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REPORT FROM THE COMMISSION

Commission Evaluation Report on the operation of the Motor Vehicle Block Exemption Regulation (EU) No 461/2010

{SWD(2021) 112 final}

Pursuant to Article 7 of Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union ("the Treaty") to categories of vertical agreements and concerted practices in the motor vehicle sector[1] (the "MVBER") the Commission is required to monitor the operation of this Regulation and draw up a report by 31 May 2021.

Article 101(1) of the Treaty prohibits agreements between undertakings and concerted practices that restrict competition, unless, in accordance with Article 101(3) of the Treaty, they contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits. The MVBER provides that with effect from 1 June 2013, Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (the "VBER") applies to agreements for the distribution of new vehicles. As to agreements relating to the sale or resale of spare parts for motor vehicles or the provision of repair and maintenance services for motor vehicles, Article 4 MVBER provides that Article 101(1) of the Treaty does not apply, provided that such agreements fulfil the requirements for an exemption under the VBER and do not contain any of the hardcore clauses[2] listed in Article 5 MVBER.

This resulting configuration implies that this report should evaluate the functioning of the MVBER and the Supplementary Guidelines[3] ("SGL"), as well as the VBER and the Guidelines on vertical restraints[4] ("VGL") as far as they apply to the distribution of new motor vehicles, the provision of repair and maintenance services and the distribution of spare parts within the European Union ("EU"). These four sets of rules are referred to collectively as the "MVBER regime" throughout this report.[5]

This report is accompanied by a Staff Working Document ("SWD") and six technical annexes. The report does not prejudge the final nature or content of any act that the Commission may prepare following the publication of this report.

1. Background to the intervention and sources

The Commission's decision whether to grant a block exemption for the motor vehicle sector and if so, in what form, must be based on the requirements of Article 101(3) of the

1 OJ L 129, 28.5.2010.

2 Hardcore clauses are those that if included in a vertical agreement remove the benefit of the exemption from the whole agreement, meaning that an individual assessment under Article 101 (3) of the Treaty would need to be conducted.

3 Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles. OJ C 138, 28.5.2010.

4 Guidelines on Vertical Restraints. OJ C 130, 19.5.2010.

5 The VBER has also been subject to an evaluation (see Staff Working Document available here) and is currently under revision. The VBER expires on 31 May 2022, i.e., one year before the MVBER.

Treaty.[6] The MVBER regime pursues general and specific objectives designed to ensure that the requirements of Article 101(3) of the Treaty are met. The **specific objectives** of the MVBER regime are (i) to provide legal certainty to stakeholders in the motor vehicle sector as to which vertical agreements can be considered compliant with Article 101 of the Treaty; (ii) to reduce the risk of "false positives" (i.e., over-exemption) and "false negatives" (i.e., under-exemption); (iii) to provide a common framework of assessment for National Competition Authorities ("NCAs") and national courts, in order to ensure consistency in the application of Article 101 of the Treaty; and (iv) to protect certain forms of competition in the motor vehicle sector. These four specific objectives all support the **general objective**: to preserve the deterrent effect of Article 101 of the Treaty by facilitating the enforcement work of the Commission, NCAs and national courts and to help businesses conduct the self-assessment of their vertical agreements in the motor vehicle sector. Since the legal and factual background to competition rules is fluid, the Commission must analyse whether the MVBER regime and its objectives remain appropriate today, with reference to the five criteria of the Better Regulation Guidelines[7] (i.e., effectiveness, efficiency, relevance, coherence and EU added value).

On 3 December 2018, the Commission officially launched the evaluation process for the MVBER regime,[8] with a view to drawing up this report. The evaluation is based on a broad range of information sources: the Commission's monitoring and enforcement activities in the sector, a public consultation[9] with stakeholders, a fact-finding study regarding the evolution of the motor vehicle sector between 2007 and 2017, as well as two targeted consultations[10] with NCAs to (i) gather data on the NCAs' enforcement of the MVBER regime and equivalent national rules; and (ii) collect their opinions on the performance of the MVBER regime.

2. Sector characteristics

2.1.Markets under evaluation

The motor vehicle industry has a complex supply chain with heterogeneous entities coexisting and interacting at different levels. As to **vehicle distribution**, the suppliers are vehicle manufacturers and their importers. On the demand side, the main actors are private individuals and companies. Some of the latter are professional transport / mobility operators, while others are active in other sectors, but use motor vehicles to transport goods and workers. With regard to **repair and maintenance**, the service providers are authorised repairers (companies with formal contractual arrangements with motor vehicle suppliers) and independent repairers. On the demand side, the main actors are again

6 Council Regulation (EEC) 19/65 enables the Commission to apply Article 101(3) of the Treaty by regulation to certain categories of vertical agreements and corresponding concerted practices falling within Article 101(1) of the Treaty for which it can be assumed with sufficient certainty that they satisfy the conditions of Article 101(3) of the Treaty.

7 Commission staff working document, Better Regulation Guidelines, Brussels, 7 July 2017, SWD (2017) 350.

8 See Section 4.1 of SWD.

9 The consultation ran from 12 October 2020 to 25 January 2021. See Annex 3 to SWD for further details.

10 The consultations ran from 8 June 2020 to 16 January 2021. See Annex 3 to SWD for further details.

private individuals and companies. **Spare parts** are provided by the Original Equipment Suppliers ("OES"),[11] either directly, or through the vehicle manufacturers, and by independent suppliers, which – in contrast to the OES – do not supply parts for vehicle assembly. On the demand side, the main actors are repairers, and to a lesser extent fleet operators and private individuals.

Whether a particular agreement may benefit from exemption under the MVBER regime depends, *inter alia*, on market share. Correct market definition is therefore an important factor in any assessment. In some circumstances, a system market which includes motor vehicles and spare parts together may be defined, taking into account, *inter alia*, the life-time of the motor vehicle as well as the preferences and buying behaviour of the users.[12] In such cases, the relevant market shares would be those for the whole (multi-brand) system rather than for repair and maintenance and the supply of spare parts.

During the consultations leading up to this report, some NCAs suggested that the motor vehicle markets could be considered to be such a system.

An important factor for analysing the strength of market links is whether a significant proportion of buyers make their choice taking into account lifecycle costs. Another relevant factor is the existence and relative position of entities operating in the aftermarket independently from the suppliers of the primary goods. Based on the information collected during the evaluation, it appears that at least for passenger cars, there are likely to be brand-specific aftermarkets, in particular because: (i) the majority of buyers are private individuals or small and medium-sized undertakings that purchase motor vehicles and aftermarket services separately; (ii) although the elements uncovered in the fact-finding show that consumers increasingly use the Internet for research before buying a passenger car, they do not demonstrate that such buyers swiftly and consistently adapt their purchasing behaviour in response to variations in aftermarket conditions; and (iii) there is a well-developed framework of entities offering only aftermarket products and services. This might not be the case for other vehicle categories, where the higher presence of professional consumers might result in more complex purchasing patterns.

2.2. Market developments

This sector has undergone several changes since the adoption of the MVBER in 2010.

As regards concentration in the sector, the market shares fluctuated over time, which indicates vigorous **inter-brand competition**. In addition, although the financial crisis affected the entire sector from 2008, the research and development ("R&D") expenditure of passenger car manufacturers remained quite stable.[13]

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11 These are the manufacturers of the parts used for the initial assembly of the vehicle.

12 See footnote 26 SGL and paragraph 56 of Commission notice on the definition of the relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997.

13 See Section 5 of SWD and Annex 2 to SWD for further details and figures.

Concerning light commercial vehicles, no manufacturer held particularly high market shares over the period 2007-2017, although this may recently have changed since two major manufacturers – FCA and PSA – have merged to create a new company named Stellantis.[14] As with passenger cars, market shares for manufacturers of light commercial vehicles have also fluctuated. However, in contrast to passenger cars, since the MVBER regime entered into force, the light commercial vehicle sector has become more concentrated, and even more so following the FCA/ PSA merger. The bus and truck sectors are traditionally also more concentrated.[15] Both have witnessed some shifts in terms of market positions. The fact-finding study shows that R&D expenditure increased throughout the observation period (2007-2017) for buses and trucks, which might indicate a degree of competition.

Intra-brand competition does not appear to have decreased significantly between 2007 and 2017, at least as far as passenger cars are concerned. The observed decline in aggregate network density for passenger cars and the increase in market concentration appear to have been moderate overall. Moreover, there has been some diversification in distribution systems, albeit limited and without significant changes in the way that the different systems are used at country level.

Statistics show that the size of the market for repair and maintenance services increased between 2007 and 2017. They also show a decreasing trend in the density of the authorised networks, which could be due to several factors, including the continuing movement observed toward consolidation of authorised dealer networks, or the need to incur greater investments to meet the demands of digital technologies and hybrid/ electric power trains.

The fact-finding study indicates that independent operators competing with authorised repairers on the repair and maintenance markets may still face difficulties in accessing the inputs they need to repair vehicles. This aspect may become more relevant with the increased use of on-board digital technologies and the development of alternative fuel vehicles that require specific expertise, tooling and spare parts.

The market for spare parts supply in selected Member States increased by almost 30% in terms of sales value between 2007 and 2017. Over the same period, parts manufacturers registered a stable operating margin, averaging around 6-7%.

3. Achievement of objectives[16]

This section evaluates whether the objectives of the MVBER regime have been achieved in practice and to what extent the MVBER regime has proven to be effective, and/or relevant.

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14 M.9730 FCA / PSA.

15 Section 5 of SWD and Annex 2 to SWD include an overview of market shares and concentration indexes for passenger cars, light commercial vehicles, trucks and buses.

16 See Annexes 3 and 6 to SWD for further details on the specific views of the respondents to the public consultation and NCAs regarding the achievement of the objectives of the MVBER regime.

A. General and specific objectives

The **first specific objective** of the MVBER regime is to increase legal certainty for stakeholders, making it easier for them to perform the self-assessment required by the wider competition law framework.[17]

The submissions from NCAs and respondents to the public consultation suggest that the regime has provided a high degree of legal certainty. In particular, the Commission has received relatively few informal questions[18] as to how the rules should be interpreted, and none of the formal complaints that it has received concerning vertical agreements in this motor vehicle sector hinged on a misunderstanding of the substantive rules. Nevertheless, the evaluation identified certain provisions that: (i) may benefit from further clarifications; (ii) may be difficult to apply; or (iii) may require adjustments due to recent market developments, new business models and / or new technologies.

The **second specific objective** of the MVBER regime is to reduce the risk of: (i) false positives, i.e., exempting agreements for which it cannot be assumed with sufficient certainty that they satisfy the conditions of Article 101(3) of the Treaty (over-exemption); and (ii) false negatives, i.e., where the respective vertical agreement or practice is not block exempted despite fulfilling the conditions of Article 101(3) of the Treaty (under-exemption).[19]

The conditions to be met by all agreements are: (i) the market share threshold,[20] below which the exemption is granted; and (ii) the absence of hardcore restrictions,[21] which remove the benefit of the block exemption for the whole agreement. The conditions also include excluded restrictions,[22] to which the block exemption does not apply, although the remainder of the agreement in which they are contained may still be exempted.

In light of the views of the majority of respondents to the public consultation and NCAs, the current market share threshold of 30% seems to have been appropriate and to remain relevant today. The Commission's enforcement practice supports this view. To date, the Commission has not identified any category of agreements that are unable to benefit from the exemption because of the parties' market share, but which are relatively unproblematic in terms of competition; the identification of such a category would have been an indication that the threshold was set too low. Nor has it found any elements that have led it to consider withdrawing the exemption from any agreement or category of

17 See Section 6.1 of SWD.

18 About 14% of the informal submission received by the Commission between 2010 and 2020 concerned general questions on the applicability of the MVBER regime.

19 See Section 6.1 of SWD.

20 Article 3 VBER.

21 Article 4 VBER and Article 5 MVBER.

22 Article 5 VBER.

agreements in the motor vehicle sector, which is an indication that the exemption threshold is not set too high. [23]

Taking into account the views of respondents to the public consultation and NCA, the lists of hardcore and excluded restrictions remains appropriate. No additional clauses that should have been considered either as general conditions for the application of the Regulation, or as hardcore restrictions or excluded restrictions were identified during the evaluation.

The **third specific objective** of the MVBER regime is to provide a common framework for the consistent application of Article 101 of the Treaty by NCAs and national courts, in view of the decentralised application of Article 101(3) of the Treaty.[24]

The evaluation shows that the MVBER regime provides added value in this respect, in that it appears to have increased legal certainty and been more effective compared to more general, nationally-fragmented guidance, enforcement practice and national case-law pertinent for the application of Article 101 of the Treaty to the motor vehicle sector. This position is largely supported by respondents to the public consultation and NCAs, although a few of the latter note that the technical character of these provisions may make them difficult to understand for non-lawyers.

The **fourth specific objective** of the MVBER is the protection of certain aspects of competition in the motor vehicle sector. In its Communication[25] of 22 July 2009 ("2009 Communication") the Commission found that a number of specific policy objectives underlying Regulation (EC) No 1400/2002[26] remained valid. These objectives were set in view of a number of issues which, at that time, were considered particularly relevant for the motor vehicle sector. The evaluation therefore includes an analysis of whether each of these objectives had been met and to what extent they had proven to be effective and / or necessary. This evaluation is presented below:

1. *Preventing foreclosure of competing vehicle manufacturers and safeguarding their access to the market*

As explained in its 2009 Communication, the Commission considered that in certain circumstances, restrictions in distribution agreements - especially the widespread use of single-branding clauses - might make it unduly difficult for competing motor vehicle manufacturers to access the markets. Thus, it sought to preserve the ability of competing motor vehicle manufacturers to enter the market and/or expand their presence.

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23 Article 29(1) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003 gives the Commission the power to withdraw the benefit of the exemption from certain categories of agreements where it finds effects which are incompatible with Article 101(3) of the Treaty.

24 In assessing the effectiveness and relevance of this objective, the evaluation has also examined the EU added value of the MVBER regime. For further details, see Section 6.5 of SWD.

25 Communication from the Commission "The Future Competition Law Framework applicable to the motor vehicle sector", 22 July 2009.

26 Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector. OJ L 203, 1.8.2002.

Drawing, in particular, on input received from NCAs and respondents to the public consultation, the evaluation shows that **this objective appears to have been largely achieved**. Inter-brand competition for new passenger cars in the EU is vigorous and stable.[27] Moreover, the information gathered in the context of this evaluation has provided no indications that passenger car manufacturers have found it particularly difficult to access the EU motor vehicle markets, either by entering, or by expanding their presence. It therefore appears that although inter-brand competition will continue to be an important objective for these markets, the specific protection of market access for competing car manufacturers may not be relevant. In contrast, the light commercial vehicle,[28] truck and bus sectors have traditionally been more concentrated, and inter-brand competition on these markets appears to be weaker.[29] In light of the above, it appears that **this objective may still be relevant for these market segments but that it may not be as relevant for passenger cars**.

2. Protecting competition between dealers of the same brand

The protection of intra-brand competition is of particular importance when inter-brand competition is relatively low. In its 2009 Communication, the Commission considered that there was a danger that intra-brand competition could be undermined, particularly in a context where new vehicles were distributed through dealers with near-identical business models. Thus, it considered it appropriate to protect price competition between dealers of the same brand and to encourage diversity in distribution formats.

The evaluation, which takes into account the opinions of NCAs and respondents to the public consultation, shows that **this objective appears to have been largely achieved**. Based on the findings of the fact-finding study, competition has not decreased significantly between 2007 and 2017, at least as far as passenger cars are concerned.[30] Moreover, although the density of the authorised networks has continued to decline between 2007 and 2017,[31] it appears that consumers are increasingly using the Internet to shop around for passenger cars,[32] and that this is extending the geographic reach of the remaining authorised dealers. Finally, since 2010, it has not pursued any cases based on claims that suppliers had put barriers in the way of intra-brand competition.[33] However, the evaluation shows that the homogeneity in distribution formats observed prior to 2010 is still present in the markets in 2021, and that, in particular, the vast majority of

27 See Section 6.3 of SWD and Section 2, Annex 2 to SWD.

28 The light commercial vehicles' sector has recently become more concentrated due to the merger of FCA and PSA M.9730 FCA / PSA.

29 The Commission will monitor these markets particularly carefully in the coming months and years.

30 See findings of the fact-finding study, Section 5 of SWD and Annex 2 to SWD.

31 This is a continuation of a long trend; see Section III of Commission Evaluation Report on the operation of Regulation (EC) N° 1400/2002 concerning motor vehicle distribution and servicing, May 2008.

32 See Annex 2 to SWD.

33 See Annex 4 to SWD.

passenger cars continue to be distributed through quantitative selective distribution networks.[34]

Based on the above, it appears that **this objective remains relevant for the light commercial vehicle, truck and bus sectors**, where concentration levels are higher, and there is weaker inter-brand competition. As regards the passenger car sector, the existence of dealer groups that may hold a portfolio of brands in a particular local area, thereby potentially reducing inter-brand competition in that area, may be an indication that the **protection of intra-brand competition also remains a relevant objective for passenger car distribution**.

3. Prevent restrictions on parallel trade in motor vehicles

In its 2009 Communication, the Commission observed that the protection of cross-border trade had enabled consumers to shop within the Single Market and take advantage of price differentials between Member States. Thus, it found it necessary to ensure that consumers continued to have this opportunity, and that distribution agreements did not restrict parallel trade.

Taking into account the opinions of NCAs and respondents to the public consultation, the evaluation shows that **this objective has been at least partially achieved**, in that consumers are generally able to purchase motor vehicles in other Member States without substantial obstacles. Although the Commission has had exchanges[35] and formal complaints regarding restrictions on cross-border trade, it has not detected any substantial obstructions on the part of suppliers that would warrant an in-depth investigation.

Moreover, the Commission's assessment is that **this objective is still relevant**: a finding which was in the main supported by NCAs and respondents to the public consultation. The protection and promotion of the Single Market continues to be a core objective of the Commission.[36] For individual consumers to benefit from the Single Market, it is essential that they are able to purchase products and services across borders without encountering artificial barriers. Next to a home, the motor vehicle is the most expensive investment that the average consumer will make, and if cross-border purchases are hampered, the risk of consumer harm is therefore high.

4. Enabling independent repairers to compete with the manufacturers' networks of authorised repairers

In its 2009 Communication, the Commission noted that independent repairers provided consumers with an alternative channel for the upkeep of their motor vehicles and were a source of vital competitive pressure, as their business models and operating costs were different from those in the authorised networks. Independent repairers' ability to compete

34 See Section 5 of SWD and Annex 2 to SWD.

35 About 25% of the informal submission received by the Commission since 2010 concerned restrictions of parallel trade.

36 The New industrial strategy for Europe (COM(2020)102 10.3.2020) puts the single market at its core, as one of the fundamentals of Europe's industrial transformation.

depended on unrestricted access to essential inputs such as spare parts, tools, training and technical information. It therefore considered it necessary to safeguard this access, as well as to deter suppliers and/or their authorised repairers from using other indirect means to foreclose independent repairers, such as by misusing warranties.

NCAs and respondents to the public consultation broadly confirmed that **this objective has been at least partially achieved**. Since the Commission adopted the four *Technical Information* decisions in 2007,[37] and included the lessons learned in the SGL, no robust complaints have been brought to its attention on this specific point. However, independent operators that compete with authorised repairers still report difficulties in accessing the inputs they need to repair vehicles (e.g., issues with obtaining full or up-to-date information and restrictions on access to in-vehicle data).[38] This view is supported by some NCAs, which also refer to difficulties for independent repairers to obtain timely access to inputs for repair and maintenance. While some of these issues may be linked to these operators' (often multi-brand) business models, and to the major investments needed to be able to repair increasingly technologically-advanced motor vehicles, it cannot be excluded that some of the difficulties encountered may be due to restrictions on the markets.

Based on the above, the evaluation finds that **the objective continues to be relevant**, in that independent repairers continue to provide an important value proposition for consumers, although some behaviour by market players may need deeper scrutiny, notably in light of recent market developments concerning the increased importance of data access.

5. Protecting competition between authorised repairers of the same brand

In its 2009 Communication, the Commission considered that effective competition on the market for repair and maintenance services not only depended on the competitive interaction between independent and authorised repairers, but also on the degree of such interaction within the network of authorised repairers. This was all the more true for owners of newer motor vehicles, who tended to have them serviced in authorised garages. Thus, it concluded that submitting candidate repairers to quantitative selection (including by obliging them to also sell new motor vehicles) was likely to cause agreements to fall within Article 101(1) of the Treaty.[39] Since most authorised repair agreements could not benefit from block exemption due to the market shares of the parties, this implied that limits on repairer numbers would need individual self-assessment.

In light of the information gathered in the evaluation, in particular the views of NCAs, but also those of stakeholders, it appears that **this objective has, at the very least, been**

37 See cases AT. 39140 - *DaimlerChrysler*, AT. 39141- *Fiat*, AT. 39142 - *Toyota Motor Europe* and AT. 39143 - *Opel*.

38 About 10% of the informal submissions received by the Commission since 2010 concerned restrictions on restrictions on access to repair and maintenance information / vehicle data.

39 See paragraph 70 SGL.

partially met. Although the fact-finding study has highlighted a general decrease in the number of authorised repairer outlets from 2007 to 2017, as well as a reduction of the total number of contracts signed by motor vehicle manufacturers with authorised repairers, the Commission's experience does not indicate any generalised practices on the part of suppliers to refuse network entry to candidate repairers that met the applicable quality criteria.

Drawing input from the NCAs and respondents to the public consultation, the evaluation shows that **this objective continues to be relevant**, in particular because the authorised networks continue to enjoy significant market power.

6. Preventing the foreclosure of spare parts suppliers

In its 2009 Communication, the Commission observed that there were often large differences in price between parts sold or resold by a motor vehicle manufacturer and alternative brands of parts. The availability of alternatives brought considerable benefits to consumers, in terms of both choice and price. Thus, the Commission considered it necessary to protect spare parts manufacturers' access to the motor vehicle aftermarkets, in particular through the identification of three hardcore clauses in the MVBER, thereby ensuring that competing brands of spare parts continued to be available.

Having regard to the views of NCAs and respondents to the public consultation, the evaluation shows that **this objective has been partially met**. Firstly, in the Commission's monitoring and enforcing experience,[40] alternatives are usually available for the most common parts used in motor vehicle maintenance, and independent repairers often use such parts to repair and maintain customers' vehicles. Secondly, although some stakeholders have indicated that independent repairers still face certain difficulties, the Commission has not received any antitrust complaints in this area that would indicate more than a limited likelihood of finding an infringement of Article 101 of the Treaty.

As to the continued relevance of this objective, the spare parts markets generally seem to be characterised by two rigidities in particular. Firstly, OES' contractual arrangements with motor vehicle manufacturers may prevent or hamper the former from supplying the aftermarket directly, in competition with parts sold to the vehicle manufacturers and then resold as spare parts. In particular, suppliers in the sector seem to use so-called "tooling arrangements", and sometimes place requirements on OES to transfer intellectual property rights to their customers. Secondly, agreements between OEMs and authorised repairers may oblige or incite the latter to purchase most of their supplies of parts directly from the motor vehicle manufacturer. The evaluation therefore finds that **this objective continues to be relevant**.

7. Preserving the deterrent effect of Article 101 of the Treaty – preventing suppliers from using indirect pressure and threats to achieve anticompetitive results

40 See Annex 4 to SWD.

In its 2009 Communication, the Commission saw fit to include as what it described as a "flanking" measure, the objective of ensuring that suppliers did not use the safe harbour granted by the block exemption to inhibit independent pro-competitive behaviour by authorised dealers and repairers through various forms of indirect pressure and threats to achieve anticompetitive results.

Having regard to the views of the NCAs and the respondents to the public consultation, the evaluation suggests that **this objective has been partially, if not fully achieved**. In particular, between 2010 and 2020, the Commission has not received any complaints that would allow it to find that suppliers had hindered pro-competitive behaviour by exerting indirect pressure or threats on dealers or repairers thereby warranting an in-depth investigation. It appears that, as in many durable goods industries, distributors are often the weaker party to agreements with suppliers. While this is not anticompetitive of itself and does not amount to *prima facie* evidence of anticompetitive behaviour, the Commission would nonetheless take such imbalance into account if elements were brought to its attention suggesting that suppliers had exerted such indirect pressure or threats on dealers or repairers. Contributions from a few NCAs as well as respondents to the public consultation bear out these observations as regards the relative weakness of dealers' contractual position, but do not seem to indicate that pressure or threats have been used to exploit this weakness with a view to hindering pro-competitive behaviour.

The evaluation indicates that **this objective may not be particularly relevant, especially with regard to the markets for passenger cars** where, as the fact-finding study confirms,[41] there is healthy inter-brand competition. Firstly, there are few indications that suppliers achieve anticompetitive results by exerting pressure on, or issuing threats to, their dealers/repairers. Rather, in the Commission's experience, the ability of suppliers to influence their dealers' / repairers' behaviour tends to manifest itself in the fact that, like many distributors of durable goods, the latter make large investments in the brand, and are therefore unwilling to jeopardise those investments by going against what they perceive as their supplier's interests. However, in view of the comments made by some stakeholders concerning a number of practices which in their view could serve as an indirect means of achieving anticompetitive results,[42] further analysis may be needed as to whether this remains a relevant specific policy objective.

The evaluation has also included an analysis of whether **other competition-related objectives could be relevant,** notably in light of recent market developments concerning access to in-vehicle data and the importance of sustainability.

Much in-vehicle data, or the information derived from it (such as the fact that a vehicle has a particular fault, or needs a routine service), may be considered an essential input for repair and maintenance. Where such data or information is not available from other sources, and is supplied to authorised repairers, it should therefore also be supplied on an

41 See Section 2, Annex 2 to SWD.

42 See footnote 150 of SWD; Section 2.3.1 ("Prevalence of particular restrictions") and Section 3.3.2, Annex 3 to SWD; and Section 1.9, Annex 6 to SWD.

equal basis to independent operators that compete with those repairers. However, the evaluation finds that access to data, like access to other essential inputs, should be seen as a subset of the specific objective of enabling independent repairers to compete with the manufacturers' networks of authorised repairers, rather than as a separate objective.

As to sustainability,[43] the most effective way for the competition rules to contribute to such objectives is to ensure effective competition, which will stimulate innovation and thereby encourage the offer of sustainable products and services. The MVBER already allows for the exemption of all agreements, including those that target sustainability objectives, so long as the market shares of the parties do not exceed the 30% threshold[44] and there are no hardcore restrictions.[45] Where the market shares exceed the 30% threshold such agreements will remain subject to individual assessment pursuant to Article 101(3) of the Treaty.

Finally, as for the relevance of the current material scope of the MVBER,[46] this was set in 2010 following a full analysis of the sector, which showed *inter alia* considerable rigidities[47] on the markets for spare parts for four-wheeled vehicles.[48] Although a majority of respondents to the public consultation considered that the scope should be widened to also cover two-wheeled vehicles and some vehicles not meant for roads (e.g., agricultural machinery, tractors and forestry vehicles, construction vehicles), the Commission's experience over the last decade has not given any concrete indications that similar rigidities exist in respect of such products. Its current assessment is therefore that the **current scope remains relevant and appropriate**: a view which is shared by the majority of NCAs.

The evaluation therefore shows that the MVBER regime has generally met its four specific objectives, which continue to be relevant. It follows that the **general objective** of the MVBER regime[49] has also been **largely achieved and continues to be relevant**.

B. Efficiency and coherence of the MVBER regime

The evaluation indicates that the MVBER regime has been efficient, and that the costs resulting from assessing compliance of vertical agreements in the motor vehicle sector with Article 101 of the Treaty are proportionate to the benefits brought by the MVBER

43 A number of respondents to the public consultation indicated that the application of the MVBER should facilitate or contribute to the pursuit of sustainability objectives.

44 See Article 3 VBER.

45 See Article 4 VBER and Article 5 MVBER.

46 Articles 1(g) and 4 MVBER.

47 Namely: (i) OES' contractual arrangements with vehicle manufacturers (e.g., so-called tooling arrangements); and (ii) incentives given to authorised repairers to purchase most of their supplies of parts directly from the OEM.

48 See para 64 et seq of Commission staff working document, The Future Competition Law Framework applicable to the motor vehicle sector, Impact Assessment and Section 4 of the study on "Developments in car retailing and after-sales markets under Regulation N° 1400/2002".

49 To preserve the deterrent effect of Article 101 of the Treaty by facilitating the enforcement work of the Commission, NCAs and national courts and to help businesses conduct the self-assessment of their vertical agreements.

regime. Absent the latter, the costs would have been higher. Moreover, the evaluation has shown that the MVBER, VBER, SGL and VGL are coherent within and between themselves as well as with other EU legislation. Nevertheless, some stakeholders consider that the regime lacks consistency in a few areas such as the distinction between bilateral and unilateral behaviour as regards the issue of access to technical information, certain references to market shares in the SGL, or the relevant market definitions in the motor vehicle sector.[50]

4. Overall assessment

Overall, the competitive environment on the motor vehicle markets has not changed greatly since 2010. However, the sector is now under intense pressure to adapt, due to three factors in particular. Firstly, there is technological evolution, in particular as regards communications technologies and the growing importance of in-vehicle data. Second, there is a constant pressure to reduce emissions, particularly in light of the EU Sustainable and Smart Mobility Strategy[51] and the Green Deal,[52] and to shift to more environmentally-friendly fuels and power trains. Thirdly, the sector needs to face the post-COVID-19 world and the likelihood that mobility patterns may to some extent have permanently changed. It therefore seems likely that some parts of the motor vehicle sector will evolve rapidly over the coming years and that this will have an impact on the conditions of competition that, as yet, cannot be quantified.

Concerning the motor vehicle distribution markets, the information available tends to indicate that competitive conditions vary depending on the type of vehicle. While competition in passenger cars is vigorous, it is less intense for light commercial vehicles, trucks and buses.

At this stage, there are no indications of market failure or actual or potential consumer harm that would justify distinguishing motor vehicle distribution from the distribution of other durable goods. Therefore, the application of the VBER appears appropriate for motor vehicle distribution.

As to the motor vehicle repair markets, the evaluation shows that many authorised repairers enjoy considerable local market power (particularly given their high share of repairs on newer passenger cars and light commercial vehicles), and that it would therefore not be safe to raise the market share threshold of the MVBER to capture agreements between such repairers and their suppliers. Although intra-brand competition within the authorised networks is limited by strict and detailed quality criteria and the large investments that authorised repairers are required to make, independent repairers continue to exert vital competitive pressure on authorised repairers and ensure that

50 For further details, see Section 4, Annex 6 to SWD.

51 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Sustainable and Smart Mobility Strategy – putting European transport on track for the future. COM/2020/789 final.

52 Communication from the Commission to the European Parliament, the European council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal. COM/2019/640.

consumers can enjoy choice in provision and prices. These operators can only continue to exert such pressure if they have access to key inputs such as spare parts, tools, training, technical information and vehicle-generated data. The current regime therefore remains appropriate, but may require updating to take account of technological progress.

The motor vehicle spare parts markets appears to have rigidities that (indirectly) reduce the choice available to end consumers. At this stage, it therefore seems that special treatment of these markets continues to be merited.

Overall, the current MVBER regime has proven to be appropriate and adapted to diverse situations. The Commission therefore does not consider that major change is currently needed to the existing rules. However, it also observes that some provisions may need updating, in particular to reflect the importance that access to data is likely to have as a factor of competition. Some of the specific policy objectives of the current regime may also need to be reconsidered in the light of this assessment.

5. Conclusion

This report presents the results of the evaluation on the functioning of the MVBER regime and does not prejudge in any respect the Commission's decision whether to let the current MVBER regime lapse by 31 May 2023,[53] renew it or revise it. The findings of the VBER evaluation will also be considered in this context.

[53] If the current MVBER were to lapse, the VBER would apply by default.