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European Commission
Directorate-General for Competition
Antitrust Registry
Ref.: HT.1021
1049 Brussels
BELGIUM

Ref.: HT 1021 – stakeholder input

CLEPA's input on the review of the competition rules applicable to the motor vehicle sector. (Commission Regulation 1400/2002)

Dear Mr. Cesarini,

CLEPA welcomes the proposals from the Commission, which show that DG Competition has a good understanding for the automotive aftermarket. CLEPA is of the opinion that with the proposed combination of the Mini BER and sector guidelines, the current balanced and competitive situation with the 3 participants Car Manufacturers (OEM), Suppliers (OES) and Independent Operators (IO) can be ensured for the future.

From CLEPA's point of view some smaller but nevertheless important corrections are needed. These corrections concern: Definitions, Repair and Maintenance Information (RMI) and Subcontracting. We have made a summary of those corrections hereunder.

I. Summary of CLEPA Key Issues

1. Draft Commission Regulation, Article 1 -Definitions:

Add the definition for IO (Independent Operator) and for RMI (Repair and Maintenance Information) from EC Regulation 715/ 2007 Article 3 (14 and 15):

14. 'vehicle Repair and Maintenance Information' means all information required for diagnosis, servicing, inspection, periodic monitoring, repair, re-programming or re-initialising of the vehicle and which the manufacturers provide for their authorised dealers and repairers, including all subsequent amendments and supplements to such information. This information includes all information required for fitting parts or equipment on vehicles;
15. 'Independent Operator' means undertakings other than authorised dealers and repairers which are directly or indirectly involved in the repair and maintenance of motor vehicles, in particular repairers, manufacturers or distributors of repair equipment, tools or spare parts, publishers of technical

information, automobile clubs, roadside assistance operators, operators offering inspection and testing services, operators offering training for installers, manufacturers and repairers of equipment for alternative fuel vehicles;

2. Draft Commission Notice -- Consistency in guidelines

Utilize in all relevant articles the word “IO” instead of independent repairers and / or parts distributors (e.g. article 52, 53, 54) according to the definition.

Replace “technical information” consistently by “Repair and Maintenance Information (RMI)”, according to the definition.

3. Article (55), RMI, factors to be considered (bullet points)

Bullet point No 3 should be No 1, which is the most important point, and bullet point No 4 should be deleted: The reason for this is due to the loophole, which may be used to define the meaning of “technical and commercial information”. At least a clearer explanation is necessary.

The bullet points should not be accumulative.

4. Article (56)

Add in line 5 “Vehicle and parts identification methods. The reason is the link between vehicle and parts, which is needed for parts identification.

5. Article (22) Subcontracting

CLEPA welcomes the remarks from the Commission to add some guidelines in order to avoid abuse of subcontracting. However to make it effective, CLEPA proposes some changes.

Commission’s proposal:

.....An arrangement whereby a vehicle manufacturer provides the tool to a component manufacturer for the production of certain components, shares in its project development costs, or contributes IPR’s and know-how....

“On the other hand, if a vehicle manufacturer obliges the component supplier to transfer its ownership or intellectual property rights in such a tool, or bears only an insignificant part of the project development costs or does not contribute any essential

IPR or know how, this will not be considered to be a genuine sub-contracting arrangement and will be subject to the provisions of the block exemption regulations.”

CLEPA’s proposal: (changes in bold and red)

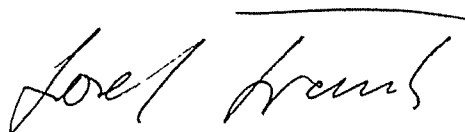
.....An arrangement whereby a vehicle manufacturer provides the tool to a component manufacturer for the production of certain components, shares in its project development costs, or contributes essential IPR’s and know-how....

Reason: For any product development an OEM in order to adapt a component to his car always provides at least in the specifications for the interfaces some information to the supplier which the OEMs often interpret as Know-how and thus IPR. Therefore we suggest adding: “essential”

.... “On the other hand, if a vehicle manufacturer obliges the component supplier to transfer its ownership in such a tool or intellectual property rights, or if the supplier bears a significant part of the product development costs or contributes any essential IPR or know how, this will not be considered to be a genuine sub-contracting arrangement and will be subject to the provisions of the block exemption regulations.”

Reasoning: the first part is clear; however “in such a tool” has to be placed after “ownership” in order to protect the rights for “IPR” itself. For the middle part and the last part, CLEPA proposes, a change in a positive statement from the supplier’s perspective and to replace “project-“by “product development”, in order to capture the whole process.

With best regards, on behalf of all CLEPA members,



Josef Frank – Director Aftermarket