



Italy is a peninsula extending into the central Mediterranean Sea, in the Southern part of Europe.

Italy became a nation-state in 1861 when the city-states of the peninsula, along with Sardinia and Sicily, were united under King Victor Emmanuel II. An era of parliamentary government came to a close in the early 1920s when Benito Mussolini established a Fascist dictatorship. His disastrous alliance with Nazi Germany led to Italy's defeat in World War II. A democratic republic replaced the monarchy in 1946 and economic revival followed.

Economy

Italy is the eighth largest economy in the world in terms of Purchasing Power Parity. After the end of World War II, Italy's economy has changed from an agriculturally based economy to a modern country, where industrial firms and services account for the most of GDP. Italy belongs to the Group of Eight (G-8) industrialised nations; it is a member of the EU and the OECD.

Competition Evolution and Environment

As against other similar countries, Italian capitalism has some distinctive features:

1) *Weight of SMEs (Small and Medium sized Enterprises):* SMEs contribute to a larger fraction of Italy's GDP and employment than they do in any other European country: 95 percent of Italian firms have less than 10 employees, and this class of companies absorbs 47 percent of the total employment (as a comparison, this number falls to 21 percent in Germany, 22 percent in France, 27 percent in United Kingdom). This impacts on the industrial specialisation of Italian economy, which insists primarily on small scale and low tech investments. Flexibility and high quality in a range of traditional consumer goods are the typical competitive advantages of Italian firms.

PROFILE	
Population:	57.6 million***
GDP (Current US\$):	1.5 trillion**
Per Capita Income: (Current US\$)	21,570 (Atlas method) 26,430 (at PPP.)**
Surface Area:	301.3 thousand sq. km
Life Expectancy:	78.7 years**
Literacy (%):	98.5 (of ages 15 and above)
HDI Rank:	21
<i>Sources:</i> - CIA Government Publications, Factbook (**) For the year 2003 (***) For the year 2004	

- 2) *Family control:* Italian firms of any size are often controlled by individuals or families, with relatively few companies listed on the Stock Exchange. Financial markets are weak, small, and under the influence of big bank groups. Separation of management and ownership is not frequent, and even in major companies shareholders occupy the management positions.
- 3) *Invasive State:* During the years of Great Depression, while the Italian Fascist Party was in power, the State nationalised a large part of the banking system and created IRI (Institute for Industrial Reconstruction), a company owned by the State with controlling shares in many big companies in different industries (manufacturing, energy, transport, public utilities, etc.). After World War II, the newly formed democratic government preserved and enlarged State ownership, with such declared aims as assisting the country in post-war reconstruction; build infrastructure; invest in capital intensive industries where private financing was unavailable; stabilise employment; help the economy

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	1997	1998	1999	2000	2001
France	683	711	968	808	1,131
Germany	700	741	933	1,022	749
Italy	239	243	270	291	288
Japan	2,387	2,416	2,470	2,561	3,438
United Kingdom	2,157	2,087	1,945	1,904	2,438
USA	8,851	8,450	7,651	7,524	5,797

Source: Database World Bank (2003).

in the historically underdeveloped South of the country (Mezzogiorno) and impose political pricing on some essential goods and services.

The experience of State ownership in Italy is usually regarded as a failure. Italian State-owned companies were static, inefficient, driven by political processes, and had large losses which burdened the State's finances. At the end of the 1980s, IRI and other State-owned companies were in such a financial distress that public opinion led to a demand for change.

At the beginning of the 1990s, serious corruption scandals involving all the old parties of the so-called 'First Republic' (Italian democracy as shaped after the World War II) gave forth to a change in Italian politics and ultimately led to a programme of privatisation. Between 1992 and 1999 the State sold companies for about €90bn. This had beneficial effects on State finances and, at the same time, opened important industries previously under State control to private entrepreneurs.

This was also the beginning of antitrust laws in Italy. As a member of EU, Italy was already subjected to EU liberalisation directives that emphasised effective competition. Since new private operators were now managing firms that once were State monopolies, it was important to ensure that they couldn't use monopolistic power to restrict competition and raise prices. So, in 1990, the Competition Act (L. 287/90) was approved with general consent.

Competition Law

Competition Act (L. 287/90) closely followed the EU directives and the European Treaty, which states that competition is a basic mechanism of the market economy and is a means of guaranteeing consumers a level of excellence in terms of the quality and price of products and services. According to the Treaty, effort must be exercised to prevent:

- agreements which restrict competition (Article 81 of the Treaty), such as price-fixing agreements and cartels between competitors; and

- that firms in a dominant position abuse their position (Article 82 of the Treaty), e.g. by predatory pricing aiming at eliminating competitors from the market.

Institution, its Competencies and Anticompetitive Business Practices

L. 287/90 also created a competition authority, *Autorità Garante della Concorrenza e del Mercato* (AGCM) or the Italian Competition Authority to enforce the Competition

Act. The Authority is an independent body, with five members that are appointed for non-extendible seven-year term by the Presidents of the two houses of the Parliament. The Act requires that members have professional or academic experience so that highly reputed persons man the authority.

In its actions, the Authority is free from government control. The Authority is in charge of applying all the provisions of the Competition Act (agreements, dominant positions, mergers) and the laws on unfair competition (D.L. 74/92 and D.L. 76/2000), which are mainly concerned with deceptive advertisement.

a) *Agreements*. The Competition Act prohibits any restrictive agreement or concerted action that has 'an appreciable impact on competition'. This applies also to pacts that are not entered into formally but effect practical co-operation at the cost of competition. Some prohibited agreements identified explicitly are direct or indirect fixing of prices or trading conditions, limitation or control of production, market, investment, or technical development, discrimination against trading parties, and tying or imposing unusual conditions in contracts. All agreements to control prices (profit pooling, mark-up agreements, 'fair trade practice' rules) have been prosecuted by the Authority, which include aggregate rebate cartels.

b) *Abuse of dominance*. The Competition Act lists some actions that go under this heading: imposing unfair prices or trading conditions, restricting production, market behavior or technical improvements, so that consumers are harmed, and, again, discrimination against trading parties and imposing unusual contract conditions. Dominance is presumed at market shares over 50 percent and in this case many types of disadvantages caused to other parties are considered abuse. Many of the Authority's interventions in this field have targeted the transport, telecommunications, electric power, and natural gas sectors, mostly for discrimination or attempts at extending a dominant position into a different market.

Box 80.1: Vignettes of Abuse of Dominance in Network and Utility Industries

Many of the Authority's cases about abuse of dominance have been concerned with former legal monopolies or *de facto* monopolistic positions in markets with essential infrastructures. Examples include:

Enel Spa: electricity, lock-in contract clauses inhibiting competitive entry. The duration of exclusive contracts was extended to prevent one category of large customers from choosing another supplier. Enel also had the right to match competitive offers.

Telecom Italia: leased lines, discrimination which impairs entry. Telecom Italia did not differentiate tariffs according to capacity demanded, increasing the competitors' cost of entry. It also supplied high capacity lines only to its own final customers and used a cheaper alternative without informing competitors.

SNAM: natural gas transport and distribution, refusal of access. SNAM refused to ship other producers' gas for electricity generation and own consumption or to revise a previous agreement about transmission prices.

Poste Italiane: hybrid mail service, discriminatory pricing preventing entry. Poste Italiane made suppliers of hybrid mail services pay excessive prices for delivery, higher than its costs and the price it charged to its own subsidiary, PT Postel.

Autostrade: toll road payment systems, tying of monopoly and competitive services. The franchised monopolist used proprietary technology for toll collection, discouraging use of other credit cards or cash.

Source: OECD, Italy: Background Report on the Role of Competition Policy in Regulatory Reform, 2001.

c) *Mergers*. The Competition Act forbids combinations that creates or strengthens a dominant position in a market with the effect of restricting competition 'appreciably on a lasting basis'. So, any merger above a certain size must be notified for approval to the Authority, which can either prevent it or to authorise it, with conditions. The Authority has to take in account substitution possibilities for suppliers and users, market positions of the parties, market structure, barriers to entry, and the evolution of supply and demand. The notification is required if the combination involves a total turnover over €411mn, or if the aggregate domestic turnover of the acquired firm exceeds €41mn. These thresholds are periodically adjusted for inflation, most recently in May 2005. If a combination violates the law, it is prohibited or, if it has already taken place, the parties are required to remove its anticompetitive effects. Fines up to 10 percent of the combination's turnover may be applied to violators.

d) *Unfair competition*. In Italian Civil Code, the notion of 'unfair competition' refers to such conducts as attempts at confusing the consumer about the product or service origin (e.g. by using names or logos imitating a competitor's products), spreading news or comments in order to discredit competitors, and the direct or indirect use 'of any other means which do not conform with the principles of fair behaviour in the trade and are likely to injure another's business'. Deceptive advertising has been one of the major concerns of the Authority in the last years. The powers of Authority in the field of unfair competition are limited, though, because it can't impose fines on a first violation. Besides, before the Authority takes action against an advertisement, it must get a non-binding opinion about it from the Communications Regulatory Authority.

Box 80.2: Autogrill and Autostrade

In 2000, the parent company of the firm that operates most of the retailing and refreshment facilities on Italy's toll roads, Autogrill, obtained control of Autostrade, the firm that operates the roads and contracts for those facilities, when the latter was privatised.

As a condition for its approval, the Authority required that Autostrade provide catering services by sub-licensees issued through competitive bidding, under an independent party's control. In addition, Autogrill committed not to increase the number of its service areas on Autostrade's highway sections.

Source: OECD, Italy: Background Report on the Role of Competition Policy in Regulatory Reform, 2001.

Regulatory Framework

Italy's Competition Act and the action of the Antitrust Authority concur with many industry specific regulations and authorities. The most important are:

- Local governments of Italy's municipalities, which control licensing in some industries (especially retail commerce) and have a tradition of directly providing such services as energy, water, waste management, local transportation, roads, public lighting, libraries, funeral services, etc. Italy has recently liberalised these utilities under the franchise-auction system, where infrastructure planning would continue to be under the control of municipalities, while management would be given to private companies. The liberalisation process is advancing with a slow pace, which seems to favour incumbents.
- *Financial services*, where Bank of Italy replaces the Antitrust Authority in applying the Competition Act; in recent years, Bank of Italy's policies have been regarded

as more concerned with stability of the banking system than with protecting consumers from collusion and price fixing.

- *Insurance services*, where a supervisory power is given to a special insurance industry agency, ISVAP. The Antitrust Authority has jurisdiction over this industry, but before taking enforcement action it must request the opinion of ISVAP. Separate statutory requirements regulate concentration in insurance.
- *Postal services*, where the old monopoly provider, Poste Italiane, still operates conforming to a contract with the Ministry of Communications. Poste Italiane is subject to the Competition Act but, for some services, it enjoys a legal exemption given to 'services of general economic interest'. Anyway, conduct that prevents competition can be dealt (and has been actually dealt) as an abuse of dominance. In addition, the Postal Code requires the prices of Poste Italiane to be set according to costs.
- *Telecommunication and Energy*, which have their own regulatory agencies ('Communications Regulatory Authority' and 'Electricity and Gas Authority') that apply industry specific rules (prices, market entry, quality standards, technical regulations, etc.); the Antitrust Authority must consult with these authorities before taking action against companies in these industries.
- *Roadways*, which are owned by the State and given to private operators under a concession regime. In 1998 the highways concession was renewed for 20 years, without competition or consideration of minimum efficient scale, which means motorway fees may decline less rapidly than achievable in a competitive market.
- *Professional services*, which are subject to pervasive public regulation, which defines exclusive functions, allows restriction of entry and limits advertising.

Consumer Protection

Italian consumer protection policies are the responsibility of different ministries and authorities. A major role is given to the Ministry for Productive Activities, which includes the Directorate General for the Harmonization of the Market and the Protection of Consumers. The Directorate is called upon to monitor prices, check the conformity of products, and protect consumers' interests, as well as linking with the consumer associations. The 14 most important of them participate in the National Consumer Council, which is also part of the Directorate and has an advisory role.

Apart from the extended provisions included in the Competition Act, the most important law concerned with consumer protection is L. 281/1998, which gives legal standing to consumer associations before the courts to

Box 80.3: Boycott over 'Euro' Price Rises

Italian consumers went on a 'shoppers strike' protesting against the huge increases in prices since the introduction of the single European currency viz. 'EURO'.

The protest was called by the country's leading consumer groups, who urged people to join and boycott certain shops, bars and restaurants. At that time, annual inflation in the country rose to 2.8 percent, even above the EU average of 2.1 percent. Various surveys and reports had shown hike in prices in over 77 percent of shops and services and the average family was nearly £500/US\$750 poorer off after the introduction of the euro.

Italian authorities expressed their deep concern over the price rises which according to them were an anomaly and they also blamed Euro for Italy's structural problems.

Source: <http://www.guardian.co.uk/euro/story/0,11306,1043627,00.html>

defend consumers' class interests. The law also allows consumer associations to provide legal assistance. Financial services, telecoms, and transport have been the typical areas of Italian consumer associations' legal action in recent years.

A number of other laws and regulations deal with specific consumer issues such as product safety, food labeling, certification of products, dispute resolution, product guarantees, consumer information. Much of this legislation comes from the implementation of EU directives.

Concluding Observations and Future Scenario

Italy has laid a solid legal foundation for competition policy: the Competition Act has a wide coverage, virtually no explicit exemptions, and builds on the already established jurisprudence of the EU. According to most views, the Antitrust Authority has shown determination and independence in his interventions and stimulated the liberalisation of many sectors. At the same time, many of these sectors are highly concentrated and former State-owned monopolists, now private companies, maintain dominant positions in TLC, energy, transport and local utilities services. A number of problems still needs to be addressed:

- Concession regimes, licensing requirements, and other regulations in many industries, especially services and professions;
- The growing devolution of responsibilities to local governments, which are responsible for delivering many services to communities and do not seem prone to competition-based reform;
- The much awaited reform of retail commerce, where regional governments are opposing liberalisation, with the effect of maintaining constraints on market entry;

- Occasional direct government interventions in markets, by attempts at controlling prices of essential goods (e.g. fuels), at protecting supposed national champions (e.g. Alitalia in the air transportation market), at limiting entry in political sensitive industries (e.g. the media);
- Inability to deal effectively with secret cartels, which are believed to limit competition in banking and insurance; and
- Policy coordination between the Authority, Bank of Italy and Consob (the Stock Exchange Regulatory Commission), which is considered necessary to deal with widespread transparency problems in listed companies.

✦ **NMa to Keep Close Eye on SEPA**

The Netherlands Competition Authority has expressed its concerns about the new Single European Payment Area (SEPA), according to the Financial Sector Monitor 2006. The SEPA – a system that will allow identical payment procedures without surcharges for bank customers in all member states – will become operational in 2008.

The authority said that increased price agreements and market sharing could jeopardise the ‘promising potential’ of a cheaper, more efficient, user-friendly and competitive payment transaction in a single European market. The Financial Sector Monitor – the NMa's annual sector report – also revealed that competition is growing in the Dutch PIN payments market. Prices for PIN payments, which are charged by banks to retailers, have dropped, and more retailers are switching providers, the report found. The Financial Sector Monitor was launched in 2003 with the support of the country's Ministry of Finance.

(Source: Global Competition Review, 20.12.06)

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