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The Distribution System in the Automotive Sector

• Abstract •

The automotive distribution sector is undergoing a phase of structural transformation, driven by digitalization, shifts in consumer preferences, and new regulatory frontiers. Traditionally based on a widespread network of dealerships, the industry is moving toward models that integrate online sales and an increasing centralization of commercial strategies by manufacturers. Brands are exploring approaches such as the agency model, direct-to-consumer, and subscription-based mobility services, reducing dependence on traditional networks and redefining the role of dealers. This article try to provide an overview of the subject, analysing the main dynamics currently underway. The aim is to shed light on the fundamental regulations, offering a basic framework of support in a sector that is continuously evolving.

Keywords: Distribution, Automotive, Transformation.

Introduction

The automotive distribution system in Europe has undergone a profound evolution, moving from highly hierarchical and territorially closed models—developed between the 1950s and 1970s—to a regulatory framework that is progressively more open and competitive. This transformation has been driven primarily by European Union competition law, particularly Article 101 TFEU, which prohibits restrictive vertical agreements unless exceptions are justified by procompetitive efficiencies.¹

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¹ Article 101 TFEU (text and overview): *EURLex* consolidated text & summaries; overview in Jones & Sufrin, *EU Competition Law: Text, Cases & Materials* (OUP, 8th ed., 2023).

The main regulatory milestones include Regulation 1400/2002, which revolutionised the sector by introducing greater commercial freedom for dealers, up to the current framework based on VBER 2022/720 and MVBBER 461/2010, which redefine the scope of distributive autonomy for manufacturers and the protection of independent operators.² At the same time, some Member States—such as Italy with Law 108/2022—have introduced specific national safeguards without, however, being allowed to derogate from EU competition principles.³

Overall, the framework seeks to balance technological innovations (digitalization, ecommerce, connected vehicles), the need for effective competition, and fair contractual relationships between manufacturers, distributors, and independent repairers.⁴ A separate and increasingly relevant issue in the sector concerns the agency agreement, which is emerging as an alternative model in the relationships between manufacturers and distributors.⁵

Background

First, it is important to underline that the entire system of automotive distribution—from block exemption regulations to national protections like the Italian 2022 law—must always be interpreted in the light of Article 101 TFEU, which prohibits vertical restraints that restrict competition.⁶ Article 101(1) TFEU sets that agreements are not allowed between companies that restrict competition, including vertical agreements (manufacturer → distributor) if they: (1) restrict markets or customers, (2) impose fixed or minimum resale prices, (3) prevent crossborder sales, (4) distort competition between Member States.

Even where a vertical agreement restricts competition, Article 101(3) TFEU allows an exception if the agreement generates sufficient efficiencies to benefit consumers (for example, facilitating market entry, avoiding freeriding, incentivizing

² Reg. 1400/2002; VBER 2022/720; MVBBER 461/2010 (scope and aims): *EURLex* acts and summaries.

³ Italian Law 108/2022 (auto distribution safeguards)—analysis and alignment with VBER/Article 101 TFEU: (a) CMS (2022); (b) Quintegia study (2024).

⁴ Digitalization/ecommerce & verticals: *Guidelines on vertical restraints* (2022) and doctrinal commentary (Whish & Bailey, 11th ed., 2024).

⁵ Agency within verticals: *Vertical Guidelines 2022* (agency sections); doctrinal analysis on “multiprincipal” and agent risk allocation (Greenberg Traurig, 2022).

⁶ Structure and objectives of Article 101(1)/(3) TFEU as applied to verticals (general doctrine): (a) Jones & Sufrin, chapters on elements/verticals; (b) Cambridge (Lorenz), *Key concepts of Article 101 TFEU*.

investments), provided strict conditions are met, and no hardcore restrictions are present—the logic that underpins the EU block exemption architecture.⁷

Returning to the automotive distribution system, it emerged during the 1950–1970 period, when manufacturers built networks of authorized dealers bound by strict contractual obligations such as territorial exclusivity, stock requirements, showroom standards, aftersales obligations. This produced a closed and controlled model designed to safeguard brand image, pricing, and customer experience. The EU intervened from 1985 with sectorspecific block exemptions for motor vehicles, curbing excessive territorial exclusivity and rigid commercial conditions, and progressively opening the system.

The Block Exemption Regulation (Regulation 1400/2002)

Regulation (EC) No. 1400/2002 then radically changed the sector. Key features can be summarized as follows: (1) reduction/removal of territorial exclusivity, (2) ability of dealers to sell outside their territory, (3) separation between sales and aftersales, (4) obligation for manufacturers to provide technical information to independent repairers.

In particular, Article 2 (Scope) applied to a wide range of vertical agreements in the motorvehicle sector, including: a) supply and distribution of new motor vehicles; b) spareparts distribution; c) repair/maintenance services. It covered agreement between: a) independent importers or wholesalers; b) authorized distributors and repairers; c) networks involving main distributors and sub-distributors; d) suppliers of spare parts and repair networks.⁸

Article 3 sets that to benefit from the block exemption, the supplier must not exceed a 30% marketshare threshold, following the model of Regulation 2790/1999. Article 4 (Hardcore Restriction) sets that If any hardcore restriction was present, the entire agreement would lose the benefit of the exemption. Key hardcore restrictions included: (1) resale price maintenance (fixing minimum resale prices); (2) restrictions on parallel trade between Member States, which aim to avoid market partitioning.

Article 5 (Specific conditions) listed sector specific conditions, that, basically, can be summarized as follows: (1) noncompete obligations, (2) location clauses, which restrict the dealer's selling or operating location.

⁷ Article 101(3) exemption and conditions (efficiencies, fair share, indispensability, no elimination of competition): EU texts and leading treatises (Whish & Bailey).

⁸ Selective vs exclusive; active vs passive sales: *VBER 2022/720* and *Vertical Guidelines* (definitions).

Finally, the Regulation permitted two main distribution structures: (1) Selective Distribution in which suppliers sell only to authorised distributors selected based on qualitative criteria, and dealers may not sell to unauthorised distributors; (2) Exclusive Distribution in which the supplier assigns territory to a distributor and restricts active sales into that territory from others (but not passive sales).⁹

The Current Framework: VBER 330/2010, VBER 2022/720, and MVBBER 461/2010

In 2010 the EU moved towards a general vertical agreements regime: (1) (VBER 330/2010) with the motorvehicle sector progressively aligned to the general framework, while Regulation 461/2010 (MVBBER) added specific rules (in particular for the aftermarket); (2) The new VBER 2022/720 (in force since 1 June 2022) preserves the 30% marketshare safe harbour, updates the definitions of active/passive sales (including online contexts), enables shared exclusivity, clarifies selective distribution (online/offline criteria), and provides a detailed framework for dual distribution, marketplace bans, dual pricing and parity clauses.¹⁰

This phase greatly reduced sectorspecific protections and aligned automotive distribution with standard vertical market rules.

The EU Regulation 330/2010 (VBER) establishes the conditions under which certain vertical agreements are automatically exempted under Article 101(3) TFEU, meaning they are presumed to produce sufficient efficiency gains to outweigh restrictions of competition. In particular: (1) The exemption must be applied if the supplier does not exceed a 30% market share in the relevant market and the buyer does not exceed a 30% market share on its purchasing market; (2) There are hardcore restrictions which remove the benefit of the exemption entirely if present. These restrictions are: resale price maintenance (RPM)—setting fixed or minimum resale prices; territorial/customer restrictions, which unjustifiably prevent passive or active sales; restrictions on crosssupplies among distributors in selective distribution systems; restrictions on enduser sales by distributors in selective systems (Article 4); (3) Some restrictions do not eliminate the exemption entirely, but they themselves are not exempt, even if included in an otherwise exempt vertical agreement. These include: (a) Noncompete obligations exceed-

⁹ Academic critique of the “straitjacket effect” of older BERs and rationale for 1400/2002: Wijckmans/Tuytschaever/Vanderelst, *The Motor Vehicle Distribution Block Exemption*.

¹⁰ 2022 verticals package and impacts on omnichannel/platforms: White & Case (2022); Hogan Lovells (2022); Portolano Cavallo (2022).

ing 5 years; (b) Posttermination noncompete clauses, unless narrowly limited; (c) Certain clauses restricting parts or components suppliers from selling to third parties.

This Regulation expired on 31 May 2022 and it was replaced from 1 June 2022 by the Regulation 2022/720 (the new VBER). It: (1) gives manufacturers greater freedom to organize agency-based models, (2) reduces the strategic autonomy of dealers, (3) allows centralization of pricing and commercial policies.

In particular: (i) The safety zone provided for under the previous regime (the so-called *safe harbour*) has been maintained for all vertical agreements, and it is defined by the 30% marketshare threshold.

(ii) In the exclusive distribution, the new framework allows shared exclusivity, enabling a supplier to appoint up to a limited (five) number of exclusive distributors for a territory. The definition of active sales has been broadened to adapt it to the current context of a significant increase in e-commerce.

(iii) In the selective distribution, the VBER provides clearer rules for selective distribution, especially regarding: online vs. offline criteria, passive sales, and obligations for authorised distributors.

(iv) Among the most significant innovations introduced by the reform is the new framework governing so-called dual distribution, namely distribution models in which the supplier sells its goods both directly to final consumers and through independent distributors. This results in a scenario in which the supplier competes directly with its own distributors.

(v) Differentiated treatment of online vs. offline channels; Allowed restrictions on online marketplaces (marketplace bans may be exempt under certain conditions); Rules on online advertising and the use of price comparison tools.

(vi) The Regulation maintains the list of hardcore restrictions that automatically exclude an agreement from the exemption, including: (a) Resale Price Maintenance (RPM) → fixed or minimum resale prices; (b) Unjustified territorial/customer restrictions (especially restrictions on passive sales); (c) Restrictions on cross-supplies within selective distribution; (d) Restrictions on sales to end users by authorised distributors. Some clauses do not eliminate the exemption for the whole agreement but are not themselves exempt, including: (a) Noncompete obligations that exceed 5 years; (b) Certain posttermination noncompete obligations; (c) Restrictions preventing component suppliers from selling to third parties.

The new framework maintains the previous approach, according to which an agency relationship is excluded from the scope of Article 101 TFEU (and thus from the VBER) only if the agent lacks economic independence—meaning that

the agent does not bear, or bears only insignificant, financial or commercial risk in relation to the contracts it concludes or negotiates on behalf of the principal (the so-called “agency test”).

MVBER 461/2010 (Automotive Specific Regulation)

The Regulation EU 461/2010 (MVBER) deals with a specific block exemption for vertical agreements in the automotive industry. The automotive sector remains subject to the general vertical agreements regime (Reg. (EU) 330/2010, later replaced by 2022/720), but Regulation 461/2010 adds specific exemptions and restrictions. It applies to: the purchase, sale, or resale of new motor vehicles, and agreements regarding repair and maintenance services and spare parts distribution.

Key points: (1) It implements Article 101(3) TFEU, permitting vertical agreements that generate efficiency benefits. (2) Its validity was extended by Regulation (EU) 2023/822 for an additional five years, beyond the original expiry of 31 May 2023. This extension allows the Commission to adapt rules to developments such as digitalization, electrification, and new mobility models.

The MVBER incorporates the general vertical rules of the new VBER (Reg. 2022/720) into the automotive aftermarket. The Regulation aims to ensure that certain vertical agreements in the automotive sector are automatically exempt from the prohibition of anticompetitive agreements in Article 101(1) TFEU, provided they meet specific conditions. As regards the hardcore restrictions, certain restrictions automatically remove the benefit of the exemption, such as: preventing the use of equivalent spare parts; obstructing independent repairers’ access to technical information; unlawful restrictions on passive/active sales; limiting access to original or matching quality spare parts. Manufacturers must provide independent repairers with: technical information, tools and diagnostic equipment, necessary software.

The Italian Framework

Italy introduced a national law (law 108/2022) to protect authorized distributors. The law provides: (1) 6-month mandatory written notice period for termination. Otherwise, the termination is invalid; (2) obligation for manufacturers to share all relevant financial information before contract signature. Before signing, the manufacturer/importer must provide the dealer with all necessary information to

assess economic and financial sustainability, including estimates of expected marginal revenues; (3) right to an equitable indemnity for nonamortized investments and goodwill created over the last five years. If the manufacturer or importer withdraws early, it must pay an equitable indemnity covering nonamortized investments and goodwill (based on revenues from the previous five years); (4) no indemnity in case of termination for breach or when the distributor voluntarily terminates. These safeguards operate consistently with EU competition law and cannot derogate from Article 101.

The Agency Model in Automotive Distribution

Under an agency agreement, the dealer does not acquire title to the vehicle but promotes/concludes sales on behalf of the manufacturer, at centrally determined conditions. According to EU competition law, an agency agreement falls outside Article 101(1) TFEU only where the agent does not bear, or bears only insignificant, financial or commercial risk related to the contracts (the “genuine agency” test), as restated in the 2022 Vertical Guidelines (with specific guidance on multiprincipal agents, dualrole agents, marketspecific investments, and risk allocation. If these conditions are met, Article 101 does not apply (and the VBER is irrelevant); otherwise, the arrangement is treated as a vertical agreement subject to 101(1) and the VBER/Guidelines framework.

In practice, manufacturers are exploring agency to centralize pricing, harmonize the online/offline journey, and manage EV gotomarket, though the boundary between genuine agency and de facto distribution requires careful, productby-product assessment under the Guidelines.

Conclusions

The analysis of the automotive distribution system shows how European regulation has progressively shifted its focus from protecting official networks to a broader safeguarding of competition and market access. Overall, the system today appears oriented toward: reducing dependence on old, closed models of exclusive dealerships; promoting hybrid and digital models, such as online distribution and agency systems; ensuring that such innovations do not undermine competition and market access; maintaining strong oversight of the aftermarket, a key sector for competitiveness.

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