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## Contribution of the Independent Union of the European Lubricant Industry (UEIL) to the Commission's policy on the future competition framework applicable to the motor vehicle sector

### I. Introduction

UEIL is the independent umbrella association for the European lubricants industry, representing more than 400 predominantly small and medium-sized companies who account for 30% of the automotive oil market share and manufacture and distribute lubricant products throughout the European Union. The lubricant industry employs more than 100 000 people in Europe and produce a turnover of approximately €30bn. As the sole and preeminent representative body for lubricant companies in Europe, UEIL aims to improve the competitive conditions for lubricants and to advocate for a fairer, stable and transparent regulatory level playing field in the future competition law framework applicable to the motor vehicle sector.

UEIL welcomes the opportunity the Commission has given to all stakeholders to present their views on the different policy options proposed on the future competition framework applicable to the motor vehicle sector. A change in the regulatory framework of the Block Exemption Regulation will have a great impact on the whole automotive sector, including on the lubricant industry.

Whilst the BER 1400/2002 has been a great tool to move forward in terms of competition, UEIL would like to present, in this paper, its observations on the implementation of this Regulation on the ground, and on the improvements that are required to restore the effective functioning of the internal market. In practice, the spirit of the BER 1400/2002 is not always respected, and existing loopholes in the Regulation have lead to reduced competition, notably in the aftermarket sector.

**In light of the different options proposed, UEIL urges the Commission to instead consider a combination of these options –notably an amended Option 4 – in order to have a clear, binding and amended Regulation which creates a level playing field for all stakeholders.** Within this framework, we call upon the Commission to pay special attention to:

- ensuring to all operators full access to technical information with no delay and at latest when the new car model is placed on the market (*see section I. b i*)– and in a non-discriminatory way;
- addressing exclusive agreements and access to competitive products, and
- ensuring that warranties only include repair works on broken and defective parts of a vehicle originating from the vehicle manufacturer and provided for free to the customer (i.e. warranties do not include neither other repair works nor maintenance products such as lubricants).

## a. General observations

First of all, UEIL recognises the Commission's efforts to find an appropriate and practical solution targeting the aftermarket sector which aims to establish a level playing field for all the actors in the automotive sector. However, UEIL would like to make a few observations with regards the market structure and the options proposed by the Commission in discussing the regulatory regime applicable to the automotive sector.

The automotive market is a highly fragmented and unbalanced market characterised by a limited number of very large companies enjoying great market power and a larger number of small and medium enterprises with limited resources. In such circumstances, it is essential to have a set of very clear hardcore restrictions which remove scope for interpretation, so that all the stakeholders involved know their rights and obligations.

UEIL can confirm that the Commission's statements on SMEs in the spare parts sector cannot be taken into account for all the different sub-sectors,

Despite the Commission's statements that fewer rules would lead to more legal certainty, UEIL believes that generalist and not targeted rules will leave bigger room for interpretation which will make it difficult for SMEs and in general, the aftermarket sector, to operate in the European territory. In addition, heterogeneous interpretations create uncertainty in the market to the detriment of the different stakeholders and consumers alike.

It is also important to note that none of the proposed options offers any improvements to the current Regulation. As rightly pointed by several of the aftermarket players, there are existing loopholes in BER 1400/2002 that have led to a reduced competition in the sector. For this reason, some of the provisions should be amended so as to provide the legal certainty required to have a fair level playing field for all stakeholders.

**In this context, UEIL would like to point out that a large majority of stakeholders have called upon the European Commission to develop a sector-specific block exemption regulation with improved provisions in order to adequately address the needs of the sector.**

### i. THE IMPORTANCE OF THE MAINTENANCE SECTOR (INCLUDED LUBRICANTS)

UEIL would like to draw to the Commission's attention the fact that the impact assessment, as well as some of the solutions proposed, appear to be primarily, focused on the repair sector, to the detriment of a comprehensive analysis of the specific issues affecting the maintenance sector. Whilst the maintenance sector faces similar problems to those of the repair sector and some of the Commission's observations in respect of the repair sector can also be said to apply to the maintenance sector, too little attention is given to specific competition problems arising in the maintenance sector, such as we outline in this paper. A complete and accurate impact assessment needs to reflect on the interests of ALL independent operators in the aftermarket, and not primarily the independent repairers. This absence of this analysis is critical since this impacts the subsequent recommendations outlined in the impact assessment.

UEIL shares with the Commission the appreciation that the protection of competition on the aftermarkets is an important policy objective and that the objective to ensure that competing brands are available on the aftermarket is still valid. However, UEIL thinks this objective can only be reached

if the Commission analyzes all current competitive conditions on the relevant market (maintenance sector included). When considering the way forward after the expiry of BER 1400/2002, no real solutions are proposed to address the difficulties the maintenance sector is facing. The maintenance sector is an important player in the aftermarket, and it should be duly taken into account when reviewing existing legislation that has an impact on its industry.

UEIL calls upon the Commission to effectively encourage competition by allowing access of alternative brands sourcing of products. **It is crucial for the automotive market itself, and for consumers alike, to have a high degree of competition which can lead to the lowest possible prices, notably at times of economic recession.**

## **ii. PREVENTIVE POLICIES NEEDED FOR SMES**

UEIL believes that the Commission, in its aim to promote the competitiveness of SMEs, should favour preventive policies instead of corrective policies that only favour large companies both in the short and long term. UEIL wishes to make clear that our concerns with the existing BER are not simply a matter of compliance with existing rules, but relate to a more fundamental failing of those rules which require further enhancement to prevent abuses.

SMEs need hard core restrictions, set out in a Block Exemption Regulation, which clearly define which practices are uncompetitive and which rules cannot be broken in order to stop, or at least to reduce their occurrence. The sole reliance on Article 81 (or on Article 82) of the EC Treaty would lead to Court cases for each individual complaint, thus making complaints prohibitively expensive for consumers and independent operators who are often small SMEs. If Article 81(or Article 82) can be used to penalize abusive behaviors, it is not sufficient to prevent them, as evidenced by the increase of unfair practices in the aftermarket which we outline below in *section I (b)*.

For these reasons, a regulatory regime which prevents uncompetitive practices from occurring is required to ensure SME survival, by helping them remain competitive, , and avoid extra legal and litigation costs from disputes and trials.

## **iii. CLEAR RULES FOR ALL THE EUROPEAN UNION**

Stakeholders need clear and comprehensive rules stated in a compulsory regulation in order to avoid the risk of incoherent and heterogeneous interpretation by companies, national competition authorities or national jurisdictions across Europe.

## **b. Specific observations as regards the lubricant industry**

While the BER 1400/2002 has brought clear improvements in competition terms to the highly fragmented automotive sector as a whole, the lubricant industry in particular has been clearly affected by existing loopholes in the Regulation as it relates to the aftermarket. We wish to highlight three specific areas of concern where we believe the Commission should take further action: access to technical information, exclusive agreements and access to competitive products, and misuse of warranties.

## i. ACCESS TO TECHNICAL INFORMATION

As already pointed out by several stakeholders, and as stressed by the Commission, the protection of competition between authorised and independent repairers (including those that provide maintenance services) implies the latter's full access to technical information. In the Commission's words: *"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."* (COM(2009) 388 final, §60)

The Commission should note that the problem of access to technical information does not only concern repairers, but all independent operators, including lubricant manufacturers. As stated in the Explanatory Brochure of the BER 1400/2002, independent operators must have access to *"all information needed to carry out repair and maintenance"* (see OJ L 203, 1.8.2002, p. 30).

In spite of this, it is common practice for vehicle manufacturers **to fail to provide technical information, in particular the specifications needed to produce a lube oil, to independent operators**<sup>1</sup>, such as lubricant manufacturers, in a timely fashion<sup>2</sup> or to provide it in an incomplete or inadequate way<sup>3</sup>

The time delays are of particular concern when Vehicle Manufacturers only provide the information relating to technical information needed to manufacture lubricants *once a new car model is already on the market*. In such circumstances, given that it takes many months to produce a new lube oil approved by Vehicle Manufacturers, competing lubes may not exist on the market until 18 months to 2 or 3 years later.

In addition, and as already indicated in UEIL's White Paper on Competition<sup>4</sup>, the approval of competing lubricants can be artificially delayed by assigning only a very small number of laboratories (only one or two) to realise tests for the qualification of a lubricant as one that meets the Vehicle Manufacturers specifications.

Furthermore, UEIL would like to draw to the Commission's attention the fact that some Vehicle Manufacturers require a considerable licensing fee in return for obtaining technical information or approval. Many companies, in particular SMEs, cannot afford such fees<sup>5</sup>. UEIL believes that in order to ensure open competition such information should be provided for free (only limited fees to cover administrative costs for providing technical information) to all operators immediately after the specifications for a lube oil have been defined.

These cases are not isolated; it is a widespread practice that also affects other consumable products such as cooling liquids.

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<sup>1</sup> In October 2008, a VM informed a technical editor that technical information was only available for authorised dealers.

<sup>2</sup> Example: A VM launched new specifications for new engines in September 2007. The definitions for these specifications were set in January 2006. However, apart from the "recommended lubricant manufacturer", lubricant operators only got the information about these standards during the first semester of 2008 and their products could only be approved during the second semester 2008.

<sup>3</sup> Many VMs allocate internal codes to define the lubricant required for a particular engine instead of providing clear technical specifications, which are required for the reproduction of this lubricant.

<sup>4</sup> [Imbalances in the EU Automotive Market: A call for a sector-Specific Regulatory Framework, UEIL, March 2009.](#)

<sup>5</sup> In 2009, a vehicle manufacturer launched four new specifications for new engines and asked the payment of 70 000 € by formula code and per year to get technical approval.

Besides, already in 2007, (see IP/07/1332 from 14 September 2007), the Commission adopted four decisions under Article 9(1) of Regulation 1/2003 that legally bound DaimlerChrysler, Toyota, General Motors and Fiat to commitments to provide technical information about car repairs to all independent garages in the EU. At the time, the Commission already realised that the sector was experiencing some problems of the kind.

**The non-existence of matching quality products due to restrictive behaviours is a clear hindrance to free and fair competition.** These practices lead to an effective foreclosure of the market for independent operators and should be addressed in the context of the Block Exemption Regulation.

The Commission has argued in the Impact Assessment report that Recital 26, which goes with Article 4 (2) justifies the withholding of technical information for security and IPR reasons. However, and as illustrated in various meetings with the Commission services, the withholding of information for the manufacture of lubricants or cooling liquids is purely based on commercial considerations and cannot reasonably be justified on the grounds of security or IPR.

On several occasions, the Commission has also argued that the clauses under Regulation 715/2007, which aim at obtaining access to technical information, should protect independent operators from this type of restrictive behaviour. Nevertheless, the problem persists insofar as the wording of the Regulation is not clear enough and that it only applies to new type approvals from September 2009.

It becomes clear that **unless a new amended clause with plain and intelligible language that leaves no room for interpretation is included under the Block Exemption Regulation, difficulties to access the technical information required to produce a matching quality product within a commercially relevant time frame will persist.**

Against this backdrop, UEIL calls upon the EU authorities update the necessary provisions of the BER 1400/2002 **to ensure that access to lubricant specifications are given to all operators without delay in order to allow other manufacturers to produce an oil of matching quality.**

In practice this would mean **amending Article 4(2) of BER 1400/2002 in a binding mini-Block Exemption Regulation referring to technical information** to ensure that all independent operators, included lubricant manufacturers and distributors, have full access to technical information with no delay and at latest when the new car model is placed on the market (e.g. technical information required to manufacture and distribute lubricants and other consumable products).

## **ii. EXCLUSIVE AGREEMENTS AND ACCESS TO COMPETITIVE PRODUCTS**

As already indicated, UEIL is firmly of the belief that existing problems with the BER are not simply a matter of compliance, but derive from fundamental problems with the nature of the exclusive agreements which Vehicle manufacturers can enter into with their preferred network. We outline below a number of serious and specific abuses of the vertical agreements system which need to be urgently addressed in the context of an updated mini-BER which is capable of **establishing a level playing field for all stakeholders in the automotive industry.**



### 1. Lack of tendering procedures

It is a widespread practice that Vehicle Manufacturers enter into exclusive agreements with their suppliers in order to increase their profit margin. In the case of lubricants, there is no tendering procedure to manufacture a lubricant. A vehicle manufacturer may ask for a significant upfront payment from an oil company in return for exclusive rights to produce and sell the required lubricant. As a result of such practices, end users and repairers can frequently only acquire one lubricant, –the one recommended by Vehicle Manufacturers – for a period of 18 months to 2 or 3 years.

### 2. Bonus systems

Another exclusive behaviour includes the bonus systems used by Vehicle Manufacturers *vis-a-vis* their networks. Current trends show that authorised dealers and repairers are being persuaded to buy greater quantities of parts or all parts from their respective suppliers, leading to a dependence on only one supplier and thus foreclosing the market to other operators. Moreover, this exclusivity is not solely based on the primary distributed product, but also includes other products such as lubricants or insurances which further reinforces this dependence.

These type of systems are reliant on the agreements reached by vehicle manufacturers and their authorised network of dealers. The spirit of BER 1400/2002 was to increase competition in a fragmented sector, and yet these practices occurring in the field diminish competition to the benefit of a few market players.

## iii. **WARRANTIES**

The Commission has recognised that there is an effective misuse of legal and extended warranties whereby vehicle manufacturers refuse to honour warranties unless maintenance is carried out within the authorised networks, effectively marginalising independent repairers (*see (COM(2009) 388 final, §60*). UEIL agrees with this statement and urges the Commission to put the necessary tools in place in order to address this situation.

However, UEIL would like to draw the attention to the Commission to the fact that the “misuse of warranties” does not only concern the situation described above. As already indicated to different Commission services, there have been many cases where Vehicle Manufacturers have threatened consumers and repairers with an alleged breach of warranty if they failed to use the lubricant they recommended, albeit the fact that lubricants are not a repair spare part (and therefore should not be considered in the vehicle’s warranty, as fuel).

### 1. Products targeted

As it is widely known, warranties are an important part of a new car package in that they offer the consumer free repairs for manufacturing faults. In line with this, the warranty work in terms of the BER 1400/2002 means “replacing broken or defective parts of a vehicle”. This has important implications on the lubricants industry, as lubricants cannot be part of the vehicle’s repair work: just as with fuel, **lubricants cannot break down or be defective**; they can only be replaced once it is used up.

It needs to be taken into account that, in practice, most users pay a considerable financial outlay for a new vehicle. Therefore, they want to be protected against an unexpected vehicle failure. Given the vehicle manufacturers’ threat of breach of warranty if users fail to employ the lubricant



they recommend, users and/or repairers buy the latter, even if it is more expensive. In reality, they are deprived of choice. This kind of behaviour goes against all free and fair competition and forecloses the market.

This problem is very important on the ground, particularly as vehicle manufacturers have developed very long “warranty contracts” (3, 5, 7 or even 10 years) combined with “maintenance contracts” . As the Commission has recognised, “longer warranties undoubtedly have the effect of shutting independent repairers out from a sizeable slice of the overall repair market” (see *COM(2009) 388 final, §60*).

## 2. Maintenance contracts

Furthermore, vehicle manufacturers tie up many users through maintenance contracts which oblige them to carry out repair works and maintenance where specified by the vehicle manufacturer and to use parts and products determined by the latter. It is a way to put independent repairers and competitive products out of the market. Maintenance contracts differ from warranties in that the user has theoretically a choice whether to sign up for additional services or not. In practical terms, as Vehicle Manufacturers link warranties with maintenance contracts, users find themselves deprived of choice.

In order to overcome these problems, UEIL would recommend to amend, within a mini-Block Exemption Regulation, provisions relating to warranties as to ensure that:

- warranties only include repair works on broken and defective parts of a vehicle originating from the vehicle manufacturer and provided for free to the customer (i.e. warranties do not include either *other repair works* or *maintenance products* such as lubricants).
- Other repair works (which are not under warranty) and maintenance services can be carried out either by an authorised or an independent repairer.
- These works can be carried out with a full freedom of choice on [repair and maintenance] products of matching quality, without any impact on warranties.

## II. The policy options

Based on the above analysis, UEIL has concluded that none of the policy options as proposed by the Commission in its impact assessment paper provide sufficient guarantees for healthy competition in the aftermarket sector.

The Commission's stated intention to put in place the new regulatory regime as of March 2010 leaves insufficient time to comprehensively address the issues outlined above and devise a **mini-BER which can effectively address the problems in the aftermarket**. . UEIL believes that it is therefore incumbent on the Commission, having been informed of these additional problems in the sector which were not reflected in the impact assessment analysis, to first clarify some of the main provisions of BER 1400/2002 and prolong the Regulation for three more years, and to use this time to work with stakeholders and develop a mini-BER that provides the heightened legal certainty the aftermarket sector needs to operate.



As exemplified through section I, the aim of BER 1400/2002 is sometimes not fully transposed into the reality, as competition is reduced due to the interpretation of the different provisions of BER 1400/2002. For this reason, UEIL believes that only a stringent, improved and well conceived mini-Regulation is required to ensure a fair level playing field in the automotive industry.

## a. Analysis of the different policy options

### **Option 1: Prolongation of BER 1400/2002**

*The baseline scenario is the continuation of the status quo*

UEIL is concerned that BER 1400/2002 in its current form does not provide enough legal certainty to the aftermarket sector. This option could only be envisaged either if the provisions of Regulation 1400/2002 were amended to fulfil the needs of the aftermarket sector or if it was to be considered a transitional solution for an improved sector-specific Regulation for the automotive sector. It is essential to remove existing loopholes allowing operators to circumvent their obligations under EU competition law. Indeed, and as already indicated, loopholes appear in terms of lack of access to the technical information (*see section I (b)(i)*), lack of access to competitive products (*see section I (b)(ii)*) and misuse of warranties (*see section I (b)(iii)*).

The Commission will find in Appendix 1 amendments needed in the current regulation to fulfil the needs of the aftermarket sector.

UEIL will not support a temporary measure aiming at letting the regime lapse with a view to integrating the sector into the general rules applicable to vertical restraints (Regulation 2790/1999). Nevertheless, UEIL could support a prolongation of the current BER, if some of its provisions were clarified, which would be seen as the prelude of a well conceived and unambiguous mini-Regulation adapted to the aftermarket.

### **Option 2: letting the sector-specific regime lapse**

*In this scenario, the automotive sector would be covered under the general rules applicable to vertical restraints (Regulation 2790/1999)*

In the past, the Commission has decided to create specific rules for the automotive sector due to the specificities of the sector, which include an unbalanced power struggle existing in this sector. The specific Regulation BER 1400/2002 has in the past contributed to increasing competition in the automotive sector as well as providing a level playing field for all the stakeholders.

Given the exclusivity requirements outlined under Regulation 2790/1999, the dealer's purchasing obligations make it fully dependent on its supplier, preventing it to rely on independent operators and products of matching quality, which are recognised to be cheaper. UEIL is of the opinion that letting this sector-specific regime lapse with no substitute (and the obvious integration of the automotive sector in Regulation 2790/1999) would be pernicious for the sector, specifically for independent operators, which would see their market share decrease to the expense of Vehicle Manufacturers increased dominance in the market.



**A sector-specific regulatory framework is essential, notably in the current economic context, to ensure the competitiveness and survival of small- and medium-sized companies**

**Option 3: Sector-specific guidelines on how the general rules would apply to the automotive sector**

*The guidelines would mainly be aimed at tackling some of the restrictions affecting the aftermarket, although they would further clarify some of the rules concerning the primary market*

The solution of guidelines would only be considered if it was accompanied by a mini-BER. Guidelines are non mandatory provisions that might not be accepted as law by the national governments. Although UEIL recognises that guidelines are useful to clarify and propose new concepts, it also appreciates that they cannot replace binding rules which have to be respected and not interpreted by all stakeholders.

In this sense, a combination with a binding option would be the perfect solution for clarifying some of the current provisions of the current BER as regards some of the identified obstacles for a fair and balanced competition in the automotive sector. Hence, specific guidelines that distinguish the two main types of "spare parts"<sup>6</sup> groups (i.e. repair products and consumables) will be welcomed by the lubricant industry<sup>7</sup>. Furthermore, the distinction of consumables from repair products would also seek to address the problem posed by the inclusion of maintenance products in warranties and in bonus systems by the vehicle manufacturers.

UEIL would like to stress that it will not accept guidelines as an independent and unique solution to address the lack of clarity in the provisions about access to technical information and competitive products, and warranties.

The guidelines could only be used to accompany a new binding regulation for the aftermarket sector in order to precise some points or concepts which would not be precisely or enough defined in the Regulation (e.g. consumables<sup>8</sup>, misuse of warranty, misuse of bonuses systems ...).

**Option 4: Sector-specific block exemption that protects the aftermarket competition**

*This sector specific block exemption would contain all the hardcore provisions aimed at protecting aftermarket competition currently set out in Regulation 1400/2002*

A sector specific block exemption would be the best option of all the proposed options IF the hardcore provisions could be amended in order to provide further clarifications of the legislation. UEIL would only support this option on the condition that provisions could be improved to ensure that consumers and repairers can benefit from the freedom of choice as well as to ensure that all operators can offer high quality products and services at affordable prices.

<sup>6</sup> See Article 1 (s) of Regulation 1400/2002 for the current definition of spare parts.

<sup>7</sup> But the best solution would be to have two definitions in the Regulation: spare parts and consumables (see Article 1 in Appendix 1).

<sup>8</sup> However, for UEIL, the best option would be to include the consumables definition in the Regulation (see Article 1 in Appendix 1).

More specifically, and for the reasons outlined in section I (b) of this paper, the aftermarket rules should be reinforced so as to:

- **Allow lubricant manufacturers and distributors to have complete access to lubricant specifications and all relevant technical information with no delay and at latest when the new car model is placed on the market and in a non-discriminatory way;**
- **Allow consumers and repairers (authorised and independent) to have a real freedom of choice in buying competitive repair and maintenance products;**
- **Restrict warranties only to repair works on broken and defective parts of a vehicle originating from the vehicle manufacturer and provided for free to the customer (i.e. warranties do not include neither other repair works nor maintenance products such as lubricants).**

UEIL is of the advice that allowing any margin of interpretation has been misused in the past by Vehicle Manufacturers to reduce consumers' and repairers' freedom of choice. Therefore, only clear, improved and mandatory rules will provide the level of legal certainty needed for all stakeholders to survive in the automotive industry.

### **III. Conclusion: UEIL's preferred option**

Despite the tailored sector specific regulation the automotive market has benefitted from since 2002, the anticompetitive behaviours governing the automotive industry are still present. With a view to specifically address these practices and in order to ensure a level playing field for all stakeholders involved in the automotive sector, UEIL believes that the Commission should put in place a straighter sector-specific regulation with updated, tailored and binding provisions that cover the current loopholes of BER 1400/2002.

Thus, UEIL's preferred option is creating a **sector-specific BER for the aftermarket which includes several modifications** relating to the provisions on technical information, access to competitive products and warranties accompanied by guidelines that provide further clarification to the text on some of the concepts (e.g. difference between consumables and repair products).

Nevertheless, and taking into account the time developing such an option would take, UEIL urges the Commission to put in place an **improved version** of BER 1400/2002 as a transitional measure **while** it builds on an unambiguous and appropriate Block Exemption Regulation for the aftermarket sector which provides the legal certainty needed for the sector as of 2013. In brief, UEIL will only advocate for free competition in a balanced market, which allows large and small companies to compete through updated, binding, and clearer rules for the aftermarket.

**UEIL calls upon the Commission to take into account the above considerations in its review of BER 1400/2002 and to ensure that any legislation succeeding BER 1400/2002 provides free competition to the benefit of consumers and business alike and the level of legal certainty that the sector requires.**

## APPENDIX 1

### **Amended option 1 : Amendments to the current Regulation**

#### **Article 1 of the Motor Vehicle BER 14200/2002: Definitions**

For the purpose of this regulation:

[...] (s) "spare parts means goods which are to be installed in or upon a motor vehicle so as to replace components of that vehicle.

[...] (x) "consumables" means goods such as lubricants or cooling liquids, which are not "components" according to trade usage, and which are necessary for the use of a motor vehicle, with the exception of fuel.

#### **Article 2 of the Car BER: Scope**

1. Pursuant to Article 81(3) of the Treaty and subject to the provisions of this Regulation, it is hereby declared that the provisions of Article 81(1) shall not apply to vertical agreements where they relate to the conditions under which the parties may purchase, sell or resell new motor vehicles, spare parts **and consumables** for motor vehicles or repair and maintenance services for motor vehicles.

The first subparagraph shall apply to the extent that such vertical agreements contain vertical restraints.

The exemption declared by this paragraph shall be known for the purposes of this Regulation as 'the exemption'.

2. The exemption shall also apply to the following categories of vertical agreements:

(a) Vertical agreements entered into between an association of undertakings and its members, or between such an association and its suppliers, only if all its members are distributors of motor vehicles, spare parts **or consumables** for motor vehicles or repairers and if no individual member of the association, together with its connected undertakings, has a total annual turnover exceeding EUR 50 million; vertical agreements entered into by such associations shall be covered by this Regulation without prejudice to the application of Article 81 to horizontal agreements concluded between the members of the association or decisions adopted by the association; [...]

#### **Article 3 of the Car BER: General conditions**

1. Subject to paragraphs 2, 3, 4, 5, 6 and 7, the exemption shall apply on condition that the supplier's market share on the relevant market on which it sells the new motor vehicles, spare parts **or consumables** for motor vehicles or repair and maintenance services does not exceed 30 %. [...]

#### **Article 4 of the Car BER: Hardcore restrictions**

1. The exemption shall not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

[...] (Hardcore restrictions only concerning the sale of repair and maintenance services, spare parts **and consumables**)

(h) the restriction of the authorised repairer's ability to limit its activities to the provision of repair and maintenance services and the distribution of spare parts **or consumables**;

(i) the restriction of the sales of spare parts **or consumables** for motor vehicles by members of a selective distribution system to independent repairers which use these **goods** for the repair and/or maintenance of a motor vehicle;

(j) the restriction agreed between a supplier of original spare parts or spare parts of matching quality, **consumables**, repair tools or diagnostic or other equipment and a manufacturer of motor vehicles, which limits the supplier's ability to sell these goods or services to authorised or independent distributors or to authorised or independent repairers or end users;

(k) the restriction of a distributor's or authorised repairer's ability to obtain original spare parts or spare parts of matching quality **or consumables** from a third undertaking of its choice and to use them for the repair or maintenance of motor vehicles, without prejudice to the ability of a supplier of new motor vehicles to require the use of original spare parts supplied by it **for free and** carried out under warranty, free servicing and vehicle recall work (**warranty only includes free repair works on broken and defective parts of a vehicle originating from the vehicle manufacturer. Other repair works and maintenance are excluded of warranty**);

[...] 2. The exemption shall not apply where the supplier of motor vehicles refuses to give independent operators **full** access to any technical information **without delay**, diagnostic and other equipment, tools, including any relevant software, or training required for the repair and maintenance of these motor vehicles or for the implementation of environmental protection measures.

Such access must include in particular the unrestricted use of the electronic control and diagnostic systems of a motor vehicle, the programming of these systems in accordance with the supplier's standard procedures, the repair and training instructions, the information required for the use of diagnostic and servicing tools and equipment **and the standards required for consumables as lubricants or cooling liquids**.

Access must be given to independent operators in a non-discriminatory, prompt (**i.e. without delay and at latest when the new car model is placed on the market**) and proportionate way, and the information must be provided in a usable form. If the relevant item is covered by an intellectual property right or constitutes know-how, access shall not be withheld in any abusive manner.

**Manufacturers shall provide unrestricted and standardised access to vehicle repair and maintenance information to independent operators through websites using a standardised format in a readily accessible and prompt manner.**

For the purposes of this paragraph "independent operator" shall mean undertakings which are directly or indirectly involved in the repair and maintenance of motor vehicles, in particular independent repairers, **manufacturers or distributors of** repair equipment, tools, **spare parts or**

*consumables*, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services, operators offering training for repairers.

#### **Article 5 of the Car BER: Specific conditions**

1. As regards the sale of new motor vehicles, repair and maintenance services, spare parts *or consumables*, the exemption shall not apply to any of the following obligations contained in vertical agreements:

(a) any direct or indirect non-compete obligation;

(b) any direct or indirect obligation limiting the ability of an authorised repairer to provide repair and maintenance services for vehicles from competing suppliers;

(c) any direct or indirect obligation causing the members of a distribution system not to sell motor vehicles, spare parts *or consumables* of particular competing suppliers or not to provide repair and maintenance services for motor vehicles of particular competing suppliers;

(d) any direct or indirect obligation causing the distributor or authorised repairer, after termination of the agreement, not to manufacture, purchase, sell or resell motor vehicles or not to provide repair or maintenance services.

[...]3. As regards repair and maintenance services or the sale of spare parts *or consumables*, the exemption shall not apply to any direct or indirect obligation as to the place of establishment of an authorised repairer where selective distribution is applied.

#### **Article 8 of the Car BER Market share calculation**

1. The market shares provided for in this Regulation shall be calculated

[...] (b) for the distribution of spare parts *or consumables* on the basis of the value of the contract goods and other goods sold by the supplier, together with any other goods sold by the supplier which are regarded as interchangeable or substitutable by the buyer, by reason of the products' characteristics, prices and intended use;