

**Non-Confidential Version**

Competition and Markets Authority  
25 Cabot Square  
London  
E14 4QZ



1 Spindle Way, Crawley, West Sussex, RH10 1TG, UK  
T +44 (0)1293 538 986 F +44 (0)1293 550 554  
www.petscorner.co.uk info@petscorner.co.uk

Pets Corner (UK) Ltd Registered No.3551085. Vat No. 702 8248 50

Sent by email to: [yberreview@cma.gov.uk](mailto:yberreview@cma.gov.uk) & [REDACTED]

29th July 2021

Dear Sir/Madam

### **Response of Pets Corner to the CMA's consultation on the retained Vertical Agreements Block Exemption Regulation (retained VABER)**

We, Pets Corner, write to respond to the CMA's consultation on its recommendations relating to the retained VABER and the scope of the proposed replacement legislation: the Vertical Agreements Block Exemption Order (VABEO) and associated guidelines.

We are an independent and privately owned retailer, focusing on premium and high-quality pet products. We are committed to bringing quality products to consumers alongside excellent customer service. Our staff are trained to understand the needs of pet owners and to advise on appropriate product selection. While we operate an online sales channel, our focus is on providing our customers with a face-to-face, customer-driven retail experience.

The essence of our response is that the existing retained VABER has become outdated, failing to adequately address the shift towards 'e-tail' and, in particular, the problem of opportunistic (typically) online sellers and large conglomerate pet stores free-riding on the investments made by independent retailers, like us.

This problem poses an existential threat to our ability to bring quality products and service to consumers. Our business model depends entirely upon the combination of exceptional product quality with knowledgeable support on product selection. Continual deep discounting by lower quality and online-only retailers, with little-to-no consumer education, simultaneously strips us of our customer base and degrades the image of our brands, making our business unsustainable.

The result of this is that the digital giants and conglomerates are creating a race to the bottom, competing us independent retailers out of the market, causing our suppliers to reduce the quality of their product offering and ultimately reducing choice and quality for consumers. This is highlighted by the fall in specialist, independent pet stores in the UK from over 10,000 to under 1,800, as well as a general trend towards falling product quality. Our response calls for a solution to this free-riding problem, requiring a shift of focus in the VABEO and guidelines towards incentivising competition on quality and not solely on price.

We propose that this could be achieved by:

1. Providing scope for and guidance on the circumstances in which our suppliers can justify the control of the retail price of their products on the basis of efficiencies that outweigh anticompetitive effects, preventing deep discounting by the giants.

***Non-Confidential Version***

2. In order to give our suppliers more flexibility to reward us independent retailers for our commitment to a quality, in-store consumer purchasing experience, the removal from the list of hardcore restrictions in the proposed VABEO of:
  - a. resale price maintenance;
  - b. dual pricing, i.e. applying different prices to products sold in the online and offline sales channels; and
  - c. the principal of equivalence in the application of quality criteria for online and offline sales in the context of selective distribution models operated by premium brand owners.

Accordingly, we attach our response to the CMA's consultation for the CMA's kind consideration, focusing on those questions which touch upon our proposition outlined above.

We would be happy to respond to any queries or comments that the CMA has on our response.

Yours faithfully

Steve Holland  
Retail Director  
Pets Corner UK Ltd

**Response of Pets Corner to the CMA's consultation on the retained VABER**

**Question 15: Do you agree with the CMA's proposed recommendation on resale price maintenance (RPM)?**

We disagree that RPM should be retained as a hardcore/by object restriction of competition law. Both the European Commission and the CMA accept that RPM can be justified on the basis of efficiencies and we wholeheartedly agree that RPM can produce positive consumer benefits, in particular where it is used in order to support competition on the basis of quality and customer service (e.g. by supporting investments made by bricks and mortar retailers like us). That being so, it is difficult to see how RPM can be categorised as restrictive by its nature, or 'by object'.

In addition, there is little in the way of decisional practice or case precedent on where RPM has been justified on the basis of efficiencies, meaning that guidance is scant and suppliers cannot in practice risk RPM conduct to protect independent retailers, as to do so might place them in breach of competition law. Accordingly, we feel that RPM would sit more appropriately in the category of restrictions that should be assessed by their effect on competition.

Nonetheless, even if the decision is taken to retain RPM within the category of hardcore restrictions, our strong view is that businesses require detailed guidance and reassurance on the circumstances in which RPM can be justified on the basis of efficiencies, in order to fill the existing void of precedent which has been identified and acknowledged by the CMA and the European Commission. We build on this point and give our view on what that guidance should say in our response to Question 17 of the CMA's consultation, below.

**Question 16: Based on your experience, do you have any examples in practice of circumstances where RPM would lead to efficiencies that outweigh the restriction of competition? If so, please provide these examples.**

In the case of products that are premium and/or technical in nature, it is essential for retailers to invest in the ability to deliver the product with knowledge and advice on the relative product quality, suitability and use e.g. through training staff.

The investments we make are not insubstantial. They include staffing and real estate costs of approximately 19% and 12% of revenue respectively. Our staff undergo classroom training of 150 hours, which is supplemented by instore and online education. Fitout costs for stores are in the region of £1,500 per month per retail unit.

In this scenario, the ability to control the retail price of retailers who do not make these investment (typically e-tailers) could be an effective way to address the problem of free-riding by those retailers (for example, where customers benefit from knowledge and guidance in an independent store but then buy online) leading to efficiencies that outweigh the restrictions on competition. Many specialist, independent retailers simply cannot compete with the retail prices of retailers who discount deeply and do not invest in customer service.

This is reflected in that over the previous two decades, the number of specialist, independent pet retailers has fallen from 10,000 to 1,800, while the market size has increased by more than 40%. This market share has been gained by the large online retailers, such as Amazon, Ebay, Zooplus, Fetch and Pets at Home, who free-ride on the investments made by specialist pet retailers.

## ***Non-Confidential Version***

Meanwhile, many specialist retailers such as Acorn Pets, Just for Pets and Purrfect Pets have been forced to leave the market.

We believe that if suppliers were able to stipulate a minimum retail price for their products, these retailers would still be in existence today, offering specialist pet products and advice to consumers, offering consumers greater choice and better quality: benefits that outweigh any anti-competitive effects of RPM. Indeed, if prices did rise to an anti-competitive level, we would expect rapid new entry/expansion from large conglomerates, groceries and FMCG brands like Mars.

The free-riding problem is also limiting the range of products that we can offer to customers. By way of a current example (we can provide hundreds more), we have been forced to discontinue offering Royal Canin medium dog food to our customers. This product started life as a pet specialist brand but is now largely sold online. The online price of £45.82 is simply not achievable for specialist retailers, like us, who invest in providing instore customer advice. [REDACTED]. If we sold at the internet price, our margin would only be [REDACTED].

Deep discounting and free-riding is also causing degradation and loss of premium brands. Heavily discounted online sales without commitment to advice and service quality risks a lack of understanding of the relative benefits of premium products on the part of the consumer. This has led to a general reduction in the quality of pet products available on the market. For example, in the pet food space, premium brands like [REDACTED] have reduced the quality of their products and Denes, Iams and Hills have dropped out of the market altogether.

We believe that RPM could be a useful tool to enable suppliers to ensure their products are sold at a sustainable price point, to ensure that consumers are educated on the relative quality attributes of premium products, for the overall benefit of product quality and consumer choice, creating efficiencies that outweigh any anticompetitive effects of RPM.

**Question 17: Do you think that additional guidance on when RPM may lead to efficiencies would be helpful? If so, please provide your views on what that guidance should say.**

We strongly agree that additional guidance on when RPM may lead to efficiencies would be helpful, particularly if RPM continues to be categorised as a by object restriction in the proposed VABEO.

If RPM is retained as a 'by object' restriction, the risks of inadvertently wrongly assessing RPM as being justified would be considerable, potentially exposing suppliers, retailers and their directors to considerable sanctions including substantial fines and director disqualification. In the face of this risk, it would be very difficult indeed for a supplier to take the decision to use RPM to, for example, address the problem of free-riding which is killing us specialist pet retailers, without the guidance and reassurance of the CMA. Equally, were a supplier to introduce an RPM policy on the basis that it was justified by efficiencies, without CMA guidance, it would be a risk for us to engage in that policy (for example, by committing to sell at RRP).

As to what that guidance might say, we agree that the list of situations set out in paragraph 29 of Annex D to the CMA's consultation document should be addressed by the guidance, including in the context of:

- high-end products;
- to prevent free-riding, for example, where bricks-and-mortar outlets invest heavily in quality or service; and
- to maintain brand value during the lifecycle of a product.

## ***Non-Confidential Version***

Going forward and on an ongoing basis, we would encourage the CMA to actively engage in informal discussions with retailers and suppliers to act as a sounding board and to enable the CMA to update the guidance from time to time to reflect learnings and developments.

**Question 18: What would be the likely impact on your business, or those you represent, if RPM were not treated as a hardcore restriction for the purposes of the proposed UK VABEO? Please explain your answer.**

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Significant positive impact: for the reasons identified in our response to Question 16, RPM could be a means of protecting specialist, independent retailers and their customers, by reducing the ability of large online-only and conglomerate retailers from free-riding on our investments to the detriment of product quality, service quality and consumer choice. We create consumer demand to the benefit of deep discounters who take advantage of our investments.

**Question 24: What are your views on the CMA's proposed recommendation on dual pricing and on the equivalence principle?**

We strongly agree with the CMA's proposals to remove dual pricing and the principal of equivalence from the list of hardcore restrictions in the VABEO.

The ability to treat the independent bricks-and-mortar and online sales channels differently, by applying different supply prices and/or different quality standards within selective distribution, would help to address the free-riding problem identified above.

**Question 28: Do you consider that the CMA's proposed recommendation (to remove dual pricing and the requirement for overall equivalence in selective distribution from the list of hardcore restrictions) will benefit offline channels? If yes, please provide examples where possible.**

### **Dual Pricing**

In combination with, or as an alternative to, justified RPM in the online channel, dual pricing, i.e. the ability to set different supply prices for products sold instore and online, would enable suppliers to reward us specialist, bricks-and-mortar-focused pet product retailers for our investments, in providing knowledge, advice and education to consumers on the benefits of products, helping them to make an informed and appropriate product selection for their pets.

By applying a higher price for products sold online, suppliers can redress the imbalance that presently enables (typically) e-tailers to undercut and undermine the investments made by specialist, bricks-and-mortar-focused retailers.

In other words, dual pricing could help to address the problem of free-riding that is, as described above in response to Question 16, threatening the sustainability of the independent retail channel and also the sustainability of premium quality brands, to the detriment of consumer choice.

## ***Non-Confidential Version***

The examples of the effects of free-riding (loss of specialist retailers who provide quality service and advice to consumers, product quality degradation and loss of premium brands) as identified in response to Question 16 are equally applicable to this question.

### **Equivalence of SD criteria**

Similarly, by applying different SD criteria reflecting the different nature of the bricks-and-mortar and online sales channels, online-only free-riders would be less able to make opportunistic, deeply discounted sales on low quality websites without any of the customer service benefits offered by specialist bricks-and-mortar retailers.

Instore, we demonstrate the use of products to customers and support customers to select and properly fit products such as pet harnesses. We also offer customers a range of high-quality and high-nutrition pet foods and help them to select from a variety to preparation and serving methods (such as dry, wet and raw). We advise the customer on the best possible diet for their pet, based on their pet's breed, age, any conditions that pet has and the life stage of the pet.

Our belief is that this product knowledge and support is best delivered in person, often preferably with the pet present, by a trusted, well-trained and knowledgeable sales representative. We do offer an online one-to-one customer service and this is free, but the uptake is less than a handful each month, compared to the millions of customers we advise on a one-to-one basis every year in our stores. Customers clearly prefer a face to face conversation on technical matters to do with their pets well-being, even if they do then proceed to make a purchase from an online-only supplier who is free-riding on our customer service efforts.

More flexibility in the ability to design online criteria would ensure that online competitors contribute to customer knowledge and experience, instead of free-riding on the experience that we deliver to our customers in our stores.

Ultimately, this will benefit consumers, who will continue to have the option of selecting premium products, with a quality service. The alternative may be that more specialist retailers are forced out of business and brands reduce the quality of their products to the detriment of consumers and their pets.