**ABI Submission to the Competition & Markets Authority consultation on draft guidance on the application of the Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022**

Thank you for inviting comments on draft guidance on the application of the Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022 ('the Draft Guidance').

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 are supportive of the CMA producing guidance on its approach to the application of the prohibition in Chapter 1 of the Competition Act 1998 to vertical agreements, as well as the application of the Vertical Agreements Block Exemption Order (VABEO).

We have set out below the parts of the Draft Guidance where we believe potential users, which may include non-specialists, would benefit from greater clarity:

1. It would be helpful, particularly for non-specialists, to include early on in the Draft Guidance a clear definition of what is meant by a vertical agreement. At present, the definition in the VABEO is referenced in a footnote at part 1.1 of the Draft Guidance and only appears in full much later, at part 6.3, which may not be helpful for those less familiar with the concepts.

2. Part 1.7 of the Draft Guidance states that it applies to '*vertical agreements that relate to the supply of all types of goods or services*'. The use of 'or' between 'goods' and 'services' could suggest that firms supplying both goods and services may not benefit from the VABEO. The Guidance should be clearer that it and the VABEO applies to vertical agreements that relate to the supply of goods or services or goods and services.

3. At part 1.9 of the Draft Guidance, the meaning of the word 'mechanically' may not be clear to all readers. The term 'simplistically' may be preferable, or it may even be clearer to remove it entirely and instead state, '*The standards set out in this Guidance must be applied with due consideration for the specific circumstances of each case*' which we believe conveys the intended message.

4. At part 2.7, it would be helpful to clarify what is meant by the term 'network'.

5. Part 2.10 describes the conditions to be met for an agreement to benefit from individual exemption from the Chapter I prohibition, as set out in section 9(1) of the Competition Act 1998. Part 2.10 explains that the first of these conditions is that the agreement '*must contribute to clear efficiency benefits*'. It would be helpful, again particularly for non-specialists, to add that these efficiencies must relate to improving production or distribution, or promoting technical or economic progress; i.e. they are business efficiencies. This is more clearly explained at part 10.32 but it would be helpful to do the same when the concept of 'efficiency benefits' is first raised at part 2.10.

6. At part 2.13, it would be helpful to clarify that the reference to 'compliance with competition law' in the first line means 'UK competition law'.

7. At part 2.15(b), it would be helpful to clarify that it is for the parties to the agreement to consider whether it should be amended to bring it within the terms of the block exemption, if it is not already (i.e. 'Should it be amended by the parties so as to bring it within the terms of the block exemption?')

8. Part 4.14 of the Draft Guidance sets out the typical features of an agency agreement with reference to what the agency does not do. It would be helpful to add features of an agency agreement in the positive, i.e. 'does…'

9. At part 5.5, it would be helpful to provide a definition of 'hardcore restriction' or examples of what constitutes a hardcore restriction.

10. At part 6.5, it would be helpful to include a practical example of 'acquiescence' and particularly 'tacit acquiescence'.

11. At parts 8.82, 10.14, 10.15, 10.38, 10.67, 10.68, 10.87 and 10.135, the term 'softening' is used as a means of expressing a reduction in competition. Elsewhere, 'reduction' is used. We consider 'reduction' to be clearer and more easily understood and for these reasons, and for consistency, believe 'reduction' should be used throughout.

12. At part 10.83 (the example of multiple exclusive dealerships in an oligopolistic market), it would be helpful to include a short explanation of what typically amounts to an oligopolistic market, e.g. '*Oligopolistic markets are those with only a small number of suppliers (typically 4 or 5 or less)*'.

13. Part 11.2 of the Draft Guidance states that requests for information must be complied with within ten working days. In our response to the BEIS consultation on the Draft VABEO, we made the following points about this:

    *'…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.'*

    We ask that the CMA considers and reflects on our concerns on the ten working day timeframe for information requests.