

**COMMISSION REGULATION (EC) No 1475/95****of 28 June 1995****on the application of Article 85 (3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

A list of definitions for the purpose of this Regulation is set out in Article 10.

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 19/65/EEC of 2 March 1965 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices<sup>(1)</sup>, as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 1 thereof,

- (2) Notwithstanding that the obligations listed in Articles 1, 2 and 3 normally have as their object or effect the prevention, restriction or distortion of competition within the common market and are normally liable to affect trade between Member States, the prohibition in Article 85 (1) of the Treaty may nevertheless be declared inapplicable to these agreements by virtue of Article 85 (3), albeit only under certain restrictive conditions.

Having published a draft of this Regulation<sup>(2)</sup>,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

- (3) The applicability of Article 85 (1) of the Treaty to distribution and servicing agreements in the motor vehicle industry stems in particular from the fact that the restrictions on competition and obligations agreed within the framework of a manufacturer's distribution system, and listed in Articles 1 to 4 of this Regulation, are generally imposed in the same or similar form throughout the common market. The motor vehicle manufacturers cover the whole common market or substantial parts of it by means of a cluster of agreements involving similar restrictions on competition and affect in this way not only distribution and servicing within Member States but also trade between them.

Whereas :

- (1) Under Regulation No 19/65/EEC the Commission is empowered to declare by means of a Regulation that Article 85 (3) of the Treaty applies to certain categories of agreements falling within Article 85 (1) to which only two undertakings are party and by which one party agrees with the other to supply only to that other certain goods for resale within a defined area of the common market. The experience gained in dealing with many motor vehicle distribution and servicing agreements allows a category of agreement to be defined which can generally be regarded as satisfying the conditions laid down in Article 85 (3). These are agreements, for a definite or an indefinite period, by which the supplying party entrusts to the reselling party the task of promoting the distribution and servicing of certain products of the motor vehicle industry in a defined area and by which the supplier undertakes to supply contract goods for resale only to the dealer, or only to a limited number of undertakings within the distribution network besides the dealer, within the contract territory.

- (4) The exclusive and selective distribution clauses can be regarded as indispensable measures of rationalization in the motor vehicle industry, because motor vehicles are consumer durables which at both regular and irregular intervals require expert maintenance and repair, not always in the same place. Motor vehicle manufacturers cooperate with the selected dealers and repairers in order to provide specialized servicing for the product. On grounds of capacity and efficiency alone, such a form of cooperation cannot be extended to an unlimited number of dealers and repairers. The linking of servicing and distribution must be regarded as more efficient than a separation between a distribution organization for new vehicles on the one hand and a servicing organization which would also

<sup>(1)</sup> OJ No 36, 6. 3. 1965, p. 533/65.

<sup>(2)</sup> OJ No C 379, 31. 12. 1994, p. 16.

distribute spare parts on the other, particularly as, before a new vehicle is delivered to the final consumer, the undertaking within the distribution system must give it a technical inspection according to the manufacturer's specification.

- (5) However, obligatory recourse to the authorized network is not in all respects indispensable for efficient distribution. It should therefore be provided that the supply of contract goods to resellers may not be prohibited where they :

— belong to the same distribution system (Article 3 (10) (a)), or

— purchase spare parts for their own use in effecting repairs or maintenance (Article 3 (10) (b)).

Measures taken by a manufacturer or by undertakings within the distribution system with the object of protecting the selective distribution system are compatible with the exemption under this Regulation. This applies in particular to a dealer's obligation to sell vehicles to a final consumer using the services of an intermediary only where that consumer has authorized that intermediary to act as his agent (Article 3 (11)).

- (6) It should be possible to prevent wholesalers not belonging to the distribution system from reselling parts originating from motor vehicle manufacturers. It may be supposed that the system, beneficial to the consumer, whereby spare parts are readily available across the whole contract range, including those parts with a low turnover, could not be maintained without obligatory recourse to the authorized network.

- (7) The ban on dealing in competing products may be exempted on condition that it does not inhibit the dealer from distributing vehicles of other makes in a manner which avoids all confusion between makes (Article 3 (3)). The obligation to refrain from selling products of other manufacturers other than in separate sales premises, under separate management, linked to the general obligation to avoid confusion between different makes, guarantees exclusivity of distribution for each make in each place of sale. This last obligation has to be implemented in good faith by the dealer so that the promotion, sale and after-sales service cannot, in any manner, cause confusion in the eyes of the consumer or result in unfair practices on the part of the dealer with regard to suppliers of competing makes. In order to maintain the competitiveness of competing products, the separate management of different sales premises has to be carried out by

distinct legal entities. Such an obligation provides an incentive for the dealer to develop sales and servicing of contract goods and thus promotes competition in the supply of those products and competing products. These provisions do not prevent the dealer from offering and providing maintenance and repair services for competing makes of motor vehicle in the same workshop, subject to the option of obliging the dealer not to allow third parties to benefit unduly from investments made by the supplier (Article 3 (4)).

- (8) However, bans on dealing in competing products cannot be regarded in all circumstances as indispensable to efficient distribution. Dealers must be free to obtain from third parties supplies of parts which match the quality of those offered by the manufacturer, and to use and sell them. In this regard, it can be presumed that all parts coming from the same source of production are identical in characteristics and origin ; it is for spare-part manufacturers offering parts to dealers to confirm, if need be, that such parts correspond to those supplied to the manufacturer of the vehicle. Moreover, dealers must retain their freedom to choose parts which are usable in motor vehicles within the contract range and which match or exceed the quality standard. Such a limit on the ban on dealing in competing products takes account of both the importance of vehicle safety and the maintenance of effective competition (Article 3 (5) and Article 4 (1) (6) and (7)).

- (9) The restrictions imposed on the dealer's activities outside the allotted area lead to more intensive distribution and servicing efforts in an easily supervised contract territory, to knowledge of the market based on closer contact with consumers, and to more demand-orientated supply (Article 3 (8) and (9)). However, demand for contract goods must remain flexible and should not be limited on a regional basis. Dealers must not be confined to satisfying the demand for contract goods within their contract territories, but must also be able to meet demand from persons and undertakings in other areas of the common market. Advertising by dealers in a medium which is directed at customers outside the contract territory should not be prevented, because it does not run counter to the obligation to promote sales within the contract territory. The acceptable means of advertising do not include direct personal contact with the customer, whether by telephone or other form of telecommunication, doorstep canvassing or by individual letter.

- (10) So as to give firms greater legal certainty, certain obligations imposed on the dealer that do not stand in the way of exemption should be specified regarding the observation of minimum distribution and servicing standards (Article 4 (1) (1)), regularity of orders (Article 4 (1) (2)), the achievement of quantitative sales or stock targets agreed by the parties or determined by an expert third party in the event of disagreement (Article 4 (1) (3) to (5)) and the arrangements made for after-sales service (Article 4 (1) (6) to (9)). Such obligations are directly related to the obligations in Articles 1, 2 and 3 and influence their restrictive effect. They may therefore be exempted, for the same reasons as the latter, where they fall in individual cases under the prohibition contained in Article 85 (1) of the Treaty (Article 4 (2)).
- (11) Pursuant to Regulation No 19/65/EEC, the conditions which must be satisfied if the declaration of inapplicability is to take effect must be specified.
- (12) Under Article 5 (1) (1) (a) and (b) it is a condition of exemption that the undertaking should honour the guarantee and provide free servicing, vehicle recall work, and repair and maintenance services necessary for the safe and reliable functioning of the vehicle, irrespective of where in the common market the vehicle was purchased. These provisions are intended to prevent limitation of the consumer's freedom to buy anywhere in the common market.
- (13) Article 5 (1) (2) (a) is intended to allow the manufacturer to build up a coordinated distribution system, but without hindering the relationship of confidence between dealers and sub-dealers. Accordingly, if the supplier reserves the right to approve appointments of sub-dealers by the dealer, he must not be allowed to withhold such approval arbitrarily.
- (14) Article 5 (1) (2) (b) requires the supplier not to impose on a dealer within the distribution system any requirements, as defined in Article 4 (1), which are discriminatory or inequitable.
- (15) Article 5 (1) (2) (c) is intended to counter the concentration of the dealer's demand on the supplier which might follow from cumulation of discounts. The purpose of this provision is to allow spare-parts suppliers which do not offer as wide a range of goods as the manufacturer to compete on equal terms.
- (16) Article 5 (1) (2) (d) makes exemption subject to the condition that the dealer must be able to purchase for customers in the common market volume-produced passenger cars with the technical features appropriate to their place of residence or to the place where the vehicle is to be registered, in so far as the corresponding model is also supplied by the manufacturer through undertakings within the distribution system in that place (Article 10 (10)). This provision obviates the danger that the manufacturer and undertakings within the distribution network might make use of product differentiation as between parts of the common market to partition the market.
- (17) Article 5 (2) makes the exemption dependent on other minimum conditions which aim to prevent the dealer, owing to the obligations which are imposed upon him, from becoming economically over-dependent on the supplier and from abandoning the competitive activity which is nominally open to him because to pursue it would be against the interests of the manufacturer or other undertakings within the distribution network.
- (18) Under Article 5 (2) (1), the dealer may, for objectively justified reasons, oppose the application of excessive obligations covered by Article 3 (3).
- (19) Article 5 (2) (2) and (3) and Article 5 (3) lay down minimum requirements for exemption concerning the duration and termination of the distribution and servicing agreement, because the combined effect of the investments the dealer makes in order to improve the distribution and servicing of contract goods and a short-term agreement or one terminable at short notice is greatly to increase the dealer's dependence on the supplier. In order to avoid obstructing the development of flexible and efficient distribution structures, however, the supplier should be entitled to terminate the agreement where there is a need to reorganize all or a substantial part of the network. To allow rapid settlement of any disputes, provision should be made for reference to an expert third party or arbitrator who will decide in the event of disagreement, without prejudice to the parties' right to bring the matter before a competent court in conformity with the relevant provisions of national law.

- (20) Pursuant to Regulation No 19/65/EEC, the restrictions or provisions which must not be contained in the agreements, if the declaration of inapplicability of Article 85 (1) of the Treaty under this Regulation is to take effect, are to be specified (Article 6 (1), (1) to (5)). Moreover, practices of the parties which lead to automatic loss of the benefit of exemption when committed systematically and repeatedly shall be defined (Article 6 (1) (6) to (12)).
- (21) Agreements under which one motor vehicle manufacturer entrusts the distribution of his products to another must be excluded from the block exemption, because of their far-reaching impact on competition (Article 6 (1), (1)).
- (22) In order to ensure that the parties remain within the limits of the Regulation, any agreements whose object goes beyond the products or services referred to in Article 1 or which stipulate restrictions of competition not exempted by this Regulation should also be excluded from the exemption (Article 6 (1) (2) and (3)).
- (23) The exemption similarly does not apply where the parties agree between themselves obligations concerning goods covered by this Regulation which would be acceptable in the combination of obligations which is exempted by Commission Regulation (EEC) No 1983/83 <sup>(1)</sup> or (EEC) No 1984/83 <sup>(2)</sup>, as last amended by the Act of Accession of Austria, Finland and Sweden, regarding the application of Article 85 (3) of the Treaty to categories of exclusive distribution agreements and exclusive purchasing agreements respectively, but which go beyond the scope of the obligations exempted by this Regulation (Article 6 (1) (4)).
- (24) In order to protect dealers' investments and prevent any circumvention by suppliers of the rules governing the termination of agreements, it should be confirmed that the exemption does not apply where the supplier reserves the right to amend unilaterally during the period covered by the contract the terms of the exclusive territorial dealership granted to the dealer (Article 6 (1) (5)).
- (25) In order to maintain effective competition at the distribution stage, it is necessary to provide that the manufacturer or supplier will lose the benefit of exemption where he restricts the dealer's freedom to develop his own policy on resale prices (Article 6 (1) (6)).
- (26) The principle of a single market requires that consumers shall be able to purchase motor vehicles wherever in the Community prices or terms are most favourable and even to resell them, provided that the resale is not effected for commercial purposes. The benefits of this Regulation cannot therefore be accorded to manufacturers or suppliers who impede parallel imports or exports through measures taken in respect of consumers, authorized intermediaries or undertakings within the network (Article 6 (1) (7) and (8)).
- (27) So as to ensure, in the interest of consumers, effective competition on the maintenance and repair markets, the exemption must also be withheld from manufacturers or suppliers who impede independent spare-part producers' and distributors' access to the markets or restrict the freedom of resellers or repairers, whether or not they belong to the network, to purchase and use such spare parts where they match the quality of the original spare parts. The dealer's right to procure spare parts with matching quality from external undertakings of his choice and the corresponding right for those undertakings to furnish spare parts to resellers of their choice, as well as their freedom to affix their trade mark or logo, are provided for subject to compliance with the industrial property rights applicable to those spare parts (Article 6 (1) (9) to (11)).
- (28) In order to give final consumers genuine opportunities of choice as between repairers belonging to the network and independent repairers, it is appropriate to impose upon manufacturers the obligation to give to repairers outside the network the technical information necessary for the repair and maintenance of their makes of car, whilst taking into account the legitimate interest of the manufacturer to decide itself the mode of exploitation of its intellectual property rights as well as its identified, substantial, secret know-how when granting licences to third parties. However, these rights must be exercised in a manner which avoids all discrimination or other abuse (Article 6 (1) (12)).
- (29) For reasons of clarity, the legal effects arising from inapplicability of the exemption in the various situations referred to in the Regulation should be defined (Article 6 (2) and (3)).

<sup>(1)</sup> OJ No L 173, 30. 6. 1983, p. 1.

<sup>(2)</sup> OJ No L 173, 30. 6. 1983, p. 5.

- (30) Distribution and servicing agreements can be exempted, subject to the conditions laid down in Articles 5 and 6, so long as the application of obligations covered by Articles 1 to 4 brings about an improvement in distribution and servicing to the benefit of the consumer and effective competition exists, not only between manufacturers' distribution systems but also to a certain extent within each system within the common market. As regards the categories of products set out in Article 1, the conditions necessary for effective competition, including competition in trade between Member States, may be taken to exist at present, so that European consumers may be considered in general to take an equitable share in the benefit from the operation of such competition.
- (31) Since the provisions of Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85 (3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements<sup>(1)</sup>, as last amended by the Act of Accession of Austria, Finland and Sweden, are applicable until 30 June 1995, provision should be made for transitional arrangements in respect of agreements still running on that date which satisfy the exemption conditions laid down by that Regulation (Article 7). The Commission's powers to withdraw the benefit of exemption or to alter its scope in a particular case should be spelled out and several important categories of cases should be listed by way of example (Article 8). Where the Commission makes use of its power of withdrawal, as provided for in Article 8 (2), it should take into account any price differentials which do not principally result from the imposition of national fiscal measures or currency fluctuations between the Member States (Article 8).
- (32) In accordance with Regulation No 19/65/EEC, the exemption must be defined for a limited period. A period of seven years is appropriate for taking account of the specific characteristics of the motor vehicle sector and the foreseeable changes in competition in that sector. However, the Commission will regularly appraise the application of the Regulation by drawing up a report by 31 December 2000 (Articles 11 and 13).
- (33) Agreements which fulfil the conditions set out in this Regulation need not be notified. However, in the case of doubt undertakings are free to notify their agreements to the Commission in accordance with Council Regulation No 17<sup>(2)</sup>, as last amended by the Act of Accession of Austria, Finland and Sweden.
- (34) The sector-specific character of the exemption by category for motor vehicles broadly rules out any regulations containing general exemptions by category as regards distribution. Such exclusion should be confirmed in respect of Commission Regulation (EEC) No 4087/88 of 30 November 1988 concerning the application of Article 85 (3) of the Treaty to categories of franchise agreements<sup>(3)</sup>, as last amended by the Act of Accession of Austria, Finland and Sweden, without prejudice to the right of undertakings to seek an individual exemption under Regulation No 17. On the other hand, as regards Regulations (EEC) No 1983/83 and (EEC) No 1984/83, which make provision for a more narrowly drawn framework of exemptions for undertakings, it is possible to allow them to choose. As for Commission Regulations (EEC) No 417/85<sup>(4)</sup> and (EEC) No 418/85<sup>(5)</sup>, as last amended by the Act of Accession of Austria, Finland and Sweden, which relate to the application of Article 85 (3) of the Treaty to categories of specialization agreements and to categories of research and development agreements, respectively, but whose emphasis is not on distribution, their applicability is not called in question (Article 12).
- (35) This Regulation is without prejudice to the application of Article 86 of the Treaty,

HAS ADOPTED THIS REGULATION :

#### *Article 1*

Pursuant to Article 85 (3) of the Treaty it is hereby declared that subject to the conditions laid down in this Regulation Article 85 (1) shall not apply to agreements to which only two undertakings are party and in which one contracting party agrees to supply, within a defined territory of the common market

— only to the other party, or

— only to the other party and to a specified number of other undertakings within the distribution system,

for the purpose of resale, certain new motor vehicles intended for use on public roads and having three or more road wheels, together with spare parts therefor.

#### *Article 2*

The exemption shall also apply where the obligation referred to in Article 1 is combined with an obligation on the supplier neither to sell contract goods to final consumers nor to provide them with servicing for contract goods in the contract territory.

<sup>(1)</sup> OJ No L 15, 18. 1. 1985, p. 16.

<sup>(2)</sup> OJ No 13, 21. 2. 1962, p. 204/62.

<sup>(3)</sup> OJ No L 359, 28. 12. 1988, p. 46.

<sup>(4)</sup> OJ No L 53, 22. 2. 1985, p. 1.

<sup>(5)</sup> OJ No L 53, 22. 2. 1985, p. 5.

*Article 3*

The exemption shall also apply where the obligation referred to in Article 1 is combined with an obligation on the dealer :

1. not, without the supplier's consent, to modify contract goods or corresponding goods, unless such modification has been ordered by a final consumer and concerns a particular motor vehicle within the range covered by the contract, purchased by that final consumer ;
2. not to manufacture products which compete with contract goods ;
3. not to sell new motor vehicles offered by persons other than the manufacturer except on separate sales premises, under separate management, in the form of a distinct legal entity and in a manner which avoids confusion between makes ;
4. not to permit a third party to benefit unduly, through any after-sales service performed in a common workshop, from investments made by a supplier, notably in equipment or the training of personnel ;
5. neither to sell spare parts which compete with contract goods without matching them in quality nor to use them for repair or maintenance of contract goods or corresponding goods ;
6. without the supplier's consent, neither to conclude distribution or servicing agreements with undertakings operating in the contract territory for contract goods or corresponding goods nor to alter or terminate such agreements ;
7. to impose upon undertakings with which the dealer has concluded agreements in accordance with point 6 obligations comparable to those which the dealer has accepted in relation to the supplier and which are covered by Articles 1 to 4 and are in conformity with Articles 5 and 6 ;
8. outside the contract territory :
  - (a) not to maintain branches or depots for the distribution of contract goods or corresponding goods,
  - (b) not to solicit customers for contract goods or corresponding goods, by personalized advertising ;
9. not to entrust third parties with the distribution or servicing of contract goods or corresponding goods outside the contract territory ;

## 10. not to supply to a reseller :

- (a) contract goods or corresponding goods unless the reseller is an undertaking within the distribution system, or
- (b) spare parts within the contract range unless the reseller uses them for the repair or maintenance of a motor vehicle ;

11. not to sell motor vehicles within the contract range or corresponding goods to final consumers using the services of an intermediary unless that intermediary has prior written authority from such consumers to purchase a specified motor vehicle or where it is taken away by him, to collect it.

*Article 4*

1. The exemption shall apply notwithstanding any obligation whereby the dealer undertakes to :

- (1) comply, in distribution, sales and after-sales servicing with minimum standards, regarding in particular ;
  - (a) the equipment of the business premises and the technical facilities for servicing ;
  - (b) the specialized, technical training of staff ;
  - (c) advertising ;
  - (d) the collection, storage and delivery of contract goods or corresponding goods and sales and after-sales servicing ;
  - (e) the repair and maintenance of contract goods and corresponding goods, particularly as regards the safe and reliable functioning of motor vehicles ;
- (2) order contract goods from the supplier only at certain times or within certain periods, provided that the interval between ordering dates does not exceed three months ;
- (3) endeavour to sell, within the contract territory and during a specified period, a minimum quantity of contract goods, determined by the parties by common agreement or, in the event of disagreement between the parties as to the minimum number of contractual goods to be sold annually, by an expert third party, account being taken in particular of sales previously achieved in the territory and of forecast sales for the territory and at national level ;

- (4) keep in stock such quantity of contract goods as may be determined in accordance with the procedure in (3);
- (5) keep such demonstration vehicles within the contract range, or such number thereof, as may be determined in accordance with the procedure in (3);
- (6) perform work under guarantee, free servicing and vehicle-recall work for contract goods and corresponding goods;
- (7) use only spare parts within the contract range or corresponding spare parts for work under guarantee, free servicing and vehicle-recall work in respect of contract goods or corresponding goods;
- (8) inform customers, in a general manner, of the extent to which spare parts from other sources might be used for the repair or maintenance of contract goods or corresponding goods;
- (9) inform customers whenever spare parts from other sources have been used for the repair or maintenance of contract goods or corresponding goods.

2. The exemption shall also apply to the obligations referred to in (1) above where such obligations fall in individual cases under the prohibition contained in Article 85 (1).

#### Article 5

1. In all cases, the exemption shall apply only if:

(1) the dealer undertakes:

(a) in respect of motor vehicles within the contract range or corresponding thereto which have been supplied in the common market by another undertaking within the distribution network:

— to honour guarantees and to perform free servicing and vehicle-recall work to an extent which corresponds to the dealer's obligation covered by Article 4 (1) (6),

— to carry out repair and maintenance work in accordance with Article 4 (1) (1) (e);

(b) to impose upon the undertakings operating within the contract territory with which the dealer has concluded distribution and servicing agreements as provided for in Article 3 (6) an obligation to honour guarantees and to perform free servicing and vehicle recall work at least to the extent to which the dealer himself is so obliged:

(2) the supplier:

(a) does not without objectively valid reasons withhold consent to conclude, alter or terminate sub-agreements referred to in Article 3 (6);

(b) does not apply, in relation to the dealer's obligations referred to in Article 4 (1), minimum requirements or criteria for estimates such that the dealer is subject to discrimination without objective reasons or is treated inequitably;

(c) distinguishes, in any scheme for aggregating quantities or values of goods obtained by the dealer from the supplier and from connected undertakings within a specified period for the purpose of calculating discounts, at least between supplies of

— motor vehicles within the contract range,

— spare parts within the contract range, for supplies of which the dealer is dependent on undertakings within the distribution network, and

— other goods;

(d) supplies to the dealer, for the purpose of performance of a contract of sale concluded between the dealer and a final customer in the common market, any passenger car which corresponds to a model within the contract range and which is marketed by the manufacturer or with the manufacturer's consent in the Member State in which the vehicle is to be registered.

2. Where the dealer has, in accordance with Article 4 (1), assumed obligations for the improvement of distribution and servicing structures, the exemption shall apply provided that:

(1) the supplier releases the dealer from the obligations referred to in Article 3 (3) where the dealer shows that there are objective reasons for doing so;

(2) the agreement is for a period of at least five years or, if for an indefinite period, the period of notice for regular termination of the agreement is at least two years for both parties; this period is reduced to at least one year where:

— the supplier is obliged by law or by special agreement to pay appropriate compensation on termination of the agreement, or

— the dealer is a new entrant to the distribution system and the period of the agreement, or the period of notice for regular termination of the agreement, is the first agreed by that dealer;

(3) each party undertakes to give the other at least six months' prior notice of intention not to renew an agreement concluded for a definite period.

3. The conditions for exemption laid down in (1) and (2) shall not affect;

— the right of the supplier to terminate the agreement subject to at least one year's notice in a case where it is necessary to reorganize the whole or a substantial part of the network,

— the right of one party to terminate the agreement for cause where the other party fails to perform one of its basic obligations.

In each case, the parties must, in the event of disagreement, accept a system for the quick resolution of the dispute, such as recourse to an expert third party or an arbitrator, without prejudice to the parties' right to apply to a competent court in conformity with the provisions of national law.

#### Article 6

1. The exemption shall not apply where:

(1) both parties to the agreement or their connected undertakings are motor vehicle manufacturers; or

(2) the parties link their agreement to stipulations concerning products or services other than those referred to in this Regulation or apply their agreement to such products or services; or

(3) in respect of motor vehicles having three or more road wheels, spare parts or services therefor, the parties agree restrictions of competition that are not expressly exempted by this Regulation; or

(4) in respect of motor vehicles having three or more road wheels or spare parts therefor, the parties make agreements or engage in concerted practices which are exempted from the prohibition in Article 85 (1) of the Treaty under Regulations (EEC) No 1983/83 or (EEC) No 1984/83 to an extent exceeding the scope of this Regulation; or

(5) the parties agree that the supplier reserves the right to conclude distribution and servicing agreements for contract goods with specified further undertakings operating within the contract territory, or to alter the contract territory; or

(6) the manufacturer, the supplier or another undertaking directly or indirectly restricts the dealer's freedom to determine prices and discounts in reselling contract goods or corresponding goods; or

(7) the manufacturer, the supplier or another undertaking within the network directly or indirectly restricts the freedom of final consumers, authorized intermediaries or dealers to obtain from an undertaking belonging to the network of their choice within the common market contract goods or corresponding goods or to obtain servicing for such goods, or the freedom of final consumers to resell the contract goods or corresponding goods, when the sale is not effected for commercial purposes; or

(8) the supplier, without any objective reason, grants dealers remunerations calculated on the basis of the place of destination of the motor vehicles resold or the place of residence of the purchaser; or

(9) the supplier directly or indirectly restricts the dealer's freedom under Article 3 (5) to obtain from a third undertaking of his choice spare parts which compete with contract goods and which match their quality; or

(10) the manufacturer directly or indirectly restricts the freedom of suppliers of spare-parts to supply such products to resellers of their choice, including those which are undertakings within the distribution system, provided that such parts match the quality of contract goods; or

(11) the manufacturer directly or indirectly restricts the freedom of spare-part manufacturers to place effectively and in an easily visible manner their trade mark or logo on parts supplied for the initial assembly or for the repair or maintenance of contract goods or corresponding goods; or

(12) the manufacturer refuses to make accessible, where appropriate upon payment, to repairers who are not undertakings within the distribution system, the technical information required for the repair or maintenance of the contractual or corresponding goods or for the implementing of environmental protection measures, provided that the information is not covered by an intellectual property right or does not constitute identified, substantial, secret know-how; in such case, the necessary technical information shall not be withheld improperly.

2. Without prejudice to the consequences for the other provisions of the agreement, in the cases specified in paragraph 1 (1) to (5), the inapplicability of the exemption shall apply to all the clauses restrictive of competition contained in the agreement concerned; in the cases specified in paragraph 1 (6) to (12), it shall apply only to the clauses restrictive of competition agreed respectively on behalf of the manufacturer, the supplier or another undertaking within the network which is engaged in the practice complained of.

3. Without prejudice to the consequences for the other provisions of the agreement, in the cases specified in paragraph 1 (6) to (12), the inapplicability of the exemption shall only apply to the clauses restrictive of competition agreed in favour of the manufacturer, the supplier or another undertaking within the network which appear in the distribution and servicing agreements concluded for a geographic area within the common market in which the objectionable practice distorts competition, and only for the duration of the practice complained of.

#### Article 7

The prohibition laid down in Article 85 (1) of the Treaty shall not apply during the period from 1 October 1995 to 30 September 1996 to agreements already in force on 1 October 1995 which satisfy the conditions for exemption provided for in Commission Regulation (EEC) No 123/85.

#### Article 8

The Commission may withdraw the benefit of the application of this Regulation, pursuant to Article 7 of Regulation No 19/65/EEC, where it finds that in an individual case an agreement which falls within the scope of this Regulation nevertheless has effects which are incompatible with the provisions of Article 85 (3) of the Treaty, and in particular:

- (1) where, in the common market or a substantial part thereof, contract goods or corresponding goods are not subject to competition from products considered by consumers as similar by reason of their characteristics, price and intended use;
- (2) where prices or conditions of supply for contract goods or for corresponding goods are continually being applied which differ substantially as between Member States, such substantial differences being chiefly due to obligations exempted by this Regulation;
- (3) where the manufacturer or an undertaking within the distribution system in supplying the distributors with contract goods or corresponding goods apply, unjustifiably, discriminatory prices or sales conditions.

#### Article 9

This Regulation shall apply *mutatis mutandis* to concerted practices falling within the categories covered by this Regulation.

#### Article 10

For the purposes of this Regulation the following terms shall have the following meanings:

1. 'distribution and servicing agreements' are framework agreements between two undertakings, for a definite or indefinite period, whereby the party supplying goods entrusts to the other the distribution and servicing of those goods;
2. 'parties', are the undertakings which are party to an agreement within the meaning of Article 1: 'the supplier' being the undertaking which supplies the contract goods, and 'the dealer' the undertaking entrusted by the supplier with the distribution and servicing of contract goods;
3. the 'contract territory' is the defined territory of the common market to which the obligation of exclusive supply in the meaning of Article 1 applies;
4. 'contract goods' are new motor vehicles intended for use on public roads and having three or more road wheels, and spare parts therefor, which are the subject of an agreement within the meaning of Article 1;
5. the 'contract range' refers to the totality of the contract goods;
6. 'spare parts' are parts which are to be installed in or upon a motor vehicle so as to replace components of that vehicle. They are to be distinguished from other parts and accessories, according to trade usage;
7. the 'manufacturer' is the undertaking:
  - (a) which manufactures or procures the manufacture of the motor vehicles in the contract range, or
  - (b) which is connected with an undertaking described at (a);
8. 'connected undertakings' are:
  - (a) undertakings one of which directly or indirectly:
    - holds more than half of the capital or business assets of the other, or
    - has the power to exercise more than half the voting rights in the other, or

- has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the other, or
  - has the right to manage the affairs of the other;
- (b) undertakings in relation to which a third undertaking is able directly or indirectly to exercise such rights or powers as are mentioned in (a) above.
9. 'undertakings within the distribution system' are, besides the parties to the agreement, the manufacturer and undertakings which are entrusted by the manufacturer or with the manufacturer's consent with the distribution of servicing of contract goods or corresponding goods;
10. a 'passenger car which corresponds to a model within the contract range' is a passenger car:
- manufactured or assembled in volume by the manufacturer, and
  - identical as to body style, drive-line, chassis, and type of motor with a passenger car within the contract range;
11. 'corresponding goods', 'corresponding motor vehicles' and 'corresponding parts' are those which are similar in kind to those in the contract range, are distributed by the manufacturer or with the manufacturer's consent, and are the subject of a distribution or servicing agreement with an undertaking within the distribution system;
12. 'resale' includes all transactions by which a physical or legal person — 'the reseller' — disposes of a motor vehicle which is still in a new condition and which he had previously acquired in his own name and on his own behalf, irrespective of the legal description

applied under civil law or the format of the transaction which effects such resale. The terms resale shall include all leasing contracts which provide for a transfer of ownership or an option to purchase prior to the expiry of the contract;

13. 'distribute' and 'sell' include other forms of supply by the dealer such as leasing.

#### *Article 11*

1. The Commission will evaluate on a regular basis the application of this Regulation, particularly as regards the impact of the exempted system of distribution on price differentials of contract goods between the different Member States and on the quality of service to final users.
2. The Commission will collate the opinions of associations and experts representing the various interested parties, particularly consumer organizations.
3. The Commission will draw up a report on the evaluation of this Regulation on or before 31 December 2000, particularly taking into account the criteria provided for in paragraph 1.

#### *Article 12*

Regulation (EEC) No 4087/88 is not applicable to agreements concerning the products or services referred to in this Regulation.

#### *Article 13*

This Regulation shall enter into force on 1 July 1995.

It shall apply from 1 October 1995 until 30 September 2002.

The provisions of Regulation (EEC) No 123/85 shall continue to apply until 30 September 1995.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28 June 1995.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*