

CECRA answer to the EC call for contributions

“Shaping competition policy in the era of digitalisation”

Brussels, 25/09/2018

ABOUT CECRA

CECRA is the European umbrella association of the motor trade and repair sector representing the interests of both, franchised vehicle and truck dealers and independent repairers. In Europe there is a total of 46,720 vehicle and truck dealers and 290,000 repairers. Those – predominantly small and medium-sized – companies employ approximately 2.9 million people being responsible for the sale of almost 16 million new vehicles a year as well as the repair and maintenance of the 228 million existing passenger vehicles and 38.5 million commercial vehicles. Thus it is ensured that vehicle users in Europe can rely on a network of qualified experts for the purchase and maintenance of their vehicles.

General preliminary remarks

As the European umbrella association of the motor trade and repair sector - representing the interests of both, franchised vehicle and truck dealers and independent repairers - CECRA warmly welcomes this initiative from Commissioner Vestager.

Over the past years, CECRA, along with an ever broader range of allies - including drivers (FIA), insurance industry (Insurance-Europe), leasing companies (Lease-Europe), garage equipment producers (EGEA), automotive aftermarket distributors (FIGIEFA), tyre manufacturers (ETRMA), lubricant industry (UEIL), vehicle inspection operators (CITA), and SMEs (EUAPME) - has been conducting a restless campaign aimed at raising the European Commission's awareness about the peculiar issues related to access to in-vehicle data/resources raised by the last generation of connected cars in the automotive sector.

In-vehicle telematics systems are currently being designed and produced in such a way that only vehicle manufacturers (VMs) are allowed to directly access the in-vehicle-generated data and resources. This technical trick creates a lock-in effect for the drivers of connected vehicles and seriously undermines the possibility for other operators of the automotive value chain to compete and keep providing high-quality services to their clients.

That's why we firmly believe that there is an urgent need for policy action at European level in order to maintain and further develop the European highly-competitive automotive ecosystem in the digital era.

Here's the [Manifesto for fair digitalisation opportunities in the automotive sector](#) that was published by the industry coalition in April 2018.

When it comes to connected vehicles' data, our vision is that, in order to continue offering the high-level services requested by customers, together with improved operational safety and environmental compliance, independent service providers must be able to compete on an equal footing with vehicle manufacturers (VMs) by continuing to access the vehicle, its data and functions in an independent and direct manner.

1st European Commission set of questions:

COMPETITION, DATA, PRIVACY, AND AI. *In a world of ubiquitous data, thanks to, for example, 5G, the Internet of Things and connected cars, where would we have data bottlenecks – or, conversely, data access, data sharing or data pooling – causing competition issues?*

CECRA's standpoint

For many years vehicle manufacturers have developed technologies to optimize the vehicle's internal functions. In the last few years attention has turned to developing the vehicle's ability to remotely connect with the outside world and enhance the in-vehicle experience. This is the so called 'connected-car'.

The range of functions/services that can be offered based on the in-vehicle telematics system is potentially very wide, and it goes from ITS services and traffic information, to information on fuelling & charging stations for alternative fuel vehicles, street parking management, usage-based insurance schemes, and – in the case of vehicle sales and aftersales sector – remote diagnostics and predictive maintenance. The consumer and societal benefits, as well as the case for new business models, stemming from the development of those new services, are extremely significant.

In the light of these opportunities, European automotive dealers and repairers, who are constantly striving to provide their customers with the best possible service, have welcomed these technological advances. In line with the tradition of the best progressive European SMEs they are currently investing heavily in order to develop new services that will meet the rising customer expectations.

In such a new technological environment, competition starts in the vehicle where the data quality determines the service quality. To be able to continue offering the high-quality services demanded by their customers, all independent operators within the whole automotive supply chain must be able to compete on an equal footing with vehicle manufacturers by accessing the vehicle, its data and functions in an independent and undistorted way.

This requires three key abilities:

- Direct real-time access to time-critical in-vehicle generated data,
- The bi-directional communication with the vehicle and its functions, and
- The ability to safely and securely interact with the driver (via the dashboard or voice commands) to fulfil their service offers.

This interoperable access will allow the development of new competitive digital products and services, which will result in true choice for consumers.

The bottleneck causing competition issues:

However, none of the three abilities mentioned and described above would be available with the model of telematics systems currently put forward by vehicle manufacturers, the so-called 'Extended Vehicle' (ExVe). It merely channels all future communication and data access through the vehicle manufacturer's proprietary backend server. Only part of the data generated by the vehicle would be sent to independent service providers, either directly or via a B2B 'neutral' server platform (the "NEVADA" concept).

The first 'reality' checks of ExVe have shown that it does not allow direct and real-time communication with the vehicle/the functions/the driver, which is increasingly needed for time-critical operations or prognostics and as an asset in improving road safety and fostering the 'green digital economy'. Instead, it gives vehicle manufacturers full control to decide arbitrarily how, when and to whom (mainly aggregated and already diagnosed/processed) data access will be granted.

As such, 'Extended Vehicle/NEVADA' would prevent all other service providers 'around the car' from offering competing services to consumers (lock-in effect), as consumers are only able to authorise a small part of their vehicle generated data to be shared with independent service providers, compared to the data available to the vehicle manufacturers. Additionally, the latency, cost and contractual conditions imposed by ExVe further limits competing services.

2nd European Commission set of questions:

DIGITAL PLATFORMS' MARKET POWER. *The interests of platforms are not always aligned with the interests of their users, which can, as a result of platforms' market power, give rise in particular to: a) leveraging concerns (digital platforms leveraging their positions from one market to another); and b) lock-in concerns (network externalities, switching costs, better service due to accessibility of data make it difficult for users to migrate to other platforms, and allow platforms to "exploit" their user bases). What should/can competition policy do to address these concerns and how?*

As explained above, the current VMs telematics technology raises unjustified barriers to entry to third party companies who want to compete on the emerging market of data-based-services, it makes it technically

and financially impossible to explore the new business models, and it eventually locks the European driver into the vehicle manufacturer's brand.

As this practice has already started disrupting the regular course of competition in the European automotive value chain, with damages in terms of consumer welfare loss that can only be increasing if remedies are not taken in the coming months, we believe that European competition authority should:

- 1) Inhibit the production and installation of ExVe/NEVADA telematics devices in new connected cars
- 2) Adopt a legislative document including the following 'High-level Principles and Requirements':
 - a. Equal in vehicle abilities for all providers as the respective vehicle manufacturer to effectively offer a remote service to the vehicle owner/driver for subsequent selection and authorisation, ensuring free consumer choice, whilst respecting all legal requirements (e.g. GDPR, avoidance of driver distraction).
 - b. Direct access to in-vehicle generated data and resources through an in-vehicle interoperable, standardised, secure and open-access platform. This platform can also be used for remote bi-directional communication between the consumer and the 3rd party service provider and for the of data using a third party approved application.
 - c. The scope and quality of the data/functionalities shall be at least the same as the vehicle manufacturers uses for its own remote services.
 - d. Access to the vehicle display and/or voice commands must be established to enable direct safe communication with the driver.
 - e. No monitoring by the vehicle manufacturer of the data and communication used by independent applications.

3rd European Commission set of questions:

PRESERVING DIGITAL INNOVATION THROUGH COMPETITION POLICY. *Do network effects, economies of scale and 'copycat' products impede innovation? In digital merger cases, is there scope to apply theories of harm based on a loss of innovation and/or loss of "potential competition" more often? Would a focus on innovation require updating our analytical tools?*

In CECRA opinion, although the theory of harm is originally thought as a criterion to help the antitrust authorities to decide whether or not a merger is to be authorised, the main principle inspiring this theory, could and should also be used to censor other practices with similar anti-competitive effects on innovation.

The European Commission's Horizontal Merger Guidelines¹ (HMG) state that one of the effects to be analysed in merger control is "the effect on innovation", putting the competitive harm caused by a reduction of innovation on an equal footing with price increases, or a reduction of output, choice or quality of goods and services.

According to the Guidelines, the aim of the Commission's merger control is to prevent mergers that would be likely to deprive customers of these benefits, including innovation.

¹ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, Official Journal C 31, 5.2.2004. p. 5-18.

We think that if – as explained above – a significant harm to innovation is about to be determined in a given market due to a clearly identified practice of the incumbents (i.e. the installation of ExVe/NEVADA telematics systems in new connected cars) that impedes third party players to enter the market, such practice should be inhibited by the authority, exactly like the European Commission already does when prohibiting those horizontal mergers that potentially result in loss of innovation².

If, according to the existing European competition rules, the European Commission does not have the power to apply the theory of harm to prohibit these types of conducts, then we warmly recommend to the European Commission to bridge this legislative gap.

² Case No COMP/M.7275, Novartis/GlaxoSmithKline's oncology business, Commission decision of 28 January 2015; Case No COMP/ M.7278, General Electric/Alstom (Thermal Power Renewable Power & Grid Business), Commission decision of 8 September 2015.