



# The VBER review – Status quo

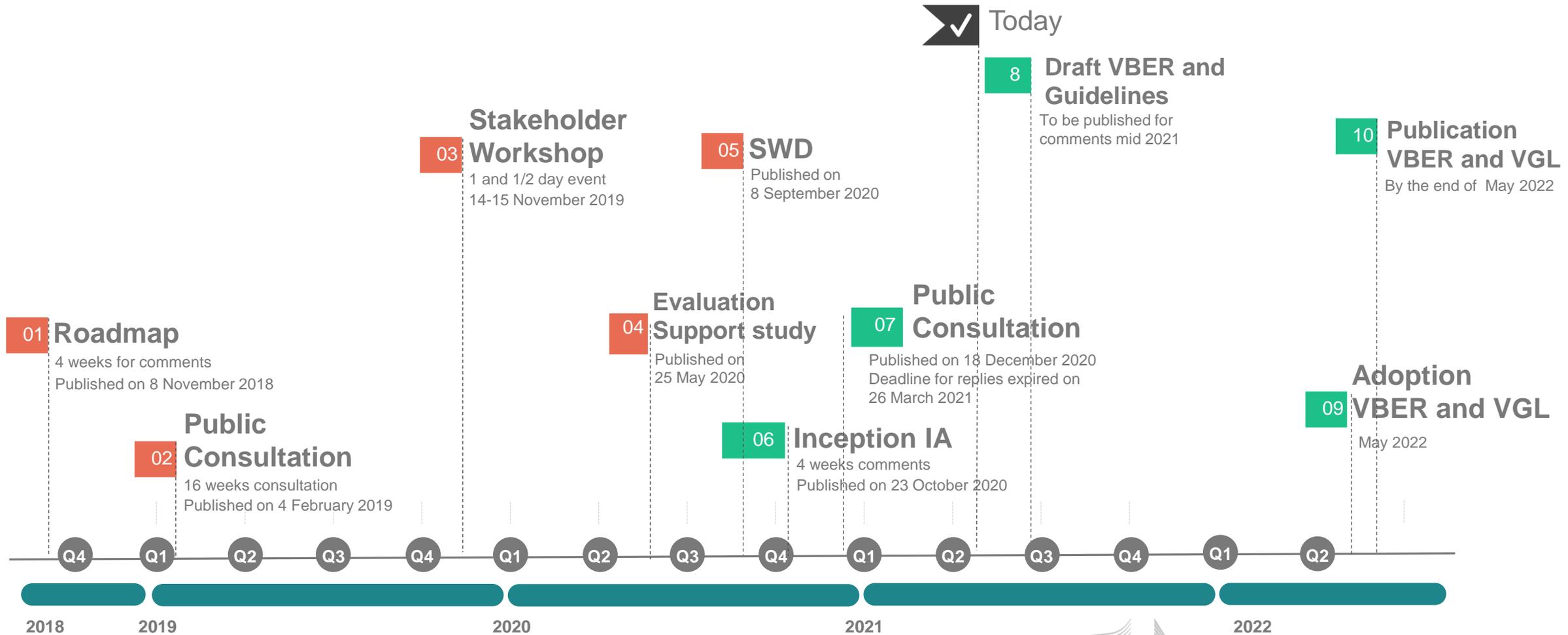
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*Speaking in a personal capacity. The views expressed are not necessarily those of DG Competition or the European Commission.*

*Associazione Antitrust Italiana  
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# The timeline – What started in 2018, will end in 2022!

Evaluation phase  
Impact Assessment phase



# A quick look at what happened – The evaluation phase

**Findings in Staff Working Document published on 8 September 2020,  
based on a number of different sources of evidence**

- VBER and Vertical Guidelines useful tools that facilitate self-assessment and help reduce compliance costs
- But room for improvement, in particular in light of significant market developments since adoption of current rules – see evaluation support study
- Different issues raised:
  - Scope of the VBER – overall appropriate (e.g. market share thresholds)
  - Diverging interpretations across the EU and weak withdrawal mechanism
  - Lack of clarity/guidance; rules that need to be adapted

# Looking at issues, options, and more – The Impact Assessment Phase

**Inception Impact Assessment (“IIA”) published on 23 October 2020 and public consultation via online questionnaire (expired 26 March 2021)**

- Focus of IIA and questionnaire: policy options, and their potential impact
- Other issues to tackle during the impact assessment (“IA”) phase: updates
  - Clarifications, also to reflect new business models (e.g. online platforms), further guidance (e.g. on newly emerged online restrictions)
  - Recent case law and enforcement practice to be included, simplification (i.e. reducing complexity to the extent possible)
  - First glimpse: working paper on distributors that also act as agents for certain products for the same supplier

# Looking forward – (Still) exploring, streamlining, and drafting

- Other issues to be explored during the IA phase
  - Improve clarity in relation to the treatment of efficiencies resulting from RPM (informal discussions with businesses on concrete instances)
  - Allow tacitly renewable non-compete clauses to benefit from the VBER
- Other elements to be taken into account
  - Impact of the COVID-19 pandemic
  - Possible need for guidance on agreements pursuing sustainability objectives (no specific issues raised during the evaluation phase)
  - Ongoing evaluation of the Motor Vehicle Block Exemption Regulation

# Taking a closer look at the policy options (1) – Eliminating false positives (under the current VBER)

## Policy options for dual distribution

1. No change
2. Limit exception to scenarios unlikely to raise horizontal concerns
3. Extend scope to importers and/or wholesalers
4. Remove the exception (i.e. individual assessment in all cases)

## Policy options for parity obligations

1. No change
2. Remove benefit for parity obligations relative to specific types of sales channels
3. Remove benefit for all parity obligations (i.e. individual assessment in all cases)

# Taking a closer look at the policy options (2) – Reducing false negatives (under the current VBER)

## Policy options for active sales restrictions

1. No change
2. Expanding the exceptions to give suppliers more flexibility, in line with Article 101 TFEU
3. Ensure more effective protection of SDS by allowing restrictions on sales from outside the selective distribution territory to unauthorised distributors inside this territory

## Policy options for specific restrictions of online sales

1. No change
2. Allow dual pricing in line with the case law
3. Allow the application of different criteria for online/offline sales in SDS, in line with the case law

# Thank you!



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