

Chapter 7

Competition and Regulatory Reform in Commercial Distribution

This chapter analyses the liberalisation of commercial distribution in recent years, and presents the costs of barriers to entry. The regulatory framework is discussed from a multi-level perspective, including the 1998 reform and the rising role of regions, with implications in terms of land planning regulations and their interactions with planning regulations for the supply of retail services. The chapter offers a cross regional comparison of regional regulations after the 2001 constitutional reform, with a focus on store size thresholds, authorisation of medium-sized and large stores, opening hours and promotions and sales. The increasing role of regional regulations through the devolution process makes it difficult to assess the competition implications. The chapter also discusses the specific cases of pharmacies, news agents and petrol stations. Finally, the chapter analyses the scope for co-ordination mechanisms, including the State, the regions and the municipalities.

Scope and relevance of regulation of commercial distribution

Commercial distribution, and especially retailing, has been and still is one of the most heavily regulated sectors of the Italian economy. As this is a domestic sector, policy analysts have tended to think that efficiency in retailing was less crucial than the efficiency of manufacturing industries that compete in the global market or of other services that indirectly condition the performance of the whole economy. Commercial distribution is prone to intervention by pressure groups and specific vested interests in retailing or in suppliers' industries. This may result in regulations that alter the functioning of the market to the advantage of incumbents, although they are proposed as instruments to protect the public interest. Costs have been very high both in terms of immediate loss of consumer welfare and in negative dynamic effects that do not only involve retailing and wholesaling, but also extend to the competitiveness of manufacturing industries producing consumer goods and, eventually, to the whole economy.

The slow path towards liberalisation of commercial distribution in Italy

Regulation of commercial distribution was introduced in the early 1970's when the diffusion of large stores managed by large multiple retailers became a threat to small traditional shopkeepers. Though consumers would have benefited from their diffusion through lower prices and the opportunity to concentrate purchases, without some form of restraint, a large number of small independent retailers, especially in the food sector, would have lost their jobs. Thus, regulations were established with the aim of balancing the interest of the consumer with the social cost of widespread bankruptcies among small shops. These were the conditions that led to the enactment of Law 426/1971, which, with various amendments, was to last until 1998. It provided a general regulatory framework that each municipality, and to a lesser extent each region, could use more or less restrictively setting the degree of entry barriers which made the modernisation of commercial distribution acceptable to local conditions. That is, barriers to entry have been the results of the interplay of lobbies with conflicting interests at a local level.

A reform of Law 426/1971 had been called for from many sides for many years, but was strongly opposed. Entry barriers had been so successful that it became more difficult to remove them over time. Regulations had sheltered commercial distribution from market forces so effectively that it was difficult to find a consensus on a liberalisation that could have had a considerable impact on the sector. It is worth noting that these arguments did find some popular favour. In 1995 two referendums about retailing were held. The first was on the abolition of the regime of authorisation of stores; the second on restrictions of opening hours. Both were lost by proponents, showing that the support to small retailing was fairly strong and that the advantages of liberalisation were not obvious to a large part of society.

In 1998, after almost thirty years and much debate, a reform of the regulations of commercial distribution was eventually carried out with the approval of Legislative Decree 114/1998. The new statute introduced a number of radical changes, reviewed below, but left in

place a number of elements safeguarding incumbents from the effects of liberalisation. In essence, this was done by maintaining a regime of authorisation of stores above a certain size and entrusting regions, which for the first time became the main public authority responsible for regulating this field, to fill the frame established by the new statute. Regions could use their new powers to adapt regulations to local conditions, and they did it in ways that sometimes went against the reform. Barriers to entry, direct and indirect, were reintroduced, sometimes establishing quantitative thresholds on the amount of sales space available to new stores. This led the Competition Authority (*Autorità Garante della Concorrenza e del Mercato*, AGCM) to intervene on many occasions, and the issues it dealt with are a good guide to the kind of anticompetitive regulations introduced by some of the regions (AGCM, 1999).

In the two years that followed the approval of Legislative Decree 114/1998, many regulations were produced at regional level. This was a foretaste of what followed just a year later, in 2001, after the approval of the reform of the Italian Constitution that was meant to open the way to a federalist transformation of the institutional framework of the country. With this move regulation of commercial distribution, among many other issues, became the sole responsibility of regions, which were no longer bound by State legislation unless their statutes impinged upon matters on which the competence of the State prevails. The implication was that Legislative Decree 114/1998 ceased to be binding and was to remain relevant only as long as regions did not intervene by enacting their own regulations. Almost from the outset, it became apparent that the issue of competition was playing a central role in Regional legislation regarding commercial distribution. The pressure from below, from local vested interests, was strong and the new wave of regulations in many cases went against the 1998 liberalisation reform. This trend sooner or later had to raise the issue of the sole competence of the State on matters concerning competition.

This happened in 2006, and then again in 2007, when the government intervened through Decrees 223/2006 and 7/2007, later converted into Laws 248/2006 and 40/2007. Law 248/2006 establishes general rules to promote competition in retailing (Art. 3) and liberalises the sale of over-the-counter pharmaceutical products (Art. 5), while Law 40/2007 only marginally touches commercial distribution. An extension of the liberalisation of the sale of pharmaceutical products, originally proposed, was not approved. These two statutes are the latest important measures intended to reform regulations of commercial distribution and are currently the reference for further attempts to promote competition in the sector.

The statutes that regulated retailing from the enactment of Law 426/1971 until now have an important feature that needs to be made explicit, namely the exclusion from general provisions of sectors thought to need specific regulations due to their particularities and the crucial impact on society of the services they provide: health (pharmacies), information (newspaper and magazine distribution) and transport (petrol stations). They have been and still are regulated by specific provisions (see section on The regulation of retail sectors). Overall, liberalisation in all these sectors has been limited and slower than for the rest of retailing.

Immediate and dynamic costs of regulations

The cost of entry barriers in commercial distribution has been and still is very high. However, the complexity of the dynamic implications of entry barriers has made a comprehensive quantitative assessment of their cost to consumers difficult. The immediate cost, easily measurable in terms of price differentials across traditional and modern store formats, is only part of the total loss of welfare due to inefficiencies arising along the value

chain, involving commercial firms as well as their suppliers and, through them, the entire economy. To assess this overall loss goes beyond the scope of this report, but before starting to review the regulations that slowed down the diffusion of large stores and the consolidation of retailing in Italy, it is useful to remind briefly the nature of these costs. They refer to immediate and indirect consequences of entry barriers as they ration the services of new store types to consumers; reduce efficiency in retailing; slow down the reallocation of economic activities within the value chain; and reduce the bargaining pressure of retail firms on their suppliers.

The rationing of the services of large and cheaper stores means that consumers who would be willing to purchase from them cannot do so and have to continue buying from traditional and more expensive ones. The negative welfare implication of a reduction of modern store types can therefore be measured on the basis of price differentials between traditional and new modern and larger stores. Three studies have attempted to evaluate the cost of the delayed modernisation of Italian retailing to consumers (Table 7.1).¹ They refer only to grocery retailing. Nomisma (1998) estimated how much would have been saved if Italian grocery retailing had a structure equal to the average of the main European economies. On this basis, considering only price differentials across store formats, the cost to consumers was estimated as 0.4% of GDP. Pellegrini (2000a) tried a different and more comprehensive estimate, using as a benchmark margin differentials across store formats in Italy and France. Depending on different sets of assumptions, the cost to Italian consumers was estimated in a range between 1.0 and 1.5% of GDP. These two studies account for the situation under the regulatory regime of Law 426/1971. Ravazzoni (2004) updated the estimate of Nomisma with reference to 2003, therefore after the first few years of application of the reform of 1998. It also included the effect of the lower diffusion of private labels in Italy, as a consequence of the lower market share of large multiples (§ 11). He reached an estimate of 0.6% of GDP. It is worth noting that though the reform liberalised entry, the gap in the diffusion of modern store formats between Italy and the main European economies did not change much. The process of retail modernisation continued, and was only just maintained by the liberalisation, which did not allow to close the existing gap with the main European economies.

Table 7.1. **Estimated cost of barriers to entry in retailing in Italy**

Retail sector considered	Benchmark	Basis of computation	Involved cost as % of GNP
Nomisma (1998) Grocery retailing	Main European countries	Price differentials across store types	0.4%
Pellegrini (2000) Grocery retailing	France	Retail margins in Italy and France	In a range from 1.0% to 1.5%
Ravazzoni (2004) Grocery retailing	Main European countries	Price differentials across store types	0.6%

The second type of effect, *efficiency gains* lost due to delayed consolidation of the retail industry in Italy, is more complex to account for since it has dynamic implications. The price advantage to consumers of modern retailing depends on the efficiency of large multiples, which is influenced by the structure of the industry. Regulations impinge upon it on at least two accounts, as they may reduce the economies of scale firms can achieve and induce negative externalities on the way operations are run. Retail firms can exploit substantial economies of scale in most central functions that serve their networks of stores. Though it would be very difficult to estimate the costs implied by the lack of economies of scale to Italian retailers, comparing the size of the main retail groups in Italy and in other comparable countries shows that the existing gap is substantial and that these costs must have been considerable (Table 7.2). Negative externalities of planning regulations on operations are particularly relevant when constraints are imposed on

locations, leading firms to accept suboptimal locations. This is a common implication of restrictions imposed by retail planning whose aim is to reduce the impact of new stores on incumbents. To estimate the cost implied by these negative externalities would be very difficult, and nobody has tried to do it.

Table 7.2. Market share of the first 5 grocery retailers in Italy, France, Germany, Spain and the UK, 2007

Rank	1	2	3	4	5	Total
Germany	Edeka 25.7	Rewe 18.2	Aldi 17.4	Markant 13.8	Metro 7.6	82.7
France	Carrefour 26.1	Leclerc 15.9	Casino 13.3	Intermarché 12.8	Auchan 12.5	80.6
UK	Tesco 29.2	Asda 15.6	Sainsburys 14.8	Morrison 10.5	Coop 6.2	76.3
Spain	Carrefour 22.5	Mercadona 15.3	Eroski 9.6	Auchan 7.6	ECI Hipercor 7.6	62.6
Italy	Coop 14.6	Carrefour 9.5	Conad 8.5	Auchan 8.1	Selex 7.5	48.3

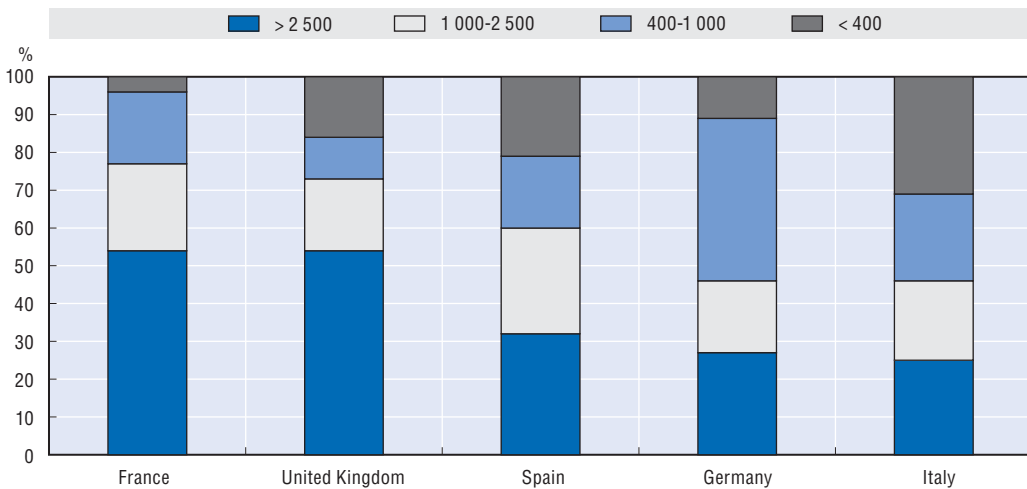
The structure of the value chain, that is, the way activities within the value chain are allocated between manufacturers and retailers, is not given, but varies depending on the relative efficiency of the two agents. The two most important activities involved are physical distribution and branding. As retail companies develop large networks of stores, it becomes more efficient for suppliers to move from direct delivery to stores, to delivery to retail warehouses. Retailers take charge of redistributing merchandise to their network of stores, and a considerable part of physical distribution is reallocated to them. It is an efficiency gain that is first reflected in lower upstream prices and then, if retailing is competitive, in lower consumer prices. A second and often overlooked reallocation of activities in favour of retailers entails branding and the diffusion of private labels. These are a low cost way to convey to consumers information and guarantees on products since they cover a large number of goods using single brands, those of retailers, that require lower marketing costs (mostly advertising) than equivalent products branded by manufacturers. For standard products that do not carry much innovation, retailer brands offer consumers price differentials with respect to leading brands of, typically, about 20%. The welfare implications of private labels are enhanced by the scale of operations: their development is an almost fixed cost and decreases per unit sold as retail firms become larger through consolidation of the sector. In Ravazzoni (2004), the cost of the lower diffusion of private labels in Italy was estimated at 0.2% of GDP (see also Table 7.3).

Table 7.3. Grocery retailing: Market share of private labels in Italy, France, Germany, Spain and the UK, 2007

Country	Market share of private labels in super and hypermarkets*
UK	40
Germany	30
Spain	26
France	25
Italy	12

*Discount is not included.

Source: IRI.

Figure 7.1. **Grocery retailing: Market shares by store dimension 2007**

Source: ACNielsen.

Large retailers exert a strong *bargaining pressure on suppliers* to obtain discounts with respect to listed prices. These discounts are justified by the reallocation of the activities in the value chain, as physical distribution and part of branding move downstream, and by the reduction of transaction costs that benefits suppliers in terms of smaller sales forces and lower inventory costs. A further component of the efficiency gain arising from retail pressure on manufacturers relates to reductions of rents gained by those who have some degree of monopolistic power, that is, by manufacturers of powerful brands.² Retailers have ways to put their suppliers under strain and make them forego at least some of the rents they may obtain from monopolistic power. More generally, they exert pressure on upstream prices that pushes their suppliers to try to increase their efficiency and to innovate so to be able to strengthen their bargaining position.³ And since suppliers have their own suppliers too, this pressure is diffused in all upstream stages of the supply chain, namely a large part of the whole economy. This chain of effects is often overlooked, but it accounts for the most important dynamic contribution that a competitive retail system can provide to the overall efficiency of the economy (Pellegrini, 2006). This chain of effects is complex, though, and there is no published evaluation of them within the context of the Italian economy.

Regulation of commercial distribution in Italy

Law 426/1971 and its imprinting on regulation of commercial distribution

Law 426/1971 contains comprehensive provisions devised to control most features of competition in retailing, and it is a useful framework to describe the evolution of regulations. Though amended many times, the law has been in place until 1998 and has become a deeply ingrained framework, the one that those involved with commercial distribution in politics and in local administrations have been using for almost 30 years. It is therefore essential to understand the evolution of regulations to this day. Law 426/1971 affected competition conditioning entry in retailing: by firm size; by store size; by type of goods sold; by trading time; and by location. These entry barriers are summarised in the first column of Table 7.4. The reference retailer addressed by the law was the independently run, one-store company with an established position in its local market.

Table 7.4. Law 426/1971 and Legislative Decree 114/1998

Regulations and their implications as barriers to entry	Law 426/1971	Legislative Decree 114/1998 (the Bersani reform)
Trade registry Barriers to entry by firm size	To be able to operate, all retailers had to register at the <i>Registro degli esercenti commerciali</i> , (REC), a professional list. Registration required to pass an exam to prove to have adequate professional qualifications.	The trade registry (REC) is abolished.
Authorisation to operate Barriers to entry by store size	Beside registering at the local Chamber of Commerce, as any other company, retail firms had to obtain a specific authorisation by the mayor of the relevant municipality. Retailers operating stores of more than 400 m ² located in municipalities with up to 10 000 inhabitants, or stores of more than 1 500 m ² in municipalities with more than 10 000 inhabitants, had also to obtain a <i>nihil obstat</i> from the relevant regional authority. The regional authorisation of large stores and shopping centres was intended to avoid that municipalities would authorise them too easily, attracted by the fiscal and employment advantages of having them located in their territory.	Small stores – up to 150 or 250 m ² respectively in municipalities with up to or more than 10 000 inhabitants – do not need authorisations to open, provided that they occupy a building or part of a building with a commercial destination. Medium-sized stores – up to 1 500 or 2 500 m ² respectively in municipalities with up to or more than 10 000 inhabitants – have by authorised only by the relevant municipality. Large stores – exceeding the limits of medium-sized ones – also need a regional authorisation. This is granted by <i>conferenze dei servizi</i> , committees those members represent the relevant Region, province and municipality and also trade associations and consumer associations.
Product lists Barriers to entry by type of goods sold	The authorisation granted by the relevant municipality must refer to one or more <i>tabelle merceologiche</i> , product lists that detail what kind of merchandise can be sold in any given store. The last version of these lists, the one simplified by the Ministry Decree 375 in 1988, defines 15 types of assortments. Product list VIII allowed to sell (with some exceptions) all kind of goods and was used to open supermarkets and hypermarkets.	Previous “product lists” are abolished, maintaining only a distinction between food and non food stores. Authorisations of medium-sized and large stores must refer to one or both of these specialisations.
Trading hours Barriers to entry by trading time	Until 1987, trading was possible for a maximum of 44 hours a week. Thereafter, regions had to define guidelines, to which municipalities had to conform in setting opening and closing hours. Sunday trading was not generally allowed, though an exception was made for newsagents, booksellers, recorded music shops, antiques and art dealers, and furniture shops. All stores had to close for half a day during the week; the day was decided by the relevant municipality and was differentiated by store type. Stores had to open not later than 9 a.m. and close not later than 8 p.m. (9 p.m. in summer time).	Stores can open for 13 hours a day, from 7 am to 22 pm. Sunday trading is possible in December and during an additional 8 Sundays a year. Municipalities or part of municipalities with a high inflow of tourists are exempted from limits on trading hours.
Retail planning Barriers to entry by location	Municipalities had to prepare a Retail Development Plan, a separate document with respect to the master plan. The aim of these plans was to estimate the demand of retail services for each product list in the homogeneous sub-areas in which the municipality was divided. This was the basis to determine the amount of sales areas that could have been authorised in each sub-area for each product list. If demand was considered already satisfied in one or more sub areas for one or more product lists, the only way to enter the market was through the acquisition of an existing store.	Retail Development Plans are abolished: provisions with respect to localisation of retail activities should be included in master plans, as for any other activity.

The main provision of the law was the introduction of a new planning instrument specific to retailing, the Retail Development Plans. Municipalities were required to formulate a plan for the “rational” development of the retailing network over their territory. These plans had to be prepared in addition to standard town planning instruments (master plans). The procedure can be summarised as follows:

- Municipalities had to determine the amount of sales area needed to serve actual and expected demand for each typology of assortment identified by the law (“product lists”, see Table 7.4).
- On the basis of estimated demand, municipalities had to prepare their Retail Development Plans: the municipality was divided into a number of homogeneous areas and detailed indication had to be given about space available for each typology of assortment within each area.

- New stores had to fit into the Retail Development Plans: they could be opened only if, in the sub-area where they were to be located, there was store space available for the typology of assortment they had applied for.

The effects of Law 426/1971 will not be discussed in detail. It is well known that it slowed the development of modern retailing in Italy, an issue on which a vast literature was produced spanning over 30 years. The first general report on competition, produced by the AGCM in 1993 (AGCM, 1993), in response to a specific instruction included in the then new Competition Act, focused on the regulatory structure affecting commercial distribution. The AGCM asked for new rules allowing for a freer entry of new stores: in essence, it asked for the abolition of Law 426/1971. The report was an important step in the discussions that led to the so-called Bersani Reform in 1998 (Legislative Decree 114/1998), which introduced the second regulatory regime of commercial distribution in Italy.

The reform of 1998 and the rising role of regions

The reform, known by the name of the then Minister of Industry and Commerce, Pier Luigi Bersani, was meant to liberalise the sector, an aim that to a large extent was achieved. Most of the entry barriers introduced by Law 426/1971 were removed and the new decree became a general and common framework to be filled with more detailed regulations by regions (Table 7.4, Column 2). The trade registry (REC) was abolished, and so was the need for authorisation to open small stores (up to 150 or 250 m² respectively in municipalities of up to or more than 10 000 inhabitants). In essence, small stores could be freely opened. Medium-sized stores (defined as stores up to 1 500 or 2 500 m², respectively in municipalities of up to or more than 10 000 inhabitants) still had to obtain an authorisation, but only from the relevant municipality. Large stores (or shopping centres), i.e. those exceeding the thresholds of medium-sized stores, had also to obtain, as before, a regional authorisation. The latter was to be granted or denied by the *conferenze dei servizi*, committees whose members represent the relevant region, province and municipality as well as the main retail associations of consumers (for the first time institutionally involved in the authorisation of large stores). Entry barriers defined in terms of the kind of goods stores could sell were much relaxed, abolishing the previous “product lists” and leaving only the obligation to state if the merchandise sold were food or non-food goods. As for trading hours, they were extended: retailers could open for 13 hours a day, from 7 am to 22 pm; Sunday trading was possible in December and during an additional 8 Sundays a year; municipalities (or areas within municipalities) with high tourist inflow were exempt from limits on trading hours. Finally, but this is a central issue of the reform, Retail Development Plans were abolished: provisions with respect to localisation of retail activities would have to be included in master plans, as for any other urban activity.

Before Legislative Decree 114/1998 retailers had to comply with two separate sets of regulations to open a store: land planning regulations and planning regulations involving the supply of retail services, both in terms of quantity (sales area available) and quality (store types). The first involved the building or part of building that was to be occupied by the store, which had to be designated for retail by the master plan. The second concerned the demand for retail services that municipalities would be expected to satisfy, which translated into surface area for the relevant “product list” in their Retail Development Plans. Complying with the first set of regulations did not automatically imply to satisfy the second and *vice versa*. The aim of the reform was to remove the second requirement. Zoning, the basic principle of town planning, establishing restrictions related to the

economic activity to which land is put to use, was to become the only guiding principle to control entry, in the hope of removing or at least reducing the rationing of space available to modern retail formats. With the abolition of Retail Development Plans, zoning and town planning could return to their proper function: the control of externalities on neighbouring land uses and the optimisation of the planning of public facilities. For small stores this was easily achieved by abolishing authorisations to trade and “product lists”. For medium-sized stores, with a limited influence that remains confined within a municipality, a requirement for specific authorisation was left in place, though the master plan should have been sufficient to control possible externalities. For large stores, whose influences go beyond single municipalities and require some form of large area planning, regional authorisation requirements remained in place. Overall, even though a regime of authorisations was in part confirmed, the aim of Legislative Decree 114/1998 was clear: authorisations had to involve land planning considerations and not the supply of retail services as such. One exception was made to this principle (Article 6, Paragraph 1, letter b), so that in granting authorisations for large stores attention had to be paid to the equilibrium among different store types. This apparently small concession to businesses eager to open large stores reintroduced a principle of supply planning, if not in quantitative terms, then in giving credit to qualitative restraints. This concession may appear of secondary importance, but it was used extensively by regions to reintroduce supply planning in retailing.

The discussion that led to the Bersani reform took place at a time when Italy was moving towards a federalist institutional framework. Legislative Decree 114/1998 was influenced by this, and on many important matters it left regions to complete the regulatory frame defined by the reform. Regions were asked to modify their land planning laws to account for commercial distribution that until then was regulated by a specific and separate planning instrument. However, the use of zoning to control externalities and its use to set quantitative limits to the expansion of, in this case, large stores is subtle. Many regions applied zoning to reintroduce quantitative and qualitative limits to the number and the type of stores to be allowed to enter the market. This was done in two main ways, through general planning documents stating how the region expected large retail establishments to develop and be located, and by setting the required standards to allow for their localisation. Municipalities, on their side, had to update their planning instruments to accommodate for retailing and could, at a lower scale, resort to this same approach. At least in some cases, regulations abolished by the reform were reset in the new institutional structure.

A review of the regions’ regulatory activity in the short period between the enactment of Legislative Decree 114/1998 and the change in the Constitution in 2001, was made irrelevant by the constitutional amendment providing regions with the sole competence to regulate commercial distribution. For some regions, conforming to Legislative Decree 114/1998 has been a long and difficult process. Lack of competences in the field of commercial distribution and pressure from local lobbies slowed down legislation and had a negative influence on liberalisation. Many regions tried to use land planning regulations to reinstate barriers, sometimes quantitative, more often qualitative, to new large stores (Pellegrini, 2000b). Overall, an analysis of the legislative activity of the regions shows that they tended to pay relatively less attention to the competitive implications of their intended draft regulations. As a result, the Competition Authority had to intervene on many occasions expressing critical views (AGCM, 1999).

Below cost sales

Legislative Decree 114/1998 also stated that limits to below cost sales had to be imposed. It did not identify them, but established that measures had to be enacted by a specific statute (Art. 15, Paragraphs 7-9). This was eventually carried out in 2001 by DPR 218/2001. The essence of the regulations can be summarised as follows.

- Retailers with a dominant position within their province (defined as a market share above 50%) are forbidden to sell below cost.
- All other retailers are allowed to sell below cost three times a year for no more than 10 days each time; at least 20 days must elapse between two below cost sales; no more than 50 products can be offered below cost each time.
- Below cost sales are allowed without limitation in the case of merchandise with particular characteristics (produce and, in general, food products near the end of their shelf life; products typically sold on the occasion of festivities; obsolete products; products with some minor defect or used in fairs and exhibitions).

Unlike in France (Commission Canivet, 2004; Colla, 2006), limitations on below cost sales did not have a strong impact on retail pricing and on the bargaining process with manufacturers (Bellini, 2005). This is probably due to the way controls were devised, *i.e.* holding municipalities accountable. To establish if a sale is below cost requires the availability of invoices and other contractual agreements between manufacturers and retailers. These are difficult to obtain at a local level, since they centralised at the headquarters of the firm, and complex to analyse. Besides, since the law does not forbid high discounts if these are made in co-operation with manufacturers (which reduces the upstream price for the duration of the promotion), controlling below cost sales would require a continuous monitoring of promotional activities that, in the grocery sectors, are typically launched every two weeks. This task goes beyond the resources and competencies of 8 000 municipalities. Retailers' behaviour also helped to reduce the incentive to perform active controls, since they formally complied with the new dispositions. Below cost sales have become a much advertised form of promotion following the rules established by the law. If retailers also practice below cost sales on other occasions, it is difficult to tell as they become part of their intense promotional activity which, again, municipalities are not structured to monitor.

Regional regulations after the constitutional reform of 2001: A cross regional comparison

After the constitutional reform of 2001, Legislative Decree 114/1998 remained the rule of reference, but this was only the case until regions decided to depart from it through regional laws. It has been used as a guideline, in part due to the legislation enacted before the constitutional reform and in part as a benchmark to measure innovation introduced after 2001. Some regions moved further. Others did not. However, the State remained responsible for matters dealing with competition and consumer protection. The separation of competencies between the State and regions has raised issues on the vertical structure of regulations (see section on State, regions, municipalities: The vertical structure of regulations). This section presents the commercial distribution of regulations across the six regions that participated to the OECD study.

The complexity of existing laws, decrees and other regulatory instruments is such that to make comparison possible, various provisions were analysed in terms of issues of

particular relevance for their competitive implications. The AGCM study (2007) was used as a starting point to define the most relevant issues for the analysis. The Authority compared the regions' attitude in terms of town planning requirements for new stores; quantitative constraints for new stores; the complexity of authorisation procedures; measures that suspend authorisations; opening hours; procedures used to define touristic municipalities where opening hours are unrestricted; promotions and sales; rules applied to allow wholesale and retail in the same premises. In comparing the statutes of Italian regions with respect to these issues, the Authority identified three clusters (Table 7.5). The first cluster includes regions where regulations define a competitive environment. The second concerns regions where regulations mitigate competition. The third includes regions where regulations hamper competition. On this basis, an empirical analysis was carried out to correlate the economic performance (inflation, occupation, investment) of these three clusters with the degree of liberalisation of their regulations. Results confirmed a positive correlation between liberalisation and economic performance, and the study has been a first test of the impact of regulations on competition at regional level.⁴ The issues used in this section to compare regions have been slightly redefined and are the following.

Table 7.5. **Regional regulation of commercial distribution: Restrictions to competition**

Low	Medium	High
Campania	Abruzzo	Friuli Venezia Giulia
Emilia Romagna	Basilicata	Lazio
Lombardy	Calabria	Liguria
Marche	Tuscany	Apulia
Molise	Veneto	Sicily
Piedmont		Trentino Alto Adige
Aosta Valley		Umbria

Source: AGCM, 2007.

Store size thresholds: they define different authorisation regimes and different town planning requirements and influence market entry in various ways. Lower thresholds for small stores restrict the area of liberalisation where authorisation is not required. Lower thresholds for medium-sized stores reduce the scope for the simplified authorisation regime requiring only the assent of municipalities, widening that of the more complex and costly procedures which involve Regions and provinces. Moreover, the introduction of more detailed dimensional thresholds for medium-sized and large stores may involve more complex and costly town planning procedures.

Authorisation of medium-sized and large stores: procedures and rules of authorisations raise the issue of entry barriers. These may depend on quantitative limits for new stores and/or qualitative requirements that make authorisations more difficult and more expensive to obtain. Qualitative requirements can be devised in such a way that, even though there are no explicit limitations on the number of new stores, entry becomes very difficult or impossible.

Opening hours: to be able to trade during particular hours of the day or on Sundays and bank holidays is an important competitive lever, especially for some distribution formats and certain types of shopping centres. Large stores selling durable goods purchased by consumers after a long search, take advantage of Sunday trading (even Law 426/1971 allowed it in several cases). One of the most important service components of convenience

stores is their long trading hours. Large shopping centres offering a mix of retailing and entertainment, and factory outlet centres, have a strong interest in Sunday trading. Retailers operating in touristic destinations can take advantage of both longer trading hours and Sunday trading.

Promotions and sales: they are an essential feature of retail competition, and constraints on the different types of promotional initiatives can greatly reduce competition. Apart from below cost sales, which are regulated at national level and monitored by municipalities (Paragraphs 20-21), regions have produced regulations involving most other forms of promotions and sales.

Store size thresholds

Among the regions considered in this section, only one, Sicily, defined new thresholds for small stores, differing from those of Legislative Decree 114/1998. In small municipalities (up to 10 000 inhabitants), stores are defined as small, and therefore free to open without authorisation, if they have less than 100 m². An intermediate threshold is introduced for municipalities of more than 10 000 inhabitants and less than 100 000 (up to 150 m²) and the upper threshold, applicable only to large towns (more than 100 000 inhabitants), is reduced to 200 m². The area of liberalisation of entry is therefore reduced with respect to the Bersani reform.

Three regions have redefined medium-sized stores. Sicily, which again used three classes of municipalities, reduced the upper limit that requires only an authorisation from the relevant (large) municipality to 1 500 m² (it used to be 2 500 m² in Legislative Decree 114/1998). The lower limit (small municipalities) is now 600 m² instead of 1 500 m². Therefore, the region widened the range of store sizes that have to obtain a regional authorisation, reducing the scope for autonomous decisions by municipalities. Piedmont confirmed the thresholds of Legislative Decree 114/1998, but introduced a wider range of store sizes (15 different definitions for food and non-food stores for the usual two classes of municipalities by population) with the aim to allow for a more detailed planning of retail locations in master plans and for the computation of related standards (e.g. parking slots). Veneto confirmed store sizes thresholds of Legislative Decree 114/1998 but introduced a new one of up to 1 000 m² that discriminates against different planning procedures (§ 32).

Four regions have modified the definition of large stores. Piedmont introduced a detailed classification of large stores similar to the one used for medium-sized ones. Veneto set an upper limit of 15 000 m² (it becomes 25 000 m² if existing units are closed in order to open the new store). Sicily introduced two thresholds, up to and above 5 000 m², to be used to differentiate authorisation requirements. The same was done in Tuscany, which defines a range of store sizes for town planning purposes.

Apart from Sicily, the other regions did not modify store sizes defined by the Bersani reform, and all of them (in fact, all regions in Italy) have maintained the distinction among small, medium-sized and large stores that at least serves as a common reference to move in the maze of regulations produced after the constitutional reform of 2001. Often, a wider range of dimensional definitions were thought useful for the sake of retail planning, but these did not alter the common framework that subjects the three basic dimensional classes of stores to as many different regulatory regimes: liberalisation of small stores; municipal authorisation of medium-sized; regional authorisation of large ones. Among the regions considered here, only Veneto introduced an upper limit to large stores.

Authorisation of medium-sized stores

Procedures and rules of authorisation define the conditions to be met to be allowed to enter the market. In the case of medium-sized stores they have to be applied by municipalities and can involve quantitative and/or qualitative constraints. Lombardy and Molise introduced quantitative limitations in the form of upper dimensional limits for new stores in small municipalities, in municipalities located in the mountain area (Lombardy), and in historic town centres (Molise). But, while Lombardy leaves municipalities to decide whether to set these limits or not, Molise sets a binding limit of 400 m². Veneto established a different and stricter rule: new stores exceeding 1 000 m² can be authorised only if the total sales area of medium and large stores operating in the municipality does not exceed that of small ones. This rule may have a particularly restrictive effect in small municipalities whose consumers are tributary to larger ones with a wider choice of purchasing alternatives.

Qualitative restrictions on medium-sized stores come from regulations that refer to town planning. In principle, they are justified to limit negative externalities and to allow for a better planning, both in terms of equilibrium among different urban functions and of efficient provisions and use of infrastructures. Lombardy and Piedmont use this approach and require new medium-sized stores above a certain threshold to present impact analyses to detail their effects on the existing transport network, the environment and also on the system of incumbent stores. The first two requirements fit an economic approach, but the latter, which is a common feature of regulation in all regions, particularly for the authorisation of large stores, reintroduces a measure of supply planning (see below). This is evident in the case of Veneto, which, having imposed quantitative limits, also requires municipalities to take into account the support of small retailers when establishing rules to be followed in authorising new stores.

Authorisation of large stores

Piedmont and Lombardy adopted a similar approach based on extensive evaluations of the impact of new stores on the existing commercial network, the transport infrastructure and the environment, and of its coherence with planning guidelines at both local and regional levels. Quantitative limits are not set. They are present in the other four regions. Veneto, Tuscany and Sicily set these limits for macro areas of the region through specific planning documents, while Molise allows new large food stores only if they substitute existing stores for at least 80% of the proposed sales area, and new non food stores only if they do not exceed 5 000 m².

To satisfy qualitative requirements, all regions require more or less complex impact analyses of new large stores. Those of Piedmont and Lombardy are particularly comprehensive, while other regions define them in a simplified way, and Molise concentrates the scope of the impact study on the competitive implications of new stores on the existing commercial network. Impact studies have therefore become a standard requirement. They involve not only the evaluation of externalities on the environment, on transport and on other planning objectives, but also the evaluation of the economic impact of new stores on incumbent retailers, notably small retailers and retail districts of city centres. If the latter are negative (loss of jobs due to closure of existing stores uncompensated by the proposed new stores), new stores are not denied authorisation but the negative impact is taken into account. In Lombardy, for example, externalities, and among them loss of employment, are measured and translate into a score card used to

determine the compensation which has to be paid to be granted the authorisation for the proposed new retail establishment. In continuity with the tradition of Law 426/1971, these kinds of evaluations are a milder form of retail supply planning, now often redefined in terms of guaranteeing the equilibrium among different store formats, of sheltering SMEs and of promoting retailing in city centres. In regions like Lombardy, where modern retailing is now dominant, this kind of measure tends to advantage large incumbents. However, the notion that new (large) stores can make existing ones close is still considered wasteful. Many seem to believe that new retail facilities make sense only if unsatisfied demand exists, disregarding the positive effect of substituting existing stores with new and more efficient ones.

Opening hours

In defining their rules on opening hours most regions did not significantly modify those of Legislative Decree 114/1998. The most notable exception is Lombardy which recently approved a law (LR 30/2007) that introduces further liberalisation. The compulsory half-day closure every week is now optional, Sunday/holiday trading is possible for a much larger number of days; small stores and stores in city centres are exempted from limitations of when to trade and so are touristic municipalities. The only region that reduced opening hours with respect to Legislative Decree 114/1998 is Sicily: from 13 to 12 hours a day.

Wider differences across regions can be found when considering the issue of liberalisation of trading hours in touristic areas. While Lombardy and Molise define such areas in a simple way, Piedmont, Veneto, Tuscany and Sicily submit the status of touristic relevance to the satisfaction of a number of very detailed parameters. In the past, the qualification of touristic relevance could easily be obtained and this was often used as a loophole to be able to open freely and compete more effectively with nearby stores located in municipalities without such qualification. Small municipalities with large shopping centres were a case in point, raising arguments and conflicts between municipal administrations. The rules set by four of the six regions are therefore intended to identify municipalities objectively where tourism is an important component of the local economy. The fact remains that different regulations across regions and municipalities may lead consumers to cross borders, attracted by more liberal trading hours. If more regions were to follow Lombardy in terms of liberalisation, regulatory competition may eventually lead to a generalised loosening of constraints on opening hours.

Promotions and sales

Three different types of promotions and sales are regulated by regional statutes: clearance sales, mid/end-of-season sales and promotional sales. The regulation of clearance sales and other types of promotional activities result from mid/end-of-year sales. In the absence of regulations, competitive retailers tend to anticipate promotional activities and that may eventually lead some of them to offer sales at the beginning or during the season or on the busy shopping days before Christmas. This behaviour is strongly opposed by independent retailers, and regulations to prevent this have always been common. But once competitive retailers are regulated, they try to use clearance sales or other forms of promotion to obtain the same results and that leads also to a regulatory response.

The six regions considered have in place similar regulations of mid/end-of-year sales. Piedmont introduced the obligation of communicating to municipalities the beginning of sales, enclosing a statement on the discount percentage applied and a copy of the

materials used to communicate the sales to consumers. It is difficult for municipalities to monitor what retailers, (sometimes several hundreds), send to their offices, and thus appreciate the aim of this obligation, namely to prevent false discounts and misleading communication. Strict rules on seasonal sales influence clearance sales. In the case of clearance sales, the six regions apply similar regulations. These establish longer opening hours during sales, and shorter opening hours when sales have completed, to allow for the relocation or renovation of the stores. Regulations are always subject to communication to the municipality.

A competitive retailer unable to use seasonal or clearance sales has yet another alternative, namely a less emphatic promotional campaign involving markdowns on a number of goods. However, this form of promotion is also regulated in all the regions considered except in Molise, and with the exception of grocery retailing. Regulations are similar, but not identical, and they ban promotional sales during high season. The various cases and detailed specifications in promotional initiatives involve costs that slightly differ across regional borders, and relate to the administrative activity for both firms and the public administration. A chain operating at national level has to face a maze of different rules which have administrative implications as well as involve other functions such as physical distribution. Promotions imply that a wide range of sales need to be provided for by adequate merchandise stocks.

Regional legislation and the devolution process

Beginning with the Bersani reform, and then even more after 2001, the production of regional regulations has been increasing at a pace that has made it difficult to assess its implications on competition. Especially after 2001, free from the limits imposed by a common national framework, statutes have greatly increased and large retail companies operating at national level now confront 20 regulatory bodies – in fact, 21 because of the two autonomous provinces of Trento and Bolzano. Each region has followed its own path in developing these bodies, and the outcome is a sort of path dependency that is difficult to justify only in terms of being better adapted to local conditions.

Some regions, such as Lombardy, Piedmont and Tuscany, took advantage of their new powers and produced comprehensive and detailed measures that go beyond the Bersani reform and introduce several innovations in retail planning. Lombardy and Piedmont, in particular, have developed an approach to retail planning that is interesting. Though both laws differ, they have in common the central role assigned to impact studies to assess the negative externalities of large retail establishments. This means, in particular in the case of Lombardy, that authorisations do not simply involve acceptance or rejection, but they can be granted subject to compensation payment offsetting their negative effects. This approach to retail planning holds no obvious negative implications on competition and, in the context of retail planning in Italy, represents a step forward, away from quantitative constraints, quotas and other strict instruments used to restrict entry.

Though comparisons across regions point to a more or less open attitude to liberalisation policies, statutes are sometimes misleading. For instance, the presence of quantitative constraints, in terms of selling area available for new stores, is only a proxy to restriction. Sometimes quantitative constraints were binding; in others they offered considerable scope for new entries. Overall, from the initial application of the Bersani reform, the number of regions that introduced quantitative limits on the amount of space

provided to new large stores have decreased, and most have moved to planning restrictions. This is by no means a guarantee of a more liberal attitude as regions can set binding and less transparent constraints for retail firms.

A common aspect in regional legislation that rests in the tradition set by Law 426/1971, is the explicit aim to protect small stores and guarantee a variety of distribution means. This is often justified to prevent retail desertification, even though Italy counts 780 000 stores. Most regions made it a priority both for themselves, when establishing the rules to be followed to authorise large stores, and for municipalities with respect to medium-sized stores. In Veneto, new medium-sized stores exceeding 1 000 m² are authorised only if the sum of the sales area of medium and large stores operating in the municipality do not exceed that of small ones. It was also established that in setting their rules to authorise new stores, municipalities respect the following objectives (LR 15/2004, Art. 14): the modernisation of the retail network; the competitiveness of the retail sector; the safeguard of the environment and mobility; the safeguard of a sufficiently dense network of neighbourhood stores; the equilibrium of distributive forms; the safeguard of small and medium-sized retail firms. These conflicting aims appear in many other regional regulations.

One would expect regulations to become more liberal with a net reduction of small independent stores and competition occurring among large stores operated by large companies which need no protection. This is not the case. The correlation between a more or less liberal attitude in regional regulation and the extent of modernisation of the distribution system is difficult to make (Table 7.6). Regions where regulations define a competitive environment include Campania, which has the lowest index of presence of medium-sized and large food stores, and Lombardy and Marche where the index is well above the national average. The same applies to the regions where regulations mitigate competition and to those where competition is considerably hampered by them. In this

Table 7.6. Liberalisation and modernisation of the distributive systems of Italian Regions

Regions	Liberalisation according to AGCM (2007)	Medium-sized and large stores in food retailing in 2007: m ² per 1 000 inhabitants, Italy = 100*
Campania	High	47
Emilia Romagna	High	111
Lombardy	High	120
Marche	High	133
Molise	High	91
Piedmont	High	111
Aosta Valley	High	110
Abruzzo	Medium	123
Basilicata	Medium	70
Calabria	Medium	70
Tuscany	Medium	93
Veneto	Medium	150
Friuli Venezia Giulia	Low	144
Lazio	Low	75
Liguria	Low	86
Apulia	Low	76
Sicily	Low	74
Trentino Alto Adige	Low	154
Umbria	Low	155

* Data provided by the Ministry for Economic Development.

latter case, Friuli, Umbria and Trentino, where the value of the index of modernisation is at its highest in Italy, coexist with four regions where the index has very low values: one region is in the centre of the country, another in the north, and two in the south. The negative effect on consumer welfare is most severe when barriers to entry apply to the distribution system and where the presence of modern stores is still limited.

Another aspect in regional measures is the introduction of micro regulations devised to control all possible instances that may arise with respect to a given matter. For example in promotions and sales, the control of seasonal sales also leads to controls on clearance sales and on other types of promotional activities. Piedmont even requests firms to submit a document that states the discounts applied and the communication material used to publicise the sale. Another example is the complex set of parameters that many regions have established to identify touristic municipalities, where opening hours are unrestricted, with the aim of closing loopholes to what is considered an improper competitive use of opening hours. Yet another example in Piedmont is the long list of store dimensions, identified with respect to the goods they sell and the types of locations they may have in the different parts of a city. This trend shows a tendency to regulate even minor instances of competition in response to the pressure of local interests on regions to intervene on matters they consider important.

These micro regulations add to the regulatory burden. They increase the compliance costs of firms, handicap those operating in more than one region and reduce the scope for economies of scale and efficiency. No attempt seems to have been made to account for the compliance costs imposed on firms and to the administrative costs imposed on municipalities. Municipalities must often manage various measures and control their application. They are often unprepared and have little resources to carry out the tasks assigned to them: most Italian municipalities are small and overcharged with duties on all possible matters. The case of below cost sales is a good example of the implications of such arrangements: regulations rest on paper as they cannot actually be applied. While the outcome might be desirable, the situation increases uncertainty and the resources of the municipal authorities get wasted.

The issue of economies of scale of local markets tends to imply regional economic activity basins, which may not coincide with institutional borders across regions. This may also become acute for some of the smaller regions. These also face a lack of human resources and capacity to deal with the regulatory powers they are entrusted with. This could lead them to either “copy” what is done by other regions or to resort to simplified regulations. Significant differences exist between a region like Lombardy, with 9 million inhabitants, which is larger than the population of many EU states; and the two smallest, Molise and the Aosta Valley, with a respective population of 321 000 and 120 000 inhabitants. The fragmentation of the regulatory framework at a very local level may also be at odds with the general trend in the industry, which is consolidating at a national and even multinational level.

Regulation of specific retail sectors

There are long traditions associated with the commercialisation of certain essential or critical products – *e.g.* pharmaceutical and health products, newspapers and magazines, energy sources – that these be subject to specific rules intended to safeguard and control the quality and access of supply. Law 426/1971 did not apply to these sectors, and the

tradition of separate regulations has remained. With respect to pharmacies there is a concurrent competence of the State and regions as both have responsibilities for matters concerning public health. Newsagents and petrol stations are now regulated by the regions as part of their competence on commercial distribution.

Pharmacies

Until Law 248/2006 (§ 64-66) was enacted, pharmacies could only be owned and managed by pharmacists, and the pharmacies also had a monopoly on all types of pharmaceutical products sold (OECD, 2008). The number of pharmacies that could be established in an area was set through strict supply planning procedures. While prices for pharmaceutical products that could be reimbursed by the National Health Service were fixed by law, pharmacies were free to set their own prices on other non-reimbursable products. In the latter case, retail prices were printed on packages and served as maximum prices with a discount possibility of up to 20% maximum (Law 149/2005, Art. 1). Law 248/2006 (Art. 5) made it possible for retail outlets other than pharmacies to sell OTC products and also eliminated the 20% discount limit off printed prices. Retail prices of OTC products have recently been liberalised (*Legge finanziaria* 2007; Art. 1, Paragraph 801, Law 296/2006). The regulation of pharmacies and the effects of its partial liberalisation in the last few years is analysed in Chapter 4 (Competition and Regulatory Reform in Professional services). The following paragraphs briefly summarise the current situation on the liberalisation of OTC drugs.

Major retail groups operating in the grocery sector, and in particular Coop, the largest, have been asking to be allowed to sell OTC drugs for many years. Federfarma, the pharmacists' association, successfully opposed the request, arguing that the sale of OTC drugs needs the assistance of a pharmacist. Eventually, the issue was settled as part of the liberalisation measures enacted by Law 248/2006. It established that OTC drugs, but no other pharmaceutical product requiring a prescription, could be sold freely, but only with the assistance of a professional pharmacist. The limitation to OTC drugs, together with this last obligation, reduced the impact of liberalisation and only two types of stores were able to take advantage of it: large hypermarkets and *parafarmacie*, i.e., stores selling health products whose commercialisation is unrestricted.

OTC drugs are convenience products and can easily fit into the unspecialised assortments of grocery retailers which consumers visit frequently. However, grocery stores had to hire pharmacists to be able to sell OTC products, and only large hypermarkets could hope to cover their costs with the sale of such a limited assortment. As of April 2008, only 230 had done it (Table 7.7) and with the existing restrictions, their number is unlikely to

Table 7.7. **OTC corners opened in hypermarkets in Italy as of April 2008**

Region	Per 1 000 inhabitants	No.	Region	Per 1 000 inhabitants	No.	Region	Per 1 000 inhabitants	No.
Lombardy	156	58	Friuli	132	9	Trentino	470	2
Emilia Romagna	133	30	Liguria	225	7	Umbria	413	2
Veneto	156	29	Marche	210	7	Basilicata	–	0
Piedmont	192	22	Campania	950	6	Calabria	–	0
Apulia	251	16	Tuscany	583	6	Molise	–	0
Sicily	382	13	Sardinia	272	6	Aosta Valley	–	0
Lazio	426	12	Abruzzo	252	5	Total	248	230

Source: ACNielsen.

increase much. The convenience that could have been offered to consumers is therefore lost and the price advantage from discounts on OTC drugs have a limited impact. In addition, large grocery chains have not been able to build up volumes and increase their bargaining power with respect to suppliers. In fact, the savings to consumers may well be apparent as OTC corners in hypermarkets have been introduced more as a way to increase service and the appeal of stores than because of their profitability. Though the information available is limited to informal assessment of retail managers, it appears that at least part of the OTC corners are losing money and savings to consumers on OTC drugs may be compensated by higher prices on other products they buy in large grocery chains.

The liberalisation was an opportunity for *parafarmacies*, since most of them are operated by professional pharmacists. (No specific authorisations are required for *parafarmacies*, as well as for other smaller outlet.) Special authorisations are not required for stores selling health products and whose commercialisation is not restricted, and requirements of ownership by a pharmacist do not apply on these stores. The sale of OTC drugs did not increase their costs and was an opportunity to strengthen their position vis a vis fully fledged pharmacies. These types of stores more than doubled in number after the liberalisation and there are now about 2 000.

Out of the EUR 2 138 million OTC sales in 2007, IMS Health-IRI Information Resources estimates that corners in hypermarkets accounted for 1.6%, *parafarmacies* for 1.4% and the remaining 97% by pharmacies.⁵ Since OTC sales account for about 8% of the total market of pharmaceutical products, pharmacies have lost about 0.25% of their market to other channels. A recent analysis by Altroconsumo (2008) summarised in Table 7.8, also shows that hypermarkets have significantly reduced prices but this has marginally affected the pricing of pharmacies.⁶ Though it may be too early to assess the effects of liberalisation, they seem to be limited. In fact, in a first draft of DL 7/2007 (Paragraphs 65-66), the liberalisation was to be extended to all pharmaceutical products that are not reimbursable by the National Health Service (with or without a prescription), but the measure was not approved. The existing regulatory structure plainly discriminates stores that, although they offer the same guarantees as pharmacies, they can only sell OTC drugs. It provides marginal advantages to consumers and discrimination remains across different competitors.

Table 7.8. **Discounts on OTC products after the price liberalisation**

	Prices reduced from 20 to 30%	Prices reduced from 10 to 20%	Prices reduced up to 10%	Prices increased
Pharmacies	1%	15%	72%	12%
Para-pharmacies	15%	62%	23%	0%
Hypermarkets	82%	18%	0%	0%

Source: Altroconsumo, 2008.

Newsagents

Before the constitutional reform of 2001, the State regulated the sales of newspapers and magazines. Specific provisions were enacted end of World War II to guarantee an even treatment of the different papers (those of small publishers and those of political parties). They required newsagents to obtain a specific authorisation from municipalities on the basis of a plan defining the number of such stores/stands to be allowed to operate on their territory. Newsagents had to stock all titles supplied to them on the basis of a sale or return agreement and provide them enough space. In 1999, after much debate about the need to

expand the sales of newspapers and magazines, Law 108/1999 introduced a period of experimentation: sales were to be extended to outlets other than newsagents for a limited period of time. The experimentation was meant to verify if the new outlets would generate new sales or take them away from newsagents'. The Law also established that newsagents would fall under the general measures of Legislative Decree 114/1998 and consequently that regions would have to enact their own regulations as to how municipalities should draw plans for their localisation. At the end of the period of experimentation a new law was to be drafted to regulate the sales of newspapers and magazines (Art. 3). This was done in 2001, just before the reform of the Constitution, when Legislative Decree 170/2001 was enacted.

Legislative Decree 170/2001 is now the main reference for the sale of newspapers and magazines. The experimentation of their commercialisation by stores other than newsagents had shown that they had been able to generate new sales, with limited negative effects on incumbents (Università di Parma, 2000). The purpose of the Legislative Decree was therefore to include them in the regulation concerning the sector. It established two types of outlets, exclusive and those allowed to sell also newspapers and magazines. The latter are identified as tobacconists, large service stations, bars, bookshops, supermarkets (exceeding 700 m²), and other specialised stores but only if they sell magazines with the same specialisation. Both are subject to authorisation by the relevant municipality. Regions were asked to produce provisions as to how municipalities had to draw their plans to locate specialised and unspecialised outlets.⁷

Though regions have been affirming their competence in regulating the sale of newspapers and magazines, the statutes they enacted contains measures which do not diverge much from those of Legislative Decree 170/2001. All six regions have in place a regime of authorisation based on plans drawn by municipalities for both specialised newsagents and other store types. Plans to determine the number of authorisations to be granted have to be prepared following strict supply planning principles (population, readership, touristic inflow, and other similar parameters), which include minimum distances between outlets meant to guarantee incumbents. Definitions of "other" stores allowed to sell newspapers and magazines are also almost identical to those of Legislative Decree 170/200. Marginal differences can be found mainly on matters which define the boundaries of specialised and unspecialised stores, *e.g.* Lombardy puts a limit (30%) on the amount of sales area which the specialised stores can use to sell products other than newspapers and magazines (DCR 7-549/2002, Art 1).

Overall, provisions in this area are a good example of regulations that are meant to define the boundaries of markets for different types of stores to satisfy requests from the economic agents involved. These provisions locate the sales of newspapers and magazines outside the market. The market is then confined to strict and intricate supply planning which contradicts the main objective of the principle on which regulations are justified, namely the diffusion of information.

Petrol stations

The proliferation of small service stations which accompanied the post war motorisation of Italy has been and still is an issue to be addressed by successive measures. The aim of most of these measures was to allow for a smooth reduction of service stations. This was carried out by providing funds to compensate closures and constrain new operators to enter the market by buying existing concessions. The statute considered the

starting point of present regulations in the sale of fuels is Legislative Decree 32/1998, whose aim (Art. 1) was to accelerate the restructuring of the network of service stations through a liberalisation of the sector. The most innovative measures involved the introduction of authorisations in place of concessions and the elimination of the norm requiring to return two existing concessions to be allowed to obtain a new one. Besides, authorisations had to be granted by municipalities on the basis of valuations which intended to move away from the supply planning criteria to the town planning requirements.

Legislative Decree 32/1998 was followed by other measures (Legislative Decree 346/1999, Law 57/2001), modifying some of the original provisions, and then by a “national plan for the modernisation of the distribution of fuels” (*Decreto del Ministero della Attività Produttive* 31/10/2001) which assigned to regions the regulation of the sector to achieve the aims set by the national plan. Regions behaved as in respect to the Bersani reform of 1998. Regulations reinforced entry barriers and limits to conduct which have slowed down progress towards liberalisation (AGCM 2001; Razzini 2004). After 20 years of attempts to modernise the network of petrol stations the results are those shown in Table 7.9. In terms of sales, the productivity of Italian petrol stations is half of those of the other main European economies and less than a third of them provide self service. Besides, if in Italy fuels sold by large retail outlets accounts for a market share of 1% in volume, while in France it is more than 50%⁸ it is not because Italian retailers are unwilling to do it, but because regulations make it very difficult.⁹

Table 7.9. **Petrol stations in Italy and in the other main European countries, end 2005**

	Petrol stations	Cars (,000)	Cars per petrol station	Average sales per petrol station (m ³)	Petrol stations with self-service	Percentage of petrol stations with self-service	Percentage of petrol stations selling non oil products
Italy	22 400	31 600	1 411	1 620	1 670	28	13
Germany	15 187	46 570	3 066	2 960	15 000	99	na
France	13 504	30 400	2 251	3 105	13 000	96	na
Spain	8 368	20 910	2 421	3 405	2 100*	24*	na
UK	9 764	30 270*	2 939*	3 870	9 492	97	84

* End 2004.

Source: Unione Petrolifera, Databook 2008.

The European Commission brought Italy before the Court of Justice as restrictions on the establishment of service stations were considered contrary to Article 43 of the EC Treaty. The restrictions called into question by the Commission comprise: opening of new stations subject to the closure of existing ones; minimum distances between stations; requirements in terms of minimum areas and the supply of supplementary commercial activities; constraints on opening hours. Eventually, to comply with the EC ruling, the Italian government intervened with DL 112/2008, converted into Law 133/2008 (Article 83-bis, Paragraphs 17-21). Since the law was enacted in August 2008, it is too early to see how regions will modify their regulations to make them consistent with this new liberal framework.

State, regions, municipalities: The vertical structure of regulations

Under Law 426/1971 the vertical structure of regulation of commercial distribution involved the State and municipalities, with a relatively secondary role played by regions in

the authorisation of large stores. The central instruments of retail planning were Retail Development Plans. With the reform of 1998 the situation changed: the State defined a broad regulatory framework, leaving regions to fill in the details. It was a natural choice since most of what they were asked to do concerned town and country planning regulations needed to account for commercial distribution after the cancellation of Retail Development Plans. During the short period of validity of Legislative Decree 114/1998, regions had to dialogue with the Ministry responsible for commerce (at the time the *Ministero dell'Industria, Commercio e Artigianato*) as they had to act within the binding constraints of the reform. Besides, as it was the first time they were dealing with matters concerning commercial distribution and they had to build up new competencies, they found helpful to move with some degree of co-operation with the Ministry. Though it was apparent that regions were following different paths, Legislative Decree 114/1998 offered a common reference. After 2001 and the reform of the Constitution, vertical co-ordination was loosened and each Region was to proceed in its own way.

The role of central co-ordination is not only set by the vertical structure of competences assigned to the State and regions. The State maintains some degree of leverage and, even if it cannot formally enact statutes on matters transferred to regions, it can at least resort to “moral suasion”. Vertical co-ordination will only occur if there is strong political will in the centre. This was less the case in the new political context created after the 2001 constitutional reform, under a federalist approach. In this context, matters concerning retailing were left to regions. At the national level, the monitoring function was preserved, with the *Osservatorio Nazionale del Commercio*, a body in charge of collecting data on retailing and wholesaling and of promoting discussion on matters concerning the sector. Regions were granted significant leeway in drafting their own regulations. The *Conferenza Stato-Regioni* remained the sole institutional body in charge of co-ordination. Though it certainly played and continues to play an important role, it is only a consultative body and its activity, as far as the role of the State is concerned, is influenced by the political context. In fact, it is also through this body that the government can exert its “moral suasion” on regions.

Under the XV Legislature, liberalisation policies became one of the main political goals of the government, and the issue of competition became central in dealing with regional legislation. With respect to commercial distribution, the government, with the same minister who had sponsored the 1998 reform, Pier Luigi Bersani, decided to intervene by decree with measures intended to reassert the competence of the State on matters affecting competition. This was done with DL 223/2006 (converted into Law 248/2006), and then with DL 7/2007 (converted into Law 40/2007). The first has been particularly important as it introduced a set of general rules to be followed by regions and liberalised the sale of OTC drugs. The second, though touching a wide set of matters, did not intervene on issues specific to commercial distribution, but several general measures intended to facilitate market entry of new firms also are relevant for the sector (Art. 9).

Law 248/2006 banned the following restrictions on commercial distribution (Art. 3):

- To subject entry to qualification standards or membership of professional bodies.
- To impose minimum distances between similar commercial activities (stores, but also other services, and in particular eating and drinking places where they have been often imposed).

- To impose limitations on assortment composition other than those regarding the selling of food and non food items (used in the authorisation procedures of Legislative Decree 114/1998 and in regional regulations).
- To impose limits to entry in terms of predefined market shares or volume of sales at a sub-regional level.
- To prohibit promotions and sales other than those established by legislation of the EU.
- To condition promotional activities, other than end-of-year/season sales, to authorisation and to time or quantitative limits.
- To prohibit the immediate consumption of food products in the premises of small food stores.

In essence, some of the principles of Legislative Decree 114/1998 were reasserted and became binding again in the context of regional legislation.

Laws 248/2006 and 40/2007 raised forcefully the issues of competition and of how to establish the boundary between state and regional powers. This echoes economic or political debates experienced in federal countries, for example in the United States. However, the new context has introduced uncertainties since it became apparent that this boundary was not easy to determine, a point emphasised by most of the six regions interviewed for this report. Both laws, and especially Law 248/2006, establish general rules defining restrictions that could not be imposed on commercial distribution. However they did not provide comprehensive guidelines on how to deal with the numerous aspects of regulation of commercial distribution which can have anticompetitive implications and leave an unclear situation.

Conclusions

The main issues

Progress in reducing restrictive regulations on commercial distribution has been slow in Italy. The turning point of the Bersani reform has been important. Vertical co-operation is still needed to reach a liberalisation of the sector, because, after the reform of the constitution in 2001 several regions reintroduced restrictions reminiscent of the tradition established by Law 426/1971. The reaffirmation of the competence of the State on matters concerning competition through Laws 248/2006 and 40/2007 has been an important step to stop this drift to the past, but the problem remains. The proliferation of regional statutes creates inefficiencies; the process through which measures are enacted lacks transparency and statutes are not subject to evaluation to determine their costs to firms, consumers and the public administrations involved; commercial distribution is over-regulated; and restrictions on market entry, both general and sectoral, are still rife.

Proliferation of regulations and co-ordination between the State and regions

The new context has led to a proliferation of regional statutes and regulations dealing with commercial distribution. Regions produced measures that often differ more in the way they are written than in the principles and rules they assert. Only in a limited number of cases has regional legislation introduced regulatory innovation.

The representatives of the different components of commercial distribution, both large chains and small retailers, interviewed for this report expressed a critical view of the present vertical set up of regulatory powers. Co-ordination between the State and regions

should be enhanced. Co-ordination among regions, regional associations and their national counterparts is also deemed to be necessary to agree on a common (national) policy with respect to the various issues of interest. Co-ordination could limit how regional associations lobby on the basis of their relative power and of the interests of the (variable) composition of the firms they represent. And co-ordination would avoid inconsistencies of the policies expressed at regional level that makes it sometimes impossible to express a common view.

The proliferation of regulations represents a cost to firms, especially those operating on a multi-regional or national level. The divergence of regional regulations also reduces the scope for concentration of the sector. While even retail groups based on associations among firms – co-operatives, buying groups and voluntary chains – are making an effort to concentrate their operations, the regulatory framework they have to comply with is moving in the opposite direction. Store formats developed nationally may need to be adapted locally as they fall in different store size thresholds; physical distribution is made more complex due to different rules on promotions and sales; labour schedules have to be arranged to fit different limits on opening hours. Besides, regions, provinces and especially municipalities have to perform a multitude of administrative procedures which generate costs. The case for co-ordination to reduce the divergence of regulations is therefore very strong.

Transparency and RIA

The Bersani reform of 1998 was approved after a long and intense debate which involved the representations of the different components of the retail industry, consumers and the public opinion. Progress towards the reform was constantly traced by newspapers and other media and the views expressed by all parties concerned were made public. After the constitutional reform of 2001, the legislative process took place in different conditions. All regions have in place consultation procedures which involve local authorities, representatives of the industry, consumers and labour unions, and transparency is formally satisfied. However, media rarely reported on the proposed measures, discussion involved a limited number of people and regulation of commercial distribution became a technical matter, confined to experts and parties directly involved by it.

If it is true that in principle local regulations are better suited to take into account local specificities, it is also true that they are subject to stronger pressures by local interests. *Concertazione*, formal or informal, is a deeply ingrained practice in Italy. But *concertazione* that is not subject to a check by public opinion tends to play to the advantage of vested interests with stronger and better organised representation. This raises a problem of defining ways of subjecting regulations to adequate and formal screenings in the public interest. RIA is the proper instrument to do this, but regions have never used RIA to assess the impact of measures involving retailing and wholesaling.

Over regulation

Regulations are not just proliferating as they differ across regions, and also because their number within each region is increasing. Every time a specific matter is regulated it creates the need for other regulations to account for micro issues that have been overlooked, to protect small interest groups which consider themselves penalised, to cater for new situations created by the same regulations, to close loopholes. The result is even more pervasive regulation of entry and conduct in the market. Measures on sales and

promotions, on the parameters municipalities have to satisfy to be considered of touristic interest and in this way be exempt from limits on opening hours, on planning standards to be satisfied by store types are examples of over regulation considered in the previous sections. Instruments to counteract this trend are now needed and, again, RIA could be usefully employed.

Restrictions on market entry.

Even if quantitative thresholds are not set and measures stay within the limits of zoning and town planning, it is very difficult, if not impossible, to prevent their use to impose entry barriers to large retail establishments. Rules that aim at a proper control of different and competing land uses and to optimise public facilities, become entry barriers. However, it is possible to identify a number of cases where measures set in retail planning cannot be justified as they take the place of the consumer. One of the most common measures is the planning aim at achieving equilibrium among retail formats, and, in essence, between large and small stores. Ostensibly to avoid “desertification”, such measures tend to protect outlets that would not be sustained by consumer demand. Similar measures affect retail sectors regulated by specific provisions, i.e. pharmacies, newsagents and petrol stations. Therefore, supply planning, formally banned, resurfaces in many measures and, as it restricts competition, it could lead the State to intervene.

Supply planning is not alone in restricting competition, since there is a long tradition of other measures impeding conduct which has the same effect, as those regulating opening hours, imposing professional standards and limiting aggressive forms of sales and promotions. Some of these regulations involve other policy areas, such as labour, which may need to be taken into account. The State should use its competence on competition and consumer protection to define guidelines to set limits to regional regulations on these matters. As already seen, regions themselves see such guidelines favourably which could make their legislative process more certain.

Policy options

To reduce the negative impact of regulations in commercial distribution, three options are possible. The first involves a better vertical structure of regulations, reinforcing and making less elusive the competence of the State on matters concerning competition. The second relates to the application of RIA. The third is the use of financial incentives provided by the state to regions that act to achieve specific policy objectives.

Sectoral guidelines on competition

The two Bersani decrees of 2006 and 2007 have been the most relevant measures to foster competition, in commercial distribution as well as in other sectors and matters, enacted in recent years. They contained specific provisions but did not provide comprehensive guidelines to establish the boundary between regional competences and state competences on competition and consumer protection. These are now needed as the Italian institutional framework is even more decisively moving towards federalism. Guidelines should be specific to issues or sectors, taking a middle ground to avoid having definitions of rules being too abstract and too general to be applied without ambiguity. They should be developed in co-operation with the regions to allow for a debate and a better understanding of their implications and purpose. Limits set centrally would be a way to reassert State competences, and also to help regions to better withstand pressures from local lobbies.

As far as commercial distribution is concerned these guidelines should address the different forms of entry barriers considered in the section on regulation of commercial distribution.

- Authorisation of medium-sized stores should be abolished. There is no reason to subject stores to authorisation whose impact (on town planning provisions, transport, and the environment) is only local. Municipalities should be left to decide how much space to allot to retailing in their master plans, and leave retailers to occupy this space with their stores. They may still restrict entry by not providing enough space for new stores, but this will expose them to competition from neighbouring municipalities which may try to attract investment. Such a measure would imply removing the distinction between small and medium-sized stores, as all of them would be free to trade in buildings, or land allocated to retailing.
- As it happens everywhere in Europe, authorisations would remain in place only for large stores and shopping centres, requiring some form of large area planning. The dimensional threshold defining the notion of large stores could be agreed at a national level, giving firms a simpler regulatory framework to comply with.
- Measures affecting the structure of the distribution network in terms of size or type of stores should be banned. It should be the results of consumer choice and not of retail planning.
- Trading hours should be freed, or, since they involve mainly their citizens, left to municipalities to decide whether to apply the principle of subsidiarity. This would expose retailers located in more restrictive municipalities to lose sales, leaving to them, and particularly small retailers which have locally more political clout, to decide whether to ask for more liberal rules or pay a price for having their work hours reduced.

General guidelines on competition in commercial distribution should also deal with regulations affecting specific lines of business.

- *Newspapers and magazines.* Special provisions for newsagents should be removed, leaving all retailers to decide whether to stock newspapers and magazines or not. To do this, the rule requiring newsagents to stock and display all newspapers and magazines sent to them on a sale or return agreement also should be removed. Originally established to guarantee the freedom of information, this rule has lost its function as it is difficult to believe that in the present situation the sale of newspapers and magazines could be discriminated on an ideological basis. Newsagents, freed from the constraints to which they are subject today, could find new products to sell, such as confectionaries, souvenirs or other convenience goods, to compensate for the loss of sales of traditional products in favour of new outlets.
- *Pharmacies.* The present rules applying to the sale of pharmaceutical products were meant as a first step towards further liberalisation. The alternative is either to allow stores with a pharmacist to sell at least the so-called C drugs category (pharmaceutical products needing a prescription but non-reimbursable), or to remove the obligation of having a pharmacist in the store even where only OTC products are sold, thus allowing a larger number of retailers to sell OTC drugs at a cost comparable with that of other fast moving consumer goods.
- *Petrol stations.* Law 133/2008 removed most of the restrictions on the establishment of service stations and regions now have to modify their regulations accordingly. The new law requires (Paragraph 21) that regional regulations should be rewritten to take into account only matters pertaining to the protection of the environment, public safety and town and country planning objectives. On the basis of past experience, the State should

carefully screen the new regional provisions to avoid the use of such matters to reinstate barriers to new entrants.

Adoption of RIA

Guidelines on competition would not necessarily limit overregulation. Other measures are needed to prevent the proliferation of regulations and lack of transparency. RIA is a well established instrument to determine the cost of regulation to firms, consumers and the public administration. RIA could not only improve the quality and efficiency of regulations but could also help prevent badly designed regulation, discouraging the adoption of provisions on matters of marginal economic relevance. Since RIA is meant to avoid excessive regulatory costs, it could be made compulsory by the State as an application of its competence on protecting consumers and the general interest of citizens and firms. Together with guidelines on competition, the adoption of RIA may also help regions to better withstand the pressure of local lobbies.

Incentives

Even, and particularly in a federalist institutional framework, the central government can influence regions by offering incentives to those that help achieve its political objectives. It is therefore possible to imagine resource transfers tied to the adoption of specific measures. With respect to commercial distribution this could involve the adoption of liberalisation measures; the achievement of certain modernisation standards of the retail network; the use of given standards or definitions, and/or the acceptance of optional guidelines to achieve regional co-ordination in adopting statutes.

Notes

1. On the costs of the delayed modernisation of Italian retailing also see OECD (2000), Boylaud and Nicoletti (2001); ISAE (2002); AGCM (2007); Schivardi and Viviano (2008).
2. On this issue Galbraith (1952), Stigler (1954), and also Von Ungern-Sternberg (1996), Connor *et al.* (1996), Dobson and Waterson (1997), Clarke *et al.* (2002).
3. A recent report by the UK Competition Commission (2007) offers interesting insights on this issue. See also Smarzynska Javorcik *et al.* (2006) on the impact of Wal-Mart on its suppliers in Mexico.
4. Schivardi and Viviano (2008) came to the same conclusions using a different method of analysis.
5. *Il Sole 24 Ore*, 4/3/2008, p. 35.
6. At least one association of pharmacists in Teramo colluded to limit discounts, which led to investigations by AGCM. AGCM, I684, *Federfarma Teramo*, May 24, 2007, Section: "Intese, abusi, concentrazioni."
7. For a detailed analysis of all matters concerning the sale of newspapers and magazines, see AGCM (2004).
8. AGCM, *Normativa sulla distribuzione di carburanti*, Segnalazione AS379, Bollettino No. 1/2007.
9. AGCM, *Regolamentazione di accesso all'attività di distribuzione dei carburanti in rete e messa a disposizione di operatori terzi non verticalmente integrati di capacità di stoccaggio e di prodotto*, Communication AS436, Bulletin 46/2007.

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From:
OECD Reviews of Regulatory Reform: Italy 2009
Better Regulation to Strengthen Market Dynamics

Access the complete publication at:
<https://doi.org/10.1787/9789264067264-en>

Please cite this chapter as:

OECD (2009), "Competition and Regulatory Reform in Commercial Distribution", in *OECD Reviews of Regulatory Reform: Italy 2009: Better Regulation to Strengthen Market Dynamics*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264067264-7-en>

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