



INTERNATIONAL  
CAR BODY  
REPAIR  
ASSOCIATION

To the European Commission

Sassenheim, 9 February 2010

Reference number HT 1021 — stakeholder input

Introduction

This is the response of the Association Internationale des Reparateurs en Carrosserie (AIRC<sup>1</sup>, European Chapter) on the European Commission's preliminary draft automotive Block Exemption Regulation that was approved on 28 October 2009. This response complements our earlier comments of 24 September 2009 on the Commission's Communication of 22 July 2009 on the future competition law framework applicable to the motor vehicle sector.

AIRC represents the common interests of 15 major European associations of passenger cars, vans, trucks and buses for collision repair/crash repair at European level. It's members are BKW (Austria), Royal Febelcar (Belgium), HUAS (Croatia), SKAD (Denmark), GNCR (France), ZKF (Germany), EOBEAMM (Greece), SIMI (Ireland), AIRA-CAN (Italy), Fédération des Artisans (Luxemburg), FOCWA (Netherlands), SMTA (Scotland), VSCI (Switzerland), VBRA (United Kingdom) and CEETRA (Spain). AIRC is the official association for the collision/crash repair industry (enclosure AIRC Brochure).

Legal framework(s)

AIRC has the impression that the Commission thinks that a more effects-based approach and less regulation would lead to better results for consumers and other stakeholders. If this is the case, AIRC disagrees with the Commission on this. Rather, more legal certainty would better ensure the coherent application of Community competition law throughout the EU. It would be detrimental for all aftermarket operators and consumers alike to remove rules which provide legal certainty and which have recently established a frame for effective competition in the automotive sector.

AIRC is of the opinion that if the automotive sector has to rely, as suggested by the European Commission, on many scattered legal instruments, which are still under revision, not even in place or the scope of which is limited, this will create a legal patchwork. Such a legal patchwork will however not represent a satisfactory framework for competition in the markets for new vehicles, spare parts, tools, servicing and repair, and ultimately would threaten consumers' freedom, insurance companies freedom, fleet owners freedom and leasing companies freedom to have their vehicles repaired in the workshop of their choice.

Access to technical information/non-discrimination

AIRC emphasizes that the automotive sector continues to differ from markets for other types of goods. Buying a motor vehicle continues to be an expenditure which differs significantly from most other purchases, and proper collision/crash repair has implications not just on budgets, but also on road safety.

<sup>1</sup> The AIRC represent the independent repairers in Europe. The AIRC is certified under ISO 9001 and is a member of the central European lobbying organisation for small and medium-sized businesses UEAPME (Union Européenne de l'Artisan et des Petits et Moyenne Entreprises). The AIRC is also a board member of ECAR (<http://www.ecar-eu.com>) the European Campaign for the Freedom of the Automotive Parts and Repair Market and of AFCAR, the Alliance for the Freedom of Car repair ([http://www.figiefa.org/afcar\\_ecar.htm](http://www.figiefa.org/afcar_ecar.htm)).



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AIRC believes it should be totally reasonable to impose this requirement for all existing vehicles, as collision/crashes can occur with vehicles when they leave the dealers on their first day. AIRC's thinks the basic principle that should continue to govern the availability of repair information to independent operators is that of non-discrimination. This implies that independent operators should be able to obtain the same information as authorised repairers.

By accident or design vehicles are more complex, and access to information is being restricted in most cases by the price that the vehicle manufacturers, importers or any other vehicle supplier charge therefore negating the benefits that BER was intended to bring. In addition using a loophole that restricts access to technical information in certain circumstances it is becoming increasingly necessary for vehicles to be sent to the dealership for 'recommissioning' even if the repair has been successfully completed by the independent collision/crash repairer. The effect of this on the independent collision/crash repair industry is that inevitably there will be fewer vehicles that they are able to repair and if the vehicle assemblers succeed in their aims the independents will be fewer if any exist at all. The effect on the consumer, insurance company, fleet owner and leasing company will be the reduction of choice on where the vehicle is repaired and an increase in cost of repair.

#### Standardization of the access to technical information

AIRC believes it is important to clarify that technical information relating to Euro 5/6 (passenger cars and heavy duty vehicles) has to be presented in accordance with the OASIS format or the CEN/ISO standard that is under development. It's generally known that vehicle manufacturers do not want to invest in standardisation of IT. They just only want to cooperate with their competitors on research and development, production and logistics. Nevertheless an adaptation of manufacturers' IT systems to an electronic format/standard will save them money on non core activities.

#### A (re)new(ed) set up

AIRC is aware of the fact that the Commission proposes to enhance enforcement against potentially harmful practices in this area through either "sector specific guidelines" or a focused block exemption regulation:

As regards agreements for repair and maintenance services and/or for the supply and distribution of spare parts, to apply the general rules as currently reflected by the proposed new block exemption for vertical agreements complemented by either sector-specific guidelines, or a focused block exemption regulation, or a combination of the two instruments with a view to reinforce competition authorities' ability to respond to competition concerns in a wider and more comprehensive manner. In particular, as regards the following concerns: (i) access to technical information; (ii) access to spare-parts; (iii) misuse of warranties; and (iv) access to networks of authorised repairers.

AIRC sees that the Commission intends to include particular provisions on the supply of spare parts in a new sector-specific block exemption regulation. These are intended to ensure that independent collision/crash repairers can obtain carmaker-branded parts, as well as to ensure that component suppliers can put their brand on component or spare parts and can continue to supply spare parts to the aftermarket. AIRC emphasizes the need for sector-specific guidelines that clarify various aspects affecting competition in the aftermarkets, for instance the consequences if a vehicle manufacturer refuses to honour warranties where vehicles have been repaired in independent repair shops

AIRC is glad that the Commission has identified a number of potential competition problems in the repair and maintenance markets and the markets for supply and distribution of spare parts. Given the benefits that a reformed competition framework may bring to consumers, AIRC is disappointed



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that the Commission has said that new provisions will apply as from 1 June 2010, and only will be extended for three years, until 31 May 2013.

Remarks/amendments BER and Guidelines

As the AIRC has studied the new Block Exemption and the Guidelines AIRC wants to give the European its specific input. This input can be read in the enclosures.

Yours sincerely,

*K.J.F. Bukholczer*

Karel Bukholczer  
General Secretary AIRC

Enclosures: - AIRC Amendments for the Sector-Specific Block Exemption Regulation Rev01  
- AIRC Amendments for the GUIDELINES Rev01  
- AIRC Brochure



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## Enclosure 1

### AIRC Amendments for the Sector-Specific Block Exemption Regulation Rev01

#### **To be included after Recital (13):**

(ad.) In order to protect effective competition on the market for collision/crash repair and collision/crash repair related services and to prevent any foreclosure of independent collision/crash repairers, it is important that all independent operators have access to all technical information, spare parts, tools (including specialist tools), diagnostic and other test equipment, including all relevant software, and training. (Technical information in the case of collision/crash repair specifically relates to full set of technical information about how a vehicle is constructed, what kind of materials are used, the characteristics of these materials, what kind of joining techniques etc.)

Independent operators include independent collision/crash repairers, wholesalers and manufacturers of spare parts and components, manufacturers of diagnostic tools and test equipment, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services, operators offering training for repairers and for remanufacturers of engines and components.

In particular, the conditions of access should not place independent operators at a competitive disadvantage.

A vehicle manufacturer, an importer or any other supplier of motor vehicles shall be required to give independent operators access to technical information on motor vehicles, including updates and all subsequent amendments, at the same time and to the same level and content as such access is given to its authorised (network of) repairers and must not oblige independent operators to purchase more than the information necessary to carry out the work in question for an unreasonable price. Suppliers should be obliged to give access to the technical information necessary for reprogramming/recommissioning, re-initialising or coding of the electronic devices in a motor vehicle to enable independent operators to complete all operations in their premises. (A vast majority of the independent collision/crash repairers operates for insurance companies, fleet owners and leasing companies. Besides that they are working with the European quality standard in collision/crash repair called Eurogarant)

#### **To be included within Article 1- Definitions:**

(ad.) “**independent operator**” means undertakings other than authorised dealers and repairers which are directly or indirectly involved in the repair and maintenance of motor vehicles, in particular collision/car body repairers, manufacturers or distributors of repair equipment, tools or spare parts, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services, operators offering training, manufacturers and repairers of equipment and for remanufacturers of engines and components;

(ad.) ‘**technical information**’ means all information required for an unequivocal vehicle and parts identification, diagnosis, servicing, collision/crash repair, inspection, periodic monitoring, repair, re-programming, re-initialising or coding of the vehicle and which the manufacturers provide for their authorised dealers and repairers, covering the same level and content and including all subsequent amendments, updates and supplements to such information.

#### **To be included within Article 5 - Hardcore restrictions:**

1. The exemption provided for in Article 4 shall not apply to vertical agreements which, directly or



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indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

(ad.) the restriction of the ability of independent repairers to service or repair a vehicle during a warranty period.

2. The exemption shall also not apply where a vehicle manufacturer, an importer or any other supplier of motor vehicles refuses to give independent operators unrestricted access to any technical information, tools (including specialist tools), diagnostic and other test equipment including any relevant software, spare parts and training.



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## Enclosure 2

### AIRC Amendments for the GUIDELINES Rev01

#### **Access to technical information by independent operators**

- (52) *The Commission regards independent operators as providing vital competitive pressure, as their business model and their related operating costs are different to those in the authorised networks. Therefore, although as explained above purely qualitative selective distribution is in general considered to fall outside Article 81(1) for lack of anti-competitive effects, qualitative selective distribution agreements concluded with authorised repairers and/or parts distributors may be caught by Article 81(1) if, within the context of those agreements, one of the parties acts in a way that forecloses independent operators from the market, for instance by failing to release technical repair information to these operators.*
- (53) *Suppliers provide their authorised repairers with the full scope of technical repair information needed to perform repair or maintenance work on vehicles of their brands and are often the only firms able to provide repairers with all of the technical information that they need on the brands in question. In such circumstances, if the supplier fails to provide independent operators with access to its brand-specific technical repair information, possible negative effects stemming from its agreements with authorised repairers and/or parts distributors could be strengthened, and cause the agreements to fall within Article 81(1).*
- (54) *Moreover, the lack of availability to necessary technical information, spare parts, multi-brand diagnostic tools and test equipment allowing independent operators to adapt their products and services to the needs of a multi-brand environment, could cause independent repairers' market position to decline, leading to consumer harm, in terms of a significant reduction in choice of spare parts, higher prices for repair services, a reduction in choice of repair outlets and potential safety problems. In these circumstances, the efficiencies that might normally be expected to result from the authorised repair and parts distribution agreements would not be such as to offset these anti-competitive effects, and the agreements in question would consequently fail to comply with the conditions laid down in Article 81(3).*
- (55) *Regulation (EC) No 715/2007 and Regulation (EC) No 692/2008 provide for a system of dissemination of repair and maintenance information in respect of passenger cars put on the market as of 1 September 2009; whereas Regulation (EC) 595/2009 and the ensuing implementing measures provides for such a system in respect of commercial vehicles put on the market as of 31 December 2012. The Commission will take these Regulations into account when assessing cases of suspected withholding of technical repair and maintenance information concerning vehicles commercialised before those dates. When considering whether withholding a particular item of information may lead its agreements to be caught by Article 81, a number of factors should be considered, including:*
- Whether the item in question is made available to members of the relevant authorised repair network. If it is made available to the authorised network in whatever form, it may also have to be made available to independent operators on a non-discriminatory basis;*
  - Whether the information in question will ultimately be used for the repair and maintenance of motor vehicles, or rather for another purpose;*
  - Whether withholding the information will have an appreciable impact on the ability of independent operators to carry out their tasks and exercise a competitive constraint on the market;*
- (56) *As to this latter point, technological progress implies that the notion of technical information is fluid. Currently particular examples of technical information include software, fault codes and other parameters, together with updates, which are required to work on electronic control units (ECUs) with a view to introducing or restoring settings recommended by the*



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*supplier, vehicle and parts identification methods by VIN and product features, parts catalogues, characteristics of the construction of the vehicle, body repair procedures, characteristics of used materials in the vehicle, temporary repair procedures, service schedules and electronic service history, working solutions resulting from practical experience and relating to problems typically affecting a given model or batch, and recall notices as well as other notices identifying repairs that may be carried out without charge within the authorised repair network. The list of items set out in the Type Approval Regulation 715/2007 as implemented and amended by Regulation 692/2008 should also be used as a guide to what the Commission views as technical information for the purposes of applying Article 81 of the Treaty.*

*(ad.) Access must be given to independent operators in a non-discriminatory, prompt and proportionate way, and the information must be provided in a usable form. For the redistribution in the form of databases or by way of inclusion into of multi-brand diagnostic tools and equipment, independent operators should receive the information in bulk.*

- (57) *The modalities for supplying technical information are also important for assessing the compatibility of authorised repair agreements with Article 81. Access must be given upon request and without undue delay, and the price charged for the information should not discourage access to it by failing to take into account the extent to which the independent operator uses it. A vehicle manufacturer, an importer or any other supplier of motor vehicles should be required to give independent operators access to technical information on new motor vehicles and parts at the same time as such access is given to its authorised repairers and must not oblige independent operators to purchase more than the information necessary to carry out the work in question.*
- (58) *The above considerations also apply to the availability of tools, training and training material to independent operators. "Tools" in this context includes electronic diagnostic and other repair tools, together with related software, including periodic updates thereof, and after-sales services for such tools.*

Note: The words "Authorised repair(er)" does not say a thing about the level of quality on the side of independent operators. The words "Authorised repair(er)" reflect a commercial perspective. Since 1985 the collision/crash repair industry have been working with its own quality systems and quality standards like Eurogarant.



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