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| **QUESTIONNAIRES TASKS 2-6** |

The European Commission has appointed Valdani, Vicari & Associati (VVA), LE Europe, WIK-Consult and The Austrian Institute of Economic Research (WIFO) to conduct a study on the Commission Regulation (EU) No 330/2010 (Vertical Block Exemption Regulation, VBER) and on the Commission Notice providing guidance on the interpretation of the VBER and Article 101 of the Treaty (VGL). This study focusses on the European competition rules applied on “vertical agreements”, i.e. agreements for the sale or purchase of goods or services between parties operating at different levels of the supply chain.

The purpose of this study is to provide support to the Directorate General for Competition (DG COMP) in the evaluation of the VBER and the Guidelines on Vertical Restraints. The aim of the exercise is to assess if the legislation still meets the specific objectives of the legal framework: the findings of the study will support the evidence base for a possible revision of the VBER and the Guidelines, through identification and analysis of provisions which may no longer be up to date with the latest market developments and business practices, any overlaps with other provisions or other inconsistencies.

The interviews aim to gather insights from relevant stakeholders, evaluating the importance of different sales channels and distribution strategies. The questionnaire is structured into six sections, the first one is dedicated to the screening questions, the last part which focusses on the overall Vertical Block Exemption Regulation and the Guidelines, while the core parts of the interview aim at collecting insights on specific practices regarding the following four types of agreements, namely:

* Retail Price Maintenance (RPM);
* Selective Distribution Model;
* Exclusive Distribution Model;
* Most Favoured Nation (MFN).

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| Retail Price Maintenance  Resale price maintenance (RPM), refers to those agreements or concerted practices having as their direct or indirect object the establishment of a fixed or minimum resale price or a fixed or minimum price level to be observed by the buyer. These clauses are treated as a hardcore restriction. Including RPM in an agreement gives rise to the presumption that the agreement restricts competition and thus falls within Article 101(1). It also gives rise to the presumption that the agreement is unlikely to fulfil the conditions of Article 101(3), for which reason the block exemption does not apply.  However, undertakings have the possibility to plead an efficiency defence under Article 101(3) in an individual case. It is incumbent on the parties to substantiate that likely efficiencies result from including RPM in their agreement and demonstrate that all the conditions of Article 101(3) are fulfilled. |

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| Selective Distribution  Selective distribution agreements restrict on the one hand the number of authorised distributors and on the other the possibilities of resale. The restriction of the number of dealers depends on selection criteria linked in the first place to the nature of the product. Restriction on resale foresees a restriction on any sales to non-authorised distributors, leaving only appointed dealers and final customers as possible buyers. Selective distribution is almost always used to distribute branded final products. |

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| Exclusive Distribution  In an exclusive distribution agreement, the supplier agrees to sell his products only to one distributor for resale in a particular territory. At the same time the distributor is usually limited in his active selling into other (exclusively allocated) territories. The possible competition risks are mainly reduced intra-brand competition and market partitioning, which may in particular facilitate price discrimination.  When most or all of the suppliers apply exclusive distribution, this may soften competition and facilitate collusion, both at the suppliers' and distributors' level.  Lastly, exclusive distribution may lead to foreclosure of other distributors and therewith reduce competition at that level. |

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| Most Favoured Nation  In general, Most-Favoured Nation Clauses (also "parity clauses") are contractual terms agreed between undertakings at diverse levels of the value chain (manufacturers/distributors/retailers/intermediaries). With these clauses, a party guarantees a counterparty equal or better trading terms as it uses with any other party.  Retail MFNs: Retail Most-Favoured Nation Clauses (MFNs) are contractual terms with which the supplier agrees to offer its products to a retailer/intermediary on terms which are the same or better than those offered on other retail channels.  The core characteristic of "Retail MFNs", is that they are agreed in the context of a B2C transaction, influencing the retail terms (e.g. through them the seller agrees to charge a retail price to the end-consumer on a platform that is at least as low as the prices it charges through other sales channels).  The terms in question may include price ("Price MFNs"), product range, availability, conditions and business model ("Non-price MFNs").  The parity obligation may apply in respect of the online or offline channels, and of all other retail channels (e.g. Wide MFNs) or only certain direct or indirect (e.g. Narrow MFNs - supplier's own website). |

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| Part A: The Interviewee | | | | | | | | | | | | | | |
| **Question A1**: Which industry does your business cover? (if your answer differs depending on the geographic market, please clarify): | | | | | | | | | | | | | | |
|  | | Agriculture | | | | | |  | Household appliances | | | | | |
|  | | Accessories & footwear | | | | | |  | Furniture | | | | | |
|  | | Clothing | | | | | |  | Media | | | | | |
|  | | Consumer electronics | | | | | |  | Publishing of books, periodicals and other publishing activities | | | | | |
|  | | Cosmetics & beauty care | | | | | |  | Sporting goods | | | | | |
|  | | Financial services | | | | | |  | Telecom & Post | | | | | |
|  | | Food and beverages | | | | | |  | Transport | | | | | |
| Other: | | |  | | | | | | | | | | | |
| Notes: | | |  | | | | | | | | | | | |
| **Question A2**: Which of the following steps along the supply chain does your business cover? (multiple answers possible) | | | | | | | | | | | | | | |
|  | Production/Manufacturing | | | | | | | | | | | | | |
|  | Wholesale distribution | | | | | | | | | | | | | |
|  | Brick & mortar retail | | | | | | | | % on total retail activities: | | | | |  |
|  | Online retail | | | | | | | | % on total retail activities: | | | | |  |
| Notes: | | | | |  | | | | | | | | | |
| **Question A3**: In the industry(es) covered by your business, which is your market position? Is your company among the leading ones or are you a newcomer in the sector? | | | | | | | | | | | | | | |
| Notes: | | | | |  | | | | | | | | | |
| **Question A4**: In which countries does your business operate? Which is the main country of operation? | | | | | | | | | | | | | | |
|  | Austria | | | | |  | Germany | | |  | | Poland | | |
|  | Belgium | | | | |  | Greece | | |  | | Portugal | | |
|  | Bulgaria | | | | |  | Hungary | | |  | | Romania | | |
|  | Croatia | | | | |  | Ireland | | |  | | Slovakia | | |
|  | Cyprus | | | | |  | Italy | | |  | | Slovenia | | |
|  | Czech Republic | | | | |  | Latvia | | |  | | Spain | | |
|  | Denmark | | | | |  | Lithuania | | |  | | Sweden | | |
|  | Estonia | | | | |  | Luxembourg | | |  | | United Kingdom | | |
|  | Finland | | | | |  | Malta | | |  | | Rest of Europe | | |
|  | France | | | | |  | Netherlands | | |  | | Rest of World | | |
| Notes: | | | | |  | | | | | | | | | |
| **Question A5**: What is the approximate share of cross-border transactions for your business (% turnover)? *[If more than one industry selected in Question A1]*: Does your answer differ depending on the industry? Please clarify. | | | | | | | | | | | | | | |
| Cross-border sales (other EU countries): | | | | | | | | | | | | |  | |
| Cross-border supplies (other EU countries): | | | | | | | | | | | | |  | |
| Cross-border sales (outside EU): | | | | | | | | | | | | |  | |
| Cross-border supplies (outside EU): | | | | | | | | | | | | |  | |
| Notes: | | | | |  | | | | | | | | | |
| **Question A6**: Which type of vertical restriction agreements would you be able to discuss in your industries? | | | | | | | | | | | | | | |
|  | Selective distribution agreements | | | | | | | | | | | | | |
|  | Exclusive distribution agreements | | | | | | | | | | | | | |
|  | Retail Most Favoured Nation (MFN) or parity clauses | | | | | | | | | | | | | |
|  | Price restrictions | | | | | | | | | | | | | |
| Notes: | |  | | | | | | | | | | | | |
| **Question A7**: Does the approach to these vertical restriction agreements vary according to: | | | | | | | | | | | | | | |
|  | Country | | | | | | | | | | | | | |
|  | Industry | | | | | | | | | | | | | |
| Notes: | |  | | | | | | | | | | | | |
| **Question A8:** Do you want the information provided in reply to this questionnaire to be anonymised so that the findings in the evaluation support study cannot be attributed to your organisation? Please consider that any confidential information provided will be treated as such and will not be shared with other entities or included in the evaluation support study. | | | | | | | | | | | | | | |
|  | Yes | | | | | | | | | | | | | |
|  | No | | | | | | | | | | | | | |
| **Question A9**: What is your company’s size? | | | | | | | | | | | | | | |
|  | Micro (less than 10 employees and less than €2 million annual turnover) | | | | | | | | | | | | | |
|  | Small (less than 50 employees and less than €10 million annual turnover) | | | | | | | | | | | | | |
|  | Medium (less than 250 employees and less than €50 million annual turnover) | | | | | | | | | | | | | |
|  | Large (over 250 employees over €50 million annual turnover) | | | | | | | | | | | | | |
| Notes: |  | | | | | | | | | | | | | |
| Part B: Limitations to resale prices: direct or indirect restrictions | | | | | | | | | | | | | | |
| **Question B1**: Which of the following types of restrictions to resale prices (either direct, indirect or both) do you have encountered with your suppliers/distributors/retailers? | | | | | | | | | | | | | | |
|  | | Maximum resale price (i.e. there is a maximum retail price set for a product or service) | | | | | | | | | | | | |
|  | | Minimum resale price (i.e. there is a minimum retail price set for a product or service) | | | | | | | | | | | | |
|  | | Minimum advertised prices (i.e. there is a minimum price a product or service can be advertised for. Actual sales are not affected and can be sold to a lower price) | | | | | | | | | | | | |
|  | | Recommended price (i.e. there is a non-binding suggestion for the product or service) | | | | | | | | | | | | |
| Other: | | |  | | | | | | | | | | | |
| Notes: | | |  | | | | | | | | | | | |
| **Question B2**: In what way do these price restriction agreements vary across the different industries and countries covered by your business? | | | | | | | | | | | | | | |
| Notes: | | |  | | | | | | | | | | | |
| **Question B3**: If applicable, in what way do these price restriction agreements vary across different product categories within your industry? | | | | | | | | | | | | | | |
| Notes: | | |  | | | | | | | | | | | |
| **Question B4**: Please indicate reasons why the encountered price restriction agreements are beneficial? | | | | | | | | | | | | | | |
| To offer a better customer experience and to avoid free riding (e.g. shop A offers a product and associated customer service and shop B offers only the product for a lower price without the customer service). Please indicate the price restriction that is used to achieve such benefit and explain how the restriction contribute to achieve such benefit | | | | | | | | | | |  | | | |
| “Double marginalisation” (both firms in the supply chain want to extract their profits and in so doing end up creating a retail price that is significantly higher, and a quantity that is significantly lower, than it would be if they merged). Please indicate the price restriction that is used to achieve such benefit and explain how the restriction contribute to achieve such benefit | | | | | | | | | | |  | | | |
| To reduce transaction costs (for instance by avoiding frequent price negotiations). Please indicate the price restriction that is used to achieve such benefit and explain how the restriction contribute to achieve such benefit | | | | | | | | | | |  | | | |
| To protect brand image (for example to maintain high-end status for certain goods (Luxury watches, designer handbags, etc). Please indicate the price restriction that is used to achieve such benefit and explain how the restriction contribute to achieve such benefit | | | | | | | | | | |  | | | |
| To promote launch of a new product or other promotional campaigns (for example in association with 2-for-1 promotions). Please indicate the price restriction that is used to achieve such benefit and explain how the restriction contribute to achieve such benefit | | | | | | | | | | |  | | | |
| To facilitate investment (for instance towards R&D). Please indicate the price restriction that is used to achieve such benefit and explain how the restriction contribute to achieve such benefit | | | | | | | | | | |  | | | |
| Guaranteed profit margins. Please indicate the price restriction that is used to achieve such benefit and explain how the restriction contribute to achieve such benefit | | | | | | | | | | |  | | | |
| Other: | | |  | | | | | | | | | | | |
| **Question B5**: Please indicate reasons why these agreements restricting resale prices are not beneficial. Please explain | | | | | | | | | | | | | | |
| Doesn’t offer sufficient benefits to my business. Please explain | | | | | | | | | | |  | | | |
| Lack of willingness of business partners. Please explain | | | | | | | | | | |  | | | |
| Competition policy requirements too restrictive. Please explain | | | | | | | | | | |  | | | |
| Uncertainty about compliance. Please explain | | | | | | | | | | |  | | | |
| Inappropriate for your type of business. Please explain | | | | | | | | | | |  | | | |
| Costs are too high (compliance costs? Other costs? please specify) | | | | | | | | | | |  | | | |
| Don’t know enough about them | | | | | | | | | | |  | | | |
| Other: | | |  | | | | | | | | | | | |
| Notes: | | |  | | | | | | | | | | | |
| **Question B6**: Do agreements restricting resale prices have an impact on your business? Please explain. | | | | | | | | | | | | | | |
| Notes: | | |  | | | | | | | | | | | |
| **Question B7**: Do agreements restricting resale prices have an impact on other actors in supply chains you are a part of? Please explain. | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B8**: What is the typical impact of the agreement(s) restricting resale prices on the market price of the concerned product(s)? | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B9**: How does, or would, the use of agreements restricting resale prices by your business impact the market for the affected product categories? | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B10**: Which party typically benefits the most from the agreement? Why? | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B11**: Which party typically initiates the agreement(s) restricting resale prices? (a producer/manufacturer; a distributor; a retailer; mutual). Please explain. | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **[To wholesalers/retailers] Question B12**: Are you aware of specific sets of rules/restrictions that de facto amount to a situation where you find preferable to set prices equal to the level suggested by the supplier? Please explain and provide examples | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B13**: In your experience, do price restriction agreements aim at encouraging the use of specific sales services by retailers? (e.g. pre-sale support) If so which ones and how? | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B14**: Are limitations to resale prices effective in providing the right incentives to retailers? | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B15**: Are other means of incentivizing retailers less preferable, why? | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B16**: Is free riding a concern more for online sales channels than offline sales channels, or vice-versa? Why? | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B17**: How are these agreements typically reached? | | | | | | | | | | | | | | |
|  | | Written (contract, letter, email) | | | | | | | | | | | | |
|  | | Orally | | | | | | | | | | | | |
|  | | Agreement on pricing algorithms | | | | | | | | | | | | |
| Other: | | | |  | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B18**: Has the implementation of the agreements restricting resale prices changed over the last 10 years both for the way the agreements are reached as well as how they are monitored and enforced once they are in place? | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B19**: How has the arrival of online platforms (e.g. Amazon, Alibaba) impacted price restriction practices? | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B20**: In your experience, how are these agreements enforced? Are there any retaliation systems? | | | | | | | | | | | | | | |
|  | | Through algorithms or other software | | | | | | | | | | | | |
|  | | Through “retaliatory” measures specified in the agreement (e.g. contract termination, refuse to supply, remove from selective distribution networks etc.) | | | | | | | | | | | | |
|  | | Through threats of retaliatory measures | | | | | | | | | | | | |
|  | | Through financial incentives (e.g. additional bonuses) | | | | | | | | | | | | |
| Other: | | | |  | | | | | | | | | | |
| Notes | | | |  | | | | | | | | | | |
| **Question B21:** If a business in your sector were to apply a minimum RPM agreement, at present: to the best of your knowledge, which costs would that business have to consider? Which would be the most significant cost? | | | | | | | | | | | | | | |
|  | | Charges or fees | | | | | | | | | | | | |
|  | | Required personhours | | | | | | | | | | | | |
|  | | Waiting time on approval | | | | | | | | | | | | |
|  | | Legal counsel | | | | | | | | | | | | |
| Other: | | | |  | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B22:** In your experience, why was it not possible to use alternatives that can achieve the same or equivalent benefits as minimum RPM agreements? (e.g. contractual clauses which require a certain amount of investments) | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B23**: Would you consider applying minimum RPM agreements if exemptions based on efficiency justifications were included in the relevant regulation on vertical restrictions? Please explain what changes to current rules would be beneficial for you when it comes to the application of minimum RPM? | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B24**: Would the application of minimum RPM agreements help retailers to support their investments in quality customer services (e.g. pre and post-sales technical assistance)? How? Please give details on which parts of these investments could be made possible by minimum RPM agreements. Can you give an example for a product/service where minimum RPM agreement would improve distribution? | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B25**: What is the impact of minimum RPM agreements on consumers in your view? Please explain the impact on innovation, quality, consumer price. | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B26**: One application of minimum RPM agreements with the potential to be exempted from regulated vertical restrictions is their use in product launches or promotional campaigns. How long is a typical launch period/campaign for your business? | | | | | | | | | | | | | | |
|  | | Less than 1 day | | | | | | | | | | | | |
|  | | 1 - 3 day | | | | | | | | | | | | |
|  | | 3 days - 1 week | | | | | | | | | | | | |
|  | | 1 – 2 weeks | | | | | | | | | | | | |
|  | | 2 – 3 weeks | | | | | | | | | | | | |
|  | | 3 weeks - 1 month | | | | | | | | | | | | |
|  | | > 1 month | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B27**: How frequently do you engage in these launch periods/campaigns? | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B28**: Does the typical launch period/campaign vary depending on the category of product/the target consumers? (*e.g. supposing you are a retailer of household appliances, do a washing-machine and a dishwasher require different time span for campaigns due to the characteristics of the product?*) | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B29**: Are there other applications for minimum RPM agreements (other than product launches or promotional campaigns) which can produce efficiencies? | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Questions on cumulative effects** | | | | | | | | | | | | | | |
| **Question B30**: In your view, if multiple companies are using agreements restricting resale prices within the same geographic market and/or within the same industry, why would it be beneficial for the companies involved? | | | | | | | | | | | | | | |
| Notes: | |  | | | | | | | | | | | | |
| **Question B31:** To the best of your knowledge, have you encountered in your industry a situation in which one or more companies were encouraging other companies to use agreements restricting resale prices? How was this enforced and monitored? | | | | | | | | | | | | | | |
| Notes: | | | |  | | | | | | | | | | |
| **Question B32:** Are you affected by other market players using agreements clauses in your sector? If so, how are you affected? Please provide details | | | | | | | | | | | | | | |
| Notes: | |  | | | | | | | | | | | | |
| **Question B33**: How does or would a widespread use of agreements restricting resale prices impact the market for the affected product categories as a whole? | | | | | | | | | | | | | | |
| Notes: | |  | | | | | | | | | | | | |
| **Question B34**: Have you encountered that other restrictions are applied to the same product under on top of price restrictions (e.g. exclusive distribution, MFN clause, selective distribution)? If so, which ones? | | | | | | | | | | | | | | |
| Notes: | |  | | | | | | | | | | | | |

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| Part C: Selective distribution agreements | | | | | | | |
| **Question C1**: Do you have set up or are part of one of the following types of selective distribution networks? | | | | | | | |
|  | | “Qualitative” (the network of distributors is based only on objective and qualitative criteria) *[see Question C2 for examples]* | | | | | |
|  | | “Quantitative” (distributors can be part of a selective distribution network only when fulfilling certain quantitative thresholds) *[see Question C3 for examples]* | | | | | |
|  | | A combination of both qualitative and quantitative criteria | | | | | |
|  | | Channelling (i.e. the practice of favouring the access to “top tier” products only to certain distributors) | | | | | |
| Other: | | |  | | | | |
| Notes: | | |  | | | | |
| **Question C2**: Please specify qualitative criteria applied in your selective distribution networks | | | | | | | |
|  | | Employment of trained personal (product-specific training); | | | | | |
|  | | Offer of customer advice before/after sale | | | | | |
|  | | Reserving a distinct area within a shop restrictive to the product or products of similar quality | | | | | |
|  | | Presentation of product in an appropriate way to preserve the “premium quality” status of the product | | | | | |
|  | | Sale of a broad selection of the supplier’s products | | | | | |
|  | | Stocking spare parts | | | | | |
|  | | Have a “brick & mortar” store | | | | | |
|  | | Having a (product-specific) workshop or customer service centre | | | | | |
|  | | Qualitative requirements to online sales (e.g. online customer service, secure payment methods | | | | | |
| Other: | | |  | | | | |
| Notes: | | |  | | | | |
| **Question C3**: Please specify quantitative criteria you applied in your selective distribution networks | | | | | | | |
|  | | Minimum size of the separate area in the premises of the shop | | | | | |
|  | | Minimum buy clause (e.g. requirement to buy a certain number of units of the product for offline sales | | | | | |
|  | | Minimum turnover for brick & mortar part | | | | | |
|  | | Maximum number of authorised retailers within the same network | | | | | |
| Other: | | |  | | | | |
| Notes: | | |  | | | | |
| **Question C4**: Why do you have set up or taken part in selective distribution networks? | | | | | | | |
| To offer a better customer experience and to avoid free riding (e.g. Shop A offers a product and associated customer service and shop B offers only the product for a lower price without the customer service). Please explain | | | | |  | | |
| To protect brand image (for example to maintain high-end status for luxury goods (Luxury watches, designer handbags, etc). Please explain | | | | |  | | |
| To maintain a stock of a certain size or variety. (Please explain) | | | | |  | | |
| To incentivise retailers to adhere to promotional campaigns. (Please explain) | | | | |  | | |
| Other: | | |  | | | | |
| Notes: | | |  | | | | |
| **Question C5**: In your experience, why it was not possible to use alternatives that can achieve the same or equivalent benefits as selective distribution networks? | | | | | | | |
| Notes: | | |  | | | | |
| **Question C6**: What type of sales services are being encouraged? | | | | | | | |
| Notes: | | |  | | | | |
| **Question C7**: Is selective distribution effective in providing the right incentives to retailers? Please explain. | | | | | | | |
| Notes: | | |  | | | | |
| **Question C8**: Why are other means of incentivising retailers (i.e. not selective distribution) less preferable? | | | | | | | |
| Notes: | | |  | | | | |
| **Question C9**: Is free riding a concern more for online sales channels or offline? Please explain why. | | | | | | | |
| Notes: | | |  | | | | |
| **Question C10**: What is the impact of the selective distribution agreement on your business / that of other stages in the supply chain (down/upstream)? Please explain. | | | | | | | |
| Notes: | | |  | | | | |
| **Question C11**: What is the impact of the selective distribution agreement on the market price of the product? | | | | | | | |
| Notes: | | |  | | | | |
| **Question C12**: In your opinion, which party benefits the most from the agreement? Why? | | | | | | | |
| Notes: | | |  | | | | |
| **Question C13**: How does the procedure of acceptance/refusal in the distribution network work? Please explain. | | | | | | | |
| Notes: | | |  | | | | |
| **Question C14**: Do the retailers know the exact criteria to be part of the network? How is this information about criteria shared with them (e.g. the information is publicly available or manufacturers need to be inquired)? Please explain. | | | | | | | |
| Notes: | | |  | | | | |
| **Question C15**: How has the arrival of on-line platforms (e.g. Amazon, Alibaba) changed the way such agreements are reached? | | | | | | | |
| Notes: | | |  | | | | |
| **Question C16**: Why are you not part of these selective distribution networks? Please explain | | | | | | | |
|  | | Doesn’t offer sufficient benefits to my business. Explain | | | | | |
|  | | Lack of willingness of business partners. Explain | | | | | |
|  | | Competition policy requirements too restrictive. Explain | | | | | |
|  | | Uncertainty about compliance. Explain | | | | | |
|  | | Inappropriate for your type of business. Explain | | | | | |
|  | | Costs are too high (compliance costs? Other costs? please specify) | | | | | |
|  | | Don’t know enough about them | | | | | |
| Other: | | |  | | | | |
| Notes: | | |  | | | | |
| **Question C17**: Are there any other agreements in addition to the ones listed above that you have in place and which influence your business relationships with suppliers/retailers? | | | | | | | |
| Notes: | | |  | | | | |
| **Question C18**: Would any of these types of agreements be of potential interest to your business? Please explain why. | | | | | | | |
| Notes: | | |  | | | | |
| **Question C19**: Do you apply (comply with) restrictions on the sales between retailers (“cross-selling”) at different levels of the supply chain? If yes, please explain how and why. | | | | | | | |
| Notes: | | |  | | | | |
| **Question C20**: Do you find the VBER and Guidelines clear enough for you to apply (comply with) restrictions to cross-sales in your operations? If not, briefly explain why. | | | | | | | |
| Notes: | | |  | | | | |
| **Pricing differentiation across retail channels and ban on online sales** | | | | | | | |
| **Question C21**: Are you answering the following questions from the perspective of a manufacturer/supplier or a distributor/retailer? *[Fill in answer from Question A2 unless unclear]* | | | | | | | |
|  | | | Manufacturer/Supplier | | | | |
|  | | | Distributor/Retailer | | | | |
| Notes: | | |  | | | | |
| **Questions for Manufacturers/Suppliers [See Question C21]** | | | | | | | |
| **Question C22:** Do you differentiate your pricing between retailers (i.e. whether they are mixed, online-only or B&M-only)? *If yes, please explain in detail any differentiation strategy across geographic and product markets and variation over time (within last 10 years)* | | | | | | | |
| Do you charge different prices to online-only and B&M-only retailers? How do you choose your pricing strategy? If yes, please describe the price difference | | | | | | |  |
| How do you consider mixed retailers: are they a separate category or do they receive the same terms as online-only / B&M-only retailers? Does this depend upon the percentage of online sales for the mixed retailers and if yes, how? | | | | | | |  |
| Notes: | | |  | | | | |
| **Question C23:** What was the reason for the introduction of this pricing differentiation policy? | | | | | | | |
|  | | | To protect service provision | | | | |
|  | | | To protect brand image | | | | |
|  | | | Due to retailer pressure | | | | |
|  | | | To maintain supplier profit margins | | | | |
| Other: | | |  | | | | |
| Notes: | | |  | | | | |
| **Question C24:** Do you impose other non-pricing conditions in respect to online selling? If yes, please describe the conditions and how these are applied across products, geographic markets and changes over time (within the last ten years) for the following two categories of retailers | | | | | | | |
|  | | | Online-only retailers | | | | |
|  | | | Mixed retailers | | | | |
| Notes: | | |  | | | | |
| **Question C25:** Do you impose requirements on retailers’ ability to sell online on third-party platforms (e.g. Amazon or eBay)? If yes, please describe the conditions and how these are applied across products, geographic markets and time (last ten years) | | | | | | | |
| Notes: | | |  | | | | |
| **Question C26:** How are these arrangements/restrictions enforced (e.g. monetary fine, restriction of product access, removal of distribution agreement) and monitored? | | | | | | | |
| Notes: | | |  | | | | |
| **Question C27**: What are the benefits and the costs for your business arising from these requirements? Please describe | | | | | | | |
| Notes: | | |  | | | | |
| **Question C28**: To the best of your knowledge, what are the effects of this policy on consumers? Please explain: | | | | | | | |
| They face higher prices as a result | | | | |  | | |
| They face a restricted access to products. Please explain how | | | | |  | | |
| They benefit from higher service provision or brand quality. Please explain how | | | | |  | | |
| Notes: | | |  | | | | |
| **Question C29:** Do you consider the use of applying different prices (“dual pricing”) to different retail channels to not be a problematic/illegal practice and to be covered by the block exemption under VBER? Please explain | | | | | | | |
| Notes | | |  | | | | |
| **Question C30:** How well do you believe existing regulation and Guidelines cover these restrictions on online selling? | | | | | | | |
| Notes: | | |  | | | | |
| **Question C31:** What is your understanding on the legality of platform bans? | | | | | | | |
| Notes: | | |  | | | | |
| **Questions for Retailers** | | | | | | | |
| **Question C32:** Have you asked suppliers to consider introducing different prices across the different retail channels? If yes, what was the reason for this? | | | | | | | |
|  | yes | | | | | | |
|  | no | | | | | | |
| To protect retailer profit margin. Please explain | | | | | |  | |
| To prevent discounting. Please explain | | | | | |  | |
| To prevent free riding on consumer service provision. Please explain | | | | | |  | |
| Other: | | |  | | | | |
| Notes: | | |  | | | | |
| **Question C33:** Are you aware that your supplier differentiates the pricing you receive, relative to competitors, as a result of you being an online-only / B&M-only / mixed retailer? If yes | | | | | | | |
|  | yes | | | | | | |
|  | no | | | | | | |
| Do you face higher or lower prices than competitors? Please explain | | | | | |  | |
| Are you aware of the price difference? Please explain how | | | | | |  | |
| Are these pricing differences uniform or do they vary across product or geographic markets? Please indicate any change within the last 10 years | | | | | |  | |
| Notes: | | |  | | | | |
| **Question C34:** Are you aware of whether dual pricing agreements occur in your product market (regardless of whether this directly affects you or not)? If yes | | | | | | | |
|  | yes | | | | | | |
|  | no | | | | | | |
| How prevalent is this? What percentage of the product market would be covered by such agreements? | | | | | |  | |
| What is the effect of this policy for retailers? Please explain, providing details on costs and benefits | | | | | |  | |
| Notes: | | |  | | | | |
| **Question C35**: To the best of your knowledge, what are the effects of these dual pricing agreements on consumers? Please explain | | | | | | | |
| Notes: | | |  | | | | |
| **Question C36:** Do you consider the use of applying different prices (“dual pricing”) to different retail channels to not be a problematic/illegal practice and to be covered by the block exemption under VBER? Please explain | | | | | | | |
| Notes: | | |  | | | | |
| **Question C37:** Are there requirements to comply with in order to sell online on your own website platform or on third-party platforms (e.g. Amazon or eBay)? If yes, please describe the conditions and how these are applied across products, geographic markets and changes over time (within the last ten years) | | | | | | | |
| Notes: | | |  | | | | |
| **Question C38:** How are these arrangements/restrictions enforced (e.g. monetary fine, restriction of product access, removal of distribution agreement) and monitored by the supplier? | | | | | | | |
| Notes: | | |  | | | | |
| **Question C39**: What are the benefits and the costs for your business arising from these requirements? Please describe | | | | | | | |
| Notes: | | |  | | | | |
| **Question C40**: To the best of your knowledge, what are the effects of these requirements on online selling on consumers? Please explain: | | | | | | | |
| They face higher prices as a result | | | | |  | | |
| They face a restricted access to products. Please explain how | | | | |  | | |
| They benefit from higher service provision or brand quality. Please explain how | | | | |  | | |
| Notes: | | |  | | | | |
| **Question C41:** Are you aware of whether these restrictions are applied in a non-discriminatory way across all retailers? Please explain | | | | | | | |
| Notes: | | |  | | | | |
| **Questions on cumulative effects** | | | | | | | |
| **Question C42**: How does or would a widespread use of Selective distribution agreements impact the market for the affected product categories as a whole? | | | | | | | |
| Notes: | | | |  | | | |
| **Question C43:** Are you affected by other market players applying Selective distribution agreements clauses in your sector? If so, how are you affected? Please provide details | | | | | | | |
| Notes: | | | |  | | | |
| **Question C44**: How has the advent of intermediation platforms and agency business models (e.g. Booking.com, Amazon, Expedia) changed the way these agreements are reached and used? | | | | | | | |
| Notes: | | | |  | | | |
| **Question C45**: In your view, did the way Selective Distribution agreements are implemented and how often they are used changed over the last 10 years? Please, explain. | | | | | | | |
| Notes: | | | |  | | | |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Part D1: Exclusive distribution agreements [only if respondent is a supplier] | | | | | | |
| In an Exclusive Distribution agreement, the supplier agrees to sell his products only to one distributor for resale in a particular territory or customer group who is protected from active sales into his territory or customer group by other (exclusive) distributors. | | | | | | |
| **Question D1.1**: At which level does your company adopt exclusive distribution agreements? | | | | | | |
|  | Wholesale level | | | | | |
|  | Retail level | | | | | |
| **Question D1.2:** What type of exclusive distribution agreements do you have in place? | | | | | | |
| Notes: | |  | | | | |
| **Question D1.3:** If it is by territory, could you please describe the type of territories? | | | | | | |
| Notes: | |  | | | | |
| **Question D1.4:** if it is by customer group, could you please describe by which type? | | | | | | |
| Notes: | |  | | | | |
| **Question D1.5:** If you apply other criteria of exclusivity, could you please describe them? | | | | | | |
| Notes: | |  | | | | |
| **Question D1.6:** Do you cumulate exclusive distribution agreements with other vertical restriction clauses that limit the distributors’ actions? (e.g. Non-compete obligations, minimum quantity purchase, exclusive sourcing and others) | | | | | | |
|  | Non-compete obligation with duration up to 5 years | | | | | |
|  | Non-compete obligations with duration longer than 5 years | | | | | |
|  | Minimum purchase or stocking obligations or incentives | | | | | |
|  | Exclusive sourcing obligations or incentives | | | | | |
| Others, please describe: | | | | | |  |
| Notes: | | | | | |  |
| **Question D1.7:** Could you please describe what are the objectives your company aims to achieve cumulating those restrictions? | | | | | | |
| Notes: | |  | | | | |
| **Question D1.8**: Is the decision to establish an Exclusive Distribution agreement with your wholesale distributor and/or retailer determined by the characteristics of your industry? If yes, could you please explain how? | | | | | | |
| Notes: | |  | | | | |
| **Question D1.9**: Which party of an Exclusive Distribution agreement more commonly asks to implement this type of clauses and why? (i.e. supplier, wholesaler, retailer) | | | | | | |
| Notes: | |  | | | | |
| **Question D1.10**: Does your company adopt different distribution models on a geographical basis? If yes, could you please explain the rationale of this decision? | | | | | | |
| Notes: | |  | | | | |
| **Question D1.11**: Does your company adopt a different distribution model on a product/brand base? If yes, could you please explain the rationale of this decision? | | | | | | |
| Notes: | |  | | | | |
| **Question D1.12**: Does your company adopt a mix of selective and exclusive distribution agreements? | | | | | | |
|  | In the same territory but at different levels (i.e. wholesale and retail) | | | | | |
|  | In different EU Member States | | | | | |
| Other distribution models: | | | | |  | |
| **Question D1.13**: If yes, what is the strategic motivation | | | | | | |
| Notes: | |  | | | | |
| **Question D1.14**: What are the motivations and objectives that prompted the use of exclusive distribution agreements? (i.e. higher efficiency gains in logistics, specific investments to be borne, increased brand image) | | | | | | |
| Notes: | |  | | | | |
| **Question D1.15**: What are the benefits and the costs for your company to be part of an exclusive distribution agreement? How does the distributor compensate for these costs? | | | | | | |
| Notes: | |  | | | | |
| **Questions on cumulative effects** | | | | | | |
| **Question D1.16**: How does or would a widespread use of Exclusive distribution agreements or equivalent clauses impact the market for the affected product categories as a whole? | | | | | | |
| Notes: | |  | | | | |
| **Question D1.17:** How does or would a widespread use of Exclusive distribution agreements cumulated with other limitation clauses (e.g. non-compete obligations, minimum purchase or stocking obligations, exclusive sourcing, others) impact the market for the affected product categories as a whole? | | | | | | |
| Notes: | |  | | | | |
| **Question D1.18:** Are you affected by other market players applying Exclusive distribution agreements clauses in your sector? If so, how are you affected? Please provide details | | | | | | |
| Notes: | |  | | | | |
| **Question D1.19**: How has the advent of intermediation platforms and agency business models (e.g. Booking.com, Amazon, Expedia) changed the way these agreements are reached and used? | | | | | | |
| Notes: | |  | | | | |
| **Question D1.20**: In your view, did the way Exclusive Distribution agreements are implemented and how often they are used changed over the last 10 years? Please, explain. | | | | | | |
| Notes: | |  | | | | |
| Part D2: Exclusive distribution agreements (for wholesale distributors and retailers) | | | | | | |
| **Question D2.1**: In which category fall your main supplier(s)? | | | | | | |
|  | Wholesale distributors | | | | | |
|  | Manufacturers | | | | | |
| Others, please specify: | | |  | | | |
| Notes: | | |  | | | |
| **Question D2.2**: Do you have Exclusive Distribution Agreements with your supplier(s)? | | | | | | |
| Notes: | |  | | | | |
| **Question D2.3:** What type of exclusive distribution agreements do you have in place? | | | | | | |
| Notes: | |  | | | | |
| **Question D2.4:** If it is by territory, could you please describe the type of territories? | | | | | | |
| Notes: | |  | | | | |
| **Question D.2.5:** if it is by customer group, could you please describe by which type? | | | | | | |
| Notes: | |  | | | | |
| **Question D.2.6:** If you apply other criteria of exclusivity, could you please describe them? | | | | | | |
| Notes: | |  | | | | |
| **Question D2.7:** Do you have in place exclusive distribution agreements which cumulate with other vertical restriction clauses that limit the distributors’ actions? (e.g. Non-compete obligations, minimum quantity purchase, exclusive sourcing and others) | | | | | | |
|  | Non-compete obligation with duration up to 5 years | | | | | |
|  | Non-compete obligations with duration longer than 5 years | | | | | |
|  | Minimum purchase or stocking obligations or incentives | | | | | |
|  | Exclusive sourcing obligations or incentives | | | | | |
| Others, please describe: | | | |  | | |
| Notes: | |  | | | | |
| **Question D2.8:** Could you please describe what are the objectives your company aims to achieve cumulating those restrictions? | | | | | | |
| Notes: | |  | | | | |
| **Question D2.9**: Is the decision to establish an Exclusive Distribution agreement with your supplier(s) determined by the characteristics of your industry? If yes, could you please explain how. | | | | | | |
| Notes: | |  | | | | |
| **[To wholesalers only, see QA2] Question D2.10**: Do you have Exclusive Distribution Agreements with your retailer(s)? | | | | | | |
| Notes: | |  | | | | |
| **[To wholesalers only, see QA2] Question D2.11**: Is the decision to establish an Exclusive Distribution agreement with your retailer(s) determined by the characteristics of your industry? If yes, how? | | | | | | |
| Notes | |  | | | | |
| **Question D2.12**: Does your company adopt different distribution models on a geographical basis? If yes, could you please explain the rationale of this decision? | | | | | | |
| Notes: | |  | | | | |
| **Question D2.13**: Does your company adopt a different distribution model on a product/brand base? If yes, could you please explain the rationale of this decision? | | | | | | |
| Notes: | |  | | | | |
| **Question D2.14**: What are the motivations and objectives that made your company participate to an exclusive agreement? (i.e. brand reputation, greater business stability, availability of specific property rights/know how) | | | | | | |
| Notes: | |  | | | | |
| **Question D2.15**: Which party of an Exclusive Distribution agreement more commonly asks to implement this type of clauses? | | | | | | |
|  | Producer | | | | | |
|  | Wholesale distributor | | | | | |
|  | Retailer | | | | | |
| Notes: |  | | | | | |
| **Question D2.16**: What are the benefits and the costs for your company to be part of an exclusive distribution agreement? How does the supplier compensate for these costs? | | | | | | |
| Notes: | |  | | | | |
| **Questions on cumulative effects** | | | | | | |
| **Question D2.17**: How does or would a widespread use of Exclusive distribution agreements or equivalent clauses impact the market for the affected product categories as a whole? | | | | | | |
| Notes: | |  | | | | |
| **Question D2.18:** How does or would a widespread use of Exclusive distribution agreements cumulated with other limitation clauses (e.g. non-compete obligations, minimum purchase or stocking obligations, exclusive sourcing, others) impact the market for the affected product categories as a whole? | | | | | | |
| Notes: | |  | | | | |
| **Question D2.19:** Are you affected by other market players applying Exclusive distribution agreements clauses in your sector? If so, how are you affected? Please provide details | | | | | | |
| Notes: | |  | | | | |
| **Question D2.20**: How has the advent of intermediation platforms and agency business models (e.g. Booking.com, Amazon, Expedia) changed the way these agreements are reached and used? | | | | | | |
| Notes: | |  | | | | |
| **Question D2.21**: In your view, did the way Exclusive Distribution agreements are implemented and how often they are used changed over the last 10 years? Please, explain. | | | | | | |
| Notes: | |  | | | | |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Part E: Retail Most-Favoured Nation clauses (MFNs) and equivalent clauses | | | | | |
| In general, Most-Favoured Nation Clauses (also "parity clauses") are contractual terms agreed between undertakings at diverse levels of the value chain (manufacturers/distributors/retailers/intermediaries). With these clauses, a party guarantees a counterparty equal or better trading terms as it uses with any other party.  ***Retail MFNs***: Retail Most-Favoured Nation Clauses (MFNs) are contractual terms with which the supplier agrees to offer its products to a retailer/intermediary on terms which are the same or better than those offered on other retail channels.  The core characteristic of "Retail MFNs", is that they are agreed in the context of a B2C transaction, influencing the retail terms (e.g. through them the seller agrees to charge a retail price to the end-consumer on a platform that is at least as low as the prices it charges through other sales channels).  The terms in question may include price ("Price MFNs"), product range, availability, conditions and business model ("Non-price MFNs"). The parity obligation may apply in respect of the online or offline channels, and of all other retail channels (e.g. *Wide MFNs*) or only certain direct or indirect (e.g. *Narrow MFNs* - supplier's own website). | | | | | |
| **Question E1**: Which of the following macro-category of MFNs or equivalent clauses do you have in place in the agreements with your suppliers/distributors/retailers/intermediaries? | | | | | |
|  | The clause requires the supplier to offer its products to a retailer/intermediary at equal or better prices as those offered to any other retailer/intermediary (“Price MFNs” or equivalent) | | | | |
|  | The clause requires the supplier and the retailer/intermediary to offer the same product range, conditions, availability and customer service (“Non-price MFNs” or equivalent) | | | | |
| Notes: |  | | | | |
| **Question E2**: Did you establish in contracts with your suppliers/distributors/retailers/intermediary “Retail MFN clauses” whereby the seller guarantees to the buyer contractual terms at least as favourable as those offered by the seller to any other buyer, therefore influencing retail prices to the end-consumer? (*These clauses are also known as “Most-favoured customer clauses”, “Prudent buyer clause”, “Price parity clause”, “Non-discrimination clause, or “Across-customers agreement”)*. Please explain. | | | | | |
|  | The buyer guarantees to the seller that its product/services will be sold to the final consumer at contractual terms which are at least as favourable as those offered by the buyer to any other seller (*also known as “Most-favoured supplier clauses”, or “Non-discrimination clause”*) | | | | |
|  | The seller guarantees to the buyer that if there is a rival seller offering the same product at better terms, the seller will meet or beat the competitive terms (*also known as “Meeting competition clause”, or “Across-sellers-agreement”*) | | | | |
| Other: |  | | | | |
| Notes: |  | | | | |
| **Question E3**: [If Q E2 is not applicable] Did you establish in contracts with your suppliers/distributors/retailers/intermediary “Non-retail MFNs” or equivalent clauses? If yes, please describe the characteristics of these clauses. | | | | | |
|  | Yes | | | | |
|  | No | | | | |
| Notes: |  | | | | |
| **Question E4**: On the online channel, which of the following types of Retail MFNs or equivalent clauses do you have in place with your suppliers/distributors/retailers? | | | | | |
| “*Wide MFNs*”, with which the seller agrees to offer the online intermediary (such as a marketplace, or a price comparison website) a retail price that is at least as favourable as the one charged on any other sales channel | | | |  | |
| “*Narrow MFNs*”, with which the seller agrees to offer the online intermediary (such as a marketplace, or a price comparison website) a retail price that is at least as favourable as the one charged on its own direct website | | | |  | |
| Other: |  | | | | |
| Notes: |  | | | | |
| **Question E5**: In what way do these MFN clauses vary across the different industries and countries covered by your business? | | | | | |
| Notes: |  | | | | |
| **Question E6**: If applicable, in what way do these MFN clauses vary across different product categories within your industry? | | | | | |
| Notes: |  | | | | |
| **[For suppliers] Question E7:** If you have in place “Wide MFN clauses” with retailers/intermediaries, do you also have business relationships with other retailers/intermediaries who do benefit of “Wide MFNs” terms and who are competing with the first ones? | | | | | |
|  | Yes. Please specify the number of retailers/intermediaries: | | | |  |
|  | No | | | | |
| Notes: |  | | | | |
| **[For suppliers] Question E8:** If you have in place “Retail MFNs” with retailers/intermediaries, what share of the supplier’s total sales/total online sales comes from the retailer/intermediary that imposes the MFN? | | | | | |
| Notes: |  | | | | |
| **[For retailers/intermediaries] Question E9:** If you have in place “Retail MFN clauses” with your suppliers, which means do you use to monitor compliance with these clauses? | | | | | |
|  | Periodical competitors’ price/terms monitoring | | | | |
|  | Periodical information request to the suppliers | | | | |
|  | Random monitoring, as the compliance is very hard to evaluate | | | | |
| Others: |  | | | | |
| Notes: |  | | | | |
| **[For retailers/intermediaries] Question E10:** With regard to the compliance monitoring of the MFNs and equivalent clauses you have in place with your suppliers, do you find it too costly/hard? | | | | | |
|  | Yes | | | | |
|  | Yes, with particular regard to “Non-price MFNs” | | | | |
|  | Yes, with particular regard to brick-and-mortar retail model | | | | |
|  | No | | | | |
| Notes: |  | | | | |
| **Question E11**: Over the last 3 years, do you think that the retailers/intermediaries have changed the scope of the retail MFN clauses requested to their suppliers? Please explain | | | | | |
|  | Yes, with regard to the channels covered | | | | |
|  | Yes, with regard to their content such as price, inventory, conditions and customer service | | | | |
|  | Yes, with regard to other reasons. Please specify. | | | | |
|  | No | | | | |
| Notes: |  | | | | |
| **Question E12**: Can you clearly recognize the difference between Retail MFNs and Resale Price Maintenance (RPM) agreements based on their effects on prices? | | | | | |
|  | Yes. Please explain why | | | | |
|  | No. Please explain why | | | | |
| Notes: |  | | | | |
| **Question E13**: In your experience, can MFNs and equivalent clauses have the same effect of an RPM agreement on prices? | | | | | |
|  | Yes, in particular “Retail MFNs” can. Please explain how. | | | | |
|  | Yes, all MFNs can. Please explain which clauses and how | | | | |
|  | No | | | | |
| Notes: |  | | | | |
| **Question E14**: In your experience, can MFNs and equivalent clauses facilitate collusion between competitors (e.g. competing sellers directly or indirectly exchanging pricing information, causing collusion on price)? Please, explain why. | | | | | |
| Notes: |  | | | | |
| **Question E15**: In your opinion, can “Retail MFNs” and equivalent clauses restrict the ability of your business to deal with third party intermediaries/distributors/retailers, therefore impeding the market access to new competitors? If yes, please provide examples. | | | | | |
| Notes: |  | | | | |
| **Question E16**: In your opinion, can MFNs and equivalent clauses soften competition and, thus, reduce potential innovation in your market? Please, explain why | | | | | |
| Notes: |  | | | | |
| **Question E17**: In your view, what is the impact of MFNs and equivalent clauses on consumers? Please explain | | | | | |
|  | Negative: higher prices | | | | |
|  | Negative: less variety of choice | | | | |
|  | Positive: lower prices | | | | |
|  | Positive: better customer service | | | | |
| Notes: |  | | | | |
| **Question E18**: In your opinion, do the features of your sector encourage the use of MFNs and equivalent clauses in business agreements? Please, explain why | | | | | |
| Notes: |  | | | | |
| **[For suppliers] Question E19**: If you have “Retail MFNs” in place with retailers/intermediaries, please provide the following information on: | | | | | |
|  | The total sales subject to the “Retail MFNs” | | | | |
|  | The total online sales subject to the “Retail MFNs” | | | | |
| Notes: |  | | | | |
| **[For suppliers] Question E20**: If you have “Retail MFNs” in place with retailers/intermediaries, what is their average market share? | | | | | |
| Notes: |  | | | | |
| **Question E21:** Why did you decide to use Retail MFNs and equivalent clauses in your agreements? | | | | | |
| **[Retailer/intermediary]**: To avoid free riding (e.g. “showrooming”, when consumers visit a platform to get informed about the product offer, but then subsequently visit the preferred supplier’s own website to buy the product). Please give examples/evidence of actual showrooming type behaviour by consumers in the sector. Please explain | | |  | | |
| **[Retailer/intermediary]:** To reduce transaction costs (e.g. avoiding frequent terms negotiations). Please explain | | |  | | |
| **[Retailer/intermediary]:** To be sure to get the best deal possible, therefore reducing uncertainty about potential price fluctuations in order to facilitate long-term investments (e.g. investments in demand-enhancing features to offer a better customer service). Please explain | | |  | | |
| **[Retailer/intermediary]:** To avoid risk of opportunism (e.g. when an intermediary made advertising investments on a product and uses MFNs to ensure that the supplier will not exploit it by selling the same product at better terms to others). Please explain | | |  | | |
| **[Seller]:** To prevent delays in transacting and to reduce transaction costs (e.g. by avoiding frequent terms negotiations between the contracting parties). Please explain | | |  | | |
| **[Seller]:** To take advantage of the risk and cost mitigation offered by the buyer (e.g. large-scale advertisement, complex payment systems, customer service). Please explain. | | |  | | |
| **[Seller]:** To take advantage of buyer’s investments to a product (e.g. ensuring loyalty to the buyer through the agreed preferential terms). Please explain | | |  | | |
| **[Seller]:** To be competitive, keeping the customers loyal by giving them preferential terms. Please explain | | |  | | |
| Other: |  | | | | |
| Notes: |  | | | | |
| **[For retailers/intermediaries] Question E22:** What type of investments do you aim to protect with the “Retail MFNs” and equivalent clauses you have in place with your suppliers? Please explain | | | | | |
|  | General demand-enhancing features | | | | |
|  | Marketing investments | | | | |
|  | Advertising investments | | | | |
|  | After sale support | | | | |
|  | Guarantees | | | | |
| Other: |  | | | | |
| Notes: |  | | | | |
| **[For retailers/intermediaries] Question E23:** If you have “Retail MFNs” in place with your suppliers, how do you charge for the services covered by the clauses? Please explain | | | | | |
|  | Per acquisition | | | | |
|  | Per click | | | | |
| Other: |  | | | | |
| Notes: |  | | | | |
| **[For retailers/intermediaries] Question E24**: If you have “Wide MFNs” in place with your supplier, please explain why “Narrow MFNs” are not sufficient for your business. | | | | | |
| Notes: |  | | | | |
| **[For retailers/intermediaries] Question E25**: If you have “Narrow MFNs” in place with your supplier, please explain why you did not require parity with any other retailer/intermediary (namely “Wide MFNs”) | | | | | |
| Notes: |  | | | | |
| **Question E26:** If you do apply Retail MFNs or equivalent measures: what are the negative consequences associated with implementing them? Please explain | | | | | |
|  | Loss of customers (undertaking that are not taking advantage of the MFNs) | | | | |
|  | Loss of sales on direct sales channels | | | | |
|  | Downward pressure on price due to the competition between suppliers | | | | |
|  | Reduction of suppliers’ market power, whereby dominant companies could abuse of MFNs imposing their negotiating power | | | | |
|  | Legal counsel fees for assuring compliance | | | | |
| Other: |  | | | | |
| Notes: |  | | | | |
| **Question E27:** Which party proposed the agreement including the MFNs or equivalent clauses? Please explain the rationale | | | | | |
|  | You | | | | |
|  | The counterpart | | | | |
|  | Both | | | | |
| Notes: |  | | | | |
| **Question E28:** In your opinion, which party benefits the most from the clauses? Please, explain why | | | | | |
| Notes: |  | | | | |
| **Question E29:** How did you reach an agreement on these clauses? Please explain | | | | | |
|  | Written (letter, email) | | | | |
|  | Oral (face-to-face, phone) | | | | |
|  | The clauses form part of our standard terms of business, but are negotiable | | | | |
|  | The clauses form part of our standard terms of business and are non-negotiable | | | | |
| Other: |  | | | | |
| Notes: |  | | | | |
| **[For retailers/intermediaries] Question E30**: Do you apply other incentives/disincentives to encourage your suppliers to give you price/content/inventory/conditions parity (e.g. relating to visibility, ranking, service levels, commission rates)? If yes, please provide details. | | | | | |
| Notes: |  | | | | |
| **[For suppliers] Question E31**: Do any of the retailers/intermediaries used by your business apply other incentives/disincentives to encourage you to give them retail price/content/inventory/conditions parity? If yes, please provide details and explain how you react to these incentives/disincentives. | | | | | |
| Notes: |  | | | | |
| **Question E32:** Why do you not use these types of clauses? Please explain | | | | | |
| They would not benefit your business. Explain |  | | | | |
| Difficulty in reaching an agreement with your partners. Explain |  | | | | |
| Restrictions imposed by competition law or other legislation/regulation. Explain |  | | | | |
| Legal uncertainty concerning compliance. Explain |  | | | | |
| They don’t fit your business model. Explain |  | | | | |
| Costs outweigh benefits (please specify the types of costs) |  | | | | |
| Lack of information |  | | | | |
| Other: |  | | | | |
| Notes: |  | | | | |
| **Questions on cumulative effects** | | | | | |
| **Question E33:** Could your business be potentially interested in any of these clauses? Please explain why | | | | | |
| Notes: |  | | | | |
| **Question E34:** Aside from the agreements listed above, have you any other kind of agreement in place that that is able to influence pricing? Please, specify | | | | | |
| Notes: |  | | | | |
| **Question E35:** Are you aware of other market players applying MFNs or equivalent clauses in your sector? By which market players? | | | | | |
| Notes: |  | | | | |
| **Question E36:** In your view, if multiple companies are using MFNs or equivalent clauses within the same geographic market and/or within the same industry, why would it be beneficial for the companies involved? | | | | | |
| Notes: |  | | | | |
| **Question E37:** To the best of your knowledge, have you encountered in your industry a situation in which one or more companies were encouraging other companies to use MFNs or equivalent clauses? How was this enforced and monitored? | | | | | |
| Notes: |  | | | | |
| **Question E38**: How does or would a widespread use of MFNs or equivalent clauses impact the market for the affected product categories as a whole? | | | | | |
| Notes: |  | | | | |
| **Question E39:** Are you affected by other market players applying MFNs or equivalent clauses in your sector? If so, how are you affected? Please provide details | | | | | |
| Loss of customers |  | | | | |
| Loss of sales on direct sales channels (if any) |  | | | | |
| The competition between suppliers create downward pressure on price |  | | | | |
| Impossibility of investing in R&D |  | | | | |
| Reduction of market power |  | | | | |
| Other: |  | | | | |
| Notes: |  | | | | |
| **Question E40**: How has the advent of intermediation platforms and agency business models (e.g. Booking.com, Amazon, Expedia) changed the way these agreements are reached and used? | | | | | |
| Notes: |  | | | | |
| **Question E41**: In your view, the way MFNs and equivalent clauses are implemented changed over the last 10 years? Please, explain. | | | | | |
| Notes: |  | | | | |
| Part F: The Vertical Block Exemption Regulation | | | | | |
| Article 101 of the Treaty of the Functioning of the European Union (TFEU) prohibits practices which prevent, restrict and distort competition, and sets out conditions for exceptions to these restrictions. Simplified, these practices may be allowed if they provide objective benefits giving consumers a fair share of these benefits, without implying restrictions non indispensable (to achieve these objectives), nor allowing the possibility of eliminating competition in the respective market.  The purpose of Commission Regulation (EU) No 330/2010 (Vertical Block Exemption Regulation, VBER) is to exempt from the prohibition contained in Article 101(1) of the Treaty those vertical agreements for which it can be assumed with sufficient certainty that they satisfy the conditions of Article 101(3) of the Treaty.  In other words, subject to certain conditions the Vertical Block Exemption Regulation (VBER) provides an automatic clearance to a set of vertical agreements in the European economy.  The Guidelines on Vertical Restraints aim to help companies to make their own assessment of vertical agreements under the EU competition rules. They describe vertical agreements which generally fall outside Article 101(1), they clarify the conditions for the application of the Vertical Block Exemption Regulation and they provide practical guidance on how vertical agreements are assessed in individual cases. | | | | | |
| **General questions on the application of VBER and its Guidelines** | | | | | |
| **Question F1**: Has your organisation benefited from the VBER? Please explain in which way or why not. | | | | | |
| Notes: | |  | | | |
| **Question F2**: Do you find the VBER and Guidelines clear enough for you to apply them in your operations? If not, briefly explain why. | | | | | |
| Notes: | |  | | | |
| **Question F3**: Do you require legal counsel in order to apply the VBER and the Guidelines? | | | | | |
| Notes: | |  | | | |
| **Question F4**: Has your business benefited from the introduction of the VBER and the Guidelines in 2010 in comparison to the previous version of the VBER (Commission Regulation (EC) No 2790/1999) and its related Guidelines)? | | | | | |
| Notes: | |  | | | |
| **Question F5**: To what extent have distribution models in your sector changed over the last 10 years (e.g. as a result of the increased importance of e-commerce and/or the arrival of e-commerce platforms). Please explain/describe | | | | | |
| Notes: | |  | | | |
| **Questions on the treatment of vertical agreements in the VBER and its Guidelines** | | | | | |
| **Question F6**: Has your organisation benefited from the treatment of the vertical agreements (price restrictions, most-favoured nation clauses, selective distribution networks, exclusive distribution agreements) in the VBER? Please explain in which way or why not. | | | | | |
| Notes: | |  | | | |
| **Question F7**: Do you find the VBER and Guidelines clear enough with respect to the following categories of vertical agreements (price restrictions, most-favoured nation clauses, selective distribution networks, exclusive distribution agreements)? If not, briefly explain why. | | | | | |
| Notes: | |  | | | |
| **Question F8**: Do you require legal counsel with respect to conduct that may qualify as the following categories of vertical agreements (price restrictions, most-favoured nation clauses, selective distribution networks, exclusive distribution agreements)? | | | | | |
| Notes: | |  | | | |
| **Question F9**: Has your business benefited from the introduction of the VBER and the Guidelines in comparison to the previous legislative framework (Commission Regulation (EC) No 2790/1999 and related Guidelines) with respect to conduct that may qualify as the following categories of vertical agreements (price restrictions, most-favoured nation clauses, selective distribution networks, exclusive distribution agreements)? | | | | | |
| Notes: | |  | | | |
| **Question F10**: Have changes in distribution models affected the use of the following categories of vertical agreements (price restrictions, most-favoured nation clauses, selective distribution networks, exclusive distribution agreements) in your sector? How? | | | | | |
| Notes: | |  | | | |
| **Question F11**: In your view, do the current rules on the following categories of vertical agreements (price restrictions, most-favoured nation clauses, selective distribution networks, exclusive distribution agreements) need to be adapted in light of the changes in distribution models? How? | | | | | |
| Notes: | |  | | | |
| **Question F12**: Has the role of the following categories of vertical restrictions (price restrictions, most-favoured nation clauses, selective distribution networks, exclusive distribution agreements) in offline retail changed in the past 10 years? | | | | | |
| Notes: | |  | | | |