

## Commission misses the mark on VBER revision: SMEs are faced with unworkable rules

Yesterday, the European Commission published the final revised Vertical Block Exemption Regulation (VBER) and the Vertical Guidelines. The revision intended to better reflect business developments and consumption patterns from the past decade. While Ecommerce Europe generally strongly supported this ambition, it believes the European Commission has missed an opportunity with the revision. Luca Cassetti, Secretary General of Ecommerce Europe, remarked:

*“While the Commission’s intention was to update the VBER to better reflect the current market reality, we are concerned they have failed to do so with the new rules. In the current market, there is no strict separation between online and offline sales, as the VBER seems to suggest, but a convergence of sales channels instead.”*

In particular, the guidelines of the revised VBER no longer consider “dual pricing” a hardcore restriction. This means that suppliers can charge different wholesale prices to distributors depending on whether the goods are intended to be sold online or offline. Instead of promoting omnichannel retail, this change maintains an outdated view on retail in which offline and online sales are separated. In reality, these are not so easily distinguishable, and our concern is that this process becomes too complicated and costly for SMEs and could force them to stop selling online. In combination with the removal of the equivalence principle and the options to ban the use of online marketplaces, we fear that it will become less attractive for retailers to sell online or to invest in digitalisation.

The revised VBER and Vertical Guidelines will enter into force on 1 June 2022 and will be applicable for the next decade. We strongly urge the Commission and national competition authorities to closely monitor the implementation of the new rules. Especially in light of the growth of D2C sales online, where suppliers sell directly to consumers and brands hold an increasingly powerful position, and considering that the provisions leave significant room for interpretation, it is crucial that authorities act expeditiously and consistently in the enforcement.

Ecommerce Europe has been actively involved to provide insights into the effects of these rules on the digital commerce sector, for instance via [our campaign](#). We will continue to support our sector and are committed to working with the European Commission to ensure retailers are not disproportionately affected by these rules.

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