

**European Association  
of  
Independent Vehicle Traders (E.A.I.V.T.)**

**Response to COMMISSION EVALUATION REPORT  
ON THE OPERATION OF REGULATION (EC)  
N° 1400/2002**



E.A.I.V.T. stands for the free, brand-independent, cross-border vehicle trade. Against this background, we ascertain that the car block exemption, which governs contractual relationships between manufacturers and their distribution partners, has neither been made by us, nor has it been made for us. Therefore it is not our primary concern to have a sector-specific block exemption regulation in force in the future. Nevertheless we acknowledge the sector-specific needs of the car trade, which have to be reflected in any and every future regulation governing competition in this market.

In principle we can agree with the EU Commission's analysis of the functioning of the car BER. However, there still remain some differences in detail as well as some questions, which we would like to discuss. The following is a brief list of the essential points, focussing on issues concerning the sale of new cars:

| <b>Position of the evaluation report:</b>   | <b>Position and questions of E.A.I.V.T.:</b>   |
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| “The profit margins of both manufacturers and dealers as regards vehicle sales appears on average to be low, which excludes possible risks of market power being exercised to the detriment of consumers.”  | This may at best apply to inter-brand competition. However, if you distinguish between manufacturer margins and dealer margins, you obtain a different picture, showing market power benefiting manufacturers.   |
| “It therefore appears that the sector-specific rules on multi-branding have not been fully effective and that the limits to the ability of vehicle manufacturers to impose direct or indirect noncompete obligations on their dealers set out in Regulation 2790/1999 could have ensured an equivalent level of protection of competition in the market.” | The sluggish development of multi-brand trade is due to the excessive standards imposed by manufacturers and the costs attached to it. We see multi-brand distribution as a positive addition to competition and ask you:<br>1) whether the Commission intends to support an increase in multi-brand distribution, and<br>2) how the Commission intends to promote this in a successor regulation? |
| “The objective appears to have been achieved, as prices between Member States have converged and cases of hindrances to parallel trade, including complaints from final consumers, have significantly diminished.”  | The apparent non-appearance of consumer complaints in large numbers is only seemingly a good sign. Consumers looking for cars do not intend to take (lengthy) legal actions to achieve their objectives.   |
| “Independent repairers are the only source of inter-brand competition on the aftermarket, and provide consumers with valuable choice. In 2000, the Commission saw two inputs as essential to the ability of such repairers to compete: technical information and spare parts.”  | This logic is strictly applicable to the sale of cars too. Inter-brand competition can only be guaranteed when the free market has access to products.   |

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| <p>“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. Instead, over-rigorous auditing or the setting of artificially high sales targets that preclude a dealer from obtaining volume bonuses would be more subtle and more effective tools for disciplining dealers that stepped out of line.”</p> | <p>How do you intend to strengthen the franchised dealers against the background of such subtle tools for disciplining dealers?</p>   |
| <p>“Therefore, the Commission has not at this stage found enough indications of market failure or actual or potential consumer harm distinguishing motor vehicles from other economic sectors.”</p>   | <p>The consumers' situation in the car market could be a lot better. Already today, concentration in the market has created regional oligopolies that deny real choice to consumers.</p>  |
| <p>As one of the objectives of the BER you named “the protection of parallel trade through the exclusion of locations clauses from the scope of the exemption”.</p>   | <p>Unlike the Commission thinks, parallel trade does not exist within the franchised sector but it exists because of the many smaller and larger independent dealers, who for decades have been adding competition to our common market. How do you intend to protect this?</p> |

We would like to discuss the above differences and questions with the Commission and are available any time for this.

Regardless of this discussion, we still see the need to repeat some of the important claims of E.A.I.V.T.:

- The advantages and disadvantages of having a sector-specific regulation or a general regulation must not be weighed against the perceived well-being of certain, commercial interest groups. On the contrary, issues of competition regulation are consumer issues. E.A.I.V.T. and its members exist because consumers call for the free market and our services close a gap in a market that is otherwise dominated by powerful distribution systems. If you seriously want to safeguard consumer interests, you have to support free trade.
- In order to be functional, the free trade also needs the interface with the branded trade. This is the only way to get competition, which is directed by the consumers rather than by the manufacturers. To safeguard this interface, the activities of intermediaries must be secured and all efforts must be undertaken to protect the rights of franchised dealers and their abilities to exert their rights. Whatever the future regulation will look like, today the branded dealers are already in a weak position compared to the manufacturers, and cannot afford to have their position further weakened.
- Furthermore, we believe it is important to question whether the so-called 0-km-cars (because they have already been registered), should be defined as new cars at all? As these cars are often pushed into the market by the manufacturers (parallel to their own distribution system and with the help of the free market), it appears sensible to generally exclude this vehicle category by way of definition from the scope of the regulation.

Brussels, 29. August 2008



Marco Belfanti, President E.A.I.V.T.