

## Questionnaire for the public consultation on a block exemption regulation and guidelines on vertical agreements

Fields marked with \* are mandatory.

### Introduction

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#### Objectives of the public consultation

Article 101(1) of the Treaty on the Functioning of the European Union (“the Treaty”) prohibits agreements between undertakings that restrict competition unless, in accordance with Article 101(3) of the Treaty, they contribute to improving the production or distribution of goods or services, or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits and unless they are indispensable for the attainment of these objectives and do not eliminate competition in respect of a substantial part of the product in question (“efficiencies in line with Article 101(3) of the Treaty”).

The prohibition in Article 101(1) of the Treaty covers, amongst others, agreements entered into between two or more undertakings operating at different levels of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services (so-called “vertical agreements”).

[Commission Regulation \(EU\) No 330/2010](#) on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (Vertical Block Exemption Regulation, “VBER”) and the [Commission Notice providing binding guidance on the Commission for the interpretation of the VBER](#) (“Vertical Guidelines”) define the currently applicable framework. The VBER will expire on 31 May 2022.

Between October 2018 and September 2020, the European Commission conducted an evaluation of the VBER and the Vertical Guidelines, the findings of which were summarized in a staff working document (“SWD”, [SWD\(2020\) 173 final](#)). The results of the evaluation showed that the rules are still relevant and useful to businesses but that certain areas of the rules may need to be adapted. On the basis of these findings, the Commission launched an impact assessment phase looking into policy options for a revision of certain areas of the VBER and Vertical Guidelines with the aim to have the revised rules by 31 May 2022, when the current rules will expire.

On 23 October 2020, the Commission published notably an [inception impact assessment](#) (“IIA”) setting out the scope of the impact assessment phase, with a focus on four areas for which the Commission proposed policy options and asked stakeholders to provide feedback by 20 November 2020. During the impact assessment phase, the Commission will collect views from stakeholders on these policy options, their

ability to tackle the issues identified in the evaluation and on any other impacts of the policy options. This questionnaire is one of the key instruments to collect stakeholders' views and the replies to the questionnaire will inform the drafting of the revised rules.

## About you

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### \* 1 Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

### \* 2 I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation

- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

\* 3 First name

Theodor

\* 4 Surname

TAURER

\* 5 Email (this won't be published)

theodor.taurer@wko.at

\* 9 Organisation name

*255 character(s) maximum*

Wirtschaftskammer Österreich

\* 10 Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

11 Transparency register number

*255 character(s) maximum*

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

10405322962-08

\* 12 Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain

- Belize
- Benin
- Bermuda
- Bhutan
  
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
  
- Burkina Faso
- Burundi
  
- Cambodia
  
- Cameroon
  
- Canada
- Cape Verde
- Cayman Islands
  
- Central African Republic
  
- Ghana
- Gibraltar
- Greece
- Greenland
  
- Grenada
- Guadeloupe
  
- Guam
  
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
  
- Guyana
  
- Haiti
- Heard Island and McDonald Islands
  
- Honduras
- Hong Kong
  
- Hungary
  
- Iceland
  
- India
- Indonesia
- Iran
  
- Iraq
  
- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma
- Namibia
- Nauru
  
- Nepal
  
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
  
- Niger
  
- Nigeria
- Niue
  
- Norfolk Island
- Northern Mariana Islands
- North Korea
  
- North Macedonia
- Norway
- Oman
- Pakistan
  
- Palau
  
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
  
- Syria
  
- Taiwan
- Tajikistan
- Tanzania
- Thailand
  
- The Gambia
  
- Timor-Leste
- Togo
  
- Tokelau
- Tonga
  
- Trinidad and Tobago
- Tunisia
  
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu

- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association', 'consumer association', 'EU citizen') country of origin, organisation name and size, and its**

transparency register number, are always published. Your e-mail address will never be published.

Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

#### \* 14 Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

**Anonymous**

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

**Public**

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the [personal data protection provisions](#)

#### \* 15 Please describe the main activity of your organisation (e.g. product(s) and/or service(s) provided)

*1000 character(s) maximum*

Die Wirtschaftskammer Österreich ist die gesetzliche Interessenvertretung der gewerblichen Wirtschafts Österreichs (ca. 500.000 Mitglieder).

#### \* 16 Please describe the sectors that your organisation represents, i.e. sectors in which your members are conducting business.

*1000 character(s) maximum*

Die Mitglieder der WKÖ gehören sowohl dem Bereich Produktion (Industrie, Gewerbe und Handwerk) als auch dem Bereich Dienstleistung an (Handel, Tourismus/Freizeitwirtschaft, Verkehr/Transport, Banken, Versicherung, Information und Consulting)

#### \* 17 Please indicate the 2 digit NACE Rev.2 code referring to the level of "division" that applies to your business (see part III, pages 61 – 90 of Eurostat's statistical classification of economic activities in the European Community, available [here](#).)

siehe oben

\* 18 Please mark the countries/geographic areas where your main business is located.

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- United Kingdom
- Others in Europe



- America
- Asia
- Africa
- Australia

\* 19 Is your company/business organisation a supplier or a buyer of products or services or both?

- Supplier
- Buyer
- Both
- Not applicable
- Do not know

20 Please estimate the percentage of your company/business organisation's annual turnover for 2019 and 2020 generated by sales through the Internet (“online sales”).

Proportion of online sales

	0 to 25	25 to 50	50 to 75	75 to 100	not applicable
* 2019	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* 2020	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

21 Please estimate the percentage of your company/business organisation's annual turnover for 2019 and 2020 generated by physical sales channels (“offline sales”).

Proportion of offline sales

	0 to 25	25 to 50	50 to 75	75 to 100	not applicable
* 2019	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* 2020	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

\* 22 Please provide explanation if necessary (e.g. variation between 2019 and 2020)

*1000 character(s) maximum*

Die WKÖ generiert keine Käufe und Verkäufe im hier gebrauchten Sinn in nennenswerten Umfang; die Mitglieder der Wirtschaftskammer generieren mit ihrer Wirtschaftsleistung einen Gutteil des österreichischen BIP.

\* 23 Please describe the relevance of the VBER and the Vertical Guidelines for your organisation.

*1000 character(s) maximum*

Nachdem alle gewerblichen Unternehmen in Österreich Mitglieder der WKÖ sind, sind alle relevanten Geschäftsbeziehungen innerhalb von Liefer- und Versorgungsketten mit Wirkung in Österreich dem EU-Regime im vertikalen Vertrieb unterworfen. Nachdem der WKÖ Fachorganisationen (Fachverbände) aus allen oben genannten Wirtschaftsbereich angehören, fließen unterschiedliche Interessenpositionen regelmäßig in die Stellungnahmen der WKÖ ein. Für die Zwecke dieses Fragebogens, werden die allgemeinen Positionen der Gesamtwirtschaft in den Antworten zu diesem Fragebogen ausgedrückt; wenn ein Fachverband aus der eigenen Interessenlage den Fragebogen selbständig ausgefüllt hat, wird er als Anlage zu diesem Fragebogen zur Kenntnis gebracht. Auf dieser Ebene der europäischen Rechtsetzung erscheint es wichtig, dass vorgebrachte Branchenprobleme gesondert dargestellt und nicht bereits interne in der WKÖ ausgeglichen werden. Dies erfolgt hier erst, wenn konkrete Textentwürfe vorliegen.

## A. How to answer?

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You are invited to reply to this public consultation by filling out the eSurvey questionnaire online. The questionnaire is structured as follows: The first part of the questionnaire concerns general information on the respondent. The second part focuses on policy options for a possible revision of the VBER and the Vertical Guidelines in relation to the four areas mentioned in section C of the IIA, namely (a.) dual distribution, (b.) active sales restrictions, (c.) two types of indirect measures restricting online sales and (d.) parity obligations. This is the main part of the questionnaire. It aims at gathering information and views from stakeholders to assess the impact of the policy changes that the Commission is exploring. The third part of the questionnaire addresses other issues and elements to be considered during the impact assessment phase.

The Commission will summarise the **results in a report**, which will be made publicly available on the Commission's [Better Regulation Portal](#).

The questionnaire is available in English, French and German, but you may respond to the questionnaire in any official EU language.

To facilitate the analysis of your reply, we would kindly ask you to **keep your answers concise** and to the point. You may include documents and URLs for relevant online content in your replies. **You are not required to answer every question.** You may respond 'no opinion/no' to questions on topics where you do not have particular knowledge, experience or opinion. Where applicable, this is strongly encouraged in order to ensure that the evidence gathered by the Commission is solid.

You are invited to **read the privacy statement attached** to this consultation for information on how your personal data and contribution will be dealt with.

You have the option of saving your questionnaire as a 'draft' and finalising your response later. In order to do this, click on 'Save as Draft' and save the new link that you will receive from the EUSurvey tool on your computer. Please note that without this new link you will not be able to access the draft again and continue replying to your questionnaire. Once you have submitted your response, you will be able to download a copy of your completed questionnaire.

Whenever there is a text field for a short description, you may answer in **maximum 5000 characters**.

Questions marked with an asterisk (\*) are **mandatory**.

To avoid any confusion about the numbering of the questions, please note that you will be asked some questions only if you choose a particular reply to the respective previous one(s).

No statements, definitions, or questions in this public consultation may be interpreted as an official position of the European Commission. All definitions provided in this document are strictly for the purposes of this public consultation and are without prejudice to definitions the Commission may use under current or future EU law or in decisions.

In case you have questions, you can contact us via the following functional mailbox: [COMP-VBER-REVIEW@ec.europa.eu](mailto:COMP-VBER-REVIEW@ec.europa.eu);

If you encounter technical problems, please contact the Commission's [CENTRAL HELPDESK](#).

## B. Policy options for revising the VBER and Vertical Guidelines

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During the evaluation phase, the following areas of the rules were identified as not working well or as well as they could. During the impact assessment phase, the Commission is exploring policy options for revising the VBER and/or the Vertical Guidelines in these areas.

### B.1 Exception for dual distribution

Agreements between competitors are not covered by the VBER and should be assessed under the competition rules for horizontal agreements. However, Article 2(4) of the VBER and paragraph 28 of the Vertical Guidelines provide an exception to this rule for dual distribution, namely the situation where a supplier sells its goods or services directly to end customers, thereby competing with its distributors at the retail level (“exception for dual distribution”). When the VBER was adopted, the retail activities of suppliers engaging in dual distribution were considered negligible and unlikely to give rise to horizontal competition concerns. However, the growth of e-commerce has enabled suppliers to engage in dual distribution more easily than in the past.

Against this background, the following policy options are considered as indicated in the Inception Impact Assessment regarding the exception for dual distribution (**Options 2 and 3 could be applied cumulatively**):

**Option 1:** no policy change;

**Option 2:** limiting the scope of the exception to scenarios that are unlikely to raise horizontal concerns by, for example, introducing a threshold based either on the parties’ market shares in the retail market or on other metrics, and aligning the coverage of the exception with what is considered exemptible under the rules for horizontal agreements;

**Option 3:** extending the exception to dual distribution by wholesalers and/or importers;

**Option 4:** removing the exception from the VBER, thus requiring an individual assessment under Article 101 of the Treaty in all cases of dual distribution.

**1 Do you or your suppliers engage in dual distribution?**

- Yes
- No
- No opinion

**\* 2 Please explain your answer above and give examples of the type of dual distribution you engage in.**

*5000 character(s) maximum*

Nachdem, wie Oben ausgeführt worden ist, sowohl Hersteller als auch Händler jeglicher Handelsstufe in der WKÖ repräsentiert sind, gibt es zahlreiche Mitglieder, die im zweigleisigen Vertrieb tätig oder von diesem betroffen sind. Da wir fast ausschließlich Rückmeldungen von Händlerverbänden erhalten haben; hat sich die Mehrzahl der Rückmeldungen an die WKÖ für Option 4 entschieden. Es darf aber festgehalten werden, dass für Hersteller der Eigenvertrieb eine wichtige Vertriebschiene darstellt. Allerdings treten in der Praxis häufig Fragen und Beschwerden zum Wettbewerbsverhältnis zwischen Hersteller und Händlern auf, welches mehrheitlich von den Händlern als unfair empfunden wird. Wenn das Konditionen- und Preisgefüge in einem zweigleisigen Vertriebssystem nicht passt, führt dies zu unproduktiven Spannungen innerhalb des Vertriebssystems und kann zu wettbewerbswidrigen Situationen führen (zB die Händler haben den Beratungsaufwand und dessen Kosten zu tragen, während der Hersteller unmittelbar das Geschäft macht). Es darf bezweifelt werden, ob eine Kombination aus Option 2 und 3 oder jeder einzelne derselben, diese Problemlage nachhaltig ausräumen kann.

**3 Based on your experience, do you consider that the exception for dual distribution set out in Article 2(4) of the VBER and paragraph 28 of the Vertical Guidelines should be maintained?**

- Yes
- No
- No opinion

**\* 4 Please explain your answer above.**

*5000 character(s) maximum*

siehe Antwort zu 2

**5 Based on your experience/knowledge, what would be the impact on the following aspects if the exception for dual distribution was to be removed, which would mean that dual distribution was subject to a self-assessment in all cases?**

Please use the follow-up question to give concrete examples of the likely impacts.

	Very negative	Negative	Neutral	Positive	Very positive	No opinion
a. Competition on the market	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b. Harmonised application of the competition rules by competition authorities and national courts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
c. Legal certainty for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
d. Efficiency of distribution systems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
e. Cross-border trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
f. Costs for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
g. Consumer welfare	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
h. Investment / Economic growth	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
i. Sustainability objectives	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**6 Please explain your answers above and, if possible, give concrete examples of the impacts you indicated. Please specify the letter of the row of the impact you are referring to.**

*5000 character(s) maximum*

Siehe dazu die Fragebogenbeantwortungen in der Anlage

**7 Do you have experience/knowledge of instances where situations of dual distribution currently covered by the exception may raise horizontal competition concerns?**

- Yes
- No
- No opinion

**8 If you have experience/knowledge of instances of dual distribution currently covered by the exception that may raise horizontal competition concerns, please explain your answer.**

*5000 character(s) maximum*

Siehe dazu die Fragebogenbeantwortungen in der Anlage

**9 Based on your experience/knowledge, do you consider that an additional threshold should be introduced to ensure that only dual distribution situations that do not raise horizontal competition concerns are block-exempted?**

- Introduce an additional threshold based on the combined market share at the retail level (i.e. dual distribution would be block-exempted if the combined market share of the parties to the agreement does not exceed a certain level in the retail market)
- Introduce an additional threshold, but not based on the combined market share at the retail level
- No need for an additional threshold
- No opinion

**15 Based on your experience/knowledge, what would be the impact of introducing an additional threshold of 20% combined market share in the retail market (in line with the threshold in Article 3 of the Block Exemption Regulation for specialisation agreements) on the following aspects? Please, use the follow-up question to give concrete examples of the likely impacts.**

	Very negative	Negative	Neutral	Positive	Very positive	No opinion
a. Competition on the market	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
b. Harmonised application of the competition rules by competition authorities and national courts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
c. Legal certainty for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
d. Efficiency of distribution systems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
e. Cross-border trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
f. Costs for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
g. Consumer welfare	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
h. Investment / Economic growth	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
i. Sustainability objectives	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**19 Do you have experience/knowledge of instances where agreements between a wholesaler, which is also active at the retail level, and its distributors could raise horizontal competition concerns?**

- Yes
- No
- No opinion

## 20 Please explain your answer.

5000 character(s) maximum

Siehe dazu die Fragebogenbeantwortungen in der Anlage

## 21 Do you have experience/knowledge of instances where agreements between an importer, which is also active at the retail level, and its distributors could raise horizontal competition concerns?

- Yes
- No
- No opinion

## 22 Please explain your answer

5000 character(s) maximum

Siehe dazu die Fragebogenbeantwortungen in der Anlage

## 23 In your experience/knowledge, how would a potential extension of the scope of the exception for dual distribution to wholesalers impact the following aspects?

Please use the follow-up question to give concrete examples of the impacts.

	Very negative	Negative	Neutral	Positive	Very positive	No opinion
a. Competition on the market	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b. Harmonised application of the competition rules by competition authorities and national courts	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c. Legal certainty for businesses	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d. Efficiency of distribution systems	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e. Cross-border trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f. Costs for businesses	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
g. Consumer welfare	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
h. Investment / Economic growth	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
i. Sustainability objectives	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**24 Please explain your answers above and, if possible, give concrete examples of the impacts you indicated. Please specify the letter of the row of the impact you are referring to.**

*5000 character(s) maximum*

Siehe dazu die Fragebogenbeantwortungen in der Anlage

**25 Based on your experience/knowledge, how would a potential extension of the scope of the exception for dual distribution to importers impact the following aspects? Please use the follow-up question to give concrete examples of the impacts.**

	Very negative	Negative	Neutral	Positive	Very positive	No opinion
a. Competition on the market	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
b. Harmonised application of the competition rules by competition authorities and national courts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
c. Legal certainty for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
d. Efficiency of distribution systems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
e. Cross-border trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f. Costs for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
g. Consumer welfare	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
h. Investment / Economic growth	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
i. Sustainability objectives	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**26 Please explain your answers above and, if possible, give concrete examples of the impacts you indicated. Please specify the letter of the row of the impact you are referring to.**

*5000 character(s) maximum*

Siehe dazu die Fragebogenbeantwortungen in der Anlage

**27 Based your experience/knowledge, would any of the following actions be able to ensure that the scope of the exception for dual distribution is appropriate (i.e. instances that may raise horizontal competition concerns are not block-exempted and instances that do not raise horizontal competition concerns or that satisfy the criteria of Article 101(3) of the Treaty are block-exempted)? You can select more than one of the following options:**



- Introduce an additional threshold
- Extend the scope of the exception to include wholesalers that engage in dual distribution
- Extend the scope of the exception to include importers that engage in dual distribution
- No action required, the current scope of the exception for dual distribution is appropriate
- Remove the exception for dual distribution (dual distribution would no longer be block-exempted and would therefore require an individual effects-based assessment under Article 101 of the Treaty)
- Other

**29 Please explain your answer, indicating what action should be taken to ensure that the scope of the exception for dual distribution is appropriate and indicating the likely impact of that action on the aspects mentioned in the table in question 25.**

*5000 character(s) maximum*

Die bestehende Ausnahme basiert auf der Annahme, dass der zweigleisige Vertrieb eine untergeordnete Rolle spielt; dies hat sich tatsächlich wesentlich verändert. Daher müssen Situationen des zweigleisigen Vertriebs strenger auf ihre Vereinbarkeit mit dem Wettbewerbsrecht überprüft werden und die Wettbewerbsbehörden bzw die Hersteller müssen die Auswirkungen des konkreten Vertriebsmodells eingehender beobachten.  
Siehe dazu auch die Fragebogenbeantwortungen in der Anlage.

**30 Based on your knowledge/experience, please indicate whether you have any other comments or suggestions with regard to the exception for dual distribution. You may also provide additional information which may be relevant for this section (copies of any documents, reports, studies etc.). Please upload the information in files with a maximum size of 1 MB each, using the button below.**

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

## **B.2 Active sales restrictions**

Agreements or concerted practices aimed at restricting the territory into which, or the customers to whom, a buyer can sell the contract goods or services (“territorial and customer restrictions”) are considered hardcore restrictions under the VBER (i.e. they cannot benefit from the safe harbour) and by object restrictions under Article 101 of the Treaty. This means that the buyer should generally be allowed to actively approach individual customers (“active sales”) and respond to unsolicited requests from individual customers (“passive sales”). While the current rules generally do not allow restrictions of passive sales (except as provided by Articles 4(b)(iii) and 4(b)(ii) of the VBER), they do permit restrictions of active sales in certain limited cases, notably to protect investments by exclusive distributors (i.e. active sales into exclusive territories can be restricted (4(b)(i) of the VBER) and to prevent sales by unauthorised distributors in territories where a supplier operates a selective distribution system (i.e. members of this system can be restricted from selling to non-members (4(b)(iii) of the VBER).

The evaluation has shown that the current rules are perceived as preventing suppliers from designing their distribution systems according to their business needs. The main issues raised in this context include the

possibility of combining exclusive and selective distribution in the same or different territories. Moreover, the current rules are considered as not allowing for the effective protection of selective distribution systems against sales from outside the territory in which the system is operated.

Against this background, the following policy options are proposed regarding the exception for active sales restrictions (**Options 2 and 3 could be applied cumulatively**):

**Option 1:** no policy change

**Option 2:** expanding the exceptions for active sales restrictions to give suppliers more flexibility to design their distribution systems according to their needs, in line with Article 101 of the Treaty;

**Option 3:** ensuring more effective protection of selective distribution systems by allowing restrictions on sales from outside the territory in which the selective distribution system is operated to unauthorised distributors inside that territory.

**\* 31 Do you or your supplier(s) apply any of the active sales restrictions that are permitted by Article 4 of the VBER?**

- Yes
- No

**32 Please explain your answer above and give examples of the types of permitted active sales restrictions that you or your supplier(s) engage in.**

*5000 character(s) maximum*

Zum Schutz selektiver Vertriebssysteme sowie Investitionsschutz von Alleinvertriebshändlern wird eine stärkere Beschränkung des aktiven Verkaufs begrüßt.

**\* 33 Based on your experience/knowledge, do you consider that the current rules allowing certain active sales restrictions should remain unchanged?**

- Yes
- No
- No opinion

**34 Please explain your answer above and give examples if possible.**

*5000 character(s) maximum*

Siehe dazu die Fragebogenbeantwortungen in der Anlage

**35 Do you have experience or knowledge of instances where the combination of exclusive and selective distribution systems in the same territory (e.g. an EUMember State) but at different levels of the distribution chain may not fully**

**comply with the current rules (e.g. exclusivity at the wholesale level within a selective distribution system)?**

- Yes
- No
- No opinion

**36 Please explain your answer above and give examples if possible.**

*5000 character(s) maximum*

**37 Do you have experience or knowledge of concrete benefits that are created by combining exclusive and selective distribution systems in the same territory (e.g. an EU Member State) at different levels of the distribution chain (e.g. exclusivity at the wholesale level within a selective distribution system)?**

- Yes
- No
- No opinion

**39 Do you have experience or knowledge of instances where the combination of exclusive and selective distribution systems in different territories (e.g. different EU Member States, with exclusive distribution in Member State X and selective distribution in Member State Y) may not fully comply with the current rules?**

- Yes
- No
- No opinion

**41 Do you have experience or knowledge of concrete benefits that are created by combining exclusive and selective distribution systems in the different territories (e.g. different EU Member States with exclusive distribution in Member State X and selective distribution in Member State Y)?**

- Yes
- No
- No opinion

**43 Based on your experience/knowledge, what actions would ensure that the exceptions for active sales restrictions provide suppliers with more flexibility to design their distribution systems according to their needs?**

- allow exclusivity at the wholesale level within a selective distribution system
- other action (please specify below)

**44 Please explain your answer**

*5000 character(s) maximum*

**45 Based on your experience/knowledge, what would be the impact on the following aspects of allowing exclusivity at the wholesale level within a selective distribution system?**

**Please use the follow-up question to give concrete examples of the likely impacts.**

	Very negative	Negative	Neutral	Positive	Very positive	No opinion
a. Competition on the market	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
b. Harmonised application of the competition rules by competition authorities and national courts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
c. Legal certainty for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
d. Efficiency of distribution systems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
e. Cross-border trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
f. Costs for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
g. Consumer welfare	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
h. Investment / Economic growth	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
i. Sustainability objectives	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**46 Please explain your answers above and give concrete examples of the impacts you indicated. Please specify the letter of the row of the impact you are referring to.**

*5000 character(s) maximum*

siehe dazu die Fragebogenbeantwortung des Kfz-Handels

**47 Do you have experience or knowledge of benefits that can result from restricting sales from outside the territory in which a selective distribution system is operated to unauthorised distributors inside that territory?**

- Yes
- No
- No opinion

**48 Please explain your answer**

*5000 character(s) maximum*

siehe dazu die Fragebogenbeantwortung des Kfz-Handels

**49 Based on your experience/knowledge, what would be the impact on the following aspects of allowing restrictions on sales from outside the territory in which a selective distribution system is operated to unauthorised distributors inside that territory?**

**Please use the follow-up question to give concrete examples of the likely impacts.**

	Very negative	Negative	Neutral	Positive	Very positive	No opinion
a. Competition on the market	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
b. Harmonised application of the competition rules by competition authorities and national courts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
c. Legal certainty for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
d. Efficiency of distribution systems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
e. Cross-border trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
f. Costs for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
g. Consumer welfare	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
h. Investment / Economic growth	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
i. Sustainability objectives	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

**50 Please explain your answers above and, if possible, give concrete examples of the impacts you indicated. Please specify the letter of the row of the impact you are referring to.**

5000 character(s) maximum

siehe dazu die Fragebogenbeantwortung des Kfz-Handels

**51 Based on your experience/knowledge, which of the following actions could ensure an appropriate list of permitted active sales restrictions in the VBER (i.e. block-exempting restrictions that do not raise competition concerns or that satisfy the criteria of Article 101(3) of the Treaty, and not block-exempting restrictions that may raise competition concerns)? You can select more than one of the following options:**

- Extend the scope of the exceptions to allow exclusivity at the wholesale level within a selective distribution system
- Extend the scope of the exceptions to allow restrictions on sales from outside the territory in which a selective distribution system is operated to unauthorised distributors inside that territory
- Maintain the current rules
- Other

**52 Please explain your answer, in particular why you consider your preferred action(s) more appropriate than other possible actions**

5000 character(s) maximum

-

**54 Based on your experience, please provide any other comments or suggestions you may have on the rules on active sales restrictions. You may also provide additional information which may be relevant for this section (copies of any documents, reports, studies etc.). Please upload the information in documents with a maximum size of 1 MB each using the button below.**

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

### **B.3 Indirect restrictions of online sales**

Online sales are generally considered a form of passive sales and restrictions preventing distributors from selling through the internet are considered hardcore restrictions that cannot benefit from the safe harbour and as by object restrictions under Article 101 of the Treaty. The current rules apply the same approach to two types of indirect measures that may make online sales more difficult. Paragraph 52(d) of the Vertical Guidelines provides that charging the same distributor a higher wholesale price for products intended to be sold online than for products sold offline (“dual pricing”) is a hardcore restriction. Paragraph 56 of the Vertical Guidelines states that the same applies to imposing criteria for online sales that are not overall equivalent to the criteria imposed for sales in physical shops (“equivalence principle”) in the context of selective distribution. A supplier may, for example, require delivery within specified timeframes in online

stores as an equivalent to a requirement for immediate delivery in physical stores or require the creation of an online helpdesk for online stores as equivalent to the service provided in physical stores.

Over the last decade, online sales have developed into a well-functioning sales channel, whereas physical stores are facing increasing pressure. During the evaluation, stakeholders indicated that the rules on dual pricing prevent them from incentivising investments, notably in physical stores, by not allowing them to differentiate wholesale prices based on the costs of each channel. Stakeholders also pointed to a lack of legal certainty in the application of the equivalence principle, as online and offline sales channels are inherently different, and it is difficult to assess when a divergence in the criteria used for each channel amounts to a hardcore restriction under the VBER.

Against that background, the following policy options are proposed for these two types of indirect restrictions of online sales (**Options 2 and 3 could be applied cumulatively**):

**Option 1:** no policy change;

**Option 2:** no longer treating dual pricing as a hardcore restriction, with safeguards to be defined in line with the case law;

**Option 3:** no longer treating as a hardcore restriction the imposition of criteria for online sales that are not overall equivalent to the criteria imposed for sales in physical stores in a selective distribution system, with safeguards to be defined in line with the case law.

## 55 Do you have experience or knowledge of benefits that can be generated by dual pricing between online and offline sales?

- Yes
- No
- No opinion

## 56 Please explain your answer

*5000 character(s) maximum*

Der der Qualifizierung von Doppelpreissystemen als Kernbeschränkung zugrundeliegende Gedanke, dass Händler von der Etablierung eines Online-Vertriebes abgehalten würden, wenn diesen unterschiedliche Einkaufspreise und Rabatte für online oder über den stationären Handel verkaufte Ware gewährt würden, ist längst überholt. Seit Inkrafttreten der GVO hat der Onlinehandel mehr und mehr an Bedeutung gewonnen und gerät der stationäre Handel im Gegensatz hierzu vermehrt unter Druck. Obwohl Konsumenten die Beratung vor Ort gerne in Anspruch nehmen, kann nicht verhindert werden, dass der Kunde letztlich nach erfolgter Beratung (auf Kosten des stationären Handels) das Produkt online kauft. Um auch weiterhin in den stationären Handel zu investieren und dem Konsumenten vor Ort für Beratung, Reparatur... zur Verfügung zu stehen (große Konsumentengruppen können die Leistungen des stationären Handels auch nicht substituieren), sollte die Qualifizierung von Doppelpreissysteme als Kernbeschränkungen aufgehoben werden.

Auf Grund der von Haus aus höheren Kosten des stationären Handels ist es notwendig Großhandelspreise für den Offline-Verkauf niedriger anzusetzen als jene für Online-Verkäufe. Damit der stationäre Handel konkurrenzfähig bleibt, sind auf Großhandelsebene niedrigere Preise nötig.

**57 Do you have experience or knowledge of instances where dual pricing between online and offline sales would raise competition concerns?**

- Yes
- No
- No opinion

**59 Based on your experience/knowledge, what would be the impact on the following aspects of block-exempting dual pricing between online and offline sales?**

Please use the follow-up question to give concrete examples of the likely impacts.

	Very negative	Negative	Neutral	Positive	Very positive	No opinion
a. Competition on the market	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
b. Harmonised application of the competition rules by competition authorities and national courts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
c. Legal certainty for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
d. Efficiency of distribution systems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
e. Cross-border trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
f. Costs for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
g. Consumer welfare	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
h. Investment / Economic growth	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
i. Sustainability objectives	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

**\*60 Please explain your answers above and, if possible, give concrete examples of the impacts you indicated. Please specify the letter of the row of the impact you are referring to.**

*5000 character(s) maximum*

**61 Case law provides that prohibiting online sales is a hardcore restriction that cannot benefit from the safe harbour provided by the VBER. What would**



**in your view be the appropriate safeguard to ensure that dual pricing between online and offline sales would not result in a prohibition of online sales?**

*5000 character(s) maximum*

Doppelpreissysteme sind weder als Kernbeschränkungen zu regeln noch als gruppenfreigestellt auszuweisen. Ihre Qualifizierung muss im Einzelfall vorgenommen werden, wobei die Kriterien für die Beurteilung in einer Leitlinie zu erarbeiten und zu präzisieren sind.

**62 Do you have experience or knowledge of benefits that can be generated from the application of different criteria for online and offline sales in selective distribution systems?**

- Yes
- No
- No opinion

**64 Do you have experience or knowledge of instances where the application of different criteria for online and offline sales in selective distribution systems would raise competition concerns?**

- Yes
- No
- No opinion

**65 Please explain your answer.**

*5000 character(s) maximum*

-

**66 Based on your experience/knowledge, if the application of different criteria for online and offline sales in selective distribution systems were to be block-exempted, what would be the impact on the following aspects?**

	Very negative	Negative	Neutral	Positive	Very positive	No opinion
a. Competition on the market	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
b. Harmonised application of the competition rules by competition authorities and national courts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
c. Legal certainty for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

d. Efficiency of distribution systems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
e. Cross-border trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
f. Costs for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
g. Consumer welfare	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
h. Investment / Economic growth	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
i. Sustainability objectives	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

**67 Please explain your answers above and, if possible, give concrete examples of the impacts you indicated. Please specify the letter of the row of the impact you are referring to.**

*5000 character(s) maximum*

siehe dazu die Fragenbeantwortung des Kfz-Handels

**68 Case law provides that prohibiting online sales is a hardcore restriction that cannot benefit from the safe harbour provided by the VBER. In your view, what would be the appropriate safeguard to ensure that the application of different criteria for online and offline sales in a selective distribution system would not result in a prohibition of online sales?**

*5000 character(s) maximum*

Unterschiedliche Kriterien für den Online- und Offline-Vertrieb sind weder als Kernbeschränkungen zu regeln noch als gruppenfreigestellt auszuweisen. Ihre Qualifizierung muss im Einzelfall vorgenommen werden, wobei die Kriterien für die Beurteilung in einer Leitlinie zu erarbeiten und zu präzisieren sind.

**69 Based on your experience/knowledge, which of the following actions should be taken in relation to the two types of indirect restrictions on online sales mentioned in this section?**

You can select more than one of the following options:

- No longer treating dual pricing between online and offline sales as a hardcore restriction, with safeguards to be defined in line with the case law
- No longer treating the application of different criteria for online and offline sales in selective distribution systems as a hardcore restriction, with safeguards to be defined in line with the case law
- Maintaining the current rules: these types of indirect restrictions of online sales should continue to be treated as hardcore restrictions
- Other

**70 Please explain your answer, in particular why you consider your preferred action(s) to be more appropriate than other possible actions.**

*5000 character(s) maximum*

**71 Please explain your answer, indicating what would be the appropriate action and its likely impact on the aspects mentioned in the table on question 66.**

*5000 character(s) maximum*

**72 Would your reply to this question be different, if the rules on active sales restrictions included more permitted exceptions (see section B.2 above)?**

- Yes
- No
- No opinion

**74 Based on your experience/knowledge, please provide any other comments or suggestions you may have on the rules for these two types of indirect restrictions on online sales. You may also provide additional information which may be relevant for this section (copies of any documents, reports, studies etc.). Please upload the information in files with a maximum size of 1 MB each, using the button below.**

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

#### **B.4 Parity obligations**

Parity clauses require a company to offer the same or better conditions to its contract party (for example, an online platform) as it offers on certain other sales channels. So-called wide parity clauses generally relate to the conditions offered on all sales channel (including other platforms and the company's direct sales channels), whereas so-called narrow parity clauses generally relate only to the company's direct sales channels (for example, the company's website).

Parity obligations can be agreed at wholesale or retail level, and they can relate to price or non-price conditions (e.g. inventory or the availability of goods or services).

All types of parity obligations are currently block-exempted by the VBER. The evaluation showed an

increase in the use of parity obligations across sectors, notably by online platforms. National competition authorities and courts have identified anti-competitive effects of obligations that require parity with other indirect sales or marketing channels (e.g. other platforms or other online or offline intermediaries).

Regarding parity obligations, the following policy options are proposed:

**Option 1:** no policy change;

**Option 2:** removing the benefit of the block exemption for obligations that require parity relative to specific types of sales channels, by including such obligations in the list of excluded restrictions (Article 5 VBER). These obligations would thus require an individual effects-based assessment under Article 101 of the Treaty. Conversely, parity obligations relating to other types of sales channels would continue to be block-exempted, on the basis that they are more likely to create efficiencies that satisfy the conditions of Article 101(3) of the Treaty. For example, the benefit of the block exemption could be removed for parity obligations that relate to indirect sales and marketing channels, including platforms and other intermediaries, while maintaining this benefit for parity obligations that relate to direct sales and marketing channels, including own websites;

**Option 3:** removing the benefit of the block exemption for all types of parity obligations, by including them in the list of excluded restrictions (Article 5 VBER), thus requiring an individual effects-based assessment in all cases.

**\* 75 Do you have experience/knowledge of parity obligations?**

- Yes
- No

**76 If you have experience/knowledge of parity obligations, please indicate whether you have this experience/knowledge because you requested a parity obligation or because you accepted a parity obligation? (multiple answers possible)**

- I have requested a parity obligation
- I have accepted a parity obligation
- Other experience/knowledge

**77 If you have experience/knowledge of parity obligations, please explain this experience/knowledge.**

*5000 character(s) maximum*

Dass weite Paritätsklauseln, die sich auch auf die Preissetzung auf allen anderen Plattformen beziehen – wie diverse Fallbeispiele beweisen – den Wettbewerb zwischen Plattformbetreibern massiv beschränken und Händler in ihrer Gestaltungsfreiheit stark einschränken, scheint unumstritten. Im Gegensatz hierzu beschränken enge Paritätsklauseln den Händler „nur“ dahingehend, dass er nicht auf seiner eigenen Website, aber auf dritten Plattformen einen günstigeren Preis anbieten kann. Letztlich muss jedoch auch hier berücksichtigt werden, dass auch enge Paritätsklauseln wettbewerbsbeschränkend wirken können, wenn ein Anbieter beispielsweise mehrere Plattformen nutzen möchten, von diesen allerdings mehrere enge

Paritätsklauseln verwenden. Es sinken hierdurch die Anreize des Anbieters, seine Preise auf den unterschiedlichen Plattformen zu differenzieren und ebenso nimmt das Interesse der Plattformbetreiber um niedrigere Provisionen ab. In Österreich wurden auch enge Paritätsklauseln im Rahmen des Reisauszeichnungsrechtes und des Rechtes gegen unlauteren Wettbewerb vor allem in Hinblick auf Hotelbuchungsplattformen als rechtswidrig eingestuft. Nach mehreren Jahren Anwendungspraxis kann mittlerweile festgestellt werden, dass den Plattformen daraus kein Schaden oder spürbarer Wettbewerbsnachteil entstanden wäre, die gebundenen Hotelbetriebe aber in der Kommunikation gegenüber den Konsumenten gestärkt wurden und die Konsumenten bessere Qualität und Preise durch das Verbot der engen Paritätsklausel erreichen.

Gleichzeitig ist hier darauf hinzuweisen, dass auch Plattformen mit einem geringeren Marktanteil als 30% über eine erhebliche Marktmacht verfügen infolge der plattformspezifischen Vorteile (Netzwerkeffekte, Datenkumulation, finanzielle Marktstärke und Marktzutrittsbarrieren). Daher sind Klauseln mit verhaltenssteuernden Effekten im Plattformbereich als besonders kritisch zu beobachten.

Paritätsverpflichtungen haben somit durch ihre wettbewerbsbeschränkende Wirkung einen starken Effekt auf den Endkundenpreis, sodass weite als auch enge Paritätsverpflichtungen jedenfalls der Gruppenfreistellung entzogen werden sollten.

**\* 78 Do you have experience or knowledge of instances where parity obligations raise competition concerns?**

- Yes
- No

**79 Please explain your answer.**

*5000 character(s) maximum*

siehe Frage 77

**\* 80 If you replied 'yes' to the previous question, please indicate whether the competition concerns raised by the parity obligations are linked to the type of sales/marketing channels that the obligation covers:**

- The competition concerns raised by the parity obligation are linked to the fact that it covers indirect sales/marketing channels (e.g. other platforms or intermediaries)
- The competition concerns raised by the parity obligation are linked to the fact that it covers direct sales/marketing channels (e.g. own website)
- The competition concerns raised by the parity obligation are linked to the fact that it covers both direct and indirect sales/marketing channels
- The competition concerns raised by the parity obligation are due to other reasons (please provide details below)
- No opinion

**\* 81 Please explain your answer by reference to the competition concerns of which you have knowledge or experience.**

*5000 character(s) maximum*

siehe Frage 77

**82 Based on your experience/knowledge, does the extent to which parity obligations raise competition concerns depend on the sector in which they are used?**

- Yes, to a large extent
- Yes, to a small extent
- No
- No opinion

**84 As regards any competition concerns raised by parity obligations, based on your experience do you consider it necessary to apply further distinctions? (multiple replies possible)**

- Yes, it is necessary to consider whether the parity obligation concerns the retail or the wholesale level
- Yes, it is necessary to consider whether the parity obligation relates to price, inventory, availability or other conditions
- Yes, if intermediaries are concerned, it is necessary to consider the type of intermediary, i.e. sales intermediaries (e.g. sales platforms) or advertising /marketing intermediaries (e.g. websites that offer only price comparison)
- Yes, it is necessary to consider whether the transactions covered by the parity obligation take place online or offline
- Yes, it is necessary to consider further distinctions (please specify these in the box below)
- No
- No opinion

**\* 86 Do you have experience or knowledge of instances where parity obligations create benefits?**

- Yes
- No

**94 Taking into account any competition concerns that may be raised by parity obligations and any benefits they may create, based on your experience/knowledge do you consider that the benefit of the block exemption should be removed for these obligations, by placing them in the list of excluded restrictions in Article 5 VBER?**

- No, parity obligations should continue to be block-exempted.
- Yes, the benefit of the block exemption should be removed for parity obligations, but only for parity obligations that relate to indirect sales /marketing channels (e.g. other platforms/intermediaries)
- Yes, the benefit of the block exemption should be removed for parity obligations, but only for parity obligations that relate to direct sales/marketing channels (e.g. own website)
- Yes, the benefit of the block exemption should be removed for all parity obligations
- No opinion

**95 Please explain your answer, in particular by reference to any differences or similarities between parity obligations relating to direct and indirect sales /marketing channels.**

*5000 character(s) maximum*

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**96 Based on your experience/knowledge, what would be the impact on the following aspects of removing the benefit of the block exemption for parity obligations that relate to indirect sales/marketing channels?**

	Very negative	Negative	Neutral	Positive	Very positive	No opinion
a. Competition on the market	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
b. Harmonised application of the competition rules by competition authorities and national courts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
c. Legal certainty for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
d. Efficiency of distribution systems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
e. Costs for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
f. Consumer welfare	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

g. Investment / Economic growth	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
h. Sustainability objectives	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**98 In your opinion, what would be the impact on the following aspects of removing the benefit of the block exemption for parity obligations that relate to direct sales/marketing channels?**

	Very negative	Negative	Neutral	Positive	Very positive	No opinion
a. Competition on the market	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
b. Harmonised application of the competition rules by competition authorities and national courts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
c. Legal certainty for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
d. Efficiency of distribution systems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
e. Costs for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
f. Consumer welfare	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
g. Investment / Economic growth	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
h. Sustainability objectives	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**100 Based on your experience, what would be the impact on the following aspects of removing the benefit of the block exemption for all parity obligations?**

	Very negative	Negative	Neutral	Positive	Very positive	No opinion
a. Competition on the market	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
b. Harmonised application of the competition rules by competition authorities and national courts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
c. Legal certainty for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
d. Efficiency of distribution systems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
e. Costs for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
f. Consumer welfare	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
g. Investment / Economic growth	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
h. Sustainability objectives	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>



## B.5 Other aspects

**B.5.1.** Resale price maintenance (“RPM”) refers to restrictions that set a fixed or minimum resale price to be observed by the buyer. Given that RPM eliminates price competition between a supplier’s distributors and, based on enforcement experience, is generally unlikely to lead to efficiency gains, it is considered a hardcore restriction under the VBER (i.e. it cannot benefit from the safe harbour) and a by object restriction under Article 101 of the Treaty. However, the Vertical Guidelines recognise that supplier-driven RPM may, in certain circumstances, lead to efficiencies, e.g. to achieve an expansion of demand during the launch of a new product or to avoid the undercutting of a coordinated short-term low price campaign in a franchising system. The evaluation has identified a lack of clarity and guidance as regards the conditions under which such efficiencies can be argued and the evidence needed to meet the threshold for an individual exemption under Article 101(3) of the Treaty. Stakeholders pointed out that, as a result, companies prefer not to run the financial and reputational risk of including RPM restrictions in their vertical agreements.

**102 Taking into account that RPM is considered a hardcore restriction under the VBER and that, as stated in the Vertical Guidelines, RPM may exceptionally lead to efficiencies, do you have experience or knowledge of concrete instances where RPM has led to efficiencies, or could have led to efficiencies if the parties had not refrained from using RPM?**

- Yes, I have experience or knowledge of concrete instances where RPM has led to efficiencies
- Yes, I have experience or knowledge of concrete instances where RPM could have led to efficiencies if the parties had not refrained from using RPM
- No
- No opinion

**104 The evaluation has shown a lack of clarity and guidance as regards the conditions under which efficiencies can be argued for the use of RPM and the evidence needed for this purpose, in your view, what measures could be taken to address this lack of clarity and guidance?**

Please substantiate your reply.

*5000 character(s) maximum*

Da die Kommission bereits in den alten Leitlinien Situationen anerkannt hat, in denen RPM wettbewerbsökonomisch gerechtfertigt sind, gilt es nun weiter Erfahrung zu sammeln und allgemeine, justiziable Grundsätze in den Leitlinien zu entwickeln, welche geeignet sind einen höheren Grad an Rechtssicherheit herbeizuführen. Die US-amerikanischen Erfahrung mit dem MAP (Minimum Advertized Price) sind hier zu berücksichtigen.

**B.5.2.** Non-compete obligations of an indefinite duration or exceeding 5 years are excluded from the benefit of the VBER and therefore require an individual effects-based assessment under Article 101 of the Treaty. Non-compete obligations that are tacitly renewable beyond a period of 5 years are deemed to have been concluded for an indefinite duration. The evaluation has indicated that this broad exclusion of non-compete clauses from the benefit of the block exemption may result in false negatives, by covering non-compete obligations that satisfy the conditions of Article 101(3) of the Treaty. In particular, the exclusion of tacitly renewable non-compete obligations could be considered unjustified, to the extent that the buyer is able to

terminate or renegotiate the agreement at any time with a reasonable notice period and at reasonable cost. Moreover, the overly broad scope of the exclusion is considered to create an unnecessary administrative burden and additional transaction costs for businesses, since it forces them to periodically renegotiate their contracts despite there being a willingness on both sides to continue the contractual relationship beyond five years.

In this context, the Commission is exploring the possibility of block-exempting tacitly renewable non-compete obligations for the duration of the agreement, provided that the buyer can terminate or renegotiate the agreement at any time with a reasonable notice period and at reasonable cost.

**105 Do you have experience or knowledge of instances where it would not be appropriate to block-exempt a tacitly renewable non-compete obligation?**

- Yes
- No
- No opinion

**106 Please explain and, if possible, provide concrete examples.**

*5000 character(s) maximum*

### **B.5.3 Sustainability agreements**

In recent years, there have been increasing discussions about the compatibility of agreements between supply chain operators to foster sustainability objectives with Article 101 of the Treaty. No specific issues relating to sustainability agreements in the vertical supply chain were identified during the evaluation. However, in line with the objectives of the European Green Deal, specific considerations as regards the impact of the current framework for vertical agreements on sustainability objectives will be taken into account in the impact assessment phase of the VBER review.

**107 Do you have experience or knowledge of situations where the current rules create obstacles for vertical agreements that pursue sustainability objectives?**

- Yes
- No
- No opinion

**109 Do you see a need for specific guidance on vertical agreements that pursue sustainability objectives? If so, what type of guidance would be necessary? Please explain your reply. What particular aspects should this guidance cover?**

*5000 character(s) maximum*

Nachhaltigkeitsvereinbarungen im horizontalen und vertikalen Bereich sind im Sinne des Grünen Deals auf ihre positiven Gesamtwirkungen hin zu untersuchen. In geeigneten Leitlinien sind die Bedingungen festzuhalten, unter denen Art. 101 Abs. 1 und Abs. 3 AEUV hier keine Anwendung finden.

#### B.5.4. Impact of the Covid crisis

The COVID-19 crisis that began in March 2020 has had a significant impact on the economy. In particular, there appears to have been a significant increase in e-commerce as a result of the measures taken to contain the spread of the pandemic. Given that these developments are very recent, they could not be taken into account during the evaluation phase of the VBER review. However, as indicated in the staff working document, in view of their importance, the effects of the COVID-19 crisis on the supply and distribution arrangements should be evaluated and, if possible, quantified at this stage of the review of the rules.

**110 Do you have experience or knowledge regarding the impact of the Covid-19 crisis on market trends that are relevant for the revision of the VBER and Vertical Guidelines (e.g. innovation in or impacts on distribution models and strategies or on consumer behaviour)?**

- Yes
- No
- No opinion

**112 Please feel free to upload a concise document, such as a position paper, explaining your views in more detail or including additional information and data. Please note that the uploaded document will be published alongside your response to the questionnaire which is the essential input to this open public consultation. The document is an optional complement and serves as additional background reading to better understand your position.**

The maximum file size is 1 MB

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

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/1294\_Fragebogen\_BSH\_ausgef\_1lt\_Leitlinien\_VBER\_2020\_BGh3.pdf

103d3fe2-40d4-49aa-93c6-f1002cde87d9/Fragebogen\_ausgefuehlt\_BG\_Fahrzeughandel\_01032021.pdf

**113 Do you have any further comments on this initiative on aspects not covered by the previous questions?**

*3000 character(s) maximum*

Die derzeitige Ausnahme für Handelsagenten in der Vertikal-GVO und den Leitlinien (Randnummer 12-21) muss beibehalten werden. Anderenfalls würde dem Vertriebsweg über Handelsagenten die

Rechtsgrundlage entzogen. Der Vertriebsweg über Handelsagenten ist gerade für KMU's von besonderer Bedeutung, um mit Ihren Produkten in anderen EU-Staaten einen schnellen Marktzugang zu bekommen. Dieser Mehrwert für den Binnenmarkt wäre ohne die entsprechende Freistellung gefährdet.

**\* 114 Please indicate whether the Commission services may contact you for further details on the information submitted, if required.**

- Yes
- No

### **Contact**

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