

Abusing One's Dominance

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The competitive environment in business can be a calculated and an often hardnosed process. Rival firms manoeuvre to expand their individual businesses and inevitably acquire new customers, and by extension sales away from each other. Naturally, in this type of scenario one would envisage that an efficient firm will usually increase its market share, while an inefficient one will likely lose market share and sometimes be driven from the market. These occurrences are an inevitable consequence of a competitive business environment.

Due to the competitive process, however, sometimes an enterprise emerges which is dominant in nature. In this context the term dominance, as indicated in the Fair Competition Act of Barbados CAP.326C (the Act), suggests that the enterprise, either by itself or with an affiliated company, has a position of economic strength which enables it to operate in the market without effective competition from its competitors or potential competitors. In effect, this enterprise has the ability to influence the price of a product in the market by increasing or decreasing its supply and or price without the fear of credible competition challenging its status.

Unfortunately, what may result is that such a firm, if threatened by a new entrant or a formerly insignificant rival, may resort to conduct aimed at taking advantage of its dominance by restricting competition to unfairly gain or maintain that position and thus have an advantage over its competitors. Such conduct is prohibited under the Act and is usually termed an "abuse of dominance".

A firm may abuse a dominant position if it takes action to:

- restrict the entry of a firm into a relevant market;
- prevent or deter another firm from engaging in competitive conduct;
- eliminate a firm from a market;
- impose unfair purchase or selling prices that are excessive, unreasonable, discriminatory or predatory;
- limit the production of goods or services to the prejudice of consumers;
- make the conclusion of agreements subject to the acceptance by other parties of unrelated supplementary obligations;
- engage in exclusive dealing, market restriction or tied selling; or
- use any other measure unfairly that allows it to maintain its dominance.

We will now take a closer look at tied selling, predatory pricing, and exclusive dealings.

Tied selling

Whenever a dominant supplier compels a business to purchase other goods from the supplier, in addition to the goods that the business intended to purchase, it is considered to be tied selling. It also occurs when a supplier requires a dealer not to use or distribute any other good that is not of the same brand when it distributes the supplier's brand.

Tied selling removes freedom of choice, by requiring businesses to acquire additional products that they would probably rather not have purchased. Often the tied products are those for which demand might be quite low and which the dominant supplier might have difficulty selling.

Predatory pricing

A dominant firm, seeking to take advantage of its power in a market may drop its prices very low, even below the cost to produce the product. The firm might do this with the intention of forcing the market price down so that other firms in the market will find it difficult to earn profits and will therefore be ultimately forced out of business. Once enough competing firms are driven out of the market the dominant firm could charge much higher prices to regain its losses and make above normal profits. This practice is predatory pricing.

Predatory pricing literally seeks to drive one's competitors out of the market. It can however only occur where the market is such that new firms find it very difficult to enter. This might be as a result of the need to obtain a license or because of high business start-up costs.

If markets are structured to allow firms to easily enter, then when the dominant firm increases its prices to recover its losses, new firms will enter the market and drive the prices down, so predatory pricing would not be feasible.

The Fair Competition Act does not limit the behaviour of a firm if the conduct is as a result of superior competitive performance.

Exclusive dealing

Where a supplier requires another business to sell or produce only goods supplied by the supplier or an agent of the supplier, this is defined as exclusive dealing.

A dominant flour milling company, for example, would have engaged in exclusive dealing if that company indicated to a bakery to which it supplies, that in order to receive flour supplies, the bakery must take its flour only from the same

dominant milling company or from another milling company chosen by the dominant supplier.

Like tied selling, exclusive dealing hinders competition by removing freedom of choice. In several cases the dominant supplier might not be the most economic supplier of the product, so the firm which is forced to accept an exclusive dealing contract might be prevented from choosing a cheaper or a higher quality product.

It should be noted that the Fair Competition Act does not prohibit the attainment of a dominant position in a market, but prohibits the abuse of that power.