

# Actuarial Association of Europe

Insurance Committee  
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Guidelines on applicability of Article 101 of TFEU to  
horizontal cooperation agreements - summary

- Cooperation is “horizontal” if the agreement is between competitors
- Acknowledgement that horizontal cooperation can lead to economic benefits; may also lead to competition problems
- Article 101 and guidelines provide framework for balanced assessment of competition implications of agreements between undertakings
- Principles of applicability based on assumption that agreement can affect trade between Member States

# Common types of agreement



- R&D
- Production
- Purchasing
- Commercialisation
- Standardisation
- Information exchange

## STEP 1

Assess whether agreement has anti-competitive object or restrictive effect (actual and potential)

If restrictive of competition then Step 2

## STEP 2

Weigh pro-competitive benefits (A) v restrictive effects (B)

If  $B > A$  then agreement void

# Restrictive effects on competition



- Appreciable adverse impact on one of the parameters of competition, i.e. price, output, quality, variety, innovation
- Consider economic and legal context in which competition would occur in the absence of the agreement

## Criteria

- Nature and content of agreement (area and objective of cooperation, extent of combination of activities and competitive relationship)
- Market power and other market characteristics (transparency, concentration, complexity, stability, symmetry)

## Agreement must:

Improve production or distribution of products, or

Promote technical or economic progress

i.e. efficiency gains

- Restrictions must be indispensable to the achievement of the objectives
- Consumers must receive fair share of resulting benefits
- Must not afford the parties the possibility of eliminating competition

Identify complementary skills and assets, evaluate efficiencies

- Strategic information
- Market coverage
- Aggregated / individualised
- Age of data
- Frequency
- Public/non-public information
- Public/non-public exchange

# Principles relating to assessment of information exchange



## Potential benefits

- Solve problem of information asymmetry
- Improve companies' internal efficiencies
- Save costs by reducing inventories
- Reduce consumer search costs, improve choice

## Detriments

- Restriction of competition
- Object of fixing prices or quantities (cartels)

## Main competition concerns

- Collusive outcome
- Anti-competitive foreclosure



# Some points relevant to insurance industry



- “exchanges of genuinely aggregated data are less likely to lead to restrictive effects than exchanges of company level data”
- “exchange of consumer data between companies in markets with asymmetric information about consumers can lead to efficiencies”
- “exchanging present and past data is more likely to generate efficiency gains than exchanging information about future intentions”
- “information exchanges ... are more likely to fulfil conditions ... if they do not go beyond what is indispensable for the economic purpose of the agreement ...