

# The 30 % market share threshold

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## Market share thresholds – The changes

- Draft Article 3 :

~~1. Subject to paragraph 2 of this Article, the **Market share threshold**~~

~~The exemption provided for in Article 2 shall apply on condition that the market share held by each of the undertakings party to the supplier agreement does not exceed 30 % on any of the relevant market on which it sells the contract goods or services.~~

~~2. In the case of vertical agreements containing exclusive supply obligations, the exemption provided for in Article 2 shall apply on condition that the market share held markets affected by the buyer does not exceed 30 % of the relevant market on which it purchases the contract goods or services agreement.~~

- Market share of the supplier (or of the buyer in exclusive supply cases) v. market share of the parties to the agreement
- Market on which the supplier sells (the buyer purchases) v. any of the markets affected by the agreement

## Single branding

### *Not to be exempted*

Seller : 25 %

Foreclosure effect on other sellers ?

Buyer : 40 %

## Single branding

*Is the not to be exempted scenario likely ?*

*Is it self correcting ?*

Manufacturer : 25 %

Component manufacturer : 25 %

Distributor : 40 %

Manufacturer : 40 %

# Single branding

## *Is the issue market definition?*

Manufacturer : 25 % Market A

Component manufacturer : 25 % Market A

Distributor : 40 % Market B

Manufacturer : 40 % Market B

Draft Article 3 : *"on any of the markets affected by the agreement"*

Para. 83 of the draft Guidelines on Vertical Restraints : *"Under Article 3 of the Block Exemption Regulation, it is the market share of both the supplier and the buyer that are decisive for the application of the block exemption. Both the market share of the supplier, on the market where it sells the contract products to the buyer, and the market share of the buyer, on the market(s) where it (re)sells the contract products, may not exceed 30 % in order to be covered by the Block Exemption Regulation."*

# Single branding

## *Market definition and distributors*

Manufacturer : 25 %	Product A	Worldwide/National
Wholesaler : 25 %	Product A	National/Regional
Retailer : 40 %	Product A	Regional/Local
Franchise : 35 %	Product A	Local

Para. 85 of the draft Guidelines on product market : *"(...) A Distributor, as reseller, cannot ignore the preferences of final consumers when he purchases final goods (...)"*

Para. 85 of the draft Guidelines on geographic market : *"(...) As distributors are professional buyers, the geographic wholesale market is usually wider than the retail market, where the product is resold to final consumers. Often, this will lead to the definition of national or wider wholesale markets."*

# Single branding

## *Market definition and components*

Manufacturer : 25 %      Product A

Manufacturer : 40 %      Product B ?

*Para. 85 of the draft Guidelines on Vertical Restraints : "(...) When the supplied product is used as an input to produce other products and is generally not recognisable in the final product, the product market is normally defined by the direct buyers' preferences. (...)"*

## Exclusive supply

### *Not to be exempted*

Seller : 35 %

Buyer : 25 %

Foreclosure effect on other buyers?

## Exclusive supply

*Is the not to be exempted scenario likely ?  
Is it self correcting ?*

Manufacturer : 35 %

Component manufacturer : 35 %

Distributor : 25 %

Manufacturer : 25 %

## Conclusion

- Why fix what works ?