

Anti competitive Behaviour

Dr.Hisham Tahat
Regulatory and Legal Expert

What is anti-competitive behaviour?

Anti-competitive behaviour is
A conduct that has the intention
or effect of significantly lessening
competition in a market

What is anti-competitive behaviour?

Two cases:

Case A: Axatel’s management committee meets and the discussion is about how to “hurt Alphatel so badly that it will withdraw from the market”. Axatel then embarks on a very vigorous marketing campaign with reduced prices and other promotions. It takes 10% of Alphatel’s market share over a 3-month period.

Case B: Axatel conducts a vigorous marketing campaign in the mobile market and succeeds in reducing Alphatel’s market share from 63% to 39% and increasing its own share from 35% to 51% over a six months period.

Is their anti-competitive behaviour in Case A or Case B? Why or why not?

Rule 1 : Fair Competition even it is aggressive to the competitor does not necessarily constitute anti competitive behaviour.

Examples anti-competitive behaviour

- Some behaviour is considered anti-competitive such as:
- **Case C:** Executives from Axatel company meet with executives from Alphatel and agree that free mobile minutes offers should be withdrawn from the market and that promotional offers for national calls should have a floor price of 5 pence per minute.
- **Case D:** Executives from Axatel meet with executives from Alphatel to agree who should submit winning bids to supply each of the major banks, airlines, and departmental stores.
- **These are attempts to ‘fix the market’ – ‘market fixing via price setting or market sharing. They are per se unlawful, even if the result is not significant lessening of competition.**

Categories of Anti-competitive Behaviour

Main categories

- 1. Anti-competitive agreements**
- 2. Mergers and acquisitions**
- 3. Abuse of a dominant position**
- 4. Predatory pricing**
- 5. Margin squeeze**
- 6. Tying and bundling**

1- Anti-competitive Agreements

Horizontal and Vertical Agreements

– Horizontal Agreements

- These are agreements between firms that are at the same level in the supply chain (Collusion)
- They are therefore likely to be competitors in the same market
- These agreements need to be closely overseen to ensure that they are not anti-competitive

– Vertical Agreements

- These are agreements between firms at different levels in the supply chain – e.g.. between equipment vendor and network operator; or between network operator and retail agent, or between network operator and consumer
- These need to be monitored as well but are less likely to offend than horizontal agreements
- These types of agreements are necessary for business to be transacted at all.

Case Study E

Axatel is a licensed mobile operator. They approached a real state developer and agrees to establish a telecom network in these development areas with an exclusive right with the developer for 7 years .Axatel insists that the agreement be exclusive so that house holders and owners will only get the telecom service form Axatel.

Other operators in the market complains to the NRA.

Questions

- 1. Is this anti-competitive behaviour by Axatel ?**
- 2. Is there any information that is missing to handle this compliant?**

2. Mergers and Acquisitions

Mergers and acquisitions

- **If a firm wants to leave an industry obvious purchasers of the firm or its assets are the firm’s competitors**
- **If a competitor takes over a firm there may be a mixture of benefits and disbenefits for competition and consumer welfare. Merge and acquisitions is not always bad : it has some benefits like :**
 - **May improve efficiency of merged operator and its ability to compete**
 - **Customer service continuity**
 - **Acquired entity might fail anyway**

So when is M&A anti-competitive? Case H

A: When it substantially lessens competition

- If a merger is found to substantially reduce competition, or give the merged entity a dominant position in a market, the first step is to evaluate any benefits from the merger. If the merger is likely to generate benefits that outweigh the damage to competition, then it should be allowed to proceed.

Toolkit



3. Abuse of a Dominant Position

Abuse with no name

- Abuse of a dominant position in a market is usually linked to something more specific, such as predatory pricing, discriminating, illegal tying, etc.
- However, there may be cases that have no names, other than abuse of a position of dominance. This means exercising dominance to produce outcomes that would not occur if the market was effectively competitive.



4. Predatory Pricing

What is predatory pricing?

- **Predatory pricing is a pricing strategy used by an established firm to eliminate competition from equally efficient firms, and secure a monopoly position in a previously competitive market. A firm practicing predatory pricing lowers its price below cost and maintains it there until equally efficient competitors are forced to incur unsustainable losses and exit the market. The firm then raises its price to monopoly level in order to recoup its lost profits.**
- **Sustainable prices should cover variable costs and make a contribution to fixed costs – which include return on capital employed.**

Claims of Predatory Pricing

- **Allegations of predatory pricing are almost always made by competitors**
- **Never made by customers**
- **The complainant usually does not know the costs of the operator complained about. So not a good source of evidence**
- **The complainant usually means by ‘predatory pricing’ a price that the complainant cannot or does not want to match in the market place.**

Remember ... a regulator needs to be very careful when assessing a complaint of predatory pricing because it might be legitimate. The regulator needs very good reasons not to allow customers the benefits of low prices. That is one of the key benefits of competition.

Justifications for low prices

In considering alleged predatory pricing NRA will take into account telecommunications-sector specific factors that may justify a different approach to pricing compared to other sectors in the economy. For example, NRA will consider, where relevant, factors such as:

- The need to attract customers to a network to ensure that economies of scale may be achieved at the earliest time in the operation of a network. One possible consequence of this might be to offer attractive low connection and usage prices to customers to switch to a new network. These prices may not always be sustained in the longer term.**

5. Margin Squeeze

Margin Squeeze

- **A margin (or price) squeeze may occur in an industry where a vertically integrated operator is dominant in the supply of an essential input for a downstream market in which it also operates. The vertically integrated operator could then harm competition by setting such a low margin between its wholesale price and the price it sets at retail level that an efficient downstream competitor is forced to exit the market or is unable to compete effectively.**
- **The dominant firm could therefore squeeze downstream competitors in several different ways:**
 - **Discriminatory price squeeze**
 - **Non-discriminatory price squeeze**
 - **Predatory price squeeze**

Margin Squeeze/ continued

- **Discriminatory price squeeze:** Where a dominant operator charges its retail rivals a higher wholesale price for essential inputs than it charges its own downstream operation.
- **Non-Discriminatory price squeeze:** Where a dominant operator raises the price of essential inputs across the board (i.e. both to other licensed operators and to its own downstream operation) while reducing the retail prices in such a way as to reduce available retail margins of competitors below commercially sustainable levels.
- **Predatory price squeeze:** This occurs when a dominant operator prices its retail services at a level which leaves insufficient (or even negative margins) for other licensed operators to continue in the market while maintaining an overall profit through the sale of the wholesale product

6. Tying and Bundling

What are bundles?

- **Bundling is offering two or more services together usually with a discount for taking them all.**
- **Is this unlawful? Usually not, and it happens all the time.**
- **Pure Bundles – these are bundles where the individual services cannot be purchased separately. Some countries (e.g. Italy) make pure bundles illegal because they are a form of tying – forcing the customer to buy more services than he wants.**
- **Mixed Bundles – these are bundles where the services in the bundle are available separately, but some benefit applies if the bundle is purchased (usually a discount or free calls, etc.)**
- **“Pure” and “Mixed” Bundles are terms employed by economists**
- **Bundles may be of benefit and convenience to consumers. They may enable economies of scope to be harnessed for consumer benefit. Bundling may lead to savings on production, distribution and transaction costs.**

Various forms of tying?

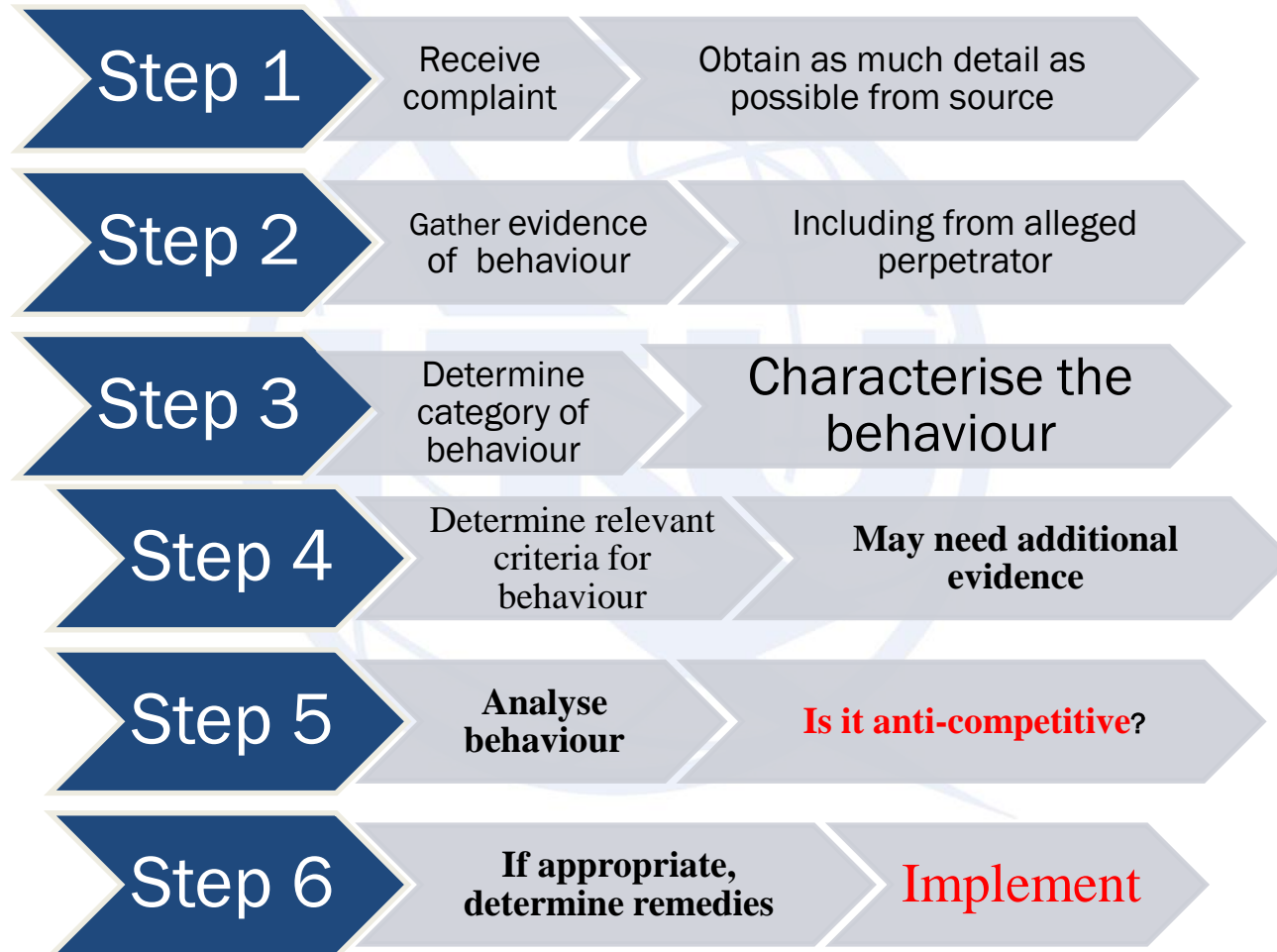
- **Tying involves using power in relation to one service to force those who want it to take other services, or to refrain from using competitor’s services**
- **Example: a service provider may be dominant in the market for access to telephony service at a fixed location and may seek to bundle the provision of competitive mobile services with the fixed service. Such a bundle would raise anti-competitive behaviour concerns and would lead to an examination of whether there is a leveraging of a dominant position in relation to one service to gain an unfair competitive advantage in the market for other, competitive, services.**
- **Example: provision of a monopoly service might be made conditional on the customer not taking certain other services from competitors in those other service markets.**

Complaints on anti competitive behaviours

- **NRA may observe anti-competitive behaviour through its own market monitoring**
- **Generally , NRA will receive most of its work in this area from complaints – when customers and competitors of particular firms complain about anti-competitive behaviour**
- **What procedure should NRA follow to investigate and resolve these matters when they arise?**

Process to Follow

The Process



Remedies

Range of remedies

- Some anti-competitive behaviour will encourage regulation to be applied, with remedies similar to ex ante remedies, to prevent recurrence of the behaviour
 - E.g. Excessive pricing might be addressed through price control regulation
 - E.g. Price discrimination might be addressed through more detailed regulation to clarify various cases that have arisen
- But that is about prevention of a recurrence
- What about past anti-competitive behaviour or per se unlawful behaviour?
- *Necessary measures* include the imposition of fines and making of orders to compensate customers to the extent of the losses they have incurred as a result of the behaviour in question.

General Discussion