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Confédération Européenne des
Associations d'Horlogers-Réparateurs
(CEAHR)

Rue Jacques de Lalaing 4
B- 1040 Brussels
Belgium

Via:

[…]
[…]

Subject: **Case AT.39097 – Watch Repair**
Commission Decision rejecting the complaint
(Please quote this reference in all correspondence)

Dear Sir,

(1) The European Commission (the "Commission") hereby informs you that it has decided to reject the complaint introduced by the Confédération Européenne des Associations d'Horlogers-Réparateurs (European Confederation of Watch & Clock Repairers' Associations, "CEAHR") against the Swatch Group Ltd ("Swatch"), Compagnie Financière Richemont S.A. ("Richemont"), LVMH Moët Hennessy - Louis Vuitton S.A ("LVMH"), Rolex Holding S.A. ("Rolex"), Audemars Piguet Holding S.A. ("Audemars Piguet") and Patek Philippe SA ("Patek Philippe"),[1] pursuant to Article 7(2) of Commission Regulation (EC) 773/2004.[2] The Commission has decided to close as well the proceedings opened on 1 August 2011 with regards to other companies which were not part of CEAHR's complaint, namely Sowind S.A. ("Sowind"), PPR, Breitling Montres, S.A. ("Breitling"), Eberhard & Co. ("Eberhard"), S.A., Cronomar S.A.

[1] CEAHR's complaint of 22 July 2004, pp. 2 and 3.

[2] Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, Official Journal L 123, 27.04.2004, pages 18-24.

("Cronomar"), and Diarsa Alta Relojería Importación, S.L. and Distribuidora Internacional de Alta Relojería, S.A. ("Diarsa") (see paragraph (8) below).

1. THE COMPLAINT

1.1. Procedure

(2) By letter dated 22 July 2004, CEAHR requested the Commission to launch an investigation, pursuant to Articles 101 and 102 of the Treaty on the functioning of the European Union ("TFEU"),[3] into the alleged existence of an anticompetitive agreement or a concerted practice between several watch manufacturers' Groups and the abuse by the latter of a dominant position, both concerning their refusal to continue to supply spare parts to independent watch repairers. The complaint was addressed against the following Groups: Rolex, Richemont, LVMH, Swatch, Patek Philippe and Audemars Piguet.

(3) In its complaint, CEAHR alleged that the refusal at stake was aimed at foreclosing independent watch repairers and has resulted in the restriction of competition on the markets for the repair and maintenance of watches. CEAHR claimed that these practices constitute an abuse of a dominant position on the relevant markets for the supply of spare parts for watches, within the meaning of Article 102 TFEU, and involve the existence of anticompetitive agreements and/or concerted practices, prohibited under Article 101 TFEU. According to CEAHR, the refusal to continue to supply spare parts was notably the consequence of the implementation by the watch manufacturers of selective systems that, in the opinion of CEAHR, are not covered by the Block Exemption Regulation on Vertical Agreements (hereinafter the "Block Exemption Regulation").[4] CEAHR alleged that, even if this Regulation were to apply, the Commission would have to withdraw the benefit of the block exemption, in so far as the conditions set forth in Article 101(3) TFEU are not met.

(4) On 10 July 2008, the Commission adopted a decision pursuant to Article 7(2) of Regulation 773/2004, rejecting the complaint of CEAHR on the grounds that there was insufficient EU interest in continuing the investigation into the alleged infringements (the "2008 rejection decision").[5] In particular, the Commission took the preliminary view that:

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[3] With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102 respectively of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Article 101 and 102 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". Where the meaning remains unchanged, the terminology of the TFEU will be used throughout this Decision.

[4] Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) [EC] to categories of vertical agreements and concerted practices (OJ 1999 L 336, p. 21). As of 1 June 2010, this Regulation has been replaced by Commission Regulation 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 (OJ 2010 L 102, p.1).

[5] Case COMP/E-1/39097 – Watch Repair. Decision C(2008) 3600.

1) The complaint concerned a market or market segment of a limited size, and thus its economic importance was also limited;[6]

2) National competition authorities ("NCAs") and national courts were well placed to pursue the case;[7] and

3) The likelihood of establishing the existence of an infringement of Articles 101 and/or 102 TFEU appeared limited;[8] the Commission took notably into account, in that regard, that, according to its preliminary investigation:

   a. The primary market for luxury and prestige watches and the two related aftermarkets (namely the supply of spare parts and the provision of repair and maintenance services) did not constitute distinct markets and that, on that basis, no dominant position appeared to exist and hence the question of the existence of an abuse was irrelevant;[9] and

   b. It could not be concluded that an anti-competitive agreement or concerted practice existed between the watch manufacturers investigated; furthermore, it was unlikely that the latter's selective distribution systems were not covered by the Block Exemption Regulation.[10]

(5) Hence, the Commission, in its 2008 rejection decision, did not conclude that the companies investigated had not violated EU competition rules: instead, it rejected the complaint for lack of sufficient EU interest in continuing the investigation into the alleged infringements, on the basis, *inter alia*, of the perceived unlikelihood of establishing an infringement of Articles 101 and/or 102 TFEU.[11]

(6) On 24 September 2008, CEAHR brought an action for annulment of the Commission's 2008 rejection decision before the General Court.

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6 See 2008 rejection decision, paragraph 8.

7 See 2008 rejection decision, paragraphs 10 and 46.

8 The Commission took also into account the complexity of the investigation into the alleged infringements, which would have required substantially more resources to further proceed (see 2008 rejection decision, paragraphs 9, 14 and 45).

9 See 2008 rejection decision, paragraphs 12 to 26 and 39 to 42.

10 See 2008 rejection decision, paragraphs 27 to 38.

11 Contrary to what it is claimed in CEAHR's submission of 27 September 2013 (see par. 4, p. 1), the Commission neither definitely concluded that Articles 101 and/or 102 TFEU had not been violated by the practices at stake, nor, *a fortiori*, used such an alleged conclusion as an additional criterion to that of lack of sufficient EU interest in order to reject the complaint. The Commission clearly stated, in effect, that *«the complaint must be rejected for lack of Community interest on grounds derived from limited impact of possible effects of the alleged infringements on the functioning of the common market, complexity of the investigation required and limited likelihood of establishing proof of infringements»* (2008 rejection decision, paragraph 9, emphasis added; see also paragraphs 10, 18 and 45). Note, in that regard, the case law cited in footnote number 64, below.

(7) On 15 December 2010, the General Court annulled the Commission's 2008 rejection decision.[12] In particular, it considered that the Commission was not entitled to conclude, on the basis of the findings of the contested decision, that the provision of repair and maintenance services for watches and the sales of luxury/prestige watches constituted a single relevant market and had thus to be examined together.[13] The General Court found that this manifest error of assessment vitiated the Commission's conclusion concerning the low probability of establishing an infringement of Articles 101 and/or 102 TFEU.[14] The General Court concluded as well that the finding of the Commission that the complaint concerned only one market or a segment of a market of limited size was insufficiently motivated.[15] In addition, the General Court ruled that the fact that the practice complained of existed in at least five Member States and was attributable to undertakings which had their head offices and places of production outside of the EU suggested that action by the Commission could be more effective than various actions at national level.[16]

(8) Following the General Court's judgement, the Commission opened proceedings, on 1 August 2011, against the watch manufacturers' groups that were the subject of the complaint (namely Rolex, Richemont, LVMH, Swatch, Patek Philippe, Audemars Piguet: see paragraphs (1) and (2) above), as well as other undertakings which were subject to an investigation initiated by the Spanish NCA following a complaint from an independent watch repairer regarding similar practices (namely Sowind, Breitling, Eberhard, Cronomar and Diarsa; see paragraph (1) above). The initiation of proceedings by the Commission relieved the Spanish NCA of its competence to apply EU antitrust rules to this case.

(9) Subsequently, the Commission undertook a thorough investigation of the sector of the provision of repair and maintenance services of watches and related activities. The Commission focused its investigation on watches that are generally worth repairing and maintaining,[17] which, for the purposes of the investigation, were identified as those sold at a retail price above EUR 1 000 (see paragraph (81) below). For the sake of brevity, this decision generally refers to watches sold at a retail price above EUR 1 000 as "prestige watches".

(10) Given the large number of companies involved and their different commercial practices across companies and Member States, the Commission focused its investigation on the

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12 Judgement of 15 December 2010, CEAHR v Commission, T-427/08, ECR, EU:T:2010:517.

13 Judgment in CEAHR v Commission, EU:T:2010:517, paragraphs 78 to 119.

14 Judgment in CEAHR v Commission, EU:T:2010:517, paragraphs 120 to 121, 133 to 142 and 149 to 152.

15 Judgment in CEAHR v Commission, EU:T:2010:517, paragraphs 30 to 49. The Court held as well, in that regard, that the Commission had also infringed its duty to take into consideration all the relevant matters of law and of fact and to consider attentively all of those matters brought to its attention (*ibid*, paragraph 49).

16 Judgment in CEAHR v Commission, EU:T:2010:517, paragraphs 173 to 176. The General Court determined, however, that the Commission did not err in finding that the watches concerned by the complaint were 'luxury/prestige watches' and confirmed the finding of the Commission that the applicant did not provide any evidence of a suspected agreement or concerted practice between the watch manufacturers seeking to eliminate independent repairers from the markets for the repair and maintenance of watches: *ibid*, paragraphs 73 to 74 and 130 to 132, respectively.

17 See footnote number 88 below.

activities of the main manufacturer groups, namely Rolex, Richemont, LVMH and Swatch, which together represent a majority share of the relevant markets (see paragraph (65) below).

(11) On 18 March and on 7 and 8 April 2011, the Commission addressed requests for information, under Article 18 of Regulation No. 1/2003,[18] to CEAHR and to the Spanish and British associations of independent watch repairers (*Asociación Nacional de profesionales relojeros reparadores* and *The British Horological Institute Limited*), respectively. On 22 June and 14 December 2012, the Commission organised conference calls with the German association of independent repairers (*Zentralverband für Uhren, Schmuck und Zeitmesstechnik*) and on 10 and 25 September 2012 with the British association of independent repairers. On 13 September 2012 and on 16 January 2013, the Commission held conference calls with the French association of independent repairers (*Fédération Nationale Artisanale des Métiers d'Art et de Création du Bijou et de l'Horlogerie*, FNAMAC). On 20 September 2012 the Commission had a conference call with the Spanish association. On 25 July 2012, the Commission met with representatives of the German association of independent repairers. On 18 December 2012, the Commission had a joint meeting with the representatives of CEAHR and of the Spanish association of independent watch repairers, at the premises of DG Competition in Brussels. These contacts served notably to obtain detailed information on the functioning of the watch repair markets in several Member States, as well as on the activities of independent watch repairers.[19]

(12) The Commission also held contacts with independent repairers on an individual basis. In May 2012, the Commission addressed requests for information to 64 independent repairers active in France, Germany, Italy, Spain and the UK. The Commission also held conference calls with some independent repairers on 4 May 2012. Thereby, the Commission collected further information on the activities of independent watch repairers and the range of repair services that they provide.

(13) On 23 November 2011, the Commission addressed requests for information to Rolex, Richemont, LVMH, Swatch, Patek Philippe, PPR, Eberhard and Audemars, to which these companies responded in writing in February 2012. These responses generally required some further clarifications. On 5 October 2012, the Commission addressed additional requests for information to Rolex, LVMH and Swatch. On 19 October 2012, the Commission addressed a new request for information to these three groups. On 22 November 2012, the Commission sent LVMH a further request for information. On 14 December 2012, the Commission addressed a complementary request for information to Rolex. Finally, on 18 January 2013, the Commission sent an additional request for information to LVMH. These requests for information mainly focused on the selective distribution and repair systems established by the watch manufacturers and on the

[18] 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, 04.01.2003, p. 1).

[19] In particular, these national associations outlined the obstacles encountered by independent watch repairers to provide repair services to consumers, following the discontinuation by certain watch manufacturers of the supply of spare parts. These contacts also provided the Commission with an opportunity to explain the scope of its investigation to the national associations.

commercial relationships between watch manufacturers and third-party manufacturers of spare parts.

(14) The Commission also held several meetings and conference calls with watch manufacturers. In particular, the Commission met Swatch on 16 May 2011, 18 October 2011 and 16 May 2012, Richemont on 6 July and 6 November 2012 and 19 February and 23 July 2013, and Rolex on 8 July 2013. The Commission also met LVMH on 9 January and 18 July 2013. In addition, the Commission held conference calls with LVMH on 13, 19 and 26 April 2012, with Richemont on 6 June 2012, with Rolex on 14 May 2012 and with Swatch on 4 September 2012. The Commission also held a call with Sellita, a spare parts' producer, on 5 November 2012, so as to improve its understanding on the production, sale and distribution of spare parts. Through these contacts, the Commission examined in more detail the activities and operations of these different companies.[20]

(15) Moreover, on 24 November 2011, the Commission visited the repair facilities of three independent watch repairers in Brussels. The Commission also visited the repair facilities of Jaeger-LeCoultre, on 11 November 2011, and of LVMH, on 23 January 2013. These visits allowed the Commission to better understand the procedures for the repair and maintenance of watches.

(16) On 11 March 2011, 29 August 2012 and 29 January 2013, the Commission met with CEAHR to discuss the progress made in the investigation and the main aspects of the case. These meetings were preceded and followed by several written communications with CEAHR.

(17) By letter registered on 5 July 2013, CEAHR called upon the Commission to act in the present case within a period of two months, pursuant to Article 265 TFEU. In particular, CEAHR requested the Commission to take the necessary measures to comply with the judgment of the General Court.

(18) On 29 July 2013, the Commission informed CEAHR, in a State of Play Meeting, that, after careful examination of the case, it had come to the preliminary conclusion that it should not further pursue its investigation[21].

(19) By letter dated 3 September 2013, the Commission formally informed CEAHR of its intention to reject the complaint, pursuant to Article 7(1) of Regulation 773/2004.

(20) In response, CEAHR made additional observations by letter dated 27 September 2013. CEAHR maintained its position that, by discontinuing the delivery of spare parts, watch manufacturers infringed Article 102 TFEU. In particular, CEAHR stated that the Commission had simply accepted the statements of the watch manufacturers concerning the reasons for interrupting the delivery of spare parts to the independent repairers, such

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[20] These discussions aimed notably at obtaining additional information, as well as clarifications with regard to a number of issues (e.g. update on the selective repair systems that had been set up by the watch manufacturers for repair and maintenance as well as information on the types of repairs undertaken by authorized repairers). In addition, information was provided on the types of repairs undertaken by in-house repair centres and on the type of repairs that may still be undertaken by independent repairers.

[21] In accordance to the Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU (OJ C 308, 20.10.2011, p. 6): see paragraph 139.

as brand image, quality of repairs and danger of counterfeiting. It also pointed out that the vast majority of watches above EUR 1000 are not prestige watches, but quite simple watches. Hence, the watch manufacturers should not refuse to continue to supply spare parts to the independent repairers, who have the necessary qualifications to repair them. Furthermore, CEAHR claimed that the manufacturers aimed to reserve the aftermarkets for themselves, as the agreements between them and the selected repairers, as well as with third party manufacturers of spare parts, form a single system whose purpose is to eliminate independent repairers. In this context, CEAHR argued that the authorized repairers are in fact and in law "part" of the watch manufacturers and do not exert competitive pressure on the market because they are bound by recommended prices.[22]

(21) Similarly, CEAHR maintained its main allegation with regard to the existence of anticompetitive practices in violation of Article 101 TFEU. In particular, it alleged that there exists a concerted practice between the watch manufacturers aimed at coordinating their action towards the elimination of independent watch repairers. In this context, CEAHR referred to the letters sent by the watch manufacturers discontinuing the supply of spare parts to independent repairers, which, according to CEAHR, were very similar and almost simultaneous. CEAHR alleged that the Commission has not investigated this matter afresh and has therefore arrived at the wrong conclusion. Also, CEAHR reiterated its view that there is a parallel between the present case and the rules applicable in the motor vehicle sector and disagreed with the Commission's position that the characteristics of the watches sector differ from those of the car sector. CEAHR argued that a fair comparison would have been between luxury watches and luxury cars.[23]

(22) In the meantime, by letter dated 16 September 2013, Richemont had provided further explanations on its approach regarding the supply of spare parts for prestige watches manufactured by it, particularly to repairers who are not also authorized retailers.

(23) On 30 October 2013, and following your request by letter of 27 September 2013, the Commission provided the CEAHR with the non-confidential documents on which it based its provisional assessment under Article 7(1) of Regulation No. 773/2004, as well as the latest submission of Richemont, mentioned in the previous paragraph.

(24) On 18 and 19 November 2013, respectively, Rolex and Swatch provided additional submissions, regarding the functioning of their corresponding selective systems for repair and maintenance of watches. Non-confidential versions of these submissions were subsequently provided to CEAHR.

(25) On 16 January 2014, the Commission informed CEAHR, in a State of Play Meeting, of its preliminary assessment of CEAHR's observations of 27 September 2013. A subsequent meeting took place on 5 March 2014. During those meetings, the case was discussed and the Commission informed CEAHR that its written observations did not contain new significant elements that would advise the Commission to change its preliminary position.

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[22] CEAHR's submission of 27 September 2013, pp. 1, 3, 7, 9-12, 15-16 and 18-20.

[23] CEAHR's submission of 27 September 2013, pp. 5, 14, 17 and 19.

1.2. The Parties

(25) The complainant, *CEAHR*, is a non-profit making association consisting of nine national associations established in eight Member States and representing the interests of independent watch repairers.[24]

(26) As indicated in paragraphs (1) and (2) above, the complaint is brought against Swatch, Richemont, LVMH, Rolex, Audemars Piguet and Patek Philippe.

(27) *Swatch* is an international group that manufactures watches in all price segments. Through its subsidiary ETA SA Manufacture Horlogère Suisse ("ETA"), it is also the largest producer of spare parts and movements for watches. The Swatch group achieved a worldwide turnover of roughly CHF 8 143 million in 2012.[25] The main brands under which Swatch sells watches priced over EUR 1 000 are: Breguet, Blancpain, Glashütte-Original, Longines, Léon Hatot, Jaquet-Droz, Omega and Tiffany & Co.

(28) *Richemont* has its headquarters in Switzerland and produces luxury products, including watches. Richemont's worldwide turnover for 2012 was EUR 8 867 million, of which some 26% related to sales of watches[26]. The main brands under which Richemont sells prestige watches are: Cartier, Jaeger-LeCoultre, IWC and Officine Panerai. These brands account for roughly 80% of the group's sales of watches priced above EUR 1 000 in the EEA. The remaining 20% are shared between several smaller brands.

(29) The France-based *LVMH* group also produces luxury products, including prestige watches. LVMH's worldwide turnover in 2012 was EUR 28 103 million, of which some 10% concerned sales of watches and jewellery[27]. The main brands under which LVMH sells its watches are: Tag Heuer, Bulgari, Hublot, Zenith, Dior and Chaumet. Tag Heuer accounts for almost half of the group's sales of watches.

(30) *Rolex* is a Swiss manufacturer of watches. It sells its watches under two brands: Rolex and Tudor. Tudor accounts, however, for a small part of the group's sales of watches.

(31) *Audemars Piguet* is a Swiss manufacturer of watches. It specialises in exclusive prestige watches and in complex mechanical movements. Its main activity is the manufacture, distribution, sale and repair of prestige watches. Its only brand is Audemars Piquet and its production is limited.

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[24] *Association Nationale des Horlogers-Réparateurs / Nationale Vereniging van Uurwerkmakers-Herstellers* (Belgium), *The British Horological Institute Limited* (UK), *Asociacion Nacional de profesionales relojeros reparadores* (Spain), *Fédération Nationale Artisanale des Métiers d'Art et de Création du Bijou et de l'Horlogerie* (FNAMAC, France), *Bundesinnung der Gold- und Silberschmiede, Juweliere und Uhrmacher* (Austria), *Nederlandse Juweliers en Uurwerkenbranche* (Netherlands), *CNA Nazionale and Confartigianato-Imprese, Confederazione Generale dell' Artigianato e delle Imprese* (Italy) and *Zentralverband für Uhren, Schmuck und Zeitmesstechnik* (Germany): see: http://www.ceahr.org/index.php?cat=membres&lg=en. These national associations have as their members small and medium-sized enterprises engaged in maintenance, repair and restoration of clocks and watches: see CEAHR's complaint of 22 July 2004, p. 2.

[25] Swatch Group annual report 2012.

[26] Richemont annual report and accounts for 2012.

[27] LVMH annual report for 2012.

(32) *Patek Philippe* is also a Swiss manufacturer of watches. It designs, manufactures and distributes prestige watches and movements, including complicated mechanical watches.

(33) As indicated at paragraphs (1) and (8) above, the Commission also opened proceedings with regards to Breitling, Sowind, PPR, Eberhard, Cronomar and Diarsa. *Breitling* has its headquarters in Switzerland, where it produces luxury fashion accessories and prestige watches, including movements. It also carries out distribution activities and repair and maintenance services for its watches. *Sowind* is a Swiss manufacturer of prestige watches that also produces complicated movements. It sells its watches under two brands: Girard-Perregaux and JeanRichard. *PPR* is an international group that produces luxury products mainly in the area of clothing and fashion accessories, but also prestige watches under the brands of Boucheron and Gucci. *Eberhard* is a Swiss company that exclusively operates in the manufacture and sale of watches. *Cronomar* is a distributor of watches of the brands Breitling and Oris in Spain. Finally, *Diarsa* is a company that imports and distributes prestige watches into Spain, for brands such as Parmigiani and Hublot.

1.3. Main allegations of CEAHR

(34) In its complaint and subsequent written submissions, CEAHR alleges that the refusal by the watch manufacturers to continue to supply spare parts to independent watch repairers violates Articles 102 and 101 TFEU.

(35) The main allegations of CEAHR are summarised below.

1.3.1. Market definition

(36) CEAHR indicates that watch repair is limited to watches of a certain value. According to CEAHR, while cheap watches are simply replaced, expensive watches are valued by their owners and brought for repair when they stop working.[28]

(37) CEAHR submits that the sale of watches and the provision of repair and maintenance services and the supply of spare parts do not belong to the same market. CEAHR considers, in particular, that the possibility that the customer switches to another watch in case of an increase in the price of repair services is merely theoretical, since a consumer that has purchased a watch is not likely to discard it, and therefore does not support the existence of a single market comprising both sales of primary products and aftermarket activities.[29]

(25) CEAHR considers that the market for repair and maintenance services and the market for spare parts constitute separate relevant markets. CEAHR supports the finding of a separate market for repair and maintenance services on the existence of independent watch repairers that are not retailers of watches.[30] CEAHR further takes the view that there is limited substitutability between spare parts belonging to different brands. [31]

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[28] CEAHR's complaint of 22 July 2004, p. 5.

[29] CEAHR's submission of 31 January 2008, p. 16.

[30] CEAHR's submission of 31 January 2008, p. 6.

[31] CEAHR's submission of 31 January 2008, p. 16; see also CEAHR's submission of 27 September 2013, p. 3 ("*[E]ach Swiss watch producer has a monopoly on its spare parts"*).

1.3.2. The alleged violation of Article 102 TFEU

(38) CEAHR alleges that the watch manufacturers hold single and collective dominant positions on the relevant markets. First, CEAHR argues that some watch manufacturers possess a single dominant position on the market for spare parts.[32] Second, it also alleges that the watch manufacturers hold a collective dominant position resulting from a number of commercial links. [33]

(39) According to CEAHR, the refusal by watch manufacturers to continue to supply spare parts to independent repairers amounts to an abuse of their respective dominant positions on the markets for spare parts for their watches and is not objectively justified. In particular, CEAHR claims that watch manufacturers suddenly discontinued previous commercial practices without invoking a single reason for the interruption of supplies. CEAHR submits that, contrary to the reasons subsequently invoked by the watch manufacturers for interrupting the delivery (such as brand image, quality of repairs and danger of counterfeiting), the vast majority of watches above EUR 1 000 are not really prestige watches, but rather simple watches. CEAHR therefore submits that watch manufacturers should not refuse to continue to supply spare parts to the independent repairers, who have the necessary qualifications to repair them.[34]

(40) In that regard, CEAHR further argues that the watch manufacturers are reserving the repair and maintenance market for themselves and that these practices result in the foreclosure of independent repairers. CEAHR claims that original spare parts are objectively necessary to be able to compete effectively on the repair market.[35] CEAHR indicates that, previously, the repair and maintenance market was operated mostly by independent repairers and, because of the discontinuance of the supply of spare parts, it was taken over by the watch manufacturers.[36] In this context, CEAHR argues that the authorized repairers are in fact and in law "part" of the watch manufacturers Groups and do not exert competitive pressure on the watch manufacturers, because they are bound by recommended prices established by the latter.[37] CEAHR further claims that repair and maintenance services are a source of profit for the watch manufacturers and that they want to secure it by eliminating all competition in that market (i.e. from independent repairers), to the detriment of consumers.[38]

(41) To sum up, CEAHR maintains that each watch manufacturer has a monopoly on its spare parts and that, by discontinuing the delivery of such spare parts to independent repairers, these manufacturers have infringed Article 102 TFEU.[39]

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32 CEAHR's submission of 20 July 2005, p. 20.

33 CEAHR's complaint of 22 July 2004, p. 9. CEAHR's submission of 20 July 2005, p. 21.

34 CEAHR's submission of 27 September 2013, pp. 7, 16 and 19.

35 CEAHR's submission of 28 November 2011, p. 4.

36 CEAHR's submission of 31 January 2008, p. 6.

37 CEAHR's submission of 27 September 2013, pp. 9, 11 and 12.

38 CEAHR's submission of 31 January 2008, p. 11.

39 CEAHR's submission of 27 September 2013, p. 3.

1.3.3. The alleged violation of Article 101 TFEU

(42) CEAHR brings forward several allegations of anticompetitive practices that would infringe Article 101 TFEU.

(43) First, CEAHR alleges the existence of an agreement or concerted practice between the watch manufacturers aimed at coordinating their action for the purpose of eliminating independent watch repairers. CEAHR claims that the watch manufacturers introduced the same policy of refusal to continue to supply spare parts practically at the same time.[40] It claims that this was a common strategy of the watch manufacturers aimed at eliminating competition on the repair and maintenance market from independent repairers.[41] In this context, CEAHR refers to the letters sent by the watch manufacturers discontinuing the supply of spare parts to independent repairers, which would be very similar, provide no reason to that end and would have been sent within a short time span of a few years. CEAHR alleges that the Commission has not investigated this matter afresh and has therefore arrived at the wrong conclusion.[42]

(44) Second, CEAHR indicates that the watch manufacturers have introduced selective systems for the distribution and repair of watches[43] that are not be covered by the Block Exemption Regulation for various reasons:

1) The authorised repairer is restricted in his ability to set the price of the repair service;[44]

2) The authorised repairer is restricted in his ability to sell spare parts to independent repairers;[45] and

3) The respective market share of each of the watch manufacturers in the market for spare parts exceeds the 30% threshold provided in the Block Exemption Regulation to benefit from the exemption.[46]

(45) CEAHR further submits that, even if the Block Exemption Regulation were to apply, the Commission should withdraw the benefit of the exemption based on the fact that the conditions set forth in Article 101(3) TFEU are not met. In particular, it claims that:

1) There is no improvement of the production or distribution of goods (quite on the contrary, if a consumer can no longer have his watch repaired by a competent repairer it might think twice before buying such a watch);

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40 CEAHR's complaint of 22 July 2004, p. 4.

41 CEAHR's complaint of 22 July 2004, p. 5. CEAHR's submission of 31 January 2008, p. 17.

42 CEAHR's submission of 27 September 2013, pp. 5, 14 and 19.

43 Regulations 2790/1999 and 330/2010 (see footnote nº 4).

44 CEAHR's complaint of 22 July 2004, p. 6.

45 CEAHR's complaint of 22 July 2004, p. 6. CEAHR refers, in particular, to Article 4(b) of Regulation 2790/99.

46 CEAHR's complaint of 22 July 2004, pp. 7 and 8. CEAHR's submission of 20 July 2005, p. 32.

2) There is no promotion of technical and economic progress (because independent repairers do not have access to training provided by the watch manufacturers and to spare parts, independent repairers are disappearing);[47] and

3) There is no benefit for consumers (since counterfeiting is not a reliable justification and it would be in any case for the manufacturers to show that consumers get a fair share of the benefit).[48]

(46) In that regard, CEAHR also considers that the bundle of selective repair systems implemented by the various watch manufacturers has the cumulative effect of parallel networks of similar vertical restraints denying access to the repair and maintenance market to independent repairers.[49]

(26) CEAHR also submits that there is a parallel between the present case and the rules applicable in the motor vehicle sector and disagrees with the Commission's position that the characteristics of the watches sector differ from those of the car sector. CEAHR argues that a fair comparison would have been between luxury watches and luxury cars and that the Commission had failed to demonstrate that there exists an essential difference between luxury/prestige watches, on the one hand, and luxury/prestige cars, on the other.[50]

(47) Third, CEAHR explains that watch manufacturers source spare parts from third-party companies, with whom they establish exclusivity agreements that restrict the ability of the latter to supply spare parts to independent repairers.[51]

(48) To sum up, CEAHR claims that watch manufacturers aim to reserve the aftermarkets for themselves, as the agreements between them and the selected repairers, as well as with third party manufacturers of spare parts, form a single system whose purpose is to foreclose independent repairers, in violation of Article 101 TFEU.[52]

1.4. Observations of the undertakings subject to the investigation

(49) In their submissions, the watch manufacturers have maintained that their selective repair systems are necessary to preserve brand image, by ensuring that repair services have high and uniform quality, and to prevent counterfeiting.

(50) Richemont submits that its selective repair system is fully justified and that there is a need to ensure quality control in the repair of technically complex and highly valuable products to protect both the customers as well as its primary business in the sale of watches. In particular, if a repair is badly undertaken, its brand image and reputation

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47 CEAHR's complaint of 22 July 2004, pp. 7-8. CEAHR's submission of 31 January 2008, p. 18.

48 CEAHR's submission of 31 January 2008, pp. 18-19.

49 CEAHR's submission of 20 July 2005, pp. 31-32.

50 CEAHR’s submission of 27 September 2013, p. 17.

51 CEAHR's submission of 20 July 2005, p. 19-20.

52 CEAHR’s submission of 27 September 2013, p. 18.

would suffer because the customer is not able to assess the quality of the repair, in particular in relation to the repair of movements, which are often hidden and not visible or too complex to understand. Therefore, the customer cannot distinguish if the problem results from an inadequate repair service or from the watch itself. Richemont considers that by using selective repair systems, it ensures that the highest quality standards are met, in the interests of the customer. Richemont also indicates that the criteria used for the selection of its authorized repairers include the need for the repairer to have adequate repair premises, to possess the requisite necessary equipment and tools to repair Richemont watches, and to have specific training to that end.[53]

(51) LVMH explains that it does not supply spare parts to independent repairers in order to protect its brand image, preserve the quality of the repair and maintenance services and prevent, to the extent possible, the supply of the spare parts to counterfeiters. In particular, one of its brands, Tag Heuer submits that, in general, it does not supply spare parts to independent repairers, except for straps, and that it appoints its authorised repairers on the basis of selective criteria. According to Tag Heuer, its watches are among the most counterfeited luxury brands and watches around the world. Tag Heuer also states that the main criteria it uses for selecting its authorized repairers include the adequacy of the premises, the attendance to introductory training (which is free of charge apart from transport costs), the carrying out of repairs in a timely manner and the availability of a certain level of repair parts stock in the repair premises.[54] Another LVHM brand, Bulgari, submits that it supplies spare parts only to authorized repairers in order for the services rendered to consumers to be impeccable and also with a view to protecting itself against counterfeit of Bulgari's products. It explains that its brands are registered throughout the world under trademarks and that the internal components of its watches meet the original specifications of the product and are often customized with engravings such as to allow the recognition of the watch as an original product. Bulgari considers that the indiscriminate circulation of spare parts would facilitate the manufacture and circulation of counterfeit products. Bulgari also indicates that its authorized repairers are subject to obligations concerning the purchase and maintenance of an adequate stock of spare parts, the keeping up to date with the necessary training, the carrying out of repairs in a reasonable time frame and the provision of a guarantee on the repair.[55]

(52) Rolex explains that both the high technicality of its watches, which are made up of spare parts and movements that are specific to Rolex, and the need to protect the consumer, require that repair services are only entrusted to watchmakers with strictly controlled capabilities and the necessary tools to intervene in Rolex watches. The main selection criteria for the admission of repairers onto Rolex's repair selection system concern the

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[53] Richemont's submission of 15 February 2012 (non-confidential version of 6 March 2012), in response to questionnaire of 23 November 2011, questions 28.5 (p. 37) and 4 and 5 (pp. 16 and 17).

[54] Tag Heuer's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, questions 28 and 30, p. 16 et seq.

[55] Bulgari's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, questions 28 and 30, p. 15 et seq.

following of appropriate training, as well as possessing the necessary tools and specific equipment to that end.[56]

(53) Swatch pointed out that the nature of watch repair parts requires a selective repair system so as to preserve the watches' quality and proper use. Swatch considers that watches in the higher price segment are valuable and highly complex goods. Therefore their repair and service usually require a high degree of knowledge and craftsmanship. Customers of such watches assume that authorized repairers have the knowledge and expertise to execute the maintenance and repair. The selective distribution network was therefore implemented to ensure a uniformly high quality of repair services as well as a wide availability of these services to end customers. Swatch also indicated that its main selection criteria for a repairer to join its repair network relate to the know-how, the availability of the tools and facilities necessary to effectively carry out repairs and the carrying out of appropriate training, which is generally free.[57]

(54) Audemars Piguet submits that it does not supply spare parts to independent watch repairers so as to preserve the quality of the repair services and to prevent counterfeiting. Audemars Piguet established a selective system for repair because it wanted to ensure that repairers are qualified to repair their watches, since a bad repair can seriously affect the value of the watch or even cause an irreparable damage. Audemars Piguet also points out that the main selection criteria for the admission of repairers onto its repair network include the taking of appropriate introductory basic training, followed by regular on-going training, the quality and security of the repair premises, the availability of adequate general and specific tools and equipment so as to ensure high quality repairs and the availability of a minimum spare parts stock so as to guarantee a proper and timely repair service.[58]

(55) Patek Philippe explains that it does not supply spare parts to independent watch repairers so as to ensure that their repair services have high and uniform quality and to preserve its brand image in the eyes of the consumer. The main selection criteria that it uses for admitting repairers onto its repair network include the following of appropriate training for the repair of its watches, the cost of which is fully covered (including accommodation costs and the payment of an indemnity allowance to the participants) apart from transport costs, and the purchase of general and specific tools and equipment for the purpose of carrying out effective repairs on its watches.

2. THE NEED FOR THE COMMISSION TO SET PRIORITIES

(56) The Commission is unable to pursue every alleged infringement of EU competition law that is brought to its attention. The Commission has limited resources and must therefore

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[56] Rolex's submission of 7 February 2013 (non-confidential version of 28 August 2013), in response to questionnaire of 14 December 2012, question 1.8.1, p. 9.

[57] Swatch's submission of 31 January 2012 (non-confidential version of 29 August 2013), in response to questionnaire of 23 November 2011, questions 28 and 30, p. 46 et seq.; see also Swatch's submission of 19 November 2013 (non-confidential version of 17 December 2013), p. 4.

[58] Audemars Piguet's submission of 22 December 2011 (non-confidential version of 2 April 2012), in response to questionnaire of 23 November 2011, questions 28 and 30, p. 15 et seq.

set priorities, in accordance with the principles set out at points 41 to 45 of the Notice on the handling of complaints.[59]

(57) When deciding which cases to pursue, the Commission takes various factors into account.[60] There is no fixed set of criteria, but the Commission may notably take into consideration whether, on the basis of the information available, it seems likely that further investigation will ultimately result in the finding of an infringement.

(58) In addition, the Commission may consider the scope of the investigation required. If it emerges that an in-depth investigation would be a complex and time-consuming matter and the likelihood of establishing an infringement appears limited, this will weigh against further action by the Commission.[61]

(59) The mere fact that the Commission has dedicated considerable time and resources to an investigation does not preclude a rejection of the complaint for reasons of priority setting (and, in particular, to take into account, in that regard, the scope of any further investigation which would be required to continue with the case). The Commission may take a decision to reject a complaint on that basis even at an advanced stage in the investigation, if that course seems appropriate to it.[62]

(60) The Commission is not obliged to take a final decision as to the existence or non-existence of the alleged infringement.[63] Where the General Court annuls a decision

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[59] OJ C 101, 27.04.2004, p. 65. See also the Commission's Report on Competition Policy 2005, p. 25-27. According to settled case law, the Commission is not required to conduct an investigation in each complaint it receives. The Court has also recognized that the Commission has discretion in its treatment of complaints. In particular, the Commission is entitled to give differing degrees of priority and refer to the European Union interest in order to determine the degree of priority to be applied to the various complaints brought before it. See, *inter alia*, Judgment of 18 September 1992, Automec v Commission, T-24/90, EU:T:1992:97, paragraphs 76, 77 and 85; Judgment in Ufex v Commission, C-119/97 P, EU:C:1999:116, paragraph 88; Judgment in EFIM v Commission, C-56/12 P, EU:C:2013:575, paragraphs 72 and 83; and Judgment of 26 January 2005, Laurent Piau v Commission, T-193/02, ECR, EU:T:2005:22, paragraph 44.

[60] The Court has held that, in assessing the EU interest as regards the continuation of the investigation of a case, the Commission may, in particular, balance (i) the significance of the alleged infringement in view of the functioning of the internal market, (ii) the probability of establishing the existence of the infringement and (iii) the scope of the investigation required: see Judgment in Automec v Commission, EU:T:1992:97, paragraph 86. However, in view of the fact that the assessment of the EU interest raised by a complaint depends on the circumstances of each case, the number of criteria of assessment to which the Commission may refer should not be limited nor, conversely, should it be required to have recourse exclusively to certain criteria: see Judgment in Ufex v Commission EU:C:1999:116, paragraph 79, and Judgment in International Express Carriers Conference (IECC) v Commission, C-449/98 P, EU:C:2001:275, paragraph 46. Furthermore, where appropriate, the Commission may give priority to a single criterion for assessing the European Union interest: see Judgment in IECC v Commission, EU:C:2001:275, paragraphs 45-47; Judgment in International Express Carriers Conference (IECC) v Commission, C-450/98 P, EU:C:2001:276, paragraphs 57-59; and Judgment in EFIM, v Commission, EU:C:2013:575, paragraph 85.

[61] Judgment of 11 July 2013, Belgische Vereniging van handelaars in- en uitvoerders geslepen diamant (BVGD) v Commission, T-104/07 and T-339/08, ECR, EU:T:2013:366 paragraph 218.

[62] Judgment of 16 September 1998, IECC v Commission, T-110/95, ECR, EU:T:1998:214, paragraphs 48 and 49.

[63] Judgment in Ufex v Commission EU:C:1999:116, paragraph 87; Judgment in EFIM v Commission EU:C:2013:575, paragraphs 57 and 82; Judgment in BVGD v Commission, EU:T:2013:366, paragraphs 168 and 211. According to the case law, the Commission has broad discretion as regards the treatment of complaints under the EU competition rules: see Judgment in Ufex v Commission EU:C:1999:116, paragraphs 88 and 89, and Judgment in Laurent Piau v Commission, EU:T:2005:22, paragraph 44.

rejecting a complaint, this annulment does not entail a finding by the Court that the practices or conduct at stake infringe Article 101 and/or 102 TFEU.[64] Where its rejection decision has been annulled, the Commission has the duty to re-examine the complaint;[65] it is not required, however, to take a decision establishing the alleged infringement.

3. ASSESSMENT OF YOUR COMPLAINT

(61) In its letter of 3 September 2013 pursuant to Article 7(1) of Regulation 773/2004, the Commission indicated that, after careful examination of the factual and legal elements put forward by CEAHR, it intended to reject the complaint. The Commission considers that the additional allegations and information provided by CEAHR, notably in its submission of 27 September 2013, do not bring forward new elements which would advise to review its preliminary assessment.

(62) The Commission has therefore decided not to conduct a further in-depth investigation into your claims, for the reasons set out below.

3.1. The likelihood of establishing the existence of an infringement

(63) The likelihood of establishing the existence of an infringement of Articles 101 and/or 102 TFEU in this case appears limited.

3.1.1. Background: The Relevant Sectors

(64) Before examining CEAHR's allegations regarding the definition of the relevant markets and the alleged infringements of Articles 101 and 102 TFEU, this section will succinctly present some of the main features of the sectors (directly or indirectly) involved in the

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[64] According to settled case law, a decision to reject a complaint on the ground of a lack of EU interest does not definitively rule on the question of whether or not there is an infringement of Article 101 and/or Article 102 TFEU, even where the Commission has assessed the facts on the basis of those articles (Judgment of 23 November 2011, Jones and Others v Commission, T-320/07, ECR, EU:T:2011:686, paragraphs 112 to 114). It follows that the obligation of the Commission to take into consideration all the relevant matters of law and of fact in order to decide on what action to take in response to a complaint relates, in that scenario, not to the constituent elements of an infringement of the said Articles 101 and/or Article 102, but to the matters relevant to the test used in order to conclude that there was an insufficient EU interest (see Judgment in BVGD v Commission, EU:T:2013:366, paragraph 211). It shall also be noted, in that regard, that the review by the Courts of the European Union of the Commission's exercise of the discretion conferred on it in dealing with complaints must not lead them to substitute their assessment of the Community interest with that of the Commission (see Judgment in BVGD v Commission, EU:T:2013:366, paragraph 219).

[65] According to Article 266 TFEU, where one of its decisions has been declared void, the Commission has to take the necessary measures to comply with the judgment of the Court of Justice. Contrary to CEAHR's claim, the annulment by the General Court of the 2008 rejection decision does not automatically impose an obligation on the Commission to require the watch manufacturers to reinstate the delivery of spare parts to independent watch repairers (see CEAHR's submission of 28 November 2011, pp. 1 and 4); instead, the Commission has to re-examine CEAHR's complaint, in the light of the considerations expressed by the General Court in its judgment. See, in that regard, the case law cited in footnote number 64 above. The General Court has consistently held that it has no jurisdiction to issue directions to the Community institutions in connection with an action for annulment (see e.g. Judgment of 12 January 1995, VIHO Europe BV v Commission, T-102/92, ECR, EU:T:1995:3, paragraph 28). Finally, it should also be noted that, contrary to CEAHR's allegation (e.g. submission of 27 September 2013, p. 4), the Commission has fully taken into account the findings of the General Court regarding the errors of assessment identified in the 2008 rejection decision, for the purposes of the reassessment of CEAHR's complaint.

complaint, namely the manufacture and sale of prestige watches, the provision of repair and maintenance services for those watches and the supply of spare parts for prestige watches.

3.1.1.1. Manufacture and sale of prestige watches

(65) The main manufacturers of prestige watches (see paragraph (81) below) are Rolex, Richemont and LVMH. These manufacturers together hold more than 50% of the EEA sales of prestige watches in 2010.[66] The market shares of these groups have remained stable since 2006. Other important manufacturers are Patek Philippe, Swatch, Audemars and Breitling, which together represent a market share below 30% (none of them has a market share of over 10% individually).

(66) In the course of its investigation, the Commission has established that the market for prestige watches appears to be competitive.[67] The number of manufacturers of prestige watches remains high[68] despite recent acquisitions by the main watch manufacturers.[69] The competition in this market is also reflected in the development of production capacity and in the significant investments in marketing made by the watch manufacturers.

(67) The competitiveness of this market is further evidenced by recent new entries. Recent years have seen a number of fashion brands like Chanel, Calvin Klein or Gucci entering the market for prestige watches.[70] Moreover, several new watch brands have been created by entrepreneurial watchmakers.[71] The competition in this market also manifests itself

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66 The watch manufacturers base their estimates of the size of the EEA market for watches on data from the Fédération Horlogère Suisse (FHS), which gives information on exports from Switzerland to the EEA. Certain adjustments to the information are, however, necessary and the watch manufacturers have provided different estimates for the EEA market size. Based on the parties' submissions, the size of the market for sales of prestige watches in 2010 was roughly EUR 3 000 million and the market shares were calculated using that figure. Given the price differences across watch brands, the market shares of the watch manufacturers were calculated using sales data expressed in value. The data submitted by the watch manufacturers contain, however, some shortcomings: (i) many brands provide sales figures in value that correspond to the ex-factory prices, meaning the price paid by the retailer (lower than the retail price paid by the final customer), and (ii) some brands provided sales data according to their own respective definition of prestige watches / watches worth repairing, which may differ to the one used in this decision (e.g. data for watches priced above EUR 600).

67 In its submission of 27 September 2013, CEAHR does not seem to challenge the conclusion that the market for prestige watches appears to be competitive, but claims that the groups of watch manufacturers coordinate their action *«outside that market»*, namely regarding the provision of repair and maintenance services and supply of spare parts (see pages 4 and 5). This claim is examined in Section 3.1.4 below.

68 For example, the Federation of the Swiss Watch Industry has registered over 500 manufacturers (including all types of watches). Even if some of these manufacturers produce cheap watches, there are still a large number of small watch manufacturers that together represent roughly 20% of the sales of prestige watches.

69 LVMH acquired several independent brands such as Tag Heuer in 1999, Hublot in 2008 and Bulgari in 2011. Richemont acquired as well several brands, including the LMH (Les Manufactures Horlogères) group in 2000 that controlled the brands IWC, Jaeger-LeCoultre and Lange & Sohne. More recently, Richemont acquired Roger Dubuis in 2008. Swatch also acquired numerous watch brands, including Breguet in 1999.

70 Richemont's submission of 15 February 2012 (non-confidential version of 6 March 2012), in response to questionnaire of 23 November 2011, section C.2 of the Introduction, pp. 9-10.

71 Richemont's submission of 15 February 2012 (non-confidential version of 6 March 2012), in response to questionnaire of 23 November 2011, section C.2 of the Introduction, pp. 9-10.

through the increasing number of new products launched each year, and the increasing complexity of the models.[72]

3.1.1.2. Repair and Maintenance Services of prestige watches

(68) The main manufacturers of prestige watches have established selective systems for the provision of repair and maintenance services ("selective repair systems") in which authorised repairers are selected on the basis of specific criteria.[73] These criteria mostly relate to the training, experience and equipment of the repairer and the suitability of the premises. The introduction of these selective repair systems took place over the past fifteen years, although Rolex introduced such a selective system several decades ago and, conversely, Swatch did it only in the last few years.[74] Some small watch manufacturers, such as Eberhard, have not set up selective repair systems and still provide spare parts to independent repairers**.**[75] Moreover, some watch manufacturers still use the services of independent repairers, mostly for the repair of old watches.

(69) In these selective repair systems, the watch manufacturers, commonly, give access to the spare parts, brand-specific tools and technical information related to the repair and maintenance of watches of their respective brands only to their authorised repairers. The latter are generally contractually prevented from reselling such spare parts outside the selective system (i.e. to non-authorised repairers or re-sellers). Many authorised repairers are also retailers of watches that have an obligation to provide after-sales services.

(70) Apart from selecting authorised repairers, the watch manufacturers have also set up their own in-house repair networks that also perform repair services. Most watch manufacturers provide repair services at the place of manufacturing and through in-house

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72 Richemont's submission of 15 February 2012 (non-confidential version of 6 March 2012), in response to questionnaire of 23 November 2011, section C.2 of the Introduction, pp. 9-10.

73 Richemont's submission of 15 February 2012 (non-confidential version of 6 March 2012), in response to questionnaire of 23 November 2011, question 28 (pp. 33-37). For LVMH, see (1) Tag Heuer's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 28, p. 16 et seq. and (2) Bulgari's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 28, p. 15 et seq. Rolex's submission of 7 February 2013 (non-confidential version of 28 August 2013), in response to questionnaire of 14 December 2012, question 1.8.1, p. 9. Swatch's submission of 31 January 2012 (non-confidential version of 29 August 2013), in response to questionnaire of 23 November 2011, question 28, p. 46 et seq.; see also Swatch's submission of 19 November 2013 (non-confidential version of 17 December 2013), p. 4. Audemars Piguet's submission of 22 December 2011 (non-confidential version of 2 April 2012), in response to questionnaire of 23 November 2011, question 28, p. 15 et seq.

74 In May 2007, the Swatch group started for the brand Omega its distribution system for spare parts with three levels of service partners. Since then, other Swatch Group brands have used Omega's experience as guidance and started implementing similar systems. In 2010, the Swatch group still relied largely on the services of independent repairers. See Swatch submissions of 19 November 2013 (non-confidential version of 17 December 2013), p. 2, and of 31 January 2012 (non-confidential version of 29 August 2013), in response to questionnaire of 23 November 2011, question 28, p. 46 et seq.

75 Eberhard's submission of 27 January 2012 (non-confidential version of 27 January 2012), in response to the questionnaire of 23 November 2011, questions 11.1 and 17.1, pp. 9-10. Eberhard's submission of 20 December 2011 (non-confidential version of 27 January 2012), in response to the questionnaire of 23 November 2011, question 29.3, p. 11.

repair centres in the most important EU markets. Repairs of complicated or vintage watches are usually performed at the headquarters of the watch manufacturer.[76]

(71) The repairers offer at least two types of repair services: quick service and complete service. The complete service is more complex and labour intensive as it involves the dismantling of the movement. Some spare parts are always replaced in the complete services (e.g. the gaskets) while other spare parts will only be replaced if they are defective and if the customer so wishes. The quick service can be quite basic, involving simply the replacement of a strap. The repairs performed by in-house repair centres and authorised repairers will depend on the level of authorisation for the respective members of the network.[77]

(72) The investment required to become an authorised repairer depends on the brand and on the level of repair service. The repairer that wants to perform more complex repair services generally needs to fulfil more demanding requirements in terms of training, experience and equipment. The watch manufacturers often offer free-of-charge training to their authorised repairers.[78]

(73) Some watch manufacturers appear to rely more on the services of authorised repairers than others. The investigation has found that for certain groups, the proportion of repairs done by authorised repairers is actually very high.

3.1.1.3. Spare parts for prestige watches

(74) A watch is produced by assembling several parts together. The most important piece of the watch is its movement. The movement is the engine inside the watch that drives the hands around and that powers any additional functions.

(75) Until the quartz revolution of the 1970s, all watches had mechanical movements. The arrival of the quartz movement in the 1970s led to a crisis in the traditional Swiss watchmaking industry based on mechanical watches. Mechanical movement can be made

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[76] Richemont's submission of 15 February 2012 (non-confidential version of 6 March 2012), in response to questionnaire of 23 November 2011, section D.3 of the Introduction, p. 14. Hublot's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 29.3, p. 17-18. Zenith's submission of 15 February 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 24.2, p. 17. Tag Heuer's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 28.3, p. 19.

[77] Richemont's submission of 15 February 2012 (non-confidential version of 6 March 2012), in response to questionnaire of 23 November 2011, section D.3 of the Introduction, question 28.3, pp. 33-34. For LVMH, see Tag Heuer's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 28, and Bulgari's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, questions 24.2 and 28, p. 12 et seq. Rolex's submission of 7 February 2013 (non-confidential version of 28 August 2013), in response to questionnaire of 14 December 2012, question 1.10, p. 10. Swatch's submission of 31 January 2012 (non-confidential version of 29 August 2013), in response to questionnaire of 23 November 2011, question 28.3, pp. 50-51. Audemars Piguet's submission of 22 December 2011 (non-confidential version of 2 April 2012), in response to questionnaire of 23 November 2011, question 28, p. 16.

[78] See e.g. Hublot's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 28.5, p. 13.

of over 100 parts and, therefore, they require more sophisticated craftsmanship than quartz movements.

(76) In the early 1990s, the traditional mechanical watch made a significant comeback with demand for complex mechanical watches increasing rapidly. The mechanical watch industry is currently experiencing stable growth, mostly due to increasing demand from China. Today, cheap and medium-priced watches usually have quartz movements. Prestige watches often have mechanical movements.

(77) The demand for spare parts for prestige watches has increased significantly over the past decade as a result notably of the development of more movements and of additional functions, the so-called complications, such as the chronograph, calendar or alarm.

(78) Some prestige watch manufacturers such as Rolex or Patek Philippe produce their own movements and spare parts, while others outsource the production of most movements and spare parts to third-party producers.[79]

(79) Across the market for prestige watches, there are some companies specialised in the design and production of movements. ETA, which today belongs to the Swatch group, is the largest producer of spare parts and movements. The watch manufacturers that outsource the production of the movements and spare parts to third-party companies like ETA often seek to adapt parts by engraving their logo or giving it a different finish.[80]

3.1.2. Market definition

(80) The Commission has examined the market for the sales of prestige watches ("the primary market"), as well as the respective markets for the provision of repair and maintenance services for prestige watches and for the supply of spare parts used in the repair and maintenance of the said watches (together, "the aftermarkets").

3.1.2.1. Primary market – sales of prestige watches

(81) For the purpose of the assessment of this complaint, the primary market is considered to cover the sales of watches which, for economic and technical reasons, are worth repairing and maintaining,[81] which are referred to as "prestige watches" in this decision. This definition excludes watches which are either not designed to be repairable[82] or watches that are not economically repairable and that typically, if broken, are ultimately thrown away due to the cost of the repair and maintenance services.[83] In its investigation, the Commission has focused on watches sold at a retail price above EUR 1 000.

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79 Rolex's submission of 14 February 2012 (non-confidential version of 28 February 2012), in response to the questionnaire of 14 December 2012, question 15, p. 11. Patek Philippe's submission of 31 January 2012 (non-confidential version of 31 January 2012), in response to the questionnaire of 23 November 2011, question 15, p. 15.

80 CEAHR's submission of 22 June 2011, p. 6.

81 See footnote number 88 below.

82 CEAHR's submission of 22 June 2011, p. 4.

83 CEAHR's complaint of 22 July 2004, p. 5. CEAHR's submission of 22 June 2011, p. 4.

(82) CEAHR contests the use by the Commission of the concept of "prestige watches" (as well as that of "luxury watches"). CEAHR submits that, while the brand itself may at times be characterised as "prestige", its watches should generally not, and that the mere fact that a watch bears a luxury brand is not necessarily a guarantee of high quality. According to CEAHR, over 80% of the watches sold above the EUR 1 000 price tag are not prestige watches, but rather simple, common, traditional models, which present no particular sophistication or complexity. CEAHR submits that only watches sold at a retail price in excess of EUR 40 000 should be characterised as prestige: this would notably include watches with "high complications" (e.g. tourbillon, minute repeater or perpetual calendar).[84] CEAHR agrees, in any event, that watches worth repairing are those of a certain value, since cheap watches are simply replaced.[85] According to CEAHR, watches priced below EUR 500 are usually not made to be serviced; the bulk of repair services would actually be performed on watches priced between EUR 1 000 and EUR 40 000.[86] CEAHR considers that this price segment is of vital importance for independent watch repairers.[87]

(83) CEAHR, therefore, while challenging the use of the concept of prestige watches, does not contest the market definition proposed by the Commission for the purposes of the assessment of this complaint.[88] Indeed, the arguments of CEAHR do not concern the delineation of the appropriate market but, instead, the question of whether or not independent repairers are generally qualified to repair these watches, as well as the related question of whether or not the watch manufacturers could justify their refusal to supply them with spare parts on the grounds of the potential complexity of prestige watches.

(84) Hence, the Commission considers that the relevant primary market is, in this case, that for the sales of watches worth repairing and maintaining and has focused its investigation on watches sold at a retail price above EUR 1 000. This conclusion is thus in line with the arguments of CEAHR. Furthermore, virtually all watches of the main watch manufacturers, parties to these proceedings (e.g. Rolex, Richemont and Patek Philippe) are sold at retail prices above EUR 1 000.[89] For the sake of convenience, watches sold at

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84 CEAHR's submission of 27 September 2013, pp. 1, 2, 6, 7 and 8. See also CEAHR's submission of 22 June 2011, pp. 4-5 and of 20 July 2005, pp. 7-8.

85 CEAHR's complaint of 22 July 2004 p. 5. According to CEAHR, *«[t]he demand for watch spare parts therefore exist practically only for expensive watches […]»*.

86 CEAHR's submission of 22 June 2011, pp. 4-5. For watches with a price tag between EUR 500 and 2 500 it would usually be more attractive to replace the whole movement than to repair it: see CEAHR's submission of 22 June 2011, pp. 4-5.

87 CEAHR's submission of 22 June 2011, p. 5.

88 CEAHR itself has defined the relevant market as relating to the *«watches worthy of maintenance and repair»* (CEAHR's submission of 30 January 2008, p. 4).

89 See e.g. Rolex submission of 14 February 2012 (non-confidential version of 28 February 2012), in response to the questionnaire of 14 December 2012 question 5.1, p. 7. See also Bulgari's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 7.a, p. 2 et seq. Likewise, Richemont's submission of 15 February 2012 (non-confidential version of 6 March 2012), in response to questionnaire of 23 November 2011, section B of the Introduction (pp. 6-7). Concerning this threshold of EUR 1 000, see also Audemars Piguet's submission of 30 January 2012 (non-confidential version of 2 April 2012), in response to questionnaire of 23 November 2011, question 6.a, 6.c and 7.a, p. 3 et seq.

a retail price above EUR 1 000 are referred to as prestige watches in the present decision.[90]

(85) The market investigation further indicates that the geographic scope of the market for prestige watches seems to be at least EEA-wide since *(i)* transport costs are low relative to the value of a prestige watch, *(ii)* the watch manufacturers offer the same range of products and carry out their marketing and advertising strategies on a European or even a global basis, and *(iii)* the watch manufacturers organised a worldwide selective distribution network. In any event, the exact geographic market definition can be left open in the case at hand since, regardless of alternative geographic definitions, the preliminary findings of the Commission would not change.

3.1.2.2. Aftermarkets for prestige watches

(86) According to CEAHR, the market for the supply of spare parts for watches and the market for repair and maintenance services constitute separate markets, which are distinct from the market for the sales of watches.[91] CEAHR argues, in particular, that the existence of independent repairers is an indication of the existence of separate markets for repair and maintenance services.

(87) In order to determine whether the sales of prestige watches and the related aftermarkets (repair and maintenance services and supply of spare parts) form part of the same market, the Commission has examined whether competition in the primary market would make price increases in the aftermarkets unprofitable. If that were the case, the primary market and the aftermarkets should be viewed together as a system market.

(88) In that regard, an important aspect for assessing if aftermarkets are separate from the primary market is determining whether buyers of watches are able to estimate the lifetime cost of a prestige watch, which includes the original purchase price and expected repair and maintenance costs. If buyers take into account the cost of future repair and maintenance services when buying a prestige watch, then an increase of prices of repair and maintenance services could be unprofitable since informed buyers would detect the increase of lifetime costs and buy a prestige watch of another brand.

(89) The investigation in the present case shows that buyers of watches are unlikely to make informed decisions when taking into account the lifetime cost of a prestige watch since (i) repair needs are irregular and difficult to predict, (ii) buyers often neglect maintenance services,[92] (iii) lifetime repair and maintenance services costs are not particularly significant in comparison with the price of the prestige watch, (iv) many buyers of

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[90] It shall further be noted that the General Court, in its judgment in the action for annulment of the Commission's 2008 rejection decision, considered that, in view notably that the price of the watches in the range referred to by CEAHR was 60 to 160 times higher than the price of the cheapest watches which still serve their main function and do so reliably, the Commission had not erred in finding that the watches concerned by the complaint were 'luxury/prestige watches' (see Judgment in CEAHR v Commission, EU:T:2010:517, paragraphs 73 and 74).

[91] CEAHR's submission of 20 July 2005 p.18. CEAHR's submission of 31 January 2008, pp. 6 and 7.

[92] Despite attempts from the watch manufacturers to try to educate consumers about the benefits of regular maintenance, the latter still appear to ignore this advice and generally contact a repairer only when the watch is damaged. See e.g. Richemont's submission of 15 February 2012 (non-confidential version of 6 March 2012), in response to questionnaire of 23 November 2011, section D.3 of the Introduction, p. 12.

prestige watches are insensitive to price and are unlikely to consider aftersales costs and (v) there is a lack of price transparency for repair and maintenance services.[93]

(90) Moreover, the investigation found that, while switching to a prestige watch of another brand does not involve any investments, such as training, changing routines or new software, there are however a number of barriers to change resulting notably from the low residual value of a damaged prestige watch in second-hand markets and from the emotional value that consumers may attach to the watch.

(91) In view of the above, the Commission preliminarily concludes that the primary market for prestige watches and the related aftermarkets are separate markets.[94] The latter will be examined in more detail in the next two sub-sections.

a) Repair and maintenance services

(92) The repair and maintenance of prestige watches often requires spare parts which are specific to a particular brand. It may also require brand specific repair equipment as well as brand specific technical knowledge. Without access to these brand-specific inputs, the repairer is generally not able to perform the repair service on the prestige watch of that brand. For that reason, there is limited substitutability between repair services across brands.[95]

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[93] It is difficult for the consumer to obtain information on the cost of the repair services. This information is generally not available on-line, in particular. Moreover, the price of some repair services can only be estimated by the repairer after inspecting the watch.

[94] This conclusion is in line with the considerations expressed by the General Court in its judgment in the action for annulment of the Commission's 2008 rejection decision (see Judgment in CEAHR v Commission, EU:T:2010:517, paragraphs 79 to 109).

[95] CEAHR's complaint of 22 July 2004, pp. 5 and 6: *«Another important point is that the repair of an expensive watch requires original spare parts, first because of their specific technical characteristics but also because of their appearance. Even if it were possible to replace a part by a non-original one, this would not be accepted by the watch owner because of differences in appearance. Therefore without original spare parts, expensive watches cannot be repaired by independent repairers»*. CEAHR submits that independent repairers have the necessary equipment to maintain and repair most watches and are qualified to repair all kinds of brands (CEAHR's submission of 27 September 2013, p. 6). CEAHR acknowledges that *«in a limited number of cases, some of these watches might indeed require repair equipment and technical knowledge that are specific to the particular brand»*, but submits that independent repairers have the technical capability to repair the vast majority of watches *«especially if they receive technical information from the brand (as they used to do in the past)»* (CEAHR's submission of 27 September 2013, p. 7). CEAHR also acknowledges that the proportion of watches in production that need special knowledge and equipment in order to be repaired properly, has increased over the past ten years, but reiterates that the vast majority of existing watches are still simple ones (CEAHR's submission of 27 September 2013, p. 7). In Richemont's submission of 15 February 2012(non-confidential version of 6 March 2012), in response to questionnaire of 23 November 2011, questions 28.3 and 28.5 (p. 34 and 37), it is mentioned that, in order to execute repairs, brand specific tools and spare parts/components are necessary and that, in order to get authorized, the repairers need to have, amongst others, *Maison*-specific equipment and tooling. Also, Rolex's submission of 7 February 2013 (non-confidential version of 28 August 2013), in response to questionnaire of 14 December 2012, in which it is indicated that specific tools and equipment can be used only to repair Rolex watches (see table attached to question 1.7.5, p. 9). In Swatch's submission of 31 January 2012 (non-confidential version of 29 August 2013), in response to questionnaire of 23 November 2011, question 36, p. 60, it is indicated that, with regard to its prestige and luxury range watches (as defined in the reply to question 5.1), spare parts produced for other brands of watches cannot be used to repair and maintain Swatch watches; regarding its high range watches (see also the reply to question 5.1), Swatch points out that, from a purely technical point of view, the movements or spare parts of the

(93) The investigation indicates, therefore, that there may be multiple separate markets for repair and maintenance services, each associated, in principle, with a particular watch brand. These services are provided by the watch manufacturers themselves and their subsidiaries, their authorised repairers and independent repairers.

(94) As regards the geographic scope of the markets for repair and maintenance services, the investigation suggests that they may be local because proximity to the repairer is important for the consumer.[96] However, the exact geographic market definition can be left open in the case at hand since, regardless of alternative geographic definitions, the findings of the Commission would not change.

b) Supply of spare parts

(95) As regards the market for spare parts, it appears that most spare parts are not interchangeable across watch brands due to differences in size and design. Even where substitutability is possible, customers seem to prefer original spare parts to preserve the value of the prestige watch.[97]

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movements are compatible for brands using the same "basic type" of ETA-movements, as well as some bracelets and straps; however, all the rest remains brand specific, as for its prestige and luxury range. For LVMH, see e.g. the submission of Bulgari of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 36, p. 21, where it is stated that *«[i]n the manufacturing of a Bulgari watch, most parts such as bridges and main plates are often personalised (whether with engraving of the Bulgari logo or with a special treatment of the material). Accordingly, while in theory spare parts produced for other brands could in most cases be used for repair without affecting the functioning of the watch, in practice, using spare parts other than the original Bulgari customized spare parts would alter the original conditions of the product as manufactured»*. See also Audemars Piguet's submission of 22 December 2011 (non-confidential version of 2 April 2012), in response to questionnaire of 23 November 2011, questions 28.1 and 28.4, pp. 15 and 19, where it is stated that the competence required so as to repair an Audemars Piguet watch is not acquired during the training somebody undergoes so as to get a general degree in the field, but it is only acquired following specialised training provided by the brand itself. The submission also states that all types of repairs require specific equipment and specific tools so as to repair an Audemars Piguet's watches. In its submission of 30 January 2012 (non-confidential version of 2 April 2012), in response to questionnaire of 23 November 2011, question 7, p. 8, Audemars Piguet also states that almost all of the spare parts used for the repair of its watches, are individualised and specific to the particular watch models manufactured by the brand. See also Eberhard's submission of 27 January 2012 (non-confidential version of 27 January 2012), in response to the questionnaire of 23 November 2011, question 7.b, p. 5, where it is indicated that *«[…] there is little or no standardisation of luxury watches spare parts, which save for some exceptions, are generally exclusive and not interchangeable among different watches (also due to the fact that the manufacturers often personalise their own branded parts). The wide variety of forms, sizes and styles of watches is such that each watch is unique and the replacement of a broken or damaged part necessitates an original part, as otherwise the identity of the particular watch model is lost, and sometimes even the functioning of the watch itself may be affected»*.

96 CEAHR's submission of 27 September 2013, p. 8.

97 CEAHR's submission of 22 June 2011, p. 6. According to CEAHR, customers always wish to have the original spare parts, even where substitutability of spare parts is possible, since *"most Brands would refuse to acknowledge as 'genuine' a watch which has been repaired with a non-branded supplied part, thereby significantly reducing its value, or even rendering it a 'fake', and therefore potentially liable to confiscation and a fine when crossing some international boundaries"*. Similarly, CEAHR indicates that *«the repair of an expensive watch requires original spare parts, first because of their specific technical characteristics but also because of their appearance. Even if it were possible to replace a part by a non-original one, this would not be accepted by the watch owner because of differences in appearance. Therefore, without original spare parts,*

(96) Therefore, the investigation preliminarily concludes on the existence of multiple separate markets for spare parts, each associated, in principle, with a particular watch brand.

(97) With respect to the geographic scope of the markets for spare parts, the investigation suggests that they are at least EEA-wide in view of low transport costs. This is further evidenced by the fact that spare parts are often traded and shipped across countries. In any event, the exact geographic market definition can be left open in the case at hand since, regardless of alternative geographic definitions, the findings of the Commission would not change.

3.1.3. Assessment under Article 102 TFEU

(98) The main allegation of CEAHR is that the refusal by watch manufacturers to continue to supply spare parts to independent watch repairers infringes Article 102 TFEU.

3.1.3.1. The existence of dominant positions

(99) As explained above, the Commission considers, for the purposes of the examination of this complaint, that the aftermarkets for the provision of repair and maintenance services and for the supply of spare parts for prestige watches are distinct from the primary market for the sales of prestige watches. The investigation has also indicated that most spare parts are not interchangeable across watch brands and that repair services often require brand-specific spare parts and sometimes specific technical knowledge and equipment.[98] For that reason, the results of the investigation support the existence of multiple aftermarkets for spare parts and for repair and maintenance services, each associated, in principle, with a particular watch brand.

(100) Some watch manufacturers produce their own movements and spare parts, while other manufacturers source some movements and spare parts from third-party producers. Rolex and Patek Philippe produce most spare parts in-house,[99] whereas others outsource the production of most spare parts to third-party companies.

(101) In so far as the spare parts are not generic,[100] third-party companies generally produce the spare parts exclusively for the watch manufacturer and do not sell them to repairers outside the selective repair network. In contrast, generic spare parts are available in the

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expensive watches cannot be repaired by independent repairers» (CEAHR's complaint of 22 July 2004, pp. 5-6).

98 See e.g. Eberhard's submission of 27 January 2012 (non-confidential version of 27 January 2012), in response to the questionnaire of 23 November 2011, question 7.b, p. 5. See also Rolex submission of 7 February 2013 (non-confidential version of 28 August 2013), in response to questionnaire of 14 December 2012, question 1.8, p. 9. Likewise, Bulgari's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 36, p. 21. See as well Hublot's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 36, p. 22. Dior's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011 question 28.6, p. 20.

99 According to CEAHR, Rolex's brand Tudor uses ETA movements (CEAHR's submission of 27 September 2013, p. 8). CEAHR indicates that Swatch has also supplied some components to Patek Philippe (CEAHR's submission of 27 September 2013, p. 8).

100 Generic spare parts can be produced by third-party producers without the need for IPRs, secret knowledge, manufacturing processes or tools/equipment owned by the watch manufacturers.

market and can be used by any repairer. However, access to generic spare parts does not appear sufficient to perform certain repair services. A prestige watch is made by assembling several spare parts, many of which are not generic, and therefore repair services often require the replacement of original spare parts. CEAHR considers that the repair of a prestige watch requires original/branded spare parts because of their technical characteristics but also because of their appearance.[101] According to CEAHR, even if it were possible to replace an original spare part by a non-original one, this would not be accepted by consumers because of differences in appearance.[102]

(102) Therefore, the Commission concludes that watch manufacturers control the supply of certain non-generic spare parts that are necessary to perform most repair services either because they produce them or through contracts signed with the external producers. Entry into the market for the supply of such spare parts would require substantial investment and, possibly, access to the watch manufacturers' technology and IPRs. Therefore, without the agreement from the watch manufacturer, no other company is likely to become an alternative source of spare parts required for the repair of watches of that brand.

(103) Based on the above, it cannot be excluded that watch manufacturers are dominant in the markets for the supply of spare parts required for the repair of their respective prestige watches.[103]

3.1.3.2. The alleged abuse

(104) CEAHR submits that the refusal by watch manufacturers to continue to supply spare parts to independent watch repairers constitutes abusive conduct which infringes Article 102 TFEU.

(105) According to settled case law, as a rule, companies, whether dominant or not, have the right to choose their trading partners.[104] It is only under certain circumstances that a

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[101] CEAHR's complaint of 22 July 2004, p. 5.

[102] CEAHR's complaint of 22 July 2004, p. 6.

[103] CEAHR has also claimed that there exist a collective dominant position of the watch manufacturers on the markets for the supply of spare parts and the provision of repair and maintenance services: *«the claimed joint dominant position does not concern commercial activities on the primary market i.e. the watch manufacturing market, but on the spare parts market and on the repair and maintenance market by way of control exercised by the oligopoly on the spare parts market»* (CEAHR's submission of 20 July 2005, pp. 20 to 23). This collective dominant position is notably explained, according to CEAHR, by the existing commercial and economic links between the watch manufacturers, However, this allegation appears in contradiction with CEAHR's main submission, which is that *«each Swiss watch producer has a monopoly on its spare parts, giving it a dominant position, and by stopping the delivery of these spare parts, it violates Article 102, by abusing that position»* (CEAHR's submission of 27 September 2013, pp. 3). In effect, it is not entirely clear how a finding of a collective dominant position of the watch manufacturers could take place in a scenario of brand specific spare parts for prestige watches (where each manufacturer allegedly controls the parts for the watches of its brands), In any event, this issue does not affect the examination of the practices at stake as constituting or not a likely violation of Article 102 TFEU, which will be undertaken in Section 3.1.3.2 below.

[104] Judgment of 17 September 2007, Microsoft v Commission, T-201/04, ECR, EU:T:2007:289, paragraph 319; Judgment of 26 October 2000, Bayer v. Commission, T-41/96, ECR, EU:T:2000:242, paragraph 180. When setting its enforcement priorities, the Commission starts as well from the position that, generally speaking, any undertaking, whether dominant or not, should have the right to choose its trading partners and to dispose freely

refusal to supply on the part of a dominant undertaking may constitute an abuse of a dominant position within the meaning of Article 102 TFEU, and in so far as it is not objectively justified.[105]

(106) The Court of Justice has considered, in that regard, that a company in a dominant position on the market in raw materials which, with the aim of reserving such raw materials for the purpose of manufacturing its own derivatives, refused to supply a customer which was itself a manufacturer of those derivatives, and was therefore likely to eliminate all competition on the part of that customer, abused its dominant position.[106] The Court has also concluded that an abuse is committed where, without any objective necessity, an undertaking holding a dominant position on a particular market reserves to itself or to an undertaking belonging to the same group an ancillary activity which might be carried out by another undertaking as part of its activities on a neighboring but separate market, with the possibility of eliminating all competition from such undertaking.[107] Similarly, it follows from the case-law that it is only in exceptional circumstances that the refusal, by an undertaking holding a dominant position, to license a third party to use a product covered by an intellectual property right may constitute an abuse within the meaning of Article 102 TFEU; the following circumstances, in particular, have been considered to be exceptional: (1) the refusal relates to a product or service indispensable to the exercise of a particular activity on a neighbouring market; (2) the refusal is of such a kind as to exclude any effective competition on that neighbouring market; and (3) the refusal prevents the appearance of a new product for which there is potential consumer demand.[108]

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of its property: see Communication from the Commission: Guidance on its enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings (OJ C 45, of 24.2.2009, pp. 7–20: hereafter "Guidance on enforcement priorities on Article 102"), point 75. Incidentally, CEAHR criticises the Commission for not referring to the Guidance Paper during its examination of CEAHR's initial complaint (see CEAHR's submission of 27 September 2013, p. 8): it suffices to note, in that regard, that the said document had not yet been adopted by the Commission at the time of the 2008 rejection decision.

[105] Judgment in Microsoft v Commission, EU:T:2007:289, paragraphs 319 and 333. See as well the case law cited in paragraph (106) below.

[106] Judgment in Istituto Chemioterapico Italiano and Commercial Solvents Corporation v Commission ('Commercial Solvents'), Joined Cases C-6/73 and 7/73, EU:C:1974:18, paragraph 25.

[107] Judgment in Centre Belge d'Études de Marché - Télémarketing ('CBEM') v SA Compagnie Luxembourgeoise de Télédiffusion (CLT) and Information Publicité Benelux (IPB), C-311/84, EU:C:1985:394, paragraphs 25 to 27.

[108] Judgment in RTE and ITP v Commission ('Magill'), Joined Cases C−241/91 P and C−242/91 P, EU:C:1995:98, paragraphs 49, 50 and 53 to 56; Judgment in Bronner, C−7/97, EU:C:1998:569, paragraphs 38 to 41; Judgment in IMS Health, C−418/01, EU:C:2004:257, paragraphs 34, 35 and 38; Judgment in Microsoft v Commission, EU:T:2007:289, paragraphs 321, 322 and 333 (see also paragraph 647 thereof regarding the criterion of the "new product"). Regarding the refusal to grant a license of a protected design for the supply of products incorporating the design, see Judgment in Volvo, 238/87, EU:C:1988:477, paragraphs 7 to 9.

The Commission accordingly considers as an enforcement priority practices of refusal to supply by a dominant company if all of the following circumstances are present: (1) the refusal relates to a product or service that is objectively necessary to be able to compete effectively on a downstream market; (2) the refusal is likely to lead to the elimination of effective competition on the downstream market, and (3) the refusal is likely to lead to consumer harm. The Commission considers that intervention on competition law grounds requires careful consideration where the application of Article 102 would lead to the imposition of an obligation to supply on the dominant undertaking. The existence of such an obligation – even for a fair remuneration – may undermine

(107) In the present case, CEAHR highlights a number of circumstances that it considers relevant for the establishment of the alleged abuse.[109] In particular, CEAHR refers to the following ones:

1) The watch manufacturers have used their dominant positions (on the markets for the supply of spare parts for prestige watches of their respective brands) to reserve an ancillary activity (i.e. the repair and maintenance of prestige watches) for themselves.[110]

2) The refusal by watch manufacturers to continue to supply spare parts has *"the possibility of eliminating all competition"* on the market for repair and maintenance services.[111]

3) The watch manufacturers had supplied spare parts to independent watch repairers for many years and only stopped doing so a few years ago, almost simultaneously.[112]

4) The watch manufacturers' refusal to continue to supply spare parts is not objectively justified.[113]

(108) In support of its argument that the conduct of the watch manufacturers constitutes an abuse of dominance under Article 102 TFEU, CEAHR relies, in particular, on the

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undertakings' incentives to invest and innovate and, thereby, possibly harm consumers. The knowledge that they may have a duty to supply against their will may lead dominant undertakings – or undertakings who anticipate that they may become dominant – not to invest, or to invest less, in the activity in question. Also, competitors may be tempted to free ride on investments made by the dominant undertaking instead of investing themselves. Neither of these consequences would, in the long run, be in the interest of consumers. See Guidance on enforcement priorities on Article 102, points 75 and 81.

109 In its submission of 27 September 2013, CEAHR claimed, more generally, that the criteria identified by the Commission in its letter of 3 September 2013 as relevant to give the case enforcement priority are met in the present case, in so far as: (1) the product at stake is objectively necessary to compete effectively in a downstream market; (2) the refusal is likely to lead to the elimination of effective competition on the downstream market; and (3) the refusal is likely to lead to consumer harm (see p. 10 and 11). CEAHR erroneously stated that the Commission, in the said letter, implicitly acknowledged that these three criteria are fulfilled in this case (see p. 10); it shall be noted, in particular, that, regarding the second criterion, the Commission preliminarily concluded that *«[i]n the present case, the refusals to supply spare parts to independent repairers in the context of the selective repair systems put in place by watch manufacturers do not seem to exclude effective competition in the repair and maintenance market»* (see letter of 3 September 2013, paragraph 88; see also paragraph 89 thereof).

110 See, for example, CEAHR's submission of 20 July 2005, p. 23 and of 27 September 2013, p. 10.

111 See, for example, CEAHR's submission of 20 July 2005, pp. 23-24 and of 30 January 2008, p. 11.

112 See, for example, CEAHR's submission of 27 September 2013, p. 3. CEAHR also emphasises that the watch manufacturers discontinued the supply of spare parts to independent repairers at more or less the same time. This issue is discussed in the framework of the examination of the alleged infringement of Article 101 TFEU at Section 3.1.4.1 below.

113 See, for example, CEAHR's submission of 20 July 2005, p. 22.

following judicial precedents: *Commercial Solvents*,[114] *Hugin*,[115] *CBEM* ("Télémarketing"),[116] *Hilti*[117] and *British Petroleum*.[118]

a) The watch manufacturers have attempted to reserve an ancillary activity for themselves

(109) CEAHR maintains that the watch manufacturers have decided to refuse to continue to supply spare parts for prestige watches to independent repairers in order to reserve for themselves the market for the repair and maintenance of those watches.[119]

(110) Contrary to CEAHR's claim, however, the present case does not seem to correspond to the scenario where a dominant company, by refusing to supply a necessary input to its competitors in a downstream or related market, attempts to reserve that market exclusively to itself. The watch manufacturers, in effect, do not appear to have aimed at excluding all third parties from the markets for the repair and maintenance of watches of their respective brands and, accordingly, at reserving those markets to themselves and their subsidiaries. Instead, the watch manufacturers have decided to introduce selective repair systems, in the context of which they appoint authorised third-party repairers on the basis of specific qualitative criteria, linked to their ability to provide quality repair services for the watches of their respective brands: the watch manufacturers generally provide the relevant spare parts only to their respective authorised repairers. The investigation has found that, for certain Groups, the proportion of repairs done by authorised repairers (as compared to those undertaken by the watch manufacturers themselves or their subsidiaries) is actually high or even very high.[120]

(111) In that regard, the Commission does not agree with the characterisation of authorised repairers as being *«in fact and in law "part"»* of the watch manufacturers, which CEAHR justifies mainly on the basis of the underlying contractual relations between them.[121] Authorised repairers are independent undertakings: neither are they subsidiaries of the watch manufacturers, nor, *a fortiori*, do they appear to constitute a single economic entity

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[114] Judgment in Commercial Solvents, Joined Cases 6 and 7/73, EU:C:1974:18. See, for example, CEAHR's submission of 30 January 2008, p. 14, and its Application of 24 September 2008 in Case T-427/08, pp. 18 and 20.

[115] Judgment in Hugin v Commission, C-22/78, EU:C:1979:138. See, in particular, CEAHR's submissions of 20 July 2005, p. 19, and of 30 January 2008, p. 15.

[116] Judgment in CBEM, C-311/84, EU:C:1985:394. See CEAHR's submission of 20 July 2005, pp. 22-24.

[117] Judgment in Hilti v Commission, C-53/92 P, EU:C:1994:77. See, in particular, CEAHR's submission of 20 July 2005, p. 19. See also Judgment of 12 December 1991, Hilti v Commission, T-30/89, EU:T:1991:70.

[118] Judgment in British Petroleum v Commission, C-77/77, EU:C:1978:141. See CEAHR's submission of 28 November 2011, p. 2.

[119] CEAHR's submission of 20 July 2005, p. 23. CEAHR's submission of 30 January 2008, pp. 14 and 15. CEAHR's submission of 27 September 2013, p. 10.

[120] CEAHR has also indicated that *«the percentage of the repairs executed by [authorized repairers] is necessarily very high indeed, and increasing»* (see CEAHR's submission of 27 September 2013, p. 10; it shall be noted, however, that, as indicated in paragraph (111) below, CEAHR considers authorised repairers as *«part»* of the watch manufacturers, and therefore attributes to the latter the repairs done by the former).

[121] CEAHR's submission of 27 September 2013, p. 10.

with the latter.[122] Incidentally, CEAHR's thesis is inherently inconsistent with its argumentation regarding one of the alleged infringements of Article 101 TFEU: indeed, if the watch manufacturer and its authorised repairers were to be considered as constituting a single undertaking, then the said provision would not apply to their relations,[123] contrary to what CEAHR has consistently claimed.[124]

(112) In the light of the above, it is difficult to argue that the watch manufacturers have tried to capture the repair and maintenance market for themselves. This constitutes a fundamental difference to cases such as *Commercial Solvents* and *CBEM*, on which CEAHR mainly relies.[125]

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[122] The watch manufacturers have, in some countries, subsidiaries entrusted with the provision of repair and maintenance services (see, for example, Swatch's submission of 31 January 2012 (non-confidential version of 29 August 2013), in response to questionnaire of 23 November 2011 question 17, p. 28 et seq.; for LVMH, see Bulgari's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to the questionnaire of 23 November 2011, question 24.1, pp. 11-12). These subsidiaries, however, are different to the authorised repairers which are members of their selective repair systems, to which reference is made here. Regarding the latter, CEAHR claims that authorized repairers *«have given up part of their independence and signed a contract with the [watch manufacturers]»* and are bound by the recommended prices set up by them (CEAHR's submission of 27 September 2013, p. 11). However, neither the existence of commercial agreements, nor the alleged resale price maintenance (this allegation is examined at paragraph (148) below) suffice to establish that each watch manufacturer and its authorised repairers constitute a single economic unit for the purposes of the application of EU competition rules. It is illustrative, in that regard, to compare the present case with the situation prevailing in the *Viho/Parker Pen II* Case, where the General Court upheld the finding of the Commission according to which the Parker group and its distributors constituted an «*economic unit within which the subsidiaries [did] not enjoy real autonomy in determining their course of action in the market»* (see Judgment of 12 January 1995, VIHO Europe BV v Commission, T-102/92, ECR, EU:T:1995:3, paragraphs 47 to 49; this ruling was uphold by the Court of Justice in the Judgment in VIHO Europe BV v Commission, C-73/95-P, EU:C:1996:405): the General Court took notably into account that: (1) Parker owned 100% of the capital of its subsidiaries established in Germany, France, Belgium and the Netherlands; and (2) the sales and marketing activities of the subsidiaries were directed by an area team which was appointed by the parent company and which controlled, in particular, sales targets, gross margins, sales costs, cash flow and stocks, and laid down the range of products to be sold, monitored advertising and issued directives concerning prices and discounts. In the present case, it appears that neither are the authorised distributors subsidiaries of the watch manufacturers, nor have the latter such extensive powers upon the former.

[123] Article 101 TFEU does not apply to agreements between undertakings belonging to a single economic entity (notably those between a parent and its subsidiaries). According to settled case law, indeed, where there is no agreement between economically independent entities, relations within an economic unit cannot amount to an agreement or concerted practice between undertakings which restricts competition within the meaning of Article 101(1) TFEU (Judgment in VIHO Europe BV v Commission, EU:C:1996:405, paragraph 51).

[124] CEAHR's complaint of 22 July 2004, pp. 4-8. CEAHR's submission of 20 July 2005, pp. 19-20 and 31-32. CEAHR's submission of 31 January 2008, pp. 17-19. CEAHR's submission of 27 September 2013, pp. 5, 14 and 17-19.

[125] CEAHR also refers to the judgment in *Hilti*, but in support of its arguments regarding market definition, rather than on the establishment of the alleged abusive conduct (see CEAHR's submission of 20 July 2005, p. 19). This precedent is therefore not relevant here. In any event, it shall be noted that the contested decision in *Hilti* concerned different types of practices than the ones at stake in the present case. *Hilti* focused indeed on practices of tying by a dominant company (not on its refusal to supply spare parts) with the aim of foreclosing independent producers (and not independent repairers). *Hilti* tied the sale of nails to the sale of cartridge strips with the aim of foreclosing independent producers of nails; the other practices considered had a similar mechanism and purpose and consisted in: (1) reducing discounts and adopting other discriminatory policies when cartridge strips were bought without nails; (2) inducing independent distributors not to fulfil certain orders for export; (3) refusing to fulfil the complete orders for cartridge strips made by established customers or dealers who might resell them; (4) frustrating or delaying legitimately available licenses of rights under Hilti' s

(113) In *Commercial Solvents*, Commercial Solvents Corporation ("CSC"), the main supplier of a particular raw material (aminobutanol) used in the production of a chemical product (ethambutol), refused to further supply the raw material in question to its main customers, thereby risking excluding the producers of that chemical from the market. The refusal followed CSC's decision to engage in the production of that chemical itself, through its subsidiary Istituto Chemioterapico Italiano.[126] The Court held that *«an undertaking being in a dominant position as regards the production of raw material and therefore able to control the supply to manufacturers of derivatives, cannot, just because it decides to start manufacturing these derivatives (in competition with its former customers) act in such a way as to eliminate their competition which in the case in question, would amount to eliminating one of the principal manufacturers* […] *in the common market*» The Court took notably into account that the dominant company had refused to supply the raw material *«with the object of reserving such raw material for manufacturing its own derivatives*» (emphasis added).[127] Indeed, CSC had decided to limit the supply of the raw materials at stake *«in order to facilitate its own access to the market for the derivatives»* (emphasis added).[128]

(114) Similarly, in *CBEM*, Compagnie Luxembourgeoise de Télédiffusion, which ran the RTL television station, refused to sell television time on the said station for telephone marketing operations using a telephone number other than that of its subsidiary Information publicité. Compagnie Luxembourgeoise de Télédiffusion (which had a legal monopoly) and Information publicité dominated the market in television advertising aimed at viewers in French-speaking Belgium. Compagnie Luxembourgeoise de Télédiffusion had reserved telemarketing activities (which were considered a separate but closely related market from that of television advertising) to its own subsidiary, to the exclusion of any other undertaking, by refusing to supply the services of its station to any other telemarketing company.[129] The Court of Justice held that *«an abuse within the*

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patents; (5) refusing without objective reason to honour guarantees; (6) operating selective and discriminatory policies directed against the business both of competitors and their customers; and (7) operating unilaterally and secretly a policy of differential discounts for supported and unsupported plant-hire companies or dealers in the UK. In its judgment, the General Court only dealt, as far as the existence of an abuse is concerned, with Hilti's policy on the grant of licenses of rights and its selective and discriminatory policies towards its competitors and their customers, since Hilti had admitted the other behaviour of which it was accused by the Commission and acknowledged that such behaviour would be liable to constitute an abuse if practiced by an undertaking in a dominant position (Judgment in Hilti v Commission, EU:T:1991:70, paragraphs 99 to 101). The Court of Justice, in turn, did not rule specifically on the abusive nature of the conduct at stake (Judgment in Hilti v Commission, EU:C:1994:77).

In turn, CEAHR's invocation of *British Petroleum* concerns the distinction between traditional and occasional customers (see CEAHR's submission of 28 November 2011, p. 2) and therefore relates to the issue of the discontinuance of a previous supply: this aspect will be examined in paragraph (126) below.

126 Judgment in Commercial Solvents, EU:C:1974:18, paragraphs 1, 6-7 and 23. The Court examined whether Istituto Chemioterapico Italiano was controlled by CSC: it noted, in that regard, that CSC had acquired 51 % of the voting stock in Istituto Chemioterapico Italiano and had a 50 % representation on the executive committee and on the board of directors, including its chairman, who had a casting vote, therefore concluding that CSC had indeed control over Istituto Chemioterapico Italiano and that the two companies had to be deemed an economic unit (see paragraphs 6 and 41).

127 Judgment in Commercial Solvents, EU:C:1974:18, paragraph 25.

128 Judgment in Commercial Solvents, EU:C:1974:18, paragraph 24.

129 Judgment in CBEM, EU:C:1985:394, paragraphs 2 to 7, 19 and 26.

meaning of Article [102 TFEU] *is committed where, without any objective necessity, an undertaking holding a dominant position on a particular market reserves to itself or to an undertaking belonging to the same group an ancillary activity which might be carried out by another undertaking as part of its activities on a neighbouring but separate market, with the possibility of eliminating all competition from such undertaking»* (emphasis added).[130]

(115) In conclusion, in each of these two seminal cases, the dominant undertaking concerned essentially tried to reserve a downstream product or an ancillary activity for itself or for one of its subsidiaries. Neither of these two cases involved the establishment of a selective distribution and/or repair system, whereby third parties are authorised as distributors or repairers of the products of the undertaking concerned. Neither judgment, thus, appears to support a finding of an abuse in the present case, in so far as, in particular, the watch manufacturers do not seem to be reserving the market for repair and maintenance for prestige watches for themselves.

(116) Finally, CEAHR relies as well on the judgment in *Hugin.*[131] In its contested decision in this case, the Commission had taken the view that Hugin, a manufacturer of cash registers, had abused its dominant position by refusing to supply spare parts to Liptons (a company servicing, reconditioning, selling, and renting cash registers) and, more generally, to third parties outside its own repair network of subsidiaries and distributors. It shall, however, be noted that, in *Hugin*, the Court of Justice annulled the Commission's decision on the grounds that Hugin's conduct did not affect trade between Member States (Judgment in Hugin v Commission, EU:C:1979:138, paragraphs 17 to 26). The Court did not examine whether or not the refusal to supply at stake was abusive and thus its judgment (or, for that matter, the annulled Commission decision) does not constitute a precedent in that regard. In any event, it appears from the introductory part of the judgment that one important reason for the Commission's intervention in this case (particularly when compared to other precedents) had been that Hugin was not willing to supply spare parts to anyone who fulfilled objective qualitative criteria or to allow any such person to enter its network (see ECR [1979], p. 1890). As it will be explained in the next sub-section and in Section 3.1.4.2 below, this constitutes a significant difference to the present case.

b) The refusal risks eliminating competition on the market for repair and maintenance services

(117) CEAHR claims that the refusal by the watch manufacturers to continue to supply spare parts risks eliminating all competition on the market for repair and maintenance services for prestige watches.[132] CEAHR submits that, because of the said refusal, independent watch repairers will soon no longer be able to compete on that market and are actually already being squeezed out of it, as shown by the figures concerning the number of

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[130] Judgment in CBEM, EU:C:1985:394, paragraph 27.

[131] CEAHR invokes Hugin, in particular, with regards to the description and structure of the relevant markets, the behaviour of the parties involved and the effects on the internal market (see, notably, CEAHR's submissions of 20 July 2005, p. 19, and of 30 January 2008, p. 15).

[132] CEAHR's submission of 31 January 2008, p.6 and p.11. CEAHR's submission of 27 September 2013, pp. 12 and18-20.

independent repairers still active (which has declined, with no new entrants) and of national schools of horology operating in the European Union (the number of which has also been reduced in the past several years, e.g. in Belgium from three to two, in the Netherlands from 3 to one; these schools have practically disappeared in Scandinavia). CEAHR further claims that there is no competition between the authorised repairers of each watch manufacturer, in so far as there are only a few of them and they are bound by so-called "recommended prices". CEAHR maintains that the marginalization of independent repairers results in consumer harm (i.e. less choice, higher prices of repair, longer delays and lack of control of the scope of the repair).[133] CEAHR concludes that there is not much competition left on the market for the provision of repair and maintenance services in the Union and that it will soon totally disappear.[134]

(118) CEAHR's argumentation is predicated upon the fundamental premise that the only source of competition on the market for repair and maintenance services comes from independent watch repairers, in so far as authorised repairers would not compete with the watch manufacturers or, more importantly, among themselves. Contrary to what CEAHR claims, however, the conditions of competition on this market do not depend only on the interaction between authorised repairers and independent repairers but also among authorised repairers themselves. In effect, beyond the repairs directly undertaken by the watch manufacturers, competition does exist between their authorised repairers, at least for as long as the selective systems introduced by the watch manufacturers are qualitative and therefore open to any repairer meeting the relevant criteria and willing to join the authorised network.

(119) Indeed, the Commission and the European Courts have consistently considered that qualitative selective systems do not bring about anti-competitive effects, for as long as certain conditions are met. This question is examined as part of the assessment under Article 101 TFEU of the selective repair agreements introduced by the watch manufacturers, in Section 3.1.4.2 below, where it is concluded that these selective repair systems appear to satisfy the relevant conditions.[135]

(120) In that regard, the Commission disagrees with CEAHR's claim that, in practice, authorised repairers are mere *"employees"* of the watch manufacturers.[136]

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[133] CEAHR's submission of 27 September 2013, p. 7.

[134] CEAHR's submission of 27 September 2013, pp. 10 to 12. At times, CEAHR presents its conclusions in a more cautious way, for instance when it indicates, in 2013, that *«[a]s for the fact […] that the 'independent repairers' are being squeezed out of the market, this is not yet a fact to-day, but, do we need to wait till this process envisaged by the [watch manufacturers] has become a reality, before the Commission will admit that this is indeed happening and is the result of the refusal to continue to deliver spare parts […]»* (CEAHR's submission of 27 September 2013, p. 12).

[135] CEAHR claims as well that, in so far as the watch manufacturers impose upon repairers requesting spare parts an obligation to join their authorised networks (and to respect a number of conditions), the watch manufacturers are in breach of Article 102 TFEU, last indent, since they make the conclusion of those contracts subject to acceptance of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts (CEAHR's submission of 27 September 2013, p. 12). In the present case, this allegation relates as well, in reality, to the assessment under Article 101 TFEU of such contracts of selective repair, which will be done, as indicated, in Section 3.1.4.2 below.

[136] CEAHR's submission of 27 September 2013, p. 2.

(121) CEAHR justifies this claim, firstly, on the grounds that authorised repairers are bound by the "recommended" prices imposed by the watch manufacturers.[137] This allegation will also be assessed in Section 3.1.4.2 below, which concerns the application of Article 101 TFEU. It shall already be noted here, in any event, that the investigation has not confirmed the claim made by CEAHR that authorised repairers are restricted in their ability to set the price for the repair services.

(122) CEAHR alleges, secondly, that many watch manufacturers prohibit authorised repairers from repairing watches from other brands and that, in any event, the selective repair systems amount to *de facto* exclusivity because it is not economically feasible for a watch repairer to meet the criteria of more than one selective repair system.[138] These allegations will be examined in Section 3.1.4.2 below. Contrary to CEAHR's claim, the watch manufacturers do not appear to (contractually or otherwise) prohibit their authorized repairers from repairing watches from other brands. The investigation has also revealed that, often, repairers do not provide services exclusively for a single brand, but actually repair watches from other brands as well.[139]

(123) CEAHR also argues that the independent watch repairers are being eliminated (or will soon be eliminated) from the repair and maintenance market.[140] The data provided by CEAHR points to a decline of around 15 to 20 % in the number of independent watch repairers in Germany and the UK over the period 2004-2010.[141] The data provided by CEAHR, however, concerns only the evolution of the number of independent repairers affiliated to CEAHR's member associations.[142] It shall be noted, in any event, that, to some extent, some former independent repairers have joined, during that time span, the selective repair systems set up by the watch manufacturers.[143] Again, for as long as these systems remain open and available to any potential repairer satisfying the relevant specific criteria, it is not likely that competition will be effectively eliminated.

(124) Under these circumstances, therefore, it is difficult to contend that the refusal to continue to supply spare parts to independent repairers, in the context of the establishment of selective repair systems, risks eliminating all competition (or effective competition) on the market for repair and maintenance services for prestige watches, as required by the abovementioned case law for a finding of an abuse of dominant position within the meaning of Article 102 TFEU.

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137 CEAHR's submission of 27 September 2013, p. 11.

138 CEAHR's submission of 27 September 2013, p. 17.

139 The Commission requested the list of authorised repairers of Rolex, LVMH, Swatch in France, Germany, Italy, Spain, and the United Kingdom, and found numerous common authorised repairers. See Rolex's submission of 4 December 2012, Swatch's submission of 29 November 2012 and LVMH's submission of 23 October 2012.

140 CEAHR's submission of 27 September 2013, p. 20.

141 CEAHR's submission of 22 June 2011, p. 2-3.

142 CEAHR has acknowledged that *«that the inscription amongst a national association of watch repairers is not compulsory in most EU Member State and is therefore not a proper reflection of the real number of professionals in the sector»* (CEAHR's reply of 22 June 2011, p. 3, to the Commission questionnaire of 18 March 2011).

143 For instance, according to Swatch's submission of 19 November 2013 (non-confidential version of 17 December 2013), p. 5, Swatch has sent between 10.000 to 20.000 letters to independent repairers that previously repaired Swatch watches and over 50% of them became authorised repairers of Swatch.

c) The watch manufacturers had traditionally supplied spare parts to independent watch repairers

(125) CEAHR puts particular emphasis on the fact that the complaint does not involve merely a refusal to supply but a refusal *to continue* to supply (i.e. the discontinuance of previous supplies by the watch manufacturers to independent repairers).[144] CEAHR invokes, in that regard, *British Petroleum*, where the Court would have made a clear distinction between «contractual» or «traditional» customers and «occasional» customers and considered that, while refusing to deliver to the latter was acceptable, refusing to supply to the former without good reason constituted an abuse.[145]

(126) Admittedly, the termination of an existing supply arrangement or the disruption of a previous supply is more likely to be found to be anticompetitive than a *de novo* refusal to supply (i.e. where the dominant company has not previously supplied to others).[146] This notwithstanding, and contrary to what CEAHR appears to suggest, the fact that a dominant company had previously been supplying the requesting undertakings does not necessarily imply that a discontinuance of supply constitutes abusive conduct within the meaning of Article 102 TFEU. There is no general or absolute obligation for a dominant company to continue to supply its customers. Indeed, it follows from the case law cited in paragraph (106) above that such a refusal is only contrary to this provision under certain circumstances,[147] which, as explained in the previous sections, do not appear to be satisfied in the present case.

(127) In this context, it shall be noted that *British Petroleum*, the judgment on which CEAHR relies, concerned a very different factual scenario to that of CEAHR's complaint. The former case dealt with the behaviour of a producer and distributor of petroleum products, which, during the OPEC oil boycott in 1973, decided, in view of the ensuing shortage, to reduce significantly (and proportionally to a much greater extent) its supply to its occasional customers, as compared to its regular long-term customers. The contested Commission decision, therefore, concerned the "fair" distribution of the available quantities amongst the customers of the dominant undertaking, under the very exceptional market circumstances of a generalized supply crisis.[148] The Court concluded

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144 See, e.g., CEAHR's submission of 27 September 2013: *«Once again, the Commission refuses to render CEAHR's position correctly: it is definitely not "the refusal by watch manufacturers to supply branded spare parts", it is "the refusal by watch manufacturers to CONTINUE to supply spare parts"»* (p. 8; emphasis added by CEAHR). See as well CEAHR's submission of 30 January 2008: *«The Commission […] leaves out a very important element; it is not simply a "refusal to supply", it is a "refusal to continue to supply", which definitely is not quite the same thing»* (p. 14).

145 CEAHR's submission of 28 November 2011, p. 2.

146 See Guidance on enforcement priorities on Article 102, point 84.

147 It is illustrative, in that regard, to review the Judgment in *CBEM*. In that case, the rejected company had concluded an agreement with Information Publicité for a period of 12 months which gave it the exclusive right to conduct telemarketing operations on the RTL station aimed at the Benelux market: it was at the expiry of such agreement that Information Publicité notified advertisers that, from that moment, RTL would no longer accept advertising spots involving an invitation to make a telephone call unless the telephone number used in Belgium was that of Information Publicité (Judgment in CBEM, EU:C:1985:394, paragraphs 4 and 5). While, therefore, the case involved a refusal to continue to supply, this aspect is completely absent from the reasoning of the Court establishing the conditions for the finding of an abuse (*ibid*, paragraphs 26 and 27).

148 Judgment in British Petroleum v Commission, EU:C:1978:141, paragraphs 1 to 4, 19 to 21.

that a duty on the part of the supplier to apply a similar rate of reduction in deliveries to all its customers in a period of shortage without having regard to obligations contracted towards its traditional customers could only be imposed by regulation.[149] The Court ultimately found that British Petroleum had not abused its dominant position and accordingly annulled the contested decision.[150]

(128) Furthermore, contrary to what CEAHR submits, the refusal to continue to supply spare parts to independent repairers does not appear to be arbitrary in this case. Such a refusal was linked to the setting up by the watch manufacturers of selective repair systems for their respective brands, in which authorised repairers are selected on the basis of specific qualitative criteria. As it will be explained in Section 3.1.4.2 below, selective distribution systems typically restrict the possibilities of resale to companies outside the authorised network (in particular, these systems are based on the requirement that authorised distributors do not supply to non-authorised re-sellers).

(129) To sum up, the fact that the watch manufacturers refused to continue to supply spare parts to independent repairers, to whom they had delivered previously, is not in itself sufficient to establish an abuse within the meaning of Article 102 TFEU, in the absence of other particular circumstances.

d) There is no objective justification for the refusal

(130) CEAHR finally argues that there is no objective justification for the watch manufacturers' refusal to continue to supply spare parts to independent watch repairers.[151] CEAHR maintains that independent repairers are at least as qualified as authorised repairers[152] and reiterates that watch manufacturers used to supply spare parts to independent watch repairers in the past.[153]

(131) As indicated in paragraph (105) above, according to settled case law, it is only under certain circumstances that a refusal to (continue to) supply on the part of a dominant undertaking may constitute an abuse of a dominant position within the meaning of Article 102 TFEU, and only in so far as it is not objectively justified. The Court of Justice has also confirmed the possibility of an efficiency defence for dominant firms under Article 102 TFEU.[154] It follows from the case law, therefore, that a dominant

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[149] The Court took notably into account that, having regard to the general shortage of petroleum products during the period under review and the difficult position in which the whole of the Netherlands market was placed, the application of a rate of reduction identical or very close to that applied to the dominant company's traditional customers would have resulted in a considerable diminution of the deliveries which those customers expected. Judgment in British Petroleum v Commission, EU:C:1978:141, paragraphs 33 and 34.

[150] Judgment in British Petroleum v Commission, EU:C:1978:141, paragraphs 35 to 43.

[151] CEAHR's submission of 27 September 2013, pp. 12-13.

[152] CEAHR's submission of 27 September 2013, pp. 7, 13 and 20.

[153] See, for example, CEAHR's submission of 27 September 2013, p. 6.

[154] Judgment in Post Danmark, C-209/10, EU:C:2012:172, paragraphs 40 to 42. The Court indicated that it is for the dominant undertaking to show that the efficiency gains likely to result from the conduct under consideration counteract any likely negative effects on competition and consumer welfare in the affected markets, that those gains have been, or are likely to be, brought about as a result of that conduct, that such conduct is necessary for the achievement of those gains in efficiency and that it does not eliminate effective competition, by removing all or most existing sources of actual or potential competition.

undertaking may avoid a finding of an abuse by demonstrating either that its conduct is objectively necessary, or that the exclusionary effect produced may be counterbalanced, outweighed even, by advantages in terms of efficiency that also benefit consumers. It also follows, nevertheless, that by itself, the lack of an objective justification does not constitute a sufficient ground for the establishment of abusive conduct pursuant to Article 102 TFEU.

(132) Moreover, it shall be recalled that, in the present case, the refusal to continue to supply spare parts to independent repairers was linked to the setting up by the watch manufacturers of selective repair systems for their respective brands, in which authorised repairers are selected on the basis of specific qualitative criteria, and that such systems typically restrict the possibilities of resale to companies outside the authorised network (see paragraph (128) above).

(133) Furthermore, during the present investigation, the watch manufacturers have put forward a number of objective justifications for the existence of their selective repair systems (and, accordingly, for the refusal to supply spare parts to independent repairers). They generally submit that selective repair systems aim at preserving the brand image in the eyes of the consumer, by ensuring that repair services have high and uniform quality, and at preventing counterfeiting.[155] Moreover, the watch manufacturers expressed concerns about the risk, in particular cases, of inappropriate repairs being made by independent repairers. Richemont has stated, for instance, that its brand image would suffer if a repair is badly undertaken because the customer is not able to assess the quality of the repair and therefore cannot distinguish if the problem results from an inadequate repair service or from the prestige watch itself.[156] Several watch manufacturers have provided examples of faulty repairs performed by independent repairers.[157]

(134) Additionally, the watch manufacturers have explained that the increased complexity of mechanical watches, as well as the decrease of qualified watchmakers following the "quartz revolution" in the 80s, has led to the implementation of selective repair and maintenance systems.[158] Richemont explained that the increased complexity of the watches stem from more sophisticated shapes and from movements with more complications, as opposed to the situation in the past when the use of simpler ETA

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[155] Rolex submission of 7 February 2013 (non-confidential version of 28 August 2013), in response to questionnaire of 14 December 2012, question 2.2.4, p. 13. Tag Heuer's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 30, p. 25. Bulgari's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 30, pp. 18-19.

[156] Richemont's submission of 15 February 2012 (non-confidential version of 6 March 2012), in response to questionnaire of 23 November 2011, section E.4 of the Introduction, pp. 16 and 17. Richemont's submission of 5 July 2012 (non-confidential version of 7 July 2014), in response to the Commission's request for information of 25 June 2012, question 4, p. 9.

[157] Richemont's submission of 5 July 2012 (non-confidential version of 7 July 2014), in response to the Commission's request for information of 25 June 2012, question 1, pp. 1-2. Rolex submission of 7 February 2013 (non-confidential version of 28 August 2013), in response to questionnaire of 14 December 2012, question 2.2.2, p. 12. Audemars Piguet's submission of 22 December 2011 (non-confidential version of 2 April 2012), in response to questionnaire of 23 November 2011, question 24.1, p. 7 et seq.

[158] See e.g. Richemont's submission of 15 February 2012 (non-confidential version of 6 March 2012), in response to questionnaire of 23 November 2011, section C.1 of the Introduction, pp. 7-8.

movements was more widespread. Richemont illustrates the increasing complexity of its watches by indicating that the average time of repair has doubled over the last 10 years.[159] Similarly, Audemars Piguet has referred to the increasing complexity of its watches, by pointing out to its constantly expanding range of very small watches, which encompasses an increasing number of diverse movements (as many as 400 movements, of different functions and sizes).[160]

(135) At this stage, as indicated in its letter of 3 September 2013, the Commission cannot exclude that the selective repair systems set up by the watch manufacturers (and the corresponding refusal by the latter to continue to supply spare parts to independent watch manufacturers) are not susceptible to bring about efficiencies, as claimed by the watch manufacturers, or that they are not objectively justified.[161]

3.1.3.3. Conclusion

(136) On the basis of the above, the Commission considers that there is limited likelihood of finding an infringement pursuant to Article 102 TFEU in this case.

3.1.4. Assessment under Article 101 TFEU

(137) CEAHR claims that the manufacturers of prestige watches concluded an agreement or implemented a concerted practice aimed at foreclosing independent watch repairers, thereby infringing Article 101 TFEU. CEAHR further alleges that the restriction, imposed by the watch manufacturers in their selective repair systems, requiring authorised repairers not to supply spare parts to independent repairers infringes as well Article 101 TFEU. Finally, CEAHR submits that the agreements between watch manufacturers and third party suppliers of spare parts for prestige watches also violate Article 101 TFEU.

3.1.4.1. The alleged existence of an anticompetitive agreement or concerted practice between the manufacturers of prestige watches

(138) In its complaint and subsequent submissions, CEAHR invoked the existence of an agreement or a concerted practice between the manufacturers of prestige watches aimed at foreclosing independent watch repairers. CEAHR supported its allegation mainly on the grounds that the watch manufacturers had applied *«practically at the same time»* the same policy of discontinuing their supply of spare parts to independent repairers.[162]

(139) In its 2008 rejection decision, the Commission indicated that it had found no evidence of an agreement or concerted practice between the watch manufacturers seeking to

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[159] Richemont's submission of 5 July 2012 (non-confidential version of 7 July 2014), in response to the Commission's request for information of 25 June 2012, question 4, p. 9.

[160] Audemars Piguet's submission of 22 December 2011 (non-confidential version of 2 April 2012), in response to questionnaire of 23 November 2011, questions 28.4 and 30, pp. 17 and 26.

[161] See section 1.4.

[162] CEAHR' complaint of 22 July 2004, p. 4 *et seq*. CEAHR's submission of 20 July 2005, pp. 28 and 29. In its submission of 30 January 2008, CEAHR somewhat nuanced its allegation, indicating that *«[…] the times at which the decisions to stop providing spare parts to the Community independent watch repairers were taken are, for the great majority, concentrated over a period of a few years»* (see page 10).

eliminate independent watch repairers from the market for repair and maintenance services. The Commission concluded, in particular, that CEAHR had not provided any evidence of the existence of such an agreement or concerted practice.[163] In its judgment, the General Court rejected CEAHR's claim against the Commission's finding.[164]

(140) CEAHR has maintained its allegation that the watch manufacturers colluded to foreclose independent repairers. However, it has not provided relevant evidence supporting its assertion.[165] In essence, CEAHR has reiterated its claim that the watch manufacturers applied the same policy of refusing to continue to supply spare parts to independent repairers in a short period of time. It has indicated, in that regard, that the dates of the letters of the watch manufacturers announcing the discontinuance of the supply show that these decisions were taken *«during a single period of about three to four years»*, adding that these letters were very similar and provided no reasons. CEAHR claims that these indicia, particularly the shortness of the relevant period, show the existence of a common strategy by the watch manufacturers to eliminate competition on the market for repair and maintenance services. CEAHR indicates as well, in support of its position, that *«practically all the Swiss brands belong to given Groups»*, have or have had *«business connections»* and are members of the *Fédération Horlogère Suisse*, where they meet regularly. CEAHR criticizes the Commission for not investigating this matter afresh or sufficiently and thereby arriving at the wrong conclusion.[166]

(141) CEAHR's allegation that the watch manufacturers started refusing to supply spare parts to independent repairers practically at the same time (or at most in a period of three to four years) is, however, not materially accurate, as shown by CEAHR's own submissions. In particular, the table *Progression of refusal to supply* submitted by CEAHR[167] shows a discontinuance of supplies taking place over a period of 20 years in the three countries examined (namely Belgium, the Netherlands and the UK).[168] A similar table analysing six Member States (Austria, Belgium, France, Germany, Italy and the Netherlands) contains references spanning from 1974 to 2005.[169] While CEAHR has

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[163] The Commission notably found that CEAHR's allegation that the watch manufacturers introduced an identical strategy concerning the refusal to supply at practically the same time (or over a period of no more than a few years) was not accurate, as CEAHR's own evidence proved that the implementation of this policy had taken place over a 20 years' period. The Commission also considered that the alleged strategy was in line with general trends on the market for the sales of prestige watches and that the primary market for those watches appeared to be competitive. See 2008 rejection decision, points 28 and 43.

[164] The General Court considered, in particular, that the evidence submitted by CEAHR on the progression of the refusals to supply by the different brands tended to confirm the Commission's position that such refusals were not the result of an agreement, but of a series of independent commercial decisions adopted by the watch manufacturers. See Judgment in CEAHR v Commission, EU:T:2010:517, paragraphs 130 to 132.

[165] See as well the letter of the Commission of 3 September 2013, paragraphs 95 to 97.

[166] CEAHR' submission of 27 September 2013, pp. 5, 14 and 19.

[167] CEAHR's submission of 20 July 2005, Annex 11.

[168] The progression of the refusal is depicted as follows: (1) Belgium: 3 brands in 1985, 5 brands in 1990, 15 brands in 1995, 35 brands in 2000 and 38 brands in 2005; (2) the Netherlands: 12 brands in 1985, 19 brands in 1990, 27 brands in 1995, 28 brands in 2000 and 39 brands in 2005; and (3) the UK: 22 brands in 1985, 24 brands in 1990, 36 brands in 1995, 39 brands in 2000 and 42 brands in 2005. Italy is mentioned in the table but no data is included.

[169] CEAHR's submission of 20 July 2005, Annex 10.

claimed that the discontinuance of the supply of spare parts took place notably around 2002,[170] CEAHR acknowledged, in 2008, that Rolex and Patek-Philippe had stopped delivering spare parts in some Member States *«about 20 years ago»*.[171] Similarly, in one of the letters submitted by CEAHR, dated 19 June 2000, it is indicated that the Swiss brands had refused to supply spare parts over the previous ten years.[172] Contrary to CEARH's submission, in fact, not all letters provided concern a period of three to four years (presumably CEAHR refers to the period 1999-2002).[173]

(142) Similarly, the Commission has confirmed during its investigation that the selective repair systems of the different watch manufacturers were not implemented at the same time, but over a relatively extended period of time.[174] In particular, Rolex appears to have introduced a selective repair system as back as the 1970s.[175] Tag Heuer had already implemented a selective distribution system for the sale of watches under that brand when LVMH acquired it in 1999[176]. Similarly, Bulgari had also implemented such a

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[170] CEAHR's complaint of 22 July 2004, p. 4. The submission states that the watch manufacturers *«have practically at the same time (about two years ago) applied the same policy of refusal to supply spare parts of their expensive watches»*.

[171] CEAHR's submission of 30 January 2008, p. 10.

[172] The letter states that *«Depuis quelque 10 ans, les grandes marques suisses notamment refusent de fournir les pièces détachées nécessaires à la remise en état des montres déposées aux horlogers rhabilleurs par les particuliers»*; the letter concerns France, but mentions as well other countries such as Belgium, the UK and Germany, and refers notably to Jaeger-LeCoultre, Cartier, Baume et Mercier, Vacheron and Piaget. See the submission *Collection Of Evidence Regarding Anti-Competition Actions Adopted By EU And Extra-EU Watch Producers And Importers* of October 2002, p. 120.

[173] See the following examples in the submission *Collection Of Evidence Regarding Anti-Competition Actions Adopted By EU And Extra-EU Watch Producers And Importers* of October 2002: (1) letter of 1 December 1994 referred to Patek-Philippe (p. 136); (2) letter of 24 September 1996 referred to Jaeger-LeCoultre (p. 145); and (3) letter of 19 November 1996 referred to Audemars Piguet (p. 146). A letter of 17 July 2002 refers to a much earlier period: *«In 1984, the Rolex company decided to change their policy of distribution of Rolex and Tudor spare parts with a view to controlling the servicing of these watch brands within their organization through their local agents in each country. Our contract with the Rolex company was terminated effective January 1985 after which we received no more deliveries of the said parts […]» (p. 14)*. Contrary to CEAHR's submissions, some of these letters do contain some (succinct) reasons for the discontinuance of the supply of spare parts (see e.g. pp. 136 and 146).

[174] In its submission of 27 September 2013, CEAHR appears to differentiate between the dates of the implementation of the selective repair systems and those of the refusal to continue to deliver spare parts (see page 14). This statement is, however, at odds with previous submissions of CEAHR, where both are inextricably linked. See for example, CEAHR's complaint of 22 July 2004, p. 4 and CEAHR's submission of 30 January 2008, p. 10. In fact, in the said submission of 27 September 2013, CEAHR appears to contradict itself, when it clearly makes that link again, by stating that *«[v]ery prudently the Commission leaves out any reference to a date at which these "selective repair systems" were set up, since it would then appear that that period corresponds about to the time, when the [watch manufacturers] decided to stop the delivery of spare parts to the 'independent repairers'! How can the Commission ignore that this common strategy covering both the setting up of selective repair facilities in the European Union, and the common refusal to continue to sell spare parts, without any motive being given, does indeed constitute proof of a deliberate policy, of nearly all the [watch manufacturers] […]»* (see p. 5).

[175] Rolex's submission of 7 February 2013 (non-confidential version of 28 August 2013), in response to questionnaire of 14 December 2012, question 1.8.1, p. 9. Rolex submission of 7 February 2013 (non-confidential version of 28 August 2013), in response to questionnaire of 14 December 2012, question 1.1, p. 3.

[176] Tag Heuer's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 28.

system when LVMH acquired the brand in 2011[177]. This was also the case with Hublot, which had also introduced such a system when it was acquired by LVMH in 2008[178]. In turn, Swatch had traditionally relied on the services of independent repairers for the repair of its watches and has introduced and gradually started implementing a selective repair system only a few years ago.[179] Finally, it shall be noted that there are certain brands within the investigated companies that still supply spare parts to independent repairers.[180]

(143) Hence, it does not appear that the watch manufacturers implemented the same policy at around the same time,[181] and, therefore, it is not possible on these grounds to conclude (or even to suspect) as to the existence of the alleged anticompetitive agreement or concerted practice.[182] In fact, nothing indicates that the successive refusals of the watch manufacturers to continue to supply spare parts were not the result of a series of independent commercial decisions by each undertaking.[183] In particular, the alleged collusion cannot be presumed on the basis merely of the participation of the watch manufacturers in the *Fédération Horlogère Suisse*, on the fact that they may have had *«business connections»* or, *a fortiori*, on the circumstance that several Groups own different brands (in the latter case, each Group must be considered as constituting a single undertaking and thus there is no agreement or concerted practice between its

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[177] Bulgari's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 28.

[178] Hublot's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 28.

[179] In May 2007, the Swatch group started for the brand Omega its distribution system for spare parts with three levels of service partners. Since then, other Swatch Group brands have used Omega's experience as guidance and started implementing similar systems. See Swatch's submission of 19 November 2013 (non-confidential version of 17 December 2013), p. 2.

[180] LVMH's brand Zenith does not have a selective repair system implemented. See Zenith's submission of 15 February 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, questions 28.1 and 29, p. 18 et seq.

[181] The request of CEAHR for further investigative measures does not appear justified, in view notably of all the above-mentioned considerations. It shall also be noted, in any event, that it is inherent to the complaint procedure that the burden of the proof of the alleged infringement corresponds to the complainant. See Judgment in EFIM v Commission, EU:C:2013:575, paragraph 72.

[182] Furthermore, it should be mentioned that, according to settled case law, even parallel conduct cannot be regarded as furnishing proof of concertation unless concertation constitutes the only plausible explanation for such conduct, and that, although Article 101 TFEU prohibits any form of collusion which distorts competition, it does not deprive economic operators of the right to adapt themselves intelligently to the existing and anticipated conduct of their competitors. See Judgment in A. Ahlström Osakeyhtiö and others v Commission ("Woodpulp II"), C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85, EU:C:1993:120, paragraph 71.

[183] *A fortiori*, CEAHR' claims that the agreements between the watch manufacturers, on the one hand, and the selective repairs systems and the third-party manufacturers of spare parts, on the other hand, form a single system whose purpose it is to eliminate the independent watch repairers from the repair and maintenance service market (CEAHR's submission of 27 September 2013, p. 18) finds no support in the available evidence. The selective repair systems set up by each watch manufacturer and the agreements of the latter with third party suppliers of spare parts will be examined separately in subsequent sections of this decision (see Sections 3.1.4.2 and 3.1.4.3, respectively).

respective brands for the purposes of the application of Article 101 TFEU).[184] Finally, in so far as there are multiple separate markets for spare parts (each associated, in principle, with a particular brand), it is not clear either why the watch manufacturers would need to collude in order for each of them to (decide to) implement a policy of discontinuance of supply of spare parts (of their respective brands) to independent repairers.[185]

(144) Therefore, the Commission considers that, in this case, there is a limited likelihood of establishing the existence of an agreement or concerted practice between the watch manufacturers aimed at foreclosing independent repairers, and thus of finding an infringement of Article 101 TFEU in that regard.

3.1.4.2. The alleged restrictions in the selective repair systems set up by the manufacturers of prestige watches

(145) As stated above, the watch manufacturers have established selective repair systems in which authorised repairers are selected on the basis of specific criteria. These selection criteria mainly relate to the training, experience and equipment of the repairer and the suitability of its premises. In the context of these systems, authorised repairers are generally prevented from supplying to independent repairers the spare parts that they obtain from the watch manufacturers.

(146) CEAHR submits that the selective repair systems for prestige watches are not covered by the Block Exemption Regulation. Furthermore, while it has not always been entirely consistent in its submissions, CEAHR appears to claim that the restriction, imposed by the watch manufacturers in their selective repair systems, requiring authorised repairers not to supply spare parts to independent repairers infringes Article 101 TFEU.[186]

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[184] These allegations had already been made by the CEAHR before the General Court, but were implicitly dismissed by the latter. See Judgment in CEAHR v Commission, EU:T:2010:517, paragraphs 123 and 130.

[185] If the markets for the supply of spare parts for prestige watches are brand specific and original parts are necessary to repair watches of a particular brand, as submitted by CEAHR, any watch manufacturer can decide by itself whether or not to discontinue the supply of those parts to independent repairers for watches of its own brand(s) and, therefore, does not need to collude with other watch manufacturers in order to (successfully) implement such an strategy, since the original parts for the watches of one manufacturer cannot be substituted by the parts supplied by other manufacturers. Hence, it is not clear what the incentives for the alleged agreement or concerted practice would be for the watch manufacturers.

[186] In its latest submission, CEAHR's writes that it *«has never alleged that the obligation, imposed by the [watch manufacturers]"not to supply spare parts to independent watch repairers" "infringes Article 101": […] such an obligation infringes TFEU Article 102. The same applies to the agreements between the [watch manufacturers] and third party suppliers of spare parts. Once again, the decision by the [watch manufacturers] to no longer supply spare parts to the 'independent repairers', either directly, or through the selective repair systems or the third party manufacturers of those spare parts, constitutes an abuse of a dominant position held by all the [watch manufacturers]»* (CEAHR's submission of 27 September 2013, p. 13). However, CEAHR has submitted, since early on in the case, that the selective systems of the watch manufacturers were not covered by the Block Exemption because, *inter alia*, they contain hardcore restrictions (e.g. CEAHR's complaint of 22 July 2004, p. 6; CEAHR's submission of 20 July 2005, p. 31). Hardcore restrictions are restrictions of competition by object and lead to the exclusion of the whole vertical agreement from the scope of application of the Block Exemption Regulation: moreover, where such a hardcore restriction is included in an agreement, the latter is presumed to fall within Article 101(1) TFEU and to be unlikely to fulfil the conditions under 101(3) TFEU for an individual exemption (see e.g. Guidelines on Vertical Restraints, OJ C-130, 19.05.2010, p. 1, paragraphs 23 and 47). CEAHR itself indicates that *«parties do only invoke a block exemption when they realise that they do infringe Article [101](1), otherwise it does not make sense»*

a) The application of the Block Exemption Regulation to the selective repair systems for prestige watches

(147) CEAHR claims that the selective repair systems for prestige watches are not covered by the Block Exemption Regulation because: (i) the authorised repairer is restricted in his ability to set the price of the repair service; (ii) the authorised repairer is restricted in his ability to sell spare parts to independent repairers; and (iii) the market shares of each of the watch manufacturers in the relevant market(s) for spare parts for its respective brand(s) exceed the 30% threshold provided in the Regulation.[187] Alternatively, CEAHR submits that, in case the Block Exemption Regulation was to be deemed applicable, the Commission should withdraw the benefit of the block exemption in this case.

(148) First, the Commission's investigation has not confirmed the claim made by CEAHR that authorised repairers are restricted, by the watch manufacturers, in their ability to set the price for the repair services, which would constitute a hardcore restriction under the rules of the Block Exemption Regulation.[188] The Commission has found that some manufacturers recommend indicative prices or impose maximum prices for such services;[189] a review of a large sample of contracts between the main manufacturers of prestige watches and their respective authorised repairers confirmed however that the latter are not contractually bound to apply the prices recommended by the watch manufacturers and that they remain free to charge prices below the referred maximum prices. These types of practices are thus, in principle, in conformity with the Block Exemption Regulation.[190]

(149) Second, the restriction imposed on authorised repairers, in the context of the selective repair systems set up by the watch manufacturers, concerning their ability to sell spare

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(CEAHR's submission of 20 July 2005, p. 29). CEAHR has also claimed that the conditions of Article 101(3) TFEU are not met in this case (e.g. CEAHR's complaint of 22 July 2004, p. 7; CEAHR's submission of 30 January 2008, pp. 16 to 19); such line of reasoning presupposes that the agreements at stake fall under Article 101(1) TFEU.

[187] See paragraph (44) above.

[188] Article 4(a) of Regulation 330/2010 [see as well Article 4(a) of Regulation 2790/1999]. The presence of a hardcore restriction leads to the exclusion of the whole vertical agreement from the scope of application of the Block Exemption Regulation, which is presumed to fall within Article 101(1) TFEU and to be unlikely to fulfil the conditions of Article 101(3) TFEU: see footnote number 186 above.

[189] See Richemont's submission of 5 July 2012 (non-confidential version of 7 July 2014), in response to the Commission's request for information of 25 June 2012, question 3.d, p.7. For LVMH, see Dior's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 32, p. 24 et seq; also Zenith's submission of 15 February 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 32, p. 22; Tag Heuer's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 32, p. 30; Hublot's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 32, p. 21-22. Finally, see Swatch's submission of 31 January 2012 (non-confidential version of 29 August 2013), in response to questionnaire of 23 November 2011, question 32, p. 59. Audemars Piguet's submission of 22 December 2011 (non-confidential version of 2 April 2012), in response to questionnaire of 23 November 2011, question 32, p. 28.

[190] According to Article 4(a) of Regulation 330/2010, the establishment of a hardcore clause concerning the restriction of the buyer's ability to determine its sale price is without prejudice to the possibility of the supplier to impose a maximum sale price or recommend a sale price, provided that they do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties.

parts to independent repairers will be examined in Section c) below. It can already be noted that such restriction does not constitute a hardcore clause within the meaning of the Block Exemption Regulation and that, therefore, by itself, it does not preclude the application of the latter.

(150) In any event, as explained above, the findings of the Commission point to the existence of multiple aftermarkets for spare parts and for repair and maintenance services, each associated with a particular watch brand. In each of these markets, the watch manufacturer generally holds a market share above 30%. Therefore, the exemption provided in the Block Exemption Regulation is generally not applicable in this case.[191]

(151) It shall however be noted, in that regard, that the Block Exemption Regulation merely defines a category of vertical agreements which the Commission regards as normally satisfying the conditions laid down in Article 101(3) TFEU. This creates a presumption of legality for vertical agreements depending on the market share of the supplier and the buyer (and the absence of hardcore restrictions). Nonetheless, vertical agreements which are not block exempted because the relevant threshold is exceeded do not necessarily fall within the scope of Article 101(1) TFEU or outside the scope of Article 101(3) TFEU.[192] It is therefore necessary to examine, first, whether, in the present case, the relevant agreements fall within the scope of Article 101(1) TFEU: see, in particular, Sections b) and c) below. If this were to be the case, it would then be necessary to examine whether or not the conditions of Article 101(3) TFEU are satisfied.[193]

(152) Finally, since the Commission has concluded that the Block Exemption Regulation does not generally apply in this case to the relevant agreements, it is not necessary to examine CEAHR's alternative request that the benefit of the block exemption is withdrawn.

b) The selection criteria set up in the selective repair systems for prestige watches

(153) As explained above, the watch manufacturers have introduced selective repair systems, in the context of which they appoint authorised third-party repairers on the basis of specific qualitative criteria (in the context of these systems, the watch manufacturers generally provide the relevant spare parts only to their respective authorised repairers).[194]

(154) According to settled case law, and as reiterated in the Commission's Guidelines on Vertical Restraints, qualitative selective distribution is generally considered to fall outside Article 101(1) TFEU for lack of anti-competitive effects, if three conditions are satisfied: (i) the characteristics of a product require a selective distribution system to preserve its quality and ensure its proper use, (ii) selected partners must be chosen on the basis of objective criteria of a qualitative nature which are not applied in a discriminatory manner and (iii) the criteria must not go beyond what is necessary.[195]

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[191] Article 3(1) of Regulation 330/2010 [see as well Article 3(1) of Regulation 2790/1999].

[192] Recital 9 of Regulation 330/2010 and paragraph 23 of the Guidelines on Vertical Restraints.

[193] Guidelines on Vertical Restraints, paragraph 96.

[194] See e.g. paragraph (110) above.

[195] Judgment in Metro v Commission, C-26/76, EU:C:1977:167, paragraphs 20 and 21. Judgment of 12 December 1996, Leclerc v Commission, T-19/92, ECR, EU:T:1996:190, paragraph 112. Judgment in Pierre Fabre Dermo-

(155) CEAHR has not explicitly contested that the above-mentioned conditions are met in the present case (although, as it will be explained below, it has advanced some arguments that could be understood as casting some doubt on the applicability of some of the said conditions)[196] and does not appear to consider this question as relevant for the assessment of the complaint.[197] Despite this, the Commission has decided to examine whether, in the present case, the criteria for access to the network of authorised repairers set up by the watch manufacturers may likely cause the respective selective systems to fall within Article 101(1) TFEU. This issue is not only important for the purposes of the application of the latter provision to this case, but also of that of Article 102 TFEU. Indeed, as indicated in paragraphs (118) and (119) above, if the above-mentioned conditions are met (in other words, if the selective repair systems remain open potentially to any repairers meeting the appropriate requirements and willing to join the authorised network), it is very unlikely that the selective repair systems will bring about anticompetitive effects. Under these circumstances, the refusal to supply spare parts outside the authorize network would not likely risk eliminating effective competition in the repair and maintenance markets.

(156) In that regard, it shall be noted that the selective repair systems established by the watch manufacturers seem to be motivated by reasons relating to the quality of repairs and the brand image, as well as to prevent counterfeiting.[198] The investigation has not shown that the watch manufacturers would have any anticompetitive incentives to significantly limit the number of their authorised repairers.[199]

Cosmétique v Président de l'Autorité de la concurrence and Ministre de l'Économie, de l'Industrie et de l'Emploi, C-439/09, EU:C: 2011:649, paragraph 41. Guidelines on Vertical Restraints, paragraph 175.

196 See e.g. paragraph (158) below.

197 Quite explicitly, CEAHR writes that it *«wonders why the Commission is wasting its time and that of CEAHR, by going deeply into the analysis of the selective repair systems. The existence of these systems is of no concern to the 'independent repairers', not even for the fact that these systems are prevented from delivering spare parts to them»* (CEAHR's submission of 27 September 2013, p. 14) and that *«CEAHR is not interested in the analyses of the selection criteria of the selected repair systems»* (*ibid*, p. 15). While in its submissions there is occasionally a certain criticism of the conditions set up by the watch manufacturers (see notably CEAHR's reply of 22 June 2011, pp. 9 and 10, to the Commission questionnaire of 18 March 2011), the position of CEAHR has consistently been that its members shall remain independent and thus not become part of the selective repair networks of the watch manufacturers: CEAHR seems to consider that entering the selective repair networks of the brands would transform the independent repairers into "employees" of the watch manufacturers (see CEAHR's submission of 16 January 2013, p. 3).

198 Richemont's submission of 15 February 2012 (non-confidential version of 6 March 2012), in response to questionnaire of 23 November 2011, section E.4 and E.5 of the Introduction and question 28, p. 16 et seq. For LVMH, see Tag Heuer's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 30, p. 25; and Bulgari's submission of 6 January 2012 in response to questionnaire of 23 November 2011, question 30, pp. 18-19. Rolex's submission of 7 February 2013 (non-confidential version of 28 August 2013), in response to questionnaire of 14 December 2012, question 1.8.1, p. 9. Swatch's submission of 31 January 2012 (non-confidential version of 29 August 2013), in response to questionnaire of 23 November 2011, questions 28 and 30, p. 46 et seq. Audemars Piguet's submission of 22 December 2011 (non-confidential version of 2 April 2012), in response to questionnaire of 23 November 2011, questions 26, 28 and 30, p. 12 et seq.

199 For instance, Swatch indicates, in that regard, the following: *«The Swatch Group does not apply any quantitative criteria in its selection or spare parts dealers or watch repairers and thus is not seeking to limit the number of dealers or repairers. The overall goal of the distribution system is to ensure that spare parts will be used in compliance with the Swatch Group's high technical standards as required by the very nature of the*

1) The characteristics of the product justify a selective system

(157) As to the first condition, the nature of the product in question must necessitate a selective system, in the sense that such a system must constitute a legitimate requirement, having regard to the nature of the product concerned, to preserve its quality and to ensure its proper use.[200]

(158) In that regard, CEAHR has made a distinction between the distribution of prestige watches and the repair and maintenance thereof. Moreover, it has reiterated its position that the so-called prestige watches are generally simple and that independent repairers also have the necessary qualifications to adequately perform repair services, as they have done for decades. Finally, according to CEAHR, the justification regarding the preservation of the "brand image" has no merit, since some bad repairs could not affect the image of the millions of prestige watches produced by each brand; moreover, a buyer of such a watch should not worry about repairs, since the customer does not buy an expensive watch expecting it to need repairs.[201]

(159) In its judgment in *Metro I*, the Court of Justice considered that the operation of a selective distribution system was justified in the sector of the production of high quality and technical advanced consumer durables.[202] More significantly for the present case, the General Court ruled in *Leclerc* that a selective system for the retail of luxury products may be justified to preserve the brand image and the aura of exclusivity and prestige of the product.[203] The General Court considered, in particular, that luxury cosmetics are sophisticated and high-quality products with a distinctive image, which is important in the eyes of consumers. According to the General Court, it is in the interests of consumers that such products are appropriately presented and that their luxury image is preserved in that way.[204]

(160) The Commission considers that the criteria used by the General Court in *Leclerc* to consider luxury cosmetics as goods whose characteristics necessitate a selective distribution system[205] are generally pertinent as well in the present case with regard to

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given product and thus to ensure the quality of the maintenance service to the end customer» (Swatch submission of 19 November 2013 (non-confidential version of 17 December 2013), p. 2; see also Swatch's submission of 31 January 2012 (non-confidential version of 29 August 2013), in response to questionnaire of 23 November 2011, questions 26 and 29.3, p. 43 et seq). Similarly, LVMH has confirmed that any repairer that meets Bulgari's selective criteria can become part of such repair system and thus receive Bulgari's spare parts; LVMH has also submitted that its brand TAG Heuer will supply spare parts to independent repairers that meet objective criteria, with no limitation as to its number (the brands Zenith and Hublot will follow a similar approach) (LVMH submission of 26 August 2013, pp. 1-3).

200 Judgment in Leclerc v Commission, EU:T:1996:190, paragraph 112. Guidelines on Vertical Restraints, paragraph 175.

201 CEAHR's submission of 27 September 2013, pp. 15 and 16.

202 Judgment in Metro v Commission, C-75/84, EU:C:1986:399, paragraphs 20 *et seq*.

203 See Judgment in Leclerc v Commission, EU:T:1996:190; paragraphs 114 to 123, and Judgment of 12 December 1996, Leclerc v Commission, T-88/92, ECR, EU:T:1996:192, paragraphs 108 to 117.

204 Judgment in Leclerc v Commission, EU:T:1996:192, paragraph 122.

205 See Judgment in Leclerc v Commission, EU:T:1996:190; paragraph 114. The Court's definition of luxury products (namely, high quality articles sold at a relatively high price and marketed under a prestige brand

prestige watches. Indeed, the latter are normally sophisticated and high-quality products which use materials of high quality and which enjoy a luxury image which distinguishes them from other similar products lacking such an image; such luxury image is important in the eyes of consumers and there is, in their minds, only a low degree of substitutability between prestige watches and non-prestige watches.[206] Concerning CEAHR's claim that prestige watches are generally simple watches (i.e. technically not very complex), it shall be noted that the General Court has ruled that the concept of the characteristics of luxury products cannot be limited to their material characteristics but also encompasses the specific perception that consumers have of them, in particular their "aura of luxury".[207] In sum, prestige watches appear to be products which are of high intrinsic quality and have a luxury character arising from their very nature, within the meaning of the *Leclerc* case law.[208]

(161) Moreover, the Commission disagrees with CEAHR's argument that the case law concerning selective distribution of goods would not be relevant for the present case, in so far as the latter does not concern the sale of prestige watches, but the supply of spare parts and the provision of repair and maintenance services for those watches (and therefore services rather than goods).[209] In effect, in view of the intrinsic nature and characteristics of prestige watches (as described in the previous paragraph), it does not

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name) seems appropriate in the case of prestige watches (Judgment in Leclerc v Commission, EU:T:1996:190; paragraph 1).

206 In the eyes of the consumer, prestige watches often appear to be a piece of jewellery or style accessory rather than a mere timepiece. The essential function of a watch, namely to tell the time, can fully and accurately be served by a watch costing around EUR 25. See Richemont's submission of 15 February 2012 (non-confidential version of 6 March 2012), in response to questionnaire of 23 November 2011, section C.2 of the Introduction, p. 9, and Audemars Piguet's submission of 30 January 2012 (non-confidential version of 2 April 2012), in response to questionnaire of 23 November 2011, question 6, pp. 3 and 4.

207 See Judgment in Leclerc v Commission, EU:T:1996:190; paragraph 115.

208 CEAHR has challenged the inherent technical complexity of most prestige watches (although in its complaint of 22 July 2004, CEAHR stressed that the watch sector is a *«highly specialized»* sector where *«repairs play an essential role»*: p. 17), but does not appear to contest the aura of luxury that these prestige watches often present in the eyes of the consumer (and particularly the prestige nature of the brands of the watch manufacturers). See CEAHR's submission of 27 September 2013, pp. 1 (*«[t]hanks to the 'prestige' of their 'brand', the [watch manufacturers] are able to charge very high prices for their watches, a fact which is usually not justified by the reality of the content of these watches»*) and 7. In turn, Richemont has explained that luxury watches supplied by its Maisons are prestigious products, very often of high technicity and complexity, which are sold (and repaired) within a selective system based on objective qualitative criteria (Richemont's submission of 16 September 2013, p. 1, par. 4); see also Richemont's submission of 15 February 2012 (non-confidential version of 6 March 2012), in response to questionnaire of 23 November 2011, section D of the Introduction (p. 11 et seq.). Similarly, Swatch has stated that watches in the higher price segment are valuable and highly complex goods and that their repair and service usually requires a very high degree of knowledge and craftsmanship. According to Swatch, customers of high quality watches assume that authorized repairers have the respective knowledge and expertise to execute the maintenance and repair thereof. The distribution system, thus, needs to set quality standards according to the type of service and complexity of the product while ensure that repair and maintenance facilities are widely available to end customers. Swatch concludes that watch spare parts are products that require a selective distribution system to preserve its quality and ensure its proper use (Swatch submission of 19 November 2013 (non-confidential version of 17 December 2013), p. 4). Rolex has stressed the notoriety reached by its watches in the eyes of both consumers and professionals (Rolex submission of 18 November 2013, p. 1).

209 See, for instance, the reference not only to sales service but also to after-sales services in the Judgment in Metro II, C-75/84, EU:C:1986:399, paragraph 54.

appear that the justifications based on the grounds of preserving the brand image and the aura of exclusivity and prestige of the product would only be relevant for the sales of such a product, and not for the repair and maintenance thereof. In particular, the reputation of the brand being a key factor in the customer's decision to purchase a prestige watch, it cannot be excluded that the objective of ensuring the provision of repair services of high and uniform quality helps maintaining the image of the brand (notably its aura of exclusivity and prestige) in the eyes of the consumer.[210] This conclusion is not convincingly denied by CEAHR's arguments, according to which some bad repairs could not affect the image of the prestige watches of a brand and that a buyer of an expensive watch does not expect it to need repairs.[211]

2) The criteria are objective and applied uniformly and without discrimination

(162) With regard to the second condition identified by the case law[212], the investigation in the present case, while revealing that the criteria defined by the brands differ somewhat (and may even vary in different Member States), has provided no indication that the repairers that are admitted to the selective repair systems are not chosen by watch manufacturers on the basis of qualitative objective criteria that are applied in a uniform and non-discriminatory manner.[213]

3) The criteria do not go beyond what is necessary

(163) Finally, as far as the third condition is concerned, the Commission has examined with particular care whether the selection criteria for the selective repair systems of the watch manufacturers could be deemed as going beyond what is necessary to ensure the aims of those systems. As indicated, these criteria concern notably the training and experience of

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[210] As noted above, the General Court has indicated that a selective system may be justified for the retail of luxury products to preserve the brand image and the aura of exclusivity and prestige of the product. See Judgment in Leclerc v Commission, EU:T:1996:190; paragraphs 114 to 123, and Judgment of 12 December 1996, Leclerc v Commission, T-88/92, ECR, EU:T:1996:192, paragraphs 108 to 117.

[211] According to the General Court, it is in the interests of consumers seeking to purchase luxury products that the luxury image of such products is not tarnished, as they would otherwise no longer be regarded as such (Judgment in Leclerc v Commission, EU:T:1996:190; paragraph 120).

[212] Judgment in Auto 24 SARL, C-158/11, EU:C:2012:351, paragraph 33. See also Guidelines on Vertical Restraints, paragraph 175.

[213] For instance, Swatch indicates, in that regard, the following: *«The Swatch Group has developed and implemented for its Brands a qualitative selective distribution system for spare parts. The aim of this distribution system is to ensure that as many qualified repairers as are interested receive access to spare parts, while ensuring that those repairers receiving spare parts have the know-how, training, expertise, tools and facilities necessary to repair the Swatch Group's products. The Swatch Group selects its authorized repairers on the basis of objective and necessary criteria in a non-discriminatory manner aimed at guarantying the maximum quality of the product»* (Swatch submission of 19 November 2013 (non-confidential version of 17 December 2013) p. 2). Similarly, LVMH has stated that its repair systems are based on qualitative, transparent, objective criteria that are applied in a non-discriminatory manner and don't go beyond what is necessary (LVMH submission of 26 August 2013, p. 1 *et seq.*). See also Tag Heuer's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 28, p. 16 et seq. and Bulgari's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 28.4, pp. 16-17. Likewise, Audemars Piguet's submission of 22 December 2011 (non-confidential version of 2 April 2012), in response to questionnaire of 23 November 2011, question 28.4, p. 16 et seq.

the repairer, and often include as well requirements related to minimum tools and equipment and minimum stock of spare parts to be able to perform timely repairs.[214]

(164) While these criteria vary somewhat across watch manufacturers, the investigation indicates that they appear to be qualitative and aim at ensuring a high quality of the repair services. These criteria, therefore, appear as not going beyond what is necessary.

(165) Furthermore, during the investigation, some brands have introduced clarifications and modifications in their respective selective repair systems in order notably to further ensure that their selection criteria are applied uniformly and in an objective manner and do not go beyond what is necessary.[215]

(166) CEAHR has explicitly indicated that it does not have a problem with the criteria concerning training, experience, tools and stock of spare parts.[216] CEAHR nevertheless alleges, regarding the condition of not going beyond what is necessary, that the repairers

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[214] For an illustration, see Annex I of Richemont submission of 16 September 2013, which contains a summary of the requirements a repairer must meet to be authorised to repair Cartier, Baume & Mercier and Montblanc watches. See also Annexes I and II of LVMH submission of 26 August 2013, which concern its brands Tag Heuer and Bulgari. See as well Swatch submission of 19 November 2013 (non-confidential version of 17 December 2013), pp. 3-4.

[215] First, LVMH has confirmed that its brand TAG Heuer will supply spare parts not only to Official Service Centres and authorized retailers-repairers, but also to independent repairers that meet objective criteria. These independent repairers will not be part of TAG Heuer's Selective Repair System, but will be allowed to use the spare parts (including original TAG Heuer spare parts) for repairs or for resale to clients of their choice. There will be no limitation as to the number of independent repairers to which TAG Heuer will supply its spare parts. In turn, the Zenith and Hublot brands will implement the same Selective Repair System as TAG Heuer in territories where the distribution of their watches is ensured by an LVMH subsidiary (and will make their best effort to ensure that the same criteria are applied in territories where distribution is ensured by independent distributors and authorized wholesale distributors). Finally, while the Bulgari brand will only supply its spare parts to repairers which are part of its selective repair system, it will ensure that any repairer that meets Bulgari's selective criteria will become part of such repair system and thus receive Bulgari's spare parts, see LVMH submission of 26 August 2013, pp. 1-3. Second, Richemont has indicated that it will not decline to supply parts to a repairer for the sole reason that the repairer is not also an authorised dealer in watches, provided that the repairer meets the objective qualitative criteria of the Maison concerned so as to be appointed as an authorised repairer for the watches and models in question. Following receipt from the repairer of an application form setting out relevant information, the objective qualitative criteria will be assessed in two steps: (1) evaluation of the skills and experience of the watchmaker, including a bench test, together with an evaluation of the workshop, including its environment and equipment; (2) the repairer undertakes Maison specific training, according to the Maison/service level/models for which authorisation is sought, and purchases the required Maison specific tools and spare parts in order to be an authorised repairer. Certain models with particular characteristics (i.e. small volumes and high technicity) may, however, be reserved to in-house repair, see Richemont submission of 16 September 2013, pp. 1-2. Third, Rolex has indicated that it is ready to enlarge the scope of its aftersales service centres to repairers who are not authorised distributors of Rolex, but that it will ensure that its new partners are subject to strict quality criteria, notably with regards to qualification, training, acquisition of specific tools and presentation. Rolex has stressed the need to protect consumers from any risk of confusion between these repairers and Rolex's authorised distributors and to continue the fight against counterfeiting, see Rolex submission of 18 November 2013, pp. 1 to 3. Fourth, Swatch has confirmed that interested repairers fulfilling the criteria may enter, at any time, into the network of one or various brands, irrespective of whether the repairer is an independent one or is already a retailer of one of Swatch Group's Brands, see Swatch submission of 19 November 2013 (non-confidential version of 17 December 2013) p. 5.

[216] CEAHR's submission of 27 September 2013, p. 16. CEAHR further points out that those same requirements apply to repairers who want to become members of the national organizations of independent watch repairers, which are members of CEAHR.

who want to be able to acquire spare parts, must *«give up their freedom and independence, in order to become a kind of "employees" of the [watch manufacturers], by signing a very demanding contract. In fact, if a repairer wants to be able to buy needed spare parts, he must 'join' the [watch manufacturers]»*.[217] This criticism relates, however, not to the conditions to join the authorised networks but to the fact that the watch manufacturers restrict the supply of spare parts to non-authorised repairers. Therefore, it will be examined under Section c) below.

(167) In addition CEAHR has claimed that many watch manufacturers require exclusivity and prohibit authorized repairers from repairing watches from other brands.[218] This allegation has not, however, been confirmed during the investigation.[219] Indeed, the watch manufacturers do not appear to contractually prohibit their authorized repairers from repairing watches of other brands.[220] Repairers can thus be authorised to repair prestige watches of several brands provided that they fulfil the selection criteria of each brand.

(168) CEAHR has also claimed that the selective repair systems amount to *de facto* exclusivity, because it is not economically feasible for a watch repairer to meet the criteria of more than one selective repair system.[221] According to CEAHR, independent repairers would have to invest considerable amounts of money in specific tools and stock of parts for each brand, representing a total amount of investment that would not make their business profitable.[222] However, as it has been indicated, the said criteria do not appear to go beyond what is necessary and would therefore appear justified. Moreover, some watch manufacturers contest that the technical criteria applied in their selective system may create artificial entry barriers for interested repairers.[223] Finally, the investigation found

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[217] CEAHR's submission of 27 September 2013, pp. 16-17.

[218] CEAHR's submission of 27 September 2013, p. 17.

[219] See e.g. Bulgari's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 28.4, pp. 16-17. See also Audemars Piguet's submission of 30 January 2012 (non-confidential version of 2 April 2012), in response to questionnaire of 23 November 2011, question 7.c, pp. 10-11.

[220] A review of a large sample of contracts between the main manufacturers of prestige watches and their respective authorised repairers confirmed that the latter are not contractually prevented from repairing watches from other brands. These contracts, in effect, do not contain such exclusive clauses.

[221] CEAHR's submission of 27 September 2013, p. 17

[222] CEAHR's submission of 27 September 2013, p. 17.

[223] For instance, Swatch submits that «*[t]he preeminent criteria are that the repairer is a trained watchmaker and has the necessary tools. The repairer's investment for specific tools linked to a certain brand is reasonable and usually represents only a fraction of the investment for standard tools. In general, trainings are free of charge and only at advanced level trainings for Prestige brands are charged on a cost base level*» (Swatch submission of 19 November 2013 (non-confidential version of 17 December 2013) p. 4). LVMH indicates that the repairers for the Bulgari brand will not be required to maintain a minimum stock of spare parts (the only requirement is that the repairer can provide a prompt repair in line with the standard lead-time, with the repairer determining at its own discretion what is the adequate stock of spare part to be maintained in order to attain this objective) (LVMH submission of 26 August 2013, p. 3).

that it is actually not uncommon that repairers provide repair and maintenance services for watches of several brands.[224]

(169) In view of the above, the criteria for admission onto the selective repair systems appear not to go beyond what is necessary.

4) Conclusion

(170) On the basis of the above, the Commission concludes that the selective repair systems of the manufacturers of prestige watches appear to be based on qualitative criteria which are objective, proportionate, laid down uniformly for all potential repairers and are not applied in a discriminatory fashion. As a result, it is not likely that these systems fall within the scope of Article 101(1) TFEU.

c) The requirement that authorised repairers of prestige watches do not to supply spare parts to independent repairers

(171) As indicated, CEAHR appears to claim that the restriction, imposed by the watch manufacturers in their selective repair systems, requiring authorised repairers not to supply spare parts to independent repairers infringes Article 101 TFEU (see paragraph (146) above).

(172) It must however be noted that selective distribution systems typically restrict the possibilities of resale to companies outside the authorised network.[225] In particular, these systems are based on the requirement that authorised distributors do not supply to non-authorised re-sellers. This requirement is indeed a characteristic feature of selective systems.

(173) This is reflected in the provisions of the Block Exemption Regulation, in particular in its Article 4(b), third indent, which excludes the restriction of sales by the members of a selective distribution system to unauthorised distributors (within the territory reserved by the supplier to operate that system) from the general hardcore restriction concerning limitations on the customers to whom a buyer party to the agreement may sell the contract goods or services.[226]

(174) The Commission similarly considers that where a qualitative selective system falls outside the Block Exemption Regulation (for non-fulfilment of the market share threshold) but does not fall under the scope of Article 101(1) TFEU (in so far as it meets the conditions described in paragraph (154) above), a restriction set out in such a system of the possibility for the authorised members to supply to non-authorised members falls likewise outside the prohibition of Article 101 TFEU.

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[224] The Commission requested the list of authorised repairers of Rolex, LVMH and Swatch in France, Germany, Italy, Spain, and the United Kingdom and found common authorised repairers. See Rolex's submission of 4 December 2012, Swatch's submission of 29 November 2012 and LVMH's submission of 23 October 2012 (the lists are, however, confidential).

[225] Guidelines on Vertical Restraints, paragraph 174.

[226] Article 4(b), third indent, of Regulation 330/2010. See as well Article 4(b), third indent, of Regulation 2790/1999.

(175) The Commission disagrees with the parallel that the CEAHR draws[227] with the rules applicable to the motor vehicle sector, in particular with Article 5(a) of Regulation 461/2010[228], which stipulates that 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 constitutes a hardcore restriction in the context of the motor vehicle sector.[229] That provision is clearly limited and therefore exclusively applicable to the motor vehicle sector, and cannot simply be generalised to apply to other sectors, notably in view that, as indicated, the (general) Block Exemption Regulation explicitly excludes such a restriction from the relevant hardcore clauses (see paragraph (173) above).[230]

(176) Therefore, the Commission considers that the obligation imposed by watch manufacturers on authorised repairers not to resell spare parts to independent repairers is, by itself, not likely to infringe Article 101 TFEU.

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[227] See for example CEAHR's submission of 27 September 2013, p. 17.

[228] 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 (OJ L 129, 28.5.2010, p. 52).

[229] The motor vehicle sector has been subject to sector-specific legislation since the 1980s. These rules respond to a number of competition problems specific to the car sector. Note, in that regard, that the particular characteristics of the watches sector seem to differ significantly from those of the car sector, if notably in so far as: (i) authorised watch repairers do not sell spare parts to end consumers (as car repairers do), but simply use them for their own repair activity (customers do not buy spare parts to repair their watches); (ii) the after-sales services in the watches' sector does not appear to constitute the high profit-making segment (the primary market is; see, in that regard, e.g. Swatch's submission of 31 January 2012 (non-confidential version of 29 August 2013), in response to questionnaire of 23 November 2011, questions 7.c and 26, p. 20 et seq.; Rolex submission of 18 November 2013, p. 2; Tag Heuer's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 7, p. 2 et seq.; Bulgari's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 7.c, pp. 4-5; Hublot's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 7.c, pp. 4-5; Richemont's submission of 15 February 2012 (non-confidential version of 6 March 2012), in response to questionnaire of 23 November 2011, question 26, p. 29), whereas the opposite generally applies to cars; (iii) over the lifespan of the watch, after-sales services do not generally represent a very high proportion of total consumer expenditure on the prestige watch (see e.g. Bulgari's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 7.c, pp. 4-5; Hublot's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 7.c, pp. 4-5) instead, costs borne by consumers for motor vehicle repair and maintenance services represent a very high proportion of their expenditure on cars; and (iv) for watches, it is less important to have several repair centres very close to the consumer, since watches can easily be shipped (and usually the cost of being shipped even to another country is quite low), unlike cars, which cannot be driven if broken (typically car consumers are not willing to drive more than 10 km to have their vehicle repaired); moreover the need for repair and maintenance seem to occur more frequently for cars than for watches.

[230] The Commission does not fully comprehend CEAHR's latest allegation, according to which the parallel should not be drawn between luxury/prestige watches, on the one hand, and cars, on the other hand. CEAHR suggests the parallel should be made with *«luxury cars»* (CEAHR's submission of 27 September 2013, p. 17). In effect, there are no specific antitrust rules for luxury cars: Article 5(a) of Regulation 461/2010 (discussed at paragraph (175) above) applies to all types of cars and thus does not limit to the latter the underlying rule regarding restrictions of the sales of spare parts for motor vehicles by members of a selective distribution system to independent repairers. Incidentally, in its complaint of 22 July 2004, CEAHR draws a parallel between watches and cars in the present case, and not to *«luxury cars»* (p. 17).

3.1.4.3. The agreements between watch manufacturers and manufacturers of spare parts for prestige watches

(177) CEAHR finally appears to claim that the agreements between watch manufacturers and third party suppliers of spare parts for prestige watches also violate Article 101 TFEU.[231]

(178) As explained in paragraph (78) above, some watch manufacturers outsource a significant part of the production of movements and spare parts for their prestige watches to third-party companies.

(179) According to Article 4(e) of the Block Exemption Regulation, the restriction, agreed between a supplier of components and a buyer who incorporates those components, of the supplier's ability to sell the components as spare parts to end-users or to repairers or other service providers not entrusted by the buyer with the repair or servicing of its goods constitutes a hardcore restriction and prevents the application of the Block Exemption Regulation.

(180) However, subcontracting agreements (whereby a contractor provides technology or equipment to a subcontractor that undertakes to produce certain products on the basis thereof exclusively for the contractor) are covered by the Subcontracting Notice.[232] According to that Notice, subcontracting agreements fall outside the scope of Article 101(1), provided that the technology or equipment which the contractor provides the subcontractor with is necessary to enable the latter to produce the goods. In particular, if the third-party producer of spare parts, in order to produce those spare parts, needs access to IPRs, secret knowledge, manufacturing processes or tools and equipment owned by the watch manufacturer, then the agreement is a genuine subcontracting arrangement falling outside Article 101(1) TFEU.[233]

(181) Within this legal framework, the investigation has found no indications that the agreements between watch manufacturers and third party producers of spare parts may violate Article 101 TFEU. Indeed, the relevant agreements often seem to fall within the Subcontracting Notice. Some brands have a very high percentage of spare parts protected by IPRs. In some cases, third-party producers of spare parts need tools, prototypes or access to secret knowledge and specifications owned by the watch manufacturer.[234]

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[231] As indicated in footnote number 186 above, in its latest submission CEAHR submits, however, that it «*has never alleged that the obligation, imposed by the [watch manufacturers]"not to supply spare parts to independent watch repairers" "infringes Article 101": […] such an obligation infringes TFEU Article 102. The same applies to the agreements between the [watch manufacturers] and third party suppliers of spare parts. Once again, the decision by the [watch manufacturers] to no longer supply spare parts to the 'independent repairers', either directly, or through the selective repair systems or the third party manufacturers of those spare parts, constitutes an abuse of a dominant position held by all the [watch manufacturers]*» (CEAHR's submission of 27 September 2013, p. 13, emphasis added).

[232] Commission notice of 18 December 1978 concerning the assessment of certain subcontracting agreements in relation to Article 85(1) of the EEC Treaty (OJ C 1, 3.1.1979, p. 2).

[233] See Subcontracting Notice, point 2.

[234] Tag Heuer's submission of 12 December 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 22 November 2012, question 3.3, p. 17 et seq, regarding specific parts and movements. Bulgari's submission of 14 December 2012 (non-confidential version of 30 August 2013 in response to questionnaire of 22 November 2012, question 3.3, p. 17 et seq, regarding also specific parts and movements.

Third-party producers of spare parts outsourced by watch manufacturers appear free to sell generic spare parts on the market.[235]

(182) Finally, the complainant has not submitted evidence (or relevant indicia) in support of its allegation that the agreements between watch manufacturers and third party suppliers of spare parts violate Article 101 TFEU.

(183) Therefore, the Commission considers that, in the present case, there is a limited likelihood of finding that the agreements between watch manufacturers and third party suppliers of spare parts infringe Article 101 TFEU.

3.1.4.4. Conclusion

(184) On the basis of the above, the Commission considers that there is a limited likelihood of finding an infringement pursuant to Article 101 TFEU in this case.

3.2. The scope of the investigation required

(185) The Commission has already dedicated considerable resources to this case. A further investigation would require considerable additional resources. Such an investigation would, among other things, require the Commission to examine in depth the implementation of the diverse selective repair systems of the different watch manufacturers subject to the complaint, taking into account that these systems often vary between the different brands of each group and between the different Member States. This would be disproportionate in view of the limited likelihood of establishing the existence of an infringement.

4. CONCLUSION

(186) In view of the above considerations, the Commission, in its discretion to set priorities, has come to the conclusion that there are insufficient grounds for conducting a further investigation into the alleged infringements and consequently rejects your complaint pursuant to Article 7(2) of Regulation No. 773/2004.

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[235] Richemont has confirmed that it does not maintain any restrictions in contracts with its suppliers, restricting the latter from supplying spare parts to third parties, other than those covered by the Commission's Notice on Sub-Contracting Agreements (Richemont submission of 16 September 2013, p. 2). LVMH similarly submits that its subsidiaries' contractual relationship with their spare parts supplier do not contain any hardcore restriction susceptible to remove the benefit from the Block Exemption Regulation of Vertical Restraints. In particular, LVMH does not generally restrict the supplier's ability to sell the spare parts to end-users or to repairers or other service providers outside their repair system. According to LVMH, spare parts' suppliers are only prohibited selling original LVMH Subsidiaries product to third parties (i.e. products on which intellectual property rights are owned by or transferred to LVMH Subsidiaries). Suppliers will in any event still have the ability to resell standard spare parts to third parties (LVMH submission of 26 August 2013, p. 3). In turn, Rolex has indicated that it manufactures most of the spare parts destined to its watches and submits that it has not concluded agreements with third party manufacturers of spare parts which would restrict the latter to supply generic spare parts to independent repairers (Rolex submission of 18 November 2013, p. 3). See also Tag Heuer's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 35, p. 31, Hublot's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 35, p. 22. Dior's submission of 6 January 2012 (non-confidential version of 30 August 2013), in response to questionnaire of 23 November 2011, question 35, p. 28. Audemars Piguet's submission of 22 December 2011 (non-confidential version of 2 April 2012), in response to questionnaire of 23 November 2011, question 35, p. 30.

5. PROCEDURE

5.1. Possibility to challenge this Decision

(187) An action may be brought against this Decision before the General Court of the European Union, in accordance with Article 263 TFEU.

5.2. Confidentiality

(188) The Commission reserves the right to send a copy of this Decision to the undertakings against which proceedings were opened in this case. Moreover, the Commission may decide to make this Decision, or a summary thereof, public on its website.[236] If you consider that certain parts of this Decision contain confidential information, I would be grateful if within two weeks from the date of receipt you would inform the case team: […], […], […] and Comp Greffe Antitrust (e-mail: comp-greffe-antitrust@ec.europa.eu). Please identify clearly the information in question and indicate why you consider it should be treated as confidential. Absent any response within the deadline, the Commission will assume that you do not consider that the Decision contains confidential information and that it can be published on the Commission's website and/or sent to the companies which were parties to the present proceedings.

For the Commission

Ferdinando NELLI FEROCI
Member of the Commission

[236] Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU, OJ 2011/C 308/06, paragraph 150.