European Data Strategy Overview

YZV403E

Legal Issues in AI

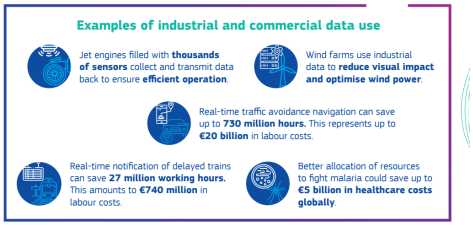
Data and the Legal Protection System of Data

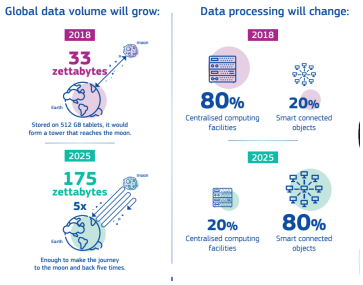
Personal Data

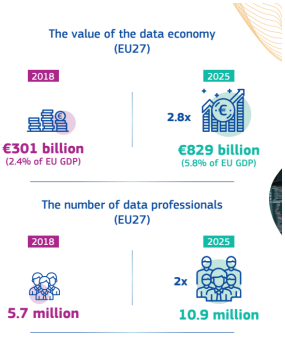
- Data Protection Regulations (GDPR and national data privacy laws, in Turkey KVKK)

Non Personal Data

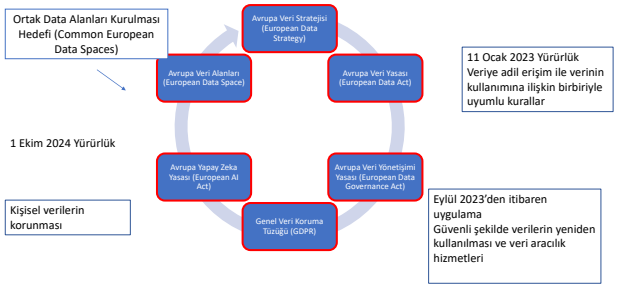
- IP Laws, Turkish Commercial Code, Turkish Law of Obligations







European Data Strategy



European Strategy for Data

Data is an essential resource for economic growth, competitiveness, innovation, job creation and societal progress in general.

- The **European strategy for data** aims at creating a **single market for data** that will ensure Europe's global competitiveness and **data sovereignty** ***(veri egemenliği)***. (Data sovereignty is the idea that data are subject to the laws and governance structures of the nation where they are collected.)
- Common European data spaces *(ortak veri alanları)* will ensure that more data becomes available for use in the economy and society, while keeping the companies and individuals who generate the data in control.

https://digital-strategy.ec.europa.eu/en/policies/strategy-data

What is European Data Act?

The European Data Act **makes more data available for use, and sets up rules on who can use and access what data for which purposes** across all economic sectors in the EU.

Subject matter and scope:

'This Regulation lays down **harmonised rules on making data generated by the use of a product or related service available to the user of that product or service, on the making data available by data holders to data recipients,** and on the making data available by data holders to public sector bodies or Union institutions, agencies or bodies, where there is an exceptional need, for the performance of a task carried out in the public interest.

What is European Data Act?

European Data Act applies to:

(a) manufacturers of products and suppliers of related services placed on the market in the Union and the users of such products or services;

(b) **data holders** that make data available to data recipients in the Union;

(c) **data recipients** in the Union to whom data are made available;

(d) public sector bodies and Union institutions, agencies or bodies that request data holders to make data available where there is an exceptional need to that data for the performance of a task carried out in the public interest and the data holders that provide those data in response to such request;

(e) providers of data processing services offering such services to customers in the Union.

What is Data Governance Act ?

The Data Governance entered into force on **23 June 2022** and, following a 15-month grace period, is applicable **since September 2023**.

Data Governance Act seeks to increase trust in data sharing, strengthen mechanisms to increase data availability and overcome technical obstacles to the **reuse of data.**

Fair Access and Fair Use of Data!

The Data Governance Act will also support the set-up and development of common European data spaces in strategic domains, involving both private and public players, in sectors such as health, environment, energy, agriculture, mobility, finance, manufacturing, public administration and skills.

What is Data Governance Act ?

The EU will boost the development of trustworthy **data-sharing systems** through 4 broad sets of measures:

- Mechanisms to facilitate the reuse of certain public sector data that cannot be made available as open data. For example, the reuse of health data could advance research to find cures for rare or chronic diseases.
- Measures to ensure that data intermediaries will function as trustworthy organisers of data sharing or pooling within the common European data spaces.
- Measures to make it easier for citizens and businesses to make their data available for the benefit of society.
- Measures to facilitate data sharing, in particular to make it possible for data to be used across sectors and borders, and to enable the right data to be found for the right purpose.

What is Data Governance Act ?

comprehensive tool designed to oversee the **reuse** of publicly or protected data across various sectors.

It aims to facilitate data sharing by regulating new entities known as ***data intermediaries*** and promoting data sharing for altruistic reasons.

The DGA defines **data altruism (veri hayırseverliği)** as a voluntary and non-commercial sharing of **data** on the basis of consent given by natural or legal persons for objectives

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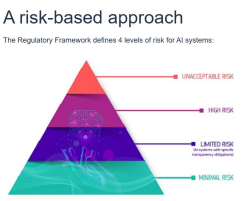
Why do we need rules on AI?

- The AI Act ensures that Europeans can trust what AI has to offer. While most AI systems pose limited to no risk and can contribute to solving many societal challenges, certain AI systems create risks that we must address to avoid undesirable outcomes.
- For example, it is often not possible to find out why an AI system has made a decision or prediction and taken a particular action. So, it may become difficult to assess whether someone has been unfairly disadvantaged, such as in a hiring decision or in an application for a public benefit scheme.

The new rules:

- address risks specifically created by AI applications
- prohibit AI practices that pose unacceptable risks
- determine a list of high-risk applications
- set clear requirements for AI systems for high-risk applications
- define specific obligations deployers and providers of high-risk AI applications
- require a conformity assessment before a given AI system is put into service or placed on the market
- put enforcement in place after a given AI system is placed into the market
- establish a governance structure at European and national level



Avrupa Yapay Zeka Yasası (European AI Act)

- 1 Ağustos 2024 yürürlük (Regulation 2024/1689)
- Risk Bazlı Çerçeve (Düşük Risk/Sınırlı Risk/Yüksek Risk/Kabul Edilemez Risk)

Avrupa Sağlık Veri Alanı (European Health Data Space)

- Sağlık verilerinin paylaşımı ve kullanımını kolaylaştırmak / hasta bakımı, araştırma ve inovasyon için sağlık verilerinin sınır ötesi değişimini standartlaştırmak ve kolaylaştırmak
- AB Veri Yasası'na dayanarak sektöre özgü ilk veri alanı oluşturma girişimi
- Takvim: İlk sağlık verisi paylaşımının en erken 2028'de yapılması planlanmaktadır.

YZV 403

Competition Law

What is competition law?

Term used to refer to laws that **promote fair and open competition** by prohibiting certain conduct.

- Protection of effective competition by prohibiting any **consensus** aiming at/ having the effect of **eliminating the uncertainities and risks associated with competition**.
- Antitrust law refers to several statutes designed to promote business competition. These laws **are not designed to protect competitors. The laws are designed to protect consumers under the theory that free and open competition will result in the best products and services at the lowest price.**
- Antitrust laws target **behavior that would reduce or prevent competition**.

CONSEQUENCES OF COMPETITION LAW INFRINGEMENTS (Sanctions)

1) Fines against the company – risk of multiple fines (idari para cezaları)
   ➢→ max. fine 10 % of annual turn-over of parent company per case!
2) Civil damage claims (Compensation) (Tazminat)
3) Individual, personal criminal liability (imprisonment) not in Turkey and Europe but in US! (Cezai Yaptırımlar)
4) Other Consequences:

➢Fines againest the managers (employees) of the companies who are involved in an infringement
➢ Damage to reputation of the company
➢ Underlying contracts void (invalidity of contracts)
➢Disciplinary measures including termination of employment contracts of individuals who committed the breach.

The European Commission fined seven cathode ray tubes (CRT) producers €1.4 billion. The cartelists including LG, Samsung and Philips had fixed prices, restricted their output, shared markets and customers

Brussels, 5 December 2012 **European Commission – Press release**

Producers of TV and computer monitor tubes involved in two decade-long cartels – **Commission fines producers of TV and computer monitor tubes EUR 1.47 billion**

*Chunghwa received **full immunity from fines under the Commission's 2006 Leniency Notice** for the two cartels […]*

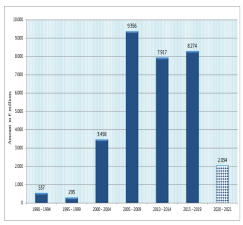
These cartels for cathode ray tubes are 'textbook cartels' […] For almost 10 years, the cartelists carried out the most harmful anti-competitive practices including **price fixing**, **market sharing**, customer allocation, **capacity and output coordination** and **exchanges of commercial sensitive information**. *The cartelists **also monitored the implementation**, including auditing compliance with the capacity restrictions by plant visits […].*

Top management level meetings, dubbed "green(s) meetings" by the cartelists themselves because they were often followed by a golf game, designed the orientations for the two cartels. Preparation and implementation were carried out through lower level meetings, often referred to as "glass meetings", on a quarterly, monthly, sometimes even weekly basis.

1.2. Fines imposed (not adjusted for Court judgments) - period 1990 - 2021

Last change: ++10 December 2021++

Year	Amount in €*)
1990 - 1994	537 491 550
1995 - 1999	292 838 000
2000 – 2004	3 458 421 100
2005 – 2009	9 355 867 500
2010 – 2014	7 917 218 674
2015 – 2019	8 274 222 000
++2020-2021++	2 034 334 000
total	**31 870 392 824**



1.5. Ten highest cartel fines per case (since 1969)

Last change: ++02 December 2021++

Year	Case name	Amount in €*)
2016/2017	Trucks	3 807 022 000
++2019/2021++	Forex	1 413 274 000
2012	TV and computer monitor tubes	1 409 588 000
2013/2016/2021	Euro interest rates derivatives (EIRD)	1 308 172 000
2008	Carglass	1 185 500 000
2014	Automotive bearings	953 306 000
2021	Car emissions	875 189 000
2007	Elevators and escalators	832 422 250
2001	Vitamins	790 515 000
2010/2017	Airfreight (incl. re-adoption)	785 345 000

*) Amounts adjusted for changes following judgments of the Courts (General Court and Court of Justice) and / or amendment decisions.

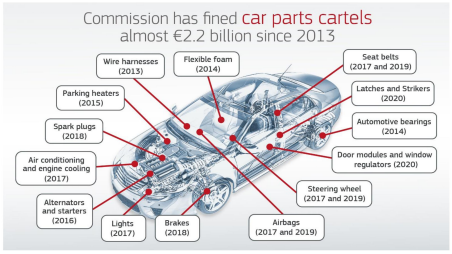
1.6. Ten highest cartel fines per undertaking (since 1969)

Last change: ++08 July 2021++

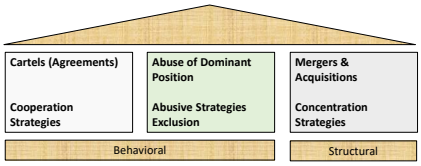
Year	Undertaking	Case	Amount in €*)
2016	Daimler	Trucks	1 008 766 000
2017	Scania	Trucks	880 523 000
2016	DAF	Trucks	752 679 000
2008	Saint Gobain	Carglass	715 000 000
2012	Philips	TV and computer monitor tubes	705 296 000 of which 391 940 000 jointly and severally with LG Electronics
2012	LG Electronics	TV and computer monitor tubes	687 537 000 of which 391 940 000 jointly and severally with Philips
2016	Volvo/Renault Trucks	Trucks	670 448 000
++2021++	VW Group	Car emissions	502 362 000
2016	Iveco	Trucks	494 606 000
2013	Deutsche Bank	Euro interest rate derivatives (EIRD)	465 861 000

1.12. Car part cases decided since 2013

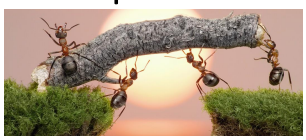
Last change: ++09 September 2021++



Three Pillars of Antitrust Law



How to Deal With Competitors?



How to Deal With Competitors? What is legal and what is not? Types of Infringements

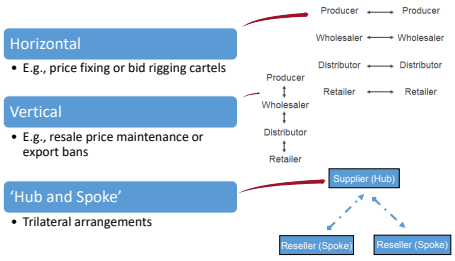
- Bilateral conduct / Cooperation Strategies (cartels **(collusion/ agreements/ contact/ collaboration/ coordination)**
  Competition law encourages independent decision-making!
- Unilateral conduct (abuse of dominant position)

How to Deal With Competitors? Anticompetitive Agreements Horizontal Restraints/ Horizontal Agreements/ Vertical Agreements

Horizontal
- E.g., price fixing or bid rigging cartels

Vertical
- E.g., resale price maintenance or export bans

'Hub and Spoke'
- Trilateral arrangements



How to Deal With Competitors? Anticompetitive Agreements Horizontal Restraints/ Horizontal Agreements

Cartels (ILLEGAL!!!)

- ✓Price fixing (including price elements and terms and conditions)
- ✓Allocation of customers / markets (productwise and/or geographicwise, „spezialisation“, „mine/yours“)
- ✓Limitation of output, capacities or sales (production quotas) Amicable capacity reduction
- ✓Bid rigging (not only public tenders!)

How to Deal With Competitors? Anticompetitive Agreements Horizontal Restraints/ Horizontal Agreements

- ✓Information Exchange

How to Deal With Competitors? Anticompetitive Agreements Horizontal Restraints/ Horizontal Agreements

Competition laws prohibit **all agreements between companies which may have as their object or effect the restriction of competition.**

"Agreement" covers all anticompetitive practices such as agreements, discussions and information exchanges between companies as well as decisions by trade associations.

1) An agreement or concerted practice

- Defined very broadly

2) Between **two or more** undertakings

✓**Does not apply to intra-group agreements**

3) Whose **object or effect** is … **the restriction of** competition

How to Deal With Competitors? What is an "Agreement"?

ALL TYPES OF CONCERTED PRACTICE

CJEU on concerted practices:
"*a form of coordination between undertakings by which, without it having been taken to the stage where an agreement properly so-called has been concluded, practical cooperation between them is knowingly substituted for the risks of competition.*"

- Oral or written
- Express or implied
- Formal/binding agreements or informal/non-binding agreements
- "Gentlemen's" agreements
- Understandings, including a "nod and a wink"
- One-off, single meetings
- Arrangements made outside of work (e.g., at the golf club)
- Any behaviour or arrangement that reduces the uncertainty of competition
- Sharing information combined with an unspoken understanding could be enough

How to Deal With Competitors? Even non-binding agreements may be penalized

- The prohibition covers all anticompetitive agreements, regardless of their form. In other words, the existence of an agreement signed by a manager authorized to represent the company is not necessary. Even a low level employee's non-binding price discussions with competitors may be penalized.
- Similarly, non-binding but anticompetitive recommendations of trade associations can be prohibited. The legal form of the association (e.g. whether it has legal personality or it is a non-profit organization) is also irrelevant.

How to Deal With Competitors? Object or effect? Even not implemented agreements may be penalized

- If an agreement has the OBJECT of restricting competition, the prohibition applies. The parties do not necessarily need to achieve the result they hoped for. For example, a low level employee's non-binding price discussions with competitors may be penalized although prices keep stable or even decrease.
- The opposite also applies. Even if the parties do not AIM at restricting competition, but the agreement has restrictive EFFECTs on competition, it may be prohibited.

How to Deal With Competitors? Object or effect? Even not implemented agreements may be penalized

A breach of competition law exists if the restriction of competition …

- was the **object**:
  - It suffices if the practice in question is (obviously) capable of affecting competition
  - No need to prove actual effect
  - Intended effect need not have occurred
- or the **effect**:
  - Even if anti-competitive effect was unintentional

How to Deal With Competitors? Even one inappropriate statement in an e-mail or diary may be enough for a penalty

- ✓Evidence such as records of telephone conversations obtained by wiretap or agreements signed by top management and stamped by a notary is not necessary to prove an infringement.
- ✓The existence of an illegal agreement can be inferred from only one inappropriate statement in an e-mail.
- ✓A piece of note in a personal agenda reflecting an illegal discussion with a competitor in a dinner may be sufficient.

How to Deal With Competitors? Between two or more undertakings: Competitors

- … are any companies
  - outside the company group, and
  - offering or potentially capable of offering (also potential competitors)
    - products which, from the buyer's perspective, are interchangeable with firm products
- Competitors include:
  - the competitor's employees
  - the competitor's fieldworkers
  - (possibly) the competitor's distribution partners
  - joint venture partners
  - actual and potential competitors
- Wholly-owned subsidiaries and parent companies are not competitors

How to Deal With Competitors? Anticompetitive Agreements/ Horizontal and Vertical Restraints

Basics – Core Rules

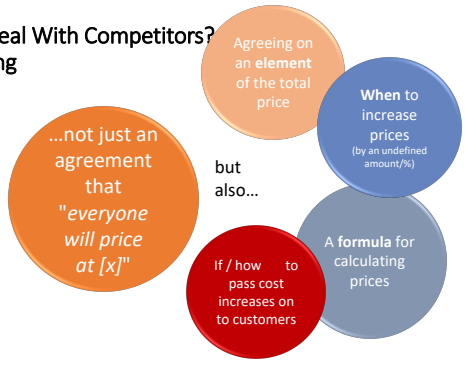
- **Never coordinate market beviour with actual OR potential competitors! HORIZONTAL**
  - Infringement of competition law, if there is deliberate coordination / acting on the basis of a common understanding / „meeting of the minds“ (expressly or tacitly, directly or indirectly)
  - Each market participant must take its business decisions autonomously
  - Competition is served best when there is a high degree of „insecurity“ in the market
  - Competitors must be unaware of their competitor‘s position
- **Never unreasonably restrict the commercial freedom of customers or suppliers! VERTICAL**
  - Vertical arrangements are ambivalent in nature: Many vertical arrangements contribute to market efficiency and therefore benefit customers (inter-brand competition)
  - However: Foreclosure effects (input, customer), restraints on intra-brand competition, may disguise horizontal cartels

How to Deal With Competitors? I. Price Fixing

To discuss or agree on purchasing or selling prices and other matters affecting prices ILLEGAL !!!!

- **Sales prices**
- **Discounts**
  - Cash discounts
  - Free goods
- **Price increases**
  - Date
  - Extent
- **Passing on costs**
- **Purchase prices**

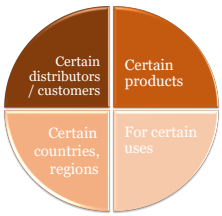
How to Deal With Competitors? Price Fixing



How to Deal With Competitors? II. Sharing markets, customers or territories

To discuss or agree on sharing markets or allocating customers and suppliers ILLEGAL !!!

Agreeing who will supply:



How to Deal With Competitors? II. Sharing markets, customers or territories

- **Allocating customers**
  - acc. to trading group
  - acc. to distribution channel
  - for advertising campaigns, etc.
- **Allocating territory**
  - according to towns, regions or continents, etc.
- **Technology**
  - allocating technologies
  - agreement on timing of technology changes, etc.

How to Deal With Competitors? III. Limitation of Output, Capacities

To discuss or agree on limiting demand or supply, capacity, production or technical development ILLEGAL !!!

How to Deal With Competitors? IV. Bid-Rigging

To discuss or agree on rigging bids ILLEGAL !!!

Exchange of Information among Competitors

- The exchange of **confidential** and **competitively sensitive** information between competitors is **illegal**

  ➔The exchange of such information typically weakens competition. For instance, increasing prices is easier if you know that your competitors are planning to do the same.

- **But**: the competitors **may** gather information about the activities of competitors from other sources, e.g. customers and distributors

Theory: why is an exchange of information prohibited?

- Simply exchanging information on competitors can give rise to **concerted practices**
- Under competition law concerted practices are treated as anti-competitive agreements.
- Therefore, never exchange information with competitors which could indicate current or future market policy ("**strategic information**").

Information Exchange: Basic Rules

Permitted:	Not permitted:
• Information that is truly public (e.g. reported in a newspaper) • General market trends • Statements that are too vague to disclose any sensitive information about Your Company or the competitor	▪ Past, present or future prices or pricing policies/strategies ▪ Terms of sale ▪ The customers and distributors to whom Your Company or the competitor is selling and on what terms ▪ Distribution strategy in a particular country ▪ Available production capacity

Information Exchange: Basic Rules

- Which kind of Information exchange **among competitors** will be regarded as **unlawful?** …
  - (future) prices and terms
  - date and/or extent of planned price increases
    - even if info only on average prices
    - even if info only regarding whether or not price increase will occur at all (no price info)
  - competitively significant contractual clauses with customers/suppliers (e.g. promises on quality, etc.)
  - status and course of negotiations on competition-related factors (especially prices)
  - cost factors
  - (future) production

Information Exchange: Basic Rules

- An exchange is when
  - ✓a company **discloses** strategic information to a competitor AND
  - ✓the competitor **accepts** the information.
- The European Commission assumes that if a company receives strategic data from a competitor it has accepted this information unless **it explicitly states that it does not wish to receive such data**. (Horizontal Guideline no. 62)

How to Deal With Competitors? Cooperation With Competitiors

Competition laws do NOT prohibit **every communication with competitors.** Equally membership in a trade association is not in itself a violation either. However this is a risky area.

Cooperation with competitors is **not banned from the outset.** However, it should always be **examined carefully** to ensure that it does not breach competition law, for example

- Cooperation in logistics
- Cooperation in procurement
- Cooperation in marketing
- Corporation in standardisation
- Cooperation in research and development
- Cooperation in production
- Cooperation by mutual supply
- Cooperation in sales/distribution

How to Deal With Competitors? Cooperation With Competitiors

- **Which of these are permissible?**
  - An agreement to supply a competitor ✓
  - An agreement to reduce production capacity ✗
  - A production joint venture
  - Agreeing who should supply certain categories of distributors / customers ✗
  - A joint purchasing agreement
  - A joint lobbying agreement ✓
  - A joint R&D agreement

How to Deal With Suppliers/ Customers?

How to Deal With Suppliers/ Customers? Resale Price Maintenance

Agreements or concerted practices between a SUPPLIER and a DEALER with the object of directly or indirectly establishing a fixed or minimum price or price level to be observed by the dealer when reselling a product/service to his customers.

"Resale price maintenance" (RPM) refers to a particular type of vertical agreement in which an upstream firm controls or restricts the price (or sometimes the terms and conditions) at which a downstream firm can on-sell its product or service, usually to final consumers.

- Upstream Firm: Supplier: manufacturer, producer, or importer
- Downstream Firm: Distributor or retailer

seller power

- Inter-brand competition Firms marketing differentiated products frequently develop and compete on the basis of brands or labels. Coca Cola vs. Pepsi-Cola
- Intra-brand competition is among retailers or distributors of the same brand.

How to Deal With Suppliers/ Customers? Resale Price Maintenance

- ❑In the case of contractual provisions or concerted practices that directly establish the resale price, the restriction is clear cut.
- ❑However, resale price maintenance can also be achieved through indirect means:

for example by fixing the distribution margin or the maximum level of discount the distributor may grant from a prescribed price level, by making the supplier's rebates or his reimbursement of promotional costs subject to the observance of a given price level, by linking the prescribed resale price to the resale prices of competitors, or by threats, warnings, or even sanctions against a dealer who does not respect a certain price level (such as penalties, delay or suspension of deliveries or termination of contracts).

Resale Price Maintenance

What is prohibited?

To fix your buyer's resale price

To fix a minimum resale price to your buyer

To fix the level of discount that your buyer can offer to its customers

To restrict discounts and pricing used in advertising

To make grant of rebates/bonuses etc. conditional on adherence to a given resale price. Do not use warnings, penalties, suspension of deliveries as a mean to fix resale price

What is permitted?

Imposing a maximum resale price is permitted

Recommending resale price is permitted provided that recommendations do not amount a minimum or fixed resale price as a result of pressure or incentives:

Abuse of Dominant Position

Abuse of Dominant Position: General View

1) Dominance: An undertaking is dominant in a market if it

- Holds a position of economic strength
- Which allows it to behave to an appreciable extent independently of ist competitors, ist customers and ultimately of consumers
- And therefore can prevent effective competition being maintained in a relevant market

Some restrictions which are acceptable for a non-dominant supplier can be illegal for a dominant company (e.g. rebates exclusivity)

2) Abuse of Dominant Position:

Art. 102 TFEU prohibits:

- **Exploitative abuses** (against customers): Excessively high prices, discrimination (in terms of prices etc.) of equivalent buyers in comparable markets
- **Exclusionary abuses** (against competitors): Systematically undercutting competitors prices in order to drive him out of the market (predatory pricing), certain rebates (eg. Fidelity rebates), exclusivity agreements (which hinder competitors from access to customers), bundling of products or services (tying, Microsoft), refusal to supply

Abuse of Dominant Position

- A company can restrict competition if it is in a position of strength on a given market. A dominant position is not in itself anti-competitive, but if the company exploits this position to eliminate competition, it is considered to have **abused** it.

Examples:

- charging unreasonably high prices
- depriving smaller competitors of customers by selling at artificially low prices they can't compete with
- obstructing competitors in the market (or in another related market) by forcing consumers to buy a product which is artificially related to a more popular, in-demand product
- refusing to deal with certain customers or offering special discounts to customers who buy all or most of their supplies from the dominant company
- making the sale of one product conditional on the sale of another product.

What is an Abuse?

✓To be in a dominant position is NOT in itself illegal ! Prohibition is on the abuse of the dominant position, not the holding of the position.

✓A dominant company is entitled to compete on the merits as any other company. However, a dominant company has a special responsibility to ensure that its conduct does not distort competition. Examples of behaviour that may amount to an abuse include:

- **requiring that buyers purchase all units of a particular product only from the dominant company (exclusive purchasing);**
- **setting prices at a loss-making level (predation);**
- **refusing to supply input indispensable for competition in an ancillary market;**
- **charging excessive prices.**

These are no more than examples, and <u>are not exhaustive.</u>

❑Unlike anti competitive agreements prohibition, there are <u>no block or parallel exemptions</u> from abuse of dominant position.

Abuse of Dominant Position

There are two tests common to assessing whether prohibition applies:

- whether an undertaking is **<u>dominant,</u>** and
- if it is, whether it is **<u>abusing that dominant position.</u>**

The first test raises two questions which are considered below: (i) the definition of the market in which the undertaking is alleged to be dominant (the relevant market); and (ii) whether it is dominant within that market.

Market definition

Before assessing whether an undertaking is dominant, the relevant market must be determined. This relevant market will have two dimensions: • the relevant goods or services (the product market), and • the geographic extent of the market (the geographic market).

Concept of Abuse

- Conduct may be abusive when, through the effects of conduct on the competitive process, it adversely affects consumers

✓directly (for example, through the prices charged) or

✓indirectly (for example, conduct which reduces the intensity of existing competition or potential competition).

A dominant undertaking is under a <u>special responsibility not to allow its conduct to impair undistorted competition.</u>

Categories of Abuse

Abusive conduct generally falls into one or both of the following categories:

- conduct which **<u>exploits</u>** customers or suppliers (for example, excessively high prices), or
- conduct which amounts to **<u>exclusionary behaviour</u>**, because it removes or weakens competition from existing competitors, or establishes or strengthens entry barriers, thereby removing or weakening potential competition.

Exclusionary behaviour may include excessively low prices and certain discount schemes, where its (likely) effect is to foreclose a market, as well as vertical restraints or refusals to supply where these (are likely to) foreclose markets or dampen competition.