

Disclaimer: this is an unofficial courtesy translation provided by the AGCM for information purposes only. It does not necessarily reflect subsequent amendments, including those introduced by separate legal provisions, nor does it constitute a legal or official interpretation. Only the original text in Italian shall prevail as a source of reference.

Last updated in December 2025.

NOTICE ON THE ENFORCEMENT OF ARTICLE 1(5) OF LAW DECREE 104 OF 10 AUGUST 2023, CONVERTED WITH AMENDMENTS BY LAW 136 OF 9 OCTOBER 2023

Decision 31190

THE ITALIAN COMPETITION AUTHORITY

AT ITS MEETING of 7 May 2024;

HAVING REGARD TO Law 287 of 10 October 1990;

HAVING REGARD TO Article 1(5) of Law Decree 104 of 10 August 2023, as converted by Law 136 of 9 October 2023;

HAVING REGARD TO Presidential Decree 217 of 30 April 1998, “*Regulation containing provisions on investigation procedures within the remit of the Italian Competition Authority*”, as amended;

CONSIDERING it necessary to define the scope and procedures for the enforcement of Article 1(5) of Law Decree 104 of 10 August 2023, as converted by Law 136 of 9 October 2023;

HAVING REGARD TO the observations received following the prior public consultation on the draft Notice held between 6 March 2024 and 5 April 2024, 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 enforcement of Article 1(5) of Law Decree 104 of 10 August 2023, converted with amendments by Law 136 of 9 October 2023*”, whose text attached hereto forms an integral part of this decision.

This decision and the relevant Notice shall be published in the Bulletin of the Italian Competition Authority.

THE SECRETARY GENERAL

Guido Stazi

THE CHAIRMAN

Roberto Rustichelli

NOTICE ON THE ENFORCEMENT OF ARTICLE 1(5) OF LAW DECREE 104 OF 10 AUGUST 2023, CONVERTED WITH AMENDMENTS BY LAW 136 OF 9 OCTOBER 2023

Preamble

Article 1(5) of Law Decree 104 of 10 August 2023, as converted by Law 136 of 9 October 2023 (“Asset Decree”) provides that “[i]f, following the outcome of a market investigation conducted pursuant to Article 12(2) of Law 287 of 10 October 1990, the Italian Competition Authority identifies competition concerns that hinder or distort the proper functioning of the market to the detriment of consumers, it may – in compliance with the principles of EU law and after consulting the market – impose on the undertakings concerned any necessary and proportionate structural or behavioural measures aimed at removing such distortions of competition”.

The same provision also provides that: “[i]n the course of the market investigation, the undertakings concerned may submit commitments such as to remove the anti-competitive concerns and the resulting harm to consumers. In such cases, the Authority – having assessed the suitability of the commitments and after consulting the market – may make them binding on the undertakings by means of the decision concluding the market investigation. The Authority shall exercise the investigative powers provided for in Article 14(2) to (2-quater) and (2-septies) of Law 287 of 10 October 1990. The fines and periodic penalty payments set out in Article 14(5) and (6) of Law 287 of 10 October 1990 shall apply”.

In Opinion 61 of 29 January 2024, the *Consiglio di Stato* (the Supreme Administrative Court), First Advisory Division, clarified that these new powers apply “without sectoral or product-market limitations, to all areas in which the Italian Competition Authority decides to exercise its powers in the context of a market investigation, provided that the relevant conditions and requirements are met”.

In light of the above, with this Notice (“Notice”), the Italian Competition Authority (“Authority”) lays down the rules governing the aforementioned procedure, in accordance with

the applicable legal framework and as a supplement to Presidential Decree 217 of 30 April 1998 “*Regulation containing provisions on investigation procedures within the remit of the Italian Competition Authority*”, as amended (“**Presidential Decree 217/1998**”).

Guiding Principles

Market investigations are a key tool for examining and analysing economic sectors where developments in trade, pricing behaviour or other circumstances suggest that competition is hindered, restricted or distorted. The new provisions introduced by the Asset Decree do not establish a new category of market investigations; rather, they allow for the use of new powers within the same market investigation. Following an initial fact-finding phase, an investigation may – where specific circumstances arise – include a second, remedial phase aimed at identifying measures that are necessary and proportionate to address the competition concerns. In this regard, and within its discretion, the Authority shall prioritise the exercise of the new powers introduced by the Asset Decree – particularly the adoption of remedial measures – in cases where the competition issues hindering or distorting the proper functioning of the market to the detriment of consumers are considered both significant and persistent.

Procedure

I. Opening of the market investigation

1. When it intends to carry out a market investigation, the Authority shall adopt a decision opening the investigation in accordance with Article 12(2) of Law 287 of 10 October 1990 (“**Competition Act**”).
2. The decision to open the market investigation shall be published in the Bulletin under Article 26 of the Competition Act (“**Bulletin**”) and on the Authority’s official website (“**Website**”). It shall include the following:
 - a. the subject matter of the market investigation and the potential competition concerns;
 - b. reference to Article 1(5) of the Asset Decree, according to which – where the relevant conditions are met – the Authority may impose structural or behavioural measures on the undertakings concerned;
 - c. the case handler;
 - d. the time limit for concluding the market investigation.

II. Powers of investigation

3. The Authority may exercise the powers set out in Article 14(2) to (2-quater) and (2-septies) of the Competition Act from the date of publication of the decision to open the market investigation.

4. The Authority may, including in conjunction with the publication of the decision to open the market investigation, launch public consultations (calls for input), specifying the topics of interest and the time limit for submitting observations.

5. The Authority may, by decision, provide for the publication on its Website of a preliminary report (“PR”) presenting the results of the fact-finding activities conducted up to that point.

6. The PR shall set a time limit of at least thirty days from its publication on the Website for interested parties to submit their observations. The Authority shall inform the sector-specific regulatory authority responsible for the markets or sectors under investigation – and may also inform other relevant public bodies – of the opportunity to submit their observations on the PR within the same time limit.

III. Conclusion of the market investigation in the absence of the conditions under Article 1(5) of the Asset Decree

7. The Authority shall adopt a decision closing the market investigation where, based on the evidence gathered, it does not identify competition concerns hindering or distorting the proper functioning of the market to the detriment of consumers – which could otherwise be adequately addressed by the measures laid down in Article 1(5) of the Asset Decree. The decision closing the investigation shall be published in the Bulletin and on the Website.

8. Upon concluding its assessment the Authority shall, in any event, have the right to:

- a. recommend appropriate legislative or regulatory initiatives aimed at improving the functioning of the affected markets;
- b. decide to open proceedings under Presidential Decree 217/1998, where the market investigation provides reasonable grounds to suspect an infringement of competition law, Article 9(3-bis) of Law 192 of 18 June 1998, or Legislative Decree 206 of 6 September 2005.

IV. Opening of the remedial phase and adoption of the market investigation findings

9. If the Authority deems that there are competition concerns capable of hindering or distorting the proper functioning of the market to the detriment of consumers, and that such concerns may be adequately addressed by imposing the measures provided for in Article 1(5) of the Asset Decree, it shall adopt the Market Investigation Findings (“MIF”) and order their publication in the Bulletin and on the Website.

10. The MIF shall indicate:

- a. the competition concerns capable of hindering or distorting the proper functioning of the market to the detriment of consumers;
- b. the types of measures set out in Article 1(5) of the Asset Decree which the Authority – based on a *prima facie* assessment – considers necessary, proportionate and suitable to address the competition concerns referred to in point (a);

c. the undertakings concerned that are potential addressees of the measures under Article 1(5) of the Asset Decree (“**undertakings concerned**”);

d. the time limit – at least 45 days – for the submission of written briefs and documents, for the undertakings concerned to exercise their right to be heard before the Authority, and for the submission of commitments, if any.

11. The MIF shall be notified to the undertakings concerned along with the decision to open the market investigation. Where the large number of recipients makes personal notification impossible or overly burdensome, notification shall take place by publication in the Authority’s Bulletin and on its Website.

V. Submission of commitments

12. Following notification of the MIF, the undertakings concerned may, within the specified time limit, submit commitments deemed capable of addressing the concerns hindering or distorting the proper functioning of the market to the detriment of consumers.

13. Where the proposed commitments are manifestly incapable of addressing the competition concerns, the Authority shall adopt a decision rejecting them and promptly notify the undertakings concerned.

14. If the Authority decides to examine the proposed commitments and does not consider them manifestly incapable of addressing its concerns, it shall, by decision, order their publication in the Bulletin and on the Website. Interested third parties may submit written observations on the proposed commitments within thirty days of publication on the Website.

15. The undertakings concerned that submitted the commitments shall be promptly informed of the outcome of the market consultation and – within thirty days following the expiry of the time limit for submitting observations – they may present their position in writing to the Authority in response to third-party observations and introduce ancillary amendments to the commitments.

16. If the Authority deems the commitments suitable to address the concerns hindering or distorting competition, as outlined in the MIF, it shall make them binding on the undertakings through the decision closing the market investigation, after obtaining the opinion of the sector-specific regulatory authority responsible for the markets or sectors under investigation, indicating a deadline for its response. Where appropriate, the Authority may also seek observations from other public bodies.

17. Where commitments are either rejected or not submitted, the investigation shall continue in accordance with the provisions set out below.

VI. Definition of the remedial measures and market consultation

18. Considering the findings of the market investigation and the submissions made by the undertakings concerned, the Authority may decide to impose structural or behavioural measures

pursuant to Article 1(5) of the Asset Decree. In this case, the Authority shall adopt a decision providing for notification of the measures to the undertakings concerned and their publication in the Bulletin and on the Website.

19. The decision shall specify a time limit of at least thirty days from its publication on the Website, within which the undertakings concerned and any other interested parties may submit written observations.

VII. Conclusion of the remedial phase

20. The undertakings concerned are promptly informed of the outcome of the consultation and may submit written briefs and documents within forty-five days after the expiry of the time limit for submitting observations referred to in point 19.

21. The undertakings concerned have the right to be heard before the Board. To exercise this right, they must submit a specific request within ten days of receiving the decision referred to in point 19. Upon receiving such a request, the Authority shall schedule the hearing within thirty days after the expiry of the time limit for submitting written briefs and documents referred to in point 20, and inform the undertakings concerned accordingly.

22. During the same hearing, the Board may also hear other parties admitted to the proceedings, provided they have submitted a duly reasoned request.

23. Once the steps outlined above have been completed, the Authority shall request an opinion from the sector-specific regulatory authority responsible for the markets or sectors under investigation, indicating a deadline for its response. Where appropriate, the Authority may also seek observations from other public bodies.

24. The Authority shall adopt the final decision and order its publication in the Bulletin and on the Website.

VIII. Participation in the proceedings, confidentiality and access to the file

25. Participation in the proceedings and access to the case file are governed by Articles 7 and 13 of Presidential Decree 217/1998.

26. Parties wishing to protect the confidentiality or secrecy of the information they provide must file a specific request, either upon submitting the document or within the time limit set by the competent Directorate. This request must indicate the documents or parts thereof to be withheld from access, stating the reasons, and provide a non-confidential version of documents for which partial restriction from access is sought. If the parties concerned do not follow these procedures, the Directorates shall presume that the documents contain no confidential information.

27. The Directorate may, by reasoned decision, defer access to the requested documents, but in any event no later than the notification of the MIF referred to in point 9.

IX. Final provisions

28. The Authority reserves the right to amend or supplement this Notice two years after its publication, based on insights gained from its practical enforcement.