



## *14th EU-China Competition Week: Tying & Bundling – Justifications & Defenses*

François Renard  
24 March 2017 – Shenzhen

© Allen & Overy 2017

## **Tying & Bundling – no leading Member State cases**

Country	Cases	Description
Netherlands	2009: <b>TNT</b>	Alleged tying/bundling: no evidence
Switzerland	2013: <b>Swisscom</b>	Alleged tying/bundling (purchase of Teleclub sports channels as part of a basic bundle of channels): no evidence
Older cases		Denmark – 2000: <b>Viterra Energy</b> France – 2008: <b>ADSL</b> France – 2010: <b>Valorena</b> (hospital waste disposal)

© Allen & Overy 2017

2

## Tying & Bundling – Justifications and defenses



### Why are there few precedents at MS level?

- Cases based on EU competition rules (Art. 102); complaint lodged to the EU Commission
- Difficulty to prove dominance
- Difficulty to prove abusive conduct
  - How distinct should the tying/tied products be? Need for a sufficient independent demand/offer (a separate “market”?)
  - Does it need to show some level of predatory pricing on the bundled products?
  - How relevant is the dominant firm’s intention?
  - In some countries, tying can also be a prohibited as an unfair trade practice
- The “abusive” conduct
  - is often pro-customer (customers benefit from it)
  - often leads to cost efficiencies
  - is rarely compulsory (i.e., customers want package deals)
  - May be of short-term effect (e.g., promotion), not worth sanctioning
- Need to show
  - harm to consumers/customers’ welfare?
  - Hindering overall degree of competition?

## Questions?



**François Renard**

Registered Foreign Lawyer (Belgium)  
Hong Kong  
[Francois.Renard@allenovery.com](mailto:Francois.Renard@allenovery.com)

**These are presentation slides only. The information within these slides does not constitute definitive advice and should not be used as the basis for giving definitive advice without checking the primary sources.**

**Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. The term partner is used to refer to a member of Allen & Overy LLP or an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP’s affiliated undertakings.**