



# Competition law enforcement in the motor vehicle sector: vertical agreements

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# Outline

1. Overview of the motor vehicle sector
2. EU competition rules on anticompetitive agreements
3. Sector specific rules for vertical agreements in the motor vehicle sector
4. The markets for the supply and distribution of motor vehicles
5. The motor vehicle aftermarkets
6. Case Study (1): Peugeot
7. Case Study (2): Technical information cases
8. Case Study (3): Auto 24

# Overview of the motor vehicle sector

## Specific features of the motor vehicle sector

Economic and political importance of the car sector

Particular significance for the Internal Market

Importance for the budget of the consumer

Environmental and safety concerns

Importance of vertical agreements

- Car manufacturers / authorised dealers and repairers

- Car manufacturers / producers of spare parts

Tradition of specific EU competition rules for vertical agreements

## Competitive structure of the motor vehicle sector

### 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

## Key areas for scrutiny: aftermarkets

### Car Repair

Ensure that authorised networks remain open

Avoid foreclosure of independent repairers

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

Ensure access to technical information for independent repairers

### Spare Parts

Protect access by spare parts manufacturers to the motor vehicle aftermarkets, thereby ensuring that competing brands of spare parts continue to be available to both independent and authorised repairers, as well as to parts wholesalers

National Competition Authorities (NCAs) of EU Member States have also been actively monitoring car aftermarkets:

E.g. Sector enquiry conducted by the French NCA in 2011-2012 on the sectors of repair and maintenance of vehicles and distribution of spare parts

**Avis n° 12-A-21 du 8 octobre 2012  
relatif au fonctionnement concurrentiel des secteurs de la réparation  
et de l'entretien de véhicules et de la fabrication et de la distribution  
de pièces de rechange**

L'Autorité de la concurrence (commission permanente),

Vu la décision n° 11-SOA-01 du 30 juin 2011 relative à une saisine d'office pour avis portant sur le secteur de la réparation et de l'entretien de véhicules et de la fabrication et de la distribution de pièces de rechange enregistrée sous le numéro 11/0048 A ;

Vu les articles 101 et 102 du traité sur le fonctionnement de l'Union européenne ;

Vu le livre IV du code de commerce relatif à la liberté des prix et de la concurrence et notamment son article L. 462-4 ;

Vu les autres pièces du dossier ;

Vu le document de consultation publique publié par l'Autorité de la concurrence le 11 avril 2012 ;

Vu les contributions reçues jusqu'au 24 mai 2012 ;

Les rapporteurs, le rapporteur général adjoint, la rapporteure générale et le commissaire du gouvernement entendus au cours de la séance du 6 septembre 2012 ;

Les représentants des groupes AXA, Mobivia, Renault, des sociétés PSA Peugeot Citroën, Bosch, de l'UFC Que Choisir, du Groupement des entreprises mutuelles d'assurances (GEMA), de la Fédération des industries des équipements pour véhicules (FIEV), de la Fédération des syndicats de la distribution automobile (FEDA), de European Campaign for the Freedom of Automobile Parts and Repair Market (ECAR), du Comité des constructeurs français d'automobiles (CCFA), de la Chambre syndicale internationale de l'automobile et du motorcycle (CSIAM), entendus sur le fondement des dispositions de l'article L. 463-7 du code de commerce ;

Adopte l'avis suivant ;

# EU Competition Rules on Anticompetitive Agreements



**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 that have as their object to restrict competition are considered serious restrictions of competition

E.g price fixing cartels and Resale Price Maintenance

Hardcore restrictions:

Presumption of negative effects under Article 101(1)

Presumption that it is unlikely that the conditions of Art 101(3) are met

This does not entirely exclude individual exemption in case of convincing evidence of likely efficiencies, but highly improbable

The order of bringing forward evidence / showing effects is reversed

First, likely efficiencies need to be shown by the defendant

Before the likely negative effects are shown by the authority/plaintiff

## 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 (BER) for many types of agreements below certain market share thresholds

Net positive balance presumed

Exception: hardcore restrictions

Guidelines help to interpret BER and provide guidance on a case by case assessment of negative and positive effects where BER do not apply (above the market share thresholds)

# Sector specific rules for vertical agreements in the motor vehicle sector

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)

L 203/30

EN

Official Journal of the European Communities

1.8.2002

**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<sup>(1)</sup>, as last amended by Regulation (EC) No 1215/1999<sup>(2)</sup>, and in particular Article 1 thereof,

Having published a draft of this Regulation<sup>(3)</sup>,

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<sup>(4)</sup> 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 within a chain of production or distribution by facilitating better coordination between the participating undertakings. In particular, they can lead to a reduction in the transaction and distribution costs of the parties and to an optimisation of their sales and investment levels.

(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.

<sup>(1)</sup> OJ 36, 6.3.1965, p. 333/65.

<sup>(2)</sup> OJ L 148, 15.6.1999, p. 1.

<sup>(3)</sup> OJ C 67, 16.3.2002, p. 2.

<sup>(4)</sup> OJ L 336, 29.12.1999, p. 21.

Last comprehensive reform of the regulatory framework for cars took place in 2010

Over-riding 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

Adoption of **Regulation 461/2010**

L 129/52

EN

Official Journal of the European Union

28.5.2010

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,

of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices<sup>(1)</sup>, which replaces Commission Regulation (EC) No 2790/1999<sup>(2)</sup>,

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

(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<sup>(3)</sup>. 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.

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<sup>(4)</sup>, and in particular Article 1 thereof,

Having published a draft of this Regulation,

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

(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.

Whereas:

(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.

(1) Regulation No 19/65/EEC empowers the Commission to apply Article 101(3) of the Treaty on the Functioning of the European Union<sup>(5)</sup> 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.

(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.

(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

<sup>(1)</sup> OJ 36, 6.3.1965, p. 533/65.

<sup>(5)</sup> 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.

<sup>(3)</sup> OJ L 102, 23.4.2010, p. 1.

<sup>(4)</sup> OJ L 336, 29.12.1999, p. 21.

<sup>(2)</sup> 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 (2010)

C 138/16

EN

Official Journal of the European Union

28.5.2010

## 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 <sup>(1)</sup> 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 <sup>(2)</sup> (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 <sup>(3)</sup> (hereinafter 'the General Vertical Block Exemption Regulation'). They are without prejudice to the applicability of the Guidelines on Vertical Restraints <sup>(4)</sup> (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
- (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.

vertical agreements and concerted practices in the motor vehicle sector <sup>(5)</sup> 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' <sup>(6)</sup> 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 <sup>(7)</sup> 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

<sup>(5)</sup> OJ L 203, 1.8.2002, p. 30.

<sup>(6)</sup> Retail level distributors are commonly referred to in the sector as 'dealers'.

<sup>(7)</sup> 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.



# 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 Regulation<sup>1</sup> and the Supplementary Guidelines<sup>2</sup>, 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.<sup>3</sup> 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.

<sup>1</sup> 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>.

<sup>2</sup> 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>.

<sup>3</sup> 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.

## Regulatory Framework

Since 1 June 2010

From 1 June 2013

Car sales  
markets

Rec 1400/2002  
(old car BER,  
extended)

Rec 330/2010  
(general BER for  
vertical agreements)

Car after-  
markets

Rec 330/2010 (general BER for vertical  
agreements) +  
Rec 461/2010 (new car BER): 3 hardcore  
restrictions on spare parts distribution

General Vertical  
Guidelines  
+  
Motor vehicles  
Guidelines  
+  
FAQs

# 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

23.4.2010

EN

Official Journal of the European Union

L 102/1

## II

(Non-legislative acts)

## REGULATIONS

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

(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<sup>(1)</sup>, 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<sup>(\*)</sup> by regulation to certain categories of vertical agreements and corresponding concerted practices falling within Article 101(1) of the Treaty.

(2) 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<sup>(2)</sup> defines a category of vertical agreements which the Commission regarded as normally satisfying the conditions laid down in Article 101(3) of the Treaty. In view of the overall positive experience with the application of that Regulation, which expires on 31 May 2010, and taking into account further experience acquired since its adoption, it is appropriate to adopt a new block exemption regulation.

(3) The category of agreements which can be regarded as normally satisfying the conditions laid down in Article 101(3) of the Treaty includes vertical agreements for the purchase or sale of goods or services where those agreements are concluded between non-competing undertakings, between certain competitors or by certain associations of retailers of goods. It also includes vertical agreements containing ancillary provisions on the assignment or use of intellectual property rights. The term 'vertical agreements' should include the corresponding concerted practices.

(4) For the application of Article 101(3) of the Treaty by regulation, it is not necessary to define those vertical agreements which are capable of falling within Article 101(1) of the Treaty. In the individual assessment of agreements under Article 101(1) of the Treaty, account has to be taken of several factors, and in particular the market structure on the supply and purchase side.

(5) The benefit of the block exemption established by this Regulation should be limited to vertical agreements for which it can be assumed with sufficient certainty that they satisfy the conditions of Article 101(3) of the Treaty.

<sup>(1)</sup> OJ L 36, 6.3.1965, p. 533.

<sup>(\*)</sup> 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.

<sup>(2)</sup> OJ L 336, 29.12.1999, p. 21.

## 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)

TABLE OF CONTENTS

Paragraphs Page

I.	INTRODUCTION	1-7
1.	Purpose of the Guidelines	1-4
2.	Applicability of Article 101 to vertical agreements	5-7
II.	VERTICAL AGREEMENTS WHICH GENERALLY FALL OUTSIDE THE SCOPE OF ARTICLE 101(1)	8-22
1.	Agreements of minor importance and SMEs	8-11
2.	Agency agreements	12-21
2.1	Definition of agency agreements	12-17
2.2	The application of Article 101(1) to agency agreements	18-21
3.	Subcontracting agreements	22
III.	APPLICATION OF THE BLOCK EXEMPTION REGULATION	23-73
1.	Safe harbour created by the Block Exemption Regulation	23
2.	Scope of the Block Exemption Regulation	24-46
2.1	Definition of vertical agreements	24-26
2.2	Vertical agreements between competitors	27-28
2.3	Associations of retailers	29-30
2.4	Vertical agreements containing provisions on intellectual property rights (IPRs)	31-45
2.5	Relationship to other block exemption regulations	46
3.	Hardcore restrictions under the Block Exemption Regulation	47-59
4.	Individual cases of hardcore sales restrictions that may fall outside Article 101(1) or may fulfil the conditions of Article 101(3)	60-64

# Hardcore Restrictions

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

No severability

While this does not exclude individual exemption in case of convincing evidence of likely efficiencies, it is unlikely (thus, high risk of fines)

Resale Price Maintenance (RPM)

Agreeing fixed or minimum resale price

Sales restrictions on the buyer

Distinction: Hardcore restrictions / Excluded restrictions

# Sales Restrictions

Sale restrictions: concern is market partitioning and price discrimination

In principle buyer/distributor should be free to resell where and to whom it 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

**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<sup>(1)</sup> 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<sup>(2)</sup> (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<sup>(3)</sup> (hereinafter 'the General Vertical Block Exemption Regulation'). They are without prejudice to the applicability of the Guidelines on Vertical Restraints<sup>(4)</sup> (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
- (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.

vertical agreements and concerted practices in the motor vehicle sector<sup>(5)</sup> 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' 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<sup>(7)</sup> 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

<sup>(1)</sup> OJ L 203, 1.8.2002, p. 30.

<sup>(2)</sup> Retail level distributors are commonly referred to in the sector as 'dealers'.

<sup>(3)</sup> 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,

of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices<sup>(1)</sup>, which replaces Commission Regulation (EC) No 2790/1999<sup>(2)</sup>,

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

(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<sup>(3)</sup>. 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.

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<sup>(4)</sup>, and in particular Article 1 thereof,

Having published a draft of this Regulation,

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

(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.

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<sup>(5)</sup> 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.

(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.

(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

(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.

<sup>(1)</sup> OJ 36, 6.3.1965, p. 533/65.

<sup>(5)</sup> 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.

<sup>(2)</sup> OJ L 102, 23.4.2010, p. 1.

<sup>(3)</sup> OJ L 336, 29.12.1999, p. 21.

<sup>(4)</sup> 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

28.5.2010

(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.

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

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

### 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:

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

(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;

(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.

### 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.

##### 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 III

#### VERTICAL AGREEMENTS RELATING TO THE MOTOR VEHICLE AFTERMARKET

##### 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

### 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.

##### 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 Regulation<sup>1</sup> and the Supplementary Guidelines<sup>2</sup>, 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.<sup>3</sup> 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.

<sup>1</sup> 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>.

<sup>2</sup> 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>.

<sup>3</sup> 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.

## Question 18. May a vehicle supplier refuse access to its authorised repair network on the grounds that the repairer in question is already authorised to repair vehicles of a brand of a competing vehicle supplier?

Where it concerns agreements outside the safe harbour created by the motor vehicle Block Exemption Regulation, the answer is generally, no. This would be likely to lead the agreements in question to breach EU competition rules.

*[In the vast majority of cases, vehicle suppliers use qualitative criteria in order to select their authorised repairers. The question therefore arises as to whether a requirement not to be authorised to repair vehicles of another supplier's brands is a valid qualitative requirement. To determine this, one needs to examine whether or not this requirement is objective and required by the nature of the service. There is normally nothing in the nature of repair services for one brand that requires them to be carried out exclusively by firms that are not authorised to repair vehicles of other brands. Such an obligation therefore normally amounts to a non-qualitative criterion that may restrict competition on the relevant market, namely the market for repair and maintenance services of the concerned brand.]*

The vehicle manufacturer is likely to be the only source for the full range of technical information relating to vehicles of its brands. Granting discounts or refunds on technical information on condition that a repairer buys a certain volume of its own brand of parts or tools might imply that the vehicle manufacturer is leveraging a dominant position on one market to abusively gain advantage on the other.<sup>29</sup>

### 17. Can an independent repairer be prevented from accessing or updating a printed or electronic record of the vehicle's service history?

No, in so far as a vehicle supplier and/or its authorised repairers are likely to be the only source for a comprehensive record relating to vehicles of its brands. Any such refusal to grant access to the service record would be likely to cause the agreements between the vehicle supplier and its authorised repairers to breach EU competition rules.

Existing service and repair records, in whatever form, are to be treated as technical information for the purposes of applying the Supplementary Guidelines. Access to such records will generally be necessary to enable the repairer to tell what operations need to be carried out in order to bring the servicing schedule up to date.

An incomplete service and repair record would be likely to reduce the residual value of the vehicle and make it difficult to prove that warranty terms had been complied with. If independent repairers could not update such records, this would likely deter consumers from using independent repairers, and would foreclose such operators from a substantial part of the market.

### ACCESS TO AUTHORISED NETWORKS

The Supplementary Guidelines set out the principle that, outside the safe harbour created by the motor vehicle Block Exemption Regulation<sup>30</sup>, authorised repair networks should generally be open to all firms that meet the relevant qualitative criteria.<sup>31</sup> Nonetheless, a question has arisen as to whether certain access conditions are to be considered as not qualitative in nature (and thus would be deemed as constituting quantitative criteria).<sup>32</sup>

### 18. May a vehicle supplier refuse access to its authorised repair network on the grounds that the repairer in question is already authorised to repair vehicles of a brand of a competing vehicle supplier?

<sup>29</sup> General guidance on the application of Article 102 TFEU can be found in the Commission Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings. See footnote number 15, above.

<sup>30</sup> In most cases, authorised repair networks of car manufacturers are likely to exceed the 30% market share threshold in the relevant market(s).

<sup>31</sup> See, in particular, paragraph 70 and 71 of the Supplementary Guidelines. See footnote number 2, above.

<sup>32</sup> Selective distribution agreements are block exempted as long as the parties' market share is below 30%, subject to the conditions defined in the Regulation, see Paragraph 46 of the Supplementary Guidelines. See footnote number 2, above. Moreover, distribution agreements based on purely qualitative criteria are not caught by Article 101, irrespectively of the parties' market share. See Paragraph 43 of the Supplementary Guidelines (see footnote number 2, above).

Peugeot

# CASE STUDY



## COMP/36623-36820-37275 - SEP and others/Automobiles Peugeot

Decision of 5 October 2005

Peugeot hindered parallel trade by  
seeking to prevent its Dutch dealers  
from selling cars to consumers from  
other Member States

Complaints from several French  
intermediaries

Infringement of Article 101 TFEU

Duration: from 1997 to 2003

Fine: € 49.5 million (joint and several  
liability of Peugeot and its Dutch  
subsidiary)



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5/X/2005

NON CONFIDENTIAL VERSION

COMMISSION DECISION

of 5/X/2005

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

(Cases F-2/36.623/36.820/37.275 – SEP et autres / Peugeot SA)

(Only the French text is authentic)

EN

EN

## Infringement

Automobiles Peugeot and its wholly-owned subsidiary responsible for importing Peugeot vehicles into the Netherlands (Peugeot Nederland) had, in collusion with the dealers belonging to the Peugeot network in the Netherlands, implemented two measures aimed at impeding cross-border car sales to final consumers in other Member States, particularly France: (restriction « by object »)

System of bonuses to dealers which discriminated against export sales and went beyond what was necessary to induce Dutch dealers to devote their best sales efforts to their contract territory

Direct pressure on dealers active in export sales



*« This decision demonstrates the Commission's determination to use the EC Treaty's competition rules to prevent companies from depriving consumers of the benefits of the Single Market. In the motor vehicle sector, such practices are particularly harmful, since the car represents the second most expensive item in the household budget. »*



Neelie Kroes  
EU Commissioner  
in charge of Competition Policy  
(2004-2009)

# Technical information cases

## CASE STUDY

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<sup>(1)</sup> 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.
  - 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),
- (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:
  - 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,
  - special information (recall notices and notification of frequent faults),
  - training materials.
- (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<sup>(2)</sup>. 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 unbundled 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.

<sup>(1)</sup> 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).

<sup>(2)</sup> 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.

## Preliminary Assessment

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

Several carmakers seemed to have failed to release certain categories of technical repair information and/or to put in place an effective system to allow independent repairers to have access to technical complete repair information in an unbundled manner

## Commitments

Provision of the relevant technical information in a non-discriminatory way between independent and authorised repairers

Carmakers to ensure that all technical information, tools, equipment, software and training required for the repair and maintenance of their respective vehicles which is provided to authorised repairers and/or independent importers in any EU Member State is also made available to independent repairers

Information to be made available in a way that is proportionate to independent repairers' needs

Unbundling of information and pricing must take account of the extent to which independent repairers use the information

*« Consumers benefit from competition between repairers, through lower labour charges and cheaper spare parts. These decisions provide a concrete and timely solution to the problems faced by independent repairers, who might lose their ability to compete without access to the relevant technical information. »*



Neelie Kroes  
EU Commissioner  
in charge of Competition Policy  
(2004-2009)

Auto 24 judgment

CASE STUDY

# Judgment of the Court of Justice of the EU of 14 June 2012 in Case C-158/11

Reference for a preliminary ruling  
from the *Cour de Cassation* (France)

## Background:

National proceedings between Auto 24 and Jaguar Land Rover France concerning the refusal of the latter to authorise Auto 24 as a distributor of new Land Rover motor vehicles



## JUDGMENT OF THE COURT (Second Chamber)

14 June 2012 \*

(Competition – Article 101 TFEU – Motor vehicle sector – Regulation (EC) No 1400/2002 – Block exemption – Selective distribution system – Concept of ‘specified criteria’ concerning a quantitative selective distribution system – Refusal to grant authorisation as a distributor of new motor vehicles – Lack of precise, objective, proportionate and non-discriminatory quantitative selection criteria)

In Case C-158/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Cour de cassation (France), made by decision of 29 March 2011, received at the Court on 1 April 2011, in the proceedings

**Auto 24 SARL**

v

**Jaguar Land Rover France SAS,**

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, U. Lohmus, A. Rosas, A. Ó Caoimh (Rapporteur) and A. Arabadjiev, Judges,

Advocate General: J. Mazák,

Registrar: R. Šereš, Administrator,

having regard to the written procedure and further to the hearing on 11 January 2012,

after considering the observations submitted on behalf of:

– Auto 24 SARL, by R. Bertin, avocat,

\* Language of the case: French.

EN



Question asked to the Court: to benefit from BER, must a quantitative selective distribution system be based on criteria which are objectively justified and applied in a uniform manner to all applicants for authorisation?

Court's ruling: no, it is only required that content of criteria may be verified

Judgement seems to support that BERs can cover selective distribution, below a certain market share cap, regardless of the nature of the product concerned and the nature of the selection criteria (see § 176 VRGL)

JUDGMENT OF 14. 6. 2012 – CASE C-158/11

19 Auto 24 then lodged an appeal in cassation against that judgment before the Cour de cassation ('the referring court'). By its appeal, Auto 24 claims, inter alia, that the Cour d'Appel, Paris, had infringed Article 1(1)(g) of the Regulation and Article 1382 of the Code Civil by holding that no legislative provision or regulation, in national or Community law, requires the grantor to justify the reasons, economic or otherwise, behind the drawing up of a *numerus clausus* and by finding that JLR had drawn up a *numerus clausus* precluding the possibility of a location in Périgueux, without examining the objectivity of the selection criteria, their economic use, the improvement in customer services and the conditions of their implementation. According to Auto 24, in a quantitative selective distribution system, the supplier must use quantitative selection criteria that are specific, objective, proportionate to the aim pursued and implemented in a non-discriminatory manner when selecting its distributors.

20 In those circumstances, the Cour de cassation, having doubts as to the correct interpretation of the Regulation and, in particular, as to the requirements relating to selection criteria for quantitative selective distribution, decided to stay proceedings and to refer the following question to the Court:

'What is to be understood by the words "specified criteria" in Article 1(1)(f) of Regulation No 1400/2002 as regards quantitative selective distribution?'

#### The question referred for a preliminary ruling

21 By its question, the referring court asks, in essence, whether the term 'specified criteria' in Article 1(1)(f) of the Regulation must be interpreted as meaning that it requires, in order to benefit from the exemption, a quantitative selective distribution system, within the meaning of the Regulation, to be based on criteria which are objectively justified and applied in a uniform and non-differentiated manner in respect of all applicants for authorisation.

22 As a preliminary point, it is important to note that it follows from the Court's case-law (see, inter alia, Case 10/86, *VAG France* [1986] ECR 4071, paragraph 12; Case C-230/96 *Cabour* [1998] ECR I-2055, paragraphs 47, 48 and 51; and Case C-260/07 *Pedro IV Servicios* [2009] ECR I-2437, paragraph 68) that non-compliance with a condition necessary for the exemption cannot, in itself, give rise to damages pursuant to Article 101 TFEU or oblige a supplier to accept an applicant distributor into a distribution system.

23 In the present case, Auto 24 claims, in essence, that all quantitative criteria within the meaning of Article 1(1)(g) of the Regulation, namely, all criteria which, in order to select distributors or repairers, directly limit the number of those distributors or repairers, must satisfy objective economic justifications, of which the supplier must provide evidence, and must be applied in a uniform and non-discriminatory manner in all of the catchment areas and to all of the potential candidates for the distribution system.