

ANNEX

Policy and impact questions

Question 1: Do you agree with the CMA's proposed recommendation to the Secretary of State to make a Block Exemption Order to replace the retained VABER with a new UK VABEO, rather than letting it lapse without replacement or renewing without varying the retained VABER?

a) **Yes**

b) No

c) Not sure

Question 2: Please explain your response providing, where possible, examples and evidence to support your answer.

Our response: The benefits of introducing a UK VABEO are significant when compared to the downsides. Such a document allows the UK to (we hope) remain broadly harmonized with the EU regime reducing costs of business for all stakeholders and ultimately end-consumers. Unless the vertical restraints regime were to change materially and in line with the US "laissez-faire" approach, it is much preferred to provide guidance by regulation rather than by case law.

Question 3: How will the proposed UK VABEO as outlined in the CMA's proposed recommendation impact consumers?

a) Significant positive impact

b) Moderate positive impact

c) Negligible impact

d) Moderate negative impact

e) Significant negative impact

Associations of undertakings Policy questions

Question 4: What are your views on the CMA's proposed recommendation for agreements with association of undertakings to continue to benefit from the UK VABEO?

Our response: We have limited experience in relation to this aspect and therefore have chosen not to respond.

Question 5: Do you think that the turnover threshold should be revised for agreements with associations of undertakings to benefit from the UK VABEO (in particular, to reflect market developments, growth, inflation and/or the UK market)? If so, please provide your views on what the new turnover threshold should be.

Our response: We have limited experience in relation to this aspect and therefore have chosen not to respond.

Impact questions

Question 6: To what extent is the exception for agreements with associations of undertakings, as outlined in the retained VABER, helpful to your business's operations or the operations of those you represent?

- a) Very helpful
- b) Somewhat helpful c) Irrelevant
- d) Unhelpful
- e) Very unhelpful

Our response: We have limited experience in relation to this aspect and therefore have chosen not to respond.

Question 7: What would be the likely impact on your business's operations or the operations of those you represent if the turnover threshold was increased?

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

Our response: We have limited experience in relation to this aspect and therefore have chosen not to respond.

Question 8: What would be the likely impact on your business's operations or the operations of those you represent if the turnover threshold was decreased?

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

Our response: We have limited experience in relation to this aspect and therefore have chosen not to respond.

Dual distribution Policy questions

Question 9: What are your views on the CMA's proposed recommendation on dual distribution?

Our response: We welcome the CMA's approach to maintaining (and extending) the exemption for dual distribution and we elaborate in the below as regards the importance of this distribution system for the continued success and innovation in the luxury goods industry:

At the outset, it is important to note that luxury products are not “normal” products mainly because the underlying end-customer purchasing rationale is based on emotion and not on need. Luxury products are therefore not necessities and hence require a different approach to stimulate demand when compared to other products that are situated more on the “necessity” side of the scale. Demand stimulation is based predominantly on the ability to communicate the prestigious and/or technical nature of our products as well as the craftsmanship involved in the production of our products.

Only then can luxury products be manufactured using the costly and – sometimes century old – techniques necessary to create these products. And only then is the end-consumer willing to pay the price arising out of the costs associated with the manufacture, marketing and distribution of luxury products.

Overall, the sales process of a luxury good is a complex journey starting with the many marketing and PR activities that brands engage in. Distribution plays however a, or perhaps the, key role requiring – amongst many other elements – an “on message” environment wherever the products are sold. The “on-message” environment is essential and a source of constant adjustment, improvement and ultimately innovation. This need to drive best practices in distribution, to get as close as we can to the end-customer to better understand needs, wants and desires, has been a fundamental driver for dual distribution since the very beginning of the luxury goods industry.

The standard dual distribution model has two pillars:

- (i) **Pillar 1 – MONO-BRAND – QUALITY, BEST PRACTICE AND BRAND UNIVERSE DRIVER:** online / offline mono-brand retail (operated either directly by the brand or via third parties) which typically include flagship stores. Only in the context of a mono-brand environment can a brand truly engage in brand-building. Such an environment allows a brand to showcase its entire universe in a closed environment dedicated to the brand. It allows end-customers to engage and experience the brand, its heritage, the craftsmanship, beauty, and/or technicity of the products in ways often not possible in a multi-brand environment.
- (ii) **Pillar 2 – MULTI-BRAND – QUALITY, REACH AND COMPARATOR:** online / offline multi-brand retail operated by third parties. Multi-brand third party retailers are equally essential partners allowing brands to (i) increase customer reach, (ii) sell products in a suitably qualitative environment with excellent localised customer service (including after-sales services), and (iii) showcase their products in the wider luxury industry context.

Ultimately, the success of dual distribution is driven by listening to end-customers and constantly adapting the product portfolio and the environment in which the products are sold (ie, the distribution set-up).

Also, it is important to note that dual distribution is not about brands driving customers to shop in mono-brand environments. Instead dual distribution is a response by brands to the demand from end-customers for more direct engagement. End-customers that shop at mono-brand stores derive welfare from the experience they receive; having these two complimentary channels – both mono-brand and multi-brand channels – has been essential for our brands and remains so today.

Allowing brands to engage in dual distribution is essential to ensure continued retail innovation. Changing the status quo of an exempted dual distribution set-up risks making dual distribution more difficult, risky or legally uncertain...and that equals a dampening of investment and a reduction of consumer welfare.

Retail innovation is moving fast and our brands have understood that the luxury goods industry – which typically has seen itself as a leader in customer services – is facing tough competition and difficult comparators.

The level of service that end-customers expect from luxury brands has been heightened by the experience that superpowers of “frictionless shopping” such as American digital retail giants can provide already today in relation to consumer products.

Reducing red tape – rather than increasing it – is essential for the wider luxury goods industry to allow it to better serve end-customers by driving luxury retail innovation across the dual distribution networks for both mono- and multi-brand stores. While the luxury goods industry will never benefit from the levels of scale economies that the consumer goods industry has been able to, it can drive quality through other more localised means that is achieved in no small part through the dual distribution network.

Question 10: Do you think that additional guidance on information exchange in the context of dual distribution would be helpful? If so, please provide your views on what that guidance should say.

Our response: It is difficult for us to understand why the issue of information exchange has been raised as a potential topic of concern in the context of dual distribution. We believe that the boundaries are very clear between what is pro and anti-competitive. It seems to us that sometimes there remains a stigma attached to vertical agreements in the context of regulation that is difficult to understand given the prevailing incentives of suppliers and buyers of products which ensure an efficient outcome for end-consumers.

For us, we need to be able to exchange with our authorized dealers information that allows us to produce more products that end-customers want to buy (and less products they do not want to buy) and to provide better services to end-customers.

The information we are therefore particularly interested in is which of our products sell well and how we can ensure that end-customers receive the best possible pre- and after-sales service.

These are benign information flows regardless of dual distribution or not.

Certainly, within the market share threshold of the UK VABEO, we do not see why there would need to be a distinction between dual distribution vertical information flows when compared to standard non-dual distribution systems. We therefore do not believe that guidance is necessary.

Impact questions

Question 11: To what extent does the dual distribution exception for non-reciprocal vertical agreements, as outlined in the retained VABER, positively impact your business’s operations or the operations of those you represent? Please explain your answer.

a) Completely

- b) Very much
- c) Moderately
- d) A little
- e) Not at all

Our response: Businesses need certainty to allow for maximum innovation. The more questions there are in the context of a project that distract from implementation, the less likely the project will occur. This is true for retail innovation as much as product innovation.

It is important to reduce red tape to the maximum extent possible. We have seen that major retail innovation in the consumer goods industry has come from outside the EU/UK where rules in relation to vertical agreements are much more free and open, allowing the “invisible hand of the market” to create outcomes that push innovation forward.

Removing the dual distribution exemption increases the burden for both brands and dealers to agree on applicable frameworks and therefore dampens investment and innovation. The VRBE and VGL have worked well in the context of dual distribution. Absent dominance, it is very difficult to see what concerns necessitate a change given that the point of competition law is to increase consumer welfare (and not protect a particular status quo).

More generally, it is important to remember that the luxury goods industry has been for centuries, and remains so today, a predominantly European endeavour. The UK has numerous luxury brands that are globally successful – our own Alfred Dunhill Maison, for instance, is testament to this.

The industry’s strength lies in its ability to innovate while using craftsmanship that – for certain techniques applied by our brands – is unique in the world. We take pride in the fact that our industry stands out as a European success story with special characteristics.

A key “special characteristic” of our industry is that the concept of a product being “necessary” does not apply. Neither does the relentless drive in other industries to follow fads and trends at all costs.

For example, when in the 1970s/80s quartz watches (with battery powered quartz movements that were more precise than the hitherto predominantly European made mechanical movements) from Asian producers swept the global watch market across all price segments, it took visionaries to believe that the ailing European mechanical movement would still be wanted in the future. But after some painful decades of decline, the industry started to grow again.

Today, the wider luxury goods industry faces important challenges once more. Digital giants from outside Europe, with their ability to understand trends before they materialize coupled with immense and seemingly limitless financial resources, are threatening to take over and disrupt industries around the world. The luxury goods industry is not immune to this development.

Our customers are spending more and more time with digital giants making it harder for our industry to engage with such customers. Our industry wins or loses with its ability to explain to customers what is going on in our Dunhill leather workshops, Cartier jewellery and perfume atelier or in Vacheron

Constantin's watchmaking facilities – the importance of our end-customers understanding how our products are manufactured is as essential as the communication around the brands heritage, marketing or cultural activities.

Digital is very important to our brands but real engagement starts with, or is complimented by, a visit to our brands "universe" in our mono-brand boutique and to compare our products with that of an industry peer at an authorized multi-brand dealer. That is when the end-customer understands that a watch can warrant a UKP10,000 price tag or why – in our digital time – a writing instrument retains its ability to fascinate. Absent this ability to engage, the prestige of our brands risks to slowly reduce over time until the end-customer no longer understands why a watch can warrant the UKP10,000 price tag.

In the luxury goods industry, dual distribution has always been an essential part of the distribution setup. It's growth also in our industry is a nod from end-customers that it is appreciated and should continue.

Dual distribution therefore is and remains a building block for the luxury goods industry allowing it to remain relevant in today's increasingly digital world. A change of the current setup that disrupts legal certainty would harm an industry that is essentially European, benefits end-customers around the world and employs millions of staff at a time when the industry needs flexibility to innovate and see off the challenges arising from predominantly outside of Europe.

Question 12: To what extent does the dual distribution exception for non-reciprocal vertical agreements, as outlined in the retained VABER, negatively impact your business's operations or the operations of those you represent? Please explain your answer.

- a) Completely
- b) Very much
- c) Moderately
- d) A little
- e) Not at all**

Our response: Please refer to our response to question 11.

Question 13: What would be the likely impact on your business's operations, or the operations of those you represent, if the dual distribution exception was not included in the UK VABEO at all? Please include examples and where possible, quantitative and/or qualitative evidence in your answer.

Our response: Please refer also to question 11 and 12. Removing the benefit of the block exemption for dual distribution would reduce innovation, intra- and interbrand competition as well as consumer choice.

We believe that it is important to remember that with the UK / European vertical restraints regime, we are already facing today the most stringent distribution rules globally. We, as predominantly European-based businesses, risk losing out in the global context and without European end-consumers being better off (as regulation in the vertical arena has the risk of dampening innovation).

The innovation that dual distribution has brought (from the mono-brand flagship store, that provides services and experiences previously unheard of, to increased intra-brand competition) is to no small extent because heavy investments in dual distribution could be safely made due to the block exemption framework. Such levels of investments may no longer be warranted were legal certainty around the viability of dual distribution to decrease.

Question 14: Do you consider the CMA's proposed recommendation, which also applies the exception to dual distribution by wholesalers and by importers, to have a positive or negative impact on business operations? Please explain your answer.

a) Significant positive impact

a) Moderate positive impact

b) Negligible impact

c) Moderate negative impact

d) Significant negative impact

Our response: We believe that this addition makes sense even if we have little experience given the previous rules considered such arrangements to fall outside of the block exemption.

Resale Price Maintenance Policy questions

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

Our response: We support the CMA's general point of view to retain RPM as a hardcore restriction however would urge the CMA to identify industry specific cases in its guidance where RPM has or is likely to have positive effects. Economic literature has for over a hundred years (see eg, Thorstein Veblen) identified luxury goods as being somewhat different. Non-price competition is crucial for the ability of luxury goods manufacturers to retain their prestige in the industry. Without such an ability to retain the "aura of luxury" (as often cited in case law), the mid- to long term result is that luxury is downgraded to premium and then from premium to consumer. The risks are clear.

That is why it is important to strike a balance between the importance of price vs non-price competition and acknowledge that, in certain industries, price competition should come second to non-price competition.

Whether one believes in that principle or not depends, in our view, on the outlook one has: short term consumer gains result from heavy price competition but mid- to long term, such heavy price competition, naturally negatively impacts the ability of manufacturers of luxury products to retain the "aura of luxury" of their products.

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.

Our response: We don't have any data of RPM leading to efficiencies as it is considered a hardcore restriction and therefore not practiced by our brands. Nevertheless, we consider that RPM would lead to efficiencies in some specific cases.

Our analysis in this regard is based on the understanding that luxury products are not products that are "necessities". The purchasing decision for a luxury product therefore differs and is linked strongly to emotion and a willingness to invest in the prestige of the brand.

To a large extent, the rationale of end-customers purchasing luxury products is driven by signalling a certain taste, a certain standing and certain appreciation of (often European) culture. And in addition to the aforementioned, scarcity, exclusivity and limited availability of products are also key ingredients of success of a luxury product. While this is also the case for branded products, such considerations are heightened in the context of luxury products.

Price and in particular discounting can have material negative effects on the prestige of luxury brands and the ability to allow end-customers to engage emotionally with a brand to the required level. A discounted luxury product does not embody scarcity, nor does it signal that other persons believe that it is a must have item – on the contrary, it is quite the opposite and suggests elements that are ingrained in our belief system arising through largely consumer goods industry practices for non FMCG consumer products: end of stock, slow mover, issue with quality.

In this context, it is important that the negative impact of discounting on the prestige of the brand is balanced against end-consumers benefitting from lower prices. That is essentially a question of a short term gain in terms of consumer welfare (ie, lower prices for end-customers) vs mid-term loss of consumer welfare (ie, discounting leads to lower prestige of a brand and its products which leads to a lower willingness to pay for the cost of the product resulting in reduced ability for brands to sustain their costly business model).

While price and discounting are important elements also for brands to find the true market value of a product, discounting is particularly harmful at certain crucial times in the life of a brand.

We are convinced that allowing brands to control (i) certain particularly high levels of discounting, and (ii) discounting at a particularly important time in the life of a brand or at the launch of a particular product, would tilt the aforementioned balance between short term consumer welfare gain vs mid-term consumer welfare loss strongly into the positive.

- Taking the example of luxury watches, a 30% discount sign is a strong signal to end-customers that the product is not scarce, nor in high demand and possibly has quality issues.

That level of discount has significant potential to materially reduce brand prestige. The destructive power of such a dealer pricing policy is exacerbated by the power of online markets.

Whereas a 30% discount sign in the store vitrine pre-Internet was visible only to a relatively small number of potential customers located in the catchment area, any dealer selling online with a 30% discount is visible to the world. It only takes one dealer (eg, who has cash difficulties), discounting one watch to impact the brand materially on a global scale.

Today, we have no tools to reduce this negative impact. We encourage the CMA to allow the luxury goods industry to take back control when it comes to pricing policies by dealers that are detrimental to the brand and in the mid-term to consumers.

- Similarly, and staying in the context of luxury watches, when new products are launched brands spend vast sums on advertising and marketing communication. That can take the form of sponsorship (from sports teams to cultural institutions and events), hosting of events, engaging with Hollywood talents in advertising campaigns, advertising on billboards, TV, cinemas, print and increasingly online media etc.

The investments made are there to shine a strong spotlight on the brand and its new products. For our brands, this is a time when we are pushing hard to get the attention of customers so that when end-customers spot the new product with authorised dealers, they are reminded about the emotional aspects that our marketing campaigns have sought to communicate.

A discounted price tag on the shop window or website at this moment of vulnerability is particularly negative for the brand but also for end-customers.

We should not forget here that luxury products are not necessities. No-one “needs” a watch that costs UKP10,000 and has a mechanical movement that is not as accurate as a battery powered quartz watch that costs UKP30.

But the fascination lies in the ability of the brand to communicate the craftsmanship behind the mechanics of the movement, the amazing technicity of the apparatus, the increasingly sophisticated material science that goes into watch components and to bundle all of this into an emotional package that clearly warrants the price tag (and reflects the cost) and creates value for the end-consumer.

The end-customer is driven to a watch purchase because of an emotional decision...not one that is based on necessity. That is why we are convinced that when new products are launched and so much marketing emphasis is placed on a new product, it is important to maintain price stability given the specificities of the industry. If not, the trade-off we set out before as regards short term (lower price) gain is negatively balanced against the mid-term loss of emotional attachment to a brand.

Therefore, we recommend to the CMA to allow the brand to control pricing in the context of a launch of new luxury products for an appropriate period (which depending on the product should be between three to six months (for seasonal products) and six to twelve months (for non-seasonal products)).

- Taking an example from the luxury fashion industry, such brands typically have a lead designer that provides artistic interpretation of the values that a brand stands for.

Such artistic directors are particularly visible and are in themselves key marketing elements for such brands. When one artistic director is replaced by another, the first two seasons (eg, Spring/Summer and Autumn/Winter) are particularly important “make or break” periods of time for brands.

In that context, an RPM price policy during the first 12 months (ie, covering the first two seasons) would allow a new designer to establish itself more easily for the following reasons:

- When designers change at fashion brands, they typically bring their own new style to the brand. Existing customers (typically enamoured with the previous designer and the resulting product style) may find the brand less attractive during a time of artistic change as the direction of the previous designer is replaced by the direction of the new designer.
- At the same time, other customers that previously were not so enamoured with the brand will look closely at the new direction the brand will take. At that point in time, discounted products in stores would be detrimental during a period of time where the end-customer (re)assesses and decides to switch to or from the brand.

In addition, we would also encourage the CMA to evaluate the impact of RPM more generally across luxury products, when there is sufficient inter-brand competition, lower price elasticity, and answer the question to what extent the conditions for a block exemption are fulfilled. The luxury goods industry has to apply the same rules as the consumer goods industry. We believe it is important to consider to what extent – especially as regards the regulatory importance placed on price vs non-price competition – this remains the right policy decision to have.

Interestingly, the CJEU in *Copad vs Dior* had also opined on the need to preserve luxury / prestige of brands in the context of discounting in favour of the brand owner – albeit in the context of intellectual property laws. Price competition was considered detrimental to the brand and hence disallowed in that case. There is therefore already today precedent to put clear emphasis in the luxury goods sector on non-price competition. We believe this makes sense and see the discrepancy between competition law and intellectual property law as an increasing problem.

Finally, in the past neither the European Commission (nor the CMA) have decided to provide a “*lex specialis*” for a particular industry in the VRBE and VGL. We understand that decision.

However, we believe there is ample room to provide specific guidance for the luxury goods industry in the context of guidelines using examples from the sector. We are certain that the wider luxury goods industry – as a European powerhouse and with its clearly different demand drivers and characteristics – with all its stakeholders would benefit from such guidance resulting in the mid-term to an increase in consumer welfare and a better future for the longevity of the industry in these difficult times.

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.

Our response: Please see our response to question 16.

Impact questions

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

Question 19: Are you aware of, or have you encountered, any difficulties in your business as a result of the treatment of RPM as a hardcore restriction for the purposes of the retained VABER? If so, please give examples.

Our response: Please see our response to question 16.

Territorial and customer restrictions Policy questions

Question 20: What are your views on the CMA's proposed recommendation on territorial and customer restrictions? In particular, what are your views on the CMA's proposed recommendation to:

- a) continue to treat territorial and customer restrictions as 'hardcore' restrictions so as to remove the benefit of the block exemption (subject to exceptions);
- b) maintain a distinction between active and passive sales;
- c) revisit the distinction between active and passive sales for certain types of online sales in the CMA VABEO Guidance; and
- d) change the current regime in order to give businesses more flexibility to design their distribution systems according to their needs?

In your response please consider whether:

- a) there are any features of the UK internal market militating in favour or against retaining the treatment of territorial restrictions as 'hardcore' restrictions for the purposes of the UK VABEO;
- b) the distinction between active and passive sales remains valid and whether changes to this categorisation should be made in order to:
 - i. clarify the situations where online sales amount to passive or active sales; or
 - ii. give businesses more flexibility to combine different distribution models.

Our response: We have limited experience in relation to this aspect and therefore have chosen not to respond.

Question 21: Do you agree that additional guidance on this issue would be helpful? If so, please provide your views on what that guidance should say including examples of situations where online sales should be regarded as passive or active sales. Impact questions

Our response: We have limited experience in relation to this aspect and therefore have chosen not to respond.

Question 22: Do you have any examples of circumstances where territorial and customer restrictions might lead to operational efficiencies? Please include examples of locations within the UK and, where possible, quantitative and/or qualitative evidence in your answer.

Our response: We have limited experience in relation to this aspect and therefore have chosen not to respond.

Question 23: How helpful is the exemption for restrictions of active sales in the UK to your business or those you represent? Please explain your answer.

- a) Very helpful
- b) Somewhat helpful
- c) Irrelevant
- d) Unhelpful
- e) Very unhelpful

Our response: We have limited experience in relation to this aspect and therefore have chosen not to respond.

Indirect measures restricting online sales Policy questions

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

Our response: We agree with the removal of dual pricing / the equivalence principle as a hardcore restriction.

Question 25: Do you agree that additional guidance on this issue would be helpful? If so, please provide your views on what that guidance should say. Impact questions

Our response: If these items are removed from the list of hardcore restrictions, we do not think additional guidance is necessary at this point.

Question 26: What are your views on the current regime, which treats certain online sales as a form of passive sales? What are some examples of the benefits or costs for your business operations, or the operations of those you represent? Please include examples and where possible, quantitative and/or qualitative evidence in your answer.

Our response: We have limited experience in relation to this aspect and therefore have chosen not to respond.

Question 27: Does the treatment of online sales bans as a hardcore restriction have an overall positive or negative impact on your business? Where possible, please provide examples of the impact on online channels and offline channels in your answer. Please include qualitative and/or quantitative evidence where possible.

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

e) Significant negative impact

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.

Our response: We believe such action will better allow brands to balance out the requirements for the brand between offline and online engagement.

During the review of current Regulation 330/2010 and its accompanying guidelines, stakeholders warned that pushing online sales may lead to a desertion of the high street as more and more products shift to specialist online dealers (typically based outside of Europe).

While this has occurred in some industries, it has not (yet) occurred in the luxury goods industry. However, if left unchecked, the risk is that the propensity of online markets to create "winner takes all" type of players could also happen in the luxury goods industry.

The last decade and in particular the experiences during COVID have accelerated trends and so the luxury goods industry is finding itself at a crossroads with dealers questioning the brick and mortar investments that have proven difficult to manage in the context of the pandemic.

We have tried to underline (see our response to questions 11 and 16 for instance) the importance of allowing luxury goods manufacturers to continue developing the prestige of a brand.

To do so, digital is a key element but equally key are brick and mortar environments. Digital is here to stay but, without protection, it is not clear how brick and mortar environments will develop in the next decade.

Without a sizeable brick and mortar channel that ensures an innovative "touch, feel, experience, engage and understand" approach to retailing, the ability for our brands to allow end-customers to understand the value proposition of our products will diminish...not tomorrow but in the mid-term.

Therefore, our company encourages the CMA not to put in place any requirements as regards dual pricing restrictions and, in any event, to make it clear that dual pricing is not a hardcore restriction.

Also, Regulation 330/2010 and its accompanying guidelines had introduced an exempted "fixed fee" concept which was not taken up by the industry due to lack of practical application. In case of new "exemption" guidance, a risk of impracticality is likely to be material given that guidance has to work across industries.

Given that the CMA has the option to amend guidelines as it sees fit, it may decide to scrap dual pricing / online equivalence from its list of hardcore restrictions without adding specific safeguards given also that enforcement mechanisms for de facto online sales bans remain available in any event.

Parity obligations (or 'most favoured nation' clauses) Policy questions

Question 29: What are your views on the CMA's proposed recommendation on parity (or 'most favoured nation') obligations? As part of this, you might like to consider whether indirect sales channel parity obligations¹ can generate benefits/efficiencies beyond those that may be created by direct sales channel

parity obligations² – if so, please provide evidence or examples in practice of circumstances where this may be the case.

Our response: We have limited experience in relation to this aspect and therefore have chosen not to respond.

Question 30: Do you agree that additional guidance on this issue would be helpful? If so, please provide your views on what that guidance should say.

Our response: We have limited experience in relation to this aspect and therefore have chosen not to respond.

Impact questions

Question 31: To what extent are indirect sales channel parity obligations relevant for your business's operations, or the operations of those you represent? Please explain your answer.

- a) Completely
- b) Very much
- c) Moderately
- d) A little
- e) Not at all

Our response: We have limited experience in relation to this aspect and therefore have chosen not to respond.

Question 32: To what extent are direct sales channel parity obligations relevant for your business's operations, or the operations of those you represent? Please explain your answer.

- a) Completely
- b) Very much
- c) Moderately
- d) A little
- e) Not at all

Our response: We have limited experience in relation to this aspect and therefore have chosen not to respond.

Question 33: Are you aware of any difficulties to your business if indirect sales channel parity obligations are treated as hardcore restrictions for the purposes of the proposed UK VABEO? Please explain your answer.

Our response: We have limited experience in relation to this aspect and therefore have chosen not to respond.

Non-compete obligations Policy questions

Question 34: The CMA invites views on the proposed recommendation in respect of non-compete obligations. In particular:

a) Should non-compete obligations that are tacitly renewable remain 'excluded restrictions' under the UK VABEO?

Our response: Tacitly renewable non-compete obligations are benign given they allow both parties to exit the agreement.

b) Are there any risks in allowing such obligations to be automatically exempt under the UK VABEO?

Our response: We do not see any risks given that parties can end tacitly renewable agreements.

c) Should the current regime in the derogations in Article 5(2) and Article 5(3) of the retained VABER be revised (for example, to reflect market developments such as the increasing trend towards online sales)?

Our response: We have not encountered issues that would require material change.

Impact questions

Question 35: To what extent are non-compete obligations relevant to your business or industry, or the industry that you represent? Please explain your answer.

a) Completely

b) Very much

c) Moderately

d) A little

e) Not at all

Question 36: Relative to the current regime as set out in the retained VABER, what would be the likely impact on your business's operations, or the operations of those you represent, if non-compete obligations that exceed 5 years in duration were no longer treated as 'excluded' restrictions? Please include examples and where possible, quantitative and/or qualitative evidence in your answer.

Our response: Our agreements typically do not go beyond 5 years (with the exception of tacitly renewable agreements that can be "opened" anyway).

Question 37: What are some of the benefits or efficiencies of non-compete obligations remaining exempt if the duration is less than 5 years? Please include 3 Paragraphs 5.10-5.16.10 examples and where possible, quantitative or qualitative evidence (or both) in your answer.

Our response: We do not see any reason to change the current rules and agree with the CMA's views to keep this exemption.

Agency Policy question

Question 38: The CMA invites views on the proposed recommendation in respect of agency issues and stakeholders to make any submissions they consider would help the CMA to develop useful guidance on this topic.

Our response: We believe the agency concept as per the VRBE and VGL today should be clarified. Additional guidance in particular in the online world is important and would be welcomed. We however urge guidance to highlight benefits in line with the concept of a block exemption and not focus purely on the elements where agency is unlikely to benefit from the exemption.

Environmental sustainability Policy question

Question 39: The CMA invites views on the proposed recommendation in respect of environmental sustainability and stakeholders to make any submissions they consider would help the CMA to develop useful guidance on this topic.

Our response: Please see our response to question 41.

Impact questions

The CMA proposes that the Secretary of State does not make any changes to the UK VABEO in respect of environmental sustainability issues, but the CMA would instead seek to provide guidance on this topic in any CMA VABEO Guidance.

Question 40: What are your views, if any, on whether the retained VABER and EU Vertical Guidelines contain or frustrate initiatives which might support the UK's Net Zero and environmental sustainability goals. Please include examples to support your views where possible.

Our response: While we cannot provide a list of concrete examples, we do believe that overregulation in areas other than sustainability (where there is limited to no regulation today) means resources are diverted away from topics that are important but not regulated today. While our company takes sustainability extremely seriously and is constantly trying to understand how it can introduce sustainability objectives more widely, it is a fact that a more complex trading environment does not facilitate the introduction of sustainability objectives as it diverts resources.

Question 41: Relative to the current regime, would any amendments relating to environmental sustainability (either in the UK VABEO or any CMA VABEO Guidance) have a positive impact on your business's operations, or the operations of those you represent? Please provide examples and evidence where possible about how any such amendments would have a positive impact.

Our response: As we are all trying to increase our ability to work sustainably, it would be beneficial in our view to give a large margin of appreciation for initiatives that may be contrary to any UK VABEO but in the mid-to-long term, have positive effects due to the sustainability efficiencies arising out of such actions.

While we do not have examples of this, we are diverting more and more resources towards sustainable initiatives and it seems to us that if there is a clash between vertical restraints regulation as set out in the UK VABEO and benefits in the area of sustainability, the latter should (at this stage at least) prevail.

Unless this is set out clearly in the guidance or in a policy document from the CMA, businesses will err on the side of caution and will likely forego the sustainability benefit and stay inside of the applicable rules. We do not believe these are the outcomes we should be aiming for – certainly in the context of vertical restraints where other major industrialised nations have chosen not to provide any regulation as there is a certain trust in the alignment of incentives creating optimal consumer welfare anyway and without need of interference.

Question 42: Relative to the current position, would any amendments relating to environmental sustainability (either in the UK VABEO or any CMA VABEO Guidance) have a negative impact on your business's operations, or the operations of those you represent? Please provide examples and evidence where possible about how any such amendments would have a negative impact.

Our response: Please see our response to question 40.

Duration Policy question

Question 43: The CMA invites views on whether the UK VABEO should have a duration of 6 years.

Our response: We believe a six-year time frame is rather short and it may be more useful for stakeholders that the CMA aligns with the European Commission timeframe. Perhaps updated guidance can be issued in other ways but to leave the UK VABEO harmonized with that of the EU as far as possible. However, alignment with the EU timeframe may also come in a second round so a first six year plus six year term to thereafter align with the EU timeframe also makes sense...especially if the CMA is willing to loosen the regime in the UK when compared to the EU to test its policy.

VABEO Obligation to provide information Policy question

Question 44: The CMA invites views on the above proposed recommendations in respect of the other provisions in the UK VABEO.

Our response: Overall, we believe it is important in the area of vertical restraints and below the 30% market share threshold, to allow flexibility for retail innovation. That means that the less regulation (see eg, the USA) the better the overall outcome. We therefore urge the CMA to decrease rather than increase the complexity of any UK VABEO when compared to the VRBE and VGL. At the same time, we believe it is of crucial importance that the UK VABEO is not stricter than the VRBE and VGL. The risk for business of fragmented regulations across the EU and the UK would reduce the benefit of any such regulation.