

TECHNICAL ANNEX 1

REGULATION 1400/2002: MAIN POLICY OBJECTIVES OF THE CURRENT BLOCK EXEMPTION FOR MOTOR VEHICLES DISTRIBUTION AND SERVICING

1. As has been observed, given the specific market conditions characterising the markets for motor vehicle sales and servicing in early 2000, stricter and more specific rules were thought necessary, going over and above those already provided for in Regulation 2790/1999. By introducing these sector-specific rules, Regulation 1400/2002 pursued seven main objectives, which are briefly recalled below.¹
2. The first objective of the Regulation was to *prevent foreclosure of competing vehicle manufacturers and to safeguard access to the vehicle retailing and repair markets*. The chosen method was to give dealers more leeway to sell the brands of competing manufacturers. The Commission felt that multi-branding, particularly within the same showroom, would increase inter-brand competition by making it easier for new entrants to penetrate the markets and facilitate the existence of niche brands. It would also enable consumers to compare brands more easily, and would contribute to intra-brand competition by reinforcing network density. In this regard, the Regulation diverges in three ways from the provisions of Regulation 2790/1999. Firstly, Regulation 1400/2002 does not exempt non-compete obligations, in contrast to Regulation 2790/1999, which exempts them for a period of five years, providing that the market share of the supplier in question is below 30%. Secondly, the way that Regulation 1400/2002 (Article 5(1) and Article 1(1)(b)) defines non-compete obligations has the effect of obliging the parties to an agreement to carry out an individual assessment on the basis of Article 81 of the Treaty if a contractual obligation prevents the dealer from taking on the brands of one or two additional suppliers. In contrast, the narrower definition of a non-compete obligation in Regulation 2790/1999 would allow manufacturers to prevent dealers from taking on more than one additional supplier's brands. Thirdly, Regulation 1400/2002 makes particular provision for dealers who wish to sell the brands of competing suppliers within the same showroom.
3. The second objective of Regulation 1400/2002 was to remove the 'straitjacket' effect of the previous block exemption, so as to *reinforce intra-brand competition through an increased diversity of distribution systems across the market*. As has been observed above, Regulation 1475/95 only exempted a single retailing format and led all new motor vehicles to be distributed in the same way, through systems combining elements of both exclusive and selective distribution. By contrast, Article 2(1) exempts all vertical agreements up to a certain market share thresholds (defined in Article 3(1)), rather than seeking to define a model. Furthermore, Article 4(1)(g) seeks to promote diversity of formats by creating an opportunity for dealers to operate stand-alone sales outlets, while Article 5(1) and 5(3) are aimed at ensuring

¹ The seven main objectives as presented in this section are based on the seven reasons for having a renewed sector-specific regulation. See Annex I to the draft new Regulation 1400/2002, published 16.3.2002, OJ C67, p.2-26

dealers' and repairers' freedom to, respectively, operate with competing brands and to open secondary outlets at other locations.

4. The third objective of the Regulation was to protect cross-border intra-brand-competition or, in other words, to *facilitate parallel trade in motor vehicles between EU countries*. Regulation 2790/1999 had already extended the scope of what was to be considered to be absolute territorial protection in other sectors by no longer exempting the combination of selective and exclusive distribution, allowing dealers to market their vehicles actively into territories allocated to other distributors. Article 5(2)(b) of Regulation 1400/2002 takes the notion of "active sales" a step further by including the opening of additional outlets. Finally, Article 4(1)(f) of Regulation 1400/2002 incorporates the *Ford- Werke* case law by excluding from the exemption any agreement that does not allow dealers to obtain vehicles with specifications current in other Member States.
5. The fourth objective of Regulation 1400/2002 concerns the aftermarket and is aimed at the *protection of competition between independent and authorised repairers*. To that end, the Regulation protects the supply of two essential inputs to independent repairers: captive and original spare parts, as well as (Articles 4(1)(i) and 4(1)(j)) to technical repair information, tools and training for independent repairers (Article 4(2)).
6. The fifth objective of Regulation 1400/2002 was to *ensure effective competition within the manufacturers' networks of authorised repairers* by reversing the decline in the numbers of authorised repair shops resulting from ongoing network re-organisations. In order to achieve this objective, it allowed all repairers who so wished, and who met the standards, to join the networks as "stand-alone" authorised repairers. A requirement that authorised repairers also sell new vehicles was seen as a non-qualitative criterion, and such criteria could not be used where the supplier's market share exceeded 30% (Article 3(1)). Moreover, a specific provision (Article 4(1)(h)) excluded the exemption from obligations requiring repairers to also sell new vehicles.
7. The aim of Regulation 1400/2002 as regards spare parts producers was to ensure that competing brands of spare parts were available on the aftermarket. The sixth objective was therefore *promoting spare parts manufacturers' access to the automotive aftermarkets*. OES were to have more freedom to sell to both independent and authorised repairers (Articles 4(1)(j) and 1(1)(t)), and to place their trademarks on the components supplied to vehicle manufacturers for assembling vehicles (Article 4(1)(l)). Moreover, authorised repairers were not to be prevented from using alternative brands of spare parts (Article 4(1)(k)).
8. The Commission's seventh objective in adopting Regulation 1400/2002 was to *ensure that dealers felt sufficiently independent from their suppliers* so as to act pro-competitively on the market, even where such behaviour was against the suppliers' wishes. In order to achieve this objective, Article 3 contains a number of measures intended to safeguard dealers' sunk costs, including minimum contractual terms, minimum notice periods in case of termination or non-renewal, and a provision allowing dealers to transfer their dealership to another dealer of their choice within the relevant brand network.