



Zveza potrošnikov Slovenije

Frankopanska 5, 1000 Ljubljana

t +386 (1) 474 06 00

f +386 (1) 433 33 71

zps@zps.si, www.zps.si

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Slovene Consumer Association's response to vertical restraints block exemptions regulation

General comments

Slovene Consumers Association ZPS is a non-governmental, non-profit member-organization active in consumer advice, information, lobbying, advocacy and representation. With the support of the Independent Consumer research institute MIPOR, we further engage in research and projects in the field of consumer policy, prices, independent comparative testing of products and services, health care, patients' rights etc.

Being a consumer association, we are most interested in the content of the consultation that deals with possible bricks-and-mortar provisions for online retailers and the protection measures for new brands. While we in general support the Commission's initiative in the field of vertical restraints block exemptions regulation and agree with most of the proposals in the consultation, we believe that the discussed provisions could lead to actions restricting

- the integration of the Single Market,
- the development of a competitive online retailing sector
- the consumer choice,
- the economic recovery from the recession

Slovenia is a relatively small market with a strong tendency to dominant market shares. Small numbers of large traditional retailers and cross-border distributors characterize a market where price competition is often absent and that is prone to competition harming behavior. These problems are further aggravated by a relatively weak regime of competition protection and lack of funds to consumer associations for increasing the transparency of the prices and addressing key competition problems. E-commerce, although far from a level of penetration it

has in some Old Member States, is a dynamic sector that has been increasing the competition in the retailing sector in the past years, thus benefiting the consumers with a greater variety of more affordable consumer goods and services. Adding to this is a growing frequency of cross-border online shopping. We would like to express our concern that the proposed regulation contains provisions that could lead to business conduct counteracting the described development and harm the Slovene consumers.

Comments on guidelines on vertical restraints

Paragraph 52 and the Footnote 29

We are concerned about the weakening of the restriction in the Paragraph 52 by the footnote 29. The possibility for the supplier to prescribe a certain off-line selling amount to the retailer and to restrict the supplies to that operator may be used in order to prevent the retailer from running an exclusive internet business. This can result in a lower via-internet supply to the consumers and hampered innovations in e-commerce (several e-sectors couldn't even come to existence with the brick-and mortar requirements). We also find that this provision can be damaging to the Single Market by limiting cross-border e-commerce, especially from the point of view of consumers having less possibilities to profit from being active on a larger geographic market than their own via internet shopping. ZPS proposes a deletion of the footnote 29.

Paragraph (54)

This paragraph allows for the setting of quality standards that can be demanded from the online retailers from the manufacturer. As a consumer association, we are well aware of how intangible and prone to abuse quality standards set by the providers can be. Moreover, this provision, interpreted together with the previously mentioned footnote 29, could lead to bricks-and-mortar provisions being interpreted as a quality standard. The consequences could possibly be harmful for the development of e-commerce, based on a doubtful argument that an offline purchase provides higher quality of information/advice than an online purchase. We disagree with this argument and don't see the e-commerce as a slimmed-down brick-and-mortar commerce, but find that consumer decide for an online purchase for significant other issues and preferences than a cost-saving. This fundamental freedom of choice is in danger of being restricted by manufacturer/distributor market design practices, enabled by the provisions in paragraph 54.

ZPS proposes that the quality standards could be defined more precisely and with explicit exclusion of a bricks-and mortar standard, while we doubt whether EU Competition Law is the right place for provisions of this kind.

Paragraph (56)

While supporting the urge to protect manufacturers of innovative products, we see a large potential for abuse of the provisions in paragraph 56 by market-harmful practices. What concerns us most are the risks of geographical price discrimination and constant introduction of “slightly” innovative products in order to gain additional 2-year periods of monopoly. We find that this provision, also because of its abuse-enabling lack of precision on what a new brand can be, can impede further integration of the Single market and be very harmful to the European consumers.