VERTICAL RESTRAINTS: COUNCIL AGREEMENT

Subject: Vertical restraints
Distribution agreements
Supply agreements
Price fixing
Block exemption

Industry: All industries; special rules for motor vehicle industry

Source: Commission Statement IP/99/286, dated 30 April 1999

(Note. Council agreement on the regulations empowering the Commission to make a general block exemption regulation on vertical restraints, in place of the separate block exemption regulations on supply and distribution agreements, is a further step towards the Commission's objectives in this area. If subsequent steps go according to plan, the Commission's draft regulation will be published shortly and, following consultations with interested parties, will come into force in the year 2000.)

On 29 April, the Industrial Affairs Council, meeting in Luxembourg, reached a political agreement on two regulations giving the Commission the necessary powers to complete the reform of competition policy applicable to vertical restraints (agreements between producers and distributors), along the lines set out in the Commission communication of 30 September 1998. On that basis, the new rules should be applicable to vertical agreements as from the year 2000. The two new regulations amend Council Regulation No 19/65/EEC of 2 March 1965 and Council Regulation No 17 of 6 February 1962.

The first regulation extends the Commission's legislative powers, allowing it to adopt a regulation, pursuant to Article 85(3) of the EEC Treaty, for vertical agreements. Such agreements are concluded between firms operating at different levels of the production or distribution chain and govern the conditions under which the firms may acquire, sell or re-sell certain goods or services. In practice, this covers all industrial distribution and supply agreements.

On the basis of the powers conferred on it by the Council, the Commission can now draw up and adopt a broad block exemption regulation covering all vertical restraints affecting finished or intermediate products and services, including vertical agreements concluded by certain associations of retailers. The block exemption regulation will nevertheless be subject to certain conditions, and, in particular, will apply only to firms whose market shares do not exceed a specific threshold. On this point, the Commission stated today before the Council that its consultation process will be based on a market share threshold of 30%

In addition, the Commission's block exemption regulation will exclude certain fundamental restrictions, such as practices involving the imposition of resale prices (fixed or minimum prices) and certain forms of territorial protection that may thwart the objective of market integration. The Commission has also stated that, as regards its proposals for the future treatment of motor vehicle distribution, it will re-examine this sector in accordance with the provisions of Regulation No 1475/95 before deciding whether to maintain or abandon the present arrangements, which will expire on 30 September 2002.

The second new regulation broadens the scope of application of Article 4(2) of Regulation No 17, exempting all vertical agreements from the requirement that they be notified prior to individual exemption. The practical advantage of this amendment is that the Commission will in future, even in the event of late notification, be able to adopt an exemption decision taking effect on the date on which the agreement was concluded. This scope for retroactive exemption will give firms greater legal certainty by ensuring that agreements that meet the exemption conditions laid down in Article 85(3) of the BC Treaty can be implemented.

The Council is expected to have formally adopted the two regulations in May. The two regulations will come into force on the third day following their publication in the Official Journal of the European Communities. The Commission will then publish in the Official Journal, following consultation with the Member States, a draft block exemption regulation and draft guidelines intended to clarify its policy on cases not covered by the block exemption regulation. All interested parties will be able to submit their comments on the draft regulation and the draft guidelines. □

The Ford / Volvo Case

In March, the Commission cleared the acquisition of Volvo Car Corporation's passenger car business by Ford Motor Corporation. The operation affects the passenger car sector where the product lines of Ford and Volvo overlap in certain segments, in particular in the executive, large and sports car segment. However, given the minor overlap of market shares and the strength of the parents' competitors, the operation will have only a limited effect in terms of industry concentration. For all passenger cars, the combined Ford / Volvo market share will not exceed 15% in the European Economic Area (EEA). In certain segments of the passenger car sector, notably for executive and sports cars, Ford / Volvo will have higher combined market shares in some Member States, in particular in Sweden. However, the reinforcement of Ford and Volvo's position in these segments through the merger is limited as the overlap between their product ranges is small. Furthermore, the position of other well established competitors, such as BMW and General Motors, remains unaffected. These competitors will be able to limit the effect of the concentration. The Commission also considers that the merger is not likely to increase entry barriers in the passenger car market or any distinct part of it. For these reasons the Commission has decided not to oppose the operation and to declare it compatible with the Common Market and the EEA Agreement. (Source: IP/99/201, dated 29 March 1999.)