

COMPETITION

INSTRUCTIONS FOR USE (AND ABUSE)



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SEMINARI INTERNAZIONALI
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The role of competition

Competition policy aims at increasing the “Wealth of Nations” by creating the right **incentives** for companies



COMPETITIVE PRESSURE = CONSUMER WELFARE

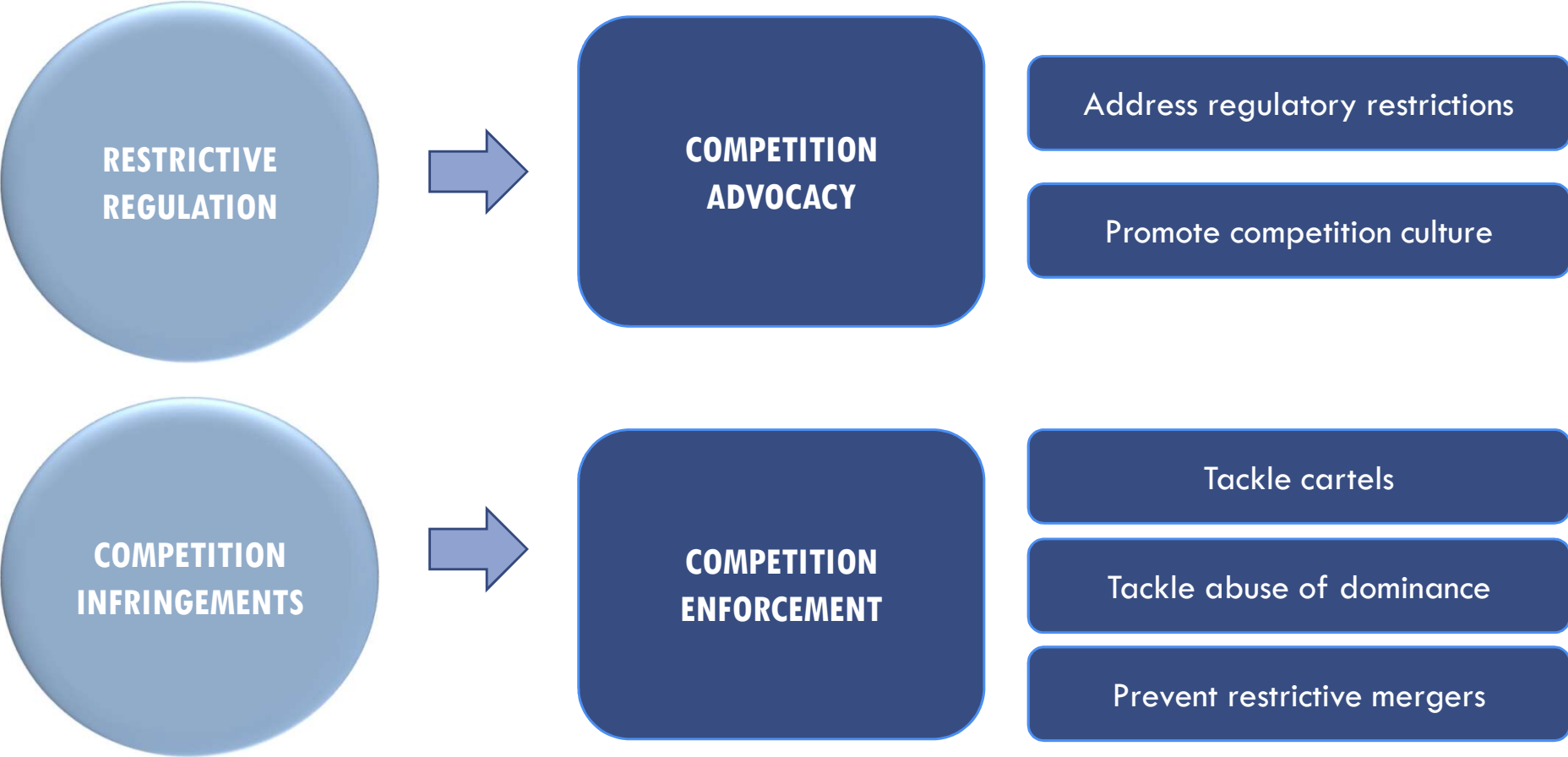


MARKET DISCIPLINE



Low prices
Better quality
Innovation

WHAT HINDERS MARKET DISCIPLINE



High fines are needed to ensure **deterrence**

**ADDITIONAL
CARTEL OR
ABUSE PROFITS**



EXPECTED FINE
*(expected level of fine
x likelihood)*

Criminal sanctions on individuals
Disqualification, bidder exclusion

SUMMARY

- Cartels and concerted practices
- Abuse of dominance
- Merger review
- Final recap

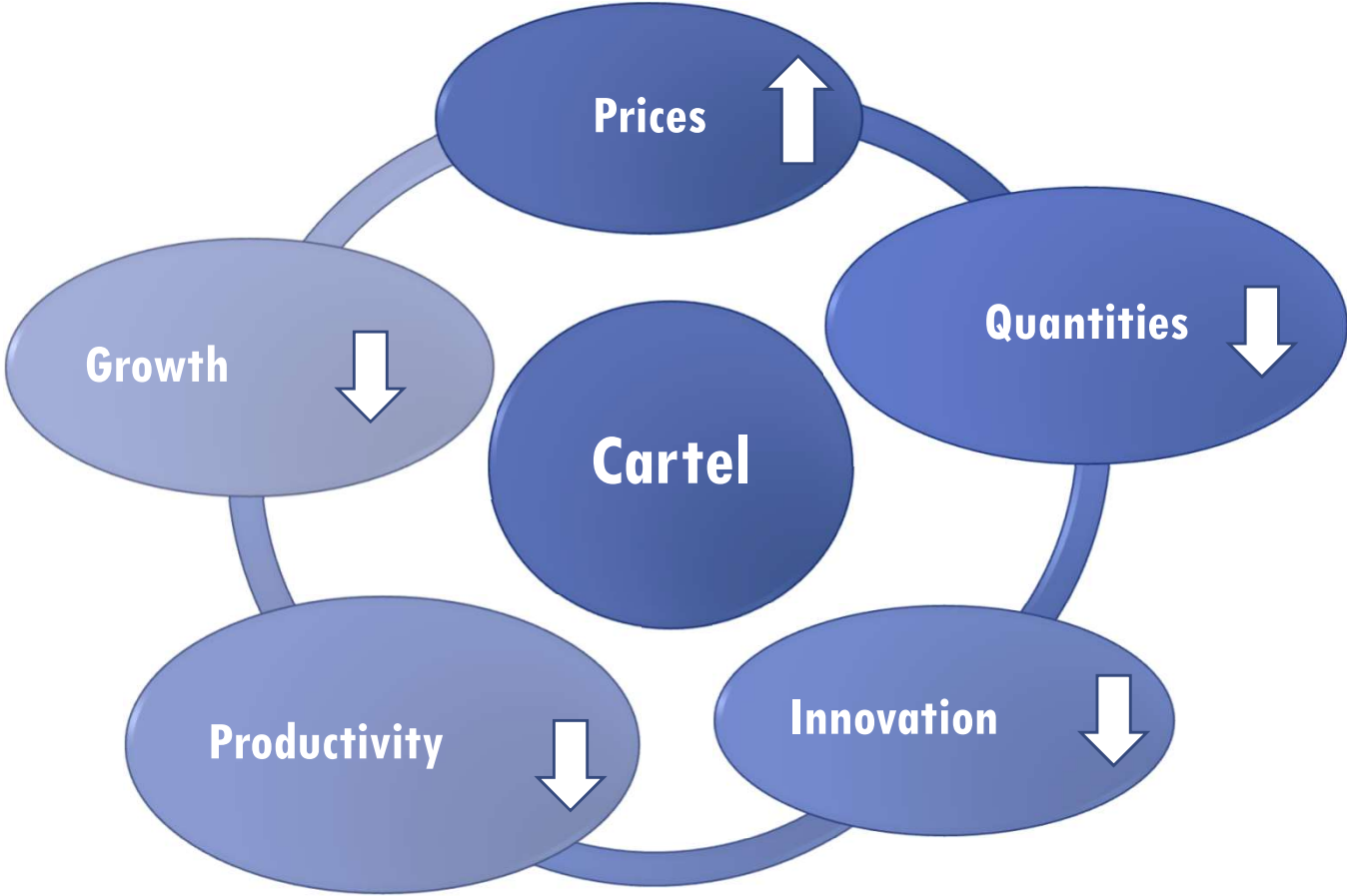


CARTELS AND CONCERTED PRACTICES

CARTELS

A cartel is an agreement between independent companies on





Conservative estimates of harmful effects

	EU	US	UK	Netherlands
Price Effect	10 – 15 %	10 %	10 – 15 %	10 %

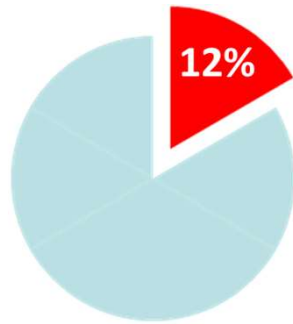
Source: OECD Guide for helping competition authorities assess the expected impact of their activities, April 2014,
<http://www.oecd.org/daf/competition/Guide-competition-impact-assessmentEN.pdf>





Bid rigging is a form of cartel that affects tenders

- Frequently found in **public procurement**
- The victim is the State, i.e. tax-payers
- Often goes along with **corruption**



Public procurement accounts for 12% of GDP in OECD countries

Public procurement spending involves crucial sectors



Increased public spending to support recovery?

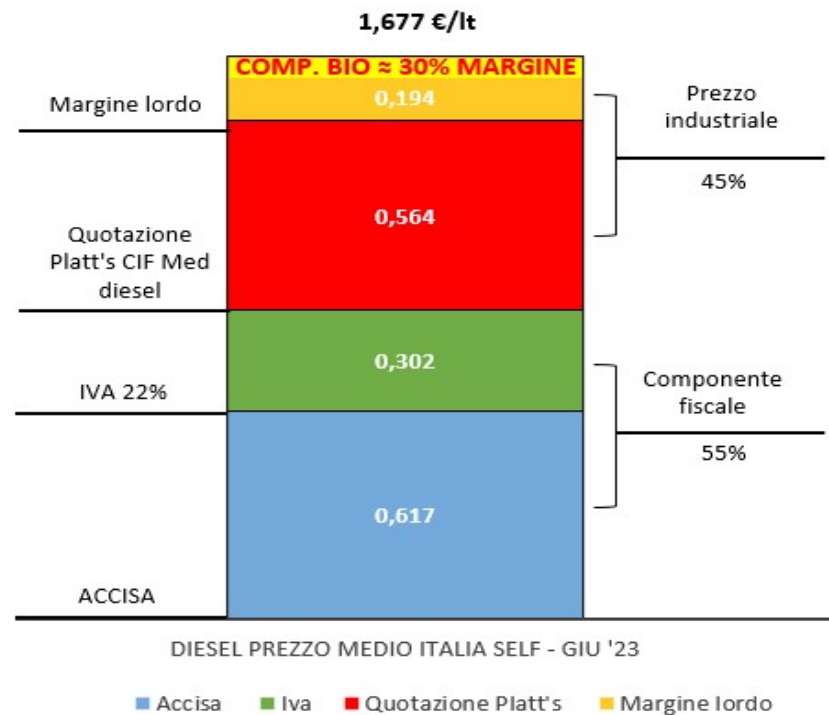
- **Widespread agreement** on the negative effects of cartels

- **Earliest competition laws** already included prohibitions of cartels (Sherman Act, US 1890; Constitution of Zeno, Byzantine Empire 483 AD)

- Major jurisdictions have made the prosecution of hard core cartels a **top-priority**
 - Mario Monti (EU Commissioner): “cancers on the open market economy”
 - The US Supreme Court: “the supreme evil of antitrust”

Bio-fuel cartel in Italy (2025)

- The most important oil operators in Italy colluded on the value of the bio component factored into fuel prices
- Value of price component from 20€/m³ in 2019 to 60€/m³ in 2023
- Fine over **€936 million**





ABUSE OF DOMINANCE



Two requisites

- The suspected firm must be **dominant**
- The firm must **abuse** its dominant position



Dominance/market power alone is not a problem

Some firms become dominant because they make a better product, offer superior service, innovate

Consumers benefit from better products and superior services, and the firm providing them should not be punished

WHAT IS “ABUSE”?

A company with dominant market position may use that dominance to **improperly exclude competition** or to **exploit consumers**

As a result, it can produce less and sell products at a higher price than if it faced competition

Harm to a rival is not abuse if there is no harm to competition



Exclusionary behavior can resemble vigorous competition

Preventing beneficial conduct harms consumers

- Competition authorities must take care not to prevent conduct that benefits consumers in the name of preventing possible abuse of dominance

Pro-Competitive vs. Anticompetitive

Predatory pricing

Tying arrangement

Denial of essential facility

Resale price maintenance and
exclusive dealing

Discount pricing

Efficient packaging

Making an expensive
investment pay off

Preserve quality, avoid free
riding





STEPS IN ANALYZING ABUSE OF DOMINANCE

1. Define the relevant market
2. Determine whether a company has a dominant position in the market (probably by looking at market share)
3. Identify the business practice that may harm competition
4. Assess the business practice's overall competitive effects in the market

Google abuses dominance as search engine to give illegal advantage to “Google Shopping”

Google promotes Google Shopping by placing it at the top



Google shows rival comparison shopping services much lower in results, where consumers do not see them

Amazon case in Italy (2021)

- Amazon conditioned access to Prime label and Buy Box to the use of its logistics services
- Fine: €1.12 billion, reduced to €745 million by the Courts

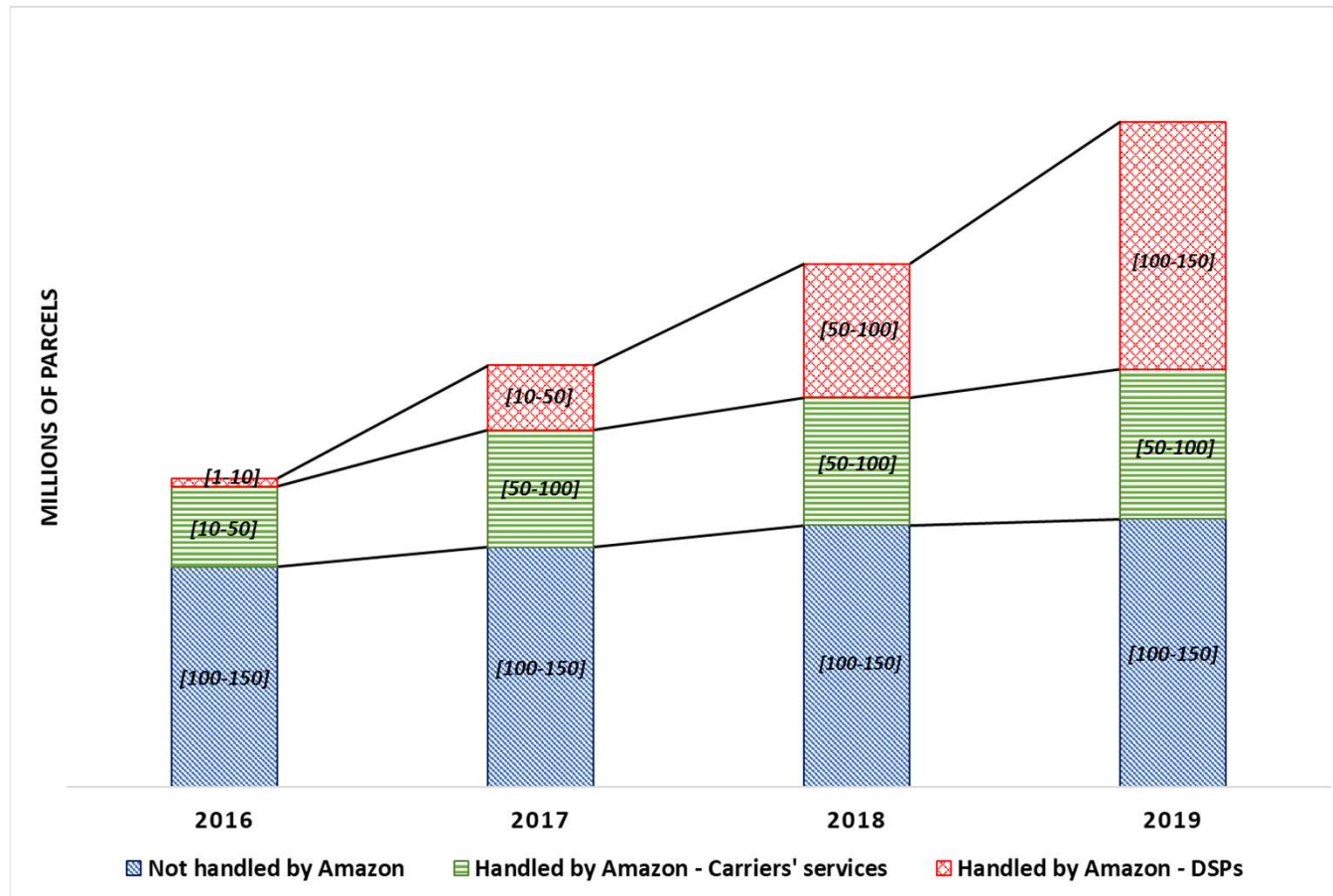
The image shows a screenshot of an Amazon product page. On the left, the Amazon logo is displayed. The main product listing shows a price of \$28³² with free delivery on Wednesday, May 24, to New York 10001. The product is in stock, and the quantity is set to 1. There are buttons for 'Add to Cart' and 'Buy Now'. Below these, it indicates 'Payment: Secure transaction', 'Ships from: Amazon', and 'Sold by: Georgi-Ohl'. A red box highlights the 'Buy Box winner' label next to the 'Sold by' information.

Other Sellers on Amazon:

Price	Shipping	Seller
\$28.39	& FREE Shipping	LY Berditchev Co.
\$29.44	& FREE Shipping	Ceebeauty
\$29.90	& FREE Shipping	HAS BRANDS

A red box highlights the 'Sellers who did not win' label next to the 'Other Sellers on Amazon' section.

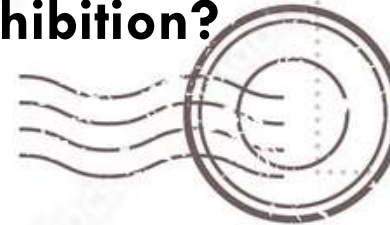
Effects on logistics



POSTCARD

Commitments or prohibition?

- **Suitability and simplicity.** Capable of solving the problem and simple to implement
- **NOT for serious and long-lasting infringements**
- **Timing of the proposal.** Not too late (little procedural efficiency), not too early (need for clear understanding of the facts of the case)



**Early detection
of the conduct
to prevent
harm**

Booking case (2024)

- Preferred Partner Program (PPP): **visibility** in search results in return for higher commission payments and **'competitive' pricing** on Booking.com
- Booking Sponsored Benefit (BSB) enabled **Booking to apply a discount** — without the operators' prior approval — to match other online platforms
- Commitments: refrain from matching prices on other online sales channels and increased transparency
- Potential effects: entrenched position in OTAs market



Booking.com



MERGER REVIEW

RATIONALE

Why do we do ex-ante control of mergers?

- To preserve competitive market structures
- To **prevent** the creation or strengthening of powerful market positions **not stemming from merits** that would enable/facilitate price increases/deterioration of quality/slow down innovation etc.
- EU test: **significant impediment of effective competition (SIEC)**

ANTITRUST INVESTIGATION



Cartels and abuse proceedings are **ex-post** interventions

Objective: tackle **past** anti-competitive conduct

MERGER REVIEW



Merger control is usually **ex-ante**

Objective: prevent deterioration of competitive market structures in the **future**

EFFECTS OF THE MERGERS

(competitive conditions resulting from the merger)



Significant impediment of
effective competition?

COUNTERFACTUAL

(future market structure without the merger)



Without merger control, competition enforcers are reduced to ex-post intervention, when abuses of a dominant position can be observed.

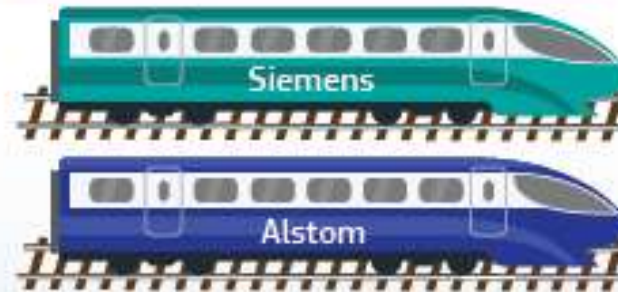
➤ Abuse proceedings are usually limited to (often inadequately) curing symptoms instead of **tackling the root causes** = market structure of a competition problem

Commission prohibits Siemens-Alstom takeover to protect rail operators and passengers

Rail signalling systems are essential to prevent collisions and keep train and metro passengers safe



Very high-speed trains travel at 300 kilometres per hour or more and are important for the transition to environmentally sustainable transport



If combined, Siemens and Alstom would no longer compete resulting in higher prices, less choice and less innovation for rail operators



FINAL RECAP



- **Cartels and concerted practices**

- Effective detection tools
- Strong investigative powers (dawn raids)
- Dissuasive sanctioning

- **Abuse of dominance**

- Pre-requisite: define market and assess dominance
- Need to distinguish legitimate competitive reaction from exclusionary or exploitative conduct → economic analysis

- **Merger review**

- Prevent significant impediment of effective competition not stemming from the merits