THE ICA’S ADVOCACY ACTIVITY: PROPOSALS FOR THE ANNUAL LAW ON COMPETITION 2014

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1. INTRODUCTION

The report on advocacy activity has become particularly prominent within the framework of the Annual Law for Competition, introduced by article 47 of Law no. 99 of 23 July 2009. In the last report of 4 July 4 2014,1 the Italian Antitrust Authority (hereinafter “Authority” or “ICA”), in its role of technical and independent body, outlined to the government and parliament the need to adopt structural interventions and to accelerate the implementation of those already started, in order to remove obstacles restricting competition. The reduction of access costs for companies entering in the market by means of less restrictive regulation as well as the removal of barriers to entry and of unjustified restrictions are all elements which foster investments and productivity growth. According to the European Commission, structural reforms could increase Italy’s Gross Domestic Product by 0.7% in ten years, while the International Monetary Fund estimates that the increase could even exceed 8% in the long term.2

2. STRUCTURE OF THE REPORT

Before analysing the most significant contents of the Authority’s proposals, it is worth highlighting that the report analyses, for each sector, the set of problems which impact competition and recommends

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1 ICA, AS 1137 – Proposte di riforma concorrenziale ai fini della legge annuale per il mercato e la concorrenza anno 2014, Boll. No. 27/2014

specific measures to the legislator, underlining the legislative or regulatory provisions to be adopted, modified or completed and setting out the goals to be achieved. Indeed, one of the Authority’s aims is to foster a culture of competition, which is essential to the success of all reforms. To this end, the report is linear and concise, in order to make immediately clear both the specific advocacy proposals and the goals to be achieved in each sector. In the second part of the report, the proposals are analysed and explained in detail.

3. CONTENTS OF THE REPORT

The specific requests for intervention set forward in the advocacy report concern different sectors: insurance companies, banks, telecommunications, fuel distribution, electricity and gas, infrastructure and port services, healthcare, postal services, professional services and local public services. The main proposals for each of these sectors are highlighted below.

i) Insurance companies

The analysis carried out by the Authority\(^3\) highlights the need for intervention in the area of civil liability insurance for motor vehicles, which is still characterised by numerous inefficiencies and excessive insurance costs. The report proposes several changes to existing regulations including measures to promote larger discounts when the insured party is covered by the healthcare provider with the same insurance company, when electronic devices are installed to record the activity of the motor vehicle, or when the insured party waives the claim to transfer its rights to compensation without the insurer’s consent. In order to encourage customer mobility, it is necessary to guarantee the party entering into a new contract the same premium conditions as those offered to insured parties possessing the same risk characteristics.

ii) Banking sector

Improving customer mobility is necessary to boost competitiveness in the banking industry. The report therefore recommends modifying banking transparency regulations by making provision for a mandatory time limit for closing bank accounts. To guarantee compliance with such a limit, which is 15 days in line with the proposal for a European directive on the matter (COM (2013) 266), the report recommends customer compensation for any delays. Finally, the report recommends the introduction of independent search engines in competition with each other, in order to provide consumers with adequate tools for comparing the costs of different banks’ accounts.

\(^3\) IC42 RCAuto
iii) Telecommunications

In order to support economic growth, the Authority deems it necessary to achieve the goals set forth in the Digital Agenda (Agenda Digitale). The Authority therefore proposes introducing measures to streamline administrative procedures and setting up a “national strategic programme” for the development of next-generation networks and digital services.

With regard to the broadcasting spectrum, the report highlights that AGCOM (Italian Regulatory Authority in the Communications) shall be entrusted with setting out fast-track procedures to ensure the optimal use of frequency resources. Finally, in order to guarantee greater transparency for consumers, the Authority has intervened in relation to the delicate issue of copyright related to private copying, requesting that the private copying costs shall be indicated in the sale price of recording equipment and blank recording media.

iv) Fuel distribution and electricity and gas sectors

In the fuel sector, the Authority recommends refraining from introducing asymmetric regulatory burdens on new entrants to facilitate the access of non-integrated operators. Furthermore, in order to encourage discounts on retail pump prices, the report highlights the need for liberalisation in relation to the types of contract between pump’s owners and operators.

Concerning electricity, the Authority has underlined the importance of rapidly developing the energy infrastructures considered essential to promote European energy market integration. In order to shorten authorisation proceedings and reduce the numbers of claims, the report recommends adopting public consultation procedures along the lines of the French “dèbat public” model. These procedures, by preventing claims arising after the decision making phase, would allow costs and times to be reduced.

v) Pharmaceutical sector

The Authority’s proposals in the pharmaceutical sector concern both medicines and distribution systems. Regarding the former, the report recommends to do not subordinate the inclusion in the national drug index (prontuario farmaceutico nazionale) to the patent expiration term, in order to avoid anti-competitive practices. Regarding the latter, the Authority proposes introducing a flat-rate system for medicine sales, irrespective of price, to encourage lower prices. The report also recommends the abolition of the current “quota” system for pharmacies.

vi) Infrastructures, airport and port services sectors

In the airport sector, the existing fragmentation of infrastructure needs to be reduced, with the aim of creating airport networks managed by a single entity based on the so-called “total” model. In this regard, the report firstly determines which airports are strategic and of national interest. In addition, concerning the granting of concessions to non-aviation-related commercial activities, the Authority considers tender procedures essential, with the adoption of transparent, non-discriminatory procedures and avoiding the granting of exclusive concessions whenever possible. It also recommends the use of
tender procedures for the purpose of granting concessions for dock facilities and technical nautical services, and that the duration of such concessions should be commensurate with the nature of the services and of the investments required. Regarding fees for technical nautical services, the report recommends that the price cap principle be applied. Finally, it recommends to totally separate business activities from regulatory activities, entrusting Port Authorities only with the latter.

vii) Healthcare

In order to encourage competition between healthcare facilities and increase patient choice, the report recommends the modification and implementation of the National Results Assessment Programme introduced by the Ministry of Health so that citizens are guaranteed access to the information that it contains. In order to facilitate access on the part of new private healthcare facilities, the Authority also recommends that objective, non-discriminatory criteria should be applied in the validation procedure for the National Health Service, as well as further criteria in addition to criteria based on past expenditure with a view to allocation of public spending among private healthcare facilities operating within the National Health Service (such as location, potential service distribution and number of qualified healthcare professionals). It also proposes further measures aimed at encouraging the use of tender procedures in relation to the procurement of medical equipment and materials.

viii) Postal service

In order to achieve an adequate level of competition in the postal service sector, the Authority considers it essential to exclude so-called “non-retail” services from the definition of “universal service”, as these are directed to business customers that send large quantities of mail. Furthermore, the report recommends introducing compulsory assessment of the efficiency and quality of the universal service, as well as criteria for greater transparency in the system through which it is funded. The removal of Poste Italiane’s exclusive right to provide services related to the notification of judicial documents, as well as of all the types of implicit subsidies such as the VAT exemption, is necessary to make the market more competitive. Finally, BancoPosta’s activities should be incorporated in a new separate company, subject to banking regulations, in order to remove Poste Italiane’s competitive advantage in the banking industry and to avoid potential cross subsidies.

ix) Professional services

After outlining the obstacles to complete liberalisation of the professional services sector, the report sets out the Authority’s proposal to modify the regulation of legal practice and the notarial profession. Regarding legal practice, several measures are considered necessary, such as the removal of lawyers’ exclusive right to provide legal advice and extrajudicial legal assistance and the removal of the obligation for lawyers to belong to a single professional order. It should be also possible to create multidisciplinary firms and to allow entry for non-lawyer equity partners. Moreover, the report recommends to allow advertisement on professional fees and to make it mandatory for legal
practitioners to submit an estimate, even if not specifically requested by the client, as well as to eliminate the prohibition of conditional fee agreements.

Regarding the notary profession, the Authority proposes removing those provisions that define as “unfair competition” certain behaviour which, on the contrary, may be considered legitimate competition, such as reductions of professional fees and advertising. Furthermore, in order to ensure greater offer of notary services in each geographical area, the report recommends to change the criteria currently used to establish the number of notaries, removing reference to the guaranteed minimum income (50000 euros) and making the “minimum demand level” (at least 7,000 inhabitants) the maximum demand level.

Local public services, local public transport, waste management and state-owned companies

Within the local public services sector, the Authority stresses the need to introduce more competition and, in order to foster compliance with criteria set by European regulation, recommends that regional and local authorities adopt an act which clearly sets out their reasons for adopting the management system chosen and its benefits in terms of efficiency. In this specific area, the Authority focuses on local public transport and waste management. In order to foster competition in the market, the report recommends introducing the possibility of providing local public transport services even in cases in which routes overlap with those operated exclusively by the concessionaire, upon payment of a royalty to the public body granting the licence if economic equilibrium can be proven to be compromised. It also proposes additional amendments to regulations regarding fares, in order to guarantee to new entrants the possibility to compete on service prices.

Concerning competition for the market, the Authority emphasises that the public concessionaire must be chosen through bidding procedures. Moreover, a share-out mechanism drawing on the National Transport Fund (Fondo Nazionale Trasporti) may be considered as an incentive to reward those Regions which use bidding procedures. The report also identifies several measures aimed at ensuring a broad participation of companies in open tenders. Finally, further proposals are made in order to remove the current discriminations between taxis/cabs and car-and-driver hire.

Regarding waste management, the Authority asks the Minister responsible to establish quantitative and qualitative criteria necessary to define the perimeter of the monopoly in the collection of urban solid waste. Furthermore, the report highlights the need to encourage the constitution of independent collection systems as alternatives to the consortium model for the recovery and recycling of packaging waste. In order to do so, it recommends that authorisation procedures be unbiased and that minimum recycling targets can also be achieved through the management of waste produced by companies which do not participate in said system.

Finally, regarding state-owned companies, the Authority stresses the need to constitute a “single statute” setting out clear, applicable rules, in order to make the currently extremely fragmented regulatory framework more coherent.
In addition, the rationalisation of state-owned companies is necessary either through a process of privatisation or through the non-renewal of concessions for entities operating at a loss. Nevertheless, the decision of the public body to cover the loss should meet the same criteria that would have been adopted by a private competitor.