

Abuse of a dominant position

– HOW TO ACT WHEN IN A DOMINANT POSITION?

Competition law prohibits abusive behaviour by companies in a dominant market position.

A dominant position is not defined merely by market share, but by classification as a market leader. Typically, a company is considered to hold a dominant position if it has a market share of more than 40%, but even a market share of 15% may be considered dominant if it is the largest player in a fragmented market. Determining the market dominance of any given company requires detailed and in-depth analysis in close collaboration with the Legal Department.

It is not illegal to be in a dominant position, but it is illegal to abuse one's market power in order to prevent or restrict competition.

Behavior considered lawful for a company not in a dominant position may be illegal when carried out by a company in a dominant market position.

– DO

✓ – Refuse to sell to a customer if you have an objective and justified reason for the refusal.

– DON'T

✗ – Offer loyalty rebates which put pressure on the customer to purchase products

✗ – Use “tying” sales, i.e. the practice of selling one product only under the condition that the buyer purchases another product

✗ – Offer unequal service to similar customers with no objective justifications

✗ – Impose obligations of exclusivity on suppliers and customers.