

DEREGULATION AS A MEANS OF SOCIAL POLICY?*

*Laura Chierroni***

Abstract

Deregulation poses serious challenges for Italian legislators. While the EU has adopted a liberal approach to this process, encouraging the removal of restrictions on free competition, the implementation of EU directives has proven to be extremely difficult in Italy for two main reasons: the resistance opposed by the so-called “close corporations” of established market operators, and the potential negative impact of deregulation on social welfare. The aim of this paper is to determine whether and on what conditions deregulation can positively impact social interests.

As a first step, the legitimacy of existing limits to competition is tested by taking into account two market sectors, the Italian taxi and pharmacy services, which are examples of close corporations and, as such, are characterized by positions of privilege and little or no competition. Subsequently, the obstacles to free competition, which are a distinctive feature of these services, are analyzed in order to assess whether their total removal can actually improve social welfare. A series of auxiliary measures aimed at mitigating the social risks of extensive deregulation are then examined and their effectiveness is evaluated. The results found in this paper show that a massive process of deregulation, such as the one promoted by the EU, cannot guarantee long-term social benefits. Sustainable economic growth can only be achieved by means of a “supervised deregulation process” that is by removing barriers on competition while also preserving those limits which are essential to ensure the protection of social welfare. It is concluded that Italian legislators are facing the difficult task of balancing the nation’s obligation, as a member state, to meet EU requirements in terms of deregulation, and the government’s duty to safeguard domestic social welfare

** Honorary Fellow, University of Florence

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1. The controversial relationship between deregulation and social equity.

This paper analyses the disputed issue of the effect of liberalisation on social welfare in Italy. Whilst a beneficial link between deregulation and economic growth is commonly recognised, no dominant position has been reached regarding the relationship between deregulation and social equity, despite a heated debate in the literature¹. Instead, two broad approaches can be identified. According to the first, the increase in competition brought about by deregulation can never increase social equity and general well-being². The second approach acknowledges potential positive effects of deregulation on social equity by arguing that the removal of obstacles in the pursuit of economic activity has an impact on the growth of per head income, on the gradual levelling of income disparities and on social mobility, thereby increasing overall social wealth³. Legal scholars who recognize the potential benefits of deregulation on social welfare, however, also claim that no real social advantage can be derived from deregulation without preserving certain levels of restriction⁴.

¹ A. Bassanini, E. Ernst, *Labor market institution, product market regulation, and innovations: Cross Country Evidence*, (2002); A. Bassanini, S. Scarpetta *The driving forces of economic growth*, (2002); G. Nicoletti, S. Scarpetta, *Product market reform and Employment in OECD Countries*, (2005); G. Nicoletti, S. Scarpetta, JM Arnold, *Does Anticompetitive Regulation Matter for Productivity? Evidence from European firms*, IZA, 551 Discuss papers (2011); P. Parascandolo, G. Sgarra, *Crescita e produttività: gli effetti economici della regolazione*, Concorrenza bene pubblico (2006).

² S. Kuznets, *Economic Growth and Income Inequality*, 45 Am. Econ. Rev. 1-28 (1955); A. Lewis, *Economic Development with Unlimited Supplies of Labor*, 22 Manchester Sch. Econ. Soc. Stud. 139-190 (1954); J. Mazur, *Labor's New internationalism*, 79 Foreign Affairs 79-93 (2000); A. Petrucci, *Liberalizzazione e semplificazioni amministrative: tecniche di regolazione e riflessi su imprese e consumatori*, www.amministrazioneincammino.it (2007).

³ J.E. Stiglitz, *The prince of inequality: How Today's Divided Society Endangers Our Future* (2012); V. F. Schivardi, E. Viviano, *Entry Barriers in Italian Retail Trade*, 121 Economic Journal 145-170 (2010); A. Pezzoli, A. Tonazzi, *Concorrenza e ... equità*, www.eticaeconomica.it (2015).

⁴ M. Ramajoli, *Liberalizzazioni: una lettura giuridica*, in F. Manganaro, A.R. Tassone, F. Saitta (eds.), *Liberalizzare o regolamentare: il diritto amministrativo di fronte alla crisi, atti del XVII convegno di Copanello 19-30 giugno 2012* (2013); F. Silva, *Liberalizzare è un*

The interest of this paper is not to analyse the theories which either recognise or thoroughly reject the positive social effects of deregulation. Instead, the focus will be on the analysis and identification of measures and rules which aim at promoting social equity and socially sustainable economic growth, while also fostering competition as far as possible. A potentially positive effect of deregulation on society has also been advocated by the AGCM (Italian Antitrust), which urged legislators to adopt deregulation policies⁵.

In order to analyse the relationship between deregulation and social welfare it seems appropriate to start from the consideration that too much regulation and market planning can often lead to positions of privilege. This belief is also shared by various legal theories in literature. Privilege gives a perception of income which does not reflect the actual production of wealth, hinders national economic growth⁶, and distorts the entire redistributive system, thus directly affecting the degree of social equity⁷.

It is when referring to these privileges of position that the 'Italian case' comes to the fore. Italy has been characterised historically by a strong presence of professional associations, which have obtained - more or less directly - political protection, and have prevented access to newcomers by means of internal alliances. In addition, in Italy, the approval of deregulation bills is subject to a complex and time-consuming process, which does not often allow the actual removal of obstacles to economic activity. This is particularly evident in the two sectors of taxi service and pharmacy, which show at least three common features: stringent and detailed regulation with strong barriers against entering the market; rooted corporatism (by

processo politico e sociale, prim'ancora che economico, in B.G. Mattarella, A. Natalin (eds.), *La Regolazione Intelligente: un bilancio critico delle liberalizzazioni italiane* (2013).

⁵ AGCM, *Relazione annuale - Presentazione del Presidente Giovanni Pitruzzella* (Annual Report - President Giovanni Pitruzzella Presentation), www.agcm.it, (2013).

⁶ OCSE, *Reports Regulatory Reforms in Italy* (2001); OCSE, *Reviews in Regulatory Reform in Italy: Better Regulation to Strengthen Market Dynamics* (2010).

⁷ L. Berti, *Il cancro che divora l'Italia: l'attrazione fatale della rendita*, www.civicolab.it (2014); J. E. Stiglitz, *The prince of inequality: How Today's Divided Society Endangers Our Future*, cit. at 3.

means of direct and indirect pressures on politicians through Parliamentary consultations, technical meetings and strikes); and rewards related to position.

2. The scope of our analysis; positions of privilege in the taxi and pharmacy sectors.

The scope of this analysis is limited to the Italian taxi and pharmacy services, as these sectors allow us to better observe the nature and characteristics of different kinds of positions of privilege which are common features of the Italian economy. More specifically, both sectors show positions of privilege which are the result of direct economic regulation - a form of government intervention which tightly limits access to the profession by predetermining the maximum number of professionals in a given sector, discourages alternative services, grants established professionals incentives and facilitations, and fixes minimum prices and tariffs. Direct economic regulation prevents a full development of competition, thus allowing established professionals to gain additional rewards which cannot be traced back to market dynamics (from now on non-market rewards), unlike other kinds of rewards which are market-generated competitive advantages gained as a result of price strategies and technological innovations⁸.

Non-market rewards can be further classified into two subcategories: economic privileges that certain categories of professionals, such as pharmacy owners, acquire exclusively as a result of Laws introduced by the state or by Local Authorities (direct privileges); and economic rewards that can only be enjoyed through direct economic participation, as is the case with the taxi sector, where licenses are traded and purchased on the secondary market (indirect privileges).

⁸ C. Bentivogli, M. Calderini, *Il servizio di taxi in Italia: ragioni e contenuti di una riforma*, 5 Occasional papers, www.bancaditalia.it (2007).

3. The regulation of taxis and vehicle hire with driver services.

In order to verify the extent of deregulation procedures in the Italian taxi sector, it is appropriate to start from the provisions under Law n. 21 of 15th January 1992, the 'regulatory framework for unscheduled transport of people'. This Law allows us to understand the extent of regulation and planning in this sector and evaluate, on such bases, the degree of deregulation achieved.

This regulation concerns two different services: taxi service (article 2), and vehicle hire with driver service (article 3), both of which require registration in the drivers' roll before starting the activity (article 6), as well as a licence or, in the case of vehicle hire with driver service, an authorization (article 8).

Regional authorities and local authorities (LAs) are expected to implement such rules by defining the number of vehicles that can be used, the service delivery system, the procedures for issuing the licence or authorization, and taxi fares (articles 4 and 5).

Article 8 of Law n. 21/1992, which establishes the general criteria for issuing licenses and authorizations, specifically forbids taxi drivers from holding more than one licence; however, no specification is provided for vehicle hire with driver service. Under article 9, transferring a licence is subject to the following requirements: 5 years must have elapsed since the licence was granted, and the transferring holder must be at least sixty years old or fall into the category of ill, disabled, or disqualified. In case of death of the holder, it is specifically provided (paragraph 2) that the licence can be transferred to a family member - an heir having the required qualification - or, as an alternative, to a third party directly chosen by the heir, subject to authorization by the LAs and within two years of the holder's death.

Article 11 introduces specific territorial restrictions for both services. Taxi drivers must collect customers and start the service within the boundaries of the city where the licence has been issued. In the case of vehicle hire with driver service, it is compulsory to book at the garage, and vehicles are prohibited from parking in public areas of cities which are provided with taxi service - unless specific dispensation is given by the city council in agreement with

trade unions. Should dispensation be granted, parking is still restricted to specific areas which are different from those reserved for taxis.

Article 11 also provides that cars offering vehicle hire with driver service are allowed to use fast tracks and other facilities reserved for taxis (paragraph 3), but only taxis are given right of way at passenger-gates (article 7). As far as fares are concerned, article 13 of the regulatory framework states that taxi service is provided upon a passenger's direct request against payment of a fee which is calculated on the basis of fares established by the competent LAs. As for vehicle hire with driver service, the fee is agreed upon directly between carrier and customers.

The regulatory framework for taxi service also includes specific tax exemptions and subsidies. Law n. 427/1993⁹ establishes a tax credit based on the excise tax paid on the fuel used during the year. The Stability Act 2014 (Law n. 147 of 27th December 2013,) established a 15 per cent increase in this tax credit. In addition, taxi drivers are exempted from issuing invoices, unless specifically requested by passengers, and from paying VAT for transporting people and their luggage within the city borders or between two cities which lie more than 50 km apart. In 2006, the so-called 'Bersani Act' (Law Decree no. 223/2006¹⁰) marked the first steps towards effective deregulation in the taxi service sector. This decree allows LAs to exempt taxi drivers from the obligation of holding no more than one licence. However, LAs will distribute no less than 60 per cent and no more than 80 per cent of the revenues received from granting new licenses among holders of single licenses. As a result of long discussions with trade unions, this provision was amended when the 'Bersani Act' was converted into Law (Law n. 248/2006¹¹). The ban on holding more than one taxi licence was thereby reintroduced, and the percentage of revenue coming from granting new licences to be distributed among holders of single licenses was

⁹ Law No. 427, of October 29, 1993.

¹⁰ Law-decree No. 223, of July 4, 2006.

¹¹ Law No. 248, of August 4, 2006.

raised to no less than 80 per cent. In 2009¹², the mandate which required hired vehicles with drivers to leave from a particular garage and return there after each ride was introduced. Subsequent deregulation measures have been impeded, as the rules established by European directive 2006/123/CE expressly exclude the taxi service sector from the application of the deregulatory measures which the directive introduced for the internal market. (recital 21).

In 2010, an amendment to Law n. 21/1992 was proposed - though subsequently rejected - in order to restore the former provision by removing the obligation of vehicle hire with driver service to book at, leave from, and return to the same garage after each ride. Subsequent statutory measures which aimed to deregulate the market did not introduce any change in the taxi service sector, but removed, as a general rule, the ban on performing economic activity outside an established geographic area.

Equally ineffective in terms of deregulation of the sector was the 2015 legislative proposal¹³. This proposal included a clause repealing the obligation of hired vehicles with drivers to park in a garage located in the city where their authorization was granted, and to leave from and return to the same garage after each ride. However, the clause was removed from the proposal during the approval process.

4. Regulation, planning and deregulation in the pharmacy sector.

Various aspects of drug sales are also heavily regulated. A careful analysis of the existing regulation and of its development over time can help establish the extent of deregulation in the pharmacy sector.

The Italian regulatory framework for the pharmacy sector has long been characterized by a restrictive and precise planning of the territorial distribution of chemists' shops. Law 468 of 1913¹⁴, the so-

¹² See Article 29, par. 1-quarter of the Law No. 14, of February 27 2009.

¹³ House of representative act No. 3012, of April 3, 2015.

¹⁴ Law No. 468, of May 22, 1913.

called 'Giolitti reform,' introduced an accurate plan for the distribution of pharmacies based on a ratio of available pharmacies per number of citizens with the intent to guarantee a widespread presence of pharmacies in the country. This ratio used to be one pharmacy per 4,000 customers in cities and towns with less than 12,500 inhabitants and one pharmacy per 5,000 customers in cities and towns with more than 12,500 inhabitants. The distribution plan also set the minimum distance between pharmacies at 200 meters.

Both Law n. 475/1968¹⁵ and subsequent Law n. 362/1991¹⁶ concerning the reorganization of the pharmaceutical sector adopted the same distribution system. In order to guarantee a widespread distribution of pharmacies in the country and, more specifically, to facilitate the accessibility of pharmacy service in less populated areas, Regional Law introduced subsidies and residence allowances for chemists operating in such areas and also granted pharmacies located in the countryside and small towns a discount for access to the national health care system¹⁷. New rules for the territorial distribution of pharmacies were introduced by article 11 of the above-mentioned Law Decree n. 1/2012. The Legislative Decree increased the number of available pharmacies to one per 3,300 inhabitants (with the possibility of opening another pharmacy should the surplus population exceed 50 per cent of 3,300 inhabitants). It also gave regional authorities the power to allow more pharmacies to be established - within a limit of 5 per cent and provided that no other pharmacy was within a 400-meter distance - inside railway stations, civilian national airports, marine stations, and gas stations along roads or motorways with high traffic density which were equipped with hotels and restaurants. In addition, Legislative Decree n. 1/2012 provided that pharmacies could open inside shopping malls and large sales establishments with more than 10,000 square meters of floor surface, as long as the distance from an existing pharmacy was at least 1,500 meters.

A certain margin of discretionary power has been conferred

¹⁵ Law No. 475, of April 2, 1968.

¹⁶ Law No. 362, of November 8, 1991.

¹⁷ Art 1, Law No. 221 of March 8, 1968.

upon LAs in order to facilitate access to the pharmaceutical service. However, as the decree has not modified the distance and distribution criteria, they are still expected to implement an allocation plan for pharmacies which abides by said criteria. The ownership of pharmacies and the procedures to transfer pharmacist licenses are also heavily regulated. Pharmacy ownership structure can be distinguished as public or private ownership. Public pharmacies are owned by the municipal authorities of the city or town where they are situated. Initially public pharmacies were regulated according to a royal decree of 1925¹⁸ authorizing LAs to run pharmacies.

According to both state Laws governing public services and local legislation, LAs are authorized to exercise their pre-emption right to acquire ownership of 50 per cent of unoccupied pharmacies and 50 per cent of newly established ones, which are opened on the basis of the local distribution plan. Under the Local Government Act of 1990¹⁹, pharmacies owned by LAs can be managed via: a) self-management; b) an *ad hoc* enterprise; c) a consortium of LAs; or d) a joint-stock company established between an LA and the pharmacists who were previously working in a public pharmacy. Once the company has been established, the aforesaid pharmacists are no longer employees of the LA.

The ability to exercise their pre-emption right and to select one of the managerial models is one of the 'exclusive and discretionary' powers of LAs²⁰. When there is only one unoccupied or newly established pharmacy, the exercise of the pre-emption right and the process of competitive selection occur alternatively. When there is an odd number of unoccupied pharmacies, the management of the remaining pharmacy is preferably assigned to an LA. According to legislative decree n. 1/2012, LAs are explicitly denied the exercise of their pre-emption right whenever public authorities decide to use a competitive selection process. However, until 2022, they will still be allowed to exercise their pre-emption right on pharmacies situated in

¹⁸ Royal Decree No. 2578, of October 15, 1925.

¹⁹ Law No. 142, of August 7, 1990.

²⁰ Corte dei Conti, Regional Control Section for Regione Lombardia, decision No. 70, of February 3, 2011.

railway stations, civilian international airports, etc. Those LAs which have exercised their pre-emption right under such provisions cannot transfer ownership or management of the pharmacy. If they relinquish ownership, the pharmacy will be considered unoccupied and therefore subject to reassignment according to the above-mentioned procedure.

Private pharmacies can be owned by individuals, partnerships, or Ltd cooperatives. Ownership of or shares in a private pharmacy can be acquired by contract, inheritance, or - if the owner surrenders his/her license - by competitive selection. Certified pharmacists possessing the required qualifications, such as a degree and a board certification, may participate in the competitive selection process, which is organized by Italian municipalities every four years. The most successful candidates are given a newly established or unoccupied pharmacy. Ownership of the pharmacy cannot be transferred until three years have elapsed since the issuing of the authorization by the competent authority. Once a pharmacy ownership has been transferred, the right to ownership of a new pharmacy can be exercised only once. This right is forfeited if a new pharmacy has not been purchased within two years from the transfer date. In any case, former owners who transfer ownership forfeit the right to participate in competitive selection for the assignment of a pharmacy for the next ten years.

The 2015 legislative proposal regulating the market and competition²¹ has relieved Ltd cooperatives of some of the legal burdens involved in running a pharmacy through the following legislations: by repealing the obligation of partners to be certified pharmacists or to obtain specific academic qualifications; by removing the ban on owning more than four pharmacies in the same province; and by allowing partners to employ a certified pharmacist as a manager, thus relieving them from the obligation to personally manage the pharmacy.

The Italian pharmaceutical sector is also affected by specific restrictions in terms of the types of drugs that can be sold in pharmacies and para-pharmacies. Prior to the approval of Decree n.

²¹ House of representative Act No. 3012, of April 3, 2015.

223/2006, the sale of drugs was restricted to those pharmacies which had been opened in accordance with the local distribution plan. Article 5 of Decree n. 223/2006 authorizes para-pharmacies to sell over-the-counter or self-medication pharmaceuticals and any other pharmaceutical or product for which no medical prescription is required, provided that at least one certified pharmacist works at the para-pharmacy. Since the introduction of the decree, the range of pharmaceuticals that can be sold by para-pharmacies has been broadened. In addition, Art. 33 of Law Decree No. 201/2011 established that 'any contractual conditions and commercial practice adopted by pharmaceutical firms which should result in unjustified discrimination of para-pharmacies, shall constitute unfair commercial practice and will be punished accordingly'²².

It can be concluded that the sale of pharmaceuticals has benefited from a certain degree of deregulation, not only in terms of the liberalization of drug commerce, but also in terms of prices. The 'Bersani Act' actually introduced the opportunity for producers and distributors of pharmaceuticals to freely offer discounts 'as long as they are clearly visible and legible and are offered to all customers'.

5. Quota-system and maximum limits on the number of professionals.

A review of the rules regulating the two sectors which are being taken into consideration in this paper reveals that the full development of competition still remains restricted to a great extent. For example, limits to the number of professionals are a common feature in both sectors. In the taxi sector, these limits are the result of the maximum number of licences granted, whereas in the pharmaceutical sector, they derive from the strict system of territorial distribution which imposes a maximum number of pharmacies per number of inhabitants in a given municipality. Such provisions result in a strict quota-system which does not allow new professionals to enter the market, except in cases when an existing pharmacy becomes available or a taxi licence is transferred in the secondary market.

²² Law Decree No. 201, of December 6, 2011.

Although these limits on competition raise many justified doubts as to their legitimacy, both domestic courts and the European Court of Justice have confirmed the legality of these provisions²³.

The case Law states that provisions setting the maximum number of professionals in any given sector are important for consumer protection, since they favour a suitable balance between offer and demand, avoid useless redoubling of service, and guarantee the availability of the service in geographically isolated or disadvantaged areas. This argument is supported by the observation that the quota-system also guarantees established professionals in these sectors a suitable income. Courts have repeatedly underlined the importance of this aspect with specific reference to the pharmaceutical sector, stating that a reduction in pharmacists' incomes may negatively affect the quality of the service offered to clients²⁴. In other words, it would appear that the necessity of not 'disrupting' the smooth running of existing activities has led courts to legitimize the existing regulatory system. However, it is still doubtful whether a legitimate quota-system is actually capable of protecting consumers and guaranteeing a high level of service. Some authors suggest that other measures - like establishing a minimum number of professionals - could achieve the same purpose without negatively affecting competition²⁵. A removal of the quota system by

²³ Italian Constitutional Court, decision No. 4, January 9, 1996; European Court of Justice, judgment of June 1, 2010, Grand Chamber, Blanco Pérez and Chao Gomez, C-570/2007 571/2007; European Court of Justice, judgment of 5th December 2013, Venturini and others, cases from C- 159/2012 to C- 161/2012; Tar Puglia, Section II, decision No. 278, of January 31, 2014. F. Levi, *Aspetti pubblicistici dell'apertura e gestione delle farmacie*, in AA.VV., *Atti del XVIII Convegno di studi di Scienza dell'Amministrazione* (1975); M. Delsignore, *Il contingentamento dell'iniziativa economica privata. Il caso non unico delle farmacie aperte al pubblico* (2011).

²⁴ European Court of Justice, Venturini and others, joined cases from C- 159/2012 to C- 161/2012, of December 5, 2013; Tar Puglia, Section II, No. 278, of January 31, 2014. G. Licata, *Considerazioni sulla 'liberalizzazione della vendita di (alcuni) medicinali al di fuori della rete di distribuzione delle farmacie 'tradizionali'*, in F. Manganaro, A.R. Tassone, F. Saitta (eds.), *Liberalizzare o regolamentare: il diritto amministrativo di fronte alla crisi*, *Atti del XVII Convegno di Copanello*, 29-30 giugno 2012 (2013); N. Salerno, *Le farmacie nel diritto dell'economia*, 1 Dir. Econ. (2011).

²⁵ M. Delsignore, *Il contingentamento dell'iniziativa economica privata*, cit. at 23, 154 ff.;

introducing a minimum number of professionals, which would vary depending on the market's demand and supply, would still guarantee a full satisfaction of demand while also offering consumers improved quality of service. An increased number of pharmacies or a higher concentration of taxis in the same area would not cause any disadvantage for consumers, whose demand would be guaranteed by the minimum number system. In addition, they would have the opportunity to choose a specific service or product on the basis of the prices and quality offered, which would determine, over the medium-long term, a selection of professionals. It is true that increased competition in sectors previously subject to a quota-system would negatively affect the income of professionals - with potential consequences on the quality of the service offered. This is a well-known, unavoidable outcome of deregulation. However, the removal of the quota-system and the concurrent loss of income would inevitably drive professionals to sharpen their entrepreneurial skills so as to allow their activity to survive and thrive in a more competitive market, with positive effects in terms of quality and costs.

Despite the clear benefits that may be derived from the 'minimum number' system, the quota-system still seems to offer an extra advantage as it guarantees a far-reaching service even in geographically isolated or scarcely inhabited areas²⁶. However, it should be considered that even the quota-system cannot ensure an even geographical distribution given that no public administration can force professionals to work in a certain area. Therefore, neither the quota-system nor the 'minimum number' system can guarantee uniform and widespread distribution, which can only be obtained through direct intervention by public authorities²⁷ and by means of measures aimed at encouraging voluntary activity in uncovered areas²⁸.

²⁶ Italian Constitutional Court, decision No. 27, of February 4, 2003.

²⁷ See paragraph 13.2.

²⁸ To this end L.A.'s pre-emption right for ownership of new or vacant chemist's shops would be justified. Given the inadequacy of private operators to guarantee public interests. L. Martini, *L'autotrasporto pubblico non di linea: il servizio taxi*, in A. Brancasi (ed.), *Liberalizzazione del trasporto terrestre e servizi pubblici economici*, (2003).

In light of all the above-mentioned considerations, the ‘minimum number’ system would appear to be the best solution, as it offers the same advantages as the quota system without negatively affecting competition. What remains to be seen is whether limits to competition are still necessary and legitimate on the basis of other considerations, including the public nature of the services provided and the need to protect specific rights.

5.1. Legitimacy of domestic limits to competition in light of the allegedly public nature of the service provided.

The term ‘public service’ is repeatedly used in the Italian legal system²⁹. However, no clear definition of the services which fall into this category is provided. Over the years there have been attempts at establishing an undisputed definition of the term, given that it is only the public nature of a service which can legitimate restraints to competition. In the absence of a clear definition of ‘public service’, the definition ‘local public service of an economic nature’, which is provided by the Italian legislation, can be used as point of reference given that it has the same content as the definition ‘services of general economic interest’ (S.G.E.I.), which was introduced by the EU under provisions 14 and 106, paragraph 2, of the Treaty on the Functioning of the European Union (TFEU)³⁰. In order to fall under these definitions a service must have been recognized as compulsory by a public authority, and must be provided either directly, by a public authority, or through private operators in order to meet a community’s needs. Both requirements impose restrictions on operators in terms of how they provide the service, as well as preventing them from quitting the service at any time³¹.

²⁹ Legislative Decree No. 267, of August 18, 2000; Law No. 146, of June 1990, n. 146, modified by Law No. 83, of April 11, 2000; Art. 358 Italian penal code approved by Royal Decree No. 1398 of October 19, 1930; Art. 23-bis, Law No. 133, of August 6, 2008.

³⁰ Italian Constitutional Court, decision No. 325, of November 3, 2010, n. 325 and Italian Constitutional Court, decision No. 272, of July 13, 2004.

³¹ When providers of public services are private operators, however, such restrictions are in conflict with the freedom of economic initiative, which is safeguarded by the Italian constitution, as these operators cannot exercise the right

Under the second paragraph of article 106 TFUE, the public nature of a service makes it possible for public administrations of member states to set down specific limitations to competition in order to satisfy specific communal needs. Therefore, all limitations set forth by a member state in order to compensate for the inadequacy of private action in a certain sector are legitimate if considered necessary as outlined above.

It is therefore important to verify whether and to what extent the economic activities under scrutiny in this paper can be qualified as public services and hence if the legislative limitations imposed on them can be justified by the need to provide a compulsory service to a community. To this end it is appropriate to make reference to three common features of public services which have been underlined in the literature: compulsoriness, access to the market after having obtained a licence or authorization, and regulated prices or fares³². In this paper it is argued whether these three features are also common to the taxi and pharmacy services. In order to assess the compulsory nature of a service it is necessary to examine state and regional regulations aimed at guaranteeing its continuity.

In the case of the taxi and pharmacy services, even a brief analysis of such regulations leads us to the conclusion that although their aim is to guarantee continuity of service to consumers, the element of compulsoriness is absent as private operators can quit the activity at any given time, and public authorities have no obligation to provide an alternative service³³. However, public services cannot be considered as such unless public authorities directly guarantee the continuity of the service. In the case of the two sectors under examination, public authorities do not act as providers but rather as regulators of private operators. For instance, in the pharmacy sector the scope of activity of lawmakers and regional regulatory frameworks is limited to decisions regarding chemist shops' opening

to stop providing the service at their discretion and at any time. A. Brancasi, *Il trasporto terrestre e la liberalizzazione dei servizi pubblici a carattere imprenditoriale*, cit. at 30.

³² L. Martini, *L'autotrasporto pubblico non di linea*, cit. at 27, 253- 266.

³³ L. Martini, *L'autotrasporto pubblico non di linea*, cit. at 27; M. Delsignore, *Il contingentamento dell'iniziativa economica privata*, cit. at 23.

hours, and management. However, they do not bind either individuals or corporations to carry out the activity on a permanent basis. Testament to this is the fact that the distribution of night shifts - which guarantees the right of consumers to the service - is made on the initiative of the single operator or on the basis of binding shift agreements established by the sector's trade unions³⁴.

In the end, in the sectors under examination, it is the private economic initiative that guarantees the satisfaction of consumers' even if public authorities still control licences and fares. Given that a key feature of public service, compulsoriness, is absent in both the taxi and pharmacy services, limits to competition imposed on the basis of the allegedly 'public' nature of these services are not justified.

5.2. Social interests as a limit to economic freedom. 'Free competition' as a limit to 'competition'.

Another interesting point to consider is whether and to what extent limits to competition are legitimate if aimed at protecting social interests. For example, taking the Italian taxi and pharmacy services into consideration, what would be the social and economic impact of a removal of the quota system, if combined with the abolition of limits on holding more than one licence?

The existing limits on holding more than one licence (in the case of taxis) and more than one chemist's shop (in the case of the pharmacy service) prevent big companies and multinational corporations from accessing and monopolizing the market, which would have an undesirable social impact by destroying competition, and consequently increasing prices and flattening the quality of service³⁵. Such a detrimental social and economic impact raises some concern regarding the social repercussions of unlimited competition. In this regard, free competition, which is promoted by the EU and encourages total removal of limits on economic freedom, is in conflict

³⁴ Tuscany Regional Law No. 16, of February 25, 2000.

³⁵ U. Mattei, *Liberalizzazione, mercati e legalità*, www.leggiditalia.it; A. Garibaldi, *I "padroncini" temono New York. Licenze regalo per ricompensarli*, in *Corriere della Sera*, 14th January 2012 .

with the concept of competition itself³⁶. By contrast, a more 'supervised' kind of competition, such as that guaranteed by the Italian constitution, can maintain a fair balance between economic interests and social values. The European Court of Justice only seems to legitimate limits to competition which are aimed at protecting individuals' fundamental rights such as health. In the matter of drug distribution, for example, the European Court of Justice legitimated the licence quota-system introduced by a member state in order to ensure the quality of the pharmacy service³⁷. However, when ruling on the limit to the establishment of large shopping centers imposed by a member state, the Court did not consider it legitimate, as such a limit was not aimed at protecting a fundamental right of individuals, but the social/economic interests of consumers³⁸. The Italian Constitutional Court, while recognizing the importance of free economic initiative as a fundamental right of all operators, tends to legitimate a wider spectrum of limits on competition³⁹. The rationale behind this approach is that, in the taxi service and pharmacy sectors, a high number of operators can help ensure lower prices and higher quality of the service provided, thus safeguarding consumers and bringing social benefits. However, the limits to competition imposed by Italian legislators seem to have favoured the specific interests of regulated professions rather than consumers' interests.

³⁶ E. Picozza, *Le situazioni giuridiche soggettive nel diritto comunitario*, in M.P. Chiti, G. Greco (eds.), *Trattato di diritto amministrativo europeo* (2007). J. Wolswinkel, *The Allocation of a Limited Number of Authorizations. Some General Requirements from European Law*, in L. Arroyo, D. Utrilla (eds.), *La administracion de la escasez. Los fundamentos de la actividad administrativa de adjudicacion de derechos limitados en numero* (2015).

³⁷ EU Court of Justice, judgement of 5 December 2013, joined cases Venturini, from C-159/12 to C-162/12.

³⁸ EU Court of Justice, judgement of 24 March 2011, *European Commission v Kingdom of Spain*, C-400/08.

³⁹ Italian Constitutional Court decision No. 94, of May 22, 2013; Italian Constitutional Court decision No. 270 of June 23, 2006; Italian Constitutional Court, decision No. 241, of May 15, 1990; Italian Constitutional Court, decision No. 223, of December 16, 1982.

6. Protection of 'traditional' service to the detriment of alternative services.

Another characteristic of the sectors under investigation is the presence of rules aimed at discouraging alternative delivery of the service. In the pharmacy service, for example, the disincentive is that prescription drugs can only be sold in a registered pharmacy. Such a restriction, which prevents competition between pharmacies and para pharmacies, is based on the assumption that only qualified professionals possess the adequate skills to sell prescription-only medicines. The validity of this assumption, however, is questionable for a very simple reason. The Law provides that para-pharmacies must have a qualified pharmacist in order to operate. However, given that non-prescription drugs can be sold without the supervision of a pharmacist⁴⁰, compelling para-pharmacies to operate under the supervision of a qualified pharmacist without allowing them to sell prescription medicines seems a paradox. In addition, given that certain medicines can only be prescribed by physicians and the pharmacist's basic duty is to check prescriptions before dispensing the medication, the limits imposed on para pharmacies are not justified, as they do not appear to coincide with the specific needs of patients, and end up favouring a certain category of professionals. This is even more the case if we take Legislative Decree n. 17/2014 (implementing Directive 2011/62/EU) into consideration, which established that non-prescription drugs can be sold and bought online without the supervision of a pharmacist. In order to avoid these contradictions, two possible solutions can be identified. The first involves removing the obligation for para-pharmacies to sell non-prescription drugs under the supervision of a pharmacist, a requirement which should be compulsory only for registered pharmacies. The other solution is to allow para-pharmacies to sell prescription drugs under the supervision of a qualified pharmacist. The distinction between pharmacies and para-pharmacies would no longer exist and the restriction on selling prescription drugs would be the absence of a pharmacist, a limit which would only affect online sales.

⁴⁰ Law decree No. 223, of July 4, 2006 converted in Law No. 248, August 4, 2006.

Similar considerations apply to the existing restrictions which do not allow other alternative operators to compete with regular taxi services⁴¹. For example, alternative, authorized operators providing vehicle hire with driver service are required to start and complete each fare at the same garage, which is both time-consuming and less consumer-friendly. In addition, limits are imposed on the number of vehicles used to provide the service. Such restrictions cannot be justified by advocating the need to guarantee a good transport service. By allowing competition, the service would undoubtedly improve in terms of number of vehicles available and lower prices. Alternative and more technologically-advanced methods of booking and paying would also be introduced, thus meeting the demands of a wider range of users.

Again, as in the case of the pharmacy service, imposing restrictions on alternative taxi services should be aimed at protecting consumers' safety by preventing inexperienced or unqualified operators from accessing the market. However, given that both regular and alternative taxi service providers must meet the same requirements in order to operate, they should benefit from the same market opportunities and be subject to the same limits.

In other words, in the absence of specific reasons for protecting consumers' interest, banning alternative taxi and pharmacy services merely protects 'traditional services'. It is also necessary to consider that alternative services can lead to technological advances, and that the need to adapt domestic rules to new technology is currently at the center of debate not only in Italy but also in other countries. In order to satisfy the needs of a more technological society, the Italian Constitutional Court has recently encouraged legislators to amend current regulations by removing barriers to entry for alternative services⁴².

⁴¹ F. De Benedetti, *Uberpop, monopoli e interessi dei cittadini*, *Il Sole 24 ore*, 26th June 2015; E. Calvano, M. Polo, *Tra Uber e i tassisti, perde il consumatore*, www.lavoce.info.it, (2015); G.L. Clementi, *Liberalizzazioni, perché l'Italia ha un disperato bisogno (anche) di Uber*, *Il Sole 24 ore*, 28th May 2015.

⁴² Italian Constitutional Court decision No. 265, of December 15, 2016.

In the same vein, in their Report n. 1354/2017⁴³ the AGCM highlighted the importance of alternative taxi and pharmacy services in improving quality and reducing costs and invited legislators to reform Act of Parliament n. 21/1992 accordingly.

7. Inheritance of profession and protection of inter-generational position.

Several studies concerning the inheritance of a profession in Italy show the impact of family relationships on the choice of a job⁴⁴. Family members inherit not only the profession itself but also access to the market which includes advantages like availability of full information regarding operating conditions, direct transfer of knowledge, and potential goodwill. Such advantages cannot be removed and they are present in both regulated and non-regulated professions. However, professional inheritance should not be confused with the phenomenon of ‘amoral familism’, which is well-known in sociology and can lead to illegal actions aimed at facilitating the beginning and continuity of a certain profession⁴⁵. From our perspective, it is important to examine how some provisions regulating taxi and pharmacy licences can limit access to the market. For example, direct transfer of a taxi or pharmacy licence to a relative who already has the necessary qualifications (in the case of death, beneficiaries who are related to the deceased have 18 months to obtain the required qualifications) limits access to the market for operators who are not beneficiaries of direct transfer.

⁴³ AGCM, AS1354 Riforma del settore della mobilità non di linea, 9 Bollettino Settimanale AGCM, 54 (2017).

⁴⁴ M. Pellizzari, G. Basso, A. Catania, G. Labartino, D. Malacrino, P. Monti, *Legami familiari ed accesso alle professioni in Italia*, 4 July 2011 Workshop Dinastie Professionali, organized by Università Bocconi and Fondazione Rodolfo DeBenedetti, www.frdp.org; M. Pellizzari, G. Pica, *Liberalizzare i servizi professionali: evidenza empirica sugli avvocati italiani*, 4 July 2011 Workshop Dinastie Professionali, organized by Università Bocconi and Fondazione Rodolfo DeBenedetti, www.frdp.org.

⁴⁵ E. C. Banfield, *The Moral Basis of a Backward Society*, (1958).

8. Impact of the 'close-corporation' system under investigation and difficulties in deregulation: the 'regulatory capture'.

The services under investigation are characterized by strong representation, which derives from Italian medieval and ancient Roman guilds, and was brought to new life during the Fascist regime⁴⁶. Their strong representative power allows these interest groups to influence political decisions in order to preserve their positions of privilege. They exercise their power either directly by claiming their right to participate in Parliamentary hearings and/or indirectly by means of strikes or resorting to mass media to advance their claims⁴⁷. Once they have obtained a certain market arrangement by using their power, these interest groups exploit their electoral leverage to preserve existing privileges, thus producing the so-called 'regulatory capture' effect⁴⁸.

Both the interest groups under investigation can rely on a number of associations which handle their relationships with public decision-makers and protect their interests in the event of regulations aimed at restricting and/or modifying the existing market structure⁴⁹. Such a task is frequently carried out during Parliamentary hearings when the representatives of these groups have the opportunity to protect their vested interests by directly participating in the policy-making process⁵⁰. While the direct participation of trade associations in the regulatory function is fundamental in order to make legislators more aware of the specific needs of certain market sectors, it can also

⁴⁶ S. Cassese, *Lo Stato fascista*, (2010). L. Ferrara, *Cesure e continuità nelle vicende dello Stato italiano. In particolare, il corporativismo fascista e quello cattolico*, 4 Ist. Federalismo, 935 ff. (2011).

⁴⁷ M. Di Giulio, *I gruppi di interesse nei trasporti*, XXVIII Convegno della Società Italiana di Scienza Politica Perugia, 11th -13th September 2014, www.sisp.it (2014).

⁴⁸ G. Stigler, *The Economic Theory of Regulation*, vol. 1 n. 1 Bell J. Econ. & Manag. Sci., 3-21 (1971); J.E. Stiglitz, *The price of inequality*, cit. at. 3; S. Cassese, *Amministrazione pubblica e interessi in Italia*, 2 Dir. e Soc., 223 ff (1992).

⁴⁹ S. Cassese, *Amministrazione pubblica e interessi in Italia*, cit. 51; S. Cassese, *Lo Stato introvabile: Modernità e arretratezza delle istituzioni italiane*, (1998).

⁵⁰ C.P. Guarini, *Riflessioni in tema di regolazione del mercato attraverso Autorità indipendenti*, in F. Gabrielli, G. Bucci, C.P. Guarini (eds.) *Il mercato: le imprese, le istituzioni, i consumatori* (2002).

make it more difficult for legislators to remove existing barriers to competition.

The 'regulatory capture' effect is particularly relevant to the taxi and pharmacy services since their economic policies are determined locally. The proximity of 'regulators' to the 'regulated parties' increases the political clout of these interest groups and makes their consent a fundamental part of the decision-making process⁵¹. In order to verify the role played by these groups as potential obstacles to deregulation it is useful to compare a series of Law Decrees - which are issued by the government - with the Acts of Parliament which converted them into Law. This transition, in Italy, is punctuated by Parliamentary hearings that are petitioned by trade associations⁵². A clear example is the provision originally included in the 'Bersani' Law Decree of 2006, which was aimed at removing limitations on the same operator holding more than one taxi licence. Following several Parliamentary hearings and a well-orchestrated mass-media campaign at the hands of trade associations, the provision was not included when the decree was converted into Law. A provision included in the first draft of the Competition Bill of 2015, which aimed at removing the obligation for hired vehicles with drivers to leave from and return to the same garage, achieved the same outcome. The pharmacy service suffered the same fate when, in September 2015, the proposal to allow physicians, pharmaceutical companies and sales representatives to own a pharmacy was rejected after several Parliamentary hearings with trade associations. Such a repetitive pattern in Parliamentary procedures highlights the power exercised by trade associations in both the taxi and pharmacy services and confirms the role they play in blocking deregulation policies.

It is now clear that certain features characterizing the pharmacy and taxi services can be obstacles to competition. The following paragraphs are focused on the social and economic impact

⁵¹ United States Supreme Court, Decision No. 13-354, of February 25, 2015, North Carolina State Board of Dental Examiners v. Federal Trade Commission.

⁵² Taxi trade associations, 7th February 2012 (Decree Law n. 1/2012), www.senato.it; Chemists trade unions 12th June 2015 (Government Bill No. 2085/2015), in www.documenti.camera.it; Taxi drivers associations and vehicle hired with drivers associations 28th February 2017 (Law 27th February 2017, n. 29).

of deregulation, and analyze the social risks involved in the removal of restrictions on competition.

9. Removal of 'not market' rewards and redistribution of income. Premises.

Theories that advocate a positive social effect of deregulation claim that competition can benefit from the removal of positions of privileges, or 'non-market rewards', which obviously act as a disincentive for operators to improve the quality of their service while also encouraging monopolistic price strategies. Repealing regulations which allow privileges and create barriers to market entry would negatively affect the income of established operators, but it would also lay the foundation for a redistribution of income on a competitive basis. In addition, there would be a transition from a condition of 'concentrated advantages and spread costs', where the advantages of an elite of established operators means disadvantages for consumers and other operators, to a fairer market condition of 'concentrated costs and spread advantages', where the removal of privileges would benefit not only new operators but also consumers⁵³. However, opening the market to competition requires additional, concurrent measures in order to prevent deregulation from producing negative social and economic repercussions. The aim of the following chapters is to analyze the social and economic effects of deregulation, and identify appropriate measures aimed at ensuring a socially and economically sustainable deregulation process.

10. The 'loss of tranquility' and the development of technologically advanced, high-quality services.

The removal of limits on economic initiative has an immediate effect on the behavior of established operators who, being deprived of their position of privilege, experience a 'loss of tranquility'⁵⁴. In

⁵³ G. Amato, L. Laudati, *The Anticompetitive Impact of Regulation*, (2001).

⁵⁴ R. Costi, M. Messori, *Per lo sviluppo. Un capitalismo senza rendite e con capitale*, (2005).

addition, access to the market by new operators boosts competitive behavior in terms of reduction of prices and improved technological innovations. As a result, established operators need to adopt more competitive strategies, by focusing on the quality of the service offered in order to preserve their position in the market. In this scenario, more and more operators will strive to provide increasingly technologically advanced, high quality services. The Uber ‘case’ exemplifies this phenomenon clearly. The American firm Uber offers private car transportation through a software mobile application (‘app’) that directly connects passengers and drivers– as well as traditional taxi service by registered professionals with a licence – by offering a platform for private transportation: the so-called ride sharing (UberPop)⁵⁵. Unlike other ride-sharing systems, Uber only accepts payment by credit or pre-paid cards with no direct exchange of money between driver and passenger. In addition, the price of fares can be estimated on the basis of the itinerary and it is possible to book a fare using the application which identifies the closest car. This service was offered in Italy from 2013 to 26th May 2015, when the Court in Milan suspended the service by upholding the claim for unfair competition advanced by taxi drivers’ trade unions. Despite its short life, Uber drove established taxi operators to improve their technological standards by introducing innovative applications like ‘IT Taxi’ in order to become more competitive.

11. Deregulation and short-termed price reduction.

A decrease in prices consequent to increased competition is an economic factor which can be easily observed in any market⁵⁶. A higher number of operators leads to competition and, more specifically, to the adoption of different market strategies, including those based on price reduction. In order for this process to begin,

⁵⁵ See R. Griffiths, R. Harrison, H. Simpson, *The link between product market reform, innovation and EU macroeconomic performance*, European Economy-Economic Paper, (2006); P. Aghion, R. Blundell, R. Griffiths, P. Howitt, S. Prante, *The Effects of entry on incumbent innovation and productivity*, 91 Rev. Econ. Stat., 20-32, (2009).

⁵⁶ See, AGCM, *Relazione annuale 2013*, cit. at 5; S. Fisher, R. Dornbusch, R. Schmalensee, *Economia*, (2010).

however, barriers to the pursuit of certain economic activities must be removed and fixed prices must be abolished. Prices generally start to decrease soon after the opening of the market to competition and, over the medium-long term, those professionals who are not able to adapt to a lower level of prices are pushed out⁵⁷. This results in an advantage for consumers in terms of purchasing power, the effect of which will be even stronger with widespread deregulation⁵⁸. In order to find evidence for the social and economic impact of increased competition and reduced prices, it is necessary to observe a market where the process of deregulation has been started - even if only partially - and a certain elasticity of prices has been achieved by either removing fixed prices or opening the market to discounts. An analysis of the pharmacy service which has been characterized by partial deregulation - limited to the selling of over-the-counter drugs - enables us to compare the economic and social results achieved through partial deregulation and those obtained by means of more extensive deregulation.

The deregulation of the sales of over-the counter medicines that was started by the 'Bersani' Law-Decree in 2006 has greatly boosted the business of para-pharmacies and other drug stores, thus triggering a decrease in prices. Evidence of this process can be found by comparing the prices of over-the counter drugs in registered pharmacies before and during deregulation. While the price of drugs sold in registered pharmacies increased by 35 per cent from 1997 to 2005 (before deregulation) it only reached 12 per cent between 2005 and 2015 (during deregulation)⁵⁹. Taking inflation rates into account, such results are even more significant and highlight the role played by para pharmacies in reducing prices. Over the same time frame, the price of over the counter drugs sold in para pharmacies was reduced

⁵⁷ S. Fisher, R. Dornbusch, R. Schmalensee, *Economia*, cit. at 60, 189.

⁵⁸ Press release of January 10, 2012, published by Organizzazione Nazionale Federconsumatori, www.federconsumatori.it (2012). Unione Nazionale dei Consumatori, *Liberalizzazioni - Per le famiglie risparmi dimezzati -*, www.consumatori.it (2012).

⁵⁹ Data collected by Altroconsumo analysing drug's prices and discounts practiced by pharmacies and para-pharmacies from 2006 to 2015; *Liberalizzazione del mercato farmaceutico, ancora molto da fare, Dossier Tecnico*, in www.altroconsumo.it (2015).

by 4 per cent. Generally, para pharmacies are more inclined to adopt aggressive price strategies by offering discounts on medicines up to 22 per cent, while discounts in registered pharmacies barely reach 8 per cent. This can be explained by the fact that para-pharmacies are not allowed to sell prescription drugs and are not, therefore, protected by any position of privilege. Consequently, in order to compensate for this disadvantage, they attract customers by offering much lower prices for non-prescription medicines⁶⁰. These observations enable us to predict a further decrease in prices should the remaining positions of privileges reserved for pharmacies be removed. It is hypothesized that a complete deregulation of the pharmacy sector, combined with the currently adopted discount strategies, would produce savings between 620 and 1230 billion euros in the yearly amount of money spent on drugs⁶¹. However, while dramatic price decreases can produce significant social and economic benefits for consumers, a free market and the removal of restrictions to the maximum number of licences involve serious social risks as they favour larger companies and multinational corporations⁶². Having more financial resources and capital, large firms or groups can afford to lower their prices to levels that result in little profit or even losses in order to push competitors out of the market. Once their monopolistic position on the market is well established, the positive effects of competition will be nullified and these industrial giants will acquire an even stronger position of privilege. The decrease in the prices of drugs achieved in the first stage of deregulation will therefore be as short-termed as competition since the newly established large firms and groups will have the power to increase prices at their discretion. The social and economic impact of the new oligarchy will be extremely negative for more than one reason. Firstly, it will produce concentrated wealth and prevent the distribution of resources, thus hampering sustainable economic

⁶⁰ G. Licata, *Considerazioni sulla 'liberalizzazione' della vendita di (alcuni) medicinali*, cit. at 24, 205-237.

⁶¹ Available data concerning 2013; N.C. Salerno, *Valutazione d'impatto della riforma delle farmacie*, www.reforming.it (2015).

⁶² U. Mattei, *Liberalizzazioni, Mercati e legalità*, cit. at 38.

growth. Secondly, the acquisition of a high number of licences by large corporations and multinational companies will imply that pharmacies and taxi services will no longer be run by self-employed individuals who are directly responsible for their service and have the success of the business at heart, but rather by a number of employees, who are usually hired on a temporary basis and who are typically less motivated to provide good customer service. The social impact of this development will be two-fold and will involve not only a lower quality of the service provided, but also a dramatic change in employment practices with a transition from self- and permanent employment to temporary job contracts. These social risks could be avoided by implementing a sort of 'supervised' competition which would involve opening the market to new operators while preserving limits to the number of licences owned by the same operator. In this case, restrictions would be justified by the need to ensure a sustainable economic growth⁶³.

12. Social mobility.

Alongside advantages in terms of prices and service quality, deregulation encourages social mobility, which is described in literature as the 'social revolution'⁶⁴. By removing positions of privilege and allowing a higher number of operators to access the market, it is possible to base the distribution of income on the quality and efficiency of the service provided. This positive effect acquires even more significance in Italy, a country where professional inheritance and the political power exercised by interest groups go hand-in-hand with one of the lowest rates of social mobility in industrialized countries. In 2010, the percentage of economic advantage inherited from high-income parents was at least 40 per cent⁶⁵.

⁶³ M. Libertini, *Concorrenza e coesione sociale*, 3 *Rivista O.D.C.* (2013); M. Luciani, *Sui diritti Sociali, Studi in onore di Manlio Mazzotti di Celso* (1995); R. Bin, *Diritti e Argomenti*, (1992).

⁶⁴ F. Silva, *Liberalizzazioni, consumatori e produttori*, 1 *Cons. dir. merc.*, 91 (2007).

⁶⁵ OCSE, *A family affair: Intergenerational social mobility across OECD countries*, in OCSE (ed.) *Economic Policy Reform: Going for Growth* (2010).

13. Auxiliary measures.

In the light of the observations above, it can be concluded that while deregulation involves several advantages, it can also pose a threat to social and economic welfare. The previous paragraphs have analyzed the risks deriving from indiscriminate deregulation and have highlighted the importance, for legislators, of identifying specific deregulatory measures which can guarantee a fair balance between economic and social interests. In the following paragraphs, two major categories of auxiliary measures are outlined: compensation measures and incentives.

13.1. Compensation measures.

One of the provisions included in the ‘Bersani’ Law Decree of 2006 provides an example of a compensation measure. Under this provision, no less than 80 per cent of the profit that LAs derive from granting new taxi licences should be redistributed among established taxi operators. Such a measure is aimed at compensating professionals for the damages deriving not only from increased competition but also, and more importantly, from the loss of their indirect privileges. Given that licences are granted against a payment which is based on the market value at any given time, partial or full deregulation will inevitably result in a reduction or complete loss of the licence value. Such a risk should not be ignored if the purpose of competition is not just boosting business but also ensuring social welfare through a fair distribution of income.

Compensation measures can also play a crucial role in ensuring a successful deregulation process. If established operators are compensated for any unfair damage deriving from deregulation, they will not have any legitimate reason to complain and their influence in the policy-making process will be substantially reduced⁶⁶.

13.2. Incentives.

Under this category we find provisions aimed at incentivizing

⁶⁶ C. Bentivogli, M. Calderini, *Il servizio di taxi in Italia: ragioni e contenuti di una riforma*, 5 Occasional papers, 23 cit. at 8.

private intervention in sectors and areas that are not commercially attractive and would otherwise be characterized by lack of service unless there is an intervention by the public sector⁶⁷. For example, the introduction of tax facilitations and financial incentives for pharmacists ensures access to pharmaceutical service even in isolated areas, thus positively impacting social welfare throughout the Italian territory. For example, qualified professionals who do not have the financial means to open a pharmacy in attractive locations could still invest in pharmacies situated in less urbanized areas. As well as ensuring widespread distribution of pharmacies, easier access to the pharmacy service and social mobility, this development also avoids resorting to public intervention, thus reducing public expenditure. These public savings can be used to finance incentives with no additional cost.

13.3. Common features of auxiliary measures

One common trait of auxiliary measures is that they are welfare measures, since their purpose is to avoid any social distortion that may derive from market liberalization such as unfair income redistribution, lack of social mobility and limited access to essential services.

An even more significant trait of auxiliary measures is that they are financially self-sufficient. Compensation measures find their sustenance in deregulation, as public authorities can use the additional profit deriving from granting new licences to finance them. Incentives, likewise, are financed by increased competition. The increase in private initiative brought about by tax exemption and financial aid releases public authorities from providing a service which would be extremely costly. Therefore, any cost deriving from tax exemption of financial support to operators is compensated for by public savings. The self-sufficiency of auxiliary measure is even more significant in times of economic crisis when public authorities are reluctant to invest in welfare policies.

⁶⁷ R.H. Thaler, C.R. Sunstein, *Nudge. Improving decisions about health, wealth and happiness* (2008).

14. Social effects of deregulation.

In light of the above considerations, deregulation appears to be a versatile tool which will produce different outcomes according to whether it is used to its full capacity - an approach which is encouraged by the EU - or in a limited and controlled way. In the first case, the outcome will be increased competition and economic growth over the short term. However, over the medium-long term, the continuing use of deregulation could impair or nullify the benefits of competition and even negatively impact social welfare by transferring the positions of privilege from a group of established operators to an oligarchy of large corporations⁶⁸. If deregulation is used with caution, on the other hand, it will still generate increased competition and economic growth, but will also produce significant and long-lasting social benefits such as social mobility, a more equitable income distribution, and price reduction. A limited or 'supervised' use of deregulation involves a careful examination of the existing limits on competition and an assessment of their social impact. It also necessitates the adoption of a series of auxiliary welfare measures aimed at compensating for the social distortion which is inevitably associated with deregulation.

To conclude, while a 'supervised' use of deregulation is undoubtedly the most appropriate strategy to prevent competition from negatively impacting social welfare, it is also true that adopting this approach will pose several challenges to Italian policy makers. When introducing deregulation policies, they will find strong resistance from 'close-corporation' such as the taxi and pharmacy service whose interest is to maintain the status quo. Additionally, by adhering to 'supervised' deregulation by preserving limits on competition, they will contravene EU Directives⁶⁹. It remains to be seen whether Italian policy makers will be able to conceive a regulatory framework which can ensure socially sustainable

⁶⁸ L. Einaudi, *Economia di concorrenza e capitalismo storico. La terza via fra i secoli XVIII e XIX*, 2 *Rivista di storia economica* 67 (1942).

⁶⁹ M. Ferrera, *Neowelfarismo liberale: nuove prospettive per lo stato sociale in Europa*, 97 *Stato e Mercato* 3-35 (2013); A. Spadaro, *Dai diritti 'individuali' ai doveri 'globali'*, (2005).

deregulation domestically, while still meeting the obligations deriving from being a EU Member State.