

Current developments under Article 102 TFEU and ECJ Decision no. C-439/08 Vlaamse federatie van verenigingen van Brood- en Banketbakkers, Ijsbereiders en Chocoladebewerkeres (VEBIC) VZW

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Abstract

Under EU Cartel law it is not prohibited the existence of a dominant market position, but the ECJ determines that an enterprise that has a dominant position in the market bears responsibility if through its conduct it does not reduce competition.

While the existence of a dominant position in itself is not forbidden, abuse of its position under Article 102 TFEU constitutes a violation of EU competition law.

In this sense, Article 102 TFEU contains a list of behaviors, which define an abuse of a dominant position. It's about:

- a. Direct or indirect liability of unreasonable purchase and sale prices or other business conditions;
- b. Restriction of production, taxation or technical development to the detriment of consumers;
- c. Using different terms for the same services versus trading partners, reducing competition;
- d. The condition included in the signing of the Contract, that the parties undertake additional services, which are not related to the purpose of concluding the contract.

In order to understand more clearly which ECJ conduct is not in accordance with Article 102 TFEU, several decisions should be mentioned: In the *Hoffman-La Roche* case, the ECJ defined the agreements as anti-competitive, which provide price reductions for regular customers, who bought all their vitamin needs from this firm with a dominant position in the market.¹ The *Michelin* pricing system was also judged by the ECJ as a violation of Article 102 TFEU, because traders bought at annual price reductions, which was dependent on achieving the sales goals and was profitable to force traders not to buy products from other competitors.² In the *Irish Sugar* case, the ECJ determined that price reduction agreements for regular customers are classified as a violation of Article 102 TFEU.³

In the *Microsoft* case certain behaviors of the dominant position of the enterprise were qualified as violation of Article 102 TFEU. This was on the one hand *Windows Media Player*, which *Microsoft* sold along with its *Windows* software, forcing and at the same time restricting the competition of other software in the field of Media and software.

In this context, the main objective of this article will be the analysis of the current jurisprudence of the ECJ under Article 102 TFEU.

Keywords: Competition, economy, law, Article 102 TFEU, ECJ.

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