



Lex Mundi Intellectual Property and Competition Law Survey

Glossary

active sales	sales in circumstances where a direct approach has been made by a seller to customers in order to elicit sales.
block exemption	a regulation specifying the conditions under which certain types of agreements are exempted from the prohibition of restrictive agreements laid down in primary legislation. When an agreement fulfils the conditions set out in a block exemption regulation it will not be deemed anti-competitive and thus the agreement is automatically valid and enforceable.
<i>de minimis</i> (EU)	level below which the affect on competition is deemed insignificant and therefore will not be subject to the censure of the competition authorities.
<i>erga omnes</i>	literally <i>toward all</i> ; against the whole of the world.
Excluded restrictions (EU)	anti-competitive restraints, which require individual assessment of their anti-competitive and pro-competitive effects; Excluded restrictions may be severed from an agreement.
Hardcore restrictions (EU)	severely anti-competitive restraints, which are deemed restrictive of competition by their very object; an agreement containing such will be void.
<i>inter partes</i>	<i>between the parties</i> . Rights or restrictions may be found invalid against a particular party, but would remain valid against any other person; the right would be invalid <i>inter partes</i> only.
non-compete obligation	any direct or indirect obligation causing a licensee/distributor not to manufacture, purchase, sell or resell goods or services which compete with the contract goods or services, or any direct or indirect obligation on a distributor to purchase from the supplier or from another undertaking designated by the supplier more than 80% (percentage can vary from jurisdiction to jurisdiction) of a distributor's total purchases of the contract goods or services and their substitutes on the relevant market
non-reciprocal agreement	an agreement where only one of the parties is licensing its technology to the other party or where in case of cross-licensing the licensed technologies are not competing technologies and cannot be used for the production of competing products.

passive sales	sales in circumstances where the initial approach to purchase products has been made by a customer to a seller.
<i>per se</i> [anti-competitive]	in some jurisdictions the legislature/courts have concluded a particular restraint is so plainly anti-competitive that it should be treated as unlawful <i>per se</i> , without any further inquiry into the restraint's likely competitive effect.
reciprocal agreement	where two undertakings grant each other licences that concern competing technologies or can be used for the production of competing technologies.
rule of reason	individual assessment by application of some form of balancing of the pro-competitive and anti-competitive effects.
safety zone / safe harbour	a defined (by maximum size/market power) category of undertakings for which potentially anti-competitive activities will ordinarily not be challenged.
selective distribution system (EU)	a distribution system where the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors selected on the basis of specified criteria and where these distributors undertake not to sell such goods or services to unauthorised distributors.