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EUROPEAN COMMISSION

Brussels, xxx
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COMMISSION REGULATION (EC) No .../..

of

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

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(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN UNION,

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

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 practices¹, and in particular Article 1 thereof,

Having published a draft of this Regulation²,

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 by regulation to certain categories of vertical agreements and corresponding concerted practices falling within Article 101(1). Block exemption regulations apply to vertical agreements which contain certain provisions and fulfil certain conditions. They 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) and to this end has adopted Commission Regulation (EC) No XXX/2010 of xx 2010 on the application of Article 101(3) of the Treaty to categories of vertical agreements and concerted practices³, which replaces Commission Regulation (EC) No 2790/1999 of 22 December 1999⁴.
- (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

¹ OJ 36, 6.3.1965, p. 533/65.

² OJ C, p. References

³ References

⁴ OJ L 336, 29.12.1999, p. 21.

concerted practices in the motor vehicle sector⁵. Regulation (EC) No 2790/1999 does not apply to vertical agreements the subject matter of which falls 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, as well as the supply of spare parts and after-sales services for motor vehicles, makes it possible to define a category of vertical agreements in the motor 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 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. 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.
- (7) Vertical agreements of the category defined above 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.
- (8) The likelihood that such efficiency-enhancing effects will outweigh any anticompetitive effects due to restrictions contained in vertical agreements depends on the degree of market power of the parties to the agreement and, therefore, on the extent to which those undertakings face competition from other suppliers of goods or services regarded by their customers as interchangeable or substitutable for one another, by reason of the products' characteristics, their prices and their intended use. Moreover, vertical agreements containing restrictions which are likely to restrict competition and harm consumers, or which are not indispensable to the attainment of the positive effects mentioned above, should be excluded from the benefit of the block exemption.
- (9) In order to define the appropriate scope of a block exemption Regulation, the Commission must take into account the competitive conditions in the relevant sector. In this respect, following in-depth monitoring of the motor vehicle sector⁶, a

⁵ OJ L 203 of 1.8.2002, p. 30.

⁶ See Evaluation Report on the operation of Commission Regulation (EC) No 1400/2002 of 28 May 2008 and the Commission Communication on The Future Competition Law Framework applicable to the Motor Vehicle sector of 22 July 2009 - COM(2009) 388.

distinction should be drawn between agreements for new motor vehicle distribution and agreements for repair and maintenance services and spare parts distribution.

- (10) As regards new motor vehicle distribution, there do not appear to be any significant competition shortcomings which would distinguish this sector from other economic sectors and which could require the application of rules different from and stricter than those in Commission Regulation (EC) No XXX/2010. The market-share limitation, the non-exemption of certain vertical agreements and the conditions provided for in that Regulation normally ensure that vertical agreements for new motor vehicle distribution comply with the requirements of Article 101(3) of the Treaty. Therefore, such agreements should benefit from the exemption granted by Regulation (EC) No XXX/2010, subject to all the conditions provided for therein.
- (11) As regards agreements for the distribution of spare parts and for repair and maintenance services, certain specific characteristics of the motor vehicle aftermarket should be taken into account. In particular, the experience acquired by the Commission in applying Regulation (EC) No 1400/2002 shows that price increases for individual repair jobs are only partially reflected in increased reliability of modern cars and lengthening of service intervals. These latter trends are linked to technological evolution and to the increasing complexity and reliability of automotive components that the vehicle manufacturers purchase from original equipment suppliers. Such suppliers sell their products as spare parts in the aftermarket both through the vehicle manufacturers' authorised repair networks and through independent channels, thereby representing an important competitive force in the automotive aftermarket. The costs borne on average by European consumers for automotive repair and maintenance services represent a very high proportion of total consumer expenditure on motor vehicles.
- (12) Competitive conditions in the motor vehicle aftermarket have also a direct bearing on public safety, in that vehicles may be driven in an unsafe manner if they have been repaired incorrectly, as well as on public health and the environment, due to emissions of carbon dioxide and other pollutants that require regular vehicle maintenance.
- (13) Insofar as a separate aftermarket can be defined, effective competition on the markets for the purchase and sale of spare parts, as well as for the provision of repair and maintenance services for motor vehicles, depends on the degree of competitive interaction between authorised repairers operating within repair networks established directly or indirectly by vehicle manufacturers, as well as between the members of such networks and independent operators, including independent spare parts suppliers and repairers.
- (14) Having regard to those specificities, the rules in Regulation (EC) No XXX/2010 are necessary but not sufficient to ensure that the benefit of the exemption is reserved only to those vertical agreements for the distribution of spare parts and for repair and maintenance services for which it can be assumed with sufficient certainty that the conditions of Article 101(3) of the Treaty are satisfied.
- (15) Therefore, vertical agreements for the distribution of spare parts and for repair and maintenance services should benefit from block exemption only if, in addition to the conditions for exemption set out in Regulation (EC) No XXX/2010, they comply with

stricter requirements concerning certain types of severe restrictions of competition that may limit the supply of spare parts in the automotive aftermarket.

- (16) In particular, the benefit of the block exemption should not be granted to agreements that restrict the sale of spare parts by members of the selective distribution system of a vehicle manufacturer to independent repairers, which use them for the provision of repair or maintenance services. Without access to such spare parts, independent repairers would not be able to compete effectively with authorised repairers, since they could not provide consumers with good quality services which contributed to the safe and reliable functioning of motor vehicles.
- (17) Moreover, in order to ensure effective competition on the repair and maintenance markets and to allow repairers to offer end users competing spare parts, the exemption should not cover vertical agreements which, although they comply with Regulation No XXX/2010, nonetheless restrict the ability of a producer of spare parts to sell such parts to authorised repairers within the distribution system of a vehicle manufacturer, independent distributors of spare parts, independent repairers or end users. This does not affect spare part producers' liability under civil law, or the ability of vehicle manufacturers to require the authorised repairers within their distribution system to only use spare parts that match the quality of the components used for the assembly of a certain motor vehicle. Moreover, in view of the vehicle manufacturers' direct contractual involvement in repairs under warranty, free servicing, and recall operations, agreements containing obligations on authorised repairers to use only spare parts supplied by the vehicle manufacturer for these repairs should be covered by the exemption.
- (18) Finally, in order to allow authorised and independent repairers and end users to identify the manufacturer of motor vehicle components or of spare parts and to choose between competing spare parts, the exemption should not cover agreements by which a manufacturer of motor vehicles limits the ability of a manufacturer of components or original spare parts to place its trade mark or logo on these parts effectively and in a visible manner.
- (19) In order to allow all operators time to adapt vertical agreements which are compatible with Regulation (EC) No 1400/2002, it is appropriate to extend the period of validity of the provisions of that Regulation relating to vertical agreements for the purchase, sale and resale of new motor vehicles until 31 May 2013. As regards vertical agreements for the distribution of spare parts and for repair and maintenance services, this Regulation should apply from 1 June 2010 so as to continue to ensure adequate protection of competition on the automotive aftermarkets.
- (20) This Regulation is without prejudice to the application of Article 102 of the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1
Definitions

1. For the purposes of this Regulation, the following definitions shall apply:
 - (a) "authorised repairer" means a provider of repair and maintenance services for motor vehicles operating within the distribution system set up by a supplier of motor vehicles;
 - (b) "independent repairer" means a provider of repair and maintenance services for motor vehicles not operating within the distribution system set up by the supplier of the motor vehicles for which it provides repair or maintenance; an authorised repairer within the distribution system of a given supplier shall be deemed to be an independent repairer for the purposes of this Regulation to the extent that he provides repair or maintenance services for motor vehicles in respect of which he is not a member of the respective supplier's distribution system;
 - (c) "motor vehicle" means a self-propelled vehicle intended for use on public roads and having three or more road wheels;
 - (d) "spare parts" means goods which are to be installed in or upon a motor vehicle so as to replace components of that vehicle, including goods such as lubricants which are necessary for the use of a motor vehicle, with the exception of fuel;
 - (e) "selective distribution system" means a distribution system where the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors selected on the basis of specified criteria and where these distributors undertake not to sell such goods or services to unauthorised distributors;
 - (f) "competing undertakings" means actual or potential suppliers in the same product market; the product market includes goods or services which are regarded by the buyer as interchangeable with or substitutable for the contract goods or services, by reason of the products' characteristics, their prices and their intended use.
2. For the purposes of this Regulation, the terms "undertaking", "supplier" and "buyer" shall include their respective connected undertakings.

"Connected undertakings" are:

- (a) undertakings in which a party to the agreement, directly or indirectly:
 - (i) has the power to exercise more than half the voting rights, or
 - (ii) has the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking, or

- (iii) has the right to manage the undertaking's affairs;
- (b) undertakings which directly or indirectly have, over a party to the agreement, the rights or powers listed in (a);
- (c) undertakings in which an undertaking referred to in (b) has, directly or indirectly, the rights or powers listed in (a);
- (d) undertakings in which a party to the agreement together with one or more of the undertakings referred to in (a), (b) or (c), or in which two or more of the latter undertakings, jointly have the rights or powers listed in (a);
- (e) undertakings in which the rights or the powers listed in (a) are jointly held by:
 - (i) parties to the agreement or their respective connected undertakings referred to in (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 (a) to (d) and one or more third parties.

Vertical agreements relating to the purchase, sale or resale of new motor vehicles

Article 2

Prolongation of Regulation (EC) No 1400/2002

Pursuant to Article 101(3) of the Treaty, it is hereby declared that from 1 June 2010 until 31 May 2013, Article 101(1) of the Treaty shall not apply to agreements or concerted practices entered into between two or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell new motor vehicles, provided that the requirements for exemption of Regulation (EC) No 1400/2002 that relate specifically to vertical agreements for the purchase, sale or resale of new vehicles are satisfied.

Article 3

Application of Regulation (EC) No XXX/2010

As of 1 June 2013, vertical agreements relating to the purchase, sale or resale of new motor vehicles shall fall within the scope of Regulation (EC) No XXX/2010.

Vertical agreements relating to the aftermarket

Article 4

Exemption

1. Pursuant to Article 101(3) of the Treaty and subject to the provisions of this Regulation, it is hereby declared that Article 101(1) shall not apply to agreements or concerted practices entered into between two or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may

purchase, sell or resell spare parts for motor vehicles or repair and maintenance services for motor vehicles («vertical agreements»), if those agreements fulfil the requirements for an exemption under Commission Regulation (EC) No xxx/2010 and do not contain any of the hardcore clauses listed in Article 5 of the present Regulation.

This exemption shall apply to the extent that such agreements contain restrictions of competition falling within the scope of Article 101(1) («vertical restraints»).

2. The exemption provided for in paragraph 1 shall apply to vertical agreements entered into between an association of undertakings and its members, or between such an association and its suppliers, only if all its members are retailers of goods and if no individual member of the association, together with its connected undertakings, has a total annual turnover exceeding EUR 50 million. Vertical agreements entered into by such associations shall be covered by this Regulation without prejudice to the application of Article 101 to horizontal agreements concluded between the members of the association or decisions adopted by the association.
3. The exemption provided for in paragraph 1 shall apply to vertical agreements containing provisions which relate to the assignment to the buyer or use by the buyer of intellectual property rights, provided that those provisions do not constitute the primary object of such agreements and are directly related to the use, sale or resale of goods or services by the buyer or its customers. The exemption shall not apply if those provisions contain restrictions of competition, in relation to the contract goods or services, having the same object as vertical restraints which are not exempted under this Regulation.
4. The exemption provided for in paragraph 1 shall not apply to vertical agreements entered into between competing undertakings. However, it shall apply where competing undertakings enter into a non-reciprocal vertical agreement and:
 - (a) the supplier is a manufacturer and a distributor of goods, while the buyer is a distributor and not a competing undertaking at the manufacturing level, or
 - (b) the supplier is a provider of services at several levels of trade, while the buyer provides its goods or services at the retail level and does not provide competing services at the level of trade where it purchases the contract services.

Article 5 *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:

- (a) the restriction of the sales of spare parts for motor vehicles by members of a selective distribution system to independent repairers which use these 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

these goods or services 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 latter'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 6

Monitoring and evaluation report

The Commission shall monitor the operation of this Regulation with a view to drawing a report on its operation not later than 31 May 2018, having regard in particular to the conditions set out in Article 101(3).

Article 7

Period of validity

This Regulation shall enter into force on 1 June 2010.

It shall expire on 31 May 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission