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HOTREC Comments on the draft VBER and draft VBER Guidelines of 09.07.2021

HOTREC – Hospitality Europe - represents the hotel, restaurant and café industry at European level. The sector counts in total around 1.8 million businesses, being 99,5% small and medium sized enterprises (91% are micro enterprises, i.e. employing less than 10 people). These businesses make up some 60% of value added. In 2019, the industry provides some 10 million jobs in the EU alone. Together with the other tourism industries, the sector is the 3rd largest industry in Europe. HOTREC brings together 45 national associations representing the interest of this industry in 34 different European countries.

The Vertical Block Exemption Regulation (VBER) and related guidelines are of high relevance for the European hospitality sector, as they regulate some common type of vertical agreement used in sector in which our members operate (e.g. agency contracts, distribution contracts, tying and exclusive supply, franchising, etc.)

HOTREC welcomes the opportunity to provide open comments on the draft revised Regulation on vertical agreements and vertical guidelines, as published by the European Commission on 9 July 2021. The publication of these drafts follows an extensive consultation process and the elaboration of support studies to which we have actively contributed. We **therefore regret that the draft put forward partially fails to address certain key market developments which have become increasingly problematic for the hospitality sector over the course of the past decade**. In these instances, the VBER enables much larger companies to impose unfair conditions on hospitality businesses, which are in vast majority of cases micro-enterprises and SMEs, and which would not accept these conditions should they have any possibility to oppose them.

I. The first issue arises from the **application of most favoured nation (MFN) clauses by Online Travel Agents (OTAs) on hotels in the online platform economy**. While we welcome the fact that the VBER draft now expressly excludes so-called wide Most Favoured Nation clauses of online intermediary service providers from the scope of the vertical block exemption and includes them in the list of non-exempted restrictions (Art. 5 (1) d, draft VBER), it fails to adequately address ‘narrow’ MFN clauses imposed by OTAs on hoteliers.

   We consider that there is no justification for providing an exemption for MFN clauses – whether wide or narrow - imposed by OTAs on hotels. The inclusion of wide MFN clauses in the list of non-exempted restrictions is not sufficient to reduce the imbalance and the restrictions of competition between highly concentrated online intermediation service providers on the one hand and the highly fragmented market players in the accommodation sector on the other hand, which depend on access to these online intermediation services. **Narrow MFN clauses should remain out-side the scope of a block exemption, in line with the legal prohibitions (France, Italy, Austria, Belgium) established in several Member States and the recent Decision of the German Federal Court.**

   We therefore urge the European Commission to achieve further **legal certainty by issuing a ban as a hardcore restriction of any restriction of a trading partner’s liberty to freely set its sales prices in the updated VBER and related guidelines**.

II. The VBER has originally devised for the brick-and-mortar business world and the market phenomenon of online intermediation service providers and the new challenges for competition associated with them were not addressed in detail.

We find that several aspects of the VBER simply cannot be transferred to address specific characteristics of the online hotel accommodation booking market, and to larger extent the digital platform economy. In this light, **we question to which extent certain aspects of the draft VBER genuinely reflect the reality of the digital hotel distribution market.** It should be noted that the concerns we raise in this part can be linked to OTA practices which, in conjunction with the application of narrow price parity clauses, enable them to entrench the relationship of dependency hoteliers find themselves in.

- There appears to be a 'qualification gap' to appropriately capture the role of OTAs in the digital economy;
- the 30% market threshold is not adapted to the reality of the OTA market;
- rules on search engine advertising and the use of trademarks need further clarification.

III. The **second issue concerns 'brewery contracts'/(exclusive) drink supply contracts proposed by (large) brewery companies and/or drink supply companies to hospitality entrepreneurs, often tied to a premise rented by the brewery or drink supplier**. The market consolidation in the brewery and drink supply sector and their importance in some specific national markets create market performance issues, especially as they often bought or rent the best locations for bars/pubs in city centres.

I. Narrow MFN clauses imposed by OTAs are anti-competitive, unnecessary and undermine the digitalisation of European hotels

The use of MFN clauses – and their negative impact on competition – has increased significantly with the rise of online distribution over the last decade. Narrow MFN clauses are now widespread in online distribution markets. These **abusive clauses undermine free competition and limit the hotelier's own commercial capacity**, which in turn affects the conditions that the end customer ends up receiving, limiting his or her ability to compare different suppliers.

MFN clauses have become the most important tool for the dominant online brokerage services to shield themselves from competition, both from competition from other online brokerage services and from emerging competition from newcomers to the market. National legislators, courts and competition authorities in the EU member states have therefore left no doubt that MFN clauses, such as those used by all hotel booking portals in the EU, aim and bring about massive restraints of competition that are incompatible with antitrust regulations.

While wide price parity/MFN clauses have largely eliminated, their application in the past by OTAs, until 2015 in the EU, has helped entrenched their very strong market position. **Narrow price parity/MFN clauses continue being imposed in the majority of EU Markets, except in France, Belgium, Austria and Italy where they have been rendered void by national legislation.**

Furthermore, and since the closure of the European Commission's public consultation of 2021, Decision KVR 54/20 of 18 May 2021 **by the German Federal Court of Justice**[1] **has clarified that narrow MFN clauses applied by the leading OTA in Europe, Booking.com, on hotels, are incompatible with EU competition law and should not be exempted from the application of Article 101.** These findings in a legally binding, supreme court decision cannot be ignored.

According to the considerations outlined here below, we consider that a block exemption of narrow MFN clauses must be prohibited:

- One option would be to **include narrow price parity clauses in the list excluded restrictions in Article 5(1)(d) of the VBER**
- Alternatively, and bearing in mind that the German Federal Court of Justice explicitly pointed out that (narrow) MFN clauses and resale price maintenance are identical in their restrictive effects on competition, **to include the following paragraph in Art. 4 f) Vertical Block Exemption Regulation:**

  "(f) direct or indirect obligations causing a buyer of online intermediary services not to offer, sell or resell goods or services to final consumers through other distribution channels on more favourable terms".
- By default and at the very least, clarify that the VBER guidelines only offer a general framework for the case-by-case analysis of a narrow price parity clause, independently of the sector concerned and without prejudice to existing national laws or case-law.

1. Narrow MFN clauses imposed by OTAs on hotels generally do not fulfil the factual requirements of primary law

Block exemption regulations are exceptional regulations and always mean an intervention in the regulatory system of European antitrust law, which in Article 101 (1) TFEU assumes a fundamental prohibition with a reservation of exceptions. Block exemption regulations reverse this regulatory concept. For this reason alone, the normative requirements for block exemption regulations and their scope of regulation should be handled very restrictively.

Block exemptions should therefore only be considered within the narrow legal framework of Article 101 (3). This means that the exemption of a group of agreements/restrictions is only compatible with primary law if, based on sufficient economic and empirical considerations, it is certain that the requirements of Art. 101 (3) TFEU are always met for this group of agreements/restrictions.

In this regard, narrow MFN clauses, as applied by OTAs on hotels, cannot be clearly identified as fulfilling the requirements of Article 101(3). At best, they would represent a 'probable' fulfilment of the exemption requirements of Article 101 (3) TFEU, which we would argue is insufficient for a block

[1] HOTREC has warmly welcomed this verdict which puts an end to a legal saga which began when the German Bundeskartellamt established in December 2015 that such narrow price parity clauses violated competition law and prohibited their further use from 1 February 2016. This decision was then revoked following Booking.com's appeal the Düsseldorf Higher Regional Court in 2019. By its latest decision of May 2021, the Bundeskartellamt annulled the decision of the Düsseldorf Higher Regional Court and rejected Booking.com's appeal.

exemption, and should be weighed against what we see as a clear restriction of competition that harms consumer, hotels, and that is not in dispensable for OTAs.

In this regard, it is important to add that in its key verdict this year, the German Federal Court of Justice determined, after a detailed examination, that:

- The first pre-condition for excluding the application of Article 101(1) TFEU to the narrow price parity clause to an individual exemption cannot be established, i.e. the improvement of the production or distribution of goods or the promotion of technical or economic progress.
- Narrow MFN clauses can in any case not be considered necessary under any circumstances in order to achieve alleged efficiency gains within the meaning of Article 101 (3) TFEU. The Federal Court of Justice has shown and proven on the basis of robust empirical evidence that the narrow MFN clauses are precisely not "necessary" within the meaning of Art. 101 (3) TFEU, but online brokerage services (at least hotel booking portals) without the narrow ones being able to assert MFN clauses very successfully in the market.
- The narrow MFN clauses also lead to a complete cessation of competition within the meaning of Article 101 (3) TFEU, so that an exemption - and in particular a block exemption - must also be ruled out for this reason.

2. The free-rider argument is neither backed by empirical evidence nor justified by normative reasons

The draft guidelines state that the restrictive effects on competition of narrow MFN clauses depend on the circumstances of each individual case and thus cannot be assessed in an abstract and conclusive manner in the light of Article 101 (3) TFEU. This is stated in paragraph 352 of the draft guidelines. In addition, the guidelines correctly point out that the narrow MFN clauses can also have restrictive effects on competition in numerous constellations, which are not compatible with Article 101 TFEU, and in particular cannot be exempted under Article 101(3) TFEU.

The fact that narrow MFN clauses - at least insofar as they are used by hotel booking portals - precisely do not fulfil the requirements of Article 101(3) TFEU is not only shown by the numerous national legal prohibitions of narrow MFN clauses, but also in particular by the recent case law of the Federal Court of Justice in Germany in the Booking.com case and the extensive investigations undertaken in the context of this legal saga.

The Bundeskartellamt conducted investigations after Booking.com had stopped using the narrow price parity clause between 2017 and 2019. The investigations showed that based on all relevant parameters such as turnover, market share, booking volumes number of hotel partners and number of hotel locations, Booking.com had been able to further strengthen its market position in Germany, and came to the conclusion that in 99% of cases the users of a booking platform ultimately also book via the booking platform. In other words, it has also been empirically proven that free-riding does not actually occur to any significant extent.

Furthermore, the so-called free-rider problem cannot justify a block exemption of the narrow MFN clauses for normative reasons either. Rather, the phenomenon that customers seek information or advice (possibly free of charge) from a market participant in order to then purchase the goods or services from a cheaper supplier is simply part of general competition. It is up to the competitive game that the respective market participants develop competitive mechanisms to adequately protect their respective interests and investments and balance them with the needs of the customers. It is notably not possible for manufacturers to spread prices so that online sales are only made at higher prices in order to protect the investments of the store-based trade from free-riding. It would be incompatible with this established principle of European competition law to implement regulatory protection for online intermediation portals by way of a block exemption of narrow MFN clauses.

3. Narrow MFN clauses have the same anti-competitive effect as wide MFN clauses

There is no actual or legal justification for treating narrow MFN clauses differently from wide MFN clauses. The competitive effects of both clauses are almost identical. In this respect, too, the German Federal Court of Justice has shown in detail that wide and narrow MFN clauses simply do not differ in their restrictive effect on competition.

In practice, narrow MFN clauses lead to an elimination of price and conditions competition between competing online brokerage services as well as intra-brand competition between different sales channels. This is because narrow MFN clauses inevitably lead to the exclusion of any horizontal competition on prices and conditions between online brokerage services, with the consequence of higher transaction costs both for the providers of the corresponding goods / services and for consumers.

4. Narrow MFN clauses impediment hotels' pricing strategies

Narrow MFN clauses limit the incentive for hotels to differentiate their room prices on the various online hotel booking portals. Although narrow MFNs - in purely formal terms - allow such price differentiation, they still prohibit that the room rate on the hotel's own online distribution channels may be lower than, for example, on Expedia's portals. As a result, a hotel may only reproduce a room price reduction on its own website if this price has also been reduced on Expedia's portals.

If, on the other hand, a hotel specifically wants to lower the room rate only on an online hotel booking portal other than Expedia's, it would be forced under the narrow MFN clauses used by Expedia to charge the higher price posted on Expedia via its own online distribution channels. This considerably reduces the attractiveness of the hotel's own online distribution and noticeably restricts its pricing freedom.

The hotel is in effect held to offer a uniform minimum retail price across all distribution channels. The hotelier is deprived of the possibility to react flexibly to different demand impulses on different distribution channels. The MFN clauses applied by the booking portals thus bring intra-brand competition to a standstill - at least for the increasingly important online distribution.

As intra-brand competition between the various distribution channels is effectively eliminated by MFN clauses, the tendency is towards a "uniform rate". As such, this is not only a symptom of a lack of competition, but naturally also facilitates parallel pricing behaviour by the hotel booking portals.

5. Narrow MFN clauses undermine the digitalisation of the European hotel industry

The digitalisation of European SMEs is a long-standing EU policy priority. We wish to remind in this regard that the imposition of narrow price parity clauses by OTAs on hoteliers acts as a major disincentive in this area and counteracts substantial efforts made at EU level to support such digitalisation via funding, trainings and exchange of best practices. By preventing hotels from freely establishing their pricing policies, narrow price parity/MFN clauses entrench the dependency relationship of hotels towards the OTAs and, combined with the possibility for and means at the disposal of OTAs to buy trademark-protected ad-words via brand-bidding severely undermine hoteliers' (and independent hoteliers in particular) capacity to develop a genuine digital marketing strategy. In effect, narrow MFNs act as a disincentive for hoteliers to attempt to develop their presence online.

Pricing policy is a pivotal issue when considering a marketing strategy which must take both offline and online sales into account, while bearing in mind that hotels cannot forego being listed on OTA websites. Continued application of narrow price parity clauses will therefore further entrench the dependency of hoteliers towards OTAs and continue working against the policy ambition, shared by both the EU and Europe’s hospitality sector, to support the digitalisation of European SMEs.

6. Narrow MFN clauses are not beneficial for consumers

Narrow MFN clauses prevent hotels and other accommodation providers from offering a lower price for a hotel room on their own, commission-free and thus cost-effective channels. This leads to a situation where consumers do not benefit from price competition.

From a consumer angle, **narrow parity clauses also serve as a disincentive for consumers to use other platforms or contact a hotel directly because OTAs guarantee that they offer the best prices**. This tends to ‘lock-in’ consumers to a single platform and in turn further consolidates OTAs’ market positions. In this regard, we wish to highlight the position presented by BEUC regarding the revision of the VBER, which states that “parity obligations should be seen as effectively hardcore restrictions for sectors in which they have clearly been demonstrated to be harmful”, clearly referencing the ongoing debate regarding the application of narrow price parity clauses by OTAs on hotels.

II. The VBER falls short of reflecting the reality of the digital environment

In addition to our major concerns regarding the draft VBER’s approach to narrow price parity clauses, we take note of several aspects of the draft which in our view fall short of correctly addressing the specificities of the online environment, and the online hotel distribution market in particular, whilst remaining mindful that the rules in the current VBER have been designed first and foremost for the classic, analogue, brick-and-mortar world of business and are difficult to transfer to online intermediation platforms.

We observe the progressive monopolisation of the European intermediary market for accommodation services by online booking portals at the expense of the actual service providers, a trend which has continued over the course of the past decade[2]. This can still be stopped, and we are convinced that the control of the market-dominating online intermediation service providers must be one of the top priorities for European competition policy to ensure fair market conditions in Europe. Price parity clauses have played as essential role in entrenching the dependency of hoteliers, but further and broader considerations need to be taken into account in order to gather a comprehensive overview of this market.

1. The draft VBER struggles to capture the exact role of OTAs

The draft VBER states (Art. 1 No. 1 d) draft VBER) that online intermediary services are to be regarded as 'suppliers' for the purposes of the VBER. We find that this approach does not reflect reality: OTAs are sales intermediaries on the downstream market and are not active upstream.

Furthermore, the draft VBER guidelines (para.44) provide a justification as to why online platform cannot be qualified as an 'agent' by principle, which represents a new approach, as the current VBER does not address the question of whether an online platform may or may not qualify as an 'agent'. Qualifying online platforms as 'independent distributors' would also fail to capture reality given that OTAs do not buy and resell hotel rooms.

There appears to be a 'qualification gap' to accurately reflect the role of OTAs, and by extent online intermediation services, in the digital platform economy. This said, the draft Guidelines appear to formally identify a third distribution method in addition to the traditional distribution methods by agent and by independent distributor (para 58, 63 and 64): distribution through an online intermediation platform in which the role of the platform is limited to "facilitating" a transaction between users active on both sides of the online platform (in occurrence, hotels and consumers). If this were confirmed, the emergence of this third mode of distribution would seem to us to reflect more faithfully the reality of the distribution chain in our sector where the heart of the value created for the consumer lies in the accommodation offer made available by the hotel via the online intermediation platform.

As such, we would ask the European Commission to consider:

- revising its position on the general exclusion of agent status "in principle" for all providers of online intermediation services.
- at the very least, clarify the rights and obligations of sellers of goods or services and of the online intermediation platform facilitating the conclusion of transactions between sellers of goods or services and end customers.
- Clarify that an agreement between a seller of goods or services and an online platform under the terms of which the seller (and not the platform) sets the commercial and price

[2] Every two years since 2013, HOTREC has conducted research on the evolution of distribution channels within the European hotel industry with a specific focus on the role of online travel agencies (OTAs), in collaboration with the University of Applied Sciences of Western Switzerland Valais (HES-SO Valais Wallis). Our most recent study, the fourth in the series, is available here: https://www.hotrec.eu/policy/european-hotel-distribution-study-2020-summary/

conditions of the goods or services sold by the intermediary of the online platform complies with Article 101 (1) TFEU.

2. The 30% market threshold is ill-adapted to the digital environment

Under Article 3(1), the draft VBER maintains the 30% market share threshold above which a vertical agreement loses the benefits of the block exemption. We consider that this threshold is not well adapted to the digital environment.

An online platform can have significant market power below this 30% threshold, particularly given the dynamics specific to the digital economy based on the effects of large networks and the massive accumulation of data. In the online hotel distribution industry, Booking is generally considered to have a market share of above 30% but Expedia is generally considered to have a market share of less than 30%, which qualifies it for the block exemption. However, Expedia's market power is considerable, especially when regarding its market share at global level, and not reflected in its European market share.

In addition, the draft Regulation maintains the principle that market shares should be calculated on the basis of the value of sales or purchases (draft Regulation, art. 7 (a)) while specifying that failing "other reliable market information" can be used. In the digital world, market power (market share) could also be assessed on the basis of other relevant elements such as the volume of traffic or the share the share in online search results.

We would therefore ask for the following adaptations to the draft guidelines:

- To clarify that in the digital environment, the threshold of 30% market share may be too high insofar as online platforms may have significant market power below this threshold given the dynamics specific to the platform economy.
- To specify and explain on the basis of examples what other reliable information could be used (besides the mention of "volumes").

3. Online advertising restrictions require clarification

The draft Guidelines contain welcome developments on the treatment of restrictions on online advertising that may be contained in a vertical agreement. The draft Guidelines recall that suppliers of goods or services may give certain instructions to their distributors on how their products or services should be sold online regardless of the applicable distribution model (para. 193).

The draft Guidelines also state that only restrictions which prevent a distributor from making effective use of the internet or one or more online advertising channels can constitute hardcore restrictions of competition. This covers vertical restrictions which are "capable of significantly diminishing the overall amount of online sales in the market" considered or which "prevent the effective use of one or more online advertising channels" by buyers or their customers (para. 188).

Para. 192 (f) includes specific examples of such restrictions. This relates in particular, according to the Commission, to "an obligation on the distributor not to use the suppliers' trademarks or brand names for bidding to be referenced in search engines ".

The application of these provisions should be clarified for online intermediation platforms. Indeed, in such a context, it should be recalled that according to the approach suggested by the Commission, the seller of a good or a service on the online platform does not act as a 'supplier' but as a 'buyer' of online intermediation services. This is therefore a fundamentally different assumption from that the aforementioned provisions of the Guidelines which are based on a "classic" distribution scheme in which a supplier, who sells goods or services to a distributor for their resale to end customers, imposes such restrictions on its reseller.

The setup is fundamentally different in the context of online intermediation platforms. Cases where a seller of goods or services wishes to restrict or limit the use of his trademark in search engines (subject to its specific conditions) do not aim to prevent an online intermediation platform from making effective use of the Internet or from using one or more online advertising channels. Likewise, such a restriction would not be "capable of significantly diminishing the overall amount of online sales in the market " considered or prevent " the effective use of one or more online advertising channels" by buyers or their clients (Guidelines, para. 188). In the hospitality industry, for example, online intermediation platforms that spend huge advertising budgets enjoy unparalleled visibility on major online search engines, whether in natural or paid results.

The Commission should thus clarify that apart from the specific case referred to in the Guess decision, other types of online advertising restrictions, in particular in the context of relations with online intermediation platforms, are covered by the categorical exemption, or at the very least, must be the subject of a full competitive and contextual analysis.

Inter-brand competition is particularly strong in the hotel sector; it is fundamental to allow hotels to optimize their sales on their direct sales' channels (which allows them to limit their distribution costs and pass on the benefits of lower costs to consumers). To do this, hotels must be able to generate at least some visibility online without being systematically overwhelmed by advertising from intermediation platforms.

It is also useful to remember that a trademark owner needs to protect the trademark, in particular in order to prevent any infringement of the brand's investment to maintain or acquire a reputation likely to attract and retain the loyalty of consumers. Any inaction on their part exposes them to a risk of dilution of the value of their brand and associated investments, or even the loss of their rights.

We would therefore ask the European Commission to:

- Clarify that para. 192 (f) of the Draft Guidelines (restriction of the use of a mark as a keyword in search engines) refers to the cases in which the restriction is imposed by a supplier of goods or services on its independent distributor (Guess case).
- Clarify that an agreement between a seller of goods or services and an online platform under which the seller can define the conditions of use of his trademark in online advertising by an online intermediation platform is in accordance with article 101 (1) TFEU. Failing that, clarify that such a restriction in the digital world must be analysed in the light of all the facts and case law and the economic and legal context in which this restriction is applied.

- If, however, the Commission would consider sellers to be "suppliers" and online intermediation platforms to be "distributors" within the meaning of paragraph 192 (f), the Guidelines should contain an exception to allow any restriction intended to allow the trademark owner to ensure the protection of his intellectual property rights, and in particular the brand investment function.

III. The VBER does not supply sufficient legal protection for hospitality businesses against the power of the breweries and/or drink suppliers in Belgium and in the Netherlands

On a separate issue than those addressed here above, we also wish to highlight that the VBER and related guidelines make it possible for practically all breweries and all drink suppliers in the Netherlands and Belgium (except Inbev) to force hospitality-businesses into very one-sided contracts where the hospitality business is obliged to purchase all drinks (often with a stipulated minimum amount of drinks/liters) and other products or services (such as insurance, gaming machines, maintenance contracts, etc.) under exclusivity clauses from its brewery or drink supplier without being able to negotiate the best price for these products and services.

This very often leads to situations where a hospitality entrepreneur that is bound by such a contract pays up to 50% more than competitors that are 'free'/not bound by such a contract (which of course the consumers –partly- pay for), because the brewery/drink supplier does not have to negotiate with bound entrepreneurs. 'Bound' establishments therefore face an additional disadvantage compared to 'free' establishments given that the latter are not paying for ancillary products at a non-negotiable price.

In addition to a clear competitive disadvantage, hospitality businesses in Belgium and the Netherlands which are bound by such contracts experience unfair conditions and practices from the brewers and/or drink suppliers they are contractually bound to, for example:

- The obligation imposed on the entrepreneur to also purchase drinks for private use;
- Imposing mandatory sales' prices;
- Requiring access to premises that are not connected to the business;
- The provision that, except for gross shortcomings by the entrepreneur as a tenant, the lease/rent may also be terminated due to non-compliance with the minimum purchase obligations;
- Minimum purchase obligations (for example minimum 250 hectolitres beer), etc.;
- To impose that the legal successors of the hospitality entrepreneur, for example heirs, buyers, etc., are obliged to continue the drink purchase contract.

Such exclusivity clauses are particularly abusive in cases where the hospitality entrepreneur rents the real estate from a brewery or drink supplier. Under the VBER, the exclusivity clause can only last for a period of 5 years, unless, as stipulated under Article 5 para. 2, the entrepreneur rents the real estate from the brewery or drink supplier. The latter applies when the hospitality business is on the premises owned or rented by the brewery or drink supplier, and the exclusivity clause in those cases can last indefinitely.

In the Netherlands, 75% of bars have contracts with a brewery which go beyond just the supply of beer, and 16% effectively rent their premises from brewers. It should be noted that in general, such establishments rented by brewers are situated in the best parts of town.

HOTREC considers that hospitality establishments should not be bound by drink purchase contracts as described above. We consider drink purchase contracts as all agreements or related agreements concluded between, on the one hand, a brewer and/or drink supplier and, on the other hand, a hospitality entrepreneur, of which the following obligations may be part of:

- a commercial lease of the property;
- the rental or provision of infrastructure;
- an investment credit;
- other loans or financial or economic benefits or allowances;
- an exclusive or non-exclusive purchase obligation on the part of the hospitality entrepreneur.

HOTREC therefore requests that the European Commission makes the necessary changes to the VBER so that such brewery and drink supply contracts are no longer exempted from the application of article 101. We believe that such contracts are very well capable of appreciably restricting competition and therefore should be caught by Article 101(1). If not, the unfair situation some/most hospitality entrepreneurs are in due to the very one-sided contracts they have with their brewery/drink supplier, would continue to exist. Withdrawing the block exemption for the above-mentioned contracts with breweries and drink suppliers, would mean much more competition freedom for hospitality entrepreneurs. At least, they would be able to always negotiate the best purchase price for the products that they offer.

We believe this could be achieved by:

- **removing the exception under Paragraph 2 of article 5, which enables for example land owners, as suppliers, to impose indefinite exclusivity contracts on tenants.**
- **changing the 5-year term in paragraph 1(a) of article 5 in 3 years. 3 years is enough time to protect the interests of breweries (and other suppliers).**

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