THE ANNUAL LAW FOR COMPETITION
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1. THE LENGTHY APPROVAL OF THE FIRST ANNUAL LAW FOR COMPETITION

The first ever annual law for competition (“ALC”) entered into force on 29th August 2017 (Italian Law no. 124/2017, OJ no. 189 of 14th August 2017). It was passed 8 years after the law providing for it (par. 47 of Italian Law no. 99/2009), with the aim of eliminating competition barriers in different sectors, following the opinions issued by the Italian Competition Authority (ICA/“AGCM”-Autorità garante della concorrenza e del mercato).

The draft law wandered back and forth between the two branches of Parliament for around two years: the very first draft was submitted by the former Government to the Chamber of Representatives on 13th April 2015 (S2085); this draft was much closer to the opinion issued by the ICA in 2014 (AS1137). Over the course of the legislative procedure, the draft law was continuously amended and new provisions, also inconsistent with the ratio of the law and competition objectives, were added in the meantime (e.g. in insurance, TLC, and banking sectors).

Consequently, the text has also changed and increased substantially: from the initial 33 articles submitted by the Government, 52 articles arrived before the Chamber of Representatives, which then became 74 in the first reading before the Senate, while the final text approved by the Assembly of the Senate, following the so-called maxi-amendment by the Government, contains one single article with 193 subparagraphs. On the whole, the law took 28 months to be passed.

Contrary to other similar legislative measures, such as Italian Decree Law no. 1 of 2012 (so called “Cresci Italia”, passed by Monti Government) the ALC does not include provisions that apply to all sectors (e.g. simplification of administrative procedures), but it dictates specific provisions for different sectors.

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1 Italian Competition Authority.
In particular, the following sectors are among those considered by the law: insurance, telecommunication, postal service, energy, fuel distribution, banking services, professional services, health services (namely pharmaceutical distribution), tourism and transport services. Specific provisions amended the threshold for the notification of mergers.

2. MAIN MEASURES ON SPECIFIC SECTORS CONSIDERED BY THE ALC

The main measures contained in the ALC for the different sectors are as follows.

2.1. Insurance, postal services, financial services

The ALC contains several measures that apply to insurance (subparagraphs 2-37) mainly aimed at protecting consumers, e.g. discounts also linked to fraud reduction, use of the so-called black box, increases in transparency in order to facilitate consumers moving from one company to another. The law essentially incorporates all of the ICA’s recommendation, apart from the need for nautical insurance services customers to obtain the approval from the insurance company in order to transfer the right to action for damages to a third party, in exchange for a substantial discount.

Provisions on postal services (subparagraphs 57-58) comply with the ICA’s liberalization recommendation for the notification of legal acts (judiciary documents and sanctions for offences under the Highway Code) so far provided solely by the incumbent State-owned Poste Italiane. The exclusivity of Poste Italiane will expire by September 10, 2017. By the end of December 2017 (i.e. 90 days after the ALC entered into force), the telecommunication authority AGCOM shall determine the requirements for the new entrants. However, the scope of the universal service is still to be redesigned, as well as the procedure for its assignment; in this respect, the ICA’s opinion has not been followed.

In the banking sector (subparagraphs 130-140), the ALC provides for measures aimed at increasing the comparability of costs for the most common services. Furthermore, it is expected that the competent Ministry will adopt a specific decree, within 6 months following the entry into force of the law, to identify the most widespread services for banking products and provide methods and terms for the comparison of these services. This provision has accepted the Authority’s proposal concerning the introduction of tools to encourage the development of independent search engines by banks, in order to facilitate comparison among banking services.

2.2. Public services

In the field of telecommunications (subparagraphs 41-55), the ALC introduces some simplification measures applied to migration procedures among mobile operators, in order to favor changes in supplier.
Other measures aimed at consumer protection should also be noted, e.g. in the event that the customer withdraws from a contract or transfers it to a different operator, the associated costs must be proportional to the concrete costs incurred by the company in order to close the phone line or to transfer the service; the ALC also provides that the costs must be disclosed to consumers as soon as the offer is advertised and over the course of the contract.

In the area of energy services (subparagraphs 59-97), the ALC provides for measures that assist the complete liberalization of the electricity and gas market, to be achieved by July 1st, 2019, such as provisions on comparability, transparency, promotion, and information of commercial offers, with the aim of encouraging customers to be aware of several options offered on the free market. The Ministry of Economic Development is required to draft the list of authorized subjects admitted to the electricity market for sale to final customers, as well as the upstream criteria for admission to the list by means of a ministerial decree. As regard transport services (subparagraphs 167-170 and 179-183), the ALC contains some provisions mainly aimed at protecting consumers. In particular, it provides for the reform of the current legislative framework on non-scheduled public services, dating back to 1992, which should comply with the following criteria: a) guaranteeing citizens’ mobility and ensuring a service that is complementary to scheduled public transport; b) adapting the range of services to the new forms of mobility taking place thanks to digital platforms and apps, which provide the interconnection between passengers and drivers; c) promoting competition; d) harmonizing regional and local areas of competence, in order to define common standards; e) adapting the system of monetary fines for road offences to an effective contrast against unregulated activities.

2.3. Fuel distribution

In the field of fuel distribution (subparagraphs 98-119), the provisions are intended to complete the process of liberalization in the distribution market, providing: a) the introduction of a register of plants; b) the verification of plants’ compatibility with safety regulations; c) the procedures for the disposal of the plants. However, some asymmetric obligations, such as the supply of several types of fuel, still only apply to new entrants. It can be hoped that the Ministry of Economic Development will focus on and eliminate such obstacles, following the ICA’s opinions.

2.4. Legal professional services

With reference to professional services (subparagraphs 141-156), the ALC revised the forensic system, introducing the possibility of also offering professional services via limited companies and multidisciplinary law firms. In this respect, however, it might be stressed that, on 24th November 2017, the ICA sent an opposing opinion to Parliament against Italian Law no. 247/2017 of 30th November 2017, converting Italian Decree Law no. 148/2017, known as “Decreto Fiscale” (‘Fiscal Decree’), for the introduction of so-called “fair compensation” in legal professional services, and other professional services. This applies to professional services towards big clients such as insurance, banks and public administrations, even if provided by entities organized in the form of a limited company.
Besides all other antitrust considerations (e.g. reintroduction of de facto minimum tariffs), the fair compensation system risks to hinder or impede the ongoing liberalization process for professional services, namely the development of new organized subjects offering such services in forms other than individually or via small-medium sized associated entities (as per the current market structure).

As regards notaries, ALC increases their number and territorial scope of activity, providing one notary per every 5 thousand inhabitants (previously, it was one notary per every 7 thousand); furthermore, the notaries are empowered to operate throughout the territory of the region in which they are located.

### 2.5. Health services

With reference to the pharmaceutical distribution sector (subparagraphs 157-165), the ALC modifies the requirements for managing pharmacies by also providing limited companies (not only physical persons) with the possibility to hold the qualification, insofar as their corporate object is limited to such activity. Moreover, the same company can now have multiple pharmacies, as the four-pharmacy ownership limit has been abolished.

Furthermore, the ALC introduced a specific “antitrust provision”, regarding private pharmacies organized as a limited company, so that the same company cannot control more than 20% of pharmacies within the territory of a region. There are also some provisions which favor the ongoing process of liberalization of shifts, and the opening and closing times of pharmacies.

### 2.6. Tourism

In the field of tourism (subparagraph 166), ALC outlaws any clause aimed at constraining tourism operators to not apply lower prices or more favorable conditions than those applied by the same subject through third parties, e.g. OTAs (so called Most Favored Nation-MFN), as null and void.

### 2.7. Other provisions

The ALC modifies the turnover thresholds for notification of mergers (subparagraph 177), by reducing the turnover threshold of the acquired company, which now consists of 30 million Euros (previously 50 million).

### 3. CONCLUSIONS

The entry into force of the ALC, eight years after the provision that envisaged it, must be welcomed because it shows a renewed confidence, from the legislator's perspective, in the process of market liberalization. In particular, it is expected that the impact of the ALC will equal 0.2% of GDP in the next five years.
At the same time, the process for its approval has taken over two years, during which some provisions have seen their pro-competitive scope reduced and others with heterogeneous objectives have been added. This is possibly connected to the lengthy legislative process and is one of the aspects that hopefully could be improved in the future.

In this respect, it is interesting to note that previous deregulation measures in recent years had been enacted via the legislative procedures and instruments of “decree laws”, and they have proved to be particularly rapid and effective, which is key for this kind of reform.