1 Main elements and objectives of Regulation 1400/2002

At the time the regulation was adopted, the Commission was of the view that the previous sector-specific block exemption had failed in its objectives, and moreover that the way in which this regulation was drafted was out of line with the more economic policy approach for vertical restraints laid down in Commission Regulation (EC) No 2790/1999, and in the Commission Notice on vertical restraints.

Car manufacturers had often not respected the terms of Regulation 1475/95, obliging the Commission to adopt four decisions imposing substantial fines. The Commission had also received large numbers of complaints from consumers, who were in particular concerned that barriers were put in their way when they tried to take advantage of high price differentials by buying their vehicles in other Member States. More than 500 such letters concerning this type of competition problems were received in 1998 and 1999. The Commission saw these letters as a sign that the single market in car distribution did not yet function as it should if the relevant EU competition rules were complied with. Moreover, it was clear that the then current rules on motor vehicle intermediaries meant that these operators could not effectively help consumers to purchase new motor vehicles in other Member States.

As regards inter-brand competition (i.e. competition between car manufacturers), in 2000, the six largest manufacturers in Europe (Volkswagen, Peugeot/Citroën, Renault, General Motors, Ford and Fiat) together had a share of about 75% of the European car market; something which the Commission at the time took as an indication that there was an oligopolistic situation on that market. The Commission was concerned that the increase in concentration in the industry, such as the mergers between Ford and Volvo, or the looser tie-ups between Renault and Nissan, Daimler-Chrysler and Mitsubishi and General Motors and Fiat would lead to steady reductions in the intensity of inter-brand competition.

1 Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article 85 (3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements, hereinafter "Regulation 1475/95".

2 Commission Regulation 2790/1999 on vertical restraints (OJ L 336 of 29.12.1999, p. 21) (hereinafter "Regulation 2790/1999") Regulation 2790/1999, which was adopted on 22 December 1999, established a block exemption which applies for all distribution agreements in all economic sectors which are not subject to the application of specific rules, such as motor vehicles (see Article 2(5) of Regulation 2790/1999).


4 On 28 January 1998, Volkswagen was fined EUR 102 million for impeding parallel trade in Italy (reduced by the CFI to EUR 90 million). On 20 September 2000 the Commission fined Opel Nederland EUR 43 million for restricting parallel trade in the Netherlands. On 30 May 2001, Volkswagen was fined a second time for price fixing in Germany, this time involving the VW Passat (fine EUR 30.96 million), and on 10 October 2001 DaimlerChrysler was fined EUR 71.825 million for impeding parallel trade in Germany, restricting sales to leasing companies and engaging in price fixing in Belgium. The latter decision was subsequently annulled by the Court of First Instance, with the exception of the part relating to price-fixing on the Belgian market.

5 In 1995 and 1996, German and Austrian consumers in particular wrote to the Commission complaining about obstacles in buying Volkswagen/Audi cars in Italy. From 1997 onwards, UK residents in particular complained of difficulties that they encountered when trying to buy right-hand-drive vehicles on the Continent.

6 Commission Notice concerning Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85(3) of the Treaty to certain categories of motor-vehicle distribution and servicing agreements (OJ No C 17, 18.1.1985, p. 4) and Clarification of the activities of motor vehicle intermediaries.
Against this background the Commission was of the view that the motor vehicle sector could not at that time be brought within the general safe harbour of Regulation 2790/1999, since its application would not remedy the competition problems identified in its Evaluation Report\(^7\), as summarised above. This shortcoming was due on the one hand to the homogeneity of distribution systems in the sector which could result in a significant loss of intra-brand and inter-brand competition\(^8\) and, on the other, to the fact that specific provisions were needed to address particular problems identified by the Commission in its evaluation report. In the light of this, it chose a new sector-specific model that was based on Regulation 2790/1999, but which was stricter than the general regime in a number of ways.

As regards the scope of Regulation 1400/2002, Article 2(1) delineated a block exemption with a broad coverage, applying to all categories of vertical agreements in the motor vehicle sector, in contrast to the single model exempted by Regulation 1475/95. The aim was to create a wider safe-harbour for vertical agreements so as to allow competing formats for motor vehicle distribution and servicing to operate on the same market. In this way, it was hoped that the risk of cumulative effects resulting from the proliferation of similar restrictive systems across the whole sector would be reduced, since diversity would lower the chance that the same measures restrictive of competition would be present in a high percentage of distribution and servicing agreements concluded by different manufacturers. At the same time, however, Regulation 1400/2002 introduced specific market share thresholds as well as additional "hardcore" restrictions and conditions, which had no equivalent in the general block exemption Regulation 2790/1999.

The following sub-sections will briefly recall these sector-specific provisions (section 1.1) and will summarise the underlying policy objectives which the Commission was meant to pursued through the adoption of Regulation 1400/2002 (section 1.2).

### 1.1 The main sector-specific elements of Regulation 1400/2002

**Different thresholds for selective distribution**

Regulation 2790/1999 covers agreements containing vertical restraints up to a market share of 30%. Based on all reasonably possible market definitions, in 2002 it appeared that in certain Member States, certain manufacturers' distribution networks exceeded the threshold of 30%, as did their activities in the markets for after-sales services and repairs. These latter were brand-specific markets on which car manufacturers' authorised networks had high market shares. To the extent that such agreements were caught by Article 81(1), Regulation 2790/1999 would therefore have not covered selective distribution for motor vehicle distribution and servicing in a number of cases.

The thresholds in Article 3(1) of Regulation 1400/2002 were therefore adapted to take account of the particularities of the motor vehicle sector. Article 3(1) introduced a flexible responsive system according to which a supplier's freedom to use systems that were restrictive

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\(^{8}\) In 2002, all brands of new cars in every Member State were sold through similar networks of franchised dealers combining elements of exclusivity and selectivity together with other vertical restraints, including single-branding.
of competition was limited in case of significant market power. To this end, Article 3(1) sets out a series of thresholds above which various distribution models was not block-exempted. In particular, all vertical agreements, including those providing for exclusive distribution, were exempted up to a market share of 30%, whereas for quantitative selective distribution, the threshold was set at 40%. Even if a supplier's market share exceeded this latter figure, its networks was still be covered by the exemption, so long as only qualitative selection was used.

This means in practice that suppliers can use qualitative selective distribution for repair and maintenance, and that (at the time) all manufacturers could, if they chose, distribute their vehicles through quantitative selective networks in all Member States.

Specific "hardcore" restrictions

As with Regulation 2790/1999, Article 4(1)(d) of Regulation 1400/2002 provides that the exemption does not apply to vertical agreements which restrict active or passive sales to end users by dealers in markets where selective distribution is used. However, before adopting the Regulation, the Commission was of the view that parallel trade was not playing its role of putting pressure on price differentials between Member States; the Commission's then twice-yearly car price reports pointed to large price differences. As noted above, both consumer complaints and formal enforcement activity showed the difficulties faced by end users who tried to engage in such trade. A study commissioned by DG Competition on the reasons for price differentials showed that these were not only due to tax differences between Member States, but could also be put down to deliberate strategies adopted by the vehicle manufacturers. Therefore, in an effort to further spell out the implications of Article 4(1)(d), Recital 14 of the Regulation makes it plain that the notion of sales to end users extends to sales via intermediaries acting on behalf of individual named consumers, while Recital 15 explicitly includes Internet sales within this notion.

It was also observed that, unlike other goods, motor vehicles are often sold in different versions depending upon the Member State. Vehicles with foreign specifications which are appreciably different from those in a consumer's home country are not seen as substitutes. Right-hand-drive vehicles, for instance, are used in the UK, Ireland, and Cyprus, while variants sold in Scandinavia may have slightly different specifications to cope with the colder climate. Intra-brand competition across borders therefore often relies on dealers being able to get hold of vehicles with foreign specifications. The Commission therefore perceived that Article 4(1)(b),(c) and (d) of the Regulation would be ineffective without a mechanism to enable consumers to obtain vehicles with specifications current in their own Member States. However, Regulation 2790/1999 contains no explicit provision clarifying that such purchasing is possible. Article 4(1)(f) of the Regulation therefore provides for an "availability clause" that excludes the benefit of the exemption from agreements that restrict a distributor's ability to obtain vehicles with specifications current in other Member States.

Moreover, a study carried out for DG Competition by the consultancy Autopolis in 2000 had shown that the up-to-then mandatory link between the sale of new motor vehicles and after sales services was not warranted. The necessity of such a link was assumed in Regulation

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10 The Natural Link between Sales and Service, November 2000.
1475/95, and that regulation therefore imposed an obligation to appoint only dealers that also offered after sales services. In 2002, the Commission not only felt that the future regulation should not impose a link; it was also of the view that suppliers should not be able to stipulate that authorised repairers should have to sell new vehicles, or vice versa. In particular, the Commission felt that allowing dealers to operate stand-alone showrooms would introduce diversity in the networks and facilitate multi-brand sales by freeing-up space within dealerships. Article 4(1)(g) of Regulation 1400/2002 therefore provides that the exemption does not apply to agreements which restrict a dealer's ability to "subcontract" (i.e. contract-out) the provision of repair and maintenance services to other firms within the brand network. The supplier may, however, require the distributor to give end users the name and address of the authorised repairer or repairers in question before the conclusion of a sales contract and, if any of these authorised repairers is not in the vicinity of the sales outlet, to also tell end users how far the repair shop or repair shops in question are from the sales outlet. Such obligations may only be imposed provided that similar obligations are imposed on distributors whose repair shop is not on the same premises as their sales outlet.

In 2002, the Commission also felt that competition within the authorised repair networks was on the decline. This was due inter alia to the fact that only dealers could be authorised repairers, and that since dealer numbers were falling dramatically because of network rationalisations, there was necessarily a parallel reduction in the numbers of authorised repair shops and a corresponding diminution of intra-brand competition. Studies showed that consumers did not like to travel far to have their car repaired; the travel time of a car owner to a repair shop was ideally less than 15 minutes, but in no case more than 30 minutes\textsuperscript{11}. However, Regulation 2790/1999 did not contain any specific provision that would prevent those suppliers who wished their networks to benefit from the block exemption from requiring their authorised repairers to also sell new vehicles\textsuperscript{12}. In order to break the mandatory link laid down in regulation 1475/95, Article 4(1)(h) of Regulation 1400/2002 provides that the exemption does not apply to vertical agreements which restrict an authorised repairer's ability to limit its activities to the provision of repair and maintenance services and the distribution of spare parts.

As regards competition in the spare parts markets, the Commission was of the view, in 2002, that spare part producers did not have sufficient access to authorised dealers and repairers. These latter did not use spare parts from sources other than the vehicle manufacturer to any significant extent, although many parts could be sourced at often lower prices from independent suppliers. In this respect, it was observed that Regulation 2790/1999 contained no provisions protecting the direct supply of spare parts from parts producers to authorised repairers/parts distributors (i.e. without passing through the vehicle manufacturers' networks). Article 4(1)(j) of Regulation 1400/2002 therefore provides that the exemption does not apply to vertical agreements which restrict a parts manufacturer's ability to sell parts to both independent and authorised repairers/parts distributors or end users.

Furthermore, in order to ensure that authorised repairers and dealers could actually obtain and use alternative brands of spare parts Article 4(1)(k) provides that the exemption does not apply to vertical agreements which restrict a distributor's or authorised repairer's ability to obtain original spare parts or spare parts of matching quality from a third undertaking of its

\textsuperscript{11} Customer Preferences for existing and potential Sales and Servicing Alternatives in Automotive Distribution, by Dr Lademann & Partner December 2001 p. 46, section 4.3.2.1.

\textsuperscript{12} But it could be argued that this was achieved anyway by limiting the application of quantitative criteria to cases where the supplier's market share did not exceed 30%.
choice and to use them for the repair or maintenance of motor vehicles. The supplier may however require the use of original spare parts supplied by it for repairs carried out under warranty, free servicing and vehicle recall work. Article 4(1)(k) should also be read in the light of Article 5(1) (see further below), which provides that the exemption does not apply to any direct or indirect non-compete obligation.

In addition, in order to increase consumer and repairer awareness of the origin of spare parts, Article 4(1)(l) of Regulation 1400/2002 provides that the exemption does not apply to vertical agreements which have as their object a restriction agreed between a manufacturer of motor vehicles which uses components for the initial assembly of motor vehicles and the supplier of such components which limits the supplier's ability to place its trade mark or logo effectively and in an easily visible manner on components or spare parts.

There is also no provision in Regulation 2790/1999 that specifies that independent repairers had to be provided with spare parts for which no substitute existed ("captive" spare parts). In order to ensure that independent repairers could get access to all categories of spare parts, including "captive" parts that can only be obtained through the carmakers networks, Article 4(1)(i) of Regulation 1400/2002 provides that any agreement that includes a restriction preventing members of the authorised networks to sell spare parts to independent repairers will not be covered by the block exemption.

The provisions relating to spare parts supply in Article 4(1) of Regulation 1400/2002 should be read in the light of Article 1(t) and 1(u). The first of these provisions seeks to encourage the use of parts supplied directly by the Original Equipment Suppliers (OES) by allowing them to market such parts as "original". The Regulation defines original spare parts as being of the same quality as the components used for the assembly of a motor vehicle and manufactured according to the specifications and production standards provided by the vehicle manufacturer for the production of components or spare parts. The second part of Article 1(t) sets up a rebuttable presumption that parts are "original" if the part manufacturer certifies that the parts match the quality of the components used for the assembly of the vehicle in question and have been manufactured according to the specifications and production standards of the vehicle manufacturer. Article 1(u) defines matching quality spare parts as parts that match the quality of the original components.

As regards competition on the market for repair and maintenance services, in particular between the authorised repair networks and the independent aftermarket, the Commission was of the view that a failure by vehicle manufacturers to grant independent repairers access to technical information which is provided to the authorised networks might foreclose such operators from the market. Regulation 2790/1999, however, contains no specific provision for such information to be made available to independent garages.

Article 4(2) of Regulation 1400/2002 therefore provides that the exemption does not apply where the supplier of motor vehicles refuses to give independent operators access to any technical information, diagnostic and other equipment, tools, including any relevant software, or training required for the repair and maintenance of these motor vehicles. 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. If the relevant item is covered by an intellectual property right or constitutes know-how, access is not to be withheld in any abusive manner.
The notion of independent operators not only includes independent repairers, but also encompasses all other firms directly or indirectly involved in repair and maintenance, including manufacturers of repair equipment or tools, independent distributors of spare parts, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers.

**Additional specific conditions for the application of the Regulation**

At the time that the Regulation was adopted, it was felt that if dealers were permitted to sell the brands of different suppliers from the same premises, this would promote both intra- and inter-brand competition. Support for this view came from both dealers' associations and consumer bodies, which felt that there was consumer demand for an alternative distribution model whereby the brands of different manufacturers were sold under the same roof.

However, the Commission's analysis showed that the application of Regulation 2790/1999 to the motor vehicle sector would amount to a step backwards as compared to Regulation 1475/95 in this regard, since under Regulation 2790/1999, suppliers would be able for a period of five years to oblige their dealers not to sell more than 20% of vehicles from another manufacturer. Under Regulation 1475/95, multi-branding was permissible on condition that it was carried out through separate legal entities and management and in separate sales premises. Regulation 1400/2002 lifted these restrictions, to allow dealers to also sell competing brands from the same site. The mechanism is contained in Article 5(1)(a) of Regulation 1400/2002, which provides that the exemption does not apply to any direct or indirect non-compete obligation. Article 1(1)(b) defines a non-compete obligation as any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell goods or services which compete with the contract goods or services, or any direct or indirect obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than 30% of the buyer's total purchases of the contract goods, corresponding goods or services and their substitutes on the relevant market, calculated on the basis of the value of its purchases in the preceding calendar year. In theory, therefore, this provision would allow a dealer to take on up to two brands from competing suppliers. Authorised repairers, however, must be free to repair all other brands; the general non-compete clause in Article 5(1)(a) is followed by a specific provision contained in Article 5(1)(b) which makes it plain that the Regulation does not exempt obligations on repairers not to provide repair and maintenance services for cars of competing brands.

These provisions are stricter than those in Regulation 2790/1999, which in principle not only allow the supplier to oblige the dealer not to sell competing brands from the same showroom but also not to sell any competing brand from any of its premises for up to 5 years if the supplier has a market share of below 30% (Article 5(a)). According to Article 5 of Regulation 2790/1999 any non-compete clause can be exempted only for a period of up to five years. If a contract containing a non-compete obligation is tacitly renewable beyond a period of five years is to be deemed to have been concluded for an indefinite duration.

There were two qualifications to the exclusion of non-compete obligations from the benefit of the block exemption. An obligation on the distributor to sell motor vehicles from other suppliers in separate areas of the showroom in order to avoid confusion between the makes

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13 After which time the application of the obligation has to be re-negotiated.

14 Speech 03/59 by Mario Monti, 6 February 2003, p.4
does not constitute a non-compete obligation for the purposes of the Regulation. However, an obligation on the distributor to have brand-specific sales personnel for different brands of motor vehicles constitutes a non-compete obligation for the purposes of the Regulation, unless the distributor decides to have brand-specific sales personnel and the supplier pays all the additional costs involved.

It should also be noted in this respect that Regulation 1400/2002 does not treat non-compete obligations as hardcore restrictions but rather as special conditions. Therefore, if a supplier on the market has a market share of below 5%, it may benefit from the de-minimis rule.\textsuperscript{15}

It was also felt necessary to allow dealers in selective distribution systems to open additional outlets in other areas, although not into territories where exclusive distribution was used. This would allow efficient dealers to expand organically, and was also seen as a key to facilitate multi-branding on the same site, thereby increasing both inter- and intra-brand competition. "Location clauses" preventing dealers from opening such extra outlets could have benefited from the exemption in Regulation 2790/1999. \textbf{Article 5(2)(b)} of Regulation 1400/2002, however, contains a sector-specific provision to the effect that the exemption does not apply to any direct or indirect obligation on any distributor of passenger cars or light commercial vehicles within a selective distribution system which limits its ability to establish additional sales or delivery outlets at other locations within the common market where selective distribution is applied. It was felt that this opportunity would significantly contribute to enhance intra-brand competition, by allowing dealers to sell more directly into higher-priced markets. This provision entered into force only after an extended transition period lasting until 1 October 2005.

\textbf{Article 5 (3)} provides that the exemption does not apply to any direct or indirect obligation as to the place of establishment of authorised repairers within selective distribution systems. In other words, the authorised repairer is free to decide not only on the location of his repair shop but also on the location of any additional outlet from which he provides repair and maintenance services for the brand in question. This means that an authorised repairer will be able to open an additional outlet without having to seek an additional contract.

\textit{Flanking measures intended to encourage dealers to take advantage of the pro-competitive provisions of the Regulation}

In 2002, the Commission was conscious of the very weak contractual bargaining power of dealers when they negotiate with vehicle manufacturers, and it felt that dealers needed to be protected to encourage them to act more pro-competitively. This sentiment was underlined by the Commission's enforcement experience, which demonstrated that dealers' pro-competitive behaviour had often been stymied by vehicle manufacturers. It therefore appeared that Regulation 1475/95 had not done enough to strengthen dealers' independence. Regulation 2790/1999 contains no provisions to redress such imbalances in bargaining power by allowing distributors to amortise their sunk costs, or to pass those costs on when their businesses are sold. In contrast, Article 3 of Regulation 1400/2002 contains a number of flanking measures intended to reinforce the commercial independence of dealers and authorised repairers and to encourage them to act pro-competitively.

\textsuperscript{15} Commission Notice on \textit{agreements of minor importance which do not appreciably restrict competition} under Article 81(1) of the Treaty establishing the European Community (de minimis), \textit{Official Journal C 368, 22.12.2001, p.13-15}
**Article 3(5)** firstly lays down minimum periods for contract duration, and provides that the exemption will only apply on condition that the vertical agreement concluded by the supplier of new motor vehicles with a distributor or authorised repairer is either concluded for an indefinite period or a period of at least five years.

**Article 3(5)** also lays down minimum notice periods for non-renewal or termination. If a definite term of five years or more is used, each party has to undertake to give the other party at least six months' prior notice of its intention not to renew the agreement. If the contract is signed for an indefinite term, the period of notice for regular termination of the agreement has to be at least two years for both parties; this period is reduced to at least one year where: the supplier is obliged by law or by special agreement to pay appropriate compensation on termination of the agreement, or the supplier terminates the agreement where it is necessary to re-organise the whole or a substantial part of the network.

In order to facilitate dispute resolution, and to free dealers from what could be expensive court proceedings, **Article 3(6)** provides for a contractual arbitration mechanism for defined categories of dispute. According to this provision, the exemption only applies on condition that the vertical agreement provides for each of the parties the right to refer disputes concerning the fulfilment of their contractual obligations to an independent expert or arbitrator. The article contains a non-exhaustive list of obligations which could be referred in this manner: supply obligations; the setting or attainment of sales targets; the implementation of stock requirements; the implementation of an obligation to provide or use demonstration vehicles; the conditions for the sale of different brands; the issue whether the prohibition to operate out of an unauthorised place of establishment limits the ability of the distributor of motor vehicles other than passenger cars or light commercial vehicles to expand its business, or the issue whether the termination of an agreement is justified by the reasons given in the notice. The right to go to an expert or to arbitration is made without prejudice to each party's right to make an application to a national court.

**Article 3(4)** reinforces the protection previously provided for in Regulation 1475/95 by adding an obligation to give reasons for contractual termination. It was felt that where a dealer or repairer had his contract terminated because he had acted pro-competitively but against the wishes of the supplier, an obligation to give reasons would enable a judge or arbitrator to decide whether the reasons given matched the real factual circumstances of the individual case. The exemption therefore only applies on condition that the agreement in question provides that a supplier who wishes to give notice of termination of an agreement must give such notice in writing and must include detailed, objective and transparent reasons.

In 2002, the Commission was of the view that the possibility for dealers to transfer their rights and obligations under their contract to another member of the same network without prior consent of the manufacturer would help to foster market integration, as stated in recital 10. **Article 3(3)** of the Regulation, therefore, provides that the exemption only applies on condition that the agreement in question stipulates that the supplier agrees to the transfer of the rights and obligations resulting from the vertical agreement to another distributor or repairer within the distribution system and chosen by the former distributor or repairer.

### 1.2 The main objectives of the regulation

As has been observed, given the specific market conditions characterising the markets for motor vehicle sales and servicing in early 2000, stricter and more specific rules were thought
necessary, going over and above those already provided for in Regulation 2790/1999. By introducing these sector-specific rules, Regulation 1400/2002 pursued seven main objectives, which are briefly recalled below.\(^\text{16}\)

The first objective of the Regulation was to prevent foreclosure of competing vehicle manufacturers and to safeguard access to the vehicle retailing and repair markets. The chosen method was to give dealers more leeway to sell the brands of competing manufacturers. The Commission felt that multi-branding, particularly within the same showroom, would increase inter-brand competition by making it easier for new entrants to penetrate the markets and facilitate the existence of niche brands. It would also enable consumers to compare brands more easily, and would contribute to intra-brand competition by reinforcing network density. In this regard, the Regulation does not exempt non-compete obligations (Article 5(1)), and extends the definition of such obligations beyond that in Regulation 2790/1999 with a view to allowing dealers to sell at least two additional brands from competing suppliers (Article 1(1)(b)).

The second objective of Regulation 1400/2002 was to remove the ‘straitjacket’ effect of the previous block exemption, so as to reinforce intra-brand competition through an increased diversity of distribution systems across the market. As has been observed above, Regulation 1475/95 only exempted a single retailing format and led all new motor vehicles to be distributed in the same way, through systems combining elements of both exclusive and selective distribution. By contrast, Article 2(1) exempts all vertical agreements up to a certain market share thresholds (defined in Article 3(1)), rather than seeking to define a model. Furthermore, Article 4(1)(g) seeks to promote diversity of formats by creating an opportunity for dealers to operate stand-alone sales outlets, while Article 5(1) and 5(3) are aimed at ensuring dealers’ and repairers' freedom to, respectively, operate with competing brands and to open secondary outlets at other locations.

The third objective of the Regulation was to protect cross-border intra-brand-competition or, in other words, to facilitate parallel trade in motor vehicles between EU countries. Any agreement that does not allow dealers to obtain vehicles with specifications current in other Member States will therefore fall foul of Article 4(1)(f) of Regulation 1400/2002. Article 4(1)(d) would allow dealers to market their vehicles actively in other Member States, while Article 5(2)(b) extended this notion of "active sales" to include the opening of additional outlets.

The fourth objective of Regulation 1400/2002 concerns the aftermarket and is aimed at the protection of competition between independent and authorised repairers. To that end, the Regulation protects the supply of two essential inputs to independent repairers: captive and original spare parts, as well as (Articles 4(1)(i) and 4(1)(j)) to technical repair information, tools and training for independent repairers (Article 4(2)).

The fifth objective of Regulation 1400/2002 was to ensure effective competition within the manufacturers' networks of authorised repairers by reversing the decline in the numbers of authorised repair shops resulting from ongoing network re-organisations. In order to achieve this objective, it allowed all repairers who so wished, and who met the standards, to join the networks as "stand-alone" authorised repairers. A requirement that authorised repairers also

\(^{16}\) The seven main objectives as presented in this section are based on the seven reasons for having a renewed sector specific regulation. See Annex I to the draft new Regulation 1400/2002, published 16.3.2002, OJ C67, p.2-26
sell new vehicles was seen as a non-qualitative criterion, and such criteria could not be used where the supplier's market share exceeded 30% (Article 3(1)). Moreover, a specific provision (Article 4(1)(h)) excluded the exemption from obligations requiring repairers to also sell new vehicles.

The aim of Regulation 1400/2002 as regards spare parts producers was to ensure that competing brands of spare parts were available on the aftermarket. The sixth objective was therefore promoting spare parts manufacturers' access to the automotive aftermarkets. OES were to have more freedom to sell to both independent and authorised repairers (Articles 4(1)(j) and 1(1)(t)). Moreover, authorised repairers were not to be prevented from using alternative brands of spare parts (Article 4(1)(k)).

The Commission's seventh objective in adopting Regulation 1400/2002 was to ensure that dealers felt sufficiently independent from their suppliers so as to act pro-competitively on the market, even where such behaviour was against the suppliers' wishes. In order to achieve this objective, Article 3 contains a number of measures intended to safeguard dealers' sunk costs, including minimum contractual terms, minimum notice periods in case of termination or non-renewal, and a provision allowing dealers to transfer their dealership to another dealer of their choice within the relevant brand network.