

On 10 October 1990, exactly one hundred years after the American *Sherman Act* and almost forty years after the ratification of the EC Treaty, Italy passed the first *antitrust* regulation. It drastically changed the Italian legal system by reversing the pro-monopolistic concept inferred in the Italian Constitution and Civil Code. However, there are remarkable differences between the two antitrust concepts. Unlike the American antitrust, set up to discipline conflicts between private individuals or hinder private monopolies, the European antitrust was established to restrict public monopolies and reduce government intervention in the economy. The history of antitrust legislation in the United States and Europe can therefore be interpreted as a snapshot of the different ways in which it is possible to tackle the unsolved problem of growth in western countries and the advent of the opposite phenomenon of private power in the market considered as the expression and product of individual freedom; a power that threatens to not only cripple the economic freedom of others, but also influence the balance required in public decisions. As a result, it can be tackled only by

increasing public power which in turn can develop into further restriction of individual autonomy. A society is democratic if it is able to establish and safeguard these two boundaries. The debate currently raging in today's society ultimately focuses on "where" to situate these boundaries. However, the question is: in its twenty-five year history has the Antitrust Authority succeeded in developing a culture of competition? To take stock of the current situation we talked to Giovanni Pitruzzella, experienced jurist and President of the Italian Competition Authority (AGCM); the subjects touched upon range from Italo Calvino to administrative measures. The picture he painted is one of a very dynamic, continuously evolving Antitrust Authority ready to tackle – and sometimes pre-empt – the needs that change with the passing of time. Giuliano Amato couldn't have put it any better when he made this statement during his *lectio magistralis* marking the 25th anniversary of the Authority: "the antitrust authority has succeeded in imposing a culture of competition in a country that was unfamiliar with the concept." From a "downstream" agency focusing chiefly

on sanctioning anti-competitive practices the Authority has slowly become an "upstream" agency working to promote competition, for example in two new fields clearly inspired by the Americans: consumer protection and advocacy. Consumers play an increasingly crucial role: new technologies have made them more informed and inevitably more exposed to the risks involved, but now they can demand and protect rights and prerogatives once inconceivable. The Authority calls advocacy a "reporting activity," a tool it can use to warn institutions when free competition appears threatened or in danger. The Competition Law developed as a result of this activity, although it was meant to be annual, it has never been approved: we could call it a victim of political scheduling. But President Pitruzzella believes this year to be THE year: we can only wait and keep our fingers crossed!

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PITRUZZELLA

ANTITRUST. 25 YEARS YOUNG

“*Technological progress in certain markets means that regulating economic activities now needs to be periodically reviewed. Regular adoption of the Competition Law would make economic liberalisation a more fluid, continuous process.*”

Telos: The 2009 Development Law established that every year a Competition Law to be adopted. In the coming weeks the Draft Law for the market and competition will be finally approved by Parliament after having been the first one presented by the government. What do you think about the upcoming State upcoming law?

Giovanni Pitruzzella: I have nothing but appreciation for the government for tabling this law for the first time. As we all know, since 2009 our advocacy activities now include being able to express an opinion about the annual competition law. This option is used every year by the Authority to convey its technical input to Parliament and the Government regarding the elimination of regulatory or administrative obstacles hindering the opening of markets, thereby paving the way for the promotion of competition and ensuring consumer protection.

The draft law undoubtedly moves in this direction and affects many important sectors of the economy, especially the electricity market, the distribution of insurance, telephone and banking services, the pharmaceutical sector and professional activities. That said, although the draft law was heatedly debated, the current text does not contain all the original proposals; I sincerely hope that the final text can be further improved by successfully bearing in mind consumers' needs and expectations. Technological progress in certain markets means that regulating economic activities now needs to be periodically reviewed. Regular adoption of this tool would make economic liberalisation a more fluid, continuous process.

Although the State has exclusive legislative authority regarding competition protection, the competences assigned to the Regions in many fields (such as energy and the transportation network) could lead to a rather fragmented regulatory framework. To what extent do you think this hinders competition? What can the Italian Antitrust Authority do to solve the problems that might ensue from this institutional and regulatory pluralism?

The Antitrust Authority has always kept a close eye on local markets and the activities of the Regions so as to counteract regulations and interventions aimed at limiting competition. One rather sensitive issue is the *slipperiness* that exists at local level: when budgetary constraints regarding economic activities in the service sector have been eliminated by the national legislator they are often reintroduced by the Regions either as a regulation or as peripheral administrative acts. In order to ensure coherent application of the competition principles enshrined in our legal system we have reinforced the tools used for this purpose. Since draft law n. 1/2012 entered into force



Giovanni Pitruzzella has been the President of the Italian Competition Authority (AGCM) since 29 November 2011. Full professor of Constitutional Law since 1994, initially at the University of Cagliari and then at the University of Palermo (where he also teaches at the Specialisation School in European Law), from 1986 to 1993, Pitruzzella was an associate professor of Public Law. Pitruzzella has been an administrative lawyer for approximately twenty years. In 2006 he was named a member of the Commission to ensure the implementation of the right to strike in basic public services: he chaired the Commission from 2009 to 2011. He was President of said Commission from 2009 to 2011. Pitruzzella is a legal expert in public procurement contracts, constitutional justice, regional public law and economic public law; he has held several positions including legal consultant for the Prime Minister's Office, the Presidency of the Sicilian Region and the Sicilian Regional Assembly. From 1998 to 2002 he was President of the "Joint Commission to establish the implementation regulations of the Special Sicilian Statute". On 30 March 2013 the President of the Italian Republic made him a member of the commission for economic reforms. Together with Roberto Bin he has written a handbook of Constitutional Law (Giappichelli); now, in its thirteenth edition, it is used in all major Italian universities. He has edited numerous anthologies, published numerous articles in legal magazines as well as six monographs, including "*Forme di governo e trasformazioni della politica*", Laterza, 1996 and, together with Vincenzo Lippolis, "*Il bipolarismo conflittuale*", Rubbettino 2007. Since 1998 he is the Director of "*Rivista di diritto costituzionale*" published by Giappichelli. Born in Palermo, 58 years old, his hobbies include: sailing, mountain bike, swimming, photography, scuba diving and travelling. The secret behind his fitness? "Lots of yoga and zero society life".

assigning new consultative competences to the Antitrust Authority, the Prime Minister's Office has received 244 requests for an opinion about regional laws; in 39 cases the Authority decided they represented a violation of competition principles.

I should emphasize that the principles established in the judgements of the Constitutional Court greatly reinforce the advocacy interventions by the Authority, thereby enhancing both its traditional consultative activity and its new powers, including the power to dispute the administrative acts of former art. 21-bis".

Since 2012 the AGCM assigns a legality rating to companies that submit the application; the goal is to encourage companies to adopt ethical principles. What's your opinion about the recent boom in requests for this legality rating?

I'd like to answer this question by citing Calvino who in his book "A Defence of Honesty in the Land of the Corrupt" (1980) described Italy as "a country that ran on illegality. There were laws, of course, and the political system was based on principles that everyone more or less claimed to share. But as it branched through many power centres, the system demanded unlimited financial resources and these could only be obtained illegally".

Nevertheless, according to Calvino a category of honest citizens did exist: "due to mental habit, conditioning, or nervous tic; that is, they couldn't help it if the things that mattered to them could not immediately be measured in money, or if their brains still operated by a worn-out mechanism that linked material gain to work performed, or social esteem to merit, or personal satisfaction to the satisfaction of others".

The legality rating was established to achieve that goal: to seek out honest people and turn them into the engine behind the economy and a model to follow. But to be truly effective the rating cannot be based only on a company's honesty, it must also be economically convenient. The company must know that if it respects the law and helps to blow the whistle on the more serious offences that make economic activities opaque and slippery then it will be awarded the legality certification and reap benefits such as access to credit and public financing.

Four years ago you were named President of the AGCM. It's time to take stock: what are the positives and negatives?

The Antitrust Authority is going through a radical revamping process which inevitably affects its set-up. Although eliminating anti-competitive practices has traditionally been its *core business*, our mandate is now much broader and includes removing the *bottlenecks* that stop the economy from growing and the competition market from producing its effects in terms of efficiency and innovation. Our experience of the past twenty years tells us that insufficient competition in several markets is not only a *cost* for consumers and businesses, but also one of the main reasons behind the underdevelopment of our national productive fabric as well as an obstacle to growth. This is what prompted the legislator to give us these new tasks, including those cited in former art. 21-bis. The Antitrust Authority now has a completely new role: it interfaces with Public Administrations to remove the actions and practices that hinder competition for and in the market.

And then there's the much greater role of the consumer. Emphasising consumer protection is even more important during this very long crisis that has made labour and economic growth – so crucial to create employment – a key issue of the political agenda. Protected consumers who are aware of their rights help to create an atmosphere of trust in the market, something that up to now has been not only one of the major stumbling blocks vis-à-vis economic recovery, but also one of the elements that has sparked the dangerous deflation threatening the European economy.