COMPETITION LAW IN THE EUROPEAN COMMUNITIES

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Comment

International Competition Network

In our July issue, there was a passing reference to the International Competition Network. Since not everyone has yet heard of it, the following information may be helpful. It is first and foremost a competition authority forum supported by participating authorities themselves; and is the only international body devoted exclusively to competition law enforcement. Membership is voluntary and open to any national or multinational competition authority entrusted with the enforcement of antitrust laws. (At the time of writing, 63 national or multinational members are listed on the Network's website.) The ICN will not exercise any rule-making function. The initiative is project-oriented. Annual conferences and meetings will provide opportunities to discuss these projects and their implications for enforcement. Annual conferences will bring together leaders of antitrust agencies to commission new projects and review the progress and recommendations of current projects.

At the first annual conference, to be held in in Naples, Italy on September 28-29, 2002, and hosted by the Italian competition Authority, ICN participants will initiate discussions to define specific projects. The initial ICN projects are: (1) the merger control process in the multi-jurisdictional context and, (2) the advocacy role and activities of competition authorities where a particular effort will be made to focus on the concerns of countries with new competition law regimes. The ICN will generate recommendations on best practices and it will be left to the individual antitrust agencies to decide whether and how to implement the recommendations, through unilateral, bilateral or multilateral arrangements, as appropriate. The ICN will also cooperate closely and seek input from existing international organisations (e.g. OECD, WTO, UNCTAD), associations and practitioners of antitrust law and/or economics, industry and consumer associations and members of the academic community. Participation of such non-governmental advisors will undoubtedly enrich considerably the quality of ICN's discussions and work products.

The concept for ICN came directly out of the recommendations of the International Competition Policy Advisory Committee (ICPAC), a group formed in 1997 by then U.S. Attorney General Janet Reno and Assistant Attorney General for the Antitrust Division Joel Klein. At a competition conference in Brussels in September 2000, both Joel Klein and Mario Monti, European Commissioner for Competition expressed their support for such an initiative. Following these endorsements, the International Bar Association convened a meeting of more than 40 of the world's senior competition officials and practitioners at Ditchley Park, England in early February 2001 to discuss the feasibility of a global antitrust network. The formation of the INC followed soon after. We will watch its activities with interest and report in due course. ■

PRICE-FIXING (INDUSTRIAL GASES): THE DUTCH GAS CASE

Subject: Price-fixing
Fines

Industry: Industrial Gases
(Implications for most industries)

Parties: Members of the Dutch cartel, listed in the report below

Source: Commission Statement IP/02/1139, dated 24 July 2002

(Note. This is another classic cartel case. Judging by the dates of the infringement, it is clear that the circumstances were neither new nor continuing. A distinction may therefore be reasonably drawn between "old" cases, in which the infringements have ended, and recent cases involving current practices.)

The Commission has fined seven producers of industrial and medical gases a total of €25.72 million for participating in a secret cartel in the Netherlands between September 1993 and December 1997. The illicit arrangement concerned the supply of several gases such as oxygen, nitrogen, carbon dioxide and argon for which the cartel members colluded to keep prices high. This is the third cartel decision taken by the Commission this year and further highlights its determination to crack down on price-fixing agreements which harm customers, industrial consumers and, as is the case for medical gases, also taxpayers.

In December 1997 and in the course of 1998 the Commission carried out inspections at the Dutch premises of NV Hoek Loos, AGA AB, Air Liquide BV, Air Products Nederland BV, BOC Group Plc, Messer Nederland BV and Westfalen Gassen Nederland BV after it became aware of the possibility of illicit behaviour by these companies in the Netherlands. The investigation revealed a price fixing cartel in the Dutch market for industrial and medical gases, which due to imports and exports of these products to and from Member States had an effect on intra-community trade.

The products include oxygen, nitrogen, carbon dioxide, argon, argon mixtures and acetylene supplied in cylinder and liquid (bulk) form and are used in several industries and manufacturing processes. The largest volumes of industrial gases are used for producing, cutting and welding metals and in the chemical industry. In the case of oxygen, nitrogen, carbon dioxide and various mixtures of gases for example they can also be used for medical purposes, especially in hospitals, namely for breathing, anaesthetics, laboratory works and numerous other applications.

The Commission has evidence showing that, between 1989 and 1991, and subsequently from 1993 until 1997, the leading suppliers of industrial gases in the Netherlands held regular meetings to discuss and fix price increases and other trading conditions for cylinder gases and sometimes supplied in bulk to their customers. They agreed not to deal with each other's existing customers for a period of 2-5 months every year in order to implement these price increases and to respect minimum prices and other trading conditions when offering gases in cylinders and in bulk to new customers. These trading conditions concerned in particular the rent of cylinders and transportation costs charged to customers. The leading suppliers also agreed to introduce a delivery charge for supplies of bulk and a charge for safety and environment on supplies of cylinders.

Although the Commission collected evidence on both periods, it took into consideration only the period after September 1993 for the purpose of calculating the fines, since prescription applies for the first infringement, which ended more than five years before the investigation began. Hoek Loos, AGA, Air Liquide, Air Products and Messer took part in the cartel arrangements between September 1993 and December 1997 whereas Westfalen participated in the cartel arrangements only from March 1994 until December 1995 and BOC from June 1994 until December 1995. The fines were distributed as follows:

NV Hoek Loos:	€12.6 million
AGA AB:	€ 4.15 million
Air Liquide BV:	€ 3.64 million
Air Products Nederland BV:	€ 2.73 million
BOC Group Plc:	€ 1.17 million
Messer Nederland BV:	€ 1 million
Westfalen Gassen Nederland BV:	€ 0.43 million

When calculating fines in antitrust violations, the Commission takes into account the gravity of the infringement, its duration and any aggravating or mitigating circumstances as well as any possible co-operation on the part of the companies in the investigation. It also looks at a company's share of the market concerned and at its overall size. The upper limit of any fine is established at 10% of a company's total annual turnover.

The starting amounts of the fines imposed on Hoek Loos and AGA (that is, before any reductions under the Commission's leniency rules) took into account the fact that the two were the leading suppliers of industrial gases in the Netherlands during the period concerned. Air Products Nederlands and Air Liquide BV were considered to be large suppliers whereas Messer Nederland and BOC were medium-sized suppliers. Westfalen was considered to be a small supplier. The Commission recognised that BOC and Westfalen had played an exclusively passive role in the infringement and had not participated in all aspects of the infringement. This led to a 15% reduction in their respective fines. In application of the leniency rules, AGA and Air Products were granted a 25% reduction for providing additional evidence on the cartel as well as comprehensive explanations on the documents found during the inspections and for not contesting the facts after receiving the Commission's statement of objections in July 2001. Hoek Loos and Messer were also granted a reduction of 10% as they did not contest the facts outlined in the statement of objections. The companies have three months to pay the fines. ■

SUPPLY RESTRICTIONS (NATURAL GAS): THE NORWEGIAN GAS CASE

Subject: Supply restrictions
Market share
"Extraterritoriality"

Industry: Natural gas

Parties: Statoil, Norsk Hydro and others listed in the report below

Source: Commission Statement IP/02/1084, dated 17 July 2002

(Note. It is just as well that this case proceeded to a settlement, since it raised a number of problematic questions of law; not least the legislative requirements of a non-Member State. On the whole, the outcome of the settlement is satisfactory from the point of view of creating a single market for gas in the European Union.)

The Commission has decided to accept the undertakings offered by certain Norwegian gas producers - most prominently Statoil and Norsk Hydro - and in return to close the case relating to the joint sale of Norwegian natural gas. Statoil and Norsk Hydro confirmed in particular that they would market their gas individually and they committed themselves to offering respectively 13 billion and 2.2 billion cubic meters (BCM) of gas for sale to new customers over a period of approximately four years. On an annual basis this corresponds to more than 5% of the total sales volumes of Norwegian gas. Commenting on the decision, the Commissioner Mr Monti expressed satisfaction with the outcome of the case. "Norway is one of the largest gas producing countries in the world accounting for approximately 10% of EU gas consumption. The undertakings will contribute to the creation of a single market for gas in Europe, since European gas purchasers will have a wider choice between gas suppliers from Norway. They will also facilitate the establishment of new supply relationships." According to Mr Monti, the case showed that competition issues concerning non-EU gas producers could be settled with the Commission in a manner that took account of the interests of the parties while respecting European competition law.

The case concerns joint sales, since at least 1989, of Norwegian natural gas through a single seller, the so-called GFU (Gas Negotiation Committee). The GFU comprised two permanent members, Statoil and Norsk Hydro, Norway's largest gas producers, and was occasionally extended to certain other Norwegian gas producers. The main task of the GFU was to negotiate the terms of all supply contracts with buyers located - inter alia - in the EU on behalf of all natural gas producers in Norway.

In June and July 2001 the Commission initiated formal proceedings against approximately 30 Norwegian gas companies arguing that the GFU scheme was incompatible with European competition law. Both the gas companies and the Norwegian Government claimed, at a hearing in December 2001, that European competition law should not be applied, since the GFU scheme had been discontinued for sales to the EEA as of June 2001 following the issuance of a Royal decree by the Norwegian Government. They also argued that European competition law could not be applied, since the Norwegian gas producers had been compelled by the Norwegian Government to sell gas through the GFU system established by the Norwegian Government.

Following the hearing and while reserving the respective legal positions, the Norwegian gas producers and the European Commission explored the possibilities for a settlement. In this respect a distinction was made between (1) the permanent members of the GFU (Statoil and Norsk Hydro), (2) six groups of companies actually selling Norwegian gas through contracts negotiated by the GFU (ExxonMobil, Shell, TotalFinaElf, Conoco, Fortum and Agip) and (3) all other Norwegian gas producers involved in the formal proceedings.

As regards Statoil and Norsk Hydro, the settlement consists of two main elements, namely (1) the discontinuation of all joint marketing and sales activities unless these are compatible with European competition law (for existing supply relationships this requires individual negotiations when contracts come up for review) and (2) the reservation of certain gas volumes for new customers, who in the past have not bought gas from Norwegian gas producers. In the latter respect Statoil has undertaken to make available 13 BCM of gas to new customers on commercially competitive terms and Norsk Hydro has undertaken the same for 2.2 BCM. This gas has to be offered for sale during the commitment period running from June 2001 to September 2005. Taking into account that the commitment period already started in 2001 and that certain volumes have already been sold during the last year, the volumes which are still available to new customers are lower than the total volume of 15.2 BCM. External auditors will monitor whether Statoil and Norsk Hydro respect their undertakings to the Commission.

When accepting the undertakings on the volumes for new customers, the Commission noted that a significant number of European customers (most prominently large industrial users, electricity producers and new trading houses) were known to have been looking for alternative sources of supply in the past and continued to do so today. The undertakings would thus facilitate the establishment of new supply relationships. This should also have a positive impact on the European market structure, which is still characterised by dominant suppliers in almost all markets. Most of these dominant suppliers are already customers of the Norwegian gas companies and bought significant gas volumes under contracts, which still run for many years and which in general contain price review clauses.

Finally and although not being part of the GFU case, Statoil and Norsk Hydro confirmed that they would not introduce territorial sales restrictions and/or use restrictions in their gas supply contracts. Both types of clauses are considered incompatible with European competition law as they prevent the creation of a single market, but considered necessary by certain market operators. The Commission welcomed Statoil's and Norsk Hydro's position as it demonstrated that gas could indeed be marketed in the Community without these anti-competitive clauses.

As regards the other Norwegian companies concerned by the GFU case, the Commission received undertakings from six groups of Norwegian gas companies, which were sellers of Norwegian gas negotiated under the GFU scheme, namely ExxonMobil, Shell, TotalFinaElf, Conoco, Fortum and Agip. For these companies the settlement consists of written commitments to discontinue all joint marketing and sales activities similar to those given by Statoil and Norsk Hydro. For the remaining Norwegian gas producers the Commission decided to close the case on the basis that they would sell Norwegian gas individually in the future.

Commission Vice President Loyola de Palacio, who is in charge of energy matters, and Commissioner Monti made a joint statement to the effect that it would now also be essential to ensure that Norwegian gas could be transported effectively through the European gas pipelines. They said: "We now need to ensure that gas sold by Norwegian gas producers individually can be transported into Europe and thus reach the European gas consumers. The Commission will pursue with vigour any violations of internal market rules and competition rules regarding access of Norwegian gas to European pipelines. We urge national authorities to do the same." ■

Carnival / P&O Princess

The Commission has granted clearance under the Mergers Regulation to the proposed acquisition of British cruise operator P&O Princess plc by US-based cruise operator Carnival Corp. The Commission was initially concerned about the parties' strong position in the cruise market in the UK and in Germany. But after an in-depth analysis it concluded that the strong growth enjoyed in the market, the absence of substantial barriers to entry and the ability for rivals in the market to shift capacity, for example from the US to the UK, would exert a sufficient competitive pressure on Carnival.

On 16 December 2001, Carnival had announced a unilateral pre-conditional offer to acquire all the shares of P&O Princess, a UK-based worldwide cruise company which operates the brands Princess Cruises, P&O Cruises, Swan Hellenic, Aida Cruises, Seetours, and A'Rosa. Carnival is also a cruise company active worldwide. Its brands include Carnival Cruise Lines, Holland America Line, Costa Cruises, Cunard Line, Seabourn Cruise Lines and Windstar Cruises.

In the course of its investigation, the Commission was in touch with the UK's Competition Commission, which was assessing and has now cleared a rival bid by Royal Caribbean, as well as with the Federal Trade Commission of the United States, which is still examining both bids for P&O Princess.

Source: Commission Statement IP/02/1141, dated 24 July 2002

BLOCK EXEMPTION (INSURANCE): COMMISSION DRAFT

Subject: Block exemption

Industry: Insurance

Source: Commission Statement IP/02/1028, dated 10 July 2002

(Note. Most of the changes proposed by the Commission are somewhat technical and peculiar to the insurance field. However, one feature is important to all industries: that is, the trend in new block exemption regulations away from the so-called "white lists" and the "clause-based approach" to provisions based on a more economic approach.)

The Commission has published a draft of a revised block exemption Regulation in the insurance sector, intended to replace the existing Regulation when it expires next year. A number of changes have been made in the draft text as compared with the current Regulation; and the Commission invites comments on these from interested parties, with a deadline for comments of 30 September 2002. The draft Regulation is intended as a successor to Commission Regulation 3932/92, of 21 December 1992.

The principles applied by the Commission in preparing a new draft Regulation have been: legislative clarity, in that the text is rearranged to be clearer and more user-friendly; a modernised economic approach, with no listing of exempted ("white") clauses; and, an emphasis on consumers, in that restrictive agreements are not exempted unless there is incontrovertible proof that they serve consumers' interests. After the deadline for comments from interested parties, the Commission will evaluate the comments received and consider whether any changes in the draft Regulation are appropriate. Then, after consulting Member States, the Commission will adopt a new Regulation, around the end of this year.

In 1992, the Commission introduced a Block Exemption Regulation for certain types of agreement in the insurance sector, specifically agreements on:

- the establishment of common risk premium tariffs;
- the establishment of common standard policy conditions;
- the joint coverage of certain types of risks;
- the testing and acceptance of safety devices.

As Commission Regulation 3932/92 expires on 31 March 2003, it has been decided to prepare a revised draft Regulation to succeed the present Regulation on its expiry.

The legal presentation of the draft new Regulation differs from that of the existing Regulation, to take account of developments in this field since 1992. Moreover, in keeping with a more economic and less "clause-based" approach, it does not contain lists of approved ("white") clauses. The new draft covers the same four categories of agreements as the current Regulation, but does not include two further categories of agreements between insurance undertakings, namely agreements on claims settlement, and on registers of aggravated risks. In these two areas, the Commission considers that it has not gained sufficient experience since 1992, nor has it encountered evidence of major competition issues likely to justify a block exemption for such agreements. The main changes in the draft, as compared with Commission Regulation 3932/92, can be summarised as follows.

Indicative risk premiums

Risk premiums are an indicative estimation of the likely future cost of claims for a risk in any particular category. The risk premium breaks down into two components, the first of which is the "pure premium"; this is a historical statistic on the number and cost of claims in the past for risks in a given category. The second element in the risk premium relates to the future; it is a correction, based on studies, to account for estimated future changes in the number and size of claims. National associations of insurers in the Member States normally produce statistics on pure premiums, based on information supplied by insurers, and carry out studies on likely future trends, and calculate an indicative risk premium on that basis. Regulation 3932/92 exempts this joint activity, on certain conditions.

None of the existing conditions for exemption has been removed in the new draft. However, one condition for exemption of joint calculation of indicative risk premiums implicit in the existing Regulation has been made explicit: as concerns pure premiums, statistics must be broken down into as much detail as is possible, while leaving a statistically useful sample. The reason for this condition is that the more statistics are broken down, the more freedom insurers have to differentiate their prices to end consumers. A further new condition for exemption is that the statistics on risk premiums be made available on reasonable and non-discriminatory terms, to any insurance undertaking which requests access to them. This condition aims particularly at insurance companies considering entering the market in question, but which need access to the statistics before taking their decision.

Standard policy conditions

Standard insurance policy conditions for many types of insurance policy are produced by national associations of insurance undertakings. Regulation 3932/92 does not authorise any compulsory clauses comprising standard conditions; all standard conditions must be optional. Certain standard conditions ("black clauses") are prohibited even if they are optional. Other than such clauses, Regulation 3932/92 grants an exemption to all standard policy conditions, on condition that they be indicative and non-binding. However, in the revised draft Regulation, standard policy conditions - even those which are non-binding and not defined as "black clauses" - are exempted only if they are agreed in conjunction with the joint calculation of pure premiums and joint studies related to risk premiums, and only in so far they are both necessary and exclusively used for such calculations or studies. This is because, in the Commission's view, the insurance sector has not so far conclusively demonstrated that such standard policy conditions serve consumer interest, except insofar as they are necessary to calculate risk premiums. (Standard clauses are closely linked to indicative risk premiums, since statistical databases on numbers and amounts of claims for certain categories of risks are of little use without clarification of the insurance policy conditions to which they relate.)

Common coverage of certain types of risks (pools)

Insurance pools involving a number of insurers are frequent for the coverage of large or exceptional risks, such as aviation, nuclear and environmental risks, for which individual insurance companies are reluctant to insure the entire risk alone. Regulation 3932/92 subjects the exemption of pools to market share thresholds: 10% for co-insurance pools and 15% for co-reinsurance pools. The revised draft Regulation increases these market shares: pools will be authorised on condition that the combined market shares of their members do not exceed 20% for co-insurance pools and 25% for co-reinsurance pools. In addition, in the revised draft, a new exemption with no market share threshold applicable, is introduced for insurance pools which are newly-created in order to cover a new risk, for the first three years of their existence. This is based on the fact that for new risks, where no historical information on claims exists, it is not possible to know in advance what subscription capacity is necessary to cover the risk, and therefore it is considered appropriate to exempt a pooling arrangement for the insurance of new risks for a limited period of time three years in the draft Regulation - until there is sufficient historical information on claims to assess the necessity or otherwise of one single pool.

Safety Equipment

In most Member States, there are lists, drawn up by the national association of insurers on the basis of technical specifications, of approved safety equipment (alarms, anti-theft and anti-fire devices) which meet certain criteria. Most insurers grant an insured party a reduction in premiums if an approved safety device is used. Regulation 3932/92 grants an exemption to the joint determination of these lists and the technical specifications (but not to any agreements concerning the use to which the lists are put, such as the granting of reduced premiums, as this is a matter for individual insurers). There are great differences from one Member State to another in the level of stringency of the technical specifications. Many safety devices are thus eligible to qualify insured parties for reductions in their premiums in certain Member States but not others. In the revised draft Regulation, a new condition for exemption of agreements between insurers on technical specifications for security equipment has been introduced. Such agreements, in order to qualify for the block exemption, must explicitly provide for the recognition of security devices installers or maintenance undertakings approved by a similar such national agreement in another Member State. This is because currently differences between such national agreements constitute an obstacle to the free movement of goods. The new condition for exemption attempts to encourage the creation of a genuine single market in safety equipment, which does not currently exist. Furthermore, this condition is intended to act as a spur to the development of European-level standards and technical specifications. ■

CONCENTRATIONS (DIVESTITURE): COMMISSION GUIDELINES

Subject: Concentrations
Undertakings (conditions)

Industry: All industries

Source: Commission Statement IP/02/1091, dated 18 July 2002

(Note. Applications for clearance of mergers, acquisitions and joint ventures are increasingly being approved only when the parties concerned agree to various forms of condition, of which by far the most usual is the divestiture of existing holdings either in specific companies or in specific areas of commercial activity. It is therefore salutary to have the Commission's draft guidelines on the forms divestiture may take: standard models are offered for comment. Similarly, when parties to a proposed concentration are willing to give appropriate undertakings, and those undertakings necessarily involve the appointment of a trustee - for example, where a company to be divested does not yet have a buyer, - a standard model covers the matter of trustee mandates. The Commission is inviting comments on its drafts.)

The Commission has published for consultation draft standard models for divestiture undertakings offered by merging parties in cases presenting competition problems. The standard models -- on divestiture undertakings and on trustee mandates -- are designed to serve as best practice guidelines to help merging parties and their legal representatives in their dealings with the Commission.

Under the Merger Regulation, which was adopted in 1989 and came into force in September 1990, companies can offer undertakings to enable the Commission to clear a merger or acquisition which otherwise would create or strengthen a dominant position. Given the legally binding timetable set out in the Regulation, timing is crucial when merging parties reach the so-called remedies stage in merger review procedures. To make the negotiation and implementation of undertakings more effective and efficient for both the merging parties and the Commission, the Commission has decided to develop standard models for divestiture undertakings and trustee mandates under the Merger Regulation. The use of these standard models will relieve the merging parties and the Commission of the heavy demands in terms of timing and resources that would otherwise be required to negotiate the terms and conditions for undertakings and trustee mandates from scratch under tight time constraints and allow both the merging parties and the Commission to concentrate more on the actual substance and implementation of the undertakings.

The draft standard models are based on the experience the Commission has gained in fashioning remedies during the 12 years since the implementation of the Regulation. They also take account of the Commission's explanatory Notice on

Remedies, adopted in December 2000. Like the Commission's Notice on Remedies itself, the standard texts are intended to increase the level of transparency and legal certainty for the merging parties offering the undertakings. Business and legal circles as well as other interested parties can find the Standard Model for Divestiture Undertakings and the Standard Model for Trustee Mandates on the Internet; and the purpose and nature of both texts as well as an explanation of their main elements are set out in an Explanatory Note at: http://europa.eu.int/comm/competition/mergers/legislation/divestiture_undertakings/index.html

The first model describes all requirements for achieving full and effective compliance with divestiture undertakings. More specifically, it is designed (i) to describe clearly the business to be divested, the divestiture procedure and the obligations of the parties in relation to the Divested Business for the interim period until divestiture has been completed and (ii) to set out the qualifications which the Commission requires for an acceptable purchaser for the divested business. The Standard Model for Trustee Mandates sets out the role and functions of the Trustee. It prescribes in detail the role and function of the trustee in the process in order to enable the trustee to expedite compliance with the undertakings.

Interested parties have until the end of September 2002 to submit their comments to the Commission's Merger Task Force. On the basis of the comments received, the Commission intends to adopt standard texts for divestiture undertakings and trustee mandates as best practice guidelines at the end of 2002. ■

MARKET POWER (COMMUNICATIONS): COMMISSION GUIDELINES

Subject: Market power

Industry: Electronic communications

Source: Commission Statement IP/02/1016, dated 9 July 2002

(Note. There is an interplay in this sector between the regulatory legislation and the requirements of the rules on competition; and, since the legislation has introduced the concept of "significant market power", the Commission has, reasonably enough, proposed guidelines on the meaning of what it describes in its statement as this new concept. However, the statement also points out that the concept is equated to that of dominance of the market under the well established rules set by Article 82 of the EC Treaty and the case law of the Court of Justice.)

The Commission has adopted Guidelines on market analysis and the assessment of Significant Market Power, as required by Directive 2002/21/EC on a new common regulatory framework for electronic communications service (the Framework Directive). The Guidelines set out the principles to be used by national regulatory authorities to define markets and analyse effective competition. They were developed on the basis of existing case law and the Commission's practice in the enforcement of the rules on competition under European Community law and result from the joint initiative of Mario Monti, Commissioner for Competition, and Erkki Liikanen, Commissioner for Enterprise and the Information Society.

On 7 March 2002, the European Parliament and the Council of Ministers adopted the new regulatory framework for electronic communications, consisting of four Directives and one Decision. The final adoption of a Directive on data protection in the telecommunications sector will take place shortly. The five Directives will apply in national markets from 25 July 2003. The new legislative package overhauls the existing regulatory framework by modernising and simplifying existing regulation with the aim of encouraging more competition and greater transparency of regulation in this crucial sector of the European economy. The Commission will complete the legislative package with a single new Directive on competition in electronic communications networks and services, based on Article 86 of the EC Treaty, which is a consolidation of related existing texts. This Directive will apply from the same date as the five Directives of the Parliament and Council.

Recognising the complex and dynamic character of today's electronic communications markets, the Framework Directive provides a new definition of undertakings with "significant market power" (SMP) by equating SMP in the new regulatory framework with the concept of dominance under Article 82 of the EC Treaty. In aligning SMP with the concept of dominance, the Framework Directive foresees a need to guide national regulatory authorities in applying the competition law concepts of "relevant market" and "dominant position". It therefore requires the Commission to adopt Guidelines on market definition and the assessment of SMP for those authorities to use in the application of the new concept of SMP.

The new regulatory package will impose *ex ante* regulatory obligations only where there is no effective competition, that is, where there are one or more undertakings with SMP in a relevant market (generally excluding emerging markets). Conversely, where competition is effective and no operator is deemed to have SMP, regulators are obliged to remove any obligations imposed under the current regulatory framework. The concept of SMP is therefore central to the procedure for deciding which operators will be subject to *ex ante* regulation.

The Guidelines are based on the relevant case law of the Court of First Instance and the Court of Justice and on the Commission's own decision-making practice in defining the relevant market and applying the concept of single and collective dominance, in particular with regard to electronic communications markets. Other competition law notions, such as "leveraging of market power", are also addressed in the Guidelines. The Commission Guidelines adopted today are the definitive version, following the adoption of a draft version in March 2001 and a public consultation thereon. The text was also discussed with national regulatory and national competition authorities on two different occasions. The Guidelines will be reviewed and revised by the Commission as and when necessary. ■

PRICE DIFFERENTIALS (MOTOR VEHICLES): COMMISSION REPORT

Subject: Price differentials

Industry: Motor vehicles

Source: Commission Statement IP/02/1109, dated 22 July 2002

(Note. The Commission's Statement contains some good factual information about car price differentials and some weaknesses in its explanation of the causes. The Commission is clearly disappointed about the negligible effect of monetary union on the differences in prices among the Member States forming the "Euro zone"; and it is in the curious position of advocating greater approximation of car prices, while at the same time urging consumers to take advantage of price differentials. The Commission also sets great store by the new block exemption regulation on motor vehicle distribution, though whether that will have a substantial effect on price differentials is debatable.)

In its latest report on car prices, the Commission has found that price differentials for new cars in the internal market are still substantial, despite the introduction of the Euro. The situation as of 1 May 2002 shows that no significant price convergence has yet taken place. Spain, Greece, Finland and Denmark (which is outside the Euro zone), are the markets where car prices before tax are generally the lowest. Prices in Germany, the biggest market, and Austria, are the highest within the Euro zone. The survey shows no discernible pattern of price approximation between the cheapest and the most expensive national markets, that is, price increases in the former or price decreases in the latter. According to the Commission, its monitoring of price differentials and other indications have been regularly confirming that there is significant room for improving the functioning of the internal market in the motor vehicle sector. The Commission considers that the new rules on motor vehicle distribution will create the right conditions for competition in car sales and servicing, making the internal market work to the advantage of European consumers and economic operators alike.

This report on car prices portrays the situation on national car markets four months after retail prices started to be denominated in Euros in the twelve Member States participating in the monetary union. Therefore, the report gives an indication as to whether pricing policies have been adapted in response to monetary integration and of the extent to which competition forces are instrumental in integrating markets. For the moment, enhanced price comparability due to the Euro has not led to greater price convergence.

The price differentials mentioned in this press release are based on the manufacturers' recommended retail prices net of tax. The full report gives prices both before and after tax. It compares prices for a total of 81 models, representing the best selling cars of 26 manufacturers. The price levels give some idea of the potential savings which consumers may obtain by exploiting price differences in the European Union. The new rules governing car distribution should simplify these purchases, whether made directly by end-consumers, or through an intermediary who buys on their behalf. The Commission has re-affirmed its commitment to investigate restrictive practices directly or indirectly impeding EU citizens from buying a car in another Member State. (Since 1998, the Commission has imposed fines on Volkswagen (twice), Opel and Mercedes for obstacles to parallel trade between Member States or resale price fixing.) As regards the United Kingdom, it should be noted that this market continues to be the most expensive for more than half of the models examined. Since the prices in the United Kingdom are still much higher than elsewhere, many British consumers continue to try to buy cars from continental dealers. The Commission often receives complaints from British consumers who encounter obstacles when purchasing a car in another Member State, in particular, concerning long delivery times or high right-hand drive supplements.

Price differences for a selection of best-selling cars (expressed as percentages of prices in Euro before tax, comparing the most expensive with the cheapest Euro zone market) on 1st May 2002 were as follows:

	1/5/2002	1/11/2001	1/5/2001
Opel Corsa	18.1%	36.9%	37.4%
Ford Fiesta	n.a	16.4%	16.5%
Renault Clio	19.5%	26.4%	31.3%
Peugeot 106	24.4%	20.3%	23.5%
VW Polo	22.6%	14.7%	28.0%

A and B:	1/5/2002	1/11/2001	1/5/2001
VW Golf	30.5%	34.5%	33.1%
Opel Astra	21.4%	32.2%	51.6%
Ford Focus	24.4%	21.0%	18.6%
Renault Mégane	26.5%	22.9%	25.8%
Peugeot 307	27.2%	29.6%	24.2%

D, E and F:	1/5/2002	1/11/2001	1/5/2001
BMW 318I	11.2%	11.6%	13.4%
Audi A 4	11.9%	13.5%	13.7%
Ford Mondeo	21.5%	20.5%	22.2%
Opel Vectra	28%	41%	48.5%
VW Passat	27.3%	23.1%	22.3%

Overall, price convergence within different car segments has not greatly varied since the last report. The above examples of the most popular car models show that price differentials have increased for six models and decreased for eight models. As in the previous survey, the Commission has found that, in the first four segments (A to D), where the high number of models from different competitors would normally lead one to suppose that competition should be strong, the average price differential within the Euro zone is much higher (well above 20%) than in segments E, F and G.

Across the Euro zone, General Motors (Opel-Vauxhall, Saab), despite some recent price alignments on the Opel brand, the Fiat group (Fiat, Lancia, Alfa Romeo), Honda and Suzuki, are the groups which have the widest price differences. On the other hand, in general, certain German manufacturers (such as BMW and DaimlerChrysler) and, to a lesser extent, Ford (Ford, Volvo, Land Rover) limit price differentials within the Euro zone to 15% or less.

The generally low pre-tax prices in Finland, Denmark and Greece are largely due to manufacturers' pricing policies and, to a lesser extent, a response to high taxes on car purchase in those Member states. Most manufacturers fix pre-tax list prices at a low level, alleging that this is necessary to make the after-tax prices affordable. However, in other Member states where no such taxes are charged, prices before tax may be either roughly similar, as in Spain, or much higher, as in Germany.

In the United Kingdom, car prices include the additional cost of UK specification, in particular right-hand drive, and are affected by the high value of the Pound. All of these aspects have to be taken into account when analysing the causes for high price differentials. The Commission has found that, for British and Irish consumers buying a car in another Member State, the supplement for right-hand drive specification is generally the lowest for models from the Japanese manufacturers, and the highest for models produced by the Volkswagen group (VW, Audi and Seat).

The methodology used is the same as that employed in previous reports: a total of 18 (previously 17) European and 8 (previously 7) Japanese manufacturers supplied the Commission with the recommended retail prices, as of 1 May 2002, of 81 of their best-selling models. The reference price for the calculation of differentials for any model is that of the cheapest country within the euro zone. Prices are adjusted for differences in standard equipment, and are given in Euro and local currency, both before and after tax. Prices for major options and for right-hand drive specification are also supplied, together with other information. For some models, further options and variations in standard equipment may exist on certain national markets. It should be noted that actual retail prices may differ from recommended list prices, as dealers must be free to set their own prices and to offer additional financial benefits to customers, depending on the market. ■

Further Information on Car Price Differentials

The Commission's press release, the condensed electronic version of the report and the manufacturers' price tables may be found on:

http://europa.eu.int/comm/competition/car_sector/

This web site also gives information relevant to the next article in this issue.

DISTRIBUTION (MOTOR VEHICLES): COMMISSION REGULATION

Subject:	Distribution Block exemption
Industry:	Motor vehicles
Source:	Commission Statements IP/02/1073 and MEMO/02/174, both dated 17 July 2002

(Note. This new block exemption regulation replaces the existing regulation and is based on a greater degree of independence for motor vehicle distributors. While the Commission may be pinning too great hopes on the practical effects of the new regulation on, for example, pricing policy, there are reasonable grounds for expecting that the effects of the principal reforms, described in this report, will in general be salutary. For the text of the regulation, see the website referred to on the previous page of this issue. The second part of this report is based on a Commission Memorandum serving as a background paper to the main Statement.)

Part I Summary of the new Regulation

The Commission has adopted what it describes as "a bold but balanced reform of the competition rules for the motor vehicle sector". The new block exemption regulation aims to put right the competition problems identified in the Commission's 2000 evaluation report on the current competition regime. It is designed to increase competition and bring tangible benefits to European consumers for both vehicle sales and servicing. The regulation will open the way to greater use of new distribution techniques, such as Internet sales. It will lead to more competition between dealers, make cross-border purchases of new vehicles significantly easier, and lead to greater price competition. Consumers will be better informed and it will be easier to compare cars and associated services offered by dealers. Car owners will have easier access to after-sales servicing, potentially at lower prices. At the same time, the quality of vehicle servicing and repairs will be fully maintained. The new regulation comes into force on 1 October 2002, with a one-year transition period allowing for the adaptation of existing contracts. A special, longer transition period until 30 September 2005 applies to the phasing-out of location clauses.

Emphasis on both sales and servicing

According to the Commission, the aim of the new regulation is to inject competition at all levels of car distribution and repair. The cost of repair and maintenance of a car is as high as the purchase price. It is therefore appropriate to provide equally effective measures for both sales and servicing. As from October 2002, dealers - directly or indirectly - will be able to reach consumers wherever they are in the EU without constraints; and consumers will benefit from greater diversity and choice. They will also benefit from improved after-sales servicing.

The Commission welcomed the importance of the input and opinions received during the public consultation on the new regulation, and especially of the views expressed by the European Parliament. In fact, the Commission accepted, either wholly or partly, 18 out of the Parliament's 29 requests for modifications. On an issue which commanded particular interest, the ban of the so-called location clause in contracts between car manufacturers and their dealers, a longer transition period than initially foreseen has now been granted. In addition, the Commission intends to meet the Parliament's wish to keep under review the developments in the market and undertakes to monitor the effects of the regulation on competition in retailing and after-sales servicing in the common market or relevant parts of it, including its effects on the structure and level of concentration.

The new regulation will replace the regime introduced in 1985 and slightly revised in 1995, which is due to expire on 30 September 2002 (current Regulation 1475/95). All Member States, the European Parliament and the Economic and Social Committee agreed on the urgent need for a substantial reform. The Commission's own evaluation report showed that several of the aims underlying Regulation 1475/95 had clearly not been achieved. European consumers do not derive their fair share of benefits from the system, competition between dealers is not strong enough and dealers remain too dependent on car manufacturers. Consumers have also in practice found it difficult to exercise their Single Market right to take advantage of price differentials between Member States and buy their vehicle wherever the price is lowest.

Restrictive nature of motor vehicle distribution

The evaluation report confirmed the restrictive nature of the distribution methods established by the motor vehicle manufacturers: a restrictive nature widely spread across the whole motor vehicle sector, as all manufacturers implement similar distribution agreements. In particular, the evaluation report identified the combination of full control over dealer selection by the manufacturer with the allocation of exclusive sales territories to dealers as the main reason for substantial lack of intra-brand competition.

If the Commission simply let this Regulation lapse, the car sector would automatically fall under the general competition rules for distribution agreements (Commission Block Exemption Regulation 2790/99). While this general regime is suitable for most economic sectors, the Commission has concluded that it does not contain sufficient safeguards to remedy the problems identified in the evaluation report, and that a stricter regime for the car sector is therefore necessary. The new sector-specific Regulation spells out the stricter exemption conditions that will apply for the distribution and after-sales agreements of new motor vehicles; and it will be applicable to the sale and after-sales services of all motor vehicles (passenger cars, light commercial vehicles, trucks and buses).

The new regulation is based on the same philosophy as Regulation 2790/99, in that, unlike the current sector-specific block exemption (Regulation 1475/95), it does not prescribe a single rigid model for car distribution in Europe but rather leaves a wide number of choices open to carmakers, distributors and dealers. Car manufacturers may choose *exclusive distribution*, where each dealer approved by the manufacturer is allocated a sales territory but is free to sell to operators that are not members of the official network set up by the manufacturer. They may also choose *selective distribution*, where dealers are also selected according to a set of criteria but are not allocated a sales territory and are not allowed to sell to operators that are not members of the official network set up by the manufacturer. The Commission does not seek to define what criteria are permitted or how a carmaker should organise his network; instead, providing an agreement corresponds to the basic conditions for the application of the regulation, everything is permitted with the exception of a defined blacklist of "hard core", that is, severely anti-competitive restrictions. Although the Regulation is much stricter than the current block exemption when it comes to ensuring effective competition, it is also more flexible in offering a broad range of possibilities.

Multi-brand dealerships

Studies have shown that many consumers would value the in-store choice and comparability available in multi-brand outlets. This "multi-branding" reinforces dealers' commercial independence vis-à-vis their suppliers and also enables dealers in sparsely populated areas to keep their businesses profitable. The new regulation therefore gives retailers a genuine choice as to whether they sell more than one brand. Carmaker may impose a requirement to display their cars only in brand-specific areas within the showroom. The current regime imposed conditions such as separate premises, separate legal entities and separate management: consequently multi-branding did not constitute an economically sustainable option for most dealers.

Making the Single Market a reality for the European consumer

The existing clause commonly referred to as the "availability clause", which allows dealers to supply cars to consumers from other Member States identical with those supplied to dealers in the consumer's home country, is retained in the new regulation. This allows consumers to make cross-border purchases, and has enabled, for example, UK and Irish consumers to obtain right-hand-drive vehicles from Continental dealers at lower prices.

The Commission's twice-yearly car price report has consistently revealed major differences in new car prices between EU Member States. A study published for the Commission last year concluded that these differences could not totally be explained by differences in tax levels. The new regulation contains other measures making it easier for the consumer to take advantage of lower prices in other EU countries. In particular, existing restrictions on operators who act on behalf of a consumer with regard to the purchase of a vehicle will be lifted. In future, these representatives, commonly referred to as intermediaries, will only have to produce a mandate showing that they are acting on behalf of a consumer.

The new Regulation not only makes shopping abroad easier, but also contains measures to allow those dealers who wish to sell to consumers in other areas of the European Union to be more pro-active.

It provides that dealers in a *selective distribution* system may engage in active sales: in other words, they may place advertisements in other areas, and address mail shots and personalised e-mails to consumers located anywhere in the European Union. Dealers may not be penalised in any sense for selling in this manner. Dealers in an *exclusive distribution* system may actively sell to independent resellers within their exclusive territory and may also, if approached, sell to final consumers or resellers based outside their territory. These active sales inside the territory, and unsolicited sales outside the territory, will create the conditions for better price competition across the EU than under the current regime where all active sales outside the territory, as well as sales to independent operators, were forbidden.

In addition, dealers in a selective distribution system may set up a secondary sales outlet or a delivery point in another part of their own country or in another Member State of the European Union. Manufacturers would therefore not be allowed to restrict the freedom of existing dealers to expand by developing secondary outlets (this is the so-called ban on location clauses). For example, a dealer in Spain who commonly sells many vehicles to French consumers may find that it makes business sense to open a sales outlet or a delivery point in Marseilles; the new regulation will make it possible for him to do so. The prohibition of such location clauses is indispensable as otherwise car manufacturers could continue to apply both selectivity and territorial protection, effectively carrying over the main features of the current regime, which has not delivered the expected benefits to the European consumer. The evaluation report identified this combination as the main obstacle to competition between dealers and to the proper functioning of the Single Market. Moreover, location clauses hinder the development of multi-brand dealerships. These measures should help to ensure that consumers are allowed to take advantage of the often high price differentials among the Member States of the European Union.

Promoting competition, quality and choice in the repair sector

Under the current regime, anyone who sells new cars is obliged to carry out repairs. Under the new regulation, dealers may choose whether they wish to carry out repairs themselves, or sub-contract them to another authorised member of the manufacturer's network, whether it is another "integrated dealer/repairer" or a repair-only outlet. The new regulation also provides that, if they meet the quality standards set by a manufacturer, both independent repairers and today's car dealers may become authorised repairers within that manufacturer's network, without being obliged to sell new cars. The carmaker may not limit the number of authorised repairers, and may not limit an authorised repairer's right to repair vehicles of other makes. Studies have shown that consumers prefer a dense network of repairers, and the changes should help to maintain network density while reinforcing the current level of technical expertise within the network.

The regulation also provides that carmakers must allow those repairers who choose to remain independent from specific brands to have access to all necessary technical information, tools, equipment, including diagnostic equipment, and training. Furthermore, the regulation forbids clauses which seek to prevent authorised repairers from supplying original spare parts or parts of matching quality to independent repairers. These provisions aim to ensure that independent repairers can continue to compete effectively with the manufacturer's network of authorised repairers. The consumer will therefore have a choice as to where his vehicle is repaired.

The regulation also aims to give consumers a choice as to which spare parts are used to repair their vehicle; clauses under which a carmaker seeks to prevent repairers from obtaining spare parts from other sources or to restrict the right of authorised repairers to use spare parts matching the quality of original spare parts will not be allowed. These measures should lead to more spare parts being sold directly to repairers by the spare part producers, giving the consumer more choice and increasing competition for the supply of parts. However, in view of the vehicle manufacturers' direct contractual involvement in free servicing, recall operations, and repairs under warranty, authorised repairers may be obliged to use original spare parts supplied by the carmakers for these types of repair.

Strengthening dealers' commercial independence

Although the current rules contain provisions to reinforce dealers' commercial independence through contractual protection, notably by providing for minimum notice periods for contract termination, the Commission's evaluation report makes it plain that these have not been sufficient to achieve all the desired effects. In the absence of more effective measures, there is the risk that certain carmakers may use termination or the threat of termination as a way of preventing dealers from engaging in the types of pro-competitive behaviour which the new regulation seeks to encourage, such as selling more than one brand within the same showroom or selling to consumers from other Member States or their representatives. To prevent manufacturers or their importers from undermining the new regime in this way, to the detriment of both consumer interests and dealers' commercial independence, the regulation provides that any carmaker wishing to terminate a dealer agreement must give clear and objective written reasons for doing so. Moreover, the regulation sets a five year minimum term for fixed-term contracts to prevent carmakers from using short-term contracts to put pressure on dealers not to engage in pro-competitive behaviour; it also provides that distributors of a given brand should remain free to acquire and sell any other distributorship of this brand wherever in the EU. This provision will promote the creation of distributors with greater bargaining power vis-à-vis the car manufacturer, and will also favour the creation of cross-border dealerships.

Duration of Regulation

The new regulation is to come into force on 1 October 2002 and will expire on 31 May 2010. This date was chosen to coincide with the expiry of Regulation 2790/99, the general block exemption regulation applicable to vertical restraints.

Part II Background information: questions and answers

Why not let the current Regulation 1475/95 expire?

During the review, the Commission considered a number of alternatives for legislative change. It was clear from an early stage that simply letting Regulation 1475/95 expire was not a realistic option. If the Commission allowed Regulation 1475/95 to lapse, the car sector would automatically fall under the general competition rules for distribution agreements (Commission Block Exemption Regulation for vertical restraints, Regulation 2790/99). While this general regulation is suitable for most economic sectors, the Commission concluded that it did not contain sufficient safeguards to remedy the problems which the evaluation report identified in the automobile sector. Additional safeguards were especially necessary because the Commission also identified what is referred to in the legal jargon as a "cumulative effect" in the motor vehicle sector. This may occur when a high percentage of goods are distributed using distribution networks which have near-identical features which are restrictive of competition.

The general competition rules for distribution agreements would also allow for a near-identical reproduction of the current system as far as sales of motor vehicles are concerned. For example, the block exemption regulation on vertical restraints actually allows the "location clauses", which are undesirable in the context of the motor vehicle sector. *[See the question on location clauses below.]* Moreover, the general competition rules for distribution agreements would not promote competition in the repair sector, in particular as regards the supply of parts and the conditions under which independent repairers can run their business.

What is the nature of the proposed regime?

While the new regulation is stricter than its predecessor, it is less prescriptive. Carmakers may choose between an exclusive distribution system, where dealers are allocated a given territory, or a selective distribution system. If a selective distribution system is chosen, the carmaker may apply a combination of qualitative and quantitative criteria, or he may alternatively select his dealers according to purely qualitative criteria. If he chooses the latter option, he will not be able to place a ceiling on the number of dealers and any dealer who meets the criteria may join the network. In all selective systems, whether qualitative or quantitative, the manufacturer may require that sales are made only to final consumers and other members of the authorised network.

Will the Regulation lead to multi-brand sales outlets?

Although, under the current Regulation, dealers are in theory allowed to sell vehicles of more than one brand, in practice they rarely do so. (In sparsely-populated areas such as Scandinavia the practice is common. It should also be noted that many dealers in Europe sell more than one brand from the same manufacturer.) At present, manufacturers may require dealers to sell other brands in separate premises, through a separate company, with separate management and a separate sales force, and in practice this makes multi-brand sales uneconomic. Studies have shown, however, that there is consumer demand for dealers to sell more than one brand, and the new regulation accordingly lifts most of the restrictions that are allowed under the current regulation, giving retailers (and ultimately consumers) a genuine choice. Car manufacturers may, however, protect their brand image by requiring their vehicles to be displayed in a "brand-specific" area of the showroom, as in motor-shows. Imposed brand-specific sales personnel would not be allowed as it could represent a substantial additional cost and therefore put a brake to multi-branding development, unless it were so decided by the dealer and the manufacturer paid all the additional costs. Finally, carmakers will be able to require a multi-brand dealer to source a minimum number of cars of their make, but this minimum may not exceed 30%.

What are the changes for the so-called "intermediaries"?

Experience has shown that it is difficult for the individual consumer to buy a vehicle abroad. He or she may experience language problems, or may be unfamiliar or uneasy with the commercial environment in another Member State. Past regulations in this sector therefore made room for the consumer to use a representative, known in the jargon as an intermediary. Many of the operators who advertise on the Internet, such as Virgin Cars or OneSwoop, operate as intermediaries. So far, measures adopted by the Commission allow manufacturers to impose restrictions on the activities of these intermediaries, such as a rule that no intermediary is allowed to buy more than ten per cent of a dealer's total sales volume. These rules obviously hamper what is a perfectly legitimate trade, and they will in future be prohibited. The only rule that car manufacturers will be able to impose will be a requirement that the intermediary must produce a mandate from the consumer.

What about sales through supermarkets?

There has been speculation as to whether the Commission ought somehow to compel car manufacturers to sell to supermarkets. In a free market economy, it is the general rule that manufacturers of goods may choose to whom they sell; and it is only in extreme circumstances that a competition authority could intervene to force a supplier of goods or services to sell to a certain individual or class of operator. The Commission acknowledges that such an extreme situation does not currently exist in the motor vehicle sector in Europe. It has accordingly opted for a set of flexible rules allowing manufacturers to choose whether they sell cars also to supermarkets. During the consultation undertaken by the Commission, no supermarket or association speaking on their behalf ever directly expressed a desire to sell cars on a regular basis; and consumers do not appear to be much attracted by the idea of buying a car from a supermarket, according to the Lademann study.

Supermarkets or other stores may always act as intermediaries for consumers, since the rules on intermediaries have been relaxed, and may also establish privileged relationships with dealers all over the Common Market. For instance, "El Corte Inglés" has introduced this model in Spain and may develop it further.

Why not require car makers to sell to pure Internet operators?

The Commission's analysis tends to show that in the longer term alleged benefits for consumers would be outweighed by drawbacks: Internet distributors who sell vehicles exclusively over the Internet could be seen as free-riding on other distributors who have an obligation to invest in a showroom, demonstration vehicles and trained sales staff who give advice to consumers. *[Editorial Note. This is a spurious argument. The essence of "shopping around" is to go to a variety of retailers, some well equipped, some scarcely equipped at all. This is not free riding: it is a matter of choice by the retailer and choice by the consumer.]* Consumers, it might be argued, would take advantage of all of these facilities but would then turn to an Internet dealer for the actual purchase of their new vehicle. In view of these risks and the fact that the Lademann study carried out for DG Competition shows that consumers are not yet much attracted by the idea of buying a car from a pure Internet distributor, it seems - for the time being - inappropriate to compel manufacturers to give them full and unconditional access to distribution networks.

It should be noted however that the new rules make it clear that no dealer who meets the manufacturer's criteria may be restricted as to his ability to sell via the Internet, or in his use of an Internet referral site. The Internet is a low-cost medium and should in the medium term reduce both distribution costs and consumer prices. Internet operators, similarly to supermarkets, could also act as an intermediary for consumers and could establish privileged relationships with dealers all over the Common Market.

Will links between sales and after-sales servicing be in the consumer's interest?

Under the current regime, any dealer member of the network has an obligation to provide for sales and servicing of cars if the carmaker so requires. He cannot currently choose one or the other of the two activities, which restricts his business freedom considerably. Under the new regime, a distributor who wants to specialise in selling cars will have the choice between carrying out after-sales servicing himself or subcontracting it to one or more official repairers which are easily accessible for his consumers. This approach will ensure that the customers of each distributor will be able to turn to at least one official repairer and will be informed by the dealer of the location of this repairer before acquiring the car, and the distance between the sales outlet and the repair shop.

Furthermore, under the new regime, the necessary infrastructure consisting of official repairers, who meet the quality standards of a manufacturer needed for the honouring of warranties and the carrying out of recall operations and free servicing, will exist throughout Europe, just as it does today.

The difference between the new and existing regimes is that some official repairers would in future not sell new vehicles. Already, for example Audi, VW and Ford have a network of official repairers (such as the Audi service centres in

Germany and Belgium or the Ford service outlets) which also carry out this type of repairs. No problems regarding this arrangement have been brought to the Commission's attention. Moreover, under the new regime, independent repairers may qualify to become official repairers if they fulfil carmakers' criteria, which will improve service to consumers and territorial coverage. Also, dealers who have their dealership terminated will be able to stay as official repairers of the make. This will avoid the risk of loss of technical expertise from the market and will help to maintain a dense coverage of service points.

What will be the impact of the new rules in the repair sector?

In addition to all advantages related to the reorganisation of the link between sales and after-sales activity, as explained above, the impact will be significant for independent repairers, and also regarding supply of original spare parts. First of all, every repairer satisfying the manufacturer's criteria may become an official repairer, thereby increasing the number of competing undertakings. Independent repairers, as under the current regime, will still have access to spare parts, but access to technical information, software and reprogramming, tools, diagnostic equipment, garage equipment and training is further broadened. Access to technical information is made more convenient for a specific need, such as the assistance offered by motor clubs and other roadside breakdown services. The principle is that such access must be given on non-discriminatory terms to both the authorised and all other repairers.

Independent repairers, even those qualified that wish not to become authorised repairers, will thus be able to compete on the same level with authorised repairers, thereby allowing them to keep pace with technological evolution. There are currently more than 100,000 independent repairers in the EU: they constitute a considerable competitive pressure towards authorised networks holding 50% market share of all repairs (and even 80% for cars under 4 years). These are impressive market shares justifying stricter conditions on the repair market. Similarly, parts producers will have better access both to the authorised and independent repairer. These producers manufacture 80% of all components and parts of a new car, while the car manufacturer produces only 20%.

Under the new regulation, parts producers will be allowed to place their logo, along with the car manufacturer's logo, on the original spare part sold to the vehicle manufacturer. The part producer could also sell the same part with his own logo without losing the description of "original spare part", either to the authorised repairers or to the independent repairers. Usually those parts are cheaper than the same parts supplied by the vehicle manufacturer. To conclude, the new regulation injects more competition between authorised repairers, between authorised and independent repairers, and between the vehicle manufacturer and the part manufacturer for the supply of original spare parts.

What will be the impact of the new rules on employment?

The regulation is not expected to have any direct discernible net effect on employment in this sector, which is ultimately driven by the profitability of the retail and after-sales markets. Most manufacturers are already implementing programmes to cut costs and rationalise distribution networks in the EC. The trend which began under the current Regulation 1475/95 is expected to continue into the future, with industry analysts predicting that the number of official network dealers will diminish by between 20-25% by 2010, regardless of the competition rules applicable to the sector. The regulation offers former dealers the opportunity to become official repairers within the manufacturers' network.

What is the location clause and how does it function?

The location clause is a provision whereby car manufacturers may control where distributors will establish their sales or delivery outlet(s). Subject to the manufacturer's policy regarding territorial coverage, it also guarantees existing distributors that no other competing distributor will establish close to his own premises any competing sales or delivery outlet. Location clauses restrict competition between dealers of the same brand. They allow for a near-identical reproduction of the current distribution system of motor vehicles under which territorial protection and selectivity are combined. The Commission's evaluation report on the current regime applicable to motor vehicle distribution identified this combination as the main negative restriction hindering substantially competition between dealers. Therefore the new regulation prohibits the use of such location clauses by the manufacturers whenever selective distribution is implemented (where sales are permitted only to final consumers and other authorised members of the network set up by the manufacturer, and therefore prohibited to independent operators).

This applies to both passenger cars and light commercial vehicles. The new regulation provides therefore that existing distributors in a selective system may not be prohibited from opening secondary sales or delivery outlets anywhere in the EU. Such additional premises will, however, have to comply with the manufacturer's criteria for the area concerned so that there is competition on a level playing field between established dealers and potential newcomers.

Under exclusive distribution, the manufacturer keeps de facto a control on the place of establishment of his distributors, as he allocates exclusive sales territories. But under this type of distribution, the authorised distributors are free to sell to independent car resellers (including supermarkets and internet operators) and these independent operators are able to trigger arbitrage between the exclusively allocated territories and across the EU.

Do the new rules apply equally to all motor vehicles?

Although the new rules apply equally for all motor vehicles both for sales and after-sales provisions, manufacturers will be allowed to implement location clauses for trucks, buses and coaches. ■