“MAIN DEVELOPMENTS IN EUROPEAN UNION AND NATIONAL COMPETITION LAW”
NATIONAL CONFERENCE OF THE ITALIAN ANTITRUST ASSOCIATION
ROME 31 MAY AND 1 JUNE 2013

Claudio Tesauro1

Keywords Competition Law, European Union, Antitrust Authority, EU Commission, Competition Compliance, Public Enforcement

1. FIRST DAY

The conference was organised by the Italian Antitrust Association2 (“IAA”), in cooperation with the Italian Association of Company Lawyers (“AIGI”) and MLex. Since it is a major annual event for competition law and policy in Italy, it targeted an Italian and international audience.

Numerous prominent EC and Italian competition law experts participated, including: Giovanni Pitruzzella (President of the Italian Competition Authority), Giuseppe Tesauro (Judge of the Italian Constitutional Court), Antonio Tizzano (Judge of the European Court of Justice), several officials from the Italian Competition Authority (the “ICA”) and the DG Competition, as well as many other well-known lawyers and academics active in the competition field.

The conference focused on two main subjects: the plenary sessions concentrated on the latest developments in both EU and Italian competition law and the new public and private antitrust enforcement; while four parallel sessions were dedicated to some specific “hot” topics3.

Professor Giovanni Pitruzzella opened the conference with a keynote speech on the work carried out by the ICA over the last year, and it was followed by an interview with Mr Dekeyser (DG Competition of the European Commission) on the recent developments in the Commission’s policy. Then, a plenary session analysed the main developments concerning antitrust practice and jurisprudence in both the European and Italian systems. The speeches focused on the application of competition rules in the past year, and dealt with the most significant cartel cases, liability of parent companies, alternative dispute resolution.

3 More precisely, the Conference covered four general topics: (i) the latest developments in EU competition law and practice; (ii) the latest developments in Italian competition law; (iii) public antitrust enforcement, and (iv) private antitrust enforcement. There were also six sessions devoted to specific topics, namely: (i) compliance programme; (ii) information technology; (iii) transport; (iv) vertical restraints; (v) the Italian Competition Authority’s new powers, and (vi) a mock case.

1 President of the Italian Antitrust Association.
2 The speeches held at the conference, any further information about IAA activities, previous conferences and papers and are available at: http://www.associazioneantitrustitaliana.it.
resolutions (i.e. settlements and commitments) and legislative changes expected in the near future.

The day continued with a session on antitrust compliance systems, which focused on the value of compliance programmes in Europe, in the USA and in Italy, taking into consideration, in particular, their effectiveness when applied to multinational companies. From a practical viewpoint, one of the most disputed issues consisted in the results of the compliance management and the need to share said results with the company’s top management. The speakers also wondered whether or not the existence of an effective compliance system constituted a mitigating circumstance to be assessed by the antitrust authorities so as to determine the amount of fines.

The other parallel session regarded transports, analysing the ICA’s recent interventions with regard to advocacy and competition law enforcement, public service contracts, and the difference between competition “in” the market and competition “for” the market. Furthermore, ICA officials discussed the possibility of depicting actual competition between trains and airplanes in the high speed sector. The ICA appeared to remain sceptical, above all due to the lack of precedents, but it did not exclude that such a possibility may be considered in the mid-long term.

The afternoon session analysed the role of antitrust in the evaluation of intellectual property rights, through a comparison between the USA and the EU experiences, focusing on the practical aspects of the matter (e.g., excluding conducts, the choice between open and proprietary systems, the royalty settings, and the risk of abuse of a dominant position). The other parallel session discussed recent developments in the field of vertical restraints, with particular regard to distribution agreements and the ability of producers to fix the resale price of their goods. Moreover, considering how the Internet is a powerful tool to reach a far wider range of customers than what can be reached with more traditional sales, particular attention was devoted to online sales, especially in the luxury good markets and in selective distribution systems. The session on vertical agreements discussed the “Hub and Spoke” practice, which many experts now consider to be the new frontier of concerted practices, despite the fact that, at least in Italy, the ICA does not seem inclined to make large use of it.

A plenary session at the end of the first day considered the convergence and the coordination between community and national leniency programmes, taking into account, on the one hand, the increase in investigations by antitrust authorities following a leniency application and recent developments in fines imposed on companies, and on the other hand, the risk of disclosure of the documents submitted by the leniency applicant.

---

4 Hub and Spokes are triangular practices where the interaction between a supplier and its distributors (scenario A), or between a distributor and its suppliers (scenario B) may lead to collusive outcomes.

5 It is also worth noting that other jurisdictions look carefully at this phenomenon. See for example the Polish Competition Authority’s (UOKIK) decision of 8 April 2008 involving a triangular agreement between the paint producer Polifarb Cieszyn-Wrocław and owners of seven mega stores offering DIY and home improvement products. Among pending cases, Competition Appeal Tribunal (CAT) case 1188/1/1/11, Tesco Stores Ltd (2) Tesco Holdings Ltd (3) Tesco Plc v. Office of Fair Trading. See also the case pending before the Bundeskartellamt against food retailers and branded food manufacturers, which started with dawn raids in January 2010.
2. SECOND DAY

The second day started with two parallel sessions. The first involved an interesting mock case concerning a “Hub and Spoke” practice. The other regarded the ICA’s new powers. In particular, the session considered the new legislative measures concerning contracts in the food production chains, the legality rating and a new function which allows the ICA to lodge an appeal against administrative regulations, under Article 21 - bis of the Italian Competition Act.

The last session regarded the most recent judicial applications of competition law, the effectiveness of administrative judicial review in Italy, and a comparison among several EU countries (Italy, United Kingdom, and Germany) as regards the development of antitrust private litigation.

In conclusion, the conference was well received as a valuable, stimulating, and enjoyable experience. In particular, it encouraged dialogue among competition community members, and provided them with a great opportunity to address their goal of bringing together information concerning the on-going developments in the competition sector, thus helping them to identify priority areas where major issues may occur in the upcoming months.