



## **CCIA's feedback on the European Commission's Inception Impact Assessment for the Revision of the Vertical Block Exemption Regulation and the Vertical Guidelines**

**20 November 2020**

The Computer & Communications Industry Association (CCIA) welcomes this opportunity to provide comments to the European Commission ("EC") Inception Impact Assessment for the Revision of the Vertical Block Exemption Regulation and the Vertical Guidelines ("VBER").

CCIA represents large, medium, and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications, and Internet products and services. CCIA is committed to protecting and advancing the interests of our members, the industry as a whole, as well as society's beneficial interest in open markets, open systems and open networks.

CCIA supports the EC's efforts to adapt the VBER to market developments and make it simpler and clearer and to avoid divergent interpretations.

Digital distribution models have been growing over the last years and will continue to grow. Consumers benefit from an abundance of choice on digital shelves. Prices are driven down by vigorous competition between suppliers on digital intermediaries that make it easier than ever for consumers to learn about the products, services, and sellers they choose to deal with. Digital intermediaries pass on the benefits of their scale, network and learning effects, and dramatically lower transaction costs for small and medium sized enterprises across the EU single market. These benefits are particularly important given the existence of supply constraints in certain geographies (DG GROW "Study on territorial supply constraints in the EU retail sector", 19 November 2020).

CCIA notes that multi-sided business models present unique analytical features and that judgments of the Court of Justice of the European Union affirm that restraints which may appear to reduce competition, but are necessary precisely in order to enable market forces to function, should be allowed. In this respect, CCIA welcomes the possibility of engaging with the EC in discussions on concrete instances where certain restraints may be justified.



On areas of further in-depth assessment:

- **Dual distribution is not problematic.** Digital intermediaries invest heavily to attract customers and suppliers to their service. Sometimes this requires subsidising one side of the service, or even entering as a supplier of particular niche products to fulfill unmet demand and grow the customer base. This is common offline as well, but in e-commerce most of the revenue generated by dual-role intermediaries is from third-party suppliers. Accordingly, digital intermediaries' interests are closely aligned with those of suppliers. At the same time, suppliers increasingly use digital services to attract customers and then compete with those services by selling directly to consumers using their own online channels (so-called "D2C").
- **Selective distribution systems should not be designed to restrict active sales via online channels,** particularly where the nature of the products sold does not justify such restriction. Digital ecosystems are increasingly capable of addressing concerns about how products are displayed (e.g. with the use of augmented reality and other virtual technologies).
- **Indirect measures restricting online sales should not benefit from block exemption.** EU Courts have held that online sales bans are hard-core restraints as they are equivalent to a restriction of both active and passive sales. Like direct online sales bans, online marketplace bans ("OMBs") often constitute an unnecessary restriction of resellers' ability to reach a greater number and variety of customers, and should also be considered a hard-core restraint requiring individual assessment. Indirect restrictions on online sales, such as dual pricing or the equivalence principle, may have the same effect as direct bans. These indirect measures should also be subject to individual assessment, because procompetitive justifications for such restrictions are likely achieved through less restrictive alternatives, such as direct payments for costs of physical sales.
- **Parity obligations should continue to be block-exempted.** Parity obligations such as MFNs continue to address significant market failures by preventing free riding on the customer-specific investments made by digital intermediaries. This is particularly true of narrow parity clauses or absent significant market power.

Finally, CCIA submits that the EC should consider the VBER in a manner consistent with other pending legislation including the "Digital Markets Act", and in particular with respect to the treatment of OMBs and the possible designation of certain online intermediaries as essential online channels ("digital gatekeepers").

Respectfully submitted,

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