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New Vertical Block Exemption Regulation and Vertical Guidelines – Here to stay!

On 1 June 2022, the revised Vertical Block Exemption Regulation (EU) 2022/720 (VBER) and the associated Vertical Guidelines (Vertical-GL) of the European Commission (Commission) have entered into force and will be the relevant guidance until 31 May 2034. They replace the previous VBER and Vertical-GL, which expired on 31 May 2022 and were, not only due to the increasing digitalization, in urgent need of reform.

The VBER and Vertical-GL are of particular practical relevance as they contain the Commission's central guidance for the assessment of distribution systems. This will not change. Also under the new VBER, vertical agreements that do not contain hardcore restrictions and whose parties do not exceed the 30% market share thresholds on the purchasing and sales markets are block exempted.

Nonetheless, the VBER and Vertical-GL provide for important innovations in various areas which will have considerable practical effects. These are:

- dual distribution systems (I.),
- agency agreements (II.),
- online distribution (III.),
- resale price maintenance (RPM) (IV.),
- different distributions systems and their combination (e.g., selective and exclusive distribution) (V.) and
- non-compete clauses (VI.).

The guiding motives of the Commission's revision were (i) improving the accuracy of the exemption (safe harbor), (ii) expanding and improving the rules and corresponding guidance, especially in the area of online sales, and finally (iii) reducing the complexity of the existing regulation. In view of the broad range of different aspects addressed in the VBER and Vertical-GL, it remains to be seen whether the Commission was able to achieve those goals. However,

it is obvious that while the new VBER and Vertical-GL contain important clarifications which provide legal certainty, they also introduce new concepts that likely create new challenges for undertakings.

Finally, while the Vertical-GL are of great importance as they set out the Commission's understanding of the law, they are not legally binding for national courts and authorities. It therefore remains to be seen how the national competition authorities, above all the German Federal Cartel Office, will integrate the Commission's new guidance into their existing practice.

I. DUAL DISTRIBUTION

A focus of the discussion on the drafts of the VBER and the Vertical-GL was dual distribution. Due to the growing relevance of online sales, dual distribution has gained considerable importance in recent years and is subject to increasing scrutiny by the Commission.

The Commission's critical approach is also reflected in the final version of the VBER and Vertical-GL. The ratio behind this is that dual distribution is associated with the risk of possible anticompetitive effects due to the dual role assumed by the manufacturer, i.e., he is at the same time the contractual partner of the distributors (vertical relationship) as well as their competitors (horizontal relationship). In addition to a possible collusion at the horizontal level, those concerns result from the (to a certain extent) inevitable exchange of information in the vertical relationship, which may also have an impact on the horizontal relationship.

Irrespective of this situation, dual distribution was exempted under the previous framework if the parties exchanging the information did not exceed the 30% market share thresholds and no hardcore restrictions were fulfilled. In the past, the Commission did not comment on the extent to which the vertical exemption covered the horizontal dimension of dual distribution. This changes with the new VBER. Although the Commission retains its original approach, under which dual distribution is covered by the VBER under certain conditions, it provides when it comes to the details for very significant changes (an in-depth, critical discussion of various aspects can also be found in the blog post Möller/Weise, Dualer Vertrieb auf dem Prüfstand (here)).

Exchange of information

The initial approach in the draft VBER not to block exempt the exchange of information in dual distribution in case of (possible) market shares of more than 10%, but less than 30%, and to subject it to an individual assessment based on the Horizontal Guidelines instead, was strongly criticized (cf. in detail Möller/Schulz/Weise, Update zum Dualen Vertrieb - Kommission legt Bewertungskonzept zum Informationsaustausch vor (here)).

The Commission has addressed this criticism and removed the controversial 10% threshold. In addition, the Commission has directly integrated the concept for assessing any information exchange for the purpose of dual distribution into the VBER and the Vertical-GL. Accordingly, a lawful exchange of information between suppliers and customers requires that it (i) directly concerns the implementation of the vertical agreement and (ii) is necessary to improve the

production or distribution of the contract goods. If one or both conditions are not fulfilled, the exemption of the VBER does not apply and a case-by-case assessment is necessary. In the assessment it is irrelevant whether the information is exchanged on the basis of a vertical agreement or informally, e.g., because one party discloses the information without being requested to do so by the other party (Vertical-GL, para. 97).

In order to clarify the required qualification of the exchanged information, the Commission has drawn up a non-exhaustive "white" and a "black" list of information that may in principle be exchanged (Vertical-GL, para. 99) or that is generally critical to exchange (Vertical-GL, para. 100).

- As examples of information that may be necessary to improve the production or distribution of the contract goods, the Commission cites, *inter alia*, the exchange of technical information (e.g., on certification, maintenance or repair of the contract goods), logistical information (e.g., on production processes, warehousing, etc.), marketing information (e.g., on advertising campaigns, new products, etc.) or aggregated sales information (e.g., in general on the sales of the goods by other distributors).

- By contrast, the Commission qualifies the exchange of information on future sales prices of dealers or the manufacturer or the exchange of detailed customer information (e.g., customer specific sales information) as not necessary.

When assessing whether the information exchanged is directly related to the vertical agreement, the Commission also considers the specific distribution model. For example, in a selective distribution scenario different information may be qualified as related to the vertical agreement than in the context of independent distribution (e.g., information on whether the selection criteria have been complied with; Vertical-GL, para. 98).

However, if information is exchanged which is not necessary according to these requirements, this does not directly result in a violation of antitrust law. If the exchange of information is not block-exempted, the restrictive effects on competition must be assessed instead on a case-by-case basis. In addition, the remaining agreement continues to benefit from the block-exemption if it fulfills the prerequisites for an individual exemption.

To ensure antitrust compliance with regard to the information exchange in dual distribution it may also be advisable to secure indispensable information flows by organizational measures such as physical separation and separation of personnel as well as the use of separate IT systems (firewalls) (Vertical-GL, para. 103).

Multi-level distribution

There are also important changes concerning multi-level dual distribution. The VBER applies irrespective of the level at which dual distribution takes place (manufacturing, import or wholesale level), as long as the customer acting as an importer, wholesaler or reseller on the downstream market is not also a competitor operating on the upstream market (Sec. 2(4)(a) VBER; Vertical-GL, para. 94). Even if this means that there will be constellations in multi-level

distribution systems that do not benefit from the block-exemption (e.g., if a manufacturer is also active at the wholesale level and the customer performs both wholesale and retail functions), the extended scope of application is convincing, since the differentiation of the various distribution levels is often not accurate in practice.

Hybrid online platforms

Finally, the VBER contains a special rule for so-called hybrid online platforms. These are platforms on which the operator sells goods/services in competition with the users of its intermediary services (such as Amazon Marketplace).

Pursuant to Sec. 2 (6) VBER, agreements with hybrid online intermediation services are in the context of dual distribution systems not block-exempted, irrespective of their market shares. Operators of hybrid online intermediation services may - if there is a restriction of competition - only be included in a dual distribution system with sufficient legal certainty if the criteria for an individual exemption are fulfilled (cf. Vertical-GL, para. 104 et seq.).

The exclusion of hybrid platforms from the block-exemption, which was already provided for in the draft of the VBER, provoked mixed reactions. While the exclusion was supported by many national competition authorities, including the German Federal Cartel Office, the complete exclusion of hybrid online intermediation services and the resulting uncertainties when integrating them into a distribution system were also sharply criticized. In response, the Commission now emphasizes that hybrid platforms are not an enforcement priority if they do not have market power and do not go along with hardcore restrictions (Vertical-GL, para. 109). However, it remains to be seen to what extent this also applies to national authorities which, like the German Federal Cartel Office, have already been skeptical of hybrid platforms in their existing practice. The reference to the Commission’s enforcement priorities is further without prejudice to the application of competition law before national courts. Finally, the assessment of the existence of market power can be difficult depending on the specific business model of the platform (cf. also Vertical-GL, para. 108).

II. AGENCY AGREEMENTS

For commercial agency agreements, which are important in practice, the new Vertical-GL contain important clarifications (Vertical-GL, para. 29 et seq.).

Genuine agents are characterised by the fact that they bear no or only insignificant entrepreneurial risks when distributing products for the principal - in contrast to non-genuine agents or independent dealers. As a result, they may be considered as part of the principal's organization and not as independent market participants. Agreements between the principal and the agent regarding the distribution of the principal's products are therefore not subject to the ban on cartels. This means, for example, that the principal is permitted to set prices for a genuine agent, which is not the case for its distributors.

Although those principles are generally recognized, the antitrust compliant organization of genuine agency systems raises considerable practical challenges. This concerns in particular the

organization and distribution of operational risks. In the new Vertical-GL, the Commission comments on some practically significant problem areas and thus offers certain guidance:

- First of all, the Commission clarifies that an interim ownership of the sold products does not preclude a classification as genuine agent and thus the exclusion of the agency agreement from Art 101 TFEU (Vertical-GL, para. 33(a)).

- Furthermore, the Commission now explains and recognizes different approaches to compensate agents for any financial risks or costs. For example, it is now possible to reimburse the costs of a commercial agent by charging flat percentage rates, as long as these flat rates are calculated in a way that covers the agent's expected product- and contract-specific costs and can be adjusted as necessary in the event of higher costs (Vertical-GL, para. 35).

- In addition, the Commission fortunately clarifies that agents who work for one and the same manufacturer as an independent dealer as well as a genuine agent are generally also allowed. According to the Commission, it must, however, be possible to distinguish the products sold in the respective function with sufficient clarity. This is not a problem in cases where the products distributed obviously belong to different markets. However, if the products belong to the same market, it must be carefully examined whether the products distributed in the respective role are objectively (sufficiently) distinguishable, e.g., due to their technical or qualitative characteristics or their functionality. If they can be clearly distinguished, it must also be ensured that the customer does not bear any relevant entrepreneurial risk in its function as agent – despite his dual role. However, the risk and cost allocation envisaged by the Commission is very complex (Vertical-GL, para. 36 et seq.). It remains to be seen whether the concept is practically manageable and whether there are any cases in which it can be implemented in an economically viable manner.

The Commission's additions are basically welcome. They provide better guidance, legal certainty and new design options, especially in the case of agents with dual character. Notwithstanding this generally positive assessment, the design of agency systems in compliance with antitrust laws is likely to create new challenges for undertakings: Since the typical price fixing in an agency agreement is a hardcore restriction in agreements with regular dealers, an incompliant design directly provokes the risk of fines. Undertakings that operate an agency system or consider its establishment should therefore carefully check the legal requirements. Especially the new leeway for agents with a dual role is likely to create new challenges for undertakings.

III. ONLINE DISTRIBUTION

Due to the increasing importance of e-commerce, the Commission has addressed this topic more comprehensively in the new VBER and the new Vertical-GL, also considering relevant case law.

In its assessment of possible requirements for online distribution, the Commission follows the general principle that the supplier - irrespective of the distribution system chosen - is permitted to determine the modalities of online distribution. Online distribution as such may not be

prohibited or significantly restricted, not even *de facto* (Vertical-GL, para. 206 et. seq.; cf. now also Sec. 5(e) VBER).

The principle outlined above is of practical importance especially in the following areas:

Dual pricing systems

One constellation that the Commission assesses more generously in the new Vertical-GL are so-called dual pricing systems, in which manufacturers make the wholesale conditions granted to their dealers subject to the sales channel (offline/online) (e.g., different prices, differentiation in the granting of rebates or subsidies, etc.).

Double-price systems have so far been regarded as unlawful hardcore restrictions due to the inherent disadvantage for online sales. Beyond the theoretical possibility of an individual exemption, only so-called fixed cost subsidies which compensated for any higher costs of stationary distribution were allowed.

From now on, the Commission will pursue a much more generous approach, according to which dual pricing systems can benefit from a block-exemption under the VBER. The prerequisite is that the selected differentiation - in view of existing cost differences of the different distribution channels - aims to create incentives for appropriate investments in online or offline distribution or to reward such investments (e.g., store equipment, staff training, etc.). However, it remains a prohibited hardcore restriction if the objective of the differentiation is to prevent online sales (Vertical-GL, para. 209).

The valuation approach laid down in the Vertical-GL is appreciated, as it considers the practical needs for a more flexible distribution structure. Future practice will show, however, where the limits of the new flexibility are reached. Where is the dividing line between still lawful (intended) promotion of stationary distribution and unlawful marginalization of online distribution, which would have to be classified as a hardcore restriction? How precise must different costs of the distribution channels, which have to be compensated, be proven? It remains to be seen how the Commission’s practice will develop on this topic.

From a German perspective, it will also be interesting to see how the Federal Cartel Office, which has traditionally followed a strict approach to dual pricing systems, will position itself. In view of the (for the time being) existing uncertainties, manufacturers should therefore only make cautious use of condition splitting. A differentiation of wholesale conditions for online and offline distribution should in any case be oriented towards the different cost structures and carefully checked for its actual effects in order to counter the possible accusation of an unlawful exclusion of online distribution.

Equivalence principle

The abolition of the so-called equivalence principle, according to which - beyond any double price systems - qualitative selection criteria for online and offline distribution had to be equivalent, is of practical relevance for selective distribution systems. By discontinuing this provision,

the Commission recognizes that online and offline sales are two fundamentally different sales channels, which may be subject to different requirements (e.g., requirements on the assumption of return costs or on the offer of certain (secure) online payment options). However, it must be considered that the selection criteria for online sales must not lead to a (*de facto*) exclusion of such sales in the future (Vertical-GL, para. 235).

The abolition of the equivalence principle is to be welcomed, although it is not clear under which circumstances an acceptable differentiation between online and offline sales will turn into an unlawful restriction of online sales. Unfortunately, the Commission has not reacted to the frequently expressed wish for guidance in the final version of the Vertical-GL. Undertakings are therefore still confronted with considerable legal uncertainties.

Parity clauses

A further clarification of specific practical importance can now be found in Sec. 5(1)(d) VBER, according to which so-called broad parity clauses of online intermediation services will not benefit from the block-exemption. In broad (retail) parity clauses, operators of online platforms prohibit their users from offering the products/services offered via the platform to competing online intermediation services under more favorable conditions. After such clauses had already been classified as anti-competitive by the German Federal Cartel Office in the hotel booking portals case, among others, they are now also completely excluded from the scope of the application of the VBER (Vertical-GL, para. 360 et seq.).

At the same time, the Commission clarifies that so-called narrow (retail) parity clauses which exclude the offer of more favourable terms on a customer's own online channel (website) or offline are covered by the exemption under the VBER, provided the 30% market share threshold is not exceeded. The same applies to wide and narrow parity clauses not used by an online intermediation service (Vertical-GL, para. 359).

For an individual exemption outside the scope of the VBER, the Commission also presents a differentiated assessment system, which should provide greater certainty in the assessment of parity clauses (Vertical-GL, para. 372 et seq.). For Germany, however, the rather strict practice of the Federal Court of Justice and the Federal Cartel Office must also be considered. An individual exemption of parity clauses may not be easily achievable on a national level.

Platform bans

It is pleasing to see that the Commission has adopted a clear position on platform bans, which have been subject of controversial discussions. With platform bans, manufacturers prohibit their dealers from selling via platforms such as Amazon Marketplace or only allow them to do so under certain conditions. In the Commission's view, both blanket and conditional platform bans will be possible in future, regardless of the product or distribution system concerned. Basically, platform bans are not intended to be an unlawful restriction on the effective use of the internet as a sales channel, but merely a way of structuring the modalities of online distribution (Vertical-GL, para. 208(c), 332 et seq.). The dealer still has the possibility to sell (and advertise), e.g., via his own website.

Also, in this area it will be interesting to see how the German Federal Cartel Office, which so far has followed a much stricter approach, will position itself. It cannot be excluded that the German Federal Cartel Office will – partly – stick to its stricter approach with reference to the specialties of online distribution in Germany.

Online advertising (especially price comparison services)

Also of great practical importance are the Commission's comments on online advertising, which the Commission regards as an essential component of effective online distribution.

Restrictions on online advertising are therefore only block-exempted if this does not prevent the effective use of the internet as a sales channel. Accordingly, the Commission regards the (*de facto*) prohibition to use certain (important) advertising channels (e.g., exclusion of search engine advertising or the prohibition to use brands or trademarks for online advertising) as a hardcore restriction. However, it remains possible to determine qualitative requirements for online advertising in the respective channels (Vertical-GL, para. 206(g), 210).

In this context, the Commission's comments on so-called price comparison services (e.g., idealo) are also of practical significance. In view of the importance of such websites, especially for smaller dealers who sell their products via their own website, the Commission sees a total ban – even in the context of selective distribution systems – as a restriction of passive sales that cannot be block-exempted. Such bans are likely to make online sales significantly more difficult. However, in line with its general comments on online advertising, the Commission considers it acceptable for manufacturers to impose qualitatively justified requirements on the use of price comparison services (Vertical-GL, para. 206(g), 343 et seq.).

Manufacturers who impose requirements for the use of price comparison services or for online advertising in general will have to carefully examine whether their requirements are still within the scope of quality assurance. It will be decisive if they are likely to excessively restrict the dealers' ability to advertise online and could therefore be classified as hardcore restrictions (e.g., because the quality requirements are designed in such a way that essential online advertising services cannot be used regardless of the dealer's efforts).

Online mediation services

Finally, the VBER and Vertical-GL bring about significant changes in the antitrust assessment of distribution via online intermediation services (Sec. 1(1)(e) VBER).

The Commission classifies providers of online intermediation services as "suppliers" with regard to sales via the platform (and not only with regard to intermediation services) (Sec. 1(1)(d) VBER, Vertical-GL, para. 67). The aim of this approach is a tighter control of online intermediation services vis-à-vis their users compared to the *status quo*. The new classification has significant effects with respect to RPM. Under the previous VBER, specifications by the operator of an online platform regarding the pricing of dealers using the online platform were block-exempted if the market share did not exceed the 30% market threshold. Under the

new classification of platform operators as "suppliers", fixed or minimum price specifications imposed by the platform operator are qualified as unlawful RPM (Vertical-GL, para. 67).

Finally, in the Commission's view, platform operators are in general not eligible to be genuine agents. The ban on cartels therefore fully applies to any agreements between a platform operator and a supplier. If there is a restriction of competition, such agreements must fulfill the requirements of the VBER (Vertical-GL, para. 46).

Although the classification of platforms as suppliers and the Commission's view on agency in this regard had received criticism in the drafting phase, the Commission stuck to its approach. Operators and users of online intermediation services should therefore review their previous practice under antitrust aspects.

IV. RESALE PRICE MAINTENANCE (RPM)

RPMs are still classified as unlawful hardcore restrictions, irrespective of the respective distribution system. Apart from non-binding price recommendations and maximum prices, manufacturers will still not be permitted to influence the dealers' pricing authority, although the Commission has made practically relevant adjustments.

Fulfillment Contracts

Until now, pricing in the context of so-called *fulfilment contracts*, according to which an (intermediate) dealer executes a contract already negotiated between a supplier and a customer at predetermined conditions (e.g., at fixed special prices), has been characterised by uncertainty. There have been good arguments against classifying the requirement for the (intermediate) dealer to fulfill his obligations under the terms already negotiated as RPM. Nevertheless, the Commission's clarification is welcome. It has now been specified, that an agreement cannot be qualified as RPM if the supplier (and not the customer) selects the fulfilling party (Vertical-GL, para. 193).

Minimum Advertised Prices

Interesting is the Commission's turnaround regarding so-called *Minimum Advertised Prices* (MAP). With MAPs manufacturers prohibit their dealers from advertising prices under a certain level. In this constellation, however, the dealer is formally free in his pricing. Under the previous VBER, MAPs were nevertheless regularly regarded as RPMs due to their proximity to minimum prices.

In the draft of the Vertical-GL, the Commission had surprisingly stated that MAPs could be lawful in principle, if they do not lead to a *de facto* RPM. The Commission has not included the "liberalization", which was strongly criticized, e.g., by the Federal Cartel Office and consumer associations, in the final version. Now recitals 187(d) and 189 of the Vertical-GL stipulate that MAPs are regarded as RPM and are therefore prohibited. Accordingly, MAPs should not be used.

V. EXCLUSIVE DISTRIBUTION, SELECTIVE DISTRIBUTION AND FREE DISTRIBUTION

The revised VBER and the Vertical-GL also contain practically relevant changes for exclusive, selective, and free distribution:

General changes

First of all, the possibilities for combining the different distribution systems are expanded. The new legal framework allows the combination of exclusive and selective distribution as well as free distribution within different territories:

- Territories with exclusive distribution can be protected against active sales from territories with selective or free distribution (Sec. 4(c)(i)(1), (d)(i) VBER).

- Territories with selective distribution can be protected against active and passive sales from other territories to non-authorized distributors (Sec. 4(b)(ii), (d)(ii) VBER).

A combination of exclusive distribution and selective distribution in one and the same territory (e.g., exclusive wholesalers and selected retailers) is still not covered by the block-exemption (Vertical-GL, para. 236).

Also, options in multi-level distribution structures will be extended. Whereas under the current legal framework the obligation of wholesalers to pass on sales restrictions to their customers (= retailers) was not permitted, the Commission now considers this approach to be too restrictive. Under the revised VBER, sales restrictions may be passed on to undertakings operating on the downstream market in order to protect exclusive and selective distribution (Sec. 4(b)(i, ii), (c)(i)(1) and (2), (d)(i, ii) VBER).

- Suppliers are allowed to request their distributors to pass on the restriction to "direct customers", as long as they respect the prohibition of active sales into exclusive territories/to exclusive customers. However, the supplier may not impose the obligation to pass on the restrictions on active sales to customers further down the distribution chain (Vertical-GL, paras. 220, 229).

- In the case of restrictions on active and passive sales into territories where the supplier operates a selective distribution system, the supplier may oblige the customers to impose the same restrictions on their direct as well as indirect "customers". This provision is intended to protect the closed nature of the selective distribution system (Sec. 4(b)(ii), (c)(i)(2), (d)(ii) VBER; Vertical-GL, paras. 223, 230, 241).

Overall, the extended possibilities for the design of different (multi-level) distribution systems are appropriate and already called for positive feedback in the consultation on the draft version. Nevertheless, their implementation is complex. Undertakings that want to make use of the newly gained freedom will therefore have to conduct a detailed assessment under the new legal framework.

Exclusive distribution

In the case of exclusive distribution, the new VBER allows so-called shared/collective exclusive distribution. This means that a customer group or a territory can be exclusively allocated to several dealers at the same time. The only prerequisite is that the number of appointed dealers per territory or customer group does not exceed five (Sec. 4(b)(i), (c)(i), (d)(i) VBER, Vertical-GL, para. 121). By this clarification the Commission has responded to the request for a clear definition of the permitted number of authorized dealers. In contrast the draft simply required that the number of authorized dealers had to be proportionate to the desired investment to ensure that each dealer accounted for a sufficient volume of business. Information on how to determine this limited number of dealers was neither to be found in the draft of the VBER nor provided in the Vertical-GL.

The expanded possibilities for exclusive distribution are positive, as they allow flexibility in the (temporary) integration of additional dealers without compromising the block-exemption of the entire exclusive distribution system. The Commission recognises with the reform that the typical risk of exclusive distribution to reduce intra-brand competition is lower in the scenario of shared exclusive distribution than when only one exclusive distributor is assigned a territory/customer group. It is convincing that the Commission included a quantitative limit on the number of exclusive distributors in the final version. The quantitative limit not only creates more legal certainty for the companies, but is also chosen in such a way that, on the one hand, the investment incentives for the distributors are maintained and, on the other hand, the supplier is granted sufficient flexibility for the organization of his distribution system.

Selective distribution

For the deletion of the equivalence principle, cf. above under III.

VI. NON-COMPETE CLAUSES (EVERGREEN CLAUSES)

Finally, from a practical point of view, the increased flexibility in the drafting of non-compete clauses (Sec. 5(1)(a) VBER) is welcome. Previously, non-compete clauses could only be concluded for a maximum term of five years. Non-compete clauses that automatically extended after five years were invalid even if the customer had a right of termination. In practice, this meant that either the entire contract or the non-compete clause had to be limited to five years.

This need for limited contract periods is now being mitigated. The Commission has decided that a non-compete clause may be automatically extended after five years, provided that the customer is given the opportunity to *effectively* (meaning within a reasonable time limit and at reasonable costs) renegotiate or terminate the non-compete clause after the expiry of the five years. The "effectiveness" of the right of termination or negotiation must be assessed on the basis of an overall economic assessment, taking into account, in particular, any barriers to termination (e.g., loan commitments) (Vertical-GL, para. 248).

VII. CONCLUSION

The analysis shows that the Commission has attempted to initiate practically relevant changes and to remedy identified weaknesses in the previous VBER and Vertical-GL. Many of the Commission's amendments are expressly welcome, even if not everything proves successful and – avoidable – uncertainties remain. From a practical point of view, it will be decisive how the national competition authorities and courts, above all the German Federal Cartel Office, will interpret and apply the new provisions.

In any case, it seems clear that the revised VBER and Vertical-GL will have a significant impact on the assessment of distribution relationships under antitrust law for the duration of their validity until 31 May 2024, a period that has often been criticised as being too long. Therefore, many undertakings will have to review reevaluate their current distribution systems.

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