



Un nuovo modello di consumatore?

Mariateresa Maggiolino

Le radici dell'economia di mercato

I consumatori «sono giudici della competizione tra imprenditori» –

Tulio Ascarelli



«[t]he direction of all economic affairs is in the market society a task of the **entrepreneurs**. Theirs is the control of production. They are at the helm and steer the ship. A superficial observer would believe that

they are supreme. But they are not. They are bound to obey

unconditionally the captain's orders. The captain is the consumer» –

Ludwing von Mises



Chi è il consumatore nel diritto della concorrenza?

I consumatori sono **agenti economici razionali** che compiono le loro scelte

- **in ragione delle informazioni disponibili** e
- in rapporto a variabili come il prezzo, la qualità, la varietà e il grado di innovazione dei prodotti e servizi disponibili sul mercato.

**È ancora vero?
Per lo meno nel
mondo digitale?**



Correva l'anno 2012 ... in Google/Motorola Mobility

«even if Google were to tie/bundle the licensing of Motorola Mobility's SEPs to the distribution of its mobile services, end-users can still download competing services onto their smart mobile devices, change the default setting and access most competing services through the web browser of a device, which means that the effect of any coercion of OEMs may be mitigated by end-user choices» (§ 180).

**La libertà di scelta
dei consumatori
digitali esclude la
coercizione**



Ma già nel 2018 e nel 2022 ... in *Google Android*

«[i]n order to overcome the status quo bias and see users looking for alternatives, service providers need to convince users that their service is significantly better than the alternative that is already pre-installed, premium placed or set as default» § 782 decisione

«[a] distinction must be made in this respect between theoretical competition assumptions and the practical reality, where the competitive alternatives to which Google refers appear to have little credibility or real impact due to the 'status quo bias' arising from the MADA pre-installation conditions» § 428 sentenza

«the two product bundles conferred a competitive advantage on Google that was attributable to the 'status quo bias' linked to pre-installation, which could not be offset by competitors and which had the effect of restricting competition on the merits to the detriment of consumers» § 594 sentenza

Le abitudini dei consumatori

digitali (quindi *non* i

comportamenti delle

imprese!) impediscono la

concorrenza basata sulla

qualità ... sui meriti?



Nel 2024 ... in *Booking/eTraveli*

«**Customer inertia** suggests that customers who book flights with an OTA would have a preference to also reserve hotels with that OTA, even if some time after the original flight's reservation» § 243

«[a]s Booking is the largest player on the hotel OTA market with high market shares, customer inertia works in its favour when **customers do not shop around and therefore do not switch** OTA provider» § 913

For Booking: «it is difficult for consumers to leave the ecosystem to access services that compete with the ecosystem. This typically occurs because consumers tend to exhibit inertia after an initial purchase has **“locked-in”** consumer demand for adjacent services (such as when a user buys a phone, and cannot avoid using the app store on the phone) or because the consumer has a perceived **“sunk cost”** that it hopes to recoup (such as a membership fee) or because of the **high frequency** and regularity of using one service the co-use case becomes habitual (a “walled garden”) § 915

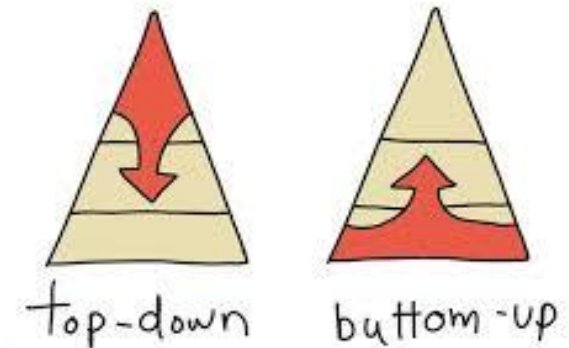
For the Commission: «Booking will be able to acquire additional customers because of the combination of the strength of its brand (**rather than the quality or prices of its services**) and **customers inertia** that would first, draw customers to Booking and then would lead them to buy with Booking several travel services» §916

Di nuovo, è la pigrizia dei consumatori digitali (ossia qualcosa di più vago del lock-in o dei sunk cost) a limitare la concorrenza basata sui prezzi e sulla qualità



Cosa deduciamo da tutto ciò?

- I rimedi basati sull'**informazione completa** e sulla **scelta** dei consumatori potrebbero essere poco efficaci, se i consumatori sono così pigri. Potrebbero servire rimedi più intrusivi!
- **I confini delle fattispecie di divieto si allargano** e le pratiche diventano anticompetitive perché **le imprese si avvantaggiano di alcuni fatti.**
- Abbiamo meno fiducia nelle scelte dei consumatori. **Le vogliamo sostituire – le stiamo sostituendo – con le scelte dei regolatori?**



GRAZIE

