

European Commission

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Opinion of the Autoalan Keskusliitto Ry on the Commission proposed guidance relating to information exchange in the context of dual distribution

In the proposed guidance relating to information exchange in the context of dual distribution, Autoalan Keskusliitto wishes to highlight following points:

Car manufacturers direct sale is increasing continuously. Manufacturers are selling directly in the beginning only electric vehicles, but after a while also combustion-engined cars are sold directly to end customers. So car manufacturers and dealers are direct competitors at the retail level not only in the combustion engine cars but also in the electric vehicle. In fact there are no different combustion car and electric car market, but only one car market which includes replacement electric and combustion products contrary to what the expert report states. And in the future all the sold new passenger cars are electric.

In order to secure functionin of the car market, all information exchange between the competitors should be illegal. To make car market function well also **information exchange in the contex of dual distribution should not be allowed unless the information exchange does not relate to the delivery of the vehicle to the end customer**. All other information exchange will cause unauthorized competitive advance to one party at the expense of another and will not make the market work properly if you look the car market as a whole (including new car and also after-sales market). Information exchange in the contex of dual distribution will generate to car manufacturer superior competitive advance at the expence of dealers and especially at the expence of independend garages in the after-sales market business.

Despite of the above mentioned we believe new car market might work moderately (not well, but moderate) if the information exchange in dual distribution is allowed as Commission has proposed only between a supplier and a buyer that is necessary to improve the production or distribution of the contract goods or services and strictly limited only to those two cases and is taken into consideration of following aspects:

1. Allowed information exchange is necessary only to improve the production or distribution of the contract goods or services and it should be be interpreted restrictively. However, the allowed exchange of information should be interpreted strictly as an exception to the prohibition on the exchange of information between competitors, which should therefore be the general rule.
2. The recipient of the data should have the burden of proof that the data is used only for the purpose allowed and nothing else and that the use of the data does not negatively affect to competition.at the relevant market
3. The recipient of the data can't never use received data to improve its own competitive advande at the expence of the party data given

4. All customer and other business strategic data is allowed to exchange only in aggregated mode only (so that certain customer can't be identified from the data) unless if the customer related data is strictly necessary to exchange to the delivery of the product or vehicle to the end customer. Manufacturer or importer has nothing objective interest to get that information except for warranty or vehicle delivery issues.
5. Information relating to the prices should not be allowed to exchange at all, because it will give one market player a dominating competitive advance at the expense of other market players. A car dealer for example buys car from manufacturer or importer and sells it to end customer. Pricing between dealer and end customer must be treated as confidential business secret. Manufacturer or importer has nothing objective interest to get that information and it just affects negatively to competition.
6. Exchanged data concerning creating after-sales services must be treated as principle of obligation of reciprocal sharing. Only with that principle it is possible to secure fair competition in the after-sales services in the future. If for example only dealers or garages are, based on dealer agreements, obliged to give data to manufacturer unilaterally, it will destroy competition in the new after-sales services (on demand services, online services etc.). Manufacturers will get a dominating position concerning after-sales services and it will reflect to fair competition immediately for example by disclosing out independent garages and even authorised garages out of the after-sales market competition. This information should be kept anonymous, as the supplier does not need to know the identity of customers in order to improve the characteristics of the products or services.

Background of our opinion

The European automotive distribution, services and mobility sector accounts for 336,000 companies offering 2,9 million jobs, most of the companies being SMEs.

European car market needs automotive dealers and garages to function well. In order to be able to sell new vehicles, automotive dealers must sign a distribution contract with their supplier. These 'authorised' dealers shall comply to the brand identity of its supplier as well as to respect the distribution and repair agreements. Significant investments are needed to comply to all these agreements. In addition, the distribution contract is accompanied by annual commercial policies, setting sales targets which are linked to remuneration systems. The relationship between the distributor and its supplier can only be in balance if, in return for the investments made, the distributor is not exposed to the risk of an abrupt termination of his contract.

This imbalance in contractual relations between manufacturers and their networks has been further aggravated by increasingly aggressive commercial policies. We refer to the Austrian Cartel Court's decision of 22 March 2021 setting out in detail the outcome of their findings.

The Austrian Supreme Court condemned forms of market power abuses; banned Peugeot from tying the dealer's premium payments to customer satisfaction surveys; reducing the dealer's margin if they do not reach sales targets; banned from competing with dealers through subsidized vehicle prices; banned from passing on the costs of its

mystery shopping and audit system to dealers; accused them from using a system for guarantee and warranty work and hourly rates that did not cover the dealers costs; etc.

In addition, and under the pretext of the GDPR rules, most manufacturers request their network to provide them with their customer data aiming to approach them directly. The objective would be to create a common database, allowing manufacturers to create a global customer file with updated data.

This transfer of data is imposed by the manufacturers. In addition, they request these data to be updated. In many cases, these obligations are not governed by an appropriate legal regime and often there is no economic compensation foreseen for the distributor. This raises legal questions regarding the responsibility and access to this data, as well as the essential economic issue of protecting the value of the distribution network, of which customer and prospect data are an essential element.

Gathering data seems to serve the manufacturers' objective to develop direct sales and thereby bypassing its distribution network. However, their network is requested to make massive investments to meet the standards to which now shall be added the costs of accessing the database which distributors themselves are supplying.

In-vehicle data or data generated by vehicle, either considered personal or not, are unchallenged controlled by OEMs. Predictive sales and repairs, remote diagnosis or new MaaS proposals, should be open to fair competition. Consumer data, but also the technical information generated by vehicle will have an impact on competition, and should therefore be included into the new Vertical Block Exemption Regulation.

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AUTOALAN KESKUSLIITTO RY



Timo Niemi
Legal Director, Deputy Managing Director

About Autoalan Keskusliitto Ry

The Finnish Central Organisation for Motor Trades and Repairs (AKL) is an association that provides services to, and represents the financial and labour-market interests of automobile, truck and machinery sales companies, repair, painting, anti-rust and inspection companies.

Over 95 percent of new car dealers in Finland are our members.