Commission evaluates the functioning of the Block Exemption Regulation for the motor vehicle sector

On 28 May 2008, the European Commission's competition service published its long awaited evaluation report on the operation of Block Exemption Regulation 1400/2002 concerning motor vehicle distribution and servicing (car BER).

The report is the result of a fact-finding exercise launched by the Commission in 2007 with a view to decide on the regime applicable to the motor vehicle sector after the Regulation expires on 31 May 2010. It does not contain any indications as to the form and content of the future regime; this will be decided at the next stage of the review process, probably towards the end of this year. Stakeholders are invited to submit their comments on the evaluation report until 31 July 2008.

In a nutshell, the report concludes that the general framework of the block exemption has had positive effects overall given that the conditions for competition have improved in recent years on the markets for both new cars and repair and maintenance.

For the lubricant industry, the most relevant conclusion of the Commission's report can be found on pages 8 and 9 and in summary consists in the following statement:

Point III.E., page 8: *Although one of the objectives of BER 1400/2002 was to encourage authorised repairers to purchase alternative spare parts brands (e.g. lubricants), authorised repairers continue to purchase most of their needs from vehicle manufacturers (VM). This is due to the fact that a purchase from more than one source would necessitate duplication of logistics and increased IT costs. Given that VMs oblige authorised repairers to use the VMs parts for warranty repairs, it is easier for repairers to get all parts requirements from the VM (who in addition is able to offer the whole range of parts). In some cases, however, VMs use bonus and rebate schemes to enhance authorised repairers' fidelity. The anti-competitiveness of such behaviour can only be assessed on a case by case basis. BER 1400/2002 is therefore not really needed.*

Point III.F., page 9: *One of the objectives of BER 1400/2002 was to ensure that Original Equipment Suppliers (OES) and producers of matching quality spare parts would have equal access to independent and authorised repairers. This objective can also be achieved without the BER, namely through existing provisions in other EU policy areas (regarding the definition of "original part"). As to parts which are not original, even in the absence of the BER the VM cannot prevent its authorised repairers to use alternative spare parts brands as such a prohibition would amount to a direct non-compete obligation which would not be covered by the Vertical BER.*

The Commission's reflections with respect to the spare parts market are the following:

- In 2002, the Commission was of the view that spare part producers did not have sufficient access to authorised dealers and repairers. These latter did not use spare parts from sources other than the VM to any significant extent, although many parts could be sourced at often lower prices from independent suppliers.
- Therefore, the Commission established BER 1400/2002, in particular Articles 4(1)(j) and (k), which prohibit any direct or indirect non-compete obligation.
- Today, the Commission realises that these provisions have not been effective, as authorised repairers still obtain between 87 and 95% of their spare parts from VMs. The new provisions were not taken up by industry players as the Commission had hoped for.
- Therefore, the Commission believes that there is no need for these provisions, and hence BER in its entirety, anymore.

These statements reflect quite clearly that the Commission has doubts whether there is still a need to maintain the car BER beyond 2010. What will the likely consequence be for the lubricant industry?

- If the car BER will not be prolonged, then the car sector will be governed by the provisions of the more general Block Exemption Regulation 2790/1999 (vertical BER), which covers the distribution agreements of all other industry sectors. However, these provisions are not at all adapted to the needs and requirements of the lubricant industry.
- Therefore, there is a clear risk that under the vertical BER, as it is to date, the situation for the lubricant industry will aggravate. In particular, one can expect that the power balance will shift in favour of VMs. There will not be any effective protection of smaller players against the market power of VMs anymore.
- However, one needs to bear in mind that the vertical BER, which also expires in 2010, is likewise currently under review by the Commission. The UEIL will strive to ensure that this vertical BER is shaped in such a way to accommodate the lubricant industry's interests and concerns.

More information on the Commission's review process can be found on
http://ec.europa.eu/comm/competition/sectors/motor_vehicles/news.html