



Council of the European Union  
General Secretariat

**Brussels, 10 October 2025**

**WK 13346/2025 INIT**

**LIMITE**

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## **WORKING DOCUMENT**

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From:	General Secretariat of the Council
To:	Working Party on Competition
Subject:	Presentation by the European Commission: Draft Guidelines on Article 102 TFEU – state of play (agenda item 4.) Working Party on Competition meeting on 10 October 2025

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Delegations will find in annex a presentation (agenda item 4.) given by the European Commission during the Working Party on Competition meeting on 10 October 2025.



# The draft Article 102 Guidelines on exclusionary abuses

Update after the public consultation

*Presentation to Council Working Party  
10 October 2025*

# Background

- Contrary to Article 101 and merger control, **there are currently no Commission guidelines on Article 102**
- On 27 March 2023, the Commission adopted: (i) a Communication amending the Guidance on Enforcement Priorities (short-term initiative) and (ii) a Call for Evidence (CfE) launching the **Guidelines on exclusionary abuses of dominance** (long-term initiative)
- In parallel, DG COMP published a policy brief providing more details on the background of the initiatives and promoting a workable effects-based approach to Article 102
- **48 responses to the CfE** from a range of stakeholders - respondents overall welcomed the initiative; call for clarity and legal certainty in the application of Article 102 to exclusionary conduct

# Status update

- 1 August 2024: Launch of public consultation on draft 102 Guidelines
- September/ October 2024: Four judgments of the CJEU on exclusionary abuse cases (*Google Shopping*, *Intel II*, *Google AdSense*, *Qualcomm Predation*)
- 31 October 2024: Formal closure of public consultation
- 30 November 2024: Deadline of granted extensions
- 13 February 2025: Stakeholder workshop
- 25 February 2025: CJEU judgment in *Android Auto* (preliminary ruling)

# Union Courts judgments on 102 TFEU

- **Google Shopping (self-preferencing)**: ECJ judgment 10 September 2024 → GC judgment upheld
- **Google AdSense (exclusive dealing)**: GC judgment 18 September 2024 → decision annulled
- **Qualcomm (predation)**: GC judgment 18 September 2024 → decision upheld, fine reduced
- **Intel II (exclusivity rebates)**: ECJ (second) judgment 24 October 2024 → decision annulled
- **Android Auto (access restrictions)**: ECJ judgment of 25 February 2025, preliminary ruling
- Based on preliminary analysis, judgments are overall in line with the approach of the draft Guidelines but raise certain issues that call for further reflection, e.g.:
  - The relationship between the two limbs of the general legal test (competition on the merits and capability to produce exclusionary effects)
  - The relevance of the exclusion of as efficient competitors in the analysis of effects
  - The assessment of rebates and the use of a price-cost test

# Outcome of public consultation

- More than 110 written submissions and more than 120 stakeholders participating in the workshop
- Vast majority of respondents welcomed the initiative as such
- At the same time, there seems to be no consensus on many key topics, especially the more debated ones
- Academics, public authorities and business associations were generally supportive of the approach in the draft text
  - ECN NCAs published a joint statement supporting the text of the draft GLs on 2 September 2024
- Law firms, economic consultancies and large businesses were generally critical and warned about risks of false positives

# Key areas for reflection highlighted in public consultation

- More clarity on the interplay between the two limbs of the general legal test
- More clarity in the approach to competition on the merits
- Use of presumptions – general support on suitability to increase effectiveness of enforcement but divided feedback on specific application, call for more details on concrete functioning
- Calls for more prominent reflection of “AEC principle” in the analysis of effects and in some cases application of the price-cost test
- Calls for more safe harbours
- Calls for more detailed explanations on objective justifications
- Calls for guidance on additional abuses

# Next steps

- The consultation exercise was very successful and allowed for the collection of a significant amount of input from stakeholders
- Ongoing work to review and analyse the feedback received
- Final adoption currently scheduled by end 2025 but with an eye on developments at EU Courts

# Thank you

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