

Italy

Predatory Pricing

Analysis (elements and evidence)

1. Please Provide the main relevant texts (in English if available) of your jurisdiction's law and guidelines on predatory pricing.

In Italy, abuse of dominance through predatory pricing is prohibited by the Competition Act 1990. Pursuant to article 3 of the Act, which is modelled upon the corresponding provision in article 82 of the EU Treaty

“the abuse by one or more undertakings of a dominant position within the domestic market or in a substantial part of it is prohibited. It is also prohibited:

a) directly or indirectly to impose unfair purchase or selling prices or other unfair contractual conditions;

b) to limit or restrict production, market outlets or market access, investment, technical development or technological progress;

c) to apply to other trading partners objectively dissimilar conditions for equivalent transactions, thereby placing them at an unjustifiable competitive disadvantage;

d) to 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.”

Moreover, article 82 EC is directly applicable in Italy.

2. Please list your jurisdiction's criteria for an abuse of dominance/monopolization based on predatory pricing.

According to the practice of the Italian Competition Authorities a predatory pricing strategy can be deemed abusive when three conditions are met:

- a) the undertaking concerned holds a dominant position on the market;
- b) its pricing behaviour can exclude an as-efficient competitor;
- c) consumers will be worse off, since the dominant firm will be able to recoup its losses through higher prices.

3. Please explain the circumstances under which a firm's pricing is, or may be, considered “predatory” in your jurisdiction, by responding to the following questions:

a) As part of your analysis, does the price have to be below one or more measures of cost? (Yes/No)

Yes.

i) If yes, please identify which of the following measures are used, as applicable:

Below marginal cost: n/a

Below average variable cost: Average variable costs of the dominant firm are used as the standard benchmark for a finding of predation.

Below average avoidable cost: n/a

Below average long run incremental cost: In some cases, it may be more appropriate to make reference to the notion of incremental costs, i.e. the costs which are specifically incurred for the incremental production. Pricing below long run incremental costs (but above short term incremental costs) may be considered predatory only in the light of the analysis of the specific economic context where the alleged predatory strategy takes place.

Below average total cost: Pricing below average total costs (but above average variable costs) will only be considered predatory in the light of an overall assessment of the firm's conduct.

Other:

Below average short run incremental cost: Whenever reference is made to incremental costs, pricing below short term incremental costs will be considered predatory.

b) For each cost measure employed, please provide the definition of the measure used in your jurisdiction.

Average variable cost: The unit cost of producing a good or service, taking into account the costs of all variable inputs but not the costs of any fixed inputs.

Average long run incremental cost: The unit cost of producing the allegedly predatory increment of output whenever such costs were incurred.

Average total cost: The unit cost incurred to produce a good or service.

Average short run incremental cost: The unit cost incurred to produce the alleged predatory increment of output, excluding any non-recoverable costs incurred before the onset of the allegedly predatory behaviour.

c) Is the same cost measure applied in all cases? (Yes/No) No.

i) If different cost measures can be applied, for example on the basis of industry, please explain and provide examples, as available.

In accordance with the case law of the European Court of Justice, the Italian Competition Authority has relied upon the Areeda-Turner test, based upon average variable costs. However, in the case *Diano/Tourist Ferry Boat-Caronte Shipping-Navigazione Generale Italiana* the Authority adopted an approach based upon average long term incremental costs. The Authority acknowledged that for some industries where competition occurs only at the margin such cost measure may prove more appropriate than average total costs.

ii) If more than one cost measure can be applied in any individual case, please explain why and whether, in practice, this has raised issues.

See question 3.a.i

d) If price must be shown to be below cost, for which of the dominant firm's sales must this be shown?

In principle, the methodology followed by the Authority compares prices charged and costs incurred for all of the dominant firm's sales. However, one cannot exclude that an exclusionary strategy is implemented by pricing marginal units below cost, while recoupment occurs at the same time through overpricing the rest of the dominant firm's sales (see the case *Diano/Tourist Ferry Boat-Caronte Shipping-Navigazione Generale Italiana*).

i) Is the only relevant comparison between the cost measure and the dominant firm's average price for all of its sales in the relevant market? (Yes/No)

See above.

e) Could a firm's price above average total cost ever be found to be predatory? (Yes/No)

No (see case *Consorzio Risposta/Ente Poste Italiane*).

f) If prices do not have to be below a cost benchmark to be considered predatory, please explain the circumstances under which the firm's prices are considered predatory.

n/a.

4. To be unlawful, must the alleged predatory pricing occur in the market in which the firm holds a dominant position/substantial market power? (Yes/No)

In principle, the predatory strategy should occur in the dominated market. However, deliberately low pricing in a downstream non-dominated market may aim at the exclusion of competitors in the dominated market through forcing customers to deal exclusively with the dominant undertaking under the threat of bankruptcy (see case *Tekal/Italcementi*): such cases are not considered as predatory pricing cases for the purposes of this questionnaire.

5. Apart from the cost criteria referenced in question 3 above, must other objective criteria, such as the duration or continuity of the pricing behaviour, be demonstrated for a finding of liability under a predatory pricing theory? (Yes/No)

A finding of predatory pricing rests exclusively on the capacity to determine market foreclosure, resulting in consumer detriment.

a) If so, please explain. For example, if the behaviour must be sustained over a certain time period, why, and for what period?

n/a.

6. On what type of evidence do you rely to prove predatory pricing? Please explain, including examples as appropriate.

a) Are cost data used? (Yes/No)

Yes. Since prices have to be below a cost benchmark in order to be considered predatory, cost data are the leading evidence in predatory pricing cases.

i) If so, are cost data from the firm used? (Yes/No)

Yes. The legal test rests on the incumbent's cost data.

b) Are there circumstances when cost data of other firms can be used? (Yes/No)

No.

c) What other data or information is used, if any? Please provide examples as relevant.

n/a.

7. Does pricing below a particular cost benchmark create a presumption of predatory pricing? (Yes/No)

Yes. If the incumbent firm prices under its average variable/short run incremental cost then there is a presumption of predatory pricing.

a) If yes, is this presumption rebuttable or irrebuttable? Please explain.

Pricing below the relevant cost measure does not *per se* amount to a finding of abusive conduct. A level of price which could exclude an as-efficient competitor will only be considered abusive when consumers will be worse off, since the dominant firm is able to recoup its losses through higher prices.

8. Is there a “safe harbour” from a finding of predatory pricing for pricing above a particular cost benchmark? (Yes/No)

Yes.

a) If yes, please explain, including the terms of the safe harbour.

In the case *Consorzio Risposta/Ente Poste Italiane* the Competition Authority held that prices above average total costs cannot be considered predatory. Furthermore, in the case *Diano/Tourist Ferry Boat-Caronte Shipping-Navigazione Generale Italiana* the Authority held that prices above long run incremental costs cannot be considered predatory.

9. Is recoupment (obtaining additional profits that more than offset profit sacrifices stemming from predatory pricing) required for a finding of liability under predatory pricing rules in your jurisdiction? (Yes/No)

Yes. Since the effect-based approach pursued by the Italian Authority is hinged upon the overall net impact of the investigated practice on consumer welfare, the ability of the dominant form to recover the losses associated with the predatory strategy is crucial to establish an infringement.

However, in earlier decisions, administrative courts were ready to find an abuse merely on the basis of pricing below the relevant cost measure, without considering the actual possibility to recoup.

If so:

a) Is this assessment conducted separately from the analysis of the firm’s market power and the predation? (Yes/No)

Yes, but recoupment can be proved through truncated evidence (e.g. presumption that recoupment could take place in stable quasi-monopoly situations).

b) What factors are employed in assessing recoupment in your jurisdiction?

The key element is the likelihood that recoupment will occur in the aftermath of a successful predatory strategy. Financial resources necessary to subsidize the short term losses caused by the exclusionary behaviour, as well as the presence of significant entry barriers are the factors most commonly referred in appraising such probability.

c) Is there a specific recoupment calculation or amount to be shown? (Yes/No)

No.

d) Is there a relevant time period for recoupment? (Yes/No)

No.

e) Is it possible for recoupment to occur in a market different than the one in which the predatory pricing took place? (Yes/No)

No. However, one cannot exclude that some complex exclusionary strategies may involve subsidising deliberately low pricing through additional profits in other markets. These cases are not treated as predation cases in our experience.

f) What degree of likelihood of recoupment is required (e.g., possibility or probability)?

The Authority looks at the *probability* of recoupment as the benchmark for establishing the infringement. There is scant indication in the case law as to what level of probability would be considered relevant.

i) Please provide examples of the recoupment standard of likelihood employed as part of your recoupment assessment.

In the case *Diano/Tourist Ferry Boat-Caronte Shipping-Navigazione Generale Italiana* the Authority held that “th[is] pricing strategy allows the incumbent to establish an aggressive reputation, deterring other potential entrants in the long run [emphasis added]. [...] Once the new entrant has been excluded or marginalised – in the light of the established reputation as an aggressive incumbent – the dominant undertaking will be able to increase prices, thus offsetting the economic losses incurred”.

10. Is the firm’s intent relevant in predatory pricing cases? (Yes/No)

No. The Authority has adopted an effect-based approach, whereby the conduct of the dominant firm was assessed with a view to establishing its exclusionary impact and its adverse consequences on consumer welfare. The intention to exclude was only relevant for the quantification of applicable fines.

a) If so, please describe the relevant type(s) of intent, and the evidence used to show the required intent, providing available examples.

n/a

b) If objective conditions for predatory pricing – for example, pricing exceeding a certain cost benchmark or recoupment – are not demonstrated, does intent matter? (Yes/No)

No.

11. In addition to proving below-cost pricing, must effects, such as market foreclosure or consumer harm, be demonstrated to establish liability? (Yes/No)

Yes. However, although the observation of actual effects can reinforce a finding of predation, a case can be based on the likelihood of such effects flowing from the predatory strategy pursued by the dominant firm.

Therefore, it is not necessary for exclusion of the competitor to actually take place, provided it can be shown that the pricing behaviour under scrutiny is capable of excluding an as-efficient competitor and harm consumers.

a) If yes, please explain the element assessed (e.g., exit or delayed entry of competitors, price increases, prevention or delay of price decreases) and the types of evidence required to do so.

All these elements might be taken into account by the Italian Authority.

Justifications and defences

12. What type of justification or defences, if any, are permitted for predatory pricing, e.g., an efficiency, meeting competition or objective necessity defence? Please explain and provide examples, as relevant.

Efficiencies are taken into account by the Italian Authority in abuse of dominance cases, provided they result in consumer welfare increases. Whenever the overall net effect of the alleged abusive practice on consumer welfare is positive, the practice will not be prohibited pursuant to article 3 of the Competition Act.

Objective necessity can be invoked by the dominant undertaking, though this has never happened in practice. It is arguable that this would exclude any liability flowing from the infringement, pursuant to the general principles of administrative law.

Enforcement

13. Please provide the following information for the past ten years:

a) The number of predatory pricing cases your agency reviewed

Over the past ten years the Authority reviewed two cases about predatory pricing.

b) The number of these cases that resulted in (i) an agency decision that the conduct violates antitrust rules; (ii) a settlement with relief.

i) The Authority found a violation of competition law in one predatory pricing case, *Diano/Tourist Ferry Boat-Caronte Shipping-Navigazione Generale Italiana*.

ii) No predatory pricing resulted in a settlement with relief in Italian case law.

c) The number of agency decision issued, if any, that held that the practice did not violate your jurisdiction's predatory pricing rules (i.e., "clearance decisions")

In the case *Consorzio Risposta/Ente Poste Italiane* the Authority found that the incumbent was not pricing under its average total cost.

d) Each of the number of agency decisions or settlements that were (i) challenged in court and, of those, either (ii) overturned by court decision or (iii) confirmed by court decision.

(i) The case *Diano/Tourist Ferry Boat-Caronte Shipping-Navigazione Generale Italiana* was challenged in court and was upheld by the Administrative Court of first instance (Tribunale Amministrativo Regionale Lazio)

14. Does your jurisdiction allow private cases challenging predatory pricing?

Yes.

15. Is predatory pricing a civil and/or criminal violation of your jurisdiction's antitrust laws?

All competition infringement with the exception of bid rigging are civil violations in our jurisdiction.

16. As relevant, please provide a short English summary of the leading predatory pricing decisions/cases in your jurisdiction, including information on the method used to calculate costs, to the extent applicable, and, if possible, a link to the English translation, an executive summary or press release of the case.

In the case *Diano/Tourist Ferry Boat-Caronte Shipping-Navigazione Generale Italiana* the incumbent reacted to the entry of a competitor in the market of transport by ferry over the Messina Strait by scheduling additional shipping services, at a price below its own costs level. The Authority compared the prices charged by the dominant undertaking for its additional transport services with its average long run incremental costs and its average short run incremental costs. The price turned out to be below both the relevant costs measures.

The Authority found that such pricing conduct resulted in the exclusion of the new entrant, while the incumbent established an aggressive reputation capable of deterring potential entrants in the long run. Since barriers to entry were sufficiently high to allow the dominant firm to recoup its losses, the Authority held that the incumbent had infringed article 3 of the Competition Act 1990 and imposed a fine of approximately €2.3 million.

17. Please provide any additional comments that you would like to make on your experience with predatory pricing rules and their enforcement on your jurisdiction, including, as appropriate but not limited to:

a) Whether there have there been or you expect there to be major developments or significant changes in the criteria by which you assess predatory pricing, explaining these developments as relevant.

b) Whether there are significant policy and/or practical considerations that may lead to greater or lesser agency enforcement against predatory pricing pursuant to unilateral conduct rules in your jurisdiction, e.g., concern with the risks of false positives/false negatives, the existence of related laws such as general ban on below-cost pricing, limited evidence of consumer harm, and/or difficulties in obtaining reliable cost data (please provide explanation as relevant).

n/a

Exclusive Dealing/Single Branding

This questionnaire seeks information on the analysis and treatment of exclusive dealing (referred to as single branding in some jurisdictions) by ICN member competition authorities. For purposes of this questionnaire, we refer to “exclusive dealing” and “single branding” as conduct that requires or induces customers or suppliers to deal solely or predominantly with that firm. Nevertheless, this questionnaire does not cover tying, bundling, loyalty discounts, rebates or related practices, which your responses should therefore not address. Unless otherwise stated, the questions concern conduct by a dominant firm or firm with significant market power.

Respondents should feel free not to answer questions concerning aspects of your law or policy that are not well developed. Answers should be based on agency practice, legal guidelines, relevant case law, etc., rather than speculation.

Legal Basis and Specific Elements

- 1. Please provide the main relevant texts (in English if available) of your jurisdiction’s laws and guidelines on exclusive dealing/single branding.**

In Italy exclusive dealing falls under article 3 of the Competition Act 287/1990. Pursuant to this article:

“the abuse by one or more undertakings of a dominant position within the domestic market or in a substantial part of it is prohibited. It is also prohibited:

- a) directly or indirectly to impose unfair purchase or selling prices or other unfair contractual conditions;
- b) to limit or restrict production, market outlets or market access, investment, technical development or technological progress;
- c) to apply to other trading partners objectively dissimilar conditions for equivalent transactions, thereby placing them at an unjustifiable competitive disadvantage;
- d) to 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.”

In particular, exclusive dealing falls within the provision of article 3 b).

Moreover, Article 82 of the EC Treaty is directly applicable in Italy.

2. Please list your jurisdiction's criteria for an abuse of dominance/monopolization based on exclusive dealing.

First of all According to the practice of the Italian Competition Authority exclusive dealing can be deemed abusive when the undertaking concerned holds a dominant position.

The Authority will then assess whether the exclusive arrangements, according to their scope and duration, affect effective competition through the exclusion of actual competitors (of the dominant firm) or foreclose entry of new competitors and whether, as a result of the exclusion/foreclosure, the dominant firm will be able to raise prices to the detriment of consumers.

Exclusive Purchasing and Supply Arrangements

3. How does your jurisdiction define single branding or exclusive dealing? For example: Must a firm require that all purchases come from it or that all sales go to it? Can something less than “all purchases” or “all sales” be considered single branding or exclusive dealing? Please specify (providing actual percentages, as relevant).

Exclusive dealing corresponds to a situation in which a firm imposes a significant restriction on the freedom to choose with whom its customers can deal, such that competitors are excluded. The restriction is not necessarily associated with “all” purchases or “all” sales. The assessment takes into account the exclusionary effect of the conduct. In the case *Comportamenti abusivi di Telecom Italia* the dominant firm granted advantageous conditions to customers dependent on the customer's ability to purchase an amount of services at least equal to that bought over the previous year, when it had a monopoly position on the market under investigation. The Authority considered such a practice as exclusionary because of its ability to impose *de facto* an exclusive dealing to customers in a newly liberalized market.

4. Is the duration of the arrangement relevant to your assessment? Yes/No

Yes. The duration of the alleged abusive conduct is an important element of assessment of exclusionary practices. It has always been taken into account in the practice of the Authority on exclusive dealing cases.

a. If so, please explain how and why, providing examples.

Exclusive dealing is not *per se* illegal; it is sometimes justifiable or even necessary for the industry achieving a high level of investment. However the market foreclosure effect increases with the exclusivity's duration. The Italian Authority, consistently with the principles on competition law enforcement developed by the European Court of Justice, held that the exclusionary clause turns to be an infringement of the Competition Act whenever its requirements, including its duration among others, are disproportionate to ensure a fair return on such welfare improving investment.

The point emerges case law: in the case *Stream/Telepiù Telepiù*, the incumbent in the pay-tv market, conditioned new contracts with the most popular soccer teams to an exclusivity duration of up to six years, so altering the customary practice in sport broadcasting rights dealing, when a new competitor was entering the market.

5. Must the firm's use of such arrangements cover a substantial portion of the market? Yes/No

Yes. The incumbent must be able to impose the exclusivity on a portion of the market sufficiently wide for foreclosing it. Since, depending on the market characteristics, the concept of a "substantial" portion of the market can assume different meanings, the analysis has to be conducted on a case by case basis.

6. Does it matter whether the arrangement was requested by the non-dominant customer or supplier? Yes/No

In its case law the Authority has never taken into account the fact that the arrangement was requested by the non-dominant party.

7. Might otherwise legal exclusive dealing/single branding arrangements be deemed abusive if they contain other provisions, e.g., an "English Clause" (requiring e.g., the customer to report any better offers to the supplier, and prohibiting the customer from accepting the offer unless the supplier does not match it), rights of first refusal (right of, e.g., the supplier to enter into an agreement with the customer according to specified terms, before the customer is entitled to enter into an agreement with a third party)? Yes/No

Yes.

a. If so, please explain and provide examples.

The analysis of exclusive dealing cases is a case by case, effect based one. In order to assess the abusive nature of the conduct what matters is not the legal form of the exclusivity but the foreclosure that might result from the conduct and its effect on consumer welfare. For example, in the cases *Unapace/Enel* and *Comportamenti abusivi di Telecom Italia* the Authority deemed abusive "English Clause" provisions that resulted in exclusionary effects.

Presumptions and Safe Harbors

8. Are there circumstances under which a firm's use of single branding or exclusive dealing arrangements is presumed illegal? Yes/No

No. A case by case economic analysis has to be conducted in order to assess the impact of each exclusive dealing arrangement on consumers.

9. Is there a "safe harbor" from a finding of liability under your single branding/exclusive dealing provisions? Yes/No

No. Please see response to question number 8.

Effects

10. Must a market foreclosure effect be shown for an abuse? Yes/No

Yes.

a. How is market foreclosure defined in your jurisdiction?

As it is deducible from case law, market foreclosure is intended as a restriction both of market access possibilities of potential competitors and of competitor ability to erode the market share of incumbent.

b. Which factors are taken into account to assess a market foreclosure effect (level of dominance, percentage of market demand/purchases or supply covered by the arrangement, existence of alternative sources of supply, entry barriers, scale economies, possibility and practicability of switching, others)? Please specify the factors considered, including, as relevant, the percentage of demand/supply covered.

In assessing a market foreclosure effect, the Authority has focused on whether the exclusivity, because of its duration and the share of market involved, is likely to exclude actual or potential competitors from the market. Market specific aspects, such as the characteristics of the input under exclusive dealing agreement, or technological change are taken into account, too.

In the case *Stream/Telepiù* the Authority held that in assessing a market foreclosure the market power of the dominant firm and the extent of the exclusive dealing had to be taken into account. In the case *Enel Trade/Clienti Idonei* the Authority considered the limited ability to switch to other suppliers as a source of foreclosure. Finally, in the case *Diritti calcistici* the extent of the market supply covered by the arrangements, and their durations, have been regarded as able to determine a market foreclosure effect.

c. What evidence is used to demonstrate these effects and must the effects be actual, likely or potential effects?

In order to show that an exclusive dealing arrangement constitutes an abuse, it is necessary to bring evidence that it is *likely* for the resulting foreclosure effect to have a negative impact on consumer welfare.

11. Must other effects, e.g., on consumer welfare, be shown for an abuse? Yes/No

Yes. Defending consumer welfare, by promoting effective competition, is the ultimate aim of the Authority. That is why a detrimental effect on consumer welfare has to be shown in order to demonstrate an abuse.

- a. **If yes, please specify what must be demonstrated and the evidence required.**

In the cases *Unapace/Enel*, *Enel Trade/Clienti Idonei* and *Comportamenti Abusivi di Telecom Italia* the alleged violator was a former public monopolist and an exclusionary conduct had the effect of preventing entry in liberalized markets, thus undermining the effects of the liberalization process to the detriment of consumers.

Justifications/Defenses

12. **What justifications/defenses are available to the dominant firm, e.g., an efficiency, meeting competition or objective necessity defense? Please specify.**

Efficiencies can be taken into account by the Italian Competition Authority if they result in consumer welfare increases.

If the allegedly abusive practice has a positive effect on consumer welfare it should not be prohibited.

- a. **If there is an efficiencies defense, what efficiencies are considered (e.g., relationship-specific investments, facilitating innovation, reduced transaction costs)? How are claims of improved service quality or reputation assessed?**

Under the limits described above all kind of efficiencies can be taken into account.

- b. **Are efficiencies balanced against competitive harm to determine whether liability attaches, or do they provide a complete defense without consideration of harm?**

An assessment of the overall net effect of the allegedly abusive practice is taken into account.

- c. **Is there a meeting competition defense? Yes/ No.**

In Italian case law there were no cases of meeting competition defence in exclusive dealing.

- d. **What is the standard of proof applicable to these defenses? What type of evidence is required to demonstrate that the defenses are met?**

Enforcement

13. **Please provide the following information for the past ten years (as information is available):**

- a. **The number of exclusive dealing/single branding cases your agency reviewed (investigated beyond a preliminary phase).**

The Authority has reviewed five cases of exclusive dealing: *Unapace/Enel*; *Stream/Telepiù*; *Enel Trade/Clienti Idonei*; *Diritti Calcistici*, *Comportamenti abusivi di Telecom Italia*.

- b. **The number of these cases that resulted in (i) an agency decision that the conduct violates antitrust rules; (ii) a settlement with relief.**

In all cases the dominant firm was found guilty of violating article 3 of Competition Law or article 82 of EC Treaty

- c. **The number of agency decisions issued, if any, that held that the practice did not violate your jurisdiction's exclusive dealing/single branding rules (i.e., "clearance decisions").**

There were no cases of clearance decisions for exclusive dealing in the past ten years.

- d. **Each of the number of agency decisions or settlements that were (i) challenged in court and, of those, either (ii) overturned by court decision or (iii) confirmed by court decision.**

(i) The three cases *Stream/Telepiù*, *Enel Trade/Clienti Idonei* and *Comportamenti abusivi di Telecom Italia* were challenged in court.

(ii) All the three decisions were upheld. Only in one case, *Comportamenti abusivi di Telecom Italia*, the Court slightly reduced the fine imposed upon Telecom Italia.

14. **Does your jurisdiction allow private cases challenging exclusive dealing/single? Yes/No**

Yes.

15. **As relevant, please provide a short English summary of the leading exclusive dealing/single branding cases in your jurisdiction and, if possible, a link to the English translation of the decision, an executive summary or the press release of the case.**

- The case *Stream/Telepiù*:

Telepiù, the incumbent firm in pay-TV market, signed long-term contracts for exclusive broadcasting rights with a significant share of Italian soccer teams. The Authority first ascertained the existence of Telepiù's dominant position in the Italian pay-TV market, as indicated by its market share (the entire market through 1997, 93 per cent of all subscribers at the end of 1998 and 82 per cent at the end of September 1999). The Authority concluded that Telepiù had violated Article 82 of the Treaty. It was found that the acquisition of exclusive rights to top sports events for a lengthy period, just at the time when the

conditions for effective competition in pay TV were being established (entry of a new operator, the approaching expire of Telepiù's exclusive rights to league matches), reinforced its dominant position and raised the already high barriers to entry into the relevant market, so making likely a harm to consumer welfare. The Authority also deemed Article 82 of the Treaty to be violated by the clause according a right of pre-emption to Telepiù or its subsidiaries for acquisition of exclusive rights for the period following the expiration of initial rights, as this would enable the dominant firm to further prevent competitors from gaining access to the most important program contents.

- The case *Comportamenti abusivi di Telecom Italia*:

Telecom Italia introduced exclusionary clauses in its business contracts in 2001-2003. Several agreements were explicitly conditioned to the customer dealing only with Telecom Italia for all telecommunication services, while other agreements required the customers to purchase from Telecom Italia a quantity at least equal to that bought in the previous year, when Telecom Italia had a monopoly position in the market. As a result of these practices, a substantial part of the business customers would be bound to Telecom Italia, right at the time of liberalization, making it more difficult for competing telecommunication companies to offer fixed network telecommunications services and to handle even a small part of the traffic of the customers in question.

16. Please provide any additional comments that you would like to make on your experience with exclusive dealing/single branding rules and their enforcement in your jurisdiction, including, as appropriate but not limited to whether there have there been or you expect there to be major developments or significant changes in the criteria by which you assess exclusive dealing/single branding, explaining these developments as relevant.

n/a