



## FESI comments on the draft guidance on information exchange

*Brussels, February 2022*

The Federation of the European Sporting Goods Industry ([FESI](#)) warmly welcomes the publication by the European Commission of the new draft section dealing with information exchange in dual distribution (VBER).

FESI supports many of the findings observed in the Expert's report, particularly that the *exchange of information is an integral part of vertical agreements also in most dual distribution scenarios*. In addition, *information exchange in dual distribution scenarios does not generally create a "false positive" under the current VBER*.

The sporting goods industry highly appreciates that dual distribution will continue to remain block exempted by Article 2(4) of the new VBER. We also strongly support the apparent removal of the additional (lower) market share threshold for information exchange.

We take note of the Commission's opinion that *not all exchanges of information between a supplier and buyer in a dual distribution scenario are efficiency enhancing* and of its decision to introduce a new Article 2(5) in the VBER, which will provide that the exchange of information between a supplier and a distributor/retailer is not covered by the VBER where the information exchange is *not necessary to improve the production or distribution of the contract goods or services by the parties*.

While we appreciate that specific examples of information exchanges that can/cannot benefit from VBER are listed in the Draft Guidance, we remain concerned that those lists seem to be non-exhaustive (especially the one outlining the types of information exchange that cannot benefit from VBER). Moreover, it only appears in the proposed guidance – which remains a non-binding document.

For the purposes of legal certainty, we would recommend to:

- Develop a limited "blacklist" of information exchange that cannot benefit from VBER as it has been acknowledged that exchange of information is an integral part of vertical agreements and does not generally create "false positives";
- Recognize that all other types of information exchange should be block exempted provided it is not used in a manner which is a hardcore restriction under the VBER; and
- Ensure that this list is directly reflected in the new VBER and not only in its guidance document.

Furthermore, the sporting goods industry is concerned about the Commission's proposal to exclude non-aggregated customer-specific value and volume sales data from the VBER. We are of the firm opinion that this information can be exchanged provided it is not used by the supplier in a manner that is a hardcore restriction under the VBER. We would strongly recommend removing this reference from paragraph 14 of the proposed guidance document.

The sporting goods industry would like to thank the European Commission for taking our recommendations into consideration.

We remain at your disposal should you wish to further discuss our suggestions.

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**About FESI**

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Founded in 1960 FESI - the Federation of the European Sporting Goods Industry represents the interests of approximately 1.800 sporting goods manufacturers (85% of the European market) through its National Sporting Goods Industry Federations and its directly affiliated member companies. 70-75% of FESI's membership is made up of Small and Medium Sized Enterprises. In total, the European Sporting Goods Industry employs over 700.000 EU citizens and has an annual turnover of some 81 billion euro.

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