



汽车行业的竞争执法：纵向协议

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欧盟成员国国家竞争机构（NCA）已积极监督汽车零部件市场：

例如，法国NCA于2011-2012年对汽车维修和维护行业及备件分销开展的行业调查

Avis n° 12-A-21 du 8 octobre 2012 relatif au fonctionnement concurrentiel des secteurs de la réparation et de l'entretien de véhicules et de la fabrication et de la distribution de pièces de rechange

L'Autorité de la concurrence (commission permanente),

Vu la décision n° 11-SOA-01 du 30 juin 2011 relative à une saisine d'office pour avis portant sur le secteur de la réparation et de l'entretien de véhicules et de la fabrication et de la distribution de pièces de rechange enregistrée sous le numéro 11/0048 A ;

Vu les articles 101 et 102 du traité sur le fonctionnement de l'Union européenne ;

Vu le livre IV du code de commerce relatif à la liberté des prix et de la concurrence et notamment son article L. 462-4 ;

Vu les autres pièces du dossier ;

Vu le document de consultation publique publié par l'Autorité de la concurrence le 11 avril 2012 ;

Vu les contributions reçues jusqu'au 24 mai 2012 ;

Les rapporteurs, le rapporteur général adjoint, la rapporteure générale et le commissaire du gouvernement entendus au cours de la séance du 6 septembre 2012 ;

Les représentants des groupes AXA, Mobivia, Renault, des sociétés PSA Peugeot Citroën, Bosch, de l'UFC Que Choisir, du Groupement des entreprises mutuelles d'assurances (GEMA), de la Fédération des industries des équipements pour véhicules (FIEV), de la Fédération des syndicats de la distribution automobile (FEDA), de European Campaign for the Freedom of Automobile Parts and Repair Market (ECAR), du Comité des constructeurs français d'automobiles (CCFA), de la Chambre syndicale internationale de l'automobile et du motorcycle (CSIAM), entendus sur le fondement des dispositions de l'article L. 463-7 du code de commerce ;

Adopte l'avis suivant ;

欧盟关于反竞争协议的竞争规则

TFEU第101条 独立公司间签署协议

第101(1)条 以限制或破坏竞争为目的或有此效果的协议应予禁止

第101(3)条 如果协议及其限制对创造有利于消费者的效率必不可少，且不会消除竞争，则不予禁止

效果为基的方法：基于协议对竞争与消费者产生的整体效果进行评估

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.

基于目的的限制

具有限制竞争目的的协议被视为对竞争有严重限制

例如价格操纵卡特尔和转售价格维持

核心限制：

按照第 101(1)进行负面影响推定

假定其不太可能满足第101(3)

在可能的效率得到令人信服的证明后，也不排除适用个案豁免，但可能性非常低。
提出证据/说明效率的顺序可以调换

在执法部门/原告展示可能的不利影响前，可能的效率先需要由被告证明

基于效果的限制

具有限制竞争效果的协议

执法部门/原告必须按照第101（1）明确可能的不利影响

一旦确定可能的不利影响，被告必须按照第101（3）条说明可能的效率（“消费者福利测试”）

《集体豁免条例》（BER）为多种低于特定市场份额门槛的协议创建了“安全港”

推定净余额

例外：核心限制

指南帮助解释BER，并指导BER不适用时（高于市场份额门槛）如何评估负面和正面影响

汽车行业纵向协议方面的特殊行业规则

主要文件: 汽车业纵向协议集体豁免条例(及其配套文件)

汽车业集体豁免条例的演进:

1985 BER (条例 123/85)

1995 BER (条例 1475/95)

2002 BER (条例 1400/2002)

2010 BER (条例 461/2010)

L 203/30

EN

Official Journal of the European Communities

1.8.2002

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

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) Experience acquired in the motor vehicle sector regarding the distribution of new motor vehicles, spare parts and after sales services makes it possible to define categories of vertical agreements which can be regarded as normally satisfying the conditions laid down in Article 81(3).
- (2) This experience 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.
- (3) These stricter rules for exemption by category (the exemption) should apply 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 or sale of repair and maintenance services for such vehicles where these agreements are concluded between non-competing undertakings, between certain competitors, or by certain associations of retailers or repairers. This includes vertical agreements concluded between a distributor acting at the retail level or an authorised repairer and a (sub)distributor or repairer. This Regulation should also apply to these vertical agreements when they contain ancillary provisions on the assignment or use of intellectual property rights. The term 'vertical agreements' should be defined accordingly to include both such agreements and the corresponding concerted practices.

(4) The benefit of the 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).

(5) Vertical agreements falling within 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.

(6) 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 held by 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, prices or intended use.

(7) Thresholds based on market share should be fixed in order to reflect suppliers' market power. Furthermore, this sector-specific Regulation should contain stricter rules than those provided for by Regulation (EC) No 2790/1999, in particular for selective distribution. The thresholds below which it can be presumed that the advantages secured by vertical agreements outweigh their restrictive effects should vary with the characteristics of different types of vertical agreement. It can therefore be presumed that in general, vertical agreements have such advantages where the supplier concerned has a market share of up to 30 % on the markets for the distribution of new motor vehicles or spare parts, or of up to 40 % where quantitative selective distribution is used for the sale of new motor vehicles. As regards after sales services it can be presumed that, in general, vertical agreements by which the supplier sets criteria on how its authorised repairers have to provide repair or maintenance services for the motor vehicles of the relevant make and provides them with equipment and training for the provision of such services have such advantages where the network of authorised repairers of the supplier concerned has a market share of up to 30 %. However, 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.

⁽¹⁾ OJ 36, 6.3.1965, p. 333/65.

⁽²⁾ OJ L 148, 15.6.1999, p. 1.

⁽³⁾ OJ C 67, 16.3.2002, p. 2.

⁽⁴⁾ OJ L 336, 29.12.1999, p. 21.

汽车行业监管框架的最近一次全面改革出现在2010年

2010 年改革的最重要目标是：

创建一个法律框架，从而更好地反映各个汽车市场的竞争激烈程度

能够更加灵活地适应经济情况

建立更加普遍的规则增加确定性和统一性

通过461/2010条例

L 129/52

EN

Official Journal of the European Union

28.5.2010

COMMISSION REGULATION (EU) No 461/2010
of 27 May 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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices⁽¹⁾, which replaces Commission Regulation (EC) No 2790/1999⁽²⁾,

Having regard to the Treaty on the Functioning of the European Union,

(3) The motor vehicle sector, which includes both passenger cars and commercial vehicles, has been subject to specific block exemption regulations since 1985, the most recent being 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⁾. Regulation (EC) No 2790/1999 expressly stated that it did not apply to vertical agreements the subject matter of which fell within the scope of any other block exemption regulation. The motor vehicle sector therefore fell outside the scope of that Regulation.

Having regard to Regulation No 19/65/EEC of the Council of 2 March 1965 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices⁽⁵⁾, and in particular Article 1 thereof,

Having published a draft of this Regulation,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

(4) Regulation (EC) No 1400/2002 expires on 31 May 2010. However, the motor vehicle sector should continue to benefit from a block exemption in order to simplify administration and reduce compliance costs for the undertakings concerned, while ensuring effective supervision of markets in accordance with Article 103(2)(b) of the Treaty.

Whereas:

(1) Regulation No 19/65/EEC empowers the Commission to apply Article 101(3) of the Treaty on the Functioning of the European Union⁽⁶⁾ by regulation to certain categories of vertical agreements and corresponding concerted practices falling within Article 101(1) of the Treaty. Block exemption regulations apply to vertical agreements which fulfil certain conditions and may be general or sector-specific.

(5) Experience acquired since 2002 regarding the distribution of new motor vehicles, the distribution of spare parts and the provision of repair and maintenance services for motor vehicles, makes it possible to define a category of vertical agreements in the motor vehicle sector which can be regarded as normally satisfying the conditions laid down in Article 101(3) of the Treaty.

(2) The Commission has defined a category of vertical agreements which it regards as normally satisfying the conditions laid down in Article 101(3) of the Treaty and to this end has adopted Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application

(6) This category includes vertical agreements for the purchase, sale or resale of new motor vehicles, vertical agreements for the purchase, sale or resale of spare parts for motor vehicles and vertical agreements for the provision of repair and maintenance services for such vehicles, where those agreements are concluded between non-competing undertakings, between certain competitors, or by certain associations of retailers or repairers. It also includes vertical agreements containing ancillary provisions on the assignment or use of intellectual property rights. The term 'vertical agreements' should be defined accordingly to include both such agreements and the corresponding concerted practices.

⁽¹⁾ OJ 36, 6.3.1965, p. 533/65.

⁽⁵⁾ With effect from 1 December 2009, Article 81 of the EC Treaty has become Article 101 of the Treaty on the Functioning of the European Union. The two Articles are, in substance, identical. For the purposes of this Regulation, references to Article 101 of the Treaty on the Functioning of the European Union should be understood as references to Article 81 of the EC Treaty where appropriate.

⁽²⁾ OJ L 102, 23.4.2010, p. 1.

⁽³⁾ OJ L 336, 29.12.1999, p. 21.

⁽⁴⁾ OJ L 203, 1.8.2002, p. 30.

“我坚信，新的规则框架能够为消费者带来巨大收益，降低维修和维护成本，这在汽车的寿命期内占有很大份额。它还将通过消除严重的限制措施来减少分销成本。”



Joaquín Almunia
EU Commission Vice-President
in charge of Competition Policy

委员会通知：关于汽车销售与维修以及汽车配件分销协议的纵向限制补充指南（2010）

C 138/16

EN

Official Journal of the European Union

28.5.2010

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

(Text with EEA relevance)

(2010/C 138/05)

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 ⁽¹⁾ 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 461/2010 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 ⁽²⁾ (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 ⁽³⁾ (hereinafter 'the General Vertical Block Exemption Regulation'). They are without prejudice to the applicability of the Guidelines on Vertical Restraints ⁽⁴⁾ (hereinafter 'the General Vertical 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
- (4) With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union (TFEU). The two sets of provisions are in substance identical. For the purposes of these Guidelines, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout these Guidelines.
- (5) OJ L 129, 28.5.2010, p. 52.
- (6) OJ L 102, 23.4.2010, p. 1.
- (7) OJ C 130, 19.5.2010, p. 1.

vertical agreements and concerted practices in the motor vehicle sector ⁽⁵⁾ until 31 May 2013. Therefore, as regards vertical agreements and concerted practices for the purchase, sale or resale of new motor vehicles, these Guidelines will only apply as from 1 June 2013. These Guidelines do not apply to vertical agreements in sectors other than motor vehicles, and the principles set out herein may not necessarily be used to assess agreements in other sectors.

- (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

⁽¹⁾ OJ L 203, 1.8.2002, p. 30.

⁽²⁾ Retail level distributors are commonly referred to in the sector as 'dealers'.

⁽³⁾ Since the modernisation of the Union competition rules, the primary responsibility for such analysis lies with the parties to agreements. The Commission may however investigate the compatibility of agreements with Article 101 of the Treaty, on its own initiative or following a complaint.

汽车业反垄断规则实施常见问题解答， 2012年8月27日



EUROPEAN COMMISSION

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 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.

¹ Commission Regulation (EU) No 461/2010 of 27 May 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. Official Journal L-129 of 28.5.2010, p.52. ; see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:129:0052:0057:EN:PDF>.

² 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. Official Journal C-138 of 28.5.2010, p.16; see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:138:0016:0027:EN:PDF>.

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: (1) 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; (2) the agreements in question are unlikely to benefit from the block exemption, because of the supplier's market share; and (3) 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.

监管框架

自2010年6月1日开始

自2013年6月1日开始

汽车销售市场

Rec 1400/2002
(旧版汽车业集体豁免条例，拓展)

Rec 330/2010
(一般纵向协议集体豁免条例)

汽车零部件市场

Rec 330/2010 (一般纵向协议豁免条例) +
Rec 461/2010 (新版汽车业集体豁免条例): 明确备件分销的3种核心限制

一般纵向指南
+
汽车业补充指南
+
常见问题解答

汽车供应与分销市场

自2013年6月1日开始统一适用纵向限制的一般规则：

《纵向限制集体豁免条例》(Rec. 330/2010): VRBER

《纵向限制指南》(2010): VRGL

有利于汽车制造商更加灵活地组织他们的网络

废除之前的《经销商保护条款》

废除多品牌和地域条款的特定规则

23.4.2010

EN

Official Journal of the European Union

L 102/1

II

(Non-legislative acts)

REGULATIONS

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation No 19/65/EEC of the Council of 2 March 1965 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices⁽¹⁾, and in particular Article 1 thereof,

Having published a draft of this Regulation,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

(1) Regulation No 19/65/EEC empowers the Commission to apply Article 101(3) of the Treaty on the Functioning of the European Union^(*) by regulation to certain categories of vertical agreements and corresponding concerted practices falling within Article 101(1) of the Treaty.

(2) Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3)

⁽¹⁾ OJ 36, 6.3.1965, p. 533.

^(*) With effect from 1 December 2009, Article 81 of the EC Treaty has become Article 101 of the Treaty on the Functioning of the European Union. The two Articles are, in substance, identical. For the purposes of this Regulation, references to Article 101 of the Treaty on the Functioning of the European Union should be understood as references to Article 81 of the EC Treaty where appropriate.

of the Treaty to categories of vertical agreements and concerted practices⁽²⁾ defines a category of vertical agreements which the Commission regarded as normally satisfying the conditions laid down in Article 101(3) of the Treaty. In view of the overall positive experience with the application of that Regulation, which expires on 31 May 2010, and taking into account further experience acquired since its adoption, it is appropriate to adopt a new block exemption regulation.

(3) The category of agreements which can be regarded as normally satisfying the conditions laid down in Article 101(3) of the Treaty includes vertical agreements for the purchase or sale of goods or services where those agreements are concluded between non-competing undertakings, between certain competitors or by certain associations of retailers of goods. It also includes vertical agreements containing ancillary provisions on the assignment or use of intellectual property rights. The term 'vertical agreements' should include the corresponding concerted practices.

(4) For the application of Article 101(3) of the Treaty by regulation, it is not necessary to define those vertical agreements which are capable of falling within Article 101(1) of the Treaty. In the individual assessment of agreements under Article 101(1) of the Treaty, account has to be taken of several factors, and in particular the market structure on the supply and purchase side.

(5) The benefit of the block exemption established by this Regulation should be limited to vertical agreements for which it can be assumed with sufficient certainty that they satisfy the conditions of Article 101(3) of the Treaty.

⁽²⁾ OJ L 336, 29.12.1999, p. 21.

VRBER/VRGL的基本特点

更加广泛的集体豁免…

… 有限的核心限制清单 (cf. 第4条 4 VRBER), 以及…

… 有限的被排除限制清单 (cf. 第5条 VRBER)

低于30%市场份额门槛的安全港 (cf. 第3条 VRBER)

超出上述市场份额门槛也不自动推定非法

COMMISSION NOTICE
Guidelines on Vertical Restraints
(Text with EEA relevance)

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核心限制

《纵向协议集体豁免条例》第4条：严重限制竞争的协议，协议整体上都不能适用集体豁免

不可分割性

如果产生效率的证据确凿，也不排除可以个案豁免，但可能性很低（被处以罚款的风险很高）

转售价格维持（RPM）

固定或限定最低转售价格

针对买家的销售限制

注意“核心限制”与“被排除的限制”的区别

销售限制

销售限制：值得关注的是市场分割和价格歧视

原则上，买方/经销商可自由进行转售，不限制地点和转销对象：

被动销售：回应主动提出的要求

被动销售限制是核心限制（主要例外是选择性分销）

主动销售：积极接触顾客的销售

主动销售限制是核心限制，除了有独家经营的保护区

定量与定性

选择性分销以及进入授权网络

《补充指南》澄清了重要问题：

单品牌义务评估

选择性分销评估

C 138/16

EN

Official Journal of the European Union

28.5.2010

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

(Text with EEA relevance)

(2010/C 138/05)

I. 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⁽¹⁾ 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 461/2010 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⁽²⁾ (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⁽³⁾ (hereinafter 'the General Vertical Block Exemption Regulation'). They are without prejudice to the applicability of the Guidelines on Vertical Restraints⁽⁴⁾ (hereinafter 'the General Vertical 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
- (4) With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union (TFEU). The two sets of provisions are in substance identical. For the purposes of these Guidelines, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout these Guidelines.
- (5) OJ L 129, 28.5.2010, p. 52.
- (6) OJ L 102, 23.4.2010, p. 1.
- (7) OJ C 130, 19.5.2010, p. 1.

vertical agreements and concerted practices in the motor vehicle sector⁽⁵⁾ until 31 May 2013. Therefore, as regards vertical agreements and concerted practices for the purchase, sale or resale of new motor vehicles, these Guidelines will only apply as from 1 June 2013. These Guidelines do not apply to vertical agreements in sectors other than motor vehicles, and the principles set out herein may not necessarily be used to assess agreements in other sectors.

- (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' 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⁽⁶⁾ 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

⁽¹⁾ OJ L 203, 1.8.2002, p. 30.

⁽²⁾ Retail level distributors are commonly referred to in the sector as 'dealers'.

⁽³⁾ Since the modernisation of the Union competition rules, the primary responsibility for such analysis lies with the parties to agreements. The Commission may however investigate the compatibility of agreements with Article 101 of the Treaty, on its own initiative or following a complaint.

汽车零部件市场

纵向协议的一般规定 (330/2010条例和指南)也适用于零配件市场

461/2010条例对零配件分销行为补充了三类核心限制

《补充指南》的进一步说明

COMMISSION REGULATION (EU) No 461/2010 of 27 May 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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices⁽¹⁾, which replaces Commission Regulation (EC) No 2790/1999⁽²⁾,

Having regard to the Treaty on the Functioning of the European Union,

(3) The motor vehicle sector, which includes both passenger cars and commercial vehicles, has been subject to specific block exemption regulations since 1985, the most recent being 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⁾. Regulation (EC) No 2790/1999 expressly stated that it did not apply to vertical agreements the subject matter of which fell within the scope of any other block exemption regulation. The motor vehicle sector therefore fell outside the scope of that Regulation.

Having regard to Regulation No 19/65/EEC of the Council of 2 March 1965 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices⁽⁵⁾, and in particular Article 1 thereof,

Having published a draft of this Regulation,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

(4) Regulation (EC) No 1400/2002 expires on 31 May 2010. However, the motor vehicle sector should continue to benefit from a block exemption in order to simplify administration and reduce compliance costs for the undertakings concerned, while ensuring effective supervision of markets in accordance with Article 103(2)(b) of the Treaty.

Whereas:

(1) Regulation No 19/65/EEC empowers the Commission to apply Article 101(3) of the Treaty on the Functioning of the European Union⁽⁶⁾ by regulation to certain categories of vertical agreements and corresponding concerted practices falling within Article 101(1) of the Treaty. Block exemption regulations apply to vertical agreements which fulfil certain conditions and may be general or sector-specific.

(5) Experience acquired since 2002 regarding the distribution of new motor vehicles, the distribution of spare parts and the provision of repair and maintenance services for motor vehicles, makes it possible to define a category of vertical agreements in the motor vehicle sector which can be regarded as normally satisfying the conditions laid down in Article 101(3) of the Treaty.

(2) The Commission has defined a category of vertical agreements which it regards as normally satisfying the conditions laid down in Article 101(3) of the Treaty and to this end has adopted Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application

(6) This category includes vertical agreements for the purchase, sale or resale of new motor vehicles, vertical agreements for the purchase, sale or resale of spare parts for motor vehicles and vertical agreements for the provision of repair and maintenance services for such vehicles, where those agreements are concluded between non-competing undertakings, between certain competitors, or by certain associations of retailers or repairers. It also includes vertical agreements containing ancillary provisions on the assignment or use of intellectual property rights. The term 'vertical agreements' should be defined accordingly to include both such agreements and the corresponding concerted practices.

⁽¹⁾ OJ 36, 6.3.1965, p. 533/65.

⁽⁵⁾ With effect from 1 December 2009, Article 81 of the EC Treaty has become Article 101 of the Treaty on the Functioning of the European Union. The two Articles are, in substance, identical. For the purposes of this Regulation, references to Article 101 of the Treaty on the Functioning of the European Union should be understood as references to Article 81 of the EC Treaty where appropriate.

⁽²⁾ OJ L 102, 23.4.2010, p. 1.

⁽³⁾ OJ L 336, 29.12.1999, p. 21.

⁽⁴⁾ OJ L 203, 1.8.2002, p. 30.

零配件分销中的特殊核心限制：

限制授权经销商向独立维修商销售汽车配件

限制配件或维修工具供应商向授权或独立的经销商或维修商销售配件或维修工具

限制零部件供应商在供应的零部件或配件上加贴自己的商标或标识

L 129/56

EN

Official Journal of the European Union

28.5.2010

(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);

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.

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

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 factors under the control of the parties, have as their object:

(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.

(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 II

VERTICAL AGREEMENTS RELATING TO THE PURCHASE, SALE OR RESALE OF NEW MOTOR VEHICLES

Article 2

Application of Regulation (EC) No 1400/2002

Pursuant to Article 101(3) 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(3) 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

CHAPTER IV

FINAL PROVISIONS

Article 6

Non-application of this Regulation

Pursuant to Article 1a 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.

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 2021 at the latest, having regard in particular to the conditions set out in Article 101(3) of the Treaty.

2012年《汽车业反垄断规则实施 常见问题解答》

保修

租赁

配件

电子工具

获取技术信息

加入授权网络



EUROPEAN COMMISSION

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 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.

¹ Commission Regulation (EU) No 461/2010 of 27 May 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. Official Journal L-129 of 28.5.2010, p.52; see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:129:0052:0057:EN:PDF>.

² 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. Official Journal C-138 of 28.5.2010, p.16; see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:138:0016:0027:EN:PDF>.

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: (1) 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; (2) the agreements in question are unlikely to benefit from the block exemption, because of the supplier's market share; and (3) 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.

问题 18. 如果某维修商是竞争品牌汽车的授权维修商，汽车供应商能否拒绝该维修商加入其授权维修网络？

当评估《汽车业集体豁免条例》安全港之外的协议时，对该问题的回答基本上是否定的。该等安排有可能导致相关协议违反欧盟竞争规则。

[在绝大多数情形下，汽车供应商使用质量型标准选择其授权维修商。这里的问题是，如果维修商是竞争品牌汽车的授权维修商，汽车供应商拒绝该等维修商加入其授权维修网络是否构成质量型标准。对该问题的回答取决于该等要求是否客观，是否服务性质所必需的。品牌汽车的维修服务应当由维修商独家完成，且维修商不得同时维修其他品牌汽车，该等要求并非品牌汽车维修服务的性质所必需的。因此，该等义务通常被认定为非质量型标准，有可能限制相关市场（即，所涉品牌汽车的维修保养服务市场）的竞争。质量型选择性分销协议原则上不违反《欧盟运行条约》第101条，参见脚注32。]

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.²⁹

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 Regulation³⁰, authorised repair networks should generally be open to all firms that meet the relevant qualitative criteria.³¹ 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).³²

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?

²⁹ 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.

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

³¹ See, in particular, paragraph 70 and 71 of the Supplementary Guidelines. See footnote number 2, above.

³² Selective distribution agreements are block exempted as long as the parties' market share is below 30%, subject to the conditions defined in the Regulation, see Paragraph 46 of the Supplementary Guidelines. See footnote number 2, above. Moreover, distribution agreements based on purely qualitative criteria are not caught by Article 101, irrespectively of the parties' market share. See Paragraph 43 of the Supplementary Guidelines (see footnote number 2, above).

标致

案例研究

COMP/36623-36820-37275 - SEP 与其他/标致汽车

2005年10月5日决定

标致通过阻止其荷兰经销商向其他成员国的消费者销售汽车而妨碍了公平交易。

来自多个法国中间商的投诉

违反TFEU第101条

期限：从1997至2003

罚金：4950万欧元（标致及其荷兰子公司的共同和单独责任）



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5/X/2005

NON CONFIDENTIAL VERSION

COMMISSION DECISION

of 5/X/2005

relating to a proceeding pursuant to Article 81 of the EC Treaty

(Cases F-2/36.623/36.820/37.275 – SEP et autres / Peugeot SA)

(Only the French text is authentic)

EN

EN

违规行为

标致汽车及其负责向荷兰进口标致汽车的全资子公司（标致荷兰），通过串通其在荷兰的标致汽车经销商，实施两项措施旨在妨碍向其他成员国的最终消费者进行跨界销售，尤其是法国（基于目的限制）

对经销商提供的奖金体系对出口销售进行歧视，超出必要限度引导荷兰经销商对其合同区域做出最好的销售努力

对从事出口销售的经销商造成直接压力

“这一决定证明，委员会决心利用欧盟条约的竞争规则防止公司在某一市场攫取消费者利益。在汽车行业，这种做法的害处尤其明显，因为汽车在居民预算中成为第二大贵重物品”



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

技术信息案例

案例研究

COMP/39.140 — 戴姆勒克莱斯勒

COMP/39.141 — 菲亚特

COMP/ 39.142 — 丰田

COMP/39.143 — 欧宝

2007年9月13日决定

多家汽车制造商及其售后服务合作伙伴达成协议，限制向独立汽车维修商发布技术信息，这为汽车售后市场带来风险

L 317/76

EN

Official Journal of the European Union

5.12.2007

COMMISSION

COMMISSION DECISION

of 13 September 2007

relating to a proceeding pursuant to Article 81 of the EC Treaty

(Case COMP/E-2/39.140 — DaimlerChrysler)

(notified under document number C(2007) 4275)

(Only the English text is authentic)

(2007/788/EC)

- (1) This decision adopted pursuant to Article 9(1) of Council Regulation (EC) No 1/2003⁽¹⁾ is addressed to DaimlerChrysler AG (hereinafter DaimlerChrysler) and concerns the supply of technical information for the repair of vehicles of the Mercedes-Benz and Smart brands.
 - spare parts information, including parts catalogues with codes and descriptions, and vehicle identification methods (that is to say, data relating to a specific vehicle which enable a repairer to identify the individual codes for the parts fitted during vehicle assembly, and to identify the corresponding codes for compatible original replacement parts for that specific vehicle),
- (2) 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. It includes seven main categories:
 - basic parameters (documentation of all reference values and set points of the measurable values concerning the vehicle, such as torque settings, brake clearance measurements, hydraulic and pneumatic pressures),
 - diagrams and descriptions of stages in repair and maintenance operations (service handbooks, technical documents such as work plans, descriptions of tools used to carry out a given repair, and diagrams such as wiring schematics or hydraulics),
 - testing and diagnosis (including diagnostic fault/troubleshooting codes, software and other information needed to diagnose faults on vehicles) — much, but not all, of this information is contained in specialised electronic tools,
 - codes, software and other information needed to re-program, re-set or re-initialise the electronic control units (ECUs) embarked on a vehicle. This category is linked to the preceding one, in that often the same electronic tools are used to diagnose the fault, and then make the necessary adjustments via the ECUs to deal with it,
 - special information (recall notices and notification of frequent faults),
 - training materials.
- (3) In December 2006, the Commission opened proceedings, and addressed a preliminary assessment to DaimlerChrysler, containing the preliminary view that DaimlerChrysler's agreements with its after-sales service partners raised concerns as to their compatibility with Article 81(1) of the EC Treaty.
- (4) In the Commission's preliminary assessment, DaimlerChrysler seemed to have failed to release certain categories of technical repair information well after the end of the transitional period provided for in Regulation (EC) No 1400/2002⁽²⁾. Moreover, at the time that the Commission's investigation was launched, DaimlerChrysler had still not put in place an effective system to allow independent repairers to have access to technical repair information in an unbundled manner. Although DaimlerChrysler improved the accessibility of its technical information over the course of the Commission investigation, notably by setting up a website (the TI website) in June 2005 designed for that purpose, the information made available to independent repairers seemed to be still incomplete.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1). Regulation as last amended by Regulation (EC) No 1419/2006 (OJ L 269, 28.9.2006, p. 1).

⁽²⁾ 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 (OJ L 203, 1.8.2002, p. 30). Regulation as amended by the 2003 Act of Accession.

初步评估

技术信息包括检查、维修和更换缺陷/损坏/陈旧的机动车部件或在汽车系统中查找故障所必须的数据、过程和说明。

多家汽车制造商似乎未能将特定种类的技术维修信息投放和/或置于有效系统当中以允许独立维修商自由获得全部技术维修信息。

承诺

以无歧视方式向独立和授权维修商提供相关技术信息
汽车制造商确保各车型的所有技术信息、工具、设备、软件和所需的培训都能提供给授权维修商和/或欧盟成员国的独立进口商也能获得独立维修商
以符合独立维修商需要的方式提供信息
信息和定价自由必须考虑独立维修商使用信息的程度

“消费者能从维修商的竞争中受益，可以获得低廉的人工费和廉价的备件。这些决定为独立维修商所面临的问题提供了切实的和及时的解决方案，如果无法获得相关技术信息，他们将丧失竞争能力”



Neelie Kroes
负责竞争政策的欧盟委员会委员
(2004-2009)

汽车 24 判决

案例研究

2012年6月14日欧盟法院司法判决 C-158/11

参考*Cour de Cassation*的初步决定(法国)

背景:

汽车24与捷豹路虎法国的诉讼争议, 涉及后者拒绝授权汽车24作为新路虎汽车经销商



JUDGMENT OF THE COURT (Second Chamber)

14 June 2012 *

(Competition – Article 101 TFEU – Motor vehicle sector – Regulation (EC) No 1400/2002 – Block exemption – Selective distribution system – Concept of ‘specified criteria’ concerning a quantitative selective distribution system – Refusal to grant authorisation as a distributor of new motor vehicles – Lack of precise, objective, proportionate and non-discriminatory quantitative selection criteria)

In Case C-158/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Cour de cassation (France), made by decision of 29 March 2011, received at the Court on 1 April 2011, in the proceedings

Auto 24 SARL

v

Jaguar Land Rover France SAS,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, U. Löhms, A. Rosas, A. Ó Caoimh (Rapporteur) and A. Arabadjiev, Judges,

Advocate General: J. Mazák,

Registrar: R. Šereš, Administrator,

having regard to the written procedure and further to the hearing on 11 January 2012,

after considering the observations submitted on behalf of:

– Auto 24 SARL, by R. Bertin, avocat,

* Language of the case: French.

EN

向法院提出的问题：适用《集体豁免条例》的条件是否需要在定量选择经销系统时必须以客观公正且统一适用于所有授权申请的标准？

法院判决：否，仅要求对标准内容进行验证

判决似乎支持《集体豁免条例》能够涵盖低于特定市场份额门槛的选择性经销，，而无论产品属性以及选择标准是什么（见 § 176 VRGL）

JUDGMENT OF 14. 6. 2012 – CASE C-158/11

19 Auto 24 then lodged an appeal in cassation against that judgment before the Cour de cassation ('the referring court'). By its appeal, Auto 24 claims, inter alia, that the Cour d'Appel, Paris, had infringed Article 1(1)(g) of the Regulation and Article 1382 of the Code Civil by holding that no legislative provision or regulation, in national or Community law, requires the grantor to justify the reasons, economic or otherwise, behind the drawing up of a *numerus clausus* and by finding that JLR had drawn up a *numerus clausus* precluding the possibility of a location in Périgueux, without examining the objectivity of the selection criteria, their economic use, the improvement in customer services and the conditions of their implementation. According to Auto 24, in a quantitative selective distribution system, the supplier must use quantitative selection criteria that are specific, objective, proportionate to the aim pursued and implemented in a non-discriminatory manner when selecting its distributors.

20 In those circumstances, the Cour de cassation, having doubts as to the correct interpretation of the Regulation and, in particular, as to the requirements relating to selection criteria for quantitative selective distribution, decided to stay proceedings and to refer the following question to the Court:

'What is to be understood by the words "specified criteria" in Article 1(1)(f) of Regulation No 1400/2002 as regards quantitative selective distribution?'

The question referred for a preliminary ruling

21 By its question, the referring court asks, in essence, whether the term 'specified criteria' in Article 1(1)(f) of the Regulation must be interpreted as meaning that it requires, in order to benefit from the exemption, a quantitative selective distribution system, within the meaning of the Regulation, to be based on criteria which are objectively justified and applied in a uniform and non-differentiated manner in respect of all applicants for authorisation.

22 As a preliminary point, it is important to note that it follows from the Court's case-law (see, inter alia, Case 10/86, *VAG France* [1986] ECR 4071, paragraph 12; Case C-230/96 *Cabour* [1998] ECR I-2055, paragraphs 47, 48 and 51; and Case C-260/07 *Pedro IV Servicios* [2009] ECR I-2437, paragraph 68) that non-compliance with a condition necessary for the exemption cannot, in itself, give rise to damages pursuant to Article 101 TFEU or oblige a supplier to accept an applicant distributor into a distribution system.

23 In the present case, Auto 24 claims, in essence, that all quantitative criteria within the meaning of Article 1(1)(g) of the Regulation, namely, all criteria which, in order to select distributors or repairers, directly limit the number of those distributors or repairers, must satisfy objective economic justifications, of which the supplier must provide evidence, and must be applied in a uniform and non-discriminatory manner in all of the catchment areas and to all of the potential candidates for the distribution system.