

# **SIGNIFICANT MARKET POWER IN RETAIL SECTOR**



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**Italian Competition Authority**

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# Outline



- The ICA's sectoral enquiry in the retail distribution sector
- Perceived inadequacy of existing rules to address buyer power and new forms of control of market power
- The introduction of new rules on the control of market power in the food sector in Italy – the ICA's approach

# Sector enquiry in the retail distribution sector

Important features of the Italian distributive sector highlighted by the sector inquiry :

- 1) Increasing weight of Modern Distribution and significant degree of concentration in local markets;
- 2) Relevance of buying alliances;

Scope for (re)considering whether the exercise of buyer power is beneficial for consumers

# Sector enquiry in the retail distribution sector

1. Positive impact on consumers if lower costs translate into better prices
2. Negative impact on the distribution and upstream markets when:
  - a) Competing distributors are foreclosed;
  - b) Collusion amongst distributors is facilitated.
  - c) Producers' incentives to invest and innovate are lowered;

Competitive assessment of buyer power entails comparing short term positive effects and long run potential restrictions

# Application of antitrust rules to buyer power



The prosecution of anticompetitive unilateral conduct flowing from buyer power requires assessment of dominance;

If dominance cannot be established, vertical restraints agreed with suppliers might be assessed under the rules on anticompetitive agreements.

Competition rules might be ill-suited to capture buyers' conduct.

# Italian Legal Framework

- The perceived inadequacy of existing rules has been invoked to justify further regulatory intervention.
- In Italy, specific legislation concerning some contractual abuses in the food distribution chain was enacted (article 62 of DL 1/2012).

# Italian Legal Framework



## THE LAW SETS PROVISIONS WHICH:

relate to **vertical relationships** within the agricultural food chain (they do not involve final consumers);

are designed to ensure greater transparency and to prevent unfair conducts **in presence of significant imbalance of contractual power**;

complement, for the agro-food industry, provisions on abuse of economic dependence (Law n. 192/1998, Article 9)

# The provisions of art. 62



- In particular:

writing form of commercial agreements for agricultural food and foodstuff is made compulsory (the contract must define: duration, characteristics and price of the product sold, mode of delivery and payment terms)

in all B2B contractual relations the following shall be prohibited :

- a) imposing – directly or indirectly – unfair trading conditions, as well as non-contractual retroactive conditions;
- b) applying dissimilar conditions to equivalent transactions;
- c) making the conclusion and the performance of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts;
- d) requesting the unilateral performance of additional obligations, not justified by the nature or the content of the relevant contractual relations;
- e) Adopting any other unfair trading conduct.

A fixed deadline for payments (30 days for perishable products and 60 days for non perishable products) is made compulsory

# The implementation

- Article 62 will be applied in contractual relations where a significant imbalance exists between the bargaining position of the parties. Its rationale is the protection of the weaker party.
- The competition agency's intervention is only justified inasmuch as the contractual abuse may cause significant harm to the relevant public interest.
- Therefore, the ICA will only intervene where the conduct at stake is sufficiently consistent and diffuse to cause such harm.