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Mr Paulo Cesarini
European Commission
Office J 70 – 01/128
Directorate-General for Competition
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Dear Mr Cesarini

Re: Report on The Operation of Regulation No 1400/2002

We attended the meeting of the forum for the Automobile and Society in Brussels, on Tuesday 3rd of June, at which you presented the Commission's evaluation report on the current Motor Vehicle Block Exemption Regulation and made clear your thinking by making this presentation. Obviously this was a clear and concise analysis based on your thorough understanding of the markets.

During your summation you invited contact and comment from the audience, as part of the consultation process, prior to the end of July. This we do now.

We are the Independent Garage Association and are federated to the RMIF in the United Kingdom. We represent the interests of the non-franchised repairers and are members of CECRA. Whilst you will be expecting a response from CECRA we feel that we should make direct representation to you on behalf of our members in the UK and their need for a formal legacy to that is contained within the Regulation (EC) No 1400/2002.

During your representation you made two comments with which we would like to raise comment, as we feel you must be labouring under the misapprehension that the matter has been properly dealt with now. This is not the case.

If we may refresh your memory you stated that "*future access to technical information was covered under the Euro-5 regulation*" and that "*current technical information was available and would therefore*

continue to be so". May I deal with technical information in general prior to addressing these two statements individually?

Technical information falls into two distinct categories. Firstly what could be referred to as 'Service data'. This is information such as measurements, capacities and repair methods, wiring diagrams and component locations and you are correct in your assumption this is available via manufacturer websites and intermediaries and publishers like Autodata. Provided the Vehicle Manufacturers continue to allow access to their websites after 2010, there being no explicit requirement for them to do so for the existing vehicle park after this review point, and that they continue to make available further information with regard to 'modifications in use', in a suitable manner, and via the data publishers then this aspect may be satisfactory in the intervening period before Euro-5 manufactured vehicles become prevalent.

The second element of technical information is with regard to the operating system on board the vehicle, often referred to as 'Security Codes'. Allow us to draw the comparison with a Personal Computer; the Operating System equates to Microsoft Windows, and cars, like computers need to know what components they have fitted with their 'system addresses'. In the Windows 95 operating system Microsoft Corporation revised this addressing problem by introducing 'plug-and-play', a simple look-up and address protocol to find, register and incorporate new components onto the system – cars do not have this facility. The Operating System on the vehicle is covered by Intellectual Property Rights and within this operating system sits all addressing information as well as security and emission data. We in the repair industry hear comments about access to this Operating System but this often misrepresents our requirement. As the vehicle Operating System does not have this 'plug-and-play' facility then the system requires intervention, to advise it of any new components that have been fitted during service or repair, these components can be as mundane as service items, brake pads, light bulbs or even the need to extinguish the 'service due' light on the dashboard.

Quite obviously, with the sophistication of the current motor vehicle, the code contained within the Operating System is highly complex – the Anti-Lock Brake System on an average family car requires three times the computing capacity as the first manned flight to the moon – You will understand this is not the province of any but a few highly skilled software engineers based within the manufacturers and it is for this reason that the repairer has never wanted access inside this code. The repairer wants the same system that is used by the franchised outlet who, incidentally, also don't have the requisite skills to perform these addressing operations and depend on a third party plug-and-play service, provided on their behalf by their Manufacturer, using 'pass through programming'.

This second level of Technical information is single use and cannot be stored or re-used even on a similar vehicle. Access must therefore be primarily made available but equally maintained as part of this review process.

The European Union has levied lower limits for production of Carbon into the atmosphere. The Manufacturers are tasked with delivering cleaner engines – we as an industry will be charged with

maintaining these in service. Surely , we need a proper, focused and regulated interface between ourselves and the Manufacturers in order to deliver this challenge?

A smoke screen of wording; re-programming, re-commissioning and Security codes has shrouded this in confusion. As a result the infringement of Intellectual property right has been allowed to be represented and this is clearly not the case. The person who must carry out the operation is the owner of the Intellectual Property Right themselves, the Manufacturer.

If, as is the situation now, proper access to pass-through re-programming is not made available then you have an aftermarket, Europe wide, that cannot complete repairs on vehicles properly. Manufacturer's franchised dealerships traditionally only maintain their vehicles during the first three years of ownership with vehicles passing into the independent aftermarket for the remaining seven (average) years of their life. If these older vehicles are going to be forced back into the franchised sector the dealer simply will not have the capacity to cope. The net effect will be a vast increase in defective vehicles on the roads of Europe or a market for illicit code-cracking that will become more prevalent.

Allow us to query the assumptions used in your representation. Euro-5 cars will not start in production until September 2009 and Euro-4 may continue to be built until 2012. Accepting the 'three years of franchise loyalty' it will be 2015 before there is a bank of vehicles in the independent sector for service and repair provided for under the new rules. For those remaining vehicles built under Euro-4 there is still non-compliance by manufacturers in making this pass-through re-programming available.

Consideration must also be given to the consumer's rights as these are the foundation of the EC Treaty. Unlike purchasing computer software the customer is not made aware at the time of purchase that he is only buying 'user rights' for the Operating System. Neither the initial contract of sale nor the vehicle documents detail this limitation therefore the customer may be at liberty to assume total ownership of the vehicle and it's Operating System. Is the customer therefore not entitled to expect full rights of ownership and access on his behalf by his agent, the repairer of his choice?

The right of ownership must be established once and for all. As onboard systems have developed this insidious situation has been allowed to grow unchecked until we are faced with the current situation based completely on assumption. Again there are two elements, the first is the operating system itself and the second is the data created by the operating system. Who owns what? This situation can only be exacerbated as telematics become more prevalent in future vehicles. We must have a resolution and this must be provided by the commission and enshrined in law.

Addressing this matter will require the overhaul of customer contracts at the original point of sale and each subsequent sale. The customer must have clarification about what they are purchasing as they could hold the supplier liable under breach of contract, and we, the repairers must have definable parameters within which to operate.

The current situation has been allowed to waste too much of everyone's time. If the commission intends the industry to take this quantum leap of faith it must first address this burning issue.

The IGA would suggest as a minimum (that):

- That the ethos of Regulation (EC) No 1400/2002 with regard to the aftermarket be encapsulated in any revision or replacement regulation or directive and that its proper implementation should be the subject of special scrutiny.
- That the legacy to obligations required under previous revisions be maintained in order to avoid either an information vacuum or confusion in consumer rights with regard to service and warranty.
- That there be equivalent requirements made for technical information and re-commissioning for vehicles produced under Euro 3 and Euro 4 as there are to be for vehicles manufactured under Euro 5. Importantly, Euro 5 is still some years ahead and an 'information vacuum' needs to be avoided.
- That the Commission's decision should not affect the consumer's rights by obviating the use of matching quality parts or restricting access to technical information required to repair and re-commission vehicles or that is required to develop diagnostic tooling. This is increasingly important with the impact of escalating vehicle technology.
- Bill of Sale – There needs to be a revised sale contract that addresses the situation regarding onboard software ownership/licensing and ownership of data.

Further to these submissions we would suggest that the claim that 'adequate regulation exists elsewhere within other European law' will not suffice. As you stated in your speech, you used Article 81 of the Treaty to prosecute four manufacturers on the matter of non-provision of technical information, however the engagements made by the manufacturers (and the preparation of these done by the commission) refers to the BER and gives, as a limit of their validity, the expiry of BER 1400/2002. This suggests that the infringement proceedings were brought under the Treaty but the terms of reference are under the BER. Our concerns therefore are that with the expiry of the BER the obligation will cease as there would be no explicit reference for them under competition law and only a tenuous link with the Treaty.

With the expiry of the BER and should the manufacturers stop giving access to technical information would we, the repair industry have to use elements from a multitude of regulation to seek a resolution for ourselves and for our customers, the consumers? Please consider that when the infringement resided within one regulation it took the commission four years to prosecute it. Would we find ourselves left with the uncertainties involved with the application of general norms of the EC Treaty?

You rightly emphasized that the Commission's enforcement actions since the 1990s may have resulted in a higher level of compliance. Therefore, the Commission should by no means reduce its enforcement actions in the future. In this regard, we were greatly concerned by your remarks that *"the resources of the Commission might be needed elsewhere"*.

With this in mind we suggest that to review and reinforce Automotive Block Exemption would be more productive than to disseminate the legislation where it might be overlooked or diluted.

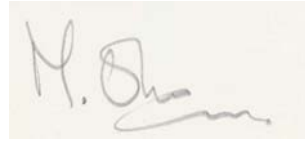
We place ourselves at your disposal should you wish to discuss this matter further



Jonas Zambakides

Vice-Chair

Independent Garage Association



Mike Owen

Head of Aftermarket

Independent Garage Association