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“Who will be in the driver’s seat?”

*Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort*

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Ladies and Gentlemen,

I would like to thank you for the opportunity to address this conference on automobile distribution in the new millennium. You have given this conference the somewhat provocative heading "Who will be in the driver's seat?". There is an obvious reply to this question: it should be the consumer who is in the driver's seat!

However, before the consumer can get behind the wheel of his or her new car, the car has to be transferred physically and legally from its birthplace, the factory, via an importer and/or a dealer to the buyer. It is this distribution process at the beginning of the "life" of a new motor involving the manufacturer, the distributors and the consumer, on which I will focus.

The "highway code" for this process is the EC block exemption on motor vehicle distribution and servicing agreements, Regulation 1475/95. Even if this code is - from the legal point of view - not compulsory, all vehicle manufacturers use it as a de facto binding framework for their distribution system. This Regulation dating from 1995 will expire at the end of September 2002.

Everybody would like to know of course what is going to happen to our "highway code" for motor vehicle distribution after this date. This will have to be decided after the Commission has adopted its Evaluation Report on the current Regulation. The Report has to be published by the end of this year. To discuss the future framework without first establishing whether the existing Regulation has worked would be to "put the cart before the horses".

The future of motor vehicle distribution is a hot topic for several reasons:

- First, many changes have taken place since 1995 and more are likely in the near future. To give some examples:
 1. Manufacturers are about to re-organise their distribution systems in order to make them more efficient: after having obtained considerable cost savings from the suppliers of car components, manufacturers are now turning their rationalisation efforts to the distribution sector, which accounts for 30% of the cost of a new car.
 2. In particular, many manufacturers are reducing the numbers of their dealers. The reorganisation of the distribution network of DaimlerChrysler in France or the ending of all Honda dealer contracts in Germany are examples of this.
 3. E-commerce is a new and fast developing distribution tool: However, up to now, use of the Internet in the automobile sector has been limited to a virtual showroom. Actual sales via Internet are practically inexistent.
 4. As regards consumers, a motor vehicle is an expensive purchase and consumers pay attention to prices. In view of the price differentials across Europe, new information technologies and the increased mobility of consumers, there are now real possibilities for consumers to shop around and to try to find the best deal.

In order to get a good deal, consumers sometimes wish to buy a car abroad, either directly or via a so-called intermediary. I should mention that consumers strongly and rightfully criticise the functioning of the Internal Market if they are unable to find a dealer who is willing to supply them or if they are discriminated against in relation to national consumers. In our experience, this still happens in too many cases. In this respect, I would mention the campaign by the British Consumers' Association, who told me that British car buyers feel that they are being "ripped off" and sent me some 20,000 protest notes signed by British consumers. I believe that such consumer actions cannot be ignored when we discuss the "highway code" for motor vehicle distribution.

It seems quite revealing that such radical consumer action appears to be limited to the car sector.

- Secondly, the subject of today's conference is of great interest to those involved because the "highway code" for motor vehicle distribution is now under review by two European competition authorities:
 1. As you know, my Directorate General for Competition is preparing an Evaluation Report on the Block Exemption Regulation for motor vehicle distribution and servicing agreements, which is due to be published by the end of this year. As this evaluation process is well advanced, I would like to use today's forum to give you an insight into our preliminary factual findings. I again stress that this report will focus on the current regime for motor vehicle distribution and will not contain proposals as to the future framework.
 2. On 10 April, the UK Competition Commission's report on motor vehicle distribution in the United Kingdom was published by the Secretary of Trade and Industry, Mr. Stephen Byers. The Competition Commission found that there is an urgent need for a radical change in view of the negative effects the "highway code" generates on car prices in the United Kingdom: the UK Competition Commission's radical suggestion is to prohibit selective as well as exclusive distribution agreements in the car sector.

In view of these findings, Mr. Byers has ordered as a first step a number of interim measures aiming at lowering resale prices immediately. However, he also clearly said that more drastic measures are being discussed with the European Commission.

Let me now turn to the preliminary findings of my Department in the current evaluation exercise.

What are the parameters of the evaluation ?

The parameters with regard to which this evaluation is carried out are those on which the Block Exemption Regulation has been based when it was adopted for the first time in 1985 and then amended in 1995, after some serious "fine tuning".

As to the three main assumptions on which the Regulation is based:

– The first assumption relates to the existence of effective competition in the motor vehicle industry.

1. As regards competition between car manufacturers, so-called inter-brand competition, the six largest manufacturers in Europe (Volkswagen, Peugeot/Citroën, Renault, General Motors, Ford and Fiat) together have a market share of about 75% of the European car market. We are therefore in an oligopolistic situation. Moreover, most motor vehicles are distributed in the same way, via exclusive and selective dealers who are subject to the same types of restrictions. This aggravates the oligopolistic effect.

However, it cannot be denied that the availability of between 2000 and 4000 car versions in each country under about 50 brands with ever shortening product cycles indicates that there is competition in the car market.

Increasing concentration in the industry (for instance the concentrations Ford/Volvo, Renault/Nissan, or Daimler-Chrysler/Mitsubishi) and the planned co-operation between General Motors and Fiat indicate, however, that we have to remain vigilant as regards competition at the manufacturing level.

2. As regards competition between dealers belonging to the same network, so called intra-brand competition, car distribution agreements give dealers only limited scope to develop this kind of competition. One reason for the limitation of real price competition is the form of the dealer's remuneration, which is based on a standard manufacturer discount, giving large or small dealers almost the same margin.

Competition between dealers also seems to be dampened by the allocation of exclusive sales territories, the exclusion of independent resellers and the banning of certain types of active marketing. These restrictions prevent dealers opening subsidiaries or sales and service outlets outside their contract territory and becoming larger and more efficient in this way.

As regards intra-brand competition in trade between Member States, i.e. competition among dealers of the same brand but located in different Member States, competition seems to be even more limited: the practice of manufacturers agreeing sales targets with their dealers, which are focussed on national sales, and the practice of allocating new vehicles to the dealers based on such targets, gives dealers only limited possibilities to engage in parallel trade. Therefore, dealers are limited in their capacity to contribute to the creation of an Internal Market for motor vehicles, in which consumers' freedom to purchase new cars across borders should be a reality.

Moreover, the UK Competition Commission has found, and the preliminary findings of my Department tend to confirm this, that manufacturers' ability to end dealer agreements with only two years notice, seems to make it wise for dealers not to pursue a sales policy which their manufacturers dislike. This is all the more the case, because dealers cannot easily shift to another brand: normally all sales territories are already "occupied" by other dealers.

Based on these findings, it seems to me that the first assumption on which the Regulation is based and which relates to the existence of effective competition in this sector seems to have become – to a certain extent - questionable.

- The second assumption is that car dealers must also provide after-sales services.

To put this in simpler words: some say there is a “natural link” between the sale of motor vehicles and after-sales services. In competition jargon, this is tying, which is normally considered as a serious restriction of competition.

According to recent indications, the existence of such a link is becoming more and more questionable, though it was used to justify the right of manufacturers to oblige all their dealers to offer after-sales services. I note that the UK Competition Commission also expressed serious doubts in its Report as to whether such tying is not excessive and contributes to make car distribution less efficient than it could otherwise be.

No technical reasons seem to exist for such a link: the so-called pre-delivery inspections of new vehicles could be carried out by the manufacturer or the haulier, who delivers a new car to a dealer.

Looking at this “link” from the viewpoint of the dealers, based on the information available, the sale of new cars is not very profitable. By contrast, the after-sales services are the main source of their revenue. Therefore, today’s dealers will normally wish not only to sell cars, but also to provide after-sales services.

Moreover, consumer expectations may suggest that a good dealer has to provide after-sales services.

Based on the above the right given to manufacturers to force their dealers both to sell cars and to provide after-sales services, seems to have become questionable. The question whether or not such a right is still justifiable, is however complex and needs to be analysed carefully.

- The third assumption on which the Regulation is based says that brand specialists are needed for the repair of motor vehicles.

I will briefly address this assumption. It is true that today’s vehicles are more and more complex and contain electronic devices, such as onboard diagnostic systems. This technical trend is likely to increase in the future in view of new safety and environmental requirements. This suggests that the maintenance and repair of new cars can be done by specialists, who are closely connected to the manufacturer and who have the necessary diagnostic equipment needed to provide the full range of after-sales services.

However, one may question whether these specialists need to be dealers or service outlets belonging to the network of a manufacturer. If independent repairers really would have full access to all technical information, as required under the present Regulation, these undertakings would be perfectly able to repair and maintain modern motor vehicles, as is also recognised by recent studies.

In conclusion: For all three assumptions on which the current regime is based, it seems to me that one can have some doubts as to whether they still hold true today.

Let me now turn to the objectives pursued by the Regulation.

The Regulation has four objectives.

- The first objective is to strengthen dealers' independence, to give them more leeway for their activity – in view of strengthening by this competition at the dealer level.

The most important provisions of the Regulation which seek to achieve this objective are those which allow dealers freedom to determine the prices and sales conditions at which they sell cars, to use spare parts of matching quality or to give them a say on the annual level of sales targets, stocks and number of demonstration vehicles.

However, from where we are today in our assessment, it seems that these measures have not had the desired effect for dealers or on competition. As manufacturers have the right to select their dealers based on quantitative criteria, and because dealers cannot grow by opening new sales outlets or new garages, today most dealers are small or medium sized undertakings. Moreover, since dealership contracts can be terminated upon two years notice, manufacturers can largely control dealers and end the contracts of dealers whose commercial behaviour they dislike.

Dealers' leeway to decide on their commercial policy is further limited by the margin system, which is common to all manufacturers and importers and used throughout the European Union: the margins of dealers are nearly the same everywhere and large dealers cannot obtain bulk rebates similar to those granted to fleet buyers. Therefore, dealers have little freedom to set their prices at different levels from other dealers in the same network.

The system of agreed sales targets and the planning and product allocation based on these targets do not seem to allow dealers to react to changes in demand with sufficient flexibility; it creates rigidities in the market, which are highly unsatisfactory. To give an example: if foreign consumers want to order cars from a dealer, he is quite often unable or unwilling to sell cars for export within reasonable delivery times, since his sales target and product allocation is in most cases based on his normal business within his sales territory.

As regards dealers' right to sell vehicles of different makes, so called multi-marketing, the Regulation allows manufacturers to impose conditions, which - for most dealers - make this right economically unattractive. Therefore, not many dealers use this right to sell cars of different makes.

- The second objective of the Regulation relates to better access for spare part producers to dealers.

According to the information received, most vehicle manufacturers seem to limit the freedom of spare part producers to supply spare parts directly to dealers belonging to the manufacturers network . It is indeed surprising to see that manufacturers seem to flout the Regulation in a way which is close to falling under one of its black clauses : by such behaviour they risk loosing the benefit of the Regulation for their whole distribution network.

In sum, the objective of giving spare part producers better access to dealers does not seem to have materialised in practice.

- The third objective of the Regulation relates to putting independent repairers in a better position to compete in the after-sales market

As regards the position of independent repairers, which the Regulation aims to strengthen by giving them access to original spare parts, my Department has found, that the independent repairers are generally content with their ability to source spare parts.

Independent repairers should also have access, on a non-discriminatory basis, to all technical information needed for the repair and maintenance of cars. To this end, a black clause was introduced into the Regulation in 1995.

Although pragmatic solutions seem to have avoided major problems in the past, car manufacturers do not appear to have implemented transparent procedures for giving independent repairers unrestricted access to technical information at reasonable prices as required under the Regulation.

If this is the case, it is a major draw back, because technological knowledge is used to hinder independent repairers from doing their job. If independent repairers work without this knowledge, this would lead to safety problems and also environmental damage. It works also against the European Directive relating to air pollution by emissions of motor vehicles adopted on 13 October 1998. This provides that all manufacturers have to give full and unrestricted access to technical information upon a reasonable fee to all repairers.

- The fourth objective relates to materialisation of the Internal Market objective in favour of consumers and the impact of intermediaries' activity on the development of parallel trade.

As the Commission's car price reports show, prices are still set on a national basis and vary considerably from one Member State to the other.

A recent test case for the functioning of the internal car market is the case of the United Kingdom. Prices for domestic buyers are, as you know, very high in this Member State if converted into euros, compared to other markets with similar car taxes.

Reasons for the price differential between UK prices and prices on the Continent include, on the one hand, the appreciation of the Pound Sterling against the euro, and, on the other the fact that right-hand drive vehicles are more expensive because the numbers of such cars are smaller than the numbers of similar left-hand drive cars. It is true that both reasons are not attributable to the car manufacturers.

However, UK prices could only rise to these actual levels because, it seems, non-British manufacturers do not decrease their UK prices. Instead of using the cost advantage they have - due to their production outside the UK - to lower prices and to try to increase competition and their market share in the United Kingdom, foreign manufacturers prefer to earn greater profits and to sell less cars in this country, as the UK Competition Commission found in its report. Moreover, parallel trade by final consumers has clearly not been sufficiently significant in quantitative terms to put downward pressure on British prices. Manufacturers also seem to use the possibilities given to them by the Regulation to agree sales targets and on this basis to allocate new vehicles to their dealers in a rather rigid way and with the focus on the local demand in the territory of each dealer. This induces dealers to discriminate in favour of consumers from their own Member State against foreign buyers.

Moreover, it is apparent that manufacturers are not too pleased if dealers engage in parallel trade and dealers are afraid to displease their manufacturer. Therefore, I do not attach too much importance to the fact that parallel trade into the United Kingdom has tripled for some manufacturers in the last two years. What matters is that it is still insufficient to put downward pressure on prices in the United Kingdom.

Finally, car intermediaries, who purchase a new car in a foreign Member State in the name and on behalf of a final consumer, often face just the same problems as the consumer in finding a dealer who is willing to supply.

Two other points have been highlighted by the evaluation exercise of my Department.

- The Regulation has not been applied properly by the car industry

Apart from the well-known case against Volkswagen, where the Commission imposed a record fine of 102 Million ECU for restrictions of parallel trade, you may be aware that my Department had to investigate similar alleged infringements of other car manufacturers such as Opel Netherlands, DaimlerChrysler, Peugeot/Citroën and Renault and a case of resale price maintenance relating to the new Volkswagen Passat in Germany. However, these cases are still under investigation and any comment from me on their outcome would amount to speculation.

This all indicates however, that the car manufacturers at least do not seem to have much respect for the “highway code”, which is very generous towards them. Such misconduct will of course also play a role in the evaluation exercise under way.

- Another point relates to new marketing or distribution methods. Here the question we have to ask is, are they possible under the Regulation?

The Internet is a new marketing tool, which creates important opportunities in the car sector as elsewhere. However, it is not only a tool for creating a virtual showroom. It can also give dealers and intermediaries new business opportunities. Because it knows no geographic barriers, the Internet allows dealers to promote their sales beyond their contract area and is therefore a tool which could very much help to integrate national markets into a wider Internal Market.

However, if we look at the Regulation and the two Commission Notices relating to car distribution, we can see that they are not at all adapted to a marketing tool like the Internet.

More worryingly, my Department has had quite a few contacts with manufacturers and operators and it seems that the existing rules are used by some manufacturers to prevent a smooth development of this new tool, where there is demand from dealers and consumers.

The question of the sale of cars via supermarkets is even more delicate. Although there is demand from supermarkets to sell motor vehicles, none of them has so far succeeded in obtaining regular supplies from a manufacturer.

Conclusions on the evaluation so far:

If I may return to the picture I introduced at the beginning of my presentation when I compared the motor vehicle Block Exemption Regulation to a “highway code”.

- Based on the work undertaken so far by my Department, it would seem that the assumptions on which this “highway code” is based are at least questionable. As regards the objectives pursued by the Regulation, it seems that most of them have not been achieved. In particular, it seems that the main driver of the distribution process is still the manufacturer and that dealers do not have much freedom as regards the way in which motor vehicles are distributed. Moreover, the code has not contributed to integrate the national markets and, more regrettably, it has not been properly implemented by many manufacturers, as the procedures against manufacturers for infringements of the Regulation show.
- If I may come back to the subject of this conference: “Who is in the driver’s seat?”, the following picture probably best describes the current situation, with only a little exaggeration:
- The manufacturer is in the back seat of the car and gives instructions to his chauffeur, the dealer, on how to drive down the distribution highway to the consumer, who buys the car. The manufacturer finally manages to bring the car down to the consumer, but not always, it seems, in the fastest, most economic and smoothest way possible: moreover, all too often the manufacturer appears to instruct the dealer, who should really be the one responsible for driving the car, to do things which are outside the “highway code”. In addition, according to consumers’ expectations, the European “highway code” seems not in all respects the best-possible solution to bring a new car to the consumer.