NOTICE TO MEMBERS

Subject: Petition 1541/2008 by Maurizio Infante (Italian), on extending the scope of Regulation (EC) No 1400/2002 to cover motorcycles

1. Summary of petition

The petitioner calls for the scope of Regulation (EC) No 1400/2002 on vertical agreements and concerted practices in the motor vehicle sector to be extended to cover motorcycles. He considers that the organisation of the motorcycle sector is identical with that of the motor vehicle sector, and that in view of the definition in Article 1(n), the scope of the regulation has already been extended to motorcycles in practice, because there are already three-wheeled motorcycles on the market.

2. Admissibility


3. Commission reply, received on 19 June 2009.

The distribution and servicing of motor cycles is currently covered by the general Block Exemption Regulation 2790/1999 ("general BER") which will expire in May 2010, at the same time as the sector specific Motor Vehicle Block Exemption Regulation 1400/2002 ("MVBER").

The Commission has published a report on the working of the MVBER in May 2008 which has been followed by a public consultation. On the basis of this consultation, the Commission is currently identifying a number of suitable options for the competition regime that will apply to the sector after the expiry of the MVBER. Such options will be fully analysed through an Impact Assessment which is planned for publication before the summer break.
With regard to the general BER, the Commission will publish a draft Regulation in the coming months which will be followed by a public consultation. All interested parties will have the opportunity to ensure that their concerns are taken into account.

As far as motor vehicles with three wheels are concerned, the Commission takes the view that on the basis of interpretation of Article 1(n), the MVBER does not apply to motorcycles including three-wheel vehicles which, due to their nature and common usage, come within the market for motor cycles, i.e. in case these three-wheelers are substitutes to motorcycles rather than to cars from the customers' perspective. A typical indicator for this substitutability would be that three-wheel vehicles are traded by motorcycle dealers alongside two-wheel motorcycles. Otherwise, three-wheel vehicles which are traded alongside cars by car dealers are covered by the MVBER.

It should also be noted that no stakeholder has asked the Commission to extend the scope of the MVBER to the motorcycle sector so far. In fact, the evidence currently available to the Commission does not indicate specific competition problems in the motorcycle sector that would suggest including motorcycles into a future sector specific Block Exemption Regulation covering both cars and motorcycles.

Moreover, the Commission has not received any formal complaint referring to competition problems in the motorcycle distribution and maintenance sector since the general BER came into force.

However, it should be noted that no final decision about a future competition regime has been taken so far as both regulations are currently under review.

Conclusions

In the light of the fact that no sector-specific competition problem has been brought to the Commission's attention so far, which would suggest a rationale for extending the scope of the MVBER to the motor cycle sector, the Commission currently does not envisage such an extension. However, this preliminary view is without prejudice to a final decision on the outcome of the review of both the MVBER and the general BER.