

Competition: Commission adopts revised competition rules for distribution of goods and services

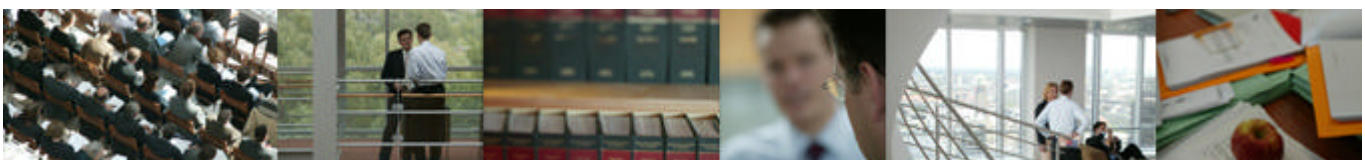
On 20 April 2010 the European Commission has adopted a new block exemption for distribution - and supply agreements. Clauses in distribution - and supply agreements that restrict competition are automatically exempt from the cartel prohibition pursuant to the block exemption, if the conditions of the block exemption are fulfilled. The new block exemption replaces the current block exemption (Regulation 2790/1999).

Manufacturers and suppliers are – similar as under the old block exemption – free to decide how to distribute their products. However, restrictive agreements can only benefit from the block exemption if the market share of the manufacturer or supplier involved does not exceed 30% and the distribution or supply agreement does not contain any hardcore restrictions of competition, such as price maintenance or absolute market sharing.

Contrary to the current block exemption, the new block exemption also provides that the market share of the distributor and retailer (the buyer) on the relevant market on which he purchases the contract goods or services may not exceed 30%. In this respect, the European Commission has taken the position that an automatic exemption is not appropriate if the distributor or retailer has significant purchasing power.

This does not mean that agreements between companies with higher market shares are automatically null and void. It only means that these companies must assess whether their agreements contain restrictive clauses and, if so, whether these are justified based on the specific facts and circumstances (taking account of the legal framework).

The new rules will come into force as of 1 June 2010 and will be valid until 2022, with a one-year transitional phase. This means that until 1 June 2011 the cartel prohibition does not apply to agreements that were in force on 31 May 2010 and do not fulfil the conditions of the new block exemption, but do fulfil the conditions of the old block exemption. As of 1 June 2010 undertakings should assess whether their restrictive agreements, if any, meet the conditions of the new block exemption and, if not, whether amendments (prior to 1 June 2011) are required.



The new block exemption regulation can be found at:

<http://ec.europa.eu/competition/antitrust/legislation/vertical.html>. Detailed guidelines that explain the scope of the new block exemption and also address situations that are not covered by the new block exemption, will be published after the finalisation of the different linguistic versions.

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Colophon

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