

FIGIEFA Comments on DG Competition discussion paper on the application of Article 82 of the Treaty to exclusionary abuses

30th March 2006

About FIGIEFA

FIGIEFA represents the interests of 28 national trade associations of automotive aftermarket distributors from 22 countries (<http://www.figiefa.org>). FIGIEFA's interest is to maintain free competition in the market for vehicle replacement parts, servicing and repair and to prevent monopolistic restrictions in the automotive aftermarket.

Sector information

Apart from the after-sales channels of vehicle manufacturers and authorised dealers affiliated to them, there is an independent market of motor vehicle servicing, replacement parts and repair. Thus, the automotive aftermarket divides into an independent distribution and repair channel and an "authorised" one (because it is linked to vehicle manufacturers).

It is very important that effective competition in the automotive aftermarket is maintained and not hampered by exclusionary abuses like e.g. tying or bundling arrangements in the subsequent after-sales market. Without the existence of effective competition in the automotive aftermarket, 250 million motorist consumers in the EU would be forced to rely solely on complete provision from the vehicle manufacturer and his sales and repair system and would become "captive consumers". This is why it is of great relevance for FIGIEFA in this context to respond to the Commission's invitation to comment on the discussion paper.

General remark

FIGIEFA welcomes the initiative to illustrate the principles for the Commission's application of Art. 82 EC to exclusionary abuses.

Economic approach

FIGIEFA points out that the economic approach to competition law, which plays an increasingly important role, involves a multitude of criteria. For example, the "as-efficient-competitor-test" described in the discussion paper involves multiple aspects. Analysing these criteria can prove burdensome for companies concerned, especially SMEs. Similarly, it may be difficult for victims to obtain data from the dominant company, e.g. on price calculations. Therefore, the costs involved are an obstacle to actions of private enforcement. The Commission should ensure that the economic approach does not render it more difficult for victims of abusive behaviour to effectively defend their rights.

Methodology

FIGIEFA observes that the discussion paper does not always identify whether a certain methodology is derived from jurisprudence established by the ECJ and CFI, whether it provides for a continuation of generally accepted approaches, or where it delineates new developments.

Sector-specific remarks

§ FIGIEFA is concerned with **rebates and loyalty schemes** offered by certain vehicle manufacturers and importers of motor vehicles to their authorised repairers. FIGIEFA's members have observed cases in which a vehicle manufacturer made rebates on "captive" (monopoly) parts¹ contingent on the purchase of "non-captive" (competitive) parts². Advantageous conditions for 'monopoly' products are only granted by the vehicle manufacturers when products, for which effective competition exists, are purchased as well. Such package deals render it difficult for independent aftermarket operators to compete effectively.

The Commission's guidelines on rebates, tying, bundling and aftermarket should reflect the regulatory framework delineated in Art. 4 of Regulation (EC) No. 1400/2002, which protects the freedom of vehicle manufacturers' authorised repairers to source quality replacement parts from independent distributors and suppliers of their choice, and the freedom of suppliers to market replacement parts to authorised and independent repairers alike.

§ FIGIEFA is also concerned with **package deals** offered by some vehicle manufacturers and importers of motor vehicles. Such packages may consist of a new motor vehicle and any servicing needed during a certain period of time, and include replacement parts needed because of regular wear-and-tear. As the buyer of such a package will need to resort to an authorised repairer rather than an independent workshop, these package deals effectively tie the consumer to the vehicle manufacturer's network of authorised garages, and strengthen the already dominant position enjoyed by most vehicle manufacturers in the servicing market.

Such arrangements may also require the authorised repairer to only use parts supplied by the vehicle manufacturer for any work undertaken in connection with the package deal, for which the consumer paid upfront. The authorised repairer is deprived of the right to source spare parts from an independent parts distributor and supplier of its choice. Accordingly, as a consequence of the package deal, the already dominant position enjoyed by most vehicle manufacturers in the market for replacement parts is strengthened.

The Commission's guidelines on bundling, tying and aftermarket should reflect the regulatory framework delineated in Art. 4 of Regulation (EC) No. 1400/2002, as further described in the Explanatory Brochure on the aforementioned Regulation (e.g. questions 37 and 99), which protects the freedom of consumers to revert to the network of garages of their choice, as well as the freedom of the authorised repairer to source quality replacement parts from independent parts distributors and parts suppliers of their choice.

¹ Captive replacement parts are parts which are exclusively offered by the vehicle manufacturer and for which independents are unable to offer competing products because of i) a *valid* intellectual property right or ii) cases of de facto pressure on the original (OE) equipment supplier to exclusively deliver his product to the vehicle manufacturer's distribution chain and not to the independent aftermarket.

² Competitive replacement parts are parts offered not only by the vehicle manufacturer, but also by a variety of independent parts producers.

Conclusion

From all this, it follows that FIGIEFA strongly supports the idea of developing detailed guidelines for the application of Art. 82 in its entirety, including discriminatory practices. Such guidelines or explanatory brochures are most helpful, and can provide valuable guidance for SMEs and other victims of abusive behaviour. Such guidance is particularly needed in circumstances in which an economic approach to competition law requires a comprehensive, and often costly, analysis conducted on a case-by-case basis. FIGIEFA supports measures furthering the coherence and predictability of decisions taken throughout Europe. Guidelines on the application of Art. 82, in this sense, may contribute to a coherent application of Community law.