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OBJECTIVE JUSTIFICATIONS IN ARTICLE 102 TFEU CASES

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Abstract: Objective justifications in EU competition law refer to legal defences invoked by undertakings to justify behaviour that would otherwise be considered anticompetitive under EU competition rules. In the context of the provisions of art. 102 TFEU, these justifications provide exceptions to the general prohibition of abuse of dominance, permitting companies to engage in activities deemed necessary to achieve legitimate business objectives or serve the public interest. Objective justifications are pivotal in ensuring fair competition within the European Single Market, particularly under Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). While Article 101 TFEU contains an exemption clause, the concept of objective justification in the context of Article 102 TFEU has been developed by the Courts.

The entry explores the significance, application, and limitations of objective justifications within the framework of Article 102 TFEU, focusing on key defences,

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such as: efficiency gains, objective necessity, public interest, legitimate business behaviour.

The assessment of objective justifications involves a case-by-case analysis, considering factors such as the conduct's effects on competition, consumer welfare and the fulfilment of a proportionality test. Objective justifications play a crucial role in balancing the enforcement of Article 102 TFEU with the need to allow dominant firms to engage in legitimate business activities. By providing a framework for defending certain conduct, objective justifications ensure that the application of EU competition law remains fair and focused on protecting competition rather than punishing dominance.

Keywords: Article 102 TFEU, abuse of dominance, objective justification, efficiencies, economic approach, consumer welfare, objective necessity

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Definition

Objective justifications in EU competition law refer to the legal defences or rationales that parties may invoke to justify behaviour that would otherwise be considered anticompetitive under EU competition rules[1]. In other words, objective justification means that certain types of conduct of dominant undertakings' do not fall within the category of abuse of dominance[2]. These justifications serve as exceptions to the general prohibition of abuse of dominance contained in art. 102 TFEU, allowing companies to engage in certain activities that may restrict competition but are deemed necessary to achieve legitimate business objectives, or serve the public interest.

The provisions of Article 102 TFEU does not contain an exemption similar to Article 101, para. 3, the concept of objective justification in the context of abuse of dominance being developed by the Courts[3]. Within the scope of Article 102 TFEU, two critical elements are often invoked to justify potentially anticompetitive behaviour: efficiency gains and the objective necessity defence[4]. Beside mentioned defences, in practice we can also identify defences related to consideration of public interest and legitimate business behaviour. Article 106(2) TFEU provides an exception to the prohibitions laid down in the TFEU, including Article 102, for undertakings

[1] P.I. COLOMO, *The Shaping of EU Competition Law*, Cambridge University Press, Cambridge, 2018, p. 41.

[2] R. O'DONOGHUE, J. PADILLA, *Law and Economics of Article 102 TFEU*, Bloomsbury Publishing, London, 2020, p. 344.

[3] W. FRENZ, *Handbook of EU Competition Law*, Springer Publishing, Berlin, 2015, p. 423.

[4] EC, Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, OJ series C no. 45/24. O2. 2009, para. 28-31.

entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly:

> 'Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.'[5]

A. Types of Objective Justifications

1. Efficiency Gains Defence

In the context of Article 102 TFEU, efficiency gains refer to the benefits accrued from activities or strategies undertaken by dominant undertakings that result in enhanced productivity, cost reductions, technological advancements, or improvements in product quality[6]. These gains often translate into tangible benefits for consumers, such as lower prices, increased product variety, or enhanced service quality. The rationale behind the recognition of the efficiency defence „relates to the concept of competition on merits and the assumption that consumers benefit from meritorious competitive market behaviour'[7].

Efficiency gains can serve as a legitimate justification for conduct that may otherwise be deemed abusive under Article 102 TFEU. Dominant

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[5] Art. 106, par. 2, *Consolidated Version of the Treaty on the Functioning of the European Union*, OJ series C no. 202/7.06.2016, p. 1.

[6] J. Van de GRONDEN, C. RUSU, *Competition Law in the EU: Principles, Substance, Enforcement*, Edward Elgar, Cheltenham, 2021, p. 273.

[7] A. JONES, B. SUFRIN BRENDA, N. DUNNE, *Jones & Sufrin's EU Competition Law. Text, Cases and Mater*ials, 8th edition, Oxford University Press, Oxford, 2019, p. 418.

undertakings may argue that their behaviour, although potentially restrictive of competition, ultimately leads to overall efficiency improvements that outweigh any negative effects on competition. For instance, a dominant firm may engage in pricing strategies aimed at achieving economies of scale or investing heavily in research and development to innovate and improve product offerings. These activities, while potentially limiting competition in the short term, can result in long-term benefits for consumers, such as lower prices, better-quality products, or increased consumer choice. Analysing efficiency gains will imply balancing the positive and negative competitive effects generated by a given behaviour[8].

Regarding the conditions which needs to be met in case of the efficiency gains defence, the Commission Guidance regarding the priorities in applying article 102 TFEU[9] mentions: a) the existence of a causal link between the conduct in question and the realised or likely to be realised efficiency gains; b) the indispensable character of the conduct from the perspective of the realisation of efficiencies; c) the outweighing of negative effects on competition and consumers by the efficiency gains; d) the non-elimination of effective competition from the relevant market[10]. The justification based on efficiency gains possess an objective character, so as far as efficiencies are present, generated by the behaviour in question and are outweighing the negative competitive effects, they can justify a presumptive abusive

[8] COURT OF JUSTICE OF THE EUROPEAN UNION (GRAND CHAMBER), Case C-413/14 P, *Intel Corp. v. EC,* Judgment of 6 September 2017, ECLI:EU:C:2017:632., par. 140.

[9] EC, *GUIDANCE on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings*, OJ series C no. 45/24. O2. 2009, par. 30.

[10] R. WHISH, D. BAILEY, *Competition Law*, 8th edition, Oxford University Pres, Oxford, 2012, p. 223.

behaviour, even if they appeared accidently and was not the intent of the dominant company to generate them[11].

Despite their potential benefits, efficiency gains as a justification under Article 102 TFEU are subject to several *conditions*[12].

Firstly, *the burden of proof* lies with the dominant undertaking to demonstrate that the *efficiency gains are genuine and outweigh any negative effects on competition*[13]. This requires a robust economic analysis and empirical evidence to substantiate the claimed efficiencies. Secondly, the European Commission and courts have emphasized that efficiency gains must be passed on to consumers in the form of lower prices, improved quality, or increased choice. Mere assertions of efficiency improvements, without concrete evidence of consumer benefits are unlikely to suffice as a valid defence under Article 102 TFEU.

Secondly, *efficiency gains must not result in the foreclosure of competitors or the creation of insurmountable barriers to entry in the market*. Foreclosure effect occur not only where access on the market is impossible, but also where access to the market is made more difficult[14]. Conduct that eliminates or substantially restricts competition to the detriment of consumers and other market participants is unlikely to be justified solely on the grounds of efficiency gains.

Thirdly, *efficiency gains must be passed on to consumers***.** Consumer welfare lies at the heart of competition law, reflecting the principle that

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11 A. JONES, B. SUFRIN Brenda, N. DUNNE, *op.cit*., p. 420.

12 *Ibidem*, p. 421.

13 GENERAL COURT, Case T-201/04, *Microsoft Corp. v. EC,* Judgment of 17 September 2007, ECLI:EU:T:2007:289, para. 688; CJEU, Case C-23/14, *Post Danmark A/S v. Konkurrencerådet*, Judgment of 6 October 2015, ECLI:EU:C:2015:651, par. 42.

14 A. EZRACHI, *EU Competition Law. An Analytical Guide to the Leading Cases*, Bloomsbury Publishing, London, 2021, p. 290.

competition should ultimately benefit consumers, by ensuring lower prices, better quality products, increased choice, and innovation[15]. Under Article 102 TFEU, *abusive conduct by dominant undertakings that harms competition, and, by extension, consumer welfare, is prohibited*. However, certain behaviours that may restrict competition can be justified if they result in overall benefits for consumers. Consumer welfare can serve as a legitimate justification for conduct by dominant undertakings that enhances consumer welfare, outweighing any potential negative effects on competition[16]. Certain business practices, while potentially limiting competition in the short term, can lead to long-term benefits for consumers. For instance, a dominant firm may engage in pricing strategies aimed at reducing costs and passing on savings to consumers in the form of lower prices. Similarly, investments in research and development to innovate and improve products or services can enhance consumer welfare by offering better-quality products, increased choice, or improved convenience. The burden of proof rests on the dominant undertaking, who should demonstrate that its conduct results in tangible benefits for consumers[17]. The mere assertions of consumer welfare benefits, without concrete evidence are unlikely to suffice as a valid defence. Competition authorities and courts will assess whether the purported benefits to consumers outweigh any negative effects on competition. Conduct that leads to the foreclosure of competitors, the creation of barriers to entry, or the distortion of competition in the market is unlikely to be justified solely on the grounds of passing on efficiency benefits to consumers. Moreover, the long-

[15] F. FERRETTI, *EU Competition Law, the Consumer Interest and Data Protection*, Springer, Berlin, 2014, p. 103.

[16] R. NAZZINI, *The Foundations of European Union Competition Law. The Object and Purpose of Article 102*, Oxford University Press, Oxford, 2011, p. 167.

[17] T. KÄSEBERG, *Intellectual Property, Antitrust and Cumulative Innovation in EU and the US*, Hart Publishing, Oxford, 2012, p. 94.

term effects on consumer welfare must be taken into account. While certain practices may lead to short-term benefits, they may also have adverse consequences for competition and consumer welfare in the long run. Competition authorities and courts will carefully weigh these factors in their assessment of the objective justification invoked.

2. Objective Necessity Defence

The objective necessity defence revolves around the notion that a certain conduct by dominant undertakings is objectively necessary to achieve legitimate business objectives or serve compelling public interests. It provides a framework for justifying behaviour that may otherwise be considered abusive under Article 102 TFEU on grounds of necessity.

Under the objective necessity defence, a dominant undertaking may argue that its conduct was indispensable to achieve legitimate business objectives, such as ensuring product safety, maintaining financial stability, or safeguarding intellectual property rights[18]. For example, in the Android Case[19], Google claimed the objective necessity of its abusive conduct consisting in anti-fragmentation agreements in order to protect the integrity and the quality of the Android platform against possible risks which could arise from incompatibilities. The Court rejected Google claims. The defence requires demonstrating that there were no less restrictive means available to achieve the same objectives without harming competition. In Volvo Case[20] the

[18] R. O'DONOGHUE, J. PADILLA, *op.cit*., p. 344; EC, *Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings*, OJ series C no. 45/24. O2. 2009, par. 29.

[19] GENERAL COURT, Case T-604/18, *Google LLC and Alphabet Inc. v. EC,* Judgment of 14 September 2022, ECLI:EU:T:2022:541, para. 867.

[20] CJEU, Case C-238/87, *AB Volvo v. Erik Veng (UK) Ltd*., Judgment of 5 October 1988, ECLI:EU:C:1988:332.

Court ruled that a refusal to license designs is not abusive as it constitutes the substance of the exclusive right, except in cases of arbitrary refusal, unfair pricing, or ceasing production of necessary spare parts. As well, in the *Tiercé Ladbroke Case*[21] the Court of First Instance upheld the Commission's decision that refusal to license rights for broadcasting horse races in Belgium was not abusive as it did not involve discrimination or market partitioning. On the other hand, in *Commercial Solvents*[22], the Court ruled that a dominant company cannot cease supplying an existing customer to eliminate them from the market. Accordingly, in *United Brands*[23], the Court retained that a dominant company cannot stop supplying a long-standing customer who follows regular commercial practices.

The objective necessity defence is not absolute and is subject to strict scrutiny by competition authorities and courts. Dominant undertakings bear the burden of proving that their conduct meets the criteria of objective necessity and that the benefits to consumers or the public interest outweigh any negative effects on competition.

Moreover, the defence does not provide *carte blanche* for dominant firms to engage in conduct that harms competition[24]. Competition authorities and courts will assess the proportionality of the conduct in question, considering whether less restrictive alternatives were available and whether

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[21] GENERAL COURT, Case T-504/93, *Tiercé Ladbroke SA v. Commission of the European Communities*, Judgment of 12 June 1997, ECLI:EU:T:1997:84.

[22] CJEU, Joined Cases C-6/73 and C-7/73, *ICI SpA v. Commission of the European Communities*, Judgment of 14 July 1974, ECLI:EU:C:1974:18.

[23] CJEU, Case C-26/76, *United Brands Company and United Brands Continentaal BV v. Commission of the European Communities*, Judgment of 14 February 1978, ECLI:EU:C:1977:167.

[24] M. GAL, *Below-Cost Price Alignment: Meeting or Beating Competition?* European Competition Law Review (ECLR), Vol. 28, No. 6, 2007, p. 8.

the purported benefits justify the potential harm to competition (Commission — Guidance on the Commission's enforcement priorities in applying Article 82, par. 29).

3. Public Interest

Certain behaviours may be justified on grounds of public interest, such as safeguarding national security, protecting the environment, or promoting social cohesion. Public interest considerations can provide a basis for exempting certain activities from the application of competition rules, especially when other regulatory objectives are at stake[25]. So, in specific contexts, societal goals (*e.g.* production and distribution of essential medical supplies, postal monopoly in certain types of mail delivery, support of public transportation system in order to reduce carbon dioxide emission etc.) may take precedence over strict competition enforcement. Public interest considerations encompass a broad range of objectives and values that extend beyond the realm of competition law. While competition law primarily focuses on promoting competition and consumer welfare, it also recognizes that there are instances where public interest concerns may justify certain behaviours by dominant undertakings.

Under Article 102 TFEU, dominant undertakings may invoke public interest considerations to justify conduct that is otherwise abusive under competition law. For example, a dominant energy supplier may engage in conduct that restricts competition in the market, such as exclusive dealing arrangements or tying practices, on the grounds that it is necessary to ensure

[25] I. LIANOS, D. GERARDIN, *Handbook of European Competition Law: Substantive Aspects*, Edward Elgar, 2013, p. 58.

the security and reliability of energy supply to consumers. In *DEI Case*[26] the Public Power Corporation (DEI), which held a dominant position in the Greek electricity market was abusing its dominant position on the market for lignite and electricity generation via exclusive dealing arrangements and tying practices. DEI argued that its conduct was necessary to ensure the security and reliability of energy supply to Greek consumers. The ECJ emphasized that while security of supply is a legitimate public interest objective, any restriction of competition must be proportionate and necessary to achieve that objective. demonstrating that the restrictive practices are essential and the least restrictive means to achieve the public interest objective.

Similarly, a dominant firm in the pharmaceutical sector may refuse to license its patents to generic manufacturers in order to protect public health by maintaining incentives for innovation and ensuring the availability of life-saving drugs. In the *IMS Health Case*[27]. NDC Health, a competitor of IMS Health, the possessor of an intellectual property right on the market for pharmaceutical data services requested access to the specific method developed by IMS health for collecting and organizing pharmaceutical sales data in Germany, IMS refusal to licence its service was considered an abuse of dominance. Although the Court had retained that protecting patents and maintaining incentives for innovation are crucial for public health, such protections must not be used to unjustifiably prevent competition and the development of new products that can benefit consumers.

In such cases, public interest considerations may outweigh the potential harm to competition, justifying the dominant undertaking's

[26] CJEU, Case C-553/12 P, *European Commission v. Dimosia Epicheirisi Ilektrismou AE (DEI)*, Judgment of 17 October 2013, ECLI:EU:C:2013:807.

[27] CJEU, Case C-418/01, *IMS Health GmbH & Co. OHG v. NDC Health GmbH & Co. KG*, Judgment of 29 April 2004, ECLI:EU:C:2003:537.

behaviour under Article 102 TFEU. In the decisional practice of the Commission, public interest considerations like *passenger safety* could be considered an objective justification[28]. Also, space and capacity restraints were recognized as possible objective justification[29] for the refusal to allow independent ramp-handling and self-handling services at an airport. *Health and public safety* considerations were mentioned in cases *Hilti*[30] and *Tetra Pak II*[31], but they were rejected on the grounds that public safety is enforced by state regulations and public bodies actions and cannot justify private undertakings exclusionary practices.

The Commission's decisional practice and the Courts case-law both recognize the fact that objective justifications need to fulfil *the proportionality test*. For example, in the *Romanian Power Exchange* Case[32] the necessity to avoid an unlawful mismatch of VAT payments in order to justify the discriminatory treatment of power exchanges from other Member States was rejected by the Court as an objective justification, because of its disproportionate character.

Conduct that disproportionately restricts competition or discriminates against competitors without sufficient justification is unlikely to be deemed permissible under Article 102 TFEU. Competition authorities and courts will carefully scrutinize the balance between the public interest and the preservation of competition in the market. Public interest considerations

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[28] EC, *Case AT.39813 – Baltic Rail*, Decision of 2 October 2017, paras. 325-328 in A. Jones, B. Sufrin Brenda, N. Dunne, *op.cit*., p. 417.

[29] EC, Decision in Case *FAG/Flughafen-Frankfurt/Main*, OJ series L no. 72/11.03.1998, p. 30.

[30] GENERAL COURT, Case T-30/89, *Hilti AG v. Commission of the European Communities*, Judgment of 12 December 1991, ECLI:EU:T:1991:70.

[31] EC, Decision in Case IV/31043 *Tetra Pak II*, OJ series L no. 72/18.03. 1992.

[32] EC, *Case AT.39984*, OJ C 314/11.09.2014, p. 7.

must not serve as a pretext for anticompetitive behaviour or the protection of private interests at the expense of consumers and competition. Competition authorities and courts will assess the legitimacy of the public interest invoked, ensuring that it genuinely serves the common good rather than individual or corporate interests[33].

4. Legitimate Business Objectives

Dominant firms may claim that their conduct is necessary to achieve legitimate business objectives, such as ensuring product safety, maintaining financial stability, or preserving the integrity of contractual relationships.

The concept of legitimate business behaviour encompasses actions undertaken by dominant undertakings in pursuit of lawful and commercially justifiable objectives, which are consistent with the rational profit-maximizing behaviour of undertakings in general[34]. Such behaviour may include, for example, efforts to protect intellectual property rights, ensure product safety and quality, maintain brand reputation, or safeguard contractual relationships. While such conduct may have an impact on competition, it is deemed necessary for the normal operation of businesses.

Under Article 102 TFEU, dominant undertakings may invoke legitimate business behaviour as an objective justification to defend conduct that might otherwise be considered abusive[35]. For instance, a dominant firm may refuse to supply essential inputs to competitors to protect its intellectual

[33] N. DUNNE, 'Public Interest and EU Competition Law' in The Antitrust Bulletin vol. 65 no. 2/2020, pp. 269. https://doi.org/10.1177/0003603X20912883.

[34] CJEU, Case C-26/76, *United Brands Company and United Brands Continentaal BV v. Commission of the European Communities*, Judgment of 14 February 1978, ECLI:EU:C:1977:167, paras. 189-190.

[35] T. van der VIJVER, *'Objective Justification and Article 102 TFEU'*, World Competition, vol. 35/2012, Issue no. 1, pp. 55, online: https://doi.org/10.54648/woco2012004.

property rights or maintain the integrity of its products. To successfully rely on this defence, the dominant undertaking must demonstrate that its conduct is objectively necessary to achieve legitimate business objectives and that there are no less restrictive means available to achieve the same objectives without harming competition[36]. This requires a robust justification supported by evidence showing the positive impact of the conduct on legitimate business interests.

The burden of proof rests on the dominant undertaking to demonstrate the legitimacy and necessity of its conduct[37]. Competition authorities and courts will assess also the proportionality of the conduct in question, considering whether less restrictive means was available to achieve the same objectives without harming competition. Conduct that disproportionately restricts competition or is not strictly necessary to achieve legitimate business objectives is unlikely to be deemed permissible under Article 102 TFEU[38].

In practice, the protection of the undertakings' own commercial interest as a defence was first accepted in *United Brands*[39], where the company refused to supply to a distributor for participating in a competitors promotion campaign. The Court of Justice of the European Union held that abusive conduct must be assessed in light of its effects on competition and consumer welfare. The CJEU recognized that conduct that may restrict

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[36] E. ØSTERUD, *Identifying Exclusionary Abuses by Dominant Undertakings Under EU Competition Law*, Wolters Kluwer, Alphen aan den Rijn, 2010, p. 256.

[37] J. Van de GRONDEN, C. Rusu, *Competition Law in the EU: Principles, Substance, Enforcement*, Edward Elgar, Cheltenham, 2024, p. 169.

[38] A. JONES, B. SUFRIN BRENDA, N. Dunne , op.cit., p. 423.

[39] CJEU, Case C-27/76, *United Brands Company and United Brands Continentaal BV v. Commission of the European Communities*, Judgment of 14 February 1978, ECLI:EU:C:1978:22.

competition may be justified if it is necessary to achieve legitimate business objectives and if the benefits to consumers outweigh any potential harm to competition. More recently, in the *Microsoft case*[40], the European Commission found that Microsoft's bundling of its Windows operating system with its media player constituted an abuse of dominance. However, the Commission also acknowledged that bundling could be justified if it enhanced consumer welfare by improving interoperability and reducing costs for consumers. In the *Sot. Lelos case*[41] the Court of Justice had recognized the entitlement of dominant companies to protect their commercial interests, without having the objective to strengthen the detained dominant position or to abuse to it. Similarly, in *Post Danmark*[42] the Court had retained that even an exclusionary effect on the market can be counterbalanced and outweighed by advantages in terms of efficiency that also benefits consumers. So, according to the case-law of the Court, dominant undertakings can provide justification for their anticompetitive market strategies[43]. The Court had mentioned in this case the objective justification of efficiency gains and objective necessity (para. 41).

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[40] GENERAL COURT, Case T-201/04, *Microsoft Corp. v. EC,* Judgment of 17 September 2007, ECLI:EU:T:2007:289.

[41] CJEU, Case C-468/06, *Sot. Lélos kai Sia EE and Others v. GlaxoSmithKline AEVE Farmakeftikon Proïonton*, Judgment of 16 September 2008, ECLI:EU:C:2008:504, para. 50

[42] CJEU, Case C-209/10, *Post Danmark A/S v. Konkurrencerådet*, Judgment of 6 October 2015, ECLI:EU:C:2015:651, paras. 40-41.

[43] CJEU, Case C-26/76, *United Brands Company and United Brands Continentaal BV v. Commission of the European Communities*, Judgment of 14 February 1978, ECLI:EU:C:1978:22, para. 184; Joined Cases C-242/91 P and C-242/91 P, *Radio Telefis Eireann (RTE) and Independent Television Publications Ltd (ITP) v. Commission of the European Communities*, Judgment of 6 April 1995, ECLI:EU:C:1995:98, paras. 54-55.

The proportional character of the behaviour was also retained in case-law[44], where it was mentioned that the normal profit-maximizing behaviour of the dominant undertaking should be based only on methods that are necessary to pursue legitimate aims and may not act in a way that will foreseeably limit competition more than necessary.

Conclusions

Objective justifications play a vital role in the enforcement of Article 102 TFEU, allowing dominant undertakings to engage in conduct that may restrict competition but is justified by legitimate business objectives or serves the public interest. However, their application requires careful scrutiny to ensure they are not used as a pretext for anticompetitive behaviour. Adherence to the principles of transparency, proportionality, and non-discrimination is essential to maintain the integrity and effectiveness of EU competition law. The assessment of such justifications involves a case-by-case analysis, taking into account the specific facts and circumstances of each situation. The burden of proof rests on the parties invoking them. As such, objective justifications function as important safeguards, enabling a balanced approach that protects competition while acknowledging the legitimate interests of businesses and consumers.

[44] GENERAL COURT, Case T-51/89, *Tetra Pak Rausing SA v. Commission of the European Communities (Tetra Pak I)*, Judgment of 10 October 1990, ECLI:EU:T:1990:15, para. 68.

Bibliography

COLOMO, Pablo Ibañez, *The Shaping of EU Competition Law* (Cambridge University Press, 2018);

DUNNE, Niamh*, Public Interest and EU Competition Law* in The Antitrust Bulletin vol. 65 no. 2/2020, pp. 256-281; online: https://doi.org/10.1177/0003603X20912883;

EZRACHI, Ariel, *EU Competition Law. An Analytical Guide to the Leading Cases* (Bloomsbury Publishing, 2021);

FERRETTI, Federico, *EU Competition Law, the Consumer Interest and Data Protection*, Springer, 2014);

FRENZ, Walter, *Handbook of EU Competition Law* (Springer Berlin, 2015);

GAL, Michal, *Below-Cost Price Alignment: Meeting or Beating Competition?* European Competition Law Review (ECLR), Vol. 28, No. 6, 2007, pp. 7-20;

JONES, Alison, SUFRIN Brenda, Dunne Niahm, Jones & Sufrin's EU Competition Law. Text, Cases and Materials, 8th edition, (Oxford University Press, 2019)

KÄSEBERG, Thorsten, *Intellectual Property, Antitrust and Cumulative Innovation in EU and the US* (Hart Publishing, 2012);

LIANOS, Ioannis, Damian Gerardin, *Handbook of European Competition Law: Substantive Aspects* (Edward Elgar, 2013);

NAZZINI, Renato, *The Foundations of European Union Competition Law. The Object and Purpose of Article 102* (Oxford University Press, 2011);

O'DONOGHUE, Robert & PADILLA, Jorge, *Law and Economics of Article 102 TFEU* (Bloomsbury Publishing, 2020);

ØSTERUD, Erik, Identifying Exclusionary Abuses by Dominant Undertakings Under EU Competition Law (Wolters Kluwer, 2010);

Van BAEL & BELLIS, *Competition Law of the European Union*, 9th edition, (Wolters Kluwer, 2021);

Van de GRONDEN, Johan W., Rusu, CĂTĂLIN, *Competition Law in the EU: Principles, Substance, Enforcement* (Edward Elgar, 2021);

Van de GRONDEN, Johan W., Rusu, CĂTĂLIN, *Competition Law in the EU: Principles, Substance, Enforcement* (Edward Elgar, 2024);

TJARDA van der VIJVER, *'Objective Justification and Article 102 TFEU'*, World Competition, vol. 35/2012, Issue no. 1, pp. 55-76, https://doi.org/10.54648/woco2012004;

WHISH, Richard, BAILEY, David, *Competition Law*, 8th edition, (Oxford University Pres, 2012).