European Law Journal

WILEY

ORIGINAL ARTICLE OPEN ACCESS

Economic Dependence: A New Frontier in EU Competition Law?

Jimena Tamayo Velasco

Department of Commercial Law, Labour Law and Private International Law, University of Valladolid, Valladolid, Spain

Correspondence: Jimena Tamayo Velasco (beatrizjimena.tamayo@uva.es)

Received: 5 February 2026 | **Revised:** 5 February 2026 | **Accepted:** 18 February 2026

Keywords: abuse of superior bargaining position | Article 102 TFEU | Digital Markets Act | economic dependence | fairness | relative market power

ABSTRACT

This paper argues for the recognition of economic dependence as a relevant concept within EU competition law, moving beyond the traditional—yet limited—dominance-based framework of Article 102 TFEU. Comparative analysis shows that this, or an equivalent concept, is already embedded in the domestic competition regimes of several EU Member States, as well as in Japan and South Korea, to address severe imbalances of bargaining power in vertical commercial relationships that may distort the competitive process below the dominance threshold. Whereas the DMA embodies a regulatory response to forms of collective dependence linked to gatekeepers, its limited scope leaves many problematic scenarios unaddressed. In the context of the ongoing evaluation of Regulation 1/2003, introducing economic dependence at EU level would offer a more comprehensive response to contemporary economic power, in line with EU constitutional values, while enhancing internal coherence and promoting normative convergence with like-minded democracies.

1 | Introduction

Economic power does not always manifest itself in the form of dominance over an entire market. The increasing complexity of contemporary economies—particularly, but not exclusively, in digital markets—has exposed the limitations of a competition law framework centred on a binary distinction between dominance and non-dominance. In this respect, the orthodox antitrust paradigm—largely shaped by the economicist turn associated with the Chicago School of antitrust in the United States—appears increasingly ill-equipped to capture certain manifestations of economic power that, independently from dominance, may nevertheless produce anticompetitive effects.

These observations are best understood within the global debate currently unfolding on the normative compass of competition law, in which it is increasingly argued that this discipline cannot be reduced to market efficiency alone but must ultimately reflect the fundamental democratic values embedded in the broader constitutional order (Davis 2026). Along these lines, some scholars have identified what has been described as a 'democratic deficit' in antitrust enforcement,

linked to an increasing technocratisation of competition law that risks distancing its application from the constitutional principles it is meant to serve (First and Waller 2013).

In Europe, competition law must be interpreted in light of the principles enshrined in primary law, that is, the founding Treaties. In this respect, Article 3(3) TEU establishes the model of a social market economy, of clear ordoliberal inspiration (First and Waller 2013, 144), which presupposes a reconciliation between economic efficiency, fairness and equal opportunities (Hildebrand 2017, 2). Although its impact on the notion of abuse of a dominant position under Article 102 TFEU has been disputed (Akman 2012, 151 et seq.), EU competition law remains rooted in this ordoliberal tradition that conceives market structure and the competitive process as means to achieve distributive efficiency (Behrens 2015).

In this context, the notion of fairness has re-emerged as a central theme in the European competition policy discourse, notably through the repeated public interventions of Margrethe Vestager (2022). Although often criticised for its vagueness (Colangelo 2023), fairness is better understood not as an operational legal concept but as a guiding principle informing the normative orientation of competition policy (Gerard 2018).

Likewise, the American Neo-Brandeisian movement rejects a purely outcome-oriented view of antitrust, conceiving competition as a process deserving protection in its own right (Khan 2018; Wu 2020). However, although this strand of thought exerted significant influence during the Biden administration, its institutional traction appears to have weakened during Trump's second term. The replacement of its most representative figures in key public positions, together with a more supportive posture towards major technology firms, marks a shift in enforcement priorities that contrasts with the approach pursued in Europe.

Interestingly, Neo-Brandeisians draw inspiration from regulatory experiences in both Europe and East Asian democracies. Tim Wu's metaphor of the 'gardener state', rooted in European ordoliberalism, advances a vision of competition based on the preservation of 'workable competition' (Wu 2020, 159), whereas Lina Khan has invoked the regulation of abuse of superior bargaining position ('ASBP') in Japan and South Korea in support of a fairness-oriented approach to antitrust (Lee 2022).

Notably, whereas Japanese competition law was originally modelled on US antitrust principles as a result of the post-war American occupation, it has developed a distinctive orientation by combining orthodox antitrust principles with explicit considerations of fairness in the functioning of markets (Takigawa 2009). Consequently, Article 1 of the Japanese Act on Prohibition of Private Monopolization and Maintenance of Fair Trade ('AMA') (Japan 1947) promotes 'fair and free competition' (Davis 2026) and prohibits unfair trade practices, which constitute a third category of anticompetitive conduct alongside private monopolisation and unreasonable restraints of trade (Yamada 2022).

It is within this broader, process-oriented conception of competition law that the notions of economic dependence and superior bargaining power, introduced in several EU Member States and East Asian jurisdictions, find their place. It is no coincidence that, in Europe, these concepts were primarily developed within German legal scholarship, where their ordoliberal foundations are particularly evident, as a response to a regulatory gap concerning anticompetitive manifestations of economic power arising from significant asymmetries in vertical commercial relationships. Although such abuses primarily raise issues of commercial fairness, namely, the exploitation of trading partners through unfair terms and conditions, their long-term effects on the competitive process—beyond immediate price outcomes—may justify competition law intervention.

Comparable legal responses have emerged in other advanced democracies facing similar structural challenges. Japan and South Korea have developed and actively enforced the concept of a superior bargaining position, functionally comparable to economic dependence.

Against this background, this paper argues that economic dependence should be recognised as a new conceptual and analytical frontier in EU competition law. Drawing on comparative experience within and beyond the Union, it submits that the absence of an EU-level framework on economic dependence leaves unaddressed significant forms of economic power capable of distorting the competitive process below the dominance threshold. In a context of growing geopolitical uncertainty and strategic realignment, the development of such an approach may enhance internal coherence among Member States while fostering normative convergence and dialogue with like-minded democracies that already regulate comparable forms of economic power.

To this end, the paper proceeds as follows. Section 2 develops the theoretical foundations of economic dependence and bargaining power. Section 3 analyses the implementation of economic dependence and superior bargaining power in EU Member States and in East Asian jurisdictions, highlighting their functional convergence. Section 4 examines the role of economic dependence in EU competition policy, with particular attention to the Digital Markets Act ('DMA') and the ongoing evaluation of Regulation 1/2003 (European Commission 2024a). The paper concludes by exploring possible avenues for integrating economic dependence into EU competition law in a manner that remains faithful to its constitutional foundations while preserving its conceptual coherence.

2 | Theoretical Foundations: Economic Dependence, Vertical Competition and Bargaining Theory

Traditional competition law and economics scholarship have approached economic power from a market-centred perspective (James et al. 2013). Rooted in the neoclassical premise that markets are mechanisms for price formation aimed at the efficient allocation of resources, market power is understood as a firm's ability to influence market-wide prices and quantities (Lianos and Carballa 2021, 8), and antitrust intervention is primarily justified where unilateral conduct leads to allocative inefficiencies, typically reflected in higher prices or reduced output (Herrero 2006, 113 et seq.). This paradigm has long informed the dominance-based structure of Article 102 TFEU, which operationalises the economic notion of market power. In line with this approach, EU institutions have determined that, below a horizontal market share of 40%, the existence of a dominant position is, save in exceptional circumstances, unlikely (European Commission 2009, para. 14).

By contrast, vertical competition—understood as rivalry between trading partners operating at different levels of the value chain—does not sit easily within this traditional framework (Lianos and Carballa 2021, 7), which conceives competition primarily as a relationship between firms offering substitutable products (European Commission 2024b, para. 12). Accordingly, the exercise of buyer power has historically attracted antitrust scrutiny only in its most extreme forms, namely, monopsony or oligopsony.[1] Outside these exceptional and relatively rare scenarios, the prevailing view has been that the bargaining pressure exerted by non-monopsonistic buyers on their suppliers is, *prima facie*, pro-competitive or, at least, harmless from a competition law standpoint.

More generally, practices arising in the context of such vertical relationships have often been characterised as exploitative abuses (Lee 2023, 45–46), which have been relegated to a secondary position within EU competition law.[2] Disputes between trading partners have therefore typically been treated as matters of fairness and good faith in commercial contracts, more appropriately addressed through private law rather than through competition law (Bougette et al. 2022).

Against this background, a growing body of scholarship has challenged the sufficiency of a purely economics-driven paradigm as the sole normative compass for assessing unilateral conduct in competition law. These authors advocate a broader understanding of competition law, centred on the protection of the competitive process as such rather than on a narrowly defined notion of economic efficiency (Fox 1977, 1991). Although consumer welfare remains a core objective, it is increasingly conceived in a more expansive sense, encompassing not only immediate price effects but also other parameters of competition such as quality, choice and innovation (Hildebrand 2017).

As part of this critique, the adequacy of the dominance-based paradigm itself has been called into question. Economic power is not exhausted by a strict notion of dominance, nor is it confined to markets defined exclusively in horizontal terms.[3] In particular, it overlooks the relational dimension of power that sociological scholarship has conceptualised through the notion of economic dependence (Emerson 1962).

In this context, Robert Steiner's theory of vertical competition, which foregrounds the central role of vertical rivalry in structuring competitive outcomes, becomes particularly relevant. Steiner argues that vertical relationships reflect a structural tension between cooperation and conflict: Whereas trading partners cooperate to create value, they simultaneously compete over the allocation of the resulting economic surplus (Steiner 2008; de Estevan Quesada 2017, 25). From this perspective, firms operating at different levels of the value chain compete vertically for profits within the same product category (Lianos 2009).

Importantly, Steiner emphasises the interdependence between vertical and horizontal competition, describing their interaction as a 'chicken-and-egg' relationship (Steiner 2011). A firm's ability to consolidate or expand its horizontal market

power may depend on its capacity to assert itself at the vertical level, and vice versa, resulting in mutually reinforcing dynamics between both dimensions of economic power (Lianos and Carballa 2021, 8).

This doctrine fits squarely within the economic framework of bargaining theory (Lee 2023, 38), which focuses on the distribution of surplus in bargaining situations, namely, the allocation of value between parties that share an interest in cooperation but hold conflicting interests as regards the terms of that cooperation (Muthoo 2000).

In its modern formulation, bargaining theory conceptualises the division of surplus in bilateral negotiations as a function of the parties' respective utilities and their alternatives in case of disagreement (Nash 1950). Central to this framework is the notion of the 'disagreement outcome', grounded in opportunity cost (Wright and Yun 2020, 1060), which defines the minimum threshold below which no party will accept an agreement.

The bargaining framework allows for a more precise understanding of buyer power in procurement markets, typically characterised by strong asymmetries between large distributors and their more vulnerable suppliers. In this context, buyer power has been defined as 'the bargaining strength that a buyer has with respect to suppliers with whom it trades' (OECD 2009). Ultimately, such power depends on a comparison of the parties' respective outside options, that is, the payoff each party would obtain in the event of no agreement (Cheng 2022, 16).

The buyer's position in the downstream market directly affects the supplier's outside option. Horizontal and vertical market power thus reinforce each other, creating a 'spiral effect' that, in extreme cases, enables the buyer to act as a gatekeeper.[4] From the supplier's perspective, the absence of equivalent alternatives for marketing its products is indicative of a situation of economic dependence *vis-à-vis* the buyer.

Although buyer power may yield short-term consumer benefits (i.e., lower prices resulting from the exploitation of suppliers, where such gains are passed on to consumers), economic scholarship has highlighted its potentially adverse long-term effects, especially when competitive parameters beyond price are considered (Chen 2007). In other words, what may initially appear as a matter of fairness in vertical relationships can acquire antitrust relevance where unfair trading conditions distort the competitive process beyond their immediate bilateral effects. Therefore, the exercise of buyer power may reshape not only the specific commercial relationship but also the overall competitive structure of the market, especially where the buyer operates as a gatekeeper (Herrera Anchustegui 2017).

In this way, the logic of economic dependence and vertical competition aligns with a broader conception of competition law that extends beyond a narrow consumer welfare standard focused on immediate price effects. Originally observed in retail distribution, this logic applies equally to digital markets, where interactions between platforms and business users reproduce analogous patterns of power and dependence.

3 | Abuse of Economic Dependence and Superior Bargaining Power: Comparative Perspectives From EU Member States and East Asian Jurisdictions

Under the orthodox antitrust paradigm of the last decades, unilateral conduct by non-dominant firms has traditionally been regarded as irrelevant. Over time, however, several jurisdictions have introduced significant exceptions to this general rule by prohibiting the conduct of firms that, although not dominant in the classical sense, nevertheless enjoy a significant degree of economic power within vertical competitive relationships.

The prohibition of the abuse of a superior bargaining position first introduced in Japan and the prohibition of abuse of economic dependence later developed in Germany belong to this category.[5] Although these legal figures emerged in different historical, economic and institutional contexts, each has influenced the evolution of neighbouring legal systems and is increasingly discussed in a globalised and interconnected economy.

Although the notions of economic dependence and superior bargaining power are not formally identical (European Commission 2014, 44), the differences between them are largely terminological and rooted in distinct legal traditions,[6] rather than reflecting meaningful substantive or methodological divergences. In both cases, the assessment of the parties' relative position relies on comparable criteria (ICN 2008, 18).

In most EU Member States, economic dependence has generally been identified, from a legal perspective, by the absence of 'equivalent alternatives' for the weaker party in the context of specific commercial relationships.[7] In Japan, the finding of a superior bargaining position relies on four cumulative criteria, among which the degree of dependence and the difficulty of substituting the commercial relationship with the stronger party play a central role (Japan Fair Trade Commission 2019, 5).

Accordingly, despite doctrinal differences, both categories may be regarded as functionally equivalent, as both seek to capture the same underlying phenomenon: the abusive exercise of economic power in vertical business-to-business relationships marked by a qualified imbalance in bargaining power.

Their underlying methodology closely corresponds to the logic of bargaining theory (Muthoo 2000, 155), insofar as the economic notion of the 'disagreement outcome' translates into the legal concept of 'equivalent alternatives' that defines a situation of economic dependence.

Not every disadvantaged position automatically constitutes a situation of economic dependence or superior bargaining position. A (weaker) undertaking will be regarded as dependent where it cannot realistically replace its commercial relationship with the other (stronger) undertaking without materially impairing its competitive position or economic viability in the market (Zabaleta Díaz 2002, 231).

In such circumstances, the dependent undertaking is subject to the power of the stronger undertaking (Lianos 2017, 382). That power, however, must be understood from a relational perspective: The element of 'relativity' qualifies the economic power that arises in bilateral relationships. It is for this reason that the German legislature coined the concept of 'relative market power' in order to prohibit the abuse of economic dependence in 1973, now enshrined in section 20 of the German Act against Restraints of Competition ('GWB') (Germany 1957). Dominance operates *erga omnes*, whereas relative market power is exercised only *vis-à-vis* dependent undertakings.[8]

The reference to the 'market' in this expression is not accidental (Bundeskartellamt 2024, 34). Germany first, and France subsequently, integrated the prohibition of relative market power into the architecture of competition law alongside the prohibition of abuse of a dominant position. This explains the conceptual link between economic dependence and market power (Bundeskartellamt 2024; de Estevan Quesada 2017, 70). The underlying logic of this systematic placement lies in the existence of vertical abuses that, although rooted in dependency, may nevertheless produce restrictive effects on competition in the market.[9]

The prohibition of abuse of economic dependence was conceived from the outset as a competition law infringement and has therefore been analysed using traditional competition law methodology.[10] Such analysis requires the identification of a position of economic strength within a defined relevant market, albeit with adaptations to reflect the relational nature of economic dependence (Lianos 2017, 371).

The relevant market delineates the reference framework for assessing the equivalence of alternative trading partners, evaluated from the dual perspective of their (objective) sufficiency and their (subjective) reasonableness.[11] As with any other antitrust provision, the application of the prohibition of abuse of economic dependence cannot be entirely detached from its effects on market competition. In Germany, authorities therefore assess whether the conduct extends beyond the bilateral relationship and is capable of affecting the competitive process more broadly, through a balancing of interests designed to avoid protectionist biases in favour of weaker competitors (ICN 2008, 22–23; Bundeskartellamt 2024, 31–32).

In Japan, the abuse of a superior bargaining position was introduced in 1953 as an unfair trading practice under Article 2(9) of the AMA.

ASBP is defined as a situation in which one party takes advantage of its superior position within a contractual relationship in order to obtain concessions or benefits in an unfair manner, having regard to ordinary commercial practices (ICN 2008, 7). The exploitation of weaker trading partners contradicts 'fair and free competition', as laid down in Article 1 AMA, because it prevents them from negotiating based on their own free and independent business judgment (ICN 2008, 14–15).

In this jurisdiction, the analysis of abuse of a superior bargaining position is conceptually more distant from the prohibition of abuse of a dominant position. It is not necessary for the stronger undertaking to be dominant in any market, and, indeed, the assessment of its position does not even require the prior definition of a relevant market.[12]

For the conduct to be abusive, it must place the weaker party at a competitive disadvantage (Yamada 2022) and be regarded as 'unjust' in light of ordinary business practices (Takigawa 2009, 9).

The competitive harm resulting from such conduct is inferred from its tendency to impede fair competition (ICN 2008, 22). This standard differs from that applicable to the abuse of a dominant position, which requires the demonstration of a 'substantial restraint of competition' within a defined market, under Article 2(5) AMA.

In South Korea, ASBP is also classified as an 'unfair trading practice' under Article 45(1)(6) of the Monopoly Regulation and Fair Trade Act ('MRFTA') (Republic of Korea 1980). In this framework, the prohibition is explicitly grounded in considerations of fairness, as the practice is unlawful insofar as it harms fair trade (Korea Fair Trade Commission 2021). As noted by Sangyun Lee, although the Korean regime is closely inspired by Japanese competition law, the notion of superior bargaining position remains more indeterminate in both meaning and scope (Lee 2023, 137). Accordingly, the Korean Supreme Court has refrained from articulating clear decisive criteria for establishing this position, relying instead on an overall assessment of the relevant circumstances, while narrowing the scope of the prohibition by progressively raising the threshold for finding abuse.

Across both European and Asian jurisdictions, this concept has been prominently applied to address abuses by powerful buyers *vis-à-vis* vulnerable suppliers in the context of the growing concentration of the retail distribution sector (European Commission 2014; ICN 2008; OECD 1999).

In Germany, the evolution of the legal category has been closely linked to this problem (Bundeskartellamt 2024, 30; Wagner-von Papp 2018), whereas in France, the prohibition of abuse of economic dependence was introduced in 1986 with the explicit aim of rebalancing commercial relationships in response to the rise of large-scale retail distribution at that time (DGCCRF 2023). In parallel, as early as 1954, the Japan Fair Trade Commission exercised its power to designate specific unfair trading practices in the large-scale retail sector (Lee 2022) and has since applied this framework proactively (ICN 2008, 31). In Korea, targeted rules have been adopted to address situations in which large retailers hold a superior bargaining position *vis-à-vis* their suppliers (Republic of Korea n.d.).

More recently, abuse of economic dependence has re-emerged as a suitable tool for addressing the conduct of platforms that, even in the absence of dominance, exercise significant intermediation power in online markets. At the same time, digitalisation has generated new forms of economic dependence that call for a reassessment of pre-existing rules.

Interactions between large online platforms (which distribute not only consumer goods but also information, applications and content) and business users are typically structured on a predominantly unilateral basis (Bougette et al. 2019, 268). Even in the absence of an explicit contractual link, the apparent legal independence of platform users may, in certain cases, conceal a situation of factual subordination (Wakui 2022, 6–7).

The specific features of digital markets intensify the economic dependence of business users and, correlatively, reinforce the position of platforms as gatekeepers (OECD 2022, 10–11). In particular, large digital firms benefit from strong direct and indirect network effects (OECD 2019, 22), control data of strategic importance for competition and exploit extreme informational asymmetries *vis-à-vis* their users (Cutolo and Kenney 2019), apply opaque algorithmic ranking mechanisms that determine product visibility (Caminade et al. 2022, 35–36) and leverage consumer cognitive biases (Observatory on the Online Platform Economy 2021, 38–39). Although the ability of platforms to host innumerable sellers (the so-called 'long-tail' of digital platforms) appears to expand commercial opportunities, several studies show that this expansion is accompanied by a dilution of the value of independent brands (Caminade et al. 2022, 36; Wakui 2022, 7).

As a result, a number of jurisdictions around the globe have adapted their regulatory frameworks to the challenges of the digital economy, recognising the usefulness of the category of economic dependence in addressing significant imbalances of power in digital markets.

In Europe, Germany has expanded its competition law to capture platform-based dependence, notably by introducing a category of dependence based on data control and considering the strategic position of gatekeepers (Germany 2021),

whereas Italy has introduced a rebuttable presumption of economic dependence where platforms are decisive for access to end customers, expressly taking into account network effects and access to data (Italy 2022). Belgium incorporated this figure into its competition law in 2019 in response to bargaining asymmetries in retail and digital markets (Belgium 2019), and in France, a trend towards a more expansive application of the concept has emerged in practice, as illustrated by the 2020 decision sanctioning Apple for abuse of economic dependence (Autorité de la concurrence 2020).

In East Asia, competition authorities have actively enforced prohibitions on abuse of superior bargaining position against major digital platforms, most notably in the cases concerning e-commerce platforms such as Amazon (Japan Fair Trade Commission 2020) and Rakuten (Japan Fair Trade Commission 2021) in Japan and online travel agencies such as Yanolja and YeogiEottae (Korea Fair Trade Commission 2021) in South Korea.

The comparative overview reveals a functional convergence between the EU concept of abuse of economic dependence and the East Asian notion of abuse of superior bargaining position, reflecting a shared constitutional understanding of competition law in which considerations of fairness may acquire relevance in safeguarding the competitive process.

As digitalisation intensifies economic dependence, this category—originally developed at national level—is increasingly permeating EU regulation of digital markets. In this evolving landscape, and in considering whether to accord greater significance to this notion within EU competition law, EU legislators may draw inspiration not only from the traditions of the Member States but also from democratic jurisdictions that reflect a deeper alignment with the Union's constitutional foundations.

4 | The DMA and the Rise of Economic Dependence in EU Competition Policy

The notion of economic dependence has begun to consolidate within European competition policy in the digital sector, as is implicitly reflected in the DMA (European Commission 2020, para. 14). In this setting, economic dependence is not confined to bilateral relationships but acquires a structural dimension, linked to the phenomenon of gatekeepers.

Although the legal nature of the DMA has been the subject of considerable debate, it seems reasonable to conclude that, even if it does not form part of competition law *sensu stricto*, this regulatory instrument does form part of European competition policy *sensu lato* (Schweitzer 2021). In this respect, its objectives are different from but complementary to those of competition law.

Within the DMA framework, economic dependence is articulated through the concept of fairness, which constitutes one of its core objectives alongside contestability.[13] By defining unfairness as 'an imbalance between the rights and obligations of business users where the gatekeeper obtains a disproportionate advantage' (European Union n.d., para. 33), the Regulation seeks to address situations of economic dependence generated by the position of gatekeepers (Monopolkommission 2021; Geradin 2021). In this sense, fairness operates as a mechanism to secure a certain degree of balance in vertical relationships between platforms and their users, whether end users or business users (Crémer et al. 2023, 981 et seq.).

The Regulation applies the logic of economic dependence through the category of gatekeepers, which operate an 'important gateway for business users to reach end users' (Article 3(1)(b)), although they 'are not necessarily dominant in competition-law terms' (European Union n.d., para. 5). Gatekeepers therefore hold a strategic position as intermediaries between end users and business users, which generates economic dependence on the part of the latter. Accordingly, the regulatory burden falls exclusively on those digital platforms that have been designated as gatekeepers in relation to one or more core platform services.

From the regulatory perspective of the DMA, however, economic dependence becomes relevant only where it affects all or a significant part of the business users interacting with the platform (Schweitzer 2021, 522–524). This collective dependence places the platform in a gatekeeper position, which entails a form of structural power enabling the platform to condition business users' access to end users (OECD 2009, 178). Such a strategic role corresponds to what some scholars have conceptualised as 'intermediation power', a third form of absolute market power, alongside traditional buyer power and seller power (Schweitzer et al. 2018).

Given its typically regulatory approach and the significant restrictions it imposes on the freedom of enterprise of gatekeepers, the scope of application of the DMA must necessarily be limited, with the result that numerous situations of economic dependence fall outside its scope of application.

First, the Regulation applies only to undertakings that meet high quantitative thresholds defined on the basis of market capitalisation, turnover or the number of active users and only in relation to the so-called core platform services.[14] Consequently, not only analogue services are excluded but also digital services that do not fall within the categories expressly covered by the Regulation. From this perspective, only a very limited number of undertakings have reached the thresholds justifying designation as gatekeepers at Union level.[15]

Second, the substantive content of the DMA is set out in a set of exhaustively listed obligations and prohibitions, most of which are inspired by investigations conducted by the Commission or National Competition Authorities ('NCAs') in digital markets. This implies that conduct that may be abusive in nature nevertheless falls outside the scope of the DMA if it does not fit within the predefined normative categories.

Finally, it should be recalled that this paper has focused on those situations of economic dependence that derive from the strategic intermediation power of gatekeepers. Although gatekeeper status typically entails economic dependence for business users, such dependence may also arise independently of any gatekeeper position, due to factors such as brand strength ('must stock items'), product scarcity or relationship-specific investments (Bundeskartellamt 2024, 35–39).

Consequently, numerous scenarios of economic dependence fall outside the narrow scope of application of the DMA. This reveals the existence of a regulatory gap in relation to situations of economic dependence that do not attain the structural dimension required by the Regulation but that also do not fit comfortably within the traditional category of abuse of a dominant position under Article 102 TFEU.

Against this background, the desirability of incorporating the notion of economic dependence or relative market power into EU competition law has been expressly considered (Bundeskartellamt 2024, 53). The European Parliament has shown considerable receptiveness to this idea and has even called on the Commission to complement the concept of absolute market power and dominance with these notions (European Parliament 2020, para. 57).

This proposal has begun to take shape in the context of the ongoing evaluation of Regulation 1/2003. In that process, the Commission has raised doubts as to whether the exception to the convergence rule in Article 3(2) of Regulation 1/2003, which permits Member States to apply stricter national rules on unilateral conduct, including abuse of economic dependence, is compatible with a coherent application of Article 102 TFEU (European Commission 2024a, 239).

In this scenario, EU-level regulation of economic dependence would help to reduce legal fragmentation resulting from the coexistence of multiple national regimes in this field. Although there is a basic consensus as to the definition of economic dependence, significant differences remain regarding the conditions for application and interpretation of this category, producing divergent outcomes across jurisdictions and creating legal uncertainty (European Commission 2024a, 148).

For example, compared with other jurisdictions, an excessively restrictive interpretation of the requirement to demonstrate a restrictive effect on competition has historically led to a very limited application of the abuse of economic dependence in France (Scalzini 2021, 87).

Beyond the objective of harmonisation, the recognition of economic dependence within EU competition law would make it possible to establish a case-by-case intervention mechanism in respect of forms of relational power that fall outside both Article 102 TFEU and the regulatory framework of the DMA. This approach would help to move beyond the current binary structure between dominance and non-dominance, in favour of a more comprehensive approach towards the control of unilateral economic power.

In this respect, the German multi-level regime introduced by the 10th Amendment to the GWB offers a valuable point of reference, combining the traditional prohibition of dominance with a quasi-regulatory framework for undertakings of paramount significance across markets—regarded as functionally comparable to the gatekeeper regime under the DMA (Franck 2025, 80)—and a specific control of relative market power, thereby enabling a graduated response to economic power according to its nature and intensity.

Against this background, the question inevitably arises as to how the notion of relative market power or economic dependence could be articulated at EU level.

In this regard, the Korean scholar Sangyun Lee identifies three main approaches to integrating the abuse of economic dependence within the framework of competition law (Lee 2023, 78 et seq.).

The first approach subsumes situations of economic dependence under the framework of abuse of a dominant position, equating the bilateral or vertical power exercised over dependent trading partners with dominance within the meaning of Article 102 TFEU. The second approach advocates recognising economic dependence as an autonomous form of economic power within competition law, distinct from, yet coexisting with, traditional dominance. This one is reflected in Member States such as Germany and France, where a specific provision prohibiting abuse of economic dependence has been introduced alongside abuse of a dominant position within domestic competition law. The third approach shifts the treatment of economic dependence outside classical antitrust and towards fairness-based frameworks that nevertheless allow for public enforcement by competition authorities. Other Member States such as Italy and Spain respond to this logic: Here, abuse of economic dependence is primarily a matter of private litigation, regulated under unfair competition law (Colangelo 2023) or contract law (Gerard 2018), but it allows for public enforcement in qualified circumstances involving a public interest element.[16]

The DMA, with its sector-specific approach to fairness, may be seen as reflecting this third logic. However, unfair competition law as such remains predominantly a matter of national private law rather than a field of comprehensive Union regulation. As a result, private-law models that treat abuse of economic dependence primarily as an unfair trading practice enforceable by public authorities on specific grounds do not lend themselves easily to transposition at EU level.

By contrast, EU competition law has traditionally reflected the first approach, insofar as Article 102(a) TFEU may capture certain manifestations of economic dependence through the prohibition of unfair prices or trading conditions (Lee 2023, 84–85). However, this strategy has been criticised as formalistic, because it forces relational forms of economic power under analytical categories designed for horizontal market power, often relying on artificial market constructions to establish dominance (Feteira 2016, 125–136).

Importantly, this approach has not resulted in a genuine recognition of economic dependence as a distinct expression of power within the EU system. The concept of the 'unavoidable trading partner', introduced by the Court of Justice in *Hoffmann-La Roche*, illustrates this limitation: Rather than constituting an autonomous basis for intervention, it ultimately served as an element supporting the finding of dominance (Court of Justice 1979, para. 41).

Dominance and economic dependence are, however, conceptually different phenomena, rooted in distinct conceptions of economic power. From this perspective, the second model suggested by Sangyun Lee—grounded in the explicit recognition of economic dependence as a separate manifestation of unilateral economic power within competition law—appears conceptually more coherent and systemically preferable.

This option would entail recognising that EU competition law may encompass different expressions of unilateral economic power, including both vertical relational power arising from asymmetries within specific commercial relationships and horizontal dominance exercised *erga omnes* within a defined market.

Its implementation at EU level would necessarily take the prohibition of abuse of dominant position in Article 102 TFEU as a starting point. Introducing into that provision an explicit prohibition of abuse of economic dependence or relative market power, modelled on the German approach, would require a Treaty amendment and, although not impossible, appears highly unlikely in the foreseeable future.

In this institutional context, Commission interpretative guidance through soft law instruments could play a significant role in introducing the notion of economic dependence while preserving its conceptual distinction from dominance. Both Articles 101 and 102 TFEU are abstract prohibitions whose content has historically evolved through judicial interpretation and enforcement practice (Ibáñez Colomo 2020, 321–322). Just as dominance is not a static concept but one that has undergone progressive reinterpretation,[17] EU competition law could similarly evolve towards the recognition of vertical or relative market power, drawing on national experience and further refined through Commission practice and judicial interpretation.

Commission soft law instruments are not legally binding, as recalled by the Court of Justice in *Grimaldi* (Court of Justice 1989, para. 16), given that the Court remains the sole authoritative interpreter of EU law pursuant to Articles 19 TEU and 267 TFEU. Nevertheless, they may represent a first step towards the recognition of this notion at EU level, because, as de Ridder and Schweitzer observe, although guidelines cannot change competition law, they can redefine competition policy (Schweitzer and de Ridder 2024, 226).

5 | Conclusions

This paper has argued that economic dependence should be recognised as a new conceptual and analytical frontier of European Union competition law. The traditional dominance-based paradigm, anchored in Article 102 TFEU and grounded in a predominantly horizontal conception of market power, is increasingly ill-equipped to capture vertical forms of economic power that may distort the competitive process without reaching the dominance threshold.

Building on the economics of bargaining and the theory of vertical competition, the paper supports the view that economic power may arise not only from market-wide control over prices and quantities but may also manifest itself as relational power exercised vis-à-vis economically dependent trading partners whose lack of equivalent alternatives exposes them to exploitation. Although such abuses primarily raise concerns of commercial fairness, their long-term impact on the structure of competition, especially when considering parameters of competition other than price, justifies their relevance within the scope of EU competition law.

Comparative experience within the European Union and beyond reflects that this phenomenon has already been regulated in different legal regimes under a variety of terminologies and doctrinal categories. Several EU Member States, following the example of Germany, have integrated economic dependence into competition law through the notion of relative market power, whereas Japan and South Korea have developed and actively enforced the concept of abuse of superior bargaining position. The clear functional convergence between the categories implemented in EU Member States and East Asian democracies is not merely technical but reflects a shared understanding of competition law as an instrument for safeguarding the competitive process within a broader constitutional framework that seeks to reconcile efficiency with fairness considerations.

At EU level, economic dependence has not yet emerged as an autonomous category within competition law. Although the DMA addresses certain structurally embedded forms of dependence associated with gatekeepers, its limited scope leaves a broad range of situations of relational power outside its reach. At the same time, Article 102 TFEU does not capture abuses of relative market power falling short of dominance. Instead, national regimes rely on the exception to the convergence rule laid down in Article 3(2) of Regulation 1/2003, which has led to the coexistence of multiple national regimes and, consequently, to increasing regulatory fragmentation and legal uncertainty within the internal market.

In this context, recognising economic dependence or relative market power within EU competition law would serve a dual function. Substantively, it would enable case-by-case intervention in respect of abuses of relational power that distort competition without meeting the threshold of dominance under Article 102 TFEU or the regulatory framework of the DMA. Systemically, it would mitigate the growing fragmentation resulting from the coexistence of heterogeneous national regimes by building a new European concept that, drawing on national experience and regulatory dialogue, could foster greater internal coherence among EU Member States while deepening normative and institutional convergence with like-minded democracies.

More fundamentally, this recognition would contribute to a recalibration of EU competition law in line with its constitutional foundations and contemporary challenges. In particular, it embraces a process-oriented understanding of competition law, one that moves beyond a rigid focus on dominance and short-term price effects and is better aligned with the constitutional values enshrined in the EU founding Treaties.

Conflicts of Interest

The author declares no conflicts of interest.

Data Availability Statement

Data sharing is not applicable to this article as no datasets were generated or analysed during the current study.

Endnotes

[1] Although monopsony has sometimes been regarded as the mirror image of monopoly, the specific features of buyer power require a differentiated legal treatment (Carstensen 2008).

[2] Despite the formal recognition of exploitative abuses under Article 102(a) TFEU, EU enforcement has for decades focused predominantly on exclusionary conduct (Akman 2009). In recent years, however, this trend may be reversing, particularly in the digital economy, as reflected in recent Commission practice (Vande Walle 2024).

[3] In 2022, the OECD addressed the application of market power concepts in digital environments, highlighting both the challenges of measuring market power in digital firms and the limits of dominance-based frameworks (OECD 2022).

[4] The interaction between upstream buyer power and downstream seller power, culminating in gatekeeper-like positions, has also been identified by the European Commission in its merger control practice in the agri-food retail sector. See, in particular, *Kesko/Tuko* (European Commission 1996), *Rewe/Meinl* (European Commission 1999) and *Carrefour/Promodès* (European Commission 2000).

[5] This paper concentrates on Germany and Japan, whose regulatory models have influenced neighbouring systems. Germany has shaped reforms in several European jurisdictions (France, Austria, Belgium, Italy, Spain, etc.), whereas Japan's approach has informed developments in South Korea and in certain EU Member States, such as Hungary, which also regulates the abuse of superior bargaining position.

[6] From a strictly terminological perspective, the notion of economic dependence, whose corollary is relative market power, integrates more naturally within the normative framework of competition law. From this standpoint, the analysis of (relative) market power at the vertical level would complement the analysis of (dominant) power at the horizontal level. By contrast, the expression 'superior bargaining power' is not commonly used within the field of competition law, as it appears more characteristic of other areas of law in which the protection of disadvantaged parties against imbalances in economic power may be directly relevant (European Commission 2014, 44).

[7] Although there is broad consensus around this generic concept, certain terminological differences can be observed across jurisdictions, which are reflected in the use of different expressions, ranging from an 'equivalent solution' in France (in its original formulation) to an 'equivalent alternative' in Spain, a 'sufficient and reasonable alternative' in Germany or a 'satisfactory alternative' in Italy.

[8] Nevertheless, part of the scholarship has questioned this antitrust framing of relative market power, arguing that the notion of market power is conceptually incompatible with the inherently relational nature of economic dependence (Wagner-von Papp 2014).

[9] Early German regulation was influenced by the work of authors such as Helmut Arndt, who, in his work *Markt und Macht*, identified forms of economic power rooted in dependency within specific commercial relationships rather than in horizontal market competition (Zabaleta Díaz 2002, 128).

[10] This paper focuses on those jurisdictions in which abuse of economic dependence is regulated within competition law. By contrast, some jurisdictions have chosen to regulate economic dependence under unfair competition law or contract law. In Spain, abuse of economic dependence is governed by Article 16(2) of the Spanish Unfair Competition Act (Spain 1991), whereas in Italy, it is regulated under Article 9 of the Law on Subcontracting in Productive Activities (Italy 1998).

[11] This two-pronged test is inspired by German competition law, which explicitly defines equivalent alternatives as the sufficient and reasonable possibilities of turning to other undertakings, but it also appears to be applied in other jurisdictions, such as France or Belgium (Feteira 2016, 167–168).

[12] Nevertheless, Shiraishi explains that, although Japanese legislation formally denies the need to define a relevant market in such cases, the Japan Fair Trade Commission does in practice engage in this exercise, delineating small and specific relevant markets in order to establish the superior bargaining position of one trading partner vis-à-vis the other (Shiraishi 2013).

[13] Both objectives are framed within the overarching objective of contributing to the proper functioning of the internal market, as stated in Article 1 DMA.

[14] It has been argued, however, that purely quantitative thresholds are not closely connected to situations of economic dependence affecting business users, as they primarily reflect the absolute size of the undertaking rather than its strategic position as an intermediary (Geradin 2021). Along similar lines, CERRE proposed a designation process based on four cumulative criteria, including business users' dependence on the platform, measured through indicators such as multi-homing rates and switching behaviour (De Streel 2020, 10–11). Interestingly, these considerations are reflected in the DMA's alternative designation route, which allows the Commission to assess qualitative factors (including switching costs or user lock-in) through a market investigation under Article 3(8) DMA.

[15] As of February 2026, the undertakings designated as gatekeepers under the DMA are Alphabet, Amazon, Apple, ByteDance, Meta, Microsoft and Booking.

[16] Article 3 of the Spanish Competition Act allows for public enforcement in relation to acts of unfair competition that, by distorting free competition, affect the public interest (Spain 2007). Similarly, in Italy, public enforcement is permitted under Article 9(3-bis) of the Italian Law on Subcontracting in Productive Activities only where the abuse of economic dependence is relevant to the protection of competition and the market (Italy 1998).

[17] This evolution is already reflected in the two classic cases that shape the concept. Whereas *United Brands* contains the classical definition of dominance (Court of Justice 1978, para. 65), *Hoffmann-La Roche* refined the concept by emphasising, alongside market shares, additional factors such as market structure, entry barriers and countervailing power (Court of Justice 1979, paras. 38–41).

References

Akman, P. 2009. "Exploitative Abuse in Article 82 EC: Back to Basics?" *Cambridge Yearbook of European Legal Studies* 11: 165.

Akman, P. 2012. *The Concept of Abuse in EU Competition Law*. Hart Publishing.

Behrens, P. 2015. "The Ordoliberal Concept of "Abuse" of a Dominant Position and Its Impact on Article 102 TFEU." Discussion Paper No. 7/15, Europa-Kolleg Hamburg, Institute for European Integration.

Bougette, P., O. Budzinski, and F. Marty. 2019. "Exploitative Abuse and Abuse of Economic Dependence: What Can We Learn From the Industrial Organization Approach?" *Revue D'économie Politique* 129, no. 2: 261.

Bougette, P., O. Budzinski, and F. M. Marty. 2022. "Self-Preferencing and Competitive Damages: A Focus on Exploitative Abuses." *Antitrust Bulletin* 67, no. 2: 190–207.

Bundeskartellamt. 2024. *National Abuse Control and Relative Market Power in the European Context* (Background paper. Working Group on Competition Law.

Caminade, J., J. Carvajal, and C. R. Knittel. 2022. "An Economic Analysis of the Self-Preferencing Debate." *Competition* 32, no. 2: 30.

Carstensen, P. C. 2008. "Buyer Power, Competition Policy, and Antitrust: The Competitive Effects of Discrimination Among Suppliers." *Antitrust Bulletin* 53: 275.

Chen, Z. 2007. "Buyer Power: Economic Theory and Antitrust Policy." *Research in Law and Economics* 22: 17.

Cheng, T. K. 2022. "Buyer Power in the Digital Economy: The Case of Uber and Amazon." *New York University Journal of Law & Business* 19, no. 1: 1.

Colangelo, G. 2023. "Fairness and Ambiguity in EU Competition Policy." *ICLE White Paper 2023-02-15*.

Crémer, G., S. Crawford, D. Dinielli, et al. 2023. "Fairness and Contestability in the Digital Markets Act." *Yale Journal on Regulation* 40, no. 3: 973.

Cutolo, D., and M. Kenney. 2019. "Platform-Dependent Entrepreneurs: Power Asymmetries, Risks, and Strategies in the Platform Economy." *Academy of Management Perspectives* 35, no. 4: 584.

Davis, L. 2026. "Transformative Competition Law Adjudication: A Dworkinian Perspective." *European Law Journal* 1.

de Estevan Quesada, C. 2017. *Explotación de la dependencia económica en las redes de distribución*. Aranzadi.

De Streel, A. (coord)2020. *Recommendations Paper—Digital Markets Act: Making Economic Regulation of Platforms Fit for the Digital Age*. CERRE.

DGCCRF. 2023. "Abus de dépendance économique: comment définir cette pratique?." https://www.economie.gouv.fr/dgccrf/les-fiches-pratiques/abus-de-dependance-economique-comment-definir-cette-pratique.

Emerson, R. M. 1962. "Power-Dependence Relations." *American Sociological Review* 27: 31.

European Commission. 2014. Study on the Legal Framework Covering Business-to-Business Unfair Trading Practices in the Retail Supply Chain—Final Report, DG MARKT/2012/049/E.

European Commission. 2020. *Commission Staff Working Document—Impact Assessment Report Accompanying the Proposal for a Regulation of the European Parliament and of the Council on Contestable and Fair Markets in the Digital Sector (Digital Markets Act)*. SWD 363 final, 15 December 2020.

European Parliament. 2020. "Annual Report on Competition Policy 2020." 2020/2223(INI).

Feteira, L. 2016. *The Interplay Between European and National Competition Law After Regulation 1/2003*. Kluwer Law International.

First, H., and S. W. Waller. 2013. "Antitrust's Democracy Deficit." *Fordham Law Review* 81: 2543.

Fox, E. 1977. "Economic Concentration, Efficiencies and Competition: Social Goals and Political Choices." *Antitrust Law Journal* 46, no. 3: 882.

Fox, E. 1991. "The Modernization of Antitrust: A New Equilibrium." In *The Political Economy of the Sherman Act: The First One Hundred Years*, edited by E. T. Sullivan, 259. Oxford Academic.

Franck, J.-U. 2025. "Damages Actions Against Digital Gatekeepers for Breaches of EU Antitrust Law and the DMA: A German Perspective." In *Compensation of Damages in Digital Markets*, edited by J. I. Ruiz Peris and C. de Estevan Quesada, 79. Atelier.

Geradin, D. 2021. "What Is a Digital Gatekeeper? Which Platforms Should Be Captured by the EC Proposal for a Digital Markets Act?" *SSRN*.

Gerard, D. 2018. "Fairness in EU Competition Policy: Significance and Implications." *Journal of European Competition Law & Practice* 9, no. 4: 211–212.

Herrera Anchustegui, I. 2017. *Buyer Power in EU Competition Law*. Institute of Competition Law.

Herrero, C. 2006. *Los contratos vinculados (tying agreements) en el Derecho de la competencia*. La Ley.

Hildebrand, D. 2017. "The Equality and Social Fairness Objectives in EU Competition Law: The European School of Thought." *Concurrences* 1: 1–10.

Ibáñez Colomo, P. 2020. "The Evolution of EU Antitrust Policy: 1966–2017." *Modern Law Review* 83: 321–372.

ICN. 2008. "Report on Abuse of Superior Bargaining Position." 7th ICN Annual Conference, Kyoto.

James, H. S., M. Hendrickson, and P. H. Howard. 2013. "Networks, Power and Dependency in the Agrifood Industry." In *The Ethics and Economics of Agrifood Competition*, edited by H. S. James, 99. Springer.

Khan, L. 2018. "The New Brandeis Movement: America's Antimonopoly Debate." *Journal of European Competition Law & Practice* 9, no. 3: 131–132.

Lee, S. 2022. *Some Afterthoughts on the Harm of ASBP/AED*. Rikkyo University.

Lee, S. 2023. *Incorporating Abuse of Economic Dependence Into Competition Law*. Korea University.

Lianos, I. 2009. "The Vertical/Horizontal Dichotomy in Competition Law: Some Reflections With Regard to Dual Distribution and Private Labels." In *Private Labels, Brands and Competition Policy*, edited by A. Ezrachi and U. Bernitz, 168. Oxford University Press.

Lianos, I. coord 2017. "Global Food Value Chains and Competition Law—BRICS Draft Report." CLES Research Paper Series 11.

Lianos, I., and B. Carballa. 2021. "Economic Power and New Business Models in Competition Law and Economics: Ontology and New Metrics." Centre for Law, Economics and Society (CLES) Research Paper Series 3.

Monopolkommission. 2021. "Recommendations for an Effective and Efficient Digital Markets Act." Special Report No 82.

Muthoo, A. 2000. "A Non-Technical Introduction to Bargaining Theory." *World Economics* 1, no. 2: 146.

Nash, J. 1950. "The Bargaining Problem." *Econometrica* 18, no. 2: 155.

Observatory on the Online Platform Economy. 2021. *Study on 'Support to the Observatory for the Online Platform Economy'*. Publications Office of the European Union.

OECD. 1999. *Buying Power of Multiproduct Retailers: Key Findings, Summary and Notes*. OECD Roundtables on Competition Policy Papers No 23.

OECD. 2009. "Monopsony and Buyer Power." DAF/COMP(2008)38.

OECD. 2019. *An Introduction to Online Platforms and Their Role in the Digital Transformation*. OECD Publishing.

OECD. 2022. *The Evolving Concept of Market Power in the Digital Economy*. OECD Competition Policy Roundtable Background Note.

Scalzini, S. 2021. "Economic Dependence in Digital Markets: EU Remedies and Tools." *Market and Competition Law Review* 5, no. 1: 81.

Schweitzer, H. 2021. "The Art to Make Gatekeeper Positions Contestable and the Challenge to Know What Is Fair: A Discussion of the Digital Markets Act Proposal." *ZEuP* 29, no. 3: 503.

Schweitzer, H., and S. de Ridder. 2024. "How to Fix a Failing Art. 102 TFEU: Substantive Interpretation, Evidentiary Requirements, and the Commission's Future Guidelines on Exclusionary Abuses." *Journal of European Competition Law & Practice* 15, no. 4: 222.

Schweitzer, H., J. Haucap, W. Kerber, and R. Welker. 2018. "Modernising the Law on Abuse of Market Power: Report for the Federal Ministry for Economic Affairs and Energy (Executive Summary)." SSRN.

Shiraishi, T. 2013. "A Baseline for Analyzing Exploitative Abuse of a Dominant/Superior Position." *UT Soft Law Review* 5: 1–7.

Steiner, R. L. 2008. "Vertical Competition, Horizontal Competition and Market Power." *Antitrust Bulletin* 53, no. 2: 251.

Steiner, R. L. 2011. *How Interactions Between Vertical and Horizontal Competition Determine Welfare Outcomes in Consumer Goods Industries*. Lecture at University of Oxford Centre for Competition Law and Policy.

Takigawa, T. 2009. "Competition Law and Policy of Japan." *Antitrust Bulletin* 54, no. 3: 435–515.

Vande Walle, S. 2024. "Exploitative Abuses in EU, German and French Competition Law." SSRN.

Vestager, M. 2022. *Fairness and Competition Policy*. European Commission Speech.

Wagner-von Papp, F. 2014. "Comparative Antitrust Federalism and the Error-Cost Framework or: Rhetoric and Reality: You Protect Competitors, We Protect Competition—Except When We Protect Competitors." In *William E. Kovacic: An Antitrust Tribute—Liber Amicorum*, edited by N. Charbit, E. Ramundo, and A. Chehtova, vol. II, 56. Institute of Competition Law.

Wagner-von Papp, F. 2018. "Unilateral Conduct by Non-Dominant Firms: A Comparative Reappraisal." In *Abusive Practices in Competition Law*, edited by F. Di Porto and R. Podszun, 209. Edward Elgar Publishing.

Wakui, M. 2022. "On Market Power and Economic Dependence." DAF/COMP/WD(2022)61.

Wright, J. D., and J. M. Yun. 2020. "Use and Abuse of Bargaining Models in Antitrust." *Kansas Law Review* 68, no. 5: 1055.

Wu, T. 2020. *The Curse of Bigness*. Atlantic Books.

Yamada, A. 2022. *Abuse of Superior Bargaining Position in Japan—Its Development and Current Position*. CPI Columns.

Zabaleta Díaz, M. 2002. *La explotación de una situación de dependencia económica como supuesto de competencia desleal*. Marcial Pons.

Legal Texts

Belgium, Law of 4 April 2019 Amending the Code of Economic Law With Regard to Abuse of Economic Dependence, Unfair Terms and Market Practices Between Undertakings (Loi du 4 avril 2019 modifiant le Code de droit économique en ce qui concerne l'abus de dépendance économique, les clauses abusives et les pratiques du marché entre entreprises).

European Commission, Guidance on the Commission's Enforcement Priorities in Applying Article 82 of the EC Treaty to Abusive Exclusionary Conduct by Dominant Undertakings, OJ C 45, 24 February 2009.

European Commission, Commission Staff Working Document—Evaluation of Regulations 1/2003 and 773/2004, SWD(2024) 216 final, 5 September 2024a.

European Commission, Commission Notice on the Definition of the Relevant Market for the Purposes of Union Competition Law, C/2024/1645, 22 February 2024b.

European Union, Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on Contestable and Fair Markets in the Digital Sector (Digital Markets Act, 'DMA').

Germany, Act Against Restraints of Competition *(Gesetz gegen Wettbewerbsbeschränkungen, 'GWB')*, adopted 27 July 1957, as amended.

Germany, Act Amending the Act Against Restraints of Competition for a Focused, Proactive and Digital Competition Law 4.0 (Gesetz zur Änderung des Gesetzes gegen Wettbewerbsbeschränkungen für ein fokussiertes, proaktives und digitales Wettbewerbsrecht 4.0 – GWB-Digitalisierungsgesetz), adopted on 18 January 2021.

Italy, Law No 192 of 18 June 1998 on Subcontracting in Productive Activities (Legge 18 giugno 1998, n. 192, Disciplina della subfornitura nelle attività produttive).

Italy, Annual Law for the Market and Competition 2021 (*Legge 5 agosto 2022, n. 118 annuale per il mercato e la concorrenza 2021)*, adopted 5 August 2022.

Japan, *Act on Prohibition of Private Monopolization and Maintenance of Fair Trade ('AMA')*, Act No 54 of 1947, as amended.

Japan Fair Trade Commission, Guidelines Concerning Abuse of Superior Bargaining Position in Transactions Between Digital Platform Operators and Consumers That Provide Personal Information, etc, 17 December 2019.

Korea Fair Trade Commission, Unfair Trading Practices Guidelines (2021).

Republic of Korea, *Monopoly Regulation and Fair Trade Act* ('MRFTA'), Act No. 3320 of 31 December 1980, as amended.

Republic of Korea, n.d. Act on Fair Transactions in Large Retail Business, Act No. 18710, as amended.

Spain, Law 3/1991 of 10 January on Unfair Competition (Ley 3/1991, de 10 de enero, de Competencia Desleal).

Spain, Law 15/2007 of 3 July on the Protection of Competition (Ley 15/2007, de 3 de julio, de Defensa de la Competencia).

Cases

Autorité de la concurrence, Decision No 20-D-04 of 16 March 2020 (Apple).

Court of Justice, Case 27/76, United Brands Company and United Brands Continentaal BV v Commission, Judgment of 14 February 1978, ECLI:EU:C:1978:22.

Court of Justice, Case 85/76, Hoffmann-La Roche & Co. AG v Commission, Judgment of 13 February 1979, ECLI:EU:C:1979:36.

Court of Justice, Case C-322/88, Grimaldi v Fonds des maladies professionnelles, Judgment of 13 December 1989, ECLI:EU:C:1989:646.

European Commission, Case IV/M.784—Kesko/Tuko, Decision of 20 November 1996.

European Commission, Case IV/M.1221—Rewe/Meinl, Decision of 3 February 1999.

European Commission, Case IV/M.1684—Carrefour/Promodès, Decision of 25 January 2000.

Japan Fair Trade Commission, Decision of 10 September 2020 (Amazon).

Japan Fair Trade Commission, Decision of 6 December 2021 (Rakuten).

Korea Fair Trade Commission, Decision of 12 August 2025 (Yanolja, YeogiEottae & Nol Universe).