New Block Exemption Regulation for the Motor Vehicle Sector

Introduction

On 28 May 2010, the European Commission (Commission) published the new block exemption regulation No. 461/2010 for the motor vehicle sector (MVBER). Under the regulation, which came into effect on 1 June 2010, certain vertical agreements and concerted practices in the motor vehicle sector are exempt from the prohibition against anti-competitive agreements as laid down in Art. 101 (1) of the Treaty on the Functioning of the European Union (TFEU).

Agreements can benefit from the block exemption so long as they do not contain any serious restrictions on competition and they meet the other conditions laid down by the Regulation. The extent of exemption depends on the type of agreement. In this respect, the new MVBER differentiates between:

- vertical agreements relating to the purchase, sale and resale of new motor vehicles (motor vehicle distribution); and
- vertical agreements relating to the conditions under which the parties may purchase, sell or resell spare parts for motor vehicles or provide repair and maintenance services for motor vehicles (motor vehicle aftermarket).

Motor Vehicle Distribution Agreements

The Commission finds that competition has improved in the motor vehicle distribution sector, rendering sector-specific regulations mostly redundant in the medium term. The general block exemption regulation on vertical agreements No. 330/2010 (Vertical BER) will therefore apply as of June 2013. In the interim period, the former MVBER No. 1400/2002 will continue to be applicable.

The rules of the Vertical BER, which apply as of June 2013, will allow motor vehicle manufacturers to be more flexible in organizing their business. Within the framework established by Art. 5 of the Vertical BER, manufacturers will be able to restrict multi-brand distribution, to prohibit dealers from opening additional points of distribution, and they will be able to make distributors offer certain repair or maintenance services. In addition, certain rules protecting dealers that were included in the old MVBER will expire, such as minimum periods of contract, cancellation periods, the right to transfer a company to another dealer and arbitration clauses. On the other hand, under the new rules manufacturers will no longer be permitted to take advantage of the 40% market share threshold of the old MVBER for agreements establishing quantitative selective distribution systems for the sale of new motor vehicles.

Motor Vehicle Aftermarket

Regarding repair and maintenance services and spare parts, the Commission is of the opinion that these sectors continue to require a special set of rules to protect and promote competition. As of 1 June 2010, any vertical agreement in these sectors must both conform to conditions set out by the Vertical BER (No. 330/2010) and may not contain restrictions of competition as defined by Art. 5 of the new MVBER (No. 461/2010).
Hence, the following three “hardcore restrictions” cannot be exempted:

1. Restrictions on the sale of spare parts for motor vehicles by members of a selective distribution system to independent repairers;
2. Restrictions on suppliers of spare parts, repair tools or diagnostic and other equipment, on the supplier’s ability to sell those goods to authorized or independent distributors, or to authorized or independent repairers or end users;
3. Restrictions, agreed between a manufacturer of motor vehicles which uses components for the initial assembly of motor vehicles and the supplier of such components, on the supplier’s ability to place its trade mark or logo effectively and in an easily visible manner on the components supplied.

On the basis of the new MVBER, the Commission can initiate proceedings against motor vehicle manufacturers which make their warranty conditional on general maintenance work being carried out by authorized repairers only. However, automotive manufacturers can demand that repair work covered by their warranty, can only be carried out by authorized repairers.

The newly introduced applicability of the general Vertical BER means that the 30% market share threshold also applies for the motor vehicle aftermarket. Since the Commission assumes a brand-specific market demarcation in this respect, it is to be expected that the block exemption will not apply for all brand-specific vertical agreements in the aftermarket sector because this 30% market share threshold is likely to be exceeded. This means that such agreements will have to be reviewed clause by clause for their conformity with Art. 101 TFEU and a possible individual exemption according to Art. 101 (3) TFEU.

### Supplementary Guidelines

Taking into account the above, the Commission's supplementary guidelines (OJEU 2010/C 138/05) will be of vital importance in practice.

The supplementary guidelines to the new MVBER set out principles for assessing under Art. 101 TFEU particular issues arising from vertical restraints in agreements for the sale and repair of motor vehicles, and for the distribution of spare parts. The guidelines are intended to help companies evaluate vertical agreements in the motor vehicle sector from an antitrust law perspective.

Selective distribution is currently the predominant form of distribution in the motor vehicle sector. The Commission adheres to the opinion that selective distribution is not generally inadmissible according to Art. 101 TFEU. However, the prohibition of Art. 101 TFEU is considered to be applicable if selective distribution agreements are accompanied by additional restraints on competition. Particular attention should be paid to three specific types of conduct which may restrict such competition, namely preventing access of independent repairers to technical information, misusing legal and/or extended warranties to exclude independent repairers, or making access to authorized repairer networks conditional upon non-qualitative criteria. Therefore, vehicle manufacturers and importers should evaluate and revise their distribution agreements and practices regarding the supply of spare parts and technical information in particular. Concerning vehicle distribution agreements, this review should be completed by 2013.

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