

Brussels, 25th September 2009

FIGIEFA's reaction to the Communication from the Commission - The Future Competition Law Framework applicable to the motor vehicle sector

FIGIEFA is the international federation of independent distributors of automotive replacement parts. It represents the interests of 26 national trade associations of automotive aftermarket distributors from 23 countries worldwide. Founded in 1956, FIGIEFA's interest is to safeguard free competition in the aftermarket on European and international level.

In the context of an on-going dialogue, FIGIEFA welcomes the Commission's view on competition shortcomings in the aftermarket and is pleased to submit its comments on the Commission Communication on the Future Competition law Framework applicable to the motor vehicle sector, COM (2009) 388 final, dated 22 July 2009 ("the Communication").

1. Methodology and overall findings

FIGIEFA would like to focus on issues that its members face in the markets in which they operate, namely the markets for spare parts, maintenance and repair. Hence, as specialised distributors of replacement parts, we can hardly comment on the distribution of new vehicles - though it is a significant part of the ongoing discussions on the future of the Motor Vehicle Block Exemption Regulation 1400/2002 (MVBBER). Yet we understand that those operating in the primary market will submit their own observations. We trust that the Commission will duly consider the value of existing freedoms of authorised dealers/repairers as well as safeguards for SMEs in a context of imbalances of power, especially with regard to their ability to source spare parts from independent distributors and to sell vehicles of different brands within the same showroom to the benefit of 260 million motoring consumers.

FIGIEFA welcomes the Commission findings that there are clear unbalances and distortions in the automotive aftermarket. Against this background, FIGIEFA is pleased to note that the Commission is

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prepared to consider a combination of **sector-specific regulation with robust guidelines**¹. However at the same time, it remains unclear why the Commission did not include this combination in the options evaluated in the Impact Assessment **as a 5th Option to be duly considered**. Clearly, such a combination would combine the advantages of the scenarios described as “Option 3” and “Option 4”. Had such a combination been considered in the Impact Assessment, it would have scored more points than any other option.

Similarly, FIGIEFA regrets that the Commission failed to seize the opportunity to consider updating the existing provisions in the event of the creation of a new sector-specific Block Exemption Regulation. For example, the discussion on recital 26 of the MVER at para. 156 of the Impact Assessment Report presupposes that the recital is carried over “as is”, even though it would clearly be within the powers of the Commission to amend the provision. Such an amendment would be more than necessary especially in light of the ease with which some vehicle manufacturers have been able to refuse access to technical information to independent operators. On this, FIGIEFA concurs with the Commission and hopes to see in the future regulatory framework a new, improved Recital 26 which will not be used by vehicle manufacturers “in a rather unscrupulous manner”².

FIGIEFA also welcomes the Commission’s intention to align the market share threshold of a future norm applicable to the motor vehicle sector at 30%. It may well be the case that the market share of a vehicle manufacturer - in the market for spare parts suitable for vehicles of its respective brand(s) - exceeds 30%, in which event it would not benefit from the block exemption.³ Nonetheless, even in such circumstances a specific regulation **with clearly defined hard-core restrictions would serve its purpose**.⁴ Such hard-core restrictions would render clear that certain behaviour would not be block exempted even where the market share is below 30%. *A fortiori*, such behaviour would be considered even less acceptable where the market share exceeds 30%.

Given that vehicle manufacturers often dominate the markets for spare parts and repairs, any regulatory mechanism which makes it costly for SMEs to afford legal certainty must be avoided. Arguing a case in the absence of a regulation with clear hard-core restrictions is a very costly exercise, from which small and medium-sized enterprises are likely to shy away. In this regard, we concur with ICDP, which have recently observed: “With less explicit regulation to shield the smaller and less resourced parties, the danger is that this approach will play into the hands of the larger, stronger players, more prepared to take risks, and more able to hire expensive lawyers to stand up to the regulators on their behalf if challenged.”⁵ The experience of FIGIEFA’s members confirms that it is helpful for SMEs, e.g. in disputes with vehicle manufacturers, to be able to refer to EU legislation with clearly defined hard-core restrictions.

Therefore, FIGIEFA disagrees with the Commission’s assessment that the current MVER, due to its detailed sector-specific provisions, did not provide legal certainty in the market⁶. Although from a strict legal point of view “misunderstanding as to its legal⁷ implications” might still exist in particular among SMEs”, the fact is that in many cases the sheer existence of hard-core clauses succeeded in defusing many problematic situations with vehicle manufacturers at an early stage, without having to involve courts or competition authorities. These positive effects should not be overlooked.

Furthermore, FIGIEFA is of the opinion that market operators’ search for authoritative guidance⁸ supports the argument that a future regulation should be complemented with **a set of guidelines**

¹ Para. 48, second bullet point of the Communication. The English version of press release IP/09/1168 also hints at the possibility of combining both instruments by alluding to „the general competition rules in conjunction with sector specific guidelines and/or an additional, more focused sectoral block exemption Regulation” (emphasis added), while the German version translates “and/or” with “beziehungsweise”.

² Para 151, Impact Assessment Report.

³ Funke/Trower, At the Crossroads: Europe’s Motor Vehicle Block Exemption, in: “Distribution”, ABA Section of Antitrust Law, Vol. 13, No. 1, p. 3 (9).

⁴ The “Impact Assessment Report” rightly mentions the „advantage of improving visibility” (para. 156).

⁵ ICDP Research Report 5/09 by Andrew Tongue, p. 27.

⁶ Para 89, Impact Assessment

⁷ Emphasis added

⁸ Paras 87 – 88, Impact Assessment

explaining how the Commission intends to apply Art. 81 & 82 EC to the sector, including examples of “do’s and don’ts”.

Specifically, FIGIEFA would like to refer to Commissioner Kroes’s press release, stating that “It is important to give the automotive sector ... legal certainty and predictability”⁹ and reiterates that **only a robust sector-specific piece of legislation complemented with guidelines** will ensure free and effective competition in the aftermarket to the benefit of consumers while providing SMEs with the legal certainty they need in their day to day business.

FIGIEFA therefore consider that a **5th option** which would combine the advantages of “Option 3” and “Option 4” would be the perfect solution to replace the current MVBBER. This new regulatory framework should be composed of **a new Motor Vehicle Block Exemption Regulation** containing notably specific rules on the aftermarket and of a set of **specific guidelines** aiming at clearing any remaining ambiguity.

2. Core elements for the future regulatory framework

As stated above, whether in a new sector-specific BER or in specific guidelines, some core elements should be present in the future regulatory framework for the automotive aftermarket. FIGIEFA fully agrees with the Commission services¹⁰ that some key issues in the aftermarket must receive particular attention, notably regarding:

- Access to spare parts from parts suppliers
- Access to OEM-branded spare parts
- Access to technical information for all independent operators
- Warranties

2.1. Access to spare parts from parts manufacturers, including suppliers of original equipment

Specialised parts producers are the key source for replacement parts. Access to their products is a prerequisite for the independent aftermarket’s ability to compete with the vehicle manufacturers’ networks. Therefore, independent parts wholesalers should be able to source spare parts from specialised parts producers. To this end, the current sector-specific provision on the supplier’s access to the aftermarket is to be preferred over the language in Regulation (EC) No. 2790/1999 (the “VRBER”),¹¹ which exempts more far-reaching restrictions.¹²

The vast majority of spare parts are manufactured by companies which also supply original equipment and spare parts to the vehicle manufacturers. Such suppliers of original equipment have often told members of FIGIEFA that they find themselves unable to sell their products to independent parts wholesalers because of respective obligations imposed on them by vehicle manufacturers. FIGIEFA would support any initiative aimed at stopping such anti-competitive practices. Such initiatives should include **enforcement actions** as well as a **clarification of the applicability of the Commission’s Subcontracting Notice of 1978**.

In this context, FIGIEFA would like to point out that the language recently presented by the Commission in the new draft Guidelines on Vertical Restraints of July 2009 (at para. 22) is not sufficiently detailed. **More precise guidance is required** on practices constituting an indirect restraint on the supplier’s ability to sell its products as spare parts to the aftermarket.

⁹ Press release IP/09/1168.

¹⁰ Para 48 second bullet point, Commission Communication

¹¹ On this subject, the draft regulation on vertical agreements of July 2009 contains the same language as Regulation (EC) No. 2790/1999, which it is designed to succeed as of June 2010.

¹² The respective hard-core restriction in the VRBER merely addresses sales to independent repairers and service providers. In other words, the VRBER would exempt an agreement by which an OEM limits the ability of a supplier to sell its products as spare parts to authorised repairers or distributors. In contrast, Art. 4 (1) (j) MVBBER ensures that sales to both independent and authorised aftermarket operators cannot be restricted. If a vehicle manufacturer was allowed to limit the ability of a parts supplier (“OES”) to supply its products directly to any aftermarket operator, including authorised repairers, this would limit competition. In this regard, the rules embodied in the MVBBER appear more suitable for protecting competition and consumer interests than those of the VRBER.

Where a supplier is not certain about recouping its investments in product development or tooling, its ability to sell its products as spare parts should not be limited in an agreement with the vehicle manufacturer. Only where the vehicle manufacturer compensates the supplier for the entire cost of product development and tooling up front, one might accept that the vehicle manufacturer limits the aftermarket access of the supplier.¹³

Besides, the future framework applicable to the automotive sector should **continue to include a hard-core restriction on “dual branding”**. At least, guidelines should state that any agreement between a manufacturer and its supplier requiring the latter not to apply its own brand to a component, should be considered an indirect restriction of the supplier’s ability to sell such components as spare parts.

2.2. Access to OEM-branded spare parts from vehicle manufacturers

FIGIEFA very much welcomes the Commission’s reference to this topic and relevant case law in the Communication.¹⁴

While effective competition exists for certain replacement parts, consumers are deprived of choice in many cases in which there are little or no alternatives to the parts offered by the vehicle manufacturer. These products are referred to as “captive parts”¹⁵.

Competition in the markets for repair and maintenance requires that workshops have access to all parts needed for the job at hand. At present, a vehicle manufacturer may not prevent the sale of spare parts from its authorised repairer to an Independent requiring such parts for a specific job. Otherwise, the vehicle manufacturer would lose the benefit of the block exemption, Art. 4(1)(i) Regulation (EC) No. 1400/2002. While this channel is helpful and should be maintained in the future, it is however hardly sufficient for an independent repairer to have to source parts from its local competitor. Rather, in order for both authorised and independent repairers to have equal opportunities in the market, both should be able to purchase them from the wholesale level.

It should be noted that German courts have held that the ability to source a product from the dominant manufacturer’s authorised distributor may not represent a sufficient alternative.¹⁶ Furthermore, FIGIEFA members ANCERA in Spain and ADF in the United Kingdom have observed many instances in which the authorised repairer refused to supply in practice parts to an Independent, apparently to prevent him from repairing the vehicle.

This is unacceptable, given that vehicle manufacturers and their authorised networks often dominate the market for servicing and repair of vehicles of the respective brand, and given that vehicle manufacturers are even monopolists with regard to captive parts.

In fact, the Commission has previously held that a refusal to supply spare parts may represent a violation of competition law,¹⁷ and the European Court of Justice has also taken decisions to this end.¹⁸ However, these cases primarily address the circumstances in which repairers can request access to spare parts. In order to assure fast and accurate servicing and repair jobs, repairers must be able to rely on the infrastructure and logistic capabilities of parts wholesalers. Therefore, the Commission is asked to **clarify that failure to supply spare parts to independent wholesalers constitutes an indirect restraint on the ability of independent repairers to obtain such parts.**

To date, repairers find themselves unable to cover all their needs from independent parts wholesalers, which FIGIEFA represents. Independent parts wholesalers do not have access to the full range of

¹³ Funke, *Erstausstattungsverträge und Ersatzteilvertrieb*, ZfAW 2005 (3), p. 31, 34 f.

¹⁴ Para. 40 (especially footnote 11).

¹⁵ Regarding parts which are captive due to design protection, FIGIEFA is still delighted of the Commission’s support for a reform of Community law concerning designs, as expressed on p. 13 of the Evaluation Report of 28 May 2008 (“repairs clause”).

¹⁶ KG Berlin, 13 June 1980, Kart 35/78, WuW/E OLG 2425; BGH 16 June 1981, KZR 7/78, WuW/E BGH 1620.

¹⁷ Commission Decision of 8 December 1977, IV/29.132 - Hugin Liptons.

¹⁸ Case 53/87, CICRA and Maxicar/Renault, ECR 1988, 6039 and Case 238/87, AB Volvo v Erik Veng (UK) Ltd., ECR 1988, 6211.

parts, as vehicle manufacturers such as Daimler (Mercedes-Benz) have refused to sell their products to independent parts wholesalers. Therefore, in the case of captive parts independent wholesalers are often unable to provide a repairer with the full range of products that the vehicle owner requires - leaving the independent repairer no choice but to buy from the authorised repairer, i.e. from its competitor at a high price which then needs to be passed on to the motorist consumer.

For all these reasons it is important for the future competition law framework **to continue with the approach which the Commission took in the addendum to the explanatory brochure** ("Frequently asked questions") at question no. 16, by indicating that vehicle manufacturers should offer distribution contracts for spare parts to wholesalers, regardless of whether these also operate a repair shop. This is the right direction, in which additional steps are needed.

The future regulatory framework should enable parts wholesalers to source spare parts directly from the vehicle manufacturer. To this end, the Commission should **clarify the limits of qualitative selection for spare parts**, and stress that **vehicle manufacturers may not refuse sales to parts wholesalers**, not least in cases where there is no alternative source of supply. Any such refusal would be anti-competitive and unjustifiable, as the ability of independent repairers - the only source of intra-brand competition in the aftermarket - to compete effectively would be impaired where they are unable to source the full range of parts which they require to serve a motorist consumer.

2.3. Access to technical information

2.3.1 General observations

FIGIEFA agrees with the Commission's observation that **maintaining a provision on the access of independent operators to technical information** would have the "advantage of improving visibility."¹⁹

In fact, restraints on competition in regard to technical information are particularly serious because the vehicle manufacturer is the only source for complete and current data for its respective make(s).²⁰ This monopoly implies particular market power, which a vehicle manufacturer must not abuse.

FIGIEFA therefore welcomes the Commission's proposal " (...) to explain in future sector-specific provisions the circumstances in which refusal to grant full and non-discriminatory access to technical information to all independent operators²¹ would bring qualitative selective agreements within the scope of Article 81 and trigger enforcement action"²²

It is true the access to technical information is also the subject of four Decisions dated 13 September 2007. In these Decisions, the Commission emphasises the risk of market foreclosure which would lead to significant disadvantages for consumers.²³ As the Commission explained, likely consequences included the loss of alternatives in the replacement parts business, higher prices for workshop services, reduced selection of workshops and possible safety risks. Yet these Decisions concern commitments which are only binding until 31 May 2010.²⁴

Besides, they only address the access to information by repairers, but do not take account of the needs of those indirectly involved in the repair or servicing of motor vehicles. Still, access to technical information is not merely an issue for repairers, but for all independent operators to make sure that the entire market of servicing, parts and multi-brand tools will properly function. And as the Decisions of 13 September 2007 demonstrate, the access to technical information is relevant under Art. 81 EC. Any future regulation should continue to reflect this through the provision of a **hardcore treatment of restrictions on access to technical information**.

¹⁹ Impact Assessment Report, para. 156.

²⁰ Commission decision of 13/09/2007, COMP/E-2/39.140 – DaimlerChrysler, para. 23, as well as parallel decisions of the same date against Fiat, General Motors and Toyota.

²¹ emphasis added

²² Commission Communication, para 33.

²³ Commission decision of 13/09/2007, COMP/E-2/39.140 – DaimlerChrysler, para. 40, as well as parallel decisions of the same date against Fiat, General Motors and Toyota.

²⁴ In an email of September 2009, a lawyer of Freshfields Bruckhaus Deringer representing Subaru in Germany explained that he did not consider the commitment decisions relevant after 31 May 2010.

Furthermore FIGIEFA emphasises the need for an update of the current provisions contained in the MVBBER on this issue. Drafted in early 2000, the current wording is not anymore in full adequacy with the advances in vehicle technologies of the past decade. Ensuring the proper functioning and environmental compliance of vehicles (including the most modern ones) on Europe's roads will only be achieved by making certain that all the aftermarket operators get access to spare parts, multibrand tools and all the information for vehicle servicing, maintenance and repair.

Besides, such an updating exercise would be needed not only to adapt the future legislation to technical progress, but also **to close loopholes and reduce any margins of interpretation within the rule**. As an example, the industrial property caveat contained in Recital 26 was used in the past to unduly withhold technical information and the originally well-intended reference to the use of "less restrictive means" was rarely used.²⁵ In particular, some vehicle manufacturers tend to mingle the notions of "safety" and 'security'. As such regular repair information is withheld on the grounds of "Sicherheit/sécurité"²⁶ in the sense of 'safety' according to their own interpretation. In the same manner, the establishment of the communication to the vehicle through multi-brand tools is hampered by introducing "safety" algorithms or password protections without any legally founded justification. Any future regulation must remedy these loopholes and shortcomings, and **more robust wording should be found to avoid that the intent and spirit of the legislation is undermined**. Regarding access to vehicle security features in particular, a better balance should be found between legitimate anti-theft protection and avoidance of withholding information needed to finalise the repair²⁷. Therefore, in the event that repair and servicing requires access to the security functions of a vehicle, the manufacturer shall provide a secure facility to enable independent operators to complete all operations involving access to the vehicle security system.

Moreover, it is crucial for the future competition regulatory framework **to echo the Euro 5 Regulations' principles on access to repair and maintenance information**. This would provide much needed competition law coherence with regards to access to technical information for both pre and post 2009 typed-approved vehicles as the independent aftermarket operators provide products and services for all types of vehicles irrespective of their age.

2.3.2 Parts identification

To the extent the technical complexity of motor vehicles has increased since the Motor Vehicle Block Exemption came into force, technical information has only become more important today. In fact, without access to unequivocal parts identification information, parts wholesalers would not be able to advise a repairer which specific parts may be suitable for an individual repair job. Based on the background of the large variety of vehicle types and equipment versions, the issue of assigning the correct replacement parts to a specific vehicle is more intricate than ever. Workshops can only obtain the correct replacement parts for a specific vehicle from competing suppliers if these are themselves able to provide the workshop with an accurate quotation. To this end, **parts wholesalers require access to the corresponding parts identification data** – this is the only way they can offer suitable parts to the workshop for the specific vehicle in each individual case.²⁸ In other terms, it is indispensable for independent repairers that they can obtain technical information from the same source from which they obtain parts. Otherwise, they will be left with only one source of supply for both technical information and parts. There would be a serious risk of market foreclosure.

²⁵ Compare Para 151, Impact Assessment Report.

²⁶ In some languages, there is only one word for 'safety und 'security', e.g. "Sicherheit", "sécurité"

²⁷ In many cases, reprogramming or re-initialisation functions are merged with security modules in the vehicle.

²⁸ This idea is also reflected in the Explanatory Brochure of the European Commission on the Motor Vehicle Block Exemption, question 93: "Like publishers of technical information, independent resellers of spare parts are entitled to access to technical information for their own use; in other words, to enable them to market spare parts efficiently and accurately. Without such access they would not be in a position to keep their customers, the repairers, informed as to which spare parts are needed to a particular job. If such information were not available at the point of sale, independent repairers would have to obtain it later from the motor vehicle manufacturer. This would be much more timeconsuming and complicated and would put independent repairers at a competitive disadvantage compared to authorised repairers, who get both parts and technical information from the same source. If a supplier were to refuse to grant independent spare part distributors the right to resell technical information, this would prevent effective competition between independent and authorised repairers and would amount to a serious indirect restriction of competition."

2.4. Warranties

FIGIEFA is pleased to note that the Commission is prepared to reinforce the message that motorist consumers should **not be tied to a specific network of repairers by means of restrictive warranty terms**.²⁹ We concur with the Commission's observations that "the position of independent repairers has been weakened by the extension of warranty periods that exclude them from certain categories of work",³⁰ and that "the increasing use of warranties (...) can also have a negative effect on consumers when they are granted on condition that the ordinary maintenance works during the warranty period (but not covered by the warranty) are carried out by a member of the authorised network."³¹

Even though warranties may normally be seen as a consumer benefit, it should not be considered acceptable for them to limit the choice of parts or workshops for regular maintenance or repair. This would drive independents out of the market, and produce effects which leave the consumer with little or virtually no alternatives to the authorised repairer. Therefore, any conduct of a vehicle manufacturer to this effect, or the leveraging of market power, is incompatible with competition law.

This holds true for any warranty that is merely granted on condition that the vehicle is serviced and repaired exclusively within the authorised network. In order to safeguard inter-brand competition in the respective after-sales-market, **neither statutory nor contractual warranties should include respective restraints that limit the motorist consumer in its choice of workshops**. FIGIEFA welcomes the approach which the Commission took in its respective letter to the German association ZDK, by stating that the principles described in the current Explanatory Brochure (at qu. 37 and 99) apply to both statutory and extended warranties.

Along these lines, the Commission is asked to clarify that this applies to any warranty included with the purchase of a vehicle, regardless of whether the benefit of the warranty is "thrown in" at no extra charge, or provided against a mere "symbolic fee" which does not truly represent the additional value of the warranty.

However, FIGIEFA takes this opportunity to stress that this applies not just to warranty periods of more than five years.³² Rather, it applies to any warranty term, as requiring the consumer to only frequent authorised workshops is by no means indispensable to the attainment of the consumer benefit. Warranties should be given without tying a consumer to a particular network for regular maintenance work.

This is the case not only where multiple vehicle manufacturers engage in parallel conduct. Rather, as the markets for parts and servicing are brand-specific (i.e. the repairer will need a part suitable for the specific vehicle), each manufacturer would violate the law by using warranty terms that result in the foreclosure of the respective market for parts, servicing and repair.

²⁹ Staff Working document No. 2, sec. 2.3.1. "The fact that a car is under a manufacturer's warranty for the first few years of its life is another reason why consumers tend to turn to the authorised repair networks during this period. Repairs carried out under warranty are obviously captive to the vehicle manufacturers' authorised networks, in that the manufacturer pays for this category of work, and is therefore able to specify that only authorised repairers may carry it out. Standard warranty periods have been increased since the block exemption was adopted, and many brands now offer a three year warranty. Often, the vehicle manufacturer offers a corrosion warranty that goes beyond three years. In addition, authorised dealers increasingly give consumers buying a car the possibility of buying an extended warranty and/or a servicing package. These extras have the effect that certain defined categories of repair are captive even after the standard warranty has expired. This captivity also has an overspill effect into areas not covered by the warranty or free servicing package for two main reasons. Firstly, consumers have a natural preference for a one-stop-shop, and if it is necessary to carry out a repair under warranty, they are also likely to have other work, such as minor collision damage, carried out in the authorised repair shop even if it would be cheaper to take the vehicle elsewhere. Secondly, consumers may be afraid that if they have repairs or servicing done in an independent repair shop during the warranty period, this may invalidate the warranty."

³⁰ Impact Assessment Report, para. 77.

³¹ Impact Assessment Report, para. 153.

³² FIGIEFA has concerns about the Commission referring merely to "extended warranties with durations of five years and longer" at para. 153 of the Impact Assessment Report. In view of the significant market shares which vehicle manufacturers and their authorised networks enjoy, even an agreement obliging the vehicle owner to source parts exclusively from the authorised network for a period of less than five years should not be exempted.

While FIGIEFA appreciates the comments in the Explanatory Brochure (at qu. 37 and 99), it would send a stronger and clearer message **to include a respective hard-core restriction** in a future Block Exemption Regulation, which should be **complemented by guidelines**.

It would have the “advantage of improving visibility”,³³ and could be worded as follows:

“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:

...

x) the restriction of the ability of independent repairers to service or repair a vehicle during a warranty period.”

3. Conclusion

Affordable mobility largely depends on the motorists’ ability to have their vehicles serviced and repaired at a reasonable cost. Aftermarket care will only be available at competitive prices as long as there is competition. Independent operators such as those represented by FIGIEFA are the source of inter-brand competition in the automotive after-sales markets. Without them, the overall cost of mobility would rise.

As the European Court of Justice recently pointed out, “Article 81 EC, like the other competition rules of the Treaty, is designed to protect not only the immediate interests of individual competitors or consumers **but also to protect the structure of the market** and thus competition as such” (emphasis added).³⁴ The parts distributors which FIGIEFA represents form an essential part of the structure of the market. Assuring effective competition in the future requires measures to protect the structure of the market.

In FIGIEFA’s view, **a combination of an updated sector-specific Block Exemption Regulation, Guidelines and enforcement actions** would build on the positive results achieved by the current MVBBER 1400/2002, thus continuing to foster effective competition to the benefit of consumers.

³³ Impact Assessment Report, para. 156.

³⁴ Judgment of the Court of 4 June 2009, C-8/08 *T-Mobile Netherlands*, at para. 38