

Submission by the Automotive Distribution Federation in respect of the European Commission's Evaluation Report on the Operation of Regulation (EC)No.1400/2002 – The Motor Vehicle Block Exemption Regulation (MVBER)



The Commission's report presents strong indications of an inclination to recommend the abandonment of MVBER when it expires in May 2010. The report projects an underlying view that other existing or forthcoming pieces of legislation could adequately deal with the distribution of new vehicles and other automotive aftermarket issues. Specifically, the measures currently embodied in the Vertical Restraints Regulation (EC) N° 2790/1999 and pre-existing in the general competition rules of Article 81 and Art. 82 of the EC Treaty of Rome.

Whilst this view may be understandable in relation to the effect of MVBER on distribution arrangements for new vehicles, where market forces have promoted change rather than the regulation itself; the Report ignores the affect on consumers, and the many SME repairers who provide services to the consumers, in respect of use and maintenance of vehicles once they are 'on the road'.

For that reason, the ADF urges the Commission to reflect on the points below and to amend its view and recommendation given in the Evaluation Report, in favour of an automotive aftermarket sector-specific regulation designed to aid the consumer, (the individual or corporate motorist), in accessing suitably equipped, supplied and trained maintenance facilities. This would provide immense positive outcomes in terms of the economy, employment, road safety and the environment.

POINT 1. Why should the automotive aftermarket have its own sector rules?

The automotive aftermarket differs from other sectors. For other technologically complex consumer products, repair and maintenance have nowhere near the importance for the consumer as for motor vehicles. In the 21st Century, perhaps regrettably, many consumer products are no longer repaired, but simply replaced if faulty or exhausted. This is not an option with motor vehicles, which require regular servicing to ensure continuous operation as well as compliance with the highest standards of environmental protection and road safety.

The London Economics report to the European Commission refers to "the unique structure of the automotive spare parts and repair market" (London Economics Report, p. 244). This unique structure was readily recognised by the Commission in 1985, 1995 and 2002, when it opted in favour of consecutive pieces of sector-specific legislation. The situation is no different now and the Commission should opt for the same solution again in 2010.

POINT 2. The Commission's alternative to sector-specific regulation will not lead to 'better regulation'

The ADF's opinion of the Commission proposition that market issues may be addressed by use of a wide variety of legal remedies is one of incredulity. It cannot possibly be proposed that 'better regulation' would emerge if market players were left to deal with a multitude of instruments; this would create legal mayhem.



In addition to the MVBBER, the other legal constraints which would need to be consulted and/or invoked in order to obtain some redress for car companies' restrictive practices include: Regulation N° 2790/ 1999, the Vertical Restraints BER; Regulation N° 715/ 2007, the 'Euro 5 & 6' provisions and the amending 692/2008 (although these will only apply to vehicle type-approved after 2009); the upcoming Euro VI Regulations; the Commercial Agents Directive 86/ 653; Consumer Goods Guarantee Directive 99/44/EC; Design Directive 98/ 71; plus the commitments by four car companies – initiated under MVBBER but, of course, fully invoked via Articles 81 & 82 of the Treaty of Rome.

This myriad of Regulations, Directives, Decisions and precedents scarcely stands examination as an example of 'better regulation'.

If the market were to rely upon them, automotive aftermarket companies, in particular small and medium-sized enterprises (SMEs), would find these abstract sets of rules far more difficult to apply.

Arguing a case in the absence of a specific Block Exemption Regulation with clearly defined hard-core restrictions will be a very costly exercise. This will, most probably, deter small and medium-sized enterprises from pursuing their rights, and those of the consumer.

Individual case decisions will undoubtedly imply a significant degree of uncertainty. They normally require economic evaluations and legal opinions, the cost of which may be excessive for small and medium-sized enterprises. Given that car companies already dominate the markets for spare parts and repairs, any regulatory mechanism which makes it costly for SMEs to access legal certainty must be avoided.

POINT 3. The Commission's evidence of the effect of the current MVBBER

Concentrating upon the market for service, repair, and supply of parts, materials, training and technical information for vehicles – i.e. the Aftermarket; the ADF feels that the Commission's perception of the success of MVBBER requires some clarification.

Firstly, from the UK experience, the National Competition Authority has not proved willing to rigorously address complaints about restrictive practices by car companies and/or their franchised dealers. The ADF has been in the forefront of the task to remedy complaints when approached by parts wholesalers, service workshops and individual motorists. The ADF has distributed 600,000 explanatory leaflets and, by supporting consumers' protests against bad practices such as arbitrary withdrawal of warranty cover because of non-network servicing or independent replacement parts; we have successfully demanded consumers' rights. Our success, when reported to the UK Office of Fair Trading, has led to an indication that the OFT feel that no further action is required. The OFT's response when asked if they wished to review the sizeable dossier of complaints in our possession, and thereby gain a fuller impression of the level of misbehaviour, was to 'note our comments', but request that no documents be forwarded to them.

We are unsure if this reflects experiences in other Member States but, if it does, then the Commission's comment that the Regulation has proved beneficial to the aftermarket is clearly a mistake.

If, however, our UK experience is beyond the norm, and the Commission's view is correct; it clearly prompts the question: If it is working so well, why would there be need to abandon it?



The Commission report draws attention to the large number of queries received regarding MVBER and it must surely be clear that the multitude of legal authorities that could, potentially, be invoked in the absence of MVBER would severely increase the workload of the Commission as well as each of the national competition authorities. In the absence of clearly defined rules, national competition authorities would need to devote additional resources to providing guidance on and ensuring compliance with appropriate Competition law.

POINT 4. The clarity of MVBER provision on supply and descriptions of replacement parts and associated information.

For ADF Member companies the MVBER introduced some important provisions regarding the distribution of spare parts by independent operators. It also gave their customers, the service and repair workshops, rights and opportunities to improve their equipment, knowledge and facilities to maintain vehicles of ever-increasing complexity.

a. It allowed original equipment (OE) suppliers to double-brand their manufactures with their own trade mark alongside that of their customer, the car company. The report comments that this provision is rarely invoked for sensitive commercial reasons and for practical reasons such as, the ownership of the machine tool used for production by the car company.

Whilst this observation has some truth, it should not be taken as a reason for toleration. The facility for removing a faulty or exhausted part from a vehicle and easily identifying the maker, so as to specify a like replacement, has proved to a great benefit to service workshop personnel, and has had a significant effect on creating demand for 'original' parts to the benefit of the manufacturer of the part in question, and to the chagrin of those who wish to peddle inferior quality items.

b. Allied to the above, is the freedom for OE suppliers to supply their product directly to independent aftermarket distributors. Although there are still some ambiguous reports of 'tied' or 'captive' parts, in general this situation has improved as a consequence of MVBER. This has brought competition to what was, previously, a monopoly supply situation via car companies and franchised dealers, to the clear benefit of consumers. The Commission's report holds that Regulation (EC) No 2790/1999 the 'VRBER', offer sufficient protect for the independent aftermarket. This is not correct. The respective hardcore restriction in the VRBER addresses, solely, sales to independent repairers and service providers, not to parts distributors.

c. Electronic data is essential for the repair or maintenance of vehicles, which are increasingly 'computers on wheels'. Art. 4(2) MVBER includes a specific provision to facilitate the access to such technical information by independent operators. The Commission's report refers to the action taken against GM, Fiat, DaimlerChrysler and Toyota, and it is pointed out that an obligation to provide technical information rests on general principles of competition law. Although these decisions are helpful for independent repairers, the commitments are only binding until 31 May 2010, and technically concern only the four manufacturers which offered them. In the absence of any other appropriate measure, what will GM, Fiat, DaimlerChrysler and Toyota do then?



d. There are, also, the particular needs of those *indirectly* involved in the repair or servicing of motor vehicles, i.e. manufacturers of multi-brand diagnostic equipment, publishers of multi-brand databases, providers of roadside assistance, or parts wholesalers supplying workshops with parts and related information. The Explanatory Brochure on MVBER issued by the Commission in 2002, states that these persons should receive the data, and are entitled to pass it on to other independent operators. Otherwise, the creation of multi-brand products would become not feasible in practice. The ADF thinks this is an area in which future legislation needs to be more clearly written, and should require car companies to make raw data available in a format which enables independent operators to include such data in their multi-brand products.

It is true that the 'Euro 5' Regulation (EC) No. 715 /2007 and its amending documents also provide for an obligation on vehicle manufacturers to provide repair information *for passenger cars*. However, this requirement only applies to new cars models which are type-approved in 2009 or later. It does not apply to the vehicles already on the road today, and it does not cover heavy duty vehicles and commercial vehicles at all. Moreover, vehicle manufacturers will continue to collect and update data for vehicles not covered by the 'Euro 5' Regulation (EC) No. 715/2007, and we feel that this data should be available to independent operators.

In summary, it is clear to use that the rules embodied in the MVBER appear more suitable for protecting competition in the aftermarket than those of the VRBER.

POINT 5. Consumer detriment through abandonment of MVBER

The Commission's report pays scant attention to the impact upon the main casualty of MVBER abandonment. Having achieved so much for consumers in the previous BERs it is unclear to us in the ADF how the Commission could accept such consumer detriment.

It cannot be acceptable to infer that consumers should be tied to a specific network of repairers or a certain brand of replacement parts. They should be free to have their vehicle serviced or repaired at the workshop, and with spare parts, of their choice. Such choice requires that information and parts required for a particular inspection or repair job are indeed available to independent operators. Any agreement restricting their ability to source what the motorist requires should be considered incompatible with EU law.

As the European Commission stated in its Explanatory Brochure on the current MVBER, a vehicle manufacturer should not be allowed to make his warranty obligations dependent on the requirement that the vehicle being exclusively serviced in his authorised network. The Explanatory Brochure makes it clear that - for normal repair and maintenance during the warranty period – the vehicle manufacturer may not require the use of specific spare parts, nor the obligation that a customer must revert to an authorised workshop. In this, at least, the UK Office of Fair Trading has been active, issuing information which consumers have found useful and reassuring. We understand that, in a letter to the German Repairers Association, ZDK, the Commission rightly confirmed that these principles apply not only to basic statutory warranties, but also to extended long-term warranties (anti-corrosion, mobility plans etc.).



POINT 6 Summary

The consumers' interests have always been at the forefront in discussions on the future form of competition law affecting the automotive market. The ADF supports this approach.

Consumers' affordable mobility largely depends on the facility to have vehicles serviced and repaired at a reasonable cost, and with minimum inconvenience. Over the lifetime of a vehicle, a family will spend about the same amount on maintenance and repair as was spent on the purchase of the vehicle. Effective competition on each level of the automotive aftermarket is of the essence when it comes to fostering innovation and keeping mobility affordable.

In Europe's independent multi-brand automotive aftermarket, 665.000 companies, predominantly SMEs, provide competitive components and quality services. 3.5 million people are employed in component production, distribution and the servicing of vehicles. In compliance with the EU's SME policy and the Lisbon Strategy, improving the business environment for the small and medium enterprises in the automotive aftermarket clearly means maintaining a legal framework, which fosters fair and effective competition in the markets for automotive spare parts and servicing.

This can best be achieved by sector-specific rules such as those outlined above.

The ADF seeks either an extension of those aftermarket sector specific rules currently enshrined within the MVBBER or, if the existing legislation is too focussed on the distribution arrangement for vehicles and legislators find its dismemberment impracticable, we propose a new chapter of competition law which would extend the aftermarket provisions of the current Regulation beyond 2010.

Competition in the markets for automotive servicing and repair, and in parts supply, has improved since the MVBBER came into force. Having furthered such improvements, these rules should *not* be allowed to expire.

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