

European Law

Question 1-

Art 102 of the Competition Law prevents abuse of a dominant position by one or more undertakings in a relevant market or a substantial part of it and it is important to restrict any behavior by an undertaking that may prohibit competition because this may potentially affect consumers and trade between Member States (Cuyvers, 2017, p. 459). Understanding which market an undertaking is operating in is crucial for the purpose of a dominant position because a broad or a narrow approach with regards to a relevant market will have a significant effect on the discovery of a dominant position (Mondaq, 2021). Nevertheless, since a dominant undertaking has an important responsibility to refrain from any conduct that may restrict or distort competition, it is equally as important to them to define what relevant market they are operating in for the sake of abiding by competition rules (Seville, 1993, p. 197). Art 101 of the competition law has increased its relevance in this area because it involves the assessment of a dominant position to determine if an agreement between two or more undertakings could potentially distort competition according to Davis (2020). Moreover, the European Court defined a dominant position in the case of '*United Brands Co v Commission of the European Communities*' (1978) as:

[...] A position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers (Office of Fair Trading, 2004).

Undoubtedly, for the purpose of Art 102, identifying the market an undertaking is operating in is necessary to establish any dominance in that particular area, in fact, by determining the relevant market, it is possible to calculate the market share of the undertaking which is an essential factor in the assessment of dominance in general as stated in the case of *'Adriatica di Navigazione SpA v Commission of the European Communities'* (2003). The significance for accurately defining what the relevant market is can be highlighted in the case of *'United Brands Co v Commission of the European Communities'* (1978); In this case, difficulties arose when the commission stressed that United Brands was operating in a narrow market for bananas which meant that they had a large position in the market, whereas the United Brands argued that the market was broad and so they only occupied a fraction of the market. Consequently, the commission intervened and provided guidance ("soft law") on how to define the relevant market in order to determine a dominant position for the enforcement of Art 101 and Art 102; The Commission Notice on the definition of the relevant market [1997] grouped the relevant market into product market, geographical market, and occasionally the relevant temporal market as stated by Chneiweiss (2020).

According to the Commission Notice (1997), the means to establishing whether different goods are in the same product market is by taking into account the product's interchangeability; This is essentially described as the degree to which the services or goods are interchangeable with other products (Craig and Burca, 2015, p. 1056).

Question 2-

To achieve their goal of market integration, the European Economic Community Treaty established provisions enabling the free movement of workers (persons) along with the free movement of goods, free movement of capital, and freedom to establish and provide services (Craig and Burca, 2015, p. 745). Initially, the concept of free movement of persons only applied to workers together with other economically active people, however, to make the free movement of workers more effective, the EU granted rights to workers' families along with other individuals even if they were not directly economically active (Cuyvers, 2017, p. 355). Additionally, the concept of 'workers' was given further expansion to include those in part-time, short-term, or seasonal employment and apprenticeship placements in the other Member States because people such as wives would be dissatisfied if they could not have such benefits (Koikkalainen, 2011). The basic provisions of free movement of workers are set down in Article 45 of the Treaty on the Functioning of the European Union which states that:

- 1) Freedom of movement for workers shall be secured within the Union.
- 2) Such freedom of movement shall entail the abolition of any discrimination based on nationality between the Member States workers regarding employment, remuneration, and other conditions of work and employment.
- 3) It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health: (a) to accept offers of employment actually made; (b) to move freely within the territory of Member States for this purpose; (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals

of that State laid down by law, regulation or administrative action; (d) to remain in the territory of a Member State after having been employed in that state, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.

- 4) The provisions of this Article shall not apply to employment in the public service (Cleaver, 2016).

Further developments arrived later in the Maastricht Treaty (TEU) with the introduction of EU citizenship in Art 20 of the TFEU, which entails that any person with a Member State's nationality is automatically an EU citizen (Cuyvers, 2017, p. 355). Moreover, Art 20 of the TFEU gives EU citizens the right to move and reside freely in other Member States; Importantly, the Treaties of the European Union developed EU citizenship rights once more through Art 21 of the TFEU which holds the principal right that states the following: EU citizens have the right to move and reside freely in the Other Member States and is susceptible to the limitations from the Treaty and secondary legislation (such as Directive 2004/38 and Regulation 492/2011) (Cygan and Szyszczak, 2006, p. 977). Furthermore, Directive 2004/38 regulates the rule on residence for EU citizens and it provides that no conditions other than a presentation of a passport or ID card, should be imposed on an EU citizen and their family members for the right of entry and residence in another Member State for a period of three months (Ochel, 2010, p. 314). For a longer stay, however, Article 7 of the Directive states that workers EU citizens shall have the right to residence in another Member State for a period of more than three months if they satisfy the following: A) They are workers or self-employed in the host Member State; B) Have sufficient resources for their family members and

themselves not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or C) they are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administration practice, for the principal purpose of following a course of study, including vocational training; and have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not become a burden on the social assistance system of the host Member State during their period of residence; or D) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (A), (B), or (C) (Rossi, 2015, p. 14). As for 'sufficient resources', Art 8(4) requires Member States to take into account the personal situation of the EU citizens and they are forbidden to set a fixed amount that will satisfy the meaning of 'sufficient resources'; Nonetheless, according to the commission's advice, EU citizens have 'sufficient resources' where the level of their resources is greater than the 'threshold under which a minimum subsistence benefit is granted in the host Member State' (Mantu and Minderhoud, 2019, p.316). In terms of expulsion, Art 27 of Directive 2004/38 expresses that irrespective of nationality, Member States can refuse entry of Union citizens on grounds of public policy, public security, or public health (Dzehtsiarou and Coffey, 2019, p. 444).

- 1) Since Mary is an Irish citizen, she is automatically considered an EU citizen under Art 20 of the TFEU, which also gives her the right to move freely and

reside in another Member State; Mary can relocate to Dublin for a period longer than three months because she is enrolling for vocational training in Dublin University to become a psychotherapist and also she has sufficient resources for herself, which satisfies the regulations set down in Art 7 of Directive 2004/38.

According to the case of '*Grzelczyk v CPAS*' (2001), Mary can apply for a subsistence allowance if her savings run out during her studies and her Irish nationality will not prevent her from benefiting from this right as that will be a breach of Art 18 of the TFEU. Likewise, Art 18 of the TFEU will also allow Mary to pay tuition fees in installments as the Dublin students because the court stated in '*Grzelczyk v CPAS*' (2001) that Union citizens who find themselves in the same circumstances as nationals of Member State should enjoy the same treatment in law regardless of their nationality.

- 2) Nadine is a Union citizen under the provisions of Art 20 of the TFEU, therefore, she also has the right to move to and reside freely in another Member State. Although, she is not a worker, Art 3 of Directive 2004/38 demands that Member States enable the admission of a family member who requires personal care from the EU citizen due to serious health issues, and also they must facilitate admission for the partner with whom the Union citizen has a durable relationship with, duly attested (Craig and Burca, 2015, p.778); Moreover, Nadine's health issue is immaterial because it is not a disease with epidemical potential, nor is it an infectious or contagious parasitic disease that requires protection provisions to nationals of the host Member State according to Art 29(1) of Directive 2004/38.

- 3) As for Oscar, who is also an EU citizen, Art 27 of Directive 2004/38 makes clear that past criminal convictions are not in themselves reasons for refusing access to an EU citizen; It also states that the individual's personal conduct must be an actual and sufficient threat affecting one of the fundamental interest of society. Oscar's conduct could be considered a sufficient threat (arsonist), but since he is 17 years old, Art 28 of Directive 2004/38 protects him against expulsion because it provides that a minor should not be subject to such action unless it is in their best interest as stated by the Convention on the Rights of the Child of 20 November 1989; Since Oscar is getting treatment as an outpatient, expulsion will not be in his best interest and so as result, he can move to Dublin with Mary.