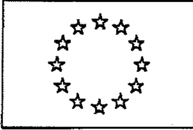

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, *[SG adds the date]*
SG-Greffe(YYYY) D/

Confédération Européenne des
Associations d'Horlogers-Réparateurs
(CEAHR)
4 rue Jacques de Lalaign
B-1040 Brussels

Rejection decision for lack of Community interest

Case No COMP/E-1/39097/Independent Watch Repairers

Subject: Case No COMP/E-1/39097/Independent Watch Repairers
(Please quote this reference in all correspondence)

Dear Sirs,

I refer to your complaint of 22 July 2004 lodged with the Commission against manufacturers of watches and spare parts regarding the alleged violations of Article 81 and 82 of the EC Treaty in connection with the watch manufacturers' refusal to supply spare parts to independent watch repairers.

The Commission has fully taken account of the comments presented in your letters, and in particular in the letter of 20 July 2005 containing a reply to the Commission's Pre-Article 7 letter of 28 April 2005 as well as your reply of 30 January 2008 to Article 7 letter of 12 December 2007.

For the reasons set out below, the Commission considers that there is insufficient Community interest for conducting a further investigation into the alleged infringement(s) and rejects your complaint pursuant to Article 7(2) of the Commission Regulation (EC) 773/2004[1].

1. THE COMPLAINT

A. The parties

(1) Confédération Européenne des Association d'Horlogers-Réparateurs (European Confederation of Watch & Clock Repairers' Associations, hereinafter referred to as "**CEAHR**") is the complainant in the present case. It consists of 7 national associations from 6 countries.

(2) The CEAHR's complaint is directed against the following manufacturers of watches and spare parts: The Swatch Group, Richemont International SA, LVMH, Rolex SA, Manufacture des Montres Rolex SA, SA de la Manufacture d'Horlogerie Audemars Piguet et Cie; and Patek Philippe SA Manufacture d'Horlogerie (hereinafter jointly referred to as "watch manufacturers").

B. The complaint

(3) The complaint relates to the watch manufacturers' refusal to sell spare parts to independent watch repairers. In particular, CEAHR alleges that such refusal was aimed at eliminating independent watch repairers from the market and resulted in the restriction of competition on the market for the watches repair and maintenance. These practices, as claimed by CEAHR, constitute abuse of a dominant position within the meaning of Article 82 of the Treaty and involve the existence of agreements and/or concerted practices which are prohibited under Article 81 of the Treaty. Furthermore, according to CEAHR, the refusal to supply spare parts is a consequence of the

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[1] 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.

implementation by the watch manufacturers of a selective distribution system which, in the opinion of CEAHR, is not covered by the Block Exemption Regulation on Vertical Agreements[2] (hereinafter referred to as the "Block Exemption Regulation"). Moreover, CEAHR alleges that even if this Regulation applied, the Commission would have to withdraw its benefit based on the fact that conditions set forth in Article 81(3) of the Treaty are not met.

2. ASSESSMENT

C. Introductory remarks

(4) According to the settled case law of the Community Courts, the Commission is not required to conduct an investigation of each complaint it receives.[3] The Community courts have also recognized that the Commission has discretion in its treatment of complaints.[4] In particular, the Commission is entitled to give differing degrees of priority and refer to the Community interest in order to determine the degree of priority to be applied to the various complaints brought before it.[5]

(5) The assessment of the Community interest raised by a complaint depends on the circumstances of each individual case. The Community courts have recognised that the number of criteria of assessment to which the Commission may refer is not limited, nor is the Commission required to have recourse exclusively to certain criteria. It is permissible to apply new criteria which had not before been considered.[6] Where appropriate, the Commission may give priority to a single criterion for assessing the Community interest.[7]

(6) In order to assess the Community interest of a complaint and to enable the Commission to focus on important harmful cases, the Commission considers that it may take into account the effects of the alleged infringement(s) on competition in the market in light of factors such as, e.g., the relative size and economic power of the parties concerned, the relative size and economic importance of the market affected, its structure and particular features as well as the effect of the alleged infringement(s) on consumers.

(7) In the present case, the Commission has undertaken an investigation of the complaint, the results of which are set out further.

(8) In particular, the Commission observes that the complaint concerns at most the market (segment) of a limited size and thus its economic importance is also limited. It is true that despite having sent several questionnaires to watch manufacturers, it proved to be difficult to obtain precise statistics and figures concerning the size of the markets

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[2] Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices

[3] See Case T-24/90, *Automec v Commission*, [1992] ECR II-2223, para. 76.

[4] See Cases C-119/97 P, *Ufex v Commission*, [1999] ECR I-1341, para. 88; T-193/02, *Laurent Piau v Commission*, paras. 44 and 80 (not yet published).

[5] *Automec, supra*, paras. 77 and 85.

[6] See Case C-119/97 P, *Ufex v European Commission*, [1999] ECR I-1341, paras. 79 and 80.

[7] See Case C-450/98 P, *International Express Carriers Conference (IECC) v Commission*, [2001] ECR I-3947, paras 57-59.

complained about – whether primary or secondary. However, from the information received by the Commission, it is immediately apparent that the size of the after-sales services related to luxury/prestige watches amounts only to insignificant part of the general turnover achieved in the sale of luxury/prestige watches, whereas it must be borne in mind that "luxury/prestige watches" constitute only a certain segment of total watches market. Moreover, the *prima facie* assessment of the complainant's submissions has not provided any reliable information on the basis of which it would be possible to conclude at this stage that there are likely infringements of competition law in this case. It also seems unlikely that such infringements would be found after devoting further investigatory resources. Finally, even if it was possible to establish infringements in the present case, national competition authorities or national courts appear to be well placed to investigate and deal with such infringements. They have the power and the obligation to apply Articles 81 and 82 of the EC Treaty.

(9) Consequently, in light of the above considerations devoting the Commission's scarce resources to continue investigating the case appears to be disproportionate. As a result, the Commission has come to the conclusion 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.

D. Procedure

(10) In its reply to Article 7 letter CEAHR claims that the Commission cannot reject the complaint on the basis of the lack of Community interest after it had used in Pre-Article 7 letter an argument that "the facts set out in the complaint do not (...) contravene Articles 81 and 82 of the EC Treaty". Firstly, it should be emphasised that a position of the Commission presented in Pre-Article 7 letter and Article 7 letter have only a preliminary character and they only reflect a given stage of the investigation and a given state of collected evidence. As a result, the Commission is free to change its view at later stage of the proceedings, and especially in a final position presented in a rejection decision. Moreover, taking into account that CEAHR has been maintaining its complaint and in the view of the comments received to the pre-Article 7 letter and to the Article 7 letter, the Commission has decided to reject the complaint on grounds of insufficient degree of Community interest to further pursue the complaint. Consequently, you have a possibility to pursue the complaint before a national court or a national competition authority in case you consider that you can provide further evidence of the alleged infringements, even if the Commission has reached a *prima facie* conclusion that the relevant market in the present case is functioning well and that it seems very difficult to establish the alleged infringements of Articles 81 or 82.

(11) CEAHR further claims that the Commission cannot invoke the lack of Community interest as the grounds for rejection after it carried out an investigation. The Commission does not agree with the statement of the complainant. As confirmed in the findings of the Court in *International Express Carriers Conference*[8], the Commission may take a decision to close its file on a complaint for lack of sufficient

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[8] *Case T-110/95 International Express Carriers Conference* v. *Commission* E.C.R, 1998, II-03605

Community interest not only before commencing an investigation of the case, but also after taking investigative measures.

E. Relevant market

a) Product

(12) Taking into consideration that the complainant specifically enumerated brands belonging to six groups of companies against which the complaint was lodged[9], the investigation has been thus focused on them. Taking into account the nature of the brands complained about, and in particular their price[10] and elite character, they will be considered as examples of luxury/prestige watches and will be collectively referred in the current proceedings as to "luxury/prestige watches". Here, it must be explained that by using the term "luxury/prestige watches" the Commission has not changed the scope of the complaint as claimed by CEAHR. Taking into consideration that the terms suggested by the complainant, such as: "expensive watches", "good watches", "watches of a certain value" or "watches worth repair" seem to be less suitable to serve as a defined name for the brands complained about, the Commission has decided to use a technical term of "luxury/prestige watches" for the description of the product in question.

(13) It must be further noted that the parties, and specifically the complainant, do not submit sufficiently comprehensible and consistent information allowing to establish a clear-cut delineation of the relevant product market and its distinctive features. It follows from the fact that diverging and/or inconsistent views are presented as to the existence of a separate market for luxury/prestige watches. In particular, the replies and explanations obtained from CEAHR and the watch manufacturers have not proven decisive in determining whether a luxury/prestige watches market exists on its own and should be considered as relevant primary market in the present case, or whether it constitutes a segment of the total watches market; or whether it is a part of luxury goods or jewellery markets.

(14) Therefore, taking into account the variety of factors that could determine the character of a given brand[11] and its belonging to a relevant product market, as well as differences in approaching this subject both by CEAHR and the watch manufacturers, the Commission is not convinced that the luxury/prestige watches market is a relevant (primary) market in the instant case. To that end, it is evident that in order to be able to establish an exact delineation of the relevant product market the Commission would have to devote substantially more resources, which would be disproportionate when

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9 Namely: Blancpain, Breguet, Omega, Glashütte, Lemania and Fréderick Piguet belonging to the Swatch group; IWC, Jaeger-LeCoutre, Lange & Söhne, Paget, Vacheron-Constantin, Cartier and Panerail belonging to the Richemont group; Zenith and Tag-Heuer belonging to LVMH group, as well as all watches produced by Rolex, Audemars Piguet and Patek Philippe.

10 The complainant submits in its reply to Art. 7 letter (point (7), page 4) that [redacted]

11 Such as: price, functionality of applications, technical complexity, type of movement (quartz v. mechanical), type of material, the series (hand finishing, rarity and exclusivity of the watches; limited editions), aesthetic of design, style and size of watch, etc.

taking into account the conclusions contained in the following paragraphs of this decision. Moreover, as further discussed - for the purposes of the present investigation it has not proven necessary to further analyse the exact delineation of the relevant market as there is no indication that the functioning of this market is disturbed.

(15) However, the Commission has undertaken an investigation of the complaint on the assumption that the luxury/prestige watches market is a separate (relevant) primary market as it appears from the *prima facie* assessment of the submissions of the parties. Consequently, the Commission has examined the market for luxury/prestige watches as the primary market, as well as two aftermarkets – one for the repair and maintenance of luxury/prestige watches, and one for spare parts for luxury/prestige watches. In its analysis, the Commission took into consideration the competition on the primary market, and in particular, the market power and the position of watch manufacturers were assessed in order to see whether the competition in the primary market may make price increases in the aftermarkets unprofitable or can otherwise prevent anticompetitive effects on the aftermarkets.

b) Primary market

(16) In the course of its investigation, the Commission has established that the primary market for luxury/prestige watches appears to be competitive[12]. First of all, there are a large number of watch manufacturers present on the market [13]. Recent years have seen considerable investment of the manufacturers in the marketing, branding and promotion of luxury watches. Investments included also a substantial development of pre-existing selective distribution networks, and concerned both wholly-owned boutiques and selected independent retailers. The competitiveness of the primary market for luxury/prestige watches is further evidenced by recent new entries into the primary luxury/prestige watch market by companies founded by former watch repairers and watch manufacturer employees[14].

d) Aftermarkets

(17) As explained in paragraph 15 above, the Commission has examined two aftermarkets – one for after-sales services (repair and maintenance) and one for spare parts, both these markets being considered as standard examples of aftermarkets. The *prima facie* assessment of the situation on both the primary market for the production and sales of luxury/prestige watches and the aftermarkets leads to the conclusion that the aftermarkets should not be considered as the separate relevant product markets, but should be viewed together with the primary market. Specific observations for each aftermarket are being made in further part of the decision (for after-sales maintenance

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[12] In this respect CEAHR does not present a consistent view, but in its reply to Article 7 letter (page 7) it also confirms that the primary market is competitive.

[13] It should be taken into consideration that the Federation of the Swiss Watch Industry has registered over 200 watch producers. Whereas it is true that the ultimate number of competitors would be smaller since some of them belong to the same corporate groups; some are very small and as such have little impact on the functioning of the market, and finally some might produce other segment watches. Nevertheless, the number of watch manufacturers indicates that there is strong competition on the market concerned.

[14] E.g. Roger W. Smith Ltd (UK), Richard Mille (Switzerland), Hautlence (Switzerland), F.P. Journe (Switzerland).

and repair – in paragraphs 19-22; and for components and spare parts for luxury/prestige watches – in paragraphs 23-26).

(18) Moreover, even if they were to be regarded as separate relevant markets, the fact that the primary market appears to be competitive makes possible anticompetitive effects very unlikely. In particular, price increases in the aftermarkets tend to be unprofitable due to their impact on sales in the primary market, unless prices in the primary market are lowered to offset the higher aftermarket prices[15]. Consequently, competition in the primary market is very likely to ensure that the overall price of the bundle of goods and services on both primary and aftermarkets is competitive (even if customers did not base their choice on accurate life cycle calculations).

(i) After-sales maintenance and repair

(19) It is apparent that the natural evolution of the market, as it seems to be, consisting in the resurgence of demand for complex mechanical movements in the luxury/prestige watches sector has led a majority of the luxury/prestige watch manufacturing groups to change their policy and to allow maintenance and repair of luxury/prestige watches only within their selective distribution system.

(20) The Commission notes that the watch manufacturers regard after-sales maintenance and repair as ancillary service to the distribution of watches[17] which is demonstrated, *inter alia*, by the value of watch manufacturers' revenue on the said market. Such value is not significant and on average constitutes a small part of the total revenue obtained[18]. Furthermore, the luxury/prestige watch manufacturers see the establishment of a consistent and uniform high-quality after-sales service network as an essential, customer-driven ingredient[19] and as an integral and vital element of their competitive strategy on the primary market. According to the manufacturers, the value of the primary product to the customer would be diminished if its image were

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15 In addition to the above considerations, the Commission observes that although the level of price increases in aftermarkets is difficult to generalise (as the differences between brands and countries are indeed very big), on average the increases amount only to % on a yearly basis, with some exceptions where there have been incidental higher increases especially originated from the price increases of components and raw material. Moreover, some of the watch manufacturers even reported that in the three investigated years – 2003-2005 prices of their after-sales activities (including prices of spare parts)

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17 E.g. reply to the Commission's questionnaire, page 5

18 Overall statistics are difficult to obtain and differ from one watch manufacturer to another, but from the information received during the course of investigation the Commission has clearly seen that the value of the repair & after-sales activities constituted a very insignificant part of overall turnover of each watch manufacturer and that the major turnover and profit was gained on the sale of watches (apart from the cases where after-sales activities are even reported to bring losses, not profits).

19 In order to guarantee a high quality of the after-sales services, the watch manufacturers introduced certain selection criteria to operate as their agent in the selective distribution system which will be further discussed in paragraph 34 of this decision. As admitted by CEAHR, the criteria for becoming an official agent of the high class brands are indeed far beyond the reach of most independent watch repairers when it comes to prestigiousness of the premises where the agent is to operate and their location.

associated with anything other than brand-related state-of-the-art post-sales servicing, carried out either by the watch manufacturers themselves, or in approved service centres.

(21) When it comes to independent watch repairers, it appears that they are not always able to meet the quality-based selection criteria introduced by the watch manufacturers with respect to their authorised point of repairs[20] (as further discussed in paragraph 34). Moreover, according to some watch manufacturers, up to [redacted]% of repair work done in their after-sales services centres concern the damages caused by the inappropriate and wrongful repair executed by the watch repairers who do not possess proper knowledge and skills[21].

[redacted]

(ii) Components and spare parts for luxury/prestige watches

(23) As mentioned before, the luxury/prestige watch components aftermarket seems to be dependent on the primary market for luxury/prestige watches and closely linked to it. This is contrary to the conclusions drawn by CEAHR who believes that the spare parts market is a distinct market in the present case. CEAHR has based its consideration on several cases decided by the Court of Justice and the Court of First Instance, and in particular in *Commercial Solvents* case[23], *Hilti* case[24] and *Hugin* case[25]. However, the Commission is of the opinion that none of these cases could be used as a precedent for the case at hand. It follows from the fact that neither the structure of the market, nor the behaviour of the parties involved, nor the effect on the functioning of the Community market is matching the circumstances of the present case[26].

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20 E.g. independent watch repairers sometimes appear not to be capable of carrying out repairs on some luxury/prestige watches, such as those based on tourbillion technology, or those with chronograph/perpetual calendar/minute repeater features.

21 [redacted] to question 10 of the Commission's questionnaire

22 This point is clearly brought out in the letter [redacted]

23 Case *Istituto Chemioterapico Italiano Spa and Commercial Solvents Corp.* v. *Commission* E.C.R, 1974, p 223

24 Case *Eurofix-Bauco/Hilti* [1988] OJ L65/19, [1989] 4 CMLR 677

25 Case 22/78, *Hugin Kassaregister AB and Hugin Cash Registers Ltd.* v. *Commission* [1979] ECR 1869, [1979] 3 CMLR 345

26 *Commercial Solvents* case concerned an infringement of Article 82 for an undertaking in a dominant position to refuse to supply a competitor in a downstream market where the effect of doing so would be to eliminate all competition in the downstream market. However, it is crucial to understand that the market for after-sales servicing of luxury/prestige watches is not a downstream market, but an after-market which depends on the existence of a primary market, that for the production and sale of luxury/prestige watches. Moreover, the *Commercial* Solvents case concerned an industrial intermediate product, not a luxury consumer product, and the market dynamics will be very different in these two contexts. Consequently, whereas in *Commercial Solvents* the dominant undertaking by refusing to supply was able to fully control a separate market for derivatives, in the present case the refusal to supply spare parts does not preclude independent watch repairers from the manufacturing process since they are not, nor ever have been, involved in the production of luxury/prestige watches, nor in the production of other goods on another downstream market. In fact, in contrast to *Commercial Solvents*

(24) Furthermore, the Commission took into consideration that an aftermarket consisting of the secondary products (spare parts) of one brand of primary product may not be a relevant market in two situations. Firstly, if it is possible for a consumer to switch to the secondary products of another producer; secondly, if it is possible for him to switch to another primary product and thus avoid higher prices in the aftermarket. In the present case it is apparent that consumers are not locked-in without having an option to shift to another primary or secondary product.

(25) Where it comes to the possibility to switch to the secondary products of another producer, it must be noted that CEAHR has not managed to provide a full, clear-cut and consistent explanation of the extent of and limitation on substitutability of spare parts for luxury/prestige watches.

(26) However, as for the possibility to switch to another primary product, potential luxury/prestige watches purchasers are fully free to choose among numerous available luxury/prestige watch brands which compete with each other[27]. As for the customers who already own luxury/prestige watches, it is in principle possible to switch to another primary product, mainly due to the fact that many luxury/prestige watches may have high residual values on numerous second-hand markets and the switching costs do not involve any investments, such as training, changing routines, installations, software, etc making the switch even easier. In view of the above, it turns out that consumers are equipped with a wide scope of possibilities to shift, without incurring extraordinary costs, between primary products.

F. Complaint under Article 81

(27) The CEAHR's complaint under Article 81 relates to several aspects. Firstly, CEAHR alleges that the watch manufacturers enumerated by it have practically at the same time (about two years before lodging the complaint) applied the same policy of refusal to supply spare parts of their expensive watches which indicates that there exists an agreement or concerted practice between them.

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case, independent watch repairers are only involved in the ancillary services related to the primary product and servicing luxury/prestige range of watches constitutes only a part of their activities (in addition to repair and maintenance of less luxury/prestige range of watches). In *Hilti* the Court of First Instance found that there were distinct markets for a primary product and for consumables. Nonetheless, those markets were structured differently and Hilti's behaviour on the market served different purposes. *Hilti* made nail guns which were used together with cartridges and nails. Nails compatible with *Hilti* guns were, however, made not only by *Hilti*, but by a number of independent firms. It was these firms who were complaining that Hilti's practices were abusive since Hilti presented itself as the only manufacturer of consumables compatible with its guns. These practises aimed at preventing the other manufacturers to access the production market, whereas, as the Court said, independent producers are free to manufacture consumables. In *Hugin* the Court defined the relevant market very narrowly - with respect to a brand, not a product. This approach, rather than being generally applicable, is strictly dependent on the circumstances of a given case. This is to prevent a situation where undertakings with quite modest position in the primary market would be viewed as dominant on an aftermarket, and as such would be faced with the risk of unnecessary intervention when implementing, in fact, a consumer-friendly policy.

[27] It must be noted that making life-cycle calculations by potential purchasers of luxury/prestige watches might not be very likely as the cost of repairs is relatively minor over the life of a luxury/prestige watch in comparison with the cost of the watch itself, and therefore the consumer does not consider the cost of after-sales servicing as a criterion when choosing a watch. Nevertheless, it appears that the mere possibility of switching between primary products does exist, and could be exercised should the consumer wish to do so.

(28) The Commission has found no evidence of a concerted practice or agreement between the luxury/prestige watch manufacturers. The primary watch market rather appears to be competitive and CEAHR does not provide any convincing evidence to support its assertion. As pointed out before, the CEAHR's allegation that watch manufacturers introduced an identical strategy concerning the refusal to supply at practically the same time is not accurate,

Furthermore, as already demonstrated, such strategy was also in line with the trend present on the market for luxury/prestige watches which consists in a corporate policy to build a general positive image of their primary products in order to achieve best-selling results on the primary market.

(29) Secondly, CEAHR claims that the watch manufacturers introduced a selective distribution system (covering the supply of spare parts), as defined in the Block Exemption Regulation, which is not covered by the said Regulation.

Moreover, CEAHR further alleges that "even if the Block Exemption Regulation would apply, the Commission would have to withdraw the benefit thereof (...) since the vertical agreements to which it might apply (...) do not contribute to promoting technical and economic progress [or] allow customers a fair share of the benefits (EC Article 81(3)) (...)".

(30) Without prejudice to other issues that may or may not have relevance to the applicability of the Block Exemption Regulation in the current case, the Commission *prima facie* does not accept the validity of the above arguments, particularly in view of information obtained during its investigation.

(31) In first instance it must be emphasised that following the Court's judgement in *Metro*[29], the operation of a selective distribution system was justified in the sector covering the production of high quality and technically advanced consumer durables. In particular, it was accepted that two categories of products justify a selective distribution system: technically complex products and luxury or branded products, the last category embracing the luxury/prestige watches without a doubt. It is true that in the present case the selective distribution does not concern the production and sale of the primary products themselves, but a supply of spare parts for their repair and maintenance. However, as explained in paragraph 20 above, even in this case the servicing of luxury/prestige watches seems to constitute an integral part of the brand image and the watch manufacturers prefer to have under control the quality of such services, whereas the supply of spare parts for less luxury/prestige sector does not appear to be a problem and independent watch

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29 Case 75/84, *Metro v. Commission* (No. 2) [1986] ECR 3021, [1987] 1 CMLR 118

30 The most recent statement contained in footnote no. 5, page 17

repairers are able to obtain spare parts supplies in order to continue their operation in the lower image sector.

(32) Furthermore, the Commission's investigation has revealed no evidence that luxury/prestige watch manufacturers set the prices of after-sales services provided by authorised distributors or repairers. The Commission has found that some manufacturers recommend indicative prices for such services, and that at least one manufacturer, Patek Philippe, publishes on its web-site guideline maximum prices for such services in order to protect the customer; both such practices being in conformity with Article 4(a) of the Block Exemption Regulation.

(33) Moreover, the Commission is of the view that the third indent of Article 4(b) of the Block Exemption Regulation seems to apply in the present case, that is, that exception is made for 'the restriction of sales to unauthorised distributors by the members of a selective distribution system'. As explained before, the analysis made by the Commission for the purpose of current proceedings has led to the conclusion that the spare parts aftermarket is not to be viewed as a market distinct from the primary market. Consequently, an overall market power of a particular watch manufacturer must be assessed, and in particular its position and strength on the primary market is to be taken into consideration. Therefore, taking into account that none of the watch manufacturer being subject to the complaint appears to have either a dominant position on the primary market, or its market share exceeds [redacted]%[31], it seems that they could benefit from the Block Exemption Regulation.

(34) Another factor to be taken into consideration are the criteria to become an authorised agent in the selective distribution system. They seem to have a qualitative character. The requirements introduced by the watch manufacturers tend to aim at guaranteeing a high quality of the after-sales services as they concern, *inter alia*, skilled and professional education (including regular brand specific education), minimum standard tools and equipment (including brand specific equipment and tools), minimum stock of spare parts to be able to perform timely repairs, compliance with after-sales and repair service policy and instructions of the brand, being capable to render both "quick service" as well as "revisions completes". With the criteria based on such qualitative elements, if the independent watch repairers insist on maintaining their work in the luxury/prestige range, they appear not to be excluded from applying for a position of an agent in a selective distribution system. Moreover, as the qualitative criteria seem to be unique depending on a given brand and since they vary among the watch manufacturers, the independent watch repairers appear to be equipped with numerous opportunities to become one of the authorised points of repair, and even if they do not meet the criteria set by one of the watch manufacturers, there seems to exist a possibility to become an agent for another one.

(35) Finally, if the independent watch repairers wish to continue their operation the luxury/prestige sector, it should be taken into account that both the results of the

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[31] In terms of volume, the market shares range from less than [redacted]% to [redacted]%, whereas in terms of value they amount from a [redacted] up to [redacted]% - data obtained from the replies of watch manufacturers to the Commission's questionnaire, as well as from Watches and Clocks – Executive Summary and Geographic Market Analysis, Global Industry Analysts Inc, Global Strategic Reports – July 2002; Tendence, Mars 2003, /2003, Federation of the Swiss Watch Industry

investigation of the Commission and the [redacted] confirm the existence of numerous well-developed second-hand markets for luxury/prestige watches. This can provide the complainant with an additional venue where spare parts for luxury/prestige watches can be obtained.

(36) Beyond the above conclusions, it must be noted that the arguments submitted by CEAHR do not provide a convincing reason for the Commission to consider withdrawing the benefit of the Block Exemption Regulation on the basis of Article 6. This can be done in exceptional circumstances where the Commission finds in any particular case that vertical agreements to which this Regulation applies nevertheless have effects that are incompatible with the conditions laid down in Article 81(3) of the Treaty, and in particular where access to the relevant market or competition therein is significantly restricted by the cumulative effect of parallel networks of similar vertical restraints implemented by competing suppliers or buyers. So far the Commission considered such a withdrawal of the benefit of the Block Exemption Regulation as justified only in extremely rare cases where a real impediment to the competition on the markets concerned has been demonstrated. Furthermore, other than CEAHR seems to imply, this does not require companies who benefit from the Regulation to come up with a justification for their conduct which stays within the conditions of the exemption; it requires companies who oppose the applicability of the Regulation to provide strong reasons for its withdrawal. According to the Commission's preliminary investigation CEAHR has provided no such reasons and has not demonstrated any consumer harm.

(37) Apart from the fact that agreements have to fulfil the conditions of the Block exemption, companies do not have to come with precautionary notifications and to demonstrate the objective justification of their selective distribution systems in order to be able to benefit from the exemption. However, the manufacturers have submitted ample evidence to show that the change of strategy regarding the distribution of spare parts for luxury/prestige watches appears to be consumer-driven, and that it can provide purchasers of luxury/prestige watches with considerably increased assurances of reliable and high-quality after-sales services in consonance with the prestigious brand images of such products. On the other hand, there is no persuasive evidence that consumers have been harmed by the policy, either in terms of inferior service, or a higher cost of repairs. Thus the Commission's investigation did not confirm the assertion made on page 8 of the CEAHR's complaint that "repairs...have become much more expensive due to the higher tariffs of the ...Swiss groups".

(38) Furthermore, the manufacturers have submitted evidence that their shift in strategy is also intended to protect consumers' interests, particularly against the threat of counterfeit watches[33].

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32 Page 4 of the [redacted]

33 The latest statistics published by the Commission prove that counterfeiting and piracy continue to be an alarming threat in Europe. In 2005 there were 3.188 registered cases concerning counterfeited watches and jewellery what constituted 12 % of all registered cases and was second biggest group of counterfeited goods after clothing and accessories. In 2006 the number of registered cases concerning counterfeited watches and jewellery increased to 3.969. The statistics are available at: http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/counterf_comm_2005_en.pdf, and

G. Complaint under Article 82

(39) The CEAHR alleges under Article 82 that watch manufacturers complained of hold a dominant position[34] on the market for luxury/prestige watches and that their refusal to sell spare parts outside the selective distribution system constitutes an abuse of dominant position and "makes it practically impossible to repair valuable watches (*the only ones that count)* outside Switzerland".

(40) However, CEAHR has not provided convincing reasons why the watch makers who are subject of the complaint collectively hold a dominant position. Moreover, as explained above, the Commission has identified several factors evidencing a strong competition on the luxury/prestige watch market which eliminates the likelihood of collective dominance on the said market[35].

[redacted] Secondly, as far as aftermarkets are concerned, it has already been established that in the Commission's view it seems unlikely that they would constitute a market to be assessed on a distinct basis, and thus the question of dominance is not to be assessed on them separately from the primary market. In addition, as far as [redacted]

(42) In the light of the above considerations, if there appears no collective or single dominance on the market for luxury/prestige watches, the question of abuse of dominant position by watch manufacturers loses its relevance.

3. CONCLUSION

(43) As to the complaint under Article 81 of the Treaty, the Commission is of the opinion that on the basis of the information in its possession it is not possible to conclude that there are agreements or concerted practices between watch manufacturers which violate this provision. In particular, it seems unlikely that one or more selective distribution systems implemented by watch producers are not covered by the Block Exemption Regulation.

(44) As far as the complaint under Article 82 of the Treaty is concerned, the Commission has examined the primary market for luxury/prestige watches together with two aftermarkets - for spare parts and for repair and maintenance of luxury/prestige watches. Such analysis has lead to the *prima facie* conclusion that the aftermarkets in

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http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/counterf_comm_2006_en.pdf

34 [redacted]

35 Applying Compagnie Maritime Belge (Joined cases C-395/96P and C-396/96P Compagnie Maritime Belge Transports SA v. Commission, 16 March 2000, [2000] ECR II-1365), it would be unlikely that the luxury/prestige watches manufacturers can be said to "present themselves or act together on a particular market as a collective entity", whereas applying Airtours, (Airtours plc v. Commission, Case T-342/99, 6 June 2002, [2002] ECR II-585), it would be unlikely to conclude that the luxury/prestige watches manufacturers can easily monitor compliance with a possible tacit collusion, can retaliate effectively and that the effectiveness of the tacit collusion cannot be jeopardised by other competitors or customers.

the present case do not constitute distinct markets, and therefore dominance, either collective or single, on the examined aftermarkets does not seem to exist. In the absence of dominance, the question of abuse lost its relevance.

(45) On the basis of its *prima facie* assessment of the alleged infringements discussed above and given a lack of indication that the relevant market is functioning well, the Commission concluded that it is not in the Community interest to give a further follow up to the complaint. In particular, it appears that even if further investigatory resources were devoted to the complaint, there would be a limited likelihood of establishing infringements, and therefore allocating the resources necessary to further investigate the case would be disproportionate. In view of the above considerations, the Commission has come to the conclusion that there is insufficient Community interest for the continuation of the investigation and the complaint must be rejected.

(46) It is important to note that Articles 81 and 82 of the EC Treaty produce direct effects in its relations between individuals and confer rights which, in particular the national courts must safeguard[36]. It should also be emphasized that a rejection for lack of sufficient Community interest to pursue an investigation does not prevent national competition authorities or courts in Member States from applying Articles 81 or 82 EC. Indeed, the national competition authorities and the national courts have, according to Articles 3, 5 and 6 of Regulation (EC) No 1/2003, applicable since 1 may 2004, the power and the obligation to apply Articles 81 and 82 of the EC Treaty in their entirety.

4. PROCEDURE

An action challenging this Decision may be brought before the Court of First Instance of the European Communities in accordance with Article 230 of the EC Treaty.

For the Commission

Neelie KROES
Member of the Commission

36 See Cases 127/73, BRT/SABAM, [1974] ECR 51, para 16, C-453/99, Courage, [2001] ECR I-6297, para 23.