

Lecture 9 - Vertical Agreements under EU Competition Law

- Horizontal agreements are conducted between businesses operating at the same level of the market.
- Vertical agreements are conducted between business operation on different levels of the market
 - Agreements that are prohibited can be allowed if they are shown to meet the 4 criteria set out in s.9 of the UK competition act or Art.101(3) TFEU.
 - Vertical restraints have been considered under Art 101(1) and in particular with reference to the 'MARKET INTEGRATION' objective.
 - Vertical forms of export restriction within the EU have been considered as Object Restriction.
 - However, EU Courts, in assessing other types of vertical agreements, appeared to be willing not to prohibit agreements containing restrictive clauses, if these clauses were pro-competitive when considered in context - *Delimitis v Henniger Brau*

Legal framework:

PRIMARY

- ✓ Art 101(1) + Art 101 (3)

SECONDARY

- ✓ Regulation (EU) 330/2010 on the Application of Article 101(3) to Vertical Agreements and Concerted Practices (UNDER REVIEW! New revised rules planned to enter into force on 1 June 2022)
- ✓ Regulation (EU) 1218/2010 on the Application of Article 101(3) to Specialization Agreements
- ✓ Regulation (EU) 1217/2010 on the Application of Article 101(3) to Research and Development Agreements
- ✓ Regulation (EU) 461/2010 on the Application of Article 101(3) to Categories of Vertical Agreements and Concerted Practices in the Motor Vehicle Sector Regulation
- ✓ Regulation (EU) 316/2014 on the Application of Article 101(3) to Technology Transfer Agreements

SOFT LAW

- ✓ Guidelines on Vertical Restraints (UNDER REVIEW!)
- ✓ Guidelines on the Application of Art 101(3) TFEU
- ✓ Guidelines on the Applicability of Article 101 TFEU to Horizontal Agreements
- ✓ Guidelines on the Application of Article 101 [TFEU] to Technology Transfer Agreements
- ✓ Supplementary Guidelines on Vertical Restraints in Agreements for the Sale and Repair of Motor Vehicles and for the Distribution of Spare Parts for Motor Vehicles

Vertical Agreements In Eu Competition Law Vertical Agreements In Eu Competition Law

Frank Wijckmans, Filip Tuytschaever



Vertical Agreements In Eu Competition Law Vertical Agreements In Eu Competition Law:

Vertical Agreements in EU Competition Law Frank Wijckmans, Filip Tuytschaever, 2025-03-19 Now in its fourth edition this volume provides comprehensive specialised coverage of EU competition law applicable to vertical agreements offering insightful analysis of the new block exemption regime under the Regulation EU 2022 720 and the 2022 Vertical Guidelines and the block exemption regime applicable to the distribution of motor vehicles Business practice is replete with vertical agreements and practitioners are often asked to advise on the admissibility of certain restrictions of competition included in such agreements The latest edition of Vertical Agreements in EU Competition Law discusses these restrictions and the different distribution systems in which they can be found including exclusive selective and free distribution as well as franchising and agency It offers expanded coverage of regulations applicable to online sales and advertising including a new chapter on e commerce The authors draw on their competition law experience to provide detailed and practice oriented analysis of the EU regulatory framework as applied by the Commission and the EU courts The latest instalment of an established practitioner text Vertical Agreements in EU Competition Law is an essential resource for lawyers and legal counsel practising in the field of competition law

Regulating Vertical Agreements Maria Fernanda Caporale Madi, 2020-10-09 Vertical agreements represent a variety of supply and distribution contracts involving different market players such as suppliers of diverse inputs manufacturers distributors and retailers They gain particular significance in a global economy where technological advances are dynamic and are changing all the time Such agreements are signed among businesspeople on a daily basis and antitrust experts around the world are often asked to advise on whether they have any negative impact on competition or whether they infringe antitrust law Taking into consideration the complex economic impacts of these vertical alliances and the different market conditions that firms face in a wide variety of situations the author proposes an in depth examination of the following topics resale price fixing geo blocking clauses exclusive and selective distribution systems the concept of economic efficiency in the context of vertical restraints self assessment of potential anticompetitive effects and antitrust risks ex post control of vertical restraints digital economies and its policy impact alternative enforcement models under various institutional frameworks the role and influence of political pressure groups The book offers very constructive theoretical and political insights at the frontier between the disciplines of Economics and Law By comparing two world s leading antitrust jurisdictions this book explores the lessons to be learned from the legal rules in the European Union and in Brazil considering their promises and drawbacks and formulates policy recommendations

Vertical Agreements and Competition Law Sandra Marco Colino, 2010-01-02 This book focuses on the current legal framework for vertical agreements in the EU and the US Over the last ten years antitrust rules governing these agreements have undergone thorough reform In the EU the old sector specific block exemptions were replaced by Regulation 2790 99 applicable to all sectors of the economy In addition changes introduced to the procedural rules have led to the

decentralisation of Article 81 3 and the removal of the notification requirement In like manner in the US the Supreme Court has gradually taken vertical restraints out of the per se illegality rule What Sylvania achieved in placing non price vertical restraints under the rule of reason in the late 1970s the Khan judgment did for maximum resale price maintenance in 1997 whilst most recently and most significantly in 2007 the Leegin case followed suit for minimum resale price maintenance The book is divided into four chapters The first chapter considers the double nature of vertical agreements and the regulatory dilemma The second chapter explores the most influential economic theories underpinning current regulatory frameworks and how these theories shape antitrust policy The third chapter questions the adequacy of the current economic analysis in recent EU and US legislation and court decisions The fourth chapter analyses how this maturing economic analysis can be reconciled with what commentators and regulators have identified as a key role for competition policy redressing assumed imbalances between dealers and manufacturers The author concludes by querying the prevailing logic of protecting sectoral interests above the competitive process

Guide to the EU Block Exemption for Vertical Agreements Martin

Mendelsohn, Stephen Rose, 2002-01-01 The revised EC policy on the application of competition law to vertical agreements is one of the most important developments in EC anti trust for many years The block exemption regulation which came into effect on 1 June 2000 and the accompanying policy changes are crucially important for companies doing business in the European Union Whichever route a business chooses to get its products to market it needs to understand the impact of the EC rules This guide provides a comprehensive and practical commentary on the new rules The work contains the full text of the block exemption regulation accompanying guidelines and other relevant Commission notices Issues covered include background to EC competition law and its application to vertical agreements in depth analysis of the provisions of the block exemption regulation examination of how the rules apply to exclusive distribution and selective distribution franchising and agency agreements The authoritative and in depth analysis of the guide will be invaluable to in house counsel business people and practitioners involved in or advising on the distribution of goods or services in the EU

Vertical Agreements and Competition Law Sandra Marco Colino, 2022 This book explores the legal framework for vertical supply and distribution agreements under the competition law regimes of the United States US the European Union EU the People s Republic of China PRC and Hong Kong The fierce scholarly debate relating to the treatment of vertical relationships between businesses operating at different levels of production or distribution is fuelled both by ideology and by the mixed effects these restrictions may have on competition As a consequence it is one of the areas in which the influential Chicago and Harvard Schools disagree most vehemently The opposed views have resulted in significant swings in the law and policy affecting these contracts in the US and the EU two of the world s most experienced antitrust jurisdictions In China where competition legislation was adopted only in 2007 vertical restrictions have already attracted the attention of both public and private enforcers It remains to be seen how the Hong Kong Competition Ordinance in force only since 2015 will be applied to vertical

agreements The book revisits this classic dispute with the aim of providing a thorough understanding of the controversy and the merits of the solutions explored over decades of competition law enforcement in the US and the EU It also assesses the validity of those solutions for younger antitrust regimes by focusing on China one of the most active new jurisdictions and Hong Kong which is just beginning to develop Chapter 1 considers the mixed effects of vertical agreements and the goals of competition policy Chapter 2 highlights the influence of policy and economics in the law and explores the prominent schools of thought which have shaped the current regulatory framework for vertical agreements Chapter 3 assesses the extent to which economic analysis should play a role in competition policy towards these restrictions Chapter 4 covers the relevant enforcement and procedural issues and Chapter 5 attempts to reconcile the development of an economic effects based approach with the attainment of other goals of antitrust affecting the relationship between suppliers and buyers

Vertical Restraints in the Digital Economy Adina Claici, Denis Waelbroeck, 2021-05-21 Vertical agreements between undertakings at the various levels of a supply chain have long been seen as a fundamental focus for antitrust legislation such as the European Union's Vertical Block Exemption Regulation VBER It goes without saying that such issues are particularly prevalent in digital markets This authoritative commentary analyses the main restrictions in vertical agreements emphasising the numerous new and contentious issues arising in the context of Internet distribution It offers both legal and economic perspectives as well as examines enforcement and possible changes to the legislation The contributors leading competition authority officials lawyers economists and academics provide in depth discussions of topics that have emerged as areas for conscious policy choices including the following restrictions of online sales price parity obligations resale price maintenance the duration of non compete obligations sustainability agreements geo blocking practices and restraint of trade in pharmaceuticals The contributions have emerged from the 2020 conference of the Global Competition Law Centre at the College of Europe in the context of the currently ongoing review of the VBER and vertical guidelines With its multidisciplinary approach highlighting the efficiencies and harms caused by the restrictions at stake this important book clearly shows how law and practice apply to specific issues relating to digital markets and how the law is likely to change in the near future It will be of immeasurable value to lawyers and officials concerned with European competition law and academics in the field

Vertical Agreements and Eu Competition Law Jonathan D. C. Turner, 2005 This practical book provides a detailed analysis of the new regime including the block exemptions for vertical agreements and motor industry agreements the Commission's Guidance and recent cases and decisions

Competition Law and Policy in the EU and UK Barry J. Rodger, Angus Macculloch, 2021-11-07 Competition Law and Policy in the EU and UK provides a focused guide to the main provisions and policies at issue in the UK and EU including topics such as anti competitive agreements abuse of dominance mergers and Brexit The book's contents are tailored to cover all major topics in competition law teaching and the authors clear and accessible writing style offers an engaging and easy to follow overview of the subject for course use The

sixth edition provides a full update for this well established title and takes recent developments into account including those in the case law surrounding the concept of object agreements under Art 101 TFEU the concept of abuse under Art 102 TFEU the treatment of online multi sided platform markets and the development of private enforcement Chapters focus on the substantive laws of the UK and EU and demonstrate how competition law affects business including co ordinated action pricing behaviour takeovers and mergers Information is presented within a structured framework complete with discussion of the UK enforcement structures following the UK s withdrawal from the EU The book includes a wealth of pedagogical features including chapter overviews and summaries discussion questions and further reading Clear focused and student friendly this book offers a comprehensive resource for students taking competition law courses and will be of interest to postgraduate students and legal professionals looking for an introduction to the topic

A Comparative Study of United States and European Union Approaches to Vertical Policy James C. Cooper, Luke M. Froeb, Daniel P. O'Brien, Michael Vita, 2012 In recent years divergence between United States US and European Union EU competition policy has garnered a lot of attention One particular area where these differences are evident is the treatment of vertical restraints In the USA an antitrust plaintiff must show that a vertical agreement is likely to harm competition that is reduce economic welfare EU competition law on the other hand places a lower burden on the European Commission EC The EC recently has promulgated a block exemption regulation BER that defines circumstances under which vertical arrangements are automatically exempted under Article Art 81 3 still European competition law condemns many more vertical agreements than does US antitrust law Dominant firms entering into vertical agreements receive even harsher treatment under EU competition law Because the Guidelines to the BER explicitly exclude dominant firms from exemption under Art 81 3 it appears that Art 81 proscribes dominant firms from entering into vertical agreements that restrict the behavior of the contracting parties Additionally Art 82 discourages dominant firms from entering into vertical agreements This paper uses a Bayesian framework to analyze the disparate treatment of vertical arrangements in the USA and EU The practice of antitrust is the problem of inferring the competitive consequences of various types of market conduct We argue that an optimal enforcement estimator would minimize an expected social loss function where the expectation is taken over the posterior probability that a given practice is anticompetitive given evidence in a particular case Empirical literature informs priors whereas theory informs the likelihood We show how differences in antitrust treatment of vertical practices can be explained by different loss functions even when each jurisdiction shares the same beliefs regarding the theoretical and empirical effects of vertical restraints

VBER 2022: EU Competition Law for Vertical Agreements Benedikt Röhrßen, 2023-08-30 This book tackles the Vertical Block Exemption Regulation VBER The VBER 2022 is the new playbook in Europe for vertical agreements Vertical agreements i e between parties from different levels of the production or distribution chain are ubiquitous in the EU economy Vertical agreements which appreciably restrict competition are in principle void and subject to fines By exception

agreements may already fall outside the scope of competition law or may be exempt if their pro competitive effects prevail Whether they do or not requires an individual assessment of each agreement with respective legal uncertainty The VBER however is the shortcut to legally certain vertical agreements because it exempts groups of vertical agreements from the prohibition of anti competitive agreements It therefore builds the practical core of distribution law Only understanding and implementing the VBER ensures a compliant distribution set up This goes for all kinds of vertical agreements especially digital dual exclusive and selective distribution plus franchise The VBER 2022 is intended to take into account market developments in particular the strong growth in e commerce Digitalisation has reinforced the trend toward verticalization and thus toward dual distribution The VBER 2022 now reboots the existing playbook making it fit for digital distribution And this book shall help as a shortcut to understanding the VBER to quickly and easily pass the transition to the new rules This book is written from the distribution contract drafting perspective It is born out of the author s practice as German attorney at law and partner in the international law firm Taylor Wessing This book aims at providing private practitioners in house counsels as well as officers within authorities and judges practical guidance on the rebooted competition law regime in the European Union including many examples of provisions to be used especially in distribution and franchise agreements It also tables and checklists for creating new and adapting existing agreements to the VBER This book has been written while accompanying the reform discussions and the introduction of the VBER 2022 as an author speaker and private practitioner

Introduction to EU Competition Law Peter Willis, 2013-09-05 This book provides an introductory but thorough guide to EU competition law covering the underlying economics and the key substantive areas of anticompetitive agreements Article 81 abuses of dominance Article 82 the application to the most common types of commercial agreement state aids state measures limiting competition and mergers It also examines the procedures under which the relevant competition authorities apply the rules private enforcement of the rules before the courts and minimising risk by implementing a compliance programme The emphasis is practical rather than theoretical the authors are practitioners in the field of competition law and economics with many years individual and collective experience in the area This will be an essential reference tool for practitioners academics and students of EU Competition Law *EU Competition Law* Eleanor M. Fox, Damien Gerard, 2023-01-20 This innovative textbook now in its second edition presents EU competition law in political economic and comparative context It brings competition law to life from an EU and global perspective with cross currents of trade and industrial policy and attention to the intervention of the state in the market Quintessentially readable the book deftly and concisely excerpts the key cases and embeds them in explanatory materials including policy statements and regulations It is entirely up to date and integrates for example new issues of power in the digital economy Notes accompanying the cases raise hard questions and explain the fascinating issues underlying contemporary competition policy in the European Union and around the world *Handbook of EU Competition Law* Walter Frenz, 2015-12-18 This handbook

offers detailed descriptions of EU competition law including mergers and public authorities. Above all, it analyzes and discusses recent decisions of the ECJ and the General Court. Presenting systematically structured and theoretically founded content, the book also includes recommendations for practitioners. Special attention is paid to the scope of penalties and the influence on fundamental rights. Rounding out the book, the conflict between safeguarding confidential information and the effectiveness of private and public enforcement is discussed intensively in the context of the new Directive 2014/104/EU.

The Evolution of European Competition Law Hanns Ullrich, 2006-01-01. Professor Ullrich is thoughtful and attracted star scholars from many countries so the papers and discussion are provocative and introduce recent economic thinking although many are written by lawyers. The text is lucid and interesting, the thought innovative, and anyone seriously interested in competition policy should read these papers and the comments with pleasure. Valentine Korah, World Competition. This collection of papers and comments deserves to be widely read and it should appeal to academics and practitioners alike. The great mix of topics and the variety of views offered make this a very stimulating contribution to the discussion of the new paradigm of EC competition law, the more economic approach and its implications for the application and interpretation of the various EU antitrust rules. Thomas Eilmansberger, European Law Journal. The editor should be congratulated for bringing together this diverse group of scholars whose spirited disagreements remind one of the many challenges faced in exploring the role and function of competition law. Giorgio Monti, European Review of Contract Law. With contributions from leading scholars from all over Europe and the US, this book covers the major areas of substantive competition law from an evolutionary perspective. The leitmotiv of the book has been to assess the dividing line between safeguarding and regulating competition, which it does by reviewing the following subjects: foundations of competition policy in the EU and the US; strategic competition policy; the evolution of European competition law from a national Italian perspective; the block exemption of vertical agreements after four years; the new Technology Transfer Block Exemption; cooperative networking mergers in the media sector; abuse of market power; concepts of competition in sector-specific regulation; competition regulation and systems coherence; efficiency claims in EU competition law and sector-specific regulation. *The Evolution of European Competition Law* will be of great interest to lawyers, economists, academics, judges, and public officials working in the fields of competition law and policy. [An Introduction to EU Competition Law](#) Moritz Lorenz, 2013-04-25. Succinct and concise, this textbook covers all the procedural and substantive aspects of EU competition law. It explores primary and secondary law through the prism of ECJ case law. Abuse of a dominant position and merger control are discussed, and a separate chapter on cartels ensures the student receives the broadest possible perspective on the subject. In addition, the book's consistent structure aids understanding: section summaries underline key principles, questions reinforce learning, and essay discussion topics encourage further exploration. By setting out the economic principles which underpin the subject, the author allows the student to engage with the complexity of competition law with confidence.

Integrated examples and an uncluttered writing style make this required reading for all students of the subject

Coherence in EU Competition Law Wolf Sauter, 2016-05-26 EU competition law plays a central role in the process of European integration both as a multifaceted tool for creating and policing the internal market as well as in organising national markets Yet as a consequence of this role it is also subject to increasingly complex demands a proliferation of sectoral regimes and multiple objectives at both an EU and national level This profligacy entails risks of fragmentation and divergence which could jeopardise the proper functioning of the internal market In this examination of EU competition law Wolf Sauter discusses three main issues i what degree of coherence exists in EU competition law ii how this coherence can be explained particularly in the broader context of integration by EU law and iii how it contributes to the legitimacy and effectiveness of EU competition law Specific focus is placed on antitrust while mergers state aid control as well as the sectoral regimes for energy and electronic communications are also examined In addition the book also charts the history and framework of these competition regimes that jointly constitute EU competition law defining both its objectives and limitations

EU and US Competition Law: Divided in Unity? Csongor István Nagy, 2016-04-22 This book examines the structure of the rule on restrictive agreements in the context of vertical intra brand price and territorial restraints analysing comparing and evaluating their treatment in US antitrust and EU competition law It examines the concept of agreement as the threshold question of the rule on restrictive agreements the structure and focus of antitrust competition law analysis the treatment of vertical intra brand price and territorial restrictions and their place in the test of antitrust competition law The treatment of vertical intra brand restraints is one of the most controversial issues of contemporary competition law and policy and there are substantial differences between the world's two leading regimes in this regard In the US resale price fixing merits an effects analysis while in the EU it is prohibited almost outright Likewise territorial protection is treated laxly in the US while in the EU absolute territorial protection due to the single market imperative is strictly prohibited Using a novel approach of legal analysis this book will be of interest to academics and scholars of business and commercial law international and comparative law

Resale Price Maintenance and Vertical Territorial Restrictions Barbora Jedlicková, 2016-03-25 Theoretical discussions among competition lawyers and economists on the approach to Resale Price Maintenance RPM and Vertical Territorial Restrictions VTR have often caused controversy However commentators agree that there is a lack of comprehensive study surrounding the topic This book explores these two forms of anticompetitive conduct from legal historical economical and theoretical points of view focusing on the EU and US experiences The author expertly goes beyond the current legal practice to explain among other things what approach should apply to RPM and VTR and why RPM and VTR are introduced in situations where procompetitive theories would not make economic sense or do not apply in practice The book takes account of economic values such as efficiency and welfare as well as other values such as freedom fairness and free competition Scholars and

students of law will find the book's depth of legal economic and historical analysis to be a rich contribution to the scholarship. This book will also be of use to EU and US practitioners and enforcers dealing with RPM and VTR cases. **Competition**

Law of the European Union Van Bael & Bellis, 2021-03-01 This new Sixth Edition of a major work by the well known competition law team at Van Bael the extensive case law in the field of cartels including in relation to cartel facilitation and price signalling important Article 102 rulings concerning pricing and exclusivity including the Post Danmark and Intel judgments as well as standard essential patents the current block exemption and guidelines applicable to vertical agreements including those applicable to the motor vehicle sector developments concerning online distribution including the Pierre Fabre and Coty rulings the current guidelines and block exemptions in the field of horizontal cooperation including the treatment of information exchange the evolution of EU merger control including court defeats suffered by the Commission and the case law on procedural infringements the burgeoning case law related to pharmaceuticals including concerning reverse payment settlements the current technology transfer guidelines and block exemption procedural developments including in relation to the right to privacy access to file parental liability fining methodology inability to pay and hybrid settlements the implementation of the Damages Directive and the first interpretative rulings As a comprehensive up to date and above all practical analysis of the EU competition rules as developed by the Commission and EU Courts this authoritative new edition of a classic work stands alone Like its predecessors it will be of immeasurable value to both business persons and their legal advisers

EU Competition Law Mario Siragusa, Gianluca Faella, 2020-07-15 This new volume analyzes in considerable detail the antitrust issues arising from vertical restraints and presents a comprehensive map and critical assessment of current enforcement practice in the European Union The purpose of the book is to provide extensive guidance to practitioners businesses and researchers as well as to contribute to the ongoing debate on the application of EU competition rules to distribution and other vertical agreements The book contains thoughtful contributions written by leading practitioners and scholars from different countries which address the general framework for assessing vertical restraints and cover a wide range of vertical practices After discussing the pro competitive rationale the potential negative effects of vertical restraints and the introduction of an economic approach by the Commission the book examines the block exemption regulation and critically reviews the limits of the 2010 revision of EU rules on vertical restraints It then explores in detail the enforcement practices concerning the most commonly used vertical restrictions and specific agreements entered into by firms situated at different levels of the production chain In particular the book provides an extensive review of the issues raised by the individual assessment of resale price restrictions exclusive distribution and customer allocation selective distribution single branding tying upfront access payments and category management Specific chapters are also devoted to franchising agency and sub contracting agreements The book's continuous references to economic analysis insights as well as the comparisons with the experiences of other legal systems contribute to its value and usefulness Series EU Competition

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