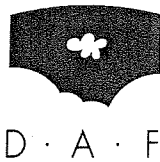


Par attulution (uif)



→ Axel + John + Vefler
→ no reply needed
→ for the file 145 1026

European Commission
Office: J 70 – 01/128
Directorate-General for Competition
B-1049 Brussels
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COMMISSION EVALUATION REPORT ON THE OPERATION OF REGULATION (EC) N° 1400/2002 CONCERNING MOTOR VEHICLE DISTRIBUTION AND SERVICING.

General remarks.

In general D·A·F is of the opinion, that the current BER has been and still is working. The BER has not worked to our complete satisfaction and expectations, but has succeeded in opening up the market, given the dealers and repairers new opportunities and improved the competition both inter- and intra-brand. It is our strong opinion that this is mainly caused by the BER rather than the general market-adjustments. We therefore recommend, that the Commission make possible to continue this positive and development and stability. It is our viewpoint that the consumers as well as the industry, dealers and repairers would have suffered from much more complicated and costly conditions without the specific regulations.

Specific remarks.

In our opinion the evaluation report lack to point out the current disproportion between the manufacturers and the dealers which the BER has not been able to balance in favour of the competition. Slowly this has started to move in the right direction with the new possibilities and rights for the dealers and repairer. We feel that it would be a mistake to stop this progress just because the development has been slower than expected when putting in to force the current BER in 2002.

D·A·F strongly fears the Commissions proposal to agree to a voluntary code of good practice. In 2002 the Danish dealers association proposed the Danish importers association to agree to an arbitration-arrangement in Denmark. The importers association then refused such an agreement and we don't expect this to change in the future. Therefore we strongly emphasize the need of regulations which prescribe obligations to use arbitration as in the current BER.

According to this we will like to draw attention to the fact, that no single European or national legislation offers right to transfer dealership, arbitration mechanism for disputes concerning contractual obligations and notice for termination. Manufacturers are in our opinion not likely to agree on a code of conduct that limits their position compared to the legislation for that matter.

It has been said that the two years notice is in anyway not enough to protect the dealer-investments, why the obligation to give to years notice of termination is of very



little importance. We must oppose to this as it is very important to have this period to adjust to the termination. Even only two years notice I better than nothing and the two years notice was when coming into force in 2002 one of the most important issues for the dealers and repairers.

Allow us to give some examples of how we find that the dealers and repairers are controlled in disfavour to the competition:

- The importers offers account-systems that give the importers access to information about the purchase of spare parts from outside the distribution-system.
- We have seen a growth in bonus-systems, which reward purchase of original spare parts from the vehicle-manufacturer and reduce the competition from other spare part-manufacturers.
- The vehicles-manufacturers direct sale to leasing-companies in our opinion causes a disproportion between the manufacturers and the dealers, as the manufacturers don't have to fulfil the same qualitative standards which are implied on the dealers (showrooms, corporate identity and vehicles for demonstration and test).

The evaluation report points out, that the current BER, might have caused the manufacturers to impose very high standards to protect their brands. We shall not argue with this, only stress that the level of the standards most likely is here to stay, and that the manufacturers in all probability will not lower the standards if the BER is not prolonged. In other words – is will be a mistake to think, that the use of the regulation 2790/1999 will lead to lower standards and costs for the dealers and repairers.

We fear that the general regulation in 2790/1999 will not in a sufficient way consider the intra-brand competition which is of more importance to the competition in the sector than the inter-brand competition. We therefore must ask the Commission to consider the sectors specific needs carefully in order to continue the current progress and to take into account the many small- and medium-sized enterprises in EU which are deeply threatened if the current BER is not prolonged.

Best regards
Danmarks Automobilforhandler Forening, D·A·F (The Danish Automobile-dealers Association)

Karoline Thomsen
Legal director