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The event will start shortly

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The webinar will last approx. 60 min including Questions & Answers.



You will be kept on mute but you can submit your questions in writing using the Q&A box.



If we are not able to address your question during the webinar, we will answer you by e-mail.

The EU Legislator at Work

EU Competition Law Briefings

Agenda



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Björn Herbers



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Michael Bauer



Foreign subsidies in the Single Market

Kai Neuhaus

Market Definition Notice

Björn Herbers

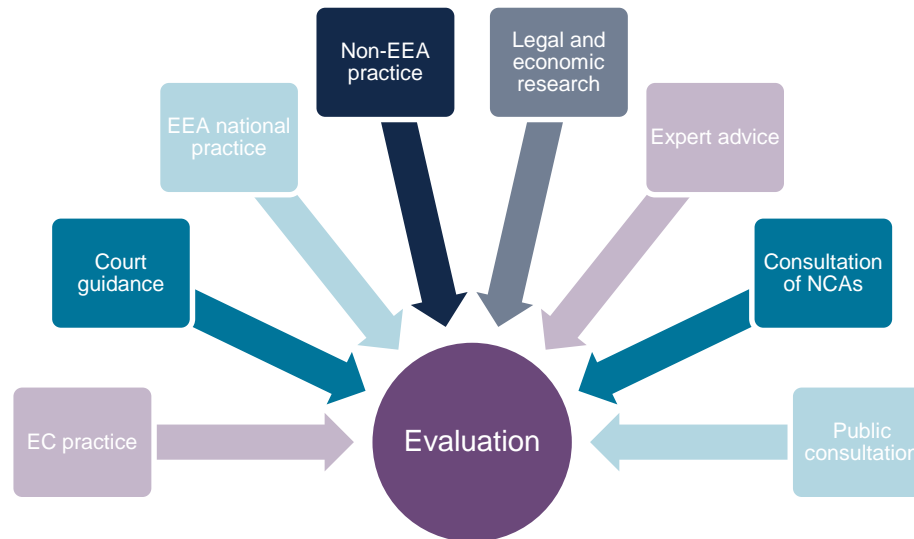
Review of the Market Definition Notice

What is it about?

- Update of the 1997 Market Definition Notice
- Guidance for concepts of relevant product and geographic markets EU competition law

Current state of play

- Evaluation by EC
- Public consultation on the existing Notice, open until 9 October
- Separate consultation of NCAs



Review of the Market Definition Notice

Potential Outcome

- Revised notice
- Geographic market definition (potential competition)
- Digitisation (Multi-sided markets, zero-price markets, digital ecosystems)
- Technical improvements and developments

Next Steps

- Further stakeholder involvement
 - Possibly workshops
- First half 2021: Staff Working Document
- 2021/2022: (Potential) Changes to Notice

Review of the rules on Horizontal Restraints

Michael Bauer

Review of the rules on Horizontal Restraints

What is it about?

- Two block exemption regulations
 - BER for R & D Agreements
 - BER for Specialisation and Joint Production
- Guidelines for horizontal restraints
 - Details concerning BERs
 - Info exchange, joint purchasing, joint commercialization, standardization
- BERs expire 31 Dec 2022

Current state of play

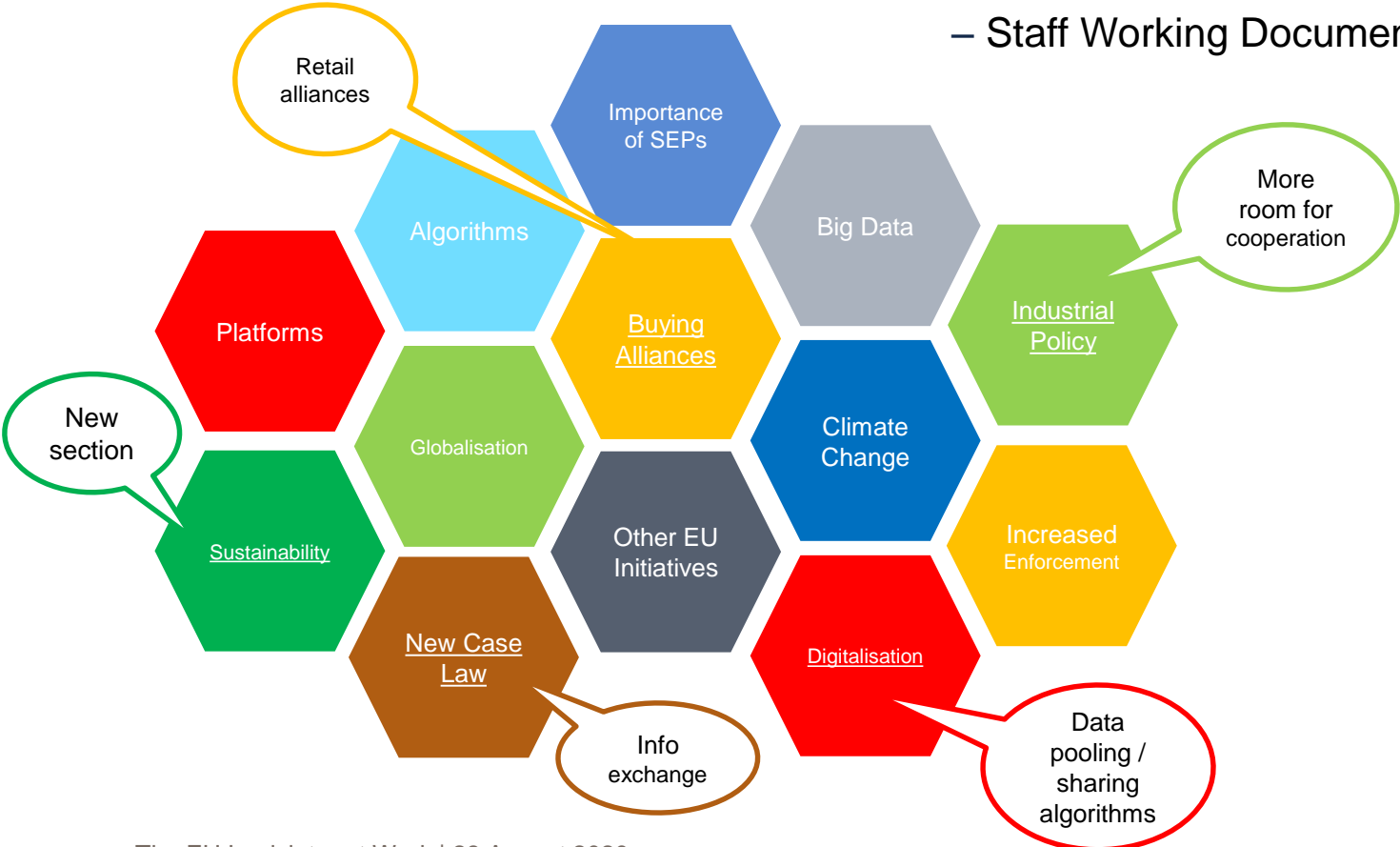
- Review launched on 19 July 2019
- Public consultation 6 Nov 2019 – 12 Feb 2020 (77 submissions received)
- Evaluation support study by external consultancy (VVA)
- Interviews with stakeholders in 6 Member States

Review of the rules on Horizontal Restraints

Potential Outcome

Next Steps

– Staff Working Document Q1 2021



Review of the rules on Vertical Restraints

Malgorzata Urbanska

Review of the rules on Vertical Restraints

What is it about?

- 2010 VBER to expire on 31 May 2022
- EC review of the current rules to decide whether it should
 - let them lapse?
 - prolong their duration?
 - revise them?

Current state of play

- Open public consultation on the evaluation of VBER / VGL (4 Feb – 27 May 2019)
- Summary of contributions received published (30 July 2019)
- Stakeholder workshop in Brussels (14-15 Nov 2019)
- Evaluation support study published (May 2020)
- Staff Working Document expected Q3 2020

Review of the rules on Vertical Restraints

Potential Outcome

- Overall feedback: **VBER effective but needs revisions**
 - rules to be simplified, clarified and updated
- **Main drivers** for changes
 - recent enforcement practice and case law
 - market developments (growth of e-commerce, changes in consumer habits, emergence / growth of new players (esp. platforms))

Next Steps

- Main areas where revisions / updates are expected
 - **RPM** (evolution not revolution?)
 - **online sales** (market developments to be addressed; dual pricing rules)
 - **selective distribution** issues (equivalence principle for quality criteria, B&M requirement, platform bans (following Coty))
 - **price parity clauses** (MFNs)
 - **discrepancies in application** of EU law by national authorities

Study on Territorial Supply Constraints

Michael Bauer

Study on Territorial Supply Constraints (TSCs)

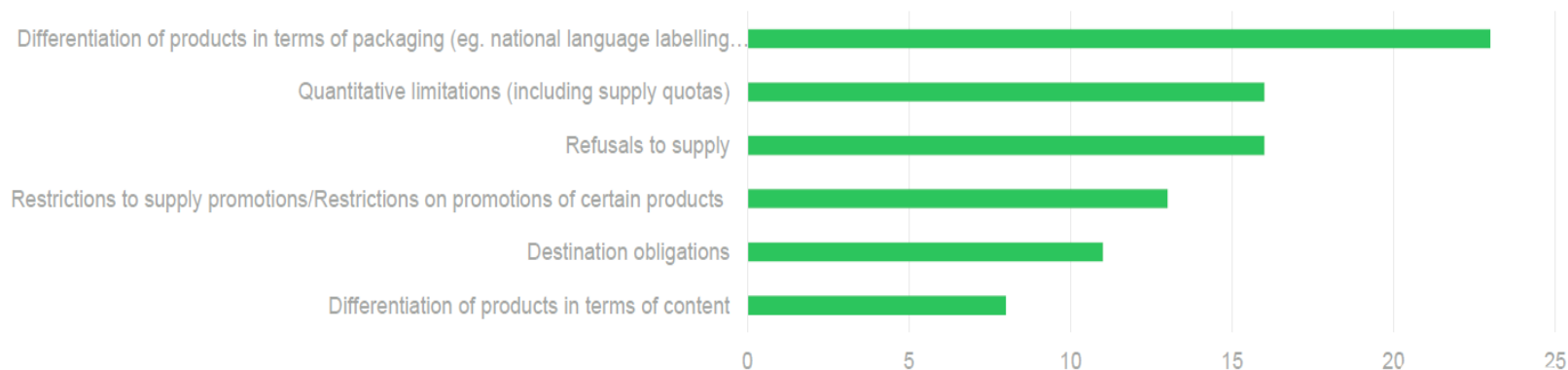
What is it about?

- DG Grow commissioned study on TSCs in retail sector
- Information on the scale & nature of TSCs and impact on the Single Market (**outside** competition law)

Current state of play

- Questionnaire in Q1 2020:
 - **49% of retailers were refused based on location / 77% of manufacturers differentiate products**
 - **Soft drinks, confectionary & personal care most problematic**

CATI survey - answers to the question: What types of TSCs is your company facing?



Source: CATI carried out by the contractor (13/03/2020)

Study on Territorial Supply Constraints

Potential Outcome

- Still open
- **Regulatory measures?**
 - Adjustment of labelling requirements?
 - Legislation to level product differentiation?
 - Legislation similar to geo-blocking directive (B2C)?
- **Effect: Levelling prices?**

Next Steps

- Commission needs to decide if actions are needed

Foreign subsidies in the Single Market

Kai Neuhaus

Foreign subsidies in the Single Market

What is it about?

- Creation of instruments to remedy the **impact of subsidies granted by non-EU governments to companies operating in the EU**
- Mix between EU **competition** rules, **trade defence** instruments and **public procurement** rules

Current state of play

- Initiative started by European Council on 21/22 March 2019
- "White paper" published 17 June 2020
- Public consultation open until 23 September 2020

Foreign subsidies in the Single Market

Potential Outcome

- Commission or national authorities empowered to **remedy negative impact of foreign subsidies**
- **Compulsory notification for foreign subsidies** facilitating acquisitions of EU companies
- **Compulsory notification for foreign subsidies** received in procurement procedures

Next Steps

- Await the outcome of 14-week public consultation
- Impact assessment
- Aim to introduce legal instruments in 2021

IoT sector inquiry

Siobhan Kahmann

IoT sector inquiry

What is it about?

- DG Comp's interest in IoT
- Relevant products
 - Products and services
 - Smart home consumer devices
- Potential issues
 - Restrictions on data and interoperability
 - Exclusivity
 - Self-preferencing
 - Proprietary standards
 - Emerging digital ecosystems and gatekeepers

Current state of play

- Questionnaires sent out to 400 players, deadline October
 - Smart device manufacturers
 - Software developers
 - Patent holders
 - On-line service providers
 - Related service providers

Next Steps / Outcomes

- Preliminary report Q1/21
- Final report Q2 or Q3/22
- Open IoT AT investigations...

New competition tool (NCT)

Edmon Oude Elferink

New competition tool

What is it about?

- **Filling the enforcement gap(s):**
 - remedy structural competition problems that cannot be tackled under existing competition rules while resulting in inefficient market outcomes
- Initiative **complementary** to the Commission's initiative on platform specific ex-ante regulation

Current state of play

- 2 June 2020: Inception impact assessment published
- 2 June 2020 – 30 June 2020: feedback road map (73 replies received)
- 3 June 2020 – 8 September 2020: open public stakeholder consultation
- Q4 2020: impact assessment finalised and proposal for a regulation to be adopted

New competition tool

Potential Outcome

- Dominance-based competition tool with a horizontal (1) or limited (2) scope
- Market structure-based competition tool with a horizontal (3) or limited (4) scope
- Remedies:
 - No infringements will be found
 - No imposition of fines
 - But: certain obligations imposed (divestments, break ups or line of business restrictions)

Next Steps

- Commission is to digest fundamental criticism from legal and economic experts:
 - *“There is no gap”*
 - *“No legal basis to bypass 101 and 102 TFEU”*
 - *“Enforcement will be politicised”*
- Pressure on Commission to deliver a product and to make sure that *“competition policy and rules are fit for the modern economy”*

Digital Services Act package

Dirk Van Liedekerke

Digital Services Act package

What is it about?

- **Ex ante regulatory instrument** for large online platforms with significant network effects acting as gate-keepers in the European Union’s internal market.
- EC: *“A small number of large online platforms increasingly determines the parameters for future innovations, consumer choice and competition”*
- Possible **complement to competition law and P2B Reg**
- National legislative initiatives

Current state of play

- IIA published June 2020
- 3 options
 - More obligations in horizontal P2B Reg
 - Extending regulatory powers to collect information
 - Ex ante tool with (a) blacklisted practices and/or (b) tailor-made remedies, possibly determined on case-by-case basis
- Consultation ongoing via detailed questionnaire
- Ongoing study work

Digital Services Act package

Potential Outcome

- Objective *“to ensure contestability, fairness and innovation and the possibility of market entry, as well as public interests that go beyond competition or economic considerations”* likely to remain
- Choices between different interests to be made
- Time ripe for ex ante tool with combination of blacklisted conduct and (EU?) body to impose tailor-made obligations?

Next Steps

- DSA Proposal by year-end?
- Many questions remain, e.g.:
 - Consistency with other instruments (NCT?)
 - Threshold/evidence criteria
 - for being “gatekeeper”
 - for forbidding conduct or imposing positive obligations
 - Flexible and future-proof solution – heterogeneity
 - M. Vestager cited in July:
 - *“no more prominent display of own downstream services”*
 - *“data silo rule”*



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