ECONOMIC PRINCIPLES AND THE REFORM OF THE EUROPEAN COMMISSION'S APPROACH TO VERTICAL AGREEMENTS

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I. INTRODUCTION

In October 2018, the Commission began its evaluation of the Vertical Block Exemption Regulation ("VBER")[2] and accompanying Vertical Guidelines,[3] which expire in May 2022.[4] The results of the evaluation were published in a Staff Working Document (the Working Document),[5] where the Commission notes that, while the VBER and Vertical Guidelines provide a useful instrument that increases legal certainty, "certain provisions… lack clarity, are difficult to apply or no longer adapted to the market developments that occurred since the adoption of the VBER and the Vertical Guidelines in 2010."[6] Some of the key issues highlighted in the Working Document are as follows:

- A perceived lack of legal certainty due to divergent interpretation of the VBER by national competition authorities ("NCAs") and national courts.[7] For instance, this was raised in the context of resale price maintenance ("RPM") and most-favored nation ("MFN") clauses.[8]

- Likely practical difficulties with market definition, particularly when it comes to online platforms.[9] For instance, NCAs have sought greater clarity on whether a distribution platform's market share "should be calculated for each market on which the platform purchases the products or services offered on the platform, or for all the products or services combined."[10] Similarly, there are questions around whether sales by non-platform providers (such as in the offline world) should be taken into account when computing the market share of "supplier platforms."[11]

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2 European Commission, "Commission Regulation (EU) No 330/2010 of April 20, 2010 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," Official Journal of the European Union L 102, April 23, 2010 ("Vertical Block Exemption Regulation" or "VBER").

3 European Commission, "Guidelines on Vertical Restraints," Official Journal of the European Union C 130, 19 May 2010 ("Vertical Guidelines").

4 European Commission, "Review of the Vertical Block Exemption Regulation."; European Commission, "EU Competition Rules on Vertical Agreements – Evaluation," available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1936-Evaluation-of-the-Vertical-Block-Exemption-Regulation.

5 European Commission, "Commission Staff Working Document – Evaluation of the Vertical Block Exemption Regulation," SWD(2020) 172 final, September 8, 2020 ("Working Document").

6 Working Document, p. 89.

7 Working Document, pp. 60, 90.

8 Working Document, p. 60. See also Working Document, pp. 169–171, 182, 184.

9 Working Document, pp. 159–162.

10 Working Document, p. 161.

11 Working Document, p. 161. The Working Document defines supplier platforms as those that provide only the infrastructure for sellers and buyers to interact and conclude a particular transaction. See Working Document, p. 130, footnotes 153, 176.

- The need for greater clarity on circumstances under which the use of selective and exclusive distribution simultaneously will not raise competition concerns.[12]

- The need for greater clarity on the rules around information exchange when a manufacturer engages in "dual distribution" (i.e. sells both directly to end customers via own retail arm and via a resale channel). Specifically, whether "information exchanges in dual distribution scenarios are to be treated as part of the vertical relationship and can thus be considered as covered by the VBER" and the conditions under which "information exchanges in dual distribution scenarios are admissible or instead problematic." In this regard, while some stakeholders have noted that "collecting data such as pricing data or data on consumer profiles from their distributors may allow suppliers to distribute their products more effectively and thus enhance inter-brand competition", others have "expressed concerns that exempting any type of information exchange in a dual distribution scenario may allow a supplier to require its distributors to pass on customer data that would provide the supplier's downstream retail operations with a strategic advantage and restrict the distributors' ability to compete effectively at retail level."[13]

- Lack of clarity on the application of the agency exception to online platforms, which may be considered "an integral part of the principal's distribution system" or as an independent reseller.[14] Pertinent in this regard are "the level and type of risks that are relevant to determine whether a vertical agreement can be considered a genuine agency agreement."[15]

- The need for more guidance on "restrictions on the use of online search advertising and price comparison websites," "online sales" and "the use of online marketplaces."[16] Such restrictions have been the subject of contention in matters such as *Coty* and *Pierre Fabre*.[17]

Each of these points raises fascinating economic questions, although space constraints do not allow us to opine in detail on every one of them. Instead, we begin by discussing five economic principles that ideally should guide any revision of the VBER and the Vertical Guidelines. We then illustrate the application of those principles by exploring the economics of two specific types of vertical agreements, namely RPM and MFN clauses. We argue that uneven enforcement across NCAs and courts arises in significant part when there are tensions between economic principles and real-world applications of the VBER and Vertical Guidelines (e.g. RPM) or lack of clarity in the guidance (e.g. MFN). In its revision, the Commission should therefore seek to mitigate such issues.

12 Working Document, pp. 92, 191. The Working Document observes that "exclusive distribution at the wholesale level and selective distribution at the retail level is commonly used" on efficiency grounds. See Working Document, p. 191.

13 Working Document, p. 157.

14 Working Document, pp. 122, 148.

15 Working Document, p. 148.

16 Working Document, p. 70.

17 Judgment of December 6, 2017 in Case C-230/16, ECLI:EU:C:2017:941, *Coty Germany GmbH v. Parfümerie Akzente GmbH*; Judgment of October 13, 2011 in Case C-439/09, ECLI:EU:C:2011:649, *Pierre Fabre Dermo-Cosmétique SAS v. Président de l'Autorité de la concurrence and Ministre de l'Économie, de l'Industrie et de l'Emploi*.

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II. FIVE ECONOMIC PRINCIPLES THAT SHOULD GUIDE ANY REVISION OF THE VBER AND THE VERTICAL GUIDELINES

In our opinion, the following five economic principles should guide any revision of the VBER and the Vertical Guidelines:

1. While vertical agreements may restrict competition, they may also allow firms to realize efficiencies which may not be possible absent such agreements. Thus, there is a significant degree of ambiguity in the overall economic desirability of vertical restraints according to a conventional economic analysis. Regulations and guidelines which support either under- or over-enforcement against vertical restraints involve giving up economic benefits or incurring economic costs.

2. There is a sound and clear economic rationale for the role played by the VBER provided it serves as an effective safe harbor for vertical agreements that are unlikely to have anti-competitive effects.[18] Economics suggests that a vertical agreement is likely to be socially desirable when it does not have anti-competitive effects. This will, in particular, be the case when the parties to the agreement remain subject to significant competitive constraints even once the vertical agreement is adopted.

3. Outside the VBER safe harbor, conventional economic analysis implies that a careful case-by-case assessment is required to evaluate whether the pro-competitive effects of a vertical agreement outweigh the potential anti-competitive effects.

4. The rules governing different types of vertical agreements should be suitably aligned. Specifically, economics suggests that certain types of vertical agreements may be close substitutes and result in the same or similar economic effects. For example, both MFNs and RPM agreements may help a manufacturer encourage retailers to provide a desirable level of service. Economists are ordinarily skeptical about aspects of the legal framework that have the effect of treating different vertical restraints with the same likely economic effects differently.

5. The rules governing vertical agreements should be suitably aligned with those applicable to vertical mergers. Specifically, it is worth noting that vertical agreements will ordinarily involve less direct control than a vertical merger, which may result in full vertical integration. As a result, economists are ordinarily skeptical about aspects of the legal framework that treat a vertical agreement more skeptically than an analogous full vertical merger.[19]

While the principles themselves cannot solve every point of technical detail, they nonetheless have significant force when considering the questions the Commission must answer in restructuring the VBER and Vertical Guidelines. Next, we illustrate that fact by applying these principles to two specific types of vertical agreements, RPM and MFNs.

18 Embodying these safe harbor provisions through the definition of the relevant market(s) and the appropriate safe harbor market share threshold can themselves be a subject of significant debate. In both the existing VBER and the EU Non-horizontal Merger Guidelines, a 30 percent market share threshold plays a significant role. See, e.g. VBER, Articles 3(1) and 7(d). Note also that when multiple suppliers have similar RPM agreements with the same distributors, then this "network" of agreements can sometimes also be anti-competitive for reasons of coordination. See Patrick Rey & Thibaud Vergé, "Resale Price Maintenance and Interlocking Relationships," *Journal of Industrial Economics*, 2010, 58(4): pp. 928–961 at p. 952.

19 The EC non-horizontal merger guidelines note "[n]on-horizontal mergers are generally less likely to significantly impede effective competition than horizontal mergers… [given that] the main source of anti-competitive effect in horizontal mergers is absent from vertical…mergers…*[Vertical] mergers provide substantial scope for efficiencies.*" See European Commission, "Guidelines on the Assessment of Non-Horizontal Mergers under the Council Regulation on the Control of Concentrations between Undertakings," Official Journal of the European Union C 265/6, October 18, 2008, ¶¶ 11–13 (emphasis added). On the other hand, the VBER says "[t]his Regulation *should not exempt vertical agreements* containing restrictions which are likely to restrict competition and harm consumers…In particular, vertical agreements containing certain types of severe restrictions of competition *such as minimum and fixed resale-prices*, as well as *certain types of territorial protection, should be excluded from the benefit of the block exemption established by this Regulation irrespective of the market share of the undertakings concerned.*" See VBER, ¶ 10 (emphasis added).

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III. RESALE PRICE MAINTENANCE

An RPM agreement is a vertical agreement wherein an upstream supplier and downstream customer agree to impose constraints on the price the downstream firm can charge its own customers. RPM can involve an upstream firm imposing (i) the downstream price entirely; (ii) a minimum downstream price; or (iii) a maximum downstream price. A fixed or minimum RPM is a "hardcore restriction" under VBER.[20] The Working Document reports that "[t]he majority of vertical cases pursued at [the] national level since the adoption of the VBER [in 2010] concerned RPM."[21]

Under the VBER, fixed or minimum price RPM does not benefit from an exemption irrespective of the market share of the parties to the agreement.[22] While in theory RPM may still benefit from an Article 101(3) exemption, according to some, it is "*de facto* a per se infringement of the competition rules."[23] Indeed, RPM agreements have "consistently been found to amount to a severe restriction of competition in enforcement actions taken by the Commission and NCAs since the adoption of the VBER."[24] Moreover, "NCAs seemed to have taken somewhat divergent approaches with regard to novel implementations of RPM [e.g. through the use of price monitoring algorithms], for which the current rules do not contain any guidance" whereby "[s]uch diverging interpretations have led to a decreased level of legal certainty."[25]

The fact that fixed or minimum RPM is considered a hard-core restriction wherein it is presumed unlikely to fulfil the conditions of Article 101(3)[26] is surprising when the economics strongly suggests that a case-by-case approach is appropriate for assessing RPM agreements.[27] Specifically, economists have identified several potential anti- and pro-competitive rationales:

- Anti-competitive rationales for RPM
  RPM may (i) facilitate collusion upstream and/or downstream;[28] (ii) restrict entry or expansion upstream[29] and/or downstream;[30] (iii) soften competition upstream and/or downstream;[31] and (iv) act as a commitment device to protect monopoly rents upstream.[32]

- Pro-competitive rationales for RPM
  RPM may (i) reduce free-riding at the retail level;[33] (ii) ensure that retailers are willing to stock and promote products with unpredictable

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20 VBER, Article 4(a).

21 Working Document, p. 172.

22 VBER, Article 4(a).

23 Working Document, p. 170.

24 Working Document, p. 59.

25 Working Document, pp. 170–171 and p. 60.

26 Vertical Guidelines, ¶ 47.

27 In the United States, this approach was adopted in the U.S. Supreme Court's *Leegin* decision. See *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, Case No. 06-480, 551 U.S. 877 (2007), Syllabus, pp. 1–2.

28 For example, RPM may make it easier for colluding suppliers upstream to monitor deviations from price agreements. See Thomas A. Lambert, "Dr. Miles is Dead. Now What?: Structuring a Rule of Reason for Evaluating Minimum Resale Price Maintenance," *William and Mary Law Review* 50, 2009, pp. 1937–2005 ("Lambert (2009)") at pp. 1944–1949.

29 The manufacturer may convince the retailer to not carry a competitor's product by guaranteeing high margins through RPM. See Lambert (2009), pp. 1949–1950.

30 In the presence of RPM, entrants may not be able to undercut incumbents to steal business. See Office of Fair Trading, "An Evaluation of the Impact upon Productivity of Ending Resale Price Maintenance on Books," *OFT's Economic Discuss Paper* 981, February 2008, pp. 5–6.

31 RPM may prevent retailers from undercutting each other. This may in turn sometimes reduce their incentive to negotiate lower wholesale prices. See Paul W. Dobson & Michael Waterson, "The Competition Effects of Industry-Wide Vertical Price Fixing in Bilateral Oligopoly," *International Journal of Industrial Organization* 25, 2007, pp. 935–962 at pp. 954–955.

32 Without RPM a monopolist manufacturer would maximize profits by selling to a single retailer, but in such a case, the manufacturer can increase its profits further by reneging on its agreement with the retailer and selling to an alternative retailer with lower retail prices. See Daniel P. O'Brien & Greg Shaffer, "Vertical Control with Bilateral Contracts," *The RAND Journal of Economics* 23(3), 1992, pp. 299–308.

33 Lambert (2009), pp. 1952–1955.

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demand;[34] and (iii) promote competition upstream by providing quality certification (which is especially important for new products).[35]

Such theoretical ambiguity is also evident from empirical studies, although we would benefit from a wider empirical evidence base on the point. For example, as mentioned in the Working Document, empirical analysis of RPM in the market for books shows that the practice may have increased consumer welfare by *lowering* the price of books without any corresponding reduction in quantity sold.[36] In another classic empirical study, Ippolito and Overstreet (1996) examined the 1970s U.S. FTC *Corning Glass Works* case and found that Corning may have used RPM as a means to address principal-agent issues with distributors in order to "achieve greater distribution of its products."[37]

The *de facto* prohibition of RPM, treating it akin to a collusive price-fixing agreement, has long sat uncomfortably alongside the presence of both the pro- and anti-competitive rationales for the adoption of RPM agreements, even before the rise of e-commerce. Moreover, the available empirical evidence does not suggest that the theoretical ambiguity can be overruled on the grounds that it all points in one direction. To the extent there is a *de facto* prohibition, we should expect to incur economic costs associated with over-enforcement.[38]

IV. MOST FAVORED NATION CLAUSES

We now turn to applying economic principles in the context of MFN agreements.[39] As the Working Document notes, it is common for online travel agents ("OTAs"), which are online platforms, to impose MFN clauses.[40] Given the lack of guidance provided by VBER, such practices have been subject to divergent treatment by NCAs,[41] which has, in turn, "led to a decreased level of legal certainty."[42]

Like an RPM agreement, platform MFNs may also have both anti- and pro-competitive effects. In terms of potential anti-competitive effects, platform MFNs may harm competition through three key mechanisms, each of which ultimately lead to higher retail prices and thus harm consumers. Specifically, MFNs may:

- soften competition between incumbent platforms (if the platform raises its commission fees, the supplier may not raise its prices);[43]
- discourage entry by low-cost platforms (charging a lower commission fee would not translate into a lower retail price on the platform);[44]
- discourage suppliers from making investments that result in lower prices (the lower price would have to be charged on the platforms as well, thereby limiting the supplier's ability to steal sales from the platforms).[45]

34 Lambert (2009), pp. 1959–1960.

35 Howard P. Marvel & Stephen McCafferty, "Resale Price Maintenance and Quality Certification," *The RAND Journal of Economics* 15(3), 1984, pp. 346–359.

36 European Commission, "Support Studies for the Evaluation of VBER: Support Study," 2020, ("EC Support Studies for the Evaluation of VBER: Support Study"), pp. 89–90.

37 Pauline M. Ippolito & Thomas R. Overstreet, Jr., "Resale Price Maintenance: An Economic Assessment of the Federal Trade Commission's Case against the Corning Glass Works," *The Journal of Law & Economics* 39(1), 1996, pp. 285–328.

38 The tension between current policy towards vertical agreements and economic analysis will likely be explored in court in private damages actions. For example, the UK *Pride Mobility Scooters* case involved eight retailers with RPM agreements with Pride and another 240+ retailers selling Pride that were not found to have RPM agreements. The defendants argued (with some force) that the damage from the eight RPM agreements was, if anything, relatively small. See Dorothy Gibson *v.* Pride Mobility Products Limited [2017] CAT 9.

39 For a more extensive survey of the economics of MFN clauses see Can Çeliktemur, Gerhard Dijkstra, Alexandra Hermann & Vikram Kumar, "Most Favoured Nation Clauses in Online Platforms: The Case for Case-by-case Analysis," 2020, Mimeo Cornerstone Research, London.

40 MFN clauses are referred to as retail parity clauses. See Working Document, p. 38.

41 Working Document, pp. 182, 184.

42 Working Document, p. 90.

43 Note that this intuition does not imply that pass-through is necessarily zero in equilibrium. See Andre Boik & Kenneth S. Corts, "The Effects of Platform Most-Favored-Nation Clauses on Competition and Entry," *Journal of Law and Economics*, 2016, 59(1): pp. 105–134 ("Boik & Corts (2016)") at pp. 110, 112; Chengsi Wang & Julian Wright, "Search Platforms: Showrooming and Price Parity Clauses," *RAND Journal of Economics*, 2020, 51(1): pp. 32–58 ("Wang & Wright (2020)") at pp. 33, 46, 51, 53.

44 Boik & Corts (2016), pp. 122, 125.

45 CMA, "Private Motor Insurance Market Investigation: Final Report—Appendices," September 24, 2014, p. A8(1)-5 ¶¶ 14, 16; p. A8(1)-4 ¶ 12.

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In terms of potential pro-competitive effects, platform MFNs may:

- help reduce free-riding by suppliers on the services provided by platforms;[46]

- reduce search costs for consumers;[47]

- reduce negotiation costs between the contracting suppliers and platforms by reassuring platforms that they are getting the best terms possible;[48]

- ensure a platform's credibility — without MFNs, consumers might not have the confidence that the platform is a means to compare prices that are actually available and hence this undermines their willingness to use platforms;[49] and

- encourage entry of new platforms, specifically platforms with a business model similar to the incumbent's.[50]

The economic literature and NCAs (in their decisions) have distinguished between "wide" and "narrow" MFN clauses. A "wide" MFN clause requires the supplier not to set lower prices either on its own direct channel (supplier's own website) or any other competing platform. On the other hand, a "narrow" MFN clause requires the supplier not to set lower prices on the supplier's own direct channel only. Taking each potential anti-competitive effect identified above, a less permissive approach to wide MFNs appears reasonable *all else equal*:[51]

- A platform with a wide MFN has greater incentives to raise its commission than if there is only a narrow MFN. The reason is that when a platform increases its commission fee, the supplier faces a choice of either absorbing the higher platform commission or, if it chooses to raise its retail price, doing so for retail sales on all platforms because of the wide MFN clause.

- A new entrant platform may be prevented from gaining a foothold in the market when offering lower commission fees to suppliers does not result in lower retail prices for consumers. This would hold in the presence of wide MFNs by one or more incumbent platforms, since suppliers would have to offer the same lower price on all platforms and not just the entrant platform. This would not hold in the presence of narrow MFNs by incumbent platforms.

- A supplier's incentive to reduce its price on one platform is only subject to the requirement of price parity on its direct sales channel under a narrow MFN whereas the restriction is universal across all platforms under a wide MFN.

However, that is not to say that a blanket policy against even wide MFNs is justified. Since both narrow and wide MFNs may potentially have both anti- and pro-competitive effects, ultimately, the economics suggests that any such presumptions on the basis of wide or narrow MFNs should be rebuttable.

For example, a platform's ability to set high commissions with a wide MFN may be constrained if suppliers can delist from the platform (depending on the degree of competition between suppliers, the wide MFN may result in improved welfare effects for all the economic actors,

46 Wang & Wright (2020), pp. 33–35.

47 CMA, "Private Motor Insurance Market Investigation: Final Report," September 24, 2014, ("CMA Private Motor Insurance Market Investigation"), ¶ 8.104; EC Support Studies for the Evaluation of VBER: Support Study, p. 104.

48 EC Support Studies for the Evaluation of VBER: Support Study, pp. 98–100.

49 CMA Private Motor Insurance Market Investigation, ¶¶ 8.89–8.91.

50 Boik & Corts (2016), pp. 122, 125–126; EC Support Studies for the Evaluation of VBER: Support Study, p. 492.

51 Narrow MFNs may in particular replicate the effects of wide MFNs if consumers view transacting on the supplier's own channel to be a close substitute to transacting on a platform. See Bjørn Olav Johansen & Thibaud Vergé, "Platform Price Parity Clauses with Direct Sales," Working Papers in Economics No. 1/17, Department of Economics, University of Bergen, 2017 ("Johansen & Vergé (2017)"), pp. 7, 24–25.

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including the consumers).[52] The available empirical evidence also supports the potential for both pro- and anti-competitive effects.[53]

It is striking therefore that, while some countries in Europe have banned both narrow and wide MFNs (e.g. France, Italy, Austria, and Belgium),[54] courts or competition authorities in other countries have decided to ban only wide MFNs (e.g. Germany, Sweden, and the UK)[55] on a case-by-case basis, a policy close to one that is justified on the basis of the economics. In summary, as a matter of economics overall, the welfare effects of platform MFNs are *a priori* ambiguous, such that they are ultimately best evaluated on a case-by-case basis. The revisions to the VBER and Vertical Guidelines should explicitly include the consideration of MFNs and could do so in a way likely to provide more clarity of the potential competition concerns, potential efficiencies and best-practice approach to analyzing their economic effects. If that agenda is pursued, it will help ensure a harmonized approach to the treatment of platform MFNs across Europe grounded in a proper economic analysis of their potential effects. The economics suggests that, like fixed and minimum RPM, neither wide nor narrow MFNs should be treated as hard-core restrictions.

V. CONCLUSION

We believe that the desire for greater clarity and more specific guidance would be best served by ensuring the Commission's policy on vertical agreements is aligned with the central economic principles — with cases outside the VBER safe harbor evaluated on a case-by-case basis. The current framework appears to have led to a situation where some types of vertical agreements are *de facto* banned in Europe. Such a situation is economically undesirable. In particular, we believe it would be useful for the Commission to incorporate new text in relation to MFNs to provide clarity. Consistent with the European Commission's conclusion at the time of its e-commerce inquiry, we do not believe that it would be desirable to treat even wide MFNs as hard-core restrictions.[56]

The case against adopting a policy based on an assessment of economic effects is primarily that doing so involves both measurement challenges and investigatory cost. However, the one-off direct legal and economic costs incurred are best considered small in the context of a €16.4 trillion European economy.[57] In contrast, the longer lasting indirect costs incurred when either anti-competitive conduct is allowed or the efficient use of vertical agreements is prohibited should not be expected to be small. The implication is that good economic policy is likely to involve incurring the costs associated with running careful investigations of the economic effects of vertical agreements in order to reduce uncertainty about the economically correct answer. In short, there is a fundamental statistical truth that marshalling additional evidence is the only way to reduce *both* the risk of allowing anti-competitive agreements and also the risk of prohibiting the efficient use of vertical agreements, i.e. reducing the risk of both Type 1 and Type 2 errors.

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52 Johansen & Vergé (2017), pp. 5–7. A supplier delisting from a platform reduces its commission fees paid for part of its sales (which will be redirected to its direct channel), and hence has an incentive to reduce its price and gain a larger market share by undercutting rival suppliers. This possibility to delist disciplines the platforms' behavior and prevents them from setting high commissions. See Johansen & Vergé (2017), pp. 15–17.

53 Some empirical studies demonstrated that banning narrow MFNs may lead to reduced prices. Hunold et al. (2018) examine several countries with varying MFN legislations. See Matthias Hunold et al., "Evaluation of Best Price Clauses in Online Hotel Bookings," *International Journal of Industrial Organization*, 2018, 61: pp. 542–571 at pp. 544, 548, 558, 562–563, 566. Mantovani et al. (2020) find an insignificant overall change in hotel prices but for hotel chains separately detect a significant decline in prices with a ban of all MFNs (wide and narrow). See Andrea Mantovani et al., "Much Ado about Nothing? Online Platform Price Parity Clauses and the EU Booking.com Case," The School of Economics Discussion Paper Series, 2020, pp. 3, 6, 23.

54 France adopted the "Loi Macron" in August 2015. Austria, Italy and Belgium followed in banning all types of parity clauses with laws entering into force in 2017. See Margherita Colangelo, "Competition Law and Most Favoured Nation Clauses in Online Markets," *New Developments in Competition Law and Economics, ed. Klaus Mathis & Avishalom Tor (Cham: Springer Nature Switzerland AG, 2019), pp. 291–317, at p. 306.*

55 For the case of Germany, see Philippe Chappatte & Kerry O'Connell, "European Union – E-commerce: Most Favoured Nation Clauses," *Global Competition Review*, 15 October 2019. For the case of Sweden, see Mark-Oliver Mackenrodt, "Price and Condition Parity Clauses in Contracts between Hotel Booking Platforms and Hotels," *IIC - International Review of Intellectual Property and Competition Law* 50, 2019, pp. 1131–1143, at p. 1131. For the case of the UK, see CMA Private Motor Insurance Market Investigation, ¶¶ 62–63.

56 The European Commission's e-commerce inquiry reached the same conclusion: "Should market shares exceed 30 % an individual assessment of parity clauses will be required." See European Commission, "Report from the Commission to the Council and the European Parliament: Final report on the E-commerce Sector Inquiry," May 10, 2017, ¶ 621.

57 "EU gross domestic product (GDP) in 2019 was €16.4 trillion." See European Union, "The economy," October 20, 2020, available at https://europa.eu/european-union/about-eu/figures/economy_en.

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