

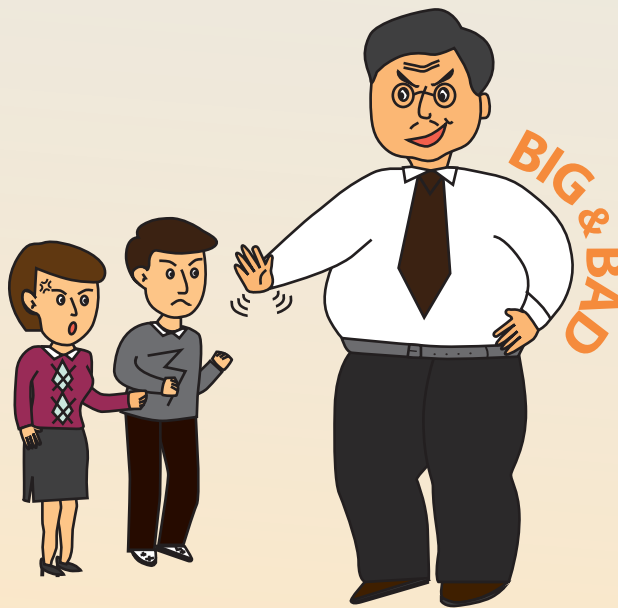
Market power abuse by big businesses distorts competition

Consumers will enjoy more choices and better prices of products and services when big companies with substantial market power compete fair and square with small-and-medium-sized enterprises in a market. While being “big” is not a breach of the Competition Ordinance, it may raise concerns when companies abuse their dominant market power. “Big and bad” businesses can exclude competitors from the market through certain malpractices, thereby limiting choices available to consumers.

Examples of abusive conduct include predatory pricing, anti-competitive tying and bundling, and refusal to deal. Predatory pricing refers to a powerful business setting prices so low that it deliberately makes a loss in an attempt to force competitors out of the market or to “discipline” smaller competitors. The company may incur losses in the short run in the expectation that it will be able to charge higher prices in the longer term.

A company with substantial market power may also harm competition by making the sale of one product (the tying product) conditional upon the purchase of another product (the tied product). It may also bundle two or more products together and sell them as a package at a discount. By doing so, a company with substantial market power in the market for one of the products in the bundle would prevent competitors in

the markets for other products in the bundle from finding customers, thus harming competition.



In another abusive practice called “refusal to deal”, a dominant business may harm its competitors in the downstream market by refusing to supply an input to its competitors or only supplying the input on unreasonable terms such as at an excessively high price. Concerns may arise, in particular, when the input in question is indispensable for businesses operating in the downstream market. The following case illustrates how Microsoft fell afoul of the competition law in Europe when it abused its dominant market position

through refusal to supply key technical information and product tying.

Squeezing out small rivals

In the 1990s, global software market leader Microsoft abused its market dominance when they refused to supply its competitors with the “interoperability information” or to authorise the use of that information. This information was essential for Microsoft’s competitors to develop and distribute products that would compete with Microsoft’s own products in the work group server operating systems market. Microsoft also abused its power by tying its Windows Media Player, a product where it faced competition, with its ubiquitous Windows operating system. Given Microsoft’s virtual monopoly in the market of PC operating systems, consumers did not have much choice but to buy both products from Microsoft. Microsoft’s illegal conduct has the effect of foreclosing the market to competitors.

The European Commission launched a five-year investigation into Microsoft’s alleged abuse of market power, after it had received a complaint from its competitor Sun Microsystems, and imposed a fine of EUR 497 million on Microsoft, as well as corrective actions to be taken within a certain period of time.

Did you know?

The Competition Ordinance has built-in de minimis arrangements under both the First and Second Conduct Rules. Except for serious anti-competitive conduct, which includes price fixing, bid rigging, market sharing and output restriction, the First Conduct Rule does not apply to arrangements between businesses where their combined annual turnover is below HK\$200 million. A business whose annual turnover is no more than HK\$40 million is not subject to the Second Conduct Rule. These arrangements have given certain protection to the SMEs.

What happens abroad?

In Singapore, the number of SMEs and their contribution to the economy have increased since the introduction of competition law. From 2006 to 2014, the number of SMEs rose from 130,000 to 189,000, representing a growth from 92% to 99% of the total number of enterprises. The total employment by SMEs also rose from 56% to 66%.



Win a study trip to Singapore

Secondary four/ five students (or equivalent) and their teachers can now enter the “Don’t Cheat. Compete” Advocacy Contest by forming teams to create stories that illustrate the benefits of competition law. The top three winning teams will go on a study tour to Singapore.

Act fast, registration ends on April 13, 2017.