Warranties and work during the warranty period

Vehicle manufacturers **cannot make their warranties contingent** on the repair or servicing of a vehicle within their network, or on the use of their own branded spare parts.

According to the new rules in force since 1st June 2010, consumers should be able to use any repair shop for regular servicing or repair work, during both the statutory warranty period and any extended warranty period. The vehicle owners should be able to have their property maintained or repaired at a workshop of their choice without having to fear incurring disadvantages in the repair of manufacturing defects on the part of the vehicle manufacturer. Where this is not the case, vehicle manufacturers will be scrutinised by the competition authorities.

Of course, every operator is subject to statutory product and service liability. Thus, anyone who damages a vehicle as a result of negligent work or use of defective parts is responsible for it.

Recall actions, free servicing and warranty work

Any defect originating from the car manufacturing process must be corrected by the vehicle manufacturer. In such cases paid for by the manufacturer, i.e. recall actions or free servicing or warranty work etc., the works must be carried out where specified by the manufacturer. In these cases, the work by the repair centre is not paid for by the motor vehicle owner but by the vehicle manufacturer. The principle of «He, who pays the piper, calls the tune" applies accordingly. The manufacturer will also determine which parts are to be used.

Insurance policies and warranty contracts

In certain situations, limitations apply to the consumer's right to go to the workshop of its choice. These can follow from leasing or financing agreements. Exceptions may also apply for contracts for ancillary services signed separately from the contract for the purchase of the vehicle (e.g. specific insurances, breakdown covers).

The Right to Repair Campaign (R2RC) gathers a wide range of aftermarket stakeholders and motorist representatives having an interest in the promotion of a competitive regulatory environment for the automotive aftermarket.

It is supported by authorised and independent repairers, independent parts distributors, part suppliers, producers of diagnostic tool and garage equipment, trade groups, roadside rescuing operators and motorist clubs and is open to any who care about the future of the multi-brand automotive aftermarket, and its rightful claim for free consumer choice in a competitive after-sales market.

Initiated by **FIGIEFA**, the members of the Right to Repair Campaign are **AIRC**, **CECRA**, **EGEA**, **FIA**, **FIGIEFA** and **FIRM.**

RIGHT TO REPAIR

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RIGHT TO REPAIR

The **new competition law framework** for the automotive aftermarket

Opportunities for the trade in spare parts

From “Motor Vehicle BER” to “Aftermarket BER”

A new competition law framework for the automotive sector entered into force on 1 June 2010. It replaces the former Block Exemption Regulation (EC) No. 1400/2002. The new set of rules is composed of an “Aftermarket” Block Exemption[1] and a “General” Block Exemption Regulation[2]. Whereas the previous Motor Vehicle BER 1400/2002 also included provisions on new vehicle sales, the new «Aftermarket BER» relates exclusively to the markets for servicing, repair and spare parts.

These new Block Exemption Regulations are accompanied by sector-specific Guidelines. All together these instruments aim to secure the foundations for effective competition in the automotive aftermarket to the benefit of consumers. To this end, it also protects the essentials of aftermarket operators in the parts distribution and repair sector.

These essentials include:

1. Access for independent operators to repair and maintenance information, tools and training provided by the vehicle manufacturer.
2. Access for multi-brand repairers to all vehicle manufacturers’ spare parts.
3. The possibility for the members of the vehicle manufacturers’ authorised network to source quality parts and tools from independent distributors.
4. The possibility for spare parts manufacturers to supply their products directly to the aftermarket and to also affix their trademark to the parts they supply to the vehicle manufacturers (double branding).
5. The definition of the term “original spare parts” on the basis of the quality of the parts and not the origin of the spare parts.
6. The definition of the term “spare parts of matching quality”

Many provisions from the former “Motor Vehicle BER” were transferred to the new «Aftermarket BER» while other rules were refined. The following outline intends to give an overview of the provisions relevant to the motor vehicle spare parts trade.

1. Commission Regulation (EU) 461/2010 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

2. Commission Regulation (EU) No 330/2010 of 20 April 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

Purchasing Spare Parts

One of the objectives of the new legal framework is to enhance competition in the markets for spare parts. This should be achieved by allowing parts manufacturers to sell their products directly to the aftermarket.

In more details, a vehicle manufacturer (OEM) may only prevent an original equipment supplier (OES) from supplying its products to the aftermarket if the OES depends on essential input from the OEM, especially where the OES is an “extended workbench”. This is a rare exception in the automotive sector though, as the most OES have sufficient know-how of their own. Where they do not depend on essential input from the vehicle manufacturer, they are much more than an “extended workbench”, and should normally be allowed to sell directly to the aftermarket. Exceptions may apply where the vehicle manufacturer provided tools, or paid for all tools up front. While each case will need to be assessed under the new competition law framework, the OES should feel encouraged to seize the new opportunities for aftermarket access.

Furthermore, the “Aftermarket BER” confirms the right (not the obligation) of the authorised repairers to supply spare parts to independent repairers. In this way, the legislator seeks to secure access at repair level to the monopolised parts of vehicle manufacturers (the so-called captive parts).

As for the access for parts distributors to OEM parts, vehicle manufacturers should offer authorised parts distribution contracts to independent spare parts wholesalers. This would also foster competition in the spare parts and repair business.

There are no significant changes to service contracts proposed by vehicle manufacturers: Whoever meets the OEM’s quality requirements may not be refused a service contract. The principle of equal treatment applies.

Furthermore, in the case where a repairer meets the standards of several networks, it can be appointed as an authorised repairer by several OEMs, or become a member of both OEM and IAM networks.

Selling Spare Parts and Technical Information

The independent aftermarket can still sell spare parts to the vehicle manufacturer’s authorised repairers. Parts sold to authorised repairers will need to be of at least the equivalent quality as the parts marketed by the vehicle manufacturer. The vehicle manufacturer may oblige its service organisations to only use spare parts which “do not harm his reputation” (“**matching quality spare parts**”) or which are manufactured in accordance with the specifications and manufacturing standards which the OEM prescribes for the assembly of the relevant vehicle (“**original spare parts**”). While the vehicle manufacturer can insist on the use of quality parts, it cannot impose significant minimum sourcing obligations on the authorised repairer.

Only where the vehicle manufacturer pays for a job undertaken by the authorised repairer, it can insist on the use of parts supplied by it. For example, the authorised repairer may be obliged to use OEM parts in the context of recall actions.

Where IAM parts distributors use the term “original spare part” in their marketing campaigns they need to respect the laws on proper advertisement. In order not to mislead their customers, they should avoid creating the impression that an IAM part is the product of a vehicle manufacturer.

Technical Information

The vehicle manufacturers must grant spare parts distributors access to technical information, tools and training required for the repair or maintenance of motor vehicles. This also includes information required by the spare parts distributors to clearly identify suitable components for a specific vehicle.

Distribution contracts in the IAM

As in all distribution contracts, the limits of competition law must also be observed in contracts between an independent parts wholesaler and its associated repair outlets. For example, this holds true in respect of non-binding recommended resale prices.

As independent spare parts wholesalers do not, in most cases, exceed the market share threshold of 30 percent, distribution contracts with minimum sourcing volumes for spare parts are lawful, provided that the term of the contract does not exceed five years. With a contract term of more than five years, an agreed minimum purchase requirement of up to 80 percent is allowed.