

## Press Release

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### More transparency in the current contract discussions between brands and their networks

**The automotive world is currently undergoing a radical transformation, both in terms of technology and sales and after-sales. Driven by the European Union to invest in the electrification of vehicles, manufacturers are tending to reduce distribution costs. This is manifested in particular by the replacement of initial distribution contracts by agent contracts. The organization of these networks is governed, at national and European levels, by legal principles which aim to protect the interests of commercial partners and to preserve competition for the benefit of the end customer.**

In this context, contract negotiations, which are accelerating in many brands, show an attempt by some manufacturers to capture value from the distributors, but also more broadly from the entire automotive value chain (recycling, leasing, etc.), at a time when manufacturers are recording unprecedented profits. The economic dialogue on the future of the distribution network, which is not transparent, leads to the implementation of new, totally unbalanced contracts. Indeed, several car manufacturers refuse to lay their cards on the table and do not communicate the main contractual terms to all stakeholders. The information is incomplete and deliberately given very late, suggesting not a sharing of value, but a transfer of value to the detriment of distributors.

**CECRA urgently requests the lifting of the confidentiality clauses** as they do not allow for a transparent dialogue and balanced negotiations between manufacturers and distributors. The current discussions are generating a deterioration of the economic climate within the sector, suggesting an economic destabilization unprecedented in the history of the automotive trade. By capturing value, it will deteriorate the local entrepreneurial fabric. Finally, it will cut back on innovation in the service sector, to the detriment of the competitiveness of companies.

Indeed, according to the results of a survey conducted by CECRA's French member Mobilians among a panel of dealers and agents of all brands, 60% of distributors declare that they are not informed about the contracts under discussion (70% among agents), while 80% of them are not ready to sign them (85% among agents).

#### **A takeover of the value chain by car manufacturers**

Since the non-renewal of the Block Exemption Regulation (BER) n°1400/2002 of 31 July 2002, specific to motor vehicle distribution, and the attachment of this sector to the general regulation, in 2010, then in 2022, the legal situation of the motor vehicle trade sector has profoundly weakened and the dependency of dealers on manufacturers has increased considerably through the increase of the importance of investments and the restriction of the commercial freedom of distributors. The implementation by many manufacturers of new, totally unbalanced distribution contracts, based on the model of agency constitutes a new step in this direction.

The change in the model of these manufacturers, aiming to control the sources of profits from vehicles, is based on the shift of its economic centre of gravity from production to services in the broadest sense of the term. From sales to recycling, these manufacturers are developing a genuine global strategy of capturing the entire automotive value chain.

Concerns about current negotiation topics relate to the following items for both dealers and agents: 1. Remuneration and commercial policy; 2. Transfer and valuation of the business; 3. Legal architecture of the contract; 4. Level of coverage of activity-specific costs for brands and market specific investments wishing to switch to an agent contract; 5. Control of used car trading.

The agents also underline their concerns regarding the capture of ownership of customer data, as well as the purchase of spare parts.

### **Respect of all legal obligations by all parties**

If the move to agency models is confirmed, and as CECRA relayed at Connect Europe in mid-September, distributors are demanding that manufacturers' agency contracts respect all the legal obligations of this particular distribution model and do not include clauses from other distribution models to their exclusive advantage ([#CONNECTEurope 2022 successful event "NO" to the non-genuine agency contracts](#) and [Non genuine agency contracts are potentially an anti-competitive practice](#)). "Whatever distribution model manufacturers deploy, a fundamental aspect is that, whether it is a dealer or an agent, they need an economically viable business model, otherwise the future of car distribution, repair and maintenance will be disrupted," said the dealer and agent networks present at Connect Europe.

CECRA has already expressed its concerns : there are quite specific requirements for a manufacturer-dealer relationship in order for it to be treated as 'agency'. There is no legal framework for a 'non-genuine agency' - such arrangements are effectively just a modified franchise. However, if a manufacturer tried to steer pricing centrally under a non-genuine agency or retail pricing was effectively fixed because there was no realistic opportunity for the dealer to negotiate prices, then the competition authorities are on standby to intervene in such arrangements

### **Considerable damage to local employment**

This change of model is not intended to create value, but to transfer the value usually produced by their partners in automotive services into the hands of certain manufacturers, whose profits have literally soared, resulting in a significant drop in turnover and sales margins for distribution and repair companies. Many companies will not be able to resist the drying up of their business and will be forced to disappear, an outcome anticipated by certain manufacturers, some of whom have already announced a reduction in the scope of their network.

This movement will primarily affect the local employment fabric in medium-sized cities and smaller towns, in sparsely populated areas, where distribution and automotive service networks have a very important economic weight.

The direction taken therefore leads to a destabilization of the distribution network and the degradation of local employment, materialized by the disappearance of direct and indirect jobs. Today, automotive distribution and repair represent 2,9 million jobs throughout Europe, which cannot be relocated, in contrast to industry, which has largely relocated.

### **A deterioration in service to the European citizens and their access to mobility is to be expected**

The movements at work suggest a deterioration in car service for the European citizens in areas where, by definition, manufacturers will not invest because they are less profitable. The control by certain manufacturers of the entire value chain and retail prices cancelling any intrabrand competition will mechanically lead to vehicle price inflation. Consumer choice will be severely limited and free price formation will come under pressure.

It should be remembered that vehicle prices have increased very much with the trend only set to increase due to the current general environment.

The acceptability of vehicle prices to consumers is becoming a growing problem, particularly the most vulnerable and those living in rural or sparsely populated areas, being the first to be affected in their access to mobility. Behind access to mobility, it is also access to employment and, more broadly, economic and social life that are penalised.

In this context, as the Low Emission Zones are implemented in most cities in Europe, the citizens will be faced with a double impossibility - that of using their old vehicle, but also of buying a new one in the face of inflationary drift.

### **A European legislative vacuum**

The non-renewal of the Block Exemption Regulation (BER) n°1400/2002 of 31 July 2002, specific to motor vehicle distribution, and the attachment of this sector to the general regulation, in 2010, then in 2022, have profoundly weakened the legal situation of the motor vehicle trade sector.

In a European regulatory context that does not provide a sufficient framework for contractual practices between manufacturers and distributors, many European countries have chosen to regulate distribution by means of specific legislative provisions in their national law, with the aim of preserving the ability of distributors to contribute to the local economy: this is the case in Austria, Belgium, Luxembourg and, more recently, this summer in Italy.

These national legislative provisions provide for the obligation for car manufacturers or importers to compensate for unamortised investments made by their distributors and/or a right to compensation for the latter at the end of the contract. Indeed, in the context where certain manufacturers are undertaking to replace selective distribution contracts by agency contracts, aimed at controlling the price of sales of new vehicles to consumers, such provisions at national level require, on the one hand, that these manufacturers assume the burden of all the investments necessary for the marketing of new vehicles and their brand and, on the other hand, in accordance with the **Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents**, that they pay compensation for the loss suffered by the agent solely as a result of the termination of the agency contract (1).

(1) This directive **makes a distinction** according to whether the agent is responsible for negotiating and/or concluding business: "For the purposes of this Directive, 'commercial agent' shall mean a self-employed intermediary who has continuing authority to negotiate the sale or the purchase of goods on behalf of another person, hereinafter called the 'principal', or to negotiate and conclude such transactions on behalf of and in the name of that principal." But the Directive therefore makes **no difference** between an intermediary acting in the name and on behalf of the principal, or in his name or on behalf of the principal.

The Commission's 2010 Guidelines on Vertical Restraints as well as the 2022 Guidelines clarify that an agent is a person who can act either on his own behalf or on behalf of the principal. Indeed, the 2022 Guidelines specifically define the agency agreement as follows: "3.2.1. Agency contracts not covered by Article 101(1) of the Treaty: (29) An agent is a legal or natural person entrusted with the power to negotiate and/or conclude contracts on behalf of another person ('the principal'), either in the agent's own name or in the name of the principal, for the purchase of goods or services by the principal, or the sale of goods or services supplied by the principal".

The transposition of the Directive in several countries notably Austria, Denmark, Germany, Portugal and Spain does not represent any problem. Unfortunately, in other national laws, the agent is in these countries systematically someone who acts in the name and on behalf of the principal. CECRA reminds that national law must always be interpreted in accordance with European law. There is indeed a principle in European law that the national court must interpret any provision of national law in conformity with the applicable provisions of Union law in order to avoid potential conflicts between European law and national law. This principle has been clearly recalled with regard to directives, notably in the Von Colson and Kamann case of the Court of Justice of the European Union. The Member States are therefore obliged to achieve the result provided for by a directive. This means that we could argue that the national laws on agency contracts must be interpreted in the light of the European directive which provides that both persons acting on behalf of the principal and those acting in their own name are considered as commercial agents.

**In order to avoid any debate on the substance and any disillusionment, it seems to us necessary that the parties to the agency contract clearly specify their status in the contract.**

In the last few days we have heard of delays to a number of the planned implementations of agency agreements in Europe, sometimes for some countries at least.

**Manufacturers who are still in the planning phase will hopefully also take note of the delays, and reconsider their own timeline and whether they have fully considered all economical and legal implications of their choice. This transition is by no means simply a contract change, but in fact is a fundamental change in the manufacturer-dealer relationship that has huge implications for roles and responsibilities, and for the people who staff the operations on both sides. A real dialogue is necessary between the brands and their networks in a transparent- via the waive of the confidentiality clauses- and constructive manner from both sides.**

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.