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Courtesy translation

Reply concerning the draft proposal for a Commission block exemption regulation and guidelines for vertical agreements in the motor vehicle sector.

On 21st December 2009, the Commission published its draft block exemption regulation and guidelines for vertical agreements in the motor vehicle sector.

In the drafts the Commission draws a distinction between the market for sale of new vehicles and the market for after-sales service and repairs and/or for the supply and distribution of spare parts (i.e. the after market).

Agreements concerning sale of new vehicles

The Danish Competition Authority agrees that it is appropriate to align the regulation of agreements for the purchase, sale and resale of vehicles to the general regulation of vertical agreements which applies to other sectors.

However, Denmark does not have any national legislation protecting contracts entered into by the dealers in the same way as in the current block exemption for motor vehicles. Therefore, there is no Danish legislation that provides the suppliers with incentives to offer the dealers a notice period of 2 years. If the Commission regulation in force is to be amended, it is important to take into account that the dealers have already made investments based on the regulation that currently applies.

Multibranding has been widely used by dealers in Denmark. The effects have been twofold. Firstly, the effect has been that the individual brands have been represented by a larger number of dealers shops. Secondly, multibranding has had the effect that dealers can also exist in areas where the population density is low and where the dealers would not be able to exist if they had based their business on only a single brand. In Denmark, the dealers provide brands from on average 2,5 different suppliers.

In view of the Danish Authority multibranding has led to increased competition for the sale of new vehicles to the advantage of the consumers.

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In conclusion, the Commission suggests amendments to the regulation in force which in particular will have effects for the dealers. Therefore, the Danish Authority supports the proposal to prolong the rules in force for a period of three years to give the dealers enough time to adjust to the new regulation.

Agreements concerning after-sales service and repairs and/or for the supply and distribution of spare parts (i.e. the after market).

The Danish Authority shares the assessment by the Commission that the primary competition problems can be found on the after market, cf. our reply of 22nd September 2009 to the Commissions notice concerning the future competition framework. As a consequence it is important that the new regulation - to the same extent as the rules in force - secures the objective concerning effective competition on the after market.

As regards access to technical repair information the rules in Regulation (EC) No. 715/2007 concerning type approval of vehicles secure that suppliers have to give access to technical information – also to independent repairers. However, the rules only apply to vehicles that are type approved after 1st September 2009.

The block exemption in force provides the suppliers with an incentive to provide access to technical repair information on equivalent conditions for both independent and authorised repairers if the suppliers want their agreements to be covered by the block exemption. According to the draft put forward by the Commission the conditions in Article 4(2) of the Regulation in force will be repealed.

This means that the draft does not contain an explicit condition to ensure undistorted access to technical repair information for authorised and independent repairers respectively. Therefore, the draft proposal will in particular have effect on cars that have been type approved before 1st September 2009.

In view of the Danish Authority it is worryingly that the Commission will repeal the conditions in Article 4(2) of the Regulation in force. By repealing this condition the Commission is in our view also removing incentive for the suppliers to provide access to the technical information. This could have consequences in the coming years until the rules on type approval will have effect in reality as the older cars are gradually phased out of the car park.

In conclusion, in view of the Danish Authority the suggested amendments do not secure the objective concerning increased competition in the after market. This is due to the fact that independent repairers are put in a difficult situation in particular in the Member States with an older car park – which is the situation in Denmark, cf. our reply of 22nd September 2009.

In addition, the draft guidelines does not explicitly stipulate that it constitutes a restriction of competition if the supplier withholds technical information towards independent suppliers concerning vehicles that have been type approved before 1st September 2009. According to the guidelines this is only one aspect that the Commission can take into consideration if the Commission has to assess whether the agreements are likely to be caught by Article 101(1).

The Danish Competition Authority would hereby urge the Commission to maintain an explicit condition that provide the suppliers with an incentive to give access to technical repair information for older vehicles on equivalent conditions for both independent and authorised repairers.

In view of the Danish Authority it is important to ensure that the independent repairers continuously have access to updated technical information also for older cars. This way they will be in a better position to exert a competitive pressure on the authorised repairers. An alternative could be that the Commission prolonged the current rules in Article 4(2) for a period of for example 5 years for cars that have been type approved before 1st September 2009.

With regard to access to spare parts the Danish Authority agrees that it constitutes serious restrictions if agreements hamper the free distribution of spare parts and components.

As regards the draft guidelines, the Danish Authority finds it useful that the Commission hereby has underlined that selective distribution agreements can restrict competition if a supplier abuses its warranty clauses. The Danish Authority agrees that this could be the case if the supplier makes its warranty conditional on the end user having all repairs, including those not covered by warranty, carried out within the authorised network. In view of the Danish Authority, such a practice would usually not lead to any advantages for the consumers/end users.

The official Danish language version of this reply and the attached courtesy translation may be published.

Yours sincerely

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Enclosure: {Official Danish language version of the reply}.