



REPUBLIC OF CYPRUS

**THE COMPETITION (PROTECTION) LAW
(LAWS OF 1989 TO 2001)**

(Order made by virtue of section 5(2))

**The Block Exemptions (to Certain Categories of Agreements
and Concerted Practices in the Motor Vehicle Sector) Order, 2003**

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THE COMPETITION (PROTECTION) LAW
(LAWS OF 1989 TO 2001)

Order made by virtue of section 5(2)

For the purposes of adoption of provisions corresponding to the Community Preamble.
act:

"Commission Regulation (EC) No. 1400/2002 of 31 July 2002, on the application of Article 81(3) of the Treaty to certain categories of agreements and concerted practices in the motor vehicle sector" (OJ L 203 of 1.8.2002, p. 30),

The Council of Ministers, exercising the powers vested in it, by subsection (2) of section 5 of the Competition (Protection) Laws, 1989 to (No.2), 2000, makes the following Order.

207 of 1989
111(I) of 1999
87(I) of 2000
155(I) of 2000.

1. This Order may be cited as the Block Exemptions (to Certain Categories of Agreements and Concerted Practices in the Motor Vehicle Sector) Order, 2003.

Short title.

2.—(1) In this Order unless the context otherwise requires—

Interpretation.

"authorized repairer" means a provider of repair and maintenance services for motor vehicle, operating within the distribution system set up by a supplier of motor vehicles;

"buyer" whether distributor or repairer, includes an undertaking which sell goods or services on behalf of another undertaking;

"competing undertakings" means actual or potential suppliers on the same product market. The product market includes goods or services which are regarded by the buyer as interchangeable or substitutable for the contract goods or services, by reason of the products' characteristics, their prices and their intended use;

"end user" includes leasing companies, unless the leasing contract provides for a transfer of ownership or an option to purchase the vehicle prior to the expiry of the contract;

"exclusive supply obligation" means any direct or indirect obligation of the supplier to sell the contract goods or services only to one buyer in the market of the Republic for the purposes of a specific use or for resale;

"exemption" means the exemption from the application of the provisions of subsection (1) of section 4 of the Law, provided for in paragraph 3 of this Order;

"independent repairer" means 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 or maintenance. An authorized repairer within the distribution system of a given supplier shall be deemed to be an independent repairer for the purposes of this Order if he provides repair or maintenance services for motor vehicles in respect of which he is not a member of the respective supplier's distribution system;

"intellectual property rights" includes, among others, industrial property rights, copyright and neighbouring rights;

"Know-how" means a package of non patented practical information, derived from experience and testing by the supplier, which is secret, substantial and identified in this context;

For the purposes of this term:

"secret" means that the Know-how, as a body or in the precise configuration and assembly of its components, is not generally known or easily accessible;

"substantial" means that the know-how includes information which is indispensable to the buyer for the use, sale or resale of the contract goods or services;

"identified" means that the Know-how must be described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality;

"Law" means the Competition (Protection) Laws 1989 to (No. 2) 2000, or any law amending or substituted for the same;

"light commercial vehicle" means a motor vehicle intended for the transport of goods or passengers, with a maximum mass not exceeding 3,5 tonnes; if a certain light commercial vehicle is also sold in a version with a maximum mass above 3,5 tonnes, all versions of that vehicle are considered to be light commercial vehicles;

"motor vehicle" means a self propelled vehicle having three or more road wheels intended for use on public roads;

"motor vehicle which corresponds to a model within the contract range" means a vehicle which is the subject of a distribution agreement with another undertaking within the distribution system set up by the manufacturer or with his consent and which is—

- (a) manufactured or assembled in volume by the manufacturer, and
- (b) identical as to body style, drive line, chassis and type of motor to a vehicle within the contract range;

"non-compete obligation" means any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell goods or services which compete with the contract goods or services, or any direct or indirect obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than 30% of the contract goods or services, corresponding goods or services and their substitutes on the relevant market, this percentage calculated on the basis of the value of its purchases in the preceding calendar year. An obligation that the distributor sell motor vehicles from other suppliers in separate areas of the showroom in order to avoid confusion between the brands, does not constitute a non compete obligation for the purposes of this Order. An obligation that the distributor have brand specific sales personnel for different brands of motor vehicles constitutes a non compete obligation for the purposes of this Order, unless the distributor decides to have brand specific sales personnel and the supplier pays all the additional costs involved;

"original spare parts" means spare parts which are of the same quality as the components used for the assembly of a motor vehicle and which are manufactured according to the specifications and production standards provided by the vehicle manufacturer for the production of components or spare parts for the motor vehicle in question. This includes spare parts which are manufactured on the same production line as these components. It is presumed unless the contrary is proven, that parts constitute original spare parts if the part manufacturer certifies that the parts match the quality of the

components used for the assembly of the vehicle in question and have been manufactured according to the specifications and production standards of the vehicle manufacturer;

"passenger car" means a motor vehicle intended for the carriage of passengers and comprising no more than eight seats in addition to the driver's seat;

"qualitative selective distribution system" means a selective distribution system where the supplier uses criteria for the selection of distributors or repairers which are only qualitative in nature, are required by the nature of the contract goods or services, are laid down uniformly for all distributors or repairers applying to join the distribution system, are not applied in a discriminatory manner and do not directly limit the number of distributors or repairers;

"quantitative selective distribution system" means a selective distribution system where the supplier uses criteria for the selection of distributors or repairers which directly limit their number;

"selective distribution system" means a distribution system where the supplier undertake to sell the contract goods or services, either directly or indirectly, only to distributors or repairers selected on the basis of specified criteria and where the said distributors or repairers undertake not to sell such goods or services to unauthorized distribution or independent repairers, without prejudice to the ability to sell spare parts to independent repairers or the obligation to provide independent operators with all technical information, diagnostic equipments, tools and training required for the repair and maintenance of motor vehicles or for the implementation of environmental protection measures;

"spare parts" means goods which are to be installed in or upon a motor vehicle, including goods such as lubricants which are necessary for the use of a motor vehicle, with the exception of fuel;

"spare parts of matching quality" means exclusively spare parts made by an undertaking which can certify at any moment that these parts match the quality of the components used for the assembly of the motor vehicles in question;

"the contract range" means all the different models of motor vehicles available for purchase by the distributor from the supplier;

"undertakings within the distribution system" means the manufacturer and undertakings which are entrusted by the manufacturer or with the manufacture's consent with the distribution or repair or maintenance of contract goods or corresponding goods;

"vertical agreements" means agreements or concerted practices entered into by two or more undertakings, each of which operate, for the purposes of the agreement, at a different level of the production or distribution chain;

"vertical restraints" means restrictions of competition falling within the scope of section 4(1) of the Law, when such restrictions are contained in a vertical agreement.

(2) The terms "undertaking", "supplier", "buyer", "distributor" and "repairer" include their respective connected undertakings which are defined as follows:

- (a) Undertakings in which a party to the agreement, directly or indirectly—
 - (i) Has the power to exercise more than half the voting rights, or

- (ii) has the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking, or
- (iii) has the right to manage the undertaking's affairs;
- (b) undertakings which directly or indirectly have, over a party to the agreement, the rights or powers mentioned in point (a);
- (c) undertakings in which an undertaking referred to in point (b) has, directly or indirectly, the rights or powers mentioned in point (a);
- (d) undertakings in which a party to the agreement together with one or more of the undertakings referred to in points (a), (b) or (c), or in which two or more of the latter undertakings, jointly have the rights or powers mentioned in point (a);
- (e) undertakings in which the rights or the powers mentioned in point (a) are jointly held by—
 - (i) parties to the agreement or their respective connected undertakings referred to in points (a) to (d), or
 - (ii) one or more of the parties to the agreement or one or more of their connected undertakings referred to in points (a) to (d) and one or more third parties.

Categories of agreements exempted from the provisions of section 4(1) of the Law.

3.—(1) Pursuant to subsection (1) of section 5 of the Law and subject to the provisions of this Order, subsection (1) of section 4 of the Law shall not apply to vertical agreements, where they relate to the conditions under which the parties may purchase, sell or resell new motor vehicles, spare parts for motor vehicles or repair and maintenance services for motor vehicles. This sub-paragraph shall apply to the extent that such vertical agreements contain vertical restraints.

(2) The exemption shall also apply to the following categories of vertical agreements—

- (a) Vertical agreements entered into between an association and its members, or between such an association and its suppliers, only if all members of the said association are distributors of motor vehicles or spare parts for motor vehicles or repairers of motor vehicles and if no individual member of the association, together with its connected undertakings, has a total annual turnover exceeding CYP five million; vertical agreements entered into by such associations shall be covered by this Order without prejudice to the application of section 4 of the Law to horizontal agreements concluded between the members of the association or divisions adopted by the association;
- (b) vertical agreements containing provisions for the assignment to the buyer or use by the buyer of intellectual property rights, provided that those provisions do not constitute the primary object of such agreements and are directly related to the use, sale or resale of goods or services by the buyer or its customers. The exemption shall apply on condition that the said provisions do not contain restrictions of competition relating to the contract goods or services which have the same object or effect as vertical restraints which are not exempted under this Order.

(3) The exemption shall not apply to vertical agreements entered into between competing undertakings.

However, the exemption shall apply where competing undertakings enter into a non-reciprocal vertical agreement and—

- (a) The buyer has a total annual turnover not exceeding CYP ten million, or
- (b) the supplier is a manufacturer and a distributor of goods, while the buyer is a distributor not manufacturing goods competing with the contract goods, or
- (c) the supplier is a provider of services at several levels of trade, while the buyer does not provide competing services at the level of trade where it purchases the contract services.

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

General conditions for the application of the exemption.

However, the market share threshold for the application of the exemption shall be 40% for agreements establishing quantitative selective distribution systems for the sale of new motor vehicles.

This market share threshold, shall not apply to agreements establishing qualitative selective distribution systems.

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

(3) The exemption shall apply on condition that the vertical agreement concluded with a distributor or repairer provides that the supplier agrees to the transfer of the rights and obligations resulting from the vertical agreement to another distributor or repairer within the distribution system and chosen by the former distributor or repairer.

(4) The exemption shall apply on condition that the vertical agreement concluded with a distributor or repairer provides that a supplier who wishes to give notice of termination of an agreement must give such notice in writing and must include detailed, objective and transparent reasons for the termination, in order to prevent a supplier from ending a vertical agreement with a distributor or repairer because of practices which may not be restricted under this Order.

(5) The exemption shall apply on condition that the vertical agreement concluded by the supplier of new motor vehicles with a distributor or authorized repairer provides—

- (a) That the agreement is concluded for a period of at least five years; in this case, each party has to undertake to give the other party at least six months prior notice not to renew the agreement, or
- (b) that the agreement is concluded for an indefinite period; in this case, each party has to undertake to give the other party at least six months prior notice; this period is reduced to at least one year where—
 - (i) the supplier is obliged by law or by special agreement to pay appropriate compensation on termination of the agreement, or
 - (ii) the supplier terminates the agreement where it is necessary to re-organize the whole or a substantial part of the network.

(6) The exemption shall apply on condition that the vertical agreement provides for each of the parties the right to refer disputes concerning the

fulfillment of their contractual obligations to an independent expert or arbitrator. Such disputes may relate, *inter alia*, to any of the following:

- (a) Supply obligations;
- (b) the setting or attainment of sales targets;
- (c) the implementation of stock requirements;
- (d) the implementation of an obligation to provide or use demonstration vehicles;
- (e) the conditions for the sale of different brands;
- (f) the issue whether the prohibition to operate out of an unauthorized place of establishment limits the ability of the distributor of motor vehicles, other than passenger cars or light commercial vehicles to expand its business;
- (g) the issue whether the termination of an agreement is justified by the reasons given in the notice:

Provided that the right referred to in this paragraph, is without prejudice to each party's right to make an application to the Court.

(7) For the purposes of this paragraph, the market share held by the undertakings referred to in paragraph 2(2)(e) shall be apportioned equally to each undertaking having the rights or the powers mentioned in paragraph 2(2)(a).

5.—(1) The exemption shall not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties have as their object—

- (a) The restriction of the distributor's or repairer's ability to determine its sale price, without prejudice to the supplier's ability to impose a maximum sale price or to recommend a sale price, provided that this does not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties to the contract;
- (b) the restriction of the territory into which or of the customers to whom, the distributors may sell the contract goods or services; however, the exemption shall apply to—
 - (i) the restriction of active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another distributor or repairer, where such a restriction does not limit sales by the customers of the distributor or repairer,
 - (ii) the restriction of sales to end users by a distributor operating at the wholesale level of trade,
 - (iii) the restriction of sales of new motor vehicles and spare parts to unauthorized distributors by the members of a selective distribution system in markets where selective distribution is applied subject to the provisions of sub-paragraph (i),
 - (iv) the restriction of the buyer's ability to sell components, supplied for the purpose of incorporation to customers who would use them to manufacture the same type of goods as those produced by the supplier.
- (c) the restriction of cross-supplies between distributors or repairers within a selective distribution system, including distributors or repairers operating at different levels of trade;

Hardcore restrictions concerning the sale of new motor vehicles, repair and maintenance services or spare parts.

- (d) the restriction of active or passive sales of new passenger cars or light commercial vehicles, spare parts for any motor vehicle or repair and maintenance services for any motor vehicle to end users by members of a selective distribution system operating at the retail level of trade in markets where selective distribution is used. The exemption shall apply to agreements containing a prohibition on a member of a selective distribution system from operating out of an unauthorized place of establishment. However, the application of the exemption to such a prohibition is subject to the provisions of paragraph 6 (2) (b);
- (e) the restriction of active or passive sales of new motor vehicles other than passenger cars or light commercial vehicles to end users by members of a selective distribution system operating at the retail level of trade in markets where selective distribution is used, without prejudice to the ability of the supplier to prohibit a member of that system from operating out of an unauthorized place of establishment;
- (f) the restriction of the distributor's ability to sell any new motor vehicle which corresponds to a model within its contract range;
- (g) the restriction of the distributor's ability to subcontract the provision of repair and maintenance services to authorized repairers, without prejudice to the ability of the supplier to require the distributor to give end users the name and address of the authorized repairer or repairers in question before the conclusion of a sales contract and, if any of these authorized repairers is not in the vicinity of the sales outlet, to also inform end users how far the repair shop or repair shops in question are from the sales outlet; however, such obligations may only be imposed provided that similar obligations are imposed on distributors whose repair shop is not on the same premises as their sales outlet;
- (h) the restriction of the authorized repairer's ability to limit its activities to the provision of repair and maintenance services and the distribution of spare parts;
- (i) the restriction of the sales of spare parts for motor vehicles by members of a selective distribution system to independent repairers using these parts for the repair and maintenance of motor vehicles;
- (j) the restriction agreed between a supplier of original spare parts or spare parts of matching quality, repair tools or diagnostic or other equipment and a manufacturer of motor vehicles, which limits the supplier's ability to sell these goods or services to authorized or independent distributors or to authorized or independent repairers or end users;
- (k) the restriction of a distributor's or authorized repairer's ability to obtain original spare parts or spare parts of matching quality from a third undertaking of its choice and to use them for the repair or maintenance of motor vehicles, without prejudice to the ability of a supplier of new motor vehicles to require the use of original spare parts supplied by him for repairs carried out under warranty, free servicing and vehicle recall work;
- (l) the restriction agreed between a manufacturer of motor vehicles using components for the initial assembly of motor vehicles and the supplier of such components, which limits the latter's ability to place its trade mark or logo in an easily visible manner on the components supplied or on spare parts.

(2) The exemption shall not apply where the supplier of motor vehicles refuses to give independent operators access to any technical information, diagnostic and other equipment, tools, including any relevant software, or training required for the repair and maintenance of these motor vehicles or for the implementation of environmental protection measures.

Such access must include in particular the unrestricted use of the electronic control and diagnostic systems of a motor vehicle, the programming of these systems in accordance with the supplier's standard procedures, the repair and training instructions and the information required for the use of diagnostic and servicing tools and equipment.

Access must be given to independent operators in a non-discriminatory, prompt and proportionate way, while the information must be provided in a usable form. If the relevant item is covered by an intellectual property right or constitutes Know-how, access shall not be withheld in any abusive manner.

For the purposes of this paragraph "independent operators" means undertakings which are directly or indirectly involved in the repair and maintenance of motor vehicles, in particular independent repairers, manufacturer's 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.

Specific
conditions
for the
application
of the
exemption.

6.—(1) As regards the sale of new motor vehicles, repair and maintenance services or spare parts, the exemption shall not apply to any of the following obligations contained in vertical agreements:

- (a) Any direct or indirect non-compete obligation;
- (b) any direct or indirect obligation limiting the ability of an authorized repairer to provide repair and maintenance services for vehicles from competing suppliers;
- (c) any direct or indirect obligation causing the members of a distribution system not to sell motor vehicles or spare parts or particular competing suppliers or not to provide repair and maintenance services for motor vehicles of particular competing suppliers;
- (d) any direct or indirect obligation causing the distributor or authorized repairer, after termination of the agreement, not to manufacture, purchase, sell or resell motor vehicles or not to provide repair or maintenance services.

(2) As regards the sale of new motor vehicles, the exemption shall not apply to any of the following obligations contained in vertical agreements:

- (a) Any direct or indirect obligation causing the retailer not to sell leasing services relating to contract goods or corresponding goods;
- (b) any direct or indirect obligation on any distributor of passenger cars or light commercial vehicles within a selective distribution system, which limits its ability to establish additional sales or delivery outlets at other locations within the market of the Republic where selective distribution is applied.

(3) As regards repair and maintenance services of the sale of spare parts, the exemption shall not apply to any direct or indirect obligation as to the place of establishment of an authorized repairer where selective distribution is applied.

7. The Commission may withdraw the benefit of the application of this Order where it finds in any particular case that vertical agreements to which this Order applies nevertheless have effects which are incompatible with the conditions laid down in subsection (1) of section 5 of the Law, and in particular where—

Withdrawal of the benefit of the Order by the Commission.

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

8.—(1) The Council of Ministers may, upon a reasoned decision of the Commission, and provided that parallel networks of similar vertical restraints cover more than 50% of a relevant market, by an Order declare that, this Order shall not apply to vertical agreements containing specific restraints relating to that market.

Non-application of the Order.

(2) An Order made pursuant sub-paragraph (1) shall not become applicable earlier than one year following its publication.

9.—(1) The market shares provided for in this Order shall be calculated—

Market share calculation.

- (a) For the distribution of new motor vehicles, on the basis of the volume of the contract goods and corresponding goods sold by the supplier, together with any other goods sold by the supplier which are regarded as interchangeable or substitutable by the buyer, by reason of the products' characteristics, prices and intended use;
- (b) for the distribution of spare parts, on the basis of the value of the contract goods and other goods sold by the supplier, together with any other goods sold by the supplier which are regarded as interchangeable or substitutable by the buyer, by reason of the products' characteristics, prices and intended use;
- (c) for the provision of repair and maintenance services, on the basis of the value of the contract services sold by the members of the supplier's distribution network, together with any other services sold by these members which are regarded as interchangeable or substitutable by the buyer, by reason of their characteristics, prices and intended use.

If the volume data required for those calculations are not available, value data may be used or vice versa. If such information is not available, estimates based on other reliable market information may be used. For the purposes of paragraph 4(2), the market purchase volume or the market purchase value respectively, or estimates thereof shall be used to calculate the market share.

(2) For the purposes of applying the market share thresholds of 30% and 40% provided for in this Order, the following rules shall apply:

- (a) The market share shall be calculated on the basis of data relating to the preceding calendar year;
- (b) the market share shall include any goods or services supplied to integrated distributors for the purposes of sale;
- (c) if the market share is initially not more than 30% or 40% respectively, but subsequently rises above the level without exceeding 35% or 45%

respectively, the exemption shall continue to apply for a period of two consecutive calendar years following the year in which the market share threshold of 30% or 40% respectively was first exceeded;

- (d) if the market share is initially not more than 30% or 40% respectively, but subsequently rises above 35% or 45% respectively, the exemption shall continue to apply for one calendar year following the year in which the level of 30% or 40% respectively was first exceeded;
- (e) the benefit of sub-paragraphs (c) and (d) may not be combined so as to exceed a period of two calendar years.

Turnover
calculation.

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

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

Monitoring
and evaluation
report.

11. The Commission shall monitor the application of this Order, on a regular basis, with particular regard to its effects on—

- (a) Competition in motor vehicle retailing and in after sales servicing in the market of the Republic, or relevant parts of it;
- (b) the structure and level of concentration of motor vehicles distribution and any resulting effects on competition.

Repeal of
an Order.
Official
Gazette,
Third
Supplement (I):
20.2.1998.

12. The Block Exemptions (Agreements of Distribution, Sale and Servicing after the Sale of Motor Vehicles) Order, 1998, is hereby repealed.