



FAROS

Speed dating with Regulation 2022/720
("VBER")

Frank Wijckmans





FINISH

Art. 5

Art. 4

Art. 3

Art. 8

Art. 2

Art. 9

Art. 1

The background is a solid blue gradient. Overlaid on this are several faint, semi-transparent squares, each containing a number. The numbers are 10, 8, 9, 7, 2, 3, and 1, arranged in a roughly grid-like pattern. The squares and numbers are drawn with a light, sketchy style.

Art. 1

Article 1 - Definitions

Critical importance!

- Exclusive distribution - Selective distribution
- Online intermediation services - Active sales - Passive sales - Non-compete obligations...

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Art. 1

Art. 2

Art. 9

Article 2(1) - All covered unless...

- **VBER applies to any restriction** of competition in vertical agreements unless:
 - Outside scope (Art. 2)
 - Market shares too high (Art. 3)
 - On hardcore list (Art. 4)
 - On list of excluded restrictions (Art. 5)

Article 2 - Limitations to VBER scope

- **Association of retailers** (Art. 2(2) and Art. 9)
- **IPR involved** (Art. 2(3))
- **Other BER** (Art. 2(7))

= nothing new

Article 2 - Limitation to VBER scope

Dual distribution (art. 2(4))

- Extension of scope for products
- Status quo for services

Article 2 - Limitation to VBER scope

Dual distribution (art. 2(5))

- Information exchange covered if:
 - Directly related to implementation of vertical agreement; and
 - Necessary to improve production or distribution of goods

See: Vertical Guidelines (paras 99-100)

Article 2 - Limitation to VBER scope

Online intermediation services (art. 2(6))

- Situation: supplier of OIS distributes also products in competition with those for which it offers OIS
- Limitation:
 - OIS agreement not covered
 - Distribution agreement covered

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Art. 3

Art. 8

Article 3 and 8 - Market share limits

- **Supplier = Max 30%**
- **Buyer = Max 30%** → Watch out

→ More flexible temporary regime

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Art. 5

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Art. 2

Art. 9

Art. 1

The image features a dark blue background with a faint, light blue hopscotch grid pattern. In the center, there is a white rectangular box with a thin white border. Inside this box, the text "Art. 4" is written in a bold, white, sans-serif font.

Art. 4

Article 4 - Hardcores

General principles

- One mistake = out
- Hardcore = not necessarily art. 101(1) or by object
- Exhaustive list

Article 4 - Hardcores

Concept

- Resale price restrictions ("How much?")
- Territorial restrictions ("Where?")
- Customer restrictions ("To whom?")

Article 4 - Hardcores

Irrespective of distribution system

- RPM
 - No fixed or minimum resale price
 - OK for maximum or recommended resale price
- Restrictions imposed on supplier
 - One exception (art. 4(f))
- Location clauses
- Wholesaler-imposed limitations

Article 4 - Hardcores

Distribution system makes the difference, but...

- Not in vertical agreement in which imposed
- But target at which directed

Article 4 - Hardcores

Key distinction

- Selective distribution
- Non-selective distribution

Article 4 - Hardcores

Active sales restriction OK if:

- Imposed towards (shared - 5!) exclusive territory or reserved territory
- Parallel imposition
- Max single tier roll-over

Article 4 - Hardcores

Active sales - Practical points

- Flexibility to scope territory
- Temporary non-compliance with parallel imposition requirement
- No need for parallel imposition in case of reserved territories

Article 4 - Hardcores

Active sales - Same regime for:

- Customer groups (1!)
- Combination of customer group with territory

Article 4 - Hardcores

- **Prohibition of sales to unauthorised traders** located in territory where selective distribution is applied

→ New! Complete protection

Article 4 - Hardcores

Quid exclusive purchasing?

- Non-selective = OK
- Selective \neq OK \rightarrow mandatory cross-supplies

Article 4 - Hardcores

Online activities (Art. 4(e))

- Online sales
 - Own webshop (Pierre Fabre)
 - Third party platforms (Coty)
- Online advertising

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Art. 5

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Art. 2

Art. 9

Art. 1

Art. 5

Article 5 - Excluded restrictions

General principles

- Only restriction affected
- Unless lack of severability

Article 5 - Excluded restrictions

- **Non-compete obligations**
- **Retail parity obligations**

Article 5 - Excluded restrictions

Non-compete obligations

- During term → tacit renewal (New!)
- Post term
- Selective distribution → boycott

Article 5 - Excluded restrictions

Retail parity obligations

- Retail → B2C not B2B
 - Parity → Not just price
 - Narrow or wide?
- Watch out: UK

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Art. 5

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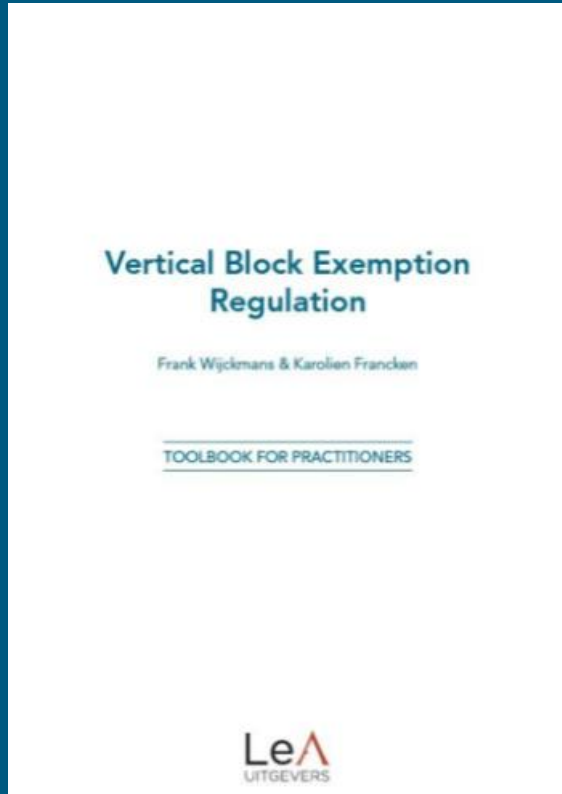
Art. 1

The image shows two children playing hopscotch on a paved outdoor area. The child on the left is in mid-air, jumping over a square with the number '5'. The child on the right is standing on a square with the number '7'. The ground is marked with hopscotch patterns and numbers. In the background, there is a bench, a railing, and some trees. The entire image has a teal color overlay. A white rectangular box with a thin black border is centered in the image, containing the word "FINISH" in bold, white, uppercase letters.

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Finish - Final observations

- **VBER = helpful continuation of chosen approach**
- Very **technical**
- **Outside** VBER = **self-assessment**



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