大成 DENTONS

Response to BEIS' technical consultation on the drafting of The Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022

Dentons welcomes this opportunity to provide its views on the draft of The Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022 published by BEIS on 21 February 2022 (**Draft VABEO**).

We note that:

1 Under Article 8(2)(f) of the Draft VABEO a wide retail parity obligation or measure that has the same effect as a wide retail parity obligation is a hardcore restriction.

2 Under Article 8(5) of the Draft VABEO, a "wide retail parity obligation" is defined as: "*a restriction by reference to any of the **supplier's** indirect sales channels (whether online or offline, for example online platforms or other intermediaries), which ensures that the prices or other terms and conditions at which a **supplier's** goods or services are offered to end users on a sales channel are no worse than those offered by the **supplier** on another sales channel*" (emphasis added).

3 Under Article 2(2) of the Draft VABEO, a "supplier" includes "*an undertaking that provides online intermediation services irrespective of whether it is a party to the transaction it facilitates*".

It is unclear whether the definition of a "wide retail parity obligation" under Article 8(5) of the Draft VABEO would apply to a wide retail parity obligation imposed <u>on a buyer</u> of online intermediation services <u>by a supplier</u> of online intermediation services. It appears from Paragraphs 7.32 to 7.41 of the draft Explanatory Notes that this is the CMA's intention, but the CMA may wish to clarify this in Guidance to accompany the VABEO.

There is also a typo (a stray "n") in line 1 of Article 15(1) of the Draft VABEO.

We would be pleased to discuss any part of our feedback further with BEIS.

Dentons UK and Middle East LLP
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