



Case C1570G – Vertical Block Exemption

Information Note

Guernsey Competition & Regulatory Authority

Case Number: C1570G

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Introduction

Guernsey competition law prohibits business to business agreements that prevent competition. This is a broadly drafted ban. It can catch a wide range of agreements, from market sharing and price fixing cartels at one end to normal business arrangements, such as supply and distribution contracts, at the other. The competition law allows for exemptions on the basis of a balancing test, where pro-competitive effects outweigh any negative effects on competition. But until now, the only way to obtain such an exemption has been to apply to the Guernsey Competition and Regulatory Authority (the **Authority**) on a case-by-case basis. This process is time consuming both for businesses and for the Authority. It is also disproportionate in many cases given that the pro-competitive effects of large numbers of business agreements outweigh any negative effects.

To address these issues, the Committee *for* Economic Development (the **Committee**) has put in place regulations (**Vertical Arrangements Block Exemption; VABE**). The VABE “pre-exempts” so-called vertical agreements from the competition law prohibition, provided that certain conditions are met. Agreements that fall within the VABE do not need to be notified to the GCRA for clearance.

How does the VABE work?

The VABE is based on three key principles:

1. The prohibition on anti-competitive agreements does not apply to “vertical agreements” (the **Exemption**)
2. The Exemption applies provided that the parties’ market shares are 30% or less
3. The Exemption applies provided that the agreement does not contain certain hard-core restrictions of competition.

These are explained below.

What is a vertical agreement?

Vertical agreements are agreements between businesses at different levels of the supply and distribution chain. Examples of these are agreements between a wholesaler and a retailer or between a manufacturer and a distributor.

Which market shares count?

To fall within the VABE, the market shares of both the supplier and the buyer must be 30% or less. For the supplier, the relevant market is the market where it sells the contract goods or services. For the buyer, the market on which it buys the contract goods or services is the relevant frame of reference.

Hard core restrictions

If a vertical agreement contains any of a number of seriously anti-competitive restrictions (sometimes referred to as “hard core” restrictions of competition), this will take the whole agreement outside the safe harbour of the VABE. The hard core restrictions are listed in regulation 3 of the VABE and include resale price maintenance (price-fixing) and market division.

Conclusion

The VABE should enable businesses and their advisers to quickly and easily confirm that their agreements are compliant or to make the necessary changes to bring them within the scope of the VABE. As well as reducing legal risk, it also reduces the administrative burden both on businesses and on the Authority.

There is no presumption that agreements that fall outside the scope of the VABE are anti-competitive. Such agreements should, however, continue to be notified to the GCRA for clearance to avoid the risk of them being later found to be anti-competitive and unenforceable.

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