



International Chamber of Commerce

The world business organization

Department of Policy and Business Practices

EC Block Exemption on Vertical Restraints – Possible Areas for Reform

Prepared by the Commission on Competition

Introduction

ICC understands that the European Commission is considering a reform of the current Block Exemption Regulation on Vertical Restraints.

ICC welcomes the opportunity to contribute to this process. As a first step it submits a list of possible areas for reform of the EC Block Exemption on Vertical Restraints.

This list has been drawn up under the auspices of ICC and includes the input of ICC members¹. ICC would be happy to submit concrete suggestions once the European Commission has determined the issues it will address.

List of possible areas for reform

More Generally

Is the time ripe to abandon the Block Exemption altogether and instead rely only on guidelines?

Should a more economic approach to vertical restraints take into account issues of dynamic competition within the vertical chain, such as the promotion of innovative distribution models?

Definitions

Updating of the Block Exemption's definition of "vertical" agreements". For example, in IT industries if a company develops an interface to another's computer program, it is unclear under the current definition whether the companies are in a vertical relationship or in related horizontal markets.

¹ The members of the ICC Task Force on Vertical Restraints are:

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Market Share Threshold

Should the market share cap be removed? If so, how should buying alliances and, more generally, buyer power be dealt with?

Blacklisted Clauses

Is there sufficient empirical evidence to sustain the current black list approach? Are the blacklisted clauses of Article 4 not outdated in light of economic support for case-by-case analysis of all vertical restraints?

Do the current rules on vertical restraints properly reflect the importance of Internet sales? Should guidance be provided in the Block Exemption or in the Guidelines?

Should the Block Exemption's requirement to grant exclusive territories to distributors in order to have active sales bans be removed?

Should the imposition of maximum prices be allowed, except when a complainant proves that they damage competition? E.g. can a vertical central unit, use maximum pricing in its chain controlling system?

Should EU law take account of recent US law developments on rpm? Should fixed retail prices be allowed for short-term promotions?

Should restraints on intra-brand competition be considered potentially in violation of Article 81 EC?

Should more attention be given to the nature of the product concerned by selective distribution?

Non-Competes

Why should a non-compete clause be treated differently from other clauses?

Should non-compete be allowed for the whole duration of the distribution agreement except when complainants demonstrate significant anti-competitive effects?

Consistency with Article 82 EC

Should the wider understanding of "tying" in the Microsoft judgment be equally applicable to vertical tying?

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