



PARIS

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**DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS
COMMITTEE ON COMPETITION LAW AND POLICY**

DAFFE/CLP/WP2/WD(97)32
For Official Use

Working Party No. 2 on Competition and Regulation

DEVELOPMENTS IN TELECOMMUNICATIONS: AN UPDATE

-- Italy --

This note is submitted by the Italian Delegation to the Working Party No. 2 FOR INFORMATION at its next meeting on 20 October 1997.

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DEVELOPMENTS IN TELECOMMUNICATIONS: AN UPDATE

Note by the Italian delegation

Legislative and market developments occurred in the Italian telecommunications in 1996 and 1997

1. The Italian legislative framework in the telecommunications sector has been substantially modified in the last two years, mostly - as in the other EU Member States - on the wave of the liberalisation process carried out at the European Union level, both for the installation and provision of infrastructures and services.
2. As a result of these changes, all the EU directives both of liberalisation (namely, the Commission directives no. 90/388, 94/46, 95/51, 96/2 and 96/19, based on the art.90.3 of the EC Treaty) and of harmonisation (namely, the Council directives 97/13 - on authorisations and licences - and 97/33 - on interconnection and universal service, based on art.100A of the EC Treaty), have been transposed into the national legal system in order to meet the deadline of January 1, 1998 for voice telephony liberalisation. Nevertheless, some implementing rules and procedures (such as the specification of terms and conditions for individual licenses as well as for the interconnection) are still to be adopted, what might impede new entrants to start operating on a commercial basis in the Italian public voice telephony market from the very beginning.
3. The main regulatory measures entered into force in the field of telecommunications in 1996 and 1997 are briefly described in the annex.
4. One of the most notable innovation, is certainly the creation - following to a lengthy Parliamentary debate - of an independent regulatory authority (the "Authority for the guarantees on the communications") for the whole communications sector, including telecommunications and mass-media (TV, broadcasting, multimedial, press and publishing sectors). The Authority is composed by two different Commissions, one dealing with communication infrastructures, the other with services and contents delivered through the networks. In the mass-media sectors, the Authority has the responsibility to preserve the principle of pluralism of information (set forth by the Italian Constitution), while the antitrust competence is fully granted to the Competition Authority. As a consequence, in principle, the creation and/or maintenance of dominant positions by undertakings acting in mass-media industry is subject to the control of both the regulatory Communications Authority (which apply some quantitative criteria in order to guarantee such pluralism) and the Competition Authority (to evaluate if the national or EU competition rules are infringed).
5. With regard to market developments, it has to be pointed out that the Italian telecommunications system, until recently, has been characterised by the presence of a strict legal monopoly on infrastructures and services. Liberalisation was *de facto* delayed also due to the fact that some key EC directives - such as in particular the directive 90/388, on services liberalisation except public voice telephony - have been implemented five years after the deadline. This situation of legal uncertainty prevented many operators (both national and foreign) to enter the telecommunications markets on a commercial basis. Symptomatic was the case of a small operator which tried to start operating in the sector of corporate voice services relying on the direct effect of the provision of EC 90/388 directive, facing the strong opposition of the public operator which refused the lease the lines for the provision of such services. Such behaviour was

considered abusive both by the Italian Competition Authority and by a national court. However too much time had passed and the new entrant, almost bankrupt, was forced to cease its activity in 1996.

6. Since then a number of new operators have entered the liberalised market, mainly, for the supply of corporate telephone value added and data transmission services. In this regard the Competition Authority conducted a number of abuse of dominance cases in order to impede the public operator *Telecom Italia* from weakening the new operators and making it more difficult to develop competition in the new markets. Furthermore in the last few years *Telecom Italia* has made huge investments to extend its fixed infrastructure and expand the relevant transmission capacity with the transformation to optical fibres (especially in urban areas), also in view of the provision of multimedial services. In this respect, one must consider that cable-TV operators do not exist in Italy at the moment so that these strategies will make it very difficult for new operators to enter the market by building local infrastructures. Recently however the electricity monopolist and the railways are trying to utilise on a commercial basis the network they own, competing with *Telecom Italia* at least on long distance telephone services.

7. As far as competition in mobile services is concerned, at present, there are basically three different products, based on three different mobile standards, i.e. the TACS analogue service, the GSM digital service and the DCS 1800 service. The first one, since the beginning 1990, has been provided by only one operator, *TIM*, controlled by *Telecom Italia*. Note that TACS is still a growing service in terms of customers and accounts for about 3.5 million subscribers. The GSM mobile services are provided under a legal duopoly, on the basis of two licenses granted to *TIM* and *Omnitel Pronto-Italia (OPI)* in March 1994. However, the latter was able to start operating only in September 1995. The position of these operators in the GSM market is considerably different, and the number of customers of *TIM* (which is one of the bigger mobile operator in Europe) is roughly three times higher than the number of customers of *OPI*. In 1996, the Competition Authority has found that *TIM* had abused its dominant position in the GSM market by means of practices (such as exclusive vertical restraints and loyalty measures) aiming at preventing *OPI* to have access to the most qualified distributors of mobile equipment and services, considerably raising its costs to enter the GSM market.

8. DCS 1800 mobile services, which are not yet provided in Italy, pursuant to Law no.189 of July 1, 1997, shall be offered by three companies, i.e. those already operating the GSM standard (*TIM* and *OPI*), plus another company to be selected through a public bid, which is planned to be concluded within this year. Many joint-ventures between Italian and foreign firms are expected to participate to the bid for DCS 1800.

9. In perspective, the growing of mobile service, even through the application of the standard DECT, will enhance competition in the local loop, thus contending the position of the former legal monopolist .

Annex

Main regulatory measures entered into force in Italy in the field of telecommunications in 1996 and 1997.

- Law-decree no.545 of October 23, 1996 converted into Law no.650 of December 23, 1996, which, *inter alia*, provided a new and faster procedure for the implementation of a number of EC directives (namely, the directive 96/19 on the full competition of telecommunications services and infrastructures, the directive 95/51 concerning the use of cable-TV networks for the provision of liberalised telecommunications' services and the directive 95/62 concerning the application of the ONP principles to the voice telephony); this procedure utilises secondary legislation instruments drafted and approved by the Government instead of the Parliament (which maintains consultative powers). Those directives have been subsequently implemented via a regulation enacted through the decree of the President of the Republic no.318 of September 19, 1997;
- Legislative Decree no.614 of November 12, 1996, which implemented into the Italian legal system the EC directive 91/623 on the approximation of legislation on terminal equipment and mutual recognition of conformity;
- In February 1997 the Ministry of Post and Telecommunications adopted some decrees amending tariffs for the use of lines and services of the public operator. Other decrees on tariffs had been adopted in May and September 1996. In general, the cost of subscriptions was raised, while the cost of long distance and international lines and services with some countries (i.e. USA, Canada and United Kingdom) were lowered;
- Legislative Decree no.55 of February 11, 1997, which implemented into the Italian legal system the EC directive 94/46 on the liberalisation of satellite services and infrastructures;
- Decree of the Minister of Post and Telecommunications of May 8, 1997, no.197, adopting a new regulation concerning the terms and conditions for provision of the public telephony service;
- Law no.189 of July 1, 1997, which provides that also the implementation of three EU directives, namely, 96/2 on the liberalisation of mobile services and infrastructures, the harmonisation directives on interconnection and universal service as well as on general authorisations and individual licences, was to take place by means of secondary legislation. The rules implementing such directives have been inserted in the Regulation no.318/97, mentioned above. However, Law no.189/97 contains also specific rules for the starting the provision of DCS 1800 mobile services, in particular, (i) by reserving some frequency bands to such mobile standard, and (ii) by indicating that the latter shall be performed by a company to be selected through a public bid, in addition to the two companies (*TIM* and *OPI*) which are presently enjoying special rights for the provision of GSM mobile services. The bid for the third operator of DCS 1800 is scheduled to be concluded within this year;

- Decree of the Minister of Post and Telecommunications of July 1, 1997, which, provides some technical measures for numbering (fixing the relevant deadlines), in order to increase the capacity of the numbering national plan and meet the needs of the new operators;
- Law no.249 of July 31, 1997 which provides (i) the creation of a single regulatory authority for the entire communications sector (“Authority for the guarantee on the communications”), encompassing both telecommunications and mass-media sectors (see above), (ii) rules for the protection of the constitutional principle of pluralism of information, including quantitative limits to the concentrations in the mass-media sectors (e.g. TV, broadcasting, multimedia press and publishing), (iii) general rules and principles on the installation and provision of infrastructures and services, accounting separation, access, interconnection and universal service. These provisions are integrated and completed by those contained in the Regulation no.318/97;
- Decree of the President of the Republic no.318 of September 19, 1997, which, as seen above, transposes in a sole regulatory document both the EC liberalisation directives 95/51, 96/2 and 96/19 and the EC harmonisation directives 95/62, 97/13 and 97/33. This is a very complex text which represents, at national level, the legal basis of the last stage of liberalisation, i.e. the creation of a competitive environment in the installation and provision of fixed and mobile infrastructures and services, including voice telephony, under the control of an independent regulatory authority. In particular, the Regulation, after having set forth some general principles, such as the abolition of special and exclusive over networks and services by the end of this year, provides specific rules (some of which need further implementation) on the various issues dealt with by the aforesaid EC directives. Such issues are the following: (i) the scope, modality of provision and financing (the net cost of the duties) of universal service; (ii) the terms and conditions of adequate interconnection of networks and interoperability of services (with specific duties for the operators having a particular market power); (iii) the right to have access to public networks and relevant prices (including the provision of a mechanism of access deficit charge); (iv) the terms and conditions of general authorisation and individual licenses, granted by the regulatory authority; (v) rights of way and common use of facilities; (vi) accounting separation; (vii) quality of services; (viii) numbering; (ix) disputes’ resolution procedures; (x) liberalisation of directory and information services; (xi) liberalisation of mobile services.