## APPENDIX 5: SUBMITTED PAPERS

## REFORM OF REGULATION AND MARKET OPENNESS, TRENDS AND PROSPECTS IN ITALY

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During the last ten years, in Italy just as in various other countries, reform of the regulations for the purposes of safeguarding competition has begun to play a primary part, and with significant outcomes, in terms of both quantitative reduction of constraints imposed by regulations and better quality of the regulations.

An undoubtedly a decisive part in stimulating remeditation of the overall regulations applicable to economic activity has to be attributed to the technological evolution that in various sectors, telecommunications and electric energy being two cases in point, changed the characteristics of the markets in such a radical manner as to render no longer valid the traditional justifications underlying particularly invasive forms of regulation. Whenever they are associated with durable monopoly conditions, technological complexities always call for extensive regulation, but do not admit disciplines that have an excessive incidence on the operational management of the enterprises.

It is against this general context of promoting competitive mechanisms that one has to see the progress that Italy has made in recent years in the direction of simplification and revision of the complex of rules that discipline economic activity: by means of an action of reducing, coordinating and harmonizing regulations and administrative procedures, a start was made with an effective simplification of the relationship of citizens and enterprises with the public administration.

In particular – following the introduction in 1990[25] of some new instruments that aimed at reducing the times in which administrative procedures were concluded and, more generally, improving the quality of the administration – a start was made in 1993[26] with the simplification process in the proper sense of the term, subsequently consolidated with the reforms approved in the years 1997-99[27] and concerning a substantial number of administrative procedures.

In the course of this reform season for strengthening the measures of simplification and liberalization, the year 1995 saw the legislator amplify the mechanisms of independent market regulation, instituting appropriate authorities for disciplining the public services[28].

25. See Law 241 of 7 August 1990, which for the first time laid down the general principles of administrative procedure and access to documents.

26. See Law 537 of 24 December 1993 ("*Interventi correttivi di finanza pubblica*" – Corrective measures of public finance).

27. See Law 59 of 15 March 1997 and Law No.50 of 8 March 1999.

28. See Law 481 of 14 November 1995.

A further step in the direction of reform of the regulations was recently taken with the approval of Law No.229 ("*Interventi in materia di qualità della regolazione, riassetto normativo e codificazione*" – measures in matters of regulation quality, regulation reorganization and codification) on 29 July 2003: this law contains decidedly innovative aspects, because – for the first time in such an express manner – the measures of regulatory and procedural rationalization were oriented towards the pursuit of liberalization policies.

It should also be remembered that "competition" has become a value enjoying constitutional protection for the first time: by means of the amendments recently introduced into Title V of the second part of the Constitution[29], "protection of competition" has in fact been included among the matters in which the State enjoys "exclusive legislation".

Another profile to be underscored is the awareness that such a reform process calls for systematic monitoring of the regulations to avoid maintenance of obsolete, inefficient and braking mechanisms in markets in continuous evolution; on the other hand, a continuous revision of the regulations in a pro-competitive sense calls for a clear and certain reference frame capable of supplying the necessary technical support at both the juridical and the economic level.

The measures that – not least on the basis of the reports of the *Autorità Garante della Concorrenza e del Mercato* (Antitrust Authority)[30] – are considered to be necessary in order to continue along this road in a coherent manner, further strengthening the results already obtained, are aimed not only at improving the regulation procedures, but also at modifying the structure and the discipline of the enterprises.[31]

**Measures concerning the ends and the procedures of regulations**

First of all, it is considered important to introduce general rules regarding participation in the adoption procedures of regulatory measures that introduce a mechanism of the Notice and Comment type (envisaged in the United States by the Administrative Procedure Act of 1946), based on a sequence that would be articulated as follows: communication that the regulation process is being got under way, publication of the regulation scheme, fixing of a deadline for the submission of comments, adoption of the measure. The aforementioned consultation criterion should be applied to procedures for the adoption of technical rules by ministries, agencies and independent authorities.

It is however deemed to be desirable that the new regulatory measures should be made the object of an impact analysis, this in order to render possible a comparative valuation of the costs for the Administration and the benefits for citizens and businesses. Upon implementation of the aforesaid simplification law No.229/2003, this analysis is to be extended also to some general regulatory measures of the independent authorities, with reference, above all, to regulations liable to produce an important impact on entrepreneurial activity.

As regards the recent constitutional amendment in a quasi-federal sense, on the other hand, there is clear awareness that the attribution of more extensive powers for regulating economic activities could lead to forms of hyper-regulation and reintroduction at the local level of restrictions and constraints abolished by simplification measures at the state level. It should in any case be noted that various Regions have already got under way the application – within the more limited regional ambit - of consultation process and the activation of instruments for valuing the impact of regulations.

29. See Constitutional Law No.3 of 18October 2001.

30. See Recommendation *("segnalazione")* AS 226/2002.

31. C. Wilcox, *Public policy toward business*, 1966.

A measure that could well make it possible to render the choices of regional and local governments more efficient has to be seen in the in the introduction of mechanisms for the systematic comparison of the measures adopted by regulators at the decentralized level (by regional governments, for example), which would have the effect of providing incentives for the adoption of best regulatory practices.

As far as relations between regulator subject (Independent Authority or other public body) and regulated subjects are concerned, it is deemed appropriate to pinpoint measures that, on the one hand, seek to avoid the regulator suffering undue interference (so-called "capture" of the regulator by the regulated subject) and, on the other, filling to the greatest possible extent the information asymmetries that place the regulator in a position of *de facto* inferiority with respect to the regulated subjects.

With reference to this last profile, it is thought that inequality of direct experience and knowledge of the activity to be regulates (for example, structure and cost of enterprises, technology, risks connected with the performed activity and, more generally, the so-called externalities) may be overcome by making provision for formal and informal contacts between regulator and regulated subjects, with attribution to the regulator of powers of inquiry and acquisition of data and information, facilitating not only the participative processes, but also forms of self-regulation.

As regards the danger of "capture" of the regulator, on the other hand, a danger particularly acute when the regulated subjects are represented by economically strong enterprises, it is deemed that the most appropriate measures should be seen in strengthening the position of autonomy and independence of the regulator (who, whenever an Authority is involved, would like to find himself in a position of independence vis-à-vis not only the political powers, but also vis-à-vis the regulated subjects).