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Public consultation - Review of the competition rules applicable to vertical agreements

The Norwegian Association of Cosmetics, Toiletries and Fragrance Suppliers (KLF) would like to give the following comments on the Review of the competition rules applicable to vertical agreements:

In general KLF agrees to the new draft Regulation and Guidelines. The system introduced ten years ago has worked well to the benefit of all parties concerned and has also contributed to the existence of highly competitive markets. It should therefore continue.

However, some changes proposed by the Commission are of concern:

- First, in the future, the Commission intends to allow only the restriction of sales to unauthorised distributors by the members of a selective distribution system "*in markets where such a system is operated*" (Article 4(b) of the proposed regulation). These last words are new and imply that any distributor in a country where no selective distribution is operated can acquire the products and resell them across the Community. As a result, it will become very difficult to maintain a well-working and impervious selective distribution system unless suppliers chose to cover the whole EU with their selective distribution system. This may often be uneconomic or unfeasible. Moreover, it is unclear why the Commission proposes to add these words as consumers across the EU have in any event the right to buy the product wherever they want. *It is therefore essential to delete this wording.*
- A second point which deserves clarification relates to recommended re-sales prices. It should be clarified in point 223 of the Guidelines that such prices do not become prohibited simply because they are followed by distributors, or because the supplier has a "*monitoring mechanism*" to follow the evolution of prices in local markets, or because there is a mere "*possibility of retaliation*" if prices are not followed. These various wordings introduce legal uncertainty and are unjustified.



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- Thirdly, as to Internet sales, the text of the Guidelines is in many aspects excessively rigid and form-based. It should be clarified that, provided Internet sales are not made impossible, it is the sole responsibility of suppliers to define the conditions imposed on resellers selling over the Internet. Therefore, the requirement that these should be "*equivalent*" to those imposed on brick and mortar shops, or that minimum sales imposed for off-line sales should be expressed in absolute amounts and not proportions are overly formalistic and introduce unnecessary subjectivity and uncertainty in the system.

Finally we would like to state that KLF fully supports the Colipa contribution to the EC public consultation.

Kind regards,
THE NORWEGIAN ASSOCIATION OF COSMETICS,
TOILETRIES AND FRAGRANCE SUPPLIERS

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Copy: Norwegian Competition Authority