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Catch me if you can: the interplay between the incumbent and the regulator in Italian telecommunications market

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How does regulation affect anticompetitive conducts?

According to **structure-conduct-performance theory**, the regulator may enhance the market performance by addressing and affecting market structure and firms' conducts.

Pontarollo *et al.* (2004) analysed the Italian incumbent's anticompetitive strategies **from 1998 to 2003** to identify and model its reaction to ex-ante regulation: **the anticompetitive behaviours changed according to the competition and regulation evolution.**

In 2013, the Italian Antitrust Authority (AGCM) fined the Italian incumbent for margin squeeze and technical boycott, proving that it **still has the incentives and the power to deploy anticompetitive strategies.**

An analysis of anticompetitive conducts from 2004 to 2012

Data on anticompetitive conducts collected across the NRA and the Antitrust authority resolutions.

A **conduct** has been considered **anticompetitive if**:

- **It infringes competition law** and it has been fined by the Antitrust Authority **OR**
- **It either infringes or misapplies the incumbent's obligations** leading to NRA interventions.

6 markets have been considered

WHOLESALE

Local Loop Unbundling (LLU)
Colocation
Wholesale Broadband Access (WBA)
Wholesale Line Rental (WLR)

RETAIL

Non Geographic Numbers (NNG)
Directories (12XY)

For each market, **both the incumbent's behaviours and the regulators' actions** have been **tracked in a timeline** to display the **chronological evolution of their interplay**.

Anticompetitive conducts classified by tools and targets

Tools \ Target	COMPETITORS	REGULATOR
PRICE	Excessive pricing Undue charges Predatory pricing	
QUALITY	Quality discrimination Lack of investment Inefficiency	
MARKET LEVERAGE	Price discrimination Cross subsidisation	
INFORMATION	Withholding of information	Withholding of information
TIMING	Refusal to deal Undue requirements	Delaying tactics

The evolution of anticompetitive conducts from 2004 to 2012

93 abuses have been deployed, **mainly against LLU operators** (21 in LLU market and 18 in colocation market).

Compared to the early stage of liberalisation, the focus of anticompetitive strategies has shifted **from price to quality, from the network to the ancillary services.**

The **strategy of denying** access to the infrastructure is **no longer feasible**. The tool of timing is mainly applied to **delay the implementation of new remedies.**

Information is mainly used to distort and sabotage regulation, which still relies upon the incumbent's information about the network and its costs.

The impact of regulation on anticompetitive strategies

Ex-post regulation has been more **effective in discouraging anticompetitive conducts**

Ex-ante regulation has proved to **be effective in granting the access to the incumbent's network**. The regulation has in fact **modified the range of foreclose strategies**, which an incumbent may deploy.

DENY-DELAY-DETAIL



DOWNGRADE-DELAY-DETAIL

No clear relationship between price regulation and conducts, but the **tool of price** was **mostly deployed during the period of price review** and to those services whose prices are based on the incumbent's **regulatory accounting**.

An assessment of regulation timeliness

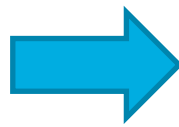
By tracking the incumbent's conducts and the regulatory actions, it is possible to measure the regulator's promptness in implementing pro-competitive remedies and counteracting anticompetitive behaviours.

Directories liberalisation	563 days
WBA implementation	435 days
WLR implementation	314 days
Synchronised activation (WLR + WBA)	1219 days

In average, **reference offers have been approved after 259 days from their effective date**. Accordingly, OLOs have run their business for eight months ignoring the wholesale inputs prices for their retail services.

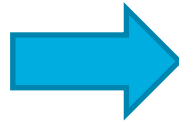
Some regulatory tips to prevent anticompetitive conducts

The **quality of ancillary services** is **hard to monitor and rule**



Reduce the scope of the incumbent in the provision of ancillary services

The incumbent is still able to **mislead price regulation** and **transfer its inefficiencies to its competitors**



Price regulation should rely on European standards and best practices, rather than on the incumbent's information

A **timely regulation** is needed to discourage anticompetitive conducts and reduce the market uncertainty



Reduce the scope of the incumbent in the provision of ancillary services and in the regulatory process to speed up ex-ante regulation