



ETIRA is a non-profit trade association for the European companies involved in state-of-the-art toner and/or inkjet remanufacturing. Every day, remanufacturers bring the European consumers and businesses a first-class high quality product which is competitively priced and, thanks to re-using base materials, makes a major contribution to the European environment and a cleaner world. Yearly, the industry adds an average 1,7 to 2 bn euro to the European economy, directly and indirectly provides 16,000-20,000 jobs, and prevents 300,000 m3 of waste from going to landfill. More info: [www.etira.org](http://www.etira.org)

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## **Contribution to consultation on EU Competition policy and the Green Deal:**

### **Need for EU competition regulator to intervene in EU printing industry market to achieve Green Deal objectives**

ETIRA herewith submits examples how the lack of fair competition in the EU printing cartridge market frustrates reaching the objectives of the EU Green Deal.

Remanufacturing empty cartridges is good for the environment. The largest environmental impact from printing comes from the many cartridges used in the printer during its lifetime. Reuse of a cartridge as a cartridge several cycles, before recycling its composing materials, can reduce CO2 emissions by 40%-60% and saves natural resources like oil, aluminium, paper and water. This is why ETIRA insists that European public policy should promote cartridge remanufacturing, and support our industry in its call for a level playing field. Unfortunately, this is currently not the case. For well-known commercial reasons, OEM's have consistently refused to facilitate cartridge reuse. The printer manufacturers (OEM's) want users to throw away the cartridge after 1<sup>st</sup> use, and then buy a new one instead of reusing it several cycles.

OEM's apply a wide variety of tools to hinder the growth of our industry. Examples include (non-exhaustive list):

#### **Embedded software preventing the reuse of the cartridge**

Today, almost every cartridge is fitted with a kind of embedded software/clever chip. The software creates the handshake with the printer: without it, the printer does not recognize the non-OEM cartridge and will not print, or the printer gives confusing messages to the end-user. This tendency to fit software on the cartridge is increasing. In the 1990's, OEM cartridges had no chips at all. As a result of this OEM anti-reuse strategy, it has become impossible for a growing number of cartridge models to be remanufactured by 3rd parties. The result is that end-users are reluctant to buy remanufactured cartridges as they fear that non-OEM cartridges may not work in their printer. They fear the risk, and they "do not want the hassle". Obviously, this unfounded fear is an unnecessary loss of market opportunity for remanufacturing, and creates more waste cartridges.

#### No sharing of information on how to remanufacture

OEM's do not make the information needed for remanufacturing available to customers or 3rd parties in any way. The software and clever chips which are present on every cartridge today, all have proprietary codes owned exclusively by the OEM. These are business confidential data and not publicly available. And OEM's do not offer the codes to 3rd parties under a licensing arrangement either.

Hence the remanufacturing industry must resort to reverse-engineering these codes. This is a complex technical activity, which can only be performed by specialized high-tech companies. For each cartridge model, they are forced to invest millions of euro's in decoding the respective cartridge chip, and due care must be taken not to infringe patents. The whole process may take years to complete.

#### Printer firmware updates locking out non-OEM cartridges

Today, many printers are connected to the printer manufacturer via the internet. Throughout the printer's lifecycle, a user receives many overnight software updates from the printer manufacturer. But often, as a side-effect of this unsolicited update, the printer no longer recognizes the non-OEM cartridge, even though it used to work perfectly fine prior to the update. As a result, remanufacturers sometimes need to replace or reset thousands of installed cartridges, or even supply a fully new remanufactured cartridge. The need for the update is often questionable. The usual reason claimed by the OEM is "improved functionality, technical requirements, of the printer etc". But updates can always be designed in such a way that they do not lock out 3rd party remanufactured cartridges. That is why we cannot but conclude that some OEM's do these firmware updates only to discourage customers to use 3rd party remanufactured cartridges.

#### Limited printer functionality when non-OEM cartridges are used

Printer manufacturer increasingly add functions to the printer that are only available if you use original OEM cartridges. So doing, buyers may be reluctant to buy non-OEM cartridges for fear the printer may not work !

#### Obliging customers to not sell remanufactured cartridges

Some OEM's oblige their customers to sell only OEM cartridges. If these distributors do not comply, OEM's will withdraw that customer's benefits and rebates. As a result, remanufacturer access to these sales channels is blocked.

#### Denial of honouring of warranties

A few OEM's still threaten end-users that the printer warranty is void when non-original cartridges were used in the printer. However, any obligation to only use OEM-cartridges violates EU fair competition laws, and will not stand up in court.

#### Closed-shop customer supply programmes

Many OEM's have sales programmes whereby they sell both the printer and the full supply of cartridges during the lifecycle of that printer (MPS). But as OEM's only offer new cartridges and do not reuse the cartridges they collect after 1<sup>st</sup> use, this sales programme also locks reuse cartridges out of the market.

#### Closed-shop collection programmes for used cartridges

Many OEM's have company-own collection programmes for empties. ETIRA estimates that OEM's collect only 10-15% of all cartridges they place on the market. But after collection, these empties are generally not remanufactured to be used as cartridge again, but merely recycled: they are taken apart and their materials are shredded, plastics melted, and partially used as base material to produce other products. Several OEM's showcase their cartridge collection and recycling activities as being good for the environment. However, the environmental footprint of mere recycling is much higher than first performing several reuse cycles, followed by recycling. Hence, it is likely that the real OEM objective behind mere recycling is to reduce the number of empties available for remanufacturing !

### Intellectual property rights (patents) and aggressive legal actions against remanufacturers

Most OEM's have registered thousands of national and EU-wide patents on part(s) of, or on the entire cartridge, which can make (re)manufacturing that cartridge illegal. Very often, the patents concern in particular those parts of the cartridge that are subject to wear and tear, which makes it impossible to legally exchange these parts, yet is needed in order to produce a quality alternative product.

### Patent-infringing newbuilt cartridges from SE Asia

The EU market imports many cheap newbuilt non-OEM cartridges from SE Asia. Very often these products infringe OEM patents. Moreover, they are bad for the environment as they are neither collected nor remanufactured. Unfortunately, traders who do not care about patents, quality, or the environment, sell these products to unwary European customers every day.

ETIRA opposes the trade in such patent-infringing newbuilt cartridges because it is an offense, and resellers and distributors should not buy these products if they want to stay out of court and avoid bankruptcy. And it's also anti-environmental and anti-social behaviour: these Asian cartridges typically pollute the European environment as they are neither remanufactured (that would be just as illegal as manufacturing them) nor recycled. They are simply thrown away after 1st use, resulting in unnecessary extra landfill in Europe. European individuals or companies caring about sustainability should only buy remanufactured OEM cartridges.

### Warranties

Sometimes printer manufacturers or maintenance firms refuse to honour the printer warranty simply because non-OEM cartridges were used in the printer. But in accordance with EU and national law, a manufacturing company cannot argue that the printer warranty is null and void just because non-OEM cartridges were used: for the warranty to be justifiably refused, there must be clear and undisputed proof that the malfunction of the printer was directly caused by the non-OEM cartridge. If this proof cannot be provided, the warranty must be honoured in full.

Luckily, today almost all OEM's have published clear statements (even on the internet !) that the printer warranty is not void simply because non-OEM cartridges are used. Also the EPEAT public procurement scheme and similar public procurement schemes clearly require OEM's to provide these assurances.

**EU competition policy should act to end the above mentioned practices, and create a level playing field by as a minimum:**

**-stopping the unchecked import of cheap polluting and unsafe new non-OEM cartridges from SE Asia**

**-prohibiting OEM's to issue printer/cartridge firmware updates that lock out 3rd party remanufactured cartridges**