



Commission seeks feedback on draft antitrust Guidelines on exclusionary abuses

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The European Commission has launched today a [public consultation](#) inviting all interested parties to comment on draft Guidelines on exclusionary abuses of dominance.

[Article 102](#) of the Treaty on the Functioning of the European Union ('TFEU') prohibits dominant companies from engaging in abusive behaviour, including behaviour that excludes competitors from the market. Examples of such exclusionary abuses of dominance include predatory pricing, margin squeeze, exclusive dealing and refusal to supply.

The enforcement of Article 102 TFEU is key to ensuring that competition works effectively, that all businesses get a fair chance to compete and that consumers can reap the benefits of competitive markets. The Commission has gained **extensive experience** in enforcing Article 102 TFEU, in particular with regard to exclusionary abuses. At the same time, Article 102 TFEU is the only area of European competition law where no Guidelines currently clarify its application.

The draft Guidelines published today aim at reflecting the Commission's interpretation of **the EU courts' case law** on exclusionary abuses and the Commission practice. This will help **increase legal certainty** to the benefit of consumers, and businesses, as well as national competition authorities and courts.

In particular, the draft Guidelines provide guidance on various key issues concerning exclusionary abuses by dominant companies, including:

- The **purpose of competition law enforcement** and the concept of consumer welfare under EU law, including in relation to exclusionary abuses.
- The main principles applicable to the assessment of **single and collective dominance**.
- The application of **general principles** to determine if a conduct by a dominant company is likely to constitute an abuse and, in particular, on the concepts of "**competition on the merits**" and "**exclusionary effects**".
- The **evidence necessary** to show that a conduct is capable of producing exclusionary effects. In particular, the draft Guidelines identify: (i) categories of conduct for which it is **necessary to demonstrate** the capability of producing exclusionary effects; (ii) categories of conduct that have a **high potential** to lead to exclusionary effects, and (iii) **naked restrictions**, which by their very nature lead to exclusionary effects.
- The **substantive legal standard** to establish a conduct's capability to produce exclusionary effects.
- The analytical framework applicable to **certain types of conduct** by dominant companies. The draft distinguishes between: (i) **conduct subject to a specific legal test** set out in EU case law (i.e. exclusive dealing, tying and bundling, refusal to supply, predatory pricing and margin squeeze); and (ii) **conduct not subject to a specific legal test** (i.e. conditional rebates, multi-product rebates, self-preferencing and access restrictions).
- The general principles applicable to the **assessment of objective justifications** that the dominant company may argue.

Next Steps

All interested parties can submit their comments on the draft Guidelines by 31 October 2024. More information including on how to submit a contribution is available [here](#).

The Commission is currently planning to finalise the draft Guidelines on Exclusionary Abuses on the basis of the comments received in this public consultation in the course of 2025.

Background Information

[Article 102](#) of the TFEU, which can also be applied by the national competition authorities and courts, prohibits the abuse of a dominant position that may affect trade within the EU and prevent or restrict competition. The implementation of this provision is defined in the [Regulation No 1/2003](#).

In its 2008 [Guidance on the Commission's enforcement priorities](#), the Commission set out its enforcement priorities with regard to exclusionary abuses of dominance. The 2008 Guidance contributed to promote an approach focused on the potential effects of alleged abusive conduct, through the analysis of market dynamics ("effects-based approach"). Since the adoption of the 2008 Guidance, the Court of Justice of the European Union has delivered 34 judgments on exclusionary abuses. This rich body of case law endorsed the effects-based approach to Article 102 TFEU promoted by the Commission and substantially clarified the scope of the rules.

In March 2023, the Commission launched a [Call for Evidence](#) seeking feedback on the adoption of Guidelines on exclusionary abuses of dominance. Stakeholders generally welcomed the initiative and called for clarity and legal certainty in the application of Article 102 TFEU to exclusionary conduct.

In parallel to the call for evidence, the Commission published a [Communication](#) (and [Annex](#)) amending its 2008 Guidance on enforcement priorities concerning exclusionary abuses. Following the adoption of the Guidelines, the Commission will withdraw the 2008 Guidance on enforcement priorities, as amended by the March 2023 Communication.

The Directorate-General for Competition also published in March 2023 a Policy Brief titled "[A dynamic and workable effects-based approach to Article 102 TFEU](#)" which further explains the background to the launch of the Guidelines initiative as well as the changes to the 2008 Guidance on enforcement priorities introduced in the Communication.

More information on this initiative can be found in the dedicated [webpage](#) of DG Competition, which contains a link to the draft Guidelines as well as instructions on how to submit observations.

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Quotes:

"Exclusionary abuses harm both businesses and consumers. They lead to higher prices, less innovation and poorer quality of goods and services. So the rules of the game need to be clear for our intervention against such abuses to be effective. Our draft guidelines seek to present a predictable, coherent and workable framework to assess abusive conduct. They reflect our interpretation of the EU case law and the precious experience gained through the enforcement of abuse rules. We encourage all interested parties to share their views."

Margrethe Vestager, Executive Vice-President in charge of competition policy - 04/07/2024

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