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COMMUNICATION FROM THE COMMISSION

**Amendments to the Communication from the Commission
Guidance on the Commission's enforcement priorities in applying Article 82 of the EC
Treaty to abusive exclusionary conduct by dominant undertakings**

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1. Over the years, the European Union (“EU”) rules on competition have been instrumental in protecting the competitive process within the EU’s internal market¹. The enforcement of those rules, namely Articles 101 and 102 of the Treaty on the Functioning of the European Union (‘TFEU’), ‘serves Europe well by contributing to a level playing field where markets serve consumers’². It can moreover contribute to achieving objectives that go beyond consumer welfare, such as plurality in a democratic society³.
2. Against this backdrop, it is of the utmost importance that the Union’s competition rules are applied vigorously and effectively. This is all the more necessary in times of economic hardship, and in view of increasing market concentration in various industries.
3. Article 102 TFEU prohibits the abuse of a dominant position by undertakings that operate in the Internal Market. It has been instrumental in disciplining the conduct of dominant undertakings, which have a special responsibility not to allow their behaviour to impair genuine, undistorted competition on the internal market⁴.
4. On 5 December 2008, the Commission adopted the Communication from the Commission – Guidance on the Commission’s enforcement priorities in applying Article 82 of the EC Treaty [now Article 102 TFEU] to abusive exclusionary conduct by dominant undertakings (‘Guidance on enforcement priorities’)⁵.
5. That Communication set out the Commission’s enforcement priorities with regard to exclusionary abuses of dominance in order to provide greater clarity and predictability as regards the Commission’s general framework of analysis in determining whether to pursue as a matter of priority certain cases of exclusionary conduct⁶. The Guidance on enforcement priorities contributed to fostering an enforcement of Article 102 TFEU focussed on the

¹ Competition law is one of the components for the achievement of the internal market, which ‘includes a system ensuring that competition is not distorted’, see Protocol 27 to the Treaty on the European Union.

² See Commission Communication, Shaping Europe’s digital future, COM(2020) 67 final, p. 8.

³ Judgment of 14 September 2022, *Google and Alphabet v Commission (Google Android)*, Case T-604/18, EU:T:2022:541, paragraph 1028.

⁴ Judgment of 6 September 2017, *Intel v Commission*, Case C-413/14 P, EU:C:2017:632, paragraph 135 and case law cited; judgment of 19 January 2023, *Unilever Italia Mkt.Operations Srl v Autorita Garante della Concorrenza e del Mercato*, Case C-680/20, EU:C:2023:33, paragraphs 28 and 38.

⁵ OJ C 45, 24.2.2009, p. 7-20.

⁶ Guidance on enforcement priorities, paragraph 2.

capability of a given conduct to harm competition, through the analysis of market dynamics, which has been described as the effects-based approach⁷.

6. The Guidance on enforcement priorities, however, did not constitute a statement of the law and did not provide an interpretation of the notion of abuse of a dominant position, but merely set out the Commission's approach as to the choice of cases that it intends to pursue as a matter of priority⁸.
7. The Commission's enforcement priorities have evolved over time, thanks to the experience gained through the Commission's practice which took into account the evolution of the case law of the Union Courts⁹, as well as market developments. Notably, the case law of the Union Courts has confirmed an effects-based approach to Article 102 TFEU as well as clarified the meaning and scope of certain concepts included in the Guidance on enforcement priorities.
8. In light of those developments, this Communication amends parts of the Guidance on enforcement priorities that no longer reflect the Commission's approach in determining whether to pursue certain cases as a matter of priority. The amendments are done in accordance with the principle of good administration and with a view to enhancing transparency on the principles underpinning the Commission's enforcement action.
9. The amendments to the Guidance on enforcement priorities are listed in the Annex to this Communication.

⁷ See press release of 3 December 2008, Antitrust: consumer welfare at heart of Commission fight against abuses by dominant undertakings, IP/08/1877.

⁸ Judgment of 6 October 2015, *Post Danmark*, C-23/14, EU:C:2015:651, paragraph 52.

⁹ Since the adoption of the Guidance on enforcement priorities, the Commission has adopted 27 decisions based on Article 102 TFEU (relating to exclusionary conduct), and the Union courts have issued 32 judgments.