



**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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Working Party No. 2 on Competition and Regulation

THE OPERATIONAL SEPARATION OF TELECOM ITALIA

-- Presentation by Paolo Lupi --

14 June 2010

The attached document is submitted to Working Party No. 2 of the Competition Committee FOR DISCUSSION under item III of the agenda at its meeting on 14 June 2010.

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AUTORITÀ PER LE
GARANZIE NELLE
AGCOM COMUNICAZIONI

The Operational Separation of Telecom Italia

Paolo Lupi
AGCOM

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Motivations

In the 1st round of market analyses Telecom Italia was found dominant in all 14 fixed network markets.


Market shares of Telecom Italia in most Fixed Network markets above EU average.

No cable infrastructure, limited extent of FTTH infrastructure.

Competition in all fixed retail markets relied exclusively on Telecom Italia's wholesale products.

Dominance was the outcome of a competitive environment characterised by the bottleneck of the access network of TI.

In May 2007 AGCOM started a public consultation on the future regulation of TI's access network in the face of migration to NGA.



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Motivations

The accompanying document contained an enquiry on the effectiveness of existing regulatory measures in addressing problems arising from the access network's bottleneck.

The dynamics of market shares and prices showed that the tendency toward competition experienced after liberalisation was slowing down.

Reduction in competitive pressure: limits of service based competition and difficulties in promoting infrastructure based competition.

Lines (000)	2001	2002	2003	2004	2005
<i>Carrier Preselection</i>	1962	3370	3600	4017	4085
<i>Bitstream</i>	350	536	895	890	1075
<i>Full Unbundling</i>		132	539	840	1341



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Motivations


TI's Market shares (%)	2002	2003	2004	2005
<i>Voice services (revenues)</i>	69	68	66	67
<i>Voice services (traffic)</i>			62	66
<i>Broadband services (lines)</i>	75	76	77	74

Slow adoption of broadband services (from 0.97 mil of 2002 to 6.78 of 2005) and high market shares of Telecom Italia in the broadband retail market.

High level of litigation: cases brought in National Courts, NRA, NCA.

Transition towards NGANs:

- risks of re-monopolisation;
- adequacy of existing wholesale services (bitstream and ULL);
- promotion of investments.




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Solutions

AGCOM identified and submitted to public consultation a number of solutions:

- ✓ to Integrate and strengthen the already existing administrative separation measures;
- ✓ Functional separation of TI's access network by accepting commitments by Telecom Italia or imposing an obligation under article 8(3)AD;
- ✓ Structural (legal or ownership) separation of TI's Access network as the effect of an autonomous decision of Telecom Italia.

All the solution envisaged shared the conclusion that the regulatory approach toward the fixed (access) network had to be revised and adapted to circumstances..



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Solutions

First solution as such did not appear adequate: administrative separation involving accounting, divisional, IT services separation, enacted in 2002 was opposed by participants in the consultation.


Most participants found functional separation as the best solution to solve discrimination problems.

The basis for imposing functional separation by means of Article 8.3 appeared weak. The legal instruments provided for by Articles 13a and 13b of the RF arrived later.

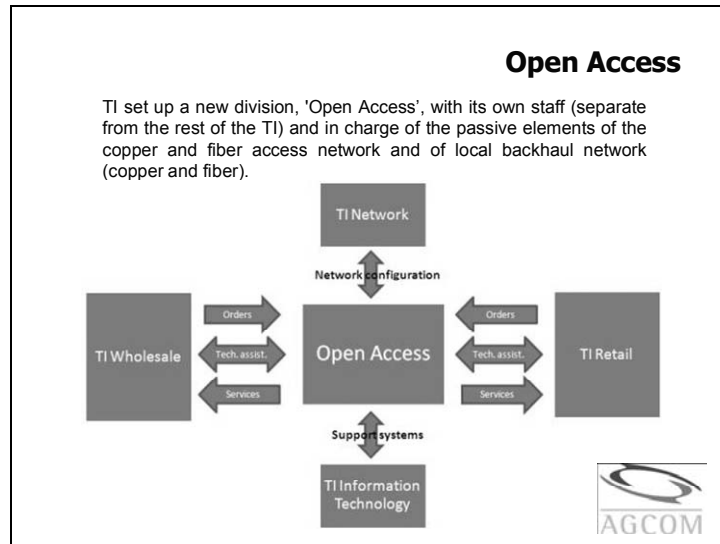
Law 248/2006 gave Italian NCA and NRA the power to accept commitments by operators. According to Article 14b, operators may offer commitments within infringement proceeding and within proceedings aimed at promoting competition in TLC markets.

If found suitable, AGCOM can make them binding on the proposers.

AGCOM subsequently adopted resolutions aimed at regulating the procedure for the evaluation of commitments.



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Procedural steps

December 2007: AGCOM started a joint analysis of all retail and wholesale fixed network access markets (markets no 1,4,5). All other 2nd round fixed network market analyses followed shortly.

In June '08 TI proposed a set of commitments within regulatory proceedings and some infringement proceedings and AGCOM started their evaluation putting on hold most fixed network analyses.

Commitments were publicly consulted (market test) and TI replied to third parties' comments (accepting some). AGCOM deemed commitments not fully satisfactory and asked to amend and integrate them.

The final proposal contains 209 commitments organised in 14 groups was approved and made binding on 11.12.08. Commitments are:

- aimed at promoting competition in the provision of electronic communication networks and electronic communication services;
- aimed at enforcing TI's existing obligations of non-discrimination and equal treatment in the provision of access network services.

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**Regulatory commitment no 1
New wholesale delivery process**

TI sets up a single delivery process for the orders of SMP Services coming from both TI's retail division and alternative operators. Orders will be processed on a first come first served basis and are ordered in different queues depending on the service and on chosen quality level.

In the event that requested resources are not available, upon demand, orders will be held in a single-queue waiting list.

TI Wholesale sets up a new customer relationship management system (CRM) to manage technical and commercial relationships between the Operators and the Wholesale division, including: a 'pre-sale analysis', a 'order tracking system', a 'Data warehouse on dismissed orders', and a data base on 'Support to co-location services'



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**Regulatory commitment no 2 incentive
scheme and code of conduct**

TI adopts an incentive scheme for the management of both Open Access and TI Wholesale based on internal/external equality of access, customer satisfaction (alternative operators and TI's own retail customers), quality, security and efficiency of the fixed access network.

TI also adopts a code of conduct for the management and the staff of Open Access and TI Wholesale which sets the rules and procedures to ensure the fulfilment of the commitments.

Infringements of the code of conduct are sanctioned on the basis of the collective labour contracts.

TI provides its employees with training programs on the code of conduct.



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**Regulatory commitments no 3-4:
monitoring system and transparency**

TI implements a monitoring system on SMP services, based on the comparison between key performance indicators (KPIs) and objectives (KPOs) related to the quality of SMP products and the equality of treatment.

Four families of KPIs monitoring provisioning, assurance, availability of services and support. This monitoring system integrates the one imposed according to administrative separation rules.

TI producea a monthly report of KPIs measured in the previous month. Reports are sent to the Supervisory Board and are published every quarter on TI website.

TI also produces an annual report to be sent to the Supervisory Board, to AGCOM and published on TI's website.



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**Regulatory commitment no 5 and 6:
Plans for quality & development**

Apply to all access network services, not only to SMP services (including fibre network).

TI every 3 months provides the Supervisory Body, AGCOM and alternative operators with detailed information on:

- 'access network quality development plans' which refer to documents adopted by Open Access (or TI) specifying the planned activities aimed at increasing the quality of the fixed access network and related services;
- TI's fixed access network building plans;
- planned phasing out of local switches;

TI will provide every three months the Supervisory Body, AGCOM and alternative operators with information on the results achieved at implementing those plans.



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**Regulatory commitment no 7 and 10:
Supervisory board & Dispute settlement body**

TI sets up an internal Supervisory Board:

- 5 members of which 3 designated by AGCOM and 2 by TI.
- 3-year term, not renewable.

In case of violations of the commitments, the Supervisory Board reports to the CEO of TI and AGCOM unless TI first brings the violation to an end within an agreed timeframe.

Following the approval, TI has adopted a regulation, agreed with AGCOM, setting forth rules and procedures of the Supervisory Board. The Supervisory Board submits an annual report to AGCOM and TI.

TI will participate in the new dispute settlement body to be set up by AGCOM (inspired to the Office of the Telecommunication Adjudicator in the UK experience).

This commitment has led to the creation of OTA Italia.



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**Regulatory commitment no 9:
Next Generation Access networks**


Undertakings apply all NGAN services provided that TI has SMP on them.

TI publishes a reference offer (fair and reasonable prices) for access to its passive infrastructures. In case access is not possible or economically viable,

TI has to provide dark fiber (same conditions as above).

TI publishes a proposal for sharing and joint building of new infrastructures.

TI participates in the "NGN committee" set up by AGCOM to discuss and solve technical, economic and organizational problems that may arise during the transition to NGAN. TI also proposes to the participants of the "NGN committee" rules on prior notifications in case TI phases out local exchanges.



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Market analyses

All fixed network market analyses were resumed after the approval of the commitments.

Telecom Italia found dominant in wholesale access markets, but no longer dominant in retail fixed network markets, where regulatory obligations were removed.

All commitments – insofar as they affect regulatory procedures and, in this context, facilitate the enforcement of the regulatory obligations – constitute part of the regulatory remedies.

Therefore all Commitments even those not explicitly or integrally mentioned within the obligations of access markets are now part of the remedies.




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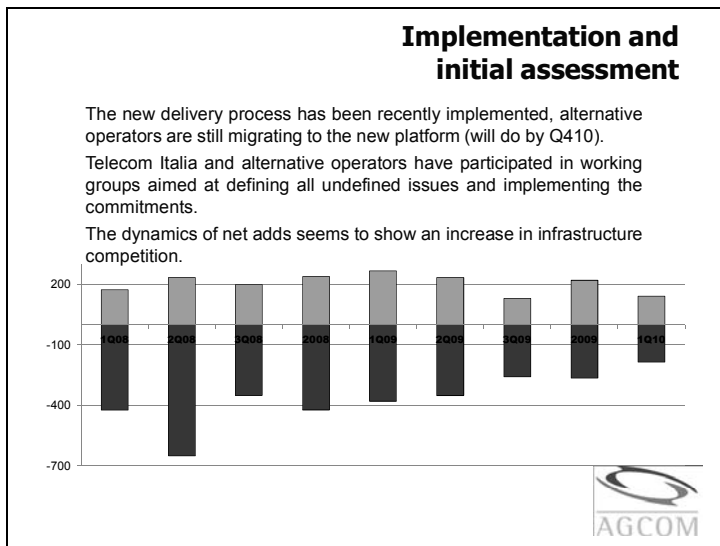
Implementation and initial assessment

Probably too early to assess the effectiveness of commitments.

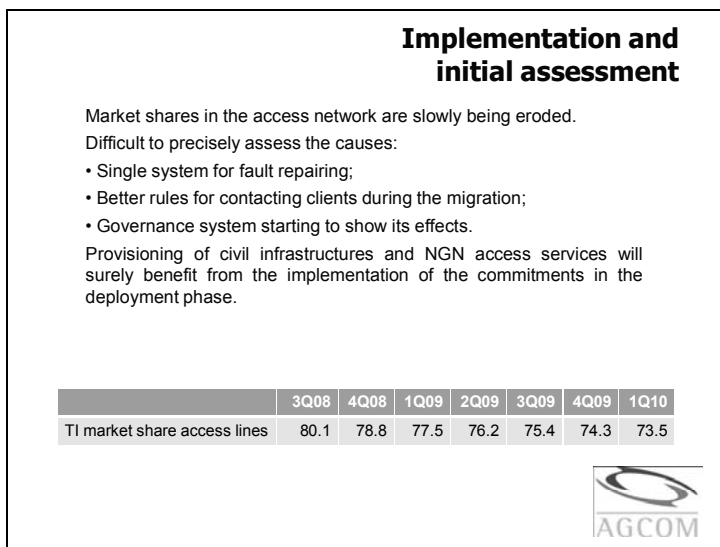
Group	Description	Implementation
1	New delivery process	Apr '09 – Apr '10
2	Incentive scheme, Code of Conduct	Jan '09 – Jul '09
3	Monitoring system	Apr '09 – Oct '09
4	Transparency of monitoring system	Apr '09 – Feb '10
5	Plans for quality of access network	Mar '09 – Feb '10
6	Plans for development of access network	Mar '09 – Feb '10
7	Supervisory board	Apr '09
8	Transfer charges	Mar '09
9	NGAN	Jul '09
10	Dispute settlement body	Jan '09 – Jul '09



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Thank you
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