

Interplay between the EU Geoblocking Regulation and competition law

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- Internet sales are considered a form of passive sales under EU Competition law
- EU Competition law only applies to geoblocking measures to block passive sales
 - adopted unilaterally by a dominant firm or
 - decided by 2 independent firms
- The Geoblocking Regulation closes a gap about passive sales over the internet by catching unilateral decisions to adopt geoblocking measures by non-dominant traders.
- Geoblocking Regulation act in parallel to EU Competition law

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- Article 6.1 of the Geoblocking Regulation « does not affect agreements restricting active or passive sales in transactions out of the scope of the Regulation »
- Article 6.2 of the Geoblocking Regulation prohibits passive sales restrictions on traders which fall within the scope of the Geoblocking Regulation
- EU Block Exemption Regulation /Guidelines on vertical restrictions generally consider restrictions to passive sales as hardcore restrictions : restrictions not covered by the Block Exemption
- EU Block Exemption Regulation/Guidelines exempt passive sales restrictions in certain (rare) circumstances
 - For example : where substantial investments by the distributor to start up the new market are necessary, restrictions of passive sales by other distributors which are necessary for the distributor to recoup those investments (for 2 years)

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- So where do we stand ?
- If you have agreed to implement exempted passive sales restrictions with another company, generally your supplier, before 2 March 2018, you must assess before 23 March 2020 if these are compliant with Geoblocking Regulation
- If you (trader) have taken a unilateral decision to implement passive sales restrictions, even if lawful under competition law, you must withdraw them immediately if amount to geoblocking covered by the Regulation

