

European Commission publishes guidance on agreements with an anticompetitive object

The European Commission has published new guidance on restrictions of competition “by object”, making clear that such restrictions will not fall outside EU competition law by being treated as “of minor importance” (the “Guidance”). The Guidance may help companies and their advisers assess whether their agreements comply with UK and EU competition law.

The Guidance (labelled a Commission Staff Working Document) accompanies the Commission’s revised Notice on agreements of minor importance (the “De Minimis Notice”). The changes to the De Minimis Notice follow the European Court of Justice’s December 2012 ruling in *Expedia* (Case C-226/11) that, because certain forms of inherently anticompetitive agreement will always amount to an appreciable restriction of competition, they cannot benefit from the “safe harbour” provided by the De Minimis Notice, although in theory they might still qualify for individual exemption.

Like its predecessor, the revised De Minimis Notice defines agreements of minor importance by reference to market share thresholds: a combined market share of 10% or less for agreements between competitors; and a market share of 15% or less for agreements between non-competitors. These thresholds are unchanged.

The Guidance lists together for the first time the following categories of restriction regarded by the Commission as having the object of restricting competition. These are taken from the restrictions identified in the Commission’s various block exemption regulations:

‘Horizontal’ agreements (between competitors):	‘Vertical’ agreements (between non-competitors):
Price-fixing	Restrictions on passive sales by re-sellers and licensees (e.g. limiting a buyer’s sales into particular territories or to particular customer groups)
Market-sharing	Restrictions on a supplier’s ability to sell components as spare parts
Agreements to limit output or supply	Restrictions on a buyer’s freedom to determine its minimum resale price
Bid-rigging	
Collective boycotts	
Exchange of information regarding future prices or quantities	
Restrictions on carrying out R&D or using own technology	

While the Guidance is designed to assist businesses (in particular SMEs) in assessing the competitive impact of their agreements, the Commission’s list of object restrictions is not exhaustive or definitive. The General Court regarded the exchange of details of prices *previously* charged to customers as an object restriction in its March 2013 decisions in *Dole* and *Del Monte* (Cases T-587/08 and T-588/08, currently on appeal to the Court of Justice), demonstrating that the established categories of object restriction are not exhaustive.

The full texts of the revised De Minimis Notice and the Guidance are available [here](#).