



Practice of Maritime Business 2007
Odessa May 31 – June 1

**Recent developments on privatisation of Italian Ports: the case of
the port of Genoa**

Alberto Batini ¹

Premise

In the last few years, privatisation has also concerned the transport sector and, in this area, has chartered a specific course for ports.

In general, the problem of privatising port activities brings with it the complexities specific to the majority of sectors involved in the transition from public to private management, as well as a series of inherent complexities, such as the existence of monopolies in the labour market which have made the evolution of the privatisation process particularly difficult.

Briefly, the services offered by Italian ports have often proved unable to face up to international competition, a problem further heightened by the increasing importance of intermodal transport which has highlighted the limitations of a system fully centred upon a public body responsible for all the activities carried out in port territory, from planning to cargo handling operations.

However, on the other hand, one has to consider that the services offered in a port area are based upon the employment of sophisticated infrastructure provided by the State, that these services have to be offered on an equal basis to all port users who may request them, and that the port-system has an environmental impact which is far from negligible.

¹ Alberto Batini graduated at the University of Pisa (Italy) – Law School in 1990 (magna cum laude – Thesis: “The European Economic Interest Group: an application in the Shipping Industry”). He has been former assistant solicitor with Sinclair Roche & Temperley, London – 1991. He joined as former assistant claims handler Standard Steamship Owners P&I Club, Charles Taylor & Co., London – 1992. Mr. Batini attended at the University of Southampton – Faculty of Law, the Institute of Shipping Law, obtaining the 18th Maritime Law Degree, 199. He is presently a Partner with the Italian law firm Batini & Associati since 1993. The firm is specialised in Maritime and Corporate Law with offices in Livorno, Genoa, Venice, La Spezia, Milan, Cagliari, Ravenna and Bologna. The author obtained a Post graduate Doctorate in Shipping and Transport Law – University of Trieste and Genoa in 1995 (Monography assigned : “The law of Tug and Tow – Public and Private Law Profiles”). Vice-President of the Ibero-American Institute of Maritime Law (IIDM) – Italian Section since 1998 - President of the Italian Young Lawyers Association - Maritime Law Sub-Commission - Editorial Articles in Shipping and Transport Law - Supporting Member of the Italian Association of Maritime Law (IAMA) and active member of the Italian Working Group for Maritime Liens and Mortgages and Arrest of Ships at the CMI Centenary Conference held in Antwerp in June 1997. Various Articles and publications - Areas of Practice: Admiralty Law and Marine Insurance Law



A further problem regarding the privatisation process was in connection with the supply of port labour: existing legislation pointed to the dockworkers' associations as sole suppliers, thereby creating a monopoly over port work.

Consequently, all these factors highlighted the need for a new organisation of the Italian port industry, more market-oriented, in a framework which, far from simply requiring a "deregulation", needed a "reregulation".

Moreover, the experience of the Port of Genoa, in view of its size and the nature of its role, represents a particularly interesting case of privatisation in the services sector.

The phase 1984 - 1990

The process which has led to today's total privatisation of activities at the Port of Genoa was implemented over the course of ten years, following the publication of a set of documents, known as the "blue books", in May 1994.

The restructuring process, conducted by the "Consorzio Autonomo del Porto" (C.A.P.), was based upon the concept of the division of roles and functions amongst different companies, established with the aim of creating a port system coherent with the market requirements and thus free from all constraints imposed by the rules and regulations of the Consorzio.

Briefly, the 1984 reform called for a three-strata corporate structure composed of an institutional level, which comprises planning and control, assigned to C.A.P.; a strategic level, entrusted to an ad hoc company (Porto di Genova SpA) experienced in marketing and coordination; and an operational level, assigned to companies specialised in port cargo handling operations (Terminal Contenitori SpA and Merci Convenzionali SpA), and the supply of common user services (Sistemi e Telematica SpA and Servizi Ecologici SpA).

The main feature of these companies, established with the 1984 restructuring programme, was that holdings were open to all port operators (dockworkers' associations and private operators), with, however, C.A.P. as majority shareholder in each company.

The concept of retaining public control of the port companies was deemed essential for the transfer of part of the personnel from C.A.P. to the new companies, with a type of "detachment" agreement. Through this agreement, C.A.P. and the Trade Unions established the temporary transfer of C.A.P. employees under the direction of the companies designated, with their remuneration and "legal status", in force prior to the "detachment", unaltered.



In fact, the establishment of these companies with mixed capital represented the first step towards the privatisation of the management of port services which reached its completion after ten years.

With regard to the number of port workers, the second half of the 1980s was distinguished by a sharp decrease in the workforce. This trend was due to a series of state interventions (such as law n.26 of 1987) which, through early retirement schemes, led to the halving of the labour force in the Port of Genoa in the period spanning 1985 - 1989, from 6,489 to 3,214 employees.

The sharp reduction in both the workforce of C.A.P. and of the Dockworkers' Association, and efforts on the part of the Ministry, C.A.P. and the private operators to break the monopoly in force led to a wave of industrial strike which resulted in almost a total paralysis of the Port of Genoa during 1989.

The exacerbation of the industrial strike, which reached its climax following the publication of the Ministerial decree of 6 January 1989 on the "identification of operations reserved for dockers operating in the national ports" and the ensuing stoppage of all port activities, highlighted the need to implement in full as quickly as possible the privatisation process which had already been phased in the Port of Genoa.

From 1990 to the completion of the privatisation process

Even in the light of the incidents which marked the end of the 1980s, the General Assembly of C.A.P. of 1990 sanctioned a further step along the course which had been undertaken towards privatisation.

On this occasion, approval was given for the introduction of the new phase centred upon the separation of the public functions from the private functions: namely, C.A.P. maintained the activities regarding planning and control, whilst the operation of the port handling facilities were placed under private management through a progressive control of the operational companies, restructured into companies specialised with respect to the type of cargo handled (eg. bulk, general cargo, pulp and paper and so on).

In particular, C.A.P. is responsible for regulating port activities, planning port territory and structural investments, relations with other public bodies and, lastly, controlling handling operations.

The port area was divided into a series of specialised terminals subsequently awarded to private operators selected by C.A.P. on the basis of their business capacity and financial solvency, pre-requisites for the development of the volumes of traffic in accordance with the throughput capacity of the infrastructure of the port.



In other terms, the port body, as proprietor of the port area and services - which from a certain point of view can still be considered to date in public hands -, selected the private operators for the management of the port activities, in replacement of the mixed public/private companies created with the reform of 1984. Nevertheless, C.A.P. monitors the activities of the new private terminal operators to ensure that the commitments undertaken, upon the stipulation of concession contracts, are complied with, as well as the standards of security.

One further big difference between the privatisation phase post-1990 compared to the preceding period can be seen in the implementation of a series of normative laws which have modified the legislation in force on port work.

This course, from the European Court of Justice ruling of 10/12/91 to the decrees and ministerial circulars, led to the definitive abrogation of monopoly over port work, as prescribed by the Code of Navigation, with law 84/94 and subsequent decrees.

The law 84/94, which represents the current frame of reference for national port reform, in introducing the concept of privatisation of port activities, points to the model adopted by the Port of Genoa, that is, it calls for the establishment of port authorities responsible for planning and control, and recommends the concessionary contracts as a means of transferring the management of operational activities from the public body to private operators.

Without going into the details of the new national port law, the reform implemented by the Port of Genoa represented a "ante legem" of the basic principles of the national law. However, the latter, through its decrees, determined with precision the role and degree of autonomy of the port authorities, as well as focusing on the nature of the relations to be established with the local Authorities and central bodies.

These factors are extremely important, particularly in Genoa in consideration of the objective complexity of the local situation, in establishing a port authority with the powers of a real Government body, equipped to deal with the administration and planning of the port territory, new infrastructure, protection of the environment and security.

In short, it means that the port authorities should be provided with the instruments compatible with the functions assigned to them by the law 84/94 and its subsequent amendments (Law 23.12.1996 n. 647 and Law 30.6.2000 n. 186) .

The first results of the Genoa reform

The Genoa reform was, in fact, completed in December 1994 with the annual concession of the Multipurpose Terminal assigned to the Dockworkers' Association, now transformed into a company, and with the establishment of the new Port



Authority on the 1st of January 1995, accompanied by the closure of all the activities incompatible with the new organisation, as outlined in the law 84/94.

Following this stage of the restructuring process, the port today features 18 companies directly involved in the management of port traffic, and 6 service companies, all operating under the guidelines of the Port Authority.

With regard to the volumes of traffic handled, the financial years, spanning the period in which the privatisation programme was being phased in (from 1992 onwards), have shown satisfactory results, culminating in 2004 with record traffic levels in general cargo, containers (1,628,000 teus, + 120% compared to 1993) and passengers (3,1 million).

If the turning point brought about by the reform with regard to the competitiveness of the port and its strong performance is evident, one must also consider the inversion of roles between the public component and private component of port investments.

In particular, from 1992 the aggregate of private investments exceeded public investments, subverting a situation of absolute pre-eminence on the part of the Italian State in the port sector.

With regard to the workforce, the rise in productivity, with a ratio of 8 to 1 over a decade, has no equal in any other industrial or services sector, and it is a further demonstration of, on the one hand, the initial acute level of inefficiency and, on the other, the extensiveness of the restructuring process.

Finally, the private component is today also preponderant in the labour force, demonstrated by the fact that the employees of the port private companies represent nearly one half of the total workforce of the port, to which one must now add the workers of the Dockworkers' Union transformed in an operational company in August 1995.

Conclusion

By way of brief conclusion to the aforesaid points regarding the privatisation process in the Port of Genoa, and today extended in all major Italian ports, it is worth mentioning the consequences that it can have in terms of redistribution of the shares of the market.

In particular, the new levels of efficiency reached, or in the process of being reached, can contribute to a capitalisation of the strong points of the Italian ports, and especially those of the north Tyrrhenian Sea, in relation to their geographic location.



In fact, the ports of the northwest Tyrrhenian Sea are positioned in a strategic location with regard to the maritime routes. Firstly, load centring in these ports saves 5 - 6 days voyage along all the trade routes with origin/destination Suez Canal compared to load centring in the North European ports; secondly, these ports are located in close proximity to the major manufacturing centres of Northern Italy, Switzerland, Austria and Southern Germany.

Regaining a key role in the handling of traffic via Suez is, on the one hand, of great commercial importance if one considers that the Oriental routes are characterised by the highest growth rates in the world, and, on the other hand, it coincides with economic logic if one considers the higher transit times and costs of load centring in the Northern European ports.

In this sense, the increased level of efficiency of the Italian ports should be interpreted as the reacquisition of the maritime function of Southern Europe, considered that the advantage deriving from the revitalization of the Mediterranean ports will mean substantial savings on all cargo imported and exported from Europe to the near, middle and far East.

Thank you for your attention.

ALBERTO BATINI