This chapter discusses the difficult concept of what constitutes an ‘abuse’ of a dominant position for the purposes of Article 102 and whether conduct should be condemned on account of the form it takes or only for its effects. It considers the case law of the EU Courts, the decisional practice of the Commission, and the Commission’s Guidance Paper on enforcement priorities, and the problem of distinguishing competition on the merits from illegitimate conduct. The chapter looks at the different classifications of abuse, particularly exclusionary and exploitative abuses; the distinction between form- and effects-based approaches to types of abuse; the leveraging of market power between distinct markets as a theory of harm; the objective justification defence; and general issues in respect of abuses concerning prices, including the ‘as efficient competitor’ test. The chapter then examines the application of Article 102 to various forms of conduct, including: price discrimination; predatory pricing; selective low pricing; margin squeeze; exclusive dealing; tying and bundling; refusal to supply; self-preferencing; malicious pursuit of
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legal proceedings; ‘regulatory gaming’; discrimination abuses; unfairly high and low pricing; hindering inter-Member State trade; and more novel claimed abuses within the digital economy.

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