

Comment

of the German Insurance Association (GDV)

ID-number 6437280268-55

**on the additional public consultation on proposed guidance
relating to information exchange in the context of dual distribu-
tion, intended to be added to the Vertical Guidelines**

**Gesamtverband der Deutschen
Versicherungswirtschaft e. V.**

German Insurance Association

Wilhelmstraße 43 / 43 G, 10117 Berlin
Postfach 08 02 64, 10002 Berlin
Phone: +49 30 2020-5000
Fax: +49 30 2020-6000

Rue du Champs de Mars 23
B - 1050 Brussels
Tel.: +32 2 28247-30
Fax: +49 30 2020-6140
ID-Nummer 6437280268-55

Contact:
**Legal and Compliance / European
Office**

E-Mail: recht@gdv.de;
bruessel@gdv.de

www.gdv.de



We thank the Commission for the opportunity to comment on this important and practically relevant aspect of the Vertical Guidelines.

However, we believe that it could have been communicated more clearly that the proposal of the Vertical Guidelines is based on a version of the Vertical Block Exemption Regulation that differs from the version consulted in July 2021. The wording of the present consultation gives the impression that the consultation only concerns an addition to the Vertical Guidelines, but not also an amendment to the draft Vertical BER itself.

Be that as it may, we welcome the fact that the Commission has apparently abandoned the differentiation between market share thresholds from the Vertical BER draft of July 2021. We had also criticized this proposal in our original consultation contribution. We consider the current proposal (including the version of the Vertical BER) to be an improvement compared to the July 2021 proposal.

However, we continue to believe that the best solution would be to keep the rules on dual distribution from the current Vertical BER unchanged. According to the experience of the German insurance industry, hardly any competition problems have come to light in the context of dual distribution, and there have been no issues pertaining to information exchange in this context. Furthermore, it is undisputed that dual distribution has a positive effect on inter-brand competition.

If, according to the current proposal, the flow of information is only covered by the block exemption if it is necessary to improve the production or distribution of the contract goods or services, this gives the impression that large parts of the exchange of information in the vertical relationship, even if it does not infringe Art. 101 TFEU, could be nonetheless questionable. This appears to be based on the assumption that any information exchanged within the vertical relationship could also be misused by the parties for collusion in the horizontal relationship and that it is up to the parties to rebut this suspicion. This puts dual distribution constellations at an unjustified disadvantage compared to normal vertical relationships. In our view there is also a danger of a "chilling effect", so that the parties in a dual distribution situation would no longer exchange any information which is not clearly beneficial, even if it is allowed according to the criteria of the Horizontal Guidelines.

Moreover, the Commission has not explained at any point which practical experience or considerations justify to now assess such an exchange of information more critically than before. The Expert Report commissioned by the Commission itself does not advocate such changes.

Even if we are critical of such an amendment to the BER, we nevertheless consider it entirely sensible, as proposed, to include some guidance to the Vertical Guidelines as to which types of information exchange in vertical relationships are unobjectionable under competition law. We also expressly welcome the statement that firewalls within the organization are suitable for minimizing concerns regarding an exchange of information.

Brussels, 18 February 2022