

COMPETITION ENFORCEMENT AGENCIES

HANDBOOK 2019

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Competition Enforcement Agencies Handbook 2019

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Competition Enforcement Agencies Handbook 2019

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Global Competition Review's 2019 edition of the *Competition Enforcement Agencies Handbook* provides full contact details for competition agencies in over 100 jurisdictions, together with charts showing their structure and a Q&A explaining their funding and powers. The information has been provided by the agencies themselves and by a panel of specialist local contributors.

The *Competition Enforcement Agencies Handbook* is part of the *Global Competition Review* subscription service, which also includes online community and case news, enforcer interviews and rankings, bar surveys, data tools and more.

We would like to thank all those who have worked on the research and production of this publication: the enforcement agencies and our external contributors.

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Questions and answers

How long is the head of agency's term of office?

The Competition Act 1990 states that the chairman and commissioners are appointed for a seven-year term.

When is he or she due for reappointment?

Roberto Rustichelli took office on 6 May 2019. He will serve a seven year mandate expiring in May 2026.

Which posts within the organisation are political appointments?

The chairman and the commissioners are appointed by the speakers of the Chambers of Parliament. The Secretary General is appointed by the Minister of Economic Development, upon recommendation by the chairman of the Italian Competition Authority (AGCM). The Competition Act 1990 states that the chairman must be a person of recognised independence who has already held high office with broad institutional responsibilities. The chairman and the commissioners shall also be independent and are chosen among judges serving in the courts of highest jurisdiction, university professors of law or economics, and business representatives of highly regarded professional standing.

What is the agency's annual budget?

The expenditure incurred in 2018 was €55.3 million. Note that this is the overall expenditure covering also

other institutional competence carried out by AGCM (for example, consumer protection).

How many staff are employed by the agency?

On 31 December 2018, there were 285 people working at the AGCM (including staff working in competence other than competition).

To whom does the head of the agency report?

The AGCM is an independent administrative body which does not report to any ministry. However, it is required to present an annual report concerning its activities to Parliament. The AGCM issues its decisions without any government interference. The decisions are subject to judicial review.

Do any industry-specific regulators have competition powers?

No, the AGCM has sole power to enforce competition law.

May politicians overrule or disregard authority's decisions? If they have ever exercised this right, describe the most recent example.

No.

Does the law allow non-competition aims to be considered when taking decisions?

No. The AGCM's assessment and determinations are exclusively based on competition considerations. However, section 25 of the Competition Law empowers the government to lay down general criteria that the AGCM would be bound to apply to authorise an otherwise prohibited merger when major general interests of the national economy are involved. However, the aforementioned provision has never been applied by the AGCM since such general criteria were not set out.

Section 25 also provides that the Prime Minister may, for reasons of national economic interest and within 30 days of the notification, prohibit mergers involving firms from countries that apply discriminatory provisions or impose clauses having similar effects in relation to acquisitions of foreign firms by Italian undertakings. As with the former, this provision has so far never been used to block proposed acquisitions by foreign undertakings.

In addition, the Bank of Italy may ask the AGCM to authorise for stability reasons a merger that could create or strengthen a dominant position in the banking sector. Moreover, the Bank of Italy may ask the AGCM to authorise, for a limited period of time, agreements prohibited under the Competition Act in order to ensure the proper functioning of the payments system. However, the Bank of Italy has so far never exercised these powers.

Which body hears appeals against the agency's decisions? Is there any form of judicial review beyond that mentioned above? If so, which body conducts this? Has any competition decision by the agency been overturned?

The decisions issued by the AGCM may be appealed before the Administrative Court of First Instance. The court's judgments may be further reviewed by the Supreme Administrative Court.

Has the authority ever blocked a proposed merger? If yes, please provide the most recent instances.

Yes. The latest prohibition decision was issued in 2013 for *Italgas-Aceagas-APS/Isontina Reti Gas* (April 2013) in the energy sector.

Has the authority ever imposed conditions on a proposed merger? If yes, please provide the most recent instances.

Yes. There have been four mergers authorised under conditions in 2018: *Profumerie Douglas/La Gardenia*

Beauty-Limoni, Rete Gas/Nedgia, Noah 2/Mondial Pet Distribution and Luxottica Group/Barberini.

Has the authority conducted a Phase II investigation in any of its merger filings? If yes, please provide the most recent instances.

In 2018, AGCM conducted five Phase II investigations: *Profumerie Douglas/La Gardenia Beauty-Limoni, Rete Gas/Nedgia, Noah 2/Mondial Pet Distribution, Luxottica Group/Barberini* and *Cassa Centrale Raiffeisen dell'Alto Adige/Gruppo bancario cooperativo delle Casse Raiffeisen*. An additional in-depth review was carried out to revise the remedies imposed in a merger previously authorised with conditions (*Unipol Gruppo Finanziario/Unipol Assicurazioni-Premafin Finanziaria-Fondiarie SAI-Milano Assicurazioni*).

Has the authority ever pursued a company based outside your jurisdiction for a cartel offence? If yes, please provide the most recent instances.

The AGCM can investigate and prosecute all anti-trust infringements falling within the scope of the Competition Act, which have been implemented, at least in part, within the territory of Italy, irrespective of where the undertakings concerned are based.

Do you operate an immunity and leniency programme? Whom should potential applicants contact? What discounts are available to companies that cooperate with cartel investigations?

A leniency programme has been in operation since 15 February 2007 and applies to undertakings only. Potential applicants may contact the relevant office within the AGCM, which can also be reached informally on a dedicated landline number, +39 06 858218 72, before the submission of the application, to obtain clarifications and guidance.

Is there a criminal enforcement track? If so, who is responsible for it? Does the authority conduct criminal investigations and prosecutions for cartel activity? If not, is there another authority in the country that does?

Antitrust infringements under the Competition Act 1990 are civil offences only. A specific discipline for criminal enforcement is provided on bid rigging on public and private contracts.

Are there any plans to reform the competition law? No.

When did the last review of the law occur?

The annual law on competition (Law No. 124/2017) adopted in August 2017 introduced two changes to the merger notification system in Italy. Namely, it lowered the second threshold (concerning the target's Italian turnover) to €30 million and clarified that the second threshold applies to the activities of at least two parties to the transaction in the local territory.

Do you have a separate economics team? If so please give details.

In 2008, a committee providing economic counsel to the board was set up. In May 2012, an Economics Unit headed by a chief economist was also established. The Chief Economist Team supports the investigative divisions in economic matters and strengthens the use of economic analysis in more complex cases. The team is currently headed by Dr Antonio Buttà, PhD in economics at London School of Economics and Political Science.

Has the authority conducted a dawn raid?

In 2018, the AGCM conducted national dawn raids in relation to six cases.

Has the authority imposed penalties on officers or directors of companies for offences committed by the company? If yes, please provide the most recent instances.

No. The Competition Law does not provide for penalties to be imposed on officers or directors for violation of the law committed by their companies.

What are the pre-merger notification thresholds, if any, for the buyer and seller involved in a merger?

A concentration will require prior notification when:

- the aggregate turnover in Italy exceeds €495 million; and
- the aggregate domestic turnover of each of at least two of the undertakings concerned exceeds €30 million.

Thresholds are adjusted every year to take account of increases in the GDP deflator index, and the resolution is published in the AGCM's bulletin after the increase

in the index has been officially announced.

Are there any restrictions on minority investments that involve less than a majority stake in the business?

Special powers apply to a wide range of transactions relating to assets in specific industries: national defence and security, energy, communications and transportation. These provisions impose mandatory filing obligations on the parties involved in any deal where key strategic assets and undertakings are being transferred and grant the government – not the AGCM – powers to impose vetoes and restrictions on such deals.

Within the remit of AGCM, the merger control regime may apply to the acquisition of minority shareholdings or stock acquisitions when they confer the possibility of exercising a decisive influence over the activity of the target undertaking (so as to confer joint or sole control over the acquired company).

According to its case law and consistently with the EU Commission practice, the following circumstances may confer (de jure or de facto) sole control over an undertaking even through the acquisition of a minority interest:

- the subscription of a shareholders' agreement or other contractual or de facto mechanisms, giving the minority shareholder sufficient powers (for example, veto rights over strategic matters, such as the approval of the budget, the business plan or the appointment of senior management) to influence the undertaking's strategic commercial decisions; or
- de facto circumstances, such as the fact that the remaining shareholding is fragmented among a large number of other shareholders, that make it possible for the minority shareholder to exercise a decisive influence on the strategic commercial behaviour of an undertaking.

Finally, there are specific provisions applicable to special sectors: for instance, with regard to the cinema exhibition services, acquisitions leading to the creation of a market share of more than 25 per cent in one of the main Italian cities must be notified to the AGCM.

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