



## Article 101 TFEU: overview

Anti-competitive agreements, decisions and concerted practices are regulated by Article 101 TFEU. The two main provisions are:

**Article 101(1) TFEU:** identifies the conduct that is prohibited, namely agreements, decisions by associations of undertakings and concerted practices which affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition.

**Article 101(3) TFEU:** sets out the conditions that must be satisfied in order for conduct prohibited by Article 101(1) TFEU to be granted an exemption.

## Article 101(1) TFEU: key conditions

Article 101(1) TFEU can be broken down into four conditions, or questions, each of which must be satisfied in order for the prohibition to be infringed. They are:

**Has the conduct to which Article 101(1) TFEU might otherwise apply been entered into by undertakings or an association of undertakings?**

**Have those undertakings entered into an agreement or concerted practice, or is there a decision by an association of undertakings?**

**Does the conduct have as its object or effect the prevention, restriction or distortion of competition?**

**Does the conduct affect trade between Member States?**

## Examples of conduct that may be prohibited by Article 101(1) TFEU

Examples of conduct that might constitute an infringement of Article 101(1) TFEU can be split into two categories:

Conduct involved in horizontal agreements\*, which are agreements between competing parties that are active at the same level of the production or supply chain.

Conduct involved in vertical agreements, which are agreements between parties active at different levels of the production or supply chain (such as an agreement between a manufacturer and a seller of a product or service).

### Horizontal agreements

Price fixing

Exchanging commercially sensitive information or data

Market sharing, limiting sales and/or output

Paying competitors to delay the launch of competing products

### Vertical agreements

Imposing fixed or minimum resale prices

Imposing bans on exporting products and/or services

Certain types of restrictions on online sales and advertising



#### For more information:

see section 3 of DFF's *Short guide to competition law for digital rights litigators*.

\*The term "agreement" is used as shorthand to include decisions by associations of undertakings and concerted practices.