

Competition

HORIZONTAL COOPERATION AGREEMENTS

Commission Notice - [Guidelines](#) on the applicability of Article 81 to horizontal co-operation agreements

Objective

To simplify the applicability of Article 81 of the EC Treaty (now Art. 101) to horizontal cooperation agreements

Relevance for the hospitality industry

These Guidelines set out the principles to assess the compatibility of “horizontal” cooperation agreements with Art. 81 (now Art. 101) of the Treaty prohibiting agreements/ decisions/ concerted practices restricting competition.

A “horizontal” cooperation is an agreement between actual or potential competitors or an agreement between two companies active in the same product market (but not necessarily active in the same geographic market).

The draft horizontal guidelines are particularly relevant for the hospitality industry, as far as they address exchange of information and standardisation agreements.

State of progress

Adopted on 5 January 2001.

A draft for new guidelines on horizontal cooperation agreements was released on 4 May 2010.

Content

The Commission, while recognising the economic benefits that can be generated by cooperation, has to ensure that effective competition is maintained. Article 81 (now 101) provides the legal framework for a balanced assessment taking into account both anti-competitive effects as well as economic benefits. These Guidelines set out the principles to assess the compatibility of “horizontal” cooperation agreements with Art. 81 (now 101) of the Treaty prohibiting agreements/decisions/concerted practices restricting competition.

The guidelines also identify “grey” areas. It is, however, absolutely clear that cooperation agreements which include, in an open or a hidden way, price fixing or sharing of markets remain strictly prohibited. But the guidelines do not address all possible horizontal agreements. They are concerned only with those types of cooperation, which potentially generate efficiency gains: agreements on production, purchasing, marketing/promoting activities, standardisation, R & D, and environmental agreements.

The new draft guidelines proposed by the Commission provides two new elements of interest for the hospitality industry:

- Exchange of information: a specific chapter deals with information exchange between competitors (either directly, through a trade association, a third party or by means of publishing). Such information exchange may constitute, under certain conditions, a violation of the EU competition rules, if they lead to reducing competition or reducing

the effects of competition. The draft horizontal guidelines provide on page 27, as an illustration of horizontal cooperation agreements prohibited under art.101 of the Treaty, the example of luxury hotels in the capital of a Member State which directly exchange information on current occupancy rates and revenues. Such information exchange would constitute an unlawful horizontal agreement as it would have “restrictive effects on competition [...] because knowing the competitor’s actual current prices would be likely to lead to coordination (i.e., alignment) of companies’ competitive behaviour”.

- Standardisation agreements: a specific chapter deals with standardisation agreements. This chapter is also relevant for the hospitality industry, as agreements to produce common quality standards may also constitute, under certain conditions, a violation of the EU competition rules. This chapter therefore provides guidance to assess whether such agreements are allowed by the EU competition rules.

HOTREC position

HOTREC welcomed the Notice on the applicability of Article 81 of the EC Treaty, which gives a clearer idea of which promoting/marketing activities common to several competitors are acceptable with regard to the EU competition rules.

Moreover, HOTREC welcomes the new draft Commission guidelines which provide greater clarity on certain type of information exchange and standardisation agreements.

Official references

Draft Communication from the Commission – “Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements”, [SEC\(2010\) 528/2](#).

Commission Notice - Guidelines on the applicability of Article 81 to horizontal co-operation agreements, [Official Journal C 003 , 06/01/2001 P. 0002 - 0030](#)

See also:

European Commission Press release on a new regime for assessment of horizontal co-operation agreements, 4 May 2010, [MEMO/10/163](#)

Regulation (EEC) No [2821/71](#) of the Council of 20 December 1971 on application of Article 85 (3) of the Treaty to categories of agreements, decisions and concerted practices, OJ L 285 of 29.12.1971

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