Synopsis of roundtable to discuss future of the Car Block Exemption Regulation

This document is a synopsis of the roundtable discussion that European Commissioner for Competition Neelie Kroes hosted on 9th February at the European Commission's Brussels headquarters to discuss the future of the block exemption Regulation (MVBER) that applies to motor vehicle sales and servicing. Participants included leading figures from all the main stakeholder groups, including consumers, car and parts manufacturers, dealers, roadside assistance operators and independent repairers. Although the invitees are referred to according to their position, it should be noted that they spoke in a personal capacity rather than as representatives of any particular company or organisation.

Attendees from car manufacturers

Certain among this class of attendees underlined that competition in the markets has improved to the benefit of consumers and cars have become more reliable. However, they expressed the view that the highly restrictive character of the current MVBER has acted as a straitjacket on motor vehicle distribution format and has in particular stifled the development of innovative forms of retailing. What the car industry needs is a less complex, less costly and easier to operate Regulation, in particular in times where survival is at stake.

They pointed out that the opportunities the MVBER was supposed to create had not been used. In particular, the provisions on multibranding had not been particularly effective, as it is being used mostly either in rural areas or by large groups just as it was before the current specific provisions came into effect. By and large the rules had contributed only to a very moderate increase in multi-branding; but had been costly and complex to operate and may have increased the risk of local dealer monopolies, in particular in metropolitan areas. In addition, multi-branding had not made it any easier for consumers to compare brands as they found it easy to do this over the Internet. The non-exemption of location clauses had also not been taken up by the market, particularly not with regard to cross-border satellite sales outlets.

Attendees from car manufacturers argued that the industry was committed to ensure that independent repairers received comprehensive and non-discriminatory access to technical information. Given that considerable investments had been sunk into ensuring that technical information flows to the independent repairers were assured, it would be highly irrational for them to cut back on these achievements, especially as to do so would run the risk that their brands would not be properly repaired within the independent sector.

Regarding the provisions designed to strengthen dealers' contractual protection, attendees from car manufacturers expressed the view that these had only had a limited protective effect. However, they underlined that dependence between manufacturers and dealers worked both ways. Only manufacturers with dealer networks that were ready to invest and were able to get appropriate credit lines from banks could compete successfully in the market. It was therefore not in the manufacturers' interest to destabilise their networks by arbitrarily dismissing dealers on short notice. It was for this reason that they had committed themselves to a code of conduct giving minimum periods of notice and alternative dispute resolution procedures.
Car producers underlined that most of the competition issues that were raised by other attendees had nothing to do with the MVBER, but were rather to do with instruments such as the subcontracting notice and the (stalled) design directive.

**Attendees from the dealer sector**

This category of attendees underlined the importance of the sector specific rules for SMEs and their beneficial effects for consumers. The dealer sector employed more people than the car manufacturing sector.

They argued that it was too early to write off the multi-branding provisions, and indicated that multi-branding had increased markedly in 2008/2009. This kind of sales was beneficial for the consumer and prevented dealers from being dependent on a single manufacturer. Bringing an end to the current block exemption would allow manufacturers to oblige dealers to limit sales to competing brands to 20%, thus stifling competition to the disadvantage of consumers.

Dealers pointed out that although they are unlikely to invest in new outlets, the provision relating to location clauses had had a dissuasive effect, in that manufacturers had been unable to maintain high price differentials between Member States.

Attendees from the dealer community argued that the specific provisions designed to strengthen the independence of dealers, such as minimum terms of contractual notice, and the provision relating to the transfer of dealerships have given SMEs more commercial freedom and confidence to invest. In particular the latter provision became an essential prerequisite for entrepreneurial freedom as well as safeguard for dealerships’ value. This independence, together with the availability clause of the MVBER had enabled dealers to engage in cross-border trade, which in turn had brought down price differentials. Moreover, the provision on arbitration had made it easier to solve disputes, due to its dissuasive effect.

According to the attendees from the dealer sector, the detailed rules in the MVBER have succeeded in creating a balance between the authorised dealers and the manufacturers. Moreover they had been helpful for SMEs, who were often unable to hire costly lawyers. The increased flexibility the general regime would provide would be at the expense of dealers.

**Attendees from component producers**

Attendees from component producers demanded that provisions designed to facilitate their access to both to the independent aftermarket and authorised repairers should be maintained. They pointed also to the importance of the rules ensuring independent repairers' access to technical information in the light of vehicle manufacturers' high market shares for spare parts.

There was a particular concern that the current provision enabling component producers to place their brand alongside vehicle manufacturers' brand should continue to apply as this provision allows repairers to identify the origin of the parts. Furthermore they also underlined the importance of the rules currently enshrined in the MVBER designed to maintain a level playing field in the market for spare part distribution.
Particular emphasis was placed on the need for additional guidelines aimed at clarifying the assessment of tooling arrangements and transfer of intellectual property under both Articles 81 and 82.

**Attendees from the independent repair and spare part distribution sector**

These attendees wished to see the sector specific provisions for the aftermarket maintained and even strengthened.

There was a particular concern as regards access to technical information. In the absence of specific provision, there was a danger that vehicle manufacturers would stop granting access. They reported that access to technical information was not easily available in all cases, in particular as regards information on electronic systems and safety equipment. Even when access is provided the information is often incomplete or unusable, for example due to the restrictive terms imposed on independent repairers. They also argued that it was important for technical publishers to have access.

Independent repairers underlined that the regulatory framework should ensure their access to captive spare parts directly from the manufacturer. They perceived that some vehicle manufacturers block access to many parts by exerting pressure on parts manufacturers through the misuse of proprietary tooling, subcontracting agreements and intellectual property rights. Without direct access, the only option in many cases is to purchase captive spare parts from the authorised network where parts are subject to mark ups as high as 100% and more and, in some cases, delivery delays compromising on service and price competitiveness to the detriment of consumers.

**Representative of the automobile clubs**

The representative of the association of automobile clubs went even further by underlining that the sector specific provisions applying to the primary market for new car distribution should also be maintained, thereby aligning his position to a large extent to the one expressed by attendees from the dealer sector. He stressed the significant costs of car ownership for consumers and underlined the importance of preserving and enhancing essential consumer rights. He claimed that the MVBER regulates a number of consumer rights which are not found elsewhere in EU legislation; namely the right to acquire a vehicle from outside the country in which the consumer resides; the right to have a vehicle that was purchased in a different country serviced in the consumer’s country of residence at an authorised garage for that particular make of car; and to lodge a warranty claim; the right to make use of independent garages and the right to make use of (cheaper) replacement parts for repairs without losing the warranty rights for a vehicle. He noted that many automobile clubs have a statutory obligation to provide breakdown services for a range of vehicles that are becoming increasingly more complex. At the same time consumers are legally obliged to maintain their vehicles in line with ever stricter safety and environmental standards. He asked for an enhanced sector specific regulatory framework to guarantee access to technical information and alternative spare parts.
Consumer association representative

The representative of consumer associations indicated that the review of the car block exemption rules is at this stage not a priority issue on BEUC’s agenda. He stated that it is difficult to judge the last block exemption review as a success. Price differentials remain even in a context where there has been an increase in inter-brand competition from Asian car makers and prices of new cars have risen more slowly than general price levels.

Multi-branding in the same showroom should be rather regarded as a tool to facilitate the market penetration by new entrants' then as a means of promoting well-informed consumer choice (which is easier and more effectively enhanced through independent information, comparative tests, the internet and other means). The changes that have been brought by the current MVBER such as multi-branding and the provision relating to location clauses have had very little impact on most markets, contrary to consumers’ expectations.

From a consumer perspective, competition problems did however exist in the aftermarket, such as refusals to honour of warranties when a car had been serviced by independent repairers. The monopolisation of spare parts in certain Member States due to design protection was undesirable consequence of the current EU legislation in the field of design which implied harmful effects for motorists. Moreover, there was a danger of distortion of competition due to state support measures channelled to consumers which might put cross-border traders at a disadvantage.

Conclusion

The participants showed a broad consensus that certain sector specific competition problems in the aftermarket exist and should continue to be addressed in a future policy framework and acknowledged that repair and maintenance account for a significant part of the consumer expenditure. Opinions differed on the appropriate legal instruments to address these issues. Attendees from the car manufacturers considered the general antitrust regulatory framework to be sufficient, whereas representatives of the dealers, independent repairers and distributors, spare part producers and automobile clubs asked for a sector specific regime.

No consensus emerged on the future competition regime governing the markets for new cars. Representatives from dealers and automobile clubs asked for the continuation of the current sector specific rules, while participants from the car industry and the representative of the consumer organisations recognised that a simplification of the current regime could bring about benefits for both the industry and consumers.

It was suggested that another meeting of the roundtable would be appropriate at a later stage and that the Commission services should pursue their discussions with all the stakeholders concerned and their organisations with a view of bridging the gap between the different positions regarding the future policy framework for the automotive distribution sector.