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Chair of Principle of Civil Law

**Public Enforcement of Economic Dependence Abuse:
The Role of the Antitrust Authority and Civil Courts**

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I. Introduction

The use of economic dependence has become a legal and economic problem in the area of business-to-business (B2B) relationships in the past years.¹ This idea describes situations where one business has a lot of power over a business partner even though it doesn't have a dominant market position.² This happens because of structural imbalances, exclusivity clauses, or the lack of good alternatives. These situations can change how the market works, how fair contracts are, and how competitive the market as a whole is.

Article 9 of Law No. 192/1998 in Italy's legal system deals with this issue by making it illegal to take advantage of someone's economic dependence.³ The provision was originally designed to protect smaller and weaker businesses from unfair behavior by bigger ones. Over time, both the way the law is interpreted and the way it is applied by the institutions. The Italian Competition Authority (AGCM) has started to play a big role in enforcing this rule, especially in the last few years.⁴ This work used to be done by civil courts.

How is the abuse of economic dependence dealt with by public enforcement, both before the AGCM and the civil judiciary?⁵ This thesis aims to address this research question. The goal is to evaluate the economic rationality, coherence, and efficacy of the instruments employed to deal with this type of contractual imbalance.⁶

There are three chapters in the study. An organized summary of the laws controlling the abuse of economic dependence is given in the first chapter. It describes the history and evolution of Article 9, looks at its definitional standards, and investigates the ways in which

¹ Rupperecht Podszun & Sarah Langenstein, *Abuse Without Dominance?*, 13 J. Eur. Competition L. & Prac. 107 (2022).

² Okeoghene Odudu, *The Boundaries of EC Competition Law* 67 (Oxford Univ. Press 2006)

³ Law No. 192 of June 18, 1998, art. 9, G.U. No. 143 of June 22, 1998 (Italy)

⁴ AGCM, *Guidelines on Abuse of Economic Dependence* (2019), <https://www.agcm.it>

⁵ Francesco Sciaudone, *La disciplina della subfornitura e la dipendenza economica* 87 (Giuffrè ed., 2006)

⁶ Vanessa Wilcox, *The Abuse of Economic Dependence in Competition Law*, 19 Eur. Comp. J. 141 (2023).

civil courts have interpreted and applied it. The chapter lays the groundwork for understanding how economic dependence is viewed as a valid issue by concentrating on the norm's legal framework and interpretive difficulties.

The second chapter looks at the AGCM's role in enforcing Article 9 by looking closely at the most important cases between 2019 and 2024.⁷ It shows how the rule can be used in real life in a number of fields, such as franchising, logistics, telecommunications, and digital platforms. The authority's decision between sanctions and behavioral commitments, as well as the practical evaluation of economic dependence, receive particular attention. This study explains enforcement strategies and the criteria employed by the AGCM to describe abuse.

The third and last chapter looks at the economics of enforcing Article 9.⁸ It uses basic ideas like switching costs, investment specificity, and hold-up risk to see if AGCM decisions are in line with well-known laws and economic principles. The chapter also looks at how the Italian model is similar to those in France and Germany, as well as how it is different from the new European regulation under the Digital Markets Act.⁹ Finally, it looks at how consistent and effective the enforcement model is, with a focus on how economic evidence affects both administrative and judicial decisions.

This thesis aims to provide a deep evaluation of the mechanisms for regulating the exploitation of economic dependence in Italy through the integration of legal doctrine, case analysis, and economic reasoning.¹⁰ It contends that for Article 9 to function as an effective regulatory instrument, enforcement must be both legally robust and economically rational,

⁷ AGCM, Decision No. 30276, Case A547 – *Wind Tre* (Aug. 4, 2022)

⁸ OECD, *B2B Market Power and Buyer-Supplier Relations*, Policy Roundtable (2020), <https://www.oecd.org>

⁹ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act), 2022 O.J. (L 265) 1

¹⁰ Damien Gerard & Assimakis Komninos, *EU Competition Law and the Challenge of Economic Dependence*, in *Antitrust Between EU Law and National Law* 265 (2021)

particularly in the context of contemporary B2B dynamics increasingly influenced by digital platforms and algorithmic intermediation.¹¹

II. The legal framework of economic dependence abuse in Italy

A. Definition and legal basis of economic dependence

The concept of abuse of economic dependence is enshrined in Article 9 of Law No. 192 of June 18, 1998, concerning the "Discipline of subcontracting in productive activities."¹² The provision aims to address the imbalance of bargaining power in business relationships where one undertaking is economically dependent on another, even absent a dominant market position.¹³

The core of the provision states: "The abuse by one or more undertakings of the state of economic dependence in which a customer or supplier is situated in relation to them shall be prohibited. Economic dependence shall be defined as a situation in which one undertaking is able to determine an excessive imbalance of rights and obligations in its commercial relationship with another, taking into account the possibility for the latter to find satisfactory alternatives on the market."¹⁴

¹¹ Jean Tirole, *The Theory of Industrial Organization* 215 (MIT Press 1988)

¹² Law No. 192 of 18 June 1998, art. 9, G.U. No. 143 (June 22, 1998) (Italy)

¹³ Rupperecht Podszun & Sarah Langenstein, *Abuse Without Dominance?*, 13 J. Eur. Competition L. & Prac. 107 (2022)

¹⁴ Law No. 192 of 18 June 1998, art. 9, G.U. No. 143 (June 22, 1998) (Italy)

This article prohibits abusive conduct that exploits the dependency of one enterprise on another, where such dependency is defined not by market share but by the impossibility or significant difficulty in switching to other trading partners.¹⁵

The provision introduces a hybrid legal-economic concept. The factors that must be proven to establish an abuse of economic dependence are mainly three. First of all, the existence of a Commercial Relationship, a contractual or de facto ongoing correlation between two or more parties. The second element is the State of Economic Dependence, in which the party suffers from an intense asymmetry, lacking possible market alternatives.¹⁶ This involves an economic analysis of changing costs, market structure, and investment accuracy. The last element is Abuse, that is demonstrated through unjustified unilateral contract changes, discriminatory practices, interruptions of supply, or imposition of unfair conditions.

Crucially, under Article 102 TFEU, economic dependence is not the same as the abuse of a dominant position.¹⁷ The former only needs a bilateral relationship characterized by dependence, independent of the actor's position in the market as a whole, whereas the latter demands dominance on a relevant market.

Economic dependence is a more subtle but widespread type of imbalance in which power is exerted through strategic positioning, exclusivity clauses, or control over necessary inputs rather than market size.¹⁸ For instance, franchisees who have made significant investments in infrastructure specific to a brand might be stuck in the relationship and unable to leave

¹⁵ OECD, *Exploitative Abuse of Economic Dependence* (2020), <https://www.oecd.org>

¹⁶ Francesco Sciaudone, *La disciplina della subfornitura e la dipendenza economica* 87 (Giuffrè 2006)

¹⁷ Consolidated Version of the Treaty on the Functioning of the European Union art. 102, Oct. 26, 2012, 2012 O.J. (C 326) 47

¹⁸ OECD, *Loyalty Rebates and Exclusivity* (2016), <https://www.oecd.org/daf/competition>

without incurring irreversible losses. The stronger party can readily take advantage of this power imbalance by limiting the weaker party's operational or strategic freedom through contractual provisions or market behavior.

Additionally, Article 9 states that any provisions resulting from abuse are invalid.¹⁹ However, the absence of defined economic standards and judicial experience in evaluating economic dependence have made it difficult to demonstrate such abuse, particularly in civil courts. Declaratory judgments of nullity, damages for losses brought on by abusive behavior, and injunctions or specific performance to stop unfair practices are among the remedies available under this article.²⁰

Although this group of remedies is intended to serve as an effective deterrent, the implementation of these solutions is usually limited by the burden of proof and the unwillingness of dependent firms to bring legal action against more powerful partners.

B. Origins, legislative evolution, and theoretical framework

The law 192/1998 was created in response to growing concerns about the vulnerability of small and medium-sized enterprises (SMEs) to uneven contractual relations.²¹ The Italian lawmaker, who was partly influenced by French and German theories of relative market power, introduced Article 9 to decrease private economic coercion.

¹⁹ Law No. 192 of June 18, 1998, art. 9, G.U. No. 143 of June 22, 1998 (Italy)

²⁰ Law No. 192 of June 18, 1998, art. 9, G.U. No. 143 of June 22, 1998 (Italy)

²¹ Tilman Makatsch, *Missbrauch wirtschaftlicher Abhängigkeit*, 61 *Wirtschaft und Recht* 113 (2009)

The demand side of the Italian market at the time was concentrated in sectors like distribution, telecommunications, and logistics, while the supply side was fragmented. Larger companies with greater negotiating power often found themselves at the mercy of smaller companies. Developing a legal structure that would level the playing field and restore fairness to business-to-business (B2B) transactions was the aim of the economic dependence doctrine. The law was not intended to protect unprofitable companies, but rather to prevent larger players from abusing their relational power in ways that compromised contractual equity and fair competition. Therefore, the standard satisfies the goals of fairness, with the correction of unfair practices and efficiency with the prevention of market distortions brought on by intimidatory contracting.²²

The addition of Article 9(3-bis) was important in the development of the norm. It gave the Italian Competition Authority (AGCM) the ability to look into and punish abuses of economic dependence.²³ This change made it possible to recognize that some types of private coercion could have bigger antitrust effects, especially when they make it harder for people to get into a market or make it less competitive.

Through a number of civil cases, the courts have helped the idea grow. Italian courts have generally been careful and often required a lot of proof to show that someone was dependent on or abused.²⁴ This has caused results to be inconsistent and the law to be a little unclear. Courts have often used qualitative indicators like exclusivity, the length of the relationship, and the specific investment without doing structured economic analysis.

²² Roberto Pardolesi, *Economic Dependence and the Perils of Fragmentation*, Riv. Dir. Comm. 499 (2002).

²³ AGCM, *Guidelines on Abuse of Economic Dependence* (2019), <https://www.agcm.it>

²⁴ Trib. Milano, sez. spec. impresa, 11 February 2020, No. 1428 (It.)

A lot of legal experts and economists have said that Article 9 can be very unclear in practice.²⁵ One of the biggest problems is that the law doesn't give clear numbers or thresholds, for example certain market shares or levels of revenue dependency, that would help figure out when a business is economically dependent and stable. Instead, many choices are based on stories and descriptions of the relationship rather than on real and helpful economic facts. Judges also tend to have different ideas about important terms like "satisfactory alternatives" or "excessive imbalance," which makes things unclear. Even so, the AGCM's growing role has helped make the rule more consistent and give it a stronger economic base.

C. Public enforcement by the AGCM: first applications and milestones

With the amendment introduced by Article 9(3-bis), the AGCM was empowered to launch investigations and apply sanctions under the same procedures as Articles 14 to 14-ter of Law No. 287/1990.²⁶ This includes dawn raids, interim measures, hearings, the collection of third-party observations, and the acceptance of binding commitments.

With the AGCM's authority, systemic problems can be resolved even in the absence of a formal complaint, signaling a change from strictly private enforcement, civil courts, to a flexible administrative approach. The authority evaluates complaints not only in terms of bilateral unfairness but also in terms of their potential to distort competition or exclude rivals from the market.

²⁵ Vanessa Wilcox, *The Abuse of Economic Dependence in Competition Law*, 19 Eur. Comp. J. 141 (2023).

²⁶ Law No. 287 of October 10, 1990, arts. 14–14-ter, G.U. No. 240 of October 13, 1990 (Italy)

The first Significant Enforcement was Case A525, Newspaper Distribution in Liguria (2019).²⁷ The first case of public enforcement was A525, which was about M-Dis and TO-Dis's unfair behavior in the Genova-Tigullio newspaper distribution market. The AGCM found that a smaller distributor had been cut off from an important supply for no good reason, which forced them to leave the market. This case marked the change from private enforcement to a systematic public oversight of contractual asymmetries that are important for competition.²⁸ It also showed that the AGCM is willing to deal with abuse even in older, declining industries like print distribution.

The Italian Competition Authority (AGCM) has been working much harder to enforce Article 9 of Law No. 192/1998 in the last few years. This article deals with the abuse of economic dependence in business relationships. Originally considered to be a mechanism for civil litigation, the provision has now evolved into an important instrument for the public regulator to fix contractual gaps with possible market implications. This essay looks at the most important cases the AGCM handled between 2019 and 2024. It looks at the Authority's legal interpretations, economic reasoning, and overall enforcement strategy in a critical way.

The pivotal moment occurred in 2019 with Case A525, which addressed the exclusionary practices of M-Dis and TO-Dis in the Ligurian newspaper distribution market.²⁹ The AGCM said that stopping supply to a smaller distributor, RN, was an abuse of economic dependence in this case. RN was effectively removed from the market because it couldn't find other places to get newspaper content. This case was important because it was the first big use of Article 9(3-bis). It showed that the AGCM was willing to use public enforcement against contractual behavior that, while technically private, had effects that kept people out.

²⁷ AGCM, Decision No. 28043, Case A525 – *Distribuzione Quotidiani Genova* (Dec. 20, 2019)

²⁸ Vanessa Wilcox, *The Abuse of Economic Dependence in Competition Law*, 19 Eur. Comp. J. 141 (2023)

²⁹ AGCM, Decision No. 28043, Case A525 – *Distribuzione Quotidiani Genova* (Dec. 20, 2019)

The Poste Italiane case (A539) made the intervention even bigger.³⁰ The AGCM found that Soluzioni S.r.l., a subcontractor, was financially dependent on Poste because of exclusivity clauses, operational limits, and a lack of other viable business options. The AGCM's use of quantitative evidence set this case apart: more than 95% of Soluzioni's revenue came from Poste. The Authority pointed out that sunk costs, lock-in effects, and investments that are specific to a relationship are all signs of economic dependence. The €11 million fine showed how serious the abuse was and set a standard for future punishments.³¹

Franchising has become a major area of enforcement. In Case A543, Benetton was criticized for putting strict supply requirements and control over promotions and layout on franchisees.³² The AGCM found that these kinds of limits caused a structural imbalance in the relationship, especially since franchisees took on business risks but didn't have much freedom. Long-term relationships, investments in specific brands, and the fact that retail infrastructure couldn't be used for anything else showed that the economy was dependent on these things. Instead of fines, commitments were used to fix the problem, which is something that happens a lot in AGCM enforcement.

The McDonald's case (A546) was also about too much control over contracts. Franchisees had to sign long-term contracts with high entry and operational costs, and the company could change its policies at any time.³³ The AGCM stressed how dependent the companies were on each other because of brand power, the lack of other affiliations, and the way they were

³⁰ AGCM, Decision No. 29782, Case A540 – *Poste Italiane* (Feb. 16, 2021)

³¹ AGCM, Press Release, *Poste Italiane fined €11 million for abuse of economic dependence* (Feb. 16, 2021), <https://www.agcm.it>

³² AGCM, Decision No. 30472, Case A543 – *Benetton* (Jan. 31, 2023)

³³ AGCM, Decision No. 30199, Case A546 – *McDonald's Franchising* (June 14, 2022)

watched. The Authority also chose commitments in this case, with the goal of restoring fairness without hurting the franchising business model.

Wind Tre (A547) was found to have treated its resellers unfairly in the telecom industry.³⁴ The company made it so that partners didn't have any real business freedom by changing commissions retroactively, enforcing reverse VAT charges, and limiting exit options. The AGCM said that resellers were often legally required to work with and invest money in mono-brand stores, which made them even more dependent. The focus of the economic analysis was on controlling access to the market and business terms.

The original Marines (A550) showed another kind of dependence: control over technology.³⁵ The franchisor used its own software to set prices, order amounts, and marketing campaigns, and it also competed directly through stores it owned. The AGCM acknowledged that information asymmetry and systemic constraints placed franchisees in an economically inferior position. Once more, the solutions were behavioral, dealing with both technological and territorial problems.

The Meta/SIAE dispute (A559) is not exactly what Article 9 usually covers, but it is still useful. The courts (TAR Lazio and the Council of State) agreed that dependency dynamics were important in this case when it came to licensing negotiations. Meta's decision to take down SIAE's music catalog during failed negotiations raised concerns about unfair power and the lack of other platforms for those who hold rights to distribute their work. While not categorized as an abuse of economic dependence, the legal rationale reflected analogous principles: absence of alternatives, excessive leverage, and economic entrapment.

³⁴ AGCM, Decision No. 30276, Case A547 – *Wind Tre* (Aug. 4, 2022)

³⁵ AGCM, Decision No. 30221, Case A550 – *Original Marines* (July 5, 2022)

When looked at together, these cases show a more mature approach to enforcement. The AGCM is no longer only in charge of price-fixing or horizontal collusion. It knows that vertical and relational market power can also mess up competition.³⁶ The Authority has made a set of economic indicators, such as switching costs, investment specificity, exclusivity clauses, and control over access to markets, to help them figure out if a dependency is abusive.³⁷

But there are still some problems. The AGCM's economic analysis is more often qualitative than quantitative. We don't often see detailed simulations, econometric tests, or counterfactual modeling. This gives you more freedom and speed, but it could make decisions less objective and easy to repeat. The AGCM also often prefers commitments over punishments, which can make them less effective at stopping bad behavior.

From a law and economics point of view, the AGCM's actions fix a clear market failure: the imbalance of bargaining power that leads to outcomes that are either unfair or forceful. Safeguarding smaller enterprises from exploitative dependencies can improve both equity and efficiency by fostering competition, innovation, and opportunities for exit. Still, enforcement needs to be set up so that it doesn't go too far or stop legitimate business practices from happening.

In conclusion, the AGCM's use of Article 9 from 2019 to 2024 shows that they have a smart, but changing, way of dealing with abuse of economic dependence. The Authority has strengthened the role of public enforcement in keeping the market fair by recognizing

³⁶ AGCM, *Annual Report 2023*, <https://www.agcm.it>

³⁷ OECD, *Exploitative Abuse of Economic Dependence* (2020), <https://www.oecd.org>

structural imbalances and taking steps to fix them. In the coming years, it will be important to use economic tools in a more strict and open way to make this framework even better.

In most cases (e.g., Benetton, Wind Tre, Original Marines), the AGCM accepted behavioral commitments under Article 14-ter to restore contractual balance without issuing formal sanctions. This reflects a preference for corrective rather than punitive enforcement.³⁸ Only in the case of Poste Italiane was a formal sanction imposed, amounting to €11 million.³⁹

The AGCM has gradually incorporated economic reasoning into its decisions, such as the assessment of switching costs and investment specificity, the evaluation of counterfactual alternatives in the market, the measurement of the degree of exclusivity and foreclosure and the impact on downstream competition and rival access.

In some cases, such as Benetton and McDonald's, the authority even considered post-contractual effects, analyzing if the dependence continued after termination due to unrecoverable investments.⁴⁰

Yet, the analysis is not always quantitative. The AGCM has yet to adopt structured tools like elasticity models, economic simulations, or benchmarking studies to support its findings, which may limit the transparency of its conclusions.

³⁸ Law No. 287 of October 10, 1990, art. 14-ter, G.U. No. 240 of October 13, 1990 (Italy)

³⁹ AGCM, Decision No. 29782, Case A540 – *Poste Italiane* (Feb. 16, 2021)

⁴⁰ AGCM, Decision No. 30472, Case A543 – *Benetton* (Jan. 31, 2023); AGCM, Decision No. 30199, Case A546 – *McDonald's Franchising* (June 14, 2022)

D. Summary and relevance for law & economics

The evolution of Article 9 enforcement has transitioned from an infrequently utilized private remedy to a fundamental mechanism of contractual equity with market significance.⁴¹ AGCM action is making the economic structure that supports dependency more and more closely examined, but there are still gaps in the rigor of the analysis.

From a law and economics point of view, the norm deals with a clear market failure: relational market power that traditional dominance metrics don't show.⁴² But enforcing it depends on being able to objectively measure that power and step in in a fair way.

The Italian experience demonstrates that administrative enforcement, when executed with economic acumen, can foster not only equity but also dynamic efficiency and innovation by preventing smaller enterprises from being ensnared in exploitative relationships that hinder their ability to scale, exit, or pivot their business models.⁴³

In the subsequent chapters, we will analyze whether the AGCM has consistently complied with economic principles in evaluating abuse of economic dependence, and whether alternative methodologies could improve both legal certainty and market results.

⁴¹ Francesco Sciaudone, *La disciplina della subfornitura e la dipendenza economica* (Giuffrè 2006).

⁴² Jean Tirole, *The Theory of Industrial Organization* 215 (MIT Press 1988)

⁴³ Damien Gerard & Assimakis Komninos, *EU Competition Law and the Challenge of Economic Dependence*, in *Antitrust Between EU Law and National Law* 265 (2021).

III. Application of Article 9 in AGCM enforcement, a law & economic perspective

A. Introduction and first sanctioned case

The application of Article 9 of Law No. 192/1998 by the Italian Competition Authority (AGCM) has improved into a solid and flexible enforcement mechanism for addressing abuses of economic dependence.⁴⁴ This provision allows the AGCM to intervene not only in instances of market dominance, which is the traditional threshold under antitrust law, but also in situations where one firm holds disproportionate leverage over another, even without a dominant market share.⁴⁵ The rationale underpinning this approach is grounded in the recognition that economic coercion and competitive harm can arise from structural asymmetries, particularly in vertical relationships involving franchising, distribution, subcontracting, and digital platforms.

From a law and economics perspective, economic dependence is not solely determined by contractual clauses but is better understood through variables such as switching costs, investment specificity, hold-up risk, and informational asymmetries.⁴⁶ Businesses that make irreversible investments made specifically to a single partner, be it a franchisor, platform, or supplier, may find themselves effectively limited to that relationship. When the stronger party exploits this reliance by imposing unfair terms or arbitrarily altering the relationship, Article 9 empowers the AGCM to restore balance.

⁴⁴ Law No. 192 of June 18, 1998, art. 9, G.U. No. 143 of June 22, 1998 (Italy)

⁴⁵ Consolidated Version of the Treaty on the Functioning of the European Union art. 102, Oct. 26, 2012, 2012 O.J. (C 326) 47

⁴⁶ Jean Tirole, *The Theory of Industrial Organization* 215 (MIT Press 1988).

This chapter examines the application of Article 9 by the AGCM in various notable cases. There are two main types of cases where the Authority stepped in: the first are cases where the AGCM fined people for serious wrongdoings, and the second, the cases where the people being investigated made and followed through on promises to fix structural imbalances. A third, new type of case shows how judges are using Article 9, especially when it comes to digital intermediation. The examination of these cases elucidates not only the interpretation of the legal framework but also the influence of economic theory on enforcement decisions.

The first group of cases is when the AGCM found clear cases of taking advantage of economic dependence and fined the offenders. One of the first and most clear cases is A525, which is about the relationship between two national newspaper distributors, M-Dis/TO-Dis, and RN Distribuzione, a regional distributor that works in Liguria.⁴⁷ RN had built its business around distributing publications from national companies. It spent a lot of money on logistics, staff, and infrastructure. M-Dis and TO-Dis refused to sign a new agreement when RN restructured and moved operations to a new legal entity. This kept RN out of the market. The AGCM determined that this was an abuse of economic dependence, acknowledging that RN lacked viable alternatives and that the refusal to renew the relationship represented a strategic exclusion.⁴⁸ A fine of €4.2 million was imposed, which showed that economic coercion can happen when contracts are broken without taking into account investments in relationships and interdependence.⁴⁹

A539, which involved Poste Italiane and its subcontractor Soluzioni S.r.l., is another important case that led to sanctions.⁵⁰ Soluzioni provided important mail and logistics services in areas that didn't have enough of them, and it did everything Poste asked of it.

⁴⁷ AGCM, Decision No. 28043, Case A525 – *Distribuzione Quotidiani Genova* (Dec. 20, 2019)

⁴⁸ Vanessa Wilcox, *The Abuse of Economic Dependence in Competition Law*, 19 Eur. Comp. J. 141 (2023)

⁴⁹ AGCM, Decision No. 28043, Case A525 – *Distribuzione Quotidiani Genova* (Dec. 20, 2019).

⁵⁰ AGCM, Decision No. 29782, Case A540 – *Poste Italiane* (Feb. 16, 2021)

Poste cut pay over time, changed the terms of service on its own, and finally ended the contract without giving enough notice. The AGCM said that this behavior was an abuse of economic dependence and that Soluzioni was stuck in the relationship because they had made a lot of specific investments and there were no other potential clients. Poste had to pay €11 million in fines. This case shows how conditions that are similar to a monopsony can lead to abuse, even in areas where public service obligations are usually expected.

B. Commitment-based resolutions (Benetton, McDonald's, Original Marines, Wind Tre)

The second main type of AGCM enforcement is when the companies being looked into choose to make commitments that address the authority's concerns, which keeps them from facing formal sanctions. These cases are especially helpful because they show how the AGCM uses Article 9 not only to punish people but also to fix commercial relationships and push for structural change.

Case A543, which was about Benetton and its retail franchise model, is one of the most important examples in this group.⁵¹ Many franchisees had complained that Benetton had too much power over different parts of their businesses.⁵² Franchisees had to buy all of their stock from Benetton, use the same marketing strategies, and keep their stores in the same layout as the parent company said they should. They also took on all the financial risk of unsold stock, had little control over prices, and had to deal with unclear processes for renewing contracts.

⁵¹ AGCM, Decision No. 30472, Case A543 – *Benetton* (Jan. 31, 2023)

⁵² Rupperecht Podszun & Sarah Langenstein, *Abuse Without Dominance?*, 13 J. Eur. Competition L. & Prac. 107 (2022)

The AGCM's study showed that a lot of these franchisees were actually dependent on the economy. They were tied to the franchisor in a way that made it too expensive for them to leave because they had invested in Benetton-branded infrastructure, software, store layouts, and marketing materials. The exclusivity clauses made this structural imbalance even worse.

The AGCM didn't punish Benetton; instead, they agreed to a set of commitments.⁵³ These included steps to give franchisees more freedom in choosing their inventory, the option to opt out of national promotional campaigns, and the creation of a bilateral advisory board to keep the conversation going. This case was an early sign that the AGCM would prefer a collaborative resolution path where dependency was not caused by coercive intent but by systemic imbalances built into business models.

A comparable strategy was apparent in Case A546 concerning McDonald's. The fast-food chain's franchise agreements were often very long, lasting up to 20 years, and very standard.⁵⁴ Franchisees had to stick to the company's prices, use approved suppliers (which often cost more), and follow centralized marketing plans. The AGCM was worried about the strictness of the contracts, the lack of renewal protections, and the wide-ranging powers that McDonald's kept, even though this kind of uniformity is common in global franchising models.

Some franchisees had spent hundreds of thousands of euros on custom build-outs and training local staff, but they were stuck in these contracts with no clear way to get out or guarantee of renewal.⁵⁵ The Authority decided that McDonald's didn't use direct threats, but the way the franchise system was set up made the power and dependency unfair.

⁵³ AGCM, *Annual Report 2023*, <https://www.agcm.it>

⁵⁴ AGCM, Decision No. 30199, Case A546 – *McDonald's Franchising* (June 14, 2022)

⁵⁵ OECD, *Franchising and Competition Policy* (2021), <https://www.oecd.org>

McDonald's made a lot of promises, including lowering the maximum franchise term to 10 years, making the renewal criteria clearer, creating a formal conflict resolution protocol, and setting up a council to represent franchisees. The goal of these points was to fix the power injustice without hurting McDonald's business model, which would make commercial practice better for the principles of Article 9.

Case A550, which was about Original Marines, was a big step forward for the AGCM's philosophy of enforcement.⁵⁶ The focus here was not on standard contract terms, but on controlling algorithms. The brand used advanced software platforms to manage its franchise network. These platforms controlled things like inventory management, restocking, pricing rules, and even store layout. It seemed that these digital systems were made to improve efficiency and keep the brand consistent. But in reality, they made franchisees passive implementers of automated decisions made by the headquarters.⁵⁷

Franchisees said they couldn't choose their own products, respond to changes in the local market, or change their prices. Additionally, their income was directly impacted by choices made by algorithms that they could not see or change. The AGCM called this use of algorithmic tools a new way of putting people in charge of the economy. Even if there was no direct abuse of contracts, the digital interface took the place of human negotiation and business judgment with centralized control.⁵⁸

In response, Original Marines made promises to change the software so that franchisees could have more freedom, allow franchisees to opt out of national promotions, and set up a governance committee to keep an eye on future algorithm updates. The AGCM agreed to

⁵⁶ AGCM, Decision No. 30221, Case A550 – *Original Marines* (July 5, 2022)

⁵⁷ OECD, *Algorithms and Competition Policy* (2017), <https://www.oecd.org>

⁵⁸ AGCM, Decision No. 30221, Case A550 – *Original Marines* (July 5, 2022)

these changes, marking a new chapter in the use of Article 9 by recognizing that dependency can be built into technology and must be controlled as such.⁵⁹

Finally, Case A547 was about Wind Tre's network of mono-brand telecom dealers. These dealers had signed exclusivity agreements and made their stores look like Wind Tre by putting up brand signs, giving employees uniforms, and changing the way they do business.⁶⁰ Their income came mostly from commissions on Wind Tre products. Wind Tre, on the other hand, changed its commission structure on its own and with retroactive effect, lowering payments after targets had already been met. It also kept the right to change the terms of the contract and didn't give clear instructions for renewal.

The AGCM said that these actions made the economy more dependent on others and created an unstable financial environment. The dealers couldn't easily switch to other operators because their mono-brand format had already cost them a lot of money. Instead of sanctions, Wind Tre agreed to freeze commission levels for a set amount of time, start talks before making changes to contracts, and set up an independent body to settle disagreements and make sure things are fair.⁶¹

This case improved a critical insight: even in well organised sectors like telecommunications, vertical dependence can arise and must be managed carefully. The AGCM's focus on clear contracts, procedural protections, and long-term stability shows that it believes in enforcement that values predictability and balanced business freedom.

⁵⁹ Vanessa Wilcox, *The Abuse of Economic Dependence in Competition Law*, 19 Eur. Comp. J. 141 (2023).

⁶⁰ AGCM, Decision No. 30276, Case A547 – *Wind Tre* (Aug. 4, 2022)

⁶¹ AGCM, Decision No. 30276, Case A547 – *Wind Tre* (Aug. 4, 2022)

C. Judicial engagement and the Meta/SIAE platform case

In the digital world, where dependency is less about physical goods and more about access to important infrastructure, the way Article 9 is understood and used has changed a lot. Case A559 between Meta and SIAE is a step forward in this area. This disagreement was different from past ones that were based on franchising or physical supply chains. It was about access to digital distribution and the role of platforms as gatekeepers.⁶²

In early 2023, Meta took SIAE's music catalog off of its Facebook and Instagram pages without asking anyone else.⁶³ This happened after the two companies couldn't agree on a licensing deal. This sudden choice had a big effect: Italian musicians and composers lost access to a main way to connect with the public, get their content seen, and make money. SIAE said that Meta's actions were an abuse of economic dependence, not because of formal contractual dominance, but because the platform is so important for reaching cultural audiences.⁶⁴

The AGCM's investigation was based on the idea that market power today can come from gatekeeping roles instead of owning productive assets or controlling prices. Meta wasn't a big company by traditional antitrust standards, but it had complete control over an ecosystem that millions of users, artists, and consumers use every day. In this case, Meta's refusal to license SIAE's content was not just a failed negotiation; it was a way of keeping people out of a public and economic space that they needed.

⁶² AGCM, Press Release, *Meta/SIAE Dispute on Music Licensing* (Mar. 2023), <https://www.agcm.it>

⁶³ The Guardian, *Meta Removes SIAE Music in Italy After Licensing Row* (Mar. 2023), <https://www.theguardian.com>.

⁶⁴ OECD, *Competition in Digital Markets* (2022), <https://www.oecd.org>

The Italian courts agreed with this line of thought. First, the Lazio Regional Administrative Court (TAR Lazio) made a temporary decision that favored SIAE. It told Meta to start negotiations again and put the content back up while the investigation was going on.⁶⁵ Later, the Consiglio di Stato (Council of State) backed this up by saying that economic dependence under Article 9 could happen in digital settings where one party can't replace the services of another without causing a lot of harm or loss of function.⁶⁶

There are a number of reasons why this case is important. First, it takes the logic of Article 9 beyond traditional B2B markets and into the area of platform regulation. Secondly, it fits in with bigger changes happening in Europe, especially the EU Digital Markets Act (DMA), which also wants to control digital gatekeepers that sit between users and markets.⁶⁷ Third, it shows how national competition authorities and courts can work together to set new rules.

In essence, Meta/SIAE did not lead to a financial penalty. The case came to an end when the parties agreed to a new licensing deal. But you can't say enough about how important it is legally and in terms of institutions. It confirmed that economic dependence is context-sensitive: in the analog economy, it may arise from product exclusivity or franchise lock-in; in the digital economy, it may result from access asymmetries and algorithmic visibility. The AGCM's handling of the case showed that they were able to see things ahead.

This extension of Article 9 into digital contexts indicates an increasing recognition within competition law that platform-mediated dependencies are not anomalies but may evolve into the standard.⁶⁸ Article 9 may function as an experimental legal instrument within an increasingly intricate digital regulatory framework, characterized by abuses that manifest not

⁶⁵ TAR Lazio, Ordinanza 17 March 2023, No. 1779 (It.)

⁶⁶ Cons. St., sez. VI, 2 May 2023, No. 4321 (It.)

⁶⁷ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act), 2022 O.J. (L 265) 1

⁶⁸ OECD, *Competition in Digital Markets* (2022), <https://www.oecd.org>

solely as pricing restrictions or physical supply shortages, but also as access withdrawal, algorithmic suppression, or exclusion from networked environments.

This case also shows how administrative enforcement and judicial interpretation can work together strategically. The AGCM's findings were supported by a judiciary that was willing to interpret statutory language in light of economic realities, rather than acting alone. The coming together of regulatory and judicial views makes public enforcement in Italy more legitimate and strong. It also shows that the regulatory ecosystem is mature enough to change as markets do.⁶⁹

D. Comparative enforcement & strategic use of law & economics

It is possible to compare the Italian enforcement experience under Article 9 to other European models that address economic dependence and vertical asymmetries. The Italian model, which is based on the AGCM, is distinctive because it has a good balance between being strict and being flexible, even though many places have some protection against the unfair use of contractual leverage.

People may be economically dependent on one another, for instance, according to Article L.420-2 of the French Commercial Code.⁷⁰ If abusing a position of economic dependence harms competition, it is illegal, according to French law.⁷¹ But when it comes to implementing it, national courts and the French Competition Authority (Autorité de la Concurrence) have typically been cautious. The burden of proof is still high, so the person

⁶⁹ Damien Gerard & Assimakis Komninos, *EU Competition Law and the Challenge of Economic Dependence*, in *Antitrust Between EU Law and National Law* 265 (2021)

⁷⁰ Code de commerce [C. com.] art. L. 420-2 (Fr.)

⁷¹ Autorité de la concurrence [French Competition Authority], Decision No. 10-D-39, *Décision relative à des pratiques mises en œuvre dans le secteur de la distribution alimentaire* (Dec. 22, 2010)

claiming abuse must demonstrate that there is dependence and that the abuse has a significant effect on competition or market structure. The French system is still based on antiquated notions of competition.

However, the AGCM has interpreted Article 9 in a broader manner. It is not necessary for consumer harm or market foreclosure to occur first.⁷² Conversely, the Authority considers relational vulnerabilities, meaning that intervention can occur even in situations where the market is still competitive overall. This reflects a more protective attitude toward vertical business partnerships and a readiness to correct power disparities in certain situations, particularly when the weaker party has invested heavily in the relationship and has no other viable options.

Germany offers yet another point of comparison. Comparative market power is discussed in Section 20 of the German Act Against Restraints of Competition (GWB), which targets businesses that harm others by abusing their superior bargaining power, even if they are not dominant. The GWB has also been applied to digital markets, particularly in relation to disputes over platform conditions and app store policies.⁷³

In order to determine relative market power, however, the German model typically employs more rigid formal metrics, such as revenue thresholds, contract volume ratios, and explicit dependency indexes. Although this increases legal certainty, it sometimes ignores contextual factors of dependence that the AGCM takes into account, such as algorithmic control or behavioral lock-in.

As a result, one could characterize Italy's strategy as more economically interpretive. In order to determine an economy's level of dependence, the AGCM considers more than just market

⁷² AGCM, *Guidelines on Abuse of Economic Dependence* (2019), <https://www.agcm.it>

⁷³ Gesetz gegen Wettbewerbsbeschränkungen [GWB] [Act Against Restraints of Competition], § 20 (Ger.)

data or numerical thresholds. It examines behavioral and transactional indicators instead. This includes examining sunk costs, the nature of bargaining, provisions that allow one party to alter the terms of the agreement, the duration of exclusivity, and the possibility of being held up.

The enforcement model of the AGCM also demonstrates the operation of strategic calibration. It is made up of three interconnected parts:

For instance, the AGCM employs targeted sanctions in well-known instances of relational exclusion or opportunism. Fines in A525 and A539 were intended to deter contract violations and unilateral contract modifications that harm economically dependent partners.⁷⁴

Secondly, the Authority favors corrective commitments in structurally unbalanced relationships where the abuse is not deliberate but rather results from the institution's structure. Business models in Benetton, McDonald's, Wind Tre, and Original Marines may inadvertently lead to dependency, according to the AGCM.⁷⁵ Instead of requiring disassembly, it chose to require modifications to preserve those models.

Third, there is a positive working relationship between the AGCM and the courts, particularly in areas that are new or complex. This synergy is exemplified by the Meta/SIAE case. The AGCM's conclusions were supported by judicial opinions that examined dependency in the context of digital gatekeeping, making Article 9 more applicable to emerging forms of economic vulnerability.⁷⁶

⁷⁴ AGCM, Decision No. 28043, Case A525 – *Distribuzione Quotidiani Genova* (Dec. 20, 2019); AGCM, Decision No. 29782, Case A540 – *Poste Italiane* (Feb. 16, 2021)

⁷⁵ AGCM, Decision No. 30472, Case A543 – *Benetton* (Jan. 31, 2023); AGCM, Decision No. 30199, Case A546 – *McDonald's Franchising* (June 14, 2022); AGCM, Decision No. 30276, Case A547 – *Wind Tre* (Aug. 4, 2022); AGCM, Decision No. 30221, Case A550 – *Original Marines* (July 5, 2022)

⁷⁶ AGCM, Press Release, *Meta/SIAE Dispute on Music Licensing* (Mar. 2023), <https://www.agcm.it>; TAR Lazio, Ordinanza 17 March 2023, No. 1779 (It.)

Concepts from economics and law form the foundation of this strategic enforcement architecture. In each of its cases, the AGCM supported its findings with theoretical tools such as hold-up theory (Hart & Moore), switching costs (Farrell & Klemperer), and investment specificity (Williamson).⁷⁷ For example, the cost of branding conversion was considered a sunk cost that led to lock-in in the McDonald's or Wind Tre cases. Likewise, the limitations of the digital interface in Original Marines were examined in terms of information asymmetries and control rights.

The relational contract theory developed by Macaulay and Macneil, which holds that long-term business partnerships function within unwritten guidelines and mutual expectations, was also examined by the AGCM. When a party unilaterally violates these standards, such as by retroactively altering commissions or refusing to renew without justification, Article 9 is intended to restore the equilibrium of the relationship.⁷⁸

The way the AGCM has evolved as a regulatory body is demonstrated by this integration of economic theory into the application of the law. When making decisions about enforcement, the Authority considers behavioral insights, market incentives, and the economic realities of risk distribution and asymmetry in addition to simply following the law.

⁷⁷ Oliver Hart & John Moore, *Incomplete Contracts and Renegotiation*, 56 *Econometrica* 755 (1988); Joseph Farrell & Paul Klemperer, *Coordination and Lock-In: Competition with Switching Costs and Network Effects*, 38 *Handbook of Industrial Organization* 1967 (2007); Oliver Williamson, *Markets and Hierarchies* (Free Press 1975)

⁷⁸ Stewart Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 *Am. Soc. Rev.* 55 (1963); Ian R. Macneil, *Contracts: Adjustment of Long-Term Economic Relations under Classical, Neoclassical, and Relational Contract Law*, 72 *Nw. U. L. Rev.* 854 (1978)

E. Conclusion and future directions

Because it integrates legal reasoning, economic analysis, and strategic judgment, the AGCM's application of Article 9 is a distinctive method of regulatory enforcement. The Authority now emphasizes the relational vulnerability, institutional asymmetry, and dependency present in corporate structures rather than traditional ideas of market power. This model demonstrates how, in modern markets, particularly those mediated by digital platforms, power is not always apparent in pricing or market share. It is also present in procedural ambiguity, technology infrastructures, and exclusivity clauses.⁷⁹

According to a comparative analysis of the cases studied, the AGCM has consistently sought balance in a variety of business models, including subcontracting (Poste Italiane), franchising (Benetton, McDonald's, Original Marines), mono-brand distribution (Wind Tre), traditional media distribution (M-Dis), and digital intermediation (Meta). Companies found to have engaged in opportunistic behavior, such as M-Dis' exclusionary policies or Poste Italiane's unilateral lowering of service standards, were fined.⁸⁰ These sanctions served a punitive purpose and reinforced the AGCM's role as a market steward, filling in the gaps left by contract law and private litigation.

In other cases, AGCM approved comprehensive commitment plans. This alternative enforcement approach, which is founded on dialogue and reform, shows a preference for structural rather than punitive solutions. These resolutions helped address systemic injustices without jeopardizing successful business models, much like the Benetton and McDonald's

⁷⁹ OECD, *Competition in Digital Markets* (2022), <https://www.oecd.org>

⁸⁰ AGCM, Decision No. 28043, Case A525 – *Distribuzione Quotidiani Genova* (Dec. 20, 2019); AGCM, Decision No. 29782, Case A540 – *Poste Italiane* (Feb. 16, 2021).

cases did. Fascinatingly, this tactic allowed companies to continue operating profitably while treating economically dependent partners more fairly.

One example of the digital turn that brings to light a new challenge is Meta/SIAE. Although platforms manage access to audiences, markets, and income sources, they are not traditional suppliers or buyers.⁸¹ Dependency in these cases is less about actual transactions and more about having access to digital infrastructure. To do this, competition authorities need to expand their conceptual toolkit. By acknowledging Meta's gatekeeping role, the AGCM, supported by Italian courts, made a compelling case that Article 9 can be a flexible tool to address new forms of exclusion and opacity.

Three challenging challenges await the AGCM and other regulators in the future. First, as digital markets advance, dependencies will become increasingly unclear. As coercive measures, algorithms, rankings, visibility, and data asymmetries can take the place of exclusion clauses. Regulators will need to stay ahead of these developments, possibly with the help of anticipatory guidelines or digital market observatories.

Second, there's a risk that abuse will be mistaken for commercial leverage or that overzealous enforcement will take place. Asymmetry isn't always a bad thing. Brand consistency, for example, is very beneficial to franchises, and exclusivity may be necessary for certain distribution models.⁸² The AGCM will need to refine its tools to distinguish structural dependence from ordinary commercial arrangements. Economic analysis will continue to play a major role in defining these limits.

Third, respect for European law needs to remain a primary concern. As the Digital Markets Act (DMA) gains traction, national tools like Article 9 and EU-level mechanisms must work

⁸¹ AGCM, Press Release, *Meta/SIAE Dispute on Music Licensing* (Mar. 2023), <https://www.agcm.it>

⁸² OECD, *Franchising and Competition Policy* (2021), <https://www.oecd.org>

together.⁸³ Italy's experience could serve as a model for other member states looking to improve their enforcement strategies.⁸⁴ Using economic dependence as a regulatory lens could help bridge the gaps between competition law and broader concerns about justice, sustainability, and access.

In conclusion, the Italian approach to implementing Article 9 is a progressive and adaptable method of regulating the public. It is a prime example of the abuse of situational leverage and market power, two problems that are becoming more widespread in modern economies. Through a combination of negotiated reforms, fines, and judicial support, the AGCM has evolved into a pioneering organization capable of interpreting commercial law from both a legal and economic perspective. The growing corpus of jurisprudence and strategic enforcement documented in these cases demonstrates the importance of Article 9 in Italy's framework for competition. It demonstrates a thorough understanding of how power works in vertical relationships and how market structures can be strengthened by government intervention that both punishes and restores equilibrium.

⁸³ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act), 2022 O.J. (L 265) 1

⁸⁴ Damien Gerard & Assimakis Komninos, *EU Competition Law and the Challenge of Economic Dependence*, in *Antitrust Between EU Law and National Law* 265 (2021)

IV. Economic analysis of Article 9 enforcement: criteria, effectiveness, and policy implications

A. Introduction

This chapter looks at the economic reasons behind and problems with enforcing Article 9 of Law No. 192/1998, which deals with abuse of economic dependence in Italy. Article 9 deals with situations where one party has too much power over another, even if there is no clear dominance.⁸⁵ This is different from traditional competition law, which is mostly about dominant market positions. This shows that regulators are starting to think differently about how to regulate businesses. Instead of just looking at market structure, they are also looking at how businesses interact with each other. From a legal and economic point of view, using Article 9 raises a lot of problems: What does it mean to be "economically dependent"? How can abuse be measured if it doesn't affect the whole market? Most importantly, does the Italian Competition Authority (AGCM) have a logical economic framework that guides its actions?⁸⁶

The AGCM has added more tools to its toolbox over the past ten years to help fix structural problems that come up in distribution, subcontracting, franchising, and platform-mediated relationships. Instead of using systematic economic standards, enforcement is still mostly qualitative and based on narrative case-by-case analysis.⁸⁷ This lack of methodological rigor could lead to inconsistent application and put legal certainty at risk. This chapter seeks to

⁸⁵ Consolidated Version of the Treaty on the Functioning of the European Union art. 102, Oct. 26, 2012, 2012 O.J. (C 326) 47.

⁸⁶ Rupperecht Podszun & Sarah Langenstein, *Abuse Without Dominance?*, 13 J. Eur. Competition L. & Prac. 107 (2022)

⁸⁷ Vanessa Wilcox, *The Abuse of Economic Dependence in Competition Law*, 19 Eur. Comp. J. 141 (2023)

bridge that gap by providing an economic framework for evaluating the execution of Article 9. This assesses the effectiveness of current standards, the alignment of obligations and sanctions, and the theoretical underpinnings justifying intervention in non-dominant relationships.

B. The economic logic behind Article 9

Article 9 is based on the idea that economic coercion can happen even if a company doesn't have a dominant position in the market.⁸⁸ Coercion, on the other hand, comes from dependence created by relational dynamics like long-term contracts, specific investments, exclusivity clauses, and sunk costs that make it hard for a business to end a business relationship. In these situations, one party may take advantage of the other not by setting prices or limiting output, most commonly, but by using contractual or operational limits that change the balance of power in negotiations.

Economic dependence becomes especially problematic when companies have to spend a lot of money to adapt to a partner's technology, infrastructure, or brand. These "relationship-specific investments" make it more expensive to switch, which makes the dependent company open to hold-up strategies.⁸⁹ For example, a franchisee might spend thousands of euros to make a store meet the franchisor's standards, only to have the commissions or supply terms change after the fact. Article 9 is meant to stop this kind of unfair behavior, not to punish businesses that do well in the market. It is meant to protect fairness in contracts when leaving the market is not an option.⁹⁰

⁸⁸ Rupperecht Podszun & Sarah Langenstein, *Abuse Without Dominance?*, 13 J. Eur. Competition L. & Prac. 107 (2022)

⁸⁹ Oliver Hart & John Moore, *Incomplete Contracts and Renegotiation*, 56 *Econometrica* 755 (1988).

⁹⁰ Law No. 192 of June 18, 1998, art. 9, G.U. No. 143 of June 22, 1998 (Italy)

This reasoning is very different from how Article 102 TFEU normally enforces antitrust laws, which requires a dominant position and harm to competition.⁹¹ Article 9, on the other hand, is more in line with theories of relational contract economics and behavioral asymmetry because it focuses on fairness in vertical relationships. It understands that modern economic power is often used in subtle ways, like through contract design, exclusivity obligations, and control over access points, instead of through brute market share.⁹²

C. Investment specificity, switching costs, and hold-up risk

Three important economic concepts that can help us understand economic dependence in the context of Article 9 are investment specificity, switching costs, and hold-up risk.⁹³ These ideas help us understand why some businesses don't have strong business relationships, even when they aren't the most powerful or have a monopoly on the market.

Investment specificity is how well an investment works with a certain trading partner. For example, a franchisee who builds a store according to the franchisor's branding and architectural standards can't easily spend that money on something else.⁹⁴ People become dependent on this kind of sunk cost because they can't get their money back when they leave the relationship. The more specific the investment, the harder it is to get out of it.

The costs of ending a business relationship in terms of money, operations, and reputation are called switching costs. These costs can be real things, like fines, retraining, or changing the name of the business, or they can be things that aren't real, like losing access to customers or supply chains that are already in place. Businesses have a hard time changing partners

⁹¹ Consolidated Version of the Treaty on the Functioning of the European Union art. 102, Oct. 26, 2012, 2012 O.J. (C 326) 47

⁹² OECD, *Loyalty Rebates and Exclusivity* (2016), <https://www.oecd.org/daf/competition>.

⁹³ Jean Tirole, *The Theory of Industrial Organization* 215 (MIT Press 1988)

⁹⁴ Stewart Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 Am. Soc. Rev. 55 (1963)

because it costs a lot to switch, which lets the stronger party make changes without the other party's permission.

When one party takes advantage of the other party's sunk costs or inability to switch, this is called hold-up risk.⁹⁵ This usually happens after the dependent party has put a lot of money into something. If the stronger party thinks the weaker party can't afford to back out, they can add new rules, lower the margins, or change the terms after the fact. This makes it harder to invest, which is bad for the economy, and it also makes it easier for people to abuse.⁹⁶

In short, these three ideas are what economic dependence is all about. Legal tests usually look at things that are not numbers, like how long something lasts or how exclusive it is. A more thorough economic analysis that uses these factors gives a more accurate and objective way to figure out when a relationship becomes abusive because it is no longer equal.

D. AGCM's enforcement model: a behavioral economic perspective

Under Article 9, the Italian Competition Authority (AGCM) has slowly started to use behavioral economics as part of its enforcement strategy. The AGCM is no longer using neoclassical models that assume people act rationally and markets are perfectly competitive. Instead, it is focusing more on how bounded rationality, information asymmetries, and the institutional context influence economic dependence and abuse.⁹⁷

⁹⁵ Oliver Hart & John Moore, *Incomplete Contracts and Renegotiation*, 56 *Econometrica* 755 (1988)

⁹⁶ Oliver Williamson, *Markets and Hierarchies* (Free Press 1975)

⁹⁷ Richard H. Thaler & Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (Yale Univ. Press 2008)

When dependent companies make deals, they might not think about risks enough, especially when the contracts are complicated or very standard. They might also have an optimism bias, which means they think their relationship with a bigger partner will stay the same or that future negotiations will be fair. Big companies know about these cognitive limits and can write contracts that give them the most power over time by using vague language, discretion, or exit clauses that they can use to pressure people later.

The AGCM's model also implicitly incorporates ideas from prospect theory, which posits that companies are more affected by losses than by gains of equal value.⁹⁸ There are many studies that show this, such as Wind Tre and Original Marines, where resellers and franchisees were punished unfairly or had to deal with policy changes that were much worse for their mental and financial health than the benefits they could have gotten.

When the AGCM gets complaints, it doesn't always look at economic harm in the usual ways, like when prices go up or output goes down. It looks at how fair and stable the contract relationship seems to be instead.⁹⁹ Although this approach increases the reach of enforcement, it also raises questions about objectivity.¹⁰⁰ Things might be clearer and more predictable if behavioral economics were applied more formally to the guidelines and standards used to make decisions.

In conclusion, the AGCM requires more precise methodological guidelines, but its assessments are more realistic due to its use of behavioral reasoning. It should avoid making arbitrary decisions regarding enforcement by using structured criteria, expert testimony, or empirical evidence in addition to being aware of behavioral biases.

⁹⁸ Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision under Risk*, 47 *Econometrica* 263 (1979)

⁹⁹ Herbert A. Simon, *A Behavioral Model of Rational Choice*, 69 *Q.J. Econ.* 99 (1955)

¹⁰⁰ Richard H. Thaler & Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (Yale Univ. Press 2008)

E. Commitments vs sanctions: efficiency and strategic impact

In enforcing Article 9, the AGCM faces a strategic choice between imposing sanctions and accepting voluntary commitments from firms under investigation.¹⁰¹ This decision reflects deeper economic trade-offs between deterrence, compliance, and procedural efficiency. Each route carries distinct implications for enforcement credibility and market dynamics.

Sanctions, like fines, hurt people and businesses. They are usually only used when there are clear, deliberate abuses where the stronger party has taken advantage of someone's dependence in a way that can be measured.¹⁰² The Authority can punish people who take advantage of others with sanctions, which sends a clear message to the market that they should not do it again. However, public enforcement can be time-consuming and expensive because fines can also be challenged in court.

Commitments, on the other hand, are voluntary changes to behavior or structure that are meant to quickly bring the business relationship back into balance without the need for punishment.¹⁰³ Companies that are more adaptable and promote open communication are better equipped to address abusive behavior when it arises from the organizational structure rather than intentional actions. The AGCM agreed to changes to the contracts of companies like McDonald's, Benetton, and Wind Tre. These changes would make it easier to leave and clear up any confusion.¹⁰⁴

¹⁰¹ Law No. 287 of October 10, 1990, art. 14-ter, G.U. No. 240 of October 13, 1990 (Italy)

¹⁰² AGCM, Decision No. 29782, Case A540 – *Poste Italiane* (Feb. 16, 2021)

¹⁰³ Law No. 287 of October 10, 1990, art. 14-ter, G.U. No. 240 of October 13, 1990 (Italy)

¹⁰⁴ AGCM, Decision No. 30199, Case A546 – *McDonald's Franchising* (June 14, 2022); AGCM, Decision No. 30472, Case A543 – *Benetton* (Jan. 31, 2023); AGCM, Decision No. 30276, Case A547 – *Wind Tre* (Aug. 4, 2022)

Promises could help speed up solutions and make enforcement cheaper from an economic point of view. They work best in areas like online platforms and retail franchising, where new ideas are quickly made or contracts are changed often. Critics say that using commitments could slow down strategic decisions and make deterrence less effective because businesses can only respond after an investigation has begun.¹⁰⁵

The AGCM's two-part plan strikes a good balance between stopping abuse and protecting the institution's good name. A more advanced approach could include clearer rules for when to use each tool and a way to measure systemic importance, investment exposure, and damage using an economic score system.¹⁰⁶

F. Relational market power and fairness in B2B contracts

One of the most interesting things about enforcing Article 9 is that it changes the focus from market-wide dominance to relational market power.¹⁰⁷ This idea looks at how much control one company has over another in a certain business relationship, which is usually only between the two companies. This power doesn't come from how big or popular the company is; it comes from how the relationship is set up and how it has changed over time.

In traditional antitrust law, abuse usually means using your power in the market to keep competitors out or take advantage of customers. Article 9, on the other hand, talks about when two people abuse each other, usually in business-to-business (B2B) situations where

¹⁰⁵ Vanessa Wilcox, *The Abuse of Economic Dependence in Competition Law*, 19 Eur. Comp. J. 141 (2023)

¹⁰⁶ OECD, *Best Practices in Competition Enforcement* (2021), <https://www.oecd.org>

¹⁰⁷ Rupperecht Podszun & Sarah Langenstein, *Abuse Without Dominance?*, 13 J. Eur. Competition L. & Prac. 107 (2022)

one person becomes economically dependent because of long-term contracts, sunk investments, or a lack of other options.¹⁰⁸

This relational approach raises significant inquiries regarding fairness, concerning both the procedure and the result. Procedural fairness is about how people talk about, change, and follow the rules of a contract. It is about whether there is openness, discussion, and a way to get help.¹⁰⁹ Substantive fairness looks at the actual terms of the agreement, like whether the obligations are fair, the risks are shared fairly, and the benefits are mutual.

The AGCM has implicitly employed these fairness dimensions in its enforcement. For example, it looked at how Wind Tre's unilateral changes to commissions, Benetton's pricing limits, or Original Marines' supply algorithms affected the weaker party's freedom and risk. In these instances, the disparity was not solely economic but also procedural: decisions were made unilaterally, frequently without negotiation or recourse.¹¹⁰

However, fairness is a subjective criterion that differs depending on the individual and the circumstance. In one place, something that seems unfair might be considered normal. You must be sensitive to the industry in order to accomplish this, and industry codes, benchmarks, or comparative contract analysis may be useful.

By emphasizing equity and relational power, Article 9 transforms our understanding of conventional competition analysis. When one party has more power than the other in a business-to-business setting, this new perspective makes sense.¹¹¹ How to translate these concepts into explicit regulations that can be applied is still the issue.

¹⁰⁸ Stewart Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 Am. Soc. Rev. 55 (1963)

¹⁰⁹ Ian R. Macneil, *Contracts: Adjustment of Long-Term Economic Relations under Classical, Neoclassical, and Relational Contract Law*, 72 Nw. U. L. Rev. 854 (1978)

¹¹⁰ AGCM, Decision No. 30276, Case A547 – *Wind Tre* (Aug. 4, 2022); AGCM, Decision No. 30472, Case A543 – *Benetton* (Jan. 31, 2023); AGCM, Decision No. 30221, Case A550 – *Original Marines* (July 5, 2022)

¹¹¹ Rupperecht Podszun & Sarah Langenstein, *Abuse Without Dominance?*, 13 J. Eur. Competition L. & Prac. 107 (2022)

G. Measuring dependence: problems with quantification and evidence

Although economic dependence is a key component of Article 9, quantifying it is still one of the most difficult enforcement issues. Economic dependence frequently lacks standardized metrics, in contrast to dominance under Article 102 TFEU, which can be substantiated by quantifiable indicators like market share, entry barriers, and control over essential facilities.

The AGCM has occasionally used proxy indicators, such as the percentage of turnover derived from a single client (as in the *Poste Italiane* case), exclusivity clauses, or the length and rigidity of contractual relationships.¹¹² However, these indicators are rarely sufficient on their own. For example, high turnover concentration does not necessarily indicate coercion if the dependent party freely entered the agreement and has credible exit options.

One of the key conceptual difficulties lies in defining what counts as a "satisfactory market alternative". Should alternatives be assessed in terms of price, switching cost, contractual freedom, or long-term viability?¹¹³ The lack of a coherent methodology opens the door to subjective or inconsistent interpretations. Furthermore, smaller firms often hesitate to provide full documentation due to fear of retaliation or reputational risks, making the problem of asymmetric evidence worse.

From an economic standpoint, investment specificity and switching costs can, in theory, be quantified through cost-benefit analysis or scenario modeling.¹¹⁴ For instance, one could estimate the sunk costs that would be lost upon exit or the time and money required to

¹¹² AGCM, Decision No. 29782, Case A540 – *Poste Italiane* (Feb. 16, 2021)

¹¹³ Oliver Williamson, *Markets and Hierarchies* (Free Press 1975)

¹¹⁴ Oliver Williamson, *Markets and Hierarchies* (Free Press 1975)

establish a new commercial partnership. However, such tools are rarely used systematically by the AGCM.

The adoption of structured evaluation frameworks, potentially inspired by real industrial organization models, represents a promising direction.¹¹⁵ These could be scoring systems that use both quantitative data (like revenue ratios, exit costs, and supply alternatives) and qualitative data (like exclusivity, duration, and dependence narratives). This hybrid strategy would lower the chance of lawsuits and make people more confident in the regulator's evaluations, in addition to making things more consistent and open.

H. Comparative analysis: France, Germany, and EU DMA frameworks

Italy's perspective on economic dependence under Article 9 is distinctive within the European legal framework, yet it has parallels. A comparative analysis shows that France, Germany, and the EU (through the Digital Markets Act, or DMA) have all come up with similar rules. Each one has its own strengths and weaknesses in terms of scope, methodology, and enforcement culture.

Article L.420-2 of the Commercial Code in France deals with taking advantage of someone who is economically dependent. The Autorité de la Concurrence has been careful when enforcing the law, often requiring proof of both dependence and harm to competition.¹¹⁶ The French model still relies a lot on old-fashioned antitrust logic, which says that you have to show that the abuse had an effect on the whole market, like foreclosure or limiting

¹¹⁵ Jean Tirole, *The Theory of Industrial Organization* 215 (MIT Press 1988)

¹¹⁶ Code de commerce [C. com.] art. L. 420-2 (Fr.)

innovation. This limits the tool's usefulness in cases of purely bilateral imbalances, which makes it harder for small and medium-sized businesses to use it as a safety net.

Germany's Section 20 GWB (Gesetz gegen Wettbewerbsbeschränkungen) goes even further by directly addressing companies that have relative market power, even if they aren't the most powerful in the traditional sense. The Bundeskartellamt has expanded its enforcement to include digital platforms, recognizing that platforms can control access, visibility, and monetization.¹¹⁷ Still, the German model prefers structured thresholds, like turnover ratios and network effects. These make the law more predictable but less flexible in terms of context.

The EU Digital Markets Act (DMA) sets up rules for "gatekeepers" and acknowledges that platforms can create systemic dependencies even when they don't have traditional market power.¹¹⁸ The DMA doesn't directly deal with abuse like Article 9 does, but its regulatory philosophy, which focuses on asymmetries, access control, and ecosystem dynamics, is similar to many of the issues that Italian law deals with. There is a lot of room for things to come together, especially in digital markets where data imbalances and contract power replace old-fashioned pricing strategies.¹¹⁹

Italy's Article 9 system is more about relationships and individual cases than France's and Germany's. It likes interpretive flexibility better than strict limits.¹²⁰ This is useful in areas that change quickly or when behavior, not structure, determines dependency. But it also makes people worry about the certainty of the law, selective enforcement, and the ability of institutions to make their own choices. A good way to move forward might be to use some of

¹¹⁷ Gesetz gegen Wettbewerbsbeschränkungen [GWB] [Act Against Restraints of Competition], § 20 (Ger.)

¹¹⁸ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act), 2022 O.J. (L 265) 1.

¹¹⁹ Damien Gerard & Assimakis Komninos, *EU Competition Law and the Challenge of Economic Dependence*, in *Antitrust Between EU Law and National Law* 265 (2021)

¹²⁰ Code de commerce [C. com.] art. L. 420-2 (Fr.); Gesetz gegen Wettbewerbsbeschränkungen [GWB] [Act Against Restraints of Competition], § 20 (Ger.)

Germany's structured evidence practices while also keeping in mind the logic of the Italian approach that takes the situation into account.¹²¹

I. Institutional learnings & policy implications

Article 9 can be enforced in two distinct but connected ways. A more sophisticated method of public enforcement that blends economic theory and legal analysis has been put into place by the Italian Competition Authority (AGCM). It provides a structural analysis of vertical imbalances in business-to-business relationships by examining hold-up risks, switching costs, and investment specificity. The AGCM's rulings demonstrate how public perceptions of economic power are evolving. Instead of focusing on market dominance, they are focusing on relational dependence. However, this chapter demonstrates that the AGCM continues to rely heavily on anecdotes about particular cases and qualitative reasoning. Good economic modeling and empirical benchmarks are scarce.

However, civil courts continue to be a separate but underdeveloped enforcement mechanism. Although Article 9 can be used in civil litigation, there are a number of factors that limit its effectiveness in this situation: plaintiffs have a heavy burden of proof; judges frequently lack specialized economic tools to measure dependency; and finally judges' interpretations of "excessive imbalance" and "lack of alternatives" are inconsistent.¹²² As a result, there is less jurisprudential clarity and fewer seminal decisions from civil enforcement.

AGCM interventions are typically more proactive and systemically oriented in practice, particularly when abuse affects multiple contractual relationships (e.g., franchise networks, reseller ecosystems, or digital intermediaries) or poses a risk of wider market effects. Civil

¹²¹ Bundeskartellamt [German Federal Cartel Office], Case B6-22/16 – *Amazon Marketplace* (2019)

¹²² Trib. Milano, sez. spec. impresa, 11 February 2020, No. 1428 (It.)

enforcement, on the other hand, is still reactive and is usually started by economically weaker parties who might not have the means, motivations, or legal certainty to take on more powerful rivals.¹²³

Therefore, a dual-track system is reflected in the discipline of economic dependence abuse in public enforcement. The first is administrative, with a foundation in competition law and a growing influence from economic and legal reasoning. The second is judicial, with a foundation in civil contract law, but it still aims for analytical depth and methodological coherence.

From an economic and legal point of view, this duality has both pros and cons. It allows for flexibility in dealing with abuse in different market situations, but it also has the potential to create confusion and fragmentation. For future enforcement to be successful, these strategies need to be harmonized, economic metrics need to be more accurate, and the courts need to be better able to assess structural dependency.¹²⁴ The AGCM's institutional knowledge will help with all of these things.

The Italian Competition Authority's (AGCM) application of Article 9 differs greatly from the way antitrust laws normally function, which view market share or dominance as the main markers of abuse.¹²⁵ The AGCM, on the other hand, adopts a more nuanced position regarding relational power and structural asymmetry in vertical business partnerships. This is in line with current legal and economic perspectives on enforcement. They assert that switching costs, investment specificity, and access dependence are all important viewpoints.

¹²³ Tilman Makatsch, *Missbrauch wirtschaftlicher Abhängigkeit*, 61 *Wirtschaft und Recht* 113 (2009)

¹²⁴ Damien Gerard & Assimakis Komninos, *EU Competition Law and the Challenge of Economic Dependence*, in *Antitrust Between EU Law and National Law* 265 (2021)

¹²⁵ Consolidated Version of the Treaty on the Functioning of the European Union art. 102, Oct. 26, 2012, 2012 O.J. (C 326) 47

The use of both commitments and fines demonstrates the AGCM's flexibility in changing its policy. While fines are only applied to opportunistic or exclusionary behavior (e.g., *Poste Italiane* and *M-Dis*), commitments are used to address issues that are inherent in successful business models (e.g., *McDonald's* and *Wind Tre*).¹²⁶ The AGCM not only regulates the market but also keeps things in balance so that dependence doesn't turn into coercion.

The *Meta/SIAE* case serves as an example of how Article 9 can be used in digital marketplaces where platform access, visibility, and data have supplanted real-world supply chains.¹²⁷ This illustrates how the framework can be adjusted to take into account new types of economic dependence. The Digital Markets Act (DMA) and other changes to European law are in line with this expansion. This makes Article 9 even more important for national regulations in dynamic markets.¹²⁸

The most important thing that this chapter's analysis shows is that Italy's public enforcement of economic dependence works on two levels. The AGCM uses economic reasoning to make systemic, proactive changes. The civil judiciary, on the other hand, is officially allowed to deal with abuse, but it is limited by a lack of economic methodology, high evidentiary standards, and a lack of clear legal rules.¹²⁹

This duality is both an opportunity and a problem. One advantage is that it lets you give different answers based on the industry and case profile. On the other hand, it could lead to inconsistency and lack of enforcement if civil courts don't want to or aren't able to recognize economic dependence outside of traditional legal categories.

¹²⁶ AGCM, Decision No. 29782, Case A540 – *Poste Italiane* (Feb. 16, 2021); AGCM, Decision No. 28043, Case A525 – *Distribuzione Quotidiani Genova* (Dec. 20, 2019); AGCM, Decision No. 30199, Case A546 – *McDonald's Franchising* (June 14, 2022); AGCM, Decision No. 30276, Case A547 – *Wind Tre* (Aug. 4, 2022)

¹²⁷ AGCM, Press Release, *Meta/SIAE Dispute on Music Licensing* (Mar. 2023), <https://www.agcm.it>

¹²⁸ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act), 2022 O.J. (L 265) 1

¹²⁹ Trib. Milano, sez. spec. impresa, 11 February 2020, No. 1428 (It.)

So, to make Article 9 enforcement more credible and effective in institutions, future policy changes should focus on: creating standardized economic guidelines for both administrative and judicial actors; teaching judges and civil courts how to assess economic dependency; making sure that AGCM decisions and judicial interpretations are better coordinated; and making sure that everything is in line with EU-level tools to avoid regulatory divergence.¹³⁰

Article 9 is a one of a kind legal-economic bridge because it doesn't directly go after harm to consumers or market concentration. Instead, it focuses on the issues and unfairness that arise when one party can unilaterally dictate the terms of a relationship.¹³¹ It protects both the weaker party and the competitive process itself when used correctly and consistently by encouraging exit options, balancing contracts, and new ideas.

This backs up the main point of this work, which is that when done right through a structured public enforcement model, the abuse of economic dependence can help make the modern economy fairer and more efficient.¹³²

¹³⁰ OECD, *Best Practices in Competition Enforcement* (2021), <https://www.oecd.org>

¹³¹ Rupperecht Podszun & Sarah Langenstein, *Abuse Without Dominance?*, 13 J. Eur. Competition L. & Prac. 107 (2022)

¹³² Damien Gerard & Assimakis Komninos, *EU Competition Law and the Challenge of Economic Dependence*, in *Antitrust Between EU Law and National Law* 265 (2021)

V. Conclusion

This thesis examines the treatment of economic dependence abuse within the context of Italian public enforcement, emphasizing the functions of the Italian Competition Authority (AGCM) and civil courts. Article 9 of Law No. 192/1998 has become a unique legal mechanism aimed at rectifying vertical imbalances in B-2-B relationships, an aspect where conventional competition law instruments, like Article 102 TFEU, can not be perfect.¹³³

The first chapter talked about what economic dependency is, where it came from in law, and how it is different from antitrust offenses based on dominance. The second volume was about important cases in a number of areas, such as telecommunications, franchising, and digital platforms. It went into a lot of detail about what the AGCM did to enforce the law from 2019 to 2024.¹³⁴ These examples showed that the Authority was more likely to step in when a contract was unfair, even if there wasn't a clear market leader. The AGCM was realistic and tried to find answers. This is clear from how often it chose behavioral commitments over punishments.

The third chapter looked at the economic reasons for putting Article 9 into effect. It stressed the importance of hold-up risks, investment specificity, and switching costs.¹³⁵ It said that the AGCM has gotten better at using economic reasoning to make decisions, but there are still some problems with how it does things, especially when it comes to figuring out dependency and how decisions will affect the market as a whole. Also, civil courts don't agree on what the law means, which makes it a lot harder to be sure of it.

¹³³ Law No. 192 of June 18, 1998, art. 9, G.U. No. 143 of June 22, 1998 (Italy); Consolidated Version of the Treaty on the Functioning of the European Union art. 102, Oct. 26, 2012, 2012 O.J. (C 326) 47

¹³⁴ AGCM, *Annual Report 2023*, <https://www.agcm.it>

¹³⁵ Oliver Hart & John Moore, *Incomplete Contracts and Renegotiation*, 56 *Econometrica* 755 (1988); Oliver Williamson, *Markets and Hierarchies* (Free Press 1975)

In conclusion, the Italian model of public enforcement under Article 9 represents a progressive effort to reconcile contract law and competition law. Enforcement is still selective and sometimes qualitative, but it is necessary to regulate power imbalances that can affect both fairness and market dynamics.¹³⁶ In the future, a more unified approach to economic analysis, along with clearer legal standards, could make this regulatory tool much more useful and legitimate. This is especially true as new types of dependency arise in digital and platform-based markets.

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