# **Identifying Dominance**

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#### I. Individual Dominance

#### **Legal Standards of Dominance**

"The dominant position referred to in Article [82] relates to 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, its customers and ultimately consumers":



Case 27/76, United Brands v. Commission

"The existence of a dominant position may derive from several factors, which, taken separately, are not necessarily determinative but among these factors a highly important one is the existence of very large market shares":



Case 85/76, Hoffmann-La Roche v. Commission

#### I. Individual Dominance

#### **Legal Standards of Dominance**

"... although the importance of the market shares may vary from one market to another the view may legitimately be taken that very large market shares are in themselves, and save in exceptional circumstances, evidence of a dominant position.":

[Other factors include: size of operations, wide geographical presence, financial resources, vertical integration, product range, essential facilities.]



Case 85/76, Hoffmann-La Roche v. Commission

"Without going into a discussion about percentages ... [dominance] must be determined having regard to the strength and number of the competitors":



Case 27/76, United Brands v. Commission

## I. Individual Dominance

Criteria of dominance emerging from case-law and administrative practice

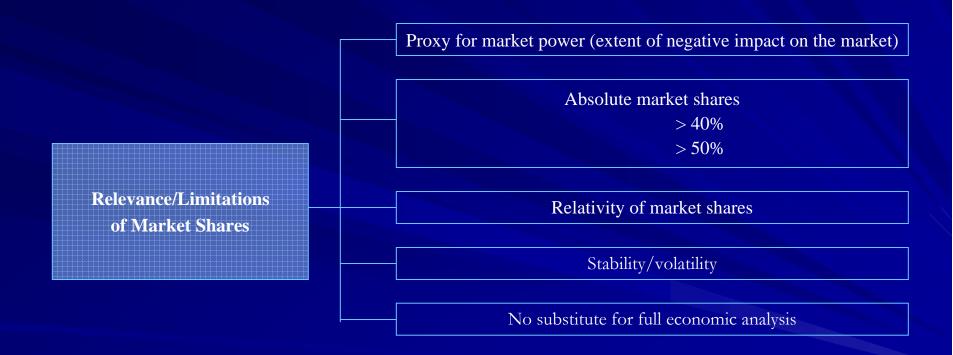
Relevance/Limitations of Market Shares

Immediate/Actual Competitive Constraints

Countervailing Bargaining Power

Potential Competition

Barriers to entry/expansion/exit



#### I. Individual Dominance

#### **Market Share Evaluation**

Market Share Evaluation Services

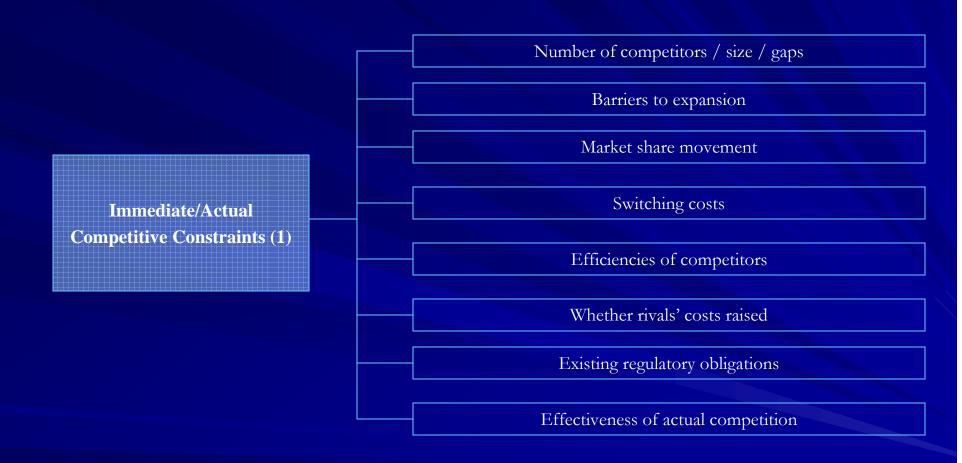
Parties, competitors, customers

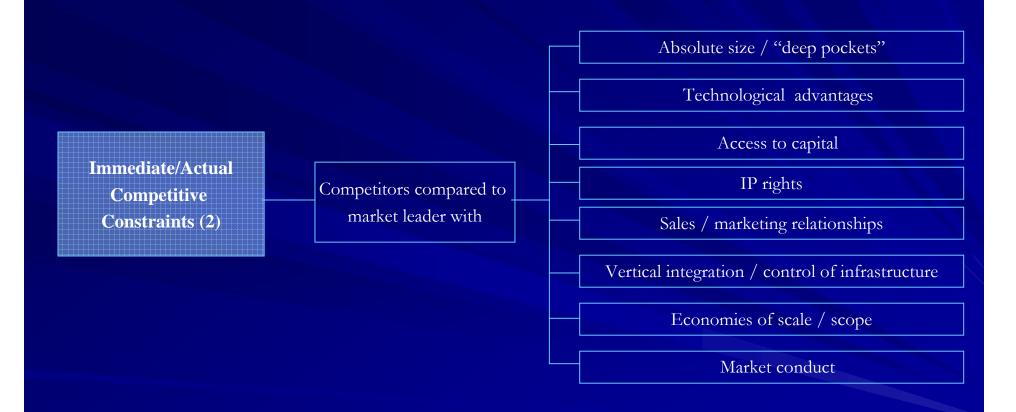
Buyers, suppliers, trade associations

Market research report

Market Share Evaluation Criteria Revenues, volumes, production

Capacities, inputs depending on markets concerned and available data



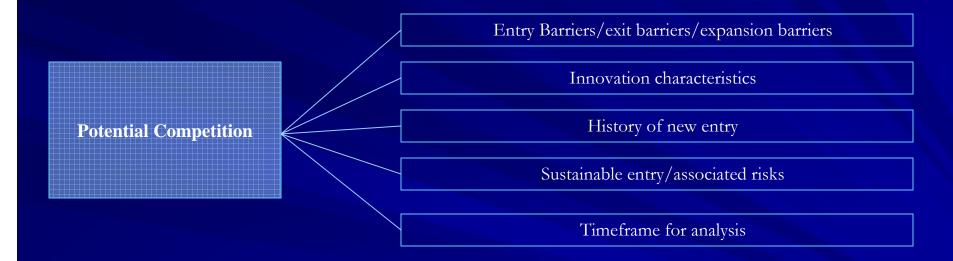


## I. Individual Dominance

Countervailing Bargaining
Power

Customer knowledge / indifference

Efficiencies of customer response



Barriers to entry/expansion/ exit	History of past entry/planned entry or expansion
	Costs involved in entry or expansion
	Likelihood of entry
	Likely response of "dominant" firm
	Natural or intrinsic barriers
	Regulatory barriers
	Strategic barriers
	Effects of entry

#### II. Collective Dominance

Collective/joint/oligopolistic/coordinated effects

Concept of tacit collusion

A group of firms able to adopt through implicit collusion a common policy on the market and to act to a considerable extent independently of their suppliers & customers

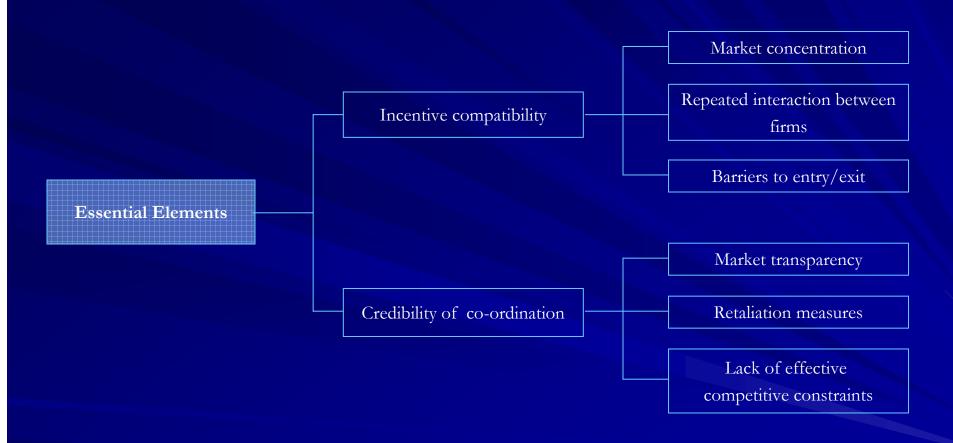
Concept in different legal instruments/different policy directions

Frequently examined in communications sector – Vodafone/Airtouch, FT/Orange, BT/ESAT Telecom, MCI WorldCom/Sprint, roaming enquiry

National cases: *Meridian/Eircell*, *Telia Finland*; more recent cases in *France*, *Italy* and *Greece* 

**Definitions** 

## II. Collective Dominance



#### II. Collective Dominance

#### **Level of Assessment**

Dynamic vs. static approach

#### Margin of discretion

Purpose of various instruments: Article 82 EC, Merger Regulation, or Framework Directive

Rigorous economic analysis vs. checklist approach

Impact of Airtours and Impala v. Commission



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