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EFFECTIVENESS – RESPONSE TO QUESTION 7 THE PUBLIC QUESTIONNAIRE FOR THE 2018 EVALUATION OF THE VERTICAL BLOCK EXEMPTION REGULATION

We have identified the following types of vertical agreements for which – in our view - it can be assumed with sufficient certainty that they generate efficiencies in line with Article 101(3) of the Treaty but which are not covered by the current scope of the exemption:

1. Vertical agreements entered into between an association of non-retailers and its members (under certain conditions);
2. Non-reciprocal vertical agreements between competitors (under certain conditions), also in cases where the supplier is not a manufacturer of the goods.

1. Vertical agreements entered into between an association of undertakings and its members

- 1.1 We support that the VBER covers vertical agreements entered into by associations of retailers that fulfil conditions stipulated therein. In our view, it is desirable to allow small and medium entities to join their forces to ensure a balance with large suppliers as it may have positive effects on distribution and allow consumers a fair share of the resulting benefits.
- 1.2 At the same time, we do not see reasons for excluding from the VBER vertical agreements entered into by all other associations (associations of non-retailers) with their suppliers. In our view, vertical agreements entered into by associations of service providers should also benefit from the VBER if the conditions provided therein (market share and turnover thresholds) are met.
- 1.3 Extending the scope of the VBER in this respect would be beneficial to small and medium sized enterprises as it may lead to the improvement of their efficiency and allow consumers a fair share of the resulting benefits. At the same time, the rule of assessing horizontal agreements between such entities would remain unchanged, thus it would not lead to a risk of any abuse in this respect. We would therefore welcome the Commission to consider including into the scope of VBER vertical agreements entered into by associations of non-retailers.

2. Non-reciprocal vertical agreements between competitors under certain conditions

- 2.1 We support that the VBER covers non-reciprocal vertical agreements between competitors that fulfil conditions stipulated therein. It is quite common on the market that suppliers supply directly only part of the customers (usually the major ones) and at the same time, they use distributors so that their products reach also smaller customers. Such dual distribution leads to efficiency, improvement of distribution and allows consumers a fair share of the resulting benefits.
- 2.2 We would like, however, to comment on the condition for exemption in the case of distribution of goods. The VBER requires the supplier to be a manufacturer of goods, while the buyer to be only a distributor and not an entity competing at the manufacturing level.
- 2.3 We do not see reasons for imposing a condition that the supplier has to be a manufacturer of the goods in order to be covered by the VBER. In our view, also other suppliers that are present at several levels of trade (e.g. importers) should benefit from the VBER with regard to their contracts with the buyers that are present on a retail level and are not competing with the supplier at the wholesale level. Such approach would lead to the improvement and efficiency of the distribution network and consequently allow the consumers of fair share of the resulting benefits. At the same time, the assessment of a horizontal relation between such entities (at the retail level) would remain unchanged, thus it would not lead to risk of any abuse in this respect.
- 2.4 We would therefore welcome the Commission to revise the above condition for exemption, to also include suppliers who are not manufacturers, if they are present at several levels of trade, while the buyer is present at the retail level and is not competing at the level of trade where it purchases the contract goods.