



EVALUATION OF THE EU COMPETITION RULES ON HORIZONTAL AGREEMENTS BETWEEN COMPANIES

The procedural framework for competition law enforcement should be proportionate and focus on what is necessary for effective enforcement, without imposing unnecessary burdens for companies. Cooperation between companies is becoming increasingly necessary to generate efficiencies and benefits to society and provide customers with complete solutions.

EU rules on horizontal cooperation should encourage companies to collaborate to carry out joint technology development or achieve objectives of other EU policies (e.g. environmental and sustainability objectives).

Especially in the age of Industry 4.0, such joint research projects or collaborations through industry platforms play an important role. Platforms offer new opportunities and business models for companies on both the provider and customer side. A self-assessment on the question of whether a particular form of cooperation between competitors is admissible is always associated with a high degree of legal uncertainty.

The Commission should therefore give clear guidance to companies intending to collaborate. There is already significant uncertainty for cooperation arrangements outside Industry 4.0 but for new digital projects (e.g. with a view to cooperation arrangements for the generation and shared use of data) there is yet none or only little case law. Existing policy should improve and provide more legal certainty for companies that want to develop new digital projects. This might be done for example through guidance letters, "no infringement" decisions, or clearer criteria in the Horizontal Block Exemption Regulations and the Guidelines on Horizontal Cooperation.

EU competition policy should also encourage temporary collaboration between companies (consortia) to make more effective bids for contracts. Such consortia of companies would be eligible for tender, enabling it to bid for the larger contracts that have become more and more the normal situation.

Consortia have many advantages in big contracts because they can increase their economic and financial standing and minimise the risk whilst combining and complementing their technical and professional expertise.

Current strict competition law enforcement can discourage such collaboration between competitors because of the legal uncertainty and risk of breaching the rules. This could lead to fewer bids or even to single bids in a tender procedure. Therefore, the EU should provide more clarity on how companies can enter into a consortium and engage in joint bidding in order to compete more effectively without falling foul of competition rules.

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