



Block Exemptions in EU Antitrust

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Block Exemptions – Legal framework

☐ **Legal basis: Art. 103 TFEU + Council empowerment regulations**

☐ **Concept**

- Block exemption regulations (BER) determine in general terms for certain kinds of agreements under what circumstances these agreements will generally qualify for exemption under Art. 101 para. 3 TFEU.
- The block exemptions create a more or less safe harbour for companies. As long as they can bring their agreements under the provisions of a block exemption they can be certain that their agreements are valid and do not trigger fines.
- Oversimplified, the block exemptions are a combination of market share thresholds and the specification of hard core restraints, so called black clauses, which make the entire contract void.

☐ **Do not define a particular contractual model or regulate contractual relations between parties**

☐ **There is no such thing as breaking the law if BER is not complied with**

Block Exemptions – Legal framework

➤ **Block Exemptions Regulations in force – general**

- ☐ BER 1217/2010 R&D Agreements
- ☐ BER 1218/2010 Specialisation Agreements
- ☐ BER 316/2014 Technology Transfer
- ☐ BER 330/2010 Vertical Agreements

➤ **Block Exemptions Regulations in force – sector specific**

- ☐ BER 267/2010 Insurance Sector
- ☐ BER 461/2010 Motor Vehicles
- ☐ BER 906/2009 Liner Shipping Consortia

➤ **Guidelines**

- ☐ Production Agreements, Purchasing Agreements, Commercialisation Agreements, Standard Setting, Information Exchange

Block Exemptions – Legal framework

➤ Market share thresholds

- ☐ For horizontal agreements usually 20%
- ☐ For vertical agreements usually 30%

➤ Hardcore restrictions (Black clauses)

- ☐ Fixing of prices, RPM
- ☐ Output restrictions/limiting of capacity
- ☐ Absolute territorial protection
- ☐ Restriction of passive sales

➤ Excluded restrictions

- ☐ Non-compete obligations/dealer exclusivity (example vertical agreements: accepted for up to 5 years)

Block Exemptions – No more work for us?

➤ Self-assessment is the rule

- ❑ Companies do a self-assessment whether
 - 1) Agreement not caught by Art. 101
 - 2) A BER applies
 - 3) No BER applies but 4 cumulative conditions of 101(3) are fulfilled

➤ Commission still active, either ex-officio or through a complaint

- ❑ Examples:
 - 1) AT 39.749 – BHP Billiton/Rio Tinto/ Iron Ore Production JV
 - 2) Airline Alliances: oneworld, STAR, SkyTeam JVs
 - 3) P3 container liner shipping alliance

➤ Art. 10 of Reg. 1/2003: Inapplicability

Exemptions – The iron ore JV of 2010



The JV

- BHP and RT signed on 5 December 2009 a set of binding agreements to put in place a production JV which would combine their iron ore assets in Western Australia
- The two companies would equally share the JV's costs and output although the product will continue to be marketed separately.

The Competition Problem

- The JV would have likely eliminated all parameters of competition in relation to negotiations with customers: price, volume, and product quality.
- On the markets for seaborne iron ore fines and lumps
- BER not available

The Outcome

- Proceedings opened on 25 January 2010
- Parties abandoned deal on 18 October 2010

Exemptions – The airline alliances

Oneworld (BA/IB/AA)

- Opened in July 2008 (parallel filing with US-DOT)
- Competition concerns on six routes: London-Dallas, London-Boston, London-Miami, London-Chicago, London-New York and Madrid-Miami
- Commitment Decision on 14 June 2010

Star (LH/AC/UA)

- Opened in July 2008 (parallel filing with US-DOT)
- Competition concerns in the premium market on Frankfurt-New York
- Commitment Decision on 23 May 2013

SkyTeam (AF-KL/AZ/DL)

- Old investigation (all carriers/all levels of cooperation) closed 2011,
- New investigation opened in January 2012 (only JV)
- Competition concerns on three routes: Rome-New York, Amsterdam-New York and in the premium market on Paris-New York
- Commitment Decision on 12 May 2015



Exemptions – The P3 alliance

- CMA CGM, Maersk Line and Mediterranean Shipping Company (MSC) announced in June 2013 a VSA
- Outside the scope of the Consortia BER
- Self-assessment
- Commission started investigation
- Did not open proceedings

