

competition in the economy
 vigorous competition drives productivity growth, innovation and value for all consumers
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productivity
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productivity

Competition Authority

Notice in Respect of Vertical Agreements and Concerted Practices

Decision N/10/01

Date: December 2010



The Competition Authority
 An tÚdarás Iomaíochta

Introduction

1. Under section 30(1)(d) of the Competition Act 2002 (“the Act”), the Competition Authority (“**the Authority**”) may publish Notices containing practical guidance as to how the provisions of the Act may be complied with.
2. The Authority has issued a Category Declaration in respect of Vertical Agreements and Concerted Practices (“**the Declaration**”),¹ which exempts certain categories of agreements and concerted practices from the prohibition set out in section 4 of the Act. The Authority considers that it would be useful for interested persons to have some informal guidance on how to assess their vertical agreements so as to ensure that they can avail themselves of the exemption provided for by the Declaration.
3. The Declaration closely resembles the EU Commission’s Block Exemption Regulation No. 330 of 2010 (“**the BER**”). Accordingly, subject to the exceptions set out in paragraphs 4 and 5 below, the Commission’s Guidelines on Vertical Restraints (“**the EU Guidelines**”)², which give practical assistance on assessing whether vertical agreements conflict with the BER, may also be referred to for guidance in assessing whether an agreement is likely to fall outside section 4(1) of the Act.
4. Article 2(2) of the BER features an exemption for retailer buyer pools, where no individual member (or its connected undertakings) of a buyer pool has an annual turnover in excess of €50 million. There is no retailer buyer pool exemption for the Irish market in the Declaration, and therefore paragraphs 28 and 29 of the EU Guidelines cannot be relied upon as guidance for the purposes of the Declaration. Buyer pools are not, however, intended to be excluded from the general scope of the Declaration.
5. Additionally, in its *Notice on Activities of Trade Associations and Compliance with Competition Law*,³ (“**the Trade Associations Notice**”), the Authority issued guidance to business about the limits that competition law places on joint or co-ordinated action by competitors (trade associations). Insofar as retail buyer pools contain competing undertakings, then the guidance set out in the Trade Associations Notice will apply. Paragraph 4.48 of the Trade Association Notice states:

“There are no absolute market share thresholds indicating when a group purchasing arrangement will result in the creation of market power. However, the European Commission have indicated in their Horizontal Guidelines that group purchasing arrangements leading to a combined market share of less than 15% in both the purchasing and selling markets are unlikely to raise concerns under the competition rules.”

¹ Decision No. D/10/01.

² The EU Guidelines are available online at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2010:0411:FIN:EN:PDF>>.

³ Decision No. N/09/002, available online at <<http://www.tca.ie/images/uploaded/documents/N-09-002%20Notice%20on%20Activities%20of%20Trade%20Associations%20and%20Compliance%20with%20Competition%20Law.PDF>>

6. Paragraphs 8-11 of the EU Guidelines refer to the Commission's *Notice on Agreements of Minor Importance* ("the de minimis Notice")⁴ and explain that because the de minimis Notice provides that such agreements are not caught by Article 101 at all, the BER does not apply to them. Because there is no de minimis notice in force under Irish law, these paragraphs cannot be relied upon as guidance for the purpose of the Declaration.

⁴ OJ C 372, 9.12. 1997

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