

September 25, 2009

NSK's opinion on the European Commission's proposal for a revised Block Exemption Regulation and Guidelines on supply and distribution agreements (vertical restraints)

Nihon Shinbun Kyokai (NSK, the Japan Newspaper Publishers & Editors Association) is a trade association comprising 109 daily newspapers in Japan. NSK has worked continuously since being established in 1946.

NSK appreciates the opportunity to respond to the request by the European Commission for comments about the commission's draft of the Block Exemption Regulation and Guidelines on vertical restraints. NSK appreciates the substantial thought and effort of the European Commission reflected in the draft and takes this opportunity to offer these comments in the hope that they may assist in the completion of a final regulation and guidelines.

Since the Antimonopoly Act was amended in 1953 to exempt from its application the system for the resale price maintenance (RPM) for publications, NSK's member newspaper companies have effected an RPM agreement with their dealers. In Japan, the RPM agreement is indispensable for daily newspapers to provide excellent services to consumers and to keep the door-to-door delivery system, which has been stably sustained by the agreement. Under this stable home-delivery system, daily newspaper companies in Japan can offer consumers a paper in the morning and another in the evening in a swift, unerring manner. The home-delivery system has also enabled daily newspapers to fulfill their public mission while achieving the largest circulations in the world.

According to "Draft Commission Regulation on the application of Article 81 (3) of the Treaty to categories of vertical agreements and concerted practices," published by the European Commission on July 28, 2009, the benefit of the block exemption could be, in principle, granted to vertical agreements by a firm within a market share threshold of 30%. However, that benefit is not bestowed on RPM agreements or practices that strictly limit sales territories. Accordingly, courts decide on a case-by-case basis whether or not the exemption is applied to an RPM agreement. In July 1985, the European Court of Justice decided that the RPM agreement for periodicals like newspapers and magazines can benefit from the exemption stipulated in Article 81 (3) of the Treaty of Rome (*Binnon v AMP* (243/83) [1985] ECR2015, [1985] 3CMLR800), but the decision does not necessarily mean that the RPM agreements for newspapers in general can enjoy legal protection.

However, a daily paper must reach consumers swiftly by home delivery. A product of such cultural and public importance needs an RPM agreement that is legally guaranteed. Thus, the agreement should be guaranteed within the EU's borders just as it is in Japan, in case NSK's member newspapers do business there.

To that end, the new Block Exemption Regulation and Guidelines needs to include a certain measure to clearly ensure consumers' interests and the public good. We strongly request that your respectable Commission take the necessary steps to achieve that.

For your information, Nihon Shinbun Hanbai Kyokai, the national association of newspaper dealers, completely shares the views reflected in this document.

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