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COMPETITION & ANTITRUST - EUROPEAN UNION

# General Court confirms manufacturers' right to set up authorised repair networks

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AUTHOR

**Sophia Real**

## Introduction

The General Court has confirmed(1) that suppliers may restrict aftermarket access to authorised repairers for their spare parts. Suppliers can refuse unauthorised repairers access, even if they are considered to have a dominant market position over those parts.

The case clarifies that even if suppliers are considered to be a monopoly supplier of spare parts or consumables for their installed base of customers, they are still entitled to control how their parts or consumables are distributed.

The automotive sector was specifically excluded from the scope of the judgment, given the *sui generis* legislative framework applying to that sector.

## Background

This case began with a complaint in 2004 by the European Confederation of Watch Repairer Associations (CEAHR, an association of national interest groups of independent watch repairers) to the European Commission concerning the refusal by a number of luxury watchmakers to supply spare parts to independent watch repairers outside their authorised repair networks and a concern that this would drive independent watch repairers out of the market.

In 2008 the European Commission rejected the CEAHR's complaint on the basis that there was insufficient EU interest in proceeding with the investigation. The CEAHR appealed the European Commission's decision, rejecting the complaint to the General Court which found in favour of the CEAHR. The General Court annulled the European Commission's decision on the basis that the European Commission had failed to consider all the relevant facts and arguments put forward by the CEAHR in its complaint.

In 2011 the European Commission opened a new investigation into the allegations raised by the CEAHR. This second investigation was closed by the European Commission in 2014 due to the disproportionate (in the European Commission's view) amount of resources required to investigate the complaint more thoroughly and the low likelihood of establishing an infringement of EU competition law. The CEAHR again appealed the European Commission's decision not to proceed with the investigation. The General Court sided with the European Commission, finding that it had not overstepped its discretion in assessing whether to proceed with the investigation. The General Court's ruling is therefore, for now at least, the last chapter in this long saga that started more than 10 years ago with the CEAHR's first complaint.

In the past, the European Commission has in some cases identified separate product markets for primary products and their spare and replacement parts (secondary products), with the

consequence that manufacturers of such parts were often found to be dominant in relation to those parts, since such parts were frequently brand-specific. In this case, the European Commission had identified:

- separate product markets for the sale of prestige watches (the primary market); and
- the market for the supply of maintenance and repair services, as well as the market for the supply of spare parts (the secondary markets).

For the secondary markets, the European Commission also found that these markets were brand-specific and that it could not be ruled out that the Swiss watchmakers could be dominant in these secondary markets. The key question was therefore whether a refusal by the Swiss watchmakers to supply spare parts to independent watch repairers outside their authorised repair networks constituted an abuse of dominance contrary to Article 102 of the Treaty on the Functioning of the European Union (TFEU).

**Decision**

Selective repair systems must be treated analogous to selective distribution systems, meaning that setting up a network of authorised repairers is permitted under EU competition rules,(2) provided that:

- such a network is objectively justified for the type of product in question to preserve its quality and ensure its proper use;
- admission to the network is based on objective criteria of a qualitative nature which are applied in a non-discriminatory manner; and
- the admission criteria are proportionate.

Refusal to supply spare parts by a manufacturer to independent repairers will only constitute an abuse of dominance under EU competition law (assuming the manufacturer is dominant in relation to these spare parts) where all effective competition in these parts will be eliminated as a result of the refusal. This will not be the case where:

- competition still exists between repairers already admitted to the network; and
- the network remains open to repairers which wish to join the network (and meet the relevant criteria).

The fact that some repairers are excluded from the authorised repairer network (where they do not meet the admission criteria) does not change this assessment. In stating that "the need to preserve undistorted competition does not entail a need to protect the existence of independent repairers as such", the General Court underlined that EU competition law is about protecting the competitive process and not individual competitors.

In this case, the General Court agreed with the European Commission that the use of authorised repair networks was likely justified in the case of luxury watches in order to prevent the counterfeiting of watches and their spare parts (noting that the protection of brand image alone would not be sufficient to justify setting up authorised repair networks).

The court specifically distinguished this case from the automotive sector, where existing rules under the Motor Vehicle Block Exemption Regulation (MVBER) continue to apply. While the complainant had tried to draw an analogy between the luxury watch sector and the automotive sector (where restrictions on sales of spare parts to independent repairers are considered hardcore restrictions of competition under the MVBER), this was rejected by the General Court because, among other reasons, the motor vehicle sector is subject to sector-specific legislation.

**Implications for companies**

The ruling will make it harder for complaints to succeed against manufacturers of spare and replacement parts that refuse to supply such parts to competing providers of repair and maintenance services. This is because the General Court's ruling confirms that manufacturers of branded products can protect themselves against the uncontrolled use of their products by setting

up selective repair systems, provided that this is justified in order to preserve quality or ensure proper use of their products. Once such a selective repair system has been set up, manufacturers of branded products are permitted to refuse to supply spare parts to repairers outside such a system, provided that competition remains between repairers already admitted to the system and access to the system remains open to repairers which wish to join it and meet the relevant criteria.

*For further information on this topic please contact Sophia Real at Baker & McKenzie by telephone (+32 2 639 36 11) or email (sophiareal@bakermckenzie.com). The Baker & McKenzie website can be accessed at www.bakermckenzie.com.*

**Endnotes**

(1) T-712/14, *CEAHR v European Commission.*

(2) Particularly, Article 101(1) of the TFEU.

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