority in the electric and hydric infrastructures⁵⁵.

The law primarily focuses on the Electricity Grid Development Plan, aiming for significant simplification and streamlining of the administrative approval process for the plan. It also encourages the adoption of second-generation smart meters, facilitating dynamic pricing offers by sellers. This provision seeks to enhance customer engagement and support demand-side management efforts to rationalize and reduce consumption. Additionally, the law aligns safety parameters for protection against electromagnetic field exposure with European standards, replacing stricter limits imposed by national legislation. This change aims to remove barriers that previously deterred new investments and market entry by operators.

Moreover, Law no. 214/2023 addresses galenic medicines, implementing Authority proposals. It allows the preparation of compounded medicines, referred to as magistral medicines, using industrially manufactured active ingredients in cases where patented medicines are available on the market. This provision expands competition in this sector, providing patients with a wider range of options and targeted therapeutic efficacy.

The law also affects other sectors, including waste management systems for electrical and electronic equipment (WEEE), infrastructure for cold ironing services, and retail gas markets. Particularly in the retail gas market, the legislation establishes a Register of Entities Entitled to Sell Natural Gas, similar to measures in electricity markets. This serves as a deterrent against unfair practices by companies selling to end customers without meeting necessary requirements, thereby fostering competition in the gas sector.

3.2.2 Advocacy in the local public transport sector

The Authority issued three advocacy opinions under Article 21-bis and one under Article 21 concerning the local public transport sector. Among these, two opinions were specifically directed towards the Metropolitan Area of Rome (Roma Capitale). The first opinion addressed the extension of the in-house concession for local public transport services and complementary services to ATAC S.p.A. until December 31, 2023⁵⁶. The second opinion focused on the assessment carried out by the local administration in deciding to re-entrust ATAC S.p.A with non-peripheral local public transport services for the period 2024-2027⁵⁷.

Regarding the extension of ATAC's in-house appointment, the Authority highlighted that the decision lacked regulatory coverage and contradicted the provisions of Legislative Decree 201/2022, Regulation (EC) 1370/2007, and Articles 49 and 56 of the TFEU. The Authority believes that such an extension could unjustifiably delay and impede the legally compliant allocation of local public transport services in Rome.

Regarding the second advocacy opinion, the Authority challenged the assessments leading to the decision to re-entrust ATAC S.p.A with local public transport services. It found the assessments conducted to be insufficient and inadequate in meeting the investigative and explanatory duties mandated by Article 14, paragraphs 2 and 3, of Legislative Decree No. 201/2022. Consequently, the Authority urged Roma Capitale to consider the possibility of initially and gradually opening the non-

⁵⁵ See the AGCM opinion no. [AS1824 - PROPOSTE DI RIFORMA CONCORRENZIALE RELATIVE A I SETTORI DELL'ENERGIA ELETTRICA E DEL SERVIZIO IDRICO INTEGRATO A I FINI DELLA LEGGE ANNUALE PER IL MERCATO E LA CONCORRENZA ANNO 2022](#), published in the AGCM Bulletin no. 13/2022.

⁵⁶ See AGCM opinion no. [AS1910 ROMA CAPITALE - AFFIDAMENTO SERVIZI DI TRASPORTO PUBBLICO LOCALE](#) published in the AGCM Bulletin no. 35/2023.

⁵⁷ See AGCM opinion no. [AS1936 ROMA CAPITALE - AFFIDAMENTO IN HOUSE DEL SERVIZIO DI TRASPORTO PUBBLICO LOCALE NON PERIFERICO PER LE ANNUALITÀ DAL 2024 AL 2027](#) published in the AGCM Bulletin no. 4/2024.

peripheral local public transport market to competition. Through these interventions, the Authority aims to ensure compliance with regulatory frameworks, promote fair competition, and enhance efficiency in the provision of local public transport services in Rome.

3.2.3 *Advocacy in the services sector*

During the 2023, the Authority intervened to tackle competition restrictions in several services sectors. With regard to nautical school services, a minimum tariff for the provision of such services was included in a provision of Legislative Decree 171/2005 (Code of Recreational Boating) which was then implemented with Ministerial Decree 142/2023, explicitly indicating these minimum values in an Annex of the decree itself⁵⁸. The Authority highlighted how imposing a minimum tariff could potentially be viewed as a competition restriction. Such a restriction, deemed unnecessary and disproportionate, fails to adequately address the necessity of ensuring the quality and safety of services provided to customers.

In relation to legal services, the Authority intervened to address competition concerns arising from certain provisions outlined in public notices for the outsourcing of legal services by several municipalities and public contracting stations⁵⁹. Notably, the Authority identified participation requirements that mandated prior experience exclusively with public entities and territorial restrictions. It was emphasized that these requirements represent competitive constraints that lack proportionality and justification, and are not necessary for the contracting authority to pursue its general interest objectives.

3.3 *Sector inquiries*

In June 2023, the Authority concluded a study on automotive fuel prices and the oil supply chain, detailed in the section below.

In November 2023, the Authority initiated a market study concerning the use of pricing algorithms for air passengers on connecting routes between the Italian peninsula and Sicily and Sardinia. This action followed the observation of elevated price levels during peak demand periods since 2022, coinciding with the resurgence of passenger air transport demand.

The investigation aims to evaluate potential adverse impacts on market functionality and consumer offering conditions resulting from the utilization of price algorithms. Additionally, it will scrutinize the communication of air ticket prices and their various components to the public. For the first time, the Authority can exercise its new powers, enabling it to impose behavioural or structural measures on companies post fact-finding inquiry, aimed at eliminating competition distortions, or to recommend legislative/regulatory adjustments to enhance market functionality (see section 1.2 above).

3.3.1 *Sector inquiry on fuel distribution*

⁵⁸ See AGCM opinion no. [AS1933 - TARIFFE MINIME CORSI SCUOLE NAUTICHE](#) published in the AGCM Bulletin no. 2/2024.

⁵⁹ See AGCM opinion no. [AS1888 - AVVISI PUBBLICI PER L'AFFIDAMENTO ESTERNALIZZATO DEI SERVIZI LEGALI](#) published in the AGCM Bulletin no. 16/2023.

In June 2023, the Authority concluded an extensive inquiry into the pricing of motor fuels in Italy, examining the competitive dynamics across various stages of the supply chain, from extraction to distribution. This inquiry, initiated in January 2023, was prompted by significant increases in retail fuel prices observed during 2022 and early 2023. It focused on price trends from January 2021 to early April 2023, aiming to identify key determining factors.

The investigation encompassed the entire oil supply chain, analyzing both international dynamics and downstream stages directly affecting Italian consumers, such as distribution. A survey of over 2000 regular fuel purchasers provided insights into consumption habits, while also shedding light on the evolving dynamics of the oil sector amid the ongoing energy transition. The main findings of the inquiry are summarized below.

Price fluctuations were largely influenced by extraordinary global events, including post-Covid consumption recovery and the Russian-Ukrainian conflict. These factors compounded the inherent peculiarities of international raw material prices (crude oil) and refined product prices, influenced by decisions made by sovereign states and organizations not subject to competitive logic or effective antitrust interventions.

Temporary excise duty cuts, along with the removal of tax concessions in January 2023, significantly impacted national price dynamics. Italy's fuel prices remain among the highest in Europe primarily due to heavy taxation.

The inquiry also revealed that motorway fuel prices exceed those on ordinary networks due to additional costs, such as royalties to motorway concessionaires and service charges. Regulatory measures aimed at enhancing price transparency, such as displaying average prices within large geographical areas, may not necessarily benefit consumers and could potentially hinder competition by encouraging price convergence among operators.

Assessing the distribution network within the country, the AGCM noted a high number of plants, some with low average output, compared to other European countries. However, this could present an unexpected advantage in the context of the ongoing energy transition if converted into a widespread network of refuelling stations for electric mobility, provided that necessary technological infrastructure is developed without distorting competition.

Lastly, the inquiry called for a review of existing concessions and terms, particularly regarding royalties and taxation, concerning extraction activities in Italy. This revision aims to better safeguard competitive conditions and resource availability, which, particularly during periods of exceptional price tensions, could also benefit consumers of refined products.

4. RESOURCES OF THE COMPETITION AUTHORITY

4.1 *Annual Budget*

The annual expenses incurred by the Authority in 2023 totalled EUR 59.6 million (provisional data)⁶⁰. This figure also includes the costs for other competences assigned to the Authority such as consumer protection, conflicts of interest and legality rating.

4.2 Personnel

A new organisation of the offices of the Italian Competition Authority was implemented as from January 2023⁶¹. The revised structure includes the following new investigative branches: a Directorate dedicated to Cartels, Leniency and Whistleblowing, another to Digital Platforms, one dealing with Concessions and Local Public Services. Furthermore, a specialised Directorate for Market Studies has been established. The Legal Affairs Department, which attends to procedural guarantees, litigation and legal research, and the Economic and Market Analysis Department, which ensures economic analysis and fact-finding inquiries, provide investigative departments with legal and economic assistance.

The total number staff of the AGCM at the end of 2023 was 312. This includes all human resources, tasked with performing both competition and non-competition competences. As a result of a considerable recruiting process carried out during 2023, 50 new resources (13 economists, 23 lawyers and 14 clerical staff) joined the AGCM in the January-July 2023 period. Moreover, the Authority launched a new procedure aimed at hiring two officials to carry out data engineering and data science activities.

As of 31 December 2023, 181 employees worked in competition area, 54 of whom were support staff and 127 non-administrative staff. The latter group comprised 62 lawyers, 53 economists and 12 other professionals (e.g. IT experts, one data scientist).

During 2023, 18 training seminars were organized on a bi-monthly basis, covering numerous and diverse topics related to specific areas of interest to the Authority. A number of specialized training days on economic issues, with particular reference to the economic analysis of abuses of dominant position, held by professors from academia were also organized during the year.

Finally, in view of the large number of new staff entries that took place in 2023, a training program (6 cycles of seminars lasting a total of 64 hours) was defined for new employees aimed at conveying to them the AGCM core missions and values as well as the basic skills in the agency competent areas.

4.3 Performance assessment

In February 2023, the Authority approved its performance plan covering the period 2023-2025⁶². The three-year plan contains several operational objectives, such as focusing enforcement and advocacy on the economic sectors most at risk, improving the quality of legal and economic analysis, promoting leniency programs, fostering coordination with regulators, reducing duration of investigations, and providing faster advocacy opinions to policymakers.

⁶⁰ In accordance with Italian Legislative Decree no. 1/2012, the financing system of the Authority is based on a mandatory contribution from companies established in Italy whose turnover exceeds the threshold of €50 million. The contribution, which was originally set as 0.06 per thousand, was gradually reduced by the AGCM to the current level of 0.059 per thousand, set in March 2024. The income derived from these contributions replaces all previous forms of financing (merger fees and funds from the public budget).

⁶¹ For more information, click on the [link](#).

⁶² See the [report](#) (in Italian only).