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Last updated in December 2025.

## **PROCEDURES FOR THE ENFORCEMENT OF ARTICLE 14-*TER* OF LAW 287 OF 10 OCTOBER 1990**

*Decision 23863*

### **THE ITALIAN COMPETITION AUTHORITY**

**AT ITS MEETING** of 6 September 2012;

**HAVING REGARD TO** Law 287 of 10 October 1990;

**HAVING REGARD IN PARTICULAR TO** Article 14-*ter* of Law 287 of 10 October 1990;

**HAVING REGARD TO** Council Regulation (EC) 1/2003 of 16 December 2002;

**CONSIDERING** it necessary to better define the procedures for the enforcement of Article 14-*ter* of Law 287 of 10 October 1990, in order to inform undertakings of the procedures for the submission of commitments and the procedures for their assessment;

**CONSIDERING** it necessary to amend the previous notice – approved by the Authority with Decision 16015 of 12 October 2006 and subsequently amended by Decision 22089 of 9 February 2011 – also to bring it in line with the interpretation of Regulation (EC) 1/2003 and Law 287/90 by EU and national judicial authorities;

**HAVING REGARD TO** the public consultation on the draft “*Notice on the procedures for the enforcement of Article 14-ter of Law 287 of 10 October 1990*”, held between 21 May and 4 June 2012 to gather and consider the input and observations from stakeholders, and considering that consultation is also recognised at EU level as an important factor in improving the quality of regulation, since shared regulatory processes help ensure more effective enforcement of the rules;

**DECIDED**

to adopt the “*Notice on the procedures for the enforcement of Article 14-ter of Law 287 of 10 October 1990*”, whose text attached hereto forms an integral part of this decision.

The Notice shall replace, with effect from 17 September 2012, the one approved by the Authority with Decision 16015 of 12 October 2006 and subsequently amended by Decision 22089 of 9 February 2011.

This decision and the relevant Notice shall be published in the Bulletin referred to in Article 26 of Law 287 of 10 October 1990.

**THE SECRETARY GENERAL**

*Roberto Chieppa*

**THE CHAIRMAN**

*Giovanni Pitruzzella*

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## **NOTICE ON THE PROCEDURES FOR THE ENFORCEMENT OF ARTICLE 14-TER OF LAW 287 OF 10 OCTOBER 1990**

### **Preamble**

1. Article 14(1) of Law Decree 223 of 4 July 2006, converted with amendments by Law 248 of 4 August 2006, containing “*Conversion into law, with amendments, of Law Decree 223 of 4 July 2006, containing urgent provisions for economic and social recovery, the containment and rationalisation of public spending, as well as measures relating to tax revenue and the fight against tax evasion*”, introduced Article 14-ter of Law 287 of 10 October 1990. Pursuant to said Article “*Within three months of being notified of the opening of an investigation into an alleged infringement of Article 2 or 3 of this Act or Article 81 or 82 EC Treaty, undertakings may offer commitments aimed at addressing 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 whether an infringement has occurred*”.

### **Submission of commitments**

2. In proceedings opened to investigate a possible violation of Articles 2 or 3 of Law 287/90 or of Articles 101 or 102 of the Treaty on the Functioning of the European Union (TFEU), parties wishing to offer commitments for the Authority’s assessment in order to address the anti-competitive concerns under investigation may submit a preliminary version of such

commitments well in advance of the three-month time limit established by the aforementioned provision. Following this preliminary submission, the parties – also at their own request – shall be heard by the competent Directorate in order to provide details, clarifications or any additions necessary to ensure a clear understanding of the proposed commitments and their ability to address the competition concerns under investigation.

3. In any case, the parties must submit the final version of the proposed commitments to the Authority within **three months** from the notification of the opening of the investigation, in accordance with Article 14-ter of the Competition Act. The Authority may nevertheless allow the submission of commitments after this time limit in exceptional circumstances and on the basis of a timely and reasoned request by the party.

4. This time limit reflects the underlying aim of the provision, which is to reduce procedural burdens and to ensure the efficiency of administrative activities. This function is consistent with the need to encourage the party under investigation to submit commitments capable of removing the effects of its conduct in a timely manner, thereby bringing the investigation to an end.

5. The undertakings concerned must submit their preliminary and final commitments using the form provided by the Authority.

### **Procedures for the assessment of commitments**

6. As a preliminary consideration, and in light of established national and EU practice and case law, commitment decisions should not be adopted where the restrictive or anti-competitive conduct is sufficiently serious to warrant the imposition of a fine<sup>1</sup>.

7. Commitments must be suitable for full and prompt implementation, easy to verify and capable of effectively addressing the anti-competitive concerns identified in the decision to open the investigation.

8. Considering the broad discretion afforded to the Authority in assessing commitments – confirmed by both EU and national case law<sup>2</sup> – commitments shall also be evaluated in light of the Authority's interest in pursuing the investigation. It remains understood that commitment

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<sup>1</sup> [See recital 13 of Regulation (EC) 1/2003 and the Commission's memorandum (Memo/04/217).]

<sup>2</sup> [For EU case law, see, among others, judgment of 11 July 2007, *Alrosa v. Commission*, in which the Court of First Instance held that: "the Commission is never obliged under Article 9(1) of Regulation 1/2003 to decide to make commitments binding instead of proceeding under Article 7 of that regulation. It is therefore not required to give the reasons for which commitments are not in its view suitable to be made binding, so as to bring the proceedings to an end". This part of the judgment was not overturned by judgment of 29 June 2010, *Commission v. Alrosa Company Ltd.*, in which the Court of Justice confirmed that the Commission enjoys wide discretion when deciding how to proceed under Article 9 of Regulation 1/2003. For national case law, see most recently, judgment 2438 of 20 April 2011 in which the Council of State, referring to the aforementioned EU precedents, confirmed – also at national level – that the Authority enjoys wide discretion in deciding whether to make the commitments proposed by the undertakings binding or to proceed with the finding of an infringement.]

decisions must establish that there are no longer grounds for action by the Authority, without concluding whether an infringement has occurred or is still ongoing.

**9.** That being said, if the Authority deems that the commitments should not be examined – either because they were not submitted on time, because the conduct is likely to amount to a serious restriction of competition, or because the commitments are manifestly incapable of addressing the anti-competitive concerns under investigation – it shall adopt a decision rejecting them within a reasonable period and notify the relevant party without delay.

**10.** If the Authority decides to assess the proposed commitments and does not consider them manifestly unfounded, it shall, by decision, order their publication in the Bulletin under Article 26 of Law 287/90 and on the Authority's website, within 45 days from the expiry of the three-month deadline for their submission.

**11.** Interested third parties may submit written observations on the proposed commitments (market test) within thirty days of their publication on the Authority's website. If the Authority requires additional information, the competent Directorate shall request such information from any parties likely to provide useful input for assessing the commitments. The Parties shall be promptly informed by the competent Directorate of the outcome of the market test and granted immediate access to the case file.

**12.** Within the mandatory period of thirty days following the expiry of the time limit for submitting observations as part of the market test – i.e., within sixty days from publication of the commitments on the Authority's website – the parties that submitted the commitments may present their position in writing to the Authority in response to third-party observations. In order to take the latter into account, they may introduce – no more than once – ancillary amendments to the commitments. These amendments must be strictly linked to the outcome of the market test and merely refine what has already been proposed. In light of its experience, the Authority does not consider it appropriate to allow repeated revisions of commitments – through successive corrections, amendments or additions by the parties – as this could unduly prolong the proceedings and delay the timely establishment of an infringement.

**13.** The entire procedure for the publication and assessment of commitments shall be completed within three months from the date of their publication, unless specific investigative needs justify an extension. This time limit is suspended if mandatory opinions are requested, for the time required to obtain them.