



UNIVERSITÀ EUROPEA DI ROMA
Dipartimento di Scienze Umane



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Abuse of Economic Dependence vs Abuse of Dominant position in Italy. Looking for convergence?

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Quid novi sub sole?

- Different sets of Law with different Rationales, providing for different remedies
- Increasing overlap and intersection between private and public law enforcement

➔ Versus a progressive convergence towards a common standard?

At the origins there was the private enforcement only

- **Law No. 192/1998 on Sub-contracting**
 - From a pro-competitive **decentralizing technique**
 - To the exposition of one party to an excessive economic **pressure** from the other
 - **Contractual weakness** leading to **economic captivity**

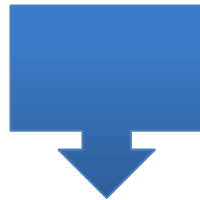


The abuse of economic dependence regime

Preliminary issue: ambit of application

Sedes and scope

- “Exceptional and sector-specific provision”
- “Occurs in vertical relations only”



- “Applicable to **any kind of relation**” (Italian Supreme Court, Obiter Dictum, 2014)

Prerequisites

- **Excessive imbalance in terms of rights and duties**
- Economic approach vs legal perspective:
sunk costs or rights distribution?
- Different and non-consistent nuances:
economic dimension, regardless from right distribution

Prerequisites

- **Absence of satisfactory alternatives**
- **Objective vs subjective approach**
- **how relevant are market conditions?**
- **short or long duration of the contract matters?**
- **reference to contractual performance?**

Open list of abusive conducts

- Abuse occurs once the **principle of good faith, loyalty and fairness** are infringed
- Contractual autonomy is limited
- Rational behaviour and valid justifications are a defence
- Possible expectations or concrete alternatives disattended?

From private to public enforcement

- **Abuse of economic dependence amounting to an abuse of dominant position** (Art. 102 TFUE and Art. 3 of Law No. 287/1990)
- **New competencies assigned to the Italian Antitrust Authority** (Art. 11 of Law No. 57/2001)
- **The expanding antitrust arena and the introduction of a *per se* violation** (Ar. 10 of Law No. 180/2011)

What is next

- **Fairness** applies in Italy as **general principle** applicable to market relations
- Italian Competition Authority reinforces its “**Fill the Gap**” Role
- ***De iure condito perspective***: restore a market oriented approach
- ***De iure condendo proposal***: Judges Specialization and Reform of Justice



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Thank you for the attention

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