

AEGPL Comments on the Future Competition Law Framework Applicable to the Motor Vehicle sector

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AEGPL, the European LPG Association, strongly supports the European Commission's efforts to revise the legal framework covering vertical agreements and concerted practices in the motor vehicle sector. In particular, we welcome the recognition of the need to take full account of the specificities of the aftermarket domain. In light of the high proportion of total consumer expenditure on motor vehicles that this sector represents, the need to preserve and promote free and effective competition in all its constituent elements is readily apparent.

With this in mind, in the context of the new draft Regulation and the associated Commission Notice, we stress the need for a broad and inclusive conception of the aftermarket so that all opportunities to enhance competition in this vital and highly specific sector can be identified and pursued to optimal effect.

Towards a More Inclusive Concept of Service Providers

As recognized in Regulation No 715/2007 on Type Approval of Motor Vehicles and on Access to Vehicle Repair and Maintenance Information, the aftermarket sector is comprised of a plethora of different types of operators including not only "repairers, manufacturers, or distributors of repair equipment, tools or spare parts" but also, among others, **"manufacturers and repairers of equipment for alternative fuel vehicles"**.

The use of the relatively restrictive term, **"repairer"** in the new Draft Regulation is inconsistent with this inclusive approach and does not adequately reflect the complexity and diversity of the aftermarket sector. This approach would unnecessarily impede the ability of operators who, while falling outside the definition of "repairer", are key actors in the aftermarket to play their rightful part in generation and maintenance of competition.

Specific Proposals for Amendments

With a view to avoiding this exclusion and optimising the effectiveness of the draft Regulation, the AEGPL proposes that the concept of "repairer" be broadened to include other relevant types of operator, as set out in Article 3 § 15 of Regulation No 715/2007. This would imply the following adjustments to the draft Regulation and guidelines respectively:

- The term **"repairer"** would be replaced by **"operator"** so as to better reflect the diverse roles of the aftermarket's constituent actors. For example, "authorised repairer" would become "authorised operator";
- For the purposes of coherence, the term "repair", when used as an adjectivized noun (e.g "repair network") would be replaced by "aftermarket", as in **"aftermarket network"**;
- As regards access to technical information, a new point - defining more extensively the nature of the **information needed by aftermarket operators** in order to carry out their activities in a manner consistent with the fundamental objectives of the block exemption - would be added to the draft Commission Notice. AEGPL's proposal for this point is in line with the provisions of Regulation No 715/2007.

The AEGPL is convinced that these minor revisions would have a disproportionately positive effect on the draft Regulation and Notice and - by extension - on the competitiveness of the motor vehicle and aftermarket sector as a whole. We look forward to further discussions with the Commission on this point over the coming months.

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Annex I - Detailed Proposals For Revisions to the Draft Regulation

COMMISSION REGULATION (EC) No .../..
of
on the application of Article 101(3) of the Treaty to categories of vertical
agreements
and concerted practices in the motor vehicle sector

Article 1, § a and b, to be amended as follows:

Article 1

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

(a) "authorised **operator** ~~repairer~~" means a provider of repair and maintenance services for motor vehicles operating within the distribution system set up by a supplier of motor vehicles;

Hence, replace, wherever it is used, the wording "authorised repairer" with "authorised operator".

(b) "independent **operator** ~~repairer~~" means a provider of repair and maintenance services for motor vehicles not operating within the distribution system set up by the supplier of the motor vehicles for which it provides repair or maintenance; an authorised repairer within the distribution system of a given supplier shall be deemed to be an independent repairer for the purposes of this Regulation to the extent that he provides repair or maintenance services for motor vehicles in respect of which he is not a member of the respective supplier's distribution system;

Annex II - Detailed Proposals For Revisions to the Commission Notice

DRAFT COMMISSION NOTICE Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles (Text with EEA relevance)

§ 59 to be amended as follows:

Misuse of warranties

(59) Qualitative selective agreements may also be caught by Article 101(1) if the supplier acts more directly to reserve ~~repairs~~ **aftermarket operations** on certain categories of vehicle to the members of its authorised networks, for instance by making the manufacturer's warranty, whether legal or extended, conditional on the end user having all ~~repairs~~ **aftermarket operations**, including those not covered by warranty, carried out within the authorised ~~repair~~ **aftermarket** networks. It also seems doubtful that such a practice could bring benefits to consumers such as could allow the agreements in question to benefit from the exception in Article 101(3) of the Treaty. However, if a supplier refuses to honour a particular warranty claim on the grounds that the situation leading to the claim in question is causally linked to a failure on the part of an independent ~~repairer~~ **operator** to carry out a particular ~~repair or maintenance~~ **aftermarket** operation in the correct manner, this will have no bearing on the compatibility of its authorised ~~repair~~ **aftermarket** agreements with the competition rules.

New § to be inserted:

(9a) Pursuant to Article 1, independent operators means undertakings other than authorised dealers and repairers which are directly or indirectly involved in the repair and maintenance of motor vehicles, in particular repairers, manufacturers or distributors of repair equipment, tools or spare parts, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services, operators offering training for installers, manufacturers and repairers of equipment for alternative fuel vehicles;

New § to be inserted:

(52a) For the purposes of the application of the Motor Vehicle Block Exemption, 'technical information' means all information required for diagnosis, servicing, inspection, periodic monitoring, repair, re-programming or re-initialising of the vehicle and which the manufacturers provide for their authorised dealers and repairers, including all subsequent amendments and supplements to such information. This information includes all information required for fitting parts or equipment on vehicles;