



## European Association of Independent Vehicle Traders (EAIVT)

Association Internationale sans But Lucratif

N° 471.517.493 - B R U X E L L E S

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*"EAIVT – Leading the market by connections"*

**Brussels, September 2021**

**To:**

**Directorate-General for Competition – Unit A1**

**Reference number: HT.6179**

**EAIVT – Contribution to Public consultation on the draft revised Regulation on vertical agreements and vertical guidelines**

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The European Association of Independent Vehicle Traders (EAIVT) is a business association within the automotive sector. Our members are players in the independent car trade, our focus is the European car market.

Our contribution to this consultation explicitly regards aspects of the car trade and deliberately ignores the situation in most other sectors unless they are specifically referred to.

EAIVT contributed with input to the EU Commission around the drafting of the former Motor Vehicle BERs 1475/95 and 1400/2002 as well as to the current regulations 461/2010 (MVBER) and 330/2010 (VBER) and their respective guidelines.

We are pleased to continue to share our insight with the Commission with regard to the revision of the above-mentioned legislation. Since the MVBER (here: also including the VBER, SGL and VGL) assumes no competence in the area of new car sales and defers that role to the VBER, and since the Commission has not committed itself to an extension of the MVBER as of yet, we revert back to the VBER consultation although our contribution also relates to the entire MVBER complex.

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As we have already pointed out in the previous “public consultation phase” of the evaluation, we see the functioning of the MVBER very critically. Whilst we agree with the Commission on many individual aspects, we cannot help but notice that there continues to be a stark imbalance of market power between the OEMs and the distribution sector. This has not improved since the VBER replaced the sector-specific regulations in the area of new car sales and the independent sector has been affected by it indirectly.

Car manufacturers opt for a system of selective distribution and reserve the right to choose their partners. If a manufacturer is not happy with the choices they’ve made, or when they are not satisfied with the sales results from their systems, they also deliver their products to outsiders (dual distribution). The members in the OEMs’ distribution system have no way of stopping such behaviour because their inferior market position would expose them to sanctions from their supplier.



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Whilst independent players can benefit from such a scenario, the picture is reversed in times of product scarcity when OEMs will "opt" to supplying their own systems exclusively again.

As a result, the supply scenario in the independent sector is volatile and the frustration from this goes all the way through to the consumer, who has no real alternative to buying from the franchised sector.

In the absence of reliable alternatives, there is no real competition in this market.

But the imbalance of power between manufacturers and dealers is not the only problem. As follows we are giving some more points for your consideration in the process:

1. Manufacturers are interfering with competition by restricting certain types of business, e.g. exports by franchised dealers to consumers and intermediaries, obstructing registration of imported cars by not supplying paper CoCs, denying multi-brand outlets, and restricting warranty eligibility to nationally-sourced cars.

This directly impacts cross-border trade and is contrary to the goals of the internal market.

2. Comparing prices EU-wide is almost impossible due to manufacturers applying different model denominations and specifications. Consequently, many consumers are discouraged from sourcing cars cross-border because they are unable to quantify the economic benefit of the parallel product.
3. The EU Single Market has been effectively segmented by manufacturers into national markets and competition between dealers of the same brand only exists on the national level. The effective restrictions on cross-border trade in motor vehicles maintained by manufacturers obstruct any real EU-wide competition.
4. Manufacturers continue to market new cars without always supplying the CoC in paper format. According to the manufacturers who do this, one of the reasons is that the paper CoC is not required in the country where the car is first sold. As a result, consumers, agents and both authorized as well as independent retailers struggle with the cross-border transaction due to the missing CoC, since the car in question may not be registered in the target country without the CoC.
5. The market requires clarification on "eligibility for warranty". A recent market example shows us that a manufacturer's restrictive approach to granting warranty on imported cars (by making warranty dependent on certain conditions pertaining to the nature of the trade) has a much wider effect in the market and in this case has resulted in the now widespread perception among consumers that cars sourced through the parallel networks are bare of any warranty.

In response to this, EAIVT would welcome a BER regime that "strengthens" the concept of warranty and upholds general warranty rules. If warranty starts on the date of first registration, it should from then on apply EU-wide and not depend on who's bought and who's sold the car.

6. Another comment regards the market thresholds contained in the draft regulation. 30% has for some time been the benchmark. Looking at the last 10 years we cannot see how and where this threshold has impacted on competitive behaviour and for example, corrected any anti-competitive tendencies. Since it appears to have no effect, we therefore suggest lowering it.
7. Our final remark applies to multi-brand distribution. Multi-brand outlets offer consumers real "choice". At the same time, it is not proven nor is it to be expected that such businesses would distort market dynamics (and unfairly disadvantage manufacturers) since customer loyalty is based on previous, positive experience with a brand, and would continue to exist. If nothing else, multi-brand distribution will add to and increase choice for the consumer. If a multi-brand operation is profitable, the economic benefits will not just go to the dealer but also to the local community, the respective stakeholders and all consumers affected. Multi-brand outlets would increase the presence and availability of products and services by a particular brand and would thus accommodate consumer preferences, whilst facilitating and increasing local business as a whole. The decision to operate a multi-brand outlet should therefore be left to the dealer regardless which brand/brands the company already represents. If the competition "base-law" in the EU entitles a supplier to deny the right of a dealer to open a multi-brand store, this law one-sidedly favours the competitive interest of one player over the economic benefit of potentially many other players and many EU consumers.
8. We continue to notice the absence of enforcement of competition rules. As described above, weaker market players often suffer anti-competitive behaviour as they cannot afford to master opposition against the stronger side. Unfortunately, the lack of opposition to anti-competitive behaviour often suggests that there is no such violation. But it is more like 'where there is no plaintiff there is no judge', and everything goes on as usual.

Hence, EAIVT would welcome the introduction of more enforcement of the rules under revision. We believe it would increase citizens' trust in our system and encourage more participation in our institutions.

Furthermore, we support the submission by our partner organisation *Bundesverband freier Kfz-Händler (BVfK)* and agree with BVfK on the need to strengthen the role of intermediaries by further clarifying the status, purpose and activity of the intermediary (see SGL 52).

Likewise, we support the submission by our partner organisation *Verband Freier Autohandel Schweiz (VFAS)* and agree with VFAS that so-called "agency-agreements", when introduced into our sector, need to be looked at. We also agree with VFAS that measures must be taken to ensure that agency systems do not cause distortion in the market and that in a scenario of agency agreements competition continues to function through all levels of distribution, i.e. independent players do not get excluded by default.

In the draft guidelines (VGL) of the VBER, the Commission writes about the objective of Article 101 saying that agreements must not (...) distort competition (...). It then continues to say that "Article 101 also pursues the wider objective of achieving an integrated internal market, which



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enhances competition in the European Union. Undertakings may not use vertical agreements to re-establish private barriers between Member States where State barriers have been successfully abolished. “

In the light of the above – and whilst we fully acknowledge that Article 101(3) has a purpose, we cannot help but point out that the realm of “exemption” as described in the draft regulations, seems inflated compared to the space which is left to curb anti-competitive behaviour.

Brussels, 17 September 2021

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