

Evaluation of the legal basis for dealer contracts in the EU

AECDR Dealer survey, January 2020

Meeting with DG COMP on 21 February 2020 in Brussels

1. Introduction of AECDR representatives
2. Results of AECDR survey
3. Discussion
4. Next steps

Subsequent to the meeting on 23 October 2019 and the workshop on 14/15 November 2019 AECDR regarded it as useful to provide additional input to DG COMP:

Online survey among dealers in Europe

Dealers from the following countries took part

<u>Czech Republic</u>	6
<u>Denmark</u>	30
Germany	623
<u>Italy</u>	104
<u>Norway</u>	78
Portugal	2
Spain	120
<u>Sweden</u>	63
<u>United Kingdom</u>	38
	1,064

Dealers representing the following brands took part

<u>Abarth</u>	Mazda
Alfa Romeo	Mercedes
Audi	MINI
BMW	Nissan
Cadillac	Opel
Citroen	Peugeot
Chevrolet	Porsche
<u>Dacia</u>	Renault
Dodge	<u>Ssangyong</u>
Fiat	Seat
Ford	Skoda
Hyundai	Smart
Jaguar	Subaru
Jeep	Toyota
Kia	Volkswagen
Land Rover	Volvo
Lexus	

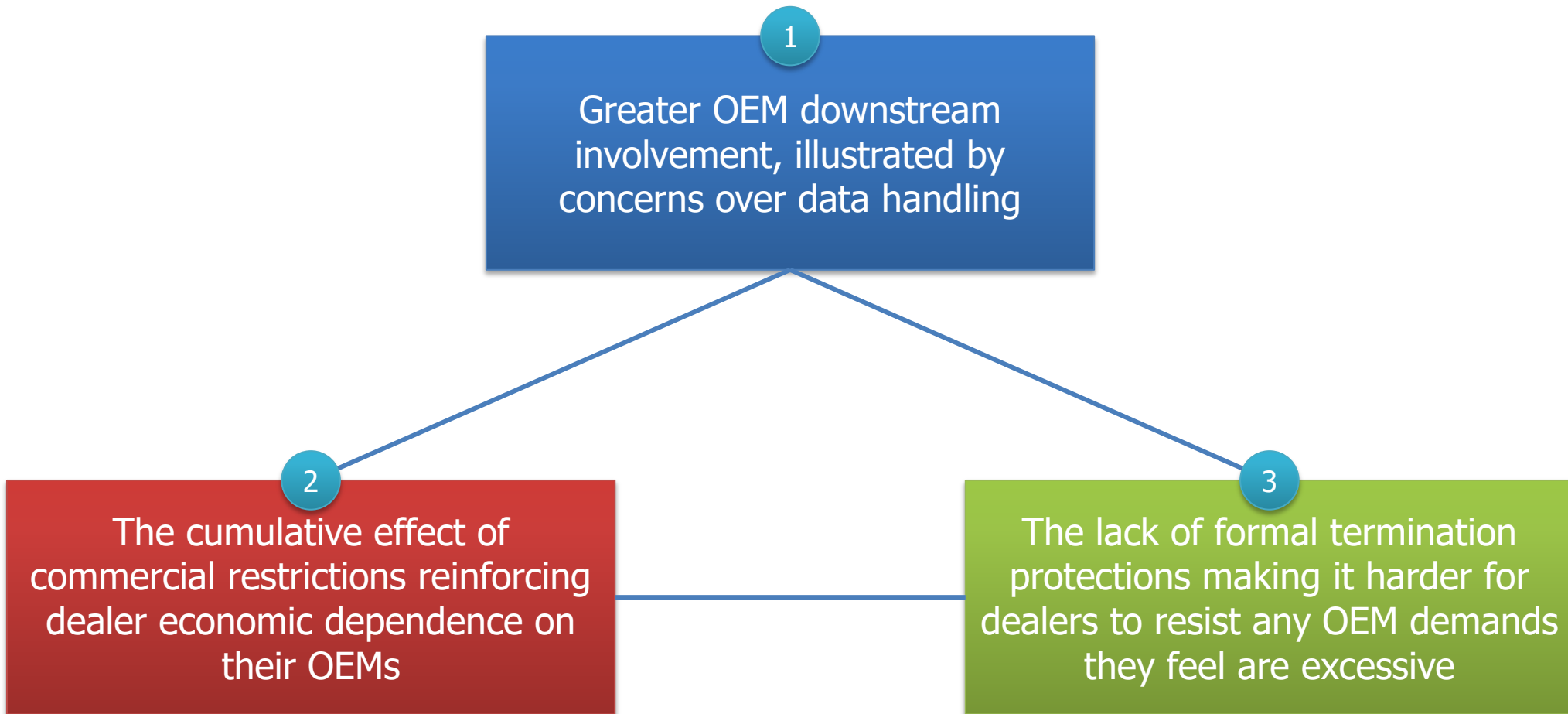
The survey was open from

10 January 2020 until 30 January 2020.

The data analysis was carried out in cooperation with ICDP



Three interrelated themes emerged most strongly from the survey as concerns dealers have



Source: AECDR dealer survey, January 2020, n=1,064

1. Greater OEM downstream involvement, illustrated by concerns over data handling

In your day-to-day dealings with your manufacturer(s)/importer(s) in the last 2 years, have you experienced any of the following?	% agree or strongly agree
Manufacturer(s) seeking to exert significantly greater ownership/control over the use of dealership customer data	81%
Manufacturer(s) proposing/setting up direct distribution channels (vehicles or parts) – whether their own or through agency agreements	62%
Manufacturer(s) proposing/setting up different distribution channels based on different standards	54%

- The number of OEM/importer-backed online new car 'selling' platforms has grown in recent years, even though very few allow customers to follow the complete new buying journey through to transaction, and rarely for a full model range
- Nevertheless, dealers perceive these platforms as a threat, often because dealers feel that OEMs/importers have not done enough to explain to dealers how the platforms will impact on their role, rewards, and customer relationships
- At the same time, rumours of OEMs moving to direct distribution channels, agency etc. have grown, with one prominent example of agency conversion already having happened (Mercedes Benz in Sweden)
- Dealer concerns over OEM access to customer data have grown as the whole environment has become more 'digital', integrated lead management systems more prevalent, etc.
- However, dealer respondents did not perceive a particular trend for OEMs to seek to restrict dealer online marketing/selling activities

Source: AECDR dealer survey, January 2020, n=1,064

1. Greater OEM downstream involvement, illustrated by concerns over data handling

“New data management agreements give OEMs and importers deep-level access into our customer data, the capital of our business, without giving us any reciprocal access to their data, such as that collected from connected cars. The idea that we are independent businesses is therefore a fiction – we are in a franchise approach that places the maximum risk onto the dealer.”

“We should be like the USA, where OEMs make cars, and dealers sell them – the businesses should be separate.”

“Manufacturers are trying to take over both private and fleet sales. We are forced to deliver their private leasing offers, but the margin on these does not cover our costs. They then pay warranty rates to us for service carried out under these inclusive leasing deals, which earns us 40% less than if we were selling service directly to the customer.”

Source: AECDR dealer survey, January 2020, n=1,064

2. The cumulative effect of commercial restrictions reinforcing dealer economic dependence on their OEMs

In your day-to-day dealings with your manufacturer(s)/importer(s) in the last 2 years, have you experienced any of the following?	% agree or strongly agree
Manufacturer(s) increasing the complexity of vehicle pricing structures/ margin systems which makes it more difficult to plan your business (and offer more competitive deals to customers)	82%
Manufacturer(s) increasing your purchase or sales targets without consultation or negotiation	72%
Manufacturer(s) increasing the levels of vehicle/ demonstrator stock you must hold without consultation or negotiation	64%
Manufacturer(s) linking rewards or penalties under your sales activity to your aftersales activity or to the sale of ancillary products, or vice versa	61%
Manufacturer(s) exerting greater control over activities unrelated to the core franchise (e.g. the retailing of used vehicle stock)	55%

- These questions prompted the most verbatim comments from the dealer respondents, with some common themes
 - Dealers felt a loss of any sense of 'partnership' with their OEM, which they felt has been largely replaced by a 'dictatorship', and with the new car business effectively now operating on a quasi-agency basis
 - A strong perception of the loss of entrepreneurial independence as a result both of increasingly detailed (and expensive) standards requirements, and of highly complex (and frequently changing) performance- and process-driven reward mechanisms
 - A feeling that some OEMs are increasingly linking new car rewards and penalties across to activities which are (or which they feel should be) totally outside the new car franchise, such as used cars and aftersales.

Source: AECDR dealer survey, January 2020, n=1,064

2. The cumulative effect of commercial restrictions reinforcing dealer economic dependence on their OEMs

“A significant shift from fixed to variable margins has put dealers under increased sales pressure.”

“A large increase in standards and investment requirements that doesn’t appear to serve any purpose.”

“The current BER severely restricts the retail and aftersales business in favour of the OEMs. The unbalanced power relationship creates an economic dependency, preventing dealers from being able to act in an entrepreneurial way. This has negative effects for dealer businesses, their staff, and their customers.”

“We are contract partners for our brand, but have not been an independent business for some time. We are the OEM’s puppets, and mainly work ‘in their pockets’..”

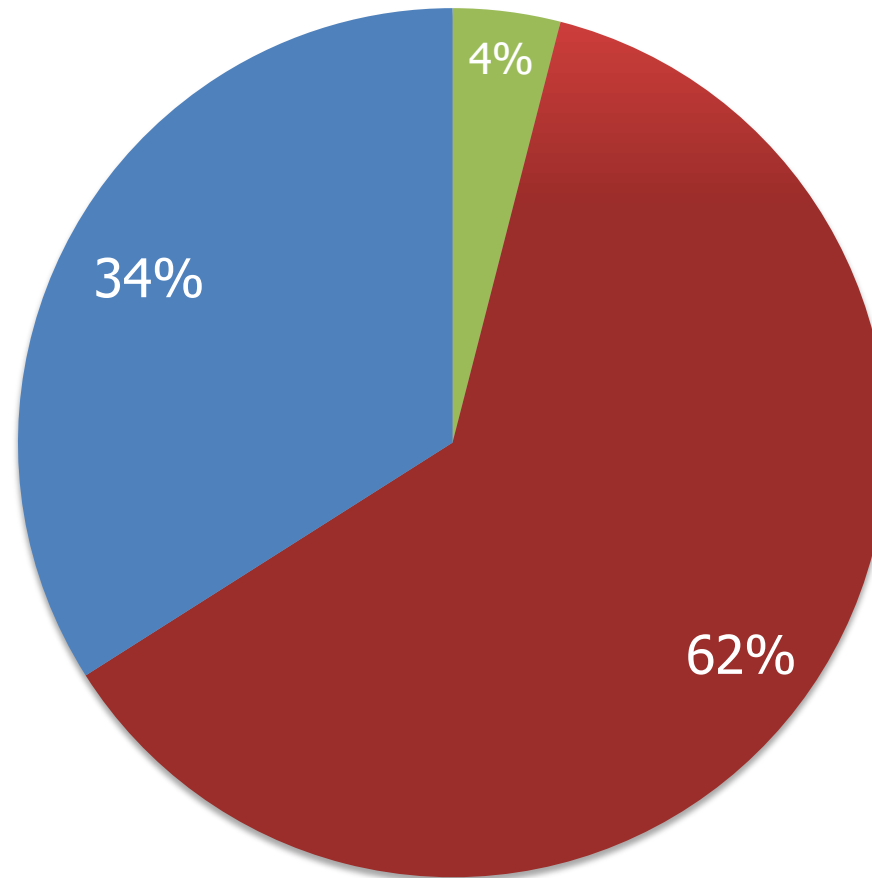
“A franchise was always a partnership between retailer and manufacturer; these days it is one of master/servant only. Another way of describing this is to say that a franchise is just part of the manufacturer’s business but using the franchisee’s capital to fund it.”

“I have been in the business for over 30 years, and things have certainly changed. But what used to be a ‘partnership’ where we would work together to overcome market challenges has turned into a ‘manufacturer dictatorship’ where outcomes cannot be calculated, and where our independence has been removed.”

Source: AECDR dealer survey, January 2020, n=1,064

2. The cumulative effect of commercial restrictions reinforcing dealer economic dependence on their OEMs

How have manufacturer practices affected your ability to measure business risk



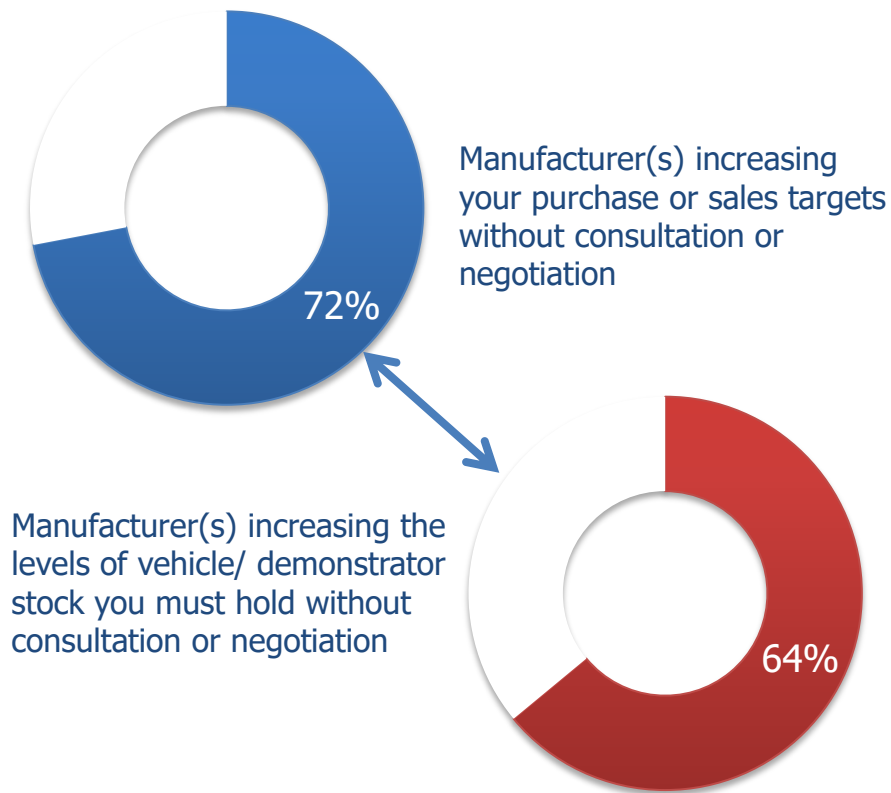
■ Positive effect ■ Negative effect ■ No effect

Source: AECDR dealer survey, January 2020, n=1,064

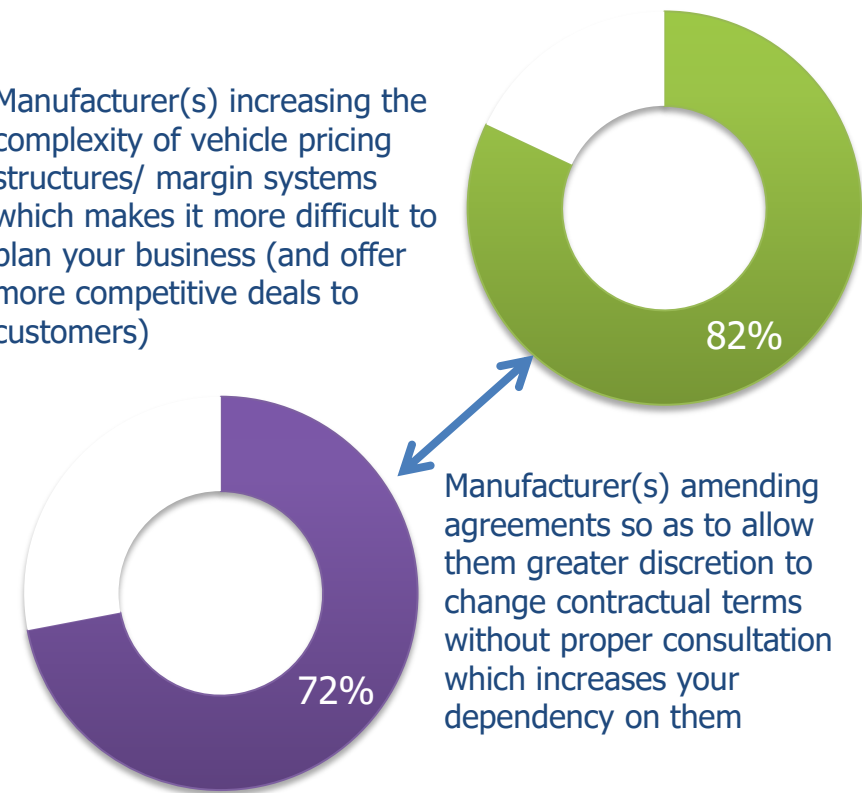
2. The cumulative effect of commercial restrictions reinforcing dealer economic dependence on their OEMs

We found reasonably strong positive correlations between the responses to two pairs of questions in particular, further illustrating the cumulative effect of OEM commercial restrictions on dealers

In your day-to-day dealings with your manufacturer(s)/importer(s) in the last 2 years, have you experienced any of the following? % agree or strongly agree



Manufacturer(s) increasing the complexity of vehicle pricing structures/ margin systems which makes it more difficult to plan your business (and offer more competitive deals to customers)



Source: AECDR dealer survey, January 2020, n=1,064

3. The lack of formal termination protections making it harder for dealers to resist any OEM demands they feel are excessive

In your day-to-day dealings with your manufacturer(s)/importer(s) in the last 2 years, have you experienced any of the following?	% agree or strongly agree
Manufacturer(s) amending agreements so as to allow them greater discretion to change contractual terms without proper consultation which increases your dependency on them	72%
Manufacturer(s) threatening / pursuing contract termination if you seek to challenge any of the above [commercial/contract changes] (including through any form of alternative dispute resolution)	46%

- The dealer respondents felt that the absence of formal termination protections in the current BER means that
 - They do not have the ‘fallback’ of statutory protection that would empower them to stand up to OEM requirements that they feel are excessive or inappropriate
 - The OEMs have been able to take advantage of this situation to introduce contract/annex amendments with increasing frequency, sometimes with insufficient dealer consultation, with the effect that dealer dependency is reinforced

“OEMs should be obliged to give dealers objective, transparent, and non-discriminatory reasons for contract termination, and to refund dealers for non-amortised brand-specific investments.”

“I cannot tell from my contract how much money I might make on a car sale. My contract refers to guidelines which can be varied unilaterally by my OEM, sometimes even by ‘round robin’ e-mail.”

“Dealers need a neutral party they can turn to for adjudication when OEMs abuse their positions. Consumers have protection, but dealers don’t!”

Source: AECDR dealer survey, January 2020, n=1,064

In terms of the improvements dealers would like to see, contract protections scored highest, followed by sector-specific guidance around dual distribution and data

What improvements to current manufacturer practices/agreements would have a positive impact on your business? % scoring 'positive impact'

Fairer / more transparent contract termination provisions, which require the manufacturer to give objective, transparent and non-discriminatory reasons for termination, and/or commit to reimbursing the dealer the cost of any sunk investments made by the dealer at the manufacturer's insistence where the manufacturer wishes to terminate for reasons other than material breach by the dealer

84%

Clearer contractual terms (affording less discretion for manufacturer to change terms post-signature)

82%

Safeguards – in dual-distribution systems - to prevent the manufacturer from exploiting its preferred position at both levels of the supply chain to the detriment of the dealer

81%

Obligation on manufacturer to share in-car generated business-critical data with dealer

76%

Limits on manufacturer's ability to restrict dealer's use of customer data (provided dealer has relevant consents)

69%

The right - within a selective distribution system - to sell your business to another distributor within that manufacturer's system, without the latter's being entitled to block the transfer arbitrarily

64%

No restrictions on dealer post-termination (proportionate confidentiality restrictions aside)

60%

The three themes ...



Greater OEM downstream involvement, illustrated by concerns over data handling

The cumulative effect of commercial restrictions reinforcing dealer economic dependence on their OEMs

The lack of formal termination protections making it harder for dealers to resist any OEM demands they feel are excessive

Source: AECDR dealer survey, January 2020, n=1,064

Dealers were not asked to comment specifically on the BER, and most would not claim to be experts on it, but those who did comment supported its retention

“Manufacturers have been able to exploit the regulation in their favour. A complete removal of the BER would be detrimental to everyone, including consumers; a fair balance across the supplier-dealer-consumer chain is desirable.”

“If the BER were not renewed, we would be in a McDonalds-style franchise situation.”

“It was not the intention of the regulation to have the system work the way it does today. It should be renegotiated urgently!”

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- The objective of the survey was to complement AECDRs contribution which was provided during the consultation of the EC by dealer views.
- AECDR is well aware of the fact that the survey does not meet scientific standards but it gives a good pictures of the dealer perspective.
- Some results could be expected, some were surprising.
- AECDR sees the survey rather as a first step to providing more valuable feedback in the process of evaluating the VBER and the ABER.



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