

Review of EC Regulation 2790/99 and of the European guidelines on vertical restraints

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The *Autorité de la concurrence* welcomes the modernization undertaken by the European Commission and recommends that the Commission better explains the balance it intends to guarantee between online trade and brick and mortar distribution networks.

The European Commission has launched a public consultation regarding two draft texts – a regulation and a guidance paper – intended to modernize the European competition policy followed in relation to vertical restraints. The *Autorité de la concurrence* [French Competition Authority] releases the opinion that it has submitted to the Commission in that regard, on 28 September 2009.

In its opinion, the Authority welcomes the Commission's decision to maintain a dedicated block exemption regulation and guidance document on vertical restraints, while refining and modernizing these texts.

Indeed, it is crucial to give market players the guarantee that European competition rules will be applied in a transparent, predictable and consistent way, whichever authority is called upon to implement these rules (i.e.: European Commission, national competition authorities or national judges).

More economic analysis, for the benefit of companies

The draft texts send a very positive signal to the business community, insofar as they inject more economic analysis in the policy followed in Europe in relation to vertical restraints. They also ensure a better balance between consumer welfare on the one hand (which justifies a relative caution regarding certain commercial

practices, such as resale price maintenance) and economic innovation on the other hand.

In particular, the European Commission reminds that even hardcore restrictions can be admitted, on a case-by-case analysis, where it appears, on the basis of robust economic evidence, that they translate into efficiency gains that are passed on to consumers. The European Court of Justice has just confirmed this approach (*GlaxoSmithKline v. Commission*, 6 October 2009, Case C-501/06 P).

Perfecting the balance between online trade and brick and mortar distribution, for the benefit of consumers

The draft regulation and guidelines, which are significantly inspired by the experience of the French Competition Authority in that respect, also move in the right way since they strive to reach a fair balance between online trade and selective distribution networks.

Practically speaking, they provide for a set of tools intended to allow producers to fine-tune these two channels of distribution, under the supervision of competition authorities and national judges.

However, given the major differences of interpretation that have been recorded in France in the last years from one judge to another, the *Autorité de la concurrence* recommends that the Commission better explains its policy, that consists in balancing all possible distribution strategies (online trade, selective distribution, exclusive distribution, etc.), insofar as they all contribute to satisfy consumer expectations, that may focus, depending on the consumers concerned, not only on price and choice criteria, but also on quality, service and proximity.

[Consult the full text of the opinion \(english version\)](#)