



Oktober 2009  
AK Position Paper

Future competition law framework applicable  
to the motor vehicle sector

Block Exemption Regulation

## About us

**The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social, educational, economical and consumer issues both, on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.**

**The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.**

### **Organisation and Tasks of the Austrian Federal Chamber of Labour**

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour, social insurance and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 – amongst others unemployed, persons on maternity (paternity) leave, community and military service – of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Herbert Tumpel  
President

Werner Muhm  
Director

## Executive Summary

The Commission recognizes correctly that the motor vehicle industry and its component suppliers currently find themselves in a very difficult situation. One must, however, also take the situation of motor vehicle dealers into account who are interested in transparent and foreseeable regulations. Not least, however, the requirements of the consumers must also be sufficiently considered. They too need legal certainty and blanket supply with warranty and other services.

The employment situation in Austria represents itself as follows: the automobile trade including the repair sector currently employs ca 62,900 persons. All employees working in associated sectors are listed in the table below. A change in the framework conditions for the automobile would also have an unforeseeable impact on the workforce, which is explained in detail later.

Employees in the automobile and associated sectors<sup>1</sup>:

- Motor vehicles and parts 32,600
- Ancillary industry including tyres 37,000
- Garages 26,300
- Automobile trade 36,600
- Accessories trade 10,800
- Production and sale of mineral oil products 20,000
- Motor vehicle insurance 3,000

<sup>1</sup> Source: Estimate Austrian Federal Economic Chamber (WKO) - Association of the Motor Vehicle Industry

In the opinion of AK, the regulations of the current Block Exemption Regulation No 1400/2002 from 31st July 2002 should be maintained. The inclusion of the automobile trade in the general Block Exemption No 2790/1999 ("Umbrella Block Exemption Regulation") for vertical agreements - resp. in its supplementary regulation - is, as explained in the following, regarded with a certain amount of criticism. The time schedule reveals that the trade agreements will come under the "Umbrella Block Exemption Regulation" from 1st June 2013 (in order to guarantee a sufficient transitional period); the repair networks and spare part agreements, from 1st June 2010. The EU Commission also plans that sector-specific guidelines for the motor vehicle trade should complement the Block Exemption Regulation. With regard to repair and spare part agreements, it would be possible to adopt additional guidelines or a sector-specific Block Exemption Regulation.

Concerning the option "Guidelines" we would like to comment already at this stage that these only represent soft-law and as a result exclusively bind the EU Commission. Neither national competition authorities nor national courts are obliged to apply them, although they nevertheless may be consulted as interpretation criteria.

# The AK position in detail

The AK rejects putting a stop to multi-brand dealership.

## 1. Restriction of the option of multi-brand dealership

In accordance with the current Block Exemption Regulation No 1400/2002, the exemption does not apply if the vertical agreement contains obligations, which restricts multi-brand dealership. This is permitted, provided that for reasons of danger of confusion, each brand has been allocated its own showroom. The Commission now proposes that single branding shall be permitted if the market share of the suppliers does not exceed 30 % and if the single branding is valid for a maximum period of five years.

This regulation, which extends the freedom of movement of the motor vehicle industry and the importers respectively, which, however, on the other hand greatly restricts the scope of action of motor vehicle dealers, has to be rejected by the AK. In particular a low market share forces dealers to sell larger quantities in order to sustain a viable business. This, however, means that the number of dealers has to be limited. Hence, consumers not only have fewer motor vehicle dealers to choose from but also longer journey times and a limited availability of automobile services resp. the possibility of negotiating discounts. As a result, the regulation anticipated by the EU Commission means less competition at the expense of consumers.

In accordance with commercial considerations, one can ultimately expect that distribution contracts will in future only be concluded for a period of five years because manufacturers want to stop the option of multi-brand dealership. Whether subsequently a follow-up contract will materialize – permitting a multi-brand dealership – is exclusively at the discretion of the manufacturer. This represents an enormous legal uncertainty for authorised dealers and their employees respectively. What must also be taken into account is the fact that the investments required by the manufacturer in many cases can only be used brand-specifically. If a dealer contract is not extended, these “sunk costs” would be exclusively at the expense of the dealers, without providing them with any further economic perspectives.

The EU Commission points out that manufacturers – in order to avoid copycats – have adjusted their quality standards for franchised dealers, as a result of which dealers incurred investment costs, which meant that their margins were reduced. In any case, the EU commission did not check whether the increase of quality standards and associated with it a restructuring of the dealer networks were not carried out for reasons of market compartmentalization. Just as little as it has been checked whether the consumers, who in the end have to bear

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these costs, would at all benefit from (“excessive”) higher quality standards. AK works on the assumption that consumers have not benefited at all, but on the contrary were put under strain by the excessive quality standards required by manufacturers.

Putting a stop to multi-brand dealership is therefore rejected both from the point of view of consumers as well as from the point of view of the workforce.

## 2. Protection of market internal competition

A review of the market by the Commission has shown that dealers have not taken up the option of completely specialising in distribution and outsourcing maintenance and repair services.

In Austria, uniform price fixing exists in form of recommended list prices for all manufacturers’ brands. Although discounts can be negotiated on an individual basis, the margin is very limited. According to dealers’ statements, the sale of new cars alone does not generate any noteworthy profits. Only based on the service intervals, recommended by the manufacturer, which are required to maintain the warranty as well as the inspection intervals prescribed by legislator, dealers make a profit in the downstream service and maintenance market. This means that it is possible only in this unit to make a profit. It is therefore quite understandable that the maintenance and service sector is not outsourced. The new vehicle business and the service and maintenance sector are therefore inseparably linked.

The EU Commission also points out that the number of additional selling points has not increased, which would confirm that this offer has not been accepted by motor vehicle dealers. In particular the location clause of the current Block Exemption Regulation may from the point of view of competition result in a revival of the market. The reasons why this option has not been accepted by the motor vehicle dealers should in any case be examined in greater detail.

In the opinion of AK, the location clause is an essential component part of a subsequent Group Exemption Directive. It should also be noted that this clause only came into effect on 1st October 2005 and that this time interval is too short to conduct any evaluation.

However, starting from these commercial considerations, the option pursuant to Article 4 Section 1 lit h of the current Block Exemption Regulation to render these services exclusively as permitted maintenance and repair services (without associated sale of new and second hand vehicles) has to be regarded as a significant advantage. By including the sale respective the service of motor vehicles in the general Block Exemption for vertical agreements, this regulation would be done away with and it would be once again at the discretion of the car manufacturers whether they would include franchised workshops or garages into their network without the selling aspect. This would mean for consumers that their choice would be reduced and for employees working in these

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workshops that they no doubt would lose their jobs.

### **3. Protecting the competition between independent and franchised workshops**

It must be welcomed that the EU Commission supports the effective protection of the competition between independent and franchise workshops. Normally, independent garages and fast repair chains offer lower prices whilst maintaining the same quality. The reality, however, is that the market share of independent workshops or garages only increases when a vehicle gets older. In case of vehicles between 0 to 4 years owners are far more inclined to use the services provided by the franchise workshop. Whether this is also in connection with a fraudulent warranty practice is not known. The willingness of customers to use reproduction or second hand spare parts for a repair does definitely exist. Franchise workshops, however, often only offer reproduction spare parts if customers explicitly ask for them.

The way, planned by the EU Commission, however, does not appear to be well suited to provide effective protection. In particular the core restrictions of the current Block Exemption Regulation guarantee fair framework conditions. If these regulations (denying independent workshops access to technical information, diagnosis and other equipment and tools) are no longer definitively included in a regulation, years of disputes – eventually with the interpretation monopoly of the

European Court of Justice – would not result in a revival of the competition. Regulation No 715/2007, which provides for the passing on of technical information of models, which enter the market after 2009, is no replacement for a relevant regulation in a Block Exemption Regulation. Any infringement, can – apart from the withdrawal of the exemption – also result in imposing a fine, whilst the sanctions pursuant to Regulation 715/2007 “only” permit the authority to impose an administrative penalty.

### **4. Prevention of a closing motor vehicle after-markets for spare part manufacturers**

As already described under Item 3, the market penetration for reproduction spare part manufacturers, which also include producers of “qualitatively equivalent spare parts”, in particular in the sector of “younger” motor vehicles, does still not exist to a relevant extent. This means that consumers are not yet able to benefit to the extent required from lower priced spare parts. In accordance with the current Block Exemption Regulation, obstructive practices, which restrict access to reproduction spare parts do represent core restrictions, which are in their capacity as intentional restriction of competition not permitted under any circumstances. Die EU Commission is now planning to subsume this market too under the general vertical Block Exemption Regulation. Any restriction of competition on the spare part market should therefore in future be subjected to a case-by-case review. As a result

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of consumer points of view AK does strictly come out against this.

### **5. Provisions of the Consumer Protection Act**

The Block Exemption Regulation 1400/2002 currently provides for provisions under civil law resp. consumer protection regulations. In the opinion of the EU Commission it is very difficult to include contractually agreed protective measures in a future scope of competition law. Provisions, which first and foremost serve another objective than the protection of fair competition, should be regulated by national contract law.

In accordance with the current Block Exemption Regulation for selling motor vehicles, vertical agreements must oblige licensed workshops to provide warranty, free of charge customer service and customer service within the scope of product recalls for each vehicle of the branch affected sold in the Common Market. Apart from that, workshops associated with the network of the supplier are obliged to carry out maintenance and repair works independent from the point of sale of the vehicle in the Common Market.

This safeguarding provision is not included in the general "Umbrella Block Exemption Regulation". Apart from the civil law component, this regulation also enhances the option of the consumer to purchase motor vehicles in the Common Market, which enables him to benefit from the currently still

existing price differences. A discontinuation of the regulation on warranty and guarantee means that consumers can only assert their rights at the relevant "point of sale", which in turn leads to a restriction of competition and cross-national trade.

The relevant request of consumers to solve this under civil law fails because of the cross-border component.

AK therefore also rejects an expiration of this regulation.

AK asks that this argumentation will be considered in further negotiations and finally once again draws attention to the fact that the Commission proposal on the one hand puts a great number of jobs at risk and that no advantages for consumers are apparent on the other. On the contrary, if these proposals are implemented one can expect a massive restriction of competition.

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