AUTOALAN KESKUSLIITTO

European Comission

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Autoalan Keskusliitto`s proposals of renewal of block excemption regulation vertical agreements

In the context of the draft regulation published by the European Commission on 9 July 2021, Autoalan Keskusliitto wishes to highlight the following points:

1. **Concerning Direct sales**
   1. Consernig information exchanges (combined market share <10 %), in our view is it should not be allowed at all. **Direct sale is ok (up to 10 % market share), but not information exchange.**

      Information exchange even in minor market share, distorts competition in horisontal level. Manufacturers and importers, when collecting data from all dealers and selling direct at the same time, have totally different database to operate and dominate market (than single dealer have). According to our view information exchange between Manufacturer/importer and dealer should be a hardcore restriction.

      In fact it should be directly stated in guidelines, that manufacturer/importer is a horisontal level competitor to dealer if selling goods directly. In that case manufacturers and importers are operating in the same relevant market than dealers.

   2. The exemption threshold should not be 30%, but instead of 10%. 30 % market share threshold makes regulation useless in practice, because in automotive sector there are in practice no operator which exceeds the threshold. In the long term 30 % threshold leads growing direct sale at the expense of dealers which leads to reduction of competition.

2. **Non-compete obligation**
   1. In the draft of block excemption regulation a non-compete obligation is defined an obligation under which the buyer may have to purchase up to 80% of the products from the manufacturer or importer.

      The threshold is far too high and it distorts competition dramatically for example in automotive spare sparts sector. The threshold must be at most 30 % in order to save good and fair competition in automotive sector.

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Background of our proposals

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

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.

The automotive distribution sector in Europe has been shook up by Chevrolet's withdrawal from the European market in 2013, and more recently by Stellantis' terminating its entire distribution network. In both cases, a simple two-year notice period has been given.

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.

Moreover, direct sale is in total contradiction with the use of a selective distribution system, both from a legal point of view (a selective distribution network implies that the products distributed are reserved for distributors which are selected on the basis of specific criteria) as well as from a economic point of view (with respect to the investments made by the distributors).

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AUTOALAN KESKUSLIITTO RY

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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.

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