

31<sup>th</sup> July 2008

European Commission  
Directorate-General for Competition  
Office: J 70 - 01/128  
B-1049  
Brussels  
Belgium

By email: [Comp-car-sector@ec.europa.eu](mailto:Comp-car-sector@ec.europa.eu)

Our ref: Infomedia-HB  
Your ref: HT-1021 —  
Evaluation Report on the  
motor vehicle block  
exemption.

Dear Sirs,

**Re: Comments on Evaluation Report on the motor vehicle block exemption**

We are enclosing a response by our client, Infomedia Limited, to the Commission evaluation report on the operation of Regulation n 1400/2002.

This comments on issues relevant to the structure of the market for automotive information in the context of the block exemption Regulation.

Please let us know if anything further would be useful.

Yours faithfully,



Orr Litchfield  
Hugh Barret  
Partner

DDI: +44 (20) 7395 2186  
Email: [hugh.barret@orrlitchfield.com](mailto:hugh.barret@orrlitchfield.com)

**Response to the Commissions Evaluation Report on the operation of Regulation (EC) n 1400/2002 Concerning Motor Vehicle Distribution and Servicing published 28<sup>th</sup> May 2008.**

**Orr Litchfield on behalf of Infomedia Limited.**

  
**Orr | Litchfield**

Third Floor, Essex Hall  
1 – 6 Essex Street  
London WC2R 3HY  
T 0044 (0)20 7395 2180  
F 0044 (0)20 7395 2181  
| [www.orrlichfield.com](http://www.orrlichfield.com)

## **Introduction**

This response to the Commission's Evaluation Report dated 28<sup>th</sup> May 2008 on the operation of regulation (EC) n 1400/2002 is given on behalf of Infomedia Limited ("Infomedia") and deals with competitive issues in the market for automotive information in Europe.

## **Infomedia**

Infomedia is a publically quoted company based in Sydney, New South Wales, Australia which produces and distributes electronic automotive parts and servicing information products to motor dealers and repairers world wide. The company's products are supplied to over 52,000 users in 160 countries and in 25 languages. It is active in the European market and distributes its products throughout Europe.

## **The European Market for Information in the Motor Industry**

The manufacture, distribution and maintenance of motor vehicles in Europe gives rise to a complex network of commercial activities which is controlled to a very significant extent by the availability of information provided by motor manufacturers and other original equipment producers ("OEMs").

The Commission Notice on the definition of relevant market for the purposes of Community competition law states that:

*'A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use`.*

The subsidiary or "horizontal markets" referred to in this response satisfy that definition.

Commission Decisions of the 13 September 2007 relating to proceeding pursuant to Article 81 of EC Treaty (the "four Decisions")

In the four Decisions, the Commission expressed the view that the market for OEM information in the automotive market was brand specific.

*"All information, with the possible exception of certain general mechanical training, is brand specific and is of no use for repairing and maintaining vehicles of other brands. The Commission's preliminary conclusion is therefore that the supply of technical information pertaining to motor vehicles of each brand may constitute a distinct product market" (paragraph 17)*

OEMs are in this sense the exclusive producers of information which travels down to a variety of consumers of that information at the various levels at which that information is utilised. Each information stream (which can be characterised as a vertical progression) is brand distinct.

## Subsidiary Markets

The aftercare and maintenance of motor vehicles is supported by a variety of products and services which are themselves differentiated into separate markets.

Examples include:

- Information publishing
- Diagnostic equipment manufacture
- Specialist tools manufacture
- Vehicle repair
- Various other services

Participants in these markets generally seek to encompass more than one brand so as to provide products and services to the largest possible consumer market.

As such, they may be seen as "horizontal producers" who are dependent on OEM information within one or several of the vertical streams.

A diagrammatic representation of this structure is given in the Appendix to this response.

Each of these subsidiary markets include producers of distinct products and services which add value through innovative technology and investment and compete by offering interchangeable products within their distinct consumer sectors.

Information publishing for example is the process by which raw data inputs relating to OEM products and processes are compiled within complex electronic programs in order to provide essential information to repairers in the most efficient and convenient manner.

The origination of the supporting software platforms requires substantial investment and Infomedia employs in the region of 52 dedicated programmers on the development of new products or modifications to existing ones.

The products which Infomedia distributes are able to combine diverse forms of information such as vehicle identification, parts codes, labour times and order lists within output reports which enable repairers to significantly improve their productivity and quality of service to consumers. The advantages provided by this technology may in fact determine the commercial success or failure of many repairers dealing with increasingly complex vehicles and model ranges.

A recent informal study carried out by Infomedia's operational staff found that the times required to generate customer quotations for common servicing and repair operations for a mid range of passenger cars were in the region of 10 minutes where information was sourced from a current manufacturer web page compared with approximately 20 seconds for the same processes when performed on one of their own products. The cumulative difference in these times is extremely significant extended across an average working day.

## Constraints on the Development of the Horizontal Markets

The control of information by OEMs has led to arbitrary policies for the supply and pricing of information to the horizontal market producers with wide variations between individual manufacturers. The market for information was reviewed extensively by the Institut Für Kraftfahrwesen Aachen ("IKA") in 2004 in its *Final Report (Comp/F-2003/26/S12.371920)*

IKA noted significant deterioration following the introduction BER 1400/2002

*"Independent publishers are facing extensive delays from vehicle manufacturers in agreeing to provide information in some quarters. Even 9 months after the regulations of the new BER came into force there are some vehicle manufacturers who although they stopped supply of information at the end of October 2003 have still not presented conditions or terms to continue supply, even though independent repairers are able to obtain it. Additionally the prices and conditions have worsened significantly since the introduction of the new BER" (paragraph 4.4)*

The final report of London Economics *"Developments in Car Retailing and After-sales Markets under Regulation 1400/2002"* considered the position two years later in June 2006 and found that:

*"Due to the increasing technical complexity of motor vehicles, car service and repair now requires a large set of technical skills as well as specialised tools for both diagnosis and repair*

*However the fact that BER 1400/2002 promotes equal access to technical information has not been fully translated into industry practice. As already mentioned in this report, the IKA study leads one to suspect that the authorised repairers' possession of the full range of necessary technical information is making independent repairers dependent upon them .... Moreover, since independent repairers lack the information embedded in brand-specific electronic repair tools, they are obliged to turn to the authorised repairers to complete specific repair jobs, thereby adding a second string to the dependent relationship".*

Commenting on the increased sophistication of some groups of independent repairers, the report further noted:

*" These market developments have given greater importance to other groups of market players such as those providing consolidated information on car repairs and those supplying garage equipment and tools. These markets are viewed as having large potential for growth as the needs of the independent sector become increasingly sophisticated".*

And further

*"The reported trend with respect to access to technical information for independent operators seems thus to be going against the objectives of the Commission. Access to VM proprietary technical information which is indispensable for most repairs in present-day vehicles, seems to be increasingly complicated and costly"*

Infomedia is able to confirm this finding and has itself experienced a consistent pattern of refusal and pricing exclusion in the supply of information necessary to extend its product range.

Following the 2006 Report, the four Decisions<sup>1</sup> and the resulting manufacturer Commitments led to the release of basic parts data to repairers through OEM websites.

This development, although welcome, has not however alleviated the difficulties of horizontal producers since the information supplied is insufficient to support the development of their products and has not been made available to them on commercially viable terms.

As noted, the manufacturer websites lack the functionality provided by the technologies added by information publishing and do not include additional information such as labour times required by repairers.

As such they represent a further extension of the vertical supply chain for information and do not address the distortions in the overall market described in this response.

### **Implications for Competition**

The BER has supported vertical organisational chains in which essential information has been sequestered and withheld from participants in the horizontal markets through refusals to supply, discriminatory pricing policies and the assertion of intellectual property rights.

On the latter point, it is submitted that the data required by the horizontal markets is rarely of a type likely to compromise the confidentiality of genuine intellectual property or the fruits of innovation since that information cannot be used to replicate manufactured products. Such information is generally treated as protected only on the basis of OEM confidentiality policies. The issue of pricing should follow this principle.

The non renewal of the BER is welcomed as a first step towards the establishment of properly competitive markets within the motor industry at both vertical and horizontal levels.

Further action will however be required by the Commission under articles 81 and 82 of the Treaty to liberalise the horizontal markets to meet Commission objectives which include:

- The removal of artificial barriers to entry.
- The promotion of new technology and price competition in the horizontal markets leading to the development of multi-brand platforms and greater consumer choice

---

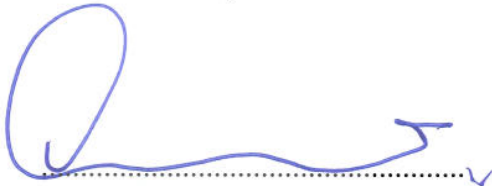
<sup>1</sup> Case COMP/E-2/39.140-DaimlerChrysler; Case COMP/E-2/39.141-Fiat; Case COMP/E-2/39.142-Toyota; Case COMP/E-2/39.143-Opel.

- The encouragement of investment in new technologies and products providing benefits to both repairers and ultimate consumers within the European market.

## **Conclusion**

Infomedia supports the non renewal of regulatory exemption from Article 81 concerning motor vehicle distribution and servicing but urges the Commission as part of the more flexible regime to which it refers to prioritise action to eliminate competitive distortions and foreclosure in the horizontal markets for motor industry products and services in order to fully achieve the consumer objectives identified in the four Decisions.

Dated 31st July 2008



Orr Litchfield

**For and on behalf of Infomedia Limited**

## Appendix

### Schematic Structure of the Market for Automotive Information.

		<b>Vertical Information Markets</b>		
	<b>OEM</b>	<b>OEM</b>	<b>OEM</b>	<b>OEM</b>
	<b>Information Flow</b>	<b>Information Flow</b>	<b>Information Flow</b>	<b>Information Flow</b>
	↓	↓	↓	↓
	↓	↓	↓	↓
<b>Horizontal Producer Markets</b>	→			
<i>Information Publishing</i>				
<i>Diagnostic Equipment Manufacture</i>				
<i>Specialist Tools Manufacture</i>				
<i>Repair</i>				
<i>Various Other Services</i>				