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Vertical rules – novelties and challenges

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VBER 2022/720 & New Vertical Restraints Guidelines

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Entered into force: 01/06/2022

Expires: 31/05/2034

Transitional period: 01/06/2022- 31/05/2023 agreements already in force on 31/05/2022

Replaces the former VBER 330/2012 (expired 31/05/2022)

New rules reflect market developments- e-commerce and online platforms

VBER 2022/720 & New Vertical Restraints Guidelines

- Detailed rules on criteria for **genuine agency agreements**
- Benefits for **dual distribution** (information exchange)
- New rules for **providers of online intermediation services (OSI)**
- Refined list of **hardcore restrictions**
 - Clarifications of RPM (still a hardcore restriction including MAPs)
 - Territorial and customer restrictions (more detailed and flexible)
 - On-line sales restrictions (more flexible)
 - Restriction on the effective use of Internet (new hardcore restriction)
- Detailed distinction between **active and passive** selling
- **Excluded restrictions:**
 - Parity/ MFN Clauses exempted (exception wide „MFN’s”)
 - More relaxed attitude to non-compete obligations (tacit renewal)

Concluding remarks

- Overall a better regulation of vertical restraints
- Adapted to online environment and digital markets (codification of ECJ case law)
- More flexibility and legal certainty in relation to some questions,
- Uncertainty in other questions
- Adjustments of existing agreements should be done carefully in order to take the most out of the new rules