

The Application of EU Regulations and Practices on Margin Squeezing in the Telecommunications Sector

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Abstract

A margin squeeze occurs when a vertically-integrated company which is dominant in the supply of an indispensable upstream input market pursues a pricing policy with the intention of preventing downstream competitors from trading profitably, thereby leading to their ultimate exclusion from the downstream market. We can often see this type of price abuse which an incumbent dominant operator implements in the telecommunications market. Even after the liberalization of the telecommunications market in the EU, many incumbents continued to maintain their dominant positions in the markets and it is thus insufficient to address the exclusive pricing of these dominant enterprises by way of ex ante regulations. The intensive introduction of competition law to the sector-specific regulations and aggressive ex post enforcement by the competition authority have been the EU's response to this situation. The model for competition analysis in relation to cases involving margin squeezing has been significantly changed. The EU Commission has transformed its format-based analysis into a systematic economic assessment. For exclusive pricing conduct including margin squeezes, the Commission has placed emphasis on the effects of market foreclosure and thereby the detriment to consumers' interests. Based on its practical experiences in the past, an explanatory document referred to as a "guidance paper" has been published by the Commission for public reference.

The policy and trend regarding the liberalization of the telecommunications sector in Taiwan is quite similar to that in the EU, whereas the vigorousness of competition law enforcement is relatively insufficient in Taiwan. In learning from the EU's regulations and

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practices on margin squeezes, and for the purpose of fostering effective competition in the telecommunications market in Taiwan, our competition authority, the Fair Trade Commission, should, among other things, take the initiative in the following three areas: it should update the definition of a dominant operator, it should establish a more delicate method for defining a market, and it should strengthen the powers in relation to competition law enforcement.

Keywords: margin squeeze, framework directive, guidance paper, dominant operator, market definition, local loop, broadband access.