HOW SAFE IS THE VBER SAFE HARBOUR?

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<u>Agency</u>

- DaimlerChrysler test : "should be interpreted narrowly"
  (VGL, para 30)

- Hybrid set-ups: expensive counterfactual
  (VGL, para 39)

FAROS

HOW SAFE IS THE VBER SAFE HARBOUR?

<u>Information exchange in case of dual distribution (Art. 2(5) VBER)</u>

- Directly related to the implementation of the vertical agreement; and

- Necessary to improve the production or distribution of the contract goods or services

FAROS

HOW SAFE IS THE VBER SAFE HARBOUR?

<u>Provider of online intermediation services</u>

- "competing undertaking on the relevant market for the sale of the intermediated goods or services"

- "actual or potential competitor"
  (VGL, para 106)

FAROS

HOW SAFE IS THE VBER SAFE HARBOUR?

Resale price maintenance

- Fulfilment contracts
  (VGL, para 193)

- MAPs
  (VGL, 187(d))

- Additional efficiencies
  (VGL, para 197) → trap for the unwary

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HOW SAFE IS THE VBER SAFE HARBOUR?

Selective distribution

- Clear definition and conditions
  (Art. 1(1)(g) VBER)

- Example of quantitative selective distribution
  (VGL, para 164) → "likely that the benefit of the block exemption will
  have to be withdrawn"

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HOW SAFE IS THE VBER SAFE HARBOUR?

Restrictions on active selling in exclusive distribution context

- Parallel imposition requirement under old VBER
  (VGL, para 51)

- Parallel imposition requirement under new VBER
  (=definition of exclusive distribution, Art. 1(1)(h) VBER)

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HOW SAFE IS THE VBER SAFE HARBOUR?

<u>Roll-over possibilities</u>

- Active sales restriction in exclusive distribution
  = 2 levels (distributor and its direct customers)

- Prohibition on sales to unauthorized distributors in selective distribution
  = unlimited (VGL, para 241)

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HOW SAFE IS THE VBER SAFE HARBOUR?

Abolishment of dual pricing prohibition online/offline

- "reasonably related to differences in investments and costs incurred by the buyer to makes sales in each channel" (VGL, para 209)

- Otherwise: risk of Art. 4(e) VBER

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HOW SAFE IS THE VBER SAFE HARBOUR?

Restrictions of online advertising without the object of preventing the use of an entire online advertising channel (Art. 4(e) VBER)

- Definition of online advertising channel?

- Prohibition on most widely used advertising channel
  (VGL, para 206 (g))

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HOW SAFE IS THE VBER SAFE HARBOUR?

<u>Non-compete obligations (Art. 5(1)(a) VBER unchanged, but)</u>

- Tacit renewal beyond 5 years, OK if easy exit
  (VGL, para 248)

- Quid indefinite duration?

FAROS

QUESTIONS?

FAROS