



Recognition of a dominant position on the Réunion molasses market and abuse resulting from lock-in clauses in contracts

Lola-Marie GIOLITI

To quote this paper: L-M. GIOLITI, “Recognition of a dominant position on the Réunion molasses market and abuse resulting from lock-in clauses in contracts”, *Competition Forum*, 2026, n° 0083 <https://competition-forum.com>.

Resume: *The Cour d’appel de Paris (Pôle 5 – Chambre 7, July 3rd, 2025, RG n°21/21673) upheld the decision n°21-D-25 of the Autorité de la concurrence. It ruled that Tereos Ocean Indien, which holds a dominant position in the Réunion molasses market, abused its position by including clauses in its contracts prohibiting the resale of molasses and making termination particularly restrictive. The Court considers that these provisions constitute primarily an abuse of exploitation, without the case establishing the existence of a foreclosure effect linked to market locking, but nevertheless emphasises their particular seriousness, especially since they were implemented by a company in a quasi-monopoly position.*

The dispute concerns the rum manufacturing sector on the island of Réunion. Rum is mainly produced from molasses, which itself is derived from the processing of local sugar cane. On the island, two sugar factories produce the molasses needed by local distilleries to make “traditional” rum, which benefits from a special tax regime and the protected geographical indication “Rhum de La Reunion”. These two sugar factories are owned by the company Tereos Indian Ocean (TOI).

Three distilleries operate in Réunion. In 2012, following a merger, the Savanna distillery was sold to Réunionnaise du Rhum (RDR). On 3 february 2012, a ten-year molasses supply contract was signed between TOI and the distilleries : Rivière du Mât, Savanna et Isautier, supplemented by a memorandum of understanding.

RDR believed that TOI, which owns the only two sugar factories on the island, has abused its dominant position in the market for supplying molasses to local distilleries. It accused TOI of price discrimination to its detriment: TOI charges her much higher prices than those charged to another distillery on the island of Réunion.

RDR referred the matter to the Competition Authority on 5 October 2017 to report these practices. In Decision No. 21-D-25 of 2 November 2021, the Authority found that TOI held a dominant position in the relevant market, defined as that molasses produced from sugar cane grown in Réunion and sold to local distilleries. However, the Authority dismissed the first complaint relating to price discrimination, finding that abuse had not been established. On the other hand, it upheld the second complaint, considering

that certain clauses in the supply contract constituted an abuse of a dominant position. A financial penalty of €750,000 was imposed jointly and severally on TOI and the sugar refineries.

RDR lodged a main appeal before the Paris Court of Appeal seeking to have the decision overturned or amended insofar as it rejected the allegation of price discrimination and limited the penalty to the second allegation. It criticised the Authority for failing to take sufficient account of the fact that the tariff discrimination implemented by TOI had placed it at a competitive disadvantage compared to other distilleries and that, furthermore, it was devoid of any objective justification.

For their part, TOI and the sugar refineries lodged a cross-appeal, contesting both the classification of their dominant position in the market for the supply of molasses in Réunion and the classification of abuse under complaint No. 2 concerning the restrictive clauses of the molasses supply contract, and requesting the cancellation or reduction of the financial penalty of €750,000. These clauses, in particular the financial compensation of €5 million in the event of early termination and the prohibition on reselling locally purchased molasses, created a practice of blocking termination of the contract, rendering the exercise of this

dominant position abusive according to the Authority.

To what extent can the imposition of particularly restrictive contractual clauses by a company in a monopoly position constitute an abuse of a dominant position?

The Paris Court of Appeal broadly upheld the Authority's analysis. It recognised TOI's dominant position and dismissed the complaint of price discrimination, due to a lack of sufficiently convincing economic evidence, in particular the lack of evidence of an actual competitive disadvantage. However, it approved the Authority's analysis of the various clauses. The €750,000 fine was also upheld, with the Court ruling that it remained proportionate to the seriousness of the practices and the economic situation of the company.

The Court notes that a monopoly on a local market is sufficient to constitute a dominant position, as the purchasing power of customers does not constitute a sufficient countervailing force. It adds that abuse may manifest itself through certain contractual practices, as contractual freedom remains subject to the prohibition of abuse of a dominant position.

The Court first confirms the classification of dominant position despite the specific characteristics of the market concerned (I), before dismissing the allegation of price

discrimination and finding that there has been abuse resulting from contractual lock-in clauses (II).

I. Confirmation of dominant position despite market characteristics

Once the relevant market has been defined, a company's dominant position can be assessed within this framework. In this judgement, however, the undertaking contested the classification of its position as dominant in the market thus defined, which led to an examination, on the one hand, of how the dominant position characterised in a particular relevant market (A), and, on the other hand, the reason why the bargaining power of the partners was dismissed as a genuine countervailing force (B).

A. A traditional approach to market dominance applied to a specific market

The definition of the relevant market had already been established by a decision of the Competition Council, which had recognised the existence of a market limited to molasses produced exclusively from sugar cane grown

in Réunion¹. This framework was not contested by the parties and the Court of Appeal adopted it as it stood, specifying the destination to local distilleries, in order to qualify TOI's dominant position. The dominant position is what poses a problem here.

As it has been rightly pointed out, a dominant position is a situation in which an undertaking has economic power that enables it to prevent effective competition from being maintained on the relevant market by giving it the ability to behave independently, to an appreciable extent, in relation to its competitors², its customers and, ultimately, consumers.

A dominant position results from numerous factors, the most important being market share, which can even constitute proof of the existence of a dominant position³. In the present case, TOI has a monopoly on the Réunion market for the supply of molasses to distilleries. With exclusive control of the island's two sugar factories, this company is the sole supplier of molasses produced from sugar cane grown in Réunion. As a result, it holds 100% of the market share.

¹ Décision du Conseil de la concurrence n° 01-D-70 du 24 octobre 2001 relative à des pratiques mises en œuvre dans le secteur de la mélasse et du rhum à La Réunion.

² Arrêt de la Cour de justice du 14 février 1978, *United Brands e. a. /Commission*, 27/76, point 65.

³ Arrêt de la Cour de justice du 3 juillet 1991, *AKZO/Commission*, C-62/86, point 60.

Added to this are other converging factors that reinforce this dominance: the total absence of realistic substitutes, natural barriers to entry linked to insularity and exclusive control of upstream production, and the structural dependence of local distilleries, which can only source their supplies from TOI.

This de facto monopoly, combined with absolute economic power over supply, makes TOI the key player, fully independent in its commercial behaviour. It is precisely this dominant position, firmly established by the Authority and confirmed by the Court, that TOI contested by invoking an alleged countervailing bargaining power of its customers, an argument that was dismissed by the Court.

B. The rejection of bargaining power as a genuine counterbalance.

TOI's main argument in challenging its dominant position was based on the alleged countervailing purchasing power of its distillery customers in Réunion, which was supposed to neutralise its monopoly and restore a normal competitive balance. According to the economic theory of countervailing buyer power, buyer power is

said to be countervailing when suppliers with strong market power resulting from a position of strength or dominance face an oligopsony or monopsony that hinders their ability to behave independently⁴. It describes downstream buyers' bargaining power, based on size, volume, or switching capacity, that may counterbalance upstream dominance⁵.

The three distilleries account for between 50% and 92% of TOI's sales by volume and between 68% and 93% by value, giving them a certain commercial importance. TOI thus argued that they had considerable bargaining power, enabling them to resist restrictive clauses and bring conditions back to a competitive level.

The Paris Court of Appeal firmly rejected this argument, stating that even if the compensatory purchasing power of customers constitutes an exceptional circumstance that could call into question the existence of a dominant position, it must still be established and sufficient. It therefore requires concrete evidence of this purchasing power, both in terms of the size or commercial importance of the customers and their actual ability to switch suppliers quickly. However, several factors render it ineffective. First, the molasses production is independent

⁴ GALBRAITH J.K., *American Capitalism. The Concept of Countervailing power*, 1952.

⁵ FREYTAG (C.), « *La puissance d'achat en droit européen de la concurrence : contextes européen, français et allemand* »,

thèse, Université Paris Ouest Nanterre La Défense et Université de Hambourg, 2014, p165.

of distillery orders: as a by-product of sugar production, its volumes are necessarily determined by sugar manufacturing rather than demand for molasses. Distilleries cannot therefore exert effective pressure by reducing their purchases, since this reduction would have no impact on the quantities produced. Furthermore, the alternatives cited, refusal to purchase, switching to agricultural rum or imports, lack credibility, as distilleries cannot quickly change suppliers and remain tied to TOI, the only local supplier.

The Court therefore upholds the Authority's decision: distilleries do not have sufficient purchasing power to deprive TOI of its dominant position on the molasses market in Réunion. This conclusion is the result of a rigorous analysis that takes into account, in particular, the absence of credible alternative sources of supply, a determining factor in assessing the existence of countervailing purchasing power. Case law has already emphasised that the existence of alternative sources of supply is an essential criterion for determining whether buyers are in a position to exert effective competitive pressure on the dominant undertaking⁶. In the absence of such alternatives, customers cannot turn to other suppliers and their bargaining power remains limited. The approach taken by the Court is therefore consistent with this previously established analysis.

⁶ TUE, 23 février 2006, Cementbouw Handel/Commission, T-282/02, points 231 et 232.

Although, at first glance, such a requirement for proof may seem particularly strict with regard to compensatory purchasing power, it appears justified in this case : distilleries remain structurally dependent on TOI for their supply of molasses, meaning that, in practice, they have no choice but to accept the conditions imposed, otherwise they risk being unable to produce rum.

II. From the rejection of price discrimination to the sanctioning of lock-in clauses

The decision thus reveals a twofold shift: on the one hand, the abandonment of automatic classification of discrimination in favour of an economic analysis of its effects (A) on the other hand, recognition of abuse arising from specific lock-in clauses in the supply contract (B).

A. Rejection of automatic repression of discrimination in favour of an analysis of effects

The Court of Appeal refuses to base its ruling on price differentiation alone. It explicitly rejects the argument that unequal treatment between trading partners constitutes an anti-competitive practice. In doing so, it implicitly

but firmly reiterates that price discrimination is not prohibited per se.

This position is consistent with Article 102 TFEU, which condemns discrimination only insofar as it is likely to place certain partners 'at a competitive disadvantage'. In other words, the difference is not unlawful in itself: it only becomes so if it affects the competitive structure of the market⁷.

The solution adopted is consistent with developments in the case law of the Court of Justice of the European Union on abuse of a dominant position. According to that case law, the assessment of a practice cannot be limited to its formal classification: it must be examined whether it is likely to have an anti-competitive effect in the light of the relevant economic circumstances. In this regard, the Court specifies that the anti-competitive effect does not have to be established in concrete terms and already realised on the market, but neither can it be purely hypothetical⁸. It must therefore appear, in the light of an economic analysis of the context of the practice, that it is actually capable of restricting competition.

Legal doctrine observes that the Court of Justice is moving towards an analysis of the actual effects of discrimination, refusing to automatically penalise price differences justified by objective differences in costs or volumes.⁹ This decision illustrates precisely this concrete economic approach: the price difference is not seen as sufficient evidence of abuse, but as one factor among others that must be considered in its competitive context.

By requiring proof of actual or potential harm to the normal functioning of competition, the Court enshrines a substantive concept of abuse. It thus rejects RDR's argument that a simple price disparity constitutes unequal treatment sufficient in itself. This position is dismissed due to a lack of evidence of an actual competitive disadvantage, in particular because of the non-comparability of purchase volumes, the stability of Charrette's market share and the absence of proven economic causality. Only unjustified differences that have a restrictive effect are penalised.

B. Abuse arising from specific lock-in clauses in the supply contract

⁷ ZACHARIE N, « *Pratiques unilatérales* », *Concurrences*, revue n° 10/2025, 2025.

⁸ CJUE, 6 octobre 2015, Post Danmark A/S, C-23/14, point 65.

⁹ MARTY F., « *L'approche plus économique en matière d'application des règles de concurrence* » 2020, p48.

The abuse does not lie in the disparity in prices charged, but in certain clauses in the contract which have the practical effect of hindering the ability to leave and locking in the commercial relationship.

In this case, the Authority found that two specific provisions of the contract had the effect of restricting the possibilities for withdrawal : firstly, the clause providing for compensation of €5 million in the event of early termination, and secondly, the clause limiting the resale of molasses on the Réunion market. The former made termination of the contract financially unattractive, while the latter restricted the distilleries' potential outlets and their ability to develop independent bargaining power. According to the Authority, these clauses, through their combined effect, effectively limited the distilleries' ability to consider terminating or renegotiating the contractual terms and thus consolidated the supplier's dominant position.

The supplier argued that each of these clauses pursued a legitimate objective of commercial stability and securing outlets, and that none of them, taken in isolation, was unfair.

However, the difficulty does not lie in the illegality of each clause taken individually, but

in their combined effect on the contractual relationship. The Competition Authority notes that the complaint concerns two contractual mechanisms: an exit indemnity and a prohibition on the resale of molasses, which block the possibilities of exiting the contract (§259 and §273).

The exit indemnity, set at €5 million and applicable even if a three-year notice period is observed, is considered excessive and makes termination virtually impossible (§277-279). At the same time, the clause prohibiting resale severely limits the outlets available to distilleries (§259). The Authority concludes that these clauses deprive distilleries of an effective possibility of termination and reduce their bargaining power, constituting a contractual lock-in that is likely to restrict competition (§292-293).

The Paris Court of Appeal upheld this analysis, noting that these provisions effectively prevent withdrawal from the contract and limit outlets, reinforcing economic dependence on the dominant supplier (§151-152). Consequently, the abuse results from the use of combined contractual clauses allowing the dominant company to restrict the commercial freedom of its partners¹⁰.

Lola-Marie GIOLITI

¹⁰ RONZANO A, Abus de position dominante : La Cour d'appel de Paris confirme la décision sanctionnant une filiale sucrière pour une pratique de verrouillage sur le marché de

l'approvisionnement de la mélasse de canne à sucre à destination des distilleries de La Réunion (Tereos Océan Indien), 4 juillet 2025, Concurrences N° 11-2025, Art. N° 126660, www.concurrences.com
