THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

Masters Thesis

Spring 2002

By
Helena McLaughlin

Advisors: Lars Bengtsson and Anneli Carlsson

MEA 130
June 2002
Executive Summary

The European Motor Vehicle Industry is complex and plays a significant role in the economic aspects of the common market. The motor vehicles constitute an important part of everyday life for many consumers and are the second largest investment many makes.

The legal framework surrounding this industry includes EU's Competition policy, which constitute the third pillar in the Single European Market where the Commission acts as the main enforcer. In this context a group exemption applicable to Article 81 of the EC Treaty has been adopted for this industry. In 1985 was Regulation 123/85 implemented, and at its expiration in 1995 was replaced by 1475/95. This Regulation is currently in effect and due to expire on September 30, 2002. The time is getting closer for the current Regulation to expire and the Commission has decided that it will be replaced by yet another industry specific Regulation.

This new Regulation was proposed as a Draft on March 16, 2002 and its context and form will be voted on in end of June or early July. It will be implemented on October 1, 2002.

The replacement will constitute a change in the legal environment, which implicitly will affect the industry as well as the common market as a whole. The impact of the changes on distributors is particularly interesting as they are supposed to gain a stronger position against the manufacturers.

This thesis will endeavor to depict the Regulation Draft in the context of EU's competition policy and to compare it with the current Regulation 1475/95 and the general Regulation for vertical restraints 2790/99. Based on the information gathered an analysis of the legal effects on the distributors will be performed. And a strategic analysis of the competitive environment will provide a framework to explore the potential impact of the implementation on the distributors competitive environment. Future aspects of distribution will also be explored.

Due to the fact that it is a sensitive issue and information has not been readily accessible as well as the fact that the final version of the new Regulation is still in the hands of the Commission, has made this study more speculative in nature. Even if the legal section about the Draft is descriptive and based on facts, it must be noted that it probably is subject to minor changes before its implementation in October.

The fact is that changes are due to appear with the new Regulation, that will affect the distributors' competitive strategies, but the extent remains to be seen.
# Table of Contents

**Executive Summary** .................................................................................................i

**Table of Contents** .................................................................................................ii

## 1. INTRODUCTION .............................................................................................1
   1.1. Background .................................................................................................1
   1.2. Aim of the Study .........................................................................................2
   1.3. Outline of the thesis ....................................................................................2

## 2. METHODOLOGY ..............................................................................................3
   2.1. Business Law - Group Exemption ............................................................3
   2.2. Business Administration - Competition Strategy ........................................3

## 3. THE MOTOR VEHICLE BLOCK EXEMPTION - ITS HISTORY AND FUTURE ................................................................................5
   3.1. Competition policy in the EU .....................................................................5
   3.2. Exclusive and Selective distribution systems ..............................................7
   3.3. Regulation 1475/95 ....................................................................................7
      3.3.1. Aims of Regulation 1475/95 .................................................................8
      3.3.2. The Black list of 1475/95 ..................................................................9
   3.4. Cases infringing Regulation 1475/95 ........................................................9
      3.4.1. Volkswagen 1998-Parallel Trade Restrictions on Dealers in Italy........10
         3.4.1.1. Issue of Law ...............................................................................10
         3.4.1.2. Background Information ...............................................................10
         3.4.1.3. Discussion of the Parties .................................................................11
         3.4.1.4. Analysis/Conclusion ..................................................................13
      3.4.2. Opel 2000-Parallel Trade Restrictions on Dealers in the Netherlands ...13
         3.4.2.1. Issue of Law ...............................................................................13
         3.4.2.2. Background Information ...............................................................14
         3.4.2.3. Discussion of the Parties .................................................................14
         3.4.2.4. Analysis/Conclusion ..................................................................15
      3.4.3. Volkswagen 2001-Price Fixing on VW Passat in Germany .............16
         3.4.3.1. Issue of Law ...............................................................................16
         3.4.3.2. Background Information ...............................................................16
         3.4.3.3. Discussion of the Parties .................................................................17
         3.4.3.4. Analysis/Conclusion ..................................................................18
      3.4.4. Conclusion of Analysis .......................................................................18
   3.5. The new Draft Regulation ..........................................................................19
      3.5.1. Reasons for a new Regulation ............................................................20
      3.5.2. Aims of the Draft ...............................................................................20
      3.5.3. Black List of the Draft .......................................................................20
      3.5.4. The Content of the Draft ..................................................................21
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

3.6. The Basic Assumptions underlying the Motor Vehicle Industry Block Exemption in relation to Regulation 1475/95, the Regulation Draft and Regulation 2790/99 .................................................................25
   3.6.1. Effective competition ..............................................26
   3.6.1.1. Intra-brand competition ....................................26
   3.6.1.2. Inter-brand competition ....................................30
   3.6.1.3. After-sales servicing ......................................30
   3.6.2. Dealers commercial independence .............................31
   3.6.3. Implementation of the Single Market .........................32
3.7. Legal Net Effect of the Draft ........................................33
   3.7.1. How will the new Regulation work to preserve effective competition and how will it affect the dealers? ..............................34
   3.7.2. What provisions are entailed in the new Regulation that will strengthen the distributors’ position? ............................35
   3.7.3. How will the new Regulation further implement the Single Market and how will that affect the distributor? ....................36
3.8. Validity of a Future Motor Vehicle Block Exemption ..............36
   3.8.1. Arguments of the parties ......................................36
   3.8.2. Future Developments ..........................................37
3.9. Conclusion of the Legal Analysis ...................................38

4. COMPETITION STRATEGY .............................................40
   4.1. Motor Vehicle Industry ...........................................40
   4.2. Competition Strategy in the Motor Vehicle Industry ............41
       4.2.1. Manufacturing level .....................................42
       4.2.2. Distribution level .......................................43
       4.2.3. Conclusion of analysis ..................................44
   4.3. Ford Motor Company - Manufacturer ..............................44
       4.3.1. Current Strategy .......................................44
       4.3.2. Future Outlook .........................................46
   4.4. Ford Dealers .....................................................49
       4.4.1. Current Strategy .......................................49
       4.4.2. Future Outlook .........................................50
   4.5. The Impact of the Legal Effects on the Competition Forces ...51
       4.5.1. Distributor ...............................................51
       4.5.2. Authorized Repairer .....................................52
       4.5.3. Strategy Options .......................................53
       4.5.4. Tables ..................................................54
A. How the new Regulation will work to preserve effective competition and how it will impact the competition forces from a dealers’ perspective. ..........54
B. Provisions entailed in the new Regulation protecting the dealers and what effect they will have on the Competition Forces. ..................55
C. The new Regulation’s further implementation of the Single Market and how it will affect the Competition Forces. .....................56
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

5. FUTURE ASPECTS OF DISTRIBUTION ...............................................................57
   5.1. Alternative distribution arrangements and systems ..............................57
       5.1.1. Internet sales .................................................................57
       5.1.2. Sales via supermarkets .......................................................58
       5.1.3. Threats and Opportunities for the Established Distributors .......58

6. CONCLUSION ...............................................................................................59

BIBLIOGRAPHY ..............................................................................................61

APPENDIX

1. Article 81 of the EC Treaty
2. Draft Regulation
3. Questionnaire
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

1. INTRODUCTION

This chapter intends to set the stage for this study by providing background information on the subject as well as why it was chosen. Then the aim of the study and the assumption will be presented. And finally, an outline of the thesis will be found.

1.1. Background

The Motor Vehicle Industry is a complex area of business, as it deals with high capital goods and entails both new and used vehicles as well as the aftermarket including services and spare parts. The complexity is most notable on the distribution level where a dealer must be multi-talented in order to market itself at all levels and comply with the complex accounting rules for the industry. The industry accounts for a significant part of the European economy as it entails "more than 120,000 firms … which employs 3,900,000 people (of whom 1,500,000 in the distribution networks), with an annual turnover of approx. EUR 400 billion."\(^1\) The complexity and the significance of the industry have led to the implementation of special competition laws within the EU such as the current EC Regulation No. 1475/95. In contrast, the US does not provide for a motor vehicle industry regulation. Consequentially the American distributors operate under a different legal framework i.e. the American model.

This Regulation is a group exemption for the Motor Vehicle Industry in regards to sales of new cars and after-sales services. Its intent is to provide a healthy competitive environment within the industry. The regulation wants to preserve an effective competition, strengthen the dealer's independence, and implement the Single Market in the industry for the benefit of the consumer. According to an evaluation of these objectives concluded in November of 2000 has none been fully met. (see section 3.5.) This evaluation was conducted in order to provide a foundation for future alternatives as the Group exemption Regulation No. 1475/95 will expire on September 30, 2002.

The expiration date is now close at hand and the Commission published in March 2002 a new Regulation Draft.\(^2\) This Draft is assumed to be implemented as is on October 1 this year. The Motor Vehicle Industry within the EU will then have to face the effects of this change.

The reason why I chose to write about the Motor Vehicle Industry stems back to my childhood as I grew up with cars with both my grandfather and father being Ford-dealers. I have also been employed in the dealership as well as with Ford Sweden where I worked with distribution aspects of new vehicles from factory to dealer. And

---

\(^1\) Opinion of the Economic and Social Committee. pp.4.2. p.7.

\(^2\) See Appendix 2 for the text on the Regulation Draft.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

since the indispensable legal framework is currently facing a critical point that will affect the future business/competition strategy aspects of the industry it was logical for me to research the crucial issue of the upcoming Regulation change.

1.2. Aim of the Study

In this thesis I will consider three questions based on the objectives of the Group Exemption previously stated from the distributors perspective: How will the new Regulation with its aim to preserve effective competition work and how will it affect them? What provisions are entailed in the new Regulation that will strengthen their position? How will the new Regulation with its aim to further implement the Single Market work and how will it affect them?

The aim of the study is twofold where the aspects pertaining to the legal system will be considered separately from the business administration aspects. The legal section in chapter 3 intends to present the legal framework for the Motor Vehicle Block Exemption, and to analyze the exemption and its future legal effects. The analysis will include a comparison of the current Regulation 1475/95; the Regulation Draft and the general Regulation 2790/99 based on the objectives set forth in 1475/95. The business section will examine the possible strategic effects on the distributors. In the Competition section one major auto manufacturer and its dealers will be used for illustrative purposes - Ford Motor Company.

My assumption is that the new Regulation will bring forth some legal changes that will affect the industry. It is therefore of great interest to examine the intention of the Regulation Draft and its legal aspects. The effects, however, will probably not be apparent in the immediate future as the industry has anticipated an upcoming change for a while, and has already implemented changes in the strategy.

1.3. Outline of the thesis

This chapter has provided an introduction to the thesis and stated the problem and aim of the study. It has also presented the underlying assumption of subject and the reason why it was chosen. In chapter 2 the methodology will be presented. Chapter 3 will deal with the legal aspects of the Regulation including historical aspects and future developments. Chapter 4 will analyze the Motor Vehicle Industry in general and Ford in particular in regards to competitive strategy in light of the drafts legal effects. The Future aspects of distribution will be considered in chapter 5 and chapter 6 will conclude with reflections over the aim and assumption posed in chapter 1.
2. METHODOLOGY

This chapter will present the research method used for this project. And as the method is two-fold, because it differs somewhat between business law and business administration, it will be described in two separate sections.

2.1. Business Law - Group Exemption

Sources of law such as the law itself, constitutions, doctrine (legal textbooks etc) and cases were used for the presentation and analysis of the Motor Vehicle Group Exemption and its legal framework. These were obvious choices to provide a basis of the legal realm. And in order to acquire greater understanding of the subject matter secondary sources such as commentaries, newspaper articles, studies and speeches have been consulted. Majority of the legal commentaries and studies/evaluations of the Regulation, however; are written by the Commission or requested by the Commission. Therefore it is valid to question to what extent the material is biased. But the Commissions evaluation and its explanation of the Regulation 1475/95 did provide helpful material in presenting and analyzing the Regulation. As well as the explanatory notes on the Draft. Four cases representing infringement of Regulation 1475/95 were also available.  

2.2. Business Administration - Competition Strategy

For the business administration sections in regards to Competition Strategy have both primary as well as secondary information been used.

To provide the framework for the Industry Analysis were Porter’s model used, and the American model has been used to compare and contrast the industries in the EU and the US. Textbooks, reports and articles were also used in order to broaden the scope of the industry analysis. The Internet proved to be a great source of information as well where primarily different automotive web sites were beneficial.

For the manufacturer microanalysis did Ford’s annual reports as well as personal interviews with Ford management provide the basic framework. The interviews took place at Ford Sweden in Stockholm and the interviewed were; Björn Litzén: Human Resource manager, Lars Ölund: District manager, Ragnar Vannerus: Service manager, and Bengt Persson: Ford Credit president. These interviews were largely focused on the situation today under the current group exemption as well as the outlook for the future both for Ford in particular and the industry as a whole. Due to the sensitivity and the speculative nature of the future aspect has the information gathered from interviews not been as beneficial as was hoped. Contact was also

---

3 Interesting to note that the manufacturers in question; Daimler, Volkswagen and Opel; are all German. Is there still a FrancoGerman tension?
established with Ford Europe, but the information received from them was not to be used in a public document. Attempts to interview Volvo management were also made, but the response was not positive.

And for the distributor analysis a questionnaire was sent out to all Ford dealers with an e-mail address and selected Volvo dealers in Sweden. The number of responses from the Ford dealers were minimal (9 of 50 or 18%), while 6 of the 12 (50%) questioned Volvo dealers answered. The questions were aimed at finding out how they viewed the future after the current group exemption. And the questionnaire included both multiple choice as well as essay type questions.

In addition, telephone interviews were conducted with an Industry Specialist, Per Johansson at Motormännens Riksförbund (MRF). These interviews pertained mainly to the current legal situation and the exemptions legal process.

Other alternative sources that could have been used are more interviews with other car manufacturers, legislative bodies and interest groups. But financial as well as time constraints have limited the range of materials researched.

The scope of this thesis has been limited in respect to the empirical data used. This is mainly the result of the sensitivity of the issue today, as it faces a critical point and the outcome will affect the whole industry. Therefore, Ford has been used as the main example to illustrate the current situation in the industry largely due to the personal background and the easier access it has provided. Even here, however, there has been some understandable reluctance to speak freely and 'on the record' about the future. The future aspect will be analyzed based on how the legal effects potentially could affect the manufacturers and distributors. In addition the possible strategic responses will be examined.

---

4 See Appendix 3
3. THE MOTOR VEHICLE BLOCK EXEMPTION - ITS HISTORY AND FUTURE

This chapter intends to present the proposed Draft group exemption for the Motor Vehicle Industry under the Competition Policy of the Union, and consider its historical and future aspects. The primary sources used for this section are the "Draft Commission Regulation (EC) No …/… of […] on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle industry" including its explanatory notes," Commission Regulation (EC) 2790/99 including its guidelines, Commission Regulation (EC) 1475/95 including its explanatory brochure, and "European Commission’s Report on the evaluation of Regulation (EC) No 1475/95 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements." Other external/non-EU sources in regards to the Regulation have been applied where applicable.

3.1. Competition policy in the EU

Competition policy within the EU constitutes the third pillar of the Single European Market and the basic competition rules are found in Articles 81-89 (ex 85-94) of the Treaty establishing the European Community. And the Commission is the main enforcer of competition policy. In the context of the motor vehicle industry block exemption a foundational knowledge of EC Treaty Article 81 is needed. Therefore, this Article will be briefly explained before the exemption aspects are considered in this chapter.

Article 81 (see Appendix 1) prohibits “all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market”. This Article has horizontal direct effect, where horizontal means that it deals with parties on the same level such as undertakings. And direct effect indicates that the Article “may confer rights or impose obligations ... that national courts are bound to recognise and enforce.” In 81(2) is the effect of non-compliance with 81(1) stated. That is that such agreements or decisions are automatically void.

It was the Van Gend en Loos case in 1962 that established the direct effect as a legal principle. In reference to Article 234 (ex 177) the Dutch administrative tribunal
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

brought the question of the direct effect of Article 25 (ex 12)\textsuperscript{12} before the Court of Justice.\textsuperscript{13} The core of this case dealt with a custom duties increase due to a reclassification of the product in question. This was deemed to be contrary to Article 25 and individuals were given the right for legal protection - vertical direct effect - by this landmark case.

The direct effect was established in order to ensure that EC Law would be applied uniformly in all Member States.

Possibility does exist for individual exemptions for agreements on a case-by-case basis as provided for in 81(3). For an exemption to be granted, the agreement must improve production or distribution, or promote technical or economic progress, and allow consumers a fair share of the benefit, while at the same time not impose any restrictions that would be too restrictive on competition. And the agreement must be notified to the Commission.\textsuperscript{14} The other option of granting exemptions is through a regulation covering particular types of agreements, i.e. a block or group exemption. These regulations were implemented in an attempt to save time for the Commission as agreements falling within the exemption would not need to be notified.\textsuperscript{15} Further reasons include that the individual exemption process could be tedious and also costly for the applicant. A further attempt of rationalization by the Commission is the general block exemption Regulation 2790/99\textsuperscript{16} adopted in 1999 which covers all vertical restraints excluding the motor vehicle industry.\textsuperscript{17}

As the motor vehicle industry is found all over the European common market and are applying similar restrictive competition agreements where exclusive and selective distribution have been seen as indispensable, a group exemption was created for this industry.\textsuperscript{18} Manufacturers have justified the need for these special rules for distribution of cars based on the facts that a car is a very complex and expensive consumer product.\textsuperscript{19} According to the preamble of the Regulation 1475/95 stems the applicability of Article 81(1) (ex 85(1)) “to distribution and servicing agreements in the motor vehicle industry ... in particular from the fact that the restrictions on competition and obligations agreed within the framework of a manufacturer’s distribution system, and listed in Articles 1 to 4 of this Regulation, are generally imposed in the same or similar form throughout the common market.”\textsuperscript{20} As seen in Article 249 of the EC Treaty, the Regulation is by definition deemed to have direct effect. "A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States."\textsuperscript{21}

\textsuperscript{12} EC Treaty Article 25 states: Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.
\textsuperscript{13} Hartley, p.191.
\textsuperscript{14} Steiner EC Law p.158.
\textsuperscript{15} Steiner p.161.
\textsuperscript{17} Bellamy & Child pp.7-109 p.559.
\textsuperscript{18} Bellamy & Child pp-7-108 p.558.
\textsuperscript{19} Goyder. p.228.
\textsuperscript{21} EC Treaty Article 249 p140.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

3.2. Exclusive and Selective distribution systems

As previously stated is the notion of exclusive and selective distribution, generally covered by Regulation 2790/99, indispensable in the motor vehicle industry. According to the preamble this is due to the fact that “motor vehicles are consumer durables which at both regular and irregular intervals require expert maintenance and repair”.22 The Preamble also states that an unlimited amount of dealers and repairers would not be efficient and thereby suggesting not beneficial for consumers. However, this notion is now under dispute and the assumption underlying the Draft is that the distribution system created by cumulating exclusive and selective has produced a "certain 'straightjacket' effect"23 The Draft therefore proposes that the car manufacturers should have to choose either the exclusive or selective distribution system.24

An exclusive distribution system is where a manufacturer can appoint one dealer to cover a certain geographical territory – the contract territory. This is the area the dealer has to focus his marketing and sales, and is not allowed to cross the territory’s borders.25

A selective distribution system then is one where the supplier chooses to distribute the goods only through certain outlets that fulfil certain criteria. These criteria could be qualitative26 and quantitative27 based on performance and sales targets. A selective distribution system creates a network, which excludes all undertakings that do not meet the specified criteria from the distribution of the relevant goods. However, the manufacturer is obliged to grant distributorship to any undertaking fulfilling the criteria, since under a selective distribution system there is no provision for exclusive sales territories.28

3.3. Regulation 1475/95

Regulation 1475/95 is a group exemption in regards to Article 81 and is applicable when agreements are made between two undertakings and selective and exclusive distribution systems are implemented where the supplier will supply “for the purpose of resale, certain new motor vehicles intended for use on public roads and having three or more road wheels, together with spare parts therefor.”29 Thereby it does not cover used cars, tractors (not intended for use on public roads), motorcycles (only 2 wheels), or distribution of parts apart from vehicle distribution.30

---

26 Qualitative criteria could be quality standards on showroom and sales personnel as well as requirement to offer full range of models. These criteria must be uniform, non-discriminatory and not limiting the number of distributors or repairers. See explanatory notes on the draft pp.13. p.16.
27 Quantitative criteria could be a quantity limit on total number of distributors. See explanatory notes of the draft pp.13. p.16.
The current Regulation replaced Regulation 123/85 but retained the former’s basic principles.\textsuperscript{31} Such as the maintenance of a combined selective and exclusive distribution system.\textsuperscript{32} The new Regulation was amended based on the experience the Commission had gained from the partial attainment of the goals of the old Regulation 123/85 and the complaints it had received.\textsuperscript{33} The adjustments were aimed to improve the functioning of an internal market in cars and to intensify competition at the stage of car distribution by re-balancing the various interests involved, in particular by strengthening the dealers, spare-part producers, independent repairers and the rights and freedoms of the consumers.\textsuperscript{34}

### 3.3.1. Aims of Regulation 1475/95

The Commission’s Report on the Regulation (paragraphs 46-54) notices five essential aims of the Regulation as described below:\textsuperscript{35}

1. To ensure efficient distribution and servicing of motor vehicles, as well as the existence of effective competition between manufacturers for the consumers’ benefit.

2. To increase the consumer’s choice according to the principles of the internal market. Improving possibilities for inter- and intra-brand competition and parallel imports.

3. To strengthen the dealer’s commercial independence, most of which are small and medium-sized undertakings, against the manufacturer in order to increase the dealer’s competitiveness.

4. To protect competition in the after-sales service market by increasing the access of spare-part manufacturers to dealers. And by providing better opportunities to compete for the independent repairers.

5. To further clarify the separation line between admissible and non-admissible agreements and behaviors, with an amended and extended list of “black clauses” and “black practices”.

\textsuperscript{31} Bellamy & Child pp.7-109. P.558.
\textsuperscript{32} Commissions Report on 1475/95 pp.45. p.18.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

3.3.2. The Black list of 1475/95

The black list have the effect of leading to an automatic loss of the benefit of the exemption, and rendering Article 81 applicable, if the behavior ("black practices") is systematically or repeatedly carried out or if the "black clauses" are inserted in agreements.36

The "black clauses" found in Article 6 of the Regulation notes that in order for the exemption to be applicable the following behaviors or agreements are not permissible between two undertakings:

1. Both parties are motor vehicle manufacturers.
2. Agreements linking products or services not included in the Regulation.
3. Restrictions of competition not exempted by the Regulation.
4. Agreements or concerted practices exempted in Article 85(1) that exceed the scope of the Regulation.
5. Supplier reserves the right to conclude agreements with further undertakings within contract territory or alter the territory.
6. Restrictions on dealer's freedom to determine prices and discounts.
7. Restrictions on consumer's freedom to obtain goods or services from the undertaking of his/her choice.
8. Supplier without objective reason granting dealers remunerations calculated on the basis of where vehicles are resold or consumers are residing.
9. Supplier directly or indirectly restricting dealer's freedom to obtain from third undertaking spare parts of matching quality.
10. Manufacturer directly or indirectly restricting freedom of suppliers of spare parts to supply parts to resellers of their choice.
11. Manufacturer directly or indirectly restricting freedom of spare-part manufacturers to place their trademark or logo effectively and easily visible on parts.
12. Manufacturer refusing to make accessible technical information required for repair or maintenance to repairers not within the distribution system.

The black list is supposed to regulate the application of the exemption, however according to Valentine Korah can Black lists in general be hard to apply, as they are often wide.37

3.4. Cases infringing Regulation 1475/95 - An Analysis

The Commission has taken decisions in four cases in regards to infringements of the current Regulation 1475/95. The manufacturers sentenced are Volkswagen (1998 and 2001), Opel (2000) and DaimlerChrysler (2001). Three of these cases will be analyzed in the following section in chronological order, i.e. Volkswagen (1998), Opel (2000) and Volkswagen (2001). Due to the fact that the decision in regards to DaimlerChrysler has not yet been published an analysis will not be conducted of that

37 Korah, Valentine. p.71.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

Restriction of competition is the common denominator of the infringements in these cases and is represented by export bans/restraints and price fixing. And as the practices were not exempted by the Regulation, Article 81 was considered. The application of Article 81 was established in case 56/65 Société Technique Minière v Maschinenbau Ulm GmbH which concluded that if an agreement legally or factually potentially could exercise an effect on trade between member states it could infringe Article 81. This could be compared to the application test established in the Dassonville case in regards to Article 30.

The decisions have impacted the shaping of the proposed Draft, mainly by reinforcing the dealers bargaining position against the manufacturer in the termination clause.

3.4.1. Volkswagen 1998 - Parallel Trade Restrictions on Dealers in Italy

Volkswagen AG restricted their dealers in Italy in their capacity to carry out export sales and this represents the first infringement on Regulation 1475/95. This is an overlapping case in regards to Regulations as the practice began in 1987 when the previous Regulation 123/85 was in effect and continued until the date of the decision in 1998.

3.4.1.1. Issue of Law

The basic question of this case was whether or not the export ban/restriction imposed by Volkswagen AG (on their Italian dealers via the Italian importer Autogerma Spa) in regards to Volkswagen and Audi cars hampered the parallel trade in the community. If so there would be an infringement of Article 81(1) of the EC Treaty and the Motor Vehicle group exemption. Parallel trade was and is a practice encouraged by the Commission in order to increase competition and ultimately assist the implementation of the common market. The current Motor Vehicle group exemption allows for some trade to be legally restricted such as sales to independent resellers, but sales to private consumers, their intermediaries, and other dealers within the network were not to be prohibited.

3.4.1.2. Background Information

Volkswagen AG charged lower prices on Audi and Volkswagen in Italy than in Austria and Germany. This encouraged parallel trading, a practice which Volkswagen wanted to discourage. Therefore, they informed their Italian importer Autogerma Spa that sales to foreign customers would lead to severe consequences.

---

38 According to information received from Konrad Schumm, however, an overview of the case based on the Commissions Press Release IP/01/1394 2001 will be provided in section 3.6.1.1.
39 Steiner p.145.
40 A dealer cannot be terminated if following the rules set out in the Regulation. Draft Article 3 pp.5.
42 Case VW pp.216.
43 Austria came into the picture in 1995, when they entered the EU.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

for both the importer as well as the dealers. They utilized restrictive measures such as flexible margins and bonuses depending on the sales destination, and restricted their supply to the Italian market in order to keep the sales priorities focused on the national market. Threats of as well as actual termination of dealer contracts\textsuperscript{44} and harsh requirements on the foreign consumers\textsuperscript{45} were also used as tools to discourage the occurrence of cross-border sales.

The practices were brought to the Commission’s attention in 1994 by complaints from German and Austrian consumers that wanted to purchase Volkswagen and Audi cars from Italy.

3.4.1.3. Discussion of the Parties

Based on the complaints it received the Commission conducted an investigation of Volkswagen and their contractual undertakings. The arguments are largely based on the records that were obtained during this investigation.

The Commission found that the restrictions in question were agreed upon between the parties\textsuperscript{46} and therefore constituted an agreement and not a unilateral act\textsuperscript{47}. Therefore the scope of the restrictions were examined in light of Article 81 (ex 85) and its pp. 1 and 3.

In regards to Article 81(1) the measures of restricting parallel trade were considered incompatible with the common market. This was due to the fact that the measures included agreements between the parties with an objective to restrict the competition in the common market.

Neither of the group exemptions allows for agreements preventing parallel trade with the use of export bans/restrictions on sales to final consumers, intermediaries for such, or dealers within the network. Since neither Volkswagen, Audi nor Autogerma made a distinction between independent dealers\textsuperscript{48} vs. the 'allowed' consumer groups it was concluded that the restrictions were infringing the exemption.\textsuperscript{49} Furthermore, the required 'written undertaking'\textsuperscript{50} was contrary to the exemption as well. The only requirement a manufacturer is allowed to impose on final consumers is an authorization of purchase and a delivery acceptance when buying a car via an intermediary.\textsuperscript{51} An individual exemption for the agreement as provided for under Article 81(3) could not be granted in this case. This is firstly due to the lack of notification of this agreement. And secondly it would not been qualified due to the

\textsuperscript{44} 50 dealers were cautioned to refrain from sales activity outside their territories and between 1993 and 1995 12 dealers had been terminated. See the case pp.93-94.
\textsuperscript{45} The Italian dealers were recommended to require a declaration, called a 'written undertaking', to be signed by the consumer stating that they would not sell the car within three months or 3000km. See the case pp.98-99.
\textsuperscript{46} Case pp.121.
\textsuperscript{47} Case pp.128.
\textsuperscript{48} Article 3(10)(a) of Regulations 123/85 and 1475/95 provides the right for a manufacturer to refuse to supply only to independent resellers.
\textsuperscript{49} Case pp.158-159.
\textsuperscript{50} See note 7 explaining the 'written undertaking' in the context of the case.
\textsuperscript{51} Article 3(11) of Regulations 123/85 and 1475/95.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

fact that the consumers would not be able to part-take in the potential benefit of such agreement.52

Volkswagen AG counteracted with three arguments, mainly in regards to the legal aspects of the investigation. Firstly, they argued that the documents the Commission used were internal and not conclusive. They contended that there were conflicts of interest between the parties involved and thereby Volkswagen cannot be responsible for the actions of Audi and Autogerma. This argument was rejected as the Commission argued that Volkswagen is responsible for the behaviors of Audi and Autogerma due to its ownership share in the two companies of 98,99% and 100% respectively.53

The second counter argument dealt with the admittance of some legal documents into the process. Audi argued that they could invoke the 'attorney’s privilege' as the staff of their legal department were acting as independent lawyers. The Commission rejected this claim based on Article 14(1) of Regulation No 17 which provides the Commission the right to the investigated company's business records.54 Written communications under the 'attorney’s privilege' between lawyer and client is only protected if they are to be used for the clients defense and if the lawyer is not an employee of the client. Neither of these conditions is met in the case of Audi.

The final argument of the defendant was in regards to the competitive aspect of their behavior. They contended that the sales to private customers and other dealers within the network were not of a substantial nature. The Commission rejected this argument as well since "(e)ven if only a small number of sales to final consumers, their intermediaries or other VW/Audi dealers is prevented, there is an infringement of Article 85(1)"(now 81(1)). This is due to the appreciable effect the restriction of trade between Member States has.55

In the judgment the Commission concluded that the Export ban/restriction set out by the manufacturer - Volkswagen AG - on their supplier and dealers in Italy was not an allowed practice under either Regulation (EEC) 123/85 or (EC) 1475/95. Thereby the benefit of the block exemption was withdrawn and since the agreement had not been notified and in any case would not have qualified for an individual exemption the Article 81(1) (ex. 85(1)) was deemed directly applicable. It was concluded that it infringed this Article since the effect of the measures was to restrict competition in the common market.

The fine imposed was ECU 102 million. The gravity of the infringement of Article 85(1) (now 81(1)) including its long duration (ten years) was the determining factor in establishing the high amount of the fine. The fine which was the highest ever imposed on a single firm was later reduced to EUR 90 million.56

52 Case pp.188-189.
53 Case pp.205.
54 "Business records' are those which relate to the activity of the undertaking on the relevant market." Case pp.199.
55 Case pp.201.
3.4.1.4. Analysis/Conclusion

The Commissions reasoning for bringing in the case under Article 81 was based on the assumption that the restriction was an agreement and not a unilateral act. The aspect of considering circulars and ongoing communication as part of an agreement in regards to the motor vehicle industry and the relationship between a manufacturer and distributor had been established in previous cases such as BMW and Ford. In the Ford case it was demonstrated that the context of the agreement would be taken into account when considering the application of Article 81(1) even if it might go against the Article's literal meaning. I.e. the measures do not require a mutual consensus in order for it to be considered as an agreement.

As for the future aspects has this case contributed to a stricter Regulation as seen in the proposed Draft where the distributors are more protected against termination as long as they adhere to the rules. Consumers benefit has also been put on the forefront in the Draft as well as in the cases that followed. This is evident in the justifications of the judgements that concluded that even if the measures were in themselves 'good', they did not share the benefit with the consumers.

The fact that the Commission imposed a record high fine in this case, however, has not stopped manufacturers in their attempts to restrict competition in similar ways in the future. One example is the Opel case presented below, and yet another is found in the unpublished case of DaimlerChrysler. This might have been a way for the manufacturers to test the limits of their playing field. Which has lead to that the Commission had to rebuild the fences so to speak a few times.

3.4.2. Opel 2000 - Parallel Trade Restrictions on Dealers in the Netherlands

The second decision also deals with obstruction of trade and is against Opel Nederland BV and General Motors Nederland BV.

3.4.2.1. Issue of Law

Restriction on parallel trade was the issue in this case as well. And the question was if the measures applied by Opel on their dealers in the Netherlands were restricting competition in the common market and thereby infringing Article 81 and the group exemptions 123/85 and 1475/95. Both regulations were considered in this case as well as the agreement in question were concluded in the transitional period between them. However, no changes had been made in the regulation in regards to the legal aspects relating to this case, therefore they can be considered as one.

3.4.2.2. Background Information

Pre-tax prices on Opel cars were substantially lower in the Netherlands than in other Member States such as the originating country Germany. In this case parallel imports to Germany in particular had increased dramatically in 1996 and the manufacturer wanted to discourage this practice. The following three measures were utilized by Opel for this purpose: instructions to dealers to refrain from export sales and applications of a restrictive supply policy as well as bonus policy.

Similarly to the Volkswagen case, the Commission carried out an investigation after receiving complaints from consumers in the common market.

3.4.2.3. Discussion of the Parties

The Commission found three measures adopted by Opel that aimed at preventing parallel trade. These were a restrictive supply policy, bonus policy and instructions to refrain from or limit export sales.

The Commission found in this case as well as in the Volkswagen case that the restrictions were agreed upon between the parties and therefore constituted an agreement and not a unilateral act. Therefore the scope of the restrictions were even here examined in light of Article 81 (1) and (3) (ex 85 (1) and (3)).

None of the measures were considered compatible with Article 81(1) as they had the object and to some extent the effect to restrict competition within the common market.

For the purpose of this case both of the Regulations 123/85 and 1475/95 can be considered as one as neither allows for agreements restricting export sales to final consumers, intermediaries for such, or dealers within the network.

The Commission argued that the restrictive supply policy restricted competition due to the fact that less cars would be supplied to the Dutch dealers. A restricted supply of vehicles was to be provided to dealers based on the SEG and audits would be conducted on the dealers. This basically prevented parallel trade as the supplied vehicles would be limited to the expected sales within the Netherlands. Opel did not contest this statement as it had informed their dealers that there was a shortage of cars and the customers within the territories were to be prioritized. They did argue

62 Case pp.23-42.
63 Case pp.43-58.
64 Case pp.59-99.
65 Case pp.103.
66 Case pp.136.
67 Case pp.146.
68 SEG - Sales Evaluation Guideline pp.31.
69 Case pp.35.
70 Case pp.36.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

however, that the SEG did not set out how many vehicles that were to be supplied to the dealer but their sales target for the following year. The Commission rejected this argument, as the supply would be adapted to the sales targets. The Commission rejected this argument, as the supply would be adapted to the sales targets.\(^\text{71}\) Opel furthermore argues that the restrictive supply allocation were of a limited extent, carried out to only 21 dealers out of 150. Therefore the issue of product shortage could be an objective reason for such measure.\(^\text{72}\) The Commission rejected this argument as well based on the fact that the 21 dealers in question had all carried out export sales and that it included all models without any support of shortage problems existing.

In regards to the second measure of the bonus policy Opel did not pay out bonuses on cars sold on export.\(^\text{73}\) Opel contented that in itself the measure did not prevent export sales and that bonuses had been retroactively granted to the dealers.\(^\text{74}\) This argument was rejected by the Commission as well, in respect to the fact that the retroactive effect could not be regarded as rectifying the object or effect on competition during its application. In addition, a bonus encourages a sale, but the absence of such as in this case discouraged dealers from export sales during its time of effect.\(^\text{75}\)

The third measure contained the direct export ban and restriction imposed on the dealers. Audits were carried out and warning letters were sent out to dealers. Opel contended in this respect that many dealers had breached their contract by selling to independent resellers. In addition dealers were not, with a few exceptions, instructed to stop all export sales. The Commission rejected the argument as a large amount of the sales were permissible.\(^\text{76}\) And the twenty dealers that were instructed to refrain from export sales accounted for majority of the export sales.\(^\text{77}\)

The fine imposed in this case amounted to EUR 43 million and was due to the very serious infringement by Opel Nederland NV and General Motors Nederland BV of Article 81(1).\(^\text{78}\) It was not as high as in the previous case of Volkswagen, mainly due to the difference in duration. In this case the infringement was deemed to be of medium duration.\(^\text{79}\)

3.4.2.4. Analysis/Conclusion

This case represents an attempt to evade the fate of Volkswagen in the previous case. Opel conducted their restraints on a smaller scale and did not include all dealers in the measures. This seems like a reasonable argument, but the net effect is still the objective of restricting competition within the common market.

\(^{71}\) Case pp.39.  
\(^{72}\) Case pp.40.  
\(^{73}\) Case pp.52.  
\(^{74}\) Case pp.57.  
\(^{75}\) Case pp.58.  
\(^{76}\) Case pp.95.  
\(^{77}\) Case pp.97.  
\(^{78}\) Case decision Article 3.  
\(^{79}\) Case pp.198.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

This case contained many similarities with the Volkswagen case in regards to the articles infringed and the manner it was reported and examined. And the Commission’s actions and judgement was consistent with those taken in the previous Volkswagen case.

It does not seem logical however for Opel Nederland BV to want to restrict exports and thereby parallel trade, since it would benefit them to sell more. Therefore it might be argued that someone up the line should have been accepting the fine. As were the case in Volkswagen, where Autogerma Spa were only considered an intermediary and not fined. And Volkswagen had to carry the whole responsibility.

The ownership situation in this case was similar, where Opel Nederland BV was a wholly owned subsidiary of General Motors Nederland BV which in turn was 100% owned by General Motors Corporation. But since they carried out the action and they were the ones with the dealer agreements, they also had to face the consequences for their actions. Consumers did not benefit from the measures in this case either as non-Dutch consumers were hindered from buying cars in the Netherlands and therefore it was justly concluded that it was not compatible with competition law.

3.4.3. Volkswagen 2001 - Price Fixing on VW Passat in Germany

Volkswagen was involved in another case, but this time it was in regards to price fixing in Germany. This decision was the first in regards to resale price maintenance.

3.4.3.1. Issue of Law

The issue of law in this case was the price fixing that infringed Regulation 1475/95 and Article 81. Even if the practice was contained to the German national market it affected trade between member states as well and it also prevented national intra-brand competition.

3.4.3.2. Background Information

The introduction of a new model of VW Passat in Germany provided an opportunity for Volkswagen to set prices or so they thought. VW wanted to keep the image of this new a high volume selling model as quality worth paying for. Therefore they instructed their dealers to not sell the car under their recommended retail price. They argued that a strict price discipline was imperative to keep the brand image and would allow the improvement of the profitability of the dealers' businesses. The dealers were also threatened of termination if they would not adhere to the recommendation.

81 IP/01/760 2001.
82 Case pp.33.
83 Case pp.30 and 52.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

The issue was even in this case brought to the Commission's attention by a consumer complaint.

3.4.3.3. Discussion of the Parties

Volkswagen AG and their German authorized dealers are the undertakings representing the vertical agreement at stake in this case. The circulars and letters sent out to dealers became a part of their agreement, as they represented an ongoing business relation in regards to the contract agreement.\textsuperscript{84} It was concluded that it conducted a system of agreements with the intent of forcing a price fix on the new VW Passat and thereby restricting competition in regards to Article 81(1).

Volkswagen argued that the measures were not agreements but a unilateral act as it contrary to the cases of AEG, BMW and Ford\textsuperscript{85} “the policy contradicts section 8(1) of the dealer agreement, which allows only non-binding price recommendations” therefore the dealers have not implicitly agreed to the policy.\textsuperscript{86} The Commission rejected this argument based on the following reasons. The CFI in the Ford and BMW cases declared that if the measures were ‘intended to influence the … dealers in the performance of their contract with (the manufacturer or importer)’\textsuperscript{87} then it would constitute an agreement. The issue of that it would be contrary to its dealer agreement could not be accepted in any case.\textsuperscript{88} In respect of the threats of termination in reference to the dealer agreement further contradicts Volkswagens argument.

The Commission concluded that the measures did restrict competition appreciably and Volkswagen did not contest this fact. The effect of the measure had the object of restricting competition by price fixing as found in Article 81(1)(a). The measure had the effect of restricting the price discount factor of competition, thereby also infringing Article 6(1)(6) of Regulation 1475/95.\textsuperscript{89} Different discounts were also applied to dealers depending on their status in regards to the price discipline. A dealer that had practiced discounting of sales prices received a 7% discount while an adhering dealer enjoyed a 12% discount.\textsuperscript{90} The measure was confined to Germany and applied to all dealers there. And it covered a very popular car in Germany, the Passat was Germany's second most sold car in 1997 after Opel Vectra.\textsuperscript{91} Parallel imports during this time were limited mainly due to the many obstacles\textsuperscript{92} present for a consumer to carry out such a procedure.

\textsuperscript{84} Case pp.57.
\textsuperscript{85} Case 107/82 AEG v Commission [1983] ECR 3151-3195, Joined cases 25 & 26/84 Ford v Commission [1985] ECR 2725-2743, Case C-70/93 BMW v ALD Autoleasing [1995] ECR 1-3439-3467. In these cases the “point at issue was the interpretation of a provision in an agreement or the question of the material scope of a provision, the pricing policy in question did not relate to a provision in the agreement.”(case pp.60).
\textsuperscript{86} Case pp.60.
\textsuperscript{88} Case pp.63.
\textsuperscript{89} “Article 6 1.The exemption shall not apply where: (6) the manufacturer, the supplier or another undertaking directly or indirectly restricts the dealer’s freedom to determine prices and discounts in reselling contract goods or corresponding goods”
\textsuperscript{90} Case pp.77.
\textsuperscript{91} Case pp.79.
\textsuperscript{92} Such as: dealer reluctance to serve foreign customers, and requirement of large deposits. Case pp.80.
The price policy intended for the prices to be kept at artificially high levels in Germany. And due to the popularity of the car as well as the problems in importing cars Volkswagen were able to keep the pricing in the German market protected. Volkswagen contested that the measure had a significant effect on the trade between Member States and that the limited exports from Germany were due to supply bottlenecks or the generally higher prices present in Germany. The Commission rejected this argument as it had been demonstrated that the measure had affected the Member State trade. And the bottleneck issue could not alter their standpoint especially in light of the behavior of the German dealers. If there were a shortage of supply then a discounting behavior would not have been enticing but a higher price in order to receive a higher margin would have.

The measure was concluded to have infringed Article 81(1) and not exempted under Regulation 1475/95. An individual exemption had not and could not be granted mainly due to the lack of consumers' share in the potential benefit of the agreement.

The infringement lasted for almost three years i.e. from September 26, 1996 to September 6, 1999 and was considered to be of medium duration. The fine in the amount of EUR 30,96 million was imposed on Volkswagen AG as they were assumed to have acted intentionally and were aware of the objective of the measure. Since they were the initiators the fines were imposed on Volkswagen only and not on the dealers.

3.4.3.4. Analysis/Conclusion

Even in this case was the consumer benefit a decisive factor in reaching a decision. High prices and no real option of parallel trade were concluded to not benefit consumers. It is interesting to note the difference in approach the measures that Volkswagen have used in their two infringement cases. First exports ban from Italy to Germany and in this case a price fixing situation in Germany. The one thing that remained the same was the high priced German market that they wanted to protect.

3.4.4. Conclusion of Case Analysis

Common to all three of the above cases is the fact that consumer complaints received by the Commission in regards to anti competitive practices will be examined. It could therefore be assumed that the Commission wanted to set an example for the future legal aspects such as cases and regulations in regards to a consumer focus.

It is clear that the Commission keeps the consumers benefit in focus in these cases, as the manufacturers did not preserve it. In all three cases consumers were to pay more for a car than necessary and were restricted in their ability to utilize their "EU-citizen" right to purchase a car anywhere within the common market.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

The Commission acted consistently in these cases and according to the interests of a healthy competition in the common market as provided for in Article 81(1) and the Motor Vehicle group exemption.

The sum of these cases in the context of the group exemption can be noted in an increased protection for the dealers provided for in the Draft. Article 3 (5) concludes that a dealer cannot be terminated if it adheres to the rules of the Regulation. And the measures brought before the Commission in the cases remain in the upcoming Regulation as incompatible practices.

3.5. The new Draft Regulation

On March 16, 2002 a draft of a new regulation was published. The applicability of the proposed regulation remains the same as in 1475/95. It will take effect October 1, 2002 and remain in force until May 31, 2010, which is the exact date when the Regulation 2790/99 expires. The coinciding expiration date was chosen in order for the Commission to be able to analyze the situation in 2010 for all industries in regards to vertical restraints.

The new regulation, if adopted as it stands, will present some interesting changes in the realm of the Automobile industry within the EU. Most notably is the abolishment of the previously indispensable exclusive and selective distribution system. I.e. the current Regulation prescribes a combination of the exclusive and selective distribution systems, while the Draft does not prescribe a single model for distribution. Under the Draft the manufacturers will be able to choose either exclusive or selective distribution based on their own criteria. Dealers in turn will be allowed to sell different brands in the same showroom (something already practiced in sparsely populated areas in Scandinavia). Termination of dealers will be harder as detailed reasons must be given. In the after-sales market there will be more room for independent repair shops to provide authorized work, as the sales-service link no longer will be a requirement.

The Draft, according to the Commission, was brought forth with the consumer as the main focus. Romano Prodi the Commission President stated that “The Commission is putting car buyer first”. And the president of the Swedish automobile organization Motormännens Riksförbund Martin Andrea stated that the Commission with its proposal puts the consumer interests first and utilizes its enforcement role and supranational decision power. This standpoint is debatable, as other alternatives could have benefited consumers just as well.

---

94 Article 14 Draft p.12.
95 Explanatory notes on the Draft pp.53 p.22.
97 Commission Press Room. ip/02/196 05/02/2002.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

3.5.1. Reasons for a new Regulation

A renewal of Regulation 1475/95 would not be a suitable option as it failed to achieve the aims that the Commission considered indispensable to enhance the Single Market. The problems identified in particular are: the inflexible distribution system, marginal parallel trade, difficulty utilizing new marketing methods, lack of a sales-service link, independent repairers accessibility to technical information, limited access to dealers by spare part producers, and the lack of dealers' independence.  

And if there would be no replacement, the automobile industry would be covered by the general Regulation 2790/99. This regulation, however, would not be able to address all the problems encountered according to the Commission. Therefore a more industry specific Regulation is needed and the Draft utilizes the general regulation's structure.

3.5.2. Aims of the Draft

The draft is constructed with the intent to address the problems identified within the current Regulation and the approach of the draft consists of:

1. Banning the selective and exclusive distribution system.
2. Reinforcing intra-brand competition by allowing active sales across boundaries and the abolishment of the 'location clause' in the selective system, and allowing passive sales in the exclusive.
3. Removing the legal link between sales and servicing.

In regards to the after-sales servicing is the draft pursuing the following aims to:

1. Allow the selection of qualified authorized repairers by manufacturers
2. Ensure that all repairers that inhabit the necessary technical expertise and fulfill the qualitative criteria can be a part of the manufacturers official network.
3. Improve access to non-manufacturer spare parts.
4. Reinforce the competitive position of independent repairers.

3.5.3. Black List of the Draft

The black clauses in the draft are found in Articles 4 and 5. Article 4 states that vertical agreements that constitute any of the following objectives would not be able to apply the exemption as defined in Article 2 of the Draft.  

102 The location clause indicates that the distributor is only allowed to operate from the manufacturer approved establishment. And on the other hand, the distributor can be protected by the manufacturer from another distributor opening a showroom in its territory.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

a. Price fixing.
b. Limits on cross border marketing and sales.
c. Restriction of cross-supplies in selective system.
d. Multi-brand restrictions on sales or services.
e. Restriction of spare-parts sales to independent repairers.
f. Restrictions of new car sales of models within distributor's contract range.
g. Restriction of subcontracting repair and maintenance services.
h. Restriction of the repairer's ability to limit its activities.
i. Restriction that limits the supplier of spare parts, repair tools or other equipment to sell to others than the manufacturer.
j. Restriction on obtaining and using any spare parts for repairs excluding warranty work; free servicing and vehicle recall work.
k. Restriction on the trademark or logo labeling of spare parts by its producer.

And the exemption will not apply when a manufacturer refuses to permit access to technical information etc. to independent operators.

Article 5 prescribes that the following direct or indirect obligations in agreements are black listed and not subject to the exemption in Article 2.105

a. Non-compete obligations relating to sales of motor vehicles.
b. Restraining a distributor from selling leasing services.
c. Excluding a distributor or a repairer from motor vehicle related business after a termination of a contract.
d. Limiting repairer's ability to provide services for competing brands.
e. Restraining a distributor of the selective distribution system not to sell motor vehicles of competing brands.
f. Limiting distributor of selective distribution system in its ability to establish sales/delivery outlets or warehouses anywhere within the common market.
g. Restricting location of establishment under selective distribution system for distributor of motor vehicles other than passenger cars.
h. Deciding the place of establishment for a repairer.

3.5.4. The Content of the Draft

The Commission has based the Draft on Regulation 2790/99.106 This is evident when examining the two Regulations side by side, as the layouts of the preamble and the articles in the Draft are basically the same as in 2790/99. "The draft BER incorporates most of the contents of Regulation (EC) No 2790/99 while providing for … stricter rules."107 Therefore, a few modifications have been implemented in order to better address the specifics of the Motor Vehicle Industry. These modifications include different market thresholds for the selective distribution systems108, a

THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

termination clause\textsuperscript{109}, and a more extensive black list\textsuperscript{110}. These differences will be explained more in detail in the following presentation of the Draft. It is important to keep in mind that the Draft probably is subject to minor changes before it enters into force, and the information below is based on the Draft per March 16, 2002.

The Draft consists of a Preamble and 14 Articles. The \textit{Preamble} is as extensive as its predecessor\textsuperscript{111} and contains 35 paragraphs that describe the Regulation’s aim and purpose as well as provide guidelines for its applicability. \textsuperscript{112}

\textit{Article 1} provides definitions of the terms used in the Regulation. The first part of this Article deals with general terms in regards to vertical restraints and is largely based on the definitions in \textsuperscript{113}1475/95. And the latter part deals with industry specific terms and is based on \textsuperscript{114}1475/95. Some new terms are also introduced, including authorized\textsuperscript{115} vs. unauthorized repairers\textsuperscript{116} and leasing companies as end users\textsuperscript{117}.

The scope of the Regulation’s application is found in \textit{Article 2}. In order for an agreement to qualify for the exemption it has to satisfy the five criteria found in the article’s five paragraphs. The first two are mandatory criteria while the other three are condition based.

1. It must be a vertical agreement\textsuperscript{118} entered into between two or more undertakings at different levels of the distribution chain within the Motor Vehicle Industry\textsuperscript{119}. The most obvious example being the agreement between a manufacturer and a distributor.

2. The restrictions of competition contained in the agreement must fall within the scope of Article 81(1).

3. If agreement is between “an association of undertakings and its members, or between such an organization and its suppliers” - all members have to be retailers of motor vehicles or spare parts for motor vehicles and no single member can have a total annual turnover exceeding EUR 50 million.

4. If agreement contains provisions in regards to intellectual property right they cannot be the primary objective of the agreement. They can neither be directly related to the use, sale or resale of goods or services nor contain competition restrictions apart from the ones covered by the Regulation.

\begin{footnotes}
\footnote{Draft Article 3 pp.5-6 p.8-9.}
\footnote{Draft Article 4 & 5 p.9-10.}
\footnote{Regulation 1475/95 Preamble p.25-29.}
\footnote{Regulation 2790/99 Preamble. p.21-22.}
\footnote{Draft Article 1 pp. a-i where e & f expounds on the selective distribution system(d) - defining the quantitative(e) and qualitative(f). p. 6-7.}
\footnote{Draft Article 1 pp. l-s. p. 7.}
\footnote{Draft Article 1 pp. j. p. 7. An authorized repairer operates within the vehicle manufacturer’s distribution system.}
\footnote{Draft Article 1 pp. k. p. 7. An unauthorized repairer operates outside the vehicle manufacturer’s distribution system. Also called an independent repairer.}
\footnote{Draft Article 1 pp. t. p. 7. The leasing company is considered an end user only if it is obliged to keep the car the entire contract period.}
\footnote{Concerted practices are included in ‘vertical agreements’. Draft Preamble pp.4.}
\footnote{The Industry in relation to the Regulation include the purchase or sale of new motor vehicles, spare parts, and repair and maintenance services. Preamble pp.4. p.2.}
\footnote{Draft Article 2 pp.3. p.8.}
\end{footnotes}
5. If competing undertakings have entered into an agreement it has to be non-reciprocal in nature. The buyer's turnover cannot exceed EUR 100 million. The supplier can either be a manufacturer and distributor of goods if the buyer is a distributor or a service provider if the buyer is not providing the same services at the same trade level.

In Article 3 are the general conditions for the Regulation's applicability found. Paragraphs 1-4 clarify the different distribution systems available to the manufacturer and the corresponding market share thresholds. And paragraphs 5-7 deal with the termination of distributors and the right to an arbitrator. Contrary to 1475/95 is the combined exclusive and selective system of distribution no longer an option. Instead the Draft provides a choice of a selective or exclusive system similar to 2790/99. The difference is found in the varying thresholds depending on the distribution system not available in 2790/99. If a quantitative selective distribution - can be combined with qualitative criteria - is chosen, "the supplier's (here the manufacturer) market share on the relevant market on which it sells the new motor vehicles, spare parts for motor vehicles or repair and maintenance services" is not allowed to exceed 40%. In regards to a qualitative selective distribution system, no threshold will be applied. The exclusive distribution system on the other hand, follows 2790/99 and exhibits the most restrictive threshold, 30% for both the supplier and buyer. In regards to the rules for the termination of distributors, this part has been expanded in an attempt to further protect distributors compared to 1475/95. It now includes a clause stating that "if a supplier wishes to give notice of termination, the notice must include detailed reasons for the termination".

Contrary to 1475/95, the Draft does not include a list of permissible practices; it only lists those that are not permitted. Thereby are "all practices which are not mentioned in this list ... permissible". The Black list of the Draft is found in Articles 4 and 5 and is largely based on 2790/99. Article 4 lists the agreement objectives that are prohibited under the Regulation. These objectives can be direct or indirect. The clauses work in favor of the distributors in order to strengthen their position against the manufacturers. The main burden is therefore placed on the manufacturer as agreements that directly or indirectly restrict the distributors in a number of different ways to be competitive are prohibited. A distributor must be able to set their own prices and not be limited by minimum prices or small margins. A selective distributor cannot be hindered from carrying out active sales anywhere in the EU, or to sell or service multiple brands on the same premises. A distributor has the right to choose if he wants to carry out repairs himself or subcontract it to an authorized repairer. He should also be able to order any model available from the manufacturer. The repairer will also have a strengthened position, as the manufacturer is not allowed to restrict the original spare-parts sales to independent repairers, or the repairer's ability to limit its activities. The manufacturer is not allowed to implement limitations on spare parts

121 Article 3 of Regulation 2790/99 only provides one general threshold for the supplier - 30%. And for the buyer - 30% only in case of an exclusive system.
122 Draft Article 3 pp.1 p.8.
123 Article 3 pp.2.
124 Article 3 pp.3.
125 Article 3 pp.4.
126 Article 3 pp.5.
suppliers neither in regards to their sales activities nor labeling of their products. The manufacturer can only restrict its distributor and repairer to use original spare parts in regards to warranty work; free servicing and vehicle recall work.

And a manufacturer has to allow access to technical information etc. to independent operators in order for the exemption to apply. "Access has to be given in a non-discriminatory and proportionate way."\(^{128}\) I.e. no preferential treatment to operators within the network.

*Article 5* deals with obligations that are black listed:\(^{129}\) These obligations could be direct or indirect in nature. Even here the main emphasis is placed on manufacturer restrictions. A distributor will be able to sell different brands with fewer restrictions than under 1475/95. There is no longer an obligation of separate premises, sales personnel, or legal entities as these would be considered as indirect non-compete obligations.\(^{130}\) Under the selective distribution system can the manufacturer can not restrict its distributors from selling motor vehicles of particular competing brands. Or limit the distributor's ability to establish sales/delivery outlets or warehouses anywhere within the common market. However, this latter point in regards to establishment is under deliberation and subject to change.\(^{131}\)

The suppliers are able to restrict the location of establishment for maximum five-year period under the selective distribution system for distributors of non-passenger car motor vehicles. This is "in order to allow both parties to adapt their agreements to changing market conditions."\(^{132}\) The distributors have to be allowed to provide leasing services for the motor vehicles they sell.

In regards to the repairers they are granted the right to provide services for competing brands. This is to "ensure that repairers can carry out repairs or maintenance on all motor vehicles."\(^{133}\) And the manufacturer cannot decide where an authorized repairer should have its place of establishment.

Neither a distributor nor a repairer can be obligated to refrain from motor vehicle related business after a contract has been terminated.

The Regulation No 19/65/EEC warrants both the Commission\(^{134}\) and the Member States\(^{135}\) the possibility to withdraw the Regulation benefits for individual agreements if the effects "are incompatible with the conditions laid down in Article 81(3) of the Treaty"\(^{136}\). Particularly "where the buyer has significant market power on the relevant market on which it resells the goods or provides the services or where parallel networks of vertical agreements have similar effects which significantly restrict access to a relevant market or competition thereon; such cumulative effects may for

---

\(^{128}\) Draft Article 4 pp.2.

\(^{129}\) Draft O.J. C 67 2002-03-16 p.10.

\(^{130}\) Draft Preamble pp.26.


\(^{132}\) Draft Preamble pp.28.

\(^{133}\) Draft Preamble pp.27.

\(^{134}\) Draft Article 6.

\(^{135}\) Draft Article 7.

\(^{136}\) Draft Article 6.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

example arise in the case of selective distribution." Or "if competition is significantly restricted in a market due to the presence of a supplier with a market power or if prices and conditions of supply to distributors of the motor vehicles differ substantially as between geographic markets." And in cases where "discriminatory prices, supplements or sales conditions are applied for the supply of corresponding goods, in particular if the supplier charges, in addition to the price for the relevant model in the contract range, unjustifiable supplements such as those which take account of the different national taxes." The difference is that the Member State can only withdraw the benefit in their country, while the Commission can withdraw it in the community as a whole.

Article 8 grants the Commission the right to declare the Regulation inapplicable in those cases where parallel networks cover more than 50% of a given market.

Articles 9, 10 and 11 further clarifies some issues brought forth in the Regulation such as the calculation of the market share and annual turnover as well as the definition of connected undertakings.

The Regulation will take effect on October 1, 2002 and its transition period will be one year i.e. until September 30, 2003. Its duration will be seven years and eight months and it will expire on May 31, 2010. This date coincides with Regulation 2790/99 and it was chosen in order to "allow the Commission to review the general situation in 2010 for all industries." There is also a requirement for a report on the evaluation of the Regulation to be presented by May 31, 2008. This would be 2 years before it expires.

3.6. The Basic Assumptions underlying the Motor Vehicle Industry Block Exemption in relation to Regulation 1475/95, the Regulation Draft and Regulation 2790/99

The basic objectives underlying the motor vehicle industry block exemption are:

- the effective competition in the sector,
- the dealer independence, and
- the implementation of a Single Market leading to consumer benefits

These were subject to scrutiny in year 2000. In the Commission's report on "the evaluation of Regulation No. 1475/95 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements" the basic assumptions of the Regulation and their relevance were analyzed in order to provide a foundation for future options. In the following section, these assumptions will be presented and examined as well as reflected upon in the context of the Draft

137 Draft Preamble pp.31 p.6.
138 Draft Article 8 and Preamble pp.33.
139 Draft Article 14.
140 Draft Article 12.
141 Draft Article 14.
143 Draft Article 13.
145 Report on the evaluation of Regulation No. 1475/95.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

and Regulation 2790/99. The information is to some extent based on the evaluation report.

3.6.1. Effective competition

The assumption that effective intra-competition\textsuperscript{146} as well as inter-competition\textsuperscript{147} exist in the motor vehicle industry was and still is crucial vis-à-vis the Regulation.

3.6.1.1. Intra-brand competition

With respect to \textit{intra-brand competition}, certain competition limits are set in the current Regulation based on the principle of territorial exclusivity where dealers are not allowed to actively pursuing customers outside their contract territory. Two restrictions apply - the prohibition on personalized advertising\textsuperscript{148} and the prohibition of sales to undertakings outside the network\textsuperscript{149,150}. Passive sales, however, are permitted where a customer residing outside a dealer’s territory can come to the dealer of his/her choice to purchase a vehicle. In this instance, the dealer is free to sell to the inquiring customer. This is true both within the Member States and across the borders. Under the Draft, however, the rules are somewhat different, as the manufacturer has to choose between a selective and an exclusive distribution system. Under the selective system the distributors will be allowed to carry out active sales anywhere within the common market. A distributor under the exclusive system would still be restricted to passive sales, but in contrast to 1475/95 the distributor will be able to sell to undertakings not included in the network. These could include supermarkets or Internet dealers.\textsuperscript{151} The Regulation 2790/99 upon which the draft is based on in this regard provides the similar rules for distribution.

The current trend towards fewer dealers and larger contract territories carries the risk of some reduction in intra-brand competition within a state as it makes it harder and more time consuming for consumers to do comparison shopping. The draft is addressing this potential problem by providing the selective distribution system, which has no territorial borders. The manufacturers previously enjoyed the notion of territories and exclusivity whilst in the draft the selective distribution system is indirectly pushed for. As the selective distribution system with qualitative criteria has no market share threshold, whereas the exclusive system has a 30% threshold on both the supplier and buyer. For Ford\textsuperscript{152} in Sweden i.e. the exclusive distribution system will no longer be an option as their market share is above 30%. Other manufacturers included in this predicament are Fiat in Italy, Volkswagen in Germany and Austria, and PSA in France.\textsuperscript{153} Under 2790/99 is the threshold of the market share 30% for the supplier regardless distribution system. And for the buyer is the

\begin{footnotesize}
\textsuperscript{146} Intra-brand competition is competition between dealers of the same brand.
\textsuperscript{147} Inter-brand competition is competition between dealers of different car makes.
\textsuperscript{148} See Reg. 1475/95 Article 3(8)(b); Faull and Nipkay pp.7.310. p.541.; Goyder. p.232.
\textsuperscript{149} See Reg. 1475/95 Article 3(10)(a); Faull and Nipkey pp.7.306. p.540.
\textsuperscript{152} Ford includes Ford and Volvo.
\textsuperscript{153} Wright, Andrew.
\end{footnotesize}
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

limitation of 30% only set forth in relation to the exclusive system. This would be another reason why the automobile industry needs a separate block exemption.

The upcoming trend with Internet makes dealers more accessible to a broader public. Which in turn could improve the competition. Today a majority of dealers in the industry have their own web sites that present their company and special deals. Many dealers in Sweden are also connected to bytbil.com which provides a service to the dealer to list their cars for sale including pictures and interested buyers can write a note of interest that is forwarded to the dealer’s e-mail or fax. The Draft allows for the manufacturers the choice whether or not to include pure Internet distributors as part of their network.

Price differences between the respective states, availability of certain models and delivery times are also valid reasons for the existence of intra-brand competition in the EU. According to Björn Forssell are the price differences a competitive phenomenon created by the manufacturer that a dealer is unable to counteract. And 1475/95 failed “to ensure reasonable uniformity of car prices across the Community.” Price differences stems from among other things the manufacturers’ pricing policies, taxation (taxes are payable in the country of destination), and currency fluctuations. The Draft is aimed at forcing manufacturers to even out prices within the common market. One hope is that cross border sales/delivery outlets will flourish allowing i.e. French distributors sell cars in Germany at French prices currently 20.1% below German retail prices. This scenario is only possible under the selective distribution system that in the draft as well as in 2790/99 exempts the ‘location clause’. Which in turn could cause some potential problems for the local distributors. Outside operators could enter local markets and undercut sales prices, which in turn could force the local distributor/s out of business. At this time the outsider could either stay and perhaps do a buy-out of the dealer/s and in addition increase sale prices, or he could pull out of the market.

The main cause of the price differentiation, however, is the lack of harmonization of taxes between the countries. And this issue is not addressed in the Regulations and cannot be remedied by the industry in itself. Not even by the free establishment clause. (Article 5(f)).

The table on the following page illustrates the differences that exist between the EU countries’ taxation on cars. Taxes include VAT.

155 www.bytbil.com
156 Lind, Tage. 4/01 p.10.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS


The Opel case (see section 3.4.2.) confirmed price differences ranging between 16-28% before taxes between the Netherlands and other member states during the time span of 1995-1997.\textsuperscript{160} Due to advertising limitations has parallel trade been mostly dependent on customers’ awareness. The usage of Internet by distributors will eliminate part of that problem. And according to the Draft, the distributors appointed under the selective distribution system will be able to actively pursue sales anywhere they choose within EU. The actual effects on parallel trade of the more flexible options are questionable, as the languages as well as cultures are very different among the Member States.

As presented in section 3.4., manufacturers such as DaimlerChrysler, Opel\textsuperscript{161} and Volkswagen\textsuperscript{162} have infringed on Regulation 1475/95 as they have tried to prevent the cross border intra-competition or parallel trading by preventing or discouraging their dealers to sell vehicles to non-natives as well as exercising price fixing.

Volkswagen represents the 1\textsuperscript{st} and 3\textsuperscript{rd} cases in the infringement by a car manufacturer in regards to competition rules. In Case T-62/98, Volkswagen denied its dealers in Italy to sell cars to customers in neighboring Germany and Austria – this resulted in a record fine of Euro 102 million.\textsuperscript{163} In the second case against Volkswagen price fixing was the issue. As read in Article 6 of the Regulation "The exemption shall not apply where: ... (6) the manufacturer ... directly or indirectly restricts the dealer's freedom to determine prices and discounts in reselling contract goods ...". In this case, only one model was concerned - the new Passat - and VW argued that the price discipline in the trade was at stake when dealer's advertised prices below the recommended retail price.\textsuperscript{164} The manufacturer repeatedly threatened their dealers with legal actions such and contractual consequences if the price would not be adhered to. The CFI argued that it constituted an infringement of The EC Treaty Article 81(1) in particular (a) where "1. The following shall be

\begin{itemize}
  \item \textsuperscript{160} 2001/146 COMP/356.653 Opel. Pp.14.
  \item \textsuperscript{161} COMP/36.653 Opel OJ. L 059, 28/02/2001 p.1-42.
  \item \textsuperscript{163} Van Ginderachter, Eric. p.14.
  \item \textsuperscript{164} COMP/F-2/36.693 O J 2001 L 262 p.21.
\end{itemize}
prohibited as incompatible with the common market: all agreements between undertakings … in particular those which: (a) directly or indirectly fix … selling prices …" The Court ruled that it was restricting competition and not serving the common market or its consumers.

In the Opel case, similarly to Volkswagen the dealers were discouraged not to sell to non-native consumers. In this case non-Dutch residents. Different tax-rates in the different member states contribute to the occurrence of differing net prices. In this case, net prices were lower in the Netherlands, which encouraged consumers from other countries to purchase their cars there. This in turn inhibited sales in the border areas of Germany. Therefore restricting the quota for exporting dealers so that they were unable to deliver to all their customers discouraged the practice. The Commission concluded that it was a very serious infringement and imposed a fine of Euro 43 million. Competition Commissioner Mario Monti stated that "The right to buy products cheaper in other Member States is one of the main benefits of the Single Market. The adoption of this decision is therefore a clear signal that competition policy serves consumers' interests."

DaimlerChrysler represents the Commissions 4th decision in regards to Regulation 1475/95. The manufacturer infringed Article 81 in three ways. They hindered parallel trade, restricted competition in the leasing realm and they utilized price fixing. In regards to the first infringement, which was concluded by the Commission to be "very serious", did DaimlerChrysler instruct their German dealers not to sell Mercedes outside their territory as well as requesting a 15% deposit on foreign consumers. The other two infringements were labeled as "serious". In regards to restriction of competition DaimlerChrysler limited sales of cars in Germany and Spain to independent leasing companies if there were no end customers for the cars. This created a restricted competition between their own and the independent leasing companies as the latter were not able to benefit from rebates or the ability to have cars available in stock. As for the third infringement, DaimlerChrysler fixed prices in Belgium by penalizing those dealers that allowed rebates higher than the agreed 3%. The fine in this case amounted to Euro 72 million.

The evaluation states that the intra-competition is not as effective as it should be, on the contrary it is rather weak. The cases above support this conclusion.

The Draft therefore wants to promote intra-brand competition with the abolishment of the combined exclusive and selective distribution system, the implementation of free establishment and the increased application of the Internet.

---

165 See table earlier in this section.
169 BF. p.60.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

3.6.1.2. Inter-brand competition

As for inter-brand competition a real effective competition is concluded to exist. Pricing and promotion are used as tools to enhance the competitiveness in the market. The draft does provide for a less regulated multi-branding, which probably will not influence the inter-brand competition notably. The only restriction left is for the dealer to keep the different brands in specific separated areas in the show room. It could, however, enable dealers to be more competitive and consumer oriented by the ability to offer more than one brand. And since the manufacturer no longer can require separate entities for the different brands will the cost of taking in another brand not as great as under the current regulation.

3.6.1.3. After-sales servicing

Other areas of competition can be found in the after-sales servicing, however, the competition here is very slight during the manufacturer's warranty period. The 'natural link' between the sales of new cars and servicing has, according to the report, lost some of its justification, which it had in 1985 or 1995. And in the Draft is the link no longer a requirement. This means that a dealer no longer is required to provide repairs and services on its premises, but can choose to subcontract the services to an authorized dealer. And the supplier can authorize independent repairers if they meet the set criteria.

It could be argued that the severance of the legal sales and service link was established in order to encourage new players to enter the stage both on the distribution and servicing level. The assumption of the lost justification was also concluded to be true by autopolis in their investigation conducted for the Commission. They conclude that “Regulation 1475/95 has imposed the forcing of a link between sales and service in the franchise sector and inadvertently curtailed the freedom of many of the different actors within the aftermarket. Without this imposition, there might have been more opportunity for innovative offerings from a variety of operators in both the franchise and non-franchise sectors, in response to consumer-driven market requirements.” At the present, not all consumers prefer to buy a car from a dealer that offers servicing, and manufacturers are moving toward a more divided approach by wanting dealers to sell cars and service outlets to carry out the servicing. It is important to note, however, that the sales margins on new cars are very small for a car dealer, and it is almost impossible to survive on them alone, therefore an incentive to provide after-sales services does exist. And MRF argues that there are more arguments in favor of the sales-service link than against it. This is due to the manufacturers need for available competence at their distribution centers, and that the competition in the aftermarket is well functioning.

The ability for freestanding repairers to become authorized would most likely end up with an increase in competition for the established dealers with repair facilities. Consumers are already favoring independent repairers, and with the option to

---

170 autopolis. p.62.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

choose between an independent authorized repairer vs. a dealer owned during the cars early years\textsuperscript{172} would make

The assumptions of effective competition in the market as a whole were according to the report questionable if they still hold true. The draft has therefore addressed this issue by abolishing the cumulative selective and exclusive distribution system as well as the sales-service link. It is not necessarily going to remedy the problems, as they are dependent on other factors within the community as well. These factors include tax differences, as well as cultural and language barriers.

3.6.2. Dealers commercial independence

The current Regulation has provisions that are intended to protect dealers against car manufacturers and increase their relative power. These provisions pertain mainly to contractual protection, such as an extended minimum notice for termination of their contract.\textsuperscript{173} But small and medium-sized dealers stand today still relatively powerless against their suppliers. According to the report the areas in which they would like improvement are: more liberty concerning the usage of spare parts of matching quality, the period for ending the dealer’s contract, the dealer’s remuneration, the freedom of dealer’s to determine their pricing policy, the right to negotiate sales targets, the right to sell more than one make (mullet-branding), and the recourse to an arbitrator.\textsuperscript{174}

In order for dealers to become more independent, changes are needed in the above stated areas. Less restrictions on selling non-original spare parts by decreasing the incentives to sell original parts, an increase in the timeframe given for notices of expiring dealer contracts, greater margins on new cars in order for the dealers to be able to survive economically, simultaneously enhancing intra-brand competition by influencing the prices, a more flexible sales target policy, and a less restrictive attitude toward mullet-branding would all contribute to increase dealers’ commercial independence.

Today the objective pursued in the Regulation "of strengthening inter alia intra- and inter-brand competition and of making dealers more independent has not really been achieved, even if some of the measures introduced ... had some limited effect."\textsuperscript{175} Independent repairers are also limited in their ability to compete, as car manufacturers make it hard for the outsiders to acquire the parts and knowledge required at a reasonable cost and ease.

The Draft has addressed some of the above issues, aiming to strengthen the dealers' and repairer's positions. The draft does not allow the manufacturer to set limitations on the repairers' choice of spare parts other than in respect to warranty work; free

\textsuperscript{172} In Sweden in particular the Ford dealer service retention is considerably high during the first five years of a vehicle’s life - above 63%. During the later years it is subject to a rapid decline. Information based on the interview with Ragnar Vännérus, Ford Sweden.
\textsuperscript{173} Regulation 1475/95 Article 5 pp2.
\textsuperscript{174} Commission Report on Regulation 1475/95 246.
\textsuperscript{175} Commission Reports on Regulation 1475/95 p.90.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

services and vehicle recall work. It has also enhanced the termination criteria to include detailed reasons for termination of a distributor. A less restrictive attitude toward multi-branding has been provided, and a manufacturer is not allowed to hinder a distributor under a selective distribution system to sell any particular competing brand. The manufacturers will also be obliged to make technical information, diagnostic and other equipment, tools, including any relevant software, and training accessible to independent repairers in a non-discriminatory and proportionate way. The proposed regime will also strengthen the distributors' and repairers' positions by allowing them to operate anywhere in the EU under the selective system. And to be able to service competing brands.

Would 2790/99 be able to strengthen the dealers' positions? It does not include a termination clause. But it would allow multi branding. It contains no provisions for independent operators, but on the other hand they are not part of a vertical agreement per se.

3.6.3. Implementation of the Single Market

Four main areas are focused on when assessing the benefits for a consumer in respect of purchasing and servicing a motor vehicle in the EU single market namely, (1) price, (2) availability, (3) warranty provisions and (4) quality and price of after-sales service.

As far as the pricing situation in the single market is concerned, it is beneficial for the consumer to shop around. Prices can differ as much as 20-65% between states. The threshold for price differences were established at 12-18% in Regulation 123/85 and kept intact in Regulation 1475/95, but this threshold has clearly not been followed. The difference in taxes, as mentioned above, is one major reason for such price differences. The Commission has powers to investigate car price differentials, but has not used it as of yet. Where car taxes are above 100%, the price differences are not considered. Currency fluctuations are another factor influencing price differences, but they do not necessarily justify the difference. The Regulation allows for a "right-hand-drive supplement" where a manufacturer can add a surcharge on a right-hand-drive car to a dealer who sells left-hand-drive cars. Even so, the right-hand-drive cars in the UK are more expensive than in continental Europe often exceeding the 12% threshold set forth in Regulation 123/85 and 1475/95. Purchasing power in the different states does not correlate with the level of car prices including tax. The Draft encourages the further implementation of the Single Market by allowing for free establishment of delivery outlets in any part of the

176 Draft Article 4 pp.1(i) p.10.
177 Draft Article 3 pp.5 p.8.
178 Draft Article 5 e p.10.
179 Draft Article 4 pp.2 p.10.
183 Ibid.
market under the selective system. The territorial borders will also be lifted under this system, and the distributors will be able to actively pursue sales. This will increase the consumers' awareness and ultimately challenge the distributors to effective competition.

Availability of new vehicles is also a benefit that a consumer should be able to enjoy. To a large extent this aspect functions well according to the report, but in reality there can be some real problems mostly due to the inflexibility of the practice of sales targets. Consumers buying in a different state can experience some reluctance and sometimes even being denied to purchase as mentioned in section 3.5.1.1. and seen in the Opel, Volkswagen and DaimlerChrysler cases. The unwillingness is largely attributed to the manufacturers. Even Ford Sweden admitted to some reluctance in selling right-hand drive cars to British consumers. The draft continues to provide for notion of availability.

Consumers can also enjoy the benefit of warranties being honored in all the Member States regardless of the place of purchase. In this area, all the manufacturers have, after some reminders from the Commission, implemented the necessary procedures to comply with the Regulation. A two-year warranty period is now mandatory since the implementation of Directive 1999/44 on January 1, 2002. New under the draft is the possibility a distributor has to subcontract such services to an authorized repairer. Since the sales-service link is broken, independent repairers can now become authorized and share the warranty, recall, and free servicing work.

When it comes to the after-sales services provided by the dealers, the customer benefits seem to differ between the Member States. UK consumers, for example, are not satisfied with the quality of the service received and prefer to use independent repairers. German consumers, on the other hand, tend to stay with the dealer services. It might therefore be concluded that independent repairers and fast-fit repairers could be just as efficient and beneficial to consumers.

Consumers' interests seem to be the main focus of the current Regulation. And even if there are shortcomings in some of the expected consumer benefits, the possibility of purchasing a car in any Member State seems to outweigh the downside. However, it should be added here that the latter benefit could be experienced without the block-exemption as well. The Draft does provide for some improvement granted that the selective distribution system is utilized. Then the price transparency will become more apparent for the consumers as well as the distributors.


The changes in the legal environment of the block exemption are most prominent in the change of the distribution system and the severance of the sales-service link. It is clear that the Commission aims at increasing the competition in the community. By introducing market share thresholds are the manufacturers pushed toward the selective distribution system. All in the anticipation that more players could enter the

---

184 Interview with Lars Ölund.
185 Opinion of the Economic and Social Committee. pp.4.3. p.7.
market. The same holds true for the abolishment of the sales-service link, more players wanted. For the manufacturers will the greatest challenge be to establish the selective criteria for distributors and repairers. And the distributors will anxiously await the verdict. If the selective distribution system will be chosen, a fierce competition might be around the corner. And the position of the average distributor may not be strengthened after all. This section will provide a summary of the legal effects on the distributors based on the provisions in the draft in regards to the three objectives analyzed.

3.7.1. How will the new Regulation work to preserve effective competition and how will it affect the dealers?

The draft will abolish the combined selective and exclusive distribution system and ultimately push the manufacturers to use a selective distribution system under which their distributors will be able to sell multiple brands, open outlets anywhere within the community and actively sell across previous territorial boundaries. Competition on the distribution level could intensify, leaving the larger distributors with capital in a stronger position i.e. Bilia, Brandt, Hedbergs, and Kindwalls. The setup will be almost like the game of Monopoly - the one who has the most capital can acquire more and end up as a winner. The provisions and their effects are presented in the table below.

<table>
<thead>
<tr>
<th>Competition Area</th>
<th>Provision</th>
<th>Effect on distributor</th>
</tr>
</thead>
<tbody>
<tr>
<td>In general</td>
<td>Distribution system either exclusive or selective.</td>
<td>Changes from current regime:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Allowed to sell to independent resellers.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Subject to a 30% market share threshold.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Allowed to sell any brand to anyone anywhere within the EU.</td>
</tr>
<tr>
<td>Intra-brand</td>
<td>Parallel trading</td>
<td>No change from current regime.</td>
</tr>
<tr>
<td>Inter-brand</td>
<td>Multi-branding</td>
<td>Allowed to sell competing brands on same premises.</td>
</tr>
<tr>
<td>After-market</td>
<td>Severing sales-service link</td>
<td>• Ability to subcontract repair services to authorized repairers.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• No longer required to provide both sales and services.</td>
</tr>
</tbody>
</table>
3.7.2. What provisions are entailed in the new Regulation that will strengthen the distributors’ position?

Most notably is that a manufacturer cannot terminate a distributor without justifiable cause. The manufacturers can neither restrain multi branding nor sales outlets under the selective distribution system. Under the exclusive is the multi site not an alternative. In the following table are the provisions and the effects on the distributors and repairers presented.

<table>
<thead>
<tr>
<th>Provision</th>
<th>Effect on Distributor</th>
<th>Effect on Repairer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Termination rules</td>
<td>• Cannot be terminated if follow the Regulation.(Art.3(5)).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Allowed to continue in the motor vehicle industry if terminated.(Art.5(c)).</td>
<td></td>
</tr>
<tr>
<td>Sale prices</td>
<td>Cannot be limited by incentives/pressures.(Art. 4(1)(a)).</td>
<td>N/A</td>
</tr>
<tr>
<td>Sales</td>
<td><strong>Selective</strong>: can actively sell any brand to anyone from anywhere within the EU.</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>(Art.4(1)(b),(f),5(e),(f)).</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Exclusive</strong>: can passively sell any brand to anyone entering their territory.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(Art.4(b)).</td>
<td></td>
</tr>
<tr>
<td>Multi-branding</td>
<td>Allowed to sell multiple brands on same premises. Only one restriction applies:</td>
<td>Allowed to service</td>
</tr>
<tr>
<td></td>
<td>brand specific areas in the show room. (Art.5(a),(e)).</td>
<td>multiple brands.(Art.5(d)).</td>
</tr>
<tr>
<td>Place of operation</td>
<td><strong>Selective</strong>: can operate from anywhere within the EU.</td>
<td>Can operate anywhere in the EU.(Art.5(h)).</td>
</tr>
<tr>
<td></td>
<td>(Art.4(1)(b),5(f)).</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Exclusive</strong>: can only operate within the contract territory.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(Art.4(1)(b)).</td>
<td></td>
</tr>
<tr>
<td>Sales-Service Link</td>
<td>Can choose if want to carry out on-site or subcontract to authorized repairer.</td>
<td>Does not have to</td>
</tr>
<tr>
<td>severance</td>
<td>Must inform customer if latter option is chosen.(Art.4(1)(g)). New entrants not</td>
<td>engage in car sales.</td>
</tr>
<tr>
<td></td>
<td>required to invest in repair facilities.</td>
<td>(Art.4(1)(h)).</td>
</tr>
<tr>
<td>Spare-parts</td>
<td>• Allowed to use matching quality spare-parts for all repairs except warranty, recall</td>
<td></td>
</tr>
<tr>
<td></td>
<td>or free servicing work.(Art. 4(1)(i)).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• <strong>Selective</strong>: can actively sell to anyone from anywhere within the EU.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(Art.4(1)(b),(c),(e),5(f)).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• <strong>Exclusive</strong>: can passively sell to anyone entering their territory.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(Art.4(1)(b)).</td>
<td></td>
</tr>
</tbody>
</table>
3.7.3. How will the new Regulation further implement the Single Market and how will that affect the Distributor?

The table below provides an overview of the indispensable factors of the Single Market.

<table>
<thead>
<tr>
<th>PRICE</th>
<th>SELECTIVE</th>
<th>EXCLUSIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open borders for sales</td>
<td>No change</td>
<td></td>
</tr>
<tr>
<td>Free establishment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consumer awareness increases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>AVAILABILITY</td>
<td>Lead to generalized cars?</td>
<td>Same as selective</td>
</tr>
<tr>
<td></td>
<td>Same models in all countries - same specs?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Manufacturer still somewhat restrictive</td>
<td></td>
</tr>
<tr>
<td>WARRANTY</td>
<td>Independent Repairers enter market</td>
<td></td>
</tr>
<tr>
<td>QUALITY &amp; PRICE ON AFTER MARKET SERVICES</td>
<td>New entrants? Maybe not but shift toward authorized repairer</td>
<td></td>
</tr>
</tbody>
</table>


There are many interest groups in the motor vehicle industry and not all are in favor of the exemption.

3.8.1. Arguments of the parties

A discrepancy and lack of reconciliation between the current Regulation's intended aims and its final outcome exist. Since the current Regulation is clearly not serving its purpose as well as it was intended, there are different interest groups arguing for its abolition. Market conditions change, and the Internet is a viable option for the future. "Market research agency Forit predicts that by 2005, 12% of all cars will be sold over the Internet (currently 3%)".  

Consumers are also arguing for a more open market without a block exemption in hopes of decreasing the price differentials in Europe. They don't have so much to lose by a non-renewal of the Regulation, but it is questionable if they have so much more to gain either. The effects are debatable.

Manufacturers have already started to adjust their ways of doing business, almost anticipating the upcoming changes. Mazda for example has terminated its contract

186 McKinsey & Commany, Inc.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

with its supplier in Sweden. And Volkswagen in Sweden has acquired ownership of their dealerships in Stockholm, Gothenburg and Malmoe.

Dealers on the other hand are the ones that would lose out the most, whether the Regulation stays or goes. Today they are restricted by market forces both from the top and the bottom. If the Regulation should disappear, it is uncertain how many of the original dealers will survive economically, because of the necessary adjustments preparing for a different type of competition.

Other parties supporting the block exemption are the ZDK (Zentralverband Deutches Kraftfahrzeuggewerbe) and the GVA (Gesamtverband Autoteile-Handel) who "maintain that one of the big advantages of the current system is that dealers can purchase parts from independent manufacturers". However, MRF argues that no party is against an exemption, but wants the roles redefined. They also state that the most important aspect of a new exemption or another form of laws is to increase the power of the dealers.

The draft introduced in 2002, will probably be a stepping stone toward a total abandonment of the regulations and an adoption of "the American model where manufacturers can sell their cars to anybody be it supermarkets or specialized car dealers." The American model is seen by some as a dream scenario, where a balance between the parties could be obtained and the manufacturer would be more controlled. The US does not have a block exemption but state laws that are providing the dealers with a strong position in relation to the manufacturers.

3.8.2. Future Developments

The future developments of the Motor Vehicle Group Exemption Regulation are now in the hands of the Commission. A hearing took place in February 2001, and Andersen conducted a study of the implication of any changes. The results of this study were presented in December 2001. A draft proposal of a new exemption was published in March 2002. This draft is only subject to minor adjustments according to EU director Sven Norberg. Even so, the economic and monetary affairs committee of the European Parliament has made 28 amendments to the proposed Draft. These amendments will be discussed and voted on in the Parliament on May 29 and 30. The amended draft will then be submitted to the Commission that in turn will decide the new Regulation's text in late June/early July.

189 McKinsey & Commpany, Inc.
190 Johansson, Per. MRF.
192 McKinsey & Commpany, Inc.
194 Andersen.
196 Lind Tage. 4/02 p.16.
197 de Saint-Seine, Sylviane.
The four major issues - lobbied forth by the manufacturers - under deliberation are:

- *the location clause* - recommended to be extended until 2005.
- *multi-branding* - sales in different premises with dedicated sales force.
- *separation of sales and services* - subcontract subject to repairer located in dealer's vicinity.
- *the dealer termination clause* - no detailed reason for termination in writing.

### 3.9. Conclusion of the Legal Analysis

After examining the Draft in the context of the current Regulation 1475/95 it can be concluded that changes will be brought forth in the legal framework within which the Motor Vehicle Industry operates. These legal changes include a choice of different distribution systems as well as a separation of sales and after-sales services. In the context of Regulation 2790/1999 it can be assumed that the Draft will prescribe generally stricter guidelines especially for the supplier. One exception applies however, the size of the market share under the selective distribution system.

The judgments on the cases infringing on the current regulation were largely based on the consumers' interest in the Single Market. Perhaps it provided a standard for the new regulation.

The Draft contains some problem areas including the idea of free establishment and the authorization of repairers. In regards to the notion of free establishment, sales outlets are not subject to the same qualitative criteria as the main place of operation. This could provide for a scary scenario, where the notion of Free-riding most likely will be stretched. The lack of a location clause and the ability to subcontract services could lead to potential problems. An outsider can enter the market and put local dealers out of business. As a large start-up investment is not needed. In the aspect of the authorized repairer is there a danger that the dealers market share in after sales services could decrease if more consumers would turn to the new free standing authorized repairers.

In conclusion, the Draft prescribes more opportunities for a distributor to compete than 1475/95, but it does not provide them with safeguards against competition such as the territorial exclusivity.
The following table compares the principles of car distribution in the EU and the US, based on Diagram 4 in the Commission’s report on Regulation 1475/95, page 31-32.

<table>
<thead>
<tr>
<th>PRINCIPLES</th>
<th>EUROPEAN UNION</th>
<th>UNITED STATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Territorial exclusivity</td>
<td>Yes; at least limitation of number of dealers present in the dealer’s contract territory</td>
<td>Yes</td>
</tr>
<tr>
<td>Selectivity</td>
<td>Yes</td>
<td>Yes; dealers require a public licence to trade from local government, which is subject to a franchise obtained by a manufacturer or importer, but no contractual prohibition on dealers selling to resellers</td>
</tr>
<tr>
<td>Prohibition on dealers selling to resellers</td>
<td>Yes</td>
<td>No; the activity of a reseller of new cars is not possible in the US</td>
</tr>
<tr>
<td>Two-tier system with main dealers, sub dealers and agents</td>
<td>Yes, subject to permission by manufacturer</td>
<td>No</td>
</tr>
<tr>
<td>Right of manufacturer to carry out direct sales</td>
<td>Yes</td>
<td>No, through franchised retail dealers</td>
</tr>
<tr>
<td>Protection against unjustified termination of dealer contracts</td>
<td>Yes, in cases of less than two years’ notice</td>
<td>Yes; manufacturers have very few grounds to terminate contract; restructuring of network by manufacturers is severely inhibited.</td>
</tr>
<tr>
<td>Brand exclusivity</td>
<td>Dealer can sell vehicles of several makes on separate premises, under separate management, in the form of a distinct legal entity and in a manner which avoids confusion between makes where the dealer shows objective reasons for doing so</td>
<td>US franchise laws allow dealers to take additional franchises if they have objective reason; multi franchised dealers + ‘automalls’ have expanded recently</td>
</tr>
<tr>
<td>Link between sales and after-sales services</td>
<td>Legal link; see art. 5(1)(1)(a): in order to benefit from Reg. 1475/95 manufacturers have to oblige dealers to offer after-sales services</td>
<td>No legal link, but all dealers offer both since it is part of their franchise “package” agreed upon with the manufacturer</td>
</tr>
<tr>
<td>Do margins vary by size of dealer?</td>
<td>No</td>
<td>No; either this is due to dealer contract or – in some States – to State statute</td>
</tr>
<tr>
<td>Sales and stock targets</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

198 Regulation 1475/95 Article 3(3).
199 Regulation 1475/95 Article 5(2)(1).
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

4. COMPETITION STRATEGY

This chapter’s ultimate aim is to consider the legal effects of the new Regulation in relation to the distributors’ strategy issues. In order to gain a better understanding of that study a foundation must be established. Section 4.1. will define the Motor Vehicle industry pertaining to the industry analysis conducted in section 4.2. Here the European Motor Vehicle industry's current situation based on Porter's five forces model will be analyzed. Then follows a brief presentation of the current situation for Ford Motor Company in section 4.3. and their Swedish dealers in section 4.4. And section 4.5. concludes chapter 4 with an analysis of the future situation in relation to the legal effects of the Draft.

The Porter's model for analysis was chosen because it is based on a framework of competitive forces that are present in the Motor Vehicle industry that are fundamental to its profitability. The competitive forces according to Porter are found on a horizontal and vertical level. Three of the five competition forces are found on the horizontal plane and are exemplified with substitute suppliers, new entrants and established producers. The other two signify the bargaining power of suppliers and buyers and are found on the vertical plane.\(^{200}\) (See figure below in section 4.1.) The industry will be examined from a manufacturer and a distributor perspective. Competition strategy issues and options for today and the future will also be presented and analyzed.

The 'American model' that will be used to contrast the industries does not have any specific competitive regulations for the Motor Vehicle Industry. In this context distributors are subject to franchise and state legislation. The distributors are more numerous than in Europe and exercise more power against the manufacturers. The table on the previous page illustrates some of the characteristics of the American model compared to the European.

4.1. Motor Vehicle Industry

Considering the complexity of the Motor Vehicle industry it is important to note what will be included in the analysis that will follow. The industry will be based on the applicability of Regulation 1475/95 as defined in Article 1 – "new motor vehicles intended for use on public roads and having three or more road wheels, together with spare parts therefor." This indicates that the motor vehicle industry will be analyzed as a whole and not in segments.

\(^{200}\) Grant, Robert M. p. 59.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

4.2. Competition Strategy in the Motor Vehicle Industry

The purpose of strategy "is to confer success through guiding management decisions toward establishing and sustaining competitive advantage for the firm." And when it comes to competition strategy today it has to do with how companies need to deal with the ever changing and increasing challenges they are faced with in the increasingly global and competitive environment that they operate within.

Porter's five forces model provides – as stated above – a framework within which an industry’s competition can be analyzed. These five forces of the industry, illustrated below, are: Potential entrants, Industry rivalry, Substitutes, Suppliers, and Buyers.

Strategy options available for the Motor Vehicle industry include diversification, low cost, and focusing. Having financial services, as a complement would be considered diversification. Low cost aims at lowering for example production costs by using the same frame for different models and utilizing same factories for different makes. And a focused strategy indicates an interest in different customer groups by only producing for example luxury or sport cars.

In the European motor vehicle industry the forces need to be analyzed on two levels, manufacturing and distribution.

---

201 Grant, Robert M. p. 4.
203 Grant, Robert M. p. 74.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

4.2.1. Manufacturing level

The western European automobile manufacturers are responsible for approximately a third of the world car production, only surpassed by the U.S.\textsuperscript{204} On the manufacturing level, there are great rivalry among the existing different manufacturers of motor vehicles. This has led to many mergers and buyouts among the Vehicle manufacturers in order to utilize economies of scale. This can be noted as these multi-brand manufacturers are using joint engines, joint platforms and joint plants.\textsuperscript{205} The composition of the competition can vary between the member states. In the UK for example, Ford is considered to be the middle income car and the competitors are either below or above it, hence it has a large market share. In Germany Ford has to compete with more brands for the middle range market, and as a result are facing a much greater competition. In addition to the inter-brand competition, is the intra-brand competition. This competition that is provided for in the Regulation has been attempted to be stifled by many manufacturers. Volkswagen denied its dealers in Italy to sell cars to customer in Germany and Austria – this resulted in a record fine of Euro 102 million.\textsuperscript{206} Van Ginderachter also mentions another manufacturer that restricted parallel trade between Spain and Portugal by limiting the quota to those Spanish dealers that had sold vehicles to Portuguese customers – thereby hindering the delivery.\textsuperscript{207} And in September 2000, Opel Nederland BV was charged with denying parallel trade from the Netherlands to other countries by inhibiting their dealers to sell to non-Netherlands consumers.\textsuperscript{208}

The potential entrants are today not such a great threat, as it requires large capital, as well as expertise to enter. As far as substitutes, there are not so many products that currently compete with cars, but services such as different transportation modes could pose a threat to the industry i.e. buses, trains, airplanes.

The bargaining powers of the suppliers are decreasing with the concentration of the manufacturer's purchases from certain suppliers.\textsuperscript{209} According to Ralf Bergner is this a potentially dangerous scenario if carried to far as today the “demands from vehicle manufacturers towards suppliers are ever-increasing.”\textsuperscript{210} This will in turn lead to lack of business control for the supplier. Bergner also argues that suppliers should be regarded as partners to the Vehicle Manufacturer.

The bargaining power of the immediate buyers i.e. dealers is very limited in the EU and in the context of the group exemption. This is contrary to the American model, where the dealers are more powerful.\textsuperscript{211} One of the major differences between the EU and the US affecting this is the concentration of the dealer population. In the US there are three times as many as in the EU. Their power has led their commercial dealings to be less constrained and their profitability much better. Autopolis

\textsuperscript{204} http://autointell.com/european_companies/western.htm 2002-04-28.
\textsuperscript{205} Bergner, Ralf.
\textsuperscript{206} Van Ginderachter. p.14.
\textsuperscript{207} Van Ginderachter. p. 14.
\textsuperscript{209} Grant p.69.
\textsuperscript{210} Bergner, Ralf.
\textsuperscript{211} Autopolis. p.21.
concludes that this suggests “that a more liberal régime may actually be healthier for dealers than a very controlled one.”

But the bargaining power for end consumers are increasing, especially as the market is getting more integrated and consumers are becoming more aware of the differences and their options. This will eventually bring prices more closer together, but only with the help of harmonization of tax regulations in the different member states. The end consumer group will be analyzed more in detail in regards to the distribution level that follows.

4.2.2. Distribution level

At the distribution level similarities with the manufacturing forces can be noted, but some differences apply. In the internal aspects of rivalry, companies compete against each other in a somewhat fierce environment. With small margins to play with and much supervision from the manufacturer many have not been able to survive this last year or two. The internal rivalry between brands – intra brand competition - is more limited to a national basis. An inter-brand competition also exist, but more across the borders, as the same car can cost much less in another country, i.e. Denmark vs. Sweden. This is mainly due to the large difference in the taxrates.

As far as the potential entrants, they are represented by Sales via Internet and supermarkets. Here the internet sales has been the dominant force and intermediaries such as autoo.se and bilekonomi.se has entered the distribution market offering their services ranging from plain information to the purchase and delivery of a new car.

When it comes to substitutes, the distributors share a commonality with the manufacturer as there are not that many true substitutes for cars as a product, rather more alternative modes of transportation.

The legal tying of sales and after market services has been a strong force in favor of the supplier/manufacturer. The brand loyalty required by a dealer also puts the manufacturer in a dominant position. This might change if the drafted Regulation is accepted were the legal link between sales and services will be broken, and more than one brand is allowed in one showroom. In addition there is a quota of vehicle orders that the dealer have to place each month in order to be in good standing. This could lead to the event that the car the buyer wants is not in stock and it has to be special ordered with a lead-time of three months. Buyers are achieving a greater impact on the dealers as their awareness increase. Brand loyalty is not as important anymore as the idea of getting a great deal. And with the introduction of the Internet providers has the issue of where to buy become less self-evident. This requires the dealers to become more competitive in their pricing as well as in their customer service. This is not always easy as the margins on new cars are very small, and the interest rates that are added on unsold new stock can add up very fast. The dealer is

212 Autopolis. p.21.
213 Commission Press Room, IP/02/196, 05/02/2002.
caught between the manufacturers' and customers' demands, and has to be very flexible and inventive to survive.

4.2.3. Conclusion of analysis

In conclusion of the industry analysis, it can be noted that the competition will increase and the strategic option of low cost is the most attractive to many of the global manufacturers. A trend toward diversification among the big manufacturers also exists as they offer financial services as well as are able to offer a complete range of car makes and models. The latter due to acquiring other brands i.e. Ford's purchase of Volvo, GM's of SAAB as well as the merger between Daimler and Chrysler. A few focus-oriented manufacturers will continue to exist, such as Porsche, Maserati and Rolls Royce.

On the dealership level in general (excluding high performance cars) will low cost by diversification be the most likely option for survival in the future. This could be achieved by the allowance for multi branding. Dealers' could use this opportunity to combine the after sales services for different makes in one establishment. And the dealer's reputation will become more important than the make's as the cars are becoming more and more similar in regards to quality and specifications.

4.3. Ford Motor Company - Manufacturer

Ford Motor Company is one of the world's largest Motor Vehicle manufacturer, and has been doing well in its home country USA, but not so well in the European market. However, by being diversified the company also owns the financing company Ford Credit. This subsidiary is doing very well in Europe, and is able to cover Ford of Europe's negative results. A 24% increase in sales was noted for 2001\textsuperscript{214}, however this was probably due to clearing out of old stock.

4.3.1. Current Strategy

At present Ford Motor Company as a whole has a current strategy that gears toward customer satisfaction and quality assurance. Their strategy for success in the future includes “three elements – continue to improve the base business, transform the business and grow the business.”\textsuperscript{215} And their vision is clear – to provide superior returns to shareholder while at the same time become world leader in providing automotive products and services to consumers. Ford Motor Company in itself also employ diversification with a global brand strategy including seven vehicle brands – Ford, Volvo, Mazda, Lincoln, Mercury, Jaguar, Aston Martin – and four service brands – Ford Credit, Quality Care, Hertz and Visteon. The advantage with a broad range of vehicle brands is the ability to employ both a low cost and a focus strategy. Low cost is accomplished primarily in the R&D and production where the same research and development as well as production facilities can be used for more than

\textsuperscript{214} Wright Investors' Service. (Data as of: 4/19/02). \url{http://www.wisi.com} 2002-04-28.

THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

one make/model. And by offering a complete range of car makes, many focus groups can be attended to.

The competitive advantages identified by Ford in their annual report for 1998\(^{216}\) are:

- Strong global brands
- Superior consumer satisfaction & loyalty
- Best total value to the consumer
- Nimble organization with leaders at all levels
- Corporate citizenship

A clear distinction can be made between the challenges the new cars and the after sales market services face which is true for the industry as a whole, and not only for Ford. The after sales sector is already faced with fierce competition with an approximate 50/50 division of the market. For this sector a removal of any type of exemption would not create too much of a change for them. They have already had to adapt their strategy toward a more open market, aiming at customer loyalty. Ford Sweden for instance has put together a special “Growth Group” with representatives from both dealers and Ford Sweden in order to develop effective strategies. The main priorities in their strategy are programs such as Service 2000, Direkt Service (certain repairs and services at set prices with no appointment necessary), Service reminders, Tire storage (for customers' summer tires in the winter and winter tires in the summer), and the Ford Card (functions as a store credit card). And their main target group consists of owners with 5-10 year old Ford vehicles. All these activities are aiming for customer loyalty as well as to break down the notion that a repair costs more at the dealer than in an independent shop.\(^{217}\)

For the new cars sector, there would be many possible new challenges with the expiration of the regulation, especially for the distributors. It could open up the market for more distributors with less brand loyalty. Ford Sweden doesn’t see the direct imports as a threat, rather as a possibility as it would expand the after-market. And they feel that more power has been given to the dealers with the renewed contracts in accordance to the current group exemption that extended a longer termination notification to the dealers. In addition there has been improvement in the close working relationship in regards to dealers, where Ford Sweden act more as a supporter than a ruler. In regards to the internal organization, cost cutting pressures exist and resources for further development for employees are available on the company’s Intranet. Much information is available for those that would like to acquire it. The current dealer structure is much in their interest to keep and to help the remaining dealers (has decreased from 90 to 60) to stand strong in the changing times ahead. And in those cases where dealers have folded, Ford’s philosophy is to first ask a neighboring Ford dealer if an interest exist as well as the economical means to take over the operations. Secondly, they will ask the local Volvo dealer, and thirdly Mazda. And they claim that there is no goal in itself to exchange Ford dealers to Volvo dealers. But Volvo is a strong actor on the Swedish market and can

\(^{217}\) Ford Sweden 2000, Service report.
be beneficial to co-operate with and is also owned by Ford.\textsuperscript{218} And according to Sven Norberg are Ford and Volvo to be considered as one manufacturer.\textsuperscript{219}

### 4.3.2. Future Outlook

Ford of Europe conducted a preliminary assessment in 2001 in which the following chart was included. This chart is based on the five possible scenarios that could take place after the expiration of the Regulation as identified by the Commission. The five possibilities are: Free for all (FFA), Exclusive distribution (ED), Qualitative selective distribution (QSD), Qualitative and quantitative selective distribution (QQSD), and Qualitative and quantitative selective distribution with limited exclusivity (QQSD+LE). In the chart below these five scenarios as seen from the manufacturer's viewpoint are compared with the current regulation 1475/95(ABE).

#### The five scenario's Key features comparison

<table>
<thead>
<tr>
<th></th>
<th>FFA</th>
<th>ED</th>
<th>QSD</th>
<th>QQSD</th>
<th>QQSD+LE</th>
<th>(ABE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Set quality standards</td>
<td>-</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Limit number of retailers</td>
<td>-</td>
<td>X</td>
<td>-</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Grant exclusive areas</td>
<td>-</td>
<td>X</td>
<td>-</td>
<td>-</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Link sales and services</td>
<td>-</td>
<td>?</td>
<td>?</td>
<td>?</td>
<td>?</td>
<td>X</td>
</tr>
<tr>
<td>Enforce resale restrictions</td>
<td>-</td>
<td>-</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Enforce full range</td>
<td>-</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Terminate retailers at will</td>
<td>-</td>
<td>X</td>
<td>-</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Sell direct to end-users</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Prevent retailers to buy</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Matching quality parts</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Prevent access to technical info by independent repairers</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

FFA = Free for all  
ED = Exclusive distribution  
QSD = Qualitative selective distribution  
QQSD = Qualitative and quantitative selective distribution  
QQSD+LE = Qualitative and quantitative selective distribution with limited exclusivity  
ABE = Existing Automotive Block Exemption Regulation 1475/95

\textbf{X} = possible  
\textbf{- } = not possible  
\textbf{?} = may be possible  
\textbf{*} = only to retailers who do not comply with quality standards

Source: Ford of Europe Preliminary Assessment, 2001

\textsuperscript{219} Lind Tage. 4/02 p.16.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

The Free for all (FFA) scenario would be "(a) system in which independent car distributors have the right to purchase new vehicles from manufacturers or their official distributor networks." If such a scenario would arise the manufacturers would basically lose all of their abilities to select dealers based on quality or quantity standards as well as giving them exclusive territories. However, Andersen points out that legally it is not likely that manufacturers would find themselves in such a situation where they are required to deliver to anyone and everyone unless they possess a dominant position.

The exclusive distribution (ED) suggests a "distribution system in which the manufacturer agrees to sell new vehicles only to a single distributor within a well-defined territory." Here the manufacturer would not be able to control the dealers' activities and the dealers' independence would be strengthened. New entrants would have a harder time to enter on the dealer level.

Qualitative selective distribution (QSD) would present a "selective distribution system based only on qualitative criteria." In this case manufacturers would not be able to limit the number of dealers, as new entrants would be allowed into the system as long as they met the qualitative criteria set forth by the manufacturers. However, the high entrance cost would most likely limit the number of new entrants naturally.

Qualitative and quantitative selective distribution (QQSD) would be a "selective distribution system based on qualitative criteria with no territorial exclusivity." Here the manufacturers would remain most of their control over dealers in regards to the sales of new cars whereas the lack of territories would weaken the after-sales link.

The Qualitative and quantitative selective distribution with limited exclusivity (QQSD+LE) would constitute a "selective distribution system based on qualitative and quantitative criteria with no territorial exclusivity." This scenario would be the one closest to the current Regulation excluding the territorial exclusivity.

Neither Ford nor any other parties such as MRF believed that there would be a Free for all situation after the current Regulation expires. And as we now can see in the Draft Regulation neither did the Commission. The Draft is a combination of the ED, QSD and the QQSD. Few believed that any major changes will be noticed in the near future – 5-year span. But in a longer perspective there is a sense that even Sweden will have to come to terms with a more fierce competition.

The new regulation will provide an opportunity for manufacturers to restructure their dealer networks according to a press release issued by Auto Industry. In the same press release are seven challenging issues as identified by Peter Stevenson and Mitch Phillips presented where manufacturers:

220 Andersen. p.96.
221 Andersen p.133.
222 Andersen p.96.
223 Andersen p.96.
224 Andersen p.96.
225 Andersen p.96.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

1. Have to choose between an exclusive or selective distribution network.
2. Will not be able to limit their dealers from selling multiple brands in same facility as long as they are displayed in separate areas.
3. Need to allow for proactive sales across borders.
4. Have to provide detailed reasons in order to terminate a dealer in contrast to today's two-year notice with no cause required.
5. Will not be able to require a dealer to provide after sales services, as the link between sales and service will be broken.
6. Have to allow authorization of independent repair facilities that meet manufacturer set criteria.
7. Have to allow authorized repairers to acquire original parts directly from the supplier.

The question of how to select dealers in the future could potentially bring forth action of terminating some less desirable dealers before the new regulation takes effect.

The European automobile organization ACEA is very critical to the new regulation as they state that it will produce an uncontrollable concentration of dealers, insufficient geographical coverage, diminished competition and most likely higher prices.227

The manufacturers strategic challenges for the future include how to keep cost down and how to keep their brand name integrity.

For the Low cost strategic option the manufacturer could consider utilizing it in manufacturing and distribution. Many of the car makes are found in different groups in a main company. As already mentioned, Ford Motor Company include seven different vehicle brands – Ford, Volvo, Mazda, Lincoln, Mercury, Jaguar, and Aston Martin. They have an opportunity to utilize the same factories for different makes. Utilizing the same frame for different brands is one way of utilizing economies of scale. There is also a possibility to merge their administrations of i.e. Ford, Volvo and Mazda especially on the national markets. This has already been evident in Sweden, as part of Ford has moved from Stockholm down to Volvo in Gothenburg. And on a European level Ford Motor Company has combined their luxury cars in a group called Premier Automotive Group in which Volvo, Aston Martin, Jaguar and Land Rover are included.228

In order to keep the integrity of their brand name; the quality of their distribution network will be very crucial. They will have to carefully consider their future franchise criteria and whether they will choose to apply selective or exclusive distribution. Since the brand name will be important the qualitative and quantitative requirements will most likely be of great importance.

4.4. Ford Dealers

Ford Dealers in Sweden have been the bases for this section of the thesis. They comprise today of about 60. One-brand dealers up until the late 1990's have mainly sold Ford in Sweden when the competition intensified on the market (after Sweden entered the EU). At this time many dealers were not able to stay afloat (mainly due to the difference in used car prices compared to the continental Europe) and had to declare bankruptcy or sell out to a different brand dealer (subject to Ford Sweden's approval). One major dealer will be used to illustrate this section, Bilia AB\textsuperscript{229}. Bilia AB was chosen due to the fact that it is listed on the stock exchange and information in regards to strategies etc. were well developed and easily accessible. The questionnaire that was sent out provided responses\textsuperscript{230} that contributes to the validity of the distributors' view of the future as presented in section 4.4.2.

4.4.1. Current Strategy

Currently are most of the Ford dealers working on customer service and loyalty. As the margin on the sales of new cars is so low, are majority dependent on the after market services. Bilia's vision is to be the best service providing company in their area of business.\textsuperscript{231} And this could be said to be shared of majority of the dealers. Based on the replies to the questionnaire (Appendix 3) were many of the dealers focused on after sales services and how to achieve customer satisfaction. Because a satisfied customer will return. The strategies of how to achieve this differ however. Some concentrate on metropolitan areas where a large market is accessible.\textsuperscript{232} Others expand their territories by acquiring other dealers.\textsuperscript{233} Brandt Bil's slogan is "Din Ford återförsäljare nära Dig" Your neighborhood Ford dealer" (my translation) which indicates their desire to be accessible for the consumer. They also show an interest in the environment and have set a goal to have all of their sites to be certified according to the ISO 14001 standard within a couple of years. Their Frölands site was certified in March of 2001.\textsuperscript{234}

Diversification and low cost are common denominators for the larger dealers such as Bilia AB, Hedbergs Bil AB and Brandt Bil AB. They are all offering multiple brands and many sites with a central administration. The advantages of their size include the availability of new and used cars as well as the ability to rotate them among their different sites. Other cost cutting areas are present in the after sales area where expertise and specialized services can be centralized. Services such as auto body and paint for example can be offered at one site, reducing the company's investment costs.

\textsuperscript{229} Bilia AB is a Swedish based service company operating throughout Europe. It is a dealer for Volvo Cars, Volvo Trucks and Buses, Volvo Construction Equipment, Renault Cars and Transport vehicles, Ford Cars and Transport vehicles and Mitsubishi light duty Trucks. In Sweden is Bilia a dealer for Ford in Gothenburg.

\textsuperscript{230} Appendix 3 contains a translated copy of the questions including the compiled answers from the distributors.

\textsuperscript{231} Bilia AB Annual Report 2001.

\textsuperscript{232} For example Bilia in Gothenburg, Kindwalls in Stockholm and Hedbergs Bil AB in Malmö.

\textsuperscript{233} For example Dahlqvists Motor AB in Kristianstad that in 2001 acquired Angelholm, and Brandt Fordon AB - a multiple brand dealer of Ford and Volvo - acquiring territories in and surrounding the provinces of Dalsland and Bohuslän. ( www.brandtbil.se ).

\textsuperscript{234} www.brandtbil.se.
4.4.2. Future Outlook

Many of the dealers are already focusing on service and their customers. In the automobile industry the margins are too small that even to consider making it big without the consumer in focus could be detrimental.

In Bilia’s annual report for 2001 is the question of the upcoming group exemption addressed. They feel confident to face the future as they have established a strong position on the market and that they will be able to utilize the opportunities that will arise with the new regulation. Due to the fact that consumers have become more focused on total quality vs. cost in regards to car ownership the peripheral services such as financing and insurance have increased in importance.

Bilia also concluded that car sales historically have followed the general fluctuations in the economy while the service sector is less influenced. Therefore are the services provided crucial for survival?

According to the responses to the questionnaire (see Appendix 3) - that was sent out to Ford and Volvo dealers in Sweden - were many pondering over the potential impact of a new Regulation. Although the response was not as great as hoped for, it provided for an insight to the distributors’ viewpoint. Majority of the respondents thought that a regulation with fewer restrictions would replace the current one. There were even predictions that the restrictions would disappear in regards to sales and be revised in regards to after sales services. And that the notion of exclusive sales would be abolished in 5-10 years. Majority believed that their position in relation to their supplier would improve under the new Regulation. However, not necessarily in practice. They were also relatively united in their answer to the third question where 10 out of 15 believed that competition would intensify. The reasoning for this included the factors of import prices, sales via Internet, recession, and freedom of establishment.

In reference to the answers provided in response to question # 5, a few different approaches for the future were encountered. One dealer had made an enlargement decision by acquiring another dealer to gain a stronger position for the future. Others invested their resources mainly into the after-sales services. Many felt that strengthening their name and goodwill as a dealer was most important. And they displayed confidence in the assumption that as long as they were good team players then the supplier would keep them in their network.

Summing up the distributors outlook on the future it could be presumed that a tense anticipation for the upcoming changes is present. Especially in regards to what the new Regulation will mean practically for them.

---

235 Only 15 responded of the 62 questioned. The minimal response were perhaps due to the sensitive nature of the issue or a lack of comprehension of the legal aspects.
236 Appendix 3 Question #1.
237 Appendix 3 Question #2.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

4.5. The Impact of the Legal Effects on the Competition Forces

In analyzing the legal effects of the Draft\(^{238}\), both distributors and repairers must be considered since the current inevitable link is proposed to be broken in the Draft. The following section will examine the future competition strategy issues in correlation to the legal effects under the Draft (section 3.6.) and in light of Porter's five forces (section 4.1.) with an industry analysis of the future. To provide an overview of the scenario, three tables (located at the end of chapter 4) have been constructed based on the legal effects and the corresponding competition forces. The issues are divided based on the three assumptions dealing with competition, distributors' position, and the implementation of the Single Market.

4.5.1. Distributor

For the distributor will the strategic issues depend to some degree on the manufacturer's choice of selective or exclusive distribution. Due to the consequential difference between the two they have to be distinguished.

In regards to effective competition, the Draft provides for some potentially significant changes in the distributors' competitive environment.

The industry rivalry is subject to increase under a selective distribution system as the established dealers will not only be allowed to actively sell to anyone and anywhere in the common market, but they will also be allowed to sell and service multiple brands. A dealer operating under the exclusive system would not face more intra-brand competition, as the territorial exclusivity will remain. However, the sales of cars to independent resellers such as supermarkets or Internet distributors could potentially increase their competition. And in regards to inter-brand competition are dealers under both distribution systems subject to an increased competition.

The threat of potential entrants will increase under selective distribution as it provides that anyone that can meet the set criteria the right to become a distributor. The severance of the sales-service link will also be a great contributor to the added threat of new operators, as the start-up investment required consequentially will be reduced.

The situation in regards to substitutes will remain the same as it is today and not bring forth any significant changes under the Draft Regulation.

The suppliers' bargaining power can come to increase in spite of the stricter legal framework\(^{239}\) as more demanding qualitative criteria could be implemented under the selective as well as exclusive distribution system. These criteria could include the quality of the showroom, sales personnel and requirements to offer full range of vehicles (except in cases of multi branding if the cost would be too great\(^{240}\)). Other

---

\(^{238}\) Please note that this section will explore the effects based on the text content of the Draft per March 16, 2002. Which is subject to changes before its implementation.

\(^{239}\) Primarily found in the 'black clauses' in Articles 4 & 5 of the Draft.

\(^{240}\) See Draft Article 5(a)
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

ways the suppliers' bargaining power can increase include the ownership of dealerships such as Volkswagen that now own their dealers in Stockholm, Gothenburg and Malmö. And Volvo AB owns 40.1% of Bilia AB. It should be noted that such practice is not allowed in the US.

The buyers bargaining power is also subject to an increase as multi-branding and the availability clause will be implemented. This would allow the consumer to compare brands and prices in a different way than before. The Draft allows for a one-stop shopping comparison if the distributors adopt the less regulated multi-branding rules. The separation of sales and services could also work in favor of the buyers as they would potentially have more authorized facilities to choose from.

4.5.2. Authorized Repairer

As the legal link between sales and after market services no longer will be valid, the aspect of the authorized repairer must also be examined.

In regards to industry rivalry at large, there will not be too much of a change, as the competition already is intense. However, in the realm of authorized repairers, there will be a probable increase in competition.

As any repairer fulfilling the manufacturer's criteria can become an authorized repairer the threat of potential entrants will increase. Since the start-up investment is large, the new entrants will most likely consist of already established independent repairers with capital.

The Substitutes for the authorized repairer will remain the same as they are today: do-it-yourself and independent repairers.

The Suppliers bargaining power will decrease in response to the Regulation, as the sales-service link no longer can be required. And the Regulation also provides for increased ability to use matching-quality spare parts. This could in turn enhance the profitability for the repairer.

With more authorized repairers to choose from the Buyers bargaining power will be apt to grow.

242 Volvo AB no longer owns Volvo Cars, but still have a great interest in how the brand name is represented.
4.5.3. Strategy Options

The bottom line is that the new Regulation can potentially increase the competition in the whole motor vehicle industry. This is true for the distributor especially under the selective distribution system. And to respond to the challenges the distributor will have to consider how to keep cost down especially in light of the slight margins the industry provides. Therefore the low cost option would be a strategy that would continue to be valid, as the demands as well as the rewards from the manufacturer most likely will increase. A distributor could consider adopting the multi brand option and be able to utilize same facilities and personnel for 2 or more makes. This would be a viable option for the authorized repairer as well, utilizing the facilities for servicing multiple brands.

The distributors will also have to be more forceful in their marketing of themselves, as the competition will intensify throughout the community. In particular in the aspect of free establishment. Ivar Ericsson sums it up well as he states ‘I believe in competition and competence’ (my translation)246.

---

4.5.4. Tables

A. How the new Regulation will work to preserve effective competition and how it will impact the competition forces from a dealer's perspective.

<table>
<thead>
<tr>
<th>Competition Area</th>
<th>Provision</th>
<th>Effect on Distributor</th>
<th>Impact on Competition Forces</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>In general</strong></td>
<td>Distribution system either exclusive or selective.</td>
<td>Allowed to sell any brand to anyone anywhere within the EU.</td>
<td>Changes from current regime: • Allowed to sell to independent resellers. • Subject to a 30% market share threshold.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Selective: I R + B p S + B p B + Exclusive: NE +0 Selective: NE +</td>
</tr>
<tr>
<td><strong>Intra-brand</strong></td>
<td>Parallel trading</td>
<td>Active sales allowed, as well as establishment of sales/delivery outlets or warehouses anywhere within the EU.</td>
<td>No change from current regime.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Selective: I R + N E + B p S - B p B + Exclusive: +0</td>
</tr>
<tr>
<td><strong>Inter-brand</strong></td>
<td>Multi-branding</td>
<td>Allowed to sell competing brands on same premises.</td>
<td>Selective: I R + N E +</td>
</tr>
<tr>
<td><strong>After-market</strong></td>
<td>Severing sales-service link</td>
<td>• Ability to subcontract repair services to authorized repairers. • No longer required to provide both sales and services</td>
<td>I R + N E + B p S - B p B +</td>
</tr>
</tbody>
</table>

**IR**: Industry Rivalry  
**NE**: New Entrants  
**B p S**: Bargaining power of Supplier  
**B p B**: Bargaining power of Buyer
**THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS**

B. Provisions entailed in the new Regulation protecting the dealers and the effect they will have on the Competition Forces.

<table>
<thead>
<tr>
<th>Provision</th>
<th>Effect on Distributor</th>
<th>Effect on Repairer</th>
<th>Impact on Competition Forces</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Termination rules</strong></td>
<td>• Cannot be terminated if follow the Regulation.(Art.3(5)).</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Allowed to continue in the motor vehicle industry if terminated.(Art.5(c)).</td>
<td></td>
<td>B p S -</td>
</tr>
<tr>
<td><strong>Sale prices</strong></td>
<td>Cannot be limited by incentives or pressures.(Art. 4(1)(a)).</td>
<td>N/A</td>
<td>B p S -</td>
</tr>
<tr>
<td><strong>Sales</strong></td>
<td><strong>Selective</strong>: can actively sell any brand to anyone from anywhere within the EU.(Art.4(1)(b),(f),5(e),(f)).</td>
<td>N/A</td>
<td>I R + B p B +</td>
</tr>
<tr>
<td></td>
<td><strong>Exclusive</strong>: can passively sell any brand to anyone entering their territory. (Art.4(b)).</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Multi-branding</strong></td>
<td>Allowed to sell multiple brands on same premises.</td>
<td>Allowed to service multiple brands.(Art.5(d)).</td>
<td>I R + N E + B p S - B p B +</td>
</tr>
<tr>
<td></td>
<td>Only one restriction applies: brand specific areas in the show room. (Art.5(a),(e)).</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Place of operation</strong></td>
<td><strong>Selective</strong>: can operate from anywhere within the EU.(Art.4(1)(b),5(f)).</td>
<td>Can operate anywhere in the EU.(Art.5(h)).</td>
<td>Selective: I R + N E + B p B + Exclusive: +0</td>
</tr>
<tr>
<td></td>
<td><strong>Exclusive</strong>: can only operate within the contract territory.(Art.4(1)(b)).</td>
<td></td>
<td>I R + N E + B p S -</td>
</tr>
<tr>
<td><strong>Sales-Service Link severance</strong></td>
<td>Can choose if want to carry out on-site or subcontract to authorized repairer. Must inform customer if latter option is chosen.(Art.4(1)(g)). New entrants not required to invest in repair facilities.</td>
<td>Does not have to engage in car sales. (Art.4(1)(h)).</td>
<td>I R + N E + B p S - B p B +</td>
</tr>
<tr>
<td><strong>Spare-parts</strong></td>
<td>Allowed to use matching quality spare-parts for all repairs except warranty, recall or free servicing work.(Art. 4(1)(j)).</td>
<td></td>
<td>B p S -</td>
</tr>
</tbody>
</table>

- **Selective**: can actively sell to anyone from anywhere within the EU.(Art.4(1)(b),(c),(e),5(f))
- **Exclusive**: can passively sell to anyone entering their territory.(Art.4(1)(b)).
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

C. The new Regulation's further implementation of the Single Market and how it will affect the Competition Forces.

<table>
<thead>
<tr>
<th>Effect on Distributor</th>
<th>Impact on Competition Forces</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>SELECTIVE</strong></td>
</tr>
<tr>
<td><strong>Price</strong></td>
<td>Open borders for sales Free establishment Consumer awareness increases</td>
</tr>
<tr>
<td><strong>Availability</strong></td>
<td>Lead to generalized cars? Same models in all countries - same specs? Manufacturer still somewhat restrictive</td>
</tr>
<tr>
<td><strong>Warranty</strong></td>
<td>Independent Repairers enter market</td>
</tr>
<tr>
<td><strong>Quality &amp; Price on After Market Services</strong></td>
<td>New entrants? Maybe not but shift toward authorized repairer.</td>
</tr>
</tbody>
</table>

I R: Industry Rivalry
N E: New Entrants
B p S: Bargaining power of Supplier
B p B: Bargaining power of Buyer
5. FUTURE ASPECTS OF DISTRIBUTION

It is now evident that a new regulation will replace the current Regulation 1475/95 that most likely will have an impact of increasing the competitive intensity of the market. It will take some time for all the players to get adjusted and the distributors will face many strategic challenges.

5.1. Alternative distribution arrangements and systems

Considering the future evolution of car distribution and alternative distribution systems there are two areas that have been pushed more than others: Internet sales and sales via "supermarkets". These could pose a threat or even an opportunity to the established distributors.

5.1.1. Internet sales

Internet operators, in their potential capacities as brokers, agents, dealers, resellers and intermediaries are under the current Regulation faced with the notion of "territorial dilemma" since the use of the internet inevitably removes geographical barriers, challenging the underlying presumptions behind traditional distribution networks and in particular territorial exclusivity.

The current Regulation contains some provisions, which could be used to limit the development of such Internet operators who want to offer certain services with respect to new cars. Firstly, it requires the dealer to have the agreement of the car manufacturer to appoint an agent for distributing the cars in its territory. Secondly, it prohibits the dealer from entrusting third parties with the distribution of cars outside its contract territory. Thirdly, the manufacturer may also oblige the dealer not to maintain branches or depots outside his contract territory and not to solicit customers for contract goods or corresponding goods by personalized advertising outside his contract territory.

The new draft abolishes these provisions, but manufacturers will not be forced to accept pure Internet operators as dealers. But this will not prevent an Internet operator to establish only one site somewhere within the community that meets the manufacturer's criteria and conduct majority of the advertising and sales over the Internet.

The Internet sales could prove itself to be price competitive with a low overhead. And be beneficial or even a necessity for a large dealer, while for a smaller dealer more of a complement. In Sweden today many dealers utilize the services of web based

247 Commission Press Room. MEMO/02/18 2002-02-05.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

referral companies such as Bytbil.com or bilweb.se for advertising their used cars. This option generally works as a beneficial complement to their own web sites.

5.1.2. Sales via supermarkets

A supermarket in its capacity as a broker or agent of a dealer, a dealer, a reseller of new cars or an intermediary could offer its services to final consumers (as in the so-called "American model") and could therefore be a valid alternative to dealer distribution. However, according to the notice on intermediaries\textsuperscript{248}, a supermarket has to take all measures to avoid confusion in the minds of consumers as regards, on the one hand, its activities as an intermediary and, on the other, its normal commercial activity as a supermarket selling goods. In view of the way supermarkets operate, the opportunity to act as an intermediary does not seem to be very attractive for them, and the above obligations imposed by the notice on intermediaries limits this option for the distribution of new cars even further.\textsuperscript{249}

The regulatory framework found in Regulation 1475/95 is not adapted to the potential of the e-commerce era or to any form of distribution of new cars by supermarkets in parallel to the existing distribution via dealer networks.

The proposed Regulation Draft on the other hand provides for more opportunities for a supermarket to be able to sell cars. AT Kearney suggest that stores such as Ica and Ikea - both with their own banks - as well as Coop Forum would be interested in selling cars.\textsuperscript{250}

5.1.3. Threats and Opportunities for the Established Distributors

As stated above, these alternative modes of distribution could pose a threat or a possible opportunity for dealers. The threat includes the aspects of the groundwork a distributor need conduct in order to thrive. An Internet distributor as well as a supermarket could potentially catch a 'free ride' on the information provided by a dealer. A customer could conduct the pre-buy research and even get to test drive at the dealer. And after reaching a decision he could turn to an alternative supplier that offers a better deal. In addition, since the legal link between sales and services will be broken, the Internet or supermarket distributor would not have to be concerned with establishing a service facility. As far as the opportunity, a dealer in the UK has counteracted to the threat by offering cars via Internet in supermarkets. Lookers is a multi-brand distributor in the UK with 84 establishments. Its subsidiary - look4cardeal.com - is Internet based.\textsuperscript{251} This provides an example that there are ways to combat threats.

\textsuperscript{249} Ibid.
\textsuperscript{250} Larsson, Gerhard.
\textsuperscript{251} Wright, Chris.
6. CONCLUSION

The current situation of the motor vehicle industry in the European Union is facing a crucial point this fall. With the expiry of the current group exemption on September 30, and the implementation of a new Regulation on October 1. The replacement was deemed inevitable by the Commission as the industry plays a significant role within the Single Market. And due to the large investment the purchase of a motor vehicle represents for the consumer.

The legal aspects of the Draft have been very interesting to evaluate, and my assumption that the upcoming legal changes will affect the industry has been validated. However, the impact on the operations within the industry might not be evident in the near future since changes began to take place in the industry long before the legal framework of the Draft was presented. One example would be that the distribution network have transformed from being comprised of many small independent dealerships to larger units covering larger territories. This trend is subject to continue due to the increased competition and the very slight margins present on sales of new cars requires the capital strength that a larger unit embodies.

In order to achieve the two-fold aim of the study, the legal aspects of the Draft regulation were described and the impact of the legal effects on competition strategy explored. Chapter 3 provided the legal framework of the proposed Draft Regulation pertaining to the Motor Vehicle Industry and its application of EC Treaty Article 81. The necessity of a Regulation for this market stems from the cohesive competition practices found in the Motor Vehicle Industry as a whole in the common market subject to exemption under Article 81(3). And in order to streamline the exemption process a block exemption was created under which agreements are not required to be notified. The proposed Draft intends to increase competition while attempting to protect the distributors against the manufacturers. In Chapter 4 was the Motor Vehicle Industry analyzed in respect to Competition forces. Ford was used as a practical example in regards to the competitive environment's strategy issues. The Drafts legal effects will most likely create increased competition in the sector, especially on the distribution level. The distributors will not only have to contend with more players on the market but also different types of distribution. These include sales via the Internet and by Supermarkets. The Future aspects of distribution were considered in chapter 5.

A conclusion have also been reached in regards to the three underlying assumptions (Effective Competition, Protection for Dealers, and the Single Market) of the motor vehicle industry exemption and their effect on the distributors.

When it comes to the objective of preserving effective competition the Draft prescribes measures that have as their intent to increase competition in the sector. These measures include the alternatives of distribution systems, the severance of the sales and after-sales service link, the multi-branding, and the 'no location clause' in
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

regards to the selective system. The Draft indirectly pushes for the selective system with the market thresholds as a guiding light. Many of the manufacturers will not be able to utilize the exclusive distribution system as it limits the market share to 30%. This in turn will potentially increase competition for the distributors as more players can enter the market under the selective system. The severance of the sales and service link will also provide a probable increase in competition for the distributors. Both on the sales as well as the service level of trade. Since new operators will not be required to establish both aspects, less start-up capital is needed. As for multi-branding distributors will be able to sell different brands on the same premises under fewer legal restrictions. This in turn would allow more distributors to adopt this option, as less capital would be required. The lack of a location clause would potentially increase cross-border trading, and a distributor with capital from a low-cost country could take advantage of the opportunity by establishing a sales outlet in countries where sales prices are higher. It is clear that the measures in the Draft probably will increase the competition in the common market for the distributors. However, the actual effect is debatable and remains to be seen as it is a very competitive industry and the margins on new cars are very low.

The Draft contains provisions that are intended to strengthen the distributors' position in regards to the manufacturers. These are mainly found in the black list, which allows for the distributors a more competitive behavior than under 1475/95. I.e. the provisions of multi-branding and free establishment.

The importance of the Single Market implementation is also found in the Draft. Large price differentials between the countries could lead to a withdrawal of the exemption. And the 'no location clause' has been included in order to promote a change in the pricing structure by cross-border distribution. It fails to recognize that the problem is mainly tax related. The availability clause effect on the distributors is that they should be able to order any of the manufacturers available models. And when it comes to warranties, there might be a reduction in the distributors handling of these as more authorized repairers will probably enter the scene. And to meet the objective of providing quality and competitive prices on after market services the sales and service link will be severed. All of these provisions could probably increase competition.

As September is fast approaching, most of the involved parties have to make adjustments. And there are still questions that remains to be answered. Can this new Regulation in actuality provide a better balance in the industry and what will the ultimate effect be on competition.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

Bibliography

Literature


Articles


THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

B.F. EU-kommissionens utvärdering av gruppendantaget. Motorbranschen 12/00 p.60.


Commission Press Room The Commission's draft for a new motor vehicle Block Exemption Regulation - Questions and Answers. MEMO/02/18, 2002-02-05.

Commission Press Room. Putting the consumer in the driver's seat - the Commission proposes a bold reform of car sales rules. IP/02/196, 2002-02-05.

Commission Press Room Commission imposes a 43 million fine on Opel Nederland B.V. for obstruction of new car exports in the Netherlands. IP/00/1028, 2000-09-20.

Commission Press Room Commission imposes fine of nearly 72 million on DaimlerChrysler for infringing the EC competition rules in the area of car distribution IP/01/1394, 2001-10-10.


DI Bilbranschen sågar nya EU-regler Dagens Industri 2002-04-17


THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

Motormännens Riksförbund. *Ett alldeles utmärkt förslag för bilköparna*


**Legislation**


**Cases**


THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

Other Materials

Andersen. *Study on the impact of possible future legislative scenarios for motor vehicle distribution on all parties concerned*. 03.12.2001


Speeches

THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

Interviews


Additional Websites


www.bilia.se

www.brandtbil.se.

www.bytbil.se
APPENDIX 1

Article 81 of the EC Treaty (ex Article 85)

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development, or investment;

(c) share markets or sources of supply;

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;

- any decision or category of decisions by associations of undertakings;

- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

APPENDIX 2

Please note that the Draft can be accessed as a pdf file at the following address:

The Draft

52002XC0316(01)

Communication pursuant to Article 5 of Council Regulation No 19/65/EEC of 2 March 1965 on the application of Article 81(3) of the Treaty to categories of agreements and concerted practices (Text with EEA relevance)
Official Journal C 067 , 16/03/2002 P. 0002 - 0026

Communication pursuant to Article 5 of Council Regulation No 19/65/EEC of 2 March 1965 on the application of Article 81(3) of the Treaty to categories of agreements and concerted practices (2002/C 67/02) (Text with EEA relevance)

The Commission invites all interested parties to send their comments on the following draft Commission Regulation (EC) on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle industry. The draft Regulation is accompanied by an explanatory memorandum.
Comments should be sent to the Commission at the following address not later than one month after the date of the present publication: European Commission Directorate-General for Competition Directorate F, Unit F2 - Motor vehicles and other means of transport B - 1049 Brussels E-mail: comp-draft-car-ber@cec.eu.int

Draft

COMMISSION REGULATION (EC) No .../...
of [...] on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle industry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,
Having regard to Council Regulation No 19/65/EEC of 2 March 1965 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices(1), as last amended by Regulation (EC) No 1215/1999(2), and in particular Article 1 thereof;
Having published a draft of this Regulation(3);
Having consulted the Advisory Committee on restrictive practices and dominant positions,
Whereas:
(1) Regulation No 19/65/EEC empowers the Commission to apply Article 81(3) of the Treaty (formerly Article 85(3)) by regulation to certain categories of vertical agreements and corresponding concerted practices falling within Article 81(1).
(2) Experience acquired with distribution and after sales servicing agreements in the automobile industry makes it possible to define categories of vertical agreements which can be regarded as normally satisfying the conditions laid down in Article 81(3).
(3) Experience acquired with markets for the distribution of motor vehicles and markets for spare parts and repair and maintenance services for motor vehicles leads to the conclusion that rules stricter than those provided for by Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices(4) are necessary in this sector, in particular where a supplier has recourse to selective or exclusive distribution.
(4) This Regulation applies to vertical agreements for the purchase or sale of new motor vehicles, vertical agreements for the purchase or sale of spare parts for motor vehicles and vertical agreements for the purchase and sale of repair and maintenance services where these agreements are concluded between non-competing undertakings, between certain competitors or by certain associations of retailers of goods. This Regulation also applies to these vertical agreements when they contain ancillary provisions on the assignment or use of
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

intellectual property rights. For the purposes of this Regulation, the term "vertical agreements" includes the corresponding concerted practices.

Recitals on the general conditions for coverage by this Regulation
(5) The benefit of the block exemption should be limited to vertical agreements for which it can be assumed with sufficient certainty that they satisfy the conditions of Article 81(3).
(6) Vertical agreements of the categories defined in this Regulation can improve economic efficiency within a chain of production or distribution by facilitating better coordination between the participating undertakings; in particular, they can lead to a reduction in the transaction and distribution costs of the parties and to an optimisation of their sales and investment levels.
(7) The likelihood that such efficiency-enhancing effects will outweigh any anti-competitive effects due to restrictions contained in vertical agreements depends on the degree of market power of the undertakings concerned and therefore on the extent to which those undertakings face competition from other suppliers of goods or services regarded by the buyer as interchangeable or substitutable for one another, by reason of the products' characteristics, their prices and their intended use.
(8) It can be presumed that, where a supplier's share of the relevant market does not exceed the thresholds provided for in the general conditions for the application of this Regulation, vertical agreements which do not contain certain types of severely anti-competitive restraints generally lead to an improvement in production or distribution and allow consumers a fair share of the resulting benefits. This sector specific Regulation contains stricter rules than those provided for by Regulation (EC) No 2790/1999, and it can therefore in particular be presumed that in general distribution agreements have such advantages where the supplier concerned has a market share of up to 30 %, or of up to 40 % in case of quantitative selective distribution for the sale of new motor vehicles. In the case of vertical agreements containing exclusive supply obligations, it is the market share of the buyer which is relevant for determining the overall effects of such vertical agreements on the market.
(9) Above the market share thresholds provided for in the general conditions for the application of this Regulation, there can be no presumption that vertical agreements falling within the scope of Article 81(1) will usually give rise to objective advantages of such a character and magnitude as to compensate for the disadvantages which they create for competition. However, where the supplier has recourse to purely qualitative selective distribution, no such market share threshold is necessary for this Regulation to apply.
(10) To prevent a supplier from terminating a contract because a distributor or a repairer engages in pro-competitive behaviour, such as active or passive sales to foreign consumers, multi-branding or subcontracting of after sales services, which may not be restricted under this Regulation, every notice of termination must clearly state the reasons for the termination. Furthermore, a period of notice, normally of two years is introduced in order to strengthen the independence of distributors from their suppliers.
(11) In order to favour a quick resolution of disputes which may arise between the parties to a distribution agreement and which might otherwise hamper effective competition, the Regulation should only cover agreements which provide for the possibility of each party to have recourse to an independent expert third party or arbitrator, in particular where notice is given to terminate an agreement.
Recitals concerning the hardcore restrictions
(12) This Regulation should not exempt vertical agreements containing certain types of severely anti-competitive restraints which are not indispensable to the attainment of the positive effects mentioned above, irrespective of the market share of the undertakings concerned.
(13) This is in particular the case for vertical agreements containing severely anti-competitive restraints, such as minimum and fixed resale prices, as well as certain types of territorial protection, which should not benefit from the block exemption established by this Regulation.
(14) Retailers may in general not be prohibited from carrying out active or passive sales of contract goods or corresponding goods to any end users within the meaning of Article 1, including end users who have given authorisation to an intermediary or purchasing agent to purchase, take delivery, transport or store a new motor vehicle on their behalf.
(15) Members of a selective distribution system may in particular be neither directly nor indirectly restricted from actively or passively selling or advertising contract and corresponding goods by any means, including the Internet or Internet referral sites, to end users within the meaning of Article 1, including their intermediaries or purchasing agents, in markets where the supplier operates a selective distribution system.
(16) The right to prohibit an authorised distributor from operating out of an unauthorised place of establishment is the only restriction on active sales in selective distribution systems which may, under certain conditions, be covered by this Regulation. However, this restriction will not be covered by this Regulation if it restricts the distributor's business from expanding at the authorised place of establishment by, for instance, limiting the infrastructure necessary to allow increases in sales volumes, including increases brought about by Internet sales.
(17) If the supplier were to limit the distributor's sales to end users in other Member States, for instance by
making the distributor's remuneration or the purchase price dependent on the destination of the vehicles or on the place of residence of the end users, this would amount to an indirect restriction of sales. Other examples of indirect restrictions on sales include supply quotas based on a sales territory other than the common market, whether or not these are combined with sales targets, or sales targets based on a sales territory other than the common market. Discriminatory or objectively unjustified supply conditions, in particular regarding delivery times or prices, applied by the supplier to the distributor, are to be considered as a restriction on the ability of the distributor to sell such vehicles.

(20) In order to give end users the right to purchase any motor vehicle which is offered within another Member State from a distributor of their choice, this Regulation does not cover vertical agreements which do not enable a distributor to order, stock and sell any such vehicle which corresponds to a model within its contract range. Furthermore, in order to allow sales by motor vehicle distributors to end users throughout the common market, this Regulation does not cover distribution agreements which do not enable the repairers belonging to the distribution network of a vehicle manufacturer, since they could not offer consumers services of good quality which contribute to the safe and reliable functioning of motor vehicles.

(21) Motor vehicles are expensive and technically complex mobile goods which require repair and maintenance services at regular and irregular intervals. However, it is not indispensable for distributors of new motor vehicles to also carry out repair and maintenance services. The legitimate interest of suppliers and consumers can be fully satisfied if the distributor subcontracts these services, including the honouring of warranties, free servicing and recall work, to a repairer or to a number of repairers within the distribution system of the supplier and if the consumer is duly informed about the location of the official repairer in case of subcontracting. Nor is it necessary, in order to adequately provide for repair and maintenance services, for repairers to also sell new motor vehicles. This Regulation therefore does not cover vertical agreements containing any direct or indirect obligation or which lead to the linking of sales and after sales service activities or which makes the performance of one of these activities dependent on the performance of the other; this is in particular the case where the remuneration of the distributors or authorised repairers relating to the purchase or sale of goods or services necessary for one activity is made dependent on the sales of goods or services relating to the other activity, or where all such goods are indistinctly aggregated into a single remuneration or discount system.

(22) In order to ensure effective competition on the maintenance and repair markets and to allow repairers to offer final consumers competing spare parts such as original spare parts and spare parts of matching quality, this Regulation does not cover vertical agreements which hinder the repairers belonging to the distribution network of a vehicle manufacturer, distributors of spare parts, and independent repairers from sourcing spare parts from the manufacturer of such spare parts or from another third party of their choice.

(23) Furthermore, in order to give authorised and independent repairers and consumers genuine choice as regards spare parts, this Regulation does not cover agreements by which a manufacturer of motor vehicles limits the ability of a manufacturer of original spare parts to place its trade mark or logo on these parts effectively and in a visible manner, whether the parts are supplied to the manufacturer of vehicles for assembly or to repairers for replacement purposes.

(24) This Regulation does not cover vertical agreements which restrict the right of authorised repairers to use spare parts of matching quality for the repair or maintenance of a motor vehicle. However, in view of the vehicle manufacturers' direct contractual involvement in repairs under warranty, free servicing, and recall operations, this Regulation covers an obligation for the authorised repairer to use original spare parts supplied by the vehicle manufacturer for these repairs.

(25) In order to protect effective competition on the market for repair and maintenance services and to prevent foreclosure of independent repairers, manufacturers must allow interested independent operators to have full access to all technical information, diagnostic and other equipment, tools, including all relevant software, and training required for the repair and maintenance of motor vehicles. Independent operators who must be allowed such access include independent repairers, manufacturers of repair equipment or tools, publishers of technical documents, and other interested parties.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

information, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers. The conditions of access should in particular not discriminate between authorised and independent operators; access should be given in due course upon request; the price for the information should take account of the extent to which the independent operator uses it. A manufacturer should give independent repairers access to technical information on new motor vehicles at the same time as such access is given to its authorised repairers and should not oblige an independent repairer to purchase more than the necessary information needed for the type of repair or maintenance work to be executed. It is, however, legitimate and proper for suppliers to withhold access to technical information which might allow a third party to bypass or disarm on-board anti-theft devices. Moreover, the legitimate interest of the motor vehicle manufacturer to decide the mode of exploitation of its intellectual property rights and know-how has to be taken into account when granting licences to third parties. However, these rights must be exercised in a manner which avoids any type of abuse.

Recitals on specific conditions

(26) In order to ensure access to or to prevent collusion on the relevant markets and to give distributors opportunities to sell vehicles of brands from two or more manufacturers, that are not connected undertakings, certain specific conditions are to be attached to the block exemption. To this end, non-compete obligations should not be exempted. In particular, this Regulation does not cover any prohibition on sales of competing makes. This is without prejudice to the ability of the manufacturer to require the distributor to display the vehicles in brand-specific areas of the showroom in order to avoid brand confusion. However, further requirements, such as an obligation to employ brand specific sales personnel, are considered to be non-exempted indirect non-compete obligations. Similarly, an obligation to display the full range of motor vehicles constitutes a non-exempted indirect non-compete obligation if it makes the sale or display of vehicles manufactured by different undertakings impossible or unreasonably difficult.

(27) In order to ensure that repairers can carry out repairs or maintenance on all motor vehicles, this Regulation does not exempt any obligation limiting the ability of repairers of motor vehicles to provide repair or maintenance services for brands of competing suppliers.

(28) In addition, specific conditions are required to exclude certain restrictions in a selective distribution system from being covered by this Regulation. This applies in particular to obligations which have the effect of preventing the members of a selective distribution system from selling the brands of particular competing suppliers, which could easily lead to foreclosure of certain brands. Two further conditions are necessary in order to create opportunities for distributors who wish to seize market opportunities outside their place of establishment, for market integration and in order to increase price competition and choice of consumers where suppliers have a certain overall presence. To this end a restriction imposed on the authorised distributor of passenger cars as to its ability to establish itself in any Member State, is excluded from the cover of the Regulation. Moreover, for suppliers of new motor vehicles other than passenger cars, a condition limiting the duration of restrictions on the place of establishment of a distributor to five years is necessary in order to allow both parties to adapt their agreements to changing market conditions.

(29) Moreover, this Regulation does not cover restrictions limiting the ability of a retailer to sell leasing services for motor vehicles.

Recitals on withdrawal and non-application of this Regulation

(30) The market-share limitations, the non-exemption of certain vertical agreements, and the conditions provided for in this Regulation normally ensure that the agreements to which the block exemption applies do not enable the participating undertakings to eliminate competition in respect of a substantial part of the goods or services in question.

(31) In particular cases in which the agreements falling under this Regulation nevertheless have effects incompatible with Article 81(3), the Commission may withdraw the benefit of the block exemption; this may occur in particular where the buyer has significant market power on the relevant market on which it resells the goods or provides the services or where parallel networks of vertical agreements have similar effects which significantly restrict access to a relevant market or competition thereon; such cumulative effects may for example arise in the case of selective distribution. The Commission may also withdraw the benefit of the block exemption if competition is significantly restricted in a market due to the presence of a supplier with market power or if prices and conditions of supply to distributors of the motor vehicles differ substantially as between geographic markets. It may also withdraw the benefit of the block exemption if discriminatory prices, supplements or sales conditions are applied for the supply of corresponding goods, in particular if the supplier charges, in addition to the price for the relevant model in the contract range, unjustifiable supplements such as those which take account of the different national taxes.

(32) Regulation No 19/65/EEC empowers the authorities of Member States to withdraw the benefit of the block exemption in respect of vertical agreements having effects incompatible with the conditions laid down in Article 81(3), where such effects are felt in their respective territory, or in a part thereof, and where such territory has the
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

characteristics of a distinct geographic market; Member States should ensure that the exercise of this power of withdrawal does not prejudice the uniform application throughout the common market of the Community competition rules or the full effect of the measures adopted in implementation of those rules.

(33) In order to strengthen supervision of parallel networks of vertical agreements which have similar restrictive effects and which cover more than 50 % of a given market, the Commission may declare this Regulation inapplicable to vertical agreements containing specific restraints relating to the market concerned, thereby restoring the full application of Article 81 to such agreements.

General recitals

(34) This Regulation is without prejudice to the application of Article 82.

(35) In accordance with the principle of the primacy of Community law, no measure taken in pursuance of national laws on competition should prejudice the uniform application throughout the common market of the Community competition rules or the full effect of any measures adopted in implementation of those rules, including this Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation:

(a) "Competing undertakings" means actual or potential suppliers on the same product market; the product market includes goods or services which are regarded by the buyer as interchangeable with or substitutable for the contract goods or services, by reason of the products' characteristics, their prices and their intended use.

(b) "Non-compete obligation" means any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell goods or services which compete with the contract goods or services, or any direct or indirect obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than 50 % of the buyer's total purchases of the contract goods or services and their substitutes on the relevant market, calculated on the basis of the value of its purchases in the preceding calendar year. This does not include a requirement that the distributor sell motor vehicles from other suppliers in separate sales areas of the showroom in order to avoid confusion between the makes.

(c) "Exclusive supply obligation" means any direct or indirect obligation causing the supplier to sell the goods or services specified in the agreement only to one buyer inside the Community for the purposes of a specific use or for resale.

(d) "Selective distribution system" means a distribution system where the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors or repairers selected on the basis of specified criteria and where these distributors or repairers undertake not to sell such goods or services to unauthorised distributors or unauthorised repairers, without prejudice to the ability to sell spare parts and the obligation to provide all technical information, diagnostic equipment, tools and training required for the repair and maintenance of motor vehicles or for the implementation of environmental protection measures to unauthorised repairers.

(e) "Quantitative selective distribution system" is a selective distribution system where the supplier uses criteria for the selection of distributors or repairers which directly limit the number of selected distributors or repairers.

(f) "Qualitative selective distribution system" is a selective distribution system where the supplier uses criteria for the selection of distributors or repairers which are only qualitative in nature, are required by the nature of the contract good or service, are laid down uniformly for all potential members of the distribution system, are not applied in a discriminatory manner, and do not directly limit the number of distributors or repairers.

(g) "Intellectual property rights" includes industrial property rights, copyright and neighbouring rights.

(h) "Know-how" means a package of non-patented practical information, resulting from experience and testing by the supplier, which is secret, substantial and identified: in this context, "secret" means that the know-how, as a body or in the precise configuration and assembly of its components, is not generally known or easily accessible; "substantial" means that the know-how includes information which is indispensable to the buyer for the use, sale or resale of the contract goods or services; "identified" means that the know-how must be described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality.

(i) "Buyer", whether distributor or repairer, includes an undertaking which, under an agreement falling within Article 81(1) of the Treaty, sells goods or services on behalf of another undertaking.

(j) "Authorised repairer" is a provider of repair and maintenance services for motor vehicles operating within the distribution system set up by a supplier of motor vehicles.

(k) "Unauthorised or independent repairer" is a provider of repair and maintenance services for motor vehicles not operating within the distribution system set up by a supplier for its motor vehicles.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

(l) "Motor vehicle" is a vehicle intended for use on public roads and having three or more road wheels.
(m) "Passenger car" is a motor vehicle intended for the carriage of passengers and comprising no more than eight seats in addition to the driver's seat.
(n) The "contract range" refers to all the different models of motor vehicles purchased by the distributor from the supplier.
(o) A "motor vehicle which corresponds to a model within the contract range" is such a vehicle:
   - manufactured or assembled in volume by the manufacturer, and
   - identical as to body style, drive-line, chassis, and type of motor with a vehicle within the contract range, and
   - which is the subject of a distribution agreement with another undertaking within the distribution system set up by the manufacturer or with his consent.
(p) "Spare parts" are parts which are to be installed in or upon a motor vehicle so as to replace components of that vehicle.
(q) "Original spare parts" are spare parts which are produced by the manufacturer of the components which are or were used for the assembly of the new motor vehicle and which are manufactured on the same production line as these components. It is for the spare part producer to prove that these spare parts match the quality of the components used for the assembly of the new motor vehicles.
(r) "Spare parts of matching quality" are spare parts which match the quality of the components which are or were used for the assembly of a new motor vehicle and which are produced by the producer of these components or another undertaking and for which the spare part producer can prove that they match the quality of those components.
(s) "Undertakings within the distribution system" are the manufacturer and undertakings which are entrusted by the manufacturer or with the manufacturer's consent with the distribution or repair or maintenance of contract goods or corresponding goods.
(t) "End user" includes leasing companies unless the leasing contracts used provide for a transfer of ownership or an option to purchase the vehicle prior to the expiry of the contract.
(u) "Independent operator" in the sense of Article 4(2) shall include in particular independent repairers, manufacturers of repair equipment or tools, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers.

Article 2
Scope of application
1. Pursuant to Article 81(3) of the Treaty and subject to the provisions of this Regulation, it is hereby declared that Article 81(1) shall not apply to agreements or concerted practices entered into between two or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, where the agreements or concerted practices relate to the conditions under which the parties may purchase, sell or resell motor vehicles, spare parts for motor vehicles or repair and maintenance services for motor vehicles ("vertical agreements").
2. This exemption shall apply to the extent that such vertical agreements contain restrictions of competition falling within the scope of Article 81(1) ("vertical restraints").
3. The exemption provided for in paragraph 1 shall apply to vertical agreements entered into between an association of undertakings and its members, or between such an association and its suppliers, only if all its members are retailers of motor vehicles or spare parts for motor vehicles and if no individual member of the association, together with its connected undertakings, has a total annual turnover exceeding EUR 50 million; vertical agreements entered into by such associations shall be covered by this Regulation without prejudice to the application of Article 81 to horizontal agreements concluded between the members of the association or decisions adopted by the association.
4. The exemption provided for in paragraph 1 shall apply to vertical agreements containing provisions which relate to the assignment to the buyer or use by the buyer of intellectual property rights, provided that those provisions do not constitute the primary object of such agreements and are directly related to the use, sale or resale of goods or services by the buyer or its customers. The exemption applies on condition that, in relation to the contract goods or services, those provisions do not contain restrictions of competition having the same object or effect as vertical restraints which are not exempted under this Regulation.
5. The exemption provided for in paragraph 1 shall not apply to vertical agreements entered into between competing undertakings; however, it shall apply where competing undertakings enter into a non-reciprocal vertical agreement and:
   (a) the buyer has a total annual turnover not exceeding EUR 100 million; or
   (b) the supplier is a manufacturer and a distributor of goods, while the buyer is a distributor not manufacturing
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

goods competing with the contract goods; or
(c) the supplier is a provider of services at several levels of trade, while the buyer does not provide competing
dervices at the level of trade where it purchases the contract services.

Article 3
General conditions for applicability of the Regulation
1. Subject to paragraphs 2, 3, 4, 5, 6 and 7 of this Article, the exemption provided for in Article 2 shall apply on
condition that the supplier's market share on the relevant market on which it sells the new motor vehicles, spare
parts for motor vehicles or repair and maintenance services does not exceed 30 %.
2. By way of exception to paragraph 1 the market share threshold for the application of Article 2 shall be 40 %
for agreements establishing quantitative selective distribution systems for the sale of new motor vehicles.
3. The market share thresholds of paragraph 1 and 2 shall not apply to agreements establishing qualitative
selective distribution systems.
4. In the case of vertical agreements containing exclusive supply obligations, the exemption provided for in
Article 2 shall apply on condition that the market share held by the buyer does not exceed 30 % of the relevant
market on which it purchases the contract goods or services.
5. The exemption provided for in Article 2 shall apply on condition that the vertical agreement concluded with a
distributor or repairer provides that if a supplier wishes to give notice of termination, the notice must include
detailed reasons for the termination in order to prevent a supplier to end a vertical agreement with a distributor
because of practices which may not be restricted under this regulation, in particular those practices, restriction of
which results in the misapplication of the exemption either to the vertical agreement as a whole, in accordance
with Article 4, or to the restriction in question, in accordance with Article 5.
6. The exemption provided for in Article 2 shall apply on condition that the vertical agreement concluded with a
distributor or repairer provides that if a supplier wishes to give notice of termination, the period of notice for
regular termination of the agreement has to be at least two years for both parties; this period is reduced to at least
one year where:
(a) the supplier is obliged by law or by special agreement to pay appropriate compensation on termination of the
agreement; or
(b) the supplier terminates the agreement where it is necessary to reorganise the whole or a substantial part of the
network.
7. The exemption provided for in Article 2 shall apply on condition that the vertical agreement provides for the
parties to refer disputes concerning the fulfilment of their contractual obligations to an independent expert third
party or arbitrator. Such disputes may for instance arise over the application of agreed criteria to set sales targets,
the attainment of sales targets or supply obligations, the implementation of stock requirements, the
implementation of an obligation to provide or use demonstration vehicles, whether the prohibition to operate out
of an authorised place of establishment limits the ability of the retailer's business to expand or whether the
termination of an agreement is justified by the reasons given in the notice. This possibility is without prejudice to
each party's right to apply to a national court.

Article 4
Hardcore restrictions
1. The exemption provided for in Article 2 shall not apply to vertical agreements which, directly or indirectly, in
isolation or in combination with other factors under the control of the parties, have as their object:
(a) the restriction of the distributor's or repairer's ability to determine its sale price, without prejudice to the
supplier's ability to impose a maximum sale price or to recommend a sale price, provided that this does not
amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties;
(b) the restriction of the territory into which, or of the customers to whom, the distributor or repairer may sell the
contract goods or services, except:
- the restriction of active sales into the exclusive territory or to an exclusive customer group reserved to the
supplier or allocated by the supplier to another distributor or repairer, where such a restriction does not limit
sales by the customers of the distributor or repairer,
- the restriction of sales to end users by a distributor operating at the wholesale level of trade,
- the restriction of sales of new motor vehicles and spare parts to unauthorised distributors by the members of a
selective distribution system, subject to the provisions of (e) below,
- the restriction of the buyer's ability to sell components, supplied for the purposes of incorporation, to customers
who would use them to manufacture the same type of goods as those produced by the supplier;
(c) the restriction of cross-supplies between distributors or repairers within a selective distribution system,
including between distributors or repairers operating at different levels of trade;
(d) the restriction of active or passive sales of motor vehicles, spare parts for all motor vehicles or repair and
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

maintenance services to end users by members of a selective distribution system operating at the retail level of trade, without prejudice to the ability to prohibit a member of a quantitative selective distribution system from operating out of an unauthorised place of establishment, provided that such a prohibition does not limit the distributor's or repairer's business expansion at the authorised place of establishment;
(e) the restriction of the sales of spare parts for motor vehicles by members of a selective distribution system to independent repairers which use these parts for the repair and maintenance of a motor vehicle;
(f) the restriction of the distributor's ability to sell any motor vehicle which corresponds to a model within the contract range of the distributor;
(g) the restriction of the ability of the distributor of motor vehicles to subcontract the provision of repair and maintenance services to authorised repairers on condition that the distributor duly informs the consumer before the conclusion of the sales contract about the location of the authorised repairer;
(h) the restriction of the repairer's ability to limit its activities to the provision of repair and maintenance services and the distribution of spare parts;
(i) the restriction agreed between a supplier of original spare parts or spare parts of matching quality, repair tools or diagnostic or other equipment and a manufacturer of motor vehicles, which limits the supplier's ability to sell these goods to independent distributors, authorised or independent repairers or end-users which use them for the repair or maintenance of motor vehicles;
(j) the restriction of a distributor's or repairer's ability to obtain original spare parts or spare parts of matching quality from a third undertaking of its choice and to use them for the repair and maintenance of motor vehicles, without prejudice to the ability of a supplier of new motor vehicles to require the use of original spare parts supplied by it for repair under warranty, free servicing and vehicle recall work;
(k) the restriction agreed between a manufacturer of motor vehicles which uses components for the initial assembly of motor vehicles and the supplier of such components which limits the latter's ability to place its trade mark or logo effectively and in an easily visible manner on the components supplied or on original spare parts and spare parts of matching quality.

2. The exemption provided for in Article 2 shall not apply where the supplier of motor vehicles refuses to give independent operators access to any technical information, diagnostic and other equipment, tools, including any relevant software, and training required for the repair and maintenance of these motor vehicles or for the implementation of environmental protection measures. Access has to be given to independent operators in a non-discriminatory and proportionate way. If the relevant item is covered by an intellectual property right or constitutes know-how, access shall not be withheld in any abusive manner.

Article 5
Specific conditions
The exemption provided for in Article 2 shall not apply to any of the following obligations contained in vertical agreements:
(a) any direct or indirect non-compete obligation relating to the sale of motor vehicles;
(b) any direct or indirect obligation causing the retailer not to sell leasing services relating to contract goods or corresponding goods;
(c) any direct or indirect obligation causing the distributor or repairer, after termination of the agreement, not to manufacture, purchase, sell or resell motor vehicles or to provide repair or maintenance services;
(d) any direct or indirect obligation limiting the ability of the repairer of motor vehicles to provide repair or maintenance services for brands of competing suppliers;
(e) any direct or indirect obligation causing the members of a selective distribution system not to sell the brands of particular competing suppliers;
(f) any direct or indirect obligation on any member of a selective distribution system for the distribution of passenger cars limiting its ability to establish sales or delivery outlets or warehouses at other locations within the common market;
(g) any direct or indirect obligation within a selective distribution system which has a duration exceeding five years and which restricts the location of the establishment of a distributorship for motor vehicles other than passenger cars;
(h) any direct or indirect obligation as to the place of establishment of an authorised repairer.

Article 6
Withdrawal of the Regulation by the Commission
The Commission may withdraw the benefit of this Regulation, pursuant to Article 7(1) of Regulation No 19/65/EEC, where it finds in any particular case that vertical agreements to which this Regulation applies nevertheless have effects which are incompatible with the conditions laid down in Article 81(3) of the Treaty.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

and in particular:
(a) where access to the relevant market or competition therein is significantly restricted by the cumulative effect of parallel networks of similar vertical restraints implemented by competing suppliers or buyers; or
(b) where competition is restricted on a market where one supplier is not exposed to effective competition from other suppliers; or
(c) where prices or conditions of supply for contract goods or for corresponding goods differ substantially between geographic markets; or
(d) where discriminatory prices or sales conditions are applied within a geographic market.

Article 7
Withdrawal of the Regulation by the authorities of a Member State
Where in any particular case vertical agreements to which the exemption provided for in Article 2 applies have effects incompatible with the conditions laid down in Article 81(3) of the Treaty in the territory of a Member State, or in a part thereof, which has all the characteristics of a distinct geographic market, the relevant authority of that Member State may withdraw the benefit of application of this Regulation in respect of that territory, under the same conditions as provided in Article 6.

Article 8
Non-application of the Regulation
1. Pursuant to Article 1(a) of Regulation No 19/65/EEC, the Commission may by regulation declare that, where parallel networks of similar vertical restraints cover more than 50 % of a relevant market, this Regulation shall not apply to vertical agreements containing specific restraints relating to that market.
2. A regulation pursuant to paragraph 1 shall not become applicable earlier than one year following its adoption.

Article 9
Market share calculation
1. The market shares provided for in this Regulation shall be calculated on the basis of the market sales volume of the contract goods or services and other goods or services sold by the supplier, which are regarded as interchangeable or substitutable by the buyer, by reason of the products' characteristics, their prices and their intended use; if market sales volume data are not available, estimates based on other reliable market information, including market sales values, may be used to establish the market share of the undertaking concerned. For the purposes of Article 3(2), it is either the market purchase volume or estimates thereof which shall be used to calculate the market share.
2. For the purposes of applying the market share thresholds of 30 % and 40 % provided for in this Regulation the following rules shall apply:
(a) the market share shall be calculated on the basis of data relating to the preceding calendar year;
(b) the market share shall include any goods or services supplied to integrated distributors for the purposes of sale;
(c) if the market share is initially not more than 30 % or 40 % respectively but subsequently rises above that level without exceeding 35 % or 45 % respectively, the exemption provided for in Article 2 shall continue to apply for a period of two consecutive calendar years following the year in which the market share threshold of 30 % or 40 % respectively was first exceeded;
(d) if the market share is initially not more than 30 % or 40 % respectively but subsequently rises above 35 % or 45 % respectively, the exemption provided for in Article 2 shall continue to apply for one calendar year following the year in which the level of 30 % or 40 % respectively was first exceeded;
(e) the benefit of points (c) and (d) may not be combined so as to exceed a period of two calendar years;

Article 10
Turnover calculation
1. For the purpose of calculating total annual turnover within the meaning of Article 2(3) and 2(5), the turnover achieved during the previous financial year by the relevant party to the vertical agreement and the turnover achieved by its connected undertakings in respect of all goods and services, excluding all taxes and other duties, shall be added together. For this purpose, no account shall be taken of dealings between the party to the vertical agreement and its connected undertakings or between its connected undertakings.
2. The exemption provided for in Article 2 shall remain applicable where, for any period of two consecutive financial years, the total annual turnover threshold is exceeded by no more than 10 %.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

Article 11
Definition of connected undertakings
1. For the purposes of this Regulation, the terms "undertaking", "supplier", "buyer", "distributor" and "repairer" shall include their respective connected undertakings.
2. "Connected undertakings" are:
   (a) undertakings in which a party to the agreement, directly or indirectly:
      - has the power to exercise more than half the voting rights, or
      - has the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking, or
      - has the right to manage the undertaking's affairs;
   (b) undertakings which directly or indirectly have, over a party to the agreement, the rights or powers listed in (a);
   (c) undertakings in which an undertaking referred to in (b) has, directly or indirectly, the rights or powers listed in (a);
   (d) undertakings in which a party to the agreement together with one or more of the undertakings referred to in (a), (b) or (c), or in which two or more of the latter undertakings, jointly have the rights or powers listed in (a);
   (e) undertakings in which the rights or the powers listed in (a) are jointly held by:
      - parties to the agreement or their respective connected undertakings referred to in (a) to (d), or
      - one or more of the parties to the agreement or one or more of their connected undertakings referred to in (a) to (d) and one or more third parties.
3. For the purposes of Article 3, the market share held by the undertakings referred to in paragraph 2(e) of this Article shall be apportioned equally to each undertaking having the rights or the powers listed in paragraph 2(a).

Article 12
Transitional period
The prohibition laid down in Article 81(1) of the EC Treaty shall not apply during the period from 1 October 2002 to 30 September 2003 in respect of agreements already in force on 30 September 2002 which do not satisfy the conditions for exemption provided for in this Regulation but which satisfy the conditions for exemption provided for in Regulation (EC) No 1475/95.

Article 13
Evaluation report
The Commission will draw up a report on the evaluation of this Regulation not later than 31 May 2008.

Article 14
Entry into force and expiration
This Regulation shall enter into force on 1 October 2002.
This Regulation shall expire on 31 May 2010.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Done at Brussels ...

For the Commission
...
Member of the Commission

(1) OJ 36, 6.3.1965, p. 533.
(3) OJ C ...
The questionnaire sent out to the Ford and Volvo distributors contained the following questions. The numbers represent the total amount of answers received for each question. And the italicized text indicate the comments received from the dealers. (The responses have been translated from Swedish by author)

1. What do you believe will take place after the group exemption will expire in September 2002?
   _1____No replacement regulation
   _9____Replacement regulation with less restrictions
   • Restrictions for whom? Distributor or supplier.
   • They will disappear on sales, but remain on the service in a revised form.
   • I believe that the power of EU’s competition policy often is underestimated but it will probably take 5 to 10 years to abolish exclusive sales.
   _4____Replacement regulation with more restrictions
   • Will develop a so called variable gross profit, i.e. if you have a repair facility, sell only one brand etc. you’ll receive a higher margin.
   _1____Remain the same
   • Brand name, security, relations

2. Do you believe that your position in relation to the supplier, after September 2002, will be:
   _9____Strengthened / Improved
   • Hopefully, which even is the idea … or?
   • The supplier is dependent on us, both to get out volume but mainly for the service market aspect.
   • Suppliers will guard companies that are both selling and servicing the vehicles - greatest customer benefit!
   • Theoretically we will get a stronger position, but practically I do not believe that there will be a change.
   _2____Weakened / Decreased
   • The manufacturers are focused on volume and I believe that the temptation to sell both left and right will be too great. On the short term there could be winners, but on the long term I believe that the manufacturer will loose. The dealers that are masters on their customer relation will be the winners.
   _4____Remain the same as today
   • Repair facility, store, gas.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

3. Do you believe that the competition in the new cars sector will increase after September 2002?
   - **10** Yes
     - Due to the prices on imports.
     - Also due to other factors such as internet sales.
     - Currently mainly due to a dawning recession.
     - The margins on vehicle sales today is extremely small - there is no room for many fortune seekers but a few will enter. The service market could possibly be more complicated.
     - More operators will be able to sell the same brand within the same area.
   - **5** No
     - The slim margins of the car industry today will deter new entrants.
     - The competition is already so high that the margins in new car sales are gone.
   - **0** Decrease

4. What is your perception as a distributor that the supplier provides you with the support you need?
   - **12** Good
   - **5** Would like more
     - The battle of the customers must intensify.

5. What is your future outlook on the car industry, and how are you as a company preparing for the upcoming changes with the group exemption?
   - Are prepared for changes of the margins - investing substantially in the service market.
   - We will strive to improve our own brand name as a dealer with the suppliers backing.
   - We have recently acquired another Ford Dealership and thus doubled in size, in order to face the future.
   - Wait and see …
   - Since very few are talking about the group exemption it is very hard to prepare for a situation that we know very little about. I would like more information.
   - Educate. Make sure we are a bold local alternative for the consumer. ……… Strive for excellent service market. Make sure our performance is great within the suppliers framework. The supplier does not exchange a good team player.
   - It will influence possible investments and long term rental agreements. Some caution exist in most areas.
   - To develop the service degree as far as possible. Service/Competence is what we can be most unique at.
   - Increased competition on all sides. Will counter this by searching for alternative sales channels, internet etc., quality in the after market service and alternative purchasing channels.
   - We are working locally with a strong image creating profile of our company. We think that the supplier should be responsible for product advertising while we work with the marketing of our company. The aim is to strengthen our own brand name in order to decrease our dependence on the supplier if our situation should change because of the group exemption.
   - We are investing heavily on the after market with service 2000 which means a personal review of the car together with the customer on site. Active used sales where we purchase recent years used cars.
THE NEW MOTOR VEHICLE GROUP EXEMPTION AND ITS EFFECTS ON THE DISTRIBUTORS

- Work across the borders, Europe one market and we who live and work in Värmland believe that Norway will be a good complement.
- Good future. We will find more information about the group exemption.
- The car industry will in the future see even more mergers. The car will increase in importance for the human communication. We as dealers must pay utmost attention to become the very best both as sellers and service providers. Then we can survive even after a changed group exemption.
- Car industry in the future: Crystal ball! The need for cars will surely remain during the near future. Increased competition - more global actors. Local preparations: work to increase customer satisfaction to the max, both in regards to new cars and the after market. Satisfied customers return!
- We are part takers in the process through the industry organization, otherwise we have to wait and see what the changes will be.
- We believe that the relation and simple pliant service is the future. We work intensively with the CRM issue. Good internal processes with high delivery precision and short lead times is another area that we focus on.