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COMMITMENT DECISIONS

The Italian Competition Authority's experience

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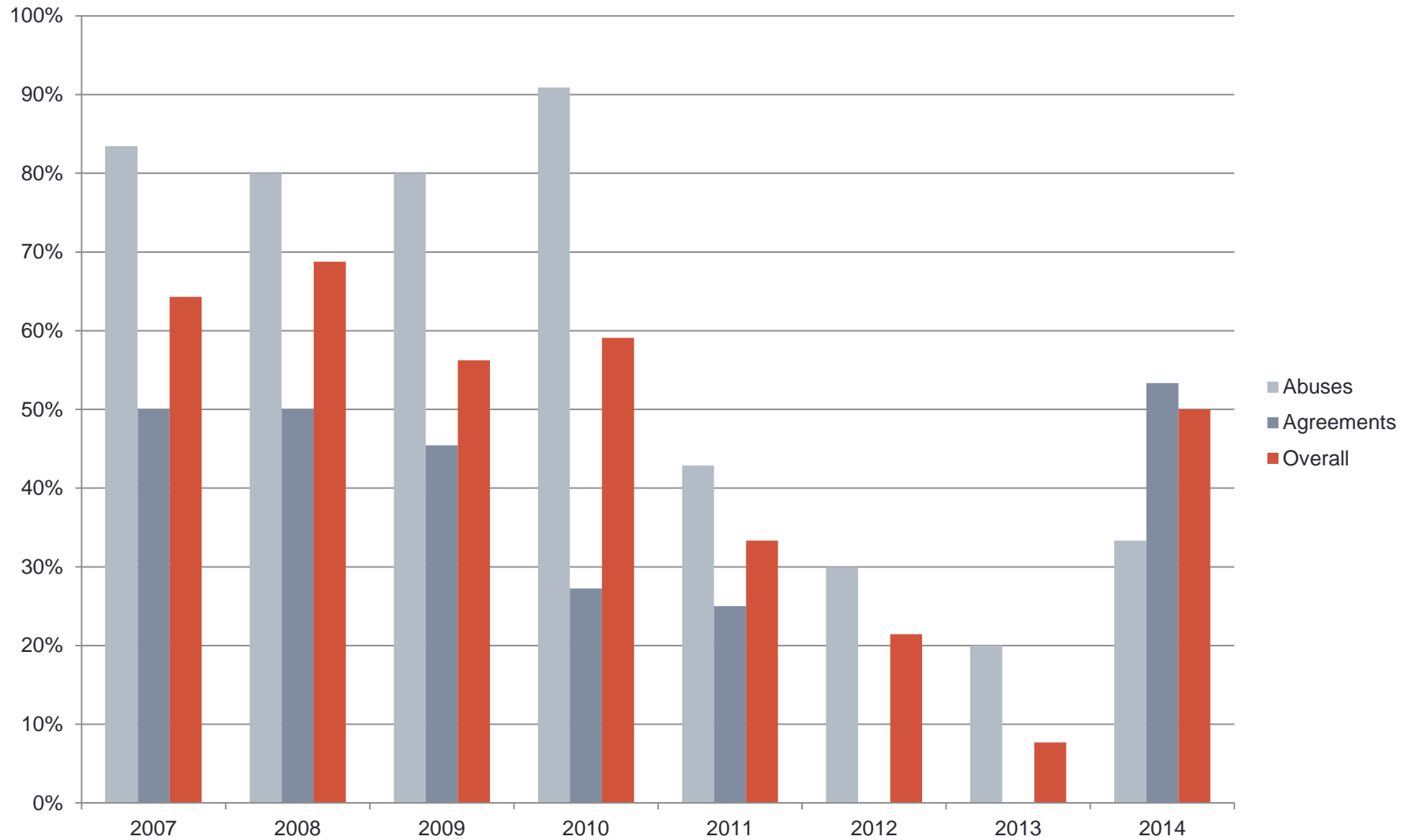
Italian Competition Authority

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Commitments under Italian Competition Law

- Commitments were introduced in the Italian Competition Law in 2006 (Article 14-ter of law n. 287/90)
- Main characteristics of commitment decisions
 - Commitments voluntarily offered by undertaking(s) are made binding
 - No finding of infringement nor legality of the conduct
 - Sanctions for non-compliance (up to 10% of turnover)
 - Re-opening of proceedings possible on substance, in the case of non-compliance, if companies provided incomplete/misleading information
- Commitments are submitted and assessed
 - before the statement of objections is issued
 - on the basis of the competition concerns outlined in the formal decision with which the ICA opens the proceedings

% cases closed with commitments



Case study n. 1 (procedure)

| | |
|-------------------------|---|
| June 2010 | proceedings launched for an alleged abuse of dominant position in the telecommunications sector (constructive refusal to supply + margin squeeze) |
| July-August 2011 | company submits final commitments |
| August 2011 | ICA publishes commitments for market test |
| December 2011 | company submits amended commitments |
| March 2012 | ICA rejects commitments |
| March 2012 | ICA issues statement of objections |
| May 2013 | infringement decision adopted (...later fully upheld by the courts) |

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- **In 2012 the ICA adopted a (new) notice on procedure that applies to commitment decisions**
 - Ensure procedural economy and swift resolution of competition problems
 - **Key features of the new procedure**
 - Companies must **act with promptness (3 months)** after the launch of the investigation in order to offer commitments to the ICA
 - Admissible commitments are published for **market test**
 - After market test company can propose, **only once, ancillary changes** to the commitments

Case study n. 2 (non-compliance)

- In 2009, the ICA had accepted commitments in an investigation it had opened in 2008 against ferry operators for an anticompetitive agreement (from 1998)
 - terminate the consortium they were operating by July 2009
 - common initiatives should be limited to the improvement of qualitative standards
 - limit the single ticket arrangement to the links to/for the Island of Capri
- In 2013, pursuant to complaints filed by passengers, the ICA decided to open proceedings to establish whether
 - the parties had infringed the 2009 commitment decision
 - the parties' market conduct amounted to a competition breach
- The ICA found that the parties had breached the commitments
 - the parties had closed the consortium but set up a joint venture undertaking substantially similar activities
 - coordination over and beyond what necessary to improve quality standards
 - single ticket was not limited to the Capri route (and was subject to restrictive terms and conditions)
- The ICA also reached the conclusion that the parties had implemented a complex long-standing collusive strategy, which started with the 1998 Agreement and continued with the 2008 Agreement.
- Companies were fined 14 million euros.

Final remarks

- **Insights from the ICA's experience**

- Need safeguards to ensure that commitments contribute to procedural economy and ensure timely intervention
- Most commonly used in unilateral conduct cases (and some vertical agreements)
- More often behavioral rather than structural commitments
- Also time limited, especially in dynamic markets
- More complex in sectors subject to ex-ante regulation
- Non-compliance is generally non a problem (4 proceedings, only one leading to the breach of commitments being ascertained)

- **Commitments may be useful for the efficient and swift solving of competition concerns and for procedural economy**

- Competition concerns must be clearly identified (theory of harm needs to be transparent and well detailed)
- An adequate procedure for the submission and evaluation of commitments must be put into place

- **Achieving an “adequate” balance between prohibition and commitment decisions is important**

- Efficiency and effectiveness of intervention
- Legal certainty
- Deterrence