

PIM

POLSKA IZBA MOTORYZACJI

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Ms Neelie Kroes
European Commissioner for Competition
European Commission
B-1049 Brussels
Belgium

31st July, 2008

Dear Commissioner,

Subject: DG Competition's evaluation report on the functioning of the Block Exemption Regulation 1400/2002

Enclosed, you will find a position paper of the Polish Chamber of Automotive Industry and Dealer Council at the Polish Chamber of Automotive Industry on the EC report on the functioning of the Commission Regulation (EC) 1400/2002 concerning vehicle distribution and servicing.

I am at your entire disposal to provide you with any further information you may require.

Yours sincerely,
Agnieszka Błoch

Enc: The position of the Polish Chamber of Automotive Industry and the Dealer Council at the Polish Chamber of Automotive Industry on the DG Competition's evaluation report on the functioning of the Block Exemption Regulation 1400/2002 concerning vehicle distribution and servicing

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**Position of the Polish Chamber of Automotive Industry and the Dealer Council
at the Polish Chamber of Automotive Industry on Commission Evaluation
Report on the Operation of Regulation (EC) N° 1400/2002 Concerning Motor
Vehicle Distribution and Servicing**

On the 28th of May the European Commission published a report, which contents evoke concern of all the representatives of the Polish car dealer market. The Dealer Council at the Polish Chamber of Automotive Industry (PIM), which represents Polish entrepreneurs operating in the motor vehicle distribution and servicing sector, would like to take a stand on a number of statements included in the report. The position regards many of the most important achievements in the market, which result from the application of the Regulation 1400/2000 (the BER) and which may be irrevocably lost in consequence of Commission's decisions if they are taken accordingly to the spirit and body of the report. The Dealer Council firmly declares that in order to maintain competition and to reduce car manufacturers' monopolistic practices, and thereby to improve both the availability of products for end customers and business conditions for dealers, the automotive market needs a subsequent regulation which would be similar to the functioning one.

1. Multibranding

In the report the Commission assesses that allowing same-showroom multibranding, introduced by the BER, has not fulfilled its pro-competitive role and dealers have not taken up the opportunities it has offered to a sufficient degree. The Commission argues that the same level of development of multibranding would be forced by current market trends, even in the absence of the provisions of the BER. These statements analysed from the Polish dealer market perspective seem to be entirely false. It should be noted that most of the volume and luxury brands operating in Poland have a very hostile attitude towards multibranding. This attitude is expressed not only in comments, but also in their day-to-day conduct. Well-known are cases of informal and very aggressive pressure exerted by the concern Renault on its dealers

who had the courage to start cooperation with the Ssangyong brand. Another well-known example is the case of a Toyota dealer expelled from the network on the basis of the first flimsy excuse that the concern used to terminate the contract, though it is common knowledge that the real reason behind the termination was that the showroom had widened its product range with Suzuki cars. The Dealer Council at the Polish Chamber of Automotive Industry could present dozens of examples of letters addressed by concerns to its dealers interested in widening the product range with new brands, letters in which dealers were discouraged from such ideas quite unambiguously way and blackmailed mostly with lowering the level of quality bonuses for the cars sold. However, despite all those unlawful activities, which also run counter to good practices, multibranding is developing in Poland slowly, but steadily. And it is beyond any doubt that multibranding contributes to increase competition and the availability to the clients of brands entering the market. Without the BER and without enforcing with it car concerns to accept multi-brand showrooms, such brands as Ssangyong would have no chance to exist in Poland, and the Poles would find it much more difficult to purchase cars from the concern Mazda, which, since June of 2008, has been again present in the Polish market, taking up the multibranding opportunities offered by the BER. Suffice it to say that out of the first 11 Mazda outlets in Poland only 2 are not in multi-brand showrooms.

The Dealer Council at the Polish Chamber of Automotive Industry firmly demands that beyond 2010 regulatory solutions aiming at maintaining same-showroom multibranding for car sales are adopted. The adoption of provisions that at the moment of signing new vertical agreements would enable car manufacturers to eliminate multibranding from the existing showrooms, would bring unimaginable effects for those dealers who have benefited from the European legislation. Moreover, the new regulation or other provisions that will follow the present ones should oppose to increases in architectural standards at will of car manufacturers. Such practices cause an unjustified rise in car distribution costs and, consequently, worsen the situation of EU consumers.

The Dealer Council at the Polish Chamber of Automotive Industry firmly states that the multi-brand car showrooms ideal might be stifled by Commission's incautious legislative actions, which might be regarded as running counter competition ideas

and to the detriment to consumers, and therefore being at variance with the spirit and the letter of the Treaty.

2. Vehicle distribution systems

Showrooms' multibranding is linked to another legal issue which change was mentioned by the Commission, namely the quantitative selective distribution system. The Commission rightly notes that this system has been used by manufacturers in contrast with the spirit behind the BER in order to decrease the network density and, in result, to limit market competition within one-brand network. The Dealer Council at the Polish Chamber of Automotive Industry entirely agrees with the statement of the report stating that the functioning of this system has done more harm to competition than good. Firstly, it has given producers endless possibilities for increasing dealer standards and, secondly, it has guaranteed them total freedom of network choice. As a consequence, this system is one of the major obstacles in developing multibranding; this fact was missed in the report. Since dealers cannot take the decision independently, but it fully depends on the consent of manufacturers, who, in most cases, prefer cooperating with one-brand showrooms, it is difficult to add another brand to an existing showroom. The Dealer Council at PIM firmly states that what should be taken into serious consideration in elaboration of the new law is the introduction of provisions excluding the possibility of creating networks within the quantitative selective system and replacing it by the qualitative selective system as the basic system for distribution permitted to build dealer networks. Moreover, special attention should be paid to the legal straitjacket enabling manufacturers and importers to freely define dealer standards. As it has already been mentioned in the previous point, this is an anti-consumer practice that burdens clients with inflated and unjustified distribution costs driven by manufacturers.

3. Abolition of location clause

The Commission, as in the case of multibranding, expresses its discontent at the fact that dealers have made only a minimal use of the freedom resulting from the abolition of the "location clause". One has to agree with the Commission's evaluations that this clause has not been used very often, also in Poland. Nevertheless it also needs to be

stated that this provision has been functioning in the market only for 2 years and it is new to the dealer mentality formed in the last decades. It seems almost certain that despite the inadequate present effectiveness of the clause, all needs to be done to maintain this type of regulation to function also beyond 2010. Dealer's freedom in setting up additional sales and delivery outlets is crucial for customers, in particular for those from small towns, where construction of showrooms meeting full standards may not have any commercial sense. In the report the Commission criticised the effectiveness of the abolition of the clause, but it completely missed the main reason behind this. Namely, the fact that manufacturers and importers have not complied with the Commission's recommendations and that there has been a lack of a description of much lower and less expensive standards for sales and delivery outlets. As manufacturers have not determined these standards, with their economic moves they have blocked the development of diversified distribution forms within one dealer network. The Commission has never reacted to this fact and in no way has enforced on manufacturers complying with the guidelines, even in the Explanatory Brochure.

The Dealer Council strongly supports maintaining the dealers' right to open additional sales and delivery outlets without importers' consent, and is certain that new lower standard outlets will be opened at a steady rate, and thereby EU consumers will find the motor vehicles offer available more easily.

4. Protective clauses in dealer contracts

One of the most important BER achievements is ensuring for dealers a greater business safety in order to encourage them to pro-competitive behaviour. The Dealer Council at PIM would like to express its surprise and a strong opposition to the Commission's deprecating and questioning the rightness of the provisions of the functioning regulations. In no way one can agree with the thesis that even in absence of the BER restrictions (a minimum two years' notice period for termination of a dealer contract, a written statement of reasons for termination, obligatory arbitration for resolving contractual disputes between parties) manufacturers and importers would act accordingly to economic sense and would not take actions against dealers to punish their pro-competitive behaviour. The statement included in the report

saying "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." seems to be simply bizarre. In the Polish market there are well-known cases that confirm Commission's naivety in this respect. Let us at least refer to the described above example of a Toyota dealer, who managed to make the concern pay compensation only because of the written form of the reasons for termination of the contract, or to the examples of Renault dealers, also mentioned above, who deprived of a guarantee of a minimum two years' notice period in case of termination, would have seen the concern to have much less difficulty in expelling them from the network. At this stage, a fact which the Commission highlighted in its documents on many occasions, and which was ignored in the report of the 28th of May, cannot be disregarded. Namely, the protection of significant financial investments of dealer SMEs, investments which often reach several millions of zlotys. In the absence of strengthened legal protection of vertical agreements similar to the previous Regulation, development activities within this business area will be abandoned, and thereby processes limiting market competition will be trigger off.

The Commission's statements suggesting replacing the regulation on obligatory settlements of disputes in arbitration by some vague voluntary "code of good practice" cause here, in the Dealer Council at PIM, a great concern and a need to express our firm protest. It would be really difficult to agree with at least one of the arguments from this part of the report, since it states that arbitration has fulfilled its role and allowed to settle many disputes between parties to vertical agreements rapidly and without unnecessary costs. This is what has taken place in the West European countries. As a consequence of dealers' attitudinal incapacitation, especially of those ones coming from the new EU Member States, in Poland only the first phase of raising awareness of opportunities that dealers' right to arbitration create is being carried out. In our country there has not been a single arbitration case in this respect, but all the dealers agree that this regulation guarantees them a greater independence from manufacturers, and thereby it contributes to promoting pro-consumer behaviour.

The Dealer Council strongly supports maintaining the provisions which guarantee stability of dealer contracts. This will ensure a greater dealers' willingness to behave in a pro-competitive way, as far as multibranding or new distribution models are concerned. Dealers, apart from end customers, are the only carriers of the competition ideas at the organisational level. It would be hard to expect such voluntary, not enforced by legislation behaviour from vehicle manufacturers and importers. Protection of dealers' investments is another crucially important matter related to this issue. Operating in vehicle dealer market requires investments estimated for millions of euros. The absence of additional legal guarantees for dealer contracts may cause a decrease in entrepreneurs' interest in investing in this market, and thereby, curtail freedom in the availability of motor vehicles to EU consumers.

5. Availability of spare parts from independent suppliers to authorised networks

The BER has guaranteed authorised repairers the opportunity for using additional supply sources of spare parts which do not come from vehicle manufacturers. According to market research in the last 5 years this legislation have led to an increase exceeding 30% in the independent suppliers share in the volume of spare parts used by authorised repairers. In the relatively new Polish dealer market this ratio has already exceeded 10% and is growing year by year. The regulatory solutions of the BER, as well as the market processes that they have stimulated, caused an immediate response of vehicle manufacturers, namely a reduction in original spare parts prices. In every respect the results of changes in legislation are favourable to the EU end customers.

The Dealer Council at the Polish Chamber of Automotive Industry firmly demands that legal mechanisms that allow authorised sales networks to make use of the possibility of purchasing spare parts from independent suppliers are maintained. The solution offered by the BER has brought very positive results for customers as it has allowed them to use services of better technically equipped authorised networks and spare parts at lower and affordable prices, in particular in case of after warranty repairs. Changes in legislation or its absence may lead to restoring bans imposed by vehicle manufacturers on their authorised repairers on using spare parts from

independent suppliers. This would be a case of anti-competitive behaviour and it would cause a substantial increase in repair prices for end customers.

6. Summary

The Dealer Council stresses that only the most vital legal aspects of functioning of the automotive market have been raised above. Additionally, at least a few more positive effects of the functioning of the BER which have made the market more stable and pro-competitive could be mentioned as well.

Therefore, the Dealer Council at the Polish Chamber of Automotive Industry would like to firmly state that the contents of the Commission's report are causing a great concern among all the Polish automotive entrepreneurs and are arousing our great anxiety over squandering the achievements of the over thirty years' Commission's pro-competitive policy. The Dealer Council, on behalf of the Polish entrepreneurs of vehicle distribution and servicing market, demands that the arguments presented to the Commission by self-governing automotive organizations in 2007 are reconsidered. It seems that the facts, statistics and opinions presented to the Commission, unambiguously indicating the positive direction of market development fostered by the functioning of the BER, have not been taken into proper consideration by the authors of the report. The Dealer Council at the Polish Chamber of Automotive Industry strongly supports maintaining of the BER regulatory solutions that guarantee a high competition level in the automotive market and safeguard economic freedom, especially within the areas mentioned above.

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