

PARITÀ DI ACCESSO

Organo di Vigilanza



2019

**Annual
Report**

2018 Activities and Results

Executive Summary

1. Executive Summary

The Supervisory Board is responsible for ensuring TIM applies the principles of non-discrimination and equal treatment to all operators accessing its network and this year's Annual Report illustrates the work undertaken, together with the principal results achieved in 2018.

This year was the first under the new board appointed in December 2017 and saw **the OdV focusing on three key areas of activity**. Together with its customary oversight role in monitoring TIM's compliance with the Undertakings set out in Agcom's Resolution N. 718/08/CONS, a role it has fulfilled since 2009, and the inspections carried out in response to complaints received from OAOs regarding potential breaches of the Undertakings by TIM, the year has also seen significant growth in the support the Supervisory Board furnishes to Agcom through its Annual Work Plan. The OdV's increased activity in this latter field represented a significant innovation for 2018. As the supervisory body responsible for monitoring the incumbent's compliance with its commitments, the Board has acquired a skill set and level of technical expertise which enables it **to provide Agcom with valuable support both in identifying the sophisticated tools required to verify compliance with the principles of non-discrimination and in monitoring the quality of the services provided by TIM Wholesale to OAOs**.

The need for constant vigilance on the quality of the access network, together with equal treatment oversight, has been confirmed by recent events in the United Kingdom. In 2015 BT, under the aegis of the regulator Ofcom and after 10 years of a model based on the Equivalence of Input, presented a new set of Commitments for compliance oversight. The Commitments were designed to allow Openreach greater autonomy in terms of governance and a higher level of investment on its fibre access network, while maintaining all its current non-discrimination obligations.

1. New network regulations and future challenges for the Supervisory Board. In the context of the complex process voluntarily undertaken by TIM in 2018 to separate its fixed services network (a process which is still under assessment by the Authority), the role the OdV is destined to play according to the market analysis scheme outlined by Agcom, currently subject to consultation, deserves to be mentioned.

In the light of the attention focused on compliance with the obligations of guaranteeing equivalence, whatever model TIM ultimately adopts, the Authority evidently intends to maintain the obligations deriving from the principles of non-discrimination and equal treatment. **Thus, it can be inferred that Agcom holds guaranteeing these principles to be essential, independently of any future separation of the current corporate structure.**

The upholding of the obligation of non-discrimination in the so-called **"contested" municipalities**, the areas where infrastructure for at least two competing access networks has been installed, also points to the same conclusion. In these areas Agcom has mitigated the series of remedies it currently obliges TIM to respect in non-contested areas, such as the criterion of cost-oriented pricing for line rentals to OAO.

What evidently emerges from the in-depth analysis of the access market carried out by Agcom is the confirmation of the principle of equivalence, both with respect to any hypothetical corporate changes and to vigorous infrastructural competition in a certain

number of Italian municipalities. Given these premises, the confirmation of the OdV's oversight role to ensure equivalence in the various structural and competitive contexts evaluated by Agcom is hardly surprising.

Considering the regulatory framework which will emerge from the current market analysis of access, and the specific obligations of non-discrimination TIM will be subject to, the OdV believes it may be appropriate to revise its regulation to increase the efficacy of its actions; in particular by leveraging the experience it has gained in past years through its steadily growing support role for the Authority.

This is also against the significant background of the approval of the new national and European rules on electronic communications, designed in part to render the overall system more attractive to the investments necessary for the development of new and existing infrastructures.

In December 2018 **Italy** updated parts of its Electronic Communications Code, providing incentives for investments in new high-capacity networks designed to support infrastructure innovation and strengthen competitiveness. December 2018 also saw the final approval of the **European Electronic Communications Code**, amending the common rules regulating the telecoms industry to face new technological and market challenges.

As part of its strategy to face these challenges, **for the first time the new European Code gives companies the scope to institute commitments** (both in terms of co-investment and separation of the access network), as a tool to deal with specific issues in the field of competition. Giving the concept of Commitments a European profile may well herald the imminent advent of a new regulatory era, **based on an ongoing dialogue between public authorities and telecoms, with the latter voluntarily undertaking Commitments**, in compliance with antitrust rules, **according to a "participatory" supervisory model already amply experimented by the OdV.**

The Italian model represented by the OdV is far from being an isolated case in Europe: in 2018 Ireland set up its own Independent Oversight Body (IOB) with the task of supervising equivalence and the Incumbent's compliance with the Commitments. The framework chosen was very similar to Italy's OdV, confirming the effectiveness of the Italian independent self-regulation model.

2. Monitoring the Resolution N.718/08/CONS Undertakings. In 2018 the OdV continued to monitor TIM's compliance with the Undertakings, updated and revised to cater for the recently introduced New Model of Equivalence and the completion of the transition to the New Provision Process.

Throughout 2018 the OdV Office carried out inspections in compliance with the Board's brief to monitor **Group 1 Undertakings** and in line with a new programme of on-site inspections regarding the correct application of the new Single Queue Process criteria introduced by TIM in the aftermath of the OdV Resolution N. 9/2016. As in past years, the OdV Office ran inspections on the correct application of the queue process with on-site visits to WOL (Wholesale Operation Lines) in East Tuscany, Puglia, Friuli Venezia Giulia and Turin-Valle d'Aosta.

2018 also saw comparative evaluation of the performance metrics for **CRM wholesale (the former Delivery Chain)** and orders handled by **CRM NOW, the new Provision Process** based on an indicator devised by the OdV to highlight any critical issues. Analysis of the indicator failed to identify any critical issues, except for a slight dip in the performance of the new Provision Process between 14 December 2017 and 14 February 2018, with a subsequent return to normal in the following months. Between January and July 2018 CRM NOW (the new

Provision Process) proved superior in performance to CRM Wholesale (the former Provision Process).

Within the scope of the **Group 2 Undertakings** TIM presented their MBO 2018 short-term incentive scheme for TIM Wholesale Infrastructure Network & System Office division to the Supervisory Board on 15 May 2018, accompanied by customer satisfaction data for Wholesale customers. The Board suggested that TIM should place greater emphasis on equivalence objectives in the MBO incentive system for their Wholesale division.

With regards to **Group 3 Undertakings** the Board acknowledged the final results of the survey on the certification of primary data used to calculate indicators and approved the final report in Resolution N. 4/2019.

Group 4 Undertakings were verified by monitoring the delivery and assurance indicators defined in Resolution N. 718/08/CONS, together with the transitory delivery indicators set out in OdV Resolution N. 20/2016. Generally speaking, the non-discriminatory KPIs did not reveal any issues in terms of equal treatment between TIM and OAO.

2018 also saw the Office producing monthly reports on the transition to **CRM NOW, the new Provision Process**, as requested by the Authority, comparing orders handled by the New Provision Process and those handled by the old system. Analysis of the data gathered proved the new system more efficient.

Checks on documentation regarding the quality and development of the access network were carried out in line with the provisions of Resolution N. 718/08/CONS on the **Group 5 and 6 Undertakings**. In particular, the OdV examined technical notes concerning the development of the 2018-2020 fixed access network drawn up under TIM's long-term technical plans for the development of the NGAN 2018-2020 fixed access network.

3. Complaints from OAOs and enquiries. 2018 saw a number of complaints from OAOs regarding presumed breaches of the Undertakings by TIM.

In early 2018 the Board completed its enquiry into the complaint made by **Wind Tre "S01/17" on 22 November 2017**, failing to find any breach of the Undertakings as per Resolution N. 718/08/CONS, but ordering further examination with regards to some of the issues raised. A technical workgroup comprising Wind-3, TIM and the Supervisory Board was set up in the wake of the S01/17 complaint to solve issues with **post provisioning** failures in VULA FttCab services; **saturated/substituted ONU** and **technician contact policy in managing on-field calls**. The OdV took the lead in offering guarantees to improve the quality of the processes supplied to OAOs within the parameters defining equal treatment.

In August 2018 the Supervisory Board ordered an enquiry into complaint **"S01/18 – TWT/Improper use of privileged information from the provisioning and assurance systems"** presented by TWT S.p.A. The complaint highlighted allegedly improper conduct by TIM regarding the use of privileged information obtained from its assurance and provisioning wholesale systems. This information had allegedly been used by TIM (or in TIM's interest) to make commercial offers to the customers of the reporting operator, in conjunction with failures on TWT customer lines.

Given that the issue was also being investigated by Agcom, the OdV decided to proceed in close collaboration with the Authority, as established in Resolution N. 396/18/CONS, guaranteeing it would monitor the commitments made by TIM in the course of a joint **TIM – Agcom – OAO technical workgroup**. This enquiry is still ongoing and will presumably result

in a report containing indications to counter the illegal use of sensitive information. Agcom's decisions will subsequently be closely monitored in a timely manner by the OdV during 2019.

4. Supervisory Board activities on behalf of the Communication Authority AGCOM. The habitual close collaboration on non-discrimination and equal treatment between the OdV and Agcom continued throughout 2018, with both the Board's customary vigilance in ensuring compliance with the Undertakings detailed in Resolution N. 718/08/CONS and, above all, in carrying out analyses and studies commissioned by the Authority as per Resolution N. 623/15/CONS.

The Authority's decision to use the OdV's technical support for monitoring and investigating compliance with the obligations of non-discrimination has considerably broadened the scope of the OdV's activities, delineating a new role in which the Board is no longer responsible merely for monitoring compliance in the sector, but also contributes to defining its rules.

Since 2016, when Agcom first decided to leverage the Supervisory Board's expertise and experience to improve aspects of its non-discrimination obligations, the Board has provided ongoing support to the Authority through a series of meetings, exchange of views, studies and analyses shaping decisions on regulations.

Agcom has used OdV support in particular to shape some critical methodological procedures. One example regarded the definition of a new set of Key Performance Indicators (KPI) on equal treatment, a field that has always been one of the OdV's major focus points. **The OdV was charged with developing a proposal for a new set of KPIs linked to the New Equivalence Model**, as well as analysing contributions made by operators in response to a public consultation launched by Agcom and proposed by the OdV.

The Authority charged the OdV with a similar task in defining the Key Performance Objectives (KPO) on equal treatment. The OdV began investigating suitable methods for structuring KPOs in 2017. In October 2018 it forwarded its report "*Method of defining non-discriminatory KPOs based on a multivariate linear regression algorithm*" to Agcom, illustrating the proposed method's characteristics, potential and possible effects.

In the field of the **simplification and rationalisation** of the "**causes of failed provision orders**" the OdV refined and extended the analysis it had carried out in 2017 and forwarded its new proposals to the Authority in October 2018. These further simplified the causes of failed provision orders' framework and extended the rationalisation to include both the causes of delays and the rescheduling of "expected delivery dates".

Finally, with regards to **verification and support relating to the digitalization of processes**, in September 2018 the OdV presented a report entitled "*Proposals on the Digitalization of Processes*", which was subsequently forwarded to Agcom. The report illustrated a method for monitoring delivery performance for digitally managed contact policy services in work orders.

5. The 2019 Annual Work Plan. The collaborative framework between the OdV and Agcom has been confirmed and extended for 2019. The Work Plan approved by the Board details the activities regarding a number of key equal treatment issues requested by the Authority.

An outstanding example is the **monitoring of the new non-discriminatory KPIs defined in Resolution N. 395/18/CONS**. The new KPIs provide the OdV more efficient tools to measure equal treatment in terms of both delivery and assurance for TIM retail and OAO. The OdV considers the monthly monitoring of these 93 new non-discriminatory indicators essential as **an innovative oversight tool** on the cutting edge of international best practise.

Also within the 2019 Annual Work Plan is a request from the Authority to propose a methodology for defining non-discriminatory KPO indicators. The OdV has already initiated this process and established a technical work group with the operators in March 2019. **The OdV considers the definition of non-discriminatory KPOs to be an essential tool for the precise evaluation of any differences between non-discriminatory KPIs for TIM and OAO.**

Work on non-discriminatory KPIs and KPOs, together with the other key activities planned for 2019, are all part of the OdV's transition to a broader role in monitoring equality of access.