



**Contribution to the European Commission's Consultation
on the Motor Vehicle competition regulations**

25 January 2021

This contribution of the Spanish Association for the Defence of Competition has been prepared by a working group of members of the association¹. Please note that the opinions included herein do not necessarily represent the opinions of all the individuals who are members of the AEDC.

Questionnaire

(Proposed answers in **bold** and marked options in **yellow**)

Effectiveness – have the objectives been met?

In your / your client's experience, has competition in **new motor vehicle distribution** intensified, weakened or stayed the same since 2010?

Competition has intensified

Competition has weakened

No change

Do not know

Please explain.

Both inter and intrabrand competition are stronger. Customers have easier access to information about newer car models including user reviews, and that is also the case with spare parts and service agreements. There has been a significant growth in other forms of ownership (carsharing, renting) providing wider choice. Fleet operators have higher leverage and that has also put pressure on both manufacturers and official networks. During this period independent repair networks have also grown, created collaborative networks, and increased the competitive pressure on official networks.

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If you or your client have observed any changes in the intensity of competition in **new motor vehicle distribution**, please identify the factor(s) to which you attribute these changes:

Motor vehicle block exemption rules (namely the VBER, the MVBBER, the Vertical Guidelines and the Supplementary Guidelines)

General economic background

Consumer preferences

Mergers between market players

Technological developments

Other legal provisions

Other factors

Do not know

Please specify how the factor(s) you have selected affected the intensity of competition.

The rules have resulted in greater flexibility although the changes have been limited in respect of contractual terms partly because of the continued application of the ACEA Code. Multibrand dealers are now more common.

Consumer preferences have supported new ownership models, especially renting which has grown significantly and more recently carsharing.

Technological developments have resulted in an attractive offer of 'greener' cars (especially hybrid & electric) which have pushed sales of new cars and led to significant innovation.

In your / your client's experience, has competition in the **provision of repair and maintenance services** for motor vehicles intensified, weakened or stayed the same since 2010?

Competition has intensified

Competition has weakened

No change

Do not know

Please explain.

The intensification of competition in these services (which is both intra-brand and inter-brand or from other networks and independent players) results from increased strength of independent repairers (who have wide access to technology, tools, client base and spare parts), especially those integrated in networks, whose brands increasingly see them as partners and an important component of servicing and distribution of spare parts.



Consumers have reacted to this and select repair shops based on customer reviews rather than brands. We may also stress the increased bargaining power of large fleet operators, who are able to negotiate better terms for the provision of repair and maintenance services, placing the official network vis-à-vis other players.

If you or your client have observed any changes in the intensity of competition in the **provision of repair and maintenance services** for motor vehicles, please identify the factor(s) to which you attribute these changes:

Motor vehicle block exemption rules (namely the VBER, the MVBBER, the Motor vehicle block exemption rules (namely the VBER, the MVBBER, the Vertical Guidelines and the Supplementary Guidelines)

General economic background

Consumer preferences

Mergers between market players

Technological developments

Other legal provisions

Other factors

Do not know

Please specify how the factor (s) you have selected affected the intensity of competition.

As earlier noted, we believe that the increase in competition has been supported by the regulatory framework ensuring access to parts and technical information. Other changes are: the development of independent repair networks, which has led to a stronger demand fuelled by better information, fleet operators and sometimes insurers selecting these networks as “preferred” shops with lower insurance premiums if used by clients; a change in consumer preferences, with customers increasingly testing other players beside the official network, even during the first years after the purchase.

In your / your client’s experience, has competition in the distribution of **spare parts** for motor vehicles intensified, weakened or stayed the same since 2010?

The intensity of competition may depend on elements such as the number and size of companies active in the market, the availability of alternative sources of supply or price competition.

Competition has intensified

Competition has weakened

No change

Do not know

Please explain



As it has been mentioned, OEMs see independent repairers and other spare part distributors as partners in the distribution of spare parts and push sales in these channels too, often through their official networks, who are encouraged to achieve sales targets in these parts. This contrasts starkly with past situations when the Commission had to “intervene” through regulation to ensure that brands did not influence their networks to prevent their selling spare parts to independent shops.

On a related vein, on-line sales have also picked up in these markets.

If you or your client have observed any changes in the intensity of competition in the **distribution of spare parts** for motor vehicles, please identify the factor(s) to which you attribute these changes:

Motor vehicle block exemption rules (namely the VBER, the MVBBER, the Vertical Guidelines and the Supplementary Guidelines)

General economic background

Consumer preferences

Mergers between market players

Technological developments

Other legal provisions

Other factors

Do not know

Please specify how the factor (s) you have selected affected the intensity of competition.

The regulatory framework has probably been instrumental in enabling the development of independent distribution channels for spare parts. That has been facilitated by the economic background, where many customers have become more price sensitive. The parallel development of newer forms of ownership and resulting fleet service commitments goes in the same direction supporting alternative distribution networks for spare parts, oil, etc. and accessories.

Scope of the exemption

The motor vehicle block exemption rules only exempt agreements where neither the market share of the buyer nor that of the seller exceeds 30%. This is so that vertical agreements in the motor vehicle sector can only benefit from the exemption

if it can be assumed, with sufficient certainty, that the efficiencies generated outweigh potential negative effects. Do you believe that this threshold is still appropriate today?

The threshold is too high

The threshold is appropriate

The threshold is too low



Do not know

Please explain your reasons.

There is no clear reason to depart from the general rule of the VBER in respect of the primary market of the sale of new cars. As regards the aftermarket, the current approach of calculating the market share for each brand separately means there is effectively no market share threshold but in turn, the conditions are quite strict.

We submit this should be reconsidered because of various developments which have been already noted.

1) There are significant client categories (for instance, renting or fleets in general but also professional users of vehicles) which do take into consideration the aftermarket when making their purchase decision in the primary market, which calls into question the necessity of a separate delimitation. A clear assertion (not just a mere “possibility”) of considering one single market in these cases would be very welcome. Moreover, even end customers increasingly do factor that in, thanks to the increased information available to them.

2) At least for repair services, it is not so clear that markets should be defined by brand, to the extent that the regulations continue obliging brands to provide technical access & spare parts to third parties outside their network.

Multibranding repairers are very common.

Beside the current threshold criterion, are there, in your view, any other elements on which the exemption should be made conditional? If yes, please specify such elements and explain your reasons.

Not for the primary market of sale of new vehicles, which is appropriately subject to the general rules for vertical agreements. As concerns the aftermarket, however, we wonder if the limitation to 'three or more wheels' should be kept, especially as new vehicles are developed. It would appear that the hard-core restrictions in Art 5 of Regulation 461/2010 (without prejudice to further comments below) should apply for motorcycles and other vehicles too.

Have you or your client encountered any types of vertical restriction in the motor vehicle sector that the VBER / MBER do not list as hard-core but which in your experience should nonetheless be considered as such?

Yes

No

Do not know



Have you or your client encountered any types of vertical restriction in the motor vehicle sector that the VBER does not list as excluded but which in your experience should nonetheless be considered as such?

Yes

No

Do not know

If “yes”, please identify these types of vertical restriction and explain why you believe that they should be excluded from the exemption.

Some members of the Association suggest that if the Commission decides to maintain the current position that imposing original parts or repair/maintenance services beyond the legal guarantee for brands with market shares above a certain threshold in aftermarkets is not usually admitted, this could be formally treated as an excluded restriction from the MVBER (as it affects aftersales, more than sales of new vehicles, and is specific for the motor vehicle sector -not in other sectors) or in the alternative (but less consistent from a regulatory policy, as it has a wider scope), in the VBER (but making the precision that this exclusion only applies to the motor vehicle sector). At present these aspects are being treated only in the MVGuidelines. The reason of this proposal is essentially formal and also for legal certainty (the Guidelines are not binding to NCA whilst the MVBER & VBER are binding).

Are there any types of vertical restriction in the motor vehicle sector that the VBER/ MVBER lists as hard-core but which in your experience should not be considered as such?

Yes

No

Do not know

If yes, please identify these types of restriction:

Resale price maintenance (VBER Article 4(a))

Territorial/customer restrictions (VBER Article 4(b))

Restriction of sales to end customers by members of a selective distribution system (VBER Article 4(c))

Restriction of cross supplies within a selective distribution system (VBER Article 4(d))

Restriction of component suppliers' ability to sell components as spare parts to end users or repairers (VBER Article 4(e))

Restriction of sales of spare parts by members of a selective distribution system to independent repairers (MVBER Article 5(a))

Restriction of part/tool/equipment suppliers' ability to sell to authorised /independent repairers/distributors or end users (MVBER Article 5(b))

Restriction of component/part suppliers' ability to place their trademark/logo on the components/parts supplied (MVBER Article 5(c))



For any restrictions that you have identified, please provide an explanation as to why you believe that these should not be considered as hardcore, identifying how they benefit consumers and explaining why they outweigh the potential anticompetitive effects.

As concerns territorial restrictions, there is a significant lack of clarity on sales objectives and penetration goals in respect of an assigned territory. Such objectives are quite commonplace in the market as brands seek to ensure that dealers concentrate their efforts in a certain territory. That however conflicts with the prohibition of territorial restrictions (even passive sales) in selective networks. To add to the confusion, territorial obligations are accepted in franchising agreements. This raises the question if franchising agreements may be used in the distribution of new cars (which in principle, should be possible, as it is covered by the VBER and the VGuidelines and the vertical integration is more intense in this market than in many others where franchises operate). One way or other, this issue deserves attention (franchising is not even mentioned in the current MVGuidelines which only pays attention to exclusive or selective distribution systems, which in practice has led to operators not even considering franchising due to lack of legal certainty).

Another arguably excessive prohibition concerns the prohibition of exclusive branding arrangements for components, which are blacklisted despite not necessarily always being a competition problem. If those branding arrangements produce a restriction on supplies by the component/part suppliers, then that is already covered by Article 5(b) of Regulation 461/2010. The specification of branding may be read as specifying that these limitations are particularly unacceptable, which is probably excessive and may give rise to misunderstandings (for instance, in subcontracting agreements where the brand provides all know-how and tools: the subcontractor may be prohibited from selling to third parties and prohibition to indicate the brand in the spare parts should be acceptable and exempted). The alternative would be to discuss this issue in the guidelines.

Are there any types of vertical restriction in the motor vehicle sector that the VBER lists as excluded but which in your experience should not be considered as such?

Yes

No

Do not know

If “yes”, please identify these types of restriction:

Non-compete/single-branding obligation (VBER Articles 5(1)(a) and 5(2))

Post-term non-compete obligation (VBER Articles 5(1)(b) and 5(3))

Restriction of sales of particular competing suppliers by members of a selective distribution system (VBER Article 5(1)(c))



For any restrictions that you have identified, please provide an explanation as to why you believe that these should not be excluded, identifying how they benefit consumers and explaining why they outweigh the potential anticompetitive effects.

n/a

Prevalence of particular restrictions

The motor vehicle block exemption rules aim at achieving certain specific objectives to the sector (see below). Please provide a qualitative estimate of the extent to which each of these objectives has been achieved, using the following coding: 1 (objective achieved), 2 (objective partially achieved) and 3 (objective not achieved), or mark "DK" if you do not know or "NR" if not relevant for you / your client:

- Ensuring access to vehicle retail and repair markets for vehicle manufacturers wishing to enter new markets or expand their market presence
- Protecting competition between dealers of the same brand
- Preventing restrictions on cross-border trade in motor vehicles
- Enabling independent repairers to compete effectively with authorised repairers
- Protecting competition between authorised repairers of the same brand
- Ensuring spare parts suppliers' access to the aftermarket

(all marked as achieved)

If you have rated any of the above objectives as "partially achieved" or "not achieved", please explain the reasons for your rating.

In the context of agreements to which you or your client are a party, have you encountered any of the following types of restriction referred to in the motor vehicle block exemption rules? Please, reply Yes or No

- Resale price maintenance (sometimes called "price fixing") (VBER Article 4(a) and VG recitals 48-49 and 223-229)
- Restriction of authorised dealers' ability to sell motor vehicles or spare parts in other Member States (VBER Article 4(b), VG recitals 50-55 and SG, recitals 48-50)
- Restriction of authorised dealers' ability to sell motor vehicles or spare parts to end customers (VBER Article 4(c), VG recitals 56-57 and SG recitals 51-52)
- Restriction of authorised dealers' ability to sell motor vehicles or spare parts to other dealers within the same distribution system (cross-supplies) (VBER Article 4 (d) and VG recital 58)



Restriction of original equipment suppliers' ability to sell spare parts to end customers or repairers (VBER Article 4 (e) and VG recital 59)

Restriction of authorised dealers' ability to sell spare parts to independent repairers (MVBER Article 5(a) and SG recital 22)

Restriction of components / parts suppliers' ability to place their trademark / logo on the components / parts supplied (MVBER Article 5(c) and SG recital 24)

Single-branding / non-compete obligations (VBER Articles 5(1)(a) and 5(2), VG recitals 66-67 and 129-150 and SG recitals 26 and 28-41)

Post-term non-compete obligations (VBER Articles 5(1)(b) and 5(3) and VG recital 68)

Restriction on authorised dealers not to sell motor vehicles or spare parts from particular competing suppliers (sometimes called the "no boycott rule") (VBER Article 5(1) (c), VG recitals 69 and 182 and SG recital 27)

Restriction of independent operators' access to technical information (SG recitals 62-68)

Misuse of warranties (SG recitals 49 and 69)

Restriction on the number of authorised repairers within a brand network (SG recital 70)

Requirement that authorised repairers within a brand network also sell vehicles of the brand (SG recital 71)

(all marked "no" except non-compete which is fairly common)

Have you or your client encountered any conduct on the part of a contractual partner that you consider served as an indirect means of achieving anti-competitive results?

Yes

No

Do not know

If "yes", please describe both the conduct and the anti-competitive result(s) in question.

Is there a code of conduct / practice that applies to contractual relations between you / your client on the one hand and your contractual partner(s) in the motor vehicle sector?

Yes

No

Do not know

No contractual relations with other companies in the motor vehicle sector

It is understood that the ACEA Code is applied generally by a large number of brands in Spain.



Legal certainty: clarity for firms as to what the law means

Companies are required to assess themselves whether the agreements and / or specific clauses they enter into are compliant with Article 101 of the Treaty. One of the functions of the motor vehicle block exemption rules is to make this self-assessment easier by allowing companies to understand and predict the legal consequences of the situations / relationships / conduct governed by Article 101 of the Treaty (often referred to as "legal certainty"). Based on your experience, do you consider that, taken as a whole, the motor vehicle block exemption rules have achieved this aim?

Yes

No

Do not know

If "no" please explain your reasons.

Do you / your client consider that the definitions given by the motor vehicle block exemption rules have increased legal certainty compared to a situation in which no such rules existed. Please use the following coding: 1 (very little), 2 (little) and 3 (sufficient), or mark "DK" if you do not know or "NA" if not applicable to you / your client:

Vertical agreements (VBER Article 1(1)(a), VG recitals 24-26 and MVBBER Article 1(1)(a))

Agreements of minor importance (VG recitals 8-11)

Agency agreements (VG recitals 12-17)

Subcontracting agreements (VG recital 22 and SG recital 23)

Franchise agreements (SG recital 189)

Non-compete obligation (VBER Article 1(1)(d))

Selective distribution (VBER Article 1(1)(e) and MVBBER Article 1(1)(i))

Exclusive distribution (VG recital 151)

Authorised repairer/ distributor (MVBBER Article 1(1)(c)-(d))

Independent repairer/ distributor (MVBBER Article 1(1)(e)-(f))

Independent operator (SG recital 62)

Intermediary (SG recital 52)

Motor vehicle (MVBBER Article 1(1)(g))

Spare part (MVBBER Article 1(1)(h))

Original part (SG recital 19)

Matching quality part (SG recital 20)

Technical information (SG recital 66)

Tool (SG recital 68)

Connected undertaking (VBER Article 1(2) and MVBBER Article 1(2))

Active and passive sales (VG recital 51)

If you have selected the option "little" or "very little" for any of the above definitions, please explain the reasons for your rating and identify whether it relates



to the respective definition, its application in practice or the overall structure of the rules.

1) The notion of agent and the extent to which competition law applies is challenging even for competition law experts. That may only worsen with internet intermediation. While this is not specific to motor vehicle distribution, it affects the sector greatly as agents are frequent, especially in the so-called secondary network.

2) On another matter, there is a marked lack of clarity on the possibility to use franchise agreements in the motor vehicle sector (the answer should be YES, but the current MVGuidelines are silent, whilst they dedicate a lot of explanations to other types of distribution) and also concerning territorial restrictions generally and specifically concerning the use of franchising agreements.

3) Finally, just a technical/drafting issue: The reference in the BER to 'connected undertakings' is arguably inconsistent in light of the definition of undertaking as an economic unit. Again, not specific in this sector.

Do you / your client consider that the below provisions of the motor vehicle block exemption rules have increased legal certainty compared to a situation in which no such rules existed. Please use the following coding: 1 (very little), 2 (little) and 3 (sufficient), or mark "DK" if you do not know or "NA" if not applicable to you / your client:

Market share thresholds for exemption (VBER Articles 3 and 7 and VG recitals 93-95)

Severability (VG recitals 70-71)

Withdrawal/disapplication of the block exemption (VBER Article 6, VG recitals 74-85, MVBER Article 6 and SG recitals 35-37)

Resale price maintenance (sometimes called "price fixing") (VBER Article 4(a) and VG recitals 48-49 and 223-229)

Territorial/customer restrictions, except for the restriction of active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another buyer, where such a restriction does not limit sales by the customers of the buyer (VBER Article 4(b) (i) and VG recitals 50-54)

Territorial/customer restrictions, except for the restriction of sales by wholesalers to end users (VBER Article 4(b)(ii) and VG recitals 50 and 55)

Territorial/customer restrictions, except for the restriction of sales by authorised dealers in a selective distribution system to unauthorised resellers (VBER Article 4(b)(iii) and VG recitals 50 and 55)

Territorial/customer restrictions, except for the restriction of the buyer's ability to sell components, supplied for the purposes of incorporation, to



customers who would use them to manufacture the same type of goods as those produced by the supplier (VBER Article 4(b)(iv) and VG recitals 50 and 55)

Restriction of sales to end customers by authorised dealers in a selective distribution system (VBER Article 4(c), VG recitals 56-57 and SG recitals 51-52)

Restriction of dealers' ability to sell motor vehicles or spare parts to other dealers within the same distribution system (cross-supplies) (VBER Article 4(d) and VG recital 58)

Restriction of original equipment suppliers' ability to sell spare parts to end users or repairers (VBER Article 4(e) and VG recital 59)

Restriction on the ability of authorised dealers within a selective distribution system to sell spare parts to independent repairers (MVBBER Article 5(a) and SG recital 22)

Restriction on the ability of suppliers of parts/tools/equipment to sell to authorised/independent repairers /distributors or end users (MVBBER Article 5(b) and SG recital 22)

Restriction of component/part suppliers' ability to place their trademark/logo on the components/parts supplied (MVBBER Article 5(c) and SG recital 24)

Exceptional admissibility of hardcore restrictions (VG recitals 60-64)

Restriction of independent operators' access to technical information (SG recitals 62-68)

Misuse of warranties (SG recital 69)

Placing limits on the numbers of authorised repairers within a brand network (SG recital 70)

Requiring authorised repairers within a brand network to also sell vehicles of the brand (SG recital 71)

Selective distribution (VG recitals 174-188 and SG recitals 42-71)

Franchising (VG recitals 189-191)

Exclusive supply obligations (VG recitals 192-202)

Upfront access payments (VG recitals 203-208)

Category management agreements (VG recitals 209-213)

Tying (VG recitals 214-222)

Indirect restrictions of cross-border trade (SG recitals 49- 50)

Exclusive distribution (VG recitals 151-173)

If you have selected "little" or "very little" for any of the above provisions, please explain the reasons for your rating and identify whether it relates to the formulation of the respective provision, its application in practice or the overall structure of the rules.

As noted in earlier responses, we believe that there is a marked lack of clarity in respect of obligations with a territorial dimension in selective distribution and the availability of franchising agreements (which admit territorial restraints -for active sales- and also non-compete during the whole duration of the contract; indeed in



the VBER these restraints are block exempted up to 30% share). That problem is partly one of policy but also one of legal certainty, as the rules are confusing and contradictory. Clarity on whether specific territorial obligations may be imposed is necessary. The same applies to non-compete obligations in franchising in the motor vehicle sector (we do not see a reason for not applying the general principles of the VBER and the VGuidelines on this point).

As regards the rules on warranties/recall campaigns/free services, there is also a problem of lack of clarity, as this matter is not in the MVBBER but in MVGuidelines and in the 'frequent questions' paper (see comments and suggestions above). Besides that formal point, the rules appear to prohibit obligations to use spare parts in extended warranties. If so, that places manufacturers in disadvantage in respect of insurance companies or fleet owners who can and often do determine the parts to be used.

As concerns access to selective repair networks, the prohibition in para 70 SG of quantitative limitations seems excessive. Independent repairers are, and rightly so, entitled to full access of products and services, as well as technology and information, tools & equipment. Forcing brands (in markets that are defined "by brand" -which is questionable nowadays, see comments above) to, on top of that, admit them as members of their service networks does not appear to increase choice, and arguably weakens the incentives of manufacturers to support their networks and that of official repairers to invest and improve their performance.

Please identify any other specific areas where you consider that there is a lack of legal certainty.

It is submitted that there is significant lack of clarity in respect of the situations where spare parts and services merit a definition of a separate relevant market. As above noted, the market evolution suggests that a greater proportion of customers consider the aftermarket in their initial choice, which would question this perspective.

Besides, from a formal standpoint it would be appropriate to maintain the structure of a BER and guidelines, avoiding the adoption of 'frequently asked questions' or similar.

In 2010, the Commission included (in recital 66 of the Supplementary Guidelines) a non-exclusive list of items commonly provided to authorised repairers and that should be considered as technical information that should not be withheld from independent operators. The items are software, fault codes and other parameters, together with updates, which are required to work on electronic control units with a view to introducing or restoring settings recommended by the supplier, motor



vehicle identification numbers or any other motor vehicle identification methods, parts catalogues, repair and maintenance procedures, working solutions resulting from practical experience and relating to problems typically affecting a given model or batch, recall notices, other notices identifying repairs that may be carried out without charge within the authorised repair network, as well as part codes and any other information necessary to identify the correct car manufacturer-branded spare part to fit a given individual motor vehicle. Please identify any other items provided to authorised repairers that you believe should have been considered as technical information for the purposes of the motor vehicle block exemption rules.

We are not aware of any such further items.

Efficiency (Were the costs involved reasonable and proportionate to the benefits?)

What types of costs (if any) have you / your client incurred when assessing whether vertical agreements to which you / your client is a party can benefit from the motor vehicle block exemption rules (namely the VBER, the MVBBER, the Vertical Guidelines and the Supplementary Guidelines)?

- We have not incurred any costs
- Internal administrative costs
- Internal lawyers
- External counsel
- Other

If “other”, please specify.

Please estimate the amount of these costs on an annual basis both in terms of value (in EUR) and as a percentage of your turnover.

We are not in a position to provide an estimate.

Please indicate whether you consider these costs to have been proportionate to any benefits the motor vehicle block exemption rules have brought to you / your client:

- They have been proportionate
- They have been disproportionate
- Do not know**
- Not applicable

If you consider the costs to have been disproportionate, please explain your reasons.

n/a



Please provide an estimate of the level of assessment costs you / your client would have incurred if this assessment had had to rely directly on Article 101 of the Treaty (no motor vehicle block exemption rules):

- Costs would have been higher
- Costs would have been lower
- Costs would have been the same**
- Do not know
- Not applicable

If you estimate that the costs would have been the same or lower, please explain your reasons.

n/a

Relevance (Do the objectives of the rules still correspond to the current needs?)

Please identify any changes affecting your business or that of your client since 2010 that you believe should be reflected in the objectives of the block exemption rules covering the motor vehicle sector (namely of the VBER, the MVBBER, the Vertical Guidelines and the Supplementary Guidelines).

The main changes affecting this sector are understood to be:

- **Customers moving away from ownership into renting/carsharing models.**
- **increased reliance on internet as a sales channel and provider of leads on services through ratings and other similar benchmarking services.**
- **the huge growth of car sharing managed by fleet operators who purchase servicing from official and independent networks.**
- **The debilitation of the official distribution networks of sales and aftersales.**

Do you consider the objectives of the motor vehicle block exemption rules to still be relevant today? Please use the following coding for your reply: 1 (the objective is still relevant), 2 (the objective is no longer relevant), or mark "DK" if you do not know or "NR" if not relevant for you / your client:

- Ensuring access to vehicle retail and repair markets for vehicle manufacturers wishing to enter new markets or expand their market presence
- Protecting competition between dealers of the same brand
- Preventing restrictions on cross-border trade in motor vehicles
- Enabling independent repairers to compete effectively with authorised repairers
- Protecting competition between authorised repairers of the same brand
- Ensuring spare parts suppliers' access to the aftermarket

If you have rated any of the objectives as "no longer relevant", please explain what factors lead you to consider this/these objective(s) to be obsolete.



(all considered still relevant)

Please describe any other objectives that you believe the Commission should pursue in respect of vertical agreements in this sector, explaining their relevance for competition on the markets in question.

n/a

The material scope of the sector-specific regime for vertical agreements concerning motor vehicles was defined in Regulation 461/2010 as self-propelled vehicles intended for use on public roads and having three or more road wheels. Based on your experience, is this scope still appropriate?

The current scope is still appropriate

The definition should be widened

The definition should be narrowed

Do not know / no views

If you believe that the material scope of the sector-specific regime should be narrowed or widened, please explain which categories of vehicle you believe should be newly excluded or included.

As earlier noted, the limitation of the scope of the rules to vehicles of three or more wheels does not have a clear justification. It was understandable in the past as the rules were much more prescriptive, but no longer now.

Coherence (Are the rules consistent internally and with other EU rules?)

In your experience or that of your client, are there any inconsistencies or contradictions within any of the individual instruments making up the motor vehicle block exemption rules (VBER, Vertical Guidelines, MVBBER and Supplementary Guidelines)?

Yes

No

Do not know

If “yes”, please identify the instrument(s) at issue, specify the provisions giving rise to the internal inconsistencies and explain the reasons for your assessment.

The existence of specific rules for one sector of the economy in itself raises a consistency issue. In essence these rules are limited to aftermarkets, a complex area where competition law lacks a clear policy. The solution is technically based



on the assumption that relevant markets should be defined separately for each brand, which brings Article 102 TFEU to the centre of the debate.

Besides, and from a purely formal viewpoint, the special treatment of this sector is contained in three documents: a block exemption regulation, the 'supplementary guidelines' and an informal 'frequently asked questions' paper (FAQ). That formal structure, again, raises consistency issues.

Finally, and as noted in earlier responses, it is submitted that there are inconsistencies/lack of clarity in respect of geographical limitations and the treatment of guarantees, which are not restated here for brevity.

In your experience or that of your client, are there any inconsistencies or contradictions between the instruments that make up the motor vehicle block exemption rules?

Yes

No

Do not know

If "yes", please identify the instruments at issue, specify the provisions giving rise to the inconsistencies and explain the reasons for your assessment.

The definition of a separate relevant market for each brand is read as impeding quantitative limitations in selective repair networks (see para 70 of the SG). That is inconsistent with the general framework on vertical restrictions and contractual freedom generally and does not seem necessary nowadays in view of the notable increase of competition of independent networks.

Based on your experience or that of your client, are there any inconsistencies or contradictions between the motor vehicle block exemption rules and other Commission instruments that lay down rules or provide guidance on the application / interpretation of Article 101 of the Treaty (such as other block exemption regulations, the Horizontal Guidelines, the Notice on the definition of the relevant market or the Guidelines on the application of Article 101(3) of the Treaty)

Yes

No

Do not know

If "yes", please identify the instruments at issue, specify the provisions giving rise to the inconsistencies and explain the reasons for your assessment.

To the best of your / your client's knowledge, are there any inconsistencies between the motor vehicle block exemption rules and other existing or upcoming Commission instruments in the area of competition policy and enforcement?

Yes

No



Do not know

If “yes”, please explain.

To the best of your / your client’s knowledge, are there any inconsistencies between the motor vehicle block exemption rules and other existing or upcoming EU rules?

Yes

No

Do not know

If “yes”, please explain.

EU added value (Could the same results have been achieved with action only at national level?)

In your experience or that of your client, have the motor vehicle block exemption rules (namely the VBER, the MVBER, the Vertical Guidelines and the Supplementary Guidelines) made it easier for national competition authorities and national courts to apply the rules consistently?

Yes X

No

Do not know

If “no”, please explain.

In your experience or that of your client, have the motor vehicle block exemption rules provided any added value, or could national guidance, the enforcement practice of national competition authorities and relevant national case-law have been equally or more effective?

National provisions would have been less effective

National provisions would have been equally effective

National provisions would have been more effective

Do not know

If you consider that national provisions would have been equally or more effective, please explain your reasons.

Final comments and document upload

Is there anything else you would like to say that may be relevant for the evaluation of the motor vehicle block exemption rules (namely the VBER, the MVBER, the Vertical Guidelines and the Supplementary Guidelines)?



If you wish to do so, you can also attach relevant supporting documents for any of your replies to the questions above, clearly identifying the question to which they refer. Please make sure that any such documents are as concise as possible.