

The Future Competition Law Framework applicable to the motor vehicle sector

Motor Vehicle Block Exemption Regulation

MEUSAC - CCD
Information Meeting
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Block Exemption Regulation (EC) 1400/2002

- Provides for
 - Franchised dealer and/or “authorised repairer” to purchase up to 70% of their purchases of “original spare parts” and “matching quality” spare parts from market operators of their choice
 - Parts manufacturers/suppliers to sell their original equipment components without restrictions to independent wholesalers or independent repairers

Block Exemption Regulation (EC) 1400/2002 (cont.)

- Parts manufacturers/suppliers to brand their original parts with their own logo
- Independent operators to have access to technical information, tools, equipment and training
- Clarified that vehicle manufacturers may not make their statutory warranty obligations dependent on the obligation that the vehicle is exclusively serviced and maintained in their “franchised” network and only with their spare parts

“WHY” – The Problem To Be Addressed

- MV-BER 1400/2002 expires on 31.05.2010
- Commission has carried out an Impact Assessment Report
- Stakeholders agree on continued need of a BER whether general or sector-specific
- Difference in conditions between vehicle sales markets and aftermarket

“WHAT” – Objectives Of Competition Policy For The Sector

- Protecting competition on the spare parts markets
- Protecting competition between authorised repairers
- Enabling independent repairers to compete with manufacturers’ networks of authorised repairers
- Safeguarding market access for competing vehicle manufacturers

POLICY OPTIONS – The “HOW”

- Commission has not considered not having any block exemption regulation covering the motor vehicle sector
- Commission has focused on four policy options for a BER covering all types of vertical agreements for motor vehicle distribution and after-sales services

POLICY OPTIONS – The “HOW” (cont)

- Exemption would not apply to
 - Restrictions on the ability of original equipment suppliers to sell spare parts to independent repairers
 - Non-compete obligations lasting more than 5 years
 - Obligations preventing authorised distributors from selling products of particular suppliers
 - Certain post-term non-compete obligations

OPTION 1

- Continuation of the *status quo*
 - Sector-specific clauses removing the exemption to
 - Single branding obligations irrespective of their duration
 - Preventing dealers from selling up to 3 competing brands from the same showroom
 - Non-respect of certain minimum contract durations and/or minimum notice periods
 - The obligation to provide for arbitration

OPTION 1 (cont.)

■ Grants

- A very wide exemption for the aftermarket
- Agreements are legal unless they contain restrictions set out in a “black list” (such as practices restricting access by independent repairers to technical information, restrictions on authorised repairers’ ability to sell spare parts to independent repairers, obligations making authorised repairers also sell new vehicles)

OPTION 2

- Lapse of current block exemption regulation and applying general rules applicable to vertical restraints found in Regulation 2790/1999
- Consumer harm only in certain circumstances
 - Weak inter-brand competition in the relevant market
 - High barriers to entry
 - Contracting parties enjoy significant market power

OPTION 2 (cont.)

- In repair and spare parts distribution markets, manufacturers' networks generally have market shares well above Option 2's single market threshold of 30%
- National Competition Authorities can investigate anti-competitive practices on criteria based "by effect" rather than "by object"

OPTION 3

- Builds on Option 2
 - Provides for sector-specific Guidelines
 - Deal with restrictions affecting competition in the repair and spare parts distribution markets
 - Would also give certain clarifications concerning the primary market

OPTION 4

- Also builds on Option 2
 - Involves adoption of a more focused sector-specific block exemption containing all the hardcore provisions aimed at protecting aftermarket competition

Economic Impacts - Competition

- Options 3 and 4 would improve the current level of protection of competition on the aftermarket
- Option 4 scores better than Option 3 as regards protecting competition in the spare parts market
- Option 2 gives less legal certainty on enforcement against restrictions on access to authorised repairer networks, and on the supply of competing spare parts

Other Economic Impacts

- None of the options would significantly affect the position of SMEs or the promotion of entrepreneurship
- Options 3 and 4 - positive impact on access to essential inputs such as spare parts and technical information

Preferred Option

- The Impact Assessment shows that Option 3 has the greatest potential for achieving the objectives identified : balancing the effective supervision of markets against the need to simplify administration and minimise compliance costs.
- Option 4 also scores very close to Option 3
- Either Option would have positive implications for competition and ultimately for consumers