

# Italy Passes New Law to Promote Competition and Market Entry

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The Italian Council of Ministers, in the session of November 4, 2021, approved a new bill to promote competition in the country, in line with one of the objectives endorsed by the Italian government in the national implementation plan for the EU Recovery and Resilience Facility.<sup>1</sup> The bill is expected to be discussed by the Italian Parliament in the coming months.

The bill aims to:

- promote competition, including facilitating market entry or expansion by smaller companies;
- remove regulatory obstacles, of a legislative and administrative nature, to open up markets;
- ensure consumer protection.

The bill contains provisions on the removal of barriers to market entry, local public services, energy and environmental sustainability, healthcare, digital infrastructure and non-discrimination between competitors.

The main changes are summarized below.

- **Removal of entry barriers** – The bill envisages a central public information system aimed at promoting publicity and transparency on the transfer of State resources, including exclusive concessions and licenses.
- **Local public services and transport** – The bill aims to ensure greater quality and efficiency in the provision of local public services, in line with EU law. Particular attention is paid to local public transport. In particular, the bill includes the following new provisions:
  - an obligation on local authorities to justify the reasons for using direct awards instead of tender procedures;
  - more controls over the establishment of new public companies;
  - encouraging the award of local and regional public contracts for transport services through public procurement procedures;
  - the introduction of alternative dispute resolution procedures between transport services providers and their users.
- **Energy and environmental sustainability** – The bill gives impetus to the construction of an electrical control unit network. In particular, the bill defines criteria for the selection of operators who will be responsible for the installation of electric charging infrastructure by local authorities and motorway concessionaires so that the selection must follow transparent and non-discriminatory competitive procedures.
- **Electronic communications** – The bill also intervenes on various points relating to digitalization. For example, with regard to the construction of new 5G and fibre infrastructure, the bill facilitates access to existing networks, including passive infrastructure. The bill introduces coordination obligations between physical infrastructure and network operators for the construction of high-speed communication networks. Furthermore, it introduces an obligation for electronic communications operators to acquire their users' express consent for all subscription services offered by third parties, including text messages and mms.
- **Waste management services** – The bill promotes the introduction of greater competition in the waste management chain. In particular, with regard to non-domestic users, the minimum duration of the agreements that non-domestic users must enter into for the collection and recovery of their waste is reduced from five to two years in order to increase competition in the provision of such services.
- **Pharmaceutical sector** – In relation to healthcare, the bill introduces measures aimed to enhance the quality of healthcare services offered through, among other things, the removal of barriers to the entry of generic drugs on the market; and the introduction of new rules on price reimbursement policies for originator drugs.
- Removal of red tape for businesses
  - **Review of administrative procedures** – The bill envisages a review, simplification and digitalization of administrative procedures. The objective is the elimination of unnecessary authorisations and formalities affecting the freedom of economic initiative, except for those required by EU law or those that protect other national constitutional principles.
  - **Simplification of controls on economic activities** – The bill envisages, among other things, the promotion of mechanisms of dialogue and cooperation between administrative authorities, auditors and auditees.
  - **Reduction of the time to set up a business** – The bill reduces the time for issuing the so-called "Single Communication" (Comunicazione Unica) from seven to four days. This Single Communication is required when setting up new businesses. The competent authority shall immediately communicate the tax code and VAT number to the entity concerned and to the Register of Companies office electronically, and within the following four days it shall communicate the further definitive data on the registered positions.

<sup>1</sup> For more background on the EU Recovery and Resilience Facility, see our previous client alert available [here](#).

- **Insurance** – The bill extends the obligation to adhere to the so-called direct compensation procedure to companies with registered offices in other EU Member States that operate in Italy.
- **Strengthening of antitrust enforcement powers** – The bill introduces various changes in order to strengthen the investigation powers of the Italian competition authority, the *Autorità garante della concorrenza e mercato* ("AGCM"), with particular regard to digital markets. Main changes include:

- Strengthening the powers of assessment of concentrations that would result in a lessening of competition without necessarily creating or reinforcing a single or collective dominant position. The bill aligns the substantive test to assess mergers under the Italian merger control rules to the "significant impediment to effective competition" (SIEC) test under the EU Merger Regulation.
- Strengthening the powers to sanction the abuse of economic dependence. This is a separate concept from that of abuse of a dominant position. The Bill introduces a rebuttable presumption of economic dependence in commercial relations with a company offering the intermediation services of a digital platform, where the latter plays a decisive role in reaching end-users and/or suppliers, including in terms of network effects and/or data availability. Conducts that are presumptively abusive include, but are not limited to: the refusal to purchase or supply, the imposition of unjustifiably burdensome or discriminatory contractual conditions, the arbitrary interruption (without reasonable notice) of ongoing business relations.

In addition, the AGCM will have a new power to call-in and review certain transactions post completion, similar to the one available to the UK's Competition and Markets Authority. The transactions that may fall within this new call-in power are transactions (i) either meeting only one of the two cumulative filing thresholds, or (ii) where the total worldwide turnover of the merging parties exceeds € 5 billion. The AGCM may exercise this new call-in power within 6 months from the completion of a transaction, if it suspects that the transaction may result in competition issues.

The bill also contains some additional clarifications to the existing merger control regime. First, the AGCM will now apply the same criteria for the calculation of the relevant turnover in case of banks and financial institutions as the one adopted under the EU Merger Regulation. Second, the bill clarifies that cooperative, full-function joint ventures are within the scope of Italian merger control rules.

Other antitrust enforcement procedural changes include:

- A settlement procedure in infringement proceedings, although the details of such a procedure will need to be defined by AGCM.
- The strengthening of powers to obtain information and documents even outside formal investigation proceedings;
- New powers to impose administrative sanctions in case of refusal to or delay in providing the requested information or documents or in case of misleading or incomplete information.

## Contacts

If you have any questions on how the bill might impact your business, please contact your usual Squire Patton Boggs lawyer or one listed below.

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