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VBER 2022: EU Competition Law for Vertical Agreements

Digital, Dual, Exclusive and Selective
Distribution plus Franchising

 Springer

Preface

Who does not appreciate a **good shortcut**?

The Vertical Block Exemption Regulation ("VBER") is not just *a* shortcut—the **VBER** it is *the* shortcut to **legally certain distribution agreements**. This is because the VBER exempts all vertical agreements in principle from the prohibition of anti-competitive agreements, which would otherwise have to be assessed individually. It thus forms the **practical core of distribution and franchise law**, for all contractual structures that connect suppliers and buyers, importers, wholesalers, retailers, franchisees, or end users.

Vertical agreements are **ubiquitous** in the EU economy. Ubiquitous are also the restrictions of competition—out- and inside the vertical agreements, for whatever reason. For example, to protect the business/know-how, overcome hold-up issues, or maintain control over the distribution of one's products or services.

Restrictions of competition occur in a wide variety of forms—direct or indirect, by object or by effect. Often, a restriction does not arise from an isolated clause, but from the combination of several clauses or concerted practices. Whatever form they have: Where an agreement appreciably restricts competition, it is, in principle, void (and subject to fines).

Which **vertical agreements** are null and void—and **on which can companies rely**? The answer lies deep down in a **nested rule-exception mechanism of EU competition law**. As overarching principle, all anti-competitive agreements are prohibited and void. By exception, however, agreements may already fall outside the scope of competition law or may be exempt if their pro-competitive effects prevail. Whether they do or not requires an individual assessment of each agreement, with respective legal uncertainty.

The book shall be the **shortcut to understanding the VBER 2022** (i.e. the shortcut to the shortcut into the safe harbour) by providing concise, **practical guidance** on the VBER 2022—for private practitioners, in-house counsels (in- and outside the EU), as well as officers and judges. It includes contract clause examples for drafting distribution and franchise agreements, as well as tables and checklists for creating new and adapting existing agreements to the VBER. This **book has been written while accompanying the reform discussions** and the introduction of the VBER 2022 as an author, speaker, and private practitioner.

The law is **up to date** as of February 2023. Any **comments to further improve** the book are welcome, especially as this is the very first edition. If you have any questions, comments, or suggestions, please reach out to me (b.rohrssen@taylorwessing.com).

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