Annual report – Introduction by President Roberto Rustichelli

Rome –July 2nd, 2019

Speaker of the Chamber of Deputies, Authorities, Ladies and Gentlemen

My seven-year term as President of the Authority has only just begun.

I would like as of now to underscore that the values of independence, autonomy and impartiality – which thus far have always guided me in my work as a judge – will continue to be the North star guiding me in my new role.

Another part of my previous experience that I will bring to this role is balance, which must be the distinguishing feature of those called to *ius dicere* – to speak the law.

As you know, the symbols of Justice are the sword and the scales: in my career I have always tried to use the scales, and the sword only rarely.

So my commitment is that I will be inspired, in each ruling I make, by a balanced vision that is never ideological or extreme. This means that, in the decisions to be taken, I must always bear in mind the values at stake and the overall effects that those decisions might have.

From another, different, perspective, the Italian institutions' inability to take coordinated action is, sadly, a problem which we are all familiar with. For that reason, it is utterly clear to me that in order to protect the interests of Italian citizens and businesses we need to act as a team in the international context and, in particular, in the European context: all of this, obviously, with due regard for the independence of the Authority and the competences of the other institutions.

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1. Competition distortions and asymmetries in the European Single Market

This year, the traditional event introducing the Authority's report comes at an important time for the European Union, after the elections that opened up a new phase in the lives of Europe's institutions and citizens.

It gives us an opportunity to reflect on the path we have taken and the steps we still need to take, all the more so at a time when enthusiasm for Europe seems to be waning and the re-emergence of nationalistic impulses is undermining the very foundations of the European construction.

Europe is our common home and membership of the European Union is the only way we have to meet the challenges posed by the globalisation of markets, technology, and the new geopolitical and trade equilibria.

In the system of values on which the European Union is founded, free competition has a position of primary importance, and we are all aware of the benefits it has produced.

Competition stimulates innovation and encourages productivity and economic growth; it fosters efficiency and reductions in costs, leading to lower prices. Lower prices are not just advantageous to consumers. Reducing the cost of essential inputs also strengthens the competitiveness of the companies using those inputs in their production cycle.

And yet, in spite of these undisputed advantages, the market and competition are no longer viewed favourably, as they were in the past, and are subject to growing criticism.

Globalisation was for many years seen as a source of endless growth and prosperity. But it is now, increasingly, showing its other face: that of a process which, if not properly controlled, contains dangers that could deeply undermine our economic systems and break the chain of solidarity.

Even that central project which led, in Europe, to the creation of an internal market without barriers between Member States, based on the free movement of people, capital, goods and services, has lost some of its impetus and drive. Doubts and uncertainties are now emerging with respect to values and goals that until now have been celebrated as the hallmarks of prosperity and well-being (market expansion, the single market, the European currency).

A serious risk is that all of this is being experienced as a betrayal and as a broken promise. And that is triggering a dangerous protectionist spiral.

It is essential, therefore, to rebuild consensus around the single market.

In this sphere, Europe and the national governments can and must do more, starting by removing those asymmetries and distortions in competition that prevent it from functioning properly to the benefit of us all.

In particular, we need to recognise that nowadays competition takes place on many levels, some of which are outwith the direct control of the competition authorities and undermine the level playing field that is the pre-condition for fair competition.

One factor that stands out is fiscal dumping by certain Member States which have become outright tax heavens. This type of unhealthy competition is the fruit of national self-interest and risks eroding the values that until now have underpinned the European integration process.

The tax competition pursued by some Member States, such as the Netherlands, Ireland, Luxembourg and the United Kingdom, is used by multinationals, as the European Commission itself has pointed out, to engage in aggressive tax planning.[1]

[1] European Commission, *Country Report The Netherlands 2019*, SWD(2019) 1018; *Country Report Ireland 2019*, SWD(2019) 1006; *Country Report Luxembourg 2019*, SWD(2019) 1015; *Country Report United Kingdom 2019*, SWD(2019) 1027.

This phenomenon is not easy to quantify, but the Commission's report on "*Aggressive tax planning indicators*" analyses the question and its effects in depth.[2]

Tax competition generates clear advantages for some countries: Luxembourg, which has a population of about 600,000 people, is able to collect corporate taxes amounting to 4.5% of gross domestic production (GDP), compared with 2% of GDP for Italy. Ireland too, at 2.7%, is doing better than Italy, even though it has a particularly low rate which is, however, able to attract highly profitable companies with gross operating profit of, on average, 69.4% of value added.

International investments adapt to the geography of tax competition. Italy attracts foreign direct investment of 19% of GDP; Luxembourg over 5,760%, the Netherlands 535% and Ireland 311%. Figures this high can't be explained by the economic fundamentals of these countries; they are largely linked to the presence of special purpose vehicles.

Indeed, one out of four companies in Luxembourg is under foreign control. Foreign-controlled companies generate 73.6% of the total gross operating profit produced in Ireland, compared with 12.7% in Italy. One study commissioned by the Dutch Ministry of Finance shows that the financial flows alone (dividends, interests and royalties) channelled through Dutch letterbox companies amount to € 199 billion (27% of the country's GDP).[3]

But while some countries are benefiting from this, the European Union is losing, given that multinational groups react to tax competition by locating their most profitable companies in those European countries offering the most favourable tax conditions. This not only drains resources from the economies in which the value is actually produced, but also reduces society's overall ability to obtain resources, thus preventing companies' profits from being taxed more equitably.

In this regard, Italy is certainly one of the most penalised countries. We just need to think, for example, of the significant economic damage to the public coffers caused by the recent transfer to London of the fiscal headquarters of what was once the leading Italian automotive company, and the transfer to the Netherlands of its parent company's head office, for both legal and tax purposes.

The amounts at stake are extremely high: tax competition generates negative externalities that cost USD 500 billion per year at the global level, with the damage to Italy estimated at USD 5-8 billion per year.[4]

Tax competition that in effect benefits the most astute multinationals places Italian companies, especially small and medium-sized ones, but also larger companies whose owners behave in a

[2] European Commission, *Aggressive tax planning indicators, Taxation Papers, Working Paper* No 71 – 2017.
[3] SEO Report no. 2018-86, *Balance sheets, income and expenditure of special financial institutions* (SFis).
[4] V. A. Cobham – P. Jansky, 2018, *Global distribution of revenue loss from corporate tax avoidance – re-estimation and country results*, in *Journal of International Development*, 30(2).

commendably ethical manner towards our country, in a position of severe competitive disadvantage.

In addition, the reduction in revenues caused by the self-interest of the few makes it impossible to lower taxes on companies and citizens; indeed it often forces the governments suffering its effects to apply stricter fiscal policies.

From another perspective, tax rulings that can confer a specific advantage on some companies, and so potentially distort competition, are also significant.

In recent years the European Commission has identified a number of tax rulings that infringe the rules on State aid. It has instructed Ireland to recover € 14.3 billion from Apple, and Luxembourg to recover € 282.7 million from Amazon and € 23.1 million from Fiat Finance and Trade.

Tax agreements like these, in many cases wrapped in secrecy, undermine trust between Member States and cast a shadow over fair participation in the single market.

It is therefore essential to return to a common strategic approach at the European level to eliminate the existing market distortions and ensure that taxes are paid in the place in which profits and value are generated.

There is also the unresolved issue of the taxation of digital companies, on which it is proving difficult to find an agreed solution, given the opposition of some Member States. For this reason, the debate will be taken forward at the level of the Organisation for Economic Co-operation and Development, and so in a multilateral context that is even more complex than the European one.

But the issue is not just a question of taxes on companies' revenues. Unfair tax competition is increasingly affecting employees and major capital owners, and is fuelling the phenomenon of "social insurance emigrants": Italy's social insurance institution, INPS, now pays 370,000 pensions in countries other than Italy.[5]

From yet another perspective, the integrity of the single market is at risk of social and social security contribution dumping. This practice, aided by company relocation, consists of exploiting the relative lack of protections envisaged for workers in eastern countries. Here too, the distorted use of the fundamental freedoms weakens the principle of the internal market, undermines businesses' competitiveness and triggers a disastrous race to the bottom in social and environmental policies.[6]

These phenomena seem all the more unacceptable when they are encouraged by the use of public resources which, instead of being channelled to foster the development of the regions or

[5] Istituto Nazionale di Previdenza Sociale, *XVII Rapporto annuale*, July 2018.
[6] European Parliament resolution of 14 September 2016 on social dumping in the European Union.

countries concerned, are exploited to the detriment of other countries; or when a company's decision to transfer production elsewhere is taken after it has received public aid for investment.

To these limitations we must add that the full contestability of ownership structures is hindered by the persistence of protectionist tendencies on the part of certain States which, by exploiting asymmetries in the single market, continue to defend national champions even in sectors that have no strategic significance, or in which no vital state interests are present. Such conduct, inspired by nationalistic thinking, runs counter to the greater European interest in the creation of a fully competitive market and is, in part, the cause of the difficulties still being encountered today by the process of economic integration.

Lastly, we must not forget that in certain specific areas like the banking sector, which is crucial to a country's systemic stability, problems and doubts have emerged over the application of the provisions on State aid, which have penalised some national systems as a result of the prevalence of interpretative approaches subsequently rejected by the European Courts. I am referring here to the General Court of the European Union's judgment of 19 March 2019 in the Tercas case. This ruling concerned the role of obligatory depositors' guarantee schemes in resolving banking crises in our country.

Taken together, these perverse effects contributed to the crisis in confidence that has swept Europe and the single market.

What is needed for such issues is a decisive and informed political impetus.

It is crucial that these problems are acknowledged and addressed under the new political-institutional framework, in the knowledge that free competition will otherwise be fated to remain no more than an abstract value.

At the same time, it must be clear that free competition is not in itself an absolute value over and above, but a value that must be coordinated and harmonised with other general interest objectives.

We should, for example, consider that consumers are also workers and tax-payers, which means that we must always fully assess the effects of any envisaged decision to ensure that it does not in fact cause more harm than good to citizens (and the same principle applies to businesses).

We must, in essence, leave national self-interest behind us and regain a true spirit of solidarity among States.

As solidarity made it possible to create our Union, it is not inappropriate today to once again appeal to that primary link to address our current problems.

At stake is the substantive legitimacy of Europe and its ability to truly address the expectations of citizens and businesses.

2. Facts and figures on the activities of the Authority

Regarding the activity of the Authority from January 1st 2018 to June 1st 2019, I should first of all mention that fines amounting to over € 1.277 billion were issued, of which over € 1.192 billion relating to antitrust enforcement and over € 85 million relating to consumer protection.

Concerning the protection of competition, 13 proceedings for anti-competitive agreements, 11 proceedings for abuse of dominant position and 5 proceedings regarding mergers were concluded.

In the matter of anti-competitive agreements and abuse, 13 proceedings closed with findings of unlawful conduct and six with undertakings.

In five cases, the proceedings found that there had been no unlawful conduct or non-compliance with the Authority's decision. The average duration of antitrust proceedings (for anti-competitive agreements and abuses) was 451 days, considerably shorter than for proceedings before the European Commission.

In terms of mergers, the Authority demonstrated its impartiality by deciding in 78 cases not to open proceedings, having taken the view that the concentrations were not likely to lead to the creation or the strengthening of a dominant position in the concerned markets.

As for the protection of consumers and micro-enterprises, 83 proceedings concluded with the Authority issuing a fine and 26 with undertakings.

For the first time, the Authority applied the provisions regarding payment accessibility, concluding 4 proceedings, three of which with fines and one with undertakings.

One particularly intensive area of activity was our advocacy work to promote compliance with competition principles by the public powers.

Particularly noteworthy were the 26 interventions pursuant to Article 21-*bis* of Law No 287/1990, the 61 opinions issued, sometimes at the request of government offices themselves, and the 22 reports through which the Authority asked the parliament and government offices to remedy anti-competitive regulations.

The overall success rate of our interventions remained above 50%.

Other tasks included 108 proceedings concerning conflicts of interest and 7,074 for the issuance of legality ratings (a recognition granted by the Authority to virtuous enterprises), an increase of over 20% with respect to the previous year.

Lastly, the Authority also engaged fully in disseminating the culture of competition and legality.

This sphere of our activity includes the guidelines on antitrust compliance that we adopted in September 2018. The guidelines clarify the content of an effective compliance programme and the assessment criteria for the recognition of mitigating circumstances, thus providing companies with greater legal certainty.

3. The challenges of the digital economy

For several years now, the Authority has been closely following the impact on the markets of developments in the digital economy. The great and broad-ranging benefits of data driven innovation are interwoven with economic mechanisms that tend to significantly increase market concentration, with high barriers to entry.

Against this background, the market power attained by Google, Amazon, Facebook, Apple and Microsoft (GAFAM) in supplying certain digital services has reached systemic significance not just in terms of the global dimension of that power but also because the services in question play a central role in the brokerage of economic and social information.

The risk feared by some parties is that these dominant positions have become so deeply entrenched as to be capable in future of preventing new operators from entering the market and of reducing incentives to innovate and improve the supply, with negative effects on companies' efficiency and dynamism.

In addition, the availability of big data seems to give these large platforms the ability to exert considerable competitive power on several markets at the same time, to the extent that they are perceived as powerful actors even before they have entered a new market. This could have the effect of fostering competition, but in certain cases could also take the form of anti-competitive leverage.

The role of the new platforms as brokers in economic transactions and social relations, and in the digital information system, has prompted a wide-ranging debate at the global level on whether the protections currently in place are sufficient to safeguard competition, privacy and pluralism.

The proposals put forward encompass the whole spectrum of possible reform initiatives: from the idea of breaking up the digital giants that has recently rekindled the political debate in the United States, to the reflection on the most appropriate and effective use of the existing instruments for intervention.

The investigation on big data launched by the Authority, together with the Communications Authority (Autorità per le Garanzie nelle Comunicazioni, known as AGCOM) and the Data Protection Authority (Garante per la protezione dei dati personali), is also contributing to the debate. These Authorities are aware of the need to fully exert their powers also in the new economic context to ensure that the objectives entrusted to them by law are achieved.

The Authority does not feel it is necessary to overturn the current institutional framework. This framework should rather adjust to the new developments, as well through a closer cooperation between the authorities involved.

The growing interdependence of markets means that the questions raised by the data economy are often trans-national in nature. For this reason, a closer coordination among the European competition authorities in this new and evolving scenario is not just desirable. It is necessary.

From this perspective, a Digital Markets working group has been set up as part of the European Competition Network (ECN) to foster coordination among Member States' authorities and encourage the correct allocation of investigations regarding the digital economy.

The European Commission itself has recently concluded three antitrust proceedings against Google and has fined the company over € 8 billion. In the United States too – a jurisdiction that traditionally takes a more cautious approach to antitrust enforcement – the Department of Justice and the Federal Trade Commission have begun to take an interest in the conduct of Google, Amazon and Apple.

Overall, the Antitrust authority is equipped with the characteristics and tools that it needs to address competition issues in the digital economy with great effectiveness. However, there is also a need for renewal.

For example, I would like to mention two broad questions regarding the future enforcement of the provisions governing the protection of competition in the digital sector.

The first concerns corporate acquisitions by the big digital operators. A recent study shows that Amazon, Facebook and Google bought about 300 companies between 2008 and 2018, often with the aim of eliminating future competitors.[7] The target companies were often in the early stages of their life cycle: in fact, about 60% had been operating for no more than four years.

The antitrust authorities should be placed in a position to assess these concentration operations. However, such operations are not usually subject to any notification requirements as the target companies are not yet generating high sales.

The second issue concerns collusion through the algorithms used by the companies to set and adjust their prices on an ongoing basis. It is clear that in this situation the traditional notion of an anti-competitive agreement as a meeting will is somewhat stretched, given that tacit collusion – that is, collusion that occurs through independent intelligent adaptation by individual companies – does not infringe competition rules.

[7] *Ex post assessment of merger control decisions in digital markets*, 9 May 2019, which can be found on the website of the Competition & Market Authority (https://www.gov.uk/government/organisations/competition-and-markets-authority)

4. The Authority's activity in antitrust and consumer protection matters

Interventions in sectors linked to the new digital technologies

Overall, the activity carried out in 2018 and the early months of 2019 illustrates the Authority's constant focus on the implications for competition of the development of the digital economy.

I would like to underscore, first and foremost, that the Authority is in a privileged position with respect to other European authorities. This is because it can exploit the complementarities and synergies arising from its situation as the national competent authority not just for the application of the competition rules but also for breaches of the consumer protection code. As a result, it can respond more effectively to the challenges posed by highly innovative markets.

Allow me to mention some interventions as examples.

On the antitrust side, the Authority accepted the undertakings submitted by TIM and Fastweb to eliminate the competition concerns raised by their co-investment project for the joint roll-out of the fibre network in 29 Italian cities.

Alongside this, on the consumer protection side, the Authority concluded five proceedings involving the leading operators in the electronic communications sector.

Most notably, Telecom, Vodafone, Fastweb, Wind Tre and Tiscali were fined for making claims in their advertising campaigns that underscored the use of fibre optics and/or the attainment of the maximum performance in terms of connection speed and reliability. However, they failed to mention essential information regarding the actual features of the services offered. The Authority issued fines amounting to over € 18 million for these infringements.

The investigations into Facebook, Apple and Samsung were also of notable interest.

In the case of Facebook, the Authority found two unfair commercial practices linked to the deceptive and aggressive way in which the company collected, used and exchanged its users' personal data with third parties for commercial and user-profiling purposes.

The Apple and Samsung cases concerned a specific form of planned obsolescence designed to artificially accelerate the phone replacement process, regardless of consumers' wishes.

Again in sectors linked to the digital economy, the Authority recently opened two new investigations into Google and Amazon for alleged abuse of dominant position.

In the Google case, the Authority intends to check and assess whether the company unduly used its dominant position in the market for smart device operating systems by refusing to integrate an app developed by Enel to provide consumers with information and services for recharging electric car batteries into the Android Auto environment. Google's behaviour could also be delaying the dissemination of renewable energies in our country, with negative consequences for the environment.

Regarding Amazon, the Authority is investigating whether the online platform has abused its dominant position in the market for intermediation services on e-commerce platforms in order to significantly restrict competition in the market for warehouse management and order despatching services for e-commerce operators.

It is significant that, alongside the antitrust intervention just mentioned, the Authority then continued its systematic monitoring of the e-commerce sector using consumer-protection tools.

The Authority's work in this sphere led to issue fines for unfair practices on a number of operators specialising in online sales of consumer products. These included the dissemination of false information about the availability and delivery times of the products on offer, the application of a price surcharge for payments of online purchases using credit cards, and the creation of obstacles to the exercise of customers' contractual rights, such as the right of withdrawal.

One important point to note is that the complementarity between the various enforcement instruments does not just apply to digital markets.

In markets undergoing liberalisation, such as the electricity market, the Authority issued fines for abuses of dominant position by Enel and ACEA. It found that they had exploited the prerogatives and assets they enjoy as a result of their status as "enhanced protection" suppliers (for disadvantaged consumers) in order to "shuttle" their customers – who received their supplies under regulated conditions – towards free market contracts. At the same time, the Authority addressed highly topical and significant issues such as unfair billing of electricity and gas consumption ("maxi-bills") or the activation of supplies not requested by users.

As a last example in the energy sector, to support consumers in the transition from the regulated market to the free market for electricity and gas, the Authority has drawn up and disseminated a guide to illustrate the advantages of liberalisation and to raise consumers' awareness of the risks connected with certain unfair commercial practices that operators might engage in.

Interventions in more traditional sectors

While we paid close and continuous attention to markets that benefit from the dissemination of digital technologies, we did not lower our guard in other market sectors.

In the antitrust sphere, our enforcement action against cartels has had a particularly strong impact.

One of the most significant cases is the car-financing cartel that involved the world's leading automotive companies. These companies were found to be exchanging sensitive information on the economic conditions attached to the loans, with a view to altering the competitive dynamics of the car sales market. This infringement, which had lasted for a good 13 years, was

punished with the highest fine ever issued by the Authority in a case involving a cartel, of over € 670 million.

The Authority then continued its activity to combat cartels aiming to falsify and distort the outcome of public procurement procedures.

These anti-competitive agreements, which in some cases conceal outright corruption, are – and on this there is now full consensus – a particularly offensive form of infringement of the competition rules.

First, in view of their economic significance, since public tenders account for a fairly high proportion of national and European GDP. Second, because they lead to cost increases for works or supplies and thus cause direct harm to state revenues and to society as a whole, since they absorb resources that could be used to stimulate growth by financing works and investment.

In the period under examination three investigations were concluded, with findings and fines against the companies concerned.

One noteworthy provision resulted in a fine of € 235 million on the companies involved in sharing out procurement procedure FM4 issued in 2014 by Consip S.p.A. This tender, worth about € 2.7 billion, concerned cleaning and maintenance services for all of the public offices throughout the country.

Other proceedings concerned the So.Re.Sa tender for the award of the service for the collection and delivery to waste disposal facilities of hospital waste in Campania Region, and the tenders for the country's forest fire prevention services using helicopters.

The Authority also underscored the importance of awarding contracts and concessions by means of public tenders through the intensive use of its powers of advocacy. Notably, its report of December 2018 highlighted the competition issues arising from the distorted use of concessions and called for specific action in a number of sectors.

The sectors concerned included highways, airports, gas distribution, major water diversion projects for hydroelectric use, part and maritime concessions, and concessions of state-owned maritime assets.

Regarding the proceedings for abuse of dominant position, 2018 also saw the conclusion of the Aspen case.

The Authority found that the South African multinational had complied with its previous decision to the effect that the increases in the price of certain "life-saving" cancer drugs had been an abuse, given that the increases were unfair and were not objectively justified. The Authority's intervention, which was followed by reductions of between 29% and 82% in the

prices of the concerned drugs, led to cost savings for Italy's national health service and improved access to treatment for patients, especially those lacking financial resources.

Over the last year the Authority has also assessed a significant number of stage II mergers. One such decision assessed the implications for dynamic competition of the Luxottica Group/Barberini merger, and the possibility for Luxottica's competitors to compete through product innovation even more than on price. In this operation, Luxottica acquired control of Barberini, a producer at the cutting edge in research into and the development of flat glass lenses for sunglasses. As a result of its constant investment in innovation, the company had become the main supplier of all producers of sunglasses with glass lenses (including Luxottica's competitors).

As the operation would have had a number of anti-competitive effects, including the loss of the drive to innovate, the Authority authorised the operation but laid down a number of measures intended, among other things, to ensure that Luxottica's competitors have access to Barberini's lenses and any technological advances linked to its products. The aim here is to avoid any discrimination between Luxottica and its competitors.

Lastly, in its interventions the Authority has increasingly, and again taking a pro-competition approach, applied Article 62 of Decree Law No 1 of 2012. This envisages, for commercial relations between operators in the agri-food sector, special provisions to protect the weakest contracting parties, i.e. those in a position of marked contractual imbalance.

In this sphere, the Authority concluded six investigations in which it found that certain commercial practices by the major large-scale distributors with respect to suppliers of fresh bread and the "return requirement" were unlawful. Under this practice, bakers were required at the end of each day to pick up all of the bread left unsold on the shelves and refund the purchase price to the buyer.

The Authority issued fines amounting to € 680,000 for these infringements.

Turning now to consumer protection, the transport sector, where the Authority focused closely on consumers' rights in the event of large-scale flight cancellations, is worthy of mention.

In this sector, the Authority found the sudden cancellation of a considerable number of flights in September/October 2017 to constitute unfair conduct and the information provided on customers' rights to be misleading and incomplete. As a result of this finding, Ryanair updated the information on its website regarding the right to financial compensation. The airline also sent individual messages to the consumers affected by the cancellations to enable them to understand and exercise all of their rights following the cancellations.

Other interventions concerned the rail transport sector.

One emblematic case, involving Trenitalia, led to changes making the online booking system much more advantageous to passengers by enabling them to select and buy different journey combinations. The Authority also completed an investigation into the NTV rail transport company, as a result of which the transparency of the company's commercial offering will be greatly increased, especially as regards discounts and the amount and terms of validity of their offers.

In the financial and insurance services sector, areas for examination included operators' conduct in relation to sales linking personal loans to insurance policies covering events entirely extraneous to the loan granted. The Authority also investigated the sale of "investment-grade" diamonds through banking channels.

Here, the Authority completed one new proceeding and also oversaw operators' compliance with the decisions through which it had found the method used by the main operators in the sector to sell these stones and the banks that had been the main sales channels to be unfair.

With a view to protecting consumers from unfair methods of transmitting information and undue influence, the work of monitoring the food supplements and door-to-door sales sectors also continued.

5. The Authority's powers: some considerations regarding their adequacy

The toolbox at the Authority's disposal is, in general, well-equipped and has been tried and tested in both the antitrust and consumer protection spheres.

In the latter context, allow me first of all to remind you that the Authority has achieved an important result.

Bringing an end to a long-standing legislative and jurisprudential case, the European Court of Justice, in its judgment of 13 September 2018, confirmed the Authority's competence to intervene in the protection of consumers in the electronic communications sector, even in the presence of national provisions governing the sector. The Court reached a similar judgment for the energy sector.

At a more general level, the Authority's consumer protection powers were shown to adapt effectively to the specific features of the new sectors and to provide a satisfactory response to the challenges posed by the digital economy.

For example, in the case of the "no-cost markets", the possibility for the Authority to take action against unfair commercial practices regarding services provided apparently free of charge has never been placed in doubt.

Of course, some profiles could be improved. These include the need for truly effective fines that are proportionate and deterrent with respect to the big tech companies, given that the maximum statutory fine, of € 5 million, is a tiny fraction of their turnover, their assets and the profits they can obtain from the infringements they commit.

We are pleased to note that a recent draft European directive is moving in this direction, by anchoring the statutory maximum fine to a percentage of the annual sales achieved by the operator concerned.

The powers of antitrust intervention have also proved to be sufficiently flexible to address new, emerging needs, as confirmed by the aforementioned cases against Google and Amazon.

Turning to the more traditional sectors, one important new development concerns the use of an instrument that seemed almost to have been forgotten: leniency programmes that allow a company taking part in unlawful conduct to blow the whistle on the existence of that conduct and enjoy the benefit of immunity or a reduced fine.

In Italy, after years in which whistle-blowing struggled to make headway, we have at last seen a growth in the number of cases involving applications for leniency, probably as a result of particularly strict fine policies.

In the last six months, three decisions have been adopted in which the leniency program was applied.

It is significant that one of the cases involved collusion that occurred in a public tender. Such cases also entail criminal risks for the person in the company who actually committed the offending behaviour; this is a notable disincentive for companies to use the leniency programme.

Nowadays, however, these problems could be overcome by the recent ECN Plus Directive, which gives Member States the opportunity to adopt suitable protections, including at the criminal law level, for the employees and directors of companies that successfully apply for leniency.

The Authority firmly supports this Directive. In the light of the envisaged extension of its powers of investigation, the implementation of the Directive could also be an opportunity to reflect on the guarantees protecting the debate in proceedings, in the awareness that the broadest respect for the principles of due process can only increase the legitimisation and quality of the decisions taken.

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None of this work would be possible without the professionalism and dedication of the men and women working in the Authority. I am grateful to them, just as I am grateful to Giovanni Pitruzzella, who led this institution with such distinction for the last seven years; and to the

members of the Board, Gabriella Muscolo and Michele Ainis, and the Secretary General, Filippo Arena, for the important work they have performed and continue to perform.

My thanks also go to the judges of the Council of State and the Regional Administrative Court of Lazio, who play an active part through their cases in the development of antitrust law; the State Legal Advisory Office for the valuable and constant assistance and representation it provides in court; the Finance Police and, in particular, their Special Antitrust Corps, for their outstanding support in conducting investigations; the Public Prosecutor's offices of Rome and Milan, with which we have worked so profitably together thanks to the protocols signed with them; the other independent authorities; the consumers' associations; the Directorate General Competition of the European Commission; and the other antitrust authorities, with which we cooperate so effectively.

Lastly, I wish to express my heartfelt thanks to the Speakers of both branches of Parliament, Maria Elisabetta Alberti Casellati and Roberto Fico, for the close attention with which they follow our activity and, above all, the President of the Republic, Sergio Mattarella, whom we had the honour to meet very recently and who is the authoritative custodian of our institutions and our constitutional values.