

# Cartels

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## Overview of the law and enforcement regime relating to cartels

### Provisions of law

According to Article 3 of the Treaty on the Functioning of European Union (“**TFEU**”), the establishment of the competition rules necessary for the functioning of the European single market falls within the EU’s “*exclusive competence*”. As a consequence, in Italy – as in all EU Member States – competition is subject to regulation at both EU and national level. In this connection, it should be noted that, although either EU or national competition rules may apply to cartels, depending on whether the cartel case concerned may affect trade between Member States or not, the substantive rules of Italian competition law are entirely modelled around EU competition law enshrined in the TFEU, also because of the principle of supremacy of EU law over national laws, which in Italy has constitutional legitimacy.

At EU level, the main regulatory framework concerning cartels and the relevant enforcement regime is set by Article 101 TFEU and Article 1 (1)(2) of the Council Regulation (EC) No. 1/2003, on the implementation of the rules on competition laid down in Articles 101 and 102 of the TFEU (jointly, the “**EU Regulation**”).

These rules, other than shaping the very essence of the equivalent provisions at a national level, are also the main reference in cartel proceedings related to conduct that affects trade between EU Member States.

On the other hand, when a cartel raises concerns only within the territory of Italy, the applicable legal framework is provided by Law No. 287 of 10 October 1990 (the “**Competition Act**”), setting forth the main substantive and procedural rules on competition in Italy. The Competition Act has been amended several times since its inception. The most recent reform was enacted by way of Law No. 118 of 5 August 2022, which amended several articles of the Competition Act, catering for the implementation in Italy of Directive (EU) 2019/1 (the so-called “**ECN+ Directive**”), which harmonises public enforcement regimes of EU competition law in the Member States.

At a national level, the cornerstone of cartel discipline is Article 2 of the Competition Act (“**Article 2**”), which:

- (i) introduces a concept of “cartel” as a general category, referring to *agreements and/or concerted practices between undertakings as well as deliberations, even if adopted pursuant to statutory or regulatory provisions, of consortia, associations of undertakings and other similar bodies* (paragraph 1 of Article 2);

- (ii) prohibits cartels between undertakings, having as their object or effect the prevention, restriction or significant distortion of competition within the national market or in a substantial part of it, also through activities consisting in (paragraph 2 of Article 2):
  - (a) directly or indirectly fixing purchase or selling prices or other contractual conditions;
  - (b) preventing or restricting production, market outlets or access, investment, technical development or progress;
  - (c) partitioning of markets or supply sources;
  - (d) applying objectively different conditions to equivalent services in business dealings with other contractors, so as to place them at an unjustified competitive disadvantage; or
  - (e) concluding contracts subject to the acceptance by the other contracting parties of additional services which, by their nature or according to commercial customs, have no relation to the subject matter of the contracts themselves; and
- (iii) clearly states that all prohibited cartels are null and void (paragraph 3 of Article 2).

Article 2 mainly reflects the content of Article 101 TFEU, but certain differences may be outlined as follows.

Firstly, Italian law has an approach in defining the nature of the “*decisions of associations of undertakings*”, which is both more articulated and, apparently, more limited than that of Article 101 TFEU, as it literally refers to deliberations (and not “decisions”) of consortia, associations of undertakings and other similar bodies, also adopted according to statutory or regulatory provisions. At national level, it has been specified that the concept of cartel includes not only the resolutions of trade associations, but also those adopted by consortia and similar bodies. This more specific approach has entailed a significant number of defences, over time, mainly based on the fact that a specific form of association (or a “*similar body*”) did not fall within the definition of Article 2, forcing the authority (and subsequent case-law) to duly motivate why the resolutions by certain bodies (such as, for example, associations of associations<sup>1</sup> or professional orders<sup>2</sup>) should be subject to the prohibition under Article 2.

Secondly, differently from the provision of Article 101 TFEU, Article 2 expressly limits the prohibition therein set out to those cartels that result in a restriction of competition that qualifies as “appreciable”. However, such a difference is merely nominal, because the EU case-law has since the 1970s clarified that the effect on trade between Member States, in order for a cartel to fall foul of the prohibition of Article 101 TFEU, must be appreciable.<sup>3</sup> The Italian Competition Act has therefore confined itself to let such a jurisprudential requirement surface in the express wording of the law. Based on the appreciable effect test, in principle minimal alterations to market conditions are tolerated, both for costs-saving in administrative procedures, and in accordance with the principle whereby the market is able, through its rebalancing mechanisms, to absorb deviations that are not such as to undermine its operating parameters.

Thirdly, Article 2 naturally limits the scope of its own application *ratio loci* to any cartel resulting in a restriction of competition within the Italian national market (according to the doctrine of effects) or in a significant part of it. The concept of “significant part” of the national market should not be understood in a quantitative or proportional sense, as it is only functional to identify a minimum level of impact of the cartel on the freedom of choice of consumers or, more generally, end customers. In other words, the notion of relevance of a part of the national market does not relate to its impact on the overall national economy, but rather to its significance for the end customers and the possibility for the latter to obtain goods or services provided in alternative geographical areas.<sup>4</sup>

Despite these minor deviations, also in light of the provision set forth in Article 1(4) of the Competition Act, which expressly requires that the rules on competition shall be interpreted in accordance with the principles of the EU’s system of competition law, Article 2 is constantly interpreted in full line with the principles of the EU legal system (including, of course, Article 101 TFEU).

In this regard, it should be noted that, since 2004, the Italian Competition Authority (“**AGCM**”, as defined below) has developed the tendency to apply Article 101 of TFEU, rather than Article 2. This practice was initially explained by reference to the necessity to overcome certain gaps that the national system showed in the first half of the 2010s, and then became permanent also in light of Article 3 of the EU Regulation, which requires national competition authorities to apply also Article 101 TFEU in all cases of cartels with a potential impact on trade between Member States.

In light of this trend – and the fact that Article 101 TFEU and Article 2 shall be subject to equivalent interpretation – it is safe to conclude that the differences between the provisions have lost their dimension. As a consequence, the trend has since 2004 intensified: between 2016 and 2025, the AGCM adopted more than 30 decisions finding anticompetitive agreements. Only a small minority of those decisions relied solely on Article 2, while the large majority were based on Article 101 TFEU, either alone or in conjunction with the national provision.

### Competent Authority and nature of the proceedings

Pursuant to Articles 10 *et seq.* of the Competition Act, the “*Autorità Garante della Concorrenza e del Mercato*”, an administrative independent Authority established by the Competition Act, is in charge of the public enforcement of the cartel prohibition and responsible for carrying out the investigation, prosecution, decision-making and imposing sanctions.

Though the AGCM is one single authority, it has separate bodies in order to grant neutrality: (i) an Office, in charge of all investigations (the “**Office**”); and (ii) the Board, its collegial body composed of three members in charge of the decision-making process (the “**Board**”).

The AGCM operates in the context of a proceedings of administrative nature, the main steps of which may be summarised as follows:

- upon notice of a potential infringement of the cartel prohibition (which may be the result of an own independent investigation, or of a third-party complaint), the AGCM’s Office submits a proposal to the Board, which shall decide whether to start an official investigation;
- when the AGCM decides to start an official cartel investigation, it shall issue the notice of opening of the investigation, outlining the main factual and legal elements of the alleged infringement and the time-limit within which the proceedings must be concluded. Such document is served on the parties involved in the cartel and to third parties that may have an interest in the proceedings, to inform them of the opening of the proceedings. Usually, the service of the notice of investigation occurs on occasion of surprise inspections (dawn-raids) carried out at the premises of the entities under investigation;
- on such occasion, the AGCM may adopt interim measures, but only to the extent the alleged violation is so material that it may result in a “serious and irreparable” damage to competition;
- during the course of the investigation – carried out, as said, by an Office of the AGCM (separate from the Board, in charge of the final decision) – the involved parties may: (i) submit written statements and documents; (ii) access the documentation of the proceedings; and (iii) request to be heard by the Office;
- during antitrust investigations, the AGCM may also explore settlement discussions under Article 14-*quater* of the Competition Act (see section below);
- by the end of the investigation, the Office drafts the document summarising the results of the investigation and makes a proposal as how the case should be decided. The Board, having verified that the proposals formulated by the Office are not manifestly unfounded, authorises the sending of the summary to the interested parties;
- the interested parties, in response, may file written defences and/or request to be heard; and
- the final decision is then adopted by the Board.

If an infringement of the cartel prohibition is found, in its decision the Board of the AGCM may:

- (a) set a term to cease any infringing conduct;
- (b) require the adoption of any behaviour or structural remedy that is proportionate to the infringement and necessary to effectively bring the infringement to an end;
- (c) considering the seriousness and duration of the infringement, provide for the application of a pecuniary administrative sanction of up to 10% of the turnover achieved in the previous financial year (closed prior to the notification of the warning), setting a term for the payment; and
- (d) if the infringement is committed by an association of undertakings and relates to the activities of its members, impose an administrative fine of up to 10% of the sum of the total worldwide turnovers of each member operating on the market(s) affected by the infringement committed by the association in the previous business year. However, the financial liability of each undertaking for the payment of the penalty shall not exceed 10% of its turnover of the previous financial year.

Italian law does not provide for criminal sanctions as a direct consequence of infringement of the cartel prohibition. This does not exclude that the same conduct may qualify as both a violation of the cartel prohibition and as a criminal offence on its own right (this is the case, for example, when the cartel alters a public tender procedure, which may qualify for criminal prosecution as “bid rigging”).

Alongside the public enforcement of competition law, in Italy private lawsuits can be brought in connection with infringement of Article 2 or Article 101 TFEU. Specifically, Legislative Decree No. 3 of 19 January 2017, implementing Directive No. 2014/104/EU on actions for antitrust damages claims, allows any natural or legal person who has suffered harm caused by an infringement of competition law the right to claim for full compensation. On private enforcement, please see below.

## Overview of the investigative powers in Italy

### Powers

The investigative powers granted to the AGCM for the enforcement of cartel regulations in Italy are set out in Articles 12 and 14 of the Competition Act. Those powers are further procedurally detailed in the Procedural Regulation adopted by way of Decree No. 217/1998 of the President of the Republic, as subsequently amended.

If information is needed in a preliminary fact-finding phase (i.e., before a formal cartel investigation is opened) to establish whether a formal proceeding can be brought, the AGCM has the power to address a request to the involved entities. Pursuant to Article 14 (2-*bis*) of the Competition Act, the AGCM may require undertakings and entities in possession of relevant material to provide information and submit documents useful for the application of Article 2 and Articles 101 TFEU. The AGCM must grant a reasonable period for reply, taking into account the complexity of the information requested, which may not exceed 60 days, subject to extension upon reasoned request. Failure or delay in providing requested information in the preliminary fact-finding phase is subject to a sanction equal to 1% of the worldwide turnover of the previous financial year.

Once a formal cartel investigation is opened, the AGCM may request undertakings, associations of undertakings or natural and legal persons that may have it to provide information and to exhibit documents useful for the purposes of the investigation, within a reasonable period of time indicated in the request.

Requests for information shall always be proportionate and shall not compel the addressees to make any self-incriminating statement over an infringement of Articles 101 TFEU or Article 2. The obligation to provide all necessary information shall include only the information accessible to the addressees of the request.

The AGCM also may at any time during the investigation: (i) call any representative of an undertaking or association of undertakings, a representative of other legal persons and any natural person to hearings, if those persons are deemed to be in possession of information relevant to the investigation; and (ii) arrange for a consultation by an expert or request economic and statistical analyses.

In addition, the AGCM may, at any time during the investigation, carry out inspections at the premises of the involved undertakings, with the following powers:

- (a) access to all premises, land and means of transportation of the undertakings;<sup>5</sup>
- (b) inspect accounting records and any other documents related to the business, in any form of medium, and access all information accessible to the entity being inspected;
- (c) make or acquire, in any form, copies of or extracts from such accounting books or documents;
- (d) affix seals to all business premises, accounting books and records for the duration of the inspection and to the extent necessary to carry out the inspection; and
- (e) ask any representative or staff member of the undertaking for explanations of facts or documents relating to the subject matter and purpose of the inspection and to record the answers thereto.

For the on-premises investigations, the AGCM may avail itself of the support of the Tax Police (*Guardia di Finanza*).

### **Limits to the investigative powers of the AGCM: legal privilege over certain documents**

Legal privilege can be invoked for written communications between an undertaking and its external lawyers where: (i) the exchange with the external lawyer is connected with the undertaking's right of defence; and (ii) the exchange is with an external and independent lawyer, i.e., a lawyer who is not bound to the undertaking by a relationship of employment. Accordingly, internal communications with and from in-house counsel are excluded from the privilege, unless they reproduce correspondence with external lawyers (see Administrative Supreme Court, judgment 24 June 2010, No. 4016).

### **Sanctions for non-cooperation**

The AGCM may issue sanctions on both undertakings and natural persons in case of non-cooperation, as follows:

- (1) sanction equal to 1% of the worldwide turnover of the previous financial year, if an undertaking:
  - (a) tries to obstruct the on-premises investigations;
  - (b) unjustifiably refuses to answer or provides an incomplete or misleading answer to a request from the AGCM; or
  - (c) refuses to be heard by the AGCM;
- (2) sanction equal to 5% of the average daily worldwide turnover of the previous financial year for each day of delay, to force an undertaking to:
  - (a) provide complete information to answer a request from the AGCM;
  - (b) appear before the AGCM at a hearing; or
  - (c) allow on-premises inspection;
- (3) sanction in the range between €150.00 and €25,823.00 if a natural person:
  - (a) tries to obstruct the on-premises investigations;
  - (b) refuses to answer or provides an incomplete or misleading answer to a request from the AGCM, unless the refusal is justified by the fact that the information requested may reveal criminal or administrative liability of the natural person; or
  - (c) refuses to take part to a hearing; and

- (4) sanction in the range between €150.00 and €500.00 for every day of delay to force a natural person to:
- (a) provide complete information to answer a request from the AGCM, unless the refusal is justified by the fact that the information requested may reveal criminal or administrative liability of the natural person;
  - (b) appear before the AGCM for a hearing; or
  - (c) allow an on-premises inspection.

### Precautionary measures

In cases of urgency due to the risk of serious and irreparable damage to competition, the AGCM may, on its own initiative, if it finds, upon summary examination, that an infringement exists, decide to adopt precautionary measures, which shall in any event be proportionate.

Where undertakings fail to comply with a decision ordering precautionary measures, the AGCM may impose an administrative pecuniary sanction of up to 3% of the total worldwide turnover achieved during the previous financial year.

## Overview of cartel enforcement activity during the last 12 months

The latest annual report published by the AGCM is the report issued in 2025 concerning its 2024 activities (the “**2024 Report**”). As of March 2026, the AGCM has not yet published the annual report concerning its activities in 2025. The 2025-related report has therefore been made on the basis of the publicly available data and information.

### 2024 Report – overview of the AGCM activities in 2024

According to the 2024 Report, the AGCM handled eight cartel investigations in 2024, spanning eight product markets and involving more than 30 companies. The increase in enforcement against hardcore antitrust infringements appears to reflect, in particular, the growing importance of the AGCM’s whistleblowing platform and leniency programme, the latter having been strengthened following the implementation of the ECN+ Directive into Italian law. During the year, the AGCM concluded one investigation with a finding of infringement and the imposition of fines, namely the case concerning terminal operators at the Port of Naples (I865, discussed below), opened four new investigations (I868, I869, I871 and I873), and continued three proceedings already underway (I864, I866 and I867). Four of the eight cases were triggered by anonymous reports submitted through the whistleblowing platform, while leniency applications were filed in two cases. The two instruments, although directed at different actors, appear to operate in a complementary manner in cartel enforcement. The AGCM appears to have focused in particular on the risk that undertakings may exploit inflationary market conditions to pass on unjustified price increases and obtain undue profits, to the detriment of customers and the wider public. The AGCM further emphasised that cartel-induced price increases may create a perception of inevitability among customers, thereby weakening their ability to react and further facilitating the restrictive practice. Particular attention must therefore also be paid to the possible role of trade associations, which may facilitate collusion and contribute to the functioning of the cartel. Against that background, one investigation was concluded in 2024 with a finding of infringement of Article 101 TFEU; four were concluded in 2025, of which one ended with a finding of no infringement, while in the remaining three the AGCM found an infringement of Article 101 TFEU and imposed fines; the other three investigations still appear to be pending as of March 2026. Together, these investigations – relating to container-handling services, cast-iron foundry products and the sale of motor fuel – led to fines totalling more than €1 billion in 2024 and 2025. The most significant sanctions were imposed in the *motor-fuel* case, in which the AGCM fined several of the leading oil companies operating in Italy, namely Eni S.p.A.

(€336,214,660), Esso Italiana S.r.l. (€129,363,561), Tamoil Italia S.p.A. (€91,029,755), Kuwait Petroleum Italia S.p.A. (€172,592,363), Italiana Petroli S.p.A. (€163,669,804), and Saras S.p.A. (€43,788,944), while no infringement was ultimately found in respect of Iplom S.p.A. and Repsol Italia S.p.A.

Please see below a brief summary of the investigation that resulted in the imposition of fines in 2024.

**1865 – TERMINAL OPERATORS AT THE PORT OF NAPLES – ENERGY SURCHARGE:** In July 2024, following the completion of its investigation, the AGCM found that an anticompetitive agreement existed among the terminal operators active at the Port of Naples, namely CO.NA.TE.CO. – Consorzio Napoletano Terminal Containers S.p.A., Società Terminal Contenitori – SoTeCo S.r.l., Marinvest S.r.l. (a company of the MSC group holding the entire share capital of Conateco and, directly and indirectly, 70% of the share capital of Soteco), and Terminal Flavio Gioia S.p.A. (“TFG”). The cartel sought to introduce a new charge collectively agreed upon by the operators in response to rising costs, together with a new pricing item and the corresponding invoicing arrangements, thereby materially distorting market dynamics to the detriment of freight forwarders and customers. The AGCM found that the case amounted to a horizontal agreement in breach of Article 101 TFEU, the three undertakings involved representing the entirety of the operators active at the Port of Naples in the provision of container-handling and related ancillary services. The AGCM further held that the conduct was also attributable to Marinvest S.r.l., as parent company, on the basis that, by virtue of its position, it had determined the conduct of its subsidiaries. In assessing the fines, the AGCM also took account of the gravity and duration of the infringement, imposing an administrative fine of €2,411,365 jointly and severally on Marinvest S.r.l. and its subsidiaries, and a fine of €625,974 on TFG.

## Overview of the AGCM activities since January 2025

During 2025, the AGCM concluded five cartel-related investigations. Four concerned alleged infringements of Article 101 TFEU (cases I864, I866, I867 and I872), while one concerned an alleged infringement of Article 2 of the Italian Competition Act (case I869). Of those cases, two ended with a finding of no infringement (I867 and I869), one was closed following the AGCM’s acceptance of commitments (I872), and in two cases the AGCM found an infringement of Article 101 TFEU and imposed fines (I864 and I866).

A brief summary of the two cases in which the AGCM imposed significant fines for infringement of Article 101 TFEU is provided below.

**I864 – PRICE OF BIOFUEL FOR MOTOR VEHICLES:** In September 2025, the AGCM found that ENI, Esso, Italiana Petroli, Kuwait Petroleum Italia, Saras and Tamoil had engaged in a concerted practice, in breach of Article 101 TFEU, consisting in the simultaneous and coordinated increase of the “bio component” of motor-fuel prices between 1 January 2020 and 30 June 2023. According to the AGCM, the cartel originated in the parties’ shared interest in managing, in a coordinated manner, the increase in biofuel-related compliance costs resulting from stricter blending obligations and rising input prices. Rather than competing independently on whether, when and to what extent those costs should be passed on, the undertakings aligned the value of the bio component, exchanged information on planned increases and relied on publicly observable pricing signals to monitor reciprocal conduct. The AGCM considered the infringement particularly serious because it concerned an important element of the final fuel price in a market where competition is essentially price-based, and because the parties’ underlying biofuel costs were not identical, so the observed alignment could not be explained simply by common cost trends. The AGCM therefore imposed fines totalling more than €936 million.

**I866 – AGREEMENTS AMONG FOUNDRIES:** In December 2025, the AGCM found that a number of Italian cast-iron foundries, together with their trade association Assofond, had participated in a single, complex and continuous secret cartel in breach of Article 101 TFEU. According to the AGCM, the infringement lasted from at least 5 February 2004 to 30 June 2024 and was aimed at coordinating pricing policies and commercial strategies *vis-à-vis* customers, in order to support price increase requests, strengthen the

foundries' bargaining power and preserve margins, particularly during periods of economic downturn and rising input costs. The cartel was implemented through the exchange of commercially sensitive information and, above all, through the joint development and dissemination of the so-called "Assofond Indicators", which the AGCM regarded not as neutral cost benchmarks but as a focal point for coordinated price adjustments. The AGCM also found that Assofond played a dual role, acting both as facilitator of the collusion and as an active co-author of the infringement. Fines of approximately €70 million were ultimately imposed.

## Key issues in relation to enforcement policy

The Italian enforcement policy in relation to cartels has remained robust over recent years and continues to be primarily driven by public enforcement.

Following the implementation in Italy of EU Directive 1/2019 (the "**ECN+ Directive**") by Legislative Decree No. 185/2021, the AGCM has the power to define its own priorities of intervention for the purposes of applying the Competition Act and Articles 101 and 102 TFEU, and may therefore not act on reports that do not fall within those priorities of intervention.

However, this possibility only increased AGCM's already existing discretion to initiate the investigation. In fact, in the past it was already possible for the AGCM to adopt a decision to dismiss a case if no sufficient elements emerged from the pre-investigation phase to suggest that there was any basis for the alleged infringement.

The decision to dismiss a case must in any case be fully motivated, highlighting AGCM's reasoning behind it. Indeed, the obligation to motivate all dismissals is functional to the subsequent exercise by the subject that filed a complaint of its right to act against the dismissal before the judicial administrative authority.

The above being said, while the overall legal framework has not undergone structural changes since the implementation of the ECN+ Directive, the practice of the AGCM reveals a number of significant trends.

In particular, the AGCM has maintained an active enforcement approach, with a focus on cases capable of producing significant economic impact. Recent decisions confirm the AGCM's willingness to pursue complex investigations in key sectors of the economy, including energy, transport and industrial markets, and to impose substantial fines where serious infringements are established. This trend reinforces the central role of the AGCM in shaping competition policy at the national level.

## Key issues in relation to investigation and decision-making procedure

The issue of providing sufficient safeguards in antitrust proceedings – and, in particular, with regard to the differentiation between the investigation and the decision-making phases – has been addressed several times.

The matter is of particular importance also in light of the numerous interventions of the European Court of Human Rights on the compatibility of sanctioning procedures of independent authorities with Article 6 of the European Convention on Human Rights on fair trial.

In particular, the ECHR has repeatedly emphasised the need to adhere, also for antitrust proceedings, to the accusatory model and not to the inquisitorial one, since, on the one hand, the sanctions imposed by the authorities correspond to the model of criminal sanctions and, on the other hand, it is necessary to guarantee the parties under investigation the widest possible right of defence.

The procedure in place for the AGCM in cartel investigation is compliant with this setting.

There are in fact numerous elements of the proceedings before the AGCM that protect the parties: the duty to include in the decision to initiate proceedings elements that are indispensable for understanding the allegations; the guarantees provided for in the inspection activities; the right to be heard orally by the

investigating offices in addition to the possibility of submitting written pleadings; the right of access to the documents in the investigation file; communication of the results of the investigation; and the right to be heard orally before the Board before the final decision is adopted, etc.

Moreover, the procedural rules guarantee a separation between the departments responsible for carrying out the investigation and the bodies responsible for the decision-making. Indeed, there is a clear distinction between the investigative phase, carried out by the Offices, which ends with the communication of the investigative findings and the final hearing before the Board, and the decisional phase, carried out by the Board itself.

A further and more recent procedural issue concerns the duration of the pre-investigative phase and, more specifically, the possible application to antitrust proceedings of the time-limit set out in Article 14 of Law No. 689/1981 (which governs administrative sanctions in general under Italian legislation).

Law No. 689/1981 provides that when an authority notifies the alleged infringement, it must do so within 90 days from the moment in which the violation is ascertained. Over the years, the question has arisen as to whether this provision may apply, by analogy, to antitrust proceedings conducted by the AGCM, in particular with reference to the period preceding the formal opening of the investigation.

This issue has given rise to significant litigation before the Italian administrative courts. In particular, certain judgments of the Consiglio di Stato suggested that the 90-day time-limit could be applicable also to antitrust proceedings, with the consequence that an excessive duration of the pre-investigative phase could lead to the annulment of the AGCM's decision. Such interpretation raised concerns, as it could substantially limit the effectiveness of competition law enforcement, given the complexity of cartel investigations and the need to carry out extensive preliminary fact-finding activities. The matter was ultimately clarified at EU level by the Court of Justice of the European Union in its judgments of 30 January 2025 in cases C-511/23 (*Caronte & Tourist*) and C-588/23 (*Trenitalia*). In those rulings, the Court held that EU law precludes the application of a national rule interpreted in such a way as to impose a strict and automatic time-limit, where this would undermine the effective enforcement of Articles 101 and 102 TFEU (including, in particular, the power of the AGCM to define its own priorities).

At the same time, the Court confirmed that antitrust proceedings remain subject to the general requirement of a reasonable duration and to full respect of the rights of defence. However, a mere failure to comply with a rigid time-limit does not automatically render the decision unlawful, unless it is demonstrated that such delay has concretely affected the ability of the undertakings concerned to exercise their rights of defence.

In this context, the duration and structure of the pre-investigative phase have become a key element in the assessment of the overall fairness of antitrust proceedings. The current framework reflects an attempt to strike a balance between the need to ensure effective enforcement of competition rules and the requirement to safeguard procedural guarantees, particularly in light of the increasing complexity of cartel investigations. With reference to the AGCM's powers in relation to dawn raids and inspections in general, these are subject to prior authorisation by the Board. Indeed, it is necessary for the officials carrying out the inspection to have a written assignment indicating the subject of the inspection and the sanctions, under Article 14(5)(6)(7)(8) of Competition Act, which may be imposed if, during the inspection, information is not provided, or the required documents are not produced. When the premises to be inspected are not owned by the undertaking under investigation but by another subject, the inspection may only be carried out with the authorisation of the public prosecutor.

In carrying out these activities, the officials can rely on the active support of the Tax Police, who acts with the same powers as they have for VAT and income tax assessments. If the undertaking refuses to cooperate, the coercive powers of the Tax Police can be activated.

Another important cornerstone for the protection of the rights of the parties involved in the proceedings concerns the possibility of access to the case file.

The key value of this right lies in the fact that, through access to documents, the parties become aware of the evidence on which the investigation is based and can therefore better defend themselves.

The undertakings involved and the subjects that filed the complaints are therefore entitled to apply for access to the case file of the investigation procedure. In addition, the Board, so as not to *de facto* nullify this right of access, may base its decision only on the documents contained in the case file and made fully available to the parties.

It should also be added that any infringement of the rights of defence does not in itself render the AGCM's measure unlawful. Indeed, case law has made it clear that it is "*in the light of the charges actually brought by the Authority against the undertakings involved and the defenses put forward by the latter that the relevance for that defense of the documents which have not been communicated can be assessed*".<sup>6</sup> It must therefore be concluded that mere formal non-compliance with the rules protecting the rights of the defence is not enough; it is also necessary to show that if the rights of defence had been fully respected, then the investigation would have had a different outcome.

## Leniency/amnesty regime

### Introduction to the leniency regime

In Italy, Articles from 15-*bis* to 15-*septies* of the Competition Act introduced, in conformity with EU law, the so-called "leniency regime" related to cartels.

On the basis of this legal framework, the AGCM in 2007 adopted a leniency programme, which was then subsequently amended, providing the details, both procedural and substantive, for companies to be eligible for the reduction or non-imposition of fines.

The leniency option is opened exclusively to participants in horizontal and secret agreements restrictive of competition. In such cases, the AGCM may grant the full or partial benefit on applicable fines, if certain conditions are met.

The detailed conditions and procedures for obtaining immunity from, or reduction of, fines are set out in a specific Communication adopted by the AGCM, which aligns the national framework with the EU leniency system.

In particular, the AGCM may discount in full the applicable sanction for those undertakings that are the first to uncover on their own motion the existence of a secret cartel and provide information and documentary evidence to such an effect, subject to the following conditions:

- (1) in the opinion of the AGCM, having regard to the nature and quality of the evidence submitted by the applicant, such information or evidence is decisive in establishing the infringement, if necessary by means of a targeted inspection;
- (2) the AGCM does not already have sufficient information or evidence to prove the existence of the infringement;
- (3) the undertaking must end its participation in the cartel immediately after having submitted the leniency application;<sup>7</sup>
- (4) the undertaking must cooperate with the AGCM in a complete and continuous way for the entire duration of the investigation; cooperation may involve, among other things:
  - (a) promptly supplying the AGCM with all relevant information and evidence in its possession;
  - (b) remaining available at the AGCM's request, promptly responding to any request that may contribute to the ascertainment of relevant facts;
  - (c) endeavouring to ensure that its current employees – as well as, to the extent possible, former employees – may, where necessary, be heard by the AGCM; this obligation also includes obtaining

all relevant information and documents in support of the leniency application in the possession of employees and managers prior to their dismissal or, where possible, their resignation;

- (d) refraining from destroying, altering or concealing relevant information or documents; or
- (e) refraining from informing anyone of the existence of a leniency application or its contents until the notice of the preliminary findings has been sent to the involved undertakings, unless the AGCM so allows; and

- (5) the undertaking intending to apply for leniency need not inform anyone of its intention, except other competition authorities or, for the purpose of obtaining legal advice, an outside counsel, provided that, in the latter case, the undertaking ensures that the outside counsel does not disclose this information to third parties.

Leniency applications concerning one and the same cartel are assessed by AGCM in the order in which they are received. Before submitting a leniency application, the undertaking may contact the AGCM, also on a name basis, for clarification by calling a dedicated line.

Since 2007, the AGCM has received approximately eight leniency applications per year, most of which usually have a Union relevance and, therefore, submitted only on a prudential basis to the Italian Authority and to the other national authorities. There have been nine leniency applications that resulted in the opening of investigations concluded with a finding of infringement. Taking into account whether the proceedings initiated before 2007, leniency was granted in 10 cases.

Leniency applications still remain well below the EU levels.

### **Impact of the leniency programme on sanctions for the undertakings**

The undertaking that is part of the cartel and is also the first to provide evidence that was decisive in establishing the infringement will be granted immunity from any sanction for having infringed the cartel prohibition. Immunity from sanctions cannot be granted to undertakings that have coerced other undertakings into joining or continuing to participate in the secret cartel.

The AGCM also values the cooperation of companies that are not the first to report the existence of a secret cartel but still provide evidence of the alleged secret cartel that provides significant added value for the purpose of proving an infringement as compared to the evidence already in the AGCM's possession at the time the first leniency application is submitted. In this case, if the applicant provides compelling evidence that the AGCM uses to prove additional circumstances that result in increased penalties for the secret cartel participants, the AGCM shall disregard such additional circumstances when determining the sanction to be imposed on the applicant who provided such evidence.

Based on the 2025 AGCM Guidelines on the leniency programme, the amount of the reduction depends on the timing of the application and the evidentiary value of the material submitted. In particular, the reduction may range:

- from 30% to 50% for the first applicant after the immunity recipient;
- from 20% to 30% for the second applicant; and
- up to 20% for subsequent applicants.

### **Impact of the leniency programme on criminal sanctions for natural persons**

Legislative Decree No. 185/2021 introduced the new Article 31-*quater* in the Competition Act, which is aimed at bridging the gap between the participation in a leniency programme and the potential criminal consequences for the natural persons involved in cases where the participation in a cartel also constitutes a criminal offence (e.g., bid rigging or market rigging). This is considered an important step forward, as the absence of any immunity from criminal sanctions for natural persons had a significant impact on the number of leniency applications filed.

The new rules extend the effects of the leniency application to natural persons, establishing the conditions under which access to the leniency programme determines the immunity of natural persons from criminal sanctions that may be imposed on them in connection with their participation in the secret cartel; for example, if they actively cooperate with the AGCM or the prosecutor (by providing useful information, etc.).

In particular, pursuant to Article 31-*quater* of the Competition Act, current and former directors, managers and other members of staff of undertakings who, in relation to participation in a secret cartel, have committed any of the facts envisaged by Articles 353, 353-*bis*, 354 and 501 of the Italian Criminal Code, shall not be punishable if:

- (i) such undertakings have been the first to submit to the AGCM a leniency application in relation to the same secret cartel and such application meets the legal requirements for leniency;
- (ii) the current and former directors, administrators and other staff members in question are actively cooperating in this regard with the competition authority prosecuting the case;
- (iii) the application was made prior to the directors, managers and other members of staff in question becoming aware that investigations are being carried out against them in relation to such facts; or
- (iv) the present and former directors, managers and other members of the staff in question are actively cooperating in this regard with the public prosecutor, providing useful and factual information to secure proof of the crime and identify other responsible individuals.

Non-application of a criminal sanction does not prejudice the right of victims who have suffered damage as a result of the infringement of competition law to seek full compensation the damages suffered.

## Administrative settlement of cases and commitments

### General overview

The Italian legal framework now provides for a formal settlement procedure in antitrust proceedings, introduced by Article 14-*quater* of the Competition Act, as inserted by Law No. 118 of 5 August 2022.

Under this provision, the AGCM may, during proceedings initiated pursuant to Article 14 of the Competition Act, engage in discussions with the parties with a view to reaching a settlement. The detailed procedural rules governing the submission and assessment of settlement proposals, as well as the applicable reduction of fines, are set out in a specific Communication adopted by the AGCM.

The introduction of this mechanism aligns the Italian system with the EU model and represents a significant development in the enforcement toolkit available to the AGCM.

The settlement procedure is entirely discretionary and may be initiated only by the AGCM. Where the AGCM considers that a case may be suitable for settlement, it invites the parties to express their interest in participating in settlement discussions within a specified time-limit.

Participation in settlement discussions does not imply an admission of liability. The procedure typically develops through bilateral discussions between the AGCM and each party, aimed at identifying a shared understanding of the scope of the alleged infringement and of the potential sanction.

During these discussions, the AGCM may disclose key elements of the case, including:

- the objections it intends to raise;
- the evidence supporting those objections;
- non-confidential versions of relevant documents; and
- an indication of the range of potential fines.

If the discussions lead to a positive outcome, the AGCM sets a deadline for the submission of formal settlement proposals. Such proposals must include, *inter alia*:

- an unequivocal acknowledgement of the undertaking's participation in the infringement and of its liability;
- an indication of the maximum amount of the fine that the undertaking is willing to accept; and
- confirmation that the undertaking has been adequately informed of the objections and has had the opportunity to express its views.

The AGCM retains full discretion throughout the procedure and may discontinue settlement discussions at any stage, including where not all parties are willing to participate or where the effectiveness of the procedure would otherwise be compromised.

Where the settlement procedure is successfully completed, the AGCM may adopt a simplified decision reflecting the settlement proposals without carrying out the full adversarial procedure.

The successful completion of the settlement procedure results in a reduction of the fine, amounting to 10% of the fine in cartel cases.

In addition to the administrative settlement procedure, Article 14-*ter* of the Competition Act provides for a legal instrument whereby the undertaking subject to investigation may request that the investigation be terminated upon proposal of certain commitments aimed at eliminating the anti-competitive risks underlining the investigation.

In particular, within three months from the notification of the opening of an investigation under Article 101 TFEU or Article 2, the involved undertakings may submit commitments such as to eliminate the anti-competitive effects of the conduct being investigated.

In the event that the AGCM considers that the commitments are late, manifestly unsuitable for their purpose or may constitute a serious restriction of competition, it shall reject them (by giving notice within a reasonable period of time) and carry on with the investigation.

If, on the other hand, the AGCM deems the commitments adequate and suitable, it shall consult the market operators (the so-called “*market-test phase*”), ordering their publication on the Internet in order to allow interested third parties to submit their observations.

At the end of this phase, the AGCM may, within the limits envisaged by EU law, adopt a decision making the commitments compulsory for the undertakings. This decision shall close the proceedings without finding of an infringement and/or the issuance of a sanction.

In the event of non-compliance with the commitments, the AGCM may impose a pecuniary administrative sanction of up to 10% of the total worldwide turnover achieved during the previous financial year.

The AGCM may *ex officio* reopen the proceedings if:

- there is a decisive change in the factual situation with respect to an element on which the decision was based;
- the undertakings involved are in breach of the commitments they have undertaken; or
- the decision is based on information provided by the parties that is incomplete, incorrect or misleading.

In cases where multiple undertakings are involved, it is possible that commitments are submitted by only one of the undertakings. In these cases, if these commitments are capable of fully resolving the anti-competitive issues identified during the investigation, the procedure will be concluded by accepting the commitments in respect of the parties that offered them and will continue in respect of the other undertakings.

## Function and trends

The settlement procedure introduced by Article 14-*quater* of the Competition Act represents a significant addition to the Italian enforcement toolkit, aimed at increasing procedural efficiency and facilitating

the resolution of complex cases. Its primary function is to streamline proceedings by encouraging cooperation between the AGCM and the parties, thereby reducing the administrative burden and shortening the duration of investigations. Although the practical application of the settlement procedure is still developing, it is likely to play an increasingly relevant role in the coming years, particularly as the AGCM consolidates its practice and further clarifies its approach to the interaction between settlement, leniency and other enforcement tools.

With reference to the commitments, since the related decision comes before the existence of an actual infringement is ascertained, once the AGCM considers that the commitments given are sufficient to remove any doubts as to the anti-competitive effects, it refrains from further investigating the matter and therefore does not rule on the merits of the case.

The benefits are twofold. Firstly, the acceptance of a commitment (and the related interruption of the investigation) allows involved undertakings to avoid that the AGCM ascertains their liability and the adverse consequences of an actual assessment, such as a negative impact on the undertaking's reputation or the binding nature that a decision from the AGCM has before civil court in damage compensation litigations.

Secondly, the acceptance of a commitment allows the AGCM to save efforts and resources in its institutional activities while at the same time promptly and effectively removing the alleged anti-competitive profiles.

### **Third-party complaints**

In Italy, suspected cartel conduct may be brought to the attention of the AGCM through ordinary third-party complaints as well as, more recently, through the AGCM's dedicated whistleblowing platform, introduced in 2023 and designed to facilitate the anonymous transmission of information concerning anticompetitive conduct, in particular secret cartels. The submission of a complaint does not, however, give rise to any automatic obligation on the part of the AGCM to open formal proceedings. The AGCM retains broad discretion in setting its enforcement priorities and may decide to carry out preliminary fact-finding, request additional information, or take no further action. Publicly available materials indicate that complaints continue to represent an important source of investigative leads, although official statistics do not appear to distinguish, in publicly accessible form, between cartel complaints received and formal cartel investigations actually opened.

### **Civil penalties and sanctions**

Cartel legislation in Italy provides for administrative pecuniary sanctions in case of non-compliance with cartel prohibition. The power to apply sanctions pertains to the AGCM.

According to Article 15 of the Competition Act, in case of infringement of the cartel prohibition, the AGCM will always order that the infringing behaviour be brought to an end and, in case of severe infringements, taking into account their seriousness and duration of the conduct, the AGCM may provide for the application of a pecuniary administrative sanction of up to 10% of the turnover achieved in the financial year preceding the finding, setting a term for the payment. If the infringement is committed by an association of undertakings and relates to the activities of its members, the AGCM may impose an administrative fine of up to 10% of the sum of the total worldwide turnovers of each member operating on the market(s) affected by the infringement committed by the association in the previous financial year. However, the financial liability of each undertaking for the payment of the penalty shall not exceed 10% of the turnover achieved in the previous financial year.

As a different form of sanction, the AGCM may impose on undertakings and associations of undertakings periodic penalty payments, the amount of which may be up to 5% of the average daily turnover achieved worldwide during the previous financial year, for each day of delay, in order to compel them to:

- (a) comply with an order to remove an unlawful conduct;
- (b) comply with the precautionary measures adopted; or
- (c) comply with their own commitments made compulsory by a decision of the AGCM.

The Competition Act only set forth the maximum amount of the sanctions, but does not specify the criteria to actually determine the relevant amount: the only indications are those relating to the seriousness and duration of the infringement, the possible actions carried out by the sanctioned undertaking to eliminate or mitigate the consequences of the infringement, the personality of the undertaking concerned and its economic conditions. Therefore, in exercising its power to impose administrative pecuniary sanctions, the AGCM has a wide margin of discretion, within the broad limits of what is provided for by the Competition Act.

In this scenario, the AGCM periodically adopts guidelines on the setting of sanctions, aimed at defining, also on the basis of EU guidelines and the indications of the administrative courts, the calculation criteria for sanctions in response to anti-competitive conduct (the “**Guidelines**”, which refers to the latest version, adopted in 2025).

The purpose of the Guidelines is to increase the deterrent effectiveness of its sanctioning policy, also by means of greater transparency of its decision-making process and the calculation procedure followed, at the same time facilitating a full and effective judicial review. Nevertheless, the information included in the Guidelines shall not be interpreted as a basis for an automatic and arithmetic calculation.

The AGCM’s sanctioning policy is aimed both at punishing infringing undertakings and at preventing the repetition of a violation, as well as at discouraging other undertakings from carrying out prohibited behaviour. In particular, in exercising its sanctioning power, the AGCM pursues the following twofold objective:

- (a) specific deterrence towards the undertakings that have been responsible for a violation of the rules on cartels (so-called “specific deterrence effect”); and
- (b) general deterrence against other economic operators from engaging in or continuing conduct contrary to the competition rules (so-called “general deterrent effect”).

Among the most qualifying aspects of the Guidelines, the following are noteworthy:

- the calculation process is structured around the following steps: first, the identification of the basic amount for each undertaking responsible for the infringement; then the adjustment of this amount by increases or reductions according to any aggravating or mitigating circumstances; and finally, if it is the case, the reduction to respect the limits set forth by the Competition Act for the maximum permissible amount of a sanction;
- the basic amount of the sanction shall be obtained by applying a percentage (maximum 30%<sup>8</sup>) to the value of sales of goods and services involved – directly or indirectly – in the infringement, made by the enterprise in the relevant market(s) in the year previous to the infringement, determined in accordance with the degree of seriousness of the infringement, by the duration of each firm’s participation in the infringement. The range to be applied (within the 30% limit) shall be assessed in light of the seriousness of the infringement, by taking into account: (i) competitive conditions in the relevant market (such as, for example, the level of concentration and the existence of barriers to entry); (ii) the nature of the products or services, with particular reference to harm to innovation; (iii) whether or not the unlawful practice has been implemented; and (iv) the significance of the actual economic impact or, more generally, the harmful effects on the market and/or on consumers;
- the duration of the infringement has an impact on the harmful consequences of the infringement and therefore deserves to be taken into account in determining the appropriate amount of the fine: the amount obtained by applying a given percentage to the value of sales will be multiplied by the number of years of participation in the infringement;

- in order to give the AGCM's sanctioning power the necessary character of effective deterrence with specific reference to the most serious restrictions of competition (regardless of their duration and their actual implementation), the AGCM may consider it appropriate to include in the basic amount an additional amount between 15% and 25% of the value of the sales of the goods or services that have been the specific object of the violation;
- the basic amount of the sanction may be increased to take account of specific circumstances that aggravate<sup>9</sup> (aggravating circumstances) or mitigate<sup>10</sup> (mitigating circumstances) the responsibility of the author of the violation, with particular reference to the role played by the undertaking in the violation, the conduct of the undertaking during the investigation, as well as the work carried out by the undertaking to eliminate or mitigate the consequences of the violation. As a rule, the impact of each of the circumstances shall not exceed 10% of the basic amount, up to an overall percentage of 30% of the basic amount, either as an increase or a decrease. However, the basic amount may be further increased by up to 100% in cases where the same undertaking has previously committed one or more similar or same-type infringements within the five years preceding the start of the infringement under investigation;
- the possibility of increasing the penalty by up to 50% if the responsible entity has a particularly high total worldwide turnover compared to the value of sales of the goods or services that are the specific object of the infringement or belongs to a group of significant economic size; and
- the possibility of further increasing the fine in consideration of the illegal profits made by the undertaking responsible for the infringement.

It should be also noted that – according to the Guidelines – in certain specific circumstances, the AGCM may issue “symbolic sanctions”, lower than the minimum level of fine obtaining from the application of the Guidelines.

A parent company may be held responsible for a conduct of a subsidiary where the latter does not decide independently upon its own conduct on the market but carries out the instructions given to it by the parent company. In such a situation, the parent company and its subsidiary are considered to form a “single undertaking”, and the AGCM may address a decision imposing fines to the parent company. Where a parent company holds, directly or indirectly, all or almost all of the capital in a subsidiary that has committed an infringement, there is a rebuttable presumption that that parent company actually exercises a decisive influence over its subsidiary.<sup>11</sup>

## Right of appeal

### Appeal against decisions of the AGCM

Article 33(1) Act of the Competition Act provides for exclusive jurisdiction of the administrative court to receive appeals against decisions taken by the AGCM.

In particular, Article 33 of the Competition Act refers in full to the Code of Administrative Procedure (Legislative Decree No. 104/2010), which in Article 133(1)(l) clearly establishes the exclusive jurisdiction of the Regional Administrative Court (“**TAR**”) and in particular that of the City of Rome (“**TAR Lazio**”) over the decisions issued by the AGCM.

The decisions by the TAR Lazio can be further appealed before the Administrative Supreme Court (*Consiglio di Stato*).

In principle, actions for annulment may be brought for a typical set of pleas in law, i.e., violation of law (*violazione di legge*), lack of competence (*incompetenza*) and misuse of powers (*eccesso di potere*). In practice, the administrative courts may fully review the facts on which the AGCM has based its decisions (this includes both the evaluation of the evidence offered by the parties and the assessment of the facts

considered by the AGCM in its decision), even though the scrutiny of the appellate courts remains formally constrained to errors in law or logical errors in the evaluation of facts.

### **Civil lawsuit for the compensation of damages**

Only appeals against the measures taken by AGCM fall into the exclusive jurisdiction of the administrative courts. Instead, private claims relating, for example, to compensation for damages suffered by individuals or legal entities related to cartels are ruled by a civil court.

This kind of decision is appealable in second instance before the Court of Appeal of the region in which the first instance court is located, then the decision of the Court of Appeal can be further appealed before the Italian Supreme Court (the “*Corte di Cassazione*”).

The appeal before the Court of Appeal is a full merits appeal; nonetheless, the appellate powers of this court are limited by the grounds of appeal put forward by the appellant in his/her pleadings.

On the opposite, the appeal before the Italian Supreme court is a legitimacy appeal, which does not allow any scrutiny of the merits of the dispute.

### **Cooperation with other antitrust agencies**

Cooperation with other antitrust agencies has been significantly strengthened following the implementation of Directive (EU) 2019/1 through Legislative Decree No. 185/2021, which introduced Chapter II-*bis* into the Italian Competition Act. Under Articles 15-*octies* to 15-*duodecies*, the AGCM may provide investigative assistance to other EU national competition authorities, including by exercising its powers to collect information, conduct inspections and verify non-compliance with investigative measures or commitments adopted in the application of Articles 101 and 102 TFEU. The AGCM may also request equivalent assistance from other EU competition authorities, notify procedural acts and decisions on their behalf, and cooperate in the enforcement and recovery of final decisions imposing fines or periodic penalty payments.

### **Development in private enforcement of antitrust laws**

With Legislative Decree No. 3/2017 (the “**Antitrust Damage Compensation Decree**”), the Italian legislator transposed Directive 2014/104/EU, which introduced uniform legislation in the Member States of the EU concerning actions for damage compensations based on a breach of competition law by one or more undertakings. This system of “private enforcement”, of a civil law nature, is additional to and shall be coordinated with the already existing systems of public enforcement of competition law.

Under the Antitrust Damage Compensations Decree, any individual (both direct and indirect victims of the cartel) can claim compensation for the harm suffered as a result of a cartel. In particular, claimants are entitled to full compensation of the damage suffered, including actual loss, loss of profit and interest. The possibility of overcompensation (i.e., punitive damage) is expressly excluded. In order to facilitate claims brought by indirect purchasers, the Antitrust Damage Compensations Decree provides for a presumption of passing-on (i.e., a presumption that the overcharge at a certain level of distribution was passed on to each level until the end purchaser). The Antitrust Damage Compensations Decree also provides that the rules set out therein also apply to damage compensation actions brought through class actions pursuant to the Italian Code of Civil Procedure.

Article 14 of the Antitrust Damage Compensations Decree basically follows Article 2056 of the Italian Civil Code, confirming the tort liability nature for anti-competitive offences and, in the trail of a well-established case law, specifying that the damage compensation must be determined in court pursuant to Articles 1223, 1226 and 1227 of the Italian Civil Code.

Therefore, only direct damages may be compensated and, if this cannot be adequately and reasonably proved by the plaintiff, the judge can settle it on an equitable basis.

The novelty, unprecedented for the Italian legal system, is represented by the possibility, for the judge who has difficulty in settling the level of damaged compensation, to avail himself of the expertise of the AGCM, formulating specific requests on the guidelines concerning the quantification of damages.

Having acknowledged the information asymmetry that characterises this type of action – in which the evidence of the infringement is usually available to the infringer – the law provides for a particular order of exhibition, which, differently from the traditional tools provided for by the Code of Civil Procedure, may also concern entire “categories of evidence” and may also involve the evidence contained in the file of the AGCM. However, in order to safeguard the public application of antitrust law, evidence is divided into the following categories: (i) evidence that can never be produced (i.e., statements related to leniency programmes); (ii) evidence that can be produced only after the AGCM proceedings have been concluded (i.e., information provided or prepared during the proceedings); and (iii) evidence that can be produced even before the conclusion of the proceedings (i.e., evidence that does not fall within the first two categories).

The court may impose administrative pecuniary sanctions in case of non-compliance with the order to produce evidence, and in such a case may also by implication consider as proven the facts that should have been proven by the evidence referred to in the broken disclosure order.

The finding of an unlawful act carried out by the AGCM that has become definitive (i.e., contained in a decision that is no longer subject to appeal, or in a judgment of the appeal court that has become final) has a binding effect for the judge and towards the author, regarding the nature of the violation and its material, personal, temporal and territorial scope. The person claiming compensation of damages, therefore, in the presence of a decision by the AGCM, will be required to demonstrate the existence of the alleged damage and the causal link between the antitrust offence and the damage allegedly suffered.

The existence of damages is presumed in the presence of a “cartel”, subject to proof to the contrary, which is for the defendant to submit.

The Antitrust Damages Compensation Decree, without prejudice to the five-year statute of limitation period, clarifies that the limitation period starts from the moment when, after the infringement has ceased, the plaintiff becomes aware of: (i) the conduct and its illegality; (ii) the fact that the conduct has caused damages; and (iii) the identity of the author. Where the AGCM has initiated an investigation or inquiry, the limitation period shall be suspended until one year after the final decision.

For actions for damage compensations, jurisdiction is centralised and reserved solely for the Specialized Sections of the Courts of Milan (for Northern Italy), Rome (for Central Italy) and Naples (for Southern Italy).

## Reform proposals

No major legislative reform specifically targeting the substantive cartel regime appears to be pending in Italy. Following the implementation of the ECN+ Directive and the introduction of the settlement procedure, recent developments have mainly concerned the consolidation of the enforcement framework through soft law instruments and administrative practice, including the 2025 update of the AGCM’s fining guidelines and the revised leniency communication.

## Endnotes

- 1 See the decision by the Administrative Court of Lazio No. 5486/2001.
- 2 See the decision by the AGCM No. 8720/2000.
- 3 See also Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty (2004/C 101/07).
- 4 See the decision by the AGCM No. 3721/1996.
- 5 However, if the AGCM has reasonable grounds to believe that information or documents related to the potential infringement are stored in premises, land, and means of transportation other than those of the undertaking, such as the home of officers, directors, and other personnel of the undertaking, the AGCM may carry out inspections of such premises, land, and means of transportation, provided that it obtains a warrant from the judicial authority.
- 6 See the decision No. 1190/2009 by the Administrative Supreme Court.
- 7 The AGCM may, however, request or allow the undertaking not to suspend certain conducts if this is deemed necessary in order to safeguard the successful outcome of the investigation.
- 8 But regularly not less than 15% for infringements related to price fixing, market sharing, and output limitation.
- 9 Aggravating circumstances include, by way of example:
  - having played a decisive role in the promotion, organisation or monitoring of a multi-subjective cartel, inducing or forcing, also by means of retaliatory measures, other undertakings to participate in it and/or to continue with it; or
  - behaving in such a way as to prevent, hinder or in any case delay the AGCM's investigative activities.
- 10 Mitigating circumstances include, but are not limited to:
  - having promptly adopted appropriate initiatives to mitigate the effects of the infringement, in particular by restoring the conditions of competition prior to the infringement and/or providing for and implementing compensatory measures in favour of the parties damaged by the cartel. The mere interruption of the illicit behaviour after the start of the investigation does not constitute an attenuating circumstance;
  - collaborating effectively with the AGCM during the course of the investigative procedure beyond what is required by legal obligations;
  - demonstrating that they have played a marginal role in participating in the cartel, also proving that they have not actually carried out the illegal practice;
  - the existence of regulatory measures and/or acts of a public authority that encourage, facilitate, or authorise the infringement; and
  - the adoption of and compliance with a specific compliance programme, adequate and in line with European and national best practices.
- 11 See the decision dated 29 January 2019, No. 4990 by the Administrative Supreme Court.

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