Types of abusive conduct

- i. Exclusionary abuse
- ii. Exploitative abuse
- iii. Discriminatory abuse

Article 102 TFEU prohibits the abuse of a dominant position. In terms of the types of abusive conduct, the article does not provide an exhaustive list; however it provides some examples of abusive conduct such as: imposing unfair prices, limiting production, applying dissimilar conditions to the parties. Article 102 bears upon the individual behavior of dominant firms, by its nature the application of Article 102 involves a competition authority or a court having to decide whether that behavior deviates from ‘normal’ or ‘fair’ or ‘undistorted’ competition, or form ‘competition on the merits’, none of which expressions free from difficulty.

The major forms/types of abusive conduct generally falls into three categories which are (i) exclusionary abuses, (ii) exploitative abuses and (iii) discriminatory abuses.

i. Exclusionary abuse

Exclusionary abuses comprise all practices that a dominant undertaking may use to obstruct others, restrict their options, establish entry barriers and therefore remove or weaken the potential competition. Different forms of exclusionary abuses are shortly specified below:

- **Predatory pricing:** A dominant undertaking may set a very low price for a period of time, even below marginal cost, to discipline its competitors, to affect their behavior, or to squeeze them out of the market.
- **Tying and bundling:** A dominant undertaking may try to foreclose its competitors by tying or bundling. ‘Tying’ usually refers to situations where customers that purchase one product (the tying product) are required also to purchase another product from the dominant undertaking (the tied product). ‘Bundling’ usually refers to the way products are offered and priced by the dominant undertaking. Product bundling may not only squeeze existing competitors out of the market, but also deter potential competitors from entering the market.
- **Margin squeeze:** A vertically integrated undertaking with dominant position in the upstream market may prevent the (non–integrated) downstream rivals to achieve a feasible price–cost margin. There are two types of margin squeeze: (i) the dominant undertaking in the upstream market may charge an input price that is too high given the downstream price (for raising rivals’ cost) or (ii) it may set a downstream market price that is too low relative to the input price (for reducing rivals’ revenue).
- **Exclusive dealing:** Exclusive dealing can be anticompetitive, provided some conditions are satisfied. It may arise from the contractual obligations that require customers to purchase specific goods or services exclusively from a particular supplier. A dominant undertaking may try to foreclose its competitors by hindering them from selling to customers through use of exclusive purchasing obligations or rebates, together referred to as exclusive dealing.
- **Loyalty rebates/discounts:** Although the discounts granted by an undertaking in a dominant position may benefit consumers, they could also distort competition. Loyalty discounts may create a suction effect by increasing the consumers’ switching costs, restrict buyers to choose their trading partners independently and prevent potential competitors from entering the market.
- **Refusal to deal:** A dominant firm may eliminate competitors from the downstream market and thereby prevent effective competition by refusing to supply or give competitors access to an input. This abusive conduct is used as a potential strategy for vertically integrated dominant undertakings.

ii. Exploitative abuse

Exploitative abuse consists in directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions. It is an abusive conduct which exploits customers or suppliers. However, it is a bit challenging to determine when a price is ‘excessive’ and ‘unfair’.

iii. Discriminatory abuse

Price discrimination is the major discriminatory abusive conduct. As a means of discriminatory abuse, different consumers are charged different prices for the same product. In other saying, in price discrimination different, prices are collected from the same product or the same price is collected from different products.

---

Publication Notice

Responsible: Freie Universität Berlin, by its President
Author: Ecem Süsoy Uygun
Stage of work: completed