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Annual Report to the Parliament

## **Address by President**

**Andrea Camanzi**

Chamber of Deputies

20 June 2018

Distinguished Guests, Ladies and Gentlemen,

first of all I would like to express, on behalf of the Authority's Board, special thanks to the President of the Republic, who is honouring us today with his presence.

I also wish to thank the President of the Chamber of Deputies for hosting us today, the representatives of the Parliament and the Government, all those present.

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In the Report that I am pleased to present with this address, the fifth since its establishment, the Transport Regulation Authority illustrates the activities carried out in the period between July 2017 and May 2018 and introduces itself to the Parliament of the 18<sup>th</sup> legislature and to the Government.

**Mobility as a good**

The developments and trends in the transport sector constitute for both the institutions and the markets an opportunity not to be missed in order to develop public policies, economic regulation and behaviour.

Mobility is a good in itself, has an economic nature and is subject to legal protection.

The disintermediation of services, that pertains to the digital era, multiplies the channels through which informed consumers and users steer their conduct; it is socially significant.

The passengers' awareness of the right to be protected throughout their journey and to enjoy efficient and quality services has increased, irrespective of the infrastructure and the mode of transport used or the carrier providing such services.

The environmental sustainability of transport and the reduction of congestion, especially in urban centres, are a priority.

Demand for individual transport modes evolves into demand for integrated and multimodal services. Passengers ask for a single

travel pass for their journeys, while the integration of infrastructures with fully interoperable complementary services is essential for businesses.

The production of mobility services is organised through platforms that enable simultaneous economic transactions on once completely separate markets. The development strategies of transport undertakings confront new challenges coming from intermodal competition.

In consideration of the structural changes taking place on the supply side, the full independence of infrastructure managers takes on decisive strategic value.

The entry of new companies into the markets of mobility services no longer necessarily depends on the access to physical transport infrastructures. On the contrary, the latter is increasingly affected by the availability, accessibility and use of structured data on passengers' behaviour and freight movements.

*Behavioural  
economics*

These issues are at the heart of *behavioural economics*, a theory for which Prof Richard Thaler has been recently awarded the Nobel Prize.

In short, change underway is based on global technologies and is systemic and irreversible. Regulation of the sector needs to fully grasp its scope by applying, likewise, systemic methods.

The Authority's responsibilities towards the Parliament acquire new distinctive features in the light of the above developments, which will be further expanded on before the Parliamentary Committees and in any other relevant forum.

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**ART's method**

The current scenario confirms the worthiness of the choice made by the legislator in 2011 concerning the setting up of an independent economic regulator in the transport sector, with responsibilities

spanning across all transport modes, so that it is in a position to facilitate, follow through and compare the changes currently under way; there remains, in any case, the need to update methods, practices and knowledge in order to ensure their persistent adequacy.

While exercising its independence of judgement, the Authority has implemented the approach envisaged by the legislator by identifying economic and charging regulatory models that are consistent with the characteristics of the transport production cycle and present common features.

The Authority's models are characterised by a pre-defined duration of the regulatory period and by homogeneous principles to determine the remuneration of net invested capital, by obligations of accounting separation and keeping of regulatory accounting, and by provisions aimed at ensuring the independence and economic equilibrium of infrastructure managers, where relevant.

*Common features of economic regulation*

We thus applied a systematic approach to compare conditions of efficiency of relevant markets, while duly acknowledging that their developments are affected by the drivers of multimodality: technological innovation, economic and environmental sustainability.

The evidence I further present contradicts the alleged negative correlation between the degree of regulation and the attractiveness of investments, whose *very fast propellers* are - rather - quite sensitive to a predictable and stable regulatory framework and a reliable independent economic regulation.

In rail high-speed passenger transport, that operates in a liberalised market, the Authority has ensured equitable and non-discriminatory access to infrastructure and service facilities, as well as sustainable charges. It has thus contributed to enhance the competitive market structure and achieve results that may be directly appreciated by end users who benefit from increased daily frequency of trains,

*High-speed developments*

significant price reductions and better service quality.

The undertakings involved have also attracted - and, in turn, made - major foreign investments, thereby gaining an exclusive competitive credibility to expand in the European rail passenger market, which is about to be fully open up to competition following the implementation of the Fourth Railway Package.

This framework also involves the conscious choice by the Authority to pursue, since its establishment, close cooperation with similar bodies participating in the European network of independent rail regulators (IRG-Rail), that I am honoured to chair this year.

#### *Airport models*

In the airports that are regulated on the basis of the models adopted by the Authority in 2014, charges are updated based on a consultation procedure, that is overseen by the Authority in its capacity as independent supervisory body. The carriers' active participation in the regulation of access to airports qualifies them as regulated parties, gives voice to their requests and prompts infrastructure managers to make known their efficiency targets.

Effects are thus produced on their industrial cost structure and, accordingly, on the price and quality of the services offered to passengers. The determination of the rate of return on net invested capital for the whole regulatory period, that the Authority sets in line with the values applied to other transport modes, prevents distortions in the allocation of investments, that are thereby, rather, encouraged.

Better use of available airport capacity has created the conditions for a significant reduction in the cost per unitary flight and for increased passenger traffic; in the airports already regulated by the Authority, the positive variation thereof compared to the previous year was much higher than the national average.

Concerning incentives for aeronautical activities, the Authority continues to exercise its advisory powers.

Albeit in a different way compared to airport and railway, the motorway management also benefits from the application of the model identified by the Authority for the optimal management area: it was designed to encourage competition by comparison (or yardstick competition) through an objective method to estimate the level of efficiency to be pursued by a company in relation to that of all other companies operating in the same segment.

*Optimal management area of toll motorways*

The Authority intends to apply yardstick competition also in areas in which (unlike motorways) it is not expressly provided for, although this is a widespread method for the regulation of other utilities sectors in Italy and of the transport sector abroad. In particular, proceedings are ongoing for the application of competition by comparison in regional rail transport, which should significantly improve its quality and efficiency. The method will be applied to airport infrastructure upon revision of the relevant charging models.

*Yardstick competition*

Work on this methodology has been carried out by the Authority's Advisory Board, composed of Italian and European leading experts in the area. Let me take this opportunity to warmly thank them all. They will continue this exercise on the occasion of a seminar that is forthcoming in Turin on the 21<sup>st</sup> of September to mark the fifth anniversary since the Authority's establishment.

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Turning to the activities performed in the period of reference, let me expand on three main sets of topics.

**ART's path**

The first one concerns the conditions for access to the infrastructures and related services.

**Conditions for access to infrastructures**

As regards access to ports, the Authority adopted the first regulatory measures concerning, *inter alia*, the award of concessions for port areas and docks and the criteria to determine the related charges and fees and keep the regulatory accounting.

**Access to port infrastructures**

The measures, whereby the Presidents of the so-called port system authorities are provided with a homogeneous transparent framework for port access regulation on a national basis, implemented both the rules establishing the Authority and the relevant provisions of Law no. 84 of 28 January 1994 concerning the recast of the rules on ports (*Riordino della legislazione in materia portuale*), as supplemented by Legislative Decree no. 232 of 13 December 2017, (amending Legislative Decree no. 169 of 4 August 2016 on “*Rules on port authorities’ governance*”).

With respect to the above provisions, the Council of State has fully confirmed the relationship between Port authorities and ART and called on the latter to continue its regulatory initiatives and assessment of the conditions for access to port infrastructures and services (Opinion no. 2199/2017 of 24 October 2017).

On the regulatory measures, that take into account evidence drawn from past individual proceedings, opinions were delivered by the Competition Authority and the National Anti-Corruption Authority.

In this respect, the National Anti-Corruption Plan of the National Anti-Corruption Authority (ANAC), as updated in 2017, includes the Authority’s measures aimed at improving transparency in this area among the provisions apt at preventing the risk of corruption in port areas: another way to highlight the relationship between independent economic regulation, measurable public choices and legality.

The subject of the economic regulation of port infrastructures will feature on the agenda of the legislator again at the time of enacting Regulation (EU) No 352/2017 of the European Parliament and of the Council of 15 February 2017 “*establishing a framework for the provision of port services and common rules on the financial transparency of ports*”.

The Regulation provides, *inter alia*, that the determination of port charging policies be done following consultations between port

managing bodies and users and be subject to appeal procedures before an independent body: in this respect, the Authority would be in a position to draw on its experience of the economic regulation of access to airport infrastructures.

In addressing ongoing changes in the demand for mobility services, the Authority undertook to regulate access to medium- and long-distance bus and coach stations: these are essential infrastructures and nodes of modal and intermodal competition in passenger land transport.

*Access to bus stations*

A survey confirmed a significant growth of demand in this segment, where the entry of new carriers resulted in greater flexibility of services and more competitive prices.

In a competitive market environment, the conditions for carriers' access to bus stations are of particular relevance, especially with respect to those which are located at main intermodal hubs (airports, ports, railways and metro stations). Measures to regulate capacity allocation of bus stations and related areas and services were thus introduced for the first time, so as to take into account, in particular, the needs of disabled persons and persons with reduced mobility, together with measures for the determination of charges and fees for their access and use.

With respect to access to airport infrastructures, the mid-term review of the existing charging models was completed in July 2017, and the Authority is about to start their full review.

*Access to airports*

Cost efficiency, adequacy of their elasticity weighted against traffic levels, update of the weighted average cost of capital (WACC), treatment of trade margins and service quality will be among the issues addressed by the revision.

Based on the above, the Authority remains convinced that proportionate and transparent regulation works in favour of all airports and carriers, regardless of their size and market power.



In addition to ordinary activities related to the exercise of its regulatory, prescribing and monitoring responsibilities in the railway area, the Authority committed to examine the effects of introducing innovative methods of management and operation of rail networks and services.

*Access to railway infrastructures*

The most relevant cases concern the planned upgrade of the maximum speed on the high-speed network and the procedures to be followed by railway undertakings to submit requests for capacity allocation to the infrastructure manager, which are still subject to individual supervisory proceedings. Among them is also the project concerning the placing in operation of two-coupled trainsets in which respect the Authority has already adopted specific criteria for charge adjustment.

*Separation and transparency obligations*

In the implementation of the latest provisions of the Fourth Package concerning the governance of the railway sector, the Authority will focus its attention on the enforcement of the requirements concerning strengthened financial transparency and accounting separation obligations, and the avoidance of conflicts of interest.

*ANSF-ART Protocol of cooperation*

Relevant experience has also been gained in the assessment of mutual interactions between market regulation and railway safety. While the National Railway Safety Authority (ANSF) retains sole responsibility in the latter respect, the current legal framework provides for the cooperation between ANSF and the Authority, that has been formalised in an *ad hoc* Protocol signed by them.

*Access to motorways*

With regard to motorways, at the request of the Ministry of Infrastructure and Transport, the Authority has adopted the charging scheme and the concession framework to be included in the tender for awarding the unitary management of motorway sections in the north-west of the country (A5 Turin-Ivrea-Quincinetto, A4/5 Ivrea-

-Santhià-Turin Ring Road System, Turin-Pinerolo connection and A21 Turin-Alessandria-Piacenza), that are currently managed by separate concessionaires.

Still ongoing are the preliminary inquiries concerning the adoption of similar measures for awarding the concessions for the management of motorway sections in the north-east of Italy (in particular, one inquiry concerns the Brenner A22 Motorway, and another the sections A4 Venice-Trieste, A23 Palmanova-Udine, A28 Portogruaro-Conegliano, A57 Mestre Ring Road for the relevant part and A34 Villesse-Gorizia Connection).

Further, upon request of the Court of Auditors, the Authority has provided information as requested in the framework of the ongoing investigation carried out by the Court Chamber that is in charge of auditing the performance of State Administrations, with respect to competitive procedures, charging schemes and depreciation criteria applied to existing motorway concessions.

The second set of topics includes transport services, and, in particular, local and regional public transport.

Market regulation of local public transport services

In this respect, service contracts need to fully reflect the main themes of the public debate: sustainable mobility, flexible and shared services, commuters' needs. In this context, the application of standard costs does not fully exhaust the issue of pursuing management efficiency, despite being a first step in this direction.

The Fourth Railway Package confirms that, in place of tendering procedures, contracts for the operation of rail passenger transport services may be directly awarded [Regulation (EU) No 2016/2338 of the European Parliament and of the Council of 14 December 2016 amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail]. Over time, contracting entities have made wide use of this

option, with a few and well-known exceptions.

*The joint position on in-house and direct awarding*

In this regard, jointly with the National Anti-Corruption Authority and the Competition Authority, ART has adopted a position addressed to the Ministry of Infrastructure and Transport, the Ministry of Economy and Finance, the Regions and the State-Regions Conference, to highlight the stringent need that contracting entities state the underlying reasons for their choice and comply with transparency obligation, including in the event of direct or in-house award. The joint position was also presented in, and welcomed by, the relevant EU fora.

On the other hand, at the national level, and with reference to all local public transport services, Decree-Law No 50 of 24 April 2017 on "*Urgent financial measures, initiatives in support of local entities, further measures for earthquake-hit areas and development measures*", converted with amendments into Law no. 96 of 21 June 2017, amended the law establishing the Authority and supplemented its functions by providing that, in the case of direct (and in-house) award, the Authority determines the targets of efficiency and effectiveness to be complied with by the operator, as well as the objectives of financial equilibrium. It has been further envisaged that, for all service contracts, the Authority provides for obligations of accounting separation between public service activities and others.

*Effectiveness and efficiency targets of local public service operators*

The above-mentioned developments indicate that the possible use of flexible awarding procedures does not rule out the obligation that service contracts be aimed at pursuing efficiency objectives.

*Tender notices, territorial continuity and connections with minor islands*

In this new framework, activities are in progress to update the measures - already adopted in 2015 - concerning the drafting of tender notices for the award of passenger local public transport services by road and rail on an exclusive basis, and to introduce specific provisions for the maritime sector. In the latter context, the ongoing proceeding also concerns territorial continuity and connections with minor islands. Both activities will be completed in the current year.

With reference to taxi services, the Authority intervened both with the ordinary advisory activities in favour of municipalities, that mainly concern quantitative planning of licences and fare adjustments, and with reference to the draft Ministerial Decree on the reorganisation of the sector, on which the Authority was invited to deliver its opinion by the Ministry of Infrastructure and Transport.

*Taxi services*

In the latter respect, and in line with the initial indications provided in 2015, the Authority has underlined the need for an overall revision of existing legislation so as to rule out exclusivity constraints with service intermediaries and encourage the use of technological tools for mobility.

The third set of topics concerns the quality of transport services and the effective protection of passenger rights.

**Service quality and protection of passenger rights**

Service quality is covered by service contracts concluded between contracting entities and transport undertakings. These contracts define and circumscribe the responsibilities of each party and do so on a case-by-case basis. On the other hand, rights relate to the relationship between carriers and users and are governed by rules of general scope. The combination of the two is essential to improve the overall travel experience of passengers: this purpose is today even more essential in the perspective of an effective integration of transport modes. Both are subject to the Authority's regulatory activity.

Minimum quality standards of general scope, to be included in the contracts for the provision of services subject to public service obligations, have been already approved for the railway area; similar measures are being adopted for sea and inland waterway transport.

*Minimum quality standards of services*

The measures are focused on issues such as regularity and punctuality of the service, completeness of the information supplied to passengers even before starting their journey, public accessibility of related data, adequate conditions of access to services to be

guaranteed to all passengers. To be effective, these standards need to be supported by a penalty system, as provided for in the measures.

In order to ensure that minimum quality standards are upheld, the Authority further envisages an active role of representative associations.

*Minimum content of the specific rights, including compensation*

Let me now turn to the measures concerning the content of minimum rights, including compensation, that may be claimed by passengers against carriers and infrastructure managers. These measures, as provided for by the statutory rules, are adopted by the Authority to further define terms and conditions for the exercise of entitlements that have been already identified by law.

In this regard, it is worth to mention the proceeding initiated by ART to define the minimum rights and entitlements of passengers of transport services subject to public service obligations. It followed up on a similar one, already concluded, concerning travel pass holders on high-speed lines. The ongoing regulatory initiative of the Authority is aimed at the wide commuter audience.

In this area, too, the key themes are punctuality and reimbursement in the event of delays (including for travel pass holders), provision of information and guarantees and protection of disabled persons and persons with reduced mobility.

These regulatory initiatives are developed alongside with the functions performed by the Authority in its capacity as national body responsible for ensuring the enforcement of EU regulations for the protection of passenger rights in rail, bus, sea and inland waterway transport.

*ART's indications on the penalties for infringement of passenger rights*

The exercise of these functions and related outcomes are broadly described in the Annual Report. The evidence drawn from this activity will serve as a basis for the indications that are about to be adopted by the Authority in order to urge appropriate legislation that may

strengthen the effectiveness of protection by revising, in particular, the penalty system provided for under domestic legislation implementing EU Regulations.

The Authority is committed to follow up on the developments of EU legislation in this area. In particular, it contributes to the initiatives aimed at promoting a multimodal and intermodal approach to the protection of passenger rights, as well as positive actions designed to implement the issuance of global tickets. The Report expands on the latter issue by referring, *inter alia*, to the experience gained in the management of clearing houses in the banking and communication sectors.

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Quite clearly, in order to address the complex issues described so far, the economic regulation needs to be comprehensible and non-punitive and encourage virtuous behaviours. It should further be proportionate and limited to the actions necessary to improve quality and cost-effectiveness of transport services and promote changes brought about by technological innovation. We believe we have kept to this approach so far.

The question now arises as to the nature of digital platforms, including those pertaining to freight transport logistics. In this regard, it should be considered whether, and under which terms, these are to be treated as essential infrastructures, whose access, that is necessary for the performance of economic activities in downstream markets, should be guaranteed under equitable and non-discriminatory conditions.

What is to be assessed, again in the context of *ex ante* regulation, is the capacity of platforms to manage big data on an exclusive basis, thereby affecting the operation of service markets.

*Multimodality and  
passenger rights'  
protection*

## **Vision**

*Platforms and data*

On the other hand, publicly available data, that are collected in the performance of a service of general economic interest or by the concessionaire of the infrastructure operating under monopoly, should in any event be made publicly available and constitute an emerging commodity.

*Integration of services and modal rebalancing*

As a conveyor of the “good” of mobility, platforms are the tool whereby the demand for integrated and multimodal services is substantiated: the latter issue was identified as the introductory topic of the Report in the framework of parallel initiatives promoted by the EU Commission and within IRG- Rail.

*Modal shift and environmental sustainability*

The previously unidimensional objective of modal shift takes on new qualifications in the search for a new and more advanced balance to be pursued by improving the environmental performance of more polluting transport modes. This approach is embodied in a number of EU legislative proposals and in the re-definition of the business models of companies investing in carbon-free and so-called “sweet” mobility solutions.

*Digitalisation and potential demand*

The use of shared or collective passenger transport service, facilitated by digitalisation, brings out an unexpressed potential demand for low-cost transport services, and adds a new variable to the identification of those that should be made or remain subject to public service obligations.

Regarding PSO services, more efficient models, less burdensome for public finances, require careful consideration.

*Economic equilibrium test*

Where services supplied under market conditions, on the one hand, and services provided under public service obligations, on the other, compete on the same routes, the question arises whether compensation and regulated charges that are applied to the latter services meet efficiency criteria. The relevance of these themes will become even more apparent with the expected application of the economic equilibrium test.

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Having addressed the thematic issues considered by the Authority, let me briefly turn to the issues of its resources and development.

## Resources and development of the Authority

At this stage of the Board's mandate, while the offices are working at full capacity, the issue of the Authority's funding - for the protection of its independence - remains open and, in particular, which entities are required to contribute to it. Following the judgment of the Constitutional Court no. 69 of 7 April 2017, if not the legislator, the courts will rule on the merit of the significant disputes, which are still pending.

### *Financing of the Authority*

With regard to organisation, on account of the targeted cost containment, the Authority has already triggered the use of joint purchases with similar bodies. It will now seek to further the use of shared instrumental services and offices, as laid down by law, beginning with certain staff management functions.

### *Joint services*

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I am pleased to turn to the acknowledgments.

## Acknowledgements

First of all, I would like to thank our staff, experts, Legal Adviser and Chief Economist, to whom the Board and I wish to address our appreciation and acknowledgements. I am, we are, proud of their skills and ability to contribute to the Authority's dialogue with national and EU networks of the transport sector. I trust, we trust, in their ability to qualify the Authority in terms of awareness of the values of independence, modernity and quality of administrative action.

Let me also thank the Authority's patient secretariat, the President's and Board Members' assistants, the President's spokesperson.

I wish to especially thank the Parliament, the Council of State, the Regional Administrative Courts of Piedmont and Lazio and the



State Attorney.

I wish to thank the national, central and local authorities which the Authority cooperates regularly with and, in particular, the Prime Minister's Office, the Ministry of Infrastructure and Transport, the Ministry of Economy and Finance, the Ministry of Economic Development, the *Guardia di Finanza*, the City of Turin hosting us and the Competition Authority, the National Anti-Corruption Authority, the Data Protection Authority and, last but not least, the regulatory Authorities for public utilities, which have been established before us and with which opportunities and areas of cooperation are ever growing.

The activities I have described would not have been possible without the support of the Politecnico di Torino and the Customs Agency, that host our offices.

I would like to extend my thanks to the members of the Authority's Board of Auditors and Evaluation Committee, and to the Authority's Guarantor of Ethics.

Finally, I wish to thank my colleagues Barbara Marinali and Mario Valducci, whom I share this experience with, and, together with them, the Secretary General.

Special thanks go to my Head of Cabinet.

