

3.1. International relations

The main developments in the international context, and the role of the Authority

In the ten years since the start of its activity, the Authority has been able to reach a primary position in the institutional context of the sector, both at Community and international level. This has been possible thanks to the high level of commitment and the results obtained in the nationwide implementation of a regulatory policy devised at Community level, together with specific attention of the Authority to the international scene, which translated into a two-way communication with the Authorities of other countries, and the active participation to the various Community and International platforms within the sector.

During the reference period, the commitment on the international front has not only continued, but in some sectors has even become much stronger.

In the sector of electronic communications, continued the constant and qualified contribution of the Authority to the review of the Community regulatory framework on electronic communications (see Framework Review), which, may we remind, consists in the review of the 2002 directives, and in an institutional regulation of a body (BEREC, Body of European Regulators in Electronic Communications) that will continue, building on the fortunate experience of the European Regulators Group (ERG), in the regulatory coordination of the Community, strengthening its institutional role and operating mechanisms.

At the time of preparation of this document, the legislative path started by the proposal of the Commission in November 2007, was unexpectedly halted by second reading voting of the European Parliament, which took place on May 6th last. In relation to the controversial issue of the safeguard of copyrights during access to available network content (highlighted at European level following the implementation by France of a particularly restrictive law on the matter)¹, the Parliament has in fact taken a back step, reinstating an amendment to art. 8 of the framework directive already approved during the first reading (Amendment no. 138), thus rendering void the political agreement, reached last march (and confirmed by the voting of the ITRE Committee of last April 21st), on the basis of which it was possible to foresee a quick approval of the reformation package.

This will mean the start of a conciliation stage next autumn, after the new Parliament comes to power.

The experience in the field, achieved during the implementation of the current framework, has enabled the Authority to supply the institutional referents at Community and national level with a technical contribution on the main regulatory issues being discussed, in pursue of the common

^{1 1} For more information on the recent French legislation see paragraph 1.1.1.

objectives of a progressive harmonization of the regulatory policies at European level, an improvement of the capacity of the regulations to sustain competition dynamics, investments, and well being for consumers.

In conjunction with the review of the legislative framework of the sector, the reference period has also seen a development at Community level of other important regulatory processes, which will have a great impact on the continental market; among them particular mention must be given to the review of regulation no. 717/2007 on international roaming, aimed at extending to the next two years the application of current legislations, with the integration of the disciplines on sms data services, and the review of the 87/372/EC directive (GSM directive), aimed at widening the range of technologies that can be used on the 900 Mhz band (up to now exclusively allocated to GSM technology).

The Commission has also continued in the processing of the two recommendation proposals on wholesale termination prices, and on the regulatory principles for the next generation access networks (the first approved last May 6th, the second currently still being processed), and, in October 2008, finalised the review of recommendation no 2003/561/EC on the procedures for the notification of international market analysis, pursuant art. 7 of directive 2002/21/EC (see Framework Directive).

Also for these topics, the Authority has made available its own technical expertise to the various legislative processing institutional quarters, becoming the preferred national point of reference in the growing stage of the sector legislative and regulatory processes of the community.

Still on the topic of electronic communications, it is worth emphasizing the commitment ensured by the Authority inside the main bodies and committees of the sector. The Authority has been confirmed as part of the ERG/IRG directive committee for the year 2009, and was appointed President of the Radio Spectrum Policy Group (RSPG) for the year 2010. In addition to requiring a strong commitment of the relevant Authority offices in the operative management of the international bodies and the coordination of the technical activities, these duties also require a consistent and preferential debate with the Commission, and all the players at institutional and market level, on all the regulatory issues of the sector. Also, the period has seen the continuation of the active participation activities of the Authority to the national delegations of the main Community and international committees of the sector.

In relation to the audiovisual sector, the period being discussed shows an increased importance of the international activities of the Authority, which goes beyond the reference framework strictly connected to the relation with the European Union Countries, or the European Council.

For the current year, one must in fact not fail to mention the strong commitment of the Authority in its role of president of the *Réseau des instances de régulation méditerranéennes (Réseau-Med)*. Such commitment was already evident during the Italian vice-presidency of 2008, with the organisation of the program of the plenum meeting, which took place in Reggio Calabria in October 2008, and the consultations for the review of the draft of the first common Réseau-Med document: the Declaration on the regulation of audiovisual contents.

The approval of this document, which represents the first declaration of common principles in terms of audiovisual regulations signed by countries of the Mediterranean basin, constitutes a further confirmation of the transnational vocation of the Authority.

The Authority continued with its commitment of bilateral collaboration with the other Authorities of the member States of the European Union, and with the activities connected with the bilateral agreements and twinning programs with bodies and Authorities from non European countries, in order to promote the European regulatory model also outside the Continental boundaries.

During the reference period, particular mention is given to the starting of the EMERG platform activities, which brings together 19 Authorities of as many countries of the Mediterranean basin, with the objective of promoting the exchange of experiences and the spreading of a common regulatory culture in adjoining areas, characterised by a tight network of commercial relations. The Authority has strongly invested in the creation of a tight collaboration within the Mediterranean region, and has given a fundamental contribution to the constitution of the new platform.

In July 2008 the Authority, leading a consortium involving BEetzA (the German Telecommunications Regulator) and Formez, was awarded the tender for a two-year twinning project with the Egyptian National Telecommunications Regulatory Authority (NTRA).

The project, operative since November 2008, follows the same path undertaken in 2005 with the two twinning projects carried out together with the Communications Regulatory Agency of Bosnia and Herzegovina, and is a demonstration of the strong commitment of the Authority in establishing and maintaining a fruitful relation with all Authorities and institutions of the international communication sector and, in particular, at community level, and within the Mediterranean region.

Lastly, the period saw a confirmation of the commitment of the Authority, since 2007 as an observer member, in the platform of central-south America regulators Regulatel.

As a conclusion, one must not fail to mention the renewed interest of the international institutional and scientific sectors for the distinctive "convergence regulator" model implemented by the national Legislator in '97, and which found its tangible expression during the ten-year experience of the Authority. This interest can be traced back to the acknowledgement that the most recent developments have finally been successful in turning the perspective of a converging market into reality, and to the subsequent need for identifying institutional solutions capable of facing the new market requirements.

Within this framework, the Authority has entered relations with several foreign authorities interested in learning more about the Italian regulatory experience, and has taken part in an international study, coordinated by the Australian Authority for the telecommunications and the media, and by the University of Sidney, aimed at providing an overall comparison of the various models of Authorities, converging and operating at global level.

Electronic communications

The legislative procedure of the Framework review has strongly engaged the Authority during the reference period, both in terms of bilateral relations, and within the Community bodies of the sector, particularly at ERG/IRG level.

It is useful to provide a short summary of the various steps of the legislative procedure, so that the contribution of the Authority to the reformation prospects may be better understood.

It is pointed out that the legislative debate - initiated in November 2007 on the basis of the proposals of the European Commission - had conducted to very distant first reading positions of the European Parliament (September 24th 2008) and of the Council (November 27th 2008, under the French presidency), both from each other, and from the original proposal of the Commission (meanwhile amended, although not significantly, at the beginning of November 2008).

On this basis, between the end of 2008 and the beginning of 2009 the Czech Council Presidency began a series of informal discussions (the so called trilogues) with the Commission and the speakers, at European Parliament level, aimed at finding common solutions in view of the second reading voting. The results of these discussions were substantially positive as far as the main topics of discussion were concerned. In fact, last March 31st 2009, the Parliament and the Council had reached a political agreement on the essential elements of the new regulatory framework. The vote of the European Parliament on May 6th of this year, although confirming the general terms of the political agreement, has in effect stopped the approval of the whole package, due to the failure to approve the compromise solution on the only theme of Amendment 138, dealing with safeguard in connection with the problem of illegal download.

The Authority has consistently attended the meetings, almost weekly, of the workgroup created by the TLC council (ensuring the presence of a national expert in the Italian delegation), and has collaborated very closely with the Undersecretaryship of Communication, and with the permanent Representation of the European Union, providing a technical contribution for the definition of the national positions on topics falling under their own responsibility, and for the preparation of CORE-PER and TLC Council meetings.

In specific terms, the main issues for which the Authority has provided a contribution relate to the new institutional setup of the Community, and the increase of independence of the national Authorities; the regulatory harmonisation instruments within the perspective of the internal market and the market analysis procedures (with specific reference to the procedures for the definition of the remedies); the introduction of functional separation instruments.

As far as the possibilities of development of the institutional context are concerned, the reformation proposal is appropriately aimed, through a substantial reformulation of art. 3 of the Framework Directive, at reinforcing the independence of the national Authorities at national level, and at emphasizing their role in pursuing a higher degree of regulatory harmonization. In conjunction with this reinforcement of the Authorities at national level, the political agreement reached by the Parliament and the Council gives shape to a new institutional setup for the collaboration between

national Authorities and Commission, destined to replace the current collaboration model at ERG level.

The political agreement of last March appears to have found a useful compromise between the various proposals made during the first reading by Parliament and Council; the new institutional model of regulatory collaboration is based on the so-called BEREC, a body without legal status, consisting of the top management of the 27 national Authorities, and a high level representation of the Commission (taking a role of observer), while the operating support will be ensured by an Office, suitably structured, with legal status under Community law.

Another key issue of the reformation is the review of the market analysis procedures and , markedly, the recognition, for the head of the Commission, of veto rights on the decisions of the national Regulators on regulatory obligations (the so-called remedies). The initial proposal of the Commission required the Authority to extend their own veto rights also to the remedy selection stage. Also on this topic, the first reading had brought contrasting opinions.

The Parliament had in fact recognised a veto right on the remedies to the Commission, although only within the framework of a "co-regulation" process, where BERT² would take on a preventive filter role in relation to the decision of the commission. On the other hand, the Council had decisively rejected all options contemplating a veto right for the Commission, only awarding to the same the power of expressing an opinion on the national regulatory decision, subject to advice of GERT³.

The trilogue resulted in an understanding, which makes BEREC the turning point of the new harmonization system. The most recent amendment proposals for art. 7 call in fact for giving the Commission the possibility of opening a "stage two" also in terms of remedies; this procedure also assigns an important role in terms of the path to be followed by BEREC, and does not recognise any veto rights to the Commission on remedies, in full compliance with the subsidiarity principle.

The issue of the increase of the harmonisation powers of the Commission was widely discussed also in relation to the possibility of reviewing art. 19 of the framework directive. The member States have generally declared themselves in favour of pursuing the objective of better consistence of the regulations at European level, but are worried about the risk of excessive centralisation of powers at Commission level. This has resulted in a compromise solution, with the Commission being given the

² This is the regulatory cooperation body proposed by the European Parliament in first reading (Acronym of Body of European regulators in Telecoms)

³ This is the regulatory cooperation body proposed by the common position of the Council in first reading (Acronym of Group of European Regulators in Telecoms).

power of defining harmonization procedures only by means of recommendations; a decisional power is granted (within certain time limits, and subject to BEREC's advice), only when a national Authority fails to fulfil the general regulatory principles contained in such recommendations.

In terms of regulatory tools, the Authority has always been in favour of the proposal of the Commission to expand the instruments available to Regulators with functional separation solutions. The compromise reached during the trilogue has confirmed the suitability of this solution, by allowing the Authorities to impose functional separation solutions (art. 13 bis of the 2002/19/EC, so-called access directive), or to accept commitments in this respect by the main operator (art. 13 ter of the access directive, in line with the model already implemented in Italy with Law 284/2006). The reform also clarifies that any functional separation activities must be seen as exceptional measures, to be implemented only in those cases where the regulatory tools fail, and on the basis of an accurate preliminary evaluation of a set of conditions (systematically defined by the reform).

On a substantial point of view, it is appropriate to mention that should the procedure end with a confirmation of the contents of the political agreement of last March, within the framework of the conciliation procedure, the overall setup of the reform is destined to making operational many of the solutions favoured by the Authority during the legislative process: from the creation of a more ambitious regulatory cooperation system, built on the strengthening of the positive experience of ERG, to the refusal of excessive centralisation of regulatory powers at European Commission level, to the strengthening of the level of independence of the national Authorities, to the introduction of functional separation.

Inevitably, the Framework Review has also characterised the activities of ERG/IRD during the reference period.

Moreover, it is appropriate to underline how the development of the legislative path has changed the profile and contribution of ERG in the institutional debate. If in fact during 2007 ERG had played a central role in the preparatory stage for the processing of the Commission proposals (in view of the nature of the consultation organ of the Commission, and of its extremely technical characterisation), with the start of the political negotiation of the co-decision process, the role of ERG was naturally scaled down, at least on a formal point of view.

ERG however consistently followed the developments of the legislative debates, through the Framework Review workgroup supervised by the Authority, providing the common viewpoints of the field Authorities, through public opinions and declaration, parliament audits and, on request of the legislators, positions on specific issues.

Particular attention was given by ERG to the opportunities for the reform of the regulatory process following art. 7 and 16 of the Framework Directive, and to the opportunities of a new institutional setup for the community. On this respect, particular mention must be given to the conclusions of the plenum meetings of Dublin (October 9th and 10th 2008) and Berlin (February 26th and 27th 2009),

respectively detailing the common position of the national Regulators on the opportunities for the reformation of art. 7 of the Framework Directive, and the institutional asset of the community.

The Framework Review workgroup has also processed and gradually updated a series of technical analysis documents of the reformation proposals. Such documents have proved particularly effective in creating a shared analysis platform, to be used for the preparation of the national delegations at Council level. The same group has also provided support to the Commission in the drafting of the 2008/850/EC recommendation, aimed at simplifying the notification procedures following art. 7 of the Framework Directive, through the identification of some types for which a simplified notification procedure was introduced.

In conjunction with the activities connected with the Framework review, ERG has also developed, during the reference period (for the second half of 2008, under the Hungarian Authority presidency - NHH -, and then, for the 2009 period, under the presidency of the German Authority - BNetzA), the activities connected with the carrying out of its own working program, and has supplied a consultation support to the main regulatory initiatives of the Commission.

In particular, there was a continuation of the activities connected with the so-called Madeira declaration of 2006. In addition to the creation of guidelines - the so-called common positions - on the main regulatory topics, the activity of the reference period was centred on the subsequent step of ascertaining the degree of conformity in the regulations applied throughout the various member states. ERG developed a range of tools and indicators aimed at monitoring the degree of regulatory harmonization, and the compliance with the common positions by the national Authorities, and has carried out regular VoIP, termination (fixed and mobile), and broadband access services assessments. The commitment of ERG in achieving more and more regulatory harmonisation was also demonstrated by a series of thematic benchmarking exercises (on regulatory accounting, criteria for the application of the so-called triple test, mobile termination price levels, etc.).

The activities in terms of regulatory prospects for next generation access networks, already tackled during the previous years, have now found a meeting point with the initiatives of the commission, thanks to the common position taken by ERG, within the framework of public consultation on the recommendation proposal on the matter. Subsequently, during the latest plenum meeting of 2008 (which took place in Budapest on December 10th and 11th 2008), ERG formalised a high level declaration on the criteria for the remuneration of the investments in next generation infrastructures in a competition context. The discussions between the Commission offices and ERG continue, in view of the next formal steps of the discussion procedure of the recommendation draft.

Another important section of activity developed by ERG concerned the monitoring activities for the national implementation of the Roaming regulation, and the technical contribution provided for the drafting of the second Roaming regulation, aimed at extending the scope of the regulation itself also to data and sms services.

ERG also developed a strong collaboration with the offices of the Commission for the setting up of a recommendation proposal on the definition of wholesale prices, for fixed and mobile termination services. Concerning the sharing of the objectives to be pursued (towards a fast and sizeable reduction of the prices of termination services - particularly as far as mobile termination services are concerned - and achieve full consistency among the levels applied by the various operators), ERG has forwarded to the Commission some technical proposals aimed at improving the effectiveness of the proposal. In particular, faced with a clear and defined indication of the Commission on a LRIC - Bottom UP type accounting system, ERG has expressed the need for allowing more flexibility to the national Regulators in identifying the accounting model; this both for technical reasons, and to avoid the risk of possible legal constraints in countries where the operators have already developed virtuous models, capable of obtaining, following a different path, the same results envisaged by the Commission. The Authority, in collaboration with the French Authority, ARCEP, has coordinated the technical activities that have brought to the common position of ERG, approved during the plenum meeting that took place in Vilnius on May 29-30 2008.

The Authority has confirmed the traditional commitment in the activities of ERG/IRG, both through a strong participation to all technical activities, and through the taking over of specific organisational coordination responsibilities. During the year just gone, such commitment was characterised by the organisational and coordination responsibilities connected with the Vice-Presidency mandate (for the whole 2008), and then, starting from 2009, by the inclusion in the Board of Directors of the two bodies.

And the commitment of the Authority in ensuring active participation to the activities of the regulatory and technical committees at Community level continued.

As far as the activities of the Communication Committee (Cocom) are concerned, the regulatory debate was mainly centred on the discussion and assessment of the recalled recommendation proposals drafted by Commission following the comitology procedures.

The Authority has consistently taken part in the activities of the Committee, and has provided its own contribution in the drafting of the national position during the discussion on the recommendations on the notification procedures following art. 7 of the Framework Directive, and the recommendations on termination. The Authority has also given its own contribution to the drafting of the six monthly report produced by Cocom on the broadcasting of broadband services within the European Union.

The Authority has continued in the participation, within the framework of the national delegation, to the activities of the Radio Spectrum Committee (RSC), created with decision 676/2002/EC, with the objective of promoting a higher degree of harmonization in the policies of the spectrum, and in the implementation of the related technical decisions.

The main issues dealt with by RSC during the reference period have been centred on the harmonization in the use of the spectrum for short range devices (SRD), for the introduction of radio-mobile systems on board of aircraft, MCA (Mobile communications on aircraft), for the use of the 2.6

GHz band in a harmonized way for IMT (mobile broadband) type systems, for the use of the 5.9 GHz band for ITS (Intelligent transport systems) transport safety type systems. Other activities concerned the use of radio-mobile systems on board of vessels, MCV (Mobile communications on vessels) type, and the use of specific ultra-broadband (UWB) devices. Lastly, worthy of a mention is also the implementation of mandates to CEPT, concerning the implications of terrestrial television switch over and the technical options for the use of the Digital Dividend, and the extension of the wapecs notion (flexible use of the spectrum), through the introduction of new technologies in radio-mobile bands, which will therefore soon be the object of regulatory activity.

In November 2008 the Authority took over the vice-presidency of the Radio spectrum policy group (RSPG), in view of taking over the Presidency position in 2010. RSPG was instituted by decision of the Commission no. 2002/622/EC, and is constituted by the competent national institutions for the management of the spectrum. Therefore, here the Authority works together with the Undersecretary of communications of the Ministry for economical development.

The objective of RSPG is to support and provide a strategic consultancy service to the Commission on radio spectrum policy issues, and on the harmonization of the conditions of use, with the aim of developing the domestic market.

In terms of institutional placement, RSPG is becoming more and more important within the Community framework, particularly in view of the reformation prospects of the regulatory framework for the management of the spectrum. The reformation calls for a helping hand, in terms of efficient utilisation of the spectrum, within a neutrality context in terms of technology and services, of implementation of quick decisions on the designation and the making available of the spectrum to the users, of higher use of market mechanisms, including the secondary trading of frequencies, within a framework that is becoming more and more harmonized at Community level. Moreover, if the reform package is confirmed in its formulation as approved in second reading by the European Parliament, RSPG would assume the important role of participant to the definition of the Spectrum policy program, the long-term program that will also be at the basis of legislative proposals for the European Council and Parliament.

During the discussed period, the Authority has contributed to the drafting of the program of activities for 2009, which entails the implementation of opinions or reports on the following topics: implications and European road map for coordinated use of the digital dividend, analysis of the best practices for the quick development of wireless broadband systems, competitive aspects within the context of the reformation of the spectrum management, guidelines for a more efficient utilisation of the spectrum used by public bodies (such opinion was the first already implemented in February 2009), coordination of the Community interests in international negotiations (including the ITU World radio conference), procedures for efficient allocation of the spectrum, impact of the new cognitive type technologies on spectrum management.

The Authority has taken an active part in the activities of all the thematic workgroups, consisting of national experts, with the participation of the services of the Commission, contributing to the drafting

of the texts, and coordinating the national position in conjunction with the communications Undersecretary of the Ministry for economic development.

The Authority has ensured its own participation at OCSE level, in support of the delegation of the communication Committee of the Ministry for economical development, to the activities of the workgroup on infrastructures and communication services (CISP), reporting to the Committee for information, information technology and communication policies (ICCP).

During 2008, as a continuation from the previous activities of the group on next generation networks, the discussion was then centred on the relationships between market development and telecommunication investments, and on the role that these may have in the current economic crisis.

The Authority took also part, with its own representative, to the ministry meeting on the future of the internet economy, which took place in Seoul on June 17-18 2008. During the meeting, the delegations of OCSE countries signed a declaration, committing themselves to promoting the development of the internet economy, with the aim of stimulating growth through to regulatory policies in support of innovation, investment and competition in the information, information technology and telecommunications sectors.

During the reference period the Authority has continued in its international dialogue and in the development of collaborations with corresponding regulators of other geographical areas.

The exchange of high level expertise continued through meetings organised within IRG-Regulatel relations. Within this framework, next October 2009 the Authority will host in Italy the IRG-Regulatel summit. This summit will focus on the market, technological and regulatory prospects of the networks and the broadband services, and will be useful for bringing together the many experienced matured on both sides of the Atlantic.

A significant development has occurred in the reference period within the framework of the relations with the regulators of electronic communications of the Mediterranean basin. On the basis of the collaboration initiated under the aegis of the European Community within the scope of MEDA, during the last few years the Authority has promoted, with particular intensity during the ERG 2007 Presidency, the strengthening of the contacts between the Regulators of the Mediterranean region. This effort resulted in the constitution, formalised in July 2008, of a new international sector platform, called EMERG (Euro Mediterranean network of regulators), with the Presidency of the Maltese regulator - MCA. In accordance with the strong commitment for the creation of such platform, the Authority has undertaken a direct commitment in the management of the EMERG Secretariat, and last December 4th organised in Rome a reflection day dedicated to the opportunities for collaboration within the Mediterranean region.

The audiovisual

During the reference period, the Authority has continued and reinforced the institutional commitment in the audiovisual sector at international level.

With reference to the activities of the contact Committee, in view of the expiry of the term (set to December 19th 2009), for the acknowledgement of directive no. 2007/65/EC (hereinafter: "AVMS", Audiovisual media service directive), the European Commission has organised, within the framework of the Committee (instituted by the first directive "television without frontiers", no. 89/552/EEC), four meetings expressly dedicated to the discussion of the juridical issues raised by the changes introduced with the new directive.

This initiative takes place at the same time as the works for the acknowledgement of the directive by the member States, and has been undertaken by the Commission to provide, at Community level, a moment for preventive comparison on the possible interpretation problems that could arise following the new Community regulations.

During the meetings, some essential aspects connected with the main changes to the AVMS directive were discussed, such the modification of the criteria for the allocation of jurisdiction, auto and-co-regulation, product placement, definition of on-demand services, television advertising, sponsoring, protection of minors, accessibility of on-demand services, European activities, right to brief abstracts, and cooperation among the national regulation authorities.

In relation to the amendment of the criteria for the allocation of jurisdiction, and of the priority of the uplink criteria over satellite capacity, it must be pointed out that the Commission has already underlined the importance of transparency of information among the member States with regard to the existing satellite operators and uplinks, which is a necessary requirement to make sure that the individual States can really enforce their own authority on the broadcasters, and guarantee correct implementation of the directive.

With reference to product placement, some delegations have asked the Commission for the implementation of interpretative guidelines, on which the Commission has declared to want to intervene, although following a light touch approach.

The Authority has also continued, during the period in question, its collaboration and participation, together with the delegates of the Undersecretaryship of communications, in the activities of the permanent Committee on cross-border television at the Strasbourg European Council, established in June 1993, pursuant art. 20 of the convention.

During the last year, the activity of the permanent Committee has been centred on the review of the European Convention on cross-border r television, in view of the fact that the compatibility of the convention with the new AVMS directive is of the utmost importance.

In order to ensure the necessary level of consistency and avoid incompatibility between the two regulatory tools, the terminology used and the expectations on issues of common interest, have been the object of a process of realignment with the AVMS directive. The realignment has taken into account the different nature of the two tools, as well as of the interest in the convention of all parties (including both members and non members of the European Union).

During the last meeting of the permanent Committee, the final draft of the Convention was discussed, as well as its reviewed preamble, after the changes made following the discussions of the latest meetings.

Particularly significant was the attention paid by the member States to the debate on the responsibilities of the media service providers. In particular, no approval was granted to the amendment of the new art. 6 of the convention, which sets certain limits - in order to safeguard the dignity and the fundamental rights of human beings - to the content of the programs broadcasted.

The original paragraph a) of the current text of art. 7 - which sets the double limit of public morality and pornography - was replaced with a more general reference to the ban of programs that instigate hate due to race, gender, religion or nationality.

Moreover, with specific regard to violence in programs, different positions arose among the member States in relation to the originally proposed modification calling for the elimination of the above limit to from the article. In particular, Italy has expressed its opinion against the elimination of the reference to violence, which was then reintroduced in the final document. Therefore, upon approval of the new convention, the audiovisual service providers will face a limitation to the incitement to hate based on race, gender, religion and nationality, as well as a limit to the content of violence in the programs broadcasted.

The final document of the revision was sent to the member States, and should be finally approved during the next meeting of the permanent Committee.

During 2008 and 2009, the Authority has confirmed its presence and collaboration to the meetings and activities carried out within EPRA, the European Platform of audiovisual regulators. During the latest meetings of the platform, which took place in May 2008 in Riga, and in October 2008 in Dublin, the representatives of the Audiovisual European Authorities were faced with many regulatory issues, dealing in particular with essential aspects relating to media literacy and the protection of minors, the new AVMS directive, and the development of auto and co-regulation systems. During the meeting in Tallin, on May 6th and 7th, officer Sebastiano Sortino was also appointed as member of the EPRA Board.

The role of the regulatory Authority in the promotion of media education (the so called media literacy) brought, during the Riga meeting, to discussions on the different degrees of involvement of the regulators in this topic. The important aspect that was highlighted is that media literacy is a form of preventive protection of minors, and that the majority of the Authorities is involved in this type of "protection" as a result of the obligations connected with the protection of minors itself. However, only a few regulators, such as Ofcom, or the German Authorities, expressly include the "promotion" of media literacy in their own statute. The comparison of the experiences of the various Countries showed that in the current state the two approaches are complementary and that in this field the regulator is not the only player, but a joint action is needed with other players, such as Ministries or schools.

The new AVMS directive, and in particular the possibility of finding a common approach for the interpretation of the "audiovisual media service" concept as defined by art. 1 of the directive, was, on the other hand, at the centre of the discussions of the plenum session of Dublin. The various interpretations were compared, with the aim of identifying the complexity and the critical elements. The possible difficulties were highlighted, resulting from a failure in limiting the extension in a more precise way, in the interest of the clarity of the law.

With reference to the collaboration and exchange with other Authorities, including those outside the European Union and the European Council boundaries, it is very important to highlight the very strong commitment of the Authority to the activities of the *Réseau des instances de régulation méditerranéennes* (RéseauMed), established in Barcelona in 1997, with the aim of strengthening the cultural and historical connections among the Countries of the two sides of the Mediterranean.

During the last year, the Authority has taken over the Presidency of the platform, and on October 2nd and 3rd 2008 hosted the 11th Réseau meeting in Reggio Calabria.

Thanks to the commitment of the member States and the Presidency, during the Reggio Calabria meeting, the objective was reached, of implementing the first common reference document throughout the various RéseauMed members, perfected during the meeting of the technical Committee meeting (of which the Authority is part), which took place in Rome in July 2008: the declaration on the regulation of audiovisual contents.

This declaration sets the common principles for audiovisual contents, on which the regulators of the Mediterranean undertake the commitment to sensitise the service producers. The declaration is based on the respect of the fundamental values and rights, such as the respect of the person and of diversity, the protection of the rule of law, the protection of childhood and adolescence and the education of minors on human rights, the honesty of information and the respect of opinion pluralism and freedom of expression.

Among the main objectives identified by the declaration, one must also mention the provision of international cooperation mechanisms, such as transparency and mutual information among the members of the Network.

The declaration constitutes a first step towards a common regulation of the audiovisual contents within the Mediterranean region, in view of technological convergence and the disappearance of the frontiers.

Among the activities of participation of the Authority to international workgroups on audiovisual issues, a mention is also given to the participation to CBISS (*Communications broadcast issues subgroup*), at Cocom level. This group was involved in technical issues connected with the development of mobile television (MTV), with particular attention to the situation on the DVB-H standard in the various European countries, and the state of development of digital radio transmission.

Bilateral relations

During the last year, the Authority has maintained a very tight network of bilateral relations with the Authorities and institutions of other countries; these activities were developed both within the scope of bilateral relations previously subscribed, and in relation to specific issues of common interest in the sectors of electronic communication and audiovisual.

The relationship with the Brazilian national telecommunication Agency (Anatel), formalised within the framework of a twinning undersigned in 2005, has been reinforced, amongst other, by the official inclusion of the Authority in the Regulatel platform. Within the framework of the twinning relation, a high level workshop day on access and the possibility of the spreading of broadband in the two countries took place in Rome on June 4th 2009.

The contacts with the Bulgarian electronic communication Authority (CRC) also continued, on the basis of a bilateral agreement undersigned in 2005, with the objective of identifying operating means of bilateral collaboration, to ensure a more structured contribution of the Authority in conjunction with twinning projects at European level.

The activity of exchange of information with the Egyptian telecommunication Authority (NTRA) and with the Morocco national Agency for the regulation of telecommunications (ANRT) continued and became stronger with the constitution of the EMERG platform.

During the reference period, numerous meetings were also organised on specific issues. Among them are the meeting with high level delegations of the Thailand Authority for telecommunication (NTC), currently being reformed towards a converging outlook, with the Chinese Media Stated Department (China SARFT), with a delegation of Chinese institutions and universities operating in the electronic communication sector, coordinated by the EU-CHINA Information Society project, and with the Authority for communications and the information society of Qatar ICT).

A more operative outlook was taken by the high level bilateral meeting with OFCOM, organised in London on November 14th 2008, and the subsequent contacts aimed at creating an exchange of experiences on functional separation issues.

We have already mentioned the renewed interest at international level for the peculiar institutional model of the Authority, characterised by the allocation of converging competencies in the electronic communication and media sectors. In addition to having become the reason for numerous contacts and exchanges of information with institutions of other countries, this converging model has also been the object of an in depth study coordinated by the Australian Authority for electronic communications and the media (ACMA) and by the university of Sidney, aimed at providing an overall comparative picture of the most interesting experiences of converging regulators on global scale: the same ACMA; the British OFCOM and the Finnish FICORA (in addition to the Authority), in Europe; the Japanese MIC and the Malaysian MCMC.

The study, published last October 2008, took approximately one year to complete and involved, through interviews and questionnaires, most of the structures and resources of the Authority.

In July 2008, following the awarding of a selective procedure during which the Authority took a primary role in a consortium also including BNetzA (the German telecommunication Regulator) and Formez (*in-house* organ of the public function Department), the Authority itself was successful in winning the European tender for the Twinning Project EG08AATE12, worth 1.5 million Euros, fully funded by the European commission, and the beneficiary of which is the Egyptian National telecommunications regulatory authority (NTRA).

The institutional twinning is a tool implemented by the European commission since the end of the '90 to ensure harmonization of the standard and the *best practices* for the institutions of the beneficiary States, in relation to the "*acquis communautaire*". This instrument proved particularly effective during a period of approx. 10 years, and its implementation has been gradually extended to Eastern Europe, the Balkans and the Mediterranean basin.

The project awarded to the Authority, in particular, lies within the framework of the "European Neighbourhood policy (ENP) action plan", a framework agreement signed by the European Union and by many Mediterranean countries (including Egypt) in spring 2007. Section 2.5 of the Action plan signed with Egypt calls in fact for a cooperation between the two parties in the electronic communications sector, with particular attention to supporting the activities of the Egyptian NTRA aimed at ensuring regulation and free competition of the telecommunication market.

And moreover it is exactly this sector that particularly in the last few months has seen a sharp increase of the efforts of the European Union Institutions towards the initiation of cooperation and harmonization processes, among which it is worth mentioning in December 2007 the meeting of the European regulators group, at the time chaired by the Italian Authority, and the Mediterranean regulators, as well as the second Euromed conference on the Information Society, on February 27th 2008 in Cairo.

The signing of the contract between the Authority and the European Commission took place on July 31st 2008, and the project formally became operative the following November 23rd, with the arrival to Cairo of the Resident twinning adviser, an officer of the Authority in charge of locally organising and coordinating all twinning activities.

The work plan requires a 24 month commitment, and is expected to be completed on November 22nd 2010. It's divided into 7 components, keeping directors and officers of the Authority, BNetzA, and Formez, busy for a total of almost 1000 man days. The components will deal with the following issues:

1. Harmonization of the Egyptian regulation with the European one.
2. Competition and licensing

3. Interconnection and Local Loop Unbundling
4. Management of low resources
5. Protection of consumers and universal service obligations
6. NTRA organisational development
7. Convergence of the media

At the moment of the production of this report, the project has already started on all components, sent experts to NTRA for a total of 200 man days, started to produce the first fact finding reports, and outlined an intervention plan, aimed at improving the efficiency of the NTRA organisational structure and, most of all, at promoting its recognition and authority among field operators and consumers. The interventions proposed by the twinning, which at the moment appear to be destined to become the most significant ones, and the ones with the most tangible results for the Egyptian telecommunication sector, are the setup of the first regulatory intervention of NTRA on market analysis and competition, the introduction of the concept and obligations of universal service, as well as the regulation of the relationships with consumer associations. Moreover, in order to contribute to increasing the visibility and authoritativeness of NTRA, in addition to the transfer of competencies, and to the support directly provided by Italian and German experts to the Egyptian colleagues, inside the headquarters of the institution, during the regulatory activities, on April 29th and 30th the Authority has organised, within the framework of the project, an international conference on "Internet broadband", which was attended by over 40 speakers, selected among field experts, technicians, operators and consumers associations from Egypt, the nearby Arabian countries, and the European Union. The success of this initiative, both in terms of quality of the interventions, presence of local stakeholders, and media coverage, has demonstrated the validity of the initiative of the Authority and has raised the interest of the Egyptian Government, which is hoping for a repetition of the event next year.

The state of the project and the proposals advanced up to now by the Authority and its partners in the implementation of the twinning procedure, have received appreciation both by the delegation of the European Commission, and by the Egyptian Program Administration Office, called to approve the quarterly report produced by the project Steering committee.

3.2. The relations with the national institutions and the Ministry for economical development - Communications

The Authority has collaborated with other national institutions, providing its own expertise and knowledge of the sector for the various needs arisen during the year of reference.

In particular, President Corrado Calabrò has given the following speeches in front of the Parliament: on September 16th 2008 he gave a speech, in front of the IX Commission "Transports and telecommunications" of the Chamber of Deputies, on the "Fact-finding investigation on the layout and the prospects offered by the new networks of the electronic communication system"; on October 30th 2008, in front of the Parliament Commission for childhood, on the "Fact-finding investigation on the safeguard of minors in the media"; on January 22nd 2009 in front of the VII Commission "Culture, science and education" of the Chamber of Deputies, on the "New procedures for the distribution of grants to the printing sector"; on April 29th 2009 in front of the XIV permanent Commission "European Union policies", on the "Fact-finding investigation on the participation of Italy in the compiling and implementation of the norm and the policies of the European Union: implementation of law no. 11 of 2005 and reformation opportunities".

The Authority has carried out consultation activities with the Parliament Commission for the general addressing and the supervision of radio-television services, for the issuing of the regulations under their own responsibilities, for the regulation of radio and television broadcasting on administration and referendum electoral consultations.

Approximately 50 documents of the inspection syndicate were examined, sent mainly by the Ministry for economical development, for the transmission of the elements for which the Authority is responsible.

The main issues dealt with by these documents were: the inefficiency of the fixed lines network; the inefficiencies connected with the switching of phone operator; fixed line rental increases; sms costs; roaming service costs; the quality of data transmission services offered by mobile operators; the supply of electronic communication services and goods through distance contracts; adsl service; the safeguard of information pluralism.

During the reference period, May 2008 - April 2009, while fulfilling the duties pursuant art. 1, paragraph 6, of law no. 249/1997, on the supply of compulsory opinions on regulations on concentration operations, dominant position abuse, as well as restrictive competition agreements concerning operators of the communication sector, the Authority has expressed sixty eight opinions on the regulations issued by the Authority for the safeguard of competition and the market (AGCM),

sixty six of which on concentration operations, and two on dominant position abuse, as shown on table 3.1. The majority of the operations relate to the acquisition of systems and frequencies within the framework of the digitalisation of terrestrial television stations and, to a lower extent, a gradual process of consolidation in the sector of radio transmission infrastructures, where some new national operators are completing the coverage of their network. It must also be pointed out that each concentration operation examined was deemed non susceptible of causing or strengthening a dominant position in the involved market.

As far as dominant position abuse is concerned, during the reference period the Authority has forwarded two opinions to AGCM, both in relation to a decision of engagements pursuant art. 14-ter of law no. 287/90.

In July 2008, the Authority has expressed the opinion on the final judgement of the inquest "Previous Telecom defaults" (proceeding A398B), for the ascertainment of possible violations to art. 3 of law no. 287/90, and concerning the relevant markets for the access to the public fixed telephone network for residential and non residential customers, and the offer of voice phone services to residential and non residential customers. As usual, the Authority has provided evaluation elements on the definition of the relevant markets identified, on the analysis of the degree of competition encountered, as well as on the engagements suggested by Telecom Italia, which were considered by AGCM suitable for overcoming the feared distortions of the competition. In particular, the Authority has observed that the assessments included in the proceedings were in line with the regulatory framework set by the Authority itself.

In a similar way, in November 2008 the Authority expressed a favourable opinion on the judgement of AGCM, which made compulsory the engagements undertaken by Telecom Italia in relation to the inquest "Exploitation of privileged commercial information" (proceedings A375B). In particular, the Authority has agreed with AGCM both on the definition of the relevant markets of the fixed network voice phone services and the wide band retail services for access to internet, and on the suitability of the engagements presented with the aim of resolving competition issues connected with the alleged violation of art. 82 of the EC Treaty.

In particular, the Authority has believed that the engagements undertaken by Telecom, both of a behavioural and of a structural nature, recalled and - in some ways - reinforced some of the regulatory obligations to which the company is already subjected to.

Table 3.1. *Opinions rendered to the Italian Antitrust Authority with regard to merger operations in the communications sector*

OPINION NO.	TYPE	ARRIVED	PARTIES	RESOLUTION NO.
C9325	Acquisition of exclusive control	8 May 2008	BT Group PLC / Wire One Holdings Inc.	283/08/CONS
C9338	Acquisition of a system and corresponding frequency	20 May 2008	3lettronica s.p.a. / Tot Toscana Televisione s.r.l.	343/08/CONS
C9339	Acquisition of a system and corresponding frequency	20 May 2008	3lettronica s.p.a. / TLC radiotelevisione di Campione s.p.a.	344/08/CONS
C9340	Acquisition of a system and corresponding frequency	20 May 2008	3lettronica s.p.a. / Telereporter s.r.l.	345/08/CONS
C9341	Acquisition of six broadcasting systems and corresponding frequencies	20 May 2008	Elettronica Industriale s.p.a. / Antenna 40	346/08/CONS

OPINION NO.	TYPE	ARRIVED	PARTIES	RESOLUTION NO.
C9349	Acquisition of two company branches	20 May 2008	Albacom.AMPS Telecomunicazioni s.p.a. / BT Italia s.p.a. e Eniatel s.p.a.	326/08/CONS
C9350	Acquisition of a company branch	8 May 2008	Edizioni Master / Videogame s.r.l.	327/08/CONS
C9355	Acquisition of a radio Broadcasting system	23 May 2008	Monradio / Teleradiodiffusioni Bergamasche	328/08/CONS
C9369	Acquisition of a company branch	30 May 2008	Elemedia s.p.a. / RBC s.r.l.	329/08/CONS
C9370	Acquisition of a company branch	30 May 2008	Elemedia s.p.a. / Associazione Radio Fiorenzuola	330/08/CONS
C9385	Acquisition of a radio Broadcasting system	6 June 2008	Monradio s.r.l. / Base s.a.s. di Spinelli & C.	354/08/CONS
C9405	Acquisition of a radio-television system and corresponding frequency	16 June 2008	Elettronica Industriale s.p.a. / P.T.V. Programmazioni Televisive s.p.a.	355/08/CONS
C9406	Acquisition of a company branch including 3 radio broadcasting systems	16 June 2008	Monradio s.r.l. / R.V.1 Radio Venaria Uno s.r.l.	356/08/CONS
C9414	Acquisition of a company branch consisting of a system and corresponding frequency	16 June 2008	Elemedia s.p.a. / R.T.L. 102,500 Hit Radio s.r.l.	357/08/CONS
C9415	Acquisition of a company branch	16 June 2008	Elemedia s.p.a. /	358/08/CONS

	consisting of a system and corresponding frequency	2008	R.T.L. 102,500 Hit Radio s.r.l.	
C9416	Acquisition of a company branch consisting of a system and corresponding frequency	16 June 2008	Elemedia s.p.a. / Radio Club 103 s.r.l.	359/08/CONS
C9420	Joint control	23 June 2008	MPS Venture SGR / Neomobile s.p.a.	384/08/CONS
C9421	Acquisition of a company branch consisting of a system and corresponding frequency	23 June 2008	3lettronica Industriale s.p.a. / Telemontegiove s.r.l.	385/08/CONS
C9435	Acquisition of a company branch	30 June 2008	Elemedia s.p.a. / Teleradiodiffusione Italia	408/08/CONS
A398	Previous Telecom defaults	9 July 2008	Telecom Italia s.p.a.	450/08/CONS

OPINION NO.	TYPE	ARRIVED	PARTIES	RESOLUTION NO.
C9470	Acquisition of a company branch	14 July 2008	Monradio s.r.l. / Radio Padania Soc. Coop.	451/08/CONS
C9471	Acquisition of a company branch	14 July 2008	3lettronica Industriale s.p.a. / Rete A s.p.a.	452/08/CONS
C9472	Acquisition of a company branch	14 July 2008	3lettronica Industriale s.p.a. / Telestars Radio Televisione di Calabria s.r.l.	453/08/CONS
C9478	Acquisition of a company branch	14 July 2008	Monradio s.r.l. / Rock FM s.r.l.	454/08/CONS
C9510	Acquisition of a company branch	29 July 2008	Elemedia s.p.a. / Radio Maria	01/08/PRES* 512/08/CONS
C9511	Acquisition of a company branch	29 July 2008	Elemedia s.p.a. / Radio Maria	02/08/PRES* 513/08/CONS
C9512	Acquisition of a company branch	29 July 2008	Elemedia s.p.a. / Radio Maria	03/08/PRES* 514/08/CONS
C9524	Acquisition of a company branch	1 August 2008	Newhouse Broadcasting Corporation s.p.a. / Discovery Communications LLC s.r.l.	9/08/PRES* 515/08/CONS
C9539	Acquisition of a company branch	7 August 2008	Monradio s.r.l. / Teleradio Cremona Cittanova Società Cooperativa	10/08/PRES* 516/08/CONS
C9540	Acquisition of a company branch	7 August 2008	Monradio s.r.l. / Gruppo ADN Italia s.r.l.	11/08/PRES* 517/08/CONS
C9563	Acquisition of a company branch	7 August 2008	Monradio s.r.l. / Target Italia s.r.l.	12/08/PRES* 518/08/CONS
C9582	Acquisition of a company branch	25 August 2008	Nuova Radio s.p.a. / Publiaudio s.r.l.	519/08/CONS
C9583	Acquisition of a company branch	25 August	Nuova Radio s.p.a.	520/08/CONS

		2008	/ Faro s.r.l.	
C9584	Acquisition of a company branch	25 August 2008	Nuova Radio s.p.a. / Associazione radio Maria	521/08/CONS
C9585	Acquisition of a company branch	25 August 2008	Nuova Radio s.p.a. / Priverno s.r.l.	522/08/CONS
C9586	Acquisition of a company branch	25 August 2008	Nuova Radio s.p.a. / N.O.R.I. Nuova onda Radio Italiana Sas	523/08/CONS
C9587	Acquisition of a company branch	25 August 2008	Nuova Radio s.p.a. / R.M.B. s.r.l.	524/08/CONS
C9639	Acquisition of a company branch	26 September 2008	Edizioni Master / Impulse s.r.l.	583/08/CONS
C9690	Acquisition of a company branch	20 October 2008	Rete A s.p.a. / 3lettronica Industriale s.p.a.	628/08/CONS

OPINION NO.	TYPE	ARRIVED	PARTIES	RESOLUTION NO.
A375	Exploitation of privileged commercial information	27 October 2008	Telecom Italia s.p.a. / Fastweb s.p.a. / Wind Telecomunicazioni s.p.a.	645/08/CONS
C9751	Acquisition of a company branch	10 November 2008	3lettronica Industriale s.p.a. / Elettronica Industriale s.p.a.	661/08/CONS
C9748	Acquisition of a company branch	10 November 2008	3lettronica Industriale s.p.a. / Elettronica Industriale s.p.a.	662/08/CONS
C9739	Acquisition of a company branch	10 November 2008	Edizioni Master s.p.a. / De Andreis Editore s.r.l.	663/08/CONS
C9770	Acquisition of a company branch	19 November 2008	Edizioni Master s.p.a. / Per Caso s.r.l.	664/08/CONS
C9779	Acquisition of a company branch	25 November 2008	Elettronica Industriale s.p.a. / 3lettronica Industriale s.p.a.	715/08/CONS
C9789	Acquisition of a company branch	27 November 2008	Elettronica Industriale s.p.a. / PRIMA TV s.p.a.	716/08/CONS
C9790	Acquisition of exclusive control	27 November 2008	RCS Media Group s.p.a. / Dada s.p.a.	717/08/CONS
C9803	Acquisition of a company branch	4 December 2008	Monradio s.r.l. / Radio Base Società Cooperativa	728/08/CONS

C9804	Acquisition of a company branch	4 December 2008	Monradio s.r.l. /Bluradioveneto s.r.l.	729/08/CONS
C9816	Acquisition of a company branch	4 December 2008	3lettronica Industriale s.p.a. /Tef s.r.l.	730/08/CONS
C9837	Acquisition of two company branches	16 December 2008	3lettronica Industriale s.p.a. / Telecolor International s.p.a.	3/09/CONS
C9838	Acquisition of a company branch	16 December 2008	3lettronica Industriale s.p.a. / Gestione Telecomunicazioni s.r.l.	4/09/CONS
C9846	Acquisition of the company	16 December 2008	Telecom Italia Media s.p.a. / Air P Tv Development Italy s.r.l.	5/09/CONS
C9845	Acquisition of exclusive control	19 December 2008	Cyrte Investments BV /RDF Media Group Plc	6/09/CONS
C9852	Acquisition of a company branch	22 December 2008	Nuova Radio s.p.a. /Edizioni Next s.r.l.	7/09/CONS
C9853	Acquisition of a company branch	22 December 2008	Nuova Radio s.p.a. /Radio Zero s.r.l.	9/09/CONS
C9860	Acquisition of a company branch	22 December 2008	Monradio s.r.l. /Publiaudio s.r.l.	8/09/CONS

OPINION NO.	TYPE	ARRIVED	PARTIES	RESOLUTION NO.
C9867	Acquisition of a company branch	30 December 2008	Monradio s.r.l. / Radio Birikina s.r.l.	23/09/CONS
C9741	Acquisition of exclusive control	15 January 2009	Dada s.p.a. /E-Box s.r.l.	24/09/CONS
C9916	Acquisition of a company branch	2 February 2009	Monradio s.r.l. / Target Italia s.r.l.	80/09/CONS
C9952	Acquisition of a company branch	23 February 2009	3lettronica Industriale s.p.a. /Telereporter s.r.l.	102/09/CONS
C9961	Acquisition of exclusive control	3 March 2009	BS Investimenti SGR s.p.a. / Tiscali International Network s.p.a.	126/09/CONS
C9971	Acquisition of exclusive control	9 March 2009	ITEDI s.p.a. /Nexta Media s.r.l.	127/09/CONS
C9976	Acquisition of a company branch	16 March 2009	Nuova Radio s.p.a. /Edizioni Next s.r.l.	147/09/CONS
C9977	Acquisition of control	16 March 2009	Il Sole 24 ore Business Media s.p.a. / Business	148/09/CONS

			Media Web s.r.l.	
C10001	Acquisition of a company branch	23 March 2009	Monradio s.r.l. /RTL 102,500Hit Radio s.r.l.	158/09/CONS
C10006	Acquisition of a company branch	30 March 2009	Rete A s.p.a. /Le Sile s.r.l.	197/09/CONS
C10022	Acquisition of a company branch	8 April 2009	Monradio s.r.l. /Radio Globo s.n.c.di Virginia Dantas & C.	198/09/CONS

** Urgent provisions adopted by Presidential Decree and subsequently ratified with a resolution by AGCOM's Board.
Source: Authority*

The relationship with the Ministry for economical development - Communication department

The year of reference was characterised by a profitable collaboration activity with the Ministry for economical development, and particularly with the communication Department, aimed at carrying out the necessary activities for achieving the digitalisation of television network (see paragraph 2.6).

In particular, the Authority, with the implementation of Deliberation no. 200/08/CONS of April 23rd 2008, including "Plans for the allocation of frequencies for the digitalisation of television networks in the all digital areas: begin of proceedings and institution of technical tables", has confirmed the working method, already applied with success for the digitalisation of television networks in Sardinia, with the aim of identifying the terrestrial digital networks to complete in the different technical areas, and of the consequent allocation of the rights of temporary use of the frequencies by the Ministry for economic development, and began the planning operations with the corresponding completion of the technical tables, devised in agreement with the Ministry for each of the technical areas.

Moreover, the Authority is continuing to give its support to the communication Department in the international negotiations with the countries involved in the coordination of the use of frequency resources of digital television, on the basis of the results of the Geneva 2006 planning Conference, and the agreements reached on that occasion. For this coordination activities, many bilateral meetings have taken place with the French Administration, and those of Switzerland, Spain, Austria and Slovenia.

As far as the activity connected with the census of the radio-television broadcasting infrastructures existing within the national territory pursuant deliberation no. 502/06/CON of August 2nd 2009 outlining the "Amendments to the regulations for the organisation and the keeping of the Register of communication operators aimed at the institution of the special section relating to the broadcasting infrastructures located within the national territory, pursuant art. 31 of Deliberation no. 236/01/CONS", so-called "national register of radio-television frequencies (see paragraph 2.17), in agreement with the Ministry for economic development - communication Department, there has been an intensification of the technical-administrative assessments and checks across the territory, in

collaboration with the local Inspectorates of the Ministry itself and the communication Police Section of the Authority (see paragraph 3.5).

The assessments were centred on the radio-electric systems serving the capitals of the provinces, with the specific objective of ascertaining the exact consistency between the declarations made by the field enterprises, and the actual operating situation, also assessing any presence of radio-electric emissions not declared during the census.

Also in relation to the management of frequencies more directly related to the telecommunication services, there has been a profitable collaboration with the above mentioned Ministry. In general, various opinions were given on the use of the frequencies for the provision of public services, falling both under the general duty of the Authority in supplying an opinion to the "National Plan for the distribution of frequencies", as required by the institutional law, and duty of the Authority in defining the plans for the allocation of the frequencies. Among the most significant opinions, we include the one pursuant art. 3, par. 3 of deliberation 541/08/CONS, concerning the suitability of the plan presented by the radio-mobile service providers for the rationalisation of the use of the 900 Mz radio-mobile band, sent during January 2009.

3.3. Relations with Universities and research centres

In performing its institutional activities, the Authority promotes the development of the electronic communication sector, in its technological, market, and regulatory aspects.

In this context, the Authority carries out and promotes studies, research, scenario analysis, and high Education, contributing in this way to market knowledge and monitoring, for those aspects for which it is responsible.

In pursuing this objective, the Authority promotes the relationships with the academic world through the definition of agreements and memorandums of understanding with Italian and foreign universities and research centres, aimed at activating structural collaborations that ensure consistent update on the events connected with technological progress, and the global communication market.

This has resulted in a positive collaboration based on continuous dialogue and exchange of information, competencies and professional competence, which find its tangible expression in the joint definition of topics for study and research projects.

Within this framework, in advance in relation to possible needs for regulatory instances, study and research projects are promoted, in collaboration with Universities and research centres, also taking into account the indications and needs of the various branches of the Authority.

During 2008 the Authority has entrusted to a number of academic institutions the responsibility for carrying out the research program "Infrastructures and wide and ultra-wide band services" (Deliberation no. 405/08/CONS), divided into three macro areas (technical-infrastructure, economic-regulatory, juridical-normative frameworks), and aimed at gaining a better understanding of the technical, economic and juridical conditions for the realisation of next generation networks and services in our country (see par. 3.4).

In addition to the numerous meetings with the involved researchers, among the activities of the program were, during the first half of 2009, two important coordination workshops. These were attended by the coordinators and components of the workgroups of the Universities responsible for the research activity - the Commercial University "Luigi Bocconi" of Milan, the University of studies of Naples Federico II, Luiss - Libera università internazionale degli Studi sociali Guido Carli, the University of studies Roma Tre, the University of studies of Rome "la Sapienza", the University of studies of Rome Tor Vergata, the University of studies of Siena, the Milan Polytechnic, the Turin Polytechnic, the Imperial college of London.

During these initiatives, the current state of advancement of the activities was explained. Comments and suggestions were collected from the operators present who, by providing new and important discussion points, have contributed to a more fruitful dialogue among the researchers involved in the program.

With specific regard to the high education sector, the Authority takes care, through the study, research and education Management Team, of the relations with the Universities, with the aim of ensuring both a high education tradition, and interdisciplinary education, on issues that fall within the institutional interest of the Authority.

The Authority also promotes the knowledge and the strengthening of its own institutional activities through the support of educational activities of direct interest, and by allowing stages to take place in its own offices.

During 2008 the Authority, with deliberation no. 281/08/CONS, has carried out a selection of six post-university Masters on issues relating to its institutional functions, allocating funds for contributing to the expenses of the Universities for the trainees visiting the branches of the Authority. At the moment, traineeships are being completed by some students of the selected Masters.

Also within the perspective of support for educational activities, the Authority has approved deliberation no. 736/08/CONS, which calls for an organic discipline for the procedure of selecting University Masters instituted by Italian Universities on matters of their own interest, for which to provide financial support for the funding of scholarships (total or partial covering of the enrolment fees for students achieving the best scores in the course admission lists), and/or for the allocation of contributions for the completion of placements at its own offices.

Therefore, starting from the current year 2009, a periodical selection is planned, of post-university Masters, carried out on the basis of appropriate public selection notifications published on the website of the Authority.

The selection is carried out following transparency and rotation principles, in accordance with the following criteria:

the Masters must be related to the topics that are of interest to the Authority;

The academic discipline (technologies, economy, law, sociology) , interdisciplinarity and existence of integrations between academic disciplines and/or goods profiles of various kinds, in the reference sectors (telecommunications, radio-television, media);

the geographic balance, as much as possible, of the funding for the Masters, throughout the various Italian macro-regions: North, Centre, South and Isles.

In relation to the academic years 2008/2009 and 2009/2010, with deliberation no. 737/08/CONS, the Authority has allocated a total financial contribution of 250,000.00 Euros, authorising a selection to be carried out, for up to a maximum of 10 post-university Masters.

3.4. The "Infrastructure and broadband /Ultra-broadband Services" (ISBUL) research program

In consideration of the development perspectives connected with the introduction of next generation networks (NGN), and the need for analysing the corresponding regulatory implications, the Authority has initiated, with resolution no. 405/08/CONS, the "Infrastructure and broadband /Ultra-broadband Services" (ISBUL) research program. The initiative is managed by the study, research and education Directorate, in collaboration with some of the main Italian Universities, selected following an appropriate procedure for the allocation of the sub-projects of the activity.

The program aims at creating a research stimulus for a sector that is of importance for the economy of our Country, a tool for the definition of intervention rules and procedures aimed at promoting innovation and competition, and a point of reference for the companies of the sector. Moreover, the study aims at providing results that would be useful for the promotion and development of the NGN networks, providing an advantage for the general public, and setting the basis for a permanent monitoring by the Authority on the technological, economical and juridical issues in relation to the infrastructures of the broadband and ultra-broadband networks.

The peculiarity, and the particular added bonus of the ISBUL program, comes from the transversal connotation of the topics dealt with, and the methodological approach implemented, which, by combining technological, economical and juridical perspectives, does not view the individual sub-projects as separate entities, but stimulates both the vertical in depth studies carried out within the same discipline, and also interdisciplinary studies, through the assessment of the relations existing between the various study areas.

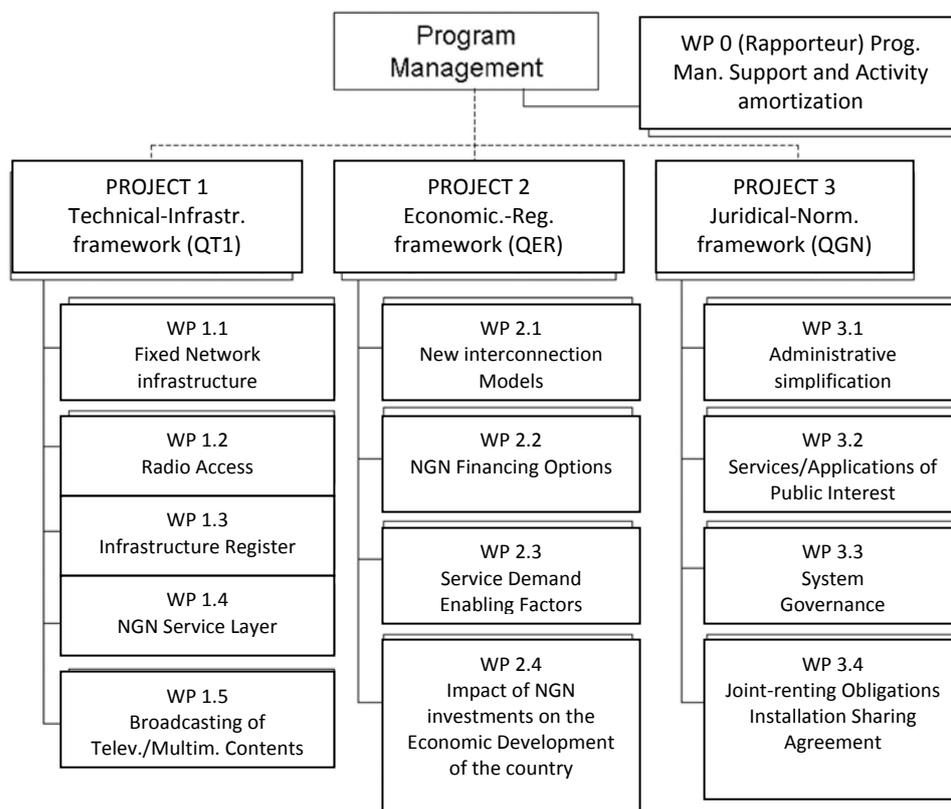
On an operating point of view the program was initiated in December 2008 and consists of three macro areas, homogeneous on a discipline point of view, which constitute three separate projects: "Technical-infrastructure framework (QTI project)", "Economical-regulatory framework (QER project)" and "Juridical-normative framework" (QGN project). Each project is therefore organised into sub-projects (called Work packages - WP), which general coordination is entrusted to the Directorate of studies, with the support of a specific research group (work package 0) responsible for scientific support and program management duties (figure 3.1)

Technical-infrastructure framework (QTI)

In the context of the development of the next generation network, the "technical-infrastructure framework" - QTI, divided into 5 work packages, aims at tackling the technological issues, trying to find an answer to the need for efficient infrastructure development, capable of supporting flexible offers in the wholesale market, and of providing a definitive competitive offer of broadband/ultra-broadband services.

The project starts by analysing the procedures for the implementation of the transition to NGN, which will depend on realisation times and geographic localisation, architectural solutions, and the technologies that will be selected, if the case, in

Figure 3.1 Program structure



Source: Authority

subsequent stages, by the investors, and by the relation that will develop between new and pre-existing network (overlay or total replacement). The technical infrastructures involved ("Fiber to the x", FTTx, where "x" represent the termination place of the fibre: home, building, cabinet) are characterised first of all by how close the fibre is to the customer: in the case the fibre is installed up to the buildings where the users are located (FTTB or FTTH), the initial investment may be up to six times higher than the investment required if the copper twisted pair continues to be used in the access network (FTTC). On the other side, FTTC architectures, which provides reduced performance levels, entail higher operational costs and management difficulties, both due to the level of faults occurring on the old copper networks, and the use of equipment in a very high number of peripheral sites.

In more general terms, even if most of the new initiatives will effectively be carried out by the incumbents, the possibility remains that the players will respond to the new technological opportunities by testing new market segmentation forms and new procedures for financing the investments needed for independent or cooperation projects, particularly if, in certain local areas, there is the possibility for enhancing existing civil infrastructures.

With reference to the problems connected with the supporting competition, it will be necessary to redefine the procedure for the sharing of the infrastructures through the application of remedies connected with the passive and active components of the network. With reference to the so-called "passive remedies", as far as the sharing of optic fibre cables, in the various architectural set-ups (FTTC, FTTB, FTTH), and the various P2P (point to point) and GPON (gigabit passive optical network) technologies, it will be necessary to review the possibilities offered by a wider spectrum of situations: sharing of cable ducts on the access network; sharing of the optic fibre in case of saturation of the cable ducts; optic fibres in the internal building sections; copper sub-loop unbundling. With reference to the so-called "active remedies" the basis of the activity will be the current reference offer of bitstream wholesale services, centred on various ATM, Ethernet and IP technologies.

In the future, radio access will become more and more important for the supply of broadband services. However, it is necessary to distinguish between those situations where radio technologies have a complementary role in relation to fixed ones (use of mobility side by side with main use of fixed network in the user premises and, also, use of femtocells dedicated to individual users, which must themselves be connected to fixed lines), from those for which a replacement role is anticipated, such as in low density geographical areas, where an extension of not only the fixed network, but also of the xDSL network, would be considered to expensive. The involved technologies dealt with in the study show a rapid evolution: from HSPA and WiMax solutions, to the opportunities offered by 4G/LTE (long term evolution).

Also object of the study is the radio spectrum management, both in relation to the reference Italian regulation, and taking into account the new management models, in line with some important aspects: spectrum and technological neutrality, allocation using market mechanisms, types of mechanisms implemented in the international experience, rights of use and trading of frequencies, analysis of technical use constraints and sizing of the channels enabling technologically neutral allocation, enhancement in terms of cost/opportunities, development of radio band demand, refarming.

One of the activities of the project consists in carrying out an investigation aimed at setting the basis for an inventory of existing wide and ultra-wide band telecommunication infrastructures. The initiative is also aimed at promoting the full implementation of the requirements of the recent legislations on the realisation of the optical network (e.g. law no. 133 of August 6th 2008), which define the new optical networks as public utility systems, and enable the electronic communication operators to use, for the installation of the fibre, the free cable ducts belonging to the local public Administrations.

A further research space dedicated to the technologies for the supply of services (the so-called "service-layer") that accompany the development of access and transport infrastructures, enriching the offer. These technologies enable triple and quadruple play (extension of the traditional voice/data services with video/TV and mobility), create the fixed-mobile convergence, and show potential regulatory repercussions, mainly caused by interconnection and quality problems.

Lastly, the HDTV and IPTV technologies and the enhancement of the "return channel" enable a significant evolution of the modes of broadcasting of television and multimedia contents, as well as the potential driving force for the development of NGN. Therefore, a space has been allocated for in depth studies on the techniques for the coding of video-audio signal, on the connected issues for implementation within the network, and for digital right management solutions.

Economical-regulatory framework (QER)

The project dealing with the "Economical-regulatory framework" of the program aims at tackling the main economical, financial, and more specifically, regulatory issues connected with the realisation of the NGN, as well as those resulting from the management of the delicate stage of transition towards next generation networks.

On a method point of view, the four sub-projects making up the QER (figure 3.1) lie on one side within a perspective of continuity with the existing one, with the understanding that it is of fundamental importance to first of all know our country as it is today, analysing not only its infrastructures, but also its business models, market structure and characteristics of the demand. On the other side, it is also clear and compelling the need for looking at the future, and this is why each work package (WP) highlights and makes it possible to identify the opportunities and issues that may result from the spreading of broadband and ultra-broadband in Italy, dedicating, for this purpose, an ad-hoc project to the impact of NGN investments on the economic system as a whole.

The research activities use the tools perfected by the economical and financial analysis, taking into account the existing literature on the matter, the consolidated models, the European and international benchmarks, and aiming at a quantification of phenomena, and the empirical assessment of the same for the Italian case, with the use of data as up to date as possible; however, together with this, it becomes necessary to complete a descriptive and qualitative report, particularly useful for the organisation of the innovative services that can be channelled using the next generation networks.

In view of existing connections between economical-regulatory issues and architectural and technological aspects, and taking into account the importance for the regulatory activity of the Authority, the research aims, as a first step, at producing an analysis of operating costs, and of the investments needed for the creation of the NGN. This assessment, possible once the architecture of the network and the access technologies (technical-infrastructure framework) have been defined, is functional for the construction of an economical-financial theoretical model, on which short and long term investment sustainability analysis can be carried out, with the objective of also ascertaining the convenience and suitability of the various financing possibilities (WP 2.3).

Another element, object of the study, in an developing scenario, is the cost of capital weighted average cost of capital (WACC), connected to the risk supported by the network manager, in itself connected with the competitive choices of the competing operators, and the regulation choices. As a consequence, for an assessment of the level of risk connected to the investment, it will be necessary to define the competitive environment in which the enterprises operates.

On this aspect, a key role is played by the interconnection models and their possible evolution following the spreading of IP-based networks (WP 2.1), as well as the identification and comparative evaluation of the factors determining the access demand and the contents (WP 2.3).

The first WP aims at providing some indications on the competitive and regulatory set-up faced by the enterprise, analysing the management of the transition on the basis of pricing mechanisms for the main wholesale services. On this respect, priority is given to the study of interconnection models on traditional networks, and the effects of the fixed-mobile convergence on the regulatory intervention and the competitive setup. In particular, in deepening the relationship between technological solution, development of new pricing regulations on a wholesale point of view, and retail competition, and in examining possible incentivizing schemes of the investments, the analysis of the various interconnection models contributes to highlighting the competitive and regulatory constraints (that have a direct impact on the degree of risk of the investment), also stimulating an assessment of the operating instruments available to the Authority and the other institutions.

In order to complete the scenario of the current and, as much as possible, future market, the analysis of the demand takes on a central role (WP 2.3), which in addition to determining the economical-financial convenience of the investment, affects (both as preliminary condition, and in terms of feedback) the impact of the investment itself on the economic development of the country (WP 2.4).

Within the framework of the factors enabling the demand of services (WP 2.3) the attention of the research activity is directed (today) mainly towards the technical-economical characterisation of broad band services, and the more complex recognition of innovative services, in particular video entertainment services, which broadcasting requires ultra-broadband; Moreover, a set of data is created, relating to European countries, from which to obtain descriptive analysis and econometric estimations of the demand of services in Italy; from these, it is possible to assess the effects of any policy, support and incentive interventions on the demand itself, as well as to obtain useful information both for the investment sustainability analysis, and for the estimation of the impact of this investment on the economic development of the Country.

Taking into account the important resources needed for the creation of the NGN, the long estimated payback periods, and the uncertainty in the development of the demand for transmission capacity and the general economical situation, work package 2.4 "Impact of NGN investments on the economic development of the Country", analyses the existing relation between economic development and level of investments in Italy, estimating the overall effect, starting from a group of data on several countries, with historical series of the main economic and technology distribution indicators.

The completion of the set of data, and the formulation of the general econometric model, are followed by the estimate of the effects on the economical development in Italy, which may take on different growth parameters, depending on the Operating expenditure - OpEx/Capital expenditure - CapEx modulation, gathered by the economical-financial analysis, and which will be assessed on the basis of the results of the estimation of demand.

Juridical-normative framework (QGN)

The development of next generation networks is connected with the need for creating fast and efficient communication channels, capable of meeting the growing demand for multimedia technology and advanced telematic services.

Within this framework, the broadband and ultra-broadband infrastructure network has a strong impact on the economic development of the country, and the competitiveness of the enterprises.

Investments in next generation networks entail in fact problems of regulation of the access to the infrastructures, which localisation is necessarily conditioned by the need for accessing public or private properties, resulting in the main costs being represented by the completion of civil works, ground excavations, and, in general, installation of the systems.

Within this perspective, it becomes necessary to define a normative and regulatory framework capable of incentivising the enterprises to invest on infrastructures, with particular attention to the access to civil works difficult to replicate. It is therefore clear how important is the granting of authorisations and concessions for the excavation works and the sharing of cable ducts by the local Administrations.

The need arises for a rationalisation of the authorisation procedures for the installation of electronic communication systems on the national territory, following the principles of efficiency, publicity and concentration, ascertaining the possibility of creating a system in accordance with regulations that, even in the eventuality of partial or temporary dispensation from the current general legal system, gives priority to the simplification of authorisation procedures, with the aim of developing optic fibre networks. Within this framework, with the "Administrative simplification" (WP 3.1) subproject, an assessment is planned to be carried out on the current normative framework relating to the substantial and procedural discipline for the installation of next generation networks, defining, also through international comparison, the limits of the current juridical setup, with particular attention to the dangers resulting from the differentiation of the discipline on several levels (communication arrangement and legislative powers of the local administration, on the management of the territory).

The safeguard of competition makes it also necessary to implement clear and homogeneous procedures on the whole national territory, as well to introduce specific access obligations.

The promotion of a broadband system, which requires the use of a wide range of financial resources, entails the need for removing economical obstacles for the realisation of investments. The governance of this system, on which the subproject called WP 3.3. is built upon, shows a certain complexity due to the fact that the committed financial resources may be, in relation to the different profitability characteristics of the investments, public and private. This defines a series of possible financing

solutions that include, on one side, investments entirely consisting of private capital, and on the other, investments entirely consisting of public capital, as well as intermediate solutions, based on a public-private partnership (PPP). In this framework, an in depth study is necessary, of the respect of the regulations on State support, as far as the participation of public institutions to broadband development programs is concerned.

Indeed, within the framework of promotion of broadband and ultra-broadband networks, particular importance is also given to an indirect support intervention by the central Government and the local institutions. The generalised access to broadband is in fact essential for social development, and the role of the Government and the local institutions is to create favourable conditions for the development of the innovation.

The regulation Authority can have a decisive role in the overall governance of the system and in the identification of diversified regulatory models, in relation to the proprietary regime of the infrastructures financed using the various procedures. On this topic, the study aims at carrying out an analysis of the competencies of the national Authority for the regulations on next generation networks, and to identify the opportunities and theories for rationalisation and enhancement of the competences themselves..

Always in relation to next generation networks, WP 3.4 aims at examining the juridical framework on equipment sharing and joint renting obligations, and at identifying possible strategies for the promotion of a shared utilisation of the infrastructures. The in-depth study of this issue becomes of significant importance in view of the possible regulatory impacts; the identification of the regulations on the sharing and joint renting of the infrastructures becomes in fact particularly important with reference to the functions entrusted to the authority.

Moreover, within this framework, the study will carry out a review of the possible coordination among the operators, for any infrastructures to be built from new, and the regulations on the common exploitation of existing civil passive structures, as well as the opportunities for "mutualisation" of the infrastructures. It will be centred, in specific, on an assessment of the role of the private sector, and an analysis on already existing juridical models of reference, as well as of new models that may be introduced (agreements between P.A. and operators, project financing, temporary enterprise associations, joint ventures).

In terms of broadband and ultra-broadband services and applications, the development of demand does not only concern the private, residential and business sectors, but also, and most of all, public services such as e-government, tele-work, telemedicine, e-learning, infomobility and telecontrol.

Within this context, the subproject "Services and applications of public utility" (WP 3.2) will deal with assessing if fast internet access is or not within the concept of universal service of a Community nature that, in specific, includes a range of services of general interest, to which telecommunication activities must be subjected to. In general terms, it is also necessary to analyse in depth the existence and the possible safeguard of the rights resulting from the development of the new communication and

information technologies, which the private may legitimately believe to own in the information society, in particular within the relation between P.A. and the private. Indeed, the use of broadband could ensure, for example, better efficiency and effectiveness of the Public Administration and the public services, in order to ensure the fulfilment of the "good performance" criteria outlined in art. 97 of the Constitution of the Republic of Italy.

Dimension of analysis and key themes

As already ascertained, the ISBUL program aims at enriching, in the public interest, the knowledge available in Italy on scientific, technological, economic and regulatory issues in relation to NGN, and to tackle the issues outlined above, with the objective of improving the information and analysis patrimony available to public and private decision makers.

In particular, the ISBUL program wants to analyse the pervasive effects of NGAN on the sector and the socio-economic and system, evaluating analysis prospects and dimensions of strategic interest, among which are:

- costs and performance of the technological solutions that can be implemented;
- sustainability of the business models of players - "stakeholders";
- competitive impact and consequences for regulations;
- macro-economic impact and effect of public policies;

international benchmarking. With the development of the study in this direction, the need has arisen for an in depth analysis of the specific issues (key issues), characterised both by the relevant regulatory implications, and by the transversal involvement of various work packages responsible for the appropriate in depth studies:

- promotion of efficient investments and the sharing of risks;
- the role of competition, investment ladder, and the new access models;
- geographical markets and digital divide;
- the digital spectrum dividend;
- the management of the transition towards NGAN (next generation access network).

In consideration of the clear "transversal" connotation of the topics of the study, the key issues (summarised in the following paragraphs) highlight the methodological peculiarity of the ISBUL

program, or the stimulus both for vertical in depth analysis carried out within the same discipline, and for the horizontal in depth studies ("interdisciplinary"), through the assessment of the relations among the different study areas (technological, economic, and juridical). In particular, being a point of connection of the sub-projects, the key issues become useful in overcoming the unavoidable rigidities caused by the formal setup of the operations, and to enable the production of consistent "scenario analysis", produced using assumptions and options that are compatible with each other.

Promotion of efficient investments and sharing of risks

With the development of NGA, the attention of regulators and policy makers must extend to radically new topics, when compared with those tackled, at least in Europe, during the last decade. During the liberalisation of the electronic communication market, the main issue was in fact that of defining the conditions within which the new subjects could have used the infrastructures developed by the incumbent, during the pre-existing legal monopoly regime. Alongside this problem, there is today a need for creating conditions for extremely high and risky investments, finalised at replacing the most capital intensive segment of the current network, in order to offer applications for which the immediate development potential is uncertain. The problem is a complex one, because it is not just a matter of unconditionally subsidizing or supporting the new initiatives (for example by ensuring an excessive remuneration of the capital in relation to the cost, "weighted" by the risk), but rather of removing distortions that may discourage efficient investments, consistent with public interest. This could occur in at least two situations: on one side, the social benefits of the innovation could not fully translate into private advantages, and therefore the willingness of the users to pay may be insufficient to cover the costs of a socially desirable innovation (external effects); on the other side, the choices of the regulator must be attentive in not jeopardising the profitability of investments, by underestimating the effect of the risks sustained by the investor on the economic costs of the regulated services. In any case, interventions that show to be effective (also in terms of perception of the financial markets) in reducing the level of risk of the investments required by the various subjects, would reduce the cost of the capital invested, and therefore would favour the initiation of a higher number of projects.

Tackling this problem means to assess at least the following research problems:

- characterisation of efficient investments: in view with what has been said, and in line with the prevailing regulatory orientations, it is necessary to implement a dynamic criteria of efficiency (which means, one that takes into account the effects of the choices on the opportunities for innovation, also for future generations); it will also be necessary to identify the external factors that private decision makers may overlook during their assessments;
- characterisation of the risk and effects on the investment decision: on the basis of the identification of the main sources of risk, including those deriving from strategic interaction among investors, it is

necessary to model the role of risk in the configuration and evaluation of projects, taking into account the irreversibility of most of the necessary investments, but also the possibility of dynamically articulating them, so that they may be redirected on the basis of the experimental results;

- characterisation of the opportunities for the reduction and sharing of risks (risk sharing): the risk undertaken must be correctly compensated (risk premium), but it is also possible to devise types of contractual relationships between players, consensual by nature, and therefore of mutual advantages, that will generate value and reduced the perceived risks, distributing them in a way to ensure agreement incentives for all contractors. This may apply for consortium or company agreements for the development of infrastructures, intermediate service sale agreements, and agreements relating to the demand of financial services.

Role of competition, investment ladder, and new access models;

In those country where a self sufficient infrastructure for the supply of cable television services has not been developed, competition in mass markets of fixed broadband services has been based, with a few exceptions (fibre, radio, satellite access), on the use of the incumbent copper access network. In these cases, the intervention philosophy of the new European regulatory framework has boosted the gradual building of infrastructures (investment ladder) by alternative fixed network operators, in the belief that this would promote on one side the strengthening of a type of competition founded on innovation, and, on the other side, exactly for this reason, it would be possible to start a strong streamlining of the previous regulatory obligations. This has caused, in the geographical areas where the necessary economic conditions existed, the abandoning by the alternative operators, of an offer based on the resale or bitstream, in favour of one based on unbundling of the local loop.

Notwithstanding the need that also in the new context, in which the current access network shall be gradually transformed, the possibilities are not jeopardised, to continue the current processes of creation of infrastructures, it will be possible that under the new conditions they are no longer considered financially viable or must, in any case, be strongly redirected. It is therefore necessary to analyse the consequences of the new technological opportunities on the characteristics and conditions of supply, technical and economic, of the wholesale services that the incumbent shall make available to other subjects. It is possible to presume that in the long term, with a wider range of alternatives, wholesale services closer to the infrastructures will exist together (sharing of cable duct, hiring of dark fibre, etc.), as well as services similar to bitstream. The technical definition of these services shall safeguard the technological autonomy in the configuration of the final offer, and promote innovative business models (for example sharing of the same physical access by several suppliers of final services). The economic supply conditions, although not discriminatory, must ensure the incentive for efficient investments for the network operator, and the implementation, by the suppliers of services, of access models more consistent with the interests of the public. For this purpose, in addition to

discouraging non-price discrimination, it will be important to carefully assess in which cases the prices of intermediate services will have to be linked to financial costs, and in which it will be useful to implement retail-minus prices.

Geographical markets and digital divide

The geographical equalisation of the prices of final services has had a historical role in ensuring the distribution of the telephone network in high cost areas, in the same way as access/traffic grants have made it historically possible for low income users to access the service. The rebalancing of the tariffs resulting from liberalisation, has strongly reduced the second type of grant, with possible strong gains in terms of allocation efficiency, but with negative transitional effects in terms of distribution. The geographical equalisation, both in final and intermediate services, continues, and can have negative effects on allocation efficiency, because it causes a deviation in the social desirability and profitability of specific modes of the entry of the operators in different geographical areas. In particular, in high cost geographical areas, the technological choices that do not use the fixed network do not benefit from the implicit support of the geographical equalisation of prices.

The transposition of considerations and approaches matures with reference to the obligations of universal service to the digital divide issue, is not immediate. It is therefore necessary to start by identifying the differences between the two themes, in terms of public, regulatory, technological and market opportunities objectives. It will then be necessary to analyse the effects of the current regulatory setup and of the other public policies implemented so far, in pursue of the actual objectives of a regulatory organ, such as the safeguard of the interests of consumers, the pursue of allocation efficiency, and the technological neutrality and competitiveness, together with the wider ones of social cohesion and improvement, in economic and efficiency terms, of the government action.

Within this framework, also lies the problem of the efficient use of resources that are additional to those, within the sector, used today for the financing of the obligations of universal services, and of the best channelling tools.

The same obligation to geographical equalisation of prices must be subjected to discussion, to ascertain the possibility of defining tools that are equally effective, in terms of objectives pursued, but less distorting, in terms of technologic neutrality and competitiveness of the regularisation. Vice-versa, it will be necessary to define compensation tools that reinstate equality conditions and reduce the interrelations between geographical markets, should the same be maintained.

This approach also highlights the fundamental role that the geographical aspect will increasingly assume, with the development of NGA, in the investment choices of the operators. It goes without saying that the quality of the services offered and the role of the various suppliers will be diversified in the various geographical areas. The pre-existence of market unifying factors, like the dominance of the incumbents in the downstream services, and the indirect externalities connected with the dimension

of the users served, are still of such relevance that in the short -medium term the definition of the distinct geographical markets of importance will be difficult. In a longer term perspective, the situation may change, particularly if different subjects succeed in managing, in a factual monopoly situation, new access networks developed in separate metropolitan areas.

The digital dividend

The rational use of the radio spectrum, supported by a consistent implementation of the fundamental principles confirmed by the European juridical framework, thanks to the technical development which saw in the digitalisation of mobile services and broadcasting a fundamental turning point, may result in a strong increase in the quantity, quality and variety of services offered on the whole to users, without penalising, compared with the current situation, any types of use, and with positive impact on fundamental rights, such as pluralism of information, and a consistent advantage for public finance.

The research program tackles this theme, in order to ascertain the possible long term impacts on the availability of broadband and ultra-broadband services, both fixed and mobile.

With this in mind, first of all an analysis is carried out of the level of freedom of the Italian decision makers within the international context they operate in, both in terms of regulatory setup, and of tangible decisions on the destination of specific frequency bands to services (ITU WRC-07 conference), and in relation to the necessary coordination among nearby countries.

On this basis, a discussion takes place, on one side, on the methodology and implementation problems connected with the use of technical-economic models for the assessment of costs-opportunities of spectrum resources and their use within a plurality of resource allocation market-based procedures; on the other side, on the role of planning models and the explicit coordination of allocations.

This makes it possible, in particular, to identify resources that, in the short term and with reduced conflict, could be allocated to radio broadband services. In fact, within all digital areas there exist significant spectrum resources for which the utilisation for television purposes is forbidden by international coordination decisions, due to the interferences that they would generate. On the other side, such resources could be used for IMP services (in particularly WiMax, HSPA and LTE).

Management of the transition towards NGAN

The actual state of the system, in terms of technological advancement, current regulations, physical and financing resources available for the development of new infrastructures, information technology applications and complementary competences necessary for enhancing the new opportunities, user consumption habits, has a strong impact on the start-up and implementation times for the transition towards the new networks.

A transition is not necessarily efficient, if started and completed within a short period of time: redirecting the most important investments towards the new infrastructures may be appropriate if certain technologies are not ready, or if the gradual development of new consumption behaviours could initially take advantage of existing infrastructures, and a higher number of investments was available, in the development of complementary applications; diluting of investment programs in subsequent stages makes it possible to contain risks and to enhance the actual opportunities within the project. Besides, regulation should discourage any investments made with the objective of cunningly reduce market competitiveness (preemption).

On the other hand, it must be avoided that any problems connected with the coordination or appropriation of the innovation, or other distortions reducing the profitability of the investments, may cause infrastructural shortfalls capable of limiting the development of demand.

Within this framework, it will be necessary to analyse the way private decision makers face investment timing choices, and identify regulatory and industrial policy philosophies and tools capable of facilitating an efficient transition.

On this respect, the most relevant duty of the regulatory Authority and of the subjects of the industrial policy, is to define as soon as possible, and in any case much before the time the operators will initiate the most important investments , an overall intervention philosophy, and a group of principles and technical norms, capable of reducing the level of uncertainty with which the operators create their plan. For this purpose, it is necessary to clearly explain the commitment of the Authority and the government in the stability across time of the declared intervention principles. The level of credibility of the commitment will be much higher if the declared principles, in a rational transition framework, are connected to those that up to now have guided the liberalisation processes of the markets within the European Union.

3.5. The Financial Police and the Postal and communications Police

During the period of reference (May 1st 2009 - April 30th 2009) the collaboration of the special Nucleus for the Broadcasting and Publishing of the Financial Police, part of the special units, has been mainly centred in the following areas of competence: concession fees due from the radio-television companies, institutional advertising of public bodies, contribution of communication operators, safeguard of the users in electronic communication systems, program schedule obligation of radio-television broadcasting stations, equality of access to information means, television advertising, copyrights in the radio and television sector.

The operating capacities of the special Nucleus were also developed thanks to an initiative following the monitoring of the analysis unit, formed at the "Situation, analysis and operating project room" of the special unit Command, which is in charge identifying possible risk areas of the system that must undergo controls.

Concession fees due by the radio-television companies

With the implementation of the collaboration relation, continues the inspection activity for the determination of the payment of the annual concession fee by radio-television broadcasting stations, pursuant art. 27, par. 9 and 10, of law no. 488/1999.

The campaign of controls consists in a review of the accounting aspects, through an analysis of the legal records and the involved balance entries, which allow an in depth study of the management issues, to check the exact turnover making up the taxable turnover that will form the basis for the calculation of the fee.

Contribution of communication operators

the annual contribution due from communication operators, pursuant art. 2, par. 38, letter b) and subsequent paragraphs of law no. 481 dated November 14th 1995, is currently regulated by art. 1, par. 65, 66 and 68 of law no. 266 dated December 23rd 2005 (financial law 2006), which amended the income system for the covering of the operating expenses of the Authority not guaranteed by State funding. The current assessment, carried out also with the direct support of Nucleus staff, has so far enabled to identify:

- for the radio-television sector, 510 parties (on a total of approx. 1,600) not fulfilling the communication obligations (among these 11 have omitted the payment of the contribution);
- for the publishing sector, 676 parties (on approx. 3,000), not fulfilling the communication obligations (among these 3 have omitted the corresponding payment);
-

Safeguard of users in electronic communication systems

Within the framework of the collaboration provided to the Authority, the Nucleus has performed 22 checks on communication operators, to ensure compliance with the obligations on quality and service chart. The service chart is an information and safeguard tools for the consumer, particularly in the telephone and internet sector. It outlines important transparency obligations for the operators of the field. Among the information duties are the obligation of indicating in which cases the customer is entitled to compensation, the period of time within which the service provider must inform its customers of the outcome of a complain, send all subscribers to the service the invoice in line with the payment due date, as well as the service standards offered.

The inspections, following the receipt of many notifications from customers, have enabled to identify several types of behaviours not in compliance with the regulations of deliberation no. 179/03/CSP.

Some of the telecommunication companies inspected failed to produce an appropriate service chart, while other, although implementing one, have failed to inform their customers appropriately, through the commercial and tax documentation.

Obligations of program schedule of television broadcasting stations

As far as the program schedule of television broadcasting stations is concerned, particularly complex and delicate control activities are being carried out on satellite television broadcasting stations showing "unencrypted" programs with erotic-pornographic content across the 24 hour period across the national territory, without any selective device to prevent minors from being able to access such program schedule (see paragraph 2.14).

The inspections carried out, originating from a notification issued by the European Commission, asking that compliance with art. 22 of the 89/552/EEC directive be ascertained, were able to find that several stations were broadcasting, without break, hotline programs with naked or semi-naked female hosts in clearly sexual poses, in order to entice the viewers to call premium tariff numbers (see par. 2.9).

The telephone numbers collected also enabled to identify the corresponding service centres, and therefore the companies owning the satellite broadcasting stations, on the basis of the documentation for the sale of the corresponding advertising spaces.

Upon completion of the inspection, 18 broadcasting stations were notified to the Authority, due to administration irregularities in relation to the broadcasting of pornographic programs during the so-called "protected" band (in violation of art. 4 and 34 of legislative decree no. 177/2005), and the lack of compulsory information during the advertising of premium tariff telephone numbers (art. 23 of Min. Decree no. 145/2006 and art. 5, par. 3 of deliberation no. 9/03/CIR).

Equality of access to means of information (so-called "par condicio")

The special Nucleus for broadcasting and publishing, based on the regulatory document pursuant law no. 28/2000, the understanding protocol, and the regulatory dispositions issued during the times by the Authority, provides an important contribution to the "Par condicio unit", for the activities of:

- acquisition of magnetic supports and publications;
- management of notifications on local broadcasting stations and publications, in collaboration, as required, with the provincial units of the Financial Police;
- direct support using own personnel resources;

mainly during the campaigns for the election of the European Parliament, politic, regional and administrative elections, and for any referendum consultations.

Television advertising

As far as advertising is concerned, the special Nucleus - following request of the Authority - has carried out 40 checks on commercial television broadcasting stations, some of which operating on the national territory, broadcasting television sales programs selling telephone logos and ringtones, associated to prize competitions, with access through premium line numbers.

The inspection activities, aimed at ascertaining compliance with information obligations for the safeguard of the consumer, by television broadcasting stations and service centres, have identified 21 operators not complying with the field regulations.

In particular the programs:

- were advertising prizes of higher value than the value indicated in the competition rules;
- did not indicate the cost of the phone call;
- did not fully describe the items being sold;
- did not provide any information on the right of withdrawal pursuant legislative decree no. 50/1992;
- omitted the identification details of the seller;
- did not display on screen the notification "televendita" (teleshopping).

The irregularities detected in violation of art. 4, par. 1, letter c) of legislative decree no. 177 dated July 31st 2005, and related regulations (deliberations no. 538/01/CSP and no. 9/03/CIR) were notified for the starting of sanction proceedings.

Copyright in the radio and television sector

The special Nucleus for broadcasting and publishing has recently carried out across the whole national territory several inspections on television broadcasting stations, in order to ascertain compliance with the copyright regulations on the audiovisual material broadcasted.

The monitoring process has made it possible to notify to the competent legal Authorities 6 broadcasting stations transmitting programs in violation of art. 171ter, par. 1, letter a) of law no. 633/1941, broadcasting works covered by copyright without the due consent of the author.

It was also ascertained that one broadcaster had entrusted to another broadcaster the use of supports obtained by the distributor, containing works covered by the copyrights of the distributor, in violation of art. 171 quater of the above law.

In summary, during the considered period, the special Nucleus:

- completed 260 inspections, 184 of which were originated by request of collaboration by the reference Authority, pursuant the "Understanding Protocol" signed with the Finance Police;
- notified to the Authority 1370 administrative irregularities (1186 of which related to the contribution due by the communication operators);
- reported to the Judicial Authority 30 parties, 1 of which under arrest.

The activity carried out during the year by the postal and communication Police section, within the framework of the understanding protocol undersigned with the authority on February 10th 2003, could be summarised as follows:

- Investigations carried out in collaboration with the Authority for the guarantees in communications, pursuant deliberation no. 502/06/CONS, at the radio-television systems serving the region capitals, or the most significant province capitals, for the technical-administrative inspection of the systems, in view of the transfer from analogue to digital television broadcasting (so-called "switch-off) set for 2012.
- Monitoring of television programs for compliance with the safeguard of minors. Within the framework of this activity, it is worth mentioning the actions against television sales programs selling cartomancy products, being broadcasted by terrestrial and satellite stations, in order to ensure better protection for the consumer, including minors, as well as the actions aimed at fighting any related conduct that may, in any way, exploit the superstitions and credulity of viewers (this latest aspect, also and foremost to protect the viewers that are most vulnerable on a psychological point of view). During these monitoring operations, violations to art. 5 ter of deliberation no. 538/01/CSP and subsequent amendments, and decree no. 145 dated March 2nd 2006, were ascertained and notified to the Authority, against two terrestrial

broadcasting television stations, and 2 digital broadcasting television stations, for programs broadcasted during time band 7: 00/23:00 (see par. 2.12).

- Investigation activities on pre-paid international telephone cards, normally used by non-Community workers to contact their countries of origin. This activity was concluded with the seizure of approximately 500,000 cards (still to be activated), for a value nearing 2,500,000.00 Euros. The investigations were centred on a telephone company owned by an Irish company, an exclusive Italian distributor, as well as approximately seventy local resellers, distributed across the national territory.
- The investigation activity brought to the acquisition of 346 telephone activation contracts, and the reporting to the Judicial authority of one individual for the crime of impersonation.
- Investigations on several cases of telephone spamming. In particular, this activity was carried out against the sending of messages to mobile phone users, aimed at inducing them to dial the number with area code 899 appearing on their telephone handset. In this case, the message was ambiguous in view of the fact that reference was made to an answering service, which the users could mistakenly believe to be their own. Moreover, the users did not have the clear perception that the telephone call would be a premium tariff call, due to the fact that the number was often represented in a surreptitious way (with the inclusion of spaces and separation points, e.g. 89 9xxxxxx), so that it would not be immediately recognisable as a premium tariff code.
- Monitoring activities on surcharge services, provided by the sending of texts or data in push mode, for which sanction proceeding are being carried out by the Authority. In details, these were SMS messages containing links to websites providing services in exchange of subscription surcharges (such as the supply of mobile logos and ringtone), and for which subsequent cancellation was difficult.
- Activity connected with the phenomena of surcharge services supplied with 899xxxxxx numbers. The monitoring consisting in the verification of the services supplied with these numbers, covered 262 cases, part of which were handled in conjunction with the Authority Inspection Service personnel.
- Inspections on the way the information services for subscribers to 12xy numbers are performed. This involved both fixed and mobile line service providers, and dealt with the "Urgent measures for the setting of the prices for the service originating from a mobile network, calls to numbers non geographically related to the subscriber information service". The above activities were aimed at ascertaining discrepancies, both in terms of cost of calls to other numbers (in relation to the tariffs published by the operators themselves), and in terms of missing information, or incomplete information provided by the free presentation message preceding the calls themselves (see par. 2.18).

In addition, 112 activities were carried out by the Postal and Communication Police Section, mainly consisting in monitoring and investigations activities, on the publication of pornography, broadcasted through television networks and internet sites, in addition to notifications, for the safeguard of minors, of radio program with vulgar content, broadcasted during the protected time band.

Support was also provided for activities connected with the activation, by fixed and mobile line telephone operators, of services not required by the user.

Lastly, the postal and communication Police section has reported to the Judicial Authority activities in connection with the Institutional Authority. In specific terms, 198 complaints were issued for information technology fraud, cloning of credit cards and debit cards (suffered mainly through internet auction sites), and 41 ordinary complaints.