

Additional public consultation on proposed guidance relating to information exchange in the context of dual distribution, intended to be added to the Vertical Guidelines

This document sets out Leaseurope's response to Commission's Public consultation on the guidance on information exchange in the context of dual distribution, as it relates to the draft revised Vertical Block Exemption Regulation (VBER) and draft revised Vertical Guidelines.

General observations

Whilst Leaseurope welcomes additional guidance on the VBER regime, the specific nature of leasing and rental operators has not been adequately addressed in the draft revised VBER and draft revised Vertical Guidelines.

Leasing and rental companies are faced with competitive market imbalances in similar vein to distributors, and beyond. For leasing and rental companies, OEMs are both suppliers as well as direct competitors with regards to mobility services. Consequently, we are advocating to explicitly recognise the special nature of leasing and rental companies in Art 2.4 of the revised VBER in addition to the Guidelines.

In today's market, many OEMs request customer data, and other market (segment) relevant data without any obvious justification. Providing the data of these customers may enable OEMs to win customers from independent leasing companies when the leasing contract is due to expire. At the same time, we see some OEMs put in place restrictions on leasing companies' ability to market mobility service offers in the SME/private segment by hindering the possibility for leasing and rental companies to acquire vehicles at a competitive price level for this segment. This strategy may foreclose independent leasing and rental companies from these segments, whilst it is unclear which efficiencies this brings for OEMs and why this should be allowed.

Consequently, we advocate to explicitly recognize in the updated VBER that all relevant theories of harm related to information exchange in a dual distribution situation, addressing not only concerted behaviour, but also, or even more so, about foreclosure and unfair advantages also apply in the leasing market.

As is noted in Paragraph 14 sub (b) of the Draft new section dealing with information exchange in dual distribution any type of information exchange that require buyers to pass on customer-specific sales data would provide the supplier's downstream retail operations with a strategic advantage and restrict the distributors' ability to compete effectively at retail level. The European Commission rightfully recognizes that such exchanges should not benefit from an exemption from the cartel prohibition. Leaseurope advocates that the protection should be even more stringent by including a hardcore restriction on any such information exchange in the updated VBER.

Moreover, in order to avoid unnecessary ambiguity, it should be explicitly recognized that this protection also applies to leasing and rental companies. The requirement for a leasing company, as a buyer of a vehicle, to provide its customer data to OEMs which act as competitors on the leasing market leads to a situation of potential foreclosure and unfair competition.

Path forward

Leaseurope would like to see the following issues addressed, in the revised VBER and the revised Guidelines:

- Recognise the long-term impact of OEMs offering leasing and rental products and its overall impact on competition in the supply chain. By virtue of their ability to exclude leasing and rental companies from accessing their products at a fair price, OEMs are able to distort competition which will ultimately result in higher consumer prices.

- Recognise the special nature of leasing and rental companies, via a clear definition of end-user in Article 1 of the current or the updated VBER,¹ in Art 2.4 VBER as well as in Vertical Guidelines.
- Recognise the long-term impact of the OEM shift to direct sales and its overall impact on competition in the value chain. The continuing increase in direct sales will erode the market share of independent operators in the market, giving OEMs a disproportionate amount of control over the entire distribution chain and market conditions. This in turn will result in less competition, higher sales prices and increased costs of spare parts and repair and maintenance operations.
- Recognise that 'spill-over' effects with regards to data exchanges would be most efficiently addressed via hardcore restrictions in the revised VBER, rather than in the revised Guidelines. If no clear demarcation is made at OEM level between sales operations and other company units offering services that engage in direct competition with leasing and rental companies, information on customers coming from said leasing and rental companies will clearly provide an unfair competitive advantage.
- In parallel, the MVBER needs to be updated and future-proofed, not in the least with regards to RMI and access to in-vehicle data.

About Leaseurope

Leaseurope, Transparency Register nr: 430010622057-05, brings together 45 member associations representing the leasing, long term and/or short term automotive rental industries in the 33 European countries in which they are present. The scope of products covered by Leaseurope members' ranges from hire purchase and finance leases to operating leases of all asset categories (automotive, equipment, machinery, ICT and real estate). It also includes the short-term rental of cars, vans and trucks. It is estimated that Leaseurope represents approximately 93% of the European leasing market. In 2021, 48% of all vehicles registered in the EU were acquired by leasing and rental companies.

In addition, our members are already the largest acquirers of electric vehicles in Europe, both with regards to full battery electric (BEV) as well as plug-in hybrids (PHEV). As such, they have helped hundreds of thousands of customers across the continent to make the jump to zero-emission mobility. This means that they have a unique perspective on the market conditions required to sustainably increase uptake.

¹ The recognition of leasing and rental companies' as end-users is **currently included** in the MVBER Supplementary Guidelines