



Independent garages and the Motor Vehicle Block Exemption Regulation

Standard Note: SN/BT/5060

Last updated: 6 July 2010

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Many Members have been contacted by constituents concerned about changes to European rules governing competition in the motor trade, and in particular, the threat posed by these rules for independent garages that carry out servicing and need access to spare parts.

Under EU competition law, specific provision is made to exclude certain sectors from the general prohibition of anti-competitive agreements. One of these sectors is the distribution and servicing of motor vehicles. The 'Motor Vehicle Block Exemption', or MVBER for short, allows car manufacturers to create networks of selective and exclusive dealerships, provided that they do not contain any serious restrictions of competition. The legislation also requires manufacturers to provide authorised repairers access to technical information and spare parts. Until recently, these rules were set out in *European Commission Regulation No. 1400/2002*. In 2008 the Commission began consulting on replacing these rules, as the regulation was set to expire in May 2010. During this process many independent garages expressed concern that without the regulation being renewed, manufacturers would be able to withhold information and parts, shutting them out of the market.

In July 2009 the Commission proposed that repair & maintenance in the market could be covered by a new focussed block exemption regulation, and in December that year launched a formal consultation on this reform.¹ In May 2010 the Commission announced that a new block exemption would apply from 1 June 2010 over the markets for repair and maintenance. In the case of vehicle sales, the Commission decided that the existing provisions in the MVBER would apply for three more years, as a transitional measure, before being withdrawn – on the grounds that this sector was highly competitive. These arrangements are set in place for 13 years, until 31 May 2023.² The long consultation period over which these proposals have been developed, and the new block exemption for repair, maintenance and spare parts, appear to have met many of the concerns initially expressed about the new regime.

This note discusses the background to this reform.

¹ European Commission press notice IP/09/1984, 21 December 2009

² European Commission press notice IP/10/619, 27 May 2010

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1 The Motor Vehicles Block Exemption Regulation

There is a general prohibition of anti-competitive agreements established under the EU Treaty.³ Certain sectors are specifically excluded from this blanket prohibition. A 'block exemption' creates what is termed a 'safe harbour' for agreements between businesses in a given sector: businesses are not required to assess if an agreement might fall foul of the general ban on anti-competitive agreements. Agreements not covered by a block exemption are not presumed to be illegal, but instead have to be assessed individually. Block exemptions thus contribute to legal certainty and to the coherent application of EU competition rules across the EU.

For the motor trade, these arrangements have been in place since the mid-eighties, allowing car manufacturers to create networks of selective and exclusive dealerships.⁴ This was partly on the grounds that the regular maintenance of vehicles, by trained staff at specially equipped facilities, was crucial in the light of their potential impact on health, property and the environment.

In October 2002 *European Commission Regulation No. 1400/2002* – the 'Motor Vehicle Block Exemption' – came into force, replacing *Regulation No 1475/95*: this allows vehicle manufacturers to create networks of selective and exclusive dealerships, provided that they do not contain any serious restrictions of competition and that they meet the other conditions laid down by the Regulation, such as giving authorised repairers (independent garages) access to technical information and spare parts. The regulation ensured that all service and repair work could be undertaken by any garage whether an authorised or independent dealership.

The purpose of these rules was set out in an explanatory brochure the Commission published alongside the MVBBER:

The [...] regulation is designed to increase competition and bring tangible benefits to European consumers. It opens the way to greater use of new distribution techniques, such as Internet sales and multi-brand dealerships. It will lead to more competition between dealers, make cross-border purchases of new vehicles significantly easier, and lead to greater price competition. Car owners will have more opportunity to choose where they have repair and maintenance carried out and what spare parts are used.⁵

³ This is now set out in Article 101 of the Treaty. A similar prohibition of the abuse of a dominant position is set out in Article 102. Prior to the Lisbon Treaty, these were set out in Articles 81 & 82.

⁴ European Commission, *The Future Competition Law Framework applicable to the motor vehicle sector*, COM(2009) 388 final July 2009 para 1.1

⁵ Commission Regulations (EC) No 1400/2002 of 31 July 2002, *Explanatory Brochure*, p3
Available at: http://ec.europa.eu/competition/sectors/motor_vehicles/legislation/explanatory_brochure_en.pdf

Looking at the rules as they applied to car repairers, the aims of this legislation were:

- to allow manufacturers to set selection criteria for authorised repairers, so long as these do not prevent the exercise of any of the rights enshrined in the Regulation;
- to ensure that if a supplier of new motor vehicles sets qualitative criteria for the authorised repairers belonging to its network, all operators who fulfil those criteria can join the network. This approach will enhance competition between authorised repairers by making sure that operators with the necessary technical expertise can establish themselves wherever there is a business opportunity;
- to improve authorised repairers' access to spare parts which compete with parts sold by the vehicle manufacturer;
- to preserve and reinforce the competitive position of independent repairers; these currently carry out on average about 50% of all repairs on motor cars. The Regulation improves their position by reinforcing their ability to gain access to spare parts and technical information in line with technical advances, especially in the field of electronic devices and diagnostic equipment. The access right is also extended to training and to all types of tools since access to all four of these elements is necessary if an operator is to be able to provide after sales services. A desirable and important side effect of this wider access is to encourage improvement in independent repairers' technical skills, to the benefit of road safety and consumers in general.⁶

This last aim has been particularly relevant to independent garages and their ability to carry out repairs and get access to the appropriate spare parts.

2 Proposals for change in 2008

In May 2008 the Commission published an evaluation report of the operation of the MVBBER, which recommended the removal of the block exemption regulations.⁷ The report argued that independent garages had sufficient access to technical information to compete effectively, and that it would be in the interest of drivers to make the rules less complex:

On the repair and maintenance markets, independent repairers now have better access to technical information; thanks to Commission enforcement action. Meanwhile, the number of authorised repair outlets has increased, because - in line with general competition policy - manufacturers (whose networks have high market shares as regards the repair of their vehicles) must let everyone into their networks providing that quality criteria are met. Suppliers of spare parts have maintained their competitive position vis-à-vis the vehicle manufacturers' own spare parts distribution channels ...

Other provisions, such as those obliging manufacturers to give independent repairers access to technical information, have been effective, but will in the future be superseded by rules in other EU policy areas (namely the Council Regulation on

⁶ op.cit. p14

⁷ [Evaluation Report on the Operation of Regulation \(EC\) N° 1400/2002 concerning Motor Vehicle Distribution And Servicing](http://ec.europa.eu/competition/sectors/motor_vehicles/documents/evaluation_report_en.pdf), May 2008
http://ec.europa.eu/competition/sectors/motor_vehicles/documents/evaluation_report_en.pdf

vehicle emissions 715/2007). The Report therefore suggests that car owners might benefit from improvements in competition if less complex rules were to apply to the sector. The form and content of the future regime will be decided in the next stage of the review process.⁸

The Commission also suggested that a *general* block exemption applying to certain vertical agreements would be effective in providing sufficient protection.⁹

The Commission's proposals lead to some concerns that manufacturers would be able to stop supplying garages who were not part of manufacturers' franchise agreements,¹⁰ and a number of independent garages established a 'Right to Repair Campaign' (R2RC)¹¹ In their response to the Commission's evaluation report this group argued removing the block exemption would disadvantage both garages and motorists:

The members of the Right to Repair Campaign disagree with the Commission's conclusion that a more effects-based approach and less regulation would lead to better results for consumers. Rather, more legal certainty would better ensure the coherent application of Community competition law throughout the EU. It would be detrimental for all aftermarket operators and consumers alike to remove rules which provide legal certainty and which have recently established a frame for effective competition in the automotive sector.

AIRC, CECRA, EGEA, FIA and FIGIEFA¹² are of the opinion that if the automotive sector had to rely, as suggested by the European Commission, on many scattered legal instruments, which are still under revision, not even in place or the scope of which is limited, this would create a legal patchwork. Such a legal patchwork would however **not** represent a satisfactory framework for competition in the markets for new vehicles, spare parts, tools, servicing and repair, and ultimately would threaten consumers' freedom to purchase their vehicles wherever they like and to have them maintained, serviced and repaired in the workshop of their choice.¹³

The Commission received a large number of submissions on their proposals,¹⁴ including the UK Government. Overall the Government agreed with the Commission that these sector-specific arrangements could go in 2010, provided that "provision is made in either the vertical block exemption and/or other EU Regulations, or in some cases an industry code of practice, addressing concerns over selective distribution; bundling; after-market access to information; notice of termination; non-compete restrictions; and contract range." On the particular issue of after-sales service, the Government's position was the following:

To cover vehicles pre-dating the coming into force of alternative measures for new models in 2009, *there needs to be a specific requirement for vehicle manufacturers to provide repair and recommissioning information.*

⁸ European Commission press release IP/08/810, 28 May 2008

⁹ [Evaluation Report on the Operation of Regulation \(EC\) N° 1400/2002 ...](#) May 2008 p5 (specifically *Commission Regulation (EC) No 2790/1999 of 22 December 1999*)

¹⁰ "EU ruling will mean higher car repair bills" *The Daily Telegraph* 10 September 2008

¹¹ [Right to Repair UK website](#), or [Right to Repair EU website](#)

¹² AIRC – Association Internationale des Réparateurs en Carrosserie; EGEA – European Garage Equipment Association; CECRA – European Council for Motor Trade and Repairs; FIA – Fédération Internationale de l'Automobile; FIGIEFA – International Federation of Automotive Aftermarket Distributors

¹³ R2RC EU press release, [Sector specific rules are needed to ensure fair and effective competition!](#), 2 June 2008

¹⁴ At present these are collated at: http://ec.europa.eu/competition/consultations/2008_motor_vehicle/index.html

This information should be supplied in a usable standard format. Stakeholders indicate that some manufacturers, despite the [Motor Vehicle Block Regulations] MVBR, either do not supply technical information, provide incomplete information or alternatively supply reams of documentation which makes it very difficult for the requesting garage to isolate the relevant section. Further, in some cases, there appears to be an IP based restriction on how this information can be used, passed on or stored for future use.

Part of the rationale for the withdrawal of the [Motor Vehicle Block Exemption] MVBE is that the lack of cases or problems notified to the European Commission and to national competition authorities indicates the market is relatively competitive. Detailed discussion with stakeholders indicates this is not necessarily the case, particularly in the area of access to information. Businesses are reluctant, even large concerns that may have the economic resource, to bring an action against vehicle manufacturers when they must maintain a close relationship with these same manufacturers for other significant parts of their business. This is especially true of small and medium sized repair and maintenance businesses which simply do not have the resource, either economic or legal, to make a complaint that on current timeframes, might be two to three years before hearing.

Stakeholders have raised the particular concern that existing databases, to which they have access, holding vehicle manufacturers technical information will either be discontinued or allowed to lapse by not being updated. The potential consumer detriment in this particular area is large and the UK sees this as a priority issue with consequences for the longer-term repair and maintenance of the vehicle parc by independent repairers.¹⁵

The Government's position was summarised in answer to a PQ in May 2009:

Norman Baker: To ask the Minister of State, Department for Business, Enterprise and Regulatory Reform what his policy is on whether the Motor Vehicle Block Exemption Regulation (EC) 1400/2002 should expire in 2010; and what discussions he has had with the motor repair industry on this matter. [274351]

Mr. Thomas: On the basis of detailed discussion with EU member states, the Motor Vehicle Block Exemption Regulation will be extended or otherwise by the European Commission as this falls within their competence under Article 81(3) of the European Treaty. We have expressed concerns about access to information, particularly technical information, and parts for the independent aftermarket, and have made several representations to the European Commission on the subject. Most other EU member states have expressed similar concerns.

I would expect these concerns to be addressed in any formal proposals by the European Commission. Officials from BERR and the Office of Fair Trading (OFT) have been in discussion with representative groups from the motor vehicle industry including the 'Right to Repair' campaign throughout the review of the Motor Vehicle Block Exemption Regulation and these helpful contacts will continue.¹⁶

¹⁵ Department for Business, Enterprise & Regulatory Reform (BERR), [UK Initial Reaction to European Commission Evaluation Report In Respect Of The Motor Vehicle Block Exemption \(MVBE\)](#), 25 July 2008

¹⁶ HC Deb 18 May 2009 c1212W

3 Consultation on reform in 2009

In February 2009 the European Commissioner for Competition Neelie Kroes held an informal roundtable discussion on the future of the car block exemption regulations. At this, she acknowledged the wide diversity of views on reforming the rules – but went on to state that any reform would not disadvantage independent garages:

How do we ensure that independent workshops can remain viable? You will have seen already our distrust of the tying or bundling of products and information in other sectors like technology – we will not allow such problems to arise in the motor vehicle industry. This issue is at the heart of the concerns of many motorists about the review of the block exemption. I understand the concern, but I want to give motorists a cast-iron guarantee: I will not agree to any change to the rules that will make life harder for independent repairers. Access to technical information and alternative brands of spare parts will continue to be necessary preconditions for such workshops to repair these older vehicles, so that they are driven safely, and meet vehicle emissions standards. I am very much in favour of joined-up policy in this area.¹⁷

In July 2009 the Commission gave some indication of its thinking in a ‘communication’ on the future framework of the law. In this it noted that independent retailers would benefit under separate legislation to obtain technical information, but that this would not be comprehensive for some time:

As regards access to technical repair information, it should be recalled that Regulation (EC) No 715/2007, which regulates the type approval of light passenger and commercial vehicles provides for a detailed set of rules ensuring full and non-discriminatory access to such information for all independent operators. This regulation is already applicable on a voluntary basis and will become mandatory for new type approvals from September 2009 onwards. However, for several years, the car park will still contain large numbers of vehicles not covered by Regulation (EC) No 715/2007, which will constitute a significant market for independent repairers. The Commission therefore concludes that it is important to continue to enforce competition rules in order to prevent foreclosure of independent operators by ensuring equivalent access conditions for technical repair information pertaining to the existing car park.¹⁸

As a consequence, it proposed “sector specific guidelines” or a focussed block exemption regulation:

As regards agreements for repair and maintenance services and/or for the supply and distribution of spare parts, to apply the general rules as currently reflected by the proposed new block exemption for vertical agreements complemented by either sector-specific guidelines, or a focused block exemption regulation, or a combination of the two instruments with a view to reinforce competition authorities' ability to respond to competition concerns in a wider and more comprehensive manner. In particular, as regards the following concerns: (i) access to technical information; (ii) access to spare-parts; (iii) misuse of warranties; and (iv) access to networks of authorised repairers.¹⁹

¹⁷ Neelie Kroes, European Commissioner for Competition Policy, *Closing remarks at roundtable to discuss future of the Car Block Exemption*, Speech 09/45, 9 February 2009

¹⁸ European Commission, *The Future Competition Law Framework applicable to the motor vehicle sector*, COM(2009) 388 final July 2009 para 31

¹⁹ COM(2009) 388 final, para 48

The Commission anticipated that any new provisions along these lines would apply when the existing regulation expired at the end of May 2010.²⁰ It also proposed that the provisions in the MVBBER which applied to the primary market for the sale of new vehicles could be aligned with the existing general rules on vertical agreements. These rules could be extended for three years in order to give time to adapt to a smooth transition to the new regime.²¹

In December 2009 the Commission published a formal consultation document, asking for views on both a) the proposal to adopt a new block exemption for car repair and maintenance services, and b) the adoption of guidelines dealing with specific issues for both motor vehicle sales and repair.²² A press notice issued at the time gives a summary:

The European Commission is inviting comments on its proposal for a revised Block Exemption Regulation and Guidelines on motor vehicle sales and repair agreements ... Following stakeholders' comments, the Commission considers that a specific block exemption is no longer warranted for the sale of new cars and commercial vehicles. However, the Commission proposes to adopt a new block exemption for repair and maintenance services, where competition appears to be more limited. It also proposes to adopt guidelines dealing with specific issues for both motor vehicle sales and repair. Interested parties are invited to submit comments by 10 February 2010. ...

The Commission's evaluation has shown that the European markets for motor vehicle distribution are fairly open, with relatively low barriers to entry. Model ranges have expanded, giving consumers more choice within each car segment, and price levels are highly competitive ... The Commission found no evidence that agreements between vehicle manufacturers and dealers would continue to require different treatment as compared to agreements in any other sector. The Commission therefore proposes to apply the general competition rules from 31 May 2013, after a three-year adaptation period, granted to take account of brand-specific long-term investments made by dealers.

The general rules are currently set out in block exemption Regulation 2790/1999 on vertical agreements, which is due to expire on 31 May 2010, and which will be replaced by a new regulation.²³ Key issues such as multi-branding, imposition of resale prices and parallel trade in the EU will be addressed in the proposed sector-specific guidelines, aimed at assisting companies in assessing the compatibility of their agreements with the competition rules.

However, the Commission's analysis found the market for repair and maintenance to be less competitive. In particular, structural factors such as the brand-specific nature of the markets and the prevalence of "captive" spare parts intrinsically limit competition. Moreover, the Commission has had to intervene to protect competition in these markets ... and has noted that manufacturers sometimes refuse to honour warranties when a vehicle has been repaired outside the authorised networks.

In view of the potential competition problems on the motor vehicle aftermarkets, the Commission proposes limiting the benefit of the block exemption for service and repair agreements to operators with a market share of up to 30%. This would make it easier

²⁰ European Commission Memo 09/348, 22 July 2009

²¹ European Commission press release IP/09/1168, 22 July 2009

²² Details of the consultation, along with responses, are collated on the Commission's site at: http://ec.europa.eu/competition/consultations/2010_motor_vehicles/index.html

²³ [This was replaced by Vertical restraints block exemption Regulation 330/2010, adopted on 20 April 2010]

for the Commission or for national competition authorities to prevent carmakers from sheltering their repair networks against competition from independent repairers, for instance by withholding technical information.

In addition, the Commission intends to include particular provisions on the supply of spare parts in a new sector-specific block exemption regulation. These are intended to ensure that independent repairers can obtain carmaker-branded parts, as well as to ensure that component suppliers can put their brand on component or spare parts and can continue to supply spare parts to the aftermarket. The Commission proposes that the sector-specific guidelines should also clarify various aspects affecting competition in the aftermarkets, for instance the consequences if a vehicle manufacturer refuses to honour warranties where vehicles have been repaired in independent repair shops.²⁴

The long consultation process on these changes appears to have met many concerns, as indicated in a PQ on this issue in January 2010:

Peter Luff: To ask the Minister of State, Department for Business, Innovation and Skills what assessment he has made of the implication for competition in the UK retail motor industry of the European Commission's proposals to replace sector-specific block exemptions for the industry with a general exemption; and if he will make a statement.

Kevin Brennan: A revised Motor Vehicle Block Exemption Regulation (MVBBER) will come into force on 1 June 2010, when the current MVBBER (No. 1400/2002) expires. There is no proposal to replace the MVBBER with the general Vertical Agreements and Concerted Practices Block Exemption Regulation (No. 2790/1999), itself currently under review.

The MVBBER, both current and revised, are in addition to the Vertical Agreements and Concerted Practices Block Exemption Regulation. The European Commission's latest public consultation on a revised draft text of the MVBBER and accompanying guidelines is underway. The draft regulation and guidelines reflect the European Commission's already extensive consultation with business, national competition authorities and member states. In particular, the provisions in respect of the market for repair and maintenance services and spare parts where we, based on ongoing discussions with business and stakeholder groups, have intervened strongly with the European Commission to ensure the effectiveness of the revised regulation and guidelines for the repair and maintenance sector.²⁵

Notably the International Federation of Automotive Aftermarket Distributors – the European trade body supported by the 'Right to Repair' campaign – gave a broad welcome to the Commission's proposals,²⁶ and the issue does not appear to have been raised in the House since then.

²⁴ European Commission press release IP/09/1984, 21 December 2009

²⁵ HC Deb 25 January 2010 c683W

²⁶ FIGIEFA press notice, *Future Competition Law Framework for the Automotive Sector: FIGIEFA's comments on the proposed Block Exemption Regulation and Guidelines*, 10 February 2010.

4 Recent developments

On 27 May 2010 the Commission confirmed the adoption of a new block exemption regulation - Commission Regulation (EU) 461/2010 - and guidelines on the application of competition rules to the car sector.²⁷ A press notice summarised these changes:

The new rules introduce a 30% market share threshold above which agreements between car manufacturers and authorised repairers will no longer be block exempted, aligning the rules with the general framework (Vertical restraints block exemption Regulation 330/2010 adopted on 20 April [2010] ...). This will make it easier for the Commission to tackle possible abuses to the detriment of consumers, such as the refusal to grant independent repairers access to technical information. It will increase competition between authorised and independent repairers. The new rules will strengthen repairers' access to alternative spare parts which can represent a big share of the repair bills.

Car manufacturers will no longer be able to make the warranty conditional on having the oil changed or other car services only in authorised garages. Of course, manufacturers may request repairs covered by the warranty - and paid for by the manufacturer - be carried out within the authorised network. All this is important for consumers because repair bills account for an estimated 40% of the total cost of owning a car and costs have been rising in recent years.

Regarding the distribution of cars, the Commission's evaluation has shown that car sales markets are highly competitive. Margins for vehicle manufacturers and dealers are slim, and for several years production over-capacities and technological improvement have led to consumer benefits in terms of falling real car prices and increasing choice. The financial crisis has added to the downward pressure on prices.

In this context, the existing rules are clearly overly complicated and restrictive and have had the indirect effect of driving up distribution costs, which make up on average 30% of the price of a new car. The Commission therefore proposes to simplify these rules and treat the distribution of cars like any other market. The current distribution model will continue to be exempted in most cases, but certain sector-specific clauses which have proven ineffective or counter-productive will not be carried forward. The new regime will give carmakers more flexibility to organise diverse networks in which multi-brand dealers co-exist alongside dealers fully committed to promoting the brands of a single manufacturer.

The new rules will come into force on 1 June 2010 as concerns the repair and maintenance markets, and on 1 June 2013 with regard to the vehicle sales markets and will be valid until 31 May 2023.²⁸

In a FAQ document published alongside this, the Commission addressed, among other issues, the particular concerns independent garages have had over increasing competition, and ensuring access to technical information:

2. How do you increase competition in the markets for repair, maintenance and spare parts?

The new block exemption regulation will apply as from 1 June 2010.

²⁷ At present both the legislation and guidelines are collated on the Commission's site at:

http://ec.europa.eu/competition/sectors/motor_vehicles/legislation/legislation.html

²⁸ European Commission press notice IP/10/619, 27 May 2010

The main change is that agreements between vehicle manufacturers and their networks of authorised repairers and spare part distributors will no longer benefit from the automatic exemption. This is because these networks usually have a market share of over 30%. This in turn will make it easier to deal directly with refusals to release technical information or the misuse of warranty terms aimed at excluding independent repairers or with new types of restrictions that may arise.

Similarly, agreements obliging authorised repairers to purchase spare parts from car manufacturers are unlikely to be block exempted, as vehicle manufacturers also tend to have a market share exceeding 30% in the spare parts markets.

This new Regulation also lists three hardcore clauses describing restrictions of competition rules on the spare parts market. These concern restrictions placed by car manufacturers on a) the sale of original spare parts by authorised repairers to independent garages, b) the ability of independent manufacturers of spare parts to supply to authorised or independent repairers, and c) spare parts' manufacturers' ability to put their trade mark or logo on their products.

The Commission remains committed to act against all restrictions of competition across the entire supply chain in the sector, as it has done recently by adopting a decision against four manufacturers of car glass imposing fines of nearly €1.4 billion for participating in a cartel (see IP/08/1685).

3. How will access to technical information for independent repairers be ensured under the new legal framework?

Independent repairers are important because they increase choice for consumers and keep the price of repairs competitive by putting pressure on car manufacturers' authorised repair networks. But for this to happen it is essential that they can get the technical information necessary to do the repairs on increasingly sophisticated cars. Withholding "technical information" will be dealt with directly under Treaty rules on restrictive business practices (Article 101) since, as said previously, the manufacturers, their spare parts and repair shops generally have a market share in excess of 30%. In addition, Guidelines also being adopted contain detailed clarifications as to the notion of technical information, cross-referring to Regulation 715/2007 on type approval of certain cars and all subsequent implementing regulations. The new rules assure access to technical information for models which are type-approved after 1 September 2009. By making a clear link with the 2007 car type-approval Regulation, the Commission will ensure both consistency as regards access to technical information for cars put in circulation before that date and allow the notion of technical information to evolve in line with technical progress.

The Commission remains committed to vigorously enforce the rules on access to technical information, as demonstrated in four cases brought in 2007 to ensure that Daimler/Chrysler, Fiat, Toyota and General Motors disclose the necessary information to independent repairers (see IP/07/1332).²⁹

²⁹ European Commission Memo/10/217, 27 May 2010