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To: [COMP VBER REVIEW](#)
Cc: [COMP GREFFE ANTITRUST](#); [Piccolo, Salvatore](#); [Michele Bisceglia](#)
Subject: HT.5455 - submission from a citizen
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Attachments: image002.png

Dear All

I have read the draft Guidelines on vertical restraints with great interest. I believe this is an excellent document which will contribute to the effective enforcement of Article 101 TFEU. So, my sincere congratulations.

My comments here concern section 8.2.5 which deals with the assessment of parity obligations. I am writing on a personal capacity. My views do not necessarily represent those of my company, Compass Lexecon, my colleagues or the company's clients. I have written several papers on parity obligations in the past with Salvatore Piccolo and Michele Bisceglia (copied here).

I have two points to make.

The first point relates to paragraphs 346 and 347. The draft correctly concludes that under certain conditions narrow parity obligations may allow the suppliers for online intermediation services to maintain a higher price for their services, leading to higher retail prices for the intermediated goods or services on all sale channels. It is also correct to state, as the draft does, that this is likely to be the case when competition for the supply of online intermediation services is limited. However, it may be helpful to clarify that narrow parity clauses produce restrictive effects equivalent to those produced by across-platform retail parity obligations whenever the buyers find themselves unable to delist from the platform or platforms imposing such parity obligations. I believe this conclusion fairly reflects the work of Johansen and Verge available at <https://ekstern.filer.uib.no/svf/2017/Working%20Paper%2001-17,%20revidert.pdf>.

The second comment concerns paragraphs 349 and 350 on parity obligations relating to non-retail conditions. The draft correctly notes that these clauses may produce anticompetitive effects as retail parity obligations do, but that there are circumstances where that need not be the case. The draft refers to the need to consider conditions of competition downstream prior to concluding about the potentially restrictive effects of such practices. This is correct. However, it may be helpful to further specify the circumstances under which the net effect of such clauses may be procompetitive. Based on my work with Michele Bisceglia and Salvatore Piccolo (available at <https://www.sciencedirect.com/science/article/pii/S016771872100031X>), I believe those circumstances are: downstream competitors are not subject to RPM, the direct channel is not subject to a parity obligation, and the direct channel imposes an effective competitive constraint on downstream competitors sourcing from the online platforms that conform the indirect distribution channel.

Sincerely

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