

**FORWARD AGENDA FOR COMPETITION POLICY
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**COMMITMENT DECISIONS AND
DETERRENCE OF ANTITRUST
INFRINGEMENTS**

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THE COMPETITION AUTHORITY TOOLBOX

DETERRENCE

Effectiveness of enforcement
(sanctions, interim measures), Private
Enforcement

PREVENTION

Compliance programs, Advocacy

EFFICIENCY

Commitments decisions

COMMITMENT DECISIONS IN THE ITALIAN LEGAL FRAMEWORK

Art. 9 of Regulation n. 1/2003

2006 introduction of commitment decisions under **art. 14-ter of the Italian Competition Law** (law n. 287/1990)

Companies may offer commitments that would **remove the competition concerns**, the Authority, after an assessment, may make them binding on the parties and terminate the proceedings without ascertaining the infringement

Implementation procedure: the AGCM issued a Notice in 2006 which was lastly revised in September 2012

HOW TO COMMIT...

Companies can offer commitments that address the competitive concerns raised by the Authority within three months from the notification of the opening of the proceedings

Commitments can be refused:

By a reasonable time when:

- Commitments are submitted too late;
- Commitments manifestly unfit to address the competition concerns;
- The case involves serious competition offences (*hardcore restrictions*);
- There is an interest in a full assessment of the case (for example because of its novelty).

PUBLICATION

If not manifestly unfit, **within 45 days** from their presentation

Market test: interested third parties can submit written comments **within 30 days** from the publication

Parties' reaction to the market test and marginal changes to the commitments **within 30 days** from the deadline for the submission of comments (60 days from their publication)

REFUSAL

The investigation continues

ACCEPTANCE

Commitments are binding and the case is closed without ascertaining the infringement

...AND END THE COMMITMENT..

- In case of non compliance with the binding commitments the Authority can fine the company up to 10% of the turnover
- **The case can be re-opened if:**
 - 1) There has been a material change in any of the facts on which the decision was based;
 - 2) The companies do not respect the commitments;
 - 3) The decision was based on incomplete, inaccurate or misleading information provided by the parties.

AGCM COMMITMENT DECISIONS (2007-2018)

• From **51%** (2007-2011)

• To **28%** (2012-2018)

	2007-2011	2012-2018	2007-2018
Decisions (total)	84	99	183
AGREEMENTS	44	64	108
%	52%	65%	59%
ABUSES	35	35	70
%	42%	35%	38%
Abuses and/or agreements	5		
COMMITMENT DECISIONS	43	28	71
%	51%	28%	39%
AGREEMENTS	13	13	26
%	30%	46%	37%
ABUSES	26	15	41
%	60%	54%	58%
Abuses and/or agreements	4		4
Violations	35	58	93
%	42%	59%	51%
Non violations or other	6	13	19
%	7%	13%	10%

AGCM COMMITMENT DECISIONS (2007-2018)

- **58%** commitment decisions in abuse cases, **37%** in agreements (not cartels!!).
- Commitment decisions adopted for a broad variety of industry sectors.
- Commitments easier to assess for some infringements (refusals to deal, exclusivity clauses, vertical restrictions...).
- **In 40%** of the cases the proposal of commitments was rejected (seriousness of the infringement, interest in a full assessment of the case, novelty, unfitness of the commitments...).
- **2012** revision of the procedural Notice on commitment decisions (after a public consultation).

AGCM COMMITMENT DECISIONS: EXAMPLES

Case No A482 – E-Class / Borsa Italiana (structural commitment) – year 2016

An investigation was launched on an alleged violation of article 102 TFEU, focusing on the application by Borsa Italiana of some contractual provisions concerning the access and the use of its financial data in a discriminatory manner in order to favour its downstream vendor BIMS.

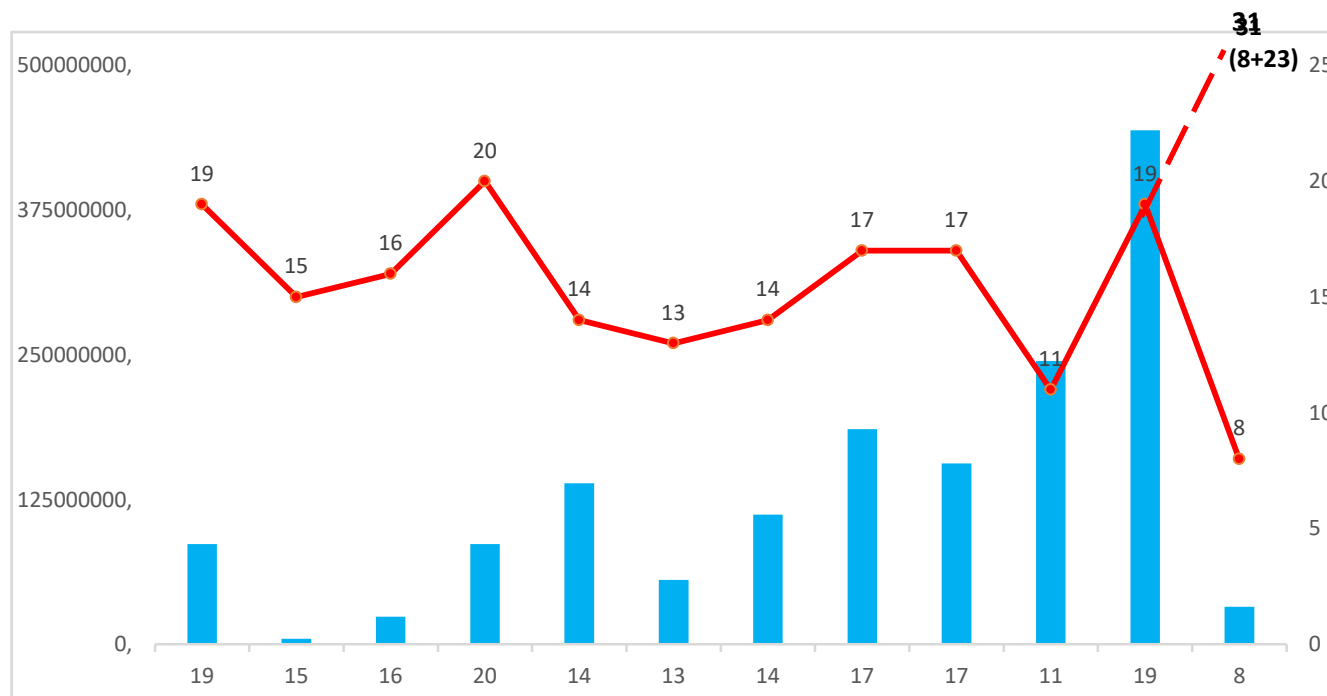
Commitment: divestiture of the branch of BIMS supplying financial information services, thus determining the end of the vertical integration between the owner of the financial data in the upstream market and the service provider competing with other operators in the downstream market

Case No. A495 - Gara TPL PADOVA

Investigation against three Italian local transport companies for a suspected infringement of article 102 TFEU in the markets of local public transport of passengers in Padua. The three parties allegedly refused to provide to the Contracting Authority of Padua the essential information in their possession, which was necessary to the completion of the relevant procurement procedure

Commitments would provide any essential information in connection with the prospective procurement procedure for public transport of passengers

DETERRENCE: SANCTIONS AND DECISIONS (2007-2018)



Decisions (abuses and agreements) and sanctions 2007-2018

Decisions ———
 Pending cases - - -
 Sanctions ■■■■

PROS

- **Administrative efficiency: saving time and resources should enhance the ability to focus on more important cases**
- **Allowing enough flexibility to end cases when competition can be restored rapidly and without major expenses**

CONS

- Impact on deterrence
- Impact on private *enforcement*.
- Regulatory temptation risks of overlap with existing regulation and asymmetric information
- Limited transparency and lack of legal predictability
- «*Chilling effect*» commitment decisions should not be a shortcut on «weak» cases

CRITICALITIES

- **Structural vs behavioral remedies – the cost of monitoring**
- **Price remedies (????)**
- **Proportionality**
- **Cases involving many parties – some offer commitments some don't**
- **Instrumental use of commitment discussions**

CONCLUSIONS

- **A useful tool...**
- **...but significant risk of abuse.**
- **If the objective is to be more efficient one should avoid lengthy discussions, assessment, monitoring of commitments**
- **An appropriate use of the tool should be reflected in the number and relevance of infringement decisions**

**Хвала на пажњи !
THANK YOU!**

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