



## Consultation on a Vertical Block Exemptions Order under the Competition (Jersey) Law 2005

### Frequently Asked Questions

Certain vertical arrangements between businesses are prohibited under competition law. The Authority may grant an exemption from the law on an individual basis. The Minister may exempt certain defined types of arrangement.

The Jersey Competition Regulatory Authority (the Authority) is carrying out a consultation on the introduction of a Vertical Block Exemption for Jersey.

This consultation will guide the development of advice to the Minister on the detail of a Block Exemption for certain types of vertical arrangement in Jersey.

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**What is Block Exemption?** The Competition Law allows the Minister to grant exemptions for individual arrangements from the blanket prohibition, by way of so-called ‘block exemptions’, where the potentially anticompetitive effects of a certain category of arrangements are typically outweighed by their pro-competitive effects<sup>1</sup>. Block exemptions provide for certain categories of arrangements and practices to be exempt on the basis that they are compatible with the provisions of the relevant competition laws.

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**What is a Vertical Arrangement?** Vertical arrangements are agreements for the sale and purchase of goods or services between businesses operating at different levels of the supply or distribution chain. This includes, for example, agreements between manufacturers and distributors, or between wholesalers and retailers.

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**Why might they be prohibited?** The Competition (Jersey) Law, 2005 (**Competition Law**) prohibits anti-competitive arrangements between businesses that may have “the object or effect of hindering to an appreciable extent competition in the supply of goods or services within Jersey or any part of Jersey”<sup>2</sup>.

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**Why might an arrangement** In many cases, vertical arrangements, despite currently requiring examination under the Competition Law, may not in themselves be harmful. They may deliver

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<sup>1</sup> Competition Law, Article 10(1).

<sup>2</sup> Competition Law, Article 8(1).

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**be exempt from the law, and what is the current process?** significant benefits to consumers in terms of improved distribution or availability of goods, increased efficiency and reduced costs.  
At present, any business that considers that an arrangement to which it is a party may breach the Competition Law must apply to the Authority for an individual exemption.

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**What are the benefits of a block exemption?** Similar vertical block exemptions are used in a number of jurisdictions (including the EU and the UK), and can generate significant benefits:

- For businesses, they create legal certainty about the status of certain arrangements under competition law and reduce the administrative burden on companies that would otherwise have to apply for an individual exemption.
- For a competition authority, block exemptions allow them to make more effective use of limited resources, by enabling the authority to prioritise cases that are likely to have a significant competitive impact (since the exempted cases that are unlikely to raise competition concerns would no longer require individual examination).

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**What is happening in the EU and UK?** The EU Vertical Block Exemptions Regulation (**EU VBER**) expires on 31 May 2022<sup>3</sup>. The European Commission, therefore, launched a public consultation on their proposals for a revised VBER, which sought to take into account recent market developments (mainly in relation to online sales and platforms) (**EU Revised VBER**). The consultation on the EU Revised VBER closed in March 2021, and a summary of responses to the consultation was published in November 2021<sup>4</sup>.

In the UK, the VBER has been retained as UK law after Brexit (**UK Retained VBER**), which is also due to expire on 31 May 2022. Following consultation, the UK Competition and Markets Authority (**CMA**) in November 2021 recommended the Secretary of State to replace the UK Retained VBER with a UK Vertical Agreements Block Exemption Order (**UK Order**) when it expires in 2022<sup>5</sup>.

Although, the EU and UK positions in the EU Revised VBER and the draft UK Order, respectively, appear to be aligned at large, the CMA has nevertheless proposed certain amendments to the UK Order which are UK specific.

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**Why is the Authority** The Channel Islands Competition and Regulatory Authorities (CICRA) and Government of Jersey have previously consulted on this issue. The Government consultation was on a Jersey only basis, however the CICRA consultation was pan-Channel Island. The consultations in the UK and EU are now also a factor in the

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<sup>3</sup> Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices.  
<sup>4</sup> Further information on the EU public consultation on the draft revised Regulation on vertical agreements and vertical guidelines, including a draft of the EU Revised VBER, a background note to accompany the draft, and a summary of the contributions to the consultation can be found here: [https://ec.europa.eu/competition-policy/public-consultations/2021-vber\\_en](https://ec.europa.eu/competition-policy/public-consultations/2021-vber_en).  
<sup>5</sup> CMA, UK competition law: Vertical Agreements Block Exemption Regulation, CMA’s recommendation (CMA145con), dated 3 October 2021.

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<b>consulting again?</b>	Authority's consideration of this issue. This consultation is being carried out by the newly constituted Authority and relates to Jersey only.
<b>What happens next?</b>	Once this consultation has closed, draft advice from the Authority will be finalised for a further short consultation before being issued to the Minister. It will then be for the Minister to consider the introduction of the Block Exemption by Order.
<b>Where is more information available?</b>	Consultation Paper – <a href="http://www.jcra.je/open-consultations/">www.jcra.je/open-consultations/</a> Guideline 2 – Anti-Competitive Agreements <a href="http://www.jcra.je/legal-frameworks/guidelines/anti-competitive-agreements/">www.jcra.je/legal-frameworks/guidelines/anti-competitive-agreements/</a> Guideline 11 – Vertical Arrangements <a href="http://www.jcra.je/legal-frameworks/guidelines/vertical-arrangements/">www.jcra.je/legal-frameworks/guidelines/vertical-arrangements/</a> Guideline 9 – Application for Guidance and Exemptions <a href="http://www.jcra.je/legal-frameworks/guidelines/applications-for-guidance-and-exemptions/">www.jcra.je/legal-frameworks/guidelines/applications-for-guidance-and-exemptions/</a> Consultation on Block Exemptions under Channel Islands Competition Laws - May 2015 (CICRA 15/24) - <a href="https://www.jcra.je/cases/2015/c1139gj-block-exemptions/c1139gj-consultation-block-exemptions-under-channel-islands-competition-laws/">https://www.jcra.je/cases/2015/c1139gj-block-exemptions/c1139gj-consultation-block-exemptions-under-channel-islands-competition-laws/</a> Block Exemptions Information Note – July 2017 - (CICRA 17/20) - <a href="https://www.jcra.je/cases/2015/c1139gj-block-exemptions/c1139gj-information-note-block-exemptions/">https://www.jcra.je/cases/2015/c1139gj-block-exemptions/c1139gj-information-note-block-exemptions/</a> Competition Law Consultation - White Paper, Consultation Paper and Government Response – November 2019 - <a href="https://www.gov.je/Government/Consultations/Pages/CompetitionLawConsultation.aspx">https://www.gov.je/Government/Consultations/Pages/CompetitionLawConsultation.aspx</a>

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