

# Chapter J – Abuse of Dominance

Competition Policy and Strategy

---

Dr. Daniel Herold

Chair VWL I, Prof. Dr. Georg Götz

English version of my 2020 lecture

## Article 102 TFEU

- Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.
- Such abuse may, in particular, consist in:
  - a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
  - b) limiting production, markets or technical development to the prejudice of consumers;
  - c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

COM(2008) 832

- Dominant position not per se illegal (par. 1). Responsibility (par. 9).
- Firms with dominant position must not abuse this position, i.e., not impair competition (par. 1).
- Consumer standard (par. 5).
- Assessment: (i) does firm have dominant position? (ii) does firm abuse dominant position? (i) and (ii) have to be satisfied for abuse of dominance to be relevant
- Dominant position
  - Dominant position of one or more undertakings (par. 4)
  - Economic strength enables prevention of competition, behave independent of competitors (par. 10)
- Abuse of dominant position
  - Market power: increase prices above (decrease quantity below, etc.) competitive level profitably (paras. 13-15)
  - Expansion and entry (paras. 16-17)

# Abuse of Dominance – Basics

- Dominant Position?
  - §18 GWB: market share of a single firm above 40%, 2-3 firms' joint market share above 50%, 4-5 firms' joint market share above two thirds
  - Entry and entry barriers
  - Counterveiling power?
- Market power
  - "Supracompetitive prices"  $\Rightarrow$  counterfactual?
  - Data! Digital Markets Act

# Abuse of Dominance – Basics

- Entry Deterrence
  - Exclusive dealing
  - Tying and bundling
  - Predation
  - Refusal to supply
  - Margin squeeze
- Efficiency effects possible
  - Benefit to consumers (e.g., innovation or cost reductions)
  - Not impair competition

# Abuse of Dominance – Overview

- Buyer purchases exclusively from one dominant seller
- Conditional rebates
  - Retroactive rebates
  - Incremental rebates
- Potential effects
  - Foreclosure
  - Price discrimination (may harm consumers)
- Price discrimination
  - First degree: seller knows customers' willingness to pay; extract entire consumer surplus by installing, e.g., two-part tariffs
  - Second degree: seller knows types; contracts to induce self-selection (e.g., rebates, two-part tariffs, menu pricing)
  - Third degree: seller knows groups; group-specific prices (e.g., student tariffs)
  - First and second degree: IO-course!

# Abuse of Dominance – Price Discrimination

## Third degree price discrimination

- Monopolist produces homogeneous product, constant marginal cost  $c$
- Two groups of consumers  $i \in \{0, 1\}$
- Demand function group  $i$ :  $q_i(p_i) = a_i - p_i$
- Demand in group 2 lower than in group 1 for every price:  $a_1 > a_2$
- Scenario 1: no price discrimination, uniform prices
  - Identical prices in both groups  $p_1 = p_2 = p$ .
  - Joint demand function

$$Q(P) = \begin{cases} \underbrace{a_1 + a_2 - 2p}_{q_1 + q_2} & , p < a_2 \\ \underbrace{a_1 - p}_{q_1} & , p \geq a_2. \end{cases}$$

- For all  $p < a_2$ , the monopoly price reads  $\hat{p}_M = \arg \max_p (a_1 + a_2 - 2p)(p - c) = \frac{a_1 + a_2 + 2c}{4}$ .
- Necessary condition  $p_M < a_2 \Leftrightarrow 3a_2 > a_1 + 2c$ , sufficient condition  $\pi(\hat{p}_M) > \pi(p_{M1})$   
 $\Leftrightarrow a_2 > (\sqrt{2} - 1)a_1 + (2 - \sqrt{2})c$ , with  $p_{M1} = \frac{a_1 + c}{2}$  as monopoly price in group 1.

# Abuse of Dominance – Price Discrimination

## Third degree price discrimination

- Scenario 2: third degree price discrimination
  - Monopoly price in each group  $p_{Mi} = \arg \max_{p_i} (a_i - p_i)(p_i - c) = \frac{a_i + c}{2}$
  - Positive demand in both countries
- Comparison
  - With uniform price price in group 1 lower than with price discrimination
  - For group 2 other way around
  - It is possible that group 2 no longer served with price discrimination
  - Welfare effects of price discrimination ambiguous

# Abuse of Dominance – Conditional Rebates

## Retroactive rebates

- If sales increase a certain threshold, rebate on all units sold
- Example rebate scheme of firm *A*: below 10,000 units sold,  $p = \text{EUR}2$ . At and Above 10,000 units, 20% rebate.
  - Consumer expenditure for 8,000 units: EUR 16,000
  - Consumer expenditure for 9,999 units: EUR 19,998
  - Consumer expenditure for 10,000 units: EUR 16,000
  - If consumer needs 10,000 and has already purchased 8,000 from *A*, *B* would have to give away 2,000 units for free
- Intel case (fines EUR 1.2 bn.).

# Abuse of Dominance – Tying and Bundling

- Tying: Good B can only be purchased together with Good A
- Bundling
  - Pure bundling: A and B can only be purchased jointly
  - Mixed bundling: A and B jointly and separately
- Potential anti-competitive effects
  - Transfer market power from Market A to Market B
  - Foreclosure in Market B
- Potential pro-competitive effects
  - Cost savings (reduction in transaction cost due to full compatibility, save packaging material)
  - Economies of scale and scope

# Abuse of Dominance – Tying and Bundling

- Primary market: durable good
- Secondary market: complementary to primary good
- If purchasing primary good, consumers are locked in (switching cost! cf. Ch. E) on secondary good  $\Rightarrow$  market power
- Examples:
  - Google Chrome and Android  
([http://europa.eu/rapid/press-release\\_IP-18-4581\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4581_en.htm)).
  - Microsoft and Windows Media Player  
(<https://eur-lex.europa.eu/legal-content/DE/TXT/HTML/?uri=CELEX:62004TJ0201&from=GA>).

# Abuse of Dominance – Predation

- Predatory prices to drive out competitors
- Upon exit, market power
- Concept
  - Absorb losses in the short-run (e.g., prices below marginal cost) to drive out competitor from the market
  - Realize monopoly profits in the long run
- Consumers benefit from intense competition in the short run
- Monopoly in the long run
- Efficiency effects unlikely

# Abuse of Dominance – Refusal to Supply and Margin Squeeze

- Refusal to supply of downstream firm
- Also conditions for other downstream firm to not be able to compete with vertically integrated downstream firm
- Good has to be “essential”
- Essential facility (cf. Bronner case of ECJ, <https://eur-lex.europa.eu/legal-content/DE/ALL/?uri=CELEX:61997CJ0007>)
  - Market access using essential facility possible from technical perspective
  - Essential facility has to be essential
- Conditions for essential facilities
  - Impossible/not profitable to duplicate
  - Essential for market entry/access
  - Competition downstream benefits from essential facility
  - Firm that denies access to (essential) facility competes with firm that is denied access