



Brussels, 16th September 2021

Public consultation on the draft revised Regulation on vertical agreements and vertical guidelines

Contribution by the Belgian Franchise Federation (Fédération Belge de la Franchise (FBF) / Belgische Franchisefederatie (BFF))

The Belgian Franchise Federation welcomes the opportunity to comment on the draft revised Regulation on vertical agreements and vertical guidelines. The Belgian Franchise Federation is a member of the European Franchise Federation (EFF) and contributed to the EFF's position paper, which it fully supports.

The Belgian Franchise Federation is particularly concerned that the new draft revised Regulation and accompanying guidelines will significantly undermine the exchange of information between franchisors and franchisees in a franchise network. A continuous exchange of information and sharing of know-how is essential in the operation of a franchise network. It allows franchisors to share their know-how and provide the assistance required to the franchisees - who are often SMEs - and ensures the uniformity of the network, thus guaranteeing to consumers that they will obtain the same quality of products and services at any franchised outlet. The Belgian Franchise Federation therefore urges the Commission to recognise, as the CJEU did in Pronuptia, that information exchange is an essential core element in a franchise network and therefore not a restriction of competition under Article 101 (1) TFEU. The calculation of market shares required to determine whether or not the 10% threshold would be reached under the draft revised rules would require complicated market analyses, lead to legal uncertainty, administrative burden and cost, in particular for SMEs, which is contrary to the simplification of the regulatory environment that the Commission is striving for.

Second, the Belgian Franchise Federation supports the EFF's suggestion to align the existing definition of the criteria of secrecy, set out in Article 2 (1)(a) of EU Directive 2016/943 on the protection of undisclosed know-how and business information (trade secrets), with the new Regulation on vertical agreements.

Third, the Belgian Franchise Federation also welcomes the Commission's recognition that the transfer of know how in franchise relations justifies a non-compete obligation for the whole duration of the franchise agreement and suggests clarifying that the post-term non-compete clause could also extend to the exclusive territory granted by the franchisor to the franchisee.

Finally, the Belgian Franchise Federation also believes that a further flexibility of the rules on RPM in franchise networks would be warranted. This would allow brands to position themselves in the market in terms of price and quality and recognise the disproportionate efforts required to carry out advertising promotions in franchise networks with independent franchisees compared to vertically integrated undertakings with branches. It would also offer some protection to franchisees in a network from free-riding by franchisees focusing on internet sales at reduced prices.

Yves Delaye

President of the Fédération Belge de la Franchise (FBF) / Belgische Franchisefederatie (BFF)



Fédération Belge de la Franchise a.s.b.l. / Belgische Franchise Federatie v.z.w.

Researchdreef 12 Allée de la Recherche – Belgium – 1070 Brussels

■ Tel. : +32 (0)2 523.97.07 ■ e-mail : info@fbf-bff.be ■ www.fbf-bff.be ■ TVA/BTW : BE 0448.319.845

■ BNP Paribas Fortis - IBAN BE75 2100 6657 1051 – BIC : GEBABEBB

