EUROPEAN COMMISSION

FREQUENTLY ASKED QUESTIONS (FAQS) ON THE APPLICATION OF EU ANTITRUST RULES IN THE MOTOR VEHICLE SECTOR

27 August 2012

Since the adoption of the new motor vehicle Block Exemption Regulation[1] and the Supplementary Guidelines[2], the Commission's services have received a number of questions relating to the application of the new framework for motor vehicle distribution and repair and for the distribution of spare parts for motor vehicles. Where these questions have been frequently asked, or are otherwise likely to be of wider interest, they are reproduced below together with answers and explanations.

These Frequently Asked Questions («FAQs») are intended to complement the Supplementary Guidelines and do not replace them. The FAQs aim, in particular, at helping firms and individuals operating in the sector and legal practitioners to understand how the Commission's Directorate General for Competition approaches particular issues regarding the motor vehicle markets.[3] The FAQs are not intended to constitute a statement of the law and are without prejudice to the interpretation of Articles 101 and 102 of the Treaty on the Functioning of the European Union («TFEU») by the European Courts. Finally, the FAQs do not prejudge the application by the Commission of Articles 101 and 102 to the specific circumstances of an individual case.

---

1 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. Official Journal L-129 of 28.5.2010, p.52. ; see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:129:0052:0057:EN:PDF.

2 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. Official Journal C-138 of 28.5.2010, p.16; see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:138:0016:0027:EN:PDF.

3 These FAQs concern particular restrictions in the motor vehicle sector that, under certain circumstances, may cause the agreement between the vehicle manufacturer and its authorised dealers or repairers (or eventually with a supplier of spare parts, repair tools or diagnostic, components for the initial assembly of motor vehicles, or other equipment) to infringe EU competition rules. Generally, this will be the case because: (1) the restriction at stake is likely to cause or strengthen the anti-competitive effects of the agreements between the vehicle supplier and its dealers or authorised repairers and spare parts distributors and cause them to be caught by Article 101(1) TFEU; (2) the agreements in question are unlikely to benefit from the block exemption, because of the supplier's market share; and (3) these agreements are unlikely to benefit on an individual basis from the exception set out in Article 101(3) TFEU. In some other cases, particular conduct referred to in these FAQs may constitute a violation of the prohibition of the abuse by an undertaking of its dominant position, pursuant to Article 102 TFEU. Finally, the FAQs refer as well to conduct or agreements that are unlikely to be in breach of EU competition rules. In any event, the application of the said rules must ultimately be assessed in each particular case, having regard to its specific factual and legal circumstances.

The FAQs are organised into several general topics, namely the honouring of warranties, servicing in the context of leasing contracts, the supply of spare parts, the use/purchase of tools, access to technical information and access to authorised repairer networks.

WARRANTIES

The Supplementary Guidelines set out the general principle that, for qualitative selective distribution agreements to benefit from an exemption under the EU competition rules, the vehicle manufacturer's warranty must not be made conditional on the end user having repair and maintenance work that is not covered by the warranty carried out within the vehicle manufacturer's authorised repair networks[4]. Similarly, warranty conditions must not require the use of the vehicle manufacturer's brand of spare parts in respect of replacements not covered by the warranty terms. These two types of restriction, which are referred to respectively as servicing and parts restrictions in the remainder of the FAQs, are likely to cause the agreement between the vehicle manufacturer and its authorised dealers or repairers to infringe EU competition rules. The reasoning behind this general principle is that such behaviour may result in the foreclosure of independent repairers or the closing of alternative channels for the production and distribution of spare parts, which ultimately may have a bearing on the price that consumers pay for repair and maintenance services.

Questions have been asked about the scope of this general principle and as to whether it applies under particular circumstances. Questions have also been raised about whether a consumer can be prevented from benefitting from the warranty on a vehicle that (s)he has purchased from an authorised dealer in another EU Member State.

The answers given below are without prejudice to the application of national consumer protection laws, which may impose specific obligations and create specific rights. They also do not apply to so-called "generosity schemes", by which a vehicle supplier[5] instructs its dealers to repair certain defects free of charge beyond the warranty period.

1. Does the assessment of servicing or parts restrictions depend on whether they are set out in the purchase contract or rather in the servicing or warranty booklet? [6]

No. In practice, the servicing or parts restrictions may be contained not in the purchase contract, but rather in another document, such as the servicing or warranty booklet. The assessment of these restrictions is in principle the same irrespective of the document in which they appear.

---

4 See Paragraph 69 of the Supplementary Guidelines, footnote number 2, above.

5 The term "vehicle supplier(s)" normally refers, in the context of this document, to the vehicle manufacturer(s), but may also include, when appropriate in the respective context, other categories of market players, such as importers or main dealers (with respect to sub-dealers).

6 Questions 1 to 3 are based on the understanding that the signing of the purchase contract or the handing over of the warranty booklet to the final consumer forms part of or relates to the agreement between the manufacturer and the dealer and thus can be addressed under Article 101 TFEU. These questions do not address the situation where the dealer is part of the manufacturer's group (e.g. it's a subsidiary of the manufacturer).

Irrespective of where the restriction is stipulated, it is likely to lead consumers to believe that the warranty will be invalidated if servicing work is carried out in independent garages or if alternative brands of spare parts are used. This, in turn, is likely to foreclose such operators or close alternative channels for spare parts' distribution.

2. **Does the assessment of servicing or parts restrictions differ if they are set out in an extended warranty issued by the authorised network at the sale of the vehicle or shortly after?**
   No. The fact that the servicing or parts restrictions are not set out in the vehicle supplier's warranty but are instead found in an extended warranty issued by the authorised network at the moment of the sale of the vehicle (or shortly thereafter) will not generally alter the assessment of the said restrictions.

Just like vehicle manufacturers or their importers, the dealers and authorised repairers within a selective distribution system are parties to a network of agreements. If these parties agree to offer a warranty scheme and the warranties in question contain a servicing or parts restriction, this is likely to foreclose independent repairers or shut off alternative spare parts' distribution channels. The warranty scheme is therefore likely to cause or strengthen the anti-competitive effects of the agreements between the vehicle supplier and its authorised repairers and spare parts distributors.

3. **Does the assessment of servicing or parts restrictions differ if they are set out in an extended warranty arranged by the vehicle supplier (or by the authorised network at the sale of the vehicle or shortly after) through a third party such as an insurer?**
   No. The fact that warranties that contain a servicing or parts restriction are arranged through a third party (typically an insurer) by the vehicle supplier (or by the members of its authorised network at or shortly after the sale of the vehicle: see question 2 above) does not in principle alter the assessment of the said restrictions.

The fact that the extended warranty containing the servicing or parts restriction is arranged through a third party does not change the analysis set out in the Supplementary Guidelines. The decisive element is whether the servicing or parts restriction is a factor within the control of one or more of the parties to the network of selective distribution agreements[7] and therefore whether its implementation is likely to foreclose independent repairers or shut off alternative channels for spare parts' distribution.

4. **Does the assessment of servicing or parts restrictions differ if these restrictions are set out in an "extended" warranty bought by a consumer from an authorised repairer or from the vehicle supplier some years after the purchase of the vehicle?**
   Yes. Such a warranty is in general unlikely to result in a breach of EU competition rules.

---

[7] In general, such servicing or parts restrictions are unlikely to bring any benefit to the insurance company.

Years after the vehicle purchase, authorised dealers do not enjoy the same degree of privileged access to customers as they do in the period shortly after the purchase. As a consequence, alternative providers of extended warranties, such as chains of independent repairers and insurance firms are less likely to face significant barriers preventing them from offering their products to vehicle owners. In such circumstances, it seems unlikely that independent repairers could face a significant foreclosure effect even if car warranties issued by vehicle suppliers or their authorised networks contained servicing or parts restrictions.[8]

5. Should a consumer be able to benefit from the warranty on a vehicle that (s)he has purchased from an authorised dealer in another EU Member State?

Yes, although some limitations concerning the scope of the warranty may apply.

If vehicle suppliers fail either to honour warranties on vehicles purchased by consumers from authorised dealers in other Member States or to contractually oblige their authorised repairers to carry out warranty work on such vehicles, this would constitute a restriction on sales and the selective distribution agreements at stake are likely to be contrary to EU competition rules.[9]

The same reasoning applies to free servicing or work carried out as a result of a product recall.[10] The reasoning does not change if the consumer has bought the vehicle through a mandated intermediary. Warranties on vehicles bought from authorised dealers in other Member States should also not be subject to additional administrative procedures that lead to delays in the work being carried out.

However, it should be noted that warranty terms may vary from one Member State to another, and that vehicle suppliers typically take account of the cost of respecting a particular set of warranty terms when setting the recommended purchase price of the vehicle. If a vehicle is exported, the vehicle supplier may legitimately apply the terms of the original warranty applicable to the vehicle, and will thus be under no obligation to apply more beneficial warranty terms that may be included with vehicles sold in the Member State of import.

---

8 Such warranties are therefore unlikely to cause the selective distribution agreements in question to be caught by Article 101TFEU.

9 These agreements will likely be caught by Article 101 TFEU. Moreover, they will not likely benefit from an exemption under Commission Regulation (EU) No 330/2010 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 (OJ L-102 of 23.04.2010, p. 1-7), because the clauses in question would constitute a restriction on sales within the meaning of Article 4(b) respectively 4(c) thereof, see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:102:0001:0007:EN:PDF. See also paragraph 50 and in particular footnote 4 of the Guidelines on Vertical Restraints. OJ C-130 of 19.05.2010, to be found at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:130:0001:0046:EN:PDF. Finally, they will be unlikely to benefit from the exception set out in Article 101(3) TFEU. See also Judgment of the Court of Justice of 10 December 1985 in case 31/85, *ETA Fabriques d'Ebauches v. SA DK Investment and others.*

10 If vehicle manufacturers fail to carry out free servicing or work as a result of a product recall on vehicles purchased by consumers from authorised dealers in other Member States or to contractually oblige their authorised repairers to carry out product recall related services on these vehicles, this would likewise constitute a restriction on sales, and the selective distribution agreements at stake are likely to be contrary to EU competition rules.

It should also be noted that if a consumer has paid separately for a mobility scheme, that scheme may be limited in scope to a particular Member State.

6. Does the assessment of a parts restriction differ if, for operations not covered by warranty, the vehicle manufacturer requires the use of a spare part (such as a lubricant) from a specific supplier (rather than stipulating that its own brand of spare parts be used)?

Generally, no. Such a restriction is likely to result in a breach of EU competition rules.

As with a parts restriction requiring the use of the vehicle manufacturer's brand of spare parts as condition for the warranty to apply, a parts restriction requiring (rather than merely recommending) the use of spare parts from a specific producer is likely to foreclose alternative channels for spare parts' distribution.

However, a vehicle manufacturer may legitimately refuse to honour warranties on the grounds that the situation leading to the claim in question is causally linked to a failure of a specific spare part provided by an alternative supplier.

LEASING

Leasing contracts between firms are not covered by the general EU rules on vertical agreements.[11] They also do not fall within the scope of the motor vehicle Block Exemption Regulation[12]. As to agreements between leasing firms and private motorists, these are not caught by Article 101 TFEU.

Nonetheless, the following question has frequently been asked.

7. If a vehicle is leased from a firm connected to the vehicle supplier, can that firm stipulate that servicing must be carried out within the vehicle supplier's authorised network and/or using exclusively branded parts from the vehicle supplier?

Yes, unless (or until) it is certain that a transfer of ownership over the vehicle to the lessee will take place at the expiry of the contract or the end of the leasing term.

In principle, for as long as there is no certainty that ownership of the vehicle will be transferred to the lessee, the leasing company will have an interest in maintaining the vehicle's residual value and may thus be entitled to place more value on the vehicle if it has always been maintained in the authorised repair network using exclusively vehicle-supplier branded parts.

By contrast, if a transfer of ownership is certain to occur (either because it is established as such in the contract or the applicable legislation or because the lessee has decided to execute an option to this effect), the leasing company cannot in principle claim a specific interest in the vehicle's residual value which would entitle it

11 Guidelines on Vertical Restraints, paragraph 26, see footnote 9.

12 See Article 2 thereof.

to place restrictions on the lessee concerning the use of independent repairers' services or the use of alternative spare parts. In this regard, the leasing company is in the same position as it would typically be under a regular purchase agreement.

SPARE PARTS

The supply of spare parts is the subject of three sector-specific hardcore clauses in the motor vehicle Block Exemption Regulation.[13] Certain questions have however been frequently asked relating to the supply of parts to both independent and authorised repairers.

8. May a vehicle supplier make bonuses or rebates for captive parts[14] conditional on the sourcing also of competitive parts?

This issue is not dealt with in the motor vehicle Block Exemption Regulation or the Supplementary Guidelines. Under certain circumstances, conditional rebates might constitute an abuse of a dominant position and thus lead to a breach of EU competition rules.

In most cases, bonus and rebate schemes are a legitimate and possibly pro-competitive means of motivating a repairer to sell more parts of the brand in question. However, care has to be taken as regards captive parts, in respect of which the vehicle supplier will have a dominant position. Making bonuses or rebates on these parts conditional on the repairer buying competitive parts of the vehicle supplier's brand could imply that the vehicle supplier is leveraging a dominant position on one market to abusively gain advantage on the other.[15]

9. May a vehicle supplier oblige its authorised repairers to store alternative brands of spare parts separately from parts of its own brand?

Generally, yes, for as long as this does not make it unduly difficult for the repairers in question to use alternative brands of parts.

A vehicle supplier may have a legitimate interest in ensuring that authorised repairers store spare parts in an orderly manner, since if the correct parts are readily at hand, this may have an impact on consumer perception of the brand. Vehicle suppliers may also have a legitimate interest in ensuring that alternative brands of parts are not mistakenly used for warranty repairs or servicing packages in respect of which they bear the costs.

---

13 See Article 5 thereof.

14 Captive spare parts are parts which may only be obtained from the motor vehicle manufacturer or from members of its authorised networks; see Supplementary Guidelines, paragraph 22. See footnote number 2, above.

15 This would amount to a breach of Article 102 TFEU. General guidance on the application of Article 102 TFEU can be found in the Communication from the Commission – Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings (OJ C-45 of 24.2.2009, p. 7–20), see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:045:0007:0020:EN:PDF. See in particular the section on tying and bundling.

However, requirements of this type should not unduly complicate stock control, increase required storage space, or impede access to such an extent that repairers are discouraged from using alternative brands of parts.[16] Examples of restrictions that might not be justified include obligations imposed by a vehicle supplier on its repairers to have a separate storeroom for such parts or not to store such parts in the work bays.

10. May an authorised repairer refuse to supply captive parts to independent garages?

Generally, yes. It is unlikely that EU competition rules would be infringed if an authorised repairer were merely to unilaterally refuse to supply spare parts to independent repairers.

In most cases, it is in the interest of authorised repairers to sell spare parts to independent repairers because they make a margin by so doing.

If for some reason an authorised repairer were to unilaterally decide not to sell captive spare parts to independent repairers, it is unlikely that this would breach EU competition rules.[17] Usually, the independent repairers are able to turn to another authorised repairer for the purchase of captive parts.

If, however, members of a selective distribution system were to agree with one another not to sell captive parts to independent repairers, the agreement in question would be likely to be anticompetitive.[18]

11. Under what circumstances would a vehicle supplier be obliged to supply spare parts directly to independent repairers?

If independent repairers encountered widespread difficulties in obtaining captive spare parts from authorised distributors of such parts, a failure on the part of the vehicle supplier to supply such parts directly might lead to a breach of EU competition rules.

Vehicle suppliers provide their authorised repairers with the full range of spare parts needed to perform repair and maintenance work on motor vehicles of their brands and are the only firms able to provide repairers and distributors with certain parts. If independent repairers are unable to source these captive parts from authorised distributors and the vehicle supplier refuses to supply independent repairers directly,

---

16 Requirements that have such an effect might be considered to be indirect non-compete obligations, the impact of which should be assessed under the Guidelines on Vertical Restraints. See footnote number 9, above.

17 Article 101 TFEU would not be relevant, since the decision not to sell the spare parts would not result from any agreement. Article 102 TFEU would generally not be applicable, since it is unlikely that the authorised repairer in question could be considered to be in a dominant position.

18 Such an agreement would indeed be likely to be caught by Article 101 TFEU. It should also be noted that a supplier's restriction of spare parts sales by a member of its authorised network to independent repairers constitutes a hardcore restriction (see Art. 5 (a) of Regulation No 461/2010, see footnote 1, above) and is therefore also likely to be caught by Article 101 TFEU.

possible negative effects stemming from its agreements with authorised repairers and/or parts distributors could be strengthened.[19] Specifically, a lack of access to captive parts could cause the market position of independent operators to decline, ultimately leading to consumer harm.

12. May a vehicle supplier prevent a member of its authorised parts distribution network from selling spare parts to independent repairers that use independent spare parts distributors as purchase agents?

Generally, no. If an authorised spare parts distributor were to unilaterally decide not to sell to independent repairers that use agents, this would not breach EU competition rules. However, if a vehicle supplier were to instruct its distributors not to sell through agents, its distribution agreements would be likely to infringe EU competition rules.

Most vehicle suppliers operate qualitative selective distribution systems for the sale of spare parts. Independent repairers are to be treated as end users of spare parts for the purposes of the motor vehicle Block Exemption Regulation.[20] If a vehicle supplier were to prevent its selective distributors from selling to such repairers when these use the services of agents, this would be an anticompetitive restriction on passive sales.

Agents are in principle to be treated as an extension of the contracting party. However, in order to be considered as an agent, the latter must have instructions to purchase a defined order and may not trade in parts that it has purchased from members of the selective distribution system. A vehicle supplier may legitimately instruct the members of such a system not to sell to firms that intend to resell the parts in question.

ELECTRONIC TOOLS

There are two categories of electronic diagnostic and repair tools on the markets: the brand-specific tools manufactured by a third party but marketed by the vehicle supplier, and other tools which are designed to repair several brands of vehicles. Questions have been asked in respect of both.

13. May the agreements between the vehicle supplier and the members of its authorised repair network stipulate that the latter must use specified electronic diagnostic or repair tools or equipment for vehicle repair, servicing and maintenance, even when equivalent tools or equipment are available from other sources?

Generally, yes. Such a restriction is unlikely to lead to a breach of EU competition rules.[21]

---

19 This would cause the agreements to fall within Article 101 TFEU. Under certain circumstances, if the parts in question were not available from authorised spare parts distributors, a failure to release such parts could amount to a breach of Article 102 TFEU.

20 Article 5(a) thereof. See footnote number 1, above.

21 The Supplementary Guidelines (see footnote number 2, above) give clarifications on the relationship between tool manufacturers and vehicle suppliers. See, in particular, paragraphs 23 and 24.

Economies of scale are likely to result if a vehicle manufacturer agrees with a tool manufacturer that the whole of its authorised repair network should use a common tool or tools. Common solutions to technical problems are also likely to be more easily found if a common tool is used. Furthermore, training may be facilitated if a common tool is used by all technicians. In most circumstances, specifying that an authorised repairer must have access to a particular tool is therefore likely to be an acceptable qualitative criterion.[22]

14. Does the guidance on access to technical information set out in the Supplementary Guidelines also apply to tool manufacturers that wish to have access to such information in order to produce multi-brand repair tools?

No. When considering whether the withholding of technical information is likely to breach the EU competition rules, the Supplementary Guidelines make a distinction between technical information that will ultimately be used for the purpose of repair and maintenance of motor vehicles, as opposed to technical information used for another purpose, such as the manufacturing of tools.[23]

As regards access to technical information and tools for independent repairers, the Supplementary Guidelines aim to prevent vehicle manufacturers from discriminating between their authorised repairers and independent repairers as regards the provision of essential inputs that are entirely under the vehicle manufacturer's control and that are not available from other sources.[24] The objective of the Supplementary Guidelines is thus to ensure that independent repairers have access to the brand-specific repair tools on the same terms as members of the authorised networks.

The agreements between the vehicle manufacturer and the tool manufacturer fall under the general EU competition rules and should be assessed accordingly.[25]

ACCESS TO TECHNICAL INFORMATION

Despite the extensive clarifications given in the Supplementary Guidelines on this topic,[26] both the Commission and National Competition Authorities have been asked questions relating to safety and security, to pricing, and to the specific issue of vehicle service histories.

15. May a vehicle manufacturer refuse to grant access to technical information to independent operators for safety or security reasons?

---

22 Therefore, this restriction will not lead the agreements between manufacturer and repairer to be caught by Article 101(1) TFEU.

23 See paragraph 65, in particular 65 (d) of the Supplementary Guidelines; see footnote number 2, above.

24 In this case, the authorised repair agreements fall within the scope of Article 101 TFEU.

25 The vehicle supplier and the tool manufacturer should thus assess their agreements under Articles 101 and 102 TFEU and more in particular under Commission Regulation (EU) No 330/2010 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 and under the Guidelines on Vertical Restraints, see footnote 9 above.

26 See, in particular, paragraphs 62 ff. of the Supplementary Guidelines. See footnote number 2, above.

Assuming that a vehicle manufacturer is likely to be the only source for the full range of technical information relating to vehicles of its brands (and its agreements concerning the supply of such information thus cannot benefit from the safe harbour created by the motor vehicle Block Exemption Regulation), the answer is generally, no. In such a case involving a (near) monopoly position, flat refusals to grant technical information for supposed reasons of security or safety will usually not be compatible with EU competition rules.

Vehicle manufacturers are in principle required to release technical information, for which they are the only source, to independent operators. Only exceptionally may a failure to provide such information be justified for safety or security reasons.[27] Factors to consider in individual cases include the following.

The scope of the information involved

Independent garages are generally familiar with systems with safety implications, including tyres, steering, brakes and shock absorbers, and indeed have historically worked on them without demonstrable negative consequences for safety. Imposing restrictions that affect the provision of parts for such systems on the grounds that they are safety-related would be unlikely to be deemed as justified.[28]

The availability of less-restrictive forms of protection

Safety: Where there is a need to restrict access to a safety-related part with which independent repairers are likely to be unfamiliar, such as a high-voltage electrical system that is specific to a particular model, or a technique for replacing carbon composite body panels, the vehicle manufacturer should adopt the least-restrictive means of achieving the desired result. One example might be to require independent repairers to attend training on the particular system or technique. Where the vehicle manufacturer or an undertaking acting on its behalf provides such training, the independent repairer should not be required to follow more training than it needs to work on the system or master the technique in respect of which the exception is invoked.

Security: As regards security-related information, a criminal records check can often be seen as an appropriate, less restrictive means of ensuring protection.

16. May a vehicle manufacturer grant discounts or refunds on technical information if an authorised repairer buys a certain volume of vehicle-manufacturer branded spare parts or tools?

This issue is not dealt with by the Block Exemption Regulation or the Supplementary Guidelines. Under certain circumstances, this conduct might constitute an abuse of a dominant position and thus lead to a breach of EU competition rules.

---

27 As the Supplementary Guidelines explain, in general failures to release technical information may cause the agreements between vehicle suppliers and their authorised repairers to be caught by Article 101 TFEU. See, in particular, paragraph 63 of the Supplementary Guidelines, see footnote number 2, above. However, in certain circumstances, vehicle suppliers may come to the conclusion that even if certain information is withheld, their agreements may benefit from the exception in Article 101(3) TFEU. However, this is unlikely in the situation of a (near) monopoly position.

28 These practices are therefore unlikely to benefit from the exception set out in Article 101(3) TFEU.

The vehicle manufacturer is likely to be the only source for the full range of technical information relating to vehicles of its brands. Granting discounts or refunds on technical information on condition that a repairer buys a certain volume of its own brand of parts or tools might imply that the vehicle manufacturer is leveraging a dominant position on one market to abusively gain advantage on the other.[29]

17. Can an independent repairer be prevented from accessing or updating a printed or electronic record of the vehicle's service history?

No, in so far as a vehicle supplier and/or its authorised repairers are likely to be the only source for a comprehensive record relating to vehicles of its brands. Any such refusal to grant access to the service record would be likely to cause the agreements between the vehicle supplier and its authorised repairers to breach EU competition rules.

Existing service and repair records, in whatever form, are to be treated as technical information for the purposes of applying the Supplementary Guidelines. Access to such records will generally be necessary to enable the repairer to tell what operations need to be carried out in order to bring the servicing schedule up to date.

An incomplete service and repair record would be likely to reduce the residual value of the vehicle and make it difficult to prove that warranty terms had been complied with. If independent repairers could not update such records, this would likely deter consumers from using independent repairers, and would foreclose such operators from a substantial part of the market.

ACCESS TO AUTHORISED NETWORKS

The Supplementary Guidelines set out the principle that, outside the safe harbour created by the motor vehicle Block Exemption Regulation[30], authorised repair networks should generally be open to all firms that meet the relevant qualitative criteria.[31] Nonetheless, a question has arisen as to whether certain access conditions are to be considered as not qualitative in nature (and thus would be deemed as constituting quantitative criteria).[32]

18. May a vehicle supplier refuse access to its authorised repair network on the grounds that the repairer in question is already authorised to repair vehicles of a brand of a competing vehicle supplier?

---

29 General guidance on the application of Article 102 TFEU can be found in the Commission Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings. See footnote number 15, above.

30 In most cases, authorised repair networks of car manufacturers are likely to exceed the 30% market share threshold in the relevant market(s).

31 See, in particular, paragraph 70 and 71 of the Supplementary Guidelines. See footnote number 2, above.

32 Selective distribution agreements are block exempted as long as the parties' market share is below 30%, subject to the conditions defined in the Regulation, see Paragraph 46 of the Supplementary Guidelines. See footnote number 2, above. Moreover, distribution agreements based on purely qualitative criteria are not caught by Article 101, irrespectively of the parties' market share. See Paragraph 43 of the Supplementary Guidelines (see footnote number 2, above).

Where it concerns agreements outside the safe harbour created by the motor vehicle Block Exemption Regulation, the answer is generally, no. This would be likely to lead the agreements in question to breach EU competition rules.

In the vast majority of cases, vehicle suppliers use qualitative criteria in order to select their authorised repairers.[33] The question therefore arises as to whether a requirement not to be authorised to repair vehicles of another supplier's brands is a valid qualitative requirement. To determine this, one needs to examine whether or not this requirement is objective and required by the nature of the service. There is normally nothing in the nature of repair services for one brand that requires them to be carried out exclusively by firms that are not authorised to repair vehicles of other brands. Such an obligation therefore normally amounts to a non-qualitative criterion that may restrict competition on the relevant market, namely the market for repair and maintenance services of the concerned brand.

[33] As explained in footnote number 32, above, qualitative selective distribution agreements are in principle not caught by Article 101 TFEU.