

## COMP VBER REVIEW

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**To:** COMP VBER REVIEW; fahrzeughandel@wko.at  
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### Comments on the draft Guidelines on INFORMATION exchange in DUAL distribution

accordingly to the introduction of the draft to the new section in the Guidelines of the new Vertical Block Exemption dealing with Information exchange in DUAL distribution in most cases the **positive impact of the Vertical agreement on competition will prevail** over potential negative impact between supplier (OEMs) and buyers (CarDealers) at the downstream level under the drafted DUAL distribution system in the planned revision of the VBER 330/2010.

Due to the fact that the necessary INFORMATION about customer contracts between the OEMs and the respective CarDealer is in most cases organized via the agreed IT system. As mentioned in the report the IT system stores the identity of all customers and purchase details of all sold cars. This mutual handling of every purchase procedure secures the guarantees/warranties obligations of the OEMs to the customers, irrespective of whether:

- the customers agreed on the car purchase contract with the authorized CarDealer or
- in case of special segments - as rental / government orders etc. - directly with the supplier (importer).

But as the "Expert Report" pointed out the **Information Exchange should remain block** exempted as not any of the information is to be considered **unrelated or disproportionate for facilitating the implementation.**

**Exchanges of information** can have significant **negative horizontal effects** and in some cases **constitute restrictions of competition** by object.

On the vertical level, **direct sales by a supplier or importer** are **in contradiction** with a **selective distribution system**:

- **legally**, because they are antinomic to the criteria deemed "*necessary*" for a good distribution of its products or services, which the supplier requires its distributors to respect and which it dispenses with for its direct sales;
- **economically** because an **unrestricted development of its direct sales** by the supplier/importer **undermines the viability of the investments** made by the distributors to **meet the required selective criterias.**

Such an alignment effect can only **be reinforced by increased price transparency** with the **development of internet sales**, in addition to the numerous factors **that limit the pricing freedom of distributors in most networks**, in particular the **low margins** and the **unpredictability of discounts** (see in particular for the distribution of APPLE branded products the aforementioned decision of the French Competition Authority and the decision of the **Austrian Supreme Cartel Court of 17 February 2021**).

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