



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

The viewpoint of Federauto

Federauto is the official federation representing the Italian automotive dealers and distributors. The Italian automotive distribution industry counts 120.000 employees and 1.300 associated companies, which generate over 3% of the national GDP and contribute by 5% to the national tax revenue.

Federauto has been asked to state its position in respect to the “Draft new section dealing with information exchange in dual distribution”. Federauto will hereby confirm the position and statements provided following the workshop on the “Chapter 2: information exchange - Review of the Vertical Block Exemption Regulation and Vertical Guidelines” held on October 15th 2021, as well as the content expressed in the Position Paper titled “Object: Conducts of car manufacturers with regard to certain contractual clauses imposed on the dealers network concerning the sharing of customer base data”, dated January 24th 2022.

In the automotive sector, the manufacturers/suppliers require the distributors to provide the complete set of each individual customer’s personal data (name and surname, date of birth, address of residence, office address, telephone and mobile numbers, e-mail addresses, driving licence data etc.) as well as financial data, specially when financial services are provided through the manufacturer’s/supplier’s captive financial company. Further to this, a significant and increasing number of suppliers are obliging the distributors to provide even the prospect customer data as well as the distributor’s financial data (so called BI – Business Intelligence data).

This data are provided to the manufacturer/supplier through the IT platforms which the distributor is obliged to adopt and use among the standards imposed within the frame of the selective distribution system. Often the manufacturer/supplier shares this data with third party service providers.

This data not only represent the distributor’s main asset, but they entail a highly strategic value, as they allow the manufacturer/supplier to improve and unfold their control on their respective reference market, thus disintermediating the distributors by directly addressing the final consumer. By doing so, the manufacturers/distributors are concentrating the market in their own perimeter of control, while improving their dominance by reducing the competitive balance among the actors on the market.

The relationship between car manufacturers and distributors, also taking into account recent market trends, is gaining an increasingly hybrid nature, in which the manufacturer assumes the dual role of exclusive supplier of its own network of dealers and, at the same time, of competitor of those same dealers. This very peculiar context, typical of the automotive sector, is comparable to the dual distribution systems.

Federauto recognises that, in such a context, a unilateral flow of information from the dealer to the manufacturer may take place in order to allow the manufacturer to make informed decisions based on actual demand. Nevertheless, such exchanges of information should be regulated so to avoid critical cases from an antitrust point of view.

Differently, this exchange of information, as in the present daily practice, clearly distorts the fair dynamics of the market, in that it offers manufacturers the possibility to initiate – based on the imposed exchange of data – targeted marketing policies in respect of the dealers' customers and, ultimately, for dispossessing the dealers' customer base.

The scenario described above, therefore, seems to raise critical issues from two viewpoints. On the one hand, the imposition of an obligation on manufacturers to share customers' personal data appears to constitute a possible abuse of their dominant position vis-à-vis dealers (*please refer to the previous communication from Federauto to DG Comp concerning the matter*). Here, the simple market share is not discriminant enough to prevent the manufacturers/suppliers to clearly hold vis-à-vis the dealers that “*position of economic strength*” which the European case-law regards as indicative of a dominant position.

Secondly, the conduct described above, having as its object the sharing of information relating to customers and their contact details between entities who, although vertically integrated, also find themselves to be direct competitors, especially by virtue of the most recent market dynamics that are gradually consolidating (*hereby Federauto clearly addresses the upcoming transition from dealer to agency contract favoured by several manufacturers/suppliers*), raises critical issues under Article 101 as it represents a hypothesis of exchange of commercially sensitive information.

In this sense, Federauto welcomes the changes introduced by the “*Draft new section dealing with information exchange in dual distribution*” as they address the lawfulness of information exchange between manufacturers and dealers in the automotive sector and clarify by means of examples concerns and mismanagement which could arise by means of such information exchange.

Nevertheless, specifically referring to par. 14 b) of the “*Draft new section dealing with information exchange in dual distribution*”, Federauto wishes to express the need of further detail so to avoid malpractice or misinterpretation. More in detail, Federauto feels that the following aspects should be clarified:

- a) The data relevant for warranty or safety issues should be related to the identification of the object of the transaction (in this case of the vehicle) and possible contacts related to cases relevant for the object's safety or its correct functioning should be delegated to and dealt by the distributor. As a matter of fact, any issue concerning the object (vehicle) is related to the user/owner, who often is not coincident with the initial buyer. It will be a task for the dealer to get hold of the relevant contact person.

- b) Once the customer data are eventually transferred/shared in accordance with the provisions suggested by the *“Draft new section dealing with information exchange in dual distribution”*, the use of these same customer data should be limited to their legitimate purpose. A different use or transfer to third parties should not be permitted.
- c) The automatic or non-automatic reciprocal transfer of vehicle born data not aimed at the improvement of the vehicle’s quality, performance or safety should not be permitted.
- d) The distributor should not be subject to any restriction concerning the use of data shared with or provided to the manufacturer/supplier.

Federauto wishes to thank the Commission for the opportunity offered by this consultation. Federauto hopes that this note will be useful along the path towards the improvement of the regulation and is available for any further discussion concerning the matter.