OECD: Italy Should Approve its Proposed Competition Legislation 'Swiftly', Including the Reform of the National Merger Filing Thresholds

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On 15 February 2017, the Organization for Economic Cooperation and Development ("**OECD**") published its economic survey of Italy. Among other things, the 156 page report recommends that Italy passes its proposed competition legislation 'swiftly', without further weakening its provisions and without 'watering down' the bill, in order to enhance competition in the country.

The bill covers several sectors, including telecommunications, online booking sites and utilities.

Significantly, as already reported, the bill also provides for the amendment to the Italian merger filing thresholds. In particular, the bill provides that the existing threshold of EUR 50 million for the target of the transaction is replaced by the threshold that at least two parties to the transaction have an individual turnover of EUR 30 million in the last financial year.

The bill is still under examination by Parliament, more than one year after it was first presented to the legislator, because its progress has been hindered and delayed for several reasons. It faced intense adverse lobbying and its approval was delayed due to the resignation of the minister in charge of the bill and the end of Renzi's government.

The bill will be discussed by the Senate in March this year and is expected to enter into force shortly thereafter.

Background and content of the proposed competition legislation

In its report, the OECD recognizes that Italy has made progress on opening up product markets to competition (especially between 2008 and 2013) in the area of state controls, as well as in relation to barriers to entrepreneurship and to trade and investment. There is still room to lower barriers relating to state controls by reducing public ownerships.

In any case, the simplification of product market regulation has not resulted in a substantial improvement in terms of productivity and investments, especially due to problems with the implementation and enforcement of the new rules. Such problems are, in turn, considered attributable to inefficiencies in the public administration and judiciary. As already highlighted by the Italian Competition Authority ("**AGCM**"), there is in the country a prevalent legal uncertainty, due to the proliferation of regulations, administrative complexity and *"a widespread distrust towards competition".* It is also stated that the regulatory restrictions in Italy hinder market entry and this in turn hampers business dynamism and investment.

In view of the above, the OECD welcomes the recent efforts to improve the efficiency of the public administration and the judiciary, which "should be pursued vigorously". In particular, Italy is encouraged to move forward with the ongoing public administration reform, which contains *"important provisions on local public services, municipal enterprises and port authorities going in the right directions that, if not diluted, will enhance competition in these sectors".*

The OECD finds that regulation is particularly restrictive in the transport sector (i.e. air and maritime transports), and in some professional sectors such as engineering, legal and accounting services. Such restrictions are considered to negatively affect the competiveness of the Italian industrial sector, and hinder the dynamism of the services sector, which account for most of Italy's GDP.

Based on previous cases of easing of entry restrictions in the service sector in Italy (e.g. in the pharmacy market), the OECD concludes that easing regulation in the services sector will have large benefits. The competition bill presented by the government to Parliament in 2015 *"goes in the right direction"*, as it deals with different services sectors, including: insurance (to reduce fraud, increase transparency and enhance offer comparability); telecommunications (to make it easier to switch provider); Italy's postal provider Poste Italiane (to end its monopoly on judicial and administrative notifications); electricity and gas sectors (to remove remaining price regulations); notaries; pharmacies; law firms; banks; fuel stations; and pensions funds.

As previously mentioned, the new bill also provides for the amendment to the Italian merger filing thresholds set forth by Article 16 of Italy's competition act (Law n. 287/1990). As a result, transactions will have to be notified to the Italian competition authority if: (i) the combined national turnover of the companies involved exceeds EUR 492 million in the last financial year. This remains unchanged. However, please note that in the meantime the merger filing thresholds have been updated by the Italian competition authority as part of its annual review and have been raised to EUR 495 million; and (ii) at least two parties to the transaction have an individual turnover of 30 million in the last financial year. This replaces the existing merger filing threshold of EUR 50 million for the target in the last financial year.

The law is sill being discussed and the OECD urges that it is *"swiftly approved without further weakening its provisions"*. In addition, the government should apply better regulation and adopt a new competition law in 2017, to *"continue its efforts of market opening and expand opportunities"*.

Relevance for companies

If approved in full and once entered into force, the new competition legislation will bring substantial changes in several sectors. For example, it will allow customers to switch telecom providers more freely, will remove price regulations in the electricity and gas sectors, and will end the monopoly of Poste Italiane on judicial and administrative notifications. The bill will also introduce provisions against the ‘rate-parity’ clauses of online hotel booking sites (following the example of other European countries, including France and Austria), which oblige the hotel to offer room rates on their websites equal to those displayed on online booking services they use.

The changes above might entail a considerable impact on companies doing business in the sectors concerned by the reform, creating interesting opportunities for some of them while imposing additional obligations on others.

As regards the proposal to lower the Italian merger thresholds, its possible consequences are not yet entirely clear. However, it appears that the current proposals will not significantly increase transaction costs or burdens on business. If approved, the (new) merger notification thresholds will remain sufficiently high to continue to screen out transactions that are unlikely to result in material competitive effects within Italy. In any case, it has to be noted the AGCM is showing a reinvigorated appetite for merger control enforcement. Accordingly, it is advisable that companies carefully assess the reporting requirements of their transactions in Italy and take the necessary steps to fully comply with the relevant regulations.

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