

Workshop on "*The role of national and international retail alliances in the agricultural and food supply chain*"

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***“Retail alliances: overview of the Italian experience and case study”***

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*The views expressed are personal and do not necessarily reflect those of the AGCM*

# Large-scale distribution and retail alliances in Italy

- Large-scale distribution in Italy is composed by:
  - **Large Distribution** (“*Grande Distribuzione*”): includes large central facilities which are managed by a single undertaking and it directly govern stores.
  - **Organized Distribution** (“*Distribuzione Organizzata*”): retail chains belonging to legally distinct commercial operators but linked by a collaboration relationship voluntary, or consortium, cooperative or of associative type. It’s grouping of small retailers seeking to obtain greater efficiency.
- In order to simplify, it could be said that the Organized Distribution encompasses retail business associates under a single sign/trademark, while in the Large Distribution companies are governed by a single ownership.
- Italian food distribution system is characterized by the strong presence of alliances of food retail chains because of:
  - complexity of the organizational models;
  - the fragmentary nature of the authorization systems;
  - the diversity of distribution formats and the degree of concentration in the sales markets;
  - the research for economies of scale and synergies in negotiation, encouraged the rise of national alliances of food retail chains

# The rise of retail alliances in Italy

- *Definition:* Retail Alliances (“*Centrali d’Acquisto*” or “*Supercentrali*”) are associations of companies or of medium/large consortia of the retail sector with the aim of **increasing** their **bargaining power** towards the producers and suppliers;
- In Retail Alliances arose in Italy at the end of the Eighties in order:
  - to hinder the bargaining power that large producer and processing undertakings had over the too fragmented large-scale distribution sector;
  - to recover efficiencies quickly in periods in which markets were unsteady.
- The purpose of the alliances of food retail chains was to create an **alliance** at the purchasing stage in order to **buy products under the best conditions**.

# The rise of retail alliances

So, the simple story about retail alliances says that when your bargaining power is not sufficient to improve negotiations...

Large  
producer



Small retail chains

# The rise of retail alliances

...you can gather with other chains in retail alliances!



Large  
producers

Retail Alliance of retail chains

Is this always the (real and good) tale about RAs?

# Evolution of national retail alliances in Italy

- In 1996, there were only 5 large retail alliance (*supercentrali*) with an overall market share that did not go beyond 50%;
- In 2005, the *supercentrale* **Centrale Italiana** has been formed by Coop and Sigma, later joined by Despar Italia, Il Gigante e Disco Verde.
- In July 2006, there were 6 centralised purchasing organisations (*Centrale Italiana, Intermedia 90, ESD Italia, Mecades, Centrale Carrefour* and *Sicon* – before *Centrale Conad*) including 21 retail chains, with a market share of **about 90% of the total sales** at national level in the Large Scale Distribution sector;
- Since 2006, there have been various and frequent changes of composition of the alliances (so-called “*alliance waltzes*”), as there was also movement of various undertakings and groups of retail chains from one alliance to another in the large-distribution sector.

# AGCM's 2013 Inquiry in the Agri-Food Sector

**Inquiry IC43:** in-depth inquiry into the large-scale food distribution sector (2013)

The inquiry made use of hearings of the market players (both on the demand and the supply side) and of a survey (about 320 questionnaires).

- Main results:
  1. Large scale distribution market was not highly concentrated at national level (about 90% of market shares belonging to 18 chains, just 2 distributors > 10%)
  2. Difficulties in bargaining relations between product suppliers and large-scale distributors due to imbalance of bargaining power and asymmetries;
  3. The *alliances waltzes*: high mobility favored transparency on commercial conditions, reducing incentives to compete;
  4. Increasing buyer power by retail alliances;
  5. Large use of “trade spending”: suppliers paying back large scale distributors in exchange of promotional, distributional and sales services, which was estimate to account for about 40% of negotiated economic conditions.

# (Some of) AGCM's interventions in the Agri-Food Sector

*Ex art. 101 TFUE:*

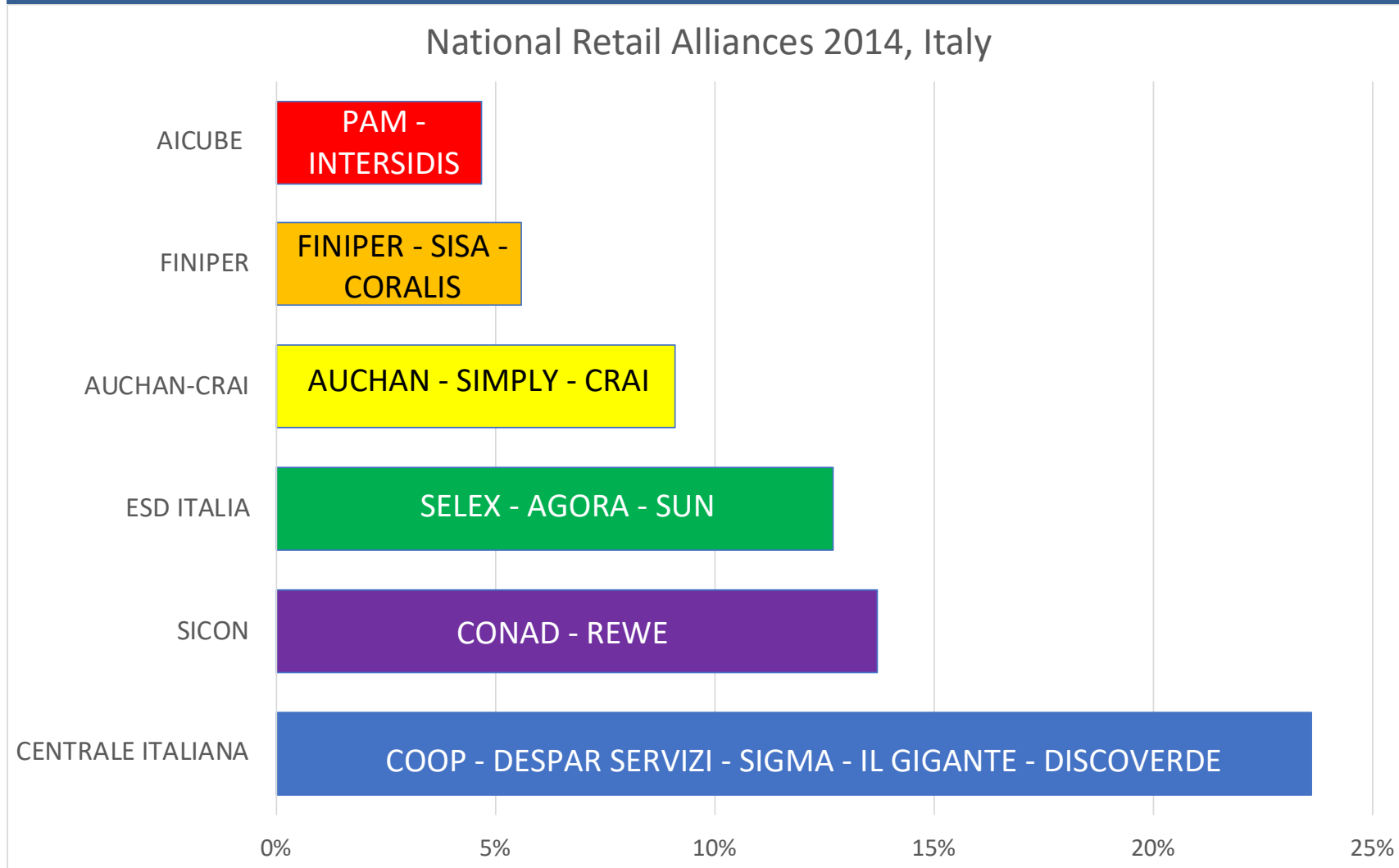
- In **Case I414** – “*Coop Italia-Conad/Italia distribuzione*” (2001): voluntary submission of a time limited agreement between Coop Italia and Conad to set up *Italia Distribuzione*, a joint venture **retail alliance** negotiating contracts with the suppliers for the purchase of goods by individual undertakings which were part of the Coop and Conad systems => Authorization under conditions (ex art. 4 law 287/90);
- In **Case I768** – “*Centrale d’acquisto per la Grande Distribuzione Organizzata*” : illicit agreement between **retail chains** in the creation of a greater Retail Alliance (“*Supercentrale*”), in 2014 (follows);

*Ex art. 102 TFUE:*

- **Case A437** – “*Esselunga/Coop Estense*” (2012) abuse of dominant position by Coop Estense to Esselunga. Coop Estense systematically blocked attempts by Esselunga to open new food retail shops, in areas which were potentially ideal for opening such shops and that were available, also intervening in administrative procedures started by Esselunga in order to obtain the necessary permits.
- A large number of **mergers**, most of them cleared without conditions.



# National retail alliances in Italy, 2014



Source: reference 1

## Case I768 – “Centrale d’acquisto per la Grande Distribuzione Organizzata”

- In December 2013 the AGCM opened a proceeding with respect to a retail alliance, *Centrale Italiana* for alleged violation of article 101 of TFUE:
  - **Centrale Italiana** was a retail alliance (a firm) of competing chains in the large-scale retail sector, created with the main objective of centralizing the contracting function of the purchasing conditions of the participating companies, to obtain cost savings in the goods purchase phase.
- Parties involved: Centrale Italiana, the 4 large-scale distributors **Coop Italia (69%)**, **Despar Servizi (25%)**, **Il Gigante** (by means of its subsidiary Gartico, 5%), **Discoverde (1%)**, plus **Sigma**, that joined the retail alliance through a contract with Coop Italia.
- The purchasing potential of the parties involved in the preliminary investigation stood on average around **23%** of the procurement markets: a figure that indicated a higher market power towards the producers (w.r.t. competing RAs), reinforced by the territorial distribution of the affiliates' sales quotas, far exceeding 40 percent in many local markets (see *later*).

# The retail alliance

- Some characteristics of *Centrale Italiana*:
  1. It's a "retail alliance of retail alliances/retail chains": each affiliate acted as a purchasing center for its own group and for its affiliates, while conditions were negotiated by the retail alliance
  2. Activity: negotiation of framework agreements containing the main purchase conditions applicable to supply contracts, which are instead subsequently stipulated by the individual distribution chains
  3. Main goal: obtaining cost savings in the goods purchase phase through collective bargaining with suppliers.
  4. Participation fees: contributions of the associates in proportion to the respective share capital of participation
  5. Additional fees: in relation to the greater organizational contribution provided by Coopitalia to Centrale Italiana - both in terms of know-how and in terms of structures and human resources - the Associates corresponded to Coopitalia an annual fee, equal to a percentage of the volume of the own turnover subject to negotiation by Centrale Italiana itself.

# The retail alliance

- Through “Framework contracts”, the Centrale Italiana defined main discounts and quantity conditional rebates, both on- and off-invoice, to be awarded either lump sum or as a percentage of the turnover achieved by each affiliate;
  - In particular:
    - a) various types of on-invoice discount;
    - b) year-end discounts, payment conditions discounts (times/methods);
    - c) conditional rebates related to:
      - i. the realization of promotional activities (promotional budget),
      - ii. the maintenance of a specific assortment (assortment discount or family discount),
      - iii. the inclusion of new products,
      - iv. the implementation of co-marketing with supplier companies.
  - Suppliers were offered of a large use of “*trade spending*” (suppliers pay for promotions, distribution, sales services)

In negotiation phase, additional services were contracted. The supplier could decide whether to renounce to the agreed services, losing the right to receive the back-payment on achievement of sales target.

# The retail alliance

- Centrale Italiana had a Contracting Team dealing with the negotiations of Framework agreement, composed by members of Affiliates.
- A two level system negotiation:
  - Framework contracts: Centrale Italiana was contracting suppliers. Affiliates were prohibited from re-contracting the distributors already contracted...
  - ...but affiliates could negotiate terms and conditions related to logistics and on-invoice discount;
- Within the retail alliance there was a **highly sensitive information exchange** with the prohibition of disclosure of confidential information to third parties and the obligation to adopt adequate protection systems for sensitive data and contractual information;
- The information exchanged in the context of the bargaining activity concerned not only costs and conditions of purchase, but also invoices of purchase made and various products sales (*these were some of the essential elements of joint negotiating power*);
- AGCM, in the proceeding opening phase, suspected that the parties had used Centrale Italiana as a **vehicle** in order to achieve further forms of collaboration, such as the search for synergies of a commercial nature and the development strategies of chains.

# The relevant markets

- Within some conditions, retail alliances may constitute the perfect scenario for coordination between retail chain competitors and can facilitate the exchange of information between them and therefore affect markets at upstream and downstream level.

## *Markets definition*

- At **upstream** level:
  - the goods procurement market: where the Parties are present on the demand side, negotiating large amount of products with a greater market power derived by being a unique agent.
  - Geographical extension: National level
- At **downstream** level :
  - different markets in which modern retail distribution is organized (products sale market), where the Parties operate individually on the supply side;
  - Product market defined at local level based on the size of the shops, with different-size shop competing asymmetrically within the same relevant market;
  - Local extension: first (at the time) analysis on Italian provinces, now 20 minutes drive catchment areas (*isochrones*).

# Market power and bilateral agreements

- At **upstream** level: Centrale Italiana + Affiliates combined market share was around 23% in goods procurement market
- At **downstream** level the Parties combined were estimated to have (roughly):
  - Market shares >50% in 11 Italian provinces;
  - Market shares >40% in 20 Italian provinces;
  - Market shares >30% in 6 Italian provinces;
  - In the market of stores greater than 1.500 square meters, *Centrale Italiana* had a market share >40% in 38 provinces (in 12 the market share greater than 70%).
- Within *Centrale Italiana* Parties had also bilateral collaboration agreement to develop synergies in specific Italian Regions:
  - Two affiliates had an industrial partnership to improve the supply in Sicily;
  - An affiliate and a firm controlled by 7 cooperatives of Coop Italia had an agreement on store management in Lazio;
  - exclusive agreement of store management in Sardinia.

# Competition Concerns

- Centrale Italiana was effectively able to facilitate collusion among affiliates, due to the highly sensitive information exchanged on prices, cost, discount and quantity purchased;
- Moreover, the *multi-market* contact at downstream level between affiliates was able to reduce incentives to compete in local markets;
- AGCM considered that the retail alliance agreement was likely to produce anticompetitive effects both on the upstream and downstream markets.
  - The possible restrictive effects on the supply markets (**upstream**) were deriving from the possession of a **strong purchasing power**. Such power could lead to a reduction in the ability to compete of contractually weaker producers, with negative consequences, in the **medium term**, on the variety and quality of the products (depletion of supply).
  - On the local product distribution markets (**downstream**), the agreement in question was deemed likely to produce negative effects in terms of coordination of sales policies or, at least, of strong reduction of incentives for reciprocal competition between member companies and / or members of Centrale Italiana.
- All these circumstances were leading to a violation of art. 101 of TFUE.



- The Parties (individually) submitted remedies in order to remove anticompetitive concerns:
  1. the termination of the Centrale Italiana in 2015 and the obligation to limit the retail alliance to conclude the contracts for 2014;
  2. the interruption of the collaboration agreements between affiliates with all the companies belonging to Centrale Italiana, including Coop Italia;
  3. Limitation to prosecution of the existing collaboration relationships between couples of affiliates with exclusive reference to the activity of purchases negotiation limited to some suppliers (no private label suppliers). This specific collaboration relationship was formalized through the stipulation of negotiation mandates;
- Remedies were tested by other market players;
- The termination of the agreement was particularly beneficial with respect to competition between Coop Italia and Despar, given the overlaps in their downstream activities;
- The dismantlement of Centrale Italiana changed the structure of the retail alliance market.

# General remarks on retail alliances

Some general remarks on retail alliances

On the positive side RAs can bring:

- Efficiency to the distribution chain;
- Improvement of goods variety and assortment;

RAs are generally beneficial to consumers...

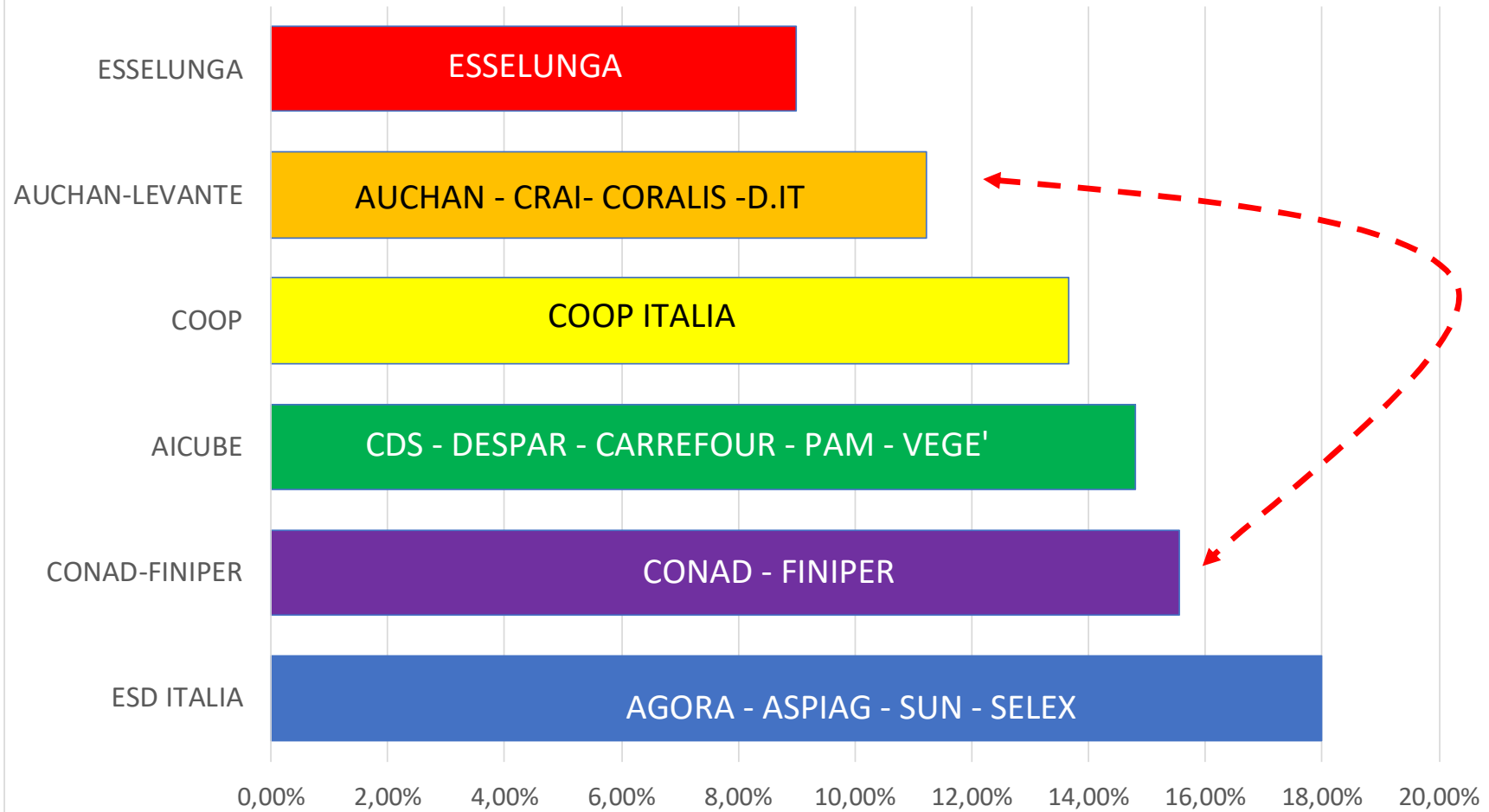
- ... if the efficiency gains are **passed-through** to consumers (prices) and there is a significant improvement in assortment and quality;

Main dangers to be avoided in such alliances:

- Coordination and collusion between retail chains;
- Reduction of incentives to compete;
- Excessive exploitation of bargaining power;
  
- Competition assessment needs to be made both at upstream and downstream level

# The actual scenario

National Retail Alliances 2019, Italy (Nielsen data)



- Source: elaboration on Nielsen data 2019
- Notified acquisition (July 2019) of Auchan by CONAD.

# AGCM's UTP powers in the Agri-Food Sector

- AGCM has been allocated with other powers in the Agri-Food Sector with the introduction of Article 62 of the “*Cresci Italia* Decree” (Decree-Law no. 1 dated 24th January 2012);
- Article 62 banned the adoption of **unfair practices** in the relationships between operators in the food and agriculture sector, in order **to protect suppliers**, and the imposition of *unjustifiably burdensome conditions* in commercial contracts.
- It introduces the concept of “**significant imbalance**” between **bargaining** parties (supplier and buyers): the existence of an asymmetry between the parties, because of their different bargaining power.
- Significant imbalance in bargaining power is not *per se* an assumption of unfair conduct (**it must be proved in assessing specific conducts**).
- Article 62 also introduced specific requirements for contracts which have as their object the sale of agricultural and food products, with the exception of those concluded with final consumer:
  - the written form and an indication of the duration,
  - quantity and characteristics of the product sold,
  - the price and the terms of delivery and payment – in the absence of which the contract should be considered null and void.

# Other powers in the Agri-Food Sector

Some recent investigations ex Art. 62 of “*Cresci Italia Decree*” :

- **AL14:** commercial relations and contractual conditions between pear suppliers and large distribution operators (2016): two retail chain operators abused its position of commercial strength to impose on a fresh fruit and vegetables supplier (the *weak side* of the contract) a series of excessively onerous discounts and economic contributions. These were not proportionate to the relationship between the parties and weigh heavily on the agreed list price. The two Coop companies have been found to put in place other conducts contrary to the principles of transparency, correctness, proportionality and reciprocal services payment of the with reference to the goods supplied.
- **AL15:** commercial relations and contractual conditions between bread producers (*bakeries*) and large distribution operators (2019): complaint by the National Association of Bread-makers vs some retail chains. The conduct consists in imposing to suppliers of fresh bread the obligation to dispose of the entire quantity of in-stores unsold bread products at the end of the day at its own expenses.

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  - Opening of the proceeding: <https://www.agcm.it/media/comunicati-stampa/2013/12/alias-6688>;
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# Thank you

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