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

Chapter 4

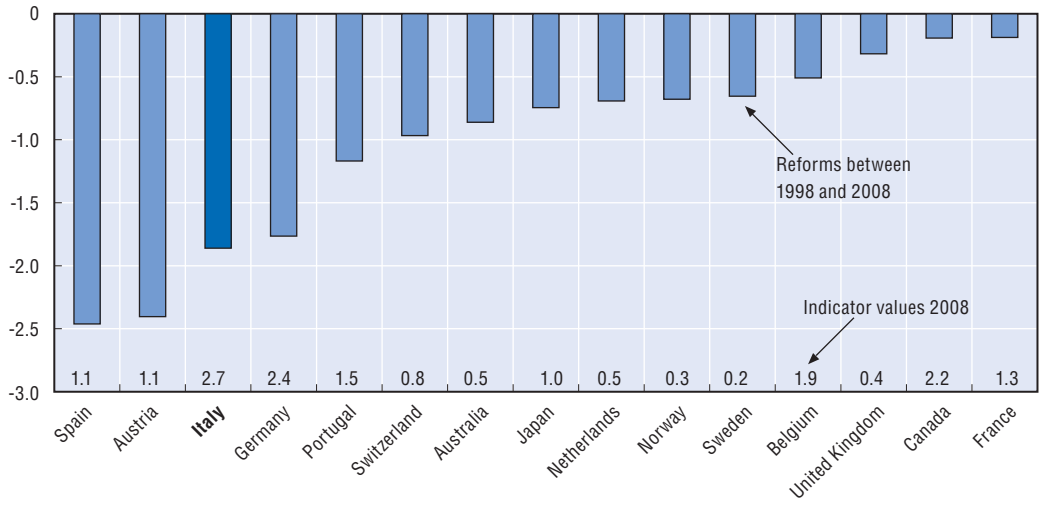
Competition and Regulatory Reforms in Professional Services

This chapter discusses the core challenges for competition and regulatory reforms in professional services. The chapter presents the context for the 2006-07 reforms of liberal professions, the so-called Bersani reforms. The chapter analyses the various dimensions of conduct regulation, including prices, advertising, quality of services and forms of business, with a specific focus on pharmacists, engineers, architects, accountants and lawyers including notaries. This involves issues related to fee regulation and calculation methods, as well as the abolition of minimum and fixed prices. The chapter addresses the exclusive tasks for designated professionals, including limitations of notaries' reserved tasks in the recent period as well as related issues for pharmacy services, with implications for the sales of OTC products.

Background

Italy has been, until recently, one of the countries with the highest degree of regulation in professions. Pharmacists were particularly heavily regulated. Italy has made significant progress over the period 1998-2008 in terms of reducing the restrictiveness of its conduct regulations for liberal professions, even if they tend to remain higher than in a large number of comparable countries (Figure 4.1).* This section examines the progress made in eliminating or revising unjustified regulation of professional services since the 2001 OECD report, *Regulatory Reform in Italy*, notably the reforms that were adopted in 2006 and 2007. The examination targets six professions: lawyers, notaries, engineers, accountants, (*commercialisti* and *ragionieri* or *esperti contabili*), architects and pharmacists.

Figure 4.1. **Trends in conduct regulation in selected service sectors**[1]



1. Index scale from least to most restrictive.

Source: OECD Regulatory Database, 1998, 2008.

These liberal professions were traditionally subject to pervasive regulation of entry and conduct in the market. Entry has been controlled, not only by setting qualification standards such as a minimum period of education, a professional examination or a minimum period of professional experience, but also by requiring membership in a professional body, by reserving the rights to perform certain services and in some cases, such as notaries and pharmacies, by limiting the number of providers on the market. Conduct in the market has been controlled through regulations that set or recommend prices, that prevent or restrict advertising and that limit or prohibit business structures. Most of the rules on the conduct in the market have been revised over the last few years.

* For further detail on these indicators, see Wölfl *et al.* (2009).

The starting point for discussion of the regulation of professional services, including self-regulation by professional bodies, is set out in a 1997 report of the Italian Antitrust Authority. The Antitrust Authority recommended reform so that regulation would be based on the principles of necessity and proportionality. That is, regulation should be limited to addressing market failures, particularly the asymmetry of information between professionals and consumers, as well as externalities and the public goods produced by certain professional services.

Following the Antitrust Authority report, a large number of draft laws were proposed to reform systematically intellectual professions. None were adopted. The large representation of members of these professions in the legislature presents a challenge for the reform process, in Italy as in other countries.

The central government retains the power to regulate the liberal professions after the reform of the second part of the Italian Constitution in 2001. The State still has exclusive power over "the institution of new professional orders, the conditions of access to them and the supervision of the requirements of current and prospective members". In addition, the State has exclusive competence for the protection of competition.

In 2006 and 2007, the government moved to reform several aspects of the liberal professions through the so-called *Bersani* reforms. Although these measures are not comprehensive, they represent the most important reforms in recent years, affecting the regulation of conduct in all liberal professions except medical services within the National Health Service. Following these reforms, on 1 January 2006 minimum prices were abolished and constraints on advertising and forms of business were relaxed. Some of the regulations of exclusive services were also reformed. Notaries no longer have exclusive competence over transfer of ownership of a vehicle and authentication of termination of a mortgage, and pharmacies are no longer the only retail outlet for over-the-counter pharmaceuticals.

Most of the professions objected to the content of the reforms, claiming that they could injure their image and prestige. But some associations, such as ANPA, representing young lawyers, and Codiarch, representing architects, supported liberalisation.

The instrument that the government used for the reform, the law-decree, has also been challenged on legal grounds. The professional bodies also object to the absence of consultation before measures are implemented. The Antitrust Authority noted that consultation could be particularly important here, considering the specificity and importance of the interests concerned.

The professions reacted to liberalisation measures. Some professional boards adopted and applied restrictive interpretations of liberalisation. Some of their revisions to Codes of Conduct after the 2006 reforms left anti-competitive features in place. Since self-regulation by associations of undertakings must be consistent with antitrust laws, the Antitrust Authority decided on 18 January 2007 to open another general fact-finding inquiry on professional services. Even national public regulation adopted rules that are not consistent with the reforms. For example, liberalisation about fees and forms of business for notaries has been limited. For lawyers, legislation was proposed to reintroduce *de facto* minimum fees, prohibit agreements on contingency fees and limit advertising, but it was not adopted.

The 2006-07 reforms

The 2006 reforms of liberal professions at the national level had three main objectives: to lower prices, limit the effects of information asymmetry and guarantee quality services.

They apply to all liberal professions except doctors working for or accredited by the National Health Service.

The main features of this reform that apply to many professions are:

- The abolition of minimum and fixed prices, to create conditions for a reduction in fees (but regulation may still control the awarding of legal costs incurred in judicial proceedings).
- The authorisation of informative advertising, to inform consumers about prices.
- Self-regulation of service quality, and also permission to link final fees to results achieved, so that the introduction of price competition will not lead to service deterioration.
- Inter-professional co-operation, to support service modernisation.

These reforms could increase competition among providers though might not lower prices for professional services. Providers may also compete in terms of the level of quality and choices they offer to customers and clients. Thus, one result of greater competition in professional services could be the introduction of new service packages at different price levels.

Reforms aimed at pharmacies have the same objectives: lower prices, limit the effects of information asymmetry and guarantee quality services. The principal features of these reforms are:

- Opening the distribution of drugs sold without medical prescription (often called over-the-counter drugs, or OTC) to retail trade.
- Permitting discounts off retail prices, with clear terms to facilitate the spread of information.
- Requiring direct assistance of a pharmacist when drugs are sold retail, to guarantee the quality of the service.
- Flexibility on the quantity and variety of medicines stocked by wholesalers which are not paid for by the National Health Service.
- Permission for partnerships of pharmacists to manage more than one business (but no more than four), and to manage one outside their province of provenance.
- Abrogation of the hereditary principle.

The reforms on notaries ended their exclusive competence in the case of transferring ownership of vehicles and terminating mortgages.

The Bersani reforms concern all of the 27 professional categories organised in orders or associations. There are close to two million members in these professions, and their numbers increased by approximately 10% between 2000 and 2006. The following subsection describes measures adopted by professional boards and Regions after the 2006 reform and, to the extent data is available, how markets have responded to the Bersani reforms.

Conduct regulation

Prices

Professional associations often contend that price competition would undermine the quality of their services and thus harm consumers. But no causal link has been established between setting minimum or fixed fees and higher quality professional services. Rather, if the price the provider can charge is fixed, then *a priori* the provider's incentive would be to reduce costs, and thus, perhaps, quality. Most importantly, fixed and minimum prices deny

clients one of the principal benefits of competitive markets, which is the opportunity to choose among different offers of price and quality.

Fee-setting regulations are rarely a benchmark for clients. Most clients do not need the reference. Businesses account for 90% of the demand for professional services, and businesses, who use these services regularly, know what to expect and need less, if any, protection through regulation. Thus it is not surprising that the rules for some professions, such as engineers, architects, bookkeepers and accountants, permit derogation from fixed or minimum prices. If fee regulation can, at least in theory, provide consumers with information about the average cost of services, there are alternative methods to reach the same goal, such as the publication of historical or survey-based price information by independent parties such as a consumer association.

Fee regulations may not improve transparency for users, because the methods for calculation often obscure total costs while encouraging the provider to increase them. This is particularly true for lawyers' fees, which are calculated according to a very complex chart which assigns a fee scale for each individual act. Accordingly, it is very difficult for a client to estimate the costs as it is impossible to foresee all the individual activities that may become necessary.

The method of computing fees can influence the intensity and quality of services performed, particularly the amount of time and effort expended. For example, for lawyers in civil court cases, different methods may encourage longer or shorter processes, and some may provide a stimulus to seek mediation or to follow an alternative path towards dispute resolution. Setting fees per hour could encourage increasing the amount of time spent on a case. Setting a bundled fee for the whole service could encourage greater efficiency; however, there is a risk that the provider could reduce his efforts if the costs end up exceeding the total bundled fee. Setting the fee per act performed encourages longer procedures, regardless of the chances of success, in order to increase the number of fees. In four of the five European Countries with shortened civil procedures, regulation of fees is not related to the time spent in trial.

Fee regulation

The Bersani decrees did not abolish previously existing decrees that set minimum tariffs for some professional services, but those decrees are no longer binding. These were typically developed with the participation of the professional bodies themselves. The national board of notaries used to formulate a resolution on professional fees, including honoraria, allowances and principles for reimbursement of expenses, which was reviewed and approved by the Minister of Justice. The lawyers' professional board did the same thing. For the engineers and architects, proposals by the professional boards were submitted to ministerial merits control. In practice, very often the legislation replicated fee proposals made by professional associations.

Notaries' and lawyers' fixed prices were binding until 2006. Lawyers could choose not to apply them only in cases of "clear disproportion". Fixed prices were strictly applied by lawyers' professional bodies, through disciplinary proceedings imposing sanctions for breach of minimum and maximum tariffs. In 2006, there were 157 proceedings concerning all breaches of the lawyers' Code of Conduct (Table 4.1). By contrast, engineers and architects had set only minimum fees. They also permitted a 20% discount for public works. Since 2000, non-binding reference prices are recommended for accountants. The

Code of Conduct of one category of accountants, the *commercialisti*, permits derogation from the minimum prices set by national regulation.

Table 4.1. **Disciplinary sanctions against lawyers in 2006 (157 proceedings)**

Warning	26
Reprimand	32
Suspension	59
Crossing out professional's body register	10
Dismissal	8

Source: National Bar Council (*Consiglio Nazionale Forense*), *www.consiglionazionaleforense.it*.

Before the 2006 reform, all Codes of Conduct developed by the professional boards referred to tariffs fixed by law, and most of them obliged members to respect the regulated fee levels (Table 4.2). Since the 2006 reforms, the legislation on minimum fees is still in force, but compliance is no longer compulsory. Individual professionals are free to set their prices, and professional boards cannot limit their members' contractual freedom.

Table 4.2. **Fee regulation before 2006 reforms**

Professional service	Fees established by law	Compulsory fees	Respect of fees required by the Code of Conduct
Engineers	Yes	Yes	Yes
Architects	Yes	Yes	Yes
Notaries	Yes *(fixed prices)*	Yes	Yes
Ragionieri	Yes	Yes *(minimum)*	No
Commercialisti	Yes	Yes *(minimum)*	No
Lawyers	Yes *(minimum and maximum)*	Yes *(minimum)*	Yes

Source: Italian Antitrust Authority, 2005.

Fee calculation method

In most of the liberal professions, abolishing minimum prices has not corrected the lack of transparency on total costs. The fee calculation method for lawyers is based substantially on particular actions, such as case studies, consultation with the client or representation at hearings. Practitioners must also observe rules for calculating travel and office expenses. Thus, fees do not depend on the amount of time the lawyer has invested. Fees for civil, administrative, fiscal and criminal judicial cases are calculated per single act, having regard to the court that is competent and the value of the case. Parties can negotiate fees as long as the minimum and maximum rates given for each service by official tariffs are respected. Since the 2006 reforms, though, the minimum rate level is no longer binding. Although professionals are required to issue a detailed bill for their services, the fee calculation method per single act could have repercussions in terms of transparency. Fees for extrajudicial services are determined per single act, per percentage or per hour.

Notaries' fees are graduated for acts having a determinate or determinable value. In other cases, fees are fixed for particular acts, such as acceptance of inheritance or minutes of meetings. Clients have the right to receive a detailed bill upon request.

Fees for accountants are calculated per single act taking into account the value of the service or the professional. The client can negotiate an agreed fee, having regard to the characteristics of the task, their value and their outcome. Since the 2006 reform, the

Table 4.3. **Lawyers' fee calculation methods**

UK	Per hour.
Spain	Freely agreed between lawyer and client (for example, on a lump sum basis or per hour). They are recommended, non-binding reference prices.
France	Freely agreed between the lawyer and the client, usually on a lump sum basis or per hour.
Germany	Fixed by law or through agreement, but minimum fees have to be respected. In 2006, the fees for extrajudicial consultation were liberalised.

Source: Senato della Repubblica-Servizio studi, Riforma del'ordinamento forense – Diritto comparato, January 2008.

minimum fee is no longer binding. The parties generally settle a lump sum for certain basic services such as bookkeeping or income tax returns.

For engineers and architects, fees are usually set as a "percentage" (determined by the amount of work). Fees for advice can be calculated by "period" (in relation to the time taken) or at the discretion of the professional. Fixed costs are charged a percentage or as a lump sum.

The fee calculation methods were not changed with the 2006 reforms. The regulations concerning the fee calculation methods are still in force, but their references to minimum fees are no longer compulsory. The method of calculating fees is still typically done by a single act or by time required (and sometimes a combination of methods). Setting a lump sum fee for the entire task is a possibility that is open only to accountants. Thus despite the reforms, it is not easy for users to know in advance the final total cost of services.

Abolition of minimum and fixed prices

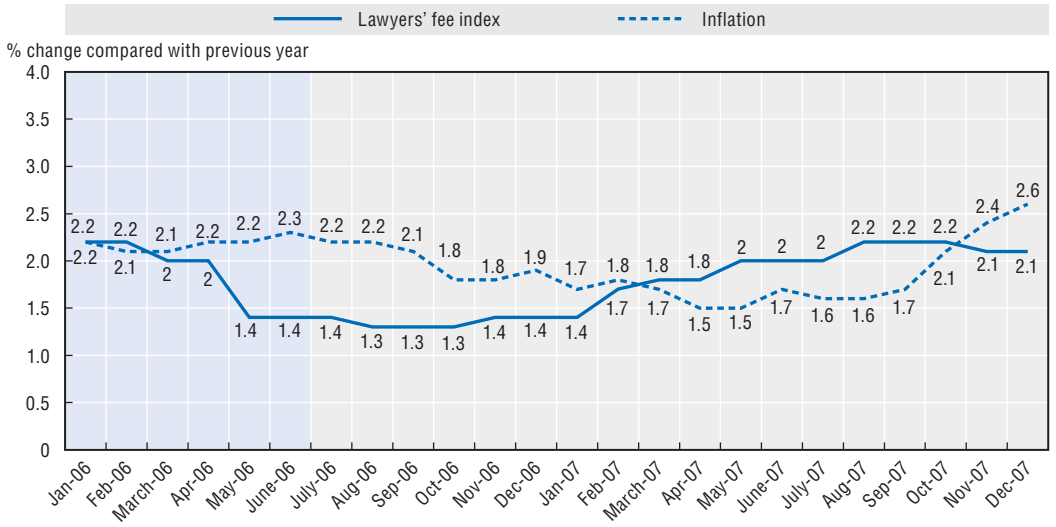
All of the professional bodies have now abolished compulsory minimum prices and changed their Codes of Conduct (Table 4.5). But a fixed fee schedule still applies to the award of legal costs incurred in judicial proceedings. The latest reform of the Code of Public Contracts suppressed minimum prices for public works, but the *Finanzieria* may be reviving the practice. More broadly, abolition of minimum prices has been broadly resisted and even reversed, and consumers have seen little benefit from price competition.

Some professional bodies have resisted the new rules on liberal professions by narrowly interpreting them. For example, the National Bar Council has recognised that liberalisation would permit setting fees below the minimum tariffs, but has cautioned that low fees might nonetheless be considered inconsistent with the Code of Conduct if the lawyer's dignity is injured, so that a disciplinary sanction could be applied. Similarly, the national council of engineers announced that fees below minimums could indicate a breach of Article 2 233 of the Civil Code, concerning respect for the decorum of the profession. An accountant who accepts a fee below the minimum tariff must be able to demonstrate that the quality of the service is not compromised.

Notaries contend that minimum tariffs still apply to notarial activities which are an expression of public functions. In addition, the previous schedule of notaries' tariffs is still used as a reference point, for computing fees for complex services and for computing the notaries' compulsory contributions for archiving tax, social security and the professional organisation. Notaries contend that their profession deserves special consideration because it performs public services, by providing a kind of preventative justice which, in a strongly litigious country, helps to limit disputes and ensure the reliability of public land registries. Legislation adopted post-liberalisation forbids "unfair price competition" among notaries, for example fee discounts. Such behaviour could be punished through disciplinary sanctions, such as warning, suspension or dismissal.

Though, some judicial decisions have resisted these interpretations. One ruled that any interpretation of legislation concerning professionals that is inconsistent with the abolition of minimum and fixed prices must be avoided, and no disciplinary sanction may be applied for fees set below minimum or fixed tariffs. In addition, a professional board decision or guideline that has as an objective to maintain minimum or fixed prices can be considered as a decision of an association of undertakings which could have a negative impact on competition.

Figure 4.2. **Lawyers' fees**



Note: The lawyers' fee index is computed using a basket ranked by type of case. Istat collects data monthly on fees set by the professional order, and quarterly on fees charged by a sample of professionals in provincial capitals. Changes took effect after June 06.

Source: Istat, report on consumer prices.

Figure 4.3. **Accountants' fees**

Note: The accountants' fee index is computed by Istat from quarterly data on fees charged by a sample of professionals in provincial capitals.
Changes took effect after June 06.

Source: Istat, report on consumer prices.

Price regulation reforms of pharmaceutical products

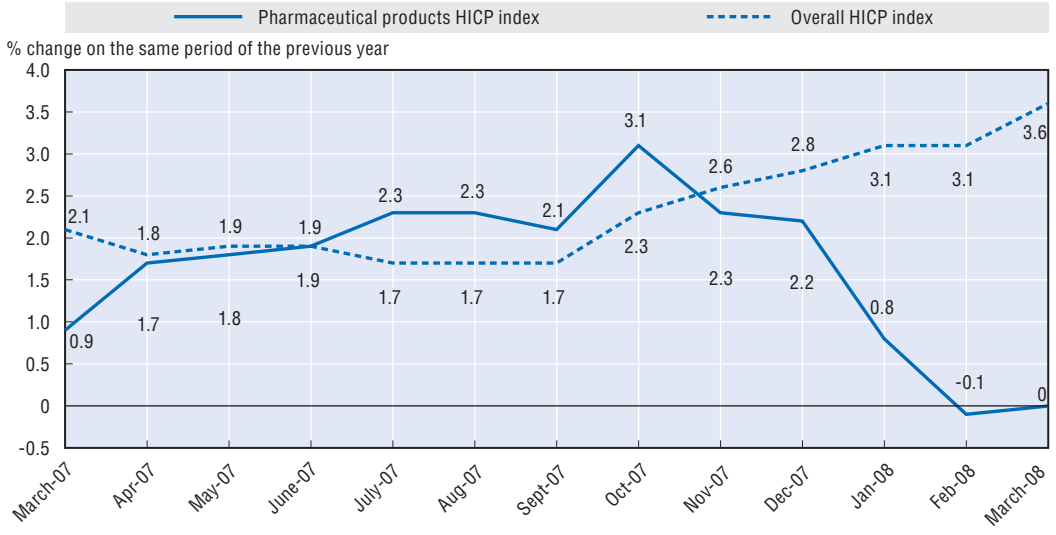
Prior to the 2006 reforms, prices of pharmaceutical products reimbursed by the National Health Service were fixed by law, while prices were formally liberalised for non-reimbursed products but that still required a medical prescription, and for over-the-counter (OTC) products. But producers or distributors print retail prices on the packages of non-prescribed and OTC products, and these serve as maximum prices for the national market. These prices can only be revised every two years. Discounting from this printed retail price was allowed, up to maximum 20%. The Antitrust Authority pointed out that it would have been better to simply avoid price indications. Fixing resale prices, even as a maximum, and printing it on packages stabilises behaviour and encourages collusive strategies since producers can easily monitor each others' prices. Limiting price adjustments to a two-year cycle stabilises behaviour by reducing uncertainty about producers' competitive strategies. It also delays or prevents cost reductions for consumers.

The Bersani reform made it possible for retail outlets other than pharmacies to sell OTC products. It also eliminated the 20% discount limit off the pre-printed price indicated by the producer or the distributor, for both pharmacies and retail outlets (Article 5, Law 248/2006). As of 2008, the retail prices of OTC products were liberalised both at pharmacy and at retail outlet levels, and pre-printing prices for non-prescription and OTC products is no longer required.

Over 3 700 retail shops other than pharmacies now sell OTC pharmaceutical products. Of these, 86% are small shops and 14% are medium-sized outlets and large-scale distribution outlets. This number is small, compared with the 17 000 pharmacies. Nevertheless, these reforms contributed to a 6.6% decrease in price between 2007 and 2008. The rate of increase in consumer prices for pharmaceutical products has fallen far below overall inflation rate (Figure 4.4). This effect of reform was supported by lower producer prices for these products (Figure 4.5).

Figure 4.4. **Consumer price trends of pharmaceutical products and inflation (HICP index)**

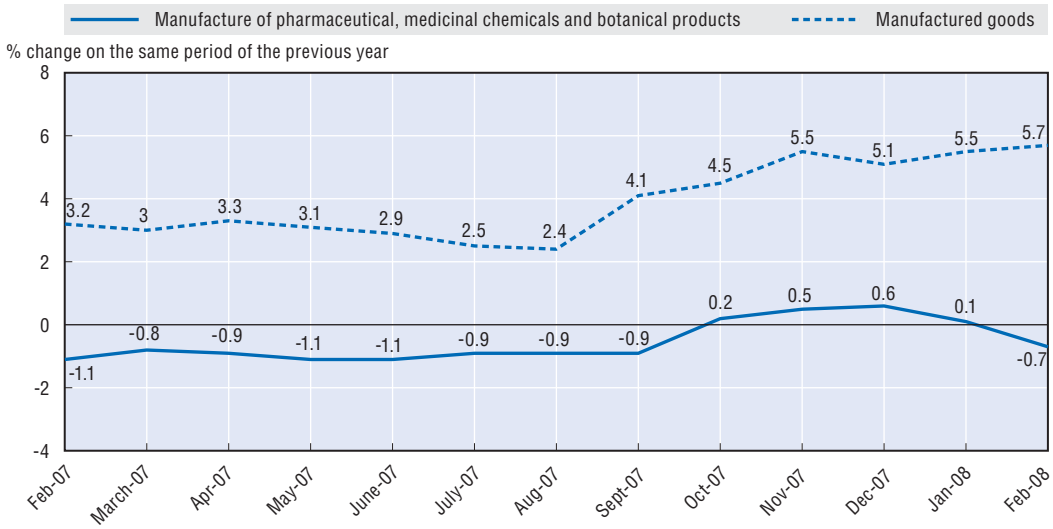
(% change on the same period of the previous year)



Note: The Harmonised Index of Consumer Prices (HICP) of pharmaceutical products includes the medicinal preparations, medicinal drugs, patent medicines, serums and vaccines, vitamins and minerals, cod liver oil and halibut liver oil and oral contraceptives (veterinary products and articles for personal hygiene are not included in its definition).
Source: Eurostat.

Figure 4.5. **Producer price trends of pharmaceutical products and products for medical use, and of overall manufactured goods**

(% change on the same period of the previous year)



Source: Ministry of Economic Development, March 2008, *www.osservaprezzi.it/approfondimenti/newsletter/2008/aprile/#focus.*

Some of the new outlets, particularly large-scale stores, have discounted more aggressively. According to an inquiry by Altroconsumo, the average discount for pharmaceutical products in pharmacies is 8% per packet (11% per packet, only considering discounted pharmaceutical products), but in large-scale distribution the average discount is 22%. The large-scale stores do not offer as wide a range of products as pharmacies do. The small "*parafarmacie*" shops are less competitive, offering a smaller range of products and lacking economies of scale. For them, the average discount is 15.8%.

Opening new channels of distribution stimulated 13% of pharmacies to offer discounts of approximately 15-20%, in order to compete with large scale outlets. Some pharmacies asked regional authorities to give them more flexibility about opening hours to compete with the new outlets. But reforms also generated resistance to change. Some distributors refused to supply the "*parafarmacie*" shops and some associations of pharmacists tried to limit discounts, which led to investigations for breaching the competition law.

Table 4.4. **Price liberalisation of professional services and pharmaceuticals**

Professional services	Minimum/fixed prices abolition
Pharmacists in retail trade (5 Dec. 2006)	No: drugs paid for by the National Health Service (*fascia A*) Yes: over the counter drugs, drugs sold without medical prescription and with medical prescription (*fascia C*)
Engineers (1 Dec. 2006)	Yes (Art. 4.4, Code of Conduct)
Architects (20 Dec. 2006)	Yes (Art. 15, Code of Conduct)
Notaries (13 Dec. 2006)	Yes
Accountants (5 Sept. 2007)	Yes (Art. 15, Code of Conduct)
Lawyers (14 Dec. 2006)	Yes (Art. 43-45, Code of Conduct)

Advertising

Professional boards have historically regulated advertising, emphasising the asymmetry of information between practitioners and consumers and the need for consumers for

protection against misleading or manipulative claims. But advertising about the characteristics and prices of services is an important instrument to overcome information asymmetries. Experiences of professional boards and the Italian Antitrust Authority confirm that advertising can be abused. Nonetheless, limitations on advertising imposed by professional Codes of Conduct result in barriers between clients and professionals and prevent clients from making informed choices. The professional associations themselves only give general advice and thus offer little help in making this choice. For example, associations of notaries provide only a list of all of the notaries in the area.

Codes of Conduct typically consider advertising to be prejudicial to the decorum and dignity of the profession. According to some, advertising should be subject to limits based on "moderation" and "good taste".

Prior to the 2006 reform, the level of advertising permitted by the different professions' Codes of Conduct varied considerably. At one extreme, engineers did not regulate advertising. At the other, pharmacists (and other medical professions) could advertise only name, address and specialisation in telephone directories, newspapers and specialised magazines subject to prior approval of the professional board and mayoral authorisation. Several of the limitations on pharmacy advertising in the Code of Conduct (such as permitting advertisement only of the existence of a pharmacy) were eliminated after intervention by the Italian Antitrust Authority. Advertising by notaries was totally forbidden until 2004, when informative advertising was allowed subject to several limits. For example, the sign outside the notary's office could not be too large and the name listed in the telephone book could not be too prominent, and it was forbidden to make an announcement in the media or to have the name included in any guide that did not include all of the notaries in the district.

Advertising by lawyers was forbidden until October 2002, when some forms of publicity were allowed, such as signs outside one's office, brochures and Internet sites. Rules limited the substance of the advertising. Lawyers could offer consultation services as long as the consultation was not for free and the offer clearly identified the lawyer who would follow the case. Advertising could indicate quality certificates and provide information about the professional practice and specialisations allowed by universities. Compared with the other Codes of Conduct, this Code was considered the most restrictive by the Italian Antitrust Authority.

There has not been a general prohibition of advertising by accountants since 1999. But interpretations by professional bodies prohibited methods considered inconsistent with the honour and dignity of the profession, including billboards and flyers, general solicitations via mail, fax or e-mail and direct solicitations through visits or phone calls. And the interpretations prohibited conveying information about tariffs or the names of clients and results obtained.

Abolishing restraints on advertising is a necessary complement to the liberalisation of tariffs. Advertising may facilitate competition by informing consumers about the quality and price of services that best meet their needs. The 2006 reform permits informative advertising, of titles and specialisations, characteristics of service, prices and total costs. Professional boards may check to ensure that the message is truthful and not misleading. Their competence is different and must not produce decisions that overlap or contradict those of the Italian Antitrust Authority, which has the exclusive power to apply the rules about misleading and comparative advertising.

The permission for "informative" advertising should not be interpreted in a way that could prevent effective and useful communication. The law on misleading and comparative advertising is well equipped to deal with situations where the decorum of the profession is thought to be at stake.

All of the Codes of Conduct have been reformed since the reforms permitted advertising (Table 4.5). But most of the Codes allow only some type of publicity and form of communication.

Table 4.5. **Advertising liberalisation in the Codes of Conduct**

Professional service	Advertising liberalisation
Pharmacists	Yes, before Law 248/2006 (Art. 20, Code of Conduct)
Engineers	Yes, before Law 248/2006 (advertising is not regulated by the Code)
Architects	Yes (Art. 36, Code of Conduct)
Notaries	Yes (Art. 18-21, Code of Conduct)
Ragionieri	Yes (Art. 12-14, Code of Conduct)
Lawyers	Yes (Art. 17-17*bis*, Code of Conduct)

Retail pharmacists cannot promote their activities through a medical centre, but they can advertise services, prices and the individual department of a shop. All advertising is subject to previous notice to the professional board.

The Code of Conduct for lawyers still limits advertising about specialisations to those that are recognised by universities. It also prohibits advertising the names of clients, even if they have given their consent. It bans both misleading and comparative advertising. In general, a lawyer cannot emphasise professional ability. It is also prohibited to offer professional services at the customers' house and in public places. The use of Internet sites is controlled. Sites must have the lawyer's own domain name or be directly traceable to the lawyer or the firm. The professional body has a power of preventive control over the content of websites and of authorisation of lawyers acting as columnists.

The notaries' Code of Conduct eliminates explicit limitations on advertising. Instead, it sets out examples of informative advertising, such as areas of specialisation which are allowed by universities, publications, lectures, days and working hours, cabinet organisation, and foreign languages. There are no particular limitations on the form of advertising. The Code includes examples such as Internet sites.

There is no general prohibition in the 2008 accountants' Code of Conduct. Their advertising may indicate the name of clients, if they have given their consent. Misleading advertising is still forbidden, and advertising must respect the dignity of the profession. Reference to names of clients and fees is forbidden for architects who can only use the Internet to a limited degree.

Methods of advertising that are used most often are, for engineers, newspapers and magazines, websites and direct contacts. For accountants, websites and participation at seminars and conferences. For notaries, some have websites (no more than 100) but only one has advertised in a local newspaper. For pharmacists: newspapers, websites and billboards.

Quality of services

The 2006 reform provides that Codes of Conduct can include measures to ensure quality to avoid poor and incompetent services. These measures include regulation of

continuing education. Other measures to guard against poor quality service include standards governing access to the profession and disciplinary rules to ensure compliance with professional ethics. The risk that the professional would face civil liability for harm due to incompetent service is also a check. In addition, recent reforms now permit professionals and clients to enter contingent fee agreements, under which the professional might not be paid if the quality of service is inadequate.

Continuing education

Continuing education should be a means of ensuring quality. Its requirements should not be used as a device for preventing entry or competition. To ensure choice and accessibility, professional bodies should adopt objective, non-discriminatory criteria for accreditation of training courses that are not organised by the professional orders themselves.

Lawyers and notaries recently adopted regulations requiring continuing education. The subject had been previously dealt with simply as a general duty of keeping up-to-date. A National Bar Association regulation, adopted 13 July 2007 and effective in 2008, establishes a duty of continuing education and regulates training courses. The National Board of Notaries adopted a regulation requiring continuing education in 2005, effective in 2006. The rules specify the obligation for continuing education in terms of the number of credits or hours undertaken over a three year period, for lawyers, and over two years, for notaries. This can be done through participation in seminars and congresses that are organised or accredited by the national associations.

Continuing education for accountants became mandatory from January 2003. Accountants must take a minimum of credits every three years in programmes adopted by the national professional bodies, which co-ordinate the local branches' activities. For all these professions, the breach of mandatory continuing education involves a disciplinary sanction. For lawyers, it would have an impact on the content of advertising. A lawyer may not advertise about an area of professional practice in which the lawyer has not complied with continuing education requirements.

The pharmacists' Code of Conduct, in Article 9, foresees a duty regarding continuing education, to be organised at the cost of the national federation or their professional board. (In 1992, the government set up a general programme for medical workers of continuing education). The pharmacists'professional body has not yet adopted a specific regulation. The same is true for engineers and architects.

Agreements on contingency fees

Italian law traditionally prohibited lawyers from entering agreements on contingent fees. Such fee agreements were null and void. Professional bodies have defended this prohibition on the grounds that it discouraged unscrupulous hunting for clients and protected clients' interests in vigorous representation. That is, a professional with a contingent fee agreement for a small or weak case would not pursue it vigorously or would demand more of its value as compensation. These outcomes might be avoided if the professional's pay did not depend on the result of the service. But the alternative to a contingent fee arrangement for such cases could be no representation at all. Moreover, under a fixed total fee, there could also be a risk that service quality would decline if the case ends up costing more than the agreed total fee would cover. If fees are assessed per act performed, the burden is on the client to decide whether the matter is worth pursuing,

without the professional's insight about how many acts might be needed. Novel or risky cases might be discouraged.

Before the 2006 reform, it was possible to consider performance in setting a lawyer's fee, through an agreement to pay an additional amount in case of success. The additional amount must be fair, and the agreement must be in writing. The laws and rules applied to the legal profession have been modified. The Civil Code and the Code of Conduct have been amended to remove the prohibition. Contingent fee agreements must be in writing, and it remains forbidden for lawyers or notaries to "become beneficiaries in a transfer of rights over the object of dispute in any judicial procedure in which they have been engaged to act". The reform opens the way to the *pactum de quota litis*, which means an agreement by which "the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter". The Code of Conduct specifies that remuneration must be in proportion to the activity. Thus an agreement about a contingency fee could be permitted by the Italian Civil Code, although it might violate the Code of Conduct if the remuneration is considered disproportionate.

The new "class action" law could lead to more changes in the lawyers' Code of Conduct. As of June 2008, consumer associations will be able to pursue class actions for damages against practices such as abuse of standard form contracts, unfair trade practices such as false advertising, and anticompetitive practices affecting consumers. The class action has been opposed by the professional association, for one of the same reasons that it raises to criticise the *pactum de quota litis*, namely that it would deprive damaged consumers of full compensation and encourage unscrupulous hunting of clients.

All liberal professionals may now make agreements about contingency fees. Other than the lawyers, none of the professions had regulated this practice.

Form of business

The form of business was traditionally regulated very rigorously for all liberal professions. A 1939 statute barred the exercise of a profession in the form of a company of any kind. This regulation was aimed to ensure that practitioners took personal responsibility towards their clients and to avoid the influence of a non-professional's capital. Sectoral legislation prohibited notaries from forming commercial enterprises.

Those limitations have been relaxed. Although the legislative decree that was supposed to regulate the subject was not adopted, decisions by the Council of State and the civil and administrative courts have made clear that the incompatibility between professional activities and a company structure is considered eliminated.

Today, members of technical professions, such as engineers and architects, are allowed to join together into partnerships, or *società di persone*, and co-operatives between member of their professional bodies (called *società di professionisti*), as well as from engineering companies (*società di ingegneria*) in the form of *società di capitali*. In these entities, both of which act in the field of public works, only members of the professional board are personally responsible, although the engineering companies can have non-professional partners. Lawyers can now create general partnerships (*società in nome collettivo*).

The 2006 reform enables *società di persone* and *associazioni di professionisti*, for which professional services are their exclusive task, to offer interdisciplinary services. Lifting

restrictions on ownership structure and expanding the scope for collaboration among professionals are aimed at permitting modernisation and improving quality, through new services or cost-efficient business models such as integrated tax advice. The moves may also enable new entry and expansion through access to new sources of capital. This is subject to three conditions: the activity of the entity must be solely professional, the activity and responsibility must be strictly personal and a professional cannot be a partner in more than one such entity. These conditions are intended to protect professionals' fiduciary obligations and personal liability. Indeed, it is feared that the professional's duty to clients might be compromised if financial liability could be limited or shared or if the professional is under investment control of someone not subject to ethical requirements.

Some professional orders consider that the forms of *società di persone* are not able to guarantee appropriately the personal character of the service. Some Codes of Conduct maintain limits on inter-professional companies. For example, lawyers are obliged to communicate immediately any project to create an association or professional company (Art. 24), and architects can only create *società semplice* or general partnerships. Other professional orders have not imposed any specific conditions on inter-professional companies.

Regulation of opening or owning a pharmacy has traditionally been very rigorous. A pharmacy could be owned only by a pharmacist or by a company of associated pharmacists (while a "public pharmacy", which is owned by a local authority, could be managed by any company). If an owner died, members of the deceased pharmacist's family who are not themselves pharmacists could take charge of their relative's pharmacy for up to ten years. Other aspects of ownership and operation that have been tightly regulated include incompatibility between distribution and retail sale of pharmaceutical products, limitation on the number of pharmacies according to the number of inhabitants and the minimum distance with respect to the maximum number permitted in each community, the wholesalers' obligation to stock 90% of medicines to guarantee a timely supplying to pharmacies.

After the 2006 reform, pharmacists may set up more than one company of pharmacists (the possibility to own a family pharmacy without a pharmacist title is abolished) and pharmacy companies can hold several pharmacies. But the maximum number that can be held in common ownership is four, and they must be located in the same district where the company has its corporate headquarters. Heirs who are not themselves qualified to be owners must sell the business or the shares within two years. These limits impede the creation of distribution networks like those in the United Kingdom. As a result of these limits, only nine companies own more than a single pharmacy, and only 64 pharmacists have set up more than a single company.

Restrictions on the acquisition of holdings in pharmacies by enterprises active in the distribution of pharmaceutical products (or having links with companies active in this area) and on their ownership of pharmacies were removed end 2007. The European Commission challenged these restraints, as inconsistent with Articles 43 and 56 of the EC Treaty (concerning the freedom of establishment and free movement of capital) and as more restrictive than necessary to achieve the objective of protecting health. The European Commission contended that the risk of conflicts of interest could be avoided by measures short of banning cross-ownership, while requiring the presence of a pharmacist to dispense drugs to patients would be sufficient to achieve the objective of protecting public

health. The same infringement proceeding challenged regulations in Spain and Austria, limiting the number of pharmacies according to the number of inhabitants and setting a minimum distance between pharmacies.

The Bersani reforms introduced an important element of flexibility on the quantity and quality of medicines stocked by wholesalers, by limiting the obligation to stock 90% of medicines or drugs which are paid for by the National Health Services.

Table 4.6. **Inter-professional co-operation**

Professional service	*Società di persone* and *associazioni di professionisti*
Pharmacists	No (not regulated by the profession's Code of Conduct)
Engineers	Yes, before Law 248/2006 (not regulated by the Code of Conduct)
Architects	Yes (Art. 12, 13, 41 Code of Conduct)
Notaries	No (Art. 15 Code of Conduct)
Accountants	Yes (Art. 6, 9 Code of Conduct)
Lawyers	Yes (Art. 17*bis* Code of Conduct)

Exclusive tasks

Reserving categories of tasks exclusively for designated professionals can lead to unjustified distortions of competition. This point has been emphasised repeatedly by the Italian Antitrust Authority, European institutions and the OECD. Exclusivity could be justified only where the exercise of the profession is strictly linked to the safeguarding of public interest and where there is no less restrictive mechanism to guarantee the quality of services. The new regulations on liberal professions relax a few of these constraints, concerning notaries and pharmacies.

Limitations of notaries' reserved tasks

In Italy, there are many reserved exclusive rights to perform activities. For instance, access to the public register for deeds requires authentication of the signature by a notary, and inheritances and gifts can only be completed with a public deed before a notary. Some powers have been transferred from judges to notaries, such as validating certificates of incorporation and decisions about articles of association and bond issues by limited companies.

Recent reforms have reduced a few of these restraints. The notaries' monopoly over transferring ownership of movable assets such as cars or boats was eliminated. These transfers can be authenticated by the municipality, by car agencies or directly through the provincial offices of the Public Car Register-*Pubblico Registro Automobilistico*-PRA. According to the notaries, this change led to a loss of work of 15% overall, but savings to consumers were probably small. The cost of ownership transfer through the municipality is only a stamp duty (EUR 14.62) plus a small administrative charge, while notaries typically charged EUR 3-30 plus TVA. But municipalities cannot complete the procedure through the transfer transcription in the Public Car Register, and car agencies, which are connected to the register and can perform this function themselves, demand about EUR 130. In addition, the reform abolished the requirement for a notary's authentication of the termination of a property mortgage once the mortgage payments have been made in full.

Pharmacy services in retail trade distribution

Traditionally, pharmacists have the exclusive right of preparation, storage and dispensation of pharmaceutical products, which are solely distributed through pharmacies.

Experience elsewhere has shown, and the Italian Antitrust Authority has argued on several occasions, that allowing other outlets to sell products which do not require a prescription would lead to a substantial increase in competition and significant price reductions, of up to 30% on the basis of the UK experience.

In line with this idea, Law 248/2006 limited the scope of the pharmacies' monopoly to prescription-only drugs. Other retail channels may sell OTC products and those that do not require medical prescription. Sale through these other channels is subject to several conditions. The outlet must notify the Ministry of Health and the Region in advance. There must be a dedicated counter set up inside the shop for these products. And there must be a pharmacist who is a member of the professional board to provide direct assistance to customers. These conditions would be more of a burden for small and medium enterprises than for large chains and distribution stores.

Some Regions have tried to make the restrictions even more onerous. Additional burdens have included requiring that the dedicated counter be separated behind a wall or a window (Lombardia, Lazio and Puglia) and that a separate cash register be used for recording sales of these products (Umbria, Puglia and Sicilia). The Italian Antitrust Authority in 2006 required regions that implemented restrictive measures to make them conform to the competition law, and the government followed up asking for reports from these regions on how they had complied with this request. Other obstacles to liberalisation came from the conduct of some wholesalers (which were sensitive to the interest of pharmacists), who co-ordinated their market behaviour to exclude the small *parafarmacie* shops from selling non-prescription products. The Italian Antitrust Authority fined four operators who had restricted competition in three Regions.

Conclusions

Recent reforms of the regulations that prevented competition in the liberal professions lifted several prohibitions and restrictions on fees, advertising and forms of business. These long-overdue changes, which the Antitrust Authority has been urging since the 1990s, are welcome, although they are not comprehensive. The Antitrust investigation was just concluded in March 2009 and is in line with the findings of this report. After the entry into force of the Bersani reform no disciplinary sanction could be applied to fees below a minimum. Any guideline of a professional board implying fixed or minimum fees is inconsistent with the competition law. Reforms to date, supported by growing international competition between professionals and by a drive for renewal from some professionals themselves, could lead to further necessary steps toward treating providers of professional services as enterprises under the Community law. Assessing the overall impact of reforms in these areas would require observing net effects on long-term outcomes, such as health and legal security, which are inherently difficult to measure. Some market place results are already evident, though, as they have improved consumers' welfare.

Changes in pharmacy retailing have led to the clearest marketplace results, improving availability and putting downward pressure on prices. Such effects would be expected after weakening a retail cartel such as this one, which owed its survival to protective regulation. Removing the exclusive right of pharmacies to sell OTC drugs and eliminating the producers' single price and the limits on discounts have created a degree of choice for about 10% of the overall pharmaceutical market, in terms of turnover, and 18% in terms of

volume (excluding hospitals). Opening alternative channels for retailing OTC products is estimated to have saved the average family about EUR 50 annually.

For most of the other changes, marketplace effects are hard to discern yet, in large part because the changes are recent and the professions are still adapting to the situation. Some professions have allowed flexibility in fees and discounts, as in the case of accountants and engineers. But the method of calculation still results in a lack of clarity about the total, especially for lawyers. Their method of setting fees per act performed could make an offer of a discount a moot point.

The culture of the professions is adapting to change hesitantly. Advertising and competition over prices are resisted. Some in the professions fear that these novelties could undermine their image, and some associations considered applying their disciplinary codes against members who cut their fees too much. Reform to permit more advertising has not yet had significant effects, in the view of the professional organisations. Permitting more inter-professional services has also had limited effects. Some professional orders, notably accountants, have expressed uncertainty about which form of organisation would comply best with the requirements that the activity must be solely professional and that responsibility for a matter must be personal. They are evidently awaiting clarification of these points.

The reforms were implemented with only limited consultation, using the tool of the law decree. Use of that tactic for this purpose has opened the reforms to procedural challenges in court. Greater consultation might have laid a foundation for acceptance of the changes; on the other hand, it might have delayed their adoption.

Policy options

Further liberalise prices for pharmaceutical products

In pharmacy retailing, the obvious next step for reform should be to liberalise the sale of those drugs which are non-reimbursable but require a prescription, the so-called category C drugs. This was provided by a first draft of the bill on liberalisation which was supposed to complete the 2006 reforms. This would have opened up another 10-15% of the market, in terms of turnover. Such sales should still be subject to supervision appropriate for their prescription status, of course. Another straightforward step would be to base a pharmacy's obligation to stock products *on their active principle, rather than on their product label or source.* This would not require that prescription be written only in terms of the active principle. Nevertheless, the Italian Antitrust Authority considers that this rule could be a determining factor in the development of the distribution of "generic medicines", which are sold at lower prices, to the advantage of both consumers and National Health Services.

Liberalise pharmacy ownership, to permit creation of efficient distribution systems

The most important reform in the pharmacy sector, though, would be to re-examine constraints on ownership that prevent achieving efficiencies in distribution. The government has contended that linking ownership to management protects the public health. It is undeniable that, to ensure proper professional service to customers, a pharmacy must be supervised by a pharmacist who can advise the consumer. But that does not depend on the location, ownership or business format of the retail outlet. The outlet does not need to be owned by a pharmacist to ensure that service. Permitting ownership by others, and permitting many outlets to be under common ownership, would enable

creation of larger, integrated distribution networks which could offer better consumer prices and services. The competitiveness of the alternatives to large-scale distribution could be strengthened by reforming the constraints on ownership. Limiting the ownership of pharmacies to pharmacists, and limiting the number and scope of operations, prevents achieving economies of scale and attracting sources of capital, as would be the case in other European countries. Removing these limits would open the market to new operators and permit the creation of chains of stores.

Remove limits on number and location of pharmacies

Intrusive structural regulation, fixing the number of pharmacies on the basis of population and imposing minimum distance requirements, seems to be more connected to protection of incumbent's rent than to protecting widespread availability. This aim could, in fact, be attained through instruments, which are less restrictive of competition (such as the incentive mechanism that is already in place to encourage pharmacies to locate in smaller and more remote places). The lifting of the fixed number of pharmacies is one of the reforms considered as fundamental to facilitate economic growth by the "Attali Report". The lifting of the fixed number of notaries is also considered an essential reform for economic growth.

Permit greater flexibility in methods of computing professional fees

Methods for computing fees should also be re-examined, to increase flexibility and choice and counter the current system's incentive to prolong litigation. To be sure, lawyers' fees are not high compared with those of others countries. But the method for calculating them encourages long, costly civil proceedings. Fees are set per act, so the longer the process, the higher the final fee. The incentive to prolong the process could be eliminated by setting lump sum fees. As long as fees are only calculated per act or per hour, reforms about fee levels and advertising are unlikely to reduce costs or make the final total more transparent at the outset. The National Bar Association has proposed a tariff of fees for court services, setting the charge for each phase (such as study of the case, introduction to the judgment, preliminary investigation and decision), each level of judgment and each competent court (civil, criminal, administrative, fiscal). Limiting the number of possible charges and fixing them in a public schedule would indeed make the process somewhat more transparent, and it would put an upper limit on the possible total. Moreover, this proposal could be considered a simplification, but, as with the current method, is inconsistent with a system based on free agreements between professional and client and does not guarantee fee transparency (a client cannot know in advance in how many phases of the process he will be involved).

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