European Internal Market and Anti-Competitive Behaviours

European Institutions, Law and Market

Second Module

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“*The idea that competition is a good thing in itself, that it must be protected from private interference and the political power of States, that the invisible hand of the market is not enough to defend it and protect consumers, that social welfare, development, and innovation also depend on the dynamism of markets, are not absolute truths, but developments in economic, political and social thinking, which have converged with varying degrees of success in modern competition laws.*
As long as the market exist, the fight against distortions of competition will always seek a balance to adapt to the economic context.”

J.M. Keynes, “*The General Theory of Employment, Interest and Money*” (1936)

What is the European Internal Market?

Pursuant to Article 26(2) of the Treaty on the Functioning of the European Union "***The internal market*** *comprises an area without internal frontiers in which the* ***free movement of goods***, ***persons***, ***services*** *and* ***capital*** *is ensured in accordance with the provisions of the Treaties*."

- The **free movement of goods** means the absence between Member States of customs barriers, quantitative restrictions on trade and the establishment of a common external tariff for the Union.
- The **free movement of services** means the right to provide services in any Member State without discrimination.
- The **free movement of capital** means that money, investments and financial resources can move freely within the Member States without formal or economic customs barriers.
- The **free movement of persons** means the abolition of all customs barriers between Member States for EU citizens in transit and has enabled workers, whether employed or self-employed, to work in the territory of any Member State.

What is the European Internal Market?

The European Internal Market covers all **27 Member States**. In addition, some non-EU countries align their rules with those of the single market, thereby extending its effects beyond the EU's borders. These include the non-EU countries that are members of the European Economic Area: **Norway**, **Iceland** and **Liechtenstein**. Thanks to bilateral agreements with the EU, **Switzerland** also trades within the single market.

What is a Treaty?

A treaty is an international agreement between States.

- **Treaty on European Union** (**TEU**) and **Treaty on the Functioning of the European Union** (**TFEU**) represent the **foundations for the European Union legal system**, establish the Union objectives and its various institutional bodies, governing their procedures.

- **TEU** and **TFEU** are at the top of the hierarchy of norms and are considered the “primary” legislation or the “**constitutional law of the European Union**”. This means that they are the most important source of law in the EU legal system, from which all “secondary” legislation (regulations, directives, decisions) derives.

Treaty on European Union (TEU)

It establishes the fundamental principles, goals and institutional structure of the EU, defining the rules for foreign policy, common security and cooperation in justice and home affairs.

- **Article 3(3)** states that "***The Union establish an internal market***. *It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance*.".

Treaty on the Functioning of the European Union (TFEU)

While the TEU establishes the fundamental principles, values and institutional structure of the Union, the TFEU is more technical and operational in nature, regulating the practical functioning of the institutional bodies of the European Union.

- **Article 26(2)** states that "***The internal market*** *comprises* ***an area without internal frontiers*** *in which the* ***free movement*** *of* ***goods***, ***persons***, ***services*** *and* ***capital*** *is ensured in accordance with the provisions of the Treaties*."

- **Art. 101** states that "*1.* ***The following shall be prohibited as incompatible with the internal market****:* ***all agreements*** *between undertakings,* ***decisions*** *by associations of undertakings and* ***concerted practices*** *which may affect trade between Member States, and which have as their* ***object*** *or* ***effect*** *the* ***prevention***, ***restriction*** *or* ***distortion*** *of* ***competition within the internal market****, and in particular those which:*

Treaty on the Functioning of the European Union (TFEU)

*(a) directly or indirectly **fix** purchase or selling **prices** or any other **trading conditions**;*

*(b) **limit** or **control production**, **markets**, **technical development**, or **investment**;*

*(c) **share markets** or **sources of supply**;*

*(d) apply **dissimilar conditions to equivalent transactions with other trading parties**, thereby placing them at a competitive disadvantage;*

*(e) **make the conclusion of contracts 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 contracts.***

*2. **Any agreements or decisions prohibited pursuant to this Article shall be automatically void.***

Treaty on the Functioning of the European Union (TFEU)

*3. The **provisions of paragraph 1 may**, however, **be declared inapplicable** in the case of:*

- any agreement or category of agreements between undertakings,

- any decision or category of decisions by associations of undertakings,

- any concerted practice or category of concerted practices,

*which contributes **to improving the production** or **distribution** of **goods** or to **promoting technical** or **economic progress**, **while allowing consumers a fair share of the resulting benefit**, and which **does not**:*

*(a) impose on the undertakings concerned restrictions which **are not indispensable to the attainment of these objectives**;*

*(b) afford such undertakings the **possibility of eliminating competition in respect of a substantial part of the products in question**.*"

Treaty on the Functioning of the European Union (TFEU)

- **Article 102** states that “***Any abuse*** *by one or more undertakings* ***of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market*** *in so far as it may affect trade between Member States.*

Such abuse may, in particular, consist in:

(a) directly or indirectly ***imposing unfair purchase*** *or* ***selling prices*** *or other unfair trading conditions;*

(b) ***limiting production***, ***markets*** *or* ***technical development to the prejudice of consumers****;*

(c) ***applying dissimilar conditions to equivalent transactions with other trading parties****, thereby placing them at a competitive disadvantage;*

(d) ***making the conclusion of contracts 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 contracts***.”

What are the benefits of the European Internal Market?

The European Internal Market is a cornerstone of the European Union integration process, acting as a **catalyst for economic development**, **innovation** and **competitiveness**.

Since its official establishment, based on the fundamental principles of the four freedoms (goods, services, capital and people), it has generated significant economic benefits, including a **significant increase in intra-EU trade**, **greater choice for consumers** at **lower prices** and **high standards of quality** and **safety**.

It is estimated that, without the European Individual Market, European GDP would be around €1.2 billion, almost equivalent to the current GDP of Spain.

In short, the European Individual Market **functions as if it were a single economic territory**, **promoting economic growth**, **competitiveness** and **prosperity** for **all citizens** and **businesses** in the European Union.

To protect the European Internal Market, Articles 101 and 102 of the TFEU **prohibit any behaviour aimed at preventing**, **restricting** or **distorting competition**.

What is competition Law?

Competition law is the **set of rules governing the behaviour of companies in the market**, prohibiting anti-competitive behaviours.

- It is fundamental to the European internal market because it ensures **fair** and **effective competition**, preventing companies from distorting the European individual market.
- Without these rules, **the trade barriers eliminated by the Treaties could be recreated through anti-competitive private behaviour**.
- Competition law **protects consumers**, **promotes innovation**, **ensures fair prices** and **allows small businesses to compete**, thus achieving the fundamental objectives of **European integration** and **economic well-being**

What is competition Law?

Articles 101-109 TFEU and **Regulation (EC) n. 139/2004** form the core of competition law and cover four main areas:

- **1. Anti-competitive agreements**

Article 101 TFEU prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market. Such agreements are prohibited and automatically void, unless they generate market efficiencies falling within the scope of the exemptions provided for.

- **2. Abuse of dominant position**

Article 102 TFEU prohibits companies in a dominant position from abusing that economic power in the internal market or in a substantial part of it. Abuses include imposing unfair prices, limiting production or innovation, applying dissimilar conditions and binding contracts that harm

What is competition Law?

- **3. Merger control**

Regulation (EC) No 139/2004, regulates mergers and acquisitions that exceed certain turnover thresholds. The European Commission assesses whether such transactions create or strengthen dominant positions that significantly impede effective competition in the internal market, and may authorise, prohibit or approve them with conditions.

- **4. State aid**

Articles 107-109 TFEU prohibit state aid that distorts competition by selectively favouring certain undertakings or the production of certain goods, if it affects trade between Member States. There are exceptions for state aid if it can be shown to increase market efficiency.

What is an undertaking?

In competition law, the concept of undertaking has an **autonomous** and **functional meaning**, which differs from that used in commercial law.

- According to the established case law of the Court of Justice (CJEU, 6 October 2021, *Sumal SL* v. *Mercedes Benz Trucks España SL*, C-882/19) **an undertaking is any entity engaged in an economic activity**, i.e. any activity consisting in offering goods or services on the market.

In so doing, **competition law**, in targeting the activities of undertakings, **enshrines as the decisive criterion the existence of unity of conduct on the market**, **without allowing the formal separation between various companies that results from their separate legal personalities** (belonging, for example, to a group of companies) to preclude such unity for the purposes of the application of the competition rules.

Anti-Competitive agreements

The **anticompetitive agreements requires the participation of at least two distinct undertakings**, i.e. not belonging to the same corporate group or economic entity.

In order to ensure flexible application of the prohibition, capable of prohibiting any form of collusion that could alter the normal development of competition, **the regulatory framework does not strictly define the cases constituting an agreement**, limiting itself to mentioning three main forms:

i) **agreements**: any form of conscious cooperation between two or more undertakings with the aim of reducing uncertainty in their respective market behaviour;

ii) **decisions by associations**: any act capable of coordinating the actions of undertakings belonging to an association of undertakings;

iii) **concerted practices**: any behaviour by undertakings which, without agreement, makes it possible to share competitive risk in a conscious manner. This category includes all residual cases of collusion other than agreements and decisions by associations.

Anti-Competitive agreements

Depending on whether the undertakings participating in anti-competitive agreements are at the same level or at different levels of the production or distribution chain, the agreements may be **horizontal** or **vertical**.

- A typical example of the first category are **cartels**, i.e. horizontal agreements between competing companies aimed at: (i) price fixing, (ii) limiting production or distribution, or (iii) allocating customers, territories or tenders. Horizontal agreements also include the **exchange of information**, i.e. when companies exchange sensitive data and coordinate their conduct. To determine the relevance of the agreement, the following elements must be assessed: (i) the sensitivity of the information, (ii) the level of data aggregation, and (iii) the timeliness of the data.

Anti-Competitive agreements

- **Vertical agreements** refer to agreements between undertakings operating at different levels of the production/distribution chain of goods or services. Unlike horizontal agreements, **vertical agreements can generate economic efficiencies** (i.e. by facilitating access to new geographical markets or innovation in products and services).

In this regard, reference should be made to **EU Regulation No. 720/2022**, known as the **Vertical Block Exemption Regulation (VBER)**.

This regulation establishes that vertical agreements may benefit from an **automatic exemption** from the prohibition of agreements restricting competition, provided that **the market shares of the parties do not exceed 30% of the relevant market** and that they **do not contain hardcore restrictions** (i.e. resale price maintenance or prohibition of the use of online sales channels).

Anti-Competitive agreements

- There are also agreements of a **hybrid nature** (known as **hub and spoke agreements**) which arise when a third party facilitates the achievement of a collusive balance between undertakings operating in markets upstream (suppliers) or downstream (distributors) of the production/distribution chain, with respect to the market in which the third party operates.

Prohibited agreements are null and void and have no legal effect.

However, it should be noted that not all agreements restricting competition are prohibited. **An agreement may**, in fact, **be exempted from the prohibition if it contributes to improving the production or distribution of products or to promoting technical or economic progress**, **while allowing consumers a fair share of the resulting benefit and avoiding**:

a) imposing on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

b) giving such undertakings the power to eliminate competition in respect of a substantial part of the products in question

Abuse of dominant position

An undertaking is considered to be in a dominant position when it can restrict competition rather than being subject to it, as it is not influenced by the behaviour of competitors, customers or consumers.

The prohibition does not apply to the holding of a dominant position as such, nor to its acquisition on competitive grounds, but rather to **aggressive initiatives by a dominant undertaking against its counterparts** (competitors, suppliers, distributors, customers and consumers).

In order to ascertain the dominant position of a company, it is necessary to define the **relevant market** in which it operates, both in terms of products and geography.

Abuse of dominant position

- The main economic criterion for defining the **product market** is the **analysis of the substitutability** of the goods and services produced by the undertaking, from the point of view **demand** (existence of goods and services that consumers consider substitutable),

(i) **supply side** (existence of competitors capable of substituting the goods and services of the undertaking concerned) and

(ii) **potential competition** (possibility of new competitors entering the market offering products and services that consumers consider substitutable for those of the undertaking concerned).

- The **geographical market** represents a limited area in which undertakings offering a range of substitutable products and services operate in a competitive relationship that differs from that found in another geographical area.

Abuse of dominant position

Once the relevant market has been defined, the **market power** of the undertaking concerned must be analysed.

This can be understood as the **ability of an undertaking to raise prices**, **reduce output and still achieve the same profits**.

- The main elements to consider when analysing market power are:
  - (i) the **market share of the undertaking concerned**,
  - (ii) the **market shares of competing undertakings**,
  - (iii) the **existence of barriers to entry into the market**, and
  - (iv) the **purchasing power of customers** and **consumers**.

Abuse of dominant position

Abusive conduct can be divided into two broad categories:

- **1. Exclusionary abuse**: this occurs when a dominant undertaking adopts practices aimed at excluding or marginalising existing competitors or hindering the entry of new competitors into the market. The main types of conduct that fall into this category are listed below.

- **Predatory pricing**: when a dominant undertaking sets prices below market cost for a period of time sufficient to eliminate competitors.
- **Unjustified interruption or refusal of supply**: when, without objective justification, a dominant undertaking interrupts or prevents the supply of essential goods or services to competing undertakings.
- **Margin squeeze or margin restriction**: when a dominant undertaking, vertically integrated in upstream and downstream markets, reduces the price difference in both markets in order to prevent competing undertakings, which purchase products in the upstream market, from competing in the downstream market.

Abuse of dominant position

- **Loyalty discounts**: when a dominant undertaking offers discounts that are unsustainable for competing undertakings, making it uneconomical for customers to turn to the latter and thus obtaining exclusivity.
- **Tying practices**: when the dominant company makes the reduction in the price of a product or service conditional on the purchase of another product or service or imposes the purchase of a product or service only in conjunction with another.

Abuse of dominant position

- **2. Abuses of exploitation** occur when an undertaking exploits its dominant position to take advantage of customers or consumers. These practices are not necessarily aimed at excluding competitors, but rather at exploiting market power to obtain increased profits. The main cases that fall into this category are listed below.

- **Excessive pricing**: when a dominant undertaking imposes prices that are excessively high in relation to the economic value of the product, not basing them on costs and exploiting the lack of alternatives for consumers.
- **Price discrimination**: when a dominant undertaking imposes different and disadvantageous prices on one customer compared to those charged to another customer, without objective justification and creating a competitive imbalance between customers.

Role of EU Institutions

In the European system, three institutions perform complementary and fundamental functions to enforce competition in the internal market.

(i) **European Commission**: is the main administrative authority in the field of competition, as it has the exclusive power to enforce competition law. Its decisions may impose significant financial penalties, which can reach up to 10% of the global turnover of the undertaking involved.

(ii) **General Court of the European Union**: is the court of first instance for appeals against Commission decisions on antitrust matters. The Court may annul, confirm or amend the Commission's decisions, including the amount of the fines.

(iii) **Court of Justice of European Union**: it is the highest court, examining appeals against judgments of the General Court, and, following requests from judges in Member States, provides guidance on the interpretation of European law. Through its case law, the Court has developed fundamental principles of European competition law, ensuring uniform interpretation of the rules in all Member States.

The Trucks Case

The Trucks Case

The “**Trucks Case**” represents one of the most significant infringements ever committed in the European Internal Market.

It was a **horizontal agreement** (Article 101 TFEU) involving the **main European truck manufacturers** (MAN, DAF, DAIMLER, IVECO, SCANIA and VOLVO/RENAULT - “OEMs”) and lasted **from 1997 to 2011**.

The products concerned were **medium-duty** (6-16 tonnes) and **heavy-duty** (over 16 tonnes) **trucks**.

The infringement consisted of **exchanges of information between OEMs** concerning (i) **gross price lists for trucks**, and (ii) the **timing and passing-on to the final users of the costs of introducing the low-emission technologies** required by the EURO 3 and EURO 6 standards.

The Trucks Case

Through the contacts, **the OEMs exchanged highly sensitive information**, such as **prices**, **discounts** and **market shares**.

These activities constituted a form of coordination whereby manufacturers knowingly replaced practical cooperation with the risks of competition, refraining from determining their own commercial policy.

- **The process at the European institutions**:

On 20 September 2010, **MAN** applied for immunity ("**leniency applicant**"), **informing the European Commission that it was part of a horizontal agreement** and describing the infringement in which it had participated.

This triggered the Commission investigations into other truck OEMs. Subsequently, DAIMLER, DAF, IVECO and VOLVO / RENAULT admitted to having participated in the infringement reported by MAN and **applied to join the leniency programme**.

The Trucks Case

At the conclusion of the investigation, in 2014 the European Commission announced the penalties it would impose on the OEMs, and MAN, DAIMLER, DAF, IVECO and VOLVO / RENAULT opted for the **settlement procedure**.

The settlement procedure is a **simplified procedure that allows undertakes involved in an antitrust investigation to acknowledge their responsibility** in exchange for a reduction in the penalty.

As it is very difficult for antitrust authorities to identify cartels, if an undertakes is the first to admit to being part of a cartel, **it will benefit from a total exemption from the penalty**.

Settlement **speeds up the process**, **reduces administrative costs** and **provides legal certainty**. Undertakes submit a formal proposal acknowledging the facts and agreeing not to contest the decision. The Commission assesses whether the acknowledgement is complete and sincere and then adopts a simplified decision.

The Trucks Case

On **19 July 2016**, the **Commission adopted the settlement decision** in respect of these undertaking, imposing the following penalties:

- MAN was exempt from any penalties as it was a leniency applicant;
- **DAIMLER**: 1.008.766.000,00 €;
- **DAF**: 752.679.000,00 €;
- **VOLVO/RENAULT**: 670.448.000,00 €.
- **IVECO**: 494.606.000,00 €.

SCANIA, unlike the other OEMs, **decided not to submit a settlement proposal**, leading the Commission **to continue its investigation under the ordinary procedure**.

On **27 September 2017**, the Commission adopted a **separate decision**, imposing a penalty of **880.523.000.00 €**.

The Trucks Case

SCANIA decided to **challenge the European Commission Decision** by appealing to the General Court of the European Union.

In its judgment of **2 February 2022** (**T-799-17**), the **General Court dismissed Scania appeal and upheld the penalty**.

SCANIA **challenged the General Court judgment before the Court of Justice.**

On **1 February 2024** (**C-251/22**), definitively dismissed the appeal, **the Court of Justice fully confirming Scania liability and the penalty imposed**.

From the point of view of **public enforcement**, the “Trucks Case” has thus run its course, but from the point of view of **private enforcement**, **claims for damages by final users against OEMs** after purchasing products (truks) subject to the cartel **are still pending before the civil Courts** of the Member States.

The Coty Case

The Coty Case

The “**Coty Case**” concerns a **vertical agreement** (101 TFEU) involving **Coty Germany**, which **supplies luxury cosmetics** through a **selective distribution network**, and **Parfümerie Akzente**, which **distributes Coty luxury cosmetics** as an authorised retailer both in physical stores and online.

Selective distribution refers to a distribution system in which the **supplier undertakes to sell goods or services**, directly or indirectly, only **to distributors selected** on the basis of specific criteria and in which these **distributors undertake not to resell**, in the territory reserved by the supplier for that system, **those goods or services to unauthorised resellers**.

This system is designed to **protect the market level of the brand and product**, making them commercially available only under **certain protected conditions**.

The Coty Case

In this case, the selective distribution agreement stipulated that the distributor (**Parfümerie Akzente**) could not use a different name or use a third-party company to resell the luxury cosmetics supplied by Coty, that had not been authorised (**authorised reseller**).

In practice, **Coty wanted to prevent its resellers from selling perfumes on Amazon in a recognisable way**.

Coty Germany brought an action before the German national Court to ascertain the obligation to Parfumiere Akzende the prohibition on distributing products via the “amazon.de” platform.

With regard to the case in question, the **German national Court** has stayed the proceedings and **referred the matter to the Court of Justice for a preliminary ruling on interpretation**.

The Coty Case

- **The process at the European institutions**:

On **6 December 2017** (**C-230/16**), the Court has issued its decision.

- The Court recognised that selective distribution systems necessarily affect competition, **but do not fall within the prohibition of Article 101 TFEU if the choice of retailers is based on objective qualitative criteria**, established without distinction for all potential retailers and applied in a non-discriminatory manner, **and if the characteristics of the product require such a distribution network in order to preserve its quality**.

- The Court has stated that the **quality of luxury goods is not only determined by their material characteristics**, but also by the style and image of prestige that gives them an aura of luxury, which is an essential element of such goods, and that the organisation of a selective distribution system designed to ensure a presentation that enhances **the prestige of the goods at the point of sale may contribute to the reputation of the goods and thus to the preservation of their aura of luxury**.

The Coty Case

- So the Court ruled:

- 1. **Article 101 TFEU must be interpreted as meaning that a selective distribution system for luxury goods designed**, primarily, to preserve the luxury image of those goods **complies with that provision to the extent that resellers are chosen on the basis of objective criteria of a qualitative nature that are laid down uniformly for all potential resellers** and applied in a no**n-discriminatory** fashion and that the criteria laid down do not go beyond what is **necessary**.

- 2. **Article 101 TFEU must be interpreted as not precluding a contractual clause which prohibits authorised distributors in a selective distribution system for luxury goods designed, primarily, to preserve the luxury image of those goods from using, in a discernible manner, third-party platforms for the internet sale of the contract goods**, on condition that that clause has the objective of preserving the luxury image of those goods, that it is laid down uniformly and not applied in a discriminatory fashion, and that it is proportionate in the light of the objective pursued, these being matters to be determined by the referring court.

The Coty Case

- 3. **The prohibition imposed on the members of a selective distribution system for luxury goods**, which operate as distributors at the retail level of trade, **of making use, in a discernible manner, of third-party undertakings for internet sales does not constitute a restriction of customers, or a restriction of passive sales to end users**.

The Coty case teaches that competition law must balance the protection of competition with other market interests, such as the protection of luxury image.

A **vertical restriction may be legitimate** if it is **proportionate**, **non-discriminatory** and **necessary** to **preserve essential characteristics of the product**.

The Bronner Case

The Bronner Case

The “**Bronner Case**” concerns the case about the refusal of **Mediaprint**, a company in the printing sector which held a **dominant position in the Austrian newspaper market**, to **include in its home delivery system the distribution of a competing newspaper** published by another company (**Oscar Bonner**).

Oscar Bronner took legal action in the Austrian Civil Court **to obtain an injunction against Mediaprint to end its abuse of its dominant position by including its newspaper (Der Standard) into its home delivery system**, arguing that delivery by post was not an equivalent alternative to home delivery and that it was not at all profitable to set up its own home delivery network, given the small number of its subscribers.

Mediaprint responded by pointing out that the creation of its home delivery system had required a considerable investment and **that the fact that it held a dominant position could not oblige it to support competing companies**.

The Bronner Case

- **The process at the European institutions:**

With regard to the case in question, the **Austrian Civil Court** has stayed the proceedings and **referred the matter to the Court of Justice for a preliminary ruling on interpretation**.

Bronner invoked the **doctrine of "essential facilities"**, **arguing that as the owner of essential infrastructure** – in this case, the only economically viable nationwide home delivery system in Austria – Mediaprint **would be required to make its system accessible to competing companies on market terms and at market prices**.

On **26 November 1998** (**C-7/97**), the Court of Justice issued its decision.

The Bronner Case

1. The Court ruled that, in order to conclude that there has been an abuse (102 TFEU), **it would be necessary not only for the refusal to provide the home delivery service to eliminate all competition on the newspaper market, but also for that service to be, in itself, indispensable for the exercise of that activity**, in the sense that there is no other means of distribution that could actually or potentially replace the aforementioned home delivery system.

2. The Court noted that **other means of distributing newspapers, such as distribution by post and sale in shops and newsagents, even if possibly less advantageous, exist and are used by publishers**.

3. The Court emphasised that, in order to prove that the creation of a new home delivery system by Bronner does not constitute a realistic alternative and that, therefore, access to the Mediaprint system is indispensable, **Bronner would have had to prove that it is not economically viable to create a second home delivery system for the distribution of newspapers with a circulation comparable to that of newspapers distributed through the Mediaprint system**.

The Bronner Case

Therefore, **the Court ruled that the case in question did not constitute an abuse of a dominant position.**

The “Bronner Case” teaches that a **dominant undertake is not always obliged to share its infrastructure with competitors**.

Refusal of access constitutes abuse only in exceptional circumstances: (i) **when the infrastructure is truly indispensable** (**there are no realistic alternatives**), (ii) **when the refusal completely eliminates competition**, (iii) **when it is not objectively justified**, and (iv) **when it prevents the emergence of a new product demanded by consumers**.

The mere fact that it is more expensive for a competing undertaking to create its own infrastructure is not sufficient.

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