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CONCENTRATIONS IN BANKING SISTEM – MERGER BETWEEN INTESA AND SAN PAOLO IMI

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INTRODUZIONE

Le operazioni di concentrazione all'interno del settore bancario costituiscono oggetto di studio tanto in ambito giuridico quanto in ambito economico.

Punto centrale, sul quale si è sviluppata gran parte della trattazione, è la individuazione degli effetti che tali operazioni possono produrre sulle dinamiche concorrenziali. In modo particolare si è cercato di dimostrare anche attraverso l'utilizzo di dati numerici che le concentrazioni possono comportare dei benefici alla concorrenza nel settore bancario e generare delle ripercussioni positive in capo ai consumatori.

L'analisi eseguita all'interno dell'elaborato individua innanzitutto l'Autorità competente a stabilire quali operazioni possano identificarsi come restrittive della concorrenza.

In secondo luogo si è cercato di analizzare le operazioni di concentrazione come un mero strumento di crescita aziendale al fine di determinare se le stesse possano comportare dei benefici o delle restrizioni in ambito concorrenziale.

In ultima analisi è stato analizzato un caso specifico di concentrazione, la fusione tra Banca Intesa e Banco San Paolo IMI. In modo particolare sono stati valutati i provvedimenti dell'AGCM al fine di considerare come essa abbia agito innanzi ad un'operazione di interesse nazionale.

Possiamo definire le concentrazioni come delle operazioni che determinano un accrescimento dimensionale dell'impresa che può essere realizzato o attraverso un rafforzamento interno o attraverso una crescita esterna attingendo risorse da terzi.

Esse sono regolate dal Reg. CE n. 139 del 2004 a livello comunitario, mentre a livello nazionale sono regolate dalla l. 10 ottobre 1990, n.287.

A differenza di altre fattispecie regolate dalla legge antitrust comunitaria e nazionale le concentrazioni non ricadono in maniera diretta e preventiva nel divieto. Esse godono di una "buona fama" e sono sottoposte ad una preventiva valutazione da parte dell'Autorità competente al fine di valutare se le stesse siano in grado o meno di comportare delle restrizioni dell'attività concorrenziale all'interno di un dato mercato.

La competenza ad eseguire questo tipo di valutazioni risulta essere spartita tra la Commissione europea che analizza le operazioni che abbiano delle dimensioni comunitarie e l'AGCM che invece è

competente a valutare quelle operazioni che non assumono una rilevanza comunitaria e pertanto sono considerate come operazioni di rilevanza meramente nazionale.

La legge oltretutto individua come parametro utile a determinare in quale ambito far rientrare l'operazione il fatturato realizzato dalle imprese che vi partecipano.

Esistono una pluralità di forme attraverso le quali è possibile che sia realizzata un'operazione di concentrazione. In particolare facciamo riferimento alla fusione, all'acquisizione del controllo sull'impresa ed in ultima analisi alla costituzione di un'impresa comune (c.d. *Joint Venture*).

Come anticipato, il punto centrale dell'intera tesi è la valutazione delle concentrazioni all'interno del settore bancario.

L'elaborato individua sia le *ragioni* che spingono le imprese bancarie a concentrarsi, sia le *modalità* attraverso le quali queste eseguono tale attività.

Il raggiungimento di economie di scala e di scopo, l'acquisizione di un certo potere di mercato e la diversificazione del rischio sono in sostanza le determinanti che spingono le imprese ad aggregarsi nel mercato. A queste determinanti si aggiunge anche la effettiva possibilità che un'operazione di concentrazione possa essere effettivamente giustificata dalla necessità di procedere al risanamento dell'impresa.

Oltretutto sono state individuate anche le modalità attraverso le quali l'impresa può realizzare tale crescita. Per farlo ovviamente deve porre in essere una strategia ovvero quell'attività che secondo Kenichi Ohmae ha come scopo quello di consentire all'impresa di raggiungere, nel modo più efficiente possibile, un vantaggio sostenibile sui propri concorrenti.

Una prima strategia è l' integrazione a monte a valle di un processo produttivo. Un'altra strategia può invece essere la diversificazione della presenza dell'impresa in diversi settori conglomerali o correlati a quello in cui operava originariamente.

A queste due principali modalità di crescita si aggiunge anche la internazionalizzazione ovvero una strategia finalizzata ad espandere la presenza dell'impresa in Paesi differenti da quello di origine.

Si è poi fatto riferimento alla possibilità che la realizzazione di una strategia di crescita possa avvenire sia per vie interne che per vie esterne. Nel primo caso si tenderà ad aumentare la capacità produttiva già posseduta dall'impresa o realizzare nuove unità di produzione. Nel secondo caso invece possiamo constatare l'esistenza di una pluralità

di modalità come la realizzazione di accordi, acquisizione di partecipazioni di controllo, creazione di *Joint Venture*, *M&A*.

All'interno dell'elaborato sono stati riportati una serie di dati dai quali si evince innanzitutto che il settore bancario è un settore che per crescere ha necessariamente bisogno di concentrarsi e per farlo il mezzo più utilizzato storicamente e statisticamente è stato quello delle fusioni e delle acquisizioni.

Il numero di *M&A* dagli anni Novanta al 2007 è stato tendenzialmente crescente, per poi subire un netto decremento dal 2007 al 2016.

Dall'analisi di questi dati quindi si evince che il settore bancario è un settore che in generale tende all'aggregazione per necessità talvolta di crescita, talvolta di salvataggio di alcuni enti che versano in condizioni difficoltose.

Data questa tendenza si è cercato di individuare quali elementi sia necessario tenere in considerazione al fine di determinare il grado di concentrazione del settore in un Paese. A tal fine è opportuno considerare: il numero di banche, il numero di imprese ed il numero di abitanti.

Un Paese di medio-piccole dimensioni come l'Italia, che presenta un altissimo numero di imprese che hanno una dimensione medio-piccola e che possiede 650 istituti creditizi a fronte di un grado di concentrazione misurato sulle prime 5 imprese bancarie presenti nel territorio del 40,7% può considerarsi non altamente concentrato e nemmeno decisamente frammentato e quindi, rispetto alle altre potenze europee, abbastanza equilibrato

Il problema da considerare in questo ambito non è di carattere esclusivamente numerico e quindi *di quante* banche sono presenti nel territorio a fronte del numero di imprese e di abitanti, ma è un problema qualitativo. E´ quindi necessario tenere presente *che tipo* di istituti creditizi siano compatibili con la popolosità, il numero e la dimensione delle imprese presenti nel territorio.

Tuttavia la questione principale è: che tipo di effetti sono in grado di produrre le operazioni di concentrazione all'interno del settore bancario?

All'interno dell'elaborato si è cercato di rispondere al quesito prendendo innanzitutto in considerazione il fatto che il consolidamento del sistema bancario può produrre due

principali conseguenze: il miglioramento dell'efficienza e l'aumento del potere di mercato, il che potrebbe comportare possibili impatti sulla concorrenza e sulla determinazione dei prezzi.

A questi due specifici effetti si aggiungono ulteriori conseguenze che riguardano il decremento dell'erogazione di servizi finanziari nei confronti di taluni soggetti, come le piccole e medie imprese.

Da un punto di vista statistico i guadagni in termini di efficienza prodotti da un'operazione di concentrazione sono ricollegabili principalmente alla riduzione di taluni costi piuttosto che alla realizzazione di maggiori guadagni.

Questo risultato è raggiungibile attraverso la realizzazione di fusioni che consentono all'impresa di sfruttare economie di scala e di razionalizzare una serie di costi dovuti soprattutto alla eliminazione di strutture organizzative comuni sia a livello centrale che a livello di c.d. *back officies*.

In relazione al secondo aspetto si è constatato che allorquando si parli di concentrazione solitamente si ritiene che aumentando il grado di concentrazione del mercato segua un aumento del potere di mercato delle imprese che vi operano e, di conseguenza, una riduzione del grado di concorrenza.

Tuttavia si è avuto modo di constatare come, osservando le dinamiche di mercato successive al periodo più denso di concentrazioni (1993-2007), l'effettivo svolgimento di una attività concorrenziale all'interno del mercato non sia in realtà diminuito.

In modo particolare è stato riportato l'esempio di imprese che si trovino in una situazione critica. Il fatto che queste siano acquisite da imprese più efficienti determinerà ovviamente un aumento del grado di concentrazione ma, contemporaneamente, contribuirà ad incrementare il livello concorrenziale nel mercato considerato e non certo a ridurlo.

L'aspetto che più ci riguarda da vicino è quello della valutazione dei benefici che tali operazioni possano comportare in capo ai consumatori.

A tal proposito l'aumento della concentrazione non necessariamente comporta come conseguenza la necessità per le banche di praticare prezzi meno favorevoli per i clienti. All'interno dell'elaborato è stato infatti dimostrato come talvolta l'aumento del potere di mercato sia controbilanciato da effetti che costituiscono benefici per i clienti stessi.

Tra le operazioni di concentrazione di maggiore importanza a livello nazionale si è deciso di riportare ed approfondire quella tra Banca Intesa e San Paolo IMI.

L'operazione fu annunciata nell'agosto del 2006 e fu realizzata a dicembre dello stesso anno.

Le due banche che hanno dato vita a questa fusione si presentavano come due dei maggiori enti creditizi presenti nel territorio nazionale.

Quali sono state le motivazioni e gli obiettivi che hanno spinto i due gruppi a realizzare la fusione?

La prima considerazione che dobbiamo eseguire è che le parti attraverso l'operazione tendono ad accrescere la loro dimensione e di conseguenza mirano ad acquisire una posizione tale sul mercato da poter ottenere un' elevata competitività a livello nazionale ma soprattutto a livello comunitario.

In particolare possiamo dire che la fusione è presentata come una vera e propria opportunità di crescita sotto molti punti di vista:

a) innanzitutto sarà possibile constatare una elevata distribuzione sul territorio nazionale delle filiali della "superbanca", in modo particolare la presenza sarà radicata nelle zone più ricche della nazione;

b) sarà possibile ovviamente osservare un aumento dell'efficienza operativa per via dello sfruttamento delle economie di scala ottenute in virtù dell'aumento dimensionale;

c) prevalenza della componente di *retail* domestico nelle attività di entrambi i Gruppi, che consente di massimizzare i potenziali benefici dell'operazione con un rischio di esecuzione ridotto;

d) vi è poi l'effettiva compatibilità tra i modelli organizzativi di entrambi i Gruppi;

e) la possibilità di progettare strategie di internazionalizzazione rappresenta un ulteriore fattore di spinta alla fusione. In particolare sarà possibile ottenere una posizione di *leadership* nel mercato nazionale grazie alla quale sarà poi possibile esercitare un effettivo ampliamento verso l'estero.

Il nuovo colosso avrebbe infatti conseguito una posizione sul mercato nazionale non replicabile da nessun altro concorrente con nessuna operazione di fusione.

Spinto da queste motivazioni, il nuovo gruppo sarebbe riuscito ad ottenere una posizione primeggiante in Italia in relazione ad una serie di segmenti di mercato.

La presenza di San Paolo e Intesa nei mercati dell'Europa Centro-Orientale consentirà al Gruppo di rafforzare la presenza e l'attività commerciale in questa area. IntesaSanpaolo arriverà ad ottenere una presenza in 10 Paesi, circa 1.370 filiali e totale attivo di circa 25 miliardi di euro.

L'espansione nell'Europa Centro–Orientale consentirà inoltre di potersi spingere in nuove aree, quali in particolare il bacino del Mediterraneo.

All'interno dell'elaborato ci si è concentrati anche sulle linee guida di carattere strategico poste alla base dell'operazione stessa.

Dall'analisi della documentazione relativa alla fusione è possibile evincere che "la strategia del Nuovo Gruppo sarà orientata alla crescita sostenibile e alla creazione di valore, da conseguire sviluppando il rapporto di fiducia con gli *stakeholders* e mantenendo uno stretto controllo su tutte le leve gestionali".

Al di là delle valutazioni circa le motivazioni che hanno spinto alla realizzazione dell'operazione ed i risultati che attraverso la stessa si vogliono raggiungere, un aspetto sul quale ci si è soffermati nel corso della trattazione è quello relativo all'attività di investigazione predisposta da parte dell'Autorità antitrust.

In relazione all'operazione di fusione tra banca Intesa e Sanpaolo IMI in data 19 ottobre 2006 l'AGCM ha deciso di avviare un'istruttoria al fine di verificare se tale operazione, date le sue caratteristiche e soprattutto la sua dimensione, potesse determinare una concentrazione restrittiva della concorrenza in grado di comportare il rafforzamento di una posizione dominante sul mercato

L'AGCM ha determinato che "vi sono diversi mercati nei quali la realizzazione dell'operazione di fusione in esame determina il rischio di costituzione o rafforzamento di una posizione dominante; si tratta dei mercati rilevanti connessi a: raccolta bancaria, impieghi, credito al consumo, leasing, factoring, carte di credito, carte di debito, fondi comuni di investimento, gestioni individuali di patrimoni (GPM e GPF), prodotti di previdenza complementare, risparmio amministrato, nonché i rami assicurativi vita I, III e V."

La conclusione dell'AGCM che abbiamo appena riportato si fonda non soltanto sulla effettiva valutazione degli effetti che la fusione genererebbe nei segmenti di mercato. L'*antitrust* infatti tiene in considerazione anche e soprattutto la dimensione e la struttura che assumerà il nuovo colosso che emergerà dalla fusione. IntesaSanpaolo diverrebbe il primo gruppo bancario italiano e uno dei primi gruppi bancari dell'Area Euro, con una capitalizzazione di mercato di oltre 65 miliardi di euro.

L'entità *post-merger* conterebbe su una clientela di oltre 13 milioni di clienti retail, oltre 50.000-55.000 clienti private e 140.000-145.000 PMI; una rete distributiva costituita da oltre 6.200 sportelli, 4.000 promotori finanziari, oltre 7.000 ATM. Alla luce dei problemi concorrenziali prospettati nel provvedimento di avvio e nella comunicazione delle risultanze istruttorie, le parti hanno assunto impegni volti a "eliminare i rischi concorrenziali ivi paventati in relazione alla realizzazione di tale operazione".

Gli impegni sono principalmente orientati a ridurre la capacità distributiva dell'entità *post-merger*.

Tuttavia l'analisi eseguita all'interno dell'elaborato è stata finalizzata anche a determinare se la fusione in questione abbia comportato o meno un incremento di efficienza. A tal proposito sono stati posti a confronto alcuni dati resi disponibili immediatamente dopo la fusione e dati più attuali.

Dieci anni fa il gruppo possedeva 5.489 filiali e una quota di mercato in Italia del 17%.

All'estero era presente in dieci Paesi (Albania,Bosnia, Croazia, Romania, Russia, Serbia, Slovacchia, Slovenia, Ucraina, Ungheria) con circa 1.400 filiali

In Europa, Intesa Sanpaolo era fra le prime dieci realtà creditizie per capitalizzazione e impieghi.

Dieci anni dopo Intesa Sanpaolo ha 5.245 filiali, di cui 4.047 in Italia.

Risulta essere il primo gruppo bancario italiano con una quota di mercato pari al 16%.

La penetrazione all'estero è paragonabile a quella di dieci anni fa: undici i Paesi (Albania, Bosnia-Erzegovina, Croazia, Egitto, Federazione Russa, Repubblica Ceca, Romania, Serbia, Slovacchia, Slovenia, Ungheria) con una rete di 1.195 sportelli. Oltretutto la divisione *Corporate and Investment Banking* possiede attività in Irlanda, Brasile e Lussemburgo e con quelle delle così dette filiali *hub* di Dubai, Hong Kong, Londra e New York.

Nell'Eurozona, Intesa Sanpaolo è al quinto posto in termini di capitalizzazione. Nonostante la situazione di recessione in cui attualmente versa l'Italia nei primi sei mesi del 2016 Intesa Sanpaolo ha erogato 27 miliardi di euro di nuovo credito a medio-lungo termine, di cui 24 miliardi in Italia (+24% rispetto al primo semestre

2015). Di questa cifra, 20 miliardi sono andati a famiglie e piccole e medie imprese (+32% rispetto al primo semestre 2015); inoltre, più di 10.000 aziende italiane sono state riportate *in bonis* da posizioni di credito deteriorato (sono circa 40mila dal 2014).
A fine 2015 i proventi operativi netti ammontano a 17,14 miliardi, in crescita dell'1,9% rispetto ai 16,82 miliardi del 2014.
Quanto agli aggregati patrimoniali, al 31 dicembre 2015 il totale attivo è di 676,5 miliardi (+4,5%), crediti verso la clientela per 350 miliardi e una raccolta diretta superiore a 372 miliardi.
Alla luce di questa considerazioni si è cercato di contestualizzare l'operazione all'interno dell'attuale contesto economico e finanziario e si è riusciti a determinare che oggi il sistema bancario europeo versa in condizioni potenzialmente drammatiche.
Alla luce dei risultati degli stress test pubblicati dall'Eba a fine luglio 2016, Intesa San Paolo è l'unica grande banca in Europa che, anche nello scenario più avverso, mostra una posizione di capitale in eccesso (71 punti) rispetto ai requisiti previsti in condizioni ordinarie.

INTRODUCTION

Concentration operations within the banking sector are the subject of study both in the legal and in the economic spheres.
The central point, on which most of the discussion has been developed, is to identify the effects that these operations can produce on competitive dynamics. In particular, it was also tried to demonstrate through the use of numerical data that concentrations may have the benefits of competition in the banking sector and generate positive repercussions for consumers.
The analysis carried out within the elaboration first identifies the Competent Authority to determine which operations can be identified as restrictive of competition.
Secondly, attempts have been made to analyze concentration operations as a mere growth tool for the purpose of determining whether they can have benefits or restrictions in a competitive environment.
Finally, a specific case of concentration was analyzed, the merger between Banca Intesa and Banco San Paolo IMI. In particular, the measures taken by AGCM were assessed in order to consider how it acted before a transaction of national interest.
We can define concentrations such as operations that determine a sizeable growth of the enterprise that can be achieved either through internal reinforcement or through external growth by outsourcing resources from third parties.
They are governed by EC Regulation n. 139 of 2004 at Community level, while at national level are regulated by l. 10 October 1990, No.287.
Unlike other cases governed by Community and national antitrust law, concentrations do not fall directly and preventively into the prohibition. They have a "good reputation" and are subject to a prior assessment by the competent authority in order to assess whether they are capable of restricting competitive activity within a given market.
The competence to carry out this type of assessment is split between the European Commission which analyzes operations of a Community dimension and the AGCM

which is competent to evaluate those transactions which are not of Community relevance and are therefore considered to be relevant transactions Merely national.
The law further identifies as a useful parameter to determine in what scope the transaction will be returned by the participating companies.
There are a number of shapes through which a concentration operation may be performed. In particular, we refer to the merger, the acquisition of control over the company and ultimately the establishment of a joint venture (joint venture).
As mentioned above, the central point of the whole thesis is the assessment of concentrations within the banking sector.
The paper identifies both the reasons that push the banking companies to focus on, and the ways in which they perform this business.
Achieving economies of scale and scope, acquiring some market power, and diversifying risk are essentially the key to pushing businesses into the market. These determinants also add to the actual possibility that a concentration operation may be justified by the need to pursue the company's business.
Moreover, the ways in which the enterprise can achieve this growth has been identified. To do this obviously has to put in place a strategy or activity that according to Kenichi Ohmae aims to enable the company to reach, as efficiently as possible, a sustainable advantage on its competitors.
A first strategy is the upstream integration of a production process. Another strategy may be to diversify the company's presence in different conglomerate sectors or to the one where it originally operated.
These two major growth modes also include internationalization, or a strategy aimed at expanding the company's presence in countries other than the country of origin.
Reference was then made to the possibility that a growth strategy can be implemented both for internal and external routes. In the first case, it will tend to increase the production capacity already owned by the enterprise or to create new production units. In the second case, however, we can see the existence of a variety of modes such as the implementation of agreements, acquisition of control shares, creation of Joint Venture, M & A.

Within the elaboration, a series of data has been reported, from which it can be seen first that the banking sector is a sector that, to grow, needs to concentrate and to make it the most used historically and statistically the merger and acquisitions.

The number of M & As from the nineties to 2007 was tending to increase, after which it fell sharply between 2007 and 2016.

From the analysis of this data, it can be seen that the banking sector is an industry that in general tends to aggregate for sometimes growth, sometimes rescuing some of the entities that are in difficult conditions.

Given this trend, it has been attempted to identify what elements need to be considered in order to determine the degree of concentration of the sector in a country. To this end, it is appropriate to consider: the number of banks, the number of enterprises and the number of inhabitants.

A medium-sized country such as Italy, which has a very small number of medium-sized businesses and has 650 credit institutions with a degree of concentration measured on the top five banking companies in the 40 , 7% may be considered not highly concentrated and not even quite fragmented and therefore, compared to other European powers, fairly balanced.

The problem to be considered in this area is not only numeric and therefore how many banks are present in the territory in terms of the number of businesses and inhabitants, but it is a qualitative problem. It is therefore necessary to keep in mind what types of credit institutions are compatible with the population, number and size of businesses in the territory.

However, the main question is: what kind of effects are they able to produce concentrations within the banking sector?

Within the workforce, we tried to answer the question by taking into consideration firstly that the consolidation of the banking system can have two major consequences: the improvement of efficiency and the increase of market power, which could lead to possible Impact on competition and pricing.

These two specific effects also add to the consequences of decreasing the provision of financial services to certain individuals, such as small and medium-sized businesses.

From a statistical point of view, the efficiency gains generated by a concentration operation are mainly related to the reduction of certain costs rather than to the achievement of higher earnings.
This is achieved through the creation of mergers that enable the company to exploit economies of scale and to rationalize a series of costs mainly due to the elimination of common organizational structures both at central and c.d. levels. Back officies.
In relation to the second aspect, it was found that when it comes to concentration, it is usually considered that increasing the degree of market concentration leads to an increase in the market power of the undertakings operating there and, consequently, a reduction in the degree of competition.
However, it has been observed that, observing the market dynamics following the densest period of concentration (1993-2007), the actual running of a competitive activity within the market did not actually diminish.
In particular, the example of companies that are in a critical situation has been reported. The fact that these are acquired by more efficient businesses will obviously result in an increase in concentration but at the same time will help to increase the competitive level in the market concerned and certainly not reduce it.
The point that most closely concerns us is the assessment of the benefits that these transactions can entail for consumers.
In this regard, the increase in concentration does not necessarily entail the need for banks to make less favorable prices for customers. Within the process, it has been shown that sometimes the increase in market power is counterbalanced by the effects that are beneficial to the customers themselves.
Among the most important concentration operations at national level, it was decided to bring back and deepen the one between Banca Intesa and San Paolo IMI.
The transaction was announced in August 2006 and was carried out in December of the same year.
The two banks that created this merger appeared as two of the largest credit institutions in the country.
What were the motivations and goals that led the two groups to achieve the merger?

The first consideration we have to make is that the parties through the operation tend to increase their size and therefore seek to gain a position on the market in order to achieve high national competitiveness, but above all at Community level.
In particular, we can say that merger is presented as a real opportunity for growth in many ways:
A) First, it will be possible to see a high distribution on the domestic territory of the subsidiaries of the "superbank", in particular the presence will be rooted in the richest areas of the nation;
(B) Obviously, it will be possible to see an increase in operational efficiency due to the exploitation of the economies of scale obtained by virtue of the size increase;
C) the prevalence of the retail component in the activities of both groups, which maximizes the potential benefits of the transaction with a reduced execution risk;
D) there is then the effective compatibility between the organizational models of both groups;
(E) the possibility of designing internationalization strategies is another factor in pushing the merger. In particular, it will be possible to gain a leadership position in the national market, which will then be able to exert a real extension to the outside world.
The new giant would have achieved a position on the national market that was not replicable by any other competitor with no merger.
Driven by these reasons, the new group would be able to obtain a prime position in Italy in relation to a number of market segments.
The presence of Saint Paul and Intesa in the markets of Central and Eastern Europe will enable the Group to strengthen its presence and business in this area. IntesaSanpaolo will arrive to gain presence in 10 countries, about 1,370 branches and a total assets of about 25 billion euros.
The expansion in Central and Eastern Europe will also enable it to push into new areas, such as the Mediterranean basin.
Within the elaboration, we have also focused on the strategic guidelines set at the base of the operation itself.

From the analysis of the merger documentation it can be seen that "the New Group's strategy will be geared towards sustainable growth and value creation, to be achieved by developing a stakeholder relationship and maintaining close control over all management levers" .

Beyond the assessments of the motivations that led to the implementation of the operation and the results that it is intended to achieve, one aspect that has been discussed during the discussion is that related to the investigative activity set out on the part Of the Antitrust Authority.

In relation to the merger between Banca Intesa and Sanpaolo IMI on 19 October 2006, the AGCM decided to initiate an investigation in order to ascertain whether the transaction, given its characteristics and above all its size, could result in a concentration Restrictive of competition which could lead to the strengthening of a dominant position on the market.

AGCM has determined that "there are several markets in which the execution of the merger under investigation creates the risk of establishing or strengthening a dominant position; These are major markets related to: banking, lending, consumer credit, leasing, factoring, credit cards, debit cards, mutual funds, individual asset management (GPMs and GPFs), supplementary savings products, savings Administered, as well as insurance life lines I, III and V. "

The conclusion of the AGCM that we just found is based not only on the actual assessment of the effects that the merger would generate in the market segments. In fact, antitrust takes into account, and above all, the size and structure that will take on the new colossus emerging from the merger. IntesaSanpaolo would become the first Italian banking group and one of the first banking groups in the Euro Area, with a market capitalization of over 65 billion euros.

The post-merger entity would cover a customer base of over 13 million retail customers, over 50,000-55,000 private customers and 140,000-145,000 SMEs; A distribution network consisting of over 6,200 branches, 4,000 financial promoters, over 7,000 ATMs.

However, the analysis carried out within the elaboration has also been designed to determine whether or not the fusion in question has resulted in an increase in efficiency. In this regard, some data made available immediately after the merger and the most recent data were compared.

Ten years ago the group had 5,489 branches and a market share in Italy of 17%. Abroad was present in ten countries (Albania, Bosnia, Croatia, Romania, Russia, Serbia, Slovakia, Slovenia, Ukraine, Hungary) with about 1,400 branches.

In Europe, Intesa Sanpaolo was among the top ten credit institutions for capitalization and employment.

Ten years after Intesa Sanpaolo has 5,245 branches, including 4,047 in Italy.

It turns out to be the first Italian banking group with a market share of 16%. Foreign penetration is comparable to that of ten years ago: eleven countries (Albania, Bosnia and Herzegovina, Croatia, Egypt, Russian Federation, Czech Republic, Romania, Serbia, Slovakia, Slovenia, Hungary) with a network of 1,195 branches . In addition, the Corporate and Investment Banking division has operations in Ireland, Brazil and Luxembourg and with those of the so-called hub branches in Dubai, Hong Kong, London and New York.

In the Eurozone, Intesa Sanpaolo is fifth in terms of capitalization. Despite the current recession in Italy in the first six months of 2016, Intesa Sanpaolo has disbursed 27 billion euros in new medium to long-term loans, of which 24 billion in Italy (+ 24% compared to the first half of 2015). Of this figure, 20 billion went to households and small and medium-sized businesses (+ 32% compared to the first half of 2015); Moreover, more than 10,000 Italian companies have been repurchased by depreciated credit facilities (roughly 40,000 from 2014). At the end of 2015, net operating income amounted to 17.14 billion, up 1.9% compared to 16.82 billion in 2014.

As to balance sheet aggregates, the total assets at December 31, 2015 totaled 676.5 billion (+ 4.5%), accounts receivable totaling 350 billion euros and direct deposits of over 372 billion.

In the light of these considerations, attempts have been made to contextualize the operation within the current economic and financial context and have been able to

determine that today the European banking system is in potentially dramatic conditions.

In light of the stress test results published by EBA at the end of July 2016, Intesa San Paolo is the only large bank in Europe that, even in the most adverse scenario, exhibits an excessive capital position (71 points) than the expected requirements Under ordinary conditions.

In the light of the competition concerns set out in the start-up and disclosure procedure, the parties have undertaken commitments to "eliminate the competitive risks involved in carrying out this operation".

Commitments are primarily aimed at reducing the distribution capacity of the post-merger entity.

CHAPTER 1

SOURCES AND THE PROBLEM OF THE COMPETENCE

a. Evolution of antitrust law

In this first part of the chapter, we will focus mainly on the evolution that has characterized antitrust law both nationally and at Community level.

I. The purpose of antitrust law

Before focusing more specifically on the evolution of the right of national and EU competition, we must first make a brief reference to what is the generic purpose of that right.

The purpose of the antitrust law can be found in principle in the will to guarantee a certain level of competitive pressure within a given market, useful for ensuring the community a degree of prosperity.

According to authoritative doctrine[1], therefore, the ultimate purpose of antitrust law would be to "ban the conduct of undertakings with market power which, by loosening competitive pressure through concentration operations, abuse of dominant position or cartels, may prevent or hinder that dynamic process of rivalry between the companies that are underlying the effective functioning of the markets. "

At present, competition rules are a definite point in any legislation. In some circumstances, some countries have such discipline with some delay compared to others, but current antitrust laws are present in over 120 countries.

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[1]FEDERICO GHEZZI- GUSTAVO OLIVIERI, *Diritto Antitrust,* GIAPPICHELLI, Torino, 2013

II. The origins of antitrust law

Thus clarified the ultimate purpose of competition law, let's see its origins.

There is a part of the doctrine that in this regard identifies the origin of antitrust law in the English Statute of Monopolies of 1623 and the common law doctrine of trade restrictions developed by the British courts over the centuries. This doctrine specifically claimed that "at what rate so that the price was fixed, high or law, did not make any difference, for all such agreements were of bad consequence, and ought to be discontinued"[2] .

The other part of the doctrine, on the other hand, tends to identify as the origin of the antitrust law the thought of great medieval exponents, one on all of St. Thomas Aquinas, who also focused his studies on barter, on the question of fairness of price and on the "overabundance cupidity ".

Others [3] tend to go even further back in time, believing that the principles of competition law were already present in imperial Rome and in particular within the Lex Iulia de Annona punishing the artificial increase in food prices.

So we can see that there are different historical periods that can be identified as the genesis of competition law. However, the first true law to protect competition law dates back to the end of the nineteenth century and had the epicenter of America. We are talking in particular about the Sherman Act of 1890.

III. The Sherman Act

The Sherman Act certainly represents the key legislative document, it was approved at federal level in 1890.

The purpose of this legislative act was to strengthen the pre-existing common law rules and thus to provide for an effective prohibition of agreements, practices and combinations in the restraint of trade[4]. Another purpose of the law was to avoid all those situations that would lead to market monopolization.[5]

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[2]King vs Norris, 2 Kenyon 300, 96 Eng. Rep. 1189(K.B. 1758)

[3]FEDERICO GHEZZI- GUSTAVO OLIVIERI, *Diritto Antitrust,* GIAPPICHELLI, Torino, 2013

[4]Section 1 of Sherman Act

[5]Section 2 of Sherman Act

The central point of the discipline contained within the Sherman Act was, moreover, that the violation of the antitrust rules ought to have been considered a real offense, or a crime that would have to be punished with civil and criminal sanctions.

IV. The introduction of antitrust law in Europe

At this point, it remains to be seen how the antitrust law has been transposed in Europe by re-examining the most important historical stages.

The starting point is certainly the second post-war period.

The situation in which Europe was behind the Second World War was particularly delicate. The tendency of European countries to have a right of competition in those years was justified by two reasons in particular: on the one hand, the need to ensure economic development by guaranteeing and encouraging entrepreneurial growth thanks to a competitive confrontation both in the internally and internationally markets[6]; On the other hand, it was precisely the Allies' initiative to impose antitrust enforcement on countries out of the conflict as a necessary condition for access to the aid provided for in the Marshall Plan[7].

In the light of this situation in the 1950s, the first rules for protecting the competition began to be seen.

In 1951 Belgium, France, Germany, Italy, Luxembourg and the Netherlands signed the Coal and Steel Treaty (ECSC)[8]. In this context, the creation of an area where the attempt was made to avoid the creation of restrictive and discriminatory commercial practices to the detriment of competition in the coal and steel sector was envisaged.

The reason for this agreement was twofold: on the one hand, the desire to prevent countries such as Germany from acquiring such resources so wide that they could risk the emergence of an additional world war; on the other hand, there was a desire to ensure fair access to these resources to all signatory countries whose economies destabilized after the war.

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[6]Based on the teachings of Freiburg's ordiberal school

[7]Was one of the US political and economic plans for the reconstruction of Europe after World War II.

[8]The Treaty establishing the European Coal and Steel Community (ECSC) was signed in Paris on 18 April 1951 and entered into force on 23 July 1952. The "common market" provided by the Treaty was opened on 10 February 1953 for coal and steel Iron and the 1st May for steel. The treaty lasted for 50 years and ended on 23 July 2002. The ECSC subsequently became part of the European Union

In this context a fundamental importance was taken by art. 65 and 66 of the ECSC Treaty aimed at prohibiting agreements which would eliminate, restrict or distort competition; abuse of dominant position and concentrations that undermined the free deployment of competitive activity.

The ECSC was only the genesis of what, a few years later, was the agreement that paved the way for the European integration process as it has been known today.

We are referring to the EEC Treaty[9], which contained two provisions of fundamental importance as regards antitrust law.

The EEC Treaty was explicitly referred to prevent competition from being distorted.[10]

First of all we must consider Article 85[11]. This provision provided for a prohibition against those agreements, association decisions and concerted practices which have as their object or effect of restricting competition, without prejudice to the possibility of using specific exemptions when the conditions laid down by law were fulfilled.

Second, it is possible to consider Article 86[12]. That provision prohibited the abuse of a dominant position by one or more undertakings.

What is to be noted here is that up to Reg. 4064/1989, however, failed to obtain Community legislation concerning concentrations.

A further step to be taken into account in this evolutionary path we are drawing is that of the Lisbon Treaty of 2009[13]. Very important is art. Article 3 of the TEU, which states, inter alia, that "the Union shall work towards the sustainable development of Europe based on (...) a strongly competitive social market economy (...). It promotes scientific and technological progress . "

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[9] It was signed on March 25, 1957, together with the Treaty establishing the European Atomic Energy Community (TCEEA): together they are called Treaties of Rome.

[10] Article 3 (g) EEC: For the purposes set out in Art. 2, the action of the Community implies, under the conditions and according to the rhythm provided for in this Treaty, a regime designed to ensure that competition is not distorted in the internal market.

[11] It is then renumbered at 81 and currently in 101 TFUE.

[12] It is then renumbered at 82 and currently in 102 TFUE.

[13] Is the international treaty signed on 13 December 2007, which has brought about major changes to the Treaty on European Union and to the Treaty establishing the European Community.

The explicit reference to the "regime to ensure that competition is not distorted" disappears from the text of the TEU, but remains within Protocol No 27 annexed to TEU and TFEU[14] .
The doctrine is divided on the actual weight that this change may have on the application of antitrust law. There are those who believe that this is a simple numerical change[15] and there is, on the other hand, those who argue that competition has an instrumental role in achieving higher goals and therefore attaches greater importance to this aspect.
This is not the place to deepen this debate, just to point out that regardless of the supported orientation it must still be considered that competition law has to consider the objectives set out in the Treaties.
To confirm this thesis, we can consider how numerous antitrust judgments have given some importance to principles such as the realization of a common market [16]
At this point, we only have to locate the current sources of Community antitrust law in a specific way.
First of all, we must consider the TFEU and in particular the arts. 101 and 102 TFEU. Art 101 prohibits restrictive agreements on competition, while art 102 imposes a ban on abuse of dominant position.
Secondly, as regards mergers, it is appropriate to consider that the aforementioned Reg. 4064/89 was replaced by Regulation No. 139 of 2004.
Ultimately, it is also necessary to make a brief reference to further provisions contained in the TFEU, which always concern competition law, but which can be defined as secondary to the provisions previously identified.
First, let's talk about art. 106 TFEU which refers to the impossibility for Member States to issue or maintain public undertakings or to which special or exclusive rights are recognized, no measure contrary to the rules of the Treaty.
Secondly, we consider Art. 107 TFEU, which refers instead to state aid, which is deemed not to be such as to jeopardize the free deployment of competitive activity.

[14]This Protocol under Article 51 TEU is to be considered as an integral part of the Treaties themselves.
[15] This refers to the renumbering of art 85 and 86 CEE in 101 and 102 TFEU.
[16] See CG, C-501, 513,515 / 06 P, GlaxoSmithkline, cf., 2009, I-9291, § 61

V. The introduction of antitrust law in Italy

By the end of the 1980s, Italy, together with Turkey[17], was the only country to have not yet adopted antitrust national legislation. The reasons for this delay are many, this is not the place to analyze them all. In this context it is sufficient to consider that the need to have competition protection rules was felt in Italy ,on the one hand, to the increasing competition between the various national systems due to the liberalization promoted by the Community bodies and the opening up of borders. Italy therefore had to equip itself with all the tools that would allow it to remain within this competitive race; On the other hand, we can see how the pressure of the Community bodies was strong in relation to the need for all states to have a regulatory corpus that was in line with the Community one.

In light of these and other reasons was issued l. 10 October 1990, No.287 on "rules for the protection of competition and the market".

The Italian legislator, however, found himself in the history for the first time in the face of the necessity of adopting rules that would predispose principles of a competitive nature, and for this reason opted for some choices that turned out to be especially happy.

Firstly, it did not seek to create an innovative model of legislation, but did produce a legislative text that was specifically reflected in the rules of the EEC Treaty on competition and in Reg. 4064/89 on mergers. If we consider the text of national law, then we realize that, apart from some variations in style, the substantive content of the rules is practically identical to that of the Community provisions.

Second, it must be considered that given the complete absence of previous case-law in the field of competition law, it was considered necessary to provide those who should have applied these rules of useful tools to determine how they should have interpreted the rules of national law.

In this regard, the national legislature intended to introduce in Art. 1 The fourth paragraph that in general we can say that solves this problem.

[17]The Turkish law protecting competition dates back to December 1994, although since 1970 the art. Article 167 of the Turkish Constitution provided for the Government to entrust the necessary measures to prevent "monopoly or cartelization resulting from the activity or from the conclusion of agreements on the market".

That provision states that all the rules of national law must be interpreted in accordance with the principles of the European Community on competition law. It is therefore clear that Community law is of great importance also at national level.

b. Evolution of banking law

Let us now analyze the historical evolution of banking law.

The assessment of the rules in force in this area is of particular interest to us because the subject of the next chapters will be the evaluation of concentration operations within the banking sector and for this reason we are now focusing on the legal provisions governing it.

I. The origins and the developement of the bank model

The bank as an entity that collects deposits and lends credit is a fairly recent phenomenon and develops in the mid-nineteenth century. However, before arriving to analyze the evolution of modern banking law, we focus briefly on the dawns or on the first forms of bank that have emerged in history.

The first financial phenomena have emerged in the past were currency exchange[18] and merchant[19].

In the sixteenth century the activities of the Pietà Mountains[20] and of the Public Banks[21] developed.

So we come to the second half of the seventeenth century, a period in which we can see the activity carried out by some intermediaries that we can define as the antecedents of the issuing institutes.

We arrive at the birth of Modern bank in the mid-nineteenth century. During this period the banker's business began to define itself more concretely and was exercised by entities that took shape increasingly similar to those of capital companies.

In that period of time, three bank models were particularly affirmed:
1) Secured Credit. It was an intermediary that was responsible for collecting savings and general resources through the issue of shares, through deposits and through issuance of corporate bonds.

[18] These subjects earned by offering the service to change foreign currencies into local currencies. They accepted repayable deposits in return for interest, that is, a profit participation.

[19] They originated in Italy in the last centuries of the Middle Ages. They were organized in "companies", among which the richest of them was the Medici family in Florence who gave birth to the Banco dei Medici.

[20] They made small loans on pledges.

[21] They received deposits and could transfer them to third parties through simple accounting records.

Once resources were collected through these methods, they used them either through loans or by investing in securities issued by companies.

2) Universal Banks. The activity of these banks concentrated mainly on the collection of savings through deposits and re-use of such deposits, either by investing in the capital of companies issuing shares or bonds, or by providing an offer of financial products, payment services and, of course, they are credit in the form of loans.

3) The deposit bank. This bank, in addition to performing the traditional deposit-raising activities through the deposits, opened up to the provision of credit also to small traders.

It was then the twentieth century and the Italian banking system was extremely fragmented.

There was the presence of a number of intermediaries that had different operating environments.

First of all, there were private banks that had a fairly large size that were set up in the nineteenth century on the model of the German mixed bank[22], one of which was the Banco d'Italia and Banco di Roma.

This network of private banks was joined by a network of public banks such as Monte dei Paschi, San Paolo and so on.

There were then numerous regional and local banks, the c.d. Savings banks.

For the rest, the banking sector was comprised of cooperative societies such as rural and crafts and popular banks.

In 1993, the Italian Chamber of Commerce (IMI) was set up to provide medium-long-term credit.

In 1946 Mediobanca was born that from the beginning was intended to finance industrial activity.

As we will see in the next paragraphs, the Italian banking system has undergone a marked change in the 1990s.

This change had its genesis with the so-called “Legge Amato” through which also public banks took the form of a Company for Shares.

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[22]The mixed bank is characterized by the fact that its directors also sit in the Boards of Enterprises Financed.

However, the universal bank having the shape of SpA became the reference model with d. lgs. n. 385/1993 (or tTUB) that has reorganized the whole matter.
At present, the banking system is largely private and, together with this privatization, a consolidation process has begun through concentration operations to make the Italian banking system stronger in international competition.

II. The evolution of bank law

Authoritative Doctrine[23] considers that by analyzing the Italian credit system, five phases can be distinguished:

1) The first phase goes from the end of the nineteenth to the early twentieth century and led to the adoption of the Law of 1926 introducing public controls on banks.
2) The second is made up of the decade 1926-1936, the year in which the first banking law of major importance in the country was issued.
3) The third phase is long enough and is characterized by a period of financial stability from 1936 to 1993.
4) The fourth phase begins to feel the influence of the single European market. This phase begins in 1993 and ends in 2007.This phase is characterized by the reduction of the public lanes to banking, which has contributed to the growth of the financial sector and to the realization of the European single market.
5) Fifth and final phase begins in 2007, when a major global financial crisis began, which led to the need to review supervisory rules on banks.

Subsequently, between 2013 and 2014, the creation of the European Banking Union has led to a further need for change in bank controls.

III. The evolution from the end of '800 to 1936

Until the end of the nineteenth century, there was no clear distinction between the banks and other companies. The only more detailed provisions for credit institutions were contained in the Trade Code of 1882 and imposed more advertising obligations and accounting data than those established for other companies.

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[23] CONCETTA BRESCIA MORRA, *Il diritto delle banche,* IL MULINO, Bologna, 2016

The normative panorama then included a special law concerning the savings banks, namely l. July 15, 1888 n. 5546, while the popular banks were governed by the Civil Code.

In 1926, therefore, the first organic law was issued, which submitted the companies, which in that law were identified as "credit companies", which carried out the activity of collecting savings on special rules and public controls.

This particularly statutory law of minimum conditions for market access and laid down conditions for the expansion of credit companies. The law also prefers prudential rules. However, the historic period considered was quite troubled, particularly for the crisis of the 1920s and 1930s, resulting from the Great Depression, for this reason the 1926 law was not able to cope with the emerging needs in the historical period considered.

The period of legal uncertainty linked to the crisis of the Great Depression ended in 1936 when the banking law was issued which determined a richer and more complete set-up than the previous law.

The law of 1936 had a much wider scope than the previous law. In this context, it was not limited to setting up a discipline for the control of deposit collection, but specific discipline was also envisaged as regards the collection of medium-long term savings and rules that attributed powers to the Bank of Italy.

A few years after the law was issued in 1936, the Constitution of the Italian Republic was introduced. Even within the constitutional charter, the protection of savings found room, in particular within Art 47 Cost.[24], which provides a general indication of the ways in which savings need to be safeguarded.

IV. The further evolution: Basilea agreements and the "t.u.b." of 1993

The trim set in the 1930s had a real collapse several years later. In fact, in the 1980s, the establishment of the single European market and the ever-increasing willingness of national operators to achieve that dimension that would allow them to compete at national and international level required further regulatory change.

[24] Art. 47 Constitution: The Republic encourages and safeguards savings in all its forms; Disciplines, coordinates and controls the exercise of credit.

In this regard two directives were issued that modified some aspects of the national banking system.

The first dir. 77/780 / EEC, transposed into Italy in 1985, reduced the barriers to access to the banking market.

The second dir. 89/646 / EEC repealed the constraints of time and operational specialization.

Even in 1988, the Basel Committee, which was composed by the key Central Banks of the Group of 10, was held. With this agreement, which was later incorporated into a number of directives[25], the basis for the introduction of a major deci- sion of prudential supervision instruments Internal banking sector, that is, the so-called Solvency coefficient.

In 1993, the legislature decided to set up a reorganization of the whole of the banking discipline accumulated up to that point, in that regard introduced in 1993 the single banking text. Following the issuance of that normative text, the laws which were in force until that time were repealed. Even today TUB represents the reference text at national level.

Basel's agreement to which we have previously referred has been revised mainly due to some complaints by some large international banks. They complained that the stability coefficient would limit the expansion of banking activities.

For this reason, in 2004 a new agreement was reached (Basel 2) whose content, contained in two directives [26], was based on three pillars: minimum capital requirements, prudential control of capital adequacy and market discipline.

The financial crisis in 2007 has undermined this set-up, in this respect the Basel Committee has begun an analysis and reflection that has led to a further review of the agreement already revised in 2004 (Basel 3).

The reflections that led to the 2011 agreement have revealed the existence of some too big to fail intermediaries and an excessive size taken by the financial system over real assets.

[25]Dir. 89/299 / EEC and Dir. 89/647 / EEC

[26]Directives 2006/48 / EC and 2006/49 / EC

In this respect, the Basel 3 agreement provides for new capital measures, specialization constraints, operational limits, corporate governance rules [27], crisis management systems and procedures to deal with the instability situation that has been created.

V. The latest banking law developements

A new banking law development took place after the sovereign debt crisis of 2009-2012.

Some analyzes[28] showed that one of the critical points in this context was the lack of coordination between the national authorities controlling banks operating in a cross-border manner.

The European Commission has launched a reform aimed at reinforcing the European institutions of finance.

Four new authorities have been created: the European Systemic Risk Board (CERS) and three other authorities devoted to prudential supervision on banks, brokers, insurance and pension funds.

In 2012, the process of creating the c.d. Banking Union on the basis of the consideration that in a community with a single currency it is important to have centralized entities that have the task of supervising banks.

This proposal provides for three important points: a single mechanism of vigilance, a single mechanism for bank crisis resolution, harmonization and reinforcement of deposit guarantee systems. This project in the following years has been fully realized.

[27]Particularly refers to the remuneration limits of top bank managers.
[28]"Committee of Wise Men" presided over by Jacques De Larosière.

c. The Competence in the application of antitrust law in the banking sistem

Let us therefore consider one of the main issues in this first chapter, which is of fundamental importance for the rest of our discussion, as well, we refer to the problem of identifying the competence to apply antitrust law in the banking sector.

The problem arises because this sector is considered as a sector with a certain specialty. In this context, there are interests of constitutional status such as the protection of savings, the legislator intervenes to ensure that these interests are protected by special regulation.

In essence, the rules in force in these areas pursue objectives that are sometimes different from those of the competition and sometimes collide with the latter.

We will address this topic first by analyzing the issue of public and private enforcement system in order to identify which authorities are generally prepared for the application of competition law and then focus more specifically on its application in the banking sector.

I. Public and private enforcement

When applying antitrust law, a distinction can be made between a public enforcement system and a private enforcement system.

The first is designed to ensure the protection of the general market interests and is entrusted to authorities which are specialized in the application of competition law; The second is activated on the initiative of individuals who bring the ordinary judicial authority to obtain a measure that primarily determines the end of unlawful conduct and the provision of damages.

By leaving this issue private enforcement issues, we will focus in particular on enforcing publicity also because of the actual prevalence of using this route to obtain the protection required.

In this regard, we can see that at the Community level the institution to whom the task of protecting competition is the European Commission[29].

At the national level, competition protection is entrusted to the Competition and Market Authority (AGCM) [30].

II. The application of national and community antitrust law

Before passing on the analysis of how antitrust law is applied within the banking system, another issue should be considered, that of the application of national and Community antitrust law..

The question can be divided into two parts: on the one hand, we can consider concentrations, on the other hand, the agreements and the abuse of a dominant position.

In relation to concentration operations, the issue is fairly simple to analyze. Indeed, both national and Community law provide for delimitative thresholds for competence.

In this regard art. 16 of l. 287/1990 provides that the merger must be notified in advance to AGCM when two conditions are met:

1) where total turnover at the national level of the undertakings concerned is more than 474 million euro;[31]

2) and the total turnover realized at national level by the undertaking for which the acquisition is in excess of 47 million euro.

However, if the concentration also exceeds the Community thresholds[32], it must be communicated to the European Commission which has exclusive competence in this context.

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[29]More specifically, this is a Directorate-General of the Commission which is chaired by a Commissioner responsible for competition.

[30] It is an independent administrative authority set up with l. 287/1990 art. 10.

[31]This value is modified annually by an amount equivalent to the increase in the gross deflator price index.

[32]The European thresholds are as follows: (i) the worldwide turnover of the undertakings concerned exceeds EUR 5 billion; II) the Community turnover of at least two of the undertakings concerned is more than EUR 250 million; (III) each of the undertakings concerned accounts for more than two thirds of its total Community turnover in one and the same Member State.

Alongside these thresholds are the other less expensive ones: I) if the worldwide turnover of all the companies concerned is greater than 2.5 billion euro; II) in each of at least three Member States the turnover of all undertakings is at least equal to EUR 100 million; (Iii) in each of at least three Member States, the turnover of at least two of the undertakings concerned is more than € 25 million; IV) the Community turnover of at least two of the undertakings concerned is greater than 100 million euro.

The situation is less linear if we refer to the agreements and abuse of a dominant position.

Without going too far into this point, we can say that in this context when AGCM or an Italian judge is in the process of finding or abusing a dominant position in the Italian territory but which may produce distorting effects on Community trade, it applies Directly art. 101 and 102 TFEU and hence the application of art. 1 and 2 l. 287/1990 occurs only when it appears evident that the transaction can not even have an impact on Community trade.

III. The application of antitrust law in the banking sistem

We therefore come to determine how antitrust law is applied within the banking sector and above all by whom.

In this regard, it is necessary to state that the principle of division for purposes according to which there is "a division of competences between the authorities on the basis of the public purse pursued" is in our order.[33] .

The principle we have referred to also applies to competition law, particularly in this context refers to the power granted to AGCM to apply antitrust law also to banking intermediaries.

However, this solution has not been adopted since the introduction of the Competition Act in 1990, we see the evolution of discipline in this area.

Initially, the authority to enforce Law 287/1990 had been assigned to the Bank of Italy, which is the bank's supervisory authority. The Bank of Italy had to operate according to the procedures laid down by the antitrust law. At AGCM, however, this role was still secured. Indeed, from the Law on Competition[34], it appears that the Bank of Italy before making the final decision should have requested an opinion which was compulsory but not binding on AGCM to which it should have also forwarded all the documentation relating to the proceeding.

[33]CONCETTA BRESCIA MORRA, *Il diritto delle banche,* IL MULINO, Bologna, 2016
[34]Art. 20, 3 l. 287/1990

As part of the doctrine[35], the ratio of this choice was to be found in the major competences and knowledge of the Bank of Italy in the banking sector.
However, the choice of the legislator just mentioned has created a number of difficult applications both procedurally and substantively. The former concerned mainly the delimitation of competences between the various authorities in the c.d. Mixed operations, while the latter, in particular, concerned the possible clash between the objectives pursued by the authorities. For these and other reasons, in 2005 the Savings Act[36] transferred the antitrust jurisdiction in the banking sector to the Guarantee Authority. The choice was radical, Bank of Italy in fact went from having a leading role to a practically marginal role.
The AGCM in this context has the opportunity to ask for information, clarifications and evaluations which are not of a formal nature and should not be mandatory or mandatory provided by the respective Authorities. Bearing in mind this choice, one may consider that if AGCM does not share the opinion provided by the Bank of Italy it may not conform to this without the need to provide any justification for it.
Subsequently in 2006 the c.d. "Decal Caliper" which reformed the law on savings.
This decree first restored a certain authority to the Bank of Italy in the application of antitrust law in the banking sector, and secondly introduced paragraphs 5-bis and 5-ter within Article 20 l. 287/1990 which provide for specific derogations from restrictive agreements and restrictive concentrations of competition.
Under these new paragraphs, the Bank of Italy may request the AGCM to:
- authorize collateral for payment system functionality requirements for a limited time, taking into account the criteria set out in art. 4.1 l. 287/1990
- authorize a concentration operation involving banks or banking groups that constitutes or strengthens a dominant position for the stability needs of one or more of the parties involved.
Nevertheless, in this context, it is envisaged that the authorizations provided for therein should not, however, allow for restrictions of competition which are not strictly necessary for the pursuit of the stated aims.

[35]FEDERICO GHEZZI- GUSTAVO OLIVIERI, *Diritto Antitrust,* GIAPPICHELLI, Torino, 2013
[36]See Art. 19, 11 l. n. 262/2005

CHAPTER 2

CONCENTRATIONS IN BANKING SISTEM AND EFFECTS ON MARKET

a. Concentrations and antitrust law

The phenomenon of mergers has become over the years studied both in legal and economic terms.

In this first part of the second chapter we will analyze this phenomenon from a general point of view.

We will consider the Community and national provisions for the purpose of determining the concept and legal forms of concentration first, and then we will analyze the evaluation procedure conducted by the antitrust authorities, focusing in particular on the criteria adopted by the national and Community authorities, we will conclude with the consideration of the powers enjoyed by the Authority at the end of that procedure.

I. Concept of concentration and its legal forms

From a purely economic point of view, concentration is a size-wise growth of the enterprise that can be achieved either through internal reinforcement or through external growth by outsourcing resources from third parties[37].

At the basis of a concentration operation, the doctrine[38] puts a number of possible motives, among which we can first identify the realization of economies of scale.

Secondly, there is the possibility of accessing the funding the enterprise with which the transaction is made or accessing loans that can only be granted by achieving a certain market share.

Thirdly, it may be necessary to use a patent or know-how owned by another enterprise which does not have the capacity, resources or size to guarantee a use the best of these resources.

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[37]FEDERICO GHEZZI- GUSTAVO OLIVIERI, *Diritto Antitrust,* GIAPPICHELLI, Torino, 2013

[38]GIAMPAOLO DELLE VEDOVE, *Concentrazioni e gruppi nel diritto antitrust,* CEDAM, Padova, 1999

Even the basis of a concentration operation can be recognized the will of a company to diversify or expand its scope even in areas other than the one where it originally operated.
Lastly, the internationalization process that interests the world-wide companies so focuses on the acquisition of competitiveness both at Community and global level.
Resuming a statement often used in the doctrine "in antitrust law concentrations enjoy a 'good consideration'" [39] when compared to other figures governed by both the Community legislature and the national legislature. Hence the approach of the legislature that does not tend to prohibit such operations but subject them to a prior check aimed at assessing its effects.
We therefore come to the notion and determination of the various legal forms of concentration.
The current regulatory dictation states that "there is a concentration when a permanent change of control is produced" as a result of one of the events identified in the rule.[40]
Reference is made to various means conventionally indicated as being suitable for carrying out a concentration operation, in particular it relates to:
A) fusion;
B) acquisition of control over an undertaking or parts of it;
C) the establishment of a joint venture.
While from a merely legal point of view it is difficult to find common points between the various forms through which the concentration operation is possible, economically this operation is simpler. In fact, it is a means by which the purchaser is "able to obtain the availability of production factors capable of producing income, which results in a reduction in the number or strength of competitors operating on that market"[41] .
It should be noted that the listing provided is purely of an exemplary nature and does not take any kind of tassative nature.
In order for the transaction to be qualified as concentrative and subject to antitrust discipline, it is necessary that it be carried out between independent undertakings,

[39]FEDERICO GHEZZI- GUSTAVO OLIVIERI, *Diritto Antitrust,* GIAPPICHELLI, Torino, 2013
[40]Art. 3, Reg. 139/2004
[41]FEDERICO GHEZZI- GUSTAVO OLIVIERI, *Diritto Antitrust,* GIAPPICHELLI, Torino, 2013

companies which do not have any kind of subordination due to participation in the same group.
The analysis of the current normative allows us to learn how the Community legislature wanted to give greater importance to the "durable" nature of the change and the effects that may result from it. Obviously, this is an aspect that can not be defined in an aprioristic and absolute way, but requires an analysis to be carried out on a case by case basis and that it must take into account the actual modes through which the operation is carried out.
At this point we can proceed to the analysis of the legal forms that are conventionally identified as being suitable for the execution of a concentration operation:

a. Merger is the first medium we referred to earlier.
Part of the doctrine[42] points out how this tool is used to achieve concentrations of firmly homogeneous businesses, such as those operating in the banking sector.
Generally, the merger operation results in a "irreversible change in the corporate structure that allows direct and unconditional availability of production factors" [43].
In addition to the traditional merger between two companies, the Commission specifies that "there may be concentration even where, without a legal merger, the activities of two formerly independent undertakings are combined in such a way as to create a 'The only economic entity. This may be the case, in particular, where two or more undertakings, while retaining their autonomy as legal persons, contractually adopt a common economic management or the structure of a "dual listed company". If we have a business union in a single economic entity, the transaction is considered a concentration. An indispensable condition for the recognition of such a concentration is the existence of a permanent unitary economic management. The factual union can only be based on contractual arrangements, but it can also be strengthened by cross-shareholdings among the companies that make up the economic entity. " [44]

[42]GIAMPAOLO DELLE VEDOVE, *Concentrazioni e gruppi nel diritto antitrust,* CEDAM, Padova, 1999
[43]FEDERICO GHEZZI-GUSTAVO OLIVIERI, *Diritto Antitrust,* GIAPPICHELLI, Torino, 2013
[44]Consolidated Communication 95/2008, cit. Point 10

Further clarification to be made, is the need for operations between independent companies. Consequently, the fact that a company which was formerly part of a group could be incorporated into a company does not necessarily imply a concentration[45].

This approach of the legislator is clearly to be shared in particular if one refers to the effects that such activity generates on the market. Two companies belonging to the same group usually follow a common line of action for this reason the possible incorporation of an undertaking against the other would not create any kind of competitive restriction.

Along with the merger, it is also possible to refer to the possibility of concentration by acquiring ownership or enjoyment rights over the entire enterprise or parts thereof.

In this regard, the Commission is always pointing out that "the object of control may be one or more undertakings - or parts of undertakings - which constitute legal persons, or the assets of such persons, or only part of that asset. Acquisition of control over assets can only be considered as a concentration if those assets constitute the whole or part of an undertaking, that is to say, an activity with a presence on the market to which a market turnover can clearly be attributed to it. "[46].

b. The other way of achieving concentrations is to acquire control of an enterprise.

"There is control in the presence of rights, contracts or other means conferring, alone or jointly, and taking into account the factual or legal circumstances, the possibility of exercising a decisive influence over an undertaking's business;

In particular of:

a) rights of ownership or enjoyment of all or part of the assets of an undertaking;

b) rights or contracts which confer a decisive influence on the composition, deliberations or decisions of the organs of an undertaking" [47].

The Community legislature therefore refers to means to "exercise decisive influence[48]".

This is a very important point because it allows us to determine a difference from the other tool that can be used to achieve concentration. In fact, if the fusion of the factors

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[45]See Resolution AGCM, March 28, 1995, 763

[46]Consolidated Communication 95/2008, cit. Point 24

[47]Art 3, Reg 139/2004

[48]Italian law also uses the same terminology.

of production was obtained directly and immediately, with the acquisition of control, this does not happen, and the purchaser will have tools that indirectly and indirectly allow him to orient the behavior of the 'company.

This point is further shared by the Commission when it determines that "even in the case of minority participation, exclusive control may result from a situation of law when specific rights are conferred on such participation. It may be preferential actions with special rights that allow a minority shareholder to determine the strategic course of the business of the acquirer, such as the power to designate more than half of the members of the supervisory board or the board of directors. Exclusive control may also be exercised by a minority shareholder who has the right to manage the affairs of the company and to determine the company policy on the basis of the social structure"[49].

c. Another means by which a concentrating operation is possible is the constitution of a Joint Venture.

Doctrine [50] defines the joint venture as "the undertaking on which two or more subjects exercise joint and parity control".

Starting from this definition it is clear that a joint venture may be able to influence competitive dynamics in a particular market. Existing companies wishing to enter a market instead of doing so through their competitive activities pool their resources of economic, technological, and so on. Realizing a new enterprise that is from an autonomous formal point of view but which is in fact the synthesis of the capabilities and resources of the constituent companies. Realizing this type of activity it is obvious that the potential number of subjects that could act in a particular market would be reduced.

However, the joint venture does not allow for an easy assessment, mainly because it is possible to achieve two main purposes through this tool: on the one hand, it is possible to determine the coordination of the behavior of the existing companies, on the other hand it is possible to use it for the realization of a concentration operation.

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[49]Consolidated Communication 95/2008, cit. Point 57

[50]GIAMPAOLO DELLE VEDOVE, *Concentrazioni e gruppi nel diritto antitrust,* CEDAM, Padova, 1999

Hence, a distinction is to be drawn between concentrating joint ventures to which the Merger Regulation and Joint Undertakings are applicable, within the framework of Article 101 TFEU, which governs restrictive competition arrangements.

Without over-emphasizing the distinctive features of these two types of joint ventures, we can see that they include all the Full function JV, that is to say those transactions which show that the joint venture has a certain autonomy by acting independently on the market[51] and structured in such a way as to operate indefinitely or in the long run[52].

[51]See Commission Communication, §20

[52]See Commission Communication of 21 December 1989, § 16

II. Evaluation stage of the antitrust authorities

The discriminating element in determining whether an operation may fall within the competence of the national or Community authority is the revenue . The evaluation procedure therefore differs in the implementing arrangements depending on whether the transaction falls within the national or Community domain.

Here we will not focus on the purely procedural aspects, but we will primarily consider the elements that antitrust authority must consider in its analysis.

A premise to do is that Community discipline has been the subject of an evolution that has moved it away from the national one, creating a lot of coordination problems.

The national legislature determines that it is appropriate to ascertain whether the transaction can "establish or strengthen a dominant position in such a way as to eliminate or substantially reduce competition"[53] . This legislative provision contained some consistency with the content of Regulation 4064/89.

On the basis of these regulatory data it can be stated that the assessment to which the antitrust authorities submitted the operations notified to them assumed the character of a "Dominance test" to determine whether the concentration operation could achieve the effect previously described.

In summary, it was necessary to consider whether, following the merger, a new dominant position could be created or an existing dominant position could be strengthened. Therefore, the parameters on which to perform such an assessment are those usually used to assess the existence of a dominant position: the definition of the relevant market both from the merchandise and the geographic point of view, the market shares held, any barriers to entry etc. .[54]

However, this setting has created not a few practical difficulties.

If the dominant position is an element which can be assessed afterwards or after the effects of such conduct have already been made on the market, concentrations refer to a number of pipelines which have not yet had any effect on the market. Therefore, the judgment given in these cases is not practical but purely of a theoretical nature.

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[53] Art. 6, l. 287/1990

[54]See Commission Notice on Relevant Market Concept, §10

On the basis of this assessment we can therefore consider how the authority has taken over a very elastic behavior over the years by banning only those operations that involved an established restriction of competition. Obviously, this trend has had consequences, which can be seen from the evaluation of some pronouncements issued in the 1990s and early 2000s. [55]

As already mentioned, European legislation has been subject to a number of changes that have led to a renewed wording of the concept under consideration.

Particularly at the aforementioned "dominance test", was preferred. "Substantial Lessening of Competition". At present, "concentrations which significantly impede effective competition in the common market or in a substantial part of it, in particular because of the creation or strengthening of a dominant position, are declared incompatible with the market"[56] .

So what changes is the approach adopted by the legislator, which obviously has an impact on the implementation of the provision by the Community's antitrust authority.

Specifically, we can see that as a result of this change of approach the assumption or strengthening of a dominant position, although statistically continuing to be in the majority, is only one of the possible consequences of the merger and it is no longer to be considered the only possible consequence of this operation[57].

The new solution adopted by the Community legislator can be shared. In this regard, the new criterion is useful in countering the "Uncoordinated effects" of business behavior on the market.

In fact, the Commission concludes that "a concentration may significantly impede effective competition in a market by eliminating significant competitive constraints for one or more vendors, which consequently have greater market power. The most direct effect of such concentration is the absence of competition between the undertakings involved in the concentration. For example, if one of the companies had increased prices before the merger would have lost part of its sales to the benefit of the other merging entity. Concentration eliminates this specific constraint. Firms active on the

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[55] Comm., 12/04/1991, Alcatel / Elettra, where the company resulting from the concentration held 80% of the Spanish telecommunications market.

[56] Art. 2 Reg. 139/2004

[57] Comm., 02/04/2003, New Corps / Tele + that has set up an effective monopoly on the Italian pay TV market.

same non-merging market may also benefit from the reduction of competitive pressure resulting from concentration, since the increase in prices by merging companies may shift part of the demand to rival firms which, In their turn, might consider it to be profitable to raise prices too. Reducing these competitive constraints could lead to significant price increases in the relevant market "[58].

Through this Communication, the Commission highlights the possibility that the new criterion adopted may reduce certain behavior held by companies operating in non-concentrating oligopolistic markets but which tend to "take advantage" of the implementation of the concentrative operation to benefit from them.

It should also be stressed how the EU legislative solution is appreciable even when we are trying to counter "coordinated effects". In particular, the Commission notes that "the structure of certain markets may be such that companies consider it possible, economically rational and therefore preferable to adopt a long-term behavior on the market that is intended to sell at higher prices. Concentration in an already concentrated market can significantly impede effective competition by creating or strengthening a collective dominant position because it increases the likelihood that businesses will be able to coordinate their behavior and increase prices without having to reach an agreement or recourse To a concerted practice. A concentration can also make coordination easier, more stable or more effective for companies that already co-ordinated before concentration, by strengthening co-ordination and by allowing companies to coordinate at even higher prices. "[59]

National legislation[60] and Community legislation[61] also differ in terms of the factors to be taken into account when their respective authorities are assessing a merger, even

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[58]EC Commission Notice on guidelines for the assessment of horizontal concentrations 2004 / C 31/03, §24

[59]EC Commission Notice on guidelines for the assessment of horizontal concentrations 2004 / C 31/03, §39

[60]Art 6, 1 l. 287/1990: With regard to merger operations subject to communication within the meaning of Article 16, the Authority assesses whether they entail the establishment or strengthening of a dominant position on the domestic market in such a way as to eliminate or reduce substantially and competition. This situation must be assessed taking into account the choice of suppliers and users, the market position of the undertakings concerned, their access to sources of supply or market outlets, the structure of the markets, the competitive situation of the national industry , The barriers to market entry of competing companies, and the trend in demand and the supply of the products or services in question.

[61]Art. 2, §1, para. Regulation (EC) No 139/2004: The concentrations referred to in this Regulation are assessed in accordance with the objectives of this Regulation and the following provisions to determine whether they are compatible with the common market.

In that assessment, the Commission shall take into account:

though both normative provisions say nothing about the tassative or non-existent nature of criteria specified therein.

III. Outcome of evaluation stage and power of the antitrust authorities

At this point, there is only the way in which the Authority can conclude the procedure and determine the powers it enjoys.

At the end of the investigation, the proceeding shall be terminated by a decision of the Authority which shall have the power to authorize the concentration where this is compatible with the market and the same shall apply when the Authority does not provide a response within the predetermined terms. Prohibit the operation by believing that it has aspects that make it incompatible with the free deployment of competition on the market.

However, a third possibility is granted to the Authority. Provide a conditional approval. In this case, the granting of the authorization is subject to compliance with certain obligations assumed by the parties or imposed by the Authority which, if not respected, would compromise the granting of the authorization itself.

Given the lack of indications of the nature and type of conditions applicable both in the Community and national law, the Commission intervened with a Communication[62] setting out structural measures and behavioral measures[63] .

Structural measures directly affect the structure of the enterprise, for example the transfer of business lines or other elements relevant to the business that are likely to generate revenue; behavioral measures are those that require the companies involved in the concentration to maintain a certain market behavior and therefore need constant monitoring activity that must be exercised in order to assess whether the commitments undertaken are met or not.

(A) the need to preserve the development of effective competition in the common market, in particular the structure of all relevant markets and the effective or potential competition of undertakings within or outside the Community;

(B) the market position of the participating undertakings, their economic and financial power, the choice of suppliers and users, their access to sources of supply or the outlets, the existence of legal or factual obstacles to ' The flow of supply and demand for the products and services in question, the interests of intermediate and final consumers and the evolution of technical and economic progress, provided that it is for the benefit of the consumer and does not constitute an impediment to competition.

[62]Commission notice 2001 / C 68/03; GUCE 22 October 2008 n. 2008 / C 267/01

[63]Cfr Communication Commission, § 13 ss .; And in the same way AGCM in the Report, 1998, p. 171

The Commission itself determines that "while deliveries do not require additional control measures once implemented, other types of commitments require effective control systems to ensure that the effects are not reduced or even eliminated by the parties. Such commitments should otherwise be considered as simple statements of intent by the parties and would not constitute binding obligations since, because of the lack of effective control systems, their breach could not lead to a revocation of the decision under the provisions of the Merger Regulation ".[64]

In the light of these considerations, in the light of the circumstances of the case, should the Authority be in a position to decide whether to apply one or other type of measure, the choice will fall to the fore as the behavioral ones present a degree of complexity Elevated both in relation to monitoring activity and in relation to the possibility of being easily circumvented.

[64]GUCE 22 October 2008 n. 2008 / C 267/01, §13

b. Concentrations as growth strategy

The analysis we will make in this second part will be mainly focused on the assessment of the concentration as a "growth strategy", so we will specifically analyze the growth process that the banking industry is interested in following consolidation.

Let's go by analyzing the reasons why banking companies are joining the market. Then we will describe the actual ways in which such growth can be achieved. We will conclude with an empirical analysis through which we will try to identify the factors that contribute to making the banking market more or less concentrated.

Before performing the analysis in the manner just mentioned, it is necessary to consider the competitive environment in which the banking company is operating.

To do this, we will consider the theory modeled by M. Porter[65] considering: the customers, products and services in the direct market, new competitors and potential entrants in the market and finally the suppliers.

Authentic Doctrine[66] provides us with support to carry out this analysis, taking into account the characteristics and peculiarities of the financial intermediaries sector.

a. The first element that characterizes the competitive environment is customer service. There is a relationship of mutual influence between the client and the financial intermediary: on the one hand there is the intermediary that adopts marketing policies that enable him to make a certain selection of clients based on the strategy he intends to adopt; On the other hand, we have customers who, based on the strategies and marketing policies adopted by the intermediaries, tend to make a choice based on the analysis of their needs.

So the central element in this context is certainly the analysis of the needs of the client, the frequency with which these change, and above all the factors that affect them.

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[65]Michael Porter is a US academic and economist. He is a Harvard Business School professor at the Institute for Strategy and Competitiveness.
Porter is one of the major taxpayers in the management strategy theory. His most important goals were to determine how a company, or a region, can build a competitive advantage.

[66]PAOLO MOTTURA, *Banche: strategia, organizzazione e concentrazioni,* EGEA, Milano, 2011

b. Substitutes for the supply of financial intermediaries are the second element that characterizes the environment in which the broker operates and therefore contributes to the determination of the strategy.
We refer more specifically to the securities market.
It should be pointed out that we are talking about alternative tools and not new entrants or potential competitors because, while these markets are managed by "management companies", they do not represent well-known companies of recognized business.
In this context, it should be stressed that the traditional banking activity typically carried out by banks (collection of savings and loan disputes) has proved insufficient with respect to the gradual increase in customer needs. It is in this context that the markets mortgages have found fertile ground to grow their businesses until they get a real shift of demand to companies operating within such markets. Progressively, they have their own autonomous regulation that, in addition to determining the behavior that brokerage firms have to keep in the market, provides effective customer protection, especially for those small investor categories that are unable to perceive the risk and the nature of their investments.

c. New competitors and potential entrants are the last category of elements to be considered in the competitive environment of an intermediary.
Reference is made to a number of intermediaries who have an interest in taking over certain areas of business or markets where the banks previously had an exclusive position.
The fact that new subjects can decide whether or not to take over these business areas depends mainly on two evaluations:
1) the attractiveness of the sector they intend to take;
2) the existence of barriers at the entrance.

I. Reasons for the banking concentration

At this point, it is appropriate to ask what are the reasons why companies operating in the banking sector are concentrating.

To answer the question in a comprehensive way, one should start from the view that "growth is an indispensable process of business life. It can be achieved through expansion in a specific core business, for vertical integration upstream or downstream of a production process, or for diversification into contiguous products or segments of customers. "[67]

The size growth of the enterprise is an element that can be assessed from a dual perspective: on the one hand, it can be the goal in itself to reach the enterprise; on the other hand, it can be identified as a mere tool for achieving competitive advantage over its competitors, which allows it to achieve a certain profit.

In the light of what is said, it is clear that at the basis of a concentration operation there is almost always implicitly the desire to increase its size.

Regardless of the extent of the size increase, it is appropriate to evaluate the determinants that drive the enterprise to grow, postponing to the next paragraph the analysis of the ways in which such growth can actually be achieved.

In this regard, it is useful to consider that there is a direct relationship between the growth of the banking business and the costs, risks and any revenues that this business holds or enjoys in the economy.

The report just considered is mainly based on the evaluation of economics of scale, purpose, market power and risk diversification. These are essentially the determinants that drive businesses to join the market.

Through the dimensional growth of the enterprise, it is possible to benefit from economies of scale only when increasing the average unit costs sustained by the company by increasing its business activities, and thus improving the " efficiency of the company itself".

There is also the question of acquiring a certain market power that the firm would be able to obtain.

However, this is not an element to be considered by itself but relates to the company's ability to determine the price of the product / service on the market. As a result, the

[67]CORRADO PASSERA, *Il processo di concentrazione del sistema bancario,* XXI SECOLO, 2009

market power acquired by the company will increase as a result of aggregation, the greater its ability to determine prices in the market itself.
A further determinant that enables companies to create value as a result of market-size growth is diversifying their business to diversify their risk. The company thus uses saving economies by expanding the portfolio of assets and services offered to customers.
A merger may then be justified by the need to remedy and restructure the critical situation in which a bank company is investing through its acquisition by a healthy banking company.
These are rescue operations that in the last thirty-five years have also affected Italy since the Banco Ambrosiano crisis of 1982 resolved through the merger of the latter with the Catholic Bank of Veneto until the Bank's crisis Popular of Vicenza and Veneto Banca to whom Banca Intesa San Paolo formalized on 21 June 2017 the interest in acquiring them.
Regarding the reasons why companies operating in the banking sector are to aggregate, it is of crucial importance to determine the extent of the activities carried out within the production process and, above all, the various sectors in which it operates.
In this context, it is considered that the size increase of the firm is not only related to the realization of profit but tends to respond to a number of additional interests linked, for example, to the creation of value for the shareholder or to the interests of other parties such as business managers or central and local governments.

II. Growth mode of a banking enterprise

We have previously considered the reasons that drive an enterprise to increase its size in the market, now it is a matter of more pragmatic assessment of the ways in which the enterprise can achieve that growth.

To do this obviously has to put in place a strategy or activity that according to Kenichi Ohmae[68] aims to enable the company to reach, as efficiently as possible, a sustainable advantage on its competitors.

A first strategy is the vertical integration upstream or downstream of a production process. It "describes the magnitude of the activities vertically related to the production of a given output that it performs directly within it".

Another strategy that falls into this category is diversification that "aims to develop the presence of the enterprise in a multiplicity of sectors whether they are related or conglomerate." [69]

The two main ways of growth are complemented by the internationalization strategy that involves expanding the business activity even in countries other than the country of origin.

In the light of the above, we can see how the implementation of a growth strategy can be realized both for internal and external ways.

In the first case, it will tend to increase the production capacity already owned by the enterprise or to create new production units.

In the second case, however, we can see the existence of a variety of modes such as the implementation of agreements, acquisition of control shares, creation of Joint Venture, M & A.

Although internal growth allows the company to increase its size by succeeding in eliminating competitors from the market in the medium to long term, the mode is certainly faster and more effective and for this reason the most used to increase the size of the business is the external one.

As for the Joint Ventures, we have already been able to analyze the ways in which these can be achieved, and above all we have found that only some of them are relevant for the purposes of antitrust law.

In this context, it should be emphasized that they are, in particular in the field of banking intermediation, a way in which it is possible to enter into market segments

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[68]Kenichi Ohmae is a Japanese organizational theorist, management consultant, Former Professor and Dean of UCLA Luskin School of Public Affairs, and author, known for developing the 3C's Model.

[69]F.RANCO FONTANA-MATTEO CAROLI, *Economia e gestione delle Imprese,* MC GRAW-HILL, Milano, 2013

characterized by a certain specificity or constitute a way to enter into business areas that previously did not exist and not have been considered by the company.

But if we talk about growth in the banking sector statistically, the most commonly used medium is M & A.

M & A transactions between banking companies originally had the nature of market transactions between companies operating in the same national territory, which tend to be of medium to small size and had the main purpose of increasing their efficiency.

The introduction of the single currency has contributed to the development of cross-border M & A operations or transnational operations with the aim of improving the competitive position of the emerging bank from the merger or acquisition.

Since the early 1990s, the Italian banking sector has been characterized by a number of mergers and acquisitions that have contributed to a high degree of concentration.

In this regard, we can consider the following table that considers the period 1987-1994.[70]

	1987	**1988**	**1989**	**1990**	**1991**	**1992**	**1993**	**1994**	**Total transactions**	**Percentage Composition**
Joint Acquisition	2	5	2	0	1	0	0	1	11	1,3
Minority acquisitions	10	56	63	88	64	99	107	73	560	63, 9
Majority Acquisitions	12	16	26	19	17	26	50	40	206	23, 5
Acquisition of production units	3	7	3	4	2	3	4	2	28	3,2

[70] STEFANO OLIVIERO-GIAMPAOLO VITALI, *Strategie di crescita esterna del sistema bancario italiano: un'analisi empirica 1987-1994, CERIS-CNR,* Dicembre 1995

Mergers	9	3	13	8	7	6	13	13	72	8,2
Total	36	87	107	119	91	134	174	129	877	100

So the banking sector is a sector that needs to concentrate to grow and to make it the most used medium, historically and statistically, are mergers and acquisitions.

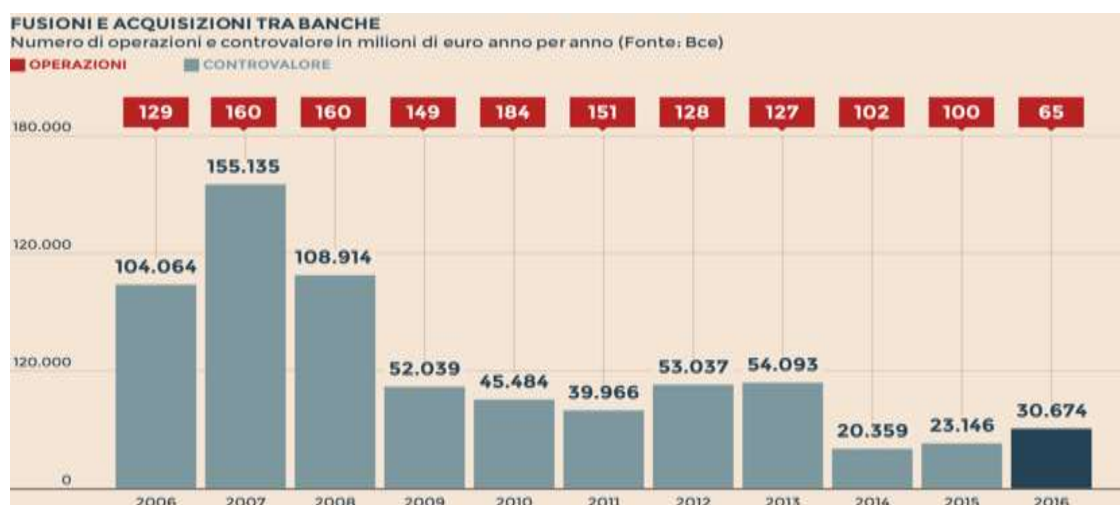
However, the number of M & A from the nineties to 2007 has been growing steadily, then falling sharply between 2007 and 2016.

From 1999 to 2007, the number of European Union banks decreased by 3.1% in average, from almost 8900 to just under 6900.

However, the reduction in the number of banking operators between 1999 and 2007 did not lead to a reduction in banking sector activity in the EU, which, however, continued to grow at rates of 8.7% per annum.

Underlying this peculiar tendency is an increase in the average size of banks, between 1997 and 2007, from 1.8 to 5.8 billion euros in terms of total assets. So we can see how there is a connection between the reduction in the number of credit institutions and the increase in banking activity due to the large number of M & as that have been realized within this sector reaching a peak in 2007. [71]

The situation has changed completely considering the decade 2006-2016 as can be seen from the evaluation of the chart below.[72]



[71] *ECB data (European Central Bank)*

[72] MORYA LONGO, *Banche, fusioni più che dimezzate dal 2007,* IL SOLE 24 ORE, 25 Settembre 2016

Analyzing it, we can say that in comparison with the 160 transactions in 2007 with a value of 155,135 million euro, only 65 transactions in 2016 amounted to 30,674 million euros.

III. Degree of concentration of the banking sector. An empirical analysis

In this part of the discussion, we will conduct an empirical analysis of the banking sector within which we will evaluate its degree of concentration. We must point out that, in order to measure the degree of concentration of a particular sector, economists tend to use two methods:

A) Four-firm concentration ratio (CR-4 ratio), the degree of concentration is determined on the basis of the market share held by the four largest companies operating in that particular sector.

B) The Herfindahl-Hirschman Index (HHI), however, the degree of concentration here is determined by adding the shares held by firms in the square sector.

To understand how the banking market is structured, three factors should be considered: the number of banks, the number of branches and the number of employees in each EU Member State. These data are collected in the table below.[73]

Country	Banks	Bank counters	Employees
Belgium	99	3.607	56.611
Bulgaria	28	3.728	31.715
Czech republic	57	2.124	40.334
Denmark	113	1.186	37.201
Germany	1.768	35.284	647.300
Estonia	37	122	4.860
Ireland	412	994	28.871
Greece		2.688	45.654
Spain	218	31.999	201.643
France	464	37.623	411.012
Croatia	33	1.194	21.190

[73] The number of banks refers to the credit institutions surveyed by the ECB in January 2016; Branches and employees refer to the ECB's "EU structural financial indicators 2014".

Italy	650	30.723	299.684
Cyprus	55	615	10.956
Latvia	61	319	9.374
Lithuania	89	610	8.952
Luxembourg	144	217	25.816
Hungary	143	3.112	39.456
Malta	28	110	4.427
Netherlands	102	1.854	94.000
Austria	679	4.247	74.110
Poland	669	14.117	175.972
Portugal	148	5.938	53.888
Romania	37	5.304	57.732
Slovenia	23	592	10.628
Slovakia	27	1.277	18.656
Finland	278	1.188	22.019
Sweden	153	2.027	54.644
UK			402.561

In the light of what is shown in the table, we can see that the largest number of banking institutions can be found in Germany, Austria and Poland and Italy is the fourth country in terms of number.

Although the number of banks pertaining to the number of employees and the number of branches present on a given territory represents a significant figure, however, it does not allow to determine alone if the banking market in that particular country is highly concentrated or not. In this regard, it should be considered an additional element that is the size of the credit institutions present on the domestic market to certify with

certainty whether, given the number of banks, given the size of the same, the specific national market can be defined as concentrated or not. Let us consider the following table.[74]

Country	Total assets of the top five national credit institutions in% of total banking system
Belgium	65,8
Bulgaria	55
Czech republic	61,3
Denmark	68,1
Germany	32,4
Estonia	89,9
Ireland	47,6
Greece	94,1
Spain	58,3
France	47,6
Croatia	72,3
Italy	40, 7
Cyprus	63, 4
Latvia	63, 6
Lithuania	85, 7
Luxembourg	32
Hungary	52,5

[74] ECB data that consider the top 5 major credit institutions in each country.

Malta	81, 5
Netherlands	85
Austria	36, 8
Poland	48, 3
Portugal	69, 2
Romania	54, 2
Slovenia	55, 6
Slovakia	70, 7
Finland	79, 8
Sweden	58, 5
UK	38, 9

Using the RC-5 ratio (partial modification of the traditional RC-4 ratio) it can be deduced that in the European context there are certainly countries like Belgium, the Czech Republic, Denmark, Estonia, Croatia, Cyprus, Latvia, Malta , The Netherlands, Portugal and Slovakia, which have a high degree of concentration compared to a relatively small number of banking institutions rooted in the territory, although some of these countries are poorly populated; and on the other hand there are countries with a higher number of banking companies present in the territory and a modest degree of concentration.

Let us now consider Italy's position in comparison with other major European powers. The Italian banking sector sees a relatively large number of banking institutions (650) and branches (30,723). Against this background, we can see that the degree of concentration of the Italian banking sector is higher (40.7%) than the German one (32.4%) and slightly lower than the French (47.6%) than however, it has a smaller number of credit institutions (464). Moreover, it should be noted that the companies present in the Italian territory are largely medium-small for a total of 3,770,844 companies, which results in a ratio of around 17 banks per 100,000 enterprises,

compared with around 2,000,000 companies in Germany, which determines a ratio of about 80 banks per 100,000 enterprises and 3,000,000 companies present in France, which determines a ratio of about 15 banks per 100,000 companies. [75]

In order to obtain a complete picture, it is necessary to add to this data also those relating to the population. In particular, Italy, with a population of 60,795,612 inhabitants, has a ratio of about 10 banks per million inhabitants, Germany with a significantly higher population than Italy has a ratio of about 21 banks per million inhabitants, France with a population far below that of Italy has a ratio of 7 banks per million inhabitants.

In the light of the data we have provided, we can therefore draw some considerations.

The banking sector is an industry that generally tends to aggregate for sometimes growth, sometimes saving some of the entities that are in difficult conditions.

In order to determine the degree of concentration of this sector in a given country, it is appropriate to consider a number of elements such as the number of banks, the number of enterprises and the inhabitants.

A medium-sized country such as Italy, which has a very small number of medium-sized businesses and has 650 credit institutions with a degree of concentration measured on the top five banking companies in the 40 , 7% may be considered not highly concentrated and not even quite fragmented and therefore, compared to other European powers, fairly balanced.

The problem to be considered in this area is not only numeric and therefore how many banks are present in the territory in terms of the number of businesses and inhabitants, but it is a qualitative problem. It is therefore necessary to keep in mind what types of credit institutions are compatible with the population, number and size of businesses in the territory.

[75]The number of companies is determined on the basis of Eurostat data.

c. Effects of concentrations on competition and market efficency So we come to the central point of our discussion, that is the assessment of the impact that the aggregation of banks can bring on the market and, therefore, the effective unfolding of competition.

In this third part we will try to analyze the consequences of concentration operations and analyze the various implications from a competitive point of view, taking into account both the position of competing companies and customer protection. The consolidation of the banking system can have two major consequences: improved efficiency and increased market power, which could have potential impacts on competition and pricing. These two specific effects also add to the consequences of decreasing the provision of financial services to certain individuals, such as small and medium-sized businesses. A further issue could arise at a systemic level when market players, due to the size increase due to merger operations, become overly large and therefore more difficult for control authorities to exercise in confront them with an effective vigilance activity. In addition, these transactions may contribute to the emergence of "too big to fail" operators. These are intermediaries who acquire such a size on the market, which requires the States, in case of difficulties, to grant aid to them through a range of financing activities, and above all, in order to protect the public's savings.

I. Efficiency

From a statistical point of view, the efficiency gains generated by a concentration operation are mainly related to the reduction of certain costs rather than to the achievement of higher earnings.

Therefore, the main consequence justifying concentration operations among banking companies is first of all the reduction of costs.

Specifically, this result can be achieved through the creation of mergers that enable the company to exploit economies of scale and to rationalize a series of costs mainly due to the elimination of common organizational structures both at central and back officies levels.

When referring to M & A operations, the gains in terms of efficiency that can be generated depending on whether we are talking about an in-market or cross-border transactions and occur primarily in the first compared to the latter.
In M & A operations in-market it is possible that efficiency gains are also achieved through the elimination of bank counters when, following the execution of the transaction, it is found that there is an actual aggregation of the same within a restricted area.

As far as cross-border M & A operations are concerned, however, these do not generate particular efficiencies in retail banking, but their utility is most perceived in relation to wholesale banking.

However, aggregations between banks may not always result in immediate gains in terms of efficiency. We can in fact consider that after a certain dimensional threshold, there is a possibility that scale diseconomies emergs. These are a series of management-related complications that arise when the size of the credit institution increases.

This is a transient and settling situation immediately following the completion of the merger operation. Under these circumstances, the firm is committed to solving the difficulties that may arise when rationalizing branches in the area or reorganizing its management structure.[76]

After passing this transitional period, it will be possible to observe growth in the enterprise market, in addition to its size in terms of efficiency.
Assessing the effects of M & A operations at Community level since the 1990s and the crisis triggered by US subprime mortgages, it can be seen that consolidation can help increase the resilience of banking companies in crisis situations despite external interference negative, since the weaker institutions have generally been acquired by the most profitable and solid ones.

II.Market power and competition

When it comes to concentration, it is usually considered that increasing the degree of

[76] D.F.Amel, C. Barnes, F. Panetta, C. Salleo, *Consolidation and efficiency in the financial sector. A review of the international evidence*, «Journal of banking & finance», 28/10/2004.

market concentration will result in an increase in the market power of firms operating there and, consequently, a reduction in the degree of competition.

However, observing the market dynamics following the densest period of concentration (1993-2007), we can see how effective competition within the market has actually not diminished. There are circumstances in which, as the degree of concentration increases, competition in the market is also increased, especially when it is necessary to maintain a certain level of competition in requiring the preparation of concentration operations.

For example, if we refer to companies in a critical situation, the fact that they are acquired by more efficient companies will obviously result in an increase in concentration, but at the same time will help to increase the competitive level in the market concerned and certainly not reduce it.

The point that most closely concerns us is the assessment of the benefits that these transactions can entail for consumers.

In this regard, the increase in concentration does not necessarily entail the need for banks to offer less favorable prices to customers, as the increase in market power is counterbalanced by the benefits that are beneficial to the customers themselves.

In support of this thesis, we can see how some economists point out that [77] "the efficiency gains a company achieves from scaling by scale or scope economies or by improving management skills can be partly transferred to customers Both in the form of more favorable price conditions and better service quality. "

A study on the Italian deposit bank market[78] found that M & A transactions can even have benefits in relation to the prices applied to customers if they consider the medium to long term.

By considering more specifically in-market mergers, the deposit rate of the banks involved in the transaction has a negative trend if we consider the short term. Considering the long term, however, it will assume a positive trend because it will necessarily result in the effect of the efficiency gains, which will generate a permanent

[77]CORRADO PASSERA, *Il processo di concentrazione del sistema bancario,* XXI SECOLO, 2009

[78]DARIO FOCARELLI- FABIO PANNETTA, *Are mergers Beneficial to consumers? Evidence from the market for Bank deposits,* AMERICAN ECONOMIC REVIEW, Settembre 2003

benefit for the savers which will result in an improvement in the remuneration of deposits.

Other economists[79] focused on the effects that M & A's banking operations have on the cost of credit that banks provide to companies and therefore on typical financing activities.

The purpose of this analysis was to ascertain whether the mergers could lead to an improvement in terms of effective access to information from the companies to which the credit would be provided, which would allow a proper assessment of the creditworthiness, and second, if the execution of a merger operation can lead to a real improvement in the ways in which the bank's information can be processed. The data obtained from the study conducted by these economists demonstrate that as the period of M & A transactions were more frequent, two consecutive consequences had been produced: on the one hand there was an improvement in the perceived efficiency as stated by the decrease of the interest rate; on the other hand, there has been an increase in banks' ability to select firms with the highest degree of reliability. With regard to the first effect, we have already seen how to counterbalance the acquisition of a high market power for banks. What matters to us in this context is that the effect of concatenating the events above is that after a merger transaction the bank rates are reduced for customers with better prospects of growth, while they have an increase for customers of low quality.

III.Implications for granting credit to small and medium-sized enterprises

The tendency to aggregate banks as we have seen has implications and consequences certainly within the banking industry.

However, these operations can also have an impact on other sectors of the economy, and a typical example is the implications that these can generate in the financing that banks provide to small and medium-sized businesses.

To understand this, it should be considered that the consolidation of the banking market has obviously resulted in an increase in the size of credit institutions. The

[79] FABIO PENNETTA-FABIANO SCHIVARDI-MATTHEW SHUM, *Do mergers improve information? Evidence from the loan market,* JOURNAL OF MONEY CREDIT AND BANKING, 2009

increase in the size of banks results in a reduction in the possibility of disbursing credit to medium-to-small businesses.

The explanation of this phenomenon is of a purely structural nature, in particular it can be traced to the greater organizational complexity that characterizes banks following a merger or acquisition operation.

Without analyzing in detail the internal organizational structure of a large banking company, we can see that these have a high number of hierarchical levels interposed between the authority that decides to issue the trust and the client relationship manager. The consequence of this greater internal organizational complexity is the "depersonalization" of the relationship between credit and customer, which also has implications for the evaluation and monitoring of small customers and could jeopardize the need to ensure a transparent relationship and an effective Degree of information between bank and customer.

Hence, larger banks tend to privilege those relationships that do not require constant interaction with the customer and therefore limit credit to small businesses. Smaller banks, however, have an organizational structure that favors repeated interaction with the customer's business and the environment in which it operates.

However, the thesis we referred to deserves to be further deepened especially because it is not shared in a unique way.

In support of this, we can identify an empirical study which shows that larger intermediaries give credit more frequently to companies that have a larger dimension and make greater use of encoded information. [80]

Other scholars[81] have pointed out that the effects of M & A operations may also depend on the type of institutions involved.

It has been noted that in the United States, as in Italy, while transactions between medium to large banks or those in which large banks have incorporated a small bank have led to a reduction in lending to small businesses, mergers and acquisitions

[80] ALLEN BERGER- NATHAN H. MILLER- MITCHELL PETERSEN- RAGHURAM RAJAN- JEREMY STEIN, *Does function follow organizationl form?Evidence from the lending practices of small and large banks,* JOURNAL OF FINANCIAL ECONOMICS, 2005

[81] PAOLA SAPIENZA, *The effects of banking mergers on loan contracts,* THE JOURNAL OF THE AMERICAN FINANCE ASSOSATION, 2002

Between small banks, or those where a small bank was the incorporating bank, loans to small businesses have risen.

Thus, recognizing the validity of the above-mentioned thesis, it is clear that a reaction of competing banks to those of large size is desirable. In particular, in the markets involved by mergers and acquisitions, the competing banks may benefit from the residual market share of the holding held by the merged entity or companies resulting in concentration, and this avoids the fact that the financing activity Towards small and medium-sized enterprises diminishes or even contributes to increasing the level of funding to the latter.

At this point we have to consider how this theory has impacted at national and European level.

Previously, we had to consider how Italy was characterized by the presence of a large number of medium-small businesses.

Large banks operating in Italy are aware of the consequences that an overly complex organizational structure might generate in relation to the provision of credit to small-medium businesses in the area. Consequently, merger groups have adopted organizational models to preserve territorial roots and relationships with small local businesses.

The aim is to prevent a systemic reduction in the delivery of credit to small and medium-sized enterprises. In this regard, besides the assumption of organizational structures that retained a rooting in the territory, the contribution of medium-small banks, which thanks to their more continuous interaction with businesses, has contributed to maintaining an effective The degree of market competition that resulted in an increase in efficiency even with regard to the companies themselves. Even at a European level, evidence suggests that consolidation is unlikely to have a negative effect on credit to small and medium-sized businesses, both through increased competition from competing banks and because M & A operations, as seen above, improve banks' risk assessment.

CHAPTER 3

THE MERGER BETWEEN *INTESA* AND *SAN PAOLO IMI*

a. The history of the parties

In this chapter, we will analyze in depth the merger between Intesa and San Paolo IMI. The transaction was announced in August 2006 and was carried out in December of the same year.

The two banks that created this merger appeared as two of the largest credit institutions present in the national territory whose history has always been characterized by a series of mergers and acquisitions of banks and financial institutions that represented national brands at national level.[82]

The analysis we will be focusing on the path that characterized the two banks until 2006 and which led them to the merger.

We will then look at the contents of the agreement and consider the effects that the super bank's achievement has led to by comparing them with respect to competition.

We will then consider the investigative activity carried out by the Antitrust Authority by evaluating the measure it has issued to protect the competition.

We will conclude our analysis with some assessments of the post-merger situation.

[82] We refer mainly to the acquisition of Banco Ambrosiano, Banco Ambroveneto, Cariplo, IMI, Banca Commerciale.

I. History and position of **Intesa**

In this first part of the third chapter we will focus our attention on the history and position Intesa Bank occupied within the market before the merger with San Paolo IMI. The institute that we know today as the bank name Intesa was born in 1925 with the name "La Centrale". It was an institution with interests that were mainly concerned with the production and distribution of electricity. This sector was involved in a nationalization work in the 1960s and for this reason the institute acquired a number of holdings, especially in banking and insurance, thus acquiring the name "The General Financial Center".

The so-called institute continued to operate in these areas until the early 1980s, a period that led to a turning point in its history.

In 1982 the New Ambrosian Banco was set up. It was created by the union of seven lenders who joined to recapture the old Banco Ambrosiano, who, following the financial crackdown in the same year, was subjected to administrative liquidation.

In 1985 La Centrale then proceeded to incorporate the Nuovo Banco Ambrosiano, assuming both the denomination and the social object.

As a result of this operation, the institute experienced a first stalemate, characterized by some organizational difficulties. Having overcome the initial difficulties, an expansion of the corporate structure was carried out.

The founding members of Nuovo Banco Ambrosiano realized a gradual sale of their participation shares to other credit institutions and insurance companies.

At the end of this series of assignments, a new structure of the group was seen that saw the New Banco Ambrosiano, which exercised control over the Cattolica Bank of Veneto and other public entities that were subject to it.

In the late eighties a new merger operation characterized the history of the Institute.

In 1989, the parent company proceeded with the incorporation of the Catholic Bank of Veneto, assuming the new denomination of Banco Ambroveneto.

The years following this operation were characterized by a certain expansive activity consisting of a series of acquisition operations that were set up by the Banco Ambroveneto and which involved smaller institutions.

Without going into details of these transactions, we can recall the most important: Banca Vallone (1991), Ambroveneto Sud (1992), Sicilian Banking Company (1994), sub holding Fiscambi Holding (1995) assuming direct control of companies in the banking sector. At that time Banco Ambrveneto acquired the control of the Caboto Group, one of the most important Italian financial operators, and Banca di Trento and Bolzano.

However, the operation that allowed the Group to achieve definitive size growth was achieved in 1997.

This year, Cariplo Bank privatized. Banco Ambroveneto then acquired this institute and managed to gain a relevant position on the market.

The strategy envisaged the creation of a new company to which both Cariplo and Banco Ambroveneto control packages were conferred.

To this end, on January 1, 1998, Banco Ambroveneto was dissociated and acquired by a new banking company called Intesa, which in January 1998 also proceeded to acquire Cariplo's bank from the Cariplo Foundation.

The institution's dimensional growth process did not end with the operation just described.

Between the end of 1998 and the beginning of 1999, additional acquisition and incorporation activities were carried out, in particular Intesa acquired Banca Popolare FriulAdria and the Savings Bank of Parma and Piacenza. On 30 June 1999, the Board of Directors of Intesa decided to promote a Public Offering of Preventive Exchange on 70% of the ordinary and savings capital of the Italian Commercial Bank. The operation was successfully completed in the period 27 September - 15 October 1999.

On May 30, 2000, the Extraordinary Shareholders' Meeting of Intesa approved the merger plan for incorporation of Savings Bank of Parma and Piacenza.

On 28 February and 1 March 2001 the Extraordinary Shareholders' Meetings of Banca Commerciale Italiana and Intesa approved the merger by incorporation of Banca Commerciale Italiana into Intesa and the institution assumed the name "Banca Intesa Banca Commerciale Italiana Spa".

In 2003 the denomination was again "Banca Intesa Spa" and the group was called "Gruppo Intesa".

II. History and position of **Sanpaolo IMI**

SanPaolo IMI is the result of the merger by incorporation of the San Paolo Banking Institute of Turin and IMI (Istituto Mobiliare Italiano).

The "San Paolo di Torino" bank was born from the "Società di San Paolo" born in 1563 to help the needy.

The company, which in the meantime became Monte di Pietà, in the nineteenth century began to play an effective credit function becoming a banking institution in all respects.

In 1932 the institute got the title of "Public Law Credit Institute".

The expansion work that led to the establishment of the Sanpaolo IMI institute began in the 1960s and continued until the nineties and was characterized by acquisitions and incorporations.

In 1977 he took control of the Banco Lariano di Como, in 1984 he was acquired by the Provincial Bank of Lombardy, based in the province of Bergamo.

In 1991, the Institute acquired Crediop from the Cassa Depositi e Prestiti and became an effective multinational group of national significance.

Between 1992 and 1997, the bank completed its privatization through the transformation of the institution into an Spa in accordance with the provisions of Law no. 218 of 1990.[83]

In February 1995, the National Bank of Communications was incorporated.

IMI was born as a public-law body with the purpose of assisting the restructuring and recapitalization of Italian industry mainly through the granting of medium-long term credit.

In the 1980s, there was an expansion of the areas of activity that were carried out by the IMI group.

In particular, we can see that the classical credit granting business is complemented by investment banking, portfolio management and financial consulting.

Since the merger between Sanpaolo and IMI in 1998, a group has a multiplicity of functions and a number of business areas: commercial banking, large corporate,

[83] So-called “Legge Amato”.

investment banking, personal financial services, merchant banking, public investment funding and infrastructure.

In 2000, Sanpaolo IMI proceeds to acquire Banco di Napoli and in 2002 it incorporates it.

Through this operation, the institute is able to expand its presence also in regions belonging to the south of Italy such as Campania, Apulia, Calabria and Basilicata and it is named after Sanpaolo Banco di Napoli.

The capillary expansion of the Institute in the Italian territory proceeds with the concentration with the Cardine Group, which in turn was originated by the Venetian and Emilian-Romagna colleges, and therefore institutes present in two of the richest regions of Italy.

Despite the creation of a very broad banking group and with a presence distributed across different areas of the national territory, the model of "National Bank of Territories" is created, consisting in the effective preservation of the regional and local brand, and in maintaining direct relations between The bank and customers are either small or medium-sized households. In essence, it tends to favor the radicalization of the territory.

In 2005, the "Eurizon Financial Group" was established.[84]

It is a company that carries out the functions of the Group's insurance, asset management and asset management activities.

[84]On 25/10/2006, Eurizon held directly and indirectly 92.5% of the total share capital of Banca Fideuram at the end of the period of membership of the OPA on the ordinary shares of Banca Fideuram. As of 1/11/2006 Sanpaolo IMI Asset Management SGR, Sanpaolo IMI Asset Management Luxembourg and Sanpaolo IMI Alternative Investments have changed their denominations in EurizonCapital SGR, EurizonCapital S.A. And Eurizon Alternative Investments.

b. Agreement and objectives

The merger between Intesa and San Paolo IMI is contextualized within a financial sector characterized by a gradual consolidation process and a high degree of concentration both at national level and at Community level.

The reasons that drive companies to join the market have already been illustrated in the previous chapter.

In this context, both Intesa and San Paolo IMI have proven to be able to exploit the growth opportunities offered by the market. Over the years, they have created a series of mergers and acquisitions through which they contributed, on the one hand, to increasing the degree of concentration of the Italian banking sector; on the other hand they have been able to acquire a position of primary importance within the same market.

As we have previously explained, both the San Paolo IMI Group and the Intesa Group are the result of a series of merger, acquisition and integration operations.

In the light of the increasing degree of concentration of the Italian banking sector and of the effective capacity of the two Groups to increase their size, "the proposed integration operation of San Paolo and Intesa is coherent in the history and strategy of the two Groups ".[85]

In this second part, we will try to analyze all aspects of the agreement concluded between the two Groups.

We will first analyze the terms and conditions of the operation so as to provide a static picture of what the parties have accomplished.

Subsequently, we will proceed to a more rational analysis of the motivations that have led to the fusion of the merger and what the goals are to achieve.

I. Modality, terms and conditions of the operation

In this section we will try to analyze the most important aspects that characterized the merger agreement between the two banks.

[85]See the information document prepared by Extraordinary Shareholders' Meetings of Banca Intesa Spa and San Paolo IMI Spa on 30 November / 1 December 2006 concerning the merger by incorporation into Banca Intesa Spa of San Paolo IMI spa.

We will therefore consider the merger resulting from the merger to try to determine whether certain shareholders have acquired a controlling position.

We will then refer to the governance model adopted by the Boards of the two Groups at the time of the merger.

The merger transaction is largely governed by the agreement signed between Banca Intesa and San Paolo IMI on August 26, 2006. On that date, the Board of Directors of Banca Intesa approved the guidelines for the merger plan with Sanpaolo IMI.

On October 12, 2006, the respective boards of directors of the companies concerned approved the merger plan, the integration plan and the post-merger company's draft statute subsequently submitted to their respective shareholders' meetings.

The agreement was amended by the following additional act between the same parties on 17 October 2006.On the basis of the ratio of the parties' exchange ratio[86] , the post-merger shareholding composition can be determined as follows from the following table[87]*:*

Shareholder	**Percentage of share capital**
Compagnia di San Paolo	7,0
Crédit Agricole	9,1
Caisse Nationale des Caisses d'Epargne	0,7
Reale Mutua	0,7
Monte dei Paschi di Siena	0,7
Generali	4,9
Fondazione Cariplo	4,7
Banco Santander	4,2
Fondazione Cassa di Risparmio di Padova e Rovigo	3,5
Fondazione Cassa di Risparmio in Bologna Gruppo Lombardo	2,7
Giovanni Agnelli & C.	2,4
Fondazione Cassa di Risparmio di Parma	2,2
Carlo Tassara	2,0
Capitalia	1,0
Mediobanca	0,8
Others	50,9

[86]The Transaction Report on the Transaction was agreed as follows: 3,115 Banca Intesa shares for an ordinary share of San Paolo IMI (post conversion into ordinary shares of the current 284,184,018 preferred stock of the latter).

[87]ALESSANDRO GRAZIANI, Sì alle nozze Intesa Sanpaolo, IL SOLE 24 ORE, 2 dicembre 2006.

From the analysis of the table it is possible to see that Crédit Agricole will be the most important shareholder. Along with this, important positions will be taken by the Compagnia diSan Paolo, Generali, the Cariplo Foundation and Banco Santander.
Moreover, the parties have had to point out that, as a result of the stock split resulting from the merger, no shareholder will come to obtain alone or with others a share that will enable him to exercise effective control over the entity resulting from the merger.
It should also be noted that although the agreement did not foresee the overcoming of the trade union agreements in force for both Intesa and San Paolo IMI, these would in fact be overcome as a result of the change in the stock situation following the merger. This consequence, although not explicitly mentioned in the agreement, can be deduced from the analysis of some merger documents. [88]
Another point that deserves to be studied is that of choosing the model of governance to be adopted post-merger.
The parties opted for the dualistic system that at the time when the operation was realized was an element of actual innovation[89].
The use of this model of administration and control in Italy has not been very frequent especially in the first two years since its introduction. However, the two-year period 2005-2006 saw an increase in the number of companies that adopted this governance system from 107 companies in 2005 to 131 companies in the autumn of 2006[90].
The dualistic model is still characterized by the presence of a c.d. Supervisory Board as an organ that is between the shareholders' meeting and the board of directors called the Management Board.[91]

II. Motivations and purpose of the operation

At this point we should concentrate on one of the central aspects of the discussion.

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[88]See Assicurazioni Generali's minutes (doc. 177) and response from the parties to the request for information (152). See also the disclosure document on the merger transaction and the press release issued by Banca Intesa on the results of the meetings held on December 1, 2006, both available on the Banca Intesa s.p.a website

[89]This is a governance model introduced in the Italian Civil Code in 2003.

[90]From Unioncamere.

[91]See the provisions of the Civil Code (art. 2409 octies and ss.) And the provisions of Legislative Decree 58/1998 and subsequent amendments (TUF, Article 147 et seq.).

What were the motivations and goals that led the two groups to achieve the merger?
The first consideration we have to make is that the parties through the operation tend to increase their size and therefore seek to gain a position on the market in order to achieve high competitiveness at national level but above all at Community level.
As regards the growth aspect at national level, we can consider the following table, useful to understand the position that the Group would take as a result of the transaction. The table shows the presence of the bank at national level considering the geographical position, the market share held within each area considered and the resulting position compared to the other banks:[92]

	Market share	**Placement**
North West	23, 6%	1°
North East	19,0%	1°
Center	13,9%	1°
South and Islands	20,2%	1°
Total Italy	19,5%	1°

From the analysis of certain documents prior to the merger[93] it was possible to deduce some conclusions. In particular, we can say that merger is presented as a real opportunity for growth in many ways:
A) first, it will be possible to see a high distribution on the domestic territory of the subsidiaries of the "superbank", in particular the presence will be rooted in the richest areas of the nation;
B) obviously, it will be possible to see an increase in operational efficiency due to the exploitation of the economies of scale obtained by virtue of the size increase;
C) the prevalence of the retail component in the activities of both groups, which maximizes the potential benefits of the transaction with a reduced execution risk;
D) there is then the effective compatibility between the organizational models of both groups;

[92] Data reported in the press release of August 26, 2006, historical archive Banca IntesaSanpaolo
[93]See the information document prepared by Extraordinary Shareholders' Meetings of Banca Intesa Spa and San Paolo IMI Spa on 30 November / 1 December 2006 concerning the merger by incorporation into Banca Intesa Spa of San Paolo IMI spa.

E) the possibility of designing internationalization strategies is another factor in pushing the merger. In particular, it will be possible to gain a leadership position in the national market, which will then be able to exert a real extension to the outside world
The new giant would have achieved a position on the national market that was not replicable by any other competitor with no merger.

Driven by these reasons, the new group would be able to obtain a prime position in Italy in relation to:

A) the distribution network. IntesaSanpaolo would have obtained about 5,500 branches corresponding to a market share of 17%. Branches would be distributed homogeneously throughout the national territory and above all they would concentrate on the richest areas of Italian territory;

B) retail, private and SME segments. The bank resulting from the merger will be able to count on a base of 12 million retail customers;

C) corporate & Investment Banking areas. IntesaSanpaolo in this area would surely become the first group at national level thanks to the market share of 20% of total lending to businesses;

D) the public sector and infrastructure sector, where it will have a market share of 22% and loans of 23 billion euros to customers;

E) asset Management and Bancassurance;

F) the new Group would then have a leading role in factoring, trade finance, project and acquisition finance and syndicated lending;

G) finally, it would become the Italian reference operator in the capital market.

Below is a table showing the sectors in which the new Group would operate, the market share held in each of them and the position held at the national level[94]:

	Market share	**Placement**
Collected by customers	22,1%	1°
Lending with customers	21,8%	1°
		1°
Retail business		
Saved savings	32,4%	1°

[94]Data reported in the press release of August 26, 2006, historical archive Banca IntesaSanpaolo

Bankassurance	30,4%	1°
Private Banking	27,6%	1°
Mortgages	23,8%	1°
Consumer credit	16,1%	1°
Corporate Activity		
IPO	29,8%	1°
Foreign Exchange Regulation	25, 4%	1°
Factoring	25,3%	1°
Unions loans	10,1%	1°
Stock brokerage	8,1%	1°

The presence of San Paolo and Intesa in the markets of Central and Eastern Europe will enable the Group to strengthen its presence and business in this area. IntesaSanpaolo will arrive to gain presence in 10 Countries, about 1,370 branches and a total assets of about 25 billion euros.

The expansion in Central and Eastern Europe will also enable it to push into new areas, such as the Mediterranean basin. Sanpaolo holds 80% of Bank of Alexandria in this area. Below is a table depicting the companies controlled by the group in Central Eastern Europe, the Country in which they are located and the position they occupy within that market:[95]

Society	**Country**	**Placement**
PBZ	Croatia	2°
VUB	Slovakia	2°
Banca Intesa Beograd e Panonska (*)[96]	Serbia	2°
CIB e IEB	Hungary	4°
Ukrsotbank (*)	Ukraine	4°
UPI Banka	Bosnia Herzegovina	5°
BIA	Albania	5°
Banka Koper	Slovenia	6°
KMB	Russia	n.r.
SPIMI Bank	Romania	n.r.

[95]Data reported in the press release of August 26, 2006, historical archive Banca IntesaSanpaolo
[96](*) Being acquired at the time of the merger

Always referring to merger documentation[97] it is also possible to determine the strategic guidelines that are the basis for the transaction.
From the analysis of this documentation it can be seen that "the new Group's strategy will be geared towards sustainable growth and value creation, to be achieved by developing a stakeholder relationship and maintaining close control over all management levers."
By trying to summarize the main activities that will enable the new Group to succeed in achieving these goals, we see how:
A) first of all, the task of the new Group will be to consolidate the primary position that the banks already held before the merger in relation to the customer relationship. This result can be pursued primarily through the innovation of products and services to be offered to customers, secondly through the homogeneous coverage of national territory and thirdly through the merger of the c.d. Best practices of operational and managerial character;
B) it is also very important to maintain a cost leadership. In this case, the result can be achieved through the exploitation of economies of scale;
C) it also plays a key role in the care of human resources within the company.
Valuing human resources through the tendency to favor their professional growth is a key point in the strategy of the new group;
D) very important aspect is that of the support that this Group can provide for the growth of the country through the financing of large companies and also the financing of major works of P.A. ;
E) there was also talk of the possibility of expanding abroad through the exploitation of the entities that had already been controlled before the merger by Banca Intesa.
At this point, we close this second part of the discussion by trying to provide a clear and clear picture of the areas where the Group's activities will be organized and that correspond to the c.d. Business areas of the enterprise.
In this regard we can distinguish five macroaree:

[97]See the information document prepared by Extraordinary Shareholders' Meetings of Banca Intesa Spa and San Paolo IMI Spa on 30 November / 1 December 2006 concerning the merger by incorporation into Banca Intesa Spa of San Paolo IMI spa.

1) With regard to the retail, private and small-medium businesses, the new Group aims to share with its customers all the benefits of its leadership position by supplying all the instruments to its customers Financials useful to the realization of their respective projects.

In this regard, a remote channel network will be realized that will make the service offered by the bank more efficient. This network will consist in the provision of phone banking, mobile banking, and internet banking.

From this point of view, the merger will make possible an improvement in terms of the quality of the services offered to customers and a simpler use of the services themselves. This also adds to a reduction in unit costs, which is an indispensable advantage for the bank.

2) The Corporate & Investment Banking area will seek to contribute to the development of medium to long-term large and medium-sized companies at national and international level.

To achieve this, we see how the business unit in question seeks to be an effective "global partner" able to offer finance, financial consulting, and thus become a real support to the company that interacts with the bank same.

Again in this context, the merger will be able to offer a major contribution mainly in improving risk management.

The integration of the capabilities of the two groups will enable the bank to better use the methodologies, tools and processes to carry out a proper credit rating assessment and therefore also the risk of the financing operation, but also greater and more comprehensive information On customers.

3) The Public Sector and Infrastructure sector is primarily intended to finance infrastructure projects and utilities.

In this regard, the merger will enable the company to create specialist teams present and rooted in all areas of the territory. The experience gained at national level will then be useful in order to be able to expand abroad, precisely to those countries where the enterprise already has interests, in order to finance public works that are useful for the bank's growth.

4) With regard to foreign banks we have already considered a strong presence of the bank in Central and Eastern Europe.

By merging the company's objective will be to expand even in the Mediterranean basin area.

5) In the area of Bancassurance Intesa and San Paolo before the merger were operating with two major market leading companies: Intesa Vita and Eurizon Vita.

c. Investigation of the AGCM

In this section, we will focus mainly on the investigative procedure carried out by AGCM in order to determine whether the merger described above could effectively distort competition on the market.

I. Initiation of the investigation and qualification of the operation

In relation to the merger between Banca Intesa and Sanpaolo IMI[98] on 19 October 2006, the AGCM decided to initiate an investigation in order to ascertain whether the transaction, given its characteristics and above all its size, could result in a concentration restrictive of competition which could lead to the strengthening of a dominant position on the market.

The starting point of our discussion is primarily the qualification of the operation and second the determination of the competence.

With regard to the first aspect, it should be noted that both national and Community antitrust rules govern the present case, albeit with the differences already discussed in the second chapter.

The AGCM stated in the notice of initiation that "the operation in question, as it involves the merger of two undertakings, constitutes a concentration within the meaning of Article 5 (1) (a) of Law no. 287/90 ".

So the Authority was immediately clear in identifying the transaction as a concentration.

Second point of particular importance is that of determining the competence. It will therefore be necessary to clarify whether the operation falls within the competence of the national or Community authority. Also in the opening remedy[99] the AGCM stated that "it falls within the scope of Law no. 287/90, subject to the conditions laid down in Article 1 of Regulation EC No 139/04 ".

[98]The AGCM specifies that the transaction will be carried out in accordance with Articles 2501 and following of the Civil Code.

[99]AGCM n. 16016, October 19, 2006.

Therefore, the Authority is equally clear in determining that the operation in question will require the application of national law because the conditions of applicability of the Community regulation are not applicable.

Regarding the procedural aspects, which are however closely linked to the question of competence, AGCM always in the document in question specifies that the transaction "is subject to the prior notification requirement of Article 16, paragraphs 1 and 2, of the same Law, since the total turnover realized in the last year at national level by all the undertakings concerned was more than EUR 432 million. "[100]

In short, therefore, the national antitrust Authority has first specified what kind of operation it is, qualifying it as a concentration operation in all respects.

Secondly, it determined that national law should be applied to the operation in question.

It has ultimately specified that this is an operation that must be communicated to the Authority in advance, considering the total turnover of the companies in the last financial year.

II. Evaluation of operation

So we get to the central point of this third part.

After having qualified the transaction and after determining who is responsible for carrying out the process of evaluating the operation, it is necessary to carry out the actual evaluation activity that the National Authority has carried out after the start of the investigation in order to determine whether the transaction can be performed or not, or whether it is necessary for the parties to put in place certain behavior to eliminate the anti-competitive aspects of the operation.

AGCM considers in this respect that the transaction may entail the creation or strengthening of a dominant position in several markets included in the traditional banking sector and not only, let us see.

1) In relation to the traditional banking sector, it is possible to include:

- The savings collection market. In relation to this type of market the starting point is the definition of the same.In this regard, it is necessary to refer to a

[100]AGCM n. 16016, October 19, 2006.

well-established orientation that sees a communion of intent between the Bank of Italy and the antitrust Authority.This approach determines that "the collection market identifies the collection of direct banking by ordinary customers through: free and tied current accounts, savings deposits, goodwill, and deposit certificates." [101]

Based on the market definition of the collection we have provided in this context, it is possible to determine that the latter has provincial territorial significance, which is determined on the basis of the availability of displacement in the area of demand.

In this regard, we can consider the following table referring to the market of direct banking at the provincial level.

It shows the market share in percentage terms of the SanPaolo Group, the Intesa Group and the merger aggregate in all provinces where the value for this aggregate exceeds 25%.

In the same provinces is then the position of the main competitors.

It should be specified that AGCM [102] has omitted certain data concerning competitors competing in some provinces for privacy and secrecy issues.

Nevertheless, the table below provides a valuable support for the analysis of the situation that the merger would generate in the market segment we are considering.

	Comp. 1	**Comp. 2**	**Comp. 3**	**Comp. 4**	**Intesa**	**Sanpaolo**	**Combined share**
Parma	10-15	5-10	5-10	5-10	45-50	5-10	50-55
Rovig	10-15	5-10	5-10		1-5	45-50	50-55

[101] See in this regard the definition of the strictly relevant banking markets referred to in the agreement between the Bank of Italy and the Authority relating to the application procedures of Art. 20 paragraphs 2 and 3 of Law no. 287/90, then in force (the agreement is published in Bulletin 10/1996) and, for example, measures C5146B Bank of Rome / Bipop-Carire (Bulletin No 35-36 / 2002); C3597B Banca Intesa / Banca Commerciale Italiana (in Bulletin No 48/1999).

[102] Source: elaboration of the AGCM of data provided by the Bank of Italy.

o							
Venice	5-10	5-10	5-10		15-20	30-35	50-55
Vercelli	10-20	5-10	5-10		25-30	20-25	50-55
Pavia	10-15	5-10	1-5		30-35	15-20	45-50
Pordenone	15-20	5-10	5-10		30-35	15-20	45-50
Piacenza	25-30	1-5	1-5	1-5	40-45	1-5	45-50
Turin	20-25	1-5	1-5		5-10	30-35	40-45
Rieti	10-15	10-15	5-10	5-10	40-45	1-5	40-45
Terni	15-20	5-10	5-10	1-5	40-45	1-5	40-45
Imperia	20-25	5-10	5-10		20-25	15-20	40-45
Naples	5-10	5-10	5-10		10-15	30-35	40-45
Padua	25-30	5-10	5-10		5-10	35-40	40-45
Caserta	10-15	5-10	5-10		10-15	25-30	40-45
Como	10-15	5-10	5-10		20-25	10-15	35-40
Biella	45-50	1-5	1-5		30-35	5-10	35-40
Gorizia	10-15	10-15	10-15	5-10	5-10	25-30	35-40
Cremona	20-25	5-10	5-10		20-25	10-15	35-40
Novara	20-25	10-15	5-10		20-25	10-15	30-35
Aosta	25-30	10-15	5-10	5-10	1-5	25-30	30-35
Udine	10-15	5-10	5-10		15-20	15-20	30-35

Brindisi	10-15	10-15	1-5		10-15	15-20	30-35
Alessandria	20-25	10-15	5-10		5-10	20-25	30-35
Varese	30-35	5-10	5-10		15-20	5-10	25-30
Viterbo	10-15	10-15	5-10	5-10	25-30	1-5	25-30
Milan	10-15	5-10	1-5	5-10	20-25	1-5	25-30
Pesaro Urbino	35-40	5-10	1-5		15-20	10-15	25-30
Savona	40-45	5-10	5-10		5-10	15-20	25-30
Verbano	40-45	15-20	10-15		15-20	5-10	25-30
Lecco	20-26	10-15	5-10	5-10	15-20	5-10	25-30
Reggio Calabria	15-20	10-15	10-15		10-15	15-20	25-30
Ascoli Piceno	15-20	10-15	5-10	5-10	15-20	5-10	25-30

From the analysis of the above data we can see that the 32 provinces we have examined 4 exceed 50% (Parma, Rovigo, Venice and Vercelli), 10 would exceed 40% (Pavia, Pordenone, Piacenza, Turin, Rieti, Terni , Imperia, Naples, Padua and Caserta), 9 would exceed 30% (Como, Biella, Gorizia, Cremona, Novara, Aosta, Udine, Brindisi, Alessandria), others would have a market share of more than 25%.

From this, the Antitrust Authority always in the document with which it opens the investigation concludes that "in many provinces the merger could result in

restrictive effects of competition, with the establishment or strengthening of a position characterized by considerable market power." [103]

In addition, the data reported would be confirmed by the fact that following the merger would result in a high concentration of detained counters.

- The lending market. In this context, of course, we can cover the financing activities, in any way they are exercised, in the short, medium and long term.

  The antitrust analysis carried out in this area was conducted on a regional basis[104].

  In this regard, the question regarding the service offered by the bank in this area is affected by a duplicate of elements.

  We refer first of all to the type of subjects that require this service. In this context, families, businesses, public administration and financial companies are generally covered. Each of these parties warns of different funding needs and for this reason each bank tends to offer differentiated products and services.

  Demand is also influenced by the ability and availability of movement of subjects.

  However, these factors could contribute to the segmentation of the lending market and thus to determine the existence of different relevant markets and should therefore always be taken into account.

  However, the analysis of AGCM has also been empirical in this case. It was mainly based on the regional-level data on the share of total lending, the aggregate post-merger quota and the share of key competitors.

  Let us look at the following table in this regard[105]:

	Comp.1	Comp.2	Comp.3	Comp.4	Intesa	Sanpaolo	Combined share
Sardinia	35-30	5-10	5-10		25-30	5-10	30-35
Valle d'Aosta	15-20	10-15	5-10		5-10	20-25	30-35

[103] AGCM n. 16016, October 19, 2006

[104] See, for example, BI measures, with the assent of AGCM, C3597B - Banca Intesa / Italian Banca Commerciale (in Bulletin 48/1999); C5196B - Bank of Rome / Bipop Carire (Bulletin 35-36 / 2002).

[105] Source: elaboration of the AGCM of data provided by the Bank of Italy.

Piedmont	15-20	5-10	1-5		10-15	15-20	25-30
Calabria	10-15	5-10	5-10		15-20	5-10	25-30
Friuli Venezia Giulia	10-15	5-10	5-10		10-15	10-15	25-30
Campania	10-15	5-10	5-10		5-10	15-20	25-30
Lombardy	5-10	5-10	1-5		15-20	5-10	20-25
Veneto	15-20	5-10	5-10		10-15	10-15	20-25
Puglia	10-15	51-0	5-10		10-15	10-15	20-25
Liguria	20-25	51-0	5-10		10-15	10-15	20-25
Umbria	20-25	15-20	5-10	5-10	15-20	1-5	20-25
Lazio	15-20	51-0	5-10		5-10	10-15	20-25
Basilicata	10-15	51-0	5-10		5-10	10-15	20-25
Emilia-Romagna	10-15	51-0	5-10	5-10	5-10	10-15	15-20
Molise	10-15	10-15	10-15	5-10	1-5	10-15	15-20
Abruzzo	10-15	51-0	5-10		5-10	5-10	15-20
Sicily					5-10	5-10	10-15
Marche					5-10	5-10	10-15
Tuscany					5-10	1-5	5-10
Trentino-Alto Adige					5-10	1-5	5-10

The regions where the 25% threshold is exceeded cover most of the provinces with the highest concentration in the harvest market. More specifically, a narrower market-based analysis of jobs, by type of demand and by provincial geographic area, would lead to the emergence of even more restrictive competition profiles linked to the merger under review. It follows that even for different geographic markets for lending, and more specifically if found in several relevant markets as a function of demand, the merger would entail the creation or strengthening of a position with high market power.

2) With regard to other credit markets and payment systems:

- The consumer credit market. It identifies the granting of credit in the form of an extension of payment, financing or otherwise facilitation in favor of a natural person acting for purposes other than business or professional activity. Consumer credit differs in two types. On the one hand we have the so-called

credit for the purchase of specific goods; on the other we have the so-called direct credit which is disbursed in the form of personal loans without any obligation of destination.

The distinction set out in this context and the Authority's precedents[106] induce us to consider two different market segments (if not two relevant markets), due to the different service provided and the related trading conditions.

Concerning the aspect of the relevant geographic scope, it is important to consider how far the business of consumers making the various forms of consumer credit extend to the territory, but also the homogeneity or otherwise of the conditions offered.

For example, if we take into account the geographic extent of direct credit, this assumes a local dimension and in particular it is limited to the regional boundaries; if, on the other hand, we look at credit, it assumes a national debt, because the characteristics of production and marketing of the financial products and services in question are homogeneous across the national territory.

Let's now consider the activity the two banks involved in the merger exercise in the aggregate consumer credit (both direct and direct).

In this context we can consider how both parties are active. In 2005 the market shares held by the parties at national level are about 5-10% Group Intesa and more than 5-10% Group San Paolo.

If we consider the post-merger quota at national level, this exceeds 10-15%, because it will be necessary to consider the shares of Agos SpA[107] and Fidis Retail Italia SpA [108] [109]. In particular, Agos holds a higher share of the national To 5-10% in consumer credit.

If we then make a distinction between the two forms of consumer credit we can get the following data:

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[106]See, for example, measures C7652 - Santander Consumer Finance / Unifin (Bulletin 17/2006); C5078 - San Paolo IMI / Cardine Banca (in Bulletin No.13 / 2002).

[107] A joint venture subject to Banca Intesa's joint control with Crédit Agricole.

[108] Jointly controlled by Banca Intesa, SanPaolo IMI, Unicredit S.p.A. E Capitalia S.p.A.

[109] On Fidis, see Commission Decision of 25 April 2003 Banca Intesa, Capitalia, IMI Investimenti, Unicredito / Fidis Retail Italia, Case n. M3067. The parties argue that Fidis' market shares should not be taken into account since the latter would soon be acquired by Fiat, in a joint venture with Crédit Agricole.

a) As regards direct consumer credit, the Intesa Group holds a national share of about 5-10% while the São Paulo Group has more than 10-15%, generating a post-merger quota of around 20-25% across the national territory.

Including Agos, the share increases further.

Considering a regional dimension, the quotas are extremely differentiated and go in aggregate post-merger terms from 5 to 10% in Tuscany to around 30-35% in Emilia Romagna, up to 55-60% in Calabria[110].

b) In relation to final consumer credit, the San Paolo Group has a market share of more than 5-10% at national level, while the position of the Intesa Group is marginal.

However, Fidis and Agos companies were not taken into account, which, given market estimates provided by the parties, would have discrete market shares. In particular, Fidis's share should be no less than 10-15% and that of Agos is about 5-10%.

The data examined show the emergence of various consumer credit issues. The most critical situation from a competitive point of view can be seen by distinguishing direct credit and final credit, and whereas in the first the regional quotas reach such levels as to create or strengthen a position with significant market power.

Another aspect that deserves to be considered is the close connection between direct credit, disbursed in the form of personal loans and lending to households disbursed by banks.

The existing connection between these two services is likely to lead to an extremely strong position on the market so as to undermine the free deployment of competitive activity.

- The leasing market. Leasing is defined as the financial lease of movable and immovable property and consists in the predisposition of loan forms intended for the use of a given asset and its possible acquisition at the end of the lease.

[110] Even in these cases, the shares of the parties are underestimated without taking into account the company Agos.

Consistent with the Authority's orientation[111], financial leasing markets should be kept separate from operating leases.

The market from a geographic point of view is broadly defined at national level.

Let us now look at the effects that the transaction under review of AGCM can generate in this market segment, paying particular attention to financial leasing due to the close relationship with the bank's business.

Taking into account the data provided by the parties and dating back to 2005, the Intesa Group would hold about 5-10% and the same stake would be on the San Paolo Group, generating a post-merger aggregate share of around 10-15%. Even in this context, the shares are underestimated because they have not taken into account those attributable to Fidis. From market estimates provided by the parties, the Fidis share should not exceed 1-5%.

However, the post merger quota does not seem to be particularly hig.

Nevertheless, it is not possible to exclude restrictive effects on the relevant market in view of the fact that financial leasing is mainly provided by bankers.

In this case, the entity deriving from the merger would be an operator who would acquire a dominant position in several segments of the traditional banking market and would thus also be able to restrict competition in the leasing market.

- The factoring market. Factoring is a pecuniary contract whereby a company transfers the ownership of its trade receivables to another company (the factoring company), which guarantees whether or not the good end (either factoring pro solving or pro soluto respectively) , provides for their collection and corresponds to the transferring company a sum of money commensurate with the value of the credits handed over.

  By virtue of the applicable laws, legitimate to perform factoring activities are the banks and financial intermediaries referred to in Article 106 of Legislative Decree no. 385/931.[112]

[111]See Measures C7932 - Banca Italease / Leasimpresa (Bulletin No.33-34 / 2006); C5078 - San Paolo IMI / Cardine Banca (in Bulletin No.13 / 2002).

With regard to the extension of the relevant market, it would also seem appropriate in this context to give it a national significance, without excluding the possibility of giving relevance to the regional extension of the market in question.

Considering the estimates of the shares in 2005, these would obtain a post-merger quota: more than 50% in the Marches; a share of between 30% and 40% in Abruzzo and Sardinia; over 25% in Lombardy, Sicily and Veneto; a share greater than 20% in Emilia, Liguria, Apulia and lower shares in the remaining regions.

The post-merger entity would then become the first operator in several areas. This figure, given the wide distribution channels enjoyed by the company, does not exclude the possibility of a competitive restriction.

- The payment services market. Taking into account the consolidated orientation of AGCM[113] it is possible to distinguish between two types of markets within the Payment services. On the one hand, we have credit cards, on the other hand, that of debit cards.

  We therefore come to the geographical definition of the markets.

  Both for credit and debit cards, the terms of issue and agreement appear uniform within the national territory. So the relevant geographic market is delimited within the national area.

  With regard to market shares held by companies, we can consider that in relation to debit cards both the Intesa group and San Paolo hold a share of about 10-15% based on the data estimated by the parties dating back to 2005.

  In relation to debit cards, the Intesa Group holds a 5-10% stake, SanPaolo of 1% to 5%.

  Although the quotas we consider are not excessively high, consideration of the effects that the merger may have on the market must also take into account

[112] See, for example, measures C5078 - San Paolo IMI / Cardine Banca (in Bulletin No 13/2002); C3597 - Banca Intesa / Banca Commerciale Italiana (Bulletin 48/1999).

[113] See Measure I624B - Rules for the Operation of the Pagobancomat Service (in Bulletin No. 12/2005). On this point, the parties have indicated in the notification that there is a single market that can be identified in all payment cards, recalling the orientation accrued by the Bank of Italy.

other elements, and in particular the continuing and growing need for customers to obtain from an increasingly complete which also includes the issuance of credit and debit cards. For this reason, it is necessary to evaluate the position held by the parties in other market segments.

It also deserves to be underlined that the parties participate or control important specialized operators such as CartaSi[114] and Setefi[115].

The two groups take advantage of these operators to carry out the activities of credit cards and debit cards.

3) In relation to the managed asset management sector before analyzing individual markets, it should be noted that the Banca Intesa and San Paolo groups have already realized before the merger of the agreements on the managed savings sector. The agreements we refer to will continue to be effective even after the completion of the merger operation.

Let's start with Banca Intesa. In relation to this group, the agreement entered into on December 22, 2005 between Nextra Management Investment SGR S.p.A. And Banca Intesa.

The agreement provides for the creation of a joint venture between Banca Intesa and Crédit Agricole in the managed savings sector. The subject of the agreement is the distribution of Nextra products through Banca Intesa[116] counters.

Instead, the San Paolo Group has entered into intragroup agreements under which Eurizon has the possibility to use San Paolo's branches to distribute managed savings products.

The agreement further provides that San Paolo can distribute savings products managed by third parties only if the conditions set out in the agreement are met.

[114] Of which SanPaolo owns more than 30%

[115] Company wholly owned by Intesa Group

[116]See the European Commission Decision M.4006 cit. Concerning the acquisition of the joint control of Crédit Agricole and Banca Intesa on Nextra (formerly subject to the exclusive control of Banca Intesa) through CAAM.

- The market for mutual funds. A common fund of investment is "autonomous wealth, divided into units, belonging to a plurality of participants, managed in the mountain" .[117]

  As far as the geographic market size is concerned, AGCM argues that it has a national relevance.

  Let's consider the following table to consider the effect that the merger would have in this market segment[118]:

Operator	Equity in millions of Euro	Market shares
Sanpaolo IMI	111926.8	19.15
Pioneer Investments	91005.9	15.57
Gruppo Intesa+Crèdit Agricole	79638.8	13.62
Fineco	33933.9	5.81
ARCA	27505.6	4.71
MPS	22644	3.87
BPVN	117716.3	3.03
BPU	15486.9	2.65
BNL	15270.3	2.61
Mediolanum	14027.1	2.40
Bipiemme	13667.7	2.34
RAS	12667	2.17
Banca Lombarda	11960.6	2.05
Generali	11837	2.02
Azimut	11205	1.92
Credem	10682.2	1.83
Deutsche Bank	9124.6	1.56
ANIMA	7397.3	1.27
BPI	7234.8	1.24
Cassa di Risparmio di Firenze	6374.4	1.09
Carige	5701	0.98
Antonveneta ABN	5561.5	0.95
ICCREA	5231	0.89
Banca Sella	4864	0.83

[117] Art. 1 of D. Lgs. n. 58/98

[118] Source: AGCM elaborations on public data from Assogestioni site.

Ersel	4777.1	0.82
Kairos	4295	0.73
Banca Esperia	3629.4	0.62
Poste Italiane	3149.1	0.54
Others		2.74
MARKET TOTAL	584546.5	100.00
Post merger quota		32.77

Analyzing the table we can first deduce that the market considered is populated by a number of operators, even though it is characterized by being sufficiently concentrated.

As we can see, the San Paolo Group is the first operator holding more than 19% of the market, the Intesa Group is ranked third with just under 14%.

The merger would create an extremely large operator, with a huge market share of approximately 33%.

This position takes on a noteworthy significance not only because it would make the post-merger entity the first in the market segment considered, but also for the detachment that would separate it from other competitors.

Moreover, the analysis of the effects can not fail to take into account that almost all SIMs and SGRs in the Italian landscape belong to a banking or insurance group at the production level.

Consequently, the positions of the parties have to be assessed in the framework of the vertically integrated group along the chain, between the management / production market and the distribution market of funds and closely linked to traditional banking markets.

- The distribution market and the distribution market of individual management services.

The individual asset management business (GPM) is carried out by banks, investment firms and savings management companies, on the basis of a client assignment. Compared to collective management, each client's assets remain distinct from that of others.

Specification characterization assumes fund assets management (GPF) in which the client's financial resources are invested in units of mutual funds.

Here too, the market is given a national significance.

We therefore come to the analysis of the effects that the merger would generate in this context. In this regard we can consider the following data coming from different sources, but lead us to the same conclusion: according to the data provided by the parties, the San Paolo group would hold about 10-15%, while the Intesa Group would be present with 5-10 %. Considering public figures of Assogestioni Group San Paolo would hold about 11% and Intesa Group about 14.52%.

The concentration in question would in fact create the first operator in individual management with a market share of between 20% and 26% at national level, with competitors in a significantly lower position .

Also in relation to this specific market segment is the previous consideration, that all managed asset management products, including GPMs and GPFs, can be distributed through bank branches. Also here is the effect of vertical integration, from production to distribution; Significant integration in the analysis of the competitive effects of the concentration in question.

Previously we specified how the market assumes a national significance. However, considering the mobility of demand, the geographic size of the market appears to be clearly identifiable at the provincial level.

In this context, the distribution market for GPM and GPF services has several local areas where the merger operation would involve significant quotas of more than 40%.

- The complementary pension market. In this context, we refer to c.d. Supplementary pension, that is, that social security activity aimed at meeting the need for income of workers at the time of their retirement. To achieve this specific goal, we can generally identify two different methods: on the one hand compulsory retirement; On the other, supplementary pension provision, through the use of negotiated or closed pension funds, open pension funds and

individual pension policies (PIPs). Let us briefly see the differences that characterize these funds.

The distinction to be drawn in this regard is two types of complementary pension products.

We can first identify those products in relation to which the membership is collective (the negotiating funds and a part of the open funds), and then those where the membership is individual (the remaining open pension funds and the PIPs).

Considering the geographical dimension, this can be identified at national level even if the possibility of giving it regional significance is not excluded.

Let's now look at the impact that the merger would generate on the market segment we are considering.

According to the data provided by the parties for 2005, San Paolo would have a share of about 10-15% and the Intesa group of more than 5-10%. The aggregate position after merger is therefore relevant.

This quota points to a position of the new entity of considerable importance, in which it is considered that the establishment of a market-rated operator can be determined.

4) In relation to other financial assets:

- The Savings Market administered. Trading in financial instruments can mainly be made through two methods: trading in own account and trading on behalf of third parties[119].

  The geographical dimension of the market takes into account the customer's willingness to move and therefore takes on provincial significance.

  Coming to the effects that would create the merger in this market we can say that according to the data provided by the parties referring to 2005 the Intesa group would hold about 10-15% and the San Paolo Group about 5-10%. The post-merger quota would be almost 20-25% across the national territory. Such a

[119] See, for example, the measure I592 - Italian Banking Association (in Bulletin no.44 / 2004); C5078 - San Paolo IMI / Cardine Banca (in Bulletin No.13 / 2002).

position already appears to indicate the risk of setting up an operator of such size as to be able to exercise considerable market power. Evaluation that would not change, if anything, would be exaggerated, by analyzing the individual positions held at the provincial level.

5) Finally we take into consideration the insurance industry:

- In relation to the merger operation we are considering it is advisable to take into account the following activities in the insurance industry:

  A) life brach I: this is a life insurance policy through which a person (the insurer), in front of a premium of the insured, undertakes to pay a sum of money at the occurrence of an event related to human life , Such as the death of the insured or reaching a certain age;

  B) life branch III: These are insurance contracts whose performance is linked to the value of units of mutual funds, equity indices and other reference values. In all types of product offered in this branch, the insured, upon payment of a premium, acquires an explicit coverage of one or more funds; Normally the shells consist of the payment of a certain number of units at the contractual maturity if the insured is alive. The particularity of these products is to pose the financial risk arising from the oscillation of the value of the units to the insured, leaving the demographic risk to be borne by the insurer.

  C) life branch V: these are capitalization operations of the savings Through which the insured entrusts the insurance company with a certain amount, for a certain time span, in the face of a reinvestment of the investment, normally related to the performance of a separate separate management with a minimum guarantee.

  It should be specified that, in relation to the above-mentioned activities, Banca Intesa and SanPaolo banks already had some bank-insurance agreements prior to the merger, which will continue to be effective even after the merger is completed.

In particular, in the insurance sector, Intesa Group operates through a joint venture with the Generali group, known as Intesa Vita S.p.A.[120]. In addition, the Intesa Group also operates through Po Vita S.p.A.[121]. Intesa Vita S.p.A. Guarantees the distribution of the policies of the Generali Group through the branches of the Intesa Group. As regards the San Pauoo Group, Eurizon distributes the insurance products of the San Paulo Group through the intragroup agreement through the San Paolo Banking Network.

For the Authority's consistent orientation, each life insurance sector represents a distinct market. This distinction is mainly based on the object of the service rendered, the risks assumed and the objective of insurance coverage expressed by the demand of each single branch. [122]

We have therefore seen earlier the three branches of the insurance industry that are interested in the transaction. In this context we must specify that each of them is distinguished in a first phase of production at national level, and a second phase of the distribution that is done at the provincial level.

If we take into account the production market and analyze it on the basis of 2005 data prior to the merger, we can consider that the operation under review will result in significant overlaps at national level.

The table below identifies the market shares of the Intesa Group (including Intesa Vita's share) of the San Paolo Group, the aggregate after merger and the share of the Generali Group.[123] With reference to the latter, it is difficult to qualify As a competing operator for all parties to the merger because of the bonds with the Intesa Group.

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[120]Company controlled jointly with Alleanza Insurance S.p.A. (The company, which belongs to the Generali Group).

[121] Of which Savings Bank of Parma and Piacenza S.p.A. Holds joint control with SAI Holding Italia S.p.A.

[122]Regarding the identification of distinct product markets for each life span of the insurance industry, see Measure C5422B - Securitan Industrial Company / La Fondiaria Assicurazioni (in Bulletin No.51-52 / 2002). It should be noted that the parties have indicated the substitutability between life span I and life span V, thus differentiating the evaluation from the competitive definition followed by AGCM.

[123]Source: AGCM elaborations on public data ANIA (2005)

Branches	Share Intesa Group (Intesa Vita and Po Vita)	SanPaolo Group share	Aggregate post-merge share	Share of the Generali group only	Quote other competitors for groups
Life branch I	13,1%	8,4%	21,5%	21,86%	10,34% Poste Vita 7,4% Unipol 6,7% MPS
Life branch III	14,3%	4,8%	19,1%	2,86%	17,7% Allianz 9% CNP Capitalia V. 8,8% Poste Vita
Life branch V	2,45%	3,7%	6,1%	23,82%	20,5% Unipol 7,81% MPS Vita

The data show that in all three insurance markets the transaction will have significant effects, especially in the first two branches where the parties together will have about 20% of the relevant market. In addition, these positions are even more relevant in determining the risk of establishing an operator with high market power when considering relationships with the Generali group.

d. The end of the investigation and the Antitrust authority decision

Let us therefore examine the conclusion of the procedure.

Following the notification of the initiation of the investigation, AGCM sent requests for information to other banks, [124] the most important savings management companies[125], insurance companies[126], Poste Italiane Spa, category associations[127] .

The Authority then entrusted to a third party[128] the data collection activity relating to the substitutability of current bank accounts with postal current accounts.

During the hearing, the following companies were heard: Banco Santander Central Hispano S.A., Unicredit Banca, Capitalia, Unipol, Crédit Agricole and Assicurazioni Generali.

Banca Intesa and San Paolo were heard on 30 October, 7, 9 and 16 November 2006 and on 16 and 22 November they exercised their right of access to documents.

On 31 October 2006, the company Assicurazioni Generali Spa was allowed to take part in the proceedings and was heard on hearing on 20 November 2006.

In the course of the investigation, AGCM co-operated and exchanged information with the following institutions: the Bank of Italy, Isvap and Covip.

At the end of the investigation, on 22 November 2006, the parties submitted the disclosure of the investigation findings.

I. The effects of the merger according to AGCM

On the basis of the above considerations, AGCM has determined that "there are several markets in which the execution of the merger under investigation determines the risk of establishing or strengthening a dominant position; These are major markets

[124]Unicredit Banca, Capitalia, Monte dei Paschi di Siena, Banca Antoniana Popolare Veneta, Banca di Piacenza, Banca Monte Parma, Banca Sella, Banca Popolare di Milano, Banca Polare dell'Emilia Romagna, Banca Popolare dell'Etruria e del Lazio, Banca Popolare di Cividale, Banca Popolare di Sondrio, Banca Popolare di Spoleto, Banche Popolari Unite, Banca Carige, CR Firenze, BCC del Polesine, BCC dell'Alta Padovana, BCC Padana Orientale San Marco, BCC Pordenonese, BCC Staranzano, BCC San Giorgio e Meduno, BCC Valdostana, Credito Valtellinese, Cassa Rurale e Artigiana di Cantù, Cassa Rurale e Artigiana di Lucinico, Farra e Capriva.

[125]Arca SGR, Pioneer Investment Management SGR e Capitalia Asset Managament S.p.A.

[126]Unipol, Lloyd's, MontePaschi Vita e RAS

[127] Assogestioni e Assifact.

[128] Nielsen

related to: banking, lending, consumer credit, leasing, factoring, credit cards, debit cards, mutual funds, individual asset management (GPMs and GPFs), complementary savings products, savings Administered, as well as insurance life lines I, III and V. "[129]
The conclusion of the AGCM we just found is based not only on the
Effective assessment of the effects that the merger would generate in the market segments we have abundantly considered earlier. In fact, antitrust takes into account, and above all, the size and structure that will take on the new colossus emerging from the merger. IntesaSanpaolo would become the first Italian banking group and one of the first banking groups in the Euro Area, with a market capitalization of over 65 billion euros.
The post-merger entity would cover a customer base of over 13 million retail customers, over 50,000-55,000 private customers and 140,000-145,000 SMEs; A distribution network consisting of over 6,200 branches, 4,000 financial promoters, over 7,000 ATMs.
According to AGCM1[130] "the merger will, among other things, have the following effects:
A) a considerable expansion of the distribution network; Resulting in an increase in the market power of downstream activity in the distribution of numerous markets. Indeed, the horizontal effect has been established in terms of the growth of bank branches (essential for traditional banking, distribution of managed savings products and life insurance products); As well as the expansion of the range of distribution channels (especially in the insurance sector, the growth effect has been established through promoters).
B) an increase in market power in the upstream activity of the production / management of numerous markets; As a result of the horizontal overlap of the parts and the expansion of the distribution capacity, being the vertically integrated structure. This analysis is true, in particular, of the impact of the merger on the markets for the production of managed asset savings (mutual funds market and GPM-GPF) and the production of life insurance products I, III and V, where The Group will be able to

[129]AGCM n. 16016, October 19, 2006
[130] AGCM n. 16249, December 20, 2006

increase its market power in the production phase, with the expansion of upstream and extended network masses.

C) an enrichment of the range and type of services offered to customers. (From strictly bank services to managed savings to insurance) with consequent effects of establishing and / or strengthening market power in the production / management and distribution activities of many products. Moreover, the importance of the product range has been demonstrated by the fact that the banking relationship is central to the customer relationship that, when created (typically through the counter), is expanded to more than one service until it becomes , Find some operators, a loyal relationship. "

In relation to the above, it is evident that there are several markets within which it is possible to establish the possibility that the operation determines the establishment or strengthening of a dominant position and in particular the Authority identifies: - provincial collection markets banking;

- Provincial Markets for Consumer Loans;
- provincial employment markets for SMEs;
- regional employment markets for public bodies;
- national market for the production of common funds;
- Provincial markets for the distribution of mutual funds;
- national GPM and GPF production market
- Provincial markets for GPM and GPF distribution.

The merger will also result in the creation of a collective dominant position in the life insurance business I, a position to be considered, also taking into account that the new entity and Generali will also operate in the life spans III and V with no incentives to compete, with quotas Of significant market and with an expanded and complementary distribution network.

All the effects that the post-merger entity would make on the markets concerned must also be assessed in the light of the relationships between Intesa, Sao Paulo and some operators present on those markets.

We are talking above all about Generali and Crédit Agricole. In fact, they are shareholders of one or both of the companies involved in the merger and, once the transaction is over, shareholders of the post-merger entity.

II. The prospecting of the commitments made by the parties

In the light of the competition concerns set out in the start-up and disclosure procedure, the parties have undertaken commitments to "eliminate the competitive risks involved in carrying out this operation"[131].

Commitments are primarily aimed at reducing the distribution capacity of the post-merger entity.

The commitments proposed by the parties may be identified in three main areas: banking, managed savings and life insurance business. It is important to note that commitments made in the banking sector can also have effects in other areas. In any case, we see more detail in the areas we referred to earlier.

1) Banking sector. The most important commitment made by the parties in this context is certainly the sale of bank branches in the various provinces in which the operation creates the risk of establishing or strengthening a dominant position. In order to identify the provinces where the parties committed to sell branches, a number of criteria were used such as the market share of the post-merger entity, the value and variation of the HHI index, the incremental incremental contribution of the transaction , the presence of suitable competitors.

The identification of the number of counters to be delivered was made assuming that the collection of a type door in each province considered is equal to the average collection on a provincial basis of the branches of the new bank. This hypothesis is intended to ensure that the implementation of the commitments leads to a reduction in the value of the collection in each province so as to overcome the restrictive profiles associated with the operation.

The commitment we refer to specifically includes the sale of some 197 branches, which will be sold to independent third parties who are not shareholders of the new

[131]AGCM n. 16249, December 20, 2006

merged bank. Obviously, these subjects will have the necessary technical expertise and must be authorized to carry out banking activities by the competent authorities.

A very important point that needs to be addressed is that of Banca Intesa's further commitment, which also intends to sell various branches to Crédit Agricole.

This agreement includes in particular the sale to Crédit Agricole of the branch offices of Cariparma (304), Friuladria (148) and other 193 branches, for a total of 645 branches.

Obviously, the sales we are referring to are subject to the authorizations by the Antitrust Authority and the stipulation of the merger agreement between Banca Intesa and SanPaolo.

The above agreement would enable Crédit Agricole to become the thirteenth national competitor of Banca IntesaSanpaolo. In addition, of the 645 branches sold to Crédit Agricole, 551 of these have an impact on provinces where the merger has a restrictive impact on competition. By analyzing the content of the Antitrust Authority's decision, we can conclude that in order for the latter to authorize the sale of the aforementioned counters to Crédit Agricole as it was carried out by an independent third party to the post-merger entity, the parties undertook to that:

a) "Crédit Agricole reduces its shareholding in the ordinary share capital of the new bank";

b) "There are no direct or indirect members of Crédit Agricole in the Supervisory Board and the Management Board of the new bank, as well as in any other management / administration body, that have direct or indirect expression of direct or indirect personal links. indirect. "

c) "Crédit Agricole does not participate in any unions of the new bank";

d) "the members of the new bank and its subsidiaries, until such time as they remain, cease to be members of the Crédit Agricole Group management bodies, including Cariparma and Friuladria";

e) "within 18 months of the date of notification of the authorization of the operation, the resolution of the customer reporting conventions currently in existence between Cariparma and Friuladria with the leasing and factoring companies of Banca

Intesa shall take place. In addition, the parties will do their best to ensure that, within two years of the sale of Cariparma, Friuladria and the other branches, the new bank will cease the ongoing agreements to maintain the operational continuity of these banks ";

f) "no later than 12 October 2007, in the Board of Directors of Agos SpA, as well as in any other management / administration body, there are no members of direct or indirect expression of the new bank or having the latter with direct personal links Or indirect, with the commitment of the new bank

g) Not to participate in the syndication agreement relating to Agos S.p.A. ".[132]

In addition to the commitment to sell branches we have considered above, the parties also undertake not to open for two years new branches in the provinces of Rovigo Pavia, Rieti, Terni, Imperia, Naples, Padua, Biella, Gorizia, Aosta, Udine, Alessandria , Pesaro-Urbino, Sassari, Bolzano, Cagliari, Pescara, Catanzaro and Bologna.[133]

2) The parties undertake to divest the joint venture CAAM SGR SpA, which is currently subject to joint control by Banca Intesa and Crédit Agricole.

The dissolution of the joint venture CAAM will result in the resolution of the distribution agreement between Banca Intesa and CAAM SGR, together with the shareholders' agreement on the aforementioned company. Consequently, products placed through the network of branches that will be headed by the Crédit Agricole Group will be different from those distributed through the network of the new bank.

3) With respect to the insurance sector, the parties undertake to "transfer, through transparent and non-discriminatory procedures to independent third parties, the business branch consisting of a complex set of activities and structures enucleated by controlled and / or participating insurance companies The new bank for the production, management of life insurance policies of branches I, III and V, having the following characteristics:

a) the ownership of the life insurance policies covered by branches I, III, and V until the date of the transfer of the Company branch, by Eurizon Vita and by Intesa

[132] AGCM n. 16249, December 20, 2006

[133] This commitment is aimed at preventing the new bank from increasing the total number of its branches in the provinces where the post-merger share is more than 40% in the markets for the collection, lending, asset management, life insurance or life insurance.

Vita with customers of the Savings Banks controlled by Intesa Casse del Centro, SanPaolo Banco di Napoli and the branches of Banca Intesa located in the following regions: Campania, Puglia, Basilicata and Calabria;

b) an organizational structure capable of pursuing, autonomously and effectively, the operational and commercial objectives of the Company Branch;

c) availability of adequate and stable distribution capacity.

The parties undertake to "refrain from distributing:

a) Life Line I, III and V policies produced by Intesa Vita and / or Generali through the banking branches at the time of notification of the authorization of the Operation to the SanPaolo Group;

b) Life Line I, III and V policies produced by Eurizon Vita through the banking branches at the Bank's Intesa Group at the date of notification of the authorization of the Transaction. " [134]

However, the commitments already envisaged were not sufficient to eliminate the danger of a competitive restriction within the insurance industry, in which respect the parties have undertaken further commitments. In particular, "Banca Intesa, as a company incorporating SanPaolo IMI, is committed to ensuring that:

a) the members of the Supervisory Board of the new bank expressed by Generali, or in any case having direct or indirect personal links with Generali and members of the Management Board of the new bank having direct or indirect personal links with Generali, are not involved either in the discussion or Voting on resolutions that directly concern the commercial strategy of Eurizon and its subsidiaries in the production and / or distribution of life insurance policies of Branches I, III and V;

b) in the performance of their duties, those members do not in any way affect the said trading strategies of such companies. For this purpose, BI - as an incorporating company SPI undertakes to adopt appropriate internal organizational measures to ensure that, in the context of the information provided to the members of the Supervisory Board and the Management Board, no information has been provided

[134] AGCM n. 16249, December 20, 2006

regarding the aforementioned Eurizon's trading strategy and its subsidiaries to the listed members.

In addition, BI - as a company incorporating SPI - undertakes to approve a manual compliance, inter alia, to highlight the illicit nature of any exchange of sensitive information about the aforesaid commercial strategy between its executives and Generali ".[135]

III. The evaluation of the commitments and the final decision of AGCM

In relation to the commitments made by the parties, it must be considered that the Authority has also carried out an evaluation of the same in the final decision.

Specifically, the antitrust point out that the commitments were appropriate to eliminate the risk of a competitive restriction, but that such a risk would have been eliminated would have required the parties' commitments to be met in full and timely manner.

In relation to the traditional banking sector, the Authority has qualified for the transfer of branches as a measure of a structural nature capable of eliminating the concentration of branches belonging to Banca IntesaSanpaolo in the provinces where there would have been excessive agglomeration of the same as a result of fusion. [136]

The criterion used to determine the geographic areas that will need to be affected by this sale and the size of the divestments has been the assessment of the post-merger quota in relation to the collection and use market. [137]

In addition, the provinces where the parties held a share of about 40% but other relevant markets were also considered.[138]

In any case, the disposals have the effect of substantially reducing the market power recognized to the parties following the merger.

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[135]AGCM n. 16249, December 20, 2006

[136]See Commission notice on corrective measures considered appropriate under Regulation (EEC) 4064/89, spec. Point 9: "Structural commitments such as the sale of a branch are in principle preferable ... as it prevents the emergence or strengthening of the dominant position"; cfr. In that regard also the judgment in Trib. I ° grado, cit. On the Gencor case, spec. Point 319

[137] In particular, in cases where the share will be above 35%, the commitments provide for a sale that significantly reduces the contribution due to the merger. In the case of quotas not exceeding 35%, the commitments provide for lower disposals compared to total sterilization but affect the impact of the merger in these provinces.

[138]Some provinces have been disposed of because of the high post-merger share (more than 40%) in mutual funds, GPM-GPF, although the post-merger collection share does not have exceptionally high values. For this reason, this did not involve total sterilization of the fund merger and GPM-GPF.

The AGCM then states that in order to realize the actual effect of the disposals it is necessary that the sale be made to third parties and independent.

In particular, it is considered necessary that "the buyer is a valid competitor who is present or potential, independent and not connected to the parties, who is in possession of financial resources. The above conditions are "minimum requirements of the buyer"[139].

As regards the sale of the counters to Crèdit Agricole, of course the above condition could not be considered compliant, and for this reason the parties have further committed to reducing the personal, structural and commercial ties with Crèdit Agricole.

Another important aspect to consider is that of the insurance industry.

The commitment not to distribute Intesa Vita and Generali Vita I, III and V Branch products attenuates the effect of expanding distribution capacity in downstream markets and also reduces the risk of coordinated effects.

The transfer of a business to a third and independent entity contributes, on the other hand, to increasing the degree of competition within the market.

On the basis of the evidence adduced, the transaction in question would be likely to be prohibited under Article 6 (1) and (2) of Law no. 287/90. The commitments made by the parties, if implemented, are capable of eliminating the adverse effects of competition in the markets identified above. For these reasons, the Authority has decided to authorize the merger operation subject to authorization to comply with the measures previously identified.

e. Post merger situation

Let's look at the situation in the post-merger period.

The merger between Intesa and San Paolo IMI was one of the major national operations, and it has also gained considerable international significance at a time when many M & A operations were carried out not only in the banking sector but also in other sectors.

[139]Commission Communication on Corrective Measures cit. Point 49.

To confirm this statement we can consider the study conducted by the US financial analyst Thomson Financial. This company calculated that between the end of 2005 and the beginning of 2006 the value of mergers and acquisitions in the world was more than $ 2.316 billion.

In this context, characterized by a multitude of world-class M & A operations, Italy has also played its part, especially through the merger between Intesa and SanPaolo IMI. For example, we consider the following table which considers the major mergers announced between the end of 2005 and 2006[140]:

Date of the merger	**Objective**	**Buyer**	**Value in millions of dollars**
05/03/06	BellSouth Corp	AT&T Inc	89.432
21/02/06	Endea SA	E ON AG	57.013
27/01/06	Arcetor SA	Mittal Steel Co NV	43.632
25/02/06	Gaz de France SA	Suez SA	40.971
26/08/06	SanPaolo IMI SpA	Banca Intesa SpA	37.624
12/12/05	Burlington Res. Inc	ConocoPhillips Co	36.472
24/07/06	HCA Inc	Investor Group	32.472
31/10/05	O2 PLC	Telefonica SA	31.798
08/02/06	BAA PLC	Airport Development	30.190
23/04/06	Autostrade SpA	Abertis Infraestruct. SA	28.369

As we can see, the merger between Intesa and SanPaolo occupied the fifth place in this special ranking, demonstrating the importance that the operation took over at that time. However, since the completion of the merger to date, little more than ten years have passed and of course the scenario has changed considerably both externally to the bank born from the merger and internally.

Just to give an example, the dualistic governance model that was adopted following the merger was abandoned in April 2016 in favor of the monistic model.

In any case, the view that "the constitution of Intesa Sanpaolo represents a precise cultural option and a specific vision of things, as well as a set of men and women committed to working with the most precious element (money of savers) to be

[140]From Thomson Financial

converted into business loans. This cultural option consists in the construction of a large banking system that is solidly placed on the domestic market. "[141]

A comparison of the group's situation in 2006, and therefore immediately after the merger and 2016, will be useful to understand the importance of merger in national and international.

Ten years ago the group had 5,489 branches and a market share in Italy of 17%.

Abroad was present in ten countries (Albania, Bosnia, Croatia, Romania, Russia, Serbia, Slovakia, Slovenia, Ukraine, Hungary) with about 1,400 branches.

In Europe, Intesa Sanpaolo was among the top ten credit institutions for capitalization and employment.

Ten years after Intesa Sanpaolo has 5,245 branches, including 4,047 in Italy.

It turns out to be the first Italian banking group with a market share of 16%. Foreign penetration is comparable to that of ten years ago: eleven countries (Albania, Bosnia and Herzegovina, Croatia, Egypt, Russian Federation, Czech Republic, Romania, Serbia, Slovakia, Slovenia, Hungary) with a network of 1,195 branches . In addition, the Corporate and Investment Banking division has operations in Ireland, Brazil and Luxembourg and with those of the so-called hub branches in Dubai, Hong Kong, London and New York.

In the Eurozone, Intesa Sanpaolo is fifth in terms of capitalization.

Despite the current recession in Italy in the first six months of 2016, Intesa Sanpaolo has disbursed 27 billion euros in new medium to long-term loans, of which 24 billion in Italy (+ 24% compared to the first half of 2015). Of this figure, 20 billion went to households and small and medium-sized businesses (+ 32% compared to the first half of 2015); Moreover, more than 10,000 Italian companies have been repurchased by depreciated credit facilities (roughly 40,000 from 2014). At the end of 2015, net operating income amounted to 17.14 billion, up 1.9% compared to 16.82 billion in 2014.

[141]PAOLO BRICCO, Così è nata la prima banca del Paese. Dieci anni fa la fusione tra Intesa e San Paolo, IL SOLE 24 ORE, 12 ottobre 2016.

As to balance sheet aggregates, the total assets at December 31, 2015 were € 676.5 billion (+ 4.5%), loans to customers of € 350 billion and direct deposits of over € 372 billion.

Today, the European banking system is in potentially dramatic conditions. In light of the stress test results published by EBA at the end of July 2016, Intesa San Paolo is the only large bank in Europe that, even in the most adverse scenario, exhibits an excess capital position (71 points) over the expected requirements under ordinary conditions.

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