

DOMINANCE AND UNILATERAL CONDUCT 2010

Update and trends in EU and US law and enforcement – implications of recent decisions

Tuesday 9 February 2010, Le Méridien Brussels

6.5
CPD
hours

Chairmen: John Kallaugher, Partner, Latham & Watkins
Luc Gyselen, Partner, Arnold & Porter LLP

Speakers from the European Commission, the Federal Trade Commission, national competition enforcement authorities, law firms and industry include:

Robert O'Donoghue
Brick Court Chambers

Richard Parker
Partner, O'Melveny & Myers LLP

Nadia Calvino
Deputy Director General
DG Competition, European Commission

William E. Kovacic
Member, Federal Trade Commission

Derek Ridyard
Director, RBB Economics

James S. Venit
Skadden Arps Slate Meagher & Flom LLP

Anne Perrot
Vice President, Autorité de la Concurrence

Till Wiesner
Head of Unit, German and European Antitrust Law
Bundeskartellamt

Cavendish Elithorn
Policy Director, Office of Fair Trading

Thorsten Mäger
Partner, Hengeler Mueller

Cristina Caffarra
Vice President, Charles River Associates

Lars Kjølbbye
Partner, Howrey LLP

Thomas Janssens
Partner, Freshfields Bruckhaus Deringer LLP

Miguel de la Mano
Deputy Chief Economist
DG Competition, European Commission

Frédéric Louis
Partner, Wilmer Cutler Pickering Hale & Dorr LLP

Hendrik Bourgeois
General Counsel, Europe
GE (General Electric Company)



Practical advice and expert comment on:

- The EC Guidance Paper – experiences one year on
- Current and future enforcement priorities
- The EU and US – what are the differences?
- Recent developments in the US
- What is happening at national level? Are national courts moving towards a more effects-based approach?
- Refusal to supply and deal
- Pricing – what discounts may be offered to which customers?
- Abuse of IPRs – how far does Article 102 (formerly Art. 82 EC) stretch?



DOMINANCE

Contributing editors: **Thomas Wessely**
and **Thomas Janssens**

Freshfields Bruckhaus Deringer

Launching at the conference, the sixth annual edition of *Getting the Deal Through – Dominance* is designed to help general counsel, government agencies and private practice lawyers navigate the world's increasingly complex competition regimes. As with the 41 other publications in the series, *Dominance* follows a question-and-answer format, with the same key topics covered by leading practitioners in over 36 jurisdictions worldwide.

“Leading publication on cross-border antitrust.”

Julia Holtz, Competition Counsel - Europe, Google, Inc, London

“Always useful and well documented. Appreciated by my team. Please also send to my colleague, who is very interested by your publications.”

Christobal Felicidad, Counsel, Arcelor Mittal, Luxembourg

“Excellent – the most useful short guide on the subject.”

Karl Hennessee, VP Litigation & Regulatory Affairs, Airbus SAS, Blagnac, France



DOMINANCE AND UNILATERAL CONDUCT 2010

Following a year when the largest ever fine on an undertaking for an infringement of EC competition law was imposed, the EC's guidance paper on exclusionary abuses was introduced, the US repealed its former administration guidance on Section 2 and other jurisdictions started actively to enforce their rules on abuse of dominance, it seems appropriate to take stock of developments in both the EU and the US and look at the differences that seem to persist between approaches.

In the meantime, courts and agencies are taking decisions on the cases before them and they all face the challenge of controlling abusive behaviour while not stifling innovation.

This conference provides a first-class opportunity to learn from senior representatives from the European Commission, the Federal Trade Commission, and the competition enforcement agencies of France, Germany and the UK, together with senior competition law specialists from industry and private practice on their latest thinking on recent developments in antitrust law and regulation of single firm conduct.

This conference will offer practical advice and expert comment on:

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Note: With the ratification of the Lisbon Treaty in November 2009, the new Treaty on the Functioning of the EU (TFEU) entered into force as of 1 December. As a result the competition rules will have new numbering – Article 82 EC Treaty will become Article 102 TFEU.

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PROGRAMME

Morning chairman: **John Kallaugher**

Partner, Latham & Watkins
Professor, University College London

08.15 Registration and coffee

09.00 Chairman's opening remarks

09.10 **The EC Guidance Paper – experiences one year on**

- Review of recent case law
- Has the Commission fully embraced an effects analysis?
- Current and future enforcement priorities
- Law and economics: an uneasy marriage

Robert O'Donoghue

Barrister, Brick Court Chambers

09.50 **The EU and US – what are the differences?**

- FTC and DOJ approaches to monopolisation
- Impending clash between the enforcers and the courts?
- Recent cases

Richard Parker

Partner, O'Melveny & Myers LLP

10.30 Coffee

10.50 **ROUNDTABLE DISCUSSION**

The morning speakers will be joined by senior officials from the European Commission and Federal Trade Commission

Nadia Calvino

Deputy Director General, DG Competition, European Commission

William E. Kovacic

Member, Federal Trade Commission

Comment: Derek Ridyard

Director, RBB Economics

James S. Venit

Partner, Skadden Arps Slate Meagher & Flom LLP

12.00 **What is happening at the national level?**

- Implementation of Article 102 guidance within the EU
- Are national courts moving towards a more effects-based approach (along Commission lines) or are they sticking with the traditional ECJ approach?
- Exclusionary and exploitative abuses

Anne Perrot

Vice President, Autorité de la Concurrence

Till Wiesner

Head of Unit, German and European Antitrust Law

Bundeskartellamt

Cavendish Elithorn

Policy Director, Office of Fair Trading

13.00 Lunch

Afternoon chairman: **Luc Gyselen**

Partner, Arnold & Porter LLP

In-depth analysis of three key topics

14.15 **Refusal to supply and deal**

A focus on the energy sector – access to production capacity

- Interplay of regulation and competition law: refusal of access to networks
- Refusal to supply: withdrawal of generation capacity
- Refusal to deal: foreclosure and balancing market

Thorsten Mäger

Partner, Hengeler Mueller, Düsseldorf

Cristina Caffarra

Vice President, Charles River Associates

15.15 **Abuse of IPRs – how far does Article 102 stretch?**

- Exploitative abuse: what price is a fair price? – *Rambus, Qualcomm*
- Bad but not abusive? – *AstraZeneca*
- Relevance of intention
- Ex post v ex ante solutions
- Lessons from the pharma inquiry

Lars Kjølbj

Partner, Howrey LLP

Thomas Janssens

Partner, Freshfields Bruckhaus Deringer LLP

16.15 Tea

16.35 **Pricing: What discounts may be offered to which customers?**

- Issues raised by the 'as efficient competitor' test
- Do rivals' own rebates policies matter for the analysis of a dominant firm's pricing practices?
- What is the potential impact of the concept of naked restrictions on the analytical framework for rebates? When does a payment to induce fidelity cease to be a rebate?
- What's the role of efficiencies in conditional rebates cases after *Intel*?
- How does the analytical framework for bundled discounts differ from the main rebates analysis?

Miguel de la Mano

Chief Economist's Office, DG Competition

European Commission

Frédéric Louis

Partner, Wilmer Cutler Pickering Hale & Dorr LLP

Comment: Hendrik Bourgeois

General Counsel, Europe, GE (General Electric Company)

17.35 Close of conference

Conference fees

Standard £650 + 21% TVA = £786.50

In-house lawyers and government agencies £550 + 21% TVA = £665.50

Early bird fee (before 31 December 2010)

Standard £550 + 21% TVA = £665.50

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Tuesday 9 February 2010

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It may be necessary for reasons beyond the control of the organisers to change the agenda, timing or the speakers.

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