

# Jersey competition law update: general vertical arrangements block exemption

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The Government of Jersey has today (12 June 2020) published its response to a consultation on the potential introduction of a general vertical arrangements block exemption, together with a summary of feedback received.

In its response, Government has announced that it will now move forward with the introduction of such a block exemption.

## Speed read

- Government is moving ahead with introducing a general vertical block exemption
- The block exemption will give participants in a vertical supply chain more certainty where they want to enter into exclusivity arrangements, and will save on associated regulatory costs
- Subject to exceptions, exclusivity and other related arrangements of up to five years (three years for fuel forecourts) will be permitted, provided the market share of both parties is 30% or less.

## What the block exemption would do

The proposed block exemption relates to vertical arrangements, ie arrangements between market participants who are vertical of one another in the supply chain (such as a manufacturer of a product and a wholesaler or retail supplier of that product).

Subject to compliance with the terms of the block exemption, it would exempt vertical arrangements where both the supplier's and the buyer's market share is 30% or less from the prohibition on anti-competitive arrangements set out in Article 8 of Jersey's competition law.

The block exemption would include the following limitations on its applicability:

- Exclusivity arrangements must be limited to five years (other than for fuel forecourts, where the limit is three years)
- It would not apply where the arrangement included "hardcore restrictions", defined consistently with the European Commission's vertical agreements block exemption (VABER). Hardcore restrictions cover restrictions such as:
  - Imposing minimum prices for the buyer's onward sale of goods or services to its customers
  - Territorial and customer restrictions (subject to exceptions to enable a supplier to properly manage buyer exclusivity arrangements)
  - Restrictions on component sales (subject to exceptions)
- It would not apply where the arrangement included "excluded restrictions" (again defined consistently with VABER). Excluded restrictions cover restrictions such as:
  - Restrictions on the buyer purchasing or dealing with products which compete with the purchased products for more than five years (including imposing a minimum purchase requirement of 80% or more of total purchases)
  - Post-termination non-compete undertakings that are over one year, are not limited to the same point of sale and are not necessary to protect supplier know-how

## Reasons for implementing the block exemption

In our response to the consultation we responded positively to the introduction of a block exemption on the terms proposed.

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The advantages of this type of block exemption (as summarised in more detail in the Government's response) include:

- Increased legal certainty for businesses and advisers, removing the need to either "take a view" on or make an application before entering into in-scope arrangements
- Reduced compliance costs
- Flexibility to introduce sector-specific block exemptions to meet the need of particular industries
- Alignment of Jersey to the EU position (on which much of Jersey's competition law is founded).

It should be noted that VABER expires in 2022 and Government has committed to review Jersey's equivalent general block exemption to ensure consistency with the subsequent EU position, subject to the requirements of the island.

### Next steps

- The Minister has approved the drafting of a Ministerial Order introducing the proposed general vertical block exemption. Once drafted, it will be shared with respondents to the consultation for a further review
- The Jersey Competition Regulatory Authority (JCRA) will then be formally consulted in accordance with the Jersey competition law
- Government will publicise the availability of the vertical block exemption and outline the reasons for it and its terms, including producing an article for the Jersey Consumer Council's newsletter. Government will also ask the JCRA to publish an article on the general vertical block exemption in its quarterly competition law newsletter
- Government will ask the JCRA to issue formal guidance.

### Resources

- [www.gov.je/blockexemptions](http://www.gov.je/blockexemptions)



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