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INSTITUT DE DROIT DES AFFAIRES

MASTER'S DEGREE II IN BUSINESS LAW – DISTRIBUTION AND  
COMPETITION LAW

**THE APPLICATION OF THE NEW REGULATION ON VERTICAL RESTRAINTS  
TO FRANCHISING AGREEMENTS**

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- Academic year 2022/2023 -

## ACKNOWLEDGEMENTS

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I wish to express my gratitude to my research supervisor, Professor David BOSCO, for proposing a research topic of significant interest for my upcoming internship, as well as for his confidence in me.

I also extend my appreciation to Mrs. QUILICHINI for her support throughout this academic year and her willingness to address my numerous inquiries.

Furthermore, I want to warmly acknowledge all my classmates for their support and dedication, which proved invaluable during this year.

With the assistance of these persons, I was able to compile a research report on a captivating subject and, in a broader sense, have a rewarding and enlightening academic year.

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## INTRODUCTION

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While the objective of competition law is to ensure unfettered competition among companies in the market, it is also essential to uphold legal certainty for economic actors. This balance is the whole point of setting up a consistent exemption regulation. The latter functions as a guide for companies that are parties to a vertical agreement.

A vertical agreement is defined as a contract between multiple undertakings, each operating at varying levels of the distribution or production chain. Due to the independence of these undertakings, such agreements may potentially constitute a cartel under the purview of Article 101(1) of the Treaty on the Functioning of the European Union (TFEU). This assessment framework enables these undertakings to better structure their distribution methods by determining the prerequisites for the agreement in question to benefit from a presumption of conformity with competition law.

Franchise agreements are therefore concerned by this regulation, but its application seems more complex due to their unique regime and the specific intricacies associated with this mode of distribution.

In the past, targeted regulations were adopted for specific categories of agreements, including notable provisions for franchising in 1999. This approach has been abandoned in favor of a more global regulation. Thus, the new regulation builds upon the foundation of Regulation 330/2010 of 20 April 2010, which was enacted for a twelve-year period. It became enforceable on 1<sup>st</sup> June 2022 and is accompanied by guidelines on vertical relationships. These guidelines facilitate the interpretation of the regulation and enhance textual comprehension.

Given the context of globalization, the liberalization of internet-based distribution, and the explosion of online sales, adapting this text to address the challenges of the digital world became imperative to more accurately reflect market realities. Additionally, the numerous decisions that have been rendered deserved inclusion in the text to ensure heightened predictability for economic players. Furthermore, a revision of the text was deemed essential to rectify any false negatives or false positives that had previously undermined the effectiveness and scope of the regulation.

At the core of these changes lies the treatment of franchise agreements, which operate under a *sui generis* regime. Companies must discern between authorized and prohibited practices. Both franchisors and franchisees must grasp the subtleties of the regulation to leverage the opportunities it offers while adhering to its provisions. Ensuring that the text is

characterized by clarity, readability, and simplicity is imperative, allowing all stakeholders to seamlessly comply with it and evade concerns regarding potential sanctions for violating competition law.

Consequently, a thorough analysis of this new regulation is essential, wherein the specificities of franchising are juxtaposed against the various proscribed practices outlined in the regulation, as well as the exemptions it provides.

Thus, the following question arises: what is the impact of the new exemption regulation on contracts with a singular regime such as franchise agreements, and how is this unique mode of distribution treated?

At first glance, the singular place of the franchise agreements within the new regulation will be studied (Part 1), then the practical implementation of this text and the ensuing consequences for franchise agreements will be analyzed. (Part 2).

## **PART. I – THE PLACE OF FRANCHISING AGREEMENTS IN THE NEW REGULATION ON VERTICAL RESTRAINTS**

The European Commission's new regulation on vertical restraints of 10 May 2022 replaces the Regulation that was adopted in 2010 after twelve years of implementation. On the one hand, it traditionally redefines the objectives of this text (Chapter 1). On the other hand, this regulation impacts franchising agreements, which have a regime with indistinct contours (Chapter 2).

### CHAPTER 1 – Redefining the goals of the Regulation on vertical restraints

The new text broadly follows the same trajectory as its predecessor, while enhancing its provisions (Section 1). Additionally, the self-assessment system has been clarified to provide heightened legal certainty, particularly for franchisees and franchisors (Section 2).

#### Section 1 – Strengthening the Regulation's benefits

The core principles of the former exemption regulation have been retained (I). The criteria for qualifying for the benefits of the exemption regulation are also upheld (II).

##### I. Maintaining the main principles of the Block Exemption Regulation

Vertical restraints of competition hold significant relevance for market competition. Following the adoption of the Treaty on the Functioning of the European Union (TFEU) in 1957, specifically Article 101, questions were raised about the classification of cartels.

On the one hand, it is necessary to characterize a coordination between several undertakings, which can be expressed as a community of wills, concerted practices between independent entities, or an alliance of undertakings.

On the other hand, a curtailment of competition must be established. These limitations can be by object and are listed in the article or can be by effect, necessitating a more in-depth economic analysis of the practice. The penalty is a legal nullity, followed by potential compensation for

damages resulting from the practice, based on legal precedents. As franchise agreements are concluded between independent companies, it is possible that these agreements have an impact on the market and competition<sup>1</sup>.

Nevertheless, due to the risks associated with unnecessary, unfair, or counterproductive sanctions, an exemption mechanism has been implemented. Article 101, in its third paragraph, effectively introduces the possibility of individual exemption, contingent on fulfilling positive conditions, such as enhancing production, distribution, promoting technological progress, or reserving a reasonable portion of benefits for users.

Simultaneously, negative conditions must be met, including refraining from imposing non-essential restrictions to achieve objectives or from affording companies the ability to eliminate competition.

However, recognizing the dispersed nature of vertical restraints led to the enactment of an initial regulation<sup>2</sup> specifically for franchise agreements, aimed at introducing a more economic approach, considering companies' market power, as advocated by the Chicago school.

Subsequently, this regulation underwent revision in 2010 with the broader exemption regulation n°330/2010, and more recently in 2022 with regulation n°2022/720. However, the discontinuation of a dedicated regulation for franchising does not entail the elimination of a particular analysis of this model, as the guidelines of the new regulations also encompass it<sup>3</sup>.

In alignment with its predecessor, Regulation 2022/720 retains its core principles. Thus, this block exemption regulation establishes a realm of legal certainty for businesses. While certain provisions are of public policy, availing the exemption, if the conditions of the regulation are met, permits a deviation from the norm. However, non-compliance with these conditions

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<sup>1</sup> N. PETIT, *Droit européen de la concurrence, Précis DOMAT Droit privé*, 2e édition, p. 252

<sup>2</sup> Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (Text with EEA relevance)

<sup>3</sup> A. BOUVIER, *Regards sur le contrat de franchise*, 7 décembre 2015, délivré par l'université de Montpellier, p.

merely denies the assurance of exemption but doesn't render the contract null and void, as individual exemption remains attainable<sup>4</sup>.

Hence, the new Regulation preserves the overarching concept of its precursor, and the consideration of franchising remains intact, despite the shift from a specific to a general regulation. Moreover, while the Regulation is directly applicable and binding, the accompanying guidelines hold non-binding authority, yet remain crucial for interpreting the text.

## II. Preservation of the conditions for benefitting from exemption

In addition to upholding the fundamental concept of the former exemption regulation, the criteria for application have also been retained. Therefore, the franchising contract is not burdened by new conditions that would disrupt its legal certainty. Thus, the new regulation allows an exemption under several cumulative conditions.

On the one hand, the supplier's market share must not exceed 30% within the relevant market where it offers contractual services or goods. Secondly, the buyer must also remain below this threshold. Finally, the agreement must not contain any hardcore restrictions or excluded restrictions.

This distinction, taken from the former regulation between hardcore restrictions in Article 4<sup>5</sup> and excluded restrictions in Article 5<sup>6</sup>, is pivotal and does not exert the same effects on the franchising agreement. Thus, the hardcore restriction is the most severe and results in an automatic loss of exemption for the entire franchising agreement. For instance, imposing a maximum selling price on the franchisee, or suggesting a selling price to the franchisee constitutes a sufficiently grave constraint to negate exemption for the complete agreement<sup>7</sup>.

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<sup>4</sup> Ibid. p. 35

<sup>5</sup> Article 4 of Commission Regulation (EU) 2022/720 of 10 May 2022 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>6</sup> Ibid. Article 5

<sup>7</sup> M. COLE, the vertical block exemption regulation, Concurrences N°4-2022



Furthermore, a novelty appeared in this article concerning the distinction between exclusive, selective, or what is termed "*free*" distribution.

Regarding excluded restrictions, however, these lead solely to the forfeiture of exemption for the concerned clauses, not the entire agreement. For instance, non-compete obligations during and after the contract, as well as the exclusion of certain brands in a selective distribution system are delineated<sup>8</sup>.

Consequently, the procedure for assessing the anti-competitive nature of an agreement and its potential exemption remains akin for companies. This allows franchisors and franchisees to independently analyze the agreements they establish.

Should these conditions be met, the agreement will be exempt from the prohibition outlined in Article 101(3) of the TFEU.

While the criteria for application have been maintained, a renovation of the former regulation has been deemed necessary and advantageous. Indeed, as the Vertical Regulation was adopted for a period of 12 years, the period is bound to change. Furthermore, the anti-competitive ramifications intrinsic to vertical agreements are intricate, diverse, and adaptable to the situations in which they operate.

## Section 2 – A clarification of the text for a didactic approach to self-assessment benefiting franchise agreement

Following an examination of the reasons behind the text's revision (I), the efficacy of the novel self-assessment system will be scrutinized (II).

### I. The reasons for a reworking of the exemption regulation

Subsequent to multiple regulations aimed at exempting vertical restraints, this new regulation seeks to further refine the safe harbor for companies. Indeed, after numerous public consultations that amassed the insights of several specialists over a span exceeding three years,

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<sup>8</sup> I. LUC, Exemption par catégorie, Dictionnaire de droit de la concurrence, Concurrences, Art. N° 12251

the European Commission published an initial Impact Assessment, a Staff Working Document and draft texts.

The objectives and impetuses behind these reforms were multifaceted. Firstly, the previous Regulation was adopted for a twelve years duration, which inevitably necessitated its renewal.

Secondly, a reform of the Regulation was imperative as it had exhibited deficiencies; it was essential to eliminate false positives and false negatives to ensure that the Regulation possessed an adjusted safety zone aligned with current market realities.

Thirdly, amidst the age of trade digitization and the evolution of new technologies, the Regulation needed restructuring to furnish businesses with fresh guidelines tailored to the robust surge in online sales. Notably, the Internet has transformed into an indispensable channel for goods distribution, especially with the advent of the COVID-19 crisis, demanding that franchise agreements adapt to this challenge. Recently, a clarification and simplification of the text of the prior regulation was welcomed to enhance comprehension by economic stakeholders.

For the Commission, the primary challenge resides in the fluctuating anti-competitive consequences of vertical agreements, contingent on factors like franchisor market power, market demand, or innovation.

The Commission is confronted with two potential paths when drafting its regulation<sup>9</sup>. Certain elements are arduous to accommodate within an exemption regulation that mandates an *ex ante* analysis of the conditions requisite for securing an agreement. Consequently, the Commission had to choose between establishing flexible criteria that can readily adapt to the ever-changing nuances of individual cases, risking heightened unpredictability for economic actors, or adhering to highly precise conditions, with the potential of fostering instances of false positives or false negatives. In this context, a middle ground was chosen, striking a balance between minimizing errors through broader criteria while avoiding excessive leeway.

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<sup>9</sup> A.S. CHONÉ-GRIMALDI et M. THILL-TAVARA, Regards croisés sur le nouveau règlement d'exemption relatif aux accords verticaux, *Revue - Europe* n° 7 du 1er juillet 2022

These motivations have spurred this much-needed overhaul, which will undoubtedly elucidate certain opaque and uncertain aspects that the previous regulations left for franchisors and franchisees.

## II. An effective self-assessment of franchising agreement legality

This new block exemption regulation for vertical agreements establishes an essential framework for self-assessment by companies. To enhance the efficacy of this tool, a concerted effort towards clarification has been undertaken. This is particularly evident in the new guidelines, which, in an introductory passage, expound upon their intent and structure.

Within this new regulation, the Commission has made a deliberate attempt to explicate the steps that parties to a franchise agreement should follow, with the aim of elucidating the self-assessment procedure. Consequently, subsequent to meticulously verifying whether the conditions for benefiting from the exemption regulation are met, the Commission specifies that the fourth step pertains to the potential characterization of an individual exemption. However, it is outlined that only under such circumstances would the third step involve scrutinizing the agreement's compliance with cartel criteria. Presenting this sequence within the new Regulation extends the reach of self-assessment, streamlining and augmenting its effectiveness by precluding any vertical agreements that do not fall under Article 101(1) of the TFEU.

Subsequently, agreements with negligible trade impact, those that insignificantly curtail competition within a market, or authentic subcontracting and agency agreements can be more readily evaluated through this process delineated in the new Regulation. This inevitably bolsters the legal certainty surrounding the franchise agreement<sup>10</sup>.

Nevertheless, while satisfying the Regulation's conditions *prima facie* permits a franchise agreement to potentially secure exemption, the pre-established self-assessment process is not foolproof. In this new regulation, the Commission has reiterated that this, under no circumstances, excludes the possibility of revoking the exemption. This is specified in Article 6, which outlines the potential for individual withdrawal if the Commission determines that the

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<sup>10</sup> P. VANNI, A.C. MARTIN, *Vue d'ensemble du règlement et des lignes directrices révisées : un cadre plus clair pour une autoévaluation plus sûre ?*, Revue Lamy de la concurrence, N°119, 1er septembre 2022

vertical agreement in question engenders effects that are incompatible with Article 101(3) of the TFEU.

Hence, franchise agreements governed by a complex, specific, and *sui generis* regime necessitate further scrutiny to avert legal uncertainty.

## CHAPTER 2 – The franchising agreement : a intricate concept with a *sui generis* regime

The franchising agreement has specific characteristics that the regulation must acknowledge (Section 1), as well as a comprehensive framework to accommodate a *sui generis* regime (Section 2).

### Section 1 – Specificities of the franchising agreement

“*Know-how*” is the core of the franchise agreement (I), but other elements are essential for forming this type of contract (II).

#### I. Central role of know-how

Know-how assumes a pivotal role within the franchise agreement; it stands as an indispensable component, encapsulating the distinctiveness of the model. In fact, scholars often term it the “*key to the system*”<sup>11</sup>.

As per the new regulation, know-how can be defined as “*confidential, substantial, and identified practical information not protected by patents, derived from the supplier's experience, and verified by them.*” Hence, this regulation outlines criteria for delineating this particular concept. “*Confidentiality*” denotes that the know-how remains inaccessible and unfamiliar. However, complete secrecy is not mandatory; it suffices that the “*system possesses originality, eludes the layperson's knowledge, and remains outside the public domain*”<sup>12</sup>.

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<sup>11</sup> H. BENSOUSSAN, *Le droit de la franchise*, Editions Apogée, 2e éd., 1999, p. 121

<sup>12</sup> Court of Appeal Paris, 28 april 1978, JurisData n° 1978-763557.

Regarding the "*substantial*" attribute, it implies that the know-how should prove advantageous to the acquirer, serving a significant purpose. In essence, this know-how must confer a competitive edge over other market participants. Furthermore, the know-how should undergo testing, often through a "*pilot*" unit's practical application. It must be subjected to improvement, rejuvenation, and alignment with market developments.

Lastly, the "*identified*" characteristic pertains to the comprehensive description of the know-how, ensuring adherence to the preceding conditions. In most instances, the franchise agreement formalizes the know-how via an operational manual that compiles all procedures the franchisee must adhere to, facilitating an accurate replication of the franchisor's achievements.

In this context, the transfer of know-how engenders an asymmetry in the franchisor-franchisee relationship. Notably, this know-how possesses commercial value due to its demonstrated market efficacy. Consequently, the franchisee is somewhat reliant on this value, enabling them to gain an economic advantage. This relational imbalance, coupled with the necessity for an efficient and competitive model, culminates in a *sui generis* regime.

As a result, this central element ushers in a favorable arrangement for the franchisor. This concept paves the way for legitimizing vertical restraints, ensuring the preservation of its value and adapting to the distinctive franchise model regime for the franchisor.

## II. The other elements of the franchising agreement

In addition to the know-how, several other elements are intrinsic to the franchise contract. Indeed, for the franchisee to replicate the franchisor's success, it's imperative for them to have access to the franchisor's concept, including the transmission of rallying signs of the clientele.

On the one hand, the distinctive signs represent another indispensable facet alongside know-how, and their absence could potentially invalidate the contract. These encompass various elements that enable customers to identify the franchise network, its offerings, appreciate the brand's image, and cultivate loyalty. They serve as the connection between consumers and the franchisor's network. This might encompass advertising, graphic guidelines, decor, or the layout of a franchisee's establishment. In essence, the franchisee must receive the network's brand and signage.

On the other hand, the franchisees must have access to the array of products or services offered by the franchisor. This aspect is intertwined with the signage and brand, for without substantive content, the brand's image would be devoid of significance.

Lastly, alongside know-how, the franchisor's support to the franchisee constitutes a fundamental element of the franchise agreement. This manifests as the franchisor's engagement and assistance in analyzing operations, identifying weaknesses, and providing effective remedies to sustain the success of the formula transferred to the franchisee.<sup>13</sup>.

These elements contribute to the formulation of a franchise agreement, a system that is currently exceedingly successful and is available in diverse formats. "*Master franchises*" involve the franchisor granting exclusive rights to a master franchisee within a designated territory. In return, the master franchisee is obligated to establish sub-franchise agreements. Additionally, "*corner franchises*" are a variation of the franchise agreement wherein the franchisor collaborates with a dealer-franchisee who operates in a significant space like a shopping center<sup>14</sup>.

Moreover, it's crucial to underscore the economic potency of this model, rendering it a pivotal consideration in the construction of the new exemption regulation. This system has continually gained momentum, emerging as the most prevalent model in the distribution realm. The doctrine attests to its merits, particularly its financial appeal, enabling cost-efficient network expansion or facilitating franchisee access to financing through the trust established with financial institutions<sup>15</sup>.

Another advantage lies in the independence of franchisees, prompting their imperative pursuit of profitability, which consequently empowers the franchisor to ensure network success.

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<sup>13</sup> A. BOUVIER, Regards sur le contrat de franchise, 7 décembre 2015, délivré par l'Université de Montpellier

<sup>14</sup> P. ARHEL, Accords de distribution : droit de la concurrence – Accords de franchise, Dalloz, Octobre 2022 Répertoire de droit commercial,

<sup>15</sup> C. A. DESFAUTAUX, Le choix de la franchise en tant que mode de développement de l'entreprise, Thèse délivrée à l'université de Caen, 1992

Nevertheless, if the advantages deserve to be underlined, the franchise contract remains a complex notion with a singular legal comprehension, as illustrated by the new exemption regulation.

### Section 2 – A ambiguous concept with a *sui generis* regime

Franchising is once again left undefined in this new regulation (I), and its regulatory framework remains unclear and contingent on that of other distribution methods (II).

#### I. The regrettable absence of a franchise definition

This fresh vertical regulation once more falls short of providing a precise definition for the term “*franchise*”. Challenges surrounding the delineation of this concept have been acknowledged, despite the fact that this contract is well-established in case law, academic discourse, and even practical implementation.

At European level, a definition was established in the exemption regulation of 30 November 1988<sup>16</sup>. According to this text, a franchise is "*a set of industrial or commercial property rights or rights relating to trademarks, trade names, signs, designs, copyright, know-how or patents, intended to be exploited for the resale of goods or the provision of services to end users*". This definition was neither included in the exemption Regulation 330/2010 nor in the current Regulation. Nonetheless, the guidelines of the exemption regulation of 20 April 2010 defined this concept in a broad manner.

The same regulation which defined the franchise also provided a definition for the franchise agreement. Thus, a franchise agreement was defined as "*an agreement by which one undertaking, the franchisor, grants to another, the franchisee, in exchange for direct or indirect financial compensation, the right to operate a franchise with a view to marketing specified types of products and/or services; it must include at least the following obligations the use of a common name or sign and a uniform presentation of the premises and/or means of transport covered by the agreement, the communication by the franchisor of know-how and the continuous provision by the franchisor to the franchisee of commercial or technical assistance*".

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<sup>16</sup> Commission Regulation (EEC) No 4087/88 of 30 November 1988 on the application of Article 85 (3) of the Treaty to categories of franchise agreements

*during the term of the agreement*". This exhaustive definition offered a precise understanding of the contract's terms and established a framework for the practice.

Within the new regulation, the absence of a concrete franchise definition is somewhat mitigated by the exclusion of intellectual property licenses from Article 101(1) TFEU. Nevertheless, the void left by the lack of an explicit franchise definition remains perplexing, particularly considering that the guidelines acknowledge franchising as one of the principal distribution systems. Furthermore, this discrepancy contrasts with the new definitions presented in the Regulation concerning exclusive distribution or so-called "*free distribution*"<sup>17</sup>.

This gap regarding the transfer of know-how introduces legal ambiguity for franchise networks, which are compelled to self-evaluate their agreements based on the distribution method that most closely aligns with their arrangement<sup>18</sup>.

## II. The absence of a dedicated regime for franchise agreement: the significance of ancillary restraints theory

Consequently, the omission of a franchising definition within the new exemption regulation is coupled with the absence of a distinct framework for this method of distribution. Notably, there exists no specialized legislation governing franchising agreements, thus necessitating participants within the franchise network to navigate various legal realms such as obligations law, intellectual property law, competition law, and commercial law.

Across time, European jurisprudence has endeavored to regulate the franchise contract and its unique characteristics, owing to the lack of a specific franchise framework. Inspired by the North American "*rule of reason*", the theory of ancillary restraints plays a pivotal role in shaping franchising practices. This theory provides leniency toward anti-competitive conduct stemming from legitimate practices. Thus, if the main transaction does not affect fair

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<sup>17</sup> J. VOGEL, *Règlement d'exemption restrictions verticales - Distribution et droit de la concurrence : quels changements intervenus et à venir?*, Contrats Concurrence Consommation n° 3, Mars 2023

<sup>18</sup> Guidelines on Vertical Restraints (Text with EEA relevance), § 167



competition, the associated restriction integral to that transaction and necessary for it is deemed valid.

The European Commission has embraced the application of this theory in two situations, selective distribution, and franchising. Thus, in a famous Pronuptia ruling by the Court of Justice of the European Communities on 28 January 1986<sup>19</sup>, the Court stated that the franchised distribution method necessitated fulfilling two indispensable conditions for its operation.

On the one hand, the franchisor must be able to avoid the risk of transferring their proprietary know-how to competitors. On the other hand, they must retain the capability to uphold the identity, brand image and reputation of their network.

By characterizing know-how as an essential element of the franchise, certain contractual clauses could be justified under the law. In this case, it was an exclusive supply clause, considered proportionate to the interest it served<sup>20</sup>.

At the national level, this theory of ancillary restraints, originating from European case law and its exemption regulation, has been acknowledged.

In the case where the clauses organize the control "*essential to the preservation of the identity and reputation of the network*"<sup>21</sup>. Thus, such clauses will not be construed as contravening competition regulations pursuant to Article 101(1) TFEU.

The application of the ancillary restraints theory has, therefore, addressed the dearth of a dedicated franchise regime, creating a *sui generis* legal framework through case law. However, this theory must be supplemented by an evaluation of the legality of the contract and its vertical restraints, particularly in relation to distribution systems closely resembling franchise agreements.

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<sup>19</sup> CJCE, 28 janv. 1986, aff. 161/84, Pronuptia, ECLI:EU:C:1986:41, pt 15

<sup>20</sup>A. BONNET, Restrictions accessoires, Dictionnaire de droit de la concurrence, Concurrences, Art. N° 12357

<sup>21</sup> Com. 20 décembre 2017, n°16-20.500

Furthermore, it should be emphasized that the Regulation and its guidelines do endeavor to accommodate the unique nature of franchising<sup>22</sup>. Nevertheless, the vagueness of details outlined in the guidelines engenders legal uncertainty<sup>23</sup>.

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<sup>22</sup> J. VOGEL, Règlement d'exemption restrictions verticales - Distribution et droit de la concurrence : quels changements intervenus et à venir ?, Contrats Concurrence Consommation n° 3, Mars 2023

<sup>23</sup> A.S. CHONÉ-GRIMALDI et M. THILL-TAVARA, Regards croisés sur le nouveau règlement d'exemption relatif aux accords verticaux, Revues - Europe n° 7 du 1er juillet 2022

## **PART. II – THE CONCRETE APPLICATION OF THE NEW REGULATION ON VERTICAL RESTRAINTS TO FRANCHISING AGREEMENTS**

On the one hand, the innovations introduced by the new regulation are closely tied to addressing the challenges posed by e-commerce within the franchise domain (Chapter 1). On the other hand, enduring components of the previous regulation have been retained and enhanced to achieve a more cohesive framework (Chapter 2).

### CHAPTER 1 – Adapting the Regulation to the evolution of franchising agreement in the digital era

The regulatory innovations pertain to both non-price practices applicable to franchising agreements (Section 1) and tariff practices (Section 2).

#### Section 1 – The fundamental framework for non-price practices within franchise agreement

The new regulation introduces a framework for specific non-tariff practices or their potential exemption (I). These innovative provisions have prompted debate within legal discourse and raised practical queries (II)

##### I. The new regulation's contribution to non-price vertical restraints

In an ever-evolving economic landscape, the drafters of the EU Regulation have successfully harmonized clarity and foresight by incorporating certain restrictions or permitting exemption for certain practices.

An initial consideration centers on restrictions concerning online sales. Article 4(e) of the new Regulation, not present in the Commission's initial draft released in July 2021, now asserts that a vertical agreement shall not "*prevent the effective use of the internet by the buyer or its customers to sell the contract goods or services*".

This explicit prohibition aligns with European case law, particularly the Pierre Fabre ruling<sup>24</sup>, which informally enshrined as a hardcore restriction the inhibition of a “buyer’s” effective utilization of the internet<sup>25</sup>. The integration of this case law aims to enhance predictability and accommodate the rise of online commerce. Consequently, franchisors cannot bar franchisees from utilizing their personal websites for passive sales.

Furthermore, the new regulation defines both passive and active sales to provide clarity. An example of active sales is a franchisee’s website in a territory-specific language that is not reserved for their use.

Nonetheless, nuances are quickly introduced such as the broad interpretation of "*effective use of the internet*", and the somewhat vague notion of "*other restrictions of online sales*". This suggests that a franchisor may still impose "*other restrictions on online sales*", echoing the Coty judgment which upheld the prohibition of a buyer’s use of marketplaces<sup>26</sup>.

The regulation also redefines exclusive distribution, introducing the concept of shared exclusivity. This allows a franchisor to allocate exclusive customer groups or territories to a maximum of five franchisees. Consequently, the other franchisees may be restricted from actively selling within that territory<sup>27</sup>, provided the sharing of the territory safeguards the investments of the franchisees<sup>28</sup>.

Furthermore, the novel inclusion of dual distribution in the regulation impacts information exchange. The exemption benefit is revoked for information exchanges that are "*either are not directly related to the implementation of the vertical agreement or are not necessary to improve the production or distribution of the contract goods or services or which do not fulfil either of these conditions*". This behavior often applies to the franchisor, who both directly distributes

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<sup>24</sup> CJEU, 13 october 2011, Pierre Fabre Dermo-Cosmétique SAS c/ Président de l’Autorité de la concurrence, aff. C-439/09

<sup>25</sup>A. GUYON, Ventes actives et ventes passives, Dictionnaire de droit de la concurrence, Concurrences, Art. N° 12379

<sup>26</sup> P. VANNI, A.C. MARTIN, Vue d’ensemble du règlement et des lignes directrices révisées : un cadre plus clair pour une auto-évaluation plus sûre?, Revue Lamy de la concurrence, N°119, 1er septembre 2022

<sup>27</sup> CJEU, 6 décembre 2017, Coty Germany GmbH c/ Parfümerie Akzente GmbH, aff. C-230/16

<sup>28</sup> Article 4, e) i) of Commission Regulation (EU) 2022/720 of 10 May 2022 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

products to end consumers and outsources activity to independent agents. The regulation addresses this practice, maintaining exemption for dual distribution while necessitating a case-by-case evaluation.

This practice has particularly developed with the expansion of online commerce, especially when a franchisor operates its own merchant site<sup>29</sup>. Apart from this case, dual distribution still benefits from the exemption, and a case-by-case assessment is made. Therefore, "*in the context of a franchise agreement, it may be necessary for the franchisor and the franchisee to exchange information on the application of a uniform business model throughout the franchised network*"<sup>30</sup>.

On this occasion, the Commission clarifies the exchanges of information that it considers necessary in the context of a franchise agreement, such as "*technical information relating to the contract goods or services*", "*logistical information relating to the production and distribution of the contract goods or services, stocks, sales volumes*".

Also "*information relating to purchases by customers of the contract goods or services*", "*information relating to the prices at which the contract goods or services are supplied by the supplier to the buyer*", or "*information relating to the performance of the contract or the marketing of the contract goods or services*". On the other hand, information which relates to future prices, to end-users except for adapting the services or goods to the requirements of the end-user.

Lastly, mirroring the context of e-commerce practices, the franchisor may stipulate the franchisee's obligation to secure approval for establishing or operating its website. Additionally, standards for website creation and operation may be imposed<sup>31</sup>. However, the regulation excludes hybrid platforms where the intermediation service provider is a market competitor, aligning with the Digital Market Act. does not apply to hybrid platforms<sup>32</sup>.

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<sup>29</sup> L. BETONNI, Réseau de distribution – la double distribution : entre vertus et déviance, Lexis-Nexis, Revue Contrats Concurrence Consommation n°11 du 1<sup>er</sup> novembre 2022

<sup>30</sup> § 98 of Commission Regulation (EU) 2022/720 of 10 May 2022 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>31</sup> Guidelines on Vertical Restraints (Text with EEA relevance) pt. 208

<sup>32</sup> Article 2 § 6 of Commission Regulation (EU) 2022/720 of 10 May 2022 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

One question remains unanswered, that of mini-sites or pages hosted on the franchisor's site. In such case, the franchisor could risk losing exemption benefits if they utilize the same site as the franchisee to market their products.

## II. A necessary consecration in support of modern franchising agreements

These contributions regarding non-price practices in the digital era are largely advantageous for franchising agreements.

For instance, in the case of dual distribution, this practice was not entirely novel but gained significant traction due to e-commerce. Franchise network heads have increasingly embarked on operating their own sites to market products and services. This phenomenon sparked debates between franchisors and franchisees. The latter contended that it amounted to unfair competition encroaching on their commercial efforts, while franchisors emphasized the complementary nature of dual distribution channels, expanded choices for consumers, and enhanced competitiveness of physical outlets. The new regulation appears to take the stance that the dual distribution system is indeed crucial for franchisors to impart and refine their know-how<sup>33</sup>. Simultaneously, it guards against potential false positives involving anti-competitive information exchanges, a pertinent consideration.

Furthermore, online intermediation platforms engaging in dual distribution appear to be ineligible for the status of agents, which necessitates non-independence from their principal. Here, the guidelines provide reassurance in the case of a network head, stating that it is "*unlikely that the Commission will give priority to the application of the legislation*".

Moreover, the regulation could potentially be further supplemented by applying the theory of ancillary restraints to the benefit of the franchises<sup>34</sup>.

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<sup>33</sup> L. BETONNI, Réseau de distribution – la double distribution : entre vertus et déviance, Lexis-Nexis, Revue Contrats Concurrence Consommation n°11 du 1<sup>er</sup> novembre 2022

<sup>34</sup> C. GRIMALDI, Double distribution : les accords verticaux relatifs à la prestation de services d'intermédiation en ligne, Issu de L'ESSENTIEL, Droit de la distribution et de la concurrence, 1st july 2022, n°07 - page 4

Regarding the framework for prohibitions on online sales, employing a soft law instrument seems judicious for marketplaces. Although banning possibilities may currently be fitting, they might become less so if platform utilization becomes essential in the future<sup>35</sup>.

These considerations surrounding the evolution of online commerce must be juxtaposed with the Digital Markets Act, which also deals with this subject. The alignment of solutions between the new Regulation 2022/720 and the rules applicable to gatekeepers will be crucial. It is highly conceivable that platforms exceeding the market share threshold criteria could fall under the purview of the exemption regulation.

Furthermore, the introduction of the concept of shared exclusivity raises questions from a franchising standpoint. This concept risks conflicting with the essence of franchising. The application of rules from the distribution system closest to franchising, which often leans towards exclusive distribution, introduces challenges. For instance, coexclusivity could contradict the fundamental nature of the franchise system.

## Section 2 – Extending the exemption benefit to novel pricing practices in support of competitive franchising agreement

New exemptions for pricing practices have been established (I), which raise new issues and debates (II).

### I. A judicious expansion of scope to certain price-related restrictions

The contributions of the new regulation extend to the realm of pricing practices, impacting the franchising landscape.

The framework of parity obligations serves as an illustration. Two types of parity clauses can be observed. On the one hand, the so-called "*extended*" clauses, constituting the stricter form, involve one party agreeing not to provide more favorable rates to any other entity apart from the party enforcing the clause.

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<sup>35</sup> P. VANNI, A.C. MARTIN, Vue d'ensemble du règlement et des lignes directrices révisées : un cadre plus clair pour une autoévaluation plus sûre?, Revue Lamy de la concurrence, N°119, 1er septembre 2022

On the other hand, the so-called "*narrow*" clauses where the party can offer lower rates to other participants but not publicly on its own online platform<sup>36</sup>. Thus, these clauses are referenced in Article 5<sup>37</sup>, stipulating that "*any direct or indirect obligation prohibiting a buyer of online intermediation services from offering, selling or reselling goods or services to end-users on more favourable terms through competing online intermediation services*" does not qualify for exemption and is regarded as an excluded restriction.

Extended parity clauses are stigmatised here, and the more favourable terms may relate to price, availability, or stock<sup>38</sup>. When applied to the context of franchise agreements, this implies that a clause permitting an online platform to mandate the franchisor to provide equivalent conditions to other online platforms will no longer be exempted. However, the avenue for implementing a narrow parity clause endures. Consequently, the online platform may still require the franchisor not to extend more favorable terms to its end customers via its own distribution channels<sup>39</sup>. This endorsement aligns with the precedents set by the Booking.com case, which highlighted the recurrent issue of the parity clauses in distribution agreements.

Furthermore, the guidelines introduce an extension of the exemption to the practice of dual pricing. Acknowledging the mounting significance of online commerce, the European Commission treats online sales akin to offline sales. Consequently, the exemption encompasses the dual pricing system and the principle of equivalence.

Within the framework of a franchise agreement, the dual pricing system would involve imposing distinct selling prices on a franchisee based on whether products or services are sold physically or online.

Simultaneously, the principle of equivalence would entail imposing differing criteria on the franchisee contingent on whether the sale occurs in a traditional store or online.

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<sup>36</sup> A.S. CHONÉ-GRIMALDI et M. THILL-TAVARA, Regards croisés sur le nouveau règlement d'exemption relatif aux accords verticaux, *Revue Europe* n° 7 du 1er juillet 2022

<sup>37</sup> Article 5 of Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted

<sup>38</sup> Guidelines on Vertical Restraints (Text with EEA relevance) point 253

<sup>39</sup> A. S. CHONE-GRIMALDI, Les obligations de parité, Issu de L'ESSENTIEL Droit de la distribution et de la concurrence, 1st july 2022, n°07 - page 6



However, it is essential to verify that the primary purpose of this practice is not to discourage the franchisee from conducting online sales<sup>40</sup>. Unlike the previous regulation, which deemed it a hardcore restriction unless the franchisor demonstrated that online sales incurred additional expenses, the exemption is now extended if the price differential corresponds to the variance in costs or investments undertaken by the franchisee<sup>41</sup>.

These new provisions in the regulation are commendable for enhancing control over platform usage and averting erroneous positive or negative assessments.

## II. A delicate but debatable evolution

This innovation partially settles the doctrinal debate regarding whether a distinction should exist between physical and electronic commerce. On the one hand, concerning parity clauses, several considerations must be factored in regarding the regulatory novelty.

Firstly, if the online platform has a hybrid nature and competes with the franchisor in question, the contract does not qualify for exemption<sup>42</sup>.

Secondly, extended parity clauses, which are deemed excluded restrictions, can still gain individual exemption.

Thirdly, for narrow parity clauses, while the Regulation does not grant block exemption, their validity can still be contested if they prove detrimental to the market<sup>43</sup>. In cases of cumulative effects, it is envisioned that national authorities or the European Commission can deny the

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<sup>40</sup> J. VOGEL, Règlement d'exemption restrictions verticales - Distribution et droit de la concurrence : quels changements intervenus et à venir ?, Contrats Concurrence Consommation n° 3, Mars 2023

<sup>41</sup> Ibid.

<sup>42</sup> Art. 2 § 6 of Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted

<sup>43</sup> A.S. CHONÉ-GRIMALDI et M. THILL-TAVARA, Regards croisés sur le nouveau règlement d'exemption relatif aux accords verticaux, Revues - Europe n° 7 du 1er juillet 2022

exemption<sup>44</sup>. Here, this counterbalance is promoted under the notion that if all platforms employ narrow parity clauses, the collective impact on fair competition could be negative, resembling the effects of broad parity clauses. This potentiality introduces legal ambiguity for businesses.

Nevertheless, this recognition brings an end to discrepancies among the case laws of diverse Member States. For instance, Sweden validated its legitimacy, whereas Germany prohibited narrow parity clauses. Hence, the Commission's decision seems rational, safeguarding platforms from free-riding and ensuring these regulated clauses don't negatively affect fair competition.

On the other hand, concerning dual pricing, it supports investments made in both sales channels, particularly those tied to physical commerce. However, critiques have been voiced within the scholarly community. Concerns include the fact that this amendment is outlined in the Guidelines rather than embedded directly within the regulation, and the lack of precise conditions governing this contractual practice<sup>45</sup>.

Furthermore, while the outcomes of this advancement are generally advantageous for franchisors and franchisees, practical challenges may arise. Specifically, franchisors will be compelled to substantiate on a case-by-case basis why it's in their interest to implement dual pricing.

Hence, as illustrated above, the Commission has rationalized this practice. Nonetheless, presenting proof and elements to legitimize this approach isn't straightforward, which might discourage franchisors from adopting this tactic.

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<sup>44</sup> Article 6 of Commission Regulation (EU) 2022/720 of 10 May 2022 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>45</sup> Ibid.

## CHAPTER 2 – Clarification of old provisions for a competitive franchising agreement

Old restrictions have been retained and continue to apply to franchise agreements (Section 1), with slight adaptations of these traditional to accommodate modern contracts (Section 2).

### Section 1 – Retention of established restrictions applicable to franchise agreements

The reaffirmation of certain prohibitions that apply to the franchising agreement is evident (I). The non-compete clause is a notable example (II).

#### I. The reaffirmation of prohibitions as hardcore restrictions

In this new regulation, changes are relatively minor, and many of the pre-existing prohibitions are reaffirmed. These hardcore restrictions, despite being already established, maintain their significance within the context of franchise agreements.

Fixed pricing is naturally excluded from exemption and continues to be deemed a hardcore competition restriction. With the proliferation of online sales, the transparency and accessibility facilitated by the internet raise questions about maintaining consistent pricing in networks like franchising. Given that franchisors often seek price alignment among franchisees to uphold a uniform network strategy, concerns arise. The guidelines introduce some modifications, including treating a supplier's prohibition on advertising prices lower than the indicated prices as equivalent to fixed pricing practices<sup>46</sup>.

Nonetheless, the new regulation maintains fixed pricing as a hardcore restriction, allowing for the issuance of recommended prices as long as these recommendations do not function as minimum or fixed selling prices resulting from coercion or pressure<sup>47</sup>.

However, the guidelines acknowledge the possibility of demonstrating efficiencies stemming from price maintenance. Thus, franchisors can justify such practices as necessary for product

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<sup>46</sup> D. BOSCO, *Pratiques anticoncurrentielles – un nouveau droit des restrictions verticales à la mode digitale*, *Contrats Concurrence Consommation* n° 7, Lexis-Nexis, Juillet 2022, comm. 120

<sup>47</sup> Article 4 a) of Commission Regulation (EU) 2022/720 of 10 May 2022 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

launches, uniform distribution campaigns featuring low network-wide prices, or enhancing pre-sales services for complex products.

However, an addition to the guidelines outlines an efficiency gain scenario. It permits the use of a "*minimum selling price or a minimum displayed price to prevent a given distributor from using a supplier's product as a loss leader, sold below the wholesale price*". Regrettably, the guidelines do not enshrine the imposition of prices for coordinated online network operations, such as within franchise systems, as an efficiency gain<sup>48</sup>.

The European Commission maintains its cautious stance on price maintenance, likely due to market dynamics and the need for consistent competition rule application across the European Union.

Furthermore, sales restrictions are also retained, albeit with certain cases augmented, as mentioned earlier. For instance, the inclusion of a territorial exclusivity clause in a franchise agreement, enabling geographical division to prevent franchisees from overlapping, is recognized. Despite some exceptions, such as allowing restrictions on active sales, the core principle against sales restrictions is upheld. Thus, clauses in franchise agreements that curtail a franchisee's ability to sell to specific clienteles are generally prohibited.

## II. The easing of certain classic excluded restrictions: the case of the non-compete clause

The contractual obligation of non-compete is an excluded restriction that traditionally faces prohibitions under certain conditions. The new regulation addresses this prohibition and disallows exemption if the obligation is of indefinite duration or exceeds a total period of five years.

Nevertheless, the non-compete obligation is intrinsic to the franchise system, and European law has aimed to strike a balance by relaxing the prohibition on such a clause. It grants the franchisor

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<sup>48</sup> P. VANNI, A.C. MARTIN, Vue d'ensemble du règlement et des lignes directrices révisées : un cadre plus clair pour une autoévaluation plus sûre?, Revue Lamy de la concurrence, N°119, 1er septembre 2022

the ability to maintain control over their know-how and ensure its confidentiality. Thus, it is added in the texts<sup>49</sup> that "*Non-compete obligations tacitly renewable beyond a period of five years are covered by the block exemption, provided that the buyer can effectively renegotiate or terminate the vertical agreement containing the obligation with reasonable notice and at a reasonable cost, which will allow him to effectively change supplier after the expiry of the five-year period*"<sup>50</sup>.

Thus, the special treatment of the franchisee which had been established by case law through the application of the ancillary restraints theory remains intact<sup>51</sup>. Furthermore, the Guidelines specifically state that "*a non-compete obligation relating to goods or services purchased by the franchisee will not fall under Article 101(1) where it is necessary to maintain the common identity and reputation of the franchised network. In such cases, the duration of the non-compete obligation is not a relevant factor under Article 101(1), provided that it does not exceed the duration of the franchise agreement itself*"<sup>52</sup>.

This development aligns well with the dynamics of franchisor-franchisee relations. While the old regulation allowed for the justification of the clause, the new rule provides increased legal certainty<sup>53</sup>. Moreover, the European Commission clarifies that the temporal constraint is solely that of the franchise agreement, due to its distinct characteristics<sup>54</sup>.

In addition, the framework of the post-contractual non-compete clause is maintained with several conditions. It must not extend beyond one year from the agreement's expiration and must be essential for preserving the know-how conveyed to the franchisee through the agreement. Moreover, it should apply to goods or services competing with those stipulated in the contract.

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<sup>49</sup> Guidelines on Vertical Restraints (Text with EEA relevance) § 248

<sup>50</sup> Article 5 § 2 of Commission Regulation (EU) 2022/720 of 10 May 2022 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>51</sup> Cass. Com. 20 décembre 2017, n°16-20.500

<sup>52</sup> Guidelines on Vertical Restraints (Text with EEA relevance) § 166

<sup>53</sup> A.S. CHONÉ-GRIMALDI et M. THILL-TAVARA, Regards croisés sur le nouveau règlement d'exemption relatif aux accords verticaux, *Revue - Europe* n° 7 du 1er juillet 2022

<sup>54</sup> *Ibid.*

Finally, it must be confined to the geographical area and premises where the franchisee conducted business during the contract's duration<sup>55</sup>.

### Section 2 – A modern regulation for franchising agreement

In summary, this new regulation is more modern and addresses contemporary issues, including sustainable development (I). However, it also raises questions about future regulations and the role that franchising will play (II).

#### I. A regulation embracing the theme of sustainable development

This new regulation, along with its accompanying guidelines, aims to enhance the identification of competition restrictions. By providing greater predictability, franchisors and franchisees can make more informed investments and develop their networks, thereby necessitating a high degree of legal certainty for optimal growth.

Thus, this new regulation represents the culmination of various jurisprudential interpretations stemming from the previous regulation, which exhibited a degree of flexibility to align with market changes<sup>56</sup>.

Furthermore, this regulation achieves a delicate equilibrium by preserving key elements from the previous text while incorporating a modern perspective adapted to the digital era. With the reduction of false negatives and false positives, the new regulation is more precise and efficient for economic participants.

This regulation will remain in effect until 2034 and will inevitably signify a shift towards digitization and sustainability in its content. Environmental concerns are highlighted through sustainability agreements, and the guidelines introduce the concept of sustainable development along with its inherent objectives. Sustainable development is established as a fundamental treaty principle and objective.

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<sup>55</sup> Le nouveau règlement d'exemption n°2022/720 sur les restrictions verticales, Collège des experts, 4 July 2022, Fédération française de la franchise

<sup>56</sup> P. VANNI, A.C. MARTIN, Vue d'ensemble du règlement et des lignes directrices révisées : un cadre plus clair pour une autoévaluation plus sûre?, Revue Lamy de la concurrence, N°119, 1er septembre 2022

Hence, a long-term non-compete clause can be eligible for exemption if it supports investments aligned with sustainability goals. In this context, employing a qualitative criterion related to sustainability objectives is deemed acceptable<sup>57</sup>.

This objective of empowering stakeholders also strives to incentivize investments that contribute to sustainable development. Consequently, this is an aspect that potentially could assume a central role in future franchising agreements. However, current legal practice seems to be relatively silent on this matter.

## II. Towards a possible recognition of the franchising system in the Regulation

The decision to formally acknowledge a system specific to franchising has sparked considerable debate. Some argue that franchising isn't covered due to its lack of inherent competition restrictions. It's only when this model is combined with competitive constraints like territorial or supply exclusivity, or non-compete obligations, that franchising falls within the purview of the Regulation. Consequently, a segment of the academic community considers Article 101 § 1 of the TFEU as the principal consideration.

Moreover, scholars caution against the formal recognition of franchising in the exemption regulation. This recognition could imply that franchising inherently restricts competition, potentially rendering the ancillary restrictions theory, which supports franchising, irrelevant for assessing the components of a franchising agreement. Consequently, the stringent conditions of the exemption regulation would be applied to franchising<sup>58</sup>.

However, the establishment of a singular mode of distribution tailored to franchising seems to have started with the establishment of "*free distribution*"<sup>59</sup>. This approach doesn't encompass selective or exclusive distribution. Therefore, it's pertinent to query whether a direct endorsement of franchising is appropriate to alleviate the ambiguity surrounding the nebulous

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<sup>57</sup> A. GLATZ, C. PETITEAU, Le nouveau règlement d'exemption : changement dans la continuité, *Revue Lamy de la concurrence*, N°119, 1st september 2022

<sup>58</sup> <https://www.lettredesreseaux.com/P-3186-451-A1-pourquoi-la-franchise-ne-doit-pas-etre-visee-par-le-nouveau-reglement-d-exemption-a-venir.html>

<sup>59</sup> Guidelines on Vertical Restraints (Text with EEA relevance), § 116

concept of "free distribution". This redefinition, centered on distribution methods, fosters an analytical framework based on distribution systems rather than on types of restrictions.

As a result, while the previous regulation had its limitations, the new one occasionally appears intricate and unclear<sup>60</sup>.

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<sup>60</sup> D. BOSCO, Pratiques anticoncurrentielles – un nouveau droit des restrictions verticales à la mode digitale, *Contrats Concurrence Consommation* n° 7, Lexis-Nexis, Juillet 2022, comm. 120



## CONCLUSION

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This new exemption regulation and its guidelines don't fundamentally alter the landscape compared to the previous text, which largely laid the groundwork. The exemption system and the application criteria remain mostly unchanged, and this appears appropriate.

However, the new text simplifies and clarifies the rules, adapting them to the challenges posed by electronic commerce. By providing precise definitions for certain terms, the text becomes more secure, enabling stakeholders to rely on it more effectively. While franchising may not be explicitly outlined, its absence is justified by its unique nature and the necessity for customized, case-specific adaptation.

The franchising agreement and its intricacies benefit from a deliberately flexible framework. While some argue for a more distinct place for franchising, others contend that maintaining flexibility and utilizing the theory of ancillary restrictions is apt.

Moreover, the text's adjustment to the demands of digital technology is commendable and essential due to the prevalence of online sales. This aspect couldn't be overlooked, and the new regulation broadly addresses the requirements of the distribution landscape. In this context, the franchising agreement has been modernized and stands to gain from exemptions that support its growth.

Additionally, the explicit inclusion of numerous decisions concerning franchising agreements will provide greater legal assurance for franchisors and franchisees. This textual endorsement is beneficial, fostering increased competitiveness in franchising agreements while mitigating negative impacts on competition law. Consequently, the franchising agreement must now be reconsidered in light of this fresh regulation.

The maintenance and future expansion of this secure harbor are promising signs. The innovations introduced by this text hold relevance for the franchise, offering potential benefits.

Therefore, the practical application of this updated text will determine whether formal recognition of the franchise system becomes necessary. As of now, it appears that the

franchising agreement continues to operate within a legal framework with flexible boundaries yet maintaining a favorable treatment.

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