Comment

of the German Insurance Association (GDV)

ID-number 6437280268-55

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

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The German insurance industry welcomes the proposals of the EU Commission for a revised Vertical Block Exemption Regulation ("VBER") and Vertical Guidelines. Overall, most proposals seem to us to be appropriate.

In detail, we have the following comments.

Dual Distribution

We think that the planned reduction in scope for the block exemption for dual distribution would not be necessary. According to the experience of the German insurance industry, hardly any competition problems have come to light in the context of dual distribution. At the same time, it is undisputed that dual distribution has a positive effect on inter-brand competition.

It does not seem practical to us that an exchange of information between the companies should only be exempted if the market share falls below a threshold of 10%. In the context of a vertical manufacturer-distributor relationship, it is normal and often even necessary to exchange current turnover and sales figures relating to the contract products. Such an exchange should not be placed under increased antitrust scrutiny. Doing so would lead to a considerable loss of legal certainty and additional expenditure for the companies concerned.

We also consider the withdrawal of the block exemption for vertical agreements between competitors in the cases of restrictions of competition by object to be misguided. The distinction between a restriction of competition by object and by effect is often unclear; the case law of the EU Commission and the EU courts has not yet revealed a clear dividing line. If this provision were to be introduced, it would therefore lead to considerable legal uncertainty in the application of the VBER, without any advantages of this provision being apparent.

Last but not least, we consider the proposed two-tier solution (full exemption below a combined market share threshold of 10 %, partial exemption between 10 % and 30 %) to be too complicated and impracticable. It is already fraught with uncertainty to determine the market shares of the parties with sufficient certainty within the framework of the required self-assessment. Unlike competition authorities, the parties to such agreements often do not have the resources to carry out appropriate market surveys. Against this background, a double market share threshold, to which different legal consequences are attached, does not appear to be workable.

Non-competition clause

According to the draft regulation, an agreement shall be permissible in future, according to which a non-competition clause is automatically extended after five years, provided that the vertical agreement can be terminated with a reasonable period of notice or can be effectively renegotiated at reasonable cost. We welcome this amendment. It meets the needs of practice by simplifying the procedure for such non-competition clauses.

Parity clauses

Insurance companies sell a relatively small but growing part of their consumer-facing insurance products (e. g. car insurance, personal liability insurance, household insurance) over price comparison portals. These portals frequently impose parity obligations on the insurers. Such obligations imposed by the price comparison portals restrict the insurer's freedom to set competitive prices on other platforms and/or channels; they affect competition for lower intermediation fees as well as competition between platforms for the best terms. In addition, these clauses make it more difficult for new competitors to enter the market.

We therefore welcome the proposal to exclude so-called "broad" parity clauses from the scope of application of the block exemption. Additionally, we would favour extending this exclusion to "narrow" price parity clauses: in our experience, the competition concerns mentioned above relate both with respect to wide as to narrow parity clauses.

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