

2022 No. 516

COMPETITION

The Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022

<i>Made</i>	- - - -	<i>4th May 2022</i>
<i>Laid before Parliament</i>		<i>9th May 2022</i>
<i>Coming into force</i>		<i>1st June 2022</i>

The Competition and Markets Authority has recommended that the Secretary of State make an order specifying certain categories of vertical agreements for the purposes of section 6 of the Competition Act 1998(a) (“the Act”).

In accordance with section 8 of the Act(b), before making the recommendation the Competition and Markets Authority published details of the proposed recommendation and considered the representations about it which were made to it(c).

The Secretary of State has decided to give effect to the recommendation without modifications and makes the following Order in exercise of the powers conferred by sections 6(2), (5), (6) and (7) and 71(3) of the Act.

Citation and commencement

1. This Order—

- (a) may be cited as the Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022, and
- (b) comes into force on 1st June 2022.

Interpretation

2.—(1) In this Order—

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- (a) 1998 c. 41. Section 6 was amended by paragraph 2 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 (c. 24) to give the function of making recommendations to the Competition and Markets Authority. The Competition and Markets Authority was established by section 25 of that Act. This function was previously the responsibility of the Director General for Fair Trading and then the Office of Fair Trading. Other amendments to section 6 were made by paragraph 38 of Schedule 25 to the Enterprise Act 2002 (c. 40) and S.I. 2004/1261. “Vertical agreement” is defined in article 3(2) of this Order.
 - (b) Section 8 was amended by paragraph 38 of Schedule 25 to the Enterprise Act 2002 and paragraph 3 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.
 - (c) The Competition and Markets Authority’s proposed recommendation and responses to its consultation can be found online at <https://www.gov.uk/government/consultations/retained-vertical-block-exemption-regulation> or obtained by writing to Competition and Markets Authority, The Cabot, 25 Cabot Square, London E14 4QZ.

“block exemption” means the exemption from the Chapter 1 prohibition^(a) arising by virtue of this Order for the category of agreements specified in this Order;

“buyer” means the purchaser of the contract goods or services and includes an undertaking which, under an agreement to which the Chapter 1 prohibition applies, sells goods or services on behalf of another undertaking;

“connected undertakings”, in relation to a party to an agreement, means—

- (a) undertakings in relation to which the party to the agreement, directly or indirectly—
 - (i) has the power to exercise more than half the voting rights,
 - (ii) has the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking, or
 - (iii) has the right to manage the undertaking’s affairs;
- (b) undertakings which directly or indirectly have, in relation to the party to the agreement, any of the rights or powers listed in paragraph (a);
- (c) undertakings in relation to which an undertaking referred to in paragraph (b) has, directly or indirectly, any of the rights or powers listed in paragraph (a);
- (d) undertakings in relation to which the party to the agreement together with one or more of the undertakings referred to in paragraph (a), (b) or (c), or in relation to which two or more of the undertakings referred to in paragraph (b) or (c), jointly have any of the rights or powers listed in paragraph (a);
- (e) undertakings in relation to which any of the rights or the powers listed in paragraph (a) are jointly held by—
 - (i) parties to the agreement or their respective connected undertakings referred to in paragraphs (a) to (d), or
 - (ii) one or more of the parties to the agreement or one or more of their respective connected undertakings referred to in paragraphs (a) to (d) and one or more third parties;

“the contract goods or services” has the meaning given in article 3(2);

“customer”, in relation to a buyer, means an undertaking not party to the agreement which purchases the contract goods or services from a buyer which is party to the agreement;

“excluded restriction” has the meaning given in article 10(2);

“hardcore restriction” has the meaning given in article 8(2);

“know-how” means a package of non-patented practical information, resulting from experience and testing by the supplier, which is—

- (a) not generally known or easily accessible,
- (b) significant and useful to the buyer for the use, sale or resale of the contract goods or services, and
- (c) described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria in paragraphs (a) and (b);

“online intermediation service” means a service that allows undertakings to offer goods or services to other undertakings or to end users with a view to facilitating direct transactions between such undertakings or between such undertakings and end users, irrespective of whether and where those transactions are ultimately concluded and that constitutes an information society service within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information on the field of technical regulations and of rules on Information Society services (codification)^(b);

(a) “Chapter 1 prohibition” is defined in section 2(8) of the Act.

(b) OJ No. L 241, 17.9.2015, p.1.

“selective distribution system” means a distribution system where the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors selected on the basis of specified criteria and where these distributors undertake not to sell such goods or services to distributors not authorised by the supplier within the geographical area reserved by the supplier in the agreement in order to operate that system;

“supplier” includes an undertaking that provides online intermediation services irrespective of whether it is a party to the transaction it facilitates;

“vertical agreement” has the meaning given in article 3(2);

“vertical restraint” means a restriction on competition in a vertical agreement to which the Chapter 1 prohibition applies.

(2) In this Order, references to “the agreement” are to be read as references to the vertical agreement claiming the benefit of the block exemption.

(3) For the purposes of this Order, the terms “undertaking”, “supplier” and “buyer” include their respective connected undertakings.

Block Exemption

3.—(1) The category of agreements identified in paragraph (2) as vertical agreements is specified for the purposes of section 6 of the Competition Act 1998(a).

(2) Subject to paragraphs (3), (4), (5) and (6), for the purposes of this Order vertical agreements are agreements or concerted practices entered into between two or more undertakings each of which operates, for the purposes of the agreement or the concerted practice concerned, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell, or resell certain goods or services (“the contract goods or services”).

(3) Vertical agreements entered into between an association of undertakings and its members, or between such an association and its suppliers, are specified provided—

- (a) all members of the association are retailers of goods, and
- (b) subject to article 4(2), the annual turnover of each individual member of the association, when combined with the annual turnover of its respective connected undertakings, does not exceed £44 million.

(4) Vertical agreements containing provisions which relate to the assignment to the buyer or use by the buyer of intellectual property rights are specified provided that—

- (a) those provisions do not constitute the primary object of such agreements and are directly related to the use, sale or resale of goods or services by the buyer or its customers, and
- (b) in relation to the contract goods or services, those provisions do not contain restrictions of competition having the same object as vertical restraints which are not exempted by virtue of this Order.

(5) Vertical agreements entered into between competing undertakings are specified only to the extent that they are non-reciprocal, and the supplier—

- (a) is a manufacturer and a distributor of goods, while the buyer is a distributor and not a competing undertaking at the manufacturing level,
- (b) is a provider of services at several levels of trade, while the buyer provides its goods or services at the retail level and is not a competing undertaking at the level of trade where it purchases the contract services,
- (c) is a wholesaler and a distributor of goods, while the buyer is a distributor and not a competing undertaking at the wholesale level, or

(a) An agreement specified for the purposes of section 6 of the Act is exempt from the prohibition in Chapter 1 of the Act. See section 6(3) of the Act.

- (d) is an importer and a distributor of goods, while the buyer is a distributor and not a competing undertaking at the level of trade where it purchases the goods or at the importation level.
- (6) This Order does not apply to—
 - (a) vertical agreements the subject matter of which falls within the scope of any retained block exemption regulation^(a) or of any block exemption order^(b), unless otherwise provided for in such a regulation or order;
 - (b) rent and lease agreements where no goods or services are being sold by the supplier to the buyer.
- (7) In this article—
 - “actual competitor” means an undertaking active on the same relevant market;
 - “competing undertaking” means an actual competitor or a potential competitor;
 - “intellectual property rights” includes industrial property rights, know-how, copyright and neighbouring rights;
 - “potential competitor” means an undertaking that, in the absence of the agreement, would, on realistic grounds and not just as a mere theoretical possibility, be likely to undertake, within a short period of time, the necessary additional investments or other necessary switching costs to enter the relevant market.

Calculation of annual turnover

- 4.—(1) For the purpose of calculating the combined annual turnover within the meaning of article 3(3)—
- (a) the turnover achieved during the previous financial year by the relevant member of the association and the turnover achieved by its connected undertakings in respect of all goods and services, excluding all taxes and other duties, are to be added together;
 - (b) no account is to be taken of dealings between the member of the association and its connected undertakings or between its connected undertakings.
- (2) The block exemption remains applicable where, for any period of two consecutive financial years, the combined annual turnover does not exceed the combined annual turnover threshold by more than 10%.

Conditions and consequences of breach of conditions

Block exemption subject to conditions and obligation

5. The block exemption has effect subject to the conditions and the obligation specified in articles 6 to 12.

Market share thresholds

- 6.—(1) The block exemption applies on condition that—
- (a) the market share held by the undertaking which is party to the agreement and which is a supplier does not exceed 30% of the relevant market on which it sells the contract goods or services, and
 - (b) the market share held by the undertaking which is party to the agreement and which is a buyer does not exceed 30% of the relevant market on which it purchases the contract goods or services.

(a) “Retained block exemption regulation” is defined in section 10(12) of the Act.
 (b) “Block exemption order” is defined in section 6(2) of the Act.

(2) For the purposes of paragraph (1), where in an agreement involving more than two parties an undertaking purchases the contract goods or services from one undertaking which is party to the agreement and sells the contract goods or services to another undertaking which is party to the agreement, the market share of the first undertaking must respect the market share threshold provided for in that paragraph both as a buyer and a supplier.

Rules for applying market share thresholds

7.—(1) For the purposes of applying the market share thresholds provided for in article 6 the following rules apply—

- (a) the market share—
 - (i) of the supplier is to be calculated on the basis of market sales value data (including sales to all vertically integrated distributors for the purposes of resale), and
 - (ii) of the buyer is to be calculated on the basis of market purchase value data, and where market sales value or market purchase value data are not available, estimates based on other reliable market information, including market sales and purchase volumes, may be used to establish the market share of the undertaking concerned;
- (b) the market share is to be calculated on the basis of data relating to the preceding calendar year.

(2) If a market share is initially not more than 30% but subsequently rises above that level without exceeding 35%, the block exemption continues to apply for a period of two consecutive calendar years following the year in which the 30% market share threshold was first exceeded.

(3) If a market share is initially not more than 30% but subsequently rises to more than 35%, the block exemption continues to apply for one calendar year following the year in which the level of 35% was first reached.

(4) The benefit of paragraphs (2) and (3) may not be combined so as to exceed a period of two calendar years.

(5) The market share held by the undertakings referred to in paragraph (e) of the definition of “connected undertakings” in article 2(1) are to be apportioned equally to each undertaking having the rights or the powers listed in paragraph (a) of that definition.

Hardcore restrictions

8.—(1) The block exemption applies to the agreement on condition that it does not contain a hardcore restriction.

(2) A hardcore restriction is one or more provisions which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object—

- (a) the restriction of the buyer’s ability to determine its onward sale price, without prejudice to the possibility of the supplier imposing a maximum sale price or recommending a sale price, provided that any such provisions do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties;
- (b) where the supplier operates an exclusive distribution system, the restriction of the geographical area into which, or of the customer groups to whom, one or a limited number of buyers, to which an exclusive geographical area or customer group has been allocated, may actively sell or passively sell the contract goods or services, but are not excepted restrictions set out in paragraph (3);
- (c) where the supplier operates a selective distribution system—
 - (i) the restriction of the geographical area into which, or of the customer groups to whom, the members of the selective distribution system may actively sell or passively sell the contract goods or services, but are not excepted restrictions set out in paragraph (4),

- (ii) the restriction of cross-supplies between the members of the selective distribution system operating at the same or different levels of trade, or
 - (iii) the restriction of active sales or passive sales to end users by members of the selective distribution system operating at the retail level of trade, except in the situation set out in paragraph (4)(a);
 - (d) where the supplier operates neither an exclusive nor a selective distribution system, the restriction of the geographical area into which, or of the customer group to whom, a buyer may actively sell or passively sell the contract goods or services, but are not excepted restrictions set out in paragraph (5);
 - (e) the restriction, agreed between a supplier of components and a buyer who incorporates those components, of the supplier's ability to sell the components as spare parts to end-users or to repairers, wholesalers or other service providers not entrusted by the buyer with the repair or servicing of its goods;
 - (f) a wide retail parity obligation or measure that has the same effect as a wide retail parity obligation (which includes any course of action, including entering into agreements or engaging in concerted practices, which has the object of replicating the anti-competitive effects of a wide retail parity obligation).
- (3) The excepted restrictions referred to in paragraph (2)(b) are—
- (a) the restriction of active sales by the exclusive distributor, or the exclusive distributor and its customers that have entered into a distribution agreement with the supplier or with a party that was given distribution rights by the supplier, into a geographical area or to a customer group reserved to the supplier or allocated by the supplier exclusively to one or a limited number of other buyers,
 - (b) the restriction of active sales or passive sales by the exclusive distributor, or the exclusive distributor and its customers to unauthorised distributors located in a geographical area where the supplier operates a selective distribution system for the contract goods or services,
 - (c) the restriction of the exclusive distributor's place of establishment,
 - (d) the restriction of active sales or passive sales to end users by an exclusive distributor operating at the wholesale level of trade, and
 - (e) the restriction of the exclusive distributor's ability to actively sell or passively sell components, supplied for the purposes of incorporation to a product, to customers who would use them to manufacture the same type of goods as those produced by the supplier.
- (4) The excepted restrictions referred to in paragraph (2)(c)(i) are—
- (a) the restriction of active sales by the members of the selective distribution system, or the members of the selective distribution system and their customers that have entered into a distribution agreement with the supplier or with a party that was given distribution rights by the supplier, into a geographical area or to a customer group reserved to the supplier or allocated by the supplier exclusively to one or a limited number of buyers,
 - (b) the restriction of active sales or passive sales by the members of the selective distribution system or their customers to unauthorised distributors located within the geographical area where the selective distribution system is operated,
 - (c) the restriction of the place of establishment of the members of the selective distribution system,
 - (d) the restriction of active sales or passive sales to end users by members of the selective distribution system operating at the wholesale level of trade, and
 - (e) the restriction of the ability to actively sell or passively sell components, supplied for the purposes of incorporation into a product, to customers who would use them to manufacture the same type of goods as those produced by the supplier.
- (5) The excepted restrictions referred to in paragraph (2)(d) are—

- (a) the restriction of active sales by the buyer, or the buyer and its customers that have entered into a distribution agreement with the supplier or with a party that was given distribution rights by the supplier, into a geographical area or to a customer group reserved to the supplier or allocated by the supplier exclusively to one or a limited number of buyers,
- (b) the restriction of active sales or passive sales by the buyer or its customers to unauthorised distributors located in a geographical area where the supplier operates a selective distribution system for the contract goods or services,
- (c) the restriction of the buyer's place of establishment,
- (d) the restriction of active sales or passive sales to end users by a buyer operating at the wholesale level of trade, and
- (e) the restriction of the buyer's ability to actively sell or passively sell components, supplied for the purposes of incorporation into a product, to customers who would use them to manufacture the same type of goods as those produced by the supplier.

(6) In paragraph (2), a reference to a restriction of an active sale or passive sale, or to a restriction of actively selling or passively selling, in relation to the selling of goods and services online, includes a restriction that, directly or indirectly, in isolation or combination with other factors, has as its object—

- (a) the prevention of buyers or their customers effectively using the internet for the purposes of selling their goods or services online or from effectively using one or more online advertising channels,
- (b) the restriction of the geographical area into which or the customer group to whom the buyers may sell the contract goods or services, or
- (c) in the case of selective distribution, the restriction of active sales or passive sales to end users by members of the selective distribution system operating at the retail level of trade.

(7) In this article—

“active sales” means—

- (a) actively targeting customers by for instance calls, e-mails, letters, visits or other direct means of communication,
- (b) targeted advertising and promotion, by means of print or digital media, offline or online, including online media, digital comparison tools or advertising on search engines targeting customers in specific geographical areas or customer groups,
- (c) advertisement or promotion that is only attractive for the buyer if it (in addition to reaching other customers) reaches a specific group of customers or customers in a specific geographical area (and is considered active selling to that customer group or customers in that geographical area),
- (d) offering on a website language options different to the ones commonly used in the geographical area in which the distributor is established, or
- (e) using a domain name corresponding to a geographical area other than the one in which the distributor is established,

and the expressions “actively sell” and “actively selling” should be construed accordingly;

“digital comparison tools” means online intermediation services used by end users to compare prices, quality or other characteristics of, and potentially to switch or purchase, goods or services from a range of businesses;

“exclusive distribution system” means a distribution system where the supplier allocates a geographical area or customer group exclusively to itself or to one or a limited number of buyers, determined in proportion to the allocated geographical area or customer group in such a way as to secure certain volumes of business that preserves their investment efforts, and restricts other buyers from actively selling into the exclusive geographical area or to the exclusive customer group;

“passive sales” means—

- (a) sales in response to unsolicited requests from individual customers, including delivery of goods or services to such customers without the sale having been initiated through advertising actively targeting the particular customer group or geographical area,
- (b) general advertising or promotion that reaches customers in other distributors' geographical areas or customer groups (whether exclusive or not) but which is a reasonable way to reach customers not in those other distributors' geographical areas or customer groups (whether exclusive or not), for instance to reach customers in a supplier's own geographical area(a), or
- (c) participating in a public procurement exercise undertaken in accordance with—
 - (i) in England, Wales or Northern Ireland, the Defence and Security Public Contracts Regulations 2011(b), the Public Contracts Regulations 2015(c), the Concession Contracts Regulations 2016(d) or the Utilities Contracts Regulations 2016(e), and
 - (ii) in Scotland, the Defence and Security Public Contracts Regulations 2011, the Public Contracts (Scotland) Regulations 2015(f), the Concession Contracts (Scotland) Regulations 2016(g) or the Utilities Contracts Regulations 2016(h),

and the expressions “passively sell” and “passively selling” should be construed accordingly;

“wide retail parity obligation” means a restriction by reference to any of the supplier's indirect sales channels (whether online or offline, for instance online platforms or other intermediaries), which ensures that the prices or other terms and conditions at which the supplier's goods or services are offered to end users on a sales channel are no worse than those offered by the supplier on another sales channel.

Effect of breach of conditions in article 6 or 8

9. Breach of either of the conditions imposed by article 6 or 8 has the effect of cancelling the block exemption in respect of that vertical agreement.

Excluded restrictions

10.—(1) The block exemption applies to the agreement on condition that it does not contain an excluded restriction.

(2) Subject to paragraphs (3) and (4), an excluded restriction means—

- (a) any non-compete obligation, the duration of which is indefinite or exceeds five years (and a non-compete obligation which is automatically renewable beyond a period of five years is deemed to have been concluded for an indefinite duration);
- (b) any direct or indirect obligation causing the buyer, after termination of the agreement, not to manufacture, purchase, sell or resell any goods or services;
- (c) any direct or indirect obligation causing the members of a selective distribution system not to sell the brands of particular competing suppliers.

(3) The time limitation of five years in paragraph (2)(a) does not apply where the contract goods or services are sold by the buyer from premises, land or a vehicle owned by the supplier or leased by the supplier from third parties not connected with the buyer, provided that the duration of the non-compete obligation does not exceed the period of occupancy of the premises or land, or possession of the vehicle, by the buyer.

(a) General advertising or promotion is considered a reasonable way to reach such customers if it would be attractive for the buyer to incur those costs even if they would not reach customers in other distributors' geographical areas or customer groups (whether exclusive or not).

(b) S.I. 2011/1848.

(c) S.I. 2015/102.

(d) S.I. 2016/273.

(e) S.I. 2016/274.

(f) S.S.I. 2015/446.

(g) S.S.I. 2016/65.

(h) S.S.I. 2016/49.

(4) As regards paragraph (2)(b)—

- (a) any direct or indirect obligation causing the buyer, after termination of the agreement, not to manufacture, purchase, sell or resell goods or services is not an excluded restriction, provided that the following conditions are fulfilled—
 - (i) the obligation relates to goods or services which compete with the contract goods or services,
 - (ii) the obligation is limited to the premises, land or vehicle from which the buyer has operated during the contract period,
 - (iii) the obligation is indispensable to protect know-how transferred by the supplier to the buyer, and
 - (iv) the duration of the obligation is limited to a period of one year after termination of the agreement, and
- (b) any restriction which is indispensable to protect know-how transferred by the supplier to the buyer which has not entered the public domain, whether or not it is time limited, is not an excluded restriction.

(5) In this article, “non-compete obligation” means any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell goods or services which compete with the contract goods or services, or any direct or indirect obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than 80% of the buyer’s total purchases of the contract goods or services and their substitutes on the relevant market, calculated on the basis of the value or, where such is standard industry practice, the volume of its purchases in the preceding calendar year.

Effect of breach of condition in article 10

11. Breach of the condition imposed by article 10 has the effect, as regards a vertical agreement which contains an excluded restriction—

- (a) which is not severable from the agreement, of cancelling the block exemption in respect of that agreement;
- (b) which is severable from the agreement, of cancelling the block exemption in respect of that excluded restriction only.

Obligation to provide information

12.—(1) A person must supply to the CMA(a) such information in connection with the agreements to which it is a party as the CMA may require—

- (a) within a period of ten working days commencing with the relevant day, or
- (b) within such longer period of working days commencing with the relevant day as the CMA may, having regard to the particular circumstances of the case, agree with the person in writing.

(2) If there is a failure to comply with the obligation imposed by paragraph (1) without reasonable excuse, the CMA may, subject first to giving notice in writing of its proposal and considering any representations made to it, by notice in writing cancel the block exemption in respect of any vertical agreement to which the request for information under paragraph (1) relates.

(3) In this article—

“relevant day” means—

- (a) the day on which a person receives notice in writing to provide information under paragraph (1), or

(a) “the CMA” is defined in section 59(1) of the Act.

- (b) where notice to provide information under paragraph (1) is given by publication pursuant to article 14(b), the day on which the notice is published;

“working day” means a day which is not a Saturday, Sunday or any other day on which the CMA is closed for business.

Cancellation and notices

Cancellation in individual cases

13.—(1) If the CMA considers that a particular vertical agreement is not one which is exempt from the Chapter 1 prohibition as a result of section 9 of the Competition Act 1998, it may, subject to paragraph (2), by notice in writing cancel the block exemption in respect of that vertical agreement.

(2) If the CMA proposes to cancel the block exemption in accordance with this Article, it must first give notice in writing of its proposal and must consider any representations made to it.

Notices in writing

14. For the purposes of articles 12 and 13, notice in writing is to be given by—

- (a) the CMA giving notice in writing of its request for information, decision or proposal to those persons whom it can reasonably identify as being parties to the relevant vertical agreement, or
- (b) where it is not reasonably practicable for the CMA to comply with paragraph (a), the CMA publishing its request for information, decision or proposal in—
- (i) the register maintained by the CMA under rule 20 of the CMA’s rules set out in the Schedule to the Competition Act 1998 (Competition and Markets Authority’s Rules) Order 2014(a),
 - (ii) the London, Edinburgh and Belfast Gazettes,
 - (iii) at least one national daily newspaper, and
 - (iv) if there is in circulation an appropriate trade journal which is published at intervals not exceeding one month, in such trade journal,
- stating the facts on which it bases the request, decision or proposal, and its reasons for making it.

Transitional provision and expiry

Transitional provision

15.—(1) In this article, a “pre-existing vertical agreement” means an agreement or concerted practice entered into before 1st June 2022 which on 1st June 2022—

- (a) does not fall into the category specified in article 3, or satisfy the conditions provided for in this Order, and
- (b) immediately before that date satisfied the conditions for exemption provided for in Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices(b).

(2) A pre-existing vertical agreement is to be treated as a vertical agreement specified in article 3 and meeting the conditions provided for in this Order until 1st June 2023.

(a) S.I. 2014/458, to which there are amendments not relevant to this instrument.

(b) EUR 2010/330, as amended by S.I. 2019/93.

(3) Articles 12 to 14 apply to a pre-existing vertical agreement as they apply to a vertical agreement.

Expiry

16. This Order ceases to have effect on 1st June 2028.

4th May 2022

Paul Scully
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is a block exemption Order under section 6 of the Competition Act 1998 (“the Act”). It gives effect to the Competition and Markets Authority’s (“CMA”) recommendation that certain vertical agreements (as defined in the Order) constitute a category of agreements which are likely to be exempt agreements as a result of section 9 of the Act. Agreements which fall within the category specified in the block exemption Order are exempt from the prohibition in Chapter 1 of the Act.

The recommendation was made by the CMA following consultation in accordance with section 8(1) of the Act.

The block exemption applies to such agreements to the extent that they fall within the scope of section 2 of the Act (agreements etc. preventing, restricting or distorting competition (the Chapter 1 prohibition)).

The block exemption applies from 1st June 2022 and will cease to have effect on 1st June 2028 (see article 16).

The block exemption does not apply if the conditions relating to market share (see article 6) or inclusion of hardcore restrictions (see article 8) are not met, or if the vertical agreement contains an excluded restriction which is not severable from the agreement (see article 10).

The block exemption can cease to apply before 1st June 2028 for some agreements if:

- the annual turnover of any individual member of an association of undertakings (together with its connected undertakings) exceeds £44 million (see article 3(3)), although the threshold may be exceeded by up to 10% for up to two consecutive financial years (see article 4(2));
- there is a breach of the condition relating to market share in article 6 (see article 9);
- the CMA cancels the effect of the exemption:
 - because of a failure of an undertaking to provide it with information about the agreement (see article 12(2));
 - because it considers that a particular agreement is not one which is exempt from the Chapter 1 prohibition as a result of section 9 of the Act (see article 13(1)).

The CMA is given a power to ask for information about agreements to which a person is a party (see article 12(1)).

A transitional provision also ensures that the Chapter 1 prohibition does not apply for 12 months to pre-existing agreements which satisfied the conditions for exemption provided for in Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (EUR 2010/330) but which do not otherwise satisfy the conditions for exemption provided for in this Order (see article 15).

Guidance on the block exemption is available from the CMA online at <http://www.gov.uk/cma> or by writing to Competition and Markets Authority, The Cabot, 25 Cabot Square, London E14 4QZ.

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