

Pursuant to Article 13(3) of the Law on Protection of Competition (“Official Gazette of the RS”, nos. 51/09 and 95/13) and Article 42(1) of the Law on Government (“Official Gazette of the RS”, nos. 55/05, 71/05-correction, 101/07, 65/08, 16/11, 68/12-CC, 72/12, 7/14-CC and 44/14),  
the Government enacts the following

## Regulation

on agreements on the repair and maintenance of motor vehicles and agreements on the distribution of spare parts for motor vehicles exempt from the prohibition

## Subject matter

### Article 1

This Regulation shall prescribe agreements on the repair and maintenance of motor vehicles and agreements on the distribution of spare parts for motor vehicles concluded between undertakings operating at the different level of production or distribution chain and more closely stipulate special conditions under which those agreements may be exempt from the prohibition.

## Meaning of terms

### Article 2

For the purposes of this Regulation, the following terms within the given meaning shall apply:

- 1) **‘vertical agreement’** means an agreement, certain agreement provision, verbal or written agreement, concerted practice, decisions of undertakings or undertakings associations, general operating conditions and other acts of undertakings that constitute a part of agreement, which set general conditions under which undertakings operating at the different level of production or distribution chain may purchase, sell or resell spare parts for motor vehicles, or provide services of repair and maintenance of motor vehicles;
- 2) **‘authorized repairer’** means a provider of repair and maintenance services for motor vehicles operating within the distribution system set up by a supplier of motor vehicles;
- 3) **‘authorized distributor’** means a distributor of spare parts for motor vehicles operating within the distribution system set up by a supplier of motor vehicles;
- 4) **‘independent repairer’** means:
  - a) **a provider of repair and maintenance services for motor vehicles** not operating within the distribution system set up by the supplier of the motor vehicles for which it provides repair and maintenance services;
  - b) **an authorized repairer** within the distribution system of a given supplier of motor vehicles, to the extent that it provides repair and maintenance services for motor vehicles in respect of which it is not a member of the respective supplier’s distribution system;

5) **‘independent distributor’** means:

a) **a distributor of spare parts** for motor vehicles not operating within the distribution system set up by the supplier of the motor vehicles for which it distributes spare parts;

b) **an authorized distributor** operating within the distribution system of a given supplier of motor vehicles, to the extent that it distributes spare parts for motor vehicles in respect of which it is not a member of the respective supplier’s distribution system;

6) **‘motor vehicle’** means a self-propelled vehicle, having three or more road wheels, which per construction, devices, assemblies and equipment is primarily intended and qualified for road transport of persons or goods on public roads;

7) **‘spare parts’** means goods which are to be installed in or upon a motor vehicle so as to replace components of that vehicle, including goods such as lubricants which are necessary for the use of a motor vehicle, with the exception of fuel;

8) **‘qualitative selective distribution system’** means a form of selective distribution system where the manufacturer and/or importer uses purely qualitative criteria for the selection of the distributor of spare parts or repairer which are laid down uniformly for all and applied in a non-discriminatory manner, and do not directly limit the number of distributors or repairers on the relevant market;

9) **‘mixed qualitative-quantitative selective distribution system’** means a form of selective distribution system where the manufacturer and/or importer, in addition to qualitative criteria also uses quantitative criteria which restrict the number of potential distributors of spare parts or repairers on the relevant geographic market, either by directly restricting their number or by implementing other quantitative criteria such as the minimum sales and alike;

10) **‘relevant product market’** means a distribution market of spare parts for motor vehicles and service market of repair and maintenance services for motor vehicles.

Other terms used in this Regulation shall have the meaning and be interpreted in accordance with the provisions of the Law on Protection of Competition (“Official Gazette of the RS”, nos. 51/09 and 95/13) and the Regulation on agreements between undertakings operating at the different level of production or distribution chain exempted from the prohibition (“Official Gazette of the RS”, no. 11/2010, hereinafter referred to as the Vertical Agreements Block Exemption).

### Agreements exempt from the prohibition

#### Article 3

The exemption from the prohibition shall apply to vertical agreements relating to the conditions under which the parties may purchase, sell or resell spare parts for motor vehicles and agreements that relate to the provision of repair and maintenance services for motor vehicles, provided that they:

1) fulfil all conditions for an exemption from the prohibition under the Vertical Agreements Block Exemption;

2) do not contain restraints from the Vertical Agreements Block Exemption which would constitute as serious hardcore restrictions prohibiting the exemption;

Under the conditions set forth under Paragraph 1 hereof, the exemption from the prohibition shall also relate to:

1) agreements that establish the qualitative or mixed qualitative-quantitative selective

distribution system of spare parts and/or servicing of motor vehicles;

2) agreements on exclusive distribution or exclusive purchase or sale as a form of distribution of spare parts and/or servicing of motor vehicles;

3) agreements between a motor vehicle manufacturer and authorized repairers that contain an obligation of repairers that during the guarantee period provided by the manufacturer of motor vehicles, use original spare parts recommended by the manufacturer for the repair and maintenance of motor vehicles;

4) agreements of motor vehicle manufacturers and authorized repairers that contain obligation of repairers that following the expiry of guarantee period provided by the manufacturer of motor vehicles, in addition to the original spare parts, may use only spare parts and components that fully match the quality of the components used for the assembly of a certain motor vehicle, or respectively components produced per specifications and production standards of a certain motor vehicle.

#### Article 4

The exemption from the prohibition of agreements from Article 3 herein, shall also apply to agreements concluded between undertakings associations operating at the retail level of trade of spare parts for motor vehicles and its members, as well as between those associations and its suppliers, provided that:

1) all members of such associations are retailers of spare parts for motor vehicles that sell those products to end users;

2) no individual member of such associations, together with its affiliated undertakings has not generated a total annual turnover exceeding five million euro.

#### Agreements not exempt from the prohibition

#### Article 5

The exemption from the prohibition shall not apply to vertical agreements on the repair and maintenance of motor vehicles and on the distribution of spare parts for motor vehicles which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, which have as their object:

1) the restriction of the sale of spare parts for motor vehicles by members of a selective distribution system to independent repairers which use those parts for the repair and maintenance of motor vehicles;

2) the restriction agreed between a supplier of spare parts, repair tools, diagnostic and other equipment and a manufacturer of motor vehicles, which limits the supplier's ability to sell these goods to authorized or independent distributors, or to authorized or independent repairers or end users;

3) the restriction agreed between a manufacturer of motor vehicles which uses components for the initial assembly of motor vehicles and a 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;

4) the restriction imposed on a manufacturer of motor vehicles and its distributors to make available technical information on a motor vehicle, data on diagnostic equipment, tools or computer programs or training necessary for the repair and maintenance of such motor vehicles to independent operators on the relevant market.

Independent operators on the relevant market from Paragraph 1, Item 4) herein, shall mean

independent repairers, manufacturers of repair equipment or tools, independent distributors of spare parts, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers.

Technical information from Paragraph 1, Item 4) herein shall particularly include: software, fault codes and other parameters, together with updates, which are required to work on electronic control units with a view to functional testing of vehicles or introducing or restoring settings recommended by the supplier, motor vehicle identification numbers, spare parts catalogues, repair and/or maintenance procedures, working solutions resulting from practical experiences of repairs and maintenance of motor vehicles, as well as other notices of technical nature necessary for qualitative repair and/or maintenance of motor vehicles.

#### Parallel network of vertical agreements

##### Article 6

When vertical agreements containing identical or similar restrains are concluded between buyers and sellers on the identical relevant product market (parallel network of vertical agreements), which due to their cumulative effect do not fulfil the conditions for individual exemption from the prohibition, and particularly when agreements containing similar restrains produce the foreclosure effect exceeding 50% of the relevant market, the Commission may institute proceedings and establish the behavioral or structural measure.

#### Transitional and final provisions

##### Article 7

Vertical agreements which have been concluded before this Regulation enters into force must be brought in compliance with the provisions of this Regulation within three months from the entry into force of the Regulation.

#### Entry into force

##### Article 8

This Regulation shall enter into force on the eighth day following the day of its publication in the “Official Gazette of the Republic of Serbia”.

## **RATIONALE**

### **I Statutory grounds for the enactment of the Regulation**

The legal basis for the enactment of this Regulation is contained in Article 13(3) of the Law on Protection of Competition (“Official Gazette of the RS”, nos. 51/09 and 95/2013) and Article 42(1) of the Law on Government (“Official Gazette of the RS”, nos. 55/05, 71/05-correction, 101/07, 65/08, 16/11, 68/12-CC, 72/12, 7/14-CC and 44/14).

### **II Statement of reasons for the enactment of the Regulation**

The provision of Article 13 of the Law stipulates the possibility of exemption of certain categories of restrictive agreements from the prohibition, whereby it is not necessary that such agreements which fulfill conditions from this article be submitted to the Commission for the exemption. Paragraph 3 of this article regulates that the Government determines the categories of agreements and more closely prescribes special conditions for the exemption referred to in this article.

In the Republic of Serbia thus far has not been enacted a special regulation relating to the agreements on the repair and maintenance of motor vehicles and agreements on the distribution of spare parts for motor vehicles.

Thus is necessary to consolidate legislation of the Republic of Serbia with the EU *acquis*, as stipulated in the provisions of Article 72 of the Stabilization and Association Agreement concluded between the Republic of Serbia, of the one part, and the European Union (European communities and their member states) and their member states, of the other part.

In regard to such kind of agreements, the European Commission has enacted the Regulation no. 461/2010 of May 28, 2010, on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector, regulating, *inter alia*, the agreements subject to this exemption, conditions enabling the exemption from the prohibition, as well as types of agreements subject to the non-application of this Regulation. In addition to the EC Regulation 461/2010, the European Commission has enacted a guidelines facilitating the implementation of this Regulation and contributing to the legal certainty and predictability of business operations of undertakings. In accordance with the mentioned, the enactment of the Regulation drafted by the Commission for Protection of Competition implies not only the fulfilment of commitment of the Republic of Serbia to align its legislation with the EU *acquis*, but also to secure legal certainty for undertakings when entering into service sector agreements pertaining to the repair and maintenance of motor vehicles.

Certain types of vertical agreements may improve economic efficiency within the production of distribution chain, reduce distribution costs and enable better coordination between the parties to the agreement.

### **III Contents of the proposed provisions**

#### **Article 1**

Prescribes categories of agreements subject to this Regulation, as well as special conditions under which these categories may be exempt from the prohibition laid down in Article 10 of the Law on Protection of Competition.

#### **Article 2**

Definitions are prescribed in accordance with the EC Regulation 461/2010 and related guidelines governing its implementation. Definition of vertical agreements sets the conditions pursuant to which parties may purchase, sell or resell spare parts for motor vehicles, or provide services of repair and maintenance of motor vehicles. The parties to the vertical agreement are undertakings operating at the different level of production or distribution chain. The most important part of the definitions relates to the listing of forms of agreement, namely: an agreement, certain agreement provision, verbal or written agreement, concerted practice, decisions of undertakings or undertakings associations, general operating conditions and other acts of undertakings that constitute a part of agreement

The proposal definition of motor vehicle is modeled against the corresponding solutions from the EC Regulation 461/2010, while considering the compliance with regulations on road traffic safety, thus stipulating that the vehicle is a self-propelled vehicle, having three or more road wheels, which per construction, devices, assemblies and equipment is primarily intended and qualified for road transport of persons or goods on public roads

#### **Articles 3 and 4**

Agreements on the repair and maintenance of motor vehicles and agreements on the distribution of spare parts for motor vehicles are exempt from the prohibition, provided they fulfil all conditions for an exemption from the prohibition under the Vertical Agreements Block Exemption, and do not contain restraints from the Vertical Agreements Block Exemption which would constitute as serious hardcore restrictions prohibiting the exemption, as well as restraints laid down in Article 5 herein. Moreover, in view of the vehicle manufacturers' direct contractual involvement in free servicing repairs under warranty, agreements containing obligations on authorized repairers to use only spare parts supplied by the vehicle manufacturer for those repairs are covered by the exemption. Also, exempt from the prohibition are agreements which contain obligation of authorized repairers operating within the selective distribution system that in addition to the original spare parts, may use only spare parts and components that fully match the quality of the components used for the assembly of a certain motor vehicle. In accordance with the above-mentioned, agreements concluded between the members of spare part retailers association are also exempt from the prohibition (whose total annual turnover is under five million euro, including its affiliated parties), as well as agreements between such associations and distributors.

#### **Article 5**

Agreements within the selective distribution system that restrict the sale of spare parts by members of

the selective distribution system of a vehicle manufacturer to independent repairers, which use them for the provision of repair or maintenance services, cannot benefit of the block exemption. Such restriction would cause that without access to spare parts, independent repairers would not be able to compete effectively with authorized repairers, since they would not be able to provide consumers with good quality services which contribute to the safe and reliable functioning of motor vehicles. Moreover, in order to ensure effective competition on the repair and maintenance markets and to allow repairers to offer end users competing spare parts, the block exemption does not cover vertical agreements between a motor vehicle manufacturer and supplier of spare parts, repair tools, diagnostic and other equipment which restrict the active and passive sale of spare parts to authorized or independent repairers or end users. Namely, the above-mentioned agreements although compliant with the Vertical Agreements Block Exemption, still represent a restriction of the supplier's ability to sell spare parts to authorized repairers (within the distributive system of motor vehicle manufacturers), independent distributors, independent repairers or end users, which consequently restricts the market developments by failing to provide accessibility of products. The block exemption does not relate to agreements 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. By not allowing this, it is allowed for increased degree of competitiveness considering the possibility of authorized and independent repairers, and also of end users, to identify (per logo or trade mark) the manufacturer of components or spare parts and to choose between competing spare parts.

Also, any kind of restriction disabling the independent operators to have an access to technical information on a motor vehicle, data on diagnostic equipment, tools or computer programs and training necessary for the repair and maintenance of such motor vehicles, shall not benefit from the block exemption.

### **Article 6**

This article provides a solution for full harmonization with the EC Regulation 461/2010, which is also in compliance with the competences of the Commission envisaged in Article 21, Paragraph 1, Items 6) and 13) of the Law on Protection of Competition. Namely, provided that following the competitive condition analysis on individual market and in individual sector, the Commission establishes that agreements subject to the exemption nevertheless have the cumulative effects contrary to Article 11 of the Law, it shall act on the implementation of measures for the protection of competition, namely the behavioral or structural measures in accordance with Article 59 of the Law.

### **Articles 7 and 8**

Envisage transitional and final provisions, as well as the entry into force.

### **IV Funds required for the implementation of the Regulation**

For the implementation of this Regulation is not necessary to allocate funds from the Budget of the Republic of Serbia.