MASTERARBEIT

Titel der Masterarbeit

„The impact of the new Block Exemption Regulation (BER) on the strategic development of the Opel retail network in Austria“

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Abstract

The aim of the master thesis is to outline the impact the recently altered institutional framework has had on the strategic development of the retail network of Opel in Austria. Manufacturers have various options to establish a retail network but have to consider the applicable Block Exemption Regulation. To identify the forces on Opel's retail network and its participants and to test the impact of the Regulation two interviews were contacted, which outline the impact and consequences from an importer and dealer perspective. Peng's institutional based view on strategy and Oliver's strategic responses to institutional changes help to comprehend decision making in regard of the strategic retail development. In conclusion, the thesis illustrates that the Opel's retail network in Austria modifies. Opel took the opportunity of the intuitional change and regained power and control over its network. However, the alterations of the network are not induced by the changed institutional framework but only enhanced by it.

1 Introduction

The European automotive market has changed significantly over the last decades. The competition has increased, the market has shrunk and market conditions have transformed. Well-established European vehicle brands struggle to maintain its market share. Notwithstanding, it the new vehicle sales and aftersales market regulated by the European Union. The prevailing vehicle retail mode, an establishment of a selective distribution system, distorts competition. By restricting the number of authorized dealers manufactures violate against one of the fundamental principles of the European Union Common Market, the EU competition law embedded in the treaty on the Functioning of the European Union (TFEU) in Art. 101 (1). However, Art. 101 (3) exempts, under certain circumstances, anti-competitive restrictions and can block exemption an industry, as it is the case with the new vehicle sales and aftersales market. The last modification of the applicable Block Exemption Regulation took place recently and is valid since the 1st June 2013. Such changes induce meaningful impacts on a brand's dealer network and its network members, as the contractual relationship is under revision. Manufactures commonly exploit such a transition time between institutional modifications and consolidate their dealer network.

Also, Opel took the opportunity and issued a new sales and service agreements in all European Union member states and so in Austria. It contains very much altered regulations compared to its last agreement. The changing regulations are part of Opel's new formulated exclusive strategy for its dealer network. A more pronounced brand image, long-term success and sustainability should be achieved and ensured. Even though, the impact of institutions on firm's strategy is not widely analyzed in literature yet, the institution-based view provides on overall view on a firm's strategy and helps to explain a firm's strategy failure or success.

1.1 Problem definition and methodology

The European automobile market is a battlefield hard to conquer, with many competitors. The glorious times when vehicle sales effortlessly flourished are over and market participants are confronted with structural problems, which have been build up decades ago. Overcapacities, high costs on production and retailing, falling demand deteriorates profit margins and prices.

A selective retail network prevails in the automotive industry, which limits the number of authorized dealers and regulates the reselling conditions and standards set by the manufacturer. By its nature the system is prone to hinder efficiencies, distorts competition and is frequently subject to antitrust concerns. The Article 101 (1) of the Treaty on the Functioning of the European Union (TFEU) applies to such practices and essentially prohibits them. In some cases, though, competitive distortion can be block exempted by European Commission under Article 101 (3). The revised Block Exemption Regulation for the automotive industry is effective since the 1st June 2013 and induced the revision of the contractual relationship between manufacturer, importer and dealer. New sales and service agreements between manufacturer and authorized dealers and repairs were issued. The altered market conditions due to the regulatory impact of the Block Exemption Regulation (BER) provides an opportunity to consolidate a brand's dealer network, realign strategies and solve long-term structural problems.

Opel, as one of the only German brands, which has suffered from significant losses and burned by a poor reputation, has the chance to restructure its long established network, even out wrong management decisions and reconcile its strategy to the changed market conditions.

The Austrian automobile industry has rather a low significance within the European market but on account of its topography and buyer habits excels in many other markets.

Hence, this master thesis aims to disclose the forces, which encumber the European automotive retail market, having the Block Exemption Regulation as its main focus. Such changes in antitrust regulations impact a firm's competitive environment, making a strategic alignment imperative. The institution-based view of a business strategy will be given the most attention to, as being the most affected one. By means of testing the impact of this regulatory alteration with Peng's Strategic Tripod Framework and Oliver's

Framework of Strategic Response to Institutional Processes the findings are grounded on a strong foundation of theoretical framework. Both frameworks supplement each other, one having the focus on the institutional conditions, its implementation and impact on strategy and performance while the other is concerned with the strategic responds of a firm to institutional changes. The combination of the two analyzing tools illustrates a focused view on a strategy's institution-based view, which also influences and determines strategic choices. The effects and implications on the manufacturer/importer-dealer/agent relationship will be enclosed with particular attention to Opel and its dealer network in Austria. Moreover, it will elaborate on the strategic responds in regard of the altered regulatory framework and Opel's strategic alignment of its retail network development in coherency to the institutional change.

Occupied with the above-mentioned topics the thesis is concerned with the following research questions, on which the thesis is structured and the analyzing is based upon:

How does Opel strategically responds to the changes of the industry environment due to the Block Exemption Regulation as the prevailing regulatory framework in the EU in regard of the its dealer network? How has Opel implemented the Regulation into the sales and service agreements and how do these alterations impact the retail network of Opel in Austria?

Further, derived from these tensions in the industry three main hypotheses are established, examined and tested on its validity throughout the thesis:

1. The new Block Exemption Regulation transfers power from dealers to the manufacturer while the last BER empowered the former.
2. The new BER impacts and changes the system of the Opel distribution and retail network in Austria significantly.
3. The regulation leads Opel to pursue a more exclusive strategy in regard of its dealer network.

This is done by initially providing the research background for the underlying problem. The first part of the thesis exhibits the various distribution and retail options an manufacturer has to establish a distribution network to eventually reach the end consumer, followed by a description of the dealer network of Opel in Austria. The second chapter is preoccupied with the European Block Exemption Regulation, the intention of the European Commission to regulate the market, the differences between the previous BER and the newly imposed one and the implementation of the BER in the Opel dealer sales and service agreements. The next chapter outlines the theoretical framework on which the analysis is based, followed by the empirical study chapter. After elaborating about the dominating forces in the automotive industry and particularly on those, which have impact the Austrian retail network of Opel the most, the strategic respond of Opel are the main concern of forth section. The implication derived from the new vehicle sales and aftersales market and the impact of the changed business environment on the importer-dealer relationship and the current strategy of Opel will be examined and its consequences on the dealer network of Opel in Austria.

2 Research background: Retail systems in the automotive industry

The decision how to distribute vehicles from a certain brand to the end consumer and the establishment of a retail network in coherency with the brand's strategy has a fundamental influence on many business areas and decision-making (Kotler et al., 2013). A manufacturer's coherent distribution policy can be a competitive advantage and has intermediate effect on a brand's recognition and perceived positioning. However, the establishment and the maintenance of such a network requires time, care, long-term strategic thinking and is very capital intensive. Thus, it can neither be altered rapidly nor easily, which exceptionally applies to long-established networks, as this of Opel Austria. The careful selection of distribution partners in regard of the location, existing product portfolio and profitability is essential for a successful and comprehensive retail network.

According to Kotler et al. (2013, p. 355): "Few producers sell their goods directly to final users. Instead, most use intermediaries to bring their products to market. They try to forge a marketing channel (or distribution channel) – a set of interdependent organizations that help make a product or service available for use or consumption by the consumer or business user". Such multichannel distribution systems are contractually regulated by vertical agreements. Vertical agreements are contracts between two or more parties, who conduct business on different levels for the purpose to purchase, sell or resell services or goods (Journal of European Commission, 2010)

Over the years indirect retailing has proven to provide the most advantages for both the manufacturer and the authorized dealer/agent and hence will be given the most attention to.

2.1 Levels of a distribution system

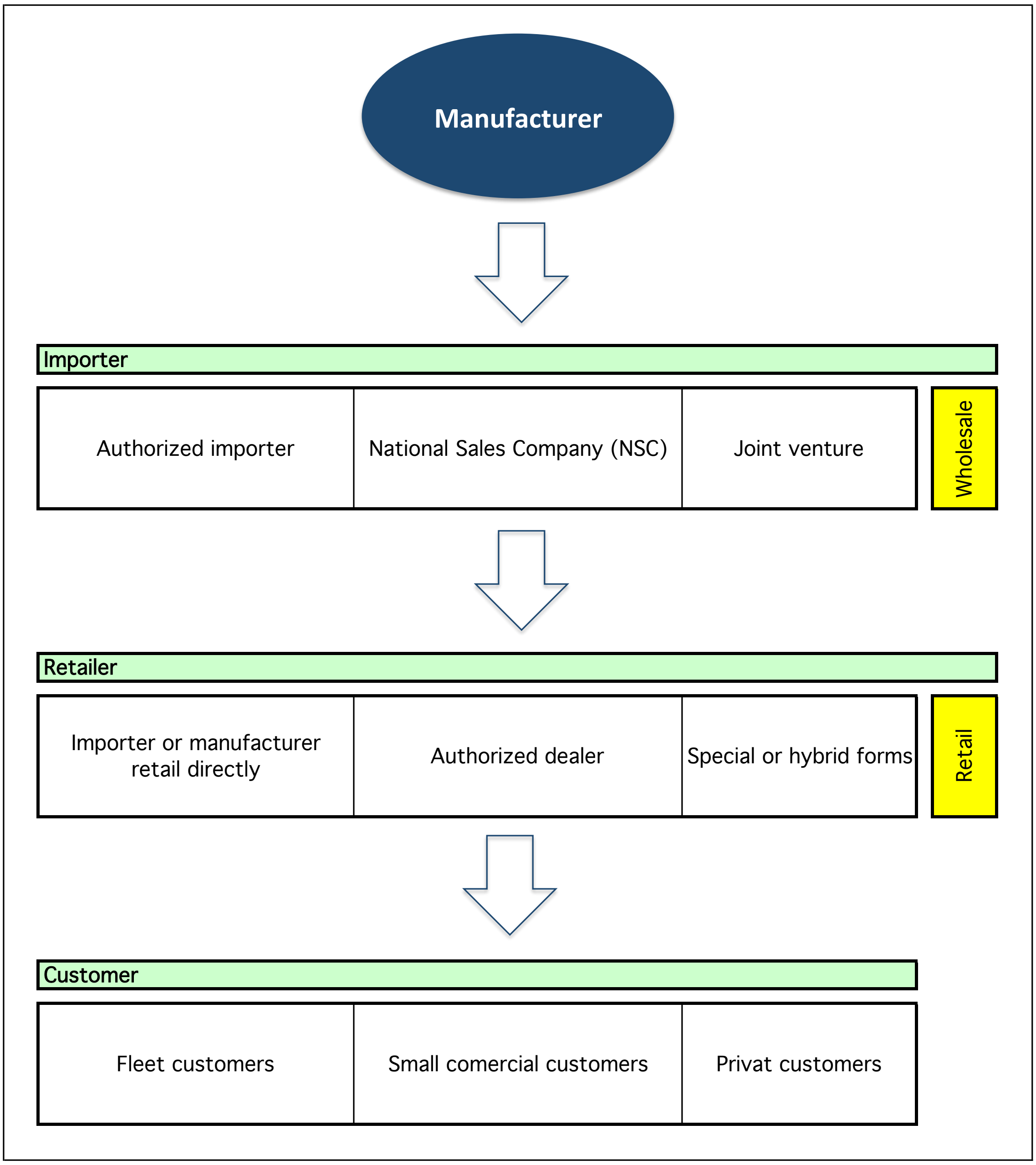


Figure 1: Basic structure of an automotive distribution system (Source: Own depiction following of Diez, 2012)

On a wholesale level, a vehicle manufacturer can choose to import its product portfolio either via a national sales subsidiary or via an authorized general importer. Rather exceptional are joint ventures between these two parties. In major markets manufacturers establish frequently a sales subsidiary, considering the importance and the degree of control over the market (Diez, 2012). Throughout the thesis a national sales subsidiary and importer will be stated synonymously. Since the NSC acts as an importer for the manufacturer in the respective country.

Commonly, general importers are either contracted by minor brands and frequently by larger manufacturers, as an entry strategy mode for smaller markets in which market knowledge is essential for success and market share grows (Diez, 2012). The different modes to distribute a vehicle to consumers are outlined in Figure 1.

Manufacturers further have the choice to retail vehicles to the end consumer directly via a national sales company, indirectly via authorized retailers or establish special or hybrid forms between these two. If a manufacturer decides to establish a NSC, the subsidiary operates as an authorized importer as well as a wholesaler and distributes the vehicles further down to the different channel levels.

The main groups, which comprise the end customer level, are fleet customers, small commercial customers and private customers (Diez, 2012)

2.2 Retail systems

Figure 2 provides an overview of the different retailing options a manufacturer can choose from. One of the first choices a manufacturer has to decide on is to distribute and retail a brand directly or indirectly to consumers. In fact many importers choose a combination of both retailing options to market their brand (Methner, 2002). Non-selective retailing is not used for car retailing and will thus not be described any further.

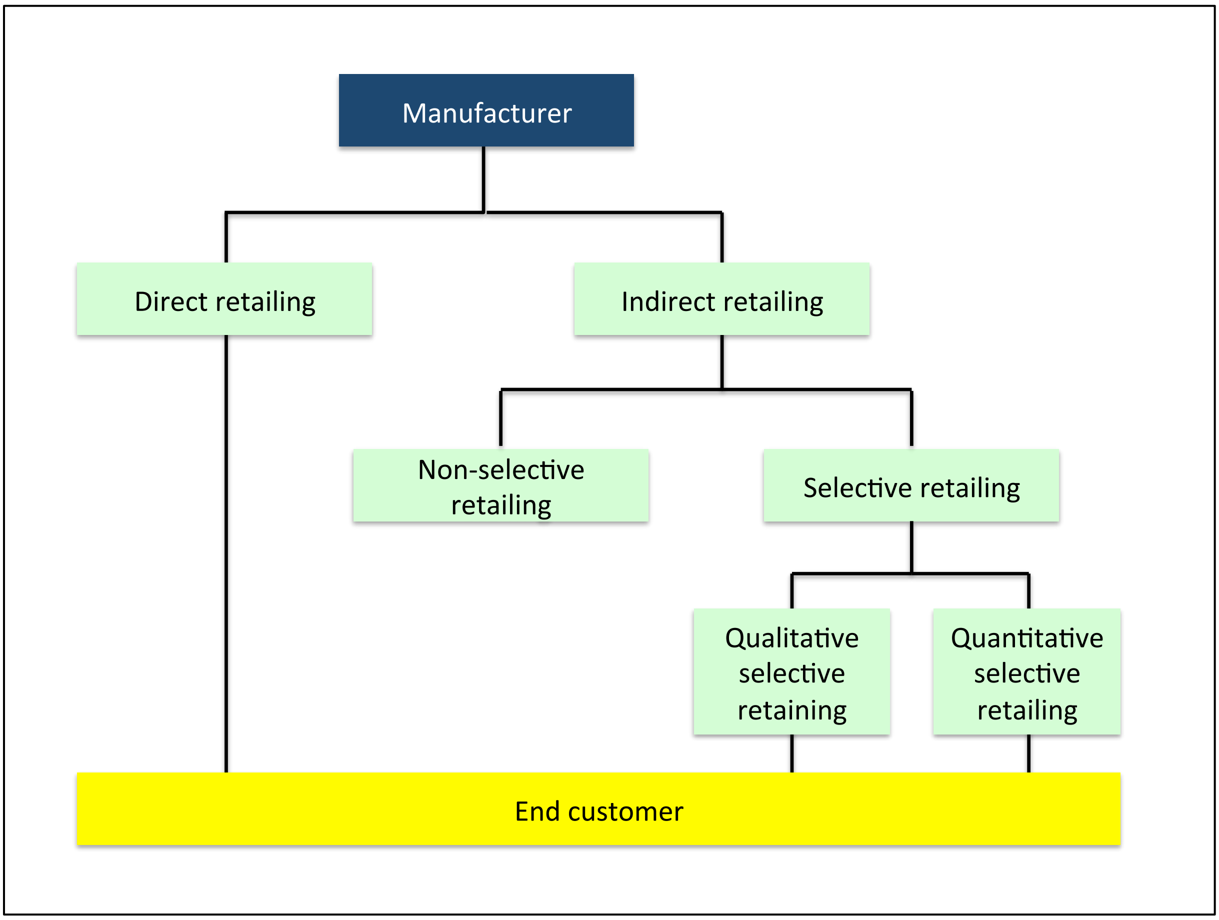


Figure 2: Retail systems (Source: Own depiction following of Diez, 2012)

2.2.1 Direct retailing

Direct retailing means that the manufacturer or the NSC retails and sells its good directly to the end customers, without the involvement of any intermediaries or agents. Within the automotive industry two direct retailing methods exist (Diez, 2012):

1. The manufacture offers direct retailing to a specific group of customers e.g fleet customers, journalists, national authorities, diplomats etc. via its national sales subsidiary, or
2. the manufacturer sells directly through manufacturer owned-dealerships (Diez, 2012).

Another form of direct retailing involves car retailing via the Internet, a means without widespread acceptance, yet (Diez, 2012). The mode is often predicted as the future of car retailing but customer recognition to buy a car via the Internet is still very low.

Direct retailing is not covered or regulated by the EU Motor Vehicle Block Exemption Regulation (MVBER). Manufactures are therefore free to structure this part of their dealer network, without paying attention to EU MVBER. It implies a greater freedom in the establishment of a brand's retail network and the construction of direct retailing agreements, having only to stay within the legal framework of the respective country. For example, VW contractually secured its direct retailing activities in its authorized sales and service agreements. It has increased its directly owned dealerships continuously, particularly in key and urban areas. These dealerships are owned by the Volkswagen Retail GmbH, a daughter of the Volkswagen AG (VW contract in Lamberg, 2011). Direct retailing has become popular among manufacturer, particularly for brands as Volkswagen or Mercedes-Benz in Germany. Also Renault and Peugeot have recently increased the number of direct dealerships and is commonly the prevailing retailing mode among premium brands (Diez, 2012). Direct retailing stores are often set up as flagship stores, which are: "Exclusive stores in urban areas primarily focused on the emotional presentation of a selection of vehicles to strengthen the brand/ product reputation and awareness" (KPMG, 2013 p. 25).

This method has the advantage to provide manufactures widespread control over its retail network and curbs the power of dealer groups. Dealers, on the other hand, face competition not only from other dealers but also from the importer itself (Methner, 2002).

More advantages from a manufacturer perspective are:

- Direct customer contact
- Direct influence on the brand image via flagship stores and model dealerships
- Secure sales
- Decrease in dealer margins
- Effective brand positioning on strategically important locations

Disadvantages for the manufacturer are:

- Capital tie-up
- Assumption of sales risk
- Insourcing increases complexity (Diez, 2012)

2.2.2 Indirect retailing

Indirect retailing indicates that the manufacturer chooses to sell its products through contractually authorized but independent dealers to end consumers. The dealer conducts business on his/her account in compliance with manufacturer's regulations and standards. The manufacturer evaluates in such vertical agreements dealer's business performances and standards and interferes in the operative business, if necessary (Diez, 2012). Hence, the automotive industry takes use of a contractual vertical system, implying that the involved companies operate on different distribution levels and are joined together to attain economics of scale. Members of the network coordinate and align their activities accordingly (Kotler et al., 2013).

Dealers are bound to fulfill the standards the importer imposes. Standards are regulated in a brand's sales and service agreement. Common standards for an authorized dealer and agent can be the retention number of demonstration, stock and display vehicles, the design and size of the dealership as a whole and of the vehicle showroom (Dealer Corporate Identity often referred to as CI). The organization and requirements of an exclusive or multiband dealer side, stuff training requirements, participation of a customer satisfaction analysis tool, necessary electronic data processing (EDP) programs, conveyance of business data and annual accounting statements and regulation of marketing activities are some more standards (Diez, 2012).

The number of intermediaries determines the length of the retail channel, therefore, a dealer network can be either structured single-channeled or multi-channeled (Kotler et al., 2013). A single channel network involves only one level of retail intermediaries. This implies that only authorized dealers sell directly to end customers. If a dealer subcontracts one or more agents, a multi channel network is in place. The contracting parties in an agency agreement are the agent and dealer and not the importer. However, the enforcement compels the importer's approval.

An agent procures vehicle sales on behalf of the authorized dealer. The end consumer, therefore, concludes the sales contract with the dealer and not with the agent. The agent only acts as an intermediary. Certified sales agents have similar standards obligations as authorized dealers (Diez, 2012). As agent dealerships are frequently smaller also the standard requirements are smaller scaled. Contrary to a service partner, whom may also, procures vehicle sales on behalf of an authorized dealer, an agent is allowed to hold new and demo vehicles and is thus required to display a brand's vehicles in an appropriate vehicle showroom (Auto & Wirtschaft, 2014).

The advantages and disadvantages of these possible channel structures are quite obvious. A single channel network is simpler in its structure and the importer has direct control of the authorized dealers, a multi channel network on the other hand enhances and facilitates a nationwide coverage but is more complex and direct control is no longer given (Kotler et al., 2013). Furthermore, a multi channel network ensures an adequate size of a dealership, as it is aligned to the territory's market potential. Sometimes agents can cover a territory more efficiently and profitably with only a small-scale workshop and showroom (Diez, 2012).

In contrast, dealers within a single channel network commonly encompass considerable size. This bears the risk that dealerships are too large for their territory's market potential. Maintenance cost may then impede cost-effectiveness and profitability. Moreover, too many medium- to large scale dealerships in areas with low- to medium market potential not only have to face competition from competing brands but also intra-brand competition (Diez, 2012).

In regard of size and scope of service four different operation modes can be distinguished:

- "Traditional dealerships, which commonly offer a fully range of service including new car sales, used car sales, service, aftermarket parts sales and also offers financial services" (KPMG, 2013 p.25). The product range is usually narrow but deep and car sales focuses on the traditional methods as sales through a certified sales representative (Diez, 2012).
- Authorized repairers focus on the aftersales market, which comprises vehicle repair and maintenance and spare parts sales. A service partner is allowed to procure vehicle sales on behave of an authorized dealer but is not allowed to sell

new cars on his/her own behalf. For this reason repairers are not required to have a showroom.

- Dealer groups are companies, which include more than three dealerships. Usually they are operated as traditional dealerships.
- Specified dealerships owned by dealer groups are dealer sides, which offer frequently, only after-sales service and are located in more rural areas. They serve to secure wide market coverage (Diez, 2012).

A further differentiation can be made between exclusive, solus and multi-brand dealerships. An exclusive dealership sells only vehicles from one brand in an exclusive showroom on his/her premise or premises. This definition of the European Commission is coherent with the definition of Opel. A solus dealership shall be an authorized dealer who sells two or more competing brands on a premise but each in an exclusive showroom run as separate legal entities. If a dealer is also an authorized service partner of a competing brand the dealership is still considered to be exclusive from a sales perspective. A multi-brand dealership sells competing vehicle brands in one showroom even tough they shall be separated physically. This definition will be important later in the thesis, as Opel and the EU Commission define solus and multi-brand dealerships differently. To avoid widespread multi-brand dealers a manufacturer can impose a non-compete obligation, which prohibits the authorized retailer to sell another brand.

2.3 Selective distribution

As indicated above a manufacturer or importer can regulate the number of authorized retails within its sales network. By limiting the number of members and controlling sales, a manufacturer takes use of a selective distribution system. This system prevails in the automotive industry. The Court of Justice of the European Union defines a selective distribution systems as such: „In connection with the sales of new motor vehicles, a „selective distribution system" is a method of distribution where the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors or repairers selected on the basis of „specified criteria"" (Press Release No. 80/12; Judgment in Case C-158/11, 2012 p. 1). Manufacturers denote these specific criteria as standards. Possible standard obligations for dealers are mentioned above. The automotive industry uses these standard obligations to ensure and secure a certain brand image and above all sales quality.

A selective distribution system is primarily used for luxury products as jewelry, cosmetics to achieve or maintain an exclusive brand image or for complex and/or technical consumer products to which an introduction is essential (Ashurst, 2011).

Exemplary for a selective distribution system is that the importer does not assign an exclusive territory to a dealer. Which means, the dealer would be the sole representative in an assigned territory and is protected by the importer from intra-brand competition.

A selective distribution can be either based on qualitative selective system and/or a quantitative selective distribution.

2.3.1.1 Qualitative selective distribution

Qualitative criteria of a selective distribution system means that an importer does not limit the number of dealers and/or repairers within its retail network, as long manufacturer's standards are fulfilled (Von Graevenitz et al., 2013). The prime objective is to ensure accurate service, hold up sales quality and secure a certain brand image (Prestel, 2011).

If the standards are inappropriately strict and difficult to achieve an importer can limit the number of network members further. However, respective repairer and sales standards must be clearly outlined, accessible and apply to all applicants and members of the network equally (Lang, 1984). Furthermore, the importer prohibits the resale of new vehicles and/or spare parts to unauthorized dealers. Hence dealers are only allowed the sell to end consumers and other authorized dealers (Prestel, 2011).

Common qualitative criteria, embedded in the manufacturer's standards, are:

- Employment of trained staff
- Provide customer advisory service
- A brand dedicated sales area
- Minimum business size
- Product presentation according to requirements of the manufacturer (Dealer CI)
- Requirements on workshop and customer area

- Presentation of a minimum product range
- Minimum and maximum number of unsold vehicles
- Minimum scope of service
- Minimum sales volume
- Prohibition of mere internet sales (Prestel, 2011)

2.3.1.2 Quantitative selective distribution

In a quantitative selective system an importer may decline a potential dealer and/or repairer even though he/she fulfills all standards and other requirements. The importer thus regulates the number of dealers directly (Von Graevenitz et al., 2013) by either explicitly specify the number and/or indirectly by imposing a minimum sales volume or profitability. This is done to protect authorized dealers within the network from intra-brand competition and to ensure profitability. Generally, a quantitative system applies superior to the qualitative criteria. The restriction to only resell to end consumers or authorized dealers applies also here (Prestel, 2011).
Both criteria can apply solely or in a combination and may apply to dealers, agents and service partners (Diez, 2012).

Inherently, selective distribution systems are subjects to the EU competition law (Prestel, 2011). "Since 1 May 2004, parties have been required to draw their own conclusions about the compatibility of their commercial agreements with EU competition law. Although many selective distribution arrangements are considered to be unobjectionable for competition law purposes, there are strict conditions which must be met and the terms and conditions of such arrangements must be individually reviewed on a case-by-case basis" (Ashurst, 2011 p.1).
"Since 1 June 2000, selective distribution has been covered by an EU Block Exemption Regulation. On 20 April 2010, the European Commission published its latest version of the Block Exemption covering distribution agreements, Commission Regulation (EU) 330/2010 and accompanying guidelines" (Ashurst, 2011 p.1). Signifying, that even though selective distribution systems distort competition, prohibited by the Art. 101(1), certain vertical agreements are in some cases excluded by the Art. 101(3), ergo being

block exempted (Ashurst, 2011). A thorough outline of regulations applying to the automotive industry is the subject of the next chapter.

2.4 Exclusive distribution

If territorial exclusivity is given an exclusive distribution systems is the case (Ashurst, 2011). In such a system an importer assigns a specified territory to an authorized dealer. The dealer focuses on his/her sales and marketing activities in this area and is not allowed to open dealerships or appoint agents outside of the assigned territory. Most importers, though, do not vest dealers with the right to sell exclusively within their area of responsibility to all customers. Commonly, importers retain the right to sell to a specified group of customers e.g. fled customers (Report on the evaluation of Regulation (EC) No. 1475/95, 2000).

2.5 Classic franchise systems verses selective systems in the automotive industry

The differences are rather marginal as both systems are based on the same principles. In either system manufacturers or producers can impose non-compete clauses and training and marketing obligation must be met. Profitability screening is also commonplace. Furthermore, franchisees and authorized dealers are provided with sales objectives and the disclosure of the agreement is prohibited. The prevailing divergence lies in the capital and risk involved. Vehicle retailers bear a high inventory risk. The longer vehicles are not resold the more pressure is put on a dealer’s cash flow, profitability and the higher are the financing costs. Notwithstanding, dealers require a certain minimum number of demonstrator, stock and display cars as well as used cars. Discounts are common in the industry and further burden the financial standing. Another difference is that authorized vehicle dealers do not have to pay a franchise fee. Contracts in a franchise system are usually on a long time basis while in a selective system prevails a two years period of notice (Auto & Wirtschaft, 2013).

2.6 Dealer network development

To establish an effective and coherent dealer network the following main factors have to be taken into consideration:

- Strategic brand positioning
- Product portfolio
- Market and retail volume
- Customer requirements
- Competitive environment (Diez, 2012)

Moreover, the number and location of dealerships and the structure of the network has to be determined. For example, high market coverage of dealerships in combination with a high market volume also requires a sufficient number of service partners. If market conditions change decisively the network may requires a consolidation. This particularly applies to historical evolved dealer network, as it is the case of most European automotive brands. Changing business condition, positioning of the brand and competition force manufacturers to assess their network on the effectiveness to serve and reach customers and to exploit market potential effectively (Diez, 2012).

Market potential is stipulated by the importer and is derived from a country's topography, number of citizens and registration statistics. If an area is insufficiently represented and has enough market potential for an additional dealership this area is declared as an open point in the network and should be closed rapidly.

From a customer perspective premium brands are not expected to have a high dealer density while customer demand a compressive dealer network reachable within a short distance from volume brands. The same applies to brands with a broad product range. To provide a customer the full range of products, dealerships require a certain size and market potential to obtain profits. Sales volume and the density of the network interact with each other and both determine the network development. Hence, if sales volume significantly declines over an extended period the network does not work efficiently, is not accurately set up and needs consolidation. All this and competitive activities influence and determine a customers perception and requirements. Therefore, dealerships must satisfy customer's anticipated quality standards of sales and service and product range (Diez, 2012).

2.7 Dealer network of Opel Austria

General Motors Austria GmbH (Ltd.) acts as a national sales company for Opel in Austria and is the official importer of Opel vehicles. The NSC is also the contracting party and authorized dealers and service partners are obligated to it.
In Europe and so in Austria, Opel retails its vehicle exclusively through authorized dealers and agents to private consumers. Thus, it does own dealerships neither fully nor partially via joint ventures. The retail network is established as a multichannel network and vehicles are offered indirectly via intermediaries. Only large fled customers as government authorities and large companies are to be handled directly from the General Motors Austria GmbH, the dealer by whom the vehicles are processed receives a handling commission.
Currently 45 dealers are contracted whom together operate 34 full range outlets and 13 service outlets. 67 agents and 58 mere service partners add up to 204 Opel represented locations in the Austrian market. All authorized dealers and agents offer the full range of a service partner, meaning that none of them only offers mere sales at any location. From a dealer's standpoint, the aftersales business is the most lucrative one, as a benchmark generating 2/3 of a dealer's profit. Figure 3 shows all Opel representatives in Austria. Every red dot indicates, either an Opel dealer, agent or service partner.

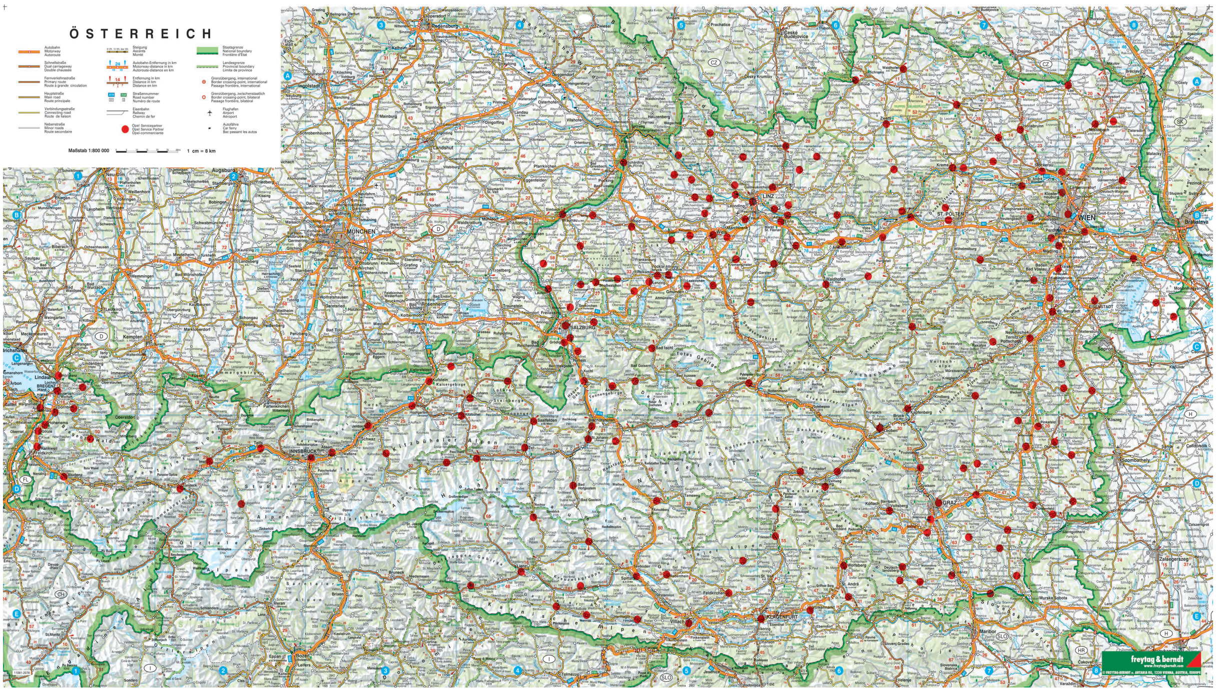


Figure 3: Opel dealer network in Austria (Source: Opel)

The Austrian market is divided in four sales districts and five aftersales districts. In both markets respective Opel sales and after-sales representatives guide network partners. The dealer network is broadly established with many long-term members, having Opel as their main brand. Among smaller and medium sized dealers, two main dealer groups, which cover mainly parts of Salzburg, Carinthia and Vienna, are part of the Opel network. 43% of the dealers exclusively sell Opel or are solus dealerships (Definition of Opel exclusivity is provided above). Exclusivity of a dealership will be widely discussed later in the thesis, as it is one of Opel's main strategic goals for its retail network.

The vehicle sales segment is stipulated as a qualitative and quantitative selective network. Thus, Opel imposes standards, which need to be fulfilled. Along with that Opel restricts the network directly and indirectly by demanding e.g. a 20% equity percentage, securities for payables and credit facilities and a liquidity ratio level of 1:1 (Opel Sales and Service Agreement, 2013).

In aftersales Opel established a qualitative network, currently without any direct and indirect restraints. At present Opel was able to close all recent open points except for one in Styria. Thus, the dealer network in Austria has almost a nationwide coverage. Austria's topography, with its many valleys and mountains and Vienna as the city, which exceeds the size of all other cities in Austria by far, determines the structure of a comprehensive dealer network significantly as well as the size of a profitable dealer. Particularly, for volume brands it is essential to be nationwide represented. Small dealerships, as agents are, frequently serve rural areas and smaller cities more efficiently and so the number of agents among the Austrian network is quite considerable (Auto & Wirtschaft, 2014).

2.8 Summary chapter two

A brand's dealer network is the direct channel from the manufacturer to the end customer. Manufacturers have various choices to set up their retail network. But only a network established coherently, with the brand's strategic positioning, product portfolio, market and retail volume, customer requirements and competitive environment, generates success and a competitive advantage. If one of these factors change significantly or market conditions alter a network may requires consolidation. However, long-established networks with long-term business partners cannot be altered easily and require time and capital.

On the wholesale level manufacturers may select an authorized importer or establish a national sales subsidy to retail its vehicles or import vehicles via a joint venture. Furthermore, it can be set up single or multi-channeled or alternatively directly market vehicles through wholly owned dealerships. Often manufacturers combine these options. In a single channel network the importer only subcontracts authorized dealers while in a multichannel network dealers have the right to additionally subcontract agents. A dealer may do so to cover an area he/she would not be able to serve profitable due to its size.

To secure the quality of vehicle retailing the manufacturer can impose a selective distribution network based on qualitative or quantitative selective criteria or a combination of both. Usually the vehicle sales network is set up as a quantitative selective distribution system with the requirement to fulfill qualitative standards while in the aftersales market service partner applicants are only required to fulfill the qualitative standards to be accepted to a brand's network.

Rather rare nowadays is an exclusive distribution system. Within such a system the importer assigns exclusive territories to dealers in which they are sole representatives of the brand.
Consistent with the requirements for a volume brand dealer network, Opel has an almost nationwide coverage in Austria. Many dealers have subcontracted agents to cover also more rural areas and the various valleys of Austria. Most dealers offer Opel as their mean brand and have a long-term relationship with the NSC. All dealers and agents are established as full range dealerships, offering sales and maintenance services.

3 Block exemption regulation (BER) – Implications

The prevailing retail system among vehicle manufacturers is nowadays a selective distribution system. By restricting the number of authorized dealers the industry distorts and restricts a free competitive environment. By doing so, car makers have violated against one of the main foundations of the European Union, the EU competition law embedded in the treaty on the Functioning of the European Union (TFEU) in Article 101(1) (Colino, 2010).

Particularly in focus of the European Union have been exclusive distribution networks. Not only does the importer curbs the number of dealers but also receives a territory protection from the importer. The importer assigns the territory exclusively to the dealer and is therefore protected from intra-brand competition. This procedure fragments the economic area of the European Union and creates artificial borders (Colino, 2010). Under Art. 101(2) all practices stated in Art. 101(1) are void, referring to practices which influence competition negatively. In some circumstances exempts Art.101(3) anti-competitive restrictions (Ashurst, 2011). The European Commission states that the Article 101(1) TFEU may be declared inapplicable if:

- "The agreement must contribute to improving the production or distribution of goods or contribute to promoting technical or economic progress,
- Consumers must receive a fair share of the resulting benefits,
- The restrictions must be indispensable to the attainment of these objectives, and finally
- The agreement must not afford the parties the possibility of eliminating competition in respect of a substantial part of the products in question" (Guidelines on the application of Article 81(3) of the Treaty (2004/C 101/08), 2004 Art. 35).

In case of the European Automotive industry the applicable exemption is referred to as "Motor Vehicle Block Exemption Regulation" (MVBER) (Von Graevenitz et al., 2013). Commonly, importers use the transition period between regulatory changes to not prolong some dealer and repairer agreements, hence, to thin out and reconcile their network.

Firstly, this chapter will provide the reader a short introduction of the second Motor Vehicle Block Exemption, which came into force in 1995, followed by an illustrative description of the MVBER 1400/02, which had a meaningful impact on the European car retailing market. The last and current applicable Regulation will then be described by comparing it to the MVBER 1400/02 and highlight the differences and changes.

In this chapter manufacturer and importer are used synonymously as both can act as a contracting partner in one or more countries. Manufacturers are usually the contracting party in their home markets as Opel is in Germany, all other national sales companies are than established as importers.

3.1 The history of the Motor Vehicle Block Exemption

The automotive industry is one of the largest industries in the European Union and therefore contributes a meaningful share to the gross domestic output of many European members. Many OEMs are closely associated with their home market, as BMW and VW with Germany, Peugeot with France and Fiat with Italy. However, not only have carmakers been challenged by a weak demand but also have had to cope with European legislation. The prevalent retail methods of the industry, selective and exclusive retailing, have been conflicting with the EU competition law, causing tensions between the parties. In 2005 Peugeot was fined approximately 50 € million for hindering exports, BMW and General Motors came under scrutiny to have breached the Regulations of the previous BER 1400/2002 (Colino, 2010).

Already in the 1970s the Commission declared that the sector specific vehicle retail systems fall within the Art. 101(1). At the same time BMW applied for an exemption for its selective and exclusive retail network, which was granted by the Commission and effectuated the first Exemption for the entire vehicle sector. The Commission justified its decision with similar arguments automotive manufacturers had (Ahlersmeier, 2010). A vehicle is a complex product, which requires expertise in maintenance and service by qualified staff, it is further necessary to ensure a high quality customer service. “Free riders” harm the quality and the reputation of the product, which cannot be in the interest of consumers. Thus, consumers are better off with a selective system in which the manufacturer controls and upholds the quality of the dealer network. The

Commission therefore recognized Art. 101(3) as obtained (Colino, 2010). Art.101(3) of the Treaty on the Functioning of the European Union purport the following:
„The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question" (Consolidated version TFEU, 2008 Art.101(3)).

Even though, the Commission's decision was exemplarily for the entire industry manufacturers did not acknowledged the principles of the BMW verdict and applications for individual exemptions were commonplace. In 1985 the Commission overcame the vast bureaucratic workload and block exempted the industry by imposing the first Motor Vehicle Block Exemption Regulation 123/85 (Ahlersmeier, 2010). Agreements between importers and dealers were now automatically block exempted if complying with the BER 123/85 (Colino, 2010). The Regulation was valid until the 1st July 1995. To benefit from the Regulation all agreements must be transposed by either adjusting the current agreement or terminating it and impose a new one.

3.2 MVBER 1475/95

The second MVBER (1475/95) purported altered regulations and provided manufacturers a greater freedom to establish their selective and/or exclusive dealer network. However, the MVBER did not have the anticipated effect, integrating EU

markets and increasing competition. The MVBER was highly regulative and indirectly stipulated a combination of selective and exclusive distribution (Colino, 2010).
The aim of the MVBER 1475/95 was to

- empower authorized dealers by given them more economic freedom and create a regulatory construct among which dealer experience a higher independency from the importer,
- enhance the position of consumers according to the principles of the European market and
- provide independent automotive spare parts producers an easier and better access to the aftersales market and in particular to authorized dealers.

Furthermore, the list of hardcore restrictions was refined and extended (Distribution of Motor Vehicles; Regulation (EC) No. 1475/95, 1995). Hardcore restrictions are arrangements, which may apply, directly or indirectly, in isolation or in combination and make the exemption no longer applicable (Guidelines on vertical restraints, 2010; Art. 47). "Where such a hardcore restriction is included in an agreement, that agreement is presumed to fall within Article 101(1). It is also presumed that the agreement is unlikely to fulfill the conditions of Article 101(3), for which reason the block exemption does not apply. However, undertakings may demonstrate pro-competitive effects under Article 101(3) in an individual case. Where the undertakings substantiate that likely efficiencies result from including the hardcore restriction in the agreement and demonstrate that in general all the conditions of Article 101(3) are fulfilled, the Commission will be required to effectively assess the likely negative impact on competition before making an ultimate assessment of whether the conditions of Article 101(3) are fulfilled" (Guidelines on vertical restraints, 2010; Art. 47).
To achieve the set objectives the Regulation granted authorized dealers to retail more than one brand on their premises, however, in separate showrooms, under separate management and run as separate legal entities. Furthermore, a dealer's exclusive assigned territory could not be altered unilaterally. Dealers were free to set their retail prices and free workshops shall provide access to technical information. Moreover, parallel imports were facilitated to enforce the Common Market and the free trade of goods. The manufacturers were prohibited to hinder the authorized dealer to buy

authorized vehicles from other authorized dealers in the Common Market while consumers were free to buy vehicles within the market without direct or indirect restrictions from neither manufacturer nor dealers (Distribution of Motor Vehicles; Regulation (EC) No. 1475/95, 1995).

After an evaluation contacted in 1999 by the Commission, the Commission admitted that the set objectives were only partially obtained. Authorized dealers maintained their subordinate bargaining position. High spare parts margins from manufacturers and consumer's apprehension to "no brand" spare parts never let the trade of spare parts from independent manufacturers flourish. Importers maintained their brand exclusivity at dealerships by imposing high dealer and brand standards, which made multi-branding unprofitable. Thus, dealers were frequently obstructed to diversify. Nonetheless, multi-brand dealerships were rather uncommon at that time. (Report on the evaluation of Regulation (EC) No 1475/95, 2000).

Parallel export never seriously processed and the Commission imposed the first time fines on Volkswagen, Opel, Daimler–Chrysler and Peugeot, which impeded export in the Common Market, as a reaction to various consumer complaints. In fact, dealers neither had a serious interest to export vehicles. Importers would not include exported vehicles in their stipulated sales target. Consequently, dealers risked to miss their sales target and bonuses (Report on the evaluation of Regulation (EC) No 1475/95, 2000).

The intention of the Commission was to provide consumers a broader and better choice in conformity with the principles of the Common Market, to enhance competition and among other reasons, to provide competitive prices exceptionally in the aftersales market. Customers shall be provided with the option to maintain their vehicle at an authorized or independent repairer. Commonly, during the validity of the warranty consumers maintain their vehicle at authorized repairers and later make use of the expertise of an independent repairer. The MVBER obliged manufacturers to provide all necessary technical information to independent repairers. Manufacturers followed the regulation, but charged for the information, which decreased the competitiveness of these repairers (Report on the evaluation of Regulation (EC) No 1475/95, 2000). After the revision of the second MVBER and endorsement from various interests group to maintain the Regulation the Commission prepared for the introduction of the third revised Motor Vehicle Block Exemption regulation which came into force on the 30th September 2002 (Liebscher et al., 2012).

3.3 MVBER 1400/02

The revision of the last sector specific Block Exemption Regulation did not provide the anticipated results. The Commission decided to impose another sector specific Block Exemption Regulation (1400/2002) and not regulate the industry by the General Vertical Block Exemption Regulation (2790/99). It is therefore not applicable for the entire industry. The Regulation (1400/2002) covers agreements which purport new vehicle and spare parts sales and distribution, manufacturer's standards relevant to authorized dealers and repairers as well as required information and spare parts for independent repairers to maintain a vehicle. The MVBER 1400/2002 was more restrictive, contrary to the previous regulation, but did not stipulate certain distribution systems or contract clauses. The Commission intended to avoid a "straitjacket effect" which was often criticized in the last MVBER (Distribution and Servicing of Motor Vehicles in the European Union Commission Regulation No. 1400/2002, 2002).
The Regulation was applicable in the European Union as well as in the European Economic Area (EEA) but is not applicable to direct sales conducted by manufacturers to the end consumers. For example, dealerships owned by the manufacturer or NSC did not have to fulfill any requirements stipulated in the MVBER ((Distribution and Servicing of Motor Vehicles in the European Union Commission Regulation No. 1400/2002, 2002). Also under the current Regulation this is still the case.
The MVBER 1400/2002 entered into force on the 1st October 2002 and expired on the 31st May 2010. A transition period until 30th September 2002 was conceded to all vertical agreements coherent with the regulation 1475/95 to adapt the agreements in accordance to the new Regulation. Most manufacturers, however, terminated the previous contracts with authorized dealers and repairers and issued new ones, aligned to the MVBER 1400/2002 (Distribution of Motor Vehicles; Regulation (EC) No. 1475/95, 1995).
Agreements based on the new MVBER must be either valid for an unlimited time or limited to at least five years.

3.3.1 Aims of the MVBER 1400/02

The Commission acknowledged that at some point maintenance and service costs of a motor vehicle equal the purchasing price and pointed out the importance of both markets. Therefore, the MV Block Exemption Regulation addresses both the new vehicle sales markets and aftersales markets simultaneously. To overcome the obstacles, which burdened the accomplishment of the last MVBER's objectives, the Commission stipulates the following main principles and aims (Distribution and Servicing of Motor Vehicles in the European Union Commission Regulation No. 1400/2002, 2002):

- Prohibition of a combined selective and exclusive distribution system
  Manufacturers had to decide which system they establish, but this was not applicable to the entire European Market. Manufacturers were given the option to choose between these two methods in some areas.
- In contrast to the former MVBER the obligation ceased to combine service and sales for authorized dealers and agents. Authorized dealers were provided with the choice to either provide repairer services themselves or subcontract a repairer whom executes aftersales services.
- Multi-branding for authorized dealers and agents was facilitated.
- Support competition between authorized dealers within a network, located in the European Market and enforce market integration.
- Expand the "Availability Clause", which means that the trade with vehicles with other specification (e.g. right-hand-drive) shall be encouraged.
- Empower authorized dealers by facilitating multi-branding, selling their business to another authorized dealer without the consent of the importer and not prohibiting in a selective distribution system authorized dealers to open another dealership anywhere in the European Market.
- Manufacturer's could impose selection criteria in conformity with the MVBER but in any case have to admit repairers whom fulfill the qualitative criteria.
- Improve the competition in the aftersales market by easing the use and access to manufacturer's spare parts, technical information, electronic devices and diagnostic equipment necessary for independent repairers and vice versa improve the access to "no-brand" spare parts for authorized repairers

(Distribution and Servicing of Motor Vehicles in the European Union Commission Regulation No. 1400/2002, 2002).

3.3.2 General condition

Based on the General Vertical Block Exemption Regulation 2790/99 the Commission introduced market share thresholds which may not be surpassed for the application of the sector specific BER. The benchmark for new vehicle retailing in an exclusive distribution network was 30% while the market share of 40% may not be exceeded in a quantitative selective network. In the aftersales market the prevailing market share threshold was 30%. The 40% threshold was neither exceeded nor attained by any importer, also because its calculation leaves room for revision. No thresholds were applicable in a qualitative selective network. Implying that, any independent repairer could apply for an authorized repairer agreement and must receive it, if the workshop fulfills the manufacturer's standards (Distribution and Servicing of Motor Vehicles in the European Union Commission Regulation No. 1400/2002, 2002).

One condition was to grant authorized dealers and repairers more freedom and power. They therefore were free to transfer all rights and obligations stated in a sales and service agreement to a third party within the brand's network. Resulting, that importers could not interfere if a dealer or repairer decided to devolve a sales and/or service agreement to another dealer or repairer within a network. This removed significant power from the importer to control and structure its network. For example, a sales contract could be easily transferred to a repairer, whom by all means must fulfill the prevailing sales standards, but without any objection of the importer in regard of the transfer. Bearing the risk that the new dealership was located in a territory with too little market potential (Distribution and Servicing of Motor Vehicles in the European Union Commission Regulation No. 1400/2002, 2002).

Furthermore, the importer could only terminate an agreement when the written notification included objective and transparent reasons for its termination. This should prevent the importer to terminate an agreement on the grounds opposing the principles of the Regulation. Notwithstanding, the Commission did not provide an exemplary list of objective and transparent reasons (Distribution and Servicing of Motor Vehicles in the European Union Commission Regulation No. 1400/2002, 2002).

In general the prevailing period of notice was two years but could be reduced to one year if the importer paid an appropriate compensation or the importer faced such structural inefficiencies in its network, which required a reorganization of the entire or parts of it's network. The necessity could be derived from competitor actions and/or from a changing business environment (Distribution and Servicing of Motor Vehicles in the European Union Commission Regulation No. 1400/2002, 2002).

3.3.3 Hardcore restrictions

The use of hardcore restrictions in vertical agreements, no matter if directly, indirectly or in combination entails that the entire agreement is no longer block exempted and can therefore not benefit from the MVBER. In general those restrictions are concerned to restrict a specific sales type or ability and are regulated in Article 4 of the MVBER. Among others the main hardcore restrictions were (Distribution and Servicing of Motor Vehicles in the European Union Commission Regulation No. 1400/2002, 2002):

- Authorized dealers and repairers were free to determine sales prices. An importer, though, could impose maximum prices or give price recommendations. Any agreement, which hindered this possibility, fell outside the scope of the MVBER.
- Generally, imposed restriction on sales territory and sales to customer groups were considered as hardcore restriction. Exemption applied to the importer's reserved right to sell to a specified customer group or likewise in an exclusive network handed of to a dealer and the restriction of an importer to sell to end consumers and the sales of new vehicles and spare parts to unauthorized dealers by selective network members. Further not block exempted was the sales of parts to competitors, which had the purpose to produce the same category of goods as the manufacturer.
- Agreements, which hindered cross supply between authorized dealers and repairers within a selective distribution network.

- Authorized dealers and repairers may not be hampered actively or passively to sell new passenger vehicles, light commercial vehicles and spare parts to end consumers by any member on any retail level of a selective network. Excluded were restrictions, which prohibit an authorized dealer to sell other vehicles then passenger or commercial vehicles.
- Authorized dealers shall not be limited to sell new vehicles, which are produced in series and within his/her contractual program range, including all available specifications.
- Constraints which hindered an authorized dealer to subcontract authorized repairers to maintain, repair and service vehicles. The dealer could be obligated to give the end consumer name and address before the conclusion of the sales contract. Similarly, an authorized repairer may not be damped to execute maintenance and repairer services and sell spare parts.
- Access to manufacturer's spare parts for unauthorized repairers may not be limited or denied by all network participants. Furthermore, network members were free to choose between manufacturers spare parts or source parts with equal quality from third parties, the restriction outside the warranty time by the manufacturer led to the exclusion of the MVBER. Nevertheless, consumers must be informed if other parts then those from the manufacturer were used.
- Restriction, by the manufacturers to provide independent market participants the access to required technical information, diagnostic and other gear. This included also software and training, which is required to maintain and repair a manufacturer's vehicle (Distribution and Servicing of Motor Vehicles in the European Union Commission Regulation No. 1400/2002, 2002).

All together the Article 4 of the MVBER stipulates 13 hardcore restrictions any application of this restrictions results in an anti-competitive outcome (Distribution and Servicing of Motor Vehicles in the European Union Commission Regulation No. 1400/2002, 2002).

3.3.4 Specific conditions

Article 5 stated specific conditions which were not exempted by the sector specific BER, thus could not refer to the benefits of the MVBER. In contrast to the hardcore restrictions, where the entire agreement falls outside the scope of the MVBER, the agreement still benefits from the Block Exemption, accept for the Article 5 conditions. Obligations, which fell within the scope of Article 5, were (Distribution and Servicing of Motor Vehicles in the European Union Commission Regulation No., 1400/2002, 2002):

- Typically, any direct or indirect non-compete obligations and those, which hinder authorized dealers to maintain and repair vehicles as well as to sell vehicles and spare parts from other competing brands.
- After the termination of an agreement, the former authorized dealer or repairer may not be prevented to manufacture, purchase, sell, resell, maintain and repair vehicles, obligations of such kind fall within the scope of Article 5.
- Any direct or indirect obstacle, which hindered the authorized dealer to sell leasing services.
- An authorized dealer of passenger cars or light commercial vehicles was free to establish, wherever a manufacturer established a selective distribution system in the Common Market, an additional sales or delivery outlet. As this condition was highly controversial among manufacturers and dealers it was valid only after a transition code at the 1th of October 2005. According to Art. 5 Par. 3 within a selective network, an authorized repairer was free to establish or relocate an outlet or main workshop. The condition was applicable from the beginning of the MVBER 2002. Any direct or indirect prevention on the part of the manufacturer fell within the scope of Article 5 (Distribution and Servicing of Motor Vehicles in the European Union Commission Regulation No. 1400/2002, 2002).

Above all the hardcore restrictions and special condition stated in Article 4 and 5, the Commission resorted the right to withdraw the benefits of the MVBER individually for vertical agreements if regulations are applied which were not consistent with the principles of the Article 101 (3) of the Treaty on the Functioning of the European Union (TFEU). In particular this applied to parallel established networks in the Common

Market, where similar vertical restrains are employed throughout 50% of the respective market. This would be the case, if more than 50% of a market's manufacturers determined the number of authorized dealers within a quantitative selective network, having as its objective to exclude certain dealers, which were similarly capable to sell vehicles. Such a regulation was only applicable for one year after its adoption, leaving the manufacturer time to take all necessary actions against the non-application of the Regulation (Distribution of Motor Vehicles; Regulation (EC) No. 1475/95, 1995) but left the manufacturer with a legal uncertainty (Liebscher et al., 2012).

3.3.5 Impact of the MVBER 1400/2002

The Commission imposed a new sector specific BER to address sector specific problems. The increase in competition was the Commission's main focus. The aim was to provide consumers more diversity and better pricing through a more competitive environment. A subordinated goal was to empower dealers and repairers in reverence to the their relationship with importers and manufacturers respectively (Commission Evaluation Report No. 1400/2002, 2008).

For the first time the Commission reported achievements of the set goals and improvement of competitive activities, this was particularly applicable for the after-sales market. Lower real prices for vehicles, increased consumer choice and a steady competition rather resulted from new entrants from emerging countries and an increased brand competition and not primarily from the MVBE regulation's effects. Stronger competition in the aftersales market could be attributable directly to the MVBER, though. Importers expanded their standard requirements for repairers, apparently, from which also consumer profited. The tighter requirements enhanced the quality of aftersales services within a brand's network and also independent repairers aligned their workshop services to high quality standards. The establishment of independent repairer chains enhanced this trend. Only the competition in the spare-part sector remained unchanged. The conceded option to obtain spare parts from not only the manufacturer but also from other spare parts manufacturers whom offer a matching quality was not embraced by the authorized repairers. Bonuses by the manufactures and the increased complexity due to dual sourcing made the option unattractive (Commission Evaluation Report No. 1400/2002, 2008).

Almost all manufacturers chose a quantitative selective distribution network and as previously indicated the new imposed MVBER triggered many importers to rethink and reconcile their brand's network. A task, executed easier within a quantitative network than in an exclusive one. In fact, all leading brands thinned out their network throughout the European Union terminated agreements with low performing dealers and repairers. Leaving remaining network members with higher sales potential per dealership and thus a better chance for higher profitability (Evaluation of the motor vehicle market; Staff Working Document No. 2, 2008).

At the same time manufacturers took the opportunity to increase and stringent their standards imposed upon dealers, agents and repairers. Authorized members of a network required more capital to fulfill the standards resulting in an indirectly limitation of the number of potential new members. Most standards have had as their aim to increase the brand positioning and visibility at dealerships and to increase the overall awareness of the respective brand. Thus, dealers were for the first time conflicted with stricter Corporate Identity as interior and exterior signaling e.g. furniture requirements, specific space dedication for car display, customer service area etc., and standards aiming to improve customer service quality such as, staff training, equipment requirements and operating methods. Furthermore, many importers conditioned a dealer's standards fulfillment on their margin system, strengthening a dealer's reliance on the importer. Common was a margin system with a low fixed margin and a variable one, based on a dealer's performance and the rate of quality standards achievement. The Commission aimed to empower authorized dealers and agents towards importers but the high capital requirements to fulfill the rigorous standard guidelines hindered many members to exploit the possibilities granted. A fact the Commission did not disapprove, arguing that higher quality standards could be only in the interest of consumers. As a matter of fact, only few dealers and repairers took the opportunity and opened additional outlets or relocated and almost no dealer subcontracted workshop to execute their aftersales business (Evaluation of the motor vehicle market; Staff Working Document No. 2, 2008).

However, multi-brand dealerships increased during the validity of the MVER 1400/2002. Between 1994 and 2004 multi-brand dealership throughout the EU increased from 7% to 17% (Evaluation of the motor vehicle market; Staff Working Document No. 2, 2008). Figure 4 displays in which way various manufacturers implemented the multi-branding options in their agreements.

Manufacturer	Brand	Current	Prior
BMW	*BMW*	No restrictions but require clear separation between the display areas	
	Mini		
PSA	*Citroën*	Not allowed on mfr-owned Non mfr-owned no restrictions	
	Peugeot		
General Motors	*Chevrolet (Daewoo)*	Not allowed on mfr-owned Non mfr-owned no restrictions but clearly defined display area	Under previous BER, full use of restrictions and brand specific requirements
	Opel/Vauxhall		
	Saab		
Ford	*Ford*	No restrictions but required to avoid brand confusion	Under previous BER, full use of restrictions and brand specific requirements
	Jaguar		
	Land Rover		
	Mazda		
	Volvo		
Honda	*Honda*	Continues with restrictions to the extent that they are allowed under new BER	Under previous BER, full use of restrictions and brand specific requirements
Hyundai	*Hyundai*	No restrictions	
Fiat	*Alfa Romeo*	No restrictions	Under previous BER, full use of restrictions and brand specific requirements
	Fiat		
	Lancia		
DaimlerChrysler	*Mercedes Benz*	Not allowed on mfr owned Non mfr-owned require brand-adequate zones	Under previous BER, full use of restrictions and brand specific requirements
Mitsubishi	*Mitsubishi*	Request clear separation between the display areas	

Figure 4: Manufacturers restrictions on multi-branding at dealerships (Source: Developments in car retailing and after-sales markets under Regulation No 1400/2002, 2006 p. 61)

Three main options prevailed among manufacturers:

- Firstly, authorized dealer sell additional brands through an outlet on different premises. Thus, there is no physical connection between the main dealership and the outlet.
- Secondly, additional brands can be sold in different showrooms but on the same premises and
- last but not least brands are sold in one showroom without physical separation.

The promotion of the last option was the intention of the Commission as to reduce and spread financial risk and costs. The disadvantage of the last multi-brand option, as various dealer associations reported, is that it impacts negatively brand image and frequently clashes with the other brand standards and systems. A reason, despite declared dealer interests, the last method was not often put into practice (Evaluation of the motor vehicle market; Staff Working Document No. 2, 2008).

Not so at Opel, the choice the sell one or more brand in one showroom prevailed. Since the MVBER 1400/2002 multi-brand dealerships have soared from under 1% up to 50%. Almost 50% of the dealerships are single branded (exclusive or solus) while 20% of multi-brand dealers sell a non-GM brand and the other 20% have offered Opel and Chevrolet, the rest combines these two.

Before the third BER was introduced multi-branding in many European countries was almost non-existent and so in Austria. Also unlike Opel dealers in Austria, many dealers have not implemented the ultimate option, as it was not commonplace in many European countries. Additional brands have been rather sold through the first and second option. Furthermore, multi-branding has varied significantly between premium brands and volume brand, the phenomena dominates among the latter (Evaluation of the motor vehicle market; Staff Working Document No. 2, 2008).

A survey conducted by Booz Allen Hamilton among 600 dealers in Germany and Austria in 2006 revealed that even though the MVBER cleared the path to multi-branding, dealers remained reluctant and were not willing to invest the brand specific expenses. Moreover, many dealers reported that manufacturers have responded fast to the threat of new showroom entrants and imposed further and stricter standards. 41% of the participants even feared sanctions from their main brand. As a result only 27% dealers stated that they contemplated about adding an additional brand to their product portfolio or virtually did so, a percentage far below the Commission's anticipated number. The more stringent standards guidelines were rendered on the expenses of small to medium size dealerships in rural areas. Many such dealers announced that the investment associated with the standards fulfillment was too high, this particularly involved the new vehicle sales standards (Mathony, 2006). Though, many former dealers and certified sales agents (CSAs) remained part of a brand network, as service partners. Standard requirements are much lower for service partners. Also the dealer's right to open dealerships anywhere in the Common Market never seriously kicked off (Mathony, 2006). Thus, in reality many manufacturers fended of potential risks, which could have hampered their control and influence over a brand's dealer network.

The demanded separation between sales and after-sales lead to a creation of a complex dealer network and contract structure. Manufacturers differentiate between passenger (PC) and (light) commercial vehicles (LCV). Because of the distinctive requirements both vehicle lines require a separate agreement. Thus, if an authorized dealer is also an authorized repairer for both PC and LCV four contracts for one brand are issued. Ergo, if a change of ownership occurred four contracts had to adapted and reissued. The evaluation of the different effective standards further increased the administrative complexity.
The Commission itself stated in its impact assessment report that market conditions and forces vary meaningfully between the new vehicle sales market and the aftersales market. In the former competition has increased, mostly due to the economic crisis and fierce competition form outside Europe. In the aftersales market some barriers still has hindered competition and hence may not provide full capabilities in efficiency. It therefore came to the conclusion that the sector and particularly consumers profit by maintenance of a Block Exemption Regulation. In order words, the Commission concluded that sufficient competition predominates the new vehicle sales segments, which made a sector specific regulation redundant (Summary of the impact assessment, 2009).

3.4 The new BER for the automotive industry

The assessment report on the impact of the MVBER 1400/2002 revealed that, from the Commission's point of view, the competition increased significantly over the years particularly in the new vehicle sales market. Competition increased in the aftersales market but not as anticipated and maintenance of a sector specific framework in this sector was likely. The altered market condition triggered to rethink the sector specific Regulation of the last MVBER 1400/2002. However, the Commission never challenged the necessity of a Regulation for the automotive industry itself but questioned only the means. Over all consumer benefits must prevail over anticompetitive effects (Summary of the impact assessment, 2009).
The MVBER 461/2010 came into force on the 1th June 2010 but meaningfully changed the regulatory framework. After the transition period of three years the General Vertical

Block Exemption Regulation 330/2010 applies also to the motor vehicle sales market, while the aftersales market remains sector specific block exempted by the MVBER 461/2010. The Motor Vehicle Block Exemption Regulation 461/2010 thus, only applies to the aftersales market if the conditions stated in the Vertical Block Exemption are fulfilled and three additional hardcore restrictions are not part of the agreement. Contradicting, the last MVBER were the General Vertical BER was not applicable. Additionally, the Commission issued Supplementary Guidelines to the General Vertical Block Exemption Regulation for the sales and aftersales market. Having as its purpose to provide aid to assess agreements, with contain possible anti-competitive outcomes. A simplification of Regulatory guidelines for the automotive sector may not be accomplished. Both Regulations will apply until the 31st May 2023 (Sigert, 2013).
The transition from a sector specific Regulation to the General Vertical BER implies that the industry will have greater freedom in the creation of agreements, as the General BER is applicable to several industries and thus has a broader applicable spectrum.

3.4.1 New vehicle sales market: Application 330/2010

One of the main changes the industry faces from the transition to the General Vertical BER has been the altered market share threshold. Figure 5 displays the applicable market share thresholds for the automotive industry before and after the 1st June 2013 (Von Graevenitz et al., 2013).

	Before 1 June 2013	After 1 June 2013
Quantitative selective distribution	Supplier's market share is 40% or less.	Supplier's and distributor's shares each 30% or less
Qualitative selective distribution	No threshold (covered even if supplier's market share is 100%)	Supplier's and distributor's shares are 30% or less (but usually allowed even if block exemption does not apply)
Exclusive supply	Distributor has less than 30% of purchasing market	Supplier's and distributor's shares each 30% or less

Figure 5: Applicable market share thresholds before and after the 1st of June 2013 (Source: Von Graevenitz et al., 2013 p. 2)

Market share thresholds are the provision to obtain the benefits of the Block Exemption. Even though, these are lower or altered only few arrangements are affected by the change, at least for the new vehicle sales market. Affected agreements must be assessed separately. Traditionally, some manufacturers exceed the threshold in their home markets as Fiat in Italy with 30.8% or PSA in France with 30.7% but only minimally. The accurate assessment of the applicable market share threshold is difficult and by far not straightforward. The market share is calculated based on relevant market and geographic market leaving a wide discretion for interpretation. The Commission suggested that geographic market assessment shall be based on national boundaries but would also accept a broader assessment e.g. EEA wide too. Furthermore, the Commission implied that all following markets may be considered as separate: mini cars, small cars, medium cars, large cars, executive cars, luxury cars, sports cars, coupés, multi-purpose cars and sports utility cars, but acknowledges overlapping between the separate markets (Von Graevenitz et al., 2013). The assessment further includes the manufacturer's market share and the retailer's market share (e.g. wholesales, retailers). Currently, this inclusion does not challenge the application of the VBER but may be an issue in the future due to dealer concentrations and tendencies in the market. From an intra-brand perspective this is reasonable but may limit the importer's scope of action

considerably. If a manufacturer is affected an alteration might be troublesome (Siegert, 2013).
One of the main changes the shift to the General Regulation brought along was the empowerment of importers by endowing them with higher control over a brand's dealer network. One new regulation associated with that, is that the importer is allowed to impose single branding in its network again. The Commission believes that the modified market conditions intensified competition and that the market is capable to regulate itself hence not affecting the market negatively. Many importers reacted against the previous MVBER's facilitation of multi-branding by imposing higher standards, which resulted in an increase in operating costs by 20%. A single brand obligation imposed by the importer is considered as a non-compete obligation (Supplementary guidelines on vertical restraints, 2010).

Notwithstanding, single branding was not introduced without conditions, which are:

- Single branding can only be imposed by manufactures with a national market share of max. 30%
- Single branding can only be imposed for the duration of 5 years, obligations, which exceed this period are not subject to Block Exemption Regulation.
- Single brand regulations, which are created to address particularly new entrants and smaller brands are not block exempted.
- If widespread single branding may be the case which causes brands being left out the Commission may cease the benefits of the BER for affected brands.
- Finally, if single branding is obliged by more than 50% of dealers in a respective market the Commission may exclude agreements from the BER including single brand clauses (Supplementary guidelines on vertical restraints, 2010).

Another non-compete obligation, which indirectly demands single branding, is that importers can oblige dealers to purchase not more than 80% of its vehicle purchases from the manufacturer (Supplementary guidelines on vertical restraints, 2010). Indirect non-compete clauses such as "qualitative standards specifically designed to discourage the distributors from selling products of competing brands, bonuses made conditional on the distributor agreeing to sell exclusively one brand, target rebates or certain other requirements such as the requirement to set up a separate legal entity for the competing brand or the obligation to display the additional competing brand in a separate showroom in a geographic location where the fulfil[l]ment of such a requirement would not be economically viable (for example sparsely populated areas)" (Supplementary guidelines on vertical restraints, 2010 Art. 32, p. 5) are also included to benefit from the Exemption.

These non-compete obligations are restricted to five years and can be renewed, but require the consent of both parties. The respective non-compete clause loses the benefit of the Block Exemption Regulation while the remaining agreement remains exempted.

The Commission acknowledged possible negative effects by allowing non-compete obligations, but does not consider them as hardcore restrictions. Over all the positives effects prevail. The Commission states two examples, which justifies the imposition of such obligations toward the consumer benefit. Firstly, investments are encouraged, e.g. if an importer invests or a dealer is required to invest on its premises (for example to fulfill a brand's standards or because of the implementation of a new dealer CI) the likelihood to attract more customers, also those from other brands, increases which may encourage further investment. Secondly, a stronger brand separation may sharpen a brand's awareness, recognition and position (Supplementary guidelines on vertical restraints, 2010).

Covered by the new Exemption importers regained power over their dealer network. In contrast to the ultimate MVBER dealers are no longer free to establish sales subsidiaries but require the consent of the importer (location clause). The importer's improved control over its network encourages a more foreseeable network development and enhances the vehicle distribution. The manufacture's approval is further required for a change of a dealership's ownership or management (Commission Regulation No 330/2010, 2010).

Further, manufacturers can now oblige dealers to offer both sales and aftersales services at a dealership and thus can prohibit subcontracting a workshop to repair, maintain and service vehicles on behalf of an authorized dealer (Commission Regulation No 330/2010, 2010).

Embedding the termination notice and dispute resolution into national law was an adjustment to the new VBER, as rights are better protected by national law, so the

Commission expressed. Additionally, importers are no longer required to state reason for a contract termination. However, if a network member receives a notice, based on a reason covered by the VBER the manufacturer might expose itself to antitrust risks. If this is the case in the Commission's antitrust revision will be taken into consideration if an agreement includes a Code of Conduct established by various manufacturer's associations (Von Graevenitz et al., 2013). The issues stated in the industry's Code of Conduct are displayed in Figure 6.

Issue	Current BER 1400/02	New BER 461/2010 330/2010	ACEA code of good practice
Notice period 2 years	✓	x	✓
Provide for arbitration	✓	x	✓
Give reasons for termination	✓	x	x
Permit sales of franchise within network	✓	x	x
Open additional outlets without OEM consent	✓	x	x

Figure 6: Industry's Code of Conduct (Source: Opel)

3.4.1.1 *Hardcore restriction*

Besides the non-compete and location clauses only five hardcore restrictions remain applicable to the automotive industry. If one or more hardcore restrictions are used in an agreement, the entire agreement falls outside the scope of the VBER, although the market threshold of 30% is not surpassed (Commission Regulation No. 330/2010, 2010).

1. Authorized dealer and repairers are free to determine sales prices. An importer, though, can impose maximum prices or give a price recommendation.
2. Generally, imposed restriction on sales territory and sales to customer groups is considered as a hardcore restriction. Exemption applies to the importer's

reserved right to sell to a specified customer group or likewise in an exclusive network handed of to a dealer, the restriction of an importer or a wholesaler to sell to end consumers and the sales of new vehicles and spare parts to unauthorized dealers by selective network members. Further exempted are the sales of parts to competitors, which have the purpose to produce the same kind of goods as the manufacturer.

3. Agreements, which hinder cross-supply between authorized dealers and repairers within a selective distribution network.
4. Authorized dealers and repairers may not be hampered actively or passively to sell new passenger vehicles, light commercial vehicles and spare parts to end consumers by any member on any retail level of a selective network. An exemption applies if the sale is conducted by an unauthorized dealership or workshop.
5. Agreements, between a spare parts manufacturer and a buyer, whom uses the spare parts for its product, which hinders to sell the spare parts to market participants outside of its network (Commission Regulation No. 330/2010, 2010).

3.4.2 Aftersales market: Application 461/2010

As competitive forces differ between the sales and aftersales market the Commission pronounced the necessity to sector specifically exempt the aftersales market. It did so by issuing another MVBER effective since the 1st June 2010. A well-connected aftersales market is directly linked to public safety, pollution and carbon dioxide emission. Regular correct executed maintenance ensures safety and reduces pollution and emission so the Commission argues. Independent repairers are only able to provide such a service if they have access to technical information and spare parts (Commission Regulation 461/2010, 2010).

Opposing to the previous regulatory measurement, the MVBER is only applicable if the provisions of the Vertical Block Exemption Regulation are fulfilled as well as no MVBER 461/2010 hardcore restrictions are in use (Von Graevenitz et al., 2013). This entails that also the imposed market share thresholds apply. The most widespread model for the aftersales market is the qualitative selective distribution model, making the market share threshold of 30% most relevant. The last MVBER did not include such a threshold and now most of the manufactures agreements between them and authorized repairers and distributors of spare parts are no longer block exempted by the current MVBER, changing the significance of the MVBER allover. The purpose is no longer the exempt the aftersales market but to point out all practices, which are, considered as hardcore restrictions. All agreements which include hardcore restrictions are not block exempted and conflict directly the Article 101(1), no matter if the have actually an anti-competitive effect or not. However, an exemption applies only if parties can prove that the application of such a restriction is imperative for consumer benefits. To prove this may be challenging, costly and time consuming. However, over all the EU regulation and hardcore restriction for the aftersales market only changed little compared to the last MVBER (Von Graevenitz et al., 2013).

3.4.2.1 Hardcore restrictions

The Commission states in the Regulation No. 461/2010: „the exemption provided for in Article 4 shall not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties have as their object:

- The restriction of the sales of spare parts for motor vehicles by members of a selective distribution system to independent repairers which use those parts for the repair and maintenance of a motor vehicle;
- The restriction, agreed between a supplier of spare parts, repair tools or diagnostic or other equipment and a manufacturer of motor vehicles, of the supplier's ability to sell those goods to authoris[z]ed or independent distributors or to authoris[z]ed or independent repairers or end users;
- The restriction, agreed between a manufacturer of motor vehicles which uses components for the initial assembly of motor vehicles and the supplier of such components of the supplier's ability to place its trade mark or logo effectively and in an easily visible manner on the components supplied or on spare parts" (Commission Regulation No. 461/2010, 2010 Art. 5 p.5).

Due to the high market share of vehicle manufacturers of whom most exceed the 30% market threshold some restriction, despite not stated as hardcore restriction, can violate the principles of Art. 101 (1) and be subject to an infringement. The Supplementary Guideline issued by the Commission may serve as an aid to assess potential antitrust risks. This particularly applies to the aftersales market where the regulatory boundaries blur. Also previous hardcore restrictions, which although have ceased to apply, may rise infringement. Restricting the number of authorized repairers within a network even though they fulfill the standards will still be difficult to justify to the Commission. The same relates to the restriction of limiting any partners from a brand's network to obtain spare parts from third parties, besides for warranty, free servicing and vehicle recalls. An indirect constraint achieved via special bonuses or incentives may also have an anticompetitive effect and thus violate Art. 101 (1). Similarly to the last MVBER in which many hardcore restrictions or specific conditions were concerned with obstacles which limit or burden independent repairers to provide an adequate service. In general, importers may evaluate their agreements carefully if competition in the aftersales market is limited in any way (Von Graevenitz et al., 2013).

3.5 Opel's implementation of the BER in its sales and service agreements

Opel throughout Europe terminated all previous agreements in order to reissue new dealer sales and service agreements as well as repairer agreements. The certified sales agent (CSA) agreements between dealers and agents also ceased after a request by the national sales company to no longer prolong it. Hence, all Opel agreements were terminated on the 31st May 2010 followed by a two years period of notice.

The last MVBER demanded a separation of sales and service agreements, contractual administrative work accelerated, involving more then 15,500 Opel and Vauxhall contracts (Opel vehicles are sold under the brand Vauxhall in Great Britain). Hence, Opel took the opportunity and combined the sales and service agreements again, only differentiating between passenger cars and light commercial vehicles. In both similar standard requirements are stated, wherever the sales and service agreements for LCVs entail further specific standards, mostly regarding the maintenance of such vehicles.

Repairer agreements were directly issued to certified sales agents and repairers by the Opel Austria GmbH. All newly issued agreements have been valid since the 1st June 2013 without a termination date. But agreements were only issued to those network partners whom fulfilled the standards of the previous MVBER or no breach of contract was the case. The contractual relationship with affected dealers, CSAs and repairers was either terminated for good or conceded a two years period to comply with standards, depending on the matter.

All other network members, who received a positive prolongation of the agreement but yet had not complied with the future standards, were either conceded a two years period to comply or Opel has acknowledged the non-compliance without further escalation. This might be the case due to financial reasons, the location etc.

Opel exploited the possibility and imposed non-compete clauses in form of a single brand clause.

"*OPEL NSC and DEALER have agreed that DEALER shall be OPEL single branded for a duration of five (5) years from the signature of this Agreement* „(Opel Sales and Service Agreement Annex 10 p.1).

Notwithstanding, must this part of the agreement be signed separately from the rest and does not have intermediate validation along with the agreement.

„*In case OPEL NSC and DEALER do not agree on a OPEL single branded provision, the DEALER's minimum purchase requirement under this AGREEMENT will mean that the DEALER'S previous calendar year purchases of MOTOR VEHICLES in any given category shall not be less than eighty percent (80%) of the value of the DEALER's previous calendar year purchases of all Motor Vehicles in the same category*" (Opel Sales and Service Agreement Annex 10 p.1).

Additionally, Opel indirectly enforced non-compete clauses, which exacerbate to sell more then one brand at a dealership. Opposing to the last agreement has Opel introduce standards, which on the one hand discourage dealers to add brands to their product portfolio and on the other hand set apart the Opel brand clearly from other brands.

Multi-brand dealers are required to comply with the respective Opel CI rules:

"*In case DEALER showroom is part-occupied by another brand, a fixed, non-transparent wall structure is required as a divider. Execution must be according to Opel Corporate Identity guidelines. Minimum height is 3,0 m. Minimum horizontal length is full depth of DEALER* *showroom except for provision for customer pedestrian access of maximum 1,5 m wide or joint vehicle and customer access of maximum 2,5 m (the latter only if brands must share one exterior vehicular access.) Divider must be able to take mounting of FlexFrames for PoS. Any vehicle, brand logo or PoS material from another brand must not be visible from the Opel showroom. The Opel dedicated areas are restricted to Opel activities only. Any change of the size / shape or location of the Opel dedicated areas needs prior written approval from OPEL NSC* " (Opel Sales and Service Agreement Annex 8 p.3 ff.).

In the event a new dealer is newly appointed and/or builds a new premises or conducts a major refurbishments a dealer has to fulfill the following requirements „*DEALER shall display, promote and sell MOTOR VEHICLES and ACCESSORIES from separate showroom sales facilities dedicated solely to the Opel brand*" "*If DEALER can prove to OPEL NSC that separate showroom sales facilities dedicated solely to the Opel Brand is not viable, DEALER shall display, promote and sell MOTOR VEHICLES and ACCESSORIES from a clearly defines separate showroom area dedicated solely to the Opel brand*". (Opel Sales and Service Agreement Art. 10.15.4 p.31) Furthermore, „*DEALER shall implement the promotion, sale, distribution or servicing of non-Opel Motor Vehicles, Parts and Accessories in a manner which has no negative impact on the DEALER MANDATORY STANDARDS. Any modification or changes to existing DEALER FACILITIES to accommodate such non-Opel activities shall not be done without prior written confirmation by OPEL NSC or DEALER's compliance with the applicable DEALER MANDATORY STANDARDS*" (Opel Sales and Service Agreement Art. 10.15.3 p.31). „*At all times, DEALER shall ensure that display of competing Motor Vehicles, Parts, Accessories, servicing and brand-related items will be exercised in a manner to avoid confusion between brands*" (Opel Sales and Service Agreement Art. 10.15.6 p.31)

In case a dealer considers to add an additional brand to its product portfolio "*the following provisions shall apply: DEALER shall give OPEL NSC sixty (60) days prior written notice before display, promotion, sale or distribution of such Motor Vehicles in order to allow sufficient time for the Parties to assess on how DEALER MANDATORY STANDARDS will be applied in the new environment*" (Opel Sales and Service Agreement Art. 10.15.1 p.31) For the application of an authorized repairer all above mentioned provisions apply except for Art.10.15.4.

Opel Mandatory Standards are regulated in Annex 8 of the Opel Dealer Sales and Service Agreement and are concerned with:

1. Corporate Identity (CI)
2. IT structure and systems
3. Capital structure and requirement and
4. Personnel

The relevant dealer CI provisions are already mentioned above, furthermore: "*The Opel dedicated areas are restricted to Opel activities only. Any change of the size / shape or location of the Opel dedicated areas needs prior written approval from OPEL NSC Opel*" (Sales and Service Agreement Annex 8 p.3). All the imposed CI regulations differ significantly from the pervious agreements. Also, Opel, unlike many other brands, did not hinder multi-branding at Opel dealerships. The old agreement stated, that dealers only had to inform Opel about the affiliation of an additional brand. In showrooms brands had to be displayed in its dedicated areas without any physical separation, hence allowing two or more brands to be displayed in the same showroom. The Opel showroom, however, may not be altered unilaterally.

The new sales and service agreement still allows multi-branding but regulations are much stricter and require considerable investment. Figure 7 displays the current dealer CI, including brand separation for new and major refurbished dealers and all mandatory exterior and interior items. Attention should be given that the Commission and Opel have a different definition of single and multi-brand dealerships. The definitions are provided above. In contrast to the last agreement a minimum demonstrator car stock is further mandatory to Opel. (Sales and Service Agreement Annex 8).

Figure 7: Current Opel exterior & interior dealer CI (Source: Opel)

The section IT structure and systems is concerned with the IT environment at a dealership, requiring a certain software and sufficient hardware. Yet, dealers must share all information regarding parts and vehicle sales in accordance with data production guidelines and laws (Sales and Service Agreement Annex 8).

Opel demands from their dealers "*a current/liquidity ratio of its legal entity greater or equal to 1:1. DEALER must demonstrate the current/liquidity ratio on his audited accounts, and at quarter ends on management accounts, an equity percentage of its legal entity greater than 20% in the balance sheets of the management accounts or have an acceptable action plan agreed with OPEL NSC*" (Sales and Service Agreement Annex 8 p. 9) and stipulates securities for payables and credit facilities aligned with the guidelines issued by the NSC (Sales and Service Agreement Annex 8).

To pronounce Opel as brand clearer and to provide customer a better service Opel demands now at least one exclusive sales consultant per dealership, signifying that this person is only responsible for Opel and no other brand. With the increase in vehicle range as well as a high diversity of accompanying campaigns and promotions the regulation appears reasonable.

All mandatory standards are audited on a yearly basis non-compliance may lead to the initiation of the escalation process which can eventually end in the termination of the agreement. Quarterly reviewed, are the four quality margin standards, which were reduced by four standards and simplified. As the name suggested, this standards provide information about the quality of dealerships in regard of sales, data information & sharing, customer service and personal training. A quality standard transgression may lead to a margin reduction but will not have any further effect.

The termination of the agreement is now regulated by national law thus in case of the Austrian dealer and repairer agreements Austrian law regulates the process of termination. The Austrian agreement states: *" DEALER or OPEL NSC may terminate this AGREEMENT at any time by written notice to the other Party. Any termination will be effective in the date specified in the notice, which date will be not less than two years after receipt of the notice*" (Opel Sales and Service Agreement p. 44). This is applicable to an ordinary notice of termination. In case of a reorganization of the Opel network the period of notice may be reduced to one year (Opel Sales and Service Agreement). Furthermore, all Opel agreements between dealers, repairers and Opel regulate and acknowledge dispute resolution and herewith implemented the suggested Code of Conduct issued by industry associations (Opel Sales and Service Agreement).

To sum it up, Opel exploited the given scope of discretion by the Commission to regain power and control over its dealer network. The previous slight "laissez faire attitude", based on many reasons, has changed very much to the contrary. Reasons for this development will be deliberated upon in the following chapters. As such a strong transformation may be challenging to implement, Opel introduced a transition code for all dealers, which were part of the network since the 1st of October 2011. For the most part it mitigate some of the rigidity of the sales and service contract. The transition code acknowledges some exception and moderation in regard of some CI mandatory requirements and mandatory furnishing, the 80% purchasing rule and showroom size regulation. If a dealer, however, alters anything at a dealership in regard of showroom size, dealership relocation, major refurbishment or addition of a new brand the transition code looses its validity (Opel Transition Code).

3.6 Summary chapter three

A selective distribution system influences competition but provides consumers more benefits and security. The Commission therefore has block exempted the automotive industry since 1985, regulating the means a vehicle is distributed, displayed and maintained. Often, the tight regulatory frameworks have not left much room for individual discretion into a brand's sales and service agreements.

Strengthening the position of dealers and repairers was one of the main objectives of the first Regulations. Nevertheless, manufacturers frequently found means to circumvent dealer empowering measurements. High standard requirements made some favorable conditions unattractive and unprofitable for dealers and curtailed anticipated effects. While in the new vehicle sales market competition has increased due to various factors, discloses the aftersales market still inefficiencies and lower a level of competitive activities. Independent repairers have encountered difficulties to get access to required information and tools for the maintenance of a vehicle. The Commission thus decided to regulate the new vehicle sales market along with other industries by means of the General Vertical Block Exemption Regulation and continue to sector specifically block exemption the aftersales market.

For the MVBER 1400/02 the Commission endeavored to mitigate the mismatching level of power between network partners. Non-compete clauses were mainly not applicable and the Commission conceded dealers a greater freedom in regard of location flexibility, multi-branding and dealership takeovers. Importers on the other hand were partially deprived of their power to structure and influence their network or found other means to wield influence respectively. The currently valid Regulation changed this very much to the contrary. Opel took advantage of this and implemented many optional regulations as mandatory into their sales and repairer agreement. The objective for the restructuring of the Opel dealer network is to polish the network and get rid of the rusty image of the brand, partially also reflected in its network. It has recaptured power by imposing direct and indirect non-compete clauses and has exacerbated multi-branding to sharpen its positioning and image toward end consumers. The power play among members of the dealer network will be the subject of the following chapters.

4 Theoretical framework

This chapter aims for providing the theoretical framework for the analysis of the strategic coherency with the changed business environment due to the altered regulatory framework, the Block Exemption Regulation.

4.1 The external environment

The external environment influences a firm and its strategy. The forces within the business environment have a direct or indirect impact on a firm's strategic position and on its decision-making. These forces should be perceived and exploited respectively as a mode to achieve set goals and to compete effectively. Only a strategy, which appreciates and embraces its competitive environment may be successful and ensures long-term sustainability. Two of the main models to describe and analyze a firm's competitive environment are the PEST and Porter's Five Forces Analysis. PEST stands for the Political, Economic, Socio-cultural and Technological environment of firm's business. All the PEST factors determine a company's action and strategic alignment and vice versa. The PEST analysis should provide a company a clear perspective on forces which may hinder or burden a strategic choice and which may enhance its effects. Literature often states antitrust regulations as an example for the political environment (Thomson et al., 2010). US or EU antitrust regulatory institution have already hindered some intended mergers and acquisitions of global giants, often to protect domestic companies (Peng, 2014).

Focusing on the environment, which might be influenced more directly, the Porter Five Forces analysis serves as a useful and popular aid. Porter focuses on the competitive rivalry in an industry by analyzing the threat of new entrants and substitutes and the bargaining power of suppliers and buyers (Thomson et al., 2010).

Both models recognize and acknowledge the importance of regulatory mechanism, but in general literature provides only little about institutional changes and the impact on a firm's strategy. Porter, for example, included in his Five Forces Framework only government policies as a barrier of entry (Akpinar, 2007) but does not scrutinize the institutional impact on an industry further (Peng, 2014).

Moreover, is an industry environment not a rigid construct but may change rapidly which requires fast strategy adaption. The higher the rate and number of changes in an environment the more difficult is it to make accurate forecasts and the higher is the uncertainty in the industry. A new imposed law e.g by the EU can change many industries and may extinguish a competitive advantage. It is therefore crucial to adapt to industry changes fast to secure success and long-term sustainability (Thomson et al., 2010).

However, institutions should generally diminish uncertainty only leaving a specific behavioral spectrum within its framework. By limiting feasible actions uncertainty is reduced, so is risk and thus transaction costs. Having a country with unstable institutions may make a country unattractive to investments and businesses (Peng, 2014) or as Peng points out: "interactions between institutions and firms that reduce transaction costs shape economic activity" (Peng, 2014 p.100)

4.2 An institution-based view on business strategy

The strategy of a firm contains various aspects. Particularly in regard of an institution-based view a business strategy can only be modified within the regulatory framework, hence limiting the economic choices (Akpinar, 2007). Peng refers to such framework as the "rules of the game" (Peng, 2014 p. 94).

Institutions are human made and can be governments, various organization, non-government organizations but also cultural frameworks which comprise of norms and ethics (Akpinar, 2007). These institutions dictate interactions by formal and informal rules (North 1991 in Martin, 2014).

Scott describes an institutional framework as a framework including formal and informal institutions, which influence individual and firm behavior and are supported by different regulatory, normative and cognitive pillars (Scott 2001 in Peng, 2014). Formal institutions are governed by laws, regulations and rules and are (normally) abided by regulatory pillars. Informal institutions comprise norms, culture and ethics and are governed by normative and cognitive pillars, determining what is perceived as right or wrong doing by a society (Peng, 2014). Both institutions influence the industries and alterations may change the conduction of business significantly (Akpinar, 2007). By the nature of this thesis the main focus is given to formal institutions.

The coercive power of governments provides a subordinated position over most other organizations. However, being a member of the European Union also implicates that member states and their governments surrender parts of their sovereignty in order to achieve political and economic integration and strengthen their power toward other states and supranational institutions. Regulatory changes enforced by the European Union have often a binding character and alter an industry environment and impacting the strategy of many companies, which do business within the European Union (Akpinar, 2007). An institutional transitions are "Fundamental and comprehensive changes introduced to the formal and informal rules of the game that affect organizations as players" (Peng, 2014 p.100) Figure 8 illustrates the interaction between supranational regulations, which may also be national regulations, and how these regulations influence industry structure and strategies of competing firms within the industry and vice versa. Hence, an industry structure and a firm's strategy interact and influence each other. Institutional regulations directly affect a firm and it's strategy (Peng, 2014). The impression that firms are not able to influence the institutional environment, however, is not entirely accurate. Lobbing is a common practice among influential firms or industries. "Business Week (2007) reported that for every dollar U.S. defense firms spend on lobbying, they reap $28, on average, in earmarks from Uncle Sam, and more than 20 firms grab $100 or more" (Business Week in Peng, 2009 p. 68). „Basically, the institution-based view suggests that when a firm cannot be a cost, differentiation, or focus leader in product markets, it can still beat the competition on other grounds—namely, the nonmarket political arena where informal relationships hold great sway" (Oliver & Holzinger, 2008 in Peng, 2014 p. 68).

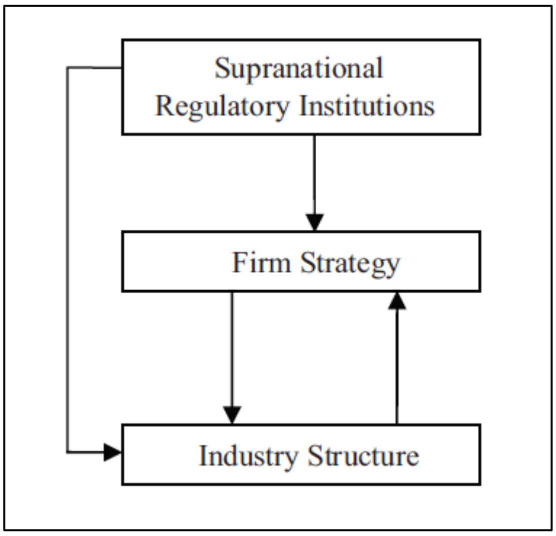


Figure 8: Influence of supranational regulatory institutions on strategy and industry structure (Source: Akpinar, 2007 p. 178)

In order to assess Opel's strategy in regard of its network development the forces, which govern strategic choices have to be examined. Peng states besides the institution-based view, the industry-based and resource-based views are the dominant forces on a firm's strategy, the former being rather neglected in strategic management literature and if acknowledged then only in context with emerging countries (Peng, 2014). Peng defines the institution-based view as: "A leading perspective of strategy that argues that in addition to industry- and firm-level conditions, firms also need to take into account wider influences from sources such the state and society when crafting strategy" (Peng, 2014 p. 94) He further states that the institution-based perspective provides the connection between the two other perspectives and questions which institutions influence strategy and the industry environment (Peng, 2014). In fact one of the Porter's Five Forces rivalry among competitors is influenced amply by institutional regulations such as antitrust laws and antidumping regulations. Peng claims that the industry-based view does not analyze the dynamics behind industry's rivalry and competition in depth (Peng et al. 2009).

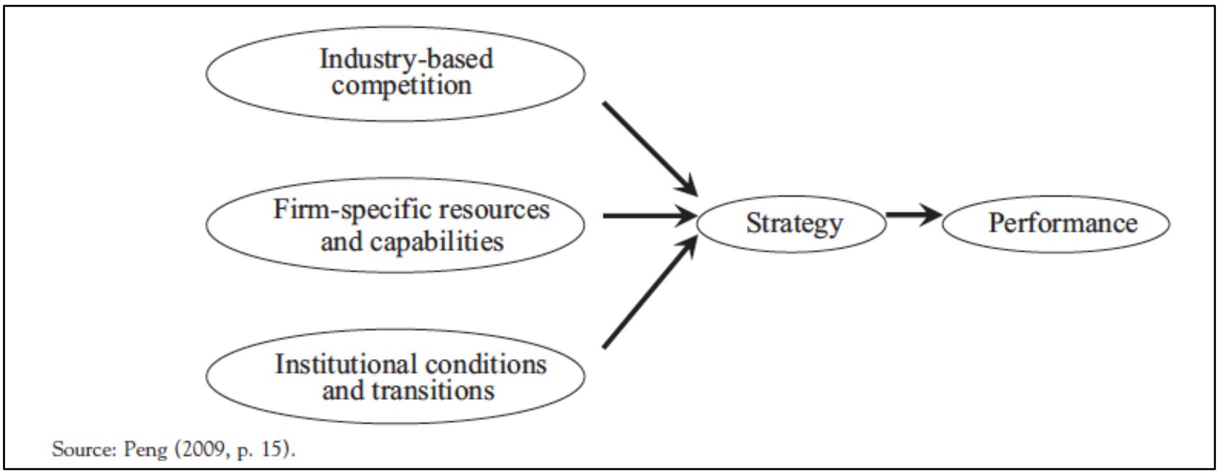


Figure 9: The impact of three main forces on strategy and performance (Peng et al., 2009 p.64)

Consequently, companies have to adapt their strategy to an industry's institutional framework in order to perform and compete successfully and to create a competitive advantage. Peng et al. 2009 further suggests, that an institutional framework impacts directly on a firm's scope, behavior and differentiation mode. Due to different prevailing regulatory frameworks companies differ more obviously between nations or continents and industries. This can give incentives about the scope of the firm e.g a company's product mix (Peng et al. 2009). For example, within the European Union hybrid and electro vehicles sales vary significantly as national governments provide either a little or great supportive regulatory framework and initiatives to promote such vehicles. Furthermore, in North America diesel-engined vehicles never gained such popularity as in Europe. If companies adapt rapidly to and embrace changes of the regulatory framework or government initiatives firms may increase their competitiveness and achieve a competitive advantage (Peng et al. 2009). Hence, a competitive advantage in one country may be none in another country due to the government regulations. By analyzing the "background noise" firms understand forces in the environment better and make accurate predictions (Peng, 2014).

A sustainable competitive advantage comprises of four components. It must be:

- Valuable in order to "exploit opportunities or neutralize threats" (Henk et al., 2010 p.107)
- Rare in order to be distinctive and have capabilities which only few or none of the competitors process
- Costly to imitate to fight back imitators and
- Nonsubstitutable, to secure a company's competitive advantage (Henk et al., 2010).

Another theory, which intends to describe the positive connection between industry and a firm's advantage, is the theory of comparative advantage. Hall et al. state that an institutional framework of a nation may contribute positively to a firm's performance and activities. A nation's combination of land, labor and capital composes a country's competitive advantage and empower firms to produce goods or services or execute some activities more effectively due to the institutional environment (Hall et al., 2001 in Martin 2014) For instance, low labor costs in a country will attract firms with labor-intensive products. Hence, a nation's institutional framework impacts company's action and their performance (Martin, 2014).

Martin intended to combine and describe the link between an institutional environment and a firm's competitive advantage and defines an institutional competitive advantage as such: "a firm has an institutional competitive advantage when it is implementing a strategy, featuring distinctive resources and activities enabled by its interactions with the institutional environment, which generates economic value in excess of its competitors" (Martin, 2014. p. 59). Such an advantage may not be the sole source of company's competitiveness and distinction. Companies may take use of an institutional environment and utilize it as their advantage and means to success. Martin argues that this perspective is rather rare as literature fairly describes institutions as constraints, limiting and curbing strategic choices (Martin, 2014). An institutional competitive advantage acknowledges the context of a firm's resources, capabilities and it's competitive environment and might be the source of success (Peng, 2014). An accurate assessment and understanding of the environment may be the reasons for one company to reap profits while others fail.

Hence, some scholars have already recognized the importance to integrate the institution-based view into strategy formulation but more interesting is how, in which situation and to what extend do institutions impact firm's strategy. In fact, by analyzing the institutional environment a firm learns more about the competitive forces and possible (re-) actions from competitors. It provides the context to the industry competition and the firm-specific resources and capabilities. The informal and formal institutions govern a firm's behavior and command the dos and don'ts.

4.3 Strategic responses to institutional changes

Oliver suggests five different responses firms can choose from to attain conformity to an institutional environment. These basically describe the various stages of a firm's resistance. Oliver focuses on formal institutions describing institutions as regularity structures, governmental agencies, laws, courts, professionals, interest groups and public opinion. Figure 10 demonstrates the five main choices of a company (Oliver, 1991).

Strategies	Tactics	Examples
Acquiesce	Habit	Following invisible, taken-for-granted norms
	Imitate	Mimicking institutional models
	Comply	Obeying rules and accepting norms
Compromise	Balance	Balancing the expectations of multiple constituents
	Pacify	Placating and accommodating institutional elements
	Bargain	Negotiating with institutional stakeholders
Avoid	Conceal	Disguising nonconformity
	Buffer	Loosening institutional attachments
	Escape	Changing goals, activities, or domains
Defy	Dismiss	Ignoring explicit norms and values
	Challenge	Contesting rules and requirements
	Attack	Assaulting the sources of institutional pressure
Manipulate	Co-opt	Importing influential constituents
	Influence	Shaping values and criteria
	Control	Dominating institutional constituents and processes

Figure 10: Strategic responses to institutional processes (Source: Oliver, 1991 p. 152)

Even tough, firms usually have to comply with institutional changes, especially if enforced by law, the acquiescence may be demonstrated in different behavior. When institutional roles and guidelines experience widespread acceptance e.g. the teacher-student role or are taken-for granted, organizations habitably adjust to the changing framework without any further strategically adaption. Companies may also acquiesce by imitating competitors in the industry or other organizations. This can either be done consciously or unconsciously. This behavior further includes consultation of consulting firms in regard of strategic adaption. When a firm decides to comply with institutional changes it does so consciously and for its own benefit. Reasons for compliancy are the reduction of vulnerability and the avoidance of criticism and penalties.

In regard of compromising behavior Oliver states: “Organizations are often confronted with conflicting institutional demands or with inconsistencies between institutional expectations and internal organizational objectives related to efficiency or autonomy. Under such circumstances, organizations may attempt to balance, pacify, or bargain with external constituents. These compromise tactics represent the thin edge of the wedge in organizational resistance to institutional pressures “(Oliver, 1991 p. 153). A company may balance an institutional change by seeking a compromise between the institutional change and the effected stakeholders and the company’s objectives. Another procedure would be not to retaliate but merely implement the minimum requirements. Ergo, a firm may cease a production of a harmful product due to institutional changes but seeks a mode to adjust the product to achieve institutional conformity and avoid public resistance. An organization may bargain with institutional authorities to actively find a common ground and obtain concessions (Oliver, 1991).

When a company pursues an avoidance tactic it may conceal its noncompliance, signifying that behind an external demonstration of acceptance an organization internally does not intent to comply with institutional changes. It does so by concealing internal procedures to institutional authorities. Another mode of an avoidance tactic is to buffer (Oliver, 1991). Oliver defines buffering as such: “Buffering refers to an organization's attempt to reduce the extent to which it is externally inspected, scrutinized, or evaluated by partially detaching or decoupling its technical activities from external contact (Oliver, 1991 p. 155).” ”Where efficient technical production is independent of public approval, or public approval is not dependent on the organization's willingness to open itself to public scrutiny (e.g., the release of financial information), buffering tactics may serve the organization's interests, especially in terms of maintaining autonomy, minimizing external intervention, and maximizing efficiency" (Oliver, 1991 p. 155). Such a procedure may rise suspicion and may attract public awareness and effect negatively a firm's reputation (Oliver, 1991). The last form of avoidance is to escape the institutional change entirely. Set goals and strategies are altered to such extend that institutional conformity is no longer required. For example a company can relocate its production facility to a Third World country so has no longer to comply with stringent safety and pollution regulations of a Frist World country (Oliver, 1991).

A more active mode of an institutional alteration refusal is to dismiss an imposed institutional rule. This might be that case when the actual enforcement is unlikely to conflict directly with a company's interests and objectives. By challenging institutional norms or rules an organization actively questions and violates such forces. The likelihood of a challenging tactic increases if it is supported by rationality and integrity and does not conflict with common beliefs. "Several Canadian manufacturers, for example, have attempted to challenge Ministry of Environment directives to conform to specific water pollution standards because they feel these directives are not "rational" and that their own behavior on pollution is above reproach" (Oliver, 1991 p. 191). Attack is a more aggressive form of defiance. An attack is more likely if an organization perceives its illegitimate and privileged position threatened (Oliver, 1991).

Manipulating, in order to decrease or distinguish external or institutional pressure is the most active form to interfere to institutional changes. By co-opting the organization intents to bring the source of change in the organization. Influential (political) representatives may be part of a board of directors to actively pursue the firm's interest and smooth institutional opposition. "Influence tactics may be more generally directed toward institutionalized values and beliefs or definitions and criteria of acceptable practices or performance. The manipulation of belief systems is reflected, for example, in the efforts of a trade association to influence public perceptions of its industry and to lobby government regulators for changes in the institutional rules to which its members are advised or required to conform" (Oliver, 1991 p. 158). The last tactic of manipulation is to increase power over a constitution, which pressure an organization. The aim is to

dominate and control an institution. Manipulating is more concerned to influence the source of pressure rather than adapting and altering the strategy itself (Oliver, 1991).
A firm's responds to an altered institutional framework depends on the reason the firm is pressured to conformity, which institution is the source of pressure, what is the content to achieve conformity, how is the conformity enforced and in which environment the firm is situated (Oliver, 1991).

The framework of Oliver to predict and describe strategic responses due to institutional changes and Peng's institution-based view on strategy serves to analyze Opel's strategic respond to the institutional change and its reasons why it responded in a certain manner. Its mode of differentiation, especially in contrast to the last BER and its alignment to the institutional environment in the regard of its dealer network development in Austria are also evaluated.

5 Empirical study

The following chapter outlines the research mode, the strategy to analyze the described phenomenon and to test the hypothesis on its validity.

5.1 Case study analysis

A case study analysis is a research strategy which seeks to answer a given research questions by collecting data and thoroughly analyzing it. A widely acknowledged definition of a case study research is provided by Yin: "A case study is an empirical inquiry that investigates a contemporary phenomenon in depth and within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident" (Yin, 2009 in Farquhar, 2012 p. 5). This is done by splitting up a complex topic in smaller units to achieve an in depth analysis (Farquhar, 2012). Based on Yin Farquhar states that is an adequate mode for research under the following conditions (Yin 2009 in Farquhar, 2012):

- " When, how or why questions are being asked.
- When the researcher has little control over events.
- When the focus is on a contemporary phenomenon" (Farquhar, 2012 p. 6)

Moreover, case study research serves as a handy tool when analyzing how a phenomenon impacts a certain environment or situation. Crucial for the quality of the case study outcome is data utilization from various sources and/or the application of different methods for data collection. It is the basis for triangulation. As the name implies the triangulation principle intends to pinpoint a phenomenon and analyze it from various ankles. The various ankles are provided by different applied information and methods.

Farquhar intensified four different types of triangulation:

- "Data: Data gathering from different sources, possibly at different times on the same object
- Investigator: use of more than one researcher in gathering and interpretation of data with same objective
- Theoretical: Use of more than one theoretical perspective in the interpretation of a single data set
- Method: Within-method (multiple techniques with same method) or between-method (different methods) with same object" (Farquhar, 2012 p.44)

By strengthening a research's triangulation the researcher provides the basis for research quality and creditability.

The objectives of a case study analysis are to analysis a certain phenomenon and through applying literature achieve understanding and theorization. Commonly a research is grounded on the elements of a conceptual framework, a research strategy and a discussion/contribution. The conceptual framework outlays the theoretical background for the research, the research question and determines the research strategy. In the discussion section findings are illustrated, analyzed and consolidated by the means of the conceptual framework (Farquhar, 2012).

When doing research based on a case study framework the researcher has to determine the number of cases. A single case design enables the researcher to make a very thorough and in-debt analyzes but is limited due to the narrow set boundaries. A multiple case study provides a design to compare and contrast a phenomenon in different settings and examine it in detail. In the following a multiple case study design is used to answer the research question (Farquhar, 2012).

5.2 Sample and Data collection

A case study research is grounded upon multiple data resources often sourced by different techniques. To answer the research question of this thesis both primary and secondary data were used (Farquhar, 2012). Namely two interviews were conduced one with the retail network development manager and fleet director of Opel Austria Mag.

(FH) Ladislaus Bandri and the second with KommR. Ing. Peter List, chairman of the Opel Franchise Board of Austria and general manager of the Eisner Holding AG. The Holding represents Opel on ten different dealerships in Austria. Interviews are an effective tool to analyze strategic phenomenon when the interviewee deliberate about their daily practice (Eisenhand and Graebner, 2008 in Rohrbeck, 2010). The face-to-face interviews were conducted as semi-structured with predefined questions. This method enables to cover all relevant aspects but leaves space for elaboration on topics, which arose during the interview (Rohbeck, 2010). The aim of these interviews was to retain a two sided perspective, namely an importer perspective and a dealer perspective in regard of the impact of the new BER on the strategic development of the Opel network in Austria and its reaction on the implementation into the new Opel sales and service agreements. Furthermore, I gained experienced during my work at Opel Austria, which vested me with valuable insights on this matter. When I began my work I was responsible for the rollout of the Opel sales and service agreements and handled the administrative content along with it. Later, I coordinated the implementation of the new Opel dealer CI, one element of mandatory dealer standards. During meetings with dealers from all over Austria, owning and/or managing different sizes of dealerships or groups, various vivid discussions about the regulatory framework of the automotive industry, the impact of the new agreements and the strategy of Opel in the past and future took place.

As secondary data internal publishable sources and external academic publications and literature contribute further as a source for the thesis. Important while seeking relevant secondary data is to retain the resource aim in order to filter effectively data and ensure the quality of the research outcome. Furthermore, the data should be evaluated based on its creditability, possible bias and the level of detail (Farquhar, 2012).

Hence, the findings are based on prior gained knowledge and supplemented by literature on this matter and direct sources from Opel Austria.

5.3 Analysis

“Case study research follows a theoretical sampling logic. The sampling is unlike large scale statistical research in that it is not driven by achieving a representation of the whole population” (Eisenhardt 1989 & Eisenhardt and Graebner, 2007 in Rohrbeck, 2010 p. 57). Cases are chosen and added to the sample for replication, extension, contrary replication, and elimination of alternative explanations of a phenomenon" (Eisenhardt and Graebner, 2007 in Rohrbeck, 2010 p. 57)).

A deductive analysis is used to address the various aspects of this thesis. Such an analysis is concerned with testing the collected data on the basis of the theoretical framework established above. Derived from the theory are codes, which are then used to support the collected data. The coding of the data is necessary to break down the data to manageable and diagnostic content and categories and to highlight important aspects referencing to the theoretical framework (Farquhar, 2012). Furthermore, the focus on multiple perspectives during the research and the analysis highlights distinct facets.

In order to ensure a high quality of the conducted research, the thesis follows Yin's suggested three aspects to test research quality:

- Reliability: Ensures that a research repetition following the same construct will result to the same conclusion. To achieve a high reliability the avoidance of research errors and biases is essential.
- Construct validity: The framework in which the research questions and hypothesis are tested must fit to describe the phenomenon. To limit the influence of subjectivity triangulation is important throughout the research.
- External validity: Also referred to generalizability aims for a high amount of generalization of the research findings (Yin, 2003 in Rohrbeck, 2010). As the topic of this case study research is very focused, generalization is achieved by conducting a multiple case study and by generalizing the findings to the theoretical framework (Yin, 2009 in Farquhar, 2012).

The analysis of the findings is based on a multiple case study research and conducted by a deductive analysis. The objective of this case study is therefore not to compare and contrast different cases with this one but to illustrate aspects and issues of the institutional change. Moreover, a firm's strategy and its strategic responds can be analyzed from various perspectives and ankles. This case study research focuses on the institution-based view and its effects on the firm's environment and strategy.

6 Analysis of the strategic development of Opel's dealer network

Before analyzing the strategic coherency of Opel's dealer network in regard of the altered institutional framework an overview about the European automotive industry and its forces as well as a short history about Opel in Europe is provided. It provides a better understanding about past strategic decisions of Opel, the forces that influenced the decisions, leading to the brand where it is currently.

6.1 In context: The European automotive industry and the history of Opel

6.1.1 The European automotive industry

Since the beginning of the 2000 carmakers in Europe experience a yet unknown phenomena market grows has declined and/or stagnated. Since World War II the European market had grown, which was the breeding ground for many nowadays well-known European carmakers and today's global players. Car sale was simple, only few car segments existed with growing and stable demand and only few competitors were in the market (Becker, 2006).

The market very much changed ever since. Fierce competition, particularly from Asian carmakers, pressures European brands. Overcapacities and an extended product portfolio cut profitability. Already in 2004 21.9 % of the cars produced were based on overcapacities in the EU. The car segments have continuously grown which has increased production costs and has curbed economics of scale (Becker, 2006).

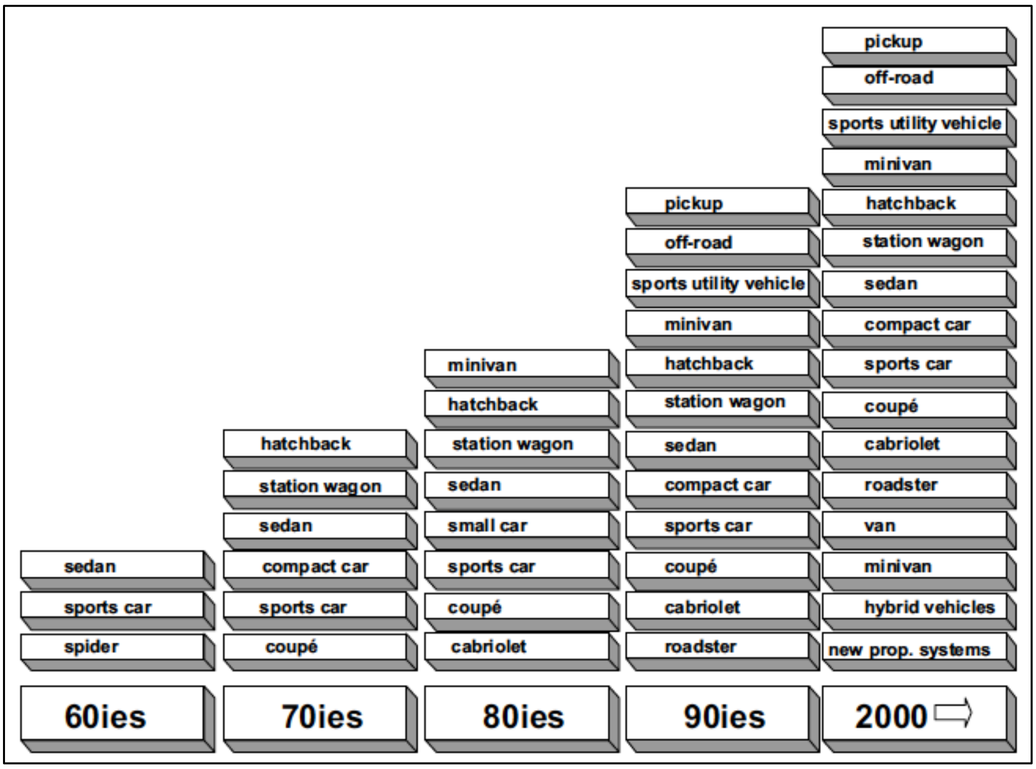


Figure 11: Increasing segments and niches over decades (Source: Becker, 2006 p.27)

Because of the shrinking market volume and the significantly increased competition a crowding-out effect has occurred. Every producer within the market tries to gain or maintain its market share on the expense of other competitors. Particularly Asian importers enhance competition. They entered in the European market with interesting price-performance models, unseen by the radar of German manufacturers, and slowly pushed upwards the mass market. The strategy has generated high growth rates in Europe. The respond from carmakers has been to lure customers into showrooms with special bonus programs and discounts. This pressures the industry even more and increases the risk of price wars among competitors (Becker, 2006).

Lower tensions govern the luxury car market. Manufacturers forward higher production costs and so compensate for the lack of economics of scale. Price sensitivity is lower among these consumers. Furthermore, particularly German manufacturers benefit from the trend of a growing luxury car segment. Also the low price segment has grown while the mass and volume market has shrunk. Similarly, to modified income allocation trends of the last decades (Becker, 2006).

Carmakers do not only struggle with competition in their segments but also with competition from other segments. Toyota introduced Lexus, an entire brand just for the luxury segment, VW launched the Phentom for the high-end segment while Mercedes tried to reach down with its A-class and the smart car. Thus, the typical target segments of car manufacturers have blurred. Many brands pushed up or down the market by means of a growing product portfolio to target various segments (Becker, 2006).

The most intense competition reigns in the middle and volume segments. Cost reduction requirements pressure the market. Thus, many car manufacturers are faced with deep structural changes and cuts in order to do not end up as a victim of the crowding-out effect. The networks, which were built in times of flourishing sales, turned to a burden. Cost cutting and plant closures have been the consequence, which was either done publicly as with Opel or privately as it was the case with BMW and Porsche (Becker, 2006).

The omnipresent pressure to cut costs made alliances with other brands inevitable most companies in the market somehow cooperate, particularly to share car platforms and use production facilities. Hence generate economics of scope as the wide product range hinders economics of scale. The problems in the home market force many companies to rely on markets outside Europe. Especially, German brands benefit greatly from their reputation to engineer high quality cars (Becker, 2006).

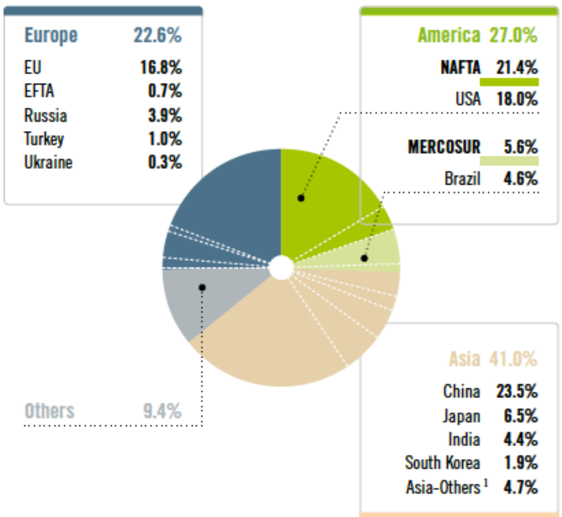
Despite the many struggles the market has experienced, it is the third biggest vehicle market in the world with Germany as its most important market, followed by France United Kingdom, Italy and Spain. These five markets generate 75% of the new car sales, 25% attributable solely to Germany. 13,749,000 new vehicles, 11% commercial vehicles and 89% passenger cars, were registered in the EU 27 member states in 2012 & about 6,000,000 units were exported. 60.6% and 35.9% of the car registered account for gasoline and diesel respectfully (European Vehicle Market Statistics, 2013). The high export rate, due to the good reputation of European car manufacturers, has helped to compensate the weak demand in their home markets during the economic crisis (Becker, 2006). Due to the sensitivity of the market to economic changes Spain, Italy and France experienced a serious decline in the number of new car registration during the economic downturn. Only Germany was able to maintain the level between 2007 and

2012. Initiatives from the government in 2009 (scrappage schemes) have helped to maintain the level (European Vehicle Market Statistics, 2013).

2014 has shown the first signs for long-term recovery. The number of new cars registration in the European Union has grown continuously in the last nine month and most member states exceeded the level from 2013 (based on June 2014 data). However, the level is still the second lowest since the EU has begun recording (ACEA, 2014). The low saving rates in the EU encourage the trend. During the economic downturn people spent only cautiously on items with high selling prices, as cars. However, the number of households with enough disposable income for a vehicle purchase maintained fairly the same. The low saving rates, now, encourage higher expenditures (King, 2014). Notwithstanding, Neil King analyst from Euromonitor International does not expect that the market recovers to the pre-crisis level within this decade but will fully recover by 2030 with expected 17 millions units sold (King, 2014 p.2).

New motor vehicle registrations – world **(market shares)** | **2012**

MOTOR VEHICLES in 1,000 units	2012	% share	2011	% change 12/11
EUROPE	**18,573**	**22.6%**	**19,648**	**-5.5%**
EU	13,749	16.8%	15,065	-8.7%
EFTA	549	0.7%	539	1.9%
Russia	3,194	3.9%	2,902	10.0%
Turkey	818	1.0%	911	-10.2%
Ukraine	264	0.3%	231	14.2%
AMERICA	**22,151**	**27.0%**	**20,105**	**10.2%**
NAFTA	17,525	21.4%	15,596	12.4%
of which USA	14,786	18.0%	13,041	13.4%
MERCOSUR	4,626	5.6%	4,509	2.6%
of which Brazil	3,796	4.6%	3,625	4.7%
ASIA	**33,644**	**41.0%**	**30,594**	**10.0%**
China	19,304	23.5%	18,505	4.3%
India	3,580	4.4%	3,292	8.8%
Japan	5,370	6.5%	4,210	27.5%
South Korea	1,542	1.9%	1,580	-2.4%
Asia-Others [1]	3,849	4.7%	3,008	28.0%
OTHERS	**7,704**	**9.4%**	**8,110**	**-5.0%**
TOTAL WORLD	**82,072**	**100.0%**	**78,457**	**4.6%**



1. Indonesia, Malaysia, Pakistan, Philippines, Singapore, Taiwan, Thailand, Vietnam

SOURCE: ACEA, VDA - 2013

Figure 12: New motor vehicle registration in Europe compared with the rest of the world (Source: ACEA, 2013 p.47)

6.1.2 The history of Opel

Opel is a truly homegrown German brand and was founded in 1862 by Adam Opel. In its first years the company produced bicycles and sewing machines and changed to a car manufacturer in 1899. By 1920 it became the biggest car manufacturer in Europe (Chandrasekhar et al., 2010) and had a market share of 44% in 1928 (Busemann et al., 2012). The brand was acknowledged for its innovations, affordable prices and high quality. In 1928 it introduced the "Tree Frog" (Laubfrosch). It was the first car in Germany, which was produced on an assembly line. The low production costs and an efficient production made it able to offer the car for DM 1,990 (Chandrasekhar et al., 2010) and sold about 119,000 times (autobild.de). This car increased the demand for Opel vehicles and contributed to its popularity (Chandrasekhar et al., 2010). GM bought Opel in 1928. The brand was GMs entry strategy for Europe and converted GM to a global player. Until today the brand is sold under the name Vauxhall in the United Kingdom. Opel has been and still is the main brand of General Motors in Europe (Chandrasekhar et al., 2010).

Over the time Opel was known to react fast to market changes and produce durable and reliable cars (Busemann et al., 2012). As a respond to oil crisis on the 70s Opel engineered cars with low fuel consumption (Chandrasekhar et al., 2010).

The most prosperous times began for Opel with the new German republic in 1949, the production capacity doubled and its most prestigious car at the time the Opel "Kapitän" enjoyed great popularity. A car with competed directly with Mercedes's product range. Due to the high demand for Opel's products expanded the brand its production capacities and built among others a new plant in Bochum. In 1972 Opel exceeded the market share of Volkswagen by over 20% (Busemann et al., 2012).

In the 1990 the downturn of Opel began. General Motors withdrew profits from Opel to compensate losses of its mother in Detroit. The rigid policy of cutbacks by the former purchasing boss Ignazio López got at the expenses of quality. The newly launched Astra in 1991 had serious rust problems because of the inferior quality and had to be called back. That has harmed the reputation of Opel severely and sustainably. General Motors appointed mostly Americans for leading managing positions whom lacked understanding for the European market. The diesel trend in Europe was thus neglected and state of the art diesel motors where only introduced years later. Ever since, Opel has struggled with its reputation and market share in Europe (Busemann et al., 2012). The situation had its negative peak in 2009, when GM considered selling Opel. General Motors was about to be illiquid in 2008 and could only be rescued with a federal bail-out program, which provided an aid of 700 billion dollars. The survival plan of GM included to focus and maintained its core American brands Chevrolet, Cadillac, GM and Buick and to divest Hummer, Saab, Saturn and Opel/Vauxhall. Opel was officially for sale. What followed then was a public back and forth between GM and the bidders, involving also the German Government, which offered financial support for the buyer. The future of Opel was unclear and the shattering of Saab was still in the memory of many potential buyers. Eventually, GM decided to retain and rehabilitate Opel by itself with the federal aid of Germany. A drastic cut back plan followed, which included a decrease of fixed costs by 30%, plant closures and cutting 10,000 jobs (Chandrasekhar et al., 2010).

The following years continued to be difficult for Opel, GM and the powerful unions combated publicly, the negative press was devastating and management continuously changed.

The former VW manger Karl-Thomas Neumann has been the new head of Opel since March 2013 and is likely to change the previous negative path of Opel. He is German, worked in the automotive industry previously and thus apprehends the European automobile market. The heavy GM investments of 4 billion Euros, its commitment to the brand and the announcement of the largest product campaign in the history of Opel, which involves 23 new models and 13 new powertrains, introduced between 2012 and 2016, show the first signs of market respond. Since last year Opel regains market share, in 14 years the first time. Especially the Mokka boosted sales in Europe (Amend, 2014). Karl Neumann announced recently that he expects Opel to break-even in 2016. The target is to become number two in Europe behind Volkswagen by 2022 (Tierney, 2014). The aim is to increase the market share until 2022 in Europe from the current approximately 5.8 % to 8% (Taylor, 2014).

6.2 Opel's strategic responds to the new BER

Before the last MVBER 1400/02 expired the Commission invited first an advisory board to create a first draft about the regulatory future, followed by public consultation with various stakeholders and associations. Later stakeholders were invited to respond to the Commissions draft. These responses were then taken into consideration for the adaption of the regulatory framework (The Future Competition Law Framework applicable to the Motor Vehicle sector, 2012). Ergo, the Commission did not directly bargain with affected stakeholders but intended to balance the interests from various stakeholders. Stakeholders were among others vehicle manufacturers whom are powerful, providing many jobs in the Union. But also consumer interests must be taken into consideration. A car is one of the main transportation modes. The strategic responds of the EU Commission to the necessity of adapting the BER was to balance expectations of multiple powerful stakeholders and at the same time strive to integrate the European market and enhance competition, main objectives of the EU itself.

Outweighing the pros and cons of the strategic responds it can only be in the interest of manufacturers to translate the BER requirements into their agreements in order to benefit from it. Otherwise manufacturers would be confronted with possible risks to violate against Art. 101 (1). Hence, manufactures are given the choice to comply or not, even though the choice of non-compliance is rather unattractive.

Unlike many other vehicle manufacturers Opel consolidated and negotiated with its European Franchise Board before adapting its agreements. The Franchise Board consists of various dealers and dealer groups. Franchise Boards exist on two levels on an European and national level. Even though, a brand's manufacturer, importers, dealers and repairers are all members of the same network all parties strive for different objectives. Hence, all stakeholders sought to promote their own interests. The negotiations took place during quite turbulent times for Opel. Unlike other German brands, Opel was struggling as sales had plummeted over years. The rusty reputation, also reflected in its dealer network, has been tightly connected with the brand. Therefore, not only Opel struggled but also its dealers. Almost all dealers have Opel as their main brand the low sales numbers of vehicles has pressured many dealers' profitability. Mr. List points out that the rigidity of implementation of the BER and its enforcement commonly depend on the market share of the respective brand. Hence, the Opel's negotiation position was not the best, but management did convince the Franchise Board to tighten standards as part of its strategy. The Transition Code for the new standards has been important to dealers to be not fully exposed to the hardship of the new sales and service agreement.

Even though, the strategic responds of effected organizations to the BER change seems straightforward. Manufactures reacted differently to the change. While some pursued a strategy of compromise with its dealers, others merely complied with the regulation without consolidating with stakeholders. Similarly, also the extent and rigor of the implementation varied among brands.

6.3 An institution-based view: Opel's dealer network development strategy

6.3.1 Opel's Importer-Dealer relationship

Both importer and dealers describe the relationship between the Austrian network members as good. Long-lasting relationships with dealers are commonplace. The Franchise Board is an important tool to ensure mutual trust and find compromises in regard of Opel's strategy and its implementation. Even though, it seems that Opel (re-) gained power over its dealer network, Mr. Bandri points out that many changes could not be implemented without the consent of the Franchise Board. On the other hand, Mr. List states that Opel translated many optional Regulations of the BER as mandatory standards, to the great displeasure of many dealers. Opel virtually exploits the full range of possibilities to strengthen its power position. The fast enforcement of the new dealer standards of Opel Austria was often too ambitious for Austrian dealers, as other countries lag behind.

Also, the multi-brand topic causes discomfort and has often resulted in vivid discussions about its necessity. In this regard, the last and current agreement has changed very much to the contrary. It is such an emotional topic, among other reasons, considering Opel's contact of multi-branding in the past. Both, Mr. List and Mr. Bandri agree that the lack of strategic focus for Opel's mother General Motors harmed the reputation of Opel. Continuous changing strategic directions were the case. Many dealers added another brand to their product portfolio because Opel, not frown upon, recommended it. For instance, if a dealer struggled financially because of low demand for Opel vehicles, Opel recommended to add another brand from GM e.g. Chevrolet, Saab. Many dealerships were designed for high market share, when Opel lost market share and/or dealers were burdened by high operation costs they often added another brand to its product range to hedge risk. The last sales and service agreement contained only minor requirement in regard of multi-branding. Vehicles needed to be clearly separated but not physically. Hence, investment requirements were low. However, over the time Opel lost most of its market share to other brands also represented in dealer showrooms. Mr. List argues that brand addition was sometimes required to compensate losses from Opel and in his case spread the Eisner group's financial risk. Notwithstanding, most dealers offer Opel as their main brand. Also Opel's market share is increasing lowering financial pressure on both sides.

The new agreement is a reflection of Opel's strategic path and its vision of its dealer network development. A dealer network based upon a strong financial position of dealers and the physical exclusivity of Opel at dealerships are the cornerstones. Many dealers consider the vigorous brand separation and CI guidelines too ambitious and its implementation not practical. In fact, the agreement requires a wall to separate brands. Various dealerships are not designed for this. The frequent changing strategic path has encountered incomprehension and frustration among network members.

6.3.2 The new BER and Opel's dealer network development strategy

Opel was able to regain power over its dealer network and interpreted the regulatory guidelines rather strict. Opel's strategy implementation in regard of its dealer network is very closely associated with the dealer agreements, having the Opel exclusivity as its main focus. Opel describes the strategy as more focused. Separate showroom, exclusive sales consultants and a secured strong working capital ratio and funding for Opel shall achieve exclusivity. As customers purchasing habits have altered and competition increased the quality of sales and dealer's capital structure should be enhanced to secure sustainability on all network levels.

In the past, GM had no clear strategy for Opel. Critics often argue that the lack of understanding of its American mother for Europe and its diverse cultures caused the downward trend of Opel. It was not empowered to make own strategic choices and during the 70s and 80s Opel was missing identity. Many automotive trends in Europe were neglected. It could be possible that General Motors neglected institutional differences between North America and Europe and left aside the institution-based view of a strategy. A similar retail strategy as in North America with too much global focus was applied. Rigorous cost cutting harmed the image and strategy positioning altered frequently.

The last Opel sales and service contract translated the MVBER quite literally, despite probabilities to maintain control over it's network in some aspects. Dealers were quite free within the network. The main change to the current Regulation in regard of the Opel agreement is the often-mentioned multi-brand regulation. The brand separation regulations and CI are closely correlated with Opel's strategy. The implementation of the strategic positioning on this level materializes on a customer level, influencing customer perception directly.

Only recently GM has empowered Opel to make own strategic choices and committed itself clearly to the brand. The strategy for its dealer network is to pursue an exclusive strategy. Dealer may maintain as multi-brand dealerships but Opel must be clearly separated with a distinct exterior and interior CI, at all Opel dealerships. The quality standards should insure a high quality of service and secure profitability. The focus of dealers should be only on one brand and its product portfolio, offering the Opel brand with competency. Exclusive sales representatives should ensure sales quality and expertise. Mr. Bandri states higher standards requirements from all brands, overwhelmed dealers. They struggled to fulfill the standards from all brands, which often resulted in an inferior overall quality of service. The more brands a dealership offers the higher is the complexity of standards. Only few dealers are capable to handle the increasing complexity and offer multiple brands and maintain a high quality of service. Frequently, dealer structure and costs are closely correlated, as brands require brand specific investments from dealers to comply with their standards, e.g only large dealerships can offer more than one brand, high overall costs due to brand specific requirements.

An exclusive strategy indirectly implies the likelihood that the Opel dealer network will shrink over time, those remaining though, will be full-range retailers. The focus will be very centered on only one brand and its products. Mr. Bandri also states that exclusivity does only make sense to those dealers whom can economically afford it, hence being designed to only represent on brand. Enforcement by exploiting Opel's pronounced power position will not be effective. Both parties must be better off, also with an exclusive strategy. Such a strategy is only implementable if long-term profitability is ensured and financial risk is curtailed even if the dealer only offers one vehicle brand. Also, the long-term relationship between the importer and dealers is crucial for success. Many partners proved to believe in the brand. A strong mutual reliance already exists.

As a long term objective Opel wants to regain its position as the number two automotive brand in Europe by offering a full range of products which also includes light commercial vehicles. It will focus on its German art of engineering and affordability. Mr. Bandri points out, that overall the strategic mistakes from the past cannot be overcome in only few years. For example, it took Audi 20 years, a structured plan and a very clear vision to become the brand it represents now. Despite recent attempts of the previous management to position the brand more upscale Mr. Bandri and Mr. List agree that Opel is currently not in the position to do so. Mr. Bandri sees the position of Opel set apart from Asian and France manufacturers but below other German manufacturers in the volume market. It seeks to get rid of its rusty image by investing in innovation, rally and sponsoring, among others football teams. Mr. List, on the other hand, argues that unlike other German brands Opel is currently not in the economic position to pursue an exclusive strategy and the strategic path for the retail network is too ambitious.

Similarly to Audi, establishing a desirable brand image requires a clear focus and a well-formulated strategy implementation. A repositioning of such a well-known brand requires time, campaigning and a strategy formulation on many levels of management. Opel's brand strategy for its dealer network influences directly customer's perception. Hence, it is an important level to alter Opel's image perception.

Looking at Opel's strategic vision in the context of the institutional regulatory change, Opel took advantage of the revision of the Block Exemption Regulation. The strategy, to pronouncedly set apart from its competitors, to purge its perceived image, to emphasis on its German origin and its regained understanding of the European market would not

be feasible with the previous agreement. A structural consolidation of the network would not have been possible during the application of the MVBER 1400/02. Granted privileges to dealers hampered a fast and easy termination of the sales and service agreement. Dealership appearance was only loosely regulated. This complicated a successful strategic implementation, which has dealer quality and appearance as main topics. As mentioned above, during the application of the previous MVBER Opel experienced very difficult times. The rigorous cost cutting and the rumors about GM's plan to sell Opel rather harmed the perceptions a strategic realignment was financially not possible.
Many factors lead Opel to the brand it is currently. Its image and competitive advantage as an innovative brand which rapidly picked up on trends decades ago, got lost and a long downward trend begun. Because of the tight implementation of the Block Exemption Regulation Opel has regained power and control over its dealer network, which is partially a reflection of the rusty image. It can influence more directly location and development decisions as well as the quality of its network. But the level of control still remains below a direct retail network. In the past Opel decided to not retail directly and focus solely on indirect distribution. In this regard, Mr. Bandri states that many direct dealerships are not operated profitable. Most manufacturers are not capable to operate a flagship store successfully. He therefore does not perceive Opel's decision as a mistake. For the reason that, volume business, e.g. large fleet customers, is processed directly by the importer.

6.3.3 Implications to the Austrian dealer network

First of all, no sales and service agreement was directly terminated because of the BER transition. Few dealers took the opportunity to close the dealership for good or sell their dealer premises.
However, from a medium to long term perspective the network has altered and will alter further. Many agents are overwhelmed by dealer standards and cannot afford brand specific investments. Commonly such dealerships are family-owned and have a similar destiny as small grocery stores in Austria, they have to close. Mr. Bandri expects that 1/3rd of its agents will drop out of the network. Agents are important in areas where

larger dealerships could not operate profitable. These regions comprise rural areas and valleys. Yet, agents are important for the Austrian market because of the country's specific topography, characterized by many valleys and only one metropolis. However, the Opel dealer network in Austria is structured to serve a much higher sales volume, which was the case in the past. Therefore, many agents are located at suburbs, struggling to compete with urban large dealerships. In the future, urban areas will be given the most attention to, as major Austrian cities grow rabidly. Notwithstanding, also national regulations and particularly traffic policy impact a vehicle brands network development. Many dealers in Vienna argue to be affected by the red green coalition in Vienna. Expanded public transportation systems, as a vehicle substitute, decrease the need for a car in cities. The new Nova applicable since the beginning of 2014 further influenced the vehicle sales number in Austria.

Unlike most European markets, the new sales vehicle market in Austria was rather stable. The number of registered new vehicles maintained its level over the last two decades. Thus a decreasing market volume cannot justify the decreasing market share of Opel. However, the market conditions altered and so the forces which govern the market. Opel, which faces a strategic repositioning and a dealer structure not coherent with its current market share, requires a consolidation.

The discontinuation of many agents makes another structural problem apparent. Most agents remain in a brand's retail network as service partners. For dealers the after-sales market is much profitable than the new vehicle sales market and at the same time a mere service partner has to fulfill lower standards requirements. Due to the Block Exemption Regulation separation of after-sales and new vehicle sales market other conditions prevail. A service partner applicant, whom fulfills the standards, must be admitted to the network and as long as he/she complies with the standards a service agreement cannot be terminated easily. Specific anti-competitive regulations apply for the after-sales market, which makes it difficult for an importer to consolidate a network in this market. Dealers and agents require a certain amount of after-sales turnover in order to be profitable and compensate fluctuations of the new vehicle sales. A broad service network is important for a volume manufacturer as Opel, but too many service partners can threaten the profitability of other full-range dealers. Mr. Bandri, therefore, states that it is not in the interest of Opel to seek new service partners but to focus on

dealers and agents who provide sales and after-sales services. They are obliged to fulfill more and stricter standards hence have a higher investment and should therefore generate more business. Mr. List further argues that many dealers compensate the low new sales business with the after-sales services. Hence, dealers in urban areas are further pressured to compete with substitute transportation.
Notwithstanding Austria is a small market. The main driver for success of Opel is its home country Germany, the biggest new vehicle market in Europe. The success there is essential for its creditability as a German brand. The Austrian market has approximately 1/10th the size of the German market. Opel was able to regain its number two position in the Austrian new vehicle market, behind Volkswagen, but its overall success and sustainability depends on bigger markets.

6.4 Summary of findings

Opel was once known as a brand, which stood for innovation, affordability and high quality. Its fast reaction to changing market conditions and its durable and reliable cars were the fundaments of Opel's market growth. Attributes one may not connect with Opel nowadays. However, it seems that management has a clear vision were the brand's position should be and for what the brand should stand for.
Overall, Opel embraced the institutional modification and exploited the situation to pursue its own interests. The main focus of Opel's strategy for its dealer network is to enhance the quality at dealerships and secure their capital structure. As competition increased, dealers were financially pressured and hedged risk by adding other brands to their portfolio. The closely connected more pronounced brand position should help the brand to convert its current situation and reputation. When competition and price pressure increased and customer buying habits altered, Opel lost track of its strategic path. Vehicles were not designed for the European market and its trends. Durability and reliability were lost during the downturn. With the clear management vision Opel took the changing institutional framework as an opportunity to implement it's network strategy. Opel is a well-known brand, which is built upon a broadly dealer network, based on long-lasting relationships with its dealers. The network serves as a firm-specific resource and competitive advantage, particularly because most dealers offer

Opel as their main brand. To create such a widespread network with many members and well-established business relationships is costly to intimidate, valuable, rare and to some extend non-substitutable. Notwithstanding, Opel's competitive advantage is rusty, lacks quality and a secured non-substitutability is not given. The reasons are self-inflicted. Both parties acknowledged that their mutual reliance is crucial for their success and survival. By consulting with its European Franchise about the necessity to consolidate its network Opel laid the fundament for is more brand-focused strategy. It seems that both parties recognized the urge to make brand-specific investments in order to secure the brand's sustainability. Opel can revert on a broad dealer network but many dealers are a mere reflection of Opel's reputation, neglecting many past trends and brand investment requirements. The loose translation of the last MVBER in the year 2002 and the previous turbulent times and its consequences are the main sources of Opel's lost control over its network. In general, though, the hypothesis number one can be confirmed for the new vehicle sales market.

1. The new Block Exemption Regulation transfers power from dealers to the manufacturer while the last BER empowered the former.

One of the aims of the MVBER 1400/02 was to empower dealers, enhancing their power position in regard of vehicle manufacturers. However, many manufacturers curtailed the empowerment of dealers by increasing standards and so increasing distribution costs. An evaluation before the current Block Exemption Regulation came into force showed, that competition increased. However, this effect was rather due to competition from Asia and not because of the MVBER. Therefore, the Commission decided to no longer specifically block exempt the automotive retail market. The more general conditions of the BER 330/2010 apply to the new vehicle sales market. The Regulation empowers manufacturer, providing them a greater freedom to structure and control their network. In regard of the aftersales market similar conditions prevail compared to the last MVBER. Only the regularly framework has changed. Most aftersales networks exceed the specific threshold, signifying they no longer benefit from the BER 330/2010. The regulation and is supplemented guideline should provide manufacturer a guideline which clauses are considered by the Commission as anti-competitive and violate the Art 101 (1).

2. The new BER impacts and changes the system of the Opel distribution and retail network in Austria significantly.

On the long run Opel's dealer network in Austria will change. The new regulatory framework is not the cause but rather structural problems and the overall modification of the automotive retail market. Hence, the second hypothesis can only be partially affirmed. The new BER facilitates the process by empowering the manufactures with control over their dealer network. As Mr. Bandri suggests urban areas will gain importance while many smaller dealerships will disappear over time. Opel's dealer network was established in accordance to sales numbers from decades ago. Ergo, the network suffers from low profitability because of, among other reasons, too many network members. As many dealerships are family owned and lack successors most will cease to make business at some point anyway. This makes termination of the agreement redundant.

3. The Regulation leads Opel to pursue a more exclusive strategy in regard of it's dealer network

As elaborated above Opel pursues a more brand-focused strategy for its dealer network. Exclusivity is an important cornerstone of this strategy. The enhancement of the quality of the dealer network and sharper differentiation of the brand compared to is competitors are the main objectives. The strategy on this level is closely related to customer's perception on the brand. However, the new Regulation was taken as an opportunity to achieve Opel's strategic goals. It serves as a means to successfully implement its strategy and not vice versa. Also, hypothesis number three can therefore only be affirmed partially. The new BER made the strategy implementation only feasible and implementable. If its was based on exploiting the institutional change as a means to achieve the set strategic goals or only a necessity to maintain the benefits from the Block Exemption Regulation is unknown.

The previous MVBER made it difficult to structurally and strategically consolidate Opel's dealer network. To denote Opel's strategic path and it's exploitation of the institutional change as an institutional competitive advantage would go too far. Other competitors certainly also took the opportunity to regain power and control over their network and according to Martin's definition an institutional competitive advantage is only accomplished when it "generates economic value in excess of its competitors" (Martin, 2014 p.59). If Opel determined and interpreted the industry environment its firm-specific resources, the institutional conditions accordingly and derived and implemented a strategy in accordance to the three main views on a strategy to push its overall dealer network performance can only be evaluated in the future.

7 Conclusion

The objective of this master thesis was to display the alterations of the Opel's dealer network in Austria due to the new Block Exemption Regulation as well as the strategic responds of Opel and its consequences for network participants.

In order to address this and related issues the various choices of automotive manufacturers to distribute and retail their vehicle brands and respective considerations were in focus. The means of distribution to the end consumers and its establishment influence many areas of business and decision-making. The brand strategy must be coherent with the retail network. To establish a comprehensive and sustainable dealer network requires capital, a well-established importer-dealer relationship and a long-term vision. On a retail level a manufacturer may opt for a direct or indirect establishment of its network. In reality manufacturers have combined these choices. Indirect retailing by means of a selective distribution system is regulated by the European Union, as its violates one of the principles of the European Union, the EU competition law embedded in the treaty on the Functioning of the European Union (TFEU) in Article 101(1). So far, the Commission has altered the regulatory framework, the applicable Block Exemption Regulation for the fourth time. The last Regulation came into force on the 1st June 2013. Commonly, manufacturers use such a change to consolidate and align their network to prevailing market conditions. While previous Regulations focused on the empowerment of dealers and repairers and on the enhancement of competition, the Commission no longer saw the need to regulate the automotive industry specifically. This has granted manufacturers a greater exertion of control over their dealer network, at least for the new vehicle sales market. The aftersales market does not show the anticipated competitive activities and remains among tighter European regulatory control. The rejection of repairer applicants whom fulfill the respective brand service standards is still likely to results in an anti-competitive outcome and the exclusion of the benefits of the Block Exemption Regulation.

Differently to previous BER alterations took Opel the advantage and issued a new sales and service agreement, which empowers Opel with greater freedom to control, intervene and structure its retail network. The tight standards embedded in the Opel agreement have as their objective to enhance the quality and the long-term sustainability of its retail network and its participants. The Opel CI requirements for dealers increased, which caused resistance among dealers as it involves investment form dealers and a clear separation of the brand to other competitors. Furthermore, also the financial vitality of dealers is regulated in the Opel sales and service agreement. All this measurements should contribute to fulfill Opel's objectives manifested in the pursuance of an exclusive strategy in regard of its retail network.

On an European level, Opel pursued a compromising strategy and bargained with its Franchise Board about the BER translation and convinced its dealers to tighten standards by emphasizing on the importance to ensure survival and success of all network members. Hence, both parties acknowledged the importance to increase the quality and appearance of the Opel network. This was a challenging task as Opel experienced burdensome times and was on the verge to be abandoned by its mother General Motors, which only exacerbate the situation.

To illustrate the impact of the current BER on the dealer network of Opel Austria two interviews were conducted, one with retail network development manager and fleet director of Opel Austria Mag. (FH) Ladislaus Bandri and the second with KommR. Ing. Peter List, chairman of the Opel Franchise Board of Austria and general manager of the Eisner Holding AG. The intention of these interviews was to provide a two-sided perspective on the topic. Many manufactures took the institutional regulatory change as an opportunity to consolidate their dealer network, but not so at Opel Austria. No sales and service agreement was directly terminated because of the new Block Exemption Regulation. Notwithstanding, the dealer network of Opel Austria will change from a medium to long-term perspective. Mr. Bandri reckons that the number of Opel network members will decrease by 1/3rd in Austria. Overall, the network comprises too many members in relation to its sales volume. This trend will mainly affect small dealerships and agents located in low market potential and suburban areas. The development, however, is not induced by the institutional change but is a consequence to altering market conditions of the European new vehicle sales market. The BER may only enhance the effect.

Austria is negligible market in the European Union in regard of the new vehicle sales market. It is about 1/10th the size of the German market, the most important market in Europe. Hence, a brand's strategic success or failure will not be determined in Austria.
Peng's institution-based view suggest that firms, when seeking a strategy in alignment to its environment, have also take into consideration the institutional framework and changes respectively, as strategy can only be drafted within its institutional framework. Only those firms, which understand the regulatory framework of an industry, are successful. Martin goes even further and describes an institutional competitive advantage as an advantage in which a firm uses its resources and capabilities in interaction with the institutional environment and so generates economic value in excess to its competitors (Martin, 2014). Opel exploited the situation of the institutional change and regained its power over its dealer retail network. The exclusive strategy Opel pursues for its retail network could neither be pursued nor implemented successfully if the old sales and service agreement would be still valid based on the last MVBER. Opel acknowledged the institutional change and exploited it as a means to implement its strategy. But by all means so did other manufacturers. The control over a manufacturers dealer network is important to implement changes faster and more effectively. Hence, Opel does not exploit an institutional competitive advantage but used the institutional change to implement its exclusive dealer network strategy. The success and coherency of the strategy with Opel's overall strategy can only be assessed in the future, as the evaluation period is too short.

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Opel Internal Sources:

Opel Sales and Service Agreement

Opel Transition Code

9 Appendix

9.1 New passenger car registration in the European Union by manufacturer (Source: ACEA, 2014)

17/6/14

	May					January - May				
	%Share		Units	Units	% Chg	%Share		Units	Units	% Chg
	'14	'13	'14	'13	14/13	'14	'13	'14	'13	14/13
ALL BRANDS**			**1,093,448**	**1,046,681**	**+4.5**			**5,431,921**	**5,082,782**	**+6.9**
VW Group	**26.5**	**25.3**	**290,119**	**264,673**	**+9.6**	**25.2**	**24.9**	**1,371,328**	**1,264,314**	**+8.5**
VOLKSWAGEN	12.7	12.7	139,300	132,678	+5.0	12.2	12.6	664,786	638,563	+4.1
AUDI	5.9	5.9	64,285	61,247	+5.0	5.7	5.7	309,459	288,668	+7.2
SEAT	2.9	2.4	31,476	25,587	+23.0	2.5	2.4	135,596	120,849	+12.2
SKODA	4.5	3.9	49,707	40,794	+21.8	4.4	3.9	238,894	196,621	+21.5
Others (1)	0.5	0.4	5,351	4,367	+22.5	0.4	0.4	22,593	19,613	+15.2
PSA Group	**11.0**	**11.0**	**120,128**	**115,152**	**+4.3**	**11.2**	**11.2**	**606,285**	**569,224**	**+6.5**
PEUGEOT	6.1	6.1	67,162	63,999	+4.9	6.2	6.2	338,381	312,633	+8.2
CITROEN	4.8	4.9	52,966	51,153	+3.5	4.9	5.0	267,904	256,591	+4.4
RENAULT Group	**9.3**	**8.2**	**101,334**	**85,323**	**+18.8**	**9.5**	**8.5**	**513,615**	**432,626**	**+18.7**
RENAULT	6.4	5.8	70,486	60,656	+16.2	6.6	6.3	358,562	319,426	+12.3
DACIA	2.8	2.4	30,848	24,667	+25.1	2.9	2.2	155,053	113,200	+37.0
GM Group	**7.5**	**8.4**	**81,754**	**87,699**	**-6.8**	**7.4**	**7.9**	**403,657**	**403,538**	**+0.0**
OPEL/VAUXHALL	7.2	7.1	79,158	74,117	+6.8	6.9	6.8	372,685	345,337	+7.9
CHEVROLET	0.2	1.3	2,596	13,566	-80.9	0.6	1.1	30,914	58,100	-46.8
GM (US)	0.0	0.0	0	16	-100.0	0.0	0.0	58	101	-42.6
FORD	**7.4**	**7.9**	**80,764**	**82,388**	**-2.0**	**7.6**	**7.4**	**410,750**	**377,494**	**+8.8**
FIAT Group	**6.4**	**6.9**	**70,422**	**72,407**	**-2.7**	**6.2**	**6.6**	**338,716**	**333,708**	**+1.5**
FIAT	4.9	5.4	53,951	56,295	-4.2	4.8	5.1	263,336	259,648	+1.4
LANCIA/CHRYSLER	0.7	0.7	7,424	7,574	-2.0	0.6	0.7	33,704	34,278	-1.7
ALFA ROMEO	0.5	0.6	5,382	6,667	-19.3	0.5	0.6	26,210	29,358	-10.7
JEEP	0.3	0.1	2,967	1,482	+100.2	0.2	0.2	12,140	8,736	+39.0
Others (2)	0.1	0.0	698	389	+79.4	0.1	0.0	3,326	1,688	+97.0
BMW Group	**5.9**	**6.3**	**64,293**	**65,769**	**-2.2**	**6.0**	**6.2**	**323,420**	**317,651**	**+1.8**
BMW	4.9	5.0	53,387	52,582	+1.5	5.0	5.1	269,955	257,324	+4.9
MINI	1.0	1.3	10,906	13,187	-17.3	1.0	1.2	53,465	60,327	-11.4
DAIMLER	**5.5**	**5.6**	**60,447**	**58,360**	**+3.6**	**5.3**	**5.5**	**288,883**	**281,182**	**+2.7**
MERCEDES	5.1	5.0	55,612	52,533	+5.9	4.8	5.0	262,989	251,632	+4.5
SMART	0.4	0.6	4,835	5,827	-17.0	0.5	0.6	25,894	29,550	-12.4
TOYOTA Group	**3.9**	**4.0**	**42,965**	**41,552**	**+3.4**	**4.2**	**4.1**	**227,579**	**210,935**	**+7.9**
TOYOTA	3.7	3.8	40,839	39,996	+2.1	4.0	4.0	216,507	202,781	+6.8
LEXUS	0.2	0.1	2,126	1,556	+36.6	0.2	0.2	11,072	8,154	+35.8
NISSAN	**3.4**	**3.2**	**37,365**	**33,759**	**+10.7**	**3.7**	**3.6**	**199,701**	**181,599**	**+10.0**
HYUNDAI	**3.1**	**3.4**	**34,166**	**35,131**	**-2.7**	**3.2**	**3.5**	**174,090**	**177,072**	**-1.7**
KIA	**2.8**	**2.8**	**30,465**	**29,596**	**+2.9**	**2.7**	**2.8**	**147,965**	**140,427**	**+5.4**
VOLVO CAR CORP.	**1.9**	**1.7**	**20,413**	**17,426**	**+17.1**	**1.7**	**1.7**	**94,879**	**84,865**	**+11.8**
MAZDA	**1.2**	**1.0**	**12,826**	**10,707**	**+19.8**	**1.3**	**1.1**	**71,010**	**55,584**	**+27.8**
JAGUAR LAND ROVER	**1.1**	**1.0**	**11,540**	**10,341**	**+11.6**	**1.2**	**1.2**	**64,066**	**61,204**	**+4.7**
LAND ROVER	0.9	0.8	9,464	8,197	+15.5	0.9	1.0	51,416	49,135	+4.6
JAGUAR	0.2	0.2	2,076	2,144	-3.2	0.2	0.2	12,650	12,069	+4.8
SUZUKI	**1.0**	**1.1**	**11,456**	**11,740**	**-2.4**	**1.3**	**1.2**	**68,048**	**59,761**	**+13.9**
HONDA	**1.0**	**1.0**	**10,419**	**10,432**	**-0.1**	**1.1**	**1.2**	**57,881**	**61,132**	**-5.3**
MITSUBISHI	**0.7**	**0.5**	**7,625**	**5,515**	**+38.3**	**0.6**	**0.6**	**33,319**	**28,134**	**+18.4**
OTHER**	**0.5**	**0.8**	**4,947**	**8,711**	**-43.2**	**0.7**	**0.8**	**36,729**	**42,332**	**-13.2**

(1) VW Group: VW 'other' include Bentley, Bugatti, Lamborghini, and since Aug '12 Porsche
(2) FIAT Group: FIAT 'other' include Dodge, Ferrari, Maserati
(*) data for Malta n.a.
(**) ACEA estimates

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9.2 New passenger car registration by country (Source: ACEA, 2014)

17/6/14

	May '14	May '13	% Chg 14/13	Jan -May '14	Jan -May '13	% Chg 14/13
AUSTRIA	26,986	29,094	-7.2	137,507	139,925	-1.7
BELGIUM	42,955	44,519	-3.5	244,806	246,715	-0.8
BULGARIA	1,802	1,854	-2.8	8,280	7,027	+17.8
CROATIA*	3,546	3,344	+6.0	15,540	12,194	+27.4
CYPRUS	785	632	+24.2	3,565	3,063	+16.4
CZECH REPUBLIC	15,396	14,822	+3.9	75,887	66,336	+14.4
DENMARK	16,871	16,630	+1.4	81,227	74,414	+9.2
ESTONIA	1,971	1,997	-1.3	8,697	8,588	+1.3
FINLAND	10,109	10,234	-1.2	49,929	47,747	+4.6
FRANCE	148,951	148,490	+0.3	762,519	740,121	+3.0
GERMANY	274,804	261,316	+5.2	1,260,654	1,219,717	+3.4
GREECE	7,459	5,241	+42.3	29,505	24,716	+19.4
HUNGARY	5,739	5,006	+14.6	26,742	22,185	+20.5
IRELAND	6,291	5,947	+5.8	64,031	51,591	+24.1
ITALY	131,602	136,850	-3.8	628,719	609,505	+3.2
LATVIA	1,121	960	+16.8	5,040	4,110	+22.6
LITHUANIA	1,338	1,109	+20.6	6,162	4,886	+26.1
LUXEMBURG	5,198	4,614	+12.7	22,729	22,089	+2.9
NETHERLANDS	31,092	30,083	+3.4	166,634	175,917	-5.3
POLAND	24,494	22,548	+8.6	150,160	122,284	+22.8
PORTUGAL	13,773	10,093	+36.5	60,041	42,297	+42.0
ROMANIA	6,001	4,107	+46.1	24,278	20,582	+18.0
SLOVAKIA	6,260	5,906	+6.0	29,101	26,172	+11.2
SLOVENIA	4,737	4,846	-2.2	23,412	22,316	+4.9
SPAIN	82,483	70,546	+16.9	364,784	313,588	+16.3
SWEDEN	27,652	25,782	+7.3	122,998	106,031	+16.0
UNITED KINGDOM	194,032	180,111	+7.7	1,058,974	948,666	+11.6
EUROPEAN UNION[1]	**1,093,448**	**1,046,681**	**+4.5**	**5,431,921**	**5,082,782**	**+6.9**
EU15[2]	1,020,258	979,550	+4.2	5,055,057	4,763,039	+6.1
EU13[3]	73,190	67,131	+9.0	376,864	319,743	+17.9
ICELAND	2,155	1,424	+51.3	4,412	3,336	+32.3
NORWAY	12,337	12,012	+2.7	60,944	59,696	+2.1
SWITZERLAND	25,787	27,252	-5.4	121,986	127,400	-4.2
EFTA	40,279	40,688	-1.0	187,342	190,432	-1.6
EU28[1]+EFTA	1,133,727	1,087,369	+4.3	5,619,263	5,273,214	+6.6
EU15[2]+EFTA	1,060,537	1,020,238	+3.9	5,242,399	4,953,471	+5.8

([1]) EU 28; data for Malta currently not available.
([2]) Member States before the 2004 enlargement
([3]) Member States joining the EU since 2004; data for Malta currently not available

9.3 Zusammenfassung

Das Ziel dieser Masterarbeit ist es den Einfluss der kürzlich geänderten gesetzlichen Rahmenbedienung, spezifisch der EU-Gruppenfreistellungsverordnung, auf die langfristige Entwicklung des Händlernetzes von Opel in Österreich darzustellen.

Hersteller bzw. Importeure haben einen weitreichenden Gestaltungsspielraum um ihr Distributionssystem auszurichten. Je nach Vermarktungsstrategie wird das entsprechende Distributionssystem gewählt. Bei der Gestaltung müssen allerdings auch die rechtlichen Rahmenbedingungen einbezogen werden, vor allem die Gruppenfreistellungsverordnung der Europäischen Union. Verschiedene Gruppenfreistellungsverordnungen wurden seit 1985 erlassen, mit unterschiedlichen Inhalt und Zielen, im Wesentlichen aber verbindet sie die Absicht den Endkunden zu begünstigen und den Wettbewerb zu verbessern bzw. erhöhen. Opel nahm die Änderung der letzten Gruppenfreistellungsverordnung als Anlass, neue Vertriebs – und Serviceverträge für die Vertriebs- und Servicepartner des Opel Händlernetzes zu erlassen. Die Umsetzung der Gruppenfreistellungsverordnung wurde im wesentlichem strikt übernommen und Opel nutze die Gelegenheit, Kontrolle und wesentliche Gestaltungsspielräume für sein Händlernetz zurückzuerlangen.

Um die Einflussfaktoren auf das Opel Händlernetz in Österreich und deren Mitglieder festzustellen sowie die Auswirkungen der Gruppenfreistellungsverordnung wurden zwei Interviews durchgeführt welche die Änderung und Folgen der rechtlichen Rahmenbedingungen einerseits von der Hersteller - und andererseits Händlerperspektive darstellen sollen. Außerdem wurde Pengs „Institutional Based View On Strategy“ and Olivers „Strategic Responses To Institional Changes“ Konzept herangezogen um ein besseres Verständnis für die Entscheidungsfindung in Hinsicht auf die langfristige Entwicklung des Händlernetzes aufzuzeigen.

Zusammenfassend kann festgestellt werden, dass sich das Händlernetz auf lange Sicht, aufgrund mehrerer Faktoren, verändern wird. Kleine, meist familiengeführte, Vertriebsstandorte mit geringem Standortpotenzial werden zurückgehen und Opel wird Standorte fördern, die ein umfassendes Service als exklusive Opelhändler anbieten. Die Entwicklungen des Händlernetzes wurde allerdings nicht durch die Änderungen der gesetzlichen Rahmenbedingungen initiierte sondern vielmehr verstärkt.

9.4 Curriculum Vitae

Stephanie Thalhammer

EDUCATION

10/2012 – to date	**University of Vienna** Master Program: International Business Administration Major: Controlling	Vienna
10/2006 – 08/2011	**Vienna University of Economics and Business** **Bachelor of Science** International Business Administration Major: Cross Functional Management	Vienna
WS 2010	Simon Fraser University (Exchange Semester)	Vancouver
1999 – 2004	**HBLA for Fashion and Garment Technology**	Graz

WORKING EXERIENCE

07/2011 – to date	**General Motors Austria GmbH** CI & Opel Sales and Service Agreements coordinator Division: Retail Network Development	Vienna
02/2010 – to date	**Weinhandel Thalhammer** Assisting in the family-owned small wine trading business in the areas of purchase, sales, marketing and customer acquisition	St. Lorenzen am Wechsel
07– 08/2010	**Austrian Chamber of Commerce** Internship	Santiago de Chile
09/2007 – 06/2010	**RHI AG** Part-time employment Division: Steel Europe Management Division: Sales and Order Administration Near and Far East	Vienna
07 – 08/2008	**RHI AG Iberia** Internship Division: Sales	Lugones, Spain
11/2004 – 08/2005	**Magda Rose KG (Jones)** Division: Goods manipulation	Vienna
06/2004	**RHI AG Asia** Internship	Singapore