



European Commission

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## **CONSULTATION REGARDING A NEW BLOCK EXEMPTION REGULATION AND GUIDELINES FOR THE MOTOR VEHICLE SECTOR**

### **1. Introduction**

We refer to the Commission's invitation to provide hearing comments to the commissions' proposal for a new block exemption regulation and guidelines for the motor vehicle sector.

The Norwegian Association of Motor Car Dealers and Service Organisations ("NBF") has previously submitted hearing statements to the Commission on the 15 July 2008 and 14 September 2009 regarding the Block Exemption Regulation for the motor vehicle sector. Please find the attached copies of the hearing statements for your information.

### **2. Sale of new cars**

NBF perceives it as positive that the existing block exemption regulation, Commission Regulation (EC) no. 1400/2002 (the "MBER") has been prolonged with 3 years with regard to sale of new motor vehicles.

However, NBF is still concerned with respect to the future regulatory regime for distribution of new cars after 31 May 2013. As previously stated by NBF in its hearing statements, the vertical block exemption regulation (the "VBER"), which is presumed to regulate the motor vehicle sector in the future, will make it possible for the car producers and importers to include clauses in its dealer contracts that will limit the dealers possibility to opt for multi-branding. This is today one of the most important aspects of the MBER, and Norwegian dealers are to a large extent dependent on multi-branding. NBF is also concerned with the

fact that the provisions of article 3 of the MBER, that secures the independence of the dealers, which is important for the competition on the retail level, will be removed from the regulation. Article 3 regulates termination of contracts, including objective and transparent reasons for termination, the right for the dealer to assign its contracts to other authorised dealers and the minimum length of termination periods.

The Commission's draft guidelines for the motor vehicle sector, that will supplement the VBER, gives little specific guidance for the sale of new motor vehicles. This will create a legal environment with a low level of predictability for the players in the market.

### **3. The Aftermarket**

For the aftermarket the Commission has proposed that the VBER, with a supplementary sector specific block exemption regulation for the aftermarket, shall apply already from 1 June 2010 (the "Mini-BER").

The actual situation for authorised repairers is however, that the Mini-BER will not apply for these repairer's contracts with the producers/importers. The reason is that the VBER only applies if the producer or the authorised repairer's market share does not exceed 30 %. In the aftermarket it is normally the case that the market share of the producer exceeds 30 % in the product market covering aftermarket services for a specific brand. See paragraph 35 in the draft guidelines. Most brands in Norway have today approximately 70-90 % market share in the aftermarket. (E.g. authorised Toyota dealers probably provides services for 70-90 % on all service on Toyota cars while independent repairers provide the rest). So therefore, it will only be the independent repairers that can depend on the block exemption regulations for the aftermarket. This implies that producers and authorised dealers must assess its aftermarket contracts individually on the basis of the article 101 of the Treaty.

This will be a costly and demanding exercise for small and medium sized businesses.

The draft guidelines for the motor vehicle sector gives in relation to the aftermarket little specific guidance.

If the Commission's proposal is adapted, the sources of law will be very complicated. To be able to assess its position in relation to the competition rules the parties must relate to:

- The vertical block exemption regulations
- The guidelines to the vertical block exemption regulations,
- The mini block exemption regulations for the aftermarket,
- The guidelines to the block exemption regulations for the motor vehicle sector (which in limited extent gives specific guidance)

- The case law of the EC court of justice regarding the article 101 in relation to selective distribution systems

This is a costly and not very user-friendly legislative technique which gives a low degree of predictability for the players in the motor vehicle sector.

NBF is also concerned that the Mini-BER will come in to effect already from 1 June 2010, and fears that the producers, to be on the safe side, will terminate its contracts to be able to assess these up against the new competition regulations. The motor vehicle sector has been heavily struck by the finance crises and is in a face of consolidation. Uncertainty regarding termination of contracts will imply an unnecessary and additional challenge for authorised repairers.

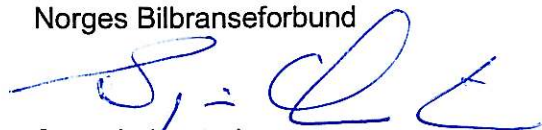
#### 4. Summary

NBF is satisfied with the fact that the existing block exemption regulation will be prolonged with 3 years for the sale of new motor vehicles, but is concerned for the legal frame work for multi-branding, and dealer's independence in relation to the producers after 31 May 2013.

With respect to the aftermarket, the Commission's proposal will imply an extremely complicated and not very user-friendly legal source situation which in practice will make it difficult for authorised repairers to assess its contracts in relation to the competition regulations. We assume that this will result in an increased number of enquiries to the competition authorities. The Commission has concluded that it is concerned about the competition in the aftermarket. It is therefore difficult to understand why the commission now proposes a competition law frame work that will be extremely difficult for the ordinary players in the market to understand.

If you have question to this please contact me on telephone 22 43 30 00.

Norges Bilbranseforbund



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