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POSITION PAPER

„Draft opinion on the consultation of guidelines on the application of Article 102 of the Treaty on the Functioning of the European Union to cases of exclusionary abuse by dominant undertakings“

We appreciate the opportunity to comment on the consultation on the guidelines for the application of Article 102 of the Treaty on the Functioning of the European Union to cases of exclusionary abuse by dominant undertakings.

The Wirtschaftsverband Papierverarbeitung (WPV) e.V. is the German Branch Association of Paper Converting Industries representing about 700, mostly small and medium sized companies with nearly 80.000 employees.

Within this consultation, we would like to take a position on the multi-product rebates listed in the guidelines under 4.3.2. The ultimate goal of our statement is the legal link between the EU Green Deal and European competition policy.

Introduction

The guidelines describe this type of rebate in such a manner that dominant undertakings market two or more separate products together and offer the buyer a certain inducement, such as a rebate (“multi-product rebate”), compared to the case in which it purchases the products separately on a standalone basis. This practice is also known as “mixed bundling” or “bundled rebates.”

Practical problem

In our case, we are confronted with consumer paper products (subsequently abbreviated as “accessory consumer paper products”) made of paper that are provided to consumers as a bundle free of charge, i.e. without any contractual consideration or with a marginal consideration of € 0.05, when a main product that is not made of paper is purchased. The accessory consumer paper product is essential for the consumption of the main product. Without the accessory consumer paper product, the main product cannot be consumed at all. The manufacturers of the main product usually do not produce the accessory consumer paper products.

As a result, accessory consumer paper products from manufacturers that ONLY offer the accessory consumer paper products are no longer purchased. There is no incentive for consumers to purchase the accessory consumer paper products at the normal price if it is already included "free" as a bundle with the main product.

The guidelines affirm that a discount is abusive in any event if the bundle or package discount enables the dominant undertaking to transfer a dominant position from one market to one or more other markets and if this is likely to lead to exclusionary effects, for example by strengthening or protecting the dominant position.

This practice initiates the predatory competition described, which can also be verified by the sales figures of the accessory consumer paper products manufacturers, since consumers usually do not buy products that require payment if those products are already provided together with the main product for almost no charge. In addition, the market power is extended from the primary market of "consumer products" to another market of "accessory consumer paper products".

Solution by concatenating European competition policy with the EU Green Deal

This type of practice should be generally classified as abusive when it comes to certain raw materials from which the additional product is made, and these raw materials are already covered by the EU Green Deal.

This request is based on the following considerations:

- Paper prices have risen continuously in recent years and have been passed on to end consumers.
- Wood and paper made from it are valuable renewable economic goods.
- Renewable wood has been placed under the ambit of Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and export from the Union of certain raw materials and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (hereinafter referred to as "EUDR") as of 31 December 2024.
- The EUDR aims to minimize the Union's contribution to global deforestation and forest degradation and thus contribute to reducing global deforestation.
- The EUDR also aims to reduce the Union's contribution to greenhouse gas emissions and global biodiversity loss.
- Paper products that are bundled to consumers free of charge or almost free of charge counteracts and contradicts this objective.

For this reason, bundling practices in the form described above should always be considered abusive if the raw materials protected by the EU Green Deal are affected and the characteristics of abusiveness contained in the guidelines are fully met.

The EU Green Deal through the EUDR can only be implemented comprehensively and sustainably by legally linking the EU Green Deal with EU competition policy. For this reason, a raw material or material-related approach should be incorporated and taken into account in the European Commission's guidelines.

Thomas Pfeiffer
Managing Director

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