

WRITTEN QUESTION E-0630/01

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to the Commission

Subject: Guidelines on Vertical Restraints (Competition Law)

In its recent Guidelines on Vertical Restraints¹, the European Commission states that:

'Where an undertaking is dominant or becoming dominant as a consequence of the vertical agreement a vertical restraint that has appreciable anti-competitive effects can in principle not be exempted.'

This statement has been objected to on the grounds that it would create a situation in which companies would be discriminated against. A Commission official has now responded to this objection in a published article² in which he states that:

'The general answer is that competition policy is and should be about discrimination between companies; the rules are stricter for those with market power than for those without and the rules are the strictest for the dominant companies.'

So far as dominant positions are concerned, competition law as set out in the Treaty prohibits certain forms of conduct which are deemed to be abusive. However, in proscribing that conduct the law is not discriminating. It does not permit a practice to one competitor that is denied to another dominant competitor, rather it prevents a dominant competitor adopting a practice that the others cannot. The aim is maintaining a level playing field and safeguarding competition 'on the merits'.

The above statements reveal a possible change in the approach being adopted by the Commission in such cases. The inference is that in future competition law will be about discrimination between companies and not about preventing certain forms of anti-competitive conduct. This would be at odds with the ruling regarding equal treatment made by the CFI in the Langnese case.

1. Does the Commission agree that the fundamental principle of non-discrimination applies to competition law as to other EU-Law?
2. Does the Commission accept that there is a difference between a law that applies a general prohibition against certain conduct, albeit conduct that can only be practised by a dominant firm, and a law which prevents a dominant firm from adopting conduct that is open to other competitors in the market?
3. Does the Commission accept that the former does not discriminate between firms while the latter would do so?

¹ OJ C 291, 13.10.2000, p. 1.

² www.nera.com/media/campaigns/campaign_info.cfm?show=nl&cid=1005