Four decisions bind DaimlerChrysler, Fiat, Toyota and General Motors to commitments to give independent repairers proper access to repair information

John CLARK and Anna NYKIEL-MATEO (1)

Introduction: Importance of these decisions for consumers

It is commonly recognised that there is a widespread problem in the motor vehicle sector stemming from car manufacturers’ failure to provide brand-specific repair information to independent repairers. Today’s cars are becoming increasingly complex, and even basic repairs can only be carried out properly if the repairer has access to the latest brand-specific technical information.

Independent repairers are the only operators able to exert competitive pressure on the carmakers’ own authorised repair networks, and they are therefore very important from the point of view of consumer welfare. Vehicle manufacturers may have an economic incentive to shelter their authorised networks from such competitive pressure in order to secure the loyalty of their selected repairers and to protect an important revenues stream deriving from the sale of spare parts.

The Commission’s investigations in these four cases have shown that if independent repairers were to be foreclosed from the market due to a lack of access to repair information, this would likely result in less choice and higher prices for consumers. Recent studies have shown, for instance, that in Germany, prices charged by authorised outlets are on average 16% higher than those billed by independent repairers, while in the UK, a typical service job provided by some of the highest priced brands of franchised dealer can in certain cases be more than 120% than the price charged for a similar job by an independent repairer. In Spain, services provided by independent repairers are significantly cheaper than those performed by members of the authorised networks: differences range between 7% and 33% (2). Independent repairers are also able to buy spare parts from different sources that are often cheaper than those supplied by the car manufacturers’ authorised networks. Given that over a car’s lifetime, repair and maintenance bills cost as much as much as the price initially paid for the vehicle itself, these differences can have a big impact on a consumer’s wallet. Furthermore, higher prices for repair and maintenance services could affect prices on the markets for second-hand cars, which could in turn have a knock-on effect on the markets for the sale of new motor vehicles. Restrictions on the availability of technical information also raise broader societal concerns, since if vehicles are repaired without the right technical information, they may be unsafe, or may waste fuel and cause additional air pollution. The protection of competition on the EU car repair and maintenance markets is therefore one of the aims of the motor vehicle block exemption regulation (Commission Regulation (CE) 1400/2002 (3)), Article 4(2) of which provides that full and non-discriminatory access to technical information must be given to independent repairers in a manner proportionate to their needs.

Developments during the investigation

Investigations involving Fiat, Toyota, DaimlerChrysler and General Motors (4) were opened in December 2004, after these firms were identified by an independent study (5) as lagging behind in terms of compliance with the Regulation. Requests for information were sent to around 1,000 independent and authorised repairers in several Member States, as well as to the parties themselves.

As the investigations proceeded, all four car manufacturers began to make progress towards compliance with Regulation 1400/2002, in particular by setting up dedicated pay-per-view websites. Moreover, all four expressed willingness to meet the Commission’s remaining concerns. The cases were therefore orientated with a view to adopting decisions with commitments pursuant to Article 9 of Regulation 1/2003.

(1) Directorate-General for Competition, unit E-2. The content of this article does not necessarily reflect the official position of the European Commission. Responsibility for the information and views expressed lies entirely with the authors.


(4) The investigations covered the Mercedes-Benz, Smart, Fiat, Alfa Romeo, Lancia, Toyota, Opel and Vauxhall brands.

On 1 December 2006 proceedings were opened, and preliminary assessments were adopted on the basis of Article 9(1) of Regulation 1/2003. Following commitments proposals received from the four carmakers in late January and early February 2007, market test notices were published pursuant to Article 27(4) of Regulation 1/2003 on 22 March and the proceedings were brought to an end through the adoption of four Commissions decisions on 13 September.

The problem: insufficiencies in terms of both the scope and the accessibility of information provision

Prior to the Commission’s intervention, all four manufacturers had made arrangements for providing technical information that did not match independent repairers’ needs either as regards the scope of the information available (i.e. the question as to whether all necessary information is provided in accordance with Article 4(2) of Regulation 1400/2002, or whether some is held back) or as regards its accessibility (i.e. whether a repairer can obtain the information that he needs in good time and in a proportionate manner, without having to purchase a large and expensive bundle of information for which he has no use). All four failed to release certain categories of technical repair information, and at the time when DG COMP started its investigation (i.e. well after the end of the transitional period provided by Regulation 1400/2002), they had not implemented any effective system to allow independent repairers to have access to technical repair information in an unbundled manner.

In addition to these common features, each of the four cases also displays specific factual characteristics. In the Fiat case, the investigation revealed inter alia that the information distributed to the authorised network in the form of a series of circulars known as the Service News remained unavailable to independent repairers. In the Opel case, the main specific feature relates to discrimination against independent repairers as regards the supply of the principal Opel electronic diagnostic tool. As far as Toyota is concerned, the main distinct feature relates to the spare parts catalogue, which was only provided to authorised repairers. The DaimlerChrysler case is characterised by the withholding of a substantial part of the information relating to on-board electronics, which seemed to go beyond the scope of the exception described in recital 26 of Regulation 1400/2002. This exception covers technical information that would enable a third party to bypass or disarm on-board anti-theft devices and/or recalibrate electronic devices, or tamper with devices which limit the speed or other performance-related parameters of a motor vehicle.

The agreements between DaimlerChrysler, Fiat, Toyota and GM and their authorised repairers set the conditions under which these repairers must provide after-sales services including maintenance, warranty repairs, recall operations and the distribution of spare parts. In particular, pursuant to these agreements the vehicle manufacturers provide their authorised repairers with the full scope of technical repair information needed to perform repair work on vehicles of their brands. In addition, the agreements require authorised repairers to carry out a full range of brand-specific repair services, and exclude firms who wish to offer a different or more targeted service, as well as stand-alone spare parts wholesalers. The Commission was concerned that as a result of the carmakers’ failure to provide independent repairers with appropriate access to their brand-specific technical repair information, possible negative effects stemming from such agreements could be strengthened, and result in a violation of Article 81(1) of the Treaty. The Commission therefore came to the preliminary conclusion that the restrictions created by the service and parts agreements entered into between DaimlerChrysler, Fiat, Toyota and GM and their authorised repair partners might result in a decline in independent repairers’ market position, in particular since the four carmakers are the only suppliers able to provide independent repairers with all of the technical information that they need on the brands in question. This could in turn translate into considerable 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, potential safety problems, and a lack of access to innovative repair shops.

The risk of foreclosure seems to be confirmed by market data which point to a relative decline in the independent repair sector in recent years. The Commission investigation showed that independent repairers are losing ground to their authorised competitors in terms of the number of operations that they carry out, and that their capacity utilisation is far lower than that within the authorised networks. Moreover, large numbers of independent repairers are leaving the market: in the UK, for instance, in 1999 there were a total of 18,000 independent workshops, but by 2004, this had declined

(9) See DG Competition’s website:
to less than 14,000 (9). As a study prepared for the Commission by an independent consultant (10) shows, during one year alone the number of independent repairers in 12 EU Member States (10) declined by close to 6,000 (11). London Economics links this decline to a lack of appropriate access to brand-specific technical repair information (12). This trend seems all the more significant when one considers that the number of authorised repairers has gone up and the overall size of the market has edged downwards (13).

In the Commission’s preliminary view, the four car manufacturers’ conduct did not comply with Article 4(2) of Regulation 1400/2002 and the agreements with their authorised repairers were unlikely to benefit from the provision of Article 81(3).

The remedy: Commitments pursuant to Article 9 of Regulation 1/2003

In order to address the Commission’s competition concerns, the four carmakers offered sets of commitments, which despite certain differences are broadly similar and structured around three core elements.

The first element sets out the principle of equal treatment in terms of the scope of technical information to be made available to independent and authorised repairers, and also clarifies the concept of technical information. In accordance with this principle vehicle manufacturers will ensure that all technical information, tools, equipment, software and training required for the repair and maintenance of vehicles of their brands which is provided to authorised repairers is also made available to independent repairers. As to the notion of technical information within the meaning of Article 4(2) of Regulation 1400/2002, the commitments indicate that this includes all information provided to authorised repairers for the repair or maintenance of motor vehicles. The commitments give particular examples of technical information indicated by independent repairers as being problematic, including 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 a vehicle manufacturer, vehicle identification methods, parts catalogues, 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. However these examples clearly cannot be interpreted as constituting an exhaustive list.

The second element clarifies the scope of the exception by virtue of which technical information can be legitimately withheld, as set out in recital 26 of Regulation 1400/2002. The commitments make it plain that if vehicle manufacturers were to invoke the exception as a reason for withholding access to certain items of technical information, the burden of proof would be upon them to ensure that the information so withheld is limited to that necessary to provide the protection described in recital 26 of the Regulation, and that it does not prevent repairers from carrying out repairs not directly linked to these safety- and security-related functions.

This is important because manufacturers are increasingly choosing to integrate these functions into the main ECUs governing, for instance, the engine, or on-board comfort systems. Increasingly, these ECUs need to be accessed for even the most basic repairs. Replacing the battery, for example, may require ECUs to be “re-flashed” or “re-initialised”. Moreover, in the most modern vehicles, replacement parts need to be registered with a central ECU before they will be accepted. There is therefore a real risk, as illustrated in the case involving DaimlerChrysler, that manufacturers will seek to interpret the safety and security exception in a way that prevents independent repairers from carrying out even the most basic of tasks.

A manufacturer therefore has two choices: it may either choose to design on-board electronics in such a way that safety and security related functions are separate from other elements, or it must make all information, including that on safety and security, available to independent repairers. If it follows the second route, it may still use less restrictive means for ensuring that safety and security are not compromised. As an example, GM has committed itself to allow independent repairers unrestricted access to all information, including information on safety and security, provided that they obtain GM Certification. This certification will be issued to independent repairers without delay subject to the completion of training.

---


(10) London Economics 2002-2003 — Denmark, Germany, Estonia, Spain, France, Italy, Hungary, the Netherlands, Poland, Portugal, Sweden, UK.

(11) Developments in car retailing and after-sales markets under Regulation Nº 1400/2002, op.cit., Figure 104, p. 147.


(13) Ibid., p. 165.
The third element sets out the principle of proportionality, according to which access to technical information granted to independent repairers must take account of their needs. This implies both unbundling of information and pricing that takes into account the extent to which independent repairers use the information. The commitments specify that the web-based on-demand system chosen by the parties as their main means to provide technical information will be kept operational during the period of validity of the commitments. Access to these specialised technical websites will be based on time windows, with the price for the shortest window of one hour set at a level which reflects the principle of equal treatment between authorised and independent repairers. During the period that the commitments apply, fee levels will not be increased at a rate that exceeds increases in the average Consumer Price Index within the EU.

Moreover, the commitments provide for a mechanism for resolving disputes relating to the provision of technical information. The particular solutions proposed by the vehicle manufacturers differ, but all the manufacturers have committed themselves to accept arbitration or mediation to resolve such disputes.

In order to avoid a situation where further developments in the area of provision of technical information to independent repairers are blocked by the commitments, the latter contain the minimum standards principle. According to this principle, the commitments are without prejudice to any current or future requirement established by Community or national law that might extend the scope of the technical information to be provided to independent operators or might set out more favourable ways for such information to be provided.

The future: Competition enforcement paves the way for technical regulation

As already described, problems involving restricted access to technical information are widespread in this sector, and National Competition Authorities are already being faced with complaints along these lines. The commitments agreed to by all four vehicle manufacturers should serve as guidance for all other manufacturers and as a framework for potential new cases to be dealt with either by the Commission or National Competition Authorities.

The commitments will remain in force until May 2010, i.e. until Regulation 1400/2002 expires. By that time the Euro 5 emissions control regulation, which the Council adopted on 30 May 2007, will enter into force. This regulation places an obligation upon vehicle manufacturers to provide independent repairers with standardised access to all technical repair information. As this new regulatory framework becomes operational, the need for competition enforcement as regards technical information provision is thus likely to phase out. It is, however, worth noting that competition enforcement in these four cases and close liaison between the Commission’s departments have acted as a spur to enable the Commission to overcome previous resistance from industry to the disclosure of technical information in the context of emissions control regulation.