Supplementary questionnaire response document

Are the companies/business organisations that are members of your association suppliers or buyers of products and/or services, or both?

Walpole's member brands are predominantly UK-based although some are owned by parent companies in Europe, North America and/or Asia. Walpole has a small number of international members headquartered out of France and North America.

Leaving aside the appropriateness of the scope of the current list of hardcore restrictions (Article 4 VBER) and excluded restrictions (Art 5 VBER) (see the last three questions in this section), do you consider that the additional conditions defined in the VBER (i.e. Article 2 and 3 VBER) lead to the exemption of types of vertical agreements that do not generate efficiencies in line with Article 101(3) of the Treaty?

We do not consider that any additional restrictions need to be added. We generally favour not making the regulation more onerous in order to ensure that innovation and creativity are safeguarded in distribution which will in itself promote efficiencies. More guidance could be provided in relation to the calculation of the buyer's market share. That would assist distributors and retailers.

Does the list of excluded vertical restrictions (Article 5 VBER) exclude types of vertical restrictions for which it can be assumed with sufficient certainty that they generate efficiencies in line with Article 101(3) of the Treaty?

Article 5 is generally unproblematic for our members. One of our members commented, however, that it would be helpful for the Commission to include additional guidance in the VGL as to when an exclusive purchase application which exceeds five years is likely to benefit from an individual exemption under Article 101(3). For example, it would be useful for the commission to include greater detail on the methodology which reviewing advisors should apply when considering whether the duration is likely to be considered justified.

Are there any other types of vertical restrictions for which it cannot be assumed with sufficient certainty that they generate efficiencies in line with Article 101(3) of the Treaty but which are not captured by the current list of hardcore restrictions (Article 4 VBER) or excluded restrictions (Article 5 VBER)?

We do not consider that any additional restrictions need to be added. We generally favour not making the regulation more onerous in order to ensure that innovation and creativity are safeguarded in distribution which will in itself promote efficiencies.

Please provide an estimate of the possible change in compliance costs – in relation to the question "Would the costs of ensuring compliance of your vertical agreements (or, in the case of a business association, the vertical agreements of the members you are representing) with Article 101 of the Treaty increase if the VBER were not prolonged?"

To provide an estimate, we consider that assessing whether an individual exemption is applicable to a situation is likely to incur advisors costs which are 4 to 5 times the amount of an assessment of whether or not the VBER is applicable to any given agreement. That does not take into account the added litigation costs which may be incurred as a result of the uncertainty brought about by the cessation of the VBER.