

Areas that are likely to change	Restrictions	Impact on customers	Current Regime	CMA Proposal
Territorial and customer restrictions	Limits where or to whom a distributor can resell i.e. to a particular territory or customer group.	<p>May be used to incentivise and protect investments made by distributors for the benefit of consumers in a particular territory or customer group.</p> <p>May also result in reduced intra-brand competition and consumer choice, as well as consumer policy issues.</p>	<p>Treated as hardcore restrictions with certain exceptions.</p> <p>Agreements which contain such restrictions do not benefit from the safe harbour except in certain circumstances.</p>	<p>The CMA will continue to make a distinction between active and passive sales. The CMA will give wider scope to circumstances where it is permitted to restrict resellers in certain customer groups or territories within the UK. The CMA queries in the Consultation whether the rise in e-commerce in recent years should result in continuing to consider online sales as passive sales.</p>
Indirect online sales restrictions	<p>Charging distributors higher wholesale price for products intended to be sold online than for products sold offline (dual pricing).</p> <p>Having different criteria for distributors to meet for online and offline sales in selective distribution.</p>	<p>May be used to incentivise and protect investments in online or offline sales for the benefit of consumers.</p> <p>It may also result in differences in quality or prices for consumers between online and offline channels.</p>	<p>Treated as hardcore restrictions.</p> <p>Agreements with such provisions do not benefit from the safe harbour.</p>	<p>This will continue to be considered a hardcore competition restriction as per recent decisions taken by the CMA for example, the CMA fined PING £1.45 million for a ban on online sales. However, the CMA intends to downgrade the following as hardcore restrictions:</p> <ul style="list-style-type: none"> • Dual pricing; and • Imposing criteria for online sales that are not overall equivalent to the criteria imposed in brick-and-mortar stores in the context of selective distribution.
Resale price maintenance (RPM)	Provisions which fix the resale price of the buyer.	May be used to incentivise and protect investments made by distributors for the benefit of consumers. It may also result in higher prices for consumers, as it constrains the ability to offer discounts.	<p>Treated as a hardcore restriction.</p> <p>Agreements with RPM do not benefit from the safe harbour.</p>	<p>This hardcore competition restriction will still be banned under the new VABEO provision. For example, resale price maintenance will still be considered a hardcore competition restriction. In the Consultation, the CMA concluded that more guidance is expected on the potential arguments which could justify resale price maintenance and the CMA is open to such arguments for consideration.</p>

<p>Parity clauses (or MFNs)</p>	<p>Restrictions which require one party to an agreement to offer the other party goods or services on terms that are no worse than those offered by the seller or to third parties. Often used by online platforms e.g. requiring suppliers to offer the platform the same or better prices and conditions as those offered on any other sales platform.</p>	<p>May be used to avoid free-riding and to recover investments made for the benefit of consumers.</p> <p>Wide parity obligations may soften competition between sales channels and reduce the incentives of intermediaries' e.g. online platforms to compete on price.</p>	<p>Not addressed in block exemption and therefore exempted.</p> <p>Agreements which contain parity clauses benefit from the safe harbour.</p>	<p>The CMA proposes making 'wide' MFN clauses (indirect sales channel parity obligations) a hardcore restriction. These restrictions prevent suppliers from offering a product or service on better terms on any other sales channel.</p>
<p>Dual Distribution (Where the supplier is a manufacturer and reseller of goods and so competes downstream with its distributors)</p>		<p>Helps facilitate multi-channel distribution to consumers.</p> <p>Any competition restriction between distributors may result in higher prices / lower quality for consumers.</p>	<p>The safe harbour applies to dual distribution scenarios but only for manufacturers.</p>	<p>The CMA intends to extend the VABEO to where non-reciprocal vertical agreements between competing suppliers can benefit from exemption where only one of the parties also operates upstream as a manufacturer. This will protect agreements between retailers and suppliers or importers that sell direct to consumers.</p>
<p>Agency (Direct sales made by manufacturer via an agent)</p>		<p>Facilitates direct sales to consumers through agents.</p> <p>Where there is not a genuine agency relationship it can restrict competition and result in higher prices / lower quality.</p>	<p>Agreements regarding the negotiation and conclusion of contracts by an "agent" on behalf of its "principal" are not subject to the Chapter I prohibition.</p>	<p>The test for determining whether a reseller qualifies as an agent or independent distributor will be retained. The CMA panel largely agreed that more guidance on agency should be provided.</p>

<p>Non-compete clauses</p>	<p>.</p>	<p>May be used to incentivise and protect investments made by the supplier for the benefit of consumers.</p> <p>Imposes some limitation on the products that distributors can sell to consumers.</p>	<p>Treated as excluded restriction if duration is more than 5 years.</p> <p>Non-compete provisions of less than 5 years are automatically exempt, but non-compete provisions of more than 5 years are not and so parties must self-assess whether they infringe competition law.</p> <p>Tacitly renewable non-competes are considered indefinite and therefore are also not automatically exempt.</p>	<p>Non-compete restrictions will be retained in the UK.</p>
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