

## *AGCM Annual Report Summary for OECD*

### *Executive Summary*

This report covers the enforcement and advocacy activities performed in the past calendar year (1 January 2020 to 31 December 2020) 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 developments up to March 2021.

In 2020 the Authority promptly reacted to the **challenges posed by the health and economic crisis caused by the Covid-19 outbreak**. Firstly, in line with the actions undertaken by the European Commission and the ECN, the Authority issued a guidance concerning cooperation agreements among competitors in the context of the Covid-19 emergency, that was applied in two cases concerning the pharmaceutical and consumer credit sectors. Secondly, the AGCM addressed the speculations which have characterized the initial emergency phase of the pandemic, using a set of different tools, by issuing information requests which were made public so that they could act as moral suasion and activating its consumer protection powers. Thirdly, the Authority adjusted its advocacy and enforcement priorities to focus on the mostly-hit sectors such as health, pharma, digital and food. Furthermore, the AGCM took account of the exceptional circumstances of the pandemic in the course of its antitrust investigations, by providing adequate time to the parties to fully exercise their rights of defence, extending twice during 2020 the payment deadlines for antitrust sanctions and reducing the amount of penalties by applying a derogation from the principles set out in Sanctioning Guidelines.

Moreover, in 2020 the enforcement and advocacy efforts of the Authority did not slow down despite the pandemic. The AGCM concluded 8 competition law proceedings, ascertaining 3 agreements restricting competition and 3 abuses of dominant position, sanctioned for a total amount of EUR 383 million; in one case the Authority accepted commitments while in another one it did not find sufficient evidence for the infringement. In the course of the year, 16 proceedings were launched for suspected breaches of articles 101 and 102 of the TFEU and for suspected abuse of economic dependence (5 abuse proceedings, of which one with interim measures; 9 anti-competitive agreement proceedings, of which one with interim measures; 2 proceedings for abuse of economic dependence) and, when indispensable, inspections were carried out in accordance with the health precautions.

With respect to **anti-competitive agreements**, in 2020 the Authority imposed a sanction of EUR 228 million for a cartel of the main mobile telephone operators coordinating an increase in their respective bill rates for domestic users. Moreover, the AGCM intervened to promote the entry in the taxi booking market by digital platforms, ascertaining that non-compete clauses imposed by taxi cooperatives to their affiliated taxi drivers were unlawful in the municipality of Naples, following similar breaches ascertained in Rome and Milan, which were confirmed by the judicial review.

As for **abuses of dominant position**, the Authority's intervened in the broadband infrastructures sector, by sanctioning the conduct of the incumbent telecommunications operator aimed at discouraging the entry of the only other competing operator. In another case, the AGCM tackled an abusive conduct aimed at hindering dynamic competition in the plastic waste recycling sector, with a view of fostering the development of alternative models of environmental sustainability. Finally, the Authority sanctioned the exclusionary conduct of the leading vertically-integrated online ticketing operator, imposing remedies of a quasi-structural nature, consisting of making 20% of tickets available, in order to encourage the entry of competitors.

On the **merger front**, the AGCM examined 72 transactions, six of which were authorised with remedies after conducting an in-depth investigation. Three transactions were particularly important

as they involved the major players in the relevant markets. In the banking sector, the Authority approved a merger between the first and the fourth players, subject to the divestiture of more than 500 branches, while in the retail groceries sector it cleared the acquisition of Auchan supermarket chain by one of the largest cooperative supermarket group. Furthermore, the Authority was called to design remedies for a rescue merger between the two main players in the postal sector, exempted by a specific law from the ordinary merger review, in order to mitigate potential anticompetitive effects.

In 2020, the Authority continued its **advocacy activities**, issuing 80 opinions to governmental and central and local administrative authorities. Several advocacy opinions were addressed to government's interventions aimed at tackling the Covid-19 related emergency and providing reliefs to the hardest-hit sectors. In March 2021, upon government's request, the AGCM issued a report containing sweeping pro-competitive reforms for the government to consider when drafting its annual competition bill, a legislative tool created to implement annual adjustments to the economic regulation with a view of removing administrative obstacles and other barriers. The main message of the March report is that a vigorous competition policy is even more important in unprecedented economic crisis like the one caused by the pandemic, as it can help overcome the structural competition problems afflicting many strategic sectors of the Italian economy, thus favouring long-term economic growth.

When competition law tools proved to be not applicable, the Authority enforced other legislations protecting weaker economic agents: in 2020 it launched 14 investigations in the dairy sector pursuant to the rules governing contractual relations in agri-food sector, and two proceedings in the clothing sector and postal services under the framework on the abuse of economic dependence.

Year 2020 has also confirmed the increasing use of **interim measures**, in particular in abuses of dominant position aimed at delaying the launch of competitive tender procedures, as in the case of the tender of the Tuscany Region for the award of local transport services, or at blocking competitors' initiatives, as in the case of the activity of free movie screening in outdoor arenas hindered by the associations of cinema filmmakers and distributors.

With respect to **due process safeguards**, the AGCM closed one investigation of suspected bid rigging in the supply of IT goods and services without ascertaining a violation as the evidence collected was considered insufficient to prove the infringement. At the same time, the Authority sanctioned, for the second time in its history, two parties for providing untruthful information in the context of an investigation for abuse of a dominant position in the online ticketing market. In the case of an acquisition, the Authority ascertained non-compliance with the notification obligation, setting one of the highest penalties ever imposed on a single undertaking for this type of procedural infringement.

On the **organisational side**, the AGCM has not discontinued its operations during the pandemic. It has adapted its procedures to ensure the safety of its employees and the representatives of businesses and it has facilitated the recourse to remote work, by accelerating the ongoing digital transformation with major investments in digital infrastructure, processes and services.

## **1. REGULATORY AND POLICY DEVELOPMENTS**

### **1.1. Covid-19 related government policies with competition implications**

In 2020, the Italian Government reacted to the emergency posed by the Covid-19 outbreak, by introducing several measures to support the health sector and more generally workers, households and firms. Some of these measures introduced a limitation or suspension of the application of competition law and principles and the Authority promptly intervened with advocacy initiatives

aimed at reminding lawmakers of the long-term consequences of a relaxation of competition principles (see section 3.2.1).

The postponement of all envisaged competitive procedures for tenders and concessions was initially contained in the so-called “Cure Italy Decree” (released on 17 March 2020 and converted into Law No. 27/2020), which introduced urgent measures to limit the spread of Covid-19, and further extended by the so-called “Relaunch Decree” (released 19 May 2020 and converted into Law No. 77/2020): depending on the sector, the postponement went from 12 months (e.g., for railway services in ports) to 12 years (e.g., concessions for parking in public spaces). This latter decree also exempted from the AGCM review all concentrations carried out within the context of public support to banks in compulsory administrative liquidation, with the stated objective of ensuring the protection of the “national economy’s relevant general interests”.

Another important exemption from the application of merger control was approved in the so-called “August Decree” (released on 14 August 2020 and converted into Law No. 126/2020) which included measures to support, inter alia, employment and the economy. This Decree authorised, by way of derogation from the provisions of the Italian Competition Act (Law No. 287/90), merger transactions notified to the AGCM by 31 December 2020 that met certain specific requirements: in particular, the provision applied to merger transactions that did not have a Community dimension; that involved companies operating in markets characterised by the presence of labour-intensive services (as defined by Article 50 of Legislative Decree No. 50 of 18 April 2016, no. 50) or of general economic interest within the meaning of Article 14 of the Treaty on the Functioning of the European Union, which had recorded balance sheet losses in the last three financial years and which, also due to the effects resulting from the health emergency, could cease their activity. The AGCM reviewed a concentration in the postal sector within this new framework (see section 2.2.2, merger case no. C12333).

Finally, the 2021 Budget Law (Italian Law no. 178 of 20 December 2020) further extended the scope of the derogation from the use of competitive tender procedures in the awarding of concessions for the use of state assets.

## **1.2. The Authority’s new guidance on cooperation agreements at times of Covid-19**

On April 24, 2020, the Authority issued a Communication on cooperation agreements during the Covid-19 pandemic (hereafter the Communication)<sup>1</sup>. The AGCM decided to adopt the Communication in order to offer a more comprehensive guidance to businesses so they could accelerate the self-assessment of cooperation projects that (i) might be necessary for tackling issues linked to the shortage of essential goods and services in the emergency phase, in particular in the pharmaceutical, agri-food and health sectors and (ii) are of temporary duration.

Therefore, the purpose of the Communication is to make transparent the AGCM general ex-ante criteria for the benefits of businesses and to introduce an ad-hoc procedure for AGCM assessment of specific cooperation projects.

According to the Communication, guidance is provided by the AGCM:

- informally to companies and trade associations on specific cooperation projects (in close cooperation with the European Commission when applying European competition rules);
- or, at its discretion, through comfort letters when applying national competition law.

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<sup>1</sup> See the non-official English version of the AGCM Communication on cooperation agreements and the COVID-19 emergency, 24 April 2020, available at: <https://en.agcm.it/dotcmsdoc/pressrelease/AGCM%20Communication%20on%20Cooperation%20in%20time%20of%20Covid-19.pdf>

The forms of cooperation envisaged in the Communication concern the health (and possibly agri-food) sector and may involve trade associations or independent third parties (i) coordinating the transport and distribution of raw materials; (ii) identifying for which medicines or medical devices (or foodstuffs) shortage problems may arise; or (iii) providing aggregated information (not regarding individual undertakings) on available production and capacity or on possible supply gaps.

According to the Communication, cooperation may extend to address critical supply shortages which would require an exchange of disaggregated and sensitive information and a degree of coordination which is generally problematic in normal times. This cooperation involving exchange of sensitive information will be assessed by the AGCM with greater flexibility provided that they are strictly necessary to avoid shortages, proportionate and of limited duration.

The AGCM applied the Communication providing guidance in two instances, in May 2020<sup>2</sup>. The first cooperation project was submitted by the two main Italian associations of pharmaceutical distributors and concerned the joint purchasing and subsequent pro-quota distribution of disposable surgical masks to pharmacies and parapharmacies (valid until 30 June 2020). The second cooperation project assessed within the framework of the Communication was the proposal by Assofin, the main Italian association of banking and financial providers of consumer loans, of a common voluntary scheme allowing a deferral of the main loan terms to consumers during the period 21 February – 30 June 2020, and open to non-members of Assofin.

In both cases, the Authority considered that, in view of the exceptional health emergency situation and of the temporally limited duration of the two cooperation agreements, there were no elements, for the time being, justifying the launch of an investigation. The assessment was made in close cooperation with the European Commission as both projects fell within the scope of Art. 101 TFEU. In the second case, the AGCM invited Assofin to keep track of exchanges of information objectively necessary and proportionate, so that may in the future be made available on request to the AGCM.

## 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 2020, 21 proceedings were concluded: 4 concerned restrictive agreements, 4 abuses of dominant position, 6 mergers requiring an in-depth assessment and 1 for non-compliance with merger notification obligations (see tables 1 and 2).

<b>Table 1 - Activity of the Authority</b>	<b>2020</b>
<b>Anti-competitive agreements (incl. cartels)</b>	4
<b>Abuses of dominant position</b>	4

<sup>2</sup> See AGCM press release of June 1<sup>st</sup> 2020, available at: <https://en.agcm.it/en/media/press-releases/2020/6/DC9901-COVI>

<b>Merger transactions examined (in phase two)</b>	6
<b>Non-compliance with merger notification obligations</b>	1
<b>Redetermination of sanctions</b>	6
<b>TOTAL</b>	<b>21</b>

**Table 2 - Proceedings concluded in 2020, divided by type and outcome**

	<b>Non-infringement of the law</b>	<b>Infringement of the law, acceptance of commitments, revision of commitments</b>	<b>No jurisdiction or inapplicability of the law</b>	<b>Total</b>
Anti-competitive agreements (incl. cartels)	1	3	-	<b>4</b>
Abuse of dominant position	0	4	-	<b>4</b>
	<b>Clearance</b>	<b>Prohibition, authorisation subject to remedies, revision of remedies</b>	<b>No jurisdiction or inapplicability of the law</b>	<b>Total</b>
Mergers of independent enterprises	<b>59</b>	<b>7</b>	<b>6</b>	<b>72</b>

In 2020, the Council of State (the Supreme Administrative Court) fully upheld on the merits the Authority's decision in a bid-rigging cartel concerning technical assistance and support services to the public administration for the implementation of programmes co-funded by the EU (case no. I796) while the Regional Administrative Court of Lazio (the Court of First Instance) fully upheld decisions in other bid-rigging cartels, one regarding forest fire-fighting and helicopter services (case no. I806) and the other facility management services (case no. I808), although reviewing the number of companies involved and the amount of sanctions imposed.

### ***Anti-competitive agreements***

In 2020, the Authority uncovered one cartel and ascertained two anti-competitive agreements, imposing sanctions for an overall amount of EUR 228 million. A fourth investigation related to a suspected bid-rigging violation which was dismissed for insufficient evidence.

The cartel case unveiled by the Authority concerned the main mobile telephone operators who had coordinated an increase in their respective bill rates for domestic users. One anti-competitive agreement was of a vertical nature and concerned the non-compete clauses imposed by taxi cooperatives to their affiliated taxi drivers in the municipality of Naples, following similar proceedings in Rome and Milan, which were confirmed by the judicial review in 2020. The other anticompetitive agreement related to a decision of a local association of driving schools to uniform tariffs for its members.

During 2020, the AGCM launched nine proceedings for suspected breaches of articles 101 TFEU, using interim measures in one case involving an agreement by the associations of cinema filmmakers and distributors aimed at blocking initiatives of outdoor arenas active in free movie screening<sup>3</sup>. Two cases concern the digital sector: in particular, one investigation involves a potentially restrictive

<sup>3</sup> See AGCM case no. 1840 - *OSTACOLI ALLE ARENE A TITOLO GRATUITO*, opening decision no. 28264 and interim measure decision no. 28286, published on the AGCM Bulletin no. 26/2020 and 28/2020, available on the [AGCM website](#).

agreement between Amazon and Apple in the sale of Apple and Beats branded products on the Amazon platform<sup>4</sup> and another one relates to the co-investment project for the rollout of the broadband infrastructure by the main operators Telecom and Fastweb, with considerable impact on the infrastructure competition<sup>5</sup>.

### ***Abuse of dominant position***

As regards abuses, four investigations were concluded, three of which ascertained a violation of art. 102 of the TFEU and one closed accepting commitments. The three infringement attracted sanctions for an overall amount of EUR 154 million.

The Authority's intervened in the broadband infrastructures sector, by sanctioning for EUR 116 million the conduct of the incumbent telecommunications operator aimed at discouraging the investments of the only other competing operator. In another case, the AGCM tackled an abusive conduct aimed at hindering dynamic competition in the plastic waste recycling sector, with a view of fostering the development of alternative models of environmental sustainability. In a third case, the Authority ascertained the exclusionary conduct of the leading vertically-integrated online ticketing operator, imposing remedies of a quasi-structural nature, consisting of making 20% of tickets available, in order to encourage the entry of competitors.

In 2020 the AGCM launched five investigations into abuse of dominant position, with the use of interim measures in one case concerning the tender of the Tuscany Region for the award of the local transport service which was delayed by the abusive conduct of the incumbent provider<sup>6</sup>. Another investigation involves an alleged abuse of dominant position by Google in the Italian market for digital display advertising<sup>7</sup>.

The Authority has also enforced other legislations protecting weaker economic agents, by launching 14 investigations in the dairy sector pursuant to the rules governing contractual relations in agri-food sector, and two proceedings in the clothing sector and postal services under the framework on the abuse of economic dependence.

#### ***2.1.2 Description of significant cases regarding anticompetitive agreements and concerted practices***

##### *1820 - Collusion over monthly billing practices in the mobile phone market<sup>8</sup>*

On January 28, 2020, the Authority ascertained that Fastweb, TIM, Vodafone and Wind Tre, the four major mobile phone operators, colluded over their billing practices and it imposed sanctions for an overall amount of EUR 228 million.

In 2015, Telecom Italia, Vodafone and Wind (now Wind Tre) changed their mobile retail billing cycles from one month to 28 days (four weeks). Fastweb also followed, and later the operators

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<sup>4</sup> See AGCM case no. 1842 - *VENDITA PRODOTTI APPLE E BEATS SU AMAZON MARKETPLACE*, opening decision n. 28294, published on the AGCM Bulletin no. 30/2020, and available at [AGCM website](#).

<sup>5</sup> See AGCM case no. 1850 - *ACCORDI FIBERCOP*, opening decision no. 28488 published in the AGCM Bulletin no. 51/2020, and available on the [AGCM website](#).

<sup>6</sup> See AGCM Case no. A536 - *REGIONE TOSCANA/GARA PER L'AFFIDAMENTO DEL SERVIZIO DI TRASPORTO PUBBLICO LOCALE*, opening decision no. 28255 and interim measure decision no. 28277 published on the AGCM Bulletins no. 26/2020 and 28/2020 and available on [AGCM website](#).

<sup>7</sup> See AGCM case no. A542 - *GOOGLE NEL MERCATO ITALIANO DEL DISPLAY ADVERTISING*, opening decision no. 28398 published on the AGCM Bulletin no. 43/2020 and available on [AGCM website](#).

<sup>8</sup> See AGCM case no. 1820 - *FATTURAZIONE MENSILE CON RIMODULAZIONE TARIFFARIA*, final decision no. 28102 published on the AGCM Bulletin no. 5/2020 and available on the [AGCM website](#).

extended this approach to fixed-line services. With a 28-day billing cycle there were 13 billing periods per year instead of 12. This implied an 8.6% increase in the price of the service on an annual basis.

Following the adoption of a law provision imposing the return to the monthly billing period and a sanction by the sector regulator for non-compliance in December 2017, all four operators simultaneously contacted their clients to communicate the return to the 12-months/year billing but keeping the 8.6% annual increase from the previous change.

To prevent the implementation of the annual increase, the AGCM adopted interim measures in March 2018. During the investigation, the Authority found that, in addition to a parallelism of conducts, numerous contacts took place between the parties (also through their CEOs) – with several meetings, conference calls, email exchanges, text messages – concerning the modification of the billing cycle and the consequent identical repricing of the commercial offers. The scope of such contacts was to coordinate the parallel maintenance, by all operators, of the existing price levels (i.e. with the 8.6% price raise) and avoid the mobility of the respective customers in the market for fixed-line services and, subsequently, also in that for mobile services. The Authority found that the operators aim was to reduce the level of uncertainty regarding the behaviour of the other operators in the market. The agreement affected the markets for fixed and mobile telephone services and for retail telecommunications services. The evidence gathered by the Authority also confirmed that the agreement between the four telecom operators was facilitated by the trade association Assotel.

With respect to fine calculation, the AGCM granted a reduction of 5% to TIM, Vodafone and Wind Tre for amending their compliance programs after the opening of the investigation. In addition, a 5% was granted to Vodafone for the specific measures adopted to comply with the interim order issued by the AGCM.

### *1832 – Agreements in the market for booking and dispatching taxi orders in the Municipality of Naples<sup>9</sup>*

On September 20, 2020, the AGCM closed proceedings against four undertakings operating as taxi radio dispatch/reservation centres in Naples ascertaining an anti-competitive agreement in violation of Art. 101 TFEU, aimed at prohibiting their affiliated taxi drivers to use, at the same time, services from other dispatch/reservation platforms, such as the app-based services provided by Mytaxi (now renamed as Free Now). In recent years, similar investigations have been closed in the Municipalities of Rome and Milan, with the AGCM's infringement decisions upheld in the judicial review.

In Naples, the Authority's investigation found evidence of a written agreement among the parties, signed on November 15, 2018, and committing each party to impede multi-homing for its affiliated taxi drivers. The AGCM also found evidence of the implementation of the agreement from November 2018 to February 2019: i.e. contract termination or threat of contract termination for those taxi drivers that also accepted rides from Mytaxi app. At the launch of the investigation, the AGCM initiated a procedure for the adoption of interim measures which was eventually closed without any measure since three of the four undertakings withdrew from the disputed agreement and gave public statements on the possibility that their member taxi drivers could freely use other app-based booking platforms.

The Authority found that the services for the collection and dispatch of the orders through the traditional channels (e.g., telephone, taxi ranks) which require affiliation (on the drivers' side) are substitutable from a user's perspective with the new online booking platforms (which are "open" as they allow multi-homing on the drivers' side) and therefore traditional radiotaxi cooperatives and Mytaxi were considered as a part of the same relevant market.

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<sup>9</sup> See AGCM case no. 1832 - *SERVIZI DI PRENOTAZIONE DEL TRASPORTO TAXI – NAPOLI*, final decision no. 28353 published on the AGCM Bulletin no. 39/2020 and available on [AGCM website](#).

### 2.1.3 Description of significant cases regarding the abuses of dominant position

#### *A514 – Abuse in the wholesale and retail markets for fixed broadband and ultrabroadband services<sup>10</sup>*

On February 25, 2020, the Authority sanctioned Telecom Italia S.p.A. (TIM) €16 million for abuse of dominance by preventing the entrance of competitors in the market for ultra-fast broadband infrastructure and delaying development in areas of Italy with no access to ultra-fast broadband networks.

The 2015 government's strategy for the roll out of the ultrabroadband networks envisaged the public intervention in the so-called "white areas", that is, areas with market failure where private investment in innovative infrastructure would not occur, absent public subsidies. Infratel, an in-house company of the Italian government, has been tasked with the implementation of the strategy and in particular with the collection of data about the services provided by the operators in the various geographic areas and the definition and mapping of the white areas and the selection of infrastructure operators via competitive tenders.

According to the AGCM, TIM engaged in a complex exclusionary strategy aimed at:

- a) delaying and, in the end, preventing the entry of a new infrastructural competitor Open Fiber both (i) in the white areas (through regulatory gaming and sham litigation) and (ii) in the rest of the country (through a repricing of its main wholesale offer to so pre-empt the contestable customer base);
- b) unduly preserving the dominant position in the market of wholesale access services and in the retail services market.

In particular, the investigation showed that in the wholesale market for broadband and ultrabroadband services, TIM strategically modified its investment plans after the launch of the tenders for the white areas so to call into question Infratel's procedure for the definition of such areas. Furthermore, it repriced its wholesale offer in order to secure the maximum share of fixed lines before the fiber network coverage announced by Open Fiber could become available.

In the retail market for broadband and ultrabroadband services, TIM launched retail offers aimed at pre-empting the relevant market's contestable demand, by increasing switching costs with an excessively long duration of its contractual terms and conditions. In the Authority's view, this strategy served the purpose to reduce the demand available to Open Fiber and to strengthen its dominant position in the retail market.

#### *A531 – Abuse in the market for the management of plastic waste recycling services<sup>11</sup>*

On October 27, 2020, the Authority fined EUR 27 million COREPLA, the Italian consortium for the collection, recycling and recovery of plastic packaging, for allegedly abusing its dominant position in the market for the management of plastic waste recycling services, by preventing a rival consortium of plastic bottle manufacturers, CORIPET, from competing on a level-playing field.

In 1997, Italy's government established COREPLA to provide plastic packaging recycling services to plastic manufacturers in return for a payment. Pursuant to the Extended Producer Responsibility

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<sup>10</sup> See AGCM case no. A514 - *CONDOTTE FIBRA TELECOM ITALIA*, final decision no. 28162 published on the AGCM Bulletin no. 10/2020 and available on the AGCM website.

<sup>11</sup> See AGCM case no. A531 - *RICICLO IMBALLAGGI PRIMARI/CONDOTTE ABUSIVE COREPLA*, final decision no. 28430 published on the AGCM Bulletin no. 45/2020 and available on the AGCM website.



(EPR) obligations for household waste management, companies that manufacture or supply plastic packaging are legally required to be a member of COREPLA, unless they create a system to manage their own plastic waste. COREPLA has been the only consortium in Italy for many years until in April 2018, CORIPET was authorised with a temporary license. To win the right to permanently operate the project, CORIPET had to prove it could recycle a certain quota of plastic bottles in an efficient, effective and autonomous manner by April 2020 (then extended to June 2021).

At the beginning of investigation, prompted by a complaint from CORIPET, the Authority ordered COREPLA to comply with its interim measures which included, inter alia, the removal of any exclusivity clauses in the contracts with local authorities and sorting plants so as to allow the allocation of plastic waste to consortia other than COREPLA.

The investigation found that COREPLA is dominant in the relevant national market for recovering and recycling plastic waste produced by households (as opposed by industrial customers) and has continued to manage all of Italy's plastic waste collection despite the entry of CORIPET. Notwithstanding the provision authorization issued to CORIPET by the Italian government, and the decision of many plastic bottle producers to move to CORIPET's services and to pay for them to the new consortium (thus ceasing to pay COREPLA), COREPLA refused to share the household plastic packaging waste with CORIPET, denying the right of CORIPET to manage the plastic packaging waste originating from the products of its members.

Furthermore, the investigation showed that COREPLA's agreement to collect plastic waste from the National Association of Italian Municipalities (ANCI) – which represents nearly all of Italy's municipalities – also included exclusivity clauses that prevented the latter from using another consortium to recycle its plastic bottles.

In the Authority's view, COREPLA's conduct, by preventing CORIPET from achieving the full authorization within the statutory two years' period, was aimed at driving the only competitor out from the market for the compliance services to EPR obligations and therefore was deemed to be a particularly serious breach of Art. 102 TFEU.

#### *A523 – Exclusivity agreements and boycotting in the market for ticketing services for live music event<sup>12</sup>*

On December 22, 2020, the Italian Competition Authority issued an infringement decision against the major event ticket seller, TicketOne S.p.A. and its parent company CTS Eventim AG & Co. KGaA (hereafter CTS Eventim Group), and four music promoters acquired by them, for a breach of Article 102 TFEU in the Italian market of ticketing services for live music events. The Authority imposed an overall sanction of EUR 10.9 million.

CTS Eventim Group implemented a complex strategy of exclusivity agreements with live music event organisers and promoters, while also acquiring Italian music promoters to boycott rival ticket sellers. In particular, CTS Eventim Group imposed long term exclusive dealing contracts (more than two years) with the main live music promoters so to secure exclusive rights on the sale of almost 100% tickets. It acquired four of the main live music promoters active in Italy (Di and Gi S.r.l., Friends & Partners S.p.A., Vertigo S.r.l. and Vivo Concerti S.r.l.), between September 2017 and April 2018, with the purpose of foreclosing upstream competing ticket sellers. The acquired companies boycotted event organiser and ticket seller Zed (the complainant), so as to exert pressure on the company to ensure that only TicketOne could distribute tickets for their pop concerts: Zed had refused to sign an exclusivity agreement with TicketOne and instead had a partnership agreement with rival ticket seller, Ticketmaster. The CTS Eventim Group also required live music promoters, when they were not

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<sup>12</sup> See AGCM case no. A523 - *TICKETONE/CONDOTTE ESCLUDENTI NELLA VENDITA DI BIGLIETTI*, final decision no. 28495, published on the AGCM Bulletin no. 4/2021 and available on the [AGCM website](#).

organising the events themselves, to impose contractual obligations on local promoters and organisers to ensure the compliance of the group's exclusive rights. Finally, the exclusionary strategy of CTS Eventim Group also consisted of exclusive dealing contracts with regional box office and boycott and retaliation behaviours against minor TicketOne competitors and defiant local promoters.

In light of the evidence collected, the Authority found that the overall exclusionary strategy implemented by CTS Eventim Group foreclosed around 60% of the market of ticketing services for live music events (in terms of value). Moreover, it concluded that companies' strategy harmed consumers because it limited choice between different ticket providers and enabled TicketOne to charge higher prices, thus reducing the quality and variety of sales channels available to consumers.

In the infringement decision, the Authority ordered the CTS Eventim Group to: (i) refrain from imposing exclusivity clauses on local promoters that acquire from national promoters the rights to organise specific events; ii) allow other ticketing operators to sell, by any means and through any channel, under FRAND terms, at least 20% of the total number of tickets, for events produced or distributed by the promoters or ticketing operators that are tied to the CTS Eventim Group by exclusivity contracts or are directly controlled by it.

## ***2.2 Mergers and acquisitions***

### ***2.2.1 Statistics***

As regards mergers, the Authority reviewed 72 transactions, 59 of which were authorised in Phase I, six were dismissed with no grounds for action due to the inapplicability of the merger law and seven required an in-depth investigation: in six cases after the in-depth review the transaction was authorised subject to remedies, while in the remaining case, the Authority revised the remedies previously imposed on a transaction.

### ***2.2.2 Summary of significant merger cases***

*C12287 - INTESA SANPAOLO/UBI BANCA-UNIONE DI BANCHE ITALIANE (merger in the banking sector)*<sup>13</sup>

In July 2020, the Authority conditionally cleared the hostile takeover of UBI Banca (UBI) by Intesa Sanpaolo (ISP) subject to conditions including the divestitures of 532 UBI branches in order to address its competition concerns.

Before reviewing the effects of the transaction on the various geographical and product markets involved, the Authority first assessed whether the concentration would have had a systemic impact on the wider national context, on the basis of the size of the operators involved, their characteristics and growth prospects.

The merger involved ISP, one of Italy's two largest banks (together with Unicredit) and UBI, the fourth-largest bank in terms of number of branches, in a national context where the presence of two main players (ISP and Unicredit) is accompanied by a large number of small operators (despite the consolidation process of recent years) and medium-sized operators like UBI. Therefore, the Authority assessed whether the purchase by a market leader (precisely, ISP) of a medium-sized banking operator such as UBI would have modified the structure of the banking sector, by strengthening ISP and eliminating a medium-sized operator which could have grown, through mergers and acquisitions, into

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<sup>13</sup> See AGCM case no. *C12287 - INTESA SANPAOLO/UBI BANCA-UNIONE DI BANCHE ITALIANE*, final decision n. 28289 published on the AGCM Bulletin no. 29/2020 and available on the AGCM website.

a possible third nation-wide banking group. Although UBI is a medium-sized bank, its rivals claimed UBI exercised competitive constraints on larger players due to its decentralised structure and its innovative use of technology. The in-depth investigation carried out by the Authority, however, did not provide clear and unequivocal evidence regarding UBI's real possibility of creating a third banking pole through aggregation operations of medium-sized Italian banks. Therefore, the acquisition of UBI by ISP was not deemed capable of altering market structures and limiting the level of competition existing at systemic level.

The in-depth investigation highlighted that the concentration would have been suitable to lessen substantially competition in some local markets for bank deposits, loans to consumers and loans to small businesses, assets under administration and custody, investment funds and individual portfolio management funds, as well as in the markets for lending to medium- and large-sized businesses and the distribution of life insurance products. The divestments imposed by the AGCM aimed at curbing the merged entity presence in local markets below the 35% threshold. UBI branches were sold to BPER, a medium size banking group, which satisfied the conditions on the characteristics of the purchaser set out by the Authority in the final decision.

#### *C12247B - BDC ITALIA-CONAD/AUCHAN (merger in the retail groceries sector)<sup>14</sup>*

In February 2020, the Authority approved with conditions the acquisition by Conad of the France-based retail chain, Auchan, which decided to exit the Italian grocery retail sector. Conad and Auchan were the first and seventh largest supermarket chains in Italy, respectively. As a result of the transaction, Auchan would transfer to Conad 291 points of sale of different size and format. The transaction concerned wholesale and retail markets for grocery and non-grocery products.

As regards the wholesale markets, the AGCM's investigation showed that the merger was not likely to lead to the creation or strengthening of a dominant position for Conad either on local or national markets, where the market share of the post-merger entity was estimated at around 18%.

With respect to the retail markets, the Authority used the results obtained from an extensive consumer survey (involving 6,000 households) to define the relevant markets from a product and geographic point of view. In particular, catchment areas were identified based on 10- or 15-minute isochrons, depending on the type and size of outlets (small market, supermarket, hypermarket, discount store). The survey allowed the Authority to include discount stores in the same relevant market with supermarkets and hypermarkets and consider the online channel still residual (the survey was conducted before the Covid-19 outbreak).

The analysis of the competitive environment in the 101 catchment areas outlined competition concerns in 33 local markets. For this reason, the transaction was approved subject to the divestiture of around 30 outlets to address the increased concentration in the local markets concerned.

#### *C12333 - POSTE ITALIANE/NEXIVE GROUP (merger in the postal sector)<sup>15</sup>*

In December 2020, the Authority conditionally authorised a concentration consisting of the acquisition by Poste Italiane S.p.A. ("Poste Italiane"), of Nexive Group S.r.l. ("Nexive Group"), both active in the provision of postal, print, digital, parcel and express delivery services. The acquisition was notified pursuant to a new framework introduced by the government in August 2020 which temporarily limited the merger control function of the Authority to the imposition of behavioural remedies without the possibility to block any mergers concerning i) labour intensive companies; ii)

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<sup>14</sup> See AGCM case no. *C12247B - BDC ITALIA-CONAD/AUCHAN*, decision no. 28163, published on the AGCM Bulletin no. 10/2020 and available on the AGCM website.

<sup>15</sup> See AGCM case no. *C12333 - POSTE ITALIANE/NEXIVE GROUP*, decision no. 28497, published on the AGCM Bulletin no. 2/2021 and available on the [AGCM website](#).

which provide public services and iii) have reported losses in the last three years (see section 1.1 above).

The transaction involved a number of activities in the postal services sector, including ordinary mail services for large business users (multiple items) for intermediate and final customers, the registered mail service and express delivery and transport services.

In the Authority's view, the merger would have led to a strengthening of the dominant position of Poste Italiane, which is the former monopolist still entrusted of the public services obligations. Post-merger, the network of the new entity would have become, de facto, the only end-to-end network with national coverage, compromising - in the absence of appropriate measures to facilitate access - the existence of the alternative operators remaining on the market. In particular, the merged entity would have become the only participant in the tenders for the award of ordinary mail services for end users and large business users, which represent the main component of the demand for mail services.

For these reasons, the Authority made the transaction conditional on Poste Italiane compliance with certain behavioural measures designed to prevent the risk of worsening existing terms and conditions on users as a result of the transaction.

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

#### ***3.1 Opinions and recommendations***

In 2020, the Authority issued 80 advocacy interventions, using the regulatory tools available and intervening in a number of sectors to urge the legislator to remove the unjustified obstacles to the competitive process and its dynamics.

In particular, the Authority issued 64 opinions pursuant to articles 21 and 22 of Italian Law no. 287/90 and 12 reasoned opinions in accordance with art. 21-bis of Italian Law no. 287/1990, three of which in accordance with the regulations on public-shareholder companies, which require the public administrations to inform the AGCM when it intends to establish state-owned enterprises and purchase shares in those already existing.

During 2020, the Authority monitored advocacy interventions for the two-year period 2018-2019<sup>16</sup>, noting that the outcome of the assessment was positive in 55% of the opinions issued in 2018 and 2019 (a percentage which rises to 70% in the case of opinions on draft laws or regulations pursuant to article 22). Most of the advocacy interventions (117 in 2018-2019) covered by the monitoring exercise concerned calls for tender (31), contracts/awards (18), municipal administrative acts (17) and regional laws (17). The sectoral areas which were mainly covered by the monitoring exercise were the services sector (28 interventions), transport (20), tourism (15), energy services (13), recreational, cultural and sports activities (11) and telecoms (10).

#### ***3.2 Description of significant advocacy interventions***

##### ***3.2.1 Advocacy to address competition restrictions of Covid-19 related government measures***

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<sup>16</sup> See the AGCM monitoring report "OUTCOMES OF COMPETITION ADVOCACY DECISIONS IN 2018-2019", October 2020, available at the AGCM website, at the following link: [https://www.agcm.it/dotcmsdoc/monitoraggio-advocacy/Advocacy\\_2018\\_2019\\_aggiornamento\\_ottobre\\_2020-EN.pdf](https://www.agcm.it/dotcmsdoc/monitoraggio-advocacy/Advocacy_2018_2019_aggiornamento_ottobre_2020-EN.pdf)

At the Covid-19 outbreak, the Authority intervened during the parliamentary debate for the conversion into law of the “Cure Italy Decree”, which was the first intervention of the government to provide economic support to families and businesses, by making a public statement<sup>17</sup>.

In particular, the AGCM invited the Parliament to re-assess the proportionality of all measures under examination which, despite the laudable aim of safeguarding public health and protecting the weakest sectors of the economy in the immediate future, could have jeopardised recovery and growth in the long run. The proportionality test was invoked by the Authority also with respect to certain measures expected to restrict, if not suspend, competition in some sectors. For instance, one measure under discussion was the blocking of the possibility to switch to a new mobile telephone operator for the duration of the entire emergency situation, in order to help the mobile services providers to face the operational difficulties linked to the lockdown. This measure was considered by the AGCM disproportionate, in view of the fact that most migration activity between different operators could be carried out remotely, and the fact that the ability to change supplier would be particularly crucial for consumers in the difficult situation caused by the pandemic and that the restriction on competition caused by the proposed measure could negatively affect prices and quality of the services.

The Authority also contributed to the discussion concerning the package of measures to relaunch the economy, by issuing a formal opinion to the “Relaunch Decree”<sup>18</sup>. The Authority’s intervention focused on those measures with adverse impact on competition in the short term and advocated for an exit strategy in order not to compromise long term prospects of the economy. For instance, in relation to the proposal to postpone tenders and extend concessions, the AGCM invited the legislator to carry out a careful and necessary balance between the short-term benefits and the possible costs that could arise in the long-term, underlying that prior to the emergency many local administrations were launching procedures to award local public transport services.

In the same opinion, the Authority also intervened with respect to a proposal exempting from the AGCM review all concentrations carried out within the context of public support to banks in compulsory administrative liquidation (see section 1.1). According to the AGCM, this exemption would have reduced transparency in the decision-making process especially in relation to the potential anticompetitive effects of a merger, in the short as well long term, thus bringing uncertainty on future prospects.

### **3.2.2 Advocacy in the communications sector**

In 2020, in light of the Covid-19 crisis which highlighted the importance of the digital sector, the Authority addressed the issues related with i) infrastructure competition; ii) the administrative obstacles for the deployment of 5G wireless communication networks and iii) the development of the demand-side of connectivity services.

In order to promote investments in “future-proof” technologies, the Authority called for the set-up of a regulatory framework for the development of ultra-broadband connectivity services delivered as a result of competition among different fixed and mobile infrastructures and connection technologies, also through forms of co-investments and without the imposition of a particular standard<sup>19</sup>.

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<sup>17</sup> See AGCM press release of 8 April 2020, available at: <https://en.agcm.it/en/media/press-releases/2020/4/ICA-suggestions-from-the-Authority-about-some-proposed-amendments-to-the-Cura-Italia-Decree>

<sup>18</sup> See AGCM press release of 7 July 2020 which summarised in English the formal opinion, available at: <https://en.agcm.it/en/media/press-releases/2020/7/S3940>. See opinion n. AS1684 - *Osservazioni in merito alle disposizioni contenute nel Decreto Rilancio*, published in the AGCM Bulletin no. 28/2020, available at: [https://www.agcm.it/S3940\\_segna%20lazione%20ex%20art.%202021.pdf](https://www.agcm.it/S3940_segna%20lazione%20ex%20art.%202021.pdf)

<sup>19</sup> See AGCM opinion AS1683 - *CRITICITÀ IN MERITO ALLO SVILUPPO DELLE INFRASTRUTTURE DI TELECOMUNICAZIONE FISSA E MOBILE A BANDA ULTRALARGA*, issued on July 1, 2020, and published on the AGCM bulletin no. 28/2020.

With respect to reducing administrative and authorization burdens<sup>20</sup>, the Authority advocated for a simplification of procedures for obtaining permits to carry out excavation work for high-capacity networks and to install 5G equipment. In this regard, the Authority suggested: the introduction of a fast track mechanism for the resolution of administrative disputes concerning unjustified refusals by local authorities; ii) the provision of substitutive powers at the central level in case of inertia from local authorities and iii) a reconciliation mechanism, entrusted to already existing bodies such as the communications regulator, for disputes between private parties in relation to the roll out of the infrastructure.

The AGCM also intervened to suggest greater consumer mobility and a boost in the demand as a driver for the adoption of new technologies in the ultrabroadband fixed network sector<sup>21</sup>. In particular, the Authority suggested: i) the removal of all forms of contractual lock-in when providing essential equipment to users; ii) the definition of standard processes for number portability between different networks and technologies, as well as a system of public support to demand (voucher) that is simple to implement, transparent in terms of timing and adoption rules, and rewards only investments in future-proof networks.

### 3.2.3 *Advocacy for a reform of the Chambers of Commerce*

In July 2020, the AGCM urged the Parliament and the Government for reform of Chambers of Commerce (CC)<sup>22</sup>, by underling the competition distortions stemming from:

- The price monitoring activities of the CC, as shown by the Authority's past enforcement & advocacy records;
- The mixture of roles assigned by law to the CC<sup>23</sup>, which are at the same time market regulators and holders of private interests.

In the opinion, the Authority noted that CC gather and analyse, on a regular basis, price and tariff data with a view to publish price lists. Historically, the ratio of this activity was to facilitate market transactions (by increasing transparency) especially in case of disagreement on prices between the parties. This activity is carried out by CC with respect to numerous products, in the contest of ad-hoc «Price Commissions» established at local level. The composition of Price Commissions often represents the major players of the sector at the expense of the weakest counterparts.

In this context, the Authority noted that Price Commissions offer an opportunity for competitors to meet and discuss commercially sensitive information with high risk of coordination. In addition, the practice of submitting price lists to the CC in exchange of a certificate of “conformity” and the possibility to get access to the price lists submitted by the other companies is considered by the Authority a hub-and-spoke mechanism for sharing information among competitors. Moreover, the application of competition law in this context has become more challenging for the AGCM after the Courts affirmed the lawfulness of the activity of price collection/monitoring and price list publication by the Price Commissions.

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<sup>20</sup> See AGCM opinion *AS1691 - OSTACOLI ALL'INSTALLAZIONE DI IMPIANTI DI TELECOMUNICAZIONE IN TECNOLOGIA WIRELESS 5G*, issued on July 28, 2020, published on the AGCM Bulletin no. 33/2020.

<sup>21</sup> See AGCM opinion *AS1696 - PIANO VOUCHER PER LA CONNETTIVITÀ IN BANDA ULTRA LARGA*, issued on the September 1, 2020, and published on the AGCM Bulletin no. 37/2020.

<sup>22</sup> See AGCM opinion n. *AS1682 - ATTIVITÀ DI RILEVAZIONE DI PREZZI E TARIFFE DELLE CAMERE DI COMMERCIO*, issued on June 17, 2020 and published on the AGCM Bulletin no. 28/2020.

<sup>23</sup> CC are functionally and financially independent public bodies that carry out functions of general interest for the business community within the territorial boundaries for which they are responsible. They carry out several activities: administrative functions (keeping company registers); promotional activities (e.g., support for companies and for development of the local economy); activities related to the analysis and monitoring of local economy and certain market regulation functions (e.g., certification, legal compliance).

The AGCM advocated for a revision of the price monitoring activities in terms of scope, implementation modalities and composition of CC and their Price Commissions. As for the scope, the AGCM asked the legislator to expressly identify the products to be subject to price monitoring, underlying that price collection & monitoring activities should be confined to a limited range of products, based on the criteria of necessity and proportionality with respect to the public interest objective at stake (e.g., for products that exhibit high price volatility or traded in a limited way, with poor information on transactions).

In order to limit the risk that the CC activity acts as a collusive device for companies the Authority suggested (i) the adoption of a statistical-historical methodology by surveying prices effectively resulting from actual past transactions and not “suggested prices” with predictive value or objective; (ii) the use of information and data which are accurate, reliable and verifiable, “certified” by an independent third party; and (iii) the prohibition of the practice of submitting price lists.

With respect to Price Commissions, the AGCM recommended price data collection & analysis activities to be entrusted to external independent third parties (industry experts, judges and members of the CC) as opposed to industry players.

## **4. RESOURCES OF THE COMPETITION AUTHORITY**

### **4.1 Annual Budget**

The annual expenses incurred by the Authority in 2020 totalled EUR 60.98 million (EUR 58.69 million in 2019)<sup>24</sup>. This figure also includes the costs for other competences assigned to the Authority such as consumer protection, conflicts of interest and legality rating.

In 2020, the outbreak of the Covid-19 virus has accelerated the digitization plan of the AGCM, with increase in investments in digital infrastructure, processes and services, including:

- enhancement of the available bandwidth of the connectivity service at the Authority's headquarters;
- activation of licenses for remote desktop sharing, in order to make remote access immediately possible for a very large number of users;
- investments in security and reliability of the platform for remote access for employees working from home;
- assignment to Authority staff the equipment for remote work: laptop, smartphone, tablet, 4G Wi-Fi modem;
- digitalization of processes such as electronic notifications, electronic case file management system and digital signatures.

### **4.2 Personnel**

The total number staff of the AGCM at the end of 2020 was 281. This includes all human resources tasked with performing other non-competition competences for the AGCM (e.g. consumer protection). In December 2020, 135 employees worked in competition area, 36 of whom were support

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<sup>24</sup> 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 0.055 per thousand, set in January 2018 and confirmed in February 2021. The income derived from these contributions replaces all previous forms of financing (merger fees and funds from the public budget).

staff and 99 non-administrative staff. The latter group comprised 47 lawyers, 42 economists and 10 other professionals (e.g. IT experts, one data scientist).

To tackle the challenges of the pandemic on the operational front, the Authority promptly facilitated recourse to remote work which used by 90% of the staff during the first emergency phase of March-May 2020 and at least 60% in the subsequent months.

### **4.3 Performance assessment**

In December 2020 the AGCM published a performance assessment of 2019<sup>25</sup>. The report shows that the AGCM has made progress in reaching its 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. In January 2021, the Authority approved its performance plan covering the period 2021-2023<sup>26</sup>.

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<sup>25</sup> The report is available at: [https://www.agcm.it/dotcmsdoc/trasparenza/performance/p28492s\\_all.pdf](https://www.agcm.it/dotcmsdoc/trasparenza/performance/p28492s_all.pdf)

<sup>26</sup> Available at the following link: [https://www.agcm.it/dotcmsdoc/trasparenza/performance/p28525s\\_all%20-%20Piano%20Performance%202021-23.pdf](https://www.agcm.it/dotcmsdoc/trasparenza/performance/p28525s_all%20-%20Piano%20Performance%202021-23.pdf)