COMMISSION REGULATION (EEC) No 123/85

of 12 December 1984

on the application of Article 85 (3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 19/65/EEC of 2 March 1965 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices [1], as last amended by the Act of Accession of Greece,

Having published a draft of this Regulation [2],

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas :

(1) Under Article 1 (1) (a) of Regulation No 19/65/EEC the Commission is empowered to declare by means of a Regulation that Article 85 (3) of the Treaty applies to certain categories of agreements falling within Article 85 (1) to which only two undertakings are party and by which one party agrees with the other to supply only to that undertaking other certain goods for resale within a defined territory of the common market. In the light of experience since Commission Decision 75/73/EEC [3] and of the many motor vehicle distribution and servicing agreements which have been notified to the Commission pursuant to Articles 4 and 5 of Council Regulation No 17 [4], as last amended by Regulation (EEC) No 2821/71 [5], a category of agreements can be defined as satisfying the conditions laid down in Regulation No 19/65/EEC. They are agreements, for a definite or an indefinite period, by which the supplying party entrusts to the reselling party the task of promoting the distribution and servicing of certain products of the motor vehicle industry in a defined area and by which the supplier undertakes to supply contract goods for resale only to the dealer, or only to a limited number of undertakings within the distribution network besides the dealer, within the contract territory.

A list of definitions for the purpose of this Regulation is set out in Article 13.

(2) Notwithstanding that the obligations imposed by distribution and servicing agreements which are listed in Articles 1, 2 and 3 of this Regulation normally have as their object or effect the prevention, restriction or distortion of competition within the common market and are normally apt to affect trade between Member States, the prohibition in Article 85 (1) of the Treaty may nevertheless be declared inapplicable to these agreements by virtue of Article 85 (3), albeit only under certain restrictive conditions.

(3) The applicability of Article 85 (1) of the Treaty to distribution and servicing agreements in the motor vehicle industry stems in particular from the fact that restrictions on competition and the obligations connected with the distribution system listed in Articles 1 to 4 of this Regulation are regularly imposed in the same or similar form throughout the common market for the products supplied within the distribution system of a particular manufacturer. The motor vehicle manufacturers cover the whole common market or substantial parts of it by means of a cluster of agreements involving similar restrictions on competition and affect in this way not only distribution and servicing within Member States but also trade between them.

(4) The exclusive and selective distribution clauses can be regarded as indispensable measures of rationalization in the motor vehicle industry because motor vehicles are consumer durables which at both regular and irregular intervals require expert maintenance and repair, not always in the same place. Motor vehicle manufacturers cooperate with the selected dealers and repairers in order to provide specialized servicing for the product. On grounds of capacity and efficiency alone, such a form of

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[1] OJ No 36, 6. 3. 1965, p. 533/65.
[2] OJ No C 165, 24. 6. 1983, p. 2.
[3] OJ No L 29, 3. 2. 1975, p. 1.
[4] OJ No 13, 21. 2. 1962, p. 204/62.
[5] OJ L 285, 29. 12. 1971, p. 49.

cooperation cannot be extended to an unlimited number of dealers and repairers. The linking of servicing and distribution must be regarded as more efficient than a separation between a distribution organization for new vehicles on the one hand and a servicing organization which would also distribute spare parts on the other, particularly as, before a new vehicle is delivered to the final consumer, the undertaking within the distribution system must give it a technical inspection according to the manufacturer's specification.

(5) However, obligatory recourse to the authorized network is not in all respects indispensable for efficient distribution. The exceptions to the block exemption provide that the supply of contract goods to resellers may not be prohibited where they :

— belong to the same distribution system (Article 3, point 10 (a)),

or

— purchase spare parts for their own use in effecting repairs or maintenance (Article 3, point 10 (b)).

Measures taken by a manufacturer or by undertakings within the distribution system with the object of protecting the selective distribution system are compatible with the exemption under this Regulation. This applies in particular to a dealer's obligation to sell vehicles to a final consumer using the services of an intermediary only where that consumer has authorized that intermediary to act as his agent (Article 3, point 11).

(6) It should be possible to bar wholesalers not belonging to the distribution system from reselling parts originating from motor vehicle manufacturers. It may be supposed that the system of rapid availability of spare parts across the whole contract programme, including those with a low turnover, which is beneficial to the consumer, could not be maintained without obligatory recourse to the authorized network.

(7) The ban on dealing in competing products and that on dealing in other vehicles at stated premises may in principle be exempted, because they contribute to concentration by the undertakings in the distribution network of their efforts on the products supplied by the manufacturer or with his consent, and thus ensure distribution and servicing appropriate for the vehicles (Article 3, point 3). Such obligations provide an incentive for the dealer to develop sales and servicing of contract goods and thus promotes competition in the supply of those products as well as between those products and competing products.

(8) However, bans on dealing in competing products cannot be regarded as indispensable in all circumstances to efficient distribution. Dealers must be free to obtain from third parties supplies of parts which match the quality of those offered by the manufacturer, for example where the parts are produced by a sub-contract manufacturer who also supplies the motor vehicle manufacturer, and to use and sell them. They must also keep their freedom to choose parts which are usable in motor vehicles within the contract programme and which not only match but exceed the quality standard. Such a limit on the ban on dealing in competing products takes account of the importance of vehicle safety and of the maintenance of effective competition (Article 3, point 4 and Article 4 (1), points 6 and 7).

(9) The restrictions imposed on the dealer's activities outside the allotted area lead to more intensive distribution and servicing efforts in an easily supervised contract territory, to knowledge of the market based on closer contact with consumers, and to more demand-orientated supply (Article 3, points 8 and 9). However, demand for contract goods must remain flexible and should not be limited on a regional basis. Dealers must not be confined to satisfying the demand for contract goods within their contract territories, but must also be able to meet demand from persons and undertakings in other areas of the common market. Dealers' advertising in a medium which is directed to customers in the contract territory but also covers a wider area should not be prevented, because it does not run counter to the obligation to promote sales within the contract territory.

(10) The obligations listed in Article 4 (1) are directly related to the obligations in Articles 1, 2 and 3, and influence their restrictive effect. These obligations, which might in individual cases be caught by the prohibition in Article 85 (1) of the Treaty, may also be exempted because of their direct relationship with one or more of the obligations exempted by Articles 1, 2 and 3 (Article 4 (2)).

(11) According to Article 1 (2) (b) of Regulation No 19/65/EEC, conditions which must be satisfied if the declaration of inapplicability is to take effect must be specified.

(12) Under Article 5 (1), points 1 (a) and (b) it is a condition of exemption that the undertaking should honour the minimum guarantee and provide the minimum free servicing and vehicle recall work laid down by the manufacturer, irrespective of where in the common market the vehicle was purchased. These provisions are intended to prevent the consumer's freedom to buy anywhere in the common market from being limited.

(13) Article 5 (1), point 2 (a) is intended to allow the manufacturer to build up a coordinated distribution system, but without hindering the relationship of confidence between dealers and sub-dealers. Accordingly, if the supplier reserves the right to approve appointments of sub-dealers by the dealer, he must not be allowed to withhold approval arbitrarily.

(14) Article 5 (1), point 2 (b) obliges the supplier not to impose on a dealer within the distribution system requirements, as defined in Article 4 (1), which are discriminatory or inequitable.

(15) Article 5 (1), point 2 (c) is intended to counter the concentration of the dealer's demand on the supplier which might follow from cumulation of discounts. The purpose of this provision is to allow spare-parts suppliers which do not offer as wide a range of goods as the manufacturer to compete on equal terms.

(16) Article 5 (1), point 2 (d) makes exemption subject to the conditions that the dealer must be able to purchase for customers in the common market volume-produced passenger cars with the specifications appropriate for their place of residence or where the vehicle is to be registered, in so far as the corresponding model is also supplied by the manufacturer through undertakings within the distribution system in that place (Article 13, point 10). This provision obviates the danger that the manufacturer and undertakings within the distribution network might make use of product differentiation as between parts of the common market to partition the market.

(17) Article 5 (2) makes the exemption of the no-competition clause and of the ban on dealing in other makes of vehicle subject to further threshold conditions. This is to prevent the dealer from becoming economically over-dependent on the supplier because of such obligations, and abandoning the competitive activity which is nominally open to him, because to pursue it would be against the interests of the manufacturer or other undertakings within the distribution network.

(18) Under Article 5 (2), point 1 (a), the dealer may, where there are exceptional reasons, oppose aplication of excessive obligations covered by Article 3, point 3 or 5.

(19) The supplier may reserve the right to appoint further distribution and servicing undertakings in the contract territory or to alter the territory, but only if he can show that there are exceptional reasons for doing so (Article 5 (2), point 1 (b) and Article 5 (3)). This is, for example, the case where there would otherwise be reason to apprehend a serious deterioration in the distribution or servicing of contract goods.

(20) Article 5 (2), points 2 and 3 lay down minimum requirements for exemption which concern the duration and termination of the distribution and servicing agreement; the combined effect of a no-competition clause or a ban on dealing in other makes of vehicle, the investments the dealer makes in order to improve the distribution and servicing of contract goods and a short-term agreement or one terminable at short notice is greatly to increase the dealer's dependence on the supplier.

(21) In accordance with Article 1 (2) (a) of Regulation No 19/65/EEC, restrictions or provisions which must not be contained in the agreements, if the declaration of inapplicability of Article 85 (1) by this Regulation is to take effect, are to be specified.

(22) Agreements under which one motor vehicle manufacturer entrusts the distribution of its products to another must be excluded from the block exemption under this Regulation because of their far-reaching impact on competition (Article 6, point 1).

(23) An obligation to apply minimum resale prices or maximum trade discounts precludes exemption under this Regulation (Article 6, point 2).

(24) The exemption does not apply where the parties agree between themselves obligations concerning goods covered by this Regulation which would be acceptable in the combination of obligations which is exempted by Commission Regulations (EEC) No 1983/83 [1] or (EEC) No 1984/83 [2] on the application of Article 85 (3) of the Treaty to categories of exclusive distribution agreements and exclusive purchasing agreements respectively, but which go beyond the scope of the obligations exempted by this Regulation (Article 6, point 3).

(25) Distribution and servicing agreements can be exempted, subject to the conditions laid down in Articles 5 and 6, so long as the application of obligations covered by Articles 1 to 4 of this Regulation brings about an improvement in distribution and servicing to the benefit of the consumer and effective competition exists, not only between manufacturers' distribution systems but also to a certain extent within each system within the common market. As regards the categories of products set out in Article 1 of this Regulation, the conditions necessary for effective competition, including competition in trade between Member States, may be taken to exist at present, so that European consumers may be considered in general to take an equitable share in the benefit from the operation of such competition.

(26) Articles 7, 8 and 9, concerning the retroactive effect of the exemption, are based on Articles 3 and 4 of Regulation No 19/65/EEC and Articles 4 to 7 of Regulation No 17. Article 10 embodies the Commission's powers under Article 7 of Regulation No 19/65/EEC to withdraw the benefit of its exemption or to alter its scope in individual cases, and lists several important examples of such cases.

(27) In view of the extensive effect of this Regulation on the persons it concerns, it is appropriate that it should not enter into force until 1 July 1985. In accordance with Article 2 (1) of Regulation No 19/65/EEC, the exemption may be made applicable for a definite period. A period extending until 30 June 1995 is appropriate, because overall distribution schemes in the motor vehicle sector must be planned several years in advance.

(28) Agreements which fulfil the conditions set out in this Regulation need not be notified.

(29) This Regulation does not affect the application of Regulations (EEC) No 1983/83 or (EEC) No 1984/83 or of Commission Regulation (EEC) No 3604/82 of 23 December 1982 on the application of Article 85 (3) of the Treaty to categories of specialization agreements [3], or the right to request a Commission decision in an individual case pursuant to Council Regulation No 17. It is without prejudice to laws and administrative measures of the Member States by which the latter, having regard to particular circumstances, prohibit or declare unenforceable particular restrictive obligations contained in an agreement exempted under this Regulation ; the foregoing cannot, however, affect the primacy of Community law,

HAS ADOPTED THIS REGULATION :

Article 1

Pursuant to Article 85 (3) of the Treaty it is hereby declared that subject to the conditions laid down in this Regulation Article 85 (1) shall not apply to agreements to which only two undertakings are party and in which one contracting party agrees to supply within a defined territory of the common market

— only to the other party, or

— only to the other party and to a specified number of other undertakings within the distribution system,

(1) OJ No L 173, 30. 6. 1983, p. 1.
(2) OJ No L 173, 30. 6. 1983, p. 5.
(3) OJ No L 376, 31. 12. 1982, p. 33.

for the purpose of resale certain motor vehicles intended for use on public roads and having three or more road wheels, together with spare parts therefor.

Article 2

The exemption under Article 85 (3) of the Treaty shall also apply where the obligation referred to in Article 1 is combined with an obligation on the supplier neither to sell contract goods to final consumers nor to provide them with servicing for contract goods in the contract territory.

Article 3

The exemption under Article 85 (3) of the Treaty shall also apply where the obligation referred to in Article 1 is combined with an obligation on the dealer :

1. not, without the supplier's consent, to modify contract goods or corresponding goods, unless such modification is the subject of a contract with a final consumer and concerns a particular motor vehicle within the contract programme purchased by that final consumer ;

2. not to manufacture products which compete with contract goods ;

3. neither to sell new motor vehicles which comepte with contract goods nor to sell, at the premises used for the distribution of contract goods, new motor vehicles other than those offered for supply by the manufacturer ;

4. neither to sell spare parts which compete with contract goods and do not match the quality of contract goods nor to use them for repair or maintenance of contract goods or corresponding goods ;

5. not to conclude with third parties distribution or servicing agreements for goods which compete with contract goods ;

6. without the supplier's consent, neither to conclude distribution or servicing agreements with undertakings operating in the contract territory for contract goods or corresponding goods nor to alter or terminate such agreements ;

7. to impose upon undertakings with which the dealer has concluded agreements in accordance with point 6 obligations corresponding to those which the dealer has accepted in relation to the supplier and which are covered by Articles 1 to 4 and are in conformity with Articles 5 and 6 ;

8. outside the contract territory

   (a) not to maintain branches or depots for the distribution of contract goods or corresponding goods,

   (b) not to seek customers for contract goods or corresponding goods ;

9. not to entrust third parties with the distribution or servicing of contract goods or corresponding goods outside the contract territory ;

10. to supply to a reseller :

    (a) contract goods or corresponding goods only where the reseller is an undertaking within the distribution system, or

    (b) spare parts within the contract programme only where they are for the purposes of repair of maintenance of a motor vehicle by the reseller ;

11. to sell motor vehicles within the contract programme or corresponding goods to final consumers using the services of an intermediary only if that intermediary has prior wirtten authority to purchase a specified motor vehicle and, as the case may be, to accept delivery thereof on their behalf ;

12. to observe the obligations referred to in points 1 and 6 to 11 for a maximum period of one year after termination or expiry of the agreement.

Article 4

1. Articles 1, 2 and 3 shall apply notwithstanding any obligation imposed on the dealer to :

(1) observe, for distribution and servicing, minimum standards which relate in particular to :

   (a) the equipment of the business premises and of the technical facilities for servicing ;

   (b) the specialized and technical training of staff ;

   (c) advertising ;

   (d) the collection, storage and delivery to customers of contract goods or corresponding goods and servicing relating to them ;

   (e) the repair and maintenance of contract goods and corresponding goods, particularly as concerns the safe and reliable functioning of motor vehicles ;

(2) order contract goods from the supplier only at certain times or within certain periods, provided that the interval between ordering dates does not exceed three months ;

(3) endeavour to sell, within the contract territory and within a specified period, such minimum quantity of contract goods as may be determined by agreement between the parties or, in the absence of such agreement, by the supplier on the basis of estimates of the dealer's potential sales ;

(4) keep in stock such quantity of contract goods as may be determined by agreement between the parties or, in the absence of such agreement, by the supplier on the basis of estimates of the dealer's potential sales of contract goods within the contract territory and within a specified period ;

(5) keep such demonstration vehicles within the contract programme, or such number thereof, as may be determined by agreement between the parties or, in the absence of such agreement, by the supplier on the basis of estimates of the dealer's potential sales of motor vehicles within the contract programme ;

(6) perform guarantee work, free servicing and vehicle recall work for contract goods and corresponding goods ;

(7) use only spare parts within the contract programme or corresponding goods for guarantee work, free servicing and vehicle recall work in respect of contract goods or corresponding goods ;

(8) inform customers, in a general manner, of the extent to which spare parts from other sources might be used for the repair or maintenance of contract goods or corresponding goods ;

(9) inform customers whenever spare parts from other sources have been used for the repair or maintainance of contract goods or corresponding goods for which spare parts within the contract programme or corresponding goods, bearing a mark of the manufacturer, were also available.

2. The exemption under Article 85 (3) of the Treaty shall also apply where the obligation referred to in Article 1 is combined with obligations referred to in paragraph 1 above and such obligations fall in individual cases under the prohibition contained in Article 85 (1).

Article 5

1. Articles 1, 2 and 3 and Article 4 (2) shall apply provided that :

(1) the dealer undertakes

(a) in respect of motor vehicles within the contract programme or corresponding thereto which have been supplied in the common market by another undertaking within the distribution network, to honour guarantees and to perform free servicing and vehicle recall work to an extent which corresponds to the dealer's obligation covered by point 6 of Article 4 (1) but which need not exceed that imposed upon the undertaking within the distribution system or accepted by the manufacturer when supplying such motor vehicles ;

(b) to impose upon the undertakings operating within the contract territory with which the dealer has concluded distribution and servicing agreements as provided for in point 6 of Article 3 an obligation to honour guarantees and to perform free servicing and vehicle recall work at least to the extent to which the dealer himself is so obliged ;

(2) the supplier

(a) shall not without objectively valid reasons withhold consent to conclude, alter or terminate sub-agreements referred to in Article 3, point 6 ;

(b) shall not apply, in relation to the dealer's obligations referred to in Article 4 (1), minimum requirements or criteria for estimates such that the dealer is subject to discrimination without objectively valid reasons or is treated inequitably ;

(c) shall, in any scheme for aggregating quantities or values of goods obtained by the dealer from the supplier and from connected undertakings within a specified period for the purpose of calculating discounts, at least distinguish between supplies of

— motor vehicles within the contract programme,

— spare parts within the contract programme, for supplies of which the dealer is dependent on undertakings within the distribution network, and

— other goods ;

(d) shall also supply to the dealer, for the purpose of performance of a contract of sale concluded between the dealer and a final customer in the common market, any passenger car which corresponds to a model within the contract programme and which is marketed by the manufacturer or with the manufacturer's consent in the Member State in which the vehicle is to be registered.

2. In so far as the dealer has, in accordance with Article 5 (1), assumed obligations for the improvement of distribution and servicing structures, the exemption referred to in Article 3, points 3 and 5 shall apply to

the obligation not to sell new motor vehicles other than those within the contract programme or not to make such vehicles the subject of a distribution and servicing agreement, provided that

(1) the parties

(a) agree that the supplier shall release the dealer from the obligations referred to in Article 3, points 3 and 5 where the dealer shows that there are objectively valid reasons for doing so ;

(b) agree that the supplier reserves the right to conclude distribution and servicing agreements for contract goods with specified further undertakings operating within the contract territory or to alter the contract territory only where the supplier shows that there are objectively valid reasons for doing so ;

(2) the agreement is for a period of at least four years or, if for an indefinite period, the period of notice for regular termination of the agreement is at least one year for both parties, unless

— the supplier is obliged by law or by special agreement to pay appropriate compensation on termination of the agreement, or

— the dealer is a new entrant to the distribution system and the period of the agreement, or the period of notice for regular termination of the agreement, is the first agreed by that dealer.

(3) each party undertakes to give the other at least six months' prior notice of intention not to renew an agreement concluded for a definite period.

3. A party may only invoke particular objectively valid grounds within the meaning of this Article which have been exemplified in the agreement if such grounds are applied without discrimination to undertakings within the distribution system in comparable cases.

4. The conditions for exemption laid down in this Article shall not affect the right of a party to terminate the agreement for cause.

Article 6

Articles 1, 2 and 3 and Article 4 (2) shall not apply where :

1. both parties to the agreement or their connected undertakings are motor vehicle manufacturers ; or

2. the manufacturer, the supplier or another undertaking within the distribution system obliges the dealer not to resell contract goods or corresponding goods below stated prices or not to exceed stated rates of trade discount ; or

3. the parties make agreements or engage in concerted practices concerning motor vehicles having three or more road wheels or spare parts therefor which are exempted from the prohibition in Article 85 (1) of the Treaty under Regulations (EEC) No 1983/83, or (EEC) No 1984/83 to an extent exceeding the scope of this Regulation.

Article 7

1. As regards agreements existing on 13 March 1962 and notified before 1 February 1963 and agreements, whether notified or not, falling under Article 4 (2), point 1 of Regulation No 17, the declaration of inapplicability of Article 85 (1) of the Treaty contained in this Regulation shall apply with retroactive effect from the time at which the conditions of this Regulation were fulfilled.

2. As regards all other agreements notified before this Regulation entered into force, the declaration of inapplicability of Article 85 (1) of the Treaty contained in this Regulation shall apply from the time at which the conditions of this Regulation were fulfilled, or from the date of notification, whichever is the later.

Article 8

If agreements existing on 13 March 1962 and notified before 1 February 1963 or agreements to which Article 4 (2), point 1 of Regulation No 17 applies and which were notified before 1 January 1967 are amended before 1 October 1985 so as to fulfil the conditions for application of this Regulation, and if the amendment is communicated to the Commission before 31 December 1985, the prohibition in Article 85 (1) of the Treaty shall not apply in respect of the period prior to the amendment. The communication shall take effect from the time of its receipt by the Commission. Where the communication is sent by registered post, it shall take effect from the date shown on the postmark of the place of posting.

Article 9

1. As regards agreements to which Article 85 of the Treaty applies as a result of the accession of the United Kingdom, Ireland and Denmark, Articles 7 and 8 shall apply except that the relevant dates shall be 1 January 1973 instead of 13 March 1962 and 1 July 1973 instead of 1 February 1963 and 1 January 1967.

2. As regards agreements to which Article 85 of the Treaty applies as a result of the accession of Greece, Articles 7 and 8 shall apply except that the relevant dates shall be 1 January 1981 instead of 13 March 1962 and 1 July 1981 instead of 1 February 1963 and 1 January 1967.

Article 10

The Commission may withdraw the benefit of the application of this Regulation, pursuant to Article 7 of Regulation No 19/65/EEC, where it finds that in an individual case an agreement which falls within the scope of this Regulation nevertheless has effects which are incompatible with the provisions of Article 85 (3) of the Treaty, and in particular :

1. where, in the common market or a substantial part thereof, contract goods or corresponding goods are not subject to competition from products considered by consumers as similar by reason of their characteristics, price and intended use ;

2. where the manufacturer or an undertaking within the distribution system continuously or systematically, and by means not exempted by this Regulation, makes it difficult for final consumers or other undertakings within the distribution system to obtain contract goods or corresponding goods, or to obtain servicing for such goods, within the common market ;

3. where, over a considerable period, prices or conditions of supply for contract goods or for corresponding goods are applied which differ substantially as between Member States, and such substantial differences are chiefly due to obligations exempted by this Regulation ;

4. where, in agreements concerning the supply to the dealer of passenger cars which correspond to a model within the contract programme, prices or conditions which are not objectively justifiable are applied, with the object or the effect of partitioning the common market.

Article 11

The provisions of this Regulation shall also apply in so far as the obligations referred to in Articles 1 to 4 apply to undertakings which are connected with a party to an agreement.

Article 12

This Regulation shall apply *mutatis mutandis* to concerted practices of the types defined in Articles 1 to 4.

Article 13

For the purposes of this Regulation the following terms shall have the following meanings.

1. 'Distribution and servicing agreements' are framework agreements between two undertakings, for a definite or indefinite period, whereby the party supplying goods entrusts to the other the distribution and servicing of those goods.

2. 'Parties' are the undertakings which are party to an agreement within the meaning of Article 1 : 'the supplier' being the undertaking which supplies the contract goods, and 'the dealer', the undertaking entrusted by the supplier with the distribution and servicing of contract goods.

3. The 'contract territory' is the defined territory of the common market to which the obligation of exclusive supply in the meaning of Article 1 applies.

4. 'Contract goods' are motor vehicles intended for use on public roads and having three or more road wheels, and spare parts therefor, which are the subject of an agreement within the meaning of Article 1.

5. The 'contract programme' refers to the totality of the contract goods.

6. 'Spare parts' are parts which are to be installed in or upon a motor vehicle so as to replace components of that vehicle. They are to be distinguished from other parts and accessories according to customary usage in the trade.

7. The 'manufacturer' is the undertaking

   (a) which manufactures or procures the manufacture of the motor vehicles in the contract programme, or

   (b) which is connected with an undertaking described at (a).

8. 'Connected undertakings' are :

   (a) undertakings one of which directly or indirectly

      — holds more than half of the capital or business assets of the other, or

      — has the power to exercise more than half the voting rights in the other, or

— has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the other, or

— has the right to manage the affairs of the other;

(b) undertakings in relation to which a third undertaking is able directly or indirectly to exercise such rights or powers as are mentioned in (a) above.

9. 'Undertakings within the distribution system' are, besides the parties to the agreement, the manufacturer and undertakings which are entrusted by the manufacturer or with the manufacturer's consent with the distribution or servicing of contract goods or corresponding goods.

10. A 'passenger car which corresponds to a model within the contract programme' is a passenger car

— manufactured or assembled in volume by the manufacturer, and

— identical as to body style, drive-line, chassis, and type of motor with a passenger car within the contract programme.

11. 'Corresponding goods', 'corresponding motor vehicles' and 'corresponding parts' are those which are similar in kind to those in the contract programme, are distributed by the manufacturer or with the manufacturer's consent, and are the subject of a distribution or servicing agreement with an undertaking within the distribution system.

12. 'Distribute' and 'sell' include other forms of supply such as leasing.

Article 14

This Regulation shall enter into force on 1 July 1985.

It shall remain in force until 30 June 1995.

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

Done at Brussels, 12 December 1984.

For the Commission

Frans ANDRIESSEN

Member of the Commission