Summary of the contributions of the National Competition Authorities to the evaluation of the Motor Vehicle Block Exemption Regulation (EU) No 461/2010

The European Commission ("the Commission") is currently evaluating the functioning of the motor vehicle block exemption rules[1], comprising the Motor Vehicle Block Exemption Regulation (EU) No 461/2010 ("MVBER"), the application of the General Block Exemption Regulation (EU) No 330/2010 to the motor vehicle sector ("VBER"), along with the 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 ("SGL") and the Guidelines on vertical restraints ("VGL").[2]

In this context, the Commission asked the National Competition Authorities ("NCAs") to share their experience in applying the motor vehicle block exemption rules. NCAs are bound by the MVBER and the VBER but not by the Commission's Guidelines, although they do tend to also take the latter into account.

The Commission received 24 contributions.[3]

Overall, the NCAs consider that the Commission should maintain the motor block exemption rules in place, while taking the opportunity of the review to simplify and fine-tune the current regime, notably in light of market developments over the last decade.

The purpose of this summary is to outline the main points raised by the NCAs without regard to the number of contributions addressing a particular point, or whether or not a particular point of view is shared by all the NCAs. Therefore, in the following, reference is made generically to "NCAs". However, for issues on which NCAs expressed clearly diverging views, both sides of the argument are presented.[4]

This summary provides the NCAs' general views on the evaluation of the motor vehicle block exemption rules, following the five evaluation criteria established by the Better Regulation Guidelines[5], namely: effectiveness, efficiency, relevance, coherence and EU added value (see **section I**). It also summarizes the comments made by the NCAs as regards the functioning of some specific aspects of the motor vehicle block exemption rules (see **section II)**.

[1] Any reference to the motor vehicle block exemption rules in this document should be understood as comprising the four instruments, namely the MVBER, the VBER and their respective Guidelines.

[2] As per Articles 3 and 4 MVBER, the VBER has applied to after-sales agreements since June 2010 and to motor vehicle distribution since June 2013, the latter falling exclusively within the scope of the VBER ever since.

[3] One contribution was submitted by one of the Contracting Parties to the EEA Agreement.

[4] The contributions received from the NCAs cannot be regarded as the official position of the Commission and its services and thus do not bind the Commission.

[5] The better regulation requirements are about designing and evaluating EU policies and laws transparently on the basis of evidence and the views of stakeholders and citizens. They are applicable to all policy areas and aim for targeted and proportionate regulation that does not go further than required to achieve a given objective, while bringing benefits at minimum cost.

I. GENERAL VIEWS OF THE NCAs

Regarding the *effectiveness* of the motor vehicle block exemption rules, NCAs generally share the view that the rules have met their objectives and have contributed to keeping markets competitive in the EU. NCAs report that intensity of competition in the three areas of the motor vehicle sector has either not changed significantly or has mostly intensified. Few NCAs report a decrease in the intensity of competition in the three areas of the automotive sector covered by this report. Nevertheless, NCAs report having encountered in their enforcement activities conducts which could in their view serve as indirect means of circumventing the obligation to ensure an equal footing for authorised and independent operators, such as the application of extended warranties, burdensome accreditation processes, and the steering of demand towards the authorised networks (see **section II**). Additionally, some NCAs suggest that the abolition of the so-called "dealer protection" clauses[6] may have aggravated existing imbalances of contractual power between vehicle manufacturers and dealers. In this regard, they point to dealers facing increased financial pressure, due to Vehicle manufacturers having shifted costs and investment requirements on to them.

As to the coverage of the block exemption, NCAs are mostly of the view that the market share threshold, by virtue of which the regime only exempts agreements where neither the market share of the buyer nor that of the seller exceed 30%, is still appropriate. However, they point at difficulties in relation to market definition and the calculation of market shares (see **section II**). Finally, NCAs note that the motor vehicle block exemption rules have provided helpful guidance to NCAs and legal certainty to stakeholders for the assessment of vertical agreements and restrictions. However, they are of the view that the effectiveness of the rules could be increased by providing clarifications and further guidance on some issues (see **section II**) and by reflecting recent market developments, new business models and new technologies. NCAs also suggest integrating the recent case law in relation to vertical restraints into the respective provisions to increase legal certainty.

Regarding the *efficiency* of the motor vehicle block exemption rules, NCAs generally consider that the motor vehicle block exemption rules have reduced the cost stemming from the assessment of the compliance of vertical agreements in the automotive sector with Article 101 Treaty on the Functioning of the European Union ("the Treaty"). Although the rules provide NCAs with a structured framework for their enforcement activities, the NCAs highlight that the reduction of cost may be minimal, as assessing the complexities of vertical agreements in the automotive sector still requires intense resources due to *inter alia* the intricate legal framework that made up the motor vehicle rules, the limited case law, and the complex and technical nature of the specific cases in the automotive industry. Nevertheless, NCAs generally assess the cost as reasonable and proportionate to the benefits obtained.

Regarding the *relevance* of the motor vehicle block exemption rules, NCAs generally consider that all the objectives of the motor vehicle block exemption rules are still relevant today. Moreover, NCAs also indicate that the current scope of the rules - that is to say, self-propelled vehicles intended for use on public roads and having three or more road wheels - is still generally appropriate. However, some NCAs also indicate that the rules should be revised to reflect recent market developments and to clarify existing obligations. First, these NCAs note the increasing importance ensuring that independent repairers have access to information relevant for the provision of aftersales services,

[6] Mainly contained in Article 3 of the previous MVBER (Reg. 1400/2002).

notably repair and maintenance, and to spare parts. Secondly, several NCAs draw the Commission's attention to the emerging issue of access to in-vehicle generated data and resources, which have the potential to unlock new business opportunities for traditional players and new entrants. Finally, some NCAs stress the increased importance of online sales and sales facilitators (e.g., online platforms) as well as a perceived shift towards new distribution models (e.g., dual distribution combining agency and selective distribution, online sales, direct distribution by OEMs) (see **section II**).

NCAs generally consider that the motor vehicle block exemption rules are *coherent* both in themselves and with other instruments that provide guidance on the interpretation of Article 101 of the Treaty. That being said, some NCAs note that three potential inconsistencies (see **section II**). Moreover, NCAs call for ensuring consistency between the motor vehicle block exemption rules and other upcoming legislative initiatives (e.g., the Digital Markets Act or the Digital Services Act, the Type Approval Regulation) particularly concerning the issue of access to in-vehicle data.

Finally, NCAs generally consider that the motor vehicle block exemption rules have *added value* and have facilitated the assessment of the compatibility of vertical agreements in the automotive sector with Article 101 of the Treaty and that action at only national level would have been less effective. This being said, NCAs have reported only limited experience in the application of the vehicle block exemption rules.

II. OVERVIEW OF THE MAIN ISSUES RAISED BY NCAs

When evaluating the functioning of the motor vehicles block exemption rules, NCAs have identified a number of specific issues. In the following, these issues are grouped in main categories: (i) scope of the exemption, (ii) achievement of objectives and indirect means of achieving anticompetitive results, (iii) legal certainty, and (iv) potential inconsistencies.

1. Scope of the exemption

1.1 Market share thresholds for exemption and market definition

Based on their experience and subject to the points set out below, NCAs indicate that the 30% market share threshold for agreements to benefit from the motor vehicle block exemption[7] is generally still appropriate.

Nevertheless, some NCAs point out that, as result of the brand-specific nature of the of the markets for repair and maintenance services and for the distribution of spare parts, the practical applicability of the motor vehicle rules in these areas is limited, as the 30% threshold is generally exceeded. Some NCAs deduce from this that the threshold may be too low, at least for the provision of repair and maintenance services and for the distribution of spare parts. On the other hand, following the same logic, some NCAs consider that the current threshold is too high with regards to the market for new motor vehicles, as for certain countries and segments the market is very fragmented, meaning that all agreements fall below the market share threshold.

NCAs also express differing views with regard to the market definition and the calculation of market

[7] VBER Articles 3 and 7 and VGL recitals 93-95.

shares in the automotive sector. In particular, some NCAs consider that certain markets for repair and maintenance services and for the distribution of spare parts may not be brand-specific. In this regard, these NCAs suggest that there may be a distinction between "complex repairs", for which there are no / few alternative service providers, and more "simple" repairs, for which there are effective alternatives. In their view, while in the first example the market could be brand specific, it would not be so in the second example. In the same vein, some NCAs suggest that, from the point of view of the repairer, the offers of vehicle manufacturer / importers, parts suppliers and other independent repair chains may be regarded as substitutable. Therefore, in the NCAs view, the market may not be brand-specific as access to the brand of a particular vehicle manufacturer / importer may not be indispensable for a repairer to operate on the relevant market. Finally, some NCAs question whether the hitherto separate markets for the sale of new motor vehicles and for aftersales services may not be tipping towards an integrated multi-brand “system” market.

Finally, some NCAs highlight their view that guarantee services and services provided during vehicle recalls should be excluded when calculating the market share of the authorised networks. In the view of these NCAs, the inclusion of such services may artificially inflate the perceived market shares of authorised repairers vis-à-vis their independent competitors.

1.2 Hardcore restrictions

NCAs recognise the importance of the hardcore restrictions[8], the presence of which removes the benefit of the exemption from the whole agreement. However, based on their enforcement experience, some NCAs point out two types of behaviour which they consider should also be considered as “hardcore”.

First, some NCAs point to refusals by Original Equipment Manufacturers (OEMs) to give independent repairers access to technical information, diagnostic and other equipment, tools, including any relevant software, or training required for repair and maintenance of motor vehicles. These NCAs concede however that in practice the inclusion of such a clause may not have real effects, since for passenger cars at least, most repair agreements may not benefit from block exemption in any event, due to the market shares of the members of the authorised networks. Nevertheless, NCAs consider that listing a OEMs’ refusal of giving independent repairers access to technical information as a hardcore restriction, may still have a signalling effect on the market for provision of repair and maintenance services.

Second, some NCAs also suggest that the hardcore clause listed in MVBER Article 5(c) - namely the restriction on component / part suppliers’ ability to place their trademark / logo on the components / parts supplied - may be redundant. In this regard, the NCAs suggest that in their experience the true issue relates more to the ability of the supplier to erase the brand of the motor vehicle manufacturer rather than its ability to place its own trademark.

1.3 Excluded restrictions

NCAs indicate that the current list[9] of contractual clauses that may not benefit from the exemption (“excluded restrictions”) is sufficient. NCAs generally agree that there are no other types of vertical

[8] Article 4 of the VBER and Article 5 MVBER.

[9] VBER Article 5, VGL recitals 66-68, 69-182 and 129-150 and SGL recitals 26, 27 and 28-41.

restriction in the motor vehicle sector that the VBER / MVBER lists as excluded but which should not be considered as such. One NCA nevertheless points to the need to include as an excluded restriction the alleged obligation imposed on dealers / service partners to transfer business information to Vehicle manufacturers.

2. Achievement of objectives and alleged indirect means of achieving anti-competitive results

2.1 Achievement of sector specific objectives

NCAs indicate that the sectoral specific objectives[10] that the motor vehicle block exemption rules aim at achieving have generally been fully or partially achieved. Nevertheless, potential competition concerns remain, in particular with regards to the specific objectives of enabling independent repairers to compete effectively with authorised repairers, preventing foreclosure of spare part producers in the aftermarket and protecting competition between dealers / repairers of the same brand.

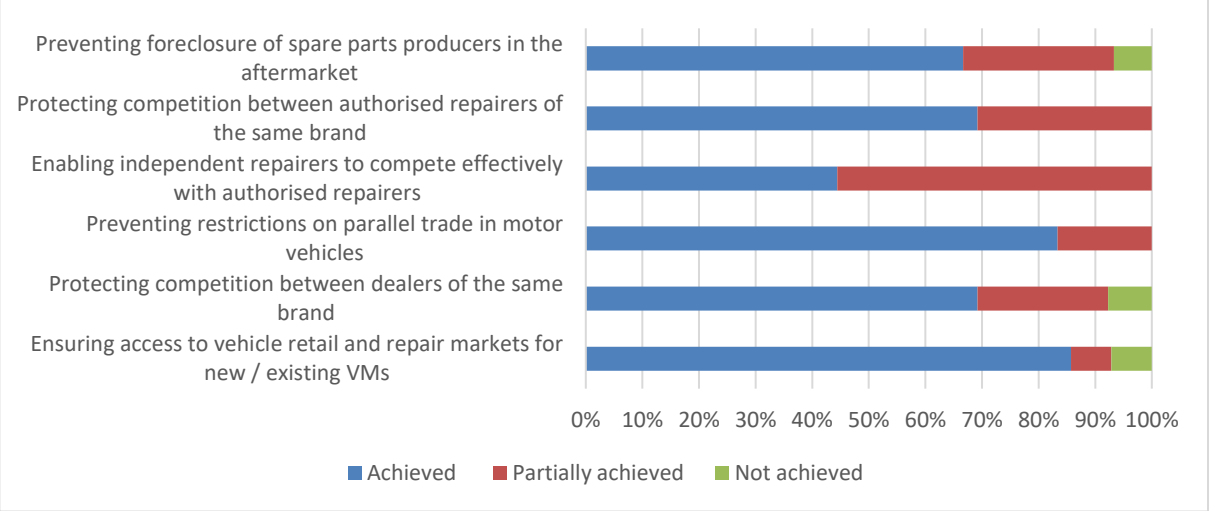

Figure 6: NCAs views on the achievement of the sector specific objectives

First, as regards the objectives of enabling independent repairers to compete effectively with authorised repairers and preventing foreclosure of spare part producers in the aftermarket, some NCAs indicate, based on their enforcement experience, that difficulties for independent repairers to obtain timely access to spare parts and to information relevant for the provision of aftersales services - notably repair and maintenance -, persist and that this may become more important in the future. Moreover, some NCAs report that as result of the increase in complexity of motor vehicles, specialized trained personnel and complex equipment are needed, which in turn may give authorised repairers an advantage over their independent competitors, forcing the latter to focus mainly on simple mechanical operations. Some NCAs suggest that the transition to electric and hybrid vehicles may reinforce this trend.

Secondly, on the objective of protecting competition between authorised repairers of the same brand, some NCAs indicate that the quality requirements set by vehicle manufacturers for

[10] These sectoral objectives were identified for the first time in Annex I of the Communication pursuant to Article 5 of Council Regulation No 19/65/EEC of 2 March 1965 on the application of Article 81(3) of the Treaty to categories of agreements and concerted practices. OJ C 67/2 of 16.3.2002.

authorised repairers have become increasingly strict, requiring large investments in personnel, buildings and equipment, which in turn translates into fewer authorised repairers being admitted to the network and thus to less intra-brand competition.

As to the objective of ensuring access to vehicle retail and repair markets for new and existing market players, some NCAs report that the increasing consolidation between dealers combined with a growing presence of vehicle-manufacturer-owned outlets and rigid remuneration systems and sales campaigns leaves little room for effective competition in the distribution of new vehicles. In this vein, few NCAs also report a trend towards direct distribution by OEMs when it comes to new motor vehicles, with dealers acting as mere delivery and configuration points. Some NCAs also highlight that remuneration schemes and sales campaigns imposed on dealers have the effect of harmonising costs, decreasing dealer margins, and thus reducing the intensity of intra-brand competition.

Finally, on the objective of preventing restrictions of parallel trade of motor vehicles, some NCAs report that cross-border competition has intensified slightly as car manufacturers no longer try to prevent the re-import of motor vehicles directly. However, some NCAs report a tendency to attempt to prevent cross-border sales via indirect means (e.g., by shortening the warranty period in certain Member States or "accidentally" failing to provide the registration document for the end consumer). Finally, some NCAs report that since car sales margins are low, and dealers make much of their profit from repair and maintenance on cars that they have sold locally, they have few incentives to sell to consumers resident in other Member States.

2.2 Indirect means of achieving anti-competitive results

Several NCAs report having encountered conduct in their enforcement activities which could serve as an indirect means of achieving anti-competitive results.

Some NCAs describe a set of conducts in respect of the relationship between OEMs and the members of their authorised networks that could potentially be anticompetitive. In particular, NCAs indicate the following: (i) fixing remuneration systems / sales campaigns that may have steering effects on dealers' conduct and unifying price effects; (ii) setting qualitative standards may raise / unify costs, thereby increasing dealers' economic dependence on a particular supplier; (iii) pushing authorised distributors to merge may increase market concentration at dealer level; (iv) imposing commercial / pricing policies on dealers may indicate an imbalance in rights and obligations between the parties; (v) setting arbitrary limits on the number of dealers may unjustifiably exclude some from the distribution networks.

Secondly, some NCAs refer to agreements between vehicle manufacturers / importers / authorised repairers and insurance companies to allegedly direct customers to authorised repairers to the detriment of independent repairers. These NCAs are concerned that such agreements may hamper market access for independent repairers and serve as an indirect means to stimulate the use of spare parts sourced from the vehicle manufacturers. NCAs also report allegations that importers / vehicle manufacturers / dealers have dissuaded customers from using independent repairers to repair their vehicles by stating that the warranty would be voided if maintenance and repairs were carried out by a non-authorised repairer.

Thirdly, some NCAs report that consumers have no visibility as to the supplier's recommended prices for repair and maintenance services and that authorised repairers seem to consistently apply the recommended price. In these NCAs' view, this may lead to higher prices for consumers and potentially to price coordination.

Finally, some NCAs report having encountered instances where vehicle manufacturers / importers allegedly withheld a code necessary for the installation of a third-party tool. According to the NCAs, this could significantly reduce the ability of such tool suppliers to offer their services.

3. Legal certainty

3.1 Definitions

NCAs consider that the motor vehicle block exemption rules have provided a helpful framework for companies (and advisors) to (self-)assess the compatibility of agreements in the motor vehicle with Article 101 of the Treaty. However, NCAs argue that some of the definitions given by the motor vehicle block exemption rules are not sufficiently clear.

First, on the definition of *vertical agreements*[11] some NCAs report difficulties assessing agreements between competitors in which one party to the agreement acts as a distributor. In this regard, the NCAs note that the Horizontal Guidelines[12] refer back to the VGL for vertical aspects of horizontal agreements.

Second, as regards *agency agreements*[13], some NCAs note that the VGL lack the necessary detail to assess the distinction between independent traders and agents acting on behalf of a supplier, especially with regard to the difference in the legal and / or commercial risks incurred. Moreover, these NCAs argue that the VGL do not provide adequate clarity as regards the increased use of mixed distribution models, under which a single undertaking combines the functions of agent and authorised distributor in the same product market for the same brand[14] In this regard, the NCAs note that it may be questionable whether an OEM should be allowed to have two separate contracts with the same dealer, as the agency model should prevent the dealers from taking any financial or business risk, which the dealers already are bearing due to the current dealer contracts. The NCAs point out that this is particularly important question for the automotive sector as OEMs usually enjoy a strong market position and impose very costly standards on authorised motor vehicle dealers.

Third, certain NCAs note that through practices commonly known as tooling arrangements, vehicle manufacturers are prohibiting original equipment suppliers from using the original tools to manufacture parts for aftermarket supply under the suppliers' own brands. The NCAs question whether these could constitute genuine *subcontracting agreements*[15] such as would not be caught by Article 101 of the Treaty, and express concern that the Commission's 1978 Subcontracting

[11] VBER Article 1(1)(a), VGL recitals 24-26 and MVBER Article 1(1)(a).

[12] Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements. OJ C 11, 14.1.2011, p. 1–72.

[13] VGL recitals 12-17.

[14] Please note that the present consultation with NCAs was conducted between October 2020 and January 2021. On 5 February 2021, the Directorate General for Competition published a Working Paper titled "*Distributors that also act as agents for certain products for the same supplier*" setting out its preliminary views on this issue.

[15] VGL recital 22 and SGL recital 23.

Notice[16] does not provide clarity on this issue, potentially allowing vehicle manufacturers to remove all sources of potential competition for spare parts supply.

Fourth, on the definition of *non-compete obligation*[17], some NCAs seem to suggest that the wording of the "no-compete" may be unclear as the clause seems to refer rather to a ban on exclusivity obligations than to a non-compete obligation in the sense used when referring to horizontal agreements.

Fifth, as regards the concept of s*elective distribution*[18] NCAs indicate that there is insufficient clarity regarding the assessment of vertical restraints within the framework of selective distribution systems in light of the recent jurisprudence. In particular, NCAs seek clarifications on the following points: (i) the implication of recent judgments to assess a vertical restraint when implemented in the framework of a selective distribution system; (ii) the limits to quantitative selective distribution systems for motor vehicle distribution and provision of repair and maintenance services in light of recent jurisprudence (e.g., *C-158/11*)[19]; (iii) the qualification of online sales restrictions and the legal treatment of online sales in the context of selective distribution.

Sixth, on the concept of *intermediary*[20], some NCAs highlight that clarity is needed with respect to the position of internet platforms. In this regard, NCAs highlight that in the field of motor vehicle sales, online e platforms act could also be said to act as intermediaries between customers and dealers. In addition, NCAs indicate that there are also firms active in the provision of repair services, who intermediate between customers and repairers. Some NCAs are of the view that both kinds of operator are related to the current notion of intermediary, since they constitute channels by which end customers acquire vehicles from dealers or services from repairers without being part of the distribution chain themselves. They therefore suggest that clarification is lacking on these recent developments. NCAs note nevertheless that the question if and under which conditions platform bans constitute a hardcore infringement pursuant to Article 4 (c) VBER is a general question which should be addressed across sectors in the VBER and/or VGL.

Seventh, on the *concept of motor vehicle*[21], some NCAs note the absence of a definition indicating when a motor vehicle should be considered "new".

Eighth, as regards *spare parts*[22], some NCAs argue that the scope of the definition should be expanded to encompass accessories: that is to say, parts which are not intended to replace components of the vehicle, but which are rather "add-ons".This question is relevant for the scope of the MVBER, since Article 4 MVBER only refers to the conditions under which the parties may purchase, sell or resell spare parts. If the definition of spare parts were to be altered or expanded, it should be kept in mind that the notion would deviate from the definition set out in Regulation

[16] Commission notice of 18 December 1978 concerning its assessment of certain subcontracting agreements in relation to Article 85 (1) of the EEC Treaty. OJ C 1, 3.1.1979, p. 2–3.
[17] VBER Article 1(1)(d).
[18] VBER Article 1(1)(e) and MVBER Article 1(1)(i).
[19] Case C-158/11 Auto 24 SARL v Jaguar Land Rover France SAS of 14 June 2012.
[20] SGL recital 52.
[21] MVBER Article 1(1)(g).
[22] MVBER Article 1(1)h).

2018/858.[23]

Ninth, as regards the concept of *connected undertaking*[24], some NCAs indicate that the current definition encompasses situations where neither of the undertakings in question actually control the other.

Finally, on the concept of *active and passive sales*[25], few NCAs are of the view clarification is needed as to how to interpret indirect restrictions on online sales which, they argue, are analogous to the imposition of dual prices, and therefore should be considered as restrictions of passive sales.

4. Specific conducts

4.1 Access to technical information

NCAs point to the need to reflect on whether the current definition of technical information[26] could be updated, against the background of the rising complexity of motor vehicles and the increasing potential of in-vehicle data[27]. They also indicate that the list of "technical information" in the Supplementary Guidelines should be considered non-exhaustive, in line with the fast-paced technological developments facing the automotive industry.

In particular, some NCAs raise the question of whether data generated in-vehicle should be included in the notion of "technical information" given in the Guidelines, and thus shared on an equal basis with authorised and independent repairers, or whether this data rather constitutes a separate category of essential input. Some NCAs note that if OEMs share in-vehicle generated data with authorised repairers then it should be considered "technical information" and should therefore be shared with independent repairers to allow effective competition on the aftermarkets. On the other hand, certain NCAs also question whether access to such data can indeed be considered essential. NCAs nevertheless also note that the number of connected cars is still relatively low and that manufacturers are still largely experimenting with in-vehicle data, meaning that it may be too early to judge whether anticompetitive behaviour may emerge. Some NCAs also question whether competition law is in general the appropriate instrument to govern such data access.

NCAs identify the following items that should be considered as technical information for the purposes of the motor vehicle block exemption rules and that, if provided to authorised shops, should also be shared on an equal footing with independent repairers:

I. Some NCAs report that an increasing number of brands use "digital service booklets" instead of the traditional physical booklets, which remained with the vehicle owner, meaning the documentation of service and maintenance work done on a vehicle is registered (only) on a

[23] Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC. OJ L 151, 14.6.2018, p. 1–218.

[24] VBER Article 1(2) and MVBER Article 1(2).

[25] VGL recital 51.

[26] SGL recital 66.

[27] Data has the potential to support a wide range of innovative services (e.g., remote prognostics and diagnostics, accident and breakdown assistance, navigation, fleet management, leasing and car-sharing, traffic management, usage-based insurance and infotainment) for traditional players and new entrants and therefore, NCAs note that in the future independent market participants will need access to data directly collected by the car.

digital platform run by the respective OEM. NCAs report that registration and access to those platforms for independent operators as well as providers of multi-brand services is in some instances being impeded or made overly difficult, with potentially exclusionary effects on independent operators. Some NCAs advocate that free access should be given to such digital service booklets.

II. Some NCAs indicate that access to information related to the performance of repair services to the electronic control units (ECUs) of motor vehicles, including all features concerning safety and security, should be considered to be technical information and should be provided to independent operators.

III. Some NCAs indicate that OEM have started using specific codes for the installation of spare parts in motor vehicles which are needed for a replacement part to be registered and therefore recognised by the vehicle's software. NCAs note that it may be necessary to allow independent repairers to have access to such software to allow them to register replacement parts.

Finally, NCAs flag the need to update recital 67 of the SGL to reflect the fact that, since the SGL were adopted, Regulation 715/2007[28] has been replaced by Regulation 2018/858.

4.2 Misuse of warranties

Some NCAs advance the view that the guidance given on the misuse of manufacturers' warranties is not clear enough.[29]

They report that independent repairers do not often have the opportunity to carry out repair and maintenance on vehicles during the warranty period. In this vein, some NCAs also note that consumers' reluctance to use the services of an independent repairer during the warranty period or warranty extension period is considerable as OEMs / importers / authorised dealers or repairers allegedly convey either *directly or indirectly* the message that the warranty will cease to apply if the end user has repair and maintenance work carried out outside the authorised repair networks. Some NCAs refer to conducts such as complex warranty conditions or long warranty periods, which in their view, steer vehicle owners towards authorised repairers. NCAs further add that this trend is exacerbated by insurance companies' certification requirements, which allegedly tend to favour authorised garages.

In this light, some NCAs stress the importance of keeping an explicit reference to the misuse of warranties in the SG. In the same vein, NCAs highlight the importance of ensuring that the clauses contained in all the documents proposed to consumers by OEMs/ authorised dealers or repairers clearly state the consumer's right to use the services of an independent repairer without losing the benefit of the warranty.

Finally, certain NCAs indicate that the SGL could be clearer as regards the distinction between legal (statutory) warranties, extended (unilateral) warranties, and warranty extensions (often issued in

[28] Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information. OJ L 171, 29.6.2007, p. 1–16.
[29] SGL recitals 49 and 69.

combination with maintenance contracts). Additionally, certain NCAs indicate that it is not clear whether authorised repairers may legitimately refuse to honour the manufacturer's warranty on a whole element of a vehicle, if an alternative brand of spare parts has been used to replace a particular part of that system.

4.3 Resale price maintenance

In line with their contributions to the VBER consultation, some NCAs note that the VBER and the VGL do not provide sufficient legal certainty as to whether certain "grey areas" constitute resale price maintenance (RPM) [30]. In particular, they point to a lack of clarity as regards the circumstances in which recommended resale prices amount to RPM and whether certain practices restricting the ability of buyers to determine their selling price should be considered as RPM (e.g., suppliers setting indicative margin based on recommended sales price, and then pushing the actual resale price down by forcing the distributors to pass on / grant extra discounts). In addition, NCAs indicate that the distinction between clear-cut RPM and so-called "hub & spoke" scenarios is currently not reflected in the VBER and the VGL.

4.4 Restriction of the buyer's ability to sell components

Some NCAs suggest clarifying that Article 4 b) iv) VBER does not apply to spare parts and other components which are supplied to a vehicle manufacturer for resale in their supplied state, but only to components which are to be incorporated in other products.

5. Potential inconsistencies

The majority of NCAs consider that the instruments making up the motor vehicle block exemption rules are generally coherent and that there are no inconsistencies either between them or with other legal instruments. Nevertheless, some NCAs draw the attention of the Commission to three potential inconsistencies.

First, certain NCAs highlight what they see as a discrepancy in the market share thresholds set out in paragraphs 56 and 12 of the SGL for the exemption of agreements for the distribution of new vehicles. While paragraph 12 states that the Commission did not identify any significant competition shortcomings in the new motor vehicle distribution sector which would require the application of a market share threshold different from and stricter than those in the VBER (30%), recital 56 indicates that, when conducting the assessment of selective distribution systems outside of the block exemption regulation, quantitative selective distribution of vehicles will generally satisfy the conditions laid down in Article 101(3) of the Treaty if the parties' market shares do not exceed 40%. In the NCAs view, this implies that motor vehicle distribution is treated differently to other sectors.

Second, on access to technical information, some NCAs note that there might be a discrepancy with the overall notion of bilateral and unilateral behaviour. According to Recital 62 of the SG, qualitative selective distribution agreements concluded with authorised repairers and / or parts distributors may be caught by Article 101 (1) of the Treaty if, within the context of those agreements, one of the parties acts in a way that forecloses independent operators from the market, for instance by failing to release technical repair and maintenance information to them. In this regard, NCAs express the

[30] VBER Article 4(a) and VG recitals 48-49 and 223-229.

view that although the application of Article 101 (1) of the Treaty requires an agreement or concerted practice, Recital 62 of the SGL foresees the application of Article 101 (1) of the Treaty when only one of the parties to the agreement acts in a way that forecloses independent operators from the market which, in the NCAs view, would usually qualify as unilateral behaviour falling under the abuse of dominance provisions.

Thirdly, NCAs indicate that there could be said to be a contradiction concerning the definition of the relevant market in the automotive sector. In the NCAs view, in its Notice on the definition of relevant market[31], the Commission focuses on the perspective of the direct customer to analyse whether the respective goods or services are substitutable to satisfy a particular demand: an approach also replicated in Article 3 (1) VBER and Recital 7 of the VBER. However, NCAs highlight that when determining if a contract between an OEM and its authorised repairer is caught by Article 101 (1) of the Treaty or whether it satisfies the conditions of Article 101 (3) of the Treaty, in paragraph 15 of the SG[32] the Commission seems to focus on the point of view of the end consumer (the motorist) instead of that of the direct contractual partner: the authorised repairer.

Finally, NCAs stress that, when conducting its review, the Commission should carefully consider any upcoming regulatory measure which may impose obligations on OEMs concerning access to vehicle generated data (e.g., under the Digital Markets Act, Digital Services Act, or the type approval rules).

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[31] Recitals 15-19 of the Commission Notice on the definition of relevant market for the purposes of Community competition law. OJ C 372, 9.12.1997.

[32] Recital 15 of the SG: *"[..] On the spare parts markets, parts bearing the motor vehicle manufacturer's brand face competition from those supplied by the original equipment suppliers (OES) and by other parties. This maintains price pressure on those markets, which in turn maintains pressure on prices on the repair and maintenance markets, since spare parts make up a large percentage of the cost of the average repair. Moreover, repair and maintenance as a whole represent a very high proportion of total consumer expenditure on motor vehicles, which itself accounts for a significant slice of the average consumer's budget."*