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OECD Joint Global Forum on Trade and Competition

COVERAGE OF COMPETITION LAWS: ILLUSTRATIVE EXAMPLES OF EXCLUSIONS

-- Note by the Secretariat --

Attached is a background document for the Joint Global Forum on Trade and Competition to be held on 15-16 May 2003.

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COVERAGE OF COMPETITION LAWS ILLUSTRATIVE EXAMPLES OF EXCLUSIONS^(*)

1. This paper is intended to contribute to ongoing reflection on some of the issues currently being debated at the WTO with regard to the possible negotiation of an agreement on a multilateral framework on competition. If negotiations indeed materialise, there could be consideration of the minimum substantive and procedural competition law provisions that might be required under an agreement. Such discussions often encompass the *coverage/exclusions* issue. This refers to the degree to which a country's general competition law provisions would apply to various sectors (e.g. banking, defence), types of conduct or kinds of relationships (e.g. R & D joint ventures, employment relationships) and economic entities (e.g. state owned enterprises, unincorporated businesses). Coverage requirements and the use of exclusions are an important element in any eventual agreement, in particular because the possibility of implementing exclusions is one means of providing the flexibility referred to in the last sentence of para. 25 of the Doha Ministerial Declaration reading: "Full account shall be taken of the needs of developing and least-developed country participants and appropriate flexibility provided to address them." The means for achieving both flexibility and progressivity and balancing these objectives with others in a possible framework agreement are complex issues under ongoing discussion at the WTO.

2. Many countries' competition laws refer to exclusions, exceptions and exemptions, but they diverge on what these labels mean. The way "exclusion" is employed in this note probably does not run counter to how it is used in existing competition laws. That would not have been the case if "exemptions" had been referred to instead. In some countries, such as the United States, exemptions generally have the same meaning as what this note refers to as exclusions. In other jurisdictions, such as the European Union, exemptions refer to specific applications of the competition law to single cases or groups of cases (i.e. block exemptions). The term "exclusion" also has an advantage over the more ambiguous "exception" term. An exception implies some kind of special treatment, and that could as easily mean either leaving something or someone out of a competition law's field of application, or applying a customised competition law or regulation to it or them.

3. At the WTO's Working Group on the Interaction Between Trade and Competition Policy, coverage/exclusions has proven to be both a controversial and recurrent topic. To help inform that debate, the OECD's Joint Group on Trade and Competition in February 2003 asked the Secretariat to draw together some existing information about exclusions currently found in a number of countries. The result is the list contained in this note.

4. Most of the material relied on to compose the list was found in the series of published country studies pertaining to the OECD's regulatory reform project. Those studies were somewhat uneven in the amount of attention paid to exclusions. In consequence, the list below is *illustrative* rather than *exhaustive*. It illustrates the wide range of exclusions potentially available to countries if a multilateral framework on competition is eventually negotiated, but cannot properly be used to compare jurisdictions in terms of the degree to which their economies are covered by their general competition statutes.

^(*) This paper is also circulated under the code "COM/DAFFE/TD(2003)6/FINAL".

5. The following list, arranged by jurisdiction, contains information about exclusions in eighteen OECD members plus the European Union, and two non-members (Chile and South Africa). For most of these, a reference is given to an OECD publication where more detailed information is available.

6. The list contains several examples of exclusions motivated more by a desire to grant legal certainty than to actually exclude something that would normally be prohibited by a typical competition statute. This is most obviously true of exclusions pertaining to mandated (i.e. regulated) conduct and matters of minor importance (*de minimis* exclusions). With or without explicit exclusions, mandated conduct and matters of minor importance would probably not be prohibited by competition statutes of general economy-wide application. This is because such statutes extend only to voluntary behaviour (including mergers) having a substantial anti-competitive impact on consumers and/or businesses.¹

7. The list also contains four examples of export cartel exemptions. These too are better regarded as clarifications rather than exclusions. Competition statutes apply only to conduct and mergers having effects on a jurisdiction's consumers and businesses. This means, incidentally, that they would normally prohibit export cartels having anti-competitive effects within the jurisdiction even if the cartel were conducted outside its borders.

Australia

Ocean shipping

Certain specified practices which might otherwise contravene the prohibitions on anti-competitive agreements and anti-competitive exclusive dealing (other than third line forcing) are excluded from the competition law.

- ***Wages and labour relations*** (collective bargaining regarding wages and working conditions)
- ***Conduct that arises from the compliance with Standards Association of Australia standards***
- ***Restraint of trade related to sale of goodwill***

A provision of a contract for the sale of a business or shares in a corporation solely for the protection of the purchaser in respect of the goodwill of the business.

- ***Partnership agreements between individuals***
- ***Export agreements***

If full particulars are notified to the competition authority within 14 days of being made.

- ***Consumer boycotts***
- ***Intellectual property rights***

¹ It could happen that a country has very few exclusions to the application of its competition statute yet still have significant portions of its economy closed to competition in ways its competition statute can do nothing about. In virtually all jurisdictions, there are laws and regulations limiting entry, production volumes, or market based pricing. To the extent economic entities act under the *compulsion* of such laws and regulations, they will normally be excluded from the application of competition laws even those purporting to apply without exclusion throughout the economy.

Conduct arising from certain arrangements relating to patents, copyrights, trade marks or designs are excluded.

- ***Exclusions created by statutes or by subsidiary legislation***

Exclusion from certain prohibitions can be provided in other statutes but they must be express and make specific reference to the competition statute. Australia's National Competition Policy requires that all national and state statutes be reviewed to identify and reform any restrictions on competition that are not essential to achieving the objectives of the statutes. In the process of this review, many exclusions from the application of the competition statute have been removed.

Exclusions may also be made by executive action, but they are limited to two years and again must expressly refer to the competition statute.

Canada²

- ***Agricultural products***

The competition statute does not apply to a contract or arrangement involving agricultural products covered by the Farm Product Agencies Act. Provincial legislation authorises collective price setting for a wide variety of agricultural producers.

- ***Ocean shipping***

Liner conference agreements are excluded from the competition law.

- ***Regulated conduct***

Some Provinces authorise collective price setting as regards certain professional services.

- ***Regulated sectors***

- airline services - sector specific merger and abuse of dominance rules (e.g. predation and other exclusionary behaviour);
- broadcasting – sector specific merger provisions.

Chile

- ***Wages and labour relations*** (collective bargaining regarding wages and working conditions)

Czech Republic³

- ***Otherwise prohibited agreements may be allowed if authorised by separate regulations***

² For more information about Canada's exclusions, see OECD (2002) "Regulatory Reform in Canada: Maintaining Leadership Through Innovation", OECD Reviews of Regulatory Reform (Paris: OECD), pp. 82-85.

³ For more information about the Czech Republic's exclusions, see OECD (2001) "Regulatory Reform in the Czech Republic", OECD Reviews of Regulatory Reform (Paris: OECD), pp. 201-205.

E.g.: insurance sector; water and sewerage charges; broadcasting and other media.

- ***De minimis exclusion***

Firms with less than 5% of national markets or 30% of local markets are excluded, except for the more serious cartel agreements (e.g. price fixing, dividing markets, bid-rigging).

Denmark⁴

- ***Wages and labour relations*** (collective bargaining regarding wages and working conditions)
- ***Regulated conduct***

The competition statute's basic prohibitions against anticompetitive agreements and abuses of dominance do not apply if the practice is a "direct or necessary consequence of public regulation". The Minister of Economic and Business Affairs evaluates in co-operation with the minister responsible for the regulation, whether a practice is a direct or necessary consequence of public regulation. This means in practice that all decisions on this matter are made by ministers, who are responsible to parliament.

- ***Resale price maintenance prohibition - tobacco products and Danish publications are excluded***
- ***De minimis exclusion***

There are two exclusions from the prohibition against anti-competitive agreements. One depends on a combination of size and market share (i.e. agreements among firms with a total annual turnover under Dkr 1 billion altogether, and aggregate market share under 10%). The other is determined only by size (aggregated annual turnover under Dkr 150 million). All agreements on resale price maintenance, horizontal price fixing and bid rigging are *per se* forbidden. As regards the second exclusion, however, an agreement might still be prohibited if the total effect of similar agreements in the sector is anti-competitive.

European Union⁵

- ***Wages and labour relations*** (collective bargaining regarding wages and working conditions)
- ***Agriculture***

Agreements forming an integral part of a national market organisation or which are necessary for the achievement of the Common Agricultural Policy are excluded from Article 81 (i.e. the Treaty Article prohibiting restrictive agreements).

- ***Defence***

Member States may require particular conduct in relation to certain specified defence industries. Such conduct is excluded.

⁴ For more information about Denmark's exclusions, see OECD (2000) "Regulatory Reform in Denmark", OECD Reviews of Regulatory Reform (Paris: OECD), pp. 191-199.

⁵ For more information about the European Union's exclusions, see OECD (1996) Antitrust and Market Access – the Scope and Coverage of Competition Laws and Implications for Trade (Paris: OECD), pp. 189-199. Much of the material in this section of the list was taken directly from that publication and is therefore somewhat out of date.

- ***Transport***

- rail, roads and inland waterways – certain technical agreements, e.g. for the standardisation of equipment and for the co-ordination of timetables, are classified as not restricting competition; in addition, the Commission may exclude agreements from Article 81 if the Council unanimously declares a state of crisis in all or part of a transport market
- maritime transport – certain technical agreements, e.g. for the standardisation of equipment and for the co-ordination of timetables, are classified as not restricting competition
- air transport – certain technical agreements, e.g. for the standardisation of equipment and for interlining, are classified as not restricting competition

- ***Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly***

These are subject to the competition rules only in so far as the application of these rules does not obstruct the performance of the particular tasks assigned to them. However, the development of trade must not be affected to such an extent that it would be contrary to the interests of the European Community.

- ***Special rules applicable to particular forms of agreement concerning small and medium sized businesses (SMEs)***

- certain non-reciprocal exclusive distribution and certain non-reciprocal exclusive purchase agreements among competing manufacturers where at least one party is below a certain sales threshold are excluded

- ***Special rules applicable to SMEs in particular sectors***

- inland waterway transport – agreements between undertakings with an aggregate carrying capacity of 500 000 metric tonnes or less for carrying on transport activities, or for joint financing or acquisition of transport equipment or supplies for such activities, are excluded from Article 81. The capacity of each undertaking must be 50 000 metric tonnes or less. The Commission can order the cessation of any unacceptable effects of such agreements;
- road transport – similar to inland waterway transport but with considerably lower weight thresholds.

- ***Export cartels***

Cartels among EC producers relating exports from the EC are normally outside the scope of Article 81. However, when the export cartel is an inseparable part of a broader cartel covering sales within the European Union, or when it has perceptible repercussions on intra-Community trade, the agreement will infringe Article 81.

Germany

The Central Bank and the Reconstruction Loan Corporation

These two entities are totally excluded.

- ***Professional services***

Rules of professional associations limiting the competitive freedom of their members (e.g. schedules of maximum and minimum fees for lawyers, architects, engineers, and doctors) are excluded from the competition statute because they are authorised by other federal laws.

- ***Passenger transport***

Train and bus operators' associations are permitted to co-operate as necessary to set up connecting services.

- ***Agriculture***

Agreements notified to the Federal Cartel Office involving the agriculture sector, covering production, sale, joint storage, treatment or processing, are excluded from the competition statute, as long as they do not fix prices or exclude competition.

- ***Credit and insurance***

Agreements among credit providers and insurance companies concerning individual cases or joint assumption of individual risks and loan syndication may be excluded from the cartel and resale price maintenance prohibitions.

- ***Copyright societies***

Copyright collection societies and their agreements and decisions are exempt from the basic prohibitions against horizontal and vertical agreements, although they would be subject to control for abuse of dominance.

- ***Sports broadcasting***

Joint marketing of rights for television broadcasting of sports events is exempt from the prohibition against horizontal agreements.

- ***Resale price maintenance prohibition*** - books, music and maps are excluded

In the three noted markets, resale price maintenance is not only permitted, it is required.

- ***Telecommunications***

There are special rules governing abusive practices; and the regulator has powers affecting mergers.

Greece⁶

- **Publicly owned enterprises**

These are excluded if they are of “general importance to the national economy”, as determined by joint decision of the Ministers of National Economy and Development

- **Agreements insuring, promoting or strengthening exports**

This exclusion can be withdrawn by decision of the Ministers of National Economy and Development

- **Regulated sectors**

- agriculture, forestry and fisheries – a provision like the one applicable to public enterprises permits exemptions for particular firms or categories of firms upon joint decision of the Ministers of Economy, Development, and Agriculture.
- all forms of transport - similar to agriculture, forestry and fisheries – here the exclusions must be “necessitated by transport policy” and agreed to by the Ministers of National Economy and Development and the pertinent transport minister
- telecommunications – the sectoral regulator applies special competition rules
- broadcasting and other media – sector regulators are responsible for some competition related issues and have a say in mergers
- banking – for mergers between banks, a different market share threshold is used to determine which transactions must be notified to the competition authority

Hungary⁷

- **Agricultural products**

Within the framework of product councils, agreements of producers, processors and traders on prices and production limits can be excluded. This is dependent on a finding by the Minister of Agriculture.

- **Public health service**

Public health services constitute a special exempted area in the field of competition law. Special sectoral rules apply to the contracting and pricing activities of undertakings (mainly state-owned, non-profit institutions financed by the public budget) operating in the health insurance market (where there is only one national insurer).

- **Professions**

Associations of physicians and veterinary surgeons are permitted to recommend minimum fees, and associations of engineers and architects are permitted to recommend rates and service requirements.

⁶ For more information about Greece’s exclusions, see OECD (2001) "Regulatory Reform in Greece", OECD Reviews of Regulatory Reform (Paris: OECD), pp. 193-197.

⁷ For more information about Hungary’s exclusions, see OECD (2000) "Regulatory Reform in Hungary", OECD Reviews of Regulatory Reform (Paris: OECD), pp. 191-199.

- ***Sports***

Professional sports associations are statutorily authorised to regulate TV broadcasting rights in their particular sport.

- ***Intellectual property rights***

Legitimate exercise of intellectual property rights under certain acts is excluded. Abuse of these rights may not be excluded.

- ***Regulated sectors***

- pharmaceutical products – producers and importers are insulated from the competition statute when they fix retail prices by adding a maximum permitted profit margin to, respectively, production costs and import prices
- tobacco products: producers and importers are authorised to set prices
- broadcasting: special standards for mergers

- ***De minimis exclusion***

Horizontal agreements (except for more price fixing, market division, and bid-rigging) are excluded provided the agreeing firms together have than 10% of the affected market. Vertical agreements are also excluded where none of the firms involved have more than 10% of their markets.

Ireland⁸

- ***Professional services***

Many are self-regulated and have adopted recommended fee scales; some are seeking an exclusion from competition law through having their collective actions included under the labour rather than competition law

Israel

- ***Agriculture***

Arrangements involving restraints, related to the growing or marketing of domestic fruits, vegetables, field crops, milk, honey, cattle, sheep, poultry or fish, provided all parties are growers or wholesale marketers. This exclusion does not apply to goods manufactured from such agricultural produce.

- ***Aviation and maritime transport***

Arrangements involving restraints, all of which relate to international air or sea transportation, provided that all parties are (a) sea or air carriers; or (b) sea or air carriers and an international association of sea or air carriers approved for this purpose by the Minister of Transport.

- ***Wages and labour relations*** (collective bargaining regarding wages and working conditions)

⁸ For more information about Ireland's exclusions, see OECD (2001) "Regulatory Reform in Ireland", OECD Reviews of Regulatory Reform (Paris: OECD), pp. 201-209.

- ***Intellectual property rights***

Arrangements including restraints, all of which relate to right to use patents, service marks, trademarks, copyrights, performers' rights or developers' rights are excluded provided the pertinent intellectual property right has been duly registered (where that is required) and the arrangement is between the party holding the right and a party being licensed to use them.

- ***Some exclusive supply and dealing arrangements***

The exclusion applies provided neither supplier nor purchaser is engaged in the production of the goods or services to which the arrangement applies.

- ***De minimis***

This exclusion operates through the provision of rebuttable evidentiary presumptions concerning minimal competitive effect. The presumptions are based mainly on market shares and the number of competitors in the relevant market

Italy⁹

- ***Banking sector***

The provisions of the competition statute, enforced by the banking regulator, provide an exclusion for temporary restrictive agreements necessary to guarantee the stability of the monetary system.

- ***Regulated conduct:***

Although public enterprises and state-controlled firms are fully subject to the competition statute's basic prohibitions. Those prohibitions do not apply to firms that by law provide "services of general economic interest" or operate in a monopoly situation to the extent that an exclusion is "indispensable" to performing specific assigned tasks. This exclusion mirrors one found in the European Union treaty.

Japan¹⁰

- ***Resale price maintenance contracts***

Resale price maintenance contracts on books, magazines, newspapers, records, music tapes and music CDs are exempted from the Antimonopoly Act.

- ***Intangible property rights***

Acts recognizable as the exercise of rights under the Copyright Act, the Patent Act, the Utility Model Act, the Design Act or the Trademark Act are exempted from the Antimonopoly Act.

- ***Cooperatives***

Certain acts of cooperatives for mutual aid among small businesses or consumers, are exempted from the Antimonopoly Act.

- ***Transport (Maritime, Airline, Bus service)***

⁹ For more information about Italy's exclusions, see OECD (2001) "Regulatory Reform in Italy", [OECD Reviews of Regulatory Reform](#) (Paris: OECD), pp. 224-234.

¹⁰ For more information about Japan's exclusions, see OECD (1999) "Regulatory Reform in Japan", [OECD Reviews of Regulatory Reform](#) (Paris: OECD), pp. 215-223.

Certain agreements, e.g. for the co-ordination of timetables, are exempted from the Antimonopoly Act.

- ***Insurance (Air transport, Nuclear power, Automobile third party liability insurance, Earthquake)***

Certain joint acts are exempted from the Antimonopoly Act.

Korea¹¹

- ***Small and medium sized businesses***

Numerous programs to protect small and medium sized businesses are excluded. For example, to strengthen SME competitiveness, case-by-case exemptions may be granted from the prohibition of unfair collaborative acts. Applicants must demonstrate that their agreements will improve productivity, quality, technology, and negotiating power and are necessary in order for them to compete efficiently with large enterprises.

- ***Co-operatives***

Their activities are excluded if they provide mutual aid among small businesses or consumers.

- ***Mergers among financial institutions***

The competition authority is confined to an advisory role. The Financial Supervisory Commission has the final authority to approve financial institution mergers.

- ***Resale price maintenance prohibition*** - publications are excluded

- ***Intellectual property rights***

Legitimate exercise of intellectual property rights under certain acts is excluded. Abuse of these rights may not be excluded.

- ***Ocean shipping***

Liner conference agreements are exempt.

Mexico¹²

- ***Wages and labour relations*** (collective bargaining regarding wages and working conditions)

- ***Export trade associations (of small producers)***

- ***“Strategic sector” exclusions***

Strategic sectors are excluded from the law’s prohibition of monopoly, but entities engaged in the exempted strategic sectors might be found to violate the law’s strictures against monopolistic practices. The strategic areas include coinage and paper money, postal service, telegraph and radiotelegraphy,

¹¹ For more information about Korea’s exclusions, see OECD (2000) "Regulatory Reform in Korea", OECD Reviews of Regulatory Reform (Paris: OECD), pp. 191-196.

¹² For more information about Mexico’s exclusions, see OECD (1999) "Regulatory Reform in Mexico", OECD Reviews of Regulatory Reform (Paris: OECD), pp. 199-204.

petroleum and other hydrocarbons, basic petrochemicals, radioactive minerals, nuclear energy and electricity (this has been partially opened up).

Netherlands¹³

- ***Small and medium sized enterprises***

The prohibition of anti-competitive agreements, decisions and concerted practices does not apply if (i) no more than eight enterprises are involved in the relevant agreement or concerted practice, or if no more than eight enterprises are involved in the relevant association of enterprises, and (ii) the combined turnover of the enterprises involved does not exceed EUR 4.540.000 if only enterprises of which the core business is the supply of goods are involved, and EUR 908.000 in all other cases.

New Zealand

- ***Specific statutory authorisations***

Conduct or arrangements that would otherwise contravene competition law are exempted if they are specifically authorised under another statute or regulation, e.g. levies imposed by the Civil Aviation Authority in order to carry out its functions.

- ***Agreements relating to international carriage by air***

Capacity sharing, tariff schedules and services agreements between airline companies are excluded from competition law provided they have been authorised by the Minister of Transport.

- ***Arrangements relating to international carriage by sea***

Arrangements relating to international carriage of goods by sea are excluded from competition law.

Outwards shipping services from New Zealand are subject to a specific competition regime. The Minister of Transport may investigate and restrict unfair practices that have the effect or purpose of limiting, preventing or reducing competition that harms any New Zealand shipper.

- ***Intellectual property rights***

Legitimate use of intellectual property rights as provided for under certain acts is excluded. Provisions relating to taking advantage of market power and resale price maintenance still apply. In essence, a person does not take advantage of a substantial degree of market power where that person only seeks to enforce a statutory intellectual property right. Abuse of such right may not be excluded.

- ***Standards issued by authorised bodies***

Provisions of contracts requiring compliance with, or application of, standards prepared and approved by a prescribed standards body are excluded.

- ***Wages and labour relations*** (collective bargaining relating to wages and working conditions)

- ***Consumer boycotts***

Concerted action by consumers other than in trade are excluded.

¹³ For more information about the Netherlands's exclusions, see OECD (1999) "Regulatory Reform in the Netherlands", OECD Reviews of Regulatory Reform (Paris: OECD), pp. 173-179.

- ***Export arrangements***

Such arrangements relating exclusively to the export of goods from New Zealand or to the supply of services wholly outside New Zealand are excluded from competition law (after notification to the relevant competition authority)

- ***Operators of small passenger service vehicles***

The setting of fare schedules within taxi co-operatives is excluded from the scope of competition law.

- ***Restraints of trade***

Certain agreements that restrict the liberty of one party to engage in a rival business are excluded. This exclusion covers, for example, provisions of a contract solely for the protection of the purchaser of the goodwill of a business (e.g. limitations on the vendor's ability to compete with his former business).

Norway

- ***Wages and labour relations*** (collective bargaining regarding wages and working conditions)

- ***Intellectual property rights***

The prohibitions against horizontal price fixing and market sharing do not apply to restraints on competition contained in an agreement between a licensor and a licensee setting out a licensee's right to utilize a registered patent or design. This exclusion would not shield restraints that extend beyond the use of the licensed technology or design to control competition in other markets or in ways unrelated to the use of the object of the licence.

- ***Agriculture, forestry and fisheries***

The Competition Act's prohibitions against horizontal agreements do not apply to the sale or supply of agricultural, forestry, or fisheries products from producers or producers' organizations in agriculture, forestry and fisheries. This exclusion only covers Norwegian products, so restraints involving products from other sources are not excluded. And the exclusion does not extend to collusive tendering.

- ***Joint Projects***

The prohibitions against horizontal price fixing and collusive tendering do not apply when two or more undertakings collaborate in single instances of joint supply or joint bidding provided their offer identifies the collaborating parties and explains the nature of their collaboration.

Poland

- ***Lotteries (state monopoly) and certain agricultural sectors***

- ***Telecommunications, postal sector, railways and air transport***

In addition to an on-going liberalization process, temporary exclusions have been granted in these sectors (most will be phased out in the near future).

- ***De minimis exclusion***

The thresholds are set at the level of 5% and 10% of the market share for horizontal and vertical agreements respectively.

South Africa¹⁴

- ***Wages and labour relations*** (collective bargaining regarding wages and working conditions)
- ***Conduct required to achieve socio-economic objectives***

The purpose of this exclusion is to prevent the application of the competition statute to boycotts or similar actions having a social justice motivation.

- ***Professional services***

Professional associations may apply for exemptions regarding rules restraining competition. The competition authority may grant the exemption if the restraint is reasonably required to maintain professional standards or the ordinary functioning of the profession.

Spain¹⁵

- ***Agreements promoting exports***

Such agreements can be authorised as long if consistent with the public interest and justified by the economic situation.

- ***Regulated conduct***

Article 2 of the competition statute explicitly excluding application to conduct authorised by other law. This exclusion was tightened up in 1996 to make it clearer that the law applies to the actions of public bodies when they are not properly protected by legal authorisation. A new paragraph was also added to clarify that competition law is applicable to restrictive agreements resulting from actions carried out by the public administration or public enterprises if those actions were not authorised by law.

- ***Ocean shipping***

Liner conference agreements meeting the requirements set out in the Ports Law are excluded from the prohibition on restrictive agreements. Nevertheless, these requirements are very restrictive as they expressly exclude those agreements that may create the possibility of eliminating competition in respect of a substantial part of the market, thus creating a dominant position by the concerned undertakings.

- ***De minimis***

The competition authorities can reject complaints that, due to their small scale, do not affect the public interest. No fixed specific thresholds are provided to guide the application of this exclusion. This exclusion has never been applied.

¹⁴ For more information about South Africa's exclusions, see "Competition Law and Policy in South Africa", OECD Global Forum on Competition Peer Review, February 11, 2003, pp. 29-34. Available at: <http://www.oecd.org/pdf/M00039000/M00039494.pdf>

¹⁵ For more information about Spain's exclusions, see OECD (1999) "Regulatory Reform in Spain", OECD Reviews of Regulatory Reform (Paris: OECD), pp. 197-212.

Turkey¹⁶

- **Banking**

Bank mergers are excluded from the competition statute.

- **Professional services**

Self regulatory bodies of professionals and other providers of services are recognised in the Constitution as quasi-public entities. Professional associations are typically authorised to set their members' prices and this is difficult to challenge under the competition statute. Some association restraints might be subject to the competition statute.

- **Public enterprises**

A public firm might not be considered to be an "undertaking", hence might not be subject to the competition statute.

- **Agriculture**

Official intervention and support displace the normal operation of supply and demand. Although the support programmes do not technically prevent the application of competition law, the non-competing markets that resulted implied a *de facto* exclusion from the competition statute.

United Kingdom¹⁷

- **Undertakings entrusted with providing services of general economic interest or having the character of revenue-producing monopolies**

There is a limited exclusion from the *Competition Act 1998* for undertakings entrusted with providing services of general economic interest or those having the character of a revenue-producing monopoly, one which is modelled upon the corresponding provision found in Article 86(2) of the EC Treaty.

- **Vertical and land agreements**

Vertical and land agreements are excluded from the application of the Chapter I prohibition of the *Competition Act 1998*. The UK Government has, however, signalled its intention to repeal the exclusion in relation to vertical agreements. The exclusion of land agreements would not be affected by any such repeal.

- **Financial services**

A special enforcement regime is applied by the Financial Services Authority and the Treasury Minister.

- **Agriculture**

In parallel with European Union rules, production and marketing agreements are excluded.

¹⁶ For more information about Turkey's exclusions, see OECD (2002) "Regulatory Reform in Turkey: Crucial Support for Economic Recovery", OECD Reviews of Regulatory Reform (Paris: OECD), pp. 79-81.

¹⁷ For more information about the United Kingdom's exclusions, see OECD (2002) "Regulatory Reform in the United Kingdom: Challenges and the Cutting Edge", OECD Reviews of Regulatory Reform (Paris: OECD), pp. 74-77.

- **Media**

- newspaper mergers are given special attention by a panel of insiders
- several special rules control competition in broadcasting

United States¹⁸

- **Government entities/public enterprises**

Entities owned and operated by the federal government and certain acts of private parties are immune from antitrust liability. Those that are owned and operated by state and local governments may be shielded to some degree from antitrust liability under the state action doctrine (if pursuant to a clearly articulated state policy to displace competition and actively supervised by the state).

- **Wages and labour relations (collective bargaining regarding wages and working conditions)**

- **Export trade**

The antitrust laws do not apply to associations whose joint actions restrict competition in export trade, under certain conditions (no effect on US prices of the commodities being exported; no other lessening of US competition; the association is for the sole purpose of export trade; and the association is registered with and files annual reports to the Federal Trade Commission). A somewhat similar but more limited immunity is available through the *Export Trading Company Act*.

- **National defence**

Agreements are afforded a partial exclusion if initiated by the President, authorised and actively supervised by him or his designee, and subject to a presidential finding that “conditions exists which may pose a direct threat to the national defence or its preparedness programmes”. There is no record of this provision ever having been used.

- **Joint research and production**

Properly registered joint ventures for research, development and production (even between horizontal competitors) are assessed under a multi-factor rule of reason rather than *per se* illegal approach, and if found to be anti-competitive are subject to single rather than triple damages. This does not apply to agreements about marketing and distribution, exchange of information on costs, sales, profitability and prices or dividing markets.

- **Energy**

Two minor exemptions are provided to remove the threat of antitrust litigation inhibiting industry co-operation with certain energy security efforts: voluntary international agreements and co-ordinated responses to supply crises, if approved by the Attorney General after consultation with the Federal Trade Commission (FTC); and certain meetings and related actions by natural gas producers if undertaken pursuant to Presidential order and monitored by the Antitrust Division of the Department of Justice (DOJ) and the FTC.

¹⁸ For more information about the United States’ exclusions, see OECD (1999) "Regulatory Reform in United States", OECD Reviews of Regulatory Reform (Paris: OECD), pp. 197-212.

- ***Transportation***

A limited set of practices in some transportation sectors (interstate trucking and bus service, international aviation alliances, railways, ocean shipping) are not subject to federal antitrust laws but are subject to review by sectoral regulators, who consider effects on competition as part of their overall analysis.

- ***Communication***

The television industry enjoys a partial exclusion in relation to joint actions to develop and disseminate voluntary guidelines to reduce violence in television programming.

- ***Copyright royalties***

Several provisions grant limited antitrust immunity to parties negotiating agreements about dividing copyright fees and royalties. Similar immunities apply to certain royalties in connection with public broadcasting and to royalties collected in connection with digital audio recording technology.

- ***Newspaper combinations***

Some joint operating arrangements among otherwise competing newspapers are permitted in order to protect editorial diversity.

- ***Securities and futures***

There are very narrow immunities affecting the securities and futures industries.

- ***Insurance***

A statutory exemption (*McCarran-Ferguson Act*) for practices meeting the test of the business of insurance, is provided, but does not apply to: (a) practices not regulated by the states or (b) actions amounting to boycott, coercion or intimidation. Mergers are covered by the general merger law.

- ***Agricultural Co-operatives***

Normal operations of producer co-operatives do not violate the antitrust laws; a special regime instead applies to them (i.e. the *Capper-Volstead* law). The Secretary of Agriculture may take action against co-operative associations that have monopolized or restrained trade to the extent "that the price of any agricultural product is unduly enhanced".

- ***Sports***

Major league baseball is partially excluded, and some sport leagues are permitted to pool the rights to broadcast their games in order to sell them as a package to broadcast networks.