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Algorithmic Pricing and Sectoral Oversight: Smart Markets, Smarter Telecommunications Regulation

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Algorithmic Pricing and Sectoral Oversight:

Smart Markets, Smarter Telecommunications Regulation

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Abstract

The integration of artificial intelligence (AI) into pricing systems has heightened longstanding concerns about tacit collusion, particularly in structurally concentrated sectors like telecommunications. While competition authorities struggle with doctrinal limits around algorithmic coordination, this paper argues that sectoral regulators, such as in telecommunications, are well placed to respond. Furthermore, rather than expanding direct oversight of AI tools, regulators should adopt a posture of *focal point disruption*: strategically examining how regulation itself influences the predictability, observability, and dimensionality of competition.

Drawing on coordination theory and recent merger jurisprudence, the paper identifies existing rules, such as those governing offer presentation, personalization limits, and product standardisation, that may inadvertently entrench collusive equilibria. In AI-mediated environments, these effects can be magnified. The paper proposes practical criteria for regulatory design that preserve asymmetries, support selective transparency, and reintroduce unpredictability into market interactions.

Rather than waiting for general competition law to evolve, sector-specific regulators must actively assess whether their frameworks stabilize tacit alignment. The aim is not to constrain innovation but to ensure that regulatory architecture does not inadvertently make collusion easier in the age of AI while maximizing the benefits it might bring to competition. This approach offers a flexible, forward-looking alternative to AI-specific regulation or contorted competition law of uncertain effect, grounded in structural awareness and anticipatory governance.

[1] My sincerest thanks to Joseph Rowsell for his invaluable feedback on this paper

The views expressed in this paper are solely those of the author and do not reflect the official position of any employer, organization, or affiliated institution. The analysis is based entirely on publicly available information and does not draw on any confidential, privileged, or non-public knowledge acquired through professional roles.

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1. Introduction

The potential for the ongoing Artificial Intelligence (AI) revolution to facilitate collusion between businesses has, predictably, drawn the attention of regulators, academics, and industry (See, e.g. Mehra 2017, Ezrachi and Stucke 2018, OECD 2017, Gal 2019, Calvano et al 2019). Whatever competition authorities eventually do, sectoral regulators must grapple with the effects of AI on business decision-making in their own domains, particularly AI's capacity to undermine the market mechanisms that have historically delivered efficient outcomes.

This doesn't require an overhaul of the regulatory regime, but it does demand a recalibration. As firms adopt AI tools, the cost-benefit analyses underpinning regulatory policies may shift, and sectoral regulators will need to decide whether to adjust the regime or intervene in how AI is used. Much will depend on where competition authorities land, but we cannot wait for general legal doctrine to settle before acting in markets where the risk is highest and the potential harm is greatest. Fortunately, these markets tend to be precisely those with sectoral regulators.

The emergence of AI pricing systems sharpens longstanding structural weaknesses in regulated sectors. While this paper takes AI as its trigger, the core argument is not about managing a novel threat but about updating regulatory posture in markets that have always been susceptible to coordination. In the face of increasingly responsive pricing tools, intensified monitoring, and greater reliance on behavioural prediction (See e.g. Ezrachi and Stuck 2018), sectoral regulators are better positioned than competition authorities to respond. Their most immediate responsibility is to ensure that the regulatory framework does not inadvertently enable AI-driven collusion.

This paper argues that regulators should not respond to AI-enabled pricing by expanding command-and-control regulation, but by reducing the focal points that facilitate coordination. This posture, described here as focal point disruption, requires rethinking how regulation shapes strategic predictability. While focal points have long been studied as enablers of tacit collusion, their disruption has rarely been framed as a conscious regulatory strategy, especially in sectors where regulation itself often stabilizes market behaviour. What is proposed here is a conceptual shift: treating regulation not just as a constraint on market power, but as a tool for destabilizing collusive equilibria by increasing strategic dimensionality.

Rather than treat AI as an abstract or downstream risk, regulators should embed AI considerations into ongoing policy review. This includes reassessing how industry data is collected and interpreted. In particular, by learning to 'see' like a data-driven telco. Without this, regulators risk missing the evolution of pricing behaviour and the emergence of new coordination mechanisms. Worse, longstanding regulations may actively widen the narrow gap that competition law already leaves open. In particular, rules that standardize offers or promote transparency in the name of comparability may now heighten the risk of tacit coordination.

As competition authorities expand their cross-government advisory roles, they must also recognize that sector-specific review will be critical to ensuring AI leads to smart competition, not algorithmic collusion, and that the sufficiency of competition law in some markets may have been contingent on human decision-makers.

This paper proceeds as follows: Section 2 outlines the nature of tacit collusion, how it interacts with AI pricing, and the doctrinal challenges it presents to competition law. Section 3 turns to telecommunications, arguing for a renewed role for sectoral regulators in shaping competitive conditions. Section 4 explores three regulatory domains—dimension-reduction, presentation, and personalization—and proposes practical strategies for disrupting focal points in AI-mediated environments. The aim is not to regulate AI, but to ensure that regulation does not stabilize collusion.

2. Tacit Collusion and AI Pricing

2.1 Tacit Collusion

Competition law enforcement tends to operate through four main channels:

1. Horizontal collusion
2. Vertical restraints
3. Abuse of dominance
4. Merger control

Each spans a spectrum from explicit agreements to tacit behavioural alignment. The further along this spectrum a case falls, the more difficult it becomes to prove and prosecute. But these categories are not hermetically sealed: where one avenue encounters doctrinal limits, others are often stretched to fill the gap. For instance, vertical restraint rules may be applied in lieu of dominance findings, or merger control invoked to address conduct that cannot be reached ex post.

This system of backstops enables flexibility, but becomes strained during periods of structural change. Novel harms, especially those that fall between categories, may fit awkwardly into the existing framework. The legal system must then choose: adapt its analytical lens, or risk missing anticompetitive effects altogether.

AI intensifies this tension. It challenges settled assumptions about how firms communicate, coordinate, and respond to market information. The central question becomes how far legal doctrine will go in treating AI-driven behaviour as equivalent to traditional forms of collusion (for discussion, see Gannon 2022).

Tacit collusion poses a particularly sharp challenge. In legal terms, it refers to situations in which firms align behaviour by observing and anticipating each other, without direct communication. Enforcement has

consistently stopped short of prohibiting the *means* through which firms gather information, so long as those means are independently legitimate (Odudu 2006, Gannon 2022).

For example, firms may rely on one another's public statements (European Commission 2011), hear about offers via shared customers (Odudu 2006), purchase market-level data from third parties (*Dole Foods and Dole Germany* 2013*, Hasselblad* 1982, *VNP/COBELPA* 1977, *Genuine Vegetable Parchment Association* 1978), or co-locate in shared retail environments. If passed directly between competitors, much of this information would be unlawful; but acquired through open channels, it remains permissible.

Most of the time, this boundary does not present a problem. Markets remain sufficiently complex that tacit coordination is unstable. But under certain conditions, particularly in concentrated markets with high transparency, coordination becomes viable even without communication (Kovacic and Others 2011). The key regulatory question is whether these observables can be limited, or whether other tools must be used to reintroduce unpredictability into the competitive environment.

As Stigler famously proposed, successful collusion requires three conditions (Stigler, 1964):

1. A shared understanding of profitable terms

2. Detectability of deviations

3. A credible threat of retaliation

In concentrated markets, all three can be achieved without explicit communication. Price moves by one firm may produce predictable responses from others. As Bagwell and Staiger argue, each firm weighs the short-term gain from undercutting against the longer-term costs of a price war (1997). Prices may also be raised with the expectation that rivals will follow.

Even then, coordination is hard to sustain. Experimental research shows that collusion rarely emerges in the absence of communication (Potters and Suetens, 2013; Horstmann et al., 2018; Gal 2019). Green et al. (2014), for instance, argue that tacit coordination is only feasible where some focal point has been contrived or imposed.

A *focal point* is a concept from coordination theory: a solution actors converge on in the absence of communication, typically because it appears prominent, natural, or institutionally reinforced (Schelling 1960, Green 2014). In susceptible markets, pricing tiers, product templates, or offer formats can become focal points not by agreement, but through convergent expectations. Firms match each other's actions not because they must, but because it becomes safe to do so—and easy to detect deviation.

Even when the structural conditions exist, coordination remains a difficult task. Market features such as low firm count, high entry barriers, product homogeneity, price observability, and stable demand all increase the odds—but do not guarantee success (Tirole, 1997).

Moreover, tacit collusion is not always harmful. It can result in any price between competitive and monopoly levels, and is often disrupted by quality competition, innovation, or external shocks. Firms may also fail to sustain coordination over time due to asymmetries, demand volatility, or the availability of undetectable discounting mechanisms.

This explains the legal system's reluctance to intervene. Attempts to constrain tacit coordination often risk suppressing beneficial transparency. Consumers rely on visible prices and comparability tools to make informed decisions. A ban on these informational flows could undermine both trust and efficiency. No satisfactory doctrinal test has yet emerged that draws the line in a way that would preserve consumer value while reliably deterring collusion.

The challenge for regulators, then, is not to prohibit the *means* of observation, but to destabilize the *environment* in which that observation becomes a reliable guide to others' behaviour. That is the essence of focal point disruption.

2.2 Automated Pricing and Tacit Collusion

The competition risks of automated pricing are well documented, from Mehra through Ezrachi and Stucke and onwards. This is not a new concern. As early as 2016, an EU Commission study revealed that more than 60% of e-commerce businesses surveyed were using software to monitor the price changes of their competitors—and often to respond to them. While AI adds novel dimensions, the underlying issue, the automation of observation and response, has been with us for some time (Mehra 2017, Gannon 2022).

In some respects, AI may even complicate collusion. The opacity of machine learning systems and the unpredictability of their outputs may make coordinated behaviour less stable than earlier generations of pricing tools. It may be harder for firms to know what their systems will do, harder to detect meaningful deviations, and harder still to trace intent or commitment.

That said, several authors have noted that AI does alter the landscape in important ways. It may change how firms implement cartels. It may incentivize third parties to facilitate coordination by offering shared data or pricing services. It may lower the cost of monitoring, reacting, and aligning to competitor behaviour across product lines and markets . Crucially, it may expand the circumstances under which tacit collusion becomes viable by helping firms solve coordination problems where the structural preconditions already exist.

At the same time, AI may enable more effective cheating on otherwise stable arrangements. Sophisticated targeting can undermine posted prices and introduce strategic unpredictability. Personalised discounts or dynamic offers make it harder for firms to monitor one another and detect deviations. This is not a minor effect: AI systems may both reinforce and disrupt collusion depending on the design, intent, and market context in which they operate.

Most obviously, AI reduces the marginal cost of surveillance and price adjustment. It allows firms to manage large inventories, execute pricing changes rapidly, and coordinate across regions or brands more efficiently. It can also intensify non-price competition—through quality differentiation, service bundling, or personalised user experiences—which can destabilise supracompetitive pricing by increasing dimensionality.

Finally, AI may insert itself between service providers and consumers. Tools that assist users in evaluating offers, whether as independent services or embedded within digital platforms, can increase competitive pressure (Gal and Elkin-Koren 2017). By enabling consumers to better navigate price and quality trade-offs, such systems could directly reduce the effectiveness of price focal points (For a discussion of the literature and case studies on AI collusion, see Gannon 2022).

These changes raise serious questions about the coherence of existing legal frameworks. Competition law remains fundamentally human-centric. Its core tests revolve around a firm's intent, its knowledge, and whether it understood the likely effects of its actions. These concepts map poorly onto automated decision-making systems.

Shared training data, common pricing platforms, or widespread model convergence may lead to similar outcomes across firms even without communication or coordination. These outcomes may look collusive, even if they are the product of individual optimization on structurally similar systems. The resulting behaviour may not fit easily within existing doctrines of agreement or information sharing.

It is legitimate for courts and authorities to proceed cautiously in this space, especially when competitive effects are unclear. But the scale and speed of AI adoption demand sustained attention. Sectoral regulators cannot assume that issues raised by AI pricing will be adequately addressed through existing antitrust doctrine alone.

To the extent that AI reshapes market dynamics differently across sectors, a general competition law solution is likely to struggle. It is not feasible to require firms to adopt different behaviours based on uncertain knowledge of how many rivals are using AI, or what those systems are doing. It is equally difficult to imagine legal rules that differentiate based on awareness of rivals' technological infrastructure—especially when such knowledge is commercially sensitive or proprietary.

In this context, the question of whether telecommunications regulators should wait for a broader legal settlement to emerge is live and consequential. Given the structure of telecommunications markets and the

prominent role regulators play in shaping competitive conditions, sector-specific regulators may be better placed to respond. They already possess the tools and flexibility to adapt policy frameworks. Delay may increase the risk of harm—not because AI invents new collusion, but because it accelerates the stability of old forms.

3. The case for Sector-Specific Action

Anyone familiar with telecommunications markets will recognize that many of the structural features necessary for tacit collusion are already present. While the specifics vary across geographies and sub-markets, the recurring characteristics are striking: a limited number of competitors, high entry barriers, repeated interactions, highly observable pricing, inelastic demand, multimarket contact, symmetric cost structures, and a degree of price stickiness that does not preclude retaliation. These traits are precisely why telecommunications has long been subject to sector-specific regulation, particularly during the transition from public ownership to privatization as markets matured.

In such a context, AI does not create a new problem; it intensifies an old one. The underlying concern about sustained coordination in concentrated markets has always existed. AI simply alters and potentially accelerates the mechanisms by which tacit collusion can stabilize.

As pricing tools make coordination more feasible, especially by identifying and intensifying different focal points, the regulator's role in safeguarding rivalry must return to centre stage. This does not require heavy-handed intervention such as banning certain forms of technology, but it does require a deliberate stance. The appropriate regulatory posture is one of *focal point disruption*: reshaping market interfaces to prevent coordination from becoming stable or self-reinforcing.

This means revisiting policies that remove competitive dimensions, promote pricing transparency, or create natural focal points. The goal is to avoid a regulatory environment that passively enables collusion by standardizing behaviour or increasing observability.

This is a challenge for the current regulatory moment. In recent years, the scope of sectoral regulation has been narrowed. The prevailing view has been that certain markets, including telecommunications, have become sufficiently competitive to justify greater reliance on market forces and general competition law (E.g. European Commission 2002). In some cases, this may be true, but telecommunications remains a structurally fragile market, where the risks of tacit coordination appear persistent and may become increasingly acute.

Whether or not competition law is sufficient to ensure effective rivalry in telecommunications deserves renewed scrutiny. The *T-Mobile* case in the EU is illustrative: even a single instance of information sharing in that market was in that case enough to establish a concerted practice. That the line between competition and collusion is so narrow reveals more about the limits of competition laws focused on communications than about collusion.

This doctrinal sensitivity, combined with the ongoing controversy over telecommunications mergers and the complex exercise of balancing the demands of scale with protecting rivalry, suggests that the sector remains at the edge of what competition law can credibly manage, whether *ex post* or *ex ante*. If AI pricing exacerbates the problem, the existing enforcement architecture may be even less capable of responding effectively. This could also be the case if the competition law applies rules of general application in a manner incapable of sufficiently protecting competition in markets like telecommunications. This, arguably, is sometimes the case without AI.

Telecommunications regulators must therefore ask whether competition law can deliver efficient outcomes in the presence of AI-enabled pricing. Even if it can, another reasonable question is whether it can do so quickly enough to prevent harm. There is also an element of relieving the burden on competition authorities: the pressure on competition law to detect and deter tacit collusion can be reduced if sector-specific regulation acts to close the gap in markets where general rules might be insufficient. That requires regulators to assume responsibility, not defer it.

Like competition authorities, telecommunications regulators cannot predict in advance how AI will affect competition in any given market. In some cases, it may destabilize coordination and intensify rivalry. For that reason, direct regulation of AI tools would be premature. But sectoral regulators still have significant influence over competitive conditions through policies governing wholesale access, offer presentation, switching, and consumer communication.

These rules shape not only consumer experience but also firm behaviour. For example, regulations on how plans are displayed or which tools must be made available for switching directly affect the transparency and predictability of pricing strategies. Such measures can significantly shift the ease with which firms monitor one another and identify deviations.

In principle, regulators should coordinate with competition authorities when designing these policies. In practice, however, competition authorities may offer limited guidance, especially when they themselves have not resolved how to approach AI pricing, or which forms of coordination they are prepared to prosecute.

Telecommunications regulators should not wait. At a minimum, they should incorporate AI awareness into policy review and rule design. This does not mean rebuilding the regulatory settlement from scratch. But it does mean recognizing that some rules—especially those that shape pricing visibility and consumer comparability—may now heighten the risk of coordination rather than mitigate it.

This is where focal point disruption enters the frame. By reviewing existing policies through the lens of coordination risk, regulators can adjust their stance without introducing new mandates or restricting technological innovation. The tools already exist. The challenge is to apply them with strategic clarity.

4. Focal point disruption as smart regulation

4.1 Existing Regulations Impacting Focal Points

A key challenge in regulated markets is that well-intentioned rules can inadvertently reinforce the very conditions that allow tacit coordination to stabilize. This risk becomes more acute in highly transparent, concentrated markets where focal points, natural places for firms to converge, are already present. In these cases, regulation may do more than shape competitive conduct; it may standardize areas otherwise subject to competitive innovation, and even remove dimensions of competition altogether.

To prevent this, regulators should adopt a posture of **focal point disruption**: not banning AI or mandating particular conduct, but proactively destabilizing the convergence mechanisms that enable coordination. This requires close attention to how regulation affects strategic observability, behavioural predictability, and the dimensionality of competition.

This section identifies **three broad regulatory domains** where focal point effects often arise, intentionally or otherwise:

- **Dimension-reducing regulation** – e.g., rules that limit product differentiation or competitive variability, such as limits on device financing
- **Presentation-focused regulation** – e.g., transparency requirements or standardised comparisons, such as 'nutrition labels'
- **Personalization-limiting regulation** – e.g., limits on targeted discounting or discriminatory pricing, such as targeted discounting

The examples provided are illustrative, not exhaustive. These domains often overlap in practice. The key analytical task is not to treat each policy in isolation, but to assess whether the overall regulatory architecture leaves *too few information asymmetries* by flattening competition to the point that tacit collusion becomes easier to maintain. Focal point disruption involves reintroducing unpredictability, preserving asymmetries, and maintaining the capacity for firms to deviate without immediate observability.

4.1.1 Dimension-Reducing Regulation

By definition, regulation narrows the range of compliant strategies available to firms. Assuming that firms will comply with applicable rules, regulation sends a clear signal about *which competitive moves will not be made* (McAdams 2015, by analogy). Regulation thus reduces the strategic uncertainty that normally inhibits and destabilizes coordination.

For example, a rule requiring firms to meet minimum standards for network resiliency may be justified to prevent harmful underinvestment, but it also assures firms that competitors will not engage in a 'race to the bottom' on infrastructure quality during a price war. The regulation removes one dimension of competition, and in doing so, reduces the unpredictability of rivals' behaviour.

In some cases, this effect may be benign. A firm might still choose to exceed the minimum standard, undermining the focal point but, in other cases, especially where the regulatory requirement becomes a hard constraint or firms are encouraged to share infrastructure, the effect may be to *eliminate entire competitive dimensions*—such as coverage, reliability, or technology type.

This logic extends to rules on maximum device financing, regulated roaming rates, or infrastructure-sharing obligations. These rules often aim to ensure equity, efficiency, or consumer protection—but they also risk flattening the market into a narrow band of permissible variation. In such cases, the regulator may inadvertently amplify price-based focal points by removing other axes of competition.

Focal point disruption in this domain does not require deregulation. It requires a sober assessment of whether the benefits of reducing certain forms of variation (e.g., overly complex products, predatory tactics) outweigh the risks of entrenching collusive stability in the remaining dimensions. In many cases, preserving some unpredictability may itself be pro-competitive. As elsewhere, the effect of stabilization will be cumulative; the sum of all regulation must not be such that, even if each measure has a minimal impact in isolation, a regulator has simplified the market to the point that price competition no longer functions.

4.1.2 Presentation-Focused Regulation

Telecommunications regulators often mandate how offers must be presented to consumers. These rules typically aim to improve transparency, facilitate switching, and enable price comparison. Recent developments include standardized plan labelling, machine-readable disclosures, and mandatory self-service tools. Each of these interventions enhances comparability, but they also increase observability.

These measures can have ambiguous effects on competition. In some cases, increased transparency may intensify rivalry by making other dimensions of competition more visible and quantifiable for consumers. For example, quality metrics such as latency, jitter, or median speed might be made prominent. Depending on how the attributes are measured and presented, they can undermine the ability of firms to present homogenous offers, to arrive easily at a mutually advantageous equilibrium, and even to engage in intelligible cheating and punishment dynamics. However, the same disclosures that inform consumers also enable firms to monitor each other's strategies. By making deviations from tacit norms more visible, such transparency can facilitate retaliation and stabilize collusion. For example, firms may currently not be able to detect quality investments

made by competitors and respond appropriately to prevent the winning business by cutting prices, but transparency will enable them to do so.

A key consideration here is **who the regulation is serving**: is the information primarily empowering consumers, or equipping competitors with surveillance tools? This is an empirical question with which regulators should *actively* engage when designing policy: the goal is destabilization. This same consideration should also apply to industry information collected and made publicly available by governments.

Rules on self-serve switching further complicate the picture. On one hand, as shown in OFCOM research, streamlined switching reduces friction and can remove consumer pain points (2017). On the other hand, such tools may reduce the use of opaque, one-to-one negotiations, such as retention offers or discretionary discounts, which have historically allowed firms to quietly 'cheat' on posted price focal points.

In fact, the very practices often discouraged such as cancellation calls, cold outreach, and use and exemption from additional fees are mechanisms that allow *non-observable discounting*, which undermines collusion. Frictionless switching may increase consumer autonomy, but it also enhances market-wide observability. The same is true for regulations that require prices to be 'scrapable' by aggregation platforms (E.G. the European Electronics Communications Code, paras 265-267). These rules simplify comparison, but they may also constrain how offers can be structured, nudging firms toward uniformity, observability, and conscious parallelism.

This does not mean transparency is inherently anticompetitive. But it must be designed with dual awareness: what helps the consumer may also help the cartel.

4.1.3 Personalization-Limiting Regulation

While not yet widespread, future regulation may seek to limit the ability of firms to personalize offers, either manually or using AI. Already, operators tailor products, communications, and pricing to different consumer segments, using observed behavioural data collected internally and available for purchase. As personalization tools become more powerful and visible, calls for fairness, non-discrimination, or standardisation may lead to rules that constrain such practices (Gerlick and Liozu 2020).

Here too, the effect may be double-edged. Restrictions on personalization may protect vulnerable consumers or prevent exploitation. But they may also *eliminate a key release valve* in competitive strategy: the ability to offer secret or selective discounts that rivals cannot easily observe. In fact, prices that are not public and vary between consumers may be one of the ways that AI can drive intense competition, and the potential loss of this advantage when attempting to regulate must be borne in mind.

In a market governed by posted prices, personalization acts as a friction point, disrupting the symmetry on which tacit collusion relies. If regulation flattens this dimension, firms are once again pushed toward a narrower set of predictable, comparable offers.

A focal point disruption stance would not preclude personalization regulation, but it would recognize its trade-offs. Where personalization is restricted, regulators should look elsewhere for ways to reintroduce unpredictability—through variable quality metrics, staggered pricing formats, or consumer-specific tools that do not reveal strategies to competitors.

4.2 Recommendations: Founding a Focal Point Disruptor

Taken together, the three dimensions of existing regulation paint a picture of a market where tacit collusion seems inevitable: competition limited almost exclusively to regular monthly price, offers which have to be presented identically, available online, machine scrapable, and universal, such that all the information relevant to competition is neatly packaged for an exercise in algorithmic tacit collusion. Establishing a regulatory posture capable of actively disrupting focal points in this context is imperative.

A posture of focal point disruption has several key dimensions. Fundamentally, it is necessary to recognize the ability of regulation to control the flow of information and knowledge across markets beyond the communication standards in competition law. It is also crucial to recognize that regulation always does this. A regulator needs to examine whether the sum of regulation creates too much certainty or standardization, and whether it therefore needs loosening to introduce known unknowns. Alternatively, whether there is a need to more proactively manufacture uncertainty and encourage entropy by, for example, enabling consumers to better evaluate other quality dimensions or encouraging dynamic price variation.

The primary challenge in undertaking this exercise is to 'see' like a data-driven telco in order to understand the risk of sustainable tacit collusion. This exercise has two major dimensions: understanding the technology available and the public and private data available to the firms, internally and for purchase.

The technology available should be analyzed both in terms of what a firm could feasibly leverage internally to better understand the market. It is therefore important for regulators to have access to significant expertise, whether internally, across sectoral regulators, and/or provided by competition authorities. The available data concerning the specific market is of similar importance, but will require an individual regulator to leverage their expertise to draw a cohesive picture of what's available. This must include both information that is aggregated and sold by third parties (which, crucially, must not be capable of being disaggregated, European Commission 2008), information that an individual operator will be able to generate internally, and data collected and made public by both the regulator and statistical authorities.

The obligation to understand these elements is also motivated by the need to be able to report behaviour that can and should be reported to competition authorities. While tacit collusion presents a particular problem to competition authorities, the use of AI to implement or formulate explicit cartels should present fewer challenges. It is therefore necessary for regulators to understand what technology is available and how it is being used to spot potential cartels. Similarly, it is necessary to understand the role of third parties providing either AI technologies or training data with shared relationships with competing firms in order to identify potential hub and spoke coordination.

Using this information, regulators must ask themselves serious questions about the potential for their regulatory choices to facilitate tacit collusion, including:

- Does this policy flatten or diversify dimensions of competition?
- Could it enable firms to predict rivals' behaviour with greater precision?
- Will it reduce the possibility of undetectable deviation?
- Would it make market observables more symmetric or more fragmented?
- Can it be designed to enhance consumer visibility without increasing firm visibility?
- Is the benefit sought or observed proportionate to the potential coordinating effect?

Before implementing any measure, regulators should actively adopt the perspective of market participants and 'red team' the regulation: internally test how collusive outcomes might arise under different formulations, given the data and tools available. When reviewing policy, the regulator should be collecting the relevant information to review the policy to determine whether it has been beneficial to consumers or not, and whether it has observably led to coordination (by observing, for example, punishment patterns in pricing). Where there is no observed benefit to consumers but a known creation of a potential focal point, even if coordination is not observed, regulators should adopt a precautionary principle and adjust regulation. Even in the absence of market evidence, regulators should internally challenge teams to simulate coordination strategies, using the tools and data available to firms. If coordination appears feasible, precautionary revisions are justified.

Most importantly, the regulator must internalize key principles of focal point disruption. In particular:

- **Preserve asymmetries**: Allow firms discretion in how they meet standards or structure offers.
- **Enable selective observability**: Empower consumers without creating universal signals competitors can use.
- **Avoid hard-coded uniformity**: Be cautious with standardisation unless there is a compelling efficiency justification.
- **Promote multi-dimensionality**: Reward differentiation along quality, service, or experience, not just price.

By shouldering the burden of actively dealing with tacit collusion in this way, particularly in structurally vulnerable markets where AI sharpens coordination risks, regulators can preempt and address a problem which

may bedevil competition law for some time in the markets where the threat is greatest. This is precisely the kind of anticipatory work that justifies the existence of sectoral regulation—offering tools that general competition law may lack the flexibility or foresight to deploy in time.

5. Conclusion

AI-enabled pricing is not an abstract future threat, it is a present and evolving feature of competitive markets. It is set to put pressure on precisely the places where competition law struggles to enable competitive outcomes in markets like telecommunications: collusion in the absence of anything conceptually clear and actionable to forbid. For sectoral regulators, particularly in telecommunications, the relevant question is not whether AI will alter pricing behaviour, but whether regulatory frameworks will exacerbate or mitigate the risk of tacit coordination in already vulnerable markets, and whether they can adjust these frameworks to mitigate the problem. Sectoral regulators must reassess how regulations shape the informational and structural terrain on which competition plays out. In markets with high transparency, repeated interaction, and few players, they must investigate whether traditional regulatory tools such as offer standardization, transparency mandates, and restrictions on personalization may now serve as focal points, anchoring collusive equilibria rather than promoting choice.

AI does not create this problem, but it amplifies it, lowering the cost of coordination and eroding the frictions that once preserved competition. On the other hand, they may intensify competition where coordination is not possible. Rather than rely on slow-moving reform of general competition law, regulators should adopt a stance of focal point disruption: the deliberate interrogation of whether regulatory choices enable sustainable tacit collusion. This does not require banning AI tools or introducing sweeping new obligations. It requires embedding the interrogation of focal points into ongoing regulatory decision-making, questioning whether rules inadvertently flatten price dispersion, suppress variety, or make coordination easier to detect and sustain.

Telecommunications regulators already play a central role in shaping market dynamics. In the face of AI-driven competition, that role must now include a more deliberate, structural vigilance. This will ensure that well-meaning regulation does not unintentionally entrench tacit collusion, particularly if it is facilitated by AI. By reviewing existing policies and applying focal point disruption as a design principle, regulators can help ensure that the markets of the future are not merely automated, but meaningfully competitive.

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