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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE EVALUATION

of the

Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector

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INTRODUCTION

The Staff Working Document evaluates Commission Regulation 461/2010⁽¹⁾ on the application of Article 101(3) of the Treaty on the Functioning of the European Union (“the Treaty”) to categories of vertical agreements and concerted practices in the motor vehicle sector (Motor Vehicle Block Exemption Regulation, or “MVBER”), together with the accompanying Supplementary Guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles⁽²⁾ (“SGL”).

Vertical agreements in the motor vehicle sector have long been subject to sector-specific block exemption. The current regime consists of the sector-specific MVBER and the SGL, as well as the general block exemption for vertical agreements, provided for by Regulation (EU) 2022/720⁽³⁾ (Vertical Block Exemption Regulation, or “VBER”), which is accompanied by the Guidelines on Vertical Restraints⁽⁴⁾ (“VGL”).

Vertical agreements between undertakings in the motor vehicle sector are found in three main areas at different levels of the distribution chain: (i) the distribution of new motor vehicles, (ii) the provision of repair and maintenance services; and (iii) the distribution of spare parts. Such vertical agreements may give rise to competition concerns and thus require assessment pursuant to Article 101 of the Treaty.

Agreements that are caught by the prohibition in Article 101(1) of the Treaty may benefit from the exemption provided for in Article 101(3) of the Treaty, if they satisfy the cumulative conditions set out therein⁽⁵⁾. With Regulation (EEC) 19/65⁽⁶⁾, the Council empowered the Commission to apply by regulation Article 101(3) of the Treaty to certain categories of vertical agreements and concerted practices in the motor vehicle sector. On this basis, the Commission adopted the MVBER.

According to Article 4 MVBER, agreements relating to the sale or resale of spare parts for motor vehicles or the provision of repair and maintenance services for motor vehicles are block-exempted, provided that such agreements fulfil the requirements for an exemption under

(¹) Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector, OJ L 129, 28.5.2010, p. 52–57, as amended by Commission Regulation (EU) 2023/822 of 17 April 2023 on amending Regulation (EU) No 461/2010 as regards its period of application, OJ L 102I, 17.4.2023, p. 1–2.

(²) Commission notice – Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles, OJ C 138, 28.5.2010, p. 16–27, as amended by Amendments to the Commission Notice – Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles 2023/C 133 I/01, OJ C 133I, 17.4.2023, p. 1–6.

(³) Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty to categories of vertical agreements and concerted practices, OJ L 134, 11.5.2022, p. 4–13, which replaced Regulation 330/2010 as of 1 June 2022.

(⁴) Guidelines on Vertical Restraints 2022/C 248/01, OJ C 248, 30.6.2022, p. 1–85. These Guidelines replaced the Guidelines on Vertical Restraints 2010/C 130/01 as of 1 June 2022.

(⁵) The exemption applies only where such agreements contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, and do not impose restrictions which are not indispensable or eliminate competition in respect of a substantial part of the products concerned.

(⁶) Regulation No 19/65/EEC of 2 March of the Council on application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices, OJ 36, 6.3.1965, p. 533–535, as amended by Council Regulation (EC) No 1215/1999 of 10 June 1999, OJ L 148, 15.6.1999, p. 1.

the VBER and do not contain any of the additional hardcore clauses ⁽⁷⁾ listed in Article 5 MVBBER. In addition, Article 5 VBER identifies certain excluded restrictions which fall outside the block exemption but do not prevent the remainder of an agreement from benefiting from it. The MVBBER does not apply to agreements for the distribution of new motor vehicles; such agreements are covered by the VBER.

For distribution and repair agreements in the motor vehicle sector the SGL provide guidance on the application of the VBER and the MVBBER and on the individual assessment under Article 101 of the Treaty of those agreements that fall outside the block exemption.

The last review of the MVBBER regime concluded in 2023 and led to a prolongation of the MVBBER for five years, as well as limited changes to the SGL relating, in particular, to vehicle-generated data. The MVBBER is due to expire on 31 May 2028 and pursuant to its Article 7, its functioning must be evaluated before that date.

The evaluation of the MVBBER and the SGL covers the period from 2021 to 2025 reflecting the end of the previous evaluation in 2021 and the assessment of developments up to the end of 2025.

Methodology

The evaluation is based on qualitative and quantitative data from numerous sources. Evidence was gathered through: a call for evidence, a public consultation, specific consultations of national competition authorities, a sector-specific study carried out by the Commission's Joint Research Centre, the procurement of external datasets and publications from specialised data providers, and the Commission's monitoring and enforcement experience.

EVALUATION FINDINGS

To what extent was the intervention successful and why?

Effectiveness: overall, the feedback gathered from the evaluation activities points to the MVBBER and the SGL having been effective in meeting their specific objectives, namely: (i) increasing legal certainty for undertakings, (ii) reducing the risk of over-exemption and under-exemption; and (iii) protecting certain forms of competition in the motor vehicle sector.

The evidence collected confirms that the first objective of increasing legal certainty has generally been achieved. In particular, the evaluation indicates that the rules remain generally clear and comprehensible. The MVBBER and the SGL continue to ensure a uniform and reliable approach to the assessment of vertical agreements in the motor vehicle sector under competition law.

That said, some stakeholders considered that certain areas of the MVBBER and the SGL provided insufficient legal certainty, particularly with regard to definitions affected by the increasing digitalisation and electrification of motor vehicles.

The evidence collected also shows that the current framework has generally met the objective of preventing over-exemption (false positives) and avoiding under-exemption (false negatives). In particular, the evaluation indicates that the market share threshold and the current lists of hardcore and excluded restrictions under Article 5 MVBBER and Articles 4 and 5 VBER

⁽⁷⁾ Hardcore clauses are those that if included in a vertical agreement remove the benefit of the exemption from the whole agreement, meaning that an individual assessment under Article 101(3) of the Treaty would need to be conducted.

generally remain appropriate. However, there are indications that the instruments have not been fully effective in addressing restrictions on access to essential inputs.

Finally, the evidence collected indicates that the third specific objective of protecting certain forms of competition in the motor vehicle sector has generally been achieved. In particular, competing vehicle manufacturers continued to access the market, cross-border trade remained possible, independent repairers and spare parts suppliers retained a significant – though sometimes constrained – role, and intra-brand competition among authorised dealers and repairers generally persisted despite trends such as network consolidation, digitalisation, and increasing vehicle manufacturer control. However, independent repairers and spare parts suppliers reported ongoing difficulties with non-discriminatory access to vehicle generated data despite recent changes to the SGL and other EU data legislation.

Efficiency: overall, the evaluation indicated that the MVBER and the SGL have been efficient in reducing compliance costs for undertakings wishing to enter into vertical agreements in the motor vehicle sector. The evidence showed that, without these instruments, undertakings would most likely face an increase in the cost of assessing the compliance of their vertical agreements in the motor vehicle sector with Article 101 of the Treaty.

Coherence: the evaluation indicates that the MVBER and the SGL are generally consistent with other EU instruments, with only limited inconsistencies with newer frameworks in relation to access to vehicle-generated data reported by stakeholders.

How did the EU intervention make a difference and to whom?

EU added value: the evidence gathered suggests that the MVBER and the SGL have added value compared to what could have been achieved by regulations or guidelines at national level.

Is the intervention still relevant?

Relevance: the evaluation indicates that the objectives of the MVBER and the SGL remain relevant, and that the provisions included in the two instruments remain generally appropriate to meet their objectives.

CONCLUSIONS

The evaluation indicates that the MVBER and the SGL generally met their objectives during the evaluation period and that they were efficient in doing so. In particular, they ensured that undertakings were able to self-assess the compliance of their vertical agreements in the motor vehicle sector with Article 101 of the Treaty with adequate legal certainty. The evaluation indicates that the objectives of the MVBER and the SGL remain relevant and supports the need for a block exemption regulation and guidance for applying Article 101 of the Treaty to vertical agreements in the motor vehicle sector.