

EN
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Answer given by Ms Vestager
on behalf of the European Commission
(17.5.2019)

The question relates to agreements between manufacturers and their distributors. Under competition law such agreements are referred to as vertical agreements.

In general, non-binding resale price recommendations and maximum resale prices among two or more parties entering into vertical agreements are exempt from the prohibition of Article 101(1) of the Treaty on the Functioning of the European Union (TFEU) when the market share of each of the parties do not exceed a 30% threshold¹.

Moreover, if parties with a very small market share, which will often be small and medium-sized enterprises (SMEs), enter into vertical agreements, many of the clauses therein may benefit from the *de minimis* notice²; in other words, they will fall outside the scope of Article 101 TFEU for lack of appreciable anticompetitive effects.

However, neither the Commission's block exemption regulations nor the *de minimis* notice permit so-called *by object* restrictions, including Resale Price Maintenance clauses (RPM), which impose requirements on distributors to observe a fixed or minimum price level. Clauses of this type will be caught by Article 101(1) TFEU, since they are prone to restrict competition between distributors.

These clauses are not always illegal. The Commission has issued guidance on this point, explaining the circumstances under which Resale Price Maintenance clauses can be compatible with EU competition law³.

The Vertical Block Exemption Regulation and accompanying Guidelines are currently being evaluated. In this context, a public consultation⁴ is ongoing, so that stakeholders have the opportunity to provide evidence on the functioning of the current rules.

¹ Commission Regulation 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, OJ L 102, 23.4.2010, p. 1-7 (Commission's Vertical Block Exemption Regulation).

² Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 101(1) of the Treaty on the Functioning of the European Union (De Minimis Notice), OJ, C 291, 30.8.2014.

³ Guidelines on Vertical Restraints, OJ C 130, 19.5.2010, p. 1-46, para. 225.

⁴ https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-5068981/public-consultation_en