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Ex ante and ex post access regime in the postal sector: a revival of margin squeeze?

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Dublin, 23-25 May 2019

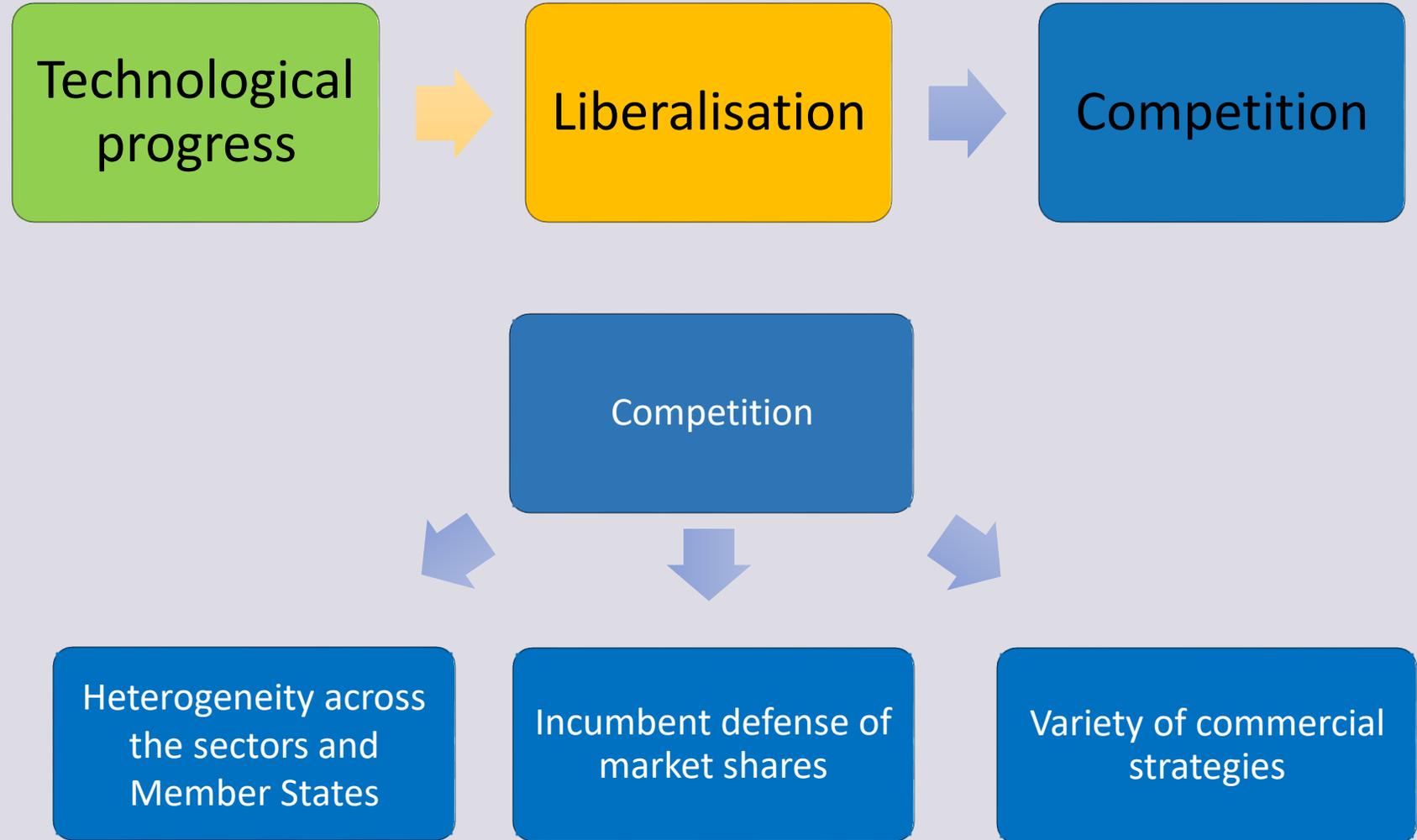


SETTING THE SCENE



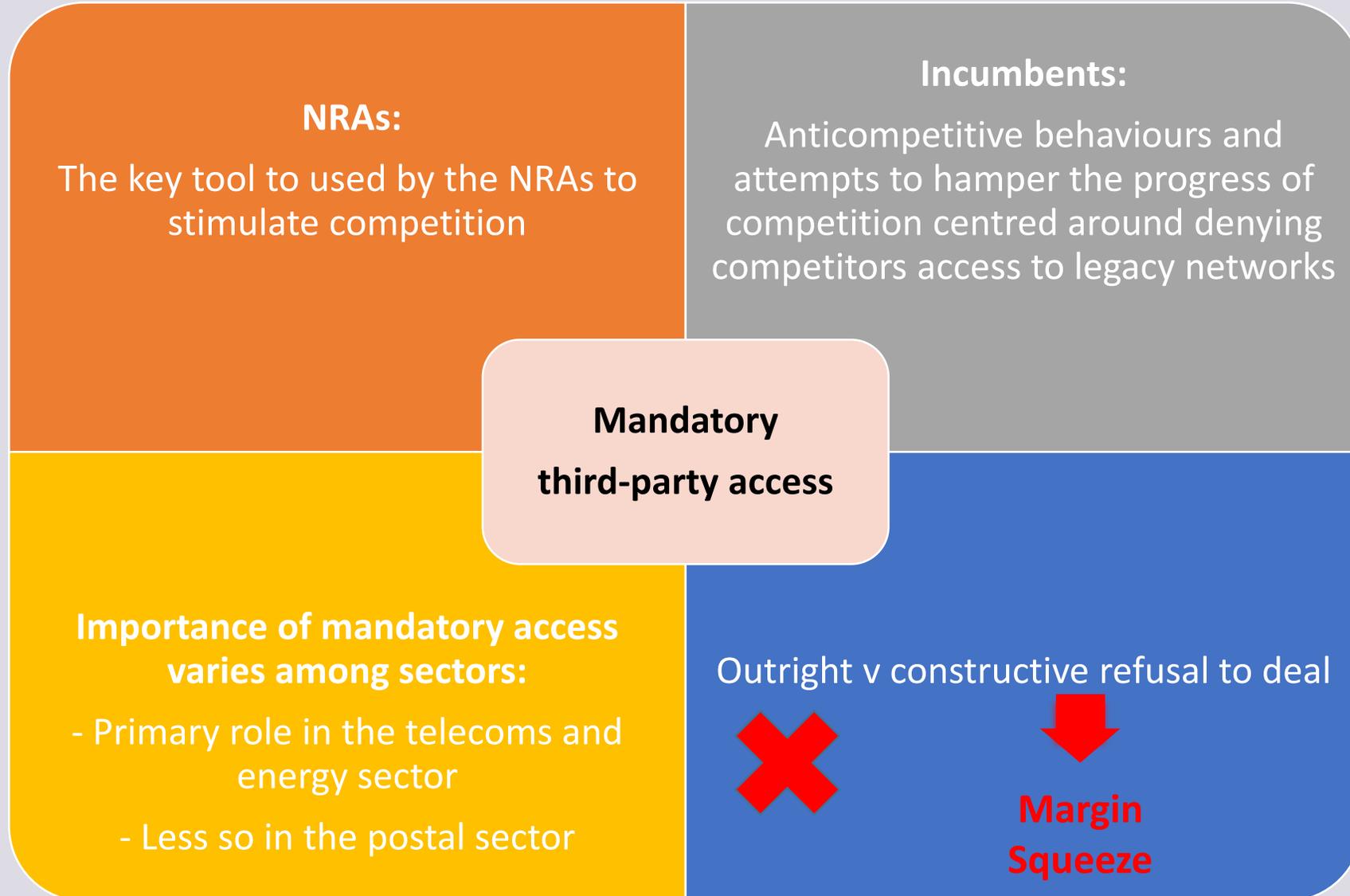
NETWORKS:

- The backbone of economic development and social structures
- Existence of natural monopoly elements
- But these natural monopolies have turned out to be far less 'natural', but rather strongly regulation- and technology-dependent





SETTING THE SCENE





Main Margin Squeeze Cases in the Telecoms Sector

- EU: *Deutsche Telekom* (2003), *Telefonica* (2007), *Slovak Telekom* (2014), *Wanadoo* (2003)*
- Member States: UK Ofcom (Talktalk/BT 2014, BT's residential broadband pricing 2010, Vodafone, O2, Orange and T-Mobile 2004), Denmark (2004), Italy (2004), France (2004), Greece (2007), Portugal (2009)

Main Margin Squeeze Cases in the Postal Sector

- No margin squeeze case in the postal sector at the EU level
- Member States: UK Ofcom (Royal Mail 2018), Italy AGCM (Poste Italiane 2017), Germany BKartA (Deutsche Post 2015), Spain (Correos 2014).



MARGIN SQUEEZE ABUSES: A NOVELTY IN THE POSTAL SECTOR



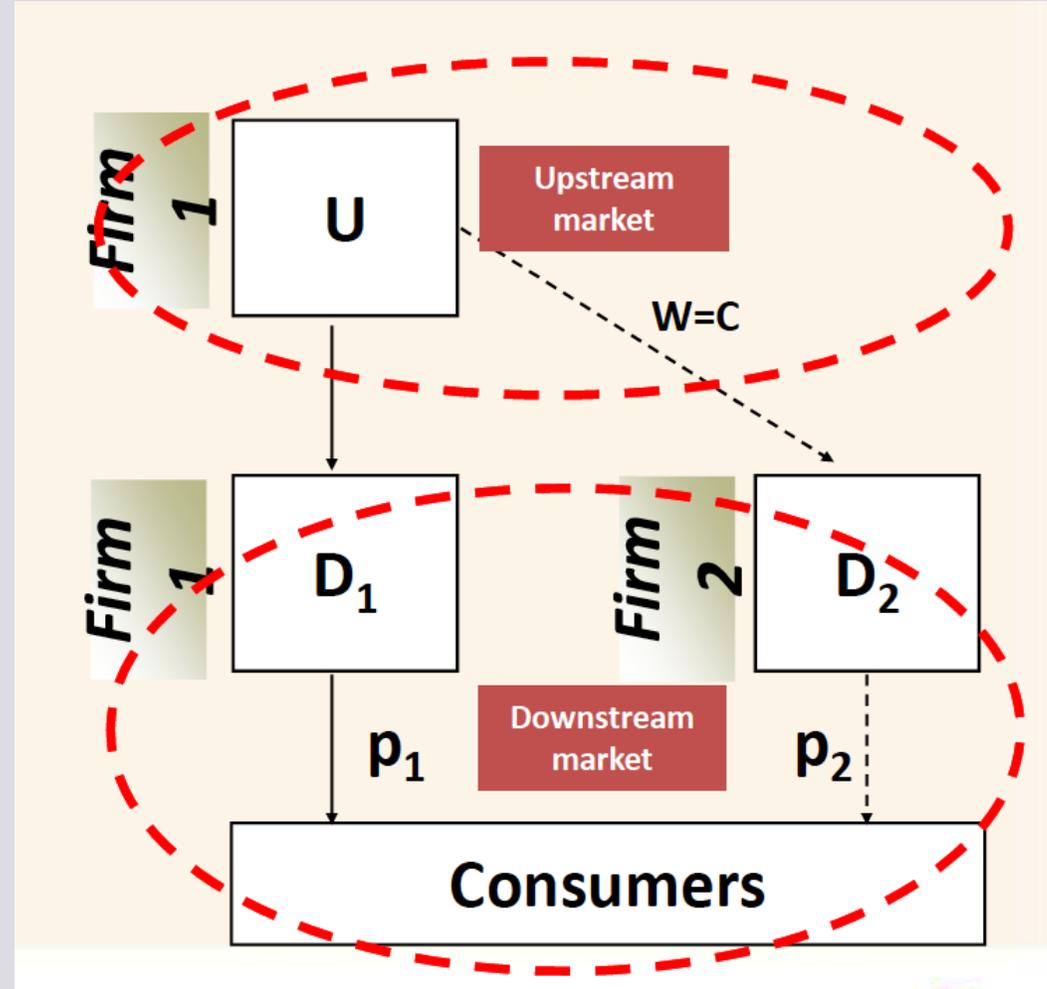
- Copenhagen Economics, based on the questionnaires received from NRAs and NCAs, which covered a ten year period up to 2011, identified 17 cases concerning discriminatory pricing and 11 concerning conditional rebates, but only one of margin squeeze.
- Lack of reported margin squeeze cases in Copenhagen Economics' study may be due to the fact that it covers the period up to 2011, while the postal market was fully liberalized only in 2012.
- Most margin squeeze cases in the telecoms sector also took place after its full liberalization in 1998, when mandatory access facilitated downstream competition, which has to be present, as otherwise margin squeeze could not even take place.

Common types of abuse in the postal sector		
Type of abuse	No of cases	Countries
Discriminatory Pricing	17	BE, DE, DK, EE, FI, FR, LT, LV, RO, SI
Conditional Rebates	11	DK, EE, FR, HU, LV, SE
Excessive Pricing	9	CY, FI, LV, PL, RO
Predatory Pricing	5	BG, CY, DE, DK
Collusion	3	DK, FR, HU
Tying and Bundling	2	FI, FR
Margin Squeeze	1	FI
Other	8	BG, FI, FR, LV, MT, NO, SK, PT

Source: Copenhagen Economics (2012), Pricing Behaviour of Postal Operators

MARGIN SQUEEZE ABUSES IN THE POSTAL SECTOR

- A vertically integrated firm dominant in the upstream market could prevent its downstream competitors from achieving a viable margin by:
 - Raising W above C ,
 - Lowering P_1 below P_2 , or
 - Using a combination of the two



W (wholesale price) versus C (cost of input)
 p_1 (firm 1 retail price) versus p_2 (firm 2 retail price)



MARGIN SQUEEZE ABUSES IN THE POSTAL SECTOR



CNMC Correos (Spain 2014)

- Complaint from Unipost that Correos granted its large customers discounts far higher than those it offered Unipost and other
- EUR 8,2 million fine
- CNMC's decision annulled by Audiencia Nacional and the Supreme Court

Margin Squeeze

AGCM Poste Italiane (Italy 2017)

- Complaint from Nexive that Poste Italiane charged it higher prices than it charged its business customers for the same service
- On top of economical non-replicability (margin squeeze), also technical non-replicability
- EUR 23.1 million fine

Margin Squeeze

BKartA Deutsche Post (Germany 2015)

- BKartA found that Deutsche Post granted its four large customers discounts below the prices its competitors had to pay
- No fine, just an infringement decision because the conduct had already been ceased

Margin Squeeze

Ofcom Royal Mail (UK 2018)

- Whistl complained that RM's changed its pricing practices in a way that would harm Whistl's ability to compete (Whistl would have to cease its own delivery operation to benefit from lower priced access service given to other competitors)
- GBP 50 million fine

Discriminatory Pricing



COMPARISON OF MARGIN SQUEEZE IN THE POSTAL AND THE TELECOMS SECTOR



Is the legacy postal network an essential or just an important input?

- EU position in the telecom margin squeeze cases: essentiality of input not required, but makes the case simpler
- *TeliaSonera (2011)*: indispensability of the wholesale input may be relevant when assessing the effects of the margin squeeze
- Para. 34 of the EU Non-Horizontal Merger Guidelines: *“input foreclosure may raise competition problems only if it concerns an **important** input for the downstream product”*
- Still, national incumbents argue that their networks are not essential, and NCAs consider the essentiality, even when not required to do so:
 - *“Poste Italiane’s service is an essential input for competitors to complete their offer” (AGCM, 2017).*
Nexive and Fulmine in Italy could reach 80% and 75% of the population, respectively.
 - *“Unipost could use its own capacity to reach the target population without resorting to Correo’s network”. (CNMC, 2014).*
Unipost (Correos’ competitor) could rely on its own capacity to reach 90% of consignments and 70% of the population.

‘important’ \neq ‘essential’



COMPARISON OF MARGIN SQUEEZE IN THE POSTAL AND THE TELECOMS SECTOR



Evolution of market shares

- In the Spanish case, the Supreme Court noted that Unipost not only had the network which allowed it to access a significant percentage of shipments and population, but also that its market share had been increasing
- Increasing market shares may seem counterintuitive and inconsistent with an ongoing abuse of dominance.
- But in the *Telefonica* case during the period covered by the investigation, market share of the telecom incumbent fell from 95% in 2001 to 55% in 2006.
- EU case law: an abuse of dominant position takes place when the behaviour of dominant firm “*has the effect of hindering the maintenance of competition still existing in the market or growth of that competition*”.
- *Telefonica* and *Slovak Telekom* decisions: concern also about the slow growth of the market when the broadband market was booming
- In contrast, in the postal sector, the market for bulk mail is mature and the demand is decreasing

Should declining volumes be a specific element to be taken into consideration when applying a margin squeeze test in the postal sector?



CONCLUSIONS



- **Pervasiveness of the margin squeeze cases:** Margin squeeze cases have been investigated in many regulated sectors, predominantly in the telecoms and energy, but recently they have arrived to the postal sector, albeit only at the national level.
- **Visibility and awareness:** Decisions at the EU level give more prominence and visibility to a given problem, the lack of European cases on margin squeeze in the postal sector could favour incoherent national responses
- **The choice of the analytical framework:** Comparison of the national margin squeeze decisions in the postal sector reveals that margin squeeze may lend itself better for testing effects that result from a bundle of different strategies.
 - This is because margin squeeze can be seen not only as an anticompetitive behaviour, but also as a possible effect of other price- and non-price based practices, like discrimination or rebates.
- **Essentiality or importance of input:** although not formally required under EU case law, NCAs nonetheless seem to recognise that legacy postal network often provide incumbents with the kind of advantage which in other contexts has led to the definition of essentiality. However, this leads to an ambiguity on whether the EU courts' position is correct.

Thank you!



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