

The New EU Block Exemption Regulation and Guidelines on Vertical Restraints and Their Implications for E-Commerce in the EU and U.S.

Research project

Investigator:

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Abstract:

Ten years after the entry into force of the EU Block Exemption Regulation and the Guidelines on Vertical Restraints, the European Commission is ready to issue revised BER and Guidelines by the end of 2009, which shall enter into force in June 2010, when the respective current EU legislation will expire.

The current Guidelines contain policy statements designed to encourage the use of the Internet. Yet, it is also clear that online distributors are still facing some specific business practices hindering further growth of this distribution channel which offers tremendous opportunities for businesses and consumers. The interest in controlling Internet selling is particularly evident in both exclusive and selective distribution networks, especially in those relating to the distribution of luxury and electronic products. Exclusive and selective distribution systems are block exempted under the current EU competition rules, because it is considered that they may bring efficiencies, such as the preventing of “free riding” between distributors, which can benefit consumers.

The main purpose of this research is to present, first, an overview of the new set of EU rules/principles concerning vertical agreements in the online space. Secondly, the paper also aims to briefly reconcile theory and practice by offering an analysis of the new EU rules in the context of the previous cases, both at the EU and at the national level. Ultimately, the paper will investigate whether and to what extent the new EU rules will follow or innovate principles developed by competition authorities and courts in the past. This analysis is complemented with an overview of the relevant U.S. cases. The borderless scope of the Internet calls for a comparative approach as the new set of EU rules will also have an impact on U.S. online companies doing business in Europe.