

L.U.I.S.S.
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LIBERA UNIVERSITÀ INTERNAZIONALE DEGLI STUDI SOCIALI
“GUIDO CARLI”

DOTTORATO DI RICERCA IN DIRITTO ED ECONOMIA
XXVI CICLO

I RAPPORTI TRA REGOLAZIONE E TUTELA DELLA CONCORRENZA
NEL SETTORE DELLE COMUNICAZIONI ELETTRONICHE

ABSTRACT

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Anno Accademico 2014 - 2015

ABSTRACT

The present study offers an in-depth economic and legal enquiry of the relationship between regulation and competition law in the electronic communications sector.

It first investigates market failures and failures created by anticompetitive behavior, in light of the economic, legal, structural and historical peculiarities of the telecommunication domain. In this regards, the role of the essentiality of the infrastructure and the presence of facility-based and service-based competition mechanisms will be comprehensively addressed.

The study further explores internal interferences between regulation and competition, scrutinizing the partly different aims pursued. The resulting scenario is extremely fragmented, including tendencies towards alignment, contraposition and juxtaposition. Indeed, from an analysis of the various obligations imposed on the incumbent operator by the regulator, a mosaic of diverse solutions are embraced, for instance in regards to cost-orientation requirements, prices tests, termination services, nondiscrimination and interconnection obligations.

This complex architecture also affects the external linkages between regulation and competition, especially in terms of application of competition law to highly regulated sectors and the effects of reciprocal influences on their goals. In this respect, concerns associated with legal certainty, coherence in the enforcement of the law and in the application of sanctions come into play.

This study additionally contributes to the current debate on technology innovation in network systems, addressing the concerns related to the preeminence of an incumbent in a regulated sectors. The issues stemming impose further analysis and policy recommendations tackling the need to overcome the present coordination breakdown between the incumbent and other operators, defined as the tragedy of the anticommons.

Finally, the present study leads to a detailed critique of the hackneyed notion of competition law and regulation complementarity, arguing for a much more sounded "*principle of regulatory consistency*", capable of tempering antitrust enforcement and warranting not purely pro-competitive objectives, but also fostering a pro-industrial policy. The author lastly warns against the inherent risks of the economic approach to competition law, whose obligations and remedies are applied following a "case by case" evaluation, often hampering the coherence of interventions and causing difficulties for market operators.