


Procedure file

Basic information	
COS - Procedure on a strategy paper (historic) 1997/2022(COS)	Procedure completed
Competition policy: vertical restraints. Green Paper	
Subject 2.60.01 Trade restrictions, concerted practices, dominant positions	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs, Industrial Policy	PPE THYSSEN Marianne	18/12/1996
Council of the European Union			

Key events			
21/01/1997	Additional information		Summary
22/01/1997	Non-legislative basic document published	COM(1996)0721	Summary
17/02/1997	Committee referral announced in Parliament		
03/07/1997	Vote in committee		Summary
03/07/1997	Committee report tabled for plenary	A4-0242/1997	
18/07/1997	Debate in Parliament		
18/07/1997	Decision by Parliament	T4-0417/1997	Summary
18/07/1997	End of procedure in Parliament		
22/09/1997	Final act published in Official Journal		

Technical information	
Procedure reference	1997/2022(COS)
Procedure type	COS - Procedure on a strategy paper (historic)
Procedure subtype	Commission strategy paper
Legal basis	Rules of Procedure EP 142
Stage reached in procedure	Procedure completed
Committee dossier	ECON/4/08580

Documentation gateway					
Non-legislative basic document		COM(1996)0721	22/01/1997	EC	Summary
Committee of the Regions: opinion		CDR0114/1997 OJ C 244 11.08.1997, p. 0038	11/06/1997	CofR	
Committee report tabled for plenary, single reading		A4-0242/1997 OJ C 286 22.09.1997, p. 0008	03/07/1997	EP	
Economic and Social Committee: opinion, report		CES0769/1997 OJ C 296 29.09.1997, p. 0019	09/07/1997	ESC	Summary
Text adopted by Parliament, single reading		T4-0417/1997 OJ C 286 22.09.1997, p. 0326-0347	18/07/1997	EP	Summary
Non-legislative basic document		COM(1999)0101	28/04/1999	EC	

Competition policy: vertical restraints. Green Paper

Given their considerable positive or negative effects on market integration, vertical restraints are of major importance to Community competition policy. While this policy has proved successful for over 30 years, a review is now necessary for several reasons: - the single market legislation is now largely in place; - the Commission's category exemption regulations governing vertical restraints will expire at the end of 1999; - there have been major changes in distribution methods which may have implications for Community policy on vertical restraints; - current economic thinking emphasises the importance of market structure in determining the effects of vertical restraints. As competition between brands increases, it will become increasingly likely that the favourable effects on competition and efficiency will prevail over the anti-competitive effects of these restraints. (Source: RAPID)

Competition policy: vertical restraints. Green Paper

OBJECTIVE: The Green Paper offers a re-evaluation of the subject of vertical restraints in Community competition policy (exclusive distribution, exclusive purchase, selective franchising and distribution) with the aim of revising the rules. **SUBSTANCE:** The Commission's analysis shows that, given their considerable effects, positive or negative, on market integration, vertical restraints are of major importance for Community competition policy. While the policy has proved itself successful over more than thirty years, a review is now necessary for the following reasons: - the single market legislation is now largely in place; it is therefore possible that in future, obstacles arising from the private sector (e.g. agreements between companies) will be more likely to threaten the unity of the internal market than impediments of a public nature; - the three regulations governing exclusive purchase, exclusive distribution and franchising are about to expire; - there have been major changes (especially thanks to the use of information technology) that may have implications for Community policy on vertical restraints. The Commission also stresses that distribution, the sector most affected by vertical restraints, represents a significant part of the internal market. It employs 22 m persons (15.6% of the total active population), represents 12.9% of value added and accounts for 4.5 m enterprises (29.4% of all undertakings). All companies need distribution, and quality and efficiency of service are crucial factors for consumer choice. However, distribution, while a dynamic sector, is also characterized by barriers to entry which tend to bolster the market power of certain distributors in oligopolistic markets. While there are examples of distributors moving outside their 'home' market and some Europe-wide chains are emerging, distribution, particularly at the retail level, is still largely national. The Commission asks whether this national character - linked to the need for economic integration of supply chains, a tendency now reinforced by the economies deriving from information technology - has implications for its competition policy. The Green Paper sets out the existing economic and legal framework governing vertical restraints, and summarizes the results of a preliminary inquiry targeted on producers, retailers, professional organizations, consumer associations and experts. This exercise has enabled the Commission to define four (non-exhaustive) options for the future direction of Community policy on vertical restraints: - Option 1 - retention of the current system, with its advantages in both material and procedural terms (possibility of a global economic assessment of the benefits of agreements; favouring of market integration; possibility of creating innovative forms of distribution; notification system; 'one-stop shop'; legal security; etc); - Option 2 - wider block exemptions: this would make the block exemption arrangements more flexible, and would extend the range of beneficiaries. In this case, either a block exemption Regulation for selective distribution would be adopted or there would be an arbitration procedure for disputes concerning admission to such distribution systems. The special arrangements for beer and petrol supplies would be made more flexible; - Option 3 - more focused block exemptions: this option would restrict the existing block exemptions to companies with a market share under a certain threshold (e.g. 40%), - Option 4 - reduction of the scope of the provision banning agreements: this option would introduce, for parties with a market share under 20%, a (rebuttable) presumption of compatibility with Article 85(1) of the EC Treaty ('negative clearance presumption'). ?

Competition policy: vertical restraints. Green Paper

The committee adopted the report by Mrs Marianne THYSSEN (PPE, B) on the Commission's Green Paper on vertical restraints (agreements between producers and retailers). Under the present system, vertical agreements are generally exempt from prior control by the Commission for a number of block exemptions. This approach was supported by the committee which, however, considered that the current system of block exemptions should leave room for more flexibility without, however, disturbing the balance between the contracting parties. MEPs proposed a system which introduced a threshold based on market share, below which the current procedural rules would continue to apply. Above this threshold, vertical agreements would be presumed to be compatible with block exemptions, although the Commission would be

able to rebut them on its own initiative or following a complaint. Companies which wished to conclude a vertical agreement should retain the option of individual notification. In order to speed up the notification procedure, Mrs THYSSEN called on the European Commission to study the possibility of adopting a number of reference decisions in relation to which subsequent applications could be assessed. The committee wanted the European Commission to propose block exemption for selective distribution agreements. On the other hand, it agreed with the European Commission that a large number of agreements between SMEs should be excluded from the scope of the Union's competition rules. Finally, as Commissioner VAN MIERT had declared that no specific proposals should be expected before the end of next year, the committee considered, for reasons of legal security, that new political guidelines should be adopted on this matter as quickly as possible.?

Competition policy: vertical restraints. Green Paper

The Committee welcomes the green paper because it initiates a revision process in an area of great sensitivity for competition policy, company competitiveness and single market integration. The Committee hopes that solutions will be devised for SMEs which facilitate their re-inclusion within the scope of the block exemption regulations, thereby helping them to measure up to market globalization. The current block exemption regulations, which are certainly too rigid and often difficult to interpret, should be revised and adjusted in a flexible way. The Committee would indicate the need for clarification of and coordination between the Commission's Notice on Agreements of Minor Importance ("de minimis", COM(96) 722 final) and the options set out in the green paper, especially Option IV which provides for rebuttable presumption of compatibility with Article 85(1) up to the 20% market share threshold. ?

Competition policy: vertical restraints. Green Paper

In adopting the report by Mrs Marianne THYSSEN (PPE, B) on the Green Paper on vertical restraints in EC competition policy (agreements between producers and retailers), Parliament expressed the view that it was necessary to formulate clear policy guidelines in a manner ensuring legal certainty for an effective, consistent and cost-efficient competition policy which promoted consumer interests and the competitiveness of European undertakings, with specific attention being paid to small and medium-sized undertakings. In general, Parliament agreed with the Commission that a large number of agreements between SMEs should be excluded from the scope of the Union's competition rules. It noted that businesses were on the whole opposed to the use of the market share approach, which was regarded as not generally applicable and as being attended by insufficient legal certainty; Parliament therefore called on the Commission to examine the possibility of including parameters other than market share as threshold values. Parliament advocated a system whereby the bottom segment of the market would be exempt, on the basis of the 'de minimis' notice, from the provisions of Article 85(1) of the EC Treaty. Parliament recommended: - that block exemptions should leave room for more flexibility without, however, disturbing the balance between the contracting parties; - that consideration be given to the insertion of a criterion based on market share and above which vertical agreements would enjoy only an easily rebutted presumption of compatibility with the block exemptions; - that consideration be given to a suspension of the application of the block exemption scheme above a certain market share, except for undertakings with an annual turnover below a level to be specified; - that enterprises which concluded agreements that did not comply with the block exemption criteria should retain the option of individual notification. The report also called on the Commission to investigate the possibility of adopting a number of reference decisions in relation to which subsequent applications could be assessed. Lastly, taking the view that competition may be restricted not only by vertical restraints but also by vertical integration, Parliament asked the Commission to carry out a comparable assessment of the impact of the two strategies on competition. ?