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Complaints against BMW and General Motors regarding contractual standards required from their dealers and repairers - questions and answers

(see also [IP/06/302](#) and [IP/06/303](#))

What are the main issues the Commission took up against BMW and General Motors?

These cases raised new policy issues under the motor vehicle block exemption Regulation 1400/2002¹ and, in essence, aimed at removing (i) unjustified obstacles to multi-brand distribution and servicing, and (ii) unnecessary restrictions on garages to become members of the authorised networks.

On multi-branding, Regulation 1400/2002 requires that authorised dealers of one brand may not be unduly restricted in exercising their choice to sell cars of another brand. They should be able to do so, if they wish, by using their existing facilities in order to avoid inefficient duplications of investments and to improve their economies of scale and scope. Spreading the costs of premises, equipment, staff, etc. over more than one brand may indeed be an effective means to reduce operating costs (per unit) and thus to mitigate the effect of increased investment requirements. This should benefit consumers both in terms of more competitive conditions and innovative forms of sales and after-sales services.

On the second point, all repair-shops who fulfil the necessary quality standards can become members of the authorised networks without being subject to quantitative exclusionary criteria or other requirements that are not indispensable to ensure high quality services. As a result, market forces can determine the location and number of repair outlets in accordance with local demand, and consumers can benefit from qualified after-sales services in their proximity and more competition between authorised repairers.

Which brands are concerned?

The BMW case concerns the brands BMW and Mini. The General Motors (GM) case concerns Opel, Vauxhall, Saab and Chevrolet. However, the solutions found in these cases will serve also as guidance on the application of Regulation 1400/2002 for the vehicle distribution sector in general.

¹ Commission Regulation (EC) No 1400/2002 of 31.7.2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector, OJ L 203 of 1.8.2002.

Is it likely that there will be further cases on similar issues?

In the BMW and GM cases, the Commission clarified a range of novel questions of law under Regulation 1400/2002. The Commission trusts that these clarifications provide the necessary guidance to the sector and enable national competition authorities and courts to deal with similar matters appropriately. National competition authorities and courts, in the meanwhile, have also acquired considerable experience in the application of Regulation 1400/2002. Issues arising primarily in a national context should be dealt with, in general, by national competition authorities and courts which are fully competent to apply and enforce EC competition law.

What exactly have BMW and GM done in order to comply with Regulation 1400/2002 as regards enhancing dealers' opportunities to sell new cars of competing brands?

Both carmakers have dispelled a number of ambiguities in their existing contracts so that dealers know their contractual rights and obligations should they opt for a multi-brand retailing format. In particular, BMW and GM have clearly communicated to their respective networks that they accept the joint and non-exclusive use of all facilities other than the part of a showroom which is dedicated for the sale of their brands. Reception counter, customer area, back office can be set up in a brand-neutral manner. In addition, both carmakers explicitly recognise the principle of co-existence of competing brands as regards their respective trademarks, distinctive signs or other corporate identity elements to be displayed in and outside the dealership premises. In addition, they have accepted to allow their dealers to use generic (multi-brand) informatics infrastructure and management systems, including accounting methodology and accounting frames, provided that such systems have equivalent functionality and quality as the solutions recommended by BMW and GM. As regards in particular GM, its contracts were adjusted so as to ensure that "sales targets" and "performance targets" do not restrict dealers in their capacity to sell competing brands. GM also clarified that its dealers can set up multi-brand internet sites and that GM trained sales personnel can also be used for selling cars of other brands while no GM-specific training is any longer required in respect of staff entrusted with the sale of competing brands.

Further obstacles to authorised dealers opting for multi-brand distribution related to the various reporting and auditing obligations of dealers, which were detailed and wide-ranging. Both BMW and GM clarified that these obligations do not extend to commercially sensitive information on dealers' business activities with products of competing suppliers.

What are the details of the solutions regarding "sales targets" and "performance targets" and what are their implications for multi-brand dealers?

A major concern of the complainants in the GM case related to the method of setting sales targets and evaluating dealer performance. One of the performance measures for dealers was based on the comparison of a dealer's local market share with the brand's national market. GM recognised the potential deterrent effect of such a mechanism on multi-brand dealers, and clarified that this mechanism will not be used to sanction dealers. In addition, GM has provided that the sales targets will be mutually agreed with dealers and will be set taking into account possible changes of local market conditions and the individual business circumstances of the dealer. A review of annual sales targets is therefore possible when a GM dealer decides to sell an additional competing brand from its premises. Such targets are subject to arbitration in the case of dispute.

Did the Commission also look at potential obstacles to multi-brand distribution resulting from obligations imposed by carmakers to display a minimum number of their cars in the dealer's showroom?

Yes, in the BMW case, the Commission also investigated whether the requirements as to the minimum number of cars a dealer must display could produce effects amounting to an indirect non-compete obligation within the meaning of Regulation 1400/2002. Market data revealed however that, for the large majority of authorised BMW dealers in the countries investigated², the BMW contracts left significant free capacity for dealers to use their existing showroom to display also cars of another brand. In particular, the group of BMW dealers that have insufficient showroom space available for other brands is largely composed of *smaller* BMW dealers and represent less than half of the current BMW network of dealers in any Member State investigated. For these smaller dealers, the contractual minimum standard requires only 3-4 display cars. In a context where quantitative selective distribution and obligations aiming at an even and effective representation of a range of the carmaker's models across markets are block exempted, the Commission did not consider this requirement to be an indirect non-compete obligation. Showrooms below a certain size may in certain cases simply not be suitable for displaying a representative range of cars by more than one brand, without additional investment.

What has the Commission required to remove obstacles for newcomers to enter the BMW and GM repair networks and/or to authorised repairers who wish to service cars of competing brands?

Regulation 1400/2002 block exempts from the EC Treaty's competition rules only contractual standards which are objectively necessary to achieve high quality repair and maintenance services (i.e. qualitative criteria). BMW and GM have removed all quantitative criteria (such as minimum turnover targets and minimum throughput capacity requirements) from their repairer contracts. In particular the BMW contracts contained an incremental scale of minimum capacity requirements in terms of work bays, equipment, stock and warehouse capacity, depending on the local BMW car park. Such requirements, which were based on the potential local demand rather than on the actual demand of each repairer (e.g. based on work order history), implied that any new entrant was required to set up service capacities duplicating those already operated by existing authorised repairers. This entailed investments in redundant capacities such as to deter the entry of new competitors into the authorised repairers' network. BMW now merely requires that each authorised repairer has a minimum of three mechanical work bays (and corresponding equipment) in order to ensure high quality service.

² The investigation focussed on a representative group of EU Member States, namely those where BMW achieves more than three quarter of its total car sales related wholesale turnover (in terms of value and volume) and where therefore the impact on consumers can be expected to be strongest. These countries are Germany, France, Italy, Sweden and the UK.

In addition, BMW and GM introduced an 'opening clause' to their servicing contracts to enable their authorised repairers to source all repair equipment, including tools and IT hardware and software from suppliers other than those designated by BMW and GM, provided that the competing products are of equivalent functionality and quality. This not only helps authorised repairers to keep their investment costs within the limits of what is objectively required to provide good quality service, but also allows authorised repairers to purchase – where available – *generic* tools, equipment and informatics infrastructure that can be used for servicing cars of different brands thus avoiding inefficient duplication of investments for multi-brand repairers. GM also removed doubts as to the possibility to use any workshop facilities or equipment for servicing cars of competing brands and reduced the number of special tools that authorised repairers must constantly hold on their premises.

Finally, BMW and GM have accepted that authorised repairers do not have to have their own warehouses on site in all countries. Authorised repairers may only be required to keep stocks of so-called "over-the-counter-parts" at their premises which are frequently demanded by customers. These clarifications and adjustments open the way for more efficient cooperation between repairers including joint purchasing and joint warehousing of spare parts. This can contribute to freeing up both physical and financial resources for the sourcing of competing spare parts, enhancing wider consumer choice.