



## Overview

### *Market*

**Describe the significance of, and developments in, the automotive industry in the market.**

The Italian car market is among the largest markets in the EU alongside Germany, the UK, Spain and France (they represent the 75 per cent all together).

Based on the estimates contained on a recent study involving the National Automotive Supply Chain Association (ANFIA), the automotive industry and its supply chain in Italy account for 5.6 per cent of the national GDP with its €93 billion overall turnover, involving 5,700 enterprises, many of which are SMEs, and employs approximately 250,000 workers.

After years of struggle due to continuous postponement of car replacement, the Italian automotive market has been growing steadily from 2014 until 2017. As an example, new vehicle registrations in 2017 had an 8 per cent increase compared to the year before, with a total amount of 1,971,475. This positive trend came to a stop in 2018 when registrations decreased to 1,910,025, 3.1 per cent less than the year before. The same decrease was not registered in the broader European market, which remained stable, with a minor variation of minus 0.04 per cent.

Similarly to vehicle registration, 2018 production of vehicles in Italy suffered a 7 per cent decrease - with only 1.06 million units produced.

According to ANFIA, this overall downturn is down to three main reasons:

- the entering into force of new EU emissions standards on 1 September 2018 - which slowed down the sale of new vehicles (see question 4);
- the political instability that characterised the first quarters; and
- a general contraction of the sale of vehicles equipped with diesel engines, as recorded in other EU states.

### *Regulation*

**What is the regulatory framework for manufacture and distribution of automobiles and automobile parts, such as homologation process as well as vehicle registration and insurance requirements?**

In Italy, the applicable rules arise from European legislation.

#### Type approval

Directive 2007/46/EC of 5 September 2007, transposed in Italy by the Minister for Infrastructure and Transport Decree of 28 April 2008, regulates the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles. The Decree contains administrative provisions and general technical requirements for approval of all new vehicles within its scope and of the systems, components and separate

technical units intended for those vehicles, with a view to facilitating their registration, sale and entry into service within the European Union.

According to article 5 of the Decree, the car manufacturer is responsible to the approval authority for all aspects of the approval process (such as the type-approval process) and for the conformity of production of the vehicle. That said, the manufacturer's responsibility depends on whether the manufacturer is involved in the production of all the technical components of the vehicle.

Directive 2007/46/EC has meanwhile been repealed by Regulation (EU) 2018/858 (on approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles), which is already in force and shall apply from 1 September 2020.

Regulation (EC) 715/2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6), also modified by Regulation (EU) 2018/858, provides emissions requirements related to the type-approval process. In addition, some rules for in-service conformity, durability of pollution control devices, on-board diagnostic systems, measurement of fuel consumption and accessibility of vehicle repair and maintenance information are provided.

The manufacturer has an obligation to demonstrate that all vehicles sold, registered or put into service in the European Union are type-approved in compliance with this Regulation. In addition, manufacturers' obligations include meeting the emission limits set out in Annex I of the Regulation.

Regulation (EC) 661/2009 on type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor sets out the technical requirements and the procedures to ensure that new motor vehicles (motor vehicles with at least four wheels used to transport passengers, motor vehicles with at least four wheels intended for goods transport and trailers) meet EU safety and energy efficiency standards. In particular, this regulation establishes requirements for the type approval of the safety of motor vehicles and their trailers, the energy efficiency of motor vehicles (the installation of tyre pressure monitoring systems and gear shift indicators is mandatory) and the safety and energy efficiency of tyres and their levels of noise emissions.

According to article 5 of the Regulation, car manufacturers have to ensure that their vehicles are designed, constructed and assembled in order 'to minimise the risk of injury to vehicle occupants and other road users'.

EC-type approval is granted by the Italian authorities once the concerned vehicles comply with the applicable regulations.

In Italy, the Directorate-General for Motor Vehicles of the Department of Land Transport and Intermodal Transport of the Ministry of Infrastructure and Transport, pursuant to article 75 of the Italian Highway Code, grants type approvals to vehicles that are in compliance with the European regulations mentioned above.

#### Registration requirements

Owners of motor vehicles have an obligation to register their vehicle pursuant to article 75 et seq of the Italian Highway Code.

However, the registration of the vehicle can only succeed if the vehicle has been type-approved by the authorities.

#### Insurance requirements

Directive 2009/103/EC of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability is essentially transposed in the Italian Private Insurance Code. Pursuant to article 122 of the Code, car owners have an obligation to insure their vehicles.

#### *Development, manufacture and supply*

**How do automotive companies operating in your country generally structure their development, manufacture and supply issues? What are the usual contractual arrangements?**

Notwithstanding the minor decrease in the number of motor vehicles registered in 2018, the Italian automotive market remains the fourth-largest market in the European Union, after Germany, the UK, and France, thus confirming its attractiveness to global motor manufacturers. The Italian automotive market is still largely dominated by Italian brands and in particular by Fiat Chrysler Automobiles (FCA): FCA alone takes up to 26 per cent of the market share, with foreign brands Volkswagen and Ford running behind with 8.5 and a 6.78 per cent respectively. In relation to new vehicle registrations, the percentage of foreign manufactured vehicles is higher than in other EU Member States and reaches up to 73.5 per cent, of which 25 per cent coming from France and 23 per cent from Germany (In France and Germany, only the 43 per cent and the 39 per cent respectively are foreign manufactured). According to recent European trends, the development of mechanics and technological components for city and family cars is a result of collaboration agreements with other leading European or US companies. Designs, however, tend to be developed internally as they constitute one of the core commercial assets of car companies.

Differences arise with respect to luxury brands, as they represent one of the leading manufacturing sectors in Italy. In the case of luxury brands, nearly all phases of the development, design, assembly and sale of vehicles are protectively taken care of internally by Italian automotive companies.

As for components and spare parts, there is a tendency in Italy both to outsource, on the one hand, and to directly (or indirectly) manage such secondary business, on the other hand. Leading Italian companies tend to own or indirectly invest in the companies that are in charge of manufacturing and supplying their main mechanical components, body components and spare parts.

Both the transportation of vehicles, by means of car carriers, and that of spare parts is outsourced to professional transporters, which will also take care of customs duties.

The selection of external companies is usually on a non-exclusive basis and takes place by means of invitations to bid, addressed to pre-selected competitors on the market. Often the latter companies tend to enter into subcontracting agreements with authorised local and family-owned entities.

#### *Distribution*

**How are vehicles usually distributed? Are there any special rules for importers, distributors, dealers (including dealer networks) or other distribution partners? How do automotive companies normally resolve restructuring or termination issues with their distribution partners?**

Generally, in Italy vehicles are distributed through selective distribution agreements entered into by local manufacturing companies, or the local representatives of foreign manufacturers, and autonomous Italian entities. The business dimensions of dealers vary mostly depending on the geographical regions they are located in. In the central-northern regions and within the main Italian cities, dealers are usually representative of rather structured and economically sound companies owning more than one dealership. In the south of Italy and in smaller towns,

where there might be a more evident economic depression, dealers tend to be small, family-owned companies.

With respect to contractual relationships with personnel, sales agents are often linked to dealers by means of agency agreements.

Notwithstanding the aforesaid general distribution mechanism, leading Italian automotive brands have recently developed new forms of sale chains by which they set up fully owned large dealerships where manufacturers promote and sell multiple vehicle brands. Clients are therefore offered the chance to see different car types and receive different services (sale, maintenance, repairs, post-sale assistance, etc) within the same vast premises. Following the Italian lead, other German and French-based manufacturers have adopted the same business model in Italy and have recently opened fully owned car dealerships in the main Italian cities, such as Rome and Milan.

With reference to distribution agreements, due to the automotive market crisis experienced in the past decade, the number of mono-brand dealers has largely diminished over the years leaving space to multi-brand dealers, which are increasingly specialising in post-sale assistance services (eg, car registrations, services for disabled people accessing state benefits, maintenance, repairs, contractual warranties, etc) and captive services (such as loans, insurance contracts, leasing and car rentals, etc). To give an idea of dealers' core business in Italy, only a small percentage (less than 15 per cent) is linked to the sale of used vehicles. The remaining percentage is connected to the sale of new vehicles and to post-sale services.

The recent economic developments in the automotive sector have also prompted the expansion of new mobility models in Italy, where the market is proving to be focused on increasing rentals and car-sharing relationships rather than traditional sale schemes. Today the number of rental or sharing vehicles in Italy has almost reached 1 million: on a daily basis, over 790,000 people use long-term rental services, 94,000 individuals choose short-term rentals and over 19,000 share their journey when travelling for work or leisure. Indeed, rentals increased in 2017 by 20 per cent and car-sharing (especially in the north) has increased by a considerable 35 per cent. The increasing trend is therefore moving towards more efficient, luxurious and high-performing cars (with fewer burdens from an insurance, tax and maintenance perspective) available to a wider share of users than before.

Moreover, interestingly, recently the Italian Supreme Administrative Court, by totally reforming the precedent Italian government's position on the matter, ruled in favour of sales of vehicles online through e-commerce channels. Despite this new overture, the practice of selling cars online has still not caught on in Italy, probably owing to practical difficulties and a cultural approach to the purchase of cars, which is still linked to traditional schemes. However, things may evolve in the future.

From a contractual point of view, there is no specific national legislation in Italy on distribution agreements; hence the same are governed by general contract law rules with reference also to sale, supply and franchising agreements.

Under EU legislation (Regulations No. 330/2010 and 461/2010 and the Supplementary Commission Guidelines No. 2010/C 138/05), however, with specific reference to automotive distribution, there are given limitations applicable to these kinds of vertical distribution agreements (ie, those contracts entered into by two or more companies at a different level of the production or distribution chain, and relating to the conditions under which the contracting parties may purchase, sell or resell certain goods or services).

Selective distribution may be based on qualitative or quantitative grounds.

In purely qualitative selective distribution schemes, dealers and repairers are selected on the basis of objective criteria required by the nature of the product or service (eg, technical skills of sales personnel, layout of sales facilities, sales techniques and the type of sales service to be provided). These types of distribution agreements are usually deemed as not having anticompetitive effects, provided that they set legitimate, uniform, non-discriminatory and reasonable objective criteria.

On the other hand, distribution agreements based on quantitative grounds are seen as more restrictive as they set numerical limitations such as a maximum given number of permitted dealers or repairers, or a minimum level of sales.

Under the aforesaid EU legislation, there is a presumption that both qualitative and quantitative selective distribution agreements in the automotive sector do not limit competition if the parties' share of the market does not exceed 30 per cent, provided they do not:

- impose fixed sale prices on dealers;
- impose geographical restrictions (albeit with some exceptions);
- restrict active or passive sales to end users;
- restrict cross-supplies between distributors within the same selective distribution system; or
- restrict the manufacturer's ability to sell components as spare parts to end users or repairers or to others who have not been entrusted by a specific dealer.

With reference to time limits applying to the duration of vehicle selective distribution agreements, prior to the implementation, on 1 June 2013, of Regulation No. 330/2010 (which substituted the previous Regulation No. 1400/2002), such agreements were considered as not restrictive of competition provided they lasted for at least five years (in this case a non-renewal six-month notice period was necessary). On the other hand, in the case of unlimited duration of the distribution agreement, any withdrawal notice had to be of at least two years, unless the manufacturer indemnified the dealer or put in place a major distribution net reorganisation (in the latter two cases, the notice could be reduced to one year).

As soon as the market proved that the aforesaid legislation and time limits were in fact restricting competition rather than incentivising it, EU legislators amended the applicable provisions, by eliminating all references to limits on duration of such agreements.

As a consequence, the current legislation only permits an exclusivity regime for a maximum period of five years from the date the distribution contract is entered into. No automatic renewal provision, which is deemed to extend the duration to over five years, is valid.

With reference to termination provisions, there is no specific time requirement under Italian law for a valid notice to be given, provided it is adequate and reasonable. The adequacy of the term provided within the termination notice very much depends on:

- the reason for termination (eg, breach of obligations by the dealer, justified or unjustified withdrawal by manufacturer, etc);
- the contractual relations between the parties (eg, duration of the contract, exclusivity regime, number of dealerships, participation in the dealer's capital share by the manufacturer, existence of an economic dependency, etc); and
- the reliance by the dealer upon the manufacturer's business strategies or the manufacturer's assurances or guarantees, which proved to be wrong or which induced

the dealer to, as an example, get mortgages or loans, make infrastructural and technological investments, buy new premises, hire new personnel, etc.

In respect to restructuring of dealers, some criticisms arise. Recent trends have proved that most automotive manufacturing companies establish their own banks. On top of rendering financial services to private consumers, automotive banks also financially sustain dealers. This causes problems in Italy with reference to insolvency matters.

Indeed, considering that products, pre-sale and post-sale services, technological infrastructure, platforms, business and sale conditions and strategies are supplied, developed and often imposed by manufacturing companies, it frequently is the case that dealers are subject to economic dependency upon manufacturers. Understandably, distributors also tend to resolve their financial issues by seeking more available financial allowances, and at better interest rates, from the manufacturers' banks. On the other hand, automotive companies have a high interest in ensuring that dealers do not become insolvent. However, they also need to make sure not to contribute to the further indebtedness of the distributor by financing it when it becomes apparent that such distributor will not be able to repay its debt, as this conduct is prosecutable under the Italian legislation.

In order to mitigate the risk of not recovering the purchase price of vehicles and spare parts to be paid by distributors in case of insolvency, manufacturers usually subject the sale of vehicles to a right of retention of title. According to this provision, title of ownership on vehicles will be transferred to dealers only upon full payment of price. This measure, albeit valid from a legal standpoint, often does not prove to be as effective considering that, in the case of receivership proceedings against dealers, the receiver often happens to disregard the retention title, leaving the manufacturer with the burden of starting long and costly legal proceedings to enforce its rights and recover its vehicles.

*Mergers, acquisitions and joint ventures*

**Are there any particularities for M&A or JV transactions that companies should consider when preparing, negotiating or entering into a deal in the automotive industry?**

There are no particularities for M&A or JV transactions for the automotive industry as such. As for other large industrial assets, the main areas to be carefully considered in the due diligence phase and in the preparation and negotiation of the transaction documentation (representations and warranties, special indemnities, price and price adjustment) are as follows:

- Production phase - the business is capital- and labour-intensive and it may have an environmental impact. So, real estate properties and other assets, employment, environment and waste management are areas to cover. Likewise, slow-moving inventory may be an issue. Single sourcing may be another issue to tackle.
- Distribution chain - the dealers' network is part of the value and dealership agreements may require careful analysis (eg, prices, competition restrictions, duration, change of control clauses).
- Finance - given the size of capital expenditure and operating expenses, financing agreements are key to business sustainability. Again, change of control clauses are the common practice.

*Incentives and barriers to entry*

**Are there any incentives for investment in the automotive market? Are there barriers to entry into the market? What impact may new entrants into the market have on incumbents?**

There are no specific tax incentives for investment in the automotive market. However, the following general tax incentives can apply:

- The Patent Box regime, applicable to Italian resident companies and to Italian permanent establishments (PEs) of foreign companies, allows for the non-taxability of a portion of the income resulting from the direct use of certain IP rights or from the grant of those rights to third parties, provided that Italian companies or Italian PEs carry out R&D activities aimed at developing, maintaining and increasing the IP rights' value. The tax benefit consists in the exclusion from the entity's taxable basis of an amount equal to 50 per cent of the income generated from (i) the direct or the indirect use of, or (ii) the transfer of certain IP rights: software protected by copyright, industrial patents, designs, models and know-how. The calculation of the portion of the income that benefits from the favourable tax regime depends on whether the taxpayer exploits the IP rights directly or indirectly.
- Italian subsidiaries and Italian PEs of foreign companies, which incur at least €30,000 of qualifying R&D expenses, will benefit from a tax credit normally equal to 25 per cent (with the exception of specific expenses which are eligible for a 50 per cent rate) of the same R&D expenses exceeding the average R&D expenditures that the subsidiary or the PE incurred in the previous three financial years, up to €10 million.
- The limits to the deduction of costs for income tax purposes related to cars used by companies in carrying on their business activities do not apply where the vehicles are an essential element for the company's business (eg, vehicles owned by a car rental company).

Pursuant to the Italy 2018 Budget Law, it is no longer possible to benefit from the increase of depreciation base of certain means of transportation referred to in article 164, paragraph 1, of the Consolidated Income Tax Legislation (including those used in carrying on a business activity), introduced in Italy by Law No. 208/2015.

The aforementioned benefit (increase of 30 per cent of the depreciable base - 40 per cent for assets purchased up to 2017) applies, however, to certain assets purchased by 30 June 2019, provided that by 31 December 2018 (i) the purchase order has been accepted by the seller and (ii) 20 per cent of the purchase price has been paid. These assets include certain means of transportation such as buses, light commercial vehicles, trucks, road trains, articulated lorries, road tractors, vehicles for specific transport or special use, means of work used in the building industry. Rumours exist that this measure will be extended for a further year, but limitedly to small and medium enterprises - however, since the relevant provisions have not been enacted yet, it is not possible to describe it in detail.

Certain tax advantages are provided by regional laws to investments in vehicles with low CO<sub>2</sub> emissions, such as electric vehicles, hybrid cars, methane powered vehicles and liquefied petroleum gas vehicles (eg, exemption from car tax).

## **Product safety and liability**

### *Safety and environmental*

#### **What are the most relevant automotive-related product compliance safety and environmental regulations, and how are they enforced? Are there specific rules for product recalls?**

At European level, the most relevant automotive-related environmental regulations are: Directive 2007/46/EC (establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles), as subsequently amended and supplemented by Commission Regulations (EU) 2017/2400,

(EU) 2017/1347, (EU) 2017/1151, (EU) 2017/1154, (EU) 2018/1832 and (EU) 2019/318); Regulation (EC) 715/2007 (on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles - Euro 5 and Euro 6 - and on access to vehicle repair and maintenance information), as subsequently amended and supplemented by Commission Regulations (EU) 2017/1151, (EU) 2017/1154) and Regulation (EU) 2018/858; Regulation (EC) No. 443/2009 (setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce carbon dioxide emissions from light-duty vehicles); and Regulation (EU) No. 510/2011 (setting emission performance standards for new light commercial vehicles as part of the integrated approach to reduce carbon dioxide emissions from light-duty vehicles). Regulation (EU) 2018/858 (on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles) will repeal and substitute Directive 2007/46/EC with effect from 1 September 2020.

Against the above background, in Italy, Legislative Decree No. 285/1992 (the Italian Highway Code) and Presidential Decree No. 495/1992 (the Regulations implementing the Italian Highway Code), in turn implemented by a number of ministerial decrees, set forth the technical specifications that must be fulfilled by motor vehicles in order to obtain the type approval by the competent department of the Italian Ministry of Infrastructure and Transport.

Under Ministerial Decree of 28 April 2008 (specifically issued to implement Directive 2007/46/EC):

- the Ministry may refuse to grant the EC type approval if it finds that a vehicle, system, component or separate technical unit, although in compliance with the required prescriptions, presents a serious risk to road safety or seriously harms the environment or public health (article 8.3);
- the Ministry that has granted an EC type approval shall take the necessary measures (including, where needed, revocation of the EC type approval) in order to ensure compliance with the type it has approved if it finds that new vehicles, systems, components or separate technical units provided with a certificate of conformity or bearing an approval mark do not actually comply with the approved EC type (article 30.1); and
- a manufacturer that has obtained an EC type approval is required to recall vehicles already sold, registered or put into service if one or more systems, components or separate technical units fitted to the vehicle, whether or not duly approved in accordance with Directive 2007/46/EC, present a serious risk to road safety, public health or environmental protection, and to immediately inform the competent authority that issued the relevant EC type approval. (article 32.1).

In principle, non-compliance with applicable law requirements is per se punished with administrative sanctions, unless the event constitutes a crime, which is to be assessed on a case-by-case basis depending on the specific factual circumstances.

#### *Product liability and recall*

**Describe the significance of product liability law, and any key issues specifically relevant to the automotive industry. How relevant are class actions or other consumer litigation in product liability, product recall cases, or other contexts relating to the automotive industry?**

Italy has a fairly strong tradition in product liability litigation, particularly since the adoption, in 2005, of Decree No. 206/2005 (the Consumer Code, which incorporates previous Italian laws implementing Directive 85/374/EEC and Directive 2001/95/EC). Product liability law is particularly significant to the automotive industry, given the large number of components (eg,



braking systems, airbags, seat belts, etc) that might in theory be subject to manufacturing or design defects and because of the gravity of the risks in the case of defective parts.

Product liability litigation in the automotive sector can also be particularly complex, in light of the fact that consumers or users generally tend to direct their claims to the manufacturer, which, in turn, might need to involve in the litigation suppliers or manufacturers of the allegedly defective components.

As regards recalls - regulated by articles 104 to 107 of the Consumer Code (implementing the General Product Safety Directive 2001/95/EC) - the automotive industry has long been one of the most affected generally. However, according to the European Rapid Alert System (RAPEX), in 2018, Italy submitted only 5 RAPEX alerts for 'motor vehicles' (three passenger car-related and two motorbike-related). In all five cases measures were taken by the respective manufacturers by recalling the products from end users.

Class actions have been allowed in Italy since 2010 and they have never represented an actual major risk for automotive manufacturers in Italy. Indeed, there were strict conditions for a class action to be considered admissible (and, thus, be decided on the merits) and this has historically discouraged consumers and consumer associations from relying on the class action system. Up until now, based on publicly available information, very few class actions have been filed against motor vehicle manufacturers. By way of example, recently, Altroconsumo - one of the most prominent and active Italian consumer associations - started: (i) a class action against Volkswagen regarding the emission tests, (ii) a class action against Volkswagen for a specific version of one of its passenger cars and (iii) another class action against FCA for a different type of passenger car. All mentioned lawsuits are grounded on the companies having declared different emissions or fuel consumption values than the actual ones (even through the 'defeat device'), which led the plaintiffs to claim damages ensuing unfair practices, which unduly impacted the consumers' choice (see question 10).

Because it did not turn out as an effective dispute resolution mechanism, unlike with other countries, a reform of the Italian class action law (aimed at removing some of the current obstacles) had long been envisaged and discussed. Following years of gestation, the Italian class action reform was approved on 3 April 2019. Its key features include:

- a broader scope of application, thereby class actions can now be brought for the enforcement of 'homogeneous rights' of anyone claiming damage redress caused by businesses;
- a long opting-in window whereby individuals can join the class action even after issuance of the decision on the merits;
- new figures in the class action management (ie, a 'common representative' of the class who will manage the merits and the subsequent enforcement phases on behalf of the individual class members);
- a success fee for the attorneys of the winning party and for the common representative of the class.

The new class action law (Law No. 31 of 12 April 2019) will enter into force on 19 April 2020, 12 months after its publication in the Official Journal. It will apply to illicit conducts occurred after its entry into force; the class action regime currently in force will be applicable to conducts taking place up until then.

Another form of collective action, also modified by this year's reform, is the 'collective action for injunctive relief'. This action is aimed at obtaining a court ruling:

- inhibiting any conduct that is detrimental to the interests of multiple individuals or entities (whereby this action is defined collective);
- ordering appropriate measures to correct or eliminate the harmful effects of the assessed violations; and
- possibly ordering the publication in the media of the injunctive relief.

The court may also establish a sum of money to be paid as a penalty for each day of delay in case of non-compliance.

## **Disputes**

### *Competition enforcement*

#### **What competition and antitrust issues are specific to, or particularly relevant for, the automotive industry? Is follow-on litigation significant in competition cases?**

In the past five years the automotive industry has been subject to inquiries implemented both by the European Commission and by the national competition authorities of the various member states. In particular, the Italian Competition Authority (ICA) has shown an interest in motor vehicle spare parts. The vast majority of the decisions issued by the ICA in this period concerned mergers in which it was decided (without applying any EU or national rule, such as Regulation (EU) No. 461/2010, specific to the motor vehicle industry) not to open an inquiry because of the lack of detrimental effects on competition. These decisions, which could apparently have no relevance at an enforcement level, are instead of high importance with regard to the definition of the relevant markets in the spare parts industry.

According to the ICA, each spare part is, in principle, intended as a separate product market, and each individual market identified as such can be divided between the spare parts that have been produced by car manufacturers (the original equipment suppliers (OESs)) and those that are distributed in the market with brands different from those of the car manufacturers (whose producers constitute the independent after market (IAM)). With regard to the geographical extent of these markets, the ICA has recognised that the OESs' markets are at least as wide as the European Economic Area, while the IAM markets are nationwide.

Furthermore, in case I776 of 10 June 2015 - Mercato della produzione di poliuretano espanso flessibile, the ICA closed an investigation concerning restrictive practices implemented in the market of car seat foam by the main market players. In this case it was ascertained that the parties had significantly exchanged information concerning their productive and commercial activities, therefore violating article 101 of the Treaty on the Functioning of the European Union (TFEU). By contrast, most recently, in case I791 of 30 March 2017 - Mercato del noleggio autoveicoli a lungo termine, the ICA stated that an exchange of sensitive information between automotive companies also active in the long-term vehicle rental sector and the National Association of Industry and Car Rental Automotive Services, did not infringe article 101 of the TFEU, as it was not able to restrict or delete uncertainty about the parties' conduct in the market. Even though the relevant market was highly concentrated, with significant barriers to entry, and the information was detailed, not public, individualised, referred to the past but frequently provided and related to multi-annual contracts, there was no connection (direct or indirect) between the information exchanged and their commercial policy. Another alleged exchange of sensitive information (violation of article 101 of the TFEU) is currently under the ICA's scrutiny. Indeed, the ICA has opened an investigation into nine automotive manufacturers' captive banks as well as industry associations Associazione Italiana Leasing and Associazione Italiana del Credito al Consumo e Immobiliare, on the suspicion they engaged in anticompetitive practices, in particular in an exchange of commercially sensitive information concerning economic and other contractual terms applied to dealers and

consumers who buy cars, through financing provided by the captive banks, from a parent company (I811 - Finanziamenti auto).

It is worth noting that on 27 September 2017 the proceedings were also extended to the parent companies of the captive banks (eg, car manufacturers) and on 20 December 2018, the ICA closed the investigation and sanctioned jointly the captive banks and each respective automotive partner. The decision has been appealed by the alleged cartellists before the Administrative Court of First Instance (TAR Lazio) and TAR Lazio has issued an interim order suspending the effects of the ICA's decision. The definitive decision of TAR Lazio is expected to be taken in 2020.

The described framework suggests that, in recent years, there have not been significant issues with regard to follow-on litigation in the automotive industry. Italy is still waiting to see the effects of the newly approved legislative decree that implements Directive 2014/104/EU. The scheme of the legislative decree, which implements Directive 2014/104/EU on certain rules governing actions for damages under national law for infringements of the competition law provisions of the member states and of the European Union (No. 350), proposed by the former Prime Minister and by the Justice and Economic Development Ministers and approved by the Council of Ministers on 27 October 2016, was approved in its definitive version during the meeting of the Council of Ministers held on 14 January 2017, as proven by the press release available on the website of the Presidency of the Council of Ministers (<https://goo.gl/PQOuB4>). This Legislative Decree, adopted on the basis of the aforementioned Directive to introduce a common regulation for claims for damages caused by infringements of competition law throughout the EU, will probably encourage the implementation of private enforcement litigation in Italy.

Last, for the sake of completeness, it is noted that the Italian parliament approved, in August 2017, the Annual Market and Competition Law, although it does not intervene in this specific sector. No Annual Market and Competition Law has yet been approved for 2018. In 2019, the Italian parliament will approve an Annual Market and Competition Law for 2018.

#### *Dispute resolution mechanisms*

**What kind of disputes have been experienced in the automotive industry, and how are they usually resolved? Are there any quick solutions along the supply chain available?**

Most of the disputes involving the automotive industry in Italy relate to bodily harm, supply chain issues, disputes with dealers' networks (and connected after-sales repair and maintenance services), disputes with consumers over unfair advertising, violation of competition law, IP disputes and disputes over defective components.

Damage claims by consumers can be brought against:

- the manufacturer for product liability pursuant to article 114 of the Consumer Code or under the general provision on tortious liability (article 2043 of the Italian Civil Code); and
- the seller for hidden defects pursuant to article 1494 paragraph 2 of the Italian Civil Code.

Supply chain disputes are also common in Italy, but tend to be resolved via settlements (except when the dispute involves a bankrupt supplier - see question 11). However, there are no specific interim injunctions under Italian law, and these are available only in summary or urgent proceedings and only in case of urgency and prima facie strong grounds for the claim.

In relation to disputes on compensation claims arising from unfair practices, publicly available information tell us that very few class actions have been filed against motor vehicle manufacturers. Recently, Altroconsumo - one of the most prominent and active Italian

consumer associations - started three class actions claiming damages ensuing unfair practices. Specifically, summoned companies were sued either for having installed the 'defeat device' or for their declarations on fuel consumption in relation to a particular version of one of their passenger cars (see question 8).

As regards disputes arising from a breach of competition and IP laws, see questions 9 and 12.

### *Distressed suppliers*

#### **What is the process for dealing with distressed suppliers in the automotive industry?**

First of all, it is worth noting that the general rules of Italian insolvency law also apply to the automotive sector, and no specific provisions exist that allow a different treatment for distressed suppliers in this industry.

As a preliminary remark, the new Italian Insolvency Code was published in the Official Journal (Gazzetta Ufficiale) on 14 February 2019 and will enter into force in August 2020, except for certain provisions that are already effective from March 2019. The new rules provide for measures aimed at preventing insolvency of entities, such as suppliers, through certain early warning tools (ie, internal reporting obligations by the statutory auditors of the company and external reporting obligations by qualified public creditors such as social security agencies, tax agencies and tax collectors), in the presence of certain indicators of a situation of distress. Should the debtor not react promptly by taking the necessary measures, the auditors and the above creditors must inform a newly created non-jurisdictional distress composition body named OCRI established within the Chambers of Commerce. Such reporting is aimed at triggering a 'composition procedure' to enable the distressed company to return to solvency through agreements with the creditors. Failing this (and recurring a state of insolvency), the Chambers of Commerce inform the Public Prosecutor, who can file before the Court the motion for the opening of the judicial liquidation. Appropriate incentives are provided to companies that voluntarily and timely resort to the composition procedure (including reductions in tax, extra time for filing restructuring plans or debt restructuring agreements, some criminal exemptions or reduction of sanctions). Some entities (such as listed companies, banks and large-sized groups) are not obliged to apply the above-mentioned early-warning rules, but will benefit from the rewarding measures if they do.

The above being said, as a general remark, caution should be adopted when dealing with a supplier showing clear signs of distress. Following the recent reforms characterising Italian legislation on creditor arrangements, an irreversibly distressed supplier will inevitably be declared bankrupt; however, if the degree of economic distress is not as serious, typically a troubled supplier will try to avoid bankruptcy liquidation through the new composition procedure described above or by seeking to be admitted to a creditor arrangement scheme by either filing a motion for a composition with creditors or presenting a debt restructuring agreement, both of which set aside any motion for bankruptcy liquidation filed by third-party creditors in the meantime, and entail a claw-back exemption.

These creditor arrangement procedures lead to drafting plans or restructuring agreements between the distressed supplier and its creditors to agree on a way to repay the debt - by liquidating the company's assets and assuring a higher satisfaction for creditors than in a bankruptcy liquidation scenario - and possibly continue the business including all pending contractual relations with creditors and third parties (which shall be allowed to terminate them only for cause), thus avoiding a bankruptcy liquidation scenario where instead pending contractual relations are suspended and resumed only on the bankruptcy receiver's election.

As opposed to bankruptcy liquidation, these procedures can be activated only on the initiative of the distressed supplier, and solely at a later stage will creditors be entitled to intervene and even propose concurrent plans. If the legal requirements for the arrangement schemes are not met, the supplier may ultimately be declared bankrupt.

Aside from creditor arrangements, bankruptcy liquidation is the ultimate procedure to ensure debt recovery for creditors. A bankruptcy declaration is issued by the bankruptcy court on a motion that can be submitted by the distressed supplier, or by any creditor thereof or any interested third party. The former management is divested of its powers and a court-appointed receiver will take control over the bankrupt entity with the aim of liquidating any assets thereof and maximising the outcome of the liquidation to assure the highest satisfaction for creditors, whose claims shall be repaid proportionally based on their ranking.

It is worth noting that bankruptcy liquidation rarely assures adequate percentages of satisfaction, especially for unsecured creditors. Moreover, as said, whenever a supplier is declared bankrupt any pending contractual relations with creditors and third parties are automatically suspended, and will be resumed only if the receiver decides for their continuation - and obtains specific court leave - because they may prove useful for the recovery and liquidation process.

Another important aspect characterising bankruptcy liquidation is that receivers will typically try to maximise incomes for the bankruptcy estate, and they will often do so also by attempting claw-back actions to reverse the effects of payments (or other asset disposals) performed by the distressed supplier in the look-back period prior to the bankruptcy declaration (or prior to the creditor arrangement, if this was unsuccessful and led to bankruptcy). These actions are more likely to succeed if there is evidence of the payee's awareness of the debtor's distress when the payment was made.

The way the automotive industry should deal with suppliers that face distress indicia must be determined on a case-by-case basis, depending on the factual circumstances at hand. In any event, a cautious approach should always be adopted, especially in relation to changing the contractual terms and conditions, by seeking authoritative approval thereof in a creditor arrangement context, and by avoiding changes in a bankruptcy liquidation scenario to avoid a significant risk of claw-back.

#### *Intellectual property disputes*

**Are intellectual property disputes significant in the automotive industry? If so, how effectively is industrial intellectual property protected? Are intellectual property disputes easily resolved?**

A significant portion of intellectual property disputes in Italy involve business operators in the automotive industry, particularly in relation to spare parts covered by trademark or design rights. Italian courts have recently addressed in a number of cases the issue whether the overall shape of automotive products (eg, motorcycles or even engines) may be protected both as a registered or unregistered trademark and as a copyright work, under specific circumstances where the products in question may be regarded as design icons. Patents and utility models are also at stake in many automotive disputes, concerning for instance braking systems, engine features or electronic functionalities of vehicles.

The number of patent disputes in this field is expected to escalate in the near future, as a consequence of the upcoming innovations relating to self-driving cars and connected cars technologies. In fact, an increasing number of patent applications concerning said technologies are being filed with the European Patent Office and further complexity may derive from the circumstance that some of the resulting patents are Standard Essential Patents.

Most provisions covering intellectual property rights in Italy are embodied in the Italian Intellectual Property Code and in the Copyright Act, as amended from time to time to implement international agreements and, most importantly, EU directives. EU regulations, such as those on the European Union trademark and on Community designs, are directly enforceable in Italy.

Specialised courts dealing with intellectual and industrial property matters were established in Italy in 2003 and reformed in 2012, when they became subsections of the newly introduced commercial courts (tribunali delle imprese). The commercial courts are also European Union trademarks and Community designs courts.

Generally speaking, proceedings before the commercial courts follow the procedural rules of ordinary civil proceedings, including the possibility to institute preliminary proceedings before initiating a full-blown case on the merits, or in the context of a pending case on the merits. The Intellectual Property Code, however, provides for some specific evidentiary, precautionary and enforcement measures, also according to Directive 2004/48/EC on the enforcement of intellectual property rights and to Directive (EU) 2016/943 on the protection of trade secrets, as implemented in Italy by Legislative Decree No. 63 of 11 May 2018, which came into force on 22 June 2018.

Preliminary proceedings are a cost- and time-effective solution for IP rightholders to tackle infringements. Indeed, a preliminary injunction may be obtained in around six months, whereas it takes no less than two to three years to obtain a first-instance decision on the merits.

Italian courts would grant a preliminary injunction when the petitioner's claims appear prima facie grounded (*fumus boni iuris*) as regards both validity of the relevant IP rights and infringement thereof, and the claimant substantiates that he or she would suffer irreparable harm until the outcome of ordinary proceedings on the merits (urgency requirement or *periculum in mora*). In this regard, Italian courts usually find the urgency requirement to be met even if a few months (up to 10 months) have passed from the moment when the right holder discovered the allegedly infringing activity. Other forms of preliminary relief available to IP rightholders in Italy are seizure (to prevent disposal of the infringing goods) and, most importantly, preliminary search orders to secure evidence of the infringement, which is usually requested in the first place and granted with an *ex parte* order. A preliminary injunction is then granted at a second stage, following a discussion hearing, subject to the relevant requirements (*prima facie* case and urgency) and based on the evidence collected during the search. If the preliminary injunction is granted, additional measures such as penalties and publication of the decision are available and commonly ordered by Italian courts.

Most intellectual property disputes are resolved based on the outcome of preliminary proceedings, often by means of settlement agreements. If this is not the case, and some material damages are claimed by the right holder, ordinary proceedings on the merits follow their regular path up to a first-instance decision, which may then be appealed before the Court of Appeals and ultimately challenged before the Supreme Court on purely legal issues.

According to the Italian Intellectual Property Code, damages are based primarily on the rightholder's lost profits, taking into account all the relevant circumstances. Lost profits cannot be lower than the reasonable royalty corresponding either to the amount the rightholder would have received if a normal licence agreement had been entered into or to a typical licence fee in the industry. In any event, the right holder may claim the disgorgement of the infringer's profits, when the amount is higher than the compensatory damages that would be awarded or as an alternative to the rightholder's lost profits.

The court may appoint a technical expert to assess damages. Where an analysis of the defendant's business is necessary the court may issue a search order or may order the disclosure of the defendant's accounting records.

Alternative dispute resolution methods such as mediation and assisted negotiations are available and increasingly used in Italy, although they are not mandatory in intellectual property disputes.

## **Employment issues**

### *Trade unions and work councils*

#### **Are there specific employment issues that automotive companies should be aware of, such as with trade unions and works councils?**

During 2016, the automotive sector registered a small recovery in terms of production and profitability compared with previous years; however, this recovery has not been sufficient to compensate for bad results achieved in past years. As a consequence, also in recent years, companies operating in the sector continued to use welfare measures and reduce their workforces. In parallel, in 2016 a, the Manufacturing Employers' Association and the unions renewed the National Collective Labour Agreement for the next four years. The main amendments concerned the welfare measures, training, salary increases, reinforcement of the complementary pension, and health coverage.

### **New technologies**

#### *Legal developments*

#### **What are the most important legal developments relating to automotive technological and mobility advances?**

From a mobility standpoint, one of the main concerns in Italy at the moment is constituted by the necessity to implement all relevant measures to achieve 'technological neutrality' aimed at reducing emissions. In terms of new vehicle registrations in Italy in 2018, hybrid and plug-in electric vehicles increased their combined market share of approximately 4.8 per cent. To boost the sale of this category of vehicles, the Italian legislator introduced, with Law No. 145 of 30 December 2018, a tax bonus or malus regime that applies upon purchase of a new vehicle. Low-emissions vehicles will benefit from a monetary bonus, while high-emission vehicles are subject to tax penalties ranging from €1,100 to €2,500.

EU Directive No. 2014/94/EU on the deployment of alternative fuels infrastructure, implemented in Italy by means of Legislative Decree No. 257 of 16 December 2016, sets out, for the first time, a common framework of measures aimed at establishing alternative fuel infrastructure, including the minimum requirements for the construction of charging points for, among others, electric and hydrogen vehicles, with the purpose of mitigating the environmental impact in transportation all around Europe. The cooperation at a European level should hopefully lead to satisfactory results in the short term. Indeed, with respect to technological advances, all European countries have recently been focusing their energies and investments on autonomous cars, also known as self-driving cars or driverless cars. Such new systems are aimed at enabling cars to drive around with no human contribution needed. By means of sensors, radars, navigators and highly technological computers, autonomous cars are able to identify surroundings and assess whether there are any obstacles or external phenomena that may impact on the driving. Such innovation is deemed as extremely useful to lower the risks of collisions and injuries, reduce insurance costs, lower fuel consumption, ease traffic, facilitate the elderly and disabled people, help avoid intoxicated driving, etc.

Having achieved great technological results, the main concern appears now to be of a legal and social nature. Mainly there is a general concern and resistance among the public with reference to safety issues (relating both to system defaults and to possible hacker attacks).

From a legal standpoint, great concerns have arisen over potential liability for defects, especially since cars will remain under the control of owners who may not diligently carry out all the relevant checks and maintenance.

Moreover, it appears obvious that corrective measures will have to be set forth in Italy, from a legislative point of view, to enable the driving of autonomous cars. By means of an example, article 46 of the Italian Highway Code, implemented through Legislative Decree No. 285 of 30 April 1992, defines as 'vehicles' all cars of any type that circulate on roads and are driven by a human being.

The first steps towards legal innovation have already been introduced by Directive No. 2010/40/EU for the establishment of a framework for the deployment of intelligent transport systems (ITS) in the field of road transport and for interfaces with other modes of transport, implemented in Italy by Law Decree No. 179 of 18 October 2012, transposed by Law No. 221 of 17 December 2012. Such legislation, as subsequently integrated by the Decree issued on 1 February 2013 by the Ministry of Infrastructure and Transport, finally resolves one of the main juridical uncertainties: with reference to liability relating to systems and ITS services, it is stated that the applicable regulation will be the same for product liability under the Italian 2005 Consumer Code.

In addition, the Ministry of Infrastructure and Transport has passed the Smart Road Decree, with the aim of closing the gap between Italy and other EU countries, as well as the US, where driverless car field testing programmes have been under way since 2010. According to the Smart Road Decree, the Ministry of Infrastructure and Transport can authorise driverless car field testing on specific stretches of roads, subject to specific requirements and surveillance during the field testing, aimed at ensuring that the testing programmes are carried out in conditions of utmost safety. Request for ministerial authorisation is available to various entities, including university research institutes, private and public research entities, manufacturers of vehicles equipped with automated driving technologies, etc.

Furthermore, two bills of law have recently been presented before the Italian parliament (Law Proposal No. 859 and No. 930), with the aim of drafting statutes providing the ground rules on the shared use of private vehicles in the form of either car sharing or car-pooling. The aim is to foster sharing-economy activities carried out by non-professional individuals through third parties' platforms, to ultimately reduce the number of vehicles circulating in the cities and therefore their economic and environmental impact. The two bills, which have been presented jointly and should be discussed together, have only received a high-level introduction before the competent commission so far and no in-depth parliamentary discussions have begun on the drafts. At the moment, commercial car-sharing activities offered by professional businesses via mobile application are regulated at local level - mainly via public calls of interests published by the competent municipalities looking to offer sharing mobility services.

## **Update and trends**

### *Recent developments*

#### **Are there any emerging trends or hot topics in automotive regulation in your jurisdiction?**

The EU Commission Delegated Act on Intelligent Transport Systems includes:

- regarding the future of connected and autonomous vehicles in particular whether 5G or Wi-Fi should be the preferred communications technology for connected and autonomous vehicles;
- EU Regulation on safer roads and new mandatory equipment for vehicles: the new rules will require almost 30 different features or systems to be introduced in new vehicles in order to improve safety. The majority of technologies will become obligatory in May 2022 for new models of vehicles and from May 2024 for existing models;
- EU Regulation on e-commerce: proposal for updating the regulation on the respect for private life and the protection of personal data in electronic communications relevant for communications between connected and autonomous vehicles and users; and
- Ministerial Decrees on black boxes to be used in vehicles: the Ministry for the Economic Development and the Ministry for Transport opened a public call on the matter in July 2018.



