



DEALING WITH DUAL DISTRIBUTION

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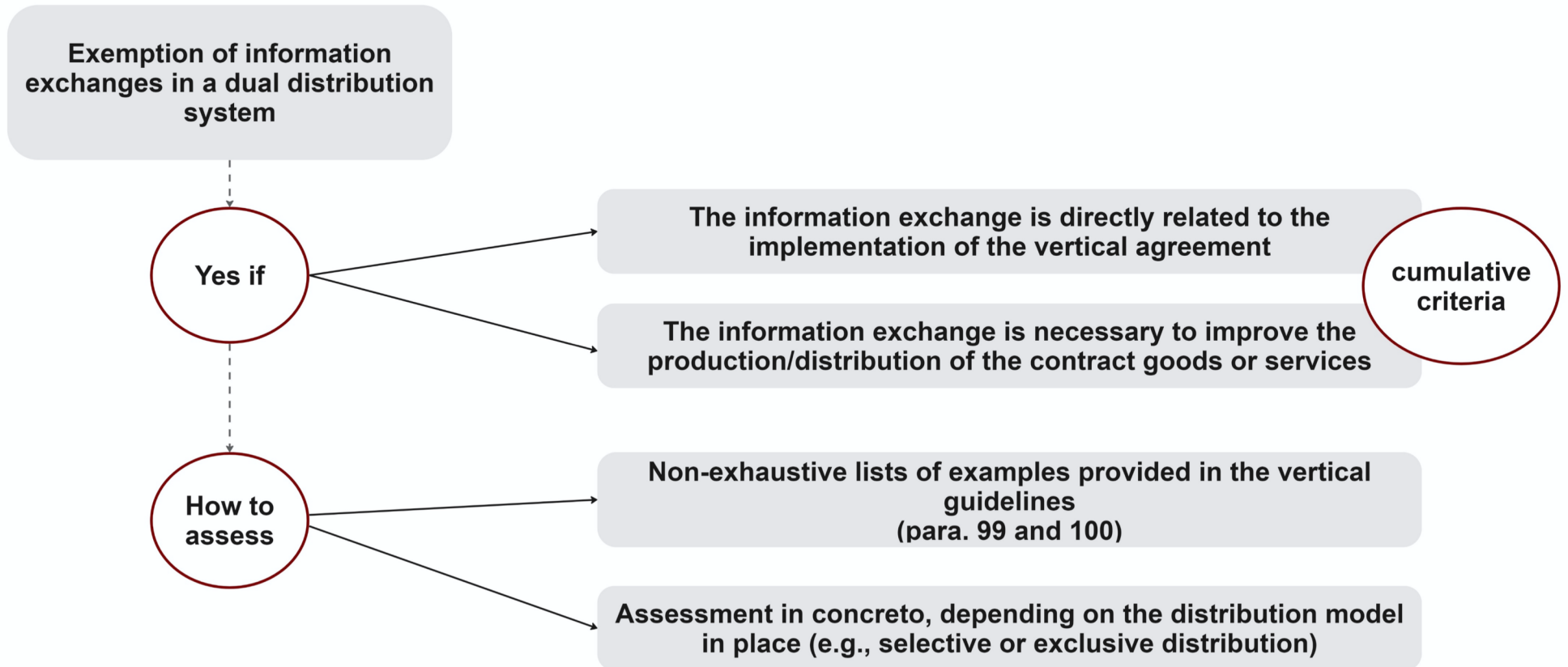


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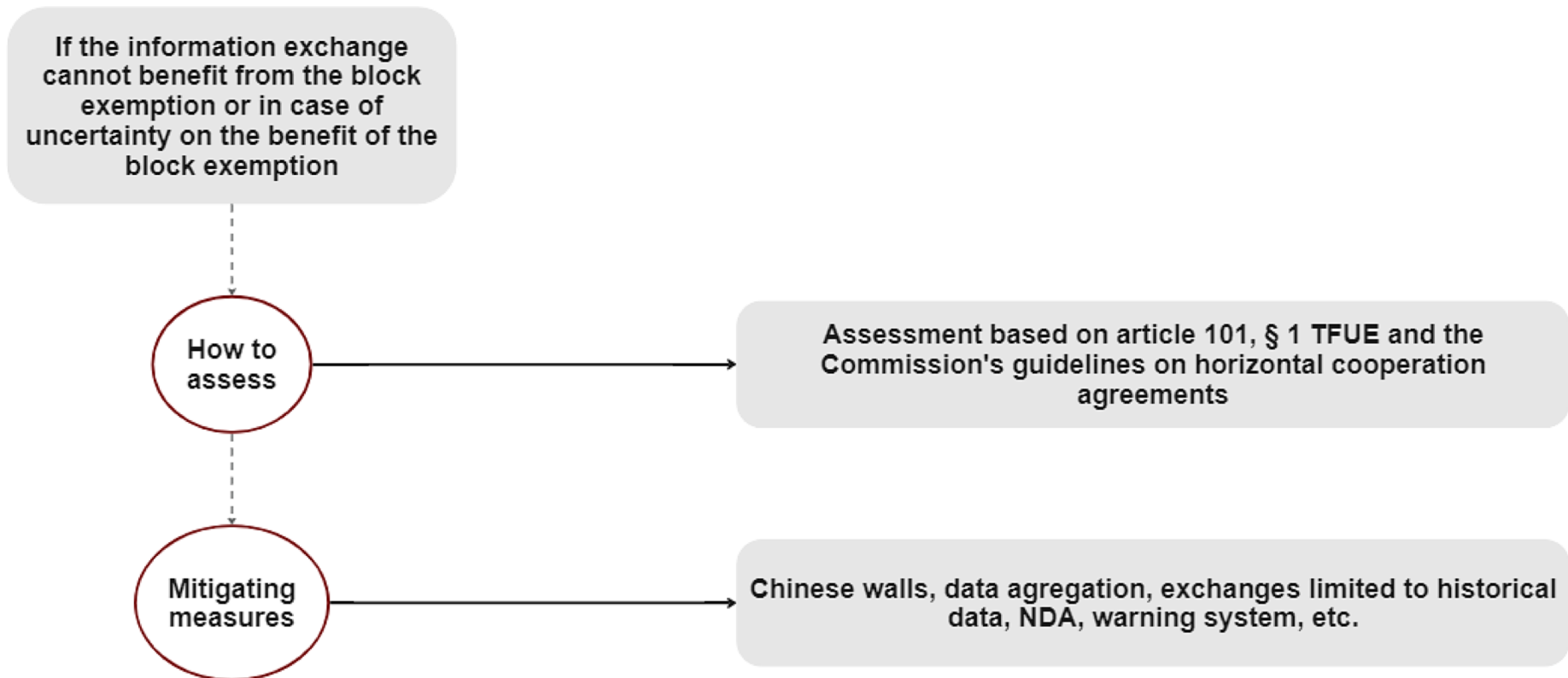


- 1 Principles ruling information exchanges in a dual distribution system**
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- 4 Possible technical and administrative measures to prevent unlawful information exchanges**

1. Principles ruling information exchanges in a dual distribution system



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Information exchanges that can usually benefit from the block exemption (GL, para. 99):

- Technical information relating to the contract goods/services
- Logistical information relating to the production/distribution of the contract goods/services at the upstream or downstream levels
- Under certain conditions, information relating to customer purchases, customer preferences and customer feedback
- Information relating to the prices at which the contract goods/services are sold by the supplier to the buyer
- Under certain conditions, information relating to the supplier's recommended or maximum resale
- Under certain conditions, information relating to the marketing of the contract goods/services
- Performance-related information

1. Principles ruling information exchanges in a dual distribution system

Information exchanges that are **generally unlikely** to benefit from the block exemption (GL, para. 100):

- Information relating to identified end users of the contract goods/services, unless such information is necessary:
 - To satisfy the end user's requirement (e.g., grant special conditions to the end user, provide pre- or after-sales services, etc.)
 - To implement/monitor compliance with a selective distribution or exclusive distribution system
- Information relating to the goods sold by a buyer under its own brand exchanged between the buyer and a manufacturer of competing branded goods.
- Information relating to future resale prices to be applied by the buyer

2. Measures to implement and critical points following the entry into force of the new rules on information exchanges

Companies should imperatively:

- 1 Conduct an audit of all information received from or sent to distributors, determine who, at the supplier level, has access to these data
- 2 Assess whether these information exchanges are likely to meet the two criteria and keep evidences of the legitime objectives pursued when collecting these data
- 3 Raise awareness among their distributors on the risks related to these information exchanges (e.g., policy or circular on information exchanges)
- 4 Implement measures to limit the risks at stake (e.g., Chinese walls, data aggregation, limit exchanges to historical data, etc.)

2. Measures to implement and critical points following the entry into force of the new rules on information exchanges

- Companies should be careful about **where data is stored and located**, and **how it is collected**.



Using a software, that does not allow access restrictions depending on the position of the employee/the department he is belonging to, increases the risk of unlawful information exchanges.

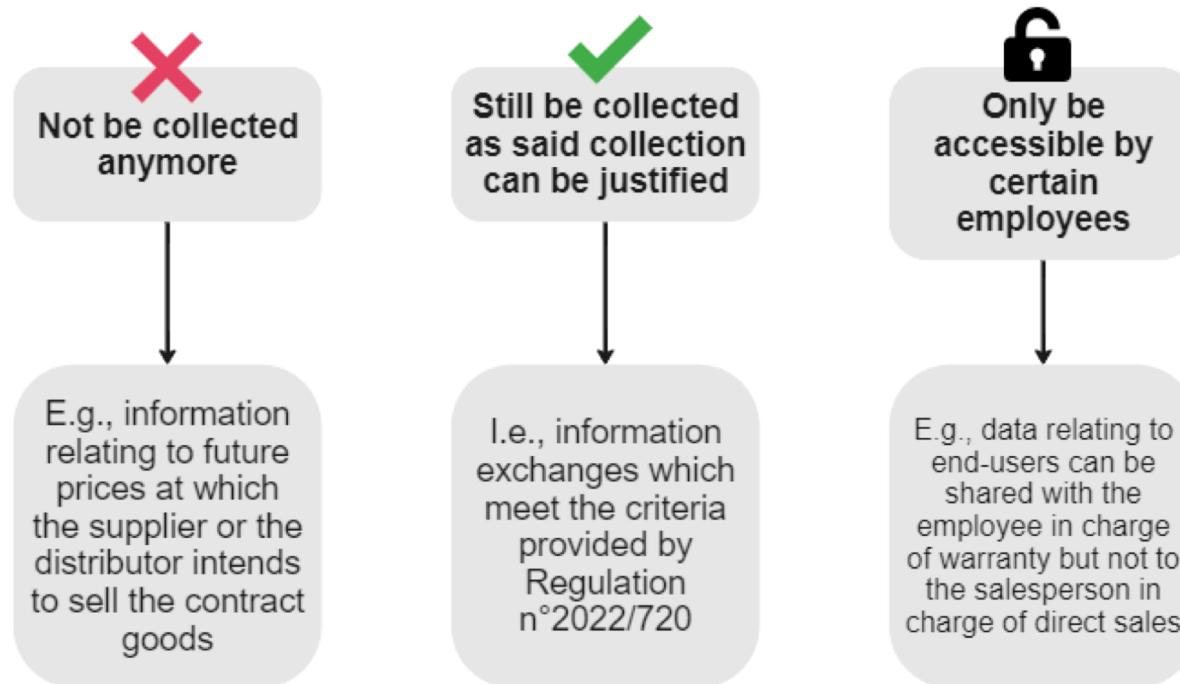


Supplier's unlimited and unrestricted access to the distributor's dealer management system (DMS) or CRM could also bear high risks.

- Companies should also be careful when the same person within the top management supervises the retail and wholesale business.

2. Measures to implement and critical points following the entry into force of the new rules on information exchanges

Depending on the results of the audit, some data shall either :



2. Measures to implement and critical points following the entry into force of the new rules on information exchanges

- In practice, the gathering of information by the supplier can usually be justified by objective reasons.
- E.g., the collect of information relating to end-users can be justified by the supplier's need to have an optimized knowledge of customers and prospects, to customize service quality, to develop loyalty programs.
- What matters in that case is to ensure that these data will not be accessible by the wrong department within the supplier's company (e.g., the department in charge of direct sales via Internet).

3. Difficulties arising out of the new rules on information exchanges

It is likely that distributors will invoke these new rules to refuse to share certain data with the supplier.

E.g. : Can a distributor refuse to submit its financial data to its supplier following the entry into force of the new rules?

- Suppliers should still be entitled to have access to the distributors' books and financial data under the new rules as the financial health of the distributor is directly related to the implementation of the vertical agreement (e.g., credit granted by the supplier).
- In a selective distribution system, the distributor's good financial health would be one of the criteria for approval within the supplier's distribution network. In that case, suppliers shall be able to control the compliance with the selection criteria (GL, para. 98).

3. Difficulties arising out of the new rules on information exchanges

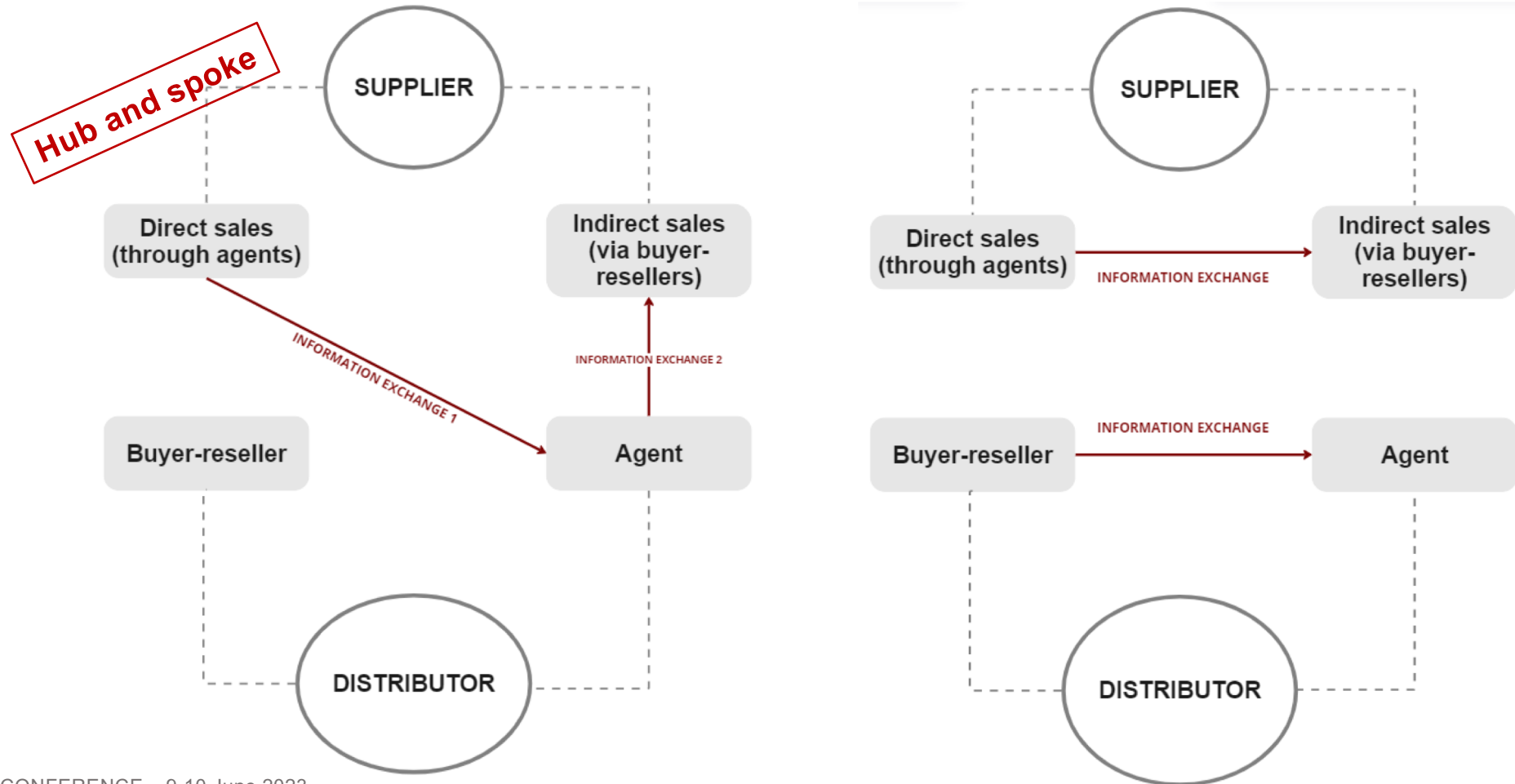
Caution is required at the distributor level in case of complex distribution model (e.g., selective distribution and non-genuine agency model combined):



3. Difficulties arising out of the new rules on information exchanges

- In this scenario, there is a risk of unlawful information exchanges if the distributor shares data which concern the agency business, that was first shared by the supplier, to the indirect sales department within the supplier's company ("**hub and spoke**").
- There is also a risk of unlawful information exchanges:
 - **Within the distributor's company**, between the department in charge of the agency business and the department in charge of the buyer-reseller activities.
 - **Within the supplier's company**, between the department in charge of the agency business and the department in charge of the indirect sales activities
- **Supplier and distributors** should implement Chinese walls to prevent unlawful information exchanges. This can be particularly difficult for distributors if they don't have sufficient material and human resources.

3. Difficulties arising out of the new rules on information exchanges



4. Possible technical and administrative measures to prevent unlawful information exchanges

Possible measures to implement to ensure the firewall's airtightness within the supplier's company :

- Physical and logistical separation between firewalled teams (distinct buildings or separated areas, access restrictions with badge)
- Cooling-off period in case of switches from one firewalled team to another
- Organization of periodical trainings
- Appointment of a compliance officer within the company
- Access restriction to hard-copy documents and electronic documents (separate folders, password protection)
- Signature of NDAs for firewalled teams, IT department
- Implementation of reporting system in case of breach

4. Possible technical and administrative measures to prevent unlawful information exchanges

Possible measures to raise awareness among distributors and limit the risks of unlawful information exchanges:

- Enter into a data sharing agreement with distributors, which sets out the rules to follow when exchanging data with the supplier.
- In case of combination of distribution models (agent/buyer-reseller), ensure that distributors know who their contact persons are within the supplier's company.
- Send warning letters in case of breach by distributors.

**Thank you for your
attention !
Any question ?**



International Distribution Institute