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# **Study “PSI: Identification of potential Exclusive Agreements – Italy”**

## **Final Report 3.0**

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## Executive summary

This Report provides a detailed overview of the activities carried out and the results of the assessment of potential exclusive arrangements (EAs) between Italian public sector bodies (PSBs) and re-users (Re-users) exploiting public sector information (PSI).

Within the study, carried out between November 30<sup>th</sup> 2009 and April 2<sup>nd</sup> 2010, over **125 Italian PSBs** – holders of the most important PSI – and over **250 Re-users** within the most valuable PSI Domains (Business information, Geographic information, Legal information, Meteorological information, Social statistical information and Transport information) were analysed, **yielding to 7 leads of potential EAs**, largely based on reports from Re-users.

The most prominent leads concern business information, while the remaining relate to meteorological and geographical information. We suggest that **5** of them may be worth a follow-up by the appropriate authorities.

Cooperation with the Dipartimento Digitalizzazione PA e Innovazione Tecnologica of the Prime Minister's Office, in charge of Information Society policies in Italy, has significantly enabled the smooth running of this assessment, in particular in the process of contact with (the various levels of) the Italian PSBs. In this context, we would like to thank the Servizio Affari Internazionali – especially the director Orietta Maizza – for her commitment and support.

# 1. Introduction

This Final Report (the Report) is produced in accordance with the requirements set out in the tender documents and the proposal submitted (as agreed upon in the context of the Contract Number **30-CE-0305451/00-63**). Furthermore, the activities leading to this Report have been carried out in full conformity with the Inception Report.

This Report provides a detailed overview of the activities undertaken and the results of the study on the existence of potential exclusive arrangements (EAs) between Italian public sector bodies (PSBs) and re-users in the context of the exploitation of public sector information (PSI).

It consists of:

Section 1 – Introduction;

Section 2 – Background and aim of this study;

Section 3 – Important aspects of the implementation of the study, in particular the close collaboration sought with the various Italian stakeholders dealing with public sector information;

Section 4 – the results of our research. It focuses on the alleged potential exclusive arrangements reported, which are highlighted in a summarizing table, also including suggestions for possible follow-up.

Section 5 – Conclusions

Finally, the Report holds three annexes.

Annex 1 – Other cases which could be relevant in the light of other articles of the PSI Directive

Annex 2 – Inception Report

Annex 3 – Providing a full overview of organisations contacted and their responses (both from the PSBs and Re-users), making the research process and the results obtained fully auditable.<sup>12</sup>

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<sup>1</sup> Where Annex 3 contains personal data within the meaning of Directive 95/46/EC, it has to be considered of a confidential nature.

<sup>2</sup> The major part of the information reflects input received from the respondents approached during this study and, although we have done our best to optimize the quantity and quality of the responses, we cannot take any responsibility for the ultimate correctness of the data provided.

## **2. Background, aim and approach of the study**

### **2.1 Background**

Directive 2003/98/EC (the Directive) of the European Parliament and the Council, dated 17 November 2003, on the re-use of public sector information prohibits, as a rule, exclusive arrangements.

Under article 11 of the Directive:

1. *The re-use of documents shall be open to all potential actors in the market, even if one or more market players already exploit added-value products based on these documents. Contracts or other arrangements between the public sector bodies holding the documents and third parties shall not grant exclusive rights.*
2. *However, where an exclusive right is necessary for the provision of a service in the public interest, the validity of the reason for granting such an exclusive right shall be subject to regular review, and shall, in any event, be reviewed every three years. The exclusive arrangements established after the entry into force of this Directive shall be transparent and made public.*
3. *Existing exclusive arrangements that do not qualify for the exception under paragraph 2 shall be terminated at the end of the contract or in any case not later than 31 December 2008.*

Since some Re-users of PSI have been voicing complaints – so far only two Member States (the Netherlands and the United Kingdom) have done systematic research in this matter - the European Commission (EC) decided to initiate studies in various Member States in search of exclusive arrangements still in force. Following a call for tender, the study in Italy was assigned to T33 S.n.c.

### **2.2 Aim and approach**

As clearly set out in the terms of reference, the study is to: *collect relevant information from the public and private side of the Italian PSI market (both supply and demand) on the potential existence of Exclusive Agreements in the light of article 11 of the PSI Directive.*

To this end we:

1. identified the Information Market Domains to be targeted;
2. undertook a survey of over **125** PSBs in the selected sectors and where necessary followed up through direct contact;
3. consulted over **250** Re-users in these sectors;
4. highlighted the findings in a summary country report (the Final Report)

The Inception Report contains a description of the approach taken, which has been closely followed. Details are attached as [Annex 2](#).

### 3. Critical steps in the implementation

We would like to briefly highlight a few important decisions taken during the implementation of the study, as they are essential to grasp the approach followed and to interpret the results obtained.

These decisions concern:

1. the identification of the relevant target-organizations and digging out the contact details
2. connecting with the appropriate levels within the Italian government
3. our approach to obtain additional responses.

#### 3.1 Identification of the relevant population

We selected and classified the population/sample on the basis of two criteria: (i) perceived economic potential of the PSI held by the PSBs and (ii) domains where EAs have been reported in the past (thus connecting to the work performed under the MEPSIR study). We ended up with 6 categories:

**Table 1: overview of PSI Domains covered**

<b>PSI Domain</b>	<b>Information covered</b>
Business information	official business registers, patent and trademark information and public tender databases
Geographic information	address information, aerial photos, buildings, Land Registry, geodetic networks, geology, hydrographical data and topographical information
Legal information	judgments of national, foreign and international courts, national legislation and treaties
Meteorological information	climate data, models and weather forecasts
Social statistical information	economic, employment, health, population, public administration, social statistics
Transport information	information on traffic congestion, work on roads, public transport and vehicle registration

Based on these classifications, we researched on the internet and existing databases (like business registers, yellow pages etc) and analyzed which PSBs hold this data (and allow its reuse) and which Re-users are exploiting/using this data. This resulted in long lists of PSBs and Re-users (names of organisations, contact persons and coordinates) which were consequently contacted throughout the research period.

Table 2 provides an overview of the numbers of PSBs and Re-users involved in the study and the division of the 6 PSI Domains selected<sup>3</sup>.

**Table 2: summarizing overview of organizations contacted and responses received per PSI Domain**

PSI Domain	Re-users		PSBs	
	<i>Number of questionnaires sent out</i>	<i>Number of responses received</i>	<i>Number of questionnaires sent out</i>	<i>Number of responses received</i>
Business	58	38	61	15
Geographic	115	84	60	12
Legal	60	24	12	2
Meteorological	9	6	41	12
Social statistical	9	6	18	4
Transport	26	14	5	2
Total	277	172	197	47

### **3.2 Connecting to the appropriate levels within the PSB and Re-user domains**

To maximise the response rate, we also tried to liaise with the appropriate levels within the PSBs and Re-users sectors.

For the PSBs, the Dipartimento Digitalizzazione PA e Innovazione Tecnologica of the Prime Minister's Office allowed us to mention the name of the Department in the cover letters sent out (December 23<sup>rd</sup> 2009), and provided us with useful advice on the potential organisations to be contacted.

For the Re-users of business and geographical information, meetings were held with **ANCIC** – Associazione Nazionale tra le Imprese di Informazioni Commerciali e di Gestione del Credito – and **ACIF** – Associazione Consulenti di Informazioni Finanziario-Immobiliari – on January 20<sup>th</sup> and February 15<sup>th</sup> 2010 in Milan.

On March 9<sup>th</sup> 2010 in Milan – we met the Italian Association of Publishers (**AIE** – *Associazione Italiana Editori*).

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<sup>3</sup> The number of questionnaires sent out illustrated within the table doesn't reflect the number of organisations approached, as: a) in some cases the same organisations / companies requested the questionnaire more than once; b) on being contacted by phone, 9 other organisations / companies stated they were not re-users and were therefore not investigated further. For more details about the number of the organisations approached, please see tables 3a and 3b.

During the meetings, the organizations were made aware of the aims of the study and we had the opportunity to get their views concerning the potential issues existing within their respective information domains. Moreover, the efforts of the Associations significantly contributed to the response by their members.

The following table illustrates the list of bodies and organizations which were contacted during the study with a request for cooperation:

Name of the organization	Role/Responsibility	Market side
Prime Minister's Office	Technological Innovation of the Public Administrations	PBs
CNIPA	National Center - Information Technology in the Public Administrations	PBs
Confindustria Servizi Innovativi e Tecnologici	Italian Federation of innovative businesses	Re-users
ANCIC <sup>4</sup>	National Association of companies dealing with financial and businesses information	Re-users
ACIF <sup>4</sup>	Association of Financial and estate Information Consultant	Re-users
AIE	National Publishers Association	Re-users

### 3.3 Obtaining responses

Another key success factor of the study was our telephone follow-up. After sending out the questionnaires both to the Re-users and the PSBs, we actively sought responses through follow-up telephone calls. This allowed us to address any problems (like having the wrong contact person or contact details) but also solved any misunderstandings regarding the questions asked.

During the telephone follow-up some respondents gave their feedback orally. To make sure that we had noted their responses correctly we always sent them a confirmation letter/email detailing their responses (allowing them to notify us of any misunderstandings or mistakes). Only after a minimum of 4 attempts to acquire a response – made over a period of 12 weeks – respondents were listed as non-respondents. [Annex 3](#) holds the details of all Re-users and PSBs contacted.

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<sup>4</sup> Sector organisation partner of *Confindustria Servizi Innovativi e Tecnologici*.

## 4. Results

### 4.1 Analysis of the responses received

**Table 3a: Detailed breakdown of the PSBs contacted**

Events	PSBs			
	<i># National level</i>	<i># Regional and local level</i>	<i>Total</i>	<i>%</i>
organizations approached with questionnaires	39	89	128	100
non-responding	28	53	81	63
responding	11	36	47	37

**Table 3b: Detailed breakdown of the Re-users contacted**

Events	Re-users	
	#	%
organizations approached with questionnaires	251	100
non-responding	79	31
responding	172	69

**Table 4a: Detailed breakdown of the responses received from PSBs**

Events	PSBs			
	<i># National level</i>	<i># Regional and local level</i>	<i>Total</i>	<i>%</i>
organizations responding	11	36	47	100
- organizations refusing to cooperate	2	9	11	23.4
- organizations not aware of any EAs	9	26	35	74.5
- organizations aware of alleged EAs	0	1	1	2.1
- number of alleged EAs reported	0	1		
- # of PSBs party to alleged EAs	0	1 <sup>5</sup>		

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<sup>5</sup> Not being part of the 6 potential EAs reported by the Re-users.

**Table 4b: Detailed breakdown of the responses received from Re-users**

Events	Re-users	
	<i>total</i>	%
organizations responding	172	100
- organizations refusing to cooperate	52	30.2
- organizations not aware of any EAs	54	31.4
- organizations aware of possible EAs	66	38.4
- number of possible EAs reported	6 <sup>6</sup>	
- # of PSBs party to possible EAs	4 <sup>6</sup>	

#### **4.2 Follow-up undertaken on leads reported**

**Table 5: results of follow-up undertaken on EAs reported**

Event	Number	Percentage %
# of these PSBs allegedly party to EAs contacted	5 <sup>7</sup>	100
Copies of potential? EAs	1	20
Denial	1	20
Confirmation	0	0
No response	2	40
Not contacted	1	20

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<sup>6</sup> Two out of these six potential EAs were not reported by questionnaire. The re-users just provided us with general information, which we then found confirmed by further articles published on national newspapers and on the web. These are leads 4 and 5 as reported in paragraph 4.3.

<sup>7</sup> This does not include the regional agencies or bodies which are holders of meteorological information, as the lead reported to us mentioned these bodies in general, without providing more specific information. Nevertheless, we were able to contact 8 of them, of which 7 denied of being part of an EA, and 1 specified it was not receiving data from other PSBs.

We received a copy from the PSB which reported a possible EA. Following up on the Re-users having reported exclusive arrangements, resulted in the remaining 6 different leads involving 4 different PSBs, we consequently submitted questionnaires to 3 PSBs allegedly party to EAs reported<sup>8</sup>. So far, none of them have responded to these requests.

Furthermore, as concerns Lead no. 1 (see below for more details), the agreement concerning the three years 2006-2008 is freely available online at: [www.agenziaterritorio.it/?id=550](http://www.agenziaterritorio.it/?id=550).

### 4.3 Details on potential EAs reported

Having scrutinized the potential EA reported by the Comune di Genova, we concluded it to be a completely valid agreement, not holding any exclusive character (the details of the agreement are nevertheless included in the following table).

As we did not receive any copies of other potential EAs, we have not been able to assess any exclusive character of the agreements. Therefore, we can only list and rely on the details that have been provided by Re-users.

We illustrate these details in the way we have received them, so we cannot account for, let alone guarantee, the correctness of the information provided. However, some leads seem to be 'false alarms', whereas others are very concrete and would justify further follow-up from the appropriate authorities, as we will indicate in paragraph 4.4.

<b>Lead 1</b>	<b>Details</b>
<i>Date reported:</i>	12/03/2010
<i>Contracting parties:</i>	MEF (Italian Ministry of Economy and Finance) and Agenzia del Territorio (AdT - Land Registry and mortgage information)
<i>PSI concerned:</i>	Business Information
<i>Type of product or service:</i>	Land Registry and mortgage information.
<i>Exclusive elements of the contract:</i>	See the details and the provisional assessment below.
<i>Duration of the exclusive contract:</i>	Unknown.
<i>Other relevant details reported:</i>	Based on art. 59(2), 59(3), 59(4) of Decree (D.L.vo) no. 300/1999, the relationship between MEF and AdT is regulated by three-year agreements renewed on a yearly basis. Based on the information collected, the last signed agreement concerns 2006-2008, and explicitly states that the Agency could develop profitable market products/services (Annex 1 to the 2006-2008 agreement).

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<sup>8</sup> We decided not to contact the European Centre for Medium-Range Weather Forecasts, being an international organisation and not an Italian PSB.

	It wasn't possible to verify with the parties the existence of more recent agreements.
<i>Response received from the PSB involved:</i>	Neither MEF nor AdT responded (as of this date).

<b>Lead 2</b>	<b>Details</b>
<i>Date reported:</i>	12/03/2010
<i>Contracting parties:</i>	Agenzia del Territorio (Land Registry and mortgage information) and Consiglio Nazionale dei Geometri (National Council of Surveyors).
<i>PSI concerned:</i>	Business information
<i>Type of product or service:</i>	Land Registry and mortgage information.
<i>Exclusive elements of the contract:</i>	Unknown
<i>Duration of the exclusive contract:</i>	Unknown
<i>Other relevant details reported:</i>	The existence of a specific agreement with some categories of professionals is confirmed by the evidence of the AdT Director at the VI Finance Commission of the Chamber of Deputies (25th November 2008), where the possibility for professionals to gain access to the database without needing to personally submit details of the requested documents at the appropriate offices is also mentioned. The hearing does not make any reference to rights of re-use.
<i>Response received from the PSB involved:</i>	AdT did not respond (as of this date).

<b>Lead 3</b>	<b>Details</b>
<i>Date reported:</i>	12/03/2010
<i>Contracting parties:</i>	Agenzia del Territorio (Land Registry and mortgage information) and Notartel SpA
<i>PSI concerned:</i>	Business information
<i>Type of product or service:</i>	Land Registry and mortgage information.
<i>Exclusive elements of the contract:</i>	Unknown.
<i>Duration of the exclusive contract:</i>	Unknown
<i>Other relevant details reported:</i>	The existence of a specific agreement with some categories of professionals is confirmed by the evidence of the AdT Director at the VI Finance Commission of the Chamber of Deputies (25th November 2008), where the possibility for professionals to have access to the database without needing to personally submit details of the requested documents at the relevant offices is also mentioned.
<i>Response received from the PSB involved:</i>	AdT did not respond (as of this date).

<b>Lead 4</b>	<b>Details</b>
<i>Date reported:</i>	30/12/2009
<i>Contracting parties:</i>	Agenzia del Territorio (Land Registry and mortgage information) and ABI (Italian Banking Association)
<i>PSI concerned:</i>	Business information
<i>Type of product or service:</i>	Land Registry and mortgage information.
<i>Exclusive elements of the contract:</i>	Unknown.
<i>Duration of the exclusive contract:</i>	3 years
<i>Other relevant details reported:</i>	As reported in the joint press release announcing the initiative, the agreement includes the exchange of data and studies, and the establishment of a technical committee with the aim – among others – of identifying actions aimed at improving the offer of information, data and services in the real estate sector.
<i>Response received from the PSB involved:</i>	AdT did not respond (as of this date).

<b>Lead 5</b>	<b>Details</b>
<i>Date reported:</i>	12/01/2010
<i>Contracting parties:</i>	Agenzia delle Entrate (Italian Tax Agency) and Società per gli studi di Settore SpA (SoSe; an undertaking owned 89% by MEF and 11% by Banca d'Italia).
<i>PSI concerned:</i>	Business information
<i>Type of product or service:</i>	Sector Studies <sup>9</sup>
<i>Exclusive elements of the contract:</i>	Unknown.
<i>Duration of the exclusive contract:</i>	Unknown
<i>Other relevant details reported:</i>	As reported by some Italian newspapers, the raw data used as a basis for the elaboration of sector studies seems to be owned by Agenzia delle Entrate. The data is then reviewed by SoSe to produce estimated accounting variables which are fiscally relevant. What seems to be currently available to the market/public are parts of this review/report.
<i>Response received from the PSB involved:</i>	AdE responded that it was not aware of any exclusive arrangements.

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<sup>9</sup> Sector studies evaluate the revenues – and fiscal -producing capacity of businesses. The method aims at estimating the relationship existing between some accounting variables (e.g. revenues) and other structural variables which, in relation to the firm, can be internal (e.g. production processes, commercial surfaces) or external (level of demand, prices, competition). The data set used for such estimations is partly based on information collected directly from the tax-payers.

<b>Lead 6</b>	<b>Details</b>
<i>Date reported:</i>	13/01/2010
<i>Contracting parties:</i>	ECMWF - European Centre for Medium-Range Weather Forecasts and various regional agencies dealing with meteorological data (e.g. Regional Agencies for Environment Protection).
<i>PSI concerned:</i>	Meteorological information
<i>Type of product or service:</i>	Meteorological forecasts
<i>Exclusive elements of the contract:</i>	Some data (e.g. data from meteorological radars, or data forecasts for LAM elaborations) are available only to other public bodies – or are available to them at better economic conditions. These public bodies then compete with private operators
<i>Duration of the exclusive contract:</i>	Unknown
<i>Other relevant details reported:</i>	None
<i>Response received from the PSB involved:</i>	The regional agencies which responded to our questionnaire denied their involvement in an EA.

<b>Lead 7</b>	<b>Details</b>
<i>Date reported:</i>	17/03/2010
<i>Contracting parties:</i>	Comune di Genova and Azienda mediterranea Acqua e Gas spa; Acquedotto De Ferrari Galliera spa; Acquedotto Nicolay spa; Azienda Municipale Igiene Urbana; Azienda Mobilità e Trasporti; Autorità portuale Genova; Autostrade spa; Enel spa; Istituto autonomo case popolari della provincia di Genova; Telecom Italia spa.
<i>PSI concerned:</i>	Geographical information
<i>Type of product or service:</i>	Completion of a large scale digital map of the Municipality.
<i>Exclusive elements of the contract:</i>	Specific conditions of access and re-use of the cartographic database for the participating private enterprises.
<i>Duration of the exclusive contract:</i>	5 years (renewable)
<i>Other relevant details reported:</i>	None
<i>Response received from the PSB involved:</i>	We received a copy of the contract.

It is worth mentioning that, in the process of studying the forms of collaboration between PSBs and Re-users, we found arrangements which, strictly speaking, would probably not qualify as EAs, but which may be contrary to other provisions in the PSI Directive. We have listed those in Annex 1, as these issues may be beneficial to the EC in its continuing process to enhance the sound functioning of the PSI Directive.

#### ***4.4 Provisional assessment of the potential EAs reported and suggestions for follow-up***

Although the factual basis for the assessment is limited, we nevertheless offer our provisional views, which are illustrated in the table below.

**Table 7: summarizing table of leads reported and provisional assessment**

Lead	PSI domain	Parties	Assessment
1	Business Information	MEF (Italian Ministry of Economy and Finance) and Agenzia del Territorio (Land Registry and mortgage information)	<p>The case is quite complex. First of all it would have to be verified which body should be considered the <i>holder</i> of the existing documents, MEF or AdT.</p> <p>Then:</p> <ul style="list-style-type: none"> <li>- if it is MEF: verification is needed of any re-use by AdT, <i>AND</i> if the agency is granted exclusive rights on the existing documents; if this is the case, the agreement could qualify as an exclusive agreement in the sense of article 11 of the Directive.</li> <li>- if it is AdT, verification is needed of any re-use by AdT, <i>AND if</i> the documents represent a basis for <i>commercial activities</i> which fall outside the scope of the agency's <i>public tasks</i>; if this is the case, and the charges and other conditions applied to the supply of documents for those activities are different from those applied to other users, then this agreement could qualify as a breach of Art.10 of the Directive.</li> </ul> <p>Based on our current information, there is no evidence to support any conclusion in this case</p>
2	Business Information	Agenzia del Territorio (Land Registry and mortgage information) and Consiglio Nazionale dei Geometri (National Council of Surveyors)	<p>The agreement could in principle grant exclusive rights (Art. 11) or be relevant in the light of Art. 10 (discriminatory conditions could be applied for comparable categories of the re-use).</p> <p>However, as the version of the agreement which is publicly available (see <a href="http://www.geoweb.it/DOCNEWS/CONVENZIONE2008.PDF">http://www.geoweb.it/DOCNEWS/CONVENZIONE2008.PDF</a>) is not complete, and as the PSB involved did not respond to our request of information, we have not been able to verify this.</p> <p>It is also worth mentioning that CNG, which is a body governed by public law, is the main shareholder of Geoweb S.p.A. (60% of the total stockholders' equity), which offers services related to mortgage and Land Registry information. A decree issued by AdT on May 4<sup>th</sup> 2007, stated that special conditions could be agreed between AdT and bodies governed by public law (Art. 8.2). However, it was not possible to verify if the decree is still in effect.</p> <p>Based on our current information, there is no evidence to support any conclusion in this case</p>

Lead	PSI domain	Parties	Assessment
3	Business Information	Agenzia del Territorio (Land Registry and mortgage information) and Notartel SpA	<p>The agreement could in principle grant exclusive rights (Art. 11) or be relevant in the light of Art. 10 (discriminatory conditions could be applied for comparable categories of re-use).</p> <p>However, as the PSB involved did not respond to our request for information, we have not been able to verify this.</p> <p>Based on our current information, there is no evidence to support any conclusion in this case</p>
4	Business Information	Agenzia del Territorio (Land Registry and mortgage information) and ABI (Italian Banking Association)	<p>The agreement could in principle grant exclusive rights (Art. 11) or be relevant in the light of Art. 10 (discriminatory conditions could be applied for comparable categories of the re-use).</p> <p>However, as the PSB involved did not respond to our request of information, we have not been able to verify this.</p> <p>Based on our current information, there is no evidence to support any conclusion in this case</p>
5	Business Information	Agenzia delle Entrate (Italian Tax Agency) and Società per gli studi di Settore SpA (SoSe)	<p>As the prohibition of EAs aims at maintaining open access to all potential actors in the market for the re-use of documents, an assessment should be made to see if there's any re-use of documents by SoSe (i.e. if any use is made of the documents held other than the initial purpose for which the documents were produced) <i>AND</i> if the company is granted any exclusive rights.</p> <p>Based on our current information, there is no evidence to support any conclusion in this case.</p>

Lead	PSI domain	Parties	Assessment
6	Meteorological information	ECMWF - European Centre for Medium-Range Weather Forecasts and various regional agencies dealing with meteorological data (e.g. Regional Agencies for Environment Protection).	The ECMWF is an intergovernmental organisation funded by EU and non-EU Member States. As the Directive (Art.1.1) establishes a minimum set of rules governing the re-use and the practical means of facilitating re-use of existing documents held by public sector bodies of the MEMBER STATES, the potential agreements do not look as relevant in the perspective of the Directive. However, being based in the United Kingdom, it might be that the organisation could fall under UK PSI rules. In any case, ECMWF cannot be regarded as an Italian organisation.
7	Geographical information	Comune di Genova and Azienda mediterranea Acqua e Gas spa; Acquedotto De Ferrari Galliera spa; Acquedotto Nicolay spa; Azienda Municipale Igiene Urbana; Azienda Mobilità e Trasporti; Autorità portuale Genova; Autostrade spa; Enel spa; Istituto autonomo case popolari della provincia di Genova; Telecom Italia spa.	The agreement does not seem to represent an EA, as any other potential re-user can sign the contract by satisfying the same conditions agreed by the companies which are already part of it.

## 5. Conclusions

Based on reports from re-users and other information collected throughout the research, the study identified a total of 7 potential EAs, 5 of which – referring to the Land Registry, mortgage and other business information - could qualify for further follow-up by the appropriate authorities.

In spite of all the efforts made and the many requests submitted, we have not received any up-to-date and complete copies of contracts that would shed more light on the potential EAs identified. Therefore, we can only base our findings on the leads reported and not on the agreements themselves. Nevertheless, there are a number of conclusions that can be drawn.

1. In most cases, the parties to the potential EAs, on both the supply and demand side, are PSBs or companies - partly or entirely - owned by PSBs or bodies governed by public law.
2. Of the identified leads, the most complex refers to the agreement regulating the relationship between MEF and AdT. In this regard, a closer examination of the numerous existing legal actions brought before Italian courts by private re-users may give precious insights and indications regarding this issue. The case should also be further analysed in the light of the infraction procedure initiated by the EC against Italy, in particular in relation to the exclusion of land registry and mortgage data from the Italian law implementing the Directive.

The other leads could in principle be relevant in the light of Article 11 (“Prohibition of exclusive arrangements”) but also Article 10 (“Non-discrimination”) of the Directive. However, a thorough assessment was not possible due to the fact that the relevant agreements were not made available by the public bodies involved.

It must be noted that, even if this information was obtained, it could prove complicated to determine, in specific cases, if the documents considered are used for purposes which can be considered other than the *initial purpose* for which they were produced; or if certain commercial activities fall inside or outside the scope of the *public tasks* of the relevant PSBs (Article 10). The identification of the body to be considered as the *holder* of certain information could also in some cases prove difficult.

3. During the research, we encountered 3 other cases which, while not qualifying as potential EAs, could be relevant in light of other articles of the PSI Directive. These cases, relating to geographical, transport and legal information, are illustrated in Annex 1.

On a more general note, it is worth mentioning that, through the identification of the relevant sample, the study revealed that the Italian PSI market structure is quite varied, on both the supply and the demand sides, depending on the sector under consideration.

The number of competing market players is rather small in certain industries (e.g. meteorological information), whereas it is significantly larger in others (e.g. business and

geographical information). At the same time, relevant information is mostly held at the national level in some sectors (e.g. social), while being spread among regional or local PSBs in others (e.g. geographical). This also seems to have an influence on the type of issues re-users have to cope with; while potential EAs seem to emerge in those sectors where information is held by national bodies, the ability to obtain and aggregate data is considered to be a more significant barrier to market development where relevant information is shared by a number of public bodies.

4. Finally, interviews with the relevant stakeholders also revealed the awareness of the European regulation concerning public information in Italy being partial, especially at the individual re-users' level, while industry associations proved much more familiar with the contents of the PSI Directive. From this point of view, we think that the study contributed to enhancing the understanding of the Directive at both the PSB and the re-user level.

## **Annexes**

### ***Annex 1 – Cases which could be relevant in the light of other articles of the PSI Directive***

We think the following leads are worth mentioning, even if they do not refer to potential exclusive agreements.

**1.** Poste Italiane offers products which can be used for improving marketing activities (see [http://www.poste.it/postali/banchedati/a\\_index.shtml](http://www.poste.it/postali/banchedati/a_index.shtml)); the products essentially include information collected through running the postal service. Poste Italiane is the only re-seller of this data. In this case, it remains to be clarified:

- a.** if Poste Italiane is to be considered a PSB – it has to be noted that, operating in the postal services sector, the reference here is the Directive 2004/17/EC, and Poste Italiane is to be considered a contracting entity but not a contracting authority; and
- b.** if the commercial re-selling of the data can be considered a purpose not falling within the public task for which the documents were produced (i.e. there is re-use);

If the answer to both these questions is positive, then it may be that documents are being re-used by a PSB as input for commercial activities which fall outside the scope of its public tasks. If that is the case, verification is needed that the same charges and conditions are applied to the supply of the documents for those activities as are applied to other users (Art. 10 “Non discrimination”).

**2.** Trenitalia S.p.A.: as from various articles published in Italian newspapers in 2008, some Italian publishers of on-paper train timetables complained about the increase of the prices applied to the sale of data concerning the timing of trains arrivals and departures by Trenitalia S.p.A. It remains to be clarified

- a.** if Trenitalia S.p.A. is to be considered a PSB – it has to be noted that, operating in the transport sector, the reference here is the Directive 2004/17/EC, and Trenitalia is to be considered a contracting entity but not a contracting authority; and
- b.** if the commercial re-selling of the data can be considered a purpose not falling within the public task for which the documents were produced (i.e. there is re-use).

If the answer to both these questions is positive, then there could be a case for verifying if the principles governing charging are in line with those established by Article 6 of the Directive.

**3.** Concerns were expressed by some re-users about the public project pursued on the basis of art. 107 of law 388/2000 – whose objective was more recently mentioned in Law 9/2009. The aim of the project would be to make available – and easily searchable – the

current version of Italian laws. However, re-users are concerned that the complex technical instruments adopted – e.g. for the classification of laws – could mean the project is aimed more at professionals than common citizens. In their view, and based on an estimate made in 2004 which is still considered credible – by overlapping with the services already offered by the public sector, this could generate losses of about 50% for the digital legal publishing sector. More details about the project can be found at [www.normattiva.it](http://www.normattiva.it).

This is a situation where the public sector could likely make a better offer- at no cost - to final users than private parties. However, there does not seem to be any limit to the re-use of the relevant documents by any potential actors in the market – the “raw data” is actually free.

***Annex 2 – Inception report (including materials sent out)***

***Annex 3 - Excel sheet with data on PSBs and Re-users contacted and results obtained<sup>10</sup>***

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<sup>10</sup> Covering all organizations researched and from whom responses were received, both PSBs and Re-users, including names of staff responsible and their contact details (which are subsequently of a confidential nature).