Competition law enforcement in the motor vehicle sector: vertical agreements

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Overview of the motor vehicle sector
Specific features of the motor vehicle sector

Economic and political importance of the car sector
Particular significance for the Internal Market
Importance for the budget of the consumer
Environmental and safety concerns
Importance of vertical agreements
  Car manufacturers / authorised dealers and repairers
  Car manufacturers / producers of spare parts
Tradition of specific EU competition rules for vertical agreements
# Competitive structure of the motor vehicle sector

## Sales markets

*Supply and distribution of cars*

- Highly competitive
  - Prices
  - Innovation
  - Consumer choice
- No major concentration trend
- No particular competition problems

## Aftermarkets

*Provision of repair and maintenance services / distribution of spare parts*

- Structurally less competitive
- Competition from the independent sector is imperative
- Important to keep authorised networks open
Key areas for scrutiny: aftermarkets

**Car Repair**
- Ensure that authorised networks remain open
- Avoid foreclosure of independent repairers
- Ensure the honoring of warranties on cars repaired in the independent sector
- Ensure access to technical information for independent repairers

**Spare Parts**
- Protect access by spare parts manufacturers to the motor vehicle aftermarket, thereby ensuring that competing brands of spare parts continue to be available to both independent and authorised repairers, as well as to parts wholesalers
National Competition Authorities (NCAs) of EU Member States have also been actively monitoring car aftermarkets:

E.g. Sector enquiry conducted by the French NCA in 2011-2012 on the sectors of repair and maintenance of vehicles and distribution of spare parts
EU Competition Rules on Anticompetitive Agreements
Article 101 TFEU addresses agreements between firms which are independent from each other.

Art. 101(1) prohibits agreements that have as their object or effect to restrict or distort competition.

Art. 101(3) declares the prohibition inapplicable if the agreement and its restrictions are indispensable to create efficiencies which benefit consumers, without eliminating competition.

Effects based approach: overall outcome for competition and consumers determines assessment.

Article 101 (ex Article 81 TEC)
1. The following shall be prohibited as incompatible with the internal 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.
Restrictions by object

Agreements that have as their object to restrict competition are considered serious restrictions of competition

E.g. price fixing cartels and Resale Price Maintenance

Hardcore restrictions:

- Presumption of negative effects under Article 101(1)
- Presumption that it is unlikely that the conditions of Art 101(3) are met

This does not entirely exclude individual exemption in case of convincing evidence of likely efficiencies, but highly improbable

The order of bringing forward evidence / showing effects is reversed

- First, likely efficiencies need to be shown by the defendant
- Before the likely negative effects are shown by the authority/plaintiff
Restrictions by effect

Agreements that have as their effect to restrict competition
Authority/plaintiff must show likely negative effects under Article 101(1)
Defendant must show likely efficiencies under Article 101(3) once likely negative effects are established ("consumer welfare test")
“Safe harbour” created by Block Exemption Regulations (BER) for many types of agreements below certain market share thresholds
  Net positive balance presumed
  Exception: hardcore restrictions
Guidelines help to interpret BER and provide guidance on a case by case assessment of negative and positive effects where BER do not apply (above the market share thresholds)
Sector specific rules for vertical agreements in the motor vehicle sector
Main instrument: specific Block Exemption Regulations (BERs) for vertical agreements in the motor vehicle sector (+ accompanying interpretative documents)

Successive generations of motor vehicles BERs:
- 1985 BER (Regulation 123/85)
- 1995 BER (Regulation 1475/95)
- 2002 BER (Regulation 1400/2002)
- 2010 BER (Regulation 461/2010)
Last comprehensive reform of the regulatory framework for cars took place in 2010.

Over-riding aims of the 2010 reform:

- Creation of a legal framework that better reflects the intensity of competition on the various car markets
- More flexibility to adapt to economic circumstances
- More commonality in rules to increase certainty and uniformity

Adoption of Regulation 461/2010
« I strongly believe the new framework will bring tangible benefits for consumers by bringing down the cost of repairs and maintenance that represent an excessive share of the total cost of a car over its lifetime. It will also reduce the cost of distribution by doing away with overly restrictive rules. »

Joaquín Almunia
EU Commission Vice-President in charge of Competition Policy
Commission Notice: 
**Supplementary guidelines** 
on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles (2010)

1. INTRODUCTION

1. Purpose of the Guidelines

(1) These Guidelines set out principles for assessing under Article 101 of the Treaty on the Functioning of the European Union (EU) particular issues arising in the context of vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts. They accompany Commission Regulation (EU) No. 464/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector (1) (hereinafter the 'Motor Vehicle Block Exemption Regulation') and are aimed at helping companies to make their own assessment of such agreements.

(2) These Guidelines provide clarification on issues that are particularly relevant for the motor vehicle sector, including the interpretation of certain provisions of Commission Regulation (EU) No. 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (2) (hereinafter the 'General Vertical Block Exemption Regulation'). They are without prejudice to the applicability of the Guidelines on Vertical Restraints (3) (hereinafter the 'General Guidelines') and are therefore to be read in conjunction with and as a supplement to the General Vertical Guidelines.

(3) These Guidelines apply to both vertical agreements and concerted practices relating to the conditions under which the parties may purchase, sell or resell spare parts and/or provide repair and maintenance services for motor vehicles, and to vertical agreements and concerted practices relating to the conditions under which the parties may purchase, sell or resell new motor vehicles. As explained in Section II of these Guidelines, the latter category of agreements and concerted practices will remain subject to the relevant provisions of Commission Regulation (EC) No. 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector (4) (hereinafter referred to as the 'Motor Vehicle Block Exemption Regulation').

(4) These Guidelines are without prejudice to the possible parallel application of Article 102 of the Treaty to vertical agreements in the motor vehicle sector, or to the interpretation that the Court of Justice of the European Union may give in relation to the application of Article 101 of the Treaty to such vertical agreements.

(5) Unless otherwise stated, the analysis and arguments set out in these Guidelines apply to all levels of trade. The terms 'supplier' and 'distributor' (6) are used for all levels of trade. The General Vertical Block Exemption Regulation and the Motor Vehicle Block Exemption Regulation are collectively referred to as the 'Block Exemption Regulations'.

(6) The standards set forth in these Guidelines must be applied to each case having regard to the individual factual and legal circumstances. The Commission will apply (7) these Guidelines reasonably and flexibly, and having regard to the experience that it has acquired in the course of its enforcement and market monitoring activities.

(7) The history of competition enforcement in this sector shows that certain restraints can be arrived at either as a result of explicit direct contractual obligations or through indirect obligations or indirect means which nonetheless achieve the same anti-competitive result. Suppliers wishing to influence a distributor's competitive behaviour may, for instance, resort to threats or intimidation, warnings or penalties. They may also delay or suspend deliveries or threaten to terminate the contracts of distributors that sell to foreign consumers or fail to observe a given...
Frequently Asked Questions (FAQs) on the application of EU Antitrust Rules in the Motor Vehicle Sector, of 27 August 2012

27 August 2012

Since the adoption of the new motor vehicle Block Exemption Regulation1 and the Supplementary Guidelines2, the Commission's services have received a number of questions relating to the application of the new framework for motor vehicle distribution and repair and for the distribution of spare parts for motor vehicles. Where these questions have been frequently asked, or are otherwise likely to be of wider interest, they are reproduced below together with answers and explanations.

These Frequently Asked Questions («FAQs») are intended to complement the Supplementary Guidelines and do not replace them. The FAQs aim, in particular, at helping firms and individuals operating in the sector and legal practitioners to understand how the Commission's Directorate General for Competition approaches particular issues regarding the motor vehicle markets.3 The FAQs are not intended to constitute a statement of the law and are without prejudice to the interpretation of Articles 101 and 102 of the Treaty on the Functioning of the European Union («TFEU») by the European Courts. Finally, the FAQs do not prejudice the application by the Commission of Articles 101 and 102 to the specific circumstances of an individual case.


3 These FAQs concern particular restrictions in the motor vehicle sector that, under certain circumstances, may cause the agreement between the vehicle manufacturer and its authorised dealers or repairers (or eventually with a supplier of spare parts, repair tools or diagnostic components for the initial assembly of motor vehicles, or other equipment) to infringe EU competition rules. Generally, this will be the case because: (i) the restriction at stake is likely to cause or strengthen the anti-competitive effects of the agreements between the vehicle supplier and its dealers or authorised repairers and spare parts distributors and cause them to be caught by Article 101(1) TFEU; (ii) the agreements in question are unlikely to benefit from the block exception, because of the supplier’s market share; and (iii) these agreements are unlikely to benefit on an individual basis from the exception set out in Article 101(3) TFEU. In some other cases, particular conduct referred to in these FAQs may constitute a violation of the prohibition of the abuse by an undertaking of its dominant position, pursuant to Article 102 TFEU. Finally, the FAQs refer as well to conduct or agreements that are unlikely to be in breach of EU competition rules. In any event, the application of the said rules must ultimately be assessed in each particular case, having regard to its specific factual and legal circumstances.
Regulatory Framework

Since 1 June 2010

- Rec 1400/2002 (old car BER, extended)

From 1 June 2013

- Rec 330/2010 (general BER for vertical agreements)

Car sales markets

Car after-markets

General Vertical Guidelines + Motor vehicles Guidelines + FAQs

Rec 330/2010 (general BER for vertical agreements) + Rec 461/2010 (new car BER): 3 hardcore restrictions on spare parts distribution
The markets for the supply and distribution of motor vehicles
Application of the general regime for vertical restraints from June 1, 2013:

Vertical Restraints Block Exemption Regulation (Rec. 330/2010): VRBER

More flexibility for car manufacturers to organise their networks

Disappearance of the former « dealers’ protection clauses »

Abolition on specific rules on multi-branding and location clauses
Basic features of the VRBER/VRGL

A wide block exemption with...

... a limited hardcore list (cf. article 4 VRBER), and...

... a limited list of excluded restrictions (cf. article 5 VRBER)

Safe harbour below 30% market share threshold (cf. article 3 VRBER)

No presumption of illegality above the market share threshold
Art. 4 BER: serious restrictions of competition which exclude the benefit of the block exemption for the whole agreement

No severability

While this does not exclude individual exemption in case of convincing evidence of likely efficiencies, it is unlikely (thus, high risk of fines)

Resale Price Maintenance (RPM)

Agreeing fixed or minimum resale price

Sales restrictions on the buyer

Distinction: Hardcore restrictions / Excluded restrictions
Sales Restrictions

Sale restrictions: concern is market partitioning and price discrimination

In principle buyer/distributor should be free to resell where and to whom it wants:

Passive sales: sale in response to unsolicited requests

Passive sale restrictions are hardcore (main exception selective distribution)

Active sales: sale as a result of actively approaching customers

Active sale restrictions are hardcore except to protect areas where there is exclusive distribution
Quantitative v. qualitative selective distribution and access to authorised networks
Supplementary guidelines clarify key issues:

Assessment of single-branding obligations

Assessment of selective distribution
The motor vehicle aftermarkets
General Regime on Vertical Agreements (Regulation 330/2010 and Guidelines) applies also to the aftermarkets Supplemented by three hardcore provisions on spare parts distribution, set out in Regulation 461/2010 Additional guidance in the Supplementary Guidelines
Specific hardcore provisions on spare parts distribution:

- Restrictions on authorised dealers' sales of spare parts to independent repairers
- Restrictions on the ability of suppliers of spare parts or repair tools to sell to authorised or independent distributors or repairers
- Restrictions on a component supplier’s ability to place its trade mark or logo on components supplied or on spare parts

(d) undertakings in which a party to the agreement together with one or more of the undertakings referred to in points (a), (b) or (c), or in which two or more of the latter undertakings, jointly have the rights or powers listed in point (a).

(e) undertakings in which the rights or the powers listed in point (a) are jointly held by:

(i) parties to the agreement or their respective connected undertakings referred to in points (a) to (d); or

(ii) one or more of the parties to the agreement or one or more of their connected undertakings referred to in points (a) to (d) and one or more third parties.

CHAPTER II
VERTICAL AGREEMENTS RELATING TO THE PURCHASE, SALE OR RESELL OF NEW MOTOR VEHICLES

Article 2
Application of Regulation (EC) No 1400/2002
Pursuant to Article 101(5) of the Treaty, from 1 June 2010 until 31 May 2013, Article 101(1) of the Treaty shall not apply to vertical agreements relating to the conditions under which the parties may purchase, sell or resell new motor vehicles, which fulfil the requirements for an exemption under Regulation (EC) No 1400/2002 that relate specifically to vertical agreements for the purchase, sale or resale of new motor vehicles.

Article 3
Application of Regulation (EU) No 330/2010
With effect from 1 June 2013, Regulation (EU) No 330/2010 shall apply to vertical agreements relating to the purchase, sale or resale of new motor vehicles.

CHAPTER III
VERTICAL AGREEMENTS RELATING TO THE MOTOR VEHICLE AFTERMARKET

Article 4
Exemption
Pursuant to Article 101(1) of the Treaty and subject to the provisions of this Regulation Article 101(1) of the Treaty shall not apply to vertical agreements relating to the conditions under which the parties may purchase, sell or resell spare parts for motor vehicles or provide repair and maintenance services for motor vehicles, which fulfil the requirements for an exemption under Regulation (EU) No 330/2010 and do not contain any of the hardcore clauses listed in Article 5 of this Regulation.

This exemption shall apply to the extent that such agreements contain vertical restraints.

Article 5
Restrictions that remove the benefit of the block exemption — hardcore restrictions
The exemption provided for in Article 4 shall not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other actions under the control of the parties, have as their object:

(a) the restriction of the sales of spare parts for motor vehicles by members of a selective distribution system to independent repairers which use those parts for the repair and maintenance of a motor vehicle;

(b) the restriction, agreed between a supplier of spare parts, repair tools or diagnostic or other equipment and a manufacturer of motor vehicles, of the supplier's ability to sell those goods to authorised or independent distributors or to authorised or independent repairers or end users;

(c) 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 of the supplier's ability to place its trade mark or logo effectively and in an easily visible manner on the components supplied or on spare parts.

CHAPTER IV
FINAL PROVISIONS

Article 6
Non-application of this Regulation
Pursuant to Article 1a of Regulation No 19/65/EC, 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.

Article 7
Monitoring and evaluation report
The Commission will monitor the operation of this Regulation and draw up a report on its operation by 31 May 2013 at the latest, having regard in particular to the conditions set out in Article 101(1) of the Treaty.
2012 Frequently Asked Questions provide additional guidance:

Honouring of warranties
Servicing in the context of leasing contracts
Supply of spare parts
Use and purchase of electronic diagnostic and repair tools
Access to technical information
Access to authorised repairer networks

FREQUENTLY ASKED QUESTIONS (FAQS) ON THE APPLICATION OF EU ANTITRUST RULES IN THE MOTOR VEHICLE SECTOR

27 August 2012

Since the adoption of the new motor vehicle Block Exemption Regulation\(^1\) and the Supplementary Guidelines, the Commission’s services have received a number of questions relating to the application of the new framework for motor vehicle distribution and repair and for the distribution of spare parts for motor vehicles. Where these questions have been frequently asked, or are otherwise likely to be of wider interest, they are reproduced below together with answers and explanations.

These Frequently Asked Questions (‘FAQs’) are intended to complement the Supplementary Guidelines and do not replace them. The FAQs aim, in particular, at helping firms and individuals operating in the sector and legal practitioners to understand how the Commission’s Directorate-General for Competition approaches particular issues regarding the motor vehicle markets.\(^2\) The FAQs are not intended to constitute a statement of the law and are without prejudice to the interpretation of Articles 101 and 102 of the Treaty on the Functioning of the European Union (‘TFEU’) by the European Courts. Finally, the FAQs do not prejudge the application by the Commission of Articles 101 and 102 to the specific circumstances of an individual case.

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3. These FAQs concern particular restrictions in the motor vehicle sector that, under certain circumstances, may cause the agreement between the vehicle manufacturer and its authorised dealers or repairers (or eventually with a supplier of spare parts, repair tools or diagnostic components for the initial assembly of motor vehicles, or other equipment) to infringe EU competition rules. Generally, this will be the case because: (i) the restriction at stake is likely to cause or strengthen the anti-competitive effects of the agreements between the vehicle supplier and its dealers or authorised repairers and spare parts distributors and cause them to be caught by Article 101(1) TFEU; (ii) the agreements in question are unlikely to benefit from the block exemption, because of the supplier’s market share; and (iii) these agreements are unlikely to benefit an individual basis from the exception set out in Article 101(3) TFEU. In some other cases, particular conduct referred to in these FAQs may constitute a violation of the prohibition of the abuse by undertaking of its dominant position, pursuant to Article 102 TFEU. Finally, the FAQs refer as well to conduct or agreements that are unlikely to be in breach of EU competition rules. In any event, the application of the said rules must ultimately be assessed in each particular case, having regard to its specific factual and legal circumstances.
Question 18. May a vehicle supplier refuse access to its authorised repair network on the grounds that the repairer in question is already authorised to repair vehicles of a brand of a competing vehicle supplier?

Where it concerns agreements outside the safe harbour created by the motor vehicle Block Exemption Regulation, the answer is generally, no. This would be likely to lead the agreements in question to breach EU competition rules.

[In the vast majority of cases, vehicle suppliers use qualitative criteria in order to select their authorised repairers. The question therefore arises as to whether a requirement not to be authorised to repair vehicles of another supplier’s brands is a valid qualitative requirement. To determine this, one needs to examine whether or not this requirement is objective and required by the nature of the service. There is normally nothing in the nature of repair services for one brand that requires them to be carried out exclusively by firms that are not authorised to repair vehicles of other brands. Such an obligation therefore normally amounts to a non-qualitative criterion that may restrict competition on the relevant market, namely the market for repair and maintenance services of the concerned brand.]

17. Can an independent repairer be prevented from accessing or updating a printed or electronic record of the vehicle’s service history?

No, in so far as a vehicle supplier and/or its authorised repairers are likely to be the only source for a comprehensive record relating to vehicles of its brands. Any such refusal to grant access to the service record would be likely to cause the agreements between the vehicle supplier and its authorised repairers to breach EU competition rules.

Existing service and repair records, in whatever form, are to be treated as technical information for the purposes of applying the Supplementary Guidelines. Access to such records will generally be necessary to enable the repairer to tell what operations need to be carried out in order to bring the servicing schedule up to date.

An incomplete service and repair record would be likely to reduce the residual value of the vehicle and make it difficult to prove that warranty terms had been complied with. If independent repairers could not update such records, this would likely deter consumers from using independent repairers, and would foreclose such operators from a substantial part of the market.

ACCESS TO AUTHORISED NETWORKS

The Supplementary Guidelines set out the principle that, outside the safe harbour created by the motor vehicle Block Exemption Regulation,29 authorised repair networks should generally be open to all firms that meet the relevant qualitative criteria.30 Nonetheless, a question has arisen as to whether certain access conditions are to be considered as not qualitative in nature (and thus would be deemed as constituting quantitative criteria).31

18. May a vehicle supplier refuse access to its authorised repair network on the grounds that the repairer in question is already authorised to repair vehicles of a brand of a competing vehicle supplier?

The vehicle manufacturer is likely to be the only source for the full range of technical information relating to vehicles of its brands. Granting discounts or refunds on technical information on condition that a repairer buys a certain volume of its own brand of parts or tools might imply that the vehicle manufacturer is leveraging a dominant position on one market to abusively gain advantage on the other.32

General guidance on the application of Article 102 TFEU can be found in the Commission Guidance on the Commission’s enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings. See footnote number 15, above.

In most cases, authorised repair networks of car manufacturers are likely to exceed the 30% market share threshold in the relevant market(s).33

See, in particular, paragraph 70 and 71 of the Supplementary Guidelines. See footnote number 2, above. Moreover, distribution agreements based on purely qualitative criteria are not caught by Article 101, irrespective of the parties’ market share. See Paragraph 43 of the Supplementary Guidelines (see footnote number 2, above).
Peugeot

CASE STUDY
Decision of 5 October 2005

Peugeot hindered parallel trade by seeking to prevent its Dutch dealers from selling cars to consumers from other Member States

Complaints from several French intermediaries

Infringement of Article 101 TFEU

Duration: from 1997 to 2003

Fine: € 49.5 million (joint and several liability of Peugeot and its Dutch subsidiary)
Automobiles Peugeot and its wholly-owned subsidiary responsible for importing Peugeot vehicles into the Netherlands (Peugeot Nederland) had, in collusion with the dealers belonging to the Peugeot network in the Netherlands, implemented two measures aimed at impeding cross-border car sales to final consumers in other Member States, particularly France: (restriction « by object »)

System of bonuses to dealers which discriminated against export sales and went beyond what was necessary to induce Dutch dealers to devote their best sales efforts to their contract territory

Direct pressure on dealers active in export sales
« This decision demonstrates the Commission’s determination to use the EC Treaty’s competition rules to prevent companies from depriving consumers of the benefits of the Single Market. In the motor vehicle sector, such practices are particularly harmful, since the car represents the second most expensive item in the household budget. »

Neelie Kroes
EU Commissioner
in charge of Competition Policy
(2004-2009)
Technical information cases

CASE STUDY
Decisions of 13 September 2007

Agreements between several car manufacturers and their after-sales service partners restricting the release of technical information to independent car repairers, which risked foreclosing the latter from the car aftersales markets.
Technical information consists of data, processes and instructions which are necessary to check, repair and replace defective/broken/used parts of a motor vehicle or to fix failures in any of a vehicle’s systems.

Several carmakers seemed to have failed to release certain categories of technical repair information and/or to put in place an effective system to allow independent repairers to have access to technical complete repair information in an unbundled manner.
Provision of the relevant technical information in a non-discriminatory way between independent and authorised repairers

Carmakers to ensure that all technical information, tools, equipment, software and training required for the repair and maintenance of their respective vehicles which is provided to authorised repairers and/or independent importers in any EU Member State is also made available to independent repairers

Information to be made available in a way that is proportionate to independent repairers’ needs

Unbundling of information and pricing must take account of the extent to which independent repairers use the information
« Consumers benefit from competition between repairers, through lower labour charges and cheaper spare parts. These decisions provide a concrete and timely solution to the problems faced by independent repairers, who might lose their ability to compete without access to the relevant technical information. »

Neelie Kroes
EU Commissioner
in charge of Competition Policy
(2004-2009)
Auto 24 judgment

CASE STUDY
Judgment of the Court of Justice of the EU of 14 June 2012 in Case C-158/11

Reference for a preliminary ruling from the Cour de Cassation (France)

Background:

National proceedings between Auto 24 and Jaguar Land Rover France concerning the refusal of the latter to authorise Auto 24 as a distributor of new Land Rover motor vehicles
Question asked to the Court: to benefit from BER, must a quantitative selective distribution system be based on criteria which are objectively justified and applied in a uniform manner to all applicants for authorisation?

Court’s ruling: no, it is only required that content of criteria may be verified

Judgement seems to support that BERs can cover selective distribution, below a certain market share cap, regardless of the nature of the product concerned and the nature of the selection criteria (see § 176 VRGL)