

Lyon, le 17/09/2021

## **Vertical Block Exemption Regulation (VBER) and Guidelines (VGL)**

### **IUCAB views on the Commission proposed drafts**

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[L'Alliance des Agents Commerciaux](#), APAC, is the French Alliance for Commercial Agents. APAC is representing and defending this profession either 28.000 Commercial Agents, they provide more than 58.000 employment and generate a turnover of more than 4 billion. Agencies are SMEs specialized in Commercial Marketing. In all economic sector, they contribute to the growth of manufacturers by developing their sales thanks to this associated sales forces.

APAC is member of [IUCAB](#) (Internationally United Commercial Agents and Brokers).

APAC welcomes the opportunity offered by the European Commission to comment on the draft Vertical Block Exemption Regulation and Guidelines (VBER and VGL) published by the Commission on its website on 9 July 2021.

In advance, APAC would like to underline that the vertical rules which are currently in force work very well according to commercial agency agreements. APAC stresses the importance of maintaining the exception of commercial agency agreements from the prohibition on restrictive agreements.

#### **➤ To 3.2.1. (28) sentence 1 of the guidelines**

The proposed wording suggests that the commercial agent who is acting as an independent economic operator represents the common practice, while the commercial agent, who is integrated as an intermediary in the organizational structure of the company represented (principal) and thus acts as an extended arm of the principal, is the exception. In practice, however, the relationship, in which the commercial agent acts as the extended arm of the principal, is the rule.

Therefore, APAC proposes the following formulation:

***"The relationship between a commercial agent and its principal may be usually characterized as a relationship in which the commercial agent does not act as an independent economic operator."***

➤ **To 3.2.1. (31) (a) sentence 1 of the guidelines**

According to (31) (a) sentence 1, an agreement is to be considered as an agency agreement, if the commercial agent does not provide the contract services itself.

The provision of additional services by commercial agents which are separately remunerated by the principals as part of their agency agreement has increased significantly in recent years. Nowadays, these additional services already represent an essential part of the activity of a commercial agent in the B2B area, with an increasing tendency in order to ensure the existence of commercial agents on the market, especially taking into consideration the growing e-commerce sector.

However, the draft does not take this development into account, since in such a case no commercial agency agreement should exist.

APAC therefore proposes

***to delete the part "and does not itself supply the contract services"***

***or***

***to clarify that this does not apply to additionally agreed services (which are separately remunerated) and thus does not call into question the classification as a commercial agency agreement.***

➤ **To 3.2.1. (32) of the guidelines**

In contrast to the guidelines currently in force, the draft does not contain any reference that the list of risks in (31) (a) to (h) is not exhaustive.

The lack of reference to a non-exhaustive list of risks could result in the fact that the commercial agent is no longer considered as a commercial agent under antitrust perspective when taking over a new, remunerated service not mentioned in the guidelines.

APAC therefore proposes to include the following wording at the beginning of 3.2.1. (32):

***"This list is not exhaustive."***

➤ **To 3.2.3. (44) of the guidelines**

***APAC welcomes the Commission's clarification that providers of online intermediation services are not qualified as agents*** for the purpose of applying of Article 101(1).

Providers of online intermediation services cannot be considered as an integral part of the principals' sales activities as they usually serve a large number of suppliers. In addition, such providers usually have considerable bargaining power as they are often much larger than the suppliers/principals who use their services.

APAC hopes that its suggestions will be taken into account.