

Opinion of the Economic and Social Committee on the 'Evaluation Report on motor-vehicle distribution and sales and after-sales service in accordance with Regulation (EC) No 1475/95 (Additional opinion to the opinion on the XXIXth Report on competition policy)'

(2001/C 221/23)

On 23 January 2001 the Economic and Social Committee, acting under the second paragraph of Rule 23 of its Rules of Procedure, decided to draw up an opinion on 'the Evaluation Report on motor-vehicle distribution and sales and after-sales service in accordance with Regulation (EC) No 1475/95 (Additional opinion to the opinion on the XXIXth Report on competition policy)'.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 May 2001. The rapporteur was Mr Regaldo.

At its 382nd plenary session (meeting of 30 May 2001), the Economic and Social Committee adopted the following opinion by 83 votes to 22 with eight abstentions.

1. Introduction

1.1. In accordance with Article 11 of the Commission's Regulation (EC) No 1475/95⁽¹⁾ of 28 June 1995 on the application of Article 81(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements, the European Commission has drawn up a report⁽²⁾ intended to provide a full evaluation of the effects of implementing the Regulation, with special reference to the impact of the exempted agreements on the price differentials of new motor vehicles between different Member States and on the quality of service offered to consumers. The report also takes account of the two communications which supplement it and clarify certain points of the regulation: Communication on Regulation (EEC) No 123/85⁽³⁾ and Clarification of the activities of motor vehicle intermediaries⁽⁴⁾.

1.2. The report represents the initial stage of the process through which Community decisions will need to be taken on the future legal regime applicable to motor vehicle distribution agreements following the expiry of the current exemption Regulation (CE) No 1475/95 on 30 September 2002.

1.3. The report is divided up essentially into three main chapters covering:

- current Community rules on motor vehicle distribution agreements;
- the current structure and most recent developments in the sector;
- analysis of the restraints allowed by Regulation (EC) No 1475/95 in relation to the situation and competitive forces operating in the sector.

2. Legal framework for motor vehicle distribution and after-sales service

2.1. Agreements between enterprises which prejudice trade between Member States and limit competition are forbidden under Article 81(1) of the Treaty. However, under Article 81(3), when the four conditions laid down are met, the Commission can stipulate in individual cases or by regulation that the prohibition in paragraph 1 is not applicable to any specific agreement or category of agreements between enterprises.

2.2. The first decision on exemption of agreements for motor vehicle distribution and related after-sales service was taken by the Commission in 1974 in the so-called BMW case.

This decision was a point of reference for subsequent legislation on the subject, since the Commission, by authorising in accordance with Article 81(3) the exclusive and selective form of distribution practised by the manufacturer, was taking into practical account the socio-economic aspects closely connected with the nature of the motor vehicle product, and not just purely legal aspects, thus acknowledging that this form of distribution was sufficiently in the public interest to be authorised.

2.3. The main principles of the BMW decision, which are still valid today, were taken up and incorporated in subsequent sectoral block exemption regulations on the distribution of motor vehicles and related services for assistance to customers: Regulation (EEC) No 123/85, which came into force on 1 July 1985 and remained valid until 30 June 1995, and the current Regulation (EC) No 1475/95, which came into force on 1 July 1995 and is valid for seven years — up to 30 September 2002.

2.4. With Regulation (EEC) No 123/85, covering distribution and service agreements of a selective and exclusive type, the Commission sought on the basis of the BMW decision to find a necessary and reasonable compromise among the plethora of interests involved:

⁽¹⁾ OJ L 145, 29.6.95, p. 25; ESC Additional Opinion OJ C 133, 31.5.1995, p. 27.

⁽²⁾ COM(2000) 743 final of 8.11.2000.

⁽³⁾ OJ C 17, 18.1.1985.

⁽⁴⁾ OJ C 329, 18.12.1991.

- those of consumers, interested in being able to obtain new vehicles and after-sales services, as well as quality products and related guarantees, throughout the territory of the European Union at competitive prices;
- those of the European motor vehicle industry, interested in preserving the brand image by externalising the distribution function in a rational and efficient way, and in increasing their own level of competitiveness on the world market;
- those of dealers, interested in meeting their obligations to customers in the best possible way — supply of new vehicles, spare parts and pre-sales and after-sales service — and in having a favourable framework for a return on the investments which they must make to carry on their activity, as well as in preserving their economic independence;
- those of spare-part manufacturers, interested in access to dealers' networks and in preserving their research and development potential in the EU;
- those of independent repairers, interested in the availability of spare parts to be used only for the repair and maintenance of vehicles.

2.4.1. The essential restrictions included in the agreements to achieve these objectives met the four conditions laid down in Treaty Article 81(3), and were designed to achieve rationalisation and hence a better distribution of motor vehicles and a better after-sales service. These restrictions enabled the manufacturer to bind the distributor *inter alia* to the following obligations:

- not to sell motor vehicles which compete with those covered by the contract;
- to sell only to final consumers or other dealers in the network;
- not to seek customers outside their contract territory;
- not to make active sales outside their contract territory;
- not to sell or use spare parts which compete with those of the contract or which are not of matching quality;
- to provide contractual products exclusively for final users or authorised resellers forming part of the manufacturer's distribution networks;
- to provide services to assist the consumer.

2.4.2. To protect the interests and economic independence of distributors, the following provisions were laid down:

- a ban on inhibiting the distributor's freedom to determine prices, discounts and reductions for the sale of products covered by the contract;
- a requirement for agreements to have a minimum duration of four years or to be of indeterminate duration with a notice of termination of at least one year.

2.4.3. The benefit of exemption could be revoked in four specific cases:

- lack of competition;
- barriers to parallel trade and hence to integration of the markets;
- excessive differences of price attributable to the Regulation;
- unjustifiable prices or discriminatory conditions.

2.5. The Economic and Social Committee endorsed this Regulation in an opinion adopted during the plenary session of 28 and 29 September 1983⁽¹⁾.

On that occasion, the Committee, while recognising the need for a specific block exemption system for the motor vehicle sector for both selective (qualitative and quantitative) distribution and exclusive distribution, noted in particular positive effects on the intensity of inter-brand competition at that time in the EEC, and stressed how important it was to ensure a good balance between the reciprocal rights and obligations of the parties, in the interests of competition and consumers.

2.6. On the expiry of Regulation (EEC) No 123/85, the Commission adopted a new block exemption system, Regulation (EC) No 1475/95, essentially based on the fundamental principles of the previous regulation in terms of exclusive and selective distribution, but including profound changes with regard to: improving the internal market for motor vehicles and intensifying competition at the distribution stage; achieving a better balance between the parties by allowing distributors greater independence of manufacturers and by giving producers and independent distributors of spare parts easier access to the markets; increasing the consumer's range of choice.

2.7. The main changes and essential objectives of Regulation (EC) No 1475/95 were aimed at:

⁽¹⁾ OJ C 341, 19.12.1983, p. 18.

2.7.1. Ensuring the efficiency of motor vehicle distribution and related services to the advantage of the consumer, and the existence of effective competition between manufacturers' distribution networks (interbrand) and within them (intra-brand).

2.7.2. Further broadening the consumer's choice in accordance with the principle of the single market, through:

- arbitrage between markets through parallel imports;
- active promotion of the sale of new motor vehicles outside the contract territory through advertising, provided that it is not personalised advertising;
- an obligation on dealers to provide assistance and repair for any vehicle sold by another enterprise in the network;
- offering independent producers and distributors of spare parts the possibility of easier access to markets.

2.7.3. Strengthening the independence of the dealer in relation to the manufacturer, and increasing competitiveness through:

- allowing the dealer to sell other competing vehicles in different premises (multi-marketing);
- allowing the dealer to become involved in any form of marketing except for sales to non-authorised resellers;
- prohibiting the manufacturer from unilaterally changing the status of the dealer or the contract territory.

2.7.3.1. With a view to strengthening the economic independence of the dealer, the Regulation lays down:

- an extension from four to five years of the duration of the agreements, and an extension from one to two years of the minimum period of notice for agreements of indeterminate duration, in order to safeguard investments more effectively;
- reference to a third independent expert or an arbitrator in the absence of agreement between manufacturer and dealer on the objectives of sales, the size of stocks and the number of demonstration vehicles.

2.7.4. Increasing competition in the market for customer services through:

- giving authorised dealers the right to acquire from third parties spare parts of equivalent quality to the original parts;

- giving independent spare part producers the opportunity to supply such products to dealers of their choice;
- giving independent repair workshops the opportunity to obtain from the manufacturer the necessary technical information for the repair of motor vehicles (apart from information covered by an intellectual property right or which constitutes confidential know-how).

2.8. The Committee also endorsed⁽¹⁾ the new Regulation (EC) No 1475/95, stressing that it was convinced that the effects would benefit manufacturers, spare part producers, distributors and consumers.

In particular, the Committee stressed the positive role of arbitration, welcomed the extensions of prohibited clauses, emphasised the need to harmonise legislation on intellectual property, and the need to update the Communication of 12 December 1984 on Regulation (EEC) No 123/85 and the Communication on the Clarification of 18 December 1991 on intermediaries, to make them more compatible with the regulation.

3. References to the new Community rules on vertical restraints

3.1. The European Commission has carried out a far-reaching review of competition policy with regard to vertical restraints by adopting Regulation (EC) No 2790/1999⁽²⁾ of general scope and the Communication on guidelines, which constitute the instrument for interpreting the policy.

3.2. The Regulation replaces the Commission's existing exemption regulations on exclusive distribution agreements (Regulation (EEC) No 1983/83)⁽³⁾; on exclusive purchases (Regulation (EEC) No 1984/83)⁽⁴⁾; on franchising (Regulation (EEC) No 4087/88)⁽⁵⁾; and also includes selective distribution, previously excluded from the exemption regulations.

3.3. Although the Commission has specified from the start that these rules did not concern the motor vehicle sector — a view strongly supported by the ESC in its relevant opinions — it cannot be ignored that the review of the specific vertical agreements regime envisaged by Regulation (EC) No 1475/95

⁽¹⁾ OJ C 133, 31.5.1995, p. 27.

⁽²⁾ OJ L 336, 29.12.1999, p. 21; ESC opinion OJ C 116, 18.4.1999, p. 22.

⁽³⁾ OJ L 173, 30.6.1983, p. 1.

⁽⁴⁾ OJ L 173, 30.6.1983, p. 5.

⁽⁵⁾ OJ L 359, 28.12.1988, p. 46.

will have to be looked at in relation to the new legal context brought about by the reform of the Community policy on vertical agreements.

3.4. The new Regulation (EC) No 2790/1999, in order to guarantee sufficient arbitrage channels between non-integrated markets, lays down that the block exemption is not applicable to agreements which impose on the purchaser a ban on active sales together with a ban on sales to intermediaries or unauthorised resellers.

Moreover, the new regime reserves the right for the Commission to declare (through a regulation) that the exemption is inapplicable in situations where networks of parallel vertical agreements cover more than 50 % of the market.

These provisions, together with the lack of any safeguards for SMEs and the absence of minimum provisions for the ending of contracts and for recourse to arbitration — as repeatedly stressed by the ESC in its opinions on the new regime — give rise among other things to serious problems involving the compatibility of motor vehicle distribution agreements — given their nature and widespread occurrence — with the principles and obligations of the new Community rules on vertical agreements.

4. What is at stake for the European motor vehicle sector

4.1. The specific Community rules for the motor vehicle sector, based on the concept of exclusive and selective distribution, have represented for more than 25 years the basic prerequisite for the European motor vehicle system, characterised by a closely integrated and highly competitive chain of production and distribution by brand, which the manufacturers establish with selected partners on a basis of joint plans — component and spare part suppliers upstream, and the distribution and service network downstream of the production stage.

4.2. As a whole, the European system is made up of more than 120 000 firms (98 % of them SMEs in the distribution system) which employ 3 900 000 people (of whom 1 500 000 in the distribution networks), with an annual turnover of approx. EUR 400 billion.

4.3. The European Union produces 16,5 million motor vehicles per year with guarantees ranging from one to three years. A two-year guarantee will become mandatory from 1 January 2002 when Directive 1999/44/CE on the sale of consumer goods and associated guarantees comes into force. Moreover, the 200 million motorists in the European Union are guaranteed the availability of spare-part supplies, servicing

and repairs throughout the territory of the Union, in line with a business-management approach based on quality standards, the constant pursuit of customer satisfaction (CSI), long-term continuous staff training and the adoption of advanced computerisation and communication techniques.

4.4. These significant socio-economic data are complemented by others which help to describe the sector further: the vehicles have implications for individual safety and the integrity of the environment, require both regular and irregular repairs and servicing, and must meet strict technical and environmental standards.

For many people buying a vehicle represents the second most important investment in the course of their lives, and it is estimated that EU citizens spend about 13-15 % of their family budget on their vehicles. All these factors go to make up the challenge which the European motor vehicle system must continually face to meet the needs of all the interested parties and especially those of consumers.

4.5. In this context, larger vehicles for the transport of people and goods by road — industrial commercial vehicles and buses — represent a strategic component both for society and for the economy of the European Union; here the final customer is a professional operator with commercial objectives.

4.6. The Committee therefore calls upon the Commission to consider the question thoroughly, taking all these aspects adequately into account, before setting about the definitive reform of the current Community rules on motor vehicle distribution.

5. General comments

5.1. The Commission's evaluation report on the application of Regulation (EC) No 1475/95 on agreements on motor vehicle distribution rightly demonstrates — by its size and the scale of the analyses carried out — the importance attributed to this important, sensitive sector of the European economy. The Committee congratulates the Commission on this useful piece of work.

5.2. Although it does not have the aim of sketching out proposals on the situation which will follow the expiry of the current regulation, the report still represents a starting and reference point for the Commission's subsequent work on the subject.

5.3. In this connection, the Committee would point out the lack of a summary table of final conclusions on the aspects of the current Community rules on motor vehicles which the Commission regards as most relevant in terms of safeguarding competition and integrating markets.

5.4. It would also have been desirable to draw a distinction between the restraints expressly allowed by the Regulation (such as territorial exclusivity and the ban on sales to independent resellers) on the one hand, and those restraints which result from the practices of operators which violate the limits laid down in the regulation for the applicability of exemption (such as barriers to passive sales to final consumers, or transactions between authorised dealers, relating to the location of those consumers or dealers within the Community territory).

5.5. In general terms, the report shows that the set of rules on selective distribution laid down in the Commission's anti-trust legislation has made it possible, over the past 25 years, for the European motor vehicle industry to restructure itself and become more competitive in relation to global challenges by optimising the production system (lean production, robotics, the 'just in time' approach) and the distribution system through restructuring and ever closer integration with the sales network (lean distribution).

5.6. The preservation of a strong brand image — a basic factor for confronting the global interbrand challenge — and joint responsibility of producers and distributors for meeting the growing quality and safety requirements imposed by the EU directives and regulations in the field, have been made possible precisely through the presence of an exclusive and selective regime in motor vehicle distribution.

5.7. Thus the exclusive and selective distribution regime seems to have enabled the European motor vehicle system to meet the requirements of Treaty Article 81(3) which allows for the authorisation of any agreement or category of agreements between undertakings 'which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit'.

5.8. Moreover, the Commission, strongly supported in this by the Committee, acknowledged in Regulation (EC) No 2790/1999 on vertical restraints that exclusive and selective vertical distribution systems are not only important for the economy but ensure incremental benefits for the consumer.

5.9. In support of the link between exclusive and selective distribution and the automobile sector, the Committee notes that the report shows how the distribution system in the USA is largely comparable to the European one in its practical operation. The Committee would also point out that a feature of the legislative framework in the USA, which is made up of the separate laws of the individual states, is that it is mandatory and not optional as in the EU, and that it views the economic protection of dealers vis-à-vis manufacturers — in terms of both termination of contracts and the requirement that sales be made through the network — as a necessary means of guaranteeing consumer protection.

5.10. As regards the balance between the parties concerned and the benefits for the consumer, the report brings out the fact that, despite the improvements provided by Regulation (EC) No 1475/95, the economic independence of the dealer is still very limited in relation to the producer, and this has effects on the extent to which the consumer's needs can best be met.

5.11. In this connection, the Committee reiterates what it has repeatedly stressed in earlier opinions: the need for future rules in this field to provide effective protection for dealers, by seeking a better balance in the contractual and economic position of the SMEs in the networks through extending as widely as possible the scope of action of the expert or arbitrator in all aspects of the contractual relationship, with special reference to the ending of contracts.

6. Specific comments

6.1. Introduction

6.1.1. The Commission's report⁽¹⁾ makes it clear that the main aims of Regulation (EC) No 1475/95 have been to ensure that motor vehicle distribution takes place in an efficient way to the benefit of the consumer and that effective competition exists between manufacturing systems (interbrand) and within each system (intra-brand). Related to this are the aims of improving choice to the consumer on the internal market and improving the possibilities of parallel trade. A further aim has been to strengthen the dealer's independence from the manufacturer.

6.1.2. The Report indicates that there is currently reason to believe that interbrand competition in the field of motor car sales is effective in the European Union (Report Conclusion 6.1.1.4). The Committee considers that this is also an important background economic fact to the consideration of

⁽¹⁾ COM(2000) 743 final of 8.11.2000.

the degree of intrabrand competition. Prices have been falling consistently over the last five years, and this has been matched by progressive improvements in vehicle technology in terms of greater safety, and by a reduced environmental impact. Distribution has also improved, with greater attention paid by manufacturers and dealers to providing increasingly effective and widespread services. Dealer networks have seen customer satisfaction indices rising constantly.

6.1.3. On the other hand, the Report suggests that there are important questions about the effectiveness of intrabrand competition, as evidenced by the complaints to the Commission and the Commission's own investigations (see Report p. 55 and Annexes III and IV). Here, the Committee believes that the Report focuses too much on the situation in the British market, where there is a risk that factors unrelated to competition policy (tax, currency) might lead to over-hasty conclusions about a system which has functioned well in the rest of the Community market. In addition, the number of complaints (a yearly 200/300 letters for the United Kingdom and 50/60 from other European consumers) represent a modest percentage of the 16 million cars sold every year in Europe, and put the allegation that intrabrand competition is not functioning into proper perspective.

6.2. *The effectiveness of intrabrand competition*

6.2.1. There are two important contributing factors that should be considered here: the legal framework and the producers' commercial controls over the dealers.

6.2.2. The legal framework for intrabrand competition

The main legal provisions introduced into Regulation (EC) No 1475/95 to improve intrabrand competition and the possibilities for parallel imports consist of:

- the entitlement of dealers to actively promote the final sale of new vehicles to final customers — either directly or through an intermediary — outside their contract territory by advertising, as long as they avoid personalised advertising [Article 3(8)(b)];
- the entitlement of dealers to sell to other dealers belonging to the same network;
- the obligation that dealers must carry out maintenance work on vehicles sold by another dealer within the distribution network [Article 5(1)(1)(a)];

- the prohibition of making dealer remuneration dependent on the final destination of the vehicle [Article 6(1)(8)];
- at the same time, however, the Regulation continues to allow manufacturers to prohibit dealers from selling to non-authorised or 'independent' resellers [Article 3(10) and (11)].

6.2.3. Taken as a whole, these legal rules appear to offer a promising basis of legal support for intrabrand competition and parallel imports. The main vehicle for intrabrand competition under the present arrangement seems to be the intermediaries who act on behalf of consumers.

6.2.4. The main legal provisions inserted to strengthen the independence of dealers consist of:

- a reduction in the scope of the non-compete clauses. Dealers can now 'multi-market' under certain conditions [Article 3(3)];
- dealers are allowed to use a common workshop for the servicing of all makes they sell;
- manufacturers are unilaterally prohibited from modifying the status of the dealer or the allotted territory [Article 6(1)(5)];
- distribution agreements with a fixed duration must have a minimum duration of 5 years; and
- distribution agreements of indefinite duration must have minimum notice period of 2 years;
- sales targets and inventory requirements have to be agreed on and independent arbitration is provided for disagreements.

6.2.5. Taken as a whole, these legal rules seemed at the time of the Regulation to be a promising legal basis for improved dealer independence. However, they must be evaluated in the light of the commercial relationship between the car producers and the dealers.

6.2.6. The commercial manufacturer-dealer relationship

In practice, the Report suggests that there are certain features of the commercial relationship between manufacturer and

dealer which inhibit intrabrand competition and reflect continued dealer dependence.

6.2.6.1. The manufacturers remunerate dealers using a system of year-end bonuses which are not based on fully predictable criteria and this discourages lateral sales as well as reinforcing dealer dependence (Report paragraph 257). The Committee would point out that more predictable sales policies on the part of manufacturers might allow dealers to be more flexible in implementing a prices policy designed to increase intrabrand competition.

6.2.6.2. The lack of quantity or volume discounts and narrow margins reduce the scope for dealers to set different prices (Report paragraphs 182 and 265). This limits intrabrand price competition to a certain extent (Report paragraph 182), though it does not prevent other forms of intrabrand competition such as competition based on quality of service (Report paragraph 181).

6.2.6.3. In practice the 'agreement' of sales targets by manufacturers and dealers is based on national sales targets, in practice fixed by manufacturers, which leave little scope for sales to intermediaries, particularly if the targets are combined with a limited product allocation.

6.2.6.4. In practice, the arbitration option is little used. Yet the Report concludes that the possibility of such recourse generally contributes to more serious and balanced negotiations between dealers and manufacturers. The Committee would be in favour of a wider basis for arbitration as a way of improving dealer independence.

6.2.6.5. Multi-marketing, though allowed under the Regulation, is rare in practice except in Northern Europe (Report paragraphs 208-210). This suggests that one theoretical avenue to dealer independence is not being taken. The Committee wonders whether the rarity of multi-marketing is not due in practice to the high structural, management and training costs, particularly in the case of general, broad-reach brands. Except in the case of brands belonging to the same group, multi-marketing is more common where it is to offer a full range of vehicle types or involves complementary products not offering direct competition.

The Commission report takes no account of the type of multi-marketing practised by holding companies controlling a number of dealers in different brands.

6.2.6.6. The threat of termination appears to continue in practice to give power to the manufacturer, particularly in a situation of fewer dealerships where loss of a dealership with a major car manufacturer could mean no prospect of another dealership with another major car manufacturer (Report paragraph 253). The longer periods of security given to the dealer by Regulation (EC) No 1475/95 do not in practice seem to have increased dealer independence.

6.2.6.7. There is evidence of growing concentration, with fewer dealers and larger contract territories (Report paragraph 91). This could add to the risk of reduced intrabrand competition unless it is compensated for by more extensive publicity and Internet use. The Committee stresses that while Internet use cannot be finally assessed, as it is only in its infancy, it has shown its worth as a means of information, but has also shown its limits as a means of direct sales. This is due to the complex nature of motor vehicles and, among other factors, to commercial practice which very often involves disposal of an older vehicle at the same time as acquisition of a new one.

The Committee would also emphasise that this type of Internet use is considered to constitute passive sales under the guidelines on the vertical restraints regulation. If, as seems probable, the same applies to the regulation on motor-vehicle distribution, then intrabrand competition will be boosted.

6.2.6.8. Price differentials remain across Europe for the same makes and models. One of the main causes are tax differences. Another is currency fluctuations. Other influential factors are the manufacturer's historical presence on a national market, distribution and transport costs (Report paragraph 189). The Committee believes that a closer alignment of taxes (tax and VAT levels) and the introduction of the euro should generate greater transparency and reduce price disparities across the Community market.

6.2.6.9. Delivery times particularly for intrabrand orders between member states are frequently longer for foreign buyers than for national buyers (Report paragraph 200). The Committee would agree with the Commission that some method should be found to end this practice of delayed deliveries for inter-state orders, where no reasonable cause is given for such delays.

6.2.7. The Committee would like to recall the fact that a considerable degree of intrabrand competition exists, given the fact that more than 30 % of the dealer's sales (sometimes rising

to 60 % in metropolitan areas) are to consumers outside the contract territory assigned to him. Moreover, the level of intrabrand competition could be significantly increased through a reasonable balance in relations between producer and dealer.

6.2.8. The way forward is to attempt to modify the block exemption and extend it, rather than putting an end to the selective distribution system.

6.3. *The protection of competition in the after-sales service market*

6.3.1. A further aim of Regulation (EC) No 1475/95 has been to protect competition in the after-sales service market. One feature of this aim has been to improve the access of spare part producers to dealer networks. To this end, 1475/95 strengthens the right of dealers to use spare parts of matching quality by introducing a right for spare parts manufacturers to supply spare parts of matching quality to dealers [Article 6(1)(9) and(10)]. It also preserves a right for spare parts manufacturers to exhibit their own trade mark or logo on the spare parts they supply [Article 6(1)(11)]. It also prohibits manufacturers from using bonuses which aggregate car sales with spare parts sales. Finally, it provides independent repairers with a right to technical information and specifies that requests for such information are not to be improperly refused [Article 6(1)(12)].

6.3.2. Again the Report indicates that in practice dealers have tended to continue to rely on manufacturers for supply. Only 5 %-20 % of spare parts are outsourced (Report paragraph 248). The Report suggests that, despite the legal framework, dealers are reluctant to buy parts from other sources because of their dependency on the vehicle manufacturers caused by end of year bonuses linked to turnover figures for original spare parts combined with large discounts for original spare parts, and recommended original spare part inventory holdings for dealers (Report paragraph 249). The Report concludes that the right of spare part producers to supply their product to dealers, as provided for in the Regulation, has not materialised. (Report 6.2.2).

6.3.2.1. It is true that a contributing factor is the belief of many consumers that original spare parts are of better quality and that this may be because of consumer confidence in original products and of inadequate information, mainly on the part of independent manufacturers.

6.3.2.2. The Committee would support the Commission in exploring measures to help encourage dealers to make use of

matching spare parts. Use of equivalent parts could be even more widespread if their quality was certified, enabling dealers to assume full liability towards vehicle users, including for work concerning safety and environmental protection.

The Committee would remind the Commission that in practice, independent manufacturers can only supply dealers with certain types of spare part rather than the full range, for obvious management-efficiency reasons; 20 % market penetration therefore represents a considerable level given that these parts are used outside the usual guarantee period. In this context, the Committee urges the Commission to tackle the equivalent quality issue by means of instruments which can effectively guarantee the equivalent quality of products placed on the market.

6.4. *Has the position of independent repairers been adequately protected?*

6.4.1. Regulation (EC) No 1475/95 made provision for several means of protection for independent repairers. Dealers were enabled to supply original spare parts to independent repairers for the repair and maintenance of a motor vehicle [Article 6(1)(12)], though there is no obligation to supply such parts at wholesale prices. The Report concludes that in general independent repairers have no major problems as regards access to original parts but that the inability to purchase such parts at wholesale prices makes it more difficult to compete.

6.4.2. Secondly, manufacturers were given an obligation to make any technical information necessary for the repair and maintenance of its vehicles accessible to independent repairers. There were limits to this obligation in the case of intellectual property rights or qualifying know-how, but such information must not be improperly withheld [Article 6(1)(12)]. It is clear that technical developments will make such information even more important in the future. However, even though non-compliance constitutes a black practice [Article 6(12)], compliance by car manufacturers is patchy and uneven. Some publish lists. Some release information on a case by case basis. Independent repairers often get information from official dealers.

6.4.3. Most independent repairers report problems of access to technical information. The problems include lack of access to new vehicle information, complex and expensive technical publications, lack of access to information on electronic devices and information systems and diagnostic equipment (Report paragraph 294). The Report comments that the car manufacturers seem not to have created technical and economic conditions that allow adequate access to independent repairers, as is required by the Regulation, and this in turn limits consumer choice.

6.4.4. The Committee would urge the Commission to explore ways of strengthening the obligations of producers to supply technical information to independent repairers: this should be done in a non-discriminatory way, enabling independent repairers to develop and subsequently enhance the quality of their services.

The Committee would, however, remind the Commission that the high levels of investment required of dealers in order to develop and acquire the technology, and provide the training needed to improve their product and related services are far greater than those normally borne by independent repairers. It is reasonable that the latter, in order to boost their competitiveness, should specialise in a number of specific products and offer consumers a transparent service guarantee similar to that provided by dealer networks. Lastly, the Committee emphasises that the one-stop-shop spare parts service that the dealer networks offer consumers involves a high level of investment in stock; in contrast, it is independent repairers' interests to make ad-hoc acquisitions of only a few parts, usually those with the highest turnover.

6.4.5. In this context the Committee recalls the need to take account of the fact that at present the dealer, in order to provide the consumer with guaranteed availability of spare parts and full servicing of all models in the network brand's range, must constantly make considerable investments both in structures and in staff training.

6.4.6. In Regulation (EC) No 1475/95 manufacturers are required, if they are to benefit from the block exemption, to impose on their dealers an obligation to provide after-sales service as well as sales of new cars. The Report indicates that, while there are technical and economic reasons for a link between sales and after-sales service, there is evidence that consumers divide between those who prefer the link and those who prefer, particularly with older cars, to use independent repairers. On balance, therefore, the Committee would rec-

ommend to the Commission that it allow such a link as part of an exempted motor vehicle distribution agreement, but at the same time the conditions should be promoted for raising the level of competition once the guarantee period (minimum 2 years) laid down by the manufacturer and practised by the dealer network has expired.

6.4.7. The Committee consequently regards as essential the link between sales and after-sales service for new vehicles, bearing in mind the nature of the product, since first and foremost it serves the interests of consumers who thus enjoy a service with quality and safety guarantees, and defective vehicles can be returned to suppliers throughout the EU territory regardless of where the vehicle in question was purchased. Secondly, respect for environmental standards is guaranteed and the brand image is maintained.

7. Concluding comments

7.1. The Report presents a case for amending the Regulation to improve the possibilities for intrabrand competition, dealer independence and the provision of technical information by manufacturers to independent repairers.

7.2. The Committee has recommended a number of specific changes in the Regulation, since it must be made to reflect experience, new instruments and technological development — provided this is achieved in full compliance with the unchanged principles acknowledging that motor vehicles are not only a means of mobility, and hence an economic asset, but also a social asset which must be protected in the interests of users themselves. This means safety, and helping to ensure that safety is maintained over time.

7.3. The Report itself suggests that the main inhibitions to intrabrand competition are the limits on personalised advertising and the ban on selling to undertakings not belonging to the network, i.e. to the independent resellers. Nevertheless, the Committee, on the basis of the points made above, would suggest that the best way forward is to strengthen the position of intermediaries in making the most of the opportunities and choices offered by parallel trade rather than to remove the ban on sales to independent resellers.

7.4. The Committee would also like to suggest that the Commission update the Communication on intermediaries and set up guidelines on the use to be made of the Internet by dealers and producers. A further suggestion would be to assess how the Internet — which did not exist when Regulation (EC) No 1475/95 was prepared — may lead to a different view of a number of elements in the regulation.

7.5. On the basis of the general and specific comments set out above, the Committee favours confirming the special

block exemption for motor-vehicle distribution, and urges the Commission to explore methods of amending and extending the current Regulation. The primary aim of the new Regulation should be to raise the overall level of competition in order to improve consumer well-being and safety, and the operation of the single market. In order to achieve these objectives, the new Regulation should have a practical impact in providing greater protection for dealers and promoting the SMEs operating in the European car sector. The Committee looks forward to the opportunity to comment on any changes that are proposed by the Commission.

Brussels, 30 May 2001.

The President
of the Economic and Social Committee
Göke FRERICHS

APPENDIX

to the opinion of the Economic and Social Committee

The following amendments, which received more than one quarter of the votes cast, were rejected during the course of the deliberations:

Point 5.6

Delete.

Reason

Quite apart from the fact that there are also strong brand images in sectors not covered by Community Regulations, the purpose of the EU legislation cannot be to increase the profile of brands of motor vehicles.

Result of the vote

For: 26, against: 60, abstentions: 6.

Point 5.7

First sentence to read as follows:

'In this respect the Commission has hitherto assumed that the existing exclusive and selective distribution regime makes it possible for the European motor-vehicle system to meet the requirements of Treaty Article 81(3).'

Delete second sentence.

Reason

Exclusive and selective distribution is not the only way in which the motor-vehicle sector can fulfil the EU Treaty.

Result of the vote

For: 31, against: 59, abstentions: 7.

Point 6.1.3

Delete from the second sentence onwards ('Here, the Committee believes').

Reason

The implication is that the report places too much emphasis on the situation on the British market and that the system elsewhere in the single market functions well. The fact is, however, that the Commission has uncovered abusive sales' practices in a whole series of countries and has received appropriate complaints from consumers. The Commission's findings lead one to conclude that intrabrand competition is not functioning throughout the EU.

Result of the vote

For: 37, against: 58, abstentions: 6.

Point 7.2

Delete the reference to the motor vehicle as a social asset in the first sentence.

Reason

If we regard environmental protection as a main political objective, then the motor vehicle, which has been proven to cause damage to the environment, should not be classified as a 'social asset'.

Result of the vote

For: 34, against: 62, abstentions: 16.

Point 7.3

Delete the second sentence and replace with the following text:

'The Committee calls for the lifting on the ban on selling to undertakings not belonging to the network and the application in future of clear, transparent and exclusively qualitative criteria (expertise of the staff) for the selection of dealers which are supplied by manufacturers.'

Reason

Quantitative restrictions which obstruct competition and establish region-wide brand monopolies for a small number of official dealers are not within the meaning of the single market.

Result of the vote

For: 27, against: 70, abstentions: 9.

Point 7.5

To read as follows:

'On the basis of the general and specific comments set out above, the Committee considers the retention of the special block exemption for motor-vehicle distribution to be still acceptable for the time being if it is ensured that the conditions and measures laid down in Regulation (EC) No 1475/95 really are applied in full. In addition, the Commission is asked to examine how the current Regulation can be amplified. The new Regulation's most urgent objective should be to increase competition, albeit without neglecting consumer safety. The Committee looks forward to the opportunity to comment on any changes that are proposed by the Commission.'

Reason

In view of the lack of intrabrand competition referred to in the Commission report and highlighted by consumer organisations — which is due in no small measure to the failure to observe the conditions laid down in Regulation (EC) No 1475/95 — it is not enough to simply continue with the present situation, albeit with one or two minor changes. In the long term the aim should be to abolish the block exemption in the motor-vehicle sector in keeping with the need for a properly functioning single market.

Result of the vote

For: 33, against: 68, abstentions: 11.

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on reporting formalities for ships arriving in and departing from Community ports'

(2001/C 221/24)

On 26 February 2001 the Council decided to consult the Economic and Social Committee, under Article 80(2) of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 May 2001. The rapporteur was Mr Kröger.

At its 382nd plenary session, held on 30 and 31 May 2001 (meeting of 30 May), the Economic and Social Committee adopted the following opinion by 50 votes to four with three abstentions.

1. Introduction

1.1. A considerable amount of information has to be provided by seagoing ships entering and departing from Community ports. This information mainly concerns the status of the ship, its crew, the nature and size of the cargo, the passengers on board and the ship's stores. Such information is required in connection with: the payment of duties; decisions taken by the port authorities on safety matters; monitoring observance of immigration rules; the compiling of statistics and, generally, the smooth clearance of ships.

1.2. The content of much of the information is the same for every port. The format of the information required by

many ports, does, however, differ. In other ports the content of the information required is also not the same.

1.3. The fact that the information with the same content is formatted differently is both time-consuming and highly costly to the shipping industry. It complicates administrative procedures not just for overseas shipping but also, and in particular, for short sea shipping. The aim is to facilitate clearance of seagoing ships and to make maritime transport correspondingly more efficient, whilst at the same time not reducing the content of the information required by the authorities of the Member States.