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# Feedback from: Inhouse Competition Lawyers Association (ICLA)

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**Submitted by**

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Inhouse Competition Lawyers Association (ICLA)

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**Initiative**

[EU competition rules – revision of the Vertical Block Exemption Regulation \(/info/law/better-regulation/have-your-say/initiatives/12636-EU-competition-rules-revision-of-the-Vertical-Block-Exemption-Regulation\)](#)

ICLA supports the Commission’s initiative to seek to address the problems identified during the evaluation:

Art. B.a: ICLA commends the goal of improving clarity on efficiencies resulting from RPM, and requests to be included in the engagement with businesses re concrete efficiencies instances. Clarification in this area is useful. We draw attention to the so-called “fulfillment model” outlined in ICLA’s previous submission at paras. 12-14 (see enclosed).

Art. B.b: We support including tacitly renewable non-compete obligations in the block exemption as described.

In its review, the Commission should bear in mind the following principles:

International convergence. An important objective should be, to the extent possible, to promote international convergence on these issues across the Atlantic and globally. It is difficult for global businesses to comply where the competition rules significantly diverge. While full convergence is not possible, we believe nonetheless that convergence can be improved and is important.

EU Level convergence. Another important objective is harmonizing CJEU case law into the regulation, for example, by clarifying the rules on online sales restrictions (incl. in the context of selective distribution) as well as the “by object” vs. “by effect” distinction along the lines of Case C-228/18 Budapest Bank and Case C-307/18 Generics (UK) decisions which cast doubts on the strict “hardcore approach” for RPM and territorial and customer restrictions. The VBER review should ensure to harmonize approaches amongst EU Member States.

ICLA supports revision of the VBER rules as follows:

Art. C.a. Dual Distribution. Notwithstanding growth in online sales, competition between a supplier and a distributor remains, by definition, of a different nature than competition between independent distributors and as such primarily affects intra-brand competition, which is typically addressed by the vertical rules. The exemption should therefore be maintained.

The topic of information exchanges in the context of “dual distribution” is missing from the roadmap. The Guidelines should clarify that dual distribution is a purely vertical relationship, and that information gathering that is relevant in the vertical relationship (e.g. retail sales data for better planning and logistics that ensures better availability of products to meet consumer demand and limits over production) should not give rise to horizontal concerns between the supplier and its distributors at retail level. In this context, we stress the importance of a consistent approach in light of the ongoing evaluation of the horizontal rules and guidelines.

C.b. Active Sales Restrictions. We welcome the Commission’s readiness to consider more flexibility as the current strict approach is inconsistent

with business reality. In particular, we support the option of shared exclusive distributors. Moreover, the option of combining “shared” exclusive distribution on the wholesale level with selective distribution on the retail level is missing from the description. Under some circumstances, it is legitimate for distributors to provide some territorial protection against competition from other distributors reselling the same brand (intra-brand competition). There is a need for more flexibility and clarity in this area.

C.d. Parity obligations. We believe competitive problems, if any, exist in the context of retail price parity rather than other parities or wholesale parity. Excluding all types of parity clauses from the benefits of the block exemption risks creating false negatives and would increase burden and costs for companies.

- In terms of policy options, ICLA would support the following:
- a. Dual distribution: option 3
  - b. Active sales restrictions: options 2 and 3
  - c. Indirect measures restricting online sales: options 2 and 3
  - d. Parity: options 2 and 3, provided this is limited to retail price parity clauses

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