

Distribution and repairs of motor vehicles in the Czech Republic under Regulation (EC) No. 1400/2002

Office for the Protection of Competition
December 2008

1. INTRODUCTION

1.1 Introduction to the issue

The sector of distribution and repairs of motor vehicles is one of the areas that are extremely important for European consumer. In the European Union, the specific issue of distribution and repairs of motor vehicles is regulated by Commission Regulation (EC) No. 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty¹ to categories of vertical agreements and concerted practices in the motor vehicle sector (hereinafter also „Regulation“ or „Regulation No. 1400/2002“). The Regulation covers vertical agreements regarding conditions under which parties may buy, sell or resell motor vehicles, spare parts for motor vehicles or repair and maintenance services for motor vehicles. In the Czech Republic, the Regulation became effective on 1 May 2004². Before the Regulation became an integral part of the Czech legal order, the legal problems of competition in the motor vehicle sector were regulated by the Notice of the Office for the Protection of Competition No. 31/2003 Coll., on permission of a general exemption from the prohibition of agreements disturbing competition according to Section 3, paragraph 1 of the Act³ for certain types of vertical agreements on the distribution and repairs of motor vehicles.

1.2 Reasons, form and objectives of the survey

For the time both enactments regulating the protection of competition have been in force in the specific sector of motor vehicles, the Office for the Protection of Competition (hereinafter also referred to as „the Office“) solved tens of instigations relating to this area. Some of these instigations resulted in initiating of the administrative proceedings⁴. In the second half of the year 2006, the European Commission acquainted the Office with the results of the study titled „Developments in Car Retailing and After-sales Markets under the Regulation“, which was carried out for the European Commission by the consultancy company London Economics (hereinafter referred to as „the Study“).⁵

Following the abovementioned, the Office had concluded that it was necessary to take actions that would contribute to a closer mapping of the state of competition environment in the motor vehicle sector, particularly with regard to the objectives for which the Regulation was adopted by the European Commission. The concept of a general questionnaire survey was chosen as the most suitable form to achieve given objective for its greatest predicative value. The respondents chosen were undertakings whose everyday activities are directly affected by the content of the Regulation. Respondents for the purpose of the survey were the members of authorized distribution and repair systems of motor vehicle suppliers.

1.3 Preparatory phase

Although the large application practice made it possible for the Office to sufficiently identify possible problematic aspects of the motor vehicle sales and repair markets, before

¹ Treaty establishing the European Community

² It is a so-called direct applicability. The Regulation may be applied to relations without a Community impact from 1 October 2005.

³ Act No. 143/2001 Coll., on the Protection of Competition and on amendment to certain acts (Act on the Protection of Competition), as amended (hereinafter referred to as "the Act").

⁴ For example, Administrative Proceeding, Ref. No. S 146/04 conducted with the company AuTec Group a.s.

⁵ Developments in Car Retailing and After-sales Markets under Regulation No. 1400/2002 – explicitly, the study did not deal with the situation in the Czech Republic.

starting the survey, the Office had contacted interest groups associating competitors operating in the car industry. The Office addressed the Association of Importers and Manufacturers of Car Parts and Repair Equipment (SISA), the Czech Association for Motor Trades and Repairs (SAČR), the Automotive Industry Association (SAP), and the Car Importers Association (SDA) with a request for their experience and comments relating to the application of the Regulation, as well as the Study. Some of the experience and observations of these organizations, or their members, were taken into account during the formulation of the questionnaire.

1.4 Questionnaire

The questionnaire designed for authorized distributors and repairers of motor vehicles⁶ contained a total of 65 questions. It was divided into five sections. The first and the fourth sections were aimed, in particular, at a closer identification of the respondent. The second and the third sections dealt closely with motor vehicle distribution. The fifth section of the questionnaire focused on the provision of repairs and maintenance services for vehicles and related activities. Authorized distributors and repairers had the possibility to choose their answers from 268 pre-formulated answers. In a total of 40 cases, the respondents had the possibility to add more details to their answers. Apart from the hardcopy, the questionnaire was made available also in electronic form on the Office's website.

1.5 The survey

Virtually all authorized distributors of motor vehicles of all⁷ brands operating in this country were addressed with the questionnaire. All authorized repairers which operate also authorized motor vehicle distribution were addressed as well. It meant in practice that from July to October 2007, a total of 866 undertakings⁸ comprising a distribution network of a total of 22 importers or agents of motor vehicle manufacturers of 34 brands were addressed. As to 31 December 2007, the Office received a total of 397 completed questionnaires sent for 555 addressed undertakings, which in percentage represents a response rate of 71.5 %.

⁶ For the purpose of this study, the term „motor vehicles“ or just „vehicles“ means both passenger cars and light commercial vehicles. In relation to the abovementioned objectives of the Study, the diversification of these two categories did not seem useful, so it was abandoned with regard to the least possible administrative load of respondents. This in no way affects the future definition of the relevant markets in the decision-making and application practice of the Office.

⁷ Within the survey, the distributors of brands whose after-sales network is only being prepared and the distributors of brands whose domestic market share can be determined as marginal were not addressed.

⁸ This data includes sales establishments, i.e. the branches of individual distributors. The number of actually addressed distributors is thus lower.

Motor vehicle suppliers whose authorized networks were addressed within the survey ^{*)}
A.M.T. Group a.s.
BMW Vetriebs GmbH – organizational unit Czech Republic
CITROËN ČESKÁ REPUBLIKA s.r.o.
CS AUTOLADA spol. s r.o.
DaimlerChrysler Automotive Bohemia s.r.o.
FIAT ČR spol. S r.o.
FORD MOTOR COMPANY, s.r.o.
General Motors Southeast Europe Ltd, organizational unit
Honda Česká republika s.r.o.
HYUNDAI Motor CZ s.r.o.
Import Volkswagen Group s.r.o.
KIA MOTORS CZECH s.r.o.
M Motors CZ s.r.o.
Mazda Motor Logistics Europe NV, organizational unit
Nissan Sales Central & Eastern Europe Kft. – organizational unit
PEUGEOT ČESKÁ REPUBLIKA s.r.o.
Renault Česká republika, a.s.
SUBARU ČR, s.r.o.
SUZUKI MOTOR CZECH, s.r.o.
ŠKODA AUTO a.s.
TOYOTA MOTOR CZECH spol. s r.o.
Volvo Auto Czech, s.r.o.

^{*)} The companies are in alphabetical order and their names are valid as to July 1, 2007.

2 MOTOR VEHICLES SALE

2.1 Distribution networks in general

The authorized distribution networks of motor vehicle manufacturers or their agents operating in the Czech Republic (hereinafter also as „the importers” or „the suppliers”) can be characterized in most cases as relatively experienced. 66.3 % of the authorized distributors have been engaged in the sale of motor vehicles (further also „vehicles”) for 10 and more years.⁹

Over 87 % of the distribution networks members deal with, apart from the sale of new vehicles, the sale of used vehicles.¹⁰ There are various reasons why some distributors do not sell used vehicles. Most of the respondents gave reasons for not selling used vehicles by insufficient sale capacities.

As regards the trend in the development of distribution networks or the development of the number of distribution network members, this can be considered stable to growing. The development of their own distribution networks in the last years was marked as stable by 50.6

⁹ Unless otherwise stated, a sales (distribution) network in the further text stands for an authorized distribution network and a distributor stands for an authorized distributor.

¹⁰ Thereinafter, motor vehicles or vehicles stand solely for new vehicles.

% of distributors. Nearly one third of the respondents state that the number of members of their distribution network has been growing in the last years. Less than 9 % of distributors have expressed the opposite opinion.

2.2 Purchase and sale of vehicles

Over 70 % of the Czech distributors sold more than 100 vehicles in 2006. Almost 5 % of the motor vehicle distributors have such a sale capacity available enabling them to sell more than 1000 vehicles a year.

The trend in the development of vehicle sales in the last years can be generally considered positive. More than 51 % of the respondents stated that their sales have been growing in the last years. According to almost 26 % of the distributors, their sales in the last years could be considered stagnant. Only fewer than 16 % of distributors state that the numbers of vehicles they have sold have had a downward trend in the last years.

Distributors purchase the decisive majority of the total sold vehicles via importers. The prevalence of vehicles purchased via an importer over the total sold vehicles was explained by distributors most often by their necessity to have stock and demonstration vehicles available. Conversely, cases when distributors sold more vehicles than they purchased via an importer were explained by the respective distributors by purchasing vehicles from third parties.

In the cases when a distributor is not able, for any reason, to cover the current sales demand, the distributor most often addresses another member of the domestic distribution network with a request for the supply of vehicles. In 2006, distributors also purchased vehicles from members of a foreign distribution network. Among other undertakings from which Czech distributors purchased at least one vehicle in 2006 there are particularly undertakings specialized in importing vehicles, i.e. independent importers.

Distributors only supply vehicles outside the Czech Republic in very limited amounts. Most of the respondents stated that they did not sell a single vehicle abroad in 2006. Almost 88 % of the distributors whose exports were zero in 2006, explained this state by the fact that there was no demand for vehicles supplied by them from foreign customers. This reason corresponds also to the other answers in which distributors expressly state that the price level of vehicles sold in the Czech Republic is higher than abroad.

2.3 Barriers to entry to an authorized distribution network and barriers to sell multiple brands

The most frequently mentioned factor which could discourage the current members of distribution networks from reapplying for membership in a distribution network is investment demand. The financial demand relating to establishing and operating a car shop as one of the possible barriers to entry is perceived by more than three fourths of distributors. From the view of distributors, another potential barrier is a decreasing profitability of this type of business. Specifically, this factor is regarded as problematic by 62 % of the respondents.

As regards the sale of multiple brands¹¹, or factors making the sale of multiple brands¹² difficult, the largest number of distributors (59 %) include large costs connected with

¹¹ Making deal in multiple brands easier, so-called multi-branding, is one of the objectives of Regulation No. 1400/2002.

an extension of sale by another brand among the reasons why they prefer selling single-brand vehicles. Almost 28 % of distributors gave loyalty to a brand as one of the reasons why they sell vehicles of only one brand. Almost the same number of distributors (27 %) gave insufficient sales capacities as the reason for selling vehicles of one brand or brands produced within one group.

According to the distributors, the sale of competing brands is also made difficult by a range of various other factors, such as a shortage of qualified personnel, a high demand for the fulfillment of criteria, unwillingness of importers to extend their distribution networks or the need to devote to dealing with the sale of the current brand.

2.4 Associations

As regards the existence of associations of distributors within distribution networks, the received answers show that the situation in relation to domestic distribution networks is not unambiguous. While 43.9 % of the respondents stated that there was an association of distributors in their distribution network, almost 45 % of the distributors stated that there were no association in the distribution network whose members they are.

The reasons why associations or other federations defending distributors' common interests do not exist are, according to the opinions of distributors across individual distribution networks, basically identical. The reason for the non-existence of an association given by the respondents most frequently is an inconsistency of opinions and diversity of interests of individual distributors. Some respondents stated that an association had existed, but it was dissolved. The reasons for the dissolution of the association were among others concerns about possible sanctions, a minimum ability to carry through anything or not taking the association into consideration by the importer. A few distributors stated that they did not see any reason for the existence of an association inside their distribution network, or that an association was not necessary.

61,2 % of the distributors are members of an association within whose distribution network the association operates. The remaining respondents, who are not members of an association, have numerous different reasons for their attitudes. The most frequently given reasons were weak bargaining position of the association, non-uniformity of the association members or non-observation of the contractual clauses by the importer. A significant number of distributors gave as the reason for their non-participation in an association that the system of membership in particular association enabled only certain applicants to be its members.¹³

2.5 Approach of importers to distribution network

2.5.1 Approach in general

Distributors in general perceive the approach of importers to the members of distribution networks as a relatively consistent. More than 40 % of distributors stated that, basically, the importer approaches all members of the distribution network equally. Almost 37 % of distributors stated that the importer did not treat all members of the distribution network equally, but its approach was justifiable for objective reasons (e.g. a different sales capacity of individual distributors).

¹² or „out of group“ brands

¹³ Most often it is a system when a certain geographical region is represented by a single distributor.

A majority of distributors do not regard the importer-distributor relationship as balanced. Almost 74 % of distributors stated that the business position of the importer is stronger compared to the position of their company. On the contrary, a fourth of the respondents consider the business relationship with the importer mutually balanced.

As regards the evaluation of the importer's activity, the average grade was 2.7 using the scale from 1 to 5. A little better was the evaluation of importers in their approach to the distribution network, or to individual distributors. On average, the distributors evaluated the approach of importers to their companies with the grade 2.6.

2.5.2 Sales targets

The importer regularly agrees on the so-called sales targets¹⁴ with an overall majority of domestic distributors. In most cases, the sales targets are concluded between importers and distributors in writing. The remaining distributors stated most often that their sales targets were agreed on orally or they were only notified by the importer.

About a third of distributors perceive the sales target as a reasonable compromise. A little fewer respondents state that although the sales target is set by the importer, they have a limited ability to affect its amount. Far most respondents (39 % of distributors) stated that the sales target was set by the importer and their company had practically no ability to affect its amount.

Three fourths of distributors had difficulties to meet the sales targets. Almost every tenth distributor stated that it usually did not manage to meet its sales targets. Conversely, 14.7 % of respondents managed to meet given sales targets without any greater problems.

Almost 9 % of distributors stated that they were aware of a distributor with whom the importer had terminated the contractual relationship for non-meeting the sales targets. In this respect, several respondents stated that they were notified at various time intervals of not reaching the agreed sales targets and of the subsequent possibility of termination of the cooperation with the importer.

Sales targets are far from being the only measure with the aim to encourage the sale of vehicles. Sixty-three percent of distributors stated that apart from sales targets, also other targets were agreed between them and the importer. In this respect, the distributors most often mention bonus and motivation programmes mostly connected with the fulfillment of targets regarding the sales of spare parts and accessories.

2.5.3 Sale prices

Almost 97 % of distributors stated that the importer regularly issued a pricelist of vehicles. The prices in the pricelist are usually marked as recommended. In some cases, the prices are marked as sale, list or action prices.

¹⁴ For the purpose of the survey, a sales target means a distributor's commitment to sell or purchase from an importer a certain amount of vehicles during a particular period of time.

The final sale price is affected by a number of factors. Distributors most often named the amounts of purchased vehicles, the „loyalty” of customers and the purchase prices of vehicles among the factors that affect the sale prices of a vehicle.

As regards the relation between the final price of sold vehicles and the price in the pricelist, distributors did not confirm a more significant correlation. The most respondents, almost every fourth, stated that they did not sell a single vehicle for the price in the pricelist in 2006.

2.5.4 Leasing

2.5.4.1 Operational leasing

Almost every third distributor perceives companies providing operational leasing as a customer with a strong bargaining position. According to the opinion of the same number of distributors, this position is so strong that a transaction with a company providing operational leasing is usually made under less advantageous conditions than in the case of other (major) customers. Conversely, for 5.3 % of distributors, a company providing operational leasing is a more lucrative customer than a common customer in relation to the amounts purchased and trade terms. For almost 27 % of respondents, a company providing operational leasing is a customer as any other customer. The opinions of some distributors show that companies providing operational leasing do business rather with larger distributors.

Almost 90 % of distributors do not feel to be restricted whatsoever by importers when making a transaction with companies providing operational leasing. The remaining distributors stated that the importer took steps making the cooperation with companies providing operational leasing difficult for them.

Over 35 % of distributors stated that the condition for making a transaction with a company providing operational leasing is the fact that the seller is to be given the identity of the leasing company's client. Conversely, almost two thirds of distributors stated that doing business with a company providing operational leasing was not subjected to awareness of the identity of the client of the company providing operational leasing.

2.5.4.2 Financial leasing

Distributors feel to be more restricted in cooperation with companies providing financial leasing than in the case of doing business with companies specializing in operational leasing. While 61.2 % of distributors stated that it is completely at their own discretion or at the discretion of their clients as to with which leasing company they will cooperate, over 25 % of respondents stated that cooperation with leasing companies was partly influenced by the importer's recommendation. About every tenth distributor feels to be influenced substantially by recommendations of the importer in cooperation with leasing companies.

3 REPAIRS AND MAINTENANCE OF VEHICLES

3.1 Repair networks in general

An overall majority of domestic distributors provides, apart from the sale of vehicles, authorized repair and maintenance services for vehicles.¹⁵ As well as in the case of the distribution of vehicles, also the network of repairers is relatively experienced. Seventy percent of repairers have been offering the repair and maintenance services for vehicles for 10 and more years. An average repairer repairs more than 1000 vehicles a year.

3.2 Repairs of multiple brands and the sale of spare parts

Most of the vehicles that were repaired in domestic repair shops in 2006 were vehicles supplied by importers. Every third repairer states that 91 % of the repaired vehicles in 2006 are vehicles supplied by the importer.

Fewer numbers of repairs of different brands' vehicles than the brands supplied by an importer were most often justified by an insufficient demand from customers and resistance to repair vehicles of other brands. Almost 40 % of repairers who realized less repairs of vehicles of other brands¹⁶ stated that the reason was an insufficient demand. Thirty-five respondents who answered given question had no interest in repairing vehicles of other brands. Other reasons by which repairers explained their low volumes of repairs of other brands vehicles were lack of equipment or know-how. Basically, repairers did not confirm that insufficient offer of spare parts can be among the factors that would discourage them significantly from repairing vehicles of other brands.

As regards the spare parts used out of warranty, the repairers' answers show that an overall majority of spare parts used in out-of-warranty repairs are spare parts supplied by the importer or via a distribution channel controlled by the importer. Repairers most often appreciate in the spare parts supplied by importers their quality, easy ordering and that they are easily „reclaimable”. Only a marginal percentage of repairers stated that they did not prefer spare parts supplied by their importer.

3.3 Approach of importers to repair networks

3.3.1 Profit on repairs

The most repairers (41.6 %) stated that they had made no profit on repairs under warranty. On contrary, almost every fifth repairer makes a profit equal to or higher than 5 % of the spare part price on repairs under warranty. Sixteen percent of respondents consider the average profit generated on repairs under warranty to be adequate. On contrary, 73 % of repairers consider the profit on repairs under warranty to be insufficient.

As regards out-of-warranty repairs, the repairers' average profits range from 11 % to 30 % of the spare part price. The most respondents (47 %) evaluated the average profit generated on out-of-warranty repairs to be 21-30 %. Almost 70 % of repairers consider the profits generated on out-of-warranty repairs to be adequate.

¹⁵ Unless otherwise stated, a repair network in the further text means an authorized repair network and a repairer means an authorized repairer.

¹⁶ Fewer than 20% of the total number of repaired vehicles.

3.3.2 Sale prices

As well as in case of vehicles, in the case of the sale of spare parts the representatives of vehicle manufacturers regularly issue spare part pricelists. A similar practice is maintained by importers also in the case of marking the list prices of spare parts. Almost 81 % of respondents stated that the importer marked the prices of spare parts in their pricelists as recommended. Every tenth repairer stated that the importer marked the spare part prices as maximum prices.

Unlike the pricelists of vehicles, the prices in pricelists play, in the case of determining the final sale prices of spare parts, a relatively significant role. It is the pricelist of spare parts that is the factor which repairers take into account most often in deciding on the final sale prices. Conversely, the prices of spare parts charged by other repairers are an aspect that plays rather a negligible role in the sale prices of spare parts.

A relatively significant effect of the prices in pricelists on the final prices of spare parts is also confirmed by the repairers' answers to the question as to what percentage of spare parts supplied by the importer was sold at the prices in pricelists in 2006. Eighty-one percent of repairers sell, or sold in 2006, a minimum of 50 % of spare parts supplied by importers at the prices corresponding to the list prices.

3.3.3 Using „original” and „non-original” spare parts

The Regulation distinguishes two basic categories of spare parts. These are original spare parts and spare parts of matching quality. „Original” spare parts in the Regulation stands for spare parts which are of the same quality as the components used for the assembly of a motor vehicle and which are manufactured according to the specifications and production standards provided by the vehicle manufacturer for the production of components or spare parts for the motor vehicle in question. This includes spare parts which are manufactured on the same production line as these components. It is presumed, unless the opposite is proven, that parts constitute „original” spare parts if the part manufacturer certifies that the parts match the quality of the components used for the assembly of the vehicle in question and have been manufactured according to the specifications and production standards of the vehicle manufacturer. Spare parts of „matching quality“ in the Regulation mean exclusively spare parts made by any undertaking which can certify at any moment that the parts in question match the quality of the components which are or were used for the assembly of the motor vehicles in question.

For the purposes of the survey, the abovementioned terminology was disregarded. For the purpose of the survey, „original” spare parts stands for spare parts of the same quality as components used for the assembly of a motor vehicle and which are manufactured according to the specifications and production standards provided by the vehicle manufacturer for the production of components or spare parts for the motor vehicle in question and which are supplied via a distribution channel controlled by an importer including supplies between the members of a repair network.

Unlike this, „non-original” spare parts for the purpose of the survey stands for spare parts of the same quality as the components used for the assembly of a motor vehicle and which are manufactured according to the specifications and production standards provided by the vehicle manufacturer for the production of components or spare parts for the motor

vehicle in question and which are supplied out of a distribution channel controlled by an importer. For the purpose of the survey, „non-original” spare parts stands also for spare parts manufactured by any company which can certify at any moment that the parts in question match the quality of the components which are or were used for the assembly of the motor vehicles in question and which are supplied out of a distribution channel controlled by an importer.¹⁷

The customer who has a vehicle repaired in a repair network is in an overall majority informed whether an „original” or „non-original” spare part is used for the repair. The customer is informed on the use of an „original”/”non-original” spare part usually orally when making a job order or from the text on the tax document.

Only a third of repairers use at least 30 % of non-original parts for out-of-warranty repairs. On the other hand, two fifths of repairers use almost exclusively original spare parts supplied by the importer for out-of-warranty repairs. As it further results from the survey, in most cases the use of an original spare part is not the customer’s express wish as only one fourth of respondents marked this factor as significant.

As regard the importer’s awareness of using „original“ or „non-original“ spare parts or parts other than those supplied via an importer, it can be stated that the situation in domestic repair networks is not unambiguous in this respect. While 54.1 % of repairers stated that the importer was aware of what spare parts are used by the repairer for out-of-warranty repairs, fewer than 46 % of respondents stated the opposite.

The repairers’ answers show that importers most often come to know of using „non-original“ spare parts during their inspections of repair shops. These inspections or audits are regular or random, concern mostly the storage areas, accounting documentation and job orders. Some respondents state that they regularly send reports to the importer. It often appears in repairers’ answers that the importer comes to know of buying other than its spare parts from the fact that the target of spare parts purchase is not fulfilled. Some answers of repairers also show that in their repair business they use new information systems which enable the importer to have a relatively precise overview of completed jobs and orders.

As stated by almost 84 % of respondents, the possible use of „non-original“ spare parts is not connected with a sanction from the importer. The remaining respondents stated in their questionnaires that using a spare part other than that supplied by the importer was followed by a sanction from the importer’s side. In most cases, this „sanction”, as specified by respondents, follows in the case of using a „non-original” spare part within repairs carried out under warranty.¹⁸ Some repairers consider a sanction for using „non-original” spare parts also a reduction of financial bonuses connected with the fulfillment or non-fulfillment of the planned withdrawal of spare parts.¹⁹

3.3.4 Solving atypical complaints

Almost 48 % of repairers stated that in the cases when a customer, during warranty period, delivers a vehicle for a complaint that has not undergone the prescribed service

¹⁷ The terminology in the Regulation as regards spare parts is governing for the application activity of the Office.

¹⁸ Sanction in this case is usually perceived by repairers as a „loss of warranty“ or non-compensation of a complaint by the importer.

¹⁹ Non-fulfillment of agreed targets may result in the notice of termination of the service agreement.

(warranty) inspection, the required repair is not recognized as a repair „under warranty”. Almost every fourth repairer stated that such a defect would be repaired for the customer in a standard way. Repairers also stated that each case was solved individually or in cooperation with the importer.

If a customer delivers, during warranty period, a vehicle for a complaint on which a repair carried out by a third party is recognizable and such repair, however, is not connected with the claimed fault in any way, three fourths of repairers' stated that they would repair such defect in a standard way. Less than 13 % of respondents stated that the required repair was not recognized as a repair under warranty to the customer. As well as in the cases of the assessment of a defect in a vehicle that has not undergone the prescribed service (warranty) inspection, also in this case repairers stated that each case was solved individually or in cooperation with the importer.

3.3.5 Technical devices, diagnostic tools, car accessories

3.3.5.1 Technical and diagnostic devices

Eighty-nine percent of the members of repair networks stated that the importer affects what technical and diagnostic devices were used for the repairs of the vehicles supplied by it, of which almost 65 % of respondents regard the way by which the importer affects the choice of technical devices used as significant. By contrast, almost 9 % of respondents stated that the importer basically did not affect what technical and diagnostic devices were used for the repairs of vehicles supplied by him.

As it results from the repairers' answers, most of the domestic members of motor vehicle manufacturers use a so-called qualitative distribution system, i.e. a system in which the supplier uses such criteria for the choice of repairers that only concern the quality and they are defined uniformly for all repairers that want to join the distribution system. A repairer joining this system is required to meet qualitative criteria which, among others, specify the equipment of the repairer with prescribed technical and diagnostic devices.

Observance of these criteria or standards is usually checked by the importer continuously. In the cases when drawbacks are found in the distributors' equipment, financial sanctions are imposed, usually after a previous notice from the importer. Failure to observe qualitative criteria may even result in the termination of the so-called service agreement.

3.3.5.2 Car accessories and car paints

More than every other repairer states that the importer affects what car accessories are sold for the vehicles supplied by it. According to the opinion of the fifth of repairers, the sale of car accessories is affected significantly. By contrast, almost 44 % of respondents stated that they basically did not feel to be affected by the importer when selling car accessories. Basically, the repairers are usually motivated to sell car accessories supplied by the importer in two ways. Either the purchase of car accessories is included in the plan of spare parts purchase or special sales targets are set for the purchase of car accessories.

More than two thirds of repairers basically do not feel to be affected by the importer in any way in the use of car paints. Almost 16 % of respondents stated in the questionnaire that the importer affects what car paints are used for the repairs of the vehicles supplied by it.²⁰ Over 12 % of the members of repair networks described the situation in such a way that the

²⁰ However, a large percentage of repairers do not operate a car paint shop at all.

importer affected significantly which car paints were used for the repairs of the vehicles supplied by it. Use of other car paints than those recommended by the importer is not usually connected with any sanction.

4 CONCLUSIONS – IN GENERAL

The domestic authorized distribution and repair networks of the representatives of motor vehicle manufacturers have undergone large changes since they were established. The sale of motor vehicles and after-sales services are currently provided for Czech customers by undertakings that have been engaged in this type of business for a long time. In the case of vehicle distributors, customers have the option to choose from distributors who are part of stable to growing distribution networks.

According to the data of the Car Importers Association, the number of vehicles registered in the Czech Republic has been growing in the last years. While in 2004, 125,758 vehicles were registered in the Czech Republic; in 2007 it was 132,542 vehicles. This trend was also confirmed by vehicle distributors when the absolute majority of them described their volumes of sales in the last years as growing.²¹

Despite the above-mentioned, the operation of motor vehicle sales and repairs is still connected with a number of aspects, be they related to the competition issue directly or indirectly. After the survey has been carried out, we can come to the following conclusions in the field of authorized motor vehicle sales and repairs.

4.1 Sale

4.1.1 Barriers to entry and barriers to sell multiple brands

Although, as it results indirectly from what has been stated above, the motor vehicle demand has been growing in the last years, there are factors which can discourage the current distributor and potential customer from the sale of motor vehicles.

The sale of motor vehicles falls to those types of business of which setting up and realisation requires considerable financial resources. It is the cost of investments connected with the sale of motor vehicles that is the factor which is probably most eligible to discourage potential applicants from joining a distribution network. Another relatively negative aspect of the sale of motor vehicles is the amount of profits created on this type business.²² In this connection it should be noted that within the survey most of the distributors marked the profits on vehicle sales as continuously decreasing. With regard to the fact that apart from the sale of vehicles, most distributors are also engaged in vehicle repairs, it can be presumed that there is a certain compensation of lower profits on sales with profits created on vehicle repairs and maintenance.

Another specific of operating the sale of motor vehicles or a possible barrier to entry to domestic distribution networks can be an unbalance²³ of the business relationship between the distributor and the importer. In this connection a large percentage of the distributors

²¹ This trend is also confirmed by the data of the European Car Manufacturers Association.

²² According to the Study, the average profits of European distributors before taxation was 1.38% in 2004.

²³ 73.8% of distributors marked the importer's position stronger (see above).

expressly considered the position of the distributor or the behaviour of the importer to be the barrier.²⁴

The cost of investments is not a barrier for a distributor to become a member of a distribution network. A high expensiveness is also a prevailing factor which prevents the current distributors from extending their sales with other vehicle brands. It is the cost of investments, along with other above-mentioned factors, that is probably the decisive factor as to why Czech distributors only sell vehicles of approx. 1.4 brand on average.²⁵ Although the survey has not proven that Czech agents of motor vehicle manufacturers would prevent distributors from selling competing brands to larger extent, certain efforts to make the sale of other brands difficult have been recorded in the survey.

According to Article 5, paragraph 1(a) of Regulation No. 1400/2002, as regards the sale of new motor vehicles, repair and maintenance services or spare parts the Regulation shall not apply to every direct or indirect non-compete obligation.

According to Article 1, paragraph 1(b) of Regulation No. 1400/2002, non-compete obligation²⁶ means any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell goods or services which compete with the contract goods or services, or any direct or indirect obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than 30 % of the buyer's total purchases of the contract goods, corresponding goods or services and their substitutes on the relevant market.

4.1.2 Sales targets and sale prices

One of the specifics of the distributor-importer contractual relationship is the fact that so-called sales targets are regularly agreed on between these undertakings. The exceptionality consists in that one party (distributor) undertakes to purchase a certain amount of goods – motor vehicles in this case – from the other party (importer) during a specified period of time. Specific for adopting the sales targets is the fact that one of the parties (distributor) in most cases (67.8 %) has no or only a limited ability to affect the final amount of the sales target. This is closely connected with the fact that for three of four distributors meeting of such agreed sales targets is difficult.²⁷

Although practically all representatives of motor vehicle manufacturers regularly issue pricelists of vehicles, the survey has not confirmed that the prices in these pricelists would be generally marked in an illegal way, i.e. as minimum or fixed prices. A conclusion can be made from the distributors' answers that when deciding on the final sale price, there are other factors that prevail rather than the price given in the importer's pricelist. Also, the survey has not collected any indications of that distributors would sell vehicles to customers to larger extent at the prices in the pricelists.

Although the distributors do not follow the prices in the importer's pricelist to larger extent, the space for a differentiation of vehicle prices within a distribution network may be

²⁴ In connection with the characteristics of the importer-distributor relationship, some distributors used emotionally biased words. For illustration, words such as superiority, arrogance, dictatorship, unworthiness, unsuitability, one-sidedness, inability or monopoly can be stated.

²⁵ As regards the average number of brands sold by a distributor, it is an arithmetic mean resulting from the data published as to a certain time by individual distributors on the Internet.

²⁶ Also translated as "prohibition to compete" or "obligation not to compete".

²⁷ Every tenth distributor is unable to meet the sales targets at all.

limited more significantly. This includes particularly such cases when so-called sale actions or various action discounts are announced by the importer for a certain model.

4.1.3 Leasing

Motor vehicles fall within technically and technologically advanced devices and customers have to take into account considerable financial resources to acquire them. This is undoubtedly one of the reasons why customers, unlike the previous years, turn to alternative forms of financing the purchase of a motor vehicle. Leasing has become one of the most popular ways of acquiring a motor vehicle.²⁸

In the field of motor vehicle purchasing, it is typically so-called indirect leasing when, simply said, a third party, i.e. a leasing company as a lessor, enters the legal relation between the seller and the customer. Leasing is further divided into operational²⁹ leasing and financial leasing.

Although an overall majority of the members of distribution networks do not feel to be limited in any way by importers when doing business with companies providing operational leasing, this does not mean that importers do not take such actions that make cooperation with companies providing operational leasing difficult for distributors.

From the distributors' answers, two basic types of importers' conduct that may limit cooperation of distributors with companies providing operational leasing can be identified. The first, most often given type is such a conduct when the importer makes the distributor's transaction with companies providing this specific financial product difficult by not awarding the company providing operational leasing with the status of a wholesale customer or end user. This procedure practically prevents the distributor from drawing such support or providing such a discount that is realized in the case of business with other buyers purchasing comparable amounts of vehicles.

The opposite case is when a distributor is practically excluded from carrying on a business with companies providing operational leasing by the fact that the wholesale discount system is set by the importer in such a way that it disadvantages the distributor purchasing fewer amounts of vehicles or by the fact that the importer reserves business with such type of customers for itself.³⁰

As regards utilization of the services of companies providing financial leasing, unlike companies providing operational leasing, there are larger efforts from the side of agents of motor vehicle manufacturers to affect as to with which leasing company their distributors will cooperate. As it can be seen from some answers, distributors can be motivated to cooperate with certain leasing companies, for example, in the form of financial bonuses.

4.1.4 Exports and imports

As regards the year-on-year growth in the number of registered vehicles or the number of vehicles sold by the members of distribution networks, it is influenced mainly by domestic

²⁸ See the development of the operational leasing market in the years 2000-2004 (in Study).

²⁹ For the purpose of this survey, operational leasing means a contractual relationship in which one party with a business plan and for consideration provides the other party – the so-called lessee – with an object chosen by him for use, without any contractual requirement for a possible ownership transfer of the object of leasing to the lessee.

³⁰ Some distributors stated that companies providing operational leasing had preferred larger distributors.

demand. In spite of the fact that the Czech Republic has been a Member State of the European Union for more than four years, most of the Czech distributors did not sell a single vehicle abroad in 2006.

The main reason for this state can be seen clearly in an insufficient demand from foreign customers. Different price levels of motor vehicles in individual EU Member States are offered in the first place as the explanation of the lack of interest of foreign customers. As it can be seen from the Car Price Report of the European Union³¹ dated 1 January 2008, the prices of motor vehicles were on average the highest in the Czech Republic compared to the other EU Member States in 2007.

Import of vehicles to the Czech Republic and the subsequent distribution of vehicles to individual members of an authorized distribution network is usually provided by the importer of the respective brand. Although the key volumes of vehicles are purchased by distributors via importers, there are cases when distributors solve the need for vehicle supply not only by cross-supplies within its domestic distribution network, but also by purchasing from the members of authorized foreign networks. In such cases, it can be conversely assumed that domestic distributors make profits on lower prices abroad.

According to Article 4, paragraph 1(b) of Regulation No. 1400/2002, the Regulation does not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object the territory into which, or of the customers to whom the distributor or repairer may sell the contract goods or services. However, the Regulation shall apply to:

- the restriction of active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another distributor or repairer, where such a restriction does not limit sales by the customers of the distributor or repairer;
- the restriction of sales to end users by a distributor operating at the wholesale level of trade;
- the restriction of sales of new motor vehicles and spare parts to unauthorized distributors by the members of a selective distribution system in markets where selective distribution is applied;
- the restriction of the buyer's ability to sell components, supplied for the purposes of incorporation to other products, to customers who would use them to manufacture the same type of goods as those produced by the supplier.

4.2 Repairs and maintenance

4.2.1 Barriers to entry and repairs of multiple vehicle brands

If distributors mentioned the costs of investment as one of the main barriers to build and operate a car showroom, the facts found by the survey prove that the same factor is eligible to discourage also potential applicants from operating a repair shop. In order for a repairer to become a member of the importer's repair network, it is necessary, among others,

³¹ http://ec.europa.eu/comm/competition/sectors/motor_vehicles/prices/report.html. This Report is published by the European Commission once a year and it is based on standardized data provided by motor vehicle manufacturers.

to meet strict qualitative requirements. Standards usually define exactly the requirements regarding the shop equipment, visual design of the repair shop or professional staff.

Even if authorized vehicle repair and maintenance services are connected with creating higher margins than in the sale of motor vehicles, it is the financial demand connected with investments in special equipment that may be the factor causing dependence on an importer or repairs of vehicles of certain brands.³²

Although the answers of most repairers show that the low volume of repairs of vehicles of other brands than those supplied by the importer is caused by an insufficient demand and unconcern of repairers, the facts found out by the survey also indicate that the restricting factors for repairs of vehicles of multiple brands are clearly a limited repair capacity of a particular repairer and the payload factor by carrying out repairs of the respective brand.

4.2.2 Sale of spare parts and sale prices

If a customer has his car repaired after warranty period in an authorized repair shop, there is a very high probability that the spare part used for the repair will be a spare part supplied by the importer. Only in about a fourth of cases such a spare part is used at the customer's wish.

Although the repairers, in connection with low volumes of sales of spare parts supplied outside the distribution channel controlled by the importer, point out particularly to the quality of these parts, it can be legitimately assumed that the relatively high volumes of parts supplied by the importer are affected also by another factor which has been mentioned by a relatively lower number of repairers. Some repairers expressly give as the reason for higher volumes of parts purchased from the importer the existence of a sales target or a plan of spare part sales. Failing to meet the agreed sales targets may have, as well as in the case of sales targets for vehicles, negative consequences for repairers. Repairers usually perceive failure to meet the purchase targets by not being paid financial bonuses.

According to Article 4, paragraph 1(k) of Regulation No. 1400/2002, the so-called hardcore restriction means the restriction of a distributor's or authorized repairer's ability to obtain original spare parts or spare parts of matching quality from a third undertaking of its choice and to use them for the repair or maintenance of motor vehicles, without prejudice to the ability of a supplier of new motor vehicles to require the use of original spare parts supplied by it for repairs carried out under warranty, free servicing and vehicle recall work.³³

Non-fulfillment of agreed purchase targets is also one of the ways of the importer's knowing of possible use of other spare parts than those supplied by it. Another possibility of how the importer knows of using a „non-original” spare part is marking of this fact on the invoice. This does not need to be explicitly the remark „original”/”non-original”. In some repair networks, there is a specific mark on invoices pointing out to the fact that it is an „original” or „non-original” spare part. With regard to the fact that customers cannot know, without a previous notice, what a particular mark means, it may be legitimately assumed that this practice serves particularly as information for importers.

³² According to the Study, the average profits of European distributors amounted to 2.67 % before taxation in 2004.

³³ Disabling to purchase spare parts may be classified also as the restriction of competition within the meaning of Article 1, paragraph 1.(a), or Article 5, paragraph 1(a) of Regulation No. 1400/2002 (see above).

As regards the prices of spare parts, the importers, as well as in the case of motor vehicles, regularly issue pricelists of spare parts. Although the prices in the case of spare parts are also marked as recommended in the pricelist, it is the price in the pricelist that is the dominant factor deciding on the final sale price of a spare part. Although the survey has not proven that importers would actively force to sell spare parts at the prices in their pricelists, it is difficult to challenge the effect of „list” prices on the final price of spare parts, also with regard to the amounts of percentages of spare parts that are sold to customers at the prices in the pricelists.

4.2.3 Technical devices, diagnostic tools, car accessories

As already mentioned above, the qualitative selective distribution system means a selective distribution system in which the supplier uses such criteria for the selection of distributors or repairers which only concern quality and which are set uniformly for all distributors or repairers. One of these qualitative criteria can be also standards regarding the repair shop equipment.

In these standards, importers very often provide the exact specification of a technical or diagnostic device and in some cases also a specific brand. It is not an exception within repair networks if an importer alone supplies the distributor with the prescribed devices and diagnostics or determines suppliers from which the distributor must buy the devices. While some repairers state that from the technical point of view the use of devices prescribed by importers is necessary, other repairers state that this approach prevents them from using more reasonable priced devices of the same quality supplied by third parties.

Similar practices can be encountered, to smaller extent, also when purchasing car accessories and car paints. Also with regard to the fact that these are usually not part of qualitative standards³⁴ or their use is specified directly in the „service“ agreement, importers’ approach in the cases when a different car accessory or paint is used is more tolerant than in the case of technical and diagnostic devices.

4.2.4 Warranty application

In the last years, carrying out regular service (warranty) inspections has become an integral part of the purchase or use of a motor vehicle. As proven by the survey results, failure to undergo these inspections may have an adverse effect for the customers of domestic distribution networks in the form of non-recognition of warranty. Only one fourth of repairers remove a defect for a customer who delivers his vehicle for repair and the vehicle has not undergone a warranty inspection in a standard way. In such case, practically every second repairer does not recognize such repair as a repair under warranty.

5 COMPLIANCE WITH THE REGULATION AND ACHIEVING THE REGULATION’S OBJECTIVES

5.1 Compliance with Regulation No. 1400/2002

³⁴ Purchase of car accessories is usually included in the plan of spare part purchase.

In general, the survey has not brought any information on that in the field of manufacture, sale, repair and maintenance of motor vehicles the obligations set in Regulation No. 1400/2002 would not be generally observed. On the other hand, it cannot be excluded, based on the survey results, that in the case of some distribution/repair networks, there is no conduct that in its substance cannot enjoy advantages brought by Regulation No. 1400/2002. According to the answers of some distributors/repairers, it is basically possible to identify three types of agreements between an importer and a distributor/repairer which could not be in compliance with Regulation No. 1400/2002. Specifically, this concerns i) disabling export of vehicles abroad, ii) disabling the sale of multiple vehicle brands, iii) disabling use of original spare parts or parts of matching quality supplied by third parties.

5.2 Achieving the objectives of Regulation No. 1400/2002

By adopting the rules specified in Regulation No. 1400/2002, the Commission of the European Communities pursued achieving the following objectives:

- A. To prevent the restriction of competing vehicle manufacturers and to provide access to the market for them*
- B. To strengthen the competition among the distributors of the same brand by supporting various forms of distribution*
- C. To facilitate cross-border trade in motor vehicles*
- D. To enable independent repairers to compete with authorized repairers*
- E. To ensure competition within authorized repair networks*
- F. To facilitate access of spare part manufacturers to the after-sales market*
- G. To protect independence of distributors against vehicle manufacturers*

As regards the fulfillment or achievement of individual objectives of the Regulation, the following can be stated based on what has been mentioned above.

- A. To prevent the restriction of competing vehicle manufacturers and to provide access to the market for them*

As stated in the Study, overall barriers for entry to the motor vehicle distribution market in the EU are relatively low.³⁵ From the view of a potential applicant, motor vehicle manufacturer, there are no formal legal or administrative barriers in the Czech Republic that would disable creating a retail network, or utilizing capacities of the members of the existing distribution networks.³⁶

Although a majority of the members of domestic distribution networks has not used, for various reasons, the ability to sell vehicles of various brands, the right to sell vehicles from a larger number of manufacturers should be secured also for the future.³⁷ The so-called multi-branding not only eliminates one of the barriers to entry of new manufacturers to the market, but also can help distributors increase savings on the volume and decrease dependence on a particular motor vehicle supplier.

Although the survey has detected, in several distribution networks, steps of some suppliers which can be interpreted as efforts to disable the sale of vehicles of third party

³⁵ Taken from the view of motor vehicle manufacturers.

³⁶ It was published in July this year that the Chinese brand BYD (Build Your Dreams) would enter the Czech market.

³⁷ Particularly with respect to the existing „multi-brand“ car shops.

brands, it can be generally stated with regard to the frequency of occurrences of such conduct that competing manufacturers are not restricted in the Czech Republic in an impermissible manner and they are not prevented from entering the market. It means that the first objective has been achieved.

B. To strengthen the competition among the distributors of the same brand by supporting various forms of distribution

As regards the forms of distribution, the European Commission states in the Evaluation Report to the application of Commission Regulation No. 1400/2002 that virtually all car manufacturers in all Member States have decided to utilize an agreement on quantitative selective distribution. The knowledge obtained by the survey do not indicate that the Czech Republic would be an exception in this respect.

The quantitative selective distribution system enables a supplier to use criteria for the selection of distributors or repairers that directly limit their number. The consequence of quantitative systems appears to be, among others, a certain unification of distribution networks. The use of a uniform corporate identity, for example in a combination with marketing actions of an importer, does not only need to bring a higher customer comfort. The use of the quantitative system may mean for customers in the final consequence even a decreased ability of selection.

In this connection, however, it should be noted that one of the key factors that decides on with which distributor of the respective network a customer will buy a vehicle, is the price. Although due to falling margins on vehicle sales and various sale actions the space for price competition inside a brand is decreasing, the ability to give a customer a more favourable offer remains, particularly as regards the members of foreign distribution networks.

With respect to what has been mentioned above, it can be stated that the objective to strengthen competition among the distributors of the same brand by supporting various distribution forms has not been fully achieved in the Czech Republic.

C. To facilitate cross-border trade in motor vehicles

Although the Regulation has brought motor vehicle distributors a larger ability to focus also on other than domestic customers, it cannot be stated that this opportunity is used significantly. The facts found out by the survey indicate that the causes of this state are not in an impermissible restriction of cross-border trade, but they should be found mainly in an insufficient interest of foreign customers.

Although the insufficient foreign demand may be caused by factors such as insufficient information or costs connected with the acquisition of a vehicle, according to information available, the cause of low sales to foreign customers can be the persistent difference in motor vehicle prices in individual Member States of the European Union.

The relatively high level of motor vehicle prices in the Czech Republic is not only disadvantageous for customers. As proven by the survey results, the consequences of motor vehicle manufacturers' decisions about the price levels at which the vehicles supplied by them will be sold in the individual Member States are perceived particularly by the domestic members of distribution networks. So due to the set price conditions and the Czech crown

exchange rate, Czech distributors only have a very limited ability to compete with the members of foreign distribution networks and to stand in the European competition.

With regard to the fact that now the Office does not have data available that would confirm a higher rate of individual imports, it can be concluded that the objective to facilitate cross-border trade in motor vehicles has not been fully achieved in the Czech Republic at this moment.

D. To enable independent repairers to compete with authorized repairers

An independent repairer is a provider of repair and maintenance services for motor vehicles not operating within the distribution system set up by the motor vehicle supplier. For the purpose of the Regulation, an independent repairer is also an authorized repairer to such extent in which it provides repair and maintenance services for motor vehicles which are not commonly repaired in the respective supplier's distribution system.

The survey does not prove that authorized repairers have been prevented from providing repair and maintenance services for motor vehicles of competing suppliers. As mentioned above, the low volumes of repairs of third party brand vehicles are rather caused by a limited repair capacity of authorized repairers.

Although there were no repairers standing outside motor vehicle suppliers' distribution systems among the questioned undertakings, establishing networks of independent repairers along with the minimum of complaints from the side of these undertakings do not indicate that independent repairers would be generally prevented from competing effectively with authorized repairers. It means that the fourth objective has been achieved.

E. To ensure competition within authorized repair networks

The data obtained by the survey prove that an overall majority of motor vehicle suppliers has used the possibility given them by the Regulation and for the selection of repair personnel they use the so-called qualitative selective distribution system. This system enables the applicant who meets pre-defined qualitative criteria to become a member of an authorized service network. On the one hand, the application of this type of distribution system guarantees an equal access of repairers to gain authorization and also the minimum quality standard of repair and maintenance services in relation to customers. On the other hand, it cannot be fully excluded that using qualitative distribution system in a combination with some other parameters set by motor vehicle suppliers can contribute to the decrease in the competition level inside a brand.

The facts obtained by the survey clearly confirm the conclusion that repairers keep acquiring most of the necessary spare parts from the motor vehicle supplier. This does not only apply to repairs under warranty, where the use of such spare parts is expected, but also to repairs carried out by authorized repairers out of warranty. Use of the same spare parts³⁸, along with the use of the same repair equipment and repair procedures, may mean the restriction of some competition parameters.

Therefore, the objective to ensure competition within authorized repair networks has not been fully achieved in the Czech Republic.

³⁸ Which, in most cases, are sold for the same price.

F. To facilitate access of spare part manufacturers to the after-sales market

In the after-sales market, there are basically two types of undertakings operating as providers: authorized repairers and the so-called independent repairers. According to the Study, an overwhelming majority of new motor vehicles is repaired within authorized repair networks and the share of the so-called independent repairers increases with the growing age of vehicles.³⁹

As regards the after-sales service provided by independent repairers, the Office has no underlying information on existence of significant barriers that would prevent spare part manufacturers from supplying to this market. In this respect, the current situation in authorized repair networks is different.

As it results from what has been mentioned above, the access of spare part manufacturers or distributors to authorized service networks is largely restricted. Although this state can surely be explained, for example, by additional costs connected with seeking alternative suppliers or savings on volumes, it can be assumed that the high volumes of spare parts supplied by importers are caused, among others, by the existence of spare part sales targets.

With respect to what has been mentioned above, the situation where the access of spare part manufactures to authorized distribution networks is made difficult cannot be considered optimum from the view of both functional competition and consumers alone.

It means that the objective to facilitate access of spare part manufacturers to the after-sales market has not been fully achieved in the Czech Republic.

G. To protect independence of distributors against vehicle manufacturers

As stated by the European Commission in the Evaluation Report to the application of Commission Regulation No. 1400/2002, independence of distributors of their suppliers was not, in its own, the Regulation's objective, but its enforcement was considered a secondary measure that should have supported the conduct in favour of competition. For this reason, the Regulation sets some minimum requirements that a vertical agreement between a manufacturer of motor vehicles and their distributor should meet.

Although during the validity of the Regulation, the independence of distributors has been strengthened in some aspects⁴⁰, the survey results prove that the independence of the members of distribution networks of motor vehicle manufacturers or their domestic agents remains considerable. The agents of vehicle manufacturers may affect a large number of matters.⁴¹

The unbalance of the importer-distributor relationship probably takes effect most typically in agreeing on sales targets. The bargaining position of distributors is proven also by the fact that importers, in some cases, do not take into consideration even the comments of associations which defend the interests of a larger number of distributors. It must be added

³⁹ The data apply to the Federal Republic of Germany and they are valid as to 2004

⁴⁰ Distributors have the ability to sell vehicles of multiple brands or the ability not to operate sale and repair simultaneously.

⁴¹ Starting with elements of the so-called corporate identity and ending with sold car accessories.

that even strengthening the minimum elements of contractual protection, as contained in the Regulation, has not brought car distributors independence common in other economic sectors.

The objective to ensure independence of distributors from vehicle manufacturers has not been completely achieved in the Czech Republic.

5.3 Conclusion

The members of authorized distribution and repair networks are not only intermediaries between motor vehicle manufacturers and customers. Authorized distributors and repairers are also important participants in competition in the motor vehicle sale and repair market. As proven also by this report, the competition in the motor vehicle sale and repair markets is at a good level in many aspects.⁴²

Although it can be assumed that the current state has been reached particularly due to the well-functioning of market mechanisms, the current standard of competitive environment in the motor vehicle sale and after-sales markets has been affected, undoubtedly, also by Regulation No. 1400/2002.

With regard to the facts provided in this report, the Office for the Protection of Competition wants to pay attention to the following priorities in the motor vehicle sector in the immediate future.

First, to improve information on the rights and obligations arising from the Regulation. For this purpose, brief instructions for consumers and the members of authorized distribution networks have been adopted. These instructions, along with this report, are published and they will be also submitted to organizations representing the interests of the above-mentioned undertakings.

Second, those areas where the survey has found a possible existence of market anomalies will be subjected to the Office's examination so that they can be identified and specific causes of these failures can be eliminated. These include, in particular, the area of after-sales services.

Third, the Office is prepared to actively contribute to the ongoing discussion on the form of the future European competition legislation regarding motor vehicles. For this purpose, this report will be submitted to the European Commission.

⁴² Despite of not achieving some objectives set by the Regulation.

The sector of motor vehicle distribution and repairs is one of the sectors that are of utmost importance for European consumers. The European consumer considers acquisition of a motor vehicle¹ the second most important investment². As it implies from the results of the study titled „Developments in car retailing and after-sales markets under the Regulation”, which was worked out for the European Commission by the consultancy company London Economics, almost 5 % of overall consumer costs were reserved for the purchase³ of motor vehicles in the years 1997-2004.

The specific problems in the field of motor vehicle distribution and repairs in the European Union is regulated in Commission Regulation (EC) No. 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty⁴ to categories of vertical agreements and concerted practices in the motor vehicle sector (hereinafter referred to as „Regulation” or „Regulation No. 1400/2002”). The Regulation applies to vertical agreements where they relate to conditions under which parties may buy, sell or resell motor vehicles, spare parts for motor vehicles or repair and maintenance services for motor vehicles.

The rules contained in the Regulation bring a practical benefit not only to end users, but also to undertakings that participate in the competition in the motor vehicle sale and after-sales markets. With regard to the fact that not even today, after more than six years of the Regulation's functioning, is there a hundred percent awareness among consumers and market participants on benefits that the Regulation brings, the Office for the Protection of Competition has decided for the following recapitulation.

The recapitulation is divided into two parts. The first part, designed for consumers, is focused on informing consumers on both benefits that result, directly or indirectly, for them from the Regulation and some circumstances which may arise in connection with the acquisition, repairs and maintenance of a motor vehicle. The other part, designed for authorized distributors and repairers, is to briefly outline the main requirements that the Regulation poses on the relationship between an authorized distributor/repairer and a motor vehicle supplier as regards trade and commitments.

¹ This applies to new motor vehicles.

² Just after the acquisition of real estate.

³ Costs connected with vehicle repairs and maintenance are not included.

⁴ Treaty establishing the European Community

The Regulation enables the consumer, among others:

- To purchase vehicles of multiple brands (including brands made outside a group) from one distributor on condition that the distributor is interested in offering and has the capacity to offer vehicles of multiple brands;
- To purchase a vehicle of the same brand, matching equipment and parameters from any authorized distributor of that brand within the European Union;
- To carry out repairs under warranty and repairs carried out free of charge at any authorized repairer of the given brand within the EU on condition that the respective repairer is able to make such a repair;
- To use, within the after-warranty service, the services of so-called independent repairers which have ensured access to the same technical information, diagnostic or other repair devices, software and trainings to which the members of authorized repairer networks have access;
- To require that for a repair performed out of warranty a spare part of matching quality supplied by a third party is used;
- To buy a vehicle or spare part at a different price than the price stated in the manufacturer's pricelist;
- To finance the purchase of a vehicle through leasing on condition that the respective distributor is interested to offer such financial product.

Twelve things that are worth considering when purchasing a car and using after-sales services

a) Before purchase

Before you proceed to the purchase of a car, it is useful to carry out a small market research.

- It is a common practice with most distributors that on their website you can find the exact technical specification of the offered vehicles including recommended prices. If you have not decided on a particular brand yet, it is useful to browse through the offers of competing brand distributors.
- When browsing through the offers of individual distributors, you do not need to concentrate only on distributors in the place of your residence. It is possible that a distributor somewhere else in the Czech Republic will sell you the same vehicle under more advantageous conditions.
- Apart from the websites of Czech distributors, you can also visit the websites of foreign distributors of a particular brand. When deciding on in which country of the European Union you can acquire your selected car most advantageously, the material Car Price

Report in the European Union, which the European Commission publishes every year on its website⁵, can help you considerably. As it is indicated in the current report, the prices of motor vehicles in 2007 were on average the highest in the Czech Republic among the Member States of the European Union. The purchase of a vehicle in a different Member State should not have any effect on warranty recognition in the Czech Republic.

- If you decide to purchase in a different Member State of the EU, you can use the services of the so-called brokers. Simply said, a broker is an individual or a legal entity purchasing a vehicle on behalf of the customer. Apart from purchase, the broker can arrange also other necessary formalities connected with the import of your vehicle for you. You should pay the maximum attention to the selection of the right broker.

b) Purchase

- According to the competition law, the prices in pricelists can only be recommended or maximum prices. When purchasing a vehicle, you can try to bargain over the price of the vehicle and its equipment. It is also useful to monitor whether the importer will not announce the so-called sale action for your selected model. At these actions, it is usually possible to acquire such vehicle with a discount or with special equipment. However, it usually applies to sale actions that the distributor's space for providing a discount on the advertised offer is very limited.
- If you do not hurry with purchasing a car, it may be useful to wait with the purchase until the end of the year. In this period, many distributors try to sell the so-called stock vehicles.
- Before purchasing a car, it is useful to test it in the form of a demonstration drive. The distributor is obliged to demonstrate the vehicle at your request.
- Choose such a form of financing that is most convenient to you. If you do not have the corresponding cash available, a vehicle can usually be financed in the form of financial leasing or consumer credit provided that the relevant conditions are fulfilled. If you are an entrepreneur, you can use also the so-called operational leasing. However, in these forms of financing it is useful to get carefully acquainted with the contract terms in advance, particularly with the amount of the respective interest rates.

c) Repairs and maintenance

- If, during the warranty period, a technical defect appears on your vehicle, it should be possible to repair it at any authorized repairer of that brand, regardless of the location where the vehicle was purchased.
- Authorized repairers usually meet the uniform quality criteria. So it should not happen to you that the local authorized repairer will not be able to solve a common repair under warranty. If this situation happens for any reason, it would be probably necessary to deliver the vehicle to the place where it was purchased. The same may happen in the situation where a vehicle was purchased through a broker.

⁵ http://ec.europa.eu/comm/competition/sectors/motor_vehicles/prices/report.html.

- If the authorized distributor from which you have purchased your vehicle does not carry out repairs of vehicles, such distributor is obligated to ensure the repair of your vehicle under warranty in a different manner.
- Carrying out a so-called warranty inspection outside an authorized network should not be the reason for refusing to recognize the warranty on condition that such a repair does not relate to the claimed defect in any way.

NOTICE

The above-mentioned information should contribute to greater consumers' awareness on the content of Regulation No. 1400/2002. At the same time, it should inform consumers on some situations which may arise in connection with the purchase, repair or maintenance of a motor vehicle. The information is not legally binding and it does not supersede the applicable legal regulations or the current or future decisions of the Office for the Protection of Competition, general courts or the relevant authorities of the European Communities.

PART II – REGULATION NO. 1400/2002 FROM THE VIEW OF AUTHORIZED DISTRIBUTORS AND AUTHORIZED REPAIRERS

If a motor vehicle supplier on one side and an authorized distributor/repairer on the other side want their vertical agreement to enjoy the benefits that Regulation No. 1400/2002 offers, the agreement to which they are counterparties should meet the following conditions.

1. General conditions applicable to the sale and repairs of vehicles

a) Market share

The share of a motor vehicle supplier in the relevant market on which it sells new motor vehicles, spare parts for motor vehicles or repair and maintenance services does not exceed 30 %. However, the market share threshold for the application of the exemption shall be 40 % for agreements establishing quantitative selective distribution systems for the sale of new motor vehicles.

Those thresholds shall not apply to agreements establishing qualitative selective distribution systems.

b) Duration

- The agreement is concluded for a period of **at least five years**; in this case, each party must undertake to notify the other party of its intent not to renew the agreement at least six months in advance.

or

- The agreement is concluded for an indefinite period of time; in this case the **notice period** for a proper termination of the agreement must be for both parties **at least two years**; this period shortens to at least one year, where
 - the supplier, by law or based on a special agreement, is to pay an adequate compensation on terminating the agreement, or
 - the supplier terminates the agreement when it is necessary to reorganize the entire network or its substantial part.

c) The possibility to appeal to an independent expert or arbitrator

- The agreement provides each party with the right to refer disputes regarding the fulfillment of its contractual obligations to an independent expert or arbitrator. These disputes may relate, among others, to subsidies, commitments, setting or reaching sales targets, carrying out stock requirements, carrying out the requirement to provide or use demonstration vehicles, the conditions for the sale of multiple brands, the question of the restriction to extend a distributor's business due to the prohibition to operate out of an unauthorized place of establishment, and the legitimacy of notice of the termination of the agreement.

2. Impermissible restrictions

The **stipulations** contained in the agreement **must not**, directly or indirectly, **have as its subject-matter**:

a) Sales and repairs of vehicles

- **The restriction of the distributor's or repairer's ability to determine its sale price**, without prejudice to the supplier's ability to recommend a sale price or to impose a maximum sale price;
- **The restriction of the territory** into which, or of the **customers** to whom, **the distributor or repairer may sell the contract goods or services**; however, this shall not apply to:
 - the restriction of active sales to the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another distributor or repairer where such a restriction does not limit sales by the customers of the distributor or repairer;
 - the restriction of sales to end users by a distributor operating at the wholesale level of trade;
 - the restriction of sales of new motor vehicles and spare parts to unauthorized distributors by the members of a distribution system in markets where selective distribution is applied;
 - the restriction of the buyer's ability to sell components, supplied for the purposes of incorporation to other products, to customers who would use them to manufacture the same type of goods as those produced by the supplier;
- **the restriction of cross-supplies between distributors or repairers** within a selective distribution system, including between distributors or repairers operating at different levels of trade;
- **the restriction of active or passive sales of new passenger cars or light commercial vehicles, spare parts** for any motor vehicles or repair and maintenance services for any motor vehicle to end users by members of a selective distribution system operating at the retail level of trade in markets where selective distribution is used. The exemption shall not apply to agreements containing a prohibition on a member of a selective distribution system from operating out of an unauthorized place of establishment;
- the imposition of a **direct or indirect commitment not to compete**;
- **the imposition** of any direct or indirect **obligation causing that the members of a distribution system cannot sell motor vehicles or spare parts of specific competing suppliers or provide repair and maintenance services for motor vehicles of specific competing suppliers**;
- **the imposition** of any direct or indirect **obligation causing that the distributor or authorized repairer cannot, after the termination of the agreement, manufacture, buy, sell or resell motor vehicles or provide repair or maintenance services**.

b) Sale of vehicles

- **the restriction of the distributor's ability to sell any new motor vehicle which corresponds to a model within its contract range;**
- **the restriction of active or passive sales of new motor vehicles other than passenger cars or light commercial vehicles to end users** by members of a selective distribution system operating at the retail level of trade in markets where selective distribution is used without prejudice to the supplier's ability to prohibit a member of that system from operating out of an unauthorized place of establishment;
- **the restriction of the distributor's ability to subcontract the provision of repair and maintenance services to authorized repairers** without prejudice to the supplier's ability to require the distributor to give end users the name and address of the authorized repairer or repairers in question before the conclusion of a sales contract and, if any of these authorized repairers is not in the vicinity of the sales outlet, also to tell end users how far the repair shop or repair shops in question are from the sales outlet; however, such obligations may only be imposed provided that similar obligations are imposed on the distributors whose repair shop is not on the same premises as their sales outlet;
- **the imposition of any direct or indirect obligation causing the distributor not to sell leasing services relating to contract goods or corresponding goods;**
- **the imposition of any direct or indirect obligation on any distributor of passenger cars or light commercial vehicles** within a selective distribution system which **limits the distributor's ability to establish additional sales or delivery outlets at other locations within the common market** where selective distribution is applied;

c) Vehicle repairs and maintenance

- **the restriction of the authorized repairer's right to determine its activities** when providing repair and maintenance services and the sale of spare parts;
- **the restriction of the sales of spare parts** for motor vehicles by the members of a selective distribution system **to independent repairers** that use these parts for repairs and maintenance of motor vehicles;
- **the restriction agreed between a supplier of original spare parts or spare parts of matching quality, repair tools or diagnostic and other equipment and a manufacturer of motor vehicles, which limits the supplier's ability to sell these goods and services to authorized or independent distributors or to authorized or independent repairers or end users;**
- **the restriction of a distributor's or authorized repairer's ability to obtain original spare parts or spare parts of matching quality from a third undertaking of its choice and to use them for the repair or maintenance** of motor vehicles, without prejudice to the ability of the supplier of new motor vehicles to require the use of original spare parts supplied by it for repairs carried out under warranty, free servicing and vehicle recall work;

- **the restriction agreed between a manufacture of motor vehicles** which uses components for the manufacturing of motor vehicles and **the supplier of such components** which **limits the supplier's ability to place its trade mark or logo effectively and in an easily visible manner on the components supplied or on spare parts**;
- **the imposition** of any direct or indirect **obligation limiting an authorized repairer's ability to provide repair and maintenance services for vehicles of competing suppliers**;
- **the imposition** of any direct or indirect **obligation** regarding **the place of establishment of the authorized repairer** where selective distribution is applied.

NOTICE

The above mentioned list of conditions represents an unbinding and incomplete material of informative character which is designated solely for a general acquaintance of authorized distributors or authorized repairers with some rights and obligations under Regulation No. 1400/2002. For the application and decision-making practice of the Office for the Protection of Competition, the original and complete wording of the Regulation published in hardcopy in the Official Journal of the European Union is decisive.