

MTBN was set up in 1990 to advise Clients on the sale of car dealerships throughout the UK. The full range of services provided by MTBN can be found on our website www.mtbn.co.uk and this includes a note of some of the deals with which we have been involved.

We have reviewed the Commission's Evaluation Report in the context of the "sale of franchised car dealerships" and we strongly disagree with the conclusion that the general principles of Regulation 2790/1999 will provide the necessary protection.

Prior to BER there was a total imbalance of power between the Car Manufacturers and the Dealers. The primary reason was that Manufacturers had total control over Dealers due to their ability to terminate franchise agreements without reason and, as a result, they were in a position to enforce their policies whether anti competitive or otherwise. This also enabled Manufacturers to effectively force Dealers to sell their business and, as the transfer of the franchise required Manufacturer approval, they could also dictate to whom the business should be sold. Most Manufacturers encouraged their "favoured" dealers to acquire adjoining dealers creating substantial regional dealers with the benefits of the economies of scale but also reduced competition within the brand.

The increasing use of the internet has helped to create competition within each brand but allowing Manufacturers to revert to the old regime (with the ultimate sanction of termination) would enable them to take greater control of this form of advertising.

Whilst Manufacturers remain extremely powerful vis-a-vis the Dealers the changes introduced in 2002 requiring Manufacturers to give a good reason for the termination of the franchise agreement has redressed the balance to some degree. However in cases where Dealers have a fixed term contract the Manufacturers have an increasing level of control as the Agreement reaches the end of its term.

The 2002 changes requiring Manufacturers to approve the transfer of a franchise where a Dealer already represents the franchise elsewhere has also helped to create a more open market. However competition continues to be restricted as certain Manufacturers adopt a very restrictive policy in terms of new entrants to the franchise.

The current state of the economy may not be a major consideration in determining the appropriate changes to BER but the industry is currently experiencing considerable difficulties which are compounded by the fuel price increases and also the impact of the credit crunch in terms of selling cars on finance. There are likely to be a significant number of casualties in the coming months and it is important that the perceived impact of the proposed changes to BER do not add to the difficulties currently facing Dealers.

We agree with the general principle of simplifying BER but, against the background of the points set out above, we propose the following:

1. The right of the Manufacturer to terminate a franchise agreement should continue to require a good reason.
2. Manufacturers should be required to allow Dealers to renew fixed term agreements unless they provide a good reason not to.

3. The existing rules on the transfer of the franchise should be extended such that Manufacturers should be required to give a good reason not to allow the transfer to a Dealer that does not represent the franchise elsewhere.

These proposals should limit the ability of Manufacturers to impose anti competitive policies on their Dealer Networks whilst at the same time allowing Dealers to represent a broader cross section of franchises and further promote competition.

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