

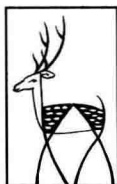
DISTRIBUTION AGREEMENTS
UNDER THE EC
COMPETITION RULES

VALENTINE KORAH AND DENIS O'SULLIVAN



Distribution Agreements Under the EC Competition Rules

VALENTINE KORAH
and
DENIS O'SULLIVAN



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DISTRIBUTION AGREEMENTS UNDER THE EC COMPETITION RULES

Professor Korah's short monographs on specific topics within EC Competition law are well known and widely used. In this work, with Denis O'Sullivan, she follows the pattern of her previous books on group exemptions for technology transfer and parallel imports. It examines the Regulation on vertical agreements, starting with a chapter on the economic background, before developing, in a series of chapters, a careful analysis of vertical agreements and all the relevant case law. A further chapter deals with agreements which do not come within the Regulation, again paying careful attention to the case law.

Valentine Korah is Professor Emeritus of Competition Law, University College, London; Visiting Professor, Fordham Law School and College of Europe, Bruges, and a Barrister.

Denis O'Sullivan is a barrister specialising in competition law matters at the Centre for European Integration Studies in Bonn, and a former associate with the law firm Coudert Brothers in Brussels.

Preface

Valentine started to write this book in 2000, but decided that she had insufficient opportunities to advise on Regulation 2790/99 to know what businessmen want to do. She, therefore, persuaded her old friend, Denis O'Sullivan, to contribute chapter seven on how to treat agreements outside the scope of the regulation. We started to write our chapters separately, but have each read and commented upon those of the other, and hope that we have made adequate cross references to integrate the two parts.

Several people have kindly read drafts of Valentine's chapters. Margaret Booth of the UK's Office of Fair Trading made many helpful comments, especially on the economics chapter. Pat Massey, then working for the Irish Competition Authority and now consulting at CompEcon Limited (www.compecon.com), made suggestions about the economics chapter. Cani Fernandez of Cuatrecasas' Brussels office and Marissa Tierno Cantello of the Dutch Competition office read the whole some months ago and made helpful comments. None of these friends has seen the final version and none is responsible for remaining errors and infelicities.

When Valentine was teaching at Fordham University School of Law in the Spring of 2001, Mr. Christoph Huetteroth, then an LL.M. student, kindly acted as a research assistant and was extremely helpful. He has since graduated *magnum cum laude* and become a US attorney. Not only was he good at downloading material and meticulous in checking citations etc., but he was also able to check the German version of the regulation, when the French and English differed. He rejects the wide view given at 3.3.9.1 about the application of the regulation to pure trademark or copyright licences on the ground that article 2(3) is a *lex specialis* taking priority over the more general provisions in article 2(1).

As always, Valentine is indebted to Fordham University School of Law for encouraging her to write, providing a computer and, far more important, competent assistance from the help desk cheerfully and courteously given. Fordham always provides funds for her research assistant. The law library at Fordham is good and the help obtained from librarians far exceeds what can be offered in the UK.

She is also indebted to University College for providing a Professor Emeritus with students, an office, computer and help with it.

Valentine listened to a perceptive and careful speech by Andrzej Kmiecik of Van Bael and Bellis at a conference organised by IBC in Brussels in May 2000. She cannot tell how many of the ideas in this book were derived from that talk and the discussion thereafter. She also learned much from debates with Luc Peepers. She would like to think both gentlemen.

Denis would like to thank his friends and colleagues at Coudert Brothers (www.coudert.com) for their very generous support. Jean-Yves Art, Pierre-Manuel Louis and Stephen Spinks in particular shared their practical insights into effective

distribution agreements inside and outside Regulation 2790/99. Many of their helpful suggestions have found their way into this book.

We would like to thank all these people, without whom the book would never have been written. Naturally, the remaining errors, omissions and infelicities are our sole responsibility.

We are both indebted to Hart Publishing, which provided a splendid team to produce the book. This time Richard Hart copy-edited the script himself, demonstrating once again the kind of versatility and responsiveness which small publishers possess and which their larger rivals often appear to lack. The index was prepared by Debbie Harris and then revised and edited by Hannah Young, who also co-ordinated production of the book with her usual good cheer and helpfulness, and providing answers to a host of questions en route. The tables were compiled swiftly and very accurately by John Emory Corral, a former student who has now done this for Valentine several times and who is always thorough and meticulous. The typesetters, Hope Services, produced the page proofs very quickly, which enabled us to read proofs in-between other work commitments in the US and Germany.

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