New Commission Rules on Horizontal Co-Operation Agreements

Information Exchange

GCLC Conference, Brussels, 16 February 2011

Donncadh Woods
European Commission
DG Competition

Caveat: all comments are personal and may not reflect the position of the European Commission
• Innovation and competitiveness are fundamental to the Commission's Europe 2020 strategy.
Horizontal Co-Operation Agreements

New rules adopted 14 December 2010

COVER:
• R&D agreements
• Production agreements
• Purchasing agreements
• Commercialisation agreements
• Standardisation agreements and standard terms
• Information Exchange
• A mix of some of these categories
Horizontals Review

• Main areas of change:
  – New: guidance on information exchange
  – Standardisation chapter (“Safe harbour” regarding standard-setting process + guidance outside)
  – Scope of R&D BER extended to also cover paid-for research (in contrast to “joint” research)
  – Incremental improvements in other chapters of the guidelines
Information Exchange

• Reasons for new chapter:
  – Strong stakeholder demand
  – Complex economics
  – Case law
  – Decentralisation
  – Only sector-specific guidance by Commission
Information Exchange

• Types of information exchanges:
  – Part of other horizontal agreements – assessed together with such agreements
  – Ancillary to a cartel (monitoring device) – assessed as part of the cartel
  – Pure information exchanges – not underpinning any other unlawful conduct
  – Directly or through third party collecting entity, which then disseminates the data
Information Exchange

• Key features of the new chapter:
  – Guidance on concerted practices
  – Guidance on restrictions by object
  – Relevant factors for assessment of restrictive effects
  – Efficiencies
Information Exchange

• Restriction by object:
  – Information exchange between competitors of individualised information regarding intended future prices or quantities
Information Exchange

• Theories of harm regarding restrictive effects:
  – Collusive outcome: coordination of the firms' behaviour leading to restrictive effects on competition:
  – Anticompetitive foreclosure
Information Exchange

• Relevant factors for assessment of restrictive effects:
  – Market characteristics
  – Characteristics of the information exchange including market coverage
  – In how far does the exchange modify the market so that a collusive outcome is likely?
Information Exchange

• Efficiencies:
  – Improving internal efficiencies of firms through benchmarking
  – Reducing inventories, quicker delivery of perishable products to consumers, dealing with unstable demand
  – Allocation of production towards high demand markets or low cost firms
  – Reducing risks of entering new markets
  – Dealing with problems of information asymmetries
  – Reduced search costs for consumers (public exchange)
Questions?
Thank you for your attention!