

CORONAVIRUS OVERCOMING THE DIFFICULTIES COOPERATION BETWEEN UNDERTAKINGS IN THE FIGHT AGAINST CORONAVIRUS. THE ITALIAN COMPETITION AUTHORITY ISSUES NEW GUIDELINES RELAXING COMPETITION RULES

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On the strength of the temporary framework adopted by the European Commission on 8 April 2020 in order to ensure that cooperation between undertakings aimed at addressing issues related to the scarcity, distribution and transport of essential goods in the fight against *coronavirus* complies with competition rules¹, on 24 April 2020 the Italian Competition and Market Authority (AGCM) published a Communication² laying down a number of general criteria to be employed in its evaluations.

Whereas undertakings are since close to twenty years themselves responsible for assessing that their agreements comply with competition rules, and whereas their prior notification normally plays a marginal role, the AGCM declared its readiness to provide preventive guidance with regard to forms of cooperation aimed at producing and allocating goods belonging to essential supply chains in the fight against the pandemic, notably where there may still be uncertainty as to whether they are compatible with national antitrust law³. More particularly, admissible forms of cooperation in the health and agri-food sector could consist of entrusting a trade association or an independent third party with i) coordinating supplies of raw materials, thus contributing to identify those for which there may be risks of shortage, ii) identifying goods at risk of shortage, and iii) gathering aggregated data and information on the production capacities available in the sector. Furthermore, the AGCM could assess exchanges of disaggregated and sensitive information required by qualifying cooperation projects between undertakings with greater flexibility, provided that they are temporary in nature and comply with the principle of proportionality. Finally, firms could set maximum prices for their products in accordance with the rules on vertical agreements⁴, in order to counter unjustified price increases at the distribution level. In any event, the AGCM will not tolerate forms of collaboration with the object or the effect of profiting from the *coronavirus* outbreak or abusing situations of dominance.

¹ Com. Comm. C(2020) 3200 final of 08.04.2020, *Temporary Framework for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak*. For further informations see our previous article, available at the following [LINK](#).

² Available at the following [LINK](#).

³ Law 10 October 1990, n. 287, *Norme per la tutela della concorrenza e del mercato*, OJ n. 240 of 13.10.1990.

⁴ Commission Regulation (EU) No 330/2010, of 20 April 2010, on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 102 of 23.04.2010.

Finally, exceptionally and at its own discretion, the AGCM could provide the undertakings concerned with written assurances of non-objections (so-called “comfort letters”) with regard to specific and sufficiently detailed projects. Comfort letters, however, will only involve domestic competition law and apply only at national level.

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Il presente articolo ha esclusivamente finalità informative e non costituisce parere legale.

This article is exclusively for information purposes, and should not be considered as legal advice.



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