

**Public consultation on the assessment of the Block Exemption Regulation and the European Commission's Guidelines on Vertical Restraints**

**May 27, 2019**

1. This contribution is submitted on an anonymous basis by the **Company** within the framework of the public consultation initiated by the Commission on the evaluation of EU Regulation No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (the "**Exemption Regulation**") and the European Commission's Guidelines of 19 May 2010 (the "**Guidelines**").
2. This contribution is a complement to the Company's responses to the European Commission's online questionnaire.
3. The Exemption Regulation and the Guidelines are relevant to the Company as they provide for legal information enabling to verify whether selected distribution models comply with European competition law. The distribution of the products manufactured and marketed by the Company in the European Union is based on territorial exclusivities entrusted to distributors and on the selection of distributors, whose physical and online points of sale are authorised on the basis of qualitative criteria. The examination of these networks' compliance under the block exemption is therefore a major legal issue for the Company, to which the Exemption Regulation and the Guidelines must be able to respond.
4. The Exemption Regulation and the Guidelines add value in assessing vertical agreements compliance with Article 101(1) of the Treaty by making it easier to examine the conformity of distribution methods with competition law. In this respect, the analysis to be carried out under the individual exemption provided for in Article 101(3) of the Treaty is more uncertain and interpreted by an old and relatively brief Commission notice. The Regulation and the Guidelines therefore provide businesses with a certain predictability.
5. Moreover, the possible extension of the Exemption Regulation combined with the maintenance without modification or possible withdrawal of the Guidelines would have negative effects on the sector and consumers.
6. Furthermore, a withdrawal of the Guidelines could lead to a reduction in the legal certainty provided to businesses, which could not be compensated by maintaining the Regulation alone, at least as it stands. For example, the requirement for a physical point of sale, which is only mentioned in the Guidelines, could be challenged without the Exemption Regulation providing compensation. This would be also a loss for consumers since they would have in the long run fewer alternatives to arbitrate their consumption choices.

7. However, a revision of the Exemption Regulation and the Guidelines is necessary in view of the major trends and changes that occurred over the latest years.
8. The Exemption Regulation and the Guidelines on Vertical Restraints have contributed to promote good market performance in the European Union but have contributed only to a certain extent. The legal framework relating to selective distribution is essential for the development of the activities of companies in the luxury sector such as the Company, in particular to enable them to preserve their brand image and develop the quality of the distribution of their products. However, this legal framework does not always provide manufacturers with sufficient flexibility to adapt their networks to the particularities of local markets or to promote online sales under conditions that sufficiently respect the brand image and the quality of product distribution. In addition, pure players and marketplaces management is still too insecure at this stage.
9. The Exemption Regulation and the Guidelines do not currently provide a satisfactory level of legal certainty, due to certain drafting ambiguities. The Guidelines are also obsolete in some respects, particularly with regard to the resale of online products.
10. The issue of online sales is dealt with in a very general manner in the Guidelines and recent case law developments (in particular the Coty case) are not taken into account. It would be useful to update the Guidelines on these aspects and to deal with the case of marketplaces to subject them to the same control as physical or online points of sale.
11. The supplier must also have sufficient flexibility to market its products via exclusively online outlets that comply with authorisation criteria dedicated to this type of marketing, without this undermining the legitimacy of its requirement for one or more physical outlets as a prerequisite to authorise online sales by an authorised reseller in its physical network.
12. It must also have the ability to develop its own online sales sites, without imposing on itself the same criteria as it would require from its online resellers (pure players or not).
13. The supplier must have the freedom to organise the distribution of its products through different distribution channels and according to its own criteria, including for its own points of sale (physical or online), in order to be able to manage the brand image and marketing positioning of its products without constraint.
14. A revision of the Guidelines is necessary because their purpose in 2010 was to take into account and protect online sales that were under development. Today, online sales have become essential, even the dominant distribution model. It is therefore no longer justified to

protect such model and necessary to return to the balance between different distribution channels. This would not only safeguard the creativity and innovation of both suppliers and smaller distributors (online or offline), but also provide sufficient alternatives for consumers who would be free to choose according to their expectations.

15. Indeed, online and physical resale seems less perceived as opposite but complementary sales channels. For example, "phygital" distribution, combining the resale of products online with physical resale through corners dedicated to online sales, has developed because of the beneficial effects it could have on customer experience. As such, maintaining high quality standards in the resale of luxury products remains an issue for suppliers and many pure players do not seem able to meet such standards or provide guarantees as to the protection of the brand image of luxury goods manufacturers. This could affect the customer's perception of the image of exclusivity and prestige that, in the customer's mind, is associated with the brand under which luxury fragrances are sold. In the long term, this would reduce the demand for luxury perfumery products.
16. Taking into account those evolutions and in an effort to harmonise case law at European level, the Guidelines could acknowledge the pro-competitive nature of restrictions on the resale of luxury products by pure players or marketplaces and maintain the validity of the requirement of the physical point of sale as a selection criterion when entering a selective distribution network. At the very least, the supplier should be free to compose its distribution channels.

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