



# **COMMENTS ON THE DRAFT EXEMPTION REGULATION AND AND GUIDELINES OF JULY 9, 2021**

## **EXECUTIVE SUMMARY**

The Commission has disclosed a draft vertical agreement exemption regulation and guidelines, inviting comments by September 17, 2021.

## **I - THE STATE OF CAR DISTRIBUTION**

- 1) The exemption has protected a deficient model, contributing to the increase in distribution costs and consequently, in vehicle prices.
- 2) The internal market is compartmentalized to an extent that allows price differences of more than 40% from one Member State to another.
- 3) The exemption regulation has become a guarantee of impunity, which allows the organization of the network without respect for the rules of selective distribution.

## **II - THE MANUFACTURERS' PROJECT**

- 1) The new model consists in the sale of vehicles and services by the manufacturer directly to the final users.

To this end, the manufacturer undertakes to appropriate the data relating to the distributors' customers and to obtain that the prospects are systematically directed to him.

In this scheme, the distributor would lose its status as an independent trader and become the exclusive agent of the manufacturer.

- 2) The manufacturer intends to take over the distribution business.

Used vehicles would be taken over and reconditioned by the manufacturer, then resold to the distributor under a franchise agreement.

Financial and mobility services would be marketed directly by the manufacturer.

The after-sales service would be marketed by the manufacturer directly and subcontracted to the repairer.

- 3) The manufacturer is building an ecosystem around its marketplace, based on data control, which would allow it to be remunerated by both suppliers and customers for all operations concerning its brands of vehicles.

- 4) This project poses various problems.

By becoming a mobility supplier and a player in all the distribution businesses, the manufacturer enters into horizontal competition with the

distributor, which is not covered by the regulation on the exemption of vertical restrictions.

The appropriation of the distributors' data, without compensation, is obviously illegitimate.

The exclusivity obligation inherent in the mandate is incompatible with the multi-brand nature of distribution.

The data confiscated by the manufacturers becomes consequently unavailable to new manufacturers, this handicap constituting a barrier to market entry.

The setting of a single price in the context of direct sales by the manufacturer destroys intra-brand competition and, insofar as the pattern is reproduced by all manufacturers, is likely to weaken inter-brand competition.

The methods of sharing the data collected by the distributor within the different entities of the manufacturer contravene the rules defined by the RGPD, by compromising the exercise of the rights of the end user on his personal data.

The change of model envisaged by the manufacturers leads to the pure and simple eviction of the main players of the distribution market.

### **III - THE COMMISSION'S PROPOSAL**

1) The Commission's proposal does not fully take into account the definition of the efficiencies that justify the exemption of vertical restraints, ignoring in particular the conditions of a fair profit for users and the indispensable nature of the exempted restraints.

2) The Commission's draft does not provide a sufficient framework for restrictions on access to the Internet, allowing manufacturers to prohibit sales on third-party platforms, or to appropriate part of the clientele that the distributor could build up on this medium.

The Commission now allows for price differentiation depending on whether the good is intended to be sold online or in a physical outlet, without sufficiently preventing the risk of differential pricing, which would discourage online sales.

3) Without sufficiently taking into account the evolution of sales channels, the Commission seems to condemn dual distribution (direct sales by the manufacturer, together with indirect sales through distributors), rather than defining the conditions for its legality.

4) The deployment of a network of agents would not fall within the scope of the exemption regulation, as long as the distribution costs are borne by the manufacturer and the distributor freely adopts the status of agent.

The Commission seems to exempt the implementation of such a network, outside the legal framework of the block exemption for vertical agreements.

5) The ambiguity maintained by the Commission on the exemption of quantitative selection does not seem to be in line with the principles governing selective distribution, which is fundamentally based on qualitative selection.

6) The rules envisaged for the withdrawal of the benefit of the exemption do not appear to be in conformity with the Treaty on the Functioning of the European Union.

---