

DETAILED PROGRAMME OF WORK

Re. : Work description for the study on the impact of possible future legislative scenarios for motor vehicle distribution on all parties concerned.

1. COMPETITION CONCERNS TO BE ADDRESSED BY THE FUTURE REGIME FOR CAR DISTRIBUTION

- (1) According to the Commission policy on vertical restraints, the following competition issues have to be addressed by any future regime for car distribution:
 - (a) effects on intra-brand competition and, in particular, possible foreclosure effects in respect of unauthorised distributors (first issue);
 - (b) effects on inter-brand, including in-store competition (second issue);
 - (c) creation of obstacles to market integration (third issue);
 - (d) effects on competition in the after-market (fourth issue).
- (2) To this end the study should allow the Commission to get all the information needed in order to assess the effects that vertical agreements fixing the conditions for servicing and marketing of new motor vehicles may have on the competitive structure of the market. The analysis to be carried out should make clear the foreseeable behaviour of the parties concerned and the effects that different legislative scenarios may have in terms of benefits for consumers and the efficient allocation of resources.
- (3) The study should have regard to the evaluation report on Regulation 1475/95 adopted by the Commission on 15 November 2000 and the comments received on the report's findings.

2. BASIC SCENARIOS FOR CAR DISTRIBUTION SYSTEMS

- (4) One can imagine five basic legislative scenarios for car distribution:
 - (i) a system whereby independent motor vehicle retailers have a right to purchase new cars from the manufacturers and/or from their “official” network of retailers (**scenario 1: free-for-all distribution**);
 - (ii) an exclusive distribution system in which the vehicle manufacturer agrees to sell new vehicles only to one dealer in a particular territory (**scenario 2: exclusive distribution**);
 - (iii) a system of selective distribution based only on qualitative criteria (**scenario 3: qualitative selective distribution**);
 - (iv) a system of selective distribution based on qualitative and quantitative criteria but without territorial exclusivity (**scenario 4: qualitative and quantitative selective distribution**) and

- (v) a system of selective distribution based on qualitative and quantitative criteria with a limited territorial exclusivity, whereby active and passive selling in other territories is not restricted (corresponding to what is permitted under the general Regulation on vertical restraints, Reg. 2790/99) (**scenario 5: qualitative and quantitative selective distribution with limited territorial exclusivity**). In this framework a sub-scenario can be analysed, whereby a limited territorial exclusivity subject to a further limitation in time of five years is provided for new distributors in order to protect their initial investments.
- (5) The analysis of all these scenarios, which will inevitably have to use the current systems as a benchmark, should allow the Commission to assess the scenarios against the general competition issues described in point 1, and in particular at letter (a). It will also permit the Commission to measure the impact each scenario will have on all of the various parties involved.
- (6) In connection with the competition issues mentioned in paragraph 1, a first and more general question to be analysed concerns the economic reasons of setting up an official dealer network, from a manufacturers' point of view (economies of scale, savings in logistics and transportation costs, lean distribution requirements, creation of a brand image by imposing uniformity and standardisation on distributors, etc.), from the dealers' point of view (protection against free-riders and hold-up problem) and from the consumer's point of view (benefits in terms of price and non-price competition, as well as in improved quality of sales and after-sales services). The study should therefore make a comparison as regards the efficiency of each of the above-mentioned scenarios for the different types of market operator. The study should also analyse the impact of the various scenarios on the achievement of the objectives of the Internal Market.

3. SPECIFIC ISSUES TO BE ANALYSED¹

- (7) The study should furthermore examine the foreseeable effects on the competitive structure of the market of specific conditions imposed by manufacturers on their dealers, as well as of further combinations of vertical restraints applied in motor vehicles distribution. The study also needs to discuss single branding obligations, taking into account the competition issues already mentioned and, in particular, the second issue. The study should analyse what the effects on the market would be if all or some of the existing strict rules for the permission of multi-marketing² (which make multi-marketing very difficult) were no longer a precondition for the sale of different makes by one dealer.

¹ These issues should be analysed in principle and when appropriate, for each of the above four basic scenarios.

² Art. 3 (3) and (4) of Reg. 1475/95: Manufacturers are allowed to impose the following conditions: it is only possible from separate premises, by separate management and through distinct legal entities in manner which avoids confusion. As regards after- sales- services: third parties should not benefit unduly from investment made by the manufacturer.

- (8) Taking particular account of the first and third competition issues, the study should also deal with the effects of the following practice: sales targets are based on the market potential within the dealer's territory and in the Member State where the dealer is located and these targets are used by the motor vehicles manufacturers as a basis for the supply of new cars to the dealer. In the evaluation report on Reg. 1475/95 the Commission comes to the conclusion that this system hampers the availability of cars for foreign buyers, since product allocations are based on the dealer's sales targets to domestic buyers only. This system hampers cross-border trade and therefore results in a partitioning of the market. It also has effect of limiting intra-brand competition between dealers, whether those dealers are located within one Member State, or in different Member States. The study should therefore analyse the potential effect of a complete abolition of the right of manufacturers to set sales targets and should examine the potential for replacing such manufacturer-set targets with an alternative system, such as "first come first served".
- (9) In the same context, another issue to be addressed relates to the so called availability clause³, which in short, makes sure that dealers in Mainland Europe can obtain right-hand-drive cars for sale to British or Irish consumers from the manufacturers, who are obliged to supply their dealers with such cars.⁴ The general vertical block exemption Reg. 2790/99 does not contain such a provision. The study should assess the need for such a clause in the future.
- (10) With particular regard to the first and fourth competition issues, the study should analyse the effects on the market of a system which allows manufacturers to oblige their retailers to provide both sales and after-sales services. The study should in particular assess whether such a tying may result in a foreclosure of new distributors or new formats (selection of retailers based on their ability to provide after-sale services).
- (11) The study should also analyse what potential effects on the market might result should the "official" retailers of new cars and the "official" repairers be selected by the manufacturer on the basis of a separate set of criteria. Under such a system, the manufacturer could no longer tie both activities together. Such a system would, of course, not exclude a selected retailer from applying to be selected as a repairer, or *vice versa* (selection of retailers and repairers would be based on separate criteria; the tying of both activities is not permitted).
- (12) The study should furthermore examine the potential impact of a system whereby the selection criteria for retailers could include their ability to provide after-sale services, but where the selection of authorised repairers was exclusively based on qualitative criteria, and the manufacturer could not oblige a candidate repairer to sell new cars (only the tying of car servicing with retailing is not permitted). In the same context and in connection with the second competition issue, the study should also examine the impact that single-

³ Art. 5 (1) (2) (d) of Reg. 1475/95.

⁴ It also makes sure that British and Irish dealers can sell left-hand drive cars. This was relevant at the beginning of the nineties, when the Pound Sterling was weak and when consumers from Mainland Europe started to buy new vehicles in the UK.

branding obligations might have on the after-sales market (manufacturer's ability to impose a non-compete obligation on their repairers).

- (13) In connection with this issue, the study ought also to examine independent repairers' access to technical information for the repair and maintenance of motor vehicles, original spare parts, training and diagnostic equipment . Although Articles 3 (10) and 6 (1) (12) of Reg. 1475/95 address the issue of access to original spare parts and technical information⁵, many submissions received by DG Comp. underline that the issue of unrestricted access is becoming increasingly important for the repair and maintenance of modern motor vehicles. Moreover, associations claim that it is vital that manufacturers provided non-discriminatory access to training and diagnostic equipment. The implications of a system which obliges manufacturers to set criteria for the certification of independent repairers should also be analysed.
- (14) The study should also describe the effects were vehicle manufacturers to introduce mass rebates for those dealers who purchase large quantities of new vehicles and thereby allow those dealers to earn a higher margin than dealers who only sell a limited number of new vehicles.
- (15) The access of large retailers to car distribution, such as department stores or supermarkets should be assessed.
- (16) Finally, the study should analyse the impact of e-commerce in the motor vehicle industry, in particular of on-line promotion and sales, in particular with regard to the relationships between manufacturers and consumers (e.g. direct sales), dealers and consumers, and parallel imports.

4. IMPACT-ANALYSIS

4.1. Type of impact to be analysed

- (17) The impact analysis should describe, first of all, the repercussions of the different scenarios on the competition issues mentioned in paragraph 1 above in the markets for new cars and after-sales services. It should then address the impact on product safety, warranty and recall and the economic repercussions of the various scenarios on all parties concerned by motor vehicle distribution and servicing, including the quality and cost of distribution. In this context it should also contain indications in broad terms on the impact on employment and on small and medium sized undertakings. Where appropriate, specific issues relating to the distribution of commercial vehicles should also be taken into account.
- (18) The impact analysis shall have equal and due regard to the requirement of "allowing consumers a fair share of the resulting benefits " [see Article 81(3) of the treaty]. For this purpose, in the context of the study, "consumers" shall include the individual consumer.⁶ Individual consumer is defined as "any

⁵ The right of independent repairers to have access to technical information has not been addressed in the general vertical block exemption Reg. 2790/99. Art. 4 (e) of Reg. 2790/99 only addresses the access to spare parts.

⁶ Other categories of consumers are e.g. leasing companies or operators of large vehicle fleets.

natural person acting for purposes which are outside his trade, business or profession". Thus, the impact analysis is not to be confined to the impact on consumers collectively.

4.2. The potential impact should be analysed on the following parties with particular regard to the following aspects:

4.2.1. Manufacturers

- (19) The study should first of all show what sort of impact the different scenarios would have on manufacturers regarding:
- Inter- and intra-brand competition in the markets for new vehicles,
 - the ability to set different prices within each Member State, and fix price differentials within the European Union,
 - competition in the after-sales service market,
 - the impact of a move towards lean production and/or lean distribution,
 - future development of the consolidation process in the motor vehicle industry,
 - new methods of distribution, notably on-line distribution and distribution through department stores or supermarkets.
 - manufacturers' interest in product safety (both for new and used vehicles),
 - responsibility for "end of life" vehicles,.
- (20) The study should also analyse what the possible reactions from the car industry might be if a given scenario were applied in the future, in a way which falls outside the scope of Article 81, for example:
- whether the car industry will shift distribution to direct selling, in particular through on-line sales at the national level and across the borders;
 - whether the car industry will have more recourse to agency systems for the distribution of new cars.

4.2.2. "Official" motor vehicle retailers

- (21) The study should show the impact on
- competition (intra-brand, inter-brand, and in-store competition),
 - the development of retailers' independence, size and market power (will retailers remain SMEs or will the impact of the change lead to bigger retailers),
 - retailers' ability to compete both inside and outside their home country,
 - the density of the "official" networks,
 - new distribution methods such as on-line sales of cars by "official" motor vehicle dealers or "official" supermarkets or department stores.

4.2.3. “Official” providers of after-sales services

- (22) The study should show the impact of the scenarios on
- the level of competition in a market of more and more complex vehicles, in particular as regards prices and the quality of after sales service,
 - access to original spare parts and parts whose quality matches the quality of original parts,
 - safety,
 - the structure of “official” providers of after-sales service,
 - the density of the “official” networks,
 - the development of on line-sales and the on-line promotion of after-sales services.

4.2.4. Independent repairers

- (23) The study should show the impact of the scenarios on
- the level of competition, in a market of more and more complex vehicles, in particular as regards prices and the quality of after-sales service,
 - the structure of independent repairers,
 - safety,
 - the impact on the existing “official” networks if the independent sector can better compete e.g. because they have full access to all technical information.

4.2.5. Consumers

- (24) Today’s consumers expect car distribution and servicing to offer them a certain number of advantages. The study should address each of these elements.

Expectations in the context of the purchase of a new car:

- easy access to information
- the option to take a test drive,
- choice of make and retailer,
- prices (in particular the impact of lean distribution on prices), price transparency and comparability taking into account the EURO and online price comparisons).
- reliable delivery system,
- safety, warranty and recall of the delivered vehicle,
- right of dealers to obtain vehicles which are not part of their normal product range but which correspond to it (regarding the body or engine) and to supply these vehicles to consumers from other Member States (e.g. the right of dealers located in Mainland Europe to obtain right-hand drive cars from their manufacturer),

- European wide warranty.

After the purchase of a new car:

- access to the whole European network of “official” repairers,
- competition between the “official” repairers and the independent sector. All of the “official” repairers and at least some of the independent ones should be able to repair and maintain vehicles and to carry out the full range of after-sales service,
- safety,
- choice regarding spare parts.

4.2.6. Producers of spare parts and of diagnostic equipment

- (25) The study should analyse the right of the above undertakings to provide spare parts and/or diagnostic equipment, which are identical and come from the same production lines as the items supplied to the vehicle manufacturers, directly to the “authorised” repairers belonging to a manufacturer’s network. The study should in particular analyse:
- the impact of providing for contractual clauses which give the “official” repairers a real choice to source these items directly from the producer,
 - the impact of providing for contractual clauses which allow manufacturers of original spare parts to put their logo or trade name on the parts they are supplying to the vehicle manufacturers,
 - the impact of an obligation for car manufacturers to supply diagnostic equipment to independent repairers and
 - the impact of B2B marketplaces for spare parts.

5. IT SHOULD BE FOR THE COMMISSION TO FIND A BALANCE BETWEEN THE DIFFERENT POSITIVE AND NEGATIVE RESULTS OF CERTAIN SCENARIOS

- (26) In order to avoid a situation where the consultants effectively “straightjacket” the Commission and pre-judge its decision, the study should not make an overall assessment of all elements which would amount to a proposal for a future regime.