Italy: Analysis of the Atlantia / ASPI case
3 August 2020

After a very long process which lasted almost two years, the Government has come to a **political decision on the future of Italy's largest highway concessionaire, Autostrade per l'Italia (ASPI)**, in light of the accident occurred in August 2018 when the s.c. Morandi bridge (a viaduct in the outskirts of Genoa, along the A10 highway which connects Genoa to the French border at Ventimiglia) collapsed most likely due to poor maintenance.

During the third week of July, the Government reached an agreement in principle with ASPI, under which:

a) The concessionaire agreed on a **substantial revision of the concession, including a new toll-setting mechanism** that will bring the return on investment down to around 7%
b) **Atlantia (the financial holding that currently holds 88% of ASPI) agreed to substantially dilute its share, so that Treasury-owned Cassa depositi e Prestiti takes control over ASPI**, which will then be listed. This process will take around one year.

This decision is of great interest mainly for three reasons:

1) **For the first time, a concession for the management of a major national infrastructure [ASPI manages an approximately 3,000 km highway network] will be revised before its expiry**, which is due in 2038, irrespective of the criminal court's verdict on who is actually at fault for the collapse of the bridge (the criminal proceedings will not lead to a final verdict until at least 2022), thus possibly setting an important precedent for investment in concessions going forward. The agreement includes a major change in the shareholding of ASPI, which will probably be listed, but controlled by Treasury-owned Cassa Depositi e Prestiti
2) **The agreement includes the commitment by ASPI to revise its toll-setting mechanism according to the criteria set by the Independent Authority on Transport in 2019**, which should apply to all private concessionaires but have given rise to criticism and a wave of legal actions by all of them, individually and collectively through their association (AISCAT). The acceptance of this mechanism now probably paves the way for the other concessionaires to accept it as well
3) **This dossier triggered a rather lively political controversy between the Five Star Movement and the other parties in the coalition**; the Prime Minister delayed any decision for several months, and ultimately took a hard stance towards the concessionaire and its majority shareholder (Atlantia, controlled by the Benetton family) which the Five Star Movement will now portray to their base as a full victory.

Background

ASPI is Italy's main highway concessionaire, controlled by the listed holding Atlantia with 88%, while the remaining 12% is owned by two funds, Appia Investment (a consortium of Allianz, EDF and DIF capital partners) and China's Silk Road Fund. Atlantia, in turn, in controlled by Edizione, which is a holding totally owned by the Benetton family.

At the time of the collapse of the Morandi bridge in August 2018, Danilo Toninelli (5SM) was serving as Minister of Infrastructures. **Toninelli took prompt action, irrespective of the outcome of the criminal investigation / proceedings, to revoke ASPI's concession in light of the concessionaire's failure to fulfill its tasks** and ensure the safety of the infrastructure which ASPI was in charge of.

Telos *Analisi & Strategie* srl |Via del Plebiscito 107| Rome 00186|T. +39 06 6994 0838| telos@telosaes.it
www.telosaes.it

Toninelli triggered the revocation process a few days after the collapse of the bridge. However, **it became clear that a unilateral revocation would not be a viable option, because under the terms of the concession contract, the concessionaire would be due around €23 billion in compensation.** When in July 2019 the experts at the Ministry of Infrastructures submitted their opinion to Toninelli that ASPI could, in fact, appeal against a unilateral revocation and obtain a €23 billion compensation, the process was stopped and Toninelli confidentially started talks with ASPI to find a compromise agreement.
One of the most controversial aspects of this story is the concession contract itself, which has never been approved according to the procedure foreseen by the law. As a matter of fact, **the draft contract received a negative opinion by the competent technical organs back in 2008; to overcome the stalemate, the then-Prime Minister Silvio Berlusconi took action to ratify the draft concession contract by means of a legislative provision, so that all the clauses laid down in the contract would have legal force**, including the one regarding the right of the concessionaire to receive a compensation in case of a unilateral revocation, even in the case the concessionaire was found to be at fault. It is common knowledge that such a favourable treatment was reserved to ASPI in return for the involvement of the Benetton family in the rescue of the national carrier, Alitalia, in 2008-2009.

In the meantime, **Toninelli promoted a new piece of legislation under which all existing concessionaires, when negotiating their 5-year economic and financial plans with the Ministry of Transport, should adopt a toll-setting mechanism in compliance with the criteria set by the independent Authority for Transport (ART).** In practical terms, in the case of ASPI this would mean a significant decrease in the return on investment, down to around 7%.

When new PD-5SM coalition came to power in September 2019, **Toninelli was replaced by PD's Paola De Micheli, whose attitude towards a revocation was much more cautious than her predecessor's.**
Since she took charge as Minister, De Micheli (alongside with Minister of Finance Gualtieri, from PD as well) has put effort to reach a compromise agreement under which ASPI would remain in charge of the concession under less favourable terms, and Atlantia would accept to gradually dilute its share in ASPI so as to let a State-owned entity, like Cassa Depositi e Prestiti, take a share. The underlying political compromise within the coalition was that the Five Star Movement would not obtain a unilateral revocation, but would instead claim they had obtained the partial "nationalisation" of ASPI.

The negotiating strength of the Government vs. ASPI/Atlantia was significantly improved by the legislative provisions passed in late 2019, which retroactively modified the terms of the concession by substantially reducing the amount of the compensation which would be due to the concessionaire in case of a unilateral revocation (from €23 billion to around €7 billion); as a result of this legislative change, ASPI's credit rating was downgraded and ASPI lost access to the market.

July 2020

Following a very long negotiation, the Government announced that an agreement in principle had been found with ASPI/Atlantia, regarding both the revision of the concession and the shareholding of ASPI. The Cabinet gave a formal mandate to the Minister of Transport and the Minister of Finance to supervise over the implementation of this agreement, and clarified that a unilateral revocation will be formally ruled out only once ASPI and Atlantia take a formal commitment to comply with the terms of this agreement.

Telos *Analisi & Strategie* srl |Via del Plebiscito 107| Rome 00186|T. +39 06 6994 0838| telos@telosaes.it
www.telosaes.it

More specifically, as regards the revision of the concession, ASPI will:

- **Invest an extra €3.4 billion as a compensation for the collapse of the Morandi bridge** (this includes the cost of demolishing and rebuilding the bridge, which will be inaugurated soon)
- Agree on a **revised concession that incorporates the above-mentioned legislative provisions on revocation and compensation** (Decree-Law n.162 of 30 December 2019)
- Improve controls (whose costs will be borne by the concessionaire) and agree to pay increased sanctions even in case of minor violations
- **Withdraw of all the appeals brought over the last 2 years** (on the reconstruction of the Morandi bridge, on the new tariff system, on the Decree-Law n.162 of 30 December 2019)
- **Revise its draft 5-year economic and financial plan by introducing a new toll-setting mechanism in line with the criteria set by the independent Authority**

As a first step in the implementation of this agreement, **upon the request of the Ministry of Transport, ASPI submitted a revised draft of its 5-year economic and financial plan on 23 July.**

As regards ASPI's shareholding:

- **Atlantia has pledged its commitment to "immediately" let Cassa Depositi e Prestiti (CDP) take control of ASPI, through a reserved capital increase**. In this phase, other institutional investors may also acquire shares
- Atlantia will also (presumably at a later stage) sell its shares in ASPI to institutional investors that are approved by CDP; Atlantia shall not use those funds to pay dividends. As a result of these 2 steps, Atlantia would dilute its share down to approximately 30%
- **Finally, Atlantia's share in ASPI will be spun off to Atlantia's investors, who will consider selling the shares; in this phase, ASPI will be listed. This means that Edizione (i.e. the Benetton family), which holds around 30% of Atlantia, would be left with around 10-12% of ASPI**
- As an alternative option, Atlantia expressed its availability to sell its entire share in ASPI to Cassa Depositi e Prestiti and other institutional investors approved by CDP

<u>Political implications</u>

The delay in taking a decision on the ASPI/Atlantia dossier is routed in the **disagreement between the Five Star Movement, arguing in favour of a hard stance vs. the concessionaire, and the other members of the coalition who were working on a compromise deal**. It is not a secret that De Micheli and Gualtieri, the 2 relevant Ministers, both from PD, would have welcomed a revision of the existing concession, with ASPI accepting a lower return on investment through the new toll-setting mechanism and more investment in maintenance and in the improvement of the infrastructure.

When it became clear that the Five Star Movement would not be happy with such a deal, and that they would not approve any compromise agreement unless ASPI was brought under the control of the State and taken away from the Benetton family, Renzi's Italia Viva proposed an alternative option under which Cassa Depositi e Prestiti would take a controlling share in Atlantia, which is a listed company – but this would have meant, as the Prime Minister put it, for the Italian State to be in a partnership with those who were (allegedly) responsible for the collapse of the Morandi bridge.

In the end, the Five Star Movement managed to impose their view that the Benetton family should be forced to exit ASPI or at least to dilute its share so as to be excluded from the governance of the concessionaire – which they are now portraying as their political success, even though it makes little sense to say that ASPI will be nationalised, when in fact it will be listed and Cassa Depositi e Prestiti will co-exist with private institutional funds in the new shareholding.
Atlantia, controlled by the Benettons through their holding Edizione, will remain active in the highway sector, holding concessions in France, Spain, Brazil, Chile and elsewhere; it will also maintain airport management concessions in Italy, including Aeroporti di Roma (which manages the airports of Fiumicino and Ciampino).

Parliamentary debate
On Thursday 23 July, during her question time, Minister De Micheli was asked by members of the opposition (Forza Italia and Lega) to share more details on the deal closed by the Government with ASPI/Atlantia last week and on its implications on both the new ownership of ASPI and on its profitability.

Although obviously these opposition groups have no lever on the Government to obtain that the terms of the agreement with ASPI are modified, the answers given by Minister De Micheli and the replies from opposition Senators are in any case helpful because most of the critical remarks raised by the centre-right opposition are shared by part of the majority, particularly by Renzi's Italia Viva that was not at all happy with the deal.

Forza Italia members complained about the deal on the grounds that ASPI's new shareholders should be in their view selected through a competitive process, and a State-owned entity like Cassa Depositi e Prestiti should not be involved at all in this operation.
De Micheli replied that the ultimate goal of the operation is not to bring ASPI under the control of the Italian State but to turn it into a public company, that can raise funds on the markets to sustain its investment plan.
However, the view of Forza Italia is that the change in ASPi's ownership will be supervised by Cassa Depositi e Prestiti (which, according to the Government's official statement will not only take a share through a reserved capital increase, but will also have the power to approve or reject the institutional funds to which ASPI is going to sell part of its share) without any competition.
This view is shared by Italia Viva: under Renzi's proposal, which was not supported by the Five Star Movement and PD, Cassa Depositi e Prestiti should take a share in Atlantia, not in ASPI.

Both Forza Italia and Lega raised another point which is probably more interesting: **since ASPI is not listed at the moment, there is a fundamental uncertainty as regards the value of ASPI's shares, which will depend among others on the tariffs set by the next 5-year economic and financial plan. Now, if the plan incorporates the toll-setting mechanism introduced by the independent authority (ART) in 2019, this will result in lower toll increases, which is good for travellers but could be a problem for Cassa Depositi e Prestiti and for whoever may be interested in acquiring a share in ASPI.** A Senator of Lega (Maurizio Campari) suggested that the Government may be considering approving higher tariffs (disregarding the ART toll-setting mechanism) for the sake of making ASPI appealing for Cassa and for the other operators: according to Campari this would be a totally negative outcome.
Minister De Micheli did not comment on this, but restated that the ASPI's new plan should be based on the ART toll-setting mechanism and that therefore, toll increases under the new

mechanism should not exceed 1.75% per year: **she also recalled that her Ministry asked ASPI to submit a new draft of the plan within today.**

De Micheli stressed that besides the new 5-year economic and financial plan, ASPI and the Ministry of Infrastructures will agree on a revised concession contract that will lay down a list of accidents/other catastrophic events that will, in the future, trigger a revocation process (provided that the concessionaire is at fault); under those circumstances, ASPI will only be due a reduced compensation under the terms of the new legislative provisions passed in December 2019 (i.e. equalling the value of the works already completed or, if a work has not been completed, the costs incurred by the concessionaire).

De Micheli did not provide any detail as regards the institutional investors that may be interested to take a share in ASPI on top of Cassa Depositi e Prestiti.

Latest developments: a recap

Two different processes are running in parallel at the moment:

1) ASPI is negotiating its new 5-year economic and financial plan, which includes a new, and less remunerative toll-setting mechanism;

2) In the meantime, Treasury-controlled Cassa Depositi e Prestiti (CDP) is negotiating with Atlantia on a memorandum of understanding that will lay down the next steps to let CDP take a controlling share while ASPI will get listed.

The two processes are closely intertwined, because the terms of the new economic and financial plan will influence the value of ASPI's shares and thus the price at which CDP and other investors will purchase them.

During the last meeting between ASPI and the Government [PM Office, Ministry of Transport, Ministry of Finance] on Friday 31 July, no final agreement was reached. Instead, the Government notified to ASPI a number of amendments and additions to the draft plan that are needed to bring it in line with the principles of the general political agreement reached in mid-July.
The next meeting is scheduled to be held on Wednesday, 5 August, and that could be the day when both the economic and financial plan and the amendments to the concession contract are finalised.

This could, in turn, speed up the process towards CDP and Atlantia signing their memorandum of understanding, because it would bring more clarity on ASPI's expected income and profits in the coming years.

However, it seems that CDP and Atlantia have not come to an agreement on several outstanding issues, and that there is still no clarity on:

a) the process through which CDP will end up taking a controlling share in ASPI - i.e. whether the capital increase reserved to CDP will take place before the IPO (as Atlantia had originally agreed with the Government in mid-July) or after the IPO
b) how the other investors (other than CDP) to which Atlantia is expected to sell 22% of its share in ASPI will be selected - here, it now seems that the investors will not be merely selected by CDP, but through a competitive process, which would prevent the risk of ASPI shares being sold at an excessively devalued price

c) how (and by whom) the value of ASPI will be assessed in case the capital increase reserved to CDP takes place before the IPO.

Obviously, the interests of CDP (on one side) and Atlantia's/ASPI's shareholders (on the other side) conflict on all these issues, and shareholders other than the Benetton family who had not make their voice heard over the last 2 years are now becoming more and more vocal.

In any case, due to the complexity of the issues that are still pending, t**he Government has failed in its effort to close the deal before the inauguration of the new bridge in Genoa, which is taking place today.**

Therefore, the bridge will be handed over to ASPI at a time when the latter is still controlled by the Benetton family, through Atlantia - which is exactly what the Government did not want to happen, but they did not move fast enough to avoid it.

Telos *Analisi & Strategie* srl |Via del Plebiscito 107| Rome 00186|T. +39 06 6994 0838| telos@telosaes.it
www.telosaes.it