Italy: The Italian Competition Authority (ICA) accepts Commitments and closes Investigation regarding Waste Paper Consortium COMIECO

On 16 March 2011, the Italian Competition Authority (ICA) closed proceedings based on an alleged violation of Article 101 TFEU against COMIECO, a consortium of undertakings active in the collection, recovery and recycling of waste paper.

The case started both on the basis of the results of the Fact Finding Inquiry into the Packaging Waste sector (concluded in July 2008) and of some complaints filed by undertakings active in the paper recycling and paper manufacturing sectors.

The alleged violation included the fact that, through internal deliberations, COMIECO: i) established an anticompetitive waste paper allocation mechanism among its members; ii) partially fixed the waste paper price charged to paper manufacturers; and iii) put in place a sanction regime in order to enforce the above.

In October 2010, COMIECO offered commitments to address the ICA's competition concerns. COMIECO committed to allocate 40% of the waste paper collected through competitive tenders; such percentage would be sold according to prices fixed by competing auctions bids.

The ICA assessed, based on the market test results, that the above commitments are appropriate and necessary in order to address its concerns about COMIECO’s mechanism for allocating waste paper. Indeed, as a result of the commitments, COMIECO’s members would compete among each other when purchasing a significant proportion (40%) of the waste paper collected by the consortium. Besides, considering that the waste paper collected by COMIECO amounts to about 33% of the waste paper collected in Italy, a very large percentage (about 80%) of waste paper will be competitively allocated among paper manufacturers. If that situation undergoes a substantial change, the ICA may re-examine its decision.

As for the remaining 60%, for which the pro quota allocation mechanism will continue to be applied by COMIECO, the ICA considers that such percentage is necessary, essentially to avoid a situation of market failure. As a matter of fact, the market analysis showed a structural excess of supply of waste paper that could ultimately result in market failure. If that structural market situation changes in the future, indicating a decrease in the risk of market failure, the ICA may reconsider its decision.