

**European Tyre Industry Contribution to Commission's
Public Consultation Initiated 21 December 2009 on
Competition Rules for the Motor Vehicle Sector:**

**Draft Commission Motor Vehicle Block Exemption Regulation and Draft
Supplementary Guidelines to General Vertical Block Exemption
Regulation**

Brussels, 10th February 2010

ETRMA on behalf of its tyre manufacturer members submitted comments on the Commission's July 2009 Communication on the "Future competition law framework applicable to the motor vehicle sector" (COM (2009) 388 final) (please see attached a copy of our comments submitted last year). ETRMA welcomes again the opportunity to comment on the draft MVBBER and Supplementary Guidelines.

1) Introduction

The tyre industry is a key actor within the automotive sector, operating both on the original equipment and replacement markets. In the original equipment market the tyre manufacturers work closely with the respective vehicle manufacturers to develop and supply tyres directly suited to specific models of the brand. The vehicle manufacturer then places those tyres onto the market as original equipment on its new vehicles. In the replacement market, the tyre manufacturers conclude distribution agreements directly with the respective tyre retailers without any involvement of the car suppliers. Further, the commercial and legal considerations arising from distribution agreements in the tyre replacement market are very different from those applicable to car distribution and repair agreements. Cross-border purchases of replacement tyres are common and easy, there are multiple tyre brands sold per retailer, a wider product and price range resulting in a broader choice for consumers, etc. These distinctions are important to understand the impact of the application of the block exemption regime for the motor vehicle sector.

With regard to the above underlined differences of the structure, demand and distribution of tyre markets in comparison to the vehicle market, application of the MVBBER to tyre distribution agreements has been an unwanted legal side effect since the adoption of the first MVBBER.

Having made this point, we call on policy makers to lay down a regulatory framework that does not impose additional constraints on our sector other than those clearly essential to ensure a continuing high level of competition in the market and which will not hamper the sector's ability to adapt quickly to changing economic circumstances to maintain competitiveness.

The European tyre industry would like to share the following specific comments:

2) Applicable BER framework for spare parts (tyres)

The draft MVBBER, Art. 4 states that for vertical agreements relating to the aftermarket, the block exemption would only apply if those agreements fulfil the requirements for exemption under the future GVBER and do not contain any of the hardcore restrictions listed in Art. 5 of the draft MVBBER. On the other hand, the draft GVBER (July 2009) states in Art. 2 para 5 that the Regulation shall not apply to vertical agreements the subject matter of which fall within the scope of any other block exemption regulation. The two BERs do not seem to be consistent so we are therefore not clear on whether the Commission intends to apply both BERs to our sector. If that's the intention, we fear that the regulatory framework applicable to our sector will be unnecessarily complex, burdensome and prone to legal uncertainties.

3) 30% Market Share Threshold

3.1) Exemption of Purely Qualitative Selective Distribution

The GVBER will exempt agreements containing vertical restraints and establishing selective distribution only up to the market share limit of 30%. This applies to both quantitative and qualitative systems. Under the current Regulation 1400/2002, agreements establishing a qualitative selective distribution system are exempted without reference to a market share limitation. The effects of a qualitative selective distribution systems are less restrictive than those of quantitative selective distribution systems and, therefore, the negative consequences on intra-brand competition are limited and mitigated in the case of qualitative selective agreements.

As the Commission states in its draft GVBER, market shares in the aftermarket, which is mainly brand-specific, are usually in excess of 30%, thus meaning parts suppliers/manufacturers will be de-facto precluded from the benefits of being block exempted even in the circumstances of a qualitative distribution system. . This legal situation will place additional burdens on the suppliers/manufacturers as they will have to undertake express additional actions to demonstrate that their systems fully meet the criteria to fall outside Article 101 (1) TFEU. Consequently, the tyre industry would like to urge that the new regime specify that the 30% market share threshold does not apply in cases of purely qualitative selective distribution, in continuity with the present MVBER.

3.2) Co-existence of Exclusive and Selective Distribution

The restriction of active or passive sales to end users by members of a selective distribution system operating at the retail level of trade will not be exempted according to the new draft of GVBER. Unlike the provisions of the existing MVBER (R. 1400/2002), the restriction is extended also to the markets where selective distribution is not used. In such scenario, the supplier will no longer be able to protect its distribution in the markets where exclusive distribution is used by preventing active or passive sales to end users in said markets. Thus, a distributor operating in an exclusively allocated territory will not benefit anymore of the advantages associated to that exclusivity and its investments efforts will be reversed.

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