

A Guide to the EU Motor Vehicle Block Exemption

This guide explains the application of EU competition law to the various commercial relationships in the motor vehicle sector, and how these have recently changed.

A regulatory jigsaw

On 1 June 2010, the latest motor vehicle block exemption came into force, bringing with it a complex patchwork of regulatory instruments and guidance.

However, it was not until 1 June 2013 that the new regime became fully applicable, and the old motor vehicle block exemption ceased to apply. From that date, the position is that:

- Distribution of motor vehicles is treated in the same way as that of other products. Arrangements should be assessed for compliance with the 2010 general block exemption for vertical agreements (the "Vertical Block Exemption"). The non-sector-specific "vertical restraints guidelines" provide guidance in this respect.
- For distribution agreements relating to aftermarkets (i.e. spare parts and repair and maintenance services), a sector-specific block exemption remains applicable: the 2010 Motor Vehicles Block Exemption (the "2010 MVBE").
- Subcontracting agreements between vehicle suppliers and manufacturers of certain components fall outside the competition rules, in accordance

with the 1978 notice on the assessment of subcontracting agreements.

The Commission has also issued sector-specific guidance on how competition law applies to distribution in the automotive sector: the Motor Vehicles Guidelines and the Frequently Asked Questions (FAQs).

This guide explains how the application of EU competition law to the various commercial relationships in the motor vehicle sector.

Background

Article 101 of the Treaty on the Functioning of the EU prohibits anticompetitive agreements between undertakings which have an effect on trade between EU Member States, and which do not meet the criteria for exception under Article 101(3). It is widely accepted that vertical agreements – that is to say, agreements between firms operating at different levels of the supply chain, such as a manufacturer and a dealer – give rise to far fewer competition concerns than so-called "horizontal" agreements between competitors. Consequently, a wide range of vertical agreements – across all sectors – are subject to automatic exemption from the Article 101 prohibition, by virtue of the Vertical Block Exemption. The virtue of a block exemption is that legal

Key issues

- How has the competition regime for distribution of motor vehicles changed since 1 June 2013?
- Do vehicle suppliers have greater commercial freedom to impose restrictions on dealers?
- How are spare parts and repair aftermarkets regulated?
- How can market participants assess whether their arrangements benefit from a block exemption?
- What types of distribution arrangements and conduct are most likely to breach the competition rules?

certainty can be achieved by compliance with its relatively clear and unambiguous provisions, with no need to carry out a more costly assessment of an agreement's likely effect on actual or potential competition, and whether it gives rise to customer benefits that are likely to outweigh any anticompetitive effects.

The motor vehicle sector has for some time been subject to a sector-specific block exemption, which applies greater restrictions on the commercial freedom

of industry players as a condition of its application. As of 1 June 2013, however, that sector-specific regime applies only to aftermarkets.

The supply of new motor vehicles

Since 1 June 2013, suppliers have significantly greater freedom to impose restrictions and obligations on distributors of their new motor vehicles. The main changes that came into force are as follows.

Additional and different market share thresholds

The market share thresholds for application of the Vertical Block Exemption are lower than those applied under the 2002 MVBE. The Vertical Block Exemption also has an additional threshold, based on the distributor's share of the market on which it purchases the contract goods or services. In the context of motor vehicle distribution, that additional threshold will rarely be exceeded, as it is the share of each individual dealer within an authorised network that is taken into account, not the aggregate market share of the entire network.

The relevant thresholds are set out in the box to the right.

The most significant change for the vehicle distribution sector is the lowering of the threshold for block exemption of selective distribution systems to 30%. This is likely to mean that some manufacturers in the EU must now individually assess their distribution arrangements for compliance in certain national markets.

Market research carried out for the Commission suggested that, in 2006, few manufacturers had more than 30% of any national passenger car market, and even those that are traditionally

Market share thresholds for block exemption

	Before 1 June 2013	After 1 June 2013
Quantitative selective distribution	Supplier's market share is 40% or less.	Supplier's and distributor's shares each 30% or less
Qualitative selective distribution	No threshold (covered even if supplier's market share is 100%)	Supplier's and distributor's shares are 30% or less (but usually allowed even if block exemption does not apply)
Exclusive supply	Distributor has less than 30% of purchasing market	Supplier's and distributor's shares each 30% or less

THE TERMINOLOGY OF THE MVBE

Motor vehicle means a self propelled vehicle intended for use on public roads and having three or more wheels.

Selective distribution systems are networks in which dealers are not allowed to sell to resellers outside their 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 selection 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.

Assessing Market Shares In Motor Vehicle Markets

For the purposes of the 2002 MVBE and the 2010 MVBE, market shares should be calculated by reference to a "relevant product market" and a "relevant geographic market", determined in accordance with the Commission's notice on the definition of relevant market, and including all "substitutable" products and areas, i.e. those to which a significant number of purchasers would switch their purchases in the face of a significant price increase. The Commission has considered the scope of various markets for the manufacture and supply of motor vehicles in decisions under the EU Merger Control Regulation, and in its explanatory brochure to the 2002 MVBE (the "explanatory brochure"). While these assessments are not definitive, they should assist industry participants to assess whether their arrangements satisfy the market share thresholds in the relevant block exemptions:

- For passenger cars, the Commission has indicated that, depending on market conditions, each of the following categories of car might constitute a separate relevant product market: mini cars; small cars; medium sized cars ('compact or lower middle class'); larger cars ('middle class'); executive cars ('upper middle class'); luxury cars; sports cars / coupés / cabriolets; multi-purpose cars; and sports utility cars (SUVs, including off-road vehicles). In many cases, however, manufacturers should be able to conclude that wider markets exist, on the basis of so-called "chains of substitution" between different types of passenger car. For example, if larger cars exert substantial price constraints on executive cars (e.g. because fully specified large cars are priced at a similar level to basic model executive cars), which in turn compete with luxury cars, then the market would comprise at least all three categories. On that basis, it is also possible that there might be a market comprising both passenger cars and light commercial vehicles (see below). As regards geographic scope, the Commission tends to assess markets on a national basis, although it accepts that they could be wider (e.g. EEA wide).
- For commercial vehicles, the Commission has typically subdivided the sector into light commercial vehicles, light duty trucks (below 5 tonnes), medium trucks (5-16 tonnes) and heavy trucks (above 16 tonnes). It has also considered whether these markets should be further sub-divided according to the nature of the truck (e.g. rigid trucks or military trucks), without coming to a firm conclusion. For buses, the Commission has identified three separate markets: city buses, inter-city buses and touring buses. The Commission has considered that the geographic markets for all these types of commercial vehicles could be either national, or EEA wide.
- For spare parts, the Commission has defined markets for the manufacture and supply of spare parts for passenger cars and for the wholesale of these parts. If the parts in question are specific to a particular brand of motor vehicle, then it will usually be appropriate to define a separate market for the relevant brand-specific parts (including "matching quality" parts and those manufactured and supplied by original equipment suppliers, but excluding those supplied at no profit for the purposes of honouring legal obligations of warranty). If consumers in a particular market make their purchasing decisions on the basis of the lifetime costs of owning a vehicle (including the cost of spare parts), it may be appropriate to define a "system" market that includes both the vehicle and the spare parts. However, the 2010 MVBE Guidelines indicate that, in the Commission's view, this will rarely be the case. Geographic markets are usually viewed as national in scope. On that product and geographic market definition, vehicle manufacturers will almost invariably exceed the 30% threshold for application of the 2010 MVBE.
- As regards repair and maintenance services, the Commission's practice is to assess the agreements between a manufacturer and its authorised repairers as franchises for the repair of the specific brand of vehicles in question. The Commission considers that the manufacturer's market share should be calculated by reference to the value of the repair and maintenance services for the relevant brand that are provided to end users by its authorised repairers, as a proportion of all such branded repairs carried out, including those made by independent operators. Geographic markets are usually viewed as national in scope. Again, levels of market penetration of independent providers of brand-specific repairs mean that few manufacturers (if any) will be below the 30% threshold for application of the 2010 MVBE.

strong in their "home" markets (such as Fiat, with 30.8% of the Italian market, or PSA, with 30.7% of the French market) only slightly exceeded the threshold. As explained in the box on page 3, however, the relevant markets may be narrower in scope than "all passenger cars", in which case some manufacturers may find themselves outside the scope of the block exemption in respect of certain models, but able to benefit from block exemption in respect of others. Contractual arrangements with dealers will need to be structured accordingly. Contracts will also need to take into account the increased possibility that, with the lower market share threshold for quantitative selection systems, future increases in a manufacturer's market share in one or more segments will bring its arrangements outside the scope of the block exemption. This is subject to an applicable transition period of between one and two years, depending on the level of the increase.

Manufacturers that do not exceed the 30% threshold

Manufacturers and wholesale car suppliers that do not exceed the 30% threshold now have significantly greater freedom to structure their distribution arrangements as they see fit, while remaining within the scope of the Vertical Block Exemption. In particular:

- *Single branding.* The Vertical Block Exemption allows suppliers to require dealers to sell only their brands in any of their sites or showrooms, provided any such "non-compete" obligation has a duration of no more than five years, and is not tacitly renewable beyond this limit. Suppliers are no longer required to allow dealers to operate multi-branded showrooms in order to be covered by the

block exemption. Restrictions that have the effect of requiring or inducing single branding (such as those which, in practice, have the effect of causing the dealer to purchase more than 80% of its total purchases of motor vehicles from the manufacturer) will also be allowed, subject to the five year limit. The Motor Vehicle Guidelines do, however, state that if the cumulative effect of different manufacturers' single branding obligations covers more than 40% of the market, the Commission or a national competition authority may withdraw the benefit of the block exemption from those agreements that contribute significantly to that foreclosure of the market. Note also that dealers in a selective distribution system cannot be prevented from selling the brands of one or more *particular* competitors to the manufacturer.

- *Location clauses.* Manufacturers can now limit the territory within which a dealer is allowed to establish sales or delivery outlets.
- *Contractual transfer, termination, notice and dispute resolution provisions.* It is no longer a condition of block exemption that the manufacturer gives dealers detailed reasons for any termination of agreements, respects certain minimum notice periods for termination, includes specified dispute resolution procedures and allows dealers to transfer their agreements to other authorised dealers. The Commission considers that these issues are more appropriately dealt with under national laws relating to contracts and unfair commercial practices. However, even if a supplier is not required to

give detailed reasons for a decision to terminate a distribution agreement with a dealer, it will nonetheless expose itself to competition risk if it terminates an agreement, or takes any other punitive measures, because the dealer has acted in a way that must be permitted under the block exemption (e.g. because the dealer has sold cars to customers outside its territory or failed to observe a given price level). If a manufacturer is accused of doing so, the Motor Vehicle Guidelines state that the Commission will take into account whether the manufacturer has adhered to a published code of conduct that is incorporated into dealers' contracts. Consequently, the use of a code of conduct (such as those developed by the manufacturers' associations ACEA and JAMA) will serve to mitigate antitrust risks. Such a code should address issues such as notice periods for contract termination, compensation for any outstanding relationship-specific investments made by the dealer in case of early termination without just cause, as well as arbitration mechanisms.

- *Sub-contracting repair and maintenance services.* Manufacturers can now require dealers or authorised repairers to offer a full range of services, from the sale of vehicles and spare parts, to repair and maintenance services, and can prevent dealers from subcontracting repair and maintenance services to authorised repairers.
- *Control over dealers' ability to sell new models.* It is no longer a condition of block exemption that dealers are free to sell any new

motor vehicle that corresponds to a model within its contract range.

Other features of the previous regulatory regime continue to apply. For example, resale price maintenance is still a "hardcore" restriction, and it remains forbidden for manufacturers operating a selective distribution system (which is by far the most prevalent model) to combine it with an exclusive distribution system. Accordingly, while they can restrict dealers' places of establishment (see above), manufacturers cannot prevent them from making sales to, or soliciting sales from, end users or other authorised dealers in any other areas of the territory in which the selective distribution system is operated (or has been reserved for operation of the system). Measures having equivalent effect – such as pricing or rebates that are based on the destination of sold

vehicles, supply quotas based on a sales territory smaller than the EU, or discriminatory treatment (whether in the case of product shortages or otherwise) – also continue to be prohibited.

The Motor Vehicle Guidelines interpret the prohibition on restrictions of sales to end-users as implying a requirement that dealers be free to sell to leasing companies and intermediaries, although they can require dealers to carry out certain checks – such as a check of the leasing company's general leasing conditions, or the valid mandate of a named consumer in the case of an intermediary – in order to verify that the purchasers in question are genuine. The Guidelines also suggest that manufacturers "may" not be able to benefit from the block exemption if they do not include so-called "availability" clauses, allowing dealers to purchase vehicles with specifications identical to those sold in

other EU countries (such as left-hand drive cars for the UK market).

Manufacturers that exceed the 30% market share threshold

Where a manufacturer exceeds the market share threshold in a particular market, its agreements relating to the relevant brands will not be block exempted, and will therefore need to be assessed more carefully for compliance with the Article 101 prohibition on anticompetitive agreements. The Motor Vehicle Guidelines give some useful guidance in this respect.

As a starting point, manufacturers should avoid the "hard core" restrictions that are set out in the Vertical Block Exemption (see above). So, for example, they must not restrict dealers from selling to other authorised dealers or to end users anywhere in the selective distribution territory, or from actively soliciting such sales.

As regards other restrictions, the competition risks will vary according to the type of selective distribution that is implemented. Purely qualitative selective distribution is in general viewed as incapable of giving rise to anticompetitive effects (even if not covered by a block exemption), provided:

- Selective distribution is objectively necessary, given the nature of the product, the need to ensure its proper use and the need to ensure quality. Given the cost of a typical new motor vehicle, this criterion will usually be met;
- Dealers are chosen on the basis of objective, qualitative and non-discriminatory criteria that apply uniformly to all potential resellers, and do not indirectly limit the number of authorised dealers; and

- The selection criteria do not go beyond what is objectively necessary for the distribution of the vehicles (such as minimum sales requirements).

As regards quantitative selective distribution – in which the number of dealers is limited by the manufacturer, directly or indirectly – the Vertical Restraints Guidelines suggest that a quantitative selective distribution system could give rise to a breach of Article 101 if it is a significant part of a "network" of such arrangements that is applied by a number of suppliers in the market in question and which covers a large part of that market. It also indicates that in such circumstances the benefit of the Vertical Block Exemption, if it applies, may be withdrawn by the Commission or a national competition authority. Given the prevalence of quantitative selection for the distribution of motor vehicles in EU markets, these statements appear to suggest that any use of quantitative selection by a manufacturer that exceeds the 30% market share threshold for block exemption will give rise to considerable antitrust risks.

However, Motor Vehicle Guidelines (which, unlike the vertical restraints guidelines, provide guidance that is specific to the motor vehicle sector) state that if a manufacturer's market share is below 40%, then its quantitative selection system is likely to be excepted from the Article 101 prohibition even if the block exemption does not apply. The omission of any reference to the existence of a "network" of similar arrangements seems to indicate that, notwithstanding the statements in the vertical restraints guidelines, the Commission does not intend to take enforcement action against the quantitative distribution systems of manufacturers with shares in the 30%-40% range, purely because

their competitors also apply such a system.

For manufacturers with shares between 30% and 40%, certain restrictions may give rise to risks that should be carefully assessed, such as location clauses, non-compete restrictions or restrictions that do not allow dealers or manufacturers to realise efficiencies that are likely to be passed on to consumers (e.g. in the form of lower prices, more innovation, greater prices etc).

The supply of spare parts and repair and maintenance services

Markets for the supply of spare parts and repair and maintenance services remain subject to a sector specific block exemption - the Motor Vehicles Block Exemption - which has applied since 1 June 2010. The Motor Vehicles Block Exemption provides that agreements relating to aftermarkets will be exempted provided the conditions of the Vertical Block Exemption are satisfied and the agreements do not contain three additional "hardcore" restrictions, which are specific to motor vehicle aftermarkets.

As noted in the box on page 3 (Assessing market shares in motor vehicle markets), the Commission generally defines markets for the supply of spare parts and repair and maintenance services in such a way that vehicle manufacturers will almost invariably exceed the 30% threshold for application of the Motor Vehicles Block Exemption. As the threshold for block exemption of qualitative selective distribution of spare parts and repair and maintenance services - the most common model of distribution in aftermarkets - has now been lowered from 100% to 30%, that means that

almost all arrangements between manufacturers and their authorised repairers and distributors of spare parts are no longer block exempted.

As a result, the main purpose of the Motor Vehicle Block Exemption is not to exempt agreements, but rather to set out what provisions will be treated as "hard core" restrictions of competition that should be avoided in all aftermarket agreements, regardless of whether they are block exempted. Hardcore restrictions not only remove the benefit of a block exemption, but also are treated by the Commission as restrictions of competition "by object". This means that even if they have no actual or potential effect on competition, they will breach the Article 101 prohibition unless they can be shown by the parties to be indispensable for the achievement of substantial consumer benefits. In practice, demonstrating that such benefits will arise is costly, and subject to a high burden of proof.

Where a particular form of conduct is not listed as a hardcore restriction under the Motor Vehicle Block Exemption or the Vertical Block Exemption, the parties will need to carry out an individual assessment of its likely impact on competition, with reference to the Motor Vehicle Guidelines.

As explained below, despite the change in the form of regulation, the application of EU competition rules to the most common types of restrictions in aftermarkets has changed little in substance in recent years.

Hardcore restrictions

The following restrictions in selective distribution arrangements continue to be largely prohibited:

- *Resale price maintenance*, although this may be permissible

in certain exceptional circumstances, such as where necessary for the successful launch of a new product during a limited period, or for coordinating a short term (two to six week) low price campaign;

- *Restrictions on sales of spare parts and associated equipment to independent operators.* This is covered by three separate hardcore restrictions. The first prohibits agreements between a supplier of components and a vehicle manufacturer who incorporates those components, where that agreement restricts sales to unauthorised repairers, other service providers or end-users. The second forbids restrictions on the ability of authorised dealers and repairers to sell spare parts (including "captive" spare parts that are not available elsewhere) to independent repairers or their purchase agents. The third covers any agreement between a manufacturer and a supplier or producer of spare parts, diagnostic tools or other equipment which directly or indirectly restricts the supplier's ability to sell those goods to authorised or independent repairers and distributors.

As regards this last restriction, the Motor Vehicle Guidelines explain that vehicle manufacturers can nonetheless prevent a manufacturer of spare parts from selling those parts to others, provided they have been developed under a sub-contracting agreement under which the vehicle manufacturer has provided a tool which is necessary for their production,

has shared significantly in the product development costs, or has contributed necessary intellectual property rights or know-how. Vehicle manufacturers will also be free to bring evidence that a particular product that is being sold as a "matching quality" spare part is of insufficiently high quality, such that endangers the reputation of its authorised network.

These restrictions apply equally to agreements between members of a selective distribution system to limit the sale of spare parts to independent operators. The unilateral refusal of one authorised repairer to sell spare parts, on the other hand, would generally not infringe EU competition rules. If independent repairers experience widespread difficulties in obtaining captive spare parts, the vehicle supplier might be obliged to supply the spare parts directly.

- *Restrictions on branding of spare parts.* Vehicle manufacturers cannot (subject to the above) restrict a manufacturer of components from placing its trade mark or logo in an easily visible manner on the components supplied or on spare parts.
- *Restrictions on sales of spare parts to end users.* Authorised repairers and distributors operating at the retail level of trade must be free to make active or passive sales of spare parts and repair services to end users regardless of their location. However, vehicle manufacturers that appoint a wholesaler to act as an intermediary between it and retail dealerships can prevent that

wholesaler from selling to end users. Sales to unauthorised distributors located within the selective distribution territory can also be restricted.

While the use of location clauses in selective distribution of spare parts and repair services is no longer a hardcore restriction, it is likely to be viewed as a quantitative restriction that infringes the Article 101 prohibition, unless it can be shown to be necessary for the achievement of substantial consumer benefits (which is likely to be difficult).

- *Restrictions on cross supplies of spare parts between authorised distributors.* Authorised members of a selective distribution system cannot be prevented from selling spare parts to other authorised distributors.

Restrictions that are likely to have anticompetitive effects

Given the high market shares typically enjoyed by vehicle manufacturers in aftermarkets (using the market definitions favoured by the Commission), there are a variety of competitive restrictions which, although not hardcore restrictions by object, are nonetheless likely to be viewed as having the effect of restricting competition. So, for example, the two types of restriction that used to be listed as hardcore, but which are not under the current Motor Vehicles Block Exemption, are still likely to give rise to an infringement. These are:

- *Obstacles to access to repair networks.* Authorised repair networks should remain open to all firms that meet transparent and generally defined quality criteria.

Limiting numbers of authorised repairers through direct or indirect quantitative selection is likely to be viewed as having anticompetitive effects. The Commission has, however, indicated that such a restriction might satisfy the criteria for exception if it were necessary for the successful launch of a brand in a new geographic market (e.g. because no distributor would assume the distribution risks without protection from competition by stand-alone authorised repairers).

- *Limiting distributors' or repairers' ability to buy spare parts from third parties.* As a form of single branding, a restriction that limits the ability of authorised repairers and distributors to source original or matching quality spare parts from third parties is likely to be viewed as anticompetitive. However, the Commission considers that an obligation on an authorised repairer to use original spare parts supplied by the motor vehicle manufacturer for repairs carried out under warranty, free servicing and motor vehicle recall work would be permissible. Other forms of single branding – such as obligations not to sell brands of particular rivals, financial incentives or material conditions to avoid the distribution of competing products – will also be assessed negatively in the absence of compelling evidence of significant consumer benefits. Similarly, making the sourcing of competitive parts a condition for bonuses or rebates for captive parts or for technical information can amount to the abuse of a dominant position.

Other restrictions that the Commission views as likely to be anticompetitive are:

- Refusal to supply information to independent operators. Purely unilateral conduct of non-dominant undertakings does not usually breach the Article 101 prohibition on anticompetitive agreements, as there is no agreement. However, the Commission takes the view that if independent operators are unable to compete effectively on aftermarkets due to an inability to access necessary technical information, the resulting market conditions will cause a vehicle manufacturer's selective distribution arrangements with its authorised repairers and distributors to have anticompetitive effects. Consequently, technical repair and maintenance information must be made available to all "independent operators", including independent repairers, spare parts manufacturers and distributors, manufacturers of repair equipment or tools, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers. The information that must be made available comprises all technical information that will ultimately be used for the repair and maintenance of motor vehicles and which is necessary to allow independent operators to exert an effective competitive constraint on the market. It includes:
 - software;
 - fault codes and other parameters, together with

updates, which are required to work on electronic control units with a view to introducing or restoring settings recommended by the supplier;

- motor vehicle identification numbers or any other motor vehicle identification methods, parts catalogues, repair and maintenance procedures, working solutions resulting from practical experience and relating to problems typically affecting a given model or batch;
- recall notices as well as other notices identifying repairs that may be carried out without charge within the authorised repair network;
- part codes and any other information necessary to identify the correct branded spare part to fit a given individual motor vehicle;
- service history records, which the independent repairer must also be able to update; and
- any other information that a vehicle manufacturer makes available to its authorised repairers.

However vehicle manufacturers can withhold information on the design, production process or the materials used for manufacturing a spare part, as well as purely commercial information, such as billing software or data on hourly tariffs operated within the authorised network. Safety or security reasons, on the other hand, are not normally valid reasons for a refusal to provide information.

These obligations exist alongside those imposed by EU Regulations (such as Regulation (EC) No 715/2007 and Regulation (EC) No 595/2009, which provide for dissemination of repair and maintenance information for certain vehicles put in the market after a certain date) and relate to all motor vehicles regardless of their date of marketing, although the lists of information set out in Article 6(2) of those Regulations should serve as a guide to what constitutes technical information for the purpose of the competition rules.

Information should be made available in a non-discriminatory manner, on request, without undue delay, in a usable form and at a cost which does not discourage the more limited access that may be sought by independent operators. Vehicle manufacturers are not, however, obliged to provide technical information in a standardised format or through a defined technical system.

- *Refusal to supply tools and training to independent operators.* The above considerations regarding the availability of technical information also apply to the availability to independent operators of tools and training, such as electronic diagnostic and other repair tools, together with related software, including periodic updates thereof, and after-sales services for such tools. In case of widespread difficulties by independent repairers in obtaining captive spare parts
- *Misuse of warranties.* The Commission will view as

anticompetitive any attempt by a vehicle manufacturer to reserve repairs on certain categories of motor vehicles to the members of the authorised network, be it directly, via a third party or through an extended warranty, unless the extended warranty is bought some years after the

purchase of the vehicle. In particular, manufacturers' warranties should not be conditional on the end user having repair and maintenance work that is not covered by warranty carried out only within the authorised repair networks, or using spare parts of the manufacturer's brand

or a brand imposed by him. Manufacturers can, however, legitimately refuse to honour a warranty claim if it results from incorrect repair or maintenance work carried out by an independent repairer or the use of poor quality spare parts.



This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2013

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.