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Accompanying the

COMMUNICATION FROM THE COMMISSION

The Future Competition Law Framework applicable to the motor vehicle sector

IMPACT ASSESSMENT

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TABLE OF CONTENTS

1.	Background	4
1.1.	Introduction	4
1.2.	Historical overview	4
1.3.	The review of Regulation 1400/2002.....	5
1.3.1.	Experience of the Regulation: the findings of the Commission's Evaluation Report of May 2008	6
1.3.2.	Public consultation on the Commission's Evaluation Report	6
1.3.3.	Elaboration and assessment of future options.....	9
2.	Problem to be addressed: – the “WHY”	10
2.1.	Applying Article 81 to vertical agreements in the motor vehicle sector.....	10
2.2.	Competitive conditions on the relevant markets.....	11
3.	Objectives – the “WHAT”	19
3.1.	Legal requirements: balancing the effective supervision of markets against the need to simplify administration and minimise compliance costs.....	19
3.2.	The specific objectives for the motor vehicle sector.....	19
3.2.1.	Preventing foreclosure of competing vehicle manufacturers and safeguarding their access to the market	20
3.2.2.	Protection of competition between dealers of the same brand	20
3.2.3.	Preventing restrictions on parallel trade in motor vehicles.....	20
3.2.4.	Enabling independent repairers to compete with the manufacturers' networks of authorised repairers	21
3.2.5.	Protecting competition within the authorised repair networks	21
3.2.6.	Avoiding foreclosure of spare part producers in the aftermarket	21
3.2.7.	Preserving the deterrent effect of Article 81	21
4.	Policy options – the “HOW”	22
4.1.	Identification of the Policy Options to be assessed.....	22
5.	Analysis of impact: Identification of assessment criteria and methodology.....	32
6.	The impact of each policy option as regards the identified criteria	34
6.1.	Economic impacts	34
6.1.1.	Effective protection of competition	34
6.1.2.	Other economic impacts.....	45

6.2.	Impact on public administration.....	54
6.3.	Social and environmental impacts	56
7.	Conclusions.....	59
8.	Monitoring and evaluation	64
	TECHNICAL ANNEX 1: MAIN POLICY OBJECTIVES OF THE CURRENT BLOCK EXEMPTION FOR MOTOR VEHICLES DISTRIBUTION AND SERVICING ...	65
	TECHNICAL ANNEX 2: THE ECONOMICS OF VERTICAL RESTRAINTS.....	65
	TECHNICAL ANNEX 3: EVOLUTION OF THE MOTOR VEHICLE MARKETS SINCE REGULATION 1400/2002 ENTERED INTO FORCE	65
	TECHNICAL ANNEX 4: COMPARING AND CONTRASTING THE FOUR POLICY OPTIONS.....	65
	TECHNICAL ANNEX 5: IDENTIFICATION AND WEIGHTING OF THE RELEVANT ASSESSMENT CRITERIA.....	65

1. BACKGROUND

1.1. Introduction

1. This Impact Assessment Report accompanies the Communication from the Commission determining what competition policy approach is to be followed in respect of the motor vehicle sector once Commission Regulation 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector (hereinafter referred to as "the Regulation" or "Regulation 1400/2002") expires in May 2010.
2. The Directorate-General for Competition is the lead service on the Communication. The other departments involved are: DG Enterprise, DG Internal Market, DG Health and Consumer Affairs, DG Economic and Financial Affairs, the Legal Service, the Secretariat-General and the Bureau of European Policy Advisers.

1.2. Historical overview

3. In the motor vehicle sector, there are approximately 120,000 "vertical" agreements between car manufacturers and authorised dealers and repairers alone, not including other agreements, such as those involving spare parts producers. The vast majority of car sales to private customers are undertaken by authorised dealers which have entered into such agreements and, depending on the Member State, approximately 45-60% of all car repairs are conducted by authorised repairers which have concluded vertical agreements with vehicle manufacturers. Vertical agreements also determine the business relations between spare part producers and car manufacturers.
4. The motor vehicle sector has had a sector-specific block exemption regulation since 1985. Commission Regulation 1475/95¹, the former sector-specific regulation for the motor vehicle sector, expired on 30 September 2002 and was replaced by the current Regulation 1400/2002.
5. When the Regulation was adopted, the Commission was of the view that the previous sector-specific block exemption 1475/95 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 2790/1999², and in the Commission Notice on vertical restraints³.

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).

³ Commission notice - Guidelines on vertical restraints (OJ C 291 of 13.10.2000, p. 1).

6. Today, unrestricted cross-border trade in cars, and the development of the Internet as a means of promoting and selling new vehicles enable consumers to take advantage of price differentials between Member States. In 2000, on the other hand, it was plain that the combination of exclusive and selective distribution within the vehicle manufacturers' authorised networks was not working to the consumer's advantage. Consumers frequently complained that they were unable to take advantage of the then high price differentials that prevailed between Member States. German and British consumers were particularly vocal; in the latter country, consumer sentiment was strengthened by a campaign ("rip-off Britain") against high prices in general. The Commission had brought four cases against vehicle manufacturers for impeding parallel trade, and imposed substantial fines⁴. Pressure on real consumer prices exerted by inter-brand competition (i.e. competition between car manufacturers) was lower than today, and the Commission was concerned that ongoing concentration would lead to a further decline.
7. 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 in the sector. This shortcoming was due on the one hand to the homogeneity of distribution systems in the sector which could result in significant loss of intra-brand competition⁵ at a time when inter-brand competition was perceived to be weak 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 instrument that was based on Regulation 2790/1999, but which was stricter than the general regime in a number of ways

1.3. The review of Regulation 1400/2002

8. 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 special rules, Regulation 1400/2002 pursued a number of sector-specific competition policy objectives, whose content is briefly recalled in Annex 1 of the present Impact Assessment .

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 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.

1.3.1. Experience of the Regulation: the findings of the Commission's Evaluation Report of May 2008

9. Pursuant to Article 11(2) of the Regulation, the Commission was required to draw up an Evaluation Report by 31 May 2008.⁶ That Evaluation Report on the operation of block exemption regulation 1400/2002 ("the Report") evaluates the impact of the Regulation on industry practices and the effects of those practices on competition in the markets for motor vehicle retailing and in after sales servicing within the EU.
10. The Report shows that on the market for the sale of new vehicles, competition between car manufacturers has become more intense and that the Single Market in the sector appears to be functioning better than in the past. This increase in inter-brand competition appears to be driven by factors other than the Regulation, such as manufacturing over-capacity, technological innovation and closer integration of markets.
11. On the repair and maintenance markets, the Report explains that independent repairers now have better access to technical information, thanks to Commission enforcement action⁷. Meanwhile, the number of authorised repair outlets has increased, because - in line with general competition policy - manufacturers (whose networks have high market shares as regards the repair of their vehicles) have allowed all repairers meeting certain qualitative criteria into their networks. Suppliers of spare parts have maintained their competitive position vis-à-vis the vehicle manufacturers' own spare parts distribution channels.
12. The Report concludes that the general framework of the block exemption has had positive effects overall, especially on the aftermarkets. However, many of the detailed sector-specific provisions may have been unnecessary, and some may have been counter-productive. For instance, the higher (40%) market share threshold below which quantitative selective distribution agreements may benefit from the exemption may have skewed manufacturers' choice towards a uniform distribution model. In addition, over-prescriptive rules in areas such as multi-brand vehicle sales and the opening of additional sales outlets may have encouraged the introduction of more onerous dealership standards, thereby making distribution more expensive, to the detriment of consumers. Other provisions, such as those enabling dealers to sub-contract repair services to other members of the same authorised network have simply not been taken up by market operators. The Report therefore suggests that car owners might benefit from improvements in competition if less complex rules were to apply to the sector, particularly in the very competitive vehicle sales sector.

1.3.2. Public consultation on the Commission's Evaluation Report

13. Following the publication of the Report, the Commission received around 120 comments on the Evaluation Report from a wide range of stakeholders, including vehicle manufacturers, dealers and authorised repairers, the independent motor trade, consumers, national authorities and the legal community. 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

⁶ http://ec.europa.eu/competition/sectors/motor_vehicles/documents/evaluation_report_en.pdf

⁷ See Cases 38140-38143, Fiat, DaimlerChrysler, Opel and Toyota.

14. The two main **vehicle manufacturers'** associations (ACEA and JAMA) sent in comments that were supportive of the end of sector-specific block exemption, and in favour of the application of the general rules to the motor vehicle sector. All comments received from individual vehicle manufacturers, with the exception of a contribution from Ford (which has aligned itself with the position taken by its dealers) supported the position taken by their respective associations.
15. The main opposition to any change to the current regime came from **authorised car dealers** and their associations, including the European association CECRA, which made up over half the total number of comments received. With few exceptions, this group of stakeholders supports the maintenance of the current measures on contractual protection for dealers⁸, arguing that competition will only prosper if there is regulatory compensation for the economic imbalance that exists between dealers and vehicle manufacturers. Dealers also argued that the competition regime ought to continue to provide for them to be free to take on the brands of competing manufacturers, and many, including the European Association CECRA also expressed the view that location clauses ought not to be exempted. This represents a change in the position expressed by this organisation, which in October 2005 adopted a position paper arguing that ending the exemption of location clauses was a "step too far"⁹.
16. The response of the **independent motor trade** focussed on specific competition issues, with different categories of commentators pleading for continued protection of the automotive aftermarket. Thus, the spare parts manufacturers' association CLEPA pleads in particular for protection of the supply of spare parts and the provision of technical information, as well as the ability of original equipment suppliers to place their brands on components and spare parts. The independent repairers' association FIGIEFA sets particular store by the provisions protecting access to technical information, and the supply of spare parts to independent repairers by members of the authorised networks. Similarly, the Fédération Internationale de l'Automobile (FIA – international alliance of Automobile Clubs, including roadside repairers) wishes for additional safeguards to enable independent repairers to have better access to vehicles during the warranty period. It also places particular emphasis on the provision of technical information to independent repairers.
17. Vehicle **leasing firms** also wished for a particular provision to be maintained: in this case, their inclusion in the definition of "end user"¹⁰. Such operators fear that in the absence of such a definition, dealers in selective distribution systems may be prevented from selling vehicles to them.

⁸ Article 3 of the Regulation.

⁹ Article 5(2)(b) of the Regulation. It should be recalled that dealer associations were fiercely opposed to the Commission's proposal aimed at including location clauses in the list of non-exempted practices and obtained support by the European Parliament during the final phase of the consultation process. This led to the compromise solution enshrined in Regulation 1400/2002 which consisted in extending up to October 2005 the transitional period for the exclusion of this clause from the Regulation's safe harbour.

¹⁰ Article 1(1)(w).

18. The response from **consumer groups** was muted, in that few associations responded. DG Comp's efforts to stimulate interest from this quarter revealed that such associations do not view the motor vehicle distribution sector as being affected by specific competition problems having regard to the intense rivalry between manufacturers which characterises the current market situation. The European Consumers' Association BEUC expressed concern that harmful effects for consumers could result if current levels of competition in the automotive aftermarket were to decline¹¹.
19. Member States were consulted on 19 December 2008 within the framework of the sub-group for Motor Vehicles of the European Competition Network. It appeared from this consultation that no **National Authority** was against a reform of the current regime, having regard to the shortcomings highlighted in the Commission Evaluation Report. In particular, most delegations were in favour of reform in respect of certain of the rules applying to the market for the sale of new vehicles, namely the dealer protection measures provided for in Article 3 of the Regulation. However, a majority was also in favour of a continued sector-specific legal framework for the sector, in the light of the importance of motor vehicles for consumers and the high level of investments involved in distribution and aftermarket activities.
20. Independent responses received from the **legal community** were split, with some lawyers arguing forcefully for an end to the sector-specific regime, while others submitted that the Commission should not turn its back on more than twenty years of block exemptions, in particular as regards the contractual protection of dealers.
21. IG Metall was the only example of a **social partner** commenting on the Report.
22. The areas of concern for the **European Parliament** can be gauged by a letter addressed to Commissioner Kroes on 19 March 2009. In that letter, the Committee on Economic and Social Affairs asked the Commission to prolong the current Regulation 1400/2002 by two years and to re-evaluate the situation in light of the current economic crisis. Commissioner Kroes responded by acknowledging that the motor vehicle sector was among those worst affected by the current economic crisis, and that therefore any proposal placed before the College would take the economic circumstances fully into account.
23. The ECOSOC's Consultative Commission on Industrial Change confirmed in its "Opinion on the components and downstream markets of the automotive sector (own-initiative opinion)" of 23 June 2009 the high degree of competition in the primary market as opposed to the aftermarket and pointed out that that the high degree of complexity of the Regulation makes it difficult for SMEs in particular to understand. .

¹¹ The Commission's services have made further efforts to engage with consumer organisations by firstly giving the European Consumer Consultative Group (ECCG) an overview of the findings of the report on at a meeting on 19 June 2008 and then on a second occasion on 30 September 2008, giving a preliminary overview of the results of the consultation exercise. Moreover, a consumer representative was present at a specially-convened meeting of a high-level group of experts in the sector, held by Commissioner Kroes on 9 February 2009.
http://ec.europa.eu/competition/sectors/motor_vehicles/legislation/legislation.html

1.3.3. Elaboration and assessment of future options

24. An inter-service steering group was set up for this Impact Assessment Report and met on various occasions – on 22 September 2008, 19 December 2008 and 16 June 2009.
25. A formal Inter-Service Consultation was launched on 2 July 2009. The Directorate-General for Competition took due account of the various comments received during this consultation.
26. A draft of this Impact Assessment was submitted to the Impact Assessment Board on 2 June 2009, which duly met on 24 June. In its opinion dated June 26 2009, the Board found that the report developed a detailed analysis of the legal dimension of the issue and provided a well-written summary of the public consultation on the recent evaluation of the Regulation.
27. The IA Board recommended a number of changes to the Report, mainly with a view to strengthening the analysis of the identified problems, to improve the assessment and comparison of the options, to place the review in a broader context and to improve the presentation of the text. The Report has been amended in accordance with the Board's comments.
28. In order to strengthen the analysis of the problems, a more consolidated examination of the sector's competition problems has been introduced which is supported in greater detail by two additional annexes specifying competition-related and general economic indicators, the latter giving an overview of the economics of vertical restraints under different competitive conditions. Moreover, the Report now distinguishes more clearly between those provisions in the current Regulation motivated by objectives which are not relevant any more and those measures which address valid competition concerns, albeit in an inefficient manner, while explaining in greater detail how certain adverse effects, such as an increase in distribution costs, may have been influenced by the current Regulation.
29. With a view to better assessing the alternative options, the analysis of the comparative advantages and disadvantages of the relevant options in addressing the problems has been reinforced as well as the examination of their impact on market entry and other dimensions, such as employment and SMEs' entrepreneurial freedom. In particular, the impact of a possible shift of negotiating power between manufacturers and dealers on consumer welfare and the costs resulting from an increased need for self-assessment under certain options has been underpinned by additional analysis. Furthermore, the final comparison of the options which was based on an aggregation of scores which raised methodological concerns has been replaced by a qualitative analysis.
30. The implications of the current economic crisis have also been taken into account in greater detail, and the implications of possible changes in the general competition framework applying to vertical restraints is now considered more exhaustively. Finally, the text has been shortened in order to enhance its readability and clarity, by moving more detailed information into annexes.

2. PROBLEM TO BE ADDRESSED: – THE “WHY”

2.1. Applying Article 81 to vertical agreements in the motor vehicle sector

31. Manufacturers of motor vehicles usually distribute their products through authorised dealer and repairer networks, i.e. networks which consist of a bundle of similar agreements between the motor vehicle manufacturer and the individual distributors or repairers. For the purposes of competition law, these agreements are referred to as vertical agreements, as the manufacturer and distributor or repairer each operate at different levels of the production or distribution chain¹².
32. Such agreements may, in certain circumstances, restrict competition within the meaning of Article 81(1). In particular, there may be an anti-competitive effect if competitors are foreclosed from a market where inter-brand competition is weak, and the parties enjoy significant market power. Moreover, where inter-brand competition is weak, vertical agreements between parties with significant market power may restrict inter-brand competition to the detriment of consumers and may also facilitate collusion between incumbent suppliers and/or distributors.
33. Vertical restraints may also have positive effects. They may for instance help a manufacturer to enter a new market, enhance brand image, or avoid a situation in which one distributor ‘free rides’ on the promotional efforts of another distributor. In these circumstances, agreements which have an anti-competitive effect may nonetheless be held to fall within the exception defined in Article 81(3) of the Treaty, providing that a sufficient share of the benefits arising from the agreement are passed on to consumers. In this context, the notion of market power (which reflects the ability of an undertaking to apply supra-competitive prices) has to be distinguished for the notion of bargaining power, which describes a situation in which one of the parties is economically dependent on the other.
34. Whether a vertical agreement actually restricts competition and whether in that case the benefits outweigh the anti-competitive effects will often depend on the market structure. Vertical agreements therefore require an assessment aimed at establishing whether they are caught by Article 81(1) and if so, whether they comply with all the

¹²

Other technical terms used in this report

Selective distribution systems are networks in which dealers are not allowed to sell to resellers outside the own network, thus ensuring that end consumers only buy vehicles from authorised dealers that have met certain standards aimed at protecting the brand image of the vehicle manufacturer.

Qualitative selective systems are based on agreements under which the vehicle manufacturer does not put a limit on the number of repairers or dealers, but is bound to accept all applications to join the network when objective criteria required by the nature of the goods or service are fulfilled.

Quantitative selection allows vehicle manufacturers to directly or indirectly limit the number of dealers in the network, so that they can refuse to let a dealer join, even if he meets the usual quality standards.

Multi-branding describes a situation in which authorised dealers sell brands of competing vehicle manufacturers. By contrast, non-compete obligations or single branding, describe clauses in agreements preventing dealers from selling the brands of competing manufacturers.

Location clauses are contractual terms that prevent dealers from opening additional sales outlets.

Dual branding is a practice whereby parts producers place their own brand alongside that of the carmaker on components used in vehicle manufacture.

conditions set out in Article 81(3) so as to benefit from the legal exception provided for therein. Agreements falling under Article 81(1) which would not comply with Article 81(3) are null and void pursuant to Article 81(2). More details about the economics of vertical restraints can be found in Annex 2.

35. Following the adoption of Council Regulation n°1/2003, it is for the parties to carry out such assessment. In case of complaints or *ex-officio*, the Commission and national competition authorities (NCAs) may require that the parties to such agreements bring any infringement to Article 81 to an end, and in case of serious violations they may impose fines upon the infringing parties. Moreover, national courts can apply these provisions directly, for instance in case of actions for damages brought before them.
36. Individual assessment can entail expenses for parties to an agreement, not only in terms of legal costs, but also because assessing agreements on an individual basis carries a greater risk of error in the form of false negatives or false positives¹³.
37. Block exemption regulations therefore create safe harbours for categories of agreements, relieving the contracting parties from the need for individual assessment. A block exemption regulation allows market players to enter into agreements they can assume to be *ex ante* in line with EU competition law, enabling them to flexibly conclude or adjust them, while reducing their compliance costs, enhancing legal certainty and contributing 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.
38. In the motor vehicle sector, there are approximately 120,000 vertical agreements between car manufacturers and authorised dealers and repairers alone, not including other agreements, such as those involving spare parts producers. In the absence of a block exemption, the risk of assessment errors would therefore be significant. It is for this reason that distribution and repair agreements in the sector have been able to benefit from consecutive block exemptions regulations since the mid-eighties, the most recent being Commission Regulation 1400/2002, which was adopted in July 2002 and became applicable on 1 October 2003. This Regulation will expire on 31 May 2010. Not surprisingly, given the implications for compliance costs and legal certainty, stakeholders are virtually unanimous about the continued need for a block exemption regulation, whether general¹⁴ or sector-specific, after 31 May 2010.

2.2. Competitive conditions on the relevant markets

39. When deciding whether to grant the benefit of a block exemption to a category of agreements, the Commission must take account of competitive conditions on the affected markets. If too broad a block exemption is granted for agreements on a problematic market, the result may be to shield contracting parties from the deterrent

¹³ i.e. that the assessment will conclude that an agreement complies with Article 81 whereas in fact it can not, or vice versa. In the first case, a firm is risking a fine, while in the second, it is needlessly and possibly expensively over-complying.

¹⁴ It should be recalled that vertical agreements concerning sectors other than motor vehicles are subject to the provisions laid down in Commission Regulation (EC) No 2790/1999

effect of Article 81 of the Treaty. On the other hand, if a block exemption applying to a competitive market is fenced about with unneeded conditions or hardcore clauses, the result may be to impose an unnecessary burden on companies, which may ultimately translate into loss of efficiency. All block exemptions therefore apply market share thresholds in order to reflect the relative market power of the parties and the likelihood that efficiency-enhancing effects may offset any potential anti-competitive effects caused by the agreements in question.

40. As regards the competitive situation in the motor vehicle sector, the very competitive conditions on the market for new vehicle sales stand in contrast to those on the less competitive aftermarket. The various economic indicators underpinning this observation are described in detail in Annex 3, and are summarised below.
41. Strong inter-brand competition has been a feature of the vehicle sales markets since the late nineties at least, and the introduction of the block exemption has neither attenuated nor enhanced this. Constantly falling real price levels are one illustration. The London Economics study¹⁵ shows that real prices were on a downward trend between 1996 and 2004, falling 12.5% overall. The introduction of the Regulation did not alter this trend one way or the other, demonstrating that the observed price trend is due to external factors rather than to the applicable competition regime. In 2007 and 2008 car prices fell by more than 3% in both years. The crisis appears to have steepened this trend, with substantial discounts being offered in order to rid the distribution chain of built-up excess stock.

Real prices	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
	-	-	-	-	-	-	-	-	-	-	-	-	-
EU	-1.6	-0.5	-0.3	-2.7	-1.8	-1.3	-0.8	-0.6	-1.9	-1.3	-1.2	-3.2	-3.1

42. Strong and increasing inter-brand competition is also evidenced by a number of successful entries, such as Kia, and relatively few exits (Rover being the only significant example). Other indications include significant fluctuations in market shares, increased choice in the sub-segments of the market, and shortening model life-cycles indicated by a higher rate of range renewal. In addition, levels of market concentration remain moderate, with an HHI of less than 2000. No carmaker has a market share of above 20% at EU level, and market shares above 30% can only be observed in a limited number of Member States. This is mainly the case for certain manufacturers' "home" markets. The London Economics study¹⁶ demonstrates that the Regulation has had no impact on levels of concentration; although they fell in three out of six Member States sampled between 1997 and 2004, there is no discernable downward change in trend in 2003; indeed in Germany and the United Kingdom (two of the biggest markets), concentration levels actually rose from 2003 to 2004, by 71 to 73% and 58 to 59% respectively. The crisis has so far had little overall impact on concentration levels. Rather than reducing the number of overall competitors, the main effect has been that certain brands have changed hands. Ford,

¹⁵ London Economics: Developments (...), p. 101-102.

¹⁶ London Economics: Developments (...), p. 28.

for instance, sold Jaguar and LandRover to the Indian firm Tata Motors, while Chrysler (which only has a modest presence on the EU markets) is now under the control of Fiat. As to GM's European brands, Saab has been taken over by the Swedish sports car maker Koenigsegg, and rival buyers¹⁷ have made proposals to gain control over the Vauxhall and Opel brands.

43. Margins are comparatively modest - carmakers' operating margins were as low as 3.9% in 2004¹⁸- and R&D expenditure is undiminished. Looking forward, competitive pressure is not expected to lessen, as car manufacturers from India and China enlarge their presence on the EU markets.
44. The Commission's enquiries have shown that while multi-branding has increased, this has been through the expansion of dealer groups rather than through same-showroom sales. Moreover, there appears to be little overall correlation between the percentage of multi-brand dealers and the Regulation's entry into force in that although there was acceleration in multi-branding in some Member States after the millennium, in most cases this took place in 2002 or earlier rather than in 2003¹⁹. This is also the case for the Scandinavian and Baltic states in which same-showroom multi-branding has been a traditional model, particularly in sparsely-populated areas. On the basis of London Economics' analysis, it can be observed that there are only three countries - Hungary, Poland and Portugal - out of 12 analysed where there may have been some correlation between the entry into force of the Regulation and a subsequent increase in multi-branding of between 5 % and 10%. However, two of these (Hungary and Poland) are very dynamic markets with volatile market shares; the average standard deviation of market shares was 1.8% and 2.1% respectively in the period 1997-2004²⁰ with no indication of increased volatility after the entry into effect of the Regulation. The entry into force of the specific provisions regarding multi-branding can therefore only have had an impact on the Portuguese market. It should also be noted that dealers selling the brands of different manufacturers within the same-showroom make up less than 5% of all dealers across the EU, accounting for only 1% of total sales²¹ so any impact that the block exemption can conceivably have had can only have been marginal at best.
45. There also seems to be little correlation between multi-branding and market entry. Although some brands have entered the EU markets over the past ten years, there is no sign of any correlation with the specific provisions of the Regulation. It is notable that the Commission received no complaint from any manufacturer that difficult access to existing dealership networks was hindering its market access, either prior to or after October 2003. Moreover, same-showroom multi-branding does not appear to have been used by manufacturers as a means of entry or expansion. Japanese manufacturers such as Toyota, which entered the EU markets in the 1970s, and have since expanded their presence, have preferred to develop their networks through the addition of mono-brand outlets. The Korean motor vehicle association KAMA has

¹⁷ Magna/ Sberbank and Beijing Automotive Industry Holding Co. If either of these prospective buyers completes a transaction, the result will be a decline rather than a rise in concentration levels.

¹⁸ London Economics: Developments (...), p. 110, reference: Reuters.

¹⁹ Given the opposition of ACEA and JAMA to same-showroom multi-branding, it seems very unlikely that any manufacturer would have consented to this model before it was legally obliged to.

²⁰ London Economics: Developments (...), figure 13, Page 30.

²¹ See ESMT study, commissioned by Daimler, and published in June 2009.

expressed the view that the ability to multi-brand is important for new entrants. However, in this respect it is notable that even though the Korean Hyundai-Kia Automotive Group, which has recently entered the EU market, it does not sell the Hyundai and Kia brands in the same showroom as each other. The downsides that same-showroom multi-branding can have in terms of brand dilution and sales cannibalisation are further illustrated by the stance of Renault, which introduced strict joint representation standards for Nissan (another brand that it controls) when the Regulation came into force. Overall, same-showroom multi-branding within the same manufacturing group (such as combined VW-Audi showrooms) is on the decline²², showing that this model may only be economically efficient in certain circumstances.

46. Demand for passenger cars has fallen sharply from more than 16 million units in 2007 to 14.7 in 2008, or 8.7%. For those few manufacturers such as Hyundai and Kia for whom access to existing dealers is a factor facilitating entry, the crisis and the accompanying fall in demand is likely to provide an opportunity, in that the inevitable network rationalisations of incumbent brands will mean that suitable sites will become available and that dealers whose contracts have been terminated will be searching for an alternative supplier.
47. While multi-branding can have benefits if it allows new entry into markets where inter-brand competition is low, it can also have broader costs. The threat that their vehicles may be sold alongside competitors' brands has led manufacturers to raise standards for the whole of the network to address possible free-riding concerns and the risk of brand image dilution. In turn, these legitimate counter-strategies have brought about a shift in brand-specific investment from carmakers to dealers. Multi-branding can also have anti-competitive effects if it allows dealers with a powerful local presence to sell a broad portfolio of brands.
48. It therefore seems likely that in encouraging same-showroom multi-branding, the Regulation has not facilitated market entry to any significant extent. Instead, by stimulating counter-strategies, it may have increased the distribution costs that are borne by the whole network, and ultimately by consumers. Dealers associations generally indicated that their investment costs associated with the introduction of selection standards designed to prevent free-riding effects and brand dilution risks, are considerable. One association quantify this increase at 20% of the total distribution costs borne by dealers. As regards intra-brand competition, the Commission's Evaluation Report²³ has shown that there has been no real move on the part of either car dealers or vehicle manufacturers to innovate at distribution level, and the vast majority of cars are still sold through very similar selective distribution networks. Very few dealers have opened additional outlets, and few have sub-contracted the provision of repair services to other firms within the authorised networks, which were two specific forms of innovation in car retailing that Regulation 1400/2002 aimed to promote.
49. However, due to the existing degree of effective competition between brands, a relative uniformity in distribution models is not likely to be problematic. Firstly, all

²² See ESMT study, commissioned by Daimler, and published in June 2009.

²³ See Annex 3

stakeholders converge in recognising that the current retailing model, which is based on selective distribution is the most appropriate to ensure the marketing of complex technical products such as motor vehicles under optimal conditions. Secondly, a lack of diversity in distribution could only raise concerns in markets in which the parties enjoy significant market power and inter-brand competition is weak. This risk does not appear to currently arise in any EU national market. Thirdly, competitive interaction between dealers of the same brand is mainly the result of price competition through discounts, special promotions and other forms of economic incentives granted to consumers. In this light, it would seem that the main potential harm which could arise from a lessening of intra-brand competition would stem from agreements that restricted dealers' ability to freely determine their retail prices (i.e. resale price maintenance).

50. Another potential source of harm resulting from a lessening of intra-brand competition is linked to the persisting price dispersion between Member States and with the ensuing risk that vehicle manufacturers could prevent arbitrage by creating obstacles to parallel trade. The ability to buy a car in another Member State is important for consumers, in particular because cars are high-value goods, in respect of which a relatively small percentage saving can still amount to a substantial sum. The Commission has dealt with this issue in a series of cases, the most recent of which culminated in the 2005 Peugeot²⁴ decision.
51. The Commission's Car Price Reports show a general trend towards price convergence across the EU since 2002²⁵. While the low- and mid-sized model segments still demonstrate higher differentials and a more "lumpy" trend than those for more expensive cars, this can likely be explained by the fact that consumers' search costs for such vehicles are higher as a proportion of total price. The vast majority of vehicle manufacturers produce models in these segments²⁶, and competition is particularly fierce, as reflected by very thin profit margins²⁷.
52. The current economic downturn has had a particular impact on price dispersion due to currency fluctuations and the asymmetric impact of the crisis on different Member States. As a consequence, price differentials rose significantly over 2008. This shows that volatility in price dispersion depends more on external economic factors than the specific rules of the Regulation which, as such, are not designed to promote price harmonisation across the EU but only to prevent restrictions that could hinder arbitrage by consumers. As it cannot be excluded that this increased dispersion may tempt suppliers to try to restrict exports by dealers within the EU, it is important that competition rules will continue to be enforced so as to prevent any possible hindrance to parallel trade.

²⁴ See press release IP/05/1227, 05/10/2005

²⁵ The standard deviation for car prices (without taxes) between the EU-15 markets fell from 7.0% in November 2002 to 5.5% in May 2004. From 2004-2007, car price differentials in the EU-15 were broadly stable. However, in the EU-25 countries, the deviation decreased, falling from 6.9% in May 2004 to 6.4% in May 2007, thanks to price convergence in the new Member States.

²⁶ Even Daimler and BMW are now present in the small and mid-sized car segments, thanks to the "A" and "B" Class Mercedes and to the BMW "1" series.

²⁷ See, for instance, "Europe's car scrapping schemes are likely to backfire", Detroit News, 10 April 2009.

53. Overall, it can be concluded that the primary market is currently competitive, but in order to preserve future competition for the benefit of consumers, appropriate safeguards are to be considered when deciding on the scope of a block exemption in order to prevent possible risks of foreclosure from arising, as well as to preserve dealers' incentives to compete by granting discounts and selling to consumers from other Member States.
54. Commercial dependence on vehicle manufacturers is an important issue for many car dealers. In the context of vertical agreements, the dependence of one contractual partner on the other is not viewed as a competition problem in itself. Nonetheless, such a situation may create a problem if it makes it easier for the stronger party to pressurise the weaker party (in this instance, the dealer) to implement anti-competitive practices such as refraining from selling to foreign consumers or refusing to grant discounts to end consumers. For this reason, protecting dealers' ability to act independently on the markets was one of the objectives of Regulation 1400/2002.
55. The main factor leading to dealer dependence is the generalised use of quantitative selective distribution, which Regulation 1400/2002 exempts up to a 40% market share threshold, and which allows carmakers to reduce dealer numbers at will. Network reorganisations have significantly reduced overall dealer numbers since 2002, and the potential for increased rationalisation may increase dealers' feeling of dependence during the current crisis. However, no stakeholder, including dealer associations, questions the appropriateness of quantitative selection for distribution in the car sector.
56. The Commission therefore has to be careful to preserve Article 81's deterrent effect by ensuring that the scope of any block exemption is not so large as to enable suppliers to realise anti-competitive aims through indirect means rather than through direct restrictions such as export bans or resale price maintenance.
57. The Commission's Evaluation Report²⁸ has shown that competition on the markets for the repair and maintenance of motor vehicles is less intense than that on the primary market. Prices for repair jobs have risen²⁹, although the yearly cost of maintaining a vehicle has declined in real terms due to lengthening service intervals and greater reliability. Profit margins remain comfortable - the average operating margin of all firms engaged in vehicle repair and maintenance (including both independent and authorised repairers) within the EU-27 was 13.2% in 2004³⁰
58. It should be borne in mind that these markets are brand-specific, and that by nature, competition is more limited, since the only actors are independent repairers, many of which are SMEs, and the members of the authorised repair network of the brand in question. Therefore it is particularly important to ensure that independent repairers operate on a level playing field when they compete with members of the authorised networks.

²⁸ See Annex 3

²⁹ Overall, real prices for repair and maintenance services increased in the EU-25 countries by 17.8% between 1996 and 2006.

³⁰ Eurostat: European business – Facts and figures 2007, p 278.

59. As far as inter-brand competition is concerned, it would appear that since the Regulation was adopted, the authorised networks have slowly continued to gain ground vis-à-vis independent repairers. During this period, the independent repair sector has been faced with the necessity to make rapid adjustments in terms of highly-skilled labour, training, and tools, in order to repair the increasingly technically-complex vehicles on Europe's roads. These investments have proven to be beyond the means of many smaller, less well-equipped garages. However, the independent sector has since undergone considerable consolidation that puts it in a better state to compete. Large chains of independents have emerged that are broadening the palette of services that they offer in order to meet the challenge of the authorised networks head-on.
60. The protection of competition between authorised and independent repairers implies that the latter's access to essential inputs should not be artificially restricted. In particular, the Commission watches closely to make sure that suppliers do not restrict independent operators' access to technical information and spare parts in a way that may foreclose them from the markets. Thus, in 2007, the Commission adopted four decisions against vehicle manufacturers that had failed to provide independent repairers with technical information³¹. Other practices, such as the refusal to honour warranties unless all maintenance is carried out within the authorised networks, also have the potential to marginalise and ultimately foreclose independent repairers. This potential problem may be exacerbated by lengthening warranty periods. While longer warranties undoubtedly have consumer benefits, they also have the effect of shutting independent repairers out from a sizeable slice of the overall repair market.
61. It may also be that separate markets can be defined for vehicles in the first period of ownership, which lasts for between three and four years. Certainly consumer behaviour during this period is very different, as they tend to have even routine work carried out within the authorised networks during this time. For this reason, the Commission considers it important that competition between members of those networks works efficiently to the benefit of consumers, *inter alia* by ensuring that network access remains open.
62. The main type of agreement used within the authorised networks is qualitative selective distribution. The fact that quantitative selective distribution is no longer exempted at market shares above 30% has led to a significant rebound in repairer numbers and network density. The London Economics study shows that while the number of authorised repair partners in the twelve Member States under study fell from 43,000 to 40,000 from 1997 to 2002, the figure had rebounded sharply to over 50,000 by 2004³².
63. As far as innovation is concerned, many repairers operate stand-alone repair shops (i.e. without selling new cars), and multi-branding in repair is becoming more common. However, authorised repairers tend to buy or offer competing brands of spare parts only to a limited extent. This phenomenon may be due to the fact that multiple-sourcing brings less efficiency benefits to dealers than the car

³¹ DaimlerChrysler, Fiat, Toyota and GM gave commitments to give independent repairers proper access to repair information - Press release - IP/07/1332 - 14.09.2007.

³² London Economics: Developments (...), figure 97, p.138.

manufacturers' logistical systems, and that vehicle manufacturers may legitimately require repairers to use their own brand of parts for repairs under warranty and "free" servicing. Finally, it is notable that there are few instances of co-operation between authorised repairers, for instance, spare parts purchasing co-operatives, or common spare parts stocks. Overall, however, it would seem that the shift to qualitative selection has led to more competition within the authorised networks, in particular through the entry of stand-alone repairers. The London Economics study shows³³ that while the number of authorised repair partners in the twelve Member States under study fell from 43,000 to 40,000 from 1997 to 2002, the figure had rebounded sharply to over 50,000 by 2004. The Commission's investigation has confirmed this trend, showing that the number of authorised car repair outlets increased by 9% between 2002 and 2004.

64. Like the markets for repair and maintenance, the spare parts markets are also brand-specific. Competition relies upon the availability of alternative brands of parts to those marketed by the vehicle manufacturers. These can be either made by the Original Equipment Suppliers, or by third party "matching quality" parts producers. For certain parts, known as "captive" parts, there are no alternatives available, and there is the potential that if independent repairers' access to these parts is impeded, they may be foreclosed from the repair markets.
65. There is also the potential for harmful anti-competitive practices to arise involving forced transfer of intellectual property rights in order to prevent component producers from supplying the aftermarket. However, this is not a problem that can be dealt with in the context of the present review of Regulation 1400/2002, since it relates to the conditions under which such arrangements can be considered as sub-contracting agreements, which fall outside the scope of Article 81(1). The definition of the relevant criteria to be used to distinguish sub-contracting agreements falling outside the scope of Article 81(1) from industrial supply agreements, which may fall under Article 81(1) and eventually require assessment pursuant to Article 81(3) is currently dealt with in the context of the review of Regulation 2790/1999 and the accompanying Guidelines on Vertical Restraints.
66. One other major rigidity still exists which cannot be satisfactorily removed by competition rules. Design protection for certain categories of spare parts means that independent distributors cannot offer the full range, leaving independent repairers partially dependent on their authorised competitors. The negative effects brought about by after-market design protection are the subject of an ongoing legislative procedure in view of the review of the Design Directive³⁴.
67. It may therefore be concluded that the protection of competition on the aftermarkets is an important policy objective. In this context, the need for adequate legal certainty should be balanced against the need to be able to effectively respond in terms of enforcement in respect of a number of critical issues.
68. Having regard to the issues examined above, many of which are discussed in greater length in the Commission's May 2008 Evaluation Report on the operation of

³³ Figure 97, page 138.

³⁴ Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs is a European Union directive in the field of industrial design rights

Regulation 1400/2002, the Commission now has to take position regarding the most appropriate legal framework which should apply to vertical agreements for motor vehicle distribution and after-sales services following the expiry of the current block exemption.

69. To this end, the present Impact Assessment identifies the relevant objectives of competition policy for the sector (see section 3) and proposes a number of possible options which are likely to effectively achieve these objectives (see section 4). On the basis of a set of impact assessment criteria (see section 5 and Annex 5), it proceeds with comparative analysis of the costs and benefits of each option in respect of each assessment criteria (see section 6) with a view to determining the preferred option (see section 7).

3. OBJECTIVES – THE “WHAT”

70. This section recalls the general legal requirements that block exemption regulations are bound to fulfil and sets out the general and specific competition policy objectives to be pursued in the motor vehicle sector.

3.1. Legal requirements: balancing the effective supervision of markets against the need to simplify administration and minimise compliance costs

71. Block exemptions have as their purpose the creation of a safe harbour within which firms enjoy a degree of certainty as regards the compatibility of agreements between them with Article 81(3) of the EC Treaty. The principles that rules laid down in application of Article 81(3) must respect are specified in Article 83(2)(b). When adopting such rules, the Council and, by virtue of the enabling regulation³⁵, the Commission, must take into account *"the need to ensure effective supervision on the one hand, and to simplify administration to the greatest possible extent on the other"*. The general objective of the Commission's policy towards vertical agreements in the motor vehicle sector is therefore to allow them to benefit from a safe harbour while ensuring effective supervision of the markets and doing the maximum to simplify administration and reduce compliance costs.

3.2. The specific objectives for the motor vehicle sector

72. All block exemptions should only cover agreements that respect the requirements of Article 81(3) of the Treaty, which imposes two positive and two negative conditions. Such agreements must:
- contribute to improving the production or distribution of goods or to promoting technical or economic progress
 - allow consumers a fair share of the resulting benefit, and not
 - impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; or

³⁵ Regulation 19/65, as amended by Regulation 1215/1999.

- afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

73. The Commission's specific objectives in deciding whether to grant a block exemption for the motor vehicle sector and in what form must be based on the requirements of Article 81(3). For Regulation 1400/2002, these are summarised in the Commission's Evaluation Report, and the objectives which form the basis of the analysis in the present impact assessment are based on these. However, since the legal and factual background to the competition rules is not static, the Commission must analyse whether each of these objectives is still valid, and indeed whether new objectives should be set.

3.2.1. *Preventing foreclosure of competing vehicle manufacturers and safeguarding their access to the market*

74. In certain circumstances, restrictions in distribution agreements may make it unduly difficult for competing vehicle manufacturers to access the EU market, and certain of the conditions for the application of Article 81(3) will not be met. The *Delimitis* judgment³⁶ lays down a series of criteria for finding that market access by competitors is made difficult by the widespread use of single branding agreements. In essence, in order for non-compete obligations to be regarded as restrictive of competition, it should be ascertained that in competitive markets, competitors who could otherwise enter the market cannot in fact do so due to the existence and wide coverage of this type of agreement. Given the importance of preserving the ability of competing motor vehicle manufacturers to enter the EU market and expand, it may be concluded that this specific aim of Regulation 1400/2002 remains valid.

3.2.2. *Protection of competition between dealers of the same brand*

75. New motor vehicles are almost entirely distributed through the vehicle manufacturers' authorised networks. There is therefore a danger that since new vehicles are distributed through dealers with near-identical business models, intra-brand competition will suffer and in markets in which inter-brand competition weakened due to further concentration, the first condition of Article 81(3) will not be met. The aim of encouraging diversity in distribution formats with a view to reinforcing intra-brand competition is as valid today as it was in 2002. In addition, the protection of price competition between dealers of the same brand should continue to be regarded as an important objective.

3.2.3. *Preventing restrictions on parallel trade in motor vehicles*

76. The protection of cross-border trade has enabled consumers to shop within the Single Market and take advantage of price differentials between Member States. If distribution agreements restrict parallel trade, there is therefore the risk that the conditions of Article 81(3) will not be met. This risk is as real today as it was in 2002, as the currently rising price differentials brought about by exogenous shocks may tempt vehicle manufacturers to prevent arbitrage by consumers from one market

³⁶ *Delimitis v Henninger BräuAG*. C-234/89 [1991] ECR-I, 935,.

to another. Moreover, the idea that cross-border trade restrictions may harm consumers has been confirmed by the recent *Lelos/ Glaxo*³⁷ judgment.

3.2.4. *Enabling independent repairers to compete with the manufacturers' networks of authorised repairers*

77. The selection standards for being admitted to the vehicle manufacturers' authorised networks are similar for all authorised repairers, which implies that the fixed and, to a lesser extent, variable costs of all authorised repairers are significantly aligned. In particular, such repairers generally have to provide a full range of repair and maintenance services, and cannot choose a more targeted scope for their activities. Independent repairers therefore provide vital competitive pressure, as their business model and their related operating costs are different. It is notable in this regard that the prices they charge tend to be substantially lower than those within the authorised networks. This situation is as real today as it was in 2002; indeed, if anything, standards are more harmonised across the networks, and the position of independent repairers has been weakened by the extension of warranty periods that exclude them from certain categories of work. It would therefore appear that the objective of enabling independent garages to better compete with authorised outlets remains valid.

3.2.5. *Protecting competition within the authorised repair networks*

78. Prior to 2002, Regulation 1475/95 allowed vehicle manufacturers to place quantitative limits on dealer numbers, and to refuse network entry to firms that wished to become authorised repairers without having to sell new vehicles. The number of authorised repair outlets was therefore limited to the number of authorised sales outlets, since neither activity could be carried on without the other. Regulation 1400/2002 broke this link, and by setting a market share threshold of 30% for quantitative selective distribution, prevented vehicle manufacturers from directly limiting numbers of repairers. As a result, competition within the networks rebounded strongly as numbers of authorised repairers increased. There seems to be no justification for backtracking on this objective, and the chosen means for ensuring that it is met (the 30% market share threshold) is coherent with the Commission's overall competition policy.

3.2.6. *Avoiding foreclosure of spare part producers in the aftermarket*

79. The aim of Regulation 1400/2002 as regards spare parts was to ensure that competing brands were available on the aftermarket. The sixth objective was therefore to promote spare parts manufacturers' access to the automotive aftermarkets. This objective is still valid, especially since large differences in price often remain between carmaker-branded parts and alternative brands.

3.2.7. *Preserving the deterrent effect of Article 81*

80. The Commission's seventh objective in adopting Regulation 1400/2002, and in particular the provisions of Article 3 thereof, was to ensure that dealers felt

³⁷ Sot. *Lelos kai Sia EE et al. v. GlaxoSmithKline AEVE*, C-468/06 to C-478/06

sufficiently independent from their suppliers so as to act pro-competitively on the market, even where such behaviour was against a supplier's wishes.

81. However, there is a widespread misunderstanding to the effect that the Commission's objective in adopting these provisions was to give dealers certain rights, and to place corresponding obligations on vehicle manufacturers, with a view to rebalancing their respective commercial bargaining positions.
82. As pointed out in Recital 9 of Council Regulation 1/2003, "*Articles 81 and 82 of the Treaty have as their objective the protection of competition on the market*". This principle implies that block exemption regulations implementing Article 81(3) are not instruments aimed at ensuring fairness in bilateral commercial relations between parties with unequal bargaining power, or at preventing abuses of economic dependence. The protection of the legitimate interests of weaker contracting parties falls instead within the remit of national laws and remains within the competence of the Member States. It is therefore important to recall that the intended purpose of Article 3 of the current Regulation was to preserve the deterrent effect of Article 81 so as to avoid the block exemption being used by manufacturers to inhibit independent pro-competitive behaviour by authorised dealers. For instance, by setting the condition that contract terminations should respect certain minimum notice periods, or by providing for an arbitration mechanism, the Regulation intended to avert the risk that manufacturers could use threats of contract termination as an indirect means for achieving an outcome which would normally be prohibited if imposed on dealers through direct explicit restrictions, such as the application of fixed resale prices, or restrictions on sales to consumers from other Member States.
83. It would therefore seem appropriate to clarify the Commission's seventh objective in order to avoid misinterpretation. For the purpose of this Impact Assessment, the seventh objective will therefore read "*preserving the deterrent effect of Article 81*".
84. Since the market developments described in Section 2 have not unveiled new practices which it would not be possible to subsume within any of the above-mentioned policy objectives, there is no reason to suggest that any other competition objective should be added, and the present exercise is therefore carried out on the basis of the seven specific objectives outlined above.

4. POLICY OPTIONS – THE “HOW”

4.1. Identification of the Policy Options to be assessed

85. The Commission approached the following analysis with the intention of identifying a broad range of feasible policy options. However, it set aside options which, on the reading of the Evaluation Report and in the light of the issues discussed in Chapter 2, would obviously worsen the drawbacks of the current regime.
86. Notwithstanding the benefits a block exemption regulation brings to the motor vehicle sector, in its Evaluation Report, the Commission has identified three major interlinked drawbacks of the current regime.

87. Firstly it has noted that the complex and highly detailed nature of the Regulation has led to widespread misunderstandings and insecurity amongst market players, in particular among SMEs, about the very nature of the block exemption. It should be recalled that, despite having deployed considerable efforts on guidance, including the publication of an explanatory brochure and a set of frequently-asked questions, the Commission has been faced, during the whole period of validity of the Regulation, with frequent requests for assistance from stakeholders, which in the main did not relate to any impact that agreements could have on the market, but rather to the interpretation of particular contractual clauses. Most of these requests were unrelated to competition issues and were generated by the detailed sector-specific provisions of the Regulation.
88. These widespread misunderstandings have also manifested themselves in the large number of complaints the Commission received since 2002, which mostly have had little to do with competition issues but rather to commercial disputes between parties, and which therefore gave no grounds for further proceedings. The vast majority of these 322 informal written and innumerable oral complaints that the Commission received revealed a degree of confusion about the detailed provisions of the sector-specific Regulation. None of the 46 formal complaints the Commission received resulted in any prohibition decision and only three informal settlements³⁸ were reached. In contrast, the main enforcement action taken by the Commission in this sector stemmed from *ex officio* investigations³⁹.
89. Although one of the purposes of a block exemption is to provide legal certainty to contracting parties, the Commission observes that in practice the Regulation may have had the opposite effect. Misunderstandings as to its legal implications are widespread, in particular among SMEs. Such confusion and lack of predictability causes extra costs of which lawyers' bills are only a part. For example, a lack of certainty may stifle entrepreneurial initiative, and cause firms to miss business opportunities and misdirect investments by choosing less efficient distribution models.
90. The lack of legal certainty of the current regime and the search for authoritative guidance also raises the risk that competition law will be interpreted in an incoherent manner across Europe. There is in particular a risk that national courts may inconsistently interpret the terms and implications of the Regulation. This risk of divergent interpretation has required the Commission to intervene as *amicus curiae* in national proceedings pursuant to Article 15(3) of Council Regulation 1/2003⁴⁰.
91. The number of requests for preliminary rulings made to the European Court of Justice (ECJ) concerning the automotive distribution sector is another indicator of the difficulties in applying the Regulation coherently in the Member States. Four out of thirteen preliminary rulings the ECJ issued from 2003 to 2007 in the antitrust field related to the interpretation of particular clauses of the Regulation regarding contract

³⁸ See IP/06/302 – 303 of March 2006 in *GM* and *BMW* cases, as well as IP/03/80 of 20 January 2003 in the *Audi* case.

³⁹ The four commitment decisions adopted by the Commission the 13 September 2007 in the cases *Toyota*, *Fiat*, *DaimlerChrysler* and *Opel* and the prohibition decision in the *Carglass* case of 12 November 2008.

⁴⁰ *Garage Greneau c/ Sté Daimler* Court of Appeal of Paris, June 7, 2007.

termination. This represents 80% of all such rulings relating to vertical distribution agreements over the period.⁴¹

92. The second problem relates to the fact that the current situation risks distorting the way in which the Commission dedicates its enforcement resources, since it has been obliged to deal with the above-mentioned requests from market players related to commercial issues, rather than to genuine competition problems. It is likely that if there were no longer such widespread misconceptions about the implications of the Regulation, the Commission would be able to focus its efforts better to combat harmful anti-competitive practices.
93. Thirdly, the Evaluation Report adopted by the Commission in May 2008 showed that the primary market for new motor vehicle distribution had no specific competition problems that set it apart from other sectors, and that overly-rigid provisions designed to protect individual competitors rather than the competitive process may well have unwelcome effects. As the most pertinent example of those effects, the Report mentioned an increase in distribution costs through increased selection standards of up to 20%, which have ultimately to be borne by consumers (see Chapter 6).
94. In addition to these three shortcomings, any option needs to take into account that the automotive sector is one of those worst hit by the current economic crisis, and needs to have conditions in place that facilitate appropriate adjustment to deal with changing economic circumstances. Over-rigid rules could seriously hamper the ability of manufacturers to adjust their distribution networks.
95. In the light of these shortcomings and the current crisis, the Commission does not consider the extreme option of proposing a block exemption which, by setting additional hardcore restrictions and more detailed conditions composed to Regulation 1400/2002, would limit the parties' contractual freedom and would, as a result, inhibit innovation and diversity in retailing formats even further. Although there are competition issues that have become more pertinent over the last years (e.g. misuse of warranties to foreclose independent repairers), these new problems are specific to the aftermarket and generally result from the significant market power enjoyed by the manufacturers' networks on the relevant repair services and parts distribution markets. However, as in these instances the market share held by the parties would be significant, it would be possible to deal with such novel issues through an effects-based approach which would limit the safe harbour granted by the block exemption through appropriate market share thresholds. This approach would have the advantage of addressing potential competition concerns, while overcoming a major shortcoming inherent to any overly-detailed block exemption relying on a black-list approach. Experience has shown that attempts to regulate complex issues through hardcore provisions all too often lead to counter-strategies aimed at circumventing those provisions. Moreover, an option which reflected a policy aimed more at

⁴¹ Three of the four concerned the issue of contract termination with one year's notice where a network was allegedly being reorganised, while the remaining case sought clarification of the meaning of Article 3(6) of the Regulation on the role of arbitration when a contract was terminated - Case C-125/05 *Vulcan Silkeborg v Skandinavisk Motor*, 07.09. 2006; joined cases C-376/05 and C-377/05 *Brünsteiner, Hilgert v BMW*, of 30 November 2006; Case C-273/06 *Auto Peter Petschenig v Toyota Frey*, 26.01.2007; Case C-421/05 *City Motors Groep v Citroen Belux*, 18.01.2007.

regulating the form of agreements than at excluding from the benefit of the exemption only those agreements harming the competitive process, would be clearly incompatible with the objective of stimulating innovation and diversity in car distribution and servicing as a means of preserving dealers' and repairers' incentives to compete (see point 3.2.2 above).

96. Finally, an approach that would widen the gap between the policy followed in the motor vehicle sector and the general policy of the Commission in the field of vertical restraints, as currently applied in all other sectors, would ultimately place economically unjustified constraints on motor vehicle manufacturers which could hamper their ability to implement the most efficient solutions for the retailing and servicing of their products, with appreciable negative effects for the competitiveness of the whole industry in the EU.
97. Nor does the Commission consider the other extreme option of letting Regulation 1400/2002 lapse without replacement while at the same time excluding the motor vehicle sector from the scope of the future general block exemption for vertical restraints. This option would seem *prima facie* undesirable given the massive benefits in terms of legal predictability offered by a block exemption in a sector with more than 120,000 vertical agreements that would otherwise have to be individually assessed by the parties pursuant to Article 81.⁴² This situation could entail excessive compliance costs, a high risk of error and incoherent enforcement. As observed above, stakeholders are virtually unanimous about the continued need for a block exemption regulation (whether general or sector-specific) after 31 May 2010 when Regulation 1400/2002 expires. Only one contributor out of the 120 which participated in the public consultation exercise on the review of the Regulation wanted no block exemption regulation at all to apply to the sector.
98. Instead, the Commission has focused on four policy options which entail the adoption of a block exemption regulation covering all types of vertical agreements for motor vehicle distribution and after-sales services –with the exclusion of certain vertical agreements between competitors – and which make the benefit of the exemption dependent on certain market share threshold(s) reflecting the relative market power of the parties. This approach is in line with the Commission's competition policy in the field of vertical restraints.
99. Moreover, in all four options, the exemption would not apply to agreements containing certain hardcore restrictions (i.e. resale price maintenance, restrictions on passive sales into territories or customer groups allocated to other distributors, restrictions on active and/or passive sales to end users in markets where selective distribution is used, restrictions on the ability of original equipment suppliers to sell spare parts to independent repairers). Similarly, all four options would contain specific conditions excluding the benefit of the block exemption in respect of non-compete (single-branding) obligations of more than five years, from obligations preventing authorised distributors from selling products of particular suppliers (no-boycott rule), as well as from certain post-term non-compete obligations. These provisions originate in the case law of the European Court and are uncontested by stakeholders in the motor vehicle sector.

⁴² See chapter 2.1.

100. It should also be underlined that all four options comply with the principle of subsidiary. Given the exclusive competence of the Commission in respect of the adoption of block exemption regulations; the criteria relating to the necessity and value added of the envisaged options are not discussed. Moreover, all four options fully comply with the decentralised enforcement of EU competition rules enshrined in Council Regulation 1/2003 and therefore equally comply with the principle of proportionality.
101. Beyond these similarities, however, the four options present a number of important differences.
102. **Option 1**, the baseline scenario, is the continuation of the *status quo*. Although this option would not solve the shortcomings mentioned above, it is reasonable to refer to it as the baseline scenario in order to verify whether other possible options which could overcome these shortcomings could entail different drawbacks such as to justify the conclusion that the *status quo* still represents the most cost-effective solution in the light of the full set of relevant impact assessment criteria.
103. Technically this option would require the adoption of a Commission regulation extending the period of validity of the block exemption in its current form. This Impact Assessment is based on the assumption that such a prolongation would be for a period of ten years. The Commission has taken note of the opinion of the Committee on Economic and Social Affairs of the European Parliament which asked the Commission to prolong the current Regulation 1400/2002 by only two years. A continuation for a period of two years can be seen as a variant of Option 1, for which the assessment in Chapter 6 does not change. However, there is widespread agreement among stakeholders that whatever the outcome of the reform, it should give a longer term perspective to allow for predictability and, therefore, avoid any short term solution requiring re-evaluation in only two years. Consequently, a prolongation of the current Regulation for only two years is not considered a self-standing option.
104. It should be noted that this option would be particularly strict as concerns the market for the sale of new vehicles, as it would entail the exclusion from the safe harbour of agreements that did not comply with certain additional hardcore provisions, and conditions going beyond those applicable to all other sectors (e.g. obligations restricting dealers' ability to subcontract repair services, single branding obligations shorter than five years preventing dealers to sell up to three competing brands from the same showroom, obligations limiting dealers' ability to establish additional outlets or to transfer their dealership to other dealers within the same brand network, non-respect of certain minimum contract durations and/or minimum notice periods for contract termination, or excluding and the obligation to provide for arbitration as a complementary means for solving contractual disputes).
105. As regards the aftermarket, Option 1 would grant a very wide exemption, covering qualitative selective distribution systems for the supply of spare parts and repair services irrespective of any market share threshold (i.e. even in case of monopoly) and would address possible competition concerns by means of an exhaustive list of hardcore provisions which would consider certain identified practices as *per se* restrictive of competition and therefore excluded from the safe harbour. In other words, all qualitative selective systems affecting competition in the aftermarket

would be legal, except a limited number of practices coming within a “black list” (e.g. practices restricting access by independent repairers to technical information, restrictions on OES' ability to sell spare parts to authorised repairers, restrictions on authorised repairers' ability to sell parts to independent repairers, obligations imposed by vehicle manufacturers on authorised repairers to sell new vehicles in addition to carrying out after-market services).

Option 2 envisages letting the sector-specific regime lapse, leaving the motor vehicle sector to be covered by the general rules applicable to vertical restraints in all other sectors as currently laid down in Regulation 2790/1999. That regulation expires at the same time as Regulation 1400/2002 and is also under review.

106. The current draft⁴³ of the successor regulation proposed by DG Comp is to a large extent a continuation of the existing Regulation 2790/1999. It is based on principles which are rooted in case law of the European Court, which have not been contested by stakeholders during the review process. While the current draft keeps all five restrictions by object as before, it introduces a number of improvements to Regulation 2790/1999, including a 30% threshold applicable also to the market share of the buyer, as well as specific guidance for e-commerce.
107. With regard to e-commerce, the draft Guidelines accompanying the revised Regulation 2790 seek to refine the distinction, in the on-line context, between "active" and "passive" sales. Sales over the Internet are mostly, but not exclusively, considered to be passive sales, the restriction of which continues to be a hardcore restriction. It is also proposed in these Guidelines that manufacturers should be allowed to require that their distributors have a "brick and mortar" presence and that they should be allowed to require their selected distributors to fulfil certain objective conditions when the latter sell on-line (e.g. lay-out of the website, deadlines for replying to customer queries) just as they are allowed to do for off-line sales.
108. By bringing the revised successor regulation and Guidelines in line with other competition policy regulations and communications adopted since 1999, in particular regarding the assessment of technology transfer agreements, the application of Article 81(3), and exclusionary conduct under Article 82, not only the supplier's market share (as is the case today) but also the buyer's market share should not exceed 30%.
109. The draft continues to treat resale price maintenance (RPM) as a restriction by object. In legal and economic circles it is currently being discussed whether RPM should be treated as a restriction by effect and, consequently, be listed as a condition rather than a hard core restriction. Classifying RPM as a condition could potentially have strong implications in the car sector which is characterized by significant rebates.
110. The improvements foreseen in the current draft, if finally adopted by the Commission, would not affect selective distribution as the backbone of car distribution in any material way. Sales of new vehicles via the Internet are of negligible volume, and the application of a market share threshold of 30% for dealers (as purchasers) would not alter distribution since the relevant market would be in

⁴³ preliminary draft adopted by the Commission on 8 July 2009

most cases the national market. Therefore, the analysis of the impacts connected with Option 2, and by consequence with Options 3 and 4, would not substantially change if Regulation n° 2790/1999 is used as a benchmark. However, should the Commission decide to modify the current rules in a manner that would appreciably affect the impact assessment of the options concerned, 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. . In line with standard economic analysis, Option 2 would reflect the principle whereby vertical restraints may lead to consumer harm only in certain circumstances, in particular when inter-brand competition in the relevant market is weak, barriers to entry are high and the contracting parties enjoy a significant market power, something which is absent in today's primary market for new vehicle sales. It would therefore appear that the measures in the current regime that significantly restrict manufacturers' capacity to adapt would be likely to weaken the European motor vehicle industry's ability to adjust to changes in demand for new vehicles and cope with increasing structural overcapacities and strong inter-brand competition. This reasoning holds all the more true in a crisis situation such as the current one which could well last beyond 2010.

111. As far as dealers are concerned, the current crisis has exacerbated a situation characterised by diminishing margins on the primary market combined with increasing investment requirements. Recent years have seen manufacturers shifting brand-specific investments onto dealers, in an attempt to avoid free-riding problems and fend off threats to brand image partly brought about by provisions in the current regime such as those on multi-branding and location clauses. Dealers have claimed that some of these investment requirements were unnecessary and unproductive. In the current crisis, these costs risk becoming critical to the sustainability of dealers' businesses. Any policy choice therefore needs to ensure an alignment of dealers' and manufacturers' incentives to keep distribution costs to a minimum and to be based on a genuine partnership. All dealers, but especially the smaller dealers, would benefit from a competition regime in which manufacturers would not be forced to shift on them significant investments costs to protect their corporate identity against possible opportunistic behaviour of competitors.
112. As a result, Option 2 would imply a less rigid approach in respect of restrictions affecting the highly-competitive market for the sale of new vehicles (e.g. restrictions to multi-branding would become an issue only if manufacturers would impose non-compete obligations longer than five years that would prevent their dealers from selling a second brand from a distinct showroom, location clauses would be covered by the exemption up to 30% market share threshold, issues of contractual "fairness" would not be covered by specific additional conditions).
113. Moreover, as regards the aftermarket, Option 2 would apply a single market share threshold of 30% to all agreements, thus removing the benefit of the safe harbour from all practices that could potentially fall under Article 81(1) because of their anti-competitive effects. It should be recalled in this connection that, in the markets for spare parts distribution and/or for the supply of repair services to consumers, manufacturers' networks generally have market shares well above this threshold. In practice this option would imply that a wider number of potentially anti-competitive practices could be scrutinized by the Commission and/or national enforcers (i.e. including practices restricting access to technical repair information by independent operators, misuses of warranty conditions by manufacturers or practices hindering

access to original and/or matching quality spare parts by all repairers). However, the approach followed pursuant to this option would not be “by object” (i.e. based on the hardcore list approach) but rather “by effect” (i.e. requiring empirical evidence of actual or potential consumer harm in each individual case).

114. In considering other options, the Commission has taken into account that, as described in Section 2 above, competition in the vehicle repair and maintenance sector is less intense. As a consequence of the current economic crisis consumers are likely to be more price-sensitive, and less likely to replace their old vehicles, which will in turn result in increased demand for repair services. Repair and maintenance services account for 40% of the total ownership costs of a vehicle, and represent an EEA-wide turnover in excess of €100 billion. There are observed barriers to effective competition on the vehicle repair side, involving access to technical information and spare parts, and the ability of independent repairers to carry out work on vehicles during manufacturers' warranty periods which are getting longer over time. Therefore, the Commission proposes two options focusing particularly on the aftermarket which give additional guidance on these competition issues.
115. **Option 3** builds on option 2, but aims at enhancing predictability by providing guidance on the application to the motor vehicle sector of the general rules in the block exemption regulation for vertical agreements by means of sector-specific Guidelines. The main issues to be dealt with in such these Guidelines would include restrictions affecting competition in the repair and spare parts distribution markets (e.g. availability of technical repair information to independent operators, misuses of warranty conditions by manufacturers, access to the authorised repair networks by newcomers fulfilling the required quality standards, access to competing brands of spare parts by all repairers), but also certain clarifications concerning the application of the general rules to the market for the sale of new vehicles (including a framework for the assessment of selective distribution above the 30% market share threshold and single branding obligations).
116. **Option 4** also builds on Option 2 but involves the adoption of a simpler and more focussed sector-specific block exemption regulation that adds to the general rules applicable to vertical restraints in all other sectors, as currently laid down in Regulation 2790/1999, hardcore provisions aimed at protecting competition on the aftermarket, in particular with regard to the essential inputs for independent repairers such access to technical information and spare parts, as currently set out in Regulation 1400/2002.
117. In essence, Options 2-4 differ from Option 1 by taking the differing conditions on the primary and after-markets into account. They provide therefore a) for a less-restrictive approach as concerns the exemption of agreements in the highly competitive market for the sale of new vehicles and b) for a narrower exemption in the after-markets through the application of a single market share threshold fixed at 30%, as opposed compared to the baseline option. The following table sets out the key differences between the four options (the Options are compared and contrasted in greater detail in Technical Annex 3).

	Option 1	Option 2	Option 3	Option 4
Market share thresholds	30% for all agreements except for quantitative selective distribution (40%) and qualitative selective distribution (100%)	30% for all types of distribution	30% for all types of distribution	30% for all types of distribution
Sale of new motor vehicles				
Resale Price Maintenance	hardcore clause	Identical provisions	Identical provisions	Identical provisions
Parallel trade	Hardcore treatment of restrictions on active and/or passive sales; Availability Clause	Identical provisions; No express provision, but direct enforcement of Art. 81	Identical provisions; No express provision, but direct enforcement of Art. 81 & explanation of case law	Identical provisions; No express provision, but direct enforcement of Art. 81
Non-compete	At least two additional brands; same showroom	exempted for five years; at least one additional brand; separate showroom	exempted for five years; at least one additional brand; separate showroom	exempted for five years; at least one additional brand; separate showroom
Post-term non-compete	No exemptions	Identical provisions	Identical provisions	Identical provisions
No-boycott rule	No exemption	Identical provisions	Identical provisions	Identical provisions
Diversity of distribution	No exemption of location clauses; Hardcore treatment of restrictions on sales-only dealers	No equivalent provisions	No equivalent provisions	No equivalent provisions
Dealer protection	Transfer of dealership; Notice periods; Motivation obligation; arbitration	No equivalent provisions; Notice periods and arbitration in binding Code of Conduct	No equivalent provisions; Notice periods and arbitration in binding Code of Conduct	No equivalent provisions; Notice periods and arbitration in binding Code of Conduct
Repair and maintenance services				
Access to authorised repair networks	Use of qualitative selection required by block exemption	Use of qualitative selection required to fall outside 81(1)	Use of qualitative selection required to fall outside 81(1)	Use of qualitative selection required to fall outside 81(1)

Specialisation in repair and maintenance	Hardcore treatment of restrictions on stand-alone authorised repairers	Not treated as hardcore, but excluded from the safe harbour (above 30% threshold)	Not treated as hardcore, but excluded from the safe harbour (above 30% threshold)	Hardcore treatment of restrictions on stand-alone authorised repairers
Access to technical information	Hardcore treatment of restrictions on access to Technical Information	No safe harbour: Direct enforcement of Art. 81	No safe harbour: Direct enforcement of Art. 81 + further guidance (reference to Reg. 715/2007 and Implementing Regulation)	Identical provisions to Option 1
Non-compete obligations on authorised repairers	No exemption of non-compete	Equivalent safeguards (above 30% threshold)	Equivalent safeguards (above 30% threshold)	Equivalent safeguards (above 30% threshold)
Other practices foreclosing independent repairers, e.g. misuse of warranties	Block exempted	Outside safe harbour; Direct enforcement of Art. 81	Outside safe harbour; Direct enforcement of Art. 81+ further guidance	Outside safe harbour; Direct enforcement of Art. 81

Distribution of Spare parts

Sales by OES to Independent Aftermarket (IAM)	hardcore	identical provisions	identical provisions	Identical provisions
Sales by OES to authorised repairers (AR)	hardcore	No safe harbour: Direct enforcement of Art. 81	No safe harbour: Direct enforcement of Art. 81 + further guidance	Identical provisions to Option 1
Sales by AR to IAM	Hardcore	No safe harbour: Direct enforcement of Art. 81	No safe harbour: Direct enforcement of Art. 81 + further guidance	Identical provisions to Option 1
Purchases of competing parts by AR	Hardcore	No safe harbour: Direct enforcement of Art. 81	No safe harbour: Direct enforcement of Art. 81 + further guidance	Identical provisions to Option 1
Dual branding	hardcore	No safe harbour: Direct enforcement of Art. 81	No safe harbour: Direct enforcement of Art. 81 + further guidance	Identical provisions to Option 1

5. ANALYSIS OF IMPACT: IDENTIFICATION OF ASSESSMENT CRITERIA AND METHODOLOGY

118. The present Impact Assessment relies on a selected set of assessment criteria which are relevant for appraising the comparative advantages and disadvantages of each option both in relation to the specific policy objectives mentioned above in Section 3 and in view of the wider repercussions that the underlying policy approaches may have on other dimensions of an economic, social or administrative nature.

119. . In essence, a first set of criteria reflects the ability of each option to ensure effective competition in the markets for new motor vehicles distribution and after sale services in the light of the following objectives:

- *Preventing the foreclosure of competing vehicle manufacturers and safeguarding their access to the vehicle retailing and repair markets*
- *Protecting intra-brand competition*
- *Avoiding impediments to parallel trade in motor vehicles between EU countries*
- *Protecting competition between independent and authorised repairers*
- *Ensuring effective competition within the manufacturers' networks of authorised repairers*
- *Preventing foreclosure of spare parts producers in the automotive aftermarket*
- *Preserving the deterrent effect of Article 81*

120. A second set of criteria looks at wider economic impacts on the undertakings concerned and on consumers and is aimed at analysing the effects of each option on

- *Compliance costs for firm*
- *Small and medium enterprises*
- *The competitive position of European vehicle manufacturers*
- *Consumers and households*

121. A third set of criteria examine the impact of each option on public administration, including the optimisation of the use of enforcement resources and the implications for the EU budget

122. Finally, the present Report takes also into account other more general impacts encompassing employment and job quality, public safety, health and environment.

123. A more detailed discussion of the relevance of each criterion in respect of the envisaged options can be found in Technical Annex 5

As to the methodology,	Score
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the point of reference for the purposes of this assessment is Option 1 – the “Business As Usual” scenario, which foresees the continuation of the <i>status quo</i> . Because statistics are often not available, it is not possible to provide financial data or other figures for the likely impact of each policy option. Therefore, for each option, the expected impact has been assessed in qualitative terms, with scores from minus three to plus three in respect of each criterion, the point of reference (score 0) being the baseline scenario (Option 1). Impact (+ive or -ive)	
High negative	-3
Moderate negative	-2
Slight negative	-1
None	0
Slight positive	1
Moderate positive	2
High positive	3

124. Each option may have a major impact in respect of a relatively unimportant criterion, and a lesser impact in respect of another criterion that has a greater overall effect. For this reason, weightings were also employed to ensure that a better comparison may be made between impacts in respect of one criterion and those in respect of another. By default, scores received in respect of each criterion will receive a normal weighting, but where impacts in respect of a given criterion risk being unduly magnified or diminished because of that criterion's relatively low or relatively high importance, those scores will be corrected through the application of a low (- 50%)

or high (+ 50%) weighting. The weighting applied to each assessment criterion is discussed in Technical Annex 5.

6. MARKET FOR THE SALE OF NEW VEHICLES **MARKET FOR THE SALE OF NEW VEHICLES** **THE IMPACT OF EACH POLICY OPTION AS REGARDS THE IDENTIFIED CRITERIA**

125. This section sets out the Commission's assessment of the positive and negative impacts that Policy Options 2 to 4 would be likely to have if implemented, in relation to the baseline Option 1. It is based on the Competition DG's own analysis, the results of a broad consultation of stakeholders and, in particular, the findings of the Evaluation Report. It firstly looks at the economic impacts, including both those that relate to the specific aims of competition policy in this area as well as other economic impacts, such as the effects on enforcement efficiency, and impacts on firms in the sector. It then goes on to examine the impact on the Community budget and on the effective use of Community resources: in this instance, the Commission's enforcement resources. Finally, it examines the potential social and environmental impacts of each option.

6.1. Economic impacts

6.1.1. *Effective protection of competition*

Preventing the foreclosure of competing vehicle manufacturers and safeguarding their access to the vehicle retailing and repair markets

126. Like Option 1, Option 2 would maintain certain limits to the block exemption of single branding obligations imposed by car manufacturers on their dealers. Reflecting the conditions set out in the general regulation on vertical restraints, such obligations would be block exempted only up to a market share threshold of 30% and for a maximum of five years. Above this threshold both options would imply that non-compete agreements would be subject to a full-blown competition assessment pursuant to Article 81(1) and 81(3). This means that in order to benefit from the general block exemption, dealers must be able to effectively terminate the tie after the initial five year period, without losing their distribution contract and the brand-specific investments connected with it. It should be noted that it is common practice in the motor vehicle sector to enter into dealership agreements of either indefinite duration or, exceptionally, for renewable periods of at least 5 years. This would imply that most of the current agreements would not be covered by the block exemption if they were to contain single branding obligations.

127. The main difference between the baseline option and Option 2 would lie in the fact that, for a clause to be defined as a non-compete obligation under the latter option, the dealer should be directly or indirectly forced to buy more than 80% of its total annual requirements from the incumbent manufacturer, in contrast to the 30% ratio provided for in the benchmark option. Therefore, in order to be exempted under Option 2, agreements would normally allow the dealer to carry only one competing brand instead of two as theoretically possible under Option 1. However, this apparent reduction in dealers' commercial freedom should not be confused with the competition objective of preventing market foreclosure.

128. It should be recalled that, in accordance with the case law of the Court of Justice, 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.⁴⁴ This means that the exclusion of single branding from the scope of the block exemption 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 may be caught by Article 81(1) and require therefore an assessment pursuant to Article 81(3). If there are barriers to market entry, the opportunity of carrying one additional competing brand may be sufficient to safeguard effective competition by newcomers.
129. The second main difference would lie in the fact that Option 2 would not encourage a particular multi-brand format, as Option 1 does with regard to multi-branding within a single showroom. However, as the Commission's Evaluation Report shows, same-showroom multi-branding is far from being widely used by dealers and, where it is used, this is mainly due to local market factors (e.g. scarcely populated areas) rather than the block exemption, which implies that any change in the regulatory regime would not affect the use of this form of multi-branding at those locations where it makes economic sense. In practice, less than 5% of all dealers have opted for same-showroom multi-branding⁴⁵.
130. Concrete examples of niche brands or newer brands having established their position in the EU markets in recent times do not underpin the assumption the only possibility for these brands to compete relies on the penetration of existing networks. Rather, many recent new entrants have successfully established their position by setting up their own networks. In this respect it is of interest that also among newcomers such as Kia and Hyundai, there is a clear strategy not to risk brand dilution by displaying the two brands in one single showroom, but to establish brand-specific networks. It would therefore seem that the overall impact of the current Regulation on fostering entry or expansion is very limited. According to a recent study, the volume of cars sold in multi-brand showrooms is slightly above 1% of total sales in the EEA in 2007 and there is no evidence of an upward trend.⁴⁶
131. Therefore, having regard to the fact that:
- Entry of newcomers or expansion of existing competing brands has not been fostered to any significant extent by the stricter rules set out in Regulation 1400/2002
 - Competition between compete brands is fierce, as confirmed by the steep decline in real consumer prices for new vehicles and the low operating margins of both manufacturers and dealers

⁴⁴ Commission Notice on agreements of minor importance (De-minimis notice); OJ 2001 C 368, p.13

⁴⁵ See "Developments in car retailing and afters-sales markets under Regulation N. 1400/2002, by London Economics (2006), Table 48, p.67

⁴⁶ See "Do we need a MVBER?" ESMT Competition Analysis, 2009, p. 69 (This study was commissioned by Daimler)

- The specific opportunities for same-showroom multi-branding have been taken up by the market only up to a very limited extent,
132. It may be concluded that Option 2, compared to the baseline option, would not increase significantly the potential risks for competing manufacturers to be foreclosed from the new vehicles distribution market. By contrast, dealer associations have reported that manufacturers responded to the perceived threat that multi-branding would damage corporate identity and brand image by increasing operating standards for their distribution networks. Some associations put the resulting increase in investment costs faced by dealers at around 20%.⁴⁷ In other words, by non-exempting single-branding obligations *ex ante*, the current Regulation contributes to inefficient distribution systems in which dealers are required to bear the burden of costly brand-specific investments. Therefore Option 2 could address an indirect shortcoming of Option 1 by removing manufacturers' incentives to increase their standards for strategic reasons without removing key safeguards against risks of market foreclosure.
133. Should, however, a real foreclosure problem arise, the most effective tool would seem to be the withdrawal mechanism foreseen in block exemption regulations, including both Regulation 1400/2002 and 2790/1999. This mechanism would allow the Commission a national competition authority to withdraw the benefit of the block exemption for the whole EU or a national competition authority for its national market, thereby exposing such agreements to individual scrutiny under Articles 81(1) and (3) of the Treaty. Such an *ex post* enforcement tool would allow manufacturers and dealers to better align their incentives to invest and preventing the risk that free-riding problems would lead to inefficient transactions impacting on dealers' profitability and, ultimately, negatively affecting consumers' interest.
134. Hence, the negative impact connected to the different treatment of non-compete obligations under Option 2, if any, would in practice only be slight.
135. Option 3 would essentially have the same outcome as Option 2, since guidance would not change the definition of non-compete obligations.
136. Option 4 would not contain any specific rule on non-compete obligations and would therefore have the same impact as Option 2. Therefore, the negative impact connected to the different treatment of non-compete obligations under Options 3 and 4, if any, would in practice only be slight.

Protecting intra-brand competition

137. Option 2 would reduce the market share threshold for quantitative selective distribution from 40% to 30%. In those Member States where the incumbent manufacturer would have a market share exceeding 30%, there could be two possible consequences. Firstly, since there is no presumption of illegality outside the safe harbour created by the block exemption, the manufacturer could demonstrate that the efficiency enhancing effects resulting from quantitative selective distribution do outweigh its possible anticompetitive effects. Secondly, in those rare cases where

⁴⁷ See Report, p.14

such market share threshold would be trespassed, a car manufacturer could opt for a distribution system based on purely qualitative selection criteria as this type of distribution would be, in accordance with a well established case law of the ECJ, not restrictive of competition and therefore not caught by Article 81(1).

138. Hence, Option 2 would have a slightly positive impact compared to the baseline scenario as regards the promotion of innovation and diversity of distribution systems, particularly in those Member States where, due to the high market shares of the incumbent manufacturer, the protection of intra-brand competition could be an economically sound policy objective.
139. Furthermore, Option 2 would not exclude “location clauses” from the scope of the block exemption. However, as shown in the Commission's Evaluation Report, the result of the non-exemption of the location clause was that car manufacturers reacted by increasing the level of their selection standards in order to prevent possible free-riding risks which could have been associated with an uncontrolled opening of additional sales outlets. While such a strategic move seems correlated with the entry into force of the stricter conditions provided for in Regulation 1400/2002, it should be recalled that such conditions appeared justified in 2002 due to the fear that a decline in the degree of inter-brand competition would have required sector-specific measures for stimulating intra-brand competition.
140. By contrast, as pointed out in Chapter 5 above, all indicators confirm that competition between manufacturers has significantly increased in recent years as a result of the combined effect of structural overcapacities, new market entries, technological innovation and progressive globalisation of manufacturing activities. In such a context, the current regulatory constraints have driven manufacturers to choose sub-optimal solutions for the organisation and management of their dealer networks, which has contributed, overall, to raise distribution costs. In this respect, certain dealers associations have indicated that the costs associated with the introduction of more demanding selection standards in 2002 may be estimated at 20% of the total distribution costs. Distribution costs account for about 30% of the total cost of a new car.⁴⁸
141. In addition to these drawbacks, it should also be observed that only few dealers have, so far, taken the advantage of opening additional outlets. The figures available suggest that such a population of dealers represents only 1% of all dealers EU-wide.
142. It follows from the foregoing that, by remedying the above mentioned drawbacks, Option 2 could have at least a slight positive impact on the costs of distribution since, faced with less regulatory constraints, car manufacturers would set their selection standards at a level which minimise overall distribution costs for their products. Furthermore, Option 2 would not have any significant negative impact on intra-brand competition given the very low take-up by dealers of the business opportunities associated with the exclusion of location clauses from the block exemption. Therefore, Option 2 would have overall a slightly positive impact compared to the base line option.

⁴⁸ "Do we need a Motor Vehicle Block Exemption?", Report by ESMT, 2009

143. Option 3 would have the same impact as option 2, in that the guidelines would have no influence on the determination of the level of the market share threshold for exemption or the treatment of location clauses.
144. Option 4 would also have the same impact as options 2 and 3, since the "mini-Regulation" would not contain any specific rule on the above mentioned aspects.

Avoiding impediments to parallel trade in motor vehicles between EU countries

145. Under any of the options presented in this Impact Assessment, the Commission will always be able to protect parallel trade effectively and efficiently, as all the four scenarios are based on the same basic material rules. It should also be recalled that since the repeal of the Notice on Intermediaries in 2002 there is no longer any limit as to the volumes of sales that dealers may achieve with intermediaries acting on behalf of final consumers. The only noticeable difference between Options 1 and 3, on the one hand, and Options 2 and 4 on the other, is the absence in the latter two options of a clarifying rule or guidance in respect of the assessment of the "availability clauses".
146. In the light of the above, Option 2 would have only a slight negative impact as regards cross-border trade in motor vehicles, since the availability clause would no longer be expressly referred to as an hardcore in the block exemption, and dealers and intermediaries would have to rely solely on case-law, which they might be ill-equipped to interpret.
147. Option 3 would remove this negative impact, by clarifying in Guidelines that, in line with the *Ford Werke*⁴⁹ case law, an agreement between a car manufacturer and its dealers restricting the latter's ability to obtain vehicles with foreign specifications would amount to an indirect restriction on active and/or passive sales which would imply the loss of the benefit of the block exemption. This option would therefore score at the neutrality point.
148. Option 4 would have the same slight negative impact as option 2, since the "availability clause" would not be carried over into the mini-block exemption.

Protecting competition between independent and authorised repairers

149. It has been argued that if the general regime were to apply to the motor vehicle sector, there would be less protection for independent repairers, since the sector-specific hard core restrictions in Article 4 of the block exemption that relate to the aftermarket would not be carried forward. This argument has, in particular, been made as regards Article 4(2) of the Regulation, which relates to the provision of technical repair information to independent operators.
150. Three points should be made as regards this issue. Firstly, the Commission can only oblige vehicle manufacturers to provide technical information on the basis of Article 81 or Article 82 of the Treaty. The function of Article 4(2) of the Regulation is not to

⁴⁹ Judgment of 28 February 1984, joined cases 228 and 229/82 *Ford of Europe Inc. and Ford-Werke Aktiengesellschaft v Commission* ECR (1984) 1129.

prohibit the withholding of technical information or to give independent operators rights to it; rather, its purpose within the framework of Regulation 1400/2002 is to claw back the benefit of the block exemption covering the agreements between a vehicle manufacturer and its authorised repairers if the former fails to make such information available to all repairers. The reason is that insufficient access to such an essential input by independent repairers would strengthen the negative effects of selective distribution due to the ensuing foreclosure risks which could seriously reduce the level of competition in the relevant car repair markets. As such, Article 4(2) is necessary because the Regulation covers qualitative selective distribution agreements entered into between repairers and carmakers up to 100% market share.

151. In contrast, by lowering the threshold for exemption of qualitative selective distribution from 100% to 30%, Option 2 would have the effect of removing the exemption from the vast majority of authorised repair agreements, since in the vast majority of cases, the authorised networks generally have very high shares on the (brand-specific) aftermarkets⁵⁰. Vehicle manufacturers would then have to rely on the standard principles of EU competition law which recognises that a purely qualitative selective distribution system is not in general incompatible with Art. 81 (1). This would, in one fell swoop, make the aftermarket provisions in Article 4 redundant. Moreover, Option 2 could make it easier for competition authorities to enforce, and for firms to rely on Article 81 in problematic cases. This holds true in particular with regard to Recital 26 of Regulation 1400/2002 which introduced an exception by enabling vehicle manufacturers to withhold technical information related to security issues. While responding to a justified concern, Recital 26 has been used by vehicle manufacturers in a rather unscrupulous manner and has obliged the Commission to carry out complex technical analysis in order to determine whether the block exemption could apply in concrete cases. The deterrent effect of Article 81 was reduced in such cases, as the burden of proving that the block exemption was not applicable remained with the Commission.
152. Also, it should not be forgotten that the vehicle park will progressively become subject to Regulation 715/2007, which provides that vehicle manufacturers have to disseminate all technical information relating to models launched after 2009, so the remedy for possible refusals to provide technical information will increasingly lie with regulatory measures rather than competition law.
153. A second issue relating to the aftermarket concerns warranties granted by the vehicle manufacturer. Warranties are beneficial to consumers who can obtain free repair services for vehicle faults. However, the increasing use of extended warranties with durations of five years and longer can also have a negative effect on consumers when they are granted on condition that the ordinary maintenance works during the warranty period (but not covered by the warranty) are carried out by a member of the authorised network. As qualitative distribution agreements are exempted up to 100% market share under Option 1, the Commission could act against such practices that strengthen the foreclosure effects of authorised repairer agreements, only by means

⁵⁰ Such agreements would only be able to benefit from the exemption if the market share of the authorised network was unusually low. This might, for instance, be the case if the Commission were to find that there was no separate aftermarket for the vehicles in question, so that the relevant market share would be that on the market for the sale of new vehicles.

of a withdrawal of the benefit of the block exemption as currently provided in Article 8 of Regulation 1400/2002. In such a case, however, not only the Commission would have the burden of proving both that Article 81(1) applies and that the conditions of Article 81(3) are not fulfilled, but any possible sanction could not cover past behaviour, depriving therefore the rules of their deterrent effect.

154. In the light of the foregoing, Option 2 is likely to highly improve the competitive landscape in the aftermarket by strengthening the competitive position of independent repairers compared to the baseline scenario. At the same time, however, the lack of express provisions may lead to legal uncertainty which could somewhat reduce such a positive impact. As a result, Option 2 is likely to have a slight positive impact compared to the baseline option.
155. Option 3 would remove the lack of clarity associated with option 2 by including guidance explaining the circumstances in which a refusal to grant full and non-discriminatory access to technical information to independent operators, or a misuse of the warranties as a means to prevent consumers from getting ordinary maintenance works from independent repairers would bring qualitative selective agreements within the scope of Article 81. The overall positive impact of Option 3 would therefore be high.
156. Option 4 would also have a positive impact relative to the baseline scenario, since, like Option 2, it would limit the benefit of the block exemption up to a 30% market share thresholds for all vertical agreements. Unlike Option 2, however, it would also carry Article 4(2) of the current block exemption into a new "mini-Regulation". Although, as noted above, this would have no legal effect in most cases, since the repair agreements in question could not benefit from the block exemption in any event due to the high market shares of the authorised repairer networks, the carrying over of Article 4(2) would have the advantage of improving visibility. The disadvantage, however, would be that that also Recital 26 would be carried over, with the connected drawback pointed out above. Moreover, the risks associated with possible misuses of warranties would entirely rely on the self-assessment by the parties concerned. On balance, Option 4 would therefore have only a moderate positive impact.

Ensuring effective competition within the manufacturers' networks of authorised repairers

157. Option 2 would have little or no impact compared to the baseline scenario as regards competition within the authorised repair networks. Under the baseline scenario, agreements which placed quantitative limits on repairer numbers would not benefit from the block exemption, because the authorised networks generally have market shares above the 30% threshold. The onus would therefore be on a manufacturer that wished to impose such limits to justify its system on the basis of Article 81(3) of the Treaty. Therefore, under both options, all firms that met qualitative criteria would in most cases be able to join the networks.
158. However, compared to the baseline scenario, Option 2 would not contain any specific hardcore provision clarifying that restrictions excluding repair-only outlets from the authorised networks do not benefit from the block exemption. This could

lead to a serious incertitude in the market as the removal of such provision could be wrongly interpreted as a signal that competition authorities would no longer pursue this type of agreements. As a result, is it likely that Option 2 could have a slight negative impact

159. Option 3 would reduce the drawbacks linked to such a possible error by explaining, in future guidelines, that restrictions excluding repair-only outlets from the authorised repairer networks would imply the application of a selection criterion which could hardly be regarded as objectively justified by the nature of the contract services. As a result, such agreements would be likely to fall under Article 81(1) and unlikely to be covered by the safe harbour of the block exception in view of the fact that parties market shares on the relevant aftermarket would be generally well above 30%. Following this reasoning, it is possible to conclude that Option 3 would have the same impact as the baseline scenario, i.e. it would score at the neutrality point.
160. The same goes for Option 4 (the mini-Regulation), since this option would carry over the same hardcore provision as Option 1.

Preventing foreclosure of spare parts produces in aftermarket

161. It has been argued that applying the general rules as contained in Option 2 would make it more difficult for component manufacturers to reach the aftermarket. However, all options do not differ significantly with regard to sales of spare parts by original equipment suppliers to independent repair shops, or with regard to sales of matching quality parts to authorised repairers by third parties producers. With respect to the latter, it should be recalled that vehicles manufacturers' share on the relevant spare parts markets are likely to be well above 30%, which implies that non-compete obligations imposed on authorised repairers would not be block exempted under any of the options under examination.
162. Option 2, however, would have an impact on spare parts producers' access to authorised repairers, in that it is unlikely that a future general block exemption would contain specific hardcore provisions concerning
- The restriction to the OES' ability to sell spare parts to authorised repairers
 - The restriction of the authorised repairers' ability to sell parts to independent repairers,
 - The double branding of component supplied by OES
163. However, as pointed out in Chapter 4 above, under Option 2 these specific practices would not be presumed as legal. As the vehicle manufacturers' market shares in the brand-specific aftermarket usually exceed the 30% threshold, the legal consequence for agreements containing such restrictions would be that they would fall outside the safe harbour and be subject to individual assessment. Given that competition in the automotive aftermarket crucially depends on the effective competitive interaction between suppliers of spare parts as well as between the manufacturers' authorised retailers and independent distributors of parts, it is highly likely that an effect-based analysis of the practices at issue would lead to the conclusion that they could infringe Article 81 should they lead to anti-competitive foreclosures effects. Hence, while

differing in terms of analytical approach, both Options 2 and 1 would ensure an appropriate level of protection of competition in all cases where there is an actual or potential risk of consumer harm.

164. The main disadvantage of Option 2 compared to the baseline scenario, would be that the removal of such provision could be wrongly interpreted as a signal that competition authorities would no longer pursue this type of agreements. This could lead to a serious uncertainty in the market and risks of errors by firms in their self assessment. As a result, is it likely that Option 2 could have a moderate negative impact.
165. Option 3 would reduce such drawbacks by explaining, in future guidelines, the conditions in which, and the relevant analytical factors whereby the restrictions at issue would infringe Article 81, bearing in mind that they would not in general benefit from the safe harbour of the block exemption in view of the fact that parties market shares on the relevant aftermarket would be in most cases well above 30%. Given the complexity of defining the relevant market in the highly differentiated spare parts supply sector, such an exercise might entail some risks of error for all firms concerned compared to the simpler, though less economically sound approach followed under Option 1. Following this reasoning, it is possible to conclude that Option 3 would have a slight negative impact compared to the baseline scenario.
166. Option 4, on the other hand, would imply no change compared to the baseline scenario, i.e. it would score at the neutrality point.

Preserving the deterrent effect of Article 81

167. As outlined above, it seems unlikely that dealer protection measures have had any observable impact on the level of protection of competition. Instead, by making it more difficult for vehicle manufacturers to adjust their distribution networks to changing economic conditions, Option 1 may have negative effects on the competitiveness of the whole industry. This holds even more true in the current economic climate, 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.
168. 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.
169. Firstly, as pointed out in the Commission's Evaluation Report, there is no evidence that these provisions have had the intended deterrent effect. To 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.
170. Secondly, dealers would have no effective remedy if their contractual partner refused to issue a contract containing the supposedly protective provisions. This is because these 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). Thirdly, 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 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".⁵¹ Provisions that predominantly pursue another objective are normally found in national contracts laws.

171. In contrast, by lowering the threshold for exemption of quantitative selection, Option 2 would make it more difficult for manufacturers with high market shares to exclude dealers from their networks, since they would only be able to do so on the grounds that quality standards had not been met, or that a dealer was in fundamental breach of contract. Moreover, paragraph 49 of the Guidelines on Vertical Restraints makes it plain that *"the hardcore restriction set out in Article 4(b) of Regulation 2790/1999 may also be the result of indirect measures aimed at inducing the distributor not to sell to (such) customers, such as refusal or reduction of bonuses or discounts, refusal to supply, reduction of supplied volumes or limitation of supplied volumes to the demand within the allocated territory or customer group, threat of contract termination or profit pass-over obligations"*⁵². It therefore excludes agreements from the exemption if the supplier uses any one of a wide spread of indirect measures to try to negatively influence a dealer's pro-competitive entrepreneurial behaviour. This hard core approach focussing on actual behaviour rather than an attempt to rebalance contractual bargaining positions would be a more effective deterrent to measures of this type. Option 2 would therefore be likely to have a slight positive impact as regards the preservation of the deterrent effect of Article 81 of the Treaty.

172. In Option3, guidance would be given to the effect that in the absence of clear evidence to the contrary, if a supplier adhered to fair and transparent commercial practices in its overall relationships with its dealers, it would be likely to be more difficult to demonstrate that it had put covert pressure on its dealers to refrain from pro-competitive practices such as granting discounts and engaging in parallel trade. Option 3 would therefore add to the advantages of Option 2, and would have a moderate positive impact.

173. Option 4 would have the same slight positive impact as Option 2.

Effective protection of competition: comparing options 2-4 to the benchmark Option 1 (BAU)

174. The impact that each option has in respect of each criterion is now combined with the weightings allocated in section 5 in order to produce a scoreboard and assess how each option scores relative to the benchmark scenario.

⁵¹ See recital 9 of Regulation 1/2003, first sentence

⁵² This paragraph is carried over almost unchanged into the current draft of the revised Guidelines.

Option 2

	Score	Weighting	Overall impact
Preventing the foreclosure of competing vehicle manufacturers and safeguarding their market access	-1	1	-1
Protecting intra-brand competition	+1	1	+1
Avoiding impediments to parallel trade in motor vehicles between EU countries	-1	1	-1
The protection of competition between independent and authorised repairers	+1	1.5	+1.5
Ensuring effective competition within the manufacturers' networks of authorised repairers	-1	1.5	-1.5
Ensuring effective competition in the markets for spare parts	-2	1.5	-3
Preserving the deterrent effect of Article 81	+1	0.5	+0.5

Option 3

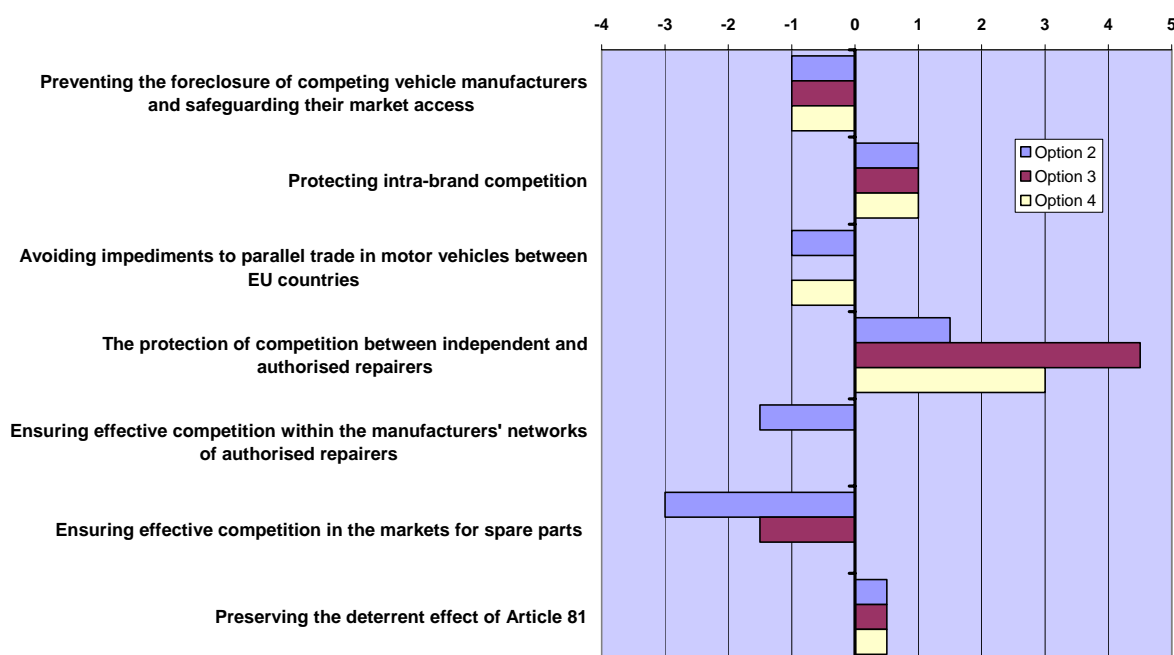
	Score	Weighting	Overall impact
Preventing the foreclosure of competing vehicle manufacturers and safeguarding their market access	-1	1	-1
Protecting intra-brand competition	+1	1	+1
Avoiding impediments to parallel trade in motor vehicles between EU countries	0	1	0
The protection of competition between independent and authorised repairers	+3	1.5	+4.5
Ensuring effective competition within the manufacturers' networks of authorised repairers	0	1.5	0
Ensuring effective competition in the markets for spare parts	-1	1.5	-1.5
Preserving the deterrent effect of Article 81	+2	0.5	+1

Option 4

	Score	Weighting	Overall impact
Preventing the foreclosure of competing vehicle	-1	1	-1

manufacturers and safeguarding their market access			
Protecting intra-brand competition	+1	1	+1
Avoiding impediments to parallel trade in motor vehicles between EU countries	-1	1	-1
The protection of competition between independent and authorised repairers	+2	1.5	+3
Ensuring effective competition within the manufacturers' networks of authorised repairers	0	1.5	0
Ensuring effective competition in the markets for spare parts	0	1.5	0
Preserving the deterrent effect of Article 81	+1	0.5	+0.5

175. The chart below allows the reader to assess how options 2-4 perform both against the benchmark option, and against each other, taking into account both the scores that each receives in respect of each criterion, and any weighting variation.



176. The chart shows that Option 3 and 4 are clear overall winners, with Option 3 having a slight advantage.

6.1.2. Other economic impacts

Reducing compliance costs borne by firms

177. As pointed out in the Commission Evaluation Report of May 2008, the complex and highly detailed nature of the Regulation has led to widespread misunderstandings and insecurity amongst market players, in particular among SMEs, about the very nature

of the block exemption. It should be recalled that, despite having deployed considerable efforts on guidance, including the publication of an explanatory brochure and a set of frequently-asked questions, the Commission has been faced, during the whole period of validity of the Regulation, with frequent requests for assistance from stakeholders, which in the main did not relate to any impact that agreements could have on the market, but rather to the interpretation of particular contractual clauses. Most of these requests were unrelated to competition issues and were generated by the detailed sector-specific provisions of the Regulation.

178. Although one of the purposes of a block exemption is to provide legal certainty to contracting parties, the Commission observes that in practice the Regulation may have had the opposite effect. Such lack of predictability causes extra costs, particular for SMEs, of which lawyers' bills are only a part. Moreover, a lack of certainty may stifle entrepreneurial initiative, and cause firms to miss business opportunities and misdirect investments by choosing less efficient distribution models.
179. By bringing distribution and repair agreements in the motor vehicle sector under the same regime as all other vertical agreements, **Option 2** will considerably improve on the degree of uniformity, which will be likely to reduce compliance costs
180. Option 2 would also be likely to substantially reduce the comparatively high error costs incurred by firms for two reasons. Firstly, the general rules are far simpler than those in Regulation 1400/2002, reducing the risk that firms will incur unnecessary costs by under- or over-complying with the rules. Secondly, firms, lawyers, courts and competition authorities could more readily draw parallels with the application of the general rules to other sectors, thereby reducing the risk of over or under-enforcement. It should, however, also be examined whether lowering the threshold for exemption to a uniform 30% might have any impact on compliance costs.
181. On the market for the sale of new vehicles, Option 2 would lower the threshold from 40% to 30%. At EU level, no manufacturer has a market share near this level. The smallest market that any geographic market definition could conceivably consider would be national. There are a few instances where car manufacturers' authorised sales networks have market shares of above 30% in their home Member States, and the same can be said in certain countries in Central Europe. However, in almost all cases the market shares in question overstep the 30% threshold by less than 5%, and this will not normally pose competition problems. Any impact on compliance costs will therefore be slight.
182. On the markets for repair and maintenance services, Option 2 would lower the exemption threshold for qualitative selective distribution agreements from 100% to 30%. Under the benchmark Option 1, these firms currently have to assess whether their agreements meet the test laid down in the Metro II⁵³ and Galec⁵⁴ cases. This test is carried over into Article 1(h) of Regulation 1400/2002 and aims at establishing the applicability of the block exemption. In other words, under Option 1, parties will

⁵³ Metro SB-Großmärkte GmbH & Co. KG v Commission of the European Communities. - Competition - Selective distribution system. - Case 75/84. European Court reports 1986 Page 3021.

⁵⁴ Groupement d'achat Edouard Leclerc v Commission of the European Communities. Case T-19/92. European Court reports 1996 Page II-01851

apply the test to assess whether their agreement is qualitative in nature, and can therefore benefit from the 100% threshold for exemption. If the agreement fails the test, the parties will then have to assess whether it can benefit from the exception described in Article 81(3) of the Treaty on a case-by-case basis. Under Option 2, the position will be equivalent in terms of compliance costs. In the vast majority of cases, the authorised repair networks have market shares far above the 30% exemption threshold. As with Option 1, the firms in question would therefore have to apply the Metro II/ Galec test, but in this case their self-assessment will be directed at establishing whether their agreements fell outside Article 81(1). As with Option 1, if an agreement fails the test, the parties will then have to assess whether it can benefit from the exception described in Article 81(3) of the Treaty. Option 2 would therefore have no different impact to the benchmark.

183. As far as litigation costs are concerned, Option 2 would not affect operators' ability to access cost-effective dispute resolution procedures, in particular because the arbitration mechanism in Regulation 1400/2002 could be carried over into a Code of Conduct and would be included in all future dealer agreements. However, litigation costs tend to be higher where the rules in question are more complex and less clear. In this respect, Option 2 should lead to a small decrease in litigation costs across the sector related to disputes between dealers or repairers on the one hand and vehicle manufacturers on the other.
184. Overall, Option 2 will therefore have no impact as regards the costs to be borne by firms
185. Compliance costs under **Option 3** will be slightly improved by giving guidance, in particular as to the circumstances under which an authorised repair agreement will not be caught by Article 81(1) of the Treaty. This option will also be likely to further reduce error costs, by giving firms guidance as to where the boundaries of the safe harbour lay. The increased clarity afforded by Option 3 should also lead to a further decrease in litigation costs across the sector related to disputes between dealers or repairers on the one hand and vehicle manufacturers on the other. Overall, therefore, Option 3 can be expected to have a slight moderate positive impact as regards the costs borne by firms.
186. **Option 4** is likely to have a beneficial effect as regards compliance costs, in particular as the over-complex provisions regarding the market for the sale of new vehicles will not be carried over. The impact as far as the need for self-assessment and litigation costs are concerned will be the same as in Option 2. Overall, this option is therefore likely to have no impact compared to the benchmark.

Particular impact on SMEs

187. The Evaluation Report adopted by the Commission in May 2008 showed that the market for the sale of new vehicles had no specific competition problems that set it apart from other sectors, and that overly-rigid provisions designed to protect individual competitors rather than the competitive process may well have unwelcome effects. The Evaluation Report revealed that vehicle manufacturers responded to the adoption of Regulation 1400/2002 by raising the level of standards applicable to car dealers, the majority of which being SMEs. In the case of Spain, this has led to an

increase of the costs by dealers of 20%.⁵⁵ A recent survey in Great Britain came to the conclusion that dealers are "crippled by overbearing manufacturer standards."⁵⁶

188. The current crisis has exacerbated a situation characterised by diminishing margins on the market for the sale of new vehicles combined with overbearing standards implying increasing investment requirements imposed by the manufacturers, which had a particular severe impact on SMEs. Recent years have seen manufacturers shifting brand-specific investments onto dealers, in an attempt to fend off threats to brand image partly brought about by provisions in the current regime such as those on multi-branding and location clauses. Dealers have claimed that some of these investment requirements were unnecessary and unproductive. In the current crisis, these costs risk becoming critical to the sustainability of the dealers' business models. Any policy choice therefore needs to ensure an alignment of dealers' and manufacturers' common interest to keep distribution costs to a minimum and to be based on a genuine partnership.
189. It is therefore likely that under **Option 2**, vehicle manufacturers would feel it less necessary to increase standards in the future, slowing the rate of increase in investment requirements. The overall effect of Option 2 as regards investment requirements is therefore likely to be at least slightly positive.
190. Some commentators, in particular dealers' associations, have argued that not carrying over Article 3 of Regulation 1400/2002, as Option 2 would imply, would reduce the contractual bargaining position of SMEs towards their suppliers, in that they will not feel so able to negotiate better conditions for fear of seeing their contracts terminated on short notice and without reasons being given. Three points should be made here. Firstly, today's dealers are required to make high levels of investments that will not be amortised over the two-year notice period provided for in Article 3 of the Regulation. The level of contractual protection provided for in the Regulation is therefore unlikely to be sufficient to encourage them to engage in pro-competitive behaviour "disapproved" by the vehicle manufacturer. Secondly, as noted in the Evaluation Report, the Commission investigation revealed not one example of the obligation to give reasons being used to unmask a situation in which a dealer had been terminated for engaging in such activity. The alleged protection enjoyed by dealers would therefore seem to be largely illusory. In that respect it is of interest that despite the perceived protection granted by the current provision, 35% of all Italian dealers participating in the 2009 survey stated that they are considering leaving the business, up from 7% in 2006.⁵⁷
191. The third point to be made is that the notice periods, the obligation to give reasons for contract terminations and the protection of investments made in good faith by a contracting party are issues that are dealt with under national contracts laws, so that dealers could still be able to bring cases of unfair treatment before national courts on the basis of the relevant provisions of national law. Moreover, it should be recalled that car manufacturers do not seem hostile to the idea to continue to commit to basic

⁵⁵ See Report, p.14

⁵⁶ Dealer network crippled by overbearing manufacturer standards finds NFDA survey. In: RMI-EYE, December/January 2006/7.

⁵⁷ Dealer stat: Obiettivo performance 2009, page 12.

principles of fair behaviour in their commercial relations with dealers, as is shown by Code of Conduct to which ACEA and JAMA have both subscribed. It would therefore appear that Option 2 is unlikely to have any real impact on the contractual bargaining power of SMEs.

192. On a more general note, having regard to the current economic crisis affecting the automotive sector, Option 2 would also be likely to bring additional benefits to SMEs in the medium term. By introducing artificial rigidities, the existing regime prevents manufacturers from tailoring their networks to changing market circumstances. These rigidities would have the effect of increasing distribution costs, and reducing the profitability of the stronger dealers, thereby affecting their ability to invest and take advantage of the post crisis situation. Option 2 would therefore likely have the effect of enabling the most efficient SMEs in the sector to emerge from the crisis more rapidly and in better economic shape.
193. As far as aftermarket operators are concerned, a consequence of the current economic crisis is that consumers are likely to be more price-sensitive, and less likely to replace their old vehicles, which will in turn result in increased demand for repair services. However, in contrast to the highly competitive market for the sale of new vehicles, competition in the vehicle repair and maintenance sector is less intense due the brand-specific nature of the relevant aftermarket. This requires attention to be given to possible practices distorting competition both between authorised and independent repairers and within the authorised networks set up by vehicle manufacturers. There are observed barriers to effective competition on the vehicle repair side, involving access to essential inputs such as technical information and spare parts, and the ability of independent repairers to carry out work on vehicles during manufacturers' warranty periods which are getting longer over time.
194. Certain commentators believe that if Article 4(2) of the Regulation were not carried over into a future regime as Option 2 would imply, this could have negative consequences for the provision of technical information. The main effect would be on independent repairers which are predominantly SMEs. However, this appears to result from a misinterpretation of the function of Article 4, which is not to prohibit behaviour, but rather to claw back the exemption from agreements in certain circumstances, as explained above in Section 6.1.1. If, on the other hand, Option 2 were to apply to the motor vehicle sector, there would be nothing to claw back, since the market shares of the authorised networks on the repair markets almost always exceed the 30% threshold for exemption, meaning that there would be no need for a provision similar to Article 4(2). As is ultimately currently the case, a failure to grant access to technical information would be dealt with on the basis of Articles 81 and 82 of the Treaty directly. The only possible negative effect attributable to Option 2 is therefore likely to result from a possible lack of clarity, rather than from any legal change.
195. As already noted, Option 2 may also have a negative impact on the ability of authorised repairers to source alternative brands of spare parts, since original equipment suppliers may be prohibited from selling to the authorised networks. However, as has been noted in the evaluation report, the percentage of parts that the average authorised repairer sources from alternative suppliers is low. Overall, therefore, any negative impact that Option 2 could have as regards access to essential inputs would only be slight.

196. It could be argued that the provision allowing dealers to sell their businesses to other firms within the same authorised network promotes entrepreneurship, in that businessmen will be more willing to build up a business if they know that they can get a good price for it should they decide to sell. However, in reality, it seems unlikely that Article 3(3) would allow a dealer to get much value for a business sold against its supplier's wishes, since if the supplier were not satisfied with the purchaser, it could simply immediately issue a termination notice. In these circumstances, all that the purchaser would inherit would be a two-year contract to sell and repair vehicles under the brand in question – something which he would be unlikely to pay much for. Under these circumstances, it seems difficult to argue that in not carrying over Article 3, Option 2 would have more than a slight negative impact on the promotion of entrepreneurship.
197. In view of the fact that neither contractual bargaining power nor the promotion of entrepreneurship are significantly affected by any of the options, it seems difficult to imagine that Option 2 could affect SMEs' ability to access finance, since it will not make it more difficult to demonstrate business viability to a financial institution.
198. Overall, it seems likely that slight detrimental impacts in some areas will be offset by positive impacts elsewhere, leaving Option 2 with a net zero impact on SMEs.
199. **Option 3** will have the same impact as Option 2 as regards investment requirements, since future guidelines will not affect the treatment of multi-branding and the opening of additional sales outlets. The same goes for the bargaining position of SMEs and the promotion of entrepreneurship; guidance will have no additional impact on notice periods, reasons for contract termination, or the ability of a dealer to sell his business to another dealer of his choice. Similarly, Option 3 will have no impact as regards access to finance. On the other hand, some additional positive impact may come about as regards access to essential inputs, in that guidance could reduce the number of instances where a vehicle manufacturer mistakenly withholds technical information. Similarly, Option 3 would address new issues which seem to greatly affect the viability of independent repairers (the vast majority of which are SMEs), such as the misuse of warranties by car manufacturers aimed at strengthening the market position of authorised repairers to the detriment of SMEs operating in the independent aftermarket. Overall therefore, it seems likely that Option 3 would have a slight positive impact on SMEs.
200. With regard to access to technical information and spare parts, Option 4 will have a slight positive impact similar to Option 3. On balance, Option 4 will therefore have a slight positive impact on SMEs compared to the benchmark.

Impact on the competitive position of European vehicle manufacturers

201. **Option 2** would be likely to have two effects as regards the competitive position of European vehicle manufacturers when compared to the benchmark. Firstly, by providing for a more flexible regime, vehicle manufacturers will enjoy greater freedom as to how they draft their distribution and repair agreements within the safe harbour of the block exemption. Any impact assessment needs to take into account that the automotive sector is badly hit by the current economic crisis, and clearly needs to make adjustments to underpin its competitiveness. Over-rigid rules could seriously hamper the ability of manufacturers to adjust their distribution networks.

With respect to the very competitive market for new vehicle sales, the Evaluation Report found that measures intended to give dealers contractual protection may have introduced disproportionate rigidities. These rigidities are likely to weaken the European motor vehicle industry's ability to adjust to changes in demand and cope with increasing structural overcapacities and strong inter-brand competition. This reasoning holds all the more true in a crisis situation such as the current one which could well last beyond 2010. Secondly, by providing for a more flexible regime for distribution and repair on the EU manufacturers' home markets, it would be likely to increase such manufacturers' ability to compete abroad. At the same time, as observed above; the introduction of more flexible rules in the field of multi-branding would not raise entry barriers for newcomers, including competitors from Asian countries; having regard inter alia; having regard to the strategic choice made by Korean manufacturers not to sell their brands in the same showroom (Kia/Hyundai). It follows that the overall impact of Option 2 on competitiveness would be positive but moderate.

202. **Option 3** and **Option 4** would be likely to also have a moderate positive impact on competitiveness, as future guidelines or a more focused Regulation would not contain any additional provision in this area.

Impact on consumers and households

203. Statistics point to a trend of decreasing real retail prices for passenger cars during the last decade (see paragraph **Error! Reference source not found.**). This trend has recently steepened due not only to a reduction in list prices but also to a special promotions intended to dispose of excess stocks. Consumers are benefitting by an overall decrease in prices, which is due to technological development, globalisation, production overcapacity and other factors which are independent of the motor vehicle block exemption. On the other hand, on the aftermarket, which represents 40% of total consumer expenditure on motor vehicles, prices for individual repair jobs have risen in real terms, partially compensated by increased reliability of modern cars and lengthening service intervals.
204. With regard to the market for the sale of new vehicles, **Option 2** would be likely to have a negligible impact on the choice of vehicles available to consumers, in particular because also under Option 2 single-branding obligations would be exempted for only a limited period of time. Therefore, under Option 2 there would be no substantial negative impact on access to the EU market by competing manufacturers. A recent study by ESMT came to the conclusion that the upper bound of cars sold due to the provisions on multi-branding in the Regulation 1400/2002 was 1% of the total volume of cars sold in the EU in 2008.⁵⁸ In addition, given the high value of a car for the average household and the effort put into the search for the best buy by consumers, the gain in terms of lesser search cost due to in-store multi-branding seems to be negligible. This is even more the case since the development of the Internet as an effective marketing tool has increased the opportunity for consumers and intermediaries to compare prices of vehicles without incurring any significant search costs. Although the improved flexibility available to suppliers and a lessening of the upward pressure on standards is likely to reduce distribution costs,

⁵⁸ "Do we need a Motor Vehicle Block Exemption?" Study by ESMT, 2009, p. 1

this impact will be small, since the Evaluation Report underlines that competition on the market for the sale of new vehicles is already fierce.

205. As far as aftermarket is concerned, a consequence of the current economic crisis is that consumers are likely to be more price-sensitive, and less likely to replace their old vehicles, which will in turn result in increased demand for repair services. Option 2 is likely to have a moderate positive impact on the choice of repairers available to the average consumer, since it will make it easier for the Commission to examine practices on the aftermarket that risk foreclosing independent repairers. This potential positive impact would be tempered, however, by the lack of clarity as regards the scope of manufacturers' obligation to grant access to technical information on pre-2009 models, which might reduce its availability and lead to a lower overall quality of repair services.
206. There is however one minor negative point associated with Option 2 as far as consumers are concerned. As Option 2 would contain no sector-specific hardcore relating to the aftermarket, the choice of spare parts available to those consumers who visit authorised repairers may be reduced, since vehicle manufacturers would be able to oblige the latter not to buy parts from OES directly. In particular, they would be able to do so when their market share on the relevant spare parts market would be below 30%. As this will be very rarely the case, Option 2 would be likely to have only a slight negative impact in this respect. Therefore, taking into account these advantages and disadvantages, Option 2 would on balance score at the neutrality point.
207. The drawbacks inherent to Option 2 would be reduced by **Option 3**, in particular because guidance would provide improved legal certainty as regards issues such as the provision of technical information. Therefore, compared to the baseline scenario, Option 3 would have a slight positive impact
208. **Option 4** would have the same small positive impact as Option 2 as regards the market for the sale of new vehicles. With regard to the aftermarket Option 4 would improve on Option 1 by applying a general threshold of 30% and would entirely remedy the shortcomings of Option 2 by maintaining the current hardcore provisions concerning the distribution of spare parts. On balance, therefore, this option would be likely to have a moderate positive impact as far as consumers are concerned.

Other economic impacts: comparing options 2-4 to the benchmark Option 1 (BAU)

209. The impact that each option has in respect of each criterion is now combined with the weightings allocated in section 5 in order to produce a scoreboard and assess how each successive option scores relative to the benchmark scenario.

Option 2

	Score	Weighting	Overall impact
Reducing compliance costs for firms	0+1	1	0+1

Particular impact on SMEs	0	1.5	0
Impact on competitiveness for carmakers	+2	1.5	+3
Impact on consumers and households	0	1.5	0

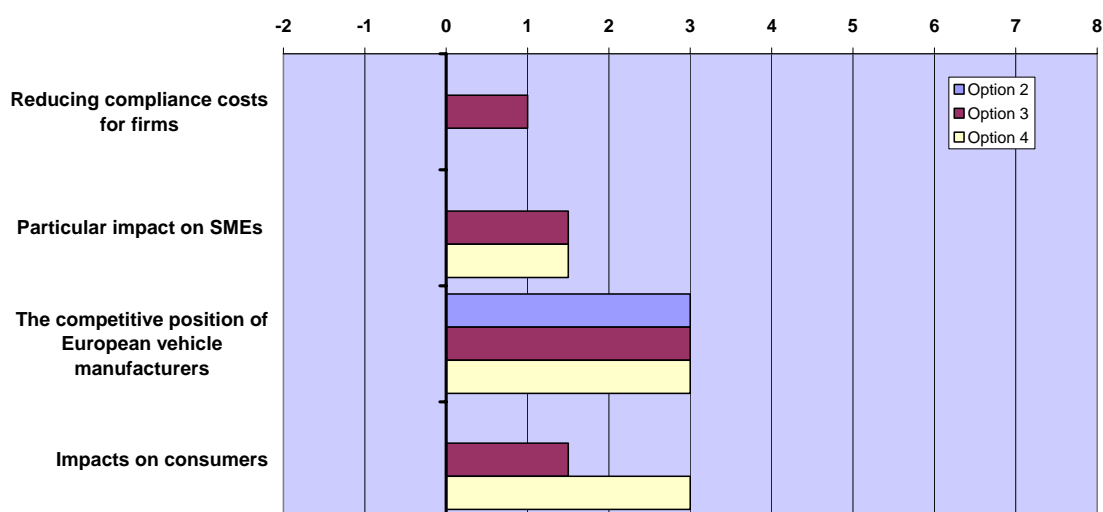
Option 3

	Score	Weighting	Overall impact
Reducing compliance costs for firms	+12	1	+12
Particular impact on SMEs	+1	1.5	+1.5
Impact on competitiveness for carmakers	+2	1.5	+3
Impact on consumers and households	+1	1.5	+1.5

Option 4

	Score	Weighting	Overall impact
Reducing compliance costs for firms	+02	1	+02
Particular impact on SMEs	+1	1.5	+1.5
Impact on competitiveness for carmakers	+2	1.5	+3
Impact on consumers and households	+2	1.5	+3

210. The chart below allows the reader to assess how options 2-4 perform both against the benchmark option, and against each other, taking into account both the scores that each receives in respect of each criterion, and any weighting variation.



211. The chart shows that although all options compare favourably with the status quo as regards other economic impacts, Option 3 and 4 are clear overall winners.

6.2. Impact on public administration

Enabling competition authorities to make better use of enforcement resources

212. As pointed out in the Commission Evaluation Report of May 2008, the current situation risks distorting the way in which the Commission dedicates its enforcement resources, since it has been obliged to invest considerable resources to deal with the complaints and requests from market players related to commercial issues, rather than genuine competition problems. The Commission received since 2002 a large number of complaints, which mostly have had little to do with competition issues, and which therefore gave no grounds for further proceedings. The vast majority of these 322 informal written and innumerable oral complaints that the Commission received revealed a degree of confusion about the detailed provisions of the sector-specific Regulation. None of the 46 formal complaints the Commission received resulted in any prohibition decision and only three informal settlements⁵⁹ were reached. In contrast, the main enforcement action taken by the Commission in this sector stemmed from *ex officio* investigations⁶⁰. It is likely that if there were no longer such widespread misconceptions about the implications of the Regulation, the Commission would be able to focus its efforts better to combat harmful anti-competitive practices.
213. Moreover, the current regime appears to raise the risk that competition law will be interpreted in an incoherent manner across Europe, and there is in particular a risk that national courts may inconsistently interpret the terms and implications of the Regulation. This risk of divergent interpretation has required the Commission to devote resources for acting as *amicus curiae* in national proceedings pursuant to Article 15(3) of Council Regulation 1/2003⁶¹.
214. Lastly, the Commission was involved in a large number of requests for preliminary rulings made to the European Court of Justice (ECJ) concerning the automotive distribution sector which is another indicator of the difficulties in applying the Regulation coherently in the Member States. Four out of thirteen preliminary rulings the ECJ issued from 2003 to 2007 in the antitrust field related to the interpretation of particular clauses of the Regulation regarding contract termination. This represents 80% of all such rulings relating to vertical distribution agreements over the period.⁶²
215. Option 2 would be likely to have a moderate positive impact on the use of enforcement resources. As noted above, the baseline option has provoked a

⁵⁹ See IP/06/302 – 303 of March 2006 in *GM* and *BMW* cases, as well as IP/03/80 of 20 January 2003 in the *Audi* case.

⁶⁰ The four commitment decisions adopted by the Commission the 13 September 2007 in the cases *Toyota*, *Fiat*, *DaimlerChrysler* and *Opel* and the prohibition decision in the *Carglass* case of 12 November 2008.

⁶¹ *Garage Gremeau c/ Sté Daimler* Court of Appeal of Paris, June 7, 2007.

⁶² Three of the four concerned the issue of contract termination with one year's notice where a network was allegedly being reorganised, while the remaining case sought clarification of the meaning of Article 3(6) of the Regulation on the role of arbitration when a contract was terminated - Case C-125/05 *Vulcan Silkeborg v Skandinavisk Motor*, 07.09. 2006; joined cases C-376/05 and C-377/05 *Brünsteiner, Hilgert v BMW*, of 30 November 2006; Case C-273/06 *Auto Peter Petschenig v Toyota Frey*, 26.01.2007; Case C-421/05 *City Motors Groep v Citroen Belux*, 18.01.2007.

considerable waste of resources that is not matched in other sectors. If these resources were re-dedicated to the prosecution of serious breaches of the competition rules in this sector or in others, considerable consumer benefit might be expected to accrue. This is best illustrated by the Commission Decision concerning a cartel in the car glass sector where fines of almost € 1.4 billion were imposed on four makers of car glass.⁶³

216. Option 3 would be likely to have an even better (i.e. high positive) impact in this regard than option 2, since it would be likely to avoid needless confusion as to how certain issues specific to the motor vehicle sector would be dealt with under the general rules.
217. Option 4 would be likely to compare positively to the baseline option as it would enable the Commission to focus its enforcement activities on the more problematic issues arising in the aftermarket. However, certain actions, for instance those involving a claim that technical information could be withheld on safety and security grounds, would be as complex as they are under Regulation 1400/2002. This Option would therefore have a moderate positive impact.

Impact on the Community budget

218. Options 2-4 would all be likely to have no impact on the Community budget. Although they would be likely to free-up enforcement resources for the most serious breaches of competition law, which are normally sanctioned with heavy fines. However, these fines would be used to reduce Member States' contributions rather than going into the Community budget.

Impact on public administration: comparing options 2-4 to the benchmark Option 1 (BAU)

Option 2

	Score	Weighting	Overall impact
Efficient use of resources	+2	1.5	+3
Impact on the Community budget	+01	0.5	+00.5

Option 3

	Score	Weighting	Overall impact
Efficient use of resources	+3	1.5	+4.5
Impact on the Community budget	+01	0.5	+00.5

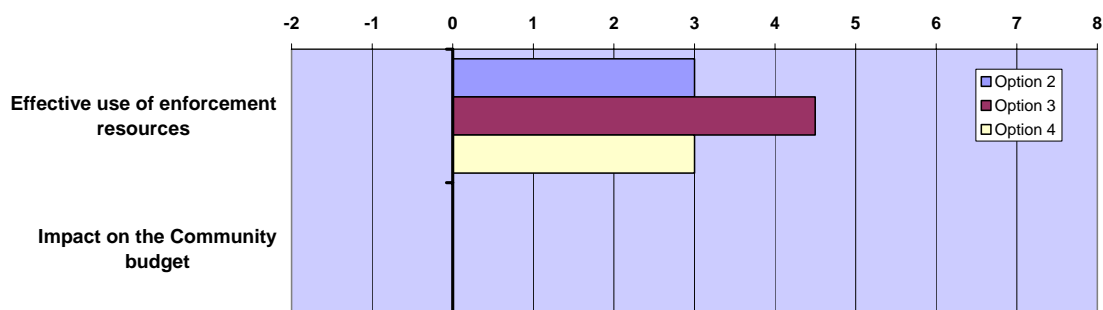
⁶³ Commission Decision of 12 November 2008

Option 4

	Score	Weighting	Overall impact
Efficient use of resources	+2	1.5	+3
Impact on the Community budget	+01	0.5	+00.5

Impact on public administration: how options 2-4 compare to each other

219. The chart below allows the reader to assess how options 2-4 perform both against the benchmark option, and against each other, taking into account both the scores that each receives in respect of each criterion, and any weighting variation.



220. The chart shows that although all options compare favourably with the status quo as regards other economic impacts, Option 3 is a clear overall winner.

6.3. Social and environmental impacts

Employment and job quality

221. Motor vehicle dealers and repairers employ a total of 2.8 million people across the EU⁶⁴ - more than the 2.2 million employed in the manufacture of motor vehicles and components⁶⁵.

222. All options would continue to exempt quantitative selective distribution, and car manufacturers would therefore be free to determine the number of dealerships in a given territory under each option. This would indirectly affect the number of jobs, since there seems to be a vague link between the number of dealers and the number of jobs in the dealer sector, as for instance in the German market where both the number of dealerships and the number of employees went down between 1997 and 2007. On the other hand, by lowering the threshold for the exemption of quantitative selection, Option 2 to 4 may make it easier for prospective new distributors to be

⁶⁴ CECRA press release, 31 July 2008.

⁶⁵ Source, ACEA website.

admitted to the networks in those Member States where car manufacturers enjoy high market shares. This new approach could, in theory, lead to an increase in the numbers of dealers in these Member States, and a corresponding increase in employment.

223. As regards the repair sector, Options 2 to 4 would lead to an appreciable improvement in the level of enforcement regarding practises which could foreclose independent repairers and cause therefore job losses in the independent aftermarket. Hence, in theory, it could be expected that such options could contribute to preserve employment levels in this sector slightly better than the baseline option. However, given the very tenuous link between the envisaged changes in the relevant competition law framework, on the one hand, and possible variations in the number of employees in the motor vehicle sales and after-sales service sectors, on the other hand, it seems reasonable to consider that none of the options would have any measurable impact on employment.
224. None of the options will have any measurable impact on job quality, in particular because access to training will be the same for all options.

Therefore, Options 2 to 4 will score at the neutrality point as regards impact on employment and job quality.

Public safety

225. A lack of clarity in the rules governing the grant of technical information under Option 2 could also conceivably have a slight negative impact on public safety, in that vehicles might be driven in an unsafe manner if they have been repaired incorrectly due to a lack of technical information. However, this is likely to be counterbalanced by the fact that enforcement will be made easier, because carmakers' agreements with their authorised repairers will no longer be covered by the block exemption. On balance, therefore, Option 2 will have no significant impact on public safety.
226. The lack of clarity mentioned in the previous paragraph would be removed under Option 3, leaving a slight positive impact on safety.
227. Option 4 would also remove the lack of clarity, by carrying over Article 4(2) of Regulation 1400/2002 into a mini-Regulation. Given that by applying a general threshold of 30% and market shares of vehicle manufacturers' usually in excess of 30% enforcement would be the same as in Option 3. There would be, therefore, a slight positive overall impact compared to the baseline option.

The environment and public health

228. A lack of clarity in the rules governing the grant of technical information under Option 2 could also conceivably have a slight negative impact on the emission of greenhouse gases and other pollutants, in that a lack of technical information might lead vehicles to be less than optimally tuned. On the other hand, Option 2 would reduce the risk of misuse of the exception for safety and security-related technical information set out in recital 26 of the current regulation, which has in the past

caused problems, because carmakers have used this exception to withhold information on basic maintenance functions. In addition, enforcement will be made easier, because carmakers' agreements with their authorised repairers will no longer be covered by the block exemption. On balance, therefore, Option 2 will be likely to have no significant impact on the environment and public health.

229. Any potential lack of clarity as to technical information provision would be removed under Option 3, improving the positive impact to a slight level.
230. Like option 3, Option 4 would give clarity as to technical information provision. Although the problems that the Commission has encountered with recital 26 would remain, there would be, on balance, a slight positive overall impact as compared to the baseline option.

Social and environmental impacts: comparing options 2-4 to the benchmark Option 1 (BAU)

Option 2

	Score	Weighting	Overall impact
Employment and job quality	0	1	0
Public safety	0	1	0
The environment and public health	0	1	0

Option 3

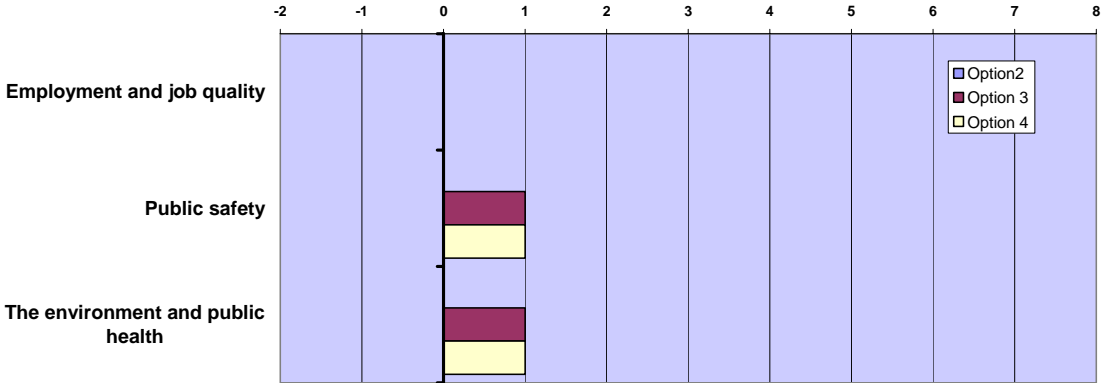
	Score	Weighting	Overall impact
Employment and job quality	0	1	0
Public safety	+1	1	+1
The environment and public health	+1	1	+1

Option 4

	Score	Weighting	Overall impact
Employment and job quality	0	1	0
Public safety	+1	1	+1
The environment and public health	+1	1	+1

Social and environmental impacts: how options 2-4 compare to each other

231. The chart below allows the reader to assess how options 2-4 perform both against the benchmark option, and against each other, taking into account both the scores that each receives in respect of each criterion, and any weighting variation.



232. The chart shows that Options 3 and Options 4 compare favourably with the status quo as regards social and environmental impacts, while Option 2 would have no effect.

7. COMPARISON OF THE OPTIONS

233. Based on the impacts analysed above, the following conclusions can be drawn on the strengths and weaknesses of the individual Policy Options as to their ability to achieve effectively and efficiently the policy objectives set out above in Section 3, their ability to take account of and properly respond to the other economic, social and environmental consequences singled out in section 5.

Policy Option 1

234. Policy Option 1 implies the adoption of a new block exemption along identical lines to Regulation 1400/2002. According to the Commission’s Evaluation Report, although the Regulation has had some positive impacts compared to its predecessor, most of these improvements can be put down to the alignment of the sector-specific regime to the principles of the Commission’s general policy for vertical restraints. In contrast, many of the detailed sector-specific elements of the current regulation have been ineffective, or in some cases, have had undesirable effects.

Policy Option 2

235. Policy Option 2 provides for vertical agreements in the motor vehicle sector to be subject to the same general principles as vertical agreements in other sectors: in other words, to be subject to the block exemption regime that emerges from the ongoing review of Regulation 2790/1999, without any sector-specific provisions.

236. The general regime contains a range of provisions that address the most common restraints to be found in vertical agreements, including absolute territorial protection and resale price maintenance. The exemption is available subject to agreements not exceeding a single market share threshold of 30%.

237. In essence, the analysis set out in section 6 above tends to show that although Option 2 would in many respects be an improvement on the benchmark, and therefore scores higher in the Impact Assessment, it also has a number of disadvantages compared to options 3 or 4.
238. The main advantages of Option 2 lie in its simplicity and clarity, which brings advantages in terms of legal certainty for contracting parties, and a reduction in misdirected enforcement resources. Moreover, the market share threshold of 30% would make the vast majority of authorised repair agreements subject to the more rigorous test concerning the applicability of Article 81(1) pursuant to the established case law in the field of selective distribution., This would make it easier to act against anti-competitive practices on the aftermarket, to the benefit of independent operators and consumers.
239. The analysis in Section 6 above nonetheless shows that Option 2 would also have a few disadvantages, in that it contains no specific reference to certain issues that have been problematic on the motor vehicle aftermarkets, in particular access by independent operators to the technical information held by vehicle manufacturers and the members of their authorised networks.

Policy Option 3

240. Policy option 3 is aimed at addressing the few weaknesses of Option 2 by providing for sector-specific clarifications in the Commission's Guidelines to be given, in particular as regards the aftermarket.
241. Section 6 above finds that Option 3 scores higher than all other options, in the main because it has the same advantages as Option 2, but would also provide operators with additional clarity as regards issues particular to the motor vehicle sector. In addition, it would allow the Commission to properly direct its enforcement resources to competition restrictions that have the most deleterious impact on consumers.

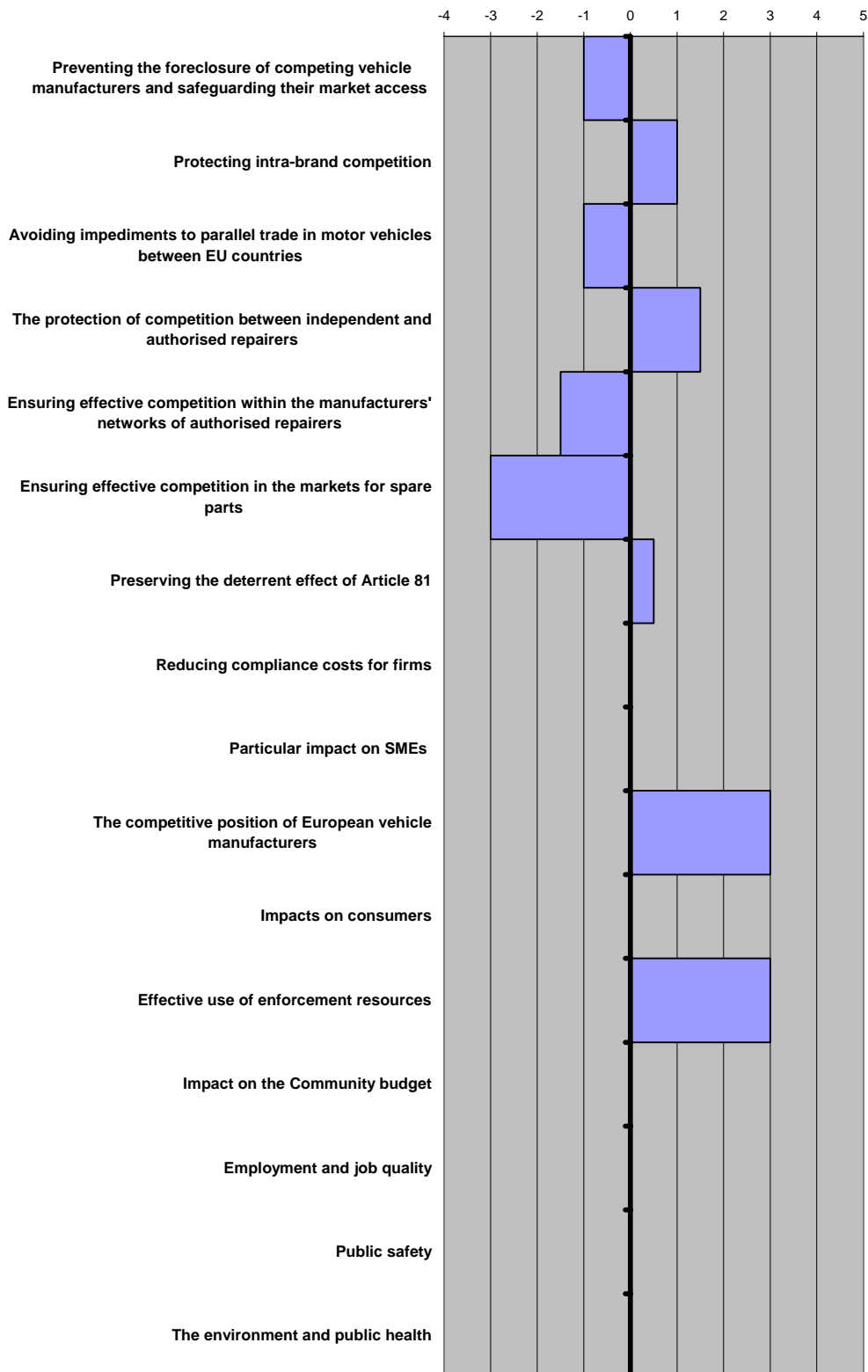
Policy Option 4

242. Policy option 4 is also aimed at addressing the few weaknesses of Option 2, but through a more focussed sector-specific block exemption, rather than through additional guidance.
243. Option 4 scores higher than all options apart from Option 3. Its main strong points are its clarity, and the use lower market share thresholds, while its main weaknesses lie in the fact that it carries over recital 26 of the current regulation, which has allowed carmakers to withhold certain technical information, and that it leaves certain practices, such as abusive warranty conditions, entirely to self-assessment by contracting parties.

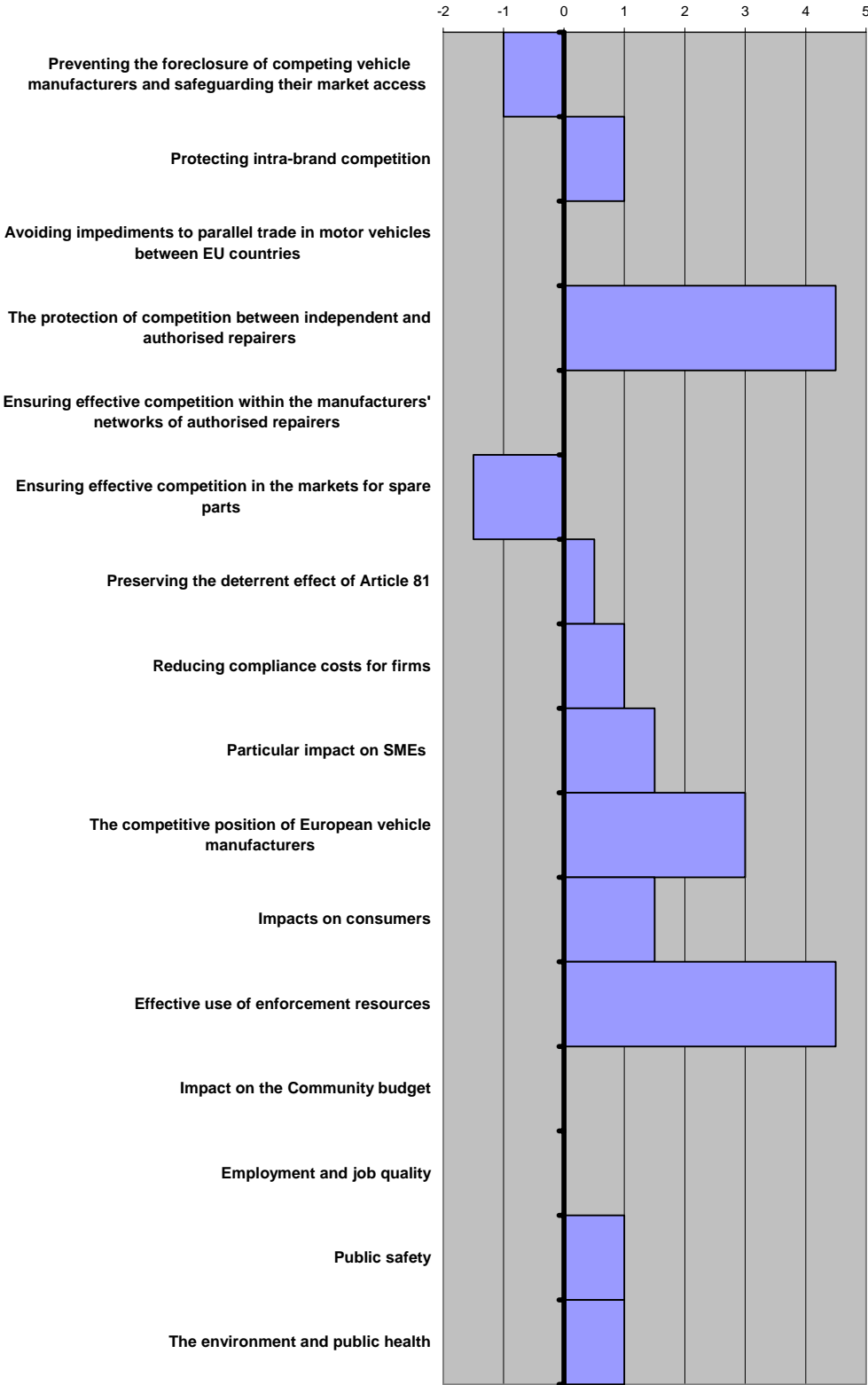
Summary of impacts of each option

244. The following charts show, option by option, the predicted impacts of each of the chosen criteria by reference to the benchmark Option 1.

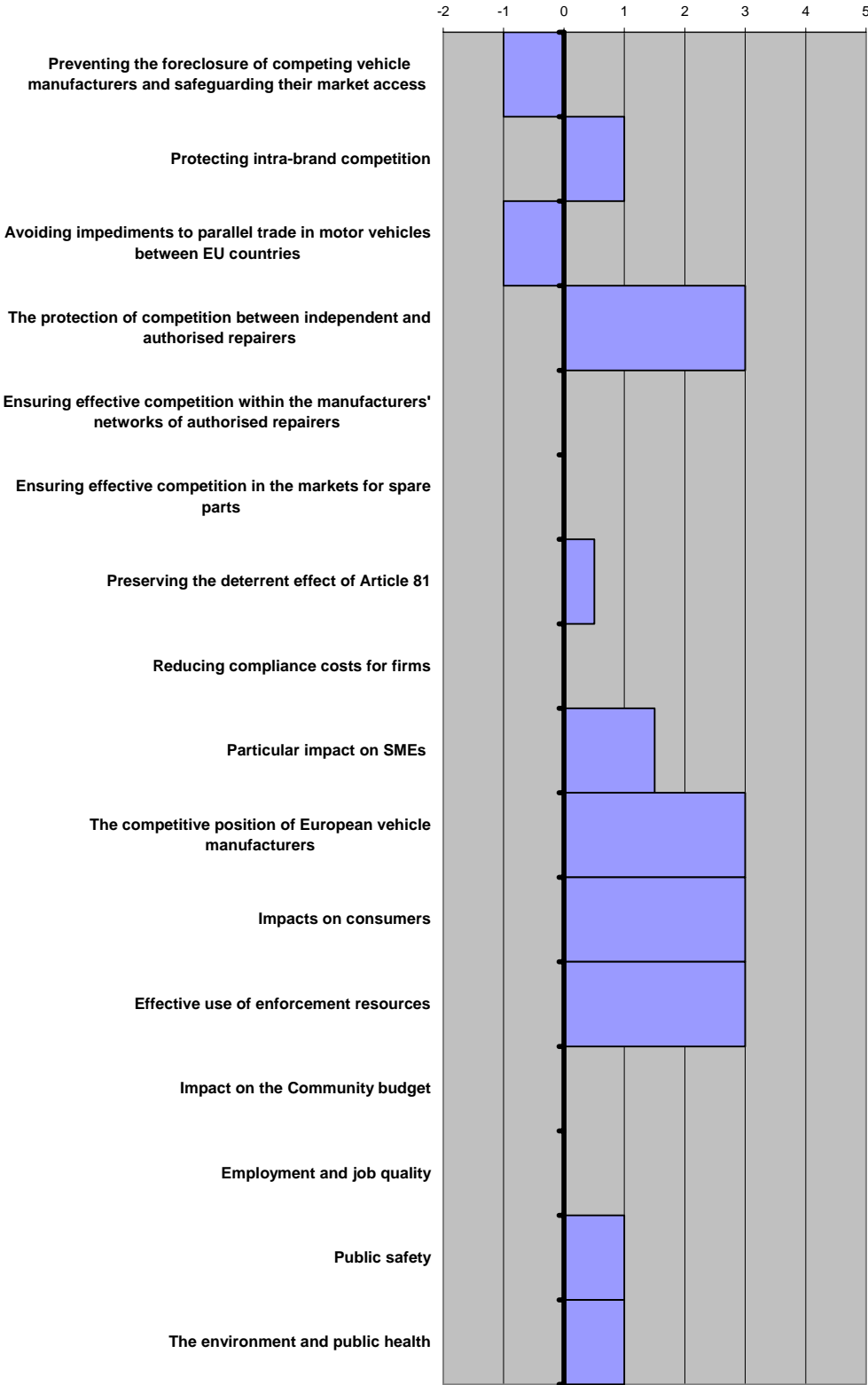
Summary of impacts of Option 2



Summary of impacts of Option 3



Summary of impacts of Option 4



The preferred option

245. This comparison of the various Policy Options and the characteristics of the underlying specific measures shows that Option 2 scored slightly better than the baseline scenario of renewing the current Regulation 1400/2002 by 10 years. Policy Option 3 has the greatest potential for achieving the objectives identified, and appears to be the Policy Option best able to meet the general objective of balancing the effective supervision of markets against the need to simplify administration and minimise compliance costs. It also best meets the sector-specific objectives set out in the Assessment, and has the most favourable impact as regards the ensemble of the other impact criteria. However, Option 4 comes quite close to Option 3 in terms of overall scoring; and it is therefore not possible to state definitively that Option 3 would have a better impact than Option 4. Nonetheless, either option would have, on balance, positive implications for competition and ultimately for consumers.

8. MONITORING AND EVALUATION

246. The research and consultation exercise that led to adoption of the Communication was very extensive. An external study, an Evaluation Report, public consultations and a series of other consultations with stakeholders at Member State and Community levels, including public authorities and prominent practitioners from the private sector, have contributed greatly to the analysis and evaluation of the relevant issues to date.
247. Following publication of the Communication, the Commission will continue the consultation process with private and institutional stakeholders and with expert practitioners. On this basis the Commission will then draft the Guidelines.
248. The Commission will also actively engage in the continued institutional dialogue with the European Parliament and the European Economic and Social Committee, both of which commented on the Commission's Evaluation Report and made recommendations for further action.
249. The Commission will continue to monitor the operation of this Regulation based on market information from stakeholders. At this stage, a considerable number of conferences, seminars and other discussions are already scheduled for the period after publication of the Communication. These will provide the Commission with opportunities to receive feedback from, and exchange views with, representatives from industry, consumer associations, law firms and economic consultants, but also representatives of Member States' governments, competition authorities and judiciary. When selecting the events in which they participate, the Commission departments will pay particular attention to achieving the widest possible spread in terms of groups of stakeholders and experts and of geographical coverage.

TECHNICAL ANNEXES

TECHNICAL ANNEX 1: MAIN POLICY OBJECTIVES OF THE CURRENT BLOCK EXEMPTION FOR MOTOR VEHICLES DISTRIBUTION AND SERVICING

TECHNICAL ANNEX 2: THE ECONOMICS OF VERTICAL RESTRAINTS

TECHNICAL ANNEX 3: EVOLUTION OF THE MOTOR VEHICLE MARKETS SINCE REGULATION 1400/2002 ENTERED INTO FORCE

TECHNICAL ANNEX 4: COMPARING AND CONTRASTING THE FOUR POLICY OPTIONS

TECHNICAL ANNEX 5: IDENTIFICATION AND WEIGHTING OF THE RELEVANT ASSESSMENT CRITERIA

TECHNICAL ANNEX 1

REGULATION 1400/2002: MAIN POLICY OBJECTIVES OF THE CURRENT BLOCK EXEMPTION FOR MOTOR VEHICLES DISTRIBUTION AND SERVICING

1. 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.¹
2. 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 diverges in three ways from the provisions of Regulation 2790/1999. Firstly, Regulation 1400/2002 does not exempt non-compete obligations, in contrast to Regulation 2790/1999, which exempts them for a period of five years, providing that the market share of the supplier in question is below 30%. Secondly, the way that Regulation 1400/2002 (Article 5(1) and Article 1(1)(b)) defines non-compete obligations has the effect of obliging the parties to an agreement to carry out an individual assessment on the basis of Article 81 of the Treaty if a contractual obligation prevents the dealer from taking on the brands of one or two additional suppliers. In contrast, the narrower definition of a non-compete obligation in Regulation 2790/1999 would allow manufacturers to prevent dealers from taking on more than one additional supplier's brands. Thirdly, Regulation 1400/2002 makes particular provision for dealers who wish to sell the brands of competing suppliers within the same showroom.
3. 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

¹ 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

dealers' and repairers' freedom to, respectively, operate with competing brands and to open secondary outlets at other locations.

4. 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*. Regulation 2790/1999 had already extended the scope of what was to be considered to be absolute territorial protection in other sectors by no longer exempting the combination of selective and exclusive distribution, allowing dealers to market their vehicles actively into territories allocated to other distributors. Article 5(2)(b) of Regulation 1400/2002 takes the notion of "active sales" a step further by including the opening of additional outlets. Finally, Article 4(1)(f) of Regulation 1400/2002 incorporates the *Ford- Werke* case law by excluding from the exemption any agreement that does not allow dealers to obtain vehicles with specifications current in other Member States.
5. 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)).
6. 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 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.
7. 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)), and to place their trademarks on the components supplied to vehicle manufacturers for assembling vehicles (Article 4(1)(l)). Moreover, authorised repairers were not to be prevented from using alternative brands of spare parts (Article 4(1)(k)).
8. 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.

TECHNICAL ANNEX 2

THE ECONOMICS OF VERTICAL RESTRAINTS

1. Vertical agreements are agreements for the sale and purchase of goods or services which are entered into between companies operating at different levels of the production or distribution chain. Typical examples are distribution agreements between manufacturers and distributors, - such as between car manufacturers and authorised car dealers - or supply agreements between a manufacturer of a component and a producer of a product using that component.
2. Vertical agreements are often designed to protect relationship specific investment made in connection with the agreement; they typically aim to avoid free-rider effects. As a consequence they can be an effective against underinvestment and therefore beneficial for competition. On the downside, vertical agreements can reduce competition either by restricting competition between distributors or by foreclosing access to the market by competing suppliers, although they are in general regarded as less harmful than horizontal agreements involving price fixing or market sharing between direct competitors.
3. In order to determine the final impact of vertical agreements on competition, it is crucial to evaluate their nature and the market structure the contract parties are operating in. In general, vertical restraints may create competition problems only if there is insufficient inter-brand competition on the relevant market, i.e. in case the supplier enjoys a significant degree of market power. The more intense inter-brand competition is, the less likely vertical agreements create a negative impact on competition. Moreover, should a vertical agreement be liable to appreciably restrict competition, such negative effects have to be balanced against their potential positive effects. Both effects are discussed in the following.

Positive effects

4. Vertical agreements can generate a number of positive, welfare – enhancing effects, as contracts between producers and distributors that specify only the price and quantity of a good may lead to less investments and sales than optimal. Certain restrictive vertical agreements that appear to reduce competition at first sight may have a beneficial effect in encouraging investment in the market and thus enhancing competition. Other vertical agreements enhance competition directly. Amongst the possible efficiency-enhancing effects, the following main arguments are often mentioned in economic literature..
5. Firstly, vertical agreements may often help to solve 'free-rider' problems. A distributor may free-ride on the promotion efforts or technical advice given on a product by another distributor. In particular for technically more complex products, this may blunt the incentive for distributors to invest in technical information, if the client is susceptible to collect information with one distributor but finally buys the product elsewhere. Restraints such as quantitative selective distribution, with limits the

number of distributors in an area may alleviate this problem and encourage investment.

6. Secondly, the limited number of distributors imposed by a restrictive distribution agreement may help to allow the manufacturer to exploit scale economies and thereby achieve a lower retail price for his product. Similarly, when a manufacturer wants to enter a new geographic market, for instance by exporting to another country for the first time, this may involve special "first time investments" by the distributor to establish the brand in the market. In order to persuade a local distributor to make these investments it may be necessary to provide protection to the distributor in limiting the number of distributors geographically, so that the distributor can recoup these investments by temporarily charging a higher price. Although the agreement may impose an immediate restriction on intra-brand competition, in the end, the agreement has furthered the market entry of a new competitor, thus benefiting competition.
7. Thirdly, free-riding can also occur between manufacturers, for instance where one manufacturer invests in promotion at the buyer's premises at the retail level that may also attract customers for its competitors. Another example is the client-specific investment, such as special equipment and training. (Temporary) non-compete type restraints in vertical agreements can help to overcome or limit this situation of free-riding.
8. Finally, in some circumstances a vertical agreement may directly enhance the competitive pressure on the market. A manufacturer which realized efficiency gains may want to ensure that his sales volume is increased by lower prices. In order to pass efficiency gains and price decrease through the end customers, he may conclude a vertical agreement which imposes maximum prices on the retail level.

Negative effects

9. On the downside, vertical agreements may not only reduce intra-brand competition but also competition between brands. In particular non-compete obligations, which imply that other suppliers cannot sell to particular distributors are likely to have more negative effects on competition than distribution agreements which are not combined with non-compete obligations. Non-compete obligations reduce inter-brand competition twofold: Apart from the foreclosure effect on other suppliers, there is no in-store competition within the shops of the distributor.
10. In the absence of sufficient inter-brand competition, restrictions on intra-brand competition may significantly restrict the choice available to consumers as well. Distribution systems that limit the number of distributors may reduce the available number of dealers for a specific customer and weaken intra-brand competition. In the case of customer allocation the result may eliminate intra-brand competition altogether. Other restrictions on competition within a brand are agreements on the retail price between the manufacturer and distributors, which can eliminate price competition within the brand completely.
11. Negative anti-competitive effects of vertical restraints can be reinforced when several suppliers organise their distribution on the same market in a similar way (parallel networks of similar agreements). In particular, single branding (non-compete obligations) or selective distribution can create a cumulative foreclosure effect.

Trade off between positive and negative effects

12. As noted above, in general for vertical restraints competition concerns can only arise if there is insufficient inter-brand competition, i.e. if there is a certain degree of market power at the level of the supplier or the buyer or both. Once there is a high degree of inter-brand competition, the positive effects of vertical restraints are more likely to outweigh the negative effects. The following example may illustrate the interaction between inter-brand and intra-brand competition.
13. The quantitative selective distribution system is a form of limited distribution that is widespread in the European car industry. Under this system the car manufacturer concludes distribution contracts with limited number of dealers that agree not to re-sell the car to non-authorized re-sellers but only to end customers or other authorized dealers. In return the car manufacturer agrees to distribute cars only via authorized outlets. The number of available dealers is not only limited but possibly geographically dispersed, so the competition between dealers of the same brand is limited to a certain degree. This approach allows for some positive economic effects mentioned above; such as limiting the free-rider effect of a dealer taking advantage of promotional efforts of another dealer, such as technical advice in sales contacts. Another example is the prohibition of selling the car to an independent reseller that helps the manufacturer to build a brand image by upholding qualitative standards in sales.
14. If these restrictions were not allowed, clients may collect free information from one dealer and buy the car easily from another (unauthorized) distributor. Dealers may therefore not have a sufficient incentive in informing clients on product, fearing a free-rider effect and manufacturer would be discouraged to build up a brand image; underinvestment would be the consequence. The vertical restriction in the form of a selective distribution system helps to avoid this underinvestment.
15. However, a dealer may be tempted to charge uncompetitive prices or offer uncompetitive services, wishing to take advantage of the fact that the distribution system reduces the competition within the brand by limiting the number of dealers and forbidding sales to independent resellers. In case there is weak competition between brands, he may succeed to do so, as the distribution agreement has eliminated or reduced the competition from other dealers of the same brand. In this case the vertical agreement would eliminate most competition; its negative effects would outweigh the positive ones. However, in case the competition between brands is strong, a dealer tempting to charge non-competitive prices would fail, as consumers would turn to a competing brand. The agreement's overall effect would be positive, as the agreement would assure the optimal level of investment and competition on quality by eliminating free-rider effects without harming price competition in the end.

Creating a safe heaven

16. Whether a vertical agreement actually restricts competition and whether in that case the benefits outweigh the anti-competitive effects will depend on the market structure and should therefore require an assessment.
17. The European law allows to balance the positive impact and the downside of vertical agreements. Whereas 81(1) of the EC Treaty prohibits agreements which appreciably restrict or distort competition, the Treaty allows in Article 81(3) to take the positive effects of vertical agreements into account and renders this prohibition inapplicable for those agreements which create sufficient benefits to outweigh the anti-competitive effects. In particular, once the positive effects of the agreement prevail, the agreement can be exempted under Article 81(3), if it "contribute[s] to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit (...)".
18. Whether a vertical agreement actually restricts competition to the degree that anti-competitive effects outweigh the benefits will often depend on the market structure. In principle, this should require an individual assessment. However the individual assessment of a vertical agreement implies inevitably a certain degree of legal uncertainty for the contracting parties. Contract partners may not be sure whether their agreement violates Article 81 (3). Moreover, the individual assessment creates an administrative burden for competition authorities and the legal branch. Therefore the EC treaty allows in Article 81 (3) for exempting not just single agreements, but categories of agreements. Once an agreement is covered by such a category, it is under a safe heaven. Contract partners may take advantage to draft an agreement in a way that that it is exempted, so that they can be sure that their agreement complies with Article 81.
19. The Commission has defined these exempted categories of vertical agreements in 'Block Exemption Regulations' (BER). A BER defines the conditions under which it can be safely assumed that positive effects of vertical agreements outweigh the negative effects. The BER No 2790/1999 entered into force on 1 June 2000 and provides a safe harbour for most vertical agreements. Agreements that concern the motor vehicle sector are dealt with the BER 1400/2002, the regulation which is discussed in the following chapters.
20. It should be noted that vertical agreements that are not covered by a BER, are not necessarily violating Article 81, unless they involve an infringement qualified as "hardcore" restriction. They are simply subject to an individual assessment where both the potential anti-competitive and efficiency-enhancing effects are to be balanced on the basis of a case by case analysis. For example, a manufacturer's market share may be higher than the threshold defined in the BER that allows the manufacturer's agreements to be covered by the BER. In this case the vertical agreement can technically not be covered by the BER and is subject to an individual assessment which should take into account the restrictions upon to in the agreement in conjunction with a competitive analysis of the market, which includes, among other things the degree of inter – brand competition. However, a contract may also be covered by the BER because parties may for some reason want to conclude a vertical agreement that contains clauses which are not exempt by the BER. In this case, the agreement has to be assessed individually as well.

TECHNICAL ANNEX 3

EVOLUTION OF THE MOTOR VEHICLE MARKETS SINCE REGULATION 1400/2002 ENTERED INTO FORCE

1. This Annex is a reproduction of Working Document 2, originally annexed to the Commission's Evaluation Report.
2. As such, it is based on data obtained from three main sources. First, the Commission launched an inquiry in May 2007, sending 185 questionnaires to six groups of stakeholders in the motor vehicle industry. These groups were individual car and truck manufacturers as well as their European and Japanese associations ACEA and JAMA, individual parts and components manufacturers in addition to their European association CLEPA, the national associations of authorised dealers and repairers as well as associations of independent repairers and parts dealers including their European associations such as CECRA and FIGIEFA, independent vehicle traders associations, consumer organizations and the national competition authorities. Each group received a different questionnaire, adapted to its own specificities.
3. Up to the last quarter of 2007, the Commission received 111 answers to its questionnaires, which amounts to a response rate of 60%. The response rate, however, varies considerably depending on the type of addressee. While all car and truck manufacturers answered, only 17 out of 28 spare parts manufacturers and 20 out of 26 national dealer associations replied. The lowest response rate is to be found among national consumer organisations, where only 2 out of 24 replied. The response rate of the independent repair and parts distributor sector was also rather low (40%).
4. Secondly, there are reports and studies which the Commission tendered out to external consultants since the current block exemption was adopted. Examples are the study by IKA (Institut für Kraftfahrwesen) of 2004 on "Access to technical information in the car sector"¹ and the study by London Economics on "Developments in car retailing and after-sales markets under Regulation 1400/2002"², published in 2006.
5. Thirdly, the Commission has made use of external sources. These sources comprise data collected by industry analysts, industry associations and consultancies. Examples are the "European Car Distribution Handbook" by HWB, the annual dataset of the US-national automotive dealers association NADA, as well as data from organisations such as ICDP. In addition, the following analysis will also take account of the information acquired by the Commission through its general market monitoring activities, including its regular informal contacts with market players.
6. The data collected is used in this document to assess the evolution of the competitive landscape of the EU markets for motor vehicles in its two major facets, i.e., distribution and repair & maintenance of new vehicles. Particular attention is paid to those figures and indicators which are relevant for evaluating the degree of

¹ IKA http://ec.europa.eu/comm/competition/sectors/motor_vehicles/documents/ika.html.

² London Economics: Developments in car retailing and after-sales markets under Regulation No. 1400/2002. http://ec.europa.eu/comm/competition/sectors/motor_vehicles/documents/retailing.html.

competition in those markets, and its development over time, especially since the entry into force of Regulation 1400/2002. After a brief overview of the general economic characteristics of the sector (sub-section 2.1), the following analysis will examine firstly the development of the competitive environment of the EU market for the distribution of new motor vehicles (sub-section 2.2) and, secondly, of the automotive aftermarket (sub section 2.3).

A) Sector characteristics

- *Motor Vehicle Production*

7. The automotive industry is one the most important in the EU. In 2004, it³ achieved an estimated turnover of €704 billion in the EU, and represented a value added of €134 billion⁴. In 2002, it was estimated that it represented about 3% of the EU's GDP, and accounted for 7% of the EU's manufacturing output⁵.
8. Around 2.3 million people are employed in motor vehicle manufacturing within the EU⁶. Between 2001 and 2006, total direct employment in the EU's motor vehicle manufacturing sector increased by 80,000. This increase can mainly be attributed to job creation in the new Member States, reflecting a general shift in production towards low-cost countries.⁷ It should also be noted that employment is to an increasing degree generated by manufacturers of non-European origin with production facilities in the EU.
9. The EU is the world leader in terms of automobile production. Of the 69 million motor vehicles produced worldwide in 2006, about 27% were manufactured in the EU. One third of all passenger cars produced in the World in 2006 were made in Europe⁸. The 19.7 million motor vehicles (17.1 million passenger cars) produced in Europe in 2007 represented an increase of 5.3% on 2006⁹.
10. The EU is a major trading partner for motor vehicles. In 2005 the EU imported vehicles worth 29.5 billion € However, exports to destinations outside the EU accounted for €71.1 billion, exceeding imports by 41.6 billion Euros¹⁰. In 2005 most of the EU's motor vehicle exports (€30 billion), went to the NAFTA area (U.S., Mexico and Canada), followed by exports to non-EU countries in Eastern Europe (€10 billion) and EFTA countries (€7 billion). Vehicles to the tune of €5 billion respectively were exported to Japan and other Asian countries. Imports into the EU come mainly from Asia. Major sources of imports are Japan (€11 billion), South Korea (€6 billion), Turkey (€5 billion) and NAFTA (€4 billion).

³ Including trailers and semi-trailers.

⁴ Eurostat: European business, facts and figures 2007, p.203.

⁵ European Commission: Cars 21: A Competitive Automotive Regulatory System for the 21st Century, p.9.

⁶ ACEA European Automobile Industry Report 07/08, p. 57.

⁷ European Economic and Social Committee: The automotive sector in Europe: current situation and perspectives, p.7.

⁸ ACEA European Automobile Industry Report 07/08, Key figures, p.1,3.

⁹ ACEA EU Economic Report February 2008, table 1 and 2.

¹⁰ ACEA European Automobile Industry Report 07/08, Key figures, page 6.

11. The main car producers present in the European market are Volkswagen, PSA, Ford, Renault, GM, Fiat, Daimler and BMW. Germany, France, the UK, Italy, Spain and Sweden together account for 93% of motor vehicle production in the EU-1511 in terms of value added. Almost half of this gross value added can be attributed to Germany. This is partly explained by the concentration of premium car brands in Germany and by the concentration of automotive suppliers in that country¹².
12. The six main producers on the European commercial vehicle market are DaimlerChrysler, MAN, Volvo, DAF, Scania, and Iveco (a subsidiary of Fiat). Out of 19.3 million commercial vehicles produced worldwide in 2006, about 2.4 million (12%) were produced in the EU. Light commercial vehicles (up to 3.5t) accounted for 1.8 million units, heavy commercial vehicles for 0.6 million and buses for 41,000 units¹³.
13. In recent years, the industry has been plagued by worldwide overcapacity and a number of manufacturers have been forced to close plants in Europe. However, certain manufacturers have also opened new manufacturing sites in the EU, taking advantage of the favourable cost situation in the new Member States and Eastern Germany and the geographic proximity to Western European markets. Although still comparatively limited, automotive production in the new Member States increased by 25% in 2007 compared to the previous year and represented 15.2% of EU production (12.8% in 2006)¹⁴. The growing share of vehicles produced in the new Member States has led to the development of industrial clusters, in particular in Southern Poland, the Eastern Czech Republic, Western Slovakia and the North of Hungary. Component suppliers tend to follow vehicle manufacturers into a region. Investment in these locations reduces the overall costs in the European production chain, thus increasing the global competitiveness of the EU industry, as the bulk of direct investment originates from manufacturers of European origin. However, overseas investors have also been attracted recently, such as Hyundai, which has set up a plant in Slovakia¹⁵.
14. The motor vehicle production process has also undergone considerable change. Three major trends can be observed. First, manufacturers increasingly develop "platform strategies", which means that production is organised in a way that allows several models to be produced on the same production line.
15. Secondly, vehicle manufacturers tend to outsource more of their production. Amongst other things, outsourcing allows a manufacturer to increase flexibility, and to take advantage of economies of scale, by devolving Research and Development ("R&D") and management and production resources to specialised equipment suppliers. For example, GM and Ford span off their respective spare part manufacturers, Delphi and Visteon, at the end of the 1990s. As a consequence of this process, the value of outsourced components is now on average considerable. Although information provided by the surveyed car manufacturers is incomplete, it appears that more than

¹¹ European Competitiveness Report 2004, p. 156.

¹² European Economic and Social Committee: The automotive sector in Europe: current situation and perspectives.

¹³ ACEA European Automobile Industry Report 07/08, key figures, p. 1 and 3.

¹⁴ ACEA EU Economic Report February 2008, table 1.

¹⁵ European Competitiveness Report 2004, p.190.

50% of components are outsourced for most models, approaching 80% of total value for some car models. It appears that there is less outsourcing for commercial vehicles.

16. Lastly, automotive suppliers are delivering increasingly complex components or "modules" instead of mere spare parts, and are developing components and sharing R&D costs together with motor vehicle manufacturers. Suppliers often share the internationalisation process with manufacturers and set up production sites close to manufacturers' plants, due to just-in-time production requirements and shared management of the production flows¹⁶. European manufacturers are leading the trend towards modularisation, often ahead of U.S. and Japanese manufacturers¹⁷.

- *Motor vehicle distribution and after-sales services*

Motor vehicle sales

17. The number of passenger cars in use in Europe has increased steadily over the last decade. In Europe there were 247 million vehicles in use in 2005 (1.8% more than in 2004). In Western Europe there is now about one vehicle in use per two inhabitants, in Eastern Europe one vehicle for more than five people¹⁸. For European consumers, the purchase of a car is considered to be generally the most important buying decision apart from the purchase of a home. In particular, during the period 1997-2004, close to 5% of total consumer expenditure in the EU was accounted by the purchase of motor vehicles (maintenance costs not included)¹⁹.

18. The EU-27 is the largest market for passenger cars in the world in terms of registrations²⁰. About 16.2 million new passenger cars were registered in 2006 which is equivalent to about 33% of all such registrations worldwide²¹.

19. In its study of 2006, London Economics reports that the average growth rate in vehicle registrations in the EU-25 over the period 1997-2004 was 0.3%²², indicating a relative stagnation. In Western Europe, the number of registrations peaked in 1999 and despite the increase in 2006 this level has still not been surpassed²³. Registrations in the new Member States (except Bulgaria and Romania) have been receding from 2004 to 2005 and gained some ground in 2006. It should be noted, however, that the recent slight increase of passenger car registrations in the old Member States since 2004 (+ 1.2%) is a remarkable result insofar as worldwide registrations have decreased in the two other major developed markets (USA -3%, Japan -1.9%).

¹⁶ J. Lefilleur and Y. Lepape: *New European Geography: the case of the automotive industry*

¹⁷ European Competitiveness Report 2004, p.190.

¹⁸ ACEA European Automobile Industry Report 07/08, p. 55.

¹⁹ London Economics: *Developments (...)*, p.102.

²⁰ According to the Auto Alliance Report, the US market is the second largest market accounting for 13.3 million passenger car registrations (Minivans, vans, SUVs and pick-ups are included).

²¹ The EU counted for 27% of the total worldwide motor vehicle registrations which also include industrial vehicles. ACEA European Automobile Industry Report 07/08, Key figures, p.1.

²² London Economics: *Developments (...)*, p.13.

²³ ACEA Industry report, p. 52.

20. New vehicle registration trends differ considerably amongst Member States, and national markets show considerable volatility. In 2006, two main markets (Italy and Germany) grew by 3.9% and 4.5% respectively, while in the UK, Spain and France new vehicle registrations decreased between 2.0 and 3.9%²⁴. In the first quarter of 2007 opposite trends existed in Germany and the UK, with Germany showing a sharp decrease and the UK an increase in registrations. Moreover, motor vehicle use in the new Member States is increasing significantly faster than registration numbers for new cars, which suggests that there is a significant stream of second-hand cars going to the new Member States.
21. According to a study conducted by KPMG the volume of commercial vehicle sales also showed considerable fluctuations in the rather mature Western European markets. In Western Europe, sales fell from 2001 onwards, reached a low in 2003 and have been increasing since. Only in Eastern Europe are commercial vehicle sales supported by a relatively stable growth process²⁵, showing a positive trend over the reference period. 1,968,832 new light commercial vehicles (up to 3.5 tonnes) were registered in 2006 in the EU-25, up from 1,723,460 in 2005. As regards medium and heavy vehicles over 3.5 tonnes, 396,148 were registered in the EU-25 in 2006²⁶, up from 377,183 the previous year. There were 30,623 buses and coaches registered in the EU-15 in 2006, slightly more than in 2005 (30,352)²⁷ As regards the overall commercial vehicle parc, at the end of 2004 there were around 31 million registered commercial vehicles in Europe. Of these vehicles, 24.8 million were light commercial vehicles, while 5.4 million were trucks, and 0.8 million buses and coaches²⁸.
22. Commercial vehicles carried 72.5% of all inland freight transported in Europe in 2006, while coaches and buses carried only 8.5 % of all passengers²⁹, indicating that trucks and vans are by far the most important mode in freight transport, whereas buses carry a relatively modest share of passengers, compared to other means of transport such as cars, trains, and aircraft.
23. Overall, the data suggest that market volume for sales of both passenger cars and commercial vehicles in Europe appears to be susceptible to considerable fluctuations, pointing to a rather dynamic environment. In particular, the market for commercial vehicles seems to be closely connected to investment and economic growth cycles.
24. Despite decreasing car registrations in certain years, the number of cars in use has been increasing constantly in Europe. This apparent paradox may be explained by the improved quality and therefore an increased longevity of the cars. Growth in the overall car parc as illustrated by increasing numbers of car registrations is mainly due

²⁴ ACEA Industry report, p. 52.

²⁵ KPMG: The European Commercial Vehicle Industry in the Age of Globalisation, p. 4.

²⁶ ERF report: European Road statistics 2007.

²⁷ ACEA press release, 26 January 2007.

²⁸ Abstract: Wireless M2M Communication and Commercial Vehicles, Berg Insight, November 1, 2005.

²⁹

ACEA:

http://www.acea.be/index.php/news/news_detail/europes_commercial_vehicle_industry_a_key_economic_assessment/

to this increased vehicle longevity rather than to increased purchases of new cars. The average car on the road is now around eight years old³⁰.

The motor vehicle aftermarket

25. The importance of the motor vehicle sector is not limited to the primary market. The European market for the service and repair of motor vehicles was worth approximately 100 billion euros in 2004³¹. In the same year, the EU-wide market for repair and services for cars alone was estimated to be around €84 billion³². Currently, according to London Economics, there are around 350,000 firms engaged in motor vehicle repair and servicing in the EU-12 alone³³. According to CECRA, there are around 400,000 companies in the whole EU engaged in motor vehicle repair and servicing, providing work for approximately 1.3 million employees.
26. London Economics³⁴ indicates that repair market trends diverge among the Member States. However, various factors are influencing the overall volume of the repair market. Repair prices are increasing in real terms, which may be partly explained by the fact that repairs necessitate the replacement of more complex components. At the same time, cars are becoming more reliable and service intervals are getting longer, leading to a decrease in total consumer expenditure, despite price increases for individual repairs³⁵. The combined effect of these opposing trends is relative stagnation, especially in apparently mature markets. For the latest period under examination, the volume of the repair markets has shrunk in several such national markets (Denmark, Italy, UK and Germany).
27. The EU market for automotive spare parts is estimated to be between €42 and 45 billion³⁶. More than 850,000 people are employed in spare parts production in the EU³⁷. According to FIGIEFA the total market for spare parts is stagnating in the EU-15 Member States, while the market in the accession countries is growing. London Economics confirms this broad trend, indicating a moderate cumulative growth for 10 selected EU countries of 2.9% from 1999-2004. Among these countries, the markets in Hungary and Poland registered the highest growth over that period, 40.1% and 48.5% respectively³⁸.
28. There are strong differences between passenger cars and commercial vehicles, in terms of both user characteristics and user needs. As regards passenger cars, most

³⁰ London Economics: Developments (...), p.24.

³¹ ZDK, Zahlen und Fakten 2005, as quoted in London Economics: Developments (...), p.117. FIGIEFA estimates the figure to be €88 billion. See its position paper at <http://www.figiefa.org/docs/FIGIEFAActivities-CARS21-AFCARPositionPaper.pdf>.

³² Commission Staff working document: Proposal for a Directive of the European Parliament and of the Council amending directive 98/71/EC in the Legal Protection of designs. Extended Impact assessment ("Design Directive Impact Assessment"), p.7.

³³ London Economics: Developments (...), p.123.

³⁴ London Economics: Developments (...), p.117 ff.

³⁵ London Economics: Developments (...), p. 176 f.

³⁶ Design Directive Impact Assessment, p.8.

³⁷ Design Directive Impact Assessment, p.10.

³⁸ London Economics: Developments (...), p.224.

observers accept that over a vehicle's lifetime, the initial purchase price of the new vehicle is matched, on average, by the amount spent on repair and maintenance. However, there appears to be a lack of transparency and predictability as regards the overall lifetime ownership costs of a car for individual consumers. By contrast, owners of commercial vehicles are more willing and able to think of a vehicle in terms of overall ownership cost, broken down into a price per kilometre. Depreciation costs are usually foreseeable, as they are generally set by tax rules rather than by real resale prices, and the degree of financial planning implicit in the running of a business means that commercial users are acutely aware of other costs, such as maintenance, tax, fuel, and insurance. As regards maintenance, commercial operators generally seek to buy a package, including both the vehicle and after-sales services. Owners of commercial fleets will often have their own in-house maintenance service. Rapid and highly-organised brand-specific roadside assistance is also of greater importance for the operator of medium or large commercial vehicles, for whom an unresolved breakdown can result in considerable losses in terms of money and reputation.

- *Evolution of consumption patterns*

29. In addition to car ownership, renting and leasing represent for individual end consumers a concrete commercial alternative to satisfy their mobility needs. Furthermore, a distinction should be drawn between private and corporate customers, as the countervailing power that fleet owners can exercise over vehicle manufacturers is clearly stronger than that enjoyed by individual car owners.
30. In its 2006 study, London Economics³⁹ pointed out that the average size of company car fleets increased by 20% and the size of the parc of leased cars grew by 72% from 1998 to 2005. ACEA reports that 44% of all cars were sold to fleet owners and leasing companies together in 2006, up from 41.3% in 2002 (excluding France).
31. The incomplete and patchy responses received from individual car manufacturers show a different picture, according to which sales to leasing companies account for less than 10% of total sales in most main markets. Car manufacturers also report that although there is no uniform EU wide trend, the share of total sales going to leasing companies and company fleets would be on the decrease in many EU Member States. The majority of car manufacturers report that the UK is the EU country where leasing is the most common. The difference between the extrapolation of the incomplete information provided by individual manufacturers and the higher share estimated by ACEA and London Economics may be explained by the fact that car manufacturers seem to have included only their *direct* sales to fleet owners and leasing companies, whereas London Economics and ACEA refer to fleet data of leasing companies and other business customers, apparently including sales from independent authorised dealers. Sales to leasing companies seem not to be widespread in the truck sector, in contrast to the position for buses, where sales to leasing companies in some Member States make up over 50% of total sales. This is probably because leasing arrangements in the truck sector are generally made directly between the manufacturer and the operator.

³⁹ London Economics: Developments (...), p 94 f.

32. The fact that sales to leasing companies make up a sizable proportion of total sales indicates that consumers increasingly have a concrete alternative to car ownership to fulfil their mobility needs. The dominant model for vehicle provision – that of selling cars to end users - seems therefore increasingly subject to competitive pressure arising from consumers' ability to switch from one mode of consumption (ownership) to another (leasing). This opportunity to choose another model of ownership is all the more likely to benefit consumers, in view of the favourable purchasing conditions that leasing companies currently seem able to obtain from car manufacturers⁴⁰, and of the competitive conditions prevailing on the car leasing market.

B) Development of the competitive environment in the motor vehicle distribution sector

33. This sub-section analyses specific economic indicators that are useful for measuring the degree of competition in the EU markets for new motor vehicles and its evolution over the period of application of Regulation 1400/2002. Firstly, the analysis will focus on indicators which are useful measures of competition between motor vehicle brands produced by competing manufacturers (i.e. inter-brand competition), before going on to look at indicators which are relevant to the assessment of the evolution of the competitive interaction between distributors of a specific brand (i.e. intra-brand competition).

34. As to inter-brand competition, the present sub-section will look firstly at how the market shares of vehicle manufacturers have fluctuated, as volatility of market shares and a relative instability of incumbents' market positions are generally the result of competitive struggles in the fields of product innovation, improved sales services, aggressive marketing and/or competitive prices. Analysis will then focus on how the degree of market concentration at vehicle manufacturer level has evolved, before examining the extent to which players have entered or left the vehicle supply markets over the reference period. Next, the sub-section will look at the degree of choice available to consumers within each market segment, before examining how research and development investments, price trends and manufacturers' operating margins have evolved. High R&D expenses are usually generated by a drive for product innovation resulting from competitive pressure, while significant downward or upwards movements of consumer prices and industry margins are important indicators which may help to understand the extent to which the markets for motor vehicles within the EU are effectively working to the benefit of final consumers.

35. Concerning intra-brand competition, the diversity of distribution formats may provide evidence that manufacturers allow different types of distributors to operate in the market and/or that retailers are willing and able to develop different business models with different cost structures so as to gain a competitive advantage over their rivals on the retail markets. Levels of dealer concentration and network density are indicative of the degree of intra-brand competition in downstream retail markets, while the rate of vertical integration across local or regional markets constitutes an additional indicator of the scope for effective competition between distributors of the same brand. Finally, the evolution of dealers' operating margins may provide a useful indication as to the

⁴⁰ Anecdotal evidence suggests that leasing companies are often able to purchase cars at prices lower than those paid by authorised dealers.

likelihood that the efficiencies generated by the existing distribution systems are passed on to final consumers, while the degree of price dispersion across Member States is informative as to whether cross-border arbitrage by consumers and/or intermediaries may exercise an effective competitive constraint on dealers of the same brand established in different countries.

- *Market indicators relevant for inter-brand competition*

Vehicle manufacturers' market shares

36. As regards passenger cars, vehicle manufacturers' market shares have developed divergent trends, depending on the manufacturer and the Member State, supporting the view that incumbents' market positions in the car sector have been relatively volatile during the reference period.
37. Certain car manufacturers, such as Kia, Hyundai, Honda, Toyota, and BMW, have benefited from a steady increase in market shares since 2002, but there are also examples of both broadly stable (Renault, Suzuki) and declining (PSA) market shares. In most national markets, the gap between the market share of the leading car manufacturer and its closest rival is small and narrowing. Moreover, since 2002, several car manufacturers have been able to enter the top four leagues at the expense of others in certain European markets⁴¹.
38. Such trends seem also to characterise the market over the longer term. Since 1995, brands such as Ford, which experienced losses of more than 25% in volume terms in some markets, have experienced a steady decline. Others have increased their share continuously (Toyota), while Fiat is an example of a major market share loss followed by a remarkable recovery in that period.
39. London Economics observed in its 2006 study that sales of premium and specialist branded vehicles had increased and that in Western Europe, the ratio of sales of volume brands to specialist and premium brands had decreased from 1998 to 2004 in most of the 12 countries analysed, showing that certain consumers were moving up-market. This trend has been confirmed by the individual car manufacturers' answers to the Commission's inquiry covering the period from 2002 to 2006: Ford, Fiat, Peugeot, Citroen, Opel/Vauxhall and the Ford brand lost market shares, whereas BMW and a number of smaller brands gained market shares.
40. It appears that no manufacturer enjoys strong market power. In 2006, the largest manufacturer Volkswagen commanded an EU-wide market share of 20.1%, followed by PSA (12.9%), whereas even when taken together, manufacturers of Korean origin only account for a total share of 3.8%⁴². However, certain brands achieve relatively high market shares in some Member States, in particular in their home markets (e.g.

⁴¹ London Economics: Developments (...), p.30. These data are confirmed by the analysis of the replies provided by individual manufacturers in the context of the Commission's inquiry.

⁴² Comité des Constructeurs Français d'Automobiles, Statistiques.

Volkswagen in the Czech Republic (49.4%), in Germany (32.6%) and Austria (30.7%), PSA in France (30.7%) and Fiat in Italy (30.8%))⁴³

41. The European market for commercial vehicles is dominated by six manufacturers which together control more than 90% of the truck market. KMPG points to considerable fluctuations in the overall market size in the mature Western European markets when measured in terms of units sold. In Western Europe, sales fell from 2000 on, reached a low in 2003, and have since been increasing. In the European market as a whole, unit sales have increased from approximately 2.6 million vehicles in 2002, to 3.2 million in 2005. Some manufacturers point out that the size of the overall markets fluctuates over the investment cycle, in particular due to the existence of large tenders in several markets.
42. Market shares in the commercial vehicle sector have been shifting in all segments, with individual manufacturers witnessing gradual declines or gradual increases in market share since 2002. For example the increase in market share enjoyed by DAF before 2002 for trucks of more than 6 t continued between 2002 and 2006. Iveco's position in the bus market from 2002-2006 is marked by a declining market share. In the same market, Daimler's market share fluctuated, rising from 2002 to a peak in 2004, before declining over the following two years.
43. According to KMPG, the 2005 EU-wide market shares for lighter trucks (6-16t) ranged from 22.9% for Volvo to 10.3% for Scania. For trucks over 16t, Volvo led with a 25% market share, while the smallest of the six competitors was Iveco (10.0%)⁴⁴. For buses, Daimler and Iveco recorded the highest market shares, of 22.9% and 21.8% respectively, while Scania had the smallest share with just 8%.
44. As in the car sector, market shares for commercial vehicles differ considerably between individual countries, and manufacturers often enjoy relatively high market shares in their home countries. An example is Iveco trucks (3.5 – 16t), which in 2006 attained a market share of 35% in Italy (39.4% in 2002) but only 3.4% in Finland. Volvo attains market shares in France and Sweden of around 50%, depending on the vehicle category, and Scania enjoys a share of close to 50% in some Scandinavian countries
45. Despite a strong presence in several national markets, it appears that no car or commercial vehicle manufacturer enjoys strong market power in the EU as a whole. Fluctuating market shares in the motor vehicle markets both for cars and industrial appear to point to competitive pressures in both areas.

Market concentration

46. The EU market for passenger cars has become less concentrated since 2002. Calculated on a pan-European basis, the share of the four largest producers (CR4) declined from 57% to 54% between 2002 and 2006, according to answers collected from individual car manufacturers. According to ACEA the indicator dropped from 54% to 52%. It should be noted that the analogous index for motorbikes, which are not

⁴³ Comité des Constructeurs Français d'Automobiles, Statistiques. These data refer to the year 2006.

⁴⁴ KMPG: The European Commercial Vehicle Industry in the Age of Globalisation, p. 11.

subject to Regulation 1400/2002, indicates a CR 4 of 64% (based on 15 EU-countries including all major national markets)⁴⁵. The EU-wide market share of the four largest truck producers, on the other hand, stood at 71.7% in 2003, down from 72.2% in 2002⁴⁶.

47. The concentration of the four largest producers calculated as an *average of country-specific markets*, is by definition higher, as the higher market shares of a manufacturer in one country are not compensated by its lower market shares in another country. According to the data reported by London Economics, this ratio declined by 2.8% during the reference period⁴⁷.
48. According to London Economics, between 1997 and 2004, the HHI index - another method used to measure the concentration ratio in the market⁴⁸ - fell in 7 out of 12 countries and, when considered together, in the 12 EU-countries analyzed in their study. The average country-specific index reached a level of about 1,600 points (measured by turnover), showing that concentration levels are now rather moderate. Usually, a HHI ratio of 1,600 is not considered in itself likely to raise competition concerns. For instance, in the context of its merger control policy, the Commission is unlikely to identify horizontal competition concerns in relation to an operation of concentration with a post-merger HHI between 1000 and 2000⁴⁹.
49. However, it should also be recalled that in the few years before Regulation 1400/2002 was adopted, several mergers, takeovers, and strategic alliances took place amongst car manufacturers in Europe (and worldwide): e.g. Daimler-Chrysler; VW-SEAT, Skoda, Lamborghini, Bentley; BMW-Rover/New Mini, Rolls Royce; Renault-Nissan, and General Motors-Fiat. At the time, most industry analysts expected this consolidation to continue for the foreseeable future. Nevertheless, in the event, several major alliances and acquisitions have since been abandoned or reversed, including the merger between Daimler and Chrysler; the alliance between General Motors and Fiat, and BMW's ownership of MG Rover, while talk of further M&A activity in this area has tailed off.

Entry barriers

50. In its 2006 study, London Economics⁵⁰ considers that overall barriers to entry in the EU car retailing market are relatively low. This perception of low entry barriers is confirmed by the responses to the Commission's questionnaires provided by most car manufacturers and their associations. In particular, ACEA and JAMA refer to the successful entry and expansion of Japanese and South Korean car manufacturers in various EU markets and to the recent entry of a Malaysian carmaker. The rapid growth

⁴⁵ ACEM, Association des Constructeurs Européennes de Motocycles.

⁴⁶ EMCC Case studies - Trends and drivers of change in the European automotive industry: Volvo Truck Corporation.

⁴⁷ London Economics: Developments (...), p. 27.

⁴⁸ It is defined as the sum of the squares of the market shares of each individual firm; a higher index number indicates thus a higher concentration in the market.

⁴⁹ [Guidelines on the assessment of horizontal mergers](#) OJ C 31, 05.02.2004, p. 5-18.

⁵⁰ London Economics: Developments (...), p.89.

of Eastern Asian entrants generated by aggressive pricing is also underlined by the European consumer association BEUC.

51. This trend is the result of a number of concomitant factors, including the general trend towards globalisation of motor vehicle manufacturing, the competitive edge recently gained by several Asian manufactures through the development of successful car models with attractive price/quality ratios, as well as an increasing degree of acceptance for new entrants and higher volatility of brand loyalty by European consumers. In addition, the eastern European market is generally seen as particularly accessible to new entrants due to growing demand for low-price vehicles, a market segment in which the newcomers enjoy a distinct competitive advantage.
52. Moreover, although new entrants from emerging countries such as China and India have so far not gained substantial market shares, carmakers such as Geely, Chery and Tata are expected to expand their presence in the European market in the near- or medium-term.
53. It should also be noted that there have only been a few market exits in the EU during the reference period, most prominently by the MG Rover Group, which went into liquidation in 2005. The brand Rover disappeared, whereas MG became part of the Chinese Nanjing Automobile. In 2007 Marcos, a minor sports car manufacturer, left the market.
54. Another indication that entry barriers in motor vehicle manufacturing are relatively low is provided by the decreasing level of market segmentation and by the proven ability of most car manufacturers operating in the EU to expand their presence across virtually all the various car market segments⁵¹. In general, car manufacturers replying to the Commission's questionnaire have confirmed that they are expanding their activities into segments hitherto not covered and that this trend, which could already be observed before 2002, has become more pronounced in recent years. Notably, Asian manufacturers are moving into segments adjacent to their traditional volume markets, while most European car manufacturers, including those manufacturing premium brands, are following the same strategy by broadening their product portfolios to include vehicles in the segments for smaller cars. On the whole, car manufacturers indicated that expansion into new segments is more frequent than withdrawal from segments. As a consequence inter-brand competition as regards new car sales is increasing, as there is a tendency for more manufacturers to compete in a given segment.
55. In contrast, for commercial vehicles, manufacturers report that overall, there has been little movement to expand or reduce brand ranges.
56. The decision to purchase a given brand of commercial vehicle is influenced in particular by the need for the availability of good quality after-sales networks across the whole region in which the vehicle is to be used. The benefits in the form of scale effects accruing from extensive service networks may constitute an entry barrier for manufacturers wishing to come onto the European market. It is notable in this regard

⁵¹ Passenger cars are classed into segments according to their size. One classification attributes an alphabetic system. Microcars = A, Supermini cars = B, Small family cars = C, Large family cars =D, Executive cars = E, Luxury cars=F. Subcategories apply for example for specific characteristics, as SUVs.

that no major market entry in the commercial vehicle sector has been observed in the reference period. There has been one notable merger in the sector, in that in 2001, before Regulation 1400/2002 came into effect, Volvo purchased the commercial vehicle arm of Renault.

57. As regards the nature of possible entry barriers in the car sector, some car manufacturers claim that the establishment of authorised repair networks based on purely qualitative selective distribution which followed the entry into force of Regulation 1400/2002 has had the effect of deterring some dealers from joining the distribution networks of smaller car manufacturers and/or of new entrants. It is claimed that prospective dealers might fear that overall profits accruing to a dealership would fall, as profits made in repair and maintenance were eroded as a result of competition from stand-alone⁵² authorised repairers. Moreover, while most car manufacturers and their associations (in particular JAMA) consider that the continued existence of large-scale single-brand networks do not constitute a significant entry barrier, some other manufacturers (e.g. Suzuki) and certain dealers associations (e.g. CECRA and several national dealer associations) stress that dealers' ability to multi-brand makes it easier for new brands to enter and/or expand in the EU market.
58. Moreover, several respondents to the Commission's questionnaires indicated that national car tax systems, including those pursuing environmental objectives, still vary considerably between Member States and that the market-specific adaptation costs due to these different regimes may act as a significant entry barrier for non-domestic manufacturers.

Product innovation

59. The European automotive industry is a leading investor in R&D, with an annual investment of around €20 billion⁵³. ACEA indicates a continuous industry average of about 4% to 5% relative to revenue; London Economics⁵⁴ estimates the average to be from 3.0% to 3.4% (1997 to 2003). The information given by individual car manufacturers also confirms that R&D expenditure in the sector has remained broadly stable since 1997. Commercial vehicle manufacturers indicate that R&D amounts to between 2.5% and 5.5% of revenues. On average, this has declined over the past ten years. It may be noted however that in a number of other sectors the R&D expenditure has fluctuated to a greater degree (Aerospace: 14.0% in 1997, down to 7.2% in 2001, up to 12.2% in 2003. Electrical engineering: 2.5% in 1995, down to 1.6% in 2002, up to 3.8% in 2003).
60. The relatively high and constant R&D spending appears to be a consequence of the competitive pressure manufacturers are facing. The sector is driven by the constant need for product innovation, as a lack of new models translates quickly into a falling

⁵² i.e. repairers that do not sell vehicles of the brand in question

⁵³ European Commission: CARS 21 report.

⁵⁴ London Economics: Identification of Industrial Sectors with weak competition, analyses of cause and impacts; forthcoming.

market share. As a consequence the typical life cycle⁵⁵ of a passenger car model has decreased sharply since the second half of the 1990s, from ten years to six or seven⁵⁶.

Price trends

61. Both the Commission's car price report⁵⁷ and the 2006 study by London Economics⁵⁸ point to a steady trend of decreasing retail prices for passenger cars. According to London Economics⁵⁹, real car prices (i.e. adjusted for inflation) came down by 12.5% between 1996 and 2004. Hedonic prices (i.e. prices that take into account evolution in the size and performance of vehicles) show an even steeper drop. Once hedonic calculations are included, real prices dropped from May 2005 to May 2006 by 1.6% and from May 2006 to May 2007 by 1.0%⁶⁰. Intense competition is indicated by several surveyed stakeholders, including consumer associations⁶¹, as well as by certain national competition authorities. BEUC and the German Consumer association note explicitly that real prices for cars have been in a downturn over the last years, without however being able to quantify precisely these price decreases.
62. The national dealer associations that replied to the Commission's questionnaire mostly indicate that, on average, end customer rebates granted by dealers are in the region of 5 to 15% off the list price and up to 20% on some models sold in the context of promotional campaigns⁶². CECRA puts the average EU-wide rebate at 7%. Not surprisingly, a number of dealer associations reported significant higher discounts to fleet customers⁶³.
63. A further indicator of competitive pressure is the fact that in some markets a proportion of new motor vehicles are registered by authorised dealers as "0 km" or "pre-registered" vehicles. These registrations, for vehicles that are usually subsequently sold at lower prices than those revealed in price surveys, serve to temporarily push up registration numbers, to relieve manufacturers of unsold stock, and to maintain list prices. Estimations from dealer associations indicate that these "0 Km vehicles" account for 3%⁶⁴ of all sales in Spain (20% for high volume brands⁶⁵), more than 10% in Austria⁶⁶, 2-12% in France⁶⁷, 5% in Italy⁶⁸, 10% in the Netherlands⁶⁹ and 4% in Germany⁷⁰.

⁵⁵ The life cycle indicates the period after which an old model in the product range is replaced by a new one which is substantially different, although it may bear the same name.

⁵⁶ ACEA response to the Commission's Inquiry.

⁵⁷ It should be noted that the Commission's car price report does not reflect manufacturers' special discounts or individual dealers' discounts.

⁵⁸ London Economics: Developments (...), p.101.

⁵⁹ London Economics: Developments (...), p. 101.

⁶⁰ Commission car price report – Eurostat.

⁶¹ BEUC and the German consumer association.

⁶² ZDK, German dealer association.

⁶³ Federaicpa, ZDK, WKA, CNPA, Bovag, AKL (national dealer associations).

⁶⁴ Faconauto.

⁶⁵ GANVAM.

⁶⁶ WKO.

⁶⁷ CNPA.

Profitability

64. Profitability varies greatly between car manufacturers, and profitable periods for one manufacturer can coincide with low profits or losses for others⁷¹. However ACEA and London Economics⁷² point out that manufacturers' net operating margins in Europe tend on average to be lower than those that manufacturers experience at worldwide level. In particular, London Economics pointed out that carmakers' operating margins were as low as 3.9% in 2004, a rate which compares unfavourably with other industries (e.g. 10.5% for chemical manufacturing, 8.1% for the tools/appliances industry and 6.5% for the technical/scientific industry)⁷³.
65. Although incomplete, the information provided by vehicle manufacturers during the Commission's inquiry indicates average returns on car sales for 2005 ranging from -10% to 19% (1995: -9% to 4%), depending on the brand and the Member State concerned.
66. Despite the lack of complete data, individual passenger car manufacturers generally underline highly fluctuating profit margins in the industry. These generally tend to be low as regards car sales, but significantly higher in the after-market business.
67. Commercial vehicle manufacturers point to net margins in the low single figures, and on average, there would appear to be no overall trend over the past ten years. Data provided by Federaicpa appears to confirm this position – the EBIT of Italian dealers rose from 0.8% in 2000, to 1.1% in 2002, before falling to 0.4% by 2006.
68. According to a London Economics multi-sector inquiry⁷⁴ study, the rate of return on investment on motor vehicle sales was 5.2% in 2006 (2002: 6.8%, 2004: 4.2%) - one of the lowest of the European industries analysed. Once adjusted for the cost of capital, the rate of return on capital for European motor vehicle sales was negative in 2003 and 2004.
69. The fact that overall profits in the sector appear to be rather modest (and even negative for a range of passenger car brands over certain periods) seems to suggest that as a result of vigorous inter-brand competition, the incumbents are currently not in position to exercise any significant degree of market power, such as would cause a detriment to consumers.

⁶⁸ Federaicpa.

⁶⁹ Bovag.

⁷⁰ ZDK.

⁷¹ Answers to the inquiry, and London Economics: Developments (...), p. 109.

⁷² London Economics: Developments (...), p.109.

⁷³ London Economics: Developments (...), p. 110, reference: Reuters.

⁷⁴ London Economics: Identification of Industrial Sectors with weak competition, analyses of cause and impacts; forthcoming.

- *Indicators relevant for intra-brand competition*

Types of distribution agreements and key elements thereof

70. As has already been observed, the sector-specific regime established by Regulation 1400/2002 was aimed firstly at strengthening intra-brand competition so as to respond to a perceived lessening of such competition resulting from the process of consolidation that industry underwent in the late 1990s. The Commission was also concerned that this process could continue, leading to a concentration of market power in the hands of fewer vehicle manufacturers. Secondly, the Regulation aimed at moving away from the form-based and legalist approach of the previous block exemption Regulation 1475/95, which imposed a legal straitjacket on the sector that hampered the development of competing/innovative distribution systems.
71. In order to give the motor vehicle retail sector the opportunity to diversify its distribution systems, Regulation 1400/2002 exempted all types of vertical agreements up to certain market share thresholds, subject to a detailed list of hardcore restrictions and specific conditions. Contractual freedom, rather than regulation, was regarded as the factor driving the degree of diversity in distribution. In turn, diversity in distribution was seen as an important condition for improving competition both between and within distribution networks and for enabling consumers to rip the full benefits of the internal market. In the event, as will be seen below, although there has been some move towards multi-branding, particularly as a result of the development of larger dealer groups, the distribution landscape is still largely characterised by homogeneity of formats.
72. By and large, passenger car and commercial vehicle manufacturers have not taken advantage of the wider scope of the block exemption. Following the adoption of Regulation 1400/2002, all motor vehicle manufacturers have adapted their dealers' contracts so as to bring them in line with the requirements of the new legal framework, but virtually all of them have chosen to use selective distribution across the whole of the EU. Suzuki may be seen as an exception, in that it has adopted a system of exclusive distribution in all countries except Hungary⁷⁵. Four other manufacturers have indicated that, alongside their selective distribution systems, they have also entered into commercial agency agreements in some countries. In general, the use of commercial agents seems to be more common among commercial vehicle manufacturers than it is in the passenger car sector.
73. In this connection, it should be noted that all manufacturers concerned have ensured compliance with the provisions of the block exemption by avoiding the combination of selective and exclusive distribution and by proposing to their dealers separate contracts for vehicle resale and after-sales activities. As a result of this uniform choice, there has been little manufacturer-driven innovation at retail level since the block exemption entered into force. This position is confirmed by many vehicle manufacturers replying to the Commission questionnaire, which emphasized that the current dealer-based distribution format will continue to characterise motor vehicle distribution for the foreseeable future. In particular, they confirmed that there has been no appreciable development of car sales in supermarkets or hypermarkets, except for

⁷⁵ Volkswagen in the Czech Republic applies qualitative selective distribution. The move has been motivated by the block exemption, which does not exempt quantitative selection when a producer has a market share of more than 40%.

occasional campaigns operated by certain large retailers mainly through stocks sales of vehicles purchased on the grey market.

74. No purely Internet-based retail concepts have emerged. London Economics points out that it is likely that less than 1,000 new cars are sold by authorised dealers over the internet annually within the EU. While the use of the Internet by authorised dealers and car manufacturers appears to be limited to marketing and advertisement, an increasing number of intermediaries seem instead to use the Internet in order to improve the efficiency of their business, in particular to collect mandates and process orders from final consumers. BEUC goes even further by pointing out that, as comparison tool for prices of motor vehicles, the Internet is not fully effective, as neither dealers nor manufacturers offer independent information as to the real resale prices.
75. In addition to revealing uniformity in terms of distribution systems, the Commission's inquiry also shows a remarkable homogeneity as regards the key elements of dealers' contracts concluded by vehicle manufacturers following the entry into force of Regulation 1400/2002.
76. In the first place it should be noted that all manufacturers concerned have opted for quantitative selective distribution, which combines the application of selection standards linked to the nature of the product and the quality of the specific sale services required from the dealers with discretionary criteria aimed at further limiting the number of authorised dealers in function of the desired territorial footprint and network density.
77. In the second place, it should be observed that the dealership contracts concluded by various carmakers are based on a large set of selection standards which, while differing in their material content, are nevertheless similar as regards their basic requirements. In particular, all passenger car manufacturers have profited from the entry into force of Regulation 1400/2002 to introduce more formal and stringent standards, covering aspects such as customer satisfaction, operating methods and equipment, staff training, signage, interior furnishing, architectural detail, and other forms of corporate identity, so as to strengthen the brand-specific profile of their authorised outlets. A similar trend can be observed in the commercial vehicle sector.
78. In the third place, as regards dealers' remuneration, manufacturers usually offer a mix of fixed/basic margin and variable margin, the latter being constituted of qualitative and quantitative bonuses. Qualitative bonuses are linked to the degree of compliance by the dealers with the various qualitative standards, which are assessed and regularly reviewed through an auditing procedure enabling the carmakers concerned to monitor dealers' achievements. Quantitative bonuses are instead linked to the performance of each individual dealer in relation to the sale targets which are to be negotiated between the parties on a yearly basis and regularly monitored by the manufacturer (sometimes on a quarterly basis). In general, CECRA observes a tendency away from contracts awarding fixed margins and towards contracts with more variable elements. CECRA also observes that, out of the total dealer's gross margin, the proportion represented by variable bonuses based upon performance and the degree of achievement of quality standards is gaining in importance relative to the fixed/basic margin. Furthermore, out of the two variable elements, the qualitative proportion has increased significantly since 2002 to the detriment of the other components of a dealer's gross margin.

79. The trend towards variable elements based on the achievement of qualitative criteria, such as customer satisfaction, configuration of dealers' facilities, training, etc. is confirmed by a number of national dealer associations (namely from Italy, France, Spain, UK, Germany, and the Czech Republic), which also observe that, in order to obtain the full qualitative bonus, dealers have increasingly to make significant investments: a situation which has further reduced the already low returns on vehicle sales gained on average by dealers and, as an ultimate consequence, has further increased dealers' dependence on vehicle manufacturers⁷⁶.
80. Despite these common features, it should be stressed that most manufacturers do not have a single way of calculating margins for the whole of Europe. For many brands the material content of the mechanism underpinning such a system may vary considerably between countries, as well as over time.
81. In the fourth place, most manufacturers have entered into dealer contracts of unlimited duration. Exceptions are BMW (BMW has concluded five-year fixed term contracts), PSA (PSA has mostly concluded contracts of limited duration before 2006) and Toyota (which has contracts concluded for an indefinite period in the majority of Member States but not in all). CECRA notes that few contracts of unlimited duration (entailing the application of the two-year notice period provided by the block exemption) have been terminated since the entry into force of the Regulation. As for commercial vehicle manufacturers, most of them have also concluded contracts of unlimited duration, with the exception of MAN, which has opted for five-year agreements.

Dealer concentration and network density

82. The numbers of dealers belonging to each individual manufacturer's networks, their relative dimension in terms of throughput, as well as their share of the overall sales of the relevant brand, constitute important factors for estimating the degree of intra-brand competition on the market, as well as its evolution over the reference period. In essence, the information collected by the Commission shows that during recent years, the motor vehicle sector has undergone a process of rationalisation, characterised by a significant reduction in the numbers of dealers and by a relative increase in the levels of concentration on the main retail markets across the EU. The entry into force of Regulation 1400/2002 seems to have given an additional impetus to this phenomenon which, however, would not seem to have reached a point where consumers' interest might be negatively affected.
83. As regards the passenger car sector, the manufacturers' replies to the Commission's survey point to a decrease in numbers of both dealer contracts and dealer outlets by around 6% from 2002 to 2006. However, trends have varied depending on the brand and the Member State. The density of individual networks broadly follows the fortunes of the brands in question as regards market share; brands that lose market shares subsequently experience a decrease in numbers of both contracts and outlets, and vice versa.
84. Car manufacturers indicate that considerations relating to efficiencies and economies of scale have led them to rationalise their networks, and reduce numbers of outlets and

⁷⁶ Federaicpa, WKO.

dealers. ACEA also indicates succession problems and legal capital ratio requirements as an explanation for the decline. While most car manufacturers appear to view consolidation as positive, some claim that the uncontrolled growth of dealer groups is endangering competition on the market.

85. JAMA and ACEA point out that the start of this rationalisation process preceded the current block exemption; something which is also borne out by figures supplied by CECRA, which indicates that while numbers of sales outlets declined by 12% between 2002 and 2003, the figure was 30% in the wider 2000-2003 period, suggesting that the most dramatic decline in outlets took place before contracts in line with Regulation 1400/2002 were signed. This finding appears to be broadly in line with the information provided by vehicle manufacturers. They report a significant decline in outlets between 2002 and 2004, which has been partially compensated by an increase from 2004 to 2006.
86. Both JAMA and ACEA expect that the ongoing rationalisation of the networks will continue (in Western Europe in particular⁷⁷). CECRA and national dealer associations also expect a continued concentration (although CECRA expects that this will slow down). However, the individual manufacturers responding to the Commission's questionnaire do not expect further general rationalisation of networks in terms of general reductions in dealer contracts. Instead, they indicate network reduction in some Member States but also expansions plans for a large number of countries, which are not all confined to the new Member States.
87. On the whole, this consolidation does not appear to have affected to the same extent the commercial vehicle sector, in which the numbers of outlets and contracts both appear to be broadly stable, probably because the sector had already undergone a considerable rationalisation before Regulation 1400/2002 entered into force. DAF however reports a sharp decline in the number of its outlets.
88. Furthermore, it stems from the analysis of the replies to the Commission's questionnaires that average sales per car dealer are mostly increasing. According to CECRA⁷⁸, in Europe average passenger car sales per dealer contract in the EU-15 countries, including Switzerland increased from 301 in 2002 to 340 in 2005. In contrast, the average US dealership sold 628 passenger cars in 2006⁷⁹.
89. The car manufacturers that responded to the Commission's questionnaire confirm this finding. In general, they indicate that the average sales numbers per dealer are increasing in most main markets for the majority of brands, while no car manufacturer has observed an appreciable decline in average sales numbers per dealer. However some large market players do not observe a uniform trend towards higher sales numbers per dealer in all main markets, such as Volkswagen (for its main brand), Fiat and GM (for all brands). Average sales per commercial vehicle dealer also seem to have increased over the past decade. Federaicpa in particular indicates that average sales per contract rose from 515 in 2000 to 599 in 2006 in Italy.

⁷⁷ ACEA.

⁷⁸ Reporting data from the HWB handbook

⁷⁹ Dealership number NADA data 2007; Automotive Alliance.

90. Following the process of rationalisation which continued and, to a certain degree, intensified after the entry into force of Regulation 1400/2002, concentration among the leading passenger car dealers has increased but seems to be still moderate. In 2006, taken together, the largest 50 (25) car dealers in Europe had a share of 10.0% (6.9%) of the market for the sale of all passenger cars (based on units sold)⁸⁰ In the US, the corresponding figures are 13% and about 8% respectively⁸¹. London Economics reports that between 1998 and 2004, the market share of the top 20 car dealers increased in all twelve investigated countries for all brands except for Renault. It also reported an increase in the market share of the top dealers in the national markets in France, Germany and Italy, but not in the UK, where the share was constant between mid- 2001 and end-2003. These market shares increased over the same period in France from 19% to 22%, in Germany from 10% to 14% and in Italy from 11% to 15%.
91. The majority of car manufacturers replying to the Commission's questionnaire confirm that the relative market share of their largest 20 dealers in the main markets has increased during the reference period, while no car manufacturer has observed the opposite. However, some major manufacturers, such as Volkswagen, Peugeot and Toyota, claim that their own dealer networks in the main markets have not followed such a general trend.
92. The position is different in the commercial vehicle sector, where manufacturers report that their top 20 dealers sell between 40% and 100% of all vehicles of the brands that they represent. The figure varies according to the brand and the Member State.

Vertical integration

93. As regards the evolution of vertical integration at the retail level, the information at the Commission's disposal suggests that, in recent years, car manufacturers have slightly increased volumes of direct sales to both business and private end customers via fully or partially owned retail outlets, in particular in metropolitan regions and other high-cost areas. This observation is confirmed by certain individual manufacturers, as well as by CECRA and by several national dealer associations⁸². ACEA however considers that the degree of vertical integration is broadly stable, observing that the increase in the proportion of outlets that are manufacturer-owned is particularly strong among carmakers that were already highly vertically integrated.
94. In absolute terms, the current levels of vertical integration are the object of different opinions by the main market participants. As regards passenger cars, ACEA and JAMA refer to data showing that manufacturers directly operated 2% of all outlets in 2006, indicating a stable trend. However, ACEA and JAMA are not able to provide data on direct sales to end customers. Answers from dealer associations indicate an increase in direct sales to end customers, excluding sales to leasing companies and fleet customers. In Italy direct sales by manufacturers to end customers have increasing rapidly in the last five years, accounting in 2006 for 25% market share in

⁸⁰ ICDP Top dealer groups in Europe; ACEA.

⁸¹ ICDP.

⁸² AKL, Bovag, CNPA, Federaicpa, Faconauto, Gangám, NFDA.

terms of units⁸³. In Spain, direct sales to end customers accounted in 2006 for 14% of units (2002: 9%). Most dealer associations did not however provide disaggregated market share information on all direct sales to end customers. Nevertheless, the information on direct sales in Europe provided by CECRA⁸⁴ and for Germany and France by the respective dealer associations (which are not directly comparable⁸⁵) point to an increase as well.

95. Compared to the passenger car sector, the degree of vertical integration at retail level would appear to be higher in the commercial vehicle sector, although the data vary greatly depending on the manufacturer⁸⁶.
96. On a more general note, most dealer associations express a critical view on direct sales, while one national association confirms (in line with ACEA and the Bundeskartellamt) that intra-brand competition is rather strengthened by increased direct sales, leading to higher discounts for consumers. Furthermore, one national dealer association observes that vertical integration is a reaction to the introduction of the current block exemption⁸⁷. In particular, a UK dealer association claims that at least one vehicle manufacturer has expanded its direct ownership of retail outlets in that country⁸⁸ as a reaction to stricter requirements imposed by the current block exemption.
97. As regards vertical integration at the wholesale/import level, individual manufacturers' answers, as well as the 2006 study by London Economics, suggest that integrated importers are more common now than they were in 2002. In 2006, most car manufacturers served all the main markets (i.e. Germany, Italy, France, UK, Poland and Spain) via vertically integrated importers, Hyundai and Mitsubishi being the exception. The same holds true for the commercial vehicle sector, where the limited numbers of large markets that were served by independent importers in 2002 now follow a continuous trend towards full vertical integration. However, according to ACEA, only 50% of importers and wholesalers of both passenger cars and commercial vehicles are national sales companies controlled by the vehicle manufacturers, and that no clear-cut trend towards higher levels of vertical integration could be observed during the reference period.
98. Smaller markets tend to be served both by independent and integrated importers, depending on the manufacturer. However movements away from independents towards integrated importers can also be observed in small markets and no movements away from integration towards independent operators has been reported, with the sole exception of Mitsubishi.

⁸³ Federaicpa.

⁸⁴ CECRA estimates that in their respective main markets, BMW and Audi distribute 40 to 45% of their vehicles directly, while for Daimler, the figure is estimated around 50% in terms of vehicles. However, the figures include sales to commercial fleet owners and leasing companies.

⁸⁵ The information for France contains only sales from integrated outlets, the German information includes only sales from headquarter, and both include sales to fleet /leasing customers from manufacturers' outlets only.

⁸⁶ Scania and MAN would seem to be the most integrated.

⁸⁷ NFDA.

⁸⁸ NFDA

Innovation in vehicle distribution: (1) Specialisation in sales

99. In order to stimulate intra-brand competition through the development innovative distribution formats driven by dealers' autonomous initiatives, Regulation 1400/2002 excludes from the benefit of the block exemption agreements which provide that authorised dealers may not contract-out the provision of repair and maintenance services for the contract brand of vehicles.

100. In the light of the information obtained by the Commission, it would seem that despite such provisions, the development of stand-alone dealers specialised in sales activities remains a marginal phenomenon. Most car manufacturers that replied to the Commission questionnaire report that, in the EU as a whole, less than 1% of their dealers have outsourced repair services. Two car manufacturers report that only 1% to 2% of dealers are stand-alone, while three others report that 2-4% of their dealers fall into this category. ACEA estimates the number of sales-only outlets across the EU at 2% or less. However, in some Member States, higher rates are reported for specific brands, in particular in Italy, Finland and Greece. In Italy, car manufacturers report that 6 to 9% of dealers in their network have contracted out their repair activities, while in Finland there are four brands for which 6% to 15% of their dealerships are stand-alone, and in Greece four brands report that stand-alone outlets make up a double digit percentage of all dealerships. Specialisation in vehicle sales activities seems to be even rarer in the commercial vehicle sector. The DAF network is an exception, with 14% of DAF dealers not directly operating a workshop.

101. For their part, dealer associations confirm that specialisation in sales is rare or non-existent due to the fact that stand-alone dealerships are not attractive commercially as most of dealers' profits are generated by after-sales activities rather than through the sale of new motor vehicles⁸⁹.

Innovation in vehicle distribution: (2) Multi-branding

102. Another form of dealer-driven innovation in vehicle distribution which Regulation 1400/2002 was meant to stimulate, is represented by the development of dealers selling new vehicles of competing brands (multi-brand dealers), in particular from one single showroom.

103. In this respect, the 2006 study by London Economics⁹⁰ reports that in most of the twelve countries surveyed there has been an overall increase in the number of dealers selling brands of competing manufacturers. According to this study, there are substantial variations across Member States. For instance, in 2004, the proportion of multi-brand dealers ranged from 35% in Denmark to 9% in Portugal. In terms of general trend, however, the share of car dealers engaged in multi-branding increased, at the EU level, from 7% to 17% over the period from 1997 to 2004, which represents a significant progression.

104. This trend is confirmed by the information provided to the Commission by a majority of car manufacturers and some dealer associations. In particular, the German

⁸⁹ Federaicpa, ZDK, NFDA, Ganvam, Faconauto, PIM, CNPA.

⁹⁰ London Economics: Developments (...) p. 59 ff.

dealer association reports that in Germany, about 20% of dealers selling volume brands are multi-brand dealers, while the figure is lower for premium brands and substantially higher (about 50%) for smaller brands having entered the market in recent years, such as Hyundai and Kia. The observation that multi-brand dealers mainly sell smaller brands newly entered into the European market is confirmed by other national dealer associations, such as Federaicpa, which reports that in Italy 15% of dealers are multi-brand, and the Czech dealer association, which estimates that 30 to 40% of Czech dealers are multi-brand.

105. In the commercial vehicle sector, multi-branding seems to be extremely uncommon.

106. Car manufacturers' views on the economic rationale for multi-branding vary considerably across brands, with a more positive attitude shown by manufacturers of volume brands than by those producing premium brands. Some car and commercial vehicle manufacturers explain in their replies to the Commission's questionnaires that they have occasionally approached dealers selling competing brands with a view to integrating them within their networks. However, other manufacturers, including certain Asian carmakers, expressly denied taking this approach. Most manufacturers that approached dealers selling competing brands claim that dealers with experience of selling an existing brand within a local area are greatly valued by brands seeking to enlarge or improve their territorial footprint, particularly if the brands sold by the dealers concerned are complementary and the potential risks of cannibalisation are consequently limited. In contrast, two of the manufacturers responding to a Commission questionnaire considered that dealers' experience with other brands would not be particularly relevant, especially where the dealers in question sold premium brands with very specific model ranges and product image.

107. It is possible to distinguish three main types of multi-branding. Firstly, a dealer may sell different brands from several outlets located in totally different sites. This is a typical model for dealer groups, i.e. undertakings having acquired the control of several dealerships operating as authorised distributors of different makes. Alternatively, a firm may sell brands of more than one manufacturer from different showrooms which are located within one single site. This model is typical for larger dealers, but not necessarily limited to dealer groups. In a third model, the brands of more than one manufacturer are sold in the same showroom. This was the type of multi-branding which the block exemption was intended to promote, so as to enable smaller dealers to improve their profitability by spreading their initial investment costs and recurring fixed costs over a larger volume of units sold.

108. The growth in multi-branding reported above does not however reflect any large-scale take up of the same-showroom sales that the Commission wished to encourage. Instead, as CECRA observes, the main area of growth over the past five years has been the expansion of large dealer groups, which has led to an increase in the number of dealers selling competing brands from different sites. This "first model" multi-branding represents the main factor that has contributed to the recent increase of multi-branding across the various manufacturers' networks. As to the second model, several national dealer associations point to a positive trend which would have become more robust since 2002, particularly in connection with the wide-spread phenomenon of network reorganisations and reconfigurations of existing facilities which followed the entry into force of Regulation 1400/2002. For instance, the Spanish association

Ganvam states that multi-brand dealers usually use separate showrooms built on the same site as pre-existing showrooms. The UK dealer association did not report on the share of dealers engaged in multi-branding but indicates that multi-branding is being taken up by dealers, albeit not on a dramatic scale. Multi-branding in the UK is rather characterised by the addition of low-volume emerging brands that do not compete directly with the established ones.

109. The French dealer association reports that, following the entry into force of Regulation 1400/2002, the vast majority of multi-brand dealers have opted for either the first or the second model, reflecting the relative parallel growth of large dealer groups.

110. As to the third model, several dealer associations report disadvantages in the form of negative impacts on brand identity, and disparities and conflicts between different brands' standards and systems. These disadvantages may explain why there had not been a widespread take-up of this model, in spite of declarations of interest from dealers. There are, however, certain advantages, in particular relating to shared costs and other synergies. The majority of respondents giving an opinion indicate that that multi-branding from the same showroom has either not taken off at all, or is less popular than other types of multi-branding. The French, the Spanish and the Polish dealer associations report that multi-branding from the same showroom is virtually non-existent in their respective countries, or is used only occasionally when it is possible to complete the model range of the existing brand with complementary models of a niche manufacturer. CECRA, on the other hand, suggests that multi-branding from the same premises and the same showroom has recently increased, while confirming however that multi-brand dealers continue to develop mainly on the basis of the first and second model. The UK, the Belgian and, to some extent, the Austrian dealer associations support this view, reporting that before 2002, there were virtually no sales of competing brands from the same showroom whereas, since Regulation 1400/2002 was introduced, such activity has developed to some degree. Multi-branding from the same showroom seems to be significant in Finland (the Finnish dealer association indicating that the second and third models have been taken up by 80% of the dealers concerned).

Innovation in vehicle distribution: (3) Development of secondary sales and delivery outlets

111. London Economics indicates that a quarter of the dealers responding to its questionnaire intended to take advantage of the opportunity to open secondary outlets following the exclusion of the so-called location causes from the benefit of the block exemption, i.e. those contractual arrangements preventing authorised dealers from operating out of an unauthorised place of establishment. Half the respondents had no economic interest in doing so, while another quarter lacked the financial means and/or managerial skills. Information gathered by the Commission suggests that despite this apparent interest expressed by certain dealers, in reality only a very few have opened secondary outlets. GM (Opel and Chevrolet) dealers in Germany appear to be an exception⁹¹ to this rule.

⁹¹ 87 Opel dealers in Germany alone have announced their intention, and 79 have actually opened secondary outlets

112. According to London Economics, dealers show almost no interest in opening outlets outside their home country. Virtually all of the replies obtained in response to the Commission's questionnaires from car manufacturers and most national dealer associations confirm this position.
113. Although no respondent to the Commission's questionnaires reported any significant development of secondary sales and delivery outlets, CECRA observes that it would be premature for the Commission to make any definitive assessment as to the potential development of such business as the transitional period provided for by Regulation 1400/2002 in respect of location clauses ended only on the 1 October 2005.

Dealer profitability

114. London Economics estimates the average dealer margin for car sales to be between 1% and 2%, showing that savings from economies of scale may have compensated dealers for increased expenses incurred through compliance with higher contractual standards.
115. Although estimates as to dealer profitability vary considerably, CECRA observes broadly that dealers' profits have been broadly stable since 2002, with a net operating margin on car sales of around 0.6%. National dealers associations make the following estimates for operating margins for car sales:
- UK: (net operating margin): 2.2% (1995), 1.3% (2000), 1.7% (2002), 1.0% (2005)
 - Italy: (gross operating margin) between 1.2% and 1.5% in 2005.
 - France (gross operating margin): 5.4% (2000), 5.4% (2002), 5.0% (2005)
 - Germany (gross operating margin): 9% (1995), 7% (2002), 10% (2005).
 - Spain (net operating margin): 1.7% (1995), 1.1% (2005).

International price dispersion and parallel trade between Member States

116. One of the key features of Regulation 1400/2002 was to remove restrictions to cross-border sales of new motor vehicles, especially in the context of selective distribution agreements. This policy objective appeared as particularly important due the continuous existence of substantial prices differentials within the internal market during the 1990s and in the light of the repeated attempts by several car manufacturers to hinder parallel trade between Member States (which resulted in several prohibition decisions taken by the Commission prior to the adoption of the new block exemption)⁹².

⁹² See in particular, Commission Decision of 28 January 1998 in the case IV/35.733 — *Volkswagen I*, Commission Decision of 20 September 2000 in the case COMP/36.653 — *Opel NL*, Commission decision of 10 October 2001 in the case COMP/36.264 — *Mercedes-Benz*. It worth noting that the Commission decision of 5 October 2005 in the case Comp/E-2/36623- *Peugeot NL* sanctioned a practice retraining parallel trade which ended in 2003, in connection with the entry into force of Regulation 1400/2002.

117. It is worth noting that since the entry into force of Regulation 1400/2002, the Car Price Reports published by DG Competition show a general trend towards price convergence across the EU. The standard deviation, (a measure indicating the degree of price dispersion) for car prices (without taxes) between the EU-15 Markets (the countries that were EU Members before 2002) dropped from 7.0% in November 2002 to 5.5% in May 2004. The car price deviation in the Euro-Zone countries came down from 5.2% in November 2002 to 4.4% in May 2004. Since 2004 the car price deviation in the Markets in the EU-15 has been broadly stable. In the EU-25 countries the deviation has been however decreasing, falling from 6.9% in May 2004 to 6.4% in May 2007 thanks to price convergence in the new Member States.
118. The European association of independent traders (EAIVT) indicates several reasons for price differentials in the EU, such as differences in (i) various national tax regimes (including registration, annual circulation and environmental taxes), (ii) consumers' purchasing power leading to heterogeneous demand across national markets and (iii) consumer preferences for national brands.
119. Given the remarkable price convergence it appears worthwhile to have a closer look at parallel trade between the member states. According to EAIVT around 10% of sales in the EU are generated by parallel trade in the broader sense between Member States and this share has been stable during the reference period. BEUC indicates that parallel imports of right-hand drive vehicles destined to the UK have decreased, while exports flows to Germany have increased, as this country remains firmly at the top of the EU league of countries with the highest list prices for cars.
120. For Germany, the Bfi93 estimates that the share of all parallel traded vehicles increased from 20% of all German sales in 2002 to 25% in 2006. Bfi reports also that certain manufacturers, especially premium brands, increasingly apply pan-EU pricing and are therefore less prone to parallel trade. Several car manufacturers and two national dealer associations report parallel trade generated by intermediaries acting on behalf of consumers to be stable or increasing, while no manufacturer reports a decreasing trend. By contrast, parallel trade in new commercial vehicles appears to be virtually inexistent for most brands, although DAF is an exception, in that 10% of its new trucks are parallel-traded. Not surprisingly, intermediary activity in the commercial vehicle sector has not developed to any significant extent.
121. Both CECRA and a number of vehicle manufacturers indicate that bogus intermediaries are a problem. These are traders who put themselves forward as representing an individual consumer, while in reality they intend to resell the new vehicle for their own account.
122. Neither CECRA, nor most of the vehicle manufacturers were able to provide detailed information on sales made by authorised dealers to end users/final consumers established in other Member States. Those estimates that were received from vehicle manufacturers indicate mostly numbers of less than 1%. Porsche reports a share of less than 5% EU-wide. It appears that in Germany authorised dealers are increasingly importing new cars⁹⁴.

⁹³ Association representing importers not contractually linked to the vehicle manufacturers.

⁹⁴ ZDK and BEUC.

- *Concluding remarks*

123. Falling real price levels, a number of successful entries, relatively few exits, significant fluctuations in market shares, moderate and decreasing concentration, increased choice in the sub-segments of the market, and shortening model life-cycles indicated by a higher rate of range renewal suggest strong and increasing inter-brand competition in the car sales market. Rather moderate and slightly decreasing market concentration, comparatively modest but fluctuating average profits and undiminished R&D expenses are further supportive elements. Looking forward, competitive pressure can be expected to increase, as car manufacturers from emerging countries enlarge their presence on the EU markets.
124. The reasons why the Commission took a tough stance in 2002 reflected a number of concerns regarding the negative evolution of some of the indicators described above. Many car manufacturers had high market shares on their home markets, due to consumer preferences for national manufacturers. Brand ranges covered a smaller number of segments than is currently the case, meaning that in certain segments, there were a more limited number of competitors. Moreover, the sector was in the midst of a merger wave, which was rapidly reducing the overall number of competitors. Structural rigidities were manifested by high price dispersion between Member States. However, the market has since evolved towards a more competitive environment.
125. As regard the assessment of the evolution of the competitive interaction between distributors of motor vehicle, it would appear that concentration among car dealers has increased moderately over the period under review. Network rationalisation and the evolution of dealer groups have reduced dealer numbers, although in some areas multi-branding may have acted as a moderating element.
126. There has been no real move on the part of either car dealers or vehicle manufacturers to innovate at distribution level. As a result, price remains the main factor of competition between dealers in the same network. Moreover, pricing within a network is not transparent, in that consumers are unable to determine the real price charged by a particular dealer without visiting his dealership and going through an individual bargaining procedure. The Internet has not had the same impact vis-à-vis the facilitation of price comparison that it has had as regards other tangible consumer goods and intangible products such as airline tickets.
127. Notwithstanding this relative rigidity of the prevailing selective distribution models, dealer profitability as regards new vehicle sales is low and stable. There has also been considerable price convergence in headline "list" prices across the EU for passenger cars. For both of these two elements, it is difficult to untangle the effect of intra-brand competition from that of competition between brands. Dealer profitability is affected by competition from other brands as well as from other dealers marketing the same make of vehicle. Similarly, the ability of dealers or manufacturers in a given Member State to sell at a price higher than that in other EU countries will not only be influenced by the ability of consumers to buy abroad, but will also be affected by inter-brand competition from other manufacturers.
128. One could therefore conclude that despite a general consolidation of the motor vehicle retailing sector, intra-brand competition in the car sector has not decreased to

any significant extent over the period under review, and that the generalisation of similar systems of distribution across the sector has not been such as to harm final consumers, due in particular to increasingly intense inter-brand competition.

C) Development of the competitive environment of the motor vehicle repair and maintenance sector

129. The main aims of Regulation 1400/2002 as regards the after-market were to foster competition among authorised repairers and parts distributors through specific rules designed to facilitate newcomers' access to the selective networks, and to protect competition between authorised and independent repairers by ensuring that the latter had full access to the relevant technical information, tools and spare parts. To this end, the Regulation also sought to protect competition between spare parts bearing the vehicle manufacturers' brands, and those supplied directly to the after-market by spare parts manufacturers.
130. This section analyses specific economic indicators that are useful for measuring the degree of competition in the EU markets for the repair and maintenance of motor vehicles together with the evolution of that competition over the period of application of Regulation 1400/2002. Firstly, the analysis will focus on indicators which are useful measures of competition between authorised and independent repairers (i.e. inter-brand competition), before going on to look at indicators which are relevant in order to assess the evolution of the competitive interaction between repairers within a given authorised networks (i.e. intra-brand competition). Finally, the section will look at how competition on the spare parts markets has evolved.
131. As to competition between authorised and independent repairers, the present section will look firstly at changes in the overall numbers of authorised and independent repairers and will examine how their market positions have evolved, before looking at market entries and exits over the period. Analysis will then focus on price trends and sector profitability.
132. As regards competition between authorised repairers belonging to the same network, diversity of distribution formats may indicate that there is less risk that a network effect could arise due to a large number of agreements containing essentially the same types of restriction. The degree of innovation may show that repairers are willing and able to develop different business models with different cost structures so as to gain a competitive advantage over their rivals. Network density is also indicative of the degree of intra-brand competition, while the rate of vertical integration across local or regional markets constitutes an additional indicator of the scope for effective competition between repairers belonging to the same brand network.
133. Turning to competition on the spare parts markets, this section will look at the evolution of market shares over the period of validity of the block exemption, before examining how the vehicle manufacturers' and spare parts manufacturers' distribution channels have developed. It will then look at the degree to which Original Equipment Suppliers and other parts manufacturers are able to access the aftermarket, before giving an overview of price trends and sector profitability.

- *Indicators relevant for assessing competition between authorised and independent repairers*

Market position and numbers of operators

134. During the Commission's investigation, national dealer associations report that authorised repairers currently have market shares of about 45% to 60% in most European main markets (although no information was provided about the UK market). Perceptions as to how the relative turnover of the independent and authorised car repair sectors has evolved during the reference period depend very much on the category of operator. ACEA, for instance, reports no overall trend as regards the market shares of its members' authorised networks; the same is true of replies received from most vehicle manufacturers. Associations of authorised dealers, however, seem to perceive that independents are gaining ground. In the UK, SIMI reports that according to franchised dealers, independent repairers are gaining in market share. The ZDK reports that independents gained ground in 2002/3, but thereafter, relative turnover remained stable. Disappointingly, the main European independent repairers' association reports that it has no data in this respect. On the other hand, the Spanish dealers' and repairers' association FACONAUTO reports that authorised repairers are gaining ground over their independent counterparts. Perhaps the most neutral viewpoint comes from London Economics, which estimates that the average turnover of the independent repairers that they had sampled had grown at a rate of only 1.2% per year: a clear decline in real terms⁹⁵ over the past ten years, showing that independent repairers are steadily losing ground to their authorised rivals.
135. In the commercial vehicle sector, the market share of the authorised networks varies greatly depending on the brand and the manufacturer. At one extreme, the Iveco network has a market share of 93% for repairs on vehicles of its brands in Germany, while the MAN network's market share in Poland is put at only 9%. Most brands exhibit no trend, although Iveco claims that its network is losing market share to the independent sector in all Member States.
136. As to car repair, both the London Economics study and the Commission's investigation have shown that numbers of independent repairers are on a fairly steep downward trend, with most national repairers' associations in the EU-15 reporting that numbers of independent repairers declined between 1995 and 2006. Only the Finnish repairers' association reported an increase. The London Economics study showed that in 1999, there were 7.3 times more independent repairers than authorised repairers. By 2003, there were only 5.2 times as many⁹⁶. FIGIEFA reports that this downward trend has continued, and that in France and Italy, the ratio is now 3:1, while in Germany there are equal numbers of independent and authorised repairers. It reports that 25% of all independent repairers have left the market since the 1990s. The SMMT indicates that in the UK, the ratio between independent and authorised repairer numbers is now 3.5:1. The Spanish association reports that the proportion is now 5.5:1, while in Italy, the ratio declined from 3.9:1 in 2000 to 2.6:1 in 2006. However, in France, FEDA reports that the ratio has increased from 1.28:1 in 2008 to 1.50:1 in 2006.

⁹⁵ London Economics: Developments (...), p. 145.

⁹⁶ London Economics: Developments (...), figure 94 on page 135.

137. Part of this downtrend is undoubtedly due to the fact that many existing businesses were simply not able to cope with the far greater technical skills, equipment and training needed to repair the increasingly technologically complex vehicles brought onto the market during the first years of the millennium. Moreover, during the first few years after the regulation was adopted, a lack of adequate access to technical information undoubtedly had a negative impact on the ability of independent repairers to compete. This position appears, however, to have improved recently, following Commission action which is described in the Working Document No. 3.. Another problem appears to have been the poor availability of full-function multi-brand electronic repair tools, due to the fact that vehicle manufacturers exercise intellectual property rights over certain information that might otherwise allow tool manufacturers to produce tools that work on several brands of vehicle. Since, in contrast to authorised repairers, almost all independent repairers repair a wide spectrum of vehicles from different manufacturers, the absence of fully effective multi-brand tools may be a considerable handicap.
138. Several respondents indicate that the proportion of repairs carried out within the authorised repair networks declines as vehicles get older. The Italian dealer association reports that the figure is very high during the first few years of a vehicle's life: during the first year it is 91%, while in the second, it is 82%, and by the third year it is still 62%, and in the fourth 49%. The French dealer association CNPA confirms this picture. While in the first year, 90% of repairs are carried out by authorised repairers; this share drops to below 20% after a vehicle is more than eight years old.
139. This phenomenon is partly due to the perception that the residual value of a vehicle may be negatively affected if repairs are carried out outside the authorised networks. It is notable in this respect that cars are still often advertised as having a "full dealer service history". When the residual value drops as the vehicle gets older, car owners may be more tempted to take their vehicles to an independent garage. It should not be forgotten in this context that in many cases, by this time the vehicle will have a new, probably more price-sensitive owner.
140. The fact that a car is under a manufacturer's warranty for the first few years of its life is another reason why consumers tend to turn to the authorised repair networks during this period. Repairs carried out under warranty are obviously captive to the vehicle manufacturers' authorised networks, in that the manufacturer pays for this category of work, and is therefore able to specify that only authorised repairers may carry it out. Standard warranty periods have been increased since the block exemption was adopted, and many brands now offer a three-year warranty. Often, the vehicle manufacturer offers a corrosion warranty that goes beyond three years. In addition, authorised dealers increasingly give consumers buying a car the possibility of buying an extended warranty and/or a servicing package. These extras have the effect that certain defined categories of repair are captive even after the standard warranty has expired.
141. This captivity also has an overspill effect into areas not covered by the warranty or free servicing package for two main reasons. Firstly, consumers have a natural preference for a one-stop-shop, and if it is necessary to carry out a repair under warranty, they are also likely to have other work, such as minor collision damage, carried out in the authorised repair shop even if it would be cheaper to take the vehicle elsewhere. Secondly, consumers may be afraid that if they have repairs or servicing

done in an independent repair shop during the warranty period, this may invalidate the warranty.

Market entries and exits

142. Although overall, numbers of independent repairers have seen a considerable decline, this masks a more complex picture, within which a large proportion of small repairers have left the market, while there have also been market entries in the form of repair chains.
143. Traditionally, the vast majority of independent repairers operated out of small, often family run, multi-brand garages. Such firms relied upon the fact that their overheads could be shared over several vehicle brands. Know-how and other technical information gained with one brand were often transferable to another, and most tools were not specific to one brand. This flexibility and breadth of knowledge may have given these repairers a competitive advantage over authorised repair shops attached to franchised dealerships.
144. Today, however, the traditional business model of such repairers appears to be under threat. Increasing proprietary technology content in vehicles means that most technical information is now brand- or carmaker-specific. Dedicated electronic diagnostic and repair tools are needed for each brand, reducing the economies that had previously accrued to small multi-brand repairers, and necessitating major investments that may exceed the financial resources of a small garage. Restrictions on access to technical information risk exacerbating this competitive decline.
145. As a result, many small independent repairers are leaving the market, and the overall makeup of the independent sector is changing. ADIRA, for instance, indicates that while in 1995, 70% of all independent repairers could be categorised as "small" (having less than 3 technicians), by 2006, the figure had dropped to 37%. In Italy, 70% of independent repairers could be classified as "small" in 1995, but this figure had declined to 37% by 2006. In Germany, the decline was from 75% in 2000 to 60% in 2006. In France, small repairers also saw a marked decline, from: 64% of all independent repairers in 1995, to only 55% in 2006. Spanish repairers report no trend, but 80% of all independent repairers are currently "small. The Belgian and Dutch national repairers' associations report no change over the period, with 90% of independent repairers being small in Belgium and 50% in the Netherlands. Only in Poland have small repairers shown a slight resurgence, from 40% in 2004 to 45% in 2006.
146. The second development has been the arrival and rapid evolution of various types of multi-brand repair chains. The automotive supply association CLEPA estimates that for Europe as a whole, such operators will represent around 50% of the independent repair sector by 2010. The CNPA estimates that in 2006, more than 48% of French independent repairers were part of a chain, up from 37% in 2005. ADIRA indicates that over the period 2002-2006, 25% of all independents were part of a chain, compared to only 1% between 1995 and 2002. AUTIG estimates that at least 60% of all independent repairers in Austria will be part of a repair chain within five years.

Innovation in repair

147. These repair chains are evolving and innovating in response to market conditions, and in particular, to consumer demand. In the past, many of these chains, such as those operating under the Speedy/Kwikfit/Pitstop brands, as well as ATU, could be thought of as fast-fit repairers, meaning that they concentrated on a narrow range of frequently-required services, such as exhaust, tyre or shock absorber replacement, and aimed to have a fast job turnaround. Increasingly, however, repair chains are offering a broader palette of services, in order to cater for customers who demand a more-or-less one-stop-shop. The spare part manufacturers' association CLEPA foresees that fast-fit repairers will experience a stagnation or erosion of market share unless they broaden the range of services that they offer. CLEPA also reports that repair chains covering a broader range of services have increased their market share and will continue to do so. Some of these repair chains are franchise operations operated by spare parts distributors (Profi-Service, AutoFit, AutoCheck), while others are operated by spare parts and tool manufacturers such as Bosch, which can not only offer spare parts and multi-brand repair tools but also technical information on the most complex electronic vehicle systems. Others, such as Autocrew, are operated by parts manufacturers. Finally, chains such as Rhiag and Stahlgruber are run on a contractual, non-franchised basis.
148. In contrast to the position as regards cars, chains of independent repairers would appear to be relatively uncommon in the commercial vehicle sector.
149. In response to the development of repair chains within the independent sector, many car manufacturers have introduced "soft franchising" concepts, such as the Renault-based chain Motrio, Volkswagen's Stop&Go, or Citroen's Eurepar. Independent repairers who sign up for such a franchise provide a narrower range of services to those carried out within the "fully-authorized" sector, but can display the brand of the soft-franchise chain, and also receive spare parts, technical information, tools and training. This kind of franchising allows car manufacturers to have a greater presence on the market for older vehicles, which has traditionally been the preserve of independent repairers⁹⁷. London Economics reports that six percent of independent repairers have entered into such an arrangement with car manufacturers. ACEA and FIGIEFA both report that there is an increasing tendency for independent repairers to join franchised networks. However, FIGIEFA reports that this tendency is still very limited.
150. Probably due to the complexity of commercial vehicle repairs and the demand for full-range service, soft-franchising for such vehicles is very uncommon, although Iveco does have lower standards for repairers that only wish to repair the (smaller) Daily range of trucks.

Price trends

151. Overall, real prices for repair and maintenance services increased in the EU-25 countries by 17.8%⁹⁸ between 1996 and 2006. However, since vehicles now need less frequent attention, consumer expenditure on repair and maintenance has declined in real terms⁹⁹. This rise in prices is partly due to the fact that today's repairers have to make far greater investments in terms of tools and training than was the case in the

⁹⁷ ACEA.

⁹⁸ Eurostat, Harmonized indices of consumer prices.

⁹⁹ London Economics: Developments (...), page 182.

past. It may also be that skilled labour shortages have pushed up the cost of hiring a modern technician over the period in question. Finally, as will be seen, the fact that captive parts have been increasing above the rate of inflation may also have had an effect on the average overall repair bill

152. Authorised repairers have historically been perceived as having a premium status within the repair sector, despite the fact that surveys generally tend to show little difference as regards the quality of the services provided. The main reason for this is probably that, unlike most independent garages, authorised repairers are able to offer a near-full range of services for the brand that they represent – a "one-stop shop". Another reason is that, as has been seen, independent repairers tend to repair older vehicles, whose owners are often more price-sensitive. Independent repairers are therefore constrained to pitch prices for their services at a lower level to those practised within the authorised networks. In Italy, for instance, independent repairers charge from 10-15% less than do members of the authorised networks. London Economics reports that in Germany, the average price charged is 16% higher at authorised repairers. In Spain, the services of independent repairers are also significantly cheaper than those performed by members of the authorised networks: price differences range between 7% and 33%.

Sector profitability/ profit margins

153. After some year-to-year variation, but no discernable upward or downward trend, the average operating margin of all firms engaged in vehicle repair and maintenance (including both independent and authorised repairers) within the EU-27 was 13.2% in 2004¹⁰⁰.
154. Replies to Commission questionnaires indicate that the net operating profit in the independent sector usually varies between 2 and 5%, although it can reach 10-15% for small family-owned businesses. Larger independent repairers usually do not achieve more than a 3% net profit margin. A German national repairers' association indicates that independent repairers' net operating margin varies between 2.5 and 3.5% in that Member State, while the French association puts the figure at between 4 and 6% in France.
155. These tight margins compare unfavourably with those in the authorised sector. Although replies from associations of authorised dealers show no clear picture and are often confused, reporting gross rather than net margins, it is clear that authorised repair shops enjoy very comfortable profit margins, which are far higher than those achieved for vehicle sales. The Dutch association BOVAG, for instance, indicates that, though declining, gross margins for after-sales activities are around 50%, compared to a 6.5% gross margin for sales of new vehicles. According to the French CNPA, gross after-sales margins were around 19.5% in 2005, a figure which was marginally on the increase. Gross margins for new car sales were falling, and in 2005 stood at 5.0%. The UK NFDA shows that authorised repair shops enjoyed a 31.3% operating profit in 2005, while the equivalent figures for parts sales and sales of new cars were 11.9% and 1.0% respectively. Profit levels in all areas were, however, declining. The German

¹⁰⁰ Eurostat: European business – Facts and figures 2007, p 278.

association ZDK indicates that gross margins for after-sales in 2005 were stable at around 77%, while gross margins for new car sales were around 10%.

156. In the commercial vehicle arena, FEDERAICPA estimates that the EBIT¹⁰¹ for authorised dealers' after-sales activities amounted to 6.1% in 2001, rising to 8.2% in 2006.

- *Competition between members of the vehicle manufacturers' repair networks*

Types of contracts and key elements thereof

157. The contractual landscape across the authorised repair sector exhibits considerable uniformity. Almost without exception, car manufacturers have adopted qualitative selective distribution as a model across the EU. Most car manufacturers offer the members of their selective networks indefinite-term contracts, covering spare parts distribution as well as repair and maintenance. However the Dutch association BOVAG and the Austrian association both point out that PSA offers separate contracts for spare parts distribution.

158. Since Regulation 1400/2002 was adopted, there has been a move away from two-tier car distribution networks towards a simpler single-tier system in which car manufacturers are able to exercise tighter control over the way in which their brands are projected. In a single-tier system, all repairers have a direct commercial relationship with the vehicle manufacturers, whereas where there is a second-tier, these "sub-repairers" only have such a relationship with a given member of the first tier. Between 2002 and 2006, there was a decline of around one sixth in the numbers of car repair outlets operating at the second tier, and the CNPA reports that this rationalisation was especially felt in France. Currently, only three vehicle manufacturers (Fiat, PSA and Renault) use two-tier networks to any great extent, although some operate on a mixed system of one-tier / two-tier outlets depending upon the country.

159. While most commercial vehicle repair networks operate on a purely qualitative basis, MAN operates a quantitative system in all Member States bar Germany, and Iveco uses quantitative selective distribution in most Member States, presumably because the market shares of these manufacturers' networks as regards the repair of vehicles of their brands do not exceed 30%. Most commercial vehicle manufacturers also offer their authorised repairers indefinite-term contracts. Stand-alone contracts for spare parts distribution are very uncommon in the world of commercial vehicles. Two-tier systems appear to be more common in the commercial vehicle arena, although these are on the decline for certain manufacturers' brands in certain markets.

160. Vehicle manufacturers' selection criteria generally require the members of their authorised networks to carry out a full range of repair services for the brands that they represent. Authorised outlets typically concentrate their activities on the repair of a single brand, although there are instances where one repair shop is authorised to repair more than one brand from the same manufacturer, or even brands from different

¹⁰¹ Earnings before interest and taxes

manufacturers. It should also not be forgotten that authorised repairers may also act as independent repairers when they are called upon to repair vehicles of brands for which they do not hold a franchise; indeed many national dealer associations, such as the CNPA and SIMI, indicate that this practice is widespread in certain Member States¹⁰². Overall, however, authorised repair outlets can be viewed as full-range brand specialists, and as such, they are in the possession of all relevant brand specific equipment, technical information and training.

161. This is not to say that authorised repairers are able to carry out absolutely every category of repair; indeed, it may not be economical for them to have the facilities to carry out complex work in fields such as bodywork. Such repairs are usually carried out in field-specialist bodyshops, many of which operate outside the vehicle manufacturers' networks, and for which insurance companies are the main customers. Both FACONAUTO and the Spanish dealers' and repairers' association GANVAM indicate that it is becoming increasingly common for authorised repairers to outsource body repair to specialist independent bodyshops.

162. One notable evolution within the authorised car repair networks since the Regulation was introduced is that vehicle manufacturers have increased requirements for tooling, training, signage, and other forms of corporate identity. The Commission's investigation has shown that repairers' attitudes to increased standards are generally negative. FACONAUTO, for instance, indicates that the new standards increased the yearly costs of operating an authorised repair shop by 25% in 2004, 2005, and 2006, and that the necessary upgrades cost on average €0.9 million. GANVAM indicated that increased standards added 25% to the running costs of such of a workshop in Spain between 2004 and 2006. Repairers' associations claim that standards are so high that independent repairers either choose not to apply for authorised status (CNPA, and the Czech dealer association) or that their application fails (ZDK, Germany) or is withdrawn (GANVAM, Spain). Bonus schemes are now often tightly linked to the extent to which a repairer meets these standards. Despite the overall picture of homogeneity within the networks, it should be noted that bonus and target schemes for authorised repairers vary greatly between Member States, both for passenger cars, and commercial vehicles.

Network density

163. The authorised car repair networks generally have market shares that exceed 30%, and carmakers that wish their networks to benefit from the block exemption are therefore obliged to admit all candidate authorised repairers that met their criteria¹⁰³. As a result, both independent repairers and dealers who are expelled when the authorised networks are rationalised have been able to apply to join or re-join those networks as stand-alone repairers, leading to resurgence in what had been declining numbers prior to the adoption of the Regulation. The London Economics study shows that while the number of authorised repair partners in the twelve Member States under study fell from 43,000 to 40,000 from 1997 to 2002, the figure had rebounded sharply to over 50,000 by 2004¹⁰⁴. The Commission's investigation has confirmed this trend,

¹⁰² However, the ZDK indicates that the practice is not common in Germany.

¹⁰³ See Article 3(1) of Regulation 1400/2002.

¹⁰⁴ London Economics: Developments (...), figure 97, p.138.

showing that the number of authorised car repair outlets increased by 9% between 2002 and 2004. Among the commercial vehicle networks, on the other hand, network density appears to have remained stable.

Vertical integration

164. Around the time that the Regulation was adopted, certain commentators perceived a trend towards car manufacturers owning their own dealerships. However, in the event, the Commission's investigation has revealed that this phenomenon of vertical integration in the passenger car sector remains limited. The car manufacturers responding to the Commission's inquiry reported that the percentage of manufacturer-owned repair outlets for their main brands across the EU increased from 1.9% in 2002 to 2.2% in 2006. Brands in the premium segment tend to have a larger share of integrated repairer outlets than the average.
165. Vertical integration in the commercial vehicle sector appears to be more common, although there seems to have been no overall trend in either direction over the period from 2002 to 2006.

Innovation within the selective distribution systems

166. Car manufacturers report that numbers of stand-alone authorised repairers (i.e. repairers that do not sell new cars) have been increasing considerably since 2002¹⁰⁵. The proportion of car repairers of this type varies considerably among manufacturers and between Member States; such firms seem to be particularly widespread in Italy (ACEA, manufacturers). The Italian dealer association points out that since 2002, the number of stand-alone repair outlets has increased dramatically.
167. In the commercial vehicle sector, a particularly high percentage of authorised outlets are repair-only, although it should be noted that this is mostly due to the fact that it is common for commercial vehicle manufacturers to sell vehicles directly, and for some brands in certain Member States there are no authorised sales outlets. In these circumstances, authorised repair outlets are inevitably stand-alone. Stand-alone repair outlets make up almost 100% of all MAN authorised repairers in the main EU markets. The same is the case for DaimlerChrysler buses, as well as for Renault trucks in DK, AT, and FI, and for Volvo Trucks in CZ, EL, HU, and AT.
168. Despite the provisions of Regulation 1400/2002, authorised repairers still typically concentrate their activities on the repair of a single brand, although there are instances where one repair shop is authorised to repair more than one brand from the same manufacturer, or even brands from different manufacturers. It would appear that this practice has moderately increased since Regulation 1400/2002 was adopted. Although many vehicle manufacturers only provided information on certain countries, most indicated that the proportion of authorised repairers engaged in multi-brand repair services had increased. For four of the five brands in respect of which EU-wide shares were provided, the proportion of multi-brand repairers rose from 2002 to 2006

¹⁰⁵ BMW, Daimler, Ford (Volvo Brand), Honda, Kia and PSA provided EU-wide percentages quantifying the increase of repair-only outlets Volkswagen, Mitsubishi Nissan and GM, did not provide EU-figures but also point to an increase.

(brand A: 9% to 10%, Brand B: 6% to 9%, Brand C: 21% to 27%, and Brand D: 3 to 7%. One manufacturer reported that the percentage of multi-branding remained stable at 11% from 2002 to 2006. As to commercial vehicles, in the main markets, up to 30% of all repairers are authorised to repair the brands of more than one manufacturer, although for Iveco, DaimlerChrysler, and Volvo, the percentage is much lower. The figure is far higher for some brands in peripheral EU states, or those with low population density, such as Finland.

169. It should also not be forgotten that authorised repairers may also act as independent repairers when they are called upon to repair vehicles of brands for which they do not hold a franchise; indeed many national dealer associations, such as the CNPA and SIMI, indicate that this type of multi-brand activity is widespread in certain Member States¹⁰⁶.

Since 2002, few authorised repairers have clubbed together to buy spare parts, or even to use common warehousing facilities. The only major such co-operation appears to be the Retail Automotive Alliance in the United Kingdom. However, this appears to have been set up by certain Ford dealers under the aegis of Ford itself, as a more efficient means of reaching both Ford dealers and independent repairers.

- *Competition in the market for spare parts*

Market shares

170. The vast majority of spare parts supplied by vehicle manufacturers are purchased from spare parts producers and sold on to the members of their authorised networks. Only a very small percentage is produced by the vehicle manufacturers themselves. Nonetheless, nearly all parts distributed via what may be thought of as the vehicle manufacturers' channels bear those manufacturers' brands. Although answers provided by car manufacturers to Commission questionnaires are incomplete, most report the overall market share of their own brands of spare parts to be high (in most cases between 40-65%). According to the French dealers' and repairers' association, CNPA, the vehicle manufacturers have around 55.6% of the French spare parts market. These figures are boosted by the fact that many parts lines are "captive", in that they are only available from the vehicle manufacturer.

171. Parts may be captive for any of several reasons: it may be, for instance, that the vehicle manufacturer has had input into the design of the part, and by thereby acquiring design rights is able to forbid the parts manufacturer from directly supplying the aftermarket. Alternatively, it may be that the parts manufacturer has entered into a "tooling arrangement" with the vehicle manufacturer, whereby the latter funds all or part of the tooling used to produce the parts line in question, and prohibits the parts manufacturer from using this tooling to supply the aftermarket directly. In other cases, it may simply be that the part in question is so infrequently replaced that it is not worth a parts manufacturer's while to produce it.

172. Three manufacturers of volume car models report that their market share as regards spare parts supply has declined in most main markets, while other

¹⁰⁶ However, the ZDK indicates that the practice is not common in Germany.

manufacturers point to a broadly stable market share over the period 2000-2006. No car manufacturer reports that its market share is on an upward trend. However, these figures conflict with what the spare parts producers report: CLEPA, the main association of such producers, estimates that the market for spare parts is divided 50/50 between the vehicle manufacturers and the spare part producers, and that the vehicle manufacturers have been increasing their market share for the last four years.

173. As for commercial vehicles, the claimed market shares of the vehicle manufacturers' brands vary between 9% (Iveco, Germany) and 53% (DAF, France) in the main markets. For bus parts, the market share of the vehicle manufacturer-branded parts appears to be higher than is the case for truck parts. There is no discernable overall market share trend in either direction, although DaimlerChrysler claims that its market share is falling.

174. Those parts that are not sold to the vehicle manufacturers are either sold by the parts manufacturers directly to repairers or through independent parts distributors. Since the block exemption entered into force, direct sales are likely to have increased, as repair chains run by parts manufacturers such as Bosch increased their presence on the market.

175. There are independent distributors of spare parts in all Member States¹⁰⁷. Their function is to consolidate parts streams from various manufacturers and importers in order to provide repairers with as full a range as possible. Repairers' associations' estimates of the market share of these distributors paint a mixed picture. In Italy, the share fell from 47% in 2002 to 45% in 2006. In France, the independents' market share rose from 52% between 2000 and 2002 to 54% in 2006. No data was provided for the United Kingdom or Portugal, while in Germany, independent distributors' market share fluctuated between 44% in 1995, 53% in 2002, and 50% in 2006. In Spain, ANCERA reports that independents held an 80% from 1995 to 2006.

Development of vehicle manufacturers' and spare parts producers' distribution channels

176. Vehicle manufacturers' brands of spare parts are usually distributed exclusively via their authorised repair networks. However, two car manufacturers have networks of authorised distributors of spare parts which do not carry out any repair activity; these represent less than 10% of all contracts for the distribution of car manufacturers' brands of parts. In the commercial vehicle sector, stand-alone spare parts distributors are also extremely rare. It should also be noted, that although the phenomenon is uncommon, certain car and commercial vehicle dealers do club together to purchase spare parts.

177. FIGIEFA indicates that few independent distributors of car parts specialise in a given category of spare parts, and the emerging distribution chains usually continue to carry the whole range. However, commercial vehicle manufacturers claim that independent parts distributors tend to cherry-pick parts for which they can make the

¹⁰⁷ In Germany alone, there about 200 spare parts distributors with around 1,000 branches between them, covering 80% of the market - Commission Staff working document: Proposal for a Directive of the European Parliament and of the Council amending directive 98/71/EC on the Legal Protection of designs. Extended Impact assessment.

most profits, and that this is damaging the profitability of the authorised truck and bus repair networks.

178. CLEPA reports that by introducing new definitions of original spare parts and spare parts of matching quality, the Regulation has improved the competitive position of independent parts distributors vis-à-vis the vehicle manufacturers' spare parts distribution channels. This improvement has been confirmed by certain independent repairers and distributors¹⁰⁸, as well as by car manufacturers and producers of commercial vehicles. On the other hand, associations of parts distributors reported to London Economics that Original Equipment Suppliers are not making much use of the definition of original spare parts. This is probably because such firms have long-standing commercial relationships with the vehicle manufacturers, which they fear might be disrupted by aggressive marketing. This is illustrated by the fact that parts manufacturers whose sales to vehicle manufacturers are declining tend to make more efforts to sell directly to the after-market.
179. Many independent spare parts distributors are small and medium-sized undertakings, and numbers of such firms appear to be on the wane, although not dramatically so. This may be due to the sheer scale required to handle and stock ever-increasing numbers of spare parts. FIGIEFA together with most car manufacturers confirm that independent spare part distributors are growing in size, partly due to consolidation. The car manufacturers attribute the growth of large independent distributors to the higher complexity and number of spare parts and the more intensive service requirements of the independent repairers.
180. The way in which the structure of the independent parts distribution market has evolved varies between Member States. FIGIEFA reports that there has been concentration in many EU-15 countries, such as Germany, the UK and Netherlands. In France and the southern European EU-15 countries on the other hand, distribution structures have so far remained fragmented. In the EU-10 countries (i.e. the "new" Member States) larger distributors have grown organically rather than by concentration, leaving pre-existing small outlets in place. FIGIEFA's observations are broadly confirmed by national independent associations which report increasing concentration in DE, UK and NL, but no such development in FR and IT. However the Spanish association also reports concentration on the Spanish market.
181. There are also a number of expanding groups of car parts distributors that are mainly active in national markets. Independent chains, such as Stahlgruber in Germany, European Truck Parts in the UK, AD Distribution in France, and Rhiag in Italy also appear to have a growing presence in the commercial vehicle sector. Due to their size, these groups enjoy a strong bargaining position vis-à-vis spare parts manufacturers. Recent years have also seen the emergence of wholesalers operating in several Member States. CLEPA reports that four expanding EU-wide spare parts wholesalers together control a turnover of about €13.5 billion, and that these are particularly strong in the new Member States. A number of national associations also report the entry of spare parts distributors operating across borders.
182. Although independent distributors are growing in sophistication and scope, the range of spare parts that they stock can never be as complete as that available from

¹⁰⁸ GVA, FIGIEFA, SMMT, TKL.

authorised outlets. Although most spare parts lines are "competitive parts"; that is to say that alternative brands are available on the market, certain lines are "captive parts", which are only available from the vehicle manufacturer, and are therefore not stocked by independent distributors.

Access to the aftermarket by OES and other parts producers

183. Independent repairers are generally free to shop around for the best deal that they can find on spare parts, in order to offer a more competitive price on the overall repair bill. National associations of independent repairers report that there are normally no obstacles in obtaining original spare parts from authorised dealers or repairers. However, CECRA reports that independent repairers source between 70-80% of their spare parts requirements from independent wholesalers. Many of the remaining 20-30% are probably captive parts that can only be obtained from members of the authorised networks.

184. It should be noted in this regard that alternative brands of parts sold by independent parts wholesalers tend to be cheaper than those marketed by vehicle manufacturers and their networks; the NFDA estimates that this difference amounts to 20-30% for "volume" vehicle brands and 30-40% for prestige and luxury brands. The main revenue stream for independent repairers comes from work on vehicles more than four years old, and owners of such vehicles may be more sensitive to the cost of spare parts, since the residual value of their cars is low. Moreover, beyond this point, the car's warranty will have expired, and the owner may therefore be less fearful that the use of alternative parts may invalidate the warranty.

185. The purchasing patterns of independent repairers are in stark contrast to those within the authorised networks. Although five car manufacturers report that in the main EU markets, their authorised repairers are purchasing a higher percentage of their spare parts requirements from alternative sources, these claims do not seem to be supported by other market observers. According to the London Economics study, authorised repairers of cars still obtain between 87 and 95% of their spare parts from car manufacturers. The NFDA reports that in the UK, authorised car repairers source close to 100% of their spare parts from the vehicle manufacturer. BOVAG estimates that in the Netherlands, the figure is 60%, while the CNPA indicates that the figure in France is 75-85%, and the ZDK indicates 80-85% for Germany. PIM reports that in Poland, the figure varies between 93 and 95%. For Finland, AKL reports that the figure is 60%. ACAP indicates that in Portugal, 70% of parts purchased by authorised car repairers are sourced from the vehicle manufacturer. FEDERAIPA estimates that in Italy, authorised car dealers purchase 70% of their spare parts from car manufacturers, while for stand-alone authorised repairers the figure is 50%. Commercial vehicle manufacturers estimate that between 50% and 90% of spare parts purchased by authorised repairers bear the truck or bus manufacturers' brand.

186. As regards spare parts purchases for the brands that they represent, the percentage may be even higher: FIGIEFA reports that although 25% of independent parts distributors' sales are made to authorised repairers, only 3% are for the brands that the repairers in question represent. Moreover, it is likely that many of the alternative brands of parts purchased by authorised repairers are tyres or lubricants, which are products that do not usually bear a carmaker's brand.

Price trends

187. It would appear that real prices for spare parts declined in the few years before the block exemption was adopted and that this decline continued into 2003, following which real prices took on a slight upward trend. This is illustrated by figures from Eurostat, which show that real consumer prices for spare parts and accessories for personal transport equipment - a category that mainly comprises motor vehicle spare parts - declined prior to 2002, and that in 2002 and 2003 real prices declined by 0.7% and 0.8% respectively, before rising in each of the following three years (2004: 0.3%, 2005: 0.1%, 2006: 0.3%)¹⁰⁹.
188. However, this situation of slowly fluctuating real spare parts prices masks a more complex picture. A total of sixteen Member States have legal provisions that grant design protection for visible spare parts thus granting vehicle manufactures a monopoly over these types of parts, rendering them captive to the authorised networks. Nine Member States, on the other hand, have more liberal regimes. There is strong evidence that where parts are design protected, produced in-house, or otherwise captive to the vehicle manufacturers, prices are rising at a far higher rate. Roughly 25% of the overall spare parts market is subject to design protection. London Economics, for instance, points out that in France, where aftermarket body panels benefit from design protection, the price of such parts increased by 14% between 1999 and 2004, while mechanical parts, which are not design-protected, registered practically no increase.
189. An analysis of prices for a range of eleven spare parts for twenty car models in nine Member States together with Norway showed that the prices for ten of the eleven were between 6.4% and 10.3% higher in those countries that had granted design protection. The true advantage that a liberal market brings to price-sensitive consumers is likely to be greater, since the figures for countries without design protection also include vehicle manufacturer-branded parts, which continue to be sold at higher prices. For example, in Germany in 2003, vehicle manufacturers charged prices for wings which were not subject to design protection that were between 48% and 223% higher than prices from alternative producers¹¹⁰.
190. Moreover, these price differences do not reveal the wider costs of design protection in terms of distorted trade patterns and inefficient allocation of resources: if design protection on spare parts were removed, increased economies of scale due to an increased number of open markets would decrease the producers' costs, resulting in further price decreases. The overall costs that the European consumer bears as a result of the design protection of spare parts can therefore be assumed to be higher than the bare figures suggest.
191. Estimates based on prices prevailing in the U.S., where design protection does not exist, indicate that if aftermarket design protection in the EU were to be

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Eurostat:
http://epp.eurostat.ec.europa.eu/portal/page?_pageid=0,1136173,0_45570701&_dad=portal&_schema=PORTAL

¹¹⁰ Design Directive Impact Assessment, p. 25/26.

withdrawn, this would lead to a reduction in the average price of previously-protected spare parts of 14% within two years¹¹¹.

Profitability

192. Like repair and maintenance, spare parts supply is a profitable business. According to Eurostat's estimates, the gross operating profit for the motor vehicle parts and accessories manufacturing sub-sector in the EU-27 was 7.5% in 2004, significantly higher than in the vehicle manufacturing sector (3.7%)¹¹². The gross operating profit rate for distributors of vehicle parts and accessories is estimated to be 6.8% in 2004¹¹³.

193. Vehicle manufacturers indicated that net operating margins on the after-sales markets remained high over the period from 2002 to 2006; four reported that margins were more than 30%. On the other hand, FIGIEFA reports that independent distributors experienced a decline in profits in the recent years, and that net profit margins are mostly between 0.2 and 2.2%. At the wholesale level, net margins are only around 1%. This is likely to be due to a combination of factors. Firstly, parts distributors have to stock increasingly wide ranges of parts in order to remain viable. Secondly, it is difficult for independent distributors to raise prices, since they operate under the major disadvantage of being unable to stock the 25% of parts that are subject to design protection and are therefore only available from the authorised networks. Authorised parts distributors are therefore the only firms on the market able to offer independent repairers a one-stop shop. Thirdly, vehicle manufacturers have been able to take advantage of increasing revenues from captive parts to reduce prices on competing parts, thus obliging independent distributors to cut their margins.

- *Concluding remarks*

194. Within the authorised networks, the basic distribution model is qualitative selective distribution. The fact that quantitative selective distribution is no longer exempted at market shares above 30% has led to a significant rebound in repairer numbers and network density. Vertical integration remains a marginal phenomenon. As far as innovation is concerned, many repairers operate stand-alone repair shops (i.e. without selling new cars), and multi-branding in repair is becoming more common. However, rigorous standards can have the effect of limiting differentiation. It is also notable that there are few instances of co-operation between authorised repairers, for instance, spare parts purchasing co-operatives, or common spare parts stocks. Overall, however, it would appear that the shift to qualitative selection has led to more competition within the authorised networks.

195. It would appear that since the Regulation was adopted, the authorised networks have slowly continued to gain ground vis-à-vis independent repairers. During this period, the independent repair sector has been faced with the necessity to make rapid adjustments in terms of highly-skilled labour, training, and tools, in order to repair the

¹¹¹ Design Directive Impact Assessment, p.26.

¹¹² Eurostat: European Business – Facts and figures, p.204.

¹¹³ Eurostat: European Business – Facts and figures, p. 278.

increasingly technically-complex vehicles on Europe's roads. These investments have proven to be beyond the means of many smaller, less-well-equipped garages. However, the independent sector has since undergone considerable consolidation that puts it in a better state to compete. Large chains of independents have emerged that are broadening the palette of services that they offer in order to meet the challenge of the authorised networks head-on. While prices have risen, the yearly cost of maintaining a vehicle has declined in real terms due to lengthening service intervals and greater reliability. Nevertheless, profit margins remain comfortable, showing the necessity of protecting competition from the independent sector.

196. During this period, an artificial bottleneck, in the form of a lack of access to technical information was applied, and this, as will be seen, only began to be removed following Commission intervention. In future, type approval regulation 715/2007 will take on the mantle of protecting access to such information. Two other major rigidities still exist, neither of which can be satisfactorily removed by competition rules. Firstly, design protection for certain categories of spare parts means that independent distributors cannot offer the full range, leaving independent repairers partially dependent on their authorised competitors. The negative effects brought about by after-market design protection are the subject of an ongoing legislative procedure in view of the review of the Design Directive¹¹⁴. Secondly, while the extension of warranty periods undoubtedly has consumer benefits, it also has the effect of shutting independent repairers out from a sizeable slice of the overall repair market.

197. It should also not be forgotten that part of the key to maintaining after-market competition lies in the hands of consumers, who until now have demonstrated a certain reluctance to turn to the independent sector, particularly for the repair and maintenance of younger vehicles. Ultimately, this reticence may only be overcome if the independent sector is able to build brand images that are equal to those of the vehicle manufacturers' networks. The evolution of independent chains is one sign that this may be beginning to happen.

¹¹⁴ Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs, OJ L 289, 28.10.1998, p. 28–35

TECHNICAL ANNEX 4

COMPARING AND CONTRASTING THE FOUR POLICY OPTIONS

A) Main elements common to all policy options

1. All four policy options are based upon the Commission's overall current policy for vertical restraints, as embodied in Regulation 2790/1999 and in the current Commission proposals for the replacement of that regulation.
2. All four options provide for the application of a block exemption for the motor vehicle sector that:
 - Has the same material scope – all vertical agreements, with the exclusion of certain agreements between competitors
 - Grants exemption on the basis of market share threshold(s)
 - Has the same basic architecture: general conditions that agreements have to meet to benefit from the block exemption, hardcore clauses which exclude agreements in their entirety from exemption, and specific conditions, which withhold the exemption from particular clauses
3. As regards the material content of such conditions and hardcore restraints, all four options entail some basic similarities as, under all of them, the benefit of the block exemption would not be applicable to :
 - Resale price maintenance, i.e. the restriction of the buyer's ability to determine its resale price, without prejudice to the possibility for the supplier to impose a maximum price, or to recommend resale prices.
 - Vertical agreements which restrict passive sales by dealers into other territories or customer groups, or active and/or passive sales to end users by dealers in markets where selective distribution is used
 - Vertical agreements restricting the ability of original equipment suppliers to sell spare parts to independent repairers.
 - Any direct or indirect non-compete obligation placed on authorised dealers for an indefinite duration.
 - Selective distribution agreements that prevent the distributor from selling goods from particular suppliers (no boycott rule)
 - provisions imposing post-term non-compete obligations on the parties

B) Elements specific to each policy option

Option 1: no change to the current sector-specific block exemption

4. Policy Option 1 is a baseline scenario that envisages no change to the law as it stands. Technically, this would require either the adoption of another block exemption regulation modelled on Regulation 1400/2002, or the adoption of a regulation prolonging the application of Regulation 1400/2002.

Scope of the exemption

5. While the general block exemption Regulation applicable to vertical restraints only exempts agreements containing such restrictions up to a market share of 30%, Article 3(1) of sector-specific Regulation 1400/2002 provides for a particularly broad exemption for two categories of agreements.
6. Firstly, as far as quantitative selective distribution agreements are concerned, the regulation exempts these agreements for the sale of new motor vehicles up to a market share threshold of 40%. Quantitative selective distribution agreements are rather restrictive agreements, under which the number of dealers are determined by the manufacturer and where dealers are only authorised to sell to end customers or to other members of the authorised network.
7. Secondly, it covers agreements establishing qualitative selective distribution agreements irrespective of the vehicle manufacturer's market share. It should be recalled that pursuant to well-established case law, purely qualitative selective distribution (i.e., based on selection criteria which are objectively justified by the nature of the goods, are fixed uniformly and applied in a non-discriminatory manner) are not restrictive of competition and do not therefore fall under Article 81(1), unless inter-brand competition is weak and the proliferation of such systems in the market leaves no room for alternative forms of distribution.

Hardcore restrictions

8. Option 1 would be characterised by the definition of a number of hardcore restrictions going beyond those to be found in the general regulation which are enumerated below. In particular, it would provide for an "availability clause", which would exclude the benefit of the exemption from agreements that restrict a distributor's ability to obtain vehicles with specifications current in other Member States.
9. In addition, the exemption would not apply to agreements restricting an authorised repairer's ability to limit its activities to the provision of repair and maintenance services, nor to agreements restricting the distributor's ability to subcontract its repair and services to other firms within the same brand network.
10. As regards competition in the spare parts market, both the access of independent and authorised repairers to alternative spare parts would be protected through specific "hardcore" provisions. In particular, vertical agreements which restricted a parts manufacturer's ability to supply authorised repairers or which restricted a distributor's or authorised repairer's ability to obtain original spare parts or spare parts of matching quality from competing producers would be treated as hardcore. Vehicle

manufacturers could however require the use of original spare parts supplied by them for repairs carried out under warranty, free servicing and vehicle recall work.

11. With a view to facilitating repairers' ability to identify the original supplier of a spare part, the exemption would not apply to vertical agreements between a manufacturer of motor vehicles which used components for the initial assembly of motor vehicles and the supplier of such components which limited the supplier's ability to place its trade mark or logo effectively and in an easily visible manner on components or spare parts.
12. A specific hardcore provision would clarify that the exemption would not apply where the supplier of motor vehicles refused 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. Finally, in order to ensure that independent repairers could access "captive" parts, i.e. parts only available from the vehicle manufacturer, Option 1 would provide that any agreement that included a restriction preventing members of the authorised networks from selling spare parts to independent repairers would not be covered by the exemption.

Specific conditions for the application of the Regulation

13. Unlike hardcore clauses, which exclude an agreement in its entirety from the exemption, specific conditions merely withhold the exemption from a particular clause in an agreement. In line with the current Regulation 1400/2002, Option 1 would contain stricter conditions than the general regime for vertical restraints.
14. In particular, non-compete obligations would be defined more broadly to include any obligation causing the buyer to sell or resell goods that accounted for more than 30% of its total purchases of the contract goods. In theory, therefore, this provision would allow a dealer to take on the brands of up to two additional competing suppliers. Moreover, an obligation on the distributor to sell motor vehicles from other suppliers in separate showrooms would not constitute a non-compete obligation for the purposes of the Regulation.
15. Finally, in order to enhance intra-brand competition, the exemption would not apply to any obligation on an authorised repairer or a distributor of passenger cars or light commercial vehicles within a selective distribution system which limited its ability to establish additional sales or delivery outlets in locations other than its principal place of establishment.

Preserving the deterrent effect of Article 81

16. A number of provisions would be maintained in order to preserve the deterrent effect of Article 81.
17. Firstly the exemption would only apply on condition that the vertical agreement concluded by the supplier of new motor vehicles with a distributor or authorised repairer is either entered into for an indefinite period or a period of at least five years.
18. Secondly, only agreements containing notice periods for non-renewal or termination would be exempted. If a definite term of five years or more were used, each party

would have to undertake to give the other party at least six months' prior notice of its intention not to renew the agreement. If a contract were signed for an indefinite term, the period of notice for its regular termination would be at least two years for both parties; this period would be reduced to one year where: the supplier was obliged by law or by special agreement to pay appropriate compensation on termination of the agreement, or if the supplier were to terminate the agreement in order to re-organise the whole or a substantial part of the network.

19. Thirdly, in order to facilitate dispute resolution, and to free dealers from what could be expensive court proceedings, there would be a measure providing for a contractual arbitration mechanism for defined categories of dispute.
20. Fourthly, the exemption would only apply on condition that the agreement in question provided that a supplier who wished to give notice of termination had to give such notice in writing, giving detailed, objective and transparent reasons.
21. Moreover, the exemption would only apply on condition that the agreement in question stipulated that the supplier agreed 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.
22. It should be noted that these provisions do not have a "hardcore" character. Therefore there would be no presumption of illegality in respect of agreements that did not contain these stipulations. Instead, such agreements would have to be individually assessed as to whether they fell foul of Article 81.

Option 2: Letting the sector-specific regime lapse, leaving the motor vehicle sector to be covered by the general block exemption regulation applicable to vertical restraints

Uniform threshold for the exemption of distribution networks

23. Option 2 applies the general block exemption on vertical agreements to the motor vehicle sector¹. As such, it provides for a uniform threshold of 30% for the exemption of distribution agreements, to be measured with reference to the market share of the supplier and the buyers. As compared to option 1, there is no higher (40%) market share threshold for quantitative selective distribution networks for car sales, nor an exemption up to 100% market share for distribution networks based on qualitative selection criteria.
24. Compared to Option 1, Option 2 would also contain a reduced number of restrictions defined as hardcore, would provide for a less strict definition of non-compete obligations, would put no limits on location clauses and would not contain the flanking measures which were supposed to strengthen the independence of dealers.

Hardcore restrictions

25. Option 2 would include a list of "hardcore" restrictions which, based on the draft block exemption regulation proposed by the Commission, would be very similar to the restrictions to be found in the current general Regulation 2790/1999.

¹ See Regulation 2790/1999 and the current Commission proposals for a renewed regime on vertical restraints, which will be taken as a benchmark for this option.

26. In practice, as far as the market for the sale of new vehicles for new vehicles distribution is concerned, Option 2 would differ from Option 1 in that it would not contain:
- any clarifying provision equivalent to the "availability clause" set out in Regulation 1400/2002. This means that restrictions impeding dealers in one Member State to sell vehicles with specifications pertaining to another Member State (e.g. right-hand drive cars) could be regarded as hardcore practices indirectly restricting active and/or passive sales by dealers in accordance with the *Ford-Werke* case law, but without any specific reference in the block exemption Regulation;
 - any provision prohibiting car manufacturers to prevent their dealers from subcontracting repair of maintenance services to other authorised repairers of the same brand network.
27. As far as the aftermarket is concerned, Option 2 would not contain any specific hardcore provision as regards:
- The obligation imposed by vehicle manufacturers on authorised repairers to also sell new vehicles.
 - The restriction to the OES' ability to sell spare parts to authorised repairers
 - The restriction of the authorised repairers' ability to sell parts to independent repairers,
 - Access by independent repairers to technical information
 - The double branding of component supplied by OES
28. It should be emphasized, however, that under Option 2 these specific practices affecting competition in the aftermarket would not be presumed as legal. As the vehicle manufacturers' market shares in the brand-specific aftermarket usually exceed the 30% threshold applicable pursuant to this option, the legal consequence for agreements containing such restrictions would be that they would fall outside the safe harbour and be subject to individual assessment.

Additional specific conditions for the application of the Regulation

29. Under Option 2, the conditions applying to non-compete obligations are less strict than those under Option 1. Suppliers falling below the 30% market share for exemption would be allowed to oblige their dealers to limit supplies of vehicles from competing carmakers to less than 20% of total purchases and not to trade with any competing brand at all from any of their premises for up to 5 years. However, a contract containing a non-compete obligation tacitly renewable beyond a period of five years would be deemed to have been concluded for an indefinite duration and would not be covered by block exemption. Moreover, in contrast to Option 1, in certain circumstances the incumbent manufacturer would still be able to prevent dealers from selling the brands of competing manufacturers within one and the same showroom.

No measures specifically aimed at preserving the deterrent effect of Article 81

30. The main difference between Option 2 and Option 1 would be that the former would not contain any specific provisions regulating the duration of agreements, the notice periods for contract termination, the use of an arbitration mechanism in case of dispute, or the transfer of dealership agreements between dealers belonging to the same network. These issues would therefore remain solely subject to the application of the relevant provisions of national contract laws, and for certain measures to the code of practice which has been put forward by ACEA and JAMA.

Option 3: As Option 2, but with sector-specific Guidelines on the application of Article 81

31. Given that stakeholders in the motor vehicle sector have been accustomed to sector-specific regulations since 1985 and that dealers and repairers have expressed a significant degree of apprehension about the application of competition law to vertical agreements in the sector without some form of guidance, it appears appropriate to consider a third option.
32. This third policy option would let Regulation 1400/2002 lapse and apply the general principles as currently reflected in Regulation 2790/1999 and in the proposed new block exemption for vertical agreements, but allow for some sector-specific clarifications as to how and on what basis the rules laid down in Option 2 would be interpreted and implemented with respect to the motor vehicle sector. Compared to Option 2, Option 3 would strengthen the predictability of the rules and facilitate self-assessment by the parties through appropriate sector-specific guidance.
33. In particular, the following issues affecting competition could be the object of sector-specific guidelines.

Parallel trade

34. Firstly it could be explained that agreements restricting the availability of vehicles with foreign specifications (such as right-hand drive vehicles on the Continent) are inadmissible in accordance with the relevant case-law². On the other hand, if a carmaker were to unilaterally refuse to supply such vehicles to dealers for sale to foreign consumers such behaviour would not be caught by Article 81.

The use of location clauses in selective systems for distributing new vehicles

35. Secondly, under Options 2 and 3, a vehicle manufacturer's selective distribution agreements would not be exempted if it held more than 30% of the relevant market. The use of a location clause in such a case would therefore not be covered by the block exemption. Future guidelines could contain the necessary orientations in order to enable the parties to carry out their self-assessment, by recalling when the use of clauses prohibiting the opening of new sales or delivery outlets without the supplier's consent ("location clauses") may have negative effects on competition, in particular by reducing intra-brand competition.

² Judgment of the Court of 17 September 1985. *Ford- Werke AG and Ford of Europe Inc. v Commission of the European Communities*, Joined cases 25 and 26/84, European Court reports 1985 Page 02725

Access to the authorised repair networks

36. Quantitative selective agreements in the motor vehicle repair and maintenance markets would not normally benefit from exemption under either Option 1 or Option 3 because the market shares of the authorised networks normally exceed 30%. Option 3 would also achieve exactly the same result as Option 1 in the scenario where a network of agreements was not caught by Article 81(1)³. The only legal difference would occur in respect of qualitative selective authorised repair agreements that were nonetheless caught by Article 81(1). Under Option 1, such agreements could nonetheless benefit from exemption, providing that they did not contain hardcore restrictions, and assuming that the specific conditions for the application of the block exemption were met. Under Option 3, on the other hand, such agreements would not benefit from exemption, since the authorised repair networks usually have market shares well in excess of 30%, and would be subject to individual analysis under Article 81(3). The end result, assuming that the self-assessment concluded that the conditions for exemption under Article 81(3) were met, would be essentially the same in terms of ease of access to the networks. Compared to Option 2, however, Option 3 would improve legal certainty by facilitating self-assessment through appropriate sector-specific guidance.
37. In the specific case where an agreement contained an obligation on authorised repairers to sell new vehicles, that agreement would not be exempted under Option 3 on account of the authorised repair networks' high share of the aftermarket. However, an individual analysis might conclude that quantitative criteria and, in particular, obligations imposed on authorised repairers to also sell vehicles could comply with Article 81 if this were shown to be indispensable or more efficient, for instance in that it fostered the entry or the expansion of a new/smaller brand in the market. This additional flexibility would be designed to respond to certain concerns expressed by vehicle manufacturers new to the EU markets in respect of the rules currently in Regulation 1400/2002 and which would be carried over into Option 1.

Availability of technical information to independent repairers

38. An agreement which provided that authorised repairers were to be the exclusive recipients of technical information would not be exempted by the general Block Exemption in the first place, on account of the authorised networks' high share of the aftermarket. Unlike Option 1, which would continue to exempt authorised repair agreements based on qualitative selection criteria up to 100% market share threshold, a specific provision not exempting this possible refusals to provide repair technical information to independent operators would not be necessary in order to apply Article 81 directly against authorised repairer agreements.
39. The Commission would therefore be able to continue to enforce access to technical information for independent repairers, based on the approach followed in the four commitment decisions which were adopted in 2007 in the Opel, Toyota,

³ This would be the case if the product in question merited a form of selective distribution; (ii) resellers were chosen on the basis of objective criteria of a qualitative nature which were laid down uniformly for all potential resellers and were not applied in a discriminatory fashion; (iii) the system in question aimed to achieve a result which enhanced competition and thus counterbalanced the restriction of competition inherent in selective distribution systems; and (iv) the criteria laid down went no further than what was necessary.

DaimlerChrysler and Fiat cases. Moreover, in certain cases, enforcement could also be based on Article 82 of the EC treaty. The guidelines envisaged in Option 3 could develop more detailed orientations on this issue to the benefit of all independent operators.

Alternative channels for spare parts distribution, including the sale of alternative brands of spare parts to all repairers

40. An obligation on authorised repairers not to use spare parts supplied by third parties would amount to a non-compete obligation, which, due to the high market shares generally enjoyed by car manufacturers on the relevant spare part markets, would in any event fall outside the block exemption. This would allow therefore the Commission to take enforcement action in case of harmful effects on competition. The Commission would in such a case make an effects-based analysis of the resulting foreclosure in the market for spare parts and future guidelines could develop the type of analysis to be followed in this respect.
41. If authorised repairers would be unable to get supplies from matching quality parts producers, for instance because the parts in question were only produced by OES, then the market share of the OES and vehicle manufacturers concerned would be likely to be above the 30% market share threshold and, in such circumstances, Articles 81 and 82 could be enforced against restrictions imposed by car manufacturers which would prevent the OES from selling to authorised repairers. Again, future guidelines could further elaborate on this issue.
42. Finally, guidelines could explain, on the basis of the *Volvo Veng* case law, that agreements preventing authorised repairers from selling parts to independent repairers would be unlikely to benefit from Article 81(3). In addition, they may breach Article 82, when the supplier enjoys a dominant position in respect of a certain category of original parts (i.e. when such parts are "captive" to the vehicle manufacturer) and if it can be shown that excluding independent repairers will likely eliminate effective competition on the market.

Option 4: a more focussed sector-specific block exemption based on the general principles of Option 2:

43. Similar to option 2 and 3, this option is based on the general rules as currently reflected in Regulation 2790/1999, limiting among other things, exemptions up to a market share threshold of 30%.
44. In the light of vehicle manufacturers' high market in the aftermarket and the highly competitive market for the sales of new motor vehicles, option 4 would maintain the sector-specific hardcore provisions relating to the aftermarket.
45. In particular, all the sector-specific hardcore clauses in the baseline scenario (option 1) would be carried over into the new block exemption. Such a more focused block exemption would be based therefore on the general block exemption for vertical agreements but, differently from Option 2, would add to the "hardcore" rules commonly applicable to all economic sectors a limited number of sector-specific "hardcore" rules derived from the current Regulation 1400/2002. These would concern:

- The obligation imposed by vehicle manufacturers on authorised repairers to also sell new vehicles.
- The restriction to the OES' ability to sell spare parts to authorised repairers
- The restriction of the authorised repairers' ability to sell parts to independent repairers,
- Access by independent repairers to technical information
- The double branding of component supplied by OES

46. It should be observed, however, that these provisions would make a significant difference only in the exceptional cases where the authorised network's share of the brand-specific aftermarket was below the threshold of 30%; in all other cases, the agreements would not benefit from the block exemption in any event.

TECHNICAL ANNEX 5

IDENTIFICATION AND WEIGHTING OF THE RELEVANT ASSESSMENT CRITERIA

A. Economic criteria related to the protection of effective competition

1. The following analysis is based on competition-specific criteria reflecting the policy objectives which have been identified in chapter 3 above.
 - (a) *Preventing the foreclosure of competing vehicle manufacturers and safeguarding their access to the vehicle retailing and repair markets*
 2. As regards the Commission's aim of ensuring that the grant of the block exemption meets the requirements of Article 81(3), options will score higher or lower depending upon the degree to which they adequately safeguard against the risk of competing manufacturers being foreclosed from the market by the widespread use of single branding obligations by the incumbents. Risks of foreclosure are generally taken seriously where vertical restraints are concerned, because they may lead to incumbent firms being sheltered from new competition, which may in turn lead to higher prices and less choice for consumers. These risks should however be balanced against inefficiencies generated by free-riding associated with multi-brand sales.
 3. The exclusion from the block exemption of non-compete obligations currently constitutes the main instrument allowing newcomers or existing players who want to respectively enter the market or expand their presence¹. It allows dealers to sell additional brands from competing suppliers and authorised repairers to also repair and maintain vehicles of competing brands.
 4. With regard to the sale of new vehicles, it should be noted that like Option 1, Options 2-4 would not allow vehicle manufacturers to impose indefinite single-branding obligations on dealers, because these options are based on the conditions provided for in the general block exemption for vertical restraints which only grants exemption to such obligations up to a market share threshold of 30% and for a maximum of 5 years. Once this period expires, or when the market share threshold is exceeded, dealers would have the opportunity to renegotiate their arrangements with the incumbent manufacturer with a view to selling a competing brand.
 5. A first evaluation of the new opportunities for multi-branding in twelve Member States surveyed by London Economics² revealed that the proportion of dealers engaged in such practices increased from 7% to 17% over the period from 1997 to 2004 and that the trend quickened in more recent years, particularly after 2002.³

¹ Article 5(1) of Regulation 1400/2002

² London Economics, report on the block exemption, 2006, page 63

³ London Economics, report on the block exemption, 2006, page 63

According to the findings of the Commission, multi-brand dealers mainly sell volume rather than luxury or niche brands. They also tend to take on smaller brands newly entered into the European market such as Hyundai and Kia.⁴

6. The growth in multi-branding reported above does not however reflect any large-scale take up of the same-showroom multi-brand sales that the Commission wished to encourage through the specific rules established in Regulation 1400/2002. As was the case before Regulation 1400/2002 entered into force, same-showroom multi-branding is mostly used by low volume brands in low volume markets, by smaller dealerships lacking the funds to make the required investments to construct a separate showroom, and in sparsely-populated areas such as Finland. Selling competing brands from the same showroom therefore appears to have done little to safeguard access of newcomers to the market, and indeed instead has had negative effects on distribution efficiency. Instead, the increase in the number of firms selling more than one brand has been mainly due to the growth of multi-brand dealer groups in search of economies of scale. This finding has been confirmed by the Commission's inquiry, which came to the conclusion that the main area of growth over the past five years has been the expansion of these groups, which has led to an increase in the number of dealers selling competing brands from different sites.⁵
7. The Commission's enquiries have shown that the ability to access existing showroom space within the existing vehicle manufacturers' networks is not a major factor determining whether market entry will take place. Overall barriers to entry in the EU car retailing market appear relatively low, as confirmed by the responses to the Commission's market inquiry. In particular, ACEA and JAMA refer to the successful entry and expansion of Japanese and South Korean car manufacturers in various EU markets⁶, which has taken place mainly through the progressive establishment of their own brand-specific dealerships throughout the EU.
8. It is therefore fair to say that general market developments have been the main driver behind multi-brand distribution, and that the specific provisions of Regulation 1400/2002 have not had any appreciable effect. Based on market information it appears that even in the absence of rules in a block exemption regulation, many car manufacturers would conclude contracts allowing for multi-branding where it makes commercial sense to do so (e.g. in scarcely-populated areas).
9. All in all, barriers to market entry seem to be less of a competition concern than they were in 2002, since the European markets for new car sales are more competitive than they were seven years' ago. Real consumer prices for new vehicles have been steadily declining, and most carmakers have expanded their model ranges, so that in any given market segment, consumers now have more choice. Therefore, the current risk of foreclosure in the markets for distributing new cars is rather low on the basis of the available data.
10. As regards the aftermarket, it should be observed that Options 2-4 are based on the general regime for vertical restraints, which implies that single-branding obligations concerning the provision of repair services for vehicles of competing brands would not

⁴ See Report, WD 2, page 21

⁵ See Report, WD 2, page 22

⁶ See Report, WD 2, page 11

benefit from block exemption, because the networks' market shares almost always exceed the 30% threshold

11. Although the structurally fierce competition in conjunction with the absence of specific concerns on entry barriers in the vehicle sales markets described above do currently not give grounds to any particular concern, it should be noted that the prevention of foreclosure and safeguarding of competing manufacturers' market access remains a basic objective of the competition policy. Against this background, the scores each option achieves for this criterion will be given a normal weighting.

(b) Protecting intra-brand competition through increased diversity of distribution systems across the market

12. This criterion aims at measuring the impact of each option on intra-brand competition. Options will score higher or lower depending upon the degree to which they reinforce intra-brand competition through increased diversity of distribution formats and systems.
13. According to accepted competition theory, intra-brand competition is of importance in markets where inter-brand competition is weak. However, in markets where inter-brand competition is strong, competitive interaction between suppliers 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, seeking to increase intra-brand competition by means of regulatory intervention entails the risk of imposing an unnecessary burden on companies, which may ultimately translate into consumer harm.
14. Fierce inter-brand competition is reflected in declining real prices for new motor vehicles. Both the Commission's car price report⁷ and the 2006 study by London Economics⁸ point to a steady trend of decreasing retail prices for passenger cars. According to London Economics⁹, real car prices (i.e. adjusted for inflation) came down by 12.5% between 1996 and 2004. Hedonic prices (i.e. prices that take into account evolution in the size and performance of vehicles) show an even more significant decrease. Once hedonic calculations are included, real prices dropped in 2005 and 2006 by 1.4% and 1.2% respectively. In 2007 and 2008 car prices fell by 3% in both years.
15. As the Commission's Evaluation Report indicates, this overall decrease in prices appears to be driven by technological development, globalisation, production overcapacity and other factors which are independent of the motor vehicle block exemption. It cannot be the result of the opportunities granted to dealers to intensify intra-brand competition, such as the opening of additional sales outlets or the specialisation in sales and subcontracting the repair and maintenance service. In fact,

⁷ It should be noted that the Commission's car price report does not reflect manufacturers' special discounts or individual dealers' discounts.

⁸ London Economics: Developments (...), p.101.

⁹ London Economics: Developments (...), p. 101.

few dealers have opened extra outlets, according to the Commission's survey of 2007, specialised dealers make up less than 1% of all authorised dealers.¹⁰

16. In the light of the high degree of inter-brand competition in the vehicle sales market, the safeguard of intra promotion of intra- brand competition does not raise particular concerns. However, the relevance of intra-brand competition may increase in case of decreasing competition between manufacturers. Against this background, the scores each option achieves for this criterion will be given a normal weighting.

i. Avoiding impediments to parallel trade in motor vehicles between EU countries

17. Each option will also be measured against how well it safeguards citizens' rights to buy their vehicles in any Member State of the EU by preventing obstacles to parallel trade.

18. The main tool used by the Commission to measure the functioning of the Single Market is its Car Price Report, published by DG Competition, which tracks price differentials for new motor vehicles between Member States. In the past, these were substantial. Moreover, parallel trade between Member States, which would normally bring such price differentials down, had been regularly hindered by car manufacturers, resulting in the Commission taking several prohibition decisions between 1998 and 2005¹¹.

19. It is unlikely that prices will ever be uniform across the Single Market, because of (i) differences in various national tax regimes (including registration, annual circulation and environmental taxes), (ii) variations in consumers' purchasing power leading to heterogeneous demand across national markets and (iii) consumer preferences for national brands.

20. However, the Car Price Reports show a general trend towards price convergence across the EU since 2002. The standard deviation, (a measure indicating the degree of price dispersion) for car prices (without taxes) between the EU-15 markets (the countries that were EU Members before 2004) dropped from 7.0% in November 2002 to 5.5% in May 2004. The car price deviation in the euro-zone countries came down from 5.2% in November 2002 to 4.4% in May 2004. From 2004-2008, car price differentials in the EU-15 were broadly stable. However, in the EU-25 countries, the deviation decreased, falling from 6.9% in May 2004 to 6.4% in May 2007, thanks to price convergence in the new Member States.

21. Against a general background of falling prices, price divergence between Member States rose significantly over 2008 for two main reasons. Firstly, the crisis which began in 2007 and which had a major impact on consumer confidence and willingness

¹⁰ See Report, WD 2, page 20

¹¹ See in particular, Commission Decision of 28 January 1998 in the case IV/35.733 — *Volkswagen I*, Commission Decision of 20 September 2000 in the case COMP/36.653 – *Opel NL*, Commission decision of 10 October 2001 in the case COMP/36.264 - *Mercedes-Benz*. It worth noting that the Commission decision of 5 October 2005 in the case Comp/E-2/36623- *Peugeot NL* sanctioned a practice retraining parallel trade which ended in 2003, around the same time Regulation 1400/2002 entered into force.

to purchase high-value goods in particular, meant that car prices decreased more steeply in some rather low-priced countries dominated by particularly price-sensitive consumers. As a consequence the price deviation in the euro zone rose from 5.2% in January 2008 to 6.0% in January 2009. Secondly, several EU currencies, among others the UK pound and Swedish krona, depreciated sharply against the Euro in the last half of 2008, entailing a correspondingly dramatic fall in Euro-denominated car prices in these countries. As a consequence of this exchange rate turbulence, the EU-wide dispersion in car prices increased sharply from 7.0% in January 2008 to 9.8% in January 2009. In January 2009, the lowest car prices could therefore be found in Member States outside the euro zone.

22. Protecting parallel trade is a core objective of the Common Market and, as such, has been the subject of long standing case-law from the European Court of Justice. As recent as September 2008 the ECJ reiterated that "*Indeed, parallel imports enjoy a certain amount of protection in Community law because they encourage trade and help reinforce competition.*"¹² The scores each option achieves for this criterion will be given a normal weighting.

ii. *Protecting competition between independent and authorised repairers*

23. As regards the aftermarkets, options will rank higher or lower depending upon how well they enable independent repairers to compete with the manufacturers' networks of authorised repairers. Competition from independent repairers may be seen as inter-brand, and therefore imposes the most powerful competitive constraint on the authorised networks. 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.
24. Ensuring that independent repairers have adequate access to technical information by means of competition law may begin to lack relevance after September 2009, once Regulation 715/2007, which regulates the type approval of vehicles, enters into application. That regulation contains a broad provision requiring vehicle manufacturers to provide repairers with all technical information on models launched after September 2009. Regulation 715/2007 will therefore progressively take over from the competition framework as the means for ensuring that independent operators have sufficient access. However, for several years the car park will still contain large numbers of vehicles of models launched before September 2009 that are not covered by the obligation in Regulation 715/2007.
25. Independent repairers source between 70-80% of their spare parts requirements from independent wholesalers, while the remaining 20-30% is obtained from members of the authorised networks.¹³ Many of these parts are captive to the vehicle manufacturer – i.e. they are not available from other sources. It is therefore important that independent repairers will be able to source these captive parts also in the future, either from the networks or directly from the vehicle manufacturers.

¹² Judgment of the ECJ of 16 September 2008 in Joined Cases C-468/06 to C-478/06, *Sot. Lelos kai Sia EE & Others v GlaxoSmithKline AEEVE Farmakeftikon Proionton, formerly Glaxowellcome AEEVE*, at para 37

¹³ WD 2, p.37

26. The independent sector offers consumers a comparable service at significantly lower prices. In Italy, for instance, independent repairers charge 10-15% less than do members of the authorised networks, whereas the figures for Germany is 16%. In Spain, the services of independent repairers are 7% and 33% cheaper than those performed by members of the authorised networks.¹⁴ These savings can have a major impact on a motorist's overall budget, because repair and maintenance accounts for roughly 40% of the total ownership costs of a car. In addition, the monetary costs of car accidents and pollution are considerable.
27. Given the importance of the independent sector for consumers the scores each option achieves for this criterion will be given a high weighting.

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

28. The score that each option receives will also vary depending upon how well they **protect competition within networks of authorised repairers**. 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 a complete set of authorised repairer stamps in its service booklet ("full dealer service history").
29. Repair and maintenance services are considered to be brand-specific markets. The intensity of competition between authorised repairers of a given brand depends on how easy it is to access to the network, and on the degree to which authorised repairers are able to buy spare parts from sources other than the vehicle manufacturer. As the network of authorised repairers and parts distributors of a given brand is normally considered to have (brand-specific) market shares well in excess of 30%, vehicle manufacturers that wish to benefit from Regulation 1400/2002 can only apply qualitative selective distribution. This means that they have to admit into their networks all candidate service partners that meet their qualitative selection criteria. As a consequence, numbers of stand-alone authorised repairers (i.e. repairers that do not sell new cars) have been increasing considerably since 2002.¹⁵
30. As well as having to buy captive parts from the car manufacturer, authorised repairers are also obliged to buy carmaker-branded parts for use in repairs covered by warranty and "free" servicing packages. Since sourcing parts from several suppliers is complex and expensive to administer, authorised repairers tend to use car manufacturers as their principal suppliers, and source between 70% and 100% of their spare parts from them. Spare parts from sources other than the car manufacturer are often available at lower prices. The only exception is captive parts, and those parts which are used for warranty work, which the authorised repairer has no choice but to source from the vehicle manufacturer. This situation, however, cannot be remedied by competition law as it is either linked to the existence of design rights or other IPRs held by vehicle manufacturers, is the result of sub-contracting agreements falling outside Article 81(1) or is the direct consequence of manufacturers' legitimate requirements as to the parts to be used for repair works covered by their warranties. Because spare parts make up

¹⁴ London Economics, pages 171/172 (WD 2, p. 30)

¹⁵ WD 2, p.33

such a large percentage of the overall repair bill, the extent to which an option improves authorised repairers' access to alternative brands of parts will have a major bearing on competition between authorised repairers.

31. Given the importance of competition between authorised repairers for consumers, and in particular for owners of vehicles less than four years old, the scores each option achieves for this criterion will be given a high weighting.

(f) *Preventing foreclosure of spare parts producers in the automotive aftermarkets*

32. Options will rank higher or lower depending upon how well they protect alternative supply channels for spare parts, both to authorised and independent repairers. Some of these parts are made on the same production line as the original component of the vehicle (OES parts), while others are made by "matching quality" parts manufacturers. It should be noted that parts falling into these categories are often cheaper than identical parts bearing the logo of the vehicle manufacturer.
33. The assessment will first measure how well spare parts producers are able to reach both authorised and independent repair shops directly. Over the lifetime of the current Regulation spare parts producers have maintained their position on the aftermarkets of between 45% and 50%, despite the prevalence of captive parts that prevent independent parts distributors from offering a full range. Scores of the options considered will depend on how well they prevent car manufacturers from limiting the ability of spare part suppliers to sell to the aftermarkets.
34. The assessment will then measure the extent to which authorised repairers are free to purchase original spare parts or parts of matching quality from spare parts manufacturers directly rather than from their car manufacturer. While the first measure is more a question of exercise of IP rights in the context of upstream agreements between the car manufacturer and the component supplier, the second is, in particular in the case of parts of matching quality, a matter of non-compete obligations contained in contracts between the vehicle manufacturer and its authorised repairers.
35. Given the importance of spare parts prices for consumers the scores each option achieves for this criterion will be given a high weighting.

(g) *Preserving the deterrent effect of Article 81*

36. As explained in the Report at Section 3.2.7, in designing a block exemption applicable for the motor vehicle sector, the Commission should ensure that the manufacturers do not use the safe harbour granted by regulation in order to hinder independent pro-competitive behaviour of authorised dealers and repairers through various forms of pressure and threats which may lead to similar outcomes as those prohibited by means of hardcore provisions (e.g. hindrances to parallel trade). In the baseline option, the achievement of this objective is sought through specific contractual dealer protection measures. In Options 2 to 4, this is the result of the extension of the scope of the relevant hardcore provisions aimed at encompassing both direct and indirect restrictions. Given that, under whatever option, this objective cannot have but an ancillary nature, this criterion will be given a low weighting.

b. Other economic criteria

(a) Compliance costs for firms

37. As noted above, the purpose of the legal framework in this area is to provide a degree of legal certainty and clarity for firms. Such a framework makes it easier to predict outcomes, and reduces error costs, thereby encouraging dynamism in decision-making to the benefit of competition. Policy options will score higher to the extent that they make it easier for economic operators, courts and competition authorities to assess the legal status of agreements, by providing simple and unambiguous rules, in respect of which the consequences of non-observance are clearly and correctly explained. Certainty and clarity also have the potential for reducing error costs borne by such firms when a competition authority or Court makes an incorrect decision that affects them. This could take the form either of finding a breach of the rules where in reality there is none (type I error) or of incorrectly deciding that no breach has occurred (type II error).
38. Moreover, some options would treat passenger cars differently from other types of machinery and motorcycles, which are sometimes supplied or sold by the same firms. Certain options may therefore score higher than others depending upon the **degree of commonality** that they offer.
39. Some options may involve the permanent dedication of more resources to monitor or to ensure compliance with the rules, while some may also lead firms to incur transitory **adjustment costs** in response to changes in the legal framework.
40. Where **dispute resolution costs** are low, this is a benefit to firms. Policy Options will therefore score higher in this respect to the extent that they make it cheaper and easier for firms to resolve disputes.
41. Overall, the criterion relating to compliance costs borne by firms will be given a normal weighting.

(b) Particular impact on SMEs

42. It is firstly possible that some options may cause SMEs to have to **spend more on investment** if they cause vehicle manufacturers to respond by raising quality standards, particularly those related to brand promotion. Secondly, some options may affect the cost of and access to essential inputs, in that they may make it more or less easy for SMEs to access spare parts and technical information.
43. Thirdly, some parties allege that certain scenarios, in particular those that do not include the continued existence of provisions along the lines of Article 3 of Regulation 1400/2002 may affect the contractual bargaining position of SMEs vis-à-vis their suppliers.
44. Fourthly, some options may promote entrepreneurship by allowing owners to get full value for their businesses when they are sold.
45. These four issues may also affect SMEs' access to finance, if they mean that banks are less willing to lend. Car dealers may be particularly sensitive to changes in their ability to access finance because of high stocking requirements.

46. Given the importance of SMEs for the sector and for the European economy as a whole, scores in respect of this criterion will receive a high weighting.

a. *Competitive position of European vehicle manufacturers*

47. If an option favours the use of more efficient distribution and repair networks by EU vehicle manufacturers on their home markets, this will favour their competitiveness abroad. It is notable in this regard that the carmakers which are encountering the worst problems in the current crisis are those based in the US. These manufacturers have suffered from rigidities on their home markets including overcapacity and legacy social costs, but also the costs of distributing through a distribution system that is rendered inflexible by rigid franchise laws.

48. Options may allow carmakers more or less flexibility to adjust to or protect themselves against changes in economic circumstances. It is easier for firms producing a range of different products to operate efficiently if there is a degree of commonality as to how the competition rules are applied across their product range. Insofar as some options imply the adoption of a specific regime for road vehicles with three wheels or more, this may lead to these products being treated differently from comparable products such as motorcycles, scooters, farm machinery, and specialised industrial vehicles.

49. Scores under this criterion will receive a high weighting; given the importance of the motor vehicle industry for the broader European economy, even a minor impact on competitiveness can have a major knock-on effect for the economy.

b. *Particular impact on consumers and households*

50. Some options could affect prices for new vehicles, repair services and spare parts. Increased competition generally causes prices for products and services to fall. More importantly, the margins derived from selling new vehicles are low, sometimes even negative, while most profits are generated by after-sales services and sales of spare parts. Since competition in the market for the sale of new vehicles is already fierce, it might be thought that the scope for further reductions in prices paid for new vehicles is limited. However, it should not be forgotten that competition authorities' resources can also be dedicated against anti-competitive behaviour on the upstream component markets, as occurred in the recent case involving a cartel in the car glass sector¹⁶. On the aftermarket, there may also be room for competition to lower prices. Options will therefore score higher or lower depending on the impact that they may have on prices for new vehicles and aftermarket services.

51. Options may have more or less effect on the maintenance of consumer choice on the markets for new vehicles, spare parts, and repair services, either by increasing the number of providers, or promoting alternative formats. Moreover, some policy options could improve the quality of vehicles and of services.

52. Scores in this area will receive a high weighting, given that motor vehicles represent a high percentage of consumer expenditure, as regards both car purchase and upkeep.

¹⁶ Commission Decision in case COMP/39.125 "Carglass" of 12 November 2008

C. Impact on public administration

(a) Effective use of enforcement resources

53. The respective options' impact on the effective use of enforcement resources is not limited to the Commission, but amplified in magnitude as the impact extends also to national competition authorities and national courts in determining the degree to which the enforcement resources can be focused on serious infringements to EU competition rules or are diverted to issues unrelated to competition. It should be noted in this context, that competition rules *per se* may have a limited impact or turn out to be outright ineffective in case they are not backed up by adequate enforcement. For example, despite the existence of a provision in Regulation 1400/2002 referring to independent repairers access to technical information, the competitive conditions improved markedly only in 2007 following four decisions of the Commissions that bound four car manufacturers to commitments to give independent repairers proper access to repair information. As a consequence, this impact is of pivotal importance for the future competition in the sector. Given that the efficient use of enforcement resources is indispensable for the implementation of competition rules and that one example of effective enforcement has a knock-on effect and sets the example for the whole sector and indeed for others, the scores achieved for this criterion will, therefore, attract a high weighting.

(b) Impact on the EU budget

54. Moreover, this policy initiative may have a slight direct impact on the EU budget, in that if the Commission is able to better allocate its resources, in particular, towards the prosecution of serious breaches of the competition rules, the aggregate level of fines imposed on undertakings may increase. Such fines are paid into the Community budget. The scores achieved for this criterion will receive a low weighting, since implications for the overall budget are minor.

D. Social and environment criteria, public health

(a) Employment and job quality

55. Given that low unemployment and high job satisfaction are essential indicators of economic welfare, any possible impact of the respective options on these criteria appears relevant.

56. It is possible that some options may have consequences for employment in particular professions, if they have an effect on numbers of dealers or repairers in the sector. The automotive trade and repair sector in Europe is composed of some 350,000 enterprises, of which around 120,000 are authorised dealers and repairers and 230,000 are independent repairers. Motor vehicle dealers and repairers employ a total of 2.8 million people across the EU¹⁷ - more than the 2.2 million employed in the manufacture of motor vehicles and components¹⁸. These are therefore relatively labour-intensive sectors. However, it should be noted that the link between changes in the relevant competition law framework and possible variations in the number of employees in the motor vehicle sales and after sales sectors is extremely tenuous.

¹⁷ CECRA press release, 31 July 2008.

¹⁸ Source, ACEA website.

57. The motor mechanic's job has become very much more skill- and knowledge dependent with the arrival of today's technically advanced vehicles. Mechanics are now commonly referred to as "service technicians", and their career path depends upon training and acquiring on-the-job skills. It is theoretically also possible that some options may lead to training and technical information being more freely available, thereby improving the **job quality** of mechanics and technicians in the independent repair sector by allowing them to improve their skills and giving them access to a broader spectrum of repair jobs, including jobs on newer vehicles that are still covered by warranty. However, this link is again extremely tenuous.

58. Scores in respect of this criterion will have a normal weighting.

(b) *Public safety*

59. Physical integrity can be considered a high good, as injuries and in particular the endurance of corporal damage impairs the quality of life. As a consequence, the respective options' impact on public safety is relevant.

60. It is in particular possible that by affecting the availability of technical information, some options may reduce the risk that vehicles are driven in a dangerous condition leading to a public safety risk. Moreover, if an option affects the density of repair outlets, this may lead to cars being driven longer distances in an unsafe condition on the way to the repair shop, or to reduce consumers' propensity to get their cars checked and repaired at regular intervals.

61. However, each Member State has rules in place which foresee technical checks at regular intervals by state licensed bodies. Any intervention via competition law can only be of residual value in lowering the safety risk. Therefore, scores as regards this criterion will be given a normal weighting.

(c) *Health and environment*

62. Physical health and an intact environment are important goods, as they have, similar to public safety, a major impact on citizen's life quality. As a consequence, the respective options' potential impact on health and environment is relevant.

63. By their nature, motor vehicles have an impact on public health and the environment. The European Environment Agency reports that cars and light commercial vehicles alone produce 14% of all the EU's carbon emissions. According the World Health Organisation¹⁹, road traffic injuries in the WHO European Region represent a major public health problem. About 127,000 people are killed and about 2.4 million injured every year. The cost of road traffic injuries to society is an estimated 2% of GDP. It is estimated that health costs from traffic pollution amount to around 1.7% of total GDP²⁰. Particulate pollution alone (PM10) is responsible for around 350,000 deaths

¹⁹ Preventing Road Traffic Injury: A Public Health Perspective For Europe, 2004.

²⁰ Lancet Medical Journal – September 2, 2000. A 2005 study commissioned by the European Commission "Baseline Scenarios for the Clean Air for Europe (CAFE) Programme" estimates that the damage to human health from all air pollution costs the European economy between €427 and €790 billion a year (between 2.8 and 5.3% of GDP).

per year in the EU²¹, and half of this pollution is produced by motor vehicles. Increasing vehicle safety and reducing emissions are therefore key regulatory aims for the European Union.

64. The main drivers to ensure that vehicles are correctly tuned are national laws which require regular emission controls as a precondition for using a vehicle on public roads, as opposed to competition law. Although competition rules are not intended to regulate this area, changes in the competition regime may nevertheless have an impact, if they improve maintenance quality or lead to consumers choosing one form of transport over another. If an option affects the availability of technical information or the price of repair, it may lead to cars being better or worse tuned, which may lead to lower or higher **emissions of greenhouse gases and other harmful air pollutants**. In view of the fact that transport accounts for a high percentage of air pollution, but that competition law intervention only has a residual effect, scores in this area will be given a normal weighting.

²¹ Statement by Stavros Dimas, European Commissioner for Environment, European Commission, CSD14 PLENARY SESSION 'THE WAY FORWARD', Thu 11 May 2006