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COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION**

**The Future Competition Law Framework applicable to the motor vehicle sector**

**(Text with EEA relevance)**

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{SEC(2009) 1053}

## COMMUNICATION FROM THE COMMISSION

### The Future Competition Law Framework applicable to the motor vehicle sector

(Text with EEA relevance)

#### 1. PURPOSE AND SCOPE OF THE COMMUNICATION

##### 1.1. Introduction

1. Motor vehicle manufacturers distribute and ensure the repair and maintenance of their products through authorised dealer and repairer networks. The bundles of similar vertical agreements which make up these networks may require assessment pursuant to Article 81 of the Treaty. Block exemption regulations create safe harbours for categories of agreements that are caught by the prohibition in Article 81(1), relieving the contracting parties from the need to analyse whether those agreements can benefit from the exception provided for in Article 81(3). Block exemptions thus contribute to legal certainty and to the coherent application of EU competition rules across the EU. Agreements not covered by a block exemption are not presumed to be illegal, but instead have to be assessed individually.
  2. The motor vehicle sector, which includes passenger cars and commercial vehicles, has been subject to specific block exemptions regulations since the mid-eighties, the most recent being Commission Regulation (EC) No 1400/2002 ("the Regulation"), which was adopted in July 2002 and became applicable on 1 October 2003. This Regulation will expire on 31 May 2010. Stakeholders are virtually unanimous that the sector should continue to benefit from a block exemption, whether general or sector-specific, after this date. The purpose of the present communication is to set out the basic policy orientations for the future legal framework that should apply to motor vehicle distribution and after-sales services agreements after the expiry of the Regulation. All interested parties are invited to submit comments on this Communication before 25 September 2009. The Commission will take due account of these comments in the context of the follow-on legislative procedure.
- ##### 1.2. The review process leading to this Communication
3. Pursuant to Article 11(2) of the Regulation, and following an in-depth market survey, the Commission evaluated the impact of the block exemption on industry practices and the effects of those practices on competition in the EU markets in its Evaluation Report of 31 May 2008<sup>1</sup>. The publication of this Report prompted numerous comments from a wide range of stakeholders, including vehicle manufacturers, dealers and authorised repairers, the independent motor trade, consumers, national authorities and the legal community<sup>2</sup>.

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<sup>1</sup> [http://ec.europa.eu/competition/sectors/motor\\_vehicles/documents/evaluation\\_report\\_en.pdf](http://ec.europa.eu/competition/sectors/motor_vehicles/documents/evaluation_report_en.pdf)

<sup>2</sup> The comments received have been published on DG Competition's website at the following address: [http://ec.europa.eu/competition/consultations/2008\\_motor\\_vehicle/index.html](http://ec.europa.eu/competition/consultations/2008_motor_vehicle/index.html)

4. On the basis of the Evaluation Report and the ensuing consultations and discussions, the Commission's services have produced an Impact Assessment Report ("IAR") appraising the potential benefits and costs of various policy options for the future regime applicable to the motor vehicle sector. This Communication is therefore to be read in conjunction with the IAR.
5. The IAR assessed four options, namely (i) prolonging the current Regulation; (ii) letting it lapse and allowing the general block exemption regulation on vertical agreements ("the general block exemption")<sup>3</sup> to apply to the motor vehicle trade; (iii) adopting sector-specific provisions<sup>4</sup> in the form of guidelines accompanying the general block exemption and (iv) adopting sector specific provisions in the form of a block exemption regulation focussing on restrictions of competition in the aftermarket and complementing the provisions of the general block exemption.
6. Although the IAR conclusions expressed a slight preference for Option (iii), the overall assessment of this option did not differ substantially from the one relating to Option (iv), due to the comparative advantages and disadvantages of the two scenarios. Therefore the IAR did not exclude that the preferred option might be an amalgam of the best features of these two options.
7. The present Communication takes also into account that the motor industry is currently facing difficult conditions stemming from a steep decline in demand due to the general economic crisis and a fall in sentiment that has deterred consumers from spending on costly items such as cars. Commercial vehicles have experienced an even stronger decline in demand and production. Overall, the industry has been hit particularly hard, mainly because it was already suffering from structural overcapacities. In this context it is important for the Commission to set out a clear and predictable competition policy framework for the motor sector, so as to avoid uncertainty, particularly in the current crisis, and that due account is taken of the challenges faced by the industry and its importance to the European economy. This communication takes into consideration a broader reflection on the future of the industry, its suppliers – a majority of which are SMEs – and its customers, and should be seen as part of the general policy framework for the sector. Given the importance of SMEs, notably in the aftermarket, the present Communication is in line with the principles agreed in the Small Business Act.

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<sup>3</sup> Options (ii), (iii) and (iv) imply that the Commission will adopt a new general block exemption to replace the current 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, after its expiry in May 2010. The preliminary draft approved by the Commission on 8 July 2009 envisages the introduction of a number of improvements which, if finally adopted, would not change substantially the analysis of the impacts connected with the above mentioned options. Should the Commission decide to modify the current proposals in a manner that would appreciably affect the motor vehicle trade, it is understood that such changes would not be automatically transposed to the motor vehicle sector but will be subject to further consultations with all stakeholders following the publication of the present Communication. The expression "the general block exemption" will be used throughout this Communication to designate the current proposals for a block exemption replacing Regulation (EC) No 2790/1999.

<sup>4</sup> Unless otherwise stated, the expression "sector-specific provisions" will be used throughout the present Communication to indicate either additional guidelines as foreseen under option (iii), or a supplementary sectoral block exemption regulation as foreseen under option (iv) or a combination of both.

### **1.3. Key elements of the future legal framework for motor vehicle distribution and after sale service agreements**

8. The general objective of the Commission's competition policy towards vertical agreements is to allow the undertakings concerned to benefit from a safe harbour through the adoption of block exemption regulations with a view to ensuring effective supervision of markets, while simplifying administration and reducing compliance costs for firms, in accordance with Article 83(2)(b) of the Treaty.
9. As regards the aim of ensuring effective supervision of the markets, the Commission acknowledges that the specific policy objectives underlying Regulation (EC) No 1400/2002 remain valid. These are discussed in section 2 below.
10. As to the measures designed to achieve such objectives, it should be recalled that the benefit of the block exemption only applies to those agreements for which it is possible to presume that the four conditions of Article 81(3) are fulfilled. At the same time, the scope of the block exemption should not be narrowed down to such an extent that administrative costs for enforcers and compliance costs for firms are unduly increased by the need to individually assess agreements with no likely net anti-competitive effects.
11. It also follows that the Commission should refrain from imposing regulatory constraints which are not justified by the objective of protecting competition on the market and which may instead hamper industry efforts to become more competitive at a global level. On the other hand, the future regime should enable competition authorities to deploy their resources for the prosecution of the most serious breaches of the competition rules, with the resulting optimisation of enforcement efforts, a strengthening of the deterrent effect of Article 81 and the improvement of policy-related outcomes. As a result, such an approach should lead to a positive overall impact on consumer welfare.
12. In the light of the foregoing, in order to define the appropriate scope of a block exemption applicable to the motor vehicle sector, the Commission needs to take into account the competitive conditions on the relevant markets and that a basic distinction should be drawn between the markets for the sales of new motor vehicles and the markets for repair and maintenance services and/or for spare parts distribution.
13. As regards sales of new motor vehicles, the Commission has not found indications of significant competition shortcomings in the EU. Therefore, it considers that, motor vehicle distribution agreements should benefit from the safe harbour granted by the general block exemption on vertical agreements. Sector-specific guidelines should also be given on certain specific issues to clarify how the general principles would apply and in particular the conditions under which the benefit of the general block exemption may be withdrawn as indicated below at point 2.1.
14. As to the markets for repair and maintenance services and/or for spare parts distribution, the Commission concludes that competition is less intense due to their brand-specific nature, which means that manufacturers' authorised networks generally enjoy high market shares. By limiting the scope of the safe harbour through a market share threshold of 30% applicable to all types of agreements, the general block exemption would in itself enable a focused and effective enforcement of Article 81 to

such agreements. However, in order to enhance the efficiency and the predictability of its competition policy, the Commission will complement the general block exemption with sector-specific provisions designed to address a number of problematic issues which are particularly relevant for the motor vehicle sector.

## **2. OBJECTIVES AND POLICY CHOICE**

### **2.1. Preventing the foreclosure of competing vehicle manufacturers and safeguarding their access to the vehicle retailing and repair markets**

15. The Commission aims at safeguarding competition by minimising the risk that incumbents will foreclose competing manufacturers from the market through the widespread use of non-compete obligations which prevent or otherwise restrict dealers from selling competing brands. Foreclosure risks should however be balanced against the possibility that multi-brand sales may bring about free-riding and lead to sub-optimal levels of investment.
16. It should be recalled that, in accordance with the case law of the Court of Justice<sup>5</sup>, single-branding obligations are not regarded as restrictions of competition by object. In particular, they may fall outside Article 81(1) when they comply with the conditions of the *de minimis* Notice<sup>6</sup>. This means that the exclusion of single-branding from the scope of the block exemption granted by the Regulation cannot be construed as automatically granting dealers the right to sell brands of competing manufacturers irrespective of the economic context in which such obligations are applied. The market power of the parties and the characteristics of the relevant market are key factors to determine whether single branding obligations are caught by Article 81(1) and require therefore an assessment pursuant to Article 81(3).
17. In order to reflect the need to appropriately balance potential anticompetitive effects against efficiency enhancing benefits, the general block exemption covers single-branding agreements where the supplier has a market share not exceeding 30% and on condition that the duration of single branding obligations does not exceed five years. This means that in order to benefit from the general block exemption, dealers must be able to effectively end the single-branding arrangement after the initial five-year period, without losing their distribution contract and the brand-specific investments connected with it. However, it is common practice in the motor vehicle sector to enter into dealership agreements of either indefinite duration or, in rare cases, for renewable periods of at least five years. This would imply that the current agreements operated by vehicle manufacturers would not be covered by the general block exemption if they were to contain single-branding obligations applicable for longer than five years.
18. The main difference between the specific provisions of the current Regulation (EC) No 1400/2002 and the general block exemption lies in the definition of non-compete obligations. Under Regulation (EC) No 1400/2002, this concept means any direct or

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<sup>5</sup> As the ECJ stated in its judgment of 28 February 1991 in case C-234/89, *Stergios Delimitis v Henninger Bräu AG*, agreements containing single-branding obligations do not have the object of restricting competition within the meaning of Article 85(1) (now Article 81(1)).

<sup>6</sup> Commission Notice on agreements of minor importance (*de minimis* notice); (OJ C 368, 22.12.2001, p. 13).

indirect obligation causing the dealer to purchase from the supplier more than 30% of the buyer's total purchases of the relevant goods, thereby allowing the dealer to take on up to two additional brands from competing suppliers, which can be sold from either different premises or from a single showroom. Under the general block exemption, the definition is limited to those obligations (extending beyond five years) that cause the dealer not to manufacture, purchase, sell or resell goods which compete with the contract goods, or to purchase from the supplier more than 80% of the buyer's total purchases of the relevant goods. In practice, this means that the dealer, after five years, should be free to take on one additional brand, but may have to sell it from a separate showroom.

19. In this respect, it should be recalled that same-showroom multi-branding has been taken up by the market only to a very limited extent and that there is no robust empirical evidence indicating that such a distribution format has facilitated entry of newcomers into the EU markets in any appreciable manner. Furthermore, multi-branding was practiced even before the entry into force of Regulation (EC) No 1400/2002 in geographic areas where such a format made economic sense due to local market conditions. It is therefore likely that this will continue irrespective of any change in the legal framework. It should also be stressed that search costs for motor vehicles are low as a percentage of product value, and that as a result consumers are generally willing to visit different showrooms in order to compare competing vehicles. Indeed, visiting different dealerships in order to compare and haggle over prices is a usual part of the purchasing process. In addition, consumers can readily compare products on the Internet. Same-showroom multi-branding can also dilute brand image, and cause manufacturers to take steps to preserve their corporate identity by adjusting dealership standards to this end. In addition, they may refrain from investing in their dealerships, for instance through training, in order to avoid free-riding risks. In practice, these factors have led, to a general increase in distribution costs borne by dealers.
20. As regards repair services, single-branding obligations would not benefit from the general block exemption applicable to vertical agreements in any event because the manufacturers' networks' market shares generally exceed the 30% threshold. Hence, as regards after-sales services agreements, no difference exists between the various options considered.
21. In the light of the foregoing, the Commission concludes that the application of the general block exemption to single-branding obligations in the motor vehicle sector represents a balanced solution taking into account the high level of inter-brand competition characterising the primary market, the risk of inhibiting efficiency gains in distribution as a consequence of regulatory constraints which would not be proportionate to the goal of protecting competition on the market, and having regard to the safeguards for multi-branding provided by the general rules. Moreover, the mechanism of withdrawal of the benefit of the block exemption will be maintained as an additional safeguard in case the existence of parallel networks of agreements containing single branding obligations results in anticompetitive foreclosure effects.
22. In order to enhance legal certainty, the Commission will set out specific guidelines explaining that, when single-branding obligations foreclose new entrants and lead to anti-competitive effects, the benefit of the block exemption can be withdrawn. This guidance will also explain that, under certain circumstances, minimum purchasing requirements not exceeding 80% of the dealer's total annual purchases may

nevertheless have loyalty enhancing effects and can therefore be treated as single-branding obligations.

## **2.2. Protecting intra-brand competition**

23. Intra-brand competition is of importance in markets where inter-brand competition, at the level of the manufacturers and/or the distributors, is weak. However, in markets where inter-brand competition is strong, competitive interaction between suppliers and buyers naturally drives contracting parties towards the implementation of the most cost-effective and efficient transactions and ensures that the resulting benefits are passed on to consumers. In these circumstances, regulatory intervention risks imposing an unnecessary burden on companies, which may ultimately translate into losses of efficiency. As far as the protection of parallel trade is concerned, the Commission acknowledges however that this is a core objective of the Common Market and has been the subject of long-standing case-law from the European Court of Justice<sup>7</sup>.
24. The current Regulation block-exempts quantitative selective distribution for new motor vehicles up to a 40% market share threshold and combines such a wide safe harbour with stricter hardcore provisions and specific conditions concerning, in particular, restrictions preventing dealers from subcontracting repair and maintenance activities and the opening by dealers of additional sales outlets (the so-called "location clause"). These stricter conditions were designed to stimulate diversity in car distribution models as a means to sustain intra-brand competition.
25. Few observable benefits resulted from these stricter rules. The market survey conducted by the Commission showed that the opportunity for dealers to specialise in sales-only activities and to subcontract the profitable repair and maintenance services has not been taken up by the market. Moreover, the dealers opened additional sales outlets only in a marginal number of cases.
26. On the other hand, in a context of fierce inter-brand competition on the markets for the sale of new motor vehicles, the current rules implied significant drawbacks. In particular, the potential for uncontrolled proliferation of additional outlets can lead to some dealers free-riding on the investments made by others, and has in practice caused vehicle manufacturers to take steps to preserve the integrity of their networks by adjusting qualitative standards to this end. This has led, in turn, to higher investment costs and lower margins for dealers.
27. The Commission therefore concludes that, by removing regulatory constraints which distort the investment incentives of the parties, the application of the general block exemption will bring about benefits to businesses and consumers. This implies that selective distribution will become subject to the general market share threshold of 30%, and "location clauses" as well as restrictions of "sales-only" dealers will be exempted up to this reduced threshold. However, in order to increase legal certainty and to contain compliance costs for companies, the Commission proposes to set out sector

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<sup>7</sup> See judgments in cases C-551/03 P, *General Motors*, [2006] ECR I-3173, paragraphs 67-68; Case C-338/00 P, *Volkswagen/Commission*, [2003] ECR I-9189, paras 44 and 49, and Case T-450/05, *Peugeot/Commission*, judgment of 9.07.2009, not yet published, paras 46-49.



specific guidelines for assessing those cases where the relevant market share exceeds 30%.

28. Furthermore, given the potential benefits that consumers may draw from unrestricted parallel trade of motor vehicles, the Commission will explain in sector-specific guidelines the circumstances in which agreements restricting dealers' ability to obtain and resell vehicles with foreign specifications ("availability clause") would amount to an indirect restriction on active and/or passive sales and, therefore, infringe Article 81<sup>8</sup>.

### **2.3. Protecting competition between independent and authorised repairers**

29. Competition from independent repairers imposes a powerful competitive constraint on the authorised networks as the independent sector offers consumers a comparable service, often at lower prices. However, independent repairers can only compete effectively if they have access to both technical information and spare parts, which are key inputs for performing repair and maintenance work. The current Regulation has sought to ensure access to those inputs by setting out specific hard core restrictions.

30. The issues connected with possible restrictions affecting access to spare parts are dealt with below under point 2.5.

31. As regards access to technical repair information, it should be recalled that Regulation (EC) No 715/2007<sup>9</sup>, which regulates the type approval of light passenger and commercial vehicles provides for a detailed set of rules ensuring full and non-discriminatory access to such information for all independent operators. This regulation is already applicable on a voluntary basis and will become mandatory for new type approvals from September 2009 onwards.<sup>10</sup> However, for several years, the car park will still contain large numbers of vehicles not covered by Regulation (EC) No 715/2007, which will constitute a significant market for independent repairers. The Commission therefore concludes that it is important to continue to enforce competition rules in order to prevent foreclosure of independent operators by ensuring equivalent access conditions for technical repair information pertaining to the existing car park.

32. It should also be observed however, that anticompetitive foreclosure effects may equally stem from other practices aimed at sheltering authorised repairers from competition by independent repairers. A typical example is the possible misuse of legal and extended warranties granted by the vehicle manufacturer which are sometimes honoured only on condition that all repair and maintenance works, including those not covered by the warranty terms, are carried out by a member of the authorised network. A drawback of the current Regulation is that, by exempting qualitative selective distribution agreements without any market share threshold, it has prevented effective remedial action against such potentially harmful practices.

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<sup>8</sup> Judgment of 28 February 1984, joined cases 228 and 229/82 Ford of Europe Inc. and Ford-Werke Aktiengesellschaft v Commission ECR (1984) 1129.

<sup>9</sup> Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ L 171, 29.6.2007, p. 1).

<sup>10</sup> Cf. Article 10 of Regulation (EC) No 715/2007 for details.

33. Therefore, the Commission concludes that, by limiting the exemption of selective distribution up to a market share threshold of 30%, the general block exemption would allow a more focused enforcement in respect of a wider range of potentially harmful practices, thus improving competition between independent and authorised repairers. In order to enhance effective enforcement, the Commission proposes to explain in future sector-specific provisions the circumstances in which a refusal to grant full and non-discriminatory access to technical information to independent operators, or a misuse of warranties would bring qualitative selective agreements within the scope of Article 81 and trigger enforcement action.

#### **2.4. Ensuring effective competition within the manufacturers' networks of authorised repairers**

34. Competition between authorised repairers of a given brand is particularly important for motorists owning a younger vehicle (i.e. up to four years old). The percentage of repairs on such vehicles carried out within the authorised networks is high due to consumer preferences and, in particular, to the higher residual value that is normally attributed to a car which has been regularly maintained by authorised repairers.
35. Repair and maintenance services are considered to be brand-specific markets. The intensity of competition between authorised repairers of a given brand depends on the conditions of access to the network established under the standard authorised repairer agreements. As the network of the authorised repairers and parts distributors of a given brand normally holds market shares well in excess of 30%, vehicle manufacturers that wish to benefit from Regulation (EC) No 1400/2002 can only apply qualitative selective distribution. This means that access to their network of authorised repairers must be based on selection criteria which are objectively justified by bringing benefits to the final consumers. The application of the general block exemption will lead to the same result.
36. In order to ensure legal certainty and effective enforcement, the Commission will clarify through future sector specific provisions the circumstances in which qualitative selective distribution would fall outside the scope of the prohibition in Article 81(1) as well as the framework of analysis for assessing agreements falling outside the safe harbour of the block exemption. In particular, sector-specific provisions will be provided to clarify the circumstances in which agreements linking sales and after-sales services would not fall foul of Article 81, as for instance in case of newcomers trying to enter a market.

#### **2.5. Preventing foreclosure of spare parts producers in the automotive aftermarkets**

37. Other than parts bearing the trademark of the vehicle manufacturer (OEM parts) there are parts made on the same production line as the original component of the vehicle (OES parts), while others are made by "matching quality" parts manufacturers. Parts falling into these categories are often cheaper than identical parts bearing the brand of the vehicle manufacturer. It is therefore important to protect alternative supply channels for spare parts, both to authorised and independent repairers by limiting car manufacturers' ability to prevent suppliers to sell to the aftermarkets.
38. Under the current Regulation, restrictions to the OES' ability to sell spare parts to authorised repairers, restrictions to the authorised repairers' ability to sell parts to

independent repairers, restrictions to the authorised repairers ability to purchase competing parts from sources other than the vehicle manufacturer, as well as restrictions limiting OES' ability to affix their logo on parts supplied to vehicle manufacturers for the purposes of first assembly are listed as hardcore restrictions and are, therefore, treated as restrictions by object.

39. Under the general block exemption, the restrictions at issue would not be treated as restrictions by object but instead would be subject to individual scrutiny. By applying a 30% market share threshold, parts distribution agreements would generally fall outside the safe harbour granted by the general block exemption, since vehicle manufacturers' share on the relevant spare parts markets are likely to be well above 30%. It follows that the above mentioned practices would not be block exempted and, absent evidence of off-setting efficiencies, Article 81 could be enforced directly against agreements which have the effect of restricting competition.
40. For the above reasons, the Commission concludes that enforcement would be as effective as today should the general rules be applied with respect to such restrictions. However, given the uncertainty that this approach may entail, the Commission will clarify in sector-specific provisions the circumstances in which the restrictions at issue would bring the underlying agreements within the scope of Article 81 and trigger enforcement action<sup>11</sup>.

## **2.6. Preserving the deterrent effect of Article 81**

41. The last objective is to preserve the deterrent effect of Article 81 so as to avoid that the block exemption is used by manufacturers to inhibit independent pro-competitive behaviour by authorised dealers and repairers. In order to achieve this objective, the Regulation contains a number of measures intended to safeguard dealers' sunk costs (e.g. contract duration, periods of notice, motivation of contract terminations, and transfer of dealerships contracts between the members of the same networks, as provided by Article 3) which are normally covered by national contract laws.
42. There are a number of arguments for concluding that protecting dealer independence through provisions aimed at regulating particular contractual clauses in the context of a block exemption is no longer an effective or valid means to achieve this objective.
43. First, as pointed out in the Commission's Evaluation Report, there is no evidence that these provisions have had the intended deterrent effect. On the contrary, the Regulation may have had negative effects, by making it more difficult for vehicle manufacturers to adjust their networks to changing economic conditions in which the ability to swiftly reorganise the network is vital for the European automotive industry to maintain and improve its competitiveness in the longer term.
44. Second, dealers would have no effective remedy if their contractual partner refused to issue a contract containing the supposedly protective provisions. This is because these

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<sup>11</sup> In addition, in accordance with the Volvo Veng case law (case 238/87 Volvo (AB) v Erik Veng [1988] ECR 6211), agreements preventing independent repairers from getting access to original spare parts may breach Article 82, when the vehicle manufacturer enjoys a dominant position in respect of a certain category of parts (e.g. captive parts) and if it can be shown that excluding independent repairers will likely eliminate effective competition on the market.

provisions create neither rights for dealers nor obligations on vehicle manufacturers but merely remove the benefit of the block exemption without implying that the contracts at issue would automatically infringe Article 81(1).

45. Third, it would seem difficult for the Commission to include contractual protection measures in any future competition law framework, now that the boundary between national contract and commercial laws on the one hand and EU competition law on the other has been clarified in the context of Regulation (EC) No 1/2003. During negotiations on that Regulation, the Commission stated that it wished "to align itself to the Council's view that "Articles 81 and 82 of the Treaty have as their objective the protection of competition on the market"<sup>12</sup>. Provisions that predominantly pursue another objective are normally found in national contracts laws.
46. The Commission therefore envisages applying the general rules. This would lead to a more economically sound approach that would significantly improve the overall consistency of competition policy in the area of vertical restraints and enable the use of efficient contractual arrangements.
47. Moreover, sector-specific guidelines will be provided in order to explain that transparent relationships between the parties would normally reduce the risk for manufacturers to be held responsible of using indirect forms of pressure aimed at achieving anticompetitive outcomes<sup>13</sup>.

### 3. CONCLUSION

48. In the light of the above, the Commission proposes:

- As regards agreements for the sale of new motor vehicles, to apply the general rules as currently reflected by the proposed new block exemption for vertical agreements. Given that stakeholders in the motor vehicle sector have been accustomed to sector-specific regulations since 1985 and that market players have expressed a wish for legal certainty, the Commission will adopt sector-specific guidelines on the points set out in Section 2.1, 2.2 and 2.6 above.

In order to allow all operators time to adapt to the general regime, the Commission proposes that the provisions of the Regulation that apply to agreements for motor vehicle distribution will remain in force until 31 May 2013.

- 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

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<sup>12</sup> See recital 9 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1-25, first sentence).

<sup>13</sup> In this context it should also be mentioned that the main associations of motor vehicle manufacturers (ACEA, JAMA) have recently agreed to propose a Code of Conduct which contains certain basic provisions derived from the current Regulation (EC) No 1400/2002.

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 (Section 2.3, 2.4 and 2.5).

Because the application of the new regime to the aftermarket may bring immediate benefits to businesses and consumers, the Commission proposes that it will apply to vertical agreements for the provisions of repair and maintenance services as well as for the supply and distribution of spare parts as from 31<sup>st</sup> May 2010.

49. All interested parties are invited to submit comments on this Communication before 25 September 2009. Observations should be sent

**By electronic mail**, to the following address:

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