INDEPENDENT UNION OF THE EUROPEAN LUBRICANT INDUSTRY
UNION INDEPENDANTE DE L'INDUSTRIE EUROPEENNE DES LUBRIFIANTS

Rue du Luxembourg 22-24
B-1000 Brussels - Belgium
Tel. +32 2 761 66 85
Fax. +32 2 213 13 63
info@ueil.org
www.ueil.org

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Per e-mail: Comp-car-sector@ec.europa.eu

# CONTRIBUTION OF THE INDEPENDENT UNION OF THE EUROPEAN LUBRICANT INDUSTRY (UEIL) TO THE COMMISSION'S EVALUATION REPORT ON THE OPERATION OF REGULATION 1400/2002 CONCERNING MOTOR VEHICLE DISTRIBUTION AND SERVICING

## I. INTRODUCTION

### About UEIL

The Independent Union of the European Lubricant Industry (UEIL) is the umbrella association of the Independent European Lubricants Industry representing their members and in particular the interests of SMEs and independent lubricant companies. To date, the UEIL represents more than 300 lubricant companies, who manufacture and distribute lubricant products under their own various trademarks throughout the European Union. With members in more than 15 European Member States and a unique collective experience of lubricants and the lubricants market, UEIL is the sole representative body for independent manufacturers of lubricants in Europe and has been recognised as such by the European Commission. It is the UEIL's policy to favour free and fair competition within the scope of prevailing EU and national laws.

### Economic relevance of the lubricants industry and structure of the market

The lubricants industry represents a major item of the aftermarket expenditures for motorists and has therefore a considerable importance within the European car distribution and repair network. We estimate that the lubricants segment of the aftermarket parts represents about 15% of the overall market in terms of retail value. The EU-wide value of the lubricants industry amounts to around € 3 billion. This is therefore a sizeable segment of the automotive spare parts market. The members of the UEIL distribute across the EU around 30% of the motor lubricants production in the European Union.

Furthermore, it should be highlighted that the lubricants industry has a considerable overall strategic importance beyond the automotive sector to include areas such as aviation, marine, manufacturing sectors etc. In all these industry segments, it is the UEIL members and other independent lubricant companies that satisfy the highly technical and complex requirements of the industry, rather than the handful of oil majors. Any impact on the health of the lubricants sector impacts much more widely on the independents.

It is important for the Commission to understand that the independent lubricants industry with its several hundreds of companies has an essential role in ensuring the promotion of effective competition in particular in the automotive sector and that therefore a fair balance of economic power in a market dominated by a handful of major oil companies on the one hand and powerful vehicle manufacturers on the other is vital.

## II. Position on the Commission's Evaluation Report

UEIL welcomes the fact that the Commission is giving all stakeholders the opportunity to submit comments to the findings of its Evaluation Report on the operation of the BER, after having ignored important sectors of the automotive industry, including the independent lubricants sector, during DG Competition's fact-finding exercise in mid-2007.

It should be noted first of all that UEIL has always followed very closely the Commission's past and current activities with respect to the Block Exemption Regulation applicable in the automotive sector. As such, UEIL has recurrently submitted its positions and concerns to DG Competition during the discussion process that has preceded the adoption of Block Exemption Regulation 1400/2002 (hereafter BER 1400/2002). Given that any changes to this regulatory framework governing the automotive industry can have severe repercussions for the independent lubricant industry, we urge the Commission once again to carefully consider the important economic and competitive impact of the independent lubricant industry and to undertake an in-depth economic assessment of the effects any amendment (or abolishment, as the case may be) of the BER 1400/2002 could have on the automotive markets.

### General observations

We have noted with some irritation that the relevance of the lubricants industry as an important element in the automotive aftermarket has not been appreciated to its full extent in the Evaluation Report. A reason for this might have been that the considerable economic importance of this sector has also been neglected in the context of the London Economics study. We are aware that many stakeholders have in the past criticised this study as being inaccurate and showing a general lack of understanding of the special nature of the automotive sector. In light of these critics and given the fact that the Evaluation Report seems to entirely and almost solely rely on the findings of this single study, it is deplorable that the Commission has not deemed necessary to re-assess its factual base by consulting further scientific research to obtain a complete picture of the actual market situation. We believe that the findings of the Report are unbalanced and therefore it would be inappropriate to use these as the sole basis for the review of BER 1400/2002.

Secondly, we note that the Evaluation Report recurrently refers to the general Block Exemption Regulation 2790/1999 (hereafter BER 2790/1999) as a potential future substitution for the BER 1400/2002. This piece of legislation is equally up for review as it is due to expire in 2010 and given that the review process is at a very early stage, its scope and content is still very open. Furthermore, one has to bear in mind that the BER 2790/1999 as currently formulated is not at all adapted to the specificities of the automotive sector. To date it is therefore almost impossible to evaluate whether the application of BER 2790/1999 to the automotive sector will be effective at all. Consequently, it appears rather strange and without any logic that the Commission makes reference to a piece of legislation as the future solution for the automotive industry in general and the lubricant industry in particular, when this legislation practically does not yet exist and its scope has not yet been defined.

Finally, on a more general note, we regret that the time period that has been given to stakeholders to provide comments to the Evaluation Report is rather short and moreover coincides with the start of the summer break. The process of collecting materials and viewpoints of all individuals involved, which is required to be able to provide a comprehensive submission with well-founded statements and arguments to the BER review process, is time-intensive. It is impossible to provide the required level of detail in a time frame of two months, let alone when this period falls into the holiday period.

**Specific observations relating to the lubricant industry**

With these general observations in mind, the UEIL sees the need to alert the Commission to some important points, which we feel should be considered in the future in the context of the Commission's review process of the BER relevant to the automotive sector.

The relevance of BER 1400/02 for the lubricant industry derives from its Article 1 (1)(s), which defines lubricants as spare parts. Article 4(1)(k) of the BER stipulates a hard core restriction for spare parts according to which suppliers are not allowed to restrict distributors or authorised repairers to buy from suppliers of their choice "original spare parts and "spare parts of matching quality" and use them freely for the repair or maintenance of motor vehicles, with the exception of repairs carried out under warranty, free servicing and vehicle recall work. The BER furthermore foresees that any obligation imposed by the supplier on its distributors or authorised repairers to buy more that 30% of specific spare parts from one single supplier would be considered as an indirect non-compete obligation, and would therefore lose the benefit of the BER exemption.

The members of the UEIL strongly support the Commission's quest to solve the competition problems identified in the automotive sector. Bearing in mind that the independent lubricant industry is one of the main driving forces for competition in the sector, we welcomed very much the adoption of a sector-specific regulatory tool to help introducing more competition to the benefit of consumers in the area of motor vehicle distribution, maintenance and repair. The spirit of BER 1400/2002 is therefore one that our members are fully subscribed to: Ensure a balanced power structure between motor vehicle manufacturers (VMs) and operators in the distribution chain to allow for a level playing field so that all operators can compete on fair terms, offer good quality products and consumers are free to choose between different alternatives.

Although experience has shown that the classification of lubricants as spare parts was certainly not the most adequate tool to increase competition in the lubricants sector compared to the status quo prior to the enactment of BER 1400/2002, we consider that the Commission's policy with respect to this sector was on the right track.

The UEIL believes that the strong economic power of VMs, the main reason for the difficulties in establishing a level playing field in the sector, can only be alleviated through a sector-specific regulation for the automotive sector. **We therefore strongly urge the Commission to revise and improve the existing provisions so as to close identified loop-holes**, thereby overcoming the remaining competition problems.

As far as lubricants are concerned, an example of such problem is for instance the incipient practice of VMs to enter into exclusive agreements with a major petroleum company which produces lubricants. On the basis of this agreement, the VM will impose on its network the exclusive supply and use of this lubricant for maintenance and repair services, branded with the name of the VM, at a fixed price by the VM. This practice is currently legally covered by the exemption granted to VMs in Article 4 (k) of BER 1400/2002, according to which VMs can impose the exclusive use of a lubricant for repairs carried out under warranty, free servicing and vehicle recall work. What the Commission failed to consider at the time is that this exemption allows VMs to foreclose the market and eliminate any competition simply through extending warranty periods from initially 6 months/1 year to 5, 7 or even 10 years or maintenance contracts which include lubricants. The creation of such a monopolistic situation, which prevents any market access for independent lubricants, is entirely in contradiction to the spirit of BER 1400/2002 and the Commission's overall competition policy.

Another remaining problem, which has recurrently been raised in discussions with the Commission, is the fact that the BER 1400/2002 does not provide sufficient incentives for VMs to grant access in a timely manner to technical information required for the production of oil and in particular engine oil, which is necessary to be able to match the specifications required by VMs for some lubricants dedicated to certain models of cars/engines. Some VMs restrict competition by delaying the release of the required technical information to potential competitors. And, after obtaining information, the approval procedure takes between 12 and 18 months. Few laboratories are designated by VMs to realize tests. Only the "recommended lubricant manufacturer" obtains technical information and approval in time. Furthermore, by creating many slight variations of engine oil, the result is that the particular oil that a particular car requires is much more unlikely to be available for purchase from a "non-recommended lubricant company".

If the Commission would amend the existing rules to overcome these problems, a level playing field could be fully installed, which would allow the lubricant industry to operate in a healthy environment to the benefit of business and consumers alike.

## Conclusion

The UEIL calls on the Commission to take into account the above considerations in its review of BER 1400/2002 and to ensure that any legislation succeeding BER 1400/2002 provides free competition to the benefit of consumers and business alike and the level of legal certainty that the sector requires.

**The UEIL believes that this can best be achieved through a sector-specific regulation with adequate provisions to ensure a balanced power structure in the automotive sector so that a true level playing field can be developed.** Under such a regime, VMs should in the future not be able to tie up their networks and impose the use of only single-branded products nor should they be able to withhold the required information on technical specifications.

**We are convinced that free competition and open markets will not be achieved simply by a discontinuation of BER 1400/2002 and an application of the general EU competition rules. Instead, we are of the opinion that the existing rules stipulated in BER 1400/2002 should be revised and improved to overcome the remaining problems.**

Hugh Dowding
President of the UEIL