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**Article**

## What Can be Learned from Continental Europe's Largest Privatisation Program? – Italy 1993 to 2003

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## WHAT CAN BE LEARNED FROM CONTINENTAL EUROPE'S LARGEST PRIVATISATION PROGRAM? ITALY 1993 TO 2003

ANDREA GOLDSTEIN\*

In 1992, when a large-scale privatisation program was launched in the midst of a dramatic political, economic and financial crisis, the Italian public enterprise sector was larger than in other major OECD countries. Although state owned enterprises (SOEs) may have made a significant contribution to growth in the 1950s and early 1960s (Barca and Trento 1997), over time they increasingly became the source of production inefficiencies and misallocation of resources. Non-economic goals were imposed upon public managers, effective incentive systems and monitoring devices were lacking, and the response to changes in market and technological developments was slow due to the lack of competitive pressures in the sheltered markets where most of these enterprises were operating.

A complex legal framework, capped at least temporarily by the 1994 privatisation law, allowed successive governments to complete large sell-offs, increasing both stock market capitalisation and the number of shareholders and contributing substantially to the reduction of public debt and therefore to the convergence towards the Maastricht criteria. Quantitative results have been nothing short of outstanding: Italy has topped the OECD privatisation ranking each year in 1995–99 (from number 9 in 1992) before falling to the second place in 2000. Annual proceeds averaged some US\$ 12 billion during 1992–2000, equivalent to 1.1 percent of 2000 GDP. Albeit only partial, the 1999 privatisation of ENEL, the electricity utility, was the world's largest initial public offer (IPO) ever at that time. IRI, the state-owned industrial holding that played such an important role not only in the country's post-war catch-up but was also a sort of model for

policy-makers in many late-industrialising countries was liquidated; control over ENI, the oil and gas group, was transferred to the private sector; the state exited almost completely from a wide range of manufacturing sectors; and in telecommunications not only was the historical operator sold off, but control over Telecom Italia (TI) has changed hands twice since privatisation – an occurrence that is unheard of in the world history of utilities privatisation! Finally, there are good reasons to believe that, on account of credibility gains and improvements in the size and efficiency of financial markets, privatisation contributed to fiscal consolidation through positive effects on net debt service. This paper reviews the motives, methods, and results of Italian privatisations.

### The institutional set-up

The 1992 framework document presented by the government to Parliament set out the four general goals of privatisation: i) to improve corporate efficiency; ii) to increase the degree of market competition; iii) to widen financial market and promote the internationalisation of the industrial system; and finally – and “residually”, iv) to increase fiscal revenues and reduce public debt. The main normative actions concerning privatisation can be categorised under different, albeit obviously intertwined, headings:

- Corporatisation – i.e. the application of the rules of the civil code to SOEs – entrusted their single shareholder, the Treasury, and their managers with the same responsibilities and obligations faced by the owner of a private firm. This virtually eliminated activities run by administrative bodies, drastically reducing the number of legally-autonomous activities run under public law and simplifying the control structure. In addition, the so-called **golden share** granted the Treasury special powers in public enterprises operating in the areas of defence, transportation, telecommunications, and energy.
- Although the law imposed a cumbersome, 7-step **procedure**, de facto the Treasury – and in particular its privatisation division – has kept most of the powers, providing technical support to the inter-ministerial committee on privatisation and liaising with the management of the public enterprises. The privatisation process was also made more flexible than in other EU coun-

\* OECD Development Centre (Paris). This is an abridged version of CESifo Working Paper no. 912, to which the interested reader is also directed for a more complete bibliography. The opinions expressed and arguments employed are my sole responsibility and do not necessarily reflect those of the OECD, the OECD Development Centre and their Members.

Table 1

## Major privatisations in Italy since 1993

	Corporation (Group)	Method of sale	Percentage sold	Gross proceeds (EURm)
1993	Italgel	Private agreement	62.12	223
	Cirio-Bertolli-DeRica	Private agreement	62.12	160
	Credito Italiano (IRI)	Public offering	58.09	930
	SIV (EFIM)	Auction	100.00	108
	Total for year			1 422
1994	IMI – 1 <sup>st</sup> tranche	Public offering	32.89	927
	COMIT (IRI)	Public offering	54.35	1 493
	Nuovo Pignone (ENI)	Auction	69.33	361
	INA – 1 <sup>st</sup> tranche	Public offering	47.25	2 340
	Acciai Speciali Terni	Private agreement	100.00	322
	SME – 1 <sup>st</sup> tranche	Private agreement	32.00	373
	Total for year			6 377
1995	Italtel	Auction	40.00	516
	Ilva Laminati Piani	Private agreement	100.00	1 298
	Enichem Augusta (ENI)	Auction	70.00	155
	IMI – 2 <sup>nd</sup> tranche	Private agreement	19.03	472
	SME – 2 <sup>nd</sup> tranche	Accept takeover bid	14.91	176
	INA – 2 <sup>nd</sup> tranche	Private agreement	18.37	871
	ENI – 1 <sup>st</sup> tranche	Public offering	15.00	3 253
	ISE	Auction	73.96	191
	Total for year			7 106
1996	Dalmine	Auction	84.08	156
	Nuova Tirrena	Auction	91.14	283
	SME – 2 <sup>nd</sup> tranche	Accept takeover bid	15.21	62
	INA – 3 <sup>rd</sup> tranche	Converted bond issue	31.08	2 169
	IMI – 3 <sup>rd</sup> tranche	Public offering	6.94	259
	ENI – 2 <sup>nd</sup> tranche	Public offering	15.82	4 582
	Total for year			7 742
1997	ENI – 3 <sup>rd</sup> tranche	Public offering	17.60	6 833
	Aeroporti di Roma	Public offering	45.00	307
	Telecom Italia	Core investors + public offering	39.54	11 818
	SEAT editoria	Core investors + public offering	61.27	854
	Banca di Roma	Public offering + bond issue	36.50	980
	Total for year			20 940
1998	SAIPEM (ENI)	Public offering	18.75	589
	ENI – 4 <sup>th</sup> tranche	Public offering	14.83	6 711
	BNL	Public offering	67.85	3 464
	Total for year			10 764
1999	ENEL	Public offering	31.70	16 550
	Autostrade	Auction + public offering	82.40	6 722
	Mediocredito Centrale	Auction	100.00	2 037
	Total for year			25 382
2000	Aeroporti di Roma	Direct sale	51.2	1 327
	Finmeccanica	Secondary public offer	43.7	5 505
	COFIRI	Direct sale	100.0	504
	Banco di Napoli	Tender share to takeover bid	16.2	493
	Total for year			7 933
2001	ENI – 5 <sup>th</sup> tranche	Accelerated block building	5.0	2 721
	Total for year			2 907
2002	Telecom Italia	Placement with institutions	3.5	1 400
	Total for year			1 498
2003	ETI	Auction	100.0	2 325
	ENEL	Bought deal	6.6	2 170
	Total for year			4 556
	<b>Total 1993-2000</b>			<b>100 033</b>

Source: Ministero del Tesoro, Bilancio e Programmazione Economica (2000), Italy's Report on Economic Reform and other sources.

tries by the wide latitude given to the management of IRI and ENI over the day-to-day conduct of the restructuring process of their sub-holdings and subsidiaries. Finally, a special commission (*Comitato permanente di consulenza globale e di garanzia*), composed of the Treasury Director and four independent experts, was set up in June 1993.

- Beyond and above the intention stated by the government of making the greatest effort to achieve the Maastricht convergence criteria and ensure Italy's participation as founding member of the Economic and Monetary Union, **external pressures** to privatise took the form of two binding commitments with the European Commission. This stance was partly the result of pressures by the European Commission for policies consistent with article 90 of the Treaty of Rome and the EU-wide restructuring of the steel industry.
- Concerning **methods**, Law 474 made explicit the preference for public offers. In order to dilute ownership concentration and ensure a better representation of small shareholders, statutes were changed to put limits to the amount of shares owned by single investors and introduce proportional representation for the election of the boards of directors. The resort to mixed techniques, involving direct sale to long-term investors, was legalised in 1995.
- Finally, the privatisation law made the sale of public utilities conditional on the institution of **independent regulatory authorities** (IRAs) to fix tariffs and oversee compliance with quality standards (see *infra* 3.3).

### Italian privatisation 1993–2003: a synthesis

Although companies to be sold were identified as early as December 1992, privatisation properly started only in late 1993, when a precise timetable was established and the first private sales took place. This long period of gestation reflected the need to establish the legal and policy framework as much as the persistence of diverging views among political parties supporting the government on the aims and scope of state divestitures. In the seven months to June 1994, three major banks and INA, Italy's second-largest insurance company, were sold through public offers (Table 1). ENI pruned non-core activities through plant closures and widespread asset sales. EFIM received EUR 439m

from the sale of its core assets (aluminium, glass, etc.) and transferred its subsidiaries in defence, aerospace, and rail equipment to Finmeccanica. IRI was liquidated on 28 June 2000 and the Treasury mandated the *Comitato dei Liquidatori* to finalize the sale of remaining assets by end-2003. Its shareholdings in Alitalia (53 percent) and RAI (99.5 percent) were transferred to the Treasury.

Sales can be categorised according to different classifications.

- In terms of **timing**, activity peaked in 1997–99 at roughly two thirds of the 1992–2000 total. In 1997, in particular, privatisation accounted for 45.9 percent of the total capital raised on the Milan Stock Exchange. The decline in activity in 2001 was due in part to unfavourable equity market conditions leading to postponement of planned transactions such as the sale of further stakes in ENEL. The only significant activity recorded in 2002 was the sale of the residual 3.5 percent Treasury stake in TI. In July 2003, a consortium led by British American Tobacco bought ETI, the tobacco monopoly, for EUR 2.3 million. In October 2003 a 6.6 stake in ENEL was sold to a bank in a bought deal.
- In terms of **sequencing**, as more than 80 percent of credit was state-controlled, it was paramount to privatise public banks first. This reflected both the danger that banks acquire shares of state-owned enterprises or convert debt of private non-financial enterprises into equity, and the fact that the so-called “banks of national interest” owned by IRI were among the most profitable and attractive state enterprises. Concerning manufacturing enterprises, the initial emphasis was on the food and heavy industries (steel and glass in particular). In fall 1993, in the face of mounting debt that was on the verge of wiping out net capital, IRI's sub-holding for iron and steel (Ilva) was liquidated, its industrial activities were transferred to two new companies that were privatised, and the giant Bagnoli plant was closed down. Not surprisingly, in peak years oil and utilities companies (including local ones) accounted for the largest share of receipts by far. Finally, the weight of the transport sector is minimal as railways, the ferry operator and the airline remain under state control.
- The choice of the sale **technique** has an obvious impact on the desired structure of property rights in privatised firms and ambiguity about

sale procedures indeed reflected conflicts within the government over what kind of private ownership structure was to be encouraged. Partisans of *noyaux durs* and people's capitalism, using the French and the British experiences as show-cases, entered into a heated cabinet dispute which eventually led to the resignation of a minister. Although a number of non-financial enterprises were initially sold to strategic investors through trade deals, by 1994 the government decisively showed its preference for public offers. Such placements proved especially successful in the late 1990s when companies such as TI, ENI and ENEL were put on the stock market. Mixed techniques, associating public offers and trade deals, have been used in a few cases, notably TI and Autostrade. On the other hand, management buy-outs (MBOs) have been rare, the major instance being Esaote, a global leader in research, production and marketing of medical diagnostic equipment and related services.

- Concerning **fiscal treatment**, a special public debt-redemption fund was created in 1993, in order to draw a clear line between transitory proceeds from asset sales and the deficit – reducing effects of other budgetary measures. This stands in contrast with the attitude of both the British government, which used proceeds to reduce the PSBR by almost one percent of GDP on average over the 1984–88 period, and the French government, which used proceeds to reduce the state sector deficit by three quarters of a percentage point in both 1993 and 1994. In any case, even if the total-ity of public enterprises were to be sold, with all privatisation proceeds used to redeem public debt, the impact would be limited, since their estimated value amounts to only 15 percent of public debt.
- Given the wide variety of techniques used, it is not easy to classify **buyers** in a clear and comprehensive manner. Suffice for our purposes to analyse public offers. Domestic retail investors have always represented the largest category

of PO investors (with percentages ranging between 33 and 79) and accounted for 47.3 percent of the unweighted average (Table 2). International capital markets have also been very receptive, absorbing on (unweighted) average a third of the offers. The relative smaller role played by Italian institutions is not surprising in view of the infancy of the country's pension funds.

- While absolute figures are impressive by international standards, the picture is more controversial when only considering sell-offs that have led to **control change**. Out of total 1993–2001 proceedings of EUR 121.3 billion, the amount corresponding to a control transfer is considerably lower (EUR 50.4 billion). Considering then that *Fondazioni* – charitable foundations controlled by local authorities – have acquired assets for EUR 13.4 bn, “pure” privatisation receipts have been as low as EUR 37 bn (De Nardis 2001).

### Privatisation and regulatory reform

In 1991, up to two thirds of IRI's workforce and up to 30 percent of ENI's employees produced goods and services in markets sheltered by legal monopolies, exclusive state concessions or dominant state demand. Exclusive state concessions were generally granted to state-controlled enterprises and the regulatory regime, based on direct management of public utilities or indirect control through IRI and ENI,

**Table 2**  
**Privatisation on the stock exchange by investors category**

	Retail Italy	Institutions Italy	Institutions abroad		
			Cont. Europe	UK & Ireland	North America
IMI 1	42.9	11.4	29.7		16.0
INA 1	68.3	9.5	15.3		6.9
ENI 1	33.4	29.6	15.0		22.0
ENI 2	40.3	14.0	16.4	15.6	13.7
IMI 2	0.0	42.6	20.2	27.9	9.3
INA 3	0.0	50.0	50.0		
ENI 3	52.3	11.9	10.7	10.3	14.8
Telecom Italia	75.0	5.8	8.1	2.9	8.2
ENI 4	76.4	8.0	2.8	6.8	6.0
BNL	62.9	10.5	21.6		5.0
ENEL 1	36.6	25.7	37.7		
ENI 5					
Autostrade	79.1	10.7	10.2		
Finmeccanica					
Un-weighted average	47.3	19.1	33.6		

*Source:* Own elaboration on Ministero del Tesoro, del Bilancio e della Programmazione Economica (2001), *Libro bianco sulle privatizzazioni*, April.

blurred the relationship between the regulator and the producer, allowing a high degree of monopoly power. Moreover, the authority over concession, monitoring and regulation of public services was extremely fragmented among several ministries, local authorities, public companies and national committees. The exception was tariff-setting, which was the responsibility of a single government committee, the CIP (Comitato Interministeriale Prezzi), whose decisions were often subordinated to macro-economic or social policy objectives, such as inflation control or equity considerations.

International experiences show how a combination of privatisation, liberalisation and better regulatory design holds the promise of large efficiency gains. Moreover, insofar as belated liberalisation may amount to a breach of commitments taken with shareholders, it is easier to open markets before, rather than after, privatisation. Unfortunately, measured with respect to its impact on competition, Italy's regulatory environment was in 1998 (the most recent year for which comparative cross-country data for product market regulations is available) much stricter than in the average European country or the United States (Nicoletti 2002, Figure 1). Although average telecom tariffs have significantly declined for both fixed and mobile calls (Cavaliere 2001), a variety of utility indicators shows that Italy is generally less competitive than other major EU countries, especially for business users (Table 3).

### Structure regulation

Structural regulation involves break up of public utilities, functional separation of competitive and non-competitive activities and access liberalisation to networks. The public telecom operators were

reorganised in view of their privatisation, with the unification of various IRI subsidiaries into a new holding, TI, the world's sixth largest telecoms operator. This decision was hardly optimal in view of the desirable liberalisation of telephone services. A better alternative would have been to privatise the subsidiaries separately, thereby injecting immediately elements of competition in the system. Given that financial markets usually discounts closed-end financial holdings relative to the cumulated value of their subsidiaries, selling Stet's operational companies separately could have also maximised revenue for the government. In 1994, a second mobile telephone services licence was awarded, and over the 1991–95 period the markets for telecommunications equipment, access to the public switched network and telecommunication services, except voice telephony, were liberalised.

Changes in the market environment of the electricity supply industry have been even more modest. Several proposals were advanced to open production and maintain an exclusive concession for grid operation in order to ensure co-ordination and safety of electricity supplies. Opinions diverged on whether to unbundle ENEL prior to sale, whether to liberalise electricity supply to large customers, and on the extent and the features of price regulation.<sup>1</sup> However, unbundling proposals met fierce opposition both within the government, wishing to avoid further delays and maximise proceeds from the sell-off, and from the managers and trade unions of the state company. In addition, disagreements at the EU level on the completion of the single market for energy have further weakened the momentum for reforms.

According to a timetable laid out in the so-called Bersani decree in 1999, no utility can produce or import more than half of total consumption by 2003. To reduce its market share to around 40 percent, ENEL has spun off three separate and independent generating companies, totalling 15,000 megawatts (MW) of gen-

**Table 3**  
**International comparison of public service prices (2001 data)**

	France	Germany	Italy	Sweden	UK
Telecommunications					
Monthly spending (private)	83	74	100	60	79
Monthly spending (business)	79	78	100	52	97
Mobile services	78	74	100	76	79
Electricity					
Year consumption 600 kWh	177	255	100	266	221
Year consumption 7500 kWh	59	77	100	54	54

Source: Own elaboration on AEGG data (*Il Sole-24 Ore*, 5 December 2002), Ofel (2002), *International benchmarking study of mobile services*, and Wissenschaftliches Institut für Kommunikationsdienste (2002), *Situation of the Swiss Telecommunications Market in an International Comparison*.

<sup>1</sup> In principle, vertical unbundling is the only way to ensure competition in electricity generation and supply as well as free access to the network. At the same time, horizontal unbundling – involving the sale of production plants and distribution networks to several private (possibly regional) companies – could allow “yardstick” regulation based on the comparative performance of independent companies.



eration capacity and put them on sale by public auction. No company was allowed to acquire or hold stakes in more than one of the three companies, and no buyer can be more than 30 percent government-held. Elettrogen – the second largest, based in Rome and Piacenza – was sold in the summer of 2001; Eurogen – the largest company, based in Rome and Milan – was purchased by the Edipower consortium of utilities and financial institutions; and a consortium including Belgium's Electrabel and Rome's utility ACEA took the smallest company, Interpower, based in Naples and Rome. ENEL must also shed market share in power distribution to comply with the requirement of a unique distributor in each municipality. It has proved arduous for ENEL and the municipalities to agree on prices and only in August 2002 did ENEL transfer network capacity and clients to the Milano and Verona utilities. Concerning the transport and dispatch functions, these have been transferred to a new company (Gestore Rete Trasmissione Nazionale, GRTN) fully-owned by the Treasury. A number of transmission companies also exist, of which the largest is ENEL-owned Terna.

In the natural gas market, Italy has been less timid in incorporating the June 1998 EU Directive. In May 2000, the government directed that no single company can supply more than 50 percent of the natural gas sold to final users by 2003 and send more than 70 percent of natural gas put into the transmission system beginning in 2002 (reduced to 61 percent by 2009). The legislation also requires corporate separation of natural gas storage and transport activities, exceeding the EU obligation of accounting separation. SNAM retains control of the 30,000-kilometer grid, but ENI had to split SNAM's pipeline transport activities from commercial and sales activities. In late November 2001, 35 percent of SNAM Rete Gas Italia, the new company controlling the gas grid, was sold through an IPO, which was heavily oversubscribed. ENI's new gas distribution company, Italgas Più, was also launched in November 2001.

### Conduct regulation

Limited progress in structure regulation has put an additional burden on conduct regulation to determine the permitted patterns of behaviour of regulated firms in the public interest. Conduct regulation can include both (product and access) price

regulation and regulation of non-price behaviour such as service and product quality, quantity, investment and environmental impact.

In the case of telecommunications, recent decisions by the AGC (Autorità per le garanzie nelle comunicazioni) have introduced Flat Rate Internet Access Call Origination (FRIACO), levelled access conditions for other licensed operators (OLO) and Internet Service Providers, and regulated shared access, sub-loop unbundling, leased wholesale lines and wide bandwidth (DSL, CVP) (AGC 2002). Following a two-year investigation, the AGC also imposed TI stricter cost accountancy obligations so as to prevent the incumbent from using information provided by competitors as anti-competitive tools. Although the incumbent owns nearly all fixed access lines, it is not difficult to receive a fixed-line license as proved by the existence of 253 operators (AGC 2003). There are 4 GSM operators and five 3G licenses were also awarded in October 2000. New regional operators have begun forming but are still in the initial network build-out phases and will not be capable of offering alternative infrastructure to TI for several years. Unbundling is becoming an option for more operators now that TI has made 939 exchanges available (of 1,040 whose openings were required by competitors) which cover approximately half the total subscriber lines (AGC 2002). Some 35,000 lines have also been disaggregated, a level only surpassed by Germany in Europe. Carrier pre-selection began in January 2000, and by the end of August 2001 about 2 million subscribers used it. Number portability was available in 2001 for fixed users and almost two years later for mobile subscribers. The license fee was increased in 2001 and tariff rebalancing completed in 2002. TI's share of the fixed telephony market has been decreasing progressively and it stood at about 70.8 percent at the end of 2002, compared with 77 percent a year earlier. The mobile sector is the largest in Europe in terms of revenue and the highest in Europe (except for Luxembourg) in terms of penetration rate. This is reflected by the fact that mobile and fixed telephony services have equal shares of the total telecommunications market. In 2003, for the first time, TIM's market share fell below 50 percent.

ENEL enjoys a dominant position in the upstream market for electricity generation. This is shown by its share of the gross installed capacity (approximately 53 percent in 2000) and of the actual elec-

tricity produced in Italy (approximately 77 percent, excluding auto-generation, in 2000), as well as by the type of power plants at its disposal (base load, mid-merit and peak-load). Moreover, ENEL is dominant in the downstream, partly liberalised, Italian electricity supply market (37 percent in the first nine months of 2001), also because of its position in the upstream market where ENEL is vertically integrated. Price regulation is designed to impose a uniform tariff across Italy, thereby reducing the possible beneficial effect on consumers of the limited liberalisation of electricity generation. Meanwhile, red tape has held up applications to build new generating plants that might compete with ENEL. In February 2002 the Ministry for Productive Activities has intervened to speed things up by instituting a single, 180-day, "one-stop" centralised authorisation system for plants with capacity greater than 300 MW.

Competition for delivery and sale to actual and potential "eligible customers" (that is consuming less than 20 GWh per year) is still limited. The Electrical Power Exchange (Borsa Elettrica) that according to the Bersani decree was to be operative in January 2001 is still on the launching pad. The advantages of having an exchange include transparency (given that strategic behaviours would be detected) and the possibility to exert pressure on the dominant supplier through the aggregation of dispersed users. Successive late deadlines could not be met due to still unsolved issues such as the treatment of imports and subsidised production. Falling short of limiting ENEL's freedom of manoeuvre (and knowing that new generation capacity will not be fully operative before long) what is needed is the development of derivative instruments and mechanisms to "contractualise" generation capacity, such as those introduced in France on the Powernext market. The resistance has come from both large users, that currently benefit from cross-subsidies, and the government's insistence on inserting a clause to give the Ministry the power to correct prices in case of "excessive" volatility.

An outline of a draft law "Reform and reorganisation of the energy sector" was presented in July 2002. Its main provisions include transferring grid ownership from ENEL to GRTN; cancelling the fees provided for the "hydroelectric rent" (to compensate for the excess value that such plants have in a market system) while not acknowledging

stranded costs for past investments: extending eligibility to all non-domestic clients before 2004 and allowing Italian firms, which cannot build nuclear power plants in Italy, to enter into joint ventures abroad. The intent seems more to control ENEL rather than to reduce its size and market power.

The Antitrust Authority (AGCM, Autorità garante della concorrenza e del mercato) has emerged as an effective "competition advocate" in the regulatory arena without assuming the regulatory portfolio itself. After complaints from several alternative fixed-line providers and the Italian Association of Internet Service Providers, the AGCM launched an investigation into TI's provision of access and found that the incumbent had taken advantage of its ownership of the PSTN (Public Switched Telephone Network) access network by refusing requests from alternative operators for wholesale DSL services, while at the same time offering its own DSL retail service. TI was fined EUR59 million for abusing its position as a carrier with significant market power. In the Snam/Edison case the competition authority has dealt with refusal of access. In March 2002, the AGCM launched a full investigation into ENEL, alleging infringement of Article 82 in the liberalised market for supply of electricity to eligible clients, and surprise investigations have been carried out at ENEL's premises throughout Italy.

### Regulatory governance

Key issues in regulation include the designation of independent regulatory authorities (IRAs), their *de jure* independence, the definition of their powers, their accountability and the role of the existing antitrust authority in monitoring access to networks and competition in the liberalised service markets. The 1994 law made the creation IRAs a prerequisite for the privatisation of public utilities. A much-delayed bill creating separate IRAs for electricity and gas (AEEG) and for telecommunications and media (AGC) was approved by Parliament in 1995 after no fewer than 180 hours of debates. IRAs regulate concessions and access to the market, ensure the universality and quality of services, supervise the operating companies' balance sheets, set service tariffs, investigate on possible misbehaviour of licensees (either independently or upon reports of customers) and rule the repeal of licences or pecuniary sanctions pending judiciary appeal by faulty companies.



Law 249 gave the AGC two overriding objectives: to introduce liberalisation, also on the basis of EU-wide choices, and to guarantee cultural, political and social pluralism in the media sector. In a country where half of the TV industry, the largest publishing house and various newspapers are controlled by the prime minister and his associates, the creation of a single IRA for both telecoms and media, while partly justified by technological convergence, was dictated by clear political considerations.<sup>2</sup> These found its reflection in the power granted to Parliament of appointing the regulators, in the lack of specific eligibility criteria, and in the excessive frequency of parliamentary hearings. Concerns have also emerged regarding the slowness of the decision-making process and its opacity – there are no public hearings and the AGC does not prepare position papers to guide the regulatory game. On the other hand, and despite the heavier burden brought about by the relative lack of progress in structural deregulation, the AEEG – which has fewer members (three rather than nine) appointed by the prime minister and is located in Milan – has been more successful in gaining credibility.

It is not easy to identify independent variables that explain such differences. That TI is fully private (bar the golden share, of course) while ENEL is still government-controlled has not made any significant difference in their approach to the regulatory game, which has been confrontational in both cases. Enforcement appears to be hampered by lengthy and cumbersome procedure, but also by the incumbents' practice of appealing systematically against the IRA decisions. While due process is a fundamental legal principle, IRAs need to put in place disincentives for excessive delaying measures (Nicoletti 2002).<sup>3</sup> Although hard to test, it is intuitively clear that, even in collegiate bodies such as the Italian IRAs, the personal qualities of the AEEG's president have played an important role.

The 1990s have seen a general proliferation of delegation to non-representative institutions around Europe, and Italy has been no exception. One may indeed argue that the traditional weakness of ministerial bureaucracy has strengthened the process even more than in other EU members. There is a perception that IRAs have on some occasions filled the void left by executive inaction and converted in law-making bodies (e.g., De Nicola 2001). For this reason, the on-going political debate on reforming IRAs is welcome, provided of course the principle of safeguarding investors and consumers against the risk of undue interference remains overriding. The bicameral commission for Constitutional reform debated the possibility of giving selected IRAs a constitutional ranking. The current majority has acknowledged the need to preserve independence and autonomy, but argued that "political organs must proceed in fine-tuning the instruments that are necessary to carry out the functions that should remain under their control, especially as concerns the IRAs' decisions of highest social and economic impact" (Camera dei Deputati 2002). The instrument to implement this function is identified in the Documento di programmazione economica e finanziaria, hence making Parliament responsible for ensuring the fulfilment of the government's guidelines.<sup>4</sup> The majority proposal currently in front of Parliament considers merging AEEG and AGC into a single regulator – an issue on which the international debate is far from settled – but unfortunately also suggests that its members should be appointed by the government, hence reducing their independence and credibility.

Finally, a brief mention should be made of the consequences of the 2001 reform of the Constitution (Title V of the Second Part). This includes at article 117 the decentralisation of the authority over transport and cabotage networks, the organisation of the telecommunications and media sectors, as well as energy generation, transport and domestic distribution. In accordance with the subsidiarity principle, regions and local authorities already have broad competencies in the energy domain. Insofar as this is a sector where benefits (and interdependencies) are national, whereas negative externalities are often local, co-operation among

<sup>2</sup> In the 1997 Green Paper, the EC put forward as one proposition for a future regulatory model the creation of a new horizontal regulatory model to cover the whole range of existing and new services in the communications sector. Nevertheless, not many institutional changes have been made to take into account convergence between telecommunications and broadcasting. Along with the political difficulty to integrate separate regulatory institutions, the special role played by media and content policy in some countries makes the merging of broadcasting and telecommunications regulatory institutions a delicate issue.

<sup>3</sup> An interesting parallel can be made with New Zealand, where the absence of a regulator provided the incumbent operator, Telecom New Zealand, with the competitive weapon of most use to an incumbent: the ability to delay. Instead of being obliged to interconnect on specific terms by law, Telecom New Zealand was able to convert disputes into full-blown litigation, with numerous appeal stages throughout the legal system.

<sup>4</sup> In September 2002, the government decided to freeze utility and public transport prices to help contain a pick-up in inflationary pressures and defuse a growing political dispute over Italy's true inflation rate.

different levels of government is required. Early evidence, unfortunately, shows that the governance game is characterised by strong animosity. Regions have challenged the 2002 decree to speed up new generation projects, claiming that grid ownership should be allocated between local governments by voltage. The AEEG has also expressed concern for the decision by Sicily to delay to 2010 the liberalisation of the gas retail market that at the national level is foreseen for 2003. A further problem is that the text of the July 2002 draft law is vague as to what principles are fundamental and henceforth reserved to the State.

### Conclusions

This paper has summarised the often momentous vicissitudes of Western Europe's largest privatisation program in the 1990s and provided evidence on the effects on productivity, quality and prices. No ex post analysis can forget how deep and widespread was scepticism surrounding its quantitative and qualitative goals at launch. In this sense, the pace and the extent of privatisations in the midst of the worst political and economic crisis in post-war Italy has been nothing short of surprising. Successful solutions were found in a number of areas, including the sequencing of sales, the use of privatisation proceeds, and the creation of a wide audience of investors attracted by state divestitures. Italy has shown a higher degree of transparency in the conduct of private sales than France and has been, partly out of necessity, far more open towards foreign investors than both France and the UK, where authorities used special powers (such as special voting rights) to prevent large foreign investments. Foreigners, lured by the lira devaluation, were also reassured by the fact that Italian authorities did not use proceeds to reduce fiscal deficits. Domestic financial markets proved far more adequate than previously expected in absorbing large amounts of new shares. Partly due to the simultaneous reduction of yields on government bonds, over-subscription has been generally larger than elsewhere in the EU, even with lower underpricing.

However, the policy drive also suffered from several unsettled issues, which limited its beneficial effects. First, a sizeable share of privatisation activity has been non-controlling stakes in SOEs. This means that capital market discipline through both monitoring by private agents and the threat of

take-over cannot function properly. Second, despite the spreading out of shareholdings and attempts at limiting single equity stakes, public companies have not emerged and the stock market does not allocate corporate control. Such a market for corporate control will remain quiescent as long as the respect of minority shareholders' rights is lax, the application of existing laws (such as those concerning take-over bids and insider trading) is feeble and the role of institutional investors is subdued. Third, in public utilities opportunities have been lost to use divestiture as a Trojan horse to introduce more competition, in particular throughout the vertical separation of hitherto public-sector monopolists and more audacious forms of asymmetric regulation. This problem is particularly severe in electricity and (to a lesser degree) natural gas. Fourth, uncertainties abound concerning the conditions for privatising the air, railways, post office and tobacco companies as well as many smaller energy and water utilities owned by local authorities. And finally, public sector bodies maintain control over companies that operate in competitive sectors. This happens despite the lack of a clear vision on the limits to the process of state retrenchment – despite policy statements to the effect that the entire country should be managed like the private sector – and with poor guarantees that the management of public sector assets will maximise collective welfare. A telling example in this sense is the role of non-profit Fondazioni in the banking sector.

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