



RE: Public questionnaire for the 2018 Evaluation of the Vertical Block Exemption Regulation – statement from Assofranchising

Dear sirs/madams,

on behalf of its members active in Italy, Assofranchising (“AIF”) is grateful for the opportunity to submit its questionnaire and hereby confirms its wishes to participate in the Commission’s process of revision of the Commission Regulation (EU) n. 330/2010 (hereinafter “Vertical Block Exemption Regulation” – “VBER”) and the Commission Guidelines on Vertical Restraints (hereinafter “VGL”).

AIF represents a large portion of franchise companies in Italy including all of the major brands and it is founding member of EFF (European Franchise Federation).

AIF chooses to submit its own questionnaire since it would like to take this great opportunity to provide the EU Commission with a closer view on how the franchising business model works in Italy and highlight major economic points and open issues the association gathered through its members.

For the aforementioned reasons this statement as well as the evaluation questionnaire to which it is attached to has to be read as complimentary to the one submitted by EFF and they represent the position of AIF only on the subject.

As preliminary point, like EFF does, also AIF favours prolonging the VBER for another term (after May 31, 2022) subject to **necessary updating** to take into account, notably, of the impact of the following (not necessarily in order of importance):

- 1) the greater importance of a strong (and effective) protection of “know-how”;**
- 2) the outcomes of the economic analysis in relation to Resale Price Maintenance (RPM) restrictions;**
- 3) the development of the digital markets;**
- 4) the post term non-competition clause (and in particular the concept of “*premises and land*”).**

As far as the **first point** is concerned, members of AIF have confidence in maintaining in the VBER and VGL a strong definition of KNOW-HOW since it is an essential element of the franchise agreement.

Reference to the “Pronuptia” case (C-161/84) is still a legal source that the future Regulation shall not ignore or supersede. However, given that the EU Directive on Trade secrets No. 2016/943 (hereinafter the “Directive”) came into force in all EU Member States, it would be appropriate to harmonize the definition of know-how in the old VBER with the one of trade secrets contained in the Directive. This solution could overcome difficulties in relation to the application of the “substantiality” requirement. In the modern business practice, indeed, it is difficult to distinguish it since it is tough to draw up a clear line between a know-how which is “significant” and one that is not.

As far as the **second** point is concerned, members of AIF have confidence in reviewing the absolute ban against RPM in the franchise business model.

Taking in account the principles of the modern economic analysis in the field, the fact that vast majority of the franchising networks operate in high competitive markets as well as the case law on “restrictions by object” set out by the ECJ in “*cartes bancaires*” case (C-67/13), it would be appropriate to recognize that it can be assumed with sufficient certainty that RPM in franchising generates efficiencies in line with art. 101(3) of the TFUE and, thus, it might constitute a valid boost for *inter-brand* competition since it promotes the common identity, the reputation of the network as well as the uniformity in the business concept at the basis of the latter.

In the light of the above, therefore, it would be useful for the competition as a whole allowing franchisors to set out price and/or commercial conditions that are uniform across all their entire network.

As far as the **third** point is concerned, members of AIF have confidence in reviewing the actual policy in relation to the restriction on online sales in order to allow franchisors to better control the identity and reputation of their networks.

In particular it would be appropriate to confirm that the principles set out by the ECJ in the well-known “Coty” case (C-230/16) are transposed to the franchising too. In particular it would be useful for the competition if they were extended beyond the luxury goods as long as these restrictions are necessary and proportionate applied to protect the common identity, the reputation of the network as well as the uniformity in the business concept at the basis of the latter.

Furthermore, it is necessary to recognize/clarify that under some circumstances online search advertising restrictions are helpful for the competition *inter-brand* where they are set out to protect the brand image (meant to as common identity, the reputation of the network as well as the uniformity in the business concept at the basis of the latter) and provided that they are not applied in a manner going beyond to what it is necessary to achieve this objective, that it is at the heart of the franchise business model.

As far as the **fourth** point is concerned, members of AIF have confidence in extending the exception provided for by art. 5.3 of VBER to the franchisee’s premises and land zone of influence, or, in other words, to the territory assigned to the franchisee, when there is, and in extending the duration of the post term non-competition clause, if this can be justified.

Finally please see answers to the questionnaire submitted where you may find the full position of AIF on the matter.

Because of the complexity of the issues in the questionnaire and the answers provided therein, AIF is at the disposal of the EU Commission to discuss and investigate in greater detail consequences on the franchise business model in Italy of the information and/or statements and/or proposals reported in this statement as well as in the evaluation questionnaire herein submitted.

Your faithfully.

Assofranchising