

Brussels, the 14th of September 2021

***Conc: UCM Position on the draft revised Regulation on vertical agreements and vertical guidelines.***

Sir,  
Madam,

In our quality of member of SME United, we have been informed about the public consultation on the draft revised regulation on EU competition rules on vertical agreements.

As you might know, UCM has various operating partnerships with a lot of professional organizations, among others with **APLSIA (*Association Professionnelle du Libre-Service Indépendant en Alimentation*)**, being the only Belgian French-speaking professional association exclusively engaged in defending the interests of SME leaders, active in local supermarkets, 90% of them being franchisees.

One of APLSIA 's biggest concern since more than 25 years, has been to aim at well-balanced relationships between franchisors and franchisees, reflected in the clauses of the franchising contract.

We totally support APLSIA's concern about those clauses being the fundamental principles of a European free market: once the contract period of a franchising collaboration between two independent parties has legally ended, each party must be free to continue the business.

APLSIA insists towards the European Commission:

1. to limit post-contractual non-compete clauses in the "hard core restrictions" of the "Vertical Block Exemption" to the duration of the franchising contract period;
2. to clearly state in the "Vertical Block Exemption Regulation", more specifically with the "hardcore restrictions", that one year after contract is the maximum period, whereby Member States have the opportunity to reduce this period, or exclude the use of contractual non-compete clauses all together, if the Member State deems this necessary to maintain or restore competition on their national market, depending on certain circumstances and to the extent that they can promote free competition;
3. to redefine the definition of "knowhow" in the more strict sense of the Regulation of 1999: "know-how" means a package of non-patented practical information, resulting from experience and testing by the supplier, which is secret, substantial and identified: in this context, 'secret' means that the know-how, as a body or in the precise configuration and assembly of its components, is not generally known or easily accessible; "substantial" means that the know-how includes information which is indispensable to the buyer for the use, sale or resale of the contract goods or services; "identified" means that the know-how must be described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality;
4. to clarify its position on possible national derogations from the VBER conditions to allow stricter requirements for post contractual non-compete clauses in order to restore proper competition on the national market.

Should you have any question regarding the subject, don't hesitate to contact us.

Best Regards,

A handwritten signature in black ink, consisting of a long horizontal line followed by a series of loops and a final upward stroke.

Arnaud Deplae  
Secrétaire Général

A handwritten signature in black ink, featuring a large initial 'P' followed by several loops and a final horizontal line.

Pierre-Frédéric Nyst  
Président