3 Public and Private Enforcement of Regulation 1400/2002

This Working Document summarizes the enforcement and monitoring activities that have taken place both at the European and the national level since 2002. Its three sections report on the activities of the Commission, the national competition authorities and the Court of Justice respectively. The Commission adopted one decision with fines concerning impediments to parallel trade and four commitment decisions with respect to access to technical information. Moreover, the Commission closed four investigations which concerned multi-brand sales and servicing and access to service networks. The Commission also received hundreds of informal complaints related to these topics. Furthermore, the Commission constantly monitored the sector through its twice-yearly car price reports as well as in two studies it commissioned. At national level, NCAs took action in several formal complaints procedures, mostly with regard to the aftermarket, i.e. compulsory use of OE spare parts, warranty work, multi-brand servicing and access to repair information. Lastly, four cases of private litigation were brought before the Court of Justice for preliminary rulings which helped to clarify some important issues on the interpretation of the Regulation.

3.1 Enforcement and Monitoring Actions by the European Commission

3.1.1 Enforcement

Between the entry into force of Regulation 1400/2002 and the end of 2007, the Commission adopted five decisions involving car manufacturers which related to practices excluded from the benefit of the BER. In one of these cases, the Commission imposed a fine pursuant to Article 7 of Regulation 1/2003 (Peugeot), while in the four other cases the Commission adopted commitments decisions pursuant to Article 9 of Regulation 1/2003. In addition the Courts in Luxembourg ruled on several older decisions of the Commission relating in particular to parallel trade in cars.

In the same period the Commission received a total of 46 formal complaints relating to the BER, pursuant to Article 7 of Regulation 1/2003. There is a clear downward trend in the yearly number of official complaints from 21 right after the entry into force of the BER in 2002 to 3 in 2006 and none in 2007. More than half of the complaints (25) related to car and truck dealers who had lost their dealer and repair contracts and were initially not admitted to the official network of the brand as authorised repairers, despite having fulfilled the required standards. Most of these complaints were closed after the manufacturer in question took remedial action or the complainant decided, after discussions with the Commission, to pursue the case before national courts or the competent national competition.

In addition to these formal complaints, up to 2007, the Commission received around 531 informal complaints by consumers and other stakeholders during the relevant period, and 322 between 2004, the first full year after the transition period ended, and 2007. The number of complaints was highest in 2003 with 169 informal complaints. Thereafter, the number of informal complaints decreased year by year to only 55 complaints in 2007. In most instances, the Commission was able to solve the problem brought to its attention by forwarding those complaints to the relevant car manufacturer or its importer in a given country and asking the addressees for an explanation and a remedy if appropriate.
On the basis of some of these official and unofficial complaints, however, the Commission decided to undertake an in-depth investigation to clarify core principles of the BER. The first of these clarifications related to access to the networks of authorised repairers\(^1\), while the last, in 2006, concerned the issue of multi-brand sales and servicing\(^2\). These clarifications on the implementation of the BER by the Commission helped to bring down the number of both formal and informal complaints considerably.

There were four areas in which the Commission took action to clarify important principles of the Regulation. Firstly, the Commission was called upon to act to ensure that parallel trade was free: a topic which is a cornerstone of the internal market and of particular relevance to the car industry. The second area was multi-branding and servicing of motor vehicles: a subject which has been reinforced by the current block exemption. The third topic concerned access to the network of authorised repairers of a given brand, which is a consequence of the application of qualitative selective distribution in the aftermarket. Lastly, the Commission took action to ensure that the independent repair sector was given access to technical information, thereby enabling it to compete.

*Protecting parallel trade*

Ensuring free parallel trade between Member States has for decades been an important tenet of the Commission's antitrust policy. The automobile sector has been perceived as particularly relevant, since many car buyers take advantage of the Single Market in this regard. Therefore, the Commission has invested time and resources to detect these very serious breaches of Community law and to enforce this important objective of competition policy in the field of vertical restraints.

In the *Peugeot* case\(^3\) the Commission imposed a fine of 49.5 million Euros on Automobiles Peugeot SA and Peugeot Nederland N.V. ("Peugeot") for having obstructed exports of new cars between 1997 and 2003 from the Netherlands to consumers living in other Member States. During this period, Peugeot implemented a strategy designed to prevent Dutch dealers from selling cars to consumers in other Member States. Peugeot's strategy consisted of two measures. Firstly, part of the remuneration of Peugeot's Dutch dealers was made dependent on the final destination of the vehicle, and discriminated against sales to foreign consumers. In particular, performance bonuses were refused if dealers sold cars to non-Dutch citizens. Secondly, Automobiles Peugeot SA exercised, through Peugeot Nederland N.V., direct pressure on those dealers who were identified as having developed a significant export activity, for example by threatening to reduce the number of cars supplied to them. As a result, consumers could not benefit from lower prices of Peugeot cars in the Netherlands.

The Peugeot case was the last of a series of Commission decisions fining car manufacturers for impeding parallel trade of their vehicles. Between 2003 and 2006 the Court of Justice and the Court of First Instance confirmed the decisional practice of the Commission in two cases involving similar practices, the *Volkswagen* I\(^4\) case and the *Opel*\(^5\) case.

\(^1\) See Commission Press Release IP 03/80 of 20 February 2003

\(^2\) See Commission press releases IP/06/303 and IP/06/302 of 13th March 2006


\(^4\) Case C-338/00P [18th September 2003] ECR I-09189.

In 2003, the Court of Justice confirmed\textsuperscript{6} in its Volkswagen \textit{I} judgment the Commission decision of 1998\textsuperscript{7} which concluded that Volkswagen had systematically forced its authorised dealers in Italy to refuse to sell Volkswagen and Audi cars to foreign buyers, mainly from Germany and Austria. According to the Court, the manufacturer’s policy of imposing supply quotas on dealers with the aim of restricting re-exports was not a unilateral act but rather an agreement within the scope of Article 81(1) EC.

Moreover, in 2006, the Court of Justice upheld the Commission decision against Opel Nederland, which had entered into agreements with Opel dealers in the Netherlands aimed at restricting or prohibiting export sales of Opel vehicles to end users resident in other Member States and to Opel dealers established in other Member States.\textsuperscript{8} It pointed out that an agreement concerning distribution has a restrictive object for the purposes of Article 81 EC if it clearly manifests the will to treat export sales less favourably than national sales and thus leads to partitioning of the market in question.

Although there were no official complaints pursuant to Article 7(2) of Reg. 1/2003, during the reference period the Commission received a number of informal complaints. Between October 2002 and 2007 there were 154 complaints by consumers writing that importing their desired car from another Member State was made unduly difficult or that car manufacturers refused to provide warranty services for imported cars. While in most instances the problem could be solved, in a number of cases the complaint was either ill-founded or lacked Community interest. The number of these complaints has been on a downward trend since 2003.

The Commission also received 50 informal complaints from intermediaries complaining about obstacles allegedly created by car manufacturers and importers in order to prevent them from acting as purchasing agents on behalf of foreign consumers. These obstacles include alleged pressures by car manufacturers instructing their dealers not to sell vehicles to intermediaries, delaying tactics and discriminatory discount policies. In the majority of cases the Commission was able to solve the problem, although in others, there was not sufficient evidence to enable the case to be pursued. The number of complaints went down between 2004 and 2007.

\textit{Multi-brand sales and servicing}

Regulation 1400/2002 has among its aims the fostering of innovative car retailing and more competitive after-sales services. Therefore, the benefit of the block exemption was made dependent on the condition that manufacturers removed all direct and indirect obstacles to multi-brand distribution and servicing on dealers and repairers, to the benefit of consumers across the EU. Out of the many complaints concerning passenger cars and trucks, the Commission took up several complaints by national and European dealers associations in the framework of two lead cases designed to clarify these core principles of the new Regulation.

On 13 March 2006 the European Commission closed its investigation into General Motors’ (GM)\textsuperscript{9} and BMW’s\textsuperscript{10} distribution and servicing agreements following changes to bring them into line with Regulation 1400/2002. As regards multi-brand sales by GM dealers, the key issue was

\begin{itemize}
  \item \textsuperscript{6} Case C-338/00P [18th September 2003] ECR I-09189.
  \item \textsuperscript{7} Commission Decision of 28th January 1998 (98/273/EC).
  \item \textsuperscript{8} See Case C-551/03 P [6th April 2006] ECR I-03173.
  \item \textsuperscript{9} See Commission press release IP/06/303 of 13th March 2006.
  \item \textsuperscript{10} See Commission press release IP/06/302 of 13th March 2006.
\end{itemize}
the method for determining sales targets and evaluating the performance of GM dealers. The Commission was concerned that GM’s contracts deterred those dealers who wished to diversify their portfolio of brands. In particular, dealer performance was measured in terms of so-called “registration effectiveness” (a proxy for market share), and dealers were assessed against GM brands’ national market share. GM removed the penalty for non-fulfilment of these performance targets and clarified that the setting of sales targets will, in all circumstances, require dealers’ agreement, and will take account of their local business circumstances including the decision to sell competing brands.

Other contract provisions hindered GM dealers and repairers from using existing facilities to sell or service cars of competing brands. To remedy this, GM clarified in particular that dealers may use generic Dealer Management Systems, provided that they are of the same quality and functionality as the GM-recommended product, and that the compatibility of interfaces with key GM software is approved by a third party. GM also clarified that dealers are not required to reveal commercially sensitive information on other brands through its reporting systems.

Similar provisions hindered BMW dealers and repairers from using their existing facilities to sell or service cars of competing brands without having to unnecessarily duplicate investments. BMW accepted that its dealers and repairers could use their premises for multi-brand distribution and servicing. BMW also clarified that dealers and repairers can use generic (multi-brand) IT infrastructure and management systems, including accounting methodologies and frameworks, and that they are not required to disclose to BMW commercially-sensitive information on their business with other brands. These changes in the standard contracts of GM and BMW provided dealers and repairers with the opportunity to be innovative and more efficient, so that consumers could benefit from better commercial conditions.

**Competition between authorised and independent repairers**

Independent repair outlets are important to European consumers, because they exert competitive pressure on the franchised networks. Studies have shown, for instance, that prices charged by authorised outlets in Germany are on average 16% higher than those billed by independent repairers, while in the UK, the difference for a typical service job between independents and some of the highest priced brands of franchised dealer can be more than 120%. Independent repairers, however, depend crucially on access to technical repair information to be able to compete against authorised repairers.

Following the IKA study of 2004, the Commission started an in-depth investigation into the provision of technical information which led in September 2007 to the adoption of four decisions that legally bind DaimlerChrysler AG, Fiat, Toyota and General Motors to provide technical information about car repairs to all independent garages in the EU.

In these four cases, the Commissions preliminary finding was that the carmakers seemed to have withheld certain technical information from independent repairers and provided the rest

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in a way that did not meet their needs. These apparent inadequacies could force independent repairers from the markets, resulting in considerable consumer harm. Such behaviour fell under Article 81(1) and could benefit neither from the block exemption\textsuperscript{16} nor from Article 81(3).

The commitments made binding by the Commission’s decisions are broadly similar and have three core elements. The first of these clarifies the notion of technical information and provides that all such information provided to authorised repairers must also be made available to independent repairers on a non-discriminatory basis. Secondly, although car manufacturers may withhold information relating to anti-theft or performance-limiting functions of on-board electronics, they have to ensure that this does not prevent independent repairers from performing repairs not directly related to these functions. Thirdly, the commitments ensure that independent repairers can obtain information that is both unbundled and priced in a way that takes into account the extent to which they use it. The websites chosen by the parties as their main means to provide technical information will be kept operational during the validity period of the commitments. Access will be based on time slots, with the price for one hour set at a level which ensures equality between independent and authorised repairers. All four manufacturers have undertaken to accept a defined arbitration or mediation mechanism for disputes.

In addition to these four cases which were closed by means of an Article 9 decision, there were 3 official complaints pursuant to Article 7 of Regulations 2003. The complainants came both from independent garages and publishers of technical information and partly involved other car manufacturers than the four subject to the Article 9 decisions.

\textit{Restricting access to the network of authorised repairers}

One of the aims of Regulation 1400/2002 is to ensure that access to the repairer network remains open to all who fulfil the minimum qualitative criteria, so that local market forces can determine the density and location of repair outlets to the benefit of consumers. The Commission took up complaints against BMW, GM, Porsche and Audi as lead cases to clarify core issues in this area.

On 13 March 2006 the European Commission closed its investigation into General Motors’ (GM)\textsuperscript{17} and BMW’s\textsuperscript{18} distribution and servicing agreements following changes to bring them into line with Regulation 1400/2002. BMW and General Motors had to remove all quantitative criteria (such as minimum turnover targets and minimum throughput capacity requirements) from their repairer contracts, thereby allowing previously independent as well as repairers of competing brands to become members of the network.

To this end, GM and BMW clarified that new entrants will only have minimum capacity requirements for personnel and work bays as are required to provide good quality repair and maintenance services. Moreover, a new “opening clause” states that repairers are free to source all workshop equipment, tools and IT hardware and software from other sources than GM and BMW provided that equivalent functionality and quality is assured. The use of available generic tools will avoid duplication of investment. Finally, as regards in particular the specific provisions imposing on authorised repairers certain minimum stocking requirements for original

\textsuperscript{16} Article 4(2) of the Regulation provides that full and non-discriminatory access must be given in a manner proportionate to independent repairers' needs.

\textsuperscript{17} See Commission press release IP/06/303 of 13th March 2006.

\textsuperscript{18} See Commission press release IP/06/302 of 13th March 2006.
spare parts, the two manufacturers concerned accepted to modify their service contracts so as to keep the minimum stocking requirements to what was regarded to be necessary to fulfil consumer demand for fast moving wear and tear parts, while at the same time allowing their authorised repairers to enter into joint stocking and joint purchasing arrangements amongst themselves.

In an earlier case involving Porsche\textsuperscript{19} in 2004 the company opened its official after-sales service network to independent repairers, who fulfil its qualitative criteria. However, since the Porsche dealer network falls under the "de minimis" rule, the conditions listed in Art. 3 and 5 of the Regulation 1400/2002 do not apply to its distribution agreements. Therefore, the Commission did not pursue its investigation regarding Porsche's refusal to admit dealers into its authorised repairers' network that sold competing brands.

Right after the entry into force of the current BER in September 2002, the Commission received 25 formal complaints and letters from car and truck dealer-repairers, representing 31 individual undertakings, whose agreements had been terminated by the vehicle manufacturer, which then refused to conclude authorised repair contracts with the firms concerned, despite the fact that they fulfilled the relevant qualitative criteria. 20 were Audi dealer-repairers, while six were truck dealer-repairers of a German brand in Italy. Concerning the 20 cases involving Audi AG\textsuperscript{20}, as a result of the settlement reached in January 2003, Audi agreed to keep or reinstate as authorised repairers those ex-dealers whose contracts it had terminated, that fulfilled the necessary qualitative criteria. Audi's mother company Volkswagen AG also accepted this agreement for the other brands of the group.

Use of OEM-parts and distribution of parts

Since the entry into force of Regulation 1400/2002 in October 2002, the Commission has received only four official complaints pursuant to Article 7 of Regulations 2003 and very few informal complaints concerning distribution agreements for spare parts. Most of these complaints, in particular from consumers, were directed towards the compulsory use of original spare parts bearing the logo of the car manufacturer (OEM parts) for guarantee work and during the period of extended warranties. Other cases concerned the refusal to become a member of the network of authorised distributors of spare parts as well as the "strongly recommended" use of OEM parts for normal repair work.

3.1.2 Monitoring

The Commission is regularly monitoring price developments in the sector through its car price reports, but also uses external expertise to keep up with issues of specific interest as well as the general functioning of the BER.

In particular, the Commission has published a six-monthly car price report since 1992. This initiative was launched following numerous complaints from consumers about differences in car prices between Member States and obstacles placed in the way of those consumers that wished to buy in another EU country. Against this background, an agreement was reached between the Commission and the car manufacturers (through their associations ACEA and JAMA) with the latter providing comparisons of car prices across the EU. The report publishes price comparisons for about 100 car models of 25 different brands. Prices are given


both excluding and including taxes in the Member States together with prices for the major options and right-hand-drive supplements. As from 2008, there will be only one edition per year.

Moreover, a study concerning access to technical information by independent repairers was published in October 2004. This report was produced by the Institut für Kraftfahrwesen Aachen (IKA) for DG Competition. The study showed that technical information for many models launched within the last ten years was not always available to independent repairers, either via the Internet, on CD/DVD and/or on paper. In addition, the quality of information provision was, according to the study, often unsatisfactory as the information was difficult to find or was only available in large, costly packages. The report was used by the Commission as a basis for starting action against four car manufacturers (see above).

Finally, in June 2006 the Commission published a report carried out by London Economics on "Developments in car retailing and after-sales markets under Regulation 1400/2002". In three parts the report describes the key trends in new car distribution, in car services and repair, and the automotive parts sector since 1997 and compares these trends with the objectives of Regulation 1400/2002. The results had been one of the sources for the Commission's fact finding summarised in the Working document No.2.

3.2 Enforcement by national competition authorities

The Commission asked national competition authorities in all 27 Member States about their enforcement experience with the application of Regulation 1400/2002. All but Luxembourg and Latvia answered. 10 Member States became EU members only two years after the Regulation entered into force. Bulgaria and Romania acceded in 2007. However, all these new Member States were required to transpose the Regulation into their national laws prior to accession, which enabled them to gain experience with the application of the Regulation for a relevant period of time.

Most NCAs distinguish between formal and informal complaints. A formal complaint requires that the NCA in question carries out enquiries and where then either remedial action is taken by the defendant or the case is dismissed by the NCA. The total number of complaints received was about 340, almost all of which concerned passenger cars. The total number of complaints received by individual NCA ranges from zero to 121 (UK’s Office of Fair Trade). The highest number of formal complaints was lodged with the Danish Competition Authority (42 formal complaints). In addition to these complaints there were 6 ex officio procedures initiated by NCAs.

There were seven cases where Art 11(4) of Regulation 1/2003 came into play; this provision stipulates that the competition authorities of the Member States shall inform the Commission no later than 30 days before the adoption of a decision requiring that an infringement be brought to an end, accepting commitments or withdrawing the benefit of a block exemption Regulation.

A large part of the complaints received by national competition authorities concerned the aftermarket. The most frequent issues were allegations that warranties would be invalidated if the vehicles in question were serviced by independent repairers, as well as questions relating to access to the network of authorised repairers and to independent repairers' access to technical information. Complaints concerning the sales of vehicles were mostly directed against attempts by the car manufacturer to make multi-branding difficult. An interesting case with regard to multi-branding concerned the corporate branding of Peugeot which required authorised dealers to clad the exterior of their sales premises in Peugeot blue. Dealers were
concerned that such distinctive Peugeot branding would prevent them from selling competing brands from their showrooms. After an intervention by the OFT in the UK, Peugeot declared that this standard was merely recommended but not compulsory.21

The German Bundeskartellamt was confronted with a complaint against Opel with regard to the Dealer Management System (DMS). Opel recommended three DMS for use in its network of authorised repairer network. Only those three recommended suppliers of DMS were given the relevant interfaces needed to communicate with the Opel AG. The Bundeskartellamt considered this as an unjustified obstruction and discrimination of other suppliers of DMS and as an obstacle to the ability of repair shops to service cars of different brands. The Bundeskartellamt had a similar case involving Volvo Trucks which restricted the use of independent software by its dealers and repairers, which also had a negative impact on multi-branding. The Volvo dealer association and Volvo Trucks found a solution, and the complaint was withdrawn.

With regard to access to technical information, the French NCA received a complaint by Autodistribution and AD Net against Citroen. The case was dealt with in close co-operation with the European Commission and ended with a decision by the Conseil de la Concurrence which made compulsory commitments made by Citroen relating to the provision of information and technical tools used in the repairing of the brand's vehicles. Subject to a limited exception, Citroën will have to provide independent repairers with non-discriminatory access to the same technical information and diagnostic tools which are available to approved repairers. Technical publishers will also have access to information proportionate to their needs, according to prices based on transparent criteria.22

The Danish competition authority dealt with a large number of cases involving importers who tried to tie their retailers and repairers to only use original spare parts supplied by them. The Danish Competition authority took action against three importers who had devised loyalty rebate systems which prevented other suppliers of spare parts from selling to authorised repairers.

The Swedish competition authority received a complaint from a trade association which asked the Konkurrensverket whether MercedesBenz could refuse to honour its anti-corrosion warranty as a means to prevent independent repair shops from performing maintenance service on Mercedes Benz cars. The Konkurrensverket decided that MercedesBenz could impose such a condition.

On a more general note, the overall view of the majority of NCAs regarding the impact of Regulation 1400/2002 on the market is fairly positive. Among the positive results achieved through the implementation of this block exemption, several NCAs pointed to an increased level of competition in the aftermarket and cited in particular the opening up of the repair and maintenance networks due to the application of purely qualitative selection criteria, the improved access to technical information by independent repairers, the wider choice of original and matching quality spare parts for consumers, as well as the growing number of multi-brand repairers. With regard to sales, NCAs noted better protection for dealers vis-à-vis car manufacturers, brought about by the clause on arbitration contained in Article 3(6), but also by the growth of larger dealers and dealer groups.

However, according to some NCAs, the introduction of more demanding selection standards meant that the Regulation failed in its aim of strengthening the independence of dealers.

21 Office of Fair Trading, News release 124/04 of 10 August 2004
Furthermore, they claimed that the new freedoms and business opportunities that the Regulation was intended to create had mainly benefited large dealers and had favoured higher levels of concentration in local retail markets. Other NCAs noted also some additional negative aspects. In particular, the exclusion of location clauses from the benefit of the block exemption pursuant to Article 5(2) had had little effect in most Member States and, moreover, all distribution contracts had been framed on the basis of the wording of the Regulation, which had led to a new straitjacket effect.

Lastly, many provisions of the Regulation left too much room for interpretation and had therefore contributed to a high degree of legal uncertainty. One NCA noted in this respect that the absence of a definition of what constituted a new motor vehicle had led to problems of free-riding by unauthorised resellers.

3.3 Private Enforcement

In addition to action taken by the European Commission or national competition authorities, there have also been many cases at national level. This is in part a consequence of the modernisation which took place as of 1 May 2004, which entitles the national courts to apply European competition law in full, and in particular Article 81, to which the Regulation relates. Some of these court cases raised issues of principle on how to interpret certain clauses of the Regulation and were referred to the European Court of Justice for a preliminary ruling. However, as will be shown below, even thereafter some uncertainties remain.

In total four cases where referred by national Courts to the European Court of Justice. Three of these concerned the issue of contract termination with one year's notice on grounds of network reorganisation. One case sought clarification of the meaning of Article 3(6) of the Regulation on the role of arbitration in case of a contract termination.

The first of the three cases on contract termination with one year's notice came from Denmark. According to Article 5(2) and (3) of Regulation 1475/95, the vehicle manufacturer had the right to terminate an agreement subject to at least one year’s notice where it was necessary to reorganise the whole or a substantial part of the network. This provision has been carried over into the current Regulation (Article 3(5)), and the judgments are therefore also valid for the current Regulation. The applicant, a Danish Audi dealer, had been given one year's notice of termination in September 2002 on grounds that in the light of the new Regulation 1400/2002, Audi needed to restructure its network and was about to reduce the number of its dealers in Denmark from 28 to 14.

In this case, a question was raised as to the meaning of the word "necessary" as a precondition for network reorganisation. While the Court stated that the mere fact that a new Regulation was introduced was not sufficient as a ground for a network reorganisation, it nevertheless accepted that, in the specific circumstances the far-reaching changes brought about by the new Regulation could imply an effective need to review the existing contracts and possibly to reorganize the networks. In this context, the Court also stated that, in order to be necessary, a network reorganisation must be convincingly justified on grounds of economic effectiveness based on objective circumstances internal or external to the supplier’s undertaking which, failing a swift reorganisation of the distribution network, would be liable, having regard to the competitive environment in which the supplier carries on business, to prejudice the effectiveness of the existing structures of the network.\(^\text{23}\) Such grounds for reorganisation could include any adverse economic consequences which would be liable to affect the

\(^{23}\) Case C-125/05 Vulcan Silkeborg vs Skandinavisk Motor, Judgment of 7 September 2006, at para. 37
manufacturer in the event that it were to terminate its distribution agreements with a two-year notice period.\textsuperscript{24} However, while according to the Court it is not for the national courts or arbitrators, in a dispute relating to the validity of the termination of an agreement with a reduced notice period, to call into question the economic and commercial considerations governing the supplier’s decision to reorganise its distribution network, it is nevertheless for the national courts and arbitrators to determine, having regard to all the evidence in the case before them, whether there have been convincingly justified grounds of economic effectiveness based on objective circumstances.\textsuperscript{25} This judgment has been reiterated in two subsequent cases.\textsuperscript{26}

The interpretation of this judgment poses some difficulties. At the very least the Court made clear that a new block exemption as such is not in itself a sufficient ground for a network reorganisation.\textsuperscript{27} What exactly the national Courts have to verify is less clear. Any adverse economic consequences could simply mean substantially lower profits for the vehicle manufacturer or his network. If too many dealers are maintained within the network for a period of two years (instead of one year) and this delay could result in a loss of efficiency of the manufacturer’s distribution system, then such a situation could have ultimately adverse consequences for the viability of the brand. This standard of proof does not seem to be too high a hurdle for vehicle manufacturers to proceed with a network reorganisation by discontinuing redundant dealerships on a one-year termination notice.

The fourth case concerned the interpretation of Article 3(6)(g) which stipulates that the block exemption shall apply on condition that the vertical agreement provides for each of the parties the right to refer disputes concerning the fulfilment of their contractual obligations to an independent expert or arbitrator. Such disputes may relate, \textit{inter alia}, to the issue whether the termination of an agreement is justified by the reasons given in the notice. In that case, the termination of a Citroen dealer in Belgium took effect before the arbitrator could deliver its opinion. The Court ruled that this provision does not require, for the block exemption to remain applicable, that the intervention of an expert, arbitrator or court should precede the execution of a termination notice or that the effects of such a termination should be suspended until a decision is adopted as to its validity.\textsuperscript{28}

\textsuperscript{24} Case C-125/05 Vulcan Silkeborg v Skandinavisk Motor, at para. 38
\textsuperscript{25} Case C-125/05 Vulcan Silkeborg v Skandinavisk Motor, at para 35 and 39
\textsuperscript{26} Joined cases C-376/05 and C-377/05 Brünsteiner, Hilgert v BMW, Judgment of 30 November 2006, and Case C-273/06 Auto Peter Petschenig v Toyota Frey, Court Order of 26 January 2007
\textsuperscript{27} Case C-125/05 Vulcan Silkeborg v Skandinavisk Motor, at para.61
\textsuperscript{28} Case C-421/05 City Motors Groep v Citroen Belux, Judgment of 18 January 2007, at apra. 27