

Competition

VERTICAL RESTRAINTS

Commission Regulation (EU) [N° 330/2010](#) of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted 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 101 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 101).

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 20 April 2010. It is completed by Guidelines on Vertical restraints adopted on the same day. These two texts replace the previous Commission Regulation (EC) [N° 2790/1999](#), and related guidelines, which expire on 31 May 2010.

The new Regulation will enter into force on 1 June 2010 and apply until 31 May 2022. Vertical agreements already in force on 31 May 2010, and which satisfy the conditions provided for in Regulation 2790/1999, continue to be block-exempted until 31 May 2011.

Content

The Regulation provides that:

- Art. 101 (1) of the Treaty on the Functioning of the EU (prohibiting concerted practices restricting competition) shall not apply to vertical agreements satisfying the conditions laid down in the Regulation: they are considered to be block-exempted;
- Block exemption on vertical agreements will apply to all sectors with no sector specific regulations (article 2);
- Vertical agreements are block-exempted when both the retailer and the buyer party to the agreement do not exceed 30% market share (article 3);
- Retailers and buyers with more than 30% market share do not benefit from the exemption: their vertical agreements must be notified 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. 101(1) of the 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 new Commission Regulation (EU) N° 330/2010 and related guidelines are very similar to the previous Regulation N° 2790/1999 and related guidelines. Nonetheless, a few modifications were introduced to take into account two recent developments:

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

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

HOTREC position

During the consultation process, which led to the adoption of the new Regulation and related guidelines, HOTREC considered that the previous Regulation 2790/1999 and its related guidelines on vertical restraints had delivered an optimal level of performance for the hospitality industry and that they should not be fundamentally altered.

As the new Regulation and its related guidelines maintain the status quo in relation to the main types of vertical agreements used by the hospitality industry, HOTREC welcome these two texts.

Official references

Commission Regulation (EU) [N° 330/2010](#) of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices

Commission Notice – [Guidelines](#) on Vertical Restraints of 20.04.2010

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:

[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.

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

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