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Amendment	Status quo (2010)	Drafts (9 July 2021)	Possible problems if implemented   Consultation
For <b>online platforms</b>	<p>Classification of online intermediate services platforms disputed.</p> <p>Platform operators' most-favoured-nation clauses can be exempted under VBER according to predominant opinion.</p>	<p>Classification of online intermediation services platforms as <i>suppliers</i>, with the result that</p> <ul style="list-style-type: none"> <li>the <b>agency privilege</b> is no longer applicable.</li> <li>VBER can be applicable between platform and retailer if requirements are met.</li> </ul> <p><b>Hybrid platforms</b> (= platforms whose operators themselves sell goods or services on their platform) are completely excluded from the benefit of the block exemption.</p> <p><b>Broad most-favoured nation clauses</b> (= undertakings' obligation to online platforms not to sell the relevant goods or services via competing distribution intermediaries at more favourable conditions) are to be excluded from the benefit of the VBER; strict most-favoured-nation clauses can be permissible.</p>	<div>   </div> <p>&gt; Check the VBER / especially the applicability of market share thresholds by online intermediation services platforms.</p> <p>&gt; Operators of hybrid platforms must check and possibly revise their contracts.</p> <div>   </div> <p>&gt; possible submission in consultation process by 17 September 2021</p>

For <b>dual distribution systems</b>	Completely block exempted under VBER if competitive relationship only at retail/sales level (Article 2(4) no. 2a Draft VBER).	<p>Establishes <b>levels of market share thresholds</b>:</p> <ul style="list-style-type: none"> <li>• Aggregate market share of <math>\leq 10\%</math> completely exempt.</li> <li>• 10% - 30% generally exempt but <ul style="list-style-type: none"> <li>– no exemption for horizontal restrictions of competition by object,</li> <li>– no exemption for exchange of information – prohibition of restrictive practices applicable here.</li> </ul> </li> <li>• Different market share definitions would need to be applied under the VBER (“<i>retail market</i>” of Article 2(4), (5) Draft VBER vs. “<i>relevant market</i>” of Article 3 Draft VBER).</li> </ul>	<div>   </div> <p>&gt; Increased legal uncertainty.</p> <p>&gt; Dual distribution systems must be checked for legal conformity – particularly any exchange of information between manufacturer and distribution intermediary; check restrictions of competition by object.</p> <div>  </div> <p>&gt; Keep horizontal guidelines and their revision in mind.</p> <div>   </div> <p>&gt; possible submission in consultation process by 17 September 2021.</p>
For the duration of <b>non-compete clauses</b>	Non-compete clauses are not permitted to be automatically extended after five years.	<b>Automatic extension</b> of a non-compete clause per se is now no longer to be deemed a non-exempt non-compete clause.	<div>  </div> <p>&gt; Check and if necessary optimise / adjust any non-compete clauses.</p>
For <b>exclusive distribution</b>	<p>Allocation of an exclusive distribution territory is strict requirement for exemption.</p> <p>Restricting active sales permissible.</p>	<p>Allocation of an exclusive distribution territory to <b>more than one retailer</b> permissible.</p> <p>New exceptions permit certain (broader) restrictions (e.g. prohibiting active sales in exclusive territories / to customer groups; prohibiting active / passive sales</p>	<div>  </div> <p>&gt; Check and if necessary optimise / adjust the exclusive distribution system.</p>

		to unauthorised retailers in selective distribution system territories; restrictions on branch locations of the sole distributing retailer; prohibiting active / passive sales to end users by wholesalers).	
For <b>selective distribution systems</b>	Restricting active or passive sales to end users using a selective distribution system not permissible.	Now permitted for example: Prohibiting active sales in exclusive distribution territories; prohibiting active/passive sales to unauthorised retailers in selective distribution territories; restricting retailer's branch locations; restricting lateral deliveries between members of the selective distribution system.	 <p>&gt; Check if necessary and optimise if necessary the selective distribution system.</p>
For <b>online sales</b>	<p>Dual pricing systems are hard-core restrictions.</p> <p>Equivalence principle for quality requirements of online sales and brick-and-mortar retail.</p>	<p><b>Dual pricing systems</b> are no longer to constitute hard-core restrictions.</p> <p><b>Abandonment of the equivalence principle</b>; different requirements (online / offline) permissible.</p> <p><b>Platform prohibitions</b> generally block exempted.</p> <p><b>Forced sales quantities</b> expressly permissible for brick-and-mortar businesses.</p>	 <p>&gt; Abandonment of special protection for e-commerce.</p> <p>&gt; Check and if necessary optimise / adjust brick-and-mortar or online distribution.</p>

Any questions? Feel free to contact our Noerr advisors:  
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