Competition policy: vertical restraints. Green Paper

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OBJECTIVE: The Green Paper offers a re-evaluation of the subject of vertical restraints in Community competition policy (exclusive distribution, exclusive purchase, selective franchising and distribution) with the aim of revising the rules. SUBSTANCE: The Commission's analysis shows that, given their considerable effects, positive or negative, on market integration, vertical restraints are of major importance for Community competition policy. While the policy has proved itself successful over more than thirty years, a review is now necessary for the following reasons: - the single market legislation is now largely in place; it is therefore possible that in future, obstacles arising from the private sector (e.g. agreements between companies) will be more likely to threaten the unity of the internal market than impediments of a public nature; - the three regulations governing exclusive purchase, exclusive distribution and franchising are about to expire; - there have been major changes (especially thanks to the use of information technology) that may have implications for Community policy on vertical restraints. The Commission also stresses that distribution, the sector most affected by vertical restraints, represents a significant part of the internal market. it employs 22 m persons (15.6% of the total active population), represents 12.9% of value added and accounts for 4.5 m enterprises (29.4% of all undertakings). All companies need distribution, and quality and efficiency of service are crucial factors for consumer choice. However, distribution, while a dynamic sector, is also characterized by barriers to entry which tend to bolster the market power of certain distributors in oligopolistic markets. While there are examples of distributors moving outside their 'home' market and some Europe-wide chains are emerging, distribution, particularly at the retail level, is still largely national. The Commission asks whether this national character - linked to the need for economic integration of supply chains, a tendency now reinforced by the economies deriving from information technology - has implications for its competition policy. The Green Paper sets out the existing economic and legal framework governing vertical restraints, and summarizes the results of a preliminary inquiry targeted on producers, retailers, professional organizations, consumer associations and experts. This exercise has enabled the Commission to define four (non-exhaustive) options for the future direction of Community policy on vertical restraints: - Option 1 - retention of the current system, with its advantages in both material and procedural terms (possibility of a global economic assessment of the benefits of agreements; favouring of market integration; possibility of creating innovatory forms of distribution; notification system; 'one-stop shop'; legal security; etc); - Option 2 - wider block exemptions: this would make the block exemption arrangements more flexible, and would extend the range of beneficiaries. In this case, either a block exemption Regulation for selective distribution would be adopted or there would be an arbitration procedure for disputes concerning admission to such distribution systems. The special arrangements for beer and petrol supplies would be made more flexible; - Option 3 - more focused block exemptions: this option would restrict the existing block exemptions to companies with a market share under a certain threshold (e.g. 40%), - Option 4 - reduction of the scope of the provision banning agreements: this option would introduce, for parties with a market share under 20%, a (rebuttable) presumption of compatibility with Article 85(1) of the EC Treaty ('negative clearance presumption').