



EUROPEAN COMMISSION

PRESS RELEASE

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## **Antitrust: Commission consults on review of safe harbour for minor agreements ("De Minimis" Notice)**

The European Commission invites comments on a proposal to revise its guidance notice for assessing when minor agreements between companies are not caught by the general prohibition of anticompetitive agreements under EU competition law. The proposal aims at updating the present Notice, in particular taking into account recent developments in the case law of the European Court of Justice (ECJ). Comments can be submitted until 3 October 2013. In light of these comments, the Commission will then adopt a new notice in 2014.

Article 101 of the Treaty on the Functioning of the European Union (TFEU) prohibits agreements that are aimed at or result in appreciable restrictions of competition. The current De Minimis Notice (adopted in 2001) defines, with the help of market share thresholds, what the Commission considers not to be an appreciable restriction of competition (see [IP/02/13](#)). It creates a safe harbour for companies whose market shares do not exceed 10% for agreements between competitors or 15% for agreements between non-competitors. If an agreement contains a hardcore restriction, that is, a very serious restriction for which there is a presumption of anti-competitiveness, the companies cannot benefit from the safe harbour.

The Commission's proposal is aimed at ensuring consistency with other recently amended competition rules, in particular the 2010 Vertical and Horizontal Block Exemption Regulations (see [IP/10/445](#), [MEMO/10/138](#), [IP/10/1702](#), [MEMO/10/676](#)) and with an ECJ ruling of December 2012 (case [C-226/11](#) Expedia).

Questions from a French court in the *Expedia* case raised the issue of whether agreements aimed at restricting competition (restrictions having an anti-competitive "object") can be considered as "de minimis" and therefore fall outside the scope of Article 101(1). The Expedia judgment has established that a restriction with an anticompetitive object constitutes, by its very nature, an appreciable restriction of competition. The proposal therefore clarifies that agreements containing a restriction by object are always seen as an appreciable restriction of competition.

The consultation documents are available at:

[http://ec.europa.eu/competition/consultations/2013\\_de\\_minimis\\_notice/index\\_en.html](http://ec.europa.eu/competition/consultations/2013_de_minimis_notice/index_en.html)

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