Press Release

Brussels, 4 April 2022

Non genuine agency contracts are potentially an anti-competitive practice

Many automakers are turning towards agency sales models, this to combine the strengths of their widespread network of independent dealers with the benefits of more tightly managed sales processes and direct customer access.

In theory, manufacturers are free to decide upon which distribution model to unroll, however, they shall respect and comply to contractual obligations of that particular distribution model put in place. In other words, they are not allowed to combine different models and taking advantage out of each particular system.

CECRA notices a trend towards manufacturers opting for an agency model. This agent model consists of appointing a 'sales agent', who acts in the name of and on behalf of a manufacturer called the 'principal'. The role of the agent consists essentially in taking orders from customers and forwarding them to the manufacturer who then delivers directly to the customers at the price fixed by the principal. All financial risks and investments are borne by the 'principal' (manufacturer). , This model also labelled as genuine agency contract. Called genuine because of them being outside of the scope of the competition legislation which is designed for regulating business conducts of independent parties. A 'genuine' agent is not independent from the manufacturer

Should the agent's responsibilities go beyond an 'insignificant' financial and investment risk (also known as 'non-genuine' agency contract), the position being exempted from competition legislation will be lost. Consequentially, under such a 'non-genuine' agency contract, the manufacturer is not allowed to fix the end-customer price. In this aspect the non-genuine agency is very similar to a distribution model, where the financial risks and investments were to a great extent supported by the dealers and the dealers were basically free to set the final end-customer prices.

CECRA warns manufacturers, they shall be fully aware of this and take into account all the aspects and obligations an agent contract implies. Although, as said, there are strict rules to comply with, we see some manufacturers becoming imaginative and a number of scenarios are emerging.

We are informed that some manufacturers try to play a 'cherry-picking game'. Some manufacturers have 'proposed' to their actual dealers to switch to non-genuine agent contracts by which the ex-dealers would have to continue bearing significant investments and risks, and the final price would not be entirely fixed (e.g. letting the final price to the customer fluctuate by a few dozen euros, this being the possible waiver of commission from the agent to the final customer). **This amount would obviously be derisory and would certainly not make it possible to consider that the manufacturer does not control the sales price to the final customer and can therefore dispense with assuming the commercial and financial costs and risks.**

In the absence of an effective possibility for "agents" to give up a significant part of their commission, there is a **risk that the competition authorities will consider that there is a de facto situation of imposed resale price, which is a black clause in the current Block Exemption Regulation** and will remain so in the future draft regulation as well. The European Commission is well informed about these practices and is following it up closely.

CECRA therefore considers that from a legal point of view, this system of "false" agent contracts does not hold water and presents **serious risks both for manufacturers** who would like to follow this path **and** - even if to a lesser extent - **for distributors** who sign "false" agent contracts who could thus become (against their will since the distributors would have been forced to sign these contracts under penalty of termination of their relationship with the brand concerned!) stakeholders in an **anti-competitive practice and thus potentially exposed to fines**!

Economically, manufacturers should not 'offer' contracts to their partners if they know that the **proposed business model** is not **viable**. CECRA is not per se opposed to the use of genuine agent contracts which can have positive elements for both manufacturers and current dealers but: "Whatever distribution model manufacturers will unroll, one fundamental aspect is that whether it is a distributor or an agent, they need an economic viable business model, otherwise the future of distributing, repairing and maintaining cars will be disrupted".

For more information

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CECRA, established in 1983, is the European federation bringing together national professional associations, which represent the interests of motor trade and repair businesses and European Dealer Councils. CECRA represents on a European scale 336,720 motor trade and repair businesses. Together they employ 2.9 million people.