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[1] Text with EEA relevance

(Continued overleaf)

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(Continued on inside back cover)

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Non-opposition to a notified concentration

(Case COMP/M.6712 — Carlyle/Getty Images)

(Text with EEA relevance)

(2012/C 307/01)

On 5 October 2012, 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 (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— in the merger section of the Competition website of the Commission (http://ec.europa.eu/competition/mergers/cases/). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,

— in electronic form on the EUR-Lex website (http://eur-lex.europa.eu/en/index.htm) under document number 32012M6712. EUR-Lex is the on-line access to the European law.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Euro exchange rates [1]

10 October 2012

(2012/C 307/02)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,2889	AUD	Australian dollar	1,2574
JPY	Japanese yen	100,94	CAD	Canadian dollar	1,2594
DKK	Danish krone	7,4582	HKD	Hong Kong dollar	9,9922
GBP	Pound sterling	0,80495	NZD	New Zealand dollar	1,5732
SEK	Swedish krona	8,6068	SGD	Singapore dollar	1,5833
CHF	Swiss franc	1,2110	KRW	South Korean won	1 436,57
ISK	Iceland króna		ZAR	South African rand	11,1516
NOK	Norwegian krone	7,3985	CNY	Chinese yuan renminbi	8,1210
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,4920
CZK	Czech koruna	24,950	IDR	Indonesian rupiah	12 385,19
HUF	Hungarian forint	282,15	MYR	Malaysian ringgit	3,9623
LTL	Lithuanian litas	3,4528	PHP	Philippine peso	53,470
LVL	Latvian lats	0,6961	RUB	Russian rouble	40,0900
PLN	Polish zloty	4,0825	THB	Thai baht	39,582
RON	Romanian leu	4,5710	BRL	Brazilian real	2,6199
TRY	Turkish lira	2,3375	MXN	Mexican peso	16,5624
			INR	Indian rupee	68,3150

[1] *Source*: reference exchange rate published by the ECB.

NOTICES CONCERNING THE EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA Surveillance Authority Notice — Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles

(2012/C 307/03)

A. The present notice is issued pursuant to the rules of the Agreement on the European Economic Area (EEA Agreement) and the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (Surveillance and Court Agreement).

B. The European Commission has issued a notice entitled 'Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles.' ([1]). That non-binding act sets out the principles which the European Commission follows for the assessment of vertical agreements under Article 101 TFEU regarding the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles.

C. The EFTA Surveillance Authority considers the above-mentioned act to be EEA relevant. In order to maintain equal conditions of competition and to ensure a uniform application of the EEA competition rules throughout the European Economic Area, the EFTA Surveillance Authority adopts the present notice under the power conferred upon it by Article 5(2)(b) of the Surveillance and Court Agreement. It intends to follow the principles and rules laid down in this notice when applying the relevant EEA rules to a particular case.

I. INTRODUCTION

1. Purpose of the Guidelines

1. These Guidelines set out principles for assessing under Article 53 of the Agreement on the European Economic Area (hereinafter 'Article 53') particular issues arising in the context of vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts. They accompany the Act referred to in point 4b of Annex XIV of the EEA Agreement (Commission Regulation (EU) No 461/2010 of 27 May 2010 ([2]) on the application of Article 53(3) of the EEA Agreement to categories of vertical agreements and concerted practices in the motor vehicle sector) (hereafter 'the Motor Vehicle Block Exemption') and are aimed at helping companies to make their own assessment of such agreements.

2. These Guidelines provide clarification on issues that are particularly relevant for the motor vehicle sector, including the interpretation of relevant provisions of the Act referred to in point 2 of Annex XIV of the EEA Agreement (Commission Regulation (EU) No 330/2010 of 20 April 2010 ([3])) on the application of Article 53(3) of the EEA Agreement to categories of vertical agreements and concerted practices ([4]) (hereafter 'the General Vertical Block Exemption'). These Guidelines are without prejudice to

([1]) OJ C 138, 28.5.2010, p. 16.
([2]) OJ L 129, 28.5.2010, p. 52, incorporated into point 4b of Annex XIV of the EEA Agreement by Decision No 91/2010 (OJ L 277, 21.10.2010, p. 44 and EEA Supplement No 59, 21.10.2010, p. 13).
([3]) OJ L 102, 23.4.2010, p. 1, incorporated into point 2 of Annex XIV of the EEA Agreement by Decision No 77/2010 (OJ L 244, 16.9.2010, p. 35 and EEA Supplement No 49, 16.9.2010, p. 34).
([4]) See footnote 3.

the applicability of the Guidelines on Vertical Restraints ([5]) (hereafter 'the General Vertical Guidelines') and are therefore to be read in conjunction with and as a supplement to the General Vertical Guidelines.

3. These Guidelines apply both to vertical agreements and concerted practices relating to the conditions under which the parties may purchase, sell or resell spare parts and/or repair and maintenance services for motor vehicles, and to vertical agreements and concerted practices relating to the conditions under which the parties may purchase, sell or resell new motor vehicles. As explained in Section II of these Guidelines, the latter category of agreements and concerted practices will remain subject to the relevant provisions of the Act previously referred to in point 4b of Annex XIV of the EEA Agreement (Commission Regulation (EC) No 1400/2002 of 31 July 2002 ([6]) on the application of Article 53(3) of the EEA Agreement to categories of vertical agreements and concerted practices in the motor vehicle sector) until 31 May 2013. Therefore, as regards vertical agreements and concerted practices for the purchase, sell or resell new motor vehicles, these Guidelines will only apply as from 1 June 2013. These Guidelines do not apply to vertical agreements in sectors other than motor vehicles, and the principles set out herein may not necessarily be used to assess agreements in other sectors.

4. These Guidelines are without prejudice to the possible parallel application of Article 54 of the EEA Agreement to vertical agreements in the motor vehicle sector, or to the interpretation that the EFTA Court may give in relation to the application of Article 53 to such vertical agreements or the Court of Justice of the European Union or the General Court may give in relation to the application of Article 53 of the EEA Agreement and Article 101 TFEU to such vertical agreements.

5. Unless otherwise stated, the analysis and arguments set out in these Guidelines apply to all levels of trade. The terms 'supplier' and 'distributor' ([7]) are used for all levels of trade. The General Vertical Block Exemption and the Motor Vehicle Block Exemption are collectively referred to as 'the Block Exemptions'.

6. The standards set forth in these Guidelines must be applied to each case having regard to the individual factual and legal circumstances. The EFTA Surveillance Authority will apply ([8]) these Guidelines reasonably and flexibly, and having regard to the experience that it has acquired in the course of its enforcement and market monitoring activities.

7. The history of competition enforcement in this sector shows that certain restraints can be arrived at either as a result of explicit direct contractual obligations or through indirect obligations or indirect means which nonetheless achieve the same anti-competitive result. Suppliers wishing to influence a distributor's competitive behaviour may, for instance, resort to threats or intimidation, warnings or penalties. They may also delay or suspend deliveries or threaten to terminate the contracts of distributors that sell to foreign consumers or fail to observe a given price level. Transparent relationships between contracting parties would normally reduce the risk of manufacturers being held responsible for using such indirect forms of pressure aimed at achieving anticompetitive outcomes. Adhering to a Code of Conduct is one means of achieving greater transparency in commercial relationships between parties. Such codes may inter alia provide for notice periods for contract termination, which may be determined in function of the contract duration, for compensation to be given for outstanding relationship-specific investments made by the dealer in case of early termination without just cause, as well as for arbitration as an alternative mechanism for dispute resolution. If a supplier incorporates such a Code of Conduct into its agreements with distributors and repairers, makes it publicly available, and complies with its provisions, this will be regarded as a relevant factor for assessing the supplier's conduct in individual cases.

([5]) (not yet published).
([6]) OJ L 203, 1.8.2002, p. 30.
([7]) Retail level distributors are commonly referred to in the sector as 'dealers'.
([8]) Since the modernisation of the EEA competition rules, the primary responsibility for such analysis lies with the parties to agreements. The EFTA Surveillance Authority may however investigate the compatibility of agreements with Article 53, on its own initiative or following a complaint.

2. **Structure of the Guidelines**

8. These Guidelines are structured as follows:

(a) Scope of the Motor Vehicle Block Exemption and relationship with the General Vertical Block Exemption (Section II);

(b) The application of the additional provisions in the Motor Vehicle Block Exemption (Section III);

(c) The assessment of specific restraints: single branding and selective distribution (Section IV).

II. **SCOPE OF THE MOTOR VEHICLE BLOCK EXEMPTION AND RELATIONSHIP WITH THE GENERAL VERTICAL BLOCK EXEMPTION**

9. Pursuant to Article 4 thereof, the Motor Vehicle Block Exemption covers vertical agreements relating to the purchase, sale or resale of spare parts for motor vehicles and to the provision of repair and maintenance services for motor vehicles.

10. Article 2 of the Motor Vehicle Block Exemption extends the application of the relevant provisions of the Act previously referred to in point 4b of Annex XIV of the EEA Agreement (Regulation (EC) No 1400/2002) until 31 May 2013 as far as they relate to vertical agreements for the purchase, sale or resale of new motor vehicles. Pursuant to Article 3 of the Motor Vehicle Block Exemption vertical agreements for the purchase, sale and resale of new motor vehicles will be covered by the General Vertical Block Exemption, from 1 June 2013 ([9]).

11. The distinction that the new framework makes between the markets for the sale of new motor vehicles and the motor vehicle aftermarkets reflects the differing competitive conditions on these markets.

12. On the basis of an in-depth market analysis set out in the Evaluation Report on the operation of the Act previously referred to in point 4b of Annex XIV of the EEA Agreement (Commission Regulation (EC) No 1400/2002 of 28 May 2008 ([10])) and in the Commission Communication on The Future Competition Law Framework applicable to the Motor Vehicle Sector of 22 July 2009 ([11]), it appears that there are no significant competition shortcomings distinguishing the new motor vehicle distribution sector from other economic sectors and which could require the application of rules different from and stricter than those in the General Vertical Block Exemption. Consequently, the application of a market share threshold of 30 % ([12]), the non-exemption of certain vertical restraints and the conditions provided for in the General Vertical Block Exemption will normally ensure that vertical agreements for the distribution of new motor vehicles satisfy the conditions laid down in Article 53(3) without the need for any additional requirements over and above those applicable to other sectors.

13. However, in order to allow all operators time to adapt to the general regime, in particular in view of relationship-specific investments which have been made in the long-term, the period of application of

([9]) The expiry of the Act previously referred to in point 4b of Annex XIV of the EEA Agreement (Regulation (EC) No 1400/2002) and its replacement with the new legal framework explained in these Guidelines does not of itself require that existing contracts be terminated. See for example Case C-125/05 Vulcan Silkeborg A/S v Skandinavisk Motor Co. A/S [2006] ECR I-7637.

([10]) SEC(2008) 1946.

([11]) COM(2009) 388.

([12]) Pursuant to Article 7 of the General Vertical Block Exemption, the calculation of this market share threshold is normally based on market sales value data or, if such data are not available, on other reliable market information, including market sales volumes. In this respect, the EFTA Surveillance Authority takes note of the fact that, for the distribution of new motor vehicles, market shares are currently calculated by the industry on the basis of the volume of motor vehicles sold by the supplier on the relevant market, which includes all motor vehicles that are regarded by the buyer as interchangeable or substitutable, by reason of the products' characteristics, prices and intended use.

the Act previously referred to in point 4b of Annex XIV of the EEA Agreement (Regulation (EC) No 1400/2002) is extended by three years until 31 May 2013 with regard to those requirements that relate specifically to vertical agreements for the purchase, sale or resale of new motor vehicles. From 1 June 2010 until 31 May 2013, those provisions of the Act previously referred to in point 4b of Annex XIV of the EEA Agreement (Regulation (EC) No 1400/2002) which relate to both agreements for the distribution of new motor vehicles and agreements for the purchase, sale and resale of spare parts for motor vehicles and/or the provision of repair and maintenance services, will apply only in respect of the former. During that period these Guidelines will not be used for interpreting the provisions of the Act previously referred to in point 4b of Annex XIV of the EEA Agreement (Regulation (EC) No 1400/2002). Instead, reference should be made to the Explanatory Brochure on that Regulation ([13]).

14. As regards vertical agreements relating to the conditions under which the parties may purchase, sell or resell spare parts for motor vehicles and/or provide repair and maintenance services for motor vehicles, the Motor Vehicle Block Exemption applies from 1 June 2010. This means that, in order to be exempted pursuant to Article 4 of the Motor Vehicle Block Exemption those agreements not only need to fulfil the conditions for an exemption under the General Vertical Block Exemption, but must also not contain any serious restrictions of competition, commonly referred to as hardcore restrictions as listed in Article 5 of the Motor Vehicle Block Exemption.

15. Because of the generally brand-specific nature of the markets for repair and maintenance services and for the distribution of spare parts, competition on those markets is inherently less intense compared to that on the market for the sale of new motor vehicles. While reliability has improved and service intervals have lengthened thanks to technological improvement, this evolution is outpaced by an upward price trend for individual repair and maintenance jobs. On the spare parts markets, parts bearing the motor vehicle manufacturer's brand face competition from those supplied by the original equipment suppliers (OES) and by other parties. This maintains price pressure on those markets, which in turn maintains pressure on prices on the repair and maintenance markets, since spare parts make up a large percentage of the cost of the average repair. Moreover, repair and maintenance as a whole represent a very high proportion of total consumer expenditure on motor vehicles, which itself accounts for a significant slice of the average consumer's budget.

16. In order to address particular competition issues arising on the motor vehicle aftermarkets, the General Vertical Block Exemption is supplemented with three additional hardcore restrictions in the Motor Vehicle Block Exemption applying to agreements for the repair and maintenance of motor vehicles and for the supply of spare parts. Further guidance on those additional hardcore restrictions is given in Section III of these Guidelines.

III. THE APPLICATION OF THE ADDITIONAL PROVISIONS IN THE MOTOR VEHICLE BLOCK EXEMPTION

17. Agreements will not benefit from the Block Exemption if they contain hardcore restrictions. These restrictions are listed in Article 4 of the General Vertical Block Exemption and Article 5 of the Motor Vehicle Block Exemption. Including any of such restrictions in an agreement gives rise to the presumption that the agreement falls within Article 53(1). It also gives rise to the presumption that the agreement is unlikely to satisfy the conditions laid down in Article 53(3), for which reason the Block Exemption does not apply. However, this is a rebuttable presumption which leaves open the possibility for undertakings to plead an efficiency defence under Article 53(3) in an individual case.

18. One of the EFTA Surveillance Authority's objectives as regards competition policy for the motor vehicle sector is to protect access by spare parts manufacturers to the motor vehicle aftermarkets, thereby ensuring that competing brands of spare parts continue to be available to both independent and authorised repairers, as well as to parts wholesalers. The availability of such parts brings considerable benefits to consumers, especially since there are often large differences in price between parts sold or resold by a car manufacturer and alternative parts. Alternatives for parts bearing the trademark of the

([13]) Explanatory brochure for Commission Regulation (EC) No 1400/2002 of 31 July 2002 — Distribution and Servicing of Motor Vehicles in the European Union.

motor vehicle manufacturer (OEM parts) include original parts manufactured and distributed by original equipment suppliers (OES parts), while other parts matching the quality of the original components are supplied by 'matching quality' parts manufacturers.

19. 'Original parts or equipment' means parts or equipment which are manufactured according to the specifications and production standards provided by the motor vehicle manufacturer for the production of parts or equipment for the assembly of the motor vehicle in question. This includes parts or equipment which are manufactured on the same production line as those parts or equipment. It is presumed unless the contrary is proven, that parts constitute original parts if the part manufacturer certifies that the parts match the quality of the components used for the assembly of the motor vehicle in question and have been manufactured according to the specifications and production standards of the motor vehicle (see Article 3(26) of Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such motor vehicles (Framework Directive) ([14])).

20. In order to be considered as 'matching quality', parts must be of a sufficiently high quality that their use does not endanger the reputation of the authorised network in question. As with any other selection standard, the motor vehicle manufacturer may bring evidence that a given spare part does not meet this requirement.

21. Article 4(e) of the General Vertical Block Exemption describes it as a hardcore restriction for an agreement between a supplier of components and a buyer who incorporates those components, to prevent or restrict the supplier's ability to sell its components to end-users, independent repairers or other service providers not entrusted by the buyer with the repair or servicing of its goods. Article 5(a), (b) and (c) of the Motor Vehicle Block Exemption lay down three additional hardcore restrictions relating to agreements for the supply of spare parts.

22. Article 5(a) of the Motor Vehicle Block Exemption concerns the restriction of the sale of spare parts for motor vehicles by members of a selective distribution system to independent repairers. This provision is most relevant for a particular category of parts, sometimes referred to as captive parts, which may only be obtained from the motor vehicle manufacturer or from members of its authorised networks. If a supplier and a distributor agree that such parts may not be supplied to independent repairers, this agreement would be likely to foreclose such repairers from the market for repair and maintenance services and fall foul of Article 53.

23. Article 5(b) of the Motor Vehicle Block Exemption concerns any direct or indirect restriction agreed between a supplier of spare parts, repair tools or diagnostic or other equipment and a manufacturer of motor vehicles, which limits the supplier's ability to sell these goods to authorised and/or independent distributors and repairers. So-called 'tooling arrangements' between component suppliers and motor vehicle manufacturers are one example of possible indirect restrictions of this type. Reference should be made in this respect to the Notice of the EFTA Surveillance Authority concerning its assessment of certain subcontracting agreements in relation to Article 53(1) of the EEA Agreement ([15]). Normally, Article 53(1) does not apply to an arrangement whereby a motor vehicle manufacturer provides a tool to a component manufacturer which is necessary for the production of certain components, shares in the product development costs, or contributes necessary ([16]) intellectual property rights, or know-how, and does not allow this contribution to be used for the production of parts to be sold directly in the aftermarket. On the other hand, if a motor vehicle manufacturer obliges a component supplier to transfer its ownership of such a tool, intellectual property rights, or know-how, bears only an insignificant part of the product development costs, or does not contribute any necessary tools, intellectual

([14]) OJ L 263, 9.10.2007, p. 1. (not yet incorporated into the EEA Agreement).
([15]) OJ L 153, 18.6.1994, p. 30 and EEA Supplement to the OJ 15, 18.6.1994, p. 29.
([16]) Where the motor vehicle manufacturer provides a tool, intellectual property rights (IPR) and/or know-how to a component supplier, this arrangement will not benefit from the Sub-contracting Notice if the component supplier already has this tool, IPR or know-how at its disposal, or could, under reasonable conditions obtain them, since under these circumstances the contribution would not be necessary.

property rights, or know-how, the agreement at issue will not be considered to be a genuine sub-contracting arrangement. Therefore, it may be caught by Article 53(1) and be examined pursuant to the provisions of the Block Exemptions.

24. Article 5(c) of the Motor Vehicle Block Exemption relates to 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 supplier's ability to place its trade mark or logo effectively and in an easily visible manner on the components supplied or on spare parts. In order to improve consumer choice, repairers and consumers should be able to identify which spare parts from alternative suppliers match a given motor vehicle, other than those bearing the car manufacturer's brand. Putting the trade mark or logo on the components and on spare parts facilitates the identification of compatible replacement parts which can be obtained from OES. By not allowing this, motor vehicle manufacturers can restrict the marketing of OES parts and limit consumers' choice in a manner that runs counter to the provisions of Article 53.

IV. THE ASSESSMENT OF SPECIFIC RESTRAINTS

25. Parties to vertical agreements in the motor vehicle sector should use these Guidelines as a supplement to and in conjunction with the General Vertical Guidelines in order to assess the compatibility of specific restraints with Article 53. This section gives particular guidance as to single branding and selective distribution, which are two areas which may have particular relevance for assessing the category of agreements referred to in Section II of these Guidelines.

1. **Single branding obligations**

(i) *Assessment of single-branding obligations under the Block Exemptions*

26. Pursuant to Article 3 of the Motor Vehicle Block Exemption read in conjunction with Article 5(1)(a) of the General Vertical Block Exemption, a motor vehicle supplier and a distributor having a share of the relevant market that does not exceed 30 % may agree on a single-branding obligation that obliges the distributor to purchase motor vehicles only from the supplier or from other firms designated by the supplier, on condition that the duration of such non-compete obligations is limited to five years or less. The same principles apply to agreements between suppliers and their authorised repairers and/or spare parts distributors. A renewal beyond five years requires explicit consent of both parties, and there should be no obstacles that hinder the distributor from effectively terminating the non-compete obligation at the end of the five year period. Non-compete obligations are not covered by the Block Exemptions when their duration is indefinite or exceeds five years, although in those circumstances the Block Exemptions would continue to apply to the remaining part of the vertical agreement. The same applies to non-compete obligations that are tacitly renewable beyond a period of five years. Obstacles, threats of termination, or intimations that single-branding will be re-imposed before a sufficient period has elapsed to allow either the distributor or the new supplier to amortise their sunk investments would amount to a tacit renewal of the single-branding obligation in question.

27. Pursuant to Article 5(1)(c) of the General Vertical Block Exemption, any direct or indirect obligation causing the members of a selective distribution system not to sell the brands of particular competing suppliers, are not covered by the exemption. Particular attention should be paid to the manner in which single branding obligations are applied to existing multi-brand distributors, in order to ensure that the obligations in question do not form part of an overall strategy aimed at eliminating competition from one or more specific suppliers, and in particular from newcomers or weaker competitors. This type of concern could arise in particular if the market share thresholds indicated in paragraph 34 of these Guidelines are exceeded and if the supplier applying this type of restraint has a position on the relevant market that enables it to contribute significantly to the overall foreclosure effect ([17]).

([17]) EFTA Surveillance Authority Notice on agreements of minor importance which do not appreciably restrict competition under Article 53(1) of the EEA Agreement (de minimis), OJ C 67, 20.3.2003, p. 20 and EEA Supplement No 15, 20.3.2003, p. 11.

28. Non-compete obligations in vertical agreements do not constitute hardcore restrictions, but depending on the market circumstances, can nonetheless have negative effects which may cause the agreements to fall under Article 53(1) ([18]). One such harmful effect may arise if barriers to entry or expansion are raised that foreclose competing suppliers, and harm consumers in particular by increasing the prices or limiting the choice of products, lowering their quality or reducing the level of product innovation.

29. However, non-compete obligations may also have positive effects which may justify the application of Article 53(3). They may in particular help to overcome a 'free-rider' problem, by which one supplier benefits from investments made by another. A supplier may, for instance, invest in a distributor's premises, but in doing so attract customers for a competing brand that is also sold from the same premises. The same applies to other types of investment made by the supplier which may be used by the distributor to sell motor vehicles of competing manufacturers, such as investments in training.

30. Another positive effect of non-compete obligations in the motor vehicle sector relates to the enhancement of the brand image and reputation of the distribution network. Such restraints may help to create and maintain a brand image by imposing a certain measure of uniformity and quality standardisation on distributors, thereby increasing the attractiveness of that brand to the final consumer and increasing its sales.

31. Article 1(d) of the General Vertical Block Exemption defines a non-compete obligation as:

'(a) 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

(b) any direct or indirect obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than 80 % of the buyer's total purchases of the contract goods or services and their substitutes on the relevant market.'

32. Apart from direct means to tie the distributor to its own brand(s), a supplier may also have recourse to indirect means having the same effect. In the motor vehicle sector, such indirect means may include qualitative standards specifically designed to discourage the distributors from selling products of competing brands ([19]), bonuses made conditional on the distributor agreeing to sell exclusively one brand, target rebates or certain other requirements such as the requirement to set up a separate legal entity for the competing brand or the obligation to display the additional competing brand in a separate showroom in a geographic location where the fulfilment of such a requirement would not be economically viable (for example sparsely populated areas).

33. The Block Exemption provided for in the General Vertical Block Exemption covers all forms of direct or indirect non-compete obligations provided that the market shares of both the supplier and the distributor do not exceed 30 % and the duration of the non-compete obligation does not exceed five years. However, even in cases where individual agreements satisfy those conditions, the use of non-compete obligations may result in anti-competitive effects not outweighed by their positive effects. In the motor vehicle industry, such net anti-competitive effects could in particular result from cumulative effects leading to the foreclosure of competing brands.

34. For the distribution of motor vehicles at the retail level, foreclosure of this type is unlikely to occur in markets where all suppliers have market shares below 30 % and where the total percentage of all motor vehicle sales that are subject to single-branding obligations on the market in question (that is to say the total tied market share) is below 40 % ([20]). In a situation where there is one non-dominant supplier with

([18]) As regards the relevant factors to be taken into account to carry out the assessment of non-compete obligations under Article 53(1), see relevant section in the General Vertical Guidelines, in particular paragraphs 129 to 150.
([19]) See cases BMW, IP/06/302 — 13.3.2006 and Opel 2006, IP/06/303 — 13.3.2006.
([20]) See General Vertical Guidelines at paragraph 141.

a market share of more than 30 % of the relevant market whereas all other suppliers' market shares are below 30 %, cumulative anti-competitive effects are unlikely as long as the total tied market share does not exceed 30 %.

35. If access to the relevant market for the sale of new motor vehicles and competition therein is significantly restricted by the cumulative effect of parallel networks of similar vertical agreements containing single branding obligations, the EFTA Surveillance Authority may, where it is the competent surveillance authority pursuant to Article 56 EEA, withdraw the benefit of the Block Exemption pursuant to Article 29 of Chapter II of Protocol 4 to the Surveillance and Court Agreement. A withdrawal decision may be addressed in particular to those suppliers that contribute in a significant manner to a cumulative foreclosure effect on the relevant market. Where that effect occurs on a national market, the National Competition Authorities of that EFTA State may also withdraw the benefit of the block exemption in respect of that territory.

36. In addition, if parallel networks of agreements containing similar vertical restraints cover more than 50 % of a given market, the EFTA Surveillance Authority may by recommendation declare the Block Exemption inapplicable to the market in question in respect of such restraints ([21]). In particular, such a situation may arise if cumulative effects resulting from the widespread use of single-branding obligations lead to consumer harm on that market.

37. With regard to the assessment of minimum purchasing obligations calculated on the basis of the distributor's total annual requirements, it may be justified to withdraw the benefit of the Block Exemption if cumulative anticompetitive effects arise even if the supplier imposes a minimum purchasing obligation that is below the 80 % limit established in Article 1(d) of the General Vertical Block Exemption. The parties need to consider, whether in the light of the relevant factual circumstances, an obligation on the distributor to ensure that a given percentage of its total purchases of motor vehicles bear the supplier's brand will prevent the distributor from taking on one or more additional competing brands. From that perspective, even a minimum purchasing requirement set at a level lower than 80 % of total annual purchases will amount to a single-branding obligation if it obliges a distributor wishing to take up a new brand of its choice from a competing manufacturer to purchase so many motor vehicles of the brand that it currently sells that the distributor's business is made economically unsustainable ([22]). Such a minimum purchasing obligation will also amount to a single branding obligation if it forces a competing supplier to split its envisaged sales volume in a given territory over several distributors, leading to duplication of investments and a fragmented sales presence.

(ii) *Assessment of single-branding obligations outside the scope of the Block Exemptions*

38. Parties may also be called upon to assess the compatibility with the competition rules of single-branding obligations in respect of agreements that do not qualify for Block Exemption because the parties' market shares exceed 30 % or the duration of the agreement exceeds five years. Such agreements will therefore be subject to individual scrutiny in order to ascertain whether they are caught by Article 53(1) and if so, whether efficiencies offsetting any possible anti-competitive effect can be demonstrated. If that is the case, they may be able to benefit from the exception laid down in Article 53(3). For assessment in an individual case the general principles set out in Section VI.2.1 of the General Vertical Guidelines will apply.

39. In particular, agreements entered into between a motor vehicle manufacturer or its importer, on the one hand, and spare parts distributors and/or authorised repairers, on the other, will fall outside the Block Exemptions when the market shares held by the parties exceed the 30 % threshold, which is likely to be the case for most such agreements. Single-branding obligations that will need to be assessed in such circumstances include all types of restriction that directly or indirectly limit authorised distributors' or repairers' ability to obtain original or matching quality spare parts from third parties.

([21]) This follows from Article 6 of the Act referred in point 4b of Annex XIV of the EEA Agreement (Commission Regulation (EC) No 461/2010 of 27 May 2010) as adapted for the purposes of the EEA Agreement.

([22]) For instance, if a dealer purchases 100 cars of brand A in a year to meet demand, and wishes to buy 100 cars of brand B, an 80 % minimum purchasing obligation as regards brand A would imply that the following year, the dealer would have to buy 160 brand A cars. Given that penetration rates are likely to be relatively stable, this would likely leave the dealer with a large unsold stock of brand A. It would therefore be forced to dramatically reduce its purchases of brand B in order to avoid such a situation. Depending on the specific circumstances of the case, such a practice can be viewed as a single-branding obligation.

However, an obligation on an authorised repairer to use original spare parts supplied by the motor vehicle manufacturer for repairs carried out under warranty, free servicing and motor vehicle recall work would not be considered to be a single-branding obligation, but rather an objectively justified requirement.

40. Single-branding obligations in agreements for the distribution of new motor vehicles will also need to be individually assessed where their duration exceeds five years or/and where the market share of the supplier exceeds 30 %, which may be the case for certain suppliers in some EEA States. In such circumstances, the parties should have regard not only to the supplier's and buyer's market share, but also to the total tied market share taking into account the thresholds indicated in paragraph 34. Above those thresholds, individual cases will be assessed in accordance with the general principles set out in Section VI.2.1 of the General Vertical Guidelines.

41. Outside the scope of the Block Exemption, the assessment of minimum purchasing obligations calculated on the basis of the distributor's total annual requirements will take into account all the relevant factual circumstances. In particular, a minimum purchasing requirement set at a level lower than 80 % of total annual purchases will amount to a single-branding obligation if it has the effect of preventing distributors from dealing in one or more additional competing brands.

2. **Selective distribution**

42. Selective distribution is currently the predominant form of distribution in the motor vehicle sector. Its use is widespread in motor vehicle distribution, as well as for repair and maintenance and the distribution of spare parts.

43. In purely qualitative selective distribution, distributors and repairers are only selected on the basis of objective criteria required by the nature of the product or service, such as the technical skills of sales personnel, the layout of sales facilities, sales techniques and the type of sales service to be provided by the distributor ([23]). The application of such criteria does not put a direct limit on the number of distributors or repairers admitted to the supplier's network. Purely qualitative selective distribution is in general considered to fall outside Article 53(1) for lack of anti-competitive effects, provided that three conditions are satisfied. First, the nature of the product in question must necessitate the use of selective distribution, in the sense that such a system must constitute a legitimate requirement, having regard to the nature of the product concerned, to preserve its quality and ensure its proper use. Second, distributors or repairers must be chosen on the basis of objective criteria of a qualitative nature which are laid down uniformly for all potential resellers and are not applied in a discriminatory manner. Third, the criteria laid down must not go beyond what is necessary.

44. Whereas qualitative selective distribution involves the selection of distributors or repairers only on the basis of objective criteria required by the nature of the product or service, quantitative selection adds further criteria for selection that more directly limit the potential number of distributors or repairers either by directly fixing their number, or for instance, requiring a minimum level of sales. Networks based on quantitative criteria are generally held to be more restrictive than those that rely on qualitative selection alone, and are accordingly more likely to be caught by Article 53(1).

45. If selective distribution agreements are caught by Article 53(1), the parties will need to assess whether their agreements can benefit from the Block Exemptions, or individually, from the exception in Article 53(3).

([23]) It should be recalled however that, in accordance with the established case law of the European Courts, purely qualitative selective distribution systems may nevertheless restrict competition where the existence of a certain number of such systems does not leave any room for other forms of distribution based on a different way of competing. This situation will generally not arise on the markets for the sale of new motor vehicles, on which leasing and other similar arrangements are a valid alternative to outright purchase of a motor vehicle, nor in the markets for repair and maintenance, as long as independent repairers provide consumers with an alternative channel for the upkeep of their motor vehicles. See for example Case T-88/92 Groupement d'achat Édouard Leclerc v Commission [1996] ECR II-1961.

(i) *The assessment of selective distribution under the Block Exemptions*

46. The Block Exemptions exempt selective distribution agreements, irrespective of whether quantitative or purely qualitative selection criteria are used, so long as the parties' market shares do not exceed 30 %. However, that exemption is conditional on the agreements not containing any of the hardcore restrictions set out in Article 4 of the General Vertical Block Exemption and Article 5 of the Motor Vehicle Block Exemption, or any of the excluded restrictions described in Article 5 of the General Vertical Block Exemption.

47. Three of the hardcore restrictions in the General Vertical Block Exemption relate specifically to selective distribution. Article 4(b) describes as hardcore the restriction of the territory into which, or of the customers to whom, a buyer party to the agreement may sell the contract goods or services, except the restriction of sales by the members of a selective distribution system to unauthorised distributors in markets where such a system is operated. Article 4(c) describes as hardcore agreements restricting active or passive sales to end users by members of a selective distribution system operating at the retail level of trade, without prejudice to the possibility of prohibiting a member of the system from operating out of an unauthorised place of establishment, while Article 4(d) relates to the restriction of cross-supplies between distributors within a selective distribution system, including between distributors operating at different levels of trade. Those three hardcore restrictions have special relevance for motor vehicle distribution.

48. The internal market has enabled consumers to purchase motor vehicles in other EEA States and take advantage of price differentials between them, and the EFTA Surveillance Authority views the protection of parallel trade in this sector as an important competition objective. The consumer's ability to buy goods in other EEA States is especially important as far as motor vehicles are concerned, given the high value of the goods and the direct benefits in the form of lower prices accruing to consumers buying motor vehicles elsewhere in the EEA. The EFTA Surveillance Authority is therefore concerned that distribution agreements should not restrict parallel trade, since this cannot be expected to satisfy the conditions laid down in Article 53(3) ([24]).

49. The Commission has brought several cases against motor vehicle manufacturers for impeding such trade, and its decisions have been largely confirmed by the European Courts ([25]). This experience shows that restrictions on parallel trade may take a number of forms. A supplier may, for instance, put pressure on distributors, threaten them with contract termination, fail to pay bonuses, refuse to honour warranties on motor vehicles imported by a consumer or cross-supplied between distributors established in different EEA States, or make a distributor wait significantly longer for delivery of an identical motor vehicle when the consumer in question is resident in another EEA State.

50. One particular example of indirect restrictions on parallel trade arises when a distributor is unable to obtain new motor vehicles with the appropriate specifications needed for cross-border sales. In those specific circumstances, the benefit of the block exemption may depend on whether a supplier provides its distributors with motor vehicles with specifications identical to those sold in other EEA States for sale to consumers from those countries (the so-called 'availability clause') ([26]).

([24]) The notion that cross-border trade restrictions may harm consumers has been confirmed by the European Courts in case C-551/03 P, General Motors, [2006] ECR 1-3173, paragraphs 67 and 68; Case C-338/00 P, Volkswagen/Commission, [2003] ECR I-9189, paragraphs 44 and 49, and Case T-450/05, Peugeot/Commission, [2009] ECR II-2533, paragraphs 46-49.

([25]) Commission Decision 98/273/EC of 28 January 1998 in Case IV/35.733 — VW, Commission Decision 2001/146/EC of 20 September 2000 in Case COMP/36.653 — Opel OJ L 59, 28.2.2001, p. 1, Commission Decision 2002/758/EC of 10 October 2001 in Case COMP/36.264 — Mercedes-Benz OJ L 257, 25.9.2002, p. 1, Commission Decision 2006/431/EC of 5 October 2005 in Cases F-2/36.623/36.820/37.275 — SEP et autres/ Peugeot SA.

([26]) Joined Cases 25 and 26/84 Ford — Werke AG and Ford of Europe Inc. v. Commission of the European Communities, [1985] ECR 2725.

51. For the purposes of the application of the Block Exemptions, and in particular as regards the application of Article 4(c) of the General Vertical Block Exemption, the notion of 'end users' includes leasing companies. This means in particular that distributors in selective distribution systems may not be prevented from selling new motor vehicles to leasing companies of their choice. However, a supplier using selective distribution may prevent its distributors from selling new motor vehicles to leasing companies when there is a verifiable risk that those companies will resell them while still new. A supplier can therefore require a dealer to check, before selling to a particular company, the general leasing conditions applied so as to verify that the company in question is indeed a leasing company rather than an unauthorised reseller. However, an obligation on a dealer to provide its supplier with copies of each leasing agreement before the dealer sells a motor vehicle to a leasing company could amount to an indirect restriction on sales.

52. The notion of 'end users' also encompasses consumers who purchase through an intermediary. An intermediary is a person or an undertaking which purchases a new motor vehicle on behalf of a named consumer without being a member of the distribution network. Those operators perform an important role in the motor vehicle sector, in particular by facilitating consumers' purchases of motor vehicles in other EEA States. Evidence of intermediary status should as a rule be established by a valid mandate including the name and address of the consumer obtained prior to the transaction. The use of the Internet as a means to attract customers in relation to a given range of motor vehicles and collect electronic mandates from them does not affect intermediary status. Intermediaries are to be distinguished from independent resellers, which purchase motor vehicles for resale and do not operate on behalf of named consumers. Independent resellers are not to be considered as end users for the purposes of the Block Exemptions.

(ii) *The assessment of selective distribution outside the scope of the Block Exemptions*

53. As paragraph 175 of the General Vertical Guidelines explains, the possible competition risks brought about by selective distribution are a reduction in intra-brand competition and, especially in case of cumulative effect, foreclosure of certain type(s) of distributors and facilitation of collusion between suppliers or buyers.

54. To assess the possible anti-competitive effects of selective distribution under Article 53(1), a distinction needs to be made between purely qualitative selective distribution and quantitative selective distribution. As pointed out in paragraph 43, qualitative selective distribution is normally not caught by Article 53(1).

55. The fact that a network of agreements does not benefit from the Block Exemption because the market share of one or more of the parties is above the 30 % threshold for exemption does not imply that such agreements are illegal. Instead, the parties to such agreements need to subject them to an individual analysis to check whether they fall under Article 53(1) and, if so, whether they may nonetheless benefit from the exception in Article 53(3).

56. As regards the specificities of new motor vehicle distribution, quantitative selective distribution will generally satisfy the conditions laid down in Article 53(3) if the parties' market shares do not exceed 40 %. However, the parties to such agreements should bear in mind that the presence of particular selection standards could have an effect on whether their agreements satisfy the conditions laid down in Article 53(3). For instance, although the use of location clauses in selective distribution agreements for new motor vehicles, that is to say agreements containing a prohibition on a member of a selective distribution system from operating out of an unauthorised place of establishment, will usually bring efficiency benefits in the form of more efficient logistics and predictable network coverage, those benefits may be outweighed by disadvantages if the market share of the supplier is very high, and in those circumstances such clauses might not be able to benefit from the exception in Article 53(3).

57. Individual assessment of selective distribution for authorised repairers also raises specific issues. Insofar as a market exists ([27]) for repair and maintenance services that is separate from that for the sale of new motor vehicles, this is considered to be brand-specific. On that market, the main source of competition results from the competitive interaction between independent repairers and authorised repairers of the brand in question.

58. Independent repairers in particular provide vital competitive pressure, as their business models and their related operating costs are different from those in the authorised networks. Moreover, unlike authorised repairers, which to a large extent use car manufacturer-branded parts, independent garages generally have greater recourse to other brands, thereby allowing a motor vehicle owner to choose between competing parts. In addition, given that a large majority of repairs for newer motor vehicles are currently carried out in authorised repair shops, it is important that competition between authorised repairers remains effective, which may only be the case if access to the networks remains open for new entrants.

59. The new legal framework makes it easier for the EFTA Surveillance Authority and National Competition Authorities to protect competition between independent garages and authorised repairers, as well as between the members of each authorised repairer network. In particular, the reduction in the market share threshold for exemption of qualitative selective distribution from 100 % to 30 % broadens the scope for competition authorities to act.

60. When assessing the competitive impact of vertical agreements on the motor vehicle aftermarkets, the parties should therefore be aware of the EFTA Surveillance Authority's determination to preserve competition both between the members of authorised repair networks and between those members and independent repairers. To this end, particular attention should be paid to three specific types of conduct which may restrict such competition namely preventing access of independent repairers to technical information, misusing the legal and/or extended warranties to exclude independent repairers, or making access to authorised repairer networks conditional upon non-qualitative criteria.

61. Although the following three subsections refer specifically to selective distribution, the same anti-competitive foreclosure effects could stem from other types of vertical agreements that limit, directly or indirectly, the number of service partners contractually linked to a motor vehicle manufacturer.

Access to technical information by independent operators

62. Although purely qualitative selective distribution is in general considered to fall outside Article 53(1) for lack of anti-competitive effects ([28]), qualitative selective distribution agreements concluded with authorised repairers and/or parts distributors may be caught by Article 53(1) if, within the context of those agreements, one of the parties acts in a way that forecloses independent operators from the market, for instance by failing to release technical repair and maintenance information to them. In that context, the notion of independent operators includes independent repairers, spare parts manufacturers and

([27]) In some circumstances, a system market which includes motor vehicles and spare parts together may be defined, taking into account, inter alia, the life-time of the motor vehicle as well as the preferences and buying behaviour of the users. See the EFTA Surveillance Authority Notice on the definition of the relevant market for the purposes of competition law within the European Economic Area, OJ L 200, 16.7.1998, p. 46 and EEA Supplement to the OJ 28, 16.7.1998, p. 3, paragraph 56. One important factor is whether a significant proportion of buyers make their choice taking into account the lifetime costs of the motor vehicle or not. For instance, buying behaviour may significantly differ between buyers of trucks who purchase and operate a fleet, and who take into account maintenance costs at the moment of purchasing the motor vehicle and buyers of individual motor vehicles. Another relevant factor is the existence and relative position of part suppliers, repairers and/or parts distributors operating in the aftermarket independently from motor vehicle manufacturers. In most cases, there is likely to be a brand-specific aftermarket, in particular because the majority of buyers are private individuals or small and medium-size enterprises that purchase motor vehicles and aftermarket services separately and do not have systematic access to data permitting them to assess the overall costs of motor vehicle ownership in advance.

([28]) As pointed out in paragraph 54 above, this will generally be the case on the markets for repair and maintenance as long as independent repairers provide consumers with an alternative channel for the upkeep of their motor vehicles.

distributors, 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.

63. Suppliers provide their authorised repairers with the full scope of technical information needed to perform repair and maintenance work on motor vehicles of their brands and are often the only companies able to provide repairers with all of the technical information that they need on the brands in question. In such circumstances, if the supplier fails to provide independent operators with appropriate access to its brand-specific technical repair and maintenance information, possible negative effects stemming from its agreements with authorised repairers and/or parts distributors could be strengthened, and cause the agreements to fall within Article 53(1).

64. Moreover, a lack of access to necessary technical information could cause the market position of independent operators to decline, leading to consumer harm, in terms of a significant reduction in choice of spare parts, higher prices for repair and maintenance services, a reduction in choice of repair outlets and potential safety problems. In those circumstances, the efficiencies that might normally be expected to result from the authorised repair and parts distribution agreements would not be such as to offset these anti-competitive effects, and the agreements in question would consequently fail to satisfy the conditions laid down in Article 53(3).

65. The Act referred to in point 1 of Annex II of the EEA Agreement (Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 ([29])) on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information as well as the Act referred to in point 45zt of Annex II of the EEA Agreement (Commission Regulation (EC) No 692/2008 of 18 July 2008 implementing and amending Regulation (EC) No 715/2007 of the European Parliament and of the Council ([30])) on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information provide for a system for disseminating repair and maintenance information in respect of passenger cars put on the market from 1 September 2009. Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro 6) and on access to vehicle repair and maintenance information ([31]) and the ensuing implementing measures provide for such a system in respect of commercial vehicles put on the market from 1 January 2013. The EFTA Surveillance Authority will take those Acts into account when assessing cases of suspected withholding of technical repair and maintenance information concerning motor vehicles marketed before those dates. When considering whether withholding a particular item of information may lead the agreements at issue to be caught by Article 53(1), a number of factors should be considered, including:

(a) whether the item in question is technical information, or information of another type, such as commercial information ([32]), which may legitimately be withheld;

(b) whether withholding the technical information in question will have an appreciable impact on the ability of independent operators to carry out their tasks and exercise a competitive constraint on the market;

(c) whether the technical information in question is made available to members of the relevant authorised repair network; if it is made available to the authorised network in whatever form, it should also be made available to independent operators on a non-discriminatory basis;

([29]) OJ L 171, 29.6.2007, p. 1, incorporated into point 1 of Annex II of the EEA Agreement by Decision No 4/2008 (OJ L 154, 12.6.2008, p. 7 and EEA Supplement No 33, 12.6.2008, p. 6).
([30]) OJ L 199, 28.7.2008, p. 1, incorporated into point 45zt of Annex II of the EEA Agreement by Decision No 43/2009 (OJ L 162, 25.6.2009, p. 20 and EEA Supplement No 33, 25.6.2009, p. 5).
([31]) OJ L 188, 18.7.2009, p. 1. (not yet incorporated into the EEA Agreement).
([32]) Commercial information can be thought of as information that is used for carrying on a repair and maintenance business but is not needed to repair or maintain motor vehicles. Examples include billing software, or information on the hourly tariffs practiced within the authorised network.

(d) whether the technical information in question will ultimately ([33]) be used for the repair and maintenance of motor vehicles, or rather for another purpose ([34]), such as for the manufacturing of spare parts or tools.

66. Technological progress implies that the notion of technical information is fluid. Currently, particular examples of technical information include software, fault codes and other parameters, together with updates, which are required to work on electronic control units with a view to introducing or restoring settings recommended by the supplier, motor vehicle identification numbers or any other motor vehicle identification methods, parts catalogues, repair and maintenance procedures, working solutions resulting from practical experience and relating to problems typically affecting a given model or batch, and recall notices as well as other notices identifying repairs that may be carried out without charge within the authorised repair network. The part code and any other information necessary to identify the correct car manufacturer-branded spare part to fit a given individual motor vehicle (that is to say the part that the car manufacturer would generally supply to the members of its authorised repair networks to repair the motor vehicle in question) also constitute technical information ([35]). The lists of items set out in Article 6(2) of the Act referred to in point 1 of Annex II of the EEA Agreement (Regulation (EC) No 715/2007) and Regulation (EC) No 595/2009, not yet incorporated into the EEA Agreement, should also be used as a guide to what the EFTA Surveillance Authority views as technical information for the purposes of applying Article 53.

67. The way in which technical information is supplied is also important for assessing the compatibility of authorised repair agreements with Article 53. Access should be given upon request and without undue delay, the information should be provided in a usable form, and the price charged should not discourage access to it by failing to take into account the extent to which the independent operator uses the information. A supplier of motor vehicles should be required to give independent operators 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 independent operators to purchase more than the information necessary to carry out the work in question. Article 53 does not, however, oblige a supplier to provide technical information in a standardised format or through a defined technical system, such as the CEN/ISO standard and the OASIS format as provided for by the Act referred to in point 1 of Annex II of the EEA Agreement (Regulation (EC) No 715/2007) and by Commission Regulation (EC) No 295/2009 of 18 March 2009 concerning the classification of certain goods in the Combined Nomenclature ([36]) and similar rules of classification.

68. The above considerations also apply to the availability of tools and training to independent operators. 'Tools' in this context includes electronic diagnostic and other repair tools, together with related software, including periodic updates thereof, and after-sales services for such tools.

Misuse of warranties

69. Qualitative selective distribution agreements may also be caught by Article 53(1) if the supplier and the members of its authorised network explicitly or implicitly reserve repairs on certain categories of motor vehicles to the members of the authorised network. This might happen, for instance, if the manufacturer's warranty vis-à-vis the buyer, whether legal or extended, is made conditional on the end user having repair and maintenance work that is not covered by warranty carried out only within the authorised repair networks. The same applies to warranty conditions which require the use of the manufacturer's brand of spare parts in respect of replacements not covered by the warranty terms. It also seems doubtful that selective distribution agreements containing such practices could bring benefits to consumers in such a way as to allow the agreements in question to benefit from the exception in Article 53(3). However, if a supplier legitimately refuses to honour a warranty claim on the grounds that the situation leading to the claim in question is causally linked to a failure on the part of a repairer

([33]) Such as information supplied to publishers for resupply to motor vehicle repairers.
([34]) Information used for fitting a spare part to or using a tool on a motor vehicle should be considered as being used for repair and maintenance, while information on the design, production process or the materials used for manufacturing a spare part should not be considered to fall within this category, and may therefore be withheld.
([35]) The independent operator should not have to purchase the spare part in question to be able to obtain this information.
([36]) OJ L 95, 9.4.2009, p. 7 — No EEA relevance.

to carry out a particular repair or maintenance operation in the correct manner or to the use of poor quality spare parts, this will have no bearing on the compatibility of the supplier's repair agreements with the competition rules.

Access to authorised repairer networks

70. Competition between authorised and independent repairers is not the only form of competition that needs to be taken into account when analysing the compatibility of authorised repair agreements with Article 53. Parties should also assess the degree to which authorised repairers within the relevant network are able to compete with one another. One of the main factors driving this competition relates to the conditions of access to the network established under the standard authorised repairer agreements. In view of the generally strong market position of networks of authorised repairers, their particular importance for owners of newer motor vehicles, and the fact that consumers are not prepared to travel long distances to have their cars repaired, the EFTA Surveillance Authority considers it important that access to the authorised repair networks should generally remain open to all firms that meet defined quality criteria. Submitting applicants to quantitative selection is likely to cause the agreement to fall within Article 53(1).

71. A particular case arises when agreements oblige authorised repairers to also sell new motor vehicles. Such agreements are likely to be caught by Article 53(1), since the obligation in question is not required by the nature of the contract services. Moreover, for an established brand, agreements containing such an obligation would not normally be able to benefit from the exception in Article 53(3), since the impact would be to severely restrict access to the authorised repair network, thereby reducing competition without bringing corresponding benefits to consumers. However, in certain cases, a supplier wishing to launch a brand on a particular geographic market might initially find it difficult to attract distributors willing to make the necessary investment unless they could be sure that they would not face competition from 'stand-alone' authorised repairers that sought to free-ride on these initial investments. In those circumstances, contractually linking the two activities for a limited period of time would have a pro-competitive effect on the motor vehicle sales market by allowing a new brand to launch, and would have no effect on the potential brand-specific repair market, which would in any event not exist if the motor vehicles could not be sold. The agreements in question would therefore be unlikely to be caught by Article 53(1).

Information communicated by the EFTA States regarding State aid granted under the Act referred to in point 1j of Annex XV of the EEA Agreement (Commission Regulation (EC) No 800/2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation))

(2012/C 307/04)

PART I

Aid No	GBER 8/12/REG		
EFTA State	Norway		
Region	Name of the Region (NUTS)	Areas eligible for regional aid	
Granting authority	Name	Husbanken	
	Address	Postboks 1404 8002 Bodø NORWAY	
	Webpage	http://www.husbanken.no	
Title of the aid measure	Regional housing scheme		
National legal basis (Reference to the relevant national official publication)	FOR-2012-04-13-311		
Web link to the full text of the aid measure	http://www.husbanken.no		
Type of measure	Scheme	X	
Duration	Scheme	14.4.2012 to 1.1.2015	
Economic sector(s) concerned	All economic sectors eligible to receive aid	X	
	Limited to specific sectors — Please specify in accordance with NACE Rev. 2.		
Type of beneficiary	SME	X	
Budget	Annual overall amount of the budget planned under the scheme	NOK 20 million	
Aid instrument (Article 5)	Grant		X

PART II

General Objectives (list)	Objectives (list)	Maximum aid intensity in % or Maximum aid amount in NOK	SME — bonuses in %
Regional investment and employment aid (Article 13)	Scheme	15 %	
	Ad hoc aid (Article 13(1))	… %	

Information notice from the EFTA Surveillance Authority based on Article 17(5) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council on common rules for the operation of air services in the Community

Invitation to tender in respect of the operation of scheduled air services in accordance with public service obligations in Finnmark and North-Troms

(2012/C 307/05)

Member State	Norway
Concerned routes	Route area 1: routes between Kirkenes, Vadsø, Vardø, Båtsfjord, Berlevåg, Mehamn, Honningsvåg, Hammerfest and Alta Route area 2: Hasvik–Tromsø, Hasvik–Hammerfest, Sørkjosen–Tromsø
Period of validity of the contracts	1 April 2013-31 March 2017
Deadline for submission of tenders	11.12.2012
Address where the text of the invitation to tender and any relevant information and/or documentation related to the public tender and the public service obligation can be obtained	Ministry of Transport and Communications PO Box 8010 Dep 0030 Oslo NORWAY Tel. +47 22248353 Fax +47 22245609 http://www.regjeringen.no/en/dep/sd/Documents/Other-documents/Tenders.html

Information notice from the EFTA Surveillance Authority based on Article 16(4) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council on common rules for the operation of air services in the Community

Imposition of public service obligations in respect of scheduled air services in Finnmark and North-Troms

(2012/C 307/06)

Member State	Norway
Concerned routes	Route area 1: Routes between Kirkenes, Vadsø, Vardø, Båtsfjord, Berlevåg, Mehamn, Honningsvåg, Hammerfest and Alta Route area 2: Hasvik–Tromsø, Hasvik–Hammerfest, Sørkjosen–Tromsø
Date of entry into force of the public service obligations	1 April 2013
Address where the text and any relevant information and/or documentation related to the public service obligation can be obtained	Ministry of Transport and Communications PO Box 8010 Dep 0030 Oslo NORWAY Tel. +47 22248353 Fax +47 22245609 http://www.regjeringen.no/en/dep/sd/Documents/Other-documents/Tenders.html

V

(Announcements)

ADMINISTRATIVE PROCEDURES

EUROPEAN PERSONNEL SELECTION OFFICE (EPSO)

NOTICE OF OPEN COMPETITION

(2012/C 307/07)

The European Personnel Selection Office (EPSO) is organising an open competition:

EPSO/AST/122/12 — Proofreaders/Language editors (AST 3) with Croatian as their main language (HR)

The competition notice is published in English, French and German only, in Official Journal C 307 A of 11 October 2012.

Further details can be found on the EPSO website: http://blogs.ec.europa.eu/eu-careers.info/

COURT PROCEEDINGS

EFTA COURT

JUDGMENT OF THE COURT

of 15 December 2011

in Case E-1/11

Dr A

(Free movement of persons — Directive 2005/36/EC — Recognition of professional qualifications — Protection of public health — Non-discrimination — Proportionality)

(2012/C 307/08)

In Case E-1/11, Dr A — REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Statens helsepersonellnemnd (Norwegian Appeal Board for Health Personnel), concerning the interpretation of Directive 2005/36/EC and other EEA law, the Court, composed of Carl Baudenbacher, President, Per Christiansen and Páll Hreinsson (Judge-Rapporteur), Judges, gave judgment on 15 December 2011, the operative part of which is as follows:

— In principle, Directive 2005/36/EC precludes the authorities of EEA States from applying national rules providing for a right to deny an authorisation as a medical doctor to a migrant applicant from another EEA State who fulfils the requirements under the Directive for a right to mutual recognition of professional qualifications.

— However, an EEA State may make an authorisation conditional upon the applicant having a knowledge of languages necessary for practising the profession on its territory.

— Moreover, an EEA State may suspend or withdraw an authorisation to pursue the profession of a medical doctor based on information concerning the personal aptitude of a migrant doctor relating to the professional qualification other than language skills, such as the ones in question, only if such requirements are objectively justified and proportionate to achieve the objective of protecting public health and if the same information would also entail a suspension or withdrawal of authorisation for a national doctor. If such grounds for suspension or withdrawal are available to the competent authorities at the time of assessment, the authorisation may be denied.

JUDGMENT OF THE COURT

of 30 March 2012

in Joined Cases E-17/10 and E-6/11

Principality of Liechtenstein and VTM Fundmanagement AG v EFTA Surveillance Authority

(Action for annulment of a decision of the EFTA Surveillance Authority — State aid — Special tax rules applicable to investment companies — Selectivity — Existing aid and new aid — Recovery — Legitimate expectations — Legal certainty — Obligation to state reasons)

(2012/C 307/09)

In Joined Cases E-17/10 and E-6/11 Principality of Liechtenstein and VTM Fundmanagement AG v EFTA Surveillance Authority — APPLICATION for the annulment of Decision No 416/10/COL of 3 November 2010 on the taxation of investment undertakings under the Liechtenstein Tax Act, the Court, composed of Carl Baudenbacher, President, Per Christiansen and Páll Hreinsson (Judge-Rapporteur), Judges, gave judgment on 30 March 2012, the operative part of which is as follows:

The Court hereby:

1. Dismisses the applications.

2. Orders the applicants to pay the costs of the proceedings.

JUDGMENT OF THE COURT

of 30 March 2012

in Case E-7/11

Grund, elli- og hjúkrunarheimili v the Icelandic Medicines Agency (Lyfjastofnun)

(Directive 2001/83/EC — Free movement of goods — Pharmaceuticals — Parallel import — Control reports — Protection of public health — Justification — Language requirements for labelling and package leaflets)

(2012/C 307/10)

In Case E-7/11 Grund, elli- og hjúkrunarheimili v the Icelandic Medicines Agency (Lyfjastofnun) — REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Héraðsdómur Reykjavíkur (Reykjavik District Court) concerning the interpretation of Directive 2001/83/EC and Articles 11 and 13 of the EEA Agreement, the Court, composed of Carl Baudenbacher, President, Per Christiansen (Judge-Rapporteur) and Páll Hreinsson, Judges, gave judgment on 30 March 2012, the operative part of which is as follows:

1. The national authorities may make importation by a health care institution, such as the Plaintiff, for use by the people in the care of the institution, of medicinal products from Norway which have been granted national marketing authorisation in Norway, and which are identical or essentially similar to products which have national marketing authorisation in Iceland, subject to a parallel import licence.

   Such a licence must be issued under a procedure limited to controlling that the medicinal products in question have a valid marketing authorisation in the EEA State of export, and that the product is identical or essentially similar to products having marketing authorisation in the EEA State of importation.

   In this context, the national authorities may not require parallel importers, such as the Plaintiff, to submit manufacturing control reports. Such a practice cannot be justified under Article 13 EEA.

2. When a medicinal product is not intended to be delivered directly to the patient, the competent authorities' right to grant exemptions under Article 63(3) of Directive 2001/83/EC is limited by the general principles of EEA law. The discretion must not be exercised in a disproportionate, arbitrary or abusive, in particular protectionist, manner.

JUDGMENT OF THE COURT

of 18 April 2012

in Case E-15/10

Posten Norge AS v EFTA Surveillance Authority

(Action for annulment of a decision of the EFTA Surveillance Authority — Competition — Abuse of a dominant position — Market for business-to-consumer over-the-counter parcel delivery — Distribution network — Exclusivity agreements — Conduct liable to eliminate competition on the market — Justification — Duration of infringement — Fine)

(2012/C 307/11)

In Case E-15/10 Posten Norge AS v EFTA Surveillance Authority — APPLICATION for annulment of Decision No 322/10/COL of 14 July 2010 relating to a proceeding under Article 54 of the EEA Agreement (Case No 34250 Norway Post/Privpak) or, in the alternative, annulment or reduction of the fine imposed on the applicant in that decision, the Court, composed of Carl Baudenbacher, President and Judge-Rapporteur, Per Christiansen and Páll Hreinsson, Judges, gave judgment on 18 April 2012, the operative part of which is as follows:

The Court hereby:

1. Sets the fine imposed by Article 2 of Decision No 322/10/COL of 14 July 2010 relating to a proceeding under Article 54 of the EEA Agreement (Case No 34250 Norway Post/Privpak) on Posten Norge AS at EUR 11 112 000;

2. Dismisses the remainder of the application;

3. Orders Posten Norge AS to bear its own costs and to pay 75 % of ESA's costs and the costs of Schenker North AB, Schenker Privpak AB and Schenker Privpak AS;

4. Orders ESA to bear the remainder of its own costs.

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

EUROPEAN COMMISSION

Notice of the expiry of certain anti-dumping measures

(2012/C 307/12)

Further to the publication of a notice of impending expiry [1] following which no duly substantiated request for a review was lodged, the Commission gives notice that the anti-dumping measure mentioned below will shortly expire.

This notice is published in accordance with Article 11(2) of Council Regulation (EC) No 1225/2009 [2] on protection against dumped imports from countries not members of the European Community.

Product	Country(ies) of origin or exportation	Measures	Reference	Date of expiry [1]
Peroxosulphates (persulphates)	Taiwan United States of America	Anti-dumping duty	Council Regulation (EC) No 1184/2007 (OJ L 265, 11.10.2007, p. 1)	12.10.2012

[1] The measure expires at midnight of the day mentioned in this column.

[1] OJ C 356, 6.12.2011, p. 17.
[2] OJ L 343, 22.12.2009, p. 51.

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