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INNOVATIONS AND COMPETITION IN LAND TRANSPORT

-- Note by Italy --

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More documents related to this discussion can be found at: http://www.oecd.org/daf/competition/competitionand-innovation-in-land-transport.htm

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-- ITALY --

1. Introduction

1. This contribution describes recent developments in the long-haul bus transport services following the 2014 liberalization, and it gives account of an advocacy opinion rendered to the Ministry for Infrastructure and Transport by the Italian Competition Authority (the "Authority" or "AGCM") on the compatibility of innovative price setting methodologies adopted by newcomers in the market[1].

2. Recent developments in the long and medium haul bus transport services

2.1 The new legislative framework

2. Since January 2014, the Italian sector for long-haul bus transport services is fully liberalized: the legislative decree n.285/2005 provided a change from a system based on exclusive concessions to an authorization regime, after a transition period which terminated in 2013. According to Art.2, the segment that is fully liberalized is the long-haul bus transport services connecting more than two regions: the new framework allows for competition among ex-ante authorized players in any route connecting at least three regions. Local public transport services - typically connecting two regions – are therefore not considered by the liberalization reform as there exists a separate legislative framework.

3. In this newly liberalised regime, operators have to apply for an authorization to the Ministry for Infrastructure and Transport ("the Ministry") which releases a license if all the requirements indicated in art. 3 of the legislative decree are met. They include, among other things[2], the indication of the routes, timetables, frequency and *fares* that operators intend to apply. This information is reported as an attachment to the license. An implementing regulation (Ministerial Decree n.316 /2006) was issued to specify the procedures for the request and renewal of the authorization.

[1] Competition issues in the Italian rail passenger transport sector and local public transport have been addressed respectively in two OECD policies roundtables held in 2013. See the *OECD Roundtable on Recent Developments in Rail Transportation Services*, available at: http://www.oecd.org/daf/competition/Rail-transportation-Services-2013.pdf; and the *OECD Roundtable on Methods for Allocating Contracts for the Provision of Regional and Local Transportation Services*, available at: http://www.oecd.org/daf/competition/ContractAllocationforLocalTransportation.pdf

[2] Other two important requirements relate to the risks of translating to the new liberalised sector the benefits of operating in local public transport sector where exclusivity is the rule to ensure the fulfilment of public services obligations (PSOs). In this regard, one requirement seeks to limit cream skimming by imposing that new operators shall not only include the most profitable routes in their authorization request. The other requirement refers to unbundling obligations which apply applied on those operators in charge of PSOs and at the same time active in the liberalised sector.

2.2 Market developments since the 2014 liberalization

4. The liberalization has boosted the offer of long-haul bus transport services and facilitated the development of innovative services. A report[3] comparing the sector in 2013, last year of the transition period based on exclusive concession, and 2015, the second year of the new authorization based regime, highlights that the liberalization process has resulted in an increase in the number and frequency of routes, experienced in all regions and in particular in the northern ones where historically long distance bus services were scarcely active. In terms of number of routes, the report shows an increase of 33% (from 286 to 380 route per week): new services were introduced by 19 operators while no changes to networks were made by 23 players. It notes that 10 companies have closed their operations. In terms of frequency of routes, an increase of 38% was registered in 2015 in the weekly frequencies and this change was operated by almost half of the operators (24).

5. The liberalization has registered the entry of new companies like Megabus and Flixbus[4], offering new transport services such as intercity services (i.e., long-haul bus transport services with only a few stops) and night services, at very competitive prices by exploiting the opportunities, also in terms of efficiencies, offered by online platforms as well as dynamic pricing policies facilitated by the adoption of revenue management systems. For instance, Flixbus is the first online platform in Italy offering bus services by partnering with traditional bus companies. Its business model is based on partnership with bus companies which provide the services, while its efforts are concentrated in advertising, branding, pricing policy and innovation. Its price setting methodology takes into account several variables: proximity to the travel day, the load factor and the prices offered by competing services. Since July 2015, around 1.8 million passengers have travelled with Flixbus services in Italy[5].

6. The low cost services launched by new players connect the major urban centres of the northern regions with central and southern Italy. For instance, Flixbus operates routes from and to Turin, Milan, Genova, Bologna, Pisa, Florence, Rome, Pescara, Naples, Foggia, Bari and Lecce, but its network is increasingly expanding.

7. Newcomers have launched new ancillary services improving quality and customer experience such as new fleet, online booking facilities (also via a dedicated app), wifi and other entertainment on board. The liberalization has also created new services such as meta-search engines which are emerging in order to support customer choice in the increasing proliferation of alternative transport services.

8. In this new contest, intermodal competition with rail services is taking off as new bus transport services are developing on many routes covered by long haul rail services, which have decreased substantially over time. On the other hand, companies from rail transport sector are exploring the opportunities of the liberalization by launching bus services: for instance, the State-owned rail company Ferrovie dello Stato has recently announced the entry in the long-haul bus services through investments and the acquisition of well-established operators: by exploiting its existing customer base the operator

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[3] The Report, published in December 2015, was commissioned by ANAV - a business association grouping all the private bus transport companies. The report was conducted by a team of the Research Center on Transport Policy *TRASPOL* of the Polytechnic University of Milan: Beria P., Laurino A., Bertolin A., Grimaldi R. (2015). *Autolinee statali: gli effetti della riforma. Risultati, opportunità e criticità dell'apertura del mercato. Studio ANAV 2015*, 4 December 2015.. The full report (in Italian) is available at: http://www.traspol.polimi.it/portfolio/2015-autolinee-statali-gli-effetti-della-riforma-risultati-opportunita-e-criticita-dellapertura-del-mercato/

[4] Flixbus acquired Megabus' trade marks in June 2016.

[5] See article from the Italian daily newspaper *La Stampa* *"*La carica dei bus a 1 euro, cosi' viaggiano i ragazzi*"* (P. Baroni), 23 October 2016.

intends to expand its business by offering customers the opportunity to choose the best option between trains and buses and, in this way, to be able to compete with the newcomers[6]. Similarly Italo, a high speed train operator competing with Trenitalia, has launched bus transport services with a view to connecting urban centres such as Pisa, Siena, Matera and Pescara which are not included in its high speed rail network.

9. As in other jurisdictions, in Italy car pooling services (e.g., the French BlaBlaCar) and bus sharing services (e.g., the Italian Buustle) are growing as alternative road transport services in areas where rail connections are absent or fares expensive. The Italian start-up GoGoBus also offers "social" bus sharing services, i.e., targeted to specific events like music concerts. It can be expected that these services, at least for the medium distance services segment, might boost intermodal competition pressure on other transport services.

3. Opinion to the Ministry for Infrastructure and Transport

10. The Authority has intervened in December 2015 with an opinion to the Ministry for Infrastructure and Transport on the compatibility of the price setting methodology of two newcomers (Megabus and Flixbus) with the new liberalised framework. The request of the MIT stemmed from a complaint received by the Ministry from a bus company lamenting the application of flexible fares depending on the travel day and seat availability and promotional fares as low as 1 euro. This fare flexibility has generated concerns among the incumbents which were instead applying only the fares indicated in the license.

11. In its request for an opinion, the Ministry noted that the bus transport services liberalised by the legislative decree n.285/2005 were only subject to a set of requirements including, among other things, the indication of the fares which the operators intend to apply and which are reported as an attachment to the licence: in fact, the two operators reported in their license the *maximum* applicable fare and the *maximum* level of discount. According to the Ministry, since long-haul bus transport services are neither subsidised nor entrusted with public service obligations, they may be priced without the obligation to follow set rule. Therefore, the Ministry concluded that there was no ground for action in absence of any irregularity in the authorization granted to the two operators. However, the Ministry asked the Authority to check whether the price setting methodology of Megabus and Flixbus was compatible with antitrust law.

12. In its opinion[7], the Authority concurred with the Ministry in that the requirement envisaged by the authorization process was the mere indication of the applicable fares/discounts to be attached to the license: according to the AGCM, art. 3 of the legislative decree n.285/2005 does not contain any reference to an ex-ante "approval" of fares since with the liberalization price is a competitive variable not subject to any regulatory constraint. Accordingly, fares and discounts can be freely set and adjusted according to travel time, seat availability or any other variable. The Authority noted that the pricing setting methodology of Megabus and Flixbus is similar to those applied in other liberalised segments of passenger transport sector (such as airlines, ferries and high speed train) or in other markets related to the tourism industry (e.g., online hotel booking). As such, this dynamic pricing methodology could not be considered in itself as violating antitrust laws according to the Authority: potential competition concerns could raise only in presence of aggressive price predatory conducts implemented by a dominant operator and not replicable by an as efficient competitor.

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6 See the press release of 28th September 2016, "2016-2027 Industrial Plan" ", available at: http://www.fsitaliane.it/cms-file/allegati/fsitaliane_en/Investor-relations/2016_09_28_2017_2026_%20Industrial_Plan_Ninety_four_billion_Investments.pdf

7 Opinion n.AS1256, S*ervizi di linea interregionali di competenza statale*, available at: http://www.agcm.it/segnalazioni/segnalazioni-e-pareri/open/C12563290035806C/286F2138CE8A357AC1257F4700531055.html

4. Final remarks

13. Two years after the liberalization, rapid changes are underway in the long-haul bus transport sector, with the entry of new operators and the introduction business models which have brought an expansion of the output at very attractive prices, providing additional quality features (online booking, wifi on board etc.) and new ancillary services (e.g., meta-search engines).

14. A preliminary assessment of the effects of the first two years of the liberalization in this sector indicates that the market opening reform has been so far beneficial for consumers in terms of expanded output, lower prices and new innovative services. The liberalization has also intensified intermodal competition and attracted the attention of rail transport players.

15. As in other areas of land transport sector (e.g. taxi services), the emergence of new players with innovative business models tends to spur increased static and dynamic competition, posing challenges to incumbents, as well as to legislative and regulatory bodies trying to keep pace with rapidly evolving businesses. The advocacy efforts by the Italian Competition Authority can play an important role in promoting regulations that achieve public policy objectives and goals in a way that minimises impact on competition[8].

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8 See, for instance, Opinion n. AS1222 - *Legge Quadro per il Trasporto di Persone mediante Autoservizi Pubblici non di Linea*, September 2015. In this opinion to the Ministry of Internal Affairs on the applicability of the 1992 taxi regulation on Uber services (after they were banned by the Tribunal of Milan in July 2015), the AGCM advocated a separate legislative definition for non-scheduled mobility services offered by online platforms connecting passengers with “non-professional” drivers. To satisfy basic requirements such as road safety and passenger security concerns, the Authority recommended a least invasive minimum regulation for the new type of service providers, which includes the set-up of a register for the platforms and identification of a set of requirements and obligations for the private ‘non-professional’ drivers.