THE APPLICATION OF COMPETITION LAW AND POLICY IN ITALY: AN OVERVIEW*

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1 Introduction

Membership in the European Communities, and particularly the European single market program, strongly influenced Italy's approach to competition policies. In particular, prospects for closer market integration and the EU's liberalization directives emphasized the importance of ensuring effective competition. EU rules about state aids have forced Italy to re-examine and ultimately dismantle its structures of central support and control, as the EU disapproved of measures that conferred advantages on State owned firms.

The Antitrust Authority, created by the 1990 Competition Act which, as a reference, is reproduced in the Appendix, was a catalyst for a shift toward a more market-based political economy. Early actions by the Authority were directed at monopoly public utilities and their efforts to prevent entry or extend market power into liberalized markets. In the course of the years, the Authority's caseload has changed, mirroring the development of a more sophisticated competition culture in the late 1990s. Many early complaints to the Authority objected to aggressive, but lawful, competition. As firms have learned more through their own experience in a more competitive environment and through observing the Authority's actions, complaints have become more sophisticated, and they have pointed to problems with restrictions and abuses in different markets.

No explicit policy objectives are stated in the Italian Competition Act. The Act states only that it implements Article 41 of the Constitution protecting and guaranteeing the right of free enterprise (Sec. 1.1). In practice the statute's provisions set out two sets of purposes. One is to foster and protect market conditions that allow economic entities equal opportunities to compete and to gain access to the market. The second

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is to enhance the welfare of consumers, by encouraging the lower prices and improved quality that can result from free market forces.

An important provision overarching purpose, to perfect Italy's participation in European community institutions, appears in the statute's instruction that the Italian law is to be interpreted in accordance with the principles of EU competition law (Sec. 1.4). This provision has had several beneficial effects. It reinforces the independence of competition policy in Italy, because elaboration of the policy depends on European institutions and thus is not under the control of other Italian political institutions or officials, or even judges. And, more importantly, embracing the EU's doctrines gave the Italian law a "jump start." The reference to EU principles includes secondary legislation, Commission decisions, and the jurisprudence of the European Court of Justice. Thus Italy immediately absorbed 30 years of doctrinal tradition and avoided the delays and uncertainties that would have resulted from the process of establishing such concepts under Italian law. Instead, EU precedent, or at least guidance, could resolve such central, pervasive questions as defining a relevant market and identifying a dominant position.

2 Competition policy institutions

The Authority is an independent collegiate body. Its five members are appointed for non-renewable seven-year terms (Sec. 10.3). The President and members of the Authority are proposed and appointed jointly by the Presidents of the two houses of the Parliament. The President must have previously held a high office with broad responsibilities. The members must be chosen among senior judges, full professors of economics or law, or "respected business executives of particularly high professional repute" (Sec. 10.2). Being a member of the Authority is a full-time commitment, as its members are not permitted to hold other positions or perform other professional services during their terms (Sec. 10.3). The Secretary General, who is responsible for overseeing operations, is nominated by the President of the Authority and appointed by the Minister of Trade and Industry (Sec. 11.5). The staff, originally authorized at 150 (plus 50 on fixed term contracts), was recently increased by 20 positions, in recognition of the Authority's increased responsibilities for deceptive and comparative advertising.

In taking action and in managing its resources, the Authority is free from control by other parts of the government. There is no avenue for political control over particular decisions. The annual budget comes from the government, but it is a separate line item in the law, subject to inflation adjustment, so ministries cannot exert indirect pressure.

The Authority's principal obligation to the other structures of government is to submit its annual report to the Prime Minister, who tables it before Parliament (Sec. 23). This Report, due by 30 April, indexes and summarizes the past year's enforcement and other actions and discusses important policy developments. In a well-publicized official release of the report in May (typically covered by national television), the President of the Authority explains the policies that underlie its decisions. Between

annual reports, other outlets keep the public informed about developments. Enforcement actions, including decisions about competition and misleading advertising matters and about mergers, are published within 20 days in a weekly bulletin (Sec. 26). The bulletin also includes the Authority's fact-finding enquiries and reports on legislation. A website in Italian and English includes all past decisions, classified into categories and updated weekly with the publication of the bulletin, which is also available on the site. Requests for documents on past activities and information of general interest will also be entertained.

Co-ordination with other agencies is required in some sectors. The Authority must request a non-binding opinion from the relevant sectoral regulator or agency before taking action involving telecommunications, broadcasting and publishing, and insurance. And it must provide such an opinion to the Bank of Italy concerning enforcement actions in banking. In that sector, the Bank of Italy is responsible for applying the Competition Act. Although these opinions are non-binding, they are public; the Authority publishes its opinions to the Bank of Italy along with its other actions. Thus disagreement does not give the other agency a veto over action, but it may compel a more complete explanation of the decision.

Investigations of possible violations may be opened in response to complaints or on the Authority's own initiative (Sec. 12.1). The Authority may also undertake, on its own initiative or in response to requests from ministers, a "general fact-finding investigation" about areas of business in which circumstances suggest that competition may be impaired (Sec. 12.2). The process of notification and application for exemption for restrictive agreements (Sec. 4) has been used much less than in other jurisdictions with similar laws. The strongly economic interpretation of the law may have discouraged frivolous applications. In addition, measures that have attracted applications elsewhere were not adopted in Italy. No transition period or protection for existing agreements was provided when the Competition Act came into force, and notification confers no provisional immunity from liability for conduct that is already underway.

In the process of investigation and decision, parties have full opportunity to present and respond to charges. A complaint may be filed by a firm that believes it is being harmed, by a public agency, or by a private individual. Complaints must be in writing and may not be anonymous. All complaints are acknowledged. If the Authority decides to investigate, the parties directly concerned are notified. At the end of the investigation the parties receive a "statement of objections" setting out the alleged violations and evidence. The parties are entitled to see any non-confidential documents in the investigation and to make presentations and written submissions, throughout the investigation and for a short period of time after the final hearing.

Authority powers include the right to request information and documents and to inspect and copy books and records (Sec. 14.2). On-site inspections to obtain copies of company documents may involve the co-operation of the Customs and Excise Police. Information about firms under investigation is treated as confidential and may not be disclosed to other government departments (Sec. 14.3). Failure to provide information requested can result in a fine of up to 25.800 Euro, imposed by the Authority, and

doubled if the information turns out to be false. These penalties are in addition to others that might apply generally (Sec. 14.5). The Authority may appoint its own experts, and it may request information from other government departments and agencies.

Decisions about requests for exemption (individual and block) from the ban on restrictive agreements must be issued within 120 days of receiving an application (Sec. 4.3, Sec. 13). There is no explicit statutory deadline for responding to a complaint or completing an investigation, but internal rules require a decision within about 6 months. This deadline can be extended. Typical reasons for delay are a party's request for more time to respond to the statement of objections, or the expansion of the scope of the investigation to new topics or respondents. The actual time taken for a decision about a complaint is usually about 9-12 months.

Sanctions for violation of the law's substantive prohibitions include orders to correct infringing conduct and fines based on turnover. Upon finding a prohibited restrictive agreement or abuse of dominance, the Authority may set a deadline by which the parties must remedy the infraction. In serious cases, it may impose a fine, which can vary depending on the gravity and duration of the violation. The base is the parties' annual turnover. The fine is a percentage of that base turnover figure, which can now range from 0 to 10%. If the party fails to effect a remedy by the deadline set, the Authority can impose a fine of up to 10% of turnover; if the party fails to pay a fine by the deadline set, the Authority can increase the fine, by at least double — the statute sets no upper limit. And if a party repeatedly refuses to comply, the Authority may order it to suspend activities for up to 30 days (Sec. 15.2); however, this power has never been invoked.

Appeals of administrative actions applying the Competition Act must be taken to the Latium Region Administrative Court (Sec. 33.1). A further appeal is possible, to the Supreme Administrative Court (the Council of State). Parties may, and usually do, request suspension of fines pending appeal. The court's ruling on the request for suspension is often an occasion to indicate the likely direction of the final decision. As a practical matter, cases from the Authority tend to go to the same court and the same chamber, where some judges have developed particular experience and interest in competition matters.

A private party can bring an independent suit in court, to annul practices that the Competition Act prohibits and to recover damages caused by violations, as well to petition for interim relief to protect the party's interest in situations where the lapse of time may cause irreparable damage. These actions may be filed in the Court of Appeal with local jurisdiction (Sec. 33).

EU law, which is substantially identical to Italy's Competition Act, also applies. The EU's competition law prohibitions apply to practices that affect trade between Member states, leaving national law prohibitions to apply to practices whose effects are confined within national borders. But the standards for determining what affects trade have become very broad, so that in an integrated market nearly any restrictive practice could have that effect. EU law may thus cover a large part of what domestic

laws cover. Italy's Competition Act may be applied only to a case that is not of "community relevance" (Sec. 1.2, Sec. 1.3). In the Authority's practice, a case has "community relevance" if the European Commission has opened a formal procedure; if it has not, then the Authority will apply the Competition Act. The Competition Act has been applied to cases involving markets larger than Italy, as long as the Commission has not initiated proceedings. The Authority has been granted the power to apply the EU competition law as well as the Competition Act and has done so in a number of recent cases.

3 Authority resources

Over five years, the Authority's personnel resources have increased by about 30%, and the budget by around 50% (not corrected for inflation). Salaries are evidently high enough to attract and keep qualified economists and lawyers.

Table 1: Trends in Competition Policy Resources

Years [1]	Number of Staff	Personnel and operating expenses (billion lire)
1994	107	23.5
1995	132	29.5
1996	138	33.6
1997	146	34.9
1998	167	35.0
1999	173	37.7
2000	169	39.1
2001	179	51.6

[1] At March 31st.

4 Substantive issues: content of the competition law

4.1 Horizontal agreements

The prohibition of restrictive agreements, the first substantive provision of the Competition Act, follows the basic EU law, with a few minor differences of phrasing and detail. The prohibition of restrictive "agreements" also covers "concerted actions", that is, conduct that lacks the formalities of "agreement" but otherwise represents the willing substitution of practical co-operation for the risks of competition.

Exemptions for otherwise restrictive agreements can be granted by the Authority, applying criteria similar to those in the EU system. The Authority interprets the criteria for granting these exemptions so that no exemption can be granted if it is inconsistent with consumer welfare. The Authority has always identified the "consumer" with the actual consumer of the product or service, not with consumers in general, so that considerations other than efficiencies would be less likely to be taken

into account. For example, the Authority granted a three year exemption to a code-sharing agreement between Alitalia, the national flag carrier, and a smaller airline because it increased output and upgraded services.

Quite often, especially in recent times, the Authority intervened against price fixing agreements. For example, in a recent price fixing agreement, the Authority found that all the Italian oil producing companies agreed among themselves to reduce the incentive of distributors to compete at the retail level. The Authority fined the companies 249 million Euro. The decision was later annulled by the Consiglio di Stato, mainly on procedural grounds. Similarly the widespread practice of insurance companies to exchange among themselves detailed information on prices and future strategies, while at the same time keep such information hidden to consumers (who would have been able to easily change their insurer had they be immediately informed of any possible price difference), was considered by the Authority a very serious restriction of competition and the insurance companies involved were fined 361 million Euro. This decision has been recently confirmed by the Consiglio di Stato.

Investigations of "private regulatory activities" by associations often find anticompetitive horizontal restraints. Activities whose declared objectives are enhancing quality or reducing transaction costs may amount to nothing more than means to divide markets, fix prices or tariffs, or suppress output. In the agriculture and food products sector, consortia that oversee rules to ensure accuracy in labelling and observance of production methods have anticompetitively set output ceilings to member firms. In pharmaceutical products, the Authority considered restrictive of competition a "self-regulatory code", setting criteria and standards for price increases. The code's parameters and mechanism would have made it easy for firms to anticipate their competitors' pricing moves, and the association's monitoring to ensure compliance would also have dampened competition.

To protect competition in liberalising markets, the Authority took action against the two mobile phone operators, which had simultaneously announced identical prices for interconnection between the digital mobile network (GSM) and the fixed public network. Their agreement both eliminated competition about this element and hindered the entry of new competitors. In September 1999, the Authority imposed a fine of 76 million Euro. Several important cases have addressed horizontal agreements affecting fees in the accounting professions. Under law, the associations have an advisory function, and the fees are actually set by an order of the Ministry of Justice. The two national associations of accountants had anticompetitively agreed to align their pricing policies, even before the fee schedule was authorised by the Ministry of Justice. The decision was annulled by the Courts. Another decision involved the national auditors association and the major auditing companies, which had co-ordinated their tariffs and hourly rates, agreed not to compete for clients that were already served by other companies, and co-ordinated their participation in tendering procedures. They claimed that co-ordination guaranteed high quality services; however, there are other regulations that promote and ensure quality. The investigation resulted, in January 2000, in fines totaling 2.3 million Euro.

4.2 Vertical agreements

The prohibition against anti-competitive agreements applies equally to agreements in the vertical dimension, between suppliers and customers. Italy has made little use of the statute's provisions for exemptions concerning vertical relationships (Sec. 4). A principal reason is that the Authority has made greater use of economic analysis, in applying the Competition Act's "appreciable impact" test. Assessment of vertical restraints has depended mainly on the evaluation of the economic impact in the relevant market, in view of the market power (if any) of the firms involved, rather than on formal analysis of contractual clauses. Most of the notified agreements of exclusive distribution were authorized because they did not lead to market foreclosure, neither for producers (that were always found to be able to find a suitable distribution outlet) nor for distributors (that were always found to be able to find suitable products to distribute).

The economic approach to enforcement means that restrictive vertical agreements have often been dealt with as abuses of dominance. For example, in the early 1990s the historic telecoms monopolist was the only provider of mobile cellular service. Its agreements with franchised retailers of mobile telephone equipment contained exclusive dealing restraints and controlled their prices and margins. The Authority found that the exclusivity commitments, and the monopolist's access to information that was not available to third parties, prevented other distributors from gaining access to the retail channels, putting them at an unjustified competitive disadvantage.

Arrangements between banks and insurance companies for distribution of insurance products have drawn several enforcement actions. If a bank has significant market power in retail distribution of financial products, because of its branch network and customer base, an exclusive distribution agreement with an insurance company may make entry by other insurance companies particularly difficult. The Authority has been concerned that, even where no firm has enough market power for the practice to be considered an abuse of dominance, if most insurance companies operate through such exclusive agreements, that common strategy could make collusion among them easier.

4.3 Abuse of dominance

The statutory prohibition of abuse of dominance generally follows the EU legislation (Sec. 3), with just small differences in the listing of types of abuse.

Many of the Authority's cases about abuse of dominance have been concerned with former legal monopolies or de facto monopolistic positions in markets with essential infrastructures. Two-thirds of the formal proceedings about abuse of dominance have targeted the transport, telecommunications, electric power, and natural gas sectors, mostly for discrimination or attempted extension of a (lawful) dominant position into a different, liberalized market. Incumbent firms have deterred competitors' entry by impeding access to essential facilities or information or pre-empted

competition by imposing lock-in contractual clauses on captive customers. Not all actions against abuse of dominance involve utility-type services; in December 1999, the Authority fined Coca-Cola 16.3 million Euro for using discounts and bonuses to wholesalers in order to claim display space and thus exclude competitors.

On several occasions, the law about abuse of dominance helped protect competition as the telecoms market was being liberalised. For example, Telecom Italia offered discounts for providing a monopoly service (for traffic generated in the switched public network) only to its own high-volume customers for liberalised services. Since the same discounts were not offered also to competitors' customers the Authority found the practice to be abusive. Analogously Telecom Italia abused its dominant position in the ADSL case, by starting the commercialization of this new service, without allowing its competitors to do likewise.

In the natural gas industry, a February 1999 decision found that the pipeline system operator Snam refused to grant access for uses other than electricity generation and own-consumption, refused to revise its 1994 agreement with the producers' association concerning the price for carriage, and ensured compliance by monitoring the final destination of the gas it carried on behalf of others. Moreover, the method of calculating the charge for carriage, which allowed Snam to fix the price level independently of the effective demand for transport, was likely to lead to unjustifiably burdensome contractual conditions. The Authority imposed a fine of 1.9 million Euro. The decision was later annulled by the Consiglio di Stato because Snam behavior was considered to be coherent with existing regulations.

In many sectors, the abuse of dominance prohibition must be applied as historic monopolies resist liberalisation and use their established quasi-regulatory positions to hinder new entry. In port services, incumbent former monopolists sometimes refused to allow competitors access to port facilities. In air transport, Alitalia was given the responsibility of assigning airport operating slots, and it used that power to its advantage by putting its own operations just ahead of its competitors'. Alitalia was also found to be abusing its dominant position by reducing, through target discounts, the incentive of travel agents to sell tickets by competitors.

4.4 Mergers

If a concentration creates or strengthens a dominant position in a market, "with the effect of eliminating or restricting competition appreciably on a lasting basis," the Authority has the power either to prevent it or to authorize it subject to the parties' taking measures to avoid those consequences (Sec. 6).

Advance notification to the Authority is required if the combination involves firms with total annual turnover over 387 million Euro or if the aggregate domestic turnover of the acquired firm exceeds 39 million Euro. These statutory thresholds have been adjusted for inflation, most recently in June 2002 (Sec. 16.1). (For banks and financial institutions, the figure used for "turnover" is one-tenth of total assets, with the exclusion of memorandum accounts; for insurance companies, it is the value

of premiums collected). Take-over bids for acquisitions that would meet the thresholds must be notified to the Authority within 15 days, at the same time they are notified to the Security and Exchange Commission.

The Authority must decide within 30 days of the notification whether the concentration might infringe the statutory standard. If so, a formal investigation may be opened. Fewer than 2% of notifications result in a formal investigation. The investigation must be concluded within an additional 45 days, which may be extended by 30 days if the parties fail to provide requested information (Sec. 16.8). An investigation may be opened after these deadlines have passed, if the information in the notification is "seriously inaccurate, incomplete, or untrue" (Sec. 16.7). Failure to comply with notification requirements can lead to an administrative fine of 1% of annual turnover (Sec. 19.2). The Authority can order parties not to complete their transaction before the investigation is concluded, except in the case of a take-over bid, which may be concluded as long as the acquiring firm does not exercise voting rights before the investigation is finished (Sec. 17). If a concentration would violate the legal criterion, it may be prohibited (Sec. 18.1), or, if the concentration has already taken place, the parties may be required to restore effective competition and remove its anti-competitive effects (Sec. 18.3). Disregard of such orders or requirements based on findings about the competitive consequences can result in a fine of up to 10% of the concentration's turnover. If the parties demonstrate that they have removed aspects of the planned deal that were likely to distort competition, the investigation is to be closed without any order (Sec. 18.2).

The analysis to determine whether the concentration creates or strengthens a dominant position is similar to that set out in the EU merger regulation. It considers substitution possibilities (for suppliers and users), market positions of the parties, conditions of access to supplies and markets, market structure, the domestic industry's competitive position, barriers to entry, and the evolution of supply and demand for the relevant goods and services (Sec. 6). As an example, a merger raising competition concerns in retail distribution was examined by the Authority in June 1998 when the Authority completed an investigation into the acquisition of the joint control of the GS group, which operates in Italy in the retail distribution of grocery products, by Promodès, a leading French group operating in commercial distribution. As initially notified, the concentration would have resulted in substantial increases in market shares in a number of local markets leading to strong increases in market power. In order to overcome the objections raised by the Authority concerning the possible creation of a dominant position, the parties undertook to sell off, within a given time limit, several supermarkets in the areas most affected by the concentration. More recently the Authority blocked a merger in the milk sector because it would have created a collective dominant position in the Veneto region. It also imposed on Enel to sell 5.500 megawatt of generation capacity in order to impede that its dominant position be strengthened as a consequence of the purchase of Infostrada, a leading Italian telecommunications company.

5 An overview of the enforcement activity

The Authority has been recently paying increasing attention to restrictive agreements. The number of actions against abuse of dominance has decreased since the mid-1990s, as restructuring and deregulation in traditional monopoly industries is taking hold and new regulators are beginning to apply sector-specific rules. The number of investigations about restrictive agreements has also decreased. Merger notifications are also at record levels, although that number may be controlled to some extent by the inflation-based adjustment of filing thresholds. The number of misleading advertising matters has declined somewhat.

Table 3: Trends in Competition Policy Actions

	1991-94	1995[1]	1996	1997	1998	1999	2000	2001
Concentrations	1.752	282	357	292	344	423	525	616
Investigations	18	1	3	7	2	6	5	6
- prohibited	4	-	-	1	-	-		2
- authorised subject to conditions[2]	4	-	3	5	2	2	2	2
Agreements[3]	98	32	64	64	54	30	52	43
Investigations	45	5	23	12	14	12	12	9
- violations found by Authority	27	3	15	8	11	12	9	3
Abuse of dominant position[3]	58	31	52	46	21	15	22	28
Investigations	20	11	10	5	3	4	7	3
- violations found by Authority	16	8	7	4	2	3	6	2
Advocacy reports and opinion to Parliament and the Government	32	25	18	38	42	30	20	17
Opinion submitted to the Bank of Italy	116	46	48	50	46	43	50	29
Misleading advertising [3]	354	240	389	506	468	358	333	289
- violations found by Authority	172	169	284	361	300	275	266	240

(1) Concentrations between non-independent companies have not been subject to notification to the Authority since 1995.
(2) Conditional authorisation or changes in terms of agreement leading to compliance.
(3) Includes cases that were dismissed (cases beyond the scope of the Authority's power; cases to which the law was not applicable; etc).
(4) Only investigations are considered.

6 Exemptions and special regulatory regimes

No explicit provision of Italy's Competition Act creates a general exemption for conduct that is arguably authorised by or consistent with a regulatory program or requirement. But in general, if conduct is authorised or required by another law or official decision, it cannot be sanctioned under the Competition Act.

Public enterprises and state-controlled firms are fully subject to the Competition Act's basic prohibitions (Sec. 8.1). Pursuant to a provision that parallels the EU

treaty, those prohibitions do not apply to firms that by law provide "services of general economic interest" or operate in a monopoly situation, to the extent that such exemption is "indispensable" to perform their specific, assigned tasks (Sec. 8.2). A grant of a statutory monopoly does not prevent other firms from engaging in internal production for their own use, except for telecommunications services or for services for which the basis for the monopoly is public order, public safety, or national defense (Sec. 9).

Small business does not receive any particular special treatment under the Competition Act. *And there is no explicit* exemption for them, but the law's requirement that a practice must have an appreciable effect on competition before it will be prohibited implies an equivalent principle. The lack of an explicit cut-off point based on firm size or market share might be thought to increase uncertainty, but experience has not shown that to be a significant problem. In any event, the EU's *de minimis* notice provides some guidance about what would be considered too small-scale to call for enforcement attention under Italian law.

There are few explicit gaps in the coverage of the Competition Act, but particular regulatory programs limit entry and competition over price and services. Advocacy by the Authority has tried to assess whether compelling public interests can be served in better ways and to recommend changes. But the process is difficult. Special rules about competition policy issues apply in a few sectors, and in one sector, banking, a different agency is responsible for applying the general Competition Act.

For banks the law fully applies, but is administered by the Bank of Italy, the Italian central bank (Sec. 20.2). The banking regulator is to request the (non-binding) opinion of the Authority when enforcing the Competition Act. The Authority is to respond to such requests within 30 days, and failing such a response, the banking regulator can proceed with its action (Sec. 20.3). Where a potential violation of the Competition Act concerns firms that operate in several sectors, each competent authority may take action (Sec. 20.7). For example, banks act as distributors of insurance products, which are under the jurisdiction of the Authority. Decisions from both agencies may be required about the same transaction or set of circumstances, depending on the nature of the different "products" involved. That raises some risk of conflict, and thus points out a need for co-ordination.

In reviewing mergers, the Bank of Italy is responsible to the extent the relevant market is for banking services, and the Authority is responsible to the extent other, non-banking markets are involved. The two enforcement bodies apply an analytic method set out in a March 1996 agreement between them. A recent merger case, in December 1999, illustrates the dual jurisdictional coverage. The Bank of Italy was concerned about effects on credit and demand deposits, and the Authority about other products, such as factoring.

In the insurance industry, the relationship between the Authority and the sectoral agency is the reverse of the relationship in the banking industry. The Authority has jurisdiction, but before taking enforcement action it must request the opinion of the

insurance regulator, ISVAP. If ISVAP does not respond to the request within 30 days, the Authority may take whatever action it deems necessary (Sec. 20.4). There are also separate, statutory requirements regulating concentration in insurance (Sec. 20.9). ISVAP is more of a supervisory body than a regulatory authority. Its principal goal is maintaining the health and solvency of the firms in the insurance industry. The Authority has had many cases involving insurance, against price and market division agreements, collusion in tenders for public agency liability coverage, and exclusive dealing agreements in distribution.

The Authority has found price competition in the insurance markets to be weak. Competition in distribution has become stronger, though, for life insurance products sold through banks and motor vehicle insurance sold over the telephone. But new avenues of distribution brought a different set of problems, of exclusive dealing agreements between insurance companies and banks that may discourage entry. Overt control of premiums ended pursuant to EU directives, but some degree of control of life insurance rates reappeared.

When the Competition Act was first introduced, a provision parallel to the one for banking assigned competence for antitrust enforcement to the Broadcasting and Publishing Authority. That provision was repealed in 1997, the regulator was abolished, and the Authority has assumed responsibility for enforcement in these sectors. Its decisions in the broadcasting and publishing sectors are taken after receiving an opinion from the newly established Communications Regulatory Authority.

Other special statutory limits govern concentration in broadcasting and publishing (Sec. 20.9). These limits are the product of a long controversy over the structure of the media industries. After a series of decisions by the Constitutional Court beginning in the 1970s, legislation in 1990 ended the national monopoly and set limits on the concentration of ownership aimed at preserving viewpoint diversity rather than to promote competition in defined markets. An individual broadcaster may not control more than 20% of the channels available nationally, nor account for more than 30% of the revenues in a particular branch — terrestrial television broadcasting, radio, cable, or satellite broadcasting. An individual broadcaster that has any holdings in the press sector may not account for more than 20% of the combined television and press. The statutory concentration limits apply regardless of the actual state of competition among different media. An Authority investigation in these sectors would not be bound by these statutory categories in identifying appropriate relevant economic markets.

The Authority has responsibility for enforcing the Competition Act in regulated sectors. The sectoral agencies are responsible for applying sector-specific rules that also promote competition. The Authority must consult with the telecoms regulator before taking action in that sector under the Competition Act. The telecoms and energy regulators are required to notify the Authority when they learn of an alleged violation of the Competition Act. In addition, the Authority provides the telecoms regulator with non-binding opinions to assist in its decisions about identifying firms with significant market power, conditions of network interconnection and access, and accounting

separation. These two sectoral agencies share the basic goal of promoting competition, and that common interest promotes co-operation with the Authority.

7 Competition advocacy

Policy analysis and advocacy have been a central task since the Authority was created. At the outset, the Competition Act required the Authority to prepare three major reports to the Prime Minister, about public tenders, commercial distribution, and public utility services. In recent years, significant advocacy work has been directed to markets characterized by liberalizing reforms following the adoption of EU directives for postal services, natural gas, electricity, and telecoms. In addition, some advocacy interventions have addressed general aspects of regulatory reform, such as reports about the use of licences and "concessions" restricting market access, limits on participation in public contract tendering procedures, and the pro-competitive relationship between liberalization and privatization.

Advocacy powers are established in the Competition Act. Acting on its own initiative, or on the request of government departments or agencies, the Authority may study and report on issues or problems involving competition and the market. The Authority may identify laws, regulations, or "general administrative provisions" that distort competition or the sound operation of the market and which are not justified by the general interest (Sec. 21.1). If the issue concerns existing or proposed legislation, the Authority may report about it to the Parliament and the Prime Minister; if it is another level of regulation, to the Prime Minister, other relevant ministers, and relevant local authorities (Sec. 21.2). It may recommend measures to prevent or remove the distortions, and it may publish its findings and recommendations (Sec. 21.3). The Prime Minister may request the Authority's opinion about clearly anti-competitive proposed laws or regulations, that is, those whose "direct effect" is to establish quantitative restrictions, exclusive rights, or pricing practices or conditions of sale (Sec. 22). In addition to issuing these reports, the Authority is often consulted by parliamentary committees in formal hearings.

The most successful advocacy efforts have been those that are supported by EU actions or policies, whether in the form of directives, resolutions, enforcement proceedings, or judicial decisions. Concerning issues of purely domestic relevance, the Authority's recommendations have often been ignored. Overall, the Parliament or the competent authorities have adopted about one-third of the Authority's recommendations, either by repealing rules or regulations or, more frequently, by amending anti-competitive provisions of draft legislation.

About half of the Authority's advocacy actions have dealt with sectors that are subject to larger-scale liberalization efforts, such as telecoms, energy, transport, and financial services. This is consistent with a strategy of focusing on the issues with the largest overall impact. Some actions have dealt with very small problems, though, such as whether a rule about promotional cigarette lighters affects competition with matches.

Table 3: Advocacy interventions, 1990–2001 [1]

Sector	
Telecommunications	47
Transport and transport infrastructure	32
Other services	23
Waste recycling and disposal	10
Insurance	10
Electricity, gas and waters	12
Printing and publishing	9
Pharmaceuticals	9
Petrochemicals	7
Health services	6
Food and beverages	5
Tourism	4
Education	3
Credit	3
Construction	5
Computer and IT	3
Professional activities	7
Postal Services	2
Cinema	3
Agriculture	2
Miscellaneous manufacturing	1
Automotive industry	1

[1] Not included 25 advocacy actions on general issues.

The Authority's experience demonstrates the close links between enforcement and advocacy. Enforcement action, particularly against abuse of dominance by historic monopolists, has often supported policy advice about liberalization and restructuring. On the other hand, enforcement sometimes prompts a legislative response to overturn it, and then the Authority must explain its action and show the harm that the proposed response could lead to. Authority opinions about driving schools, agricultural quotas, and resale price maintenance, and perhaps others, aimed at legislation designed to overturn the Authority's decisions.

8 Unfair competition

The rules of traditional "unfair competition" fall under the Civil Code, rather than the Competition Act. Among the kinds of conduct treated as unfair are acts that are likely to confuse the consumer about product or service origin, such as using similar names or logos or imitating a competitor's products too closely, and

disparagement, that is, spreading news or comments that are likely to discredit a competitor's products and activities — as well as claiming a competitors' virtues as ones' own. And a catch-all provision reaches the use "directly or indirectly of any other means which do not conform with the principles of fair behavior in the trade and are likely to injure another's business". Competitors, or associations of competitors, can go to court for orders to cease the offence and correct its effects and for damages.

The Authority does have jurisdiction to apply rules about deceptive advertising, which is one of the principal types of traditional unfair competition. The EU Directive on Deceptive Advertising has been enacted into Italian law. Intended to protect both competitors and consumers, this regulation targets advertising that induces, or is likely to induce, error in those it reaches (or whom it is intended to reach), where the deception is likely either to affect the behavior of the recipients or to cause harm to a competitor. All aspects of the communication, including prices, conditions of sale, and identifying characteristics of the advertiser, are relevant. Advertisements must be clearly recognizable as such, and advertisements that are likely to reach children are subject to special scrutiny. Comparative advertising is now covered, too. The Authority has the power to order suspension of a deceptive advertisement, to require the advertiser to demonstrate proof of its claims, and to order corrective advertising. The extent of the corrective advertising it can order is limited, though, and the Authority cannot impose fines on a first violation. Advertisers that fail to comply with the Authority's orders about advertising face fines up to 2.582 Euro or imprisonment up to 3 months. These penalties are in addition to what competitors might recover as damages in a civil suit.

Deceptive advertising matters represent a large part of the Authority's workload, measured by number of actions, if not by resources employed. The Authority may receive a thousand complaints a year, and in recent years it has averaged over 400 investigations and over 300 findings of violation. Enforcement involves inter-agency co-ordination. Before the Authority takes final action about an advertisement that is broadcast or disseminated in the press, it must get a non-binding opinion about it from the Communications Regulatory Authority.

Appendix

ITALIAN COMPETITION AND FAIR TRADING ACT
(Law no. 287, of 10th October 1990)

Title I
Agreements, Abuse of dominant position and Concentrations

Section 1
Scope and relationship to Community law

1. The provisions of this Act implementing Article 41 of the Constitution protecting and guaranteeing the right of free enterprise, apply to agreements, abuse of a dominant position and concentrations falling outside the scope of Articles 65 and/or 66 of the Treaty establishing the European Coal and Steel Community, Articles 85 and/or 86 of the Treaty establishing the European Economic Community (EEC), EEC Regulations or Community acts having an equivalent statutory effect.
2. Where the Competition Authority, within the meaning of section 10, hereinafter referred to as "the Authority", considers that a case does not fall within the scope of this Act, as defined in subsection (1), it shall inform the Commission of the European Communities and forward to it any relevant information at its disposal.
3. The Authority shall suspend any investigation into cases in respect of which the Commission of the European Communities has opened a formal procedure under the provisions referred to in subsection (1) above, save for any aspects entirely of domestic relevance.
4. The provisions of this Title shall be interpreted in accordance with the principles of the European Community competition law.

Section 2
Agreements restricting freedom of competition

1. The following shall be regarded as agreements: accords and/or concerted practices between undertakings, and any decisions, even if adopted pursuant to their Articles or Bylaws, taken by consortia, associations of undertakings and other similar entities.
2. Agreements are prohibited between undertakings which have as their object or effect appreciable prevention, restriction or distortion of competition within the national market or within a substantial part of it, including those that:
   a) directly or indirectly fix purchase or selling prices or other contractual conditions;
   b) limit or restrict production, market outlets or market access, investment, technical development or technological progress;

c) share markets or sources of supply;
d) apply to other trading partners objectively dissimilar conditions for equivalent transactions, thereby placing them at an unjustifiable competitive disadvantage;
e) make 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 null and void.

Section 3

Abuse of a dominant position

1. The abuse by one or more undertakings of a dominant position within the domestic market or in a substantial part of it is prohibited. It is also prohibited:
   a) directly or indirectly to impose unfair purchase or selling prices or other unfair contractual conditions;
   b) to limit or restrict production, market outlets or market access, investment, technical development or technological progress;
   c) to apply to other trading partners objectively dissimilar conditions for equivalent transactions, thereby placing them at an unjustifiable competitive disadvantage;
   d) to make 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.

Section 4

Exemption from the prohibition of agreements restricting competition

1. The Authority may authorize, for a limited period, agreements or categories of agreements prohibited under section 2 which have the effect of improving the conditions of supply in the market, leading to substantial benefits for consumers. Such improvements shall be identified taking also into account the need to guarantee the undertakings the necessary level of international competitiveness and shall be related, in particular, with increases of production, improvements in the quality of production or distribution, or with technical and technological progress. The exemption may not permit restrictions that are not strictly necessary for the purposes of this subsection, and may not permit competition to be eliminated in a substantial part of the market.
2. The Authority may subsequently, after giving notice, revoke the exemption referred to in subsection (1) in cases where the party concerned abuses it, or when any of the conditions on which the exemption was based no longer obtain.

3. Requests for exemption shall be submitted to the Authority, which shall avail itself of the powers of investigation referred to in section 14 and decide within a period from 120 days of the date on which the application is filed.

Section 5
Concentrations

1. A concentration shall be deemed to arise when:
   a) two or more undertakings merge;
   b) one or more persons controlling at least one undertaking or one or more undertakings, acquire the direct or indirect control of the whole or parts of one or more undertakings, whether through the acquisition of shares or assets, or by contract or by any other means;
   c) two or more undertakings create a joint venture by setting up a new company.
2. Control of an undertaking shall not be deemed to have been acquired in the case of a bank or financial institution which acquires shares in an undertaking when constituted, or when its share capital is raised, with a view to re-selling them on the market, provided that it does not exercise any voting rights vested in those securities while it holds them; in no case the holding period shall exceed 24 months.
3. Operations which have as their main object or effect the coordination of the actions of independent undertakings shall not constitute concentrations.

Section 6
Prohibition on concentrations restricting free competition

1. The Authority shall appraise concentrations subject to notification under section 16, to ascertain whether they create or strengthen a dominant position on the domestic market with the effect of eliminating or restricting competition appreciably and on a lasting basis. This situation shall be appraised taking into account the possibilities of substitution available to suppliers and users, the market position of the undertakings, the access conditions to supplies or markets, the structure of the relevant markets, the competitive position of the domestic industry, barriers to the entry of competing undertakings and the evolution of supply and demand for the relevant goods or services.
2. Whenever the investigation under section 16(4) shows that the operation entails the consequences referred to in subsection (1), the Authority shall either prohibit the concentration or authorize it laying down the necessary measures to prevent such consequences.

Section 7
Control

1. For the purposes of this title, control is acquired in the cases provided by Article 2.359 of the Civil Code, and by the holding of rights, contracts or other legal relations which, separately or in combination, and having regard

for the considerations of fact and law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:
a) the ownership or right of use over all or part of the assets of an undertaking;
b) rights, contracts or other legal relations which confer a decisive influence over the composition, resolutions or decisions of the board 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 beneficiaries under the contracts or are parties to the other legal relations;
b) while not being holders of the rights or beneficiaries under the contracts or parties to such legal relations, have the power to exercise the rights deriving therefrom.

Section 8
Public undertakings and statutory 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, are entrusted with the operation of services of general economic interest or operate on the market in a monopoly situation, only in so far as this is indispensable to perform the specific tasks assigned to them.

Section 9
Internal production

1. The statutory monopoly granted to the State or to a public entity or agency, as well as any statutory monopoly granted to an undertaking entrusted with the sale of goods and services to the public does not imply a prohibition on third parties from producing the same goods or services for their own internal use, or for their parent or subsidiary companies.
2. Internal production is not allowed in cases where public order, public safety and national defence are the grounds for the relevant statutory monopoly provisions, or for telecommunications services, unless a government franchise is granted.

Title II
Establishment and functions of the Competition Authority

Chapter I
The Establishment of the Authority

Section 10
The Competition Authority

1. The Competition Authority, hereinafter referred to as "the Authority" is hereby instituted, with its headquarters in Rome.

2. The Authority shall act with total autonomy and independence of judgment and assessment, and is a collegial body consisting of the President and four members proposed and appointed jointly by the Presidents of the Italian Chamber of Deputies and Senate. The President shall be a person of well-known independence, and who has already held high office with broadly-based institutional responsibilities. The four members shall be persons of well-known independence, and chosen among judges serving on the Supreme Administrative Court ("Council of State"), the Court of Auditors, the Supreme Court of Appeals, full professors of Economics or Law or respected business executives of particularly high professional repute.
3. The members of the Authority shall be appointed for a non-renewable period of seven years. While holding office they may not exercise any professional or consultancy activities, or acquire directorships or be employees of public or private entities, or hold public office of any kind whatever. Civil servants shall be given temporary leave throughout their full term of office.
4. The Authority may correspond with any government department and with any other statutory bodies or agencies under public law, and may request information and co-operation in the performance of its duties. Being the national Competition Authority, it shall be responsible for relations with the institutions of the European Community provided by the relevant provisions of Community law.
5. Within 90 days of the entry into force of this Act, the President of the Republic shall issue a Decree, at the proposal of the Minister of Trade and Industry, in consultation with the Minister of the Treasury, following a decision by the Council of Ministers, establishing the investigation procedures for ensuring full disclosure of any documents used in the course of the Authority's investigations, and the right of reply, debate and the submission of defences.
6. The Authority shall draw up rules governing its own organization and operations, regulations for staff salary scales and conditions of employment and promotion, and rules for keeping expenditure within the limits laid down in this Act, even if they constitute exceptions to the general provisions governing public accounting.
7. The Authority is responsible for expenditure relating to its own operations, within the limits provided in the national budget and entered under a single heading in the budget of the Ministry of Trade and Industry. Its annual financial management shall be based on the budget approved by the Authority by 31st December of the previous year. The content and structure of the budget, in which expenditure shall be restricted within the limits of the forecast revenue, shall conform to the rules referred to in subsection (6), which also govern the procedures for introducing amendments. The financial statements, which shall be approved by 30th April of the following year, shall be audited by the Court of Auditors. The budget and the financial statements shall be published in the Gazzetta Ufficiale of the Italian Republic.

REVISTA DIREITO MACKENZIE
ANO 4 – NÚMERO 2 – P. 199-228

8. The emoluments of the Chairman and Members of the Authority shall be laid down by Prime Ministerial Decree, as proposed by the Minister of Trade and Industry, by agreement with the Minister of the Treasury.

Section 11

Staff of the Authority

1. By Prime Ministerial Decree a specific record shall be instituted for the staff of the Authority. The number of posts may not exceed 150. Staff shall be recruited by public competitive examination, except for those grades for which recruitment is provided by section 16 of Law No. 56 of 28th February 1987.
2. The staff salaries and conditions of employment and promotion shall be in accordance with to the criteria laid down in the collective labour contract for Bank of Italy staff, taking account of the Authority's specific functional and organizational requirements.
3. Staff members of the Authority are forbidden to take any other employment or duties, and to exercise any professional, commercial or industrial activities.
4. The Authority may recruit up to 50 members of staff under fixed-term contracts governed by private law provisions. The Authority may, if appropriate, also engage experts for consultation on specific matters and problems, whenever necessary.
5. The Secretary-General is responsible for overseeing the operations of the Authority's services and offices, and shall report to the Chairman. He is appointed by the Minister of Trade and Industry, acting on a proposal of the Chairman of the Authority.

Chapter II

The Authority's powers over agreements restricting 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 notice by the public authorities or by any other interested party, including bodies representing consumers, the Authority shall conduct an investigation to ascertain any infringements of the prohibitions provided by sections 2 and 3.
2. The Authority may also institute a general fact-finding investigation at its own initiative, or at the request of the Minister of Trade and Industry, or of the Minister of State Shareholdings, in areas of business in which the development of trade, the evolution of prices or other circumstances suggest that competition may be impeded, restricted or distorted.

Section 13

Notification of agreements

1. Undertakings may notify the Authority of any agreements they conclude. The Authority shall commence the investigations under section 14 within 120 days of notification, after which time no investigation may take place, except where the notification is found to be incomplete or untrue.

Section 14

Investigation

1. In the event of an alleged infringement of sections 2 or 3 the Authority shall notify the undertakings and entities concerned that an investigation is being opened. The owners or legal representatives of such undertakings or entities may submit representations in person or through a special attorney by the deadline set at the moment of notification, and may make submissions and opinions at any stage during the course of the investigation, as well as further representations before the investigations are completed.
2. The Authority may, at any stage in the investigation, request undertakings, entities and individuals to supply any information in their possession and exhibit any documents of relevance to the investigation; it may conduct inspections of the undertaking's books and records and make copies of them, availing itself of the cooperation of other government agencies where necessary; it may produce expert reports and economic and statistical analyses, and consult experts on any matter of relevance to the investigation.
3. Any information or data regarding the undertakings under investigation by the Authority are wholly confidential and may not be divulged even to other government departments.
4. In the exercise of their functions, officials of the Authority shall be considered "public officials". They are sworn to secrecy.
5. The Authority may fine anyone who refuses or fails to provide the information or exhibit the documents referred to in subsection (2) without justification, in an amount up to 50 million lire, which is increased up to 100 million lire in the event that they submit untruthful information or documents, in addition to any other penalties provided by current legislation.

Section 15

Service of notice and penalties

1. If the investigation provided in section 14 reveals infringements of sections 2 or 3, the Authority shall set a deadline within which the undertakings and entities concerned are to remedy the infringements. In the most serious cases it may decide, depending on the gravity and the duration of the infringement, to impose a fine up to ten per cent of the turnover of each

undertaking or entity during the prior financial year; time limits shall be laid down within which the undertaking shall pay the penalty.

2. In the case of non-compliance with the notice referred to in subsection (1), the Authority shall impose a fine of up to ten per cent of the turnover or, in cases where the penalty provided by subsection (1) has already been imposed, a fine of no less than double the penalty already imposed with a ceiling of ten per cent of the turnover as defined in subsection (1). It shall also set a time limit for the payment of the fine. In cases of repeated non-compliance, the Authority may decide to order the undertaking to suspend activities for up to 30 days.

Chapter III

The Authority's powers to prohibit concentrations

Section 16

Notification of concentrations

1. The concentrations referred to in section 5 shall be notified in advance to the Authority if the combined aggregate domestic turnover of all the undertakings concerned exceeds L. 500 billion or if the aggregate domestic turnover of the undertaking which is to be acquired exceeds L. 50 billion. These figures shall be increased each year by an amount equivalent to the increase in GDP price deflator index.
2. In the case of banks and financial institutions the turnover used shall be equal to the value of one-tenth of their total assets, with the exclusion of memorandum accounts and, in the case of insurance companies, to the value of premiums collected.
3. Within five days of receiving notification of a concentration, the Authority shall inform the Prime Minister and the Minister of Trade and Industry.
4. If the Authority considers that a concentration may be subject to prohibition under section 6, within 30 days of receiving the notification or of being informed thereof by any other means, it shall commence the investigations pursuant to the provisions of section 14. When formal notification is received of a concentration in respect of which the Authority deems the investigation unnecessary, it shall notify the undertakings and the Minister of Trade and Industry of its conclusions on this matter, within 30 days of receiving notification.
5. When notification is given to the "Commissione Nazionale per le Società e la Borsa" of any public takeover bid which might result in a concentration subject to notification under subsection (1), the Authority shall be notified thereof at the same time.
6. With 15 days of receiving notification of a takeover bid pursuant to subsection (5), the Authority shall give notice that the investigation is being initiated

and shall inform the Commissione Nazionale per le Società e la Borsa at the same time.

7. The Authority may commence the investigation beyond the time limits provided by this section when the information notified by the undertakings is seriously inaccurate, incomplete or untrue.
8. Within 45 days of the commencing of the investigation provided in this section, the Authority shall notify the undertakings concerned, and the Minister of Trade and Industry of its conclusions. This period may be extended in the course of the investigation for a further period of not more than 30 days whenever the undertakings fail to supply the information and the data in their possession upon request.

Section 17
Temporary suspension of a concentration

1. When conducting the investigation provided in section 16, the Authority may order the undertakings concerned not to proceed with the concentration until the investigation is concluded.
2. The provisions of subsection (1) shall not suspend a takeover bid that has been notified to the Authority under section 14(5), provided that the acquirer does not exercise any voting rights conferred by the securities in question.

Section 18
Conclusion of investigations of concentrations

1. If, following the investigation provided by section 16, the Authority ascertains that a concentration falls within the scope of section 6 of this Act, it shall prohibit it.
2. When the investigation produces insufficient evidence to justify action to be taken in respect of a concentration, the Authority shall close the investigation and immediately inform the undertakings concerned and the Minister of Trade and Industry of its conclusions. This measure may also be taken at the request of the undertakings concerned, if they are able to demonstrate that any aspects of the concentration deemed likely to distort competition as originally planned have since been removed.
3. If the concentration has already taken place, the Authority may require measures to be taken in order to restore conditions of effective competition, and remove any effects that distort it.

Section 19
Fines for failure to comply with the prohibition on concentrations or the notification requirement

1. The Authority shall impose administrative fines on undertakings which implement a concentration in violation of the prohibition provided by section

18(1) or which fail to comply with the instructions issued pursuant to section 18(3), ranging from a minimum of one per cent to a maximum of ten per cent of the turnover of the business forming the object of the concentration.

2. The Authority may impose administrative fines on undertakings which fail to comply with the prior notification requirements provided by section 16(1) in the amount of one per cent of the turnover of the year prior to the year in which the undertaking is challenged, over and above any other penalties for which it may be liable under subsection (1), following the investigation provided by Title III, counted from the date on which the penalty referred provided by this subsection is notified.

Chapter IV

Special provisions

Section 20

Banks, insurance companies and the broadcasting and publishing undertakings

1. **[Repealed]**
   [Section 1, subsection 6, letter c, n. 9 of Law n. 249 of July 31st, 1997, on the "Institution of the Communications Authority" assigned to the new Communications Authority the functions and competences of the Broadcasting and Publishing Authority, excluding those pursuant to section 20, subsection 1 of Law n. 287/90 which is repealed.]
2. With respect to banks, the provisions of sections 2, 3, 4 and 6 shall be enforced by their own supervisory authority.
3. Measures by the supervisory authorities referred to in subsections (1) and (2) to enforce the provisions of sections 2, 3, 4 and 6 of this Act shall be adopted after hearing the opinion of the Competition Authority within the meaning of section 10, which shall be issued within 30 days of receiving the documentation on which the measure is based. If the opinion is not issued within 30 days, the supervisory authorities may adopt the measures for which they are empowered.
4. In the case of operations involving insurance companies, the measures shall be adopted by the Authority within the meaning of section 10 after hearing the opinion of Istituto per la Vigilanza sulle Assicurazioni Private e d'Interesse Collettivo (ISVAP), which shall be issued within 30 days of receiving the documentation on which the measure is based. If the opinion is not issued within 30 days, the Authority within the meaning of section 10 may adopt the measures for which it is empowered.
5. The statutory authority for the supervision of banks may also waive the prohibition provided by section 2 authorizing agreements to proceed for a limited period in order to guarantee the stability of the monetary system, in

accordance with the criteria provided by section 4(1). Such authorization shall be adopted by agreement with the Authority within the meaning of section 10, which shall judge whether or not the agreement impedes competition.

6. The Authority referred to in section 10 may notify the supervisory authorities referred to in subsections (1) and (2) above of any cases of possible infringement of sections 2 and 3.
7. As an exception to the provisions of the preceding subsections, where the agreement, abuse of a dominant position or concentration relate to undertakings operating in sectors falling within the competence of more than one Authority, each of those authorities may adopt measures falling within its competence.
8. The supervisory authorities referred to in this section shall follow the same procedures provided for the Authority within the meaning of section 10.
9. The provisions of this Act governing concentrations do not constitute a derogation from the statutory provisions in force governing banking, insurance, broadcasting and publishing.

Title III

The Authority's fact-finding and consultative powers

Section 21

Powers to notify Parliament and the Government

1. In order to contribute to more effective protection of competition and the market, the Authority shall identify cases of particular relevance in which the provisions of law or regulations or general administrative provisions are creating distortions to competition or to the sound operation of the market which are not justified by the requirements of general interest.
2. The Authority shall notify Parliament and the Prime Minister of any distortions arising as a result of legislative measures, and the Prime Minister, other relevant ministers, and the relevant local authorities of distortions arising in any other cases.
3. At its discretion, the Authority shall issue an opinion on any measures needed to remove or prevent distortions, and it may also publish the cases notified and the opinions as appropriate according to the nature and the importance of the distortions.

Section 22

Consultation activities

1. The Authority may express opinions on legislation or regulations and on problems relating to competition and the market whenever it deems this

REVISTA DIREITO MACKENZIE
ANO 4 – NÚMERO 2 – P. 199-228

appropriate or whenever requested to do so by the government departments and agencies concerned. The Prime Minister may also request the opinion of the Authority in relation to legislation or regulations whose direct effect is:

- to place quantitative restrictions on the exercise of an activity or access to a market;
- to lay down exclusive rights in certain business areas;
- to impose general pricing practices or conditions of sale.

Section 23

Annual report

1. By 30th April of each year the Authority shall submit a report to the Prime Minister on its activities during the preceding year. The Prime Minister shall submit the report to Parliament within thirty days thereafter.

Section 24

Report to the Government on certain sectors

1. After consulting the relevant government departments, within 18 months of its constitution the Authority shall submit a report to the Prime Minister on the steps that must be taken in order to adapt the legislation relating to public tenders, public franchise-holders and commercial distribution to the principles of competition.

Title IV

Provisions on Government powers over concentrations

Section 25

Government powers over concentrations

1. The Council of Ministers shall, at the proposal of the Minister for Trade and Industry, lay down the general criteria to be used by the Authority when issuing authorization as a waiver to the prohibitions provided by section 6 of the law, when major general interests of the national economy are involved in the process of European integration, provided that competition is not eliminated from the market or restricted to an extent that is not strictly justified by the aforementioned general interests. In all these cases the Authority shall also prescribe the measures to be adopted in order to restore full competition by a specific deadline.
2. In the case of the concentrations referred to in section 16 involving entities or undertakings of countries which do not protect the independence of bodies or undertakings under provisions having an equivalent effect to those given in the Titles above, or apply discriminatory provisions or impose clauses having similar effects in relation to acquisitions by Italian undertakings or

entities, the Prime Minister may, within 30 days of the notification referred to in section 16(3) and acting on a resolution of the Council of Ministers, proposed by the Minister of Trade and Industry, prohibit the concentration on the grounds that it is against the essential national economic interests.

Section 26

Publication of decisions

1. The decisions referred to in sections 15, 16, 18, 19 and 25 shall be published within 20 days in a special bulletin issued by the Prime Minister's Office. The findings of the investigations provided by in section 12(2) shall also be published in this bulletin, if the Authority deems this appropriate.

[...]

Title VI

Final provisions

Section 33

Jurisdiction

1. Appeals against administrative measures adopted under the provisions of Titles I to IV of this Act fall within the exclusive jurisdiction of the administrative courts. They must be filed before the Latium Region Administrative Court.
2. Annulment proceedings and claims for damages, and petitions for emergency measures to be adopted in respect of infringements of the provisions of Titles I to IV, must be filed before the Court of Appeal having jurisdiction over the place.