

## Issues Paper on the Motor Vehicle Block Exemption Regulation

The purpose of this meeting is to gather your views and have an open discussion on agreements concerning the distribution and servicing of motor vehicles in the EU.

As you know, these types of agreements are caught by the EU competition rules because the terms of the agreements can result in competition being restricted, to the detriment of European consumers.

In the past, the Commission identified certain competition problems specific to motor vehicle distribution and servicing. As a result, in addition to the general regulation exempting vertical agreements from the competition rules as long as they meet certain conditions, the motor vehicle sector benefited from its own, sector-specific rules, the Motor Vehicle Block Exemption Regulation (MVBER).

This regulation will expire in May 2010 and in advance of this date, the European Commission has undertaken an evaluation of the impact of the MVBER on industry practices and the effects of those practices on competition in the markets for **motor vehicle retailing** and in **after sales servicing** within the EU. An Evaluation Report was published in May 2008, and the comments from stakeholders received in response to that report are being considered.

In the Report, the Commission assesses the degree to which the seven objectives the Commission set itself in 2002, when the current MVBER was enacted, have been achieved. A summary of these seven objectives and our findings is set out below as a basis for discussion.

### **1. Preventing foreclosure of competing vehicle manufacturers and safeguarding their access to the market**

The MVBER sought to achieve this by giving dealers more leeway to sell the brands of competing manufacturers. The Commission felt that multi-branding, particularly within the same showroom, would increase competition between brands by making it easier for new entrants to penetrate the markets, and facilitate the existence of niche brands.

Do you consider this still important nowadays, taking into account changed market circumstances, including increased globalisation and vigorous competition between brands (inter-brand competition) resulting from substantial production overcapacity and imminent market entry by Asian manufacturers?

It appears that provisions designed to regulate in detail multi-brand sales within the same showroom have in practice not been very much taken up by dealers. Multi-brand operations have mainly developed through the expansion of multiple dealerships within large dealers' groups. Do you consider that this is an accurate statement?

Would you consider that there was material change in the use of multi-brand sales outlets before and after the MVBER was adopted, i.e. the predominant use in areas with lower population density, where adding a competing brand is economically necessary to enable the dealers and brands to stay on the market?

To what extent have provisions favouring multibranding encouraged car manufacturers to set higher selection standards in order to strengthen the corporate identity of their authorised outlets

and to avoid the dilution of their brand image?

## **2. Reinforcing competition between dealers of the same brand (intra-brand competition) by encouraging diversity of distribution systems**

The current MVBBER exempts all vertical agreements up to certain market share thresholds. It does not seek to impose a certain type of agreement. However, virtually all car manufacturers have opted for quantitative selective distribution agreements.

In your view, to what extent has the detailed and prescriptive nature of the MVBBER contributed to the development of these quasi-uniform distribution systems?

## **3. Facilitating cross-border trade in motor vehicles**

The third objective of the MVBBER was to protect cross-border intra-brand competition. During recent years, prices in different Member States have converged, and we have received significantly fewer complaints from consumers about parallel trade being hindered. In particular the provisions that brought the MVBBER closer to the general regime by ensuring active and passive sales in selective distribution systems appear to have had beneficial effects.

Empirical data shows that very few dealers have actually made use of the possibility to open additional sales outlets anywhere in the EU (the so called "location clause"). To what extent has, in your view, this sector-specific provision nevertheless contributed to market integration?

## **4. Enabling independent repairers to compete with the manufacturers' networks of authorised repairers**

Independent repairers compete against relatively uniform networks of authorised repairers. These authorised repairers have high market shares, in particular for the maintenance of newer vehicles. Access to technical information is pivotal to enable the independent repairers to compete effectively. As of 1 September 2009 a new system of access to technical information will enter into force as set out by Regulation 715/2007. However, older cars are not covered by this new system.

The Commission adopted four decisions on this issue in 2007, under Article 81 of the Treaty, ensuring access to technical information for independent repairers.

Would you consider that the European Commission and National Competition Authorities by applying Articles 81 and 82 of the Treaty (prohibiting anticompetitive agreements and abuse of dominance) can ensure access to technical information for independent repairers, even in the absence of a specific prohibition set out in sector-specific legislation?

## **5. Protecting competition within the authorised repair network**

Overall, the MVBBER has been successful in protecting competition between authorised repairers, as it has led to the introduction of qualitative selective repair systems, under which all repairers can join authorised networks provided they fulfil objective criteria. As a consequence, market forces have resulted in the number of authorised repairers increasing.

What is your view on the future development of the authorised repair market? What competition

rules do you consider appropriate to ensure that this repair market works competitively for the benefits of consumers?

## **6. Facilitating spare part producers' access to the aftermarket**

Under the MVBER, spare parts producers are free to sell to both independent and authorised repairers. Moreover, authorised repairers can not to be prevented from using alternative brands of spare parts.

Spare parts manufacturers have maintained their share of the aftermarket supply due to their historically solid presence in the independent aftermarket. It seems that there are few instances of authorised repairers refusing to supply spare parts to their independent competitors, largely because they make considerable profits by doing so. Moreover, the provisions relating to the purchase of alternative brands of spare parts by authorised repairers do not seem to have caused any significant change in their commercial behaviour, as such repairers continue to purchase most of their needs from vehicle manufacturers. Finally, it would appear that consumers spend overall less for repair and maintenance due to the increased reliability of their cars, although individual repair prices have increased. Would you agree with these statements?

What is your view on the future development of the spare parts market? Do you see the risk that spare part manufacturers will be foreclosed in the future from the aftermarket? To what extent are exclusive rights concerning captive parts, and the design protection granted to vehicle manufacturers, undermining the competitiveness of the independent aftermarket supply chain? What competition rules would in your view be appropriate to ensure that the independent supply chain works to the benefit of consumers?

## **7. Protecting dealer independence vis-à-vis vehicle manufacturers**

In order to act pro-competitively on the market, even where such behaviour is against the suppliers' wishes, the MVBER contains a number of measures intended to safeguard dealers' sunk costs, including minimum contractual terms, minimum notice periods in case of termination or non-renewal, and a provision allowing dealers to transfer their dealership to another dealer of their choice within the relevant brand network.

Do you share the view that it is important in today's economically difficult times to allow the industry to adjust flexibly to rapidly changing market conditions and that a too rigid a competition framework based on conditions for long term contracts, or long notice periods, might be counterproductive?

As to the provision allowing dealers to sell their dealerships to other members of the network in order to encourage the development of cross-border dealerships, dealers have not taken advantage of this opportunity as virtually all transfers of dealerships within the authorised networks occurred at purely national level. To what extent has this provision promoted high levels of dealer concentration in certain local areas and does this pose a problem for competition in the long term?

Lastly, to what extent are these issues relevant under competition law, bearing in mind that they are normally dealt with under national contract and commercial law?