

VOLKSWAGEN

AKTIENGESELLSCHAFT

- **Dropping of the 10-30% market share threshold**
 - We highly appreciate the approach to drop the 10-30% market share threshold in dual distribution scenarios and to follow the fundamental approach to exempt all vertical agreements that are not explicitly prohibited within the scope of the VBER.
- **Per se exclusion of hybrid platforms in dual distribution scenarios**
 - To our regret, there is no further statement on how to deal with hybrid platforms in dual distribution scenarios (Art. 2 (7) VBER). Hence, we would like to reemphasise our previous statement on this matter (see Volkswagen Group Comments to the VBER draft of Sept. 2021). There is still uncertainty on whether a manufacturer or wholesaler that provides a “brand specific” online platform would fall within the exclusion of the VBER exemptions. As outlined in the previous statement, online platforms provided by manufacturers are normally available to their authorized dealers, typically brand specific and not offered to any external not authorized third parties. Thus, such vertical agreements are not very likely to hinder or impede inter-brand competition. Possible negative effects on intra-brand competition are likely counter-balanced by the gains in inter-brand competition.
- **Clarification relating to (38) of the revised guidelines**
 - We would also be grateful for more clarity in relation to dual-role scenarios, in particular the example given at Paragraph 38 of the Revised Guidelines and the situations where there would be a requirement to meet “all relevant investments” of the non-agency independent distributor. The resulting costs could make such distribution models unworkable for businesses, despite the fact that the Commission’s report acknowledges that most vertical agreements are benign and the main area of concern is information sharing.
 - We therefore consider it important for the Commission to clarify why Paragraph 38 of the Draft Guidelines adopts such a position and what competition concerns the Commission is seeking to prevent, as well as to clarify what steps suppliers can take to maintain dual-role relationships without falling within Article 101(1). In particular it would be helpful for the Commission to clarify whether the example in Paragraph 38 only applies to dual-role relationships where the products sold via agency are sold alongside those products sold via independent distribution (i.e. in the same shop or on the same premises) – if so, would separation of the products (e.g. distinct premises, staff etc) allow a supplier to maintain the dual-role relationship without having to cover the relevant investments for the products which are not sold via agency?
- **Rec (2) of the draft:**
 - The definition of non-reciprocal is too narrow, excluding sales even in exceptional and justified cases from the buyer to the supplier (such as e.g. warranty cases).

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- **Rec (13) and (14) of the draft**
 - Please clarify that the distinction drawn between information that can be exchanged and information that cannot be exchanged is not only true within the context of the BER but is a general principle due to the horizontal nature of the question.
- **Rec. 13, lit. (e): Exchange of information relating to the prices at which the buyer resells the goods or services.**
 - Kindly clarify the differentiation between the allowed “exchange of information relating to the prices at which the buyer resells the goods or services” in Rec. 13, lit. (e) and the prohibited “exchange of the actual future price” in Rec. 14. lit (a). Reading the overall context, the former would allow exchanging information on (historical) transaction prices.
- **Rec (14) Clarification relating to „Actual / Future prices“ would be endorsed**
 - Please clarify why (14) lit (a) refers to “actual future prices” while the legitimate exchange in (13) lit (d) refers only to “prices”. In the context, please elaborate considering the Commission decision AT.39850 - Container Shipping, how far in advance new Recommended Retail Price and / or selling prices can be communicated to the dealer network within a distribution network, in particular in the context of a dual distribution scenario.
- **Rec. 14 lit (a)**
 - Please specify under which circumstances within a legitimate maximum price scheme a supplier may check the end customer prices.
- **Recital lit. 14(b)**
 - Please specify under which circumstances within a selective distribution it remains legitimate to check customer data to verify that no sales to unauthorized resellers have been made.
- **Rn. (17) Firewall on retail level**
 - In a Dual Distribution scenario where the supplier is selling directly in addition to the traditional distribution system via authorized dealers but engages the same dealers in the direct distribution as service providers / genuine / non-genuine agents please elaborate (17) if firewalls on a dealer level are required which would result in substantial investments for SME enterprises or the entire exclusion of SME enterprises from direct businesses of suppliers.