Volkswagen AG

Supplement 1: Question 4.22

Review of the HBER and Guidelines - Input on the field of tension between restructuring and antitrust law in the consultation process on Horizontal Block Exemption Regulations

As a rule, the successful restructuring of a company at risk of insolvency requires a comprehensive coordination of the restructuring plan among the stakeholders concerned, in particular the financial creditors, major customers of the services of the company, suppliers, owners and employees, as well as with the company. From the outset, the cooperation is restricted on restructuring and is therefore limited in time. For Volkswagen and other OEMs, this need arises particularly if the production loss caused by insolvency cannot be compensated by other suppliers in a sufficiently short time (due to lack of know-how or lack of production capacity).

In Europe, due to the competition authorities' practice with regard to the cooperation of competitors and the exchange of competitively sensitive information, such a process is being substantively impeded and in particular delayed to such an extent that the rescue plan often fails to arrive on time. Overall, there is a need for clarification under antitrust law for the coordination of creditors in the restructuring of a company at the risk of insolvency.

The informal joint development of a restructuring concept, which is common and indispensable as well as economically desirable in the restructuring practice, must not fail solely because of doubts concerning the limits of what is permitted under antitrust law. This would have massive macroeconomic effects in Europe and affects the competitiveness of the European market. In addition, failed restructuring projects endanger workplaces. Legal clarification is therefore needed to reliably remove the legal uncertainty for the successful restructuring of a systemically important supplier through the joint efforts of the company itself, the creditors involved, the customers, suppliers, owners, employees and other stakeholders.

The problem does not only arise in the automotive industry, where the economic effects are evident. It affects all industrial sectors in which companies are integrated into the value chain and therefore are systemically relevant. In the event of an earnings and financial crisis, these companies require support limited in time and quantity from their creditors and customers to restore their competitiveness.

Against this background, the Commission should clarify that co-operations between competitors with the aim of restructuring companies at risk of insolvency do not constitute a restriction of competition.