

Slip Sliding Away? The Changing Politics of European Car Distribution

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ABSTRACT *This paper examines the development of EU regulations in the car distribution sector. In the span of approximately fifteen years, the sector has shifted from being regarded by its critics as being one of the most protected havens of European industry to one faced with open competition. The paper claims that the inability of the car industry to resist liberalization in this sector is related to several factors. First, there was declining support from member states for their national producers, in part explained by global shifts in ownership and production which rendered concepts of “national producer” problematic. Second, technological changes combined with the impact of globalization on in the industry undermined the case for a link between sales and service of cars. Third, DG competition, led by Mario Monti, wished to push through the ability of consumers to make cross-border purchases of cars. Fourth, a more general logic embedded in the Single European Market programme (SEM) had led to several decisions to prosecute EU car producers for infringing SEM rules and thereby undermining the ability of EU member states to protect their “national producers.” This has implications more broadly: will increasing globalization of industrial ownership further undermine the state-firm nexus in the EU, thus reducing the propensity of national industries to resist liberalization? In this context, will member states be prepared to give the EU Commission a freer hand in forcing through liberalization in the remaining sectors that remain problematic?*

In a matter of around fifteen years, the EU car distribution sector has shifted from being one of the most protected havens of European industry to being faced with open competition. This is all the more surprising in that the car industry has been regarded as being one of the most visible symbols of national champions (and national protection) in Europe (Mattoo and Mavroidis, 1994; Groves, 1995; Fraser and Holmes, 1997; Holmes and Smith, 1998). Indeed, most explanations for the development of the car industry in the EU have been accurately and correctly related to the degree to which the car-producing EU member states have been willing to support the industry’s claims for special treatment. This explains why the industry has been subjected to numerous restrictive trade measures on import competition from Japan, threats of local impositions against non-EU producers based in the EU and in the case of the car distribution sector, blanket exemption from competition rules.

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This paper demonstrates that due to both economic changes occurring in the industry and institutional shifts of decision-making power away from the member states and towards the European Commission and the European Court of Justice, member states have become less and less willing and able to support the industry.

The globalization of the car industry has undermined traditional notions of national production and distribution. It is now difficult to define what a national car producer is in Europe. This means that national support is more difficult to garner from member states. It also provides a political rationale for member states to pass governance of the sector over to a supranational, EU level. Second, technology in the distribution sector which once granted car producers and distributors an “informational” head start over their rival actors in the sector has led to calls for liberalization. The growth of Internet sales, directly undermining territorial exclusivity, has prevented the car industry from arguing successfully for the need for a “location clause” in the regulatory framework for the industry. The ending of formal restrictions of exports of Japanese cars in 1999, removed a public policy argument for the maintenance of selective and exclusive distribution (SED). The EU–Japan “Elements of Consensus” agreement which governed imports of Japanese cars into the EU was based upon the demands of five member states for the protection of their national sectors against Japanese imports. In order to prevent parallel imports of Japanese cars into the five member states from other countries within the EU, it was necessary to monitor trade within the EU for this purpose. SED provided a useful means of doing so since Japanese car distributors could control the sale of Japanese cars within their territory.

The paper aims to demonstrate that as global changes in the ownership and production structures occurred, as technological developments in the economics of the industry shifted, and as pressures for liberalization at the EU and international level increased, it became increasingly difficult for the industry actors to resist liberalization in the sector. This resulted in an important change in the traditional balance of power in the industry and crucially undermined the state-firm link.

The case in this paper adds further evidence to the argument that technology and globalization break down long-standing relations between states and firms forcing actors to seek new positions in the respective industries (Milner, 1988). Arguably, while car manufacturers are highly internationalized in their production structures, our case demonstrates that the regionally and nationally bounded actors, the car distributors, have suffered most from global and technological changes. National governments are less willing and able to protect them from these trends and while manufacturers will be negatively impacted by these changes, their multinational structures will eventually allow them to adjust.

Section 1 offers a brief summary of developments in EU car distribution regulation since the inception of the 1985 “Block Exemption” to the adoption of EC Regulation 1475/95 which liberalized the 1985 rules to EC Regulation 1400/2002 which places the sector under the same competition rules as other industries in the EU, thereby removing the car industry’s exemption from normal rules. The development of the policy, in a matter of seventeen years is

remarkable given that historically, the car sector has been given strong national protection from the state.

Section 2 is a stakeholder analysis of the changes and the influences that each actor sought to bear on the development of regulation. This section demonstrates the declining influence of the car manufacturers and distributors as technological changes, shifts from national to EU level governance and as global pressures for liberalization undermined their arguments for protection. The “winners” of all these changes have been the consumer organizations who had been pushing for liberalization ever since the 1985 Block Exemption was introduced and the new retailers who sell through the Internet. The main “losers” of the changes have been the distributors whose commercial existence was predicated on territorial monopoly in the face of the demands for exclusivity from the car manufacturers. They have lost largely because of technological changes in the economics of car distribution and a global and European push for liberalization of the sector. As nationally and locally rooted actors, liberalization weakened their position. The car manufacturers themselves would appear to be losers, but not to the extent of the distributors as their highly internationalized production structures would enable them to adjust to the changes in the new framework. Their support for the distributors was tacitly based on the maintenance of exclusivity in the regulation. As this is removed in Regulation 1400/2002, it is unlikely that the manufacturers will maintain their support for distributors in the future. One of the remarkable aspects of positions taken by the manufacturers and distributors was their relative unwillingness to adopt new arguments in favor of exempting car distribution from normal competition rules. Despite mounting criticism of the regulation of the sector and despite an increasing number of actors who were mobilized against the block exemption, the manufacturers and dealers continued to offer the same arguments in favour of the *status quo*.

Section 3 examines what can be generalized from this case. Section 4 is a concluding section, summarizing the main findings and questions for future research.

1. The development of EU car distribution regulation

Examining the EU car sector would seem to be a classic case of EU intergovernmental politics at work: the political sway of the leading car-producing member states would appear to be the main driving force behind this policy. Indeed, the history of the industry clearly demonstrates this in the field of trade policy with Japan and other East Asian producers. The case study in this paper examines the development of policy in a related sub-sector of the industry: car distribution. This section will briefly outline the development of regulation in this sub-sector. At this stage, the paper does not analyze how the new legislation emerged, reserving this analysis for Section 2.

While the arguments used by member states to protect their national producers from East Asian import competition were closely related to traditional political economy arguments against “unfair” competition, the arguments mobilized by the car industry in Europe for the maintenance of a selective and exclusive distribution system (SED) were based, ironically, on well-established efficiency

arguments related to marketing externalities (Telser, 1960). Indeed, throughout the world, the common practice in the industry had been to require distributors to sell only one brand of car in return for geographical monopolies on the sale of that brand.

This practice, however, was bound to run contrary to the concept of the free movement of goods enshrined in the Single European Market project launched by Jacques Delors' EU Commission in the early 1980s. The challenge facing the car producers, their distributors, and their allied supporters in the member state governments was to convince the EU Commission that somehow the car distribution sector was different from other goods sectors and therefore required special treatment. In 1985, after intense pressure from the car producers and distributors, the EU Commission adopted Regulation 123/85 (hereafter 123/85) which granted complete SED rights to the industry. Regulation 123/85 was the legal formalization at the EU level of existing national practices. The measure gave full exemption to the distribution sector from normal EU competition rules. Among the measures contained in 123/85 was the right of manufacturers to impose exclusivity on distributors; to allow manufacturers to terminate contracts without right of appeal and grant territorial monopolies to car distributors. On the servicing aspect of SED, independent service companies did not have the right to service cars under warranty and only genuine OEM parts could be used for servicing. The measures would be in place for ten years and would be subject to review a year before their expiration. In 123/85, there was no reference to the significant price differentials for the same vehicle that existed between member states nor was there any link drawn between SED and these price differences.

After eighteen months of consultation, the EU Commission decided to renew 123/85 under a new form: Regulation 1475/95. The development of 1475/95 was the subject of intense lobbying by the main actors in the industry. The main outcome of the new framework was a slight liberalization of the sector granting more freedom to car distributors to sell more than one brand of car (without explicitly allowing it). Importantly, and in direct reference to the politics of the SEM, the EU Commission claimed it would monitor the relationship between the SED and price differentials and inserted a list of "black clauses" in 1475/95 which would be invoked if certain practices were undertaken by the industry to frustrate consumers in the EU from attempting to make cross-border purchases. Additionally, the European Court of Justice (ECJ) became active in trying to make the SEM rules stick, by prosecuting car manufacturers for anti-competitive practices. Lastly, 1475/95, despite the car industry's attempts to renew the exemption from competition rules indefinitely, was to be renewed only for seven years. While consumer groups were unhappy at the renewal of SED, the EU Commission was making a distinct effort to liberalize the regime, in line with the SEM logic, and to reflect increasing realities about the globalization of the industry and of technological developments in the sector.

Consultation on Regulation 1400/2002, designed to replace 1475/95, began more than two years before the latter expired. The EU Commission began a long and extensive process of pre-draft consultation in order to develop a new draft Regulation. The final Regulation adopted by the EU Commission represented

perhaps the death knell for the practice of SED in Europe. In 1400/2002, there is the legal right to distributors to sell more than one brand of car on the same premises (termed multifranchising); significantly greater consultation rights regarding termination of contracts between distributors and manufacturers and crucially the ending of the restriction on location of distribution outlets that granted territorial monopolies to distributors. On the servicing of cars, further liberalization includes allowing distributors to sub-contract servicing of vehicles to independent repairers as long as they meet criteria set by the manufacturer. Effectively, 1400/2002 ends the long-standing practices of the industry and represents a remarkable change and power shift in the industry away from national producers and member states towards consumers and the EU Commission.

2. From 123/85 to 1400/2002: a stakeholder analysis

This section examines in detail how and why regulation of the sector went from being tightly controlled by restrictive practices developed by the industry and became progressively liberalized such that by 2002, the very concept of SED enshrined in 123/85 had been ended. This occurred against the wishes of one of the most powerful lobby groups in the EU and in less than two decades. It is argued that the waning influence of the car industry is related to three factors. First, the logic of liberalization as part of the SEM combined with the transfer of decision-making power to EU level institutions with an interest in furthering this process of liberalization undermined the industry and made the member states less willing and able to support their national producers. Second, the more general global trend in the industry related to the de-linking of national ownership and production supported by global trade liberalization altered the strategies and preferences of car producers around the world. Thus, it has become increasingly problematic to refer to “national producers” and therefore national political support is more difficult to garner. For example, the ending of all trade restrictions on imports of Japanese cars into the EU in 1999 in addition to the location of Japanese producers within the EU has rendered “European v. Foreign” comparisons questionable. Third, the nature of technological developments has made it difficult to argue for the persistence of restrictive practices. The use of Internet sales and direct database sales serve as an example of the irrelevance of the close link between distribution and retailing.

As is argued below, the decline of influence among actors in the industry is not uniform. Liberalization implies big “losses” for the distributors who have become accustomed to territorial monopolies and have lived by the existence of SED. For them, significant change is implied. Consumer groups have gained substantially from the changes in 1400/2002. The ending of SED in its previous form grants the liberalization that they have demanded. Probably the most interesting position is that of the manufacturers. Traditionally, they have supported their dealer network to the extent that it allowed them to control sales of their vehicles; control competition and extract profits in the after-sales service aspects of car distribution. They lobbied hard to maintain SED over time but with progressive liberalization have found their efforts being constrained. At the

same time, the manufacturers have witnessed the rapid globalization of their industry and the development of new technologies that undermine their position in the distribution sector. On the one hand, technology enables them to offer more efficient sales and distribution opportunities through direct sales on the Internet. On the other hand, this technology undermines their control of SED. As is demonstrated below, while the producers lobbied hard to maintain SED, even in a watered-down form, manufacturers knew that time was running out and they will in the future have to adjust their relationships with distributors.

2.1 Regulation 123/85 and its renewal in 1995

At the start of the consultation and renewal process for Regulation 123/85, it was clear that the manufacturers were looking for maintenance of the *status quo* and for a renewal of at least 10 years. While recognizing the EU level policy competence in this area, ACEA was also keen to ensure that they could enlist national support for their renewal campaign. UK dealers, for example, were encouraged to send letters to their MPs persuading them to lobby the Department of Trade and Industry (DTI) and the UK government for renewal of 123/85.

The main set of arguments for a renewal of the 123/85 was detailed in a position paper co-authored by the manufacturers and dealers produced in July 1993. The central conclusion of the paper was unequivocal: the SED system had led to an increase in consumer benefits and a reduction in any “possible anti-competitive side effects” caused by the SED itself. The manufacturers claimed that the car was not like other consumer goods. Competition as it is understood in the standard economic textbook could not be reasonably applied in this case. Implicitly, the manufacturers were drawing a contrast between the car industry, where pre- and after-sales services were an important aspect of the product “bundle” with other “off the shelf” industry types. Moreover, the manufacturers argued that safety and regular maintenance are essential features of the car that can only be guaranteed through a carefully drafted regulatory regime that enshrined exclusive and selective distribution. The manufacturers argued that the demands of safety required significant investments in safety equipment, electronic and mechanical diagnostic tools as well as training of staff. All these investments, the manufacturers claimed, could not be made without adequate financial security and a return on their investment.

The cost for advanced repair equipment is high and financial returns are unattractive. [...] The only way the manufacturers can guarantee the continued existence of a competent network is based on the Block Exemption [...]. If manufacturers were no longer permitted to operate on this basis, dealers would only concentrate on the profitable elements of the business and nobody would take responsibility for the financially unattractive service

related to emissions and service for which sophisticated high tech equipment is indispensable.¹

The manufacturers claimed that an over emphasis on a model of competition based on “perfect contestability” as forwarded by BEUC tended to mask the harsh reality that inter-brand competition between manufacturers was fierce. They pointed to low margins on car sales as evidence of a highly competitive industry. On the question of exclusivity, the manufacturers underlined that there has never been a court ruling against them that condemned them for refusing a request for a multifranchise agreement. In this context, one industry analyst pointed out that although there has been no litigation on the part of dealers to promote multifranchising, it is unlikely that dealers would wish to confront their manufacturers for fear of their exclusive contract being terminated.²

Territorial and brand exclusivity, according to ACEA, has no restrictive impacts on competition. This is because every dealership is faced with competition from other brand dealers in its vicinity. Indeed, the manufacturers asserted that brand exclusivity is pro-competitive in that concentrating on one particular brand prevents the spillover of competitively sensitive information and acts as a safeguard against “tactical interaction and co-ordination of competitive behavior.” Moreover, there is a pro-consumer effect whereby dealers are forced to concentrate on one brand and therefore enhances sales and after-sales service provided to consumers. The manufacturers pointed to evidence from the US that suggested that multifranchising is “well below” the performance levels of single-brand dealers.

Multi-make dealers also have a greater number of vehicles to deal with and as a consequence they do not always possess the in-depth product knowledge that is required to provide high quality service for goods of an ever increasing technical complexity.³

The EU Commission had been sympathetic to the views of the dealers as evidenced by an early draft of 1475/95 in which the Commission recognized that 123/85 had failed to take into account the demands for greater economic and financial independence.⁴ Regulation 123/85 gave little power to dealers to influence the terms of the contract. Dealers could have their contracts terminated by manufacturers without sufficient notice. CECRA claimed that “[a] dealer agreement should recognize the dealer’s substantial investment in premises, equipment and personnel. Unless, therefore, there is an established substantial continuing breach of the dealer agreement by the dealer [...], the [manufacturer] should be liable to indemnify the dealer in respect of obligations incurred [...]

1. European Automobile Manufacturers Association (ACEA), *Automotive Dealer Agreement Block Exemption: Request for Renewal*, July 1993, Brussels. ACEA stated that the 1985 block exemption has actually contributed to the achievement of the Single European Market by contributing to the free circulation of goods.

2. Malcolm Harbour, Director, International Car Distribution Programme (ICDP).

3. *Ibid.*, p. 7.

4. Groves, 1995, p. 100.

and to pay adequate compensation to the dealer.”⁵ Moreover, this created an adversarial climate between manufacturer and dealer and provided little economic security to the dealer. CECRA wanted to ensure that dealers could have greater freedom to advertise outside their assigned territories. As far as direct sales were concerned, CECRA feared that greater use of direct retailing by manufacturers was a serious threat to dealers. They wanted restrictions on this practice because sales to fleets represent important sources of revenue for dealers. Direct sales also undermined territorial control for the dealer and contributed to the asymmetric relationship in favor of the manufacturers. The dealers claimed that “[i]n many cases, the delivery of vehicles sold to manufacturers direct are entrusted to authorized Dealers, and Dealers reasonably seek adequate remuneration for their involvement [in after sales service]. Sometimes manufacturers pay this compensation, but not in the majority of instances.”⁶

Given these differences in expectations between the manufacturer and dealer groups, the greatest challenge faced by dealers and manufacturers was how they were going to be able to form a united position in the consultation process with the EU Commission. Early communication between ACEA and the dealer networks attempted to form an alliance to tackle the consumer groups. ACEA was worried that Karel Van Miert, the Commissioner in charge of competition policy at the time would be sympathetic to the consumer groups’ views.⁷ Thus it was imperative that the combined might of manufacturers and dealers were brought together to counter this possibility.

As an opponent to ACEA and substantially weaker in its influence over the EU Commission, BEUC represented the national consumer groups at the EU level. Their central contention was that there was that the manufacturers and dealers offered no credible evidence that a liberalization of rules on distribution would worsen the consumer or the industry at large. Thus 123/85 should not be renewed. They claimed that the onus of proof should be on the industry to show that the necessity for SED. BEUC claimed 123/85 had a number of directly and indirectly restrictive effects on competition. BEUC further claimed that 123/85 had been drafted and administered in such a way as to be “much too permissive [...] Which has subtly shifted the burden of proof from those who favor restrictions on competition to those who are opposed to such restrictions.”⁸ The EU Commission was accused by BEUC of not being tough enough on price differentials, parallel imports, and for their lack of active investigation of claims against manufacturers and dealers. BEUC claimed that ACEA formed a concentrated oligopoly and the 123/85 served to weaken the willingness of the manufacturers to compete with each other. BEUC argues that this was “partly because of an attachment to the *status quo* (and the benefits that they derive from it), and partly for fear of ‘rocking the boat.’ In these circumstances the aggregate behavior of the parties in the system can (and in this case does) produce

5. European Committee for Motor Trades and Repairs (CECRA)(1993), Submission for the Renewal of EEC Regulation 123/85 (The Block Exemption Regulation Applying to Motor Distribution Agreements in the European Community), CECRA 93 1820/RS/CD. Brussels, 1993. par. 8.3, p. 7.

6. *Ibid.*, p. 8.

7. The SMMT and UK Ford Dealers Association.

8. Bureau Européen des Unions de Consommateurs, *Regulation No 123/85: Summary of BEUC Position, BEUC/3/94*, Brussels, January 1994. p. 3.

anti-competitive effects similar to those produced by explicit arrangements not to compete outside the scope of the application of the block exemption.”⁹

ACEA had several fronts on which it had to generate consensus. First, it had to forge agreement among its own members and their associated national dealer networks. This proved to be relatively straightforward as most national groups had strong interests in maintaining the status quo. Second, it created an uneasy but working relationship with CECRA. This proved to be more difficult. These two were necessary pre-conditions for a successful lobbying process with the EU Commission on the renewal of 123/85. Third, it had to provide a convincing rebuttal of the link between the completion of the SEM, cross-border differentials and 123/85. Until now, while the EU Commission had not officially drawn a link between these three (a point often made by ACEA) it was known that DG Competition officials were convinced of a link based on research done for them.

A document authored by the EU car producers was to form the basis of all the manufacturers’ lobbying activities regarding 123/85.¹⁰ However, when ACEA suggested that this paper should be adopted as a joint CECRA/ACEA paper, it received only lukewarm support from dealer groups.¹¹ UK groups pointed out that the claim of the paper that the 123/85 struck the correct balance between the interests of manufacturers, dealers and consumers was unacceptable.¹² Equally unacceptable to the dealers was the claim by ACEA that high-tech service operations could only be provided by exclusive dealerships. Finally, UK dealers could not agree with ACEA’s claims that direct sales have a minimal impact on dealer interests.¹³

The “clincher” for ACEA came when they agreed to water-down the claim that 123/85 had minimal impact on dealer interests and by promoting the interests of CECRA regarding territorial exclusivity and by offering more conciliatory view on termination of dealer contracts. Throughout the renewal process, ACEA had a stronger position than CECRA as CECRA members relied upon car manufacturers for financial and commercial support.¹⁴ The best they could hope for, which is what they achieved, was a watering down of ACEA’s position. Moreover, ACEA sought consensus with CECRA only to the extent it needed it to tackle the EU Commission.

It is worth noting that CECRA pointed to the necessity to put forward a convincing argument on the supposed link between market segmentation and “excessive” price differences. At the time, Van Miert was believed to be looking at the renewal of the 123/85 in a “pragmatic” way, implying that manufacturers and dealers would need to seek a detailed response to this issue. As is argued

9. *Ibid.*

10. ACEA, *Automobile Distribution in Europe—The European Automobile Industry’s Position: Renewal for Another 10 Years*, Brussels, April 1994.

11. A series of confidential faxes sent between national dealers groups, ACEA and CECRA demonstrate the unease that dealers had with ACEA’s paper.

12. UK Ford Dealer Groups

13. Interestingly, ACEA made it known to UK dealers that they would be prepared to drop the direct sales issue if it would have avoided controversy.

14. Malcolm Harbour, Director of ICDP (International Car Distribution Programme), an industry analyst, claimed that even if the EU Commission granted power to dealers to multifranchise, the majority of dealers would not have the financial resources to challenge the manufacturers.

below, the failure to convincingly challenge EU Commission logic on the necessity for the completion of the SEM, which for the EU Commission meant price convergence, partly led to the introduction of 1400/2002 after the expiration of 1475/95 and the end of SED.

Despite this, ACEA/CECRA held the upper hand with Commission officials. Even DG Competition, which is known for its pro-liberalization stance when compared with DG Trade or DG Enterprise,¹⁵ was prepared to listen to ACEA's arguments. Partly as a result of pressure from member states such as the UK to consider maintenance of the status quo,¹⁶ and in part considering the role of the "Elements of Consensus" agreement between the EU and Japan on Japanese imported cars, the EU Commission was likely in some form to renew 123/85. Indeed, the final wording of 1475/95 used similar vocabulary and emphasis to that of the ACEA/CECRA submissions. For example, ACEA/CECRA claimed in a position paper:

The cost for advanced repair equipment is high and financial returns are unattractive. [...] The only way the manufacturers can guarantee the continued existence of a competent network is based on the Block Exemption [...]. If manufacturers were no longer permitted to operate on this basis, dealers would only concentrate on the profitable elements of the business and nobody would take responsibility for the financially unattractive service related to emissions and service for which sophisticated high tech equipment is indispensable.¹⁷

Multi-make dealers also have a greater number of vehicles to deal with and as a consequence they do not always possess the in-depth product knowledge that is required to provide high quality service for goods of an ever increasing technical complexity.¹⁸

The EU Commission's final wording of 1475/95 read:

The exclusive and selective distribution clauses can be regarded as indispensable measures of rationalisation in the motor vehicle industry, because motor vehicles [...] at both regular and irregular intervals require expert maintenance and repair, not always in the same place. Motor vehicle manufacturers co-operate with the

15. Both doctoral research and consultancy projects for the EU Commission has demonstrated to the author the considerably more interventionist stance taken by the latter two DGs. DG Industry in particular, has shown the greatest enthusiasm for the creation of EU-level competencies in industrial policy. DG Competition officials, mainly lawyers, have fought hard to eliminate state aid in the EU.

16. British Trade Minister at the time, Neil Hamilton, made both parliamentary and private calls for the renewal of 123/85 reflecting the views of the UK Society for Motor Vehicle Manufacturers and Traders (SMMT).

17. See footnote 2.

18. See footnote 4.

selected dealers and repairers in order to provide specialised servicing for the product.¹⁹

Despite its allegedly pro-liberalization bias, DG Competition decided to renew the BE. While there were some slight modifications to the 1985 BE related to marginally greater flexibility for dealers to sell competing brands,²⁰ the emphasis remained on an exemption from the normal rules of competition. In the renewal process, the European level organization of ACEA and CECRA combined with support from the member states won the day for the most part. Nevertheless, a closer reading of 1475/95 provided a portent of future developments. First, the BE was renewed for only seven years followed by a review. ACEA/CECRA had called for at least ten years. Second, the EU Commission introduced “Black Clauses” into 1475/95 which threatened the withdrawal of exemption from competition rules if, among other things, the car dealers and manufacturers frustrated cross-border sales. Third, the EU Commission informed the car industry that there was to be formal monitoring of price differentials within the EU. This was an indirect way of drawing a link between SED and price differentials, something the industry vigorously denied.

Further weakening of ACEA and CECRA’s position was encouraged by other events within the EU. The ECJ and DG Competition began to undertake a series of high profile investigations and prosecutions of car companies for breaches of competition rules.²¹ It is also worth noting that at this time, there were also a number of mergers and acquisitions taking place in the global industry that was undermining the concept of national producers and therefore national political support for the car producers.²²

2.2 The end of SED: regulation 1400/2002

By the time that 1475/95 was to be renewed, the political and technological landscape of car distribution had changed. First, Mario Monti had replaced Karel van Miert as Competition Commissioner and had gone on record as being keen to see that competition in the industry was increased in the face of increasing tendencies towards oligopoly.²³ He made explicit references to the need to be able to make cross-border purchases of cars: “I should mention that consumers strongly and rightfully criticize the functioning of the Internal Market if they are unable to find a dealer who is willing to supply them or if they are discriminated against in relation to national consumers. I believe that such consumer actions cannot be ignored when we discuss the ‘highway code’ for motor vehicle distribution.”²⁴

19. Commission Regulation (EC) No 1475/95, 28.6.95 recital 4.

20. This relates to the ability of a dealership to sell a competing brand on separate premises; operating as a separate legal entity and forbidding the use of qualified mechanics to service cars other than the brand of the manufacturer.

21. Among these were prosecutions of VW/Audi, Peugeot and BMW for attempting to restrict cross-border sales of cars.

22. These included BMW’s acquisition of Rover, the Daimler–Chrysler merger and Renault’s acquisition of Nissan.

23. Mario Monti Commissioner for Competition Policy “Who will be in the driver’s seat?” Forum Europe Conference Brussels, 11 May 2000.

24. *Ibid.*

He was thus likely to lead DG Competition towards favoring a more liberal stance on the renewal of 1475/95. Monti had been Commissioner for the Internal Market previously and had spent a significant amount of time during his tenure attempting to get member states to enforce SEM liberalization. This experience probably informed his liberal stance on the question of renewing 1475/95. Second, the EU-Japan “Elements of Consensus” had expired and therefore the pressure for intra-EU liberalization of the car industry was growing.²⁵ Third, considerable changes in the ownership structures of the European car industry and the increased presence of non-EU manufacturers producing within the EU meant that national political support for “national champions” by the member states was weakened. Fourth, the growth of Internet sales, the use of direct sales by manufacturers direct to consumers and the increasing need for product customization was undermining the traditional SED model. In this light, when the EU Commission initiated its pre-draft consultation process, ACEA and CECRA faced the most serious challenge to SED so far.

More than one hundred questionnaires were sent by the EU Commission in 1999 to parties involved in the motor vehicle distribution trade, including consumer associations, dealers, independent importer/repairers, independent importers, spare-part producers, firms that sell through the Internet and all the motor vehicles manufacturers. The aim of the questionnaire was to gauge whether 1475/95 had achieved its objectives and crucially to examine whether it was necessary to maintain SED in the light of changes in technology in car distribution. It was the first time that the EU Commission had undertaken such an exhaustive consultation in the car distribution sector. Faced with an increase in the number of actors that they would have to challenge, ACEA and CECRA faced an uphill battle. Each actor was requested to send the EU Commission a consultation document and unsurprisingly ACEA/CECRA and BEUC sent documents.²⁶ ACEA/CECRA’s arguments remained essentially unchanged from those forwarded in the pre-1475/95 period. However, faced with the issue of Internet sales, ACEA dodged the issue claiming that the retail sector required the presence of dealerships.²⁷ On the issue of price differentials, ACEA/CECRA refused to draw a link with SED arguing national tax systems as being responsible for the problem. Thus despite manifest pressure to change their position, the industry remained committed to maintaining SED. For their part, BEUC reiterated their view that SED was anti-competitive and didn’t foster consumer benefits related to competition. As with the manufacturers, BEUC maintained a position similar to those of the early 1990s.

The EU Commission held a hearing in February 2001 in which all interested parties were allowed to offer their views on the future 1475/95. Over fifty participants attended this meeting. ACEA sent several people to represent the

25. Since the “Elements of Consensus” agreement involved a deal between five EU member states: UK, France, Spain, Italy and Germany to restrict imports of Japanese cars into these countries, it was argued that SED, by placing constraints on cross-border sales, enabled Japanese car distributors within the EU to control the flow of parallel imports.

26. Motor vehicle distribution in the European Union, ACEA, Brussels, October 2000. Commentaires du BEUC sur le rapport de la Commission relatif au fonctionnement du règlement d’exemption en bloc concernant la distribution de véhicules automobiles, Bruxelles, Janvier 2001.

27. ACEA, Motor vehicle distribution in the European Union, p. 10.

industry view.²⁸ BUEC sent the Director, Jim Murray, to deliver his views on SED. He was supported by national consumer representatives. Among new actors were independent retailers including notable celebrities such as Richard Branson representing Virgin Cars. The Commission was represented by the Director-General of DG Competition and the Head of Unit responsible for car distribution.

Importantly, there were national legislative representatives from the UK, France, and Germany. While the French representative claimed that SED should be maintained, the UK representative argued that SED had not achieved its objectives and saw little argument for its maintenance. The German legislator argued that the benefits were mixed but that distributors were given economic security by the arrangements.²⁹

These changes in national government sympathies, especially the UK and German government positions, are very important in the development of 1400/2002. Given the shift in ownership and the nature of global mergers in the sector, member state attitudes had changed. The merger by Daimler and Chrysler in Germany significantly undermined support for the concept of national German car manufacturers. Similar events with the takeover of Rover by BMW in the UK and the growing ownership interest of General Motors in Fiat reduced the influence of national producers in the eyes of their national governments.

It is also worth mentioning that the EU Commission's reports on car price differentials³⁰ and the introduction of the Euro focused member state government's minds on the fact that identical cars were priced differently in different member states. The UK government's position was typical of a general shift in attitudes of the majority of member states.

The attitude of the UK government had hardened towards the BE due to increased public disquiet about the fact that: "high prices were in effect being paid because manufacturers were confident that buyers in the UK would go on paying over the odds, and that the selective and exclusive distribution arrangements were the key factor sustaining these prices."³¹

In response to the UK Parliament Select Committee on Trade Industry's deliberations on the issue of UK car distribution,³² the Department of Trade and Industry produced a report largely sharing the concerns expressed by the UK

28. These included senior staff from the industry including Dr Wolfgang Schneider from Ford, Dr Hanns Glatz from Daimler and Mr Camille Blum of ACEA. The presentations by ACEA representatives were exhaustive covering the importance of the industry to the EU economy, the relationship between sales and service, technological changes in the industry and public perceptions of car distribution in the EU.

29. Presentation of Karl-Heinz Scherag, Member of the Bundestag, February 2001.

30. These reports were started in 1998 and produced every six months. The findings highlighted the absence of a "single market" for cars in the EU.

31. Views of Chris Stanton, MP, member of the UK Commons Select Committee on Trade and Industry. The Committee held an enquiry into car price differentials in October 1998 inviting representatives from consumer groups, manufacturers and distributors.

32. Trade and Industry Committee Report (8 December 1998), *Vehicle Pricing*. The hearing that led to this report invited several of the UK industry's leading figures including Graeme Potts, President, Alan Smith, Strategy Committee Member, Malcolm Harbour, MEP, Director, Harbour Wade & Brown, one of the UK's leading automotive consultancies, Alan Pulham, Director, National Franchised Dealers Association, Ernie Thompson, Chief Executive and Paul Eeveritt, Head of Policy and Economics, Society of Motor Manufacturers and Traders.

Parliament.³³ Indeed on the basis of research done by the UK Competition Commission, the UK government introduced national legislation in 2000 that resembled the EU Commission's final decisions in 1400/2002.

The UK Competition Commission's own research was categorical in its criticism of the BE: "about half of the practices which we find to be against the public interest are explicitly allowed by the block exemption [and that] action to remedy their adverse effects should be taken without delay."³⁴

In response to the findings of the Competition Commission, Steven Byers, Secretary of State for Trade and Industry introduced the "Supply of New Cars Order."³⁵ It attacked a number of well-established, and anti-competitive, practices among the dealerships. New measures included preventing suppliers from discriminating in respect of discounts when supplying cars to a contract hire company according to whether the end-user is a private or fleet buyer; stopping suppliers from refusing to supply dealers because of the dealer's advertised resale prices; and prohibiting suppliers from agreeing to pay bonuses or give preferences to dealers on the grounds of the number of cars pre-registered by the dealer.

Thus, given these changes at the national level in the UK, it was unsurprising that the UK government was not going to favor maintenance of the 1475/95 *status quo*. A similar situation developed elsewhere in the EU. Member states such as Belgium and The Netherlands, where car prices were some of the lowest, also did not see much need for the maintenance of the 1475/95 where dealerships such as Autos Cardoen had already begun to sell cars at discounts to local large-scale retailers such as supermarkets in Antwerp.³⁶ Of the large member states, the French government took a position closest to the *status quo* arguing that the overall balance of 1475/95 was largely positive.³⁷ However, the French government recognized that changes in the nature of car retailing to include the growing market for internet sales and supermarket sales meant that competition for car retailing outside of the scope of 1475/95 would create the necessary competition to prevent anti-competitive practices from the dealerships. It is also worth mentioning that 1400/2002 also offered the industry a one-year transition period for the distribution sector to adapt to the new regime. This further reduced resistance among member states.

Given shifting attitudes among the member states and on the basis of positive noises from Commission officials who indicated that SED was likely to be removed, BUEC were confident ahead of the meeting.³⁸ Indeed, the number of

33. Government Observations On The First Report From The Committee (Session 1998–99) On Vehicle Pricing (HC 64).

34. UK Competition Commission, "New cars: A report on the supply of new motor cars within the UK," April 2000.

35. Government News Network, "Government Measures To Benefit Car-buyers Come Into Force," Press-Release, P2000/595.

36. "European car market set for shake-up," Jorn Madslie BBC News Online business staff.

37. Jean- Paul Charié, Député du Loiret "Le maintien du règlement d'exception de la distribution automobile est justifié par les faits," February 2001.

38. The views of a confidential industry source.

actors arguing against ACEA and CECRA had increased substantially and the inability of the industry to formulate new arguments in support of an unchanged renewal 1475/95 contributed manifestly to their weak negotiating position and process that led to liberalization under 1400/2002. The manufacturers and distributors received more bad news in the following two years as the EU Commission prosecuted a number of EU producers for anti-competitive practices related to distribution and cross-border sales.³⁹

Arguably, as a consequence of these prosecutions, the increasing level of skepticism among the member states, the inability of ACEA/CECRA to alter their position in the light of changes and a welter of independent research commissioned by DG Competition into the car distribution question, the draft Commission Regulation that emerged at the end of 2001 reflected the changing reality of car distribution and of the industry in general.

3. Car distribution regulation in the EU: lessons elsewhere?

The case study in this paper supports a number of conceptual and theoretical issues highlighted in the literature on EU integration and on the balance between supranational influences in EU decision-making and intergovernmental. First, it reminds scholars of the continued and primordial importance of intergovernmental decision-making power in the EU (Wallace and Young, 1997; Moravcsik, 1999; Meunier, 2000). To the extent that member states for the reasons argued in the paper were prepared to sponsor their national car industry actors was in large part the reason for why 123/85 and 1475/95 remained restrictive. It also demonstrates the converse that as soon as member state support for restrictions waned, liberalization followed in the form of 1400/2002.

Second, the case provides evidence to point towards a pro-liberalization bias of the EU Commission and the ECJ whose mandate is to ensure that the SEM is made to work (Stone Sweet and Caporoso, 1998). Once decision-making had been handed over to the EU Commission, the sector underwent progressive liberalization. In this context, it is difficult for the member states to directly affect the decision of the Commission. This supports the view held by scholars who argue for the increasing influence of the EU supranational institutions in EU decision-making (Sandholtz and Zysman, 1989; Sandholtz and Stone Sweet, 1998; Stone Sweet and Sandholtz, 1998).

Third, the case study also contributes to the literature on the importance of lobbying in EU politics (Cawson, 1995, 1997; Green Cowles, 1997; Kohler-Koch, 1997; Mazey and Richardson, 1997, 2001; Middlemas, 1997; Coen, 1998; Greenwood, 2001). The case demonstrates the profound influence that lobby groups exert on the decision-making process of the EU, their centrality in allowing the EU to develop policy frameworks on the basis of expert advice and

39. Opel Nederland were prosecuted in 1999 for blocking imports of Opel cars from other member states. VW Germany were fined for retail price maintenance in Germany in 2001 and this was followed by fines against Daimler-Chrysler for attempting to frustrate cross-border sales.

the increasing formalization of this process within the EU Commission.⁴⁰ As this paper has demonstrated, sections of the official drafting of 1475/95 were worded very closely to ACEA and CECRA submissions to DG Competition, clearly demonstrating the importance of the industry's views in drawing up of EU legislation.

In this context the case also illustrates the remarkable influence in the number of lobbyists attempting to influence decision-making processes in the EU. This is a function of attempts by the EU Commission to foster dialogue and participation through initiatives such as industry workshops, the extensive use of questionnaire material and the Internet as a vehicle for spreading awareness. It is interesting to note that from the review of 123/85 to 1400/2002, the number of interested parties engaged by DG Competition increased substantially.⁴¹ Indeed, this could only serve to undermine ACEA and CECRA's case for the maintenance of SED: voices for dissent were too numerous to ignore. Of course, the increase in the number of industry actors is itself a function of technological change that has created new space for competitive car retailing.

Fourth, the impact of globalization on European industrial structures has encouraged the process of liberalization and has undermined notions of "national champions" and even "European champions" (Tsoukalis, 1997) as both global mergers and EU inward foreign direct investment have redrawn the industrial landscape.

Lastly, the EU's participation in global trade liberalization at the WTO has also meant that it is increasingly difficult for member states to erect protectionist barriers in support of national industries, especially as the EU Commission strives to gain greater control over external trade policy.⁴²

4. Conclusions

The main conclusions of our case study are that the car manufacturers and distributors failed to resist liberalization of SED due to several factors. First, there was declining support from member states for their national producers as evidenced by the official change of policy of the UK government away from SED. Second, technological changes in the industry undermined the case for a link between sales and service of cars. Third, DG competition, led by Mario Monti wished to push through the ability of consumers to make cross-border purchases of cars. Monti believed that SED was detrimental to this objective, based in measure by his experience of running the Internal Market Directorate General previously. Fourth, a more general logic embedded in the SEM program had led to several decisions to prosecute EU car producers for infringing SEM rules. Fifth, ACEA and CECRA and their national affiliates failed to offer new

40. The February 2001 workshop on car distribution, organized by DG Competition nicely demonstrates this.

41. The first review 123/85 to 1475/95 involved a handful of actors, whereas the most recent review called upon the views of hundreds of interested parties.

42. There are of course exceptions to the rule such as agriculture and audiovisual but these are increasingly exceptions to the rule.

convincing arguments to counter the increasing number of actors opposed to SED.

While one case study could not and should not constitute a definitive illustration of the power of liberalization within the EU, the car distribution case offers insights into future trajectories for industrial regulations for the EU and for the politics that seeks to resolve regulatory questions. Is there a likelihood that other similarly protected sectors will face pressures for liberalization from outside the EU caused by globalization? Will this pressure be reinforced by continued efforts by the EU Commission and the ECJ to enforce SEM rules? In this context, and in the ongoing debate between an intergovernmentalist and supranationalist perspective on EU integration, can we expect future sharing of decision-making power between the member states and the EU Commission in the governance of the SEM?

The development of EU regulation in the car distribution sector from a restrictive framework based on SED in the mid 1980s to being on the verge of near complete liberalization is an excellent illustration of the above questions about EU policymaking: the importance of EU member states in pushing for the interests of their national firms; the pressure for liberalization from the EU Commission and the ECJ; and more general global shifts in ownership and technology that undermine traditional notions of what constitutes national and European political interests. The car industry, once regarded as the centerpiece of national interest and industrial policy has been liberalized in the face of powerful lobbying from some of Europe's biggest employers. Thus this paper seeks to encourage further sectoral research to tackle some of the more controversial aspects of EU integration and policymaking.

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