

Brief Guide to EU Competition Law

Introduction.

The main provisions of EU Competition law are contained in Articles 101 and 102 of the Treaty for the Functioning of the European Union.

Article 101(1) prohibits “all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market”. Article 101(2) provides that such agreements are rendered void. Article 101(3) provides that the provisions of Article 101(1) may be declared inapplicable in the case of arrangements which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which do not:

- (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (ii) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 102 prohibits “any abuse by one or more undertakings of a dominant position in trade for any goods or services within the internal market or a substantial part of it”.

Articles 101 and 102 have the twin objectives of promoting greater market integration and prohibiting anti-competitive behaviour. The European Commission and the Court of Justice have traditionally placed greater emphasis on the former objective at the expense of the latter. The Commission has also been criticised for being somewhat inventive in finding that inter-state trade has been affected.

Powers and Penalties.

- Commission officers have powers to enter premises and to inspect and copy documents.
- The Commission has the power to impose fines of up to 10% of turnover on undertakings where it finds that they have infringed Article 101 or 102.
- The Commission may also order undertakings to cease such behaviour.
- The Commission has the power to grant block exemptions in respect of categories of agreements. Such block exemptions provide that the category of agreements concerned satisfy the requirements of Article 101(3). For example, there are block exemptions for vertical agreements.

Reform of EU Competition Law.

Regulation 1/2003, which came into effect on 1st May 2004 introduced the most radical overhaul of EU competition law in almost forty years. The Regulation was designed to tackle serious breaches of competition law by allowing for greater deployment of resources to the investigation of serious infringements. Under the previous regime much of the Commission's time was absorbed in considering individual requests for exemption.

The Regulation provides that all national competition authorities are empowered to apply EU competition law. It also provides that the provisions of Article 101(3) may be directly applied by national courts and competition authorities. Previously only the Commission could declare that an agreement satisfied the requirements of Article 101(3). Under the Regulation a new regime has been established to enable the Commission and national competition authorities to cooperate with one another in conducting investigations.

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