



Horizontal Co-operation Agreements

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Disclaimer: This presentation reflects my personal views and should not be reported as representing the official views of the European Commission.



For reference: EU legislation in force

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](#)

Commission Regulation No 1217/2010 of 14 December 2010 on the [application of Article 101\(3\) of the Treaty on the functioning of the European Union to categories of research and development agreements](#)

Commission Regulation No 1218/2010 of 14 December 2010 on the [application of Article 101\(3\) of the Treaty to categories of specialisation agreements](#)

Council Regulation No 2821/71 on [application of Article 85 \(3\) \[now 81 \(3\)\] of the Treaty to categories of agreements, decisions and concerted practices](#)



Horizontal Co-operation agreements

Agreements between competitors operating at the same level
(as opposed to vertical agreements between companies at different levels of the supply chain)

Generally positive view, but some redlines:

- where competitors agree to fix prices, share markets, or limit output

Potential substantial consumer benefits:

- if competitors combine complementary activities, skills or assets
- means to share risk, save costs, increase investments, pool know-how, enhance product quality and variety, and launch innovation faster



Information sharing: Assessment building blocks

Ancillary/self-standing, structured/unstructured, agreement/concerted practice, object / effect

Object sharing of individualised intentions regarding future prices or quantities (§§ 72-74 of Guidelines) (hard core cartel)

Effect, if the effects are restrictive: (§§ 75-94 of the Guidelines)

Main factors relevant in effects analysis:

- Market characteristics and coverage (market power)
- Nature and content of information exchange

Theories of harm regarding restrictive effects:

- Collusive outcome: coordination of firms' behaviour leading to restrictive effects on competition (GL§§65-68)
- Anticompetitive foreclosure (GL§§ 69-71)



Research and development agreements

R&D agreements vary in form and scope

Non-restrictive scenarios:

- Non-competitors
- R&D outsourcing
- No joint exploitation
- Market share threshold for competitors: 25% (BER)
- Above 25% - apply usual exemption assessment

Hard-core provisions:

- Active sales restrictions possible without time limit for territories or customers exclusively allocated to the other party
- Passive sales restrictions with regard to territories and customers considered hard-core



Standard setting agreements

Usually pro-competitive, but restrictive effects, if:

1. used for anti-competitive discussions
2. foreclosure of innovative technologies
3. Exclusion/discrimination by prevention of effective access to the standard

“Safe harbour” regarding standard-setting process:

- No obligation to comply with standard
- Unrestricted participation for competitors
- Transparency for the wider circle of stakeholders
- Effective access to the standard
- If IPR involved: clear and binding IPR policy:
 - FRAND commitment
 - In case of royalties: disclosure obligation in SSO’s policy



Specialisation and joint production agreements

Main competition concerns: potential alignment of output levels, quality and price

BER: specialisation incl. joint production (<20% combined market share)



Agreements on commercialisation

Types of agreements

Co-operation between competitors in the selling, distribution or promotion of their substitute products – range from joint determination of all commercial, including price to limited agreements that only address specific function, such as distribution, after-sales service, or advertising.

Market power

- No presumption, if <15% combined market share



Purchasing agreements

Usually aim at creating buying power

- Alliances of retailers

Market power

- No presumption, if <15% combined market share



Thank you for your
attention!

Questions?