

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

FIGIEFA Input

A. INTRODUCTION

Founded in 1955 and based in Brussels, FIGIEFA is the European federation representing the political interests of independent distributors of automotive replacement parts towards the European Union and the United Nations. It brings together 19 national associations, as well as leading market players. Through a dense network of over 50,000 outlets operated by 30,000 companies, most of them SMEs, and over 350,000 employees, European independent distributors of automotive replacement parts deliver innovative and competitive solutions for safe, smart, sustainable and affordable road mobility all over Europe. They are a key component of the wider European automotive aftermarket ecosystem, composed of 500,000 companies and 4.3 million employees, which ensures consumer choice and maintains in perfect condition the 320 million vehicles on European roads.

FIGIEFA welcomes the draft Vertical Restraints Block Exemption (**VBER**). A safe harbour for distribution agreements and detailed guidelines are in the best interest of the wholesale distributors, which FIGIEFA represents.

However, the draft VBER does not reflect specific characteristics of motor vehicle replacement parts distribution, or the automotive aftermarket in general. **It is therefore necessary for the future VBER to be complemented by an instrument that deals with these characteristics, i.e. a successor to Regulation 461/2010 (MVBER).** FIGIEFA has contributed to the public consultations regarding this sector-specific instrument (<https://www.figiefa.eu/new-automotive-block-exemption-regulation/>).

B. THE DRAFT VBER

Access to a complete range of replacement parts for Europe's citizens ensures that complex and costly products can be repaired and maintained, rather than discarded prematurely. Replacement parts therefore contribute to a sustainable economy and, in the case of automotive parts, to affordable mobility.

While the draft VBER so far fails to address sustainability objectives, the future rules on vertical restraints (at least as they apply to automotive replacement parts), should nonetheless ensure the widest possible access to replacement parts.

The draft VBER by itself would not suffice to attain these goals; **the sector-specific hard-core clauses are still necessary:**

- The VBER does not include a hard-core restriction like Art. 5 (a) MVBER, which supports that all replacement parts required for a particular maintenance or repair job are available to an independent repairer. Under the VBER, a similar result could possibly be reached if the term "end user " in Art 4(c) were defined as including service providers purchasing parts for installation during repair or maintenance.
- The VBER does not sufficiently protect the availability of parts directly from component suppliers. Art. 5 (b) MVBER is still better designed to protect competition in replacement parts markets as it covers sales to

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both independent and authorised aftermarket operators. It also covers garage equipment. In contrast, the present Art. 4 (e) VBER only facilitates sales to *independent* repairers but block exempts restrictions of the component suppliers ability to sell its products as replacement parts to *contracted* service providers. However, FIGIEFA very much welcomes the proposed insertion of the term “wholesalers” in draft Art. 4 (e) VBER as well as the guidance in para. 231 of the draft Guidelines. The new wording serves to protect sales from a supplier of original equipment to independent wholesalers, and is a step in the right direction.

- The VBER is silent on the ability of a component supplier’s ability to apply its own logo. In contrast, Art. 5 (c) MVBER prevents the vehicle manufacturer from restricting the ability of its component suppliers to visibly place their trade mark or logo on the products supplied.

C. THE DRAFT GUIDELINES

FIGIEFA welcomes that the Commission intends to publish revised guidelines and recognises the useful clarifications, which the draft Guidelines offer.

However, the draft Guidelines do not address important issues currently identified in the sector-specific Supplementary Guidelines, which continue to be needed:

- Only the Supplementary Guidelines (at para. 69) highlight that suppliers may not condition **warranties** on their product being serviced or repaired by franchised dealers, or with specific parts.
- Only the Supplementary Guidelines (at para. 62) highlight that **technical information** ultimately needed for repair or maintenance should be available to aftermarket operators.

As regards **dual distribution**, FIGIEFA welcomes the reference to wholesalers and importers in draft Art. 2(4) VBER. However, given the practical relevance of dual distribution it would be welcome to receive additional guidance on situations where the market share is between 10-30%. The issue of information exchange in dual distribution is particularly pressing in high-tech sectors like automotive, so the Commission should offer clarity early on (i.e. in the VBER, rather than defer to the less advanced horizontal (H)BER process). In particular, the Commission could use the future Vertical Guidelines to clarify what kinds of communications, particularly in respect of pricing or discounting practices, between a manufacturer engaged in dual distribution and its wholesalers would be considered lawful under, or in violation of, Article 101(1) TFEU. FIGIEFA considers that this clarification is particularly important in view of: (i) the exclusion in Article 2(6) of the draft VBER of object restrictions from the scope of the dual distribution exemption; and (ii) the fact that para. 87 of the draft Guidelines states that the dual distribution exemption should be interpreted narrowly.

Furthermore, the market share in para. 344 of the draft Guidelines should be increased to 10%. Finally, and with view to enhancing legal certainty, the Commission may want to expand further the principles in paras. 195, 206, 221, 226, 339-344 of the draft Guidelines and include additional examples to ensure that businesses can apply the principles.

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