

Antitrust: Commission adopts revised competition rules for the motor vehicle sector: frequently asked questions

1. What is the reform about?

The reform is about setting rules that take into account the intensity of competition on the markets for the distribution of motor vehicles and spare parts, and for the provision of repair and maintenance services. It covers cars, trucks and buses.

The Commission's analysis has shown that competition in the market for the sale of new vehicles is strong. In this light, the current sector-specific rules create an unnecessary straitjacket that prevents car manufacturers from organising their distribution systems as they see fit. The Commission has therefore aligned the rules applicable to motor vehicle distribution with those that apply to distribution agreements in other sectors (Regulation 330/2010 adopted on 20 April), but with a three-year transition period to allow dealers to adapt.

Competition on the markets for repair and maintenance and for spare parts distribution is less intense, and there is a risk that consumers may be harmed by anti-competitive practices that push up repair costs. Repair and maintenance is very important for consumers, not only for reasons of safety and reliability, but also because repair bills account for 40% of the total cost of owning a car. Unlike car prices, the cost of the average repair job has actually risen over the past years. Consumers particularly feel the effect of rising repair costs during the present crisis, as they are more price-sensitive and also drive older vehicles that require more frequent maintenance. The Commission has therefore put in place a tougher regime for these markets that will make it easier to enforce the rules. Particular problematic issues include withholding technical information and spare parts, and refusing to honour warranties if consumers have their cars repaired at independent garages.

2. How do you increase competition in the markets for repair, maintenance and spare parts?

The new block exemption regulation will apply as from 1 June 2010.

The main change is that agreements between vehicle manufacturers and their networks of authorised repairers and spare part distributors will no longer benefit from the automatic exemption. This is because these networks usually have a market share of over 30%. This in turn will make it easier to deal directly with refusals to release technical information or the misuse of warranty terms aimed at excluding independent repairers or with new types of restrictions that may arise.

Similarly, agreements obliging authorised repairers to purchase spare parts from car manufacturers are unlikely to be block exempted, as vehicle manufacturers also tend to have a market share exceeding 30% in the spare parts markets.

This new Regulation also lists three hardcore clauses describing restrictions of competition rules on the spare parts market. These concern restrictions placed by car manufacturers on a) the sale of original spare parts by authorised repairers to independent garages, b) the ability of independent manufacturers of spare parts to supply to authorised or independent repairers, and c) spare parts' manufacturers' ability to put their trade mark or logo on their products.

The Commission remains committed to act against all restrictions of competition across the entire supply chain in the sector, as it has done recently by adopting a decision against four manufacturers of car glass imposing fines of nearly €1.4 billion for participating in a cartel (see [IP/08/1685](#)).

3. How will access to technical information for independent repairers be ensured under the new legal framework?

Independent repairers are important because they increase choice for consumers and keep the price of repairs competitive by putting pressure on car manufacturers' authorised repair networks. But for this to happen it is essential that they can get the technical information necessary to do the repairs on increasingly sophisticated cars. Withholding "technical information" will be dealt with directly under Treaty rules on restrictive business practices (Article 101) since, as said previously, the manufacturers, their spare parts and repair shops generally have a market share in excess of 30%. In addition, Guidelines also being adopted contain detailed clarifications as to the notion of technical information, cross-referring to Regulation 715/2007 on type approval of certain cars and all subsequent implementing regulations. The new rules assure access to technical information for models which are type-approved after 1 September 2009. By making a clear link with the 2007 car type-approval Regulation, the Commission will ensure both consistency as regards access to technical information for cars put in circulation before that date and allow the notion of technical information to evolve in line with technical progress.

The Commission remains committed to vigorously enforce the rules on access to technical information, as demonstrated in four cases brought in 2007 to ensure that Daimler/Chrysler, Fiat, Toyota and General Motors disclose the necessary information to independent repairers (see [IP/07/1332](#)).

4. Why did the Commission not carry over the provisions on contractual clauses?

As a condition for exemption, the previous block exemption required certain clauses relating to the transfer of dealerships between distributors of the same network, notice periods for contract termination, contract duration and arbitration to be included in the agreements between car makers and dealers.

However, evaluation has shown that these provisions have not achieved their aim of making markets work better and may even have made access to distribution networks more difficult for newcomers. The provision allowing car dealers to transfer their dealership within the network without the car manufacturers' consent was meant to facilitate the emergence of dealer groups with a European footprint, thereby fostering market integration. However, this provision not only failed to create such cross-border groups, but appears to have hindered outsiders that wished to enter the network, and encouraged concentration on national markets.

Moreover, the provisions relating to contractual clauses encroach on areas that normally fall within the ambit of national contract laws, and have led to confusion and wasted enforcement resources.

The new Guidelines, however, encourage car manufacturers to adhere to minimum ethical standards in their commercial relations with dealers, possibly incorporated in a Code of Conduct. This would be an important factor when assessing individual conduct.

5. What are the changes for car dealers that sell competing brands ("multibrand dealers")?

The old rules have had little impact on favouring multi-dealerships, which continue to be determined by the size of the dealers and their geographical location – multi dealerships are more likely to happen in remote areas and within large dealer groups that have buyer power.

Moreover, carmakers reacted to the threat that generalised multi-branding might pose for brand identity and corporate image by increasing the level of investments required from the dealers in terms of separating the brands, presentation, etc. Manufacturers also started to contribute less to dealers' investment costs. The rules required manufacturers (wishing to benefit from the exemption) to allow their dealers to sell the brands of at least two competing manufacturers within the same showroom.

The result was an overall increase in distribution costs, which are estimated to have gone up by 20% to the disadvantage of car dealers and consumers.

Under the new rules, vehicle manufacturers have more leeway to organise their networks as they see fit and, in particular, to strike the right balance between single and multi brand dealerships.

The Commission has introduced a number of safeguards to ensure the distribution of smaller brands:

(i) First, only manufacturers with a national market share of maximum 30% that impose single-branding obligations may benefit from the block exemption.

(ii) Second, manufacturers that impose single branding for more than five years cannot benefit from the block exemption. Dealers must be free to terminate the tie after five years.

(iii) Third, single-branding obligations that are specifically designed to exclude newcomers or smaller brands that are currently sold in existing multi-brand outlets will not be exempted.

(iv) Fourth, if the widespread use of single-branding obligations leads to competing brands being shut out from the market, the competition authorities may withdraw the benefit of the block exemption for individual car manufacturers.

(v) Fifth, if single-branding obligations cover more than 50% of a given market, the Commission may adopt a regulation declaring the block exemption inapplicable to agreements containing such clauses.

6. How does the Commission ensure that consumers continue to benefit from the internal market?

The new framework maintains the level of protection as regards cross-border sales, and consumers will continue to benefit from price differentials between Member States, as shown by the Commission's annual car price report, which monitors those price differentials for the most popular cars.

The Commission remains committed to protect parallel trade in the internal market and to intervene in cases where competition is restricted or distorted. A case in point is the decision against Peugeot Nederland of 2005 (see [IP/05/1227](#)) which has been upheld by the Court on 9 July 2009 (case T-450/05).

Moreover, by strengthening the enforcement of competition rules in the repair, maintenance and spare parts markets, the new rules will contribute to creating a level playing field between car manufacturers and spare part producers, and thus contribute to lower prices for spare parts.

7. For how long will the new Motor Vehicle BER and Guidelines apply?

The new Motor Vehicle Block Exemption Regulation will be valid for 13 years until 2023. The Commission will constantly monitor the situation in the markets for motor vehicle and spare parts distribution, as well as in the market for the provision of repair and maintenance services. The Commission will also monitor the application of the Regulation, in cooperation with National Competition Authorities and stakeholders.