



CONTRIBUTION OF THE INDEPENDENT LEASING INDUSTRY TO THE COMMISSION'S EVALUATION REPORT ON THE OPERATION OF REGULATION 1400/2002 CONCERNING MOTOR VEHICLE DISTRIBUTION AND SERVICING

INTRODUCTION

About the signatories

The signatories are independent leasing companies, which offer a variety of fleet and vehicle management services, through financial and operational leasing, predominantly in the automotive sector and which operate throughout Europe. Being the major providers of leasing services in Europe, we have established ourselves as the European market leaders in fleet and vehicle management with offices in almost every European country and beyond, and as such, have been in the centre of attention of the captive leasing industry for years.

The economic relevance of the independent leasing industry

Facts and figures

It has been estimated that throughout Europe, approximately 40% of all new passenger cars are purchased/financed through leasing agreements. In some European countries the leasing rate is even higher. In particular in Germany and in the UK, leasing makes up over 50% of the market. It has to be noted though that the aforementioned figures relate to the entire leasing industry, including captive and independent companies. The undersigned independent companies represent a total of ca 640.000 new vehicles registrations per year in Europe.

Market developments and competitive impact

The fleet and vehicle financing and management services provided by the signatories include for instance vehicle comparison based on total cost of ownership, vehicle purchase, maintenance and repair, tyre replacement, fuel management, assistance and insurance, to name a few. In our role as independent operators and by means of our very advanced technological equipment, we are able to offer tailor-made management solutions, thereby providing clients with real added value. Our powerful and innovative ICT systems allow the independent leasing industry to provide clients with a periodic data analysis of the vehicle, consumption patterns and related costs, whatever the car brand and whichever country the vehicle is located in, as well as with respect to diverse other elements of the automotive value chain, such as maintenance and repair. The market consolidation process that has taken place in recent years, has generated the emergence of some larger international leasing corporations, each of which purchases to date up to 250.000 vehicles annually and re-sells them after an average period of 36 to 48 months on the free market, with a view to maximise the client's value. Due to our size and international presence as well the clients' mandate to optimise the total cost of ownership (TCO) during the entire period of 36 to 48 months, the independent leasing industry poses a serious competitive challenge to the captive leasing companies, which on the basis of their market power often strive to assert themselves by means of "*cutthroat competition*".

In light of the above, it appears obvious that the independent leasing industry has an essential role in ensuring the promotion of effective competition in the automotive sector, in particular in areas such as vehicle purchase, maintenance and repair as well as service cost. As has rightly been recognised by the Commission itself, leasing has developed to become a concrete commercial alternative to ownership to satisfy the mobility needs of individuals. We therefore urge the Commission to carefully consider the considerable economic and competitive impact of the independent leasing industry in the context of the review of the Automotive Block Exemption Regulation 1400/2002 (hereafter BER 1400/2002).

II. POSITION ON THE COMMISSION'S EVALUATION REPORT

The signatories welcome the fact that the Commission is giving all stakeholders the opportunity to submit comments to the findings of its Evaluation Report on the operation of the BER, after having ignored important sectors of the automotive industry, including the leasing sector, during DG Competition's fact-finding exercise in mid-2007.

Prior to getting into the details of our contribution, it should be noted first of all that the signatories, which through their national associations are also members of Leaseurope, the European Federation of Leasing Company Associations, strongly support and fully embrace the position put forward by Leaseurope on the Evaluation Report. However, the particular nature of the independent leasing sector requires careful consideration and therefore the signatories would like to put particular emphasis on the points developed further below.

General observations

We have noted with some disappointment that the relevance of the leasing business as distribution market in the automotive sector has not been appreciated to its full extent in the Commission's Evaluation Report. A reason for this might have been that the considerable economic importance of this distribution channel has also been neglected in the context of the London Economics study. We are aware that numerous stakeholders have in the past criticised the London Economics study as being inaccurate and showing a general lack of understanding of the particularities of the automotive sector. In light of these critics and given the fact that the Evaluation Report seems to entirely and almost solely rely on the findings of this single study, it is incomprehensible that the Commission has not deemed necessary to re-assess its factual base by consulting further scientific research to obtain a complete picture of the actual market situation. We dare to say that as far as the leasing sector is concerned, if the true economic relevance of the leasing industry had been recognised by the Commission, one could assume that the Report would have contained some reflections on Article 1 (1)(w), the key provision for the industry. This is even more so true if one takes into account that the Commission views the leasing industry as the future alternative option to ownership. As a result, we feel that the findings of the Report are unbalanced and therefore it would be inappropriate to use these as the sole basis for the review of the BER 1400/2002.

Secondly, we note that the Evaluation Report recurrently refers to the general Block Exemption Regulation 2790/1999 (hereafter BER 2790/1999) as a potential future substitution for the BER 1400/2002. This piece of legislation is equally up for review as it is due to expire in 2010 and given that the review process is at a very early stage, its scope and content is still very open. Furthermore, one has to bear in mind that the BER 2790/1999 as currently formulated is not at all adapted to the specificities of the automotive sector. To date it is therefore almost impossible to evaluate whether the application of BER 2790/1999 to the automotive sector will be effective at all. Consequently, it appears rather strange and without any logic that the Commission makes reference to a piece of legislation as the future solution for the automotive industry in general and the leasing industry in particular, when this legislation practically does not yet exist and its scope has not yet been defined.

Specific observations relating to the leasing industry

The independent leasing companies see the need to alert the Commission to some important points, which we feel should be considered in the future in the context of the Commission's review process of the BER relevant to the automotive sector.

1. Importance of the leasing companies' end-user status for competitive market conditions

BER 1400/02 stipulates in its Article 1 (1)(w) that leasing companies are to be considered as end-users under the terms of the BER, unless the leasing contracts provide for a transfer of ownership or an option to purchase the vehicle prior to the expiry of the contract. A similar provision cannot be found in the general Block Exemption Regulation 2790/1999 for vertical agreements (hereafter BER 2790/1999).

We are aware that it is the declared aim of some key vehicle manufacturers' (VMs) to prevent that in any future regulation leasing companies are considered as end-users. The reason is simple. Due to this status, any authorised dealership has the right to supply independent leasing companies throughout Europe. Independent leasing companies should be able to obtain vehicles at competitive conditions considering their scope and purchasing scale, thus maintaining a level playing field with captive leasing providers ; equally they should be able to provide aftermarket services in a way that consumers can benefit from the financial advantages gained thereof.

If leasing companies were to lose their end-user status in the future and if one were to accept the argumentation of VMs as put forward in past years, then leasing companies would have to be treated as businesses active in vehicle trading, purchasing, renting and reselling cars for commercial purposes. Consequently, independent leasing companies would have to be considered – from the perspective of the supplier - as non-authorised independent resellers.

The Commission has rightly stated that following the introduction of BER 1400/2002, all VMs with the exception of Suzuki have chosen to work through selective distribution systems. Such a distribution systems grants the supplier the right to impose on its authorised networks the prohibition to sell vehicles to non-authorised businesses. Consequently, the only possibility for independent leasing companies to obtain vehicles would be either through direct sales from VMs or if the VMs' networks would ignore the ban on sales to unauthorized resellers. However, the latter option can be excluded immediately given the VMs market power and the fact that dealers would risk contract cancellations, which in light of the currently difficult market conditions no dealer would deliberately take on. And the first option would very likely entail a discrimination of the independent leasing industry, as it can be expected that the majority of VMs, which have 'captive' leasing companies at their disposal, would grant those preferential treatments.

Hence, the disappearance of the lessor's end-user status would not only damage the level of considerable competition, which currently exists in the leasing sector, but it would also jeopardise the existence of the independent leasing industry. Eventually, the consumer would have to bear the detriments as VMs would dictate the prices applicable in the leasing market. Considering that the leasing industry's share in all vehicle sales accounts for 30 to 50% depending on the country, the above outlined development would represent a considerable restriction of competition to the benefit of the captive leasing industry and the clear detriment of the consumers. We regret that this aspect has been entirely neglected in the Evaluation Report and hope therefore that the Commission will consider it in the further review process.

2. Competition-enhancing role of independent leasing industry hampered by certain practices by vehicle manufacturers

The inevitable consequence of an expiration of BER 1400/2002 without adequate replacement will be an increase of the already today existing dominant market position of VMs to the detriment of independent operators active in the automotive sector, such as the

independent leasing industry, and consumers alike. Already today, we observe with great concern some practices deployed by VMs, which, while reflecting their market power, clearly raise competition concerns and it can be expected that these practices would in the future become the rule. One example consists in offering specific service packages (composed of a combination of repair service offered free of charge or at reduced costs) linked with the purchase of a new vehicle. The package is sometimes optional, sometimes bundled with the purchase. Consequently, non-authorised garages and repairers are excluded from providing their maintenance and repair services for these vehicles. Furthermore, this practice curtails one of the leasing industry's core competence and key contribution to competition, which consists in offering customers beneficial conditions by choosing the most adequate partners according to competitive criteria. This freedom, which is a crucial element for the leasing industry to enable customers to take advantage of competitive maintenance services either from authorised or from independent garages, would be effectively eliminated should such practices become rampant.

In conclusion one can say that in the absence of protective measures provided by BER 1400/2002, the current contribution of the independent leasing industry, which is today considered as a key promoter of competition in the automotive sector, would be severely weakened as a result of the growing power of VMs who would unavoidably revert to practices as described above. It is the consumer who would suffer from this development in the end. This cannot be in the interest of the Commission.

3. Pan-European cross-border business in the leasing sector

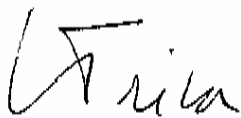
A further aspect that we feel should in the future be considered by the Commission is the cross-border sales of vehicles in the business-to-business area. In recent years, the share of international clients requesting true cross border deals has constantly been increasing along with their own international purchasing organizations. This demand is truly pan-European. However, we observe that this demand currently cannot be satisfied: it is made financially inefficient by increased logistical complexities linked to different national vehicle specifications or restrictions in local supply of vehicles. Since importers or national sales companies of VMs would refer any such request for cross-border vehicles to their retail network, these outlets tend to not be equipped nor capable to ensure the preparation of these vehicles for delivery outside their home markets. Any serious attempt to enable such cross-border deal (provided there are significant price advantages at the outset) seems to be very difficult to handle at the retail level for the required volumes and scope.

We understand that a free and unhampered pan-European competitive market presupposes the effective elimination of barriers established by nationally diverging specifications of vehicles. BER 2002/1400 has so far been a good tool for the promotion of competition throughout Europe, but it has not yet succeeded in eliminating the remaining barriers. This aspect has unfortunately not been considered in the Evaluation Report and therefore we strongly urge the Commission to make possible European-wide specifications as contribution to healthy competition throughout the automotive industry in Europe.

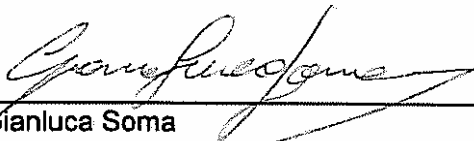
Finally, on the basis of our experience and market relevance we request that regardless of the future shape of the legislation, the end-user status of lessors and the key features of their competitive role as described above should be carefully taken into consideration.



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