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Practical cross-border insights into vertical agreements and dominant firms

Vertical Agreements and Dominant Firms 2023

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Q&A Chapters

North Macedonia


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1 General

1.1 What authorities or agencies investigate and enforce the laws governing vertical agreements and dominant firm conduct?

The investigation and enforcement of the laws concerning vertical agreements and dominant firm conduct in North Macedonia are performed by the Commission for Protection of Competition (the "Commission").

The Commission is especially competent to monitor and enforce application of the Law on Protection of Competition (Official Gazette of the Republic of Macedonia no. 145/2010 as amended from time to time; the "Competition Law").

1.2 What investigative powers do the responsible competition authorities have?

The Commission may request the undertakings to submit data regarding their economic and financial status, their business relations and connections, data on their statutes and decisions, and number and identity of the persons concerned by such decisions, as well as other necessary data.

Moreover, in case there is a justified suspicion that a certain undertaking owns documents or other objects or information that could be relevant to prove the existence of a misdemeanour, the Commission may order the said undertaking to provide authorised persons of the Commission with evidence on the spot. The Commission may schedule an oral hearing, if considered necessary for the purpose of determination of the facts.

1.3 Describe the steps in the process from the opening of an investigation to its resolution.

Investigation procedures concerning misdemeanours are conducted by the Misdemeanour Commission, which is a body that operates within the Commission and can be initiated:

- on the initiative of the Commission itself (*ex officio*);
- by a request of the Secretary General of the Commission; or
- by a request of a natural person or legal entity that has a legitimate interest in determining the existence of a misdemeanour.

The Misdemeanour Commission will initiate a misdemeanour procedure with a procedural order against which no appeal is allowed. However, legal action instituting an administrative dispute is allowed against the order.

In cases where a misdemeanour procedure has been initiated, the Misdemeanour Commission will conduct an evidence procedure and will determine the facts of the case.

For the purpose of determination of relevant facts, the Misdemeanour Commission may use its investigative powers and request the submission of data from the undertakings regarding their economic-financial condition, their business relations, data regarding their statutes and decisions, and the number and identity of the persons affected by such decisions, as well as other data necessary for conducting the procedure. A statement of determined relevant facts is delivered to all participants in the procedure.

After deciding upon the relevant facts of the case, the Misdemeanour Commission adopts a decision by which it determines whether the undertaking has or has not committed a misdemeanour, and stipulates other measures, if necessary.

The Misdemeanour Commission decision may be contested in an administrative dispute in front of the Administrative Court.

1.4 What remedies (e.g., fines, damages, injunctions, etc.) are available to enforcers?

The Commission is authorised to impose monetary fines to undertakings whose performance may distort and affect the competition on the relevant market.

Furthermore, the Commission for misdemeanour matters, in addition to the monetary fine, may impose on the legal person a temporary ban on the performance of a specific activity for a duration of three to 30 days and a ban on the performance of an occupation, activity or duty for a duration of three to 15 days.

1.5 How are those remedies determined and/or calculated?

When setting the fine, the Misdemeanour Commission especially takes into account the severity of the misdemeanour, the duration of the misdemeanour and the degree of distortion of competition and the effects caused by the misdemeanour.

The Commission for misdemeanour matters, when determining the fine, shall first determine a basic amount of the fine and shall then adjust it taking into consideration the mitigating or aggravating circumstances. The basic amount shall be calculated based on the value of the sales to which the misdemeanour refers. The basic amount of the fine may amount up to 30% of the revenue of the perpetrator of the misdemeanour generated by the activities/sales on the relevant market where the misdemeanour has been committed in the last complete business year. In cases where the misdemeanour has been committed during

several years, the basic amount of the fine is multiplied by the number of years over which the misdemeanour was committed.

Such determined amount is adjusted by taking into consideration the mitigating or aggravating circumstances, which are explicitly determined by the law.

The maximum amount of the fine shall not exceed 10% of the value of the total annual turnover earned in the last business year, calculated based on an absolute and nominal amount, for which the undertaking or association of undertakings has compiled an annual account.

1.6 Describe the process of negotiating commitments or other forms of voluntary resolution.

Following the initiation of a misdemeanour procedure, and until the final delivery of the statement of facts, the person against whom a procedure has been initiated may propose to the Misdemeanour Commission to take commitments by which the distortion of competition caused by its actions would be overcome. Commitments must be considered sufficient for overcoming the distortion of competition and confirmed by the Commission.

However, commitments to overcome the distortion of competition in case of a severe distortion of the competition on the relevant market are not permitted.

1.7 At a high level, how often are cases settled by voluntary resolution compared with adversarial litigation?

The Commission's practice does not show many cases settled by voluntary resolution.

1.8 Does the enforcer have to defend its claims in front of a legal tribunal or in other judicial proceedings? If so, what is the legal standard that applies to justify an enforcement action?

The decision of the Commission, by which misdemeanour liability is being determined, may be contested in front of the Administrative Court. The party to which the misdemeanour decision applies may contest the decision by submitting a lawsuit to the Administrative Court where the Commission acts as a defendant. The Administrative Court shall submit the lawsuit to the Commission and the Commission shall provide a response defending the grounds of the decision.

1.9 What is the appeals process?

An appeal is not allowed against Commission decisions, but the Commission decisions may be contested in front of the Administrative Court. The decision of the Administrative Court may be appealed to the Higher Administrative Court.

1.10 Are private rights of action available and, if so, how do they differ from government enforcement actions?

Private rights of action related to competition matters, such as claims for damage compensation, are allowed. Claims for damage compensation against the party that is breaking the completion rules may be submitted in front of the competent basic court and the process would be carried out as a standard litigation procedure in accordance with the rules set out in the Law on Litigation Procedure.

1.11 Describe any immunities, exemptions, or safe harbours that apply.

The Competition Law provides safe-harbour rules from the general prohibition of anticompetitive practice under certain conditions for:

(i) agreements, decisions of associations of undertakings and concerted practices that contribute to the improvement of the production or distribution of goods or services or to the promotion of technical or economic development, provided that the consumers have proportional benefit thereon;
(ii) minor agreements;
(iii) vertical agreements for exclusive right of distribution, selective right of distribution, exclusive right of purchasing and franchising;
(iv) horizontal agreements for research and development or specialisation;
(v) agreements for transfer of technology, licence or know-how;
(vi) agreements for distribution and repairing motor vehicles;
(vii) insurance agreements; and
(viii) agreements in the transport sector.

The Government of North Macedonia has adopted several bylaws, which prescribe detailed conditions for exemption of these types of agreements.

1.12 Does enforcement vary between industries or businesses?

There are no provisions in the applicable legislation that prescribe a special enforcement procedure for certain industries or businesses, except for the exemption of certain agreements in particular industries from the general prohibition of anticompetitive practice of the agreements (as specified above).

1.13 How do enforcers and courts take into consideration an industry's regulatory context when assessing competition concerns?

When assessing competition concerns, the Commission takes into consideration the need to maintain and develop effective competition on the market or a substantial part of it, and the market position of the concerned undertakings and their economic power (the alternative supply available to suppliers and consumers for the purpose of market supply, as well as their access to the offering markets, the legal and other barriers for entry into and exit from the market, the supply and demand trends for the relevant goods and/or services, the interests of the consumers and technological and economic development). The Commission considers the rules of doing business in each industry, defined in the special laws of each industry – especially the rules related to the possibilities for entering the particular industry market, or special rules related to the pricing of certain services, etc.

1.14 Describe how your jurisdiction's political environment may or may not affect antitrust enforcement.

The political environment generally should not affect antitrust enforcement; however, the policies of the Government may affect the competition and antitrust regulation (for example, one of the policy strategies of the Government of North Macedonia

(currently a non-EU member) to become a Member State of the EU is to continuously harmonise antitrust laws with EU legislation).

1.15 What are the current enforcement trends and priorities in your jurisdiction?

Primarily, Macedonian competition and antitrust enforcement trends follow the EU competition and antitrust regulation trends. Additionally, the creation of advanced mechanisms for monitoring and administrating competition and antitrust enforcement is one of the Commission's priorities.

1.16 Describe any notable recent legal developments in respect of, e.g., vertical agreements, dominant firms and/or vertical merger analysis.

The Competition Law and its bylaws as well as the Guidelines adopted by the Commission have not been amended recently. However, with a focus on aligning the local regulation with EU law, the Commission's agenda in the near future envisages the adoption and alignment of local regulation with the new Vertical Block Exemption Regulation (the "VBER") accompanied by the new Vertical Guidelines, adopted by the European Commission in 2022.

2 Vertical Agreements

2.1 At a high level, what is the level of concern over, and scrutiny given to, vertical agreements?

Vertical agreements are generally considered less restrictive compared to horizontal agreements, as vertical agreements under certain circumstances may have pro-competitive effects.

Vertical agreements have special treatment in the competition and antitrust regulation. The Competition Law recognises the block exemption of vertical agreements from the general prohibition of anticompetitive practices under certain conditions. More closely, the terms and conditions for exemption of the vertical agreements from the general competition rules are defined in the special bylaw for block exemption of certain types of vertical agreements adopted by the Government of North Macedonia.

2.2 What is the analysis to determine (a) whether there is an agreement, and (b) whether that agreement is vertical?

For the purpose of determination of the existence of an agreement, it is sufficient that the parties have expressed their joint intention to conduct themselves on the market in a specific way. The existence of a formal agreement itself is not necessary in order for an undertaking to have misdemeanour liability.

The form in which their joint intention is expressed is irrelevant as long as it constitutes a faithful expression of the parties' intention. In case there is no explicit formal agreement, the Commission will have to prove that a unilateral policy of one party receives the acquiescence of the other party.

An agreement is considered a vertical agreement if such agreement or concerted practice is entered into between two or more undertakings each of which operates, for the purposes of the agreement or the concerted practice, at a different level of the production or distribution chain, and relates to the conditions under which the parties may purchase, sell or resell certain goods or services.

2.3 What are the laws governing vertical agreements?

Vertical agreements are governed by the Competition Law and the Decree on Block Exemptions of Certain Categories of Vertical Agreements (Official Gazette of the Republic of Macedonia no. 42/12; the "Decree on Block Exemptions").

2.4 Are there any types of vertical agreements or restraints that are absolutely ("*per se*") protected? Are there any types of vertical agreements or restraints that are *per se* unlawful?

There are no vertical agreements that are *per se* protected. Vertical agreements for exclusive right of distribution, exclusive purchasing, franchising, distribution agreements of motor vehicles, agreements for transfer of technology, licence or know-how, agreements for distribution and repairing motor vehicles, insurance agreements and agreements in the transport sector are exempted from the general prohibition of anticompetitive practice; however, such exemption is not absolute – there are still rules with regard to restrictions and clauses which these agreements may not contain and which are considered unlawful *per se* (such as resale price-fixing and territorial restrictions).

2.5 What is the analytical framework for assessing vertical agreements?

According to the Competition Law, agreements and concerted practices regarding price-fixing, sharing product markets and limiting production or sales shall be prohibited as they restrict competition *per se*. The rule-of-reason analysis is applied to all types of vertical restraints, the analytical framework of which may be divided broadly into three steps:

- determination of whether the restraint in question falls within the ambit of the Competition Law (i.e., constitutes an agreement that has the purpose of restricting competition or which restricts or may restrict competition) – if so, further rule-of-reason analysis is required;
- determination of whether the restraint in question is subject to the general exceptions set forth in the Competition Law; and if not
- determination of whether the restraint in question is subject to the exemptions set forth in the Decree on Block Exemptions.

An agreement complying with the conditions of the rule of reason set out above shall be effective from the moment of conclusion thereof without any prior decision by the Commission. All vertical restraints that do not qualify for a block or individual exemption shall be prohibited and shall be void from the moment of conclusion thereof.

In the event of a dispute concerning compliance of the agreement with the provisions of a particular exemption, the burden of proof concerning compliance shall fall upon the party to the agreement benefitting from this exemption.

2.6 What is the analytical framework for defining a market in vertical agreement cases?

For the purpose of assessment of vertical agreements, a relevant market is considered the relevant product market and relevant geographical market.

Therefore, a relevant product market is a market of all goods and/or services deemed interchangeable or replaceable by the

consumer, taking into account the characteristics of the goods, their price and their intended use.

Furthermore, a relevant geographical market is the area in which the undertakings are involved in the supply and demand of goods and/or services, and in which the conditions for competition are sufficiently homogenous and can be distinguished from the neighbouring areas, taking into consideration the conditions for competition (which are considerably different in those areas).

The Commission has adopted guidance for the definition of the relevant market, which is aligned with the European Commission Notice on the definition of relevant market for the purposes of Community competition law (97/C 372/03).

2.7 How are vertical agreements analysed when one of the parties is vertically integrated into the same level as the other party (so-called "dual distribution")? Are these treated as vertical or horizontal agreements?

Agreements in which a contracting party of an agreement is vertically integrated into the same level of distribution of the other contracting party are considered vertical agreements.

If such agreements are concluded between competitors, such competitors do not benefit from the block exemption.

However, an exemption to the above is provided for vertical agreements where:

- the supplier is a manufacturer and a distributor of goods, while the buyer is a distributor and not a competing undertaking at the manufacturing level; or
- the supplier is a provider of services at several levels of trade, while the buyer provides its goods or services at the retail level and is not a competing undertaking at the level of trade where it purchases the contracted services.

2.8 What is the role of market share in reviewing a vertical agreement?

When reviewing vertical agreements, the Commission considers the market share of the parties of the agreement, especially when assessing whether such agreement falls under the block exemption of vertical agreements.

Thus, the exemptions of vertical agreements are applied under the condition that the market share held by the supplier does not exceed 30% of the relevant market on which it sells the contracted goods or services and the market share held by the buyer does not exceed 30% of the relevant market on which it purchases the contracted goods or services.

In case there is a multi-party vertical agreement in which an undertaking buys the contracted goods or services from one undertaking party to the agreement and sells the contracted goods or services to another undertaking party of the agreement, the market share of the first undertaking must respect the market share threshold provided, both as a buyer and a supplier, in order for the exemption to apply.

2.9 What is the role of economic analysis in assessing vertical agreements?

Economic analyses play an important role in assessing vertical agreements, namely an assessment of whether the block exemption shall be applicable to the vertical agreement, including an assessment on whether such agreement still produces objective economic benefits. The economic benefits of a vertical agreement must be assessed on a case-by-case basis.

2.10 What is the role of efficiencies in analysing vertical agreements?

Efficiencies are recognised as a parameter that the Commission needs to assess before making an ultimate assessment of whether the agreement is forbidden. In case the undertakings substantiate that likely efficiencies result from including the restriction in the agreement, this will require the Commission to effectively assess the likely negative impact on competition before making the ultimate assessment.

2.11 Are there any special rules for vertical agreements relating to intellectual property and, if so, how does the analysis of such rules differ?

Special rules for vertical agreements with regard to intellectual property agreements are applied, especially in cases where the vertical agreements contain provisions that relate to the assignment or use of intellectual property rights by the buyer, provided that those provisions do not constitute the primary object of such agreements and are directly related to the use, sale or resale of goods or services by the buyer or its customers.

The analysis of these agreements does not differ much from the assessment of other vertical agreements.

2.12 Does the enforcer have to demonstrate anticompetitive effects?

The enforcer has to assess and demonstrate the anticompetitive effects of a vertical agreement in cases where the restrictive practices do not qualify as hardcore restrictions.

2.13 Will enforcers or legal tribunals weigh the harm against potential benefits or efficiencies?

The benefits and efficiencies of certain vertical agreements against anticompetitive effects are taken into consideration when assessing whether the agreement is in the line with the mandatory competition and antitrust rules and its exemptions.

2.14 What other defences are available to allegations that a vertical agreement is anticompetitive?

Defences to an allegation that a vertical agreement is anticompetitive include individual assessment of the operation of the undertaking and proving that the concluded agreement is exempted from the application of the antitrust legislation.

This means that a vertical agreement must include production of objective economic benefits, the restrictions on competition must be indispensable to attain the efficiencies, consumers must receive a fair share of the efficiency gains, and the agreement must not afford the parties the possibility of eliminating competition in respect of a substantial part of the products concerned.

2.15 Have the enforcement authorities issued any formal guidelines regarding vertical agreements?

Yes; the Commission has adopted the Guidelines on Vertical Restraints, which are fully harmonised with the EU legislation.

2.16 How is resale price maintenance treated under the law?

Resale price maintenance is considered a rigorous practice and therefore any agreements that directly or indirectly fix the purchase or selling prices or any other trading conditions are considered prohibited by the law.

2.17 How do enforcers and courts examine exclusive dealing claims?

Exclusive dealing claims where both the supplier's and buyer's market share each do not exceed 30% is exempted from the application of the law, even if combined with other non-rigorous vertical restraints, such as a non-compete obligation limited to five years, quantity forcing or exclusive purchasing.

2.18 How do enforcers and courts examine tying/supplementary obligation claims?

Pursuant to the Guidelines on Vertical Restraints, tying is block-exempted when the market share of the supplier, on both the market of the tied product and the market of the tying product, and the market share of the buyer, on the relevant upstream markets, do not exceed 30%. It may be combined with other non-hard-core vertical restraints such as a non-compete obligation or quantity forcing in respect of the tying product, or exclusive sourcing.

The market position of the supplier on the market of the tying product is obviously of main importance to assess possible anti-competitive effects. Buying power is also relevant, as important buyers will not easily be forced to accept tying without obtaining at least part of the possible efficiencies. Tying not based on efficiency is therefore mainly a risk where buyers do not have significant buying power.

However, the effects of the tying obligations shall be assessed in each individual case in accordance with the rules set out in the Guidelines on Vertical Restraints.

2.19 How do enforcers and courts examine price discrimination claims?

There is a general rule that all agreements concluded between undertakings, decisions by associations of undertakings and concerted practices that have as their object or effect the distortion of competition shall be prohibited, and in particular, those which apply dissimilar conditions to equivalent or similar transactions with other trading parties, thereby placing them at a competitive disadvantage; thus, price discrimination may be considered a forbidden practice that causes anticompetitive effects (however, notwithstanding the aforementioned, each case must be assessed individually).

2.20 How do enforcers and courts examine loyalty discount claims?

Generally, loyalty discounts are not forbidden as long as their ultimate goal is to prevent competition, i.e., prevent the buyer/distributor from selling other brand products. Although a loyalty discount scheme is likely to be considered an indirect means of achieving a non-compete commitment, it could be argued that loyalty discount claims may have a positive effect for consumers in certain circumstances, thus loyalty bonus effects shall be assessed in each individual case (especially the market share of the parties in the agreement, their economic power, etc.).

2.21 How do enforcers and courts examine multi-product or "bundled" discount claims?

Bundling is mainly assessed in the same way as tying. Pursuant to the Guidelines on Vertical Restraints, "bundled" discount claims are block-exempted when the market share of the supplier, on both the market of the tied product and the market of the tying product, and the market share of the buyer, on the relevant upstream markets, do not exceed 30%.

2.22 What other types of vertical restraints are prohibited by the applicable laws?

The prohibited vertical restraints include: determination of sale prices; territory and customer sale restrictions; active or passive sale restriction to end-users by members of a selective distribution system operating at the same retail level of trade; cross-supplies restriction between distributors within a selective distribution system; and restriction agreed between a supplier of components and a buyer who sells spare parts to end-users or to repairers or other service providers not entrusted by the buyer with the repair or servicing of its goods.

Additionally, vertical agreements must not contain:

- a direct or indirect non-compete obligation concluded for an indefinite duration, whereupon the non-compete obligation is tacitly renewable beyond a period of five or deemed to have been concluded for an indefinite duration, or any direct or indirect non-compete obligation whose duration exceeds five years;
- a direct or indirect obligation causing the buyer, after termination of the agreement, to not manufacture, purchase, sell or resell goods or services (with certain exceptions); and
- a direct or indirect obligation causing the members of a selective distribution system to not sell the brands of particular competing suppliers.

2.23 How are MFNs treated under the law?

In the Guidelines on Vertical Restraints, MFN arrangements are not analysed as a stand-alone restriction, but as a means of reinforcing the effectiveness of resale price maintenance policies by reducing the buyer's incentive to lower the resale price. If they are used to create or facilitate resale price maintenance, MFN clauses may be considered as having the objective of restricting competition and may qualify as a hardcore restriction.

MFN clauses will generally not be considered anticompetitive but may restrict competition by their effects. Since it is not excluded that MFN clauses are also likely to have pro-competitive effects, their competitive analysis is ultimately factual and dependent on the sector and economic context in which they are implemented and shall be analysed separately in each individual case.

3 Dominant Firms

3.1 At a high level, what is the level of concern over, and scrutiny given to, unilateral conduct (e.g., abuse of dominance)?

Any abuse by one or more undertakings of a dominant position on the relevant market or a substantial part of it is prohibited by the Competition Law. Such abuse, may, in particular, consist of:

1) Directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions.

2) Limiting production, markets or technical development to the prejudice of consumers.
3) Applying different conditions to equivalent or similar legal transactions with other trading partners, thereby placing them in a position of competitive disadvantage.
4) Making the procedural order of agreements 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 agreements.
5) Unjustified refusal to deal or encouraging and requesting from other undertakings or association of undertakings not to purchase or sell goods and/or services to a certain undertaking, with an intention to harm that undertaking in a dishonest manner.
6) Unjustified refusal to allow another undertaking access to its own network or other infrastructure facilities for adequate remuneration, if without such access, as a result of legal or factual reasons, the other undertaking becomes unable to operate as a competitor on the relevant market.

The provisions of items (2) and (6) above shall not apply if the dominant undertaking proves that such concurrent usage of its network or its infrastructure facilities is not possible due to certain operational or other reasons, or due to certain justified reasons.

Abuse of dominant position cases have mainly occurred in the telecommunication market.

3.2 What are the laws governing dominant firms?

Dominant firm conduct is regulated by the Competition Law.

3.3 What is the analytical framework for defining a market in dominant firm cases?

The Competition Law does not provide special rules for defining a market in dominant firm cases, but the same rules for market definition shall apply in case of assessment agreements, concentrations and dominant firm conduct.

Therefore, a relevant product market shall be defined as the market of all goods and/or services deemed interchangeable or replaceable by the consumer, taking into account the characteristics of the goods, their price and their intended use.

Furthermore, a relevant geographical market is the area in which the undertakings are involved in the supply and demand of goods and/or services, in which the conditions for competition are sufficiently homogenous and can be distinguished from the neighbouring areas, taking into consideration the conditions for competition (which are considerably different in those areas).

The Commission's guidance for the definition of the relevant market, which is aligned with the European Commission Notice on the definition of relevant market for the purposes of Community competition law (97/C 372/03), shall be considered.

3.4 What is the market share threshold for enforcers or a court to consider a firm as dominant or a monopolist?

A firm is considered a dominant firm on the market if its share on the relevant market is more than 40%, unless the undertaking proves the opposite.

3.5 In general, what are the consequences of being adjudged "dominant" or a "monopolist"? Is dominance or monopoly illegal *per se* (or subject to regulation), or are there specific types of conduct that are prohibited?

The law does not explicitly prohibit holding the dominant position on the market, so it is not illegal but it is subject to regulation. 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:

1) Directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions.
2) Limiting production, markets or technical development to the prejudice of consumers.
3) Applying different conditions to equivalent or similar legal transactions with other trading partners, thereby placing them in a position of competitive disadvantage.
4) Making the procedural order of agreements 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 agreements.
5) Unjustified refusal to deal or encouraging and requesting from other undertakings or association of undertakings not to purchase or sell goods and/or services to a certain undertaking, with an intention to harm that undertaking in a dishonest manner.
6) Unjustified refusal to allow another undertaking access to its own network or other infrastructure facilities for adequate remuneration, if without such access, as a result of legal or factual reasons, the other undertaking becomes unable to operate as a competitor on the relevant market.

3.6 What is the role of economic analysis in assessing market dominance?

The legal presumption of having a dominant position is the market share of the company; however, economic analysis to assess market dominance also has an important role.

An enterprise has a dominant position on the relevant market if as a potential seller or buyer of a certain type of goods and/or services:

1) there are no competitors on the relevant market; or
2) compared to its competitors, it has a leading position on the relevant market, especially considering:
   - the market share and position;
   - the financial power;
   - the access to sources of supply or the market;
   - the connection with other enterprises;
   - the legal or factual obstacles to the entry of other enterprises in the market;
   - the ability to dictate market conditions given its supply or demand; and/or
   - the ability to exclude other competitors from the market by targeting other enterprises.

3.7 What is the role of market share in assessing market dominance?

When assessing market dominance, market share plays a crucial role, since market share is the first indication of holding a market dominant position.

3.8 What defences are available to allegations that a firm is abusing its dominance or market power?

A dominant firm can defend their behaviour by demonstrating that: the conduct is crucial to the realisation of efficiencies; the likely positive effects outweigh the negative effects on the competition and consumer benefits on the relevant market; or the conduct does not eliminate the competition.

3.9 What is the role of efficiencies in analysing dominant firm behaviour?

Efficiencies may have an impact on the ultimate assessment of the behaviour of the dominant firm as well as the negative consequences of such behaviour, which affects the level of the fine and measures that the Commission may impose on the dominant firm for its behaviour.

3.10 Do the governing laws apply to "collective" dominance?

"Collective" dominance is recognised by the Competition Law. It shall be presumed that two or more legally independent undertakings have a joint dominant position on a relevant market if they act or participate jointly on the relevant market.

3.11 How do the laws in your jurisdiction apply to dominant purchasers?

Dominant purchasers are not defined the Competition Law – the Competition Law does not differentiate between dominant purchasers and dominant suppliers, so the Competition Law would apply equally to both dominant suppliers and dominant purchasers.

3.12 What counts as abuse of dominance or exclusionary or anticompetitive conduct?

Abuse of dominance includes:

1) direct or indirect imposition of unfair purchase or selling prices;
2) limitation of the production, markets or technical development to the detriment of consumers;
3) application of different conditions for equivalent or similar legal activities with other commercial partners, thereby placing them in a less favourable competitive position;
4) making the conclusion of agreements subject to acceptance of additional obligations by the other contractual parties, which, by their nature or according to the commercial customs, are not connected with the subject of the agreement;
5) unjustified refusal to trade or encouraging and requesting from the other undertakings or associations of undertakings not to purchase or sell goods and/or services to a certain undertaking, with an intention to harm that undertaking in a dishonest manner; and
6) unjustified refusal to allow another undertaking access to its own network or other infrastructure facilities of another undertaking for an adequate compensation, provided that the other undertaking, without such concurrent use, due to legal or factual reasons, is hindered to act as a competitor on a particular relevant market.

3.13 What is the role of intellectual property in analysing dominant firm behaviour?

There is no existing practice of the Commission in cases where intellectual property is considered while analysing dominant firm behaviour.

3.14 Do enforcers and/or legal tribunals consider "direct effects" evidence of market power?

Although there is no practice of the Commission in cases where "direct effects" evidence of the market power is considered while analysing dominant firm behaviour, following European Commission practices and case law, the Commission would also consider "direct effects" evidence of market power.

3.15 How is "platform dominance" assessed in your jurisdiction?

The Competition Law and bylaws are silent on "platform dominance", thus in such case the Commission would follow the European Commission practices on similar matters.

3.16 Are the competition agencies in your jurisdiction doing anything special to try to regulate big tech platforms?

The Commission does not apply any special treatment in respect to big tech platforms.

3.17 Under what circumstances are refusals to deal considered anticompetitive?

The Competition Law provides that unjustified refusal to deal is one of the methods of a dominant firm to abuse its market position. For example, when a dominant firm deals with one company but refuses under the same terms to deal with another company because that company is doing business with the dominant firm's competitors, such behaviour of the dominant firm would harm the competition.

4 Miscellaneous

4.1 Please describe and comment on anything unique to your jurisdiction (or not covered above) with regard to vertical agreements and dominant firms.

North Macedonia as a candidate member of the EU is contentiously harmonising the Macedonian regulation with the EU regulation. The Commission has modest history and practice since its establishment, and in absence of local practice and case law, the Commission refers to European Commission practice, thus for every matter for which the local law is not explicit or there is no existing practice, it may be deemed that the Commission would act in the same manner and direction as the European Commission.

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