

Draft Revised Market Definition Notice (published 8 November 2022) FIGIEFA feedback to the European Commission's public consultation

PAR. 16, 25 AND 55 DRAFT NOTICE:

"Expected transitions in the structure of the market calls for a forward-looking assessment. Structural market transitions (...) affect the general dynamics of demand and supply in a market and therefore the general reactions to changes in relative supply conditions. Such structural market transitions need to be distinguished from changes affecting only individual undertakings or consumers offering or demanding products in the relevant markets."

Comment FIGIEFA: We refer to the automotive aftermarket and the digitalisation and connected products (IoT) that can change the automotive aftermarkets in a structural way, in particular because of the conditions on the primary markets in automotive: high purchase prices of vehicles, long lifetimes and vertically integrated parties on the primary markets that compete with independent operators on the aftermarket. A lack of digital access and interoperability will foreclose a wide range of aftermarket suppliers (aftermarket operators) and potential entrants from offering substitutes for parts, services and technologies on the aftermarket. The demand side (consumers and businesses) will also structurally change due to the change in market structure that allows vendor lock-in. Where structural changes are the result of unjust denial of digital access or interoperability, as mandated in (sector-specific) competition or type approval norms, this should not be considered an expected transition in the structure of the market.

Proposal FIGIEFA to add the following text to par 16: *Digital access and interoperability are often prerequisites for competitive markets. Any forward-looking assessment should duly consider whether expected transitions in market structure may be the result of unjust denial of such access, or other violations of competition law, with view to preventing and remedying any such violations.*

PAR. 58 DRAFT NOTICE:

"Barriers to switching may also arise when it is not possible for customers to switch between different sales channels. For example, the competitive constraints in the supply of car components for the original equipment market may differ from those in the supply of such components for spare parts, with customers for spare parts not being able to obtain the components at the conditions offered to original equipment manufacturers. This may lead to the definition of two distinct relevant product markets."

Comment FIGIEFA: FIGIEFA agrees that conditions at which vehicle components are sold as original equipment (in an agreement between the original equipment supplier and the vehicle manufacturer) differ significantly from the conditions at which the same components are sold as spare parts to aftermarket operators. The Commission should support effective competition in spare parts markets, with view to keeping mobility affordable and goods repairable. According to Article 4 (f) Vertical Block Exemption Regulation (VBER) and Article 5 (c) Motor Vehicle Block Exemption Regulation (MVBER), it is a hardcore restriction when an a supplier of components would be restricted by an vehicle manufacturer (OEM) - who incorporates those components -, to sell these components as spare parts to end users, repairers, wholesalers or other service suppliers.

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PAR 100-103 DRAFT NOTICE :

(100) *There are generally three possible ways to define relevant product markets in the case of primary and secondary products, namely: (i) as a system market comprising both the primary and the secondary product; (ii) as multiple markets, namely a market for the primary product and separate markets for the secondary products associated with each brand of the primary product; or (iii) as dual markets, namely the market for the primary product on the one hand and the market for the secondary product on the other hand.*

(101) *The definition of a system market may be more appropriate: (i) the more likely it is that customers take the whole-life costs into account when purchasing the primary product; (ii) the higher the expenditure on (or the value of) the secondary product(s) compared to the expenditure on (or the value of) the primary product; (iii) the higher the degree of substitutability between primary products and the lower the switching costs between primary products; and (iv) when there are no or few suppliers specialised only in the secondary product(s). When these circumstances are less likely to be met, it may be more appropriate to define dual markets or multiple markets, depending primarily on the degree of substitutability between the secondary products of the various suppliers. For instance, if secondary products from different suppliers are compatible with all or most of the primary products the definition of dual markets may be more appropriate, whereas if customers of the primary product are locked-in to using only a restricted set of secondary products, the definition of multiple markets may be more appropriate”*

(...)

(103) *Digital ecosystems can in certain circumstances be thought of as consisting of a primary core product and several secondary (digital) products whose consumption is connected to the core product, for instance, by technological links or interoperability. When considering digital ecosystems, the Commission may thus apply similar principles to the ones applied to after markets to define the relevant product market(s).*

Comment FIGIEFA: In order to ensure coherence with existing EU legislation, FIGIEFA would like to point out that with view to vehicles and automotive spare parts, distinct primary and secondary markets can normally be defined. Vehicle buyers do not normally take great account of the total cost of ownership (Cf. Commission Notice, Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles (2010/C 138/05), para. 57, footnote 1). Whereas the Commission considered that system markets may possibly be identified in the context of *commercial* vehicles sourced by fleet operators, FIGIEFA believes that this is no longer the case as the rapid technical progress (in part related to electric and autonomous mobility) and the immense fluctuations in operating costs (fuel prices, regulatory change, international supply chain issues) have rendered Total Cost of Ownership (TCO) calculations more complex and less reliable even for fleet operators.

Proposal FIGIEFA: In that respect FIGIEFA proposes to add to par. 101 draft notice that “*Secondary markets exist in particular in cases where:*

- i. The fact that the secondary market(s) depends on access and compatibility with brand-specific product(s) on the primary market does not indicate that no distinct aftermarkets exist, at least not where compatible products can be sourced from a variety of suppliers;*
- ii. In case of a long lifespan of a product, the expenditure on the secondary market should be compared to the expenditure on the primary market as element over the elapse of time. High purchase costs for the primary product are likely to result in a secondary market, even if the ultimate costs over the lifetime of the product on the secondary market turns out to be higher;*
- iii. Due to the long lifetime, rapid technical or regulatory change, it is difficult to calculate the total cost of ownership when purchasing the primary product;*
- iv. A wide range of suppliers on the secondary market indicate a separate aftermarket, especially if these suppliers are specialised in secondary products (compatible with the primary product). In contrast, a*

- scarcity of such suppliers does not indicate a system market where such scarcity is due to a lack of appropriate access to relevant inputs such as technical information, standard essential patents, etc.*
- v. *Internet of Things will not automatically result in one system market or one digital ecosystem. Rather, it reflects current competition policy to protect downstream markets against foreclosure.”*