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ABI Submission to the Department for Business, Energy, and Industrial Strategy on the Draft Vertical Agreements Block Exemption Order

Thank you for inviting comments on the draft Vertical Agreements Block Exemption Order (VABEO) to exempt certain specified agreements from the prohibition of Chapter I of the Competition Act 1998.

We continue to support the approach to replace the retained Vertical Agreements Block Exemption Regulation (VABER) when it expires on 31 May 2022 with a UK block exemption order for vertical agreements. As we said in response to the CMA's consultation last year, our members have expressed how helpful the retained VABER is in that it provides clarity about activities that are permitted, which in turn supports innovation amongst firms in different sectors. This innovation ultimately benefits consumers.

We also support the aspects of the draft VABEO that go beyond the retained VABER; in particular, the prohibition on wide retail parity obligations.

There are two aspects of the draft VABEO that do not feature in the retained VABER, which grant the CMA increased powers and where we would welcome greater clarity on how such powers would be exercised in practice:

1. Firstly, the draft VABEO grants powers to the CMA to unilaterally decide to withdraw the block exemption. This could add considerable legal uncertainty to firms seeking to rely on an exemption within the Order, and firms would benefit from more clarity on how and when this discretion may be exercised.

2. Secondly, the draft VABEO grants the CMA powers to compel parties using the Order to provide information within ten working days of request. Failure to do so can then lead to the CMA cancelling the block exemption in respect of any vertical agreement to which the request for information relates. Ten working days is a very short period of time if the information request is complex or extensive, and days can be lost if the request goes to somebody in the organisation who has left or is away. The CMA should be granted, and should give careful consideration to exercising, discretion to extend this time period for more extensive information requests. In addition, there should be safeguards around the use of the power to cancel the block exemption given the very significant implications that this could have for companies seeking to rely on it.