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## I

*(Information)*

## COMMISSION

**Euro exchange rates <sup>(1)</sup>****15 March 2002**

(2002/C 67/01)

<b>1 euro</b>	=	7,4333	Danish krone
	=	9,133	Swedish krona
	=	0,6213	Pound sterling
	=	0,8853	United States dollar
	=	1,4098	Canadian dollar
	=	114,12	Japanese yen
	=	1,4617	Swiss franc
	=	7,7675	Norwegian krone
	=	88,43	Icelandic króna <sup>(2)</sup>
	=	1,6879	Australian dollar
	=	2,037	New Zealand dollar
	=	10,4022	South African rand <sup>(2)</sup>

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<sup>(1)</sup> Source: reference exchange rate published by the ECB.

<sup>(2)</sup> Source: Commission.

**Communication pursuant to Article 5 of Council Regulation No 19/65/EEC of 2 March 1965 on the application of Article 81(3) of the Treaty to categories of agreements and concerted practices**

(2002/C 67/02)

(Text with EEA relevance)

The Commission invites all interested parties to send their comments on the following draft Commission Regulation (EC) on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle industry. The draft Regulation is accompanied by an explanatory memorandum.

Comments should be sent to the Commission at the following address not later than one month after the date of the present publication:

European Commission  
Directorate-General for Competition  
Directorate F, Unit F2 — Motor vehicles and other means of transport  
B-1049 Brussels  
E-mail: comp-draft-car-ber@cec.eu.int

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**Draft**

**COMMISSION REGULATION (EC) No .../...**

**of [...]**

**on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle industry**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 Regulation (EC) No 1215/1999<sup>(2)</sup>, and in particular Article 1 thereof,

Having published a draft of this Regulation<sup>(3)</sup>,

Having consulted the Advisory Committee on restrictive practices and dominant positions,

Whereas:

- (1) Regulation No 19/65/EEC empowers the Commission to apply Article 81(3) of the Treaty (formerly Article 85(3)) by regulation to certain categories of vertical agreements and corresponding concerted practices falling within Article 81(1).
- (2) Experience acquired with distribution and after sales servicing agreements in the automobile industry makes it possible to define categories of vertical agreements

which can be regarded as normally satisfying the conditions laid down in Article 81(3).

- (3) Experience acquired with markets for the distribution of motor vehicles and markets for spare parts and repair and maintenance services for motor vehicles leads to the conclusion that rules stricter than those provided for by Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices<sup>(4)</sup> are necessary in this sector, in particular where a supplier has recourse to selective or exclusive distribution.
- (4) This Regulation applies to vertical agreements for the purchase or sale of new motor vehicles, vertical agreements for the purchase or sale of spare parts for motor vehicles and vertical agreements for the purchase and sale of repair and maintenance services where these agreements are concluded between non-competing undertakings, between certain competitors or by certain associations of retailers of goods. This Regulation also applies to these vertical agreements when they contain ancillary provisions on the assignment or use of intellectual property rights. For the purposes of this Regulation, the term 'vertical agreements' includes the corresponding concerted practices.

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<sup>(1)</sup> OJ 36, 6.3.1965, p. 533.

<sup>(2)</sup> OJ L 148, 15.6.1999, p. 1.

<sup>(3)</sup> OJ C ...

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<sup>(4)</sup> OJ L 336, 29.12.1999, p. 21.

Recitals on the general conditions for coverage by this Regulation

- (5) The benefit of the block exemption should be limited to vertical agreements for which it can be assumed with sufficient certainty that they satisfy the conditions of Article 81(3).
- (6) Vertical agreements of the categories defined in this Regulation can improve economic efficiency within a chain of production or distribution by facilitating better coordination between the participating undertakings; in particular, they can lead to a reduction in the transaction and distribution costs of the parties and to an optimisation of their sales and investment levels.
- (7) The likelihood that such efficiency-enhancing effects will outweigh any anti-competitive effects due to restrictions contained in vertical agreements depends on the degree of market power of the undertakings concerned and therefore on the extent to which those undertakings face competition from other suppliers of goods or services regarded by the buyer as interchangeable or substitutable for one another, by reason of the products' characteristics, their prices and their intended use.
- (8) It can be presumed that, where a supplier's share of the relevant market does not exceed the thresholds provided for in the general conditions for the application of this Regulation, vertical agreements which do not contain certain types of severely anti-competitive restraints generally lead to an improvement in production or distribution and allow consumers a fair share of the resulting benefits. This sector specific Regulation contains stricter rules than those provided for by Regulation (EC) No 2790/1999, and it can therefore in particular be presumed that in general distribution agreements have such advantages where the supplier concerned has a market share of up to 30 %, or of up to 40 % in case of quantitative selective distribution for the sale of new motor vehicles. In the case of vertical agreements containing exclusive supply obligations, it is the market share of the buyer which is relevant for determining the overall effects of such vertical agreements on the market.
- (9) Above the market share thresholds provided for in the general conditions for the application of this Regulation, there can be no presumption that vertical agreements falling within the scope of Article 81(1) will usually give rise to objective advantages of such a character and magnitude as to compensate for the disadvantages which they create for competition. However, where the supplier has recourse to purely qualitative selective

distribution, no such market share threshold is necessary for this Regulation to apply.

- (10) To prevent a supplier from terminating a contract because a distributor or a repairer engages in pro-competitive behaviour, such as active or passive sales to foreign consumers, multi-branding or subcontracting of after sales services, which may not be restricted under this Regulation, every notice of termination must clearly state the reasons for the termination. Furthermore, a period of notice, normally of two years is introduced in order to strengthen the independence of distributors from their suppliers.
- (11) In order to favour a quick resolution of disputes which may arise between the parties to a distribution agreement and which might otherwise hamper effective competition, the Regulation should only cover agreements which provide for the possibility of each party to have recourse to an independent expert third party or arbitrator, in particular where notice is given to terminate an agreement.

Recitals concerning the hardcore restrictions

- (12) This Regulation should not exempt vertical agreements containing certain types of severely anti-competitive restraints which are not indispensable to the attainment of the positive effects mentioned above, irrespective of the market share of the undertakings concerned.
- (13) This is in particular the case for vertical agreements containing severely anti-competitive restraints, such as minimum and fixed resale prices, as well as certain types of territorial protection, which should not benefit from the block exemption established by this Regulation.
- (14) Retailers may in general not be prohibited from carrying out active or passive sales of contract goods or corresponding goods to any end users within the meaning of Article 1, including end users who have given authorisation to an intermediary or purchasing agent to purchase, take delivery, transport or store a new motor vehicle on their behalf.
- (15) Members of a selective distribution system may in particular be neither directly nor indirectly restricted from actively or passively selling or advertising contract and corresponding goods by any means, including the Internet or Internet referral sites, to end users within the meaning of Article 1, including their intermediaries or purchasing agents, in markets where the supplier operates a selective distribution system.

- (16) The right to prohibit an authorised distributor from operating out of an unauthorised place of establishment is the only restriction on active sales in selective distribution systems which may, under certain conditions, be covered by this Regulation. However, this restriction will not be covered by this Regulation if it restricts the distributor's business from expanding at the authorised place of establishment by, for instance, limiting the infrastructure necessary to allow increases in sales volumes, including increases brought about by Internet sales.
- (17) If the supplier were to limit the distributor's sales to end users in other Member States, for instance by making the distributor's remuneration or the purchase price dependent on the destination of the vehicles or on the place of residence of the end users, this would amount to an indirect restriction of sales. Other examples of indirect restrictions on sales include supply quotas based on a sales territory other than the common market, whether or not these are combined with sales targets, or sales targets based on a sales territory other than the common market. Bonus systems based on the destination of the vehicles or any form of discriminatory product allocation, whether in the case of shortage of the production output or otherwise, may also amount to indirect restrictions on sales.
- (18) Vertical agreements that do not oblige the motor vehicle distributors and repairers within a supplier's distribution system to honour warranties, perform free servicing and carry out recall work in respect of motor vehicles sold by the manufacturer in question anywhere in the common market amount to an indirect restriction of sales. Furthermore, in order to allow sales by motor vehicle distributors to end users throughout the common market, this Regulation does not cover distribution agreements which do not require the repairers within the supplier's system to carry out repair and maintenance services for the contract goods and corresponding goods wherever these goods are sold in the common market.
- (19) This Regulation does not cover any vertical agreement that restricts the sale of original spare parts or spare parts of matching quality by members of the distribution system to independent repairers which use them for the provision of repair or maintenance services. Without access to such spare parts, these independent repairers would not be able to compete effectively with the authorised repairers within the distribution system of a vehicle manufacturer, since they could not offer consumers services of good quality which contribute to the safe and reliable functioning of motor vehicles.
- (20) In order to give end users the right to purchase any motor vehicle which is offered within another Member State from a distributor of their choice, this Regulation does not cover vertical agreements which do not enable a distributor to order, stock and sell any such vehicle which corresponds to a model within its contract range. Discriminatory or objectively unjustified supply conditions, in particular regarding delivery times or prices, applied by the supplier to corresponding vehicles, are to be considered as a restriction on the ability of the distributor to sell such vehicles.
- (21) Motor vehicles are expensive and technically complex mobile goods which require repair and maintenance services at regular and irregular intervals. However, it is not indispensable for distributors of new motor vehicles to also carry out repair and maintenance services. The legitimate interest of suppliers and consumers can be fully satisfied if the distributor subcontracts these services, including the honouring of warranties, free servicing and recall work, to a repairer or to a number of repairers within the distribution system of the supplier and if the consumer is duly informed about the location of the official repairer in case of subcontracting. Nor is it necessary, in order to adequately provide for repair and maintenance services, for repairers to also sell new motor vehicles. This Regulation therefore does not cover vertical agreements containing any direct or indirect obligation or incentive which leads to the linking of sales and after sales service activities or which makes the performance of one of these activities dependent on the performance of the other; this is in particular the case where the remuneration of the distributors or authorised repairers relating to the purchase or sale of goods or services necessary for one activity is made dependent on the sales of goods or services relating to the other activity, or where all such goods are indistinctly aggregated into a single remuneration or discount system.
- (22) In order to ensure effective competition on the maintenance and repair markets and to allow repairers to offer final consumers competing spare parts such as original spare parts and spare parts of matching quality, this Regulation does not cover vertical agreements which hinder the repairers belonging to the distribution network of a vehicle manufacturer, distributors of spare parts, end users or independent repairers from sourcing spare parts from the manufacturer of such spare parts or from another third party of their choice.
- (23) Furthermore, in order to give authorised and independent repairers and consumers genuine choice as regards spare parts, this Regulation does not cover agreements by which a manufacturer of motor vehicles limits the ability of a manufacturer of original spare parts to place its trade mark or logo on these parts effectively and in a visible manner, whether the parts are supplied to the manufacturer of vehicles for assembly or to repairers for replacement purposes.

(24) This Regulation does not cover vertical agreements which restrict the right of authorised repairers to use spare parts of matching quality for the repair or maintenance of a motor vehicle. However, in view of the vehicle manufacturers' direct contractual involvement in repairs under warranty, free servicing, and recall operations, this Regulation covers an obligation for the authorised repairer to use original spare parts supplied by the vehicle manufacturer for these repairs.

(25) In order to protect effective competition on the market for repair and maintenance services and to prevent foreclosure of independent repairers, manufacturers must allow interested independent operators to have full access to all technical information, diagnostic and other equipment, tools, including all relevant software, and training required for the repair and maintenance of motor vehicles. Independent operators who must be allowed such access include independent repairers, manufacturers of repair equipment or tools, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers. The conditions of access should in particular not discriminate between authorised and independent operators; access should be given in due course upon request; the price for the information should take account of the extent to which the independent operator uses it. A manufacturer should give independent repairers access to technical information on new motor vehicles at the same time as such access is given to its authorised repairers and should not oblige an independent repairer to purchase more than the necessary information needed for the type of repair or maintenance work to be executed. It is, however, legitimate and proper for suppliers to withhold access to technical information which might allow a third party to bypass or disarm on-board anti-theft devices. Moreover, the legitimate interest of the motor vehicle manufacturer to decide the mode of exploitation of its intellectual property rights and know-how has to be taken into account when granting licences to third parties. However, these rights must be exercised in a manner which avoids any type of abuse.

#### Recitals on specific conditions

(26) In order to ensure access to or to prevent collusion on the relevant markets and to give distributors opportunities to sell vehicles of brands from two or more manufacturers, that are not connected undertakings, certain specific conditions are to be attached to the block exemption. To this end, non-compete obligations should not be exempted. In particular, this Regulation does not cover any prohibition on sales of competing makes. This is without prejudice to the ability of the manufacturer to require the distributor to display the vehicles in brand-specific areas of the showroom in order to avoid brand confusion. However, further requirements, such as an

obligation to employ brand specific sales personnel, are considered to be non-exempted indirect non-compete obligations. Similarly, an obligation to display the full range of motor vehicles constitutes a non-exempted indirect non-compete obligation if it makes the sale or display of vehicles manufactured by different undertakings impossible or unreasonably difficult.

(27) In order to ensure that repairers can carry out repairs or maintenance on all motor vehicles, this Regulation does not exempt any obligation limiting the ability of repairers of motor vehicles to provide repair or maintenance services for brands of competing suppliers.

(28) In addition, specific conditions are required to exclude certain restrictions in a selective distribution system from being covered by this Regulation. This applies in particular to obligations which have the effect of preventing the members of a selective distribution system from selling the brands of particular competing suppliers, which could easily lead to foreclosure of certain brands. Two further conditions are necessary in order to create opportunities for distributors who wish to seize market opportunities outside their place of establishment, for market integration and in order to increase price competition and choice of consumers where suppliers have a certain overall presence. To this end a restriction imposed on the authorised distributor of passenger cars as to its ability to establish itself in any Member State, is excluded from the cover of the Regulation. Moreover, for suppliers of new motor vehicles other than passenger cars, a condition limiting the duration of restrictions on the place of establishment of a distributor to five years is necessary in order to allow both parties to adapt their agreements to changing market conditions.

(29) Moreover, this Regulation does not cover restrictions limiting the ability of a retailer to sell leasing services for motor vehicles.

#### Recitals on withdrawal and non-application of this Regulation

(30) The market-share limitations, the non-exemption of certain vertical agreements, and the conditions provided for in this Regulation normally ensure that the agreements to which the block exemption applies do not enable the participating undertakings to eliminate competition in respect of a substantial part of the goods or services in question.

(31) In particular cases in which the agreements falling under this Regulation nevertheless have effects incompatible with Article 81(3), the Commission may withdraw the benefit of the block exemption; this may occur in particular where the buyer has significant market power on the relevant market on which it resells the goods or provides the services or where parallel networks of vertical agreements have similar effects which significantly restrict access to a relevant market or competition thereon; such cumulative effects may for example arise in the case of selective distribution. The Commission may also withdraw the benefit of the block exemption if competition is significantly restricted in a market due to the presence of a supplier with market power or if prices and conditions of supply to distributors of the motor vehicles differ substantially as between geographic markets. It may also withdraw the benefit of the block exemption if discriminatory prices, supplements or sales conditions are applied for the supply of corresponding goods, in particular if the supplier charges, in addition to the price for the relevant model in the contract range, unjustifiable supplements such as those which take account of the different national taxes.

(32) Regulation No 19/65/EEC empowers the authorities of Member States to withdraw the benefit of the block exemption in respect of vertical agreements having effects incompatible with the conditions laid down in Article 81(3), where such effects are felt in their respective territory, or in a part thereof, and where such territory has the characteristics of a distinct geographic market; Member States should ensure that the exercise of this power of withdrawal does not prejudice the uniform application throughout the common market of the Community competition rules or the full effect of the measures adopted in implementation of those rules.

(33) In order to strengthen supervision of parallel networks of vertical agreements which have similar restrictive effects and which cover more than 50 % of a given market, the Commission may declare this Regulation inapplicable to vertical agreements containing specific restraints relating to the market concerned, thereby restoring the full application of Article 81 to such agreements.

#### General recitals

(34) This Regulation is without prejudice to the application of Article 82.

(35) In accordance with the principle of the primacy of Community law, no measure taken in pursuance of national laws on competition should prejudice the uniform application throughout the common market of the Community competition rules or the full effect of any

measures adopted in implementation of those rules, including this Regulation,

HAS ADOPTED THIS REGULATION:

#### Article 1

#### Definitions

For the purposes of this Regulation:

- (a) 'Competing undertakings' means actual or potential suppliers on the same product market; the product market includes goods or services which are regarded by the buyer as interchangeable with or substitutable for the contract goods or services, by reason of the products' characteristics, their prices and their intended use.
- (b) 'Non-compete obligation' means any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell goods or services which compete with the contract goods or services, or any direct or indirect obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than 50 % of the buyer's total purchases of the contract goods or services and their substitutes on the relevant market, calculated on the basis of the value of its purchases in the preceding calendar year. This does not include a requirement that the distributor sell motor vehicles from other suppliers in separate sales areas of the showroom in order to avoid confusion between the makes.
- (c) 'Exclusive supply obligation' means any direct or indirect obligation causing the supplier to sell the goods or services specified in the agreement only to one buyer inside the Community for the purposes of a specific use or for resale.
- (d) 'Selective distribution system' means a distribution system where the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors or repairers selected on the basis of specified criteria and where these distributors or repairers undertake not to sell such goods or services to unauthorised distributors or unauthorised repairers, without prejudice to the ability to sell spare parts and the obligation to provide all technical information, diagnostic equipment, tools and training required for the repair and maintenance of motor vehicles or for the implementation of environmental protection measures to unauthorised repairers.
- (e) 'Quantitative selective distribution system' is a selective distribution system where the supplier uses criteria for the selection of distributors or repairers which directly limit the number of selected distributors or repairers.



- (f) 'Qualitative selective distribution system' is a selective distribution system where the supplier uses criteria for the selection of distributors or repairers which are only qualitative in nature, are required by the nature of the contract good or service, are laid down uniformly for all potential members of the distribution system, are not applied in a discriminatory manner, and do not directly limit the number of distributors or repairers.
- (g) 'Intellectual property rights' includes industrial property rights, copyright and neighbouring rights.
- (h) 'Know-how' means a package of non-patented practical information, resulting from experience and testing by the supplier, which is secret, substantial and identified: in this context, 'secret' means that the know-how, as a body or in the precise configuration and assembly of its components, is not generally known or easily accessible; 'substantial' means that the know-how includes information which is indispensable to the buyer for the use, sale or resale of the contract goods or services; 'identified' means that the know-how must be described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality.
- (i) 'Buyer', whether distributor or repairer, includes an undertaking which, under an agreement falling within Article 81(1) of the Treaty, sells goods or services on behalf of another undertaking.
- (j) 'Authorised repairer' is a provider of repair and maintenance services for motor vehicles operating within the distribution system set up by a supplier of motor vehicles.
- (k) 'Unauthorised or independent repairer' is a provider of repair and maintenance services for motor vehicles not operating within the distribution system set up by a supplier for its motor vehicles.
- (l) 'Motor vehicle' is a vehicle intended for use on public roads and having three or more road wheels.
- (m) 'Passenger car' is a motor vehicle intended for the carriage of passengers and comprising no more than eight seats in addition to the driver's seat.
- (n) The 'contract range' refers to all the different models of motor vehicles purchased by the distributor from the supplier.
- (o) A 'motor vehicle which corresponds to a model within the contract range' is such a vehicle:
- manufactured or assembled in volume by the manufacturer, and
  - identical as to body style, drive-line, chassis, and type of motor with a vehicle within the contract range, and
  - which is the subject of a distribution agreement with another undertaking within the distribution system set up by the manufacturer or with his consent.
- (p) 'Spare parts' are parts which are to be installed in or upon a motor vehicle so as to replace components of that vehicle.
- (q) 'Original spare parts' are spare parts which are produced by the manufacturer of the components which are or were used for the assembly of the new motor vehicle and which are manufactured on the same production line as these components. It is for the spare part producer to prove that these spare parts match the quality of the components used for the assembly of the new motor vehicles.
- (r) 'Spare parts of matching quality' are spare parts which match the quality of the components which are or were used for the assembly of a new motor vehicle and which are produced by the producer of these components or another undertaking and for which the spare part producer can prove that they match the quality of those components.
- (s) 'Undertakings within the distribution system' are the manufacturer and undertakings which are entrusted by the manufacturer or with the manufacturer's consent with the distribution or repair or maintenance of contract goods or corresponding goods.
- (t) 'End user' includes leasing companies unless the leasing contracts used provide for a transfer of ownership or an option to purchase the vehicle prior to the expiry of the contract.
- (u) 'Independent operator' in the sense of Article 4(2) shall include in particular independent repairers, manufacturers of repair equipment or tools, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers.

*Article 2***Scope of application**

1. Pursuant to Article 81(3) of the Treaty and subject to the provisions of this Regulation, it is hereby declared that Article 81(1) shall not apply to agreements or concerted practices entered into between two or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, where the agreements or concerted practices relate to the conditions under which the parties may purchase, sell or resell motor vehicles, spare parts for motor vehicles or repair and maintenance services for motor vehicles ('vertical agreements').

2. This exemption shall apply to the extent that such vertical agreements contain restrictions of competition falling within the scope of Article 81(1) ('vertical restraints').

3. The exemption provided for in paragraph 1 shall apply to vertical agreements entered into between an association of undertakings and its members, or between such an association and its suppliers, only if all its members are retailers of motor vehicles or spare parts for motor vehicles and if no individual member of the association, together with its connected undertakings, has a total annual turnover exceeding EUR 50 million; vertical agreements entered into by such associations shall be covered by this Regulation without prejudice to the application of Article 81 to horizontal agreements concluded between the members of the association or decisions adopted by the association.

4. The exemption provided for in paragraph 1 shall apply to vertical agreements containing provisions which relate to the assignment to the buyer or use by the buyer of intellectual property rights, provided that those provisions do not constitute the primary object of such agreements and are directly related to the use, sale or resale of goods or services by the buyer or its customers. The exemption applies on condition that, in relation to the contract goods or services, those provisions do not contain restrictions of competition having the same object or effect as vertical restraints which are not exempted under this Regulation.

5. The exemption provided for in paragraph 1 shall not apply to vertical agreements entered into between competing undertakings; however, it shall apply where competing undertakings enter into a non-reciprocal vertical agreement and:

(a) the buyer has a total annual turnover not exceeding EUR 100 million; or

(b) the supplier is a manufacturer and a distributor of goods, while the buyer is a distributor not manufacturing goods competing with the contract goods; or

(c) the supplier is a provider of services at several levels of trade, while the buyer does not provide competing services at the level of trade where it purchases the contract services.

*Article 3***General conditions for applicability of the Regulation**

1. Subject to paragraphs 2, 3, 4, 5, 6 and 7 of this Article, the exemption provided for in Article 2 shall apply on condition that the supplier's market share on the relevant market on which it sells the new motor vehicles, spare parts for motor vehicles or repair and maintenance services does not exceed 30 %.

2. By way of exception to paragraph 1 the market share threshold for the application of Article 2 shall be 40 % for agreements establishing quantitative selective distribution systems for the sale of new motor vehicles.

3. The market share thresholds of paragraph 1 and 2 shall not apply to agreements establishing qualitative selective distribution systems.

4. In the case of vertical agreements containing exclusive supply obligations, the exemption provided for in Article 2 shall apply on condition that the market share held by the buyer does not exceed 30 % of the relevant market on which it purchases the contract goods or services.

5. The exemption provided for in Article 2 shall apply on condition that the vertical agreement concluded with a distributor or repairer provides that if a supplier wishes to give notice of termination, the notice must include detailed reasons for the termination in order to prevent a supplier to end a vertical agreement with a distributor because of practices which may not be restricted under this regulation, in particular those practices, restriction of which results in the misapplication of the exemption either to the vertical agreement as a whole, in accordance with Article 4, or to the restriction in question, in accordance with Article 5.

6. The exemption provided for in Article 2 shall apply on condition that the vertical agreement concluded with a distributor or repairer provides that if a supplier wishes to give notice of termination, the period of notice for regular termination of the agreement has to be at least two years for both parties; this period is reduced to at least one year where:

- (a) the supplier is obliged by law or by special agreement to pay appropriate compensation on termination of the agreement; or
- (b) the supplier terminates the agreement where it is necessary to reorganise the whole or a substantial part of the network.

7. The exemption provided for in Article 2 shall apply on condition that the vertical agreement provides for the parties to refer disputes concerning the fulfilment of their contractual obligations to an independent expert third party or arbitrator. Such disputes may for instance arise over the application of agreed criteria to set sales targets, the attainment of sales targets or supply obligations, the implementation of stock requirements, the implementation of an obligation to provide or use demonstration vehicles, whether the prohibition to operate out of an unauthorised place of establishment limits the ability of the retailer's business to expand or whether the termination of an agreement is justified by the reasons given in the notice. This possibility is without prejudice to each party's right to apply to a national court.

#### Article 4

##### Hardcore restrictions

1. The exemption provided for in Article 2 shall not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

- (a) the restriction of the distributor's or repairer's ability to determine its sale price, without prejudice to the supplier's ability to impose a maximum sale price or to recommend a sale price, provided that this does not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties;
- (b) the restriction of the territory into which, or of the customers to whom, the distributor or repairer may sell the contract goods or services, except:
- the restriction of active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another distributor or repairer, where such a restriction does not limit sales by the customers of the distributor or repairer,
  - the restriction of sales to end users by a distributor operating at the wholesale level of trade,
  - the restriction of sales of new motor vehicles and spare parts to unauthorised distributors by the members of a selective distribution system, subject to the provisions of (e) below,
  - the restriction of the buyer's ability to sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture the same type of goods as those produced by the supplier;
- (c) the restriction of cross-supplies between distributors or repairers within a selective distribution system, including between distributors or repairers operating at different levels of trade;
- (d) the restriction of active or passive sales of motor vehicles, spare parts for all motor vehicles or repair and maintenance services to end users by members of a selective distribution system operating at the retail level of trade, without prejudice to the ability to prohibit a member of a quantitative selective distribution system from operating out of an unauthorised place of establishment, provided that such a prohibition does not limit the distributor's or repairer's business expansion at the authorised place of establishment;
- (e) the restriction of the sales of spare parts for motor vehicles by members of a selective distribution system to independent repairers which use these parts for the repair and maintenance of a motor vehicle;
- (f) the restriction of the distributor's ability to sell any motor vehicle which corresponds to a model within the contract range of the distributor;
- (g) the restriction of the ability of the distributor of motor vehicles to subcontract the provision of repair and maintenance services to authorised repairers on condition that the distributor duly informs the consumer before the conclusion of the sales contract about the location of the authorised repairer;
- (h) the restriction of the repairer's ability to limit its activities to the provision of repair and maintenance services and the distribution of spare parts;

- (i) the restriction agreed between a supplier of original spare parts or spare parts of matching quality, repair tools or diagnostic or other equipment and a manufacturer of motor vehicles, which limits the supplier's ability to sell these goods to independent distributors, authorised or independent repairers or end-users which use them for the repair or maintenance of motor vehicles;
  - (j) the restriction of a distributor's or repairer's ability to obtain original spare parts or spare parts of matching quality from a third undertaking of its choice and to use them for the repair and maintenance of motor vehicles, without prejudice to the ability of a supplier of new motor vehicles to require the use of original spare parts supplied by it for repair under warranty, free servicing and vehicle recall work;
  - (k) the restriction agreed between a manufacturer of motor vehicles which uses components for the initial assembly of motor vehicles and the supplier of such components which limits the latter's ability to place its trade mark or logo effectively and in an easily visible manner on the components supplied or on original spare parts and spare parts of matching quality.
2. The exemption provided for in Article 2 shall not apply where the supplier of motor vehicles refuses to give independent operators access to any technical information, diagnostic and other equipment, tools, including any relevant software, and training required for the repair and maintenance of these motor vehicles or for the implementation of environmental protection measures. Access has to be given to independent operators in a non-discriminatory and proportionate way. If the relevant item is covered by an intellectual property right or constitutes know-how, access shall not be withheld in any abusive manner.

#### Article 5

##### Specific conditions

The exemption provided for in Article 2 shall not apply to any of the following obligations contained in vertical agreements:

- (a) any direct or indirect non-compete obligation relating to the sale of motor vehicles;
- (b) any direct or indirect obligation causing the retailer not to sell leasing services relating to contract goods or corresponding goods;
- (c) any direct or indirect obligation causing the distributor or repairer, after termination of the agreement, not to manufacture, purchase, sell or resell motor vehicles or to provide repair or maintenance services;
- (d) any direct or indirect obligation limiting the ability of the repairer of motor vehicles to provide repair or maintenance services for brands of competing suppliers;
- (e) any direct or indirect obligation causing the members of a selective distribution system not to sell the brands of particular competing suppliers;
- (f) any direct or indirect obligation on any member of a selective distribution system for the distribution of passenger cars limiting its ability to establish sales or delivery outlets or warehouses at other locations within the common market;
- (g) any direct or indirect obligation within a selective distribution system which has a duration exceeding five years and which restricts the location of the establishment of a distributorship for motor vehicles other than passenger cars;
- (h) any direct or indirect obligation as to the place of establishment of an authorised repairer.

#### Article 6

##### Withdrawal of the Regulation by the Commission

The Commission may withdraw the benefit of this Regulation, pursuant to Article 7(1) of Regulation No 19/65/EEC, where it finds in any particular case that vertical agreements to which this Regulation applies nevertheless have effects which are incompatible with the conditions laid down in Article 81(3) of the Treaty, and in particular:

- (a) where access to the relevant market or competition therein is significantly restricted by the cumulative effect of parallel networks of similar vertical restraints implemented by competing suppliers or buyers; or
- (b) where competition is restricted on a market where one supplier is not exposed to effective competition from other suppliers; or
- (c) where prices or conditions of supply for contract goods or for corresponding goods differ substantially between geographic markets; or
- (d) where discriminatory prices or sales conditions are applied within a geographic market.

*Article 7***Withdrawal of the Regulation by the authorities of a Member State**

Where in any particular case vertical agreements to which the exemption provided for in Article 2 applies have effects incompatible with the conditions laid down in Article 81(3) of the Treaty in the territory of a Member State, or in a part thereof, which has all the characteristics of a distinct geographic market, the relevant authority of that Member State may withdraw the benefit of application of this Regulation in respect of that territory, under the same conditions as provided in Article 6.

*Article 8***Non-application of the Regulation**

1. Pursuant to Article 1(a) of Regulation No 19/65/EEC, the Commission may by regulation declare that, where parallel networks of similar vertical restraints cover more than 50 % of a relevant market, this Regulation shall not apply to vertical agreements containing specific restraints relating to that market.

2. A regulation pursuant to paragraph 1 shall not become applicable earlier than one year following its adoption.

*Article 9***Market share calculation**

1. The market shares provided for in this Regulation shall be calculated on the basis of the market sales volume of the contract goods or services and other goods or services sold by the supplier, which are regarded as interchangeable or substitutable by the buyer, by reason of the products' characteristics, their prices and their intended use; if market sales volume data are not available, estimates based on other reliable market information, including market sales values, may be used to establish the market share of the undertaking concerned. For the purposes of Article 3(2), it is either the market purchase volume or estimates thereof which shall be used to calculate the market share.

2. For the purposes of applying the market share thresholds of 30 % and 40 % provided for in this Regulation the following rules shall apply:

- (a) the market share shall be calculated on the basis of data relating to the preceding calendar year;
- (b) the market share shall include any goods or services supplied to integrated distributors for the purposes of sale;

(c) if the market share is initially not more than 30 % or 40 % respectively but subsequently rises above that level without exceeding 35 % or 45 % respectively, the exemption provided for in Article 2 shall continue to apply for a period of two consecutive calendar years following the year in which the market share threshold of 30 % or 40 % respectively was first exceeded;

(d) if the market share is initially not more than 30 % or 40 % respectively but subsequently rises above 35 % or 45 % respectively, the exemption provided for in Article 2 shall continue to apply for one calendar year following the year in which the level of 30 % or 40 % respectively was first exceeded;

(e) the benefit of points (c) and (d) may not be combined so as to exceed a period of two calendar years;

*Article 10***Turnover calculation**

1. For the purpose of calculating total annual turnover within the meaning of Article 2(3) and 2(5), the turnover achieved during the previous financial year by the relevant party to the vertical agreement and the turnover achieved by its connected undertakings in respect of all goods and services, excluding all taxes and other duties, shall be added together. For this purpose, no account shall be taken of dealings between the party to the vertical agreement and its connected undertakings or between its connected undertakings.

2. The exemption provided for in Article 2 shall remain applicable where, for any period of two consecutive financial years, the total annual turnover threshold is exceeded by no more than 10 %.

*Article 11***Definition of connected undertakings**

1. For the purposes of this Regulation, the terms 'undertaking', 'supplier', 'buyer', 'distributor' and 'repairer' shall include their respective connected undertakings.

2. 'Connected undertakings' are:

- (a) undertakings in which a party to the agreement, directly or indirectly:
  - has the power to exercise more than half the voting rights, or

- has the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking, or
  - has the right to manage the undertaking's affairs;
- (b) undertakings which directly or indirectly have, over a party to the agreement, the rights or powers listed in (a);
- (c) undertakings in which an undertaking referred to in (b) has, directly or indirectly, the rights or powers listed in (a);
- (d) undertakings in which a party to the agreement together with one or more of the undertakings referred to in (a), (b) or (c), or in which two or more of the latter undertakings, jointly have the rights or powers listed in (a);
- (e) undertakings in which the rights or the powers listed in (a) are jointly held by:
- parties to the agreement or their respective connected undertakings referred to in (a) to (d), or
  - one or more of the parties to the agreement or one or more of their connected undertakings referred to in (a) to (d) and one or more third parties.
3. For the purposes of Article 3, the market share held by the undertakings referred to in paragraph 2(e) of this Article shall be apportioned equally to each undertaking having the rights or the powers listed in paragraph 2(a).

#### Article 12

#### Transitional period

The prohibition laid down in Article 81(1) of the EC Treaty shall not apply during the period from 1 October 2002 to 30 September 2003 in respect of agreements already in force on 30 September 2002 which do not satisfy the conditions for exemption provided for in this Regulation but which satisfy the conditions for exemption provided for in Regulation (EC) No 1475/95.

#### Article 13

#### Evaluation report

The Commission will draw up a report on the evaluation of this Regulation not later than 31 May 2008.

#### Article 14

#### Entry into force and expiration

This Regulation shall enter into force on 1 October 2002.

This Regulation shall expire on 31 May 2010.

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

Done at Brussels ...

*For the Commission*

...

*Member of the Commission*

**Explanatory note on the  
Draft  
COMMISSION REGULATION (EC) No .../...  
of [...]  
on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted  
practices in the motor vehicle industry**

## 1. INTRODUCTION

1. The position of motor vehicle distribution and servicing agreements within the common market in respect of Article 81 of the Treaty is governed by Commission Regulation (EC) No 1475/95. This Regulation expires on 30 September 2002. The Commission has therefore to take a decision on the rules applicable to motor vehicle distribution as from 1 October 2002.

2. The Commission's evaluation report of Regulation (EC) No 1475/95 <sup>(1)</sup> launched the debate on the adequacy of such rules. An informal consultation and evaluation process has ensued with the organisation of hearings or debates by the Commission, the EP and the Ecosoc, complemented with in-depth evaluation studies carried out by various consultants on request of DG Competition <sup>(2)</sup>.

3. This process has led to the conclusion that the rules laid down in Regulation (EC) No 1475/95, which exempt the combination of selective and exclusive distribution and which prescribe a single model for the distribution of motor vehicles, are no longer adapted to the objectives underlying their adoption and that a different and stricter regime is necessary. Further details on this evaluation process, on the drawbacks of the existing regime and how the draft BER addresses these weaknesses are contained in Annex 1 to this memorandum.

4. A new sector-wide block-exemption Regulation (BER) is thus to be proposed.

5. This note describes first the regulatory approach chosen and the general approach as regards the substance of the proposal (chapter 2). It then turns to the measures proposed for the market for the distribution of new motor vehicles (chapter 3.1) and for after-sales servicing (chapter 3.2), before examining the rules relating to independent repairers (chapter 4). The note concludes by describing the main procedural steps leading to the adoption of the new BER.

## 2. GENERAL APPROACH OF THE PRELIMINARY DRAFT BER

### 2.1. Regulatory approach of the new BER

6. The draft BER is a sector-specific regulation which is based on the Commission's new policy for the assessment of vertical restraints as laid down in the recent general BER on vertical restraints, Commission Regulation (EC) No 2790/1999, and in Commission notice on vertical guidelines <sup>(3)</sup>. It is thus based on a more economic approach and on the principle that it is for the economic operators (manufacturers, distributors) to organise distribution according to their own needs. It is stricter than the general BER and than the existing Regulation for motor vehicle distribution (Regulation (EC) No 1475/95) in order to remedy the competition problems identified in this sector. Consequently:

— the sector-specific draft BER is less prescriptive than Regulation (EC) No 1475/95, with a view to allowing the development of innovative distribution formats. Unlike the Regulation (EC) No 1475/95, which prescribed a combination of selective and exclusive distribution; the draft does not impose a single distribution model; this approach will avoid the 'strait-jacket' effect observed in the case of Regulation (EC) No 1475/95. Consequently, for example, the draft BER gives each manufacturer the choice of using either selective or exclusive distribution. Furthermore, each distributor may choose between carrying out after-sales services himself or subcontracting them,

<sup>(1)</sup> COM(2000) 743 final of 15.11.2000.

<sup>(2)</sup> 'The sales-services link', by Autopolis, 'Price differentials in the EU: an economic analysis', by Prof. Verboven and Degryse, 'Study of the impact of legislative scenarios about motor vehicle distribution', Andersen Consulting and 'Customer preferences for existing and potential sales and servicing alternatives in automobile distribution', Dr Lademann. These studies are available at DG Competition Internet site at [http://europa.eu.int/comm/competition/car\\_sector/](http://europa.eu.int/comm/competition/car_sector/).

<sup>(3)</sup> Commission Regulation (EC) No 2790/1999 on vertical restraints (OJ L 336, 29.12.1999, p. 21) and Commission notice 'Guidelines on vertical restraints' (OJ C 291, 13.10.2000, p. 1).

- the draft BER focuses on those practices and behaviours which seriously restrict competition within the common market and which are detrimental for consumers. To this end, and in line with the Commission's new approach of block exemption regulations <sup>(4)</sup> the draft BER clarifies, by setting out a list of conditions and hard core restrictions <sup>(5)</sup>, which are not permitted; this list has been drawn up in order to address the drawbacks of Regulation (EC) No 1475/95 and in order to take account of specific issues, in particular as regards after-sales servicing. In line with this new approach, all practices which are not mentioned in this list are permissible; therefore unlike Regulation (EC) No 1475/95, the draft BER no longer mentions those practices which are permissible,
- the draft BER takes account of the new policy that BERs should cover restrictive agreements up to a certain market share threshold, and that the approach is stricter where market shares are higher.

## 2.2. General line as regards the substance of the draft BER

7. Motor vehicles are expensive and complex technical goods with a lifetime of, on average, more than 10 years. They need repair and maintenance at regular and irregular intervals and are subject to regulations which apply throughout their lifetime and which concern safety and environmental protection. Most consumers have an interest in preserving their value and in making sure that they are at all times a safe and reliable means of transport.
8. Figures available show <sup>(6)</sup> that the purchase price and the cost of after-sales servicing of a car each account for about 40 % of the total cost of ownership, the remaining 20 % being for financing, insurance and other costs. In view of these factors, the draft BER has to address competition issues regarding both after-sales servicing and the distribution of new motor vehicles.
9. As regards the **distribution of new motor vehicles**, the draft BER is built around the following principles:
  - The evaluation of the current Regulation led to some negative conclusions being drawn <sup>(7)</sup>. Applying the

<sup>(4)</sup> Commission Regulation (EC) No 2790/1999; Commission Regulation (EC) No 2658/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty to categories of specialisation agreements (OJ L 304, 5.12.2000 p. 3); Commission Regulation (EC) No 2659/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty to categories of research and development agreements (OJ L 304, 5.12.2000 p. 7).

<sup>(5)</sup> Restrictions which are never permissible, like resale price maintenance or export bans.

<sup>(6)</sup> Andersen study p. 43, chapter II.2.1.B.

<sup>(7)</sup> See Annex 1, chapter 1, to this note.

general vertical block exemption regulation (Regulation (EC) No 2790/1999) would not remove all the problems identified in the evaluation report <sup>(8)</sup>, and the draft BER therefore introduces more stringent requirements.

- The approach consists basically of the following elements:
  - banning the combination of selective and exclusive distribution permitted by Regulation (EC) No 1475/95: manufacturers have to choose between selective and exclusive distribution when appointing their distributors,
  - reinforcing competition between the distributors in different Member States (intra-brand competition) and market integration by permitting active sales and by prohibiting the use of the so-called 'location clause' <sup>(9)</sup> for the sale of passenger cars in a selective distribution system. In an exclusive distribution system the same result is achieved by permitting passive sales, including sales to resellers; Regulation (EC) No 1475/95 only allowed passive and to a very limited extent non-personalised active sales,
  - reorganising the link between sales and after-sales servicing by allowing a distributor to subcontract servicing and repair to an authorised repairer who belongs to the network of the relevant manufacturer and who fulfils the quality standards of that manufacturer; this is different from Regulation (EC) No 1475/95, which imposed a link between both activities,
  - facilitating real multi-branding, i.e. removing some of the existing restrictions on the sale of motor vehicles of different brands by one distributor.
- As can be seen from this list, the draft BER will set up a more flexible regime which should allow the development of innovative distribution methods and thereby enhance competition.

<sup>(8)</sup> See Annex 1, chapter 4, to this note.

<sup>(9)</sup> The location clause allows a manufacturer to request that a distributor only operates from a certain place of establishment; moreover it allows the manufacturer to agree with the distributor that no other distributor will be allowed to open a showroom in that territory. Active sales by other distributors are however possible to consumers in that territory.



10. As regards **after-sales servicing of motor vehicles**, the draft BER is to a large extent based on the principles of the existing motor vehicle block exemption Regulation (EC) No 1475/95, since the general block exemption on vertical restraints, Regulation (EC) No 2790/1999, does not sufficiently address the relevant issues as regards the after-sales of motor vehicles<sup>(10)</sup>. It has also to be borne in mind, as has already been mentioned, that the cost of after-sales servicing amounts on average to 40 % of the total cost of ownership of a car. It is therefore important to ensure that customers can choose between different servicing alternatives and that all operators (dealers, official repairers, independent repairers including body shops, fast fit chains and service centres) can offer services of good quality and thereby contribute to the safe and reliable functioning of motor vehicles.

11. Consequently, as regards after-sales servicing, the draft BER pursues the following aims:

— to allow manufacturers to select qualified authorised repairers for the repair and maintenance of motor vehicles,

— to ensure that all those operators who have the necessary technical expertise and who fulfil the qualitative criteria set by a manufacturer can become a member of that manufacturer's official repairer network. This approach will enhance competition in the after-sales service market between the official repairers by making sure that operators with the necessary technical expertise can establish themselves wherever there is a business opportunity. Opening up the repair market in this manner can also be expected to maintain or even increase the density of the official repairer networks to the benefit of the consumer, at a time where many manufacturers are carrying out or announcing restructuring plans for their networks leading to a major reduction in dealership coverage. Studies show that consumers do not like to travel far to have their car repaired; the travel time of a car owner to a repair shop is ideally 15 minutes, but in no case more than 30 minutes<sup>(11)</sup>,

— to improve official repairers' access to spare parts which compete with parts sold by the manufacturer, by reinforcing the relevant principles of Regulation (EC) No 1475/95,

— to preserve and reinforce the competitive position of independent repairers; these currently carry out on

average about 50 %<sup>(12)</sup> of all repairs on motor cars, and the majority of repairs on vehicles more than four years old. The draft proposal improves their position by strengthening and extending the principles of Regulation (EC) No 1475/95; to this end it reinforces their existing right to have access to spare parts and technical information in line with technical advances, especially in the field of electronic devices and diagnostic equipment. The access right is also extended to training and to all types of tools. A desirable and important side effect of this wider access is to encourage improvement in independent repairers' technical skills in the interests of road safety.

Taking all of these elements into account, it can therefore be concluded that the draft BER reinforces competition within the official networks and between official repairers and independent repairers.

### 3. THE CONTENT OF THE DRAFT BER

The following sections explain the rules for the distribution of new motor vehicles and for after-sales servicing. As regards both areas, this memorandum first goes over the rules setting out how a manufacturer or his importer may choose the members of his network and secondly describes the new framework within which the distributors or authorised repairers will operate.

#### 3.1. The distribution of new motor vehicles

##### 3.1.1. Selection of distributors

12. According to the general policy on vertical restraints, as applied in Commission Regulation (EC) No 2790/1999 and in the guidelines on the treatment of vertical restraints and followed in the new draft motor vehicle block exemption, the use of either quantitative (includes qualitative) selective distribution<sup>(13)</sup> or exclusive distribution is appropriate for expensive and complex goods such as motor vehicles and can also be used for other products. Under both systems a manufacturer may appoint qualified distributors which operate in line with its requirements and may limit their overall number. A manufacturer operating under the draft regulation will therefore be able to ensure that his distribution system covers all areas of Europe, just as he could under Regulation (EC) No 1475/95.

<sup>(10)</sup> See Annex 1, point 11, to this note.

<sup>(11)</sup> Lademann study, p. 46, section 4.3.2.1.

<sup>(12)</sup> Andersen study, p. 254, appendix 8; ACEA accenture study, p. 11.

<sup>(13)</sup> Selective distribution is accepted for less sophisticated products than cars such as luxury goods (perfume) and certain hifi equipment.

### 3.1.2. *Rules for the selection of distributors in a selective distribution system*

13. The draft BER covers a system whereby distributors are selected by the manufacturers on the basis of qualitative criteria (see definition in Article 1(f)), such as the size and quality of the showroom, the quality of the sales personnel, the obligation to offer the full range of vehicles of the relevant brand or the obligation to have demonstration vehicles. In addition, a manufacturer can use quantitative criteria (see Article 1(e)) for the selection of its distributors, such as ceilings on the total number of distributors or minimum sales obligations. Through such obligations, which need not necessarily to be combined, vehicle manufacturers keep control over the size, density and composition of their distribution network and can directly or indirectly limit the number of distributors which they wish to appoint as their selected distributors. A manufacturer therefore remains in a position to ensure that his distribution system covers all regions in the common market.

### 3.1.3. *Rules of the draft BER for the selection of distributors in an exclusive distribution system*

14. The draft BER will also cover an alternative system whereby a manufacturer allocates to each distributor an exclusive sales territory (as well as the allocation of an exclusive customer group). In such a system, (or for the relevant customer group) no other distributor may be appointed within the distributor's territory. Certain minimum qualitative standards may also be imposed on such distributors.

### 3.1.4. *Common elements under both selective and exclusive distribution*

15. Under neither system would a vehicle manufacturer be obliged to appoint certain qualified operators as his distributors. In particular, a manufacturer could decide whether or not it wished supermarkets or pure Internet dealers to distribute its new passenger cars or light commercial vehicles; under the new BER such new entrants could not force a vehicle manufacturer to supply them with new vehicles or to appoint them as distributor. For Internet distributors who sell vehicles exclusively over the Internet, such an exclusion could be justified on the grounds that these distributors are free-riding on other distributors who have an obligation to invest in a showroom, demonstration vehicles and trained sales staff who give advice to consumers. Consumers, it might be argued, would take advantage of all of these facilities but would then turn to an Internet dealer for the actual purchase of their new vehicle. The evidence available shows that if supermarkets were now allowed to enter manufacturers' distribution systems this could have a certain negative impact on manufacturers and distributors. Studies claim that this could lead to a concen-

tration of players, cause product ranges to shrink, decrease product innovation and could, after a short period of lower car prices, lead to less effective intra-brand competition and ultimately to higher prices<sup>(14)</sup>. In view of these risks and the fact that a study carried out for DG Comp shows<sup>(15)</sup> that consumers are not much attracted by the idea of buying a car from a supermarket or from a pure Internet distributor, it seems for the time being inappropriate to force manufacturers to allow these undertakings to become official distributors, as they would have to under a purely qualitative selective distribution system.

### 3.1.5. *Rules governing how distributors operate*

#### Internal market aspects

16. The Commission's biannual car price reports show that car price differentials are still very high in Europe. Although Regulation (EC) No 1475/95 tried to underpin the right of consumers to purchase a new motor vehicle in another Member State, in practice manufacturers were able to limit parallel trade to a level which avoided the need for them to even-out prices even between Member States with low tax levels. One key element of the draft BER is to considerably reinforce the consumer's single market right to take advantage of the price differentials between Member States and to purchase a new vehicle anywhere in Europe.

17. Even if the Euro will increase price transparency for consumers, it will remain difficult for them to buy a new motor vehicle from a distributor located in another Member State. The draft BER therefore creates better opportunities and more freedom for operators such as distributors and intermediaries to supply new motor vehicles to consumers in other Member States.

#### Internal market aspects under selective distribution

18. Under selective distribution, distributors can carry out active sales<sup>(16)</sup> throughout the common market (see Article 4(d) draft BER). In practical terms this means that a distributor based in the Netherlands, where new cars are normally much cheaper than in Germany, could advertise in German newspapers and send letters or personalised e-mails to consumers located outside the Netherlands. This goes further than the current regime, under which only passive sales and general advertising outside the distributor's territory was permitted.

<sup>(14)</sup> Andersen study, p. 230, chapter IV.4.3.A., see also p. 234.

<sup>(15)</sup> Lademann study, p. 41.

<sup>(16)</sup> Definition: see Commission guidelines on vertical restraints, point 50.

19. One limit to active sales could relate to the so called 'location clause' <sup>(17)</sup> (see Article 5(f) and (g)), by virtue of which a manufacturer could oblige a distributor to operate from a certain place of establishment (e.g. Place de la Concorde 100 in Strasbourg). Under the location clause, this French distributor could not open further sales outlets, warehouses or depots in other markets, for example in Lyons or Freiburg. Moreover, the location clause also gives this distributor the assurance that no other distributor selling vehicles of the same make will be appointed for the Strasbourg area by the manufacturer.
20. However, the ability to impose a location clause in a selective distribution system has the following effects: on the one hand it allows manufacturers and distributors to have full control over the structure and density of their network, which might be desirable for manufacturers; on the other hand it has negative effects as regards market integration, since it allows the manufacturer to reintroduce local sales territories and compartmentalise the common market by preventing a selected distributor from opening further sales outlets, delivery points or warehouses elsewhere (e.g. a Dutch VW dealer could not open a showroom or delivery outlet in Dover). If price differentials between certain markets are high, it is very likely that distributors from a low price country (e.g. the Netherlands) would take advantage of the business opportunities offered by the high prices in another Member State (e.g. the United Kingdom) and would open sales or delivery outlets over there. In such a scenario, most end-consumers would have a real opportunity to benefit from the price differentials in the common market. If, in contrast, the distributor can only approach consumers in other countries by personalised mail, visits or advertisements, only very few consumers will be able buy a new car from a foreign distributor <sup>(18)</sup>.
21. With these considerations in mind, it seems appropriate to prohibit the use of location clauses for the distribution of passenger cars (see Article 5(f) draft BER) <sup>(19)</sup>.
22. There are several justifications for opening-up the distribution networks:
- It will foster market integration.
- Distributors from 'cheap' countries could open sales or delivery outlets in high price countries and undercut the incumbent dealers <sup>(20)</sup>. As a consequence, consumers would have a real opportunity of buying from a foreign distributor or, and this is more likely, the manufacturer would have to even-out prices across Europe.
- Finally, the absence of a location clause is also important for the development of multi-branding: for example a distributor of make A could no longer object if manufacturer A concluded a dealership agreement with a dealer selling make B within the same territory, who would then become a multi-brand distributor.
23. This opening-up of markets does not increase the number of operators that the manufacturers have to deal with, since the number of distributors remains the same.
24. The draft BER provides that a location clause which is permissible <sup>(21)</sup> is only covered for a period of five years, after which it has to be re-negotiated (see Article 5(g)). This obligation to re-negotiate the location clause gives both parties the opportunity to adapt to market developments, such as the manufacturer's desire to allow a multi-brand distributor to set up in a mono-brand distributor's territory or the distributor's wish to open further sales outlets.
25. In order to prevent a location clause from being used to limit the opportunities for a distributor to expand its business, the draft BER clarifies that such limitations are not permissible (see end of Article 4(d)). If, for example, the warehouse or office space is not large enough to carry out active sales via for example the Internet, (which may require certain additional administrative and storage facilities), the manufacturer has to allow the distributor to use such infrastructure elsewhere.

<sup>(17)</sup> Article 4(c) Regulation (EC) No 2790/1999 provides for an exemption of location clauses within selective distribution systems.

<sup>(18)</sup> See, for example, Lademann study, p. 63: consumers prefer to buy a car from a distributor who offers personal advice, test drive and even service.

<sup>(19)</sup> For medium and heavy trucks, buses and coaches, which are purchased by professional buyers, which are in a better position to purchase a new vehicle abroad than individual consumers, there seems to be no need for prohibiting the use of location clauses.

<sup>(20)</sup> A French Opel distributor of Place de la Concorde 100 in Strasbourg could open additional sales outlets or delivery points elsewhere in France. He could also open sales outlets or delivery points in Germany and, for example, sell the Corsa in Germany at French prices, which are 20,1 % below the German retail price.

<sup>(21)</sup> For instance, for medium and heavy trucks, buses and coaches, for which a location clause is always permissible.

#### Internal market aspects under exclusive distribution

26. In an exclusive distribution system, the mechanism to ensure that consumers can buy a new vehicle anywhere in the common market is different. Firstly, the distributor has the right to carry out passive sales to all consumers who turn up in his showroom. Although manufacturers may prohibit dealers from engaging in active promotion outside the exclusive territory, for example in a newspaper mainly sold in another town or through personalised e-mails to consumers outside the allocated territory, they may not prohibit dealers from having their own websites<sup>(22)</sup>. Furthermore, exclusive distributors may not be prevented from carrying out sales to independent resellers ('grey dealers') who are not members of the relevant manufacturer's distribution network. These independent resellers, which could be supermarkets or pure Internet dealers, would probably take advantage of price differentials and play an important role in the area of parallel trade.

#### Internal market aspects under both selective and exclusive distribution

27. In order to give distributors the means to supply cars to all consumers who approach them, sales targets, product allocation or bonus systems based on a territory (e.g. town or district as today) which is smaller than the common market, are no longer permitted, in contrast with the position under Regulation (EC) No 1475/95 (see recital 17 and Article 4(d)). In the past, manufacturers have used sales targets based on local or national markets to keep control over export sales by reducing the supply of new cars to those dealers who wanted to sell to both consumers in their own territory and foreign consumers without any discrimination. Bonus schemes were also used to make sales to foreign consumers less attractive. The draft BER therefore puts distributors in a position to honour all orders from all consumers within the European Union; a manufacturer will no longer be able to limit active<sup>(23)</sup> or passive<sup>(24)</sup> sales. Under the draft BER a dealer located for example in Ostend, where cars are much cheaper than in the United Kingdom and where many British consumers buy new cars, must get all the cars he needs to satisfy orders from both Belgian customers and those from other Member States without being financially penalised.

28. In order to allow consumers to take advantage of price differentials in the common market, the Commission has

always clarified<sup>(25)</sup> the role of purchase agents or intermediaries (such as 'Virgin cars'), who are professionals who help consumers who wish to purchase a new motor vehicle in another Member State. The draft BER underlines the important role of intermediaries in the common market and gives them more leeway to organise their activity efficiently. To this end, it is proposed to abolish two Commission notices<sup>(26)</sup> which limit the activity of intermediaries<sup>(27)</sup>. These restrictions have been another indirect obstacle to parallel trade and allow manufacturers to pursue national pricing policies with high price differentials between Member States. The draft BER clarifies that the only permissible requirement on an intermediary is a valid authorisation from the end consumer. It follows that intermediaries can make extensive use of the Internet to advertise and to carry out transactions.

29. In order to give all consumers a real opportunity to take advantage of the internal market, the draft BER contains what is commonly referred to as an availability clause (see Article 5(b)). This clause obliges manufacturers to supply their distributors with a vehicle of a model which is marketed in other countries and which corresponds to a model normally sold by the distributor. This clause's most important role so far has been to enable British and Irish consumers to purchase a new right-hand drive motor vehicle on the Continent, where dealers normally sell only left-hand drive cars. The availability clause of the draft BER is made simpler than that in Regulation (EC) No 1475/95 and its scope is extended to all motor vehicles: distributors can order any corresponding vehicle distributed in the common market by the vehicle manufacturer, and not only those which are needed to fulfil a pre-existing sales contract.
30. The draft BER makes sure that all distributors can carry out sales via the Internet by having their own website or by using a referral site operator (e.g. Autobytel), which runs an Internet site referring consumers requests to distributors (see recital 15).

<sup>(25)</sup> Guidelines on vertical restraints, point 53; Commission notice 'Clarification of the activities of motor vehicle intermediaries' (OJ C 329, 18.12.1991, p. 20).

<sup>(26)</sup> Commission notice concerning 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 (OJ C 17, 18.1.1985, p. 4), and the Commission notice 'Clarification of the activities of motor vehicle intermediaries' (OJ C 329, 18.12.1991, p. 20).

<sup>(27)</sup> Based on these notices, intermediaries can be restricted for example regarding the location of their business. Another element hampering their activities is that a car dealer may not sell more than 10 % of the new vehicles through a given intermediary.

<sup>(22)</sup> Vertical guidelines, point 50, second indent.

<sup>(23)</sup> In the context of selective distribution.

<sup>(24)</sup> In the context of exclusive distribution.

### Multi-branding

31. The new BER makes multi-branding, which studies have found is increasingly attractive to consumers<sup>(28)</sup>, easier. Distributors will be allowed to sell new motor vehicles from different manufacturers in different areas of the same showroom in a way which does not harm the brand identity (see recital 26 and Article 5(a)). In practical terms, under the new BER an Audi distributor could sell cars from Jaguar in brand-specific sales areas of the same showroom. Other conditions which can be imposed on multi-branding pursuant to Regulation (EC) No 1475/95, such as the obligation to have separate legal entities, separate management and sales personnel and separate premises, which make multi-branding costly for the distributors and which were an obstacle to its widespread development<sup>(29)</sup>, will no longer be covered by the draft BER.
32. Multi-brand dealerships have the advantage of allowing consumers to compare models from different manufacturers and of increasing competition between different brands. It therefore seems appropriate for the sales staff to have to be trained for all models they sell: such sales personnel would be better equipped than brand-specific sales staff to inform consumers of the advantages and disadvantages of the different models available. It should be left to the distributor to decide whether or not he would like to employ sales personnel who are trained on all makes, as is common for the sale of for example video or hi-fi equipment or computers, or make use of brand-specific sales personnel. The argument that sales staff who are not dedicated to one make will have an incentive not to be objective and will sell those cars with a higher dealer margin seems not convincing: it is open to those manufacturers who grant lower margins to raise them and eliminate this problem. Moreover, if a sales person is brand-specific he/she will try to sell a model of the brand that he represents even though a car from another make might better suit the needs of a specific consumer. The draft BER is based on an approach which avoids unnecessary costs and which allows the distributor to decide on how he organises his sales staff.

### Supply of leasing companies

33. The draft BER clarifies in the definition in Article 1(u) and recital (14 and 15) that distributors may also sell new vehicles to leasing companies. In order to prevent leasing companies (who are not members of a manufacturer's distribution network) from starting to resell new vehicles, supply to leasing companies is only permissible if the

<sup>(28)</sup> The Lademann study came to the conclusion that, depending on the Member State, 8 % to 15 % of consumers would buy from a multi-brand distributor; the 'Zukunftstudie Automobilverkauf 2003' on sales in 2003 indicates that 38 % of all consumers would prefer to buy a new car from a multi-brand distributor. A survey carried out by Taylor, Nelson, Sofres for the car industry indicates a figure of 25 %.

<sup>(29)</sup> Multi-branding has developed only in Nordic countries. In view of the scarce density of the population, a dealer needs to sell several makes in order to be profitable.

leasing contract does not provide for a transfer of ownership or option to purchase a vehicle before the end of the leasing contract. This text is identical to the one in Regulation (EC) No 1475/95. As the Commission's fine decision of 10 October 2001 against DaimlerChrysler clarified, this provision not only covers sales to leasing companies which have already found lessees for cars, but also covers orders for vehicles for which the leasing companies will find lessees during the delivery period, or for vehicles which are intended to be held in stock to be supplied at very short notice to lessees (e.g. to replace a car which had an accident). These clauses aim at ensuring that independent<sup>(30)</sup> leasing companies can effectively compete with the vehicle manufacturers' own leasing companies. Moreover, recital (29) clarifies that distributors may also distribute new motor vehicles to end users on the basis of a leasing instead of a sales contract.

### Sales/service link

34. In order to allow distributors to specialise in the sale of new motor vehicles and in view of the importance of after-sales servicing for consumers, the draft BER opts for a reorganisation of the sales/after-sales service link. Thus, distributors may choose to carry out after-sales services themselves (as today's dealers do); alternatively, they may subcontract them to an authorised repairer which respects all the qualitative criteria for repairs set by the vehicle manufacturer and which are also applied to today's dealers (see Article 4(g)). If a distributor has subcontracted after sales servicing, he has to inform the customer of the location of the subcontractor before concluding a sales contract on a new motor vehicle. It is also important for would be multi-brand dealers to have the opportunity to specialise in the sale of new motor vehicles: they can transform their repair shop into a showroom and subcontract after-sales servicing to official repairers of the relevant makes. The reorganisation of the sales/service link thus helps to develop a new type of distributor: one for which there is consumer demand.
35. Under the new BER, a distributor will have the choice either to offer after-sales services himself or to subcontract them to one or more official repairers which are easily accessible for his consumers (see Article 4(1)(g)). This approach will ensure that the customers of each distributor will be able to turn to at least one official repairer. Under the new BER the necessary infrastructure consisting of official repairers, which meet the quality standards of a manufacturer needed for the honouring of warranties and carrying out of recall operations and free servicing, will exist throughout Europe, just as it does today. The only difference between the new regime and today's system is that some of the official repairers would in the future not sell new vehicles. This is however already the case today: for example Audi, VW and Ford have a network of official repairers (e.g. the Audi service centres in Germany and Belgium or the Ford service outlets) which also carry out this type of repairs. Problems in

<sup>(30)</sup> Not linked to a car manufacturer such as Avis Lease or Leaseplan.

this context have not been brought to the attention of the Commission's services.

### 3.1.6. *Thresholds up to which the BER covers distribution systems for the sale of new motor vehicles*

36. The draft BER would cover quantitative selective or exclusive distribution in all relevant sales and service markets up to the normal market share of 30 % (see Article 3(1)). Due to the existing price differentials between the Member States, it is very likely that passenger car and light commercial vehicle markets at the retail level are still national. However, since the rules for quantitative selective distribution of new motor vehicles are stricter than those provided by Regulation (EC) No 2790/1999, it seems appropriate to cover such systems up to a market share threshold of 40 % (see Article 3(2)). These market share thresholds, which are below the market share which would indicate dominance, would ensure that virtually all manufacturers and distribution networks in the EC, which are based on quantitative selective distribution, would be covered by the draft BER. This is desirable for reasons of legal certainty. Above these thresholds, the draft BER would cover qualitative selective distribution (see Article 3(3)) as a minimum, which is a general indication that above the 40 % market share threshold the regime should be stricter <sup>(31)</sup>.

## 3.2. **After-sales servicing**

### 3.2.1. *General approach*

37. As explained in point 10 above, the draft BER is to a large extent based on the principles of Regulation (EC) No 1475/95 and tries to make these more efficient and to adapt them to technical progress, *inter alia*, in the area of electronic devices.

### 3.2.2. *Rules for the selection of official repairers*

#### Qualitative selective distribution

38. In order to ensure that the official (or 'authorised') repairers meet the qualitative standards set by the relevant manufacturer, the draft BER covers qualitative selection of official repairers without any market share threshold (see Article 3(3)). This approach takes account

of the technical nature of after-sales servicing and of the very high market share of the official repairers on the market for repair and maintenance of motor vehicles during the warranty period and thereafter for vehicles up to four years old, which is about 80 % <sup>(32)</sup>. After this period, consumers turn more frequently to independent repairers, but the market share of official repairers is still, as already mentioned, about 50 % if repairs on all vehicles are taken into account. In view of these high market shares, it is appropriate to only cover qualitative selective distribution, which is the less restrictive system, above the normal market share thresholds of 30 % (see Article 3(2) Regulation (EC) No 2790/1999) which have been retained in Article 3(2) of the draft BER. This differentiation is in line with the general policy on vertical restraints to cover restrictive agreements up to a certain market share threshold and to apply a stricter regime above the thresholds.

39. The exemption of qualitative selection has the advantage of avoiding foreclosure of this market with respect to new qualified entrants. However, in view of the investment which has to be made by an authorised repairer, apart from existing dealers, whose contract has been ended, it cannot be expected that many independent repairers will qualify to become official repairers. Moreover, it is favourable for existing dealers, whose contract is ended in the context of the ongoing drastic reduction in the numbers of dealerships <sup>(33)</sup>. Such dealers can carry on as 'official repairers' of their brand as long as they fulfil the qualitative criteria set by the relevant vehicle manufacturer. Through this approach, the draft BER strengthens to a considerable extent the position of authorised repairers towards the vehicle manufacturers. Meanwhile, the general level of technical expertise on the market is increased and a dense network of official repairers all over Europe is maintained. A dense network of official repairers with technical expertise provided by the manufacturer will contribute to a high quality of the services provided and to road safety. It can also be anticipated that in this respect the draft BER will have positive effects on employment and small and medium-sized undertakings.

40. It should also be noted that the draft BER does not cover location clauses for authorised repairers (see Article 5(h)). This allows them to operate wherever it is profitable. As under Regulation (EC) No 1475/95, an official repairer has to be allowed to repair vehicles of all manufacturers, since a non-compete clause is not covered by the draft BER (Article 5(d)). Under the draft BER the setting up of multi-brand repairers would thus be possible.

<sup>(31)</sup> However, since there is no presumption that above a threshold of a BER a distribution system is illegal (see vertical guidelines point 62) an individual assessment of such systems based on the guidelines on vertical restraints would have to be carried out as in any other regulation and could lead to the conclusion that a less restrictive type of quantitative selection would be compatible with the requirements of Article 81(3).

<sup>(32)</sup> See, *inter alia*, Andersen study, Appendix 7, p. 252.

<sup>(33)</sup> General Motors recently announced its intention to reduce its dealer network in Germany by 50 %; Volkswagen has already drastically reduced the number of its dealers and the general trend is that during the next five years the number of dealers will diminish by 15 % to 20 % according to the Accenture study, p. 117, commissioned by the automobile industry (ACEA) in 2001.

### Quantitative selective distribution or exclusive distribution

41. Based on the new and more flexible approach in the area of block exemption regulations, the draft BER also covers the use of more restrictive systems for the selection of official repairers, mainly quantitative selective distribution or exclusive distribution, up to the normal market share threshold of 30 % (see Article 3(1)). However, the draft BER would in practice cover such systems only for types of after-sales services where extensive competition exists from independent repairers and where the market share of the authorised repairers is low, such as the replacement of tyres or certain repairs which are carried out by fast-fit chains. As regards the traditional after-sales servicing business of an official repairer, who offers (nearly) the full range of after-sales servicing, the market share will be well above 30 %. It is therefore likely that vehicle manufacturers, which have an interest to have a system of repairers who offer all types of repair services ('one stop shop principle') for reasons of consumer convenience and in order to take account of consumer preferences will use qualitative selection for the selection of their authorised repairers.

#### 3.2.3. Rules for the operation of the official repairers

42. As with the existing Regulation (EC) No 1475/95, the draft BER clarifies that consumers who have purchased a motor vehicle in another Member State can turn to all official repairers as regards honouring the warranty, performing free servicing and carrying out of recall<sup>(34)</sup> work (see recital 18). In line with Regulation (EC) No 1475/95, the draft also clarifies (see recital 18) that under the new BER a manufacturer has to require all its authorised repairers to carry out normal repair and maintenance. The recitals make it clear that the absence of such an obligation would amount to an indirect restriction of active or passive sales within the meaning of Article 4(1)(b) and (d) of the draft BER<sup>(35)</sup>.

43. Moreover, official repairers normally also distribute spare parts supplied to them by the vehicle manufacturer and use them extensively for repair and maintenance. Taking into account that about 80 % of all components used for the assembly of a motor vehicle are produced by component and spare part manufacturers (e.g. Bosch, Magneti Marelli, Valeo), and are normally also available from independent spare part distributors at lower prices,

<sup>(34)</sup> A recall is initiated by a vehicle manufacturer when a technical problem is identified with a vehicle model. The manufacturer then asks the customers to turn to one of its network dealers or repairers for a repair which is free of charge for the customer. A recall is sometimes also announced in the media.

<sup>(35)</sup> It is unnecessary to mention these rights in the text of the draft BER. Moreover, it would create the false impression that for other products, the distribution of which is governed by Regulation (EC) No 2790/1999, which does not explicitly refer to these rights, such rights do not exist.

the draft BER (like the existing Regulation (EC) No 1475/95) has to create better conditions in order to allow official repairers to source these spare parts wherever possible, from the spare part manufacturer directly or from independent spare part suppliers (see Article 4(1)(j) and (k)), which also produce and offer spare parts with the same quality but at generally lower prices. Under the draft BER consumers should have a real choice between spare parts which have been supplied to the repairer by the vehicle manufacturer and those of matching quality offered by other suppliers.

44. In order to enhance competition as regards spare parts sold by an authorised repairer, the draft BER defines the term 'original' spare part (see Article 1(s)). According to this definition, original spare parts are those spare parts which are produced by the undertaking which also produces the components for a new vehicle and which are manufactured on the same production line. This new definition is necessary in order to avoid the confusion which currently exists among consumers. Consumers believe that original spare parts are only those parts which are supplied by the motor vehicle manufacturer, often at higher prices, and that they are better than parts which come directly from the part manufacturer. However, in reality in many cases both 'categories' of parts are produced by the same part manufacturer on the same production line (e.g. windscreen wipers manufactured by Bosch and used by VW for the production of the Golf). It is for the spare part producer to prove that the original spare parts match the quality of those used for the assembly of a new vehicle.

45. In line with Regulation (EC) No 1475/95, official repairers must also be given access to spare parts which are of the same quality as the original spare parts used for the assembly of a new motor vehicle, but which have been produced on another production line by the producer of the components used for the assembly of a car or by another producer (e.g. a windscreen wiper produced by Valeo for the VW Golf).

46. For repair under warranty, recall operations and free servicing arrangements (all of which the vehicle manufacturer offers to the customer for free) the vehicle manufacturer can request its authorised repairers to only use spare parts supplied by the vehicle manufacturer (Article 4(1)(j)). This exception is justified for economic reasons and by the fact that the vehicle manufacturer has either to reimburse the authorised repairer if spare parts are used or at least to replace them for free. This flexible approach would be lost if the authorised repairer were allowed to use spare parts supplied to him from other sources.

### 3.3. Rules regarding ending dealer contracts and solving disputes

47. In order to prevent a manufacturer from terminating a contract because a distributor or a repairer engages in pro-competitive behaviour which may not be restricted under the draft proposal, every notice of termination must clearly state the reasons for the termination (Article 3(5)). In addition, the draft BER provides (see Article 3(6)), in line with Regulation (EC) No 1475/95, that for contracts one year's notice has to be given if a network is re-organised or if compensation is paid to the dealer, and two years' notice has to be given in all other cases. In the context of the consultation of the Member States and of third parties, the Commission will also analyse whether a distributor, which fulfils the qualitative criteria set by a supplier, should be entitled to acquire a distributorship from another distributor within the supplier's network.
48. In the case of termination of a contract, but also where disputes arise regarding the fulfilment of contractual obligations, the parties have to agree in their distribution agreement that such disputes can be referred to an independent expert third party or arbitrator (Article 3(6)). This provision is based on the relevant provision of Regulation (EC) No 1475/95, which applied to a limited number of types of dispute, for example on sales targets. Since this provision has proven its usefulness, the draft BER extends its scope to all disputes on contractual obligations.

### 4. INDEPENDENT REPAIRERS

49. Independent repairers (e.g. independent garages, fast-fit chains, autocentres like Midas, body repairers) account on average for about 50 % of all repairs throughout the European Union. In order to be able to compete with the 'official' authorised repairers, they need to have access to technical repair information, training, diagnostic equipment and tools (Article 4(2)). Without such access they could for example not carry out the normal 10 000 km maintenance of a Smart, since a certain type of software is needed which is provided by Mercedes online or on CD-ROM. To this end the draft BER strengthens the existing obligation on vehicle manufacturers to make available to independent repairers all technical information which is also made available to official repairers. This access should be given without delay on a non-discriminatory basis, (between dealers and independent repairers) taking into account affordability and the principle of proportionality. In the past, under Regulation (EC) No 1475/95 which already provided for a certain degree of right of access, the access right was often rendered unaffordable because vehicle manufacturers were only willing to sell complete packages of the repair information at a very high price, which independent multi-brand repairers could not afford. However, if official repairers have to pay for information or training, the principle of non-discrimination means that the independent repairers will also have to pay a corresponding fee.

50. The access right provided by the draft BER, which now clearly also covers the relevant software and access codes, tools, including diagnostic tools, equipment and training, is necessary in order to put independent repairers in a position to repair modern motor vehicles (as these become older, their owners will increasingly turn to independent repairers), to offer good quality services and to contribute to the safe and reliable functioning of all motor vehicles. Without this access, the technical skills of these operators, which carry out about 50 % of all after-sales services, would tend to decrease, especially as regards modern motor vehicles, which are equipped with more electronic devices. It is noteworthy that surveys show that independent repairers offer after-sales services of the same quality as authorised dealers and that consumer satisfaction with the services provided by both groups is at a similar level<sup>(36)</sup>. There are only two limits to this access: access cannot be required to technical information which permits on-board anti-theft devices to be bypassed or disarmed (see recital 25); moreover, software which allows re-calibration of the computers on a vehicle (e.g. to change the engine program in order to make the engine more powerful) has also not to be provided.
51. The group of operators who can request access is also widened (see recital 25 and Article 4(2)): not only independent repairers, but also manufacturers of repair equipment and tools, publishers of technical information, automobile clubs, roadside assistance operators and operators offering inspection and testing services or training for repairers should also be given access to the above items.
52. Independent repairers need access to spare parts. For example, a body repair shop has to be able to buy body panels or headlamps from a vehicle dealer or official repairer, since these parts are generally not available from the independent spare part distributors. The draft BER explicitly mentions that official repairers have the right to sell spare parts to independent repairers, which need them for the repair and maintenance of motor vehicles (Article 4(1)(b), fourth indent). This approach is identical to that of Regulation (EC) No 1475/95 and should be maintained.

### 5. DURATION OF THE BER AND TRANSITION PERIOD

53. The new BER should enter into force on 1 October 2002. It seems appropriate to limit its duration to that of Regulation (EC) No 2790/1999, which expires on 31 May 2010 (total duration seven years and eight months). This will allow the Commission to review the general situation in 2010 for all industries. This duration is similar to that of Regulation (EC) No 1475/95 (duration seven years).

<sup>(36)</sup> Autopolis study, pp. 13-14, section 3.6. with reference to a statement of CECRA in a reply to the EU Commissions questionnaire in August 2000; for further details and references see the Commissions evaluation report on Regulation (EC) No 1475/95, point 396.



54. In order to allow market participants to adapt to the new situation, the new BER should, as usual, provide for a transition period. Under Regulation (EC) No 1475/95, the transition period was one year, whereas the transition period under Regulation (EC) No 2790/1999 was one year and seven months.
55. However, different elements have to be taken into account:
- the new regime represents a considerable departure from the principles of Regulation (EC) No 1475/95 even if some of the elements of the previous regulation are maintained and strengthened,
  - the evaluation report clearly establishes that Regulation (EC) No 1475/95 has not achieved all its aims; changes are therefore indispensable and requested by consumers,
  - all players know that after 1 October 2002 new rules will be applicable; some manufacturers have already given notice of termination to all their dealers in order to be able to adapt the contracts to the new regime as of 1 October,
  - the draft BER is favourable to distributors and authorised repairers since they get windows of opportunity to compete which do not exist under the current Regulation.
56. A general transition period of one year, i.e. until 30 September 2003 is therefore proposed.

## 6. IMPACT OF THE NEW BER ON ALL PLAYERS

57. The chosen approach aims at removing the competition problems identified in the evaluation report by introducing a more flexible system which gives all operators more flexibility and more leeway for their activities. The manufacturers' opportunities to select their distributors and repairers based on qualitative criteria are preserved, without forcing them to open the distribution systems to new operators, such as supermarkets or pure Internet distributors, if they do not consider this to be appropriate. For independent after-sales service providers, the approach is to increase their level of skills and to allow them to offer consumers after-sales services of good quality.

## 7. CONCLUSION

58. The procedure to be followed for the preparation of block exemption Regulations is set out in Articles 5 and 6 of Regulation 19/65/EEC of the Council. In accordance with these provisions, when the Commission proposes to adopt a Regulation, it must publish the draft and invite comments from interested parties within a specified time limit which may not be less than one month. Moreover, the Commission must consult the Advisory Committee on restrictive practices and dominant positions twice: first before publication of the draft Regulation and secondly before its adoption. In this context, the Commission particularly welcomes comments indicating any potentially detrimental impact that the regulation might have on road safety and the environment.

## ANNEX I

## REASONS FOR A NEW BER FOR MOTOR VEHICLE DISTRIBUTION

**1. Negative outcome of the Commission's evaluation of the existing BER, Commission Regulation (EC) No 1475/95, in the evaluation report of 15 November 2000**

1. A renewal of the existing motor vehicle block exemption Regulation (EC) No 1475/95 is not a real option. Regulation (EC) No 1475/95 was based on Regulation (EEC) No 123/85, which preceded it. The evaluation report adopted by the Commission on 15 November 2000 concluded that Regulation (EC) No 1475/95 did not achieve certain of its principal aims. The evaluation came in particular to the following conclusions as regards the distribution of passenger cars:
- (a) Regulation (EC) No 1475/95 has a certain 'straightjacket' effect, since all new motor vehicles are distributed in the same way: that is, through systems which cumulate exclusive and selective distribution;
  - (b) parallel trade between Member States does not play its role and is still marginal; as the Commission's bi-annual car price reports highlight, price differentials in Europe are still high. Parallel trade is not strong enough to have an impact on manufacturers' pricing policies; a study commissioned by DG Comp. on the reasons for price differentials shows that price differentials are not only due to tax differences between <sup>(1)</sup> Member States, but also to pricing strategies adopted by the vehicle manufacturers; moreover, intermediaries cannot play their role efficiently as regards the purchase of new motor vehicles in other Member States;
  - (c) the use of new marketing methods, in particular the Internet, and the sale of new vehicles via multi-brand dealerships are both difficult under Regulation (EC) No 1475/95;
  - (d) there is no natural link between the sale of new motor vehicles and after sales services. This link was assumed in Regulation (EC) No 1475/95, and the regulation therefore imposed an obligation to appoint only dealers that also offered after sales services. Moreover, the evaluation report also found that the specialists needed for the repair of motor vehicles need not necessarily be dealers; this finding was confirmed by a study commissioned by DG Competition <sup>(2)</sup>;
  - (e) access to technical information for independent repairers is not sufficiently assured;
  - (f) spare part producers do not have sufficient access to dealers and dealers do not use spare parts directly sourced from the spare part suppliers to a sufficient extent; instead most spare parts used by dealers are sourced via the vehicle manufacturer, although about 80 % of the spare parts are not produced by the vehicle manufacturer and could to some extent be sourced at lower prices from the spare parts producers directly;
  - (g) dealers' independence has not been significantly strengthened by Regulation (EC) No 1475/95. Although the regulation provided for greater recourse to agreed, rather than imposed sales targets, gave dealers the right to sell vehicles from different manufacturers under strict conditions, and imposed longer minimum notice periods (in most cases two years instead of the one year provided for under the previous Regulation (EEC) No 123/85), dealers are still very much dependent upon their manufacturers.

**2. Regulation (EC) No 1475/95 is not respected by the car industry and consumers are not satisfied with its operation**

2. Although Regulation (EC) No 1475/95 is very generous to the automobile industry, car manufacturers have often not respected its terms, obliging the Commission to adopt four decisions involving the imposition of fines. On 28 January 1998, Volkswagen was fined EUR 102 million for impeding parallel trade in Italy (reduced by the CFI to EUR 90 million). On 20 September 2000 the Commission fined Opel Nederland EUR 43 million for restricting parallel trade in the Netherlands. On 30 May 2001, Volkswagen was fined a second time for price fixing in Germany, this time involving the VW Passat (fine EUR 30,96 million), and on 10 October 2001 DaimlerChrysler was fined EUR 71,825 million for impeding parallel trade in Germany, restricting sales to leasing companies and engaging in price fixing in Belgium <sup>(3)</sup>.

3. The high number of consumer complaints received by the Commission over the last few years indicates that consumers also perceive Regulation (EC) No 1475/95 to be unsatisfactory.

<sup>(1)</sup> 'Car price differentials in the European Union, an economic analysis' by Prof. Verboven and Degryse.

<sup>(2)</sup> 'The sales-service link' by Autopolis.

<sup>(3)</sup> Details of these cases can be found at DG Competition Internet site.

### 3. Positions and reports from national competition authorities

4. Most Member States which have expressed their views have indicated that the rules laid down by Regulation (EC) No 1475/95 should be reviewed, although views may differ about the extent of the review. The competition authorities of the UK and Denmark have also evaluated the operation of Regulation (EC) No 1475/95. They have come to the following conclusions:

— In its April 2000 'Report on the supply of new motor cars within the UK' The UK Competition Commission criticises the effects of the selective and exclusive distribution system permitted by Regulation (EC) No 1475/95 on new car prices, on innovation, and on consumer choice. The Competition Commission believes that substantial changes are necessary to remedy these adverse effects. It recommends among other things that manufacturers should not be allowed to grant exclusive territories, and should be prohibited from refusing to supply new cars to any retailer. It also recommends that car makers should not be permitted to require their dealers to sell the whole of a model range and that the link between sales and after-sales servicing should be broken. Consequently, it recommends that Regulation (EC) No 1475/95 should not be renewed.

— In spring 2001, the Danish Competition Authority produced a report on 'Agreements and prices in the car sector'. The report concludes that in Denmark, intra-brand competition, i.e. between members of the same network, is absent on the markets for new cars and for spare parts. The Danish Competition Authority identifies Regulation (EC) No 1475/95 as the main reason for the lack of competition, especially on the market for after-sales servicing. The Danish Competition Authority therefore recommends that 'a possible future distribution system for new cars should not be based on quantitative and exclusive criteria, but only on certain qualitative requirements'.

### 4. The general BER for vertical restraints, Commission Regulation (EC) No 2790/99, does not remedy the problems identified in car distribution

5. Regulation (EC) No 2790/99, which was adopted on 22 December 1999, establishes a block exemption which applies for all distribution agreements in all economic sectors which are not subject to the application of specific rules, such as motor vehicles (see Article 2(5) of Regulation (EC) No 2790/99). Regulation (EC) No 2790/99 represents the new approach for vertical restraints and should therefore constitute the starting point for determining the new regulation for car distribution. However, as it stands, the application of the new legal framework on vertical restraints would not result in any substantial modification of the current situation for car distribution. This shortcoming is due on the one hand to the competition problems that homogeneity in distribution systems brings about, and on the other hand, to the fact that specific provisions are needed to address problems identified by the Commission in the evaluation report.

6. The Commission may exclude the benefit of Regulation (EC) No 2790/99, where access to a given market or competition within that market is significantly restricted by the cumulative effect<sup>(1)</sup> of parallel networks of similar vertical agreements, and where these cover more than 50 % of a relevant market and are practised by competing suppliers or buyers. The guidelines on vertical restraints make it plain that appreciable anti-competitive problems may occur where the market coverage ratio of the selective distribution system exceeds 50 %, and where the aggregate market share of the five largest suppliers (CR5) is also above 50 % and suppliers apply quantitative selection criteria directly limiting the number of authorised dealers. Such networks of selective distribution systems may result in a significant loss of intra-brand competition, and in a possible foreclosure of more efficient distributors, thereby limiting distribution to the detriment of final consumers, and increasing the risk of collusion between the major suppliers.

7. All brands of new cars in every Member State are currently sold through similar networks of franchised dealers combining exclusivity and selectivity (qualitative and quantitative) and other vertical restraints. As a consequence, the cumulative effect resulting from this covers considerably more than 50 % of the relevant market (in fact nearly 100 %) and the aggregate market share of the five largest suppliers (CR5) also exceeds 50 %. Such thresholds are exceeded in the EC as a whole and in all Member States.

8. A further problem affecting the sales and after sales market is that Regulation (EC) No 2790/99 covers vertical restraints up to a market share of 30 %. Based on all reasonably possible market definitions, it is likely that certain manufacturers' distribution networks exceed the threshold of 30 %, as do their activities in the markets for after-sales services and repairs, which are likely to be brand-specific markets where car manufacturers would have high market shares, particularly in view of the fact that during the term of the manufacturer's warranty, cars are almost exclusively serviced by an authorised dealers. Regulation (EC) No 2790/99 would therefore not cover a major proportion of sales and repair networks in the EC.

<sup>(1)</sup> Commission notice 'Guidelines on vertical restraints' (OJ C 291, 13.10.2000, p. 1), point 119(7).

9. As regards in-store inter-brand competition (multi-branding), the application of Regulation (EC) No 2790/99 to the car sector would amount to a step backwards as compared to Regulation (EC) No 1475/95, since a non-compete obligation, i.e. the obligation not to sell more than 20 % of vehicles from another manufacturer, is permissible for a period of 5 years, after which it has to be renegotiated. If the dealer uses premises which are owned or leased by the manufacturer, the non-compete obligation is not limited in time. Under Regulation (EC) No 1475/95, full multi-branding is permissible on condition that it is carried out through separate legal entities, management and sales premises.
10. Regulation (EC) No 2790/99 does not contain the so called 'availability clause', which allows dealers to order a car for sale to a foreign consumer who wishes to buy a car abroad which has identical specifications to the same model sold in their own country (e.g. as many British consumers do when they order a right-hand-drive car in mainland Europe). This clause is however an important element for achieving the single market objective for motor vehicle distribution.
11. Moreover, the rules provided for by Regulation (EC) No 2790/99 in order to protect competition in the after-market do not seem appropriate. It is noteworthy that while 40 % of the total cost of ownership of a passenger car is attributable to the purchase, 40 % relates to after-sales servicing carried out through official repairers and independent repairers (the rest being finance and insurance costs). Both activities are therefore equally relevant for consumers. Currently, the problem of access to technical information and of the possible anti-competitive effects of the exercise of IPR rights appears to be more serious in this sector, especially in view of the technical complexity and the high degree of diversity of the electronic systems built into motor vehicles. Regulation (EC) No 2790/99 also fails to ensure that spare part suppliers can sell their spare parts to dealers; this would allow dealers to offer consumers a choice between different spare parts.
12. In these circumstances, based on the approach explained in the Commission's guidelines on vertical restraints<sup>(1)</sup>, stricter rules have to be put in place. The draft BER incorporates most of the contents of Regulation (EC) No 2790/99 while providing for such stricter rules.

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<sup>(1)</sup> See, for example, points 73 and 81 of Commission notice 'Guidelines on vertical restraints'.

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### Communication — Notification of titles of qualifications in specialised medicine

(2002/C 67/03)

(Text with EEA relevance)

Council Directive 93/16/EEC to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications as amended recently by Directive 2001/19/EC and particularly Article 42(a) thereof foresees that Member States shall notify the Commission of the laws, regulations or administrative provisions they adopt as regards the award of diplomas, certificates and other evidence of formal qualifications in the field covered by this Directive. The Commission shall publish an appropriate notice in the *Official Journal of the European Communities*, listing the names adopted by the Member States for the training qualifications concerned and, where applicable, for the corresponding professional title.

Italy has notified the designation of thoracic surgery to be amended for that Member State in the list of specialist medicine peculiar to two more Member States.

Sweden has notified the designation of nuclear medicine to be amended for that Member State in the list of specialist medicine peculiar to two or more Member States.

Annex C of Directive 93/16/EEC as amended by Directive 2001/19/EC is hereby amended as follows:

(a) under thoracic surgery, the entry for Italy should read:

'Chirurgia toracica; Cardiochirurgia';

(b) under nuclear medicine, the entry for Sweden should read:

'Nukleärmedicin'.

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**UNIFORM APPLICATION OF THE COMBINED NOMENCLATURE (CN)****(Classification of goods)**

(2002/C 67/04)

**Explanatory notes adopted under Article 10(1) of Council Regulation (EEC) No 2658/87 of 23 July 1987, on the tariff and statistical nomenclature and on the Common Customs Tariff <sup>(1)</sup>, as last amended by Regulation (EC) No 2433/2001 <sup>(2)</sup>.**

The explanatory notes to the combined nomenclature of the European Communities <sup>(3)</sup> shall be amended as follows:

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**6402 Other footwear with outer soles and uppers of rubber or plastics**

The following paragraph is inserted after the first paragraph:

'The "technical features" listed are not to be considered as being cumulative of the "synthetic materials"; but are considered to be descriptive of the "synthetic materials" mentioned above.'

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**6404 Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials**

The following paragraph is inserted after the first paragraph:

'The "technical features" listed are not to be considered as being cumulative of the "synthetic materials"; but are considered to be descriptive of the "synthetic materials" mentioned above.'

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<sup>(1)</sup> OJ L 256, 7.9.1987, p. 1.

<sup>(2)</sup> OJ L 329, 14.12.2001, p. 4.

<sup>(3)</sup> OJ C 199, 13.7.2000, p. 1.

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**Non-opposition to a notified concentration****(Case COMP/M.2631 — PTT/Hermes Versand)**

(2002/C 67/05)

**(Text with EEA relevance)**

On 25 February 2002 the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in German and will be made public after it is cleared of any business secrets it may contain. It will be available:

- as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),
- in electronic form in the 'CDE' version of the CELEX database, under document No 302M2631. CELEX is the computerised documentation system of European Community law.

For more information concerning subscriptions please contact:

EUR-OP,  
Information, Marketing and Public Relations,  
2, rue Mercier,  
L-2985 Luxembourg.  
Tel. (352) 29 29 427 18, fax (352) 29 29 427 09.

**Publication of an application for registration pursuant to Article 6(2) of Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin**

(2002/C 67/06)

This publication confers the right to object to the application pursuant to Article 7 of the abovementioned Regulation. Any objection to this application must be submitted via the competent authority in the Member State concerned within a time limit of six months from the date of this publication. The arguments for publication are set out below, in particular under 4.6, and are considered to justify the application within the meaning of Regulation (EEC) No 2081/92.

COUNCIL REGULATION (EEC) No 2081/92

APPLICATION FOR REGISTRATION: ARTICLE 5

PDO ( ) PGI (x)

**National application No: —**

**1. Responsible department in the Member State**

Name: Directorate for the Production and Utilisation of Orchard Products

Address: Akharnon St 2, GR-10176 Athens

Tel. (30-1) 529 12 74

Fax (30-1) 523 38 66.

**2. Applicant group**

2.1. Name: Agricultural Fruit and Vegetable Company of Kastoria (GEOK)

2.2. Address: Fotini, GR-52059 Kastoria

2.3. Composition: producers/processors (x) other ( )

With 610 apple-producer members (membership list 13225/9-11-79).

Recognised as a producer group as of 1981.

The group's precursors were the Agricultural Cooperatives of Tichio, Mavrochori and Polykarpi (Kastoria's three main apple-growing areas) established in 1925, 1926 and 1958 respectively. The company is a primary company with a popular base, and is one of the most important of its kind in Greece.

**3. Type of product: 1.6.**

#### 4. Specification

(Summary of requirements under Article 4(2))

4.1. **Name:** Milo Kastorias.

4.2. **Description:** Apple trees are perennial, deciduous trees belonging to the family *Rosaceae* and the sub-family *Pomoideae*. Its flowers are hermaphroditic and develop almost together with the leaves, in clumps of five to seven at a time.

The fruit, the apple itself, is fleshy and juicy with a slightly tart sweet taste, round, with crisp, whitish flesh. From the botanical standpoint the apple is a 'false fruit' since the carpel is involved in its formation.

The designated area produces the red varieties Starking, Starkrimson, IDR Delicious, Red Chief and the yellow varieties Golden Delicious, Jonagold, Granny Smith.

Apple trees are cultivated for their fruit. The apples are harvested when they correspond with certain ripeness indicators — soluble ingredients (12,5 brix for red varieties, 14,5 for yellow), resistance of the flesh to pressure (7-8 kg), distribution of red colour (must be more than 80 % of coloured surface) and internal concentration of ethylene (1 ppm).

Apples are eaten mainly raw and to a lesser extent cooked in various ways (stewed, preserved, baked, in pies, in sauces, etc.). They are also used for the production of cider (whose preparation is mentioned by Plutarch in the first century AD), juice, wine, liqueur, brandy and vinegar, and in confectionery and the production of pectin. Apples are a good source of vitamins A and C, they contain large amounts of carbohydrates and they are an excellent source of dietary fibre.

4.3. **Geographical area:** In the prefecture of Kastoria apple trees are grown mainly in lake- and riverside localities, which are the GEOK's area of operations (districts of Kastoria, Vitsios, Agia Trias, Orestias, Agion Anargyron and Iona Dragoumi). The height above sea level of the cultivation zone ranges from 630 to 850 m.

The total area used for growing apples is 16 500 stremmas (1 stremma = 1 000 m<sup>2</sup>), or 5 % of farmland in the prefecture.

The soil of the said apple-growing area is alluvial and sedimentary, of light consistency, well draining and slightly acidic.

The climate is continental, with low temperatures in winter which fully satisfy the apple tree's great need for cold weather to break the period of dormancy. The summers are cool because of the geographical latitude, the height above sea level and the waters of the lakes and rivers, with large temperature differences between day and night, a factor that greatly favours the formation of plentiful pigmentation (anthocyanins) in the fruit. The mean annual rainfall is 602 mm (1991-1997).

4.4. **Proof of origin:** The Greek names for apple and apple tree — 'milo' and 'milia' (or 'mileia' in poetry) — derive from the ancient Greek Aeolic and Doric dialects, and are Mediterranean in origin.

Apple trees have been known since prehistoric times in both natural and wild forms. Fossilised trees have been found dating back to 3000 BC.

Homer (eighth century BC) mentions the cultivation of apple trees both in *Odyssey*, VII, 115 ('apple trees with bright fruit') and XXIV, 340, and *Iliad*, X, 152. There are also mentions in Hesiod's *Theogony* (eighth century BC), line 215 ('the Hesperides who guard the rich, golden apples and the trees bearing fruit beyond glorious Ocean'), Herodotus (fifth century BC), Aristophanes (*The Clouds*, line 978), Theophrastus (fourth century BC) and other writers of antiquity.

Famous in Greek mythology is the golden apple sent as a gift by Eris, goddess of rivalry and vengeance, to the nuptials of Thetis and Peleus, with the message 'for the fairest'. This was her revenge for being the only Olympian god not invited, and provoked a rivalry between the three most beautiful goddesses, Hera, Athena and Aphrodite, which in turn led to the abduction of Helen and the Trojan war. (The original Greek for 'apple of discord' is 'μήλο της έριδος' or 'apple of Eris'.)

According to C. H. Chandler, professor of arboriculture at the University of California, apple trees have been cultivated in Greece since 600 BC.

In the Kastoria prefecture their cultivation goes back at least to the beginning of the 20th century, beginning in mountain villages. In the years between the wars (1930-1940) it spread and became established in the prefecture's lake- and riverside areas (corresponding to the districts of Kastoria, Aliakmona, Makedna, Vitsios, Agia Trias, Orestias, Agion Anargyron and Iona Dragoumi).

The GEOK is an officially recognised group of apple-producers which is legally obliged to keep cultivation, production and sales records for its members. So records exist for each producer of numbers of trees, area under trees and production quantity and quality.

The resultant top-quality produce is collected, conserved, sorted, packaged and standardised at the GEOK's modern cold storage and sorting facilities.

The competent inspection staff of the regional agricultural directorates monitor production, standardisation and distribution on the basis of ministerial decisions.

#### 4.5. **Method of production**

4.5.1. *Harvesting*: Harvesting begins at the end of September, lasts a month and takes place in a festive atmosphere.

The ripeness criteria applied by the GEOK were defined by the Arboriculture Laboratory of the University of Thessaloniki's Department of Agriculture after a series of experiments carried out in the GEOK's apple-growing zone, and are as follows:

- A. Concentration of soluble constituents (red varieties 12,5 brix, yellow varieties 14,5 brix).
- B. Resistance of the flesh to pressure 7-8 kg.
- C. Local distribution of red colour (> 80 % of the coloured area).
- D. Internal concentration of ethylene (1 ppm).

This method is used to check the quality of the harvested product and physiological diseases or ones developed after picking during storage are largely avoided.

Producers pick the fruits by hand (one at a time), putting them into plastic containers from where they are transferred to wooden crates measuring 1,10 × 1,20 × 0,7 m (bins). These are loaded by hoists onto trucks, which transport them the same day to the GEOK's refrigerators, from where they are at once taken to the cold stores.



- 4.5.2. *Preservation*: The apples are collected, preserved, sorted, standardised and packaged at the GEOK's facility in Fotini, where its cold-stores and sorting equipment, the most modern of their kind in the Balkan area, are located.

The apples are stored and preserved in 16 cold-stores, four of which have a controlled atmosphere.

The apples are preserved from harvesting time until May/beginning of June of the following year.

The GEOK is the most organised agricultural enterprise in the prefecture of Kastoria, with considerable facilities and technical experience at its disposal.

However, under the action plan it has submitted as an apple producer association (whose implementation will be subsidised by the European Agricultural Fund), it will be modernising and adapting its infrastructure so as to provide its members with stable trading structures, training, agricultural information and environmentally friendlier cultivating methods.

One of the action plan's main elements is the acquisition of new equipment, which, in combination with its existing equipment, will perfect and modernise the collection, processing and storage of produce.

- 4.5.3. *Standardisation — packaging — marketing*: The only standardising and packaging unit in the prefecture of Kastoria is the GEOK's unit, which is the distribution centre for all the Kastoria's apple production for which PGI recognition is being sought.

During the preservation period, sorting and standardisation are carried out gradually by the ultra-modern electronic sorting equipment, whose capacity is 10 t/hour, which divides the apples into quality categories according to the individual weight of the apples and their colour (proportion of red colour 80 %).

All the types and sizes are packaged in plastic crates and cartons of various sizes according to the requirements and particularities of the domestic market and markets abroad:

- three-layer cartons (50 × 27 × 30 cm),
- five-layer, 'tray pack' cartons (52 × 32 × 32 cm),
- cardboard two-layer trays (40 × 60 × 18 cm), with apples placed in two layers in a plastic holder.

Under the action plan submitted by the GEOK for EU funding, it is also planned to acquire a 'micro-packaging' system more suited to the final marketing of this product.

Marking equipment will also be acquired to highlight the product's qualitative characteristics and origin. A retail outlet will also be created for Kastoria apples of guaranteed quality.

Approximately 20-30 % of the GEOK's apple production is exported to countries in Europe, such as Italy, Portugal, Germany and the Netherlands. Smaller quantities are exported to Israel, Albania and Russia.

- 4.6. **Link:** The product's characteristics (size, intense red colour, exceptional organoleptic characteristics — taste, scent and juicy flesh — due to the appropriate ratio between soluble solids and acids, and high flesh hardness — 7-8 kg — persisting at a natural rate of decline until the end of the trading period) are a result of soil and climate conditions in the area and of the cultivation methods applied.

The soil of the GEOK's apple-growing areas is a key element in tree growth and optimum accomplishment of the natural ripening cycle. It is alluvial and sedimentary, originating in the Grammo and Vitsio rock layers (mainly igneous); it is light in consistency, well-draining, slightly acidic and pathogen-free, with a high organic materials content (1,5-2,0 %).

The area's climate, which is mild continental (thanks to the lake waters), with cool summers due to altitude (the apple-growing areas are at 630 m), is conducive to a high concentrations of soluble solids and optimum sugar-acid ratios, resulting in excellent organoleptic characteristics (i.e. delicious taste and smell, a juicy and dense flesh texture) and a long life.

The wide variation in temperature between day and night, particularly in the ripening months of July, August and September, favours the formation of plentiful pigmentation (anthocyanins) in the fruit, whence the vivid redness and yellowness of the respective varieties.

The cultivation methods applied, which are the result of long experience and know-how, help produce well-proportioned, sizeable and homogenous fruit. These methods principally include suitable thinning at the right time, appropriate (mainly organic) fertilisation and compensatory irrigation in summer.

Apple festivals, dating back many years, are organised regularly, with the participation of folklore performers and cultural groups. These events, along with various customs involving apples (particularly at Christmas), organised educational outings to orchards for pupils of State schools (going back many years), various sayings that are the distillate of long experience and popular wisdom ('apples fall under their own trees', 'apple tree, count your own apples', 'an apple a day keeps the doctor away') — all these elements of local culture and tradition contribute both toward conservation of the environment and to a harmonious lifestyle for those living in the area.

#### 4.7. **Inspection body**

Name: Normarchiaki aftodiikissi Kastorias (Prefectural Government of Kastoria)

Address: Diikitirio (Town Hall)  
M. Alexandrou  
GR-52100 Kastoria

- 4.8. **Labelling:** It is obligatory for packaging to bear the words 'Milo Kastorias' PGI and the information required under Article 4(7) of Presidential Decree No 81/93.
- 4.9. **National requirements:** The general provisions of Presidential Decree No 81/93 concerning the production process for PDO and PGI products are applicable.

**EC No:** EL/00128/2000.05.16.

**Date of receipt of the full application:** 17 July 2001.

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**Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty**

**Cases where the Commission raises no objections**

(2002/C 67/07)

(Text with EEA relevance)

**Date of adoption of the decision:** 30.10.2001

**Member State:** United Kingdom

**Aid No:** N 120/01

**Title:** Aid to Rolls-Royce for the development of engines

**Objective:** To support the development of two new high-thrust civil aircraft engines

**Legal basis:** 1982 Civil Aviation Act

**Budget:** GBP 250 million

**Aid intensity or amount:** Reimbursable advance of up to 37 % of eligible costs

**Duration:** Last instalment to be delivered by 31 March 2004

**Other information:** Annual report

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

[http://europa.eu.int/comm/secretariat\\_general/sgb/state\\_aids](http://europa.eu.int/comm/secretariat_general/sgb/state_aids)

**Date of adoption of the decision:** 21.12.2001

**Member State:** Spain

**Aid No:** N 611/B/01

**Title:** Processing and marketing — fisheries sector

**Objective:** To improve the financial and technical management of fisheries enterprises by means of advisory services

**Legal basis:** Orden por la que se establecen las bases reguladoras de las subvenciones para planes de asistencia técnica y de gestión en los sectores de transformación y comercialización de los productos agrarios, silvícolas, de la pesca, la acuicultura y la alimentación, y se convocan para el ejercicio 2001 (Ministerio de Agricultura, Pesca y Alimentación)

**Budget:** ESP 40 million (approximately EUR 240 405 in 2001 (this amount applies to all the sectors covered by the legal basis: agriculture, forestry, fisheries and food)

**Duration:** Unspecified

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

[http://europa.eu.int/comm/secretariat\\_general/sgb/state\\_aids](http://europa.eu.int/comm/secretariat_general/sgb/state_aids)

**Date of adoption of the decision:** 3.7.2001

**Member State:** Ireland

**Aid No:** N 209/01

**Title:** Guarantee for borrowings of the Housing Finance Agency

**Objective:** Social housing

**Legal basis:** Housing Finance Agency Act, 1981 with its amendments 1982, 1985, 1988 and 1992

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

[http://europa.eu.int/comm/secretariat\\_general/sgb/state\\_aids](http://europa.eu.int/comm/secretariat_general/sgb/state_aids)

**Date of adoption of the decision:** 20.6.2001

**Member State:** Germany

**Aid No:** N 804/2000

**Title:** Sale of shares in GSG — Land Berlin

**Objective:** Sale of a public company by a trade sale

**Aid intensity or amount:** Measure not constituting aid

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

[http://europa.eu.int/comm/secretariat\\_general/sgb/state\\_aids](http://europa.eu.int/comm/secretariat_general/sgb/state_aids)

**Date of adoption of the decision:** 20.6.2001

**Duration:** 1 April 1998 to 31 December 2001

**Member State:** The Netherlands

**Aid No:** NN 87/2000

**Title:** Waste disposal system re-collection of paper and cardboard at times of low international prices

**Other information:** The measure makes an agreement between producers and importers of paper and paper products, municipalities and waste paper companies binding to all producers and importers of paper and products in the Netherlands

**Objective:** Environmental protection

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

**Legal basis:** Artikel 15.36 Wet Milieubeheer

**Aid intensity or amount:** The measure does not constitute aid

[http://europa.eu.int/comm/secretariat\\_general/sgb/state\\_aid](http://europa.eu.int/comm/secretariat_general/sgb/state_aid)

### Notice of the impending expiry of certain anti-dumping measures

(2002/C 67/08)

1. The Commission gives notice that, unless a review is initiated in accordance with the following procedure, the anti-dumping measures mentioned below will expire on the date mentioned in the table below, as provided in Article 11(2) of Council Regulation (EC) No 384/96 of 22 December 1995 <sup>(1)</sup> on protection against dumped imports from countries not members of the European Community.

#### 2. Procedure

Community producers may lodge a written request for a review. This request must contain sufficient evidence that the removal of the measures would be likely to result in a continuation or recurrence of dumping and injury.

Should the Commission decide to review the measures concerned, importers, exporters, representatives of the exporting country and Community producers will then be provided with the opportunity to amplify, rebut or comment on the matters set out in the review request.

#### 3. Time limit

Community producers may submit a written request for a review on the above basis, to reach the European Commission, Directorate-General for Trade (Division B-1), TERV 0/13, B-1049 Brussels <sup>(2)</sup> at any time from the date of the publication of the present notice but no later than three months before the date mentioned in the table below.

4. This notice is published in accordance with Article 11(2) of Regulation (EC) No 384/96 of 22 December 1995.

Product	Country(ies) of origin or exportation	Measures	Reference	Date of expiry
Silicon metal	People's Republic of China	Duty	Regulation (EC) No 2496/97 (OJ L 345, 16.12.1997)	17.12.2002

<sup>(1)</sup> OJ L 56, 6.3.1996, p. 1, as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

<sup>(2)</sup> Telex: COMEU B 21877, fax (32-2) 295 65 05.

## III

(Notices)

## COMMISSION

## Operation of scheduled air services

**Invitation to tender issued by Ireland under Article 4(1)(d) of Council Regulation (EEC) No 2408/92 in respect of the operation of scheduled air services between Dublin and Donegal, Ireland**

(2002/C 67/09)

(Text with EEA relevance)

1. **Introduction:** Ireland has amended the public service obligation published in the *Official Journal of the European Communities* C 266 of 16.9.2000 pursuant to Article 4(1)(a) of Regulation (EEC) No 2408/92 of 23.7.1992 on access for Community air carriers to intra-Community air routes, in respect of scheduled air services operated between Dublin and Donegal with effect from 22.7.2002. The standards required by the revised public service obligation were published in the *Official Journal of the European Communities* C 66 of 15.3.2002.

In so far as by 30.4.2002, no air carrier will have commenced or be about to commence such air services in accordance with the public service obligation and without requesting financial compensation, Ireland has decided, in accordance with the procedure laid down by Article 4(1)(d) of that regulation, to continue to limit access to the route to a single air carrier from 22.7.2002 and to offer the right to operate such services by public tender.

2. **Object of invitation to tender:** Operation from 22.7.2002 of scheduled air services between Dublin and Donegal in accordance with the public service obligation imposed on that route and published in the *Official Journal of the European Communities* C 66 of 15.3.2002.

3. **Participation:** Participation is open to all air carriers holding a valid operating licence issued by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23.7.1992 on licensing of air carriers.

4. **Tender procedure:** The present tender is subject to the provisions of points d), e), f), g), h) and i) of Article 4(1) of Regulation (EEC) No 2408/92.

5. **Information for tenderers:** The complete tendering dossier, including application forms, a note on demographic and socio-economic features of Donegal airport catchment area, a note on Donegal airport (past passenger numbers, landing fees, technical facilities, etc.) and the full conditions of the contract, may be obtained free of charge from:

Department of Public Enterprise, Mr Ken Gorman, 44 Kildare Street, IRL-Dublin 2. Tel. (353 1) 604 16 18. Fax: (353 1) 604 16 81. e-mail: kengorman@dpe.ie.

6. **Information required from tenderers:** In addition to a fully completed application form, tenderers are required to satisfy the awarding authority, having regard to the requirement for the services to commence on 22 July 2002 and to the requirements for reliability and continuity of services, that they have:

- a) the financial standing and capacity to undertake and operate the specified services;
- b) the necessary valid operating licences and certificates (Air Operating Licence and Air Operator's Certificate); and
- c) demonstrated previous experience of operating scheduled passenger services.

Subject to being satisfied in relation to each of (a), (b) and (c) above, the awarding authority proposes to award the contract to the tenderer who seeks the lowest compensation amount over the three-year period of the contract. However, the awarding authority is not obliged to accept any tender.

The awarding authority reserves the right to solicit further information about any applicant's financial and/or technical resources and abilities, and without prejudice to the foregoing, to solicit or seek further information, whether from a third party or from the applicant, regarding the ability of the applicant to undertake and operate the relevant scheduled air services.

Tenders should be priced in euro and all supporting documents must be in the English language. The contract shall be considered as a contract made under Irish law and subject to the exclusive jurisdiction of the Irish courts.

7. **Financial compensation:** Tenders must explicitly state the amount of compensation required for the operation of the public service obligation on the route for each of the 3 years from the scheduled starting date (with an analysis for each year). The compensation should be calculated in accordance with the required minimum standards.

The actual amount of the compensation payable by the Department of Public Enterprise will be established ex-post and will be limited to the actual losses incurred, having regard to actual costs, revenues and, if applicable, profit margin, by the successful tenderer in operating the service subject, as a maximum, to the limit of the amount stated in respect of each year in the tender.

The contract will include provision for the maximum limit of compensation in any year(s) to be increased, at the sole discretion of the awarding authority, in the event of changes in operating conditions. Without prejudice to the provisions governing the termination of the contract, the awarding authority will, in assessing any proposal for an increase in the maximum limit of compensation in any year(s), have due regard to developments affecting the operation of the service that were not or could not have been anticipated by the tenderer or are due to factors outside the control of the tenderer.

The contract will be awarded by the Minister for Public Enterprise. All payments under the contract will be in euro and such payments will be subject to receipt by the awarding authority of appropriately documented claims accompanied by certification from the carrier's auditors in accordance with the terms of the contract.

8. **Period of validity, amendment and termination of the contract:** The contract will be valid for a period of 3 years from 22.7.2002. A new invitation to tender will be made, if applicable, before the end of a period of 3 years maximum from 22.7.2002. Any amendment or termination of the contract will be in accordance with the terms of the contract. Variations in the standards required by the public service obligation will be permitted only with the prior agreement of the awarding authority.
9. **Penalties in the event of the carrier failing to comply with the contract:** In cases of force majeure or where a flight is cancelled for reasons directly attributable to the carrier, the compensation payable will only be in respect of costs, if any, actually incurred by the carrier in handling passengers disrupted by the non-operation of such flights.

The awarding authority reserves the right to serve notice of termination of the contract if, having regard to the adequacy of service provided by the carrier and in particular to the number of flights cancelled for reasons directly attributable to the carrier, it is of the opinion that the standards required by the public service obligation have not or are not being met satisfactorily.

10. **Deadline for submission of bids:** Thirty one (31) calendar days from publication of this communication in the Supplement to the *Official Journal of the European Communities*.
11. **Application procedure:** Tenders must be submitted by registered letter, date as postmarked, or delivered to:

Department of Public Enterprise, 44 Kildare Street, IRL-Dublin 2,

by 12.00 noon (Irish time) on the date in point 10 in envelopes marked 'EASP Donegal Tender'.

12. **Validity of invitation to tender:** In accordance with the first sentence of Article 4(1)(d) of Regulation (EEC) No 2408/92, the validity of this invitation to tender is subject to the condition that no Community air carrier presents, by 30.4.2002, a programme for operating the route in accordance with the public service obligation without receiving any financial compensation.
13. **Freedom of Information Act, 1997:** The Department of Public Enterprise undertakes to use its best endeavours to hold confidential any information provided by tenderers, subject to the Department's obligations under law, including the Freedom of Information (FOI) Act 1997. If tenderers wish that any of the information supplied by them in their tenders should not be disclosed because of its commercial sensitivity, they should, when providing the information, identify same and specify the reasons for its sensitivity. The Department will consult with tenderers about this sensitive information before making a decision regarding release of the information under the provisions of the Freedom of Information Act. If tenderers consider that none of the information supplied by them is commercially sensitive, they should make a statement to that effect and such information may be released in response to an FOI request.

### Operation of scheduled air services

#### Invitation to tender issued by Ireland under Article 4(1)(d) of Council Regulation (EEC) No 2408/92 in respect of the operation of scheduled air services between Dublin and Kerry, Ireland

(2002/C 67/10)

(Text with EEA relevance)

1. **Introduction:** Ireland has amended the public service obligation published in the 'Official Journal of the European Communities' C 266 of 16.9.2000 pursuant to Article 4(1)(a) of Regulation (EEC) No 2408/92 of 23.7.1992 on access for Community air carriers to intra-Community air routes, in respect of scheduled air services operated between Dublin and Kerry with effect from 22.7.2002. The standards required by the revised public service obligation were published in the 'Official Journal of the European Communities' No C 66 of 15.3.2002.

In so far as by 30.4.2002, no air carrier will have commenced or be about to commence such air services in accordance with the public service obligation and without requesting financial compensation, Ireland has decided, in accordance with the procedure laid down by Article 4(1)(d) of that regulation, to continue to limit access to the route to a single air carrier from 22.7.2002 and to offer the right to operate such services by public tender.

2. **Object of invitation to tender:** Operation from 22.7.2002 of scheduled air services between Dublin and Kerry in accordance with the public service obligation imposed on that route and published in the 'Official Journal of the European Communities' No C 66 of 15.3.2002.

3. **Participation:** Participation is open to all air carriers holding a valid operating licence issued by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23.7.1992 on licensing of air carriers.

4. **Tender procedure:** The present tender is subject to the provisions of points d), e), f), g), h) and i) of Article 4(1) of Regulation (EEC) No 2408/92.

5. **Information for tenderers:** The complete tendering dossier, including application forms, a note on demographic and socio-economic features of Kerry airport catchment area, a note on Kerry airport (past passenger numbers, landing fees, technical facilities, etc.) and the full conditions of the contract, may be obtained free of charge from:

Department of Public Enterprise, M. Ken Gorman, 44 Kildare Street, IRL-Dublin 2. Tel. (353-1) 604 16 18. Fax: (353-1) 604 16 81; e-mail: kengorman@dpe.ie.

6. **Information required from Tenderers:** In addition to a fully completed application form, tenderers are required to satisfy the awarding authority, having regard to the requirement for the services to commence on 22 July 2002 and to the requirements for reliability and continuity of services, that they have:

- a) the financial standing and capacity to undertake and operate the specified services;
- b) the necessary valid operating licences and certificates (Air Operating Licence and Air Operator's Certificate); and
- c) demonstrated previous experience of operating scheduled passenger services.

Subject to being satisfied in relation to each of (a), (b) and (c) above, the awarding authority proposes to award the contract to the tenderer who seeks the lowest compensation amount over the three-year period of the contract. However, the awarding authority is not obliged to accept any tender.

The awarding authority reserves the right to solicit further information about any applicant's financial and/or technical resources and abilities, and without prejudice to the foregoing, to solicit or seek further information, whether from a third party or from the applicant, regarding the ability of the applicant to undertake and operate the relevant scheduled air services.

Tenders should be priced in euro and all supporting documents must be in the English language. The contract shall be considered as a contract made under Irish law and subject to the exclusive jurisdiction of the Irish courts.

7. **Financial compensation:** Tenders must explicitly state the amount of compensation required for the operation of the public service obligation on the route for each of the 3 years from the scheduled starting date (with an analysis for each year). The compensation should be calculated in accordance with the required minimum standards.

The actual amount of the compensation payable by the Department of Public Enterprise will be established ex-post and will be limited to the actual losses incurred, having regard to actual costs, revenues and, if applicable, profit margin, by the successful tenderer in operating the service subject, as a maximum, to the limit of the amount stated in respect of each year in the tender.

The contract will include provision for the maximum limit of compensation in any year(s) to be increased, at the sole discretion of the awarding authority, in the event of changes in operating conditions. Without prejudice to the provisions governing the termination of the contract, the awarding authority will, in assessing any proposal for an increase in the maximum limit of compensation in any year(s), have due regard to developments affecting the operation of the service that were not or could not have been anticipated by the tenderer or are due to factors outside the control of the tenderer.

The contract will be awarded by the Minister for Public Enterprise. All payments under the contract will be in euro and such payments will be subject to receipt by the awarding authority of appropriately documented claims accompanied by certification from the carrier's auditors in accordance with the terms of the contract.

8. **Period of validity, amendment and termination of the contract:** The contract will be valid for a period of 3 years from 22.7.2002. A new invitation to tender will be made, if applicable, before the end of a period of 3 years maximum from 22.7.2002. Any amendment or termination of the contract will be in accordance with the terms of the contract. Variations in the standards required by the public service obligation will be permitted only with the prior agreement of the awarding authority.
9. **Penalties in the event of the carrier failing to comply with the contract:**

In cases of force majeure or where a flight is cancelled for reasons directly attributable to the carrier, the compensation payable will only be in respect of costs, if any, actually incurred by the carrier in handling passengers disrupted by the non-operation of such flights.

The awarding authority reserves the right to serve notice of termination of the contract if, having regard to the adequacy of service provided by the carrier and in particular to the number of flights cancelled for reasons directly attributable to the carrier, it is of the opinion that the standards required by the public service obligation have not or are not being met satisfactorily.

10. **Deadline for submission of bids:** Thirty one (31) calendar days from publication of this communication in the 'Supplement to the *Official Journal of the European Communities*'.
11. **Application procedure:** Tenders must be submitted by registered letter, date as postmarked, or delivered to:
- Department of Public Enterprise, 44 Kildare Street, IRL-Dublin 2,
- by 12.00 noon (Irish time) on the date in point 10 in envelopes marked 'EASP Kerry Tender'.
12. **Validity of invitation to tender:** In accordance with the first sentence of Article 4(1)(d) of Regulation (EEC) No 2408/92, the validity of this invitation to tender is subject to the condition that no Community air carrier presents, by 30.4.2002, a programme for operating the route in accordance with the public service obligation without receiving any financial compensation.
13. **Freedom of Information Act, 1997:** The Department of Public Enterprise undertakes to use its best endeavours to hold confidential any information provided by tenderers, subject to the Department's obligations under law, including the Freedom of Information (FOI) Act 1997. If tenderers wish that any of the information supplied by them in their tenders should not be disclosed because of its commercial sensitivity, they should, when providing the information, identify same and specify the reasons for its sensitivity. The Department will consult with tenderers about this sensitive information before making a decision regarding release of the information under the provisions of the Freedom of Information Act. If tenderers consider that none of the information supplied by them is commercially sensitive, they should make a statement to that effect and such information may be released in response to an FOI request.



### Operation of scheduled air services

#### Invitation to tender issued by Ireland under Article 4(1)(d) of Council Regulation (EEC) No 2408/92 in respect of the operation of scheduled air services between Dublin and Galway, Ireland

(2002/C 67/11)

(Text with EEA relevance)

1. **Introduction:** Ireland has amended the public service obligation published in the *Official Journal of the European Communities* C 266 of 16.9.2000 pursuant to Article 4(1)(a) of Regulation (EEC) No 2408/92 of 23.7.1992 on access for Community air carriers to intra-Community air routes, in respect of scheduled air services operated between Dublin and Galway with effect from 22.7.2002. The standards required by the revised public service obligation were published in the *Official Journal of the European Communities* C 66 of 15.3.2002.

In so far as by 30.4.2002, no air carrier will have commenced or be about to commence such air services in accordance with the public service obligation and without requesting financial compensation, Ireland has decided, in accordance with the procedure laid down by Article 4(1)(d) of that regulation, to continue to limit access to the route to a single air carrier from 22.7.2002 and to offer the right to operate such services by public tender.

2. **Object of invitation to tender:** Operation from 22.7.2002 of scheduled air services between Dublin and Galway in accordance with the public service obligation imposed on that route and published in the *Official Journal of the European Communities* C 66 of 15.3.2002.

3. **Participation:** Participation is open to all air carriers holding a valid operating licence issued by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23.7.1992 on licensing of air carriers.

4. **Tender procedure:** The present tender is subject to the provisions of points d), e), f), g), h) and i) of Article 4 (1) of Regulation (EEC) No 2408/92.

5. **Information for tenderers:** The complete tendering dossier, including application forms, a note on demographic and socio-economic features of Galway airport catchment area, a note on Galway airport (past passenger numbers, landing fees, technical facilities, etc.) and the full conditions of the contract, may be obtained free of charge from:

Department of Public Enterprise, Mr Ken Gorman, 44 Kildare Street, IRL-Dublin 2. Tel. (353 1) 604 16 18. Fax: (353 1) 604 16 81. e-mail: kengorman@dpe.ie.

6. **Information required from tenderers:** In addition to a fully completed application form, tenderers are required to satisfy the awarding authority, having regard to the requirement for the services to commence on 22 July 2002 and to the requirements for reliability and continuity of services, that they have:

- a) the financial standing and capacity to undertake and operate the specified services;
- b) the necessary valid operating licences and certificates (Air Operating Licence and Air Operator's Certificate); and
- c) demonstrated previous experience of operating scheduled passenger services.

Subject to being satisfied in relation to each of (a), (b) and (c) above, the awarding authority proposes to award the contract to the tenderer who seeks the lowest compensation amount over the three-year period of the contract. However, the awarding authority is not obliged to accept any tender.

The awarding authority reserves the right to solicit further information about any applicant's financial and/or technical resources and abilities, and without prejudice to the foregoing, to solicit or seek further information, whether from a third party or from the applicant, regarding the ability of the applicant to undertake and operate the relevant scheduled air services.

Tenders should be priced in euro and all supporting documents must be in the English language. The contract shall be considered as a contract made under Irish law and subject to the exclusive jurisdiction of the Irish courts.

7. **Financial compensation:** Tenders must explicitly state the amount of compensation required for the operation of the public service obligation on the route for each of the 3 years from the scheduled starting date (with an analysis for each year). The compensation should be calculated in accordance with the required minimum standards.

The actual amount of the compensation payable by the Department of Public Enterprise will be established ex-post and will be limited to the actual losses incurred, having regard to actual costs, revenues and, if applicable, profit margin, by the successful tenderer in operating the service subject, as a maximum, to the limit of the amount stated in respect of each year in the tender.

The contract will include provision for the maximum limit of compensation in any year(s) to be increased, at the sole discretion of the awarding authority, in the event of changes in operating conditions. Without prejudice to the provisions governing the termination of the contract, the awarding authority will, in assessing any proposal for an increase in the maximum limit of compensation in any year(s), have due regard to developments affecting the operation of the service that were not or could not have been anticipated by the tenderer or are due to factors outside the control of the tenderer.

The contract will be awarded by the Minister for Public Enterprise. All payments under the contract will be in euro and such payments will be subject to receipt by the awarding authority of appropriately documented claims accompanied by certification from the carrier's auditors in accordance with the terms of the contract.

8. **Period of validity, amendment and termination of the contract:** The contract will be valid for a period of 3 years from 22.7.2002. A new invitation to tender will be made, if applicable, before the end of a period of 3 years maximum from 22.7.2002. Any amendment or termination of the contract will be in accordance with the terms of the contract. Variations in the standards required by the public service obligation will be permitted only with the prior agreement of the awarding authority.
9. **Penalties in the event of the carrier failing to comply with the contract:** In cases of force majeure or where a flight is cancelled for reasons directly attributable to the carrier, the compensation payable will only be in respect of costs, if any, actually incurred by the carrier in handling passengers disrupted by the non-operation of such flights.

The awarding authority reserves the right to serve notice of termination of the contract if, having regard to the

adequacy of service provided by the carrier and in particular to the number of flights cancelled for reasons directly attributable to the carrier, it is of the opinion that the standards required by the public service obligation have not or are not being met satisfactorily.

10. **Deadline for submission of bids:** Thirty one (31) calendar days from publication of this communication in the 'Supplement to the *Official Journal of the European Communities*'.

11. **Application procedure:** Tenders must be submitted by registered letter, date as postmarked, or delivered to:

Department of Public Enterprise, 44 Kildare Street, IRL-Dublin 2,

by 12.00 noon (Irish time) on the date in point 10 in envelopes marked 'EASP Galway Tender'.

12. **Validity of invitation to tender:** In accordance with the first sentence of Article 4(1)(d) of Regulation (EEC) No 2408/92, the validity of this invitation to tender is subject to the condition that no Community air carrier presents, by 30.4.2002, a programme for operating the route in accordance with the public service obligation without receiving any financial compensation.

13. **Freedom of Information Act, 1997:** The Department of Public Enterprise undertakes to use its best endeavours to hold confidential any information provided by tenderers, subject to the Department's obligations under law, including the Freedom of Information (FOI) Act 1997. If tenderers wish that any of the information supplied by them in their tenders should not be disclosed because of its commercial sensitivity, they should, when providing the information, identify same and specify the reasons for its sensitivity. The Department will consult with tenderers about this sensitive information before making a decision regarding release of the information under the provisions of the Freedom of Information Act. If tenderers consider that none of the information supplied by them is commercially sensitive, they should make a statement to that effect and such information may be released in response to an FOI request.

### Operation of scheduled air services

#### Invitation to tender issued by Ireland under Article 4(1)(d) of Council Regulation (EEC) No 2408/92 in respect of the operation of scheduled air services between Dublin and Knock, Ireland

(2002/C 67/12)

(Text with EEA relevance)

1. **Introduction:** Ireland has amended the public service obligation published in the 'Official Journal of the European Communities' C 266 of 16.9.2000 pursuant to Article 4(1)(a) of Regulation (EEC) No 2408/92 of 23.7.1992 on access for Community air carriers to intra-Community air routes, in respect of scheduled air services operated between Dublin and Knock with effect from 22.7.2002. The standards required by the revised public service obligation were published in the 'Official Journal of the European Communities' C 66 of 15.3.2002.

In so far as by 30.4.2002, no air carrier will have commenced or be about to commence such air services in accordance with the public service obligation and without requesting financial compensation, Ireland has decided, in accordance with the procedure laid down by Article 4(1)(d) of that regulation, to continue to limit access to the route to a single air carrier from 22.7.2002 and to offer the right to operate such services by public tender.

2. **Object of invitation to tender:** Operation from 22.7.2002 of scheduled air services between Dublin and Knock in accordance with the public service obligation imposed on that route and published in the 'Official Journal of the European Communities' C 66 of 15.3.2002.
3. **Participation:** Participation is open to all air carriers holding a valid operating licence issued by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23.7.1992 on licensing of air carriers.
4. **Tender procedure:** The present tender is subject to the provisions of points d), e), f), g), h) and i) of Article 4(1) of Regulation (EEC) No 2408/92.
5. **Information for tenderers:** The complete tendering dossier, including application forms, a note on demographic and socio-economic features of Knock airport catchment area, a note on Knock airport (past passenger numbers, landing fees, technical facilities, etc.) and the full conditions of the contract, may be obtained free of charge from:

Department of Public Enterprise, Ken Gorman, 44 Kildare Street, IRL- Dublin 2. Tel. (353-1) 604 16 18. Fax: (353-1) 604 16 81; e-mail: kengorman@dpe.ie.

6. **Information required from tenderers:** In addition to a fully completed application form, tenderers are required to satisfy the awarding authority, having regard to the requirement for the services to commence on 22 July 2002 and to the requirements for reliability and continuity of services, that they have:

- a) the financial standing and capacity to undertake and operate the specified services;
- b) the necessary valid operating licences and certificates (Air Operating Licence and Air Operator's Certificate); and
- c) demonstrated previous experience of operating scheduled passenger services.

Subject to being satisfied in relation to each of (a), (b) and (c) above, the awarding authority proposes to award the contract to the tenderer who seeks the lowest compensation amount over the three-year period of the contract. However, the awarding authority is not obliged to accept any tender.

The awarding authority reserves the right to solicit further information about any applicant's financial and/or technical resources and abilities, and without prejudice to the foregoing, to solicit or seek further information, whether from a third party or from the applicant, regarding the ability of the applicant to undertake and operate the relevant scheduled air services.

Tenders should be priced in euro and all supporting documents must be in the English language. The contract shall be considered as a contract made under Irish law and subject to the exclusive jurisdiction of the Irish courts.

7. **Financial compensation:** Tenders must explicitly state the amount of compensation required for the operation of the public service obligation on the route for each of the 3 years from the scheduled starting date (with an analysis for each year). The compensation should be calculated in accordance with the required minimum standards.

The actual amount of the compensation payable by the Department of Public Enterprise will be established ex-post and will be limited to the actual losses incurred, having regard to actual costs, revenues and, if applicable, profit margin, by the successful tenderer in operating the service subject, as a maximum, to the limit of the amount stated in respect of each year in the tender.

The contract will include provision for the maximum limit of compensation in any year(s) to be increased, at the sole discretion of the awarding authority, in the event of changes in operating conditions. Without prejudice to the provisions governing the termination of the contract, the awarding authority will, in assessing any proposal for an increase in the maximum limit of compensation in any year(s), have due regard to developments affecting the operation of the service that were not or could not have been anticipated by the tenderer or are due to factors outside the control of the tenderer.

The contract will be awarded by the Minister for Public Enterprise. All payments under the contract will be in euro and such payments will be subject to receipt by the awarding authority of appropriately documented claims accompanied by certification from the carrier's auditors in accordance with the terms of the contract.

8. **Period of validity, amendment and termination of the contract:** The contract will be valid for a period of 3 years from 22.7.2002. A new invitation to tender will be made, if applicable, before the end of a period of 3 years maximum from 22.7.2002. Any amendment or termination of the contract will be in accordance with the terms of the contract. Variations in the standards required by the public service obligation will be permitted only with the prior agreement of the awarding authority.
9. **Penalties in the event of the carrier failing to comply with the contract:** In cases of force majeure or where a flight is cancelled for reasons directly attributable to the carrier, the compensation payable will only be in respect of costs, if any, actually incurred by the carrier in handling passengers disrupted by the non-operation of such flights.

The awarding authority reserves the right to serve notice of termination of the contract if, having regard to the

adequacy of service provided by the carrier and in particular to the number of flights cancelled for reasons directly attributable to the carrier, it is of the opinion that the standards required by the public service obligation have not or are not being met satisfactorily.

10. **Deadline for submission of bids:** Thirty one (31) calendar days from publication of this communication in the 'Supplement to the *Official Journal of the European Communities*'.

11. **Application procedure:** Tenders must be submitted by registered letter, date as postmarked, or delivered to:

Department of Public Enterprise, 44 Kildare Street, IRL-Dublin 2,

by 12.00 noon (Irish time) on the date in point 10 in envelopes marked 'EASP Knock Tender'.

12. **Validity of invitation to tender:** In accordance with the first sentence of Article 4(1)(d) of Regulation (EEC) No 2408/92, the validity of this invitation to tender is subject to the condition that no Community air carrier presents, by 30.4.2002, a programme for operating the route in accordance with the public service obligation without receiving any financial compensation.
13. **Freedom of Information Act, 1997:** The Department of Public Enterprise undertakes to use its best endeavours to hold confidential any information provided by tenderers, subject to the Department's obligations under law, including the Freedom of Information (FOI) Act 1997. If tenderers wish that any of the information supplied by them in their tenders should not be disclosed because of its commercial sensitivity, they should, when providing the information, identify same and specify the reasons for its sensitivity. The Department will consult with tenderers about this sensitive information before making a decision regarding release of the information under the provisions of the Freedom of Information Act. If tenderers consider that none of the information supplied by them is commercially sensitive, they should make a statement to that effect and such information may be released in response to an FOI request.

### Operation of scheduled air services

#### Invitation to tender issued by Ireland under Article 4(1)(d) of Council Regulation (EEC) No 2408/92 in respect of the operation of scheduled air services between Dublin and Sligo, Ireland

(2002/C 67/13)

(Text with EEA relevance)

1. **Introduction:** Ireland has amended the public service obligation published in the *Official Journal of the European Communities* C 266 of 16.9.2000 pursuant to Article 4 (1)(a) of Regulation (EEC) No 2408/92 of 23.7.1992 on access for Community air carriers to intra-Community air routes, in respect of scheduled air services operated between Dublin and Sligo with effect from 22.7.2002. The standards required by the revised public service obligation were published in the *Official Journal of the European Communities* No C 66 of 15.3.2002.

In so far as by 30.4.2002, no air carrier will have commenced or be about to commence such air services in accordance with the public service obligation and without requesting financial compensation, Ireland has decided, in accordance with the procedure laid down by Article 4 (1)(d) of that regulation, to continue to limit access to the route to a single air carrier from 22.7.2002 and to offer the right to operate such services by public tender.

2. **Object of invitation to tender:** Operation from 22.7.2002 of scheduled air services between Dublin and Sligo in accordance with the public service obligation imposed on that route and published in the *Official Journal of the European Communities* No C 66 of 15.3.2002.

3. **Participation:** Participation is open to all air carriers holding a valid operating licence issued by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23.7.1992 on licensing of air carriers.

4. **Tender procedure:** The present tender is subject to the provisions of points d), e), f), g), h) and i) of Article 4(1) of Regulation (EEC) No 2408/92.

5. **Information for tenderers:** The complete tendering dossier, including application forms, a note on demographic and socio-economic features of Sligo airport catchment area, a note on Sligo airport (past passenger numbers, landing fees, technical facilities, etc.) and the full conditions of the contract, may be obtained free of charge from:

Department of Public Enterprise, Mr Ken Gorman, 44 Kildare Street, IRL-Dublin 2. Tel. (353-1) 604 16 18. Fax: (353-1) 604 16 81; e-mail: kengorman@dpe.ie.

6. **Information required from tenderers:** In addition to a fully completed application form, tenderers are required to satisfy the awarding authority, having regard to the requirement for the services to commence on 22 July 2002 and to the requirements for reliability and continuity of services, that they have:

(a) the financial standing and capacity to undertake and operate the specified services;

(b) the necessary valid operating licences and certificates (Air Operating Licence and Air Operator's Certificate); and

(c) demonstrated previous experience of operating scheduled passenger services.

Subject to being satisfied in relation to each of (a), (b) and (c) above, the awarding authority proposes to award the contract to the tenderer who seeks the lowest compensation amount over the three-year period of the contract. However, the awarding authority is not obliged to accept any tender.

The awarding authority reserves the right to solicit further information about any applicant's financial and/or technical resources and abilities, and without prejudice to the foregoing, to solicit or seek further information, whether from a third party or from the applicant, regarding the ability of the applicant to undertake and operate the relevant scheduled air services.

Tenders should be priced in euro and all supporting documents must be in the English language. The contract shall be considered as a contract made under Irish law and subject to the exclusive jurisdiction of the Irish courts.

7. **Financial compensation:** Tenders must explicitly state the amount of compensation required for the operation of the public service obligation on the route for each of the 3 years from the scheduled starting date (with an analysis for each year). The compensation should be calculated in accordance with the required minimum standards.

The actual amount of the compensation payable by the Department of Public Enterprise will be established ex-post and will be limited to the actual losses incurred, having regard to actual costs, revenues and, if applicable, profit margin, by the successful tenderer in operating the service subject, as a maximum, to the limit of the amount stated in respect of each year in the tender.

The contract will include provision for the maximum limit of compensation in any year(s) to be increased, at the sole discretion of the awarding authority, in the event of changes in operating conditions. Without prejudice to the provisions governing the termination of the contract, the awarding authority will, in assessing any proposal for an increase in the maximum limit of compensation in any year(s), have due regard to developments affecting the operation of the service that were not or could not have been anticipated by the tenderer or are due to factors outside the control of the tenderer.

The contract will be awarded by the Minister for Public Enterprise. All payments under the contract will be in euro and such payments will be subject to receipt by the awarding authority of appropriately documented claims accompanied by certification from the carrier's auditors in accordance with the terms of the contract.

8. **Period of validity, amendment and termination of the contract:** The contract will be valid for a period of 3 years from 22.7.2002. A new invitation to tender will be made, if applicable, before the end of a period of 3 years maximum from 22.7.2002. Any amendment or termination of the contract will be in accordance with the terms of the contract. Variations in the standards required by the public service obligation will be permitted only with the prior agreement of the awarding authority.
9. **Penalties in the event of the carrier failing to comply with the contract:** In cases of force majeure or where a flight is cancelled for reasons directly attributable to the carrier, the compensation payable will only be in respect of costs, if any, actually incurred by the carrier in handling passengers disrupted by the non-operation of such flights.

The awarding authority reserves the right to serve notice of termination of the contract if, having regard to the

adequacy of service provided by the carrier and in particular to the number of flights cancelled for reasons directly attributable to the carrier, it is of the opinion that the standards required by the public service obligation have not or are not being met satisfactorily.

10. **Deadline for submission of bids:** Thirty one (31) calendar days from publication of this communication in the Supplement to the *Official Journal of the European Communities*.

11. **Application procedure:** Tenders must be submitted by registered letter, date as postmarked, or delivered to:

Department of Public Enterprise, 44 Kildare Street, IRL-Dublin 2,

by 12.00 noon (Irish time) on the date in point 10 in envelopes marked 'EASP Sligo Tender'.

12. **Validity of invitation to tender:** In accordance with the first sentence of Article 4(1)(d) of Regulation (EEC) No 2408/92, the validity of this invitation to tender is subject to the condition that no Community air carrier presents, by 30.4.2002, a programme for operating the route in accordance with the public service obligation without receiving any financial compensation.
13. **Freedom of Information Act, 1997:** The Department of Public Enterprise undertakes to use its best endeavours to hold confidential any information provided by tenderers, subject to the Department's obligations under law, including the Freedom of Information (FOI) Act 1997. If tenderers wish that any of the information supplied by them in their tenders should not be disclosed because of its commercial sensitivity, they should, when providing the information, identify same and specify the reasons for its sensitivity. The Department will consult with tenderers about this sensitive information before making a decision regarding release of the information under the provisions of the Freedom of Information Act. If tenderers consider that none of the information supplied by them is commercially sensitive, they should make a statement to that effect and such information may be released in response to an FOI request.