

Introduction to Competition Law

Prof. Miguel Sousa Ferro

8 January 2021

Group I

Analyse the case below and briefly answer each of the questions below

A company called Eat-Out-In (EOI) was the first to launch in Portugal a food order and delivery service which works through an app or website. Several other companies were launched and became its competitors, but EOI currently has about 55% of total sales through such apps/websites in Portugal. The service is a dual platform combining two markets. On one side, EOI has contracts with restaurants and charges them a % of the price of products sold through the platform. On the other side, EOI charges consumers a fee for the delivery, which it gives to the persons making the deliveries.

One month after the start of the Covid-19 pandemic, EOI increased the fee it was charging restaurants, from 30% to 35%. It has kept the price at this level ever since. Another platform charges the same fee, and there are some small competitors who charge less.

1. Discuss what the product and geographic markets might be in this case (3 points)
 - *Demonstrate knowledge of the concept of relevant market, including its dimensions of product, geographic and temporal market, and of its case-law origin and development, with soft-law manifestations*
 - *Take a position on how the relevant market should be defined in this case, identifying the need to distinguish the sides of multilateral platforms such as this and putting the emphasis on sufficient interchangeability from a demand and supply side perspectives*
2. Would you say EOI has a dominant position? Justify your reply. (3 points)
 - *Concept of dominant position has set out in EU Case Law*
 - *The question should ideally be left open, as there is insufficient information, but the presumption of dominance above 50% should be mentioned, as should the factors in the case which seem to suggest dominance. Either reply is admissible, as long as duly justified.*
3. Would you say EOI's behaviour infringes competition law? Justify your reply. (4 points)

- *Identifying the practice as a potential abuse of dominance via excessive pricing*
- *Discuss what constitutes an excessive price. There are several approaches which can be used to assess whether the price is excessive. Emphasis can be placed on equity and fairness, comparison with costs, comparison with prices by non-dominant companies, etc.*
- *Either reply is admissible, as long as duly justified.*

Group II

Briefly answer the following questions

1. If the EU Merger Control Regulation is not applicable to a given concentration, does this mean that the concentration can be carried out without having to obtain any authority's authorization? And what does the "one stop shop" rule in EU Merger Control mean? (5 points)
 - *First question: no, you must still assess whether the notifying thresholds of competition law of the various Member States (as well as of third States) are met, so you may need to file in several jurisdictions simultaneously. Prohibition of implementation prior to authorization (stand still obligation)*
 - *Second question: it means that when the EU merger thresholds are met, only the EU Commission needs to be notified and will decide, excluding the applicability of the national merger control rules of the EU Member States.*

2. What is the *de minimis* rule under Article 101 TFEU? (5 points)
 - *Although 101 does not refer to a significant restriction of competition, EU case-law has made it clear that not every degree of restriction of competition is relevant and caught by this provision*
 - *De minimis non curat praetor is the latin expression which expresses the maxim that very small issues (insignificant restrictions of competition) are not caught by 101*
 - *Mention De Minimis thresholds set in EU Law, varying according to characteristics of agreement in question, but around 5 to 10%*
 - *Mention the issue of needing to take into account, when assessing de minimis, the effects of bundles of agreements between the same companies and even between other companies on the same market.*