

## Abuse of Dominance

### Austria: Data firm abused dominant position according to court

- ▶ The Cartel Court has ruled (see [here](#) for the German version of the ruling) that a so-called multi-supplier clause (MSC) is seen to be anticompetitive if it is used by a dominant company and no appropriate compensation is contractually agreed.
- ▶ IQVIA, a data analysis firm, used an MSC in its contracts with wholesalers. The clause implied a 40 % discount on the fee for aggregated sales data if wholesalers sell their data to third parties.
- ▶ IQVIA was a monopolist until 2013. In 2013 INSIGHT Health entered the market. As both companies operate in the data analysis business, they must rely on data obtained from wholesalers. The court held that the relevant market is considered to be the national market for the supply of sales tracking analysis for pharmaceutical products and that IQVIA has a dominant position in this Market.
- ▶ According to the court, MSC pushed INSIGHT to increase its purchase price in order to make up for IQVIAs discount. Because there is no reasonable justification for the MSC, the usage of this clause restricts competition as it foreclosed on the data input market.

### Moldova: Moldova's Supreme Court upholds abuse fine against electricity firm

- ▶ In October 2012, the Competition Council (CC) learned that Naturgy's Moldovan subsidiary abused its position of dominance in the electricity market.
- ▶ According to the agency's Romanian language [press release](#), Naturgy's Moldovan subsidiary infringed competition rules by transferring power equipment owned by a construction company to its annual balance sheet in return for connecting the construction company to the power grid.
- ▶ Naturgy contested the decision of the CC but the Supreme Court confirmed the breach of competition rules.

#### **Agricultural service company fined for abusing its dominance**

- ▶ According to a [press release](#) of Moldova's Competition Council (CC) Cereale Cupcini SA was fined MDL 51.693 (approx. EUR 2.600) for abusing its domi-

nant position by applying disproportionate tariffs to Wetrade Argo LLC for the loading and unloading services of wheat.

- ▶ In November 2017 a probe was opened against Cereale Cupcini SA regarding unfair conditions for loading and unloading wheat from the state material reserves. The market analysis showed that Cereale Cupcini SA holds a dominant position on this market.

### Poland: Polish window maker Fakro challenges a decision of the European Commission (EC) before the General Court

- ▶ Window maker Fakro complained to the European Commission about market foreclosing practices of its main rival, market leader Velux.
- ▶ The EC concluded in its decision that Velux, the Danish rival of Fakro, did not abuse its dominant position by using predatory pricing. The agency also argued that further investigations presumably won't reveal any findings that would suggest an infringement of competition law took place.
- ▶ Fakro, on the other hand, will challenge the decision before the General Court arguing that it is not "legally valid". Fakro believes it is also treated unfairly by the European Commission.

### Romani: Romania's Competition Council (CC) commenced proceedings against a hydropower firm

- ▶ Hidroelectrica, a hydropower producer, is suspected of increasing the price of electricity by limiting supply.
- ▶ According to its [press release](#), it appeared to the agency that Hidroelectrica manipulated the day ahead market (DAM) to influence the price on the balancing market (BAM). While the DAM serves as the "main forum" for trading electricity the following day, the BM is responsible for regulating supply and demand.
- ▶ Dawn raids were carried out at the premises of Hidroelectrica and its electricity transporter Transelectrica. The latter, though, is not under investigation; rather the agency's sole attempt is to find other documents concerning the functioning of the BM.
- ▶ It is also not the first time that Hidroelectrica is subject of an investigation carried out by the local agency. In November 2016, the company and ten of its contractors were fined a total of EUR 37m for vertical restraints within long-term contracts. Hidroelectrica was fined EUR 4.6m.

## Serbia: MasterCard may have restricted competition by imposing excessive fallback interchange fees

- ▶ Serbia's Commission for Protection of Competition (CPC) [has opened](#) investigations against MasterCard arguing that the company restricts competition by illegally abusing its dominant position in the payment card market.
- ▶ Fallback fees apply when no other interchange fee has been agreed between the issuing and the acquiring bank and therefore determine the floor price for accepting payment cards. The agency concluded that these fees have been set several times higher than those applied in other EU member states.
- ▶ The market restriction hereafter is that MasterCard's practice may have prevented acquiring banks from negotiating a service charge below the interchange fee.
- ▶ This could lead to unwelcomed pass on of the fee to consumers which then leads to higher prices. Furthermore, banks have an incentive to offer only cards that yield the highest interchange fee revenue which also leads to distortion of competition.

## Turkey: Google fined for abuse of dominance

- ▶ Google has been fined approx. EUR 12.7m in Turkey for abuse of dominance in relation to its mobile operating system Android as well as mobile application and services provision (see here for a link to the [announcement](#) in Turkish).
- ▶ The Turkish competition authority (TCA) found that agreements with mobile phone producers pursuant to which Google is the default search engine and Google Webview the default single app of its kind, breached competition law.
- ▶ To remedy the situation the TCA imposed a series of obligations on Google, all aimed at allowing rivals of Google to compete effectively even if Android is used as the operating system.