Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector (Text with EEA relevance)

COMMISSION REGULATION (EU) No 461/2010

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation No 19/65/EEC of the Council of 2 March 1965 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices[(1)], and in particular Article 1 thereof,

Having published a draft of this Regulation,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

(1) Regulation No 19/65/EEC empowers the Commission to apply Article 101(3) of the Treaty on the Functioning of the European Union[(2)] by regulation to certain categories of vertical agreements and corresponding concerted practices falling within Article 101(1) of the Treaty. Block exemption regulations apply to vertical agreements which fulfil certain conditions and may be general or sector-specific.

(2) The Commission has defined a category of vertical agreements which it regards as normally satisfying the conditions laid down in Article 101(3) of the Treaty and to this end has adopted Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices[(3)], which replaces Commission Regulation (EC) No 2790/1999[(4)].

(3) The motor vehicle sector, which includes both passenger cars and commercial vehicles, has been subject to specific block exemption regulations since 1985, the most recent being Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector[(5)]. Regulation (EC) No 2790/1999 expressly stated that it did not apply to vertical agreements the subject matter of which fell within the scope of any other block exemption regulation. The motor vehicle sector therefore fell outside the scope of that Regulation.

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EU) No 461/2010. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) Regulation (EC) No 1400/2002 expires on 31 May 2010. However, the motor vehicle sector should continue to benefit from a block exemption in order to simplify administration and reduce compliance costs for the undertakings concerned, while ensuring effective supervision of markets in accordance with Article 103(2)(b) of the Treaty.

(5) Experience acquired since 2002 regarding the distribution of new motor vehicles, the distribution of spare parts and the provision of repair and maintenance services for motor vehicles, makes it possible to define a category of vertical agreements in the motor vehicle sector which can be regarded as normally satisfying the conditions laid down in Article 101(3) of the Treaty.

(6) This category includes vertical agreements for the purchase, sale or resale of new motor vehicles, vertical agreements for the purchase, sale or resale of spare parts for motor vehicles and vertical agreements for the provision of repair and maintenance services for such vehicles, where those agreements are concluded between non-competing undertakings, between certain competitors, or by certain associations of retailers or repairers. It also includes vertical agreements containing ancillary provisions on the assignment or use of intellectual property rights. The term 'vertical agreements' should be defined accordingly to include both such agreements and the corresponding concerted practices.

(7) Certain types of vertical agreements can improve economic efficiency within a chain of production or distribution by facilitating better coordination between the participating undertakings. In particular, they can lead to a reduction in the transaction and distribution costs of the parties and to an optimisation of their sales and investment levels.

(8) The likelihood that such efficiency-enhancing effects will outweigh any anticompetitive effects due to restrictions contained in vertical agreements depends on the degree of market power of the parties to the agreement and, therefore, on the extent to which those undertakings face competition from other suppliers of goods or services regarded by their customers as interchangeable or substitutable for one another, by reason of the products' characteristics, their prices and their intended use. Vertical agreements containing restrictions which are likely to restrict competition and harm consumers, or which are not indispensable to the attainment of the efficiency-enhancing effects, should be excluded from the benefit of the block exemption.

(9) In order to define the appropriate scope of a block exemption regulation, the Commission must take into account the competitive conditions in the relevant sector. In this respect, the conclusions of the in-depth monitoring of the motor vehicle sector set out in the Evaluation Report on the operation of Commission Regulation (EC) No 1400/2002 of 28 May 2008[(6)] and in the Commission Communication on The Future Competition Law Framework applicable to the Motor Vehicle sector of 22 July 2009[(7)] have shown that a distinction should be drawn between agreements for the distribution of new motor vehicles and agreements for the provision of repair and maintenance services and distribution of spare parts.

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(10) As regards the distribution of new motor vehicles, there do not appear to be any significant competition shortcomings which would distinguish this sector from other economic sectors and which could require the application of rules different from and stricter than those set out in Regulation (EU) No 330/2010. The market-share threshold, the non-exemption of certain vertical agreements and the other conditions laid down in that Regulation normally ensure that vertical agreements for the distribution of new motor vehicles comply with the requirements of Article 101(3) of the Treaty. Therefore, such agreements should benefit from the exemption granted by Regulation (EU) No 330/2010, subject to all the conditions laid down therein.

(11) As regards agreements for the distribution of spare parts and for the provision of repair and maintenance services, certain specific characteristics of the motor vehicle aftermarket should be taken into account. In particular, the experience acquired by the Commission in applying Regulation (EC) No 1400/2002 shows that price increases for individual repair jobs are only partially reflected in increased reliability of modern cars and lengthening of service intervals. These latter trends are linked to technological evolution and to the increasing complexity and reliability of automotive components that the vehicle manufacturers purchase from original equipment suppliers. Such suppliers sell their products as spare parts in the aftermarket both through the vehicle manufacturers' authorised repair networks and through independent channels, thereby representing an important competitive force in the motor vehicle aftermarket. The costs borne on average by consumers in the Union for motor vehicle repair and maintenance services represent a very high proportion of total consumer expenditure on motor vehicles.

(12) Competitive conditions in the motor vehicle aftermarket also have a direct bearing on public safety, in that vehicles may be driven in an unsafe manner if they have been repaired incorrectly, as well as on public health and the environment, as emissions of carbon dioxide and other air pollutants may be higher from vehicles which have not undergone regular maintenance work.

(13) In so far as a separate aftermarket can be defined, effective competition on the markets for the purchase and sale of spare parts, as well as for the provision of repair and maintenance services for motor vehicles, depends on the degree of competitive interaction between authorised repairers, that is to say those operating within repair networks established directly or indirectly by vehicle manufacturers, as well as between authorised and independent operators, including independent spare parts suppliers and repairers. The latters' ability to compete depends on unrestricted access to essential inputs such as spare parts and technical information.

(14) Having regard to those specificities, the rules in Regulation (EU) No 330/2010, including the uniform market share threshold of 30 %, are necessary but are not sufficient to ensure that the benefit of the block exemption is reserved only to those vertical agreements for the distribution of spare parts and for the provision of repair and maintenance services for which it can be assumed with sufficient certainty that the conditions of Article 101(3) of the Treaty are satisfied.

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(15) Therefore, vertical agreements for the distribution of spare parts and for the provision of repair and maintenance services should benefit from the block exemption only if, in addition to the conditions for exemption set out in Regulation (EU) No 330/2010, they comply with stricter requirements concerning certain types of severe restrictions of competition that may limit the supply and use of spare parts in the motor vehicle aftermarket.

(16) In particular, the benefit of the block exemption should not be granted to agreements that restrict the sale of spare parts by members of the selective distribution system of a vehicle manufacturer to independent repairers, which use them for the provision of repair or maintenance services. Without access to such spare parts, independent repairers would not be able to compete effectively with authorised repairers, since they could not provide consumers with good quality services which contribute to the safe and reliable functioning of motor vehicles.

(17) Moreover, in order to ensure effective competition on the repair and maintenance markets and to allow repairers to offer end users competing spare parts, the block exemption should not cover vertical agreements which, although they comply with Regulation (EU) No 330/2010, nonetheless restrict the ability of a producer of spare parts to sell such parts to authorised repairers within the distribution system of a vehicle manufacturer, independent distributors of spare parts, independent repairers or end users. This does not affect the liability of producers of spare parts under civil law, or the ability of vehicle manufacturers to require the authorised repairers within their distribution system to only use spare parts that match the quality of the components used for the assembly of a certain motor vehicle. Moreover, in view of the vehicle manufacturers' direct contractual involvement in repairs under warranty, free servicing, and recall operations, agreements containing obligations on authorised repairers to use only spare parts supplied by the vehicle manufacturer for those repairs should be covered by the exemption.

(18) Finally, in order to allow authorised and independent repairers and end users to identify the manufacturer of motor vehicle components or of spare parts and to choose between alternative parts, the block exemption should not cover agreements by which a manufacturer of motor vehicles limits the ability of a manufacturer of components or original spare parts to place its trade mark or logo on those parts effectively and in a visible manner.

(19) In order to allow all operators time to adapt to this Regulation, it is appropriate to extend the period of application of the provisions of Regulation (EC) No 1400/2002 relating to vertical agreements for the purchase, sale and resale of new motor vehicles until 31 May 2013. As regards vertical agreements for the distribution of spare parts and for the provision of repair and maintenance services, this Regulation should apply from 1 June 2010 so as to continue to ensure adequate protection of competition on the motor vehicle aftermarkets.

(20) The Commission will, on a continuous basis, monitor developments in the motor vehicle sector and will take appropriate remedial action if competition shortcomings arise which

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may lead to consumer harm on the market for the distribution of new motor vehicles or the supply of spare parts or after-sales services for motor vehicles.

(21) The Commission may withdraw the benefit of this Regulation, pursuant to Article 29(1) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty[8], where it finds in a particular case that an agreement to which the exemption provided for in this Regulation applies nevertheless has effects which are incompatible with Article 101(3) of the Treaty.

(22) The competition authority of a Member State may withdraw the benefit of this Regulation pursuant to Article 29(2) of Regulation (EC) No 1/2003 in respect of the territory of that Member State, or a part thereof where, in a particular case, an agreement to which the exemption provided for in this Regulation applies nevertheless has effects which are incompatible with Article 101(3) of the Treaty in the territory of that Member State, or in a part thereof, and where such territory has all the characteristics of a distinct geographic market.

(23) In determining whether the benefit of this Regulation should be withdrawn pursuant to Article 29 of Regulation (EC) No 1/2003, the anti-competitive effects that may derive from the existence of parallel networks of vertical agreements that have similar effects which significantly restrict access to a relevant market or competition therein are of particular importance. Such cumulative effects may, for example, arise in the case of selective distribution or non-compete obligations.

(24) In order to strengthen supervision of parallel networks of vertical agreements which have similar anti-competitive effects and which cover more than 50 % of a given market, the Commission may by regulation declare this Regulation inapplicable to vertical agreements containing specific restraints relating to the market concerned, thereby restoring the full application of Article 101 of the Treaty to such agreements.

(25) In order to assess the effects of this Regulation on competition in motor vehicle retailing, in the supply of spare parts and in after sales servicing for motor vehicles in the internal market, it is appropriate to draw up an evaluation report on the operation of this Regulation,

HAS ADOPTED THIS REGULATION:

CHAPTER I

COMMON PROVISIONS

Article 1

Definitions

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

a ‘vertical agreement’ means an agreement or concerted practice entered into between two or more undertakings each of which operates, for the purposes of the agreement or