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Your Ref.: HT.6179**CONTRIBUTION TO THE PUBLIC CONSULTATION ON THE DRAFT REVISED
REGULATION ON VERTICAL AGREEMENTS AND VERTICAL GUIDELINES**

Eurelec Trading ("Eurelec"), a joint venture headquartered in Brussels, Belgium, set up by the two retail groups REWE (Germany) and E.Leclerc (France) in 2016 to jointly negotiate purchase prices and purchase price conditions, welcomes the opportunity to be able to comment on the draft Regulation on vertical agreements ("draft VBER") and the accompanying Vertical Guidelines ("draft Guidelines") published by the European Commission ("Commission") on 9 July 2021.

1. General comments

The draft VBER and draft Guidelines provide an important reference framework for companies acting as distributors at retail or wholesale level and that are purchasing, selling and reselling products (and/or services) from suppliers.

The published drafts aim to keep up with market developments, in particular the steep rise of e-commerce and the emergence of online platforms, having occurred since the last revision of these tools ten years ago. These developments had a profound effect on how companies do business in Europe.

Eurelec in this submission would like to limit its comments on the practice of territorial supply constraints ("TSCs") that can be described as barriers imposed by suppliers in a contractual relationship, affecting retailers and wholesalers' ability to sell and/or source their products.

Specifically, Eurelec refers to **Paragraph 189 of the draft Guidelines** that in connection with the hardcore restriction contained in Article 4(b) to (d) of the draft VBER deals with the imposition by the supplier of "indirect measures" inducing the distributor not to sell to certain territories or to certain customers.

2. Substantive comments focusing on TSCs

The issue of TSCs and the omission so far by the Commission to expressively address these in existing legislative tools governing vertical restraints at EU level is of main concern for Eurelec in the context of this consultation.

Eurelec has the following comments with respect to the draft Guidelines at this stage:

- Eurelec welcomes the effort generally to offer - in Paragraph 189 - now a more structured and clear description of what may constitute indirect measures resulting in territorial/customer restraints (indirect measures being actions to reinforce and encourage compliance with cross-border and/or customer restrictions). Paragraph 50 of the current Vertical Guidelines in Eurelec's view is lacking clarity in this respect.
- It is also to be welcomed that the Commission has added in Paragraph 189 of the draft Guidelines a new example with little (i) and has refined/offered a precision of existing examples in little (g) and (h) in conjunction with little (f).
- However, Eurelec regards it a lost opportunity that the Commission has not expressively mentioned TSCs and addressed the significant negative effects of such practices, for example just prior to the listing of examples in Paragraph 189 of the draft Guidelines.

Ideally, the Commission should:

- provide a definition of TSCs ("barriers imposed by suppliers in a contractual relationship affecting retailers and wholesalers' ability to sell and/or source their products");
- ideally refer to sectors in which they are most prevalent (reference should be made specifically to the branded food and non-food retail/wholesale sector);
- specify how TSCs affect retailers/wholesalers in the supply chain ("restricting the ability of retailers/wholesalers to (i) source products at European level (i.e. in other EU countries than the one in which they are based) and/or (ii) restricting retailers/wholesalers ability to distribute (i.e. resell) products to other EU countries than the one in which they are based, and/or (iii) restricting retailers/wholesalers ability to move products within their distribution network from EU country to EU country");

and finally

- highlight the significant negative effects on competition (reference should be made to the fact that they are an "effective" means for suppliers to keep national markets segmented with the aim to maintain significant price differences

between EU Member States. This way they prevent retailers/wholesalers from benefitting from the Single Market and depriving consumers from the true benefits of a Single Market (acknowledged by the Commission already in 2009, supported by its own Study on TSCs in the EU retail sector of 2020).

- Finally, Eurelec would like to take the opportunity to point to an "enforcement gap" in the area of TSCs, which consists in unilateral practices by non-dominant manufacturers/suppliers.

This makes it even more important that the Verticals Guidelines are explicit on TSCs and the various practices that may amount to the more subtle forms of TSCs. With these we mean those that are "indirect", i.e. not direct restrictions but measures - forming an agreement within the meaning of Article 101 TFEU - reducing the incentive for retailers/wholesalers to source from where they want and to re-sell to wherever they want in the EU.

Yours sincerely,



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