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Last updated in May 2025.

Law no. 287 of 10 October 1990

COMPETITION AND MARKET PROTECTION ACT

TITLE I

RULES ON RESTRICTIVE AGREEMENTS, ABUSE OF DOMINANT POSITION AND CONCENTRATIONS

The Chamber of Deputies and the Senate of the Republic
have approved;

THE PRESIDENT OF THE REPUBLIC

HEREBY ENACTS

the following law:

Section 1

Scope and relationship with the EU legal framework

1. The provisions of this Act implementing section 41 of the Constitution, which protects and safeguards the right to free economic initiative, apply to restrictive agreements, abuse of dominant position and concentrations of undertakings.
2. The Italian Competition Authority as per section 10, hereinafter referred to as the “Authority”, shall apply, also concurrently with respect to the same case, articles 101 and 102 of the Treaty on the Functioning of the European Union and sections 2 and 3 of this Act to agreements restricting free competition and to abuse of a dominant position.

3. [Repealed by Legislative Decree no. 3 of 19 January 2017]

4. The provisions contained in this Title shall be interpreted based on the principles of EU competition law.

Section 2

Agreements restricting freedom of competition

1. Restrictive agreements and/or concerted practices between undertakings, as well as any decisions by consortia, associations of undertakings and other similar entities, even if adopted pursuant to their statutory or regulatory provisions, shall be regarded as anti-competitive agreements.

2. Agreements between undertakings which have as their object or effect the significant prevention, restriction or distortion of competition within the internal market or a substantial part thereof are prohibited, including when implemented through activities consisting in:

- a) directly or indirectly fixing purchase or selling prices or other trading conditions;
- b) preventing or limiting production, market outlets or market access, investments, technical development or technological progress;
- c) sharing markets or sources of supply;
- d) applying objectively dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at an unjustified competitive disadvantage;
- e) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

3. Prohibited agreements are void for all intents and purposes.

Section 3

Abuse of dominant position

1. The abuse of a dominant position by one or more undertakings within the national market

or a substantial part thereof is prohibited. The following are also prohibited:

- a) directly or indirectly imposing unjustifiably burdensome purchase or selling prices or other contractual conditions;
- b) preventing or limiting production, market outlets or market access, technical development or technological progress, to the prejudice consumers;
- c) applying objectively dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at an unjustified competitive disadvantage;
- d) making the conclusion of contracts subject to acceptance by the other parties of additional obligations which, by their nature and according to commercial usage, have no connection with the subject of such contracts.

Section 4

Exemption from the prohibition of agreements restricting competition

1. The Authority may authorise, by adopting a decision, for a limited period of time, the agreements or categories of agreements prohibited pursuant to section 2, where these lead to improvements in market supply conditions, capable of entailing substantial benefits for consumers. Said improvements must be identified also by considering the need to ensure that undertakings are sufficiently competitive internationally and they must be linked, in particular, to an increase in production, an improvement in the quality of production or distribution, or to technical and technological progress. Such authorisation may in any case not allow restrictions that are not strictly necessary for the attainment of these objectives, nor can it allow for competition to be eliminated in respect of a substantial part of the market.

2. The Authority may revoke its authorisation under subsection 1, following a cease and desist order, if the beneficiary abuses of said authorisation or if any of the prerequisites for the exemption are no longer met.

3. Requests for exemption must be submitted to the Authority, which shall resort to its powers of investigation referred to in section 14 and adopt a decision within one hundred and twenty days from the submission of the request.

Section 5

Concentrations

1. A concentration shall be deemed to arise:

a) when two or more undertakings merge;

b) when one or more persons controlling at least one undertaking, or one or more undertakings, acquire the direct or indirect control, whether by purchase of shares or assets, by contract or by any other means, of the whole or parts of one or more undertakings;

c) when two or more undertakings establish a joint venture which performs, on a lasting basis, all the functions of an autonomous entity.

2. The acquisition of control of an undertaking does not occur when banks or financial institutions acquire, upon setting up an undertaking or increasing its capital, shareholdings in that undertaking with a view to reselling them on the market, provided that they do not exercise the voting rights in respect of those shareholdings during the entire period of ownership of the same, which may in any case not exceed twenty-four months.

3. To the extent that the creation of a concentrative joint venture has as its object or effect the coordination of the behaviour of undertakings that remain independent, such coordination shall be assessed in accordance with the parameters adopted for the assessment of agreements restricting competition, with a view to establishing whether or not the operation gives rise to the consequences under section 6. In making this assessment, the Authority shall take into account in particular, whether two or more parent companies simultaneously retain, to a significant extent, activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market, as well as whether the coordination which is the direct consequence of the creation of the joint venture affords the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products or services in question.

Section 6

Prohibition on concentrations restricting free competition

1. With regard to concentrations subject to notification pursuant to section 16, the Authority shall assess whether they significantly impede effective competition in the national market or in a substantial part thereof, in particular as a result of the creation or strengthening of a dominant position. This situation must be assessed in view of the need to maintain and develop effective competition, by taking into account the structure of all the markets

concerned and the current or potential competition, as well as the market position of the undertakings concerned and their economic and financial power, the alternatives available to suppliers and users, their access to supplies or market outlets, any legal or other barriers to entry, supply and demand trends for the relevant goods and services, the interests of the intermediate and ultimate consumers, and the technical and economic progress, provided that it is to consumers' advantage and does not constitute an obstacle to competition. The Authority may assess the anti-competitive effects of acquisitions of control over small undertakings characterised by innovative strategies, including in the field of new technologies.

2. Upon completing an investigation pursuant to section 16, subsection 4, if the Authority finds that the transaction entails the consequences referred to in subsection 1, it shall either prohibit the concentration or authorise it subject to the measures necessary to prevent such consequences.

Section 7

Control

1. For the purposes of this Title, control shall be deemed to arise in the cases provided by Article 2359 of the Civil Code, and when there are rights, contracts or any other legal relationships which, either separately or in combination, and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, also by:

- a) ownership or the right to use all or part of the assets of an undertaking;
- b) rights, contracts or other legal relationships which confer decisive influence on the composition, voting or decisions of the governing bodies of an undertaking.

2. Control is acquired by persons or undertakings or groups of persons or undertakings which:

- a) are holders of the rights or entitled to rights under the contracts concerned, or which are a party to the other legal relationships above; or
- b) while not being holders of such rights or entitled to rights under such contracts, or parties to such legal relationships above, have the power to exercise the rights deriving therefrom.

Section 8

Public undertakings and legal monopolies

1. The provisions of the preceding sections apply to both private and public undertakings and to those in which the State is the majority shareholder.

2. The provisions of the preceding sections do not apply to undertakings which, by law, manage services of general economic interest or operate as monopolies on the market, insofar as their activities are strictly connected to the performance of the specific tasks assigned to them.

2-bis. If the undertakings referred to in subsection 2 intend to operate on markets other than those referenced therein, they must do so through separate undertakings.

2-ter. The creation of undertakings and the acquisition of control in undertakings operating in other markets as per subsection *2-bis* are subject to prior notification to the Authority.

2-quater. **[Repealed by Law Decree no. 113 of 9 August 2024]**

2-quinquies. In the cases referred to in subsections *2-bis* and *2-ter*, the Authority shall exercise its powers under section 14. Undertakings found to be in breach of sections 2 and 3 shall be subject to the provisions and sanctions set forth in section 15.

2-sexies. In case of failure to comply with the notification obligation set forth in subsection *2-ter*, the Authority shall impose an administrative monetary sanction of up to 100 million lire.

Section 9

Self-production

1. The granting by law to the State or to a public entity of a monopoly on a market, as well as the exclusive right granted by law to an undertaking entrusted with managing the supply of goods and services to the public against compensation, shall not prohibit third parties from producing said goods and services for their own use, for their parent company or subsidiaries.

2. Self-production is not permitted in cases where the exclusive rights have been granted for reasons of public policy, national security and national defence, as well as in the field of telecommunications unless a concession is granted.

TITLE II

ESTABLISHMENT AND FUNCTIONS OF THE ITALIAN COMPETITION AUTHORITY

Chapter I

ESTABLISHMENT OF THE AUTHORITY

Section 10

The Italian Competition Authority

1. The Italian Competition Authority, referred to as the Authority for the purposes hereof, is hereby established, with its headquarters being in Rome.
2. The Authority shall act with complete autonomy and independence of judgment and assessment, and is a collegial body consisting of the chairman and four members who are appointed by a joint decision of the Presidents of the Chamber of Deputies and the Senate of the Republic. The chairman is selected among persons of well-known independence who have held prominent institutional positions entailing major responsibilities. The four members are selected among persons of well-known independence, identified among judges serving on the *Consiglio di Stato* (the Supreme Administrative Court), the *Corte dei Conti* (the Court of Auditors) or the *Corte di Cassazione* (the Supreme Court of Cassation), full university professors of Economics or Law, and highly skilled acclaimed professionals from economic sectors.
3. Members of the Authority are appointed for a non-renewable period of seven years. Under penalty of removal from office, they may not engage in any professional or consultancy activities, nor may they serve as directors or employees of public or private entities, or hold any other public office of any kind. Civil servants are granted leave of absence for the entire duration of their mandate. Members of the Authority cannot be removed from office or discharged for reasons related to the proper performance of their duties or the proper exercise of their powers in enforcing this Act or article 101 or 102 TFEU. Members of the Authority may be removed from office only if the supplementary penalty referred to in section 28 of the Criminal Code is applied by way of a final judgment; in those cases, the Board of the

Authority shall inform the Presidents of the Italian Chamber of Deputies and the Senate of the Republic for all decisions falling within their remit.

3-bis. The members and staff of the Authority shall perform their duties and exercise their powers for the purpose of enforcing this Act and articles 101 and 102 TFEU without any political interference and any other external influence. They shall neither seek nor take instructions from the Government or any other public or private entity in the performance of their duties or the exercise of their powers. The members and staff of the Authority shall refrain from taking any action which is incompatible with the performance of their duties or the exercise of their powers for the purpose of enforcing this Act or article 101 or 102 TFEU.

3-ter. The Authority shall adopt and publish a code of conduct for its members and staff inclusive of provisions on conflicts of interest and the relevant sanctions. During the three years following the termination of their duties, the members and staff of the Authority may not be involved in any proceedings for the enforcement of article 101 or 102 TFEU or sections 2 or 3 herein which they dealt with during their employment or appointment within the Authority. Any contracts and assignments in breach of the above provisions are null and void.

4. The Authority has the right to liaise with all public administrations and with bodies governed by public law, and ask the latter in addition to updates and information, also to cooperate in the performance of its duties. In its capacity as the national authority in charge of protecting competition and the market, the Authority shall cooperate with the bodies of the European Union as provided by applicable EU legislation.

5. Within ninety days from the date of entry into force of this Act, the President of the Italian Republic shall issue a Decree – based on a proposal by the Minister for Industry, Trade and Crafts, in consultation with the Minister of the Treasury, and after deliberation by the Council of Ministers – establishing investigation procedures that ensure full access to the investigation documents, the right to be heard and the recording of minutes for all interested parties.

6. The Authority shall adopt the rules governing its organisation and functioning, staff employment legal and economic conditions, and its career progression framework, as well as those on managing expenditure within the limits laid down herein, also by way of derogation from general State accounting rules.

7. The Authority shall manage the expenditure for its functioning independently, in accordance with the contribution limit set forth in subsection *7-ter*. The Authority is

independent in the use of its financial resources. Its finances are managed based on the budget approved by the Authority by 31 December of the year prior to that which the budget refers to. The content and structure of the budget, in which expenditures cannot exceed the forecast revenue, are defined in the rules referred to in subsection 6, which also govern the procedures for introducing adjustments. The financial statements, which shall be approved by 30 April of the following year, are subject to review by the *Corte dei Conti* (the Court of Auditors). The budget and the financial statements are published in the Official Gazette of the Italian Republic.

7-bis. [Repealed by Law Decree no. 1 of 24 January 2012, converted with amendments into Law no. 27 of 24 March 2012]

7-ter. The expenditures deriving from the functioning of the Italian Competition Authority are covered through a contribution of 0.08 per thousand of the turnover recorded in the last financial statements approved by companies limited by shares whose overall income is over 50 million euro, without prejudice to the criteria set forth in subsection 2 of section 16 herein. The maximum contribution threshold for each undertaking may not exceed one hundred times the minimum amount.

7-quater. Without prejudice to the existing financing methods for the year 2012, including the application of section 2, subsection 241 of Law no. 191 of 23 December 2009, as of 2013, the contribution referred to in subsection *7-ter* shall be paid directly to the Authority in accordance with procedures determined by a decision of the Authority within 30 October 2012. For subsequent years, starting from 2014, the contribution shall be paid directly to the Authority by 31 July of each year, in accordance with the procedures determined by a decision of the Authority. The Authority may adopt a decision to change the amount of the contribution – and its payment methods – to maximum 0.5 per thousand of the turnover recorded in the financial statements approved prior to said decision, without prejudice to the maximum contribution threshold under subsection *7-ter*.

8. The compensation due to the chairman and the members of the Authority shall be determined by decree of the President of the Council of Ministers, following a proposal by the Minister for Industry, Trade and Crafts, in agreement with the Minister of the Treasury.

Section 11

Staff of the Authority

1. A decree of the President of the Council of Minister shall establish dedicated staff positions

for the Authority. The number of positions envisaged in the organisational chart may not exceed one hundred and fifty. Staff shall be hired through an exam-based public recruitment process, except for those categories whose recruitment is laid down in section 16 of Law no. 56 of 28 February 1987.

2. Staff employment legal and economic conditions, as well as the career progression framework are established based on the criteria laid down in the collective bargaining agreement in force for the Bank of Italy, while considering the Authority's specific functional and organisational needs.

3. The staff employed by the Authority are in any case prohibited from taking up any other employment or assignment or from engaging in professional, commercial or industrial activities.

4. The Authority may directly recruit up to fifty staff members under fixed-term contracts governed by the rules of private law. Where necessary, the Authority may also consult experts on specific matters and issues.

5. The secretary-general, who reports to the chairman, oversees the functioning of the Authority's services and offices. The secretary-general is appointed by the Minister for Industry, Commerce and Crafts, following a proposal by the chairman of the Authority.

Chapter II

THE AUTHORITY'S POWERS OVER AGREEMENTS RESTRICTING FREEDOM OF COMPETITION AND ABUSE OF A DOMINANT POSITION

Section 12

Powers of investigation

1. After assessing the elements in its possession and those brought to its attention by public administrations or by any other interested party, including consumer associations, the Authority shall launch an investigation to ascertain potential infringements of the prohibitions under sections 2 and 3.

1-bis. Evidence admissible before the Authority includes documents, oral statements, electronic messages, recordings and all other documents containing information, irrespective of their format and storage method.

1-ter. The Authority has the power to define its priorities when enforcing this Act and articles 101 and 102 TFEU. The Authority may choose not to pursue complaints that are not aligned with its priorities.

1-quater. Proceedings related to infringements of article 101 or 102 TFEU or of sections 2 or 3 herein, including the Authority's exercise of powers outlined in this Chapter, shall comply with the general principles of European Union law and the Charter of Fundamental Rights of the European Union.

2. On its own initiative or at the request of the Minister for Industry, Trade and Crafts or of the Minister of State Shareholdings, the Authority may also conduct general market studies in economic sectors where trade developments, price trends or other circumstances suggest that competition may be impeded, restricted or distorted.

2-bis. To enforce sections 2 and 3 herein, as well as articles 101 and 102 of the Treaty on the Functioning of the European Union, the Authority may at any time request companies and entities to provide any useful information and documents in their possession. These requests for information must state their legal basis, be proportionate and they shall not force their recipients to admit to an infringement of articles 101 and 102 of the Treaty on the Functioning of the European Union or of sections 2 and 3 herein.

2-ter. Failure or omission to provide information and documents requested pursuant to subsection *2-bis*, or the submission of false information and documents, for no justified reason, shall lead to the imposition of administrative monetary sanctions as per section 14, subsection 5, by a decision of the Authority. The Authority shall grant the entities under subsection *2-bis* with a reasonable amount of time to respond, also in view of the complexity of the requested information. This deadline shall under no circumstance exceed sixty days but may be extended following a reasoned request. The latter is without prejudice to any other sanctions provided by applicable legislation.

Section 13

Notification of agreements

1. Undertakings may notify the Authority of any agreements they have entered into. If the

Authority does not open proceedings as per section 14 within one hundred and twenty days of the notification, it will no longer be permitted to do so, unless the notification is found to be incomplete or false.

Section 14

Investigation proceedings

1. In the event of an alleged infringement of article 101 or 102 TFEU or of sections 2 or 3 herein, the Authority shall conduct an investigation within a reasonable timeframe and notify the undertakings and entities concerned of its opening. The owners or legal representatives of such undertakings and entities shall have the right to be heard – either in person or through a special attorney – within the deadline specified in the notification. They shall also have the right to present their arguments and views at any stage of the proceedings, as well as to be heard again before the conclusion of said proceedings.

2. The Authority may, at any stage of the investigation, request undertakings, associations of undertakings or natural or legal persons to provide any information and documents they may have relevant to the investigation, within a reasonable timeframe specified in the request. These requests for information must be proportionate and cannot force recipients to admit to an infringement of article 101 or 102 TFEU or of sections 2 or 3 herein. The obligation to provide all necessary information extends to any information accessible to the recipients of the request.

2-bis. The Authority may, at any stage of the investigation, interview representatives of an undertaking or of an association of undertakings, representatives of other legal persons and any natural person who may possess information relevant to the investigation.

2-ter. The Authority may commission economic and statistical reports and analyses, as well as consult experts on any matter relevant to the investigation.

2-quater. The Authority may, at any time during the investigation proceedings, order all inspections of undertakings and associations of undertakings necessary for the enforcement of this Act and articles 101 and 102 TFEU. Officials of the Authority entrusted with conducting inspections may:

a) enter any premises, land and means of transport of undertakings and associations of undertakings;

b) examine the books and other records related to the business, irrespective of the medium on which they are stored, and access all the information accessible to the entity subject to inspection;

c) take or obtain in any form, copies of or extracts from such books or records, and if deemed appropriate, continue reviewing information and selecting copies or extracts on the Authority's premises or any other premises designated by it;

d) seal any business premises and books or records for the period and to the extent necessary for the inspection;

e) ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers.

2-quinquies. If there are reasonable grounds to suspect that books or other records related to the business and to the subject matter of the inspection, which may be relevant to prove an infringement of article 101 or 102 TFEU or of sections 2 and 3 herein, are being kept in premises, land and means of transport other than those referred to in section 14, subsection 2-*quater*, letter a) herein, including the homes of managers, directors and other members of staff of the undertakings and associations of undertakings concerned, the Authority may order the inspection of such premises, land and means of transport. The officials of the Authority tasked with the inspection shall be vested with the powers set out in subsection 2-*quater*, letters a), b) and c) above.

2-sexies. Inspections at the locations referred to in subsection 2-*quinquies* above may only be conducted subject to prior authorisation by a reasoned decree issued by the Public Prosecutor of the jurisdiction where the inspection is to take place. The decree must be notified to the Authority within ten days of its issuance. If the decree is denied, the Authority may challenge the refusal within ten days of notification by filing an appeal with the secretariat of the Public Prosecutor's office that issued the decree. The appeal, along with the decree of refusal, shall then be forwarded to the Judge for Preliminary Investigations, in accordance with Section 368 of the Code of Criminal Procedure.

2-septies. When conducting inspections under sub-sections 2-*quater* and 2-*quinquies*, the Authority may request assistance from officials of the *Guardia di Finanza* (the Italian Financial Police). Pursuant to section 54, subsection 4 of Law no. 52 of 6 February 1996, these officials shall act in accordance with the powers and rights set forth in Decrees of the

President of the Republic no. 633 of 26 October 1972 and no. 600 of 29 September 1973, as well as other tax provisions. The Authority may also request assistance from other State bodies.

2-octies. When the Authority conducts an inspection pursuant to subsections *2-quater* and *2-quinquies* or an interview pursuant to subsection *2-bis*, in the name and on behalf of another national competition authority pursuant to article 22 of Council Regulation (EC) no. 1/2003 of 16 December 2002, officials and other duly authorised or appointed representatives of the requesting national competition authority may attend and actively participate in the inspection or interview, under the supervision of the Authority's officials.

3. All news, information and data regarding the undertakings under investigation by the Authority shall be subject to an obligation of professional secrecy, also vis-à-vis other public administrations.

4. While performing their duties, the Authority's officials are considered public officials. They are bound by professional secrecy.

5. The Authority shall impose an administrative monetary sanction not exceeding 1 percent of the total worldwide turnover recorded in the preceding business year where, intentionally or negligently:

a) the undertakings or associations of undertakings hinder the inspection referred to in subsection *2-quater* above;

b) the seals affixed in accordance with subsection *2-quater*, letter d) have been broken, without prejudice to the further criminal sanctions provided for the offending party;

c) in response to a question asked in accordance with subsection *2-quater*, letter e), the undertakings and associations of undertakings fail to provide a complete answer or they supply incorrect or misleading information;

d) in response to a request for information pursuant to subsection 2, the undertakings and associations of undertakings supply incorrect, incomplete or misleading information or fail to supply information within the required time-limit;

e) the undertakings or associations of undertakings fail to attend the interview convened pursuant to subsection *2-bis* above.

6. The Authority may impose on undertakings or associations of undertakings periodic penalty payments not exceeding 5 percent of the average daily worldwide turnover in the preceding business year for each day of delay from the date set in the request or decision, in order to compel them to:

a) provide complete and accurate information in response to a request for information pursuant to subsection 2 above;

b) attend the interview convened pursuant to subsection 2-*bis* above;

c) submit to the inspection referred to in subsection 2-*quater* above.

7. An administrative monetary sanction ranging from 150 euro to 25,823 euro may be imposed, by decision of the Authority, on natural persons who intentionally or negligently:

a) hinder the inspection referred to in subsection 2-*quinqüies* above;

b) supply incorrect, incomplete or misleading information or fail to supply information within the required time-limit, in response to a request for information pursuant to subsection 2 above, unless they provide a reasoned refusal on the grounds that the requested information may disclose their liability for an offence punishable by administrative sanctions of a punitive nature or for a criminal offence;

c) fail to attend the interview convened pursuant to subsection 2-*bis* above;

8. The Authority may impose on natural persons periodic penalty payments ranging from 150 euro to 500 euro for each day of delay and calculated from the date set in the request or decision, in order to compel them to:

a) provide complete and accurate information in response to a request for information pursuant to subsection 2 above, unless they provide a reasoned refusal on the grounds that the requested information may disclose their liability for an offence punishable by administrative sanctions of a punitive nature or for a criminal offence;

b) attend the interview convened pursuant to subsection 2-*bis* above;

c) submit to the inspection referred to in subsection 2-*quinqüies* above.

Section 14-bis
Interim Measures

1. In cases of urgency due to the risk of serious and irreparable damage to competition, the Authority may – acting on its own initiative, on the basis of a *prima facie* finding of infringement – order the adoption of interim measures.
2. A decision adopted pursuant to subsection 1 must be proportionate and apply until the adoption of the final decision or for a specified period of time which may be extended insofar as necessary and appropriate. The Authority shall inform the European Competition Network of any interim measures adopted within the framework of investigation proceedings into an alleged infringement of articles 101 and 102 TFEU.
3. If undertakings fail to comply with a decision imposing interim measures, the Authority may impose an administrative monetary sanction not exceeding 3 percent of their total worldwide turnover recorded in the preceding business year.

Section 14-ter
Commitments

1. Within three months of being notified about the opening of an investigation into an alleged infringement of sections 2 or 3 herein or article 81 or 82 EC Treaty, undertakings may offer commitments aimed at removing the anti-competitive conduct under investigation. After assessing the suitability of these commitments and consulting market operators, the Authority may, in accordance with EU law, make these commitments binding on the undertakings. Such a decision may apply for a specified period and closes the investigation without establishing the existence of an infringement.
2. If undertakings fail to comply with commitments made binding pursuant to subsection 1, the Authority may impose an administrative monetary sanction not exceeding 10 per cent of their total worldwide turnover recorded in the preceding business year. To monitor compliance with the commitments the Authority shall exercise its powers under section 14 herein.
3. The Authority may reopen the proceedings on its own initiative if:

- a) there has been a significant material change in any of the facts on which the decision was based;
- b) the undertakings concerned act contrary to their commitments; or
- c) the decision was based on incomplete, incorrect or misleading information provided by the parties.

Section 14-*quater* **Settlement procedure**

1. During an investigation opened pursuant to section 14, subsection 1, the Authority may set a deadline for the undertakings concerned to express in writing their willingness to engage in discussions with a view to possibly filing settlement submissions.

2. The Authority may provide the parties participating in settlement discussions with the following information:

- a) the objections it intends to raise against them;
- b) the evidence used to establish the objections it intends to raise;
- c) non-confidential versions of any specified accessible document listed in the case file at that point in time, in so far as this is justified for the purpose of enabling the party to ascertain its position regarding a time period or any other specific aspect of the cartel;
- d) the range of potential sanctions. Such information is confidential with respect to third parties unless the Authority has expressly authorised its disclosure.

3. If the discussions are successful, the Authority may set a deadline for the undertakings involved to decide whether to opt for the settlement procedure. This entails introducing settlement submissions that reflect previous discussions and acknowledge their participation in an infringement of sections 2 and 3 of herein or articles 101 and 102 of the Treaty on the Functioning of the European Union, as well as their respective liability.

4. The Authority may suspend the settlement discussions entirely at any time, also with respect to one or more specific parts, if it believes the procedure's effectiveness is compromised. Before the Authority sets a deadline for the settlement submissions, the parties

will be entitled to have the information specified in subsection 2 disclosed to them in due course upon request. The Authority is not required to consider any settlement submission received after the specified deadline.

5. By means of a general measure, the Authority shall establish the procedural rules governing the submission and assessment of settlement submissions under this section, in compliance with European Union law and ensuring the right to be heard. The general measure shall also define the extent of the reduction of the sanction under section 15, subsection 1-*bis*, to be granted if the settlement procedure is successful.

Section 15

Cease and desist orders and sanctions

1. Following an investigation under section 14 herein, if the Authority finds that an infringement of article 101 or 102 TFEU or of sections 2 or 3 herein has occurred, it shall set a deadline for undertakings or associations of undertakings to remove the infringement. If the infringement has already ceased, the Authority shall prohibit its reiteration. To this end, the Authority may impose the adoption of any behavioural or structural remedy proportionate to the infringement and necessary to effectively bring it to an end. When choosing between two equally effective remedies, the Authority shall opt for the least burdensome remedy for the undertaking, in line with the principle of proportionality.

1-*bis*. Based on the seriousness and duration of the infringement, the Authority shall also impose an administrative monetary sanction not exceeding 10 per cent of the total worldwide turnover recorded by each undertaking or association of undertakings in the business year preceding the notification of the cease and desist order, and set a deadline for the payment of the sanction. If the infringement committed by an association of undertakings relates to the activities of its members, the Authority shall impose an administrative monetary sanction not exceeding 10 per cent of the combined total worldwide turnover recorded in the business year preceding the notification of the cease and desist order by each member operating in the market affected by the infringement. However, each undertaking's financial responsibility for the payment of the sanction shall not exceed 10 per cent of its turnover recorded in the business year preceding the notification of the cease and desist order.

1-*ter*. When a sanction is imposed on an association of undertakings taking account of the turnover of its members pursuant to section 14, subsection 5 and section 15, subsection 1-*bis*, and the association is not solvent, it is obliged to call for contributions from its members to cover the amount of the sanction. If these contributions have not been paid in full to the

association of undertakings within the deadline set by the Authority, the Authority may require payment of the sanction directly by any of the undertakings whose representatives were members of the decision-making bodies of the association when it adopted the infringing decision. Where necessary to ensure full payment of the sanction, after demanding payment from those undertakings, the Authority may also require payment of the amount of the sanction still owed by any of the members of the association which were active on the market on which the infringement occurred. However, payment cannot be required from undertakings which show that they have not implemented the infringing decision and either were not aware of its existence or have actively dissociated themselves from it before the investigation began.

1-quater. If, based on the available information, the Authority concludes that the conditions for establishing an infringement are not met, it may adopt a decision to that effect. Where, after informing the European Commission pursuant to Article 11, paragraph 3 of Regulation (EC) no. 1/2003, the Authority determines that there are no longer grounds for action and therefore closes the investigation proceedings, it shall inform the European Commission accordingly.

2. In the case of non-compliance with the cease and desist order referred to in subsection 1, the Authority shall impose an administrative monetary sanction not exceeding 10 percent of the turnover. If the sanction under subsection 1 has already been imposed, the minimum sanction shall be at least double the previously imposed amount, but not exceeding 10 percent of the turnover as defined in subsection 1. The Authority shall also set a deadline for the payment of the sanction. In cases of repeated non-compliance, the Authority may order the suspension of the undertaking's business activities for up to thirty days.

2-bis. The Authority may impose on undertakings and associations of undertakings periodic penalty payments not exceeding 5 per cent of the average worldwide daily turnover recorded in the preceding business year for each day of delay from the date set in the decision, in order to compel them to:

- a) comply with the cease and desist order referred to in subsection 1 above;
- b) comply with the interim measures adopted pursuant to section 14-*bis*;
- c) comply with the commitments made binding by a decision pursuant to section 14-*ter*.

Section 15-bis
Non-imposition of sanctions

1. In accordance with the EU legal framework, the Authority shall adopt, by general measure, a leniency programme setting out the conditions under which undertakings that reveal their participation in a secret cartel and fully cooperate in establishing infringements of competition rules may qualify for a non-imposition or reduction of the administrative monetary sanction.

2. For the purposes of applying such provisions, secret cartel shall mean an agreement or concerted practice, whose existence is concealed in whole or in part, between two or more competitors aimed at coordinating their competitive behaviour on the market or influencing the relevant parameters of competition through practices such as, but not limited to, the fixing or coordination of purchase or selling prices or other trading conditions, including in relation to intellectual property rights, the allocation of production or sales quotas, the sharing of markets and customers, including bid-rigging, restrictions of imports or exports or anti-competitive actions against other competitors.

3. The Authority shall grant immunity from sanctions only where the applicant:

a) fulfils the conditions laid down in section 15-*quater* herein;

b) discloses its participation in a secret cartel; and

c) is the first to submit evidence which:

1) enables the Authority – upon receiving the application – to carry out a targeted inspection in connection with the secret cartel, provided that the Authority did not yet have in its possession sufficient evidence to carry out such an inspection or had not already carried out such an inspection; or

2) in the Authority's view, is sufficient for it to find an infringement covered by the leniency programme, provided that the Authority did not yet have in its possession sufficient evidence to find such an infringement and that no other undertaking previously qualified for immunity under point 1) in relation to that secret cartel.

4. Immunity from sanctions cannot be granted to undertakings that have taken steps to coerce other undertakings to join a secret cartel or to remain in it.

5. The Authority shall inform the applicant of whether or not it has been granted conditional immunity from sanctions. The applicant may request that it be informed by the Authority of the outcome of its application in writing. In cases where the Authority rejects an application for immunity from sanctions, the applicant concerned may request the Authority to consider its application as an application for reduction of sanctions.

Section 15-ter **Reduction of sanctions**

1. The Authority shall grant a reduction of sanctions only if the applicant:

- a) fulfils the conditions laid down in Section 15-*quater* herein;
- b) discloses its participation in a secret cartel; and
- c) submits evidence of the alleged secret cartel which represents significant added value for the purpose of proving an infringement covered by the leniency programme, relative to the evidence already in the Authority's possession at the time of the application.

2. If the applicant submits compelling evidence which the Authority uses to prove additional facts which lead to an increase in sanctions as compared to the sanctions that would otherwise have been imposed on the participants in the secret cartel, the Authority shall not take such additional facts into account when setting any sanction to be imposed on the applicant for reduction of sanctions which provided this evidence.

Section 15-*quater* **General conditions for leniency**

1. In order to qualify for leniency for participation in secret cartels, the applicant is required to satisfy the following conditions:

- a) it ended its involvement in the alleged secret cartel at the latest immediately following its leniency application, except for what would, in the Authority's view, be reasonably necessary to preserve the integrity of its investigation;
- b) it cooperates genuinely, fully, on a continuous basis and expeditiously with the Authority from the time of its application until the Authority has closed its proceedings against all

parties under investigation by adopting a decision or has otherwise terminated its investigation proceedings; such cooperation includes:

1) providing the Authority promptly with all relevant information and evidence relating to the alleged secret cartel that comes into the applicant's possession or is accessible to it, in particular:

- 1.1 the name and address of the applicant;
- 1.2 the names of all other undertakings that participate or participated in the alleged secret cartel;
- 1.3 a detailed description of the alleged secret cartel, including the affected products, the affected territories, the duration, and the nature of the alleged secret cartel conduct;
- 1.4 information on any past or possible future leniency applications made to any other competition authorities in relation to the alleged secret cartel;

2) remaining at the Authority's disposal to answer any request that may contribute to the establishment of facts;

3) making managers, directors and other members of staff available for interviews with the Authority and making reasonable efforts to make former managers, directors and other members of staff available for interviews with the Authority;

4) not destroying, falsifying or concealing relevant information or evidence; and

5) not disclosing the fact of, or any of the content of, its leniency application before the Authority has notified its statement of objections in the investigation proceedings, unless otherwise agreed; and

c) during the contemplation of making a leniency application to the national competition authority it must not have:

- 1) destroyed, falsified or concealed evidence of the alleged secret cartel; or
- 2) disclosed the fact of, or any of the content of, its contemplated application, other than to any other competition authorities in the European Union or third countries.

Section 15-*quinquies*

Form of leniency statement

1. Leniency statements in relation to full or summary applications pursuant to section 15-*septies* may be made in writing or in oral form. By its general measure under section 15-*bis*, the Authority may identify other means that permit applicants not to take possession, custody, or control of such submitted statements.
2. If requested by the applicant, the Authority shall acknowledge the receipt of the full or summary application in writing, stating the date and time of receipt.
3. Leniency statements in relation to full or summary applications, including those filed pursuant to section 15-*sexies*, shall be submitted in Italian. The Authority and the applicant may bilaterally agree that the application be submitted in another language.

Section 15-*sexies*

Markers for applications for the non-imposition of sanctions

1. Undertakings wishing to apply for the non-imposition of sanctions may be initially granted a place in the queue for leniency, where they so request, for a period specified on a case-by-case basis by the Authority, in order for the applicant to gather the necessary information and evidence to meet the relevant evidential threshold for immunity from sanctions. The Authority has full discretion in deciding whether or not to grant the marker request.
2. An undertaking submitting a request as per subsection 1 must provide the Authority, where available, with the following information:
 - a) name and address of the applicant;
 - b) the basis for the concern which led to the request;
 - c) the names of all other undertakings that participate or participated in the alleged secret cartel;
 - d) the affected products and territories;
 - e) the duration and the nature of the alleged secret cartel conduct;

f) information on any past or possible future leniency applications made to any other competition authorities in relation to the alleged secret cartel.

3. Any information and evidence provided by the applicant within the period specified in accordance with subsection 1 is deemed to have been submitted at the time of the initial request.

Section 15-septies

Summary applications

1. An undertaking that has applied to the European Commission for leniency in relation to a secret cartel falling within the scope of article 101 TFEU, either by submitting a full application or by applying for a marker, may file a summary application with the Authority in relation to the same cartel, provided that such application covers more than three Member States as affected territories.

2. Summary applications shall consist of a short description of each of the following:

a) the name and address of the applicant;

b) the names of the other parties to the alleged secret cartel;

c) the affected product(s) and territories;

d) the duration and the nature of the alleged secret cartel conduct;

e) the Member State(s) where the evidence of the alleged secret cartel is likely to be located;
and

f) information on any past or possible future leniency applications made to any other competition authorities in the European Union or third countries in relation to the alleged secret cartel;

3. If the European Commission receives a full application and the Authority receives a summary application in relation to the same alleged cartel, the Authority shall consider the Commission as the main interlocutor of the applicant, in particular in providing instructions to the applicant on the conduct of any further internal investigations, until clarity has been gained as to whether the Commission intends to pursue the case in whole or in part. In this

period, the Authority may request the applicant to provide specific clarifications only regarding the items set out in subsection 2, before it requires the submission of a full application pursuant to subsection 5.

4. Upon receiving a summary application, the Authority shall verify whether it has already received a summary or full application from another applicant in relation to the same alleged secret cartel. If the Authority has not received such an application from another applicant and considers the summary application to fulfil the requirements of subsection 2, it shall inform the applicant accordingly.

5. Once the European Commission has informed the Authority that it does not intend to pursue the case in whole or in part, the Authority shall request applicants to submit a full application. Only in exceptional circumstances, when strictly necessary for case delineation or case allocation, may the Authority request the applicant to submit the full application before the Commission has informed the Authority that it does not intend to pursue the case in whole or in part. Upon requesting applicants to submit a full application, the Authority shall specify a reasonable period within which the full application is to be submitted, together with the corresponding information and evidence. In any case, this is without prejudice to the right of the applicant to voluntarily submit a full application at an earlier stage.

6. If the applicant submits the full application in accordance with subsection 5, within the period specified by the Authority, the full application is deemed to have been submitted at the time of the summary application, provided that the summary application covers the same affected product(s) and territory(ies), as well as the same duration of the alleged secret cartel, as the leniency application filed with the Commission, which may have been updated.

Chapter II-*bis*

INVESTIGATIVE ASSISTANCE AS PART OF THE EUROPEAN COMPETITION NETWORK

Section 15-*octies*

Investigative cooperation

1. Without prejudice to section 14, subsection 2-*octies*, the Authority may exercise its investigative powers referred to in section 14 in the name and on behalf of other national competition authorities of the European Union that request it, in order to establish whether

there has been a failure, by undertakings or associations of undertakings, to comply with the applicant authority's requests for information, inspections, interviews, cease and desist orders, interim measures and commitment decisions in relation to the enforcement of articles 101 and 102 TFEU.

2. The Authority may request other national competition authorities of the European Union to exercise the investigative powers conferred on them by national law in order to establish whether there has been a failure by undertakings or associations of undertakings to comply with the Authority's requests for information, inspections, interviews, cease and desist orders, interim measures and commitment decisions in relation to the enforcement of articles 101 and 102 TFEU.

3. The Authority shall transmit the information gathered pursuant to subsection 1 to the applicant authority and it shall use the information received from other authorities pursuant to subsection 2 as evidence, subject to the safeguards set out in article 12 of Regulation (EC) no. 1/2003.

Section 15-*novies*

Notification requests

1. At the request of another national competition authority of the European Union made in relation to the enforcement of article 101 or 102 TFEU, the Authority shall notify the addressees on its national territory of:

a) any statements of objections to the alleged infringement of article 101 or 102 TFEU and any decisions applying those articles adopted by the applicant authority;

b) any other procedural act adopted in the context of investigation proceedings which should be notified in accordance with the national law of the applicant authority;

c) any other relevant documents related to the application of article 101 or 102 TFEU, including documents which relate to the enforcement of decisions imposing sanctions or periodic penalty payments.

2. When enforcing article 101 or 102 TFEU, the Authority may request other national competition authorities of the European Union to notify the addressees in their national territory of:

- a) any statements of objections to the alleged infringement of article 101 or 102 TFEU and any decisions applying those articles;
- b) any other procedural act adopted in the context of investigation proceedings which should be notified in accordance with national law;
- c) any other relevant documents related to the enforcement of article 101 or 102 TFEU, including documents which relate to the enforcement of decisions imposing sanctions or periodic penalty payments.

Section 15-*decies*

Requests for the enforcement of decisions imposing sanctions or periodic penalty payments

1. At the request of another national competition authority of the European Union, the Authority shall adopt, together with the competent administrations, the measures necessary to ensure the enforcement of final decisions imposing sanctions or periodic penalty payments adopted by the applicant authority in relation to the enforcement of articles 101 and 102 TFEU. This shall apply to the extent that, after having made reasonable efforts in its own territory, the applicant authority has ascertained that the undertaking or association of undertakings against which the sanction or periodic penalty payment is enforceable does not have sufficient assets in the Member State of the applicant authority to enable recovery of such sanction or periodic penalty.
2. For cases not covered by subsection 1, in particular cases where the undertaking or association of undertakings against which the sanction or periodic penalty payment is enforceable is established in Italy, the Authority may in any case assist in the enforcement of final decisions imposing sanctions or periodic penalty payments adopted by the applicant authority in relation to the enforcement of articles 101 and 102 TFEU, where the applicant authority so requests.
3. The Authority may request the competent authorities designated for this purpose by the other countries of the European Union to ensure the enforcement of final decisions imposing sanctions or periodic penalty payments adopted by the Authority in relation to the enforcement of articles 101 and 102 TFEU.
4. Matters regarding limitation periods for the enforcement of sanctions or periodic penalty payments shall be governed by the national law of the Member State of the applicant authority.

5. For the purposes of this section, a final decision means a decision that can no longer be appealed by ordinary means.

Section 15-*undecies*

Cooperation procedure

1. The Authority shall execute any requests under sections 15-*novies*, subsection 1, and 15-*decies*, subsections 1 and 2 without undue delay by means of a uniform instrument which shall be accompanied by a copy of the act to be notified or enforced.

2. Such uniform instrument shall indicate the following:

- a) the name, known address of the addressee, and any other relevant information for the identification of the addressee;
- b) a summary of the relevant facts and circumstances;
- c) a summary of the attached copy of the act to be notified or enforced;
- d) the name, address and other contact details of the requested authority;
- e) the period within which notification or enforcement should be effected, such as statutory deadlines or limitation periods.

3. For requests referred to in section 15-*decies*, in addition to the requirements set out in subsection 2, the uniform instrument shall provide the following:

- a) information about the decision permitting enforcement in the Member State of the applicant authority;
- b) the date when the decision became final;
- c) the amount of the sanction or periodic penalty payment;
- d) information showing the reasonable efforts made by the applicant authority to enforce the decision in its own territory. The requirement set out in this letter does not apply to requests made pursuant to section 15-*decies*, subsection 2.

4. The uniform instrument shall be sent to the Authority in Italian. However, the Authority and the applicant authority may bilaterally agree, on a case-by-case basis, that the uniform instrument be sent in another language. The act to be notified or the decision permitting enforcement of the sanction or periodic penalty payment must be accompanied by a translation of the same in Italian. However, the Authority and the applicant authority may bilaterally agree, on a case-by-case basis, that such translation be provided in a different language.

5. The uniform instrument referred to in subsection 1 shall constitute the sole basis for the enforcement measures adopted by the Authority. It shall not be subject to any act of recognition, supplementing or replacement.

6. The Authority shall not be obliged to execute a request referred to in sections 15-*novies* and 15-*decies* only if:

a) the request does not comply with the requirements of this section; or

b) the Authority is able to demonstrate reasonable grounds showing how the execution of the request would be manifestly contrary to public policy. If the Authority intends to refuse a request for assistance referred to in sections 15-*novies* and 15-*decies* herein or requires additional information, it shall contact the applicant authority.

7. The Authority can request that the applicant authority bear all reasonable additional costs in full, including translation, labour and administrative costs, in relation to actions taken as referred to in sections 15-*octies* and 15-*novies*.

8. The Authority may recover the full costs incurred in relation to actions taken as referred to in section 15-*decies* from the sanctions or periodic penalty payments it has collected on behalf of the applicant authority, including translation, labour and administrative costs. If the Authority is unsuccessful in collecting the sanctions or periodic penalty payments, it may request the applicant authority to bear the costs incurred. The Authority may also recover the costs incurred in relation to the enforcement of such decisions from the undertaking against which the sanction or periodic penalty payment is enforceable.

9. The Authority shall recover the amounts due in euro, in accordance with national law provisions. The Authority shall, if necessary, in accordance with national law, convert the

sanctions or periodic penalty payments in euro at the rate of exchange applying on the date on which the sanctions or periodic penalty payments were imposed.

10. The Authority may agree, on the basis of reciprocity, to waive the recovery of the costs referred to in subsections 7 and 8 vis-à-vis other national competition authorities in the European Union.

Section 15-*duodecies*

Jurisdiction and applicable law

1. Disputes shall fall within the competence of the competent bodies of the Member State of the applicant authority, and shall be governed by the law of that Member State, where they concern:

a) the lawfulness of an act to be notified in accordance with section 15-*novies* or a decision to be enforced in accordance with section 15-*decies*; and

b) the lawfulness of the uniform instrument permitting enforcement in the Member State of the requested authority.

2. Disputes concerning the enforcement measures adopted in the Member State of the requested authority or concerning the validity of a notification made by the requested authority shall fall within the competence of the competent bodies of the Member State of the requested authority and shall be governed by the law of that Member State.

Chapter III

THE AUTHORITY'S POWERS TO PROHIBIT CONCENTRATIONS

Section 16

Notification of concentrations

1. The concentrations referred to in section 5 are subject to prior notification to the Authority if the combined aggregate nation-wide turnover of all the undertakings concerned is more than four hundred and ninety-two million euro and if the aggregate nation-wide turnover of each of at least two of the undertakings concerned is more than thirty million euro. These

amounts shall be increased each year by an amount equivalent to the increase in GDP price deflator index.

1-*bis*. The Authority may request the undertakings concerned to notify a concentration within thirty days even if only one of the two turnover thresholds referred to in subsection 1 is exceeded, or if the combined aggregate worldwide turnover of all the undertakings concerned is more than 5 billion euro, if there are concrete threats to competition at a national level, or a substantial part thereof, also considering the detrimental effects on the development and spread of small undertakings with innovative strategies, and if no more than six months have elapsed since the completion of the concentration. The Authority shall define the procedural rules for the implementation of this section in its own general measure, in compliance with the EU legal framework. The sanctions under section 19, subsection 2 shall apply in case of failure to notify. The provisions in this subsection shall not apply to concentrations implemented before the date of entry into force.

2. In the case of credit institutions and other financial institutions, the turnover shall be replaced by the sum of the following income items, after deduction of value added tax and other taxes directly related to those items, where appropriate:

- a) interest income and similar income;
- b) income from shares and other variable yield securities, income from participating interests, income from shares in affiliated undertakings and other income from securities;
- c) commissions receivable;
- d) net profit on financial operations;
- e) other operating income.

For insurance undertakings, the turnover shall be replaced by the value of gross premiums written which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums.

3. Within five days of the notification of a concentration, the Authority shall inform the President of the Council of Ministers and the Minister for Industry, Trade and Crafts.

4. If the Authority determines that a concentration is liable to be prohibited pursuant to section 6, it shall start investigation proceedings within thirty days of receiving the notification or becoming aware of it, in accordance with the provisions under section 14. Upon receiving a duly notified concentration, if the Authority deems an investigation unnecessary, it shall notify the undertakings concerned and the Minister for Industry, Trade and Crafts of its decision within thirty days of receiving the notification.

5. A public takeover bid which may give rise to a concentration subject to notification pursuant to subsection 1, must be notified to the Authority upon being notified to the *Commissione nazionale per le società e la borsa* (the Italian Companies and Stock Exchange Commission).

6. In the case of a public takeover bid notified to the Authority pursuant to subsection 5, the Authority shall notify the start of its investigation proceedings within fifteen days of receiving the notification and at the same time notify the *Commissione nazionale per le società e la borsa* (the Italian Companies and Stock Exchange Commission).

7. The Authority may start an investigation following the expiry of the deadlines set out herein if the information provided by the undertakings in their notification is found to be seriously incorrect, incomplete or false.

8. Within the final deadline of ninety days from the opening of the investigation under this section, the Authority must notify the undertakings concerned and the Minister for Industry, Trade and Crafts of its conclusions. This deadline may be extended in the course of the investigation proceedings by no more than thirty days, if the undertakings fail to provide the requested information and data in their possession.

Section 16-bis

Requests for information on concentrations between undertakings

1. For the purpose of exercising its powers under this Chapter, the Authority may at any time request undertakings and entities to provide information and produce useful documents. These requests for information must state their legal basis, be proportionate and they shall not force their recipients to admit to an infringement of article 101 or 102 of the Treaty on the Functioning of the European Union or of sections 2 or 3 herein.

2. By decision of the Authority, entities requested to provide or exhibit the documents under subsection 1 shall be subject to the administrative monetary sanctions under section 14, subsection 5 if they refuse or fail to comply, or if they provide false information or documents, without any justified reason. The Authority shall grant the entities under subsection 1 with a reasonable period to comply with the information request, also in view of the complexity of the requested information. This period shall under no circumstance exceed sixty days but may be extended upon submission of a reasoned request. The latter is without prejudice to any other sanctions provided by applicable legislation.

Section 17

Temporary suspension of concentrations

1. While starting an investigation pursuant to section 16, the Authority may order the undertakings concerned to suspend the implementation of the concentration until the investigation is concluded.
2. The provision under subsection 1 shall not prevent the implementation of a takeover bid notified to the Authority pursuant to section 16, subsection 5, provided that the acquirer does not exercise the voting rights attached to the relevant securities.

Section 18

Conclusion of investigation into a concentration

1. If, after investigation proceedings under section 16, the Authority determines that a concentration falls within the scope of section 6, it shall prohibit its implementation.
2. If an investigation reveals no grounds for action regarding the concentration, the Authority shall close the investigation proceedings and immediately inform the undertakings concerned and the Minister for Industry, Trade and Crafts of its conclusions. This decision may be adopted following a request by the undertakings concerned if they can prove that any elements in the original notified concentration that could potentially distort competition have since been removed.
3. If the concentration has already been implemented, the Authority may prescribe the measures necessary to restore conditions of effective competition, by removing any distorting effects.

Section 19

Administrative monetary sanctions for failure to comply with the prohibition on concentrations or the notification obligation

1. If an undertaking implements a concentration in breach of the prohibition under section 18, subsection 1, or if it fails to comply with the provisions under subsection 3 of the same section, the Authority shall impose an administrative monetary sanction in the range of one percent and ten percent of the turnover recorded by the undertaking which is the subject of the concentration.
2. In the case of undertakings that have failed to comply with the prior notification obligation under subsection 1 of section 16, the Authority may impose on such undertakings an administrative monetary sanction not exceeding one percent of the turnover recorded in the business year preceding the Authority's opening of proceedings into such failure. The latter is in addition to any sanctions applicable pursuant to subsection 1, following the conclusion of investigation proceedings as provided in this Chapter III, whose starting date is that of the date of notification of the sanction referred to in this subsection.

Chapter IV

SPECIAL PROVISIONS

Section 20

Banks and credit institutions, insurance companies and the broadcasting and publishing sectors

1. [Repealed by Law no. 249 of 31 July 1997].
2. [Repealed by Law no 262 of 28 December 2005].
3. [Repealed by Law no. 262 of 28 December 2005].
04. In the case of agreements restricting competition, abuse of dominant position or concentrations involving undertakings operating in sectors subject to the supervision of multiple authorities, each authority may adopt the measures falling within its remit.

4. With respect to transactions involving insurance companies, the Authority, as defined in section 10, shall adopt its decisions after receiving an opinion from the *Istituto per la vigilanza sulle assicurazioni private e d'interesse collettivo – ISVAP* (the Supervisory Authority for Private Insurance Undertakings and Insurance Undertakings of Public Interest). This opinion must be rendered within thirty days of receiving the relevant documents. If no opinion is rendered within this deadline, the Authority, as defined in section 10, may adopt the decision falling within its remit.

The deadline for completing investigation proceedings requiring an opinion shall be suspended until the Italian Competition Authority receives said opinion from ISVAP or in any case until the expiry of the deadline for the submission of such opinion.

5. For transactions involving the acquisition of control of banks which constitute a concentration subject to prior notification pursuant to section 16, the decisions by the Bank of Italy – as required by section 19 of the Consolidated Law as per Legislative Decree no. 385 of 1 September 1993, aimed at assessing sound and prudent management – and by the Authority as defined in section 10 – pursuant to section 6, aimed at assessing the market's competitive structure – must be adopted within sixty working days from the submission of the request accompanied by the necessary documents.

5-bis. Upon request by the Bank of Italy, the Italian Competition Authority may authorise:

a) agreements restricting competition, by way of derogation from the prohibition under section 2, for needs linked to payment systems functions, for a limited period of time and in line with the criteria set out in section 4, subsection 1;

b) concentrations involving banks or banking groups that create or strengthen a dominant position, for needs linked to the stability of one or more of the entities involved.

5-ter. The authorisations under subsection *5-bis* may in any case not permit restrictions that are not strictly necessary for the attainment of the stated objectives.

6. [Repealed by Law no. 262 of 28 December 2005].

7. [Repealed by Legislative Decree no. 303 of 29 December 2006].

8. [Repealed by Legislative Decree no. 303 of 29 December 2006].

9. The provisions on concentrations herein do not amount to a derogation from existing

provisions in the banking, insurance, broadcasting and publishing sectors.

TITLE III

THE AUTHORITY'S ADVOCACY AND ADVISORY POWERS

Section 21

Advocacy to Parliament and the Government

1. To ensure more effective protection of competition and the market, the Authority shall identify particularly significant cases where legal or regulatory provisions, or general administrative measures, result in distortions of competition or the proper functioning of the market that are not justified by general interest needs.
2. Any distortions arising from legal provisions shall be reported by the Authority to Parliament and to the President of the Council of Ministers, and in all other cases, to the President of the Council of Ministers, the competent ministers and affected local and territorial authorities.
3. Where deemed appropriate, the Authority shall issue an opinion on the actions necessary to remove or prevent distortions and it may publish any reports and opinions as appropriate, depending on the nature and importance of the distortions.

Section 21-bis

The Italian Competition Authority's powers over administrative acts resulting in distortions to competition

1. The Italian Competition Authority is authorised to take legal action against general administrative acts, regulations and decisions issued by any public administration that are contrary to rules governing competition and the market.
2. If the Italian Competition Authority determines that a public administration has adopted an act contrary to competition and market rules, it shall issue a reasoned opinion within sixty days, detailing the specific features of the breach. If the public administration fails to comply within sixty days following the notification of the opinion, the Authority may lodge an appeal, through the *Avvocatura dello Stato* (the Attorney General), within the following thirty days.

3. Legal proceedings initiated under subsection 1 shall be governed by the provisions of Book IV, Title V, of Legislative Decree No. 104 of 2 July 2010.

Section 22

Advisory activities

1. The Authority may issue an opinion on draft laws or regulations and on problems relating to competition and the market either on its own initiative or following a request from administrations and public bodies. The President of the Council of Ministers may seek the Authority's opinion on draft laws or regulations that directly have the effect of:

- a) imposing quantitative restrictions on business activities or market access;
- b) establishing exclusive rights in specific areas;
- c) imposing generalised practices regarding prices and sales conditions.

Section 23

Annual report

1. By 31 March of each year the Authority shall submit a report on its activities from the previous year to the President of the Council of Ministers. The President of the Council of Ministers shall forward the report to Parliament within the following thirty days.

1-bis. The annual report shall include information on the appointment and removal of the members of the Authority, the financial allocation referred to in section 10, subsection 7-ter herein for the year in question and any changes in this amount compared to previous years. The annual report shall be made available to the public on the Authority's website.

Section 24

Report to the Government on certain sectors

1. Having heard the relevant administrations, the Authority shall – within eighteen months from its establishment – submit a report to the President of the Council of Ministers on the measures to be adopted to bring provisions on public procurement, concession holders and commercial distribution in line with the principles of competition.

TITLE IV

PROVISIONS ON GOVERNMENT POWERS OVER CONCENTRATIONS

Section 25

Government powers over concentrations

1. The Council of Ministers, acting on a proposal from the Minister for Industry, Trade and Crafts, shall lay down the general and preventive criteria enabling the Authority to exceptionally authorise, for significant general national economic interests within the context of European integration, concentrations prohibited under section 6. Such authorisation is granted provided that the concentration does not eliminate competition from the market or impose restrictions on competition not strictly justified by the aforementioned general interests. In these cases, the Authority shall also prescribe the measures necessary to restore full competition within a specified timeframe.

2. In the case of concentrations referred to in section 16 involving entities or undertakings from States which lack equivalent protections for corporate independence or which apply discriminatory provisions or impose clauses having a similar effect on acquisitions by Italian undertakings or entities, the President of the Council of Ministers may – after deliberation by the Council of Ministers, following a proposal by the Minister for Industry, Trade and Crafts – prohibit the concentration to protect essential national economic interests within thirty days of the notification referred to in section 16, subsection 3.

Section 26

Publication of decisions

1. The decisions referred to in sections 15, 16, 18, 19 and 25 shall be published within twenty days in a special bulletin, issued by the Office of the President of the Council of Ministers. The findings of the market studies referred to in section 12, subsection 2 shall also be published in the same bulletin, if deemed appropriate by the Authority.

TITLE V

PROVISIONS ON THE PARTICIPATION IN THE CAPITAL OF CREDIT INSTITUTIONS

Sections 27-30.

[Title repealed by Legislative Decree no. 385 of 1 September 1993]

TITLE VI

FINAL PROVISIONS

Section 31

Penalties

1. The administrative monetary sanctions relating to infringements of this Act shall be governed by the provisions contained in Chapter I, Parts I and II of Law no. 689 of 24 November 1981, where applicable.

Section 31-*bis*

Limitation periods

1. The limitation periods for the imposition of sanctions or periodic penalty payments by the Authority under this Act shall be interrupted for the duration of investigation proceedings before national competition authorities of other Member States or the Commission in respect of an infringement concerning the same agreement, decision of an association of undertakings, concerted practice or other conduct prohibited by article 101 or 102 TFEU. The interruption of the limitation period shall start from the notification of the first formal investigative measure to at least one undertaking subject to the proceedings and it shall apply to all undertakings or associations of undertakings which have participated in the infringement.

2. The interruption shall end on the day the national competition authority concerned or the Commission closes its proceedings by adopting a decision establishing the infringement and ordering that it be brought to an end, imposing a sanction or by making the party's commitments binding, or by concluding that there are no grounds for further actions.

3. Each interruption shall start time running afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period provided

by section 28, subsection 1 of Law no. 689 of 24 November 1981 has elapsed without the Authority having imposed a sanction or a periodic penalty payment.

4. The limitation period for the imposition of sanctions or periodic penalty payments by the Authority shall be suspended for as long as the decision of the Authority is the subject of proceedings pending before the Administrative Court, pursuant to section 33.

Section 31-ter

Access to the file

1. Access to leniency statements as per section 15-*bis* or to settlement submissions, if any, shall only be granted to the parties to the relevant proceedings and only for the purposes of exercising their rights of defence. For the purposes hereof, settlement submission means a voluntary presentation by, or on behalf of, an undertaking to a competition authority of the European Union, describing the undertaking's acknowledgement of, or its renunciation to dispute, its participation in an infringement of article 101 or 102 TFEU or national competition law and its responsibility for that infringement, which was drawn up specifically to enable the competition authority to apply a simplified or expedited procedure.

2. The party having obtained access to the file of the proceedings launched by the Authority may only use information taken from leniency statements and settlement submissions where necessary to exercise its rights of defence in proceedings before the judicial authority in cases that are directly related to the case for which access has been granted, and only where such proceedings concern:

a) the allocation between cartel participants of a sanction imposed jointly and severally on them by the Authority; or

b) the review of a decision by which the Authority found an infringement of article 101 or 102 TFEU or sections 2 and 3 herein.

3. The following categories of information obtained by a party during proceedings before the Authority shall not be used by that party in proceedings before the judicial authority before the Authority has closed its proceedings with respect to all parties under investigation by adopting a decision establishing the infringement or making the party's commitments binding or otherwise has terminated its proceedings:

- a) information that was prepared by other natural or legal persons specifically for the proceedings of the Authority;
- b) information that the Authority has drawn up and sent to the parties in the course of its proceedings; and
- c) if any, settlement submissions that have been withdrawn.

4. Leniency statements may only be exchanged between national competition authorities pursuant to article 12 of Regulation (EC) No 1/2003 either:

- a) with the consent of the applicant; or
- b) where the national competition authority receiving the leniency statement has also received a leniency application relating to the same infringement from the same applicant as the national competition authority transmitting the leniency statement, provided that, at the time the leniency statement is transmitted, the applicant cannot withdraw the information which it has submitted to the national competition authority receiving the leniency statement.

5. The provisions of this section shall apply irrespective of the form in which leniency statements are submitted.

Section 31-*quater*

Interplay between applications for the non-imposition of sanctions and sanctions on natural persons

1. Current and former managers, directors and other members of staff of undertakings are exempt from punishment for crimes under sections 353, 353-*bis*, 354 and 501 of the Criminal Code related to their involvement in the secret cartel, if:

- a) these undertakings have filed, with the Authority, or for cases falling under the scope of articles 101 and 102 TFEU, with the European Commission or another national competition authority of a Country within the European Union, an application for the non-imposition of sanctions pursuant to section 15-*bis* herein in relation to the same secret cartel and said application fulfils the requirements set out in section 15-*bis*, subsection 3, letters b) and c) herein.

- b) current and former managers, directors and other members of staff in question actively cooperate in this respect with the competition authority pursuing the case;
 - c) said application predates the time when those current or former managers, directors and other members of staff concerned were made aware of the proceedings against them regarding those events.
 - d) current and former managers, directors and other members of staff in question actively cooperate in this respect with the Public Prosecution, by providing useful and concrete information to secure evidence of the offence and identify the other parties responsible.
2. If the application for the non-imposition of sanctions is submitted to the European Commission or to another national competition authority within the European Union pursuant to subsection 1, letter a), the Authority shall ensure the necessary interchange between the public prosecutor and the authority that received the application.
3. The above is without prejudice to the right of victims who have suffered harm caused by an infringement of competition law to claim full compensation for that harm, in accordance with section 33, subsection 2 herein and Legislative Decree no. 3 of 19 January 2017.

Section 32

Financial coverage

1. The financial burden resulting from the enforcement of this Act, estimated at 20 billion lire for 1990, 32 billion lire for 1991, and 35 billion lire for 1992, shall be covered by reducing the allocation contained in Chapter 6856 of the 1990 budget of the Minister of the Treasury for the 1990-1992 three-year period accordingly, using the specific provision “Interventions for the protection of competition and the market”.

Section 33

Jurisdiction

1. Judicial review before administrative courts shall be governed by the *Codice del Processo Amministrativo* (the Code of Administrative Proceedings).
2. Actions for nullity and actions for damages, as well as interim injunction applications with respect to an infringement of the provisions under Titles I-IV shall be lodged before the court

with territorial jurisdiction having the specialised chamber as per section 1 of Legislative Decree no. 168 of 26 June 2003 and subsequent amendments.

Section 34
Entry into force

1. This Act shall enter into force on the day following its date of publication in the Official Gazette of the Italian Republic.

This Act, bearing the seal of the State, will be added to the Official Compendium of Legislative Acts of the Italian Republic. It shall be observed and enforced as a law of the State.

Rome, 10 October 1990

COSSIGA
ANDREOTTI, President of the Council of Ministers
BATTAGLIA, Minister for Industry, Trade and Crafts

Minister of Justice: VASSALLI