



## Observations and conclusions to the Romanian Competition Council's report on the automotive spare parts market

*In April 2012, the Romanian Competition Council (the "RCA") in its report following to the sector inquiry into the automotive spare parts market (the "Report") proposed the implementation of the "repair clause" into Romanian legislation*

After a public consultation on its initial analysis and recommendations, the RCA published on 6 February 2013 its final conclusions regarding the automotive spare parts market, responding to the observation received from third parties.

Observations were received from the main players in the Romanian automotive market, such as Dacia Renault group and Ford Romania, the Automotive Manufacturers and Importers Association, the Automotive Manufacturers in Romania Association and the Auto Spare Parts Distributors in Romania Association. Also, the RCA received an opinion from the State Office for Inventions and Trademarks ("OSIM").

### Automotive manufacturers and distributors observations

The representatives of the manufacturers and importers considered necessary to maintain the protection for the visible spare parts and stated that the implementation of the "repair clause" will raise concerns about: investments in innovation, research and development, and the negative direct effect on the jobs in the sector.

On the other side, the distributors appreciated the initiative of the RCA reminding that the majority of visible spare parts are captive and the manufacturers have a legal monopoly in the aftermarket.

### OSIM observations and RCA clarifications

The opinion of OSIM regarding the implementation of the "repair clause" is also noteworthy. Under Directive 98/71/EC (transposed into Romanian legislation through Law no. 129/1992, as further amended), the design or industrial model which meets certain conditions is protected for one or more periods of five years each, with the possibility of extending it to up to 25 years from the date of filing the application.

In fact, OSIM is against the amendment of the legislation by introducing the "repair clause", due to the following:

- (i) the lack of mandatory character of the repair clause in European legislation; and
- (ii) non-compliance with TRIPS Agreement.

The RCA's response to OSIM's arguments was focused on the excessive restrictive interpretation of the legislation in force by OSIM through the exacerbation of the importance of IP rights in counterbalance with the interest of the other players in the aftermarket, i.e. the spare parts independent producers and particularly the final consumers.

In response to the argument that the implementation of the "repair clause" is not a mandatory provision for Romania, the RCA recalled that Directive 98/71/EC expressly allows the liberalisation of spare parts national markets and that ten Member States have already enacted the "repair clause" and liberalised their aftermarket.

Regarding the non-compliance with the TRIPS Agreement, the RCA stated that neither the ten member states that already enacted the "repair clause", nor the European legislation that expressly



provides the liberalisation of the aftermarket have been found to infringe the TRIPS Agreement up to date.

### **RCA's final assessments and recommendations**

The RCA has made an in-depth analysis of the auto vehicles manufacturers observations sent to it regarding the issue of innovation on one side, and on the issue of safety on the other side.

The RCA observed that the liberalisation of the aftermarket for visible spare parts will not deprive the manufacturers from the legal design protection on the primary market, i.e. the production and sales of new cars market. The liberalisation of the aftermarket will have no influence on the innovation activity of car manufacturers as the manufacturers will continue to innovate due to their needs to keep up with its competitors on the primary market.

The issue of the safety, quality and structural integrity of spare parts has been repeatedly raised by the vehicle manufacturers, which have argued that the use of non-original body repair parts in a liberalised aftermarket can be unsafe.

The RCA addressed the issue of the safety of spare parts by referring to the European Parliament study dated September 2006 (the "Study"). The Study was aimed to determine whether invoking a general risk to safety from the use of non-original spare parts was justifiable.

The RCA reminded that the Study concluded that with "the possible exception of engine bonnets, the great majority of parts subject to industrial design rights are non-structural or cosmetic parts, which play a negligible role in occupant protection". Moreover, safety purposes should be correlated with the maintenance of the competition on the aftermarket.

The RCA stated that the introduction on the Romanian market of some visible parts of poor quality and unsafe for the consumer, after the opening on the spare parts market, would be supervised by the national technical body – R.A.R. – which is responsible for approval/ certification of the used products on road vehicles. R.A.R. could refuse certification, sale or utilization of the road vehicles, if the parts present a serious risk to the road safety or harm significantly the environment and/ other public health.

As per the effects of the aftermarket monopoly, the RCA analysed the prices of a visible spare parts. The RCA concluded that due to the monopolistic position of the vehicle manufacturers prices are higher and that the introduction of a repair clause would have the effect of reducing the price of visible spare parts, while allowing the sector to operate more efficient, allowing to independent distributors to put pressure on manufacturers prices.

RCA considered that any estimated job losses should be proved and that any possible job losses could be compensated by the creation of jobs involving the manufacture of visible spare parts by upcoming undertakings in the aftermarket.

As an example of other jurisdiction, the French competition authority issued in October 2012 certain recommendations aiming at lowering the price of car repairs and maintenance through the adoption of the "repair clause". The French competition authority considered that is necessary to introduce a transition period as to take into account the current difficulties in the car industry and to program a gradual lifting of IP rights depending on the type of spare parts.

### **Conclusions**

The RCA reiterated in its final analysis its recommendations stated in the Report.

Due to the economic difficulties experienced by the car manufactures, an option for Romanian authorities may be to follow the example of the French authorities and to implement a progressive and controlled removal of the monopoly on the visible spare parts, depending on each type of spare part.



The adoption of a transition period may give enough time to Romanian car manufacturers in order to prepare for the opening up of the market to competition.

**Source:** *Iustinian Captariu, Ioana Tirca, The Romanian Competition Council publishes its final conclusions regarding the automotive spare parts market, 6 February 2013, e-Competitions, N°51103, [www.concurrences.com](http://www.concurrences.com)*

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