



Recent competition law developments in the motor vehicle sector

Jean-Christophe MAUGER
DG Competition, unit E4
EU-MOFCOM Competition week
Haikou, october 2016

Outline:

- I Reminder of the EU competition rules applicable to the motor vehicle sector
- II Review of the regime applicable to vertical agreements in the sector
- III Recent developments in monitoring and enforcement

I EU competition rules applicable to the motor vehicle sector

Applicable rules

Horizontal agreements:

Co-operation

- Regulation 2821/71 on the application of Article 101(3)
- Research & Development block exemption (Regulation 1217/2010)
- Specialisation block exemption (Regulation 1218/2010)
- Guidelines (2011)
- Rules on technology transfer agreements

Cartels

- Leniency - 2006 Notice
- Setting of fines - 2006 Guidelines

Vertical agreements:

- General rules - Regulation 330/2010 and Guidelines
- Supplemented by three sector-specific hardcore provisions set out in Regulation 461/2010
- Additional guidance in Supplementary Guidelines and FAQs

Abuse of dominance:

- 2009 Communication - Guidance on the Commission's enforcement priorities

- ## II Review of the regime applicable to vertical agreements in the motor vehicle sector
- operational department
 - revision process
 - key driver of the review
 - outcome of the review

Review of regime for vertical agreements in the sector - Commission department responsible

Directorate-General for Competition

- Four main areas of responsibility: Antitrust, Mergers, Cartels, State Aid
- Decisions are subject to scrutiny from the European Courts in Luxembourg
- Based in Brussels
- Roughly 1000 personnel
- Political head is Commissioner Margrethe Vestager
- Services are headed by a Director-General, Johannes Laitenberger
- Operational Directorate E: Basic industries, Manufacturing and Agriculture

Review of regime for vertical agreements in the sector – Revision process

"Smart regulation" - importance of process

- Evaluation Report 2008
- Roundtable on framework 2009
- Impact Assessment 2009

Role of other Commission departments

- Input from other departments including business and consumer affairs
- Vote by College of Commissioners

Role of European Parliament

- No veto, but views are considered very important

Interested parties

- Formal consultation process of interested parties

Review of regime for vertical agreements in the sector - Key driver: need to reflect competitive conditions

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

- ⇒ Carmakers have a quasi-monopoly over certain key inputs
- ⇒ Competition from independent repairers and parts suppliers is essential
- ⇒ Important to keep authorised networks open

Review of regime for vertical agreements in the sector - Outcome

Sales markets

Supply and distribution of cars

General regime applies (Regulation 330/2010)

Selective distribution block exempted up to 30% market share – in most cases this **is not likely to be** exceeded

Old rules on "dealer protection" abolished

Manufacturers given more freedom to determine whether or not their dealers can sell other brands

Location clauses block exempted – so dealers cannot open extra outlets as they please

Aftermarkets

Provision of repair and maintenance services / distribution of spare parts

General regime applies with additions – three specific hardcore clauses on spare parts distribution maintained

Selective distribution block exempted up to 30% market share – in most cases this **will likely** be exceeded

⇒ Most agreements will have to be examined outside the block exemption

Clarity given in the Supplementary Guidelines as regards warranty misuse, access to technical information, and access to the authorised repair networks

III Notable developments in monitoring and enforcement

Key areas for scrutiny

Car Repair

Ensure that authorised networks remain open

Avoid foreclosure of independent repairers

Ensure that warranties are not misused to prevent cars being 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 aftermarkets, thereby ensuring that competing brands of spare parts continue to be available to both independent and authorised repairers, as well as to parts wholesalers

Notable developments – Provision of technical information to independent repairers

Commission Decisions of 13 September 2007

COMP/39140 - 39143 — DaimlerChrysler, Fiat, Toyota, Opel

- Agreements between car manufacturers and authorised repairers that restricted the release of technical information to independent repairers
- Certain information was withheld entirely, electronic tools supplied to independent repairers were degraded, practical repair tips were not supplied, and pricing could be excessive
- Risk: foreclosure of these firms from the car aftersales markets
- Remedy: clarification of the concept of technical information and the car manufacturers gave commitments to release the information to independent repair shops

Notable developments – Access to the authorised distribution networks

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

- Reference for a preliminary ruling from the *Cour de Cassation* (France)
 - **Jaguar Land Rover France** (JLR) refused to admit Auto 24 as a distributor, despite the fact that it met the quality criteria
 - JLR argued that since it operated a quantitative selective distribution system, it could exclude Auto 24
 - Auto 24 argued that it had a right to admission, since to benefit from block exemption, selective distribution had to be based on objectively justified criteria applied in a uniform manner
 - The Court ruling favoured JLR: it was only necessary that the content of the criteria could be verified and there is no need these criteria are uniform
- ⇒ Seems to confirm the Commission's line that selective distribution agreements can be block exempted, regardless of the nature of the product and the selection criteria

Notable developments – Components supply cartels

Case COMP/39748 — Automotive wire harnesses

- Decision of 10.07.2013
- Addressees: 10 legal entities belonging to 5 undertakings
- Infringements: coordination of prices and allocation of supplies
- Total Fines: € 141 791 000

Case COMP/ 39922 Bearings

- Decision of 19.03.2014
- Addressees: two European companies and four Japanese companies
- Infringements: coordination of prices, collusion on Requests for Quotations and Annual Price Reductions, exchange of sensitive information
- Total fines: € 953 000 000

Notable developments – Spanish Competition Authority Alleged collusion among car dealerships

Actions of the Spanish Competition Authority ("NMCC") in 2013 and 2014:

- The NMCC opened infringement proceedings against dealers of various brands including Volvo, Audi, Seat, Volkswagen, Nissan, Toyota, Land Rover, Hyundai and Opel.
- The investigated companies are suspected to have infringed article 1 of the Spanish Competition Act (the equivalent of Article 101 of the Treaty on the Functioning of the European Union) by fixing prices and other sale conditions and sharing sensitive information in the distribution markets.
- Background – strong downward pressure on prices because of recession in Spain similar to other sectors (building materials)

Notable developments – French Competition Authority Provision of spare parts

Sector enquiry conducted by the French authority in 2011-2012 on the sectors of repair and maintenance of vehicles and distribution of spare parts

- Recommended the liberalisation of the markets for the supply of parts such as body panels, by removing design protection when third parties manufacture (copy) such parts for use in repair. Spare parts suppliers should have the possibility to sell them on an open market.
- These rules currently vary between EU Member States – parts tend to be very much more expensive when design protection applies

Conclusion

Both the Commission and the National Competition Authorities have been active in enforcing the competition rules.

This enforcement has taken place both upstream and downstream, from components supply to car distribution and repair.

By tailoring the intensity of the rules to the strength of competition on the various markets, the new regime for vertical agreements in the sector should make the task easier.

Regulatory rigidities in certain markets such as those for visible spare parts continue to restrain free competition.