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Regarding the proposed Block Exemption Regulation and Guidelines for the Automotive Sector.

The Danish Federation of Small and Medium Sized Enterprises (DFSME) represents 6 Danish trade organisations in the independent part of the automotive sector. DFSME would like to thank for the possibility to present our comments to the proposed MVBER.

To begin with the DFSME is content that the Commission wishes to continue a sector specific Block Exemption Regulation for the Automotive Sector (MVBER) as well as a set of guidelines minimizing future disputes about what is allowed on the after market.

However, DFSME finds it rather unpractical that the regulations regarding the automotive sector are to be found in 3 different documents rather than one; the general BER, the sector specific MVBER and the guidelines.

In order to make the regulation as transparent and user friendly as possible, DFSME suggests to include the conditions in the general BER which are to be used for the automotive sector, unaltered into the MVBER. This will ease the use of the regulation and avoid leading to different interpretations and implementations in the different member states.

Considering the larger difference in size and economic power between the car manufacturers and the small independent repairers, it should be avoided if possible to make it prohibitively expensive for the SMEs to lead court cases regarding the MVBER. In the view of DFSME this will be the case in the absence of hard core conditions which would lead many to abstain from leading cases at all.

Access to technical information

The current MVBER sets equal access to technical information for authorized as well as independent repairers as a condition for obtaining the exemption.

This condition is taken out of the proposed MVBER.

DFSME believes that this change will reduce the incentive for the car manufacturers to make the technical information accessible to the independent repairers, when equal access ceases to be a necessary condition for the exemption. This will in turn unquestionably hurt competition on the market when the independent repairers no longer have

access to the required information, which solely the authorized car dealerships possess. In particular in a country like Denmark which has a relatively high average car age and thus a high demand for repair work.

The independent repairer's lack of access to technical information not only affects the competition on the market for auto repairs. The independent repairer's lack of access to technical information can furthermore have a negative impact on road safety, fuel consumption and the environment. Without the correct information from the car manufacturers, the independent repairers run the risk of performing wrong repairs on the car. Repairs that potentially reduces the safety of the driver, passengers, and other motorists as well as harming the environment more than necessary.

In this regard it is insufficient that the rules regulating access to technical information is treated in the guidelines to the MVBBER. The guidelines can solely be used as guiding principles and do not have status as a legally binding document.

According to the Commission, access to technical information is just part of the considerations in the overall evaluation whether or not to exempt an agreement. Thus there is no guarantee that an agreement will not be exempted even if the independent repairers are not given access to crucial technical information. This is not satisfactory in the view of DFSME.

This is a considerable weakening of the legal position of the independent repairers and their competitiveness in relation to suppliers and the authorized repairers, despite the fact that the Commission underlines the importance of the independent repairers for the competition in the guidelines.

The Commission points to Regulation 715/2007 (the so-called EURO-5 Regulation) which contains rules about the access to technical information for repair and maintenance work on cars, as the reason not to make access to technical information a condition for an exemption.

However, the EURO-5 only relates to vehicles type-approved after September 1st 2009.

Thus EURO-5 will not fully come into effect before the older cars are phased out and all cars are type-approved after September 1st 2009. Until then the market will be in a vacuum concerning the legal position. It is of the utmost importance to ensure the competition on the repair market that Article 4(2) in the current MVBBER is continued in the coming MVBBER, making it a condition for exemption that full and equal access to technical information is given to the independent repairers.

Concerning the access to technical information certain conditions are present which in practise hinders the access to technical information for the independent repairers.

When a component is changed in a modern day car, it has to be registered or coded into the onboard computer. This can be done in 2 ways. Either by using a special online system from the car manufacturer or by sending the information to a car dealership manually, who then manually sends the information to the car manufacturer, who

then manually resends the information to the car dealership, who finally resends the code to the independent repairer manually.

It is obvious that when there is not equal access to the technical information, and the independent repairers have to resolve to the manual solution described above, it will take longer before the information is submitted to the onboard computer of the car and the customer can be back on the road. This reduces the competitiveness of the independent repairers vis-à-vis the authorized repairers since the customer will be inclined to choose the more expensive solution at the authorized repairer rather than be without his car for longer than necessary.

In case an independent repairer wishes to join the car manufacturer's online systems, he faces another problem since each brand has its own specially designed system. This means in practice that an independent repairer, repairing for instance 15-20 different brands which is not unusual, would have to pay for the access to the online systems of each of these brands, and pay for technical solutions that are able to handle these many different systems and platforms.

This would be obviously very expensive and very few of the typically small independent repairers would be able to afford it. This is a serious obstacle for the competition from the independent repairers and hurts the market for repair services.

It should thus be made a condition for fulfilling the requirement of free and equal access to technical information that the information is provided on a standardized platform, and at a price which is affordable for the smaller repairers as specified in EURO-5.

Abuse of warranties

It is an often heard and wide spread misconception among the consumers that a factory warranty is only valid in case all repairs and service checks have been carried out at an authorized dealership. The authorized network does little to correct this misunderstanding.

The Commission has previously expressed doubt that an agreement containing such a provision benefits the consumers. DFSME fully supports this doubt.

In order to completely exclude such agreements hurting competition, the MVER should contain a hard core clause in Article 5 that such warranties cannot be exempted.

In this regard it should be considered as abuse of a warranty – and thus exclude exemption of the warranty – if the car manufacturer tries to circumvent the warranty rules by selling an extended warranty as an insurance at an artificially low price. For instance by offering the customers an extended warranty for the price of 1 €, which obviously doesn't correspond to the service sold, under the condition that the customer always uses specifically appointed authorized repairers.

DFSME urges the Commission to give concrete examples in the MVBBER of what will be considered as misuse of the warranties. In the view of DFSME it should be impossible to give warranties under the condition that the customer uses specific repairers. A warranty should solely be condition to observance of the regular servicing which can also be performed by an independent repairer.

Distribution of spare parts

DFSME believes that continuing the rules from the current MVBBER in the coming MVBBER will increase competition of the market for spare parts.

However, regarding captive parts – i.e. parts that the car manufacturer produces themselves – there is still an issue with the competition. The Commission itself has pointed this out in its impact assessment from July 2009. In reality the independent repairers are forced to purchase these spare parts from the authorized repairers or dealerships - who are their direct competitors - at retail prices rather than at wholesale prices which the authorized repairers does.

This distorts competition when some repairers (the independent) are forced to purchase certain spare parts on other and more expensive terms than their competitors, since this obviously has an impact on the overall cost of the repair which the customer pays.

In the view of DFSME it should be added as a hard core clause in the MVBBER that independent repairers should have equal access to buy captive parts at the wholesaler on the same terms as the authorized repairers.

Yours sincerely,

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