

ITALY

Market developments

1. Competitive environment

The Italian market is characterised by an increasing level of infrastructure-based competition mainly due to the entry into the market of Open Fiber (OF) a non-vertically integrated operator with a “wholesale-only” business model. At the end of 2016 OF completed the acquisition of the entire share capital of Metroweb Italia S.p.A. from F2i SGR S.p.A. and FSI Investimenti S.p.A¹.

Other elements that contributed to the increasing infrastructure competition were (i) the Strategic partnership Fastweb and TIM entered into during 2016 aimed at connecting 3 million households with FTTH in 29 cities (already covered by FTTC) by 2020 with a total investment for the deployment of the FTTH network of €1.2 billion; (ii) additional FTTC investments by other operators (Fastweb and Vodafone) covering more than 30% of population and (iii) the steady increase of FWA accesses, which reached almost 1 million lines in the third quarter of 2017.

In 2017 the Italian Competition Authority (AGCM) has launched an investigation into the above mentioned joint venture set up by TIM and Fastweb on grounds that it may breach competition rules: the AGCM found that the joint venture could result in a “consistent prevention, restriction or distortion of competition” in the country’s wholesale and retail broadband and ultra-broadband markets. Commitments presented by the parties have been put to a market test². Additional investigations were launched by AGCM against TIM for abuse of dominant position *inter alia* for conducts adopted in the context of the implementation of the Italian Ultra broadband (UBB) strategy³.

A consolidation trend in the sector is in progress. The consolidation has involved three alternative operators active specifically in the supply of broadband and ultra-broadband services to business and residential consumers: Infracom, Mclink and KPNwest have been acquired by the Italian Infrastructure Funds (F2i) and the Marguerite Fund, both sponsored by

¹ <https://www.enel.com/media/press/d/2016/10/enel-signs-agreement-for-the-acquisition-of-metroweb> Metroweb is a company operating in the City of Milan as a dark fibre access provider that sells only passive services on GPON fibre optic networks connecting the end user. Thanks to the acquisition of Metroweb and the construction works in course, Open Fiber already has the largest Fibre to Home (FTTH) network in Italy (2 million Property Units - PU) In the first quarter of 2017 Open Fibre completed works in Milan, Turin and Bologna. At the end of 2016 works started in Catania, Venice, Cagliari, Padua, Bari, Palermo, Naples, Florence and Genoa, cabling more than 280 000 property units.

² According to Law. n. 249/97, the Italian Communications Authority (AGCOM) was requested to provide comments on a draft decision by AGCM.

³ See <http://www.agcm.it/stampa/comunicati/8824-a514-banda-ultralarga,-avviato-procedimento-nei-confronti-di-telecom-italia-per-possibili-abusi-di-posizione-dominante.html>

Cassa Depositi e Prestiti (CDP), a company completely owned by the Ministry of Economy and Finance (MEF).⁴

Another important trend registered in 2017 is the increasing convergence between telecommunications and content: in this respect on 30 May 2017 the Commission approved Vivendi's acquisition of Telecom Italia, subject to conditions⁵. As a consequence of the merger Vivendi became the largest shareholder of Telecom Italia. With the decision no. 178/17/CONS adopted on 18 April 2017⁶, the Italian Communications Authority (AGCOM) found Vivendi to be in breach of Article 43, paragraph 11 of Legislative Decree 177/2005 by exceeding the concentration limits within the Integrated System of Communications (SIC), as a consequence of the shares owned in Telecom Italia S.p.A. and Mediaset S.p.A. Vivendi was thus ordered to take appropriate steps in order to comply with the relevant law within the following 12 months. After presenting several plans that were not accepted by AGCOM, on 13 September 2017 Vivendi submitted to AGCOM new measures aimed at removing the position in breach of the national concentration limits⁷. The national authority will monitor the correct implementation of the plan. In parallel, the Italian Government, considering that the acquisition of the *de facto* control of Telecom Italia by Vivendi posed a threat to national security interests, decided to exercise the so called "Golden Powers" thus imposing a number of requirements in the field of governance and organization on the group⁸.

Legacy network access remedies include the obligation of providing passive access to copper (LLU, SA and SLU), WLR and active access (bitstream access, which includes an access component and a backhaul component). NGA access remedies include the obligation of providing access to civil infrastructures (ducts, trenches) and dark fibre⁹, as well as VULA and bitstream access (which includes VULA together with backhauling access component).

VULA and SLU access services have started to be requested by other authorised operators since, respectively, the beginning of 2014 and the end of 2013. Currently the most used NGA wholesale services are SLU access services (about 949 000 lines sold by December 2017, 572 000 by June 2016) and VULA access service (about 936 000 lines sold by December 2017,

⁴ <http://www.f2isgr.it/f2isgr/investimenti/portafoglio/index.html>

⁵ See http://europa.eu/rapid/press-release_IP-17-1475_en.htm

⁶ AGCOM Decision n. 178/17/CONS is available in IT at the following link: https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_2fsZcpGr12AO&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_2fsZcpGr12AO_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_2fsZcpGr12AO_assetEntryId=7533934&_101_INSTANCE_2fsZcpGr12AO_type=document

⁷ The plan presented by Vivendi is available in IT at the following link: https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_2fsZcpGr12AO&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_2fsZcpGr12AO_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_2fsZcpGr12AO_assetEntryId=8475243&_101_INSTANCE_2fsZcpGr12AO_type=document

⁸ The IT investment screening law (Decree-Law 15 March 2012, n. 21) provides the Italian Government with "special powers" aimed at safeguarding the ownership structures of companies operating in sectors considered strategic and of national interest; these powers can be exercised in particular in two sectors : defence and national security (Art.1 of Decree Law 21/2012) and energy, telecommunication and transport (Art.2 of DL 21/2012). Both Telecom Italia and Vivendi appealed to the President of the Italian Republic against the Golden Power decree. In parallel, discussions on the possible spin-off of the Telecom Italia's network started. In February 2018 Telecom Italia presented its network spin-off plan to the Italian Government.

⁹ Including access to the following passive elements of the access network: i) primary segment of the network; ii) secondary segment of the network; iii) access segment to the curb; iv) access segment to the local exchange; v) terminating segment; vi) in-building's wiring (copper and fibre); vii) co-location at the local exchange and at the intermediate concentration points (cabinets).

173 000 by June 2016). The total number of NGA wholesale services (about 1.9 millions of lines sold by the end of December 2017) has significantly increased in one year

a. Fixed Markets

Coverage	IT-2016	IT-2017	EU-2017
Fixed broadband coverage (total)	99%	99%	97%
Fixed broadband coverage (rural)	94%	95%	92%
Fixed NGA coverage (total)	72%	87%	80%
Fixed NGA coverage (rural)	16%	39%	47%
Ultrafast coverage (total)	no data	22%	58%
4G coverage (average of operators)	86%	89%	91%

Source: Broadband Coverage Study (IHS and Point Topic). Data as of October 2016 and October 2017.

NGA coverage rose significantly from 72% of households in 2016 to 87% in 2017. Thanks to this further improvement, Italy managed to go above the EU average (80%).

As for rural areas, roll-out data shows a significant increase in NGA coverage, from 16% in 2016 to 39% in 2017. Despite this progress, Italy is still lagging behind the EU average (47%).

Fixed broadband prices	IT-2016	IT-2017	EU-2017
Fixed broadband price index [values between 0-100]	90	87	87

Source: Commission Services based on Fixed Broadband Prices in Europe (Empirica). Digital Economy and Society Index 2018.

Fixed broadband market shares	IT-2016	IT-2017	EU-2017
Incumbent market share in fixed broadband	46.2%	45.5%	40.3%
Technology market shares			
DSL	92.0%	90.7%	64.2%
Cable	-	-	19.4%
FTTH/B	2.6%	3.4%	12.9%
Other	5.3%	6.0%	3.6%

Source: Communications Committee. Data as of July 2016 and July 2017.

The fixed market is in a stage of substantial modification, in view of the growing NGA coverage and the subsequent take-up of ultra-broadband services. A first relevant point is the growth of fixed access lines (starting from 3Q 2016), which is the first inversion of trend since 2007. The growth of fixed access lines is due to the relevant increase of the ultra-broadband services offered on FTTC networks and, at lower rate, through FTTH networks.

The decreasing number of xDSL service is related, on one side, to the competition with Fixed Wireless Access (FWA) services in low density area, and on the other side, to a substitution effect with NGA services, offered through FTTC and FTTH networks.

New entrants' DSL subscriptions by type of access (VDSL excluded)	IT-2016	IT-2017	EU-2017
Own network	0%	0%	0.5%
Full LLU	72.1%	71.6%	72.8%
Shared Access	0.7%	0.6%	4.1%
Bitstream	27.2%	27.8%	14.7%
Resale	-	0.0%	7.8%

Source: Communications Committee. Data as of July 2016 and July 2017.

b. Mobile market

Mobile market	IT-2016	IT-2017	EU-2017
Market share of market leader	33%	32%	35%
Market share of second largest operator	30%	21%	28%
Number of MNOs	4	4	-
Number of MVNOs	16	19	-
Market share of MVNO (SIM cards)	7%	8%	-

Source: Communications Committee. Data as of October 2016 and October 2017.

Following the European Commission's approval of the proposed merger on September 1st, 2016 Wind and H3G have begun offering services under the combined 'Wind Tre' brand. The firm became the first Italian mobile operator in terms of market shares/number of customers, with more than 31 million users, just ahead of TIM and Vodafone, while it also serves 2.4 million broadband fixed line customers. As part of the merger, Wind and H3G agreed to sell certain spectrum and network assets to the French firm Iliad, allowing it to set up a new mobile network operator (MNO) in Italy. Iliad's "Mobile project in Italy" aims at creating a 4th fully independent MNO within a decade, through access to a large number of decommissioned sites from Wind Tre, more than 10 000 sites available on the main TowerCos and the transfer of frequencies which have been secured in cooperation with the Ministry for Economic Development (MiSE).

The entrance of Iliad in the Italian market is expected for the mid-2018.

Mobile broadband prices [EUR/PPP]	IT-2016	IT-2017	EU-2017
Least expensive offer for handset (1 GB + 300 calls basket)	€7	€3	€4
Least expensive offer for tablet and laptop (5 GB basket)	€9	€4	€7

Source: Mobile Broadband Price Study (Van Dijk and Empirica). Prices expressed in EUR/PPP, VAT included. Data as of February 2016 and February (handset) 2017.

The merger of Wind and H3G Italia and the upcoming arrival of Iliad have already led to reactions in the Italian mobile market. The most important are the introduction of low-cost no-frills brands by competitors: TIM launched its own low-cost second brand, Kena Mobile, at the end of March 2017, and Vodafone is preparing to launch a low-cost MVNO and has already created a company called Vei SRL for that purpose.

Regulatory developments

2. Supporting measures for deployment and investment in high-speed networks

a. Spectrum

In Italy, 64.77% of the spectrum harmonised at EU level for wireless broadband is assigned. In absolute terms this means 706 MHz, below the EU average of 751.6 MHz.

The Italian budget law for 2018, adopted by the Parliament and published in the Official Journal on 27 December 2017¹⁰ includes important provisions on 5G and a national roadmap for the refarming of the 700 MHz band.

¹⁰ Law 27 December 2017 n. 205. Full text is available at the following link: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-12-27:205>

According to the law, by 30 April 2018 AGCOM will have to set the rules of a competitive selection procedure for the 700 MHz, 3.6-3.8 GHz and 26 GHz (26.5 - 27.5 GHz) bands, without prejudice to the temporary assignments in the 3.7 – 3.8 GHz band for the 5G projects (4 years) and the current assignments for FSS and earth exploration services. Rights of use will be assigned by 30 September 2018¹¹. If refarming and migration of current users are needed in the two higher bands, these will take place by 1 December 2018. Spectrum in the 700 MHz band will be available as of 1 July 2022.

By 31 May 2018, AGCOM will update the National Frequency Allocation Plan for Digital Terrestrial Television (DTT) services, taking into account the most recent technological standards and using exclusively the channels assigned to Italy on the basis of GE06 (in the VHF band III) and other agreements with neighbouring countries. DTT network operators' current rights of use will in parallel be amended to refer to DVB-T2 technology. The budget law also includes compensation measures¹².

In line with Decision (EU) 2017/899¹³, a roadmap will be established by 30 June 2018 and a transition period is foreseen from 1 January 2020 to 30 June 2022 to free and reform the UHF band, as well as to restructure the public broadcaster's "regional multiplex"¹⁴.

In addition €2.86 million will be made available in view of promoting 5G development and supporting relevant activities.

In 2017 Italy signed the necessary cross-border spectrum coordination agreements with the following Countries: Slovenia, Croatia, Montenegro, Greece, France, Vatican City State, Monaco, Spain, Switzerland, Austria and Malta.

In 2017 Italy has officially requested the European Union's assistance for negotiations with third (non-EU) countries: Algeria, Albania, Tunisia and Libya.

The Budget Law 2017¹⁵ had regulated the extension of rights of use of the 900 and 1.8 GHz frequency bands from 30 June 2018 to 31 December 2029 (also in order to line up the expiry date of all rights of use of mobile frequencies) and the possibility to reform the bands to UMTS/LTE from GSM¹⁶. On the basis on this law, the interested MNOs applied for the extension of their rights of use. Since the Budget Law 2017 was silent about the 2G phasing-out after the deadline of 30 June 2018, in the relevant public consultation AGCOM had

¹¹ The rules of the assignment procedure will in particular take into account ongoing work at technical level within CEPT on defragmentation of the 3.4-3.8 GHz band on the one hand and on compatibility and coexistence studies concerning the 26 GHz band on the other.

¹² €276,8 million in total until 2022 for replacing network operators' active equipment in the UHF band (and in the 3.6 – 3.8 GHz and 26 GHz, if necessary); €304.2 million in the 2020-2021 period for local network operators giving back their rights of use; €100 million in the 2019-2022 period as financial support to end-users for equipment replacement.

¹³ Decision (EU) 2017/899 of the European Parliament and of the Council of 17 May 2017 on the use of the 470-790 MHz frequency band in the Union, OJ L 138, 25.5.2017, p. 131–137

¹⁴ By 30 September 2018 MiSE will launch the selection procedure of network operators for local broadcasting. These operators will then negotiate commercial agreements with audio-visual service providers selected on the basis of rankings established by MiSE before 31 December 2018. By the same date AGCOM will set the rules for the assignment of rights of use for the 470 – 694 MHz band (the so-called sub-700 MHz band), which will take place by 28 February 2019 (at the same time, spectrum in the VHF band III will be assigned to RAI for regional/local public service broadcasting).

¹⁵ Law 11 December 2016, n. 232

¹⁶ A process that was already initiated on some blocks both in 900 and 1800 MHz band for all operators.

proposed to impose GSM minimum service obligations until 30 June 2022 (subject to further analysis to be carried out by 2020), in order to ensure the continuity of GSM service to safeguard 2G-only users as well as the growing 2G M2M applications¹⁷. On the basis of the outcome of the consultation, AGCOM adopted its final decision¹⁸ confirming the GSM obligations (not necessarily using all the relevant spectrum bands, but only the parts sufficient to maintain the quality of service) until the deadline of June 2022. This date was chosen by taking into account the technical-financial plans of MNOs, which envisage to keep GSM service for the next years, mainly due to the high volume of GSM traffic registered in their networks, including M2M applications, and a study about the forecasts of M2M service developments.

As to the long lasting problem of the cross border broadcasting interferences, on 13 December 2017 MiSE provided the Commission Services with an official note stating that in the period between 9 and 16 January 2017 the switch-off of the interfering channels was completed. Residual broadcasting interference issues with Croatia are being addressed through bilateral discussions also in the context of the RSPG good offices working group¹⁹.

With regard to FM interference, Italy is addressing the issue in the context of the RSPG good offices where it was noticed that some actions have been undertaken by the Italian administration to cease FM interference cases on some priority channels identified by its neighbors. In this respect, while good progresses were made with France and Malta, problems still persist in respect to Slovenia and Croatia. Italy informed the RSPG about the 2018 Budget Law²⁰, which will make mandatory that all radio devices include digital radio. This will become compulsory on 1st June 2019 for wholesaler and on 1st January 2020 for retailers. According to the Italian authorities this could be considered as preliminary step towards migrating some of the FM programs to digital radio thus facilitating the removal of the FM interfering transmitters.

b. National and EU investment in broadband

In 2017 the National Ultra Broadband Plan entered the implementation phase²¹. The first two tenders were awarded to Open Fiber (first contract signed in June 2017 and second contract in November 2017)²². Preparatory activities for the launch of the third and final tender for the regions of Sardinia, Apulia and Calabria were carried out at the end of 2017: in particular, a new public consultation on the investment plans for the deployment of ultra-broadband in white

¹⁷ See

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_2fsZcpGr12AO&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_2fsZcpGr12AO_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_2fsZcpGr12AO_assetEntryId=8617176&_101_INSTANCE_2fsZcpGr12AO_type=document

¹⁸ AGCOM Decision no. 296/17/CONS.

¹⁹ The RSPG's Good Offices function was established in 2012 to assist in bilateral spectrum management negotiations between its members. Any Member State may request the RSPG Chairman to put a coordination and/or interference issue on the agenda of an RSPG meeting. The RSPG may decide to respond positively to this request and set up relevant actions.

²⁰ See above footnote 8

²¹ For details please refer to the 2017 telecom country chapter: <https://ec.europa.eu/digital-single-market/en/news/europes-digital-progress-report-2017-country-profiles-telecom-country-reports>

²² The infrastructural interventions foreseen under the first and second contract involve, respectively, the regions of Veneto, Tuscany, Molise, Emilia Romagna, Abruzzo and Valle d'Aosta, Umbria, Sicily, Autonomous Province of Trento, Piedmont, Marche, Liguria, Lazio, Friuli Venezia Giulia, Campania and Basilicata for a total of 6,743 municipalities and more than 13M citizens.

areas in these three regions was launched in order to assess the areas where public intervention is still necessary. The third tender should be launched in the first months of 2018.

On 7 August 2017, the CIPE ("*Comitato Interministeriale per la programmazione economica*") has completed the allocation of resources for the Ultra Broadband Plan, allocating additional € 1.3 billion of the Development and Cohesion Fund (FSC). The total amount of resources allocated adds up to €3.6 billion that will be used for the implementation of phase two of the Ultra Broadband Plan²³.

The II phase of the Italian Ultra Broadband Plan foresees infrastructural intervention in grey areas and vouchers to stimulate the demand.

At the end of 2016 (a detailed consultation document was published at the end of March 2017), AGCOM launched a fact-finding survey on frequency-related matters for the development of 5G networks (decision no. 557/16/CONS), with also the aim to support the European 5G Action Plan and to collect information on various general 5G regulatory issues such as frequencies, licensing, coverage, verticals, network architectures, etc. AGCOM has stated that availability of spectrum for 5G will follow the on-going harmonisation process in EU, CEPT and ITU, taking into account the necessity of a maximum coordinated approach among EU member states and the first RSPG Opinion on spectrum related aspects for next-generation wireless systems (5G), as well as the RSPG second Opinion, adopted in January 2018²⁴.

In March, 2017, Italy launched a public call to undertake 5G pre-commercial trials in the 3.7 - 3.8 GHz radio spectrum made available by the State. The call closed in June 2017. According to MiSE's roadmap, the trials started in December 2017 and will finish by December 2021.

In 2017 the so called "WiFi°Italia°It" project was launched with the aim to allow users to connect easily to a free of charge and widespread WiFi network throughout the Country through the use of an application for mobile devices that allows each user to access to a federated WiFi networks²⁵.

c. Implementation of the Broadband Cost Reduction Directive

The Directive 2014/61/EU²⁶ (the "Broadband Cost Reduction Directive") has been fully transposed in Italy with the Legislative Decree no. 33/2016 of 15 February 2016. The Decree applied as from 1 July 2016. In the Decree, AGCOM was designated as the dispute settlement body, while MiSE, by its in-house company Infratel Italy S.p.A. ("Infratel"), was designated as the body to perform the functions of the Single Information Point.

AGCOM implemented the provision of Article 10 of the Directive 2014/61/EU (transposed in Article 9 of the Legislative Decree n. 33/16) with Decision no. 449/16/CONS. This decision sets terms and conditions to manage a dispute procedure and it includes the procedural rules to open, manage and settle a dispute, providing also the possibility to reach agreements between

²³ At the beginning of 2018, AGCOM has published a Report providing a breakdown of investment allocation for selected areas, available at: <https://goo.gl/Dw15NC>.

²⁴ The [RSPG Second Opinion on 5G networks](#) was adopted on 30 January 2018

²⁵ For more information on the WiFi°Italia°It" project see <http://wifi.italia.it/en/>

²⁶ Directive 2014/61/EU of 15 May 2014 on measure to reduce the cost of deploying high-speed electronic communication network (OJ L 155, 23.5.2014, p. 1–14).

the parties²⁷. AGCOM, as dispute settlement body, have solved 3 disputes regarding requests of access to physical infrastructures by network operators deploying high-speed electronic networks.

The Legislative Decree 33/2016 of February 2016 transposed the Broadband Cost Reduction Directive, but in 2017 the single information point (SINFI) was not fully operational yet²⁸. The persisting issues related to the delays in the local authorisation/permit granting are expected to be resolved by means of preliminary technical agreements between Infratel and the municipalities.

3. Regulatory function

In 2017, AGCOM approved a number of decisions regarding the implementation of some of the measures imposed on Telecom Italia within the last access market analysis review (Decision no. 623/15/CONS) regarding the enhancement of non-discrimination guarantees²⁹ and the implementation of access obligations aimed at allowing the delivery of provisioning and assurance services also by third parties³⁰. As a result in particular a new model of equivalence (NME) has been adopted by Telecom Italia which has significantly strengthened the current Equivalence of Output (EoO) system through the introduction of: i) re-organisation of TI wholesale division; ii) a new delivery chain; iii) optimisation of back-office for delivery and assurance; iv) improvement of performance of delivery and assurance; v) new tracking order system; vi) simplification of the refusal (KO) tagging system; vii) joint single enhanced database (NetMap) available for TI retail division and OAOs, removing information asymmetry; viii) joint tests of the new release software. In the context of provisioning and assurance service a new provisioning and assurance system will be implemented with the objective of improving efficiency and quality of wholesale services, also reducing the risk of anti-competitive behaviour.

²⁷ It is worth mentioning that national laws and regulation aimed at facilitating the deployment of ultra-broadband were established in Italy between 2002 and 2014 independently from the CRD. Such obligations are extended by the Directive, but they also integrate it in some cases (e.g. specifying in more details the procedures).

National laws:

- Law n. 166/2002: coordination of civil works
- Law n. 133/2008: access to physical infrastructure
- Law n. 133/2014: transparency concerning physical infrastructure
- Law n. 164/2014: in-building physical infrastructure

Regulatory decisions (Agcom):

- Decision no. 538/13/CONS: symmetric access to in-building physical infrastructure
- Decision no. 622/11/CONS: access to existing physical infrastructure, coordination of civil works, permission granting
- Decision no. 538/13/CONS imposed symmetric access to in-building physical infrastructure, under Art. 12 Framework Directive, of undertakings providing electronic communications who controls the infrastructures (independently of SMP).
- Decision no. 622/11/CONS imposed access to existing infrastructure (cables, ducts, manholes) owned by public body (or private body managing public resources, e.g. highways managing body), installed underneath roads, highways, train roads, or installed inside water or electricity transport systems. Infrastructures involved are only in the backbone section of the networks.

²⁸ According to the information provided by the Italian Authorities, SINFI is currently under field trial test with 10 operators and is expected to be fully operational by the end of the first quarter of 2018.

²⁹ Decision no. 652/16/CONS.

³⁰ Decision no. 321/17/CONS.

Beside the work of the technical group for the implementation of remedies and related monitoring activities, a number of reference offers regarding the major access products have been approved during 2017³¹.

Moreover, in 2017 the reviews of some markets have been finalised and are expected to be notified under the Article 7 procedure during 2018. They concern in particular the wholesale market for voice call termination on individual mobile networks³²; the wholesale market for high-quality access provided at a fixed location³³; the wholesale markets regarding local access provided at a fixed location and the wholesale market for central access provided at a fixed location for mass-market products³⁴.

As to the division of competences between the Italian Communication Authority and the Competition and Consumers authority (AGCM) following the memorandum of understanding (MoU) signed by the parties on 26 December 2016, the two Authorities are now cooperating and coordinating the respective activities in particular by setting up joint working groups in charge of carrying out preliminary activities in case of *e.g.* sanction proceedings. In parallel, a request for preliminary ruling - precisely seeking clarifications on the relationship between the Unfair Commercial Practices Directive and the sector-specific provisions, in particular clarification on the interpretation of the '*lex specialis*' principle enshrined in Article 3(4) of the Unfair Commercial Practices Directive - is pending before the Court of Justice of the European Union³⁵.

4. Consumer matters

In 2017, AGCOM has received 90 000 dispute resolution applications, through the 17 delegated regional communications Committees ("Corecom" the Region's consulting and management entity in charge of communications, which is also a functional body of AGCOM with territorial mandates regarding disputes resolution between users and telecoms). In 83% of cases the parties came to an agreement. The average value of the agreements on the customer-side was €450, so the total amount of compensation paid to users was over €30 million.

AGCOM has also received about 7 000 complaints and reports from users and consumer associations regarding unilateral modifications to terms of contracts; withdrawal costs and difficulties in changing provider.

After several initiatives by AGCOM and AGCM aimed at sanctioning and banning the widespread telco operators' practice introducing a billing period of 28 days, in November 2017 the Italian Parliament approved an amendment to the "Fiscal Decree" introducing the

³¹ In particular the reference offers for WLR, ULL, Bitstream/VULA and wholesale high-quality access.

³² Market no. 2 of Recommendation 2014/710/EU.

³³ Market no. 4 of Recommendation 2014/710/EU.

³⁴ Markets no. 3a and 3b of Recommendation 2014/710/EU.

³⁵ The request for a preliminary ruling can be retrieved at the following link:

[http://curia.europa.eu/juris/fiche.jsf?jsessionid=9ea7d0f130de4a41b779397a4bc6a72b8465af651f2a.e34KaxiLc3eQc40LaxqMbN4PaNyPe0?id=C%3B54%3B17%3BRP%3B1%3BP%3B1%3BC2017%2F0054%2FP&pro=&lgre c=en&nat=or&oqp=&dates=&lg=&language=en&jur=C%2CT%2CF&cit=none%252CC%252CCJ%252CR%252 C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&n um=C-54%252F17&td=%3BALL&pcs=Oor&avg=&mat=or&jge=&for=&cid=383138](http://curia.europa.eu/juris/fiche.jsf?jsessionid=9ea7d0f130de4a41b779397a4bc6a72b8465af651f2a.e34KaxiLc3eQc40LaxqMbN4PaNyPe0?id=C%3B54%3B17%3BRP%3B1%3BP%3B1%3BC2017%2F0054%2FP&pro=&lgre c=en&nat=or&oqp=&dates=&lg=&language=en&jur=C%2CT%2CF&cit=none%252CC%252CCJ%252CR%252 C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&n um=C-54%252F17&td=%3BALL&pcs=Oor&avg=&mat=or&jge=&for=&cid=383138)

compulsory monthly billing for all the fixed and mobile electronic communication services³⁶. The above mentioned amendment also imposed transparency obligations on the operators as to the characteristic of the physical infrastructure used to provide their services: the provision aims at ensuring transparency as to the kind of fibre connection offered to the final client (FTTH, FTTC etc.)³⁷. At the end of 2017 AGCOM adopted guidelines and specific measures aimed at ensuring the correct implementation of the new provisions³⁸.

In addition, the level of sanctions that can be imposed by the national authority in case of breach of the new provision has increased.

Another set of provisions aimed at improving the transparency of contracts was included in Law no. 124, August 4th 2017. In particular the new Law *inter alia* aims at increasing the level of transparency of the costs borne by the customer in case of withdrawal from contracts or switching to a different operator and making the relevant process easier.

Nevertheless, according to the information provided by Consumer Associations, overall problems related to transparency and unilateral modifications to contracts still persist and the new law may not be as effective as expected.

a. Roaming

Following the entry into force of the Regulation (EU) 2015/2120³⁹ on 29 November 2015, the retail roaming charges were abolished in the EU as from 15 June 2017. AGCOM has allowed 3 derogations (all MVNO), with a 4th currently under assessment.

While the months preceding the 15 June 2017 were still characterised by widespread non-compliance by the operators in particular with the default-reduced transition retail price ('Roam Like At Home+', or 'RLAH+'), against which AGCOM's enforcement efforts proved ineffective also due to the insufficient sanctions available to AGCOM at that time (as also already registered in the last year's Telecom Chapter), in view of the introduction of Roam Like At Home (RLAH) as of 15 June 2017 AGCOM intensified its monitoring activity on the main national mobile operators (both MNO and MVNO) registering an overall good level of compliance with the new provisions and intervening, where cases of lack of compliance were pointed out⁴⁰, with warning letters to the relevant operators requiring full compliance with Roam Like at Home⁴¹ (RLAH) rules.

³⁶ Decree-Law 16 October 2017, n. 148 converted into Law 4 December 2017, n. 172 (Italian O.J. 05/12/2017, n. 284) available in Italian at the following link <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2017-10-16;148!vig=>

³⁷ The Law provides that AGCOM will have to define the technical characteristics and correspondent denominations of the different kinds of physical infrastructure, defining as "full optical fibre infrastructure" the one that ensures the fibre connection up to the customer's living unit. Lack of compliance with the technical characteristics set by the Authority will represent an unfair commercial practice.

³⁸ See in particular AGCOM Decision no. 495/17/CONS and AGCOM Decision no. 496/17/CONS.

³⁹ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access (OJ L 310, 26.11.2015, p. 1).

⁴⁰ *Inter alia*, the cases detected included (i) incorrect application of FUP (fair use policy); (ii) limitation to the national territory of free promotions; (iii) corporate offers excluding RLAH.

⁴¹ Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, p. 10), as amended by Regulation (EU) 2015/2120 and Regulation (EU) 2017/920.

Against this background, in November 2017 Italy adopted the "European Law" whose Article 4 amends Article 98 of the Italian Electronic Communications Code attributing specific interim powers to the National Regulatory Authority and introducing a new set of sanctions to apply in cases of breach of the Roaming Regulation. New penalties range from €120 000 to € 500 000⁴².

Following the introduction of RLAH in June 2017, Italian subscribers consumed 3.6 times more voice and 9.5 times more data roaming services when travelling in the EU in summer 2017 compared to summer 2016⁴³.

b. Net neutrality

During 2017 the Italian NRA carried out general monitoring activities⁴⁴ on the correct implementation of the Net Neutrality rules enshrined in Regulation (EU) 2015/2120 with a focus on zero-rating offers, traffic management practices, and specialised services. The NRA also reported about an informal ongoing cooperation with the Italian Data Protection Authority on matters related to Article 3(4) of the above mentioned Regulation. On 15 March 2017, AGCOM adopted a Decision (no. 123/17/CONS) to address two "zero-rating" offers found to be in breach of Article 3(3) of Regulation (EU) 2015/2120. In particular, AGCOM noted a discrimination between the general purpose traffic, which is often blocked or slowed down, compared to the zero-rated traffic, which flows without being blocked or slowed down. Regarding compliance of the offers mentioned above with Article 3(2), the Authority's assessment is currently ongoing.

In November 2017 Italy adopted the "European Law" whose Article 4 amends Article 98 of the Italian Electronic Communication Code introducing a new level of sanctions for the breaches of the Net neutrality provisions included in Regulation (EU) 2015/2120. New penalties range from €120 000 to € 500 000⁴⁵. Rules on penalties were recently reinforced also with Law 4 August 2017, n. 124 ("*Legge annuale per il mercato e la concorrenza*"), which increased the applicable sanctions for indirect infringements of Articles 3, 4, 5 of Regulation (EU) 2015/2120, *i.e.* the sanctions apply if the operators refuse to provide the information requested by the NRA or does not implement or execute NRA's orders⁴⁶.

⁴² See Article 4, Law 20 November 2017 n. 167.

⁴³ Figures compare Q3/2017 with Q3/2016 retail roaming volumes according to the BEREC International Roaming Benchmark Report, April 2017-September 2017, published on 14 March 2018.

⁴⁴ The Italian NRA also cooperated with technical bodies for more specialised traffic measurements at server and client level on fixed and mobile networks. AGCOM circulated requests for information to ISPs and organized formal meetings with vendors and ISPs with the aim to provide a clear and useful set of information to stakeholders about the content of Regulation (EU) 2015/2120 and in order to stimulate an effective compliance by ISPs.

⁴⁵ See above, footnote 43.

⁴⁶ In addition to the above, with regard to the freedom of choice of the terminal equipment, at the beginning of 2018, AGCOM launched, with the Decision no. 35/18/CONS, a public consultation on possible measures to ensure the free choice of terminal equipment by consumers and end users. Furthermore, AGCOM, with the Decision no. 68/18/CONS, adopted a warning against an operator regarding the commercial practice of allowing the use of the mobile terminal in tethering mode only by paying an additional fee. AGCOM considered this practice as a breach of Article 3, paragraphs 1 and 2 of EU Regulation no. 2015/2120.

c. 112

In 2017 there were no changes to the legislation relevant for emergency calls location. The accuracy of the location via the available APPs, based on GPS positioning, is < 20 m. In 2017 the First Level PSAP Model was introduced in four Italian regions (Friuli Venezia Giulia, Sicilia, Trentino Alto Adige and Piemonte). In total (including the Italian regions already switched to the PSAP1 model: Lazio, Liguria and Lombardia) the APP is available for more than 25.5 million Italian citizens.

SMS as an alternative means of access to emergency services is available in Italy but only to a long number. A call abandon rate of more than 20% was reported. Italy introduced the Emergency applications "Where Are U" in all the Regions adopting the first level PSAP model, "FlagMii" in Piedmont⁴⁷. As to the average time needed for receiving the caller location by the 112 operator, due to the implementation of the "push" system or the automatic "pull" system, near instant times (up to 10 seconds) were reported in Italy. In 2017 Lombardy region joined as partner the pilot project 'HELP 112' that aims at improving caller location information transferred to Public Safety Answering Points (PSAPs)⁴⁸.

d. Universal service

Broadband is currently not included in the scope of universal service⁴⁹. With Decision n. 253/17/CONS AGCOM has published the outcomes of an assessment on the review of universal service obligation aimed at considering the possible inclusion of broadband services in the universal service obligation in line with European Commission Communication (COM (2011) 795). In this respect AGCOM acted as advisor of the Ministry of Economic Development that, according to Article 65 of the Italian Communication Code, is in charge of the periodic review of the universal service obligation.

At this stage, as the Commission believes that Member States could be asked to consider including broadband connections in USO where the data rate in question is used at national level i) by at least half of all households and ii) by at least 80 % of all households with a broadband connection, AGCOM has verified that the European requirements are met for a 2 Mbps connection. It is anyway up to the Ministry to decide whether to include the 2 Mbps connection in the USO.

⁴⁷ Emergency applications are another handset based location solution that uses the GNSS or Wifi capability of the smartphone. Emergency applications are being deployed at a Member State or regional level. These applications require prior action from the citizen – as opposed to AML – as it has to be downloaded. The transmission of location data is possible only when an active data connection is available. These applications can provide a much more accurate GNSS/Wifi location than network based location solutions

⁴⁸ HELP 112 is the pilot project on the design, implementation and execution of the transfer of GNSS data during a 112 call to a PSAP. Project partners will look at available technologies and future opportunities, test and assess them, as well as define requirements and recommendations for technologies enhancing caller location information at the European level in a cost effective manner. In this context, several solutions will be examined in four pilot sites. This project will also use the European GNSS solutions (Galileo, EGNOS).

⁴⁹ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (OJ L 108, 24.4.2002, p. 51).

In order to promote equivalent choice and access to telecom services for disabled users, in March 2017 AGCOM approved a decision (n. 46/17/CONS), which introduced an obligation on telco operators to apply discounts on offers for visual and hearing impaired users⁵⁰.

5. Conclusion

Thanks to increasing infrastructure-based competition and a combination of private and public investments, Italy is significantly improving the level of fibre-based next generation access (NGA) roll-out, in line with the goals of the European Commission's Digital Agenda strategy. This certainly also produced a positive effect on the demand side that is increasing in parallel but at a slower pace. On another note, regarding the Multi Operator Vectoring (MOV), a technical Committee of operators promoted by AGCOM has developed in June 2015 the guidelines for technical characteristics for MOV, which Telecom Italia and operators wishing to adopt vectoring transmission systems have to comply with, as established in a regulatory measure of 2015⁵¹. While trials continued on the basis of the 2015 measure no business model on MOV has been launched yet..

On the other hand, several factors, including delaying tactics by the incumbent operator are suspected by the national Antitrust authority to have produced a negative impact on the process of implementation of the Ultra-broadband National plan⁵².

With regard to the implementation of the Broadband Cost Reduction Directive, as mentioned above, Italy was the first Member State to fully transpose the legislation but in 2017 the single information point (SINFI) was not fully operational yet⁵³. The persisting issues related to the delays in the local authorisation/permit granting are expected to be resolved by means of preliminary technical agreements between Infratel and the municipalities.

Italy is a pioneer with regard to 5G mobile technology thanks to the 5G testing initiatives launched by both the Government and the operators privately in a number of cities. In particular, the Government “5G in 5 Cities” plan assigned, in September 2017, 100MHz in the 3.6-3.8 GHz spectrum band⁵⁴.

⁵⁰ According to this decision disabled users have the right to receive a 50% discount on each operator best flat/semi-flat fixed offer (voice + data). In addition, hearing-impaired users are entitled to receive a 50% discount on each operator best mobile offer including 50 free SMS/day and at least 20 GB/month of data, while visual impaired users are entitled to receive a 50% discount on each operator best mobile offer including unlimited voice and at least 10 GB/month of data.

⁵¹ AGCOM Decision no. 623/15/CONS Article 20.

⁵² See above, footnote 2.

⁵³ According to the information provided by the Italian Authorities, SINFI is currently under field trial test with 10 operators and is expected to be fully operational by the end of the first quarter of 2018.

⁵⁴ The winning bidders will start to test by 2018 infrastructures and services in the metropolitan city of Milan, Prato, L'Aquila, Bari and Matera. See <http://bandaultralarga.italia.it/en/5g-5-italian-cities-approved-the-best-projects/>.