COUNTRY STUDIES

Italy - The Role of Competition Policy in Regulatory Reform

2000

Introduction

The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers. This report on the role of competition policy in regulatory reform analyses the institutional set-up and use of policy instruments in Italy. This report was principally prepared by Mr. Michael Wise for the OECD.

Overview

Related Topics

BACKGROUND REPORT ON

THE ROLE OF COMPETITION POLICY IN REGULATORY REFORM*

* This report was principally prepared by **Michael Wise** in the Directorate for Financial and Fiscal Affairs of the OECD. It has benefited from extensive comments provided by colleagues throughout the OECD Secretariat, by the Government of Italy, and by Member countries as part of the peer review process. This report was peer reviewed in June 2000 in the OECD's Competition Law and Policy Committee.

Table of contents

Tables

Executive Summary

Background Report on the Role of Competition Policy in Regulatory Reform

Competition policy is central to regulatory reform, because its principles and analysis provide a benchmark for assessing the quality of economic and social regulations, as well as motivate the application of the laws that protect competition. Moreover, as regulatory reform stimulates structural change, vigorous enforcement of competition policy is needed to prevent private market abuses from reversing the benefits of reform. A complement to competition enforcement is competition advocacy, the promotion of competitive, market principles in policy and regulatory processes. This report addresses two basic questions: First, is Italy's conception of competition policy, which depends on its own history and culture, adequate to support pro-competitive reform? Second, do national institutions have the right tools to promote competition policy effectively? That is, are the competition laws and enforcement structures sufficient to prevent or correct collusion, monopoly, and unfair practices, now and after reform? And can its competition law and policy institutions encourage reform? The answers to these questions are assessed in terms of their implications for the strategies and sequencing of regulatory reform.

Italy's economy has historically combined pervasive state intervention in larger-scale industries with vigorous competition, within a co-operative setting, at smaller scales. Its competition policy responds to the challenge of European union, as does much of the programme of liberalisation and reform, which the new competition policy institutions have strongly supported and promoted. Traditions of co-operation and control persist, though, in a multitude of regulatory constraints on pricing, entry, and product or service quality, many of them imposed at the regional level. Reform is thus complicated by the shift of some policy-making powers to regional governments, which calls for careful management to minimise costs while achieving the benefits of decentralisation.

Historical patterns, in the marketplace and in regulatory approach to it, have been changing, and the introduction of formal competition policy in 1990 was a catalyst for those changes. The Antitrust Authority, only ten years old, quickly became a strong voice in policy debates. It success is particularly notable in view of its novelty in the Italian government structure and its appearance in a seemingly inhospitable environment. Independent status and strong leadership have been critical to its effectiveness and credibility. The basic competition law, which follows EU practice, is applied with an emphasis on economic principle and analysis, and the Authority has been scrupulous about matters of process and transparency. Enforcement has concentrated on issues that complement regulatory reform, particularly abuses of dominance by traditional network monopolies. Vigorous and persistent advocacy has concentrated on major restructuring efforts, but it has also dealt with a host of smaller-scale regulatory constraints on competitive markets.

The challenge now is to sustain effectiveness as the focus of competition policy attention shifts toward more difficult subjects, such as restraints imposed by lower levels of government and by clandestine agreements. The impact of such restraints may be suggested by Italy's persistent inflation differential, principally in non-traded services, compared to its EU neighbours. Advocacy will become more difficult, because decentralisation increases the number of forums and because of the breadth of small business support for regulatory constraints on competition. Enforcement may be hampered by weaknesses in provisions for imposing sanctions. Judicial support and endorsement of the Antitrust Authority's enforcement actions, which is necessary in order for enforcement to be credible, reliable, and consistent, has been lacking, although there are positive signs of change. Revisions to the law may be needed to support flexible and effective sanctions against horizontal agreements. The Antitrust Authority could play a more systematic role in the processes of reviewing existing and proposed laws and regulations, as the government is launching wide-ranging projects to codify and simplify regulation and to apply tools such as regulatory impact analysis that could support competition policy principles.

Box 1. **Competition policy's roles in regulatory reform**

In addition to the threshold, general issue, whether regulatory policy is **consistent** with the conception and purpose of competition policy, there are four particular ways in which competition policy and regulatory problems interact:

- Regulation can **contradict** competition policy. Regulations may have encouraged, or even required, conduct or conditions that would otherwise be in violation of the competition law. For example, regulations may have permitted price co-ordination, prevented advertising or other avenues of competition, or required territorial market division. Other examples include laws banning sales below costs, which purport to promote competition but are often interpreted in anti-competitive ways, and the very broad category of regulations that restrict competition more than is necessary to achieve the regulatory goals. When such regulations are changed or removed, firms affected must change their habits and expectations.

- Regulation can **replace** competition policy. Especially where monopoly has appeared inevitable, regulation may try to control market power directly, by setting prices and controlling entry and access. Changes in technology and other institutions may lead to reconsideration of the basic premise in support of regulation, that competition policy and institutions would be inadequate to the task of preventing monopoly and the exercise of market power.

- Regulation can **reproduce** competition policy. Rules and regulators may have tried to prevent co-ordination or abuse in an industry, just as competition policy does. For example, regulations may set standards of fair competition or tendering rules to ensure competitive bidding. Different regulators may apply different standards, though, and changes in regulatory institutions may reveal that seemingly duplicate policies may have led to different practical outcomes.

- Regulation can **use** competition policy methods. Instruments to achieve regulatory objectives can be designed to take advantage of market incentives and competitive dynamics. Co-ordination may be necessary, to ensure that these instruments work as intended in the context of competition law requirements.

1. COMPETITION POLICY FOUNDATIONS

The motivation and design of Italy's competition policy have made it a strong foundation for market-oriented regulatory reforms. This role for competition policy institutions is particularly significant, in light of the magnitude of the challenge that Italy faced in improving market functioning. Its traditional policy framework for market regulation took little note of competition principles, and thus competition policy faced a host of constraints imposed by the government itself.

1.1. Context and history

Central influence has historically been treated as more important than competition in Italy's large-scale industries. Government policy encouraged investment in selected "high-tech" growth industries early in the last century, and when conditions shifted, banks helped industries organise cartels, in steel, chemicals, paper, and machinery, to protect those investments. Central mobilisation was the official organising principle of the economy from the 1920s through the war. The state holding company, IRI, which was set up in 1933 to take over shares of companies in trouble, became responsible for a form of mixed, semi-state enterprise that endured for more than 50 years. Before World War II, cartels and protection prevented competition and discouraged innovation, and major industries, such as vehicles, tires, steel, and shipbuilding, were virtually monopolies. After the war, political structures were completely transformed. During the reconstruction, there were signs of reform in economic policy too, in decisions to end price controls and open up to foreign trade. But a large state-enterprise sector remained, and it became increasingly inefficient in the 1960s and 1970s, as firms were managed for political as well as business objectives. Soft budget constraints dampened incentives to profitability. The long habit of state support produced a moral hazard problem that undermined the competitive process: it appeared that no substantial firm would be allowed to fail (Clark, 1996). Concerns about the competitive incentives and performance of the state-owned firms were matched by problems in the private sector. The largest privately-owned industrial firms in Italy have traditionally had ownership structures, such as family control through cross-shareholdings magnifying minority positions, that have been linked in other countries to problems with corporate governance, financial stability, and competition.

At the other end of the size scale, Italy has become well known for its flourishing small and medium-sized, family-owned firms, in manufacturing as well as services. In this characteristic form of successful Italian industry, flexible firms deal with suppliers and competitors in complex networks of mutually reinforcing, geographically specialised systems. Although there are risks that co-operative relationships and protective regulation can constrain competition unnecessarily even at that scale, there has been little need for intervention by central government laws and institutions to promote or control competition. In the words of Michel Albert, "The Italian economic model, characterised by family capitalism, a weak state, enormous budget deficits, and an amazing vitality among SMEs, is unique, except for perhaps the economy of the Chinese diaspora." (Fayette, 1999).

Membership in the European Communities, and particularly the European single market programme, strongly influenced Italy's approach to competition policies. Increasing competition in the larger market exposed inefficiencies in Italian industry. Prospects for closer market integration and the EU's liberalisation directives further emphasised the importance of ensuring effective competition (Italy, 2000). EU rules about state aids have forced Italy to re-examine and ultimately dismantle its structures of central support and control, as the EU disapproved of measures that conferred advantages on the IRI firms. The adoption of the European merger control regulation in 1989 may have prompted legislative action, and not just in Italy, as many other EU countries adopted revised laws in 1990 or shortly afterwards, modelled on EU norms. The merger regulation showed how the public interest might still guide investment consistently with a competitive market economy. Its appearance also implied that such guidance would come from the EU, rather than national governments, especially in the countries whose institutions had no equivalent or similar competences. EU developments about both state aids and mergers showed that traditional means of government intervention in the allocation of industrial assets and investment would decline in importance.

Changing attitudes in Italy, as well as developments at the EU level, probably explain why Italy's first comprehensive competition law was adopted without great controversy in 1990. The desirability of a national competition law had been the subject of debate in Italy since the 1950s. As EU competition policy developed after 1957, its example drew the attention of academics and reformers. Increasing experience within European institutions helped make the Italian business and legal cultures more comfortable with the principles of competition and market openness. Consensus about the need for a change in approach was building, in civil society if not in the administration.

The Antitrust Authority ("Authority"), created by the 1990 Competition Act,[1] was a catalyst for a shift toward a more market-based political economy. Italy was ready for change in its post-war government institutions, and that change came in the course of the economic and political crises of 1992-94, just after the Authority was established. The Authority's agenda of enforcement and action matched the reform mood and agenda — which was hardly surprising, for its second President was the former prime minister whose government had initiated important economic reforms. Many early actions were directed at monopoly public utilities and their efforts to prevent entry or extend market power into liberalised markets. Large fines against major industries, such as insurance, and investigations of well-connected companies demonstrated the Authority's seriousness and independence. The Authority's changing caseload has mirrored the development of a more sophisticated competition culture in the 1990s. Many early complaints to the Authority objected to aggressive, but lawful, competition, and thus showed the degree that firms were not yet familiar with what competition laws can — or should — do (Italy, 2000). As firms have learned more through their own experience in a more competitive environment and through observing the Authority's actions, complaints have become more sophisticated, and they have pointed to problems with restrictions and abuses in different markets (Italy, 2000).

1.2. Policy goals

The objectives of Italy's competition policy strongly support regulatory reform, although explicit policy objectives are not stated in the law. The Competition Act says only that it implements Article 41 of the Constitution protecting and guaranteeing the right of free enterprise (Italy, 2000; Sec. 1.1). In the Constitution, that right is subject to qualifications, some of them general and potentially elastic. Free competition may not be exercised contrary to the public interest or to security, liberty, or human dignity, and laws are to set out necessary programmes and controls to ensure that economic activity, both public and private, is directed and limited toward social purposes. Thus, the Constitutional text sets out potential conflicts among values, although it does list the freedom of competition first (OECD CLP, 1996*b*). This potential for conflict does not appear to have impeded the actual implementation of competition policy, though. The Authority understands the statute's provisions as setting out two sets of purposes. One is to foster and protect market conditions that allow economic entities equal opportunities to compete and to gain access to the market. The second is to enhance the welfare of consumers, by encouraging the lower prices and improved quality that can result from free market forces (Italy, 2000).

An overarching purpose, to perfect Italy's participation in European community institutions, appears in the statute's instruction that the Italian law is to be interpreted in accordance with the principles of EU competition law (Sec. 1.4). This instruction has had several beneficial effects. It reinforces the independence of competition policy in Italy, because elaboration of the policy depends on European institutions and thus is not under the control of other Italian political institutions or officials, or even judges. The Authority need not endorse the national courts' interpretation of the Competition Act, if it is not compatible with EU competition law. And embracing the EU's doctrines gave the Italian law a "jump start." The reference to EU principles includes secondary legislation, Commission decisions, and the jurisprudence of the European Court of Justice. Thus Italy immediately absorbed 30 years of doctrinal tradition and avoided the delays and uncertainties that would have resulted from the process of establishing such concepts under Italian law. Instead, EU precedent, or at least guidance, could resolve such central, pervasive questions as defining a relevant market and identifying a dominant position (Italy, 2000).

1.3. Competition policy in reform

The Authority's economics-based approach to its missions underpins the economic reform agenda. Its members have included several academic economists, as well as legal scholars, and its permanent staff has a strong economics concentration. A professional economist served in the position of Secretary General since the agency began operation; however, the present Secretary General is an expert in European Community law the restructuring of traditional infrastructure monopolies. The chairman of the ministerial commission that proposed the adoption of the law, a scholar of law and economics, served as a member of the first Authority. Reform was part of the Authority's original statutory responsibilities. The law required the Authority to submit three reports to the Prime Minister, on public tenders, public franchise-holders and retail distribution. The reports, which were delivered in its first two years of operation, were influential in designing later reforms (Italy, 2000). But the problems have deep roots and are not yet resolved. These same issues are the subject of reform efforts today.

The fact that competition policy has been anchored in EU norms is paralleled by the correlation between reform progress and EU direction. Progress has been clearest where the call for pro-competitive reform relies on EU authority or guidance. Reform efforts that address traditional domestic concerns without such external leverage have been much less successful. And despite the higher rate of success where action responds to EU instruction, Italy has been relatively slow in the transposition of the EU's liberalising internal market directives. Italy has recently sought to catch up, but many actions are recent and incomplete (OECD, 2000).

Italy remains among the countries whose regulatory environment presents the greatest obstacles to competition. A comparison of the overall regulatory settings in OECD Member countries concluded that the greatest burdens to competition were in Italy, Greece, and Norway (Nicoletti *et al.,* 1999). Another indicator of the potential, and the need, for pro-competitive reform comes from data about inflation. Italy's inflation rate remains about 0.5-1% higher than core Europe. Comparing the behaviour of different sectors reveals that the difference is due principally to services, particularly insurance. The OECD's Economic Survey of Italy for 2000 concluded that "the burden of regulatory and administrative compliance and high charges for private services, arising from inadequate competition, continue to act as a drag on international competitiveness and the development of the small business sector" (OECD, 2000).

1.4. Key issues in competition policy

The nature of the competition policy problems Italy faces has evolved, along with its institutions. Today these include:

- A multitude of controls on entry and market conduct, through concession and licensing requirements and other regulations, especially in services and professions;

- Devolution of responsibilities to local governments, which apply many of these constraints, and which are responsible for delivering services in traditionally monopolised sectors, but which are not always sympathetic with the objectives of competition-based reform;

- Delayed reform of retail distribution, as regional governments have stalled the process of implementing national legislation, with the effect of maintaining constraints on new entry;

- Reform of local utilities and public services, through legislation now being developed. Implementing details need to be worked out carefully, to ensure that local and regional government action does not dilute the success of large-scale infrastructure reforms;

- Occasional direct interventions in markets, by laws controlling prices or market shares, suggesting doubt about the commitment to market methods;

- Completing the restructuring of traditional infrastructure monopolies;

- Developing enforcement capacities to deal with secret cartels.

1.5. Substantive issues: content of the competition law

The content of Italy's substantive law parallels that of the EU, and the Competition Act instructs that it is to be interpreted according to the principles of the EU's competition law (Art. 1). Italy's experience shows how essentially identical rules can be applied through different approaches, in Italy's case, with an emphasis on methods and principles taken from economics.

Box 2. **The competition policy toolkit**

General competition laws usually address the problems of monopoly power in three formal settings: relationships and agreements among otherwise independent firms, actions by a single firm, and structural combinations of independent firms. The first category, **agreements**, is often subdivided for analytic purposes into two groups: "horizontal" agreements among firms that do the same things, and "vertical" agreements among firms at different stages of production or distribution. The second category is termed "**monopolisation**" in some laws, and "**abuse of dominant position**" in others; the legal systems that use different labels have developed somewhat different approaches to the problem of single-firm economic power. The third category, often called "**mergers**" or "**concentrations**," usually includes other kinds of structural combination, such as share or asset acquisitions, joint ventures, cross-shareholdings and interlocking directorates.

Agreements may permit the group of firms acting together to achieve some of the attributes of monopoly, of raising prices, limiting output, and preventing entry or innovation. The most troublesome **horizontal** agreements are those that prevent rivalry about the fundamental dynamics of market competition, price and output. Most contemporary competition laws treat naked agreements to fix prices, limit output, rig bids, or divide markets very harshly. To enforce such agreements, competitors may also agree on tactics to prevent new competition or to discipline firms that do not go along; thus, the laws also try to prevent and punish boycotts. Horizontal co-operation on other issues, such as product standards, research, and quality, may also affect competition, but whether the effect is positive or negative can depend on market conditions. Thus, most laws deal with these other kinds of agreement by assessing a larger range of possible benefits and harms, or by trying to design more detailed rules to identify and exempt beneficial conduct.

Vertical agreements try to control aspects of distribution. The reasons for concern are the same — that the agreements might lead to increased prices, lower quantity (or poorer quality), or prevention of entry and innovation. Because the competitive effects of vertical agreements can be more complex than those of horizontal agreements, the legal treatment of different kinds of vertical agreements varies even more than for horizontal agreements. One basic type of agreement is resale price maintenance: vertical agreements can control minimum, or maximum, prices. In some settings, the result can be to curb market abuses by distributors. In others, though, it can be to duplicate or enforce a horizontal cartel. Agreements granting exclusive dealing rights or territories can encourage greater effort to sell the supplier's product, or they can protect distributors from competition or prevent entry by other suppliers. Depending on the circumstances, agreements about product combinations, such as requiring distributors to carry full lines or tying different products together, can either facilitate or discourage introduction of new products. Franchising often involves a complex of vertical agreements with potential competitive significance: a franchise agreement may contain provisions about competition within geographic territories, about exclusive dealing for supplies, and about rights to intellectual property such as trademarks.

Abuse of dominance or **monopolisation** are categories that are concerned principally with the conduct and circumstances of individual firms. A true monopoly, which faces no competition or threat of competition, will charge higher prices and produce less or lower quality output; it may also be less likely to introduce more efficient methods or innovative products. Laws against monopolisation are typically aimed at exclusionary tactics by which firms might try to obtain or protect monopoly positions. Laws against abuse of dominance address the same issues, and may also try to address the actual exercise of market power. For example under some abuse of dominance systems, charging unreasonably high prices can be a violation of the law.

Merger control tries to prevent the creation, through acquisitions or other structural combinations, of undertakings that will have the incentive and ability to exercise market power. In some cases, the test of legality is derived from the laws about dominance or restraints; in others, there is a separate test phrased in terms of likely effect on competition generally. The analytic process applied typically calls for characterising the products that compete, the firms that might offer competition, and the relative shares and strategic importance of those firms with respect to the product markets. An important factor is the likelihood of new entry and the existence of effective barriers to new entry. Most systems apply some form of market share test, either to guide further investigation or as a presumption about legality. Mergers in unusually concentrated markets, or that create firms with unusually high market shares, are thought more likely to affect competition. And most systems specify procedures for pre-notification to enforcement authorities in advance of larger, more important transactions, and special processes for expedited investigation, so problems can be identified and resolved before the restructuring is actually undertaken.

1.6. Horizontal agreements

The prohibition of restrictive agreements, the first substantive provision of the Competition Act, follows the basic EU law, with a few minor differences of phrasing and detail. The most interesting difference is at the outset, where Italy's prohibition of restrictive agreements includes an additional phrase, which as translated requires that their object or effect be an "appreciable" impact on competition (Section 2.2).[2] This addition does not produce differences in outcome, though, as EU competition law is interpreted to include a similar consideration. The prohibition of restrictive "agreements" also covers "concerted actions", that is, conduct that lacks the formalities of "agreement" but otherwise represents the knowing substitution of practical co-operation for the risks of competition (OECD CLP, 1999*d*). The distinction may have been significant in practice, as at least one court has refused to find a prohibited "agreement" among firms, despite documented evidence of agreement among the firms' employees and officials, because the documents did not evidence or comprise formal commitments by the firms as such.

Exemptions for individual agreements, and for categories of agreements, can be granted by the Authority, applying criteria similar to those in the EU system. Here, too there are differences of detail. Consumer benefit from improved production must be "substantial" under the Italian law; under the EU treaty, consumers must receive a "fair share" of the benefits. And a restraint may be justified in Italy if it is needed to guarantee firms the "necessary level of international competitiveness." (Sec. 4). The Authority interprets the criteria for granting these exemptions so that no exemption can be granted if it is inconsistent with consumer welfare. The Authority has always identified the "consumer" with the actual consumer of the product or service, not with consumers in general, so that considerations other than efficiencies would be less likely to be taken into account (Italy, 2000).

Links between restraints on horizontal competition and regulation were at issue in investigation of possible price fixing in retail and wholesale distribution of petroleum products, opened in 1999. Complaints contended that pre-tax prices in Italy were significantly higher than elsewhere in the EU and showed little variation at the distribution level, and that producers tried to remove distributors' incentives to vary from the recommended retail price and used similar contracts in order to facilitate horizontal co-ordination. Finding that an industry-wide agreement to impose contract restrictions prevented retail-level independent price competition, the Authority fined the suppliers 3.5% of turnover, or 640 billion lire. Regulation may compound problems in this sector, because strict regulation of hypermarkets and commercial centres outside of towns has reduced an important avenue of competition in gasoline distribution.[3]

Investigations of "private regulatory activities" by associations often find anti-competitive horizontal restraints. Activities whose declared objectives are enhancing quality or reducing transaction costs may amount to nothing more than means to divide markets, fix prices or tariffs, or suppress output (Italy, 2000). In the agriculture and food products sector, consortia that oversee rules to ensure accuracy in labelling and observance of production methods have tried to control output through market-division agreements (OECD CLP, 1999*a*). In pharmaceutical products, parallel price movements, accompanied by communications about pricing plans and not explained by common cost changes, were found to be restrictive concerted practices (OECD CLP, 1999*a*). The Authority also rejected the industry trade association's application for an exemption for a "self-regulatory code" setting criteria and standards for price increases. The code's parameters and mechanism would have made it easy for firms to anticipate their competitors' pricing moves, and the association's monitoring to ensure compliance would also have dampened competition (OECD CLP, 1999*a*).

To protect competition in liberalising markets, the Authority took action against the two mobile phone operators, which had simultaneously announced identical prices for interconnection between the digital mobile network (GSM) and the fixed public network (OECD CLP, 1999*d*). Their agreement both eliminated competition about this element and hindered the entry of new competitors. In September 1999, the Authority imposed the unprecedented fine of 150 billion lire (Italy, 2000). In airlines, the Authority examined two proposals for extensive code-sharing with Alitalia. One agreement, with Minerva, appeared to increase output and permit Minerva to upgrade its services, and accordingly the Authority granted it a limited-term, 3-year exemption. The Authority found that the other agreement, with Meridiana, served principally to end competition and increase fares, and thus it refused to grant an exemption (OECD CLP, 1999*a*; OECD CLP, 1999*b*).

Several important cases have addressed horizontal agreements affecting fees in the accounting professions. Under law, the associations have an advisory function, and the fees are actually set by an order of the Ministry of Justice. The two national councils of *ragionieri e periti commerciali* and of *dottori commercialisti* formulated restructured price schedules and worked together to align their pricing policies. Moreover, the national council of *ragionieri e periti commerciali* invited its members to apply its fee schedule before it was authorised by the Ministry of Justice. In November 1998, the Authority concluded that the conduct went well beyond the advisory function, and that the resolutions, the invitation to apply fees in the absence of ministerial approval, and the co-ordination to harmonise the fees of the two professions violated the prohibition on restrictive agreements (Italy, 2000). Another decision involved the national auditors association, Associazione Nazionale Revisori Contabili (Assirevi) and the major auditing companies, which had co-ordinated their tariffs and hourly rates, agreed not to compete for clients that were already served by other companies, and co-ordinated their participation in tendering procedures. They claimed that co-ordination guaranteed high quality services; however, there are other regulations that promote and ensure quality. The investigation resulted, in January 2000, in fines totalling 4.5 billion lire (Italy, 2000).

The courts' treatment of these cases has been uneven. The Authority has succeeded in establishing important technical points, but it has often failed to persuade the courts of the ultimate merits of its findings. In the accountants case, a January 2000 Italian administrative court decision agreed that the Authority had jurisdiction, holding that an accountant is an "undertaking" under the Competition Act, without regard to the different treatment of such professionals under civil law. Thus each party was an association of undertakings, subject to the Competition Act. But the court overturned the Authority's decision on the grounds that what the associations did was an officially authorised "public act". By law, the private groups could "advise" the public bodies, but because it was a public body that made the ultimate decision setting the fees, the court said the act of setting fees could not be attributed to the associations. And the *Meridiana* decision was also reversed on appeal to the court, not on technical grounds but on the merits, as the court disagreed with the Authority about whether the code-sharing would have an anti-competitive effect (OECD CLP, 1999*b*).

To make the prohibition of restrictive horizontal agreements more effective will require strengthening and modifying some of the rules and doctrines about sanctions. Fines for substantive violations are set as a percentage of the violator's turnover, which can range from 1% to 10% (Sec. 15.1). Where the violator is an association, which typically has little or no related turnover on which to base the fine, the sanction would necessarily be small. Yet associations are often the means for reaching and implementing the most serious restrictive agreements, and evidence of agreement often appears most clearly in the associations' activities. Basing sanctions on the turnover of the associations' individual members, and making the members liable for the fines, would make the sanction fit the offence. This would require an amendment to the Competition Act.

The flexibility for assessing sanctions may not be wide enough to support an "amnesty" programme, for detecting and investigating secret cartels by encouraging members to confess. An increasing number of jurisdictions have been able to break up cartels by promising to impose lighter sanctions, or even grant complete amnesty, to the first member of the cartel to come forward, confess, and implicate the other members. In serious cases, the Authority apparently has no discretion to offer complete amnesty, but instead must impose a fine of at least 1% of turnover. The difference between 1% and the maximum fine of 10% may be enough to attract some confessions. But the EU's leniency programme permits the enforcer to impose no fine at all, and the US programme, which has the longest track record of success, promises complete amnesty to the first cartel member to come in and implicate its co-conspirators. The Authority may need this additional flexibility to take effective enforcement action against the secret horizontal agreements that are likely to become its most important enforcement priority. This too would require an amendment to the law.

Box 3. **The EU competition law toolkit**

The law of Italy follows closely the basic elements of competition law that have developed under the Treaty of Rome (now the Treaty of Amsterdam):

- **Agreements**: Article 81 (formerly Article 85) prohibits agreements that have the effect or intent of preventing, restricting, or distorting competition. The term "agreement" is understood broadly, so that the prohibition extends to concerted actions and other arrangements that fall short of formal contracts enforceable at civil law. Some prohibited agreements are identified explicitly: direct or indirect fixing of prices or trading conditions, limitation or control of production, markets, investment, or technical development; sharing of markets or suppliers, discrimination that places trading parties at a competitive disadvantage, and tying or imposing non-germane conditions under contracts. And decisions have further clarified the scope of Article 81's coverage. Joint purchasing has been permitted (in some market conditions) because of resulting efficiencies, but joint selling usually has been forbidden because it amounts to a cartel. All forms of agreements to divide markets and control prices, including profit pooling and mark-up agreements and private "fair trade practice" rules, are rejected. Exchange of price information is permitted only after time has passed, and only if the exchange does not permit identification of particular enterprises. Exclusionary devices like aggregate rebate cartels are disallowed, even if they make some allowance for dealings with third parties.

- **Exemptions**: An agreement that would otherwise be prohibited may nonetheless be permitted, if it improves production or distribution or promotes technical or economic progress and allows consumers a fair share of the benefit, imposes only such restrictions as are indispensable to attaining the beneficial objectives, and does not permit the elimination of competition for a substantial part of the products in question. In the past, such exemptions might be granted in response to particular case-by-case applications; however, the EU is changing the enforcement regulation so that the exemption criteria would apply directly, without the need for application and specific approval. In addition, there are generally applicable "block" exemptions, which specify conditions or criteria for permitted agreements, including clauses that either may or may not appear in agreements (the "white lists" and "black lists"). Some of the most important exemptions apply to types of vertical relationships, including exclusive distribution, exclusive purchasing, and franchising.

- **Abuse of dominance**: Article 82 (formerly Article 86) prohibits the abuse of a dominant position, and lists some acts that would be considered abuse of dominance: imposing unfair purchase or selling prices or trading conditions (either directly or indirectly), limiting production, markets, or technological development in ways that harm consumers, discrimination that places trading parties at a competitive disadvantage, and imposing non-germane contract conditions. In the presence of dominance, many types of conduct that disadvantage other parties in the market might be considered abuse. Dominance is often presumed at market shares over 50%, and may be found at lower levels depending on other factors. The prohibition can extend to abuse by several firms acting together, even if no single firm had such a high market share itself.

1.7. Vertical agreements

The prohibition against anti-competitive agreements applies equally to agreements in the vertical dimension, between suppliers and customers. Italy has made little use of the statute's provisions for exemptions concerning vertical relationships (Sec. 4), compared to other jurisdictions that use the EU toolkit. A principal reason is that the Authority has made greater use of economic analysis, in applying the Competition Act's "appreciable impact" test. Assessment of vertical restraints has depended mainly on the evaluation of the economic impact in the relevant market, in view of the market power (if any) of the firms involved, rather than on formal analysis of contractual clauses. Economic analysis determines whether the restraint is even prohibited; if not, then there is no need to examine it further under the criteria for exemption. Thus the Authority has generally avoided having to determine whether an otherwise prohibited agreement should be permitted in order to promote other policy objectives.

The economic approach to enforcement means that restrictive vertical agreements have often been dealt with as abuses of dominance. For example, in the early 1990s the historic telecoms monopolist was the only provider of mobile cellular service. Its agreements with franchised retailers of mobile telephone equipment contained exclusive dealing restraints and controlled their prices and margins. The Authority found that the exclusivity commitments, as well as the monopolist's access to information that was not available to third parties, prevented other distributors from gaining access to the retail channels, putting them at an unjustified competitive disadvantage.

Arrangements between banks and insurance companies for distribution of insurance products have drawn several enforcement actions. If a bank has significant market power in retail distribution of financial products, because of its branch network and customer base, an exclusive distribution agreement with an insurance company may make entry by other insurance companies particularly difficult. The Authority has been concerned that, even where no firm has enough market power for the practice to be considered an abuse of dominance, if most insurance companies operate through such exclusive agreements, that common strategy could make collusion among them easier (OECD CLP, 1998*b*). Enforcement against vertical restraints in financial sectors requires inter-agency consultation, because of the division of jurisdictional responsibilities between the Authority and sectoral agencies, which is discussed further below.

1.8. Abuse of dominance

The statutory prohibition of abuse of dominance generally follows the EU legislation (Sec. 3). There are small differences in the listing of types of abuse. In the subsection related to curtailing or restricting production, the Competition Act includes restrictions on market access, and in the subsection about discrimination among trading partners, it requires that the dissimilarity of conditions be "objective" and that the resulting competitive disadvantage be "unjustifiable." Like the requirement of an "appreciable" effect on competition in the prohibition of restrictive agreements, these minor differences of detail do not imply any difference in basic approach from the EU legislation, but they do signal a particular attention to understanding economic consequences.

Many of the Authority's cases about abuse of dominance have been concerned with former legal monopolies or de facto monopolistic positions in markets with essential infrastructures. Two-thirds of the formal proceedings about abuse of dominance have targeted the transport, telecommunications, electric power, and natural gas sectors, mostly for discrimination or attempted extension of a (lawful) dominant position into a different, liberalised market (Italy, 2000). Incumbent firms have deterred competitors' entry by impeding access to essential facilities or information or pre-empted competition by imposing lock-in contractual clauses on captive customers. Not all actions against abuse of dominance involve utility-type services; in December 1999, the Authority fined Coca-Cola for using discounts and bonuses to wholesalers in order to claim display space and thus exclude competitors.

On several occasions, the law about abuse of dominance helped protect competition as the telecoms market was being liberalised. For example, Telecom Italia discriminated in its charges for providing a monopoly service (for traffic generated in the switched public network), favouring its own high-volume customers for liberalised services, and refused to allow competitors to offer the same discounts. This was found to be an abuse that hampered market access, and Telecom Italia undertook to eliminate the discrimination. Fines were imposed on Telecom Italia for some other practices, such as supplying high capacity lines only to its own final customers without publicising this option, and using a cheaper transmission alternative to dedicated lines without informing competitors of this possibility, which amounted *de facto* to preventing competitors from gaining access to equivalent service (OECD CLP, 1998*a*).

Attention is shifting now to the natural gas industry. A February 1999 decision found that the pipeline system, Snam, refused to grant access for uses other than electricity generation and own-consumption, refused to revise its 1994 agreement with the producers' association concerning the price for carriage, and ensured compliance by monitoring the final destination of the gas it carried on behalf of others. Moreover, the method of calculating the charge for carriage, which allowed Snam to fix the price level independently of the effective demand for transport, was likely to lead to unjustifiably burdensome contractual conditions. The Authority imposed a near-maximum fine of 9% of turnover, or 3 584 million lire. Another case, in 1998, resulted in ordering access to a pipeline system in central and southern Italy (OECD CLP, 1998*a*).

In many sectors, the abuse of dominance prohibition must be applied as historic monopolies resist liberalisation and use their established quasi-regulatory positions to hinder new entry. In port services, incumbent former monopolists sometimes refused to supply labour to new entrants experiencing a temporary shortfall, despite statutory obligations (OECD CLP, 1997*a*). In air transport, Alitalia was given the responsibility of assigning airport operating slots, and it used that power to its advantage by putting its own operations just ahead of its competitors' (OECD CLP, 1997*a*).

Box 4. **Cases against abuse of dominance in network and utility sectors**

Many of the Authority's cases about abuse of dominance have been concerned with former legal monopolies or de facto monopolistic positions in markets with essential infrastructures. Examples include:

- **Enel Spa: electricity, lock-in contract clauses inhibiting competitive entry.** The duration of exclusive contracts was extended to prevent one category of large customers from choosing another supplier. Enel also had the right to match competitive offers.

- **Sip: credit card telephone service, refusal of access.** The incumbent monopoly telecom operator refused to grant 3C Communications the use of telephone lines.

- **Sip: mobile cellular telephones, exclusive dealing.** Sip, with a monopoly in cellular service, demanded exclusive dealing and resale price conditions in franchise contracts with equipment retailers, preventing others from gaining access to the retail channels.

- **Sip: GSM cellular telephone service, pre-emptive marketing and consumer deception.** Sip conducted a marketing campaign promoting its image as an operator of GSM service, without disclosing that this was experimental; the campaign threatened to hamper the development of GSM market competition.

- **Sip: private switching system installation and maintenance, non-competition requirements.** Sip obliged installers not to compete with it when selling, installing or maintaining facilities for clients supplied by Sip.

- **Sip: private exchange service, refusal to lease lines for competing service.** Sip refused to lease lines to permit creation of a network infrastructure of leased switching nodes and dedicated lines. The Authority ruled that Community Directive 90/388 applied to those services; although it had not yet been incorporated into Italian law, the deadline for doing so had already expired.

- **Telecom Italia: voice telephony private networks, discrimination impairing entry.** Telecom Italia reduced the charges for a monopoly service (for traffic generated in the switched public network) only to its customers of the liberalised service, and refused to allow competitors to offer their own customers the same discounts.

- **Telecom Italia: leased lines, discrimination impairing entry.** Telecom Italia did not differentiate tariffs according to capacity demanded, increasing the competitors' cost of entry for competitors. It also supplied high capacity lines only to its own final customers and used a cheaper alternative without informing competitors of the option.

- **SNAM: natural gas transport and distribution, refusal of access.** SNAM refused to ship other producers' gas for electricity generation and own consumption or to revise a previous agreement about transmission prices.

- **Poste Italiane: hybrid mail service, discriminatory pricing preventing new entry.** Poste Italiane made suppliers of hybrid mail services pay excessive prices for delivery, higher than its costs and than the price it charged to its own subsidiary, PT Postel.

- **Aeroporti di Roma: airport security, abuse of regulatory authority to prevent entry.** The manager of the two Rome airports refused to permit airlines to negotiate with competing providers of security services.

- **Aeroporti di Roma: airport handling, tying and abuse of regulatory authority.** The airport agency charged excessive fees, imposed unreasonable conditions, and discouraged entry into self-provision of handling services by airlines.

- **Aeroporti di Roma: airport catering, refusal to deal:** The airport agency refused to negotiate with a potential third party provider of on-site catering services.

- **Alitalia: takeoff and landing slots, discriminatory abuse of regulatory power.** Alitalia used its power over slot scheduling to harm competitors' strategies, and warned travel agents not to issue tickets of competing airlines.

- **Autostrade: toll road payment systems, tying of monopoly and competitive services.** The franchised monopolist used proprietary technology for toll collection, discouraging use of other credit cards or cash.

- **Provveditorato for Venezia-Porto Marghera: harbour services, abuse of regulatory power.** The authority controlling the port refused to permit firms to use their own loading facilities.

Expanding the scope of sanctions available to the Authority could make enforcement of this prohibition more effective. In typical settings, access to a service or facility that is still controlled by the traditional monopolist is the key to developing competition. The Authority has the power to order the incumbent to afford access after finding a violation. Giving it the power to issue interim relief, such as an order to grant access pending its final decision, could speed up the development of competitive markets. Now, the would-be entrant or challenger can obtain immediate relief against a denial of access by going to a court. That option appears to be impracticable and ineffective (Franzosi, 1999).

Recently adopted legislation,[4] not part of the Competition Act, prohibits abuse of "economic dependence". This is defined as a situation in which one firm can determine an "excessive imbalance of duties and claims" in its commercial relations with another. Dependence is to be evaluated taking into account the claimed victim's possibilities of substitution. Conduct that might be considered abusive includes refusal to deal, imposition of unjustifiably burdensome or discriminatory contractual conditions, and arbitrary termination of existing trading relations. The law is concerned about fair dealing, and thus it is not relevant, whether the practice has any impact on the market. The Authority is not responsible for enforcing this prohibition, and the Authority has opposed adding it to the Competition Act (OECD CLP, 1998*a*) (Italy, 2000). Enforcement is principally through arbitration in Chambers of Commerce or private lawsuits (OECD CLP, 1998*d*). The Italian Parliament is considering modifying the law to focus on the economic consequences of the abuse (Italy, 2000).

1.9. Mergers

If a concentration creates or strengthens a dominant position in a market in Italy, "with the effect of eliminating or restricting competition appreciably on a lasting basis," the Authority has the power either to prevent it or to authorise it subject to the parties' taking measures to avoid those consequences (Sec. 6). The analysis to determine whether the concentration has the forbidden effect is similar to that set out in the EU merger regulation. It considers substitution possibilities (for suppliers and users), market positions of the parties, conditions of access to supplies and markets, market structure, the domestic industry's competitive position, barriers to entry, and the evolution of supply and demand for the relevant goods and services (Sec. 6).

Advance notification to the Authority is required if the combination involves firms with total annual turnover over 714 billion lire, or if the aggregate domestic turnover of the acquired firm exceeds 71 billion lire. These statutory thresholds have been adjusted for inflation, most recently in April 2000 (Sec. 16.1). (For banks and financial institutions, the figure used for "turnover" is one-tenth of total assets, with the exclusion of memorandum accounts; for insurance companies, it is the value of premiums collected). The Authority must inform the Prime Minister and the Minister of Trade and Industry within five days after receiving a notification. Take-over bids for acquisitions that would meet the thresholds must be notified to the Authority within 15 days after they are notified to the exchange commission.

The review process is relatively swift. The Authority must decide within 30 days of the notification whether the concentration might infringe the statutory standard. If so, a formal investigation may be opened; if not, the parties and the Minister of Trade and Industry are notified. Fewer than 2% of notifications result in a formal investigation. The investigation must be concluded within an additional 45 days, which may be extended by 30 days if the parties fail to provide requested information (Sec. 16.8). An investigation may be opened after these deadlines have passed, if the information in the notification is "seriously inaccurate, incomplete, or untrue" (Sec. 16.7). Failure to comply with notification requirements can lead to an administrative fine of 1% of annual turnover (Sec. 19.2). The Authority can order parties not to complete their transaction before the investigation is concluded, except in the case of a take-over bid, which may be concluded as long as the acquiring firm does not exercise voting rights before the investigation is finished (Sec. 17). Remedies appear both strong and flexible. If a concentration would violate the legal criterion, it may be prohibited (Sec. 18.1), or, if the concentration has already taken place, the parties may be required to restore effective competition and remove its anti-competitive effects (Sec. 18.3). Disregard of such orders or requirements based on findings about the competitive consequences can result in a fine of up to 10% of the concentration's turnover. If the parties demonstrate that they have removed aspects of the planned deal that were likely to distort competition, the investigation is to be closed without any order (Sec. 18.2).

A never-used provision of the statute permits balancing competition considerations against other national interests. Mergers that could impair competition in the domestic market may be permitted where "major general interests of the national economy are involved in the process of European integration" (Sec. 25.1). The decision is to be made by the Authority, applying general criteria proposed by the Minister for

Trade and Industry and promulgated by the Council of Ministers. This "integration" benefit is to be balanced against the concentration's impact on domestic competition, and the Authority may prescribe measures and set a deadline to restore full competition (Sec. 25.1). This provision appears intended to permit higher concentration among domestic firms, with the long-term goal of creating substantial competitors in an integrated European market. But it has never been applied, and the necessary general criteria for doing so have not been promulgated.

The merger law has been applied to support restructuring and deregulation. For example:

- In November 1997 the Authority prohibited Telecom Italia from acquiring control of Intesa, a firm formerly jointly controlled by Fiat and IBM that provides data transmission services to corporate customers. Intesa is the second-largest firm in the markets affected, so the acquisition would have strengthened Telecom Italia's already dominant position in basic data transmission and supply of direct circuits, and it would have created a dominant position in personalised data transmission. And control of its main competitor in corporate data transmission would have increased the extent of Telecom Italia's vertical integration into application services (OECD CLP, 1998*a*).

- In 2000, the parent company of the firm that operates most of the retailing and refreshment facilities on Italy's toll roads, Autogrill, obtained control of Autostrade, the firm that operates the roads and contracts for those facilities, when the latter was privatised. As a condition for its approval, the Authority required that Autostrade provide catering services by sub-licenses issued through transparent and competitive bidding procedures, under an independent party's control. In addition, Autogrill committed not to increase the number of its service areas on Autostrade's highway sections (Italy, 2000).

- In 1999, the largest Italian milk producer, Parmalat, acquired the operations of the second largest producer, Cirio (Eurolat). The industry has a tradition of control and state involvement, as prices were only liberalised in 1991, and local dairies were often municipally-run monopolies, although many have been privatised. Parmalat undertook to sell six local brands, to divest some facilities, and not to use its own brand for fresh milk for three years. In light of these commitments, the Authority permitted the acquisition.

The timetable for investigation is short, compared to the four-month timetable for an inquiry by the EU. Conforming the deadlines to the common practices in other major jurisdictions, especially the EU, would reduce confusion resulting from differences in procedures. And it would give the Authority more time for complete investigation of the small number of transactions that require detailed examination.

1.10. Unfair competition

The rules of traditional "unfair competition" fall under the Civil Code, rather than the Competition Act.[5] Among the kinds of conduct treated as unfair are acts that are likely to confuse the consumer about product or service origin, such as using similar names or logos or imitating a competitor's products too closely, and disparagement, that is, spreading news or comments that are likely to discredit a competitor's products and activities — as well as claiming a competitors' virtues as ones' own. And a catch-all provision reaches the use "directly or indirectly of any other means which do not conform with the principles of fair behaviour in the trade and are likely to injure another's business." Competitors, or associations of competitors, can go to court for orders to cease the offence and correct its effects and for damages. The catch-all provision is potentially broad enough to lead to results that could undermine general interest competition policy, but there is no indication that it has in fact been used in ways that do so.

The Authority does have jurisdiction to apply rules about deceptive advertising, which is one of the principal types of traditional unfair competition. The EU Directive on Deceptive Advertising has been enacted into Italian law.[6] Intended to protect both competitors and consumers, this regulation targets advertising that induces, or is likely to induce, error in those it reaches (or whom it is intended to reach), where the deception is likely either to affect the behaviour of the recipients or to cause harm to a competitor. All aspects of the communication, including prices, conditions of sale, and identifying characteristics of the advertiser, are relevant. Advertisements must be clearly recognisable as such, and advertisements that are likely to reach children are subject to special scrutiny. Comparative advertising is now covered, too.[7] The Authority has the power to order suspension of a deceptive advertisement, to require the advertiser to demonstrate proof of its claims, and to order corrective advertising. The extent of the corrective advertising it can order is limited, though, and the Authority cannot impose fines on a first violation. Advertisers that fail to comply with the Authority's orders about advertising face fines up to 5 million lire or imprisonment up to 3 months. These penalties are in addition to what competitors might recover as damages in a civil suit (Italy, 2000).

Deceptive advertising matters represent a large part of the Authority's workload, measured by number of actions, if not by resources employed. The Authority may receive a thousand complaints a year, and in recent years it has averaged over 400 investigations and over 300 findings of violation (OECD CLP, 1999*a*). Enforcement involves inter-agency co-ordination. Before the Authority takes final action about an advertisement that is broadcast or disseminated in the press, it must get a non-binding opinion about it from the Communications Regulatory Authority (Italy, 2000).

2. INSTITUTIONAL ISSUES ENFORCEMENT STRUCTURES AND PRACTICES

The Authority's strongly independent status explains much of its success. Its procedures appear efficient and transparent. The novelty of the institution and of the policies it represents may explain the difficulties it has experienced when its decisions are appealed to the courts.

2.1. Competition policy institutions

The Authority is an independent "commission" body. Its five members are appointed for non-renewable seven-year terms (Sec. 10.3). These terms run concurrently, so every seven years there is the potential for complete turnover. The President and members of the Authority are proposed and appointed jointly by the Presidents of the two houses of the Parliament. The Authority is a full-time commitment, as its members are not permitted to hold other positions or perform other professional services during their terms (Sec. 10.3). The Secretary General, who is responsible for overseeing operations, is nominated by the President of the Authority and appointed by the Minister of Trade and Industry (Sec. 11.5). The staff complement, originally authorised at 150 positions (plus 50 on fixed term contracts), was recently increased by 20 positions, in belated recognition of the Authority's increased responsibilities for deceptive and comparative advertising.

The law's prescribed qualifications for members of the Authority show that it was conceived to be a prominent body. The President must have previously held a high office with broad responsibilities. The three Presidents have been, respectively, a former President of the Constitutional Court, a former Prime Minister, and a former Advocate General of the European Court of Justice. The members must be chosen from senior judges, full professors of economics or law, or "respected business executives of particularly high professional repute" (Sec. 10.2). The current membership, other than the President, comprises three law professors and an economics professor.

In taking action and in managing its resources, the Authority is free from control by other parts of the government. There is no avenue for political control over particular decisions. The statutory criteria for membership require that the members must be persons of "well-known independence". It is not clear how compliance with this criterion could be ensured if the appointing power were determined to undermine it, but so far there is no sign of any such attempt. One possible source of external, indirect control could be through the budget. The annual budget comes from the government, but it is a separate line item in the law, subject to inflation adjustment, so ministries cannot exert indirect pressure. Here too, there has been no effort so far to control through the budget, and in fact funding has been fully adequate (Italy, 2000).

The Authority's principal obligation to the other structures of government is to submit its annual report to the Prime Minister, who tables it before Parliament (Sec. 23). This Report, due by 30 April, indexes and summarises the past year's enforcement and other actions and discusses important policy developments. In a well-publicised official release of the report in May (typically covered by national television), the President of the Authority explains the policies that underlie its decisions. Between annual reports, other outlets keep the public informed about developments. Enforcement actions, including decisions about competition and misleading advertising matters and about mergers, are published within 20 days in a weekly bulletin (Sec. 26). The bulletin also includes the Authority's fact-finding enquiries and reports on legislation. A website in Italian and English[8] includes all past decisions, classified into categories and updated weekly with the publication of the bulletin, which is also available on the site. Requests for documents on past activities and information of general interest will also be entertained (Italy, 2000).

Co-ordination with other agencies is required in some sectors. The Authority must request a non-binding opinion from the relevant sectoral regulator or agency before taking action involving telecommunications, broadcasting and publishing, and insurance. And it must provide such an opinion to the Bank of Italy concerning enforcement actions in banking, because in that sector the Bank of Italy is responsible for applying the Competition Act. Although these opinions are non-binding, they are public; the Authority publishes its opinions to the Bank of Italy along with its other actions. Such disclosure by the Authority is useful in providing the public with a more complete view of the issues at stake and in encouraging the emergence of a common standard of transparency.

2.2. Competition law enforcement

Investigations of possible violations may be opened in response to complaints or on the Authority's own initiative (Sec. 12.1).[9] The Authority may also undertake, on its own initiative or in response to requests from ministers, a "general fact-finding investigation" about areas of business in which circumstances suggest that competition may be impaired (Sec. 12.2). The process of notification and application for exemption for restrictive agreements (Sec. 4) has been used much less than in other jurisdictions with similar laws. The strongly economic interpretation of the law may have discouraged frivolous applications. In addition, measures that have attracted applications elsewhere were not adopted in Italy. No transition period or protection for existing agreements was provided when the Competition Act came into force, and notification confers no provisional immunity from liability for conduct that is already underway (Italy, 2000).

In the process of investigation and decision, parties have full opportunity to present and respond to charges. A complaint may be filed by a firm that believes it is being harmed, by a public agency, or by a private individual. Complaints must be in writing and may not be anonymous. All complaints are acknowledged. Complaints or possible *ex officio* cases are assigned to particular Directorates according to subject matter. After a preliminary examination, the Directorate recommends whether or not to carry out a full investigation. If the Authority decides to investigate, the parties directly concerned are notified. At the end of the investigation the parties receive a "statement of objections" setting out the alleged violations and evidence. The parties appear at the final hearing before the Authority, along with the Directorate that has carried out the investigation, where the findings are discussed. The parties are entitled to see any non-confidential documents in the investigation and to make presentations and written submissions, throughout the investigation and for a short period of time after the final hearing (Italy, 2000).

Basic investigative powers and confidentiality protections appear adequate. These powers include the right to request information and documents and to inspect and copy books and records (Sec. 14.2). On-site inspections to obtain copies of company documents may involve the co-operation of the Customs and Excise Police. Information about firms under investigation is treated as confidential and may not be disclosed to other government departments (Sec. 14.3). Failure to provide information requested can result in a fine of up to 50 million lire, imposed by the Authority, and doubled if the information turns out to be false. These penalties are in addition to others that might apply generally (Sec. 14.5). The Authority may appoint its own experts, and it may request information from other government departments and agencies. (Italy, 2000).

Deadlines demand expedition. Decisions about requests for exemption (individual and block) from the ban on restrictive agreements must be issued within 120 days of receiving an application (Sec. 4.3, Sec. 13). The deadline is enforced by the "silence is consent" rule; if there is no action in 120 days, the exemption is granted. (The Authority has never used this rule, though). There is no explicit statutory deadline for responding to a complaint or completing an investigation, but internal rules require a decision within about 6 months. This deadline can be extended. Typical reasons for delay are a party's request for more time to respond to the statement of objections, or the expansion of the scope of the investigation to new topics or respondents. The actual time taken for a decision about a complaint is usually about 9 months.

Sanctions for violation of the law's substantive prohibitions include orders to correct infringing conduct and fines based on turnover. Upon finding a prohibited restrictive agreement or abuse of dominance, the Authority may set a deadline by which the parties must remedy the infraction. In serious cases, it may impose a fine, which can vary depending on the gravity and duration of the violation. The base is the parties' annual turnover from the products that are the subject of the agreement or abuse. The fine is a percentage of that base turnover figure, which can range from 1% to 10%. If the party fails to effect a remedy by the deadline set, the Authority can impose a fine of up to 10% of turnover; if the party fails to pay a fine by the deadline set, the Authority can increase the fine, by at least double (although still subject to an upper limit of 10% of turnover). And if a party repeatedly refuses to comply, the Authority may order it to suspend activities for up to 30 days (Sec. 15.2); however, this power has never been invoked.

Appeals of administrative actions applying the Competition Act must be taken to the Lazio Region Administrative Court (Sec. 33.1). A further appeal is possible, to the Supreme Administrative Court (the Council of State) (Italy, 2000). Parties may, and usually do, request suspension of fines pending appeal. The court's ruling on the request for suspension is often an occasion to indicate the likely direction of the final decision. As a practical matter, cases from the Authority tend to go to the same court and the same chamber, where some judges have developed particular experience and interest in competition matters. But there is no formal specialised chamber, and the constitution generally prevents establishing specialised courts. The Authority can re-open a matter if the court has dismissed it for technical reasons, to correct the technical mistake. Because of the delays in the judicial system, only a few cases — fewer than 10 — have gone all the way through the process. In part to remedy such situations, Law No. 205/2000 foresees faster procedures for some conflicts (such as those concerning public tendering), and a 20% increase in the number of judges. The law enables judges to decide the *sospensiva* together with the merits of the case.

The Authority's record on judicial review has been poor, but it is improving as the courts and the Authority have become more familiar with each other. Courts have extended their scrutiny beyond issues of law to matters of fact such as market definition, sometimes holding there was not enough evidence to support the Authority's conclusion, and sometimes holding that the conclusion was not supportable even given the evidence. One response to these developments has been an effort to strengthen the evidentiary records in the Authority's cases. And the courts have been moving, too. The trend of recent higher court decisions has stressed the limitations on the scope of review, tending to correct the previous trend toward judicial intervention and scepticism.

Box 5. **The costs of the appeal process**

Lengthy court processes, and the reversals in many cases, explain the difference between the sanctions the Antitrust Authority has ordered and the amount that has actually been collected. Out of the total sanctions imposed up to mid-2000 of 326 billion lire, more than half — 180 billion lire — is accounted for by two cases. The parties in those two cases have not asked for suspension pending appeal. Of the remaining total of 156 billion lire in sanctions ordered, 77 billion lire, or more than half, was suspended pending the outcome of appeal. Most of that amount — 65.5 billion lire — was eventually annulled.

2.3. Other enforcement methods

A petitioner or complainant has a limited power to ensure that the Authority deals with its case. The Authority responds to every complaint lodged. It may drop a case after determining that the facts and the claim appear *prima facie* groundless. If it does so, it must inform the complainant and state its reasons. Under Italian administrative jurisprudence, courts have occasionally denied complainants the right to appeal such adverse decisions, on the grounds that only the respondent could have standing to challenge the agency's judgement about the public interest. So far, the administrative court has not reviewed any decision to dismiss a complaint under the Competition Act (Italy, 2000). Thus, although the Authority operates on the policy of making a reasoned response to each complaint, it appears that the strength of a private party's right to such a decision has not been tested.

A private party can bring an independent suit in court, to annul practices that the Competition Act prohibits and to recover damages caused by violations, as well to petition for interim relief to protect the party's interest in situations where the lapse of time may cause irreparable damage. These actions may be filed in the Court of Appeal with local jurisdiction (Sec. 33). Filing a private civil action does not appear to depend on any prior action or decision by the Authority. There have been several dozen private suits, virtually none of them successful. The Courts of Appeal have typically dismissed the complaints on the grounds that they lacked jurisdiction, that the plaintiffs did not need immediate relief, or that there was no showing that defendants abused a dominant position in a market. The one exception involved a private exchange telephone company complaining that the historic monopolist was impeding entry by delaying installation of necessary circuits; in 1995, the Court of Appeal of Milan awarded damages of 3.5 billion lire (Franzosi, 1999). One reason for the courts' scepticism may be that the cases appear similar to ordinary commercial disputes, so the judges are reluctant to invoke the Competition Act to deal with them. Another reason may be that the judges are deferring, in a general sense, to the Authority's expertise and powers to order relief (Franzosi, 1999). Private parties may also bring suits to apply the prohibitions of EU competition law. Such actions, like ordinary suits about claims of unfair competition, would be heard by the first-instance civil courts of general, local jurisdiction, rather than the Courts of Appeal.

EU law, which is substantially identical in substance to Italy's Competition Act, also applies, of course. The EU's competition law prohibitions apply to practices that affect trade between Member states, leaving national law prohibitions to apply to practices whose effects are confined within national borders. But the standards for determining what affects trade have become very broad, so that in an integrated market nearly any restrictive practice could have that effect. EU law may thus cover a large part of what domestic laws cover. Italy's Competition Act may be applied only to a case that is not of "community relevance" (Sec. 1.2, Sec. 1.3). In the Authority's practice, a case has "community relevance" if the European Commission has opened a formal procedure; if it has not, then the Authority will apply the Competition Act. The Competition Act has been applied to cases involving markets larger than Italy, as long as the Commission has not initiated proceedings. The Authority has been granted the power to apply the EU competition law as well as the Competition Act, but it has made little use of the power — the first instance was in November 1998 — because the Italian law is so closely harmonised with the substance of EU law (Italy, 2000). To ensure that tendency toward consistency, Italy has been active in consultations at the EU level about the development of EU law and policy.

Experience with private enforcement and with direct application of the Treaty articles in Italian courts has been disappointing. Judges have little power of investigation in these civil cases, and they are not familiar with complex relationships between economics and commercial behaviour. Trials are long and costly. Problems with applying the law through civil litigation could hamper upcoming EU-level reforms, as devolution of responsibility to apply competition law to local institutions is intended to rely on national judicial processes as well as enforcement agencies.

An agreement that amounts to bid-rigging in public procurement is a criminal offence.[10] This criminal law is not used as an adjunct to competition enforcement.

2.4. International trade issues in competition policy and enforcement

The Authority can extend its inquiries beyond national borders, due to its power to apply EU competition law directly, (Italy, 2000). Now that the procedures for such cases have been clarified, this power has been applied in a few cases.[11] In appropriate settings, the Authority has assessed competition problems in terms of international and even world markets. For example, when Mannesmann Demag acquired control of Innocenti Santeustacchio, the market of interest, for pipe rolling mills using particular technologies, was evidently world-wide. The acquisition was permitted, subject to commitments to license the technology so that new entrants would not be barred from the EU market (Italy, 2000).

Italy has been the locus of major recent EU competition enforcement actions intended to ensure market openness. The EU applied its prohibition of abuse of dominance against the largest Italian producer and distributor of cigarettes, for imposing distribution contracts that limited the access of foreign products and favoured its own production. The largest fine in EU competition enforcement history was imposed in 1998 against a ten-year-long corporate policy of forcing Volkswagen dealers in Italy to refuse to sell cars to foreign buyers, especially those from Austria and Germany. (OECD CLP, 1999*f*).

The Competition Act reserves a tool to be used if other jurisdictions' merger enforcement is used to disadvantage Italian firms. The Prime Minister may prohibit a concentration (acting on a resolution of the Council of Ministers, proposed by the Minister of Trade and Industry) as contrary to essential national interests, if it involves entities or undertakings from countries that do not protect firm independence or that discriminate against Italian firms (Sec. 25.2). This provision has never been used.

2.5. *Agency resources, actions, and implied priorities*

The Authority has enough financial resources to do its job, but some arbitrary constraints on its personnel strength should be corrected. Salaries are evidently high enough to attract and keep qualified economists and lawyers. It may be outgrowing its facilities; a move to a larger headquarters building is being planned. Over five years, its personnel resources have increased by about 30%, and the budget by 50% (not corrected for inflation). A statutory ceiling on its authorised personnel strength is now hobbling the Authority's ability to add staff to handle cartel enforcement and regulatory analysis.

Table 1. **Trends in competition policy resources**

Year	Person-years	Budget (billion lire)
1998	174	20 940
1997	166	20 600
1996	154	19 800
1995	138	15 700
1994	136	13 080

Source: Italy, 2000.

A summary of actions by sector demonstrates the link between competition policy and regulation. Many, but not all, of the sectors in which the Authority has taken the most actions are ones occupied by traditional monopolists who are facing restructuring and deregulation, such as transport and telecoms, or by providers subject to anti-competitive "private" regulation, such as agriculture and professional services.

Table 2. **Competition Act Actions by Sector (to March 1999)**[1]

Sector	Agreement	Abuse	Merger	Total
Banking[2]	11	5	12	28
Transport and related infrastructure	7	14	2	23
Minerals, non-metal	14	1	2	17
Food and beverages	10	1	4	15
Telecommunications	2	9	3	14
Insurance	11	1	1	13
Chemicals	4		3	7
Electricity, gas, water	2	4	1	7
Petrochemicals	6	1	0	7
Printing and publishing	4			4
Professional activities	4			4
Automotive industry	1	2	0	3
Sport		2	1	3
Cinema	32	0		2

Sector	Agreement	Abuse	Merger	Total
Recording industry	1	1		2
Computers, IT		2		2
Mechanical engineering	1		1	2
Advertising services	2			2
Other services	2			2
Radio and television	2			2
Agriculture		1		1
Television rights	1			1
Extractive industry		1		1
Financial services			1	1
Chain retailing			1	1
Education	1			1
Wood and paper			1	1
Postal services		1		1
Metallurgy	1			1
Glass	1			1

1. Investigations ending in finding of violation, authorisation subject to conditions, or changes in terms bringing an agreement into compliance.
2. Actions by Bank of Italy
Source: Authority, 1999; Italy, 2000.

The Authority is paying increasing attention to restrictive agreements. The number of actions against abuse of dominance has decreased since the mid-1990s, as restructuring and deregulation in traditional monopoly industries are taking hold and new regulators are beginning to apply sector-specific rules. The number of investigations about restrictive agreements has also decreased, but the number of violations found has increased. Merger notifications are also at record levels, although that number may be controlled to some extent by the inflation-based adjustment of filing thresholds. The number of misleading advertising matters has declined somewhat. The resource allocation to this function is not proportionate to the number of matters; until the separate staff section for advertising was eliminated and the responsibility distributed over the other sections, it had fewer than a dozen staff. The data suggest there has been a shift in priorities toward problems about restrictive agreements, but that might represent changes in the economy, rather than deliberate decisions by the Authority. The Authority believes that its ability to set priorities in assigning resources is limited to some extent by the undertaking to respond to all complaints and applications.

Table 3. **Trends in competition policy actions**

	1999	1998	1997	1996	1995	1994	1991-93
Mergers (notifications)	423	344	292	357	282[1]	597	1155
Investigations	6	2	7	3	1	3	14
- Prohibited	-	-	1	-	-	-	4
- Authorised, modified	2	2	5	3	-	-	5
Agreements[2]	30	54	64	64	32	25	73
Investigations opened	12	14	12	23	5	14	31
-Violations found by Authority	12	11	8	5	3	7	20
Abuse of Dominance	15	21	46	52	31	14	44
Investigations opened	4	3	5	10	11	8	12
-Violations found by Authority	3	2	4	7	8	5	11
Misleading Advertising	368	468	506	389	240	191	163
- Violations found by Authority	275	300	361	284	169	105	67
Reports to Parliament	28	42	38	18	25	15	17
Actions by Bank of Italy[3]	43	46	50	48	46	52	64

1. Since 1995, transactions between commonly controlled firms no longer require notification.
2. Principally notifications.
3. Opinions from the Authority to the Bank of Italy; the number of investigations by the Bank is the same, although there may be minor differences in the assignment of the Bank's action to particular years.
Source: Italy, 2000.

3. LIMITS OF COMPETITION POLICY: EXEMPTIONS AND SPECIAL REGULATORY REGIMES

3.1. Economy-wide exemptions or special treatments

The extent of and justification for exclusions from generally applicable competition policy, or special treatment for types of enterprises or activities, can determine whether competition policy can provide a suitable framework for broad-based regulatory reform. No explicit provision of Italy's Competition Act creates a general exemption for conduct that is arguably authorised by or consistent with a regulatory programme or requirement. But in general, if conduct is authorised or required by another law or official decision, it cannot be sanctioned under the Competition Act. There are few clear rules or conditions describing how the exercise of authority by another government body displaces or overrules competition law. The Authority has tried to test the extent of this protection. In the recent case about accountants' fees, the limit was reached: the court held that, because the fees were ultimately set by a government decision, the associations' agreement about the fee schedules they would propose did not constitute a restrictive agreement.

Public enterprises and state-controlled firms are fully subject to the Competition Act's basic prohibitions (Sec. 8.1). Pursuant to a provision that parallels the EU treaty, those prohibitions do not apply to firms that by law provide "services of general economic interest" or operate in a monopoly situation, to the extent that such exemption is "indispensable" to perform their specific, assigned tasks (Sec. 8.2). This provision has been invoked only once (Italy, 2000), to approve an arrangement among performing rights societies to suppress bootleg copies. That application was probably superfluous, for the arrangement probably did not restrict competition. A grant of a statutory monopoly does not prevent other firms from engaging in internal production for their own use, except for telecommunications services or for services for which the basis for the monopoly is public order, public safety, or national defence (Sec. 9).

Local governments of Italy's provinces and municipalities have important powers that can affect competition. These include licensing and land use planning and development. Exercise of these powers can produce results inconsistent with national competition policy. Anti-competitive local government action can be difficult to correct by central, administrative direction. Two kinds of problems are now appearing in this setting: promoting competition in the provision of municipal services, and removing local regulatory constraints on entry and other dimensions of market competition.

By law, local governments have exclusive competence to provide services "having social objectives and aimed at promoting the economic and social development of local communities". These may be provided, directly or by concession grant. Such services have included energy, natural gas, water, waste management, local transportation, education, roads, public lighting, libraries, kindergartens, and school cafeterias. In addition, some localities also operate theatres and hotels and provide funeral services.

Reform of local public services is a key element in the reform of infrastructure sectors. Benefits from liberalisation of national functions may be lost if local level functions remain inefficient. Italy has recently undertaken a programme of liberalising local public utilities, to introduce market principles in water distribution, energy (other than electricity), public transport, and waste management. A draft law being considered in Parliament would generalise the franchise-auction system. Infrastructure planning would continue to be the responsibility of the municipalities. Use and management would be open to private companies, pursuant to licenses. The local government could choose either to award concessions by auction or, for some services, to permit competition in the market. Only joint-stock companies would be eligible for a license; this rule would also apply to existing providers, who may thus have to be restructured in order to continue. Smaller municipalities could request exemption, in order to maintain direct controls (OECD, 2000).

Aspects of the draft legislation may contribute to uncertainty and delay. The bill would require tendering or competition in the market, but it does not deal with privatisation.[12] Thus the potential for confusion between supervision and management roles may persist. Issues about bidding process and responsibility for investment would remain unresolved. It would provide for a long transition process, although the transition periods have been reduced as the bill has worked its way through the legislature. The Senate tried to add reciprocity guarantees, aimed at foreign firms trying to acquire Italian local service firms. The proposals would have permitted long concession terms — from 20–30 years — that could dilute the force of competition or entrench monopolies. Some mayors demanded such long terms protected from the threat of competition in order to make their own public service providers more valuable to a buyer in a privatisation sale.

The slow pace of reform of the local public service sector favours incumbents. The effectiveness of the reform depends on support from municipal administrations, which sometimes oppose liberalisation. Some local governments are taking steps to resist it, by such means as granting long concessions, before the law will require them to use competitive tenders. In transport, some local governments are raising, not lowering, barriers, by creating integrated local monopolies combining rail and bus services. On the other hand, some local leaders understand the advantages for their citizens and are taking the lead to show how introducing competition can improve service and reduce costs. After legislation is adopted, problems in implementation can be expected, as auction awards are made by local officials who are beyond central control. The legal framework will be helpful, by assuring that there will be auctions or competition in the market, that the process would be non-discriminatory, and that the local authorities' network access rules would be approved by the national regulators. But it will be important to ensure that the implementing details effectively support these goals.

Box 6. **Case study: solid waste disposal**

The Authority has studied the local public service sectors several times. A recent study of solid waste operations showed that economies of scale in waste collection were modest, implying that larger cities could find it economical to award contracts to several firms, to service different parts of the city. But only Naples has done so. Some medium-sized cities studied have been reluctant to change contractors, from one whose services were familiar to one that obtained a contract on the basis of operational costs, out of concern over service quality and environmental compliance. Tendering procedures tended to be non-transparent, and only one had actually awarded a contract through an open tender. Based on the still-limited experience, the municipalities generally expressed satisfaction with competitive tendering, because the process, including the threat that a contractor might lose the business to another, improved service quality (OECD CLP, 1999*c*).

Many potentially anti-competitive regulations and concession-granting powers remain within the jurisdiction of local and regional governments. Lines of business affected by these constraints range from transportation consultants to driving schools to ski instructors to movie theatres. Some are the responsibility of national government, too. About 30 types of concession requirements limit entry and thus competition. The number is declining, but authorisations labelled as "licenses" may still be used to control entry, such as in petroleum distribution. The Authority is preparing a general report about the use of such devices and other regulations of entry, prices, activity, and industrial structure, which is to be completed in late 2000. Supporters of these kinds of restraints typically argue that they are needed to ensure quality or protect consumers, but the more important motivation is usually to limit competition. One reason for the proliferation of these formal constraints is that maintaining anti-competitive conditions in fragmented sectors, involving smaller businesses (where the constraints usually appear) requires more regulatory protection than in concentrated ones.

Small business does not receive any particular special treatment under the Competition Act. There is no explicit *de minimis* exemption, but the economics-based approach to enforcement implies an equivalent principle. The law's requirement that a practice must have an appreciable effect on competition before it will be prohibited is sometimes loosely called a *de minimis* rule. The lack of an explicit cut-off point based on firm size or market share might be thought to increase uncertainty, but experience has not shown that to be a significant problem. In any event, the EU's *de minimis* notice provides some guidance about what would be considered too small-scale to call for enforcement attention under Italian law.

3.2. Sector-specific exclusions, rules and exemptions

There are few explicit gaps in the coverage of the Competition Act, but particular regulatory programmes limit entry and competition over price and services. Advocacy by the Authority has tried to assess whether compelling public interests can be served in better ways and to recommend changes. But the process is difficult. Special rules about competition policy issues apply in a few sectors, and in one sector, banking, a different agency is responsible for applying the general Competition Act.

3.3. Financial services

The most important special sectoral treatment is in financial services. For banks, the provisions of the Competition Act — concerning restrictive agreements and exemptions, abuse of dominance, and mergers — are enforced by the banking regulator, which is the Bank of Italy, and not the Authority

(Sec. 20.2).[13] The banking regulator is to request the (non-binding) opinion of the Authority when enforcing the Competition Act. The Authority is to respond to such requests within 30 days, and failing such a response, the banking regulator can proceed with its action (Sec. 20.3). Where a potential violation of the Competition Act concerns firms that operate in several sectors, each competent authority may take action (Sec. 20.7). For example, banks act as distributors of insurance products, which are under the jurisdiction of the Authority. Decisions from both agencies may be required about the same transaction or set of circumstances, depending on the nature of the different "products" involved, and this joint responsibility points out the importance of co-ordination.

The Competition Act provides a basis for exemption that is specific to the banking sector. Restrictive agreements in banking might be permitted in order to guarantee the stability of the monetary system; however, in applying this standard, the banking regulator may only authorise such agreements for a limited period of time and subject to the concurrence of the Authority, which is to determine whether the agreement impedes competition (Sec. 20.5). This special exemption provision has never been applied (OECD CLP, 1998*b*) (Italy, 2000). It would apply only to restrictive agreements, and not to abuses of dominance or mergers. And in any event, the Bank of Italy evidently believes that the exemption provision is probably superfluous, and that the goals of stability and competition are not inconsistent; rather, its officials maintain that only a competitive system will be stable in the long run.

Mergers and acquisitions by banks are subject both to the Competition Act and to separate substantive standards (Sec. 20.9), which are detailed by regulation, subject to EU standards.[14] A bank's acquisition of shares in another bank or financial institution requires prior authorisation by the Bank of Italy, if the shares acquired exceed 10% or 20% of the acquired company, if the acquisition confers control, or if the acquisition cost exceeds 10% of the acquiring bank's own funds. The same rules apply to bank shareholdings in insurance companies, except that a bank's total shareholdings in insurance companies cannot exceed 40% of the bank's own funds (OECD CLP, 1998*b*). Acquisitions and holdings between banks and non-financial firms are also subject to some oversight by the Bank of Italy. An industrial firm may not hold more than 15% of a bank's shares, and a bank may not hold more than 5% of a non-financial firm's shares. These limits follow from EU directives.

In reviewing mergers, the Bank of Italy is responsible to the extent the relevant market is for banking services — although the Bank claims jurisdiction to examine all markets potentially affected by a merger involving a bank — and the Authority may be responsible to the extent other, non-banking markets are involved. The two enforcement bodies apply an analytic method set out in a March 1996 agreement between them. Rather than use a cluster market approach, they examine whether there are different relevant markets for different services. The process begins with provisional markets for deposits (including checkable accounts, time deposits and certificates of deposit) and for loans (both short term and medium to long term). The geographical scope is provisionally defined on the basis of Italy's administrative areas. For deposits, each *provincia* is considered; for loans, each region (that is, a group of adjacent *province*). A post-transaction share below 15% in these provisional markets is usually treated as a "safe harbour". If the transaction requires more detailed investigation, information is developed about demand and supply substitutability and different relevant markets may appear. Where parties compete in providing specific financial services such as leasing, factoring, asset management, or securities trading, these too may be considered distinct relevant markets (OECD CLP, 1998*b*). A recent merger case, in December 1999, illustrates the dual jurisdictional coverage. The Bank of Italy was concerned about effects on banking products, and the Authority about some products, such as factoring, where firms other than banks were also involved. Both agencies reached the same conclusion, to require divestiture of about 45 regional branches.

Several observers, including the Bank of Italy, believe that more consolidation is likely and even desirable to enable Italian banks to compete in Europe. Some Italian banks are becoming parts of holding company structures that own banks in several EU countries, but no Italian bank has yet set one up itself. Thus, it appears that the Bank of Italy has been guiding the restructuring of the industry, permitting combinations among domestic banks and using its power to approve the transfer of significant blocks of bank shares. The Governor of the Bank of Italy recently warned, though, that consolidation may be nearing its limits under competition principles and that further consolidations may require some divestitures. The Bank of Italy applies a market-share based rule of thumb, treating a market share over 25% (on a local basis) as a reason to inquire whether a bank has a dominant position. On a national basis, no bank is near that level. Because legal constraints prevent publicising details of the Bank of Italy's decisions about bank mergers under the banking regulations dealing with stability and soundness, those decisions are not as accessible as the decisions based on competition law, which are published in the Authority's bulletin.

The Bank of Italy has made use of its enforcement powers. The number of "antitrust" actions by the Bank of Italy in the banking sector is reportedly the largest by any competition enforcement agency in Europe in that sector. These actions have included challenging horizontal agreements, which have typically been co-ordinated or accomplished through the national banking trade association. An investigation of "standard bank rules," which the association has issued regularly since the 1950s, showed that many of them contained clauses restricting competition, setting prices either directly or indirectly. The Bank of Italy persuaded the association to delete a number of the clauses and to amend others (OECD CLP, 1998*b*). More recently, in a cartel case in early 2000 (against individual banks, not involving the association), the Bank of Italy imposed fines of 33 billion lire.

The tensions inherent in overlapping, shared jurisdiction may be manageable. In considering restrictive agreements, officials at the Bank and the Authority have had to work out disagreements over issues such as the scope of conspiracy and the level of sanction to apply. Enforcement staffs at the Bank and the Authority consult frequently, and in the end the two agencies have generally reached results that each can support. The Authority's opinions about banking enforcement actions are public, which would encourage the Bank of Italy to explain inconsistencies.

The Bank's analysis and approach has resulted in significant enforcement actions. Giving the Bank of Italy the responsibility for making enforcement decisions, in consultation with the Authority, may have encouraged the Bank to be more vigorous. A debate underway in OECD countries is raising the larger issue of whether, as the application of competition law in the banking sector has matured, the need for a special sectoral competition regulator may be declining. The debate over the right institutional framework for the banking sector has not been resolved, but an alternative approach under discussion, which is used in some other sectors, would give competition authorities responsibility for enforcing competition law, in consultation with central banks. This approach could help ensure that the overall enforcement system in this sector is consistent with the model that applies in other regulated sectors, and it may also help ensure that the most general and flexible methods of analysis are applied in this sector.

3.4. Insurance

In the insurance industry, the relationship between the Authority and the sectoral agency is the reverse of the relationship in the banking industry. The Authority has jurisdiction, but before taking enforcement action it must request the opinion of the insurance industry agency, ISVAP. If ISVAP does not respond to the request within 30 days, the Authority may take whatever action it deems necessary (Sec.20.4). There are also separate, statutory requirements regulating concentration in insurance (Sec. 20.9).

ISVAP is more of a supervisory body than a regulatory authority. Its principal goal is maintaining the health and solvency of the firms in the insurance industry. It has exercised its competition policy functions to promote that goal, sometimes by resisting the Authority's law enforcement efforts. The Authority has had many cases involving insurance, against price and market division agreements, collusion in tenders for public agency liability coverage, and exclusive dealing agreements in distribution (OECD

CLP, 1999*a*) (OECD CLP, 1998*a*). In some of these cases, ISVAP has disagreed about issues such as the contestability of insurance markets and the scope of relevant geographic markets. For example, ISVAP has tended to presume national and even European markets, while the Authority has examined local markets for distribution.

The Authority has found price competition to be weak. Competition in distribution has become stronger, though, for life insurance products sold through banks and motor vehicle insurance sold over the telephone (OECD CLP, 1998*e*). But new avenues of distribution brought a different set of problems, of exclusive dealing agreements between insurance companies and banks that may discourage entry (OECD CLP, 1998*e*). Overt control of premiums ended pursuant to EU directives, but some degree of control of life insurance rates reappeared. The actuarial basis for calculating premiums includes both the general provisions allowed under the EU directive and additional requirements set by ISVAP,[15] such as setting the maximum interest rate that can be guaranteed to a policy-holder. The Authority has been concerned that these additional rules may discourage innovation and lead to price uniformity.

A recent controversy over auto insurance prices shows how pressures can produce potentially anti-competitive policies. As premiums increased dramatically, sometimes doubling, there was concern about the effect on overall inflation rates. Explanations for the increase differ. Some believe it represents a competition problem, pointing to the absence of advertisements as evidence that the firms are not competing. Others, including ISVAP, point to the heavy losses in the sector to explain the attempts to increase prices. As an immediate reaction, the government issued a decree freezing premium increases for a year, thus effectively dampening the market's ability to respond to cost changes by changing prices, and also, perhaps, providing an umbrella or a focal point with which firms can co-ordinate to avoid price competition more successfully. The government is considering legislation to deal with other issues and potential inefficiencies affecting the sector, while the moratorium on premium increases remains in effect until the end of March 2001. And the Authority opened an investigation to determine whether these increases result from concerted action. Concluding that the industry had indeed been colluding about contract terms and exchanging sensitive strategic information since 1993, in July 2000 the Authority imposed fines against 38 companies totalling about 700 billion lire.[16]

3.5. Publishing and broadcasting

At one time, a provision parallel to the one for banking assigned competence for antitrust enforcement to the Broadcasting and Publishing Authority. That provision was repealed in 1997,[17] the regulator was abolished, and the Authority has assumed responsibility for enforcement in these sectors. Its decisions in the broadcasting and publishing sectors are taken after receiving an opinion from the newly established Communications Regulatory Authority (OECD CLP, 1999*a*). The Authority inherited, and completed, an investigation of a market division agreement about broadcast rights for sports (OECD CLP, 1999*a*). The decision was followed by special legislation[18] to prohibit any single entity from having more than 60% of the broadcast rights for Italian football teams on pay TV.

Other special statutory limits govern concentration in broadcasting and publishing (Sec. 20.9). These limits are the product of a long controversy over the structure of the media industries. After a series of decisions by the Constitutional Court beginning in the 1970s, legislation in 1990 ended the national monopoly and set limits on the concentration of ownership. Those limits, which in fact recognised the status quo, were motivated by concern to preserve viewpoint diversity more than to promote competition in defined markets. Thus the law set limits based on media businesses taken together, including the press. The law also set limits on advertising, with private channels permitted to carry more than the publicly supported networks.

After the Constitutional Court intervened again, to hold that it was not enough to permit only a single private network operator, the law was changed in 1997 to lower the concentration limits. An individual broadcaster may not control more than 20% of the channels available nationally, nor account for more than 30% of the revenues in a particular branch — terrestrial television broadcasting, radio, cable, or satellite broadcasting. An individual broadcaster that has any holdings in the press sector may not account for more than 20% of the combined television and press revenues (OECD CLP, 1998*c*). The statutory concentration limits apply regardless of the actual state of competition among different media. An Authority investigation in these sectors would not be bound by these statutory categories in identifying appropriate relevant economic markets.

Newspaper and magazine sales have been limited by law to permanent news-stands. The Authority supported a proposal to try permitting sales in a range of other outlets, from bars and tobacco shops to bookstores and department stores. But the Authority criticised two features as anti-competitive. One would have required these outlets to carry any publication that asked to be carried, regardless of limitations of space or other considerations. The other would have limited the number of new outlets based on officials' views about likely demand (OECD CLP, 1998*a*).

3.6. Telecommunications and energy

Regulatory issues concerning these sectors are addressed in background reports to Chapters 5 and 6. The Authority has responsibility for enforcing the Competition Act in these sectors (OECD CLP, 1998*a*). The sectoral agencies are responsible for applying sector-specific rules that also promote competition. The Authority must consult with the telecoms regulator before taking action in that sector under the Competition Act.[19] The telecoms and energy regulators are required[20] to notify the Authority when they learn of an alleged violation of the Competition Act (Italy, 2000). In addition, the Authority provides the telecoms regulator with non-binding opinions to assist in its decisions about identifying firms with significant market power, conditions of network interconnection and access, and accounting separation[21] (OECD CLP, 1998*f*) (Italy, 2000). These two sectoral agencies share the basic goal of promoting competition, and that common interest promotes co-operation with the Authority.

3.7. Retail distribution

Local and regional administrations retain powers to curb competition by preventing entry into retailing, even though some limits have been relaxed (OECD CLP, 1998*d*). Retail distribution has been fragmented, in part because of very restrictive regulation. For grocery products, opening a new outlet required a licence from the municipal government, which in turn was based on "commercial plans" setting maximum selling areas for each category. The municipal government could veto new outlets larger than 400 m^2 in smaller towns, although regional governments could override municipal decisions about outlets larger than 1500 m^2. Representatives of competing trade and commercial interests were involved in the process of issuing new licenses (OECD CLP, 1998*d*) (OECD, 1999, p. 120) (OECD, 2000).

Regulations affecting retail shops were simplified in March 1998.[22] The new law reduced the number of shop categories from 14 to just 2, food and non-food. It eliminated constraints on non-food shops over 250 m^2 in larger towns. With the profile constraints of the many categories now repealed, shops can bundle different kinds of goods. Shops may be open for up to 13 hours a day (between 06:00 and 22:00), and up to 12 Sundays a year. But although the procedures are simplified, a license from the municipal government is still needed for new medium size outlets, that is, those between 150 m^2 and 1500 m^2 in smaller towns, or between 250 m^2 and 2500 m^2 in towns and cities with populations over 10 000. For larger outlets, the municipal license requires the consent of the regional government (OECD

CLP, 1998*d*). Regions were to have submitted plans for urban development, including rules for opening large shops, by March 1999; in the meantime, though, no new large stores could be set up (OECD, 1999, p. 120) (OECD, 2000).

As the 1998 decree was under consideration, the Authority pointed out some potential problems, particularly the scope of discretion that was left to the regional governments' exercise of their lawmaking and planning powers. The final version of the decree responded to this concern in part, but as experience now shows, not enough (OECD CLP, 1998*a*). There has been no large-firm entry except in Emilia Romagna. The principal reason is that regions failed to prepare the required plans. Six months after the March 1999 deadline, four regions had not yet adopted all the necessary measures, and most of the others' plans were incomplete.[23] The central government has the power, which it had not yet exercised as of mid-2000, to pre-empt the planning function for a region that does not meet the deadline. The law sets out objectives that the regions can pursue in their planning, which are ambiguous enough to embrace anti-competitive ulterior purposes, such as re-introducing product category limits or quotas. Although the objectives permit more room for competition than the previous law, they do not necessarily requite a more competitive outcome. One region used the opportunity to change the thresholds and make entry more difficult, and no region has adopted a clearly market-oriented plan.

The same law that relaxed constraints on retail distribution added a rule, against "sales below cost", that could impair competition. The law prohibits retail sales at a price below the sum of purchasing costs and indirect taxes, minus discounts and contributions relating to the individual product. These amounts must be verified and proved by documentary evidence. The law calls on the government to adopt even more detailed rules. For violations of those rules, the law refers to the sanctions provided for violations the Competition Act. The law also fosters adoption of self-regulation codes by representative associations of manufacturers and retailers. This process risks inviting price fixing and "gentlemen's agreements" to resist discounting. The Authority issued a critical opinion, pointing out how the proposed law did not take account of contemporary distribution and commercial competition, and explaining that the Competition Act could already deal with real problems of pricing strategies that might lead to exclusion and monopoly. As of October 1998, the rules had not been issued and the industry self-regulatory structures were not in place (OECD CLP, 1998*d*).

3.8. Petroleum distribution

Retail sale of petroleum products has been subject to strict entry limits. In 1998 the concession system for granting service station franchises was replaced with a license system. The change did not lead to significant new entry, because quota and other controls remain. The Authority had recommended using a simple permit system based on objective criteria. One goal of the change was to reduce the number of service stations, evidently out of a belief that many were inefficiently small, but without eliminating jobs. The end of the "transition" phase is set for June 2000 (at the Authority's request, after an initial to extend it from the end of 1999 until June 2001). Firms have been free to set up new self-service stations since October 1999. But competition is still being controlled with respect to important dimensions of marketing. For example gasoline distributors cannot sell unrelated products, and their opening hours are strictly controlled.

3.9. Postal Services

In postal services, the traditional monopoly provider, Poste Italiane, is now a state-owned stock company, operating pursuant to a performance contract with the Ministry of Communications. As the EU Directive has come into force, the scope of services reserved to Poste Italiane was actually increased somewhat for letters, although it was reduced for parcels. Evidently, the EU Directive levels were treated as ceilings, rather than minimums. Competing firms may no longer provide reserved services; previously, they could do so if they paid Poste Italiane its full price when they did. Poste Italiane may compete in providing non-reserved services, although before providing a new service it must obtain a license from the Ministry of Communications. No license is required for other providers of non-reserved services. Poste Italiane has some advantages over competing providers. It monopolises manufacturing and primary distribution of stamps, and it has the exclusive right to place collection boxes in public places.

Poste Italiane is subject to the Competition Act, in principle. For some services, it enjoys the exemption provided for undertakings entrusted by law with the operation of services of general economic interest (Sec. 8), but only to the extent that the application of those the Competition Act would obstruct the performance of the general interest task. The exemption is interpreted narrowly. The scope of the special and exclusive right and of the conduct implementing the right must be strictly in proportion to the identified general economic interest. Conduct that prevented or undermined new entry could be dealt with as an abuse of dominance. In addition, the rules for setting Poste Italiane's prices, under the Postal Code, require its prices to be set according to costs and prohibit discrimination. Thus strategic pricing below cost to deter entry into a market could violate both the Competition Act and the Postal Code.

Poste Italiane has been involved in 4 Competition Act matters. Two mergers were permitted, one of them subject to conditions to preserve competition that amounted to an agreement to hold the acquired firm separate (OECD CLP, 1999*e*). In December 1998, Poste Italiane was found to have abused its dominant position in discriminating against competitors providing hybrid electronic-surface mail services, by charging them a price for delivery that was significantly, and unjustifiably, higher than its costs and higher than the price it charged its own subsidiary company for the same service (OECD CLP, 1999*a*).

One area of concern is the potential distorting effects of Poste Italiane's efforts to enter other businesses. In 1997, the Authority objected to a proposal to authorise Poste Italiane offices to sell travel documents and tickets. The Authority called for non-discriminatory, generally applicable, objective eligibility requirements to apply to Poste Italiane as well as to other firms. But Poste Italiane received its special authorisation, while the constraints that barred other firms from entry remained in place (OECD CLP, 1999*a*). In the financial services sector, Poste Italiane, which already provides some financial services, has sought to expand into others using infrastructure and personnel that provide postal services. The Bank of Italy has not issued a banking license. The main regulatory issue is how to ensure that Poste Italiane competes fairly and does not introduce inefficiencies into either the financial services or the postal services.

3.10. Air transport

Numerous actions by the Authority since 1993 have tried to remove constraints on competition in airline services and in the related aspects of slot access, ground handling, and catering. Despite persistent efforts and some significant fines, only limited progress has been achieved in introducing competition into airport services and concessions. Enforcement action against Alitalia has attacked its dominance of internal traffic, achieved by controlling the bulk of the operating slots at Rome's Fiumicino (70%) and Milan's Linate (50%) airports. The Authority has challenged Alitalia's practice of routinely cancelling flights while keeping the unused slots from its competitors, of using its power to assign slots to disadvantage its competitors' operations, and of sending notices to travel agents to persuade them not to issue the tickets of competing airlines (Italy, 2000). The Authority rejected a code-sharing agreement between Alitalia and Meridiana (OECD, 2000), although the latter decision was reversed in court. (OECD CLP, 1999*b*).

3.11. Harbour and port services

Efforts to make Italian ports more competitive included establishing independent port authorities in 19 ports and privatising and liberalising port services (EIU 1999). Widespread regulatory barriers to competition in harbour services were partially lifted in 1994, when legislation separated regulatory bodies from operating companies and liberalised charges. For cargo handling, privatisation solved the problem of having public and private functions performed by the same entity.

But for other "general interest" services, the law allowed the regulatory authorities to be shareholders in the companies providing services. Because of this dual function, regulatory decisions by port authorities designed to limit competitors' scope of action could be viewed as an abuse of a dominant position. For example, competitors were barred from providing temporary labour and highly labour-intensive services, so the port companies could monopolise the supply of manpower to their competitors. In an October 1997 fact-finding report, the Authority called for the general interest services to be awarded on the basis of a public tender. And the Authority has taken enforcement action against such blatant abuses of dominance as a port operator's refusal to permit ships to put in at quays that a shipper operated on its own behalf (Italy, 2000).

Maritime services such as piloting, towing, berthing and bunkering are subject to a regulated monopoly system. Regulation based on safety and security, while leaving the number of providers to be determined by the market, would permit competition without lowering safety standards. The Authority has argued that shipping and port companies should have the option to perform these services on their own behalf, as long as they comply with those safety standards. Price regulation has been based on the costs of services as calculated by the companies that provide them, and thus the information gap between the regulator and the regulated parties is wide. And the regulatory system, which depends on consultations through professional associations, discriminates against users that are not members (OECD CLP, 1998*a*).

3.12. Roadways

Building and operating superhighways is a concession-based function. In May 1998 the Authority submitted a report to the Chairman of the State Road Agency and the Minister for Public Works on the proposal to extend Autostrade's franchise to build and operate motorways for twenty years and to apply the same policy to other motorway licenses. The Authority recommended awarding franchises, including renewals, through transparent procedures. Where dividing a motorway into several sections would not sacrifice scale economies, the Authority recommended tendering for each section separately and potentially awarding contracts to different companies (OECD CLP, 1999*a*). But the highways concession was renewed for 20 years, without competition or consideration of minimum efficient scale. Revenue maximisation was evidently the principal consideration. The long concession means motorway fees may decline less rapidly than if the government had guaranteed wider rights of access.

3.13. Trucking

The scope for competition in trucking will grow, effective in mid-2001 — three years after EU liberalisation (OECD, 1999, p. 21). Deliveries within Italy have been controlled by a system of licences issued by the truckers' association. Maximum and minimum rates, which differ by about 15-20%, are set by the Ministry of Transport. Adjustments in these regulated limits may hide subsidies. The minimum levels are high by international standards, and prices in fact have been driven below them by *sub rosa* competition, which a 1993 law tried to prevent. The Authority criticised this law, which was replaced by new legislation in 1998 that makes entry criteria more consistent with EU requirements and simplifies issuing licences, assigning them to companies rather than truck owners, to encourage mergers (OECD, 1999, p. 89). The industry has been atomised, with 200 000 firms, each with fewer than two trucks on average.

3.14. Taxicabs

Statutes and regulations preventing competition over taxi fares, with the result of artificially restricting taxi service. The Authority has argued, unsuccessfully, that there is no consumer-protection or competition policy justification for the administrative control of minimum taxi fares, although consumer protection interests could justify limiting maximum charges, making service mandatory, and setting professional standards for taxi drivers (OECD CLP, 1996*a*).

3.15. Professional and other services

As is common in other OECD Member countries, liberal professions in Italy are subject to pervasive public regulation, defining exclusive functions, restricting entry, setting minimum fees, controlling advertising, and regulating forms of business structure. Governments have repeatedly pledged to move toward liberalising profession services, but little has actually been done. The few changes include a recognition of different kinds of accounting specialties and a more neutral process for certifying builders' capacity to participate in public procurement. Firms bear high costs for the services of officials such as notaries and commercial agents. The Authority has tested the limits of this regulation through law enforcement, achieving only partial success. Most effort must be through advocacy, because the conduct that leads to these anti-competitive results is usually authorised or protected by law.

Box 7. **Regulation of professional services**

The professions and services that control entry and limit price, service, and other kinds of competition are legion:

- **Legal services**: notary, lawyer.
- **Accounting services**: *commercialista* (university degree required), *ragioniere* (university degree not required), *consulente del lavoro* (specialised in industrial relations).
- **Technical services**: architect, engineer, *geometra* (university degree not required), geologist, agronomist, *agrotecnici, periti agrari* (both related to agronomy, but university degree not required), chemist, biologist.
- **Health care**: physician, psychologist, pharmacist, veterinarian.
- **Other**: journalist.

The Authority issued a report in October, 1997, setting out findings and policy recommendations about anti-competitive regulations in law, accounting, health care, and engineering and architecture. Concerning the principal anti-competitive features of these regulations, it made the following general recommendations:

Entry and Access:

- Supervised training should be permitted as an equivalent to taking specific courses.
- Quantitative restrictions on entry should be eliminated.
- Professional associations' roles in setting quantitative limits and controlling entry should be reduced.
- Registration of licensed professionals with associations should be required only if they exercise exclusive functions.

Practice:

- Laws calling for minimum fees charges should be repealed.
- Restrictions on advertising should be removed.
- Limitations on business structure (such that professional services can be provided only by individuals or through professional partnerships, and not through corporations), which were in place until August 1997, should be removed.

The Authority recommended thoroughly redesigning the regulation of liberal professions according to the criteria of necessity and proportionality. Regulation should apply only where substantial market failures require it, that is when:

- Consumers cannot evaluate the quality of services;
- Effects of inadequate quality are particularly severe; and
- Provision of the services is related to central values of the society.

In any event, the extent of regulation should not exceed what is strictly required to cure the identified market imperfection. Applying these principles should reduce both the number of professions that enjoy protections and the extent of those protections.

After the Authority's report, the Ministry of Justice set up a commission to propose changes. The commission's members came largely from the professional organisations, and its proposals for reform were modest. The stated objectives of its draft law were sound: to eliminate obstacles to competition among professionals, to eliminate unjustified forms of monopoly rent, and to protect consumers. But the proposed law would have left many anti-competitive features of the existing regulations in place. Entry controls would remain substantially unchanged. Fee schedules would no longer be compulsory, but recommended fees would still serve as a potential focal point for agreement. Advertising would no longer be prohibited completely, but remaining means of control could substantially inhibit competition and entry. And important general principles were omitted. The proposed general rules contained no clear general criteria for identifying the activities that should be publicly regulated, yet they would have permitted the creation of new licensed activities and would even have let existing professional bodies advise about whether new "professions" to compete with them should be included in their coverage. Instead, the Authority recommended market-based measures, including reporting on historic fees and on providers' general service quality, so consumers could make more informed decisions, and replacing the publicly-recognised certifying bodies with private ones, which would not necessarily be exclusive. The opinion on the draft law produced yet another round of revisions to the proposal (as of mid-1999).

Source: OECD CLP, 2000*a*.

4. COMPETITION ADVOCACY FOR REGULATORY REFORM

4.1. Promotion in the policy-making and regulatory processes of competitive, market methods and outcomes has been the Authority's most important task.

Policy analysis and advocacy have been a central task since the Authority was created. At the outset, the Competition Act required the Authority to prepare three major reports to the Prime Minister, about public tenders, commercial distribution, and public utility services. In the last three years, significant advocacy work has been directed to markets characterised by liberalising reforms following the adoption of EU directives for postal services, natural gas, electricity, and telecoms. In addition, some advocacy interventions have addressed general aspects of regulatory reform, such as reports about the use of licences and "concessions" restricting market access, limits on participation in public contract tendering procedures, and the pro-competitive relationship between liberalisation and privatisation.

Advocacy powers are established in the Competition Act. Acting on its own initiative, or on the request of government departments or agencies, the Authority may study and report on issues or problems involving competition and the market. The Authority may identify laws, regulations, or "general administrative provisions" that distort competition or the sound operation of the market and which are not justified by the general interest (Sec. 21.1). If the issue concerns existing or proposed legislation, the Authority may report about it to the Parliament and the Prime Minister; if it is another level of regulation, to the Prime Minister, other relevant ministers, and relevant local authorities (Sec. 21.2). It may recommend measures to prevent or remove the distortions, and it may publish its findings and recommendations (Sec. 21.3). The Prime Minister may request the Authority's opinion about clearly anti-competitive proposed laws or regulations, that is, those whose "direct effect" is to establish quantitative restrictions, exclusive rights, or pricing practices or conditions of sale (Sec. 22). In addition to issuing these reports, the Authority is often consulted by parliamentary committees in formal hearings.

The most successful advocacy efforts have been those that are supported by EU actions or policies, whether in the form of directives, resolutions, enforcement proceedings, or judicial decisions. Concerning issues of purely domestic relevance, the Authority's recommendations have often been ignored (OECD CLP, 1998*f*). Overall, the Parliament or the competent authorities have adopted about one-third of the Authority's recommendations, either by repealing rules or regulations or, more frequently, by amending anti-competitive provisions of draft legislation (OECD CLP, 1998*f*). That success rate is disappointing, but it is consistent with reports of other OECD country agencies that have tried to assess their success rates. And it does not take full account of situations of partial success, where the full recommendation was not adopted but the outcome might have been even more restrictive. Timing is important. The Authority's views have the best chance to be incorporated when they are conveyed at an early stage of the process and when a co-operative relationship can be established with the regulator (Italy, 2000).

About half of the Authority's advocacy actions have dealt with sectors that are subject to larger-scale liberalisation efforts, such as telecoms, energy, transport, and financial services. This is consistent with a strategy of focusing on the issues with the largest overall impact. Some actions have dealt with very small problems, though, such as whether a rule about promotional cigarette lighters affects competition with matches. Unless an opinion must be provided because it is requested by another decision-maker, tackling every issue that comes up can risk diluting the overall message and impairing credibility. It may be better to address the smaller issues in a context that can link them to a pattern and thus to a larger problem.

Table 4. **Advocacy interventions, 1990–1999**

Sector or topic	**Number of actions**
Telecommunications	33
Professional services	28
Energy (electricity and gas)	13
Maritime transport	13
Banking and insurance	11
Public utilities	9
Agriculture, food	7
Air freight	7
Fuel	7
Retail distribution	7
Entertainment	5
Pharmacies	5
Newspaper distribution	4
Antitrust jurisdiction	3
Construction	3
Education	2
Local bus service	2
Manufacturing	2
Privatisation	2
Railways	2
Road freight	2
Broadcast TV	1
Product standards	1
Rail freight	1
Satellites	1
Taxi service	1
Tendering procedures	1
TOTAL	**173**

Source: Italy, 2000.

The Authority's experience demonstrates the close links between enforcement and advocacy. Enforcement action, particularly against abuse of dominance by historic monopolists, has often supported policy advice about liberalisation and restructuring. On the other hand, enforcement sometimes prompts a legislative response to overturn it, and then the Authority must explain its action and show the harm that the proposed response could lead to. Authority opinions about driving schools, agricultural quotas, and resale price maintenance, and perhaps others, aimed at legislation designed to overturn the Authority's decisions.

Box 8. **Examples of the authority's advocacy**

Network infrastructure reform: telecommunications. The Authority has made taken more advocacy actions in this sector, supporting and promoting liberalisation, than in any other. Subjects covered in the last few years include rules for tendering for digital mobile telephony licenses, leased line terms and tariffs, reference interconnection charges, and, in preparing the regulation to implement the EU directive, rules governing licences and permits, mobile telephony services, frequency allocation, interconnection, telephone numbering, and universal service.

Private regulation: agriculture and food processing. Proposals to establish regulated monopolies to certify the origin of agricultural and food products with protected names have drawn criticism (OECD CLP, 1998*a*). These proposals apparently respond to actions by the Authority concerning such groups as the consortia that certified the authenticity of San Daniele and Parma hams and Parmigiano Reggiano and Grana Padano cheeses (OECD CLP, 1997*a*). Commenting on a draft decree that would have exempted a wide range of agreements and empowered the Minister for Agriculture to extend trade association agreements to unrelated firms, the Authority pointed out that it was inconsistent with EU principles and rules governing competition in agriculture, despite the preamble's claim to the contrary (OECD CLP, 1999*a*).

Special interest legislation: book retailing. The Authority objected to a bill to impose resale price maintenance on retail book sales, because it would prevent price competition among retailers and it would reduce competition among publishers by discouraging targeted promotional campaigns. To promote the bills' declared objective of protecting traditional channels of distribution, the Authority recommended promotional measures that would safeguard a wide range of distribution channels and thus respect the principles of competition (OECD CLP, 1999*a*). The Authority had rejected the industry's application for an exemption, after its investigation showed that the entry of different kinds of retailers had actually increased overall book sales and that the profitability of smaller booksellers in general had not been impaired (OECD CLP, 1997*b*).

Structural reform policy: public franchises. In October 1998 the Authority submitted a report recommending generally applicable policies and procedures for public franchises. The report pointed out cases in which public franchises should be replaced by other measures, because they were no longer justified in the light of EU and national law. In deregulated sectors, franchises were no longer justified, as they clashed with the principle of freedom of economic enterprise guaranteed by EU law and Article 41 of the Italian Constitution. Guaranteeing universal service or public controls for social purposes could be achieved by regulating how services are provided, products are specified, and tariffs are set. In some areas, franchises might be replaced with contractual instruments such as supply and service tenders. Limiting the number of authorisations could only be justified for services requiring the use of scarce resources, and should respect of the principles of proportionality, objectivity, non-discrimination, and transparency (OECD CLP, 1999*a*).

Entry control: pharmacies. A June 1998 report examined pharmacies' exclusive right to sell drugs, the means of determining and thus limiting the number of pharmacies, and restrictions on advertising and opening hours. The number of pharmacies that can be licensed in each municipality is based on demographic and geographic criteria and the minimum distance between outlets. The Authority argued that guaranteeing a minimum level of service throughout the country could be attained more effectively by identifying indicators of service adequacy and by providing for municipal pharmacies only where it was found that not enough privately owned pharmacies had entered the market to provide an adequate service (OECD CLP, 1999*a*).

Price control: interest rates. A 1996 law to control usury prohibits lenders from charging more than 150% of average interest rates. The Treasury surveys the industry and publishes every quarter the average interest rates charged for categories of loans. In its 1997 Annual Report, the Authority argued that this price control may lead to rationing of bank credit and encourage riskier borrowers to look for illegal credit sources. It argued that competition over rates offered would protect borrowers more effectively (OECD CLP, 1998*b*). Similarly, the Bank of Italy has pointed out that an effect of setting a strict "usury" level could be to ration credit to smaller borrowers.

As more powers devolve to regional and local governments, the task of monitoring and correcting competition problems in regulation becomes much more complex. The number of sources of regulation multiplies. Processes are often more difficult to follow, because they are not as well publicised as actions of the central government and regulatory agencies. But the task is simplified to some extent by the fact that different regions tend to confront the same kinds of problems and to adopt similar approaches to them. Once a problem is well understood, the same basic analysis and advice is likely to be appropriate in many settings. And as different regions take different approaches to these common problems, the more successful strategies may become benchmarks for others. The challenge is to determine when and how to participate most effectively in local government deliberations and decisions. The Authority has been working with the Ministry of Interior to disseminate its policy analysis and recommendations effectively and efficiently to local governments.

5. CONCLUSIONS AND POLICY OPTIONS

Italy's competition policy and institutions have been employed effectively in the process of reforming economic regulations, to move Italy toward a higher potential growth rate. Reform is proceeding slowly, but this reflects the difficulty of the task, not a lack of well-directed effort.

5.1. Current strengths and weaknesses

Italy has laid a solid legal and institutional foundation for incorporating competition policy into its regulatory system. As Italy's governing institutions have been re-examined throughout the 1990s, so has its approach to economic regulation. Traditional habits of intervention and control are giving way to the larger-scale expression of another traditional value, enterprise. Pro-competitive reform is now at the centre of debate, and major liberalisation projects are underway, generally following EU leads.

The Competition Act's wide coverage, with virtually no explicit exemptions, announces that competition is a horizontal principle. Its embrace of the already established jurisprudence of the EU has given competition policy a strong pedigree and useful leverage.

The vigorous performance of the institution that applies the competition law has surprised many observers. The Authority's independence has been critical to convincing market actors that basic policy priorities had really changed. Especially in view of the long history of extensive state involvement in the economy, enforcement by a part of the government could seem like just a different tool of state control, exercised to protect state commercial interests. Practical insurance of independence is at least as important as the textual commitment to it. Fixed, non-renewable terms put the Authority's members beyond some levers of influence, such as the threat of dismissal or the promise of reappointment. Equally important is adequate resources, which are assured by statute and under the Authority's own control. The Authority does not retain the fines it imposes, but the budget officials no doubt have done the sums and found that competition enforcement is a profit centre. Novelty, of the policy and the institution, attracted talented, imaginative young staff, free of the bureaucracy's traditions, paid well enough to attract and retain them. The transparency and speed of the Authority's procedures too have demonstrated a commitment to business "not as usual". And the Authority has been fortunate in its leadership.

The economic emphasis of competition policy supports and complements larger-scale structural reform. There are no signs of inflexible formalism that might, under other priorities and enforcement approaches, have undermined one of Italy's competitive strengths, the networks of complementary competitors in "industrial districts." The liberalisation projects that were getting underway as the Authority was being established were an opportunity to link this new national institution to other reform projects. Making the traditional state monopolies early targets of enforcement combined with advocacy demonstrated the relevance and potential benefits of an economics-based approach, and probably also helped the new institution gain visibility.

The strength of commitment to competition policies in the various parts of the regulatory state varies. In principle, a reasonable structure of consultation is in place among the Authority and the sectoral agencies that share some responsibilities with it. In practice, it remains possible for the Authority and another regulator to deal with the same conduct, applying rules drawn from different sources. A common conceptual problem, of who regulates access to a monopoly facility when access is controlled by price, remains in jurisdictional limbo. Pricing above cost for an essential facility can be an abuse of dominance, just as pricing below cost to exclude competition can be predatory, but these are difficult judgements to make, for a regulator and for an antitrust enforcer, because it is difficult to determine economic costs. Information is not maintained on the same basis at different agencies, and it cannot always be exchanged with others, because of differences in the legal constraints and protections that apply to the ways information is obtained.

The quality of understanding of competition policy goals, and of working relationships with the Authority, varies among these other regulatory agencies, which differ in structure, responsibility, and mission. The electric and gas regulator, a comparatively small and independent agency, shares the goal of promoting competition. The structure and status of the telecoms agency are more complex, but it too shares the basic goal of promoting competition. The Bank of Italy applies the same Competition Act as the Authority does, and thus is charged with promoting similar policies. But the same may not be true of ISVAP, which does not share the explicit goal of promoting competition and which has disagreed more often with the Authority's initiatives.

Traditional habits of intervention and control have not disappeared from the public administration. Proposals to control prices directly, as in insurance and petroleum products, still appear. Laws set market share ceilings in cinemas, broadcasting, and electric power. Many constraints on entry and operation in particular sectors continue to dampen competition and protect incumbents from challenge, principally in services and distribution. A tradition of co-operation through trade associations promotes a value of preserving marginal firms. These problems, and the related problem of concealed anti-competitive agreements to fix prices and divide markets, will be more difficult to resolve than were the big monopolies. They are smaller in scale, at least when taken one at a time. And they may protect interests that support local governments, which are responsible for many of the regulatory constraints.

Lack of flexibility in the sanctions that the Authority can apply has made enforcement of competition policy against such horizontal restraints more difficult. Cases against associations may have had little practical effect, because it is not possible to levy a significant fine against the association. The Bank of Italy indicates that it is developing a new strategy for associations. There have been few actions to date against concealed horizontal agreements, which are difficult to investigate without a means of persuading members to reveal their co-conspirators.

An important area where the "competition culture" has developed slowly may be the court system. The courts are slow, and in the past they have appeared sceptical of the Authority's decisions. One response to the delay in reaching final decisions has been to put too much weight on the threshold decision whether to suspend the Authority's order and fine during the court's review. Such a decision is typically made based on only a summary proceeding, yet in many cases it is outcome-determinative, and a full, reasoned ruling is never issued. And courts have often second-guessed the Authority's judgements about the weight of evidence and economic inferences from it. With increasing experience, the role of the courts must be focused on technical compliance with process. Two court decisions in early 2000 are promising. The Lazio regional administrative appeals court affirmed a decision of the Authority, instructing that the standard for review should be the "evident unreasonableness" of the decision, and that judges cannot substitute their own evaluations for those of the Authority. A month later, the Council of State issued a similar instruction, in reversing a decision that had rejected the Authority's definition of a relevant market.

The Council of State held that the Authority's decision must be upheld if it is logical and reasonable, if it correctly states its reasons, and if it is based on fair procedure. The Council of State instructed the court of first instance that it should not itself get involved in the market definition exercise by taking it upon itself to judge the reasonableness of substitution possibilities; that is a matter for the Authority's expert judgement.

5.2. Capacities for and impediments to change

A sign that competition-based policies are becoming the norm, not the exception, is that the Authority's comments on legislative proposals now deal increasingly with implementation, to ensure that professed pro-competitive intentions are not undermined by inconsistent details. Details are a major challenge, of course, both in new proposals and in existing laws and rules. Projects to improve the quality of proposed legislation, and to correct problems in the existing stock, are getting underway across the government. Until recently, the Authority was not formally included in those projects, although it has been active in commenting on proposals and problems *ad hoc*. Following OECD recommendations, a Prime Minister's decree of July 2000 placed a representative of the Authority in the Observatory (*Osservatorio sulle semplificazioni)*, a permanent consultative body established in 1999 as the main national vehicle for public consultation on simplification and regulatory review (see background report to Chapter 2). This should strengthen attention to competition impacts of regulations. As these projects mature and expand, it will be important to include competition policy as a major substantive criterion, and to do so by including the Authority directly in the process of improving regulatory quality.

Regionalisation is a challenge to the promotion of competition policy. The culture of competition is not as well established in local governments. Many advocacy reports are aimed at regional issues, but keeping track of particular situations in regions, in order to make a timely participation in the local debate, is a practical problem. One potential resource in this effort could be the special committees that some regions have set up to deal with legislative quality.

The role and strength of competition policy may be challenged, as the conditions of its early success change over time, and the focus shifts from historic utility monopolies to cartels. As novelty wears off, and as the other changes in the governing structures stabilise, the Authority's independence may come under pressure. It may need to be careful not to bring this pressure upon itself. Where regulations appear to permit anti-competitive conditions, and advocacy has not succeeded in changing them, the Authority may be tempted to resort to enforcement against the firms that benefit, despite ambiguities in the legal status of their conduct. Firms may complain to the legislature, with some justification, that this is unfair. And yet where traditional forms of control have been eliminated, such as direct price controls, the Authority may come under pressure from the other direction, to use antitrust law to achieve inconsistent purposes. Maintaining the Authority's ability to influence the policy process, and to resist anti-competitive special-interest legislation overturning its decisions, creating exceptions, or contradicting competition policy generally, will be a continuing problem.

5.3. Policy options for consideration

The following steps should be considered to make competition policy more effective, by eliminating gaps in coverage, strengthening capacities to promote reform and enforce the law, and complete the projects of introducing competition into historical monopoly sectors.

Eliminate all unnecessary regulatory constraints on competition about price, entry, and quality, which cannot be justified as the best way to serve public interests. Concessions, licenses, and other rules impair competition in many sectors. Examples appear in the treatment of local services, retail distribution, and local transport. Many are imposed by local and regional governments. Although the scope of the problem has not been measured completely, it is clearly substantial. The aggregation of such constraints, which primarily impact non-traded services, may be a cause of Italy's persistent inflation differential. The Authority is producing a report on all of the services subject to regulatory constraints on entry, pricing, product and service quality at the local and the national levels. This should focus the reform effort, by demonstrating the need for principled action to correct the general problem. And action based on a general principle could be more effective than an effort to deal with them one by one, for the latter strategy might stimulate strong resistance from the producer interest, without enlisting countervailing support from consumer interests.

Provide effective competition in, and for, local public services markets: Ensure that the framework law does not undermine national reform goals by preserving unnecessary market power at the local level.

Avoid anti-competitive direct government interventions in sectoral problems: The temptation to control prices and market shares by legislation in situations that are not regulated monopolies should be resisted. Price controls may appear to solve an immediate problem, but they are inevitably less flexible and discriminating than application of general competition policy principles. And they may just reinforce an industry's instincts for co-operation and common behaviour. Rules that limit market shares, perhaps in an effort to rein in monopoly, also prevent competition by segmenting the market. Legislation may be based on misconceived "markets" and thus distort or prevent competition that would otherwise occur. Both kinds of controls are typically rationalised as transition measures, but they also typically last too long.

Include competition policy in the processes of ensuring legislative quality: Several new projects offer important opportunities to improve how competition policy is incorporated into the regulatory system. As regulatory impact analysis becomes the established practice in preparing new rules, competition impacts should be made an explicit criterion in the process, and the Authority should participate in it, routinely. This would identify problems at an early stage, making it easier to correct them. And in the review and compilation of existing laws and regulations, competition policy should also be a criterion, and the Authority should be involved. By legislative decree, a representative of the Authority is now involved directly in the *Observatorio* on simplification of rules and procedures. And the new guide about regulatory impact analysis, issued in December 2000 by the regulatory simplification unit of the Ministry of Public Administration, supports a market-competition criterion for assessing new regulations.

Increase enforcement attention to clandestine collusion: Attention to the major infrastructure sectors must continue, where necessary. That process is well established. The problem of anti-competitive collusion now calls for more attention. The Authority has been concerned that its obligation to respond to all complaints limits its ability to set enforcement priorities. But even if the workload follows the mailbag, complaints about horizontal problems are likely to increase, as the Authority increases its attention to this area and publicises its interest.

Improve sanctions, to make enforcement more effective: Effective action against horizontal collusion will require strengthening the Authority's hand. It may need the flexibility to offer complete amnesty, that is, a fine of 0, in order to stimulate confessions from members of cartels. Because many agreements are reached through associations, it may need the power to levy substantial fines on associations, or to fine the members directly where their associations have violated the law, in order to achieve effective deterrence. In February 2001, the Parliament approved a bill that would permit both smaller and larger fines. That is, it would permit a fine of 0, to support a leniency programme, and it would also permit computing fines based on total enterprise turnover, rather than just the turnover in the line of business subject to the violation. In addition, giving the Authority power to order interim relief may make enforcement more efficient. Proceedings at the Authority are reasonably fast, compared to those in some other jurisdictions. But in some cases, competitive harm is immediate and a remedy six months later is entirely inadequate. Interim relief can be ordered by a court, but that process entails another decision-maker with its own problems of delay. These changes would require amending the statute. There is some risk that opening up the subject for debate could lead to other changes, such as the incorporation into the competition law of potentially inconsistent doctrines. But it may be worth running that risk. One such doctrine, for example, is the rule against abuse of economic dependence, which the Authority has historically resisted. There are two reasons why it might be appropriate for the Authority to take on this responsibility. The Authority would be in a good position to prevent its misuse for anti-competitive purposes. And, because small businesses typically support this rule, giving the Authority this explicit role in their defence could soften the blow of increased enforcement against collusion, which often involves smaller businesses.

More powers may also be appropriate for dealing with deceptive advertising. The sanctions available now may be inadequate to undo the harm that a deceptive advertising campaign has done to the competitive process. The Authority has the power to order the violator to publicise the fact that the previous advertisements have been found to be deceptive. That publicity, coming long after the original advertising campaign, may have much less impact than the original advertisements did. The Authority should have the power to ensure that corrective advertising accomplishes that goal, of correcting the mistaken impressions that the deceptive advertisements had conveyed. And consideration might be given to treating violations the same way as violations of the Competition Act, in that fines could be imposed for original violations, not just for violations of the Authority's orders.

Make merger review deadlines consistent with other jurisdictions: Conforming the Authority's deadlines in merger review to those used by the EU will simplify processes by eliminating a potential source of confusion. It will also give the Authority more time for complete investigation in the small handful of matters that require it.

Raise the statutory caps on the Authority's staff levels: The Authority confronts some resource limitations, principally in its inability to hire as many staff as it needs. Because of statutory ceilings on positions, it cannot hire more people, even though it has enough funds to pay them. The Authority's staff is smaller than that of some sectoral regulators. Particularly as the Authority's attention is focused increasingly on the resource-intensive task of uncovering cartels, and its responsibilities are enlarged to include important roles in the process of ensuring regulatory quality, it should be freed of constraints that prevent it from applying its budget resources to support the personnel it needs.

5.4. Managing regulatory reform

As institutions mature, and as attention shifts from the national level and problems caused by a tradition of monopoly to the local level and problems caused by a tradition of co-operation, competition policy faces the challenge of sustainability. Developing competition policy at the national level has relied on the example, and the leverage, of EU institutions and models. Developing a competition culture at local government levels may be loosely analogous process. It will require sustained and consistent national policy direction. And it will require a long process of demonstration and persuasion as well, to convince local leaders and businesses as well as consumers of the benefits of a competitive approach. This may be particularly important if the costs appear first.

NOTES

1. Law 287/90, Competition and Fair Trading Act. All citations are to this Act unless otherwise noted.
2. The Italian law prohibits agreements (*intese*) "che abbiano per oggetto o per effetto di impedire, restringere o falsare in maniera consistente il gioco della concorrenza" (Sec. 2.2); the Italian version of the parallel provision of the Treaty, which uses the term *accordi* rather than *intese*, does not include the phrase "in maniera consistente".
3. Financial Times, 15 October 1999, p. 14.
4. Law No. 192, 18 June 1998, Art. 9.
5. Civil Code, Art. 2 598; see Legislative Decree 74/92, Sec. 7.13.
6. Legislative Decree 74/92.
7. Legislative Decree 67/2000.
8. http://www.agcm.it
9. Procedural regulations for antitrust investigations are set out by Presidential Decree No. 217 of 30 April 1998; for misleading advertising investigations, by Presidential Decree No. 627 of 10 October 1996 (Italy 2000).
10. Penal Code, sections 353-354.
11. Law No. 526/1999.
12. Procedures for privatising local public services and enterprises are provided by two previous statutes, no.. 474/1994 and No. 127/1997.
13. The section of the law that provides for this separate application (Sec. 20) appears to set out a general framework for sector-specific application, but the only sector it covers now is banking.
14. Ministerial Decree, 22 June 1993.
15. Legislative Decree No. 174/95.
16. Financial Times, 1 August 2000, p. 2.
17. Law No. 249/1997 (Sec. 20.1 [repealed])
18. Law 78/99.
19. Law 249/97, sec. 1.6.*c*).11.
20. Law 481/95, sec. 2.33.
21. Presidential Decree No. 318/97, sec. 1. *am*; sec. 4.9; sec. 4.17; sec. 9.2.
22. Legislative Decree No. 114. The basis for the changes was the first *Bassanini* law, framework law 57/97.
23. *Il Sole 24 Ore,* 28 October 1999, p. 17.

BIBLIOGRAPHY

Clark, Martin (1996), Modern Italy 1871-1995, New York.

Fayette, Jacques (1999), "Italie: Vraies-fausses idées sur l'économie Italienne," *Économies étrangères*, no. 2 600, p. 19, 20 Jan.

Franzosi, Mario and Marie-Hélène Polo (1999), "Italian Antitrust Law: A Survey of Twenty-eight Cases," E.C.L.R., p. 299.

Government of Italy (1999), Ministry of Treasury, *Italy's Report on Economic Reform*, December.

Government of Italy (2000), communication with OECD Secretariat.

Italian Competition Authority (1999), *Antitrust at Your Fingertips*, supplement no. 2 to Bulletin, no. 15/1999, Rome.

Kostoris, Fiorella P. S. (1996), "Excesses and limits of the public sector in the Italian economy: the ongoing reform", in *The New Italian Republic: From the Fall of the Berlin Wall to Berlusconi*, S. Gundle and S. Parker, eds., pp. 272-293, New York.

Nicoletti, Giuseppe, Stefano Scarpetta and Olivier Boylaud (1999), *Summary Indicators of Product Market Regulation with an Extension to Employment Protection Legislation*, OECD Economics Department Working Papers No. 226, Paris, December.

OECD (1999), *Economic Survey, Italy* 1998-1999, Paris.

OECD (2000), *Economic Survey, Italy* 2000, Paris.

OECD Committee on Competition Law and Policy (1996*a*), *Annual Report on Competition Policy Developments in Italy*, 1995, Paris, October.

OECD Committee on Competition Law and Policy (1996*b*), *Seminaire sur la mise en oeuvre judiciaire du droit de la concurrence*; OECD, Paris.

OECD Committee on Competition Law and Policy (1997*a*), *Annual Report on Competition Policy Developments in Italy 1996*, Paris, October.

OECD Committee on Competition Law and Policy (1997*b*), *Resale Price Maintenance*, Paris, February.

OECD Committee on Competition Law and Policy (1998*a*), *Annual Report on Competition Policy Developments in Italy 1997*, Paris, October.

OECD Committee on Competition Law and Policy (1998*b*), Working Party No. 2, *Enhancing the Role of Competition in the Regulation of Banks*, Note by Italy, Paris, February.

OECD Committee on Competition Law and Policy (1998*c*), Working Party No. 2, *Competition And Regulation In Broadcasting In The Light Of Convergence*, Note by Italy, Paris, October.

OECD Committee on Competition Law and Policy (1998*d*), *Round Table on Buyer Power*, Note by Italy, Paris, October.

OECD Committee on Competition Law and Policy (1998*e*), Working Party No. 2, *Competition and Related Regulation Issues in the Insurance Industry*, Note by Italy, Paris, May.

OECD Committee on Competition Law and Policy (1998*f*), *Mini-Roundtable On Relationship Between Regulatory And Competition Authorities*, Note by Italy, Paris, May.

OECD Committee on Competition Law and Policy (1999*a*), *Annual Report on Competition Policy Developments in Italy 1998*, Paris, October.

OECD Committee on Competition Law and Policy (1999*b*), *Round Table on Airline Mergers and Alliances*, Note by Italy, Paris, October.

OECD Committee on Competition Law and Policy (1999*c*), Working Party No. 2 on Competition and Regulation, *Competition In Local Services: Solid Waste Management*, Note by Italy, Paris, October.

OECD Committee on Competition Law and Policy (1999*d*), *Mini-Round Table on Oligopoly*, Note by Italy, Paris, April.

OECD Committee on Competition Law and Policy (1999*e*), Working Party No. 2 on Competition and Regulation, *Promoting Competition in Postal Services*, Note by Italy, Paris, February.

OECD Committee on Competition Law and Policy (1999*f*), *Annual report on Competition Policy Developments in the European Commission*, Paris, October.

OECD Committee on Competition Law and Policy (2000*a*), *Round Table on Competition in Professional Services,* Paris, February.

Marina Tavassi (1996), *Le rôle de la science économique et des économistes dans les affaires de concurrence: Les critères de preuve dans les affaires de concurrence,* Paris, October.