FREE AND FAIR COMPETITION

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I. EMISA & MEMBERS

EMISA is a non-profit organization, established in 2007, which represents the interests of independent manufacturers, suppliers and service providers operating in the marine diesel engine and related equipment markets.

EMISA aims to give independent operators a voice, in order to achieve fair competition and a level playing field in the marine diesel engine and related equipment markets. In the past, policy makers tended to refer (regulatory) debates to (large) Original Equipment Manufacturers (OEMs), considering them as representatives of the market in which they operate. However, these OEMs are obviously no neutral experts. They are market players with their own commercial interests. In these debates the many (smaller) independent parties were often not represented, which nowadays still results in rules and regulations that - implicitly - support and favour the position of OEMs.

EMISA represents approximately 80-90 members, mainly established in Europe but also in the Asia-Pacific (APAC) region and the Americas. Many members of EMISA are SMEs. Their business model largely depends on excellent customer relations, high levels of quality and service, and added value based on (technical) knowledge, flexibility and innovation. In this context it is important to realize that nowadays innovation often starts at the level of independent Original Equipment Suppliers (OES) rather than OEMs, since innovation starts within flexible businesses who are aware of the demands for sustainability and of the issues flagged by their customers, combined with high technical knowledge of the latest (digital) developments.

II. ABOUT MARINE TRANSPORT & MARINE DIESEL ENGINE MARKETS

It is hard to overestimate the importance of marine transport for the general economy in the EU. Approximately 90% of worldwide trade is carried by ship. The efficiency and reliability of this service affects all consumers in terms of costs, and reliable delivery times as well as in terms of the environmental impact. Marine diesel engines are used both for marine propulsion as well as for electrical power generation.

II.1. PRIMARY MARKETS MARINE DIESEL ENGINE INDUSTRY & SERVICE/DISTRIBUTION NETWORKS

The standard configuration for most deep-sea cargo vessels is to have one large two stroke engine (low speed two-stroke diesel engine) for propulsion and three or more medium speed diesel generators for electrical power. Cruise vessels and ferries tend to use medium speed engines (medium-speed four-stroke diesel engine) for both propulsion and for electrical power as these engines are more compact than the two stroke engines and the additional cargo / cabin space justifies the extra operating costs of a medium speed engine. Lack of space also means that offshore support vessels and coastal vessels tend to have medium speed diesel engines for propulsion and electrical power. As these vessels become smaller, high-speed industrial diesel engines are fitted and eventually as the vessels get smaller still, the engines are marinized truck engines. This submission focusses on the low speed two- stroke engines and on the medium speed four stroke engines, although the issues are very similar in the high-speed diesel market.

Large two stroke slow speed engines have a rotational speed of approximately 90 – 150 rpm. Four stroke medium speed engines have a rotational speed of approximately 350 – 1,000 rpm. The two-stroke diesel market is highly concentrated with basically three manufacturers worldwide, MAN who have a market share of approximately 80%, Winterthur Gas and Diesel (previously known as Sulzer) have a market share of approximate 15% and Mitsubishi have a market share of 5%. Both MAN and Winterthur Gas & Diesel design engines which they licence out to engine builders in the Far East and elsewhere.

The medium speed four-stroke diesel market is also concentrated but less than the two-stroke market. There are three European brands and one Korean brand which dominate this market. They are Wärtsilä, MAN, the old MaK engine range, now owned by Caterpillar and Himsen, owned by Hyundai. There are also a number of Japanese brands like Daihatsu, Niigata, Yanmar, but their market penetration outside Japan is relatively limited.

In the annual report 2013 of Wärtsilä[i1] the following schemes are presented, that provide an overview of the **global marine diesel engine market shares** of the medium-speed engines in the upper scheme and of the low-speed engines in the lower scheme.

Market position of medium-speed main engines

Wärtsilä's market shares are calculated on a 12 months rolling basis, numbers in brackets are from the end of the previous quarter. The calculation is based on Wärtsilä's own data portal.

Market position of low-speed main engines

Wärtsilä's market shares are calculated on a 12 months rolling basis, numbers in brackets are from the end of the previous quarter. The calculation is based on Wärtsilä's own data portal.

The annual report 2016 of the Wärtsilä Corporation[2] shows that in 2016, in the medium-speed engine sector, the percentage of 'other competitors' was reduced to 10% and mainly gained by Caterpillar (MAK).

In the low-speed two-stroke engines the Swiss company Winterthur Gas & Diesel Ltd. (WinGD) was established in 2015 as a joint venture between Wärtsilä and China State Shipbuilding Corporation's (CSSC), for research and development, design, operational and manufacturing support, and the marketing and sales of two-stroke low-speed gas and diesel engines. Wärtsilä sold its stake in the joint venture to CSSC in 2016. In December 2017 Wärtsilä continued the service partnership with WinGD by signing a 10-year service partnership agreement that appoints Wärtsilä as an (exclusive) authorized global service provider for all WinGD products and engines under Wärtsilä, Sulzer and WinGD brands and provides WinGD and its customers continued access to Wärtsilä's worldwide service network and services and spare parts. It enhanced Wärtsilä's options to provide integrated smart solutions and smart services to the shipping industry. Along with the agreement, Wärtsilä Services continues to have access to WinGD's Intellectual Property Rights (IPRs) and technical specifications.

[1] Annual report 2013, Wärtsilä Corporation, page 24
[2] Annual report 2016, Wärtsilä Corporation, page 40.

> *"The agreement will also make Wärtsilä's integrated lifecycle solutions available to all WinGD-powered vessels, including the development of new digital solutions for performance management, ship management, and energy efficiency optimisation."*[3]

Over the last decades engine builders are increasingly becoming vertically integrated companies with fully owned service and distribution networks for repair and maintenance services, overhaul services and supply of spare parts.

Wärtsilä operates primarily through fully owned service stations, workshops and repair centres in 70 countries worldwide. As explained above, these service stations are the authorised repair centre for the Winterthur Gas & Diesel engines as well as their own products. MAN B&W has a similar worldwide service network in more than 100 countries operating under the name of Primeserve.

In contrast, Caterpillar operates primarily through authorized distributors with - apparently - territorial restrictions, examples of these distributors in the EU are Zeppelin in Germany and Denmark, PonPower in the Netherlands, Barloworld in Spain and Portugal.

The other (smaller) engine builders, like Hyundai Himsen and most of the Japanese manufacturers operate primarily through a mix of owned offices, authorised repair companies and independent parties. Hyundai Himsen lists on its website[4]: "direct service centres", "authorised service centres", "co-operative repairers" and "parts sales agents".

Within the marine market, the engine builders of both two stroke and four stroke engines sell their engines to the builder of the ship. The builder of the ship (shipyard) is, in principle, not the future owner of the vessel and engine, nor the end-user thereof. The shipyard which is building the vessel is concerned about the initial capital costs rather than the through life costs. The shipyard will normally give a guarantee for 12 or 24 months. Thereafter, the performance, reliability and operating costs of the engine are not of concern to the shipbuilder. All long-term running costs are transferred to the shipowner, who has had little or no choice in the selection of the engines fitted on board. In theory the shipowner can insist on his choice of equipment to be installed on his vessel, but in practice the shipbuilding yard will have created a standard design of vessel, and any changes to this standard design, even small ones, will incur a heavy financial penalty. The reality is that once a design has been finalised, the shipowner has very little say over the equipment which will be installed. Large engine builders (OEMs) compete for market share on the primary market: once build-in, the engine will normally remain installed in the vessel for the lifetime of that vessel. Consequently, it remains as an asset which the OEM can and will service on the aftermarket for the next decades.

[3] Quote - https://maritimetechnology.nl/en/wartsila-extends-the-service-agreement-with-winterthur-gas-diesel-ldt-for-another-10-years/, 25 January 2018 https://www.wartsila.com/media/news/25-01-2018-wartsila-extends-the-service-agreement-with-winterthur-gas-diesel-ldt-for-another-10-years-2107100

[4] http://hics.hhi.co.kr/kb01/websquare/websquare.html?w2xPath=/nmi/PRM_NM_0013.xml

In fact, the primary market is separated from the aftermarket. Ships may well have a life in excess of 20 years and the engines themselves may well have a life in excess of forty years. Thus, it is the aftermarket which is of the greatest economic interest and which will have the greatest effect on the consumer. So, the engine builder's ability to set the cost of through-life maintenance can only be controlled if there is effective competition on the secondary market.

II.2. MARINE DIESEL ENGINE AFTERMARKETS & END-USER WELFARE

The total annual market turnover of the marine diesel engine aftermarket is at least $3,0 billion per annum. Due to the long lifetime (up to approximately 40 years) of marine diesel engines (and the ship), the costs for repair and maintenance (R&M) services and spare parts have the greatest influence on the overall costs for the shipowner/end-user. Price is a decisive factor, but also quality, safety and availability of the R&M services and spare parts are essential factors for shipowners/end-users.

The spare parts for one engine model are -in principle- not interchangeable with another engine model with the result that the spare parts aftermarket and the repair and maintenance and overhaul services for each engine model are separate. Under these circumstances there is a severe threat that shipowners get locked-in within the brand-specific systems created by each engine-builder. This has been an issue for decennia, but nowadays certain developments, for example digitalisation, enable engine builders to lock-in end-users completely. This is fundamentally threatening the very existence of the independent aftermarket.

In our opinion shipowners/end-users should be in control and should be able to choose the R&M service and the spare parts they desire for their engine. In that context it is essential that effective competition exists on the aftermarkets between OEMs (engine builders) and Independent operators. Of course, an actual choice is only possible if a genuine alternative offer is available on the market. Therefore, independent operators should be able to explore a sustainable business model (in a competitive environment) which can remain completely independent from the business model of engine builders.

Thus, in respect of end-user welfare, independent suppliers and service providers form an essential element in ensuring that:

- prices for spare parts and services are kept under competitive pressure;
- alternative spares and service are available (no-one stocks all items all the time / has engineers available all the time);
- Innovative ideas and developments are not stifled by vested interests and remain competitive (e.g. regarding development of sustainable and environment friendly solutions).

II.3. SPARE PARTS: BRAND-SPECIFIC, MODEL- AND TYPE-SPECIFIC

As detailed above, spare parts for each engine model are - in principle - brand-specific and not interchangeable. Often even within one model of engine, differences in types exists, which might entail type-specific spare parts or sometimes a different type number is used to create confusion about the proper parts to be installed. The risk is that shipowners get locked-in within the brand-specific system of an engine builder, without a genuine alternative option.

Marine diesel engine spare parts can be divided in:

a) OES (Original Equipment Suppliers)-spare parts;
b) independent replacement parts and
c) captive parts.

With regard to **OES-spare parts** it is important to realize that nowadays, 'engine builders' are in fact more 'engine assemblers and designers' than manufacturers of engines. Many engines are built under licence by third party companies and the vast majority of the components which are replaced during standard maintenance are purchased by the engine builder from specialist component manufacturers. For example, starting at the top of the combustion unit, the cylinder head valves will come from one company, the fuel injection equipment from another company. the piston rings from a third company, the pistons from a fourth company, the cylinder liners from a fifth company, the connecting rods from a sixth company, the bearings from a seventh company and the crankshaft from an eighth company. These specialist component manufacturers - Original Equipment Suppliers (OES) -have in-depth (technical and commercial) knowledge of the components/parts they manufacture/supply and they play a leading role in innovation. Frequently an OES may supply several OEM's for at least some, but not necessarily all, of their engine models. Other OES companies may be an "approved" supplier but not the actual or current supplier. So, when we talk about OES spare parts, there may be a grey area where an OES company is the actual supplier to that OEM but not that particular model of engine, or the OES company may have been approved as a supplier from a technical point of view, but for commercial reasons is not currently supplying.

Independent replacement parts, often come from OES companies who are approved by other OEMs but not by this particular OEM. Their knowledge of the product is extensive and the quality can, in some cases, be better that the original OES. Whilst Independent replacement parts form an important cost-reduction option for shipowners, obviously the quality and safety must be excellent, otherwise the manufacturers of these replacement parts will not be able to maintain a sustainable business model. Even where the quality is objectively better than the original part, engine builders tend to frighten shipowners stating that the warranty on the engine will end and /or that insurance companies will not pay in case of an incident/accident, if independent replacement parts are installed in the engine.

By definition engine builders monopolize '**captive parts'.** These are parts which are either produced by the OEM or which are subject to a contract with the OES prohibiting sales to third parties. The result is that these parts can be sourced only from the engine builder or its authorised network and are not available for independent aftermarket at all or only at such high costs that no commercially viable business case is possible for independent service providers. Although this seems a problem of just some specific parts, in fact the impact is much bigger. An

independent service provider cannot perform a service if he cannot obtain the captive part needed for the repair/ maintenance/ overhaul. This means a severe loss of business, especially when keeping in mind that several services are interrelated and performed at once and under strict time pressure if a ship is in dock.

In order to enable effective competition on the aftermarket of marine diesel engines, it is essential that all spare parts, i.e. OES-spare parts, independent spare parts and captive parts, can be obtained under competitive conditions. All manufacturers should be free to supply both the shipowner/engine owner, the operator of the engine as well as independent service and supply companies, apart from engine builders and their (authorized) network.

III. DEVELOPMENTS SINCE 2010 THAT SHIFTED POWER TO OEMs

Since the 2010 Vertical Block Exemption Regulation (VBER), two important developments have shifted power to OEMs (engine builders) to the detriment of independent service providers and manufacturers on the aftermarkets: i) vertical integration and ii) digitalization.

Over the past decade, especially the large market players have become vertically integrated companies, e.g. MAN and Wartsila. Others, like CAT/Himsen, still rely on authorized distributors and service stations. Due **to vertical integration** large OEMs/engine builders are now also **in direct competition** with independent repair and maintenance providers on the marine diesel engine aftermarket. This is an important shift because independent operators need to rely on technical information from OEMs. With authorized dealers, OEM's have an indirect interest to deny shipowners and independent suppliers technical information and data concerning what is fitted on their engines. With vertically integration, there is a direct interest for OEMs to distort access to technical information and data to independent suppliers.

Furthermore, due **to digitalization** and the rapidly increasing importance of the Internet of Things (IoT) OEMs are becoming gatekeepers - technically as well as commercially - to enable access to their brand-/model-/type-specific aftermarket. Through digital means an engine can be foreclosed easily. Some examples are: access only with secret OEM-passwords, no access to data deriving from sensors in the engine, no interoperability with software in the brand-specific engine, delay in updates of software, no ability to create and develop independent software that enable independent diagnostics about the status of the engine and develop the best service at the lowest costs (hampering innovation), no interoperability that enables the creation of independent (innovative) software to run in the engine (e.g. to reduce emissions), etcetera. With digital foreclosure, no independent offers are possible on the marine diesel engine aftermarkets, which means that independent market players will disappear. Independent operators need access to data, need to be able to run independent software in a safe and secure way, in interaction with the engine/the ship and the crew/shipowner. This is essential to enable independent operators to make a genuine independent offer to **their** customers. OEMs have no incentive to create interoperability in the designs of their engines, unless forced to do so. In the interests of end-user welfare (shipowners and ultimately consumers) effective competition needs to be enabled.

IV. RELEVANCE UNDER THE VBER

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 the concerted practice, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services*"

As the evaluation of the VBER is limited to distortion of competition under Article 101 TFEU, EMISA will avoid introducing a 102 TFEU topic. With regard to (less digitalised) engines indeed a number of different methods are applied by mainly OEMs in conjunction with their dealer network, which distort competition, to the detriment of independent suppliers. For this submission EMISA will give examples of these methods individually in the context of 101 TFEU.

Furthermore, EMISA is of the opinion that access to technical information and machine-generated data is a vertical issue and thus relevant under the VBER. Although this is necessary as a first step, one should realize that it is also insufficient: to enable effective competition on the aftermarket it is essential to actually impose interoperability in the OEM-design of an engine.

The need for interoperability by design in the context of IoT to enable effective competition is relevant in case of:

- products/machines with a long lifetime;
- relatively high purchase price;
- with even higher and non-transparent/unforeseeable costs in the aftermarket (this means that these costs are not really known at the moment of purchase, e.g. for repair/maintenance and overhaul),
- thus a separate primary- and aftermarket.

For these type of products/machines purchasers will get locked-in the IoT-system of the builder, if interoperability is not imposed from the outset. Due to the new possibilities of the IoT (through digitalization) the OEM will become a gatekeeper who can and will foreclose all (independent) competition from the aftermarket, with the consequence for the buyer that he will be locked-in: there remains only one source for repair, maintenance and supply (when available) of spare parts for its (costly) product/machine.

The bigger picture is that engine builders are gaining full control over their brand-specific aftermarkets as they become (digital) gatekeepers thereto. Interoperability must be imposed before the engine is purchased by the shipyard, who subsequently sells the ship to the (future) shipowner. Interoperability will allow the shipowner to choose his preferred service operator, which could be an OEM, but could equally be an independent operator. The shipowner (engine owner) should be in control.

Below examples are listed mainly related to two topics:

a) Availability of spare parts: technical foreclosure of spare parts, commercial foreclosure of spare parts and restrictions on direct sourcing of spare parts from OES – this is very important as no repair or maintenance is possible if spare parts/components are not

available or if it is not possible to find the correct type of spare part because it is disguised.

a) Access to technical information/data and digitalization: OEMs are becoming gatekeepers to their brand specific aftermarket, independent manufacturers and suppliers will no longer be able to offer a genuine alternative to end-users due to IoT. Already for many years lack of technical information and data is a huge problem.

a) **Availability of spare parts**

i. **Examples of commonly applied technical restrictions are:**

a) Refusal to supply technical information regarding the precise details of the components fitted on the engine, while the authorized dealers receive this information (timely);
b) Manipulation of the spare parts manuals preventing engine owners and independent operators from identifying the correct execution of the part which is required
c) Changes in design without technical merits to confuse independent aftermarket operators

ii. **Examples of commonly applied commercial restrictions are:**

a) Refusal to supply parts, especially 'captive parts', gas inlet valves, redesigned filter units and centrifuges, special F.I. equipment.
b) Delaying quotations for spare parts, extending delivery times and undermining the reputation of independent suppliers
c) Engine builders bundle the supply of products and services and use long term supply and maintenance contracts (to exclude independent suppliers)
d) Engine builders refuse to work on engines where parts are supplied by independent suppliers and refusal to honor warranties / misuse of warranties
e) Engine builders reject parts supplied by independent suppliers (without actual quality/safety/technical justification)
f) Intensive lobbying by engine builders - influence regulatory bodies

iii. **Examples of commonly applied restrictions on direct sourcing from OES**

a) OES parts/components are relabeled when bought-in and prohibition on the use of an OES logo/brand
b) Purchasing power of the OEM restricts the OES to supply to the owner/operator of the engine and/or to independent suppliers
c) Use of restrictive clauses in OEM standard terms of purchase (current 4(e) VBER)

b) **Access to technical information/data and digitalization: examples of commonly applied restrictions**

a) Password protection – no access or control for the owner/end user
b) Denial of access to data – distortion of innovation– nimonic valves, TMA valve rotators, special plunger and barrels, acidic resistant bearing material for gas engines, TIAN bearings for Bergen, optimizing lube oil consumption, vibration analysis,
c) Lack of access to fault codes
d) Exclusion from big data/ trend analysis
e) Preventative maintenance all in hands of OEM – no ability to integrate (innovative) independent software without safe and secure integration abilities to access engine-software
f) Software driven controlled engines (different fuels: electrical engines/ hydro energy engines etc.) – OEM controls access by requirement to test (independent software) – delaying/preventing approval – restriction on competition and restriction of innovation and development of more competitive alternatives

V. EMISA's PROPOSAL FOR ADJUSTMENTS TO VBER & VGL

In light of the examples above, EMISA suggests to add the following clauses to the VBER, as restrict-ions that remove the benefit of the block exemption, to replace the current Article 4(e) VBER (and the first part of Article 4). Please note that - to a certain extent - EMISA's input is inspired by the motor vehicle block exemption regulation (MVBER)5 and additional guidelines (MVGL)6.

The exemption provided for in [Article XX] shall ***not*** *apply* ***to vertical agreements and practices*** *which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have* ***as their object or effect****:*

e) the restriction of the sales of spare parts and/or components to end-users, (independent) repairers which use those for repair and maintenance[7] and/or to wholesalers[8];

f) the restriction of the supplier's ability to sell spare parts, repair tools or diagnostic or other equipment effectively to authorised or independent distributors or to authorised or independent repairers or end users;

[5] 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, 28-05-2010

[6] 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 (Text with EEA relevance) (2010/C 138/05)

[7] Article 4(b)(iii) VBER currently already allows the restriction of the buyers ability to sell components supplied for the purposes of incorporation to customers who would use them to manufacture the same type of goods as those produced by the supplier.

[8] Article 4(b)(ii) VBER currently already allows the restriction of sales to end-users by a buyer operating at the wholesale level of trade.

g) *the restriction of the supplier's ability to place its trade mark or logo effectively and in an easily visible manner on the components supplied or on spare parts.*

In the MVGL under paragraphs 62 to 68, detailed explanation is provided regarding **access to technical information and data.** EMISA suggests the following adjustments to be incorporated in the VGL (the current numbering of paragraphs has been used to make comparison easier):

(63) *Suppliers provide their authorised repairers with the full scope of technical information needed to perform repair and maintenance work on ~~motor vehicles~~ engines/industrial equipment[9] of their brands and are often the only companies able to provide repairers with all of the technical information that they need on the brands in question. In such circumstances, if the supplier fails to provide independent operators with appropriate access to its brand-specific technical repair and maintenance information, possible negative effects stemming from its agreements with authorised repairers and/or parts distributors could be strengthened, and cause the agreements to fall within Article 101(1) of the Treaty.*

(64) *Moreover, a lack of access to necessary technical information could cause the market position of independent operators to decline, leading to consumer harm, in terms of a significant reduction in choice of spare parts, higher prices for repair and maintenance services, a reduction in choice of repair outlets and potential safety problems. In those circumstances, the efficiencies that might normally be expected to result from the authorised repair and parts distribution agreements would not be such as to offset these anti-competitive effects, and the agreements in question would consequently fail to satisfy the conditions laid down in Article 101(3) of the Treaty.*

(…)

(66) *Technological progress implies that the notion of technical information is fluid. Currently, particular examples of technical information include 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~~ engine/industrial equipment identification numbers or any other ~~motor vehicle~~ engine/industrial equipment 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, and recall notices as well as other notices identifying repairs that may be carried out without charge within the authorised repair network. The part code and any other information necessary to identify the correct ~~car~~ engine/industrial equipment manufacturer-branded spare part to fit a given individual ~~motor vehicle~~ engine/industrial equipment (that is to say the part that the ~~car~~ manufacturer would generally supply to the members of its authorised repair networks to repair the engine/industrial equipment ~~motor vehicle~~ in question) also constitute technical information[10]. (…)*

(67) *The way in which technical information is supplied is also important for assessing the compatibility of authorised repair agreements with Article 101 of the Treaty. Access should be given upon request and without undue delay, the information should be provided in a usable form, and the price charged should not discourage access to it by*

[9] According to EMISA this should be restricted to i) engines/industrial equipment with a long lifetime; and ii) relatively high purchase price and iii) with even higher and non-transparent/unforeseeable costs in the aftermarket, e.g. for repair/maintenance and overhaul, thus with a separate primary- and aftermarket.

[10] The independent operator should not have to

failing to take into account the extent to which the independent operator uses the information. A supplier of ~~motor vehicles~~ engines /industrial equipment should be required to give independent operators access to technical information on new ~~motor vehicles~~ engines/industrial equipment at the same time as such access is given to its authorised repairers and should not oblige independent operators to purchase more than the information necessary to carry out the work in question. (…)

(68) The above considerations also apply to the availability of tools and training to independent operators. 'Tools' in this context includes electronic diagnostic and other repair tools, together with related software, including periodic updates thereof, and after-sales services for such tools.

Special attention in this context is required for the **practical hurdles** that can be used to deprive independent operators from their rights. For example: all data and technical information is in principle in the hands of the OEMs and in second instance in their authorized network. Therefore, some sort of transparency requirement should be included, to avoid that competitive advantage is gained by hiding and delaying. Otherwise the simple elapse of time will be an advantage, to the detriment of independent operators, who will lose market share.

Furthermore, attention should be given to **access to big data**, in a direct and timely manner. Innovation abilities will also depend to a large extend on access to machine- generated big data (statistical relevant data), which enable (prognostic) diagnostic services. Interoperability should be the ultimate aim to enable effective competition on the aftermarket of IoT of engines/Industrial equipment. According to EMISA this should be restricted to i) engines/industrial equipment with a long lifetime; and ii) relatively high purchase price and iii) with even higher and non-transparent/unforeseeable costs in the aftermarket, e.g. for repair/maintenance and overhaul, thus with a separate primary- and aftermarket.

In addition the **development and implementation of independent software** should be enabled in the engine, otherwise the access to technical information and data will not enable a genuine alternative and competitive offer from independent operators . The ability is essential to maintain end-user choice, resulting in lower prices, better quality, innovation and thus to avoid end-user harm.

In the MVGL under paragraph 69 also detailed explanation is provided regarding **misuse of warranties**. EMISA suggests the following adjustments to be incorporated in the VGL (the current numbering of paragraphs has been used to make comparison easier):

(69) Qualitative selective distribution agreements may also be caught by Article 101(1) of the Treaty if the supplier and the members of its authorised network explicitly or implicitly reserve repairs on certain categories of engines/industrial equipment ~~motor vehicles~~ to the members of the authorised network. This might happen, for instance, if the manufacturer's warranty vis-à-vis the buyer, whether legal or extended, is made conditional on the end user having repair and maintenance work that is not covered by warranty carried out only within the authorised repair networks. The same applies to warranty conditions which require the use of the manufacturer's brand of spare parts in respect of replacements not covered by the warranty terms. It also seems doubtful that selective distribution agreements containing such practices could bring benefits to consumers in such a way as to allow the agreements in question to benefit from the exception in Article 101(3) of the Treaty. However, if a supplier legitimately refuses to honour a warranty claim on the grounds that the situation leading to the claim in

question is causally linked to a failure on the part of a repairer to carry out a particular repair or maintenance operation in the correct manner or to the use of poor quality spare parts, this will have no bearing on the compatibility of the supplier's repair agreements with the competition rules.

VI. CONCLUDING REMARKS

In the short EMISA would ask to enable effective competition on the vertical agreements and practices on the aftermarket, as far as possible by means of the VBER and VGL, in short to enable:

- access to spare parts (no technical and/or commercial restrictions);
- direct sourcing from OES;
- access to the engine-generated data in direct communication with the engine/ship and the crew; and
- access to (big) data for innovation and implementation of independent software (preferably via an open telematics platform) in the engine

Should you have any questions or comments, EMISA will be pleased to offer more details.