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## **MOTION FOR A RESOLUTION**

further to Questions for Oral Answer O-0047/2010 [ECON] and O-0044/2010 [IMCO]

pursuant to Rule 115(5) of the Rules of Procedure

on the Motor Vehicle Block Exemption Regulation

**Sharon Bowles**

on behalf of the Committee on Economic and Monetary Affairs

**European Parliament resolution on the Motor Vehicle Block Exemption Regulation**

*The European Parliament,*

- having regard to having regard to Article 3(3) of the Treaty on the European Union, Article 101(1) and (3), Article 103(1) and Article 105(3) of the Treaty on the Functioning of the European Union (hereinafter the ‘TFUE’),
- having regard to Regulation No 19/65/EEC of 2 March of the Council on application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices<sup>1</sup>,
- having regard to Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents<sup>2</sup>,
- having regard to 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<sup>3</sup> (the general vertical agreements block exemption regulation, hereinafter the ‘current GBER’),
- having regard to Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector<sup>4</sup> (the motor vehicles block exemption regulation, hereinafter the ‘current MVBER’),
- having regard to Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information<sup>5</sup>; and to Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information<sup>6</sup>,
- having regard to Draft Commission Regulation on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (the new general vertical agreements block exemption regulation, hereinafter the ‘new GBER’), published on 28 July 2009 for consultation on the Commission’s website,
- having regard to Draft Commission Regulation on the application of Article 101(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle

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1 OJ 36, 6.3.1965, p. 533.

2 OJ L 382, 31.12.1986, p. 17.

3 OJ L 336, 29.12.1999, p. 21.

4 OJ L 203, 1.8.2002, p. 30.

5 OJ L 171, 29.6.2007, p.1.

6 OJ L 188, 18.7.2009, p. 1.

sector (the new motor vehicles block exemption regulation, hereinafter the ‘new MVBBER’), published on 21 December 2009 for consultation on the Commission’s website,

- having regard to the Commission notice – Guidelines on Vertical Restraints<sup>7</sup>,
- having regard to the Commission explanatory brochure on distribution and servicing of motor vehicles in the European Union,
- having regard to the Commission notice – Guidelines on the application of Article 81(3) of the Treaty<sup>8</sup>,
- having regard to Draft Commission Notice – Guidelines on Vertical Restraints, published on 28 July 2009 for consultation on the Commission’s website,
- having regard to Draft Commission Notice – Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles, published on 21 December 2009 for consultation on the Commission’s website,
- having regard to Commission Communication of 25 June 2008 on ‘Think small first – a Small Business Act for Europe’ (COM(2008)394),
- having regard to the ‘Commission evaluation report on the operation of Regulation (EC) No 1400/2002 concerning motor vehicle distribution and servicing’ and its accompanying Staff Working Documents, published in May 2009 on the Commission’s website (hereinafter the ‘evaluation report’),
- having regard to Commission Communication of 22 July 2009 on ‘The Future Competition Law Framework applicable to the motor vehicle sector’ (COM(2009)388) and its accompanying Staff Working Documents,
- having regard to the Opinion of the European Economic and Social Committee of 18 March 2010 on Commission Communication: The Future Competition Law Framework applicable to the motor vehicle sector (INT/507 – CESE 444/2010),
- having regard to the contributions from the different stakeholders sent to the Commission during the periods of public consultations and published on the Commission’s website, as well as the positions expressed by the stakeholders during the joint meeting of the ECON and IMCO Committees on 19 October 2009 and the ECON Committee workshop of 12 April 2010, both on the MVBBER,
- having regard to its Resolution of 30 May 2002 on the draft Commission Regulation on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle industry (2002/2046(INI))<sup>9</sup>,

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7 OJ C 291, 13.10.2000, p. 1.

8 OJ C 101, 27.4.2004, p. 97.

9 OJ C 187 E, 7.8.2003, p. 24.

- having regard to its Resolution of 15 January 2008 on CARS 21: A Competitive Automotive Regulatory Framework (2007/2120(INI))<sup>10</sup>,
  - having regard to its Resolution of 25 March 2009 on the future of the automotive industry<sup>11</sup>,
  - having regard to its Resolution of 9 March 2010 on the Report on Competition Policy 2008 (2009/2173(INI))<sup>12</sup>,
  - having regard to Rules 115(5) and 110(2) of its Rules of Procedure,
- A. whereas distribution agreements are regulated at EU level through two separate legal frameworks, namely, on the one hand, a Directive providing for the coordination of national laws regarding commercial representation agreements (Directive 86/653/EEC, the so-called Commercial Agency Directive), and, on the other hand, two block exemption regulations in the context of competition law as far as vertical distribution agreements are concerned (the current GBER and the current MVBBER),
  - B. whereas in 1999 the Commission defined in the current GBER a category of vertical agreements which it regards as normally satisfying the conditions for exemption laid down in Article 101(3) TFEU from the prohibition of anticompetitive clauses and practices,
  - C. whereas the motor vehicle sector has been subject to a specific competition regulatory framework since the mid-eighties,
  - D. whereas in 2002 the Commission considered that the motor vehicle sector should not be brought within the current GBER regime, because specific provisions were still needed to address the particular competition problems it had identified in this sector, namely an oligopolistic situation in the European car market; whereas the Commission was by then concerned that competition between car manufacturers was low,
  - E. whereas the Commission decided therefore to adopt in the current MVBBER stricter rules for this sector, in particular specific market share thresholds and additional hardcore restrictions and conditions,
  - F. whereas the scope of the current MVBBER encompasses three different product markets: (a) new motor vehicles (primary market); (b) spare parts for motor vehicles (aftermarket); and (c) repair and maintenance services (aftermarket); whereas motor vehicles include both passenger cars and commercial vehicles,
  - G. whereas both the current GBER and the MVBBER will expire on 31 May 2010; whereas the Commission has launched the process of reviewing both regulations and their accompanying guidelines,
  - H. whereas the Commission now considers that the markets for new motor vehicles sales are

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10 Texts adopted, P6\_TA(2008)0007.

11 Texts adopted, P6\_TA(2009)0186.

12 Texts adopted, P7\_TA-PROV(2010)0050.

highly competitive and that concentration levels have been declining; whereas the Commission considers also that entry barriers are low in this market and that there has been a rapid growth of Eastern Asian entrants generated by aggressive pricing,

- I. whereas the Commission notes that, as a result, retail prices for passenger cars have been decreasing; whereas, on the contrary, the Commission notes that competition on the repair and maintenance markets is still very limited and that prices are very high for certain types of spare parts,
- J. whereas the Commission proposes that a specific block exemption for the purchase and sale of new motor vehicles (primary market) is no longer needed and that the new GBER will apply to the primary market after a prolongation period of 3 years; whereas until 31 May 2013, the current MVBBER will continue to apply to the primary market,
- K. whereas the Commission also proposes to adopt specific guidelines of interpretation and application applicable to the motor vehicle sector, both for the primary market and the aftermarket,
- L. whereas, for the aftermarket (spare parts for motor vehicles, repair and maintenance services), the Commission proposes to adopt a special block exemption regulation, the new MVBBER,
- M. whereas it is undeniable that the vast majority of the motor trade and repair businesses have expressed their serious concerns about a risk of temporary suspension or short-term prolongation of the current MVBBER, as it will lead to a further deterioration of the power balance between manufacturers and the rest of the automotive value chain and will benefit only the handful of major vehicle manufacturers,
- N. whereas several representatives of the vehicle spare parts market, servicing and repair sector have expressed their support for a new set of aftermarket rules as a major step forward compared to the current MVBBER,
- O. whereas the primary market and after-sales market are not mutually exclusive and the commercial viability of many independent dealers depends on both their flexibility to sell and repair vehicles,
- P. whereas the EU is currently facing an exceptional financial and economic crisis and high rates of unemployment; whereas the EU should promote a competitive social market economy and aim at reducing poverty; whereas the European automotive industry is a key sector of the European economy, contributing to employment, innovation and the competitiveness of the whole economy; whereas this industry has been particularly hit by the current crisis and supported by State interventions in several Member States,
- Q. whereas multi-branding provisions apply to sales distribution under the same roof, in separate showrooms in the same area or in separate premises,
- 1. Welcomes the fact that the Commission has opened several public consultations as regards the review of both the MVBBER and the GBER; appreciates that the Commission has submitted to Parliament the evaluation report on the application of the current

MVBER;

2. Encourages the Commission to proactively work in a spirit of openness and transparency with the Parliament and to inform and send legislative, pre-legislative and non-legislative documents to Parliament at an early stage, as assured by Commissioner Almunia during his hearing as Commissioner-designate;
3. Highlights that such approach would allow for a thorough debate among Members of Parliament and would enhance the democratic legitimacy of the Commission decision;
4. Calls on the Commission to clearly specify which contributions from the stakeholders, if any, it intends to incorporate in the final regulation so as to ensure a transparent drafting of the final MVBER and GBER;
5. Stresses that it is necessary to establish general conditions to make the motor vehicle industry in the EU, including both vehicle manufacturers and vehicle parts producers, sustainable and enable it to remain economically efficient and in the forefront of technological, ecological and social innovation; underlines the importance to strike a balance between competition requirements and intellectual property, both in the internal market and with third countries;
6. Believes that the new MVBER should be regarded as a piece of an integrated approach to legislation in the motor vehicle sector;
7. Recalls the importance of legal certainty; therefore calls on the Commission to draft Frequently Asked Questions or an Explanatory Brochure to explain in more detail the new legislative framework to market players;
8. Points out that the relationship between manufacturers, on the one hand, and dealers, service providers and other relevant economic actors in the automotive supply chain, on the other hand, has to be carefully analysed, taking into consideration their unequal economic power as trading partners;
9. Stresses that there is a need to ensure that small and medium-sized players in the automotive supply chain enjoy favourable conditions; emphasises the importance of adopting a solid regulatory framework able to effectively prevent any abuse of any dominant position and ensure that there is no increase of dependence of SMEs vis-à-vis large manufacturers; recalls the importance of SMEs as job-providers, in particular in a time of economic crisis, and as suppliers of proximity, responding to the demand of the population, even in less populated areas;
10. Is not in favour of the removal of certain conditions imposed by the current MVBER for an agreement to be exempted, namely the contractual clauses on multi-branding, notice of termination, duration, arbitration of disputes, litigation and business transfers within the network; recalls, in particular, that the need to simplify the conditions for business transfers is part of the first principle of the Small Business Act; draws attention to the risk represented by a single branding obligation for consumer choice and dealers' independence vis-à-vis manufacturers; fears that these clauses might become subject to the different national contract laws;

11. Calls on the Commission to ensure that distributors, including from the motor vehicle sector, benefit from the same level of contractual protection throughout the EU as commercial agents currently do; believes that such an alignment could be achieved by amending Directive 86/653/EEC and partially extending its scope of application to include all distribution agreements;
12. Emphasises that it is important particularly in times of economic distress to allow concrete commercial alternatives to ownership, such as leasing, to satisfy the mobility needs of individuals; therefore, urges the Commission to ensure that the new MVBBER and GBER stipulate the required conditions, such as the end user definition, to allow such commercial alternatives to develop and contribute to healthy competition in the automotive market;
13. Is not in favour of a non-binding Code of Conduct setting out mutual obligations between franchised dealers and their suppliers which will be ineffective in protecting dealers' interests vis-à-vis manufacturers; any Code of Conduct should be accompanied by a proper enforcement mechanism, namely access to an appropriate arbitration procedure;
14. Fears that the objective of the Commission to continue promoting effective competition in the motor vehicles aftermarket by addressing consumer choice and effective access for independent market operators could not be reached through this reform; agrees with the Commission that competitive conditions in the motor vehicle aftermarket have also a direct consequence on public safety;
15. Calls on the Commission to maintain the threshold of 30% for the obligation to purchase spare parts, in order to keep authorised repairers' freedom to purchase spare parts from other sources than the vehicle manufacturer and therefore avoid coming back to a quasi-captive supplying, which would increase spare parts' prices and cut other spare parts suppliers' activity;
16. Stresses that European consumers and other end users should not face any barriers to purchase a car at competitive prices, even in large quantities and regardless of the distribution system chosen by the supplier, and be able to choose where and how they have repair and maintenance carried out;
17. Reminds in this context the repeated calls from Parliament for greener vehicles and the statements by the President of the Commission on greening the economy; believes that multi-branding as well as easy access to repair and maintenance services help to reach the objective of lower emission vehicles through easy comparison of vehicles when buying a car and adequately functioning vehicles; reiterates its request to investigate the effectiveness of State aid granted to the motor vehicle sector for 'green recovery';
18. Is concerned that the Commission's proposed guidelines for the motor vehicle sector are insufficiently precise to ensure technical information is made available to independent dealers in the same comprehensive format as provided for in Regulation (EC) No 715/2007 and Regulation (EC) No 595/2009; furthermore, calls on the Commission to update the definition of technical information on the basis of technological progress and to ensure continued access to updated services and parts data in readily accessible electronic formats;

19. Calls on the Commission to apply the new aftermarket rules as of the 1st June 2010 irrespective of solutions to be adopted regarding the sales of new vehicles;
20. Calls on the Commission to address new forms of anticompetitive customer tying measures such as any type of after-sales service contingent upon the exclusive repair or maintenance of a vehicle within the brand-specific network;
21. Calls on the Commission to monitor the operation of the new legal framework for the automotive sector on a regular basis; in particular, urges the Commission to carry out a thorough reassessment of the competition conditions in the motor vehicle primary market before the end of the prolongation period, focusing on the impact of certain contractual clauses such as multi-branding, business transfer and the threshold for spare parts, as well as on the provisions of the proposed Code of Conduct; in this respect, urges the Commission to leave all regulatory options open and to take appropriate measures, including a new prolongation of part of the MVBBER or revisions to be made to the GBER, should it appear that the competitive conditions in particular in the primary market have significantly worsened;
22. Stresses that Parliament should be informed by the Commission of any adaptation of the new legal framework that it might envisage to adopt as a result of its market monitoring and that Parliament should be consulted in good time before such a decision is taken;
23. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.