HORIZONTAL AGREEMENTS (ALL INDUSTRIES): COMMISSION DRAFTS

Subject: Horizontal agreements
Specialisation agreements
R & D agreements
Purchasing agreements
Marketing agreements
Market shares

Industry: All industries

Source: Commission Statement IP/00/411, dated 27 April 2000

(Note. A similar process is taking place in respect of horizontal agreements as for vertical agreements: the scheme is being rationalised and, ostensibly, simplified. The Commission has not given long for interested parties to comment: it needs to have the new system in place by the end of the year, when the old regulations expire. The draft guidelines are a useful document.)

The Commission has published draft rules and guidelines on horizontal co-operation agreements between competitors. The objective of these proposals is to clarify the application of competition rules in this area and to ensure their continuing relevance in the changing economy of today. The Commission has invites all interested parties to comment on the new draft rules. The Commission will then adopt a final version of the Regulations and Guidelines allowing these revised competition rules to come into force in the year 2001.

On the occasion of the publication of the new proposals, Mario Monti, the Commissioner in charge of competition policy, said: "This important reform project confirms our commitment to review and modernise Community rules on competition. A more effective policy towards horizontal co-operation will reduce the regulatory burden for companies, while ensuring an effective control of agreements between companies holding significant market power."

Horizontal co-operation agreements (that is, agreements between companies operating at the same level of the market) are capable of distorting competition and are liable to fall under the Community competition rules (Article 81 of the Treaty). Guidance for the assessment of these agreements is at present given by way of two 'block exemption' Regulations (on research and development (R&D) agreements and specialisation agreements respectively) and two interpretative Notices (dealing with particular issues, such as co-operative joint ventures). As the block exemption Regulations will expire on 31 December 2000, and as the existing Notices need to be updated, the Commission has engaged in a fact-finding exercise resulting in draft rules for the future assessment of horizontal co-operation. To this end, the Commission has just published a draft block exemption Regulation on the application of Article 81(3) of the Treaty to categories of specialisation agreements, a draft block exemption Regulation on

the application of Article 81(3) of the Treaty to categories of research and development (R&D) agreements and draft Guidelines on the applicability of Article 81 to horizontal co-operation agreements.

The review of the competition rules applicable to horizontal co-operation agreements started in late 1997 with a wide-ranging consultation of European companies. It showed that industry regarded the existing block exemption Regulations as too focused on legal clauses, and that there was a need for clearer guidance on the assessment of those categories of co-operation which were not covered by any block exemption. The draft documents aim to give better guidance to industry. They will replace the fragmented and partly outdated notices and regulations in this area. The review is also an essential pillar in the Commission's attempts to modernise competition policy. The approach is similar to that of the new Regulation setting out the rules for the distribution of goods and services ("vertical co-operation agreements") which the Commission adopted on 22 December 1999.

The draft block exemption Regulations are intended to replace the existing Regulations on Specialisation (Commission Regulation (EEC) 417/85) and R&D (Commission Regulation (EEC) 418/85). Compared to the existing Regulations, the drafts are designed to be more user-friendly and to have greater clarity and a wider scope of application. The new block exemptions will replace the existing system of specifically exempted clauses by a general exemption, for companies holding no significant market power, of all conditions under which undertakings pursue R&D and specialisation agreements. This move away from a clause-based approach gives greater contractual freedom to the parties to these agreements. However, hardcore restrictions (price-fixing, output limitation or allocation of markets or customers) will generally remain prohibited. The market share threshold for exemption is set at 20% for specialisation agreements, and at 25% for R&D agreements.

The draft Guidelines complement the draft block exemption Regulations. They are applicable to R&D and production agreements not covered by the block exemptions as well as to certain other types of competitor collaboration (for example, joint purchasing, or joint marketing). The Guidelines describe the general approach which should be followed when assessing horizontal co-operation agreements and set out a common analytical framework. This should help companies to assess with greater certainty whether or not an agreement is restrictive of competition and, if so, whether it would qualify for an exemption.

The draft proposals were approved by the Commission on 18 January. Since then, as foreseen by the enabling Council Regulation, they were discussed with the Advisory Committee on Restrictive Practices and Dominant Positions on 22/23 February, before being published as draft legislative texts. The draft Commission Regulations on R&D and Specialisation and the draft Guidelines are published in the Official Journal C.118 of 27.04.00 and are also available on the Internet at: http://europa.eu.int/comm/dg04/entente/other.htm.