



KONKURRENS

3 april 2023





Mötets öppnande

Uppdatering från ICC internationellt

Henrik Blomqvist, Policyansvarig, ICC Sverige

Hur konkurrensrätten påverkar gröna partnerskap

Simon Holmes, medordförande *ICC Working Group on Competition and Sustainability*

Paus

EU:s horisontella gruppundantag

Erik Söderlind, Advokat och Delägare, Kastell Advokatbyrå

Nästa möte och avslut



Uppdatering från ICC internationellt

Henrik Blomqvist, Policyansvarig, ICC Sverige



ICC Sveriges prioriteringar 2023 | Konkurrens

Arbeta för att konkurrenslagstiftningen ska främja och inte hindra företags hållbarhetssamarbeten.

Driva på för att procedurer kring konkurrensmyndigheters begäran om information från företag ska effektiviseras.

Uppdatera ICC Antitrust Compliance Toolkit.

Internationella arbetsgrupper

- Task Force on State Aid
- Task Force on Competition Law & Sustainability
- Task Force on Non-Target RFIs
- Task Force on Merger Control Reforms
- Task Force on Competition and Digital Economy
- Task Force on New EU Horizontal Guidelines
- Task Force on Antitrust Damages Actions
- Task Force on Antitrust Compliance Policy Harmonization
- Task Force on ICN



ICC och EU-kommissionen

- ICC har arrangerat två träffar med EU-kommissionens generaldirektorat för konkurrens
 - Generaldirektör **Olivier Guersent**, den 12 december 2022
 - Head of Task Force Third Country Subsidies, **Christof Schoser**, den 13 mars
- ICC Comments on the Draft Implementing Regulation to the EU Foreign Subsidies Regulation (FSR)

Competition Commission 2023

Policypapper: *ICC Merger Control Recommendations*

Policypapper och undersökning: *ICC Recommendations on RFIs*

Policypapper: *ICC Competition and Sustainability (fler case)*

Referensverk och nytt partnerskap med Concurrences: *ICC Compendium of Antitrust Damages Actions*

Policypapper och undersökning: *Global Report on Regulatory Developments on Competition Law and Digital Economy*

Verktyg: *Uppdatering av ICC Antitrust Compliance Toolkit*

Event: ICC Pre-ICN-event i anslutning till ICN i Barcelona den 18-20 oktober





Hur konkurrensrätten påverkar gröna partnerskap

Simon Holmes, Ordförande ICC *Working Group on Competition and Sustainability*,

Gästprofessor, Oxfords universitet, och medlem i UK

Competition Appeal Tribunal





EU:s horisontella gruppundantag

Erik Söderlind, advokat och delägare, Kastell
Advokatbyrå



The approaching new horizontal package



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“Nothing new on the western front – still waiting on news”

Process

- **Roadmap for evaluation**

- Feedback period
- 05 September 2019 - 03 October 2019
- 13 respondents

- **Public consultation**

- Consultation period
- 06 November 2019 - 12 February 2020
- 77 respondents

- **Final version of evaluation**

- 06 May 2021, staff working document

- **Impact assessment including open consultation**

- Consultation period
- 13 July – 5 October
- 67 respondents

- **Proposal 1 March 2022**

- Feedback period
- 1 March 2022 – 26 April 2022
- 98 respondents

- **Prolongation old group exemptions six months**

- 8 December 2022

- No public news since (to my knowledge)

Main points of proposal 1 March 2022

R&D agreements

Limited positive changes/clarification, grace period, calculation of market shares and definition of potential competitor.

Main negatives:

Agreement no longer exempt where less than three competing R&D efforts would remain in addition to and comparable with those of the parties to the R&D agreement – **how would anyone know?**

Market share threshold 25 % of “technology market” – **how would anyone know?**

Main points of proposal 1 March 2022

Specialization agreements

Limited positive changes/clarification in draft group exemption, grace period and calculation of market shares.

Extension of unilateral specialization agreements to (explicitly) cover more than two parties

Main points of proposal 1 March 2022

Horizontal guidelines (massive document 149 pages including table of contents) structure:

Horizontal agreements in general – 18 pages.

R&D agreements – 29 pages

Specialization agreements – 14 pages (of which 3 covers mobile infrastructure sharing)

Purchasing agreements – 12 pages

Commercialisation agreements – 13 pages (of which 2 covers bidding consortia)

Information exchange – 19 pages

Standardisation agreements – 14 pages

Standard terms – 5 pages

Sustainability – 18 pages

Main points of proposal 1 March 2022

Horizontal guidelines, continued.

Joint ventures – EC “typically” not apply Article 101.1 TFEU on agreements between parent and controlled JV, concerning activity where the JV is active – **positive but word “typically” cast doubt**

Missconception in relation to case law “single economic unit” ? – **clearly two parents not part of same economic unit other than in responsibility for JVs actions?**

Potential competitor – concept developed, (possibly) a bit less stringent requirement than previous guidelines – more stress on “realistic” assessment than previously

Ancillary restriction – very strict interpretation of ancillary – only if agreement “impossible” to carry out in absence of restriction

Main points of proposal 1 March 2022

Horizontal guidelines, continued

Purchasing agreement – artificial distinction between joint purchasing and buying cartels

Ignores difference between sellers co-operating on price – object higher selling prices = consumer harm
and

buyers co-operating on price – object lower purchase prices = consumer benefit

Only exception on purchase market = where buyers have significant market power

Main points of proposal 1 March 2022

Horizontal guidelines, continued

Commercialisation agreements, bidding consortia – positive development, acknowledgement that joint bidding often pro competitive even where competitors cooperate – if better offer made possible (price/quality) and competition in tender not eliminated.

Still unclear if cooperation between one undertaking capable of submitting offer individually and another undertaking, not capable of such an individual offer are ok or not – should mostly be ok.

Positive that the requirement included in the tender rules are the first consideration when determining if an undertaking should be deemed to be able to participate individually or not.

Main points of proposal 1 March 2022

Information exchange – by object restriction, an already muddled area muddled further

Current guidelines – focus on information on future pricing intentions – relatively clear.

New draft guidelines - focus on “commercially sensitive information” – not so clear

Main points of proposal 1 March 2022

Sustainability – positive that included but:

Safe harbour presupposes – no “significant increase in price” or no “significant reduction in the choice of products available”

and

Article 101.3 TFEU exemption presupposes – consumer benefit, i.e. proof consumer see price increase as worth the cost or, where collective benefit, proof that such benefit is large enough to outweigh direct consumer harm.



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Nästa möte och avslut