
Better regulation and competition

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Better regulation and competition

- ❑ Better regulation might enhance competition
- ❑ The objective of improving a competition-friendly regulatory framework is shared by regulators and antitrust authorities
- ❑ Their cooperation in rule-making might help in improving residuality and necessity criteria, as well as by cutting down rule-makers' protectionist arguments

OECD Economic Surveys: Italy (2017)



- «The Competition Authority (AGCM, 2015) has highlighted that the proliferation of regulations, administrative complexity and a widespread distrust towards competition have abetted incumbents and hampered competitive pressures by fostering legal uncertainty.
- In many cases, sub-national governments have also resisted efforts to increase competition in sectors dominated by municipal enterprises, such as transport and other locally provided services. (...)
- Approving the **annual competition law** currently being discussed by Parliament would be a step forward to enhance competition in the services sector and professions.
- Also, as highlighted above, making more extensive use of **regulatory impact assessment** would help improve the quality of regulation”

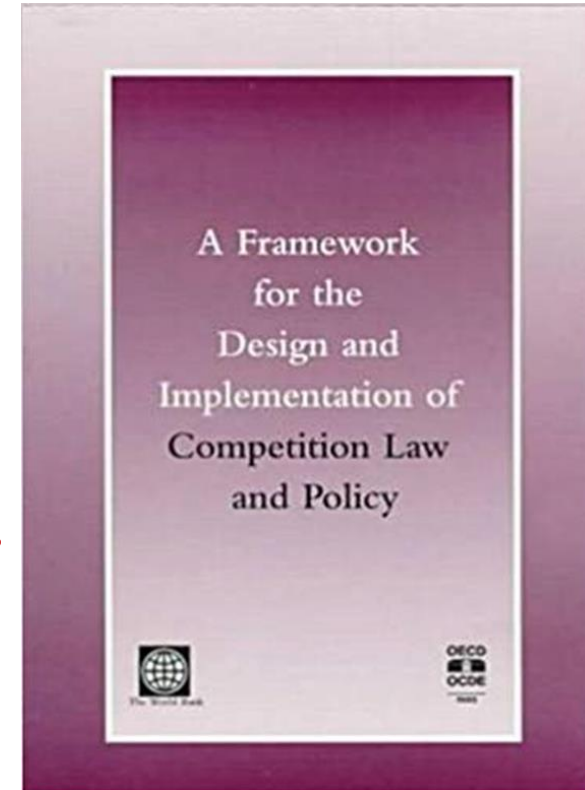
How to enhance pro-competitive regulation?

□ Advocacy Activities

□ Competition Assessment

Advocacy activities (1)

- ❑ “Private restrictive business practices are often facilitated by various government interventions in the marketplace. Thus, **the mandate of the competition office extends beyond merely enforcing the competition law.** It must also participate more broadly in the formulation of its country’s economic policies, which may adversely affect competitive market structure, business conduct, and economic performance.
- ❑ **It must assume the role of competition advocate,** acting proactively to bring about government policies that lower barriers to entry, promote deregulation and trade liberalization, and otherwise minimize unnecessary government intervention in the marketplace”



WB and OECD 1998

Advocacy Activities (2)



Advocacy activities enable competition authorities to act

- in cooperation with of regulators (art. 21- 22 Italian competition law n. 287/90)
- as a supervisor of regulators (art. 21-*bis* law 287/90)

Traditional Advocacy Tools

- “The Authority shall **notify** Parliament and the Prime Minister of any distortions arising as a result of legislative measures, and the Prime Minister, other relevant ministers, and the relevant local authorities of distortions arising in any other cases” (art. 21 law 287)
- “The Authority may express **opinions** on draft legislation or regulations and on problems relating to competition and the market whenever it deems this appropriate or whenever requested to do so by the government departments and agencies concerned” (art. 22 law 287/1990)

Limited efficacy of Traditional Advocacy Tools

- ❑ Opinions and advices are non-binding
- ❑ Opinion and advice activities regard already adopted or previously drafted regulation

New advocacy tools: legitimatio ad causam

- “It is admissible for the [Italian competition] Authority to take legal action whenever the general administrative provisions, regulations or measures of any public administration infringe on the laws protecting competition and the market.
- Should the Authority determine a provision issued by a public administration to infringe on the laws protecting competition and the market, a **reasoned opinion** indicating the specific nature of said infringement shall be issued within sixty days.
- Should the public administration fail to comply with the opinion within sixty days of notification, the Authority may lodge an **appeal [to the administrative judge] through the Avvocatura dello Stato** within the following thirty days”
(art. 21-bis law 287, introduced by the law decree 201/2011)

New advocacy tools:

Annual law on competition

- Starting in 2010, the **annual report** submitted by the Italian Competition Authority to the Presidency of the Council (according to art. 23 law 287/1990) **identifies regulation that hinder competition and that, as a consequence, should either be eliminated or reformulated**
- The Government presents Parliament with a draft law that incorporates the Competition Authority's indications and specifies any sectors it has decided not to apply them (art. 47 law 99/2009)

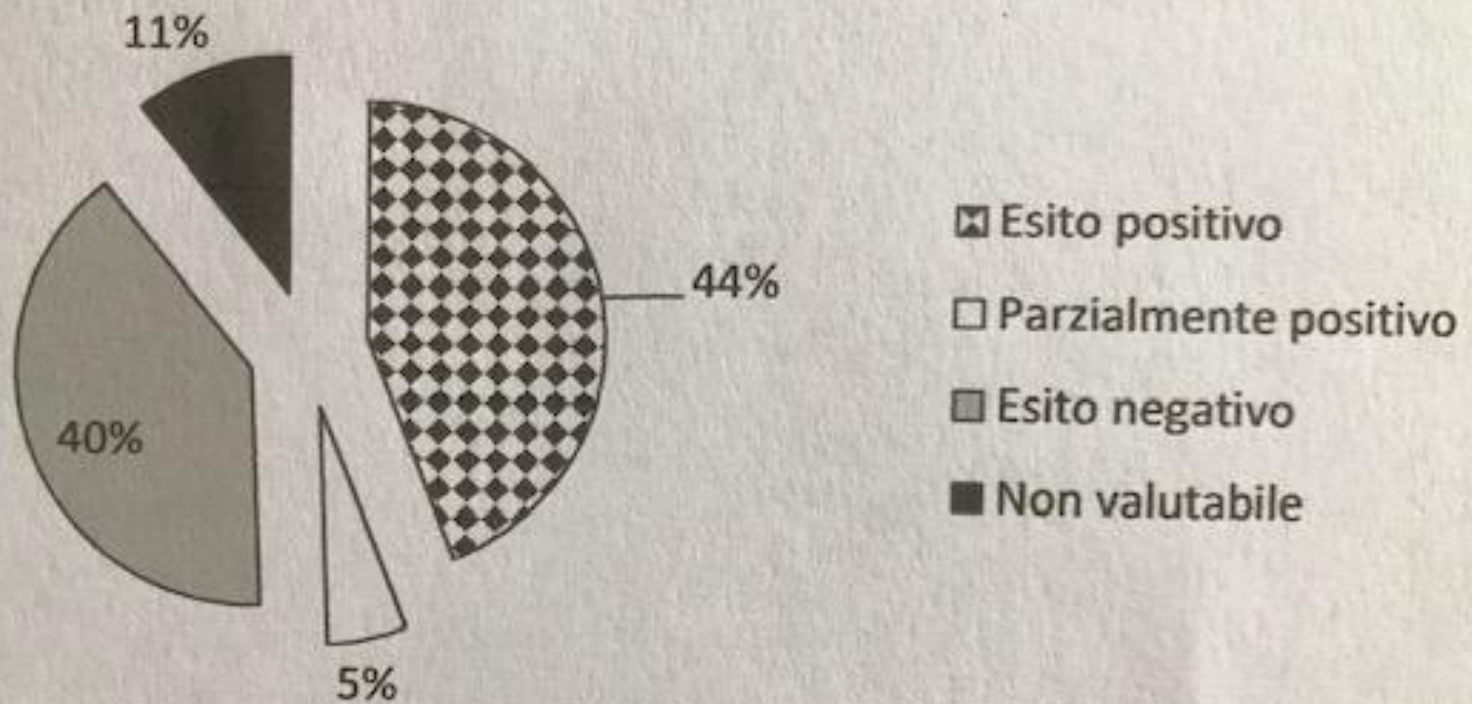
Is the Italian annual competition law an effective advocacy tool?

- 2014: advice AS1137
- 2013: advice AS 988
- 2012: advice AS 901
- 2010: advce AS 659



Law 124/2017

Success rate of competition advocacy (2017)



Source: Data processing AGCM on data 2016 and 2017

New advocacy tools: Competition Assessment

- ❑ CA is a comparative exercise that weighs up impact on competition of the regulatory option of not altering the *status quo* against feasible regulatory options, showing how incremental deviations from the doing nothing option will achieve results
- ❑ CA can be applied widely and is relevant for economic and social regulation
- ❑ CA promotes the use of competition-based concepts

Why competition assessment?

- ❑ “Healthy competition between firms in a market can deliver benefits to consumers through lower prices, more choice and innovation and can help increase productivity and growth”

(CMA 2015)

- ❑ Regulations which do not unduly restrict competition are more likely to achieve their objectives and to enhance consumer welfare
- ❑ Competition assessment might improve better quality regulation by preventing unintended consequences on competition or by allowing them where really needed

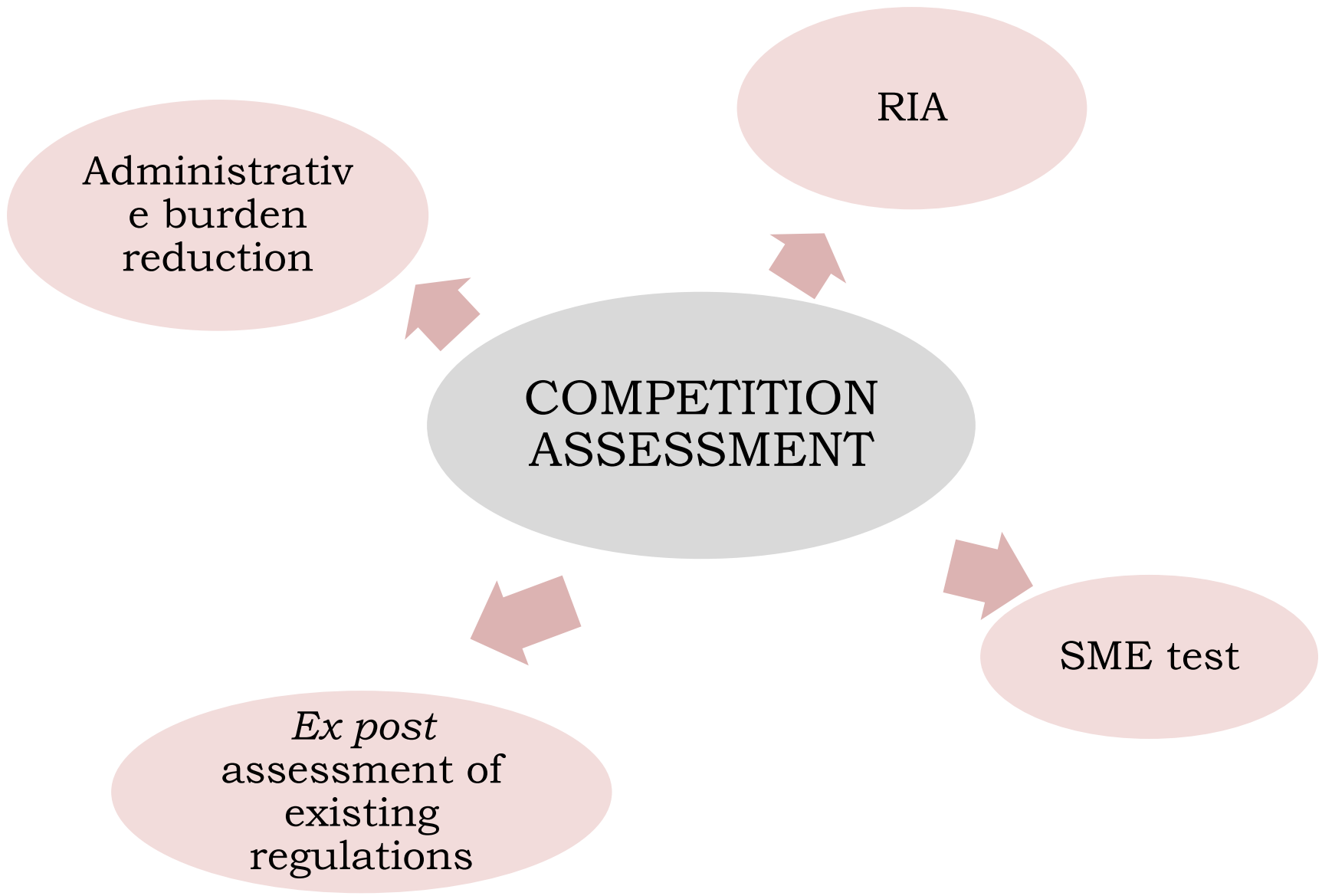
(OECD, *Competition Assessment Toolkit*, vol. II, 2010)



EC Better Regulation Toolbox

- OCED, Competition Assessment Toolkit, Guidance and operational manual, 2017
- Competition Market Authority, Competition Impact Assessment Guidelines, 2015
- Australian Government, *Best Practice Regulation Handbook*, 2013
- Decree of the Italian President of the Council of Ministries n. 169/2017





Competition assessment should be considered if a legal provision has any of the following effects.

A

Limits the number or range of suppliers

This is likely to be the case if the provision:

- A1** Grants exclusive rights for a supplier to provide goods or services
- A2** Establishes a license, permit or authorisation process as a requirement of operation
- A3** Limits the ability of some suppliers to provide a good or service
- A4** Significantly raises cost of entry or exit by a supplier
- A5** Creates a geographical barrier for companies to supply goods, services or labour, or invest capital

B

Limits the ability of suppliers to compete

This is likely to be the case if the provision:

- B1** Limits sellers' ability to set prices for goods or services
- B2** Limits freedom of suppliers to advertise or market their goods or services
- B3** Sets standards for product quality that provide an advantage to some suppliers over others, or are above the level that some well-informed customers would choose
- B4** Significantly raises costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants)

C

Reduces the incentive of suppliers to compete

This may be the case if the provision:

- C1** Creates a self-regulatory or co-regulatory regime
- C2** Requires or encourages information on supplier outputs, prices, sales or costs to be published
- C3** Exempts the activity of a particular industry, or group of suppliers, from the operation of general competition law

D

Limits the choices and information available to customers

This may be the case if the provision:

- D1** Limits the ability of consumers to decide from whom they purchase
- D2** Reduces mobility of customers between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers
- D3** Fundamentally changes information required by buyers to shop effectively

CA and RIA

- 1 Problems/issues that give rise to the need for action
- 2 Objectives
- 3 Range of options that constitutes feasible means for achieving the objectives
- 4 Assessment of the economic, social, environmental impacts of the baseline and selected policy options
- 5 Consultations
- 6 Preferred option
- 7 Strategy to implement and review the preferred option

Step I

Initial assessment

- ❑ A proposal will have a significant impact on competition by
 - restricting entry
 - affecting the ability of firms to compete
 - reducing the incentive of firms to compete
 - limiting the choice or information available to consumers?
- ❑ in the relevant market

(Checklists: EC Toolbox, CMA, [OECD](#); Australian Government Handbook; DPCM n. 169/2017)

Step II

Full CA - Checklists

Does the proposal:

- restrict entry for new firms?
 - affect the ability of firms to compete?
 - reduce the incentive for firms to compete?
 - limit the choice or information available to consumers?
- in the primary market
- in any related markets

CA in SME test

- 1 Preliminary assessment of firms likely to be affected
- 2 Cost-benefit analysis of proposed rules on SMEs
- 3 Mitigating measures to soften their effects on smaller firms, where appropriate

CA of existing regulations

- 1 Analysis of the stock of regulation through review criteria, such as legality, necessity, efficiency, administrative cost recovery, market-friendliness and (where possible) an assessment of impacts on competition of existing rules under evaluation
- 2 Reform or automatic abrogation (guillotine) of all regulations considered unnecessary according to the above-mentioned criteria

CA of a specific regulation (1)

	<i>Ex post</i> assessment of a regulation for which an RIA has or has not been performed
1	Verification of whether the rule is still needed and justified, and its effectiveness
2	Possible revision

CA of a specific regulation (2)

	Administrative burden reduction programmes
1	Measurement of administrative burdens
2	Simplification measures

Better Regulation Tools	Competition Assessment
RIA	<p><u>Initial assessment</u> (checklist)</p> <p><u>Full CA</u>: do-nothing and alternative options impact assessment on competition (checklist)</p>
SME test	<p><u>2nd step</u> (cost/benefit analysis): assessment of the impact of proposed rules on competition (checklist)</p> <p><u>3rd step</u>: assessment of the impacts on competition of mitigating measures (checklist)</p>
Ex post assessment of existing regulations	<p><u>1st step</u>: analysis of the stock of regulation through competition-friendliness review criterion (where possible a CA) (checklist)</p> <p><u>2nd step</u>: assessment of the impacts on competition of reforms (checklist) or proposal of competition friendly reforms</p>
Ex post assessment of a given regulation for which an RIA has or has not been performed	<p><u>1st step</u>: verification of whether the rule is still needed and justified from a competition point of view (checklist)</p> <p><u>2nd step</u>: assessment of the impacts on competition of reforms (checklist) or proposal of competition friendly reforms</p>
Administrative burden reduction programmes	<p><u>2nd step</u>: analysis of the impact on competition of simplification proposals (checklist)</p>

Advantages of CA (and RIA)

- ❑ Participation in rule-making and transparency
- ❑ Evidence-based decisions

Advantages of CA

- Giving reasons for rules
 - lack of competition worries
 - positive effects on competition (attempted quantification)
 - costs of impact on competition (attempted quantification)
 - competition-restricting options

Critical issues of CA

- ❑ CA is a costly procedure: it must be used according to the proportionality principle
 - only major rules with a potentially significant impact on competition might be concerned
 - the depth of the assessment must be proportional to the issues at stake and the resources available
- ❑ Advantages of the CA could be frustrated if done in a ritualistic or formalistic way

Challenges

- ❑ How to select rules with a significant impact on competition?
- ❑ How best to balance the role of rule-makers and antitrust authorities in CA?

Competition Impact Assessment

Taxi regulation

You are asked to provide a short competition impact assessment on taxi regulation reform in a hypothetical town.

You can perform the exercise in small groups (max 4 people).

Read carefully the description of the current situation in par. 1, 2 and 3

Visit to the Chamber of Deputies - March 20

Agenda

3:30-4:30 PM (*timing to be confirmed*)

Opening welcome address
Legislative drafting exercise

Andrea Frangioni (Parliamentary Officer), Antonio Placanica (Parliamentary Officer), Valerio Di Porto (former Parliamentary Officer)

4:30-5:30 PM

Guided tour to Montecitorio

List of Participants

Please indicate

your Name, Date, Place and Country of Birth

the language of the exercise and the guided tour: English or Italian