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Round Table on Consumer Protection in Financial Services
Contribution by the Italian Competition Authority

The Italian Competition Authority (AGCM) welcomes this opportunity to share its experience in the field of consumer protection in financial services, which has represented a primary area of intervention for the institution over the last few years.

Powers of the Italian Competition Authority

The remit of AGCM encompasses a set of powers regarding consumer protection. Since 1992, AGCM has been granted the power to tackle misleading advertising. In 2007, following the transposition of the EC Directive no. 29/2005 into the Italian legislation through the Consumer Code, AGCM's competences in the field of consumer protection have been broadened to include unfair commercial practices by undertakings suitable to distort the economic behaviour of consumers, for instance by omitting relevant information, disseminating deceptive information or using forms of undue influence. AGCM may intervene, also through interim measure, and impose fines up to 5 million euros. Moreover, AGCM has been tasked with the enforcement of unfair contractual terms rules with reference to contractual forms or general contractual conditions used by sellers or suppliers vis-à-vis consumers.

The main provisions applied by AGCM are the following: Legislative Decree no. 146/2007, which transposed in Italy the Directive no. 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market; Legislative Decree no. 21/2014, which transposed Directive no. 2011/83/UE on consumer rights; Law no. 27 of 24 March 2012, which transposed Directive no. 93/13/ECC on unfair contract terms. All these provisions have been systematised in the so-called Consumer Code (Legislative Decree no. 206 of 6 September 2005).

AGCM is not the sole public body tasked with consumer protection in financial services in Italy. Banca d'Italia, the national central bank, CONSOB, the financial markets regulator, and IVASS, the institute for the supervision of insurance services, are also endowed with significant consumer protection powers in their respective spheres of action. AGCM actively cooperates with these entities and is due to ask for their non-binding opinions when the products or services involved in the proceedings fall within the scope of their activity. Furthermore, AGCM signed memoranda of understanding with each of these institutions over the years. Importantly, in 2010 AGCM, Banca d'Italia, CONSOB, IVASS and Covip (the Italian pension funds supervisory commission) signed a Protocol of agreement on financial education in order to promote and create joint initiatives, reinforce existing reciprocal cooperation instruments and coordinate their activities.

The main area of intervention on financial services by the Italian Competition Authority

The activity of AGCM in the field consumer has been driven by two main objectives: ensuring disclosure and transparency by tackling misleading or incomplete information, on the one hand, and addressing aggressive practices by financial institutions, on the other.

Disclosure and transparency are essential to ensure that consumers receive accurate and complete information about the financial products or services they purchase. In fact, besides having a significant impact on consumer overall welfare, financial services often show a high degree of complexity, so that the relationship between financial institutions and their clients is typically characterised by a significant imbalance and information asymmetry. Suitable disclosure may also facilitate consumers in choosing the best value product for their needs, while helping to maintain pressure on providers to offer competitive rates.

Some recent decisions adopted by AGCM in this regard are briefly described in the box below.

Disclosure and transparency – examples of misleading practices

In 2015, AGCM assessed that an advertising campaign regarding a savings product offered by the national postal operator was non transparent and thus misleading. The Authority held that the advertising messages did not adequately clarify that the attractive interest rate emphasised was actually subject to several conditions, suitable to alter the consumers' appreciation of the financial product¹.

By the same token, in 2016 addressed misleading information disseminated by a personal loan firm through targeted letters sent to financed clients. The letters proposed new loans at improved financial conditions, well below those originally subscribed by the consumers. However, AGCM found that, in the vast majority of the cases, customers that contacted the firm were actually offered worse financial terms: as a result, in 75% of the cases, clients ended up with substantially higher interest rates².

Other infringements against which AGCM's initiatives have proven particularly effective are aggressive practices that take advantage of the limited consumers' knowledge about their rights and prerogatives provided by the legal framework. Since the rules governing the financial sector are complex, consumers might not realise that the terms applied by the institution are actually detrimental for them.

Aggressive practices - limited knowledge by consumer

In a case carried out in 2016 with regard to variable rate mortgages, the Authority accepted the commitments submitted by a bank that had not applied the negative Euribor (Euro Interbank Offered Rate) rates to variable rate mortgage contracts. The case also involved the bank's failure to inform customers of the method used to calculate the interest rate, in the face of the constant decrease of Euribor rates. The commitments undertaken by the bank enabled it to rectify, *ab origine*, the economic damage suffered by consumers, while correctly informing them about the method for the calculation of the interest rate³.

¹ PS 10009 POSTE ITALIANE-CASSA DEPOSITI E PRESTITI/LIBRETTO SMART, decision no. 25758 of 2 December 2015, <http://www.agcm.it/consumatore/consumatore-delibere/open/C12560D000291394/2E6F6515E751836DC1257F290061EFD2.html>

² PS3330 - AGOS-PROBLEMATICHE VARIE, decision no. 26149 of 4 August 2016, <http://www.agcm.it/consumatore/consumatore-delibere/open/C12560D000291394/E6CF03560C934835C12580120027777C.html>

³ PS10296 - UNICREDIT-MUTUO VARIABILE SOGLIA MINIMA, decision no. 26283 of 21 December 2016, <http://www.agcm.it/consumatore/consumatore-delibere/open/C12560D000291394/557E23F16ECC5B46C1258098004F91FC.html>

In 2017, AGCM tackled aggressive practices by three major Italian banks, which acted in violation of the Consumer Code in relation to the practice of compound interest. These banks continued to apply compound interest, despite the express prohibition introduced by law in 2014. After the reform in 2016, which reiterated the prohibition of compound interest without the prior authorisation of the client, the three banking institutions adopted aggressive methods to induce their clients to authorise the debiting. In particular, in their communications to customers, these banks presented the application of compound interest as the standard option and only emphasised the possible negative consequences stemming from the clients' refusal to authorise compound interest⁴.

A recurring practice addressed by AGCM is the attempt of some financial institutions to take advantage of the weak bargaining position of consumers, either because the latter need a specific financial service (e.g., a mortgage or a personal loan) in a short period of time or because they are undergoing financial difficulties. This has become all the more important over the last few years, in light of the downturn that affected the Italian economy. In this regard, AGCM tackled conducts consisting in tying products and services that not necessarily should be purchased together, as well as aggressive practices aimed at the collection of debts.

Tying practices and aggressive collection of debts

In 2016, AGCM fined a bank that, *de facto*, made the supply of loans to customers (mortgages, personal loans, availability of credit to the bank account) conditional upon the acquisition of its own shares or convertible bonds, with a view to placing these securities with customers and, in the process, increasing its capital, thus achieving its pre-set objectives. The objectives in question were, firstly, to reach certain asset ratios in view of the transfer of the bank to the sole supervision of the European Central Bank and, secondly, to increase in size through the potential acquisition of other banks⁵.

⁴ PS10790 - UNICREDIT-INTERESSI ANATOCISTICI, decision no. 26832 of 31 October 2017, <http://www.agcm.it/consumatore/consumatore-delibere/open/C12560D000291394/6F28194AAED3FD6CC12581DF0057191F.html>, PS10791 - INTESA SANPAOLO-INTERESSI ANATOCISTICI, decision no. 26833 of 31 October 2017, <http://www.agcm.it/consumatore/consumatore-delibere/open/C12560D000291394/F9F57AF51F2E6F59C12581DF00571921.html>, PS10792 - BNL-INTERESSI ANATOCISTICI, decision no. 26834 of 31 October 2017, <http://www.agcm.it/consumatore/consumatore-delibere/open/C12560D000291394/7D6919846CD95851C12581DF00571923.html>

⁵ PS10363 - BANCA POPOLARE DI VICENZA-VENDITA ABBINATA FINANZIAMENTI-AZIONI, decision no. 26168 of 6 September 2016, <http://www.agcm.it/consumatore/consumatore-delibere/open/C12560D000291394/0955AD4068E68313C1258034002C2233.html>.

A similar practice by a bank that forced consumers to become shareholders in order to obtain soft loans was fined the following year. The aggressive commercial practice consisted of making the granting of loans conditional upon consumers buying shares or convertible bonds. The underlying purpose of the conduct was to achieve the capital increase needed by the bank to cover its current operations⁶.

AGCM also fined a personal loan firm for an aggressive commercial practice consisting in insistent payment reminders by frequent telephone calls, text messages and telegrams, even addressed to third parties (such as guarantors, employers and family members), which caused undue pressure on the borrowers⁷.

Along the same lines, AGCM tackled aggressive conducts carried out by three insurance companies, which sent injunctions and summons without respecting the competent territorial court, that is the court of the customer's residence. While acknowledging the legitimate right of the companies to take legal action in court, AGCM held that such conducts were suitable to generate in consumers the belief that it was preferable to pay the requested amount rather than to be exposed to legal proceedings before a court different from that of residence, thus avoiding expenses and difficulties related to the attendance of the lawsuit⁸.

Finally, consumers should be able to search, compare and, where appropriate, switch between products and providers easily and at reasonable and disclosed costs. AGCM has addressed undue switching costs and obstacles to mobility, to ensure that consumers can take advantage of better opportunities offered in the market. For example, in 2015 AGCM accepted commitments offered by two important banks that were allegedly hindering requests by customers to close their bank accounts. In particular, it appeared that the banks did not follow up such requests claiming that they lacked certain formal

⁶ PS10602 - VENETO BANCA-VENDITA ABBINATA FINANZIAMENTI-AZIONI, decision no. 26613 of 24 May 2017, <http://www.agcm.it/consumatore/consumatore-delibere/open/C12560D000291394/45250CA4161E0987C1258130002FECC6.html>.

⁷ PS3330 - AGOS-PROBLEMATICHE VARIE, decision no. 26149 of 4 August 2016, <http://www.agcm.it/consumatore/consumatore-delibere/open/C12560D000291394/E6CF03560C934835C12580120027777C.html>

⁸ PS10222 - HDI ASSICURAZIONI-INDEBITO RECUPERO CREDITI, decision no. 26404 of 18 May 2016, <http://www.agcm.it/consumatore/consumatore-delibere/open/C12560D000291394/223968F4FAE0AAE5C1257FC3005D7750.html>, PS10223 - UNIPOL ASSICURAZIONI-INDEBITO RECUPERO CREDITI, decision no. 26405 of 18 May 2016, <http://www.agcm.it/consumatore/consumatore-delibere/open/C12560D000291394/B9D6819E554CDF97C125800C00413B9A.html>, PS10273 - UNIQA ASSICURAZIONI-INDEBITO RECUPERO CREDITI, decision no. 26026 of 18 May 2016, <http://www.agcm.it/consumatore/consumatore-delibere/open/C12560D000291394/E66D74C666102FB9C1257FC3005D7754.html>.

requirements, but did not inform the customers thereof and continued to charge the account fees⁹.

Conclusions

The activity of the Italian Competition Authority in the field consumer protection is primarily intended to eliminate conducts that affect consumers and undermine confidence in the functioning of the markets. This loss of confidence is of notable significance in the financial sector, where informational asymmetry between enterprises and consumers is particularly marked and where confidence and trust are the lynchpins of the system.

AGCM is aware that financial choices are often important life decisions for consumers. In addition, it is difficult for consumers to learn from experience, as financial products are often one-off purchases and typically decisions produce their effects over the long-term, meaning that risk and uncertainty can play a larger role. Therefore, AGCM is committed to ensure transparent pricing, complete and simply presented information, fair terms and conditions and business conduct, and consumer choice and mobility, which are key factors to spur public trust in the financial sector.

To this end, cooperation with sector regulators tasked with concurring consumer protection competences has proven beneficial with a view to exchange views, enjoy possible synergies and promote consumer awareness.

Finally, as an authority with a dual competence in competition and consumer protection, AGCM has the opportunity to analyse market issues in the financial sector from a twofold perspective and to use these two competences cooperatively. AGCM's activity in the field of competition enforcement and advocacy has proven to be complementary to consumer protection. Indeed, consumer protection enhances trust and transparency, which are necessary requisites for competition to function properly, while competitive

⁹ PS7968 - BARCLAYS-CHIUSURA C/C, decision no. 25475 of 13 May 2015, <http://www.agcm.it/consumatore/consumatore-delibere/open/C12560D000291394/AC4B21130DE3DB48C1257E57004E78E4.html>, PS8963 - INTESA SANPAOLO-CHIUSURA CONTO, decision no. 25476 of 13 May 2015, <http://www.agcm.it/consumatore/consumatore-delibere/open/C12560D000291394/6316E83CDBE03A97C1257E57004E78E8.html>.

markets provide consumers with greater choice amongst financial services and create competitive pressure on providers to offer competitive products, enhance innovation and maintain high service quality.