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Subject

Comments on the draft Guidelines on Exclusionary Abuses of Dominance

Dear Sir or Madam,

I am writing to comment on the draft Guidelines on Exclusionary Abuses of Dominance ("Draft") as part of the European Commission's public consultation.

I am an assistant professor at the Amsterdam Law School and a member of the Amsterdam Centre for European Law and Governance. I have received no funding from any interested party with regard to this submission or any related work.

The Draft in my opinion does not sufficiently acknowledge that Article 102 TFEU protects also workers. Namely, it fails to explicitly recognise that undertakings may commit an exclusionary abuse of dominance also on a labour market. Even more crucially, the Draft further fails to provide that in such cases there does not need to be any detriment to downstream consumers because EU competition law, including Article 102 TFEU, protects workers in their own right.

In particular, paragraph 5 of the Draft states the following: "Article 102 TFEU applies to all practices by dominant undertakings which may directly or indirectly harm the welfare of consumers". There are additional references to consumer harm throughout the Draft. Yet, there is no reference to worker harm.

This should be rectified in the final version of the Guidelines. Only then will undertakings be able to anticipate the Commission's intervention in labour markets under Article 102 TFEU and, thus, hopefully discouraged from abusing dominance on these markets.

My working paper, which discusses two reasons why EU competition law should recognise competitive harm suffered by workers as relevant in itself, can be found at <https://bit.ly/harmtoworkers>.

Faithfully,

Dr. Jan Broulik
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