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Competition Law Enforcement in the Motor Vehicle Industry: Vertical Agreements

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Competition

Specific features of the motor vehicle industry

- Economic and political importance
- Particular importance for the Internal Market
- Importance for consumers
- Environmental and safety concerns
- Importance of vertical agreements
 - Car manufacturers / authorised dealers and repairers
 - Car manufacturers / producers of spare parts

Competitive structure

Sales markets

Supply and distribution of cars

Highly competitive

- Prices
- Innovation
- Consumer choice

No major concentration trend

No particular competition problems

Aftermarkets

Provision of repair and maintenance services / distribution of spare parts

Structurally less competitive

Competition from the independent sector is imperative

Important to keep authorised networks open

Aftermarkets - Key area for scrutiny

Car Repair

Ensure that authorised networks remain open

Avoid foreclosure of independent repairers

Ensure the honouring of warranties on cars repaired in the independent sector

Ensure access to technical information for independent repairers

Spare Parts

Protect spare parts manufacturers' access to aftermarkets:

- Ensure that competing brands are available to authorised and independent repairers,
- Ensure that competing brands are available to parts wholesalers

Article 101 TFEU addresses agreements between firms which are independent from each other

Art. 101(1) prohibits agreements that have as their *object* or *effect* to restrict or distort competition

Art.101(3) declares the prohibition inapplicable if the agreement and its restrictions are indispensable to create efficiencies which benefit consumers, without eliminating competition

Effects-based approach: overall outcome for competition and consumers determines assessment

Article 101 (ex Article 81 TEC)

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. 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:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Restrictions by object

Agreements having as their **object** to restrict competition are considered serious restrictions of competition (e.g. price-fixing cartels)

Hardcore restrictions:

- Presumption of negative effects under Article 101(1)
- Presumption that it is unlikely that the conditions of Art 101(3) are met
- Does not exclude individual exemption (if convincing evidence of efficiencies) – highly improbable

Restrictions by effect

Agreements that have as their effect to restrict competition:

- Authority/plaintiff must show likely negative effects under Article 101(1)
- Defendant must show likely efficiencies under Article 101(3) once likely negative effects are established (“consumer welfare test”)
- “Safe harbour” created by Block Exemption Regulations (BERs) for many types of agreements below certain market share thresholds

Net positive balance presumed

Exception: hardcore restrictions

-BER Guidelines give guidance for a case-by-case assessment of negative and positive effects (for cases above the “de minimis” market share thresholds)

Main instrument: specific Block Exemption Regulations (BERs) for vertical agreements in the motor vehicle sector (+ accompanying interpretative documents)

Successive generations of motor vehicles BERs:

1985 BER (Regulation 123/85)

1995 BER (Regulation 1475/95)

2002 BER (Regulation 1400/2002)

2010 BER (Regulation 461/2010)

**COMMISSION REGULATION (EC) No 1400/2002
of 31 July 2002**

on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 19/65/EEC, of 2 March 1965 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices⁽¹⁾, as last amended by Regulation (EC) No 1215/1999⁽²⁾, and in particular Article 1 thereof,

Having published a draft of this Regulation⁽³⁾,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

- (1) Experience acquired in the motor vehicle sector regarding the distribution of new motor vehicles, spare parts and after sales services makes it possible to define categories of vertical agreements which can be regarded as normally satisfying the conditions laid down in Article 81(3).
- (2) This experience leads to the conclusion that rules stricter than those provided for by Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices⁽⁴⁾ are necessary in this sector.
- (3) These stricter rules for exemption by category (the exemption) should apply to vertical agreements for the purchase or sale of new motor vehicles, vertical agreements for the purchase or sale of spare parts for motor vehicles and vertical agreements for the purchase or sale of repair and maintenance services for such vehicles where these agreements are concluded between non-competing undertakings, between certain competitors, or by certain associations of retailers or repairers. This includes vertical agreements concluded between a distributor acting at the retail level or an authorised repairer and a (sub)distributor or repairer. This Regulation should also apply to these vertical agreements when they contain ancillary provisions on the assignment or use of intellectual property rights. The term 'vertical agreements' should be defined accordingly to include both such agreements and the corresponding concerted practices.

(4) The benefit of the exemption should be limited to vertical agreements for which it can be assumed with sufficient certainty that they satisfy the conditions of Article 81(3).

(5) Vertical agreements falling within the categories defined in this Regulation can improve economic efficiency and therefore on the extent to which those undertakings face competition from other suppliers of goods or services regarded by the buyer as interchangeable or substitutable for one another, by reason of the products' characteristics, prices or intended use.

(6) The likelihood that such efficiency-enhancing effects will outweigh any anti-competitive effects due to restrictions contained in vertical agreements depends on the degree of market power held by the undertakings concerned and therefore on the extent to which those undertakings face competition from other suppliers of goods or services regarded by the buyer as interchangeable or substitutable for one another, by reason of the products' characteristics, prices or intended use.

(7) Thresholds based on market share should be fixed in order to reflect suppliers' market power. Furthermore, this sector-specific Regulation should contain stricter rules than those provided for by Regulation (EC) No 2790/1999, in particular for selective distribution. The thresholds below which it can be presumed that the advantages secured by vertical agreements outweigh their restrictive effects should vary with the characteristics of different types of vertical agreement. It can therefore be presumed that in general, vertical agreements have such advantages where the supplier concerned has a market share of up to 30 % on the markets for the distribution of new motor vehicles or spare parts, or of up to 40 % where quantitative selective distribution is used for the sale of new motor vehicles. As regards after sales services it can be presumed that, in general, vertical agreements by which the supplier sets criteria on how its authorised repairers have to provide repair or maintenance services for the motor vehicles of the relevant make and provides them with equipment and training for the provision of such services have such advantages where the network of authorised repairers of the supplier concerned has a market share of up to 30 %. However, in the case of vertical agreements containing exclusive supply obligations, it is the market share of the buyer which is relevant for determining the overall effects of such vertical agreements on the market.

(1) OJ 36, 6.3.1965, p. 533/65.
(2) OJ L 148, 15.6.1999, p. 1.
(3) OJ C 67, 16.3.2002, p. 2.
(4) OJ L 336, 29.12.1999, p. 21.

Latest comprehensive reform of the regulatory framework for cars in 2010

Aims of the 2010 reform:

Creation of a legal framework that better reflects the intensity of competition on the various car markets

More flexibility to adapt to economic circumstances

More commonality in rules to increase certainty and uniformity

COMMISSION REGULATION (EU) No 461/2010

of 27 May 2010

on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation No 19/65/EEC of the Council of 2 March 1965 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices⁽¹⁾, and in particular Article 1 thereof,

Having published a draft of this Regulation,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

- (1) Regulation No 19/65/EEC empowers the Commission to apply Article 101(3) of the Treaty on the Functioning of the European Union⁽²⁾ by regulation to certain categories of vertical agreements and corresponding concerted practices falling within Article 101(1) of the Treaty. Block exemption regulations apply to vertical agreements which fulfil certain conditions and may be general or sector-specific.
- (2) The Commission has defined a category of vertical agreements which it regards as normally satisfying the conditions laid down in Article 101(3) of the Treaty and to this end has adopted Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application

of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices⁽³⁾, which replaces Commission Regulation (EC) No 2790/1999⁽⁴⁾.

- (3) The motor vehicle sector, which includes both passenger cars and commercial vehicles, has been subject to specific block exemption regulations since 1985, the most recent being Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector⁽⁵⁾. Regulation (EC) No 2790/1999 expressly stated that it did not apply to vertical agreements the subject matter of which fell within the scope of any other block exemption regulation. The motor vehicle sector therefore fell outside the scope of that Regulation.
- (4) Regulation (EC) No 1400/2002 expires on 31 May 2010. However, the motor vehicle sector should continue to benefit from a block exemption in order to simplify administration and reduce compliance costs for the undertakings concerned, while ensuring effective supervision of markets in accordance with Article 103(2)(b) of the Treaty.
- (5) Experience acquired since 2002 regarding the distribution of new motor vehicles, the distribution of spare parts and the provision of repair and maintenance services for motor vehicles, makes it possible to define a category of vertical agreements in the motor vehicle sector which can be regarded as normally satisfying the conditions laid down in Article 101(3) of the Treaty.
- (6) This category includes vertical agreements for the purchase, sale or resale of new motor vehicles, vertical agreements for the purchase, sale or resale of spare parts for motor vehicles and vertical agreements for the provision of repair and maintenance services for such vehicles, where those agreements are concluded between non-competing undertakings, between certain competitors, or by certain associations of retailers or repairers. It also includes vertical agreements containing ancillary provisions on the assignment or use of intellectual property rights. The term 'vertical agreements' should be defined accordingly to include both such agreements and the corresponding concerted practices.

⁽¹⁾ OJ 36, 6.3.1965, p. 533/65.

⁽²⁾ With effect from 1 December 2009, Article 81 of the EC Treaty has become Article 101 of the Treaty on the Functioning of the European Union. The two Articles are, in substance, identical. For the purposes of this Regulation, references to Article 101 of the Treaty on the Functioning of the European Union should be understood as references to Article 81 of the EC Treaty where appropriate.

⁽³⁾ OJ L 102, 23.4.2010, p. 1.

⁽⁴⁾ OJ L 336, 29.12.1999, p. 21.

⁽⁵⁾ OJ L 203, 1.8.2002, p. 30.

« I strongly believe the new framework will bring tangible benefits for consumers by bringing down the cost of repairs and maintenance that represent an excessive share of the total cost of a car over its lifetime. It will also reduce the cost of distribution by doing away with overly restrictive rules. »



Joaquín Almunia
EU Commission Vice-President
in charge of Competition Policy

Commission notice

Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles

(Text with EEA relevance)

(2010/C 138/05)

I. INTRODUCTION

1. Purpose of the Guidelines

- (1) These Guidelines set out principles for assessing under Article 101 of the Treaty on the Functioning of the European Union⁽¹⁾ particular issues arising in the context of vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts. They accompany Commission Regulation (EU) No 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector⁽²⁾ (hereinafter 'the Motor Vehicle Block Exemption Regulation') and are aimed at helping companies to make their own assessment of such agreements.
- (2) These Guidelines provide clarification on issues that are particularly relevant for the motor vehicle sector, including the interpretation of certain provisions of Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices⁽³⁾ (hereinafter 'the General Vertical Block Exemption Regulation'). They are without prejudice to the applicability of the Guidelines on Vertical Restraints⁽⁴⁾ (hereinafter 'the General Vertical Guidelines') and are therefore to be read in conjunction with and as a supplement to the General Vertical Guidelines.
- (3) These Guidelines apply to both vertical agreements and concerted practices relating to the conditions under which the parties may purchase, sell or resell spare parts and/or provide repair and maintenance services for motor vehicles, and to vertical agreements and concerted practices relating to the conditions under which the parties may purchase, sell or resell new motor vehicles. As explained in Section II of these Guidelines, the latter category of agreements and concerted practices will remain subject to the relevant provisions of Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of

vertical agreements and concerted practices in the motor vehicle sector⁽⁵⁾ until 31 May 2013. Therefore, as regards vertical agreements and concerted practices for the purchase, sale or resale of new motor vehicles, these Guidelines will only apply as from 1 June 2013. These Guidelines do not apply to vertical agreements in sectors other than motor vehicles, and the principles set out herein may not necessarily be used to assess agreements in other sectors.

- (4) These Guidelines are without prejudice to the possible parallel application of Article 102 of the Treaty to vertical agreements in the motor vehicle sector, or to the interpretation that the Court of Justice of the European Union may give in relation to the application of Article 101 of the Treaty to such vertical agreements.
- (5) Unless otherwise stated, the analysis and arguments set out in these Guidelines apply to all levels of trade. The terms 'supplier' and 'distributor' (9) are used for all levels of trade. The General Vertical Block Exemption Regulation and the Motor Vehicle Block Exemption Regulation are collectively referred to as 'the Block Exemption Regulations'.
- (6) The standards set forth in these Guidelines must be applied to each case having regard to the individual factual and legal circumstances. The Commission will apply (7) these Guidelines reasonably and flexibly, and having regard to the experience that it has acquired in the course of its enforcement and market monitoring activities.
- (7) The history of competition enforcement in this sector shows that certain restraints can be arrived at either as a result of explicit direct contractual obligations or through indirect obligations or indirect means which nonetheless achieve the same anti-competitive result. Suppliers wishing to influence a distributor's competitive behaviour may, for instance, resort to threats or intimidation, warnings or penalties. They may also delay or suspend deliveries or threaten to terminate the contracts of distributors that sell to foreign consumers or fail to observe a given

(1) With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union (TFEU). The two sets of provisions are in substance identical. For the purposes of these Guidelines, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout these Guidelines.

(2) OJ L 129, 28.5.2010, p. 52.

(3) OJ L 102, 23.4.2010, p. 1.

(4) OJ C 130, 19.5.2010, p. 1.

(5) OJ L 203, 1.8.2002, p. 30.

(6) Retail level distribution are commonly referred to in the sector as 'dealers'.

(7) Since the modernisation of the Union competition rules, the primary responsibility for such analysis lies with the parties to agreements. The Commission may however investigate the compatibility of agreements with Article 101 of the Treaty, on its own initiative or following a complaint.

Commission Notice: Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles (2010)

Frequently Asked Questions (FAQs) on the application of EU Antitrust Rules in the Motor Vehicle Sector, of 27 August 2012



EUROPEAN COMMISSION

FREQUENTLY ASKED QUESTIONS (FAQS) ON THE APPLICATION OF EU ANTITRUST RULES IN THE MOTOR VEHICLE SECTOR

27 August 2012

Since the adoption of the new motor vehicle Block Exemption Regulation¹ and the Supplementary Guidelines², the Commission's services have received a number of questions relating to the application of the new framework for motor vehicle distribution and repair and for the distribution of spare parts for motor vehicles. Where these questions have been frequently asked, or are otherwise likely to be of wider interest, they are reproduced below together with answers and explanations.

These Frequently Asked Questions («FAQs») are intended to complement the Supplementary Guidelines and do not replace them. The FAQs aim, in particular, at helping firms and individuals operating in the sector and legal practitioners to understand how the Commission's Directorate General for Competition approaches particular issues regarding the motor vehicle markets.³ The FAQs are not intended to constitute a statement of the law and are without prejudice to the interpretation of Articles 101 and 102 of the Treaty on the Functioning of the European Union («TFEU») by the European Courts. Finally, the FAQs do not prejudice the application by the Commission of Articles 101 and 102 to the specific circumstances of an individual case.

¹ Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector. Official Journal L 129 of 28.5.2010, p.52 ; see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:129:0052:0057:EN:PDF>.

² Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles. Official Journal C-138 of 28.5.2010, p.16; see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:138:0016:0027:EN:PDF>.

³ These FAQs concern particular restrictions in the motor vehicle sector that, under certain circumstances, may cause the agreement between the vehicle manufacturer and its authorised dealers or repairers (or eventually with a supplier of spare parts, repair tools or diagnostic components for the initial assembly of motor vehicles, or other equipment) to infringe EU competition rules. Generally, this will be the case because: (1) the restriction at stake is likely to cause or strengthen the anti-competitive effects of the agreements between the vehicle supplier and its dealers or authorised repairers and spare parts distributors and cause them to be caught by Article 101(1) TFEU; (2) the agreements in question are unlikely to benefit from the block exemption, because of the supplier's market share; and (3) these agreements are unlikely to benefit on an individual basis from the exception set out in Article 101(3) TFEU. In some other cases, particular conduct referred to in these FAQs may constitute a violation of the prohibition of the abuse by an undertaking of its dominant position, pursuant to Article 102 TFEU. Finally, the FAQs refer as well to conduct or agreements that are unlikely to be in breach of EU competition rules. In any event, the application of the said rules must ultimately be assessed in each particular case, having regard to its specific factual and legal circumstances.

The markets for the supply and distribution of motor vehicles

Application of the general regime for vertical restraints from June 1, 2013:

Vertical Restraints Block Exemption Regulation (Rec. 330/2010): VRBER

Vertical Restraints Guidelines (2010): VRGL

More flexibility for car manufacturers to organise their networks

Disappearance of the former « dealers' protection clauses »

Abolition on specific rules on multi-branding and location clauses



Basic features of the VRBER/VRGL

A wide block exemption with...

... a limited hardcore list (cf. article 4 VRBER), and...

... a limited list of excluded restrictions (cf. article 5 VRBER)

Safe harbour below 30% market share threshold (cf. article 3 VRBER)

No presumption of illegality above the market share threshold

COMMISSION NOTICE
Guidelines on Vertical Restraints
(Text with EEA relevance)

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Hardcore Restrictions

Art. 4 BER: serious restrictions of competition which exclude the benefit of the block exemption for the whole agreement

- Do not exclude individual exemption if there is convincing evidence of likely efficiencies, but this is unlikely (high risk of fines)

Resale Price Maintenance (RPM)

Agreeing fixed or minimum resale price

Sales restrictions on buyers

Sales Restrictions

Sale restrictions: market partitioning and price discrimination

In principle buyer/distributor should be free to resell where and to whom he wants:

Passive sales: sale in response to unsolicited requests

Passive sale restrictions are hardcore (main exception selective distribution)

Active sales: sale as a result of actively approaching customers

Active sale restrictions are hardcore except to protect areas where there is exclusive distribution

Quantitative v. qualitative selective distribution and access to authorised networks Supplementary guidelines clarify key issues:

Assessment of single-branding
obligations

Assessment of selective
distribution

Commission notice

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- (7) The history of competition enforcement in this sector shows that certain restraints can be arrived at either as a result of explicit direct contractual obligations or through indirect obligations or indirect means which nonetheless achieve the same anti-competitive result. Suppliers wishing to influence a distributor's competitive behaviour may, for instance, resort to threats or intimidation, warnings or penalties. They may also delay or suspend deliveries or threaten to terminate the contracts of distributors that sell to foreign consumers or fail to observe a given

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(3) OJ L 102, 23.4.2010, p. 1.

(4) OJ C 130, 19.5.2010, p. 1.

(5) OJ L 203, 1.8.2002, p. 30.

(6) Retail level distribution are commonly referred to in the sector as 'dealers'.

(7) Since the modernisation of the Union competition rules, the primary responsibility for such analysis lies with the parties to agreements. The Commission may however investigate the compatibility of agreements with Article 101 of the Treaty, on its own initiative or following a complaint.

The motor vehicle aftermarkets

General Regime on Vertical Agreements (Regulation 330/2010 and Guidelines) applies also to the aftermarkets Supplemented by three hardcore provisions on spare parts distribution, set out in Regulation 461/2010 Additional guidance in the Supplementary Guidelines

COMMISSION REGULATION (EU) No 461/2010

of 27 May 2010

on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation No 19/65/EEC of the Council of 2 March 1965 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices⁽¹⁾, and in particular Article 1 thereof,

Having published a draft of this Regulation,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

- (1) Regulation No 19/65/EEC empowers the Commission to apply Article 101(3) of the Treaty on the Functioning of the European Union⁽²⁾ by regulation to certain categories of vertical agreements and corresponding concerted practices falling within Article 101(1) of the Treaty. Block exemption regulations apply to vertical agreements which fulfil certain conditions and may be general or sector-specific.
- (2) The Commission has defined a category of vertical agreements which it regards as normally satisfying the conditions laid down in Article 101(3) of the Treaty and to this end has adopted Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application

of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices⁽³⁾, which replaces Commission Regulation (EC) No 2790/1999⁽⁴⁾.

- (3) The motor vehicle sector, which includes both passenger cars and commercial vehicles, has been subject to specific block exemption regulations since 1985, the most recent being Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector⁽⁵⁾. Regulation (EC) No 2790/1999 expressly stated that it did not apply to vertical agreements the subject matter of which fell within the scope of any other block exemption regulation. The motor vehicle sector therefore fell outside the scope of that Regulation.
- (4) Regulation (EC) No 1400/2002 expires on 31 May 2010. However, the motor vehicle sector should continue to benefit from a block exemption in order to simplify administration and reduce compliance costs for the undertakings concerned, while ensuring effective supervision of markets in accordance with Article 103(2)(b) of the Treaty.
- (5) Experience acquired since 2002 regarding the distribution of new motor vehicles, the distribution of spare parts and the provision of repair and maintenance services for motor vehicles, makes it possible to define a category of vertical agreements in the motor vehicle sector which can be regarded as normally satisfying the conditions laid down in Article 101(3) of the Treaty.
- (6) This category includes vertical agreements for the purchase, sale or resale of new motor vehicles, vertical agreements for the purchase, sale or resale of spare parts for motor vehicles and vertical agreements for the provision of repair and maintenance services for such vehicles, where those agreements are concluded between non-competing undertakings, between certain competitors, or by certain associations of retailers or repairers. It also includes vertical agreements containing ancillary provisions on the assignment or use of intellectual property rights. The term 'vertical agreements' should be defined accordingly to include both such agreements and the corresponding concerted practices.

⁽¹⁾ OJ 36, 6.3.1965, p. 533/65.

⁽²⁾ With effect from 1 December 2009, Article 81 of the EC Treaty has become Article 101 of the Treaty on the Functioning of the European Union. The two Articles are, in substance, identical. For the purposes of this Regulation, references to Article 101 of the Treaty on the Functioning of the European Union should be understood as references to Article 81 of the EC Treaty where appropriate.

⁽³⁾ OJ L 102, 23.4.2010, p. 1.

⁽⁴⁾ OJ L 336, 29.12.1999, p. 21.

⁽⁵⁾ OJ L 203, 1.8.2002, p. 30.

Specific hardcore provisions on spare parts distribution:

Restrictions on authorised dealers' sales of spare parts to independent repairers

Restrictions on the ability of suppliers of spare parts or repair tools to sell to authorised or independent distributors or repairers

Restrictions on a component supplier's ability to place its trade mark or logo on components supplied or on spare parts

L 129/56

EN

Official Journal of the European Union

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(d) undertakings in which a party to the agreement together with one or more of the undertakings referred to in points (a), (b) or (c), or in which two or more of the latter undertakings, jointly have the rights or powers listed in point (a);

contain any of the hardcore clauses listed in Article 5 of this Regulation.

(e) undertakings in which the rights or the powers listed in point (a) are jointly held by:

This exemption shall apply to the extent that such agreements contain vertical restraints.

(i) parties to the agreement or their respective connected undertakings referred to in points (a) to (d); or

Article 5

Restrictions that remove the benefit of the block exemption — hardcore restrictions

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:

(ii) one or more of the parties to the agreement or one or more of their connected undertakings referred to in points (a) to (d) and one or more third parties.

(a) 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;

CHAPTER II
VERTICAL AGREEMENTS RELATING TO THE PURCHASE, SALE OR RESALE OF NEW MOTOR VEHICLES

Article 2

Application of Regulation (EC) No 1400/2002
Pursuant to Article 101(3) of the Treaty, from 1 June 2010 until 31 May 2013, Article 101(1) of the Treaty shall not apply to vertical agreements relating to the conditions under which the parties may purchase, sell or resell new motor vehicles, which fulfil the requirements for an exemption under Regulation (EC) No 1400/2002 that relate specifically to vertical agreements for the purchase, sale or resale of new motor vehicles.

(b) 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 authorised or independent distributors or to authorised or independent repairers or end users;

(c) 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.

Article 3

Application of Regulation (EU) No 330/2010
With effect from 1 June 2013, Regulation (EU) No 330/2010 shall apply to vertical agreements relating to the purchase, sale or resale of new motor vehicles.

CHAPTER IV
FINAL PROVISIONS

Article 6

Non-application of this Regulation

Pursuant to Article 1a of Regulation No 19/65/EEC, the Commission may by regulation declare that, where parallel networks of similar vertical restraints cover more than 50 % of a relevant market, this Regulation shall not apply to vertical agreements containing specific restraints relating to that market.

CHAPTER III

VERTICAL AGREEMENTS RELATING TO THE MOTOR VEHICLE AFTER-MARKET

Article 4

Exemption

Pursuant to Article 101(3) of the Treaty and subject to the provisions of this Regulation Article 101(1) of the Treaty shall not apply to vertical agreements relating to the conditions under which the parties may purchase, sell or resell spare parts for motor vehicles or provide repair and maintenance services for motor vehicles, which fulfil the requirements for an exemption under Regulation (EU) No 330/2010 and do not

Article 7

Monitoring and evaluation report

The Commission will monitor the operation of this Regulation and draw up a report on its operation by 31 May 2021 at the latest, having regard in particular to the conditions set out in Article 101(3) of the Treaty.

2012 Frequently Asked Questions provide additional guidance:

Honouring of warranties

Servicing in the context of leasing contracts

Supply of spare parts

Use and purchase of electronic diagnostic and repair tools

Access to technical information

Access to authorised repairer networks



EUROPEAN COMMISSION

FREQUENTLY ASKED QUESTIONS (FAQS) ON THE APPLICATION OF EU ANTITRUST RULES IN THE MOTOR VEHICLE SECTOR

27 August 2012

Since the adoption of the new motor vehicle Block Exemption Regulation¹ and the Supplementary Guidelines², the Commission's services have received a number of questions relating to the application of the new framework for motor vehicle distribution and repair and for the distribution of spare parts for motor vehicles. Where these questions have been frequently asked, or are otherwise likely to be of wider interest, they are reproduced below together with answers and explanations.

These Frequently Asked Questions («FAQs») are intended to complement the Supplementary Guidelines and do not replace them. The FAQs aim, in particular, at helping firms and individuals operating in the sector and legal practitioners to understand how the Commission's Directorate General for Competition approaches particular issues regarding the motor vehicle markets.³ The FAQs are not intended to constitute a statement of the law and are without prejudice to the interpretation of Articles 101 and 102 of the Treaty on the Functioning of the European Union («TFEU») by the European Courts. Finally, the FAQs do not prejudice the application by the Commission of Articles 101 and 102 to the specific circumstances of an individual case.

¹ Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector. Official Journal L-129 of 28.5.2010, p.52; see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:129:0052:0057:EN:PDF>.

² Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles. Official Journal C-138 of 28.5.2010, p.16; see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:138:0016:0027:EN:PDF>.

³ These FAQs concern particular restrictions in the motor vehicle sector that, under certain circumstances, may cause the agreement between the vehicle manufacturer and its authorised dealers or repairers (or eventually with a supplier of spare parts, repair tools or diagnostic components for the initial assembly of motor vehicles, or other equipment) to infringe EU competition rules. Generally, this will be the case because: (1) the restriction at stake is likely to cause or strengthen the anti-competitive effects of the agreements between the vehicle supplier and its dealers or authorised repairers and spare parts distributors and cause them to be caught by Article 101(1) TFEU; (2) the agreements in question are unlikely to benefit from the block exemption, because of the supplier's market share; and (3) these agreements are unlikely to benefit on an individual basis from the exception set out in Article 101(3) TFEU. In some other cases, particular conduct referred to in these FAQs may constitute a violation of the prohibition of the abuse by an undertaking of its dominant position, pursuant to Article 102 TFEU. Finally, the FAQs refer as well to conduct or agreements that are unlikely to be in breach of EU competition rules. In any event, the application of the said rules must ultimately be assessed in each particular case, having regard to its specific factual and legal circumstances.

Technical information cases

COMP/39.140 – DaimlerChrysler

COMP/39.141 – Fiat

COMP/ 39.142 – Toyota

COMP/39.143 – Opel

Decisions of 13 September 2007

Agreements between several car manufacturers and their after-sales service partners restricting the release of technical information to independent car repairers, which risked foreclosing the latter from the car aftersales markets

COMMISSION

COMMISSION DECISION

of 13 September 2007

relating to a proceeding pursuant to Article 81 of the EC Treaty

(Case COMP/E-2/39.140 — DaimlerChrysler)

(notified under document number C(2007) 4275)

(Only the English text is authentic)

(2007/788/EC)

- (1) This decision adopted pursuant to Article 9(1) of Council Regulation (EC) No 1/2003⁽¹⁾ is addressed to DaimlerChrysler AG (hereinafter DaimlerChrysler) and concerns the supply of technical information for the repair of vehicles of the Mercedes-Benz and Smart brands.
- (2) Technical information consists of data, processes and instructions which are necessary to check, repair and replace defective/broken/used parts of a motor vehicle or to fix failures in any of a vehicle's systems. It includes seven main categories:
- spare parts information, including parts catalogues with codes and descriptions, and vehicle identification methods (that is to say, data relating to a specific vehicle which enable a repairer to identify the individual codes for the parts fitted during vehicle assembly, and to identify the corresponding codes for compatible original replacement parts for that specific vehicle),
 - special information (recall notices and notification of frequent faults),
 - training materials.
 - basic parameters (documentation of all reference values and set points of the measurable values concerning the vehicle, such as torque settings, brake clearance measurements, hydraulic and pneumatic pressures),
 - diagrams and descriptions of stages in repair and maintenance operations (service handbooks, technical documents such as work plans, descriptions of tools used to carry out a given repair, and diagrams such as wiring schematics or hydraulics),
 - testing and diagnosis (including diagnostic fault/troubleshooting codes, software and other information needed to diagnose faults on vehicles) — much, but not all, of this information is contained in specialised electronic tools,
 - codes, software and other information needed to re-program, re-set or re-initialise the electronic control units (ECUs) embarked on a vehicle. This category is linked to the preceding one, in that often the same electronic tools are used to diagnose the fault, and then make the necessary adjustments via the ECUs to deal with it.
- (3) In December 2006, the Commission opened proceedings, and addressed a preliminary assessment to DaimlerChrysler, containing the preliminary view that DaimlerChrysler's agreements with its after-sales service partners raised concerns as to their compatibility with Article 81(1) of the EC Treaty.
- (4) In the Commission's preliminary assessment, DaimlerChrysler seemed to have failed to release certain categories of technical repair information well after the end of the transitional period provided for in Regulation (EC) No 1400/2002⁽²⁾. Moreover, at the time that the Commission's investigation was launched, DaimlerChrysler had still not put in place an effective system to allow independent repairers to have access to technical repair information in an unburdened manner. Although DaimlerChrysler improved the accessibility of its technical information over the course of the Commission investigation, notably by setting up a website (the TI website) in June 2005 designed for that purpose, the information made available to independent repairers seemed to be still incomplete.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1). Regulation as last amended by Regulation (EC) No 1419/2006 (OJ L 269, 28.9.2006, p. 1).

⁽²⁾ Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector (OJ L 203, 1.8.2002, p. 30). Regulation as amended by the 2003 Act of Accession.

Commitments

- Non-discriminatory provision of technical information to independent repairers
- Technical information, tools, equipment, software and training also made available to independent repairers
- Information, etc. available in a proportionate manner to independent repairers' needs