

Competition Law

Block exemptions: the example of vertical restraints

updated Chart 9 | 17

Topic:

In the context of block exemptions, agreements are exempt where they fall within the terms of the relevant regulation and comply with any conditions as set out. The Regulation on categories of vertical agreements and concerted practices provides a good example. Other block exemption regulations in general follow the same pattern.

Block exemption: categories of vertical agreements and concerted practices, Regulation 330/2010/EU

Exemption

A vertical agreement is exempt if it completely complies with the terms of Regulation 330/2010/EU.

"Vertical agreement", Art. 1(1)

"[A]n agreement or concerted practice entered into between two or more undertakings each of which operates [...] at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services".

Terms of the Regulation, Arts. 2 and 3

In principle, everything that is not prohibited (i.e. hardcore restrictions, excluded restrictions) is allowed, if:

- The market share of the supplier and the buyer in the relevant market does not exceed 30%;
- In the case of associations: if no individual member of the association, together with its connected undertakings, has a total annual turnover exceeding EUR 50 million.

In cases above the thresholds, individual exemption may be possible under Art. 101(3) TFEU; see *Chart 9/18*.

Allowed restrictions

Everything that is not prohibited, including in particular the exceptions to Arts. 4 and 5; e.g.:

- Fixing a maximum resale price or recommending a resale price;
- Territorial restrictions of active/solicited sales;
- Restricting a wholesale from selling to end users;
- Restricting the resale of components to customers who would use them to manufacture products competing with the supplier's products;
- Prohibiting a member of a selective distribution system from operating out of an unauthorised place of establishment.

Prohibited restrictions

No exemption for agreements containing **hardcore restrictions** as listed in Art. 4 and for **excluded restrictions** as listed in Art. 5; e.g.:

- Resale price-fixing;
- Territorial restrictions of passive/unsolicited sales;
- Restriction of cross-supplies between distributors;
- Restriction of the supply of components;
- Non-compete obligations of longer than five years;
- Obligation on the members of a selective distribution system not to sell the brands of particular competing suppliers.

Exceptionally: withdrawal of the exemption

- By the Commission; Art. 29(1) of Regulation 1/2003/EC, recital 13 in the preamble to Regulation 330/2010/EU;
- By an NCA, Art. 29(2) of Regulation 1/2003/EC, recital 14 in the preamble to Regulation 330/2010/EU.

Note:

Art. 9 establishes a transitional regime up to 31 May 2011 for agreements already in force on 31 May 2010 and complying with the old block exemption on vertical restraints (Regulation 2790/1999/EC).