

Updated EU Competition Rules for Vertical Agreements

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On 10 May 2022, the European Commission adopted new EU competition rules for vertical distribution agreements that entered into force on 1 June 2022, bringing important amendments to the current rules by partly narrowing the safe harbour but also allowing for more flexibility. Distribution agreements that are already in force on 31 May 2022 benefit from a one-year transitional period.

The new Vertical Block Exemption Regulation (VBER) and Vertical Guidelines retain the structure and substance of the previous VBER and provide parties to a vertical agreement with guidance for the self-assessment whether their agreements are covered by the VBER or may qualify for an individual exemption pursuant to Article 101(3) TFEU. Certain rules have been clarified and readjusted, in particular with regard to the distinction of exclusive, selective and free distribution. In this regard, the new rules offer more flexibility for suppliers who intend to combine different types of distribution models and wish to oblige their distributors to pass-on sales restrictions to their customers. The VBER and the Vertical Guidelines also address hotly debated topics like dual distribution, dual pricing, MFN clauses and online sales restrictions.

Companies have been given a more effective tool, but while the legal assessment of their vertical agreements will be facilitated, the assessment remains a complex exercise. Markets will continue to develop over the next 12 years, which will show whether the European Commission has crafted a flexible enough framework.

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