

Local public transport regulation and the new Italian Regulator for Transport

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Outline of the presentation

1. Functions and powers of the Italian Regulatory Authority for Transport (ART)
 - Undirect regulation functions: the dialectic between central and local regulation
2. Critical issues in the local public transport (LPT) sector
3. The regulatory solutions (measures) for LPT
4. Focus on the design of an effective competitive tendering framework

FUNCTIONS AND POWERS OF THE ITALIAN REGULATORY AUTHORITY FOR TRANSPORT (ART)

The Italian Regulatory Authority for Transport (1)

- The **Regulatory Authority for Transport (ART)** has been established by art. 37, Law Decree n. 201/2011, revised and integrated by law decree n.1/2012. Not a law, but an article in a decree\bill => not a systematic view of functions and powers
- **Start up in January 2014**
- **A European uniqueness:**
 - Italy is the first among the market economy countries to introduce an independent regulation in the transport sector (only **one single regulator for several transport sectors**).
- The institutive law entrusts the ART with a quite general regulatory responsibility and, precisely:
- **Vertical regulatory functions** on infrastructure and service (Functional interdependence governed at different territorial levels; limited contestability of final service markets):
 - Tariffs, fees,
 - Quality standards
 - Customer rights
 - Control and supervision
 - **Defines the schemes for tendering and the content of the contracts of service in Local public transport and in railways sector, including regional passenger service**, verifies the absence of discriminatory conditions, with reference to rolling stocks
- **Horizontal regulatory functions/areas of competence** in different transport sectors (because of intermodal effects in different transport sectors):
 - Tolloed Highways (new investments)
 - Airports and Ports
 - Railways infrastructure and service
 - **Local public transport (LPT)**
 - Taxi

The Italian Regulatory Authority for Transport (2)

Concerning LPT (and other sectors), it has to be remarked that ART has functions of direct and (more often) indirect regulation:

A) ART direct regulatory functions:

- Defines minimal quality standards, including rebates (*art. 37, comma 2, lett. d*)
- Guarantee fair and not discriminatory access conditions [...] with respect to urban and local human mobility (*art. 37, comma 2, lett. a*)

B) ART indirect regulatory functions:

- ART does not set tariffs or fees, but criteria only (*art. 37, comma 2, lett. b-c*), to be implemented by administrative entities, such as Ministers, Regions, Local councils, Mobility Agencies
 - Sanctioning powers are referred to undertakings turnover only
- Defines (binding?) schemes for tendering and of the contracts of service (not an auctioneer) pursuant to *art. 37, comma 2, lett. f*)
- Advocacy functions (*art. 37, comma 3*):
 - Push and support administrative entities (including local ones) in the identification of public service obligations and geographical perimeter of public service and efficient methods of financing
 - Propose the withdrawal, suspension, or revocation of concessions, contracts of public service, etc.
 - Favour alternative dispute resolution

The Italian Regulatory Authority for Transport (3)

Why indirect functions prevail on direct ones in LPT?

- For the same reasons explaining why a regulator for local public transport arrives more than 15 years after L. 481/95 establishing Energy and TLC authorities (nowadays, still “waste disposal and collection” has not a central regulation)
- Legislative decrees 422/97 and 400/99: **transferring of legislative, financial, regulation (price, quality, quantity, access, environmental, etc.) and planning responsibility for the whole system of LPT services from central to regional and local governments**, respecting general rules and principles fixed by the national government and unless competition issues prevail = decentralization of administrative responsibilities, according to the principle of vertical subsidiarity
- 2001 Constitutional Reform (**Regionalization**) gave exclusive legislative competence to regional government as far as local public services are concerned; State intervention in defining the main features of the form of the market in which economic services are supplied (public monopoly, competition in the market, competition for the market) is justified in terms of competition policy and promotion, which remain exclusive central prerogative.
- Industrial *municipalism*: coincidence between ownership and planning of LPT companies= Lack of true independence between local competent authority & provider

ITALIAN LOCAL PUBLIC TRANSPORT (LPT) POLICY ISSUES AND REGULATORY FLAWS

A snapshot of Italian LPT market structure

“Snow White and the Seven Dwarfs”

Bus, tram, metro and ferry-boat:

- Prevailing direct award to company fitting with the in-house criteria (*in-house provision*);
- Few competitive tenders to stock option companies or direct award to mixed companies in which the private partner is selected through a public tender procedure;
- Although competitive tendering was mandatory since 2001 (with many stops and go ...), local incumbent operators (often associated with others) have won most of the few tender procedures
- Supply fragmentation. Nearly 1.000 undertakings operate in the bus service market (not an Italian exception), but the largest LPT companies are few and often not competitive (ATAC has an annual loss of > 100 mln euro)
- the five leading providers have a share of 30% of total veh-km, while the same portion is around 60% in the main European countries
- Public-owned leading operators are oversized in terms of personnel (mostly in the undirect or administrative roles/qualifications)
- The major part of companies (around 90%) is mono-utility, i.e they run only local public transport services

Regional railways

- Prevailing direct award to Trenitalia (100% state-owned subsidiary of the FS holding) for a minimum period of 6+6 years (more than 76% of the mkt)

Policy issues in Italian local public transport

- Weak planning and programming capacity by regional and local authorities =>
 - Mismatch between demand and supply of mobility, no rigorous, homogeneous or transparent criteria of identification of minimal services, transport basins
 - Limited intermodal integration and costly overlapping between railways and bus services
- Striking territorial disparities concerning operative costs, labor productivity, fares and commercial revenues/operative costs ratio, levels of quality of service
- => large unsatisfaction of citizens, commuter especially (European Barometer surveys)
- => Low patronage levels
- Legal uncertainty (stop and go policies)
- Unfair compensation (no criteria to identify over or undercompensation) for public service obligations
- Uncertainty of financial public transfer, both at the national, regional or county level, either for current expenses or for investments
- only a few “service contract” satisfy the mandatory minimum ratio of 35% for coverage of operative costs through fare income
- Delays in transfer of public financial resources
 - => difficulties in medium-to-long term planning and industrial development (investments) with consequences on the quality performance of services
 - => negative impact on financial accounts of operators (high debt levels, financial cost burden and low profitability);
 - Scant industry attractiveness for investors
 - = vicious circle between financial shortage, the lowering of quality and declining patronage

Critical issues in local (“contract”) regulation

Uncomplete and ineffective regulatory framework until now => local and contract regulation proved very weak:

- Tariffs have not played a signalling role for orienting demand and investments. They are fixed according to electoral/consensus concern
- Limited tariff integration and no independent clearing
- *Price cap* is not applied
- Public service contracts suffer from:
 - Missed identification of PSOs
 - Under or over-compensation
 - Not credible mechanisms of control and penalty
 - Weak incentives to:
 - Improve operation efficiency, Patronage levels and Revenues
 - Invest in new vehicles and infrastructure
 - Improve quality standards
 - Unfair risk allocation between operator and purchaser

Regulatory issues in competitive tendering

Implementation mechanisms and rules adopted to carry out tendering procedures have not proved so far effective in ensuring higher efficiency of quality performance or higher patronage

Possible reasons:

- Limited room for manoeuvre left to operators to organize productive inputs and to gain productive efficiency (prevalence of gross cost contracts, rigid mobility plans, strict social clauses, high weighting of economic awarding criteria)
- strict existing relationship between the buyer/regulator and the incumbent provider has undermined the credibility of auctions, making difficult for most efficient operators to expand beyond their regional (and even national) borders.
- Not transparent, uncertain or unfair definition of compensations for public service obligations (see above),
- asset ownership proved as a high barrier to entry. In some cases, for ex., calls for tender have required participants to provide essential instrumental goods (depots, vehicles, stations, rolling stock, shelters), tailoring the qualifying requisites to the incumbent and reducing the number of competitors.
 - The national law establishes that call for bids has to grant that essential facilities are placed at the disposal of operators entrusted of the provision of the service, but this provision doesn't emerge as decisive.
- Limited information on the demand characteristics of mobility basins
- Too large territorial scale for tendering basins (=limited contestability)

THE START-UP OF ART IN LPT

THE REGULATORY DESIGN OF COMPETITIVE TENDERING

What the Italian regulator can do

- *Not all the critical issues of LPT may be solved by regulatory actions, in compliance with ART statutory duties, but it may give a great contribution by:*
- Setting minimum levels of quality standards in homogeneous territorial contexts (social cohesion, level playing field, virtuos competition or benchmarking, avert the risk of social dumping)
- Suggesting incentive mechanisms for the most appropriate objectives in different contexts (efficiency, performance quality, patronage, revenues, etc.) and carry out benchmark studies to obtain target objectives for competent authorities to assume
- Submitting tariff criteria oriented to a regulatory logic (flexibility, *price cap*)
- Submitting suitable criteria for the identification of PSO and territorial scale for transport basins/geographical scope of public service contracts
- Recommend effective and homogeneous (comparable) reporting schemes, control and monitoring mechanisms;
- Promoting associate exercise of monitoring functions in order to obtain economies of scale (=money saving) and effectiveness
- Supporting local administration in exercising regulatory functions (by through analytical tools, methods, comparative data & information, diffusion of best practices, etc.)
- **Establish a coherent regulatory framework for competitive tendering (object of a recent consultation paper-ART resolution n. 46/2014)**
- Beside regulation, the new platforms of intelligent Transport Systems (ITS) and Big data may contribute to find solutions for many critical issues

Regulatory design of tendering (1)

Regulatory measures aimed at:

- A. Promote contestability of franchise markets and **level playing field** conditions for all bidders (in tendering procedures)
- Timing (e.g. the period between the launching of the competitive tendering procedure and the submission of the offers, as well as the period between the launching of the competitive tendering procedure and the moment from which the operation of the transport services has to start (relevant to acquire rolling stocks))
 - Information on:
 - Mobility Demand
 - Management (revenues, quality performance, labour inputs, commercial speed, etc.), “relevant technical and financial data, including information about the allocation of costs and revenues” - legitimate protection of the commercial interests of third parties
 - Asset (depots, stations, shelters, maintenance workshops) and rolling stocks
 - Personnel (content of social clause)
 - Selection criteria, including quality related, environmental or social criteria
 - Awarding criteria
 - Transfer of essential facilities and other assets
 - Cautions and financial guarantees
 - Awarding commissions

Regulatory design of tendering (2)

Regulatory measures aimed at:

- B. Reduction of risks and costs for all participants (incumbents and new entrants), franchisors (public finance), customers (commuters), tax payers, workers
- “complexity or extent of the services to be provided”
 - duration of public service contracts (the longer the contract, more unpredictable future events)
 - Mandatory and optional Certifications (technical, labour, security, safety, quality, etc.)
 - *Jus variandi*
 - *Flexibility of programs and compensations*
 - Terminal value criteria of calculation for asset to be transferred to new entrant
 - Rent fees criteria of calculation
 - Social clauses

Regulatory design of tendering (3)

Regulatory measures aimed at:

- C. Protection of customers, tax payers (effects on public finance), transparency and public accountability:
- Content of contracts of public service
 - PSOs and related compensations
 - *Price cap + subsidy cap*
 - Tariffs
 - Quality standards and customer rights
 - Controls, monitoring and reporting; social reporting
 - Incentives: premium and sanctions, bonus/malus mechanisms
 - Involvement of customers and their associations in the process of setting and monitoring of quality standards
 - Guarantees for the new entrant at the end of the contract awarding concerning personnel, assets and rolling stocks

THANK YOU!

