



The Eurocouncil of the Fédération Internationale de l'Automobile
European Bureau

FIA European Bureau
53, rue d'Arlon
1040 Bruxelles

ID number: 95060931779-32

Per email: comp-greffe-antitrust@ec.europa.eu

**FIA EUROCOUNCIL ANSWER TO THE
CONSULTATION ON THE REVIEW OF COMPETITION RULES APPLICABLE TO VERTICAL
AGREEMENTS**

The Eurocouncil of the Fédération Internationale de l'Automobile (FIA) as Europe's leading organisation for motoring consumers -and its member automobile clubs - have as their priority, affordable, safe, clean and sustainable mobility throughout the 27 member States. Some 35 million citizens are members of European FIA clubs and they depend on them for a range of consumer services and advice including breakdown assistance. These motorists are the owners of 20% of Europe's passenger cars. Across Europe on a daily basis, FIA clubs deal with members' queries regarding where and how to purchase their vehicles and after sales servicing issues. Moreover, the clubs' roadside assistance patrols answer to in excess of 10 million rescue calls annually. In the majority of cases, cars are put back on the road to complete the journeys started that day. Thus the FIA is well placed to respond to this consultation first and foremost as a representative of motoring consumers who total some 270 million across the EU.

Motor vehicles are very specific, expensive products and everything should be done so that European consumers pay the lowest possible price for buying, maintaining and getting their cars repaired.

We believe that a revised Vertical Restraints Block Exemption Regulation 2790/1999 (VRBER) is not likely to foster more efficient competition in the automotive sector. Indeed, in the motorcycle (powered two-wheeler) sector where competition is regulated by the VRBER, aspects criticised by the Commission with respect to the car sector also prevail here. Servicing activities have not been outsourced to subcontractors, nor is there any tendency to split distribution and servicing activities. Rather, manufacturers exploit the less restrictive VRBER provisions to oblige authorised dealers to abstain from selling multiple brands for a period of five years and in making dealer agreements cancellable at short notice. Arguably, there is less competition in the two-wheel segment than there is in the segments covered by the motor vehicle BER.

The following aspects, which proved beneficial to the European motorists' consumers would not be covered if the automotive primary and aftermarket were to be regulated by the VRBER:

Right for consumers to choose where to get their car repaired/ serviced (access to technical information & original spare parts, warranties...)



The Eurocouncil of the Fédération Internationale de l'Automobile
European Bureau

As a consumer organisation, FIA Eurocouncil supports an improved motor-specific MVBER that provides for the affordability of repair and maintenance of cars.

Neither the access to technical information, nor the access to spare parts needed for repair would be covered by the application of the proposed VRBER and these dispositions play an important role in ensuring that consumers get a fair deal for the servicing and repair of their cars. We are convinced that consumers would benefit from a revised, improved BER taking into account the experience gathered so far and the technical evolution of cars.

Under the current MVBER, car manufacturers may not benefit from the exemption if they do not comply with their obligation to provide independent repairers with technical information¹. Such hard core restrictions are necessary to improve the level of competition in the aftermarket. It is not found in the VRBER.

In its Communication on Impact Assessment on the Future Competition law Framework applicable to the Motor Vehicle Sector, the European Commission acknowledges the challenge posed by *"the possible misuse of legal and extended warranties granted by vehicle manufacturers, which are sometimes honoured only on condition that all repair and maintenance works (...) are carried out by a member of the authorised network"*². The only appropriate means to break this "imposed link" between sales and after sales is an improved MVBER. The VRBER is not detailed enough to regulate such an issue. It lacks the direct effect of a sector specific regulation and its difficult enforcement is likely to jeopardize the legal certainty achieved by the MVBER for consumers in the past decades.

Consumers' right to choose their car (Multi-branding)

Dispositions of the current VRBER 2790/1999 and the draft proposal³ would allow for an 80% supply clause, which would clearly limit multi-branding opportunities. The situation under the current MVBER restricts any "non-compete" obligation on dealers when they are obliged to purchase more than 30% of their supplies from a single manufacturer⁴. The MVBER also contains provisions guaranteeing the competitive independence of dealers, such as the right to two years' notice of termination⁵. Relying on the VRBER would create an imbalance in favouring vehicle manufacturers in the distribution process.

Consumers should be allowed to choose their vehicle – households' second more important expense after a house – from a broad range of brands. Multi-branding also provides for increased inter-brand competition, which ultimately results in lowering prices for consumers.

Too many MVBER specific provisions upholding motoring consumers' rights are absent from the VRBER⁶. FIA European clubs call on the Commission to ensure legal certainty and uphold consumers' rights in a revised and improved Motor-specific Block Exemption Regulation.

As at 28/09/2009

¹ Article 4.2, Regulation n° 1400/2002

² EC Communication on the future competition Law Framework applicable to the motor vehicle sector, COM 2009(388), page 8 (paragraph 32).

³ Combination of articles 1(b) and 5(a)

⁴ Articles 1(b) and 5.1(b) from the Regulation n°1400/2002.

⁵ Regulation n° 1400/2002, article 3 (5)