



Consultation Document

Commission evaluation report concerning motor vehicle distribution and servicing

Response from:

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Executive Summary

The BVRLA and its Members welcomes the opportunity to put forward our comments on the European Commission's (EC) draft report into the current Block Exemption Regulations (BER). Specifically, this review offers both the EC and our Members the opportunity to assess the effectiveness of the existing BER for motor vehicles and to examine how best the EC should implement changes to build on the aspect of the Regulations that are working and importantly to strengthen areas which clearly are not.

As the economic owner of the vehicle, any proposed changes to BER are likely to have a direct impact upon our Rental and Leasing Members. It is therefore paramount that Members' views are fully considered to ensure that there are no unintended consequences and importantly, that the EC achieves its primary goal of ensuring that any changes to BER delivers a fair, but competitive market.

We believe the BER's original objective of ensuring new vehicles are competitively priced across EU Member States has been reasonably successful. In particular, we have noted as vehicle buyers that there has been a high level of choice and improvements in the quality of after-sales service.

End User Status

The report acknowledges that the vehicle rental and leasing sector is an important contributor to the automotive market and to the after sales market and there has been an evolution of consumption patterns away from outright purchase and towards alternative arrangements such as leasing and rental, which adds to the competitive pressure on car dealers. Competitive pressure is further sustained by direct selling by vehicle manufacturers to leasing companies and other fleet buyers.

We believe that it is this which has focused some motor manufacturers to attempt to erode our Leasing Members end user status, as several major motor manufacturers have made attempts to obtain our Leasing Members' customers' details. Following a full review by the BVRLA we have challenged a number of motor manufacturers following their request for contact details of our Members' customers. In our opinion we believe that the request for such information is in breach of the BER. More importantly any request for such information would dilute competition and restrict the activities of the leasing company. It is therefore of vital importance that the regulations continue to protect the leasing sector's end user status to enhance competition and not constrict the activities of the leasing industry. We also believe this type of direct supply agreement with the leasing sector would have reduced



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intra-brand competition.

Intra brand

The report notes that the BER are aimed at encouraging intra-brand competition across borders. This objective appears to have been achieved, as prices between Member States have come together. However, one of our key concerns as mentioned above is the recent move by some manufacturers to dilute the end user status which may reduce intra brand competition.

High level on authorised repairers

The introduction of authorised repair agents has improved customer access to service and repair facilities. Overall, the BER has been successful in protecting competition between authorised repairers, which has led to the introduction of qualitative selective repair systems. As a consequence, market forces have led numbers of authorised repairers to increase, since all repairers meeting objective criteria can join a network. However, we feel that manufacturers should relax the criteria for these authorised repair agents and encourage many more to be established to make service facilities available closer to where the customer lives and ultimately enhance competition and raise standards.

Free flow of technical information

There has been plenty of criticism that the BER is failing to provide technical information to independent repairers. We believe that such practices could harm consumers by forcing independent repairers to exit the market place and thereby dilute competition.

It is therefore paramount that vehicle manufacturers make vehicle data freely available, albeit at a reasonable cost, for all service and repair outlets qualifying to receive it. The qualification being the demonstration of a basic ability (staff training and equipment availability) to receive the relevant data.

Conclusions

There is a healthy level of competition in the motor industry at present, which has led to an unprecedented level of choice for vehicle buyers and improved the quality of after-sales service. The BVRLA agrees that simplifying some of the sector-specific regulations imposed by BER will not hamper this progress. However, while the Association is in favour of removing much of the red-tape surrounding motor vehicle distribution, a number of concerns still remain.

In order for our Members to continue to help sustain competitive pressure on the market we believe the EC must take forward the two following key areas: one, it is vitally important that



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the end-user status of leasing companies is clearly maintained and defined. Secondly, the EC must ensure that efficient competition between independent and authorised repairers should remain a key priority.

Specific Comments

Background

The current Block Exemption Regulation (BER) which controls the distribution, sale and servicing of cars, light commercial vehicles and trucks came into effect in July 2002. The rules were intended to 'put customers in the driving seat' – by attempting to give dealers greater independence from carmakers, promoting inter-brand competition, liberalising the aftermarket and encouraging the harmonisation of prices across the EU. Before the current BER was published in 2002, the BVRLA lobbied for the introduction of a fairer and more competitive regime both in new car sales and more importantly, a freer after-sales and service market.

Most notably, the Association successfully ensured that our Members, as the economic owner of motor vehicles, are correctly recognised as the end user for the application of buying terms. This also helped to protect the position of leasing intermediaries or brokers who are defined as agents acting on behalf of leasing companies. In relation to the greater freedom to purchase from manufacturers direct and from other independent sources' the EC announced that manufacturers need not restrict their dealers to an exclusive distribution area and instead can appoint dealers on quality grounds.

In addition, dealers will be able to establish multi-franchise sites with separate sales areas for different marques but where sales staff need not be brand specific. The BVRLA specifically requested that after-sales repair and warranty work should be open to independent accredited approved agents who meet the requirements of regulation on servicing standards and parts availability. To this end, the EC stipulated that service agents independent of sales outlets can be established but will be obliged to take part in manufacturers' free servicing programmes and warranty repair schemes irrespective of which EU member state the vehicle was sourced.

General observations of the report

We have examined the evaluation paper in collaboration with our Members and have identified a number of key issues on the effectiveness of the current BER. These are;

- The current franchise system has worked well from the point of view of quality and safety.
- The introduction of many new models and variants has improved inter-brand competition.



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- We are disappointed at the low number of multi-franchise sites that have been established meaning that the customer has to visit multiple showrooms to compare models.
- The introduction of authorised repair agents has improved customer access to service and repair facilities but we feel manufacturers should relax the criteria for these agents and encourage many more to be established to make service facilities available closer to where the customer lives or works and improve competition.
- We are still concerned at the difficulties and barriers for independent repair garages to access manufacturer's technical information and wish access to be made much easier.
- One of our key concerns is the recent move by some manufacturers to dilute the end user status of leasing companies by insisting on the compulsory provision of our Members' customer details for the leasing company to be able to gain access to fleet terms.

In the next part of our response we will examine each of the above points in greater detail.

End user status

Over the past six months it has been brought to the BVRLA's attention that a number of suppliers are trying to dilute the end user status of a number of our Members, by requesting the contact details of their customers. Our Members in their capacity as an end user, are not obliged to provide details of the lessee (the leasing company's customer) where the leasing company remains the economic owner of the motor vehicle. Therefore, it is our opinion that the imposition of a contractual obligation upon a leasing company, in their capacity as an end user¹, to provide details of the lessee would be deemed to be a breach of the hardcore restrictions as defined under the Commission Regulation.

Earlier this year, the Association challenged the request for such information from various suppliers. In light of our challenge we have managed to stop such behaviour of the supplier by referring to the relevant clause of the BER. It is crucial that the end user status of lessors is maintained, since it is clear that in the vast majority of cases lessors deliver a range of services that go well past the simple provision of a vehicle. For example, lessors will be instrumental in helping the lessee to meet wider environmental and health and safety objectives through the development of fleet policy. The lessor is also the primary source of comparative vehicle data; this ensures lessees operate vehicles that are best suited to their individual business needs. Removing such a clause would dilute competition in the vehicle

¹ As defined by Article 1(w) of the Commission Regulation (EC) No 1400/2002



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distribution market and more importantly, could restrict the activities of the leasing company. It is vital that the sector needs to maintain end user status and this must not be solely stated in guidelines as this does not carry any weight, the point must be contained in the regulations.

Current franchise system

We believe that the current franchise system has worked well, especially with regards to quality and safety. However, we consider that the BER has not succeeded in removing the restrictions of the previous sector specific block exemption. It is important that the BER continues to reinforce competition between dealers of the same brand by encouraging diversity in distribution formats.

The EC has made a number of observations in its report regarding the efficiency of the franchise system, most notably that the BER may actually have encouraged uniformity in distribution by setting the market share threshold for the exemption of quantitative selective distribution agreements, at a level that is higher for other forms of distribution. Secondly, by only exempting long-term contracts, the BER may have made it more difficult for newcomers to access the networks.

The use of quantitative selection has permitted suppliers to reduce network density over the period from 2002 to 2006. It might therefore be questioned whether the exemption of this form of distribution may have led to a reduction of intra-brand competition, to the detriment of consumers and in contradiction of the regulations.

The opportunities offered by the BER for dealer-driven innovation in distribution, have done little to encourage diversity within the quantitative selective model. Almost all observers agree that Article 5(2)(b) of the Regulation seems to have had little effect, in that few dealers have opened secondary outlets. Moreover, Article 4(1) (g) of the Regulation, which provides that dealers must be free to specialise in motor vehicle sales by sub-contracting out repair and maintenance, has also been ineffective, in that few dealers have chosen to abandon what is a very lucrative part of their businesses.

Multi brand competition

The existing regulations prevent the foreclosure of competing vehicle manufacturers and safeguards their access to the market. It appears that the sector-specific rules on multi-branding have not been fully effective and that limits on the ability of vehicle manufacturers to impose direct or indirect non-compete obligations on their dealers set out in Regulation 2790/1999, could have ensured an equivalent level of protection of competition in the market.



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We concur with the findings in the report, although we believe that the EC has been extremely cautious in the commentary about how few dealers have taken the opportunity to multi-brand within the same dealership. Having created a legal terrain where dealers can multi brand, manufacturers have been able to informally make this very difficult for it to actually happen by insisting that the brand decor rules and franchise key performance indicators make it almost impossible for one dealer in one building to sell two manufacturers vehicles without contravening one or the others' brand identity rules. Equally, the technological investment required to multi-brand repair and maintenance facilities has become so large that it becomes another factor in prevention.

Multi franchise sites

So far we have been disappointed with the low number of multi franchise sites that have been established. It is doubtful that Article 3(5) of the BER can have had much effect, given that in the vast majority of cases, suppliers have given dealers indefinite contracts that can be terminated on two years notice: something which hardly gives much protection to a dealer's brand-specific investment. Moreover, in today's climate of strong inter-brand competition, it seems unlikely that a manufacturer would choose to respond to pro-competitive dealer behaviour by threatening expulsion from the network.

As regards Article 3(3) of the Regulation, which was intended to foster market integration through the development of cross-border dealerships, the Commission's inquiry has shown that virtually all transfers of dealerships within the authorised networks have occurred at a national level. The aim has therefore not been achieved, and the BER may instead have led to dealer concentration in certain local areas, potentially creating future problems for the national competition authorities. Ultimately, this means that the customer has to visit multiple showrooms to compare models.

Authorised Repair Agents

Competition in the market for the provision of the after sales market is vitally important to all car owners and users. In order for our Members to select the best value maintenance and repair services they should be able to have a choice in the after-sales services market, reinforced competition between authorised and independent repairers is essential.

Access to technical information and spare parts was protected within the BER and this appears to have helped the independent sector through a period of structural adjustment to changing technological needs. Spare parts manufacturers have maintained their share of aftermarket supply, and there are few instances of authorised repairers refusing to supply spare parts to their independent competitors, largely because they make considerable profits by doing so.

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It should also be noted that in the unlikely event of a vehicle manufacturer distributing its parts itself, rather than through a selective distribution system, its authorised repairers would lose their distribution function and would be qualified as end users. In these circumstances the hardcore provision in the BER would be ineffective, since it does not apply to restrictions imposed on such users.

The introduction of authorised repair agents has improved customer access to service and repair facilities but we feel manufacturers should relax the criteria for these agents and encourage many more to be established to make service facilities closer to where the customer lives or works and improve competition.

Access to technical information

Access to technical information is vitally important to our Member's sector. At the present time there is still great difficulty for independent repairs to gain access to technical data more freely and also to call for more competition in the availability of spare parts. The independent sector must have access to technical information and technical training to allow them to compete effectively. This sector is a valuable source of service for lessor and loss of this sector would increase repair costs across the board. Manufacturer restrictions should not be allowed to slow the dissemination of technical information as a repairer could be put out of business in a relatively short time. Euro 5 and 6 oblige manufacturers to release data but it must be in a timely fashion and be accompanied by appropriate training. We are still concerned at the difficulties and barriers for independent repair garages to access manufacturer technical information and wish access to be made much easier.

Additional Comments

Our Members believe that the existing BER has not provided adequate protection for the independent sector. The Commission acknowledges that there has been contraction in this sector. What is not clear is that this has left the remaining large groups in a better position to compete; this sector of the market will require continued support and protection if it is not to contract further or disappear completely.

Conclusion

The competitive environment in the motor vehicle distribution markets appears to have considerably improved since the Commission last evaluated the position in 2000. This evolution seems, however, to be mainly due to external factors, in that in an increasingly global economic context, market forces have led the sector to develop positively in a way initially not foreseen by the Commission.

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Despite the sector-specific hardcore restrictions laid out in Article 4 of the Regulation, the Commission's inquiry has not revealed any clear causal link between these provisions and the improvements of the competitive conditions in the market which could be observed during the reference period.

Regarding competition in the market for automotive spare parts, it should be recalled that the intellectual property rights held by vehicle manufacturers and the widespread use of a variety of sub-contracting arrangements with original equipment suppliers (including so-called tooling arrangements) have meant that certain spare parts remain captive to the vehicle manufacturers' networks. This may have somewhat weakened the position of independent parts wholesalers and translated into higher overall repair prices. However, these potential competition issues depend on the application of Article 81(1) to this type of arrangement in each individual case and do not relate to any possible failure of the BER to properly address such problems under Article 81(3).

In summary therefore, it appears that the provisions of the BER which diverged from the general principles derived from the case-law of the European courts and currently reflected in Commission Regulation 2790/1999, may be regarded, in the current economic context characterised by increasingly globalised and competitive automotive markets, as overly strict, too complex and/or redundant, particularly in view of the introduction of new EU legislation for motor vehicles. In the light of the foregoing, it would seem that a more effects-based and flexible approach would deliver better results for consumers by:

- Allowing the Commission to better focus its efforts on the most harmful anti-competitive practices and avoid risk of distortions of its enforcement priorities.
- Ensure the coherent application of Community competition rules throughout the EU.
- Lead to more legal certainty for firms in the sector.

Leasing Companies

In general, vehicle leasing, sometimes referred to as long term rental, is an arrangement where the user (the hirer) simply hires the use of the vehicle and assumes operational responsibility for a predetermined period and mileage at fixed monthly rental from the owner (the leasing company). Legal ownership is, in the majority of cases, retained by the leasing company.



Short Term Rental Members

Rental Members offer daily, weekly and monthly rental of vehicles to corporate and retail customers. As explained above, the contract hire and daily rental Members are the owners of the vehicle.



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Bona-fides **BVRLA, the Industry and its Members**

- The BVRLA is the trade body for companies engaged in the leasing and rental of cars and commercial vehicles. Its Members provide short-term self-drive rental, leasing and fleet management services to corporate users and consumers. They operate a combined fleet of 2.6 million cars, vans and trucks, buying 44% of all new vehicles sold in the UK.
- Through its Members and their customers, the BVRLA represents the interests of more than two million business car drivers and the 10 million people who use a rental vehicle each year. As well as informing the Government and policy makers on key issues affecting the sector, the BVRLA regulates the industry through a mandatory code of conduct.