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OBJECTIVE JUSTIFICATIONS IN PREDATORY PRICING

Raimundas Moisejevas

Mykolas Romeris University, Faculty of Law,
Department of Business Law
Ateities 20, LT-08303 Vilnius, Lithuania
Telephone (+370 5) 2714 525
E-mail raimundas11@yahoo.com

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Abstract. *Abuse of a dominant position is one of the key aspects in EC competition law. The Court of Justice and General Court acknowledge that sometimes the actions of dominant undertaking that might be recognized as abusive should not be prohibited on the basis of Article 102 TFEU, if undertaking provides objective justification or proves that its actions generate positive effect which outweighs negative outcome on competition. Therefore, actions that usually are regarded as predatory pricing, which is one of the forms of the abuse of a dominant position, in case of special circumstances might be recognized as legitimate. In the present case, attention should be devoted to objective justifications, since this provides the basis for evaluation of legitimate, pro-competitive reasons that explain why undertakings may establish prices lower than costs. This article is devoted to the analysis of objective justification, which might prove that allegedly abusive behaviour is actually legitimate. Plenty of factors might be recognized as objective justifications, therefore it is quite difficult to provide a finite list of justifications.*

Keywords: *abuse of dominant position, objective justifications, predatory pricing, average variable costs, effect on the market.*

Introduction

Judicial institutions of the European Union, in certain cases, recognize that actions of dominant undertaking that might be acknowledged as abusive, should not be prohibited on the basis of Article 102 TFEU, if undertaking provides objective justification of its actions or proves that its actions generate positive effect which outweighs negative outcome on competition.¹ Therefore, actions that usually are regarded as predatory pricing in case of special circumstances might be recognized as legitimate. In case of predatory pricing attention should be paid to objective justifications, since it allows evaluating legitimate, pro-competitive reasons, which allow understanding why undertakings might establish prices lower than costs.² Dominant undertaking, which is suspected in predatory pricing, should provide objective justification proving that objective circumstances in the market influenced decision of undertaking to establish prices lower than costs. W. Baumol claims that many undertakings, in order to introduce new product to the market or sell obsolete inventory, establish prices lower than costs.³

This article satisfies novelty criteria, since Lithuanian authors have not published any article on objective justifications in relation to abuse of dominance or predatory pricing in particular. It should be noted that in the practice of the Lithuanian competition council objective justifications have not been analyzed yet.⁴ In 2009 the Commission made reform in the area of its evaluation of dominant position, therefore it is the area that underwent significant changes recently.⁵ The concept of objective justifications is also important, since it is analyzed only in several decisions of the Court of Justice and General Court.

The object of the article is to analyse the importance of the objective justifications in the case of predatory pricing in the competition law of the EC. Analysis is concentra-

- 1 Case C - 40/70 *Sirena S.r.l. v. Eda S.r.l. and others* [1971]; Case C - 78/70 *Deutsche Grammophon Gesellschaft mbH v. Metro-SB-Großmärkte GmbH & Co. KG* [1971], paras. 19, 22; Case C - 27/76 *United Brands Company and United Brands Continental BV v. Commission* [1978], para. 182–184; Case C - 77/77 *Benzine en Petroleum Handelsmaatschappij BV and others v. Commission* [1978], paragraphs 32–34; Case C-395/87 *Ministère public v. Jean-Louis Tournier* [1989], para. 46; Case C - 311/84 *Centre belge d'études de marché - Télémarketing (CBEM) v. SA Compagnie luxembourgeoise de télédiffusion (CLT) and Information publicité Benelux (IPB)* [1986], para. 27; Joint cases C-241/91 P and C-242/91 P *Radio Telefís Éireann (RTE) and Independent Television Publications Ltd (ITP) v. Commission* [1995], para. 55; Case T-30/89 *Hilti v. Commission* [1991], paras. 102–119; Case T-83/91 *Tetra Pak II v. Commission* [1996], paras. 115, 136, 207; Case T-228/97 *Irish Sugar plc v. Commission* [2000], paras. 167, 188–189 and 218; Case C-163/99 *Portuguese Republic v. Commission* [2001], para. 53.
- 2 Possibility to submit objective justifications is recognized in Brazil, Bulgaria, Canada, Chile, Denmark, EU, France, Germany, Hungary, Ireland, Italy, Jamaica, Japan, Korea, Mexico and United States [interactive]. [accessed 11-08-2008]. <http://www.internationalcompetitionnetwork.org/media/library/unilateral_conduct/FINALPredatoryPricingPDF.pdf>.
- 3 Baumol, W. Predation and the Logic of the Average Variable Cost Test. *Journal of Law and Economics*. 1996, 39(49).
- 4 International Competition Network [interactive]. [accessed 11-08-2008]. <[http://www.internationalcompetitionnetwork.org/media/library/unilateral_conduct/2007 Questionnaire Docs/LITHUANIA%20REPSONSE.pdf](http://www.internationalcompetitionnetwork.org/media/library/unilateral_conduct/2007%20Questionnaire%20Docs/LITHUANIA%20REPSONSE.pdf)>.
- 5 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.” (2009/C 45/02).

ted on the legal decisions formulated in the practice of the European Commission, Court of Justice, General Court and the courts of the member states of the European Union.

The aim of the article is to use scientific methods to analyze comprehensively the peculiarities of the objective justifications in the case of predatory pricing in EC competition law.

In this article many different research methods were used: logical, systematic analysis, comparative and linguistic.

1. Meeting Competition Defence

Most countries in the world recognize that it is possible to justify establishment of prices lower than costs on the basis of the meeting competition defence.⁶ Meeting competition defence appeared for the first time in the United States discriminatory pricing cases and it was used in predatory pricing cases. Article 2 of Robinson-Patman Act provides that “nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.”⁷ Courts of the United States have held that “[a] company should not be guilty of predatory pricing, regardless of its costs, when it reduces prices to meet lower prices already being charged by its competitors,” and that “to force a company to maintain non-competitive prices would be to turn the antitrust laws on their head.”⁸ The court of the United States in the *United States v. AMR Corp.* case in 2003 held that while applying the Sherman act, it should not rely on meeting competition defence and this decision created certain ambiguity in legal practice.⁹

Dominant undertaking may refer to meeting competition defence, if they set extremely low prices in response to prices lower than costs, which are set by the competitor. It is the right of the dominant undertaking to refer to meeting competition defence, and is based on the idea that the ability of undertaking to compete on the market should not be endangered only because they are in a dominant position. Sometimes it is noted that although dominant undertaking prohibits to refer to certain actions, such actions should be recognized as legal, if they are performed by the competitors of dominant undertaking, and this undertaking refers to analogous actions aiming to compete. It is prohibited for dominant undertaking to set discriminatory prices for consumers, but if competitors provide especially attractive offers to certain consumers (for example, products at very

6 For example in Brazil, Bulgaria, Kanada, Denmark, France, Mexico, New Zealand, South Afrika, US and EU. [interactive]. [accessed 11-08-2008]. <http://www.internationalcompetitionnetwork.org/media/library/unilateral_conduct/FINALPredatoryPricingPDF.pdf>.

7 15 U.S.C. § 13(b).

8 *ILC Peripherals v. IBM*, 458 F. Supp. 423, 433 (N.D. Cal. 1978), affirmed, *Memorex v. IBM*, 636 F.2d 1188 (9th Cir. 1980); see also *Richter Concrete v. Hilltop Concrete*, 691 F.2d 818, 826 (6th Cir. 1982) („competition is not damaged if undertaking reduces its costs in order to meet lower prices of competitors“).

9 *United States v. AMR Corp.*, 335 F.3d 1109, 1121 n.15 (10th Cir. 2003).

low prices), dominant undertaking may “meet competition” and propose consumers similarly attractive offers, even if such offers are not made to all consumers. It might be presumed that such “meeting of competition” is prohibited by part (c) of Article 102 of the TFEU, which provides that application of dissimilar conditions should not be the cause of trading parties being placed at a competitive disadvantage. Consumers of the dominant undertaking would be in adversity not because of the actions of dominant undertaking, but because certain consumers receive discriminatory offers from other undertakings. Dominant undertaking may claim that alleged abusive action is a response to the competitive actions of other undertakings, which allows for the reduction of losses (meeting competition defence).¹⁰

Recognition of the right to use meeting competition defence does not mean that dominant undertaking might refer to any action only because competitors referred to them. Sometimes competitors of dominant undertaking might use their relative supremacy and analogous behaviour of dominant undertaking may restrict the use of such relative supremacy. In order to evaluate the response to the application of meeting competition defence, comparison of competitors’ prices is not the most important factor. It is necessary to establish whether the price is not smaller than the costs of dominant undertaking, irrespective of whether this price corresponds to the prices of competitors. Let’s say that a newcomer to the market is more effective than dominant undertaking and may establish a smaller price. In order to enter the market, a new competitor may establish prices that are smaller than the dominant undertakings’ costs, but higher than its own costs. Suppose that a new competitor will be able to gain necessary volume of sales only if he takes part of the market from the dominant undertaking and the latter will continue selling products for high prices in order to cover its high costs. After recognition that the dominant undertaking has a right to apply prices the same as its competitors, even if these prices are smaller than the costs of dominant undertaking, the more effective competitor would not be allowed to anchor in the market and the departure of such a competitor from the market might cause damage to consumers. It should be noted that products of dominant undertaking may be of higher quality and have more credit from consumers than products proposed by a new competitor. Although courts do pay attention to these differences, it is quite difficult to evaluate them precisely.¹¹

In the *United Brands* case,¹² ECJ for the first time recognized the right of the dominant undertaking to refer to meeting competition defence in order to rebut alleged abuse. ECJ claimed that “although it is true, as the applicant points out, that the fact

10 European Commission, DG Competition, Brussels December 2005, DG Competition discussion paper on the application of Article 82 of the Treaty to exclusionary abuses [interactive]. [accessed 13-11-2007]. <<http://ec.europa.eu/comm/competition/antitrust/art82/discpaper2005.pdf>>.

11 Federal Cartel Office, decision of 18 February 2002, case B-9-144/01; FCO Press Release, “Higher Regional Court Düsseldorf Provisionally Confirms the Prohibition of Lufthansa’s Abusive Pricing Strategy,” 10 April 2002 [interactive]. [accessed 11-08-2008]. <www.bundeskartellamt.de/wEnglisch/News/Archiv/ArchivNews2002/2002_04_10.shtml>.

12 Ratliff, J. Abuse of Dominant Position and Pricing Practices: A Practitioner’s Viewpoint. *E.C.L.A.* 2003, 6; Kon, S.; Turnbull, S. Pricing and the Dominant Firm: Implications of the Competition Commission Appeal Tribunal’s Judgment in the NAPP Case. *E.C.L.R.* 2003, p. 76.

that an undertaking is in a dominant position cannot disentitle it from protecting its own commercial interests if they are attacked, and that such an undertaking must be conceded the right to take such reasonable steps as it deems appropriate to protect its said interests, such behaviour cannot be countenanced if its actual purpose is to strengthen this dominant position and abuse it ... even if possibility of a counter-attack is acceptable that attack must still be proportionate to the threat taking into account the economic strength of the undertaking confronting each other.¹³ Therefore, settlement of small prices on the basis of meeting competition defence should be proportional and fit the actual circumstances.¹⁴ Principles established in the *United Brands* case were developed in several subsequent cases claiming that protection of the commercial position of undertaking has to be based on "... criteria of economic efficiency and consistent with the interests of consumers."¹⁵

It should be noted that in the practice of the judicial institutions of European Union the content of meeting the competition defence is interpreted as being quite contradictory and undertakings aiming to ascertain probable legal evaluation of their actions face lack of legal certainty.¹⁶ Commission and European courts almost have not expressed their opinion concerning application of meeting competition defence in predatory pricing cases. CIF noted that if there is a danger towards commercial interests of dominant undertaking, dominant undertaking might refer to reasonable and proportional actions in order to protect its interests.¹⁷

In *Hilti* case in 1987 Commission for the first time in the EC law *expressis verbis* recognized right of the dominant undertaking to refer to meeting competition defence.¹⁸ Hilti Company used to supply the main customers of its competitors with goods for the smaller prices than its constant buyers. After the Commission started examining the actions of Hilti, this company undertook not to discriminate buyers; at the same time the Commission recognized that Hilti has a right to meet a competitive offer.¹⁹ In the *AKZO* case, ECJ confirmed the importance of meeting the competition defence.²⁰ Commission

13 Case C - 27/76 *United Brands Company v. Commission* [1978], paras. 189–190.

14 Gravengaard, M. A. The meeting competition defence principle—a defence for price discrimination and predatory pricing. *E.C.L.R.* 2006, 27(12): 658–677.

15 Case T-228/97, *Irish Sugar Plc v. Commission* [1999], paras. 112, 189. see also Case T-65/89, *BPB Industries v. Commission* [1993], paras. 69, 117; also Case T-219/99, *British Airways Plc v. Commission* [2003], paras. 279–280.

16 Slater, D.; Waelbroeck, D. Meeting Competition: Why it is not an Abuse under Article 82. *Research Papers in Law. College of Europe.* 2004, 3: 2. Rules formulated in the practice of EU judicial institutions are not unambiguous. Summary of judicial practice is submitted by Waelbroeck, D. Exclusionary Pricing and Price Discrimination under EC Competition Law. In *Current Competition Law*. Vol. III. Andends, M.; Hutchings, M.; Marsden, Ph. (eds.). BIICL, 2005, p. 300 et seq.

17 Joint cases T-24/93, T-25/93, T-26/93 ir T-28/93, *Compagnie maritime belge transports SA and Compagnie maritime belge SA, Dafra-Lines A/S, Deutsche Afrika-Linien GmbH & Co. and Nedlloyd Lijnen BV v. Commission.* [1996], para. 107.

18 Decision of Commission on 22nd of December, 1987, case COMP/30.787, *Eurofix-Bauco v. Hilti* [1988] O.J. L 65/19, see part devoted to obligations.

19 *Ibid.*

20 Decision of Commission on 29th of July, 1983, case COMP/30.698, *ECS v. AKZO-temporary measures* [1983] O.J. L252/13, para. 38 and Art. 4.

had no doubts concerning right of the undertaking to adjust its prices to the prices of competitors, however the facts proved that AKZO company lowered prices not because of competitive offers. ECJ agreed with the evaluation provided by the Commission and claimed that "... by maintaining prices below its average total costs over a prolonged period, without any objective justification, AKZO was thus able to damage ECS by dissuading it from making inroads into its customers."²¹ ECJ noted in respect of the decisions of the Commission, that this decision "... does not prohibit them (AKZO company—R. M.) from making defensive adjustments, even aligning itself on ECS's prices, in order to keep the customers which were originally its own."²² In "Discussion paper" it is noted that meeting the competition defence is applicable only towards such actions, which otherwise would be recognized as price abuse.²³

J. Bellamy, Member of the Competition Commission Appeal Tribunal, in *Napp Pharmaceutical Holdings Ltd v. Director General of Fair Trading* case held that dominant undertakings have special responsibility not to weaken competition and are obliged to protect their commercial interests only by "reasonable and proportionate" means.²⁴

1.1. Applications of Meeting Competition Defence in Order to Justify Prices Lower than Costs

Although meeting competition defence grants to dominant undertaking absolute freedom to take actions that may amount to abuse of dominant position, in exceptional cases undertaking may establish prices lower than costs of goods production. Such an exception may look contrary to the prohibition to apply predatory pricing and to the position of the ECJ in the AKZO case. In this case it was stated that establishment of prices smaller than average variable costs is profitable only in case if competitors are eliminated from the market, therefore, by application of such pricing, it is always intended to eliminate competitors.

Some scholars do not recognize the right of the dominant undertaking to refer to meeting competition defence if undertaking sets prices lower than costs. Areeda and Turner note that a monopolist might attempt to justify its lower than marginal costs prices by stating that it responds to the similarly low price of a competitor. However, such justifications, according to Areeda, are either of doubtful value or very rarely applicable, therefore prices, which are lower than marginal costs and higher than average costs, are not legal.²⁵

21 Case C-62/86 *AKZO Chemie BV v. Commission*, [1991], para. 140.

22 *Ibid.*, para. 156.

23 European Commission, DG Competition, Brussels December 2005, DG Competition discussion paper on the application of Article 82 of the Treaty to exclusionary abuses [interactive]. [accessed 11-03-2007]. <<http://ec.europa.eu/comm/competition/antitrust/art82/discpaper2005.pdf>>.

24 *Napp Pharmaceutical Holdings Ltd v. Director General of Fair Trading*, Case No. 1001/1/1/01, paras. 342–343 [15 January 2002].

25 Areeda, P. E.; Turner, D. F. Predatory Pricing and Related Practices under Section 2 of the Sherman Act. *Harvard L. Rev.* 1975, 88: 697; Brodley, J. F.; Bolton, P.; Riordan, M. H. Predatory Pricing: Strategic Theory and Legal Policy. *Georgetown L. J.* 2000, 88: 2275.

Most scholars take position that dominant undertaking may refer to meeting competition defence if undertaking sets price, which is smaller than average total costs and higher than average avoidable costs.²⁶ Such a position is based on the decision of the ECJ in the *AKZO* case²⁷ and on the fact that the Commission in this case did not object to the right of dominant undertaking to establish smaller than cost prices in case such prices are set in response to the small prices of competitors.²⁸ Legitimacy of prices smaller than costs should be evaluated in relation to costs of competitors, limitations set towards competitors and similar circumstances. Competition institutions of certain states recognize the right of the dominant undertaking to set prices smaller than costs in case such prices are established by the competitor. For example, the Danish competition council *MetroXpress Danmark A/S v. Berlingske Gratisavisser* held that newspaper in a dominant position had the right to sell a promotional area for a smaller price than its costs, if similar actions were taken by the competitor.²⁹ The Canadian legal system also recognizes the right of a dominant undertaking to refer to meeting competition defence. Canadian court decided in the *Boehringer Ingelheim v. Bristol-Myers Squibb* case that the price, which is smaller than the costs but which corresponds to the price of competitor and is not smaller than it, should not be recognized as predatory.³⁰ The Court, while recognizing the right to meet the competition has to establish the balance between prohibition of actions, which are aimed to eliminate competitors and encouragement of competition. O'Donoghue and Padilla recognize the importance of such legal defence in case there is evidence that prices smaller than average avoidable costs will condition enduring profit even if a competitor is not eliminated from the market i.e., if there is a necessity to acquire inner effectiveness, which does not depend on elimination of any competitor.³¹

In 1997, the Commission took the informal decision in the *Digital Undertaking* case, in which the Commission affirmed the obligations of the dominant undertaking previously accused of abuse of dominant position.³² The digital company aiming to resolve the case peacefully took obligation to ensure that all reduced prices will be higher than average total costs.³³ Digital reserved the right to lower prices in response to com-

26 Such a position is taken by Springer, U. Meeting Competition: Justification of Price Discrimination Under EC and US Antitrust Law. *E.C.L.R.* 1997, p. 255; Lorenz, M.; Lübbig, M.; Russel, A. Price Discrimination, a Tender Story. *E.C.L.R.* 2005, p. 359; O'Donoghue, R. Over-Regulating Lower Prices: Time for a Rethink on Pricing Abuses under Article 82 EC. *E.C.L.A.* 2003, p. 39; with this position disagree Waelbroeck, M. Studi in honore di Francesco Capotorti – Meeting Competition: Is This a Valid Defence for a Firm in a Dominant Position? 1999, p. 489.

27 Case C-62/86 *AKZO Chemie BV v. Commission*, [1991], para. 140.

28 Decision of Commission on 29th of July, 1983, case COMP/30.698, *ECS v. AKZO-temporary measures* [1983] O.J. L252/13, para. 38.

29 See Annual Report to the OECD on Competition Law and Policy in Denmark 2002, p. 6 [interactive]. [accessed 11-08-2008]. <www.oecd.org/dataoecd/22/12/2509437.pdf>.

30 *Boehringer Ingelheim (Canada) Inc. v. Bristol-Myers Squibb Canada Inc.* (1998), 83 C.P.R. (3d) 51 O.J. No. 4007 (Q.L.).

31 O'Donoghue, R.; Padilla, J. *The Law and Economics of Article 82 EC*. Hart Publishing, 2006, p. 286.

32 Commission press release IP/97/868 of 10 October 1997 on Digital Undertakings.

33 *Ibid.*

petition but undertook obligation that such reduction will be proportional and will not disturb competition.

Commission notes that meeting competition defence usually is applied only in respect of such actions, which in other case should be recognized as price abuse.³⁴ If a competitor sets prices lower than dominant undertaking, the dominant undertaking might refer to meeting competition defence to the extent that his short term losses are reduced. Dominant undertaking cannot justify predatory pricing on the basis of meeting competition defence, in case undertaking intentionally experiences losses aiming to preclude competitor from entering the market. In “Discussion paper” Commission notes that meeting competition defence is applicable only in case if actions are suitable, necessary and proportional.³⁵ In order to prove that the undertakings’ action corresponds to proportionality test, it is necessary to show that: 1) action is suitable to achieve legal purpose; 2) action is necessary; 3) action is proportional. Moreover, dominant undertaking has to prove that legitimate purpose may not be achieved on the basis of less anti-competitive actions, that actions are at the maximum limited in relation to time and that the entrance of new competitors to the market is not restricted to a large extent. B. Allan believes that such requirement of Commission is controversial, since dominant undertaking while applying pricing practices and referring to meeting competition defence may limit entrance and expansion of competitors on the market.³⁶

Third proportionality requirement “requires, with a view to protecting the consumers’ interest, a case by case weighing of the interest of the dominant company to minimise its losses and the interest of its competitors to enter or expand.”³⁷ Actually, it is very difficult for dominant undertaking to weigh various interests.³⁸ Also, it is doubtful whether established obligation of the undertaking to make such weighing corresponds to the aims of Art 102 TFEU indicated by the Commission, i.e. aim to protect not competitors, but competition in order to ensure welfare of consumers.³⁹ Bearing in mind the very strict and ill-defined application of “proportionality test” we may conclude that the Commission de facto restricts the ability of the dominant undertaking to rely on meeting the competition defence, while applying prices smaller than average total costs. “Discussion paper” provides that if undertaking sets prices smaller than average avoidable costs it is not possible to rely on the meeting competition defence; in case prices higher

34 European Commission, DG Competition, Brussels December 2005, DG Competition discussion paper on the application of Article 82 of the Treaty to exclusionary abuses [interactive]. [accessed 11-03-2007]. <<http://ec.europa.eu/comm/competition/antitrust/art82/discpaper2005.pdf>>.

35 *Ibid.*, para. 132.

36 Allan, B. Article 82: A commentary on DG Competition’s Discussion Paper. *Competition Policy International*. 2006, 2: 55.

37 European Commission, DG Competition, Brussels December 2005, DG Competition discussion paper on the application of Article 82 of the Treaty to exclusionary abuses, *supra* note 34.

38 Gravengaard, M. A., *supra* note 14, p. 658–677.

39 Commission of the European Communities, Brussels, 3 December 2008, COM (2008), Communication from the Commission, Guidance on the Commission’s Enforcement Priorities in Applying Article 82 EC Treaty to Abusive Exclusionary Conduct by Dominant Undertakings, para. 6. European Commission, DG Competition, Brussels December 2005, DG Competition discussion paper on the application of Article 82 of the Treaty to exclusionary abuses, *supra* note 34.

than average avoidable costs are applied it is possible to invoke such defence, if all the requirements of proportionality test are satisfied, i.e. it should not be possible to refer to less restrictive measures that would allow to limit losses, measures should be limited in time and ability of competitors to enter or expand not restricted.⁴⁰ Such situation is hardly probable, therefore it is possible to conclude that Commission established presumption that meeting competition defence may be relied in only exceptional cases.

The standpoint of the European judicial institutions and of the Commission might be criticized. At first, conditions for the application of such defence are too strict and ill-defined; therefore ability to rely on such defence is limited.⁴¹ Secondly, a proportionality criterion, which requires to prove that the legitimate aim to the same extent may not be achieved using less anti-competitive alternatives is not defined clearly enough; moreover, establishment of such requirement is not reasonable.⁴² Thirdly, right of the dominant undertaking to set prices lower than average avoidable costs should be recognized in case such pricing is used by competitors.⁴³

1.2. Decision of 30th January 2007 by the CIF and 2nd April 2009 by the ECJ in *France Telecom* Case

In the *France Telecom*⁴⁴ case CIF analyzed meeting competition defence. France Telecom company claimed that pricing should not be regarded as predatory even if they are smaller than costs, since undertaking was coordinating its prices with prices of competitors and the fact that prices of competitors are smaller than costs of France Telecom is not relevant.⁴⁵ The commission noted that although dominant undertaking has a right to coordinate its prices with those of competitors, the undertaking is deprived of such a right in the case of prices of undertaking being smaller than the costs of its goods/services. The commission believes that prices applied by the France Telecom do not cover its costs; therefore it may not coordinate prices with undertaking that does not have a dominant position and intends to encourage sales. CIF, while reviewing the

40 Commission of the European Communities, Brussels, 3 December 2008, COM (2008), Communication from the Commission, Guidance on the Commission's Enforcement Priorities in Applying Article 82 EC Treaty to Abusive Exclusionary Conduct by Dominant Undertakings, para. 6. European Commission, DG Competition, Brussels December 2005, DG Competition discussion paper on the application of Article 82 of the Treaty to exclusionary abuses, *supra* note 34.

41 Ashurst commentary [interactive]. [accessed 11-03-2008]. <<http://ec.europa.eu/comm/competition/antitrust/art82/066.pdf>>; IBA, International Bar Association, BE commentary [interactive]. [accessed 11-03-2008]. <<http://ec.europa.eu/comm/competition/antitrust/art82/102.pdf>>; Simmons & Simmons commentary [interactive]. [accessed 11-03-2008]. <<http://ec.europa.eu/comm/competition/antitrust/art82/069.pdf>>; Taylor Wessing, UK commentary [interactive]. [accessed 11-03-2007]. <<http://ec.europa.eu/comm/competition/antitrust/art82/097.pdf>>; Linklaters, UK commentary [interactive]. [accessed 11-03-2008]. <<http://ec.europa.eu/comm/competition/antitrust/art82/127.pdf>>.

42 Ashurst commentary, *supra* note 41; Assonime, Associazione fra le societa italiane per azioni [interactive]. [accessed 11-03-2008]. <<http://ec.europa.eu/comm/competition/antitrust/art82/031.pdf>>.

43 Simmons & Simmons commentary, *supra* note 41; Telecom Italia, komentaras [interactive]. [accessed 11-03-2008]. <<http://ec.europa.eu/comm/competition/antitrust/art82/050.pdf>>.

44 Case C-340/03 *France Telecom SA v. Commission* [2007].

45 *Ibid.*, para. 171.

coordination of prices of dominant undertaking with prices of competitors, noted that “... it is therefore not possible to assert that the right of a dominant undertaking to align its prices on those of its competitors is absolute and that it has been recognised as such by the Commission in its previous decisions and in the relevant case-law, in particular where this right would in effect justify the use of predatory pricing otherwise prohibited under the Treaty.”⁴⁶ CIF rejected arguments made by France Telecom and claimed that the right of the dominant undertaking to coordinate its prices with those of competitors is not absolute.⁴⁷ CIF pointed out that dominant undertaking has a right to protect its business interests in case they are endangered, but may not refer to actions, which are intended to strengthen dominant position and abuse it. The jurisprudence of the Court establishes special requirements for the dominant undertakings. Art 102 of the TFEU provides that in case of special circumstances dominant undertaking may lose right to coordinate its policy or refer to actions, which per se do not amount to abuse and are not prohibited if performed by non dominant undertakings.⁴⁸ Even if dominant undertaking refers to certain action protecting commercial interests and alignment of prices with its competitors “is not in itself abusive or objectionable, it might become so where it is aimed not only at protecting its interests but also at strengthening and abusing its dominant position.”⁴⁹ This decision of CIF does not allow for the unambiguous conclusion of whether the dominant undertaking, which aims to protect business interests and not to strengthen the dominant position (or abuse it), has a right to align prices with competitors, if its prices are lower than average variable costs. The decision of the CIF to differently approach cases when dominant undertaking responds to competition in order to protect its interests and when undertaking strengthens its dominant position and abuses it. Michal Gal believes that the present decision of the CIF allow for a dominant undertaking to rely on meeting competition defence, if it intends to protect legitimate interests and sets prices lower than costs.⁵⁰

Decision of CIF in the *France Telecom* case corresponds to the practice of European judicial institutions concerning meeting competition defence, which recognizes the right of the dominant undertaking to take reasoned, proportional measures in order to protect commercial interests and respond to commercial proposals in the market while aiming to maintain its consumers.⁵¹ However, the CIF did not recognize right of France Telecom to rely on meeting the competition defence and held that it abused its dominant position.

46 Case C-340/03 *France Telecom SA v. Commission* [2007], para. 182.

47 *Ibid.*

48 Case T-111/96 *ITT Promedia v. Commission* [1998], para. 139.

49 Case C-340/03 *France Telecom SA v. Commission* [2007], para. 187.

50 Gal, M. Below-cost price alignment: meeting or beating competition? The France Telecom case. *E.C.L.R.* 2007, 28(6): 382–391.

51 For the analysis of respective jurisprudence see O’Donoghue, R.; Padilla, J., *supra* note 31, p. 285.

The decision of the Commission in the *Wanadoo Interactive* case⁵² was interpreted by the Norwegian competition council in the *SAS* case⁵³ as stipulating that meeting competition defence may not be relied on the basis of the EC law if prices are smaller than average total costs, since *Wanadoo Interactive* case in para 315 provides that “... alignment by the dominant operator on the promotional prices of a non-dominant operator is not justified. Whilst it is true that the dominant operator is not strictly speaking prohibited from aligning its prices on those of competitors, this option is not open to it where it would result in its not recovering the costs of the service in question.”⁵⁴ The Norwegian competition council did not pay attention to the fact that Commission did not allow *Wanadoo* company to use meeting competition defence, since evidence concerning intent to eliminate competitors were provided “... in such a context, while the argument based on alignment on competitors’ prices would have been admissible in principle, it lost all factual foundation as from This Decision therefore finds fault with the company not so much for setting prices at the end of 2000 at a below cost level, as for subsequently maintaining those prices at that level as part of a wideranging strategy of market pre-emption deployed at national level as from the beginning of March 2001.”⁵⁵ We may conclude that the Commission recognizes the right of the dominant undertaking to rely on meeting competition defence only in order to set prices higher than average variable costs, but not in case if prices are lower than average variable costs. In different periods the *Wanadoo* company used to set prices lower than average variable costs and higher than average variable costs but lower than average total costs.

Advocate General Mazák’s opinion on the *France Telecom SA* case proposed to recognize the right of the dominant undertaking to submit objective justifications that may prove that undertaking legitimately set prices lower than average variable costs as a reaction to pricing of competitors.⁵⁶

The ECJ in *France Telecom SA* case did not recognize the right of France Telecom to justify its actions on the basis of absolute right to align its prices to the prices of competitors. However, it is positive that the ECJ clearly separated case when dominant undertaking sets prices lower than costs aiming to protect its interests and case when dominant undertaking uses pricing as a measure to strengthen dominant position and

52 Decision of the Commission 16th July 2003. Case COMP/38.233, *Wanadoo Interactive*, para. 315 ir 331. It should be noted that name of *Wanadoo Interactive* case changed into *France Telepom* by the decision of CIF.

53 See decision of Norwegian Competition Council on 5th June, 2005 in case V2005-9, *SAS* predatory pricing on the air route Oslo-Haugesund, p. 43. It should be noted that this decision was overruled by decision of Oslo court on 28th of July, 2006. Oslo court noted that even after recognition that *SAS* did not cover its average variable costs on route Oslo-Haugesund, *SAS* have not breached Norwegian competition law, since there were objectively reviewable and acceptable reasons for *SAS* to use this route although profitability was negative., see Decision p. 92.

54 Decision of Commission on 16th July, 2003. Case COMP/38.233, *Wanadoo Interactive*, para. 315.

55 *Ibid.*, para. 331.

56 Opinion of Advocate General Mazák issued on 25th September, 2008 m. Case C-202/07. *France Telecom SA v. Commission*, para. 95.

abuse it. According to the ECJ, illegal are only such actions, as when the undertaking intends to abuse the dominant position by certain pricing practice.⁵⁷

1.3. Cases when It Is not Possible to Rely on Meeting Competition Defence

European judicial institutions recognize that in predatory pricing cases it is not possible to rely on meeting competition defence, if there is evidence that dominant undertaking intends to eliminate competitors.⁵⁸ Moreover, in the *Compagnie Maritime Belge* case the ECJ held that the right of the undertakings to rely on meeting competition defence should be viewed especially strictly, if their position is close to monopoly.⁵⁹ Therefore, the undertaking, which has an especially big share of the market, in most cases will not be able to rely on meeting competition defence.⁶⁰

2. Efficiency and Objective Necessity Defences

2.1. Efficiency Defence

Commission claims that actions of the dominant undertaking will not be prohibited by the Article 102 of TFEU if the undertaking provides objective justification of its actions or proves that its actions produce efficiencies, which outweigh negative effect on consumers.⁶¹ In para 74 of the “Guidance on the Commission’s enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings” Commission provides that it seems unlikely that dominant undertaking accused of predatory pricing will be able to rely on efficiencies defence, since it is doubtful that predatory pricing will create efficiencies.⁶² Dominant undertaking in order to rely

57 Case C – 202/07. *France Telecom SA v. Commission*. [2009]. para. 46–48.

58 Decision of Commission on 16th of July, 2003, case COMP/38.233, *Wanadoo Interactive*, paras. 330–331; Case C-62/86 *AKZO Chemie BV v. Commission*, [1991], paras. 102, 108–109, 115; Case T-83/91 *Tetra Pak II v. Commission*, [1994], para. 147. This principle is also embedded in the case C - 27/76 *United Brands Company and United Brands Continentaal BV v. Commission* [1978], para. 189, in which ECJ noted that dominant undertaking cannot rely on its right to defend commercial interests if real aim is to strengthen dominant position and abuse it.

59 Joint cases C-395/96 P and C-396/96 P, *Compagnie Maritime Belge SA (C-395/96 P) and Dafra-Lines A/S (C-396/96 P) v. Commission* [2000], para. 119; Opinion of Advocate General Fennelly made on 29th of October, 1998 in joint cases C-395/96 P and C-396/96 P *Compagnie Maritime Belge SA (C-395/96 P) and Dafra-Lines v. Commission*. It should be noted that *Compagnie Maritime Belge* had more than 90 percent of the market.

60 Gravengaard, M. A., *supra* note 14, p. 658–677.

61 Commission of the European Communities. 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. (2009/C 45/02), para. 74; European Commission, DG Competition, Brussels December 2005, DG Competition discussion paper on the application of Article 82 of the Treaty to exclusionary abuses, *supra* note 34.

62 Commission of the European Communities. 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. (2009/C 45/02), para. 74.

on the efficiencies defence, should prove that the following requirements are satisfied: 1) efficiencies are/or will be achieved because of certain actions, for example, improvement of the quality of products; 2) certain actions are necessary in order to increase efficiencies, i.e. it is not possible to rely on the other, not so anti-competitive actions; 3) Increased efficiencies compensate negative effect on competition and consumers; 4) actions should not limit competition, since competition is the source of economic effectiveness.⁶³ Therefore, Commission aims to apply to the Article 102 of the TFEU requirements almost analogous to part 3 of the Article 101 of the TFEU.⁶⁴

2.2. Objective Necessity Defence

Commission claims that the undertaking, which aims to rely on the objective necessity defence, has to prove that actions were objectively necessary, for example because of security or health reasons related with dangerous qualities of certain product.⁶⁵ Dominant undertaking claiming that certain actions are necessary has to provide evidence that without respective action, particular products in the market will not be released or distributed.⁶⁶ It should be noted that according to the ECJ, dominant undertaking is not authorized to take action *ex officio* in order to eliminate products from the market, which are regarded by the undertaking as dangerous or of inferior quality in relation to its products.⁶⁷

Commission claims that prices smaller than the respective cost benchmark may be justified if such pricing is intended to lower short term losses.⁶⁸ The undertaking may claim that prices smaller than average avoidable costs allow reducing losses if there is a big demand decrease, overproduction or change in market conditions. Such a situation might appear if there is a need to sell corruptible or antiquated goods, or in the case of an increase of storage costs. The commission notes that only in exceptional situations it is possible to justify prices smaller than average avoidable costs. Such situation might appear, for example, in the case of learning effects.

63 Commission of the European Communities. 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. (2009/C 45/02), para. 30.

64 Commission Communication – Notice – Guidelines on the application of Article 81 (3) of the Treaty (OJ 101, 27.4.2004, p. 97).

65 Commission of the European Communities. 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. (2009/C 45/02), para. 29.

66 European Commission, DG Competition, Brussels December 2005, DG Competition discussion paper on the application of Article 82 of the Treaty to exclusionary abuses, *supra* note 34, para. 80.

67 Case T-30/89 *Hilti v. Commission* [1991], paras. 118–119; Case T-83/91 *Tetra Pak II v. Commission*, [1994], para. 83-84 ir 138.

68 European Commission, DG Competition, Brussels December 2005, DG Competition discussion paper on the application of Article 82 of the Treaty to exclusionary abuses, *supra* note 34, para. 131.

3. Product Introductions, Obsolete Inventory and Industry Downturn

Commission recognizes that it is legitimate to establish prices lower than costs in order to sell obsolete products and vacate space for new products.⁶⁹ Sharp slumps in demand may cause a surplus of goods and it will cause establishment of prices lower than costs even having no intent to refer to predatory pricing. Sometimes undertaking may temporarily apply prices smaller than costs prices in order to enter the market and establish new trade mark expecting that consumers will like its production and buy products even if the price is increased. Moreover, consumers will inform each other about the quality of goods and dominant undertaking has reason to believe that a product will be popular enough between consumers and will allow undertaking to recoup losses after raising the price. One of the necessary presumptions is the conviction of consumers that goods will be of high quality in the future too. If prices lower than costs are not applied for a long time, and are used in order to advertise goods and do not cause damage for competition, such pricing might be recognized as economically sound even if it does not allow for an undertaking to get maximum profit in short time. Example of objective justification was provided in the press release submitted by the U.K. Office of Fair Trading on 29th April of 2004. A bus company started business in a new geographical market and was accused of predatory pricing. Although prices of services of the bus company were lower than its costs, Office of fair trading decided that undertaking didn't breach Competition act, since there was evidence that undertaking intended to create commercial background in new place and did not attempt to obtrude competitor from business. The office of fair trade came to the conclusion that actions of undertaking amounted to legitimate competition, period of small prices was beneficial for consumers and competition was not weakened.⁷⁰ Justification of dominant undertaking that small prices are needed for advertising is often criticized, since dominant undertaking usually does not need to advertise its goods. However, such defence should be recognized as legitimate, if it is sound and there is no less restrictive alternative.⁷¹

Dominant undertaking may establish prices smaller than costs of certain goods, in order to encourage consumers to buy other goods that are sold for higher prices. For example, grocer's shop may implement advertising campaign, during which orange juice will be offered on the price lower than costs, expecting that buyers will also buy other goods in shop. Such pricing may not be prohibited if undertaking does not intend to eliminate the competitor, which trades only such goods that are sold for a price lower than the cost.

69 European Commission, DG Competition, Brussels December 2005, DG Competition discussion paper on the application of Article 82 of the Treaty to exclusionary abuses, *supra* note 34.

70 See. First Edinburgh Buses Not Predatory [interactive]. [accessed 11-03-2008]. <<http://www.offt.gov.uk/News/Press+releases/2004/75-04.htm>>.

71 See. Areeda, P.; Hovenkamp, H. *Antitrust Law*, para. 746 (Rev. Ed. 1996).

Undertaking will experience big losses if in a certain branch of industry, after strong decline of trade, it will not withdraw from the market hoping that demand will rise in the future. In industry downturn it should be legitimate to establish prices lower than costs. In certain branches of industry, the demand is cyclical and undertakings may establish prices lower than costs in order to avoid bankruptcy and lower storage costs.

4. Network Effects Market

Establishment of small prices in order to advertise products is closely related with network effects market.⁷² In network effects market price of the products or services directly depends on the number of consumers that use precise product or service. If one person acquires certain good, other consumers will also get benefit. Value of the product will grow with the number of consumers that use this product. For example, if the number of people who use certain telephone operator grows, the price of this network in relation to consumer will grow too. Costs experienced in order to expand circle of consumers are compensated when part of the market increases, i.e. undertaking intends to intrigue with its products as more consumers as possible and increase demand for its products. This case is similar to the establishment of small prices in order to advertise products, since with increase of goods sold possible demand for products in the future increases too. Such actions of undertaking will not have a negative effect on the competition if: 1) undertaking reasonably believes that demand for products will substantially grow in case of increase of a permanent number of consumers; 2) a big number of permanent consumers will heighten the ability to provide additional goods and services, will magnify value of main product; 3) consumers will devote higher value to product and undertaking will be able to recoup losses; and 4) prices lower than costs will not be applied longer than it is necessary in order to intrigue big number of consumers.⁷³ In this case it is necessary to evaluate whether less restrictive alternative is available.

In the network effects market, establishment of prices lower than costs sometimes is the only chance for undertaking to stay in the market.⁷⁴ Moreover, in such a market, dominant undertaking may establish prices lower than costs even without facing competitors.⁷⁵ Actions of dominant undertaking will not be viewed as predatory, since the validity of its pricing is not related with intent to eliminate competitors. Competition institutions that intend to stop such actions may interfere with development of network effects market and cause damage to consumers. Adriaan ten Kate and Nielsen note that

72 Elzinga, K.; Mills, D. Predatory Pricing and Strategic Theory. *Georgetown Law Journal*. 2001, 89: 2475, 2485.

73 Brodley, J. F.; Bolton, P.; Riordan, M. H. Predatory Pricing: Strategic Theory and Legal Policy. *Georgetown L. J.* 2000, 88: 2282.

74 Ten Kate, A.; Niels, G. Below Cost Pricing in the Presence of Network Externalities. In Hope, E. (ed.) *The Pros and Cons of Low Prices* [interactive]. Konkurrensvetket/Swedish Competition Authority, 2003 [accessed 11-03-2007]. <http://www.kkv.se/bestall/pdf/rap_pros_and_cons_low_prices.pdf>.

75 *Ibid.*, p. 111–112.

in such case competition authorities should not interfere and should leave it for the market to determine which undertaking will stay in the market.⁷⁶

In network effects market, establishment of prices lower than costs may be viewed as profitable strategy if undertaking engaged in predatory pricing does not allow for new competitors to enter or intends to eliminate them.⁷⁷ A well-known example is a fight between Microsoft and Netscape in the browser market, when Microsoft was supplying its product *ex gratia* in order to eliminate Netscape.⁷⁸ It should be noted that the experienced losses were recouped by Microsoft in the other operating system market, in which Microsoft had a monopoly. Microsoft believed that in if the case were that Netscape becomes a popular browser, Netscape may cause danger for Microsoft in the operating system monopoly.

5. Systems Pricing and Learning Curve

In order to increase sales of two or more products that are connected to each other, it is possible to refer to systems pricing. For example, printers of personal computers sometimes are sold at low prices together with expensive toner cartridges. Such form of sales is named systems pricing (one of the forms of discrimination), which allows the producer to get higher revenues from buyers that use a printer and pay additionally for toner cartridges. The present form of pricing will be recognized as legitimate if the undertaking proves that systems pricing is not used in order to eliminate the competitor (which trades only those products that are sold at a price lower than costs). Systems pricing and predatory pricing are different, since systems pricing is applied all the time until goods are in the market and in the predatory pricing case low prices are set only for a certain period and later they are increased.⁷⁹

The learning curve is an empirical relationship, which shows that the costs of the production of unit fall with the growth of experience of production.⁸⁰ Learning curve expresses idea that learning-by-doing may be important source of innovations. In this case the undertaking in order to increase profit will set price lower than costs not in order to eliminate competitors, but in order to increase volume of production. This way undertaking may use methods of production, which lowers costs and will cover losses

76 *Ibid.*, p. 111–119; See also Ridyard, D. Exclusionary Pricing and Price Discrimination Abuses under Article 82 - An Economic Analysis. *European Competition Law Review*. 2002, 23: 286, 299 note 47.

77 On review of literature and explanation see Ten Kate, A.; Niels, G., *supra* note 74, p. 97–129; see also Farrell, J.; Katz, M. Competition or Predation? Schumpeterian Rivalry in Network Markets. *University of California, Berkeley, Economics Dept. Working Paper*. 2001, E01-306 [interactive]. [accessed 19-06-2008]. <<http://repositories.cdlib.org/iber/econ/E01-306/>>.

78 *United States v. Microsoft*, 253 F.3d 34 (D.C. Cir. 2001).

79 Edwards, G. The Perennial Problem of Predatory Pricing. *Australian Business Law Review*. 2002, 30: 184. More comprehensive analysis on differences between problems related to predatory pricing and other pricing systems is provided in Eckert, A.; West, S. D. Testing for Predation by a Multiproduct Retailer. In Hope, E. (ed.), *supra* note 74, p. 39–69.

80 Comprehensive analysis is made in Cabral, L.; Riordan, M. The learning curve, predation, antitrust, and welfare. *Journal of Industrial Economics*. 1997, 45: 155–169.

with gained profit. If there is a sharp learning curve the undertaking may establish price lower than costs in order to sell more products. Such actions do not restrict competition, if there is a learning curve and prices lower than costs are not established for a long time. It will be difficult for new undertakings, which get into the market, to increase efficiency, if in certain cases they will not be allowed to establish prices lower than costs.

Conclusions

1. The position of the Commission towards objective justifications should be criticized, since conditions for the application of such defence are too strict and ill-defined; therefore ability to rely on such defence is limited. Secondly, a proportionality criterion, which requires proof that legitimate aim to the same extent may not be achieved using less anti-competitive alternatives is not defined clearly enough; moreover, establishment of such requirement is not reasonable. The European Union judicial institutions and Commission should recognize the right of the dominant undertaking to submit objective justifications of its actions in all cases, irrespective of whether prices applied are lower than costs. Therefore, the right of the dominant undertaking to set prices lower than average avoidable costs should be recognized in case such pricing is used by competitors.

2. There are a number of justifications, which might be invoked in order to justify establishment of prices lower than costs. Commission recognizes as legitimate justifications product introductions, obsolete inventory, industry downturn, network effects market, systems pricing, learning curve and others. Application of these justifications is based on economic arguments. For example, Commission recognizes that it is legitimate to establish prices lower than costs in order to sell obsolete products and vacate space for new products. It is necessary to agree with the Commission that such justifications are sound.

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OBJEKTYVŪS GROBUONIŠKOS KAINODAROS PATEISINIMAI

Raimundas Moisejevas

Mykolo Romerio universitetas, Lietuva

Santrauka. *Piktnaudžiavimo dominuojančia padėtimi draudimas yra vienas svarbiausių Europos Bendrijos konkurencijos teisės principų. Europos Sąjungos teisminių institucijų praktikoje pripažįstama, kad tam tikrais atvejais dominuojančio ūkio subjekto veiksmai, kurie iš esmės laikytini piktnaudžiavimu, gali būti nepripažinti draudžiamais pagal Sutarties dėl Europos Sąjungos veikimo 102 straipsnį, jeigu ūkio subjektas gali pateikti objektyvų savo veiksmų pateisinimą arba įrodyti, jog jo veiksmai sukelia teigiamą poveikį, nusveriantį neigiamą įtaką konkurencijai. Taigi grobuoniška kainodara laikytini veiksmai, esant ypatingoms aplinkybėms, gali būti pripažinti teisėtais. Tiriant grobuonišką kainodarą, reikia įvertinti galimus objektyvius pateisinimus, nes jie leidžia atsižvelgti į teisėtą, konkurenciją skatinančias priežastis, padedančias suprasti, kodėl ūkio subjektai gali nustatyti mažesnes nei kaštai, kainas. Grobuoniška kainodara apkaltintas ūkio subjektas turi pateikti mažesnių nei kaštai kainų nustatymo objektyvius pateisinimus, pagrįsti, kad mažesnių nei kaštai kainų nustatymą lėmė objektyvios rinkos aplinkybės, jog įprasti verslo veiksmai sukėlė tam tikrų nuostolių. Objektyviais pateisinimais galima pripažinti daug veiksnių (našumas, objektyvus būtinumas, prekių išpardavimas, prekyba, siekiant reklamuoti prekes, prekyba pramonės nuosmukio laikotarpiu ir t. t.), todėl baigtinių jų sąrašą pateikti yra gana sudėtinga. Pažymėtina, kad Lietuvos Respublikos konkurencijos taryba iki šiol nenagrinėjo galimų grobuoniškos kainodaros veiksmų objektyvių pateisinimų atvejų.*

Reikšminiai žodžiai: *piktnaudžiavimas dominuojančia padėtimi, objektyvūs pateisinimai, grobuoniška kainodara, vidutiniai kintamieji kaštai, poveikis rinkai.*

Raimundas Moisejevas, Mykolo Romerio universiteto Teisės fakulteto Verslo teisės katedros lektorius, socialinių mokslų daktaras. Mokslinių tyrimų kryptys: EB konkurencijos teisė, ES materialinė teisė, ES institucinė teisė, nekilnojamojo turto teisė, tarptautinė viešoji teisė.

Raimundas Moisejevas, Mykolas Romeris University, Faculty of Law, Department of Business Law, lecturer, doctor in social sciences. Research interests: EC competition law, EC institutional law, EC material law, real property law, international public law.