

## **Distribution and Supply Agreements**

### **New Block Exemption for Vertical Agreements**

The EC Regulation No 2790/1999 on Vertical Restraints (“1999 Block Exemption”) expired on May 31, 2010. The new EC Regulation No 330/2010 of the European Commission (“2010 Block Exemption”) and Guidelines (“2010 Guidelines”) hereto entered into force on June 1, 2010.

Pursuant to EU and German competition law, all agreements which have as their object or effect the prevention, restriction or distortion of competition are prohibited.

As the 1999 Block Exemption the 2010 Block Exemption provides for a “safe harbour” under competition law if an agreement complies with its terms.

The 2010 Block Exemption applies to vertical agreements and concerted practices for the purchase or sale of goods or services, in particular industrial supply agreements, exclusive and selective distribution agreements, exclusive purchasing agreements and franchising agreements.

The 2010 Block Exemption provides for one major change. The 2010 Block Exemption provides for a “safe harbour” only if the market share each of the suppliers and the buyer does not exceed 30 % on any of the relevant markets affected by the agreement. The 1999 Block Exemption required only that the supplier’s market share does not exceed 30 %.

The 2010 Block Exemption does not provide for an exemption to vertical agreements which contain hardcore restrictions of competition, e.g. resale price fixing, restriction of territory (if no exception applies).

The 2010 Guidelines set out the principles on how the Commission will assess vertical agreements. To some extent the Commission seems to set up a more economic approach. Restrictions on passive sales by distributors into a territory of another distributor *may* be exempted during the first two years if that distributor has made substantial investments to start up or develop a new brand. The 2010 Guidelines provide more specific information as to restrictions on Internet sales. A new and more detailed guidance is given on resale price maintenance; resale price maintenance is a hardcore restriction, the Commission states that in individual cases a resale price maintenance *may* lead to efficiencies and thus be eligible for an individual exemption, e. g. where a manufacturer introduces a new brand or enters a new market.

The 2010 Block Exemption provides for a transitional period of one year during the period from June 1, 2010 to May 31, 2011 in respect of agreements already in force on May 31, 2010 which do not comply with the 2010 Block Exemption but which, on May 31, 2010, complied with the 1999 Block Exemption.

Vertical agreements, in particular distribution and supply agreements already in force on May 31, 2010 and to be concluded after June 1, 2010 should be reviewed whether they comply with the 2010 Block Exemption.

This applies in particular whether (i) the market share of the supplier does not exceed 30 % on the relevant market and (ii) the market share held by the buyer does not exceed 30 % of the relevant market on which it purchases the goods or services and (iii) the agreement does not contain hardcore restrictions.