

Regulatory reform and competition: How to push the agenda forward

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The political economy of competition oriented reforms

- Privatization decisions are mostly domestic; liberalization decisions mostly originated from the EU. Why?
- A formal answer is that the EU Treaty is neutral with respect to ownership of enterprises (also State Aid provisions are neutral). Indirectly State Aid provisions have provided an incentive to privatize
- A political economy answer is that privatization is a redistribution from the State to the private sector: domestic private constituencies usually gain. On the contrary, liberalization leads to a different allocation of resources: domestic powerful constituencies loose; consumers gain but they do not count much. This is why decision making is best taken far away from vested interests
- Member States have resisted any major liberalization decision: telecommunications, energy, private services

Telecommunications services

- The first directive, which in 1988 liberalized the market for telephone terminal equipment, was challenged in Court by five countries (France, Italy, Belgium, Germany and Greece). The Court ruled in favor of the Commission
- Directive 388/90 liberalized value added services but was adopted by Member States with a huge delay. In Italy the antitrust Authority advocated for its prompt adoption
- Full liberalization from January 1998
- Competition and antitrust were not considered sufficient: the EC Council adopted in 2007 the Roaming Directive which set a maximum price for roaming charges for calls made within the EC

Electricity

- Discussion on an electricity Council directive lasted six years from 1990 till 1996.
- The 1996 directive left a lot of choices to MS: either free entry into generation or tendering process; either negotiated access to the transmission grid or regulated TPA. Not very effective
- Directive 54/2003 aimed at complete market opening for firms on July 1 2004 and for families on July 1 2007. The directive introduced TPA and a national independent regulator. No vertical separation.
- The 2007 sector enquiry shows that MS electricity markets are quite isolated and interconnection capacity is low. The third liberalization package is underway: functional separation; stronger cooperation between regulators

Private services

- Articles 43 and 49 of the EC Treaty establish the freedom of establishment and to supply services, prohibiting, discriminations based on nationality and national measures having the same effect.
- Restrictions are allowed only if they are strictly necessary for achieving a public interest objective (difficult to enforce judicially)
- 2004 Bolkestein directive: origin principle (reinforcing mutual recognition). Strong opposition which led to wide sectoral exclusions.
- The 2006 adopted directive abandoned the origin principle; prohibited practices (access restrictions on nationality and access based on market characteristics) or to be justified (access based on distance or on population, price regulation, mandatory supply of additional services)

The liberalization drive in Italy

A chronology

- **1990:** Italy adopts an EC inspired domestic competition law. The law requires the Authority to draft three advocacy reports on public procurement, on retail trade and on concessions. These reports have been very important for influencing subsequent reform
- **1992:** Italy sets up the telecom and energy regulators adopting a functional specialization approach. As a result in the course of the years many antitrust cases in these industries. Only for banks Italy adopts a sectoral specialization approach. Very few cases in banking

The recent liberalization drive in Italy

A chronology

- **1992:** The antitrust authority starts delivering its annual report in Parliament. Press/TV coverage on the importance of competition
- **1998:** The Minister of Industry, inspired by the 1993 advocacy report by the Competition Authority, liberalizes retail trade (fully liberalizing the opening of small shops up to 250 m², subjecting to a regional plan the opening of medium and large surfaces).
- The law was criticized by incumbent retail traders of all dimensions. In the process of approval, the Parliament introduces the prohibition of sales below costs. The Authority argues against it, but is not followed.

The recent liberalization drive in Italy

A chronology

- **1999:** Italy joins the European Monetary Union and the exchange rate becomes fixed. Competitive devaluations are no longer possible
- **2001:** Oecd examines Italy on regulatory reform. Concern over high degree of regulatory restrictions
- **1990-2006:** the Authority issues almost 400 advocacy reports. Most of them are ignored. They are followed when they back a European initiative where compliance is mandated or when the powers of the Authority are at stake

The recent liberalization drive in Italy

A chronology

- **June 2006:** the Minister of industry issues a decree with the objective of liberalizing a number of activities, improving consumer protection, strengthening the enforcement powers of the Authority. A lot of categories are affected (professional services, pharmacies, banks, insurance companies, bars, restaurants, bakeries, taxi).
- **January 2007:** the Minister issues a second liberalization decree
- The press release of the Ministry contains specific reference to the advocacy reports of the Authority

The recent liberalization drive in Italy

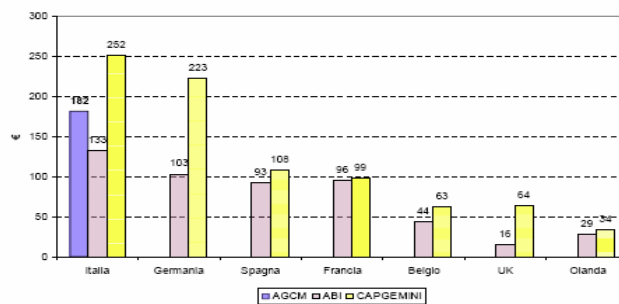
- Strong reaction by professionals and by banks based on general interest considerations (TRUST, UNIVERSAL SERVICE; STABILITY)
- The national association of banks tries to interpret the law restrictively so as to liberalize as little as possible. The antitrust authority intervenes. Rivalry between banks strongly increases
- Strong reaction by taxi drivers protesting for income losses (strikes in major cities)
- Taxi service II: greater flexibility in shifts management and increase in the number of licenses to be decided by municipalities

An example

Italian banks

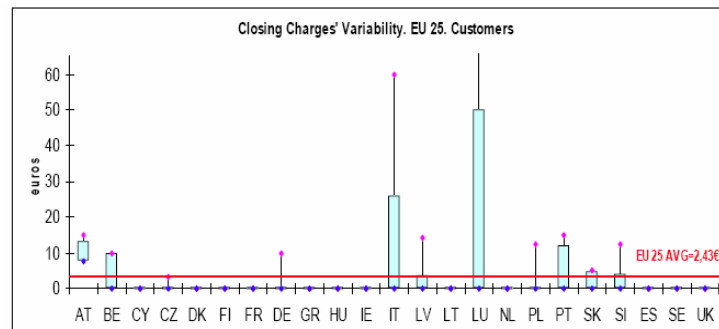
Banks: Current account expenses in 2006

Figura 3.7: Confronto internazionale della spesa per il c/c (€), dati al 31/03/2006.



Fonte: Elaborazioni AGCM su dati raccolti nel corso dell'indagine.

Closing charges for current accounts in the EU



Notes: Truncation at €65.
Source: Commission services retail banking sector inquiry, 2005-2006

These costs are now much lower. How did it happen?

- **1990**: Banking is subject to the law but enforcement of the law is assigned to the Bank of Italy.
- **1990-2005**: Not very active enforcement of the law by the Bank. Year after year the Chairman of the competition Authority asks Parliament that the competences of antitrust enforcement in banking be assigned to the Authority. Nothing happens.
- **In the course of 2005** the Bank is strongly criticized for favoring domestic over foreign buyers in the authorization process of an acquisition of a domestic bank. Charges are filed against the Governor and he resigns.
- On **22 December 2005** the Italian Parliament approves a law and the long awaited move takes place.

Recent advertisement by Unicredit a major Italian Bank (very similar to account number portability)

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The recent liberalization drive in Italy

Some conclusions

- According to polls **70%** Italians were in favor of liberalization efforts. For all other policies consensus seldom reached **50%**.
- The feared destructions associated with competition do not come about as quickly. Lawyers started to advertise on the web the price of its services. Prices of OTC drugs declined by 15-20%
- Once competition is on the political agenda, the suggestions of the competition Authority become an essential "facility". The Authority can also help in bringing competition in the political agenda. Furthermore the Authority can intervene with its enforcement powers to accompany the liberalization efforts
- Liberalizing pays off politically. It has to be all over the board. Protests cancel each other out.
- Unfortunately this political advantage is not a lasting one.

An Epilogue

- In order to allow the merger of Alitalia and Air One, Alitalia's major domestic competitor, last week the Government issued a decree where for reasons of national interest and in the presence of a bankrupt firm the Government may suspend the enforcement of merger control provisions should the provision of essential services be at stake.
- Only a year ago competition oriented reform was the preferred policy option in Italy. Now, because of the perceived trade off between business and consumer interests, competition enforcement had to be sacrificed. For competition policy subsidiarity is a solution only for enforcement.