PRESENTATION OF THE ITALIAN COMpetition AUTHORITY'S ANNUAL REPORT

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1. The creation of neutral and independent powers as regards the democratic set-up does not amount to a separation from the institutional system. On the contrary, said powers have to give account of their interventions.

However, without disavowing the relevance of the annual report submitted to the Parliament, it is necessary, without hypocrisies, to wonder if similar appointments do not run the risk of becoming empty liturgies, or even worse the institutions’ self-celebrations of the results obtained.

In order to avoid such risks and enhance the Parliament’s control function, I believe that it is necessary for the presentation of the annual report to fit into an interweaving of a stable relationship between the Authority and Parliamentary Commissions, so that the former may constantly provide the representative institutions with information concerning the actions carried out in order to guarantee competition in the various markets, as well as with independent technical elements and evaluations concerning the dynamics and transformations of the various economic sectors at national and European level. In this perspective, regardless of the many meetings held with the Parliamentary Commissions, it is necessary to continue to work on this ground so as to make the relationship between the ICA and the Parliament even more functional, of course respecting each institution’s independence and role.

Likewise, it is necessary to continue to enhance the moments for debates with our stakeholders. In this regard, I would like to recall the periodical meetings held with consumers’ associations whose contribution is fundamental for our activity, the dialogue developed with the legal community which concurs to the improvement of the institution’s procedures and directions, the transparency of our financial statement and the procedures of the spending review carried out autonomously, which have enabled to reduce enterprises’ contribution by 25% compared to the amount established by the legislator, at the first implementation stage.

2. In 2013, the ICA imposed sanctions for anticompetitive behaviors for an amount equal to 112,873,512 Euros and, during the first six months of 2014, for an amount equal to 184,528,819 Euros. With regard to unfair

1 Chairman of the Italian Competition Authority, Presentation held in Rome on June 30th, 2014.
commercial practices, the sanctions imposed in 2013 amounted to 9,253,000 Euros, and during the first six months of 2014 to 8,198,500 Euros.

The Authority has carried out the enforcement of competition law and consumers’ rights together with its advocacy activity toward the Government, the Parliament, Regions and local bodies, with the aim to promote pro-competitive amendments of rules and regulations.

The opinions aimed at obtaining reforms of regulatory acts and regulations that create barriers and hindrances to competition in several markets amounted to 120.

In the same period, the Authority submitted 21 opinions, pursuant to art. 21 bis of law n. 287 dated 1990, to several public administrations in order to indicate regulations going against competitive principles. In about half of the cases, the administrations receiving the opinions complied with the Authority’s indications. In 8 cases, appeal in front of the Administrative Judge followed the Authority’s opinions in order to obtain the annulment of the anticompetitive behaviours.

Owing to the great attention devoted to the removal of regulatory and administrative restrictions for the correct functioning of the market, the Authority has recently obtained the coordination of the work group as regards competition promotion within the ambit of the International Competition Network (ICN).

The ICA has also carried out its new function of legality rating of enterprises, which entered into force last year, issuing ratings as regards 128 enterprises.

Further 273 resolutions concerned the implementation of the law on conflicts of interest of members of the Government - the deficiency of which was highlighted to the Parliament in our six-month period report submitted in December 2013 - in which we reasserted the need for a reform concerning the matter.

Detailed information on this activity is available in the voluminous report which will be distributed today.

3. In this context, I believe that it is important to briefly consider the role that the ICA is carrying out in a period of epochal changes.

The crisis that broke out in 2007 in the USA as a private finance crisis and which moved to Europe as a crisis of sovereign debts and the Eurozone institutional architecture, cannot be viewed simply as a phase of the economic cycle. Rather, especially in several Countries like Italy, it seems to express the end of the balance among democracy, market and social cohesion which characterized the long political-constitutional experience that began after the Second World War. If this experience managed in the difficult task – to use Ralf Dahrendorf’s words – to “square the circle,” that is to create a virtuous balance among the institutions of these three amits, favoring a very long period
of economic growth and expansion of rights, today said balance is shaken at the foundations.

Europe and in particular Italy are undergoing a phase of deep change; we are at the beginning of a new constitutional cycle – the one started after the Second World War being exhausted - whose outcomes are still very much uncertain.

Antitrust activities are affected by this process of change, also because they have always been at the crossway of democracy, market and social cohesion. This is evident when considering the origins of antitrust in the North-American experience, where the reaction against cartels and attempts to monopolize the markets was carried out by small owners, farmers, small entrepreneurs on whom the large enterprises in the transportation, communication and energy sectors were imposing extremely unfair economic conditions. This is how the Sherman Act was originated in 1890. The antitrust regulation was not only a way to protect the general economic welfare, but it was also a tool for fighting against the private economic power damaging the freedom of the “smaller ones” and the independence of the political power.

As known, its original inspiration has slowly lessened, up to going totally lost. Recently, though, several critical voices have risen against these developments stating that the crisis imposes to go back to the inspiring concepts of American capitalism.

4. The target of this current of thought is crony capitalism, which in Italy is called relationship capitalism. The latter is based on the interweaving of few big economic powers, on their relationships with the political and administrative powers, on the research of “situational rents”.

Crony capitalism is based on privileges, rather than on merits; it worsens inequalities, it makes society closed, static, not very much open to competition and innovation. Likewise, it sacrifices individuals' ambition of being able to improve their social position exclusively owing to their merits. Therefore, it prejudices the particular form of equality which is equality of opportunities.

These tendencies, in Countries such as Italy, have favored the expansion of an unproductive and inefficient public expenditure, as regards some of its components, aimed at satisfying particularistic interests of lobbies and of rent seekers.

Also this has contributed in creating the enormous public debt which constitutes a big obstacle for economic growth and an unfair burden on the new generations.

However, to label the Italian economy, in its whole, as an example of crony capitalism is unfair toward the large part of Italian enterprises that successfully compete on the international markets and are capable of being leaders in innovation, for the many enterprises
that have been able to overcome the crisis and for those that have suffered also due to an unfriendly legal-institutional environment. Rather, relationship capitalism constitutes a component of the system in its whole, which damages the vital and competitive part of the Italian economy.

Today, the economy’s structure and its relationship with the political and administrative institutions are subject to a significant change.

This process of change is fuelled by several concurring forces and needs: the imperative exigency to put public accounts in order complying with European restrictions, the need to strengthen the economy’s competitiveness so as to restart economic growth, the necessity to renew the legitimacy of public institutions and economic subjects after the extremely serious scandals that have deeply undermined the public opinion’s trust.

In some cases, such events involve penal aspects that have to be ascertained by the judiciary, in the respect of the right to defence. However, besides these events, there are others in which the antitrust enforcement has intervened.

5. The media’s attention was drawn, even at international level, by the Authority’s decision to impose a sanction for more than 180 million Euros on two pharmaceutical multinationals that established a cartel in order to promote the sale of an exceedingly more expensive drug (more than 900 Euros per application), compared to the cheaper one (from 15 to 80 Euros per application), making the refund of the latter impossible for the National Health System. According to our estimates, this cartel caused a higher expenditure for the National Health System equal to 540 million Euros in 2013, which increased to about 615 million in 2014. This prejudiced not only the public finances but also consumers who, in many cases, were obliged to interrupt the treatment, with consequent risks for their health, due to the unavailability of the more expensive drug on behalf of the medical facilities.

The sanctioned enterprises appealed against our decision in front of the Italian Administrative Court (“Tar”). However, it is interesting to observe that the Health Service Governing Board recognised the therapeutic equivalence of the two drugs in the treatment of maculopathy - as already done by authoritative international independent studies - and that the Government adopted a law decree amending the regulation – in particular with reference to the off-label use of the drug – making the less expensive drug available upon prescription and refundable, thus enabling considerable savings for the public expenditure and advantages for consumers.

Another case resolved by the Authority, always in the pharmaceutical ambit, has recently been confirmed by the Italian Supreme Administrative Court (“Council of State”): I am
referring to the Pfizer case, in which the multinational exploited the complexity of patent regulations and established merely instrumental litigations thus slackening the entrance on the market of generic drugs alternative to the one which it had proposed and was commercialising, imposing on the National Health Service a higher expenditure quantifiable in about 14 million Euros.

The cases mentioned are characterised by the existence of complex administrative regimes that require the cooperation of the private subject. The latter is thus capable of influencing the decisions of the public bodies obtaining particular competitive advantages, which are even greater if the subject occupies a dominant position in the market of reference. In cases such as these, the private enterprise – especially if in a dominant position – can exploit administrative procedures at its advantage, obtaining benefits that, non being based on merits, become actual situational rents. With regard to such cases, a new form of abuse is being proposed and defined as abuse of administrative procedures.

In this perspective, there is also the decision on the Coop-Esselunga case, recently confirmed by the Council of State. The Authority ascertained the abuse carried out by the company in a dominant position in the large-scale trade market in the province of Modena. The behaviour consisted in systematically hindering a new competitor from accessing the market by instrumentally interfering in urban planning and authorization procedures launched by the competitor with the local administration. The Authority, with the Judge’s full endorsement, resolved that formal compliance with the rules of the urban administrative procedures (in this case) does not count, in itself, for excluding unlawful competitive behaviours upon the existence of the other conditions provided for by the antitrust law. Obviously, the principle is likely to find implementation in many ambits.

The decisions on behalf of TAR and the Council of State are fundamental to guarantee certainty to competition law and to consolidate the new directions. An effective and qualitative judicial review makes the Authority’s action stronger, also in those cases in which our interventions are, totally or in part, amended by the Judge and even more as in the important cases that I mentioned, in the cases in which our interventions were confirmed with decisions that drew attention beyond national borders.

6- Furthermore, there is the whole series of antitrust cases that concerned the conducts of former-monopolists which recently have been much more sensitive toward competition rules.

In some situations, however, they continued to benefit from privileges sanctioned by the law distorting competitiveness. An example can be found in the regulation that exempted Poste Italiane from VAT on postal services object of individual negotiation. The Authority deemed the regulation to be in contrast with the European law, as interpreted by the Court of Justice, and disimplemented it. The Authority’s
decision was confirmed by the Tar of Lazio and is now in appeal in front of the Council of State.

In other cases, the former monopolists exploited their dominant positions to hinder the penetration of competitors in the market. The Authority imposed a sanction amounting to almost 104 million Euros on Telecom Italia for abusive conducts carried out in order to slacken the competitors’ growth in the markets of voice telephone services and access to broadband Internet. The decision concerns the access to Telecom Italia’s network and it affects a strategic sector for economic growth, due to its centrality, in the development of the broadband, concerning the access of operators alternative to a part of Telecom’s local network, also in the presence of investments in its own infrastructures. At the moment, the decision has been confirmed by the Tar.

Lastly, it is important to mention the decision concerning the FS group, in a proceedings launched following a report submitted by NTV, concerning the conditions for accessing the high speed system. In this case, the proceedings was closed with the acceptance of the commitments undertaken by the FS group, which removed some hindrances for using the system, which also entailed for NTV a 15% cost reduction for accessing the system.

In order to prevent behaviours such as those mentioned, a central position is given to the deterring function of the sanction: it goes beyond the actual resolution of the case and warns all economic operators that by infringing competition rules they can incur into heavy economic sanctions. For this reason, consistently with the European Commission’s procedures, decisions with sanctions outnumber decisions that accept enterprises’ commitments to remove anticompetitive behaviours. In 2013 and during the first months of 2014, decisions with commitments were only 3 over a total of 18 proceedings closed by the Authority.

Moreover, in order to make the criteria more transparent for enterprises as regards the imposition of sanctions and to simplify the interventions of the jurisdictional control on the Authority’s decisions, during the year a procedure was launched for issuing Guidelines, on the basis of a best practice recommended at European level.

Very often, privileges and favourable conditions for certain economic operators have been consecrated in public administrations’ acts. The Authority has intervened against these acts owing to the new powers with which it has been appointed, pursuant to art. 21 bis of the Italian Competition Law, n. 287 1990. An emblematic case, in this sense, can be found in the Authority’s appeal against the decisions of the Ministry of Infrastructure and Transport that basically continue to maintain an artificial setting of minimum prices in the transportation sector: soon the Court of Justice of the European Union will be ruling on the matter.
7. Besides the fight against antitrust unlawful behaviours, other tools have been used to overcome relationship capitalism that can prejudice competition.

This is the case of what emerged when examining the Unipol-Fonsai concentration. Of course, we dealt with this case considering its consequences from a competitive viewpoint on the insurance market. We subjected the concentration to several pro-competitive measures, first of all imposing the new group to sale assets so that also at provincial level the market share detained would not be more than 30%. However, we also intervened – and this is an important novelty – in the relationships between the new post-merger body and important financial operators. In particular, the measures imposed entailed the rescission of financial, stock and personal connections with several among the main banks and insurance groups in the Country.

The report concerning the forming of the annual competition law - which the Authority is getting ready to define – will highlight the existence of many economic sectors in which the regulatory framework hinders competitiveness based on merits while favouring positional rents.

For example, according to the ICA, it is necessary to carry out reforms in the insurance market as regards civil liability deriving from the circulation of vehicles and motorbikes, in view of the fact that the prices paid by consumers for insurance policies are among the highest in Europe and that the policy holders’ mobility from one company to another is particularly low.

It is also necessary to continue the process in the bank sector as regards the rescission of personal relationships among the various institutions, launched, upon the Authority’s suggestion, by prohibiting interlocking directorates. This prohibition needs to be made effective also for bank foundations. Moreover, it is necessary to strengthen the separation between foundations and conferring banks, extending the prohibition to control holdings in bank institutions also with reference to those cases in which control is carried out together with other stakeholders.

In many cases, local growth and the development of utilities that could produce wealth for the Country are blocked by municipal capitalism, based on the connection between bodies and companies which they control or share, providing public services or instrumental activities. It is necessary to carry out a radical reorder of public companies, envisaging divestments or however the impossibility to renew the appointing of those companies that register losses or provide goods and services at higher prices than the market's. Moreover, the time seems ripe for inserting in the agenda reforms concerning the regulation of local public services overcoming the traditional approach based on a general model.
It is also time to elaborate specific measures fit to the nature of the different services so as to open competition in those amits in which maintaining exclusive rights finds no technical justification, and to enhance in the other cases competitiveness on the market.

Other reforms indicated in the imminent report will be directed not mainly toward removing barriers and connections that hinder competition based on merits, but rather in creating an environment that favours entrepreneurial initiatives in crucial sectors for growth. In this perspective, for example, it is possible to identify proposals concerning the digital Agenda, the use of radio spectrum, electric energy, professional services.

8. As I was mentioning at the beginning, the relationship among democracy, market and social cohesion is being redefined.

On one hand, there is a model of capitalism founded on the relationship among several big economic powers, on the privileged relationship with public bodies, on the protection of competitors, especially the foreign ones. On the other hand, there is a model based on an open concept of economy and society in which competition based on merits is essential, while it spurs toward innovation and places consumers’ welfare in the centre. The ICA’s resolutions aim at the latter, both when dealing with single cases, and when carrying out its advocacy functions.

By creating a more open market characterized by a competition based on merits, rather than on positional rents and less dependent on public bodies’ decisions and favours, it is possible to reach a double aim: to improve consumers’ welfare and to strengthen the Italian economy’s competitiveness, favouring economic growth.

Hence, a double consequence: the fact of choosing the sectors in which the ICA needs to concentrate its interventions; the close connection between competition protection and consumer protection, with reference to the legal system and procedures.

As regards the first aspect, it is important to highlight that the Authority’s commitment is concentrated, and will continue to be concentrated, in those sectors in which relationship capitalism is stronger and in which fair competitive dynamics spur competitiveness and growth. These are sectors often indicated by the European Commission: energy, transportation, services, electronic communications, online commerce, financial services.

As regards the second aspect, it is important to highlight that the Authority’s activity stands on two legs equally important: competition protection and consumer protection against unfair commercial practices.
As regards the latter, in the last months, with legislative decree n. 21/2014, a situation of uncertainty was overcome regarding the powers for the repression of unfair commercial practices. It was clarified that the general competence – in all sectors, also those regulated – is appointed to the ICA, which will carry out said responsibility in full compliance with sectorial regulations and collaborating with other Authorities. This collaboration is living a particularly happy season owing to all the Authorities’ commitment, in the convicement that consumers need quick and fair answers, and enterprises need expectations and the exclusion of conflicting interventions. The same legislative decree enabled the implementation of the directive on consumer rights, appointing the Authority with the function of consumer protection in contracts with professionals, with particular reference to distance contracts.

The Authority’s activity concerning consumer protection mainly concentrated on those sectors which, due to the novelty of commercial relationships, can produce new forms of consumer exploitation. For these reasons, e-commerce falls within the ICA’s priorities. It is a sector in which we closed important cases, shutting down 160 websites that sold counterfeited products and 3 websites that sold drugs subject to medical prescription. Moreover, we launched 3 preliminary investigations against large operators of the new markets opened by internet, such as Google, Apple, Amazon and Gameloft in the sector of free applications for smartphones and tablets, Tripadvisor in the market of online reviews, and Groupon in that of e-couponing. E-commerce offers extraordinary possibilities for economic growth, but the internet cannot become a Far West where everything is allowed. The Authority’s activity as regards e-commerce is particularly intense also at international level where it participates in annual sectorial inspections of internet websites (sweep) and in the Community project European Unfair Terms Strategy (EUTS). In these contexts, the Authority has distinguished itself for the broad and high-level experience acquired in its enforcement activity, unanimously recognised as the most incisive at European level.

Besides this new front, the Authority is always involved in the more traditional sectors, such as air transportation, food, trips, telecommunication and energy.

9. The thrust toward a more open market with competition based on merits and not on positional rents has to combine with the need to strengthen social cohesion strained by the strong crisis that we have been facing.

We cannot ignore criticisms – made in the name of the constitutional ideology currently dominating, that of rights – according to which
the market tramples on rights and increases inequalities.

In order to overcome such dangers – certainly existing – it is necessary to appeal to a very different concept of market compared to that of a spontaneous order entrusted to the free game of demand and supply, governed exclusively by the famous “invisible hand.”

The concept of market given in the European Treaties is that of a legal order in which the law not only defines the external frame (for example, rules concerning contracts) but it also conforms the structure of the market, with the aim to remedy the negative externalities, to avoid abuses of economic power, to realize competition where spontaneous dynamics would lead to monopoly, to protect consumers, to acknowledge European citizens’ fundamental rights.

This is the market’s social economy that constitutes the cultural root of antitrust law and that is included in the European Union’s constitutional rights. Basically, although things have often gone differently, we should nonetheless be induced to implement the principles of the market’s social economy, rather than to reject competition.

10. The market is made compatible with rights, and its presence and efficiency are necessary to make said rights effective. The fact is that – as highlighted several years ago in a book by Holmes and Sunstein – “all rights cost.”

The protection of all rights - from traditional rights of freedom (such as that of ownership which requires the public structures’ operativeness in protecting it from any invasion on behalf of third parties) up to social rights which imply a positive intervention on behalf of public powers - requires the use of financial resources. This means, in contrast with ultraliberal positions, that the protection of rights also passes through taxes from which resources are obtained for their protection. This also means, though, that it is even more indispensable to have an economy capable of producing wealth from which it is possible to obtain resources in order to guarantee rights.

To this end, we do not have better mechanisms than market economy. The known alternative is the URSS Constitution which formally recognised an extremely broad catalogue of rights, leaving them mainly on paper though!

Moreover, a competitive market produces the broadening of possibilities to choose and the lowering of prices, sensitively increasing the level of effectiveness of many rights.

11. A topic used to paralyse competition policies is that in order to exit the crisis it is necessary to have tax policies, and that competition has social costs which are not
bearable in a time of high unemployment (because it obliges inefficient companies to exit the market).

However, if the moment has come to schedule in the European agenda growth policies, it is necessary to avoid fuelling illusions. When a State becomes “a debtor State,” it unavoidably depends on a “double trust,” that of the citizens-electors and that of financial operators, of whom it needs the credit in order to avoid default. A state, such as ours, that needs about 400 billion Euros every year to renew its debt, has significant limits in the use of anti-cyclical fiscal policy. Therefore, it has to play the card of competitiveness so as to attract investments and create the conditions for its enterprises to succeed in the global markets. This is where “structural reforms” and liberalizations come in. The opening of the markets to competition favours innovation, which is the main engine for growth; it reduces prices with an advantage for the competitiveness of enterprises that operate in the “end-markets” and increases consumers’ welfare.

Indeed, competition has social costs because inefficient enterprises exit the market and this can lead to new unemployment. However, the seriousness of such consequences should lead not to stifle competition but to improve welfare mechanisms and strengthen policies for the re-employment of workers. Therefore, costs due to the lack of competition can be even higher, in terms of absence of growth, lack of new jobs, restraints on innovation, higher prices paid by consumers.

12. The ICA’s role which, on the basis of its recent experience, I have tried to outline, is inserted within the ambit of a European dimension. The ICA has two fronts: it is regulated by national laws, but acts under the European umbrella, because it implements the European laws and the Commission’s soft laws, it operates within the network of competition authorities belonging to the 28 Member States, it deals with cases relevant at European level, it collaborates constantly with the Commission and other Authorities in dealing with cases, in exchanging information, in elaborating common procedures and rules aimed at a uniform implementation of competition law within the whole European Union.

In this way, the Italian Competition Authority concurs in consolidating the single market. In fact, with regard to many fields – in sectors such as energy, financial services, manufacturing, transportation, online services – the procedure for opening national markets and competition protection will be able to fully produce their effects in terms of reduction of prices, broadening of consumers’ possibilities to choose, innovation, if it is part of a more ambitious project aimed at the actual realization of the internal market.

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To conclude, I want to express my gratitude toward those who made our interventions possible: the women and men that work for the ICA with passion and competence. To them, my greatest appreciation for the quality of the work carried out and for their remarkable ability in facing even extremely complex cases. Moreover, it is with great satisfaction that I can state that the Authority fully implements the principle of equality among genders: currently, 59% of the personnel is composed of women who also occupy about half of the positions in charge.

I am grateful to the Secretary General, to the Head of the Chairman’s Office and to the Head of my staff for their wise, cultural and juridical direction which they constantly impress on the institutional activity.

Moreover, I want to thank the Trade Union Organisations for the constructive debate that I hope will be increasingly fruitful.

It is a pleasure for me to welcome on the Board Gabriella Muscolo, whose recent appointing as the Authority’s Commissioner represents a further confirmation of the existence, in the female environment, of high professionalism: I warmly thank her and Salvatore Rebecchini for their constant commitment in the institutional activity.

A particular acknowledgement goes to Carla Rabitti Bedogni and Piero Barucci who, up to a couple of months ago, were part of the Authority’s Board.

My warm and informal gratitude also goes to the Italian Finance Police (“Guardia di Finanza”), whose professional contribution is indispensable for the good outcome of our investigations, to the Tar of Lazio and to the Council of State that interacting with our decisions concur in forming an effective and foreseeable competition law, to the State Bar that defends us in trial and assists us with great juridical wisdom, to the Regulatory Authorities, consumers associations, the Italian and European antitrust communities, colleagues and friends that operate in the European network.

I thank all of you for patiently listening to me and even more because, each one of you in your professional or institutional roles, is working so that after the crisis Italy will be able to start growing again and achieve the role of great economic and political actor which it deserves on the European and global scene. However, I especially want to thank the millions of Italian citizens who, far from the spotlights of the public scene, with their sacrifices, with their work, with their intelligence are the main hope for a great future of our extraordinary Country.

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