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Putting the consumer in the driver's seat - the Commission proposes a bold reform of car sales rules

The European Commission today proposed new competition rules for the motor vehicle sector, which aim to get a better deal for car buyers throughout the EU. The new draft regulation aims to remedy the competition problems identified in the Commission's 2000 evaluation report on the current competition regime. It is designed to increase competition and bring tangible benefits to European consumers for both vehicle sales and servicing. The regulation will open the way to greater use of new distribution techniques such as Internet sales. It will lead to more competition between dealers, make cross-border purchases of new vehicles significantly easier, and lead to greater price competition. Consumers will be better informed and it will be easier to compare cars and associated services offered by dealers. Car owners will have easier access to after-sales servicing, potentially at lower prices. The quality of vehicle servicing and repairs will be fully maintained. With regard to all these aspects, the driving theme that has inspired the draft regulation is that the consumer's interests must be put first.

"The Commission is putting car buyers first", Commission President Romano Prodi commented. "People want a real choice. They want to buy cars and obtain services wherever it is most advantageous, to have a choice of brands and models, and to have high quality after-sales servicing at a reasonable price. The car sector is also a test of our promise to deliver a true Single Market. The euro is already creating much greater transparency when it comes to comparing prices; liberalising motor vehicle sales and servicing will mean that dealers and repairers can actually compete effectively. A simple facelift of the existing Regulation could not have achieved this. That is why the Commission has designed a very different and much improved model which will be put on the road later this year."

"This bold initiative encourages diversity and choice in motor vehicle retailing and puts the European consumer firmly in the driver's seat", Competition Commissioner Mario Monti explained. "It should help to remedy the competition problems that we have observed in the sector over the past few years and allow the car buyer to purchase a vehicle wherever it is cheapest. The new regulation will improve competition in both vehicle sales and servicing. This is important because over the lifetime of a car, a consumer spends as much on maintenance and repairs as he does to purchase the car in the first place."

Why adopt a new regulation?

Today's proposal is intended to replace the regime established in 1995, which is due to expire on 30 September 2002 (Regulation 1475/95). If the Commission simply let this Regulation lapse, the car sector would automatically fall under the general competition rules for distribution agreements (Commission Block Exemption Regulation 2790/99). While this general regime is suitable for most economic sectors, the Commission has concluded that it does not contain sufficient safeguards to remedy the problems identified in the evaluation report, and that a stricter regime for the car sector is therefore necessary.

The proposal was drawn up following an extensive process of fact-finding and consultation, and takes into account the views of interested parties and the findings of a series of studies commissioned from independent consultants.

The Commission's own evaluation report showed that several of the aims underlying Regulation 1475/95 have clearly not been achieved. European consumers do not derive their fair share of benefits from the system, competition between dealers is not strong enough and dealers remain too dependent on car manufacturers. Consumers have also in practice found it difficult to exercise their Single Market right to take advantage of price differentials between Member States and buy their vehicle wherever the price is lowest.

The new Regulation will be applicable to the sale and after-sales services of all motor vehicles (passenger cars, light commercial vehicles, trucks and buses).

Allowing freedom of choice

The new draft regulation is based on the same philosophy as Regulation 2790/99, in that unlike the current sector-specific block exemption (Regulation 1475/95), it does not prescribe a single rigid model for car distribution but rather leaves a set of choices open to carmakers, distributors and dealers.

Car manufacturers may choose between exclusive distribution, where each dealer approved by the manufacturer is allocated a sales territory, and selective distribution, where dealers are selected according to a set of criteria¹. The Commission does not seek to define what criteria are permitted or how a carmaker should organise his network; instead, providing an agreement corresponds to the basic conditions for the application of the regulation, everything is permitted with the exception of a defined blacklist of "hard core", i.e. severely anti-competitive restrictions.

Although the Regulation is much stricter than the current block exemption when it comes to ensuring effective competition, it is also more flexible.

¹ They may not, however, combine exclusivity and selectivity as permitted under the current regime. Regulation 1475/95 effectively lays down a single model for distribution combining selective and exclusive distribution.

Multi-brand dealerships

Studies have shown that many consumers would value the in-store choice and comparability available in multi-brand outlets. This “multi-branding” reinforces dealers’ commercial independence vis-à-vis their suppliers and also enables dealers in sparsely populated areas to keep their businesses profitable. The new draft regulation therefore gives retailers a genuine choice as to whether they sell more than one brand.

Making the Single Market a reality for the European consumer

Regulation 1475/95 contains a clause commonly referred to as the availability clause, intended to allow dealers to supply cars to consumers from other Member States that are identical to those supplied to dealers in the consumer’s home country. This clause is retained in the new draft regulation, as it allows consumers to make cross-border purchases, and has enabled UK and Irish consumers to obtain right-hand-drive vehicles from Continental dealers at lower prices.

The Commission’s twice-yearly car price report has consistently revealed major differences in new car prices between EU Member States. A study published for the Commission a year ago concluded that these differences were not entirely due to differences in tax levels². The draft for a new regulation contains other measures intended to make it easier for the consumer to take advantage of lower prices in other EU countries. In particular, existing restrictions on operators who act on behalf of a consumer with regard to the purchase of a vehicle will be lifted. In future, these representatives, commonly referred to as intermediaries, will only have to produce a mandate showing that they are acting on behalf of a consumer.

Under Regulation 1475/95, when a consumer wants to buy a car cheaply in another Member State, it is mainly up to the individual concerned or his intermediary to try to locate dealers willing to sell to this person. The new draft Regulation not only makes shopping abroad easier, but also contains measures to allow those dealers who wish to sell to consumers in other areas of the European Union to be more pro-active. It provides that dealers in a selective distribution system may engage in active sales – in other words, they may place advertisements in other areas, and address mail shots and personalised e-mails to consumers located anywhere in the European Union. Dealers may not be penalised financially for selling in this manner, and may not have a quota imposed on them.

In addition, dealers in a selective distribution system may set up a secondary sales outlet or a delivery point in another part of their own country or in another Member State of the European Union. One might imagine, for example, that a Ford dealer in Belgium who commonly sells many vehicles to UK consumers might find that it made business sense to open a sales outlet or a delivery point in London. The new draft regulation would make it possible for him to do so.

These measures should help to ensure that the Single market operates to put pressure on the often extraordinarily high price differentials that exist between Member States of the European Union.

² The study, and other material relating to the review process can be found on the Commission’s website at http://europa.eu.int/comm/competition/car_sector/

Promoting quality and choice in the repair sector

Whereas under the current system, every car dealer is forced to invest in facilities to carry out repairs and maintenance on the vehicles they sell, under the new draft, dealers may choose whether they wish to carry out repairs themselves, or sub-contract them to another authorised member of the manufacturer's network, be it another dealer/repairer or a repairer only. The new draft regulation also provides that, providing they meet the quality standards set by a manufacturer, both independent repairers and today's car dealers may become authorised repairers within that manufacturer's network, without being obliged to sell new cars. The carmaker may not place a limit on the number of authorised repairers, and may not seek to limit an authorised repairer's right to repair vehicles of other makes.

Studies have shown that consumers favour a dense network of repairers, and this proposed change should help to maintain network density while reinforcing the current level of technical expertise within the network.

The draft regulation also provides that carmakers must allow those repairers who choose to remain independent from specific brands, access to all necessary technical information, tools, equipment, including diagnostic equipment, and training. Furthermore, the draft forbids clauses which seek to prevent authorised repairers from supplying original spare parts or parts of matching quality to independent repairers. These provisions aim to ensure that independent repairers can continue to compete effectively with the manufacturer's network of authorised repairers. The consumer will therefore have a choice as to where his vehicle is repaired.

The draft also aims to give consumers a choice as to which spare parts are used to repair their vehicle; clauses by which a carmaker seeks to prevent repairers from obtaining spare parts from other sources or which restrict the right of authorised repairers to use spare parts which match the quality of original spare parts would not be allowed by the new block exemption. These measures should lead to more spare parts being sold directly to repairers by the spare part producers, thereby lowering prices for the European consumer.

However, in view of the vehicle manufacturers' direct contractual involvement in free servicing, recall operations, and repairs under warranty, authorised repairers may be obliged to use original spare parts supplied by the carmakers for these types of repair.

Taken as a whole, the changes as regards both independent and authorised repairers set the scene for improvements in competition and for safe and high-quality repair and maintenance services, to the benefit of the European consumer.

Strengthening dealers' commercial independence to allow them to better serve the car buyer

Although the current rules contain provisions to reinforce dealers' commercial independence through contractual protection, notably by providing for minimum notice periods for contract termination, the Commission's evaluation report makes it plain that these have not been sufficient to achieve all of the desired effects.

In the absence of more effective measures, there is the risk that certain carmakers might use termination or the threat of termination as a way of preventing dealers from engaging in the types of pro-competitive behaviour which the new draft regulation seeks to encourage, such as selling more than one brand within the same showroom, or selling to consumers from other Member States or their representatives. In order to prevent manufacturers or their importers from undermining the new regime in this way, to the detriment of both consumer interests and dealers' commercial independence, the draft regulation now provides that any carmaker wishing to terminate a dealer agreement must give clear written reasons for doing so. This measure should enable a judge or an arbitrator to check the validity of the contract termination.

Timing of the procedure leading to the final adoption of the Regulation

The draft regulation will now be submitted to the Advisory Committee on Restrictive Practices and Dominant Positions, consisting of representatives from the Member States. The Committee is due to be convened at the beginning of March 2002. In the meantime, it will also be sent for consultation to the European Parliament and the Economic and Social Committee. After its discussion in the Advisory Committee, the draft will then be published in the Official Journal in order to give interested parties the opportunity to comment. After further consideration by the Commission of all the views expressed during the consultation period, the draft will be submitted to the Advisory Committee once more and should formally be adopted by the Commission before the summer break. The new regulation is to come into force on 1 October 2002. There will be a transition period (probably one year) during which all distribution agreements existing as of that date will have to be brought in line with the new rules.

The block exemption provided for in the draft regulation will expire on 31 May 2010. This date was chosen to coincide with the expiry of Regulation 2790/99, the general block exemption regulation applicable to vertical restraints.