COMPETITION AUTHORITY: THE SUCCESS RATE OF ADVOCACY

Roberto Sommella ¹

The outcome of advocacy reports issued by the Italian Competition Authority (hereinafter also the “Authority”), including appeals before the Constitutional Court, shows an increasingly positive trend. According to data gathered by the Agency’s Research and Impact Analysis Department, its efforts to promote a more competition-oriented regulatory environment vis-à-vis central and local administration reached their goals in 56% of the cases, while the success rate of appeals filed by the Authority before the Constitutional Court, through the Presidency of the Council of Ministers, peaked at 73%.

“The attention of the Authority, originally focused only on national markets, has now shifted onto local markets, and hence on the Regions, whose regulatory initiatives often restrain competition”, stated Giovanni Pitruzzella, President of the Italian Competition Authority, at a recent conference. According to Pitruzzella, in some cases, e.g. in the field of distribution, there is a sort of Penelope’s web, whereby liberalisation measures approved by Parliament are later brought to a standstill at regional level. As for the reaction of the local authorities, which were represented at the event by Enrico Rossi, President of Tuscany, Pitruzzella stressed that “at least in half of the cases, the local administrations’ attitude conforms to our opinion”.

The impetus coming from the Italian Competition Authority was recognised by Rossi himself, whose Region repeatedly asked for the Authority’s opinion to gather useful information to improve the quality of services, as in the field of local public transport services, as well as by Claudio De Vincenti, Undersecretary of the Presidency of the Council, who acknowledged the crucial role played by the Italian Competition Authority in promoting competition and advising the Government as to what economic sectors warrant normative intervention. “It is completely normal” – De Vincenti highlighted, “that the Competition Authority monitors us carefully and I greatly thank it for what it does. Many studies highlight the positive impact of competition on growth and employment”.

During the conference, which was attended also by other leading experts in the field, the results of a yet unpublished research were presented. The following is a summary of the data:

*Overall outcome of advocacy activities (2013-2014)*

103 out of 185 advocacy interventions of the Competition Authority had a positive outcome (85 had a positive outcome and 18 were

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partially positive), while 64 interventions had a negative outcome and 19 could not be assessed: on the whole, positive outcomes accounted for 56% of interventions (46% positive and 10% partially positive), while negative outcomes occurred in 34% of the cases. Compared to previous years, these results are very satisfactory: the success rate reached 32% in 2007, 31% in 2008 and 16% in 2009. The largest number of interventions dealt with “miscellaneous services” (22%), followed by “energy” (14%), “environment” (15%) and “commercial distribution” (9%).

Outcome of advocacy reports pursuant to Art. 21 of the Italian Competition Act 1990 (addressed to the Parliament and the Government)

As regards interventions pursuant to Art. 21, the compliance percentage is 38% (27% positive and 11% partially positive), while negative outcomes are 60% (2% of interventions could not be assessed).

Outcome of opinions pursuant to Art. 22 of the Italian Competition Act 1990 (concerning administrative provisions distorting competition)

As regards interventions pursuant to Art. 22, the results are more encouraging, with a success rate of 66% (49% positive outcomes, 17% partially positive), while the negative outcomes are 14% (20% of opinions could not be assessed).

Outcome of opinions pursuant to Art. 21 bis of the Italian Competition Act (judicial appeals against administrative acts, regulations and any administrative measures restraining competition).

Since 2011, when the agency was granted new powers pursuant to Art. 21 bis of the Italian Competition Act, the Authority has expressed 62 opinions. The main sectors involved are transports (17), miscellaneous services (8), large-scale retail distribution (7), insurance (7) and financial services (5). As regards the target, local authorities were three times more likely than central authorities to be addressed an opinion (47 and 15 opinions respectively). In 5 out of 15 cases, central authorities complied with the opinion; a higher success rate is recorded for local authorities, where compliance followed in 24 out of 47 cases, (almost 50%).

Outcome of opinions addressed to the Presidency of the Council of Ministers, pursuant to Art. 22 of the Italian Competition Act.

Since the entry into force of Decree Law No. 1/2012, the Authority received from the Presidency of the Council of Ministers 244 requests for opinions on regional laws. In 39 cases the agency signalled a potential infringement of the competition rules. In 23 out of these 39 cases (59%), the Presidency of the Council of Minister conformed to the Authority’s opinion and therefore filed an appeal against the regional law before the Constitutional Court; 15 of these cases were decided by the Constitutional Court: in 11 cases, the Court ruled on the unconstitutionality of the regulations; in 3 cases, the appeal was declared inadmissible; and 1 case was rejected due to an erroneous interpretative assumption.

In two additional cases, following the opinion of the Authority, the Region concerned decided to amend the regulation under
scrutiny, with a view to bringing it into line with the competition principles. In conclusion, the success rate of this kind of advocacy activity performed by the Italian Competition Authority stands at 73%.

*Outcome of opinions expressed pursuant to regulations other than the Italian Competition Act.*

The Authority expressed 6 opinions based on regulations other than the Italian Competition Act: 2 of them had a positive outcome, 2 a negative outcome and 2 could not be assessed.