



# Information Exchange The European Commission's Guidelines

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# Guidance on information exchange: response to a strong stakeholder demand

- Complex economics
- Case law alone – few precedents
- Decentralisation - need for guidance for self-assessing firms, and guidance to the ECN

## Key features of the chapter:

- Clearly defined category of restriction of competition by object for information exchanges
- Structured framework for assessing the effects of information exchanges
- Guidance on assessing efficiencies of information exchanges

# The chapter targets:

- Information exchanges that are part of other horizontal agreements (e.g. R&D, production) – *assessed in combination with the respective horizontal agreement*
- Pure information exchanges – *not underpinning any other unlawful conduct - can constitute an infringement alone*
- **Main concern:** Situations where firms, short of entering into agreements to price fix, through exchanging information (that artificially increases transparency in the market) may find coordination to be the most rational and profitable strategy.
- Information can be exchanged directly between competitors or through third party collecting entity, which then disseminates the data (the framework presented relevant for both)

# Monitoring device for a cartel

- Information exchanges that constitute a supporting mechanism for a **cartel** (explicit collusion such as price fixing or market sharing) are assessed as part of the cartel.

## Focused main theories of harm:

- **Coordination** of the competitors' strategies on the market leading to restrictive effects on competition, 2 main ways:
  - **Focal point:** Reaching a common understanding on the terms of coordination, by eliminating strategic uncertainty as to the level at which firms should coordinate (mainly data on future intentions)
  - **Increasing internal and external stability of coordination,** Monitoring/punishment of deviations and entry (current and past data)
- **Anticompetitive foreclosure**
  - **Exclusive** exchange of essential information, or one that rises rivals costs in neighbouring market, could lead to consumer harm.

# By object

- Restriction by object:
  - Information exchanges between competitors of individualised data regarding intended future prices or quantities
  - Constitutes the most efficient (costless) mechanism for coordination, unlikely to serve pro-competitive reasons
  - Exchanges of this type in private are normally considered and fined as cartels (generally have the object of price-fixing, market sharing)



## Some cases ...

- Airline Tariff Publishing (ATPCO): DoJ settlement in the 90s
- PT AdC: Lisbon Breadmakers Association (2008).
- ES CNC: STAMPA (2011),
- UK OFT: Independent Schools (2006), RBS/Barclays (2010), Experian Whatif? (2011)



# Structured framework for assessment of restrictive effects

- ❖ *Within that defines various safety zones for information exchanges*
- 1. Characteristics of the relevant markets  
*Assess **to what extent** the market is transparent, stable, concentrated, non-complex, symmetric, as **it is in this type of markets that coordination can occur***
- 2. Characteristics of the information exchange  
*strategic nature, coverage, genuinely public/private, aggregation, frequency, age*
- 3. Assess whether and how the exchange of information can change ( $\Delta$ ) the relevant market in away that coordination becomes **likely**.  
*e.g. by making it more transparent or less complex*



## The framework applied in UK tractors

- Current individualised sales & market shares  $\Rightarrow$  **analysis of effects**
- **Monitoring** deviations and non members' strategies + controlling parallel imports to the UK  $\Rightarrow$  stabilising market positions
- **Market:** concentrated, high barriers to entry, absence of competitive pressure from competitors outside the exchange (national market), absence of countervailing power on demand side, multi-market contacts etc.
- **Information:** "sensitive" nature, detailed, low aggregation, high frequency, direct contacts, limited ambit of beneficiaries.
- Not bound to look at actual effects – "*creates market transparency which is **likely** to destroy hidden competition in the oligopoly*", CFI said that the restriction of competition needs to be substantial = **likelihood + magnitude**
- **81.3:** exchange **not indispensable** to improve the product planning by manufacturers and better monitoring of dealers, aggregate data sufficient



## Some examples of efficiencies from information sharing

- Dealing with problems of information **asymmetries** (*e.g. banking, insurance*)
- Improving firms' internal efficiency through **benchmarking** against best practices of competitors (*not individualised, ranking, generally info on costs*)
- Reducing inventories, quicker delivery of **perishable** products, dealing with **unstable demand** (*the carrot juice example*)
- Better **investment** and entry decisions (*e.g. by pooling demand info*)
- Allocation of production to high demand markets and low cost companies, better supply decisions. (*static models, Cournot or Bertrand?*)
- More efficient production, R&D, standardization etc.
- **Better choice for consumers**, reduced search costs, less “lock in” (mainly *public exchanges of current data, e.g. price comparison websites* )



## Asnef-Equifax: a pro-competitive information exchange

- Spanish association of financial institutions wanted to create an online register containing sensitive **information on existing and potential borrowers** (past credit history, failures to pay, outstanding credit balances etc) to better inform lenders as to **risks** connected with granting loans
- **Leading to greater and more efficient availability of credit!**
- The Court assessed the economic conditions of the market and the characteristics of the register, and how the register could have changed the market environment.
- The ECJ concluded that the market at issue was a **fragmented** one, and hence one where coordination of competitors strategies would be unlikely.
- The ECJ underlined the importance of the fact that the **identity of the lenders is not disclosed** and that the register is **accessible to all operators on a non-discriminatory basis**.



# Thank you for your attention!