

Financial Crisis, Regulation, and Competition

By Antonio Pilati, member, Italian Antitrust Authority

The financial crisis has deeply affected the understanding of competition by the general public. Governments, the public opinion and regulators and supervisors contribute to change ideas and courses of actions under four respects:

- 1) the idea is stressed that consumers and society can be harmed by a market such as the financial one, which operates at full competitive efficiency. Thus, competition itself can be a hazard;
- 2) substantial government aid is disbursed to bail companies and businesses that have made serious strategic mistakes;
- 3) distortions to competition are commonly justified by an appeal to the notion of systemic risk. The operation of the credit market is posited to be an interconnected system most pieces thereof cannot be allowed to fail, lest the whole economy collapse. The core of the financial market—albeit never clearly defined in its boundaries—is thus understood as an utility of sorts, subtracted to the principles of competition.
- 4) insofar as it is considered “under probation,” competition can only vindicate its role in the economic action so long as it is fettered by a surfeit of rules in the financial markets and accepts an awkward coexistence with State aid in other areas. Consequently, two recently reaffirmed lead principles do melt away: deregulation as the ideal-type of liberalisation (once the transition from monopoly to market has been achieved) and the incompatibility of direct governmental aids with the proper functioning of the market.

All these changes entail wide-ranging consequences.

Geographical imbalances do emerge. Public subsidies do differ from State to State, in their size and scope. In markets that—contrary to some forecasts—show a growing trend towards a global integration, different subsidies involve—as the European Commission worries—steep gradients in competition.

Imbalances do also stem due to the scope for lobbying efforts that play a decisive role in the allocation of subsidies. Moreover, politically weaker or largely autonomous industries can become veritable sacrificial victims to placate the displeasure of the public for the disbursement of State aid, as it seems to be happening in the software industry (Intel, Microsoft 2, possibly Google).

The operation of regulatory and supervisory agencies is interfered with. In a number of cases it is pre-determined by legislatively enacted micro-regulations, in other instances it follows ex post facto the decisions of the executive, occasionally it strives to regain a degree of credit in the areas more exposed to become victims of “ideological compensations.” Perversely, the outcome is a rewarding of less efficient companies and industries by means of subsidies, whereas innovators are penalized by onerous regulations.

By virtue of the global integration of today’s world, a degree of contagion can be observed that spreads—quite often defensively—public aid efforts. Concurrently, at least in Europe, the liberalisation process in industries characterised by a monopoly or dominated by former monopolists does grind to a halt.

Competition can only be successfully championed—particularly in the current hostile cultural setting—if a number of crucial policy issues are faced.

A code is not a user manual, and the rules do not prescribe the content of the subsequent action: a rule does establish boundaries, forbids behaviours, stipulates safety measures. The surfeit of regulations that is currently deployed does not help to manage risk in the growing complexity of the financial markets (instruments, objectives, scenarios, scope); strategies are still open and the guarantees against a systemic collapse do equally foster a degree of hazard (as witnessed by its revival). Until a conceptual framework is outlined that separates the scope of “utility” credit—where failure is not countenanced, but an inventory of permitted behaviours is provided and the greatest disclosure is demanded—from a fully competitive market—where waivers and bailouts are rejected—the system based on competition is sorely harmed and the non-financial industries are willing and legitimated to demand the same conditions when they found themselves in dire straits.

To oppose the imbalances caused by the growth of governmental interventions and at the same time to smooth the way for the integration of the markets the co-ordination of the legal frameworks that regulate the functioning of the markets in different countries is vital. Competition is no longer a cross-Atlantic affair, but deeply involves emerging countries (Gazprom, Telecom/Telefonica in South America, Rio Tinto).

In many industries, innovation increasingly depends from long-term, large-size and high-risk investments. Competition does mainly operates before a product is launched in the market, when the final applications are still unclear and both the investment levels and the death rate of ideas are high. The protection of innovation is a rule that secures competition in its creative quest and its outcome (intellectual property, performing networks) cannot be compared to an utility inherited by a public monopoly (such as the infrastructures built with collective investments) and subjected to principles of non-discriminatory access.