

Competition

VERTICAL RESTRAINTS

Commission Regulation (EC) No [2790/1999](#) of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and market practices

Objective

To simplify the current rules applicable to different supply and distribution agreements, such as selective distribution, exclusive purchasing, exclusive supply and franchise agreements, when assessing such vertical agreements under Article 81 of the Treaty. To exempt, under certain conditions, vertical agreements, which distort competition, from the application of the general prohibition of agreements, which distort competition (Article 81).

Relevance for the hospitality industry

The block exemption regulation on vertical restraints is of particular importance for the hospitality industry mainly for two types of agreements:

- Franchising contracts;
- Beer supply contracts.

State of progress

The Regulation was adopted on 22 December 1999. It was completed on 24 May 2000 by Guidelines on Vertical restraints and on 30 March 2004 by new guidelines on the application of Article 81(3) of the Treaty.

The Regulation is due to expire by 31 May 2010.

On 28 July 2009, the Commission issued a draft proposal for a renewal of the Regulation and of the accompanying guidelines. The Commission launched a consultation on these documents (open until 28 September 2009).

Content

The Regulation provides that:

- Block exemption on vertical agreements will apply to all sectors with no sector specific Regulations (article 3);
- Companies with up to 30% market share will not have to provide notification and can benefit from exemption (article 3);
- Companies with more than 30% market share will not benefit from the block exemption and will be examined on a case-by-case basis; and
- Certain types of agreements shall not benefit from the block exemption, given their specific characteristics (article 4 and 5).

The guidelines address:

- The application of the Regulation;
- Vertical agreements which generally fall outside Art. 81(1) of the EC Treaty;
- Market definition and market share calculation; and
- The general framework of analysis and the enforcement policy of the Commission in individual cases concerning vertical agreements.

The draft Regulation issued for consultation by the Commission is almost identical to the existing Regulation 2790/1999. However, a few slight modifications are proposed. They mostly intend to take into account two developments over the recent years:

- Increased market power at the level of buyers (big retailers); and
- New form of distribution, in particular due to the development of internet (online sales).

A summary of the content of the Regulation is also available on the [SCADPlus](#) website (European Commission). A summary of the Commission guidelines is also available on the [SCADPlus](#) website.

HOTREC position

After consultation of its national associations, HOTREC replied to the Commission consultation. The hospitality industry considers that, over the last years, both current Regulation 2790/1999 and its related guidelines on vertical restraints have delivered an optimal performance in practise for the hospitality industry. Consequently, the existing Regulation and guidelines should not be fundamentally altered.

Both the “Draft Commission Regulation on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices” and the “Draft Commission Notice - Guidelines on Vertical Restraints” submitted for comments by the Commission mainly propose to maintain the status quo in relation to the main types of vertical agreements used by the hospitality industry. HOTREC therefore welcomes the two drafts issued by the Commission and would appreciate if the Commission could keep these two drafts unmodified.

Official references

[Draft](#) Commission Regulation on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices, published on 28 July 2009.

[Draft](#) Commission Notice - Guidelines on Vertical Restraints, published on 28 July 2009.

Commission Notice - Guidelines on the application of Article 81(3) of the Treaty (Text with EEA relevance). [Official Journal C 101](#), 27/04/2004 P. 0097 – 0118

Commission Notice – Guidelines on Vertical Restraints, [O.J. C 291](#) of 13.10.2000

Commission Regulation (EC) No [2790/1999](#) of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and market practices, O.J. L 366 of 29.12.99

See also:

Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded - Annex II: List referred to in Article 20 of the Act of Accession - 5. Competition policy. [O.J. L 236](#) of 23.09.2003 P. 0344 - 0346