



COMMISSION OF THE EUROPEAN COMMUNITIES

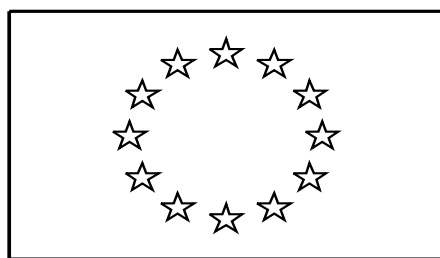
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REPORT

**on the evaluation of Regulation (EC) No 1475/95 on the application of
Article 85(3) of the Treaty to certain categories of motor vehicle distribution and
servicing agreements**

(presented by the Commission)

Report on the evaluation¹ of
Regulation (EC) No 1475/95
on the application of
Article 85(3)
of the Treaty to
certain categories of
motor vehicle distribution
and servicing agreements



EUROPEAN COMMISSION

¹ Article 11(3), OJ L 145, 29.6.1995, p. 25.

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1 INTRODUCTION

- (1) This is the report which the Commission is required to draw up by 31 December 2000.² The report evaluates the application of Regulation 1475/95, particularly as regards the impact of the exempted system of distribution on price differentials of motor vehicles between the different EU Member States,³ and on the quality of service to final consumers. The report also takes account of the two Commission notices which are relevant to motor vehicle distribution⁴ and which complement or clarify issues involved in the Regulation.
- (2) The Regulation is applicable to the distribution and the servicing of new motor vehicles which are intended for use on public roads and have three or more road wheels.⁵ It consequently covers cars, trucks and buses and the servicing of such vehicles.
- (3) A number of technical terms used in the report are explained in **Annex I**.
- (4) In order to know the views of interested parties, the Commission sent 8 different questionnaires⁶ to more than 110 undertakings and associations of parties interested in motor vehicle distribution and servicing.⁷ The facts and

² See Article 11 of Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article 81(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements, OJ L 145, 29.6.1995, p.25, hereinafter referred to as Regulation 1475/95 or the Regulation.

³ Pursuant to EEA Joint Committee decision 46/96 of 19 July 1996 amending Annex XIV (Competition) to the EEA Agreement (OJ L 291, 14.11.1996, p. 39-40), Regulation 1475/95 is also applicable in the EEA Member States. This report therefore covers the EEA even if normally reference is made only to EU Member States.

⁴ Commission notice concerning Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements, OJ C 17, 18.1.1985, p. 4 (hereinafter referred to as the notice on Regulation 123/85), and Clarification of the activities of motor vehicle intermediaries, OJ C 329, 18.12.1991, p. 20 (hereinafter referred to as the notice on intermediaries).

⁵ See Article 1 of Regulation 1475/95. Used motor vehicles are thus not covered by the Regulation. The same applies to tractors as their main use is not on public roads. The separate distribution of spare parts or the provision of servicing without any connection to the distribution of vehicles is not covered either.

⁶ These questionnaires have also been published together with a press release on the Commission's web site under:
http://europa.eu.int/comm/dg04/antitrust/others/car_sector/eval_reg_1475_95/questionnaires/index_en.htm

⁷ This report covers in principle the distribution and servicing of all types of motor vehicle. It is, however, more specifically focused on passenger cars in view of the replies received following the sending of the questionnaires. Moreover, most of the issues identified by the Commission in the application of the Regulation also concerned passenger cars. If the findings concern something specific related to commercial vehicles, such as trucks or buses, this will be specified.

findings of the report are based on the replies given by these parties,⁸ on the Commission's own experience and on studies.

- (5) On 10 April 2000, the Secretary for Trade and Industry published the UK Competition Commission's report.⁹ The report evaluates the supply of new motor cars within the United Kingdom. Although the UK Competition Commission's report mainly focuses on high prices for new cars sold in the United Kingdom, it also evaluates many aspects of Regulation 1475/95. The Competition Commission comes to the conclusion that Regulation 1475/95 permits restrictive practices which work against the public interest. In contrast to the present evaluation report of the European Commission, the UK Competition Commission's report also contains recommendations as to the future of Regulation 1475/95: it recommends *inter alia* that selective and exclusive distribution of new motor cars should be prohibited and that Regulation 1475/95 should be changed or at least allowed to expire.¹⁰
- (6) The purpose of the present report is to evaluate Regulation 1475/95 and the two notices. It does not contain any proposals as regards the situation after the expiry of Regulation 1475/95 on 30 September 2002.

2 THE BLOCK EXEMPTION RATIONALE AND RECENT DEVELOPMENTS CONCERNING THE NEW BLOCK EXEMPTION REGULATION DEALING WITH VERTICAL RESTRAINTS

- (7) The internal market represents an opportunity for EU firms¹¹ to enter new markets that may have been previously closed to them because of regulatory barriers. Such penetration of new markets takes time and investment and is risky. It is often facilitated by agreements between producers who want to break into a new market and local distributors. Efficient distribution with appropriate pre- and after-sales support is part of the competitive process that brings benefit to consumers.
- (8) However, arrangements between producers and distributors can also be used to continue to partition the market and exclude new entrants - both at the production and distribution level - who would intensify competition and lead to downward pressure on prices. Agreements between producers and distributors (vertical restraints) can therefore be used pro-competitively to promote market integration and efficient distribution, or anti-competitively to block integration and competition. The price differences between Member States that still exist

⁸ See Annex VIII of the report for further details.

⁹ Competition Commission, New cars, A report on the supply of new motor cars within the UK, presented to Parliament by the Secretary of State for Trade and Industry by Command of Her Majesty, April 2000, 737 pages (hereinafter referred to as the UK Competition Commission report).

¹⁰ UK Competition Commission report, pt. 1.20.

¹¹ Following the termination of the EU-Japan consensus at the end of 1999, Japanese suppliers are now also free from quantitative restrictions on their supplies to the EU car market.

provide the incentive for companies to enter new markets as well as to erect barriers against new competition.¹²

- (9) In this respect, Article 81(1) of the EC Treaty, which prohibits restrictive agreements and concerted practices in the field of vertical restrictions – as in other types of relationship between economic operators - may be declared inapplicable if the agreement as a whole brings about overall economic advantages which outweigh the disadvantages for competition. Such exemption under Article 81(3) is possible if an agreement contains only indispensable restrictions, does not eliminate competition and promotes production, distribution or technical improvements, while granting a fair share of the gains to consumers.
- (10) Exemptions may be granted on a case-by-case basis or by a regulation for certain categories of agreements. Such a block exemption regulation is the consequence of the experience gained in dealing with many similar or identical agreements; such experience allows a category of agreements to be defined which can generally be regarded as satisfying the four conditions of Article 81(3).
- (11) In an exercise of rationalisation and modernisation of its policy concerning vertical restraints, the Commission recently adopted a general block exemption Regulation.¹³ It replaces three block exemptions relating to exclusive distribution agreements,¹⁴ exclusive purchasing agreements¹⁵ and franchise agreements.¹⁶
- (12) From the very outset of its reform of vertical restraints, the Commission specified that this new block exemption would not cover motor vehicles.¹⁷ The Commission stated that, as regards its proposals for the future treatment of motor vehicle distribution, it would re-examine this sector in accordance with the provisions of the Regulation before deciding on the future regulatory framework.

¹² Commission Green Paper on vertical restraints in EC Competition policy, COM(96)721, p.1.

¹³ Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices, OJ L 336, 29.12.1999 p. 21-25, hereinafter referred to as the new block exemption on vertical restraints.

¹⁴ Commission Regulation (EEC) No 1983/83 of 22 June 1983 on the application of Article 85(3) of the Treaty to categories of exclusive distribution agreements, OJ L 173, 30.6.1983, p. 1; Corrigendum OJ L 281, 13.10.1983, p. 24.

¹⁵ Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article 85(3) of the Treaty to categories of exclusive purchasing agreements, OJ L 173, 30.6.1983, p. 5; Corrigendum OJ L 281, 13.10.1983, p. 24.

¹⁶ Commission Regulation (EEC) No 4087/88 of 30 November 1988 on the application of Article 85(3) of the Treaty to categories of franchise agreements, OJ L 359, 28.12.1988, p. 46.

¹⁷ IP/99/286, 7.5.1999. See also the Green Paper on vertical restraints in EC competition policy, COM/96/0721 FINAL - Executive summary p.ii, footnote 2.

3 BACKGROUND FOR SPECIFIC RULES FOR MOTOR VEHICLE DISTRIBUTION

3.1 CHARACTERISTICS OF MOTOR VEHICLE DISTRIBUTION AGREEMENTS

- (13) Most¹⁸ motor vehicles are distributed via dealer networks which combine selective and exclusive features.
- (14) Selectivity means that each manufacturer or importer sets criteria for the selection of its distributors. They can be firstly qualitative criteria.¹⁹ Such performance-related criteria are, for example, an obligation to employ specialists, to design the retail space according to the manufacturers' directives, to provide after-sales services according to certain standards, to meet certain stock requirements and standards for advertising. Distributors belonging to the network are not allowed to sell goods on to resellers not belonging to the distribution network. A selective distribution system thus creates a network which excludes all undertakings which do not meet the specified criteria from the distribution of the relevant goods.²⁰ However, in a distribution system solely based on qualitative criteria, the manufacturer/importer is obliged to appoint as distributor every undertaking which meets these criteria. Indeed, the manufacturer cannot be subjective in the application of these standards. Moreover, in order to limit the number of official dealers, manufacturers and importers carry out a further quantitative selection amongst those distributors who meet the qualitative criteria. Such quantitative criteria are, for example, the number of dealers acting in the same sales territory or the imposition of quantitative sales targets. As a consequence, each manufacturer has a large leeway in organising its distribution network, in particular as to the place where the dealer has to run his business as well as to the number of dealers belonging to its network which is sufficient to pursue its marketing strategy²¹ As has been noted, manufacturers in this industry can consequently effectively dictate to their retailers both the type and the location of their customers.²²
- (15) Under a selective distribution system there is, however, no provision for exclusive sales territories. The manufacturer is not entitled to split up a market

¹⁸ In most countries, a limited number of new vehicles are also distributed to final consumers by the manufacturers themselves (so-called direct sales), by sales outlets connected to the manufacturer or via commercial agents.

¹⁹ Purely qualitative selective distribution is in general considered to fall outside Article 81 (1) for lack of anti-competitive effects. For the conditions under which this is true see Commission Guidelines on vertical restraints, pt. 185; adopted by the Commission on 24 May 2000, Official Journal C 291 of 13.10.2000, page 1.

²⁰ See e.g. Article 1(d) of Commission Regulation (EC) No 2790 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices, OJ L 336, 29.12.1999.

²¹ See, for example, the Fourth Report on Competition Policy, 1974, point 87.

²² International Car Distribution Programme (ICDP), Research Paper 6/99, "*Beyond the block exemption II, the build-up to 2002*", by Dr. A. Tongue, September 1999, (hereinafter ICDP, "*Beyond the block exemption IP*" 6/99, p. 8-11.

and assign defined territories of this market on an exclusive basis to its distributors. This is the main feature of an exclusive distribution system.

- (16) As to exclusivity, most manufacturers use the possibility granted by Regulation 1475/95 to appoint only one dealer for a geographically limited territory - the contract territory - on which the dealer has to concentrate his marketing efforts²³ and endeavour to sell contract products in accordance with the sales targets he has agreed with the manufacturer. Therefore, dealers are not allowed to open sales outlets or to appoint sub-dealers or sales agents outside their contract territory. Nearly all car manufacturers also undertake to prohibit their dealers from selling actively by means of personalized advertising within the territory of any other dealer.
- (17) However, most manufacturers do not give their dealers the exclusive right to supply new vehicles to all consumers in the dealer's territory: they retain the right to sell new vehicles to certain categories of consumers (so called "*reserved consumers or customers*") in competition with their dealers.²⁴
- (18) Most car dealers in the European Union only sell cars from one manufacturer, even if these cars are sold under different brands. Selling a make produced by a different manufacturer is only permissible where the seller is a separate legal entity run by separate management, and where the sale is made in separate premises. In practice this amounts to excluding multi-branding to a large extent.²⁵
- (19) The obligation on dealers to provide after-sales services, which manufacturers have to impose on them pursuant to Regulation 1475/95, ties the sales of new cars to the after-sales service activities, which are two different types of businesses.
- (20) Such agreements may fall under the prohibition of Article 81 since they have as their object or effect the prevention, restriction or distortion of competition within the common market if they are liable to affect trade between Member States.²⁶ In addition, the Commission considered that the restrictions contained in these agreements were made more severe by the fact that all manufacturers use the same or similar agreements throughout the common market (so-called cumulative effect).²⁷ Neither of the two Regulations²⁸ further specify what are

²³ This is even a stronger restriction in comparison to quantitative selection of the number of dealers in a given sales territory (see above pt. (14)).

²⁴ See Article 2 of Regulations 123/85 and 1475/95.

²⁵ See below 6.2.1.6 on page 89 of this report.

²⁶ See also UK Competition Commission report, pt. 2.10 et seq., in particular pt. 2.14 and pt. 2.38.

²⁷ See recital 3 of Commission Regulation (EEC) 123/85 of 12 December 1984 on the application of Article 85 (3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements, OJ L 15, 18.1.1985, p. 16 (hereinafter referred to as Regulation 123/85) and recital 3 of Regulation 1475/95, which call the use of similar networks of vertical agreements containing restrictions of competition "*cluster*".

²⁸ See in particular recital 3 of Regulation 123/85 and of Regulation 1475/95.

the results of this effect. Applying traditional EU competition case law,²⁹ it would appear that the cumulative effect resulting from the use of similar vertical distribution agreements containing single branding clauses is that market access for new manufacturers becomes considerably more difficult: they might not find distributors for their products, because all of them are bound to their existing supplier by an exclusivity clause.³⁰ However, due to the EU-wide quantitative selection and/or the territorial exclusivity of all dealers, new distributors might not find a manufacturer who is willing to sell new cars to them.³¹

CONCLUSION:

The block exemption of motor vehicle distribution and servicing agreements permits the combination of selective (with qualitative and quantitative criteria) and exclusive distribution.

As a result of the combination of these two types of vertical restraints, motor vehicle manufacturers are entitled to impose high quality criteria on their dealers, but are not obliged to supply any new potential dealer who meets these criteria. They can also close their sales network by restricting sales to independent resellers. However, they may not restrict sales to final consumers and their intermediaries, or other dealers of the network. For consumers, there is no real alternative source of supply for purchasing motor vehicles other than via the dealer networks.

Motor vehicle manufacturers are also allowed to divide up a market into exclusive sales territories.

3.2 COMPARABLE PRODUCTS AND EXISTING DISTRIBUTION MODES

(21) Why are motor vehicles distributed in a certain way and quite similar products in other ways? The purpose of this section is to put into perspective different

²⁹ See Judgment of the Court of 28 February 1991, *Delimitis Henninger Bräu*, [1991] ECR I-935; Judgment of the Court of 12 December 1967, *Brasserie de Haecht*, [1967] ECR 421; Judgment of the CFI of 8 June 1995 [1995] ECR II-1533, paragraphs 99-104, 119; Judgment of the Court of 1 October 1998, *Langnese*, [1998] ECR I-5609, paragraphs 44-46. *Bundeskartellamt v Volkswagen AG and VAG Leasing*, [1995] ECR I-3477, paragraph 23 regarding the access of car leasing companies to *Volkswagen* dealers.

³⁰ It is true that in Europe e.g. Korean car manufacturers were able to increase their market share from 0.1% in 1990 to 2.7% in 1998 (see ACEA position paper regarding the European Commission's questionnaire on the application of the automobile block exemption, page 12, published in the internet under: <http://www.acea.be/acea/BEMVD.pdf>). As regards the UK market, since 1990, notably Chrysler and Daewoo have entered the market and took between them about 2% of the market in 1999 (see UK Competition Commission report, pt. 2.89.). However, see also ICDP, "Multi-franchising, Developments and Impact of Sales Channel Management of Automobile Manufacturers", by M. Hoffmeister and R. Heinerberg, Research Paper 1/98, (hereinafter: ICDP, "Multi-franchising" 1/98), p. 60: ICDP underlines that the speed of penetration is much faster, when existing dealers are used to access a new market. Therefore it was relatively easy for Korean and Malaysian makes to cover the entire United States of America, where multi-marketing is more widespread than in Europe, without investing heavily in brand exclusive new car dealerships.

³¹ See recital 13 and Article 6 of Commission Regulation 2970/1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices, OJ L 336, 29.12.1999, p. 21.

ways of distributing products that have some common characteristics with motor vehicles. Motor vehicles may be compared to some of these products in relation to their technological content, their price, the need for advice on sale, the need for after-sales services, brand image and safety issues.

(22) It is worthwhile noting that products that have in common one or more of the above-mentioned features are distributed through one or sometimes various distribution systems having different characteristics.

(23) Four examples³² of such products are:

1. Tractors, agricultural machines, construction and earthmoving equipment
2. Motorcycles
3. Medical equipment
4. Computers

Diagram 1: Comparison of cars with other technical products

SIMILARITY WITH CARS	TECHNOLOGY	PRICE	ADVICE DURING SALE	AFTER-SALES SERVICES	BRAND IMAGE	SAFETY
Tractors, and construction equipment	X	X	X	X	X	X
Motorcycles	X	X	X	X	X	X
Medical	X	X	X	X		X
Computers	X		X	X	X	

3.2.1 Tractors, agricultural machines, and construction and earthmoving equipment

(24) These products are commonly distributed and serviced through exclusive dealerships. The dealer has an exclusive territory where he is the sole authorised seller for one particular brand.³³ These products are technologically complex products, although not as much so as cars. The purchaser needs advice on the product when the sale is being made, and after-sales services are very important for safety and commercial reasons. The cost of after-sale services may represent, during the lifetime of such a machine, an equivalent amount to the purchase price. The price of such products is generally higher than the price of a car. Brand image is very strong. The products are mostly not built to circulate on public roads.

³² All these products are covered as from 1 June 2000 with regard to their distribution agreements by the new block exemption on vertical restraints.

³³ For specific reasons, dealers in Finland may sell different brands in their exclusive territory.

3.2.2 Motorcycles

- (25) Motorcycles are normally distributed through selective distribution. A dealer has no exclusive territory and may sell competing motorcycle brands. These products are also technical products which require the same advice when the sale is being made and the same level of after-sales services by brand specialists as for cars. Motorcycles circulate on public roads and therefore raise safety issues. The average price is generally lower than that of cars, although purchase of a motorcycle still represents an important investment. Brand image is as important as it is for cars.

3.2.3 Medical equipment

- (26) Medical equipment is usually distributed through selective distribution. These products are highly complex products. They integrate electronics and software. Sales personnel must be well trained, advice on the product and training are essential for the use of the equipment, and after-sales requirements are vital. Malfunction may cause huge damage to human health, and prices are also considerable.

3.2.4 Computers

- (27) Computers are distributed through selective distribution networks and many of them directly via Internet³⁴ or via other types of distributors such as supermarkets. The technological complexity of computers and related equipment is evident. Manufacturers place great emphasis on product advice during sale. Computers need specialised after-sales assistance as the typical user does not possess the necessary knowledge and expertise to repair the product or to properly install additional devices. Brand image is important in this sector.

CONCLUSION:

Cars are similar in certain aspects to the above-mentioned products. Nevertheless, the products are distributed through different and less restrictive distribution channels than the ones used for cars.

³⁴ Dell and Gateway computers, for example.

3.3 REGULATORY FRAMEWORK FOR MOTOR VEHICLE DISTRIBUTION AND SERVICING

3.3.1 The legal framework until 30 June 1985

- (28) Since the former block exemption Regulation 67/67³⁵ did not cover these agreements, the Commission adopted, in 1974, its first exemption decision³⁶ in the field of motor vehicle distribution and servicing agreements in the so called “BMW” case. This decision was designed as a landmark decision³⁷ and it was hoped that manufacturers would adapt their distribution systems accordingly. However, this was not the case. Many car manufacturers continued to notify their agreements to the Commission in order to obtain individual exemption decisions. In order to solve this problem of handling a mass of individual notifications and to give more guidance and legal security to the car industry, the Commission decided to adopt a block exemption regulation, Regulation 123/85, along the lines set out in the BMW decision.
- (29) Agreements which fulfil the conditions set out in this Regulation are automatically exempt without notification. Firms in the sector are, however, still free to enter into other types of agreements that they can notify on an individual basis and request a negative clearance or exemption decision.

3.3.2 Regulation 123/85

- (30) As from 1 July 1985 until 30 June 1995, distribution and servicing were covered by a sector-specific block exemption, Regulation 123/85. In this Regulation, the Commission had to find a reasonable compromise between the many interests involved:
- the manufacturer’s interest in designing its distribution network in an efficient way;
 - the interest of the dealers regarding the supply of new vehicles and spare parts and their interest in getting an exclusive contract area, in keeping their economic independence and in being able to make a sufficient return on their investment;
 - the interest of independent resellers in the availability of spare parts;
 - the interest of spare-part producers in having access to dealer's networks,
 - and, most importantly, the interest of consumers in having the possibility of sourcing new vehicles and after-sales services throughout the common

³⁵ Commission Regulation 67/67EEC of 22 March 1967 on the application of Article 85 (3) of the Treaty to certain categories of exclusive dealing agreements, as amended by Regulation (EEC) 2591/72 of 8 December 1972 and by Regulation (EEC) 3577/82 of 23 December 1982, OJ 57, 25.3.1967, p. 849 (Special Edition 1967, p. 10).

³⁶ Commission decision of 13 December 1974 – *Bayerische Motoren Werke AG* – OJ L 29, 3.2.1975, p. 1.

³⁷ See Fourth Report on Competition Policy, 1974, point 86.

market and of acquiring quality products and after-sales services at a competitive price.

- (31) Regulation 123/85 covered selective and exclusive distribution and servicing agreements. The block exemption of such restrictive agreements was based on the following considerations:
- (32) Due to the nature of the product concerned, it was considered that a number of restrictions placed on distributors were indispensable in order to allow some rationalisation and, as a result, better motor vehicle distribution and servicing. The restrictions were the following:

Selective distribution:

- (33) Regulation 123/85 explicitly mentions that the manufacturer may impose minimum standards as regards in particular his business premises, technical facilities, training of staff, advertising, collection, storage and delivery of vehicles and services and as to the repair and maintenance services with a view to the safe and reliable functioning of the vehicles.³⁸
- (34) In order to protect the selective character of a motor vehicle distribution system, a prohibition placed on distributors not to supply contract goods to independent resellers was accepted.³⁹ Under Regulation 123/85 manufacturers could consequently stipulate who their distributors may sell on to. They could impose on their dealers a requirement that they sell only to end-customers and to other dealers within a manufacturer's distribution system.⁴⁰ The sale of spare parts to independent resellers who needed them for repairs or maintenance of vehicles had to be permitted.⁴¹ More importantly, the supply of a vehicle to a final consumer who used the services of an intermediary which had received a written authorisation from the consumer did not put into question the selectivity of a distribution system and could not be restricted by manufacturers.⁴²
- (35) The exclusion of wholesalers not belonging to the distribution system of a manufacturer or importer from the distribution of spare parts originating from the manufacturer was also exempted. It was held that otherwise rapid availability of original spare parts, including those with low turnover, would not be possible and this would then not be in the interest of consumers.⁴³

³⁸ Article 4 (1)(1) of Regulation 123/85.

³⁹ Recital 5 of Regulation 123/85.

⁴⁰ Article 3(10)(a).

⁴¹ Article 3(10)(b).

⁴² Article 3(11) and the end of recital 5.

⁴³ Recital 6 of Regulation 123/85.

- (36) Moreover, manufacturers were allowed to oblige their dealers to offer after-sales services⁴⁴. They were thus able to tie two different types of commercial activities: the sales of new motor vehicles and the provision of after-sales services.
- (37) As regards the limitation of the number of dealers and repairers due to quantitative selection and exclusivity, the Commission considered this to be indispensable in view of the characteristics of motor vehicles. They are expensive and complex consumer durables which at both regular and irregular intervals require expert maintenance and repair, not always at the same place. To provide specialised servicing, manufacturers had to co-operate with dealers and repairers in order to ensure that they were fully informed of technical problems and maintenance instructions and that they were well trained.⁴⁵ However, on grounds of capacity and efficiency, the Commission held that such cooperation in the field of servicing could not be extended to an unlimited number of dealers and repairers.⁴⁶ On the basis of the circumstances prevailing at that time, the Commission also regarded the linking of servicing and distribution of new vehicles as more efficient than a separation of both activities, particularly as the distributor must give new vehicles a technical inspection according to the manufacturer's specifications before their delivery to final consumers.⁴⁷

Territorial protection:

- (38) The obligations upon distributors to concentrate on the contract territory i.e. the obligation that dealers must not maintain branches or depots or even seek customers outside their contract territory and that they may not entrust third parties with the distribution of goods outside this area⁴⁸ was also considered indispensable for an improvement in motor vehicle distribution and therefore exempted. It was held that such restrictions on the dealer's activities outside the allotted area led to more intensive distribution and servicing efforts, to a better knowledge of the market based on closer contacts with consumers and to a more "*demand oriented*" supply.⁴⁹
- (39) However, unlimited territorial protection was not recognised as indispensable since it would exclude the European consumer's freedom to buy anywhere in the common market.⁵⁰ Therefore, under the Regulation dealers had to be able to meet demand from final consumers in other areas of the common market.

⁴⁴ See article 4 (1)(1)(e) of Regulation 123/85; however, according to article 5 (1)(1)(a), 2nd indent of Regulation 1475/85, manufacturers are obliged to request from their dealers to offer after sales services in order to benefit from the block exemption.

⁴⁵ Commission Decision of 13 December 1974 – *Bayerische Motoren Werke AG* – OJ L 29, 3.2.1975, p. 1, point 24.

⁴⁶ Recital 4, 1st to 3rd sentences, of Regulation 123/85.

⁴⁷ Recital 4, 4th sentence, of Regulation 123/85.

⁴⁸ Article 3(8) and (9).

⁴⁹ Recital 9 of Regulation 123/85.

⁵⁰ Recital 12, last sentence, of Regulation 123/85.

Moreover, dealers were not to be prevented from advertising in media which covered a wider area than their own contract territory.⁵¹ This amounted to a prohibition of active sales outside the contract territory. In order to ensure that consumers could exercise their right to source their vehicles anywhere in the common market, dealers had *inter alia* the right to order from the manufacturer "corresponding" motor vehicles⁵² (so-called "availability clause").⁵³ These are vehicles which are similar to those distributed by the dealer but which are produced with different technical specifications, such as right-hand drive. Manufacturers had also to impose on their network of dealers a number of obligations relating to after-sales services: dealers had to provide free servicing and repair in the context of warranty and recall operations wherever in the common market cars have been purchased.⁵⁴

Non-compete clauses:

- (40) Non-compete clauses⁵⁵ without any time limit which prohibited the sale of vehicles from other manufacturers (so-called "multi-marketing") and of spare parts which do not match the quality of spare parts of the contract range, or the sale of vehicles of the same manufacturer but outside the dealer's product range at stated premises, were also exempted by Regulation 123/85. It was held that these clauses contribute to the concentration of the distributors on products supplied by the manufacturer and thus ensure appropriate distribution and servicing for vehicles.⁵⁶
- (41) However, the exemption of non-compete clauses was not completely unlimited. If dealers were able to show that there were objectively valid reasons for the sale of one or more other makes,⁵⁷ the manufacturer had to lift the ban on selling other makes. As regards spare parts, dealers were free to source spare parts which matched the quality of contract goods⁵⁸ ("*spare parts of matching quality*") from other suppliers⁵⁹ and to use them for the repair of vehicles, unless for repair work within the warranty period or in the context of a recall operation.

Rules ensuring dealers' economic independence:

- (42) Regulation 123/85 also tried to protect the dealer's economic independence from the supplier. Accordingly, obligations imposed on dealers to apply

⁵¹ Recital 9 of Regulation 123/85. This possibility is generally referred to as passive sales.

⁵² Article 13(11) of Regulation 123/85.

⁵³ Article 5(1)(2)(d).

⁵⁴ Article 5(1)(1)(a) and (b).

⁵⁵ Article 3(2) to (5).

⁵⁶ Recital 7 of Regulation 123/85.

⁵⁷ Article 5(2)(1)(a).

⁵⁸ This quality standard can be imposed in view of the importance of vehicle safety; see recital 8 of Regulation 123/85.

⁵⁹ Article 3(4) and recital 8 of Regulation 123/85.

minimum resale prices or maximum trade discounts ruled out an application of the Regulation.⁶⁰ Furthermore, the supplier could only appoint new dealers within the contract territory or alter the territory if he showed that there were valid reasons for doing so. In contrast, as regards the dealer's wish to appoint a sub-dealer inside his contract territory or to alter or end such a contract, the supplier was not allowed to withhold approval arbitrarily.⁶¹ Moreover, dealer contracts concluded for a definite period had to be for at least four years; the standard period of notice for the termination of an agreement concluded for an indefinite period was one year.⁶² The aim of these rules was to protect the dealer's investments. In order to protect the dealer's right to purchase spare parts of matching quality from other suppliers, and to allow these producers to compete on equal terms with the manufacturer's supplies of original spare parts, the Regulation prohibited cumulation of discounts.⁶³

- (43) Dealers' economic independence was, however, limited. Under the Regulation, each manufacturer had the possibility of deciding unilaterally, on the basis of estimates, on the dealer's potential sales, on sales targets, stock quantities and numbers of demonstration vehicles.⁶⁴

Withdrawal of the block exemption:

- (44) Article 10 of Regulation 123/85 gave the Commission the right to withdraw the benefit of the Regulation if a distribution system did not fulfil the criteria of Article 85(3) (now Article 81(3)). The Regulation mentioned in particular four specific cases where such withdrawal would apply:
- the products covered by the distribution system were not subject to competition from competing products (**withdrawal due to lack of competition**);
 - a manufacturer or an undertaking within the distribution system continuously or systematically made it difficult for final consumers or distributors to purchase contract goods or corresponding goods, or to obtain servicing for such goods within the common market by means not exempted by Regulation 123/85 (**withdrawal due to obstacles to parallel trade**);
 - prices and conditions differed substantially between Member States for a considerable period and these differences were chiefly due to obligations exempted by the Regulation (**withdrawal due to price differentials chiefly due to Regulation**);

⁶⁰ Article 6(2) and recital 23 of Regulation 123/85.

⁶¹ Article 5(1)(2)(a) and recital 13 of Regulation 123/85.

⁶² These periods could be shorter if a dealer was a new entrant to the distribution system and the period of the agreement or the period of notice for termination of the agreement was the first agreed by the dealer.

⁶³ Article 5(1)(2)(c) and recital 15 of Regulation 123/85.

⁶⁴ Article 4(1)(3) to (5).

- when prices and conditions applied for the supply of passenger cars corresponding to a car within the dealer's contract range (e.g. the supplement for a right-hand-drive car delivered to a dealer in mainland Europe) were not objectively justifiable and had the object or effect of partitioning the common market (**withdrawal due to objectively unjustified prices or conditions for corresponding passenger cars**).

3.3.3 Regulation 1475/95

(45) In 1995, the Commission adopted a new block exemption, Regulation 1475/95, for motor vehicle distribution and servicing agreements. Although the basic principles of Regulation 123/85 remained unchanged, i.e. the maintenance of an exclusive and selective distribution system, the Commission amended the formal Regulation on the basis of the experience it had gained with its application and also in response to complaints it had investigated. The adjustments are aimed at improving the functioning of an internal market in cars and intensifying competition at the stage of car distribution by re-balancing the various interests involved, in particular by strengthening the dealers', spare-part producers', independent repairers' and consumers' rights and freedoms.

3.3.3.1 The essential aims of the new Regulation

- (46) The following section will briefly list the essential aims pursued by Regulation 1475/95, some of which were taken over from Regulation 123/85. These aims will be discussed in greater detail in section 6 (page 64) of this report.
- (47) The first aim of Regulation 1475/95 is to make sure that motor vehicle distribution and servicing takes place in an efficient way to the benefit of consumers and that effective competition exists between manufacturers' distribution systems and, to a certain extent, within each system.⁶⁵
- (48) The second aim of Regulation 1475/95 is to further increase the consumer's choice in accordance with the principles of the internal market.⁶⁶ These changes are aimed at creating an environment which improves the possibilities for inter- and intra-brand competition and for parallel imports.
- (49) To achieve this aim, it is made clear that dealers' remuneration may not depend on the final destination of a vehicle.⁶⁷ Dealers may now also actively promote the final sale of new vehicles outside their contract territory by advertising, the only restriction being that personalised advertising remains prohibited.⁶⁸ Furthermore, under the new Regulation, manufacturers have to impose on

⁶⁵ See recitals 4 and 25 of Regulation 123/85 and recitals 4, 7 and 30 of Regulation 1475/95.

⁶⁶ See recital 26 of Regulation 1475/95.

⁶⁷ Article 6(1)(8).

⁶⁸ Article 3(8)(b) of Regulation 1475/95.

dealers an obligation to carry out repair and maintenance work also on vehicles which have been sold by another dealer within the distribution network.⁶⁹

- (50) The third aim pursued by the new Regulation is to strengthen the dealer's independence from manufacturers with the aim of increasing the dealer's competitiveness.⁷⁰ To this end, the scope of the non-compete clauses exempted by Regulation 123/85 was reduced and dealers are now, under certain conditions, allowed to sell motor vehicles of other manufacturers (multi-marketing).⁷¹ Dealers are now also allowed to use a common workshop for the servicing of the makes they are selling.⁷²
- (51) Although the exclusion of sales to non-authorized resellers was maintained, dealers are clearly permitted to engage in any type of transaction (sale, leasing, and hire purchase).⁷³ The major changes to strengthening the dealer's economic independence concern a prohibition on the manufacturer unilaterally modifying the status of the dealer or the allotted territory.⁷⁴ Furthermore, an extension of the minimum duration of distribution agreements with limited duration from 4 to 5 years and an extension of the period of notice for termination of agreements concluded for an indefinite period from 1 to 2 years⁷⁵ were introduced in order to better protect dealers' investments. Finally, sales targets and requirements regarding stocks and demonstration vehicles have now to be agreed, or in the event of disagreement, decided by an independent expert third party.
- (52) The fourth aim pursued by the Regulation concerns the protection of competition in the after-sales service market. In this respect, the Regulation wanted to first of all increase spare-part manufacturers' access to dealers. Although the right to use spare parts of matching quality for after-sales services existed already under Regulation 123/85,⁷⁶ the new Regulation strengthens this right of dealers and it introduces a possibility for spare-part manufacturers to supply spare parts to dealers.⁷⁷ In order to render this right more effective,

⁶⁹ Second indent of Article 5(1)(1)(a) of Regulation 1475/95. This obligation was not explicitly mentioned in Regulation 123/85, although difficulties in obtaining after-sales services from network dealers was mentioned as one reason for withdrawing the benefit of the former Regulation; see Article 10(2) of Regulation 123/85.

⁷⁰ See recital 17 of Regulations 123/85 and 1475/95.

⁷¹ Pursuant to Article 3(3) of Regulation 1475/95, multi-marketing is permissible although it is subject to the condition imposed by the car manufacturers that it is done on separate premises, under separate management, in the form of a distinct legal entity and in a manner which avoids confusion between makes.

⁷² Pursuant to Article 3(4) of Regulation 1475/95, this is only permitted if a third party cannot benefit unduly from investments made by a supplier, notably in equipment or the training of personnel.

⁷³ See Article 10(13) of Regulation 1475/95.

⁷⁴ Article 6(1)(5) of Regulation 1475/95.

⁷⁵ Article 5(2)(2) and (3).

⁷⁶ Article 3(3) of Regulation 123/85.

⁷⁷ Article 6(1)(9) and (10) of Regulation 1475/95.

spare-part producers are allowed to place their trade mark or logo on parts which they supply to a manufacturer for the assembly of a vehicle or for repair and maintenance of such vehicles.⁷⁸ This provision is aimed at creating transparency regarding the identity of the producer of a specific part. Based on this information it was assumed that dealers, independent repairers and consumers are in a better position to find out who produced a given part of a vehicle and who could be a supplier of spare parts in addition to the vehicle manufacturer.

- (53) Secondly, the new Regulation aims to give independent repairers better opportunities to compete with network dealers in the after-sales service market: manufacturers have to supply repairers not belonging to their network with technical information necessary for the repair or maintenance of cars. The supply of this information may only be refused if it is covered by intellectual property rights or constitutes identified, substantial secret know-how. However, an improper refusal is not permissible.⁷⁹
- (54) A further, more legalistic, aim of the new Regulation was to further clarify the distinction between admissible and non-admissible agreements and behaviour. Therefore, the list of so-called “*black clauses*” was amended and considerably extended.⁸⁰

3.3.3.2 Clarification of prohibited restrictive practices

- (55) Regulation 1475/95⁸¹ establishes a “*black list*” comprising two types of behaviour::

The first concerns “*black clauses*” which should not be used in agreements. If they are included, this leads to an automatic loss of the benefit of the block exemption. Such a loss takes place if:⁸²

- the two parties to the agreement are motor vehicle manufacturers;
- the obligations of the agreement are extended to products and services other than motor vehicles or spare parts;
- the agreement contains obligations for the manufacturer or the dealer which are more far-reaching than those permitted under the Regulation;
- the parties agree restrictions permitted under Regulations 1983/83 on exclusive distribution agreements or 1984/83 on exclusive purchasing agreements which go further than those permitted under Regulation 1475/95;

⁷⁸ Article 6(1)(11) of Regulation 1475/95.

⁷⁹ Article 6(1)(12) of Regulation 1475/95.

⁸⁰ Article 6 of Regulation 1475/95. By contrast, Regulation 123/85 contained only three black clauses in Article 6.

⁸¹ See Article 6 of Regulation 1475/95

⁸² See Article 6(1)(1) to (5) of Regulation 1475/95.

- the manufacturer is given the right to alter the contract territory during the period of the agreement, or to conclude distribution and service agreements with other companies in the contract territory.
- (56) The loss of the benefit of the Regulation in these cases means that all restrictive clauses contained in the agreement are automatically and without any declaration from the Commission or from a national authority no longer exempted, and Article 81 is applicable.
- (57) The second type is the list of “*black practices*” which also lead to the automatic loss of the exemption if the behaviour is systematically or repeatedly committed.⁸³ “*Black practices*” occur where:
- the manufacturer, the supplier or another undertaking within the network fixes resale prices or discounts;
 - one of these undertakings directly or indirectly impedes final consumers, their intermediaries or authorised dealers from buying a vehicle where they consider it to be most advantageous;
 - the dealer's remuneration depends on the final destination of a vehicle;
 - the manufacturer or supplier interferes with the dealer buying spare parts of equal quality from a spare-part supplier of his choice;
 - these undertakings interfere with sales by a spare-part supplier although the latter offers spare parts of matching quality;
 - the manufacturer hinders spare-part producers from affixing their trade mark or logo on parts supplied for the initial assembly or for the repair or maintenance of vehicles;
 - the manufacturer does not pass on technical information necessary for the maintenance of the manufacturer's vehicles to independent repairers without objectively justified reasons for such a refusal.
- (58) The “*black practices*” can be unilateral and may be adopted by the manufacturer, importer or even by dealers. They have consequences only for the undertaking engaged in the practice: restrictive clauses agreed in favour of this undertaking which appear in the distribution and servicing agreements of that party, in the geographic area in which the objectionable practice distorts competition, are automatically and without any action on the part of the EU Commission or national authorities no longer block exempted.

3.3.4 Notice on Regulation 123/85⁸⁴

- (59) This notice was adopted by the Commission together with Regulation 123/85. It has not been modified since and is still in force⁸⁵ and therefore also clarifies issues of relevance to Regulation 1475/95.

⁸³ See Article 6 (1)(6) to (12) and recital 20 of Regulation 1475/95.

⁸⁴ Notice on Regulation 123/85, see footnote 4, page 7.

⁸⁵ See Commission press release IP(95) 648, 21.6.1995, p. 3.; since the entry into force of Regulation 1475/95 the clarification however only concerns those provisions which on substance

- (60) At the request of the commercial sectors involved in car distribution, the notice was intended to construe rights and obligations contained in Regulation 123/85. It also sets out certain administrative guidelines for the withdrawal of the benefit of the block exemption.
- (61) The notice highlights and tries to make workable the consumer's basic "*right*"⁸⁶ to buy a motor vehicle and to have it maintained or repaired wherever prices and conditions are most advantageous to him. In this respect, a number of key issues relating to parallel trade and competition within the Community are clarified.
- This "*right*" of a consumer exists, pursuant to the notice, first of all as regards the normal product range that the dealer offers to his incumbent customers. For passenger cars, this right⁸⁷ also exists as regards cars which correspond to vehicles distributed by a dealer but with the specifications marketed by the manufacturer in the Member State where the consumer wants to register the vehicle.⁸⁸ An example of such a car is a passenger car with right-hand drive. In order to allow British or Irish consumers to buy such cars from dealers in mainland Europe, the latter can order such cars from their manufacturers with the specifications of cars which are sold in the United Kingdom or in Ireland.⁸⁹
 - The notice also makes it clear that the European consumer's freedom to source a vehicle or after-sales services wherever it is most advantageous may also not be jeopardised by direct or indirect bilateral or unilateral measures on the part of manufacturers or distributors. Examples of such actions are longer delivery times, a refusal to carry out warranty work or lack of cooperation in the event of difficulties with the registration of a new vehicle.
 - As regards the possibility for consumers to purchase a new vehicle using the services of a mandated intermediary, the notice makes it clear that it is for the consumer or intermediary to give documentary evidence that the intermediary is acting on behalf and for the account of the consumer.
 - As regards price differentials in Europe, the Commission may withdraw the benefit of the Regulation if prices differ substantially between Member

have been left unchanged by this Regulation. This is not the case for example for Article 10 (4) of Regulation 123/85: see Article 8 (3) of Regulation 1475/95.

⁸⁶ The word "*right*" in this context may give rise to misunderstandings, because neither Regulation 123/85 nor Regulation 1475/95 creates any obligation for dealers to sell a vehicle to a consumer which could be enforced by a consumer against a dealer.

⁸⁷ Article 5(1)(2)(d) of Regulations 123/85 and 1475/95 contains the so-called "*availability clause*".

⁸⁸ See Article 13(10) of Regulation 123/85 and Article 10(10) of Regulation 1475/95.

⁸⁹ Article 6(7) of Regulation 1475/95, leads to a similar result as Article 5(1)(2)(d) which concerns passenger cars. Pursuant to Article 6 (7) a manufacturer loses the benefit of the block exemption if it systematically or repeatedly refuses to deliver to its dealers, commercial vehicles, trucks or buses corresponding as regards their specifications to those in the country where the vehicles will be registered. The notice on Regulation 123/85 is therefore not up to date as regards this point. See also the section 6.3.2.2., page 110, of this report on the availability of vehicles for cross-border sales.

States, and if these price differentials are chiefly due to obligations exempted by the Regulation⁹⁰. However, the Commission declares in the notice that it will not investigate price differentials if they are not above 12% or if they do not exceed either a further 6% over a period of 12 months or if only an insignificant portion of motor vehicles is concerned. The same is true if taxes, charges or fees for a new vehicle amount to more than 100% of the net price or if the level of resale prices is subject to state measures for more than one year. The Commission will also take account of exchange rate fluctuations when investigating price differentials.

- As regards the sale of passenger cars corresponding to a model within the normal contract programme of a dealer, an objectively justifiable supplement can be charged in addition to the price for a similar product of the contract programme. This supplement has to be based on special distribution costs and differences in equipment and specification. Today such a supplement is charged if a British or Irish consumer purchases a right-hand-drive car in a left-hand-drive country, where that car corresponds to a left-hand-drive model within the normal contract programme of a dealer. The dealer may charge an objectively justifiable supplement (the so called right-hand-drive supplement) in addition to the normal price for the corresponding left-hand-drive product. The same principle applies where left-hand-drive cars are sold in a right-hand-drive country.
- In countries where taxes are above 100% of the net price of a car or where prices are subject to national measures, the notice also allows the charging of a “*further supplement*” for a passenger car due to be parallel exported. This “*further supplement*” can increase prices up to the prices in the cheapest country where no such taxes or price regulation exists⁹¹.

3.3.5 Notice on intermediaries⁹²

(62) A basic objective of Regulations 123/85 and 1475/95 is to give consumers a real possibility of purchasing a new vehicle wherever they like in the single market. In order to facilitate such cross-border purchases, the Regulations consider it desirable for consumers to be able to appoint an intermediary to purchase and take delivery of a vehicle on their behalf. Accordingly, dealers have the right to sell and deliver a vehicle to final consumers who have appointed an intermediary.⁹³

(63) However, experience showed that the scope of Regulation 123/85, as it relates to intermediaries, required further clarification. In 1991, therefore, the

⁹⁰ See also recital 31 of Regulation 1475/95.

⁹¹ The text of the notice states that this supplement has to be a “*further supplement*” to the one charged for passenger cars corresponding to a model within the normal contract programme (see previous bullet point). This could be interpreted as meaning that no such supplement can be charged if a consumer buys a car out of the normal product programme of the dealer (for further details see also below pt. (316) on page 102).

⁹² Notice on intermediaries, see footnote 4, page 7.

⁹³ Article 3(11) of Regulation 123/85 and Regulation 1475/95.

Commission adopted the notice on Regulation 123/85. Such clarification is important because dealers are not allowed to supply new motor vehicles to independent resellers.

- (64) In its Decision in the Ecosystem⁹⁴ case, the Commission provided further clarification in 1991 of what is permitted to intermediaries and distinguished their activity from that of independent resellers. In order to give further guidance to all involved in motor vehicle distribution and to allow intermediaries to play their role in promoting trade in the single market, the Commission adopted its “*notice on intermediaries*” in 1991, based on the principles developed in the Ecosystem case. The notice is still valid today.⁹⁵
- (65) The notice describes the leeway that intermediaries have for the provision of their services to final consumers who have given them written authority to purchase a vehicle. The notice in essence sets out the following:
- Intermediaries have to avoid creating the impression, if they advertise, and in their contacts with consumers, that they are independent resellers. To this end, they have to clarify, for example, that prices quoted are best estimates, and they have to pass on to the customer all advantages obtained in the negotiations carried out on behalf of the purchaser.
 - They may not assume risks of the ownership of the vehicles, but may provide other services in the context of the purchase of a new vehicle, such as the risk of financing the purchase of a motor vehicle in another Member State.
 - Intermediaries may not establish a privileged relationship with dealers which is contrary to the obligation of the dealer not to appoint distributors or agents outside his contract territory or to actively seek customers outside his contract territory⁹⁶ or which undermines the dealer's obligation to endeavour to sell within his contract territory a minimum quantity of vehicles in line with his sales targets. In view of this, intermediaries may not receive higher discounts than those which are customary on the market (which would indicate that the intermediary acts as a sort of sub-distributor outside the dealer's allotted area and thereby undermines the exclusive character of the distribution system). Moreover, a dealer may not sell more than 10% of his sales through any one intermediary since it is said that this would jeopardise and run counter to the dealer's obligation to fulfil his sales targets.

⁹⁴ Commission Decision of 4 December 1991 *ECO System v Peugeot*, OJ L 66, 11.3.1992, p. 1, upheld by the Court of First Instance judgment of 22.4.1993 *Peugeot v Commission*, Case T-9/92 [1993] ECR II-0493, and the Court judgment of 16.6.1994 *Peugeot v Commission*, Case C-322/93P [1994] ECR I-277.

⁹⁵ See Commission press release IP(95) 648, 21.6.1995, p. 3.

⁹⁶ Article 3(8)(b) of Regulation 123/85; this prohibition has been limited in scope by Regulation 1475/95, Article 3(8)(b) which only prohibits personalised advertisements outside the contract territory.

3.4 FURTHER COMMISSION ACTION IN THE AREA OF MOTOR VEHICLE DISTRIBUTION WITH A VIEW TO PROMOTING PARALLEL IMPORTS AND CONTRIBUTING TO THE COMPLETION OF AN INTERNAL MARKET

3.4.1 Explanatory brochure

- (66) In order to specify the regulatory framework amended by Regulation 1475/95, the Commission published a brochure in 1995 in all Community languages.⁹⁷ This legally non-binding guide to the Regulation explains the rights and obligations of manufacturers, dealers, spare-part producers and independent repairers. It also provides consumers with detailed information on their freedom to buy a new motor vehicle directly or via an intermediary in another Member State of the European Union, to claim the producer warranty and to have the vehicle serviced anywhere in the Community from a dealer belonging to the network of a manufacturer.

3.4.2 Hotlines

- (67) Consumers often face problems when buying a car in another Member State. They tend to turn to the Commission first, which refers them to the manufacturer or importer concerned. One of the Commission's instruments in dealing with such consumer letters has been the establishment, at the Commission's request, of telephone "Hotlines", also known as "Help Lines", by most car manufacturers.⁹⁸ Where consumers experience problems in buying a car abroad, they may directly contact the car manufacturer concerned, who can supply the requested information or refer them to a dealer.

3.4.3 The Commission's car price report

- (68) Since 1993, the Commission has published a report on car prices within the EU every six months (on 1 May and 1 November, respectively).⁹⁹ These reports,¹⁰⁰ of which currently more than 4 000 copies are sent out, attract a large degree of interest from consumers and their associations.
- (69) Until 1998, prices were published for only twelve of the fifteen Member States, excluding Denmark, Finland and Greece by reason of the high taxes imposed on car purchase in those countries. With the introduction of the euro, it was decided from 1 May 1999 to include car price data for all fifteen Member

⁹⁷ Document IV/9509/95; available on the Internet under:
<http://europa.eu.int/comm/dg04/aid/en/car.htm>.

⁹⁸ See: http://europa.eu.int/comm/dg04/aid/en/car_hotlines_en.htm.

⁹⁹ Pursuant to Article 11 of the Regulation, the Commission has to evaluate on a regular basis the application of the Regulation with a particular focus on price differentials between the different Member States. Such is the purpose of this report.

¹⁰⁰ An extract of each report, which figures among the most popular publications of the Directorate-General for Competition, is also made available on the Competition Directorate-General website: <http://europa.eu.int/comm/dg04/aid/en/car199911.pdf>.

States, with a distinction being made between, on the one hand, the eleven participants of the euro zone and, on the other hand, the four non-participants.

- (70) Prices for the 75 most frequently sold car models are expressed in euro and national currencies, excluding and including taxes. The report also contains prices for some major specifications and for the right-hand-drive supplement requested for such right-hand-drive cars sold in mainland Europe.
- (71) The prices published in each car price report are analysed as regards the development of price differentials within the European Union. The result of this analysis is published in press releases¹⁰¹ which accompany the publication of the report.
- (72) The report has created greater price transparency on recommended retail prices and induced consumers to acquire cars in another Member State where prices are lower. Such parallel trade, if substantial enough, should be an important market-related factor for reducing price differentials.

3.5 ALLEGED BENEFITS OF THE EXISTING REGULATORY FRAMEWORK GOVERNING CAR DISTRIBUTION AND SERVICING AGREEMENTS FOR MANUFACTURERS, DEALERS AND CONSUMERS AND OTHER PARTIES

- (73) It is generally argued¹⁰² that the current distribution system operated in the single market has brought benefits for parties involved in motor vehicle distribution and servicing. **Annex II** lists the benefits generally cited.

4 MOTOR VEHICLE DISTRIBUTION: THE FACTS

4.1 STRUCTURE OF EU CAR AND SPARE-PARTS DISTRIBUTION

4.1.1 Car manufacturers: description of the market, market shares and brands

- (74) A large number of manufacturers are active on the European market: there are eight large groups and a number of Japanese, Korean and smaller European suppliers (see diagram below). In 1998, motor vehicle production in the European Union amounted to 16.6 million units, of which 14.5 million were passenger cars.

¹⁰¹ For the most recent press release on car prices on 1.5.2000, see IP/00/781 of 13 July 2000; also published on the Internet under: <http://europa.eu.int/comm/dg04/aid/en/car>.

¹⁰² See e.g. ICDP, Research Report 4/98, "*Beyond the block exemption, an analysis of vertical restraints and retail competition in the European Car Industry*" by A. Tongue and J. Brown, hereinafter: ICDP "*Beyond the block exemption*", 4/98. On pages 25 and 27, this paper lists in more detail the benefits that it believes the current system of distribution has brought to the various categories of operators concerned. It also explains the burdens that the system creates for dealers.

- (75) Trade in motor vehicles between the European Union and other countries is substantial. Major destinations for exports are the NAFTA zone, western and eastern European countries and Japan, while imports are mainly from Japan and eastern European countries. The trade balance in motor vehicles shows a currently high export surplus for the European Union, amounting to €20.1 billion in 1998.
- (76) New passenger car registrations amounted to 14.37 million in 1998, and rose by 4.9% to 15.08 million in 1999.¹⁰³
- (77) The western European car market is very close to maturity¹⁰⁴ and new car sales generally serve to replace old cars. Moreover, the import limitations for Japanese cars introduced in 1989 have been abolished as of 1.1.2000.¹⁰⁵ The industry is characterised in general by persisting excess production capacity and, consequently, unsatisfactory capacity utilisation.¹⁰⁶ However, this varies from one manufacturer to the other and may also depend on the lifecycle of a car model; in particular a temporary lack of capacity may occur if the production of a new car model starts. In recent years, the industry has also been characterised by an accelerating process of restructuring, including take-overs, mergers, as well as cooperation in various areas between car manufacturers.¹⁰⁷
- (78) There are more than 40 brands with a total of about 250 models, including an increasing number of "niche" products¹⁰⁸ competing for customers in the European Union. Product cycles are becoming increasingly shorter, since the industry is under pressure to offer improved products. Moreover, car manufacturers are tending to increase product differentiation.
- (79) In fact, as indicated below, the six leading manufacturers with market shares above 10%, representing about 20 brands, together have a market share of 74%.¹⁰⁹ The rest of the car market is shared between two other European car manufacturers (+/- 11%), Japanese manufacturers (+/- 12%) and Korean

¹⁰³ See also, for further details, ACEA, www.acea.be.

¹⁰⁴ See ICDP "Future of the dealer- the evolving retailer", 4/99, p. 10; ICDP "Beyond the block exemption", 4/98, p. 10; A. Card in: OECD Proceedings, "Market Access Issues in the Automobile Sector", July 1997, by M. Harbour, (hereinafter: OECD, "Market Access Issues in the Automobile Sector"), p. 95.

¹⁰⁵ The import limitations for Japanese cars still existed when Regulation 1475/95 was adopted in 1995.

¹⁰⁶ See, for example, ICDP, "Beyond the block exemption", 4/98, p. 43; ICDP "Revenue management – how the car industry can learn from airlines" by Jonathan Brown, Management Briefing n° 2, p. 8.

¹⁰⁷ See, for example, for mergers/take-overs *BMW/Rover* (Commission Decision M.416, 14.3.1994), *Ford/Mazda* (Commission Decision M.741, 24.5.1996), *Toyota/Daihatsu* (Commission Decision M.1326, 6.11.1998), *Daimler-Benz/Chrysler* (M.1204, 22.7.1998), *Renault/Nissan* (Commission Decision M.1519, 12.5.1999), and *Ford/Volvo* (Commission Decision M.1452, 26.3.1999).

¹⁰⁸ For example, multi-purpose vehicles, off-road vehicles, convertibles, coupés.

¹⁰⁹ As to the car market in the United Kingdom, see UK Competition Commission report, pt. 2.82 et seq.

manufacturers (+/- 3%) (see following diagram). Although the European car market is characterised by the presence of only few large suppliers, market concentration is less advanced than in the US and Japan.¹¹⁰

Diagram 2: Market shares

MANUFACTURER	BRANDS	MARKET SHARE EU*	MARKET SHARE EU*	MARKET SHARE EU*
EUROPEAN/AMERICAN:		1999	1998	1997
Volkswagen group	Volkswagen, Audi, Seat, Škoda, Lamborghini	18.8%	18.0%	17.1%
PSA group	Peugeot, Citroën	12.1%	11.4%	11.3%
Renault	Renault	11.0%	10.7%	9.9%
General Motors group	Opel, Vauxhall, Saab, others	11.5%	11.5%	12.1%
Ford group	Ford, Volvo, (Mazda), Jaguar	11.2%	11.8%	13.0%
Fiat group	Fiat, Lancia, Innocenti, Alfa Romeo, Ferrari, Maserati	9.6%	10.9%	11.9%
DaimlerChrysler group	Mercedes-Benz, Chrysler, Smart	5.6%	5.1%	4.4%
BMW group	BMW, Rover, Land Rover	5.3%	5.7%	6.1%
TOTAL:		85.1%	85.1%	85.8%
JAPANESE::		1999	1998	1997
Toyota	Toyota	3.2%	3.0%	2.8%
Nissan	Nissan	2.6%	3.0%	3.0%
Honda	Honda	1.4%	1.5%	1.6%
Mazda	Mazda	1.4%	1.5%	1.4%
Mitsubishi	Mitsubishi	1.2%	1.3%	1.3%
Others	Suzuki, Subaru, Daihatsu	1.7%	1.7%	1.6%
TOTAL:		11.5%	12.0%	11.7%
KOREAN	Daewoo, Hyundai, Kia, Ssangyong	3.2%	2.7%	2.2%
Others	Bentley, Lada, Ligier, Lotus, Porsche, Rolls-Royce, Aston Martin, others	0.2%	0.2%	0.3%
TOTAL:		100%	100%	100%

* New car registrations; source: ACEA (*Association des Constructeurs Européens d'Automobiles*), www.acea.be

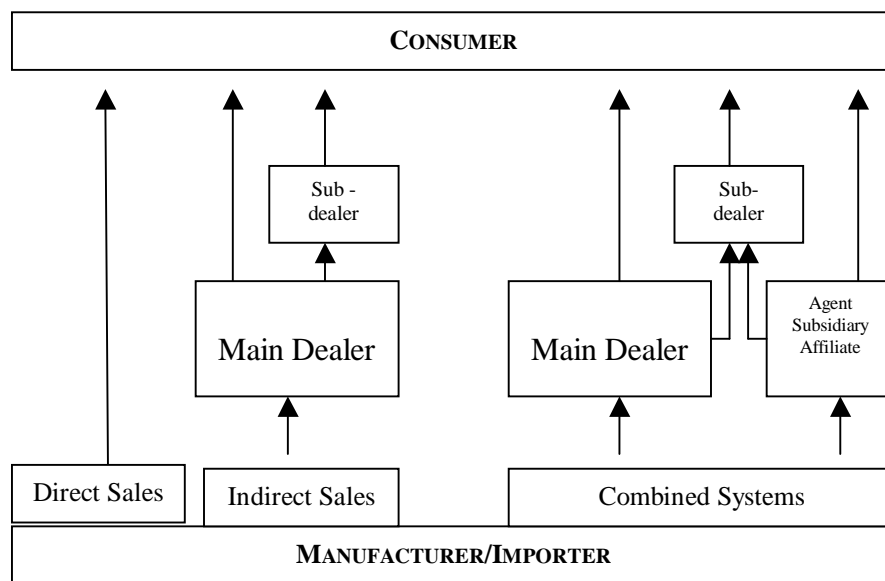
¹¹⁰ While in the European Union, the three largest car manufacturers (*Volkswagen group*, *PSA group* and *General Motors group*) had a combined market share of 41% (1998), the three major groups in the USA (*General Motors*, *Ford* and *DaimlerChrysler*) attained a combined market share of 72% (1998; source: www.autofacts.com), and the three major groups in Japan (*Toyota*, *Nissan* and *Honda*) had a combined market share of 59% (1998; source: www.japanauto.com).

4.1.2 Manufacturers' distribution networks

General structure of the network:

- (80) Several different types of operators are involved in the distribution of new vehicles. The following diagram gives an overview of existing distribution channels:
- (81) The vehicles are supplied to consumers in the following ways by manufacturers or, where relevant, by the national importers:
- directly by using subsidiaries/agents; or
 - indirectly by using dealers; or
 - through combined systems using subsidiaries and/or agents and also dealers.

Diagram 3: Distribution demands in the automotive industry



Based on: ICDP, Multi-Franchising, Research Paper No 1/98, exhibit 2.

- (82) As described earlier,¹¹¹ retail distribution of cars is based on exclusivity and selectivity. It follows that manufacturers either entrust a limited number of undertakings with the distribution of cars within a given contract territory or appoint importers with a dealer network. As each car manufacturer applies the same principles, car distribution as a whole is characterised by a system of almost identical distribution networks (also referred to as the "*cumulative effect*").¹¹²
- (83) In general, except for their home country, manufacturers appoint one supplier for each Member State (generally referred to as the wholesaler or the

¹¹¹ See subsection 3.1, page 10, of this report.

¹¹² See pt. (20) of this report.

importer), who concludes individual distribution contracts with dealers located in this Member State.¹¹³ Importers are in most cases directly owned by the manufacturers.¹¹⁴

- (84) Manufacturers generally sell cars either to their dealers, or to their respective importers located in other Member States. The importers sell the cars they have purchased from their manufacturer on to their dealers. The bulk of the cars delivered to dealers are usually sold to final consumers. The remaining cars are sold on to sub-dealers or distributed by dealers' agents to final consumers.
- (85) Retail distribution is assumed by a large number of mostly independent, small and medium-sized dealers.¹¹⁵ In addition to entering contractual relationships with their manufacturer or importer, main dealers may be allowed to conclude contracts with sub-dealers. Certain manufacturers also use subsidiaries or agents for distribution of their cars; these may order cars either directly from their manufacturer or importer, or indirectly through a main dealer.¹¹⁶
- (86) Manufacturers generally reserve certain customer groups for direct selling with or without involvement of a dealer.¹¹⁷ For these sales, manufacturers grant

¹¹³ The following exceptions have been found: *Fiat* has appointed two importers respectively in Greece and Portugal; in a number of cases (in particular Japanese manufacturers), Luxembourg is handled by the Belgian importer, and in one case (*Rover*) imports into Finland and Sweden are handled by the importer of its parent company (*BMW*). The German importer of *Honda* also handles distribution in Belgium, Luxembourg, the Netherlands and Austria, while its French importer also serves the Italian and Spanish markets. *General Motors Europe* performs a co-ordinating role in distribution throughout Europe, while actual distribution is undertaken by National Sales Organizations primarily owned by *General Motors Corporation* (GMC, USA); *Adam Opel* (D), *Vauxhall* (UK) and *GM Espana* are all directly owned by *GMC* and have significant manufacturing operations. A comparable situation prevails for *Ford of Europe*.

¹¹⁴ Only a small number of dealers are owned by a manufacturer or a supplier. However, a small number of producers rely on independent importers for distribution of their brand; this is true in particular in the case of *Volkswagen* and some Japanese manufacturers.

¹¹⁵ In particular the French producers *PSA* and *Renault* control a more significant number of their dealers, and *DaimlerChrysler* realise a great deal of its sales in Germany through wholly-owned "*Niederlassungen*" and independent undertakings called "*agents*".

¹¹⁶ In Germany, *Volkswagen* and *Audi* service outlets act as commercial agents for a main dealer or for a sub-dealer. Also in Germany, *DaimlerChrysler* is distributing its cars through affiliates ("*Niederlassungen*") and "*agents*", which order cars from one of the affiliates or from another "*agent*". In Italy, *DaimlerChrysler* uses some of its service outlets as "*agents*", which order cars from a main dealer. Other Italian service outlets of *DaimlerChrysler* are sub-dealers. *DaimlerChrysler* "*agents*" sell in the name and act on behalf of the manufacturer or importer with whom he has concluded an agreement.

¹¹⁷ A great part of direct sales generally concerns the manufacturers' staff, in particular in Member States where the manufacturer has production facilities, and other reserved customer groups such as armed forces, diplomats or employees of suppliers, who normally submit individual orders. In addition to that, manufacturers supply - either directly or assisted by a dealer - to fleet owners, such as national authorities, leasing and rental companies, and other undertakings which normally order larger quantities. The proportion of direct sales in manufacturer's total sales varies with the Member State concerned and may attain 20% of total sales. A particular situation occurs in the United Kingdom, where up to 80% of all sales are so-called "*direct*" and "*assisted*"

high rebates normally well above the rebates granted to their dealers for individual orders.

- (87) The following diagram compares the main characteristics of the car distribution systems prevailing in the US and in Japan, which are also based on a manufacturer/dealer relationship with the following features:

fleet sales, while in Germany, as the next most important market for fleet sales, they account for about 40% of total sales; see: Consumers' Association 2000, "*The forecourt revolution: the future of the car industry*", Policy Report (hereinafter: CA 2000 "*The forecourt revolution*").

Diagram 4: Principles of car distribution in the EU, the US and Japan

PRINCIPLES	EUROPEAN UNION	UNITED STATES	JAPAN
Territorial exclusivity	Yes; at least limitation of number of dealers present in the dealer's contract territory	Yes	Yes
Selectivity	Yes	Yes; dealers require a public licence to trade from local government, which is subject to a franchise obtained by a manufacturer or importer, but no contractual prohibition on dealers selling to resellers	Yes
Prohibition on dealers selling to resellers	Yes	No; the activity of a reseller of new cars is not possible in the US ¹¹⁸	No, unless there is a valid reason. Sales to resellers who export car outside Japan are permissible.
Two-tier system with main dealers, sub-dealers and agents	Yes, subject to permission by manufacturer	No	Yes, subject to permission by manufacturer who is not allowed to withhold permission unreasonably
Right of manufacturer to carry out direct sales	Yes	No, through franchised retail dealers	Yes
Protection against unjustified termination of dealer contracts	Yes, in cases of less than two years' notice:	Yes; manufacturers have very few grounds to terminate contract; restructuring of network by manufacturers is	No protection in anti-trust law. Pursuant to civil law, dealer contracts can be ended with reasonable period of notice.

¹¹⁸ Resellers do not get a public licence to trade new cars.

		severely inhibited. ¹¹⁹	
Dealer standards	Yes	Yes	Yes
Brand exclusivity	Dealer can sell vehicles of several makes on separate premises, under separate management, in the form of a distinct legal entity and in a manner which avoids confusion between makes ¹²⁰ or where the dealer shows objective reasons for doing so ¹²¹	US franchise laws allow dealers to take additional franchises if they have objective reason; multi-franchised dealers + 'automalls' have expanded recently	Leading manufacturers (market share >10%) may not impose restrictions on the handling of competing products. Rules avoiding confusion between brands are permissible.
Link between sales and after-sales services	Legal link; see art. 5 (1)(1) (a): in order to benefit from Reg. 1475/95 manufacturers have to oblige dealers to offer after-sales services	No legal link , but all dealers offer both since it is part of their franchise "package" agreed upon with the manufacturer	No legal link; manufacturers may require dealers to offer sales + after sales services.
Do margins vary by size of dealer ?	No	No; either this is due to dealer contract or – in some States – to State statute	No; differentiation of margin according to dealer size is not permitted
Sales and stock targets	Yes	Yes	Yes.

Based on ICDP, "*Beyond the block exemption*", Research Report 4/98, p. 21 – 24; OECD Proceedings, "*Market Access Issues in the Automobile Sector*", 1997, p. 158 ss; information supplied by ICDP, manufacturers or their associations.

- (88) As may be seen from the above diagram, the characteristics of the European and US systems of car distribution are largely comparable, while certain differences exist between them and the car distribution system in Japan. However, American dealers are said to be in a much stronger position towards car manufacturers e.g. as regards the termination of dealers' contracts, which is very difficult and costly for the manufacturer. Moreover the rules on multi-marketing are less strict. Manufacturers are also obliged by law to provide

¹¹⁹ ICDP "*The US Legal Framework for Car Distribution*" by Philip Wade, 9/2000

¹²⁰ Article 3 (3).

¹²¹ Article 5 (2) (1).

dealers with a fair supply of new vehicles or face penalties. In the USA guaranteeing the independence of dealers is seen as a means of protecting consumer choice.¹²²

Retail distribution:

- (89) In 1998, a total of 113 400 distributors existed in the European Union,¹²³ of which 66 100 were main dealers. Between 1996 and 1998, the car industry reduced the number of dealerships across the Community by about 6%.
- (90) The dealership structure in many Member States has in the past been characterised by a "two-tier" dealer network with main dealers and sub-dealers. The importance of this aspect varies substantially, however, with the brand and the Member State concerned.¹²⁴ The proportion of secondary dealers is relatively high in countries such as France, Italy and Spain, whereas in countries such as Germany, the United Kingdom and the Netherlands, they play only a minor role.¹²⁵
- (91) Many manufacturers have started to eliminate smaller dealers from their distribution networks in order to better control service standards and brand image. They have an incentive to rationalise their networks to ensure the viability of the remaining dealers and to facilitate contacts and negotiations with the networks. Consequently, dealers' contract territories will be larger in the future. At the same time, however, the dealers want to remain close to the customer.¹²⁶

¹²² ICDP "The US Legal Framework for Car Distribution" by Philip Wade, Executive Briefing, 9/2000. In the USA the key laws affecting automotive distribution are mostly state laws. In Japan the Antimonopoly law does not contain detailed rules on motor vehicle distribution like in the EC block exemption regulation.

¹²³ ACEA; European Car Distribution Handbook 1998; CECRA (European Council for Motor Trades and Repairs) estimates that currently about 100 000 dealerships (including sub-dealers) are involved in car distribution.

¹²⁴ Few sub-dealers, or none at all, are involved in the distribution of the *Seat*, *Citroën*, *Honda*, *BMW* and *Renault* brands. Sub-dealers are much more frequently made use of in the distribution of the *Mercedes-Benz*, *Fiat*, *Volkswagen* and *Toyota* brands. See also ACEA / European Car Dealer Handbook 1998; M. Habour in: OECD, "Market Access Issues in the Automobile Sector" p. 155; Financial Times Automotive, "The Future of Automotive Distribution, Evolution or Revolution?", A.T. Kearney, 1998, p. 12, which, however, gives a different picture.

Some manufacturers (in particular *Renault*, *Citroën*, *Seat* and *DaimlerChrysler*) prefer the use of commercial agents. For *Mercedes-Benz* and *Seat*, commercial agents play an important role only in their respective home markets, whereas *Renault* and *Citroën* are using this channel in many Member States.

¹²⁵ In most southern European markets such as France, Italy and Spain, the number of sub-dealers in comparison to main dealers is particularly high, while in other markets, such as Denmark, Greece, Ireland, the Netherlands, Portugal and the United Kingdom, sub-dealers play a very limited role; see also: CA 2000, "The Forecourt Revolution", p. 22.

¹²⁶ An example of this development is *Ford*, which has converted its smallest dealers into pure service outlets. The declared objective was to provide better quality, consistent servicing across the network and a more professional overall brand image.

Features and economic situation of dealerships:

- (92) In Europe, distribution costs, which include advertising, marketing support, transport and other costs, are often said to represent up to 30% of a vehicle's retail price before tax, a percentage which is higher than the figure for vehicles sold in the United States (25-27%) but similar to that for the Japanese car market (29-31%).¹²⁷ This relatively high proportion for the European market indicates that there is, in principle, real scope for cost reduction through network consolidation and distribution efficiency improvements in the context of the move towards "lean distribution" systems for new motor vehicles. However, the consolidation of the European dealership structure has so far been rather moderate.
- (93) The average number of annual sales per dealer varies considerably between Member States. In the European Union in 1998, a dealer (including main dealers and sub-dealers) sold on average 137 cars, while a main dealer sold 223 cars.¹²⁸ While dealers in the United Kingdom, Ireland, Italy, Portugal and Spain generally sell much more than the average, sales in Germany and the Netherlands correspond to the average. Sales per dealer in all the Nordic countries, Greece, France, Belgium and Austria are below the average.¹²⁹ Sales per main dealer outlet vary considerably across the European Union and range from 422 in Italy to only 95 in Sweden.
- (94) There are also big differences as to the number of dealerships in relation to population and size of the Member State (dealership density). While the density is relatively high in the geographical centre of the European Union,¹³⁰ it is much lower in other countries.¹³¹
- (95) Profitability of dealerships relies on new car sales margins which are relatively low and are often supplemented by additional manufacturer bonuses. Other linked activities - sales of used cars and credit broking - can add significant extra revenue to dealers. Currently, after-sales service is - as a rule - more profitable than new car sales activity.¹³² However, in comparison with other forms of retailing, car dealer groups' profitability is said to be rather low.¹³³

¹²⁷ FT "The Future of Automotive Distribution, Evolution or revolution?", 1998, p. 33; CA 2000, "The Forecourt Revolution", p. 20.; in this context, see also the overview: ICDP, "Beyond the block exemption", 4/98, p. 16, Chart: "Car Advertising Expenditure in France - 1996".

¹²⁸ ACEA.

¹²⁹ See ACEA / European Car Dealer Handbook, 1998 (sales per dealer outlet in Germany and the Netherlands of 133 corresponded to the average); ICDP, "Multi-franchising, Developments and Impact of Sales Channel Management of Automobile Manufacturers", by M. Hoffmeister and R. Heinerberg, Research Paper 1/98, (hereinafter: ICDP, "Multi-franchising" 1/98), p. 24.

¹³⁰ Austria, Belgium/Luxembourg, Germany, Denmark, France, Netherlands.

¹³¹ Spain, Finland, Greece, Ireland, Sweden, United Kingdom.

¹³² See OECD, "Market Access Issues in Automobile Sector" points 7-11.

¹³³ ICDP, "Beyond the block exemption", 4/98, p. 29-30.

- (96) The wholesale price is the recommended retail price determined by the manufacturer, the supplier or the importer, less the margin. The main element of the margin granted to dealers for each car to be sold is the difference between the recommended retail price¹³⁴ of a car and the price which dealers pay to their supplier. It generally ranges from 10 to 18%.¹³⁵ One particular feature of this main element of the margin is that it is identical for all dealers of a given Member State for a specific model, irrespective of their size or the volumes ordered. This is recognised as a distinctive practice in car retailing in contrast to retailing of other consumer products. The margin allows the dealer to cover his administrative and operating cost, and to grant discounts to his customers.
- (97) As another element of the margin dealers are generally granted bonuses by their manufacturers or importers for achievement of sales targets and other, mostly customer-related, objectives. Bonuses are fixed either as a percentage or as an absolute amount for each car sold. Bonuses are granted upon achievement of certain quantitative objectives (generally sales volume or market share) and other, qualitative objectives (for example, customer satisfaction and quality of service or premises). Bonus payments to dealers can attain the equivalent of 1 to 4% of a new car selling price.¹³⁶
- (98) As regards the proportion of both elements of the margin in the total remuneration, substantial differences exist in the systems applied by manufacturers. This can be true for different makes of the same manufacturer, and also for the systems applied in different Member States for the same brand.¹³⁷
- (99) A similar system of margins applies to spare parts, which the dealer purchases from his supplier. Margins for spare parts are generally higher than for new cars, and the granting of discounts to customers is not common practice.
- (100) New sources of revenue are also emerging for dealers (selling of insurance, financing, leasing etc.), which are liable to improve dealers' profitability.

4.1.3 Multi-brand dealerships

- (101) Since 1995, manufacturers have had to allow dealers to sell a second (or more than one) brand, generally from separate premises.¹³⁸ However, true multi-brand dealerships, where dealers sell brands from different manufacturers not belonging to a same group, are rare. In most cases where a dealer sells a

¹³⁴ The so-called "*list prices*".

¹³⁵ OECD "*Market Access Issues in the Automobile Sector*", p.8. Section 6.2.1.3 of this report gives more precise figures provided by car manufacturers.

¹³⁶ See also OECD, "*Market Access Issues in the Automobile Sector*", points 7 to 11.

¹³⁷ CA 2000, "*The Forecourt Revolution*".

¹³⁸ Articles 3 and 4 of Regulation 1475/95.

second brand, this brand belongs to the same manufacturer, the most significant examples being Volkswagen/Audi and Fiat/Alfa Romeo/Lancia.

- (102) Across the European Union, 75 to 80% of all main dealers sell only one brand. The following diagram gives an idea of the proportion of exclusive main dealers in different Member States:

Diagram 5: Percentage of exclusive main dealers

PERCENTAGE OF EXCLUSIVE MAIN DEALERS		
MEMBER STATE	1997	1998
Sweden	46%	58%
Norway	53%	67%
Switzerland	65%	72%
Denmark	66%	77%
Italy	77%	77%
France	80%	80%
Spain	80%	84%
United Kingdom	85%	88%
Germany	88%	89%
Netherlands	91%	89%

Sources: ICDP, "Multi-Franchising" p. 36 (for 1997); European Car Distribution Handbook 1998 (for 1998).

- (103) While these proportions have been relatively stable over the years, distribution networks in the Nordic countries¹³⁹ are traditionally much more open to multi-brand arrangements than other markets. More frequently, dealers whose first brand has a low market share tend to take on a second brand, even from another manufacturer.
- (104) In Sweden, before 1970, a system consisting of mutual exclusive distribution contracts combined with territorial clauses between the dealers was applied for car distribution as well as in neighbouring industries. However, this situation was dissolved by the Competition Ombudsman in Sweden in 1970. The landmark case was *BIVA*,¹⁴⁰ where the Competition Ombudsman initiated proceedings under the 1953 Competition Act against Volvo, Saab and Volkswagen because of their refusal to supply the co-operative owned car (department) store called BIVA with new cars due to fear of multi-dealership. As a result of the arrangements between the Ombudsman and the undertakings concerned, car dealers were allowed to sell competing car

¹³⁹ Because these countries are large and thinly populated, single-brand dealerships are not a viable economic option.

¹⁴⁰ NFR 1970:2.

brands from the same sales premises and to pursue passive sales outside their territory.¹⁴¹

- (105) In the United States, multi-brand dealerships are more common. The analysis shows, however, that dealers are taking complementary franchises rather than franchises for products which directly compete with the products they are already distributing. Typically, one US dealer will sell one of the big three American car makes and add one European or Asian make. However, only 2% of US dealers are "duals" with competing American makes.¹⁴²

4.1.4 Spare parts

Production of spare parts:

- (106) Spare parts used for the maintenance and repair of vehicles are primarily original spare parts (original equipment supplies) or spare parts of matching quality (independent after-market - IAM -), which are products corresponding in quality with those produced by the car manufacturer.¹⁴³
- (107) Original spare parts account for approximately 49% of total spare-part production. They can either be produced directly by car manufacturers (19% of total production), or be purchased by the car manufacturers for the equipment of their new vehicles from independent producers. Outsourcing accounts for 30% of total spare-part production.¹⁴⁴ In this case, spare-part producers co-operate with the car manufacturer in the development of parts and components, and, to this end, invest in research and development programmes, the cost of which can attain 5 to 10% of their annual sales. It is expected that in the near future, in order to counterbalance the contractual power of car manufacturers, suppliers of spare parts will merge and will become system integrators, providing complete systems for each commodity area (chassis, body, powertrain and interior). Recently, some car manufacturers have introduced on the market new brands for their spare parts, which are characterised by a low price and are to be installed on old vehicles.¹⁴⁵

¹⁴¹ See also (NO 1972:24, 1973:36) *Bernitz, Ulf, Marknadsrätt* p. 86, *Juristförlaget*, second edition 1986.

¹⁴² OECD, "Market Access Issues in the Automobile Sector", p. 11 and 12.

¹⁴³ The commercial policy followed to date by car manufacturers and component manufacturers aims to promote high quality parts. Thus, sales of spare parts of non-corresponding quality with the original ones are considered negligible.

¹⁴⁴ The trend towards outsourcing has become very common among car manufacturers; for more details see D. Audet: "L'accès au marché dans le secteur automobile," p. 30, published in *l'Observateur* of l'OECD, December 1999.

¹⁴⁵ In particular, *Renault* introduced the new brand "*Motrio*" and *Ford* the brand "*Motorcraft*". "*La pièce adaptable détrônera-t-elle l'origine ?*", *Auto Info*, 1099, 21.1.2000, p. 34; *Guaranteeing Survival of the Independent Aftermarket*, PriceWaterhouseCoopers for FIGIEFA - FMA/FAM, May 2000, slides 36 et seq. (hereinafter PriceWaterhouseCoopers, "*Guaranteeing Survival*", May 2000).

- (108) Non-original spare parts account for 51% of total production, and they are frequently priced up to 30% below prices of corresponding original spare parts. This percentage includes spare parts matching the quality of original spare parts and other spare parts of lesser quality.¹⁴⁶

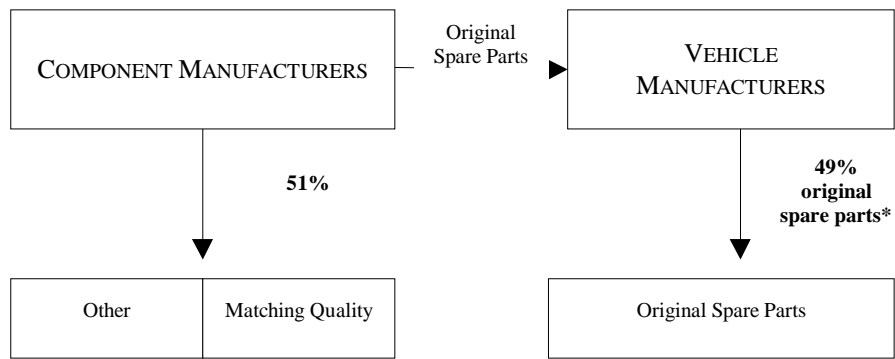
Distribution of spare parts:

- (109) The distribution of original spare parts and that of non-original spare parts differ in some respect:
- original equipment is sold by car manufacturers through their official networks. This distribution organisation is very accurate and requires a rapid delivery system which necessitates stockholding, marketing support, packaging, additional sales personnel and technical training in maintenance and repair;
 - non-original equipment is sold to dealers, in particular as regards spare parts of matching quality, but it is mainly supplied to other repairers as well as to distributors who can be generalists or specialists as well as "do-it-yourself" outlets, which directly supply the consumer for work he can carry out himself. The distribution chain of non-original spare parts involves distributors acting at different levels (national, regional, local). The current distribution chain contains some inefficiencies in terms of time of delivery and costs, which will be avoided in the near future with the introduction of new technologies, the reorganisation of the distribution system and the offer of new services to independent repairers.
- (110) Spare parts manufactured by independent producers are usually sold to independent garages for price and competitiveness reasons. Supplies from independent producers to car manufacturers' official networks are said to consist almost exclusively of parts for vehicles of other brands. Dealers, although they could potentially purchase parts from other sources than the car manufacturer,¹⁴⁷ would be reluctant to do so because of their dependency on the vehicle manufacturer.
- (111) The production of the various types of spare parts can be illustrated by the following diagram:

¹⁴⁶ "La pièce adaptable détrônera-t-elle l'origine ?", Auto Info, 1099, 21.1.2000, p.34; For example, *Lear Corporation Plc* manufactures spare parts both for *Fiat Auto SpA* and for the independent after-market - IAM -, *UNIPART* manufactures spare parts both for *Honda* and for the IAM. This element is underlined by several Commission decisions regarding merger operations between spare-parts producers, Decisions of 31 July 1991, Case IV/M012 *Varta v Bosch* (OJ L 320, 22.11.1991, p. 26) and of 29 May 1991, Case IV/M043 - *Magneti Marelli v CEAc.* (OJ L 222, 10.8.1991, p. 38) and Commission Decision of 15 October 1993, Case IV/M.337 - *Knorr-Bremse v Allied Signal* (OJ C 298, 4.11.1993)..

¹⁴⁷ Recital 27 and Article 6(1)(9) and (10) of Regulation 1475/95; see also section 6.2.1.1, page 82 and section 6.2.3.1, page 93 of this report.

Diagram 6: Production of spare parts

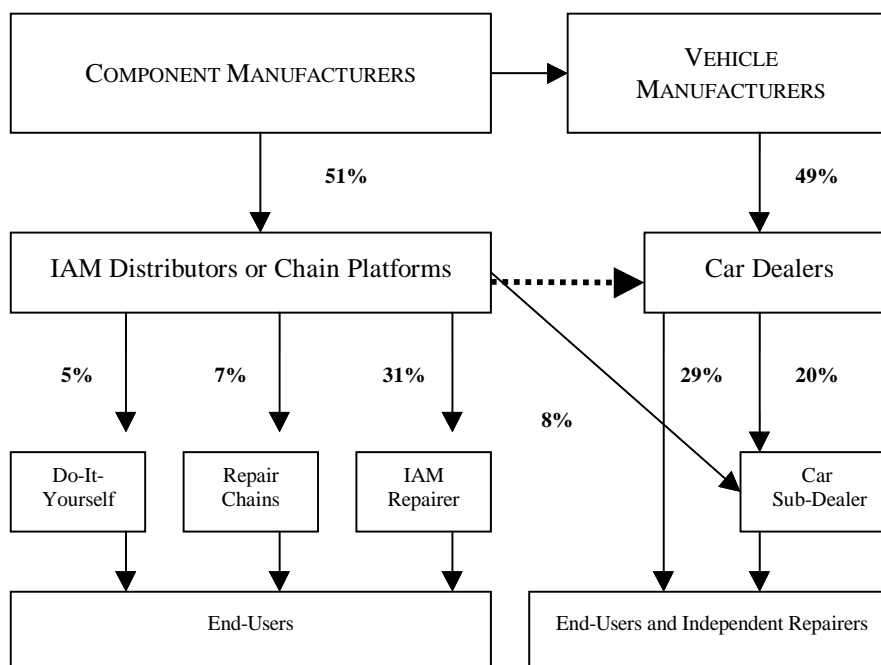


* 30% are produced by component manufacturers
19% are produced by vehicle manufacturers

Source: European Commission

(112) The distribution system can be illustrated by the following diagram:

Diagram 7: Distribution of spare parts



Source: CLEPA (Comité de Liaison de la Construction d'Équipements et de Pièces d'Automobiles, European Association of Automotive Suppliers, *Automotive Aftermarket in Europe*, 5 November 1999.

(N.B. Dotted arrow (.....➔) added by the Commission).

(113) Figures provided by CLEPA in the above diagram concerning distribution of spare parts partially differ from those provided by car manufacturers in their replies. Car manufacturers estimate that spare parts of matching quality represent from 5% to 20% of their official networks' requirements, while CLEPA said that this portion is limited to 8%. FIGIEFA, the association of automotive after-market distributors, estimates that this percentage amounts to +/- 15%.

4.2 AFTER-SALES SERVICING

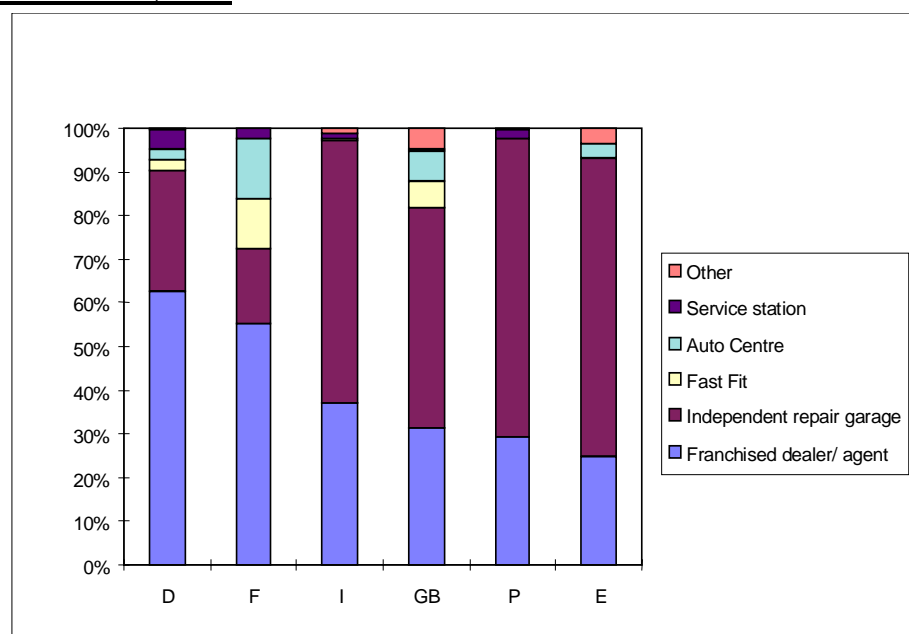
4.2.1 Structure

(114) After-sales servicing is carried out by:

- network dealers belonging to the network of vehicle manufacturers;
- service outlets (about 119 000 in 1998) established by manufacturers;
- independent repairers;
- "fast-fit" repair chains, some of which are owned by car manufacturers.

(115) Dealers and service outlets focus mainly on after-sales services for vehicles of one make; in contrast, the independent repairers and fast-fit chains generally provide repair and maintenance for cars of different brands.¹⁴⁸ However, repair and maintenance under the manufacturer's warranty period is in principle executed by dealers of the make concerned, while after this period, customers use independent repairers for repair and maintenance. For certain routine work, customers also turn to fast-fit chains, auto centres or similar. The importance of the different players in the after-sales market is illustrated by the following diagram.

Diagram 8: Shares of the different after-sales service providers for brake pad fitment, 1997



Source: Autopolis (GIPA)

(116) The following diagram illustrates the specifications of the different providers of after-sales services:

Diagram 9: Specifications of the different providers of after-sales services

TYPE OF PROVIDER	INVESTMENT / TECHNICAL KNOWLEDGE REQUIRED	TECHN. LIMITS IN PROVIDING AFTER-SALES SERVICES	ASPECTS AFFECTING CONSUMER SATISFACTION 149	TREND IN NUMBER
Dealers	High	None	High prices	Decrease ¹⁵⁰
Pure Service	High	None	High prices;	Decrease ¹⁵¹

¹⁴⁸ This is also true for authorised dealers, who have to prepare for resale second-hand cars taken in with the sale of a new car.

¹⁴⁹ As regards the quality of the after sales services provided by the different providers see in particular pts. (395) and (396) of this Report.

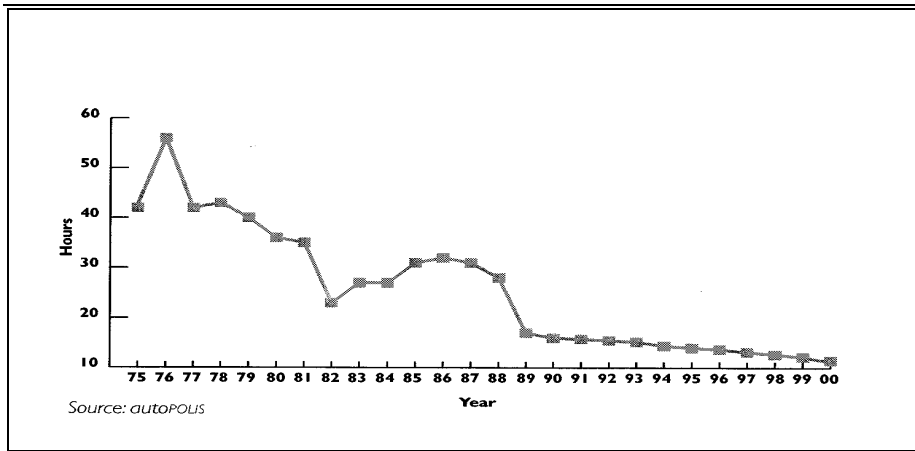
¹⁵⁰ See in particular pt. (91), page 36, of this report.

Outlets				
Independent Repairers (multi-brand)	Medium	Certain brand-specific knowledge and equipment, in particular in electronics / electricity, diagnostics, testing	Lower prices than authorised dealers / repairers;	Decrease ¹⁵²
Fast-Fit Chains (all brands)	Low	Low brand-specific knowledge required	Low prices	Increase ¹⁵³

(117) It has been observed that there is an overall trend towards a reduction in the number of service points (down 6% during the period 1996 to 1998),¹⁵⁴ partly as a response to longer service intervals and greater reliability of cars in general, a phenomenon which may increasingly affect dealers' commercial situations.¹⁵⁵

(118) The following diagrams show that the after-sales-service requirements of newly launched cars are on a decreasing trend. This is true for the number of inspections made¹⁵⁶ as well as the time needed for them.

Diagram 10: Diminishing service requirements



¹⁵¹ In line with reorganisation of dealers' networks.

¹⁵² A majority of manufacturers consider that the number of independent repairers has somewhat decreased.

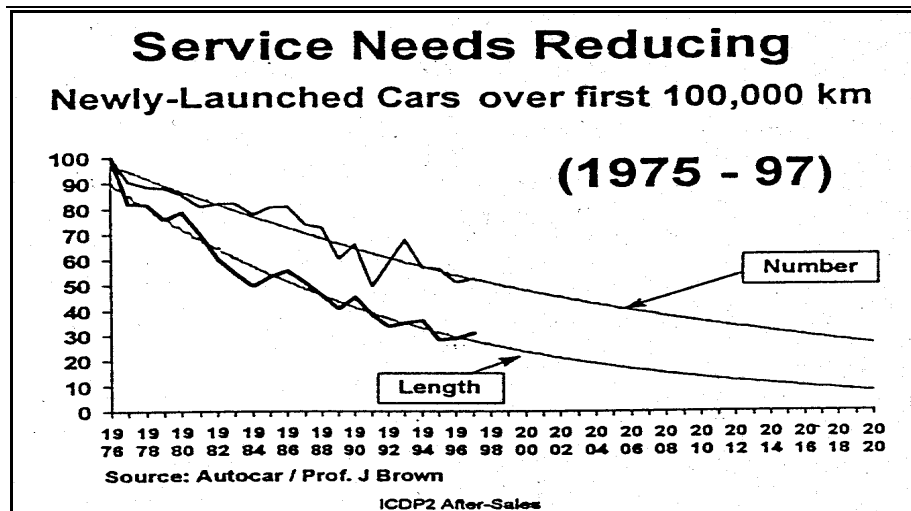
¹⁵³ The information available on this issue is not consistent: some manufacturers and studies (see section 5.2) consider that the number will decrease, due to longer durability of components.

¹⁵⁴ ACEA / European Car Dealer Handbook, 1998.

¹⁵⁵ ICDP, "Beyond the block exemption II", 6/99, p. 15-18; CA 2000, "The Forecourt Revolution" p. 28.

¹⁵⁶ Cars sold in the 1970s had to be serviced every 5 000 km; today the service interval is 20 000 km and in some instances 30 000 km.

Diagram 11: Trend in service needs of new cars



- (119) Over recent years, many independent repairers have decided to focus on "low investment-high profit", so-called "fast-fit activities" and to form and join chains.¹⁵⁷ The distinctive characteristics of fast-fit chains are a strong brand name, a limited range of repairs (brake-pads, shock absorbers, tyres, exhaust systems), rapid service and low price levels.¹⁵⁸ The presence of fast-fit chains varies according to the Member State. Their presence is particularly strong in France and in the UK, where they were introduced in the mid-1980s.¹⁵⁹
- (120) Supported in the mid-1980s by intensive brand marketing, fast-fit chains have captured large shares of the market for fast-fit replacement parts. Nevertheless, demand for many of their standard items is nowadays declining, as the components they are specializing in are of increasingly higher durability, and the chains are finding it difficult to expand beyond their core areas.
- (121) As a response to increased competition from independent repairers and fast-fit chains, especially as regards older cars, car manufacturers have developed

¹⁵⁷ For a comprehensive view of the phenomenon, see: ICDP, "After-sales in Europe" by P. Wade, L. Buzzavo; T. Chieux, K. Zellmer, J. Kiff, 2/97 (hereinafter: ICDP, "After-sales in Europe".) p. 99; PriceWaterhouseCoopers "Guaranteeing Survival", May 2000 slides 20ss. and 79ss..

¹⁵⁸ Light repair and maintenance of automotive vehicles accounts for some 40% of the overall market for repair and maintenance of automotive vehicles and represents a very profitable activity; see also Commission Decision of 31 May 1999, Case No IV/1526 – *Ford v Kwik-Fit*.

¹⁵⁹ In France, the major independent fast-fit chains are usually owned by supermarket chains or organised in franchise networks. In 1995, the fast-fit chains in France were: *Feu Vert* (162 outlets), *Midas* (266 outlets), *Norauto* (120 outlets), *Speedy* (365 outlets), *Stationmarche* (104 outlets). In 1995, in the UK the leading national service chains included: *Halfords* owned by *Boots* (136 outlets), *Lex Autocentres* owned by *Lex group* (96 outlets), *Apple Car Clinics* owned by *Kwik-Fit* (65 outlets), *Flexi Car Care Centres* owned by *Caffyns dealer group* (32 outlets). ICDP, "After-sales in Europe", 2/97.

their own fast-fit formulas for their dealers.¹⁶⁰ Moreover, certain manufacturers, such as Ford Motor Company and Fiat SpA, have recently acquired control over very large and successful fast-fit chains.¹⁶¹ Dealers see these fast-fit operations as having an advantage for the customer in terms of service convenience rather than with regard to lower prices.

4.2.2 *Manufacturers' warranty*

(122) The manufacturers grant a warranty on each new car. It covers in general production faults and other shortcomings for which the manufacturer can be held responsible. The warranty period begins at the time when a car leaves the manufacturer's network, usually when the car is delivered by a dealer.¹⁶² Warranty conditions usually provide for a one-year contract warranty, in some cases limited to a maximum mileage. Certain manufacturers grant a two- or three-year warranty, sometimes only in certain Member States. In this context it should be noted that the directive on certain aspects of the sale of consumer goods and associated guarantees¹⁶³ obliges the Member States to introduce new legislation by 1st January 2002. According to this legislation a dealer who has sold a motor vehicle will be held liable if lack of conformity of the new vehicle with the contract becomes apparent within two years as from delivery. If a dealer is liable to the consumer because of a lack of conformity resulting from an act or omission by the producer, the dealer has the right to pursue remedies against the manufacturer or importer liable in the contractual chain. However, it remains open whether or not such new legislation will also lead to an extension of the direct warranty granted by motor vehicle manufacturers to consumers. In this context it should also be mentioned that the majority of manufacturers grant already today an anti-corrosion warranty

¹⁶⁰ For simple and standardised car repairs, dealers offer service packages at a predetermined price. Moreover, some dealers have reacted by offering some services without prior appointment. They also have introduced longer opening hours.

¹⁶¹ Decision 6556 of *Autorità garante della concorrenza e del mercato*, 12 November 1998, Case C/3270 – *Magneti Marelli/Midas International*, Boll. 46/1998 (428 outlets in Europe) and Commission Decision of 31 May 1999, Case IV/1526 – *Ford v Kwik-Fit* (1 907 outlets in Europe).

Other fast-fit chains which belong to car manufacturers or to their official dealers are: *Volkswagen (Stop and Go)*, *Opel and Vauxhall dealers (Master-Fit)*, *Ford dealers (Rapid-Fit)*, *Renault dealers (Renault-Minute)*, *BMW (Autotechnic)*.

¹⁶² Regulation 1475/95 expressly provides that authorised dealers are obliged to honour the manufacturer's warranty, to perform free servicing and vehicle recall work on vehicles even if they were supplied by another dealer in the same or another Member State. This provision ensures that a final consumer can have the benefit of these guarantees available from every dealer of the manufacturer's network throughout the Community, irrespective of the place of purchase of the car. It has however to be noted that this obligation is limited to the extent to which the dealers are obliged under the terms of their dealership to service vehicles which they themselves have supplied (Article 5(1)(1)(a), recital 12 of Regulation 1475/95).

¹⁶³ Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 07/07/1999 p. 12; see in particular Article 3.

of up to 12 years, and some grant free assistance during a certain period and under certain conditions.

- (123) Importers or dealers may grant additional benefits in certain Member States, in particular in response to competitors' actions.¹⁶⁴

4.3 CURRENT AND FUTURE DEVELOPMENTS

4.3.1 Introduction

- (124) It is sometimes said that the car distribution system has remained essentially unchanged since Henry Ford established it in 1910. Whatever the truth in this assertion may be, over the last five years significant changes have taken place and are ongoing.¹⁶⁵

- (125) This section consequently describes the main current and future developments in the car distribution chain. The developments can be divided into three categories:

- the development of "*lean distribution*",
- the development of the Internet as a new method for marketing and car sales,
- more varied formats for sales and service channels.

- (126) Another development already described in section 4.1.2 (in particular pt. (91), page 36) observes the ongoing consolidation of the dealer networks by the car manufacturers.

4.3.2 Development of "lean distribution"

- (127) Over the last decade, car production has been the subject of a lean production revolution and as a result has become more efficient and flexible. One consequence has been an improvement in the quality and reliability of cars. However, experts consider that this revolution at production level has not yet fully translated itself into a revolution at the level of distribution, which is still partly run by what is known as the "*stock-push*" supply system. They emphasise that this latter system is designed to satisfy a dealer order and not a real customer order; important elements for the consumer, such as the car delivery date and the exact configuration that he wants, are not really considered as an essential element of the supply chain.

- (128) Manufacturers are now moving at different speeds towards a system of cars "*built to customer order*". This is known as "*lean supply chains*" or "*lean distribution*". The development of information technology and particularly of

¹⁶⁴ The extension of warranty is, again, particularly common in the United Kingdom.

¹⁶⁵ ICDP, "*Beyond the block exemption II*", 6/99, p. 13 to 17 and ICDP, "*Beyond the block exemption*", 4/98, p.37.

the Internet¹⁶⁶ should clearly act as a catalyst in building customer links in the distribution system and in allowing customers to purchase cars built to order and to have them delivered rapidly.

4.3.2.1 The traditional "*stock-push*" supply system

- (129) In this system, dealers order a selection of cars from the manufacturer on a regular basis¹⁶⁷ and try to sell these cars to customers after delivery to their premises, which may take two or three months. Dealers amass high levels of stock operating this way, but fail to deliver the precise car the customer wants. As part of the order, dealers often are forced to buy a minimum quantity of slow-selling models in order to be allocated the short-supply models by the manufacturer. They may also be induced to purchase excessive volumes by bonus schemes. Such a system naturally encourages the dealer to sell from his stock in order to reduce his costs and normally does not give him, to any large extent, the possibility of amending any orders he may previously have made. At first glance, one of its effects is to create opportunities for price competition at the level of dealers in favour of consumers.
- (130) The result of such a system, where applied, is that most customers buy cars from the dealer's stock. Dealers must then offer substantial discounts in order to dispose of obsolete or less popular models or when demand falls, since rather than slowing production, manufacturers generally continue production, pushing stock out to dealers who must then arrange to sell it. This system clearly has repercussions on the profitability of dealers and also of the car manufacturer, who must make up for the additional discounts granted by the dealers to clear their stock, by providing them with additional incentives.
- (131) In this "*stock-push*" situation, the system thus delivers the most appropriate car according to the stock level situation. It is not actually designed to supply the customer with a car tailor-made to his needs. The philosophy behind the system is that it would be beneficial to manufacturers since dealers of the same network would compete strongly with each other via discounts to sell the cars they have in stock and that this intra-brand competition would thereby create incremental sales for the manufacturers. Such a system also makes it possible to plan production lines and ensures that all the production is financially secure for the manufacturer. It has developed mainly for the convenience of the manufacturer.

4.3.2.2 The new system of lean distribution

- (132) The establishment and the operation of such a system has been facilitated due to the type of selective and exclusive relationship which exists between

¹⁶⁶ Development of Intranets between car manufacturers, importers and dealers should allow the customer order to be easily accessible to all sectors of the supply chain.

¹⁶⁷ Dealers are induced by the manufacturer to order sufficient number of cars to cover the planned production for a certain period of months.

manufacturers and dealers under Regulation 1475/95 in which the manufacturers have strong control over their dealers. Enforceable sales targets set unilaterally by the manufacturers as permitted by Regulation 123/85 have helped to implement it. The changes introduced by Regulation 1475/95, which now imposes an obligation on manufacturers to agree sales targets with their dealers has, to a certain extent, reduced the manufacturers' control over their dealers. Dealers' independence has, however, not developed accordingly, since as explained further in this report, other measures taken such as the margin policy including bonus, and the rigid policy of car manufacturers as to the supply of cars to their dealers, have kept the balance of power in favour of car manufacturers.

- (133) Manufacturers are moving more and more towards a new supply chain which pursues a goal of cars "*built to customer order*". They are introducing to that effect lean supply and stocking systems - integrated computer-based ordering systems taking into account the specifications of the car required by the customer, with the aim of cutting distribution costs and of enhancing customer service.¹⁶⁸
- (134) The objective of this new method is to eliminate the inefficiencies of the traditional system of building cars that the manufacturer wants ("*supplier push*"), by introducing a system of building vehicles according to customers' specifications ("*market pull*"). Dealers' profitability could thus also improve due to the decrease in stocking costs and reduced discounting.¹⁶⁹
- (135) In a lean distribution system, market inventories will be pooled and dealers given free access to any model to meet a customer's requirement. Such changes imply a significant change in the role of the dealers and result in lower levels of stock, faster turnover of stock and better matching of models to buyers' wishes.¹⁷⁰ The lean distribution system applies not only to the distribution of new cars, but also to the distribution of spare parts where it is important that the delivery is quick, accurate and reliable.
- (136) The implementation of a lean distribution system requires a number of changes at both the manufacturing and the dealership level. The manufacturer may need to re-design the factory scheduling and production facilities to manufacture cars as quickly as possible. The new system also requires manufacturers to be more flexible and to permit late changes to the specification of vehicles. Moreover, the logistics need to be improved to increase the speed of transport. Unsold cars need to be stored centrally allowing free access to all dealers, rather than dispersing the stock through all

¹⁶⁸ See ICDP, "*Future of the Dealer, The Evolving Retailer*", Research Report 4/99, (hereinafter ICDP, "*Future of the Dealer*"), p. 24-27; an example is BMW (Yahoo, *Deutschland Finanzen*, 10.2.2000).

¹⁶⁹ ICDP considers that intra-brand competition between dealers will inevitably be reduced partly as a result of moves to introduce lean distribution; ICDP, "*Beyond the block exemption*", 4/98, p. 4.

¹⁷⁰ See for example: OECD "*Market Access Issues in the Automobile Sector*", p. 168-169.

dealers. The above changes require an effective use of information technology systems and improved communications channels.

- (137) It has been said¹⁷¹ that a move from a system in which dealers sell entirely from stock to a system based on "sold customer orders" could generate important savings for the distribution system as a whole.

Example: the Smart car

- (138) One example of a lean distribution system is the "Smart" car.¹⁷² The distribution of this car is not made via traditional DaimlerChrysler dealerships, but through specialised "Smart centres", which are situated in locations with high traffic and which receive weekly deliveries of cars directly from the factory. The dealer is expected to pay MCC directly on receipt of the new car. MCC hopes in this way to promote lean and efficient dealerships with the aim of fulfilling each customer order within two weeks. Moreover, customers will be able to order a car according to their exact specification and to organise its delivery to the Smart centre of their choice.¹⁷³

CONCLUSION:

The traditional "stock-push" system has given car manufacturers a method that allows them to minimise the cost of production by achieving planned stable production volumes, which are pre-sold to dealers. Over-production, or non-successful cars, are taken care of by dealer discounts, bonuses, or other action at the wholesaling level. This puts a lot of financial pressure on dealers and the customers' requirements are not a key element in the running of the system.

In this traditional system, manufacturers are determining the output without taking into account the precise requirements of demand. Operation of this system has been facilitated by the current dealer/manufacturer relations established under Regulation 1475/95. A move to lean distribution should bring a more flexible system which is more customer-orientated as regards car configuration and delivery time. The use of lean distribution on a large scale is said to generate important savings to all the actors involved in the distribution chain.

¹⁷¹ See M. Harbour and D. Jones, "Creating Profitable Customers Fulfilment, Applying Lean Thinking to Car Distribution" and G. Williams, "European New Vehicle Supply - the long Road to Customer Push Systems" in the ICDP Journal Summer 1999 -. ICDP estimates that the European industry would make the following gains by introducing vehicle and part supply systems on a lean model for vehicles: 4 billion euro per annum in operating costs and 11.4 billion euro in stock reduction and for parts: 6 billion euro in stock reduction. It estimates that savings as a percent of price total for a car could amount to: 2% (reduced discounting), 2.5% (reduced physical and managerial stock holding costs), 2.5% spending cost reductions, and 4% order mix. A change to the approach of pricing could also produce further profit improvements. For these latter figures, see: ICDP "Management Briefing No 1", J. Brown "Flexible pricing to match demand with supply".

¹⁷² The Smart car was originally developed through a joint venture (Micro Compact Car -MCC) between Mercedes-Benz and SMH (manufacturer of Swatch watches). MCC is now fully owned by DaimlerChrysler.

¹⁷³ Financial Times Automotive, "The future of Automotive Distribution", 1998, p. 58; the Smart car distribution network is to be expanded substantially (de.biz.yahoo.com of 29.2.2000).

4.3.3 Internet - a new marketing method

- (139) The Internet can offer an alternative distribution method for vehicles in Europe¹⁷⁴. The question is not if, but to what extent, this development will influence the traditional model of car distribution in Europe.
- (140) The main driving factors for the growth of automotive commercial activities on the Internet are: comprehensiveness and quality of information, attractiveness of presentation, interactivity allowing personalised two-way communication and cost-effectiveness. This retail method is considered the most suitable for some users in the future, especially given the declining demand of after-sales services and the greater integration of computer-based forward ordering systems into production scheduling. It is conceivable that a new entrant manufacturer, or even a new brand from an existing manufacturer, without needing to look after a network of long-standing dealer partners, might wish to select this route and sell directly to end-consumers.¹⁷⁵
- (141) The importance of e-commerce is influenced also by the number of Internet users. The use currently varies between the different Member States. In Sweden, where there is the highest percentage of Internet users compared with other Member States, more than 500 car dealers use the Internet to promote their cars, and the number is increasing every month. More than 20% of the consumers use the Internet as a source of information before they decide to buy their cars, and this number is steadily increasing. The success of this distribution system is due to the prospect of cutting marketing costs by half and to the possibility of having relation-based marketing, which will be the leading marketing strategy. A central database covering the customers' preferences makes it possible to create a very precise overview of how the customers use their vehicles and which services they need.¹⁷⁶ The diffusion of the Internet in the European Union over the last few years and its forecast

¹⁷⁴ As to the different types of automotive e-commerce models see ICDP "Who's afraid of 'infomediaries'? The task for the car distribution industry in the information age" by Leonardo Buzzavo", Management Briefings No. 3/2000, p. 8:

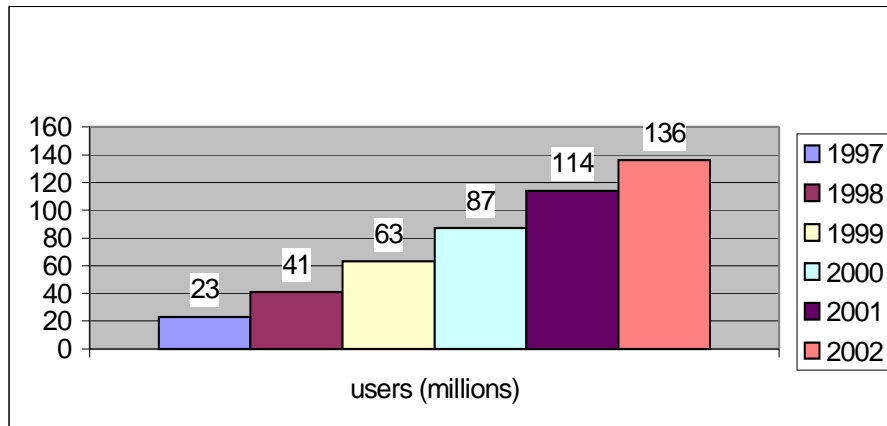
<i>Model</i>	<i>Example</i>
Dealer controls price	Individual dealer sites or Driveoff.com
Referral (refers lead to dealer in return for fee)	Autobytel.com
Broker (arranges purchase and delivery - assumes margin risk)	Carsdirect.com
Dutch auction/ reverse bidding (posts consumer's desired vehicle and (maximum) price and dealers bid for the sale)	Ebay.com Carchoice.com
Name your price (posts customer's vehicle request and amount customer will pay for it – interested dealers respond)	Priceline.com

¹⁷⁵ ICDP, "Beyond the block exemption II", 6/99, p. 14.

¹⁷⁶ Source: Periodical, 1-2 February 2000, from the Swedish Association for Motor Retail Trades and Repairs (*Motorbranschens Riksförbund*, MRF).

growth are described in the following diagram, which shows the yearly increase in the number of Internet users in Europe since 1997.

Diagram 12: Internet users in the EU



Source: El País, 18 February 2000, p. 41.

- (142) However, some constraints to the success of e-commerce in car distribution can be identified: the low degree of access to the Internet in Europe, legal factors (such as security of transactions, protection of intellectual property rights), the attitude of certain consumers preferring to have direct contact with dealers, and the manufacturers' tight control of their network in Europe.¹⁷⁷

Replies on e-commerce

- (143) In general, car manufacturers and independent importers express a very cautious attitude towards Internet sales, saying that, while the Internet will grow as an information tool with a wide range of services, all sales realised through electronic sales methods will be directed through the existing distribution network.¹⁷⁸
- (144) Other manufacturers and importers¹⁷⁹ acknowledge that the Internet will grow dramatically in many fields, although it is still unclear if and how the Internet

¹⁷⁷ ICDP, "Vehicle sales & supply stream: electronic new media and car distribution", by T. Chieux and P. Wade, Research Report 7/98, April 1998, (hereinafter: ICDP, "Electronic new media and car distribution"), p. 6.

¹⁷⁸ It is said the overall distribution policy will not change for three main reasons: (1) consumers need to touch and feel "in the real world" a really emotional product, (2) cars cannot be delivered by mail (unlike books from Amazon.com for instance), (3) pre-delivery inspection and used vehicle exchange can only be dealt with physically by a dealer.

¹⁷⁹ The importers refer to the US market where in 1999 5% of the new vehicles were sold via the Internet and 35% chosen via the Internet according to the importer, who believes that there will be a similar trend in Europe. *Frankfurter Allgemeine, Le Soir*.

may evolve to become a sales function.¹⁸⁰ Car manufacturers still have a cautious approach towards sales via the Internet.

- (145) The association of spare-parts producers believes that new communication technologies will make access to technical information and services easier for the repairer and end-user. It will also produce greater transparency in the market for spare parts and will reduce the geographical boundaries and allow consumers to reach all dealers world-wide.
- (146) Internet operators and consumer associations think that the Internet will significantly influence the distribution system for cars in the near future, since it improves consumers' access to relevant information and facilitates comparisons, which is likely to increase price competition, and brings about more retail competition and more innovation at the retail level. It will also allow the manufacturers to substantially reduce costs arising from the distribution system.

CONCLUSION:

The Internet presents important possibilities for introducing new methods for the distribution of motor vehicles. In general, consumers are more and more willing to purchase products via the Internet. Car manufacturers still have a cautious approach towards sales via the Internet.

New companies acting as intermediaries on the Internet:

- (147) The leading market for car sales via the Internet is the United States. In 1995, Autobytel.com was launched in the United States as a free on line service for consumers wishing to purchase a new car. The dealers also pay a subscription and a monthly fee to this Internet operator. According to the company's own research in 1998, 63% of the consumers who contacted them for a price quote placed an order within 24 hours.¹⁸¹
- (148) This operator entered the European market on 30 April 1999 when it was launched in the United Kingdom. Autobytel UK enables the consumer to place a Purchase Request online for a new or used vehicle. The Purchase Request is electronically passed to the supplying dealer for order fulfilment.¹⁸²
- (149) Autobytel UK does not regard itself as a reseller, but as an intermediary or provider of a new marketing method. Its aim is to offer consumers all

¹⁸⁰ Mc Kinsey: forecast to expand at a compound annual growth rate of 104% in western Europe for 1998-2002.

¹⁸¹ FT "The future of Automotive Distribution", 1998, p. 82.

¹⁸² The fees to be paid by dealers are £5 000 sign-on fees, and £500 monthly fees for new and used cars.

information concerning cars, including proprietary research tools, pricing information and car buying value.¹⁸³

- (150) Similar services are offered by CarPoint, a service operated by Microsoft which was introduced on the Microsoft Network in 1995 and on the Internet in July 1996. It operates in a similar way to Autobytel.com except that private sellers cannot yet sell their cars via the service. Another new entrant is OneSwoop.com, a UK-based company, which plans to establish a new on-line intermediary service to facilitate the purchase of cars, by offering additional optional services such as financial services, insurance and car delivery. OneSwoop started to operate in January 2000 in the United Kingdom and intended to expand to additional EU countries by mid-2000.

European manufacturers:

- (151) All European manufacturers have their web sites containing corporate and basic commercial information (group or company identity, network, vehicle range). Still, in only a few cases is information about car prices and financial details available to consumers.¹⁸⁴ A content analysis of European car manufacturers' web sites was conducted in comparison with those of US and Asian manufacturers in 1998. This showed that European manufacturers appear to stress the information content of their web sites, but that interaction with customers was still poor. By contrast, US and Asian manufacturers have already focused their web sites on seeking an end result from visitors i.e. a decision to purchase.¹⁸⁵
- (152) Only recently, some car manufacturers have started experimenting with transactions on the Internet. Renault has enabled potential clients to make reservations on the Internet, but it is not yet directly involved in sales, which are still carried out by the dealers. In the near future, however, it is planning to invest massively in e-commerce. In particular, Renault has recently financed the establishment of Autobytel in Europe, and it is going to create several web sites in order to sell new and second-hand vehicles.¹⁸⁶ In December 1999, Ford started to sell vehicles on the Internet in Finland. General Motors has begun a dedicated online agency in the United Kingdom through its Vauxhall brand.¹⁸⁷ Mercedes and Fiat are testing the Internet for specific models in

¹⁸³ *Inchape* and *Bilia*, two of the leading European distributor and dealer groups, have both acquired parts of the company. *Inchape* has acquired 100% of *Autobytel* in the UK and *Bilia* has acquired the exclusive rights for the Nordic countries (Sweden, Norway, Denmark and Finland).

¹⁸⁴ ICDP, "Electronic new media and car distribution", 07/98, p. 16.

¹⁸⁵ ICDP, "Electronic new media and car distribution", 07/98, p. 21.

¹⁸⁶ "Renault ouvre ses portales sur le web", Autoinfo 25 February 2000. In particular, *Renault* is going to establish several web sites: renault.site, to inform final consumers on products and services of the car manufacturer and to sell new vehicles; carevia.com, to sell used vehicles of all brands; a multi-make web site, developed together with other car manufacturers, to inform consumers on models of different makes; renault.net, to organise the commercial activity of its network.

¹⁸⁷ In September 1999, *Vauxhall* became the first car manufacturer to sell a range of cars exclusively on the net. However, the sale of these cars is still the responsibility of the dealer. Nevertheless,

their range (Smart and Barchetta).¹⁸⁸ Other car manufacturers, including DaimlerChrysler's Jeep and Toyota's Lexus, have set up Internet clubs for their customers.¹⁸⁹ The use of the Internet is also growing for online purchasing and retailing. Ford and General Motors have announced plans to shift their purchasing system on to web-based exchanges in order to achieve savings by moving their component sourcing arrangements on-line.¹⁹⁰

- (153) Official dealers (individually or in groups) have only recently started to set up their own web pages. For the time being, web sites developed by dealers are used mainly for corporate communication and for the sale of used cars. The Internet is also a very convenient tool for providing names and addresses of dealers from the group.

Future outlook:

- (154) It is generally accepted that the Internet will grow as an information tool and will provide consumers with better information for the purchase of new cars. It will also increase price transparency, since a consumer can more easily compare prices of vehicles and take advantage of the market disparities and the differences in prices which may exist within one or more Member States.
- (155) It seems unlikely for a number of reasons detailed in section 7.1 (page 129) that in the near future the Internet will replace the traditional dealerships for the purpose of selling new cars. However, the possible growth of the Internet in car distribution in Europe especially for cross-border trade is potentially important. It could develop parallel trade on a much larger scale, with all the benefits that would result from that, including a reduction in price differentials between the Member States of the European Union.¹⁹¹ Moreover, the

the choice of vehicle, the test drive the used-car trade-in, and the vehicle delivery can be arranged by the consumer from his home. The consumer can also conclude the sales contract with the dealer electronically.

¹⁸⁸ "Renault met le turbo", Argus de l'automobile, 17.2.2000. As regards Fiat, the experiment was limited to Italian consumers and went on only for a period of 4 months. Only a small number of vehicles were sold.

¹⁸⁹ "Rush is on for online sales", Financial Times Auto, 29.2.2000, p. II.

¹⁹⁰ "Fast-track drive on the road to e-commerce", Financial Times Auto, 29.2.2000, p. I; see also the joint B2B-market place "Covisint" of Ford, GM, DaimlerChrysler and Renault/Nissan under: <http://www.covisint.com/>.

¹⁹¹ The Internet is considered an important tool for reaching the objectives of price transparency and harmonisation, since it has an enormous potential for cross-border shoppers and could act as a mechanism for creating a true European single market. In this regard, see ICDP study "Future directions for European car distribution: Evolution or Revolution?", synthesis of ICDP2 research 1996-98 by M. Harbour with J. Brown, P. Wade and the ICDP research team, Research Paper 11/98, September 1998, (hereinafter: ICDP, "Future directions for European car distribution"), 11/98, p. 10.

Commission is promoting the Information Society including e-commerce via the Internet.¹⁹²

- (156) E-commerce will have a positive impact on the independent after-market. It will be an important vehicle for disseminating technical information from manufacturers to the independent sector. It will permit efficient and quicker delivery of products to independent repairers and lead to a reduction in costs following the possible elimination of intermediaries in the distribution chain. Moreover, it will provide a better service to future customers, who will expect better and more clearly presented information and more transparency as regards margins and commissions. E-commerce will thus help to increase competition in the after-market between the official networks and independent undertakings.¹⁹³

CONCLUSION:

The Internet is already an important additional marketing tool for car manufacturers and dealers. It reinforces price transparency. The Internet, by its nature, gives consumers an easy-to-use and more efficient instrument for seeking a competitive offer beyond the territory of the local dealer responsible for the territory in which the consumer is located.

The Internet generates a new category of entrepreneurs wishing to act as intermediaries for consumers facilitating the purchase of their cars. They might want to develop it at a later stage as a sales tool.

For the moment, contrary to other retail sectors, where direct business-to-consumer trade is happening, none of the Internet-based operators are able to sell cars directly to consumers. They have to go through the dealer network and thus the existing distribution system. Currently, car manufacturers are themselves carrying out direct selling of cars to customers on only a very limited trial basis (but still via or in cooperation with the dealer network for the collection of cars).

Some car manufacturers are now developing their Internet business to include spare-parts trade.

4.3.4 New formats for sales and service channels

- (157) The sale of cars via supermarkets is one example of such an alternative distribution channel. Another example is vertically integrated sales companies or dealers who are specialised in the sale of a specific type of car¹⁹⁴.
- (158) New cars have traditionally not been sold through such channels. The current car distribution system based on exclusive dealerships does not make this a realistic, economically viable channel of distribution. (For further explanation,

¹⁹² See e.g. eEurope, An Information Society for All, Communication on a Commission initiative for the special European Council Lisbon 23 and 24 March 2000 published under: http://europa.eu.int/comm/information_society/eeurope/pdf/com081299_en.pdf

¹⁹³ See PriceWaterhouseCoopers, "Guaranteeing Survival" May 2000, slides 15 et seq.

¹⁹⁴ E.g. a dealer who sells only small cars or four-wheel-drive cars or sports cars.

see section 6, page 64 of this report). This is highlighted by the notice on intermediaries, which imposes very strict requirements both on intermediaries who want to act within a supermarket's premises, and on supermarkets which want to act as an intermediary.¹⁹⁵ In both cases the current Regulation allows manufacturers to ban very large, multi-branded car stores, which display a selection of cars, choosing the more attractive models or the ones which fit the retailer's market "*niche*". It is said this system could lead to a decline in the customer's choice over the vehicle he can buy, since not all the models will be selected for display or made available.

- (159) From the manufacturers' point of view, marketing costs would rise because they would be forced to compete with other makes for "*shelf space*" at the supermarkets. They would also face the task of maintaining territorial coverage in rural areas, and both of these costs might need to be recouped in the price charged for the product. It is foreseen that price competition would increase, since it would be likely that central purchasing by large chains would secure volume discounts.¹⁹⁶ It remains to be seen, if distribution via supermarkets takes place, whether this new means of distribution would develop in addition to existing dealerships and would increase customer choice. Due to the fact that dealerships and supermarkets normally cover large geographic zones, it is said that territorial coverage would not be jeopardized.
- (160) Car manufacturers have made a number of limited attempts to distribute their vehicles via certain supermarkets in order to increase market penetration.¹⁹⁷ Supermarkets have also tried to begin marketing of cars, but sometimes without success.¹⁹⁸ It is noteworthy in this context that supermarkets are successfully starting to sell motor bikes in certain countries.

¹⁹⁵ Notice on intermediaries, section 2(a), 2nd paragraph and section 2(b), last paragraph.

¹⁹⁶ ICDP, "*Beyond the block exemption*", 4/98, p. 50.

¹⁹⁷ For example, negotiations took place between the French supermarket chain Auchan and Fiat with a view to cooperation for the sale of the Lancia Epsilon model in France. It was envisaged that the 118 supermarkets would act as commercial agents of the local Fiat dealers. *Le Monde*, 1.10.1999. The agreement was apparently not concluded due to the dealers' opposition.

¹⁹⁸ A recent example: in August 2000, the German supermarket group Edeka made promotion about the sale of the Smart car from DaimlerChrysler. Edeka wanted to sell a package consisting of a portable PC [worth 4,999 DM (2,500 €)], a printer, a GSM, a radio and a travel arrangement for 1,000 DM [500 €] on the condition that the customer buys a Smart car from a Smart dealer. DaimlerChrysler gave instructions to its dealers not to take part in this action and Edeka cancelled it (see e.g. http://www.swr.de/plusminus/beitrag/00_09_08/beitrag1.html). Another example of the marketing of cars by a supermarket concerns Sainsbury's in the UK: Starting on 14 August 2000, customers can choose and order a new car amongst 3,500 models at the same time as they do grocery shopping under the Sainsbury's Bank Drive scheme, which is a personal contract purchase scheme with the possibility, after the end of the agreement (2 or 3 years), to purchase the car or to give it back. (see: <http://www.j-sainsbury.co.uk/investors/140800.htm>). The Spanish retailer El Corte Inglés is also trying to engage in new car sales in co-operation with a joint venture founded by dealers as of October 2000 (see *Expansión* of 16 August 2000, p. 3).

- (161) The Korean car manufacturer Daewoo has chosen another marketing method in its effort to penetrate the European market without vertically integrated sales companies. Daewoo chose to enter the European market by using a combination of wholly owned national sales companies and distributors instead of a traditional dealer network. The company established several Daewoo car centres, company-owned showrooms where prospective buyers could see and test-drive the product. Daewoo achieved its target 1 per cent market share in the United Kingdom.¹⁹⁹
- (162) Spare parts and accessories are often sold through supermarkets. For example, the French retailer, Carrefour, sells parts and service products through its supermarkets. It also has special Centre-Auto/Service Automobile Carrefour centres (CA/SAC) centres where it carries out basic vehicle service and "fast-fit" work. Carrefour currently has 130 supermarkets in France, of which 52 have CA/SAC centres. Carrefour sells a wide range of car parts and accessories.²⁰⁰ It is the market leader in France in the sales of lubricants, wipers, batteries and seat covers.²⁰¹

CONCLUSION:

Regulation 1475/95 allows manufacturers to ban large, multi-branded car stores, which display a selection of cars, choosing the more attractive models or the ones which fit the retailer's market "niche". Therefore this Regulation limits the development of new distribution channels for motor vehicles.

5 ENFORCEMENT OF REGULATION 1475/95 BY THE COMMISSION

5.1 LETTERS FROM CONSUMERS AND INTERMEDIARIES

- (163) The Commission has received letters from consumers concerning their negative experiences in exercising their single market rights. In 1995 and 1996, German and Austrian consumers in particular wrote to the Commission complaining about obstacles in buying Volkswagen/Audi cars in Italy. From 1997 onwards, UK residents in particular have encountered many difficulties when trying to buy right-hand-drive (RHD) vehicles on the continent. More than 500 such letters concerning RHD problems were received in 1998 and 1999. In addition, the Commission received about 90 requests for information on the subject of buying RHD cars abroad. By comparison, in the same period some 130 letters were received which concerned problems of cross-border purchases for left-hand-drive cars. (See Annexes III and IV for further details.)

¹⁹⁹ FT "The Future of Automotive Distribution", study, p. 28-30.

²⁰⁰ Windscreen wipers, seat covers, brake pads, car alarms, stereos, roof racks, tyres, lubricants and batteries.

²⁰¹ FT "The Future of Automotive Distribution", study, p. 163.

(164) Even if these letters do not give a comprehensive picture of the problems that the consumers face, they are an important source of information for the Commission. They indicate that the single market in car distribution does not yet function as it should if all involved fully complied with the relevant EU competition rules and Regulation 1475/95.²⁰² The proceedings against Volkswagen/Audi in 1998 for impeding consumers from buying a car in another Member State and the initiation of several proceedings for obstacles to parallel trade against various car manufacturers, based on consumer complaints, confirm this situation (see further section 5.2.1 below, page 61). As can be seen from **Annexes III and IV**, in certain Member States distribution systems seem to give rise to more complaints than in others. Consumers still quote the same types of problems they encounter when ordering a car abroad. These are: difficulty in finding a dealer who is prepared to take their order; difficulty in getting a price quotation; much longer delivery time than for local customers; high deposits; high RHD supplement; delays in agreed delivery time; non-delivery of vehicles and cancellation of orders.

(165) Based on the information available to the Commission and the complaints received, parallel trade takes or took place mainly between the following countries:

- consumers, from Germany, try (or tried) to purchase new cars in Italy (mainly between 1994 and 1996), Denmark, the Netherlands, Belgium and Finland;
- consumers from Austria, tried to purchase new cars between 1994 and 1996 in Italy;
- British consumers have been purchasing new cars in the Netherlands, Belgium, Germany, France, Denmark and Portugal since 1997;
- consumers from Belgium try to buy certain models of new cars in Germany;
- consumers from France try to purchase new cars in the Netherlands and Germany, mainly because the delivery times are shorter in Germany and the prices are lower in the Netherlands than in France; some French consumers also buy cars in Belgium;
- consumers from Portugal purchase new cars in Spain;
- consumers from Spain purchase new cars in Germany;
- Swedish consumers try to buy new cars in Denmark;
- Norwegian consumers buy cars in Denmark.

²⁰² Some of these complaints are about obstacles to parallel trade committed before the entry into force of Regulation 1475/95 on 1 October 1995. However, under Regulation 1475/95 and also under the Commission's first motor vehicle block exemption, Regulation 123/85, the protection of parallel trade was one of the core elements for the exemption of motor vehicle distribution agreements (see e.g. notice on Regulation 123/85, chapter I 1; see also Court of First Instance judgment of 6 July 2000 *Volkswagen v. Commission*, case T-62/98, pt. 241).

(166) The feedback received from intermediaries is also negative. They complain about the obstacles they face from car manufacturers or dealers when they act to exercise the right to buy a car abroad for a particular customer.

(167) Where letters from consumers or intermediaries indicate problems which should not occur in a distribution system which is compatible with Regulation 1475/95, the Commission forwards those letters to the relevant manufacturer or importer and asks them to take action to remove the problem and to inform the Commission and the complainant of the action taken. In general, following such action by the Commission, the car manufacturers are prepared to find solutions to the problems. However, the manufacturers do not always put in place general measures applicable throughout their distribution network in order to avoid repetition of the problem.

5.2 FORMAL PROCEDURES INVOLVING REGULATIONS 123/85 AND 1475/95

5.2.1 Major proceedings against car manufacturers

(168) All formal proceedings initiated against car manufacturers described below relate to "*black practices*,"²⁰³ most of which are impediments to parallel trade, encountered when consumers want to buy a car in a country other than their country of residence, thereby profiting from a lower price.

(169) Between 1995 and 1999, the Commission carried out several inspections at the premises of car manufacturers, their importers and some of their dealers. The objective of these actions was to verify whether measures had been taken vis-à-vis dealers with the aim of restricting or preventing sales to customers from other Member States in a way which was contrary to Regulations 123/85 and 1475/95. In all these cases, the decision to initiate an investigation had been motivated by complaints from consumers who were trying to benefit from the advantages of the single market and who informed the Commission about alleged obstacles to such sales.

(170) During inspections carried out in October 1995, the Commission found evidence that **Volkswagen AG** and its subsidiary **Audi AG**, in conjunction with their common importer for Italy, Autogerma S.p.A., had developed a strategy of hindering and/or preventing purchases of new cars in Italy by final consumers, in particular German and Austrian consumers. The Commission adopted a negative decision on 28 January 1998 against Volkswagen AG, imposing a record fine of €102 million.²⁰⁴ In its judgment of 6 July 2000 the

²⁰³ See section 3.3.3.2, page 22, for more details.

²⁰⁴ OJ L 124, 25.4.1998, p. 60; see also Press Release IP/98/94, 28.1.1998. *Volkswagen* has challenged this decision before the Court of First Instance.

Court of First Instance confirmed the essential findings of this decision, although it reduced the fine to €90 million.²⁰⁵

- (171) Another case involving **Volkswagen AG** concerns price-fixing for the new Volkswagen Passat model in Germany. A statement of objections²⁰⁶ was sent to the company in June 1999, stating that this measure infringed Article 81 of the EC Treaty, as dealers were being discouraged from competing effectively with dealers in other Member States where prices were lower. It also reduced incentives for customers from other high-price markets (such as the United Kingdom) to purchase a car in Germany.
- (172) After inspections had been carried out in December 1996, a statement of objections was sent to **DaimlerChrysler AG** in April 1999, claiming that the company, together with its importers in Spain, the Netherlands and in Belgium, had undertaken measures intended to restrict and/or prevent sales of Mercedes-Benz cars in these Member States to non-resident consumers.²⁰⁷
- (173) In the case concerning the Dutch importer of Opel, the Commission imposed by decision of 20 September 2000 a fine of 43 million €. The decision is based on the documents found during inspections carried out in December 1996. According to these documents, **Opel Nederland B.V.** had implemented a number of measures in order to restrict and/or prevent purchases of new Opel cars in the Netherlands destined for immediate re-export.²⁰⁸
- (174) In two further cases, the Commission carried out inspections at **Renault S.A., Peugeot S.A. and Citroen S.A. and certain of their importers** in March and

²⁰⁵ Court of First Instance judgment of 6 July 2000 *Volkswagen v. Commission*, case T-62/98. The CFI decided that the measures adopted by Volkswagen, such as the bonus policy, by which it sanctioned export sales through non-payment of the bonus normally granted for domestic sales, the restrictive supply policy, the behaviour towards consumers who were discouraged from buying new cars in Italy and through control, warnings and sanctions in respect to Italian dealers, restricted parallel trade and infringed Article 81 (1). In contrast, the CFI considered that it had not been established with sufficient evidence that Volkswagen had introduced some measures on which the fine was based, especially the split margin system to limit parallel exports.

The CFI held that the Commission knew about the above illegal bonus scheme and that it had not been able to show that the infringement went on after Volkswagen had sent circular letters in 1996 to its dealers. It therefore ruled that the fine should be based on an infringement period of only three years, i.e. from 1993 to 1996 (instead of more than ten years).

However, the CFI only slightly reduced the fine by € 12 million to € 90 million which indicates the CFI's view that restrictions of parallel trade are very serious infringements.

²⁰⁶ A statement of objections (SO) is the first step in a formal proceeding by which the Commission informs undertakings in writing of the objections that it raises against them in view of an alleged breach of EC competition rules; the undertakings concerned have the right to comment on the SO, which in no way prejudices the outcome of a case.

²⁰⁷ See Memo/99/22, 16.4.1999 and Note BIO *aux bureaux nationaux* BIO/99/407, 27.10.1999. The proceedings against *DaimlerChrysler and the Volkswagen (price fixing for the Passat)* are not yet finalised. The Commission is currently analysing the replies to the statement of objections submitted by these car manufacturers

²⁰⁸ See press release IP/00/1028 of 20/9/2000.

September 1999 respectively. The inspections were prompted by information which indicated that non-resident customers, among them UK and French consumers, were hindered (in particular in Germany, the Netherlands and Ireland) when buying a car. These cases are still under investigation. They all concern core principles of EU competition rules for motor vehicle distribution, which were protected both by Regulation 123/85 and by Regulation 1475/95.

5.2.2 Formal complaints

(175) The Commission has received a number of formal complaints in the field of car distribution. **Annex V** describes the types of complaint received by subject matter.

5.2.3 Notifications of distribution agreements

(176) There exist a number of agreements for the distribution and servicing of motor vehicles which do not come under the Regulation and for which it does not provide any legal security. In 1997 the Commission received a notification of the standard agreements for **Ford service outlets**. The Commission found that the agreement did not fall within the scope of Regulation 1475/95, since it concerned servicing alone. However, the Commission recognised the advantages for consumers, especially with regard to having services near to hand. The Ford service outlet agreement fulfilled the conditions set out in Article 81(3) and the case was closed by means of a comfort letter.

(177) The notification of the standard distribution agreements for the **Smart** car concerned a new distribution concept for cars. However, after having insisted that Smart dealers must be able to sell other makes and to seek, through advertising, customers outside the contract territory, the Commission sent the parties a comfort letter in which it confirmed that following these considerable modifications the agreement was compatible with Regulation 1475/95.²⁰⁹

CONCLUSION:

The proceedings initiated against car manufacturers indicate that one of the main objectives of the Regulation, i.e. to protect the rights for consumers in a single market described in this report, appears not to be entirely fulfilled. Moreover, the fact that new types of car distribution and/or servicing systems have been notified is a sign that Regulation 1475/95 does not cover other types of motor vehicle distribution and/or servicing agreements. It thus provides legal security for only one type of such agreements.

²⁰⁹ XXVII Report on Competition Policy, 1997, First Part, section I, B 3 and Press Release IP/97/740, 4.8.1997.

6 ASSESSMENT OF THE APPLICATION OF REGULATION 1475/95

6.1 ASSUMPTIONS UNDERLYING REGULATION 1475/95: ARE THEY STILL VALID?

6.1.1 Does effective competition exist in the motor vehicle industry?

(178) One of the basic assumptions underlying the exemption of exclusive and selective distribution agreements for motor vehicles is that effective competition exists, not only between manufacturers of different brands through their respective distribution systems (inter-brand competition), but also to a certain extent between different dealers of the same brand (intra-brand competition). An objective of Regulation 1475/95 is that European consumers should take an equitable share in the benefit from the operation of such competition.²¹⁰

6.1.1.1 Intra-brand competition in car distribution

Limits set by the Regulation

(179) According to the Regulation, members of a dealer network must be free to sell to final customers, either directly or through an intermediary, and to other dealers belonging to the same network, irrespective of their place of residence within the EU. Dealers are, however, not authorised to sell to undertakings which do not belong to their network and which are not final consumers, but carry out a resale activity, usually referred to as "*independent resellers*".²¹¹

(180) Due to the principle of territorial exclusivity, dealers have a particular obligation to focus on their contract territory. They may, however, also sell to customers coming from outside the contract territory (passive sales), or seek customers outside their own contract territory, unless this is done through personalised contacts.²¹² Dealers within a given Member State therefore have the right to compete with other dealers, and in particular with dealers from other Member States.

6.1.1.2 Intra-brand competition within a Member State

(181) Dealers within the distribution network of a particular car manufacturer have, in principle, a number of instruments available which allow them to actively compete with other dealers. In particular, dealers may grant discounts and other benefits to customers. They can also rely on their professional skills, the

²¹⁰ See recital 30 of Regulation 1475/95.

²¹¹ Article 3(10) and (11) of Regulation 1475/95.

²¹² See Article 3(8) of Regulation 1475/95 (right to carry out passive sales, and right to actively seek customers outside the contract territory unless this is done through personalised advertising).

quality of service (sales and after-sales), the offer of favourable terms for the trade-in of second-hand cars, and the provision of a large number of other customer-related services (for instance, extended opening hours, flexible service, replacement cars, 24-hour assistance). These measures allow them to compete with other network dealers.

- (182) The widespread use of such measures may serve as an indication of effective competition. However, the “margins” granted by manufacturers or their suppliers to dealers (i.e. the [wholesale-] prices at which cars are sold by the manufacturer or importer to the dealer as compared to the recommended retail prices) are similar for all dealers selling a given model in a given Member State, and large dealers do not benefit from a higher volume-related discount than small dealers. Intra-brand competition is thus to a certain extent limited as regards price competition. There do not, in the current system, seem to be sufficient incentives for manufacturers to reduce the supply price when a dealer orders large quantities.
- (183) Most manufacturer reserve themselves the right to make direct sales to certain reserved customer groups.²¹³ These deals are usually directly negotiated between the customer and the manufacturer or its supplier in the customer's Member State. Dealers have the right to compete for such deals. However, the discounts usually granted by the manufacturer to reserved customers largely exceed the discounts which a dealer is able to offer to his individual customers, with the result that in practice dealers can not effectively compete with their manufacturers on these deals.
- (184) The trend towards fewer dealers and larger contract territories is described in section 4.1.2, in particular point (91) (page 36). It is said that this carries a risk of some reduction in intra-brand competition,²¹⁴ as customers have to invest more time and effort in comparing offers. On the other hand, bigger dealers are in a better position to make extensive publicity in particular beyond their sales territory. The Internet may in general make it easier and cheaper to advertise over a wider area.

6.1.1.3 Intra-brand competition across the EU

- (185) Intra-brand competition among dealers from different Member States is fostered by the substantial price differences existing across the European Union and by improved price transparency. The latter has been generated by the Commission's regular Car Price Reports²¹⁵ and by the introduction of the euro in the Member States belonging to the Eurozone.

²¹³ Typically, reserved clients comprise company staff, national authorities, employees of international organizations, larger undertakings and leasing and rental companies. The right of direct sales can however be excluded according to Article 2 of Regulation 1475/95.

²¹⁴ See, for example, ICDP, "*Beyond the block exemption*", 4/98, p.33; Auto Infos 1100, 11.2.2000, p.14.

²¹⁵ These Commission Reports are published twice a year. For further details, see section 3.4.3, page 27, of this report.

- (186) While price differences are the main driving force for parallel trade, other factors such as availability of certain models or delivery times may equally play a role in intra-brand competition. As customers become increasingly aware of opportunities for buying a car in another Member State where prices and other sales conditions are more favourable, dealers in certain markets where prices are higher can face competition from foreign dealers.

Factors explaining price differentials:

- (187) Prices, and consequently price differentials, are the result of a number of factors which have to be assessed individually in each Member State. While some of these factors may be considered to be variables which are beyond the control of market operators and which can be influenced only in the long term (such as taxation, exchange-rate fluctuations and the general economic situation in a Member State), others are variables which may be changed in the short or medium term.

Manufacturers' pricing policies

- (188) Manufacturers decide on their pricing policies by assessing what a consumer would be ready to pay for a car, taking into account factors such as the general economic, monetary and taxation situation in the Member State concerned, the purchasing power of potential car buyers and the prices of competing models, and also elements such as market share objectives and the relative importance of customer groups. In this respect, differences in standard equipment and options also play a role in price comparisons of a particular model between Member States.
- (189) Manufacturers also rely on make-specific aspects for pricing, such as the different perception of the make in a national market, which may be influenced by the manufacturer's historical presence in that market.²¹⁶ Finally, differences in distribution and transport costs, as well as other operational costs, may have an influence on the final pricing of a make or model.²¹⁷ Based on these elements, all manufacturers or, where relevant, importers issue lists with recommended retail prices to their dealers.

Taxation of car purchase

- (190) Manufacturers attribute a large portion of price differentials to differences in the taxation of the purchase of a new vehicle, such as different levels of VAT and differences in other taxes such as licensing, environmental or luxury taxes. As these other car taxes have up to now been excluded from tax

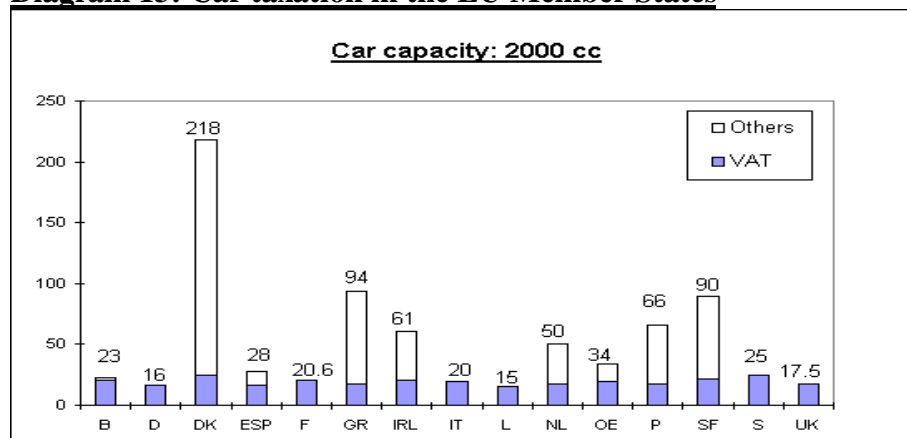
²¹⁶ For instance, *Mercedes-Benz* in Germany or *Fiat* in Italy are manufacturers who are traditionally strongly present in their respective home markets; on the other hand, these manufacturers have to apply different market strategies in countries where they face competition from strong domestic producers.

²¹⁷ See also report by Lehman Brothers, 31.7.1998, analysing price differentials for various products across the European Union.

harmonisation in the single market, wide differences still exist across the European Union as to car purchase taxation.

- (191) Recommended list prices before tax are relatively low in countries where taxation of car purchase is high. A further particularity of the car sector is the requirement that, in contrast to all other goods, taxes have to be paid in the country of destination; this includes VAT,²¹⁸ and any additional tax on car purchase and registration tax. VAT rates, like other taxes, also vary between Member States.²¹⁹
- (192) The following diagram gives an overview of taxation in the Member States for a car with a 2000 cc engine. The columns give the percentage of car taxes based on the car price, net of tax. The shadowed part of each column corresponds to VAT, the white to other taxes.

Diagram 13: Car taxation in the EU Member States



Source: ACEA: Tax 1999

- (193) These factors create strong incentives for re-exporting cars from Member States where, due to taxation, prices before tax are relatively low into countries where prices before tax are relatively high.

Currency fluctuations

- (194) Exchange rate developments are another major cause for price differences.²²⁰ Prior to the introduction of the euro,²²¹ fluctuations concerned in particular the Italian lira, the Swedish krona and the pound sterling. Since 1 November 1999, exchange rate movements have been limited mainly to the pound sterling and the Swedish krona.²²² It has been observed that, in order

²¹⁸ Value Added Tax.

²¹⁹ See Annex VI, ACEA, "Motor vehicle taxation in the European Union", Summary Table, 1999 for details.

²²⁰ See also UK Competition Commission report, pt. 2.205 et seq.

²²¹ On 1 January 1999 in Belgium, Germany, Finland, Spain, France, Italy, Ireland, Luxembourg, Austria, the Netherlands and Portugal.

²²² For an analysis, see section 6.3.1, pt. (319) page 103, of this report.

to avoid losing competitiveness as compared to local producers, or to preserve currency-induced windfall benefits, manufacturers are reluctant to sufficiently adapt local prices to exchange rate changes.²²³

- (195) Such situations can create strong incentives for intra-brand competition, as customers increasingly seek to acquire cars in Member States where, due to exchange rate movements, cars are cheaper.²²⁴

The particular situation in the United Kingdom and Ireland:

- (196) Regulation 1475/95 provides that customers must be able to order a car from a dealer in another Member State with the specifications of their home country.²²⁵ This provision (known as the "*availability clause*") particularly concerns the right-hand-drive specification common for the United Kingdom and Ireland.
- (197) The supplement for such right-hand-drive specification²²⁶ is determined by the manufacturer as an absolute amount in national currency, for each of a manufacturer's models. It has to be objectively justifiable and may include any extra production and administrative costs, or an extra fee based on administrative and logistics costs involved in the specification.²²⁷ Indeed, the relative importance of the supplement depends on the car's price before tax, although the absolute amount may be identical or similar for a given brand. Therefore, in the eyes of consumers, the supplement charged outside the United Kingdom or Ireland may be one element which may influence their decision to buy a car in another Member State.²²⁸
- (198) The degree of intra-brand competition between the United Kingdom and other Member States has also been influenced by the fluctuation of the exchange rate of the pound sterling as already mentioned earlier in this report. It has

²²³ See Commission Decision of 28.1.1998 (Case IV/35.733 - VW, OJ L 124, 25.4.1998, which mentions the situation in Italy, where, in 1995, the Italian lira had devalued substantially against the German mark and the Austrian schilling, and *Volkswagen* did not sufficiently raise its prices in Italy, because it feared losing market shares against its Italian competitors; or IP/99/554 concerning the situation in the UK; here, it was mentioned that so called "*windfall profits*" can occur in cases where the currency of an export market (example: pound sterling) is re-evaluating against the domestic currency of a manufacturer (example: German mark), and where the latter does not reduce its prices in the re-evaluating currency.

²²⁴ See section 6.3.1, pt.(323), page 104 of this report for an analysis.

²²⁵ Article 5 (2)(d) and Commission notice on Regulation 123/85, Chapter I 1.

²²⁶ See also (61), page 24,pt. 5th bullet point

²²⁷ See Commission notice on Regulation 123/85, Chapter II 2; see also UK Competition Commission report, pt. 2.103 and 2.104: according to the UK Competition Commission, for most cars the original planning and development includes left-hand and right-hand variants. Thus the design costs of these variants should be part of the general production cost of the relevant model and be spread across the whole production volume of that car model. Consequently, for the vast majority of new cars a supplement based on planning and development and/or production costs does not seem to be justifiable.

²²⁸ For further information, see pt. (327) et seq., page page 106, of this report.

been found that between 1 May 1997 and 1 November 1999, the value of the pound appreciated by about 24% against the ECU/euro.²²⁹

Delivery times

- (199) Delivery time is an aspect which becomes relevant for intra-brand competition in particular when a car is ordered by a customer in another Member State than his country of residence. Delivery times may differ between Member States for all customers, i.e. national and foreign, and in particular, apart from more general manufacturer-specific logistical factors, for models newly introduced on the market or specific versions of a model.
- (200) Delivery times may vary, sometimes considerably, and are often longer than usual or expected, when a car is ordered by a customer from another Member State. This concerns in particular, but not exclusively, models newly introduced on the market. As regards delivery times for cars sold to incumbent and foreign buyers, the rule is that they should be the same. In practice it is shown that delivery times quoted to foreign buyers are generally considerably longer.²³⁰ However, such longer delivery times²³¹ are only permissible for the so-called corresponding cars.²³²
- (201) Parallel trade should especially take place within border areas of neighbouring countries, and/or between countries where appreciable price differences exist. Due to their high car price level in general, Germany and France and, since 1997, the United Kingdom²³³ should be major destinations for re-imports, whereas in countries such as the Netherlands, Denmark, Spain, Ireland and Finland, strong re-export demand should exist.

²²⁹ For more information, see pt. (319) et seq., page 103, of this report.

²³⁰ For details see section 6.3.1, page 97, of this report.

²³¹ In general not more than 6 weeks.

²³² The most common examples of such corresponding cars are cars with right-hand-drive specification for the United Kingdom and Ireland purchased in mainland Europe and cars with engine versions meeting road tax-exempted emission standards in Germany.

²³³ See the Commission's Car Price Reports.

CONCLUSION:

Intra-brand competition relies on a number of instruments available to dealers which are members of the distribution network of a manufacturer. The granting of discounts and other benefits to customers is the most important instrument available to dealers for the purpose of competing with each other. However, the margin and bonus policies usually applied by manufacturers, which provide for a fixed margin for each car sold and a bonus for the achievement of certain objectives, put a limit on dealers' financial leeway.

Intra-brand competition between dealers from different Member States relies basically on price differentials for new cars across the Community, and should be fostered by an increasing awareness on the part of consumers, prompting them to engage in parallel trade. Price differentials are caused by certain factors which are outside the influence of market operators, but also stem from pricing strategies applied by car manufacturers.

Competition is, however, limited by the restrictions on personalised advertising outside the contract territory and by the ban on selling to undertakings not belonging to the network who carry out resale activity. Both restrictions are permitted by Regulation 1475/95.

6.1.1.4 Inter-brand competition in car distribution

- (202) The structure of the motor vehicle industry in the European Union has been described in section 4.1 (page 28) of this report.
- (203) Market shares and their trend over time may give some indication of the degree of inter-brand competition. The market shares²³⁴ of manufacturers and their brands not only vary over time across the European Union,²³⁵ but also differ widely as between Member States (see following diagram for illustration). Moreover, another indicator for the level of inter-brand competition can be seen in the large sums spent by all car manufacturers for the promotion of new car sales.
- (204) The basic assumption concerning intra-brand and inter-brand competition described above at the beginning of this section relates to the distribution of new motor vehicles. However, since the Regulation establishes for the purpose of the exemption a link between sales and after-sales services, this report also analyses the degree of competition in the area of after-sales services.

²³⁴ For the purpose of the table, market shares are calculated for a certain geographical area of the European Union, or for individual Member States and for the total passenger car market.

²³⁵ Source: ACEA, CCFA.

Diagram 14: Car manufacturers market shares

MANUFACTURER	EUROPEAN UNION MARKET SHARE	DOMESTIC MARKET SHARE %		MEMBER STATE(S) LOWEST MARKET SHARE %		MEMBER STATE(S) HIGHEST MARKET SHARE (EXCEPT HOME MARKET) %	
<u>Volkswagen</u>		D		UK		A	
1999	18.8%						
1998	18.0%	28.2		9.3		31.1	
1997	17.1%	27.5		8.7		29	
1996	17.1%	27.3		8.5		27.4	
<u>Renault</u>		F		DK		E	
1999	11.0%						
1998	10.7%	29.0		3.7		13.7	
1997	9.9%	27.3		3		12.8	
1996	10.2%	26.6		2.8		13.3	
<u>PSA</u>		F		S		E	
1999	12.1%						
1998	11.4%	28.2		1.2		21.0	
1997	11.3%	28.6		3.3		21.8	
1996	12.1%	29.4		3.7		20.6	
<u>Ford</u>		UK	D	GR		IRL	
1999	11.2%						
1998	11.8%	18.5	8	3.2		11.3	
1997	13.0%	18.7	11.1	4.1		12.9	
1996	11.7	20	11.4	4.7		13.7	
<u>General Motors</u>		UK	D	F	GR	FIN	P
1999	11.5%						
1998	11.5%	13.4	14.5	6.4	6.7	14.6	12.4
1997	12.1%	14.3	15.8	6.9	5.9	14.1	14.2
1996	12.4	14.8	16.4	7.4	7.3	15.5	14.4
<u>Fiat</u>		I		S		GR	P
1999	9.6%						
1998	10.9%	39.0		1.0		13.1	13.2
1997	11.9%	43.1		0.6		13.6	14.1
1996	11.4	43.7		0.3		17.5	17.5
<u>Japanese producers</u>		-		F		IRL	
1999	11.5%						
1998	12.0%			4.8		31.5	
1997	11.7%			4.4		30.4	
1996	10.4			3.8		31.3	

Source: ACEA; www.acea.be; CCFA (*Comité des Constructeurs Français d'Automobiles*), "Analyse & Faits, Le marché européen," 1999, www.ccfa.fr.

- (205) Car manufacturers generally hold strong market positions in their home market, despite the fact that, since 1995, many national producers have lost market shares to foreign suppliers.²³⁶
- (206) However, nearly all manufacturers listed in this diagram sell cars under various brands. If the market share trends are considered on a brand to brand

²³⁶ Source: ACEA.

basis, it can be seen that inter-brand competition takes place not only between manufacturers, but also between the brands belonging to one manufacturer.²³⁷ The latter type of competition between the brands of one manufacturer is, from the competition view point, not relevant.

- (207) A further indication for inter-brand competition could be that standard equipment of cars has generally improved, while prices paid at the retail level in absolute terms have diminished. As a result, it is argued that prices for cars have diminished in relative terms, as compared with other products.²³⁸

Multi-make distribution:

- (208) The possibility for a dealer to sell a second (or third) make²³⁹ is designed to be a tool for promoting competition between brands belonging to different manufacturers, and for enhancing dealers' commercial independence vis-à-vis their primary manufacturers or importers. In reality, multi-brand arrangements are usually limited to cases where a dealer sells a second make of the parent company,²⁴⁰ or where a dealer's first make has a low market share or is represented in a "*niche market*", where selling a second make is vital to the dealer's business operations.²⁴¹ In the Nordic countries in particular, selling a second or third brand appears to be vital for the dealer's business operations and profitability, given the low or very low population density in many of their areas.
- (209) Real multi-brand arrangements are very rare. Consequently, existing arrangements do not have an appreciable impact on inter-brand competition across the European Union.
- (210) It is argued that brand loyalty from consumers when sourcing a car is very high. This factor can have a limiting effect on inter-brand competition, especially in an environment where real multi-brand distribution is very limited.

Manufacturers pricing policies:

- (211) Manufacturers claim that aggressive pressure by competitors is the major element determining their pricing policies. Whilst this is true to a certain extent, it has also to be acknowledged that large manufacturers or those which have a strong market position on their home markets often act as price leaders when setting list prices, others with smaller market shares are often price followers (i.e. are orienting their policy with regard to the one adopted

²³⁷ See for details ACEA, "*Western Europe New Passenger Car Registrations*", 1999.

²³⁸ See section 6.3.1 of this report.

²³⁹ See Article 3(3) and recital 7 of Regulation 1475/95.

²⁴⁰ Important examples are *Volkswagen/Audi*, *BMW/Rover*, *General Motors/Saab*.

²⁴¹ A particular case is the joint distribution of *Renault/Volvo* in the Nordic countries, a legacy of the former cross-shareholding between both companies.

by the stronger players).²⁴² However, some new entrants into the European car market, such as Korean manufacturers, seem to set their prices at levels which allow them to gain market access and to increase their market share in Europe.

- (212) In using their pricing instruments, manufacturers take into account their strategic objectives, in particular market shares, volumes and/or profits. Subjective, customer-related aspects, such as the image of the make and the perception of the price/quality ratio of the model, also have an influence on the manufacturers' pricing decisions. Apart from this, exogenous factors such as the economic conditions of the market and the taxes levied on new cars play an important role when recommended retail prices are set for the different Member States.

CONCLUSION:

It can be said that there is currently reason to believe that effective inter-brand competition exists in the European Union.

6.1.1.5 Competition in after-sales servicing

- (213) Dealers and service outlets of car manufacturers, independent repairers and so-called "fast-fit" chains are competing in the after-sales service business. During the term of the manufacturer's warranty, cars are almost exclusively serviced by an authorised repairer, as customers may otherwise lose the benefit of the warranty.²⁴³
- (214) After the warranty period has expired, many customers continue to entrust a dealer or service outlet with service, maintenance and repair work for their cars, at least for some years. For certain routine work, many customers turn, however, to an independent repairer or to a fast-fit chain. After 3 to 5 years, cars are increasingly serviced by independent repairers or fast-fit chains.²⁴⁴ Contrary to the sale of new cars, consumers can, after the end of the warranty period, choose amongst (three to four) different types of after-sales service providers (dealers, independent repairers, fast-fit chains and, for some makes,

²⁴² See also UK Competition Commission report, pts. 2.177 and 2.178, 7.4 and chapter 9. In this context see also Frank Verboven "The markets for gasoline and diesel cars in Europe", discussion paper n° 2069, February 1999, Centre for Economic Policy Research, p. 2, 35: this study on price differentials between a given car model equipped with a diesel engine and a petrol engine comes to the conclusion that 70% to 85% of the price difference is attributable to price discrimination; the remaining percentage follows from the higher costs due to differences in specifications. The fact that such price discrimination is possible is one element which seems to indicate that inter-brand competition in the car sector might not be as strong as it is generally believed.

²⁴³ Articles 5 and 6 of Regulation 1475/95 provide that the warranty has to be honoured by any dealer in the European Union, irrespective of the place of purchase of the car; in fact, all manufacturers have introduced such provisions in their service booklets.

²⁴⁴ See section 4.2.1, page 43, of this report.

service outlets). Generally, after-sales servicing takes place close to the consumer's residence in his home country.

- (215) The freedom of dealers to source spare parts of matching quality for maintenance and repair work²⁴⁵ should have a positive impact on competition in after-sales servicing, in particular between dealers and independent repairers.
- (216) Independent repairers also depend on the availability of technical information²⁴⁶ given the increasing importance of electronic components and systems in cars. The access to technical information provided for by the Regulation is aimed to promote competition in after-sales servicing.

CONCLUSION:

In practice, competition in after-sales servicing is limited to the period after expiry of the manufacturer's warranty, as during that term consumers prefer to turn to dealers for the repair and maintenance of their cars in order to not to lose the warranty. After the warranty period, competition takes place since consumers can turn for servicing to undertakings inside and outside the official network. The situation is thus very different in that respect from the distribution of new cars.

6.1.2 Are motor vehicles technical consumer goods whose maintenance and repair require brand specialists?

- (217) Regulation 1475/95 starts from the assumption that motor vehicles require expert maintenance and repair and that manufacturers have to co-operate with selected dealers or repairers in order to provide specialised servicing.²⁴⁷
- (218) The categories of undertakings providing maintenance and repair, and the type of services offered, are illustrated in the following diagram.

²⁴⁵ Article 6 of Regulation 1475/95.

²⁴⁶ See Article 6 (1)(12) and recital 28 of Regulation 1475/95.

²⁴⁷ See recital 4 and Article 5 of Regulation 1475/95.

Diagram 15: Characteristic features of the different providers of after-sales services

TYPE OF SERVICE PROVIDER	FULL RANGE OF SERVICE AND REPAIR	LIMITED RANGE OF SERVICE AND REPAIR	SIMPLE STANDARD SERVICE AND REPAIR WORK	AGE OF CARS SERVICED*
Dealer	X			0-3 years (warranty period); up to 4 years of age
Service outlet	X			0-3 years (warranty period); up to 4 years of age
Independent repairer	X (only some)	X		after 3-4 years
Fast-fit chains			X	after 4-6 years

Source: Commission

* The above reference to the age of the cars is, however, only indicative. Depending on national habits, it may also occur that independent repairers carry out certain work before the car reaches the age mentioned and that dealers continue carrying out work after the warranty period.

- (219) New cars are increasingly reliable and need less maintenance,²⁴⁸ as has been explained in section 4.2.1 (page 43) of the report.
- (220) New cars are also becoming more complex due to the greater use of electronic systems such as computerised controls for the antilock braking system and emission control, but also to the use of single Central Processing Units to control all the car's functions. Many in the industry believe that the reduction in the turnover and in the profitability of the dealership's after-sales departments due to longer service intervals and the need for less servicing per visit will be offset by increased service retention due to the greater complexity of cars.²⁴⁹ Network dealers and service outlets would thus be the only specialists capable of repairing and maintaining motor vehicles.
- (221) However, studies raise serious doubts as to whether technology will be the saviour of the dealer's after-sales business.²⁵⁰ They point out that this prophecy has proved unfounded in the past when new electronic devices were built into cars. They expect that this will also be the case as regards the new, even more complex systems which are now built into vehicles. Electronic protocols used by diagnostic equipment is said to be shared across makes and already available to the independent sector. Moreover, the issue of providing

²⁴⁸ See: ICDP, "After-sales in Europe" by P. Wade, L. Buzzavo, T. Chieux, K. Zellmer, J. Kiff, Research paper 2/97 of July 1997 (hereinafter: ICDP "After-sales in Europe" 2/97), p. 74; PriceWaterhouseCoopers "Guaranteeing Survival", May 2000, slides 71 et seq.

²⁴⁹ ICDP "After-sales in Europe" 2/97, p. 77.

²⁵⁰ ICDP "After-sales in Europe" 2/97, p. 78.

adequate diagnostic equipment to the after-sales market is said to be getting easier because the complexity is moving from hardware to software and the latter is becoming more transparent and easily communicable.²⁵¹ Moreover, it is said ²⁵² that the relevant software can easily be discovered or copied by a process of reverse engineering – i.e. interrogating a car’s computer in order to understand its software. Therefore, it is said that diagnostic equipment for the independent repairers will be available at affordable prices by the time a new model is serviced by these undertakings.

- (222) The broadest possible access to technical information would be in line with the spirit of the Regulation²⁵³ and would allow independent repairers to compete with dealers and service outlets belonging to the network of a manufacturer.
- (223) Nevertheless, it is obvious that cars are and will remain complex technical consumer goods for the repair and maintenance of which specialists are required. These specialists should have the necessary technical knowledge and equipment to carry out these services properly in order to preserve road safety, the reliability of the vehicle and its value. However, based on the above, it is not necessary for such specialists, who carry out all types of repair and maintenance, to be dealers or service outlets linked to a certain manufacturer.

CONCLUSION:

Brand specialists are needed for maintenance and repair work on cars if such work requires specific technical knowledge or equipment. However, brand specialists do not necessarily have to be dealers or service outlets belonging to the network of a manufacturer. Repairers who are independent from a manufacturer and who are willing and able to acquire the necessary expertise and equipment are also able to maintain and repair modern vehicles.

6.1.3 Is the tying of sales of new vehicles and after-sales services still justified?

- (224) The tying of the distribution and servicing of motor vehicles was regarded as more efficient than a separation between a distribution organisation and a servicing organisation.²⁵⁴ It was argued that there is a “*natural link*” between sales and servicing. Regulation 1475/95 therefore requires manufacturers, if they are to benefit from the block exemption, to impose on their dealers an obligation to provide after-sales services as well.²⁵⁵ As has

²⁵¹ For example, the Internet has a site where one can download all diagnostic codes for Chrysler cars.

²⁵² ICDP “*After-sales in Europe*” 2/97, p. 78.

²⁵³ See in particular Article 6(12) of Regulation 1475/95, which obliges vehicle manufacturers to give the independent repairers full and non-discriminatory access to technical information.

²⁵⁴ See recital 4 and Article 5 of Regulation 1475/95.

²⁵⁵ Article 5 of Regulation 1475/95

been noted, recent evidence from the market place would appear to contradict the necessity of this link.²⁵⁶

- (225) However, car manufacturers have also appointed a large number of service outlets;²⁵⁷ dealers also run service centres, which are physically separated from their sales outlets. The primary task of these outlets and centres is to offer after-sales services for the vehicles of a given manufacturer. Some of these service outlets may however also act, as regards the sale of new motor vehicles, as agents of a dealer of the relevant manufacturer.²⁵⁸
- (226) Car manufacturers generally are in favour of maintaining the option of tying sales and servicing, as it is advantageous for manufacturers themselves (recall campaigns, repair under warranty for free), for dealers (sales promotion, crucial for economic viability) and consumers (safety, product reliability). In this respect, manufacturers have always stressed the requirement that dealers carry out the sale and the pre-sale inspection of the car.
- (227) Importers underline the logistical advantages of the link between sales and servicing for the distribution of spare parts, for the coordination of stocks in spare parts, and in order to facilitate the operation of recall campaigns.
- (228) Dealers generally confirm that, in the eyes of consumers, this link is indispensable, at least for servicing during the first four years of a car's life.²⁵⁹ While a minority of dealers submit that a separation of these activities would affect their viability,²⁶⁰ others admit that some separation has already become reality.
- (229) Spare-part producers argue that the established practice of tying sales and after-sales services has led to the result that all spare parts required by dealers, including parts of matching quality, are sourced through car manufacturers,²⁶¹ thus preventing spare-part producers from having direct access to the dealer networks. Spare-part producers therefore fear an evolution towards growing

²⁵⁶ ICDP, "Beyond the block exemption" 4/98, p. 58. ICDP, "Beyond the block exemption II" 6/99, p. 17.

²⁵⁷ Ford UK has established pure service outlets in the United Kingdom, see Commission Press Release IP/97/740 of 4.8.1997 and XXVIIth Report on Competition Policy, 1997, First Part, Section I, B 3; further examples are Daewoo in the United Kingdom, who have contracted a retail group to provide after-sale support (for details, see Financial Times Automotive, p. 29), and Škoda in Germany, who in 1995 established 250 service-only points to carry out after-sale operations, following restructuring of their dealer network in view of their weak market position with low sales per dealer, which required a reduction in the number of dealer outlets.

²⁵⁸ See also ICDP, "Beyond the block exemption", 4/98, p. 58.

²⁵⁹ Source: Commission information; this view is shared by importers, who consider that a separation of the activities would make it more difficult for consumers to obtain appropriate servicing.

²⁶⁰ Certain consumers' associations see a positive effect of a link for customer relations, while others would be in favour of a split; some criticise cross-subsidisation between sale and servicing activities.

²⁶¹ In particular, the manufacturers' selling companies and importers.

dominance of manufacturers and their dealer networks over spare-part suppliers. Easing the tie between sales and servicing would therefore strengthen the position of spare-part producers vis-à-vis authorised repairers.

- (230) The majority of consumer associations hold the view that such a link is not indispensable and that a split would be advantageous for consumers, while a minority considers that a split would bring no change. It seems that the answer to this question depends largely on consumer perceptions and patterns of behaviour, which may differ among Member States.
- (231) All in all there seem to be three main arguments which are used to justify the above “*link*” between sales and after-sales services.

Technical considerations:

- (232) An argument in favour of the practice of tying sales and after-sales services has been that the sale of a new car requires a pre-delivery inspection according to the manufacturer’s specifications, which could only be executed by the dealer who delivers the car to the final consumer.²⁶² This “*link*” is also considered important for the purposes of the manufacturer's warranty, recall campaigns and vehicle repair and maintenance. It is also argued that the technical nature of the product, with its potential unreliability, justifies the need for manufacturers to insist that their dealers offer both sales and service facilities.²⁶³
- (233) However, nowadays pre-delivery inspections, if still necessary, are already carried out, with the consent of the car manufacturer, by undertakings which do not belong to its distribution network.²⁶⁴
- (234) Moreover, manufacturers have no control over the repair and maintenance of a vehicle once it has been sold. Consumers might come back to the dealer who has sold a vehicle, but they may also use another dealer or service outlet – this would even not affect the warranty - or an independent repairer for after-sales services. As has been demonstrated in the previous section, all these types of undertaking are able to provide state-of-the-art after-sales services. It cannot therefore be argued that, for technical reasons, the dealer

²⁶² Recital 4 of Regulation 1475/95.

²⁶³ See, for example, ICDP, “*Beyond the block exemption*”, 4/98, p. 58 - 60.

²⁶⁴ See *L’Argus de l’automobile*, 24.2.2000, p. 48. According to this article, STVA, a company belonging to SNCF, the national French railway company, operates 15 centres in France. In these centres, new Ford cars are checked by specialists of STVA as regards the mechanics, as regards the conformity with national regulations and equipped with additional specifications. The vehicles are delivered to French *Ford* dealers in a condition which allows them to deliver the car to their customer. STVA carried out these services on 16% of all new vehicles registered in France in 1998. A major Japanese car manufacturer carries out pre-delivery inspections before a car is handed over to a dealer. The latter can then deliver the car to his customers without a further inspection.

who has sold a car has necessarily to perform after-sales servicing on the vehicle too.

Economic considerations:

- (235) There is a consensus that dealers' net profit margins from new car sales are low and that they are likely to decrease further in the mature West European markets – especially with continuing over-production.²⁶⁵ In contrast, after-sales are a source of rather healthy profits for dealers. However, due to the effects of improved technology, quality, reliability and longer service intervals, this could also change in the future.²⁶⁶
- (236) On the basis of these elements, it seems that dealers need to have an after-sales service department in order to be able to sell new cars. In contrast, an after-sales service undertaking, i.e. a service outlet, does not need a sales department in order to generate viable profits.
- (237) Consequently, today's economic reality seems to indicate that it is necessary for a distributor of new motor vehicles, in order to be viable, to have after-sales services. However, the low profit margins generated by the sales departments of dealers may also be due to the fact that they can offset this activity with the profits derived from the after-sales department. Consequently, for dealers there are less real economic constraints on rationalising their sales departments, trying to reduce costs linked to car distribution and make their sales departments profitable as if these departments were stand-alone activities. If this is the economic reality, it could be questioned whether there is a need to oblige²⁶⁷ car manufacturers to impose an obligation on their dealers to provide after-sales services as well.
- (238) Moreover, some car manufacturers are already moving away from the sales-service link and in future would like to have dealers who only sell new cars.
- (239) Furthermore, in view of the greater reliability and the longer service intervals of new cars, dealers will be less and less able to base their profitability mainly on after-sales services, and they will have, in any event, to try to make profits on the sale of new cars as well.
- (240) The argument that manufacturers want to make arrangements with reliable undertakings in order to be able to honour the warranty and to offer repair services for faulty vehicles free of charge to their customers does not justify the tying of the sale of new vehicles and after-sales services either: a service outlet network could also reliably offer this type of repair services, for which the repairer can normally ask to be reimbursed by the manufacturer.

²⁶⁵ ICDP, "Future of the dealer", 4/99, p. 10.

²⁶⁶ ICDP, "Future of the dealer", 4/99, p. 10; ICDP, "Beyond the block exemption II", 6/99, p. 15 - 17; ICDP, "Beyond the block exemption", 4/98, p. 59.

²⁶⁷ Article 5 of Regulation 1475/95.

Consumer expectations:

- (241) According to dealers, customers prefer after-sales service to be provided by the dealer during the warranty period. The dealers also claim that during the first four years of a car's life, consumers prefer servicing to be carried out by the dealer.²⁶⁸ It is, however, noteworthy that most consumers' associations hold the view that this "link" is not indispensable and that a split would be advantageous for consumers. It seems that the answer to this question depends largely on consumer perceptions and patterns of behaviour, which may differ among Member States.
- (242) Since a car is a very expensive and, if not well maintained, potentially dangerous product, it is understandable that consumers need easy access to a reliable after-sales service network during the lifetime of a car. In addition, in some countries consumers may also have a preference for having their car serviced and repaired by the dealer who sold their car. In view of these consumer expectations, dealers also wish to offer after-sales services in order to attract customers.
- (243) Moreover, due to the high mobility of today's society, many cars are not serviced by the dealer who sold the car, but by another dealer or a service outlet belonging to the car manufacturer's network. All these undertakings operate on the basis of the standards set by the manufacturer of the car, which are the same or very similar throughout the manufacturer's network. The behaviour of these consumers puts in question the existence of a "natural link" between sales and after-sales. Such a link would basically require that the consumers use the after-sales department of the dealer from which they have purchased the car. Consumer behaviour, however, shows that this is, to a considerable extent, not the case.²⁶⁹
- (244) In addition, especially as regards older cars, which normally need more repair and maintenance in order to preserve their value and to remain safe, consumers tend to turn to independent repairers and fast-fit chains. This is also an indication that, from the consumer's point of view, there is no "natural link" between sales and servicing.

²⁶⁸ This view is shared by the importers, who consider that a separation of the activities would make it more difficult for consumers to obtain appropriate servicing.

²⁶⁹ OECD, "Market Access Issues in the Automobile Sector", p. 16; ICDP, "Future Direction for European Car Distribution", p. 19.

CONCLUSION:

There are good reasons to believe that, due to technical progress, tying the sales of new cars and after-sales servicing (or the so-called "natural link" between sales and servicing) has now lost some of its justification which it had in 1985 or 1995.

Economic reasons for carrying out both activities may exist today: sales of new cars are not very profitable.

Some, but not all, consumers may prefer to purchase a car from a dealer who also offers after-sales services.

Consequently, the "natural link" between sales and after-sales services seems no longer to exist in the way it may have existed in the past. A more flexible approach therefore seems possible,²⁷⁰ one which would allow dealers to decide which activity they wish to focus on.

6.2 HAS THE COMMERCIAL INDEPENDENCE OF DEALERS BECOME GREATER?

6.2.1 Introduction

- (245) This section will address those provisions of Regulation 1475/95 which, to a certain extent, are intended to protect dealers against car manufacturers and give dealers the possibility of taking autonomous economic decisions. The reason for having these rules is that dealers are usually small or medium-sized undertakings which cannot withstand the economic power of their supplier. Although dealers are in general in favour of the regime provided by Regulation 1475/95, the operation and effects of these provisions nevertheless fall to be analysed in this report as well. This is all the more necessary since dealers and their associations continue to insist in their discussions with the Commission²⁷¹, that they still feel relatively powerless when compared with the manufacturers. They point out that this inequality of economic power severely limits their ability to be innovative and to take full advantage of their rights under the Regulation.
- (246) The following subject matter is dealt with: the use of spare parts of matching quality (section 6.2.1.1, page 82), the period for ending the dealer's contract (section 6.2.1.2, page 83), the dealer's remuneration (section 6.2.1.3, page 85), the freedom of dealers to determine their pricing policy (section 6.2.1.4, page 86), the right to negotiate sales targets (section 6.2.1.5, page 87), the right to sell more than one make, referred to as multi-branding (section 6.2.1.6, page 89) and the recourse to an arbitrator (section 6.2.1.7, page 90).

²⁷⁰ See also ICDP, "*Beyond the block exemption*", Research Report No. 4/98, p. 39, 58; ICDP, "*Beyond the block exemption II*", 6/99, p.1, 14, 15; ICDP, "*Future Directions for European Car Distribution*", 11/98; see also the UK Competition Commission's report, pt. 2.419 to 2.423; it takes the view that the car manufacturers or importers should not be able to insist on dealers offering servicing and repair services.

²⁷¹ The main reason put forward by the dealers is that the manufacturers can end their contracts with two years notice without reason and that it is difficult to become a dealer of another major manufacturer in case of termination of their contract.

6.2.1.1 Use of spare parts of matching quality

- (247) Regulation 1475/95 enables dealers to purchase spare parts²⁷² of matching quality from sources other than the car manufacturer with whom they have a contract for the repair and maintenance of cars²⁷³. In order to ensure that this freedom for dealers is not economically undermined by the manufacturer/importer, the aggregation of discounts for new vehicles and original spare parts is not permitted under Regulation 1475/95.²⁷⁴ The purpose of these provisions, which were also contained in Regulation 123/85, is to limit the economic dependence of dealers on car manufacturers as regards the sources of supplies and at the same time to give final consumers a wider choice as to the range of products offered and as to prices.²⁷⁵
- (248) In practice, all car manufacturers authorise their dealers to use spare parts of matching quality to original spare parts, and prohibit the use of parts of lesser quality. They estimate that non-original spare parts of matching quality account for more or less 5% to 20% of their networks' requirements. This low percentage is confirmed by the spare-part producers' and consumer associations' replies to the Commission's questionnaire. They complain that dealers only rarely use non-original spare parts for repair and maintenance. They believe that this low percentage is due to dealers' preference for original spare parts or to car manufacturers' sophisticated delivery systems.
- (249) From the replies to the Commission's questionnaires, it appears that this low percentage is due to a number of reasons:
- Car manufacturers grant large discounts to their dealers for the purchase of original spare parts. Such discounts are higher than those for the supply of motor vehicles (see below section 6.2.1.3, page 85) for a more detailed analysis). The rate in most cases usually amounts to around 30% of the value of the product and can amount to more than 50% in certain Member States and for certain car manufacturers.
 - Most car manufacturers do not oblige their dealers to keep in stock a minimum, pre-defined quantity of spare parts. However, quite a large number of car manufacturers recommend to their network the range and

²⁷² Article 10(6) gives a definition of spare parts: "*spare parts*" are parts which are to be installed in or upon a motor vehicle so as to replace components of that vehicle. They are to be distinguished from other parts and accessories, according to trade usage.

²⁷³ The spare parts of matching quality may be used for the repair of cars outside the warranty if the repair is not done in the context of a recall action; see Article 4 (7) and 10 (11) of Regulation 1475/95.

²⁷⁴ Article 5 (1)(2)(c). Aggregation of discounts would induce dealers to purchase original spare parts in order to have higher discounts from the car manufacturers.

²⁷⁵ Dealers' freedom in the choice of their source of supplies still encounters limits linked to safety and consumer satisfaction: spare parts must correspond in quality to those produced and distributed by the car manufacturer; the manufacturer is enabled by the Regulation to verify the quality of those parts; dealers can be induced to use original spare parts only for work under guarantee, free servicing and vehicle-recall work. Finally, there is a general obligation upon dealers to inform customers on the use of non-original spare parts.

number of spare parts that a dealer should hold for optimum efficiency or include annual target sales with dealers for the spare parts in value terms.

- Moreover, dealers' profit margins are in general limited. They cannot risk losing the end-of-year bonuses which are granted by car manufacturers and which are also based on the original spare-part turnover in a given year.²⁷⁶
- Dealers fear that their contract will be terminated if they use too many non-original spare parts even where those parts are of matching quality.
- The obligation on dealers to inform consumers when they use non-original spare parts of matching quality²⁷⁷ is considered by spare-parts producers as one of the reasons why they have difficulty in supplying spare parts to dealer networks. Usually, consumers consider non-original spare parts as being of a lesser quality than the original ones even if they are identified and produced by the same spare-part producer who manufactures the original spare parts and, as a consequence, even after being informed still prefer to have original parts installed on their vehicles. This belief has a strong influence on the use of non-original spare parts and drastically limits the use of such parts for the repair and maintenance of cars.
- The producers of components and parts fitted on new vehicles indicated in their replies to the Commission's questionnaires that they normally cannot supply all these parts and components directly to the dealers of the manufacturer which uses them for production of new vehicles: most vehicle manufacturers seem to require their component suppliers to sell components and spare parts for a given model only to the vehicle manufacturer, even though this is clearly "*black listed*" behaviour²⁷⁸

CONCLUSION:

The use by dealers of non-original spare parts of a quality which matches that of original parts is still very limited. This seems to be due to the fact that consumers do not receive complete information on the characteristics of such parts. Many consumers therefore believe that original spare parts are of better quality. The other reasons underlying this limited use stem from the commercial policy of the car manufacturers – setting higher margins for original spare parts and obstructing direct sales to dealers by spare-part producers.

6.2.1.2 Longer period for terminating dealer contract

(250) Regulation 1475/95 provides that distribution agreements can be concluded for a fixed period of at least five years or without time limit. The period of notice for terminating the latter type of agreement has to be at least two years for both parties and can be reduced to one year in special cases (e.g. reorganisation of a dealer network). These provisions were introduced in

²⁷⁶ The position of spare-parts producers on this issue will be explained more fully in section 6.2.2 "*Has the access of spare parts producers to dealer networks improved?*".

²⁷⁷ Article 4(1)(8) and (9) of the Regulation.

²⁷⁸ Article 6 (1)(10) of the Regulation.

1995²⁷⁹ in order to give legal certainty to dealers as to their contractual relations with car manufacturers and to better protect dealers' investments and give them a reasonable period to change their commercial activity.

- (251) Nearly all dealer contracts used in Europe are concluded for an indefinite period. If agreements lasting five years are used, they are normally renewed or extended beyond this period. Agreements concluded for an indefinite period are normally ended with two years' notice. However, especially in Germany and Italy, dealer agreements have been ended with one year's notice in the context of network reorganisations.²⁸⁰
- (252) The relevant rules of the Regulation give dealers only limited protection, in that they allow them a certain period of time to earn a return on their particular brand-specific investments, part of which is lost if they become a dealer of another network or an independent reseller or repairer.
- (253) Otherwise, these rules do not really strengthen dealers' independence. Since all other manufacturers use selective/exclusive distribution agreements with a limited number of dealers and since all manufacturers are about to reduce the number of dealers in the context of the ongoing restructuring process, it is rather exceptional for a dealer whose contract has been ended to become a dealer of another well established make.²⁸¹ Such a dealer may however be able to become a dealer of one of the new Asian car manufacturers which have accessed the European car markets and which are trying to increase their market shares in Europe.
- (254) The above provisions are aimed at providing financial protection for the weaker party to a distribution agreement and also at giving dealers some leeway to engage in competition. The protection of the financial interests of parties to a contract is normally not a matter for competition rules. When appropriate, national legislation may protect such interests.²⁸²

²⁷⁹ Article 5(2) of the former Regulation 123/85 also contained provisions regarding the duration and the termination of dealer agreements. These provisions were less favourable to the dealer, since distribution and service agreements could be for a period of at least four years or for an indefinite period. The period of notice for normal termination of the agreements was at least one year.

²⁸⁰ Almost all the German car manufacturers and *Honda*, *Nissan* and *Toyota* reduced their number of dealers in Germany. *General Motor* did so in Italy.

²⁸¹ Some manufacturers offer their ex-dealers a service outlet contract. Otherwise, if the dealer does not want to stop his activities, he becomes an independent repairer or an intermediary; see also UK Competition Commission report, pt. 2.258: it also points out that it is difficult for a dealer to switch the make and to become a dealer of another manufacturer. Moreover, under pt. 2.259, it points out that the manufacturer can also veto the sale of the ongoing business even to another dealer of the same network.

²⁸² In Germany, based on an analogy with the rules applicable to commercial agents, dealers can get compensation for goodwill if their contract is ended.

CONCLUSION:

The rules fixing the minimum duration of a distribution agreement to five years or, if the agreement is not limited in time, the mandatory minimum two-year period of notice allow dealers to earn a return on their investment for a longer period of time than under Regulation 123/85. However, these rules have not strengthened the position of dealers vis-à-vis manufacturers in any major way.

6.2.1.3 Sufficient margin to preserve dealers' independence

- (255) Regulation 1475/95 does not contain a general provision regarding dealer margins, but it obliges car manufacturers, when calculating dealers' margins, to distinguish between supplies of motor vehicles, and suppliers of spare parts or other goods.²⁸³
- (256) One of the aims of Regulation 1475/95 was to strengthen the economic independence of dealers. The system used by car manufacturers to remunerate dealers for new cars is one indicator of that independence which the Regulation was intended to strengthen.
- (257) The largest part of dealers' margins consists of a discount on the recommended retail prices. This discount is the same for all dealers, whether large or small, located in a given Member State and belonging to the network of a manufacturer.²⁸⁴ The discount normally varies from model to model. In addition to these discounts, dealers get a variable margin, a so-called "bonus". It is based on various parameters, e.g. the sales volumes, customer satisfaction, quality of management, characteristics of showroom, attainment of sales targets and other factors. Even if these parameters are known to dealers at the beginning of each year, the method of calculation and the magnitude of the bonus is made known by the manufacturer /importer to the dealer only at the end of each year. Dealers therefore do not know the level of this additional bonus when they carry out a transaction. This keeps pressure on them during the year and may also have a negative effect on the willingness of dealers to give rebates, since they never know how much they will earn on top of their normal discounts.
- (258) According to the information supplied by the car manufacturers, discounts to dealers for new vehicles are between 5% and 20% of the recommended retail prices of new cars, depending on the manufacturer, model and Member State. This discount serves to finance the dealer's distribution cost, overheads and the rebates which dealers usually have to give to final consumers.
- (259) For spare parts, discounts granted to dealers are in general higher and can amount to 50% of the retail prices. The bonuses were in most cases between 3% and 5% and have been increased over the last few years.

²⁸³ Article 5(1)(2)(c).

²⁸⁴ See also UK Competition Commission report, pt. 2.273 to 2.279 and 6.105 et seq.

- (260) Car manufacturers can also subsidise dealers' activities by organising promotional campaigns, during which they reduce vehicle prices, e.g. for a special model, or offer packages of extras at highly discounted prices in order to stimulate sales.
- (261) Dealers maintain that the criteria for setting bonuses are not always transparent or objective and are out of their control. The same is true as regards promotional activities of manufacturers.
- (262) They also complain that they are granted the same margins irrespective of their size or capacity in fulfilling contractual obligations regarding sales targets, for example.
- (263) Moreover, dealers receive a discount which is inferior to that granted to fleet operators and other reserved²⁸⁵ clients, which usually receive a rebate of 20% to 40 % of the recommended retail price. As a consequence, dealers cannot compete with car manufacturers in supplying this category of consumers, which in some Member States, such as the United Kingdom,²⁸⁶ is extremely important in quantitative terms

CONCLUSION:

The margin dealers earn in the context of the sale of new cars consists of a fixed discount of up to 20% on the recommended retail prices and of a variable bonus of 3% to 5%. Whereas the fixed discount barely covers the distribution costs of the dealers, the variable payment granted by the manufacturer – the bonus - is based on criteria which are unilaterally fixed by the car manufacturer. Moreover, such bonuses are calculated at the end of the year and they are not transparent for the dealers. Such a remuneration system is not imposed by the Regulation.

The fact that all dealers in a given Member State earn the same margin does not allow big dealers to source vehicles at lower prices and to pass part of this benefit on to their customers. This hampers intra-brand competition.

6.2.1.4 Leeway in dealers' pricing policy

- (264) Regulation 1475/95 ensures price competition at the retail level. Dealers have therefore to be free to autonomously determine prices and discounts to final consumers; car manufacturers are not allowed to directly or indirectly restrict this freedom.²⁸⁷ Consequently, they only issue lists with recommended retail prices.

²⁸⁵ Pursuant to Articles 1 and 2 of Regulation 1475/95, manufacturers can "reserve" themselves the right to sell vehicles to certain categories of customers. However, dealers must be prevented from selling vehicles to these customers too.

²⁸⁶ In the United Kingdom, discounts set by car manufacturers to fleet operators vary from 30% to 35% of the vehicle's price; see: CA 2000, "The Forecourt Revolution," p. 35.

²⁸⁷ Article 6(1)(6) and Article 6(2) and (3) of Regulation 1475/95. Article 6(2) of Regulation 123/85 contained a similar provision.

- (265) However, dealers' leeway to set prices freely is de facto limited due to the margin system described in the previous section.²⁸⁸ Moreover, the rebates granted by manufacturers to fleet operators and other reserved customers are too high to allow dealers to compete with their manufacturer in this area.
- (266) Although the freedom of dealers to set their prices is a core element of Regulation 1475/95 and largely accepted by all interested parties, including the motor vehicle manufacturers, the Commission is investigating a case of alleged resale price maintenance operated by a major car manufacturer.

CONCLUSION:

Dealers must be free to determine their resale prices. However, in the distribution systems run under Regulation 1475/95, this freedom is limited due to the homogeneous margins dealers usually earn. Infringement proceedings have been initiated against one major car manufacturer which appears to have restricted this core freedom of dealers.

6.2.1.5 Role of dealers as to sales targets

- (267) Regulation 1475/95 allows car manufacturers and dealers to agree on annual sales targets for cars and spare parts, which dealers have to endeavour to meet.²⁸⁹ If both parties cannot reach an agreement on the annual targets, an expert third party has to decide on these targets. The obligation to agree on annual sales targets was introduced in 1995²⁹⁰ to create a level playing field between dealers and manufacturers/importers in this respect and to ensure that sales targets are not set at inappropriate levels. Dealers' associations indicate in their replies to the Commission's questionnaire that the right to ask for the intervention of an expert third party if no agreement can be reached on sales targets has had a positive effect: car manufacturers are now more inclined to take account of the dealer's position when setting sales targets. Due to this greater flexibility, expert third parties have had to intervene in only a very limited number of cases. It should also be mentioned in this context that some car manufacturers use two types of sales targets. First, they agree with their dealers on annual sales targets; this seems to be in line with the requirements of the Regulation. Secondly, in some cases manufacturers unilaterally and without giving their dealers a right to call for arbitration set sales targets four times per year which are valid for the following three months. The latter sales targets are also the basis for the

²⁸⁸ As to the situation in the UK: see UK Competition Commission report, pts. 2.280 to 2.296, which explain in detail the various measures used by car manufacturers/importers to limit UK dealers' freedom to set their retail prices or discounts.

²⁸⁹ Article 4(1)(3): Sales targets are determined taking into account sales previously achieved in the territory and forecast sales for the territory and at national level.

²⁹⁰ Pursuant to Article 4(1)(3) of Regulation 123/85 the manufacturer could set the sales targets unilaterally.

payment of bonuses. Such behaviour is likely to result in the automatic loss of the benefit of the group exemption.²⁹¹

- (268) Sales targets for both vehicles and spare parts are negotiated each year between dealers, importers and car manufacturers. Dealers have an obligation to use their best efforts to meet or exceed the agreed sales targets. If dealers fail to meet the sales targets due to insufficient efforts or bad faith, their contracts can be terminated.
- (269) Most car manufacturers are reluctant to modify a previously agreed sales target during the year. In the future, however, with the combined use of “lean production” and “lean distribution”, it should be much easier for a manufacturer to match the supply of new cars to the quantity that a dealer can sell at any given time.
- (270) Dealers state in their replies to the Commission's questionnaire that sales targets are set too high. This is due to the car manufacturer's estimates and expectations on market conditions. High targets can facilitate intra-brand competition since they induce dealers to compete with one another in order to sell more cars. However, when they are difficult to reach, they can penalise those dealers which, notwithstanding a high performance rate, cannot fulfil the target and will therefore not earn the highest possible bonuses.
- (271) Moreover, the existence of a link between sales targets and product allocation has to be noted: sales targets are not only based on the cars which a manufacturer can produce, they are also based on the marketing strategies a manufacturer wishes to pursue in the different Member States. If a manufacturer, as has been observed, decides to allocate to its importer/network in a certain Member State only as many cars as are needed to achieve or maintain a certain market share in that country and sets the sales targets accordingly, then the instrument of sales targets goes beyond the function it should have pursuant to the Regulation²⁹². The link between these targets and product allocation may prevent the dealer from selling the maximum number of cars (i.e. sell a car to all consumers who wish to buy a car from him) and thereby outperforming the target. This link may thus have a hampering effect on intra-brand competition and also, to a limited extent, inter-brand competition. It might indeed neutralize differences in dealer performance, in particular in situations of scarcity (e.g. new models). Moreover, it can have the effect of hampering sales to foreign consumers which might be triggered by price differentials due to exchange rate fluctuations or differences in taxation.

²⁹¹ See Explanatory Brochure on Regulation 1475/95, reply to question 13: this states that “minimum requirements” as to sales agreed for a shorter period “than one year” may result in an automatic loss of the benefit of the group exemption [Article 6(1)(3)].

²⁹² Cf. Article 4 (1)(3) of Regulation 1475/95.

CONCLUSION:

The need to agree on sales targets and the right to ask an expert third party to set them in the event of disagreement has balanced the interests of the parties involved in the negotiation of these targets.

Nevertheless, the practice of manufacturers to set sales targets in a certain Member State is based on national demand can also have negative effects on competition if it is combined with a limited product allocation.

In a system of lean distribution, a flexible adaptation of sales targets to market conditions should be possible.

6.2.1.6 Right of dealers to sell more than one make (multi-make, multi-marketing or multi-brand)

(272) Regulation 1475/95 enables dealers to sell new motor vehicles offered by undertakings other than the manufacturer. Such multi-marketing has to be done by a distinct legal entity, in separate sales premises, under separate management, and in a manner which avoids confusion between makes.²⁹³ A manufacturer has to release dealers from these obligations if the latter can show that there are objective reasons for doing so.²⁹⁴

(273) The introduction, in 1995, of the option to run multi-make-dealerships had the objective of improving inter-brand competition by opening markets in terms of geography, products and competitors and also of giving dealers financial independence from their primary supplier.²⁹⁵ Although in the UK, for example, the number of multi-franchise dealers increased strongly between 1990 and 1995²⁹⁶ it is said that in general manufacturers support exclusivity at all costs.²⁹⁷ However, Regulation 1475/95 leaves it to the sole discretion of the dealer to decide whether he wants to join the network of a second make or not.

(274) Multi-marketing can have advantages for final consumers, who have a wider range of products and/or of brands at one single site, and who do not therefore need to shop around in order to compare different models. This form of distribution could also have advantages for the distribution of brands with low sales volumes, or for example in rural areas, where sales would otherwise not reach a critical mass.²⁹⁸

²⁹³ Article 3(1)(3).

²⁹⁴ Article 5(2)(1), see also the Commissions' brochure on Regulation 1475/95, question 7: Such objective reasons exist if the obligations prevent a dealer from operating on an economically viable basis.

²⁹⁵ See Commission brochure on Regulation 1475/95, question 8.

²⁹⁶ See : ICDP, "Multi-Franchising", 1/98, p.26, (hereinafter referred to as "Multi-Franchising").

²⁹⁷ ICDP, "Multi-Franchising" p. 26 and 35.

²⁹⁸ ICDP, "Multi-Franchising" p. 45.

- (275) However, where a dealer is required to observe the restrictions permitted by the Regulation and set out in paragraph (272) above, multi-marketing has proved to be unattractive to dealers in financial terms. Moreover, these restrictions do not allow dealers to take advantage of the economies of scale which multi-marketing would normally allow then as regards overheads. The restrictions are an obstacle (1) to developing a more efficient cost structure, (2) to increasing sales volumes because of increased local market power and (3) to spreading the risks for the dealer by reducing his dependence on one brand's market performance and the power of one manufacturer over its dealer.²⁹⁹ Therefore, apart from the areas in the Nordic countries which are sparsely populated and where the above obligations are only partially imposed on the dealers, few true multi-make dealerships seem to exist in the EU.³⁰⁰
- (276) Most multi-make dealers in Europe sell different makes, all of which are controlled by one manufacturer.³⁰¹ Such multi-make dealerships are normally only used outside the manufacturer's home country. In the manufacturer's home markets they tend to sell each brand via separate dealer networks.
- (277) In general, dealers do not encounter any problems when they decide to sell more than one make. Nevertheless, based on the information received in some Member States (e.g. Italy), despite the Regulation,³⁰² car manufacturers seem to have given incentives to dealers to stay with one make. In other Member States (e.g. Belgium), dealers who ask their main manufacturing or importing partner for permission to take on a second make are said to have been systematically refused.

CONCLUSION:

The rules on multi-make dealerships impose a heavy financial burden on dealers who want to sell several makes and multi-make dealerships thus become unattractive for them from the economic point of view. True multi-make dealers are accordingly in practice rare. The main advantages which would normally be expected to follow the introduction of multi-marketing, i.e. improved inter-brand competition and improved dealer independence, have therefore not been attained.³⁰³

6.2.1.7 Arbitration

- (278) Regulation 1475/95 establishes that the parties to a distribution agreement must, in the event of disagreement on issues regarding the annual setting of

²⁹⁹ ICDP, "Multi-Franchising", 1/98, p.50.

³⁰⁰ See section 4.1.3, page 38, of this report for more detailed information on multi-brand dealerships.

³⁰¹ Examples are VW/Audi, , Ford/Jaguar, Fiat/Lancia/Alfa Romeo dealers.

³⁰² If confirmed, such action would contravene Regulation 1475/95.

³⁰³ See also section 6.1.1.4, page 70, of this report and UK Competition Commission report, pt. 2.328 to 2.339; the UK Competition Commission concludes that the rules on multi-make dealerships contained in Regulation 1475/95 have negative effects on prices, reduce the choice of type of retailer from which consumers may buy cars and reduce innovation in car retailing.

sales targets, stock requirements, demonstration vehicles and the termination of the dealer's agreement, accept a system for a quick resolution of a dispute, such as recourse to an expert third party or an arbitrator.³⁰⁴ The role of these provisions is to counterbalance the different interests of car manufacturers and dealers and to give the latter greater commercial independence.

- (279) Very few cases of intervention by an arbitrator are recorded by car manufacturers and dealers. The effectiveness of the provisions on arbitration may lie in the fact that they offer the possibility of threatening the other partner with a call for arbitration. Most car manufacturers insist that their policy is to strive to reach an agreement benefiting both parties before having to go to a third party. The mere mention of this possibility in the contract, and the will of the dealer to use this system, generally leads to a constructive dialogue. In this sense, arbitration could be considered to be a preventive measure.³⁰⁵

CONCLUSION:

The rules giving the parties to a dealership agreement a right to call for the intervention of an expert third party or an arbitrator have not been frequently used. However, the possibility of recourse to a third party has generally led to more serious and balanced negotiations between dealers and manufacturers. The rules are therefore considered a useful instrument by all parties involved in motor vehicle distribution.

6.2.2 Has the access of spare-part producers to dealer networks improved?

- (280) As has already been explained,³⁰⁶ under Regulation 1475/95, dealers have the right to source and use spare parts a quality which matches those distributed by car manufacturers, ("spare parts of matching quality").³⁰⁷ Spare-parts manufacturers have a right to place their trade mark or logo on parts supplied for the initial assembly or for the repair or maintenance of vehicles³⁰⁸ and may not be impeded by car manufacturers from supplying such parts to dealers. These provisions were introduced in 1995 to ensure effective competition on the maintenance and repair markets.³⁰⁹ As a consequence, consumers, when having their vehicle serviced or repaired by a dealer, should normally be able

³⁰⁴ Article 4(1)(3) on the annual setting of sales targets; Article 4(1)(4) on stock requirements; Article 4(1)(5) on demonstration vehicles and Article 5(3) on the termination of dealer agreements.

³⁰⁵ However, the UK Competition Commission in its report, pts. 2.125, 2.310 and 2.293, mentions that sales targets are set at levels which 50% of all dealers cannot achieve and which are unrealistic. Moreover, it found out that dealers are reluctant to ask for arbitration because they are afraid that the manufacturer could terminate the dealer contract with two years notice if a dealer dares to ask for arbitration. It therefore concludes that in practice sales targets are set unilaterally by the manufacturers.

³⁰⁶ Section 6.2.1.1, page 82, of this report.

³⁰⁷ Article 3(5), and Article 6(1)(9).

³⁰⁸ Article 6(1)(10) and (11) and Article 6(1)(3).

³⁰⁹ Recital 27 of Regulation 1475/95.

to choose between original spare parts and those of matching quality, the latter being up to 30%³¹⁰ cheaper than original spare parts.

- (281) A further reason explaining the limited use of spare parts of matching quality in addition to those mentioned in section 6.2.1.1 (page 82) of the report relates to discussions as to the quality of such spare parts. Although recital 8 of the Regulation contains a presumption that parts coming from the same source of production are identical in quality to original spare parts and that it states that it is for the spare-part manufacturer to confirm that these parts correspond to those supplied to the manufacturer of the vehicle, manufacturers can still raise doubts about the quality of such parts.
- (282) Spare-part producers also point out that the term “spare part”³¹¹ is not entirely clear and may give rise to discussions between dealers and manufacturers as to whether a given item is a spare part covered to the Regulation or an accessory which dealers can freely buy and sell.
- (283) Also, according to the associations of spare-part producers, some car manufacturers’ policy is to hinder car part producers placing their trade mark or logo in a visible manner on these parts in order to avoid transparency as to the real origin of such parts. Consumers are therefore unable to make a real choice between an original part and a part coming from the same part producer but distributed under his brand name. Such behaviour of car manufacturers, if confirmed, would amount to a black practice.³¹²

CONCLUSION:

The right of spare-part producers to supply their products to dealers, as provided for in the Regulation, has not materialised in any substantial manner, for the various reasons explained in this section and in section 6.2.1.1 (page 82) of this report.

6.2.3 Has the position of independent repairers been strengthened?

- (284) As described in 4.2.1 (page 43) of this report, there are several players on the market for the repair and maintenance of motor vehicles: dealers and service outlets, and independent repairers.
- (285) The motor vehicle manufacturers take the view that the presence of independent repairers³¹³ will be more limited in the future.

³¹⁰ "La pièce adaptable détrônera-t-elle l'origine?" in Auto Info, 1099 of 21.1.2000, p. 34.

³¹¹ Article 10(1)(6) of the Regulation defines "spare parts" as parts which are to be installed in or upon a motor vehicle so as to replace components of that vehicle and leaves the distinction from other parts and accessories to trade usage.

³¹² Article 6(1)(11).

³¹³ They base this assumption on the fact that independent garages are usually small and remote, do not advertise their activity and, as they purchase small volumes of spare parts, do not obtain favourable conditions. Moreover, since cars are becoming more complex goods which require

(286) Notwithstanding the car manufacturers' position on this issue, the independent sector has the capability to meet consumers' expectations. Independent repairers have the skill and experience to compete in after-sales services with the car manufacturers' networks. The success of the independent repairers and of "fast fitters" in recent years has obliged motor vehicle manufacturers to rethink and improve their after-sales service activities.³¹⁴ In order to allow competition to work properly here, the Regulation obliges manufacturers to allow their dealers to supply the independent repairers with original spare parts.³¹⁵ As to technical information manufacturers have to make sure that this is made available to independent repairers under the conditions of the Regulation.³¹⁶

(287) The practical implementation will be analysed in the following sections.

6.2.3.1 Access to original spare parts

(288) Regulation 1475/95 enables dealers to supply original spare parts to independent repairers for the repair or maintenance of a motor vehicle.³¹⁷ This provision ensures that independent repairers, having access to original spare parts, can compete with the car manufacturers' networks in the repair and maintenance of vehicles.

(289) No major problems are met on this issue, since spare-part sales by dealers to independent repairers represent part of the revenues of official dealers.

(290) However, dealers do not normally sell original spare parts at the wholesale price they acquire spare parts from the manufacturers, but at a higher price. This may reduce the price advantage of independent repairers.

CONCLUSION:

In general, independent repairers have no major problems as regards access to original spare parts. However, they cannot purchase them at the same wholesale prices as the dealers, which makes it more difficult for them to compete.

6.2.3.2 Access to technical information

(291) According to Regulation 1475/95, each motor vehicle manufacturer has an obligation to make any technical information which is necessary for the repair and maintenance of its vehicles accessible to undertakings not belonging to its distribution network. This information can be withheld if it is covered by the

more investment in equipment and training, independent repairers will be excluded from qualified repair and maintenance.

³¹⁴ For further details, see section 4.2.1, page 43, of this report and PriceWaterhouseCoopers "Guaranteeing Survival", May 2000, slides 72 et seq.

³¹⁵ Article 3(10)(b).

³¹⁶ Article 6(1)(12).

³¹⁷ Article 3(1)(10)(b).

car manufacturer's intellectual property rights or identified, substantial and secret know-how; however, it may not be withheld improperly.³¹⁸

- (292) As a result of this obligation, independent repairers should have access to all technical knowledge necessary for the repair and maintenance of motor vehicles; consumers should thus have a real choice in the after-sales service market between independent repairers, dealers and service outlets belonging to the network of a manufacturer. This obligation has also been imposed in order to avoid any unfair exploitation of the close link between dealers and their manufacturers permitted by the Regulation.
- (293) The full implementation of this obligation is not yet a reality, although access to this information is already important today as regards vehicle safety and protection of the environment. Moreover, in view of the highly complex electronic systems installed in new vehicles, access to technical information will become even more important in the future.³¹⁹ Although non-compliance with these obligations constitutes a black practice under the Regulation,³²⁰ only some car manufacturers publish a list of all relevant available technical information with prices and sales conditions . Others provide information on the technical characteristics of their products on a case-by-case basis. Very often independent repairers get the information from the official dealer from whom they source the original spare parts for the repair and maintenance of a car.
- (294) Most of the associations of independent repairers report problems as regards access to technical information, especially to high-tech parts of motor vehicles (so-called "*black boxes*"). Independent repairers encounter the following problems:
- Access to information on new vehicle models is extremely difficult during the first year after the start of their production.
 - Technical publications are expensive and they do not always contain all the information required.
 - Sometimes these publications cover the whole range of models offered by a manufacturer, but sub-sections are not made available, even if the independent repairer only needs information on a specific model.³²¹ Even if in these cases manufacturers give access to their information, the cost is too high for independent repairers with a limited customer base, since they cannot spread this cost over a sufficient number of customers.
 - Information on electrical and electronic devices is rarely accessible.

³¹⁸ Article 6(1)(12).

³¹⁹ ICDP, "*Beyond the block exemption*", 4/99, p. 59-60; PriceWaterhouseCoopers "*Guaranteeing Survival*", May 2000, slides 21 et seq.

³²⁰ Article 6(12).

³²¹ One manufacturer asked for a payment of £2 500 for the information on CD-ROMs covering the whole model range even though the information requested was only about the normal maintenance of one specific model.

- Every manufacturer has its own information technology and systems. There is no standard system or format used: for economic reasons especially, small repairers are not able to buy the necessary information systems needed to read the information provided by motor vehicle manufacturers.
- Certain independent repairers maintain that a access to diagnostic equipment used by the manufacturer's network should also be granted to them in order to allow them to fully compete in the repair and maintenance of motor vehicles.

- (295) An alternative approach for giving independent repairers, car experts and body repairers access to technical information has been developed in Germany. A joint venture in which the motor vehicle manufacturer, dealer and independent repairer association participate, DAT-Treuhand, publishes on CD-ROM the necessary information for the repair and maintenance of vehicles of several makes. DAT receives this information from the car manufacturers free of charge. Every interested undertaking can purchase these CD-ROMs, which are regularly updated, for a monthly fee of €100.³²² DAT offers this service in Germany, Italy, France and Spain. Recently, BMW established a web site where independent repairers can have access to all technical information necessary to repair vehicles of this brand by paying an initial fee. This decision was adopted in line with the European Directive against air pollution by emissions from motor vehicles,³²³ which requires manufacturers to make available to independent repairers all information on the on-board diagnostic systems of cars that is needed for the servicing and repair of the cars. This information has to be made available against a reasonable and non-discriminatory payment.³²⁴ BMW concedes that only information for simple repair work is available, since a consumer who has an important problem has to address it directly to BMW's official network.³²⁵
- (296) The Commission has also received several complaints from independent repairers pointing out that the payment requested for this information is prohibitive. This is, in particular, the case for independent garages which provide after-sales services for cars of different makes and which need technical information for each of these vehicles.
- (297) Moreover, automobile clubs who provide for repair services on the road (without being repairers in the strict sense of the word) and producers of diagnostic equipment have pointed out that they too have a legitimate interest

³²² However, even this monthly fee is said to be too expensive for very small (*"family business"*) garages.

³²³ Directive 98/69/EC of the European Parliament and the Council of 13 October 1998 relating to measures to be taken against air pollution by emissions from motor vehicles and amending Council Directive 70/220/EEC, OJ L 350, 28.12.1998, p. 2.

³²⁴ See Annex XI, point 3.1.2. of the above Directive.

³²⁵ Autoinfo 1101, dated 25.2.2000, p. 19.

in getting access to the information in the black boxes of cars. They have asked for an appropriate extension of the above information access right.

- (298) Independent repairers do not have full access to all technical information needed for the repair and maintenance of motor vehicles as called for by the Regulation. In particular, the practical and economic conditions for the purchase of such information are an obstacle for many independent repairers. The lack of access to this information, which could become even more important in the future with the increasing use of electronic devices on motor vehicles, not only limits consumers' choice, but also gives rise to concern whether the independent repairers can guarantee that their repair and maintenance services are in line with the standards regarding safety and environmental requirements set by the vehicle manufacturer. There is not yet a level playing field as regards the availability of technical information between dealers and independent repairers.

CONCLUSION:

Independent repairers' access to technical information is made difficult by car manufacturers. Other parties, such as automobile clubs and producers of diagnostic equipment, also have a legitimate interest in having access to technical information on motor vehicles.

GENERAL CONCLUSION ON SECTION 6.2:

The aim of the above provisions, namely to give dealers more leeway for their economic activity as distributors of new vehicles and as providers of after-sales services and to protect their commercial independence, has been achieved to only a limited extent. Dealers are the weaker party in a distribution and servicing agreement and they are wholly dependent economically on the vehicle manufacturers, even if manufacturers were to comply fully with the Regulation. This dependence gives manufacturers ample possibilities to exercise full control over their dealer network. Therefore the objective pursued by the Regulation adopted in 1995 of strengthening inter alia intra- and inter-brand competition and of making dealers more independent has not really been achieved, even if some of the measures introduced (in particular those relating to the period of notice for ending dealer contracts and on arbitration) had some limited effect.

As regards the situation of independent repairers, the greater sophistication of new motor vehicles makes it more important that all players in the after-sales service sector have access to all technical information for the repair and maintenance of motor vehicles. Car manufacturers seem not to have created technical and economic conditions such that this access is granted, as required by the Regulation.

6.3 IS THERE A BENEFIT FOR CONSUMERS AS TO THE PURCHASE AND SERVICING OF MOTOR VEHICLES IN THE SINGLE MARKET?

- (299) This section deals with the wider question as to whether the current motor vehicle distribution systems, which operate under Regulation 1475/95 and the two notices, offer consumers benefits in the area of the purchase and servicing of a motor vehicle. A positive reply to this question is important, since such benefits are a "conditio sine qua non" for exemption of an agreement pursuant

to Article 81(3). There are four main areas where such benefits should be identifiable: (1) prices for new vehicles, (2) availability of new vehicles within the home country and abroad, (3) warranty provisions and their implementation, and (4) quality and prices of after-sales service.

6.3.1 Are prices for new motor vehicles offered in the single market satisfactory?

(300) Car manufacturers argue that despite increasing marketing costs,³²⁶ new models are in many cases offered at prices similar to those of the models they replace.³²⁷ Taking into account the generally higher specifications of new models, this reflects a trend towards better value for money. Studies seem to support this view, showing that contrary to popular belief, car prices have not increased in recent years.³²⁸ In France, official government data actually show that new car prices in real terms have fallen by 5% since 1995.³²⁹ In Germany, a similar trend can be observed with a fall in car prices of almost 3% since 1995.³³⁰ However, it has to be noted that considerable price differences exist for a given model of car between Europe, Japan and the United States.

(301) In a market economy, it is not the role of a public authority such as the European Commission to analyse whether or not a particular price for a car is appropriate, nor is it the Commission's task to harmonise prices. In contrast, price differentials within the single market are, from the competition point of view, an important sign that there still exist distinct geographic markets within the single market and that arbitrage may not take place to a sufficient extent between these markets. Price differentials within the single market have therefore been addressed in Regulation 1475/95 and the notice on Regulation 123/85.³³¹ Price differentials are to be understood as differences between recommended retail prices net of taxes.

(302) In this respect, four questions will be analysed:

- Are the price differentials within the European Union below or above the limits set out in the notice on Regulation 123/85?³³²
- What is the impact of national car taxes on price differentials?
- What is the impact of currency movements on price differentials?

³²⁶ According to manufacturers, the intensifying competition resulting from the ever-widening source product offer forces them to increase their advertising spending. In 1998, car manufacturers spent \$5.2 billion. advertising their products in the five main EU markets. This represents a 6.5% increase over 1997. Car manufacturers generally are amongst the biggest advertisers in the EU.

³²⁷ Source : ACEA.

³²⁸ "Pricing in Euroland" - Lehman Brothers European Strategy – 31.7.1998.

³²⁹ Source : INSEE. Consumer price index up 5.6%, new car price index down 0.5% over 1995-98 period.

³³⁰ Source : *Statistisches Bundesamt*.

³³¹ Recital 31 of Regulation 1475/95 and notice on Regulation 123/85, Chapter II. 1.

³³² Notice on Regulation 123/85, Chapter II. 1.

- Are there other factors which explain price differentials?

Are the price differentials within the European Union within the limits set in the notice on Regulation 123/85?

- (303) The motor vehicle industry has for many years been criticised by consumers and others for maintaining high price differentials within the European Union.³³³ However, a recently published study indicates³³⁴ that, out of a range of 53 homogeneous product and service items across a variety of industry sectors in the euro zone, the car industry actually maintains the smallest differentials. Nevertheless, these criticisms can be understood from the consumer point of view, since passenger cars are the second most expensive item used in a household.³³⁵ Therefore, even relatively small price differentials have a much greater economic impact on the budget of a household than price differentials for less expensive products or services.
- (304) The exemption for selective and exclusive distribution agreements provided for by Regulations 123/85 and its successor, Regulation 1475/95, which allow manufacturers to allocate dealers a geographically limited sales territory in a Member State and to prohibit dealers from active sales³³⁶ - or at least certain types of active sales³³⁷ - outside the allotted area, amounts to a limited market partitioning system. Special care must therefore be taken with regard to price differentials within the single market. One of the objectives of the single market is to promote the integration of national markets and consequently increase economic efficiency. In such a market, price differentials, which can be an indicator of market partitioning, need to be closely monitored.
- (305) Regulations 123/85 and 1475/95 accordingly stipulate that the Commission can withdraw the benefit of the Regulation in the event of substantial price differentials. They provide that, if prices or conditions of supply for contract goods or for corresponding goods which are continually being applied differ substantially as between Member States, such differences being chiefly due to obligations exempted by the Regulation, then the Commission can withdraw the benefit of the Regulation for the relevant network.³³⁸ The same applies if a manufacturer or an importer in supplying the distributors with cars, unjustifiably discriminates prices or sales conditions.³³⁹
- (306) In its notice on Regulation 123/85, the Commission set out its interpretation of this clause. It indicated that recommended retail prices for any particular

³³³ ICDP; "*Beyond the block exemption*"; 4/98, p. 32.

³³⁴ "*Pricing in Euroland*" - Lehman Brothers European Strategy – 31.7.1998.

³³⁵ House of Commons, Session 1998-99, Trade and Industry Committee, First Report, "*Vehicle Pricing*", 1998, p. 36, pt. 31.

³³⁶ Article 3(8)(b) of Regulation 123/85.

³³⁷ Article 3(8)(b) of Regulation 1475/95.

³³⁸ Article 10(3) of Regulation 123/85 and Article 8(2) of Regulation 1475/95.

³³⁹ Article 10(4) of Regulation 123/85 and Article 8(3) of Regulation 1475/95.

car model within the single market must not exceed 12% of the lowest price. However, the differential may exceed this percentage by 6 % for a period of less than one year or for an insignificant percentage of motor vehicles.³⁴⁰ If these limits are exceeded, the Commission declared that it may open an investigation on its own initiative and examine the reasons. In order to be able to monitor price differentials and to create transparency on recommended resale prices, the Commission started in 1993 to publish its "Car Price Reports"³⁴¹ twice a year.

- (307) The 12% threshold³⁴² was chosen because it was considered that beyond this percentage demand would normally start to become mobile to a significant degree. This would lead to more parallel trade and put downward pressure on the higher prices and thus reduce price differentials.³⁴³ In this context, this threshold has only been chosen as an indicator for price differentials which might need to be investigated and not as an absolute limit for acceptable price differentials.
- (308) The figures in the Commission's latest Car Price Reports show that price differentials have not become significantly smaller in recent years and regularly exceed 20% and can be as high as 65% within Europe.³⁴⁴ Even if only the seven countries of the Eurozone with low car taxes are taken into account, price differentials can be as high as 30%.

CONCLUSION:

Price differentials within the European Union are in excess of the 12% and 6% thresholds mentioned in the notice on Regulation 123/85.

What is the impact of national car taxes on price differentials?

- (309) National taxes levied for new cars range from 15% (value added tax) in Luxembourg to more than 200% in Denmark (VAT plus specific tax on car purchase).³⁴⁵ The following diagram shows that net car prices in countries with high car taxes are lower than in countries with normal car taxation. One exception is, however, the United Kingdom, where prices are inflated by

³⁴⁰ Chapter II of the notice on Regulation 123/85.

³⁴¹ For further details, see section 3.4.3, page 27, of this report.

³⁴² The 12% threshold was initially part of the "black clause" of the draft of Regulation 123/85. If this percentage had been exceeded, it would have led to a temporary suspension of the contractual clause which prevents the resale of vehicles to independent resellers.

³⁴³ In this context, it can be left open whether or not this threshold, which is a rule of thumb, is appropriate or not.

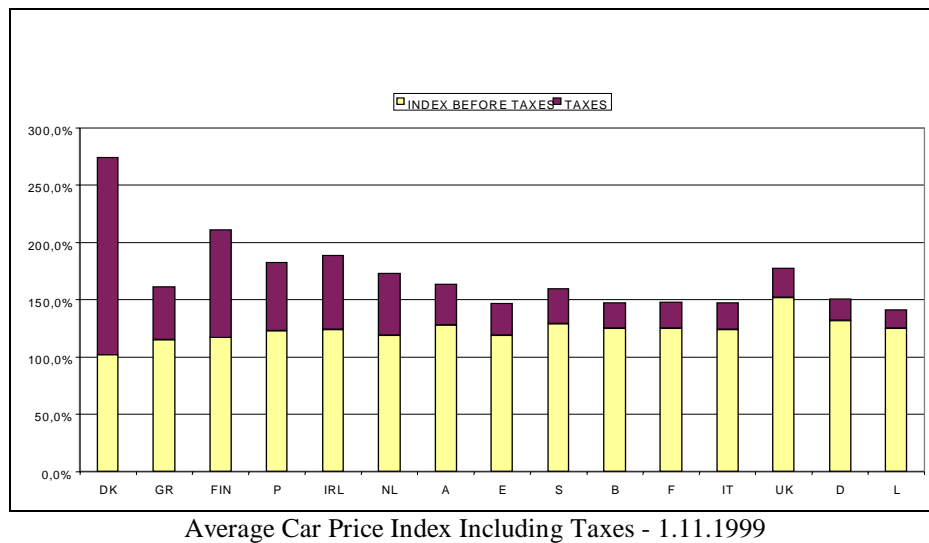
³⁴⁴ See e.g. the Commission's Car Price report with car prices on 1.11.1999 and the press release on this report, IP/00/121, 7.2.2000; Commission's Car Price Report with car prices on 1.5.2000 and the press release on this report, IP/00/781, 13.7.2000.

³⁴⁵ See ACEA press release of 22.7.1999 (http://www.acea.be/acea/press_releases.html); see also Annex VI of this report and diagram 13 on page 67.

exchange rate fluctuations. This will be further analysed in the next subsection of this report.

- (310) The following diagram illustrates car price differentials in the EU. The yellow (lighter) part of each column is the index for the average net price in each country. The bordeaux (darker) part is the average car tax in each Member State. This diagram confirms that net car prices are, on the average, lower than in countries with high car taxes. The basis of this diagram is the average prices in Denmark, which are the lowest in the EU. The index for net prices in Denmark is shown as 100%.

Diagram 16: Car price differentials net of taxes and including taxes

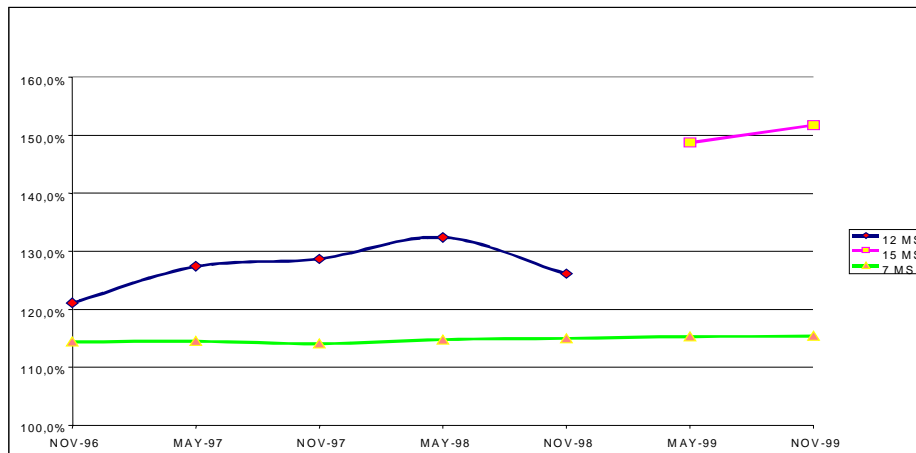


- (311) Manufacturers claim that, especially in high-tax countries, they have to reduce net prices artificially in order to be able to offer their customers cars at affordable prices. Therefore, in countries with high taxation, pre-tax prices are in general lower than in countries with low taxation. This is the result of a pricing policy decided by car manufacturers.
- (312) Based on this argument, the following section of the report will first of all compare price differentials within the 7 left-hand-drive countries which have comparable taxes with price differentials in 12³⁴⁶ or 15³⁴⁷ EU Member States, i.e. including the high-tax countries (see diagram below).

³⁴⁶ These are the 12 countries for which prices were published in the car price reports until 1.11.1998. (Austria, Belgium, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom).

³⁴⁷ Starting with the car price report showing prices on 1.5.1999, all 15 Member States, including now Denmark, Finland and Greece, were included.

Diagram 17: Comparison of price differentials in 7³⁴⁸ left-hand-drive countries having low car taxes with price differentials in 12 or all 15 Member States



(313) This diagram compares the average of the car price differentials³⁴⁹ in the 7 left-hand-drive countries that have low car taxes³⁵⁰ (green (lighter) line) with the price differentials of all 12 Member States quoted in the Commission's Car Price Reports³⁵¹ between 1 November 1996 and 1 November 1998 (blue (darker) line), and with all 15 Member States for the period after 1 May 1999.

This diagram highlights two important developments:

- Between November 1996 and November 1999, car price differentials between the 7 left-hand-drive countries were stable over time. The average price differentials between these 7 countries were much smaller than price differentials for 12 EU Member States. If the price differentials of all 12 countries, i.e. the 7 above mentioned countries plus the United Kingdom plus 4 countries with high car taxation regimes,³⁵² are analysed, then it can be seen that high car taxes clearly increase the magnitude of car price differentials within these 12 countries from 15% to up to more than 30% of the net car prices.

³⁴⁸ Belgium, France, Germany, Italy, Luxembourg, Spain, Sweden.

³⁴⁹ For the purpose of this diagram each of the car prices contained in the EU Commission's car price reports is converted into an index, whereby the cheapest price in a certain country equals 100%. For the other countries the index for each car is determined accordingly. For each date shown in the diagram an average of these indexes is calculated on a country to country basis. The average of the latter is then used to draw the lines shown in the above diagram.

³⁵⁰ The United Kingdom is also a country with low car taxation. It is not included in this diagram because the prices for this country are for right-hand-drive cars.

³⁵¹ Until November 1998, the car price report gave prices for 12 Member States only. Denmark, Greece and Finland were excluded because car taxes in these countries are close to 100% or even higher. However, from May 1999 onwards, the car price report covers all 15 Member States.

³⁵² The three Member States which have car taxes close to or higher than 100% (Denmark, Greece, and Finland) of the net price of the car were not taken into account for the period 1 November 1996 to 1 November 1998.

- For the period May 1999 to November 1999, the diagram shows all 15 Member States, i.e. including those countries where car taxes are close to or above 100% of the net car prices. This section of the diagram confirms the trend described in the previous paragraph. The inclusion of the three Member States with car taxes close to or above 100% of the prices net of tax increases car price differentials even further.
- (314) Car taxation is a factor which is outside the control of the motor vehicle industry. The Commission recognises this and in its notice on Regulation 123/85³⁵³ stated that it will not investigate price differentials if they can be attributed to taxes, charges or fees amounting in total to more than 100% of the net price of a car, as is the case in Denmark, Finland and Greece. However, if these countries are excluded, price differentials are still above the thresholds of 12% and the Commission could therefore, in line with its notice, have used its powers to investigate car price differentials within the European Union.
- (315) However, the Commission has not done so, since - as the diagram clearly shows - special car tax regimes have an impact on price differentials.
- (316) The notice on Regulation 123/85 mentions another possible way of reducing price differentials. According to the notice,³⁵⁴ the supplier of a car (e.g. the manufacturer or his importer) may charge "*a further supplement*" to the price of the vehicle in countries where car taxes are higher than 100% of the net car price if such cars are due to be exported. This "*further supplement*" may increase the price to the net price which would be charged for a similar car in the Member State that is not subject to a car tax of more than 100%, and in which the lowest price net of tax is recommended for the sale of such a vehicle. However, the text of the notice clearly specifies that this supplement is "*a further*" supplement.
- (317) This text can be understood as meaning that the supplier can charge this supplement only if he is already entitled to charge another supplement for the relevant car, such as the supplement for the so-called "*corresponding car*".³⁵⁵
- (318) If this interpretation were correct, and some car manufacturers take the view that it is, this clause would permit considerable price discrimination in cross-border sales of right-hand-drive cars as against purchases of left-hand-drive cars. Such an interpretation is clearly in contradiction with the basic principles of the Regulation, i.e. to give all European consumer the right to take full advantage of the single market and to purchase a car wherever prices are most advantageous.

³⁵³ Chapter II, pt.1.

³⁵⁴ Chapter II, pt. 2, second paragraph.

³⁵⁵ Notice on Regulation 123/85 Chapter II, pt. 2, first paragraph. For example, such a supplement for a corresponding model would be the right-hand-drive supplement for a car purchased in Denmark. In this case, the dealer could use the possibility mentioned in the notice and charge this "*further supplement*".

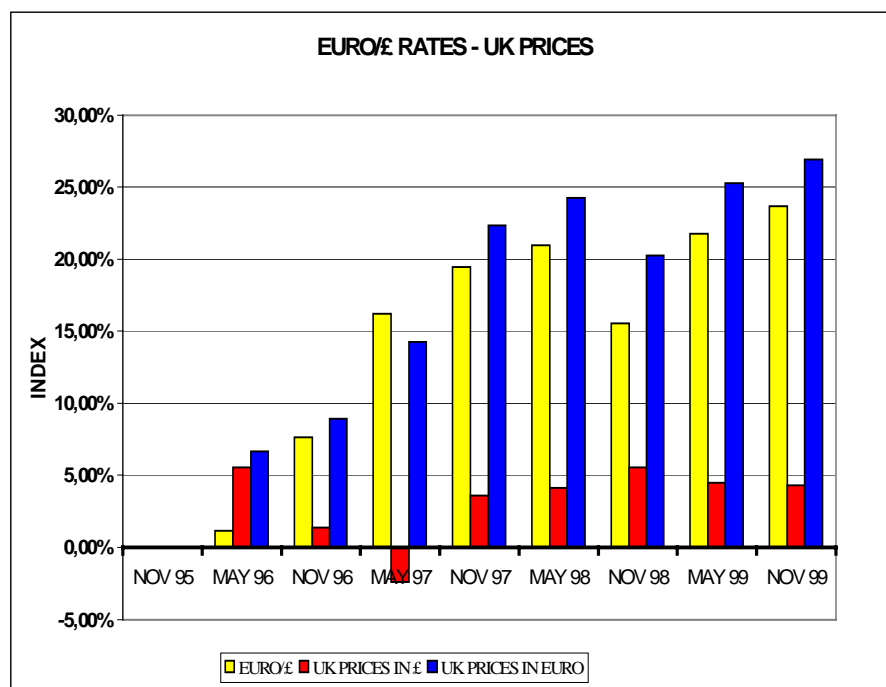
CONCLUSION:

High car taxes have a clear impact on car prices and contribute to increased price differentials within the single market. Under the notice on Regulation 123/85, a further supplement may be charged in countries where car taxes are above 100%. This would be discriminatory: it would allow to make an additional surcharge for exports of – in practice – right-hand-drive cars which are purchased in these countries. With this surcharge manufacturers could increase prices for such cars to the price level in the cheapest country where car taxes are below 100% of the net car price. The maintenance of such a provision which allows price increases in view of the tax regime in a certain Member state for export sales of – in practice – right-hand-drive cars does not appear to be justified.

What is the impact of currency movements on price differentials - in particular the British case.

(319) The following diagram addresses this issue. It shows the trend in the value of the pound sterling (first column), the index (November 1995 = 100) of UK car prices in sterling (second column) and the index (November 1995 = 100) of UK car prices in ECU/euro (third column).

Diagram 18: Development of the exchange rate of the pound sterling against the euro and UK car prices in sterling and euro.



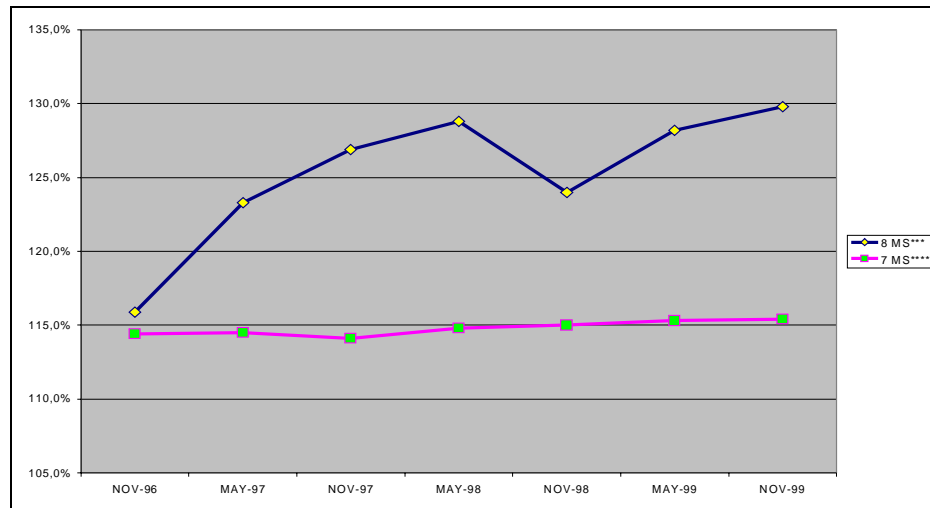
- Exchange rates Euro/£ showing the increase in value of the pound against the euro.
- Recommended retail prices in pounds compared to prices in November 95 (index 0%).
- Recommended retail prices converted into euro.

Source: DG Competition – Car Price Reports May 1996 – November 1999

(320) The above diagram shows that from November 1997 onwards, recommended retail prices in sterling have been relatively stable. It also shows as a clear

trend that the rise in UK prices converted into euro has closely followed the appreciation of the pound sterling.

Diagram 19: Development of price differentials in countries with low car taxes without the UK and same including UK prices



Source : European Commission Car Price Reports

- (321) The above diagram also clearly shows that price differentials within the 7 left-hand-drive countries with low car tax regimes have been stable over the last 3 years [violet (lighter), nearly straight line]. However if the United Kingdom is included, where car taxes are also low, price differentials increase in parallel to the monetary appreciation of the pound [blue (darker) line].
- (322) However, one would also have expected another element to play a role in promoting downward pressure on prices in the United Kingdom. During the period of the strength of the pound sterling, manufacturers located in the Eurozone should have been in a position to produce at lower cost than their competitors in the United Kingdom. In order to benefit from this competitive advantage, and under the assumption that price elasticity of demand is sufficient, manufacturers from continental Europe would have been expected to lower their prices in the United Kingdom, with the aim of increasing their market shares.³⁵⁶ However, experience has shown that only a minority of manufacturers has reduced prices in the United Kingdom, while most of them have maintained, or have even increased, prices.
- (323) The above diagram reveals that despite the strength of the pound, car prices in the United Kingdom have, since 1997, generally not decreased. Assuming that parallel trade becomes lucrative if price differentials are above 12%,

³⁵⁶ The UK Competition Commission came to the same conclusion. See in particular its report, pts. 2.202 and 2.226.

significant trade should indeed have taken place and should have exerted a downward pressure on car prices. The fact that producers can obviously ignore the impact of parallel imports on prices in the United Kingdom³⁵⁷ implies that trade is very limited and that competition does not fully play its role.³⁵⁸

- (324) The following paragraphs will explain the rules regarding price differentials due to currency fluctuations.
- (325) In the Commission's 1995 Communication on the impact of currency fluctuations on the internal market,³⁵⁹ it is stated that currency fluctuations do not justify anti-competitive practices in the form of restrictions of parallel imports; such measures would clearly contravene EU competition rules. It can be deduced from this Communication that exchange rate fluctuations do not justify restrictions of competition which impede parallel trade and work against a reduction in price differentials between Member States.
- (326) Regulation 1475/95 also mentions currency fluctuations: in its recitals,³⁶⁰ it states that the Commission will take account of currency fluctuations between Member States before it takes a decision to withdraw the benefit of the Regulation pursuant to Article 8(2). However, this Article does not allow the benefit of the Regulation to be withdrawn simply because price differentials exist which are due to currency fluctuations: withdrawal is possible only if the price differentials are chiefly due to contractual obligations of a manufacturer's selective and exclusive distribution system exempted by the Regulation. In this regard, the Commission would have to assess whether or not such a distribution system prevents the development of unrestricted parallel trade, which should exert downward pressure on prices which are inflated due to exchange rate fluctuations. Whether distribution systems compatible with Regulation 1475/95 limit parallel trade or not is examined in section 6.3.2 (page 111) of this report.

³⁵⁷ According to the findings of the UK Competition Commission in its report, pt. 7.190 et seq., in 1998 parallel trade in right-hand-drive cars accounted for 0.5% of all new cars registered in the UK; as regards parallel imported cars registered by private customers, these accounted for 1% of the registrations. However, these percentages varied from make to make and could be as high as 3% of all registrations of new BMW cars and over 5% of all registered new Mercedes cars.

³⁵⁸ It is noticeable that no car manufacturer in its reply to the questionnaire mentioned the level of parallel trade as a criteria to be taken into account when determining prices – a reason could be that parallel trade is negligible

³⁵⁹ COM(95) 503 final, 31.10.1995.

³⁶⁰ Recital 31 of Regulation 1475/95; Chapter II, pt. 1, last paragraph, of the notice on Regulation 123/85, also addresses this issue and states that “*Particular account will be taken, for an appropriate period, of alterations of the parities within the European monetary system or fluctuations in exchange rate in a Member State*”.

CONCLUSION:

The car price differentials calculated in ECU/euro within the 8 countries with low taxes on cars show that the rise in value of the pound sterling after 1996 has automatically increased the magnitude of differentials between these countries: UK car prices increased nearly in parallel with the rise in value of the pound. However, the rise in value of the pound cannot, on its own, completely justify the level of prices in the UK since other factors (increase in parallel trade, action of car manufacturers producing in the euro zone) should have exerted downward pressure on prices. These factors, which are to be expected in a market on which there is competition, did not materialise.

Are there other factors which explain price differentials?

- (327) The above price differentials between 7 countries in mainland Europe and the United Kingdom do not take account of a basic technical difference between the cars which are sold in the 13 EU Member States of mainland Europe and the vehicles marketed in the United Kingdom and Ireland: the latter are right-hand-drive cars. The impact of this technical difference on car prices is analysed in the following.
- (328) Right-hand-drive cars sold in Europe are more expensive than left-hand-drive cars sold in the relevant Member States. This is due to the so-called "*right-hand-drive supplement*", which is a surcharge on the price for a corresponding left-hand-drive model. (See section 6.1.1.3, pt. (197), page 68, for further details).
- (329) Regulations 123/85³⁶¹ and 1475/95³⁶² as interpreted by the notice on Regulation 123/85³⁶³ allow manufacturers to charge such a supplement. When a manufacturer is selling a right-hand-drive car to a dealer who normally sells left-hand-drive cars, he can charge him, on top of the price for a similar left-hand-drive car, "*an objectively justifiable supplement on account of special distribution costs and any differences in equipment and specification*".³⁶⁴ This has obviously a knock-on effect on retail prices for right-hand-drive cars in mainland Europe, and many car manufacturers even have a recommended retail price for such cars or the supplement is included in their price lists.³⁶⁵

³⁶¹ Article 10(4) in conjunction with Article 5 (1)(2)(d).

³⁶² Article 8(3) in conjunction with Article 5(1)(2)(d).

³⁶³ Chapter II, pt. 2.

³⁶⁴ See also UK Competition Commission report, pt. 2.103 and 2.104: according to the UK Competition Commission, for most cars the original planning and development includes left-hand and right-hand variants. Thus the design costs of these variants should be part of the general production cost of the relevant model and be spread across the whole production volume of that car model. Consequently, for the vast majority of new cars a supplement based on planning and development and/or production costs does not seem to be justifiable.

³⁶⁵ The supplements are published for all models and Member States in mainland Europe mentioned in the Commission's car price reports, as far as right-hand-drive versions of cars exist.

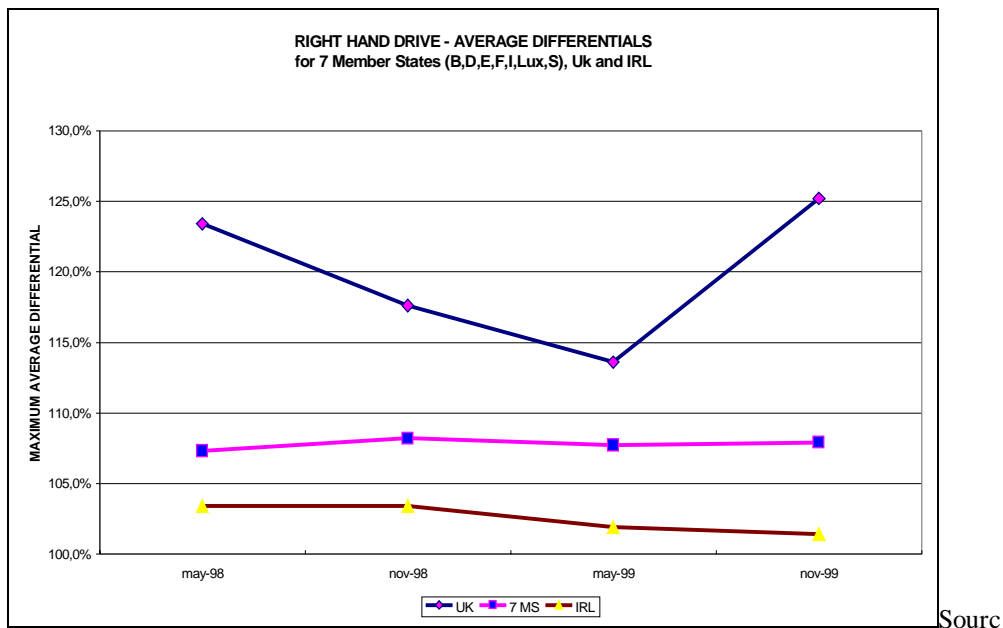
- (330) Following consumer complaints, the Commission had to investigate the recommended prices of three manufacturers who charged these supplements for right-hand-drive cars sold in Europe. All three manufacturers based these supplements on:
- cost associated with the development, testing and production of a right-hand-drive car as compared to such cost for an identical model with left-hand-drive;
 - additional administrative costs associated with an order for a right-hand-drive car in a left-hand-drive country, and
 - additional transport costs for such a car.
- (331) In one of the three cases investigated, the Commission found that the relevant manufacturer had in the past not based its right-hand-drive supplements on objective criteria.³⁶⁶
- (332) Two European manufacturers were able to show that their supplements, of up to 12% of the price of a left-hand-drive car, were objectively justifiable in view of the higher costs linked to the production of a small number³⁶⁷ of right-hand-drive cars.³⁶⁸
- (333) In order to get a better view on the magnitude of price differentials for right-hand-drive cars in Europe, it is appropriate to take account of this supplement and to compare the recommended retail prices for right-hand-drive cars sold in 7 European countries with relatively low car taxation, with the recommended retail prices of such cars for the United Kingdom (where car taxation is also relatively low) and also Ireland, which is also a right-hand-drive country.

³⁶⁶ For one model, it was between 25% and 40%, for another between 10% and 31% of the price for a left-hand-drive car, depending on the country of purchase. Following the Commission's intervention, this manufacturer adopted a new approach: it now charges a very small amount which takes into account the different costs for the production of left- and right-hand-drive cars. This sum was increased by a mark-up for extra administrative and distribution costs. The right-hand-drive supplement is now around 3% of the recommended price for left-hand-drive models.

³⁶⁷ For most European manufacturers, the ratio of production between left-hand-drive cars and right-hand-drive cars is around 90:10; however, for Rover, this ratio seems to be close to 50:50 (see UK Competition Commission report, pt. 2.103); for most Japanese manufacturers, the ratio is also close to 50:50. If the ratio between left-hand and right-hand drive cars is close to 50:50, the supplement can only be based on higher distribution and administrative costs.

³⁶⁸ The lower supplement they had asked for in previous years was either a pure estimate of the above costs or was only based on a partial recovery of the costs, e.g. the higher costs for the production of those parts which are specific to a right-hand-drive car.

Diagram 20: Price differentials for right-hand-drive cars in 7 countries with low car taxes compared to average right-hand-drive prices in the United Kingdom and Ireland



e: European Commission car price report

- (334) The diagram shows the differential between recommended prices for right-hand-drive cars sold in the 7 countries (violet line in the middle of the diagram) and the United Kingdom (blue line in the upper part of the diagram) i.e. for technically identical models. For information, Ireland is included as well (brown line in the lower part of the diagram).
- (335) Price differentials for right-hand-drive models sold in the 7 countries in mainland Europe with low tax, are about 8%. If the United Kingdom is added, price differentials increase considerably from 13 to 25% for the period considered (May 1998 to November 1999). In any case, the differentials are always above the 12% threshold even if only prices for right-hand-drive cars are compared.

CONCLUSION:

Recommended UK retail prices for right-hand-drive cars are considerably higher than prices for such cars on the continent and are above the 12% threshold mentioned in the notice on Regulation 123/85.

This differential can be as high as 25%.

Market structure of the passenger car market in the United Kingdom³⁶⁹

- (336) Recommended retail prices in the United Kingdom are said to be inflated due to the small number of cars which are marketed via dealers to final customers at "normal" retail prices.
- (337) Due to the British taxation system for company cars and also because of convenience, many employers give their employees a company car instead of an increase in salary.³⁷⁰ The fleets of such company cars are either bought by the employer, who owns a fleet of vehicles, or by a leasing or long-term rent-a-car company. They are then given to the staff of the employer for permanent use. The payment for the car or the leasing-fee or rent is financed or paid by the employer.
- (338) There is some uncertainty about the size of this so-called "*fleet*" or rather "*company*" car market. The British Consumers' Association holds that 20% of new cars are direct sales to daily rental companies and other direct accounts, (utilities, government, other large fleet operators).³⁷¹ These sales involve large, pre-planned blocks of identical vehicles. The sales are negotiated directly between the manufacturer/importer and the customer. Another 60% of new cars can be split into three groups: the largest part of these cars are company cars purchased by operators of smaller fleets or sole traders; these purchases are carried out by professional buyers. Although most of these cars are sourced through dealers, price negotiations also take place with the manufacturer, who might grant an additional direct discount. Cars that have been used for demonstration are also part of this category of cars which dealers have to sell at wholesale or semi-wholesale prices and on which the dealers' earnings are extremely limited. Only the remaining 20% of new cars are sold to real private retail customers on normal terms. These latter sales are, however, said to provide a significant contribution to dealers' profits.³⁷²

³⁶⁹ For further details, see UK Competition Commission report, pts. 2.143 et seq. and 3.53 et seq.

³⁷⁰ CA 2000, "*The Forecourt Revolution*", p. 23 and p. 36.

³⁷¹ The Motability scheme which provides cars to disabled British citizens is the largest owned fleet in the UK. It is said to purchase 7% of the new cars sold in the UK.

³⁷² CA 200, "*The Forecourt Revolution*", p.23 and p. 36; Autopolis, "*Report to government select committee on car pricing in the UK*", 1998, published in the Internet under: <http://www.autopolis.com/think.htm>; see comments on slide 10 (hereinafter Autopolis "*Report to government select committee*").

- (339) In contrast, the SMMT³⁷³ indicated that the fleet market (more than 25 vehicles) accounts for about 50% of the market. The market for small fleet operators is said to account for 7% and the retail market for 43%.³⁷⁴ The SMMT claims that only a small fraction of the cars of the fleet market are sold at high discounts.
- (340) The UK Competition Commission in its report³⁷⁵ points out that non-private registrations (business and fleet) account for 55% of all registrations whereas 45% are private registrations. Based on these figures and those mentioned by other interested parties mentioned above, it also comes to the conclusion that fleet customers account for a large share of UK new car registrations.
- (341) The quantitative figures provided by the car manufacturers to the Commission in reply to the questionnaire do not give a clear picture. The fact that the number of cars sold directly by the manufacturer and importers is not considerably higher in the United Kingdom than in other Member States indicates that such direct sales cover only a fraction of fleet sales. These figures do not include the fleet sales which are handled through dealerships and where manufacturers are also giving sales incentives or direct discounts to the customers.
- (342) However, even under these circumstances, it seems that the UK car market presents different features in this respect from most other EU car markets.
- (343) However, in their replies to the Commission's questionnaires, the associations of fleet operators confirmed that up to now, fleet and business cars are not sourced outside the country of registration. Looking at the discounts granted by car manufacturers to fleet operators, the average of which is more than 20% and can amount to 41%, this conduct seems to be logical. These buyers have to pay prices for new cars which are close to the car prices charged in other European countries.³⁷⁶

CONCLUSION:

The size of the British market for fleet and company cars seems to be much larger than in other European Member States. Moreover, it is generally recognised that these cars are sold either directly by the manufacturer/importer with high discounts, or via dealers at prices which are discounted due to financial incentives paid by the manufacturer/importer. In the United Kingdom, the majority of all new cars are thus sold at prices much below the recommended retail prices due to direct or indirect financial intervention by the manufacturer/importer. Price lists issued by these companies do not give a realistic indication on the manufacturer's/importer's point of view on the transaction prices which are appropriate in view of market conditions.

³⁷³ Society of Motor Manufacturers and Traders.

³⁷⁴ Statement by Mr Thomson, Chief Executive of the SMMT, 9.11.1998, before the Trade and Industry Committee, see Trade and Industry Committee, First Report, "Vehicle Pricing", p. 42.

³⁷⁵ Pt. 5.91 et seq.

³⁷⁶ Autopolis, "Report to government select committee", 1998, see comments on slide 11, 6th dot.

Purchasing power and wealth in different Member States

- (344) In its submission to the Commission, ACEA points out that wide variations in purchasing power exist within the EU. It argues that this explains why cars – as well as products and services - are more expensive in countries with above-average purchasing power.
- (345) In order to analyse whether there is such a clear correlation, Annex VII compares the per capita volume indices for gross domestic product (GDP) of each Member State with the price indices for a number of car models sold in each Member State. For this analysis, prices include taxes.³⁷⁷
- (346) However, the argument does not stand up to closer examination. In this respect, Luxembourg is by far the "richest" Member State and is simultaneously the lowest priced.

CONCLUSION:

There is no correlation between the level of purchasing power in the Member States and the level of car prices including tax.

6.3.2 Can the availability of new vehicles be considered satisfactory?

- (347) This section is about the core of motor vehicle distribution in Europe. It analyses whether or not the systems put in place by vehicle manufacturers meet the essential requirement of a distribution system, namely, to make sure that the network dealers are supplied with sufficient quantities of new vehicles in order to allow them to satisfy their customers' requests and compete with other dealers of the same and other brands. It may be paradoxical to analyse this question in a sector which has a general overcapacity of 30%.³⁷⁸ But feedback received from consumers and distributors suggests that in certain cases they do not get sufficient numbers of vehicles to satisfy demand. The availability of vehicles for local and for cross-border sales by network dealers will be separately assessed. Afterwards the question of the availability of new vehicles from independent resellers who are not members of an official network will be discussed.

6.3.2.1 Local availability

Sales via dealers

- (348) Nearly all manufacturers/importers operating in Europe distribute new motor vehicles via selective and exclusive distribution networks of dealers as permitted by Regulation 1475/95.

³⁷⁷ Prices have to include car taxes in this context because they reflect the prices consumers have to pay for a car bought in their domestic market. Pre-tax prices are only relevant for an analysis of cross-border purchases of new cars.

³⁷⁸ See e.g. "Problèmes économiques" 2603, 10.2.1999, p. 29 ; source *Conjoncture-Paribas*, December 1998.

- (349) All vehicle manufacturers (be it the manufacturers or their importers for certain Member States) have put in place procedures designed to make sure that their network dealers can order a sufficient number of new vehicles for sale. In essence, the procedure manufacturers use for the allocation of new vehicles to their distributors (both importers and dealers) is as follows:
- (350) The procedure starts with a discussion between the manufacturer or importer³⁷⁹ and each dealer in which they try to find out how many cars the dealer should endeavour to sell in the future. The relevant quantities are decided on the basis of criteria such as sales achieved by the dealer in the past, market expectations and strategies for the future in the relevant Member State and the dealers' contract area. In this context the manufacturer will also have to take account of the foreseeable output of his production lines when certain targets are suggested to importers or dealers. At the end of these negotiations, the manufacturer/importer will agree with its dealers on their individual sales targets. Most manufacturers/importers hold such meetings at the end of a year in order to agree the sales targets for the coming year. Some car manufacturers/importers review these sales targets with their dealers at regular intervals and adjust them if there is a need or an opportunity to do so in view of the development of the markets or of production output.
- (351) As regards the criteria for the setting of sales targets, Regulation 1475/95³⁸⁰ gives some guidance: targets have to be set taking into account sales achieved in the dealer's contract territory in the previous year, forecast sales for the territory and at national level.³⁸¹ In the event of disagreement, the Regulation provides for the possibility of asking an expert third party to decide on these targets on the basis of the above criteria.³⁸² Even though the Regulation only permits the fixing of agreed sales targets and provides for an arbitration procedure in order to avoid one-sided decisions by the manufacturer (as allowed before under Regulation 123/85³⁸³ until 1995), manufacturers and importers still have more influence than the dealers in this process of determining the sales that the dealers have to endeavour to achieve. The manufacturer is the one who decides which models are produced, he can control the output of the production lines and define the market strategy to be pursued in the different Member States for the make. All these factors have a strong influence on each dealer's past performance and will also have a considerable impact on the dealer's potential future sales.

³⁷⁹ In Member States where the manufacturer has entrusted an importer with the role of a wholesaler, the importer will discuss the sales targets with the dealers and report the overall sales figures back to the manufacturer.

³⁸⁰ See Article 4(1)(3), first alternative.

³⁸¹ See Article 4(1)(3), second alternative.

³⁸² See Article 4(1)(3), second alternative.

³⁸³ See Article 4(1)(4) of Regulation 123/85.

- (352) Manufacturers and dealers take the view that the procedure for setting sales targets works in general satisfactorily.³⁸⁴
- (353) However, a number of consumers' associations point out that the availability of new vehicles is far from perfect. They state that new vehicles are delivered sometimes much later than agreed upon in the sales contract or are not delivered with the right specifications.
- (354) Even if some of these problems may be attributable to dealer attitude, sales targets and allocation of vehicles can give rise to problems if demand is higher than expected (as described in pt. (271), page 88, of this report). If the manufacturer is not willing to rapidly increase³⁸⁵ the supply of cars to a certain Member State where demand is high, these problems may persist for a certain time. As a consequence, delivery times may considerably vary from one Member State to the other. Moreover, even within a given Member State, the policy of certain manufacturers described in pt. (271), page 88, of this Report can also have the effect that very efficient dealers who sell more cars than expected will not be able to get more new cars from the importer/manufacturer. As a consequence their delivery times will be longer than those of their (less efficient) competitors who stick to the sales target.
- (355) Another problem arises due to the fact that manufacturers in general request that dealers sell their whole model range and that sales targets include a certain number of all models, including a number of vehicles which do not sell well. In practice, this means that dealers will only get sufficient numbers of an attractive model if they also take a number of less attractive models, which can only be sold with some difficulty and at high discounts.
- (356) In order to allow adjustment of sales targets and the allocation of new cars to their importers/dealers, most manufacturers monitor at regular intervals (e.g. monthly, every three months) the agreed targets and the allocation of new vehicles. Car manufacturers say that, if necessary, sales targets and car allocation are adapted to market conditions in the dealer's contract area. In addition, some manufacturers have introduced IT systems which allow dealers who want to sell a new vehicle to an end-consumer to check whether another dealer has placed an order with the manufacturer for his stock of such vehicles. This ordering system enables the dealer who has a customer to order a car which is built for the stock of another dealer. Other manufacturers have IT systems which allow dealers to find out whether one of the other dealers belonging to the manufacturer's network in the same Member State has in stock a car with the specifications ordered by a customer. If both dealers agree, this car can be cross-delivered³⁸⁶ to the dealer who sold the car. This

³⁸⁴ For further details, see section 6.2.1.5, page 87, and section 6.2.1.7, page 90, of this report.

³⁸⁵ By increasing production or by reallocating cars which – in the planning – should have been distributed in other Member States.

³⁸⁶ See Article 3(10(a) of Regulation 1475/95: car manufacturers cannot prohibit such cross-supplies within their own network.

allows him to deliver a car promptly to his client and avoids unnecessary waiting times.

- (357) Even if some manufacturers have put in place procedures designed to introduce some flexibility, the system of setting sales targets and allocation of cars to dealers has negative effects on competition. If a dealer sells more cars than anticipated, and if the relevant vehicle is very popular, he very often seems to be unable to order more cars from the manufacturer because an increase in production will not be possible and because all the other dealers will also be able to sell the cars which have been allocated to them. The possibility of cross-sales between network dealers is, however, not a real option for overcoming the problem of undersupply, since the other dealers will also be short of new vehicles. The system of setting sales targets therefore hampers the scope for network dealers to outperform their competitors especially as regards vehicles for which demand is higher than production output. If a dealer sells more of such cars than his competitors, his delivery times will increase, whereas dealers who are performing not so well will be in a position to supply vehicles within shorter deadlines and attract new customers, not because of their better performance, but because of their better supply situation.
- (358) The UK Competition Commission's report³⁸⁷ mentions another method of using sales targets in a way which works against the spirit of the single market and seems to infringe EU competition rules. Some dealer agreements seem to provide that only those cars which have been supplied by the manufacturer or the official UK importer to a UK dealer count towards a dealer's sales target. If a dealer purchases new cars from a dealer located in another Member State³⁸⁸ and sells them to his clients, these cars will not be taken into account when it comes to deciding whether he has achieved his sales targets or not. For a dealer who purchases new cars from his counterparts located in another Member State, it will be very difficult to achieve his sales target. Since the failure of a dealer to meet his sales targets is a reason for the termination of most dealer agreements, such a policy deters dealers from buying new cars from their counterparts located in another Member State. Such a policy is exacerbated if cars which have been sourced from another dealer are excluded from bonus payments. In any event, such a policy is likely to be considered as a "black practice" under Article 6(1)(7) of Regulation 1475/95.
- (359) Apart from these serious shortcomings, the replies received by the Commission to its questionnaires and the Commission's own experience show that the above system seems to function well in situations where there is no shortage of supply. The small number of complaints from consumers concerning the unavailability of cars from their local dealer or failure to meet the delivery time quoted in the sales contract indicates that this system does

³⁸⁷ Pt. 2.311 et seq.

³⁸⁸ Pursuant to Article 3(10)(a) of Regulation 1475/95, such cross-supplies may not be prohibited.

not hamper the availability of cars to customers having their residence within the dealer's contract territory.

- (360) The above system, which is mainly based on local market data also, allows the pursuit of national marketing strategies³⁸⁹ and the operation of distribution systems with delivery times which differ from Member State to Member State. The information available to the Commission shows that the delivery times for a particular model can be three weeks in one Member State and up to 38 weeks in another. Such a policy may be justified in the light of consumer preferences such as the fact that, in general, consumers in Nordic countries are willing to wait longer for a new car than in the southern part of Europe, where consumers tend to buy a car which is in stock if the waiting time is too long for them. From the competition point of view, differences in delivery times are not a problem in themselves, because they give car manufacturers some flexibility if they want to strengthen their position in certain Member States by offering cars with very short delivery times and, compared to their competitors, advantageous prices. They can therefore be considered to be, if anything, pro-competitive.
- (361) However, this is only true if parallel import and exports are not made more difficult and if consumers in other Member States can also take advantage of the more attractive and competitive market conditions, e.g. of the shorter delivery times or lower prices outside their home country. Whether this is the case will be analysed further below.

CONCLUSION:

In general, the availability of new vehicles for customers living in the contract area of a dealer functions well. Nevertheless, if there is a shortage of new vehicles, the allocation of these vehicles to dealers on the basis of agreed sales targets leads to some inflexibility and hampers competition: dealers selling a number of cars above the agreed sales targets will have longer delivery times than their competitors who do not outperform their sales targets.

Direct sales to consumers inside the Member States

- (362) Manufacturers can reserve themselves the right to make direct sales to certain final consumers (such as public authorities, fleet operators or international organisations).³⁹⁰ The Commission is not aware of any difficulties as regards the supply of vehicles through direct sales in the Member States. Nevertheless, in this area competition is very limited for two reasons. Fleet operators order large quantities of cars. The allocation of cars to network dealers is not flexible enough to allow dealers to sell large numbers of cars to fleet operators, in particular if such transactions do not take place at regular intervals and if they could not be taken into account when sales targets were set. Moreover, manufacturers traditionally offer to their reserved customers

³⁸⁹ Only three of the car manufacturers which replied to the Commission's questionnaire pursue a policy which aims at harmonising delivery times.

³⁹⁰ Article 2 of Regulation 1475/95.

such as fleet operators and public bodies discounts which are much higher than the dealers' margins and bonuses. Dealers are therefore also economically not in a position to compete with their manufacturer in this area.

CONCLUSION:

The availability of new vehicles to reserved customers buying directly from manufacturers at national level seems to meet customers' expectations.

6.3.2.2 Availability of new motor vehicles for cross-border sales

Cross-border sales from dealers located in another Member State

- (363) In order to create a balance between selective and exclusive distribution, which in themselves allow some partitioning of the single market because the number of dealers is limited and each of them has to focus its sales efforts on a geographically limited territory, Regulation 1475/95 contains a number of provisions which aim at creating conditions for the development of a single market for motor vehicles.
- (364) The Regulation does not exempt dealer contracts which confine dealers only to satisfying the demand for cars within their territories. Dealers must also be able to meet demand from buyers in other areas of the single market, be it inside or outside the Member State in which a dealer is located. In view of this aim, Regulation 1475/95 provides that advertising by dealers via a channel which is directed at customers outside the contract territory can only be prevented if it amounts to personalised advertising.³⁹¹ Moreover, manufacturers and importers may not use product differentiation to partition the single market.³⁹² In order to avoid such partitioning the Regulation contains the “*availability clause*”³⁹³ which gives dealers a right to order cars with technical specifications which correspond to a model which is marketed by the manufacturer in another Member State. The Regulation also contains a number of clauses³⁹⁴ which aim at ensuring that consumers are really in a position to purchase motor vehicles wherever in the European Union prices or terms are most favourable.³⁹⁵
- (365) As regards the availability of **commercial vehicles including trucks and buses** for cross-border sales, it is to be noted that, in contrast to cars, the technical requirements for these vehicles have not yet been harmonised. A European vehicle type approval, which exists for passenger cars, does not yet exist for commercial vehicles and is not expected to be introduced within the

³⁹¹ See Article 3(8) and recital 9 of Regulation 1475/95, see also Chapter I of the notice on Regulation 123/85.

³⁹² Recital 16 of Regulation 1475/95.

³⁹³ Article 5(1)(2)(d).

³⁹⁴ Articles 6(1)(7) and (8) of Regulation 1475/95 and Chapter I, 1 of the Communication on Regulation 123/85.

³⁹⁵ Recital 26 of Regulation 1475/95.

next two to three years. Nevertheless, according to one of the black clause of Regulation 1475/95 which covers all types of motor vehicles including commercial vehicles, dealers have to be in a position to also order commercial vehicles which match the technical standards of the Member State in which such a vehicle is to be registered.³⁹⁶ According to this black clause, manufacturers and importers lose the benefit of the Regulation if they restrict the freedom of final consumers or their authorised intermediaries to purchase from any network dealer contract goods or corresponding goods³⁹⁷.

- (366) As regards the cross-border availability of **passenger cars**, all car manufacturers argue that there are no obstacles in place and that they have informed their dealers many times orally and in writing that the latter are free to sell cars to any final consumer within the EU. In order to show that parallel trade is unrestricted, they point to the increase in parallel trade in cars in recent years between markets where price differentials are considerable.
- (367) The figures provided to the Commission do not give a complete overview of all parallel traded cars. They do, however, indicate that some parallel trade takes place. Nevertheless, these figures are not evidence that every consumer wishing to take advantage of the single market and the price differentials within it will succeed in finding a dealer who is willing to sell a car and that manufacturers or dealers do not try in one way or the other to discriminate against these customers as compared with domestic buyers. The problems in this field are also illustrated by the Commission decision in the Volkswagen and Opel Nederland case and the other pending procedures³⁹⁸ as well as the numerous consumer letters which the Commission has received.
- (368) As can be seen from the British consumer associations' replies and from the complaints from individual consumers (see **Annex III**) which the Commission received in the last two years, the most frequent difficulties encountered by consumers are as follows:
- dealers claim that the supply of cars from the importer or manufacturer is not sufficient to meet both their local demand and the demand of foreign consumers;
 - dealers claim that the sale of new cars is not profitable and that therefore they are not interested in selling cars to buyers who will not come back for after-sales servicing or to buy a car to replace the one they wish to buy now;
 - dealers who are willing to sell new cars quote delivery times which are much longer than their normal delivery times; this is true both for left-hand-drive and for right-hand-drive cars which are sold in mainland Europe; this phenomenon seems to be particularly common in the Netherlands and in Denmark;

³⁹⁶ This right of dealers stems from Article 6(1)(7) of Regulation 1475/95.

³⁹⁷ See also footnote 89 of this Report.

³⁹⁸ For details, see section 5.2.1, page 61, of this report.

- dealers do not grant the same rebates to foreign buyers as they do to domestic customers and/or they quote higher prices to foreign buyers than the retail prices recommended for their country;
- foreign buyers have to pay very high deposits for vehicles which are exported. These deposits can be as much as the full sales price of a car.

(369) It is noteworthy that such practices and refusals are, according to the comments received from a number of consumer associations and the complaints received by the Commission, used frequently, but not exclusively, in regions geographically close to the border of an expensive country, like the region of Maastricht in the Netherlands and the south of Denmark for German consumers. The same was also true for some dealers close to harbours where boats from the United Kingdom dock. In the past, during the devaluation of the Italian currency in 1994 to 1996 similar arguments were used by VW and Audi dealers in the north of Italy.³⁹⁹

(370) In view of the “natural interest” of all dealers and importers in selling as many cars as they can, the reasons for such “*uneconomic*” behaviour seem to stem from factors which are outside the dealer's influence and linked primarily to the unavailability of sufficient quantities of a particular model. The result is that a dealer is not in a position to sell to his domestic and foreign buyers in a satisfactory manner.⁴⁰⁰

(371) As explained previously in section 6.2.1.5 (page 87), dealers have a contractual obligation to endeavour to sell a certain number of vehicles in accordance with their sales targets. The criteria, which have to be taken into account when sales targets are set, are in essence past and expected future market development within the contract territory and the country of the dealer. This is compatible with the Regulation.⁴⁰¹ However, the block exemption does not provide for a similar and clear procedure as regards sales to buyers coming from outside the dealer's territory: the “*availability clause*”⁴⁰² provides only for a right of dealers to request the delivery for export of passenger cars which correspond to a model marketed by the dealer. However, it is left open whether these cars are already included in the cars which are allotted to a dealer based on the agreed sales targets,⁴⁰³ or whether the dealer can request the delivery of additional cars in view of his exports. The relevant “*black clause*” of the Regulation,⁴⁰⁴ according to which dealers have to be in a position to sell all types of vehicles including commercial

³⁹⁹ See Commission Decision of 28 January 1998, Case IV/35.733 – VW, OJ L 124, 25.4.1998, p. 60.

⁴⁰⁰ Which is a priority for him in view of the sales targets and in view of the higher economic attractiveness of such customers who will come back to the dealer for after-sales services.

⁴⁰¹ Article 4(3).

⁴⁰² Article 5(1)(2)(d).

⁴⁰³ Some car manufacturers maintain that this is the case.

⁴⁰⁴ Article 6(1)(7).

vehicles which match the technical standards of the Member State in which the vehicle is to be registered, does not clarify this issue either.

- (372) A further problem arises as regards the supply of cars due to be exported which are identical to the models the dealer normally sells. Neither the “*availability clause*” nor the above “*black clause*” clarifies the question whether or not a dealer can request additional vehicles (on top of those allocated to him in the context of the agreement on sales targets) in order to be able to sell them to final consumers in other Member States. Manufacturers often state that vehicles due to be exported have to be supplied from the number of cars which have been allotted to the dealer in the context of the sales targets.
- (373) As far as the Commission is aware from its many contacts with car manufacturers on the issue of the availability of cars for final consumers in other Member States, it seems that none of the manufacturers has put in place the necessary transparent procedures to make sure that dealers are well informed and that cars to be parallel exported are made available to them in a non-discriminatory way and in sufficient quantities, which should be the case in a single market. However, in view of the above lack of clarity in the Regulation and the notices, the existing legal framework does not provide for clear guidance as to what is required in order to allow dealers to supply cars to foreigners on the same terms and conditions as to domestic or local buyers.
- (374) In contrast to passenger cars, the Commission's investigation in the recent merger case ⁴⁰⁵ Volvo/Scania revealed that nearly all heavy trucks (above 16 tons) and buses are purchased nationally because of the need for efficient after-sales and service support, the risk of reduced second-hand value of privately imported trucks and the different types of technical characteristics prevailing in the various Member States. It is therefore difficult to draw any conclusions on the availability of heavy trucks and buses for cross-border sales.

CONCLUSION:

Although a core aim of the Regulation is to give every European citizen the right to purchase a car in an EU country of his choice, car buyers still face difficulties when they try to purchase new vehicles in another Member State. On the one hand, these difficulties can be explained by the reluctant attitude of manufacturers and/or their distributors towards cross-border car purchases; on the other hand, manufacturers and their importers can use a system of sales targets allowed under the Regulation and subsequent allocation of production output to their dealers to organise distribution in a way which can lead to discrimination against cross-border sales as compared with national sales. This makes it possible to apply strategies to protect dealers in some Member States from intra-brand competition from dealers located in other Member States.

⁴⁰⁵ Case IV/M.1672.

Cross-deliveries within a manufacturer's network on a cross-border basis

- (375) Under the Regulation, importers and dealers can engage in cross-deliveries within the distribution network of the relevant car manufacturer.⁴⁰⁶ The figures provided to the Commission in reply to its questionnaires show that none of the importers has carried out such cross-supplies to importers or dealers located in other Member States. As regards cross-deliveries between dealers, the Commission is aware of a very limited number of cross-sales to other dealers of the same make.⁴⁰⁷ However, in the case of popular vehicles, dealers will not have sufficient quantities to cross-supply them to other dealers. Moreover, due to the practice of linking the sales targets to the allocation of new cars to the dealers,⁴⁰⁸ a dealer who supplies cars to other dealers of the same network may be unable to reach his sales targets because he is unable to obtain more new cars. Such a dealer will not qualify for a bonus because he has not reached his sales targets – or, even worse, lose the franchise. Moreover, a dealer who purchases cars from another dealer may also face difficulties: as has been described by the UK Competition Commission, some manufacturers seem not to count cars, which have been sourced from another dealer located in another Member State towards the dealers' sales targets.⁴⁰⁹

CONCLUSION:

Cross-deliveries between dealers belonging to a manufacturer's network in different Member States exist to only a limited extent. They do not seem to have an appreciable effect on the overall availability of cars in the various Member States.

Cross-border purchases via intermediaries

- (376) In view of the practical difficulties final consumers face when trying to buy a car in another Member State, they can, by signing a written authorisation, appoint an intermediary to make the necessary arrangements for the purchase of a new vehicle in their name and on their behalf.⁴¹⁰
- (377) In general, intermediaries are confronted with the same difficulties as final consumers when they try to find a dealer willing to sell a car to their client. These difficulties have been described in section 6.3.2.2 (page 116) .
- (378) Nevertheless, in some cases, intermediaries have established contacts with a dealer who is indeed willing to sell new vehicles to their customers. Here another problem may arise which makes parallel trade difficult. According to the notice on intermediaries,⁴¹¹ intermediaries should not establish with a

⁴⁰⁶ Article 3(10)(a).

⁴⁰⁷ As to the reasons for the limited number of cross-supplies, see also above pt. (358) on p. 114.

⁴⁰⁸ see pt. (271) on p. 88 of this report.

⁴⁰⁹ UK Competition Commission Report, pt. 2.316 to 2.318.

⁴¹⁰ Article 3(11); for details, see also notice on intermediaries.

⁴¹¹ Chapter 2(c) of the notice on intermediaries.

dealer “*a relationship which is privileged and contrary to contractual obligations*” accepted by the dealer.⁴¹² If a dealer takes orders amounting to more than 10% of his annual sales from any one intermediary, this creates, according to the notice, a presumption of a privileged relationship contrary to the above Articles. The car manufacturer may in such a case take action against the dealer and, for example, refuse to sell him cars to be supplied to consumers who have ordered them via the intermediary in question. The Commission has been informed of several such cases in the past. This also represents an obstacle for certain dealers and intermediaries wishing to engage in parallel trade.

- (379) It has to be noted that one of the provisions to which the notice⁴¹³ refers has been amended in Regulation 1475/95: the new Regulation allows dealers to actively promote their sales outside their contract territory if they do not use personalised advertisements⁴¹⁴. This new freedom seems to be put into question if dealers are not able to freely respond to orders for new vehicles presented to them by very efficient intermediaries.
- (380) The intermediaries’ main task is to assist consumers in purchasing a vehicle in another Member State. However, a number of provisions contained in the notice on intermediaries seems to limit the scope of the latter to provide efficient and attractive services. In particular the notice contains the following limits: intermediaries have to avoid carrying out their operations using a common name or sign because this could create the misleading impression of an authorised distribution system. They may not use an outlet within the premises of a supermarket where the principal activities of the supermarket are carried out.⁴¹⁵ Nor may an intermediary receive discounts different from those which are customary on the market of the country in which the car is purchased.⁴¹⁶ All these restrictions limit the intermediaries’ scope to organise their businesses freely and in the most efficient way. Moreover, these restrictions mean that an intermediary cannot get better deals for his customers by grouping orders together and passing them on to a dealer who in turn could grant higher rebates to the intermediary purchasing large quantities of cars for which the dealer did not have any advertising costs.
- (381) Market opportunities for intermediaries depend on price differentials within the EU. This makes it necessary for intermediaries to change their sources of supply over time, depending on which markets are cheapest for the sourcing of new vehicles.

⁴¹² The text of the notice makes reference especially to Articles 3(8)(a) and (b), and (9) and Article 4(1)(3) of Regulation 123/85.

⁴¹³ Art. 3 (8) (b) of Regulation 123/85.

⁴¹⁴ Art. 3 (8) (b) of Regulation 1475/95.

⁴¹⁵ See Chapter 2 (a) of the notice on intermediaries.

⁴¹⁶ See Chapter 2 (c) of the notice on intermediaries.

(382) All these factors explain why intermediaries are small and medium-sized undertakings which are not in a position to organise a cross-border vehicle trade in Europe which, together with the private cross-border purchases, would in quantitative terms be sufficiently important to force manufacturers to reduce the price differentials in Europe.

CONCLUSION:

Intermediaries face the same difficulties as final consumers when they try to purchase a new vehicle in another Member State. The rules governing the activities of intermediaries make it difficult for them to become an easy and efficient channel for buyers who want to take advantage of the price differentials in the single market and to source their vehicle in another Member State.

Direct sales

(383) As regards direct sales of new passenger cars to fleet operators, the replies received from rental and leasing companies indicate that there seems to be no demand for cross-border purchases. The practice of direct sales at highly discounted prices⁴¹⁷ might make cross-border purchases from dealers in another Member State uninteresting. Other reasons for the absence of such cross-border purchases might be that the downstream market for long-term hire and leasing, on which these companies operate, is not sufficiently competitive to give these operators an incentive to try to source cars outside their home country. Nevertheless, the Commission is aware of a number of fleet operators who tried to purchase cars directly from a manufacturer or an importer and met with a refusal. Since no dealer or other independent distributor is involved in direct sales, such a refusal is outside the scope of this report.

CONCLUSION:

Since there still seems to be little demand for cross-border direct purchases of new vehicles from other Member States, it is difficult to assess whether manufacturers' or importers' distribution behaviour within the framework of the Regulation gives rise to discrimination against foreign buyers as compared with domestic customers.

6.3.2.3 Availability of cars via resellers

(384) Regulation 1475/95 exempts clauses in dealer contracts which prohibit sales of new vehicles to independent resellers who are not part of the distribution network of a manufacturer.⁴¹⁸ The rationale behind this exclusion of independent resellers from the distribution of new vehicles is that, in view of the technical complexity of motor vehicles, manufacturers need to co-operate with certain dealers and repairers in order to provide specialised servicing for the products. On grounds of capacity and efficiency, such cooperation cannot

⁴¹⁷ For further details see also UK Competition Commission report, pt. 7.53ss.

⁴¹⁸ Article 3(10)(a).

be extended to an unlimited number of dealers and repairers.⁴¹⁹ It is worth noting in this regard that according to Regulation 1475/95 dealers undergo a qualitative selection also regarding their capacity to carry out after-sales services. In this system dealers are always providers of after-sales services and thus capable of carrying out any necessary technical intervention, including the pre-delivery inspection of a new motor vehicle according to the manufacturer's specifications. In view of these elements, it was considered that this inspection could only be carried out by a dealer belonging to the network of the relevant manufacturer and that therefore the sales of new vehicles to independent resellers can be excluded.⁴²⁰

- (385) Since network dealers are prohibited from selling new cars to independent resellers, only a very small number of cars can be purchased from independent resellers.
- (386) The question arises as to whether the exclusion of such distributors is still justifiable. Cars have become much more reliable today and there seems to be no objective reason why the pre-delivery inspection of a car cannot be carried out by the manufacturer before the car is transported to a dealer who has just to do simple work like cleaning the car and making sure that it has no external damage. It should also be borne in mind that there exist specialist independent repairers who have the technical knowledge to carry out pre-delivery inspections and/or who can request access to this information.⁴²¹ Moreover, quality comparisons between independent repairers and those belonging to the manufacturers' networks show that the quality of repairs carried out by independent resellers and repairers is just as good as the quality of repairs carried out by official dealers.

CONCLUSION:

The exclusion of independent resellers from the distribution of new cars may be questionable.

6.3.3 Is there a benefit for consumers as regards the honouring of the warranty and after-sales services?

6.3.3.1 Is the honouring of the manufacturer's warranty satisfactory?

- (387) Manufacturers provide for a warranty on new motor vehicles as regards the proper functioning of the vehicle. In addition, most manufacturers offer an anti-corrosion warranty. As to the length and extent of these warranties, please refer to section 4.2.2 (page 47) of this report.
- (388) The following sections will analyse whether the way in which manufacturers and their network dealers honour the warranty is satisfactory. This will be discussed as to cars which have been purchased by a consumer from a local

⁴¹⁹ See recital 4, sentence 3.

⁴²⁰ See recital 4, end of sentence 4.

⁴²¹ Article 6(1)(12).

dealer and as to cars purchased from another dealer in or outside the consumer's home country.

General problems concerning honouring of the warranty of cars

- (389) According to the Regulation,⁴²² a dealer has to honour the manufacturer's warranty and to perform free servicing and vehicle-recall work on the motor vehicles he has sold, notwithstanding his own legal obligation pursuant to national contract law in this respect. In the replies to the Commission's questionnaires, no major problems were reported as regards the honouring of these warranties.
- (390) However, consumers' associations criticise the fact that most manufacturers' warranty conditions provide that the warranty will end or be partly excluded if a car has been repaired or maintained by an independent repairer. Consumers' associations point out that such warranty conditions oblige consumers who do not want to lose their warranty to have their cars serviced by network dealers or service outlets. The competitive assessment of such warranty conditions may also depend on the ratio between the duration of the warranty and the lifetime of the vehicle.⁴²³

Honouring the warranty for a car which has not been purchased from a local dealer

- (391) In order to benefit from the Regulation, vehicle manufacturers have to oblige their dealers to honour the manufacturer's warranty, to perform free servicing and vehicle recall work on vehicles within their contract or a corresponding range, wherever the vehicle has been purchased.⁴²⁴ This obligation complements the freedom of consumers to purchase a new motor vehicle in another Member State⁴²⁵ without losing any of the rights enjoyed by consumers who buy a new vehicle from a local dealer. Consumers' associations, in their replies to the Commission's questionnaires, are in favour of these rules and unanimously request that the relevant clauses should be maintained after the expiry of Regulation 1475/95, on 30 September 2002.
- (392) Although these obligations on dealers are an important element of the Regulation, consumers still complain about the fact that dealers are reluctant to carry out warranty work on cars which they have not sold. To some extent this is said to be due to the paperwork involved for the dealer, who has to ask for reimbursement for the spare parts and labour cost involved in the repair of the vehicle. This is especially true if the warranty booklet for the car has not been filled in by the dealer who sold the car; in such cases, the dealer who has

⁴²² Article 5(1)(1)(a), first indent, and Article 4(1)(6).

⁴²³ As is the case for cars sold in the UK; see the Commission car price reports, which indicate the length of the warranty in the different Member States. One Japanese manufacturer seems to extend the warranty for its cars to 5 years (see: *l'Argus de l'Automobile*, 3.2.2000, p. 6.).

⁴²⁴ Article 5(1)(1)(a) and recital 12 of the Regulation.

⁴²⁵ Recital 12 of the Regulation.

carried out the repair of a car under warranty does not know whether or not it is still under warranty and will ask the consumer either to pay for the repair or to have the warranty booklet filled in. Especially in cases of parallel traded cars which have been sold in another Member State or via an independent reseller, it is sometimes difficult for consumers to get the necessary signatures and documents. However, the use of IT should enable car manufacturers to check whether or not the car is still under warranty and to reimburse dealers even if the warranty booklet has not been signed by the dealer who sold the car: an e-mail to the dealer who sold the car or to the manufacturer should suffice to establish when the car was sold.

- (393) In the past, some dealers and even one car manufacturer seem not to have been aware of their obligations under the Regulation. As a result, following action by the Commission, some car manufacturers have sent circular letters to their dealers to rectify this and to inform them of their obligation to honour⁴²⁶ the warranty for vehicles which have been purchased elsewhere in the EU.

CONCLUSION:

No major problems seem to exist as regards the honouring of the warranty for cars which have been bought from a local dealer.

Car manufacturers have not always informed their network dealers throughout Europe that they have also to honour the warranty of cars which have been bought from a dealer located in another Member State. After having been reminded by the Commission of their obligations, the relevant manufacturers informed their dealers of their obligations and put the necessary procedures in place to comply with the Regulation. Consumers' associations point out that the provisions of the Regulation which oblige dealers to honour the warranty for a vehicle bought from another dealer are essential in order to protect consumers' rights on parallel imported vehicles.

6.3.3.2 Can after-sales service be considered satisfactory?

- (394) After-sales services are normally purchased on the local market. However, since a car is a mobile product, in many cases consumers cannot do so or do not want to have their car serviced by the dealer from whom they purchased it. Regulation 1475/95 accordingly obliges all dealers belonging to the network of a manufacturer to carry out repair and maintenance work on all vehicles made by such manufacturer.⁴²⁷

After-sales-service by the dealers who have sold a vehicle

- (395) As regards the quality of after-sales services, one can assume that dealers are well acquainted with the technical instructions given by the manufacturers and

⁴²⁶ Without any charge for the consumer who claims the warranty.

⁴²⁷ Article 5(1)(1)(a), Article 4(1)(1)(e) and recital 12 of Regulation 1475/95.

that they also have the necessary staff, tools and equipment to provide after-sales services of good quality.⁴²⁸

- (396) Consumers are less positive about the **quality** of after-sales service. For instance, the UK's Consumers' Association recently reported⁴²⁹ that forty-eight dealers and independent repairers were tested throughout the country. Seven of the ten which stood out as particularly poor because they had missed a serious safety fault, charged for work not done or recommended unnecessary work, were franchised dealers; four (two dealers, two independents) of the undertakings tested received a top rating. The Consumers' Association concludes that franchised dealers are no better than independent repairers. Other surveys⁴³⁰ give a more positive picture of the quality of after-sales services: they indicate that about 89 percent of the motorists were satisfied with the quality of car servicing they received from dealers. However, according to Lex's findings,⁴³¹ for many years consumer satisfaction was higher if a car had been serviced by an independent repairer than if it had been serviced by a dealer. According to the Castrol Trend tracker, this is still true today: it indicates that although all sectors show high satisfaction figures, the 'other paid source' sector⁴³² provided the highest satisfaction followed by independent garages and then franchised dealers.⁴³³ As regards the range of services available, normally dealers are able to do all types of repairs including complicated ones, such as repairs of airbags and automatic transmissions. However for some types of repairs, such as car bodies, dealers are in general not obliged to have their own repair shop: they are allowed to subcontract this work to other network dealers or to a body repair shop in which they are a majority shareholder or which has been accredited by the manufacturer.
- (397) The consumer's expectation that after-sales services provided by dealers should be of the highest in quality may be all the more legitimate since dealers' prices are in general higher than the prices of independent repairers: a recent British article⁴³⁴ shows that major services are on average 50% more expensive when carried out by dealers – as compared to an average of 26% in Spain.⁴³⁵ Based on the replies to the Commission's questionnaires, this can be

⁴²⁸ According to Article 4(1)(1) of the Regulation, manufacturers can impose on their dealers certain qualitative standards as regards the training of the personnel and the equipment of their after-sales departments.

⁴²⁹ "Secret Service" in: Which? Magazine, September 1999, p. 8.

⁴³⁰ "The 1999 Lex Report on Motoring", p. 70; AA, "Consumer information for motorists", Surveys of motorists and the garage trade and proposals for actions, 1996, p. 3; see also "The Castrol Car Service and Customer Satisfaction Trend Tracker" by Brian Taylor, published by The Automotive Strategies Group, January 2000, p. iii.

⁴³¹ "The 1999 Lex Report on Motoring", p. 70;

⁴³² Self-employed mechanics, fleet workshops, mobile servicing units and black economy repair (see "The Castrol Car Service and Customer Satisfaction Trend Tracker", p. 93).

⁴³³ "The Castrol Car Service and Customer Satisfaction Trend Tracker", p. ii.

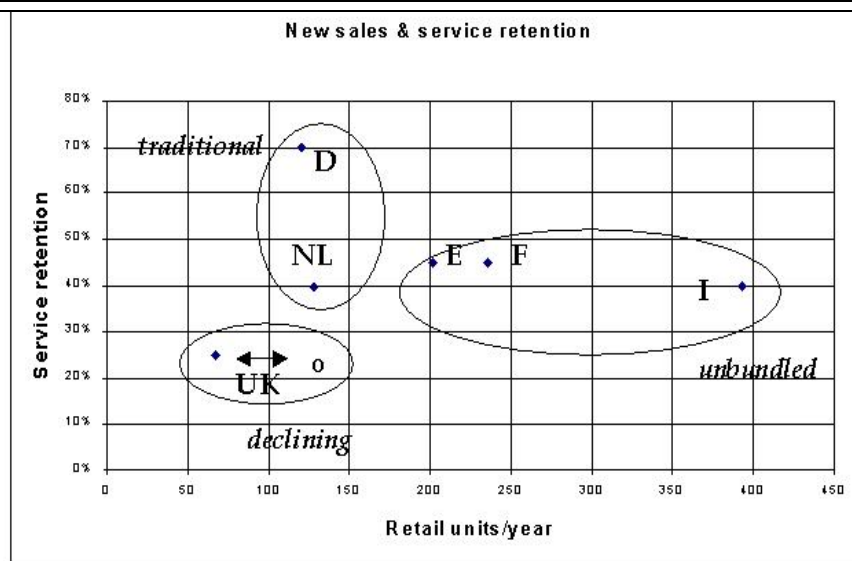
⁴³⁴ "Drive down your car running costs" in: Which? Magazine, March 1998, p. 20

⁴³⁵ 1994 OCU study.

explained by two reasons. Firstly, as has been explained in section 6.2.1.1 (page 82) of this report on the very limited use of spare parts, dealers do not seem to exploit the opportunity offered by the Regulation to lower their prices by not using original spare parts but rather much cheaper, non-original spare parts of matching quality. Secondly, dealers' services may also be more expensive because they are obliged to have specific brand tools and testing equipment which independent repairers do not normally have. After the end of the warranty period, consumers tend to have their cars serviced by independent repairers because of the lower cost. This tendency varies between Member States.

- (398) The following diagram illustrates the service retention of dealers after the end of the warranty period. In Germany, for example, 70% of consumers stay with dealers; in the United Kingdom, only 25% do so, whereas 75% of all UK consumers turn to other providers for after-sales services once the warranty period has ended.

Diagram 21: Service retention of dealers in different Member States



Source: Autopolis, "The need to reform the service and retailing system" 10/ 1998.

Units/year figures indicate the average size of the dealers⁴³⁶.

- (399) As far as **speed** of service is concerned, fast-fit chains are able to offer new types of services for simple, standardised repairs. However, as has been explained in section 4.2.1 (page 43) of this report, dealers and manufacturers are starting to react to this competition by offering service packages at pre-set prices and without prior appointment ("*ready-while-you-wait service*"). This also shows that it is important to have a sufficient number of efficient and competitive independent repairers and fast-fit chains to protect competition in the area of after-sales services.

After-sales services by another dealer than the dealer who has sold a vehicle

- (400) As regards the provision of after-sales services for new vehicles bought from another dealer, no major problem has been brought to the attention of the Commission. Distribution agreements seem to abide by the Regulation in this respect.⁴³⁷ This can be explained by the fact that after-sales services are in

⁴³⁶ As to the details of this diagram: the "**traditional**" system in countries such as Germany is characterised by dealers with relatively low unit throughput and high service retention which helps to ensure profits. In the Netherlands similar retail volumes per dealer are seen to those in Germany; however, dealers there have a much weaker hold on the provision of auto servicing as the independent market has made greater inroads. In contrast to the northern markets, the southern markets are "**unbundled**". Here the main dealer sells cars but is flanked by a multitude of service sub-dealers. Fairly high new unit sales keeps the main dealer in business even though much of the service revenue goes to sub-dealers. As regards the UK, it is said to be in the worst position: more than half of all the cars which pass through the books of the dealer (shown in the above diagram with an **O**) are fleet purchases which contribute very little to the dealer's revenue. The sales to private consumers by UK dealers are much lower (shown in the diagram with an **◆**) and are said to be "**declining**". The diagram also shows that British consumers use the dealers only to a very small extent for the repair and maintenance of cars (in particular once the warranty has expired); see CA 2000, "*The Forecourt Revolution*", p.29.

⁴³⁷ Second indent of Article 5(1)(1)(a) of Regulation 1475/95.

general profitable and it would not be logical for dealers to refuse to offer after-sales services for such cars.

CONCLUSION:

The after-sales services provided by dealers seem not always to be of the quality required by manufacturers and consumers. Moreover, after-sales services provided by dealers are on average more expensive than those provided by independent repairers, who are able to offer most services at a generally similar quality level. In order to protect competition in the after-sales service market, it is important to have a sufficient number of efficient independent repairers and fast-fit repairers.

7 ASSESSMENT OF FUTURE DEVELOPMENTS UNDER REGULATION 1475/95 - INTRODUCTION

- (401) The marketing and sales of new cars via the Internet was not considered at the time Regulation 1475/95 was adopted, since at that time commercial use of the Internet was still in its infancy. The Regulation does therefore not give any guidance on a number of issues concerning this new marketing method or selling tool.
- (402) The present section tries to take into consideration the future evolution of car distribution with particular regard to Internet sales (section 7.1 below) and/or new sales via supermarkets or specialised shops (section 7.2). The interest in these two distribution systems follows the attempts of several car manufacturers and Internet service providers to develop their activities in these fields. Car manufacturers encountered difficulties in harmonising their traditional organisations with these new sales methods. These difficulties are linked not only to practical problems, but also to possible impediments resulting from the Regulation.

7.1 INTERNET SALES

Application of Regulation 1475/95 to e-commerce concerning the marketing and sales of new cars

Dealers selling cars via the Internet

- (403) Pursuant to Regulation 1475/95 a dealer can use all existing means to promote the sales of new motor vehicles provided that he observes the minimum standards laid down by the manufacturer relating to advertising⁴³⁸ and does not personally contact potential customers located outside his contract territory (e.g. by e-mail).⁴³⁹ Thus the promotion of new vehicles by dealers via the Internet can not be prohibited⁴⁴⁰ the only limit being that the

⁴³⁸ Article 4 (1)(1)(c) of the Regulation.

⁴³⁹ See article 3 (8) (b) of the Regulation.

⁴⁴⁰

dealer may not personally contact potential customers located outside his contract territory (e.g. by e-mail).⁴⁴¹

Internet operators acting as broker or agent for a dealer:

- (404) Regulation 1475/95 not only concerns the relationship between a manufacturer and its dealers. It also covers the activities of intermediaries acting on behalf of the consumer for the purchase of a car. However, some Internet companies may not want to act as intermediaries within the meaning of the Regulation, but rather as a broker or agent acting for the dealers.
- (405) The Regulation contains some provisions which could be used to limit the development of such Internet operators who want to offer new services with respect to new cars. Firstly, it requires the dealer to have the agreement⁴⁴² of the car manufacturer to appoint an agent for distributing the cars in its territory. Secondly, it prohibits the dealer from entrusting third parties with the distribution of cars outside its contract territory.⁴⁴³ Thirdly, the manufacturer may also oblige the dealer not to maintain branches or depots outside his contract territory and not to solicit customers for contract goods or corresponding goods by personalised advertising outside his contract territory⁴⁴⁴. However, the use of the Internet removes geographical barriers and does not take into account territorial exclusivity. The question arises as to how the activity of an Internet operator has to be assessed under the above rules. Moreover, in the view of the ever increasing use of the Internet it is questionable whether these rules are still appropriate.
- (406) These provisions could be, and already have been, used⁴⁴⁵ by car manufacturers to impede the activity of such an Internet operator acting on behalf of a given dealer in the exclusive territories of other dealers.

Internet operators acting as a dealer:

- (407) An Internet operator has no right, in the current system of distribution, to become a dealer, since he would not fulfill the traditional criteria for the selection of new dealers⁴⁴⁶ used by all car manufacturers and covered by the Regulation.

It is also worth to note that general advertising or promotion on the Internet, that reaches customers in other distributors' exclusive territories and which is a reasonable way to reach consumers outside those territories (in particular the consumers inside the dealers own territory) are considered as passive sales in the sense of Regulation 2790/99; see Commission Notice Guidelines on Vertical Restraints, pt. 50, 2nd indent and pt. 51.++

⁴⁴¹ See article 3 (8) (b) of the Regulation.

⁴⁴² Article 3(6) of the Regulation.

⁴⁴³ Article 3(9) of the Regulation.

⁴⁴⁴ Article 3(8)

⁴⁴⁵ A major car manufacturer has relied on these provisions to justify its opposition to any commercial relation between its dealer and such internet operators.

⁴⁴⁶ E.g. up to now all dealers have to focus on a sales territory, which is always a geographically defined territory of a Member state (see article 1 and 4 (1)(3) of the Regulation). Furthermore an Internet operator may have a particular interest in advertising by electronic means vis-à-vis a large range of customers. This may be in contradiction with the obligations which can be

- (408) Moreover, Regulation 1475/95 only exempts distribution agreements for new cars if the distributor not only sells new vehicles, but also provides after-sales servicing.⁴⁴⁷ So far Internet operators are only interested in providing services related to the sale of cars. They do not have an infrastructure to provide after-sales service in the geographic area in which they operate.

Internet operator acting as a reseller:

- (409) The Regulation exempts the prohibition of the sale of new vehicles by dealers to independent resellers.⁴⁴⁸ As a result of this rule, dealers cannot sell to an Internet operator who would sell new cars directly to consumers. Thus, the development of this type of commercial activity can be severely limited.

Internet operator acting as an intermediary:

- (410) The only real option available for an Internet operator under the present legal framework is to act as an intermediary for the consumer ("*OneSwoop*" for instance). However, even in this scenario, legal problems still exist.
- (411) If an intermediary buys a car in the name of, or on behalf of, a consumer, he must be able to show a written and signed mandate that identifies the final consumer by name and address. The authorisation must also specify the type of vehicle.⁴⁴⁹ If the intermediary fails to show such authorisation, the dealer may refuse to sell the vehicles to him.⁴⁵⁰ The requirement that the mandate has to be a written and signed document creates a practical problem for transactions carried out via the Internet, where the authorisation may consist of an electronic message.⁴⁵¹

imposed on a dealer pursuant to article 3(8). Dealers have also to have a physical showroom within their sales territory which corresponds to the standards of the manufacturer (see article 4(1)(1)(a)). These criteria, which an Internet dealer can not meet, are criteria of a distribution system based on territorial exclusivity and on quantitative selection of the distributors.

⁴⁴⁷ Article 5(1)(1)(a).

⁴⁴⁸ Article 3(10)(a).

⁴⁴⁹ Article 3(11) of the Regulation states that a dealer cannot sell motor vehicles within the contract range or corresponding goods to final consumers using the services of an intermediary unless that intermediary has prior written authority from such consumers to purchase a specified motor vehicle or where it is taken away by him, to collect it.

⁴⁵⁰ According Article 3(10) of the Regulation, a dealer cannot supply vehicles to a reseller not belonging to the distribution system.

⁴⁵¹ This problem has been pointed out by intermediaries operating via the internet who state that their activity could be seriously damaged by Article 3(11) of the Regulation.

- (412) In the past, only hand-written signatures have been considered legally valid. However, the recent Electronic Signature Directive adopted on 30 November 1999⁴⁵² also promotes the validity of electronic signatures. The Directive stipulates, *inter alia*, that Member States have to introduce legislation ensuring that an electronic signature cannot be legally discriminated against solely on the grounds that it is in electronic form.⁴⁵³

CONCLUSION:

The Internet offers wide scope for introducing new methods for the distribution of motor vehicles. In general, consumers are more and more willing to purchase products via the Internet. They already use the Internet to purchase complex and expensive products such as computers and financial services.

The regulatory framework for the distribution of motor vehicles is not adapted to certain new e-commerce activities: it can be used to prevent or limit Internet operators not belonging to a distribution network to become dealers or brokers for the marketing or distribution of new motor vehicles.

7.2 SALES VIA SUPERMARKETS

Regulation 1475/95 and sales via supermarket

- (413) The following section of this report examines the legal problems resulting from the Regulation as regards sales of new cars by supermarkets.

Supermarkets acting as a broker or agent of a dealer, as a dealer, or as a reseller of new cars:

- (414) Supermarkets wanting to promote the sale of new vehicles in one of these capacities will face similar problems to Internet operators⁴⁵⁴ (see section 7.1 (page 129)).

⁴⁵² Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, OJ L 13, 19.1.2000, p. 12.

⁴⁵³ Press release IP/99/915, 30.11.1999.

⁴⁵⁴ The main obstacles for supermarkets to become a dealer are: since manufacturers operate quantitative selection, there is no "right" of a supermarket to be appointed as a dealer. Moreover, the geographic area in which a supermarket operates is in Europe already allocated to one or several dealers as an exclusive territory. Dealers can therefore object to the appointment of a supermarket (or another dealer) in their sales territory.

Supermarkets acting as an intermediary:

- (415) A supermarket could offer its services as an intermediary for final consumers. However, according to the notice on intermediaries,⁴⁵⁵ a supermarket has to take all measures to avoid confusion in the minds of consumers as regards, on the one hand, its activities as an intermediary and, on the other, its normal commercial activity as a supermarket selling goods. In view of the way supermarkets operate, the opportunity to act as an intermediary does not seem to be very attractive for them, and the above obligations imposed by the notice on intermediaries limits this option for the distribution of new cars even further.
- (416) Dealers and independent importers do not like car manufacturers' attempts to distribute cars via supermarkets. They believe that supermarkets will use cars as a product to attract consumers' attention by setting lower prices. However, supermarkets do not represent a valid alternative to distribution via dealers. Cars are high-priced goods about which consumers expect to be well informed and in relation to which they expect to be offered the possibility of after-sales services. Consumers' associations point out that such sales would result in lower prices. However, consumers would have to turn to an undertaking other than the supermarket such as a dealer or an independent retailer for the after-sales servicing.

CONCLUSION:

The current regulatory framework is not adapted to any form of distribution of new cars by supermarkets in parallel to the existing distribution via dealer networks.

⁴⁵⁵ Notice on intermediaries, Chapter 2 (b), last paragraph.

TERMINOLOGY USED IN THIS REPORT

TERMS	EXPLANATION
CONTRACT GOODS	New motor vehicles intended for use on public roads and having three or more road wheels (cars, commercial vehicles such as trucks, Buses) and spare parts therefore, which are the subject of an agreement within the meaning of Article 1 (see : Article 10, pt. 4)
CROSS BORDER SALE	Sale of a motor vehicle by a dealer to a final consumer who has his/her residence in another member state.
CROSS SALES	Sale of a new motor vehicle from a dealer belonging to the network of a motor vehicle manufacturer to another dealer belonging to the same network.
DEALER	Undertaking entrusted by a motor vehicle manufacturer or with the manufacturer's consent with the distribution and servicing of contract goods. „Contract goods“ are according to Article 10 of Regulation 1475/95 new motor vehicles intended for use on public roads and having three or more road wheels, and spare parts therefore.
INDEPENDENT REPAIRER	Undertaking offering maintenance and repair services for cars, which does not belong to the network of the relevant motor vehicle manufacturer. If a dealer belonging to a manufacturer's network maintains or repairs a car of another brand, than he is considered, as regards this activity, as an independent repairer.
INDEPENDENT RESELLER	Undertaking active as a retailer of new motor vehicles, which does not belong to the distribution network of a motor vehicle manufacturer.
INTERMEDIARY	An intermediary is, in accordance with the Notice on Intermediaries, a provider of services acting on account of a purchaser and final user; he cannot assume risks normally associated with ownership, and is given prior written authority by an identified principal, whose name and address are given, to exercise such activity.
SERVICE OUTLET	Undertaking entrusted by a motor vehicle manufacturer or with the manufacturers consent with the servicing of motor vehicles and the distribution of spare parts.

SPARE PARTS

Parts which are to be installed in or upon a motor vehicle as to replace components of that vehicle. They are to be distinguished from other parts and accessories, according to trade usage (see Article 10, pt. 6 of Regulation 1475/95).

BENEFITS FOR MANUFACTURERS

Manufacturers can set up a network for the distribution and servicing of motor vehicles run by other undertakings and tailor this net of distributors according to criteria, most of which are set unilaterally by each manufacturer.

Furthermore, a manufacturer can ensure that his products and after sales services are offered in all geographic areas of the Community and decide on the density of his distribution system.

Manufacturers can ensure that they are represented by dealerships, which run their businesses in premises and in a way corresponding to the brand image¹ and qualitative standards² set by the manufacturer. This right to tailor the distribution system according to the strategy pursued by the manufacturer is also highlighted by the right to end dealer contracts with one years' notice³ in case of reorganisation of part or the whole network.

Nearly all dealers are undertakings, which are not wholly owned by the manufacturers or in which it does not hold a stake. Therefore, it is the dealers who have to make the investment into the premises and the equipment required by the manufacturer and the dealers who have to employ the necessary qualified staff. They have to bear the full economic risk of their operations. Nevertheless, manufacturers have a right to closely monitor their distributors activities and performance through sales targets for e.g. the sale of new vehicles and spare parts, or as regards requirements on stocks of contract goods.

The measures that manufacturers can adopt have a strong influence on dealers performance, and dealers do not have much power to oppose this influence. In addition, manufacturers can always use their normal right not to renew or to end a dealer contract.⁴

CONCLUSION:

The current rules for motor vehicle distribution give manufacturers extensive possibilities to tailor their distribution systems according to their strategies. Manufacturers can decide on the level of the presence in the different Member States and to steer the businesses of their dealer networks accordingly.

¹ The brand identity of manufacturers is protected e.g. by Article 3 pt. 3 of Regulation 1475/95, which stipulates that a dealer may only sell another make in separate premises under separate management and in the form of a distinct legal entity. Moreover, Article 3 pt. 4 protects any investment made by manufacturers in the after sales service area of the dealers, notably in equipment and training, from being used for the servicing of cars from other makes.

² See Article 4 (1) pt. 1: The manufacturer can oblige dealers to comply with minimum standards, in particular (a) the equipment of the business premises and the technical facilities for servicing; (b) the specialised, technical training of staff, (c) advertising, (d) the collection, storage and delivery of contract goods or corresponding goods and sales and after sales servicing, (e) the repair and maintenance of contract goods, in particular as regards the safe and reliable functioning of motor vehicles.

³ Article 5 (5), 1st indent of Regulation 1475/95.

⁴ See Article 4 (2) pt. 2 of Regulation 1475/95.

BENEFITS FOR DEALERS

Dealers are allocated a territory, in which they exclusively, or sometimes together with a limited number of other dealers belonging to the same network, can develop their business activities. The contract territory of each dealer is a sort of "safe harbour" which is protected from intra-brand competition stemming from new operators within the allotted territory⁵. This protection gives dealers, most of which are small and medium sized undertakings and which have to finance their premises and technical installations according to the requirements of the make, a better basis to earn a return on their investment.

The dealers investment is also protected for a certain time: Either dealer contracts have to be concluded for at least five years or, in case they are unlimited in time, they can be ended with two years notice without reason or, in case of a reorganisation of the network, with one years notice.

The manufacturer guarantees the supply of contract goods to dealers. Moreover, dealers get a wide range of support services offered by the manufacturer.⁶

Dealers may source contract goods from, and supply them to, other network dealers. As to spare parts, dealers may source them also from other suppliers as long as they match the quality of original spare parts.

The current distribution systems provide the same margins for nearly all distributors, whether they are small or large, in a given Member State. This quasi uniformity of the margin for all distributors creates a level playing field regarding prices in that it does not allow big dealers to obtain high volume based discounts which they could pass on to their customers and thus undercut smaller dealers. Therefore, the current margin system is considered to be beneficial for smaller dealers and helps them to stay profitable.

Based on what has been explained in the previous paragraph, freedom of dealers to set their prices and sales conditions for new vehicles⁷ is a theoretical advantage of the current distribution system, all operators have a similar leeway to set prices.

⁵ However, territorial protection is not absolute. Dealers have to face a certain degree of intra-brand competition under the Regulation: Other dealers can advertise outside their contract territory and actively promote sales by other means than personalised advertising (see Article 3 pt. 8 of Regulation 1475/85). They are also allowed to sell cars to customers having their residence or head office in another dealers territory. They are not however normally submitted to price competition from high volume independent resellers.

⁶ Such as financial aid, technical and IT assistance, supply of additional services which can be offered together with the sale of a new vehicle, such as credits for the financing of new vehicles, leasing, insurance.

⁷ See Article 6 (2) of Regulation 123/85 and Article 6 pt. 6 of Regulation 1475/95.

CONCLUSION:

The current regime gives dealers a certain protection with regard to their investment. It allows them to operate within the framework set-up by the manufacturers with limited possibilities to operate outside the contract territory. The freedom of dealers to set their prices and sales conditions for new vehicles is largely a theoretical advantage of the current distribution system, since all operators have a similar leeway to set prices. In order to protect their investment in premises and technical facilities and keep them in line with the requirements set by the manufacturer, dealers enjoy protection as regard the ending of their contracts.

BENEFITS FOR CONSUMERS

The first aim pursued by the current rules is to allow manufacturers and importers to set up a system of undertakings which distribute new vehicles in an efficient⁸ way, which offer consumers after sales services of good quality⁹ taking safety aspects into account¹⁰, and all this at competitive prices and conditions.¹¹ It is said that such framework provides customers with a wide choice of cars and with a high degree of convenience due to the presence of a full dealer network selling the complete model range and offering local access.¹²

The second aim is to protect the consumers “right” to purchase a new motor vehicle from a dealer of his choice everywhere in the Single Market.¹³ Such supplies are made normally with the vehicles a dealer gets for his incumbent customers. Due to the single vehicle type approval system for passenger cars, these vehicles can be registered in any Member State without any technical modification. If a final consumer requests a car built to the specifications of his home country, dealers have a right to order such cars from the manufacturer due to the so called “availability clause”.¹⁴ In order to protect this “right” all network dealers have to honour the warranty and to do after sales services on vehicles which have been purchased elsewhere in the Single Market.¹⁵

The possibility to use an intermediary for the purchase of a new vehicle in a foreign country¹⁶ was also introduced in order to give final consumers, who might not want to make the purchase arrangements in a foreign Member State themselves, a real opportunity to take advantage of the Single market. The possibility of dealers to

⁸ Recitals 4 of Regulations 123/85 and 1475/95. Recitals 6 of both Regulations indicate that account was taken of the consumers interest in readily availability of spare parts.

⁹ See Article 3 pt. 4 of Regulation 123/85 and Article 3 pt. 5 of Regulation 1475/95; Article 4 (1) pt. 1 of Regulations 123/85 and 1475/95.

¹⁰ Mentioned in Recital 8 of Regulations 123/85 and 1475/95.

¹¹ Article 6 (2) of Regulation 123/85 and Article (6) pt. 6 of Regulation 1475/95.

¹² See ICDP Research Report 4/98 “Beyond the block exemption”, p. 28.

¹³ This aim is underlined in both Regulations and the Notice on Regulation 123/85. Recitals 9 and 16 of Regulation 123/85 and 1475/95, Notice on Regulation 123/85, Chapter I, (1) and Chapter I, (3) regarding the possibility to use an intermediary to purchase a motor vehicle in another Member State.

¹⁴ Article 5 (1) pt. 2 d) of Regulations 123/85 and 1475/95; see also Art 6 pt. 7 of Regulation 1475/95 for all types of vehicles.

¹⁵ See Article 5 (1) pt. 1 of Regulation 1475/95.

¹⁶ Article 3 pt. 11 of Regulations 123/85 and 1475/95; Notice on Regulation 123/85, Chapter I (3); see also Notice on Intermediaries.

advertise outside their home territory, which was introduced by Regulation 1475/95¹⁷ in order to create further and better opportunities for a final consumer to buy a new vehicle from another dealer than the one which is responsible for his place of residence.

CONCLUSION:

The current regulatory framework provides that distribution and servicing systems should be tailored such that motor vehicles are distributed in an efficient way to final consumers and that after-sales services for these vehicles are of good quality and offered at competitive prices. Moreover, the framework aims at giving each consumer a real opportunity to buy a new motor vehicle anywhere in the Internal Market.

¹⁷ Article 3 pt. 8 of Regulation 123/85 prohibited active sales outside the dealers contract territory; however dealers were allowed to advertise their products in media which covered their contract territory first, even if these media were also distributed outside the contract areas. Article 3 pt. 8 lit b) of Regulation 1475/95 allows active advertising without geographic limitation as long as it does not amount to personalised advertising.

ANNEX III

RIGHT HAND DRIVE – CONSUMERS LETTERS

British consumers attempts to purchase a car in another Member State

1998

MEMBER STATE	Number of letters
AUSTRIA	4
BELGIUM	60
DENMARK	9
FRANCE	12
GERMANY	34
IRELAND	30
ITALY	6
LUXEMBOURG	3
PORTUGAL	4
SPAIN	13
THE NETHERLANDS	121
U. KINGDOM*	8
UNSPECIFIED**	7
TOTAL	311

1999

MEMBER STATE	Number of letters
BELGIUM	24
DENMARK	23
FINLAND	5
FRANCE	8
GERMANY	14
IRELAND	10
ITALY	4
LUXEMBOURG	2
SPAIN	8
SWEDEN	5
THE NETHERLANDS	93
U. KINGDOM*	12
UNSPECIFIED**	1
TOTAL	209

* Letters received from British consumers about the situation in the United Kingdom without further attempt to purchase in another Member State.

** Letters concerning difficulties in purchasing in another Member State without further indication of the Member State concerned.

ANNEX IV

LEFT HAND DRIVE – CONSUMERS LETTERS

European consumers attempts to purchase a car in another Member State

1998

MEMBER STATE	Number of letters
AUSTRIA	1
BELGIUM	5
DENMARK	29
FINLAND	1
FRANCE	2
GERMANY	3
ITALY	2
LUXEMBOURG	2
PORTUGAL	1
SPAIN	2
THE NETHERLANDS	21
UNSPECIFIED*	4
TOTAL	73

1999

MEMBER STATE	Number of letters
BELGIUM	5
DENMARK	14
FINLAND	3
FRANCE	5
GERMANY	4
ITALY	2
LUXEMBOURG	1
SPAIN	2
SWEDEN	1
THE NETHERLANDS	22
UNSPECIFIED*	2
TOTAL	61

* Unspecified Member State or several Member States visited

MAIN CATEGORIES OF COMPLAINTS:

- (1) The first type of complaints is about the validity of a standard-form exclusive dealership agreements for motor vehicles. A number of, mainly French but also German, dealers maintained that their dealership contracts which were concluded under Regulation 123/85 are void. An agreement which is not covered by Regulation 123/85 or Regulation 1475/95, normally falls under the prohibition of Article 81(1). As these Regulations and Article 81(1) EC are directly applicable in the Member States, national courts and national authorities can apply these provisions directly.¹ Consequently, the complainants can enforce their rights on the national level.² Therefore, the Commission normally rejects these complaints for lack of Community interest.³
- (2) The second type of complaints concerns points which have already been clarified by the Court of First Instance (CFI) or the European Court of Justice (ECJ), for example, cases concerning the role and the activities of intermediaries.⁴ Based on these clarifications and the fact that national courts can apply EC competition rules, the Commission considered that pursuing these

¹ Block exemption regulations, such as Regulation 1475/95, are meant to facilitate the application of EC Competition rules by national courts and authorities (see Notice on cooperation between the national courts and the Commission in applying Articles 81 (ex Article 85) and 82 (ex Article 86) of the EC Treaty OJ C 39, 13/2/1993, p. 6 and Commission Notice on cooperation between national competition authorities and the Commission in handling cases falling within the scope of Articles 81 (ex Article 85) and 82 (ex Article 86) of the EC Treaty, OJ C 313, 15/10/1997, p. 3). However, according to Article 10 of Regulation 123/85 and Article 8 of Regulation 1475/85 as well as Article 7 (2) of Regulation 19/65 EEC as amended, only the Commission and the authorities of the Member States can withdraw the benefit of the block exemption.

² CFI Judgement of 18/09/1992 (Case T-24/90) *Automec ./. Commission* (“*Automec II*”), ECR. p.II-2223; see also Notice on the co-operation between the national courts and the Commission in applying Articles 81 (ex Article 85) and 82 (ex Article 86) of the EC Treaty, OJ C 39 of 13/02/1993, p. 6, CFI Judgement of 24/01/1995 (Case T-114/92) *BEMIM ./. Commission*, ECR p. II-147.

³ CFI Judgement (Joint Cases T-185/96, T-189/96 et T-190/96) of 21/01/1999, *Riviere Auto Service v. Commission*, ECR 1999, p. II-0093 (*VAG France*); Court Judgement (Case C-282/95 P) of 18/03/1997, *Guérin (Volvo) v. Commission*, ECR 1997, p. I-1503.

⁴ CFI Judgement (Case T-23/90) of 12/07/1991, *Peugeot SA v. Commission* (Eco System), ECR 1991, p. II-0653; Commission Decision confirmed by the CFI Judgement (Case T-9/92) of 22/04/1993, *Peugeot SA v. Commission* (Eco System), ECR 1993, p. II-0493 and the Court Judgement (Case C-322/94) of 16/06/1994, *Peugeot SA v. Commission* (Eco System), ECR 1994, p. I-2727; see also XXIII Report on competition policy, 1993, p.222.

complaints is not in the Community interest and that they should be treated by national courts.⁵

- (3) The third type of complaints concerns the role of independent resellers. The ECJ has, in 1996, in a number of preliminary rulings confirmed that the activities of independent resellers cannot be opposed (in particular by network dealers) based on Regulation 123/85.⁶ Following this clarification and given that Regulation 1475/95 has not altered the approach towards resellers, complaints relating to the status and activities of independent resellers can also be treated by national courts and Competition Authorities.

⁵ CFI Judgement (Joint Cases T-189/95, T-39/96 et T-123/96) of 13/12/1999, *SGA v. Commission* (not yet published); CFI Judgement (Joint Cases T-9/96 and T-211/96) of 13.12.1999, *Européenne Automobile Sarl v. Commission* (not yet published).

⁶ Court Judgement (Case C-226/94) of 15/02/1996, *Grand Garage Albigeois SA ./ Massol*, ECR 1996, p. I-0651; Court Judgement (Case C-309/94) of 15/02/1996, *Nissan France SA* ECR 1996, p. I-0677; Court Judgement (Case C-128/95) of 20/2/1997 *Fontaine*, ECR 1997, p. I-967; Court Judgement (Case C-41/96) of 5/6/1997 *VAG Händlerbeirat/SYD-Consult*, ECR I p. I-3123; see also, cases IV/35137 *Trabisco* , IV/35149 *Serieys* and IV/35150 *Aqueducs c/ dealers* XXVIII. Report on competition policy, 1998, p. 190, 191.

ANNEX VI

MOTOR VEHICLE TAXATION IN THE EUROPEAN UNION				
SUMMARY TABLE				
TAXES ON ACQUISITION				
	VAT	Sales/Registration tax		
		PC	CV	Registration charge
Belgium	21%	Based on cc+age e.g. 1,8 litres: 5000 BF	None	2500 bfr
Denmark	25%	105% up to 50,800 Dkr 180% on the remainder	95% of value exceeding 12,500 Dkr (below 2t) 30% of value exceeding 30,900 Dkr (2 - 4t)	1070 dkr
Germany	16%	None	None	50 dm
Spain	16%	<1,6 litres: 7% >1,6 litres: 12%	None	10,250 pts
France	20,6%	None	None	102 FF-195 FF & parafiscal charge
Greece	18%	New car: 16-128 %	New vehicle: 6-46%	
Ireland	21%	<1,4 litres: 22,5% 1,4 - 2 litres: 25% > 2 litres: 30%	13,3% LCV other 40 £ -100£	
Italy	20%	Iet + apiet	Iet + apiet	300,000-720,000 lire
Luxembourg	15%	None	None	1128 flux
The Netherlands	17.5%	Petrol car: 45,2 %-3394 DFL diesel car: 45,2 %-1278 DFL	None	22 -93,25 dfl
Austria	20%	Based on fuel consumption (M VEG) max. 16%	None	842-1269 ats
Portugal	17%	Based on cc e.g. 1,6 litres: 935,762 esc.	None	5000 esc
Finland	22%	100% - 4600 fim	None	
Sweden	25%	None	Excise tax based on weight and pollution	
United Kingdom	17,5%	None	None	None
PC		:	Passenger	Cars
CV : Commercial Vehicles				

ANNEX VII

PER CAPITA VOLUMES INDICES FOR GDP

COMPARED WITH CAR PRICE DIFFERENTIALS IN THE EU¹

Models /→ Member States ² ↓	Per capita volumes indices for GDP	Audi A4	BMW 318I	Citroën Xsara	Ford Focus	Opel Corsa	Renault Mégane	Seat Ibiza	Peugeot 306
L	164	<i>100</i>	<i>102</i>	n.a.	109	<i>100</i>	<i>100</i>	<i>100</i>	<i>102</i>
DK	125	193	208	162	191	177	176	182	180
B	115	103	<i>103</i>	<i>100</i>	109	105	105	<i>107</i>	108
A	114	115	121	110	120	116	115	128	122
NL	110	126	127	113	125	132	119	130	120
D	109	<i>101</i>	<i>105</i>	<i>102</i>	<i>108</i>	114	109	133	111
IRL	107	133	147	123	141	128	135	149	135
F	105	104	107	105	<i>108</i>	104	113	115	114
I	103	105	<i>105</i>	106	109	<i>102</i>	111	108	110
FIN	103	148	153	129	149	153	138	145	155
S	101	<i>99</i>	107	108	121	129	117	122	111
UK	101	107	115	122	126	121	128	152	133
E	80	103	106	108	<i>100</i>	108	<i>102</i>	115	<i>100</i>
P	73	133	143	123	141	115	129	143	124
GR	69	123	137	92	111	<i>97</i>	<i>94</i>	<i>102</i>	<i>104</i>
EU (average)	101								

Methodology:

For each of the eight selected models, the three Member States with the **highest price including taxes** have been marked (in **bold**), and the three Member States with the **lowest prices including taxes** have been marked (in *italics*).

¹ Indices, based on recommended retail prices for selected models; expressed in euro including taxes (source: Commission, Report on Car Prices within the EU, 1/11/1999).

² Source : OECD - Main Economic Indicators, © April 1999 (Ranked by index calculated for the year 1998).

Findings:

For the eight selected models, the following general statements can be made:

- 1) Prices including taxes are among the highest in Denmark (all eight models), followed by Finland (seven of the models), and Ireland (seven of the models). Only two exceptions have been found (Opel Corsa and Seat Ibiza; see table).
- 2) While Denmark has the highest PCI of all EU Member States (after Luxembourg), the PCI in Finland and in Ireland is only little above the EU average.
- 3) Prices including taxes are the lowest in Luxembourg (six models), in Greece (five models) and in Germany (four models). Certain of the models are relatively cheap in Belgium, Spain and Italy.
- 4) While Luxembourg is the Member State with the highest PCI, Germany, Belgium and Italy have a respective PCI above the average, while in Greece and Spain, the PCI is substantially below the average.

Conclusions:

As concerns prices including taxes in the different Member States, no general rule has been found. In particular, prices are not generally the highest in Member States with a high PCI, and are not generally the lowest in Member States with a low PCI.

On the contrary, it appears that prices are relatively low in countries with a high PCI, such as Luxembourg, Belgium and Germany, but also in countries with a low PCI, such as Greece and Spain.

On the other hand, it appears that prices are relatively high in countries with a high PCI, such as Denmark and Ireland, but also in Finland with a PCI only little above the average.

Annex VIII

Request to:	send on	replied on
AB VOLVO (Trucks)	02.09.1999	10/12/1999
ACEA	09.09.1999	29/11/1999
ADAM OPEL AG, Rechtsabteilung	02.09.1999	12/11/1999
AESRA/EASRA	02.09.1999	29/11/1999
AgV Arbeitsgemeinschaft der Verbraucherverbände	02.09.1999	04/11/1999
AUDI AG	02.09.1999	22/11/1999
AUTO-BY-TEL UK LTD.	22.09.1999	24/11/1999
AUTOGERMA	02.09.1999	19/11/1999
AUTOHIT PLC.	22.09.1999	22/12/1999
BAK (Bundeskammer für Arbeiter und Angestellte)	31.08.1999	28/10/1999
BEUC	31.08.1999	03/12/1999
BMW AG, Rechtsabteilung	02.09.1999	11/11/1999
BMW Import A/S	03.09.1999	28/10/1999
BOVAG	22.09.1999	26/11/1999
BRITISH INDEPENDENT MOTOR TRADERS ASSOC.	14.10.1999	08/11/1999
BVRLA (The British Vehicle Rental and Leasing Association)	31.08.1999	08/12/1999
CCA (Comitato Consumatori Altroconsumo)	31.08.1999	06/01/2000
CECRA 2 different questionnaires	02.09.1999	24/11/1999
CECRA 2 different questionnaires	22.09.1999	29/11/1999
CECU (Confederación Estatal de Consumidores y Usuarios)	31.08.1999	29/10/1999
CETRAA	02.09.1999	21/10/1999
CLEDIPA	02.09.1999	30/11/1999
CLEPA	02.09.1999	22/11/1999
CNPA (Conseil National des Profession de l'Automobile)	02.09.1999	09/11/1999
CNPA (Conseil National des Professions de l'Automobile)	14.10.1999	04/01/2000
CONSUMERS' ASSOCIATION	22.09.1999	22/12/1999
D A F	14.10.1999	06/01/2000
DAIMLERCHRYSLER AG, Rechtsabteilung	02.09.1999	16/11/1999
D'IETEREN	02.09.1999	12/11/1999
EAIVT (European Association of Independent Vehicle Traders)	02.09.1999	08/11/1999
ECATRA	?	30/11/1999
ECG (European Car Transport Group of Interest)	27.09.1999	16/12/1999
EGEA (European Garage Equipment Association)	02.09.1999	19/11/1999
FACONAUTO (Federacion de Asociaciones de Concesionarios de la automocion)	02.09.1999	19/11/1999
FEDERAICPA	03.09.1999	16/11/1999
FEDERAUTO	14.10.1999	22/11/1999

FEDERAUTO (Fédération Belge du Commerce et de la Réparation Automobile)	02.09.1999	04/11/1999
FEGARBEL ASBL Service VZW	22.09.1999	24/11/1999
FERRARI S.p.A.	02.09.1999	04/11/1999
FIA/AIT (Affiliated Members ANWB, TCB, RACC, ADAC, ÔAMTC, AVD, ACI & AA)	03.09.1999	07/11/1999
FIAT	02.09.1999	17/11/1999
FIATSagi (Fiat Auto & Iveco)	02.09.1999	17/11/1999
FIEV	02.09.1999	19/11/1999
FLA (Finance & Leasing Association)	31.08.1999	29/10/1999
FORBRUGERRÅDET	31.08.1999	08/11/1999
FORD OF EUROPE (& VOLVO)	02.09.1999	22/11/1999
FORD-WERKE AG (& VOLVO)	02.09.1999	22/11/1999
GARAGE VANDE KERCKHOVE N.V.	06.09.1999
GCR (Groupement des Concessionnaires Renault)	02.09.1999	07/12/1999
GENERAL MOTORS (Europe) AG & VAUXHALL MOTORS Ltd.	02.09.1999	16/11/1999
GENERAL MOTORS EUROPE	02.09.1999	11/11/1999
Wirtschaftskammer Bundesgremiums für den Fahrzeughandel Österreich	30.09.1999	14/12/1999
GEWERBE- UND WIRTSCHAFTSKAMMER FÜR DAS FÜRSTENTUM LIECHTENSTEIN	03.11.1999	10/12/1999
HONDA MOTOR Co. Ltd (Factory)	29.09.1999	22/11/1999
HONDA MOTOR EUROPE U.K..	02.09.1999	22/11/1999
HYUNDAI MOTOR COMPANY - EUROPE OFFICE	02.09.1999	06/12/1999
IGA (Independent Garage Association)	02.09.1999	29/11/1999
INC (Institut National de la Consommation)	31.08.1999	06/01/2000
INCHCAPE Plc	14.10.1999	14/12/1999
IV (Industriellenvereinigung)	02.09.1999	08/12/1999
JAMA	09.09.1999	,,,
JARDINE MOTORS Plc	14.10.1999	26/11/1999
KK (Kulattajat-Konsumenterna ry)	31.08.1999
Konsumentverket	08.09.1999	03/01/2000
LANCASTER Plc Lancaster House	02.09.1999	26/11/1999
MAHAG	02.09.1999	04/11/1999
MAN NUTZFAHRZEUGE AG Rechtsabteilung	02.09.1999	15/11/1999
MASERATI S.P.A.	22.09.1999	04/11/1999
MERCEDES-BENZ (U.K.) Ltd Mercedes-Benz Center	02.09.1999	04/11/1999
MERCEDES-BENZ PORTUGAL S.A.	02.09.1999	04/11/1999
MINI MOTOR SALES EUROPE B.V.	02.09.1999	29/10/1999
MOTORBRANSCHENS RIKSFÖRBUND	03.09.1999	29/11/1999
NFDA (National Franchised Dealers Association)	02.09.1999	26/11/1999
NISSAN EUROPE N.V.	02.09.1999	25/11/1999
NORPART C/o Kongsberg Automotive ASA	03.11.1999	16/11/1999
OCU (Organización de Consumidores y Usuarios)	31.08.1999	10/11/1999
OPEL NEDERLAND	02.09.1999	10/11/1999
OPEL OY	02.09.1999	16/11/1999
OY VEHO AB	03/09/1999	22/11/1999
PON'S AUTOMOBIELHANDEL B.V.	02.09.1999	10/11/1999

PSA PEUGEOT CITROËN	02.09.1999	10/11/1999
RENAULT SA	02.09.1999	16/11/1999
ROVER Ltd International	02.09.1999	08/11/1999
S.I.M.I.	22.09.1999	06/01/2000
SAAB DANMARK A/S	03.09.1999	05/11/1999
SCANIA AB	02.09.1999	11/11/1999
SEAT ESPAÑA	02.09.1999	22/11/1999
SKANDINAVISK MOTOR Co.	03.09.1999	08/11/1999
TEST-ACHATS	31.08.1999	06/12/1999
TOYOTA MOTOR EUROPE	02.09.1999	09/11/1999
ULC (Union Luxembourgeoise des Consommateurs)	31.08.1999	10/01/2000
UNIVERSAL HONDA LTD.	22.09.1999	24/11/1999
Universität Kaiserslautern - Fachbereich Sozial- und Wirtschaftswissenschaften, Lehrstuhl für Zivil- und Wirtschaftsrecht	07.09.1999	26/11/1999
UNRAE (Unione nazionale distributori automotoveicoli)	02.09.1999	22/11/1999
VAUXHALL MOTORS Ltd	02.09.1999	12/11/1999
VIKH (Verband innovativer Kfz-Unternehmer und Handelsvertreter e.V.)	02.09.1999	07/12/1999
VKI (Verein für Konsumenteninformation)	31.08.1999	08/11/1999
VKW (Vereinigung freier Kfz-Werkstätten, e.V.)	14.10.1999	03/11/1999
VOLKSWAGEN AG	02.09.1999	19/11/1999
ZDK (Zentralverband Deutsches Kraftfahrzeuggewerbe)	02.09.1999	04/11/1999
STATISTICS	117	101