AS453 - CONSIDERATIONS AND PROPOSALS FOR REGULATING MARKET COMPETITION AND SUPPORTING ECONOMIC GROWTH

Rome, 11 June 2008

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The Competition Authority has produced this technical analysis for submission to the policy-making authorities, drawing on its experience of monitoring the economic system in terms of competition dynamics.
It is the responsibility of Parliament and the Government, each exercising their institutional responsibilities, to set the priorities and identify the initiatives they consider most appropriate.
These considerations and the actions proposed below appear in a general section, and then in analytical sections, ordered by individual sectors.

Introduction

It is commonly agreed that Italy's sluggish economic growth is due to low productivity growth. This has now become a medium/long-term cycle, and there is no time to be lost if it is to be reversed. But this can only come about if the supply of goods and services in both the public and the private sectors can be rapidly modernised.
In the light of its experience, particularly in the past few years, this Authority has repeatedly advocated the role that a properly functioning market, and the resultant coherent regulation of competition, can have in achieving increased productivity. This report also refers to many of the reports that the Authority has submitted to policymakers over the years, pursuant to the Competition Act, Law No. 287/90.
To enable effective competition to deploy its full effects, general liberalisation is needed, coupled with the rigorous enforcement of competition law and equally incisive consumer protection measures. Consumer protection is directly designed to sustain effective competition to the extent that they strengthen the stimuli to select companies which are effectively more "virtuous", fostering a greater mobility of the demand. Consumer protection is therefore a complementary instrument to competition enforcement, and constitutes an essential factor for developing sustained competition pressure.

Competition in networked public services: the infrastructure deficit

Energy, transport and telecommunications are essential inputs for virtually all our economic activities. The efficiency and quality of these services and utilities therefore have a crucial impact on the competitiveness and the prospects for the development of the national economy as a whole.
The Authority has frequently pointed out that our production system is seriously constrained by the costs and disadvantages caused by higher prices and the inferior quality and efficiency of essential services and resources, such as electricity, gas and transport, as a direct consequence of Italy's overall inadequate infrastructure base.
The inadequacy of our infrastructure can be put down to a variety of concomitant factors. Historically, public management of companies with a statutory monopoly status gave priority to pinning down tariffs rather than to implementing strategies to make the most of the external economies associated with upgrading networks and infrastructure. Later liberalisations, mainly driven by the European Union, have often not been preceded or accompanied by effective measures to reorganise the structure of production and reform the regulatory framework. Furthermore, the main purpose of aligning Italian legislation to the EU liberalisation directives has been to ensure minimum compliance with the obligations on the member states rather than to seize the opportunities for competition and development which those initiatives are designed to promote.
This has been compounded by the enduring difficulties encountered when public decisions have to be made when choosing and funding measures considered to be priorities for developing the national economy, and which prevent them from being completed within reasonable deadlines and consistently with the initial estimated expenditure commitments.
Both past and more recent experience have shown that the fragmentation (and often

confused allocation) of powers and responsibilities between different tiers of government, combined with the manifest (and sometimes prejudicial) opposition of the local communities have led, across time, to a worrying inability of the public institutions to define and implement basic infrastructure adjustment and modernisation projects and programmes of general national interest, indispensable for ensuring the country's economic and social development.

Government and parliament are both vested with the essential task of laying down an unambiguous and consistent framework of priorities and objectives to be used for identifying and adopting the initiatives needed to guarantee more efficient institutional pathways for siting infrastructure investment of relevance to the whole country. Unless the Constitution is amended, the search for agreed solutions at different tiers of government needlessly drags out the procedures, making them excessively burdensome and incompatible with the need to make up for the delays accumulated in the past. Central government must therefore be empowered to act as the decision-maker of last resort regarding the implementation of infrastructure facilities in the overall national interest.

Public ownership – direct or indirect – of most of the infrastructure networks leaves the central government with considerable margins for policy-making and for promoting investment in such strategic sectors as energy and rail transport, where market mechanisms have failed to produce satisfactory results in terms of quality or magnitude to meet the priorities dictated by the development requirements of the economic system. The numerous shortcomings that have come to light demonstrate the need for a more decisive use of these instruments for intervention, while being wholly consistent with the latest community policies on State aids and the commitments undertaken in the framework of the Lisbon Strategy.

Furthermore, in such a crucial sectors as electricity and natural gas, the interdependent operation of the national systems, the European Union's dependency on imports and the concentration of the international supply of primary energy sources, are evidence of the increasingly supranational dimension of the problems to be resolved, and the need for a Community approach to be taken to the search for adequate solutions. It is against this background that we have to view the European Commission's recent legislative proposals to more decisively and effectively integrate the national markets, particularly by separating the transport networks from production and distribution, creating closer cooperation between the national regulatory authorities and establishing the European network of transport network managers, to guarantee closer and more effective coordination of cross-border investment.

However, the compromise solution that is currently under discussion, in comparison with the original plan for the total separation of ownership, based on the functional separation of transport network management appears to be introducing elements of greater complexity in the way the system will operate, making it necessary for particularly invasive regulation of infrastructure investment and development programmes.

The Commission's proposals might be usefully enhanced by introducing further and more advanced forms of integration, such as by incorporating a European gas transport networks company, entrusted with managing the infrastructure facilities provided by the individual national operators, in the interests of the Community. Totally transparent governance measures will guarantee the neutrality of the management, while the

dimensions of the company itself will considerably reduce the risk of its acquisition by the suppliers.
The existence of a significant level of unmet demand also indicates the advisability of undertaking a rapid review of the procedures for activating new natural gas storage sites in order to foster the development of a better organised structure of supply in the segment of end-customer sales, expanding the opportunities for the market entry of companies that are effectively independent of the dominant operator.
For similar reasons, an impetus should also be given to enable more rapid progress to be made with plans for new NLG terminals, particularly in view of the prospects for increased imports over the coming years and the allied benefits deriving from greater diversification of sources of supply, also in geographical terms.
Lastly, with regard to rail transport, appropriate measures must be adopted to separate ownership in order to set about resolving the problems raised by the many different roles and functions that are currently being performed by the Ferrovie dello Stato Group, which is the service provider, the network manager and, in some respects, the market regulator as well. At the same time, the public service areas must also be more clearly identified, quantifying their charges and defining more transparent and efficient criteria for allocating and covering those charges. In particular, it would be appropriate to make the most of competitive procedures for allocating routes, in order to minimise the amount of public subsidies required for unprofitable routes while, in other cases, guaranteeing that at least part of the revenues are used to develop high-speed links and to finance the necessary logistical infrastructure investments for the development of intra-modality in the freight transport sector.

The liberalisation of postal services

The Authority recently[1] drew attention to a number of competition problems in the mail delivery service, primarily connected with the high level of economic dependence on Poste Italiane of its main present and potential competitors. This situation is mainly due to the regulatory environment. Legislation transposing the first postal services liberalisation directive gave Poste Italiane the exclusive right to provide the postal service that had formerly been managed by local franchisees.
The Authority has imposed binding commitments to create a sufficiently large market area to keep Poste Italiane's competitors operational, while awaiting legislation to liberalise potentially competitive operations. The Ministry of Communications, also prompted by the Authority, has declared its intention to review the scope and the substance of the universal postal service consistently with European legislation and with the developments in the industry, to redefine the area of exclusive control while reducing the costs of the universal service, amending tax legislation favouring Poste Italiane by providing exemption from VAT on all postal services, even those outside the area of the universal service, with facilities for the mailing of newspapers, periodicals and books. It is crucial that these intentions should be fully and rapidly followed up in practice.

Liberalisation and privatisation of local public services

[1] Cf A388, measure of 27 February 2008, Bulletin 8/2008.

For most of the local public services (transport, waste collection and disposal, and gas, electricity and water distribution) the former municipal corporations have now been converted into joint stock companies in order to introduce minimum budgetary discipline and improve the efficiency of public asset management. However, this process is not been followed by any clear separation of ownership between the new companies and the public authorities.

As the Authority has repeatedly pointed out, there are still powerful elements of ambiguity in the present situation, all closely correlated. The local publicly-owned corporation, while formally incorporated under private law, continues to be the predominant model for managing services. Even where services were liberalised a long time ago, the use of competitive tenders for allocating services is still only marginally practised overall, sometimes (as in public transport and the distribution of natural gas) because of repeated extensions under national legislation of the transition period initially provided for liberalisation. Lastly, the lack of effective regulations has often led to local governments taking over the roles of the franchisor, the regulator and the service provider.

The actual opening up of the markets has been minimal, and by far the most common system used is to directly award the service contracts. In the field of local public transport – but this largely applies to other services as well – very few parties have actually taken part in the few tenders have been held (less than 20% of the total awards) and in 90% of the cases the outcome has been confirmation of the previous service provider, either alone or in a joint-venture with other companies. Moreover, there is still very little penetration by foreign companies, and in most cases this has only been done through the acquisition of Italian companies rather than by direct participation in the tenders. On the whole, then, liberalisation has so far failed to meet up with expectations.

One absolutely paramount matter in this regard has been the removal of conflicts of roles resulting from the widespread proprietorship links existing between a public authority (regional or local government) and the successful tenderers in order to guarantee greater transparency and impartiality in the service provider selection procedures and encourage fair competition between companies operating in fully liberalised industries (selling gas and electric power to end customers).

As experience has amply shown, public ownership does not remove the difficulties connected with the imbalances in terms of information that characterise the relationship between the regulator and the regulated companies, but conversely generate an untoward mingling of commercial functions and regulatory powers, essentially shielding publicly-owned corporations from both market discipline and effective regulatory control.

By resolving the conflict of roles, the privatisation of companies providing local public services can therefore play a decisive part in guaranteeing a more efficient, impartial and transparent exercise of regulatory powers and greater fairness between the various service providers in relation to the conditions of market access – with particular reference to participating in the procedures for the awarding of services – and the exercise of the liberalised activities open to competition. An important part could be played in the privatisation of local public services by foundations originally created by the banks.

The adoption or retention of laws or regulations affecting the structure of the market are not always justified by any real and proven impossibility of market mechanisms to

function properly, or the inability of the market mechanisms to produce socially satisfactory outcomes. In some sectors, such as regional road transport, the need for the generalised recourse to exclusive franchises does not seem to be able to bring about effective economies of scale or scope to suggest that the service is a natural monopoly in relation to all the individual routes. The decision to operate the service as a monopoly can therefore be overcome, at least for the most remunerative routes, where the size of the market makes it possible to establish a better-articulated structure of supply and a plurality of competing operators.

In other cases (example waste collection or local road transport)[2] production conditions make it possible to test forms of effective market competition, with reasonable probabilities of success, in relation to the procedures for awarding the service. The absence of substantial and recoverable investment would seem to make it possible to award services for comparatively short periods of time, which makes it appropriate to organise competitive but not excessively complex selection procedures, based on the prior and unambiguous identification of the service put out to tender (in terms of territorial coverage, technical characteristics, and quantity and quality standards). The management of the service could therefore be entrusted to the operator offering the lowest tariffs to users, thereby obviating the need for regulation (transport), or guaranteeing to minimise costs to the local authorities (waste collection); in both these cases adjudication should all events be based on absolutely certain, objective, transparent and non-discriminatory criteria.

In the case of networked public services (local rail transport, water, electricity and gas distribution) the magnitude of non-recoverable investment which is generally needed to guarantee the maintenance, adjustment and upgrading of the infrastructure, makes it virtually inevitable that the services will be awarded for a relatively long periods of time, such that when setting out the tender terms and conditions it is not possible to have a prior and complete set of rules governing the services throughout the whole period of the franchise. The pursuit of quality, efficiency and cost-effectiveness objectives is therefore basically left to the quality of regulation and in particular its ability to prevent opportunistic conduct on the part of the franchisee and to preserve sufficient incentives for investment and innovation in the service and to improve it for the benefit of the users.

In these sectors, too, the privatisation of local companies, without prejudice to retaining ownership of the infrastructure, is in the hands of the local authority, not only removes conflict of roles that have already been mentioned, but can also have important effects in terms of enhancing the incentives to minimise costs and improve the efficiency of production. Furthermore, when competition for the ownership of the companies is not artificially hampered by private conduct or by unjustifiably restrictive regulations, exposure to the risk of acquisition can increase the effectiveness of the market mechanisms for controlling the performance of the companies operating under an exclusive franchise, providing the regulator with useful information regarding the actual profitability of the service and the adequacy of the tariffs.

From this point of view it would also be equally desirable to introduce a system of total separation in terms of ownership between the monopolies (typically local network management) and the services in competition (example rail transport or the sale of electricity and gas) in order to simplify the costs structure of the regulated companies and

[2] Regional transport on unprofitable routes.

eliminate the incentives to the network manager to adopt exclusive conduct and strategies designed to prevent competition or to distort the proper functioning of competition to their own advantage in vertically-linked segments of activity. In the light of recent and likely future joint ventures of former municipal corporations, a system of ownership separation would also certainly play a major part in reducing the risk of undue distortions on competitive markets, guaranteeing neutrality in the management of the infrastructure and focusing sectoral regulation measures aimed at improving the efficiency, quality and the dimensions of the local networks for the benefit of the intermediate and final users.
At the same time, the particular complexity of these sectors makes it advisable, for various reasons, for the regulatory and control functions to be vested in nationwide administrative bodies in possession of the necessary technical and economic powers. Firstly to guarantee the efficient and impartial exercise of regulatory powers by ensuring that the regulator is truly impartial and independent of the regulated companies in the franchise relationship (local government and the company). Secondly, to guarantee adequate standards of regulatory efficiency and quality throughout the whole of the country, avoiding the proliferation of unjustifiably differentiated regimes and practices which, partly because of the resources and technical power is distributed variously between individual local administrations, would contribute towards perpetuating the compartmentalisation of the markets which we see existing today. Lastly, but no less importantly, in order to enable the regulator to have available a wider set of data and information from independent sources and thereby encourage the introduction of forms of regulation encouraging network management activities based on a comparison of the successes achieved in different local spheres ('yardstick competition').
The solution suggested here has already been implemented for some time in the case of certain local public services such as electricity and gas supply, whose regulation has been entrusted to the national authority for the sector. Drawing on positive past experience it is reasonable to suppose that this solution can be validly extended to take in other local services (rail transport and water distribution) perhaps incorporating the resources and the powers of existing regulatory authorities.

The liberalisation of services

Service industries, which taken together contribute about 70% to GDP, typically suffer from major and widespread statutory and regulatory obstacles to private enterprise and competition which hamper their growth, giving rise to inefficiencies and major distortions that then percolate throughout the whole of the economic system. The very magnitude of this phenomenon, which is common to numerous EU countries, has revealed the appropriateness of adopting specific measures at the EU level which took the particular form of directive 2006/123/EC of the European Parliament and the Council of 12 December 2006, relating to services in the internal market. This directive, which was intended to create a uniform regulatory environment throughout the Community to foster the development of more intense competition in this sector, requires individual member states to carefully revise their respective regulatory systems in order to identify and remove any statutory obstacles that cannot be justified by interests deserving of protection, or at all events disproportionate for their purpose. Apart from the careful implementation of the directive, the reform of the regulation that this proposes,

consistently with the criteria and the methods it identifies, constitutes a model that it would be appropriate to extend to the largest possible number of activities, even beyond its own field of implementation. This is therefore an activity that should be scrupulously and effectively pursued involving every tier of government.
The reforms that have been initiated nationwide in the course of the past few years, often hampered by subsequent regional legislation, should at all events be supported and extended. The following paragraphs examine the most important critical factors and proposals for intervention in the most important sectors.

The distribution trades

In structural terms the distribution trades are still inefficient and undersized in comparison with other European countries, mainly because of the regulatory system that is often hostile to large-scale commercial facilities and to the start-up of new outlets in general. There is a twofold cost to be paid for such distortions and impediments to competition: on the one hand, the heavy costs caused by the inefficiency of the distribution structure are passed on to the final consumers in terms of poorer quality and less diversified services and comparatively higher prices than those of other European countries, with negative effects which are all the greater because of the differential income levels. On the other hand, the absence of a national industry capable of penetrating foreign markets deprives Italian products of a major source of export support which other countries have for their products, disseminated through large international chains.
The results of the reforms that have been started so far, are already broadly unsatisfactory, show that there is still a long way to go and that difficulties and objections are hampering attempts to bring about real liberalisation and the modernisation of Italy's distribution structure. Further and more incisive action is now needed.
In particular, all the obstacles to establishing large-scale distribution facilities must be removed from national, and above all regional, legislation and from administrative practices, and urban planning and environmental protection instruments must be used for their proper purposes. It would be useful in this connection to introduce an explicit provision into national legislation, pursuant to article 117(e) of the Italian Constitution, enshrining the principle requiring urban and environmental planning legislation or administrative regulations to respect the criterion of proportionality when imposing constraints on free enterprise.
It is also necessary to guarantee certainty regarding the timing of issuing licences and to broaden the scope of the implied assent ("silence=consent") procedures as suggested previously.
Existing prohibitions on joint wholesale and retail selling, existing constraints under national and regional legislation regarding the determination of selling prices (for example the regulations governing underselling and special sales promotions) and regulations governing retailing (for example, regulating minimum and maximum opening times, and opening rotas) should also be abolished because there is no justification for them in terms of efficiency.

Service stations

As this Authority has advocated several times in the past, the system governing vehicle fuel distribution must be liberalised. National legislation still provides that when the Regional governments set the criteria for issuing licences for new service stations they must set quotas based on presumed customer numbers and minimum distances, require a minimum area or statutory quality characteristics (for example the offering of non-oil services) for new sales outlets. Implementing these provisions, the Regional governments' measures have differed widely. In some cases they have even retained the obligation, which was only a transitional measure in national law, to close down a given number of existing service stations as a condition for opening new ones. Current legislation also lays down rigid (maximum and minimum) business hours and rotas.
Moreover, the control exercised by vertically integrated oil companies over most of the logistical infrastructure facilities and refining capacity does little to encourage moving towards a better-articulated and competitive supply structure, conditioning the possibilities for such parties as chain retailers, whose development could trigger a significant process of change and modernisation in the industry, from adopting autonomous supply policies.
The rigidities and inefficiencies in the distribution structure therefore affect the final cost of fuel, with repercussions on the whole economic system. The government should therefore rapidly approve nationwide reforms enacting binding provisions for regional legislation, abolishing any existing exceptions to the prohibition on imposing minimum distances between pharmacies, and any obligations (such as minimum surface areas, quality standards, etc) which if only applied to new service stations would place unjustifiably differentiated burdens on new market entrants from those to which existing fuel distributors operating on the market are already subject. Maximum working hours should also be liberalised.
At the same time, provisions should also be enacted obliging the proprietors of logistical infrastructure facilities to set aside a proportion of their overall storage capacities for third party use, and to require the companies controlling the petroleum refineries to sell some of their product, particularly to smaller operators that are not able to purchase their supplies on the international market.

The distribution of drugs and medicines

Partly taking up the suggestions made by the Authority, a number of statutory measures have recently initiated the process of opening up the drugs distribution markets, particularly by liberalising the prices of over-the-counter (OTC) drugs. Many Regions nevertheless continue to enforce unjustifiable regulatory and procedural obstacles to opening new pharmacies and to different ways of retailing drugs and medicines, particularly in terms of business hours.
These restrictions must therefore be removed by radically simplifying the local requirements and formalities. Another constraint that must be removed is the requirement that only qualified pharmacists (and pharmacists' partnerships) may own pharmacies, as well as the limitation of the number of licences that any one party may hold (today the maximum number is four licences). Similar measures are also necessary in relation to the

statutory restrictions on licences and on the siting of pharmacies (the pharmacies master plan, or "pianta organica", restrictions on their numbers, and obligations relating to minimum distances between pharmacies) which are wholly inadequate if the pharmacies are to be rationally and satisfactorily distributed throughout the country. These objectives can be more effectively achieved by making provision for a minimum – rather than a maximum – number of pharmacies in different parts of the country, thereby preventing artificial and inefficient limits on access, expanding consumer choice and giving an impetus to incentives to improve service quality.

Banking and financial services

These are sectors in which the particular complexity of the goods and services offered tends to create a general imbalance in relations between business and consumers which is frequently reflected in the lack of transparency in the contractual terms and conditions and the inadequacy of the guarantees for the consumer when they are revised. The negative effects of these skewed relations are often compounded by others caused by the ownership and the organisational structures that limit or distort corporate incentives to pursue efficiency. Triggering and fostering greater competition in these areas requires measures to generate greater mobility of demand by adopting measures to improve the level, quality, transparency and the provision of information to customers, make it easier to compare different offerings, broaden opportunities, and reduce the costs and charges connected with the exercise of freedom of consumer choice. On the supply side, measures are also needed to narrow the margins for behaving opportunistically and to enhance the effectiveness of incentives for companies to pursue more efficient management.

In the banking industry, the progress achieved through recent changes to the rules governing *ius variandi* must be consolidated by fostering greater simplification and transparency, and making the information provided more easily comparable (by introducing summary information leaflets and overall cost indicators), reducing the time taken and the costs of transferring contracts (portability of current accounts, surrogation of mortgage contracts), strengthening the instruments to protect consumers (with the introduction of guarantees on the duration of the conditions offered, and administrative control over vexatious clauses).

The Authority has also been keeping a particularly watchful eye on aspects of bank governance in order to pre-empt or reduce the negative repercussions – in terms of incentives to efficiency, transparency and competition – of proprietorship and organisational arrangements combining management functions and strategic and controlling responsibilities, conflicts of interest and in some cases (the 'Banca Popolare' system) conditions in which there is no competition for control.

The Authority is very carefully monitoring the authorised acquisitions and mergers taking place in this sector to be able to gauge the impact on competition and on the benefits accruing to customers.

In the insurance industry, the introduction of the direct settlement system under the recent reform of third party liability car insurance, was intended to create a closer relationship between the insured and the insurer, strengthen incentives on the side of the demand

(since the waiting time and quality of the settlement depends on the damaged party's insurer) and improve the efficiency of insurance companies' relations with their customers and service risks and costs management. For the same purposes, further measures should be introduced to simplify the information given to customers (for example, by using standardised contracts which clearly separate the most common insurance cover clauses from clauses extending guarantees), and to make the economic conditions of insurance contracts more transparent (in relation, for example, to percentage changes in future premiums in the event that claims are, or are not, made during the insurance period), also designed to foster and encourage greater mobility on the demand side.
In the insurance industry the move towards the no-fault direct compensation system as a result of the recent reform of third party liability insurance, has been designed to establish a closer relationship between the insured and the insurer, in order to strengthen incentives on the side of the demand (the timing and the quality of compensation depends on the company of the aggrieved party) to greater efficiency among insurance companies and their relationship with their customers and in the management of the service risks and costs. In the same way, further simplification is to be expected with regard to the information provided to customers (for example, by using standardised model contracts which clearly separate the most commonly used insurance cover clauses from extensions of guarantees), and to increase transparency regarding the economic conditions of insurance contracts (for example, relating to the percentage variation of the future premiums in relation to percentage changes in future insurance premiums if no claims are made during the insurance period), also designed to foster and encourage greater mobility on the demand side.

Professional services

In this area, too, recent legislation has also introduced measures to increase competition, such as the repeal of statutory and regulatory rules laying down fixed or minimum fees, and prohibiting the practise of charging fees commensurate with particular objectives, lifting the total or partial ban on advertising the qualifications and specialisations of professionals, the characteristics of their services and the price and overall costs of their services, and the abolition of the bar on the provision of interdisciplinary professional services by professional partnerships or associations.
However, these measures have since been followed up by a number of special enactments that have actually contradicted those principles, such as the fees charged by notaries, and in the public works sector. Some professional organisations have placed a restrictive construction on these new provisions. But the Authority's fact-finding survey to ascertain the degree to which the aforementioned pro-competition rules have actually been taken on board have revealed a disappointing situation, because the professional codes of conduct still remain basically impervious to the demands of modernisation.
The Authority is fully aware of the fundamental interests of individuals and the community which are often linked to professional services, and of the contribution that certain professional activities have to make to the dissemination of scientific and technological innovation in the interests of national competitiveness. The Authority nevertheless believes that competition principles can be applied consistently with the

demands of social protection and the safeguarding of public interests which must be guaranteed by regulating professional services.
Specific attention in this connection should be paid to the question of access, sole rights, and the structure and function of professional associations, and fee-setting.
Access to a profession, and hence the possibility of providing professional services, should therefore, in principle, be unfettered except in cases in which it is demonstrably necessary to protect the general interest by imposing specific moral and/or technical eligibility requirements.
Where necessary, these requirements should be proportional to the greater or lesser degree to which they are restrictive, to be determined in terms of the specific needs for protection that arise. It would be useful for school and university courses to be instituted to enable students to qualify for the professions directly. The imposition of the State examination, whether preceded or not by a practical training period, should be evaluated according to circumstances. The period of practical training should be proportional to the need for hands-on learning required by the various professions and should be able to be performed not only under the tutorship of a professional but also in public and private facilities performing the same activities and, if possible, as part of the courses themselves.
Restrictions on the numbers of new entries to certain professions – such as notaries and doctors working for the National Health Service – should also be abolished. For such restrictions protect no general interest.
A further and different obstacle to the operation of the market is reserving certain activities to specific professions, which if not adequately restricted can create undue protection for registered professionals to the detriment of consumers. It is therefore necessary for these reserved activities and extensions to them to be justified at all times by the need to protect the service users which could not otherwise be achieved. All the existing reserved activities must be re-examined in order to see whether they are objectively justified with a specific cost/benefit analysis, or they must be abolished altogether or expanded to welcome in more qualified professionals.
A system of "orders" and "associations" for regulating professions with their function of stable oversight over professionals' activities is a far-reaching system for guaranteeing public control over private activities, which is only justified for particular protection purposes. The tasks of the "orders" should be to guarantee that the professional services are properly performed and to ensure the professionals are kept up to date. The orders' management bodies precisely because of their public law control functions which they perform in the general public interest, should no longer represent exclusively the members of their profession.
Professional codes of conduct must only lay down ethical rules to guarantee the interests of clients and the freedom and autonomy of the professionals, but they should never regulate the market conduct of professionals.
In the professional services sector, too, the price of services must be established by joint agreement between the parties. In particular circumstances, the need to protect consumers can justify, as an exceptional measure, the setting of maximum fees. In this case the fees should be laid down more transparently and be immediately clear to consumers, particularly for standard procedures and formalities; for example, the overall cost of divorce proceedings may be of interest to a consumer depending on the most frequent

types of formalities rather than the prices of individual activities into which professional services may theoretically be broken down.

Competitiveness and the role of government

With increasing market integration and interdependency between economic systems, public sector efficiency in general is decisive to determining the level of competitiveness and the development opportunities of each national economy.
The public sector, in an industrially advanced economy, is both a production sector and a source of regulation.
As a production sector, it is required to produce goods and/or services according to the techniques and technologies determined by the principles of responsibility, efficiency and strict costing. This Authority considers that all innovations that tend to affect the conduct of the government sector – as a production sector – to adjust to other areas of the economy are pro-competitive within the production system as a whole, particularly if: (a) the outsourcing of certain services is followed by procedures that are public in character, (b) the issue of licences or authorisation does not impose any unjustifiably cost burdens on business.
This should be coupled by a serious revision of the laws and regulations in order to identify the actual need, with reference to each industry and sector, and ensure proportionality in the administrative procedures governing the exercise of different economic activities. It is to be hoped that the simplification process will go further than has already been planned, and remove the need for prior specific clearance from government departments by extending recourse to general licences or the practice of merely reporting business start-ups. In the latter case in particular the report must not be conditional upon the submission of documentation which is already in the possession of the authorities, or which they can easily acquire, and must not be disproportionate to the nature of the business activity concerned; in the case of confirming a previous permit, the timing of the procedures must be reduced to the minimum and tacit approval procedures introduced, so that the authorities can act to protect themselves with increased powers, also in terms of imposing penalties; to meet the need for companies to notify the authorities, provision has to be made to have only one receiving administration, requiring it to take care of the subsequent transmission of the information it receives to any other government departments or agencies that may be involved.
In relations between companies and government departments, electronic media should be able to be used as far as possible for transmitting data (the Internet, digital signature). This would be able to reduce the cost of the administrative formalities required by government administrations for business start-ups and operations, consistently with the objectives proposed by the European Commission, because according to recent estimates the costs to small and medium enterprises now exceed a total of €16 billion a year.
Moreover, these same criteria should be followed when simplifying the administrative procedures, requesting each department, respectful of their autonomy and in the exercise of their own specific powers, to organise their activities according to criteria and procedures that give priority to reducing the burdens imposed on the general public and on business.
Regular monitoring of the regulatory framework should also be introduced through

appropriate forms and instruments in order to verify across time, in the light of past experience and with reference to the development of the economic and technological environment, the actual soundness and effectiveness of the regulatory regimes governing individual activities, both from the point of view of enforcement and in relation to their administrative powers and responsibilities.
Finally the one-stop-shop project for businesses must be implemented, particularly by requiring government departments to comply with specific obligations to coordinate the exercise of their powers, all of which are intended to enable an individual company to trade; the distribution of administrative powers must not be allowed to damage economic development.
Lastly, control must be stepped up over inefficient or unjustifiably protectionist regulations, both in the preparatory phase and after the measure has been adopted.
In order to achieve this, the first important thing is to put in place procedures for the self-assessment of regulations operated by the parties responsible for adopting them, on the basis of models of analysis focusing on competition profiles. The Authority has already initiated a number of regional co-operative initiatives in this regard, identifying several analysis grills which, without introducing any unnecessary procedural burdens, make it possible to easily and rapidly appraise the negative impact of rules on the efficient operation of the markets, thereby giving the regulatory authority the ability to see whether it is advisable to amend the rules, and the types changes that need to be made. Naturally, central government regulations should also be subjected to this prior appraisal process.

Safeguarding competition and regulation

Hitherto the instruments available to the Authority to deal with administrative regulation have mainly been reports, but these reports do not have any legally binding effects. It would therefore be appropriate to think in terms of giving the Authority new powers, authorised pursuant to article 117 (2) of the Constitution as a means of fully protecting competition which, under the Constitution, is the sole responsibility of central government.
Such powers, in relation to general administrative acts, whose effects interfere with the operation of the market, must at all events respect the autonomy of other governmental authorities. The balance that might be struck between the need to enable the Authority to use more effective instruments for intervention to protect competition than merely submitting reports, and the concurrent need to ensure the autonomy of the government administrations in the pursuit of other public interests entrusted to them, could, for example, be to empower the Authority with specific statutory powers to challenge administrative acts through the Attorney General's office, where it considers them to violate competition law, and following a report showing that the administrative act is detrimental to interests which the Authority has been instituted to protect. There must therefore be a deadline by which the Authority may challenge administrative acts, beginning from the date of the report which should at all events be submitted within the deadlines set for the interested party to launch a challenge.
The challenge should be preceded by a reasoned opinion in which the Authority identifies the specific features of the violations it has found. The government department

responsible would then be given a specific deadline by which to conform to the Authority's findings. In the event of failure to comply with the reasoned opinion, the Authority could then file a case before the administrative courts.
This report includes an annex summarising the main competition issues on the various markets, together with proposals for possible action to be taken in each case.
Comments have been drawn up in particular with relation to the following sectors:
(a) service stations,
(b) electricity,
(c) natural gas,
(b) electronic communications,
(e) banking services,
(f) insurance services,
(g) transport,
(h) pharmaceuticals,
(i) food,
(j) the distribution trades,
(k) cinemas
(l) professional services.

The President
Antonio Catricalà

Service stations

The main critical issues

Ten years after the beginning of liberalisation, the modernisation of the national fuel distribution system is still awaiting completion. Italy's fuel distribution system continues to be less efficient than the rest of Europe's in terms of the amount of fuel distributed per service station, the number of self-service stations, the development of nonoil business, and market entry and penetration by major chain retailers. These delays have had inevitable repercussions on petrol and diesel fuel retail prices, which constantly remain higher than the European average.

Apart from possible instances of collusion and coordination, partly facilitated by the oligopolistic structure of the market and the high level of vertical integration of the major oil companies, shortcomings and critical issues in the current distribution structure are still largely due to statutory and regulatory constraints[3] (imposed at both the national and the regional levels) connected in particular with what has often been excessively restrictive rules governing market access and business operations for the, albeit lawful, protection, of specific public interests.[4]

With reference to market entry conditions, national legislation[5] which still provides that the regional governments must identify quotas when setting the criteria for authorising new service stations, based on their catchment areas and on minimum distances, empowering them to impose compliance with obligations in terms of minimum surface areas or quality features (for examples, the provision of nonoil services). When implementing these measures, the regional governments have adopted widely differing procedures, in some cases retaining the obligation – which was only supposed to be a transitional nationwide statutory measure[6] to close a given number of existing service stations as a condition for opening new sales outlets.

From the point of view of the constraints on business operations, the main limitation imposed by current legislation has to do with the imposition of rotas, and minimum and maximum business hours.[7]

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[3] In this regard see the Authority's AS283 Report, "*Legal provisions governing fuel distribution*" of 4 November 2004 (Boll. 45/2004) and AS379 "*Legal provisions governing fuel distribution*" of 18 January 2007 (Boll. 1/2007).

[4] Fuel distribution generates externalities (above all in relation to security and the protection of the urban environment) which are nevertheless broadly covered by the controls imposed by specific legislation: there are no significant cases of skewed information, and statutory obligations are imposed for the provision of this public service, even though in some cases this could be limited to guaranteeing the service in disadvantaged zones.

[5] The relevant national legislation comprises not only legislative decree no.132/98 enacting "the rationalisation of the fuel distribution system pursuant to art. 4 (4) (c) of a Law no. 59 of 15 March 1997", but also Decree Law No. 383/99 on "urgent measures relating to excise duty on oil products and hastening the liberalisation of the oil product sector" which was enacted, with amendments, as Law No. 496 of 28 December 1999 and the ministerial decree of 31 October 2001 adopting the "National Plan containing guidelines for modernising the fuel distribution system".

[6] Ending on 30 June 2000, pursuant to article 3 (1) of Legislative Decree No. 32/98.

[7] Article 7 of Legislative Decree No. 32/98 provided that it was only possible to extend the maximum business hours "by up to 50% of the minimum prescribed business hours" after at least 6000 fuel stations had been closed.

Also in the light of the criticisms of the European Commission, and which formed the object of an EU infringement procedure (No. 2004/4365) in February 2007, the government laid a bill before Parliament which, in the version adopted in May by the Chamber of Deputies Production Committee, provided not only for a substantial lifting of the constraints of which the Authority had already complained in previous reports, but also for a partial liberalisation of service stations' business hours, but only for service stations situated in commercial shopping areas.[8]
The Bill – which was subsequently approved, with amendments, by the Senate Industry Committee in October – failed to complete its parliamentary passage before the end of the Parliament. Furthermore, during the same period, the Conference of Regional Presidents approved a common policy document explicitly setting out the guidelines with which the regional governments would comply in the exercise of their rule-setting powers regarding fuel distribution, partly as a means of meeting and resolving the critical issues identified by the European Commission.
In the new organisational structure of this sector, as set out in the Bill and the Regions' document, from the point of view of competition there still remain a number of critical areas regarding, in particular, the imposition of minimum distances between service stations, quality standards, minimum surface areas, and opening hours.
As for the structural aspects of this sector, one particularly important matter is the control exercised in the fuel distribution sector by the vertically-integrated oil companies over most of the logistical infrastructure facilities and refining capacity. For this prevents a more articulated and competitive supply side structure, conditioning both the margins of independence on the fuel distribution market operators that are not integrated upstream (about one-third of the total service stations); and, secondly, it hampers the possibility for potential fuel suppliers, such as large retail chains, to adopt autonomous supply policies, which, if developed, could trigger a significant process of change and modernisation in this sector.[9]

Action proposed

On 28 February 2008, the European Commission referred Italy to the European Court of Justice for its failure to change the law regarding service stations, explicitly mentioning the Authority's reports, giving Italy a further four-month extension period (until 28 June 2008) to adopt the necessary measures.

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[8] See in this connection, the Authority's report AS393, *"Measures for the consumers and to facilitate production"*, 17 May 2007 (Boll. 19/2007).
[9] With regard to the critical issues mentioned here, see in particular the Authority's report AS436, *"The regulation of access to the networked fuel distribution business and the provision of storage capacity and oil products to non-vertically-integrated third parties"* of 20 December 2007 (Boll. 46/2007). Furthermore, following investigation No. 1681 into *"Networked fuel prices"*, the Authority made it compulsory for the vertically-integrated oil companies to honour the commitments entered into, relating, among other things, to the allocation to third parties of significant shares of their logistical infrastructure capacity and output from certain refineries, on certain and at all events fair and non-discriminatory terms and conditions.

The Authority therefore believes that there is no time to be lost in implementing measures to completely liberalise this sector, giving priority to the removal of restrictions and statutory and regulatory constraints that are still delaying or hampering the process of reorganisation and gradual development towards a more efficient system, which is more favourable to developing effective competition dynamics.
On the subject to the conditions of access and the exercise of the fuel distribution business it is to be hoped that nationwide reforms will be rapidly approved, with binding effects on regional law.
1) Any extension of the ban on imposing minimum distances must be abolished. The qualification imposed on the ban in the government Bill tabled in the last parliament ("without prejudice to provisions to protect health, security and the territory") appear superfluous, given that specific legislation exists for this purpose and because, at the regional level, they might make it possible to underhandedly reintroduce obligations relating to minimum distances between filling stations;
2) obligations (minimum service areas, quality standards, etc) should be removed if they are only required for new facilities, for they could place unjustifiably differentiated burdens on new entrants to those imposed on companies already on the market;
3) opening hours should be liberalised; in this connection, the document recently approved by the Conference of Regional Presidents provides that "further adjustments" may be made to comply with individual regional planning documents.
With regard to the structural profiles in this sector, it is advisable to introduce measures to loosen constraints on improving market competition deriving from the substantial economic dependency of service station operators that are not vertically integrated into the refinery and logistical segments. The Authority therefore advocates the adoption of further rules (in addition to those governing the residual opening provided by article 5 of Legislative Decree No. 32/98) which:
1) require the owners of logistical infrastructure facilities to allocate a proportion of the overall capacity of their depots to third party use;
2) encourage the parties controlling the oil refineries to sell their products, particularly to smaller operators, including those working locally, who are unable to procure supplies on the international market.

Electric power

The main critical issues

The liberalisation of the national electricity industry, following Legislative Decree No. 79/99, was accompanied and underpinned by a number of major structural reforms intended to open up the production and sale of electricity to competition, and to introduce a complex electricity transmission, dispatch and distribution regulatory system.[10]
Even though the main statutory and regulatory barriers to market access and the exercise of liberalised activities have essentially been removed, there are still a number of critical elements, connected mainly with wholesale market price trends and price formation mechanisms and the completion of the process of opening up to competition the retail electricity.
Wholesale electricity prices still remain quite high, particularly in comparison with the prices recorded in other Europe in the electricity Exchanges, even taking account of the differences in generation facilities, which in Italy are skewed in favour of the more costly hydrocarbon fossil fuels.[11]
In this connection, the national transmission network rigidities and capacity constraints are particularly significant, because they are creating local co-management phenomena, permanently encouraging the persistence of certain market strengths that seriously interfere with price formation dynamics and the level of dispatch charges paid by the end-users, which, in some parts of the country (such as in the Italy's two large islands) are particularly burdensome.[12]
Following recent legislation to liberalise the retail sale of electric power,[13] since 1 July 2007 domestic users, who were previously captive, have been allowed to resort the free market, and to change their power supplier.
In this new scenario, particular care must be paid to the risks of distorting competition that might derive from the continuing existence of vertically-integrated company structures combining the distribution and sale of electric power, particularly where there is also vertical integration in the production phase. What must be done in particular is to prevent the greater mobility of demand being hampered or discouraged by local

[10] Among the most important measures we would recall in particular the vertical separation of activities that had previously been performed in an integrated manner by the former public monopoly holder, Enel; Enel's allocation of 15,000 MW of generation capacity (equivalent to about 23% of total installed capacity in 2000); the establishment of an organised wholesale market (the "electricity exchange") to buy and sell electric power and set dispatching capacities; the separation of the ownership and management of the national transmission grid from the electricity generating companies, which will be completed with the sale, by 1/7/09 of the remaining equity interest in Enel owned by Cassa Depositi e Prestiti.
[11] This gap is slowly narrowing, but that has mainly been the result of parallel price increases in other European Union countries (above all in France and Germany).
[12] 10. In this connection, see the results of the Authority's fact-finding survey IC22 - *Fact-finding survey on the status of liberalisation in the electricity and natural gas industries* (2005) conducted jointly with the Electricity and Gas Authority. A second fact-finding survey of the same matters (IC 22B) conducted jointly with the Electricity and Gas Authority since August 2006), was also begun, and is still in progress.
[13] Legislative Decree No. 73 of 18 June 2007, providing "*urgent measures to implement Community provisions regarding the liberalisation of the energy markets"*, enacted as Law No. 125 of 3/8/07.

distributors that had previously enjoyed a statutory monopoly, using delaying tactics and/or preventing the use of the information the customers need.
The law had introduced measures several times in the past to guarantee separation between power distribution and retailing for networks serving at least 100,000 end users, and to require distributors to provide information on consumption during the previous year to any company interested in selling electricity.[14]
However, these measures may prove inadequate to guarantee the total and effective neutrality in the management of the distribution networks, and above all guarantee opportunities for access to the networks by all the electricity retailing companies. With ownership and control linkages between the distribution and sales companies, separating the companies does not eliminate the margins and incentives for adopting potentially opportunistic conduct to the detriment of competitors which are not vertically integrated. Furthermore, the scope of the obligation to separate the companies is restricted at the present time to the larger distributors alone.

Action proposed

The critical issues indicated above demonstrate the need, first and foremost, for prompt and effective measures to upgrade the national transmission network, and agreements to eliminate or attenuate cases of local co-management and market strength, very largely connected with shortcomings and physical ties created by the present electricity transport and transit infrastructure.
The Electricity Regulatory Authority recently introduced an incentives system, permitting consisting a higher return on capital, in order to give priority to these areas of investment falling within the powers of the network manager.[15]
However, considering the wide margin of discretion that the manager still retains regarding the development of the network and the measures adopted, it is to be hoped that the steps taken in the past by the Regulator can be joined by other measures to provide incentives which are able more effectively to guarantee that the decisions taken by the network manager are appropriate overall, in terms of the type and the volume of investment, to guarantee the adequate upgrading of the transmission network to meet the needs identified and ensure the more effective operation of the national electricity system.
Similarly, with regard to the sale of electric power to end users, while the obligations to separate the companies that were recently imposed by law on the distribution companies are a step in the right direction, they appear to be inadequate to guarantee that liberalisation will be followed by any real opening-up of the market to competition, bringing real benefits to users in terms of prices and service quality.
As has occurred in the past in relation to electricity generation and transmission, in this case, too, appropriate and more incisive measures should be introduced to completely separate the ownership of the electricity distribution and sale companies. In the new environment resulting from the recent – and planned – grouping of the former municipal corporations, an ownership separation régime would certainly have significant effects on

[14] Cf. Article 1 (1) of the aforementioned Legislative Decree No. 73 of 18 June 2007, as amended by the enacting law No. 125 of 3/08/07.
[15] Cf Resolution No. 384/07 of the Electricity and Gas Authority.

reducing the risks of undue distortion of competition and would guarantee the neutrality of the management of the distribution service while fostering regulation of the industry to encourage greater efficiency in maintaining and developing the local distribution networks through the rules of the market.

Natural gas

The main critical issues

In the natural gas industry, the liberalisation that began initially with Legislative Decree No. 164/001[16] was completed when the gas retail market was fully opened up on 1 January 2003.
Looking back a few years after full liberalisation, however, one can see that no significant competitive developments have been introduced into the structure of the industry, which is amply demonstrated by the fact that so few companies are operating on the supply side, which remains typical of the wholesale supply market, unsatisfactory price dynamics and the extremely limited and marginal level of mobility of the demand to this day.
This has been very largely due to the high level of vertical integration by the dominant company in all the phases in the gas industry – gas imports, domestic gas production, transport, storage, distribution and sale to the end customer.
The effects of this on the natural gas wholesale supply market have been particularly noticeable, where the lack of increased infrastructure investment in new gas import and storage capacities able to raise the share of gas supplied independently of ENI has had negative repercussions on both the security of the national system and on the level of market concentration.
In the period 2000-2008 none of the initiatives for new gas import infrastructure were implemented. Between the end of 2008 at the beginning of 2009 the upgrades implemented by ENI on two international gas pipe-lines (TAG and TTPC) will become fully operational, and will carry the volumes of gas that third party operators have contractually agreed with non-European suppliers; however, these are investments that have been made as a result of specific investigations conducted by the Authority[17] and by the European Commission, and not as a result of autonomous initiatives taken by the dominant operator. During this period, however, the first infrastructure investment independent of ENI might become operational: this is an offshore regassification terminal with an annual eight billion cubic metre capacity.
The same applies to the natural gas storage sector, which is a major factor of flexibility for gas sales companies in view of the more or less marked rigidity in the profile of imports and a wholesale market that has not yet been fully developed. For in this case, too, the present situation continues to remain a virtual monopoly of the dominant operator and there has been a failure to activate new sites, despite a significant level of unmet demand.[18]

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[16] For the purposes of protecting and fostering competition, the decree provided, in particular, (a) obligations to separate companies operating in different phases in the industry in competition with the monopoly-holder, as a result of which ENI proceeded to incorporate different companies specifically for gas transport (Snam Rete Gas) and gas storage (Stogit); and (b) maximum quotas, by reference to annual national consumption, of the volumes of natural gas that each company would be able to sell to their end customers or put into the national network.
[17] Cf. Measure No. 15174 of 15 February 2006 in relation to the A358-*Eni Trans Tunisian Pipeline* case, (Boll. 5/06).
[18] 16. For these reasons, the Authority recently began a fact-finding survey, jointly with the Electricity and Gas Authority (cf. IC38 - *Natural gas storage market*, Boll. 44/07). The survey is still in progress and one

Further critical issues relate to natural gas distribution where, similarly to what has already been said with regard to electricity, the current level of integration between the sale and distribution companies can seriously hamper the development of effective competitive dynamics for gas retailing and encourage the companies that have historically held consolidated local markets to retain them.
Several recent statutory measures have postponed the possibility of implementing transparent and competitive procedures for awarding franchises to guarantee competition for local distribution services. The 2008 Budget Law[19] once again postponed to 2011 the deadline for the expiry of the transition period for re-awarding, by tender, the expiring franchises, thereby freezing the current situation. The law has also extended the present statutory ban on participating in tenders by companies directly awarded the service, or belonging to the same group, to include the natural gas distribution service. However, this ban does not apply in the case of the first tender called to award the service previously provided by the last direct franchise-holder.[20] Since most of the present natural gas distribution franchises were awarded directly to the franchisees, this ban prevents the current franchise-holder from tendering in other areas, but not for the first tender called to award the service in its own territory.

Action proposed

The prospects for the industry largely depend on the quality of the reforms which the parliament and the new government will be able to introduce during the course of this Parliament to eliminate or reduce the statutory, regulatory and structural constraints which currently characterise crucial areas of the industry and hamper the development of the markets to make them more receptive to genuine and effective competition.
One particularly important measure would be to introduce statutory and regulatory provisions to clearly and promptly define priorities for new investment in infrastructure for national import capacity (through gas pipelines and LNG regassification terminals) and gas storage – which might otherwise run aground in the planning phase – and at the same time in measures to guarantee a more favourable environment for gaining access to, and expanding new businesses where, as in the case of storage, the present particularly the high level of control by the dominant operator, significantly condition development opportunities and margins for developing effective competition for the benefit of consumers.
It is equally useful and urgent to revise the current rules governing the award of distribution franchises, primarily to reduce the transition period for the award of direct franchises soon to fall due – which will make it possible for them to be re-awarded through a public tender system – and to define the minimum territorial areas to be put out to tender based on economic rather than administrative, bases.[21]

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of its aims is to thoroughly analyse the statutory and economic environment in relation to natural gas storage access, also in order to ascertain whether or not statutory and regulatory obstacles are hampering this industry.
[19] cf. Article 2 (175) of Law No. 244 of 24 December 2007.
[20] Cf. Article 2 (175) of Law No. 244/2007, referring to article 113 (15-*quater*, of Legislative Decree No. 267 of 18 August 2007.
[21] Cf. In this connection the Authority's report of 8 November 2007, AS427-*Competition rules and the quality of essential services in the gas distribution industry* (Boll. 39/07).

In this connection, consideration could also be given to reviewing the derogation to the general prohibition granted to directly-awarded franchisees to enable them to participate in the first tender called for the award of the service in their own territory. Considering that this is likely to limit the number of potential individual tenderers, because of that prohibition, the immediate effect of that derogation could in fact be, yet again, to substantially prolong the present breakdown of the local markets. However, even when fully implemented, current legislation is not able to resolve the problems raised by from conflicts of interest generated by the relations of ownership and control that often exists between the franchisors and the franchisees. For following the possible (and also probable) awarding of the first tenders, the present franchisees of the service would no longer be subject to the aforementioned prohibition, (because they would no longer be direct-awarded franchisees).

Electronic communications

Main critical issues

The electronic communications industry is undergoing radical changes, due to the huge technological transformations taking place and the development of innovative services against the background of competition which will ultimately lead to the overall redefinition and increasing convergence of the telecommunications and radio and television broadcasting markets.

Telecommunications

In the telecommunications industry, traditional voice telephony services are still the main source of revenues, but their economic importance is tending to decline, partly because of the success of the mobile communications services and the spread of broadband. Liberalisation and technological innovation have also produced important results in terms of the reduction in charges and in improved quality, as well as the range of services available.
At the same time, the structure of the industry reveals considerable inertia in the face of the loss of the dominant operator's market shares, and delays in the dissemination of broad-band, in comparison with other European countries. In the fixed telephony sector, despite some recent progress thanks to local loop unbundling access, the substantial stability of the market structure has largely been due to the control operated by the dominant operator over the network infrastructure, also by virtue of a national situation lacking in major cable access alternatives.
These difficulties, moreover, could be heightened by the new generation network – considering the objective difficulty faced by alternative operators to extend their infrastructure at deeper levels in the network – and by the prospect of deregulation under the new regulatory framework introduced by the European Community for retail services.[22]
Further critical issues regarding entry conditions also refer to the availability of radio frequencies, where the demand for "conventional" mobile telephony services is linked to the demand for the introduction and dissemination of innovative services. For competition in this sector is strongly influenced by the allocation of the limited frequency resources available – above all those of greatest commercial interest, such as the 900 MHz frequencies – between alternative services and technologies and between competing operators. This is why the manner in which the frequency spectrum is managed acquires

[22] The regulatory approach proposed by the European Commission will concentrate action on the residual bottlenecks, such as broadband access, and a parallel decrease in the retail markets deemed to be susceptible to a prior regulatory control. The new Recommendation on the relevant markets has identified one single retail market, considering that the regulation of the wholesale market can be sufficient in most cases to resolve any competitive problems on the markets downstream of it. Furthermore, the burden of proof for the purposes of imposing regulatory obligations on markets not included in the list given in the Recommendation, is particularly stringent; the national regulatory Authority is required to demonstrate that: (i) the market is subject to high entry and nontransitional barriers (structural, legal and regulatory); (ii) the markets' features are such that they cannot evolve towards effective competition without *ex ante* regulation, and (iii) the rules governing competition are not sufficient to resolve the market's problems.

particular importance. If based on traditional administrative-type awarding criteria, it would not be possible to guarantee sufficient levels of flexibility and efficiency in the use of the resource and could be a factor which will distort the operation of the market.

Broadcasting

Prospects for the development of television are closely connected with the outcome of this delicate phase of technological transition that is currently taking place, and particularly the move towards broadcasting the terrestrial signal using digital technology and developing alternative platforms for the supply and use of audiovisual content. These dynamics are also related to major opportunities in terms of reducing the high level of concentration which has historically characterised the structure of this industry,[23] expanding the possibilities of allowing new independent operators to enter the market to supply contents and to promote more effective competition.
Opening up this industry to real competition cannot ignore the need for the planned management of the radio frequency spectrum in compliance with the EU principles of transparency, objectivity, nondiscrimination and proportionality. Recourse to flexible, market-oriented measures for the management to the radio frequency spectrum can enhance the efficiency of its use, enable competing operators to enter the market, and encourage innovation.

Action proposed

Telecommunications

International comparisons[24] show that reduced charges and improved services in the telecommunications industry in various countries have been more significant on markets on which there is intense competition. Community experience also shows the significant interdependence that exists between the magnitude of these benefits and the effectiveness of regulation to guarantee adequate and fair opportunities for market access.
Considering the structure of this sector – which is still characterised by the central position of the access network belonging to the dominant operator – and the prospects connected with the development of the new generation network and the EU regulatory framework, promoting and maintaining a more competitive environment will therefore depend essentially on the quality of regulation.
The prime task of sectoral regulation is to guarantee effective transparency and equality to all the companies operating in the market in terms of price, timing, and the terms and conditions of access to the services and the essential network components, eliminating unjustified positions of advantage while reducing to the maximum the risks of opportunistic conduct by the dominant operator. Where regulations focusing solely on obligations to behave in a particular way prove to be inadequate, to ensure total equality between the different operators in terms of market access and trading conditions it may

[23] Cf. The results of the Authority's fact-finding survey IC23 - *Television broadcasting* (2004).
[24] Cf. OECD, *Telecommunications Outlook 2007*.

be necessary to introduce a more incisive structural separation of network service management from the supply of end services by the vertically integrated operator.[25]
It is also essential for the regulation of the industry to be geared to encouraging investment, particularly in alternative and new generation networks, defining a transparent, certain and more efficient environment for allocating the limited frequency resources that exist and reducing the complexity of the administrative procedures, relating, for example, to issuing permits for excavations and the occupation of publicly owned land, which often involve a considerable number of authorities and local administrations.
Lastly, looking forward to the gradual deregulation of retail services, it is becoming increasingly more necessary to strengthen the instruments for consumer protection overall, particularly those designed to provide better and more useful information to end users; the purpose of this is to make the commercial offerings of different operators more transparent and less complex than they are at the present time, because by significantly limiting the consumers' ability to compare them with alternative proposals, they have a negative impact on the quality and the mobility of the demand.

Radio and television broadcasting

Considering the overall legislative framework, including Community law, governing this industry, it would appear essential to back the process of technological innovation and change that is currently taking place and in particular to bring forward as soon as possible the deadline for moving over fully to digital technology. Technical solutions should also be encouraged which will maximise the number of operators and the degree of pluralism and overall variety of supply.
With regard to the actions to be appraised, it might be useful at the same time to consider the present rules governing the public radio and television broadcasting service which, if the purposes, environments and the contents of the public service are clearly identified, and make it possible to draw a clearer distinction - in terms of ownership, organisation and management and financing - with respect to the commercial activities that are currently being performed by the public broadcaster. In addition to making it easier and more likely, as envisaged by Italian legislation, for the government to sell off its equity interest in the public franchisee, such measures could contribute decisively to promoting the market entry of new companies in the commercial broadcasting segment and free up energies and resources that are essential to open up the Italian radio and television broadcasting system to the market, and bring about a radical transformation of the industry in a more competitive direction.[26]

[25] Cf. in this connection, the Authority's report of 24 April 2002, AS 241 - Equal internal-external treatment by operators with considerable market strength on the fixed telephony market (Boll. 24/02).
[26] See in this regard the measures adopted by the Authority cited in the previous note.

Banking services

Main critical issues

Law No. 262 of 28 December 2005 and the later Legislative Decree No. 303/06 introduced major novelties into the institutional structure of the banking industry, encouraging a move to an objectives-based banking supervision model in Italy, mainly designed to guarantee a clear distinction in terms of roles, scope and powers between the functions of safeguarding the stability of the banking system – to ensure the sound and prudent management of the banks, entrusted to the Bank of Italy – and to protect competition, entrusted to the Competition Authority.

There have also been major breaks with the past in terms of the structure of the banking industry, both as a result of major bank groupings, recently involving Italy's most important banking groups, and as a consequence of Italian bank acquisitions through which foreign banks have entered the national market.

However, this vibrant situation and these factors of change seem to have done little to improve competition in the banking industry with particular reference to the benefits that the changes on the relevant markets should reasonably have been expected to produce for the benefit of customers in terms of improved quality and cheaper banking services.

This has been largely due to the very nature of the banking and financial services, whose particular complexity and the resultant skewed information, tend to create a generally one-sided contractual relationship between the bank and the consumer which is often characterised by little transparency and weakness on the part of customers to fully understand and influence the terms, contents, guarantees and procedures for revising them over the years. The overall effect has been a substantial reduction in the level of demand mobility and the parallel weakening of the pressure of competition and incentives to improve the financial and quality conditions of the services on offer.

Similar results have also been linked to the way the banks are governed, whose ownership and organisational structure are sometimes inadequate to guarantee sufficient incentives to pursue efficiency, transparency and competition, mainly because of the undue mixing of management functions and strategic and control responsibilities, conflicts of roles and interests, or conditions in which banks are basically unable to compete.

The Banca Popolare banks are a good example in this regard, characterised as they are by specific governance rules (the per capita voting system, the restrictions on shareholdings, the approval of the entry of new members) which, also by virtue of the limited attendance at general meetings, the proxy system, and the smaller percentage of votes which are normally required to carry general assembly resolutions, actually encourage the constitution of a stable core of shareholders with voting rights, playing a decisive role in running the bank. This being so, the Banca Popolare management model essentially resembles that of ordinary joint stock companies, but the lack of real competition to acquire control considerably weakens exposure to the discipline normally exercised by the market and by incentives to operate more efficiently.

Action proposed

The particular character of banking services and the apparent inertia characterising the operation of the markets suggest the need for statutory regulatory measures to be introduced, designed as a matter of priority to foster greater mobility of the demand through measures which enhance the level, quality, transparency and usability of the information given to customers, improving the comparability of the offering, broaden opportunities and reduce the costs and charges connected with consumers exercising freedom of choice.

Partly due to the prompting of this Authority[27] there have been several recent statutory provisions in this direction referring, for example, to regulating the *"ius variandi"* in bank contract. For the previous legislation had been appropriately modified by making provision, in particular, for restricting unilateral changes to cases in which there were justifiable grounds, superseding the practice of serving notice impersonally by publication in the Official Gazette, extending the minimum period for exercising the right of withdrawal, and exempting consumers from being charged for terminating their contracts.

It is to be hoped that the progress already made will be consolidated by making information simpler, more transparent and comparable, for example, by introducing short information leaflets and overall cost indicators,[28] while cutting down the time taken and the costs of transferring current accounts and mortgages;[29] broadening the range of consumers protection instruments by providing guarantees regarding the duration of the conditions offered and removing administrative control over vexatious clauses.

Particular care should also be paid to aspects of bank governance where, also in the light of the changes introduced by the company law reform of management/governance models, where it is essential for greater transparency regarding ownership and organisational structures to guarantee shareholder representativity and to protect minority shareholders, and above all to create a more favourable environment for developing effective competition.

To achieve this, the Authority deems it appropriate to introduce measures, perhaps in the form of self-regulation, to guarantee that there are no conflicts of roles or undue mixing of interests on the management and auditing boards between competing companies, and to remove obstacles to full competition between banks.[30]

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[27] Cf. the Authority's reports of 24 May 2006, AS338 - *"Ius variandi" rules in bank contracts"* (Boll. 19/06) and 19 July 2007, AS412 - Article 10 of Law No. 248 of 4 August 2006, m*inistry for Economic Development Circular of 21 February 2007* (Boll. 30/07).

[28] In this connection, see the Authority's report of 24 May 2007, AS394 - *Obstacles to the competitive development of the retail banking services market* (Boll. 19/07).

[29] Cf. the Authority's report of 22 November 2007, AS431) - *Procedure for the portability of mortgages in mortgage contracts* (Boll. 40/07).

[30] To achieve this, the Authority deems it appropriate to introduce measures, perhaps in the form of self-regulation, to guarantee that there are no conflicts of roles or undue mixing of interests on the boards of directors and statutory auditors between competing companies, and to remove the obstacles to full competition between banks. With reference to these aspects, the Authority has repeatedly expressed its position during the course of parliamentary hearings (cf. The hearing of the President, Antonio Catricalà, before the Senate VI Finance Committee as part of the fact-finding survey of the evolution of the Italian banking system -10 July 2007), and in its evaluation of recent mergers and acquisitions (cf. Measure C 8027 - *Banca Intesa/San Paolo IMI*, Boll. 49/2006; C 8277 - *Banche Popolari Unite/Banca Lombarda e*

Somewhat similar considerations also apply to asset management companies (especially savings management companies). For in this case, too, the ownership structure of these companies – which are generally offshoots of banks and are therefore vertically integrated with these banks' distributions structures – seem capable of negatively influencing the opportunities and the incentives to achieve full competition on the managed savings markets and likely lead to potential conflicts of interest between lenders, borrowers and savers.

Piemontese, Boll. 13/2007; C 8242 - *Banca Popolare di Verona e Novara/Banca Popolare Italiana*, Boll. 11/2007; C 8660 - *Unicredit/Capitalia* Boll. 33/2007; C 8939 - Intesa San Paolo/Cassa di Risparmio di Firenze, Boll. 2/2008; C 9182 - *Banca Monte dei Paschi di Siena/Antonveneta*, Boll. 3/2008).

Insurance services

The main critical issues

Over one year following the liberalisation of the insurance business, the outcome is still broadly unsatisfactory in terms of the prices of insurance products, the quality of the services and the intensity of competition.
Among the most important recent developments are the statutory measures regarding insurance agents working in various non-life insurance branches, and direct compensation under compulsory motor vehicle third party liability insurance.
The ban imposed by Decree Law No. 7/07[31] on contractual agreements for the exclusive distribution of non-life insurance policies[32] introduced – at least formally – a radical change to the operation of an industry totally dominated by agents representing only one insurance company, which tended to make it more difficult for new operators to join the market and, in view of the particular complexity of the insurance product, made it more burdensome for consumers to shop around for the most convenient insurance policies to meet their requirements.
As had happened in other countries, the abolition of the obligation on agents to represent only one single insurance company has encouraged the development of a system of distribution of insurance policies in the direction of a model in which, together with direct sales (through employees or distance selling – through call centres or the Internet) an important role should eventually be played by brokers or independent consultants, to make it possible for less well equipped consumers to compare the offering and make their selection with sufficient information and knowledge between a wide range of alternative products.
However, a development of this kind appear to be hampered at the present time by the widespread persistence of *de facto* exclusive relations, and the absence in Italy of truly independent insurance brokers, paid directly by the consumers and hence sufficiently incentivised to retain customer loyalty across time by providing them with an adequate level of quality and sound professional service.
With specific reference to compulsory third party motor insurance, Legislative Decree No. 209/05, taking up a number of specific suggestions that this Authority had previously made,[33] carried through a root and branch reform of the previous system of settling claims, and made provision for moving over to a direct compensation system in order to create a more appropriate system of incentives, on the supply and the demand sides alike, to facilitate more efficient consumer choice.
By encouraging close relations between the insured and the insurer, a direct compensation system tends to strengthen incentives to be more selective and to increase the mobility of the demanded in choosing an insurance company, considering that the modalities, timing and quality of the compensation/damages depends on the insured's insurance company. At the same time the greater transparency and immediacy associated

[31] Enacted as Law No. 40 of 2 April 2007.
[32] The ban had been previously introduced by Decree Law No. 223/06, enacted as Law No 248 of 4 August 2006, but only restricted to compulsory third-party civil liability vehicle insurance.
[33] In the Authority's report of 1 June 2005, AS 301 - *The reorganisation of the statutory provisions governing insurance. The Insurance Code* (Boll. 22/05).

with the direct relationship should make insurance companies act more effectively, encourage improved quality of customer care and stimulate greater efficiency in risk management and cost control.
Judging from experience acquired in the initial phase of implementing the reform, there still remain a number of critical issues to be resolved. In particular, the no-fault or direct compensation system, under which the damaged party is paid by his or her own insurance company, might – if not adequately differentiated according to the type of damage and the type of vehicle – significantly reduce incentives to ensure effective cost control, or lead companies to pass the average cost not covered by the direct compensation system on to the customer.

Action proposed

The delays and difficulties encountered in moving towards a more complex, flexible and competitive insurance distribution system suggest that there is a need for further provisions to complete the measures already adopted, and to drive the process of change more rapidly forward.
It is therefore to be hoped that Italy will adopt a system in which insurance agents are increasingly paid commissions by their customers for their consultancy and assistance services when selling and managing insurance products.[34]
This solution, which has already been adopted for certain categories of agents other than insurance agents, would be likely to encourage the development and dissemination of a distribution channel which is truly independent of the insurance companies to a greater degree than has hitherto been the case as a consequence of the prohibition of exclusive contractual clauses under current legislation. Moreover, if the commissions paid depend on policy-holders rather than by the insurance companies it would make it possible to better align the distributors' incentives with the interests of the final customers, limiting the risks connected with conflicts of interest and opportunistic conduct, and creating more favourable conditions and greater transparency to the benefit of consumers and efficient working of the insurance markets.
Also with regard to insurance services, as with banking services, the effects of the particular complexity of insurance products, has was seen in the case of banking services, on balanced contractual relations make it indispensable for statutory and regulatory measures to be implemented to encourage greater mobility of the demand, promote higher levels of transparency and guarantee more effective protection to consumers, also by increasing administrative control over compliance with the law governing vexatious clauses.
This being so, and with particular reference to compulsory third party motor car insurance, the Authority believes that measures should be adopted in order to guarantee:
1. a substantial simplification of the information given to customers, by introducing standardised specimen contracts, for example, which clearly separate the types of most

[34] Cf. The Authority's report of 16 January 2007, AS 378 – *Distribution of third party liability vehicle insurance policies* (Boll. 1/07).

common coverage from the clauses defining the extension of guarantees and the rules developing the no-claims bonus system;[35]

2. Greater transparency regarding the financial conditions of the policy, for example the percentage variation of the future premium in the event of a claim during the course of the insured period.

The current clearing system of offsetting costs between insurance companies should also be revised, in order to guarantee appropriate differentiation, not only – as is already compulsory since 1 January 2008 – by types of claim (personal or property) but also by type of vehicle in order to guarantee the effective financing of direct compensation and the actual transfer to the insured the benefits expected from its introduction. When this is done, in order to ensure broader and more efficient risk allocation, the possibility of making similar distinctions could also be appraised which – within the no claims bonus system – would make it possible to grade the premium increases in the event of claim, proportional to be damage caused by the insured party.

[35] Cf. The Authority's report of 29 November 2007, AS 433 –*Third party liability vehicle insurance* (Boll. 41/07).

Transport

The main critical issues

The transport industry comprises a wide-range of different cases: areas characterised by the continuing public service obligations (local transport, for example) and those which were liberalised over a decade ago (air transport), and services characterised by considerable intermodal competition (freight transport). One common feature in most of this area (with the sole partial exception of airports) has nevertheless been the fact the distortions of competition gradually tend to lead not so much to increased profits but to excessively high costs. In other words, where profits are made, they are shared between several parties – shareholders, employees and suppliers – all of whom are equally anxious to prevent their markets from opening up to competition.

Ownership and organisational structures

In **local public transport** where competition is basically restricted to entrusting the service to the service provider by public tender problems remain with regard to the relations existing between the regulator and the service provider, or conflicts of interest between the local administration calling the tender and the company controlled by that same authority.[36] For when the awarding authority and the service franchisee have the same owner leads to a general immobility of the existing situation, evidenced from the fact that about 90% of the few tenders that have been called so far (not more than 20% of the total franchises awarded) were adjudicated to the previous service provider, either alone or at most in a temporary joint venture with other companies (ATI).
In the **rail transport sector**, too, the ownership and organisational structure of the Ferrovie dello Stato (FS) group constitute a major critical area in terms of competition, particularly in view of the imminent prospect of opening up passenger transport to competition and of the market entry of new high-speed rail operators. The changes that have occurred in recent years in the organisational structure of the FS group have certainly been important and consistent with EU guidelines governing the liberalisation of the railway industry. But the separation of Rete Ferroviaria Italiana (RFI) from Trenitalia alone does not, however, appear to be sufficient in itself.[37] The fact that the two companies share the same proprietorship and that some of the regulatory functions continue to be vested in RFI considerably distort competition and curb its development.[38]

Barriers to market entry

[36] Cf. The Authority's report of 26 February 1998, AS125 - *Local public transport* (Boll. 8/98) and investigation 1657 - *Supplementary public transport services in the municipality of Rome* (Boll. 41/07).
[37] Cf. the Authority's report of 7 August 2003, AS 265 - *Separation of the management of railway infrastructure and transport services* (Boll. 32/03).
[38] Cf. Investigation A 35 – *Fremura/Ferrovie dello Stato* (Boll. 19/93) and AS 227 – *Fremura-Assologistica/Ferrovie dello Stato* (Boll. 8/03).

There are three main restrictions on access to **local public transport**: (i) the continual postponement of tenders for the award of the services: (ii) the calling of tenders which, in one way or another, are skewed in favour of the previous service provider; (iii) the availability of rolling stock, with regard to rail transport.
Legislative Decree No. 422/97 provided a five-year transition period for liberalising the industry and the subsequent awarding of the service by competitive tendering. So far, however, these expectations have been ignored because of the repeated extensions of the transitional régime.
With reference to the preparation of tenders, the tendency of a number of regional governments to pool the batches of work, while encouraging the growth in dimensions which is advisable in such a fragmented sector, can nevertheless reduce the number of tenderers without any justification. Similarly, the need for intermodal integration can create a barrier to access and can prevent real competition in which every tenderer, whether alone or in a temporary joint venture, is also required to demonstrate rail transport capacities; for railway companies are far fewer in number than road haulage companies. Lastly, the market entry of the new service providers can be significantly conditioned by what are called "social clauses" in some of the tenders, designed to protect the labour force, which make it mandatory for the successful tenderer to employ the same number of persons and guarantee the same pay as the previous service provider. Employment targets and the protection of the labour force can at all events be pursued adopting less restrictive practices, such as by using the surplus workforce to expand or improve service quality.
The absence of a secondary rolling stock market accessible to new entrants intending to take part in the tenders called by the regional governments, is still a further, crucial constraint on the process of liberalising local public rail transport, particularly, as is often the case, when the regional governments do not have the rolling stock that is required to provide the service. Under such circumstances it would be appropriate in all events: (a) to ensure that the availability of rolling stock when the tender is called is not made a requirement for eligibility to tender, or a means of discriminating between the competing companies; (b) the tender should be awarded to the company which is able to provide the whole service under the economically most advantageous conditions, jointly evaluation the bids for the management of the transport service and the features and quality of the rolling stock. At all events, before beginning operations, the successful tenderer should be granted the minimum amount of time required to procure the rolling stock needed for the provision of the service.[39]
With regard to **taxi services**, despite a number of positive domestic statutory measures[40], one very serious obstacle to opening up this whole sector to competition is the continuing presence of regulatory restrictions on access by new operators. In particular, the current system restricts the types of individuals eligible to provide a taxi service, and prohibits the issue of licences to companies, and prohibits any licensee from holding more than one licence.[41] The negative impact of such restrictions, also in relation to the possible

[39] Cf. The Authority's report of 26 June 2003, AS 262 - *Procurement of the railway rolling stock needed to call tenders for the award of regional rail services* (Boll. 26/03).
[40] Cf. In particular Decree Law No. 223/06, enacted as Law No. 248 of 4 August 2006.
[41] Cf. The Authority's reports of 28 July 1995, AS 053 - *Taxi services* (Boll. 29/95) and 26 February 2004, AS 277 - *Distorted competition on the taxi service market* (Boll. 9/04).

development of alternative and more efficient ways of organising the service, is all the more burdensome due to the continuing anomalies characterising most of the local taxi markets, particularly in the large towns and cities where there is a tightly regulated number of taxis with a per capita density of taxis in terms of the population that is far smaller than in similar sized cities in the rest of Europe (such as Sweden, the Netherlands and Ireland), where the taxi service has been totally liberalised.
Further critical issues in this sector are the repercussions of employment law on conditions of access to recently liberalised sectors, particularly with regard to the possibility – already referred to with reference to **rail transport**[42] and, more recently, the provision of **handling services**[43] – for the issue of licences or permits to new market entrants to be conditional on implementing the collective labour agreement concluded between the trade unions and the former monopoly-holder. Workers in industries in which there are highly statutory barriers to market entry enjoy overall more favourable treatment than the average, as a result of the ability to exploit the monopoly situation in which they operate (particularly if public). The general imposition of obligations of this kind therefore significantly pushes up production costs, particularly for companies that have entered the market after liberalisation and which have organised their own industrial relations without making provision for the application of that kind of labour contract. Notwithstanding the desirability of industry-wide contracts, the Authority believes that such obligations can have negative repercussions on the development of formally liberalised sectors but which are not fully competitive.

Business regulation

In the **airports sector**, the present system of regulating tariffs and charges for the centralised infrastructure and assets for exclusive use, based on the payment of royalties to remunerate the managers for the lower revenues resulting from the liberalisation of airport services, does not guarantee the linking of the fees paid to use these resources to the costs, as required by EU rules.[44] Furthermore, the inclusion of fixed assets created using interest-free public grants in the net invested capital, also for non-privatised companies, can also create particularly unsatisfactory results when setting regulated fees and charges.[45]

In the **road haulage industry**, concern has been caused by a number of recent undertakings by the government to return to the system of administered tariffs by introducing a minimum anti-dumping tariff to protect security and legality, to help road hauliers faced with increased vehicle fuel and service production costs. A system of minimum tariffs is not, however, a guarantee of service quality or security, but on the contrary also guarantees profitability to hauliers offering inefficient and poor quality

[42] Cf. The Authority's report of 24 October 2007, AS 424 -- *Measures to protect consumers and facilitate production and trade, and intervention in industries of national importance* (Boll. 39/07).
[43] Cf. The Authority's report of 10 January 2008, AS 441 - *Airport ground handling services* (Boll. 08).
[44] Cf. The Authority's reports of 19 February 1998, AS 123 - *The liberalisation of airport ground handling services* (Boll. 7/98) and 29 January 2004, AS 274 - *The liberalisation and the privatisation of airport activities* (Boll. 5/04).
[45] Cf. The Authority's report of 30 October 2007, AS 426 - Directive for the regulation of tariffs and charges for airport services offered on an exclusive basis, and guidelines for implementation (Boll. 39/07).

services. Furthermore, public control and the imposition of statutory penalties through the public authorities makes it possible to guarantee minimum quality standards and comply with labour and social security legislation without the need and introduce any competing restrictions whose sole purpose is to protect the level of profits to the road hauliers.[46]
In the **air transport** industry distortion still exists, caused by the way services are awarded to guarantee territorial continuity with Sardinia.[47] In particular, this system does not guarantee the maximisation of the resources needed to provide the public service but encourages forms of collusion and market sharing between the airlines which unjustifiably reduce opportunities for competition. Furthermore, the prohibition on servicing the "onerous" routes by companies that do not wish to fully undertake the obligations of providing a public service, in many cases damages the benefiting users themselves (the residents of Sardinia) because some of the airlines (such as the low-cost carriers) could provide the service on better conditions and with lower fares than those provided under the "onerous" régime.
Similar tensions exist between the obligations to provide a public service and competition in the **railway industry** where the absence of clarity in terms of charges for public service can unjustifiably limit the market access opportunities. The possibility of exploiting the cross- subsidisation of profitable and unprofitable routes would enable the dominant operator to hamper market entry or the growth of competing companies. Furthermore, the lack of transparency regarding the actual costs of providing the universal service means that the contribution demanded of other operators is commensurate with the costs of the FS group rather than to those of the most efficient service-provider.

Measures proposed

In the light of the critical issues identified, the Authority considers it appropriate that the initiatives to be adopted by the new parliament and the new government in the various areas of transport should, as a matter of priority, address the following:
(a) the full implementation of the reform to make **local transport** more competitive that began with Legislative Decree No. 422/97, and to proceed without delay to call a tender for the transport services; eliminating the linkages between the awarding authority and the tendering companies; ensuring that the object of the tender, as far as the dimension of the batches of work and the intermodal integration requirements are concerned, are consistent with the economies of scale and range, and do not unjustifiably restrict the number of potential participants; guaranteeing that the employment objectives and the protection of workers are pursued using measures that are less restrictive of competition, which do not require the new awardees to recruit the same number of employees, and under the same contractual terms and conditions, as those employed by previous service provider;
(b) a clear definition of the obligations of the public **rail passengers transport** service, equally clearly clarify the part of the public service which the market alone (that is to say,

[46] Cf. The Authority's reports of 19 May 1993, AS 013 - *Road haulage for the third parties* (Boll. 10/93), and 4 May 1995, AS 045 - *Minimum bus hire charges* (Boll. 18/95).
[47] Cf. The Authority's report of 19 May 1993, AS 013 - *Road transport on behalf of the parties* (Boll. 10/93) and 4 May 1995, AS 045 - *Minimum bus hire charges* (Boll. 18/95)

the unprofitable routes and the services); and award the management of the rail transport service by tender on non-remunerative routes that can minimise subsidies;
(c) avoid allowing the problems linked to defining collective labour contract relating to recently liberalisations - with particular reference to **rail transport** and **airport services** - - to increase costs to new market entrants and raise entry barriers, by requiring the new operators to comply with the same conditions that were practised by the former monopolists;
(d) complete the process of regulating the charges for **airport services and infrastructure** used under a monopoly and rapidly conclude the programme contracts with the management of the main airports;
(e) prevent the reintroduction into the **road haulage sector** system of minimum tariffs, which are totally ineffective in achieving the aim of guaranteeing adequate quality and security standards.

Pharmaceuticals

The main critical issues

Competition protection in the pharmaceuticals industry must take account of other concurrent general interests, such as the protection of health, the promotion of innovation and compatibility with public finances.
Secondly, the ways in which the industry is organised and operates are substantially influenced on the demand side, by a number of peculiarities mainly connected with the fact that there are three different types of parties involved, each one with different needs and roles: the end consumer, that is to say the patient, who uses drugs but does not pay for them, the physician who prescribes the drugs but is generally not very sensitive to their cost, and lastly the National Health Service which in most cases has to pay for the drugs, and is therefore the party most interested in the economic/financial aspects.
This being so, the most important profiles to be considered from the point of view of competition have to do with the difficulties in developing generic drugs, and secondly the restrictions laid down by the existing legislation governing the distribution of drugs and medicines.

Manufacture

With regard to the manufacture of drugs the main critical issues are the following: (i) the regulation of the system for refunding the cost of drugs; (ii) prescribing practices, (iii) the procedures for determining the margins to distributors.
Under the present refunding system, the role of generic drugs is essentially restricted to simply holding down the prices of the other drugs. When a patent expires and the corresponding generic is placed on the market, negotiations with the manufacturers of the generic drugs are mainly about offering a higher discount than the minimum provided by law. Even though this practice makes it immediately possible to cut prices it nevertheless tends to reduce the prospects for the effective and permanent development of generics, and gives rise to the medium-and long-term risk of increasing the cost burden to the National Health Service.
With reference to prescribing practices, physicians generally prefer to prescribe the drug manufactured by the originator even though, in most cases, there are no specific or reasoned grounds for so doing.
Lastly, the way in which margins are established for the distributors, as a given percentage of the drug price, obviously creates incentives to sell the drugs at a higher price, and in larger (and also more costly) packages.

Distribution

Partly taking up some of the suggestions made by the Authority, recent legislation[48] has liberalised the retailing and the prices of over-the-counter (OTC) drugs, and liberalising the prohibition on holding more than one pharmacy licence and, in the case of the death of a pharmacy licensee, making it mandatory for the spouse or heir up to the second

[48] Cf. Decree Law No. 223/06, enacted as Law No. 248 of 4 August 2006.

degree of kinship to dispose the pharmacy licence two years after the pharmacist's death if they are not qualified pharmacists.
However, there still remain a number of major restrictions on access to the retail pharmacy trade and the exercise of the profession and the way it is organised, deriving primarily from the current rules that stipulate that only qualified pharmacists (and pharmacists' associations or companies) may own a pharmacy, limiting the maximum number of licences that one pharmacist may hold to only four.[49]

In addition to these constraints there is also the matter of the limits on quotas and the siting of pharmacies. Current legislation[50] limits the number of pharmacies authorised in each municipality according to demographic criteria, geographical considerations and distances. The number of licences is laid down by the law on the basis of one pharmacy for every 5000 inhabitants in municipalities with a population of up to 12,500, and one for every 4000 inhabitants in other municipalities. If the population of a particular municipality exceeds the threshold by at least 50% another pharmacy is permitted to be opened. Moreover, every new pharmacy must be at least 200 metres away from the nearest pharmacy, but all events must be sited such that it meets the needs of the local people. The pharmacy masterplan that every municipality must have is reviewed every two years on the basis of the resident population in each municipality during the prior year.
The Authority has also taken action by submitting a series of reports advocating, particularly at the regional level, the simplification of the requirements and formalities for opening new pharmacies to distribute OTC drugs – mainly large chain retailing outlets and "para-pharmacies"[51] – and the abolition of maximum opening hours for pharmacies, in the light of the market changes introduced by liberalisation.[52]

Action proposed

The progress made in introducing greater openness and more liberalisation in this sector does not remove the need for further reform. To consolidate this progress new initiatives are needed, particularly to encourage both the market entry of generic drugs without discouraging incentives to innovation, and more competition between different distribution channels and between pharmacies.

[49] This restriction exists nowhere else in the European Community. In the United Kingdom, for example, joint stock companies may own pharmacies, and this has led to the establishment of pharmacy retail chains. The experience of the United Kingdom shows that where restraints on ownership and the holding of multiple licenses are removed, the market structure becomes more concentrated, and the supply conditions and prices also improve. In the UK, for example, the OTC market share of the pharmacy chains (such as Boots) is less than 29%, while the independent pharmacists account for over 43%.
[50] Cf. Royal Decree No. 1265 of 27 July 1934, Law No. 475 of the 2 April 1968, and Law No. 362 of 8 November 1991.
[51] Cf. The Authority's report of 23 November 2006, AS 371 - *Regulation of the retailing of OTC drugs* (Boll. 45/06) and of 3 August 2007, AS 413 - *Constraints on retailing OTC drugs in outlets other than authorised pharmacies* (Boll. 30/07).
[52] Cf. The Authority's report of 1 February 2007, AS 381 - *Constraints on the opening hours of pharmacies* (Boll. 3/07).

Manufacture

Since a number of leading patents will shortly be expiring, it would be appropriate, firstly, to introduce measures to develop the generic drugs industry. This would have positive effects for consumers and for the Italian National Health Service but at the present time it is limited in comparison with the majority of other European countries.[53]
In particular, when negotiating the prices of generic drugs, price levels should be able to be adjusted proportionately, for example, to the price of the originator's drugs. In other words, the system for reimbursing the cost of drugs and medicines should be such that the generic drug should not be taken solely as the benchmark parameter but account should also be taken of the potential contribution it can make in the medium term, also in terms of holding down public expenditure.
The dissemination of generic drugs could also be encouraged by requiring physicians to prescribe the generic version of a drug unless the originator's drug is truly considered to be essential and there are adequately grounds for not doing so. This would facilitate the development of generics without affecting public finances.
Lastly, the profit margins to distributors ought to be established on the basis of a lump sum remuneration for every package sold (wholesale or retail), which would make today's positive correlation of margins with the drug prices to become less important and encourage distributors to market cheaper drugs (often generics).

Distribution

The constraints on the ownership, number and the siting of pharmacies under current legislation should be completely abolished because they are not necessary and altogether they are disproportionate to the general interest for which they were introduced.
Quality requirements on the part of the persons selling drugs and managing stores and pharmacies are already sufficient to guarantee that consumers' expectations regarding the professional qualifications and skills of the pharmacists they patronise, and prevent interference with the sound operation of the public service.[54]
The restrictive impact of the constraints on pharmacy ownership, limiting it to qualified pharmacists (and pharmacists' partnerships and companies) is also all the greater today because of the concurrent prohibition on holding more than four licences.[55]
These constraints, which have absolutely nothing to do with efficiency, unjustifiably hamper market access and artificially restrict the opportunities for developing a better articulated and diversified distribution system in which, for example, it would be possible to permit the market entry of other types of operators (OTCs and wholesalers) and to disseminate alternative methods for organising or managing pharmaceuticals distribution.
Similar considerations also apply *a fortiori*, to the statutory restrictions on permits and the siting of pharmacies, which are wholly inadequate for the purposes of a rational and

[53] Cf. The Authority's report of 24 October 2007, AS 421 - *Urgent financial/economic measures for development and social equality* (Boll. 38/07) and the Assogenerici Report, April 2008.
[54] Cf. The Authority's report of 2 February 2006, AS 326 - *Regulation of drugs distribution* (Boll. 4/2006).
[55] This prohibition was originally not introduced in Decree Law No. 223/06 but only later when the Decree Law was enacted into law.

satisfactory territorial distribution of pharmacies.[56] In reality, these objectives can be more effectively achieved with a minimum – rather than the maximum – number of pharmacies in each area, thereby avoiding artificially and inefficiently restricting access and broadening consumer choice and strengthening incentives for improving the quality of the service.[57]

[56] Cf. In this connection the Authority's report of 11 June 1998, AS 144 - *Regulation of pharmacies* (Boll. 23/98).

[57] In Ireland, Germany, the Netherlands and the United Kingdom, market entry and the siting of were completely liberalised a long time ago.

Food

Main critical issues

The food industry comprises a huge number of different markets each with their own organisational and regulatory features. As a rule, competition would appear to be strongly constrained and restricted by widespread EU regulations, mainly intended to stabilise and defending incomes, minimum levels of security of supplies, safeguarding the land and protecting the environment. The influence of these regulations decreases as the distances between the various areas of production and distribution and the primary production sector increases. Consequently competition in the industrial packaged food production and commercial distribution sectors are wholly similar to the production and distribution dynamics of other staple products.

Ownership and organisation

One of the main problems with the present structure and organisation of the national agricultural system is the wide fragmentation on the supply side, which hampering the efficient placement of our products on the market, particularly where the buyers work on more concentrated and more highly organised markets.
In the fruit and vegetables sector, where there the supply is highly fragmented, the degree to which current EU law on organised producers it is being implemented, is unsatisfactory on the whole. In particular, instead of encouraging the pooling of suppliers by effectively concentrating the production and commercial functions on an entrepreneurial basis, the implementation of these rules have tended more to create a bureaucracy and make these organisations rather inflexible.[58]
In order to fully exploit and concentrate the agricultural offering, a major part is played by the Consortia which protect products of protected origin governed by EU and domestic law.[59] These Consortia enable agricultural producers who are able to comply with specific production instructions to use a single brand or mark for their products, or for by-products of those products, obtained by industrial processing (as in the case of cheeses and hams bearing a typical name).
However, particularly in cases in which the consortia only include major industrial corporations characterised by well-established commercial names, the functions of promoting, enhancing and protecting the names which DOP consortia legislation gives them do not overlap with the commercial functions of the individual members of the consortia, going so far as to set prices and quantities of product to be put onto the market, which would at all events infringe Community law regarding anti-competitive agreements. Apart from situations of blatant and verifiable market anomalies, the agreed search to match supply and demand should mainly focus on aspects relating to product

[58] See, in this connection, the results of the Authority's fact-finding survey, IC 28 - *Fact-finding survey of food distribution* (2007).
[59] Pursuant to article 14 of Law No.526/99: *"the protection consortia (...) are regulated by the civil code not only in terms of their typical functions (protection, promotion, enhancement, consumer information and the general care of interests relating to product names) but also perform "control" and "oversight" functions in compliance with Community regulations and the instructions issued by the Ministry".*

quality, ensuring that the manner in which production plans are implemented does not give rise to unjustified quantitative limits on supply.[60]

Market entry restrictions

Community regulations regarding the DOB consortia guarantee producers that are not yet members of the consortium, or decide not to become members, the right to use the mark after controlling compliance with the production specifications. Measures must be taken to ensure that the programming plans of controls and the ways in which they are applied, which are submitted to the ministry for approval, do not introduce measures whose effect is to interfere with the competition that already exists on the market for typical product names, with specific reference to the conditions under which new operators are able to enter the market.

Regulations governing business operations

Regulation of the vertical relations between agricultural suppliers and the buyers that then process their products is a further particularly important element because of the powerful influence these relations are able to exert on competition on the agricultural markets and on the allied markets downstream of them.
In particular, in the agriculture industry there is still a widespread practice of concluding what are known as "interprofessional agreements", which were previously governed by law No. 88 of 16 March 1988,[61] subsequently repealed by Legislative Decree No. 102/05, which, together with the Prime Ministerial Decree of 5 August 2005 providing "Measures for the establishment of "Commodity negotiating panels" stands as the main statutory benchmark for vertical relations within the different areas of the food industry. This type of agreement is essentially designed to foster the placement of agricultural products with the processing and marketing companies, guaranteeing both parties a certain degree of equal bargaining power.
However, the systematic and generalised use of forms of collectively organising agricultural bargaining, leading to agreed quantities to be supplied and agreed prices, can seriously interfere with competition between the farmers, removing the incentives they need to expand their enterprises and groupings of more efficient enterprises. Restrictions created by this kind of bargaining are by no means necessary to achieve the objectives of the commodity agreements, which are to enhance the agricultural and agrifood product and make the best use of them; the sustainable strengthening of the market power of farmers in relations with the industrial buyers can only be pursued after the organisation of the agricultural supply is reconverted towards stable and structured groupings.[62]

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[60] Cf. The Authority's opinion of 6 April 2005, AS 293 - *Price formation of agri-food products* (Boll.14/05).
[61] Which was ruled to be contrary to Community law by the European Court of Justice on 26 September 2000 (C-22/99 Cristoforo Bedinetto v Biraghi S.p.A.) and was subsequently repealed by Legislative Decree No. 102/05.
[62] Cf. The Authority's report of 30 November 2005, AS 318 - *Provisions for the establishment of commodity negotiating panels* (Boll. 46/05) with particular reference to the provisions of the aforementioned Ministerial Decree of 5 August 2005, giving the Minister for Agricultural and Forestry

At all events, when any new agreements are concluded by the commodity panels, there should be no predetermined guaranteed margins at every stage in the production chain, because this could introduce unnecessary and disproportionate restrictions on competition for the purposes being pursued.[63]
The recent process of acquisitions and mergers still taking place in the modern commercial distribution system both through structural groupings and under agreements such as those for Procurement Centres, also suggests that particular care should be paid to the ways in which contractual relations operate between suppliers and distribution chains. For example, the request made to suppliers by the distribution companies for contributions for services that are difficult to identify and quantify (such as items to include in the product range, positioning on shelves, etc) could artificially increase these producers' costs to access the modern distribution chains. As has already occurred in many other European countries, these contractual aspects could be specifically regulated in order to identify and prohibit the most common practices such as payment for inclusion on the distributor's price list before any order is made, or taking part in financing promotions, acquisitions or investments that cannot be justified by any common interest, or being charged disproportionately for product displays or positioning.

Action proposed

While at respecting the "common market organisations" (CMO) for each different market segment, competition protection and promotion are essential means of improving the operation and the efficiency of this sector. Particular attention should therefore be paid to analysing the vertical relations governing exchanges at different stages in the industry, because on the one hand their purpose is to encourage the effective placement of agricultural products while ensuring that the buyers do not exploit their oligopolistic strength, while guaranteeing the maintenance of effective and non-distorted competition on both the markets in which the suppliers and the buyers operate.
The Authority therefore advocates the adoption of both statutory and regulatory provisions, or other forms of intervention, designed in particular to:
1. Foster the formation of consortia and/or other joint ventures as durable and structural means of concentrating the supply. Both in the fruit and vegetable and other sectors where there is a high level of fragmentation, the regulation of the OPs should identify criteria for recognising and financing producers in a way which will encourage stable groupings of companies, ensuring that their role does not merely remain a fictitious grouping on paper alone to achieve planning objectives and management market crises;
2. Encourage means of improving the agricultural supply based on the recognition of DOP and IGP marks, while at the same time ensuring that the work of the consortia to

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Policies the powers to authorise agreements limiting competition connected with the adoption of commodity agreements.
[63] See in this connection the results of the Authority's fact-finding survey IC 28 - *Fact-finding survey of food distribution* (2007).

protect them does not interfere with independent decisions taken by the companies belonging to the consortia or new market entrants in terms of prices and quantities to be produced: for the main purposes of the protection consortia, by their very nature and on the basis of specific community and domestic statutory and regulatory provisions, is to promote and protect the quality of products bearing protected marks;

3. Any regulations and rules that make it possible to conclude commodity agreements that impose restrictions on competition on the markets on which different parties to the agreements operate should be abolished. Like interprofessional agreements, any commodity agreements which entail price-fixing and quantity-setting only produce short-term result in terms of balancing the market strength between the contracting parties, while in the long run discouraging the growth and selection of the most efficient companies;

4. It may be appropriate to regulate vertical relations for trading between the food companies and the GDOs, or alternatively encouragement should be given to drafting and enforcing a self-regulatory code for these operators which, without interfering with their own independent commercial autonomy, regulate the way the contractual agreements are implemented, the forms in terms of payment, and the mandatory contribution items.

The distribution trade

Main critical issues

Despite the present trend in the direction of gradual concentration, the distribution trade overall is still smaller and less efficient than in Europe's major countries, due historically to the fact that Italy used to have particularly tough regulations regarding market access, the siting and the size of commercial outlets and shops and the organisation and operation of commercial activities.

The reform introduced by Legislative Decree No. 114/98 was designed to thoroughly overhaul the distribution trade based on principles of liberalisation, administrative simplification and competition, taking up numerous suggestions that had already been proposed by this Authority.[64] For this decree combined the commodity tables and divided them into only two groupings (food and non-food), retaining the professional eligibility requirements of traders only in the case of the food sector, and abolishing the Traders' Register.

Even though this decree abolished the previous instrument of municipal trading plans, it gave regional governments the functions of regulating and planning the establishment of new commercial activities, and issuing guidelines and policies for the municipal licensing authorities.[65]

Ten years later, the results in terms of progress with liberalisation and the development of competition in this sector have fallen far short of the initial expectations. One particularly important reason for this has been the differing interpretations placed on the measures, which in some cases have been restrictive, by the regional governments when implementing the new rules, which have often been enforced in different ways and in some cases in conflict with the original purposes and objectives. Even though these different effects vary from one region to another, they can be measured in terms of the degree of market concentration, new market entrants and the average size of sales outlets.

Distribution trade programming and quota-setting policies have often survived the reform, imposing market entry constraints and/or restricting the areas to be used for opening new commercial outlets. Some local authorities have laid down catchment basins considering the demand to be already met by the existing supply without taking account of the possible development of the supply, and indeed laying down planning schemes for the quantity of supply in order to maintain the existing competitive situation. Even objectives of general interest, in terms of town and country planning or landscape and environmental safeguards have in many instances been improperly used to evade the purposes for which the law was enacted and to reintroduce structural market regulation.[66]

More recently, further national statutory measures[67] have abolished the professional eligibility requirements that some regional laws impose to begin trading, except those relating to the food and refreshments sectors. Furthermore, the measures have been

[64] Cf. The Authority's report to the government of 1 January 1993, AS 008 - *Regulation of the distribution trade and competition* (Boll. 1/93).

[65] Cf. The Authority's report of 25 February 1998, AS 124 - *The reform of trade* (Boll. 7/98).

[66] For a more detailed analysis and assessment of the effects and the actual implementation of the rules governing the distribution trade, see the Authority's study, *"The quality of regulation and regional economic performance: the distribution trade in Italy"* (Collana Studi e Ricerche, No. 1, March 2007).

[67] Cf. Article 3 of Decree Law No. 223/06, enacted as law No. 248 of 4 August 2006.

abolished which formerly linked supply to demand in the given territory, setting minimum distances between commercial outlets of the same kind, and limiting the range of products on sale, which retaining the distinction between food and non-food outlets. The legislative and regulatory provisions of regional governments and local authorities in conflict with or not compliant with the new principles were supposed to have been adjusted by 1 January 2007.

Action proposed

The – as-yet broadly unsatisfactory – results of the reforms that have been introduced demonstrate that what has been done so far is still far from complete, evidencing the difficulties and opposition which are hampering attempts to introduce genuine liberalisation and modernisation into the Italian distribution system. Further and more incisive measures are also necessary and cannot be put off any longer, also in the light of the effects of the present statutory and regulatory framework on consumer welfare and on the gap in terms of efficiency and competitiveness which is penalising the Italian distribution system in comparison with Europe's leading countries.
Restrictions, which are essentially unjustified – and are at all events out of all proportion – on opening commercial outlet centres, and on their siting and localisation, extension and trans-formation, and the constraints that are still imposed by current rules on rotas and business hours[68] further raising entry barriers and preventing the sound and efficient operation of the market, to the benefit of the traders already operating on it. For one rarely finds new market entrants, whereas the licences to open new commercial centres and retail outlets remain unchanged. The only new openings, mainly by traders already present on the market, have taken place almost exclusively by avoiding existing restrictions by grouping together several commercial licences, including some that have not been used. Furthermore, the fact that here are regions with differing rules and regulations is making it more difficult for entrepreneurs to develop their business and begin organising nationwide operations because of the differences in the regulations between different local authorities.
There is a twofold price to be paid for these distortions and obstacles to competition: firstly, the higher costs resulting from the inefficiency of the distribution structure are being passed on to the end-consumers in terms of reduced quality, and poorer service diversification and comparatively higher prices paid than in other countries in Europe, which has negative repercussions which are all the greater considering the income differentials; on the other hand, the lack of a national industry that is able to penetrate foreign markets is depriving Italy's products of important export support, which foreign products have by being retailed through their large commercial chains.
The Authority therefore trusts that the reform that began at the end of the 1990s will receive a fresh impetus in the course of the current Parliament that has just begun, and lead to a root and branch review of the present national rules and regulations governing the distribution trade, giving priority to removing all the non-essential restrictions which are not adequately justified by the general interest and which are preventing the full deployment of free enterprise and the full operation of the market mechanisms in

[68] Cf. The Authority's report of 27 March 2008, AS 448 - *Opening commercial outlets in the municipality of Rome* (Boll. 8/08).

determining individual choices regarding the start-up, establishment, siting and dimension of sales outlets, the range of the products and services to be offered, and the types of organisation and trading practices.
Based on past experience, it is also to be hoped that national legislation will, in full compliance with the principles of the Italian Constitution, more clearly and rigorously define the scope and the limitations on the statutory and regulatory powers of the Regional governments and the local authorities, in order to guarantee they are implemented consistently with the aim of liberalising the market and opening it up to competition, and to promote and protect general interests in any way connected with the development of an efficient and modern system of commercial distribution.

Cinemas

The main critical issues

Cinema management is still subject to serious statutory and regulatory constraints, particularly with reference to market entry conditions.[69]
Legislative Decree No. 3/98 had abolished the requirement of a licence to open a cinema seating fewer than 1300 people, which was subsequently reintroduced by Legislative Decree No. 28/04. In particular, this latter measure provided for a sharing of central and regional government powers, based on dimensional criteria, giving the Ministry of Cultural Heritage and Activities powers to issue licences for multiplex cinemas with over 1800 seats (art. 2(5)). It was left to Regional legislation to govern the issue of licences for all the other cinemas, relating to the construction, conversion or adaptation of buildings to be used as cinemas and open air cinema arenas already in operation, partly in order to rationalise the territorial distribution of different types of cinema.
As a result of the Constitutional Court ruling[70] declaring Legislative Decree No. 28/04 to be unconstitutional, regional powers are currently being exercised over all the cinemas (whether open-air or closed and regardless of their seating capacity) and on the basis of the criteria provided by Legislative Decree No. 28/04 relating to the ratio of the population to the number of cinema screens, the siting of the cinemas, the quality level of the facilities and the need to give priority to transferring existing cinemas and open-air arenas in other areas within the Provinces.
In Lazio – but the same also applies to numerous other regions as well – Law No. 4 of 28 April 2006 (the Regional 2006 Budget Law) requires regional authorisation for building, transforming and adapting buildings to be used for cinemas and arenas for film exhibition, and for the extension and splitting of cinema halls already operating, but only in the case in which the overall seating capacity is, or becomes, more than 600 in municipalities with a population of up to 150,000 inhabitants, or above 1300 seats in municipalities with a population in excess of 150,000.
When implementing these provisions[71] guidelines and criteria were established for the issue of permits on the basis of indicators taking account of the following: the ratio between the number of cinema halls, the number of seats, screens and population density in different catchment areas, also at an inter-municipal or supra-municipal level, quantitative and qualitative data on box office numbers, the quality level of the facilities, equipment, amenities and technological instruments used, and the characteristics of the roads and the traffic and mobility conditions for accessing them. A number of provisions were also reintroduced regarding the distances between cinemas requiring prior authorisation before they can be opened, and the overall seating capacity beyond which a special permit is required.

[69] Cf. The Authority's report of 11 December 2003, AS 272 - *The reorganisation of cinemas* (Boll. 50/03) and the report of 28 May 2007, AS 397 - *Liberalising the opening of cinemas and the protection of spectators* (Boll. 20/07).
[70] Cf. Constitutional Court judgment No.285 of 19 July 2005.
[71] Cf. Regional Regulation No.16 of 17 December 2007 (Lazio Region Official Gazette, 20 December 2007).

Action proposed

Statutory and regulatory constraints on market access, which are not necessary and are not proportional to the pursuit of specific and justified objectives of general interest, impose unjustified restrictions on free enterprise which are incompatible with the principles of competition and are extremely prejudicial to the sound operation of the market which they affect. By doing away with or attenuating the competitive pressure exercised by potential market entrants, these restrictions tend to artificially increase the market power of the companies already operating there while at the same time reducing incentives to cut costs and lower prices, adopt more efficient technologies and production processes, and product innovation, diversification and improvement.

In the cinema theatre industry, particularly, more intense competition could encourage greater differentiation in the programming of the cinemas, so that they screen not only the most popular films but also less commercially popular ones, catering for the more sophisticated audiences.

Making the opening of new cinemas, or the transformation of existing ones, conditional on compliance with such parameters as a ratio between the number of inhabitants, cinema seats and cinema screens, for which no proof has been given of any real connection with market dynamics, is likely to slow down the hoped-for expansion of this industry, setting quotas for the number of cinemas present in a particular area and weakening competition between different cinema owners, to the detriment of service quality and total sales, to the disadvantage of the public.

For the Authority therefore trusts that there will be a far-reaching revision of the present statutory and regulatory provisions governing authorisation to open new cinemas, and particularly incentives at the national level which, in the prime interest of consumers, lay down clearer guidelines for regional regulations, imposing the abolition of authorisation criteria that are designed to lay down in advance the structure of the markets and other unjustified restrictions on competition and free enterprise.

Professional services

Main critical issues

The main critical issues in this area have to do with the statutory restrictions governing access to the liberal professions, particularly in cases where the practice of the profession requires mandatory registration with a professional association or Order, or where certain categories of professionals have exclusive rights to perform particular services or economic activities.

Notaries

Access to the notarial profession is governed by an organic plan laying down the maximum number of notaries and the siting of notarial offices in each district based on parameters relating to the population, the value of the contracts, the size of the territory and the means of communication, with the explicit intention of guaranteeing notaries a minimum annual income. The number of notaries as a proportion of the population in each district may not exceed one for every 7000 inhabitants. The organic plan is subject to ordinary revision (every seven years) and extraordinary revision which, however, only takes place when it is shown to be necessary.[72]
In addition to these constraints there are also the delays in updating the organic plan (the most recent revision was two years following the deadline date for it to take place) and the filling of existing vacancies, as well as the practice, which is nevertheless permitted under current legislation, to hold competitive examinations for a fewer candidates than the number of vacancies actually available.[73]
Indicative in regard are the results of a comparative study conducted recently on behalf of the European Commission[74] into the national conveyancing systems (pre-contract searches, transfer deed drafting, signature certification and deed registration in the Land Registry). In some countries of the European Union these services are, or may be, provided by different professionals (notaries, lawyers, solicitors, real estate agents or other professionals).
This study showed, primarily, that the most restrictive regulations were in the "Latin" notarial system which exists in all European countries, including Italy. The most serious restrictions relating to all the variables considered in the study, that is to say restrictions on market entry (*numerus clausus*, and an organic plan); the obligation to use a professional (which various widely from one country to another and may only involve authenticating the signature, or simply registering the title deed or drafting the whole title deed), and constraints on professionals' market conduct (for example, charging mandatory fees and limits on advertising).

[72] Cf. Article 4 of law No. 89 of 16 February 1913 (the Notarial law) as amended by Law No. 80 of 14 May 2005, enacting Decree Law No. 35/05.
[73] Cf. Art. 4 of Law No. 64 of 22 January 1934.
[74] *Conveyancing services market* (December 2007) which can be seen on the website of the European Commission Directorate-General for Competition:
http://ec.europa.eu/comm/competition/sectors/professional_services/studies/studies.html

In countries using the Latin notarial system fees are decidedly higher, and they tend to increase as the value of the real estate being conveyanced increases. With a few exceptions, moreover, the higher charges are not generally accompanied by a higher quality of service in terms of the possibility of buyer choice, the certainty of the title deeds and the speed with which the transaction is conducted (of the 16 countries examined, Italy was 10th in terms of service quality). Lastly, the restrictions on entry to the profession, intended to guarantee high average minimum incomes, are not indispensable for guaranteeing an adequate number of notaries in a given area.
Conversely, the experience of the liberalised systems (such as in the Netherlands, and the English-speaking and Scandinavian countries) shows that results are generally positive in terms of lower charges, higher quality, certainty of the legal relations and the development of new professionals.

Family doctors

Similar restrictions are also imposed on the exercise of the profession of family doctors (and paediatricians, where doctors opt for this specialism) who are paid by the National Health Service (NHS), on the basis of fixed fees per patient. Current legislation[75] provides that the contract between the NHS and family doctors should be governed by nationwide contracts between the government and the trade unions, and by supplementary trade union agreements at the regional level. In particular, the national collective labour contract[76] provides that each NHS family doctor should have a maximum of 1500 patients in each territory with a resident population of not less than 5000.
The effect of these constraints is heightened by the extra restrictions in some cases resulting from regional agreements with the trade unions representing the doctors to fill vacant posts, generally intended to reduce the ratio of family doctors to patients in individual territorial areas, without any effective efficiency or public expenditure containment requirements.[77]

Action proposed

Recent statutory provisions, taking up in part the suggestions that the Authority has been advancing for a long time,[78] have removed some of the statutory restrictions on the exercise of the liberal professions, particularly by removing the obligation to charge

[75] See article 8 of Legislative Decree No. 502/92.
[76] Incorporated into Italian law by Presidential Decree No. 207/00.
[77] Cf. The Authority's reports of 19 October 2005, AS 315 - *Modes of access to the profession of the family doctor with the National Health Service in the Calabria Region* (Boll. 41/05), and 28 June 2006, AS 347 - *Agreement with the Tuscany Region regarding general practitioner family doctors approved by Regional government Resolution No. 1015* (Boll. 26/06) and 4 October 2006, AS 364 - *Agreement between the Lombardy Region and the trade unions for general practitioners* (Boll. 39/06).
[78] Cf The Authority's report of 4 February 1999, AS 163 - *Reorganisation of the intellectual professions* (Boll. 4/99)

minimum fees, and permitting advertising and providing interdisciplinary services through professional partnerships or associations.[79]

The Authority hopes that these measures, and along the same lines, the genuine opening-up to competition, will be followed up by further measures, primarily designed to bring about a more radical reform of the means of gaining access to the double professions life thoroughly overhauling the aspects of current legislation which are mostly in contradiction to the principles of free enterprise, and are difficult to justify in the light of specific and motivated requirements in the general interest.

With reference to notaries and family doctors, the Authority hopes in particular that the statutory and regulatory provisions setting the number of professionals that can operate in each district door territorial environment, on the basis of certain parameters (such as the size of the resident population), and which are essentially designed to guarantee minimum incomes for those already working there, while preventing the development of more competition and restricting consumer choice, while significantly hampering increased social mobility.

As amply demonstrated from the experience in other European countries with liberalisation, it is not necessary to set quotas and draw up organic plans to guarantee quality services and a sufficiently balanced territorial distribution of the services. Qualifications and statutory quality requirements to qualify to exercise the profession, and codes of conduct laid down by professional associations and orders are already sufficient in themselves to provide assurances to clients and patients that minimum standards of professional competence and skills are being adhered to. Furthermore, where it is really necessary to have an adequate availability of professional services in different parts of the country, these two have met by adopting less restrictive or anti-competitive measures such as by setting a minimum, rather than a maximum number of professionals in each area. Controversy, the protection that these restrictions are supposed to guarantee to professionals already practising on the market tends, on the whole, to reduce competition to reduce prices and incentives to improve the quality of service; these are all the more desirable considering the (in many cases constitutional) importance of the public interests related to the services, such as public health and the certainty of contracts.

At the same time that restrictions on access to the professions abolished it would also be appropriate to subject the current rules reserving specific activities for particular categories of professionals to a thorough overhaul, carefully appraising whether they are really necessary and proportional in terms of the corresponding negative repercussions they have on the economic and quality conditions of the services delivered and under probability of expanding new forms of professional organisations and profiles.

[79] cf. article 2 of Legislative Decree No. 223/06, enacted as Law No. 248 of 4 August 2006.