



## Antitrust: Commission adopts new Vertical Block Exemption Regulation and Vertical Guidelines

Brussels, 10 May 2022

The European Commission has adopted today the new [Vertical Block Exemption Regulation \('VBER'\)](#) [accompanied by the new Vertical Guidelines](#), following a thorough evaluation and review of the 2010 rules. The revised rules provide businesses with simpler, clearer and up-to-date rules and guidance. The new rules will help them to assess the compatibility of their supply and distribution agreements with EU competition rules in a business environment reshaped by the growth of e-commerce and online sales. The revised VBER and Vertical Guidelines will enter into force on 1 June 2022.

Executive Vice-President Margrethe **Vestager**, in charge of competition policy, said: *"The revised Vertical Block Exemption Regulation and Vertical Guidelines are the result of a thorough review process. The new rules will provide companies with up-to-date guidance that is fit for an even more digitalized decade ahead. The rules are important tools that will help all types of businesses, including small and medium enterprises, to assess their vertical agreements in their daily business."*

### Main changes in the revised rules

The VBER exempts from the prohibition in Article 101(1) of the Treaty on the Functioning of the European Union ('TFEU') agreements between companies that are active at different levels of the production or distribution chain, subject to conditions. The rules thus provide for a safe harbour where certain agreements are block exempted.

The main changes to the previous rules focus on adjusting the safe harbour to ensure that it is neither too generous nor too narrow. In particular, the new rules:

- **Narrow the scope of the safe harbour as regards:** (i) dual distribution, that is, where a supplier sells its goods or services through independent distributors but also directly to end customers, and (ii) parity obligations, that is, obligations which require a seller to offer the same or better conditions to its counter-party as those offered on third-party sales channels, such as other platforms, and/or on the seller's direct sales channels, like its website. **This means that certain aspects of dual distribution and certain types of parity obligations will no longer be exempted under the new VBER but must instead be assessed individually under Article 101 TFEU.**
- **Enlarge the scope of the safe harbour as regards:** (i) certain restrictions of a buyer's ability to actively approach individual customers, i.e. active sales, and (ii) certain practices relating to online sales, namely the ability to charge the same distributor different wholesale prices for products to be sold online and offline and the ability to impose different criteria for online and offline sales in selective distribution systems. **These restrictions are now exempted under the new VBER, provided all other conditions for the exemption are met.**

The revised VBER rules have also been clarified and simplified, to make them more accessible to those who use them in their day-to-day business. In particular, the VBER rules have been updated as regards the assessment of online restrictions, vertical agreements in the platform economy and agreements that pursue sustainability objectives, among other areas. In addition, the guidelines provide detailed guidance on a number of topics, such as selective and exclusive distribution and agency agreements.

Additional detailed information on the main changes can be found in an [explanatory note](#) that accompanies the revised rules.

### Background on the review process

[In September 2020](#), the Commission published a [Staff Working Document](#) setting out the results of the evaluation of the 2010 VBER and Vertical Guidelines. The evaluation showed that they are both useful tools that significantly facilitate the self-assessment of vertical agreements and help reduce compliance costs for businesses. However, it also provided indications that the rules needed to be

adapted to market developments that have occurred since their adoption in 2010.

Following this evaluation, in October 2020 the Commission launched the impact assessment, during which it gathered further evidence on the areas for improvement, including through an [open public consultation](#), discussions with interested parties and national competition authorities, as well as through targeted expert reports.

In July 2021, the Commission launched a [public consultation](#) inviting comments from stakeholders on a draft revised VBER and Vertical Guidelines. In November 2021, the Commission published the results of the public consultation, including a [summary of the contributions](#) received. An [additional targeted consultation](#) on the draft guidance relating to information exchange in the context of dual distribution was conducted in February 2022. The Impact Assessment Report, which includes more details on the consultation activities as well as the assessment of the proposed changes, is also published today together with the revised rules and the results of the targeted consultation.

## **Background on the VBER**

Vertical agreements are agreements 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.

Article 101(1) TFEU prohibits agreements between undertakings that restrict competition. However, under Article 101(3) TFEU, such agreements are compatible with the Single Market, provided they contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits and without eliminating competition.

The VBER exempts vertical agreements that meet certain conditions from the prohibition in Article 101(1) TFEU, thus creating a safe harbour for those agreements. A safe harbour that is too generous would not comply with Article 101 TFEU. On the other hand, a safe harbour that is too narrow would increase compliance costs for businesses. The VBER is accompanied by the Guidelines on Vertical Restraints that provide guidance on how to interpret and apply the VBER and how to assess vertical agreements that fall outside the safe harbour of the VBER.

## **For More Information**

See the [dedicated webpage of DG Competition](#), which contains all stakeholder contributions submitted in the context of the evaluation and the impact assessment, summaries of the different consultation activities, the Staff Working Document on the evaluation and the expert reports prepared for the impact assessment.

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