

International League of Competition Law – Congress 2019

Question A:

To what extent should competition law be concerned with differences in prices, terms and conditions and quality to different purchasers?

Report of the AEDC / VSMR

(Association pour l'étude du droit de la concurrence – Vereniging voor de studie van het mededingingsrecht – Belgium)

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1. Introduction

This report offers a general overview of discriminatory practices in Belgian competition law, to allow us to explore to what extent Belgian competition law is concerned with differences in prices, terms and conditions and quality to different purchasers.

As a general and preliminary remark, it must be noted that Belgian competition law has a limited track record regarding discriminatory practices. As a result, Belgian competition law has rather limited added value to offer in the global debate regarding discriminatory practices and the way in which the debate should evolve. A striking detail of this, is the number of cases in which discriminatory practices were invoked by plaintiffs, but where the competition authority did not see the need to properly dismiss such claims. Therefore, a number of questions prepared by the international reporters will not find a meaningful answer in this report. In spite of this, Belgian competition case-law does provide a certain level of guidance regarding discriminatory practices and this will be discussed in the report.

The structure of this report is as follows. Part 2 will explore the notion of discrimination in the Belgian competition legal framework, discussing the statutory provisions and comparing them with the approach on the European level. Part 3 provides an overview of the assessment and application of these provisions by the higher national courts and by the competition authority, as well as a detailed overview of “first-line” and “second-line” discrimination case-law in Belgian competition law. Part 4 sets out the objective justifications allowing for abusive discriminatory practices and its implementation in Belgian case-law. Part 5 explains to what extent objectives have been identified in Belgian competition law to prohibit discriminatory practices. Part 6 demonstrates the relevance of other legal areas in the debate surrounding discriminatory practices. Finally in Part 7, we conclude and give our final thoughts and insights regarding the potential for Belgian competition law to follow a different path in its assessment of discriminatory practices in the (near) future.

2. The Notion of Discrimination in the Belgian Competition Legal Framework

2.1. Statutory Provisions Concerning Discrimination in Belgian Competition Law

Under Belgian competition law, the prohibition on discriminatory practices is embodied both in article IV.1 and article IV.2 of the Belgian Code of Economic Law (“CEL”)² – Belgian counterparts of article 101 and 102 TFEU. In particular, article IV.1, §1, 4° CEL concerns second line discrimination and article IV.2 (2), 3° CEL concerns first line discrimination.³

² Law of 3 April 2013 regarding the introduction of Book IV “Protection of Competition and of Book V “Competition and Price Evolution” in the Belgian Code of Economic Law (“CEL”), Official Gazette 26 April 2013, no. 2013011190, p. 25216; and the Law of 2 May 2019 amending Book I “Definitions”, Book XV “Enforcement” and replacing “Book IV “Protection of competition” of the Belgian Code of Economic Law (“CEL”), no. 2019012261, p. 50073.

³ In addition, the Belgian Parliament has adopted a new competition law only recently, *i.e.* the Law of 4 April 2019 amending the Code of Economic Law (“CEL”) regarding the abuse of economic dependency, unlawful dispositions and unfair market practices, Official Gazette 24 May 2019, no. 2019011404, p. 50066. This new law introduces the concept of ‘abuse of economic dependency’ into Belgian law and is discussed in Part 7 below.

Even if discriminatory practices are thus both prohibited by article IV.1 and IV.2, these discriminatory practices are, in practice, only targeted when they are imposed by dominant undertakings.

Further, no additional soft law provisions exist under Belgian competition law that could further clarify practices regarding discrimination. Therefore, as further described below, European guidance will apply to Belgian competition law.

On the basis of article 3 of Regulation No. 1/2003,⁴ article 101 and 102 TFEU may also apply within the framework of Belgian competition law. Therefore, article 101 and article 102 TFEU can apply in addition to the Belgian competition rules.

Besides the dispositions of Belgian competition law, there are other provisions in Belgian commercial and business law that cover issues of discrimination.

In particular, discriminatory practices may be considered as unfair trade practices pursuant to Book VI of the CEL, which regulates and prohibits certain market practices and consumer protection. In particular, article VI.104 CEL prohibits any practice contrary to fair market practices, whereby an enterprise causes harm to the professional interests of one or more other enterprises.⁵ Since article VI.104 CEL is a general provision covering the residual category of unfair practices not explicitly mentioned in other dispositions of Book VI of the CEL, this disposition also covers discriminatory practices.

2.2. Types of Discrimination Specifically Mentioned in Belgian Competition Law

As mentioned above, article IV.1, §1, 4° CEL⁶ and article IV.2 (2), 3° CEL⁷ explicitly prohibit second line and first line price discrimination respectively and state that its existence is established when equivalent transactions are treated differently.

The provisions of article IV.1 and IV.2 CEL are identical to the provisions of article 101 and 102 TFEU. Both, (i) because of these similarities and (ii) due to the existence of only a very limited amount of Belgian case-law regarding discriminatory practices, the Belgian competition authority (“BCA”) and courts will follow the approach taken by the European Commission (“EC”) and European Courts for the application of competition law to discriminatory practices in particular and for the overall application of competition law more generally. Therefore, the BCA and Belgian courts have declared on many occasions that they

⁴ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ 2003, L 1, p. 1.

⁵ Article VI.104 CEL : “Prohibited is any act that is contrary to fair market practices, as a result of which a company damages or may damage the professional interest of one or more other companies.”

⁶ Article IV.1, §1, 4° CEL states the following: “Are prohibited, without the need for a prior decision, all agreements between undertakings, all decisions of associations of undertakings and all concerted practices which have as their object or effect that competition on the relevant Belgian market or on a substantial part thereof is prevented, restricted or distorted and in particular those that consist of: (...) 4° the application of unequal conditions for equal performances to trading partners, causing them competitive disadvantage”.

⁷ Article IV.2 (2), 3° CEL states the following: “This abuse [of dominance] can in particular consist of the application of unequal conditions for equal performances to trading partners, causing them competitive disadvantage”.

will follow the precedents established by the EC and EU courts and the EC's guidance papers,⁸ and that Belgian competition law should be interpreted in light thereof.

In this regards, according to consistent EU case-law, undertakings with a dominant position cannot impose discriminatory commercial policies or pricing policies, except if an objective economic justification exists for this discrimination or if the practice enhances efficiency.⁹ For example, a discriminatory commercial or pricing policy will be justified, where this differential pricing could lead to an increase in a dominant undertaking's output, allowing certain customers to obtain a product which they might not have been able to afford absent the discriminatory practice.¹⁰

In addition, case-law from competition authorities of other EU Member states can also have some probative value, which entails that the BCA can also rely on their precedents.

3. The Notion of Discrimination in Practice by the BCA and National Courts

3.1. General Landscape of Discriminatory Practices in Belgian Competition Law

When looking at the general landscape of discriminatory practices in Belgian competition law, we mainly look at the decisions of the BCA or appeals thereof by the Court of Appeal. In the context of these decisions, it appears that the BCA has solely taken decisions on the basis of complaints, both regarding "primary-line" and "secondary line" abusive discriminatory conduct.

Based on the overview of relevant case-law, it also appears that the vast majority of cases regarding discriminatory practices relate to secondary line abusive discrimination conduct. As is often the case with this type of abuse, the relevant decisions never solely relate to or assess complaints regarding discriminatory practices. Rather, discriminatory practices are mostly invoked by plaintiffs together with other abusive practices.

In addition, it appears that the BCA did not always formally found abusive discriminatory practices and, as such, did not always explicitly referred to a finding of anticompetitive discriminatory conduct. Instead, sometimes the existence of discriminatory practices may be implied from the description of certain abusive practices in the BCA's decision. For the sake of completeness, both cases in which the existence of discriminatory practices is explicitly referred to and cases in which the existence of discriminatory practices can be implied are included in the overview of relevant case-law below.

⁸ For instance, 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, OJ C 45, 24.2.2009, pp. 7–20.

⁹ GC, case T-228/97, *Irish Sugar v Commission*, ECR 1999 II-2969; and ECJ, case C-322/81, *Michelin v Commission*, ECR 1983-03461.

¹⁰ R. Whish and D. Bailey, "Competition Law", 8th ed, Oxford University Press 2015, pp. 804-806.

3.2. Statistics Regarding Discriminatory Practices in Belgian Competition Law

Figure 1: Overview of First-line Discrimination Cases

Year	Name of the Parties	Sanction	Amount of the fine	Other sanction (injunction/remedies)
2006	Incine / Rendac ¹¹	No	N/A	N/A – dismissed
2008	Base / Belgacom ¹²	Yes	N/A	Injunction
2010	Mobistar SA / Belgacom SA ¹³	No	N/A	N/A – dismissed
2015	Belgacom / Base Company / Mobistar ¹⁴	No	N/A	Panel of expert appointed
2015	Lampiris/Electrabel ¹⁵	No	N/A	NA – dismissed

Figure 2: Overview of Second-line Discrimination Cases

Year	Name of the Parties	Sanction	Amount of the fine	Other sanction (injunction/remedies)
2001	Demol / Esso ¹⁶	No	N/A	N/A - dismissed
2002	Nationale Unie van Belgische Exporteurs van Land- en	Yes	EUR 10.000 on two of the defendants	Injunctions to stop imposing and applying anticompetitive conditions

¹¹ Decision no. 2006-P/K-17 of 28 September 2006, MEDE-P/K-01/0004, *BVBA Incine / NV Rendac*.

¹² Commercial Court Antwerp, 17 July 2008, AR A/07/6778, available on www.juridat.be. For a further analysis of the case see X. Taton, T. Franchoo, N. Baeten and I. Rooms, *Les actions civiles pour infraction au droit de la concurrence – Chronique de jurisprudence (2004-2010). 2ème partie Private handhaving van het mededingingsrecht in België – Overzicht van rechtspraak (2004-2010). 2de deel*, TBH 2014/3, p. 208.

¹³ Decision no. 2010- L/G- 27 of 22 July 2010, L/G-07/0015, *Mobistar S.A. / Belgacom S.A.*

¹⁴ Court of Appeal Brussels no. 2012/AR/1, 26 February 2015, *Belgacom / Base Company / Mobistar* TBM 2016, afl. 3, p. 286.

¹⁵ Decision no. ABC-2015-P/K-09-AUD of 25 March 2015, CONC-P/K-09/0002, *Lampiris / Electrabel*.

¹⁶ Decision no. 2001-V/M-61 of 19 November 2001, CONC-I/O-99/0007 and CONC-I/O-99/0013, *Demol / Esso*.

	Tuinbouwproducten / VMV, and others ¹⁷			
2005	Productions & Marketing NV / Sabam ¹⁸	N/A	N/A	N/A – prejudicial question to the Court of Appeal, leading to a finding of abusive discriminatory practices
2005	Distribution One / Coca Cola Enterprise Belgium ¹⁹	No	N/A	Commitments offered by Coca Cola Enterprise Belgium
2006	Unizo / Banksys ²⁰	No	N/A	Commitments offered by Banksys
2011	Belgian discotheques / Sabam ²¹	N/A	N/A	Injunction
2011	Freedom / Inbev ²²	No	N/A	N/A – dismissed
2012	Publmail, Link2Biz International et G3 Worldwide Belgium / BPost ²³	Yes	EUR 37 million – annulled on appeal	N/A

¹⁷ Decision no. 2002-P/K-80 of 5 November 2002, *Nationale Unie van Belgische exporteurs van land- en tuinbouwproducten / VMV, and others*.

¹⁸ Court of Appeal Brussels (9e bis k.) nr. 2004/MR/7, 3 November 2005, *Production & Marketing / Sabam*, AM 2006, afl. 1, 50; Jaarboek Handelspraktijken & Mededinging 2005, 883, noot Platteau, K; NJW 2006, afl. 140, p. 322, noot Deene, J.; TBM 2006, afl. 4, p. 319.

¹⁹ Decision no. 2005-I/O-52 of 30 November 2005 Affaire CONC-I/O-98/0012, *Distri-One S.A. c./ Coca-Cola Enterprises Belgium S.P.R.L.*

²⁰ Decision no. 2006-I/O-12 of 31 August 2006, CONC-I/O-00/0049, Banksys S.A., CONC-P/K-02/0043, FNUCM / Banksys S.A., CONC-P/K-02/0051, *Unizo / Banksys S.A.*

²¹ President of the Commercial Court Mons, 21 January 2011, *Belgian discotheques/Sabam*, A/08/1189, unpublished. For a further analysis of the case see X. Taton, T. Franchoo, N. Baeten and I. Rooms, Les actions civiles pour infraction au droit de la concurrence – Chronique de jurisprudence (2011-2015). Private handhaving van het mededingingsrecht in België – Overzicht van rechtspraak (2011-2015), TBH 2017/8, pp. 798-799.

²² Decision 2011-P / K-15 of 29 April 2011, *Freedom / Inbev*. In an earlier decision, the BCA dismissed the complaint from Freedom against Inbev (Decision no. 2010-P/K – 42-AUD of 28 September 2010, *Freedom / Inbev*).

²³ Decision no. 2012-P/K-32 of 10 December 2012, CONC-P/K-05/0067, CONC-P/K-09/0017 et CONC-P/K-10/0016, *Publmail, Link2Biz International et G3 Worldwide Belgium / BPost*. (Appealed – Court of Appeal

2012	Standaard Boekhandel / AMP ²⁴	Yes	N/A	Injunction
2017	VZW Vlaamse Federatie van Persverkopers, VZW Buurtsuper.be, ASBL Prodipresse / AMP ²⁵	No	N/A	N/A - dismissed
2018	TECO/ABB ²⁶	No	N/A	Interim measures – requirement to maintain a non – discriminatory pricing policy

3.3. Alleged Discriminatory Practices Without Further Assessment

As set out in the introduction of the report, there are a number of BCA and court decisions in which the plaintiffs – in addition to other anti-competitive practices – either raised arguments in support of discriminatory practices or where the BCA interpreted a part of the plaintiffs’ arguments as consisting of discriminatory practices, but where the BCA made no further assessment thereof.

It is remarkable that, even if throughout these decision, several references are made to discrimination claims by plaintiffs, the decision lacks an in depth assessment of these invoked arguments. For some of these cases, no further competitive analysis of the discriminatory practice was made, because no dominant position could be established.²⁷ In other cases, the BCA simply refrains from making any further assessment, for instance, because the plaintiffs invoke purely factual data that cannot suffice as a basis for an analysis.²⁸ These cases are listed below.

Brussels, 10 November 2016, *BPost/ Publimail, Link2Biz International et Spring*, TBH 2017, afl. 8, 865 and TBM 2017/1, p. 42 – Further appealed – Belgian Supreme Court – Cass.(1e k.) AR C.17.0126.F, 22 November 2018, *Belgian competition authority / BPost*, www.cass.be and *Competitio* 2019/1, p. 21.)

²⁴ Court of Appeals Brussels, 29 May 2012, *Standaard Boekhandel / AMP*, *Jaarboek Marktpraktijken*, 2012, 1011, TBH 2012, TBM 2013, afl. 2, p. 194.

²⁵ Decision no. ABC-2017-P/K-25-AUD of 22 June 2017, *Affaire MEDE-P/K-10/0005 – VZW Vlaamse Federatie van Persverkopers, VZW Buurtsuper.be, ASBL Prodipresse c/ SA AMP*.

²⁶ Decision no. BMA-2018-V/M-28 of 3 September 2018, *MEDE-V/M-18/0027, NV TECO / BVBA ABB Industrial Solutions*.

²⁷ See for example in Decision no. 2010-P/K-37 of 22 September 2010, *CONC-P/K-06/0009, Syndicat des Libraires Francophones de Belgique / Interforum* ; and Decision no. 2010-P/K-36 of 22 September 2010, *CONC-P/K-06/0008, Syndicat des Libraires Francophones de Belgique / Dilibel*.

²⁸ See for example in Decision no. 2010- L/G- 27 of 22 July 2010, *L/G-07/0015, Mobistar S.A. / Belgacom S.A.*

Figure 3: Overview of Cases in Which Discrimination was invoked

Year	Name of the Parties	Sanction	Amount of the fine	Other sanction (injunction/remedies)
2000	Radio Tienen / Sabam ²⁹	No	N/A	N/A - dismissed
2003	Liège-Tilleur sa / Union Royale Belge des Sociétés de Football-Association (U.R.B.S.F.A.) ³⁰	No	N/A	N/A - dismissed
2009	Base / Belgacom ³¹	No	N/A	N/A - dismissed
2009	Base / Belgacom Mobile ³²	Yes	EUR 66.3 million	N/A
2010		No	N/A	N/A - dismissed

²⁹ Decision no. 2000 – V/M – 27 of 30 August 2000 *VZW Radio Tienen / Sabam CVBA* (Appealed – Court of Appeal Brussels, 21 January 2002, *Jaarboek Marktpraktijken* 2002, p. 840). In this case, The BCA considered that no objective justification existed for the imposition of these minimum lump sum by Sabam, the Belgian collection society, to private radio stations, but did not impose interim measures, because the request did not meet the requirement of urgency for interim measures in Belgian competition law. No further assessment of the alleged discriminatory practices was made.

³⁰ Decision no. 2003-V/M-101 of 19 December 2003, CONC-V/M-03/0037, *Liège-Tilleur SA / Union Royale Belge des Sociétés de Football-Association (U.R.B.S.F.A.)*. In this case, the plaintiff invoked non-discrimination arguments, both in its request for interim measures and in the final decision on the merits. Still, the BCA refrained from making any additional assessment on the abusive practices.

³¹ Decision no. 2009-P/K-31-AUD of 24 December 2009, CONC-P/K-04/0036, *Base / Belgacom*. The BCA made an assessment regarding alleged discriminatory pricing practices by Belgacom, but the BCA refrained from providing an in depth analysis, as the case is closed without taking a decision on the merits.

³² Decision no. 2009-P/K-10 of 26 May 2009, CONC-P/K-05/0065, *Base / BMB*. (Appealed – Court of Appeals Brussels, 28 June 2013, which asked prejudicial questions to the Belgian Supreme Court – Belgian Supreme Court, 20 December 2013, <http://www.cass.be> (27 Januari 2014); *Jaarboek Marktpraktijken* 2013, 1302; *Pas*. 2013, afl. 12, p. 2688.; and *TBH* 2014, afl. 3, p. 323.)

	Syndicat des Libraires Francophones de Belgique ³³			
2011	SBS Belgium / Telenet ³⁴	No	N/A	Expert appointed
2016	White Start Woluwe against the Belgian Sport Arbitration (CBAS or BAS) ³⁵	No	N/A	N/A - dismissed
2017	Algist Bruggeman ³⁶	Yes	EUR 5.489.000	N/A
2018	FEI ³⁷	Yes	N/A	N/A
2019	SPRL The Great Circle / l'Institut Royal Météorologique (IRM) ³⁸	No	N/A	N/A – dismissed

³³ Decision no 2010-P/K-37 of 22 September 2010, CONC-P/K-06/0009 *Syndicat des Libraires Francophones de Belgique / Interforum*; and Decision no. 2010-P/K-36 of 22 September 2010, CONC-P/K-06/0008 *Syndicat des Libraires Francophones de Belgique / Dilibel*. In both decisions, the plaintiffs invoked discriminatory practices as an abuse of dominance, but the BCA made no further assessment due to lack of a dominant position.

³⁴ Commercial Court Mechelen, 3 November 2011, *AM* 2013, afl. 3-4, p. 237. For a further analysis of the case see X. Taton, T. Franchoo, N. Baeten and I. Rooms, *Les actions civiles pour infraction au droit de la concurrence – Chronique de jurisprudence (2011-2015). Private handhaving van het mededingingsrecht in België – Overzicht van rechtspraak (2011-2015)*, TBH 2017/8, p. 799.

³⁵ Decision no. ABC-2016-V/M-22 of 14 July 2016, CONC-V/M-16/0016, *ASBL White Star Woluwe Football Club / CBAS*. In a request for interim measures by football club White Star Woluwe against the Belgian Sport Arbitration (CBAS or BAS), the football club invoked abusive discriminatory practices by the BAS in its assessment of its financial difficulties, preventing them to obtain a licence. The football club argued that they were treated differently compared to other clubs. The BCA dismissed the request without any further assessment of this point.

³⁶ Decision no. 2007-I/O-07-AUD of 22 March 2017, *Algist Bruggeman*.

³⁷ The *FEI* case relates to a number of cases. However, for the purpose of this overview it suffices to only refer to the last *FEI* case: Decision no. ABC-2018-V/M-33 of 28 September 2018, CONC-V/M-17/0037, Lisa Nooren et Henk Nooren Handelsstal SPRL.

³⁸ Decision no. ABC-2019-V/M-10 of 15 February 2019, CONC-V/M-19/0002, *SPRL The Great Circle / l'Institut Royal Météorologique (IRM)*. The BCA explicitly states that it interprets a part of the plaintiffs' arguments as discriminatory practices, even if plaintiffs do not explicitly refer to discriminatory practices. No further (*prima facie*) assessment of these arguments is made.

3.4. Conditions for Discriminatory Abuse Under Belgian Competition Law

As mentioned above, discriminatory practices are embodied in Belgian competition law, both in article IV.1, §1, 4° CEL³⁹ and article IV.2 (2), 3° CEL.⁴⁰ These articles explicitly prohibit second line and first line price discrimination respectively and state that its existence is established when equivalent transactions are treated differently.

In line with European competition law,⁴¹ a practice will be considered as an abusive discriminatory practice in Belgian competition law if (i) a dominant undertaking (ii) applies dissimilar conditions to similar transactions or similar conditions to dissimilar transactions⁴² (iii) resulting in a competitive disadvantage.⁴³ These three components will be discussed on the basis of Belgian competition case-law below.

These three components have been set out as a general guideline for the assessment of abusive discriminatory practices in *BPost*.⁴⁴ The BCA started its assessment by stating that “the mere fact that products are part of a different market is not sufficient to justify discriminatory prices”.⁴⁵ It further stated that under certain conditions, a dominant undertaking may adopt a different pricing strategy for different categories of customers, but the commercial behaviour of the undertaking must not distort competition in an upstream or downstream market.⁴⁶ It must be assessed whether a certain degree of competition exists between the dominant undertaking

³⁹ Article IV.1, §1, 4° CEL states the following: “Are prohibited, without the need for a prior decision, all agreements between undertakings, all decisions of associations of undertakings and all concerted practices which have as their object or effect that competition on the relevant Belgian market or on a substantial part thereof is prevented, restricted or distorted and in particular those that consist of: (...) 4° the application of unequal conditions for equal performances to trading partners, causing them competitive disadvantage”

⁴⁰ Article IV.2 (2), 3° CEL states the following: “This abuse [of dominance] can in particular consist of the application of unequal conditions for equal performances to trading partners, causing them competitive disadvantage”.

⁴¹ A. Layne-Farrar, A. Setari and P. Stuart, *Abusive Discrimination*. In F. Gonzalez-Diaz and R. Snelders (eds), *EU Competition law, Volume V, Abuse of Dominance Under Article 102 TFEU*, Claeys & Casteels, Deventer 2013, pp. 555-558; and F. Wijckmans and S. De Keer, *Discriminatie in het mededingingsrecht: een korte verkenning*, *Tendensen in het Bedrijfsrecht/Le droit des affaires en évolution*, Kluwer/Bruylant, 2009, pp. 35-75.

⁴² Court of Appeal Brussels (9e bis k.) nr. 2004/MR/7, 3 November 2005, *Production & Marketing / Sabam*, AM 2006, afl. 1, 50; *Jaarboek Handelspraktijken & Mededinging 2005*, 883, noot Platteau, K; NJW 2006, afl. 140, 322, noot Deene, J.; TBM 2006, afl. 4, p. 319.

⁴³ Decision no. 2012-P/K-32 du 10 December 2012, CONC-P/K-05/0067, CONC-P/K-09/0017 and CONC-P/K-10/0016, *Publmail, Link2Biz International and G3 Worldwide Belgium / BPost* (Appealed – Court of Appeal Brussels, 10 November 2016, *BPost/ Publmail, Link2Biz International et Spring*, TBH 2017, afl. 8, 865 and TBM 2017/1, p. 42 – Further appealed – Belgian Supreme Court – Cass.(1e k.) AR C.17.0126.F, 22 November 2018, *Belgian competition authority / BPost*, www.cass.be and *Competitio 2019/1*, p. 21.); Decision no. 2006-I/O-12 of 31 August 2006, CONC-I/O-00/0049, *Banksys S.A.*, CONC-P/K-02/0043, FNUCM / *Banksys S.A.*, CONC-P/K-02/0051, *Unizo / Banksys S.A.*; Decision no. 2005-I/O-52 of 30 November 2005, CONC-I/O-98/0012, *Distri-One S.A. c./ Coca-Cola Enterprises Belgium S.P.R.L.*

⁴⁴ Decision no. 2012-P/K-32 of 10 December 2012, CONC-P/K-05/0067, CONC-P/K-09/0017 et CONC-P/K-10/0016, *Publmail, Link2Biz International et G3 Worldwide Belgium / BPost* (Appealed – Court of Appeal Brussels, 10 November 2016, *BPost/ Publmail, Link2Biz International et Spring*, TBH 2017, afl. 8, 865 and TBM 2017/1, p. 42 – Further appealed – Belgian Supreme Court – Cass.(1e k.) AR C.17.0126.F, 22 November 2018, *Belgian competition authority / BPost*, www.cass.be and *Competitio 2019/1*, p. 21.).

⁴⁵ Decision 2011-P / K-15 of 29 April 2011, *Freedom / Inbev*.

⁴⁶ CFI, case T-301/04, *Clearstream v Commission*, ECR 2009 II-03155 , para. 192.

and undertakings active in a related market, or whether the conduct of the dominant undertaking is detrimental to competition or disadvantage for competitors or trading partners in the market where that company is itself active or in a related market.⁴⁷

3.4.1. Criteria Applied to Establish Equivalence of the Transaction

First, the establishment of an abusive discriminatory practice requires the assessment of whether the transactions are equivalent. In European competition law, the equivalence of transactions is assessed by taking into account several factors, among which, product characteristics, its cost, timing and any other customer related factors.⁴⁸

The same approach is used in Belgian competition law and a number of precedents provide some guidance regarding this criteria. These Belgian precedents demonstrate that factors such as different relevant markets, different market structures and different type of customers have been accepted by the BCA as criteria to assess the equivalence of transactions and eventually to exempt the defendant.

For instance, in *Lampiris/Electrabel*, the BCA dismissed Lampiris' allegations that Electrabel imposed unfair prices for similar products (*i.e.* the provision of electricity). The BCA considered that services offered by Electrabel, the former incumbent electricity provider for Belgium, on the electricity wholesale market were different compared to the services offered on the retail market. Therefore, Electrabel's price differences for the two different markets were not considered discriminatory.⁴⁹

In *Freedom / Inbev*, the BCA did not find an abusive discriminatory practice, because it considered that the the different relevant market, with a different market structure and different product mix, allowed for this differentiation and therefore also for different rebates that were granted.⁵⁰

Finally, in *Incine / Rendac*, the BCA dismissed a complaint from Incine regarding alleged discriminatory practices, because the requested services by Incine differed from services for which Rendac had listed prices. As the difference between the services was obvious, the BCA considered that it was impossible to make a proper comparison of both prices.⁵¹

⁴⁷ Decision no. 2012-P/K-32 of 10 December 2012, CONC-P/K-05/0067, CONC-P/K-09/0017 et CONC-P/K-10/0016, *Publmail, Link2Biz International et G3 Worldwide Belgium / BPost*, paras 167-168 (Appealed – Court of Appeal Brussels, 10 November 2016, *BPost/ Publmail, Link2Biz International et Spring*, TBH 2017, afl. 8, 865 and TBM 2017/1, p. 42 – Further appealed – Belgian Supreme Court – Cass.(1e k.) AR C.17.0126.F, 22 November 2018, *Belgian competition authority / BPost*, www.cass.be and Competitio 2019/1, p. 21.).

⁴⁸ A. Layne-Farrar, A. Setari and P. Stuart, *Abusive Discrimination*. In F. Gonzalez-Diaz and R. Snelders (eds), *EU Competition law, Volume V, Abuse of Dominance Under Article 102 TFEU*, Claeys & Casteels, Deventer 2013, pp. 558-559.

⁴⁹ Decision no. ABC-2015-P/K-09-AUD of 25 March 2015, CONC-P/K-09/0002, *Lampiris / Electrabel*, paras 132-147; For a further analysis of the case see J. Ysewyn and M. Van Schoorisse, *Overzicht van de Belgische Mededingingsautoriteit in 2015*, TBM 2016, afl. 2, pp. 51-54.

⁵⁰ Decision 2011-P / K-15 of 29 April 2011, *Freedom / Inbev*, paras 39-43.

⁵¹ Decision no. 2006-P/K-17 of 28 September 2006 MEDE-P/K-01/0004, *BVBA Incine / NV Rendac*, para 4.

3.4.2. Test to Assess the Dissimilarity of Conditions

Second, after the establishment of the equivalence of the transaction, it needs to be assessed whether the dominant undertaking applied similar or dissimilar conditions to the transaction. This assessment will include an analysis of prices charged and commercial conditions applied. The assessment of the dissimilarity of conditions involves a fact-specific assessment.⁵²

TECO/ABB gives a good illustration of the assessment of (dis)similarities of conditions. ABB, a producer of smart electricity boxes, obtained the exclusive right to produce the lids for these boxes through its acquisition of GE Industrial Solutions (GE), which had obtained this monopoly in a public tender. GE charged substantially higher prices for these lids to other companies in the market, compared to the prices charged to Eandis as offered in the tender bid by GE. Based on its *prima facie* assessment of ABB's practices, the BCA found that it was not manifestly unreasonable to consider that ABB abused its dominant position. In particular, the BCA found that this pricing practice was implemented together with a price decrease for the prices charged in the tender with GE and in combination with prices that resulted in margin squeeze. In addition, ABB was aware that companies were dependent on her for their supplies and this created uncertainties in the market.⁵³

For the assessment of the dissimilarity of conditions, the BCA considered *prima facie* that the dissimilar prices imposed by ABB should be assessed by comparing (i) the price as requested by ABB in the context of the public tender with (ii) the price as requested outside the tender. In particular, the BCA considered that the first price requested in the public tender was obtained in an open competition, while the second price was determined by its monopoly position. Therefore, no *prima facie* presumption exists to consider that the price charged in the public tender would not be fair and competitive compared to the prices charged outside the public tender.⁵⁴

3.4.3. Effects-based Approach of the Abusive Discriminatory Practice

As mentioned in Part 2.2 above, the BCA applies an effects-based approach in its assessment of potential anti-competitive practices, in line with the EU approach. As such, the BCA will assess the actual or likely effect of the abusive discriminatory practice on competition. However, also in line with the EU approach, in certain cases, the BCA considers abusive practices as *per se* abusive.

In *AMP*,⁵⁵ the Court of Appeal took into account the adverse competitive effect of a price difference for smaller press distributors. In particular, the Court considered the likely anti-competitive effects that the discriminatory practice would create between small and larger press distributors and the detrimental effect on investment and expansion opportunities, and as a

⁵²A. Layne-Farrar, A. Setari and P. Stuart, Abusive Discrimination. In F. Gonzalez-Diaz and R. Snelders (eds), EU Competition law, Volume V, Abuse of Dominance Under Article 102 TFEU, Claeys & Casteels, Deventer 2013, p. 569.

⁵³ Decision no. BMA-2018-V/M-28 of 3 September 2018, MEDE-V/M-18/0027, *NV TECO / BVBA ABB Industrial Solutions*.

⁵⁴ Decision no. BMA-2018-V/M-28 of 3 September 2018, MEDE-V/M-18/0027, *NV TECO / BVBA ABB Industrial Solutions*, paras 43 and 44.

⁵⁵Court of Appeals Brussels, 29 May 2012, *Standaard Boekhandel / AMP*, Jaarboek Marktpraktijken, 2012, 1011, TBH 2012, TBM 2013, afl. 2, p. 194.

consequence, on the effects on competitiveness. The Court made clear, that the effect could not be negligible. Finally, it did not seem as if the Court took an element of intention into account when assessing the effects of the anti-competitive practice.

However, it appears that an assessment of the effects of the discriminatory practice is sometimes neglected. In *Sabam*, the Brussels Court of Appeal found that Sabam, Belgium's major collecting society for author rights, charged different prices to major customers compared to prices charged to other customers. The Court of Appeal found that these differences did not amount to price discrimination, without any assessment of an actual competitive disadvantage due to this different treatment on the downstream market.⁵⁶

3.5. First-line Discrimination Prohibited as Foreclosure Abuse

In the EC's Guidance regarding exclusionary conduct,⁵⁷ the EC discusses price-based exclusionary conduct, such as rebates and discounts, predation, refusal to supply and margin squeeze, and/or tying and bundling as potentially abusive. The BCA has applied some of these exclusionary conducts to assess the exclusionary effects of discriminatory practices.

As such, *Lampiris/Electrabel* is an illustration of a mix of both first- and second-line discrimination, for which the BCA made an extensive assessment of the alleged price discrimination and its potential exclusionary effects. However, margin squeezes were considered as the exclusionary abuse, while the discrimination and excessive pricing practices were assessed as exploitative abuses. In this case, Lampiris alleged that Electrabel abused its dominant position by charging discriminatory prices by incorporating the value of gas emission allowance certificates (received for free from the Belgian market regulators) into its prices on the wholesale electricity market. Lampiris claimed that this resulted in artificial costs included in the prices charged by Electrabel to Lampiris. No further analysis of the discriminatory prices was made to assess the exclusionary effects.⁵⁸

3.6. Second-line Discrimination Prohibited as Exploitative Abuse

Second-line discrimination is considered exploitative, when it puts other trading partners at a competitive disadvantage due to unjustified discrimination. The BCA has provided some useful guidance regarding the meaning of this type of discriminatory exploitative abuses in a number of cases.

As mentioned above, in *Lampiris/Electrabel*, the BCA analysed margin squeezes and excessive pricing as second-line discrimination to assess exploitative abuses by Electrabel, next to the assessment of discriminatory exclusionary abuses.⁵⁹ The BCA considered that these prices

⁵⁶ Court of Appeal Brussels (9e bis k.) nr. 2004/MR/7, 3 November 2005, *Production & Marketing / Sabam*, AM 2006, afl. 1, 50; *Jaarboek Handelspraktijken & Mededinging 2005*, 883, noot Platteau, K; NJW 2006, afl. 140, 322, noot Deene, J.; TBM 2006, afl. 4, p. 319.

⁵⁷ 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, OJ C 45, 24.2.2009, pp. 7–20.

⁵⁸ ECJ, case C-95/04 P, *British Airways v Commission* ECR 2007 I-2331, para 145; and CFI, case T-301/04, *Clearstream v Commission*, ECR 2009 II-03155, para 194.

⁵⁹ Decision no. ABC-2015-P/K-09-AUD of 25 March 2015, CONC-P/K-09/0002, *Lampiris / Electrabel*, pp. 17-18, paras 146-147.

were discriminatory compared to prices that Electrabel charged to its affiliate “ECS” that was competing with Lampiris. Even if these claims were dismissed, the case demonstrates that the BCA applies the general guiding principles enshrined in European case-law. In this regard, the BCA specifically referred to *British Airways* to make an assessment of foreclosure effects stating:⁶⁰ “there is nothing to prevent discrimination between business partners who are in a relationship of competition from being regarded as abusive as soon as the behaviour of the undertaking in a dominant position tends, having regard to the whole of the circumstances of the case, to lead to a distortion of competition between those business partners.”⁶¹ The BCA accepted the allegations regarding margin squeezes, but dismissed the excessive pricing allegations.

Besides the finding of discriminatory pricing practices, the Court also assessed excessive pricing, refusal to supply and unfair practices related to the price increase in *AMP*.

Finally, in *TECO/ABB*, the BCA imposed a number of interim measures on ABB that would remedy the competition issues. The BCA required ABB to implement a non-discriminatory pricing policy and processing of its orders. To remove further uncertainties on the market, ABB had to apply price discounts for substitutes of the lids and its components and it was not allowed to implement any price increase on the said products. The interim measures were imposed following combined assessments of discriminatory practices and margin squeeze. The claims regarding excessive pricing were dismissed.⁶²

4. Objective Justifications to Discriminatory Practices

Once it is established that a dominant undertaking applied dissimilar conditions to equivalent transactions or similar conditions to different transactions, this practice can still be exempted in case an objective justification exists for the discriminatory practice. For instance, security or health reasons can justify such behaviour or substantial efficiencies which outweigh any anti-competitive effects on consumers. In addition, the concerned undertaking will need to prove that the abusive practice is indispensable and proportionate to the goal allegedly pursued by the dominant undertaking.⁶³

In this regard, the BCA and national courts recognise that objective justifications could justify discriminatory practices. In this context, we have seen that these objective justifications have been considered in certain decisions.

⁶⁰ Decision no. ABC-2015-P/K-09-AUD of 25 March 2015, CONC-P/K-09/0002, *Lampiris / Electrabel*, paras 132-147, see for further analysis of the case, J. Ysewyn and M. Van Schoorisse, *Overzicht van de Belgische Mededingingsautoriteit in 2015*, TBM 2016, afl. 2, pp. 51-54.

⁶¹ ECJ, case C-95/04 P, *British Airways v Commission* ECR 2007 I-2331, para 145 and CFI, case T-301/04, *Clearstream v Commission*, ECR 2009 II-03155, para 194.

⁶² Decision no. BMA-2018-V/M-28 of 3 September 2018, MEDE-V/M-18/0027, *NV TECO / BVBA ABB Industrial Solutions*.

⁶³ 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, OJ C 45, 24.2.2009, pp. 7-20, paras. 28 and 29.

For instance, in *AMP*,⁶⁴ the Court of Appeal had to make an assessment of AMP's price increases for smaller retailers with larger retailers. Smaller retailers paid a fixed fee, while larger retailers were charged a variable percentage, resulting in a higher relative price being paid by smaller retailers. The Court of Appeal concluded that the doubling of the minimum lump sum consisted in price discrimination. However, the Court accepted AMP's argument that the initial pricing by AMP to smaller retailers consisted of a preferential treatment in favour of smaller retailers for which an objective justification existed (importance of large news coverage). However, AMP could not demonstrate why the objective of the price increase (more efficient cost recovery) could not be obtained by raising proportionately both the price of the minimum lump sum as the variable percentage.⁶⁵ As a consequence, it seems as if the Court was willing to accept objective justifications if these would have been presented by AMP.

In *Demol / Esso*, the plaintiff asked the BCA to impose interim measures on Esso, the gas station operator, as it allegedly imposed unequal commercial conditions to independent gas station operators. The BCA did not grant the interim measures, because it considered that Esso did not have a dominant position on the Belgian market and different purchasing volumes and investments made by other gas station operators were accepted as objective justifications that allowed for the different treatment among independent operators.⁶⁶

In *Nationale Unie van Belgische Exporteurs van Land- en Tuinbouwproducten*, the BCA imposed a fine due to anticompetitive agreements and it decided that certain provisions of a purchasers agreement could no longer be applied. In particular, the BCA argued that there was no objective justification for the application of discriminatory rules regarding the admission of purchasers.⁶⁷ In turn, the BCA could not accept any objective justification for the discriminatory exclusion of purchasers.⁶⁸

Finally, in another *Sabam* case,⁶⁹ the President of the Commercial Court in Mons requested Sabam to provide objective justifications for the different prices charged to small and large discotheques for the same services. Sabam stated that the differences were objectively justified, because larger discotheques have larger potential revenues. The President dismissed this justification, because Sabam could not demonstrate how its provided services and the related costs of the service varied according to the size of the discotheque.⁷⁰

⁶⁴ Court of Appeals Brussels, 29 May 2012, *Standaard Boekhandel / AMP*, *Jaarboek Marktpraktijken*, 2012, 1011, TBH 2012, TBM 2013, afl. 2, p. 194.

⁶⁵ H. Burez, *Tweedelijnsprijsdiscriminatie door een verticaal geïntegreerde onderneming (of toch niet) ?*, *Jaarboek Marktpraktijken – Intellectuele eigendom / Mededinging*, 2012, p. 1074-1076.

⁶⁶ Decision no. 2001-V/M-61 of 19 November 2001, CONC-I/O-99/0007 and CONC-I/O-99/0013, *Demol / Esso*.

⁶⁷ See for example Commission decision 77/66/EEG of 2 December 1977 (Case IV/28.948 – Cauliflowers), OJ L 21, 26 January 1978, pp. 23–31.

⁶⁸ Decision no. 2002-P/K-80 of 5 November 2002, *Nationale Unie van Belgische exporteurs van land- en tuinbouwproducten / VMV, and others*.

⁶⁹ President of the Commercial Court Mons, 21 January 2011, *Belgian discotheques/Sabam A/08/1189*, unpublished.

⁷⁰ For a further analysis of the case see X. Taton, T. Franchoo, N. Baeten and I. Rooms, *Les actions civiles pour infraction au droit de la concurrence – Chronique de jurisprudence (2011-2015)*. *Private handhaving van het mededingingsrecht in België – Overzicht van rechtspraak (2011-2015)*, TBH 2017/8, pp. 798-799.

5. Objectives Justifying to Prohibit Discriminatory Practices

It seems as if the BCA has not explicitly shared its objectives justifying to prohibit discriminatory practices. Therefore, it is safe to assume that the objectives admitted under European law also apply to Belgian competition law. In this context, the BCA has used the sanction of discriminatory practices as a tool to restore an effective competitive structure on a number of occasions. In this regard, the BCA has accepted commitments that removed the BCA's potential concerns.

In *Unizo / Banksys*, Banksys, a company providing services for integrated and secured payment systems, acknowledged the infringements of alleged discriminatory practices (among others) raised by Unizo, the Belgian association for independents, small and medium-sized enterprises and liberal professions. The BCA did not even had to make any thorough analysis of the practice in question, because Banksys offered a commitment to adhere to the principle of non-discrimination towards retailers, who only make a small number of transaction through its payment systems.⁷¹

In *Distribution One / Coca Cola Enterprise Belgium*, the BCA stopped further investigations into alleged discriminatory practices (among others) by Coca Cola, as the commitments offered by Coca Cola were considered sufficient to remove the BCA's concerns. In particular, Coca Cola committed to apply the same prices and logistic rebates and adhere to the same promotional programs, benefits and fees to customers falling within the same category. Therefore, no further assessment of the alleged abusive discriminatory practices was made.⁷²

In *ABB*, the commitments imposed by the BCA required ABB to maintain a non-discriminatory pricing policy and processing of its orders. ABB was required to apply price reductions for products it sells in competition with the lids, and for electricity boxes or their components, as well as refraining from price increases that were not objectively justifiable.

6. Relevance of Other Legal Areas to Apprehend Discriminatory Practices

Other legal areas have a role to play to apprehend discriminatory practices and seem appropriate to deal with the issue of discrimination. The decision of the Brussels' Court of Appeal in *BPost* is a strong example of this. In a first decision in 2011, the BCA assessed the per sender rebate scheme by BPost, the incumbent Belgian mail services operator and fined BPost for €37 million. BPost's rebate scheme allowed direct senders to qualify for significant volume rebates, while intermediaries could not qualify for these rebates. Although, the BCA did not formally reach a finding of discrimination, it concluded that the practice was a breach of equal treatment regarding the grant of rebates, which prevented the development of intermediaries.⁷³

⁷¹ Decision no. 2006-I/O-12 of 31 August 2006, CONC-I/O-00/0049, Banksys S.A., CONC-P/K-02/0043, FNUCM / Banksys S.A., CONC-P/K-02/0051, *Unizo / Banksys S.A.*

⁷² Decision no. 2005-I/O-52 of 30 November 2005, CONC-I/O-98/0012, *Distri-One S.A. c./ Coca-Cola Enterprises Belgium S.P.R.L.*

⁷³ Decision n° 2012-P/K-32 du 10 December 2012, CONC-P/K-05/0067, CONC-P/K-09/0017 et CONC-P/K-10/0016, *Publimail, Link2Biz International et G3 Worldwide Belgium / BPost* (Appealed – Court of Appeal Brussels, 10 November 2016, *BPost/ Publimail, Link2Biz International et Spring*, TBH 2017, afl. 8, 865 and TBM 2017/1, p. 42 – Further appealed – Belgian Supreme Court – Cass.(1e k.) AR C.17.0126.F, 22 November 2018, *Belgian competition authority / BPost*, www.cass.be and *Competitio* 2019/1, p. 21.).

In November 2016, the Court of Appeal annulled this decision on the basis of the *ne bis in idem* principle, according to which an undertaking cannot be fined twice for the same conduct. The Court of Appeal concluded that the BIPT, the sector regulator for postal services, already sanctioned BPost for quasi the same practices.⁷⁴ In November 2018, the Belgian Supreme Court overturned the decision, because it found that the Court of Appeal did not take into account different objectives that both authorities might pursue.⁷⁵

7. Future of the Prohibition of Discriminatory Practices on a Competition Law Perspective

The overview of abusive discriminatory practices in Belgian competition laws shows that the developed case-law is fairly limited and not providing much additional guidance to precedents that have been developed in European case-law. It is also unclear whether the enforcement of discriminatory practices in Belgian competition law will increase in the near future, even if the development in the digital economy have voiced concern regarding discrimination as exploitative abuse.

In this regard, the BCA publishes an annual priority policy in which it highlights the economic sectors that will be on its radar for the following year. For 2018, the BCA flagged the telecom market, the sector for distribution, services to consumers and public procurement, pharmaceutical and logistics as its prioritized sectors. For the sector for distribution, the BCA explicitly mentioned that special focus would be on potential restrictions to online distribution, because the Belgian Observatory for Prices⁷⁶ has observed higher prices for products in super markets compared to prices in Belgium's most important neighbouring countries.⁷⁷ For 2019, the BCA announced that its priority sectors remained the same and highlighted potential restrictions to online distribution as well.⁷⁸ On this basis, the BCA is including the developments in the digital economy in its prioritized fields of investigation. Nevertheless, we have not seen any increase in enforcement activities by the BCA or by national courts so far.

Furthermore, as mentioned above, the Belgian Parliament has adopted a new competition law only recently,⁷⁹ which introduces the concept of 'abuse of economic dependency' into Belgian

⁷⁴ Court of Appeal Brussels, 10 November 2016, *BPost/ Publimail, Link2Biz International et Spring*, TBH 2017, afl. 8, 865 and TBM 2017/1, p. 42 (Further appealed – Belgian Supreme Court – Cass.(1e k.) AR C.17.0126.F, 22 November 2018, *Belgian competition authority / BPost*, www.cass.be and *Competitio* 2019/1, p. 21.).

⁷⁵ Belgian Supreme Court – Cass.(1e k.) AR C.17.0126.F, 22 November 2018, *Belgian competition authority / BPost*, www.cass.be and *Competitio* 2019/1, p. 21.

⁷⁶ In short, the Belgian Observatory for Prices (« Prijzenobservatorium ») is responsible for analysing price evolution, pricing levels, market functioning and margins in Belgium. More information is available (in French or in Dutch) at : <https://economie.fgov.be/nl/over-de-fod/structuur-fod-economie/observatoria/prijzenobservatorium>

⁷⁷ The BCA's annual priorities policy for 2018, available (in Dutch or in French) at : <https://www.bma-abc.be/nl/over-ons/publicaties/prioriteitenbeleid-2018>.

⁷⁸ The BCA's annual priorities policy for 2019, available (in Dutch or in French) at : <https://www.bma-abc.be/nl/over-ons/publicaties/nota-prioriteitenbeleid-2019>.

⁷⁹ Law of 4 April 2019 amending the Code of Economic Law. The exact wording of the relevant provision is the following: “position of an undertaking in its relation towards one or more other undertakings that is characterised by the absence of reasonable equivalent alternatives, available in a reasonable period of time, under reasonable conditions and costs, allowing this other or these other undertakings to impose performances or conditions that could not be obtained under normal market conditions”.

law.⁸⁰ The concept does not have an equivalent in EU competition law, but has been recently introduced in other competition regimes in Europe, among which, into German and French competition law.⁸¹ The notion allows for the enforcement of competition law against non-dominant undertakings with ‘significant market power’. Even if it remains unclear how the notion can effectively be enforced and what the exact scope of the abuse will be, the need for this legislations was mainly inspired by alleged abuses in the food distribution sector and to allow the protection of smaller trading partners in these vertical relationships. It is possible that discrimination theories will revive through this new legislation.

In addition, the intended protection by this new legislation might eventually have a much broader application than foreseen. In this regard, the President of the Belgian Competition Authority emphasized the need for more protection against vertical abuses created by the dependency on internet platforms.⁸² In the same vein, it is therefore not unlikely that the application of these rules will increase the application of theories of harm based on discriminatory practices either by dominant undertakings or by undertakings with significant market power. Nevertheless, even if the preoccupation by the BCA with regard to enforcement of competition rules to the digital economy has been raised several times, we have not seen any significant enforcement or investigative improvements by the BCA towards anticompetitive practices in the digital economy to date.

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⁸¹ More information is available at: <https://www.economie.gouv.fr/dgccrf/Publications/Vie-pratique/Fiches-pratiques/Abus-de-dependance-economique>.

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