



Jersey

COMPETITION (VERTICAL ARRANGEMENTS BLOCK EXEMPTION) (JERSEY) ORDER 2023

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COMPETITION (VERTICAL ARRANGEMENTS BLOCK EXEMPTION) (JERSEY) ORDER 2023

THE MINISTER FOR ECONOMIC DEVELOPMENT, TOURISM, SPORT AND CULTURE, after consulting the Jersey Competition Regulatory Authority, makes this Order under Articles 10 and 61 of the [Competition \(Jersey\) Law 2005](#) –

Commencement [[see endnotes](#)]

1 Interpretation

(1) In this Order –

“active sales” means –

- (a) actively targeting customers, including by telephone calls, e-mail, letters, visits or other direct means of communication;
- (b) targeted advertising or promotion by means of print or digital media, offline or online, including online media, digital comparison tools or advertising on search engines targeting specific customer groups or customers in specific geographical areas;
- (c) advertisement or promotion that is only attractive for the buyer if it (in addition to reaching other customers) reaches a specific customer group or customers in a specific geographical area (and is considered active selling to that customer group or customers in that geographical area);
- (d) offering on a website language options different to the ones commonly used in the geographical area in which the distributor is established; or
- (e) using a domain name corresponding to a geographical area other than the one in which the distributor is established,

and the expressions “actively sell” and “actively selling” are construed accordingly; “block exemption” means the exemption from Article 8(1) of the Law given to vertical arrangements under Article 2;

“buyer” means the purchaser of the contract goods or services, including an undertaking which, under a vertical arrangement to which the prohibition in Article 8(1) of the Law applies, sells goods or services on behalf of another undertaking;

“competing undertaking” means –

- (a) an undertaking that is active on the same relevant market; or
- (b) an undertaking that, in the absence of the vertical arrangement, would be reasonably likely to undertake within a short period of time the necessary

additional investments or other necessary switching costs to enter the relevant market;

“contract goods or services”, in relation to a vertical arrangement, means the goods or services, including resulting goods or services, to which the vertical arrangement relates;

“digital comparison tools” means online intermediation services used by end users to compare prices, quality or other characteristics of, and potentially to switch or purchase, goods or services from a range of businesses;

“exclusive distribution system” means a distribution system in which the supplier allocates a geographical area or customer group exclusively to itself or to one or a limited number of buyers, determined in proportion to the allocated geographical area or customer group in such a way as to secure certain volumes of business that preserves their investment efforts, and restricts other buyers from actively selling into the exclusive geographical area or to the exclusive customer group;

“know-how” means a package of non-patented practical information, resulting from experience and testing by the supplier that is –

- (a) not generally known or easily accessible;
- (b) significant and useful to the buyer for the use, sale or resale of the contract goods or services;
- (c) described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria in paragraphs (a) and (b);

“Law” means the [Competition \(Jersey\) Law 2005](#);

“online intermediation service” means a service that –

- (a) allows undertakings to offer goods or services to other undertakings or end users with a view to facilitating direct transactions between such undertakings or between such undertakings and end users, irrespective of whether and where those transactions are ultimately concluded; and
- (b) that constitutes an information society service within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information on the field of technical regulations and of the rules on information society services (OJ L 241, 17.9.2015, p. 1);

“non-compete obligation” means –

- (a) any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell goods or services which compete with the contract goods or services; or
- (b) any direct or indirect obligation on the buyer to purchase from the supplier or from any other undertaking designated by the supplier more than 80 per cent of the buyer’s total purchase of the contract goods or services and their substitutes on the relevant market, calculated on the basis of the value or, where such is standard industry practice, the volume of its purchase in the preceding calendar year;

“passive sales” means –

- (a) sales in response to unsolicited requests from individual customers, including delivery of goods or services to such customers without the sale having been initiated through advertising actively targeting the particular customer group or geographical area;

- (b) general advertising or promotion that reaches customers in other distributors' geographical areas or customer groups (whether exclusive or not) but which is a reasonable way to reach customers not in those other distributors' geographical areas or customer groups (whether exclusive or not), including to reach customers in a supplier's own geographical area; or
- (c) participating in a public procurement exercise or responding to private invitations to tender,

and the expression "passively sell" is construed accordingly;

"selective distribution system" means 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 within the territory reserved by the supplier to operate that system;

"supplier" includes an undertaking that provides online intermediation services irrespective of whether it is a party to the transaction it facilitates;

"vertical arrangement" means an arrangement entered into between 2 or more undertakings, each of which operates, for the purposes of the arrangement, at a different level of the production or distribution chain, and relates to the conditions under which the parties to the arrangement may purchase, sell or resell certain goods or services (the contract goods or services);

"wide retail parity obligation" means a restriction by reference to any of the supplier's indirect sales channels (whether online or offline, including online platforms or other intermediaries), which ensures that the prices or other terms and conditions at which the supplier's goods or services are offered to end users on a sales channel are no worse than those offered by the supplier on another sales channel.

- (2) For the purposes of this Order, the terms "undertaking", "supplier" and "buyer" include their respective connected undertakings.
- (3) For the purposes of this Order, "connected undertaking", in relation to a party to an arrangement means –
 - (a) an undertaking in which the party to the arrangement, directly or indirectly –
 - (i) has the power to exercise more than half the voting rights,
 - (ii) has the power to appoint more than half the members of the board of directors, supervisory board, board of management or bodies legally representing the undertaking, or
 - (iii) has the right to manage the undertaking's affairs;
 - (b) an undertaking which directly or indirectly has, over a party to the arrangement, the rights or powers listed in sub-paragraph (a);
 - (c) an undertaking in which an undertaking referred to in sub-paragraph (b) has, directly or indirectly, the rights or powers listed in sub-paragraph (a);
 - (d) an undertaking in which –
 - (i) a party to the arrangement together with one or more of the undertakings referred to in sub-paragraph (a), (b) or (c), or
 - (ii) 2 or more of the undertakings referred to in sub-paragraph (a), (b) or (c),jointly have the rights or powers listed in sub-paragraph (a); or

- (e) an undertaking in which the rights or the powers listed in sub-paragraph (a) are jointly held by –
 - (i) parties to the arrangement or their respective connected undertakings referred to in sub-paragraph (a), (b), (c) or (d), or
 - (ii) one or more of the parties to the arrangement or one or more of their connected undertakings referred to in sub-paragraph (a), (b), (c) or (d) and one or more third parties.

2 Block exemption

- (1) Under Article 10(1) of the Law, and subject to the provisions of this Order, vertical arrangements are exempt from Article 8(1) of the Law.
- (2) The block exemption applies to a vertical arrangement to the extent that the vertical arrangement contains a vertical restraint.
- (3) The block exemption applies to a vertical arrangement between a supplier and buyer which relates to –
 - (a) the conditions for the purchase, sale or resale of goods or services supplied by the supplier; or
 - (b) the conditions for the sale by the buyer of goods or services which incorporate the goods or services supplied.
- (4) The block exemption applies to a vertical arrangement, including a franchise agreement, that contains provisions relating to the assignment to a buyer or use by a buyer of intellectual property rights if –
 - (a) the intellectual property rights are ancillary and are directly related to the use, sale or resale of goods or services by the buyer or its customers; and
 - (b) the provisions do not contain restrictions of competition having the same object as vertical restraints to which the block exemption does not apply.
- (5) The block exemption does not apply to –
 - (a) subject to paragraph (6), a vertical arrangement between competing undertakings except where the competing undertakings enter into a non-reciprocal arrangement and the supplier is –
 - (i) a manufacturer and distributor of goods, while the buyer is a distributor and not a competing undertaking at the manufacturing level,
 - (ii) a provider of services at several levels of trade, while the buyer provides its goods or services at the retail level and is not a competing undertaking at the level of trade where it purchases the contract services,
 - (iii) a wholesaler and a distributor of goods, while the buyer is a distributor and not a competing undertaking at the wholesale level, or
 - (iv) an importer and a distributor of goods, while the buyer is a distributor and not a competing undertaking at the level of trade where it purchases the goods or at the importation level;
 - (b) restrictions or obligations that do not relate to the conditions of purchase, sale or resale of goods or services, including an obligation preventing parties from carrying on independent research development;
 - (c) a rent agreement or lease agreement where no goods or services are being sold by the supplier to the buyer; or

- (d) a vertical arrangement which falls within the scope of any other Order made under Article 10 of the Law, unless otherwise provided for in such an Order.
- (6) Sub-paragraph (5)(a) does not apply to –
 - (a) an exchange of information between the supplier and the buyer that is not directly related to the implementation or is not necessary to improve the production or distribution of the contract goods or services, or both;
 - (b) vertical arrangements relating to the provision of online intermediation services where the provider of the online intermediation services is a competing undertaking on the relevant market for the sale of the intermediated goods or services.
- (7) In this Article –
 - “intellectual property rights” includes industrial property rights, know-how, copyright and neighbouring rights;
 - “vertical restraint” means a restriction of competition in a vertical arrangement falling within the scope of Article 8(1) of the Law.

3 Market share threshold

- (1) The block exemption applies to a vertical arrangement on the condition that –
 - (a) the market share held by the supplier does not exceed 30 per cent of the relevant market on which the supplier sells the contract goods or services; and
 - (b) the market share held by the buyer does not exceed 30 per cent of the relevant market on which the buyer purchases the contract goods or services.
- (2) For the purposes of paragraph (1), where under a vertical arrangement involving more than two parties, an undertaking buys the contract goods or services from one party to the vertical arrangement and sells the contract goods or services to another party to the vertical arrangement, the block exemption applies only if the market share of the undertaking (both as a buyer and a supplier) complies with the market share threshold under paragraph (1).
- (3) Subject to paragraph (4), for the purposes of paragraph (1) –
 - (a) the market share of the supplier is calculated on the basis of market sales value data;
 - (b) the market share of the buyer is calculated on the basis of market purchase value data;
 - (c) the market share of an undertaking is calculated on the basis of data relating to the preceding calendar year; and
 - (d) the market share of the supplier includes any goods or services supplied to a vertically integrated distributor for the purposes of resale.
- (4) Where market sales value data or market purchase value data are not available for the purposes of the calculations under paragraph (3)(a) or (b), estimates based on other reliable market information, including market sales and purchase volumes, may be used to establish the market share of an undertaking for the purposes of paragraph (1).
- (5) If the market share of an undertaking that did not initially exceed the 30 per cent threshold under paragraph (1) subsequently increases above that threshold and –

- (a) does not exceed 35 per cent, the block exemption continues to apply for a period of 2 consecutive calendar years following the year in which the 30 per cent market share threshold was first exceeded; or
 - (b) exceeds 35 per cent, the block exemption continues to apply for a period of one calendar year following the year in which the 35 per cent market share level was first exceeded.
- (6) Paragraph (5)(a) and (b) do not apply so as to extend the application of the block exemption for a period exceeding 2 calendar years from the date of the increase in market share above the 30 per cent threshold under paragraph (1).
- (7) The market share held by an undertaking referred to in Article 1(3)(e) that is a party to a vertical arrangement is appointed equally to each undertaking that has the rights and powers listed in Article 1(3)(a).
- (8) In paragraph (3)(d) “vertically integrated distributor” means a distributor that is a connected undertaking.

4 Hardcore restrictions

- (1) The block exemption does not apply to a vertical arrangement which, directly or indirectly, on its own or in combination with other factors under the control of the parties to the vertical arrangement, has as its object any of the following hardcore restrictions –
 - (a) the restriction of the buyer’s ability to determine its onward sale price, without prejudice to the setting by the supplier of a maximum sale price or recommended sale price that does not amount to a fixed sale price or minimum sale price as a result of pressure from, or the offer of incentives by, any of the parties to the vertical arrangement;
 - (b) where the supplier operates an exclusive distribution system, the restriction of the geographical area into which, or of the customer groups to whom, one or a limited number of buyers, to which an exclusive geographical area or customer group has been allocated, may actively sell or passively sell the contract goods or services, but is not one of the excepted restrictions set out in paragraph (2);
 - (c) where the supplier operates a selective distribution system –
 - (i) the restriction of the geographical area into which, or of the customer groups to whom, the members of the selective distribution system may actively sell or passively sell the contract goods or services, but is not one of the excepted restrictions set out in paragraph (3),
 - (ii) the restriction of cross-supplies between the members of the selective distribution system operating at the same or different levels of trade, or
 - (iii) the restriction of active sales or passive sales to end users by members of the selective distribution system operating at the retail level of trade, except in the situation set out in paragraph (3)(a);
 - (d) where the supplier operates neither an exclusive nor a selective distribution system, the restriction of the geographical area into which, or of the customer group to whom, a buyer may actively sell or passively sell the contract goods or services, but is not one of the excepted restrictions set out in paragraph (4);
 - (e) the restriction, agreed between a supplier of components and a buyer who incorporates those components, of the supplier’s ability to sell the components

as spare parts to end users or to repairers, wholesalers or other service providers not entrusted by the buyer with the repair or servicing of the buyer's goods;

- (f) a wide retail parity obligation or a measure that has the same effect as a wide retail parity obligation (which includes any course of action, including entering into arrangements, which has the object of replicating the anti-competitive effects of a wide retail parity obligation);
 - (g) subject to paragraph (5), a restriction which prevents the effective use of the internet by the buyer or its customers to sell the contract goods or services by restricting the geographical area into which or the customers to whom the contract goods and services may be sold under paragraph (b), (c) or (d).
- (2) The excepted restrictions referred to in paragraph (1)(b) are –
- (a) the restriction of active sales by the exclusive distributor, or the exclusive distributor and its customers that have entered into a distribution agreement with the supplier or with a party that was given distribution rights by the supplier, into a geographical area or to a customer group reserved to the supplier or allocated by the supplier exclusively to one or a limited number of other buyers;
 - (b) the restriction of active sales or passive sales by the exclusive distributor, or the exclusive distributor and its customers to unauthorised distributors located in a geographical area where the supplier operates a selective distribution system for the contract goods or services;
 - (c) the restriction of the exclusive distributor's place of establishment;
 - (d) the restriction of active sales or passive sales to end users by an exclusive distributor operating at the wholesale level of trade; and
 - (e) the restriction of the exclusive distributor's ability to actively sell or passively sell components, supplied for the purposes of incorporation into a product, to customers that would use them to manufacture the same type of goods as those produced by the supplier.
- (3) The excepted restrictions referred to in paragraph (1)(c)(i) are –
- (a) the restriction of active sales by the members of the selective distribution system, or the members of the selective distribution system and their customers that have entered into a distribution agreement with the supplier or with a party that was given distribution rights by the supplier, into a geographical area or to a customer group reserved to the supplier or allocated by the supplier exclusively to one or a limited number of buyers;
 - (b) the restriction of active sales or passive sales by the members of the selective distribution system or their customers to unauthorised distributors located within the geographical area where the selective distribution system is operated;
 - (c) the restriction of the place of establishment of the members of the selective distribution system;
 - (d) the restriction of active sales or passive sales to end users by members of the selective distribution system operating at the wholesale level of trade; and
 - (e) the restriction of the ability to actively sell or passively sell components, supplied for the purposes of incorporation into a product, to customers that would use them to manufacture the same type of goods as those produced by the supplier.

- (4) The excepted restrictions referred to in paragraph (1)(d) are –
- (a) the restriction of active sales by the buyer, or the buyer and its customers that have entered into a distribution agreement with the supplier or with a party that was given distribution rights by the supplier, into a geographical area or to a customer group reserved to the supplier or allocated by the supplier exclusively to one or a limited number of buyers;
 - (b) the restriction of active sales or passive sales by the buyer or its customers to unauthorised distributors located in a geographical area where the supplier operates a selective distribution system for the contract goods or services;
 - (c) the restriction of the buyer's place of establishment;
 - (d) the restriction of active sales or passive sales to end users by a buyer operating at the wholesale level of trade; and
 - (e) the restriction of the buyer's ability to actively sell or passively sell components, supplied for the purposes of incorporation into a product, to customers who would use them to manufacture the same type of goods as those produced by the supplier.
- (5) Paragraph (1)(g) applies without prejudice to –
- (a) other restrictions of online sales; and
 - (b) restrictions of online advertising that do not have the object of preventing the use of an entire online advertising channel.

5 Excluded restrictions

- (1) The block exemption does not apply to –
- (a) an excluded restriction specified in paragraph (2) that is contained in a vertical arrangement; or
 - (b) a vertical arrangement that contains an excluded restriction specified in paragraph (2) if the obligation is not severable from the remaining provisions of the vertical arrangement.
- (2) An excluded restriction to which paragraph (1) refers is as follows –
- (a) subject to paragraphs (3) and (4), any direct or indirect non-compete obligation, the duration of which is indefinite or exceeds a period of 5 years;
 - (b) subject to paragraphs (5) and (6), any direct or indirect obligation causing the buyer, after termination of the vertical arrangement, not to manufacture, purchase, sell or resell goods or services; or
 - (c) any direct or indirect obligation causing the members of a selective distribution system not to sell the brands of particular competing suppliers.
- (3) For the purposes of paragraph (2)(a), a non-compete obligation that is tacitly renewable beyond a period of 5 years is deemed to be an indefinite non-compete obligation.
- (4) The time limit of 5 years under paragraph (2)(a) does not apply where –
- (a) the contract goods or services are sold by the buyer from premises, land or a vehicle owned by the supplier or leased by the supplier from a third party that is not connected to the buyer; and
 - (b) the duration of the non-compete obligation does not exceed the period of occupancy of the premises or land, or possession of the vehicle by the buyer.

- (5) Despite paragraph (2)(b), a vertical arrangement may include the imposition of a restriction which is –
 - (a) unlimited in time on the use and disclosure of know-how; and
 - (b) indispensable to protect the know-how used or disclosed, but which has not entered the public domain.
- (6) Despite paragraph (2)(b), the block exemption applies to any direct or indirect obligation causing the buyer, after termination of the vertical arrangement, not to manufacture, purchase, sell or resell goods or services where the following conditions are fulfilled –
 - (a) the obligation relates to goods or services which compete with the contract goods or services;
 - (b) the obligation is limited to premises, land or a vehicle from which the buyer has operated during the contract period;
 - (c) the obligation is indispensable to protect know-how transferred by the supplier to the buyer; and
 - (d) the duration of the obligation is limited to a period of one year after the termination of the vertical arrangement.

6 Fuel forecourt arrangements

- (1) Despite anything to the contrary in this Order, the block exemption does not apply to a fuel forecourt arrangement that contains –
 - (a) a non-compete obligation, the duration of which is indefinite or exceeds 3 years; or
 - (b) where the fuel forecourt arrangement is operated from premises or land owned by the buyer, an obligation that restricts or purports to restrict the ability of the buyer to dispose of those premises or land.
- (2) For the purposes of paragraph (1)(a), a non-compete obligation that is tacitly renewable beyond a period of 3 years is deemed to be a non-compete obligation, the duration of which is indefinite.
- (3) In this Article, “fuel forecourt arrangement” means an arrangement entered into between 2 or more undertakings, each of which operates, for the purposes of the vertical arrangement, at a different level of the production or distribution chain, and relating to the conditions under which the supplier will supply and the buyer will purchase motor vehicle fuel and other motor vehicle related products for resale in the fuel forecourts operated by or on behalf of the buyer.

7 Cancellation of block exemption

- (1) Despite anything to the contrary in this Order, where the Authority finds in a particular case that a vertical arrangement to which the block exemption applies has effects which are incompatible with Article 9(3) of the Law and is in breach of Article 8(1) of the Law, the Authority may, under Article 36 of the Law, subject to first giving notice of its proposal and considering any representations made to it, direct that –
 - (a) the block exemption is cancelled in respect of the vertical arrangement; and
 - (b) the vertical arrangement must be terminated.

- (2) The Authority must –
 - (a) give notice of the direction under paragraph (1) in writing to each undertaking that is a party to the vertical arrangement;
 - (b) in the notice, specify reasons for the direction; and
 - (c) publish the notice.
- (3) A direction under paragraph (1) takes effect on the date specified in the notice which must be a date after the notice of the direction is given and published under paragraph (2).
- (4) A direction under this Article does not have retrospective effect.

8 Obligation to provide information

- (1) The Authority may require a person to provide to the Authority information in connection with the vertical arrangements to which the person is a party.
- (2) A person who is required to provide information under paragraph (1) must provide the information within a period of 10 working days beginning on the day after the request is made, or within such longer period as the Authority may, having regard to the circumstances of the case, specify in writing.
- (3) If a person who is required to provide information under paragraph (1), fails, without reasonable excuse, to comply with the requirement within the period specified in paragraph (2), the Authority may find that Article 7 applies.

9 Citation and commencement and expiry

- (1) This Order may be cited as the Competition (Vertical Arrangements Block Exemption) (Jersey) Order 2023.
- (2) This Order comes into force 7 days after it is made and expires on 1st June 2028.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement	Project No (where applicable)
Competition (Vertical Arrangements Block Exemption) (Jersey) Order 2023	R&O.27/2023	11 April 2023	

Projects available at statesassembly.gov.je

Table of Endnote References

There are currently no endnote references