Horizontal cooperation agreements: application of competition rules

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PURPOSE: in this Communication concerning competition rules applicable to horizontal cooperatio agreements, the Commission invites all interested parties to submit their comments regarding the following three texts: - a draft block exemption Regulation on the application of Article 81 (3) of the treaty to categories of specialisation agreements, - a draft block exemption Regulation on the application of Article 81 (3) of the treaty to categories of research and development (R&D) agreements, - draft guidelines on the applicability of Article 81 (3) to horizontal cooperation agreements. CONTENT: the review of the competition rules applicable to horizontal cooperation agreements started in 1997 with a wide§ranging consultation of European companies. It showed that industry regards the existing block exemption Regulations as too focused on legal clauses, and that there is a need for clearer guidance on the assessment of those categories of cooperation which are not covered by any block exemption. The draft documents thus aim to give better guidance to market participants. They will replace the fragmented and partly outdated notices and regulation in this area. The review is also an essential pillar in the Commission's attempts to modernise competition policy. The draft block exemption Regulations are intended to replace the existing Regulation on Specialisation and R&D. In comparison with the existing Regulations, the drafts are designed to be more user§friendly, with greater clarity and an increased scope of application. The new block exemptions will replace the existing system of specifically exempted 'white list' clauses by a general exemption, for companies holding no significant market power, of all conditions under which undertakingss pursue R&D and specialisation agreements. However, 'hardcore' restrictions (price-fixing, output limitation or allocation of markets or customers) will generally remain prohibited. The market share threshold for exemption is set at 20% for specialisation agreements, and at 25% for R&D agreements. The draft guidelines complement the draft block exemption Regulations. They are applicable to R&D and production agreements not covered by the block exemptions as well as to certain other types of competitor collaboration (e.g. joint purchasing, or joint commercialisation). The Guidelines describe the general approach which should be followed when assessing horizontal cooperation agreements and set out a common analytical framework. This should help companies to assess with greater certainty whether or not an agreement is restrictive of competition and, if so, whether it would qualify for an exemption.