Competition policy: vertical restraints, guidelines

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In adopting the report by Mrs. Marianne THYSSEN (EPP/ED, Belg), the European Parliament approves the legislative resolution on the draft guidelines on vertical restraints. Firstly, the European Parliament welcomes the Commission's initiative of publishing Guidelines on the application of Article 82, because businesses are thus provided with an instrument enabling them to assess their vertical agreements with a view to the way in which the Commission proposes to implement the policy. However, the Parliament notes it would be possible for businesses to make this assessment still more effective if the Guidelines contained references to earlier administrative decisions and constant law case. Secondly, the European Parliament considers that the Guidelines are generally clear and unambiguous, but asks the Commission nevertheless to take into account the following observations: - Guidelines should contain more interpretation and concrete examples of cases in which the supplier makes significant investments to the benefit of the purchase; - clarify the uncertainty among undertakings; - pay attention to the actual current economic situation when refering to agency agreements; - the need to go into more detail when evaluating exclusivity clauses in agency agreements; - the need for the Commission to make it clear in the Guidelines that, if only a limited number of retailers has a turnover slightly exceeding EUR 50 million, the general evalution pursuant to Article 81 will not normally differ from instances where all members respect the turnover ceiling; - in particular habitual practices specific action should be taken in respect of these practices, since they are not only inimical to competition, but are regularly used to block parallel imports in order to create watertight national markets; - the need to specify the cases in which a non-compete clause may remain valid for more than 5 years, ruling out cases where suppliers resort to bogus transactions (establishing surface rights, usufruct, sale to the distributor with a buy-back agreement, and so forth) to extend the life of a contract and foreclose the market; - when referring to markets for spare parts, it is necessary to specify the cases in which the market for a make's spare part constitutes a distinct market (as defined in the Hugin rule). Furthermore, the European Parliament calls on the Commission to evaluate the application of the Guidelines over time and where appropriate adjust them. It has also suggested that the Commission carry out this evaluation within four years, and urges it to notify Parliament of the results, together with any proposed amendment of the Guidelines and to publish them in the Official Journal of the Euroepan Communities. In conclusion, the Parliament considers it at any rate appropriate that the Commission, should it depart for whatever reason from its policy set out in these Guidelines, should issue a communication to notify businesses of this.