

APPENDIX A

The main Associations and other bodies from whom the Commission received information and views

Associations:

Automobile Association
British Automotive Parts Promotion Council
Consumer Association
Factoring Services Group
Motor Agents Association
Motor Factors Association
National Consumer Council
Royal Automobile Club
Society of Motor Manufacturers and Traders
Trades Union Congress.

Car manufacturers and Importers:

AC Cars Limited
Alfa Romeo (Great Britain) Limited
Aston Martin Lagonda (1975) Limited
BMW (GB) Limited
Bristol Cars Limited
BL Cars Limited
Citroen Cars Limited
Colt Car Company Limited
Datsun UK Limited
Maranello Concessionaires Limited
Fiat Auto (UK) Limited
Ford Motor Company Limited
Heron Suzuki GB Limited
Honda (UK) Limited
Lada Cars Limited
Lotus Cars Limited
Mazda Cars Imports (GB) Ltd
Mercedes Benz (United Kingdom) Limited
Morgan Motor Company Limited
Peugeot Automobiles (UK) Limited
Porsche Cars Great Britain Limited
Reliant Motor Public Limited Company
Renault (UK) Limited

Rolls Royce Motors Limited
Saab (Great Britain) Limited
Skoda (Great Britain) Limited
Subaru (UK) Limited
Talbot Motor Company Limited
TKM Vehicle Service Limited
Toyota (GB) Limited
VAG (United Kingdom) Limited
Vauxhall Motors Limited
Volvo Concessionaires Limited.

Other Manufacturers, Distributors and Importers:

Armstrong Patents Co Limited
Associated Engineering Limited
Automotive Products Limited
Brown Brothers Limited
Clark-Eaton Limited
Drive Sales Limited
Esso Petroleum Company Limited
Factoring Services Group
Guest Keen and Nettlefold Limited
Kontinental Auto-Werke
Kwik-Fit Holdings Limited
Lookers Company Limited
Lucas Industries Limited
Mann Egerton and Company Limited
National Tyre Services Limited
Normand Group of Companies
Payne Motor Spares Limited
W Harold Perry Limited
Quinton Hazell Limited
Royal Doulton-Autoglass Limited
Russel Company
Shell UK Oil Limited
J B Volkswagen Limited.

APPENDIX B

**Exclusivity clauses in contracts submitted to
the Commission by the companies**

<i>Dealer Agreement</i> 5(a) 5(b)	<p>Alfa Romeo (Great Britain) Limited</p> <p>'The Dealer shall purchase the Parts from the Company or from such source as the Company may direct on the conditions of sale contained in the Second Schedule and subject also to the provisions of this Agreement so far as they relate to the sale or purchase of the Parts.'</p> <p>'The Dealer shall not maintain stocks of or use for maintenance of the Vehicles any spare parts other than the Parts.'</p> <p>'Parts' are defined in Clause 1 as 'spare parts exchange units components tools machinery equipment accessories works manuals, literature and any other items supplied by the Company to the Dealer'.</p>
<i>Distributor Agreement</i> 2c	<p>Automotive Products Limited (Autela Components Division)</p> <p>'will not engage or be interested either directly or indirectly as principal agent or employee in selling goods of the same description as those supplied by AUTELA under the terms of this Agreement'.</p>
<i>Dealer Agreement</i> 9.2(a)	<p>BMW (GB) Limited</p> <p>'The dealer will not without BMW GB's written consent (or save as may be expressly permitted by the Fifth Schedule¹ hereto) sell or acquire for sale:</p> <p>(ii) Parts, exchange parts and accessories (other than BMW Parts) insofar as it wishes to sell the same to other Dealers;</p> <p>BMW Parts—'All parts, accessories and assembled units manufactured by or on behalf of the Manufacturer and all parts, accessories and assembled units approved by the Manufacturer for sale in the United Kingdom.'</p>
<i>Distributor Agreement</i>	<p>British Leyland Motor Corporation Limited</p> <p>'Except with the prior written consent of the Company to the contrary the Distributor shall:</p>
<i>Main Dealer Agreement</i>	<p>(ii) purchase Parts only from the Company or from another Distributor or Main or Retail Dealer'</p>
<i>Retail Dealer Agreement</i> 8(c)	<p>'... the Main Dealer shall:</p> <p>(ii) purchase Parts only from a Distributor or another main or Retail Dealer.'</p>

¹ The Fifth Schedule relates to 'Particulars of other Franchises'.

'... Retail Dealer shall:

- (ii) purchase Parts only from a Distributor or Main or another Retail Dealer.'

Parts are defined in Clause 1 as 'new and reconditioned units, component parts, Unipart components and accessories as described in the lists issued by the Company from time to time ...'

Citroen Cars Limited

Dealer Agreement

1(b)
23(d)(i)

“Parts” shall refer to:

- (i) Replacement parts and new or replacement assembled units and accessories for vehicles as manufactured by or for the Company to its design particulars or specifications; and
- (ii) Parts and new or replacement assembled units and accessories for vehicles which are the standard products of manufacturers other than the Company and are new and unused and which form or are intended to form part of the equipment of vehicles, and are duly approved by the Company.'

'The Dealer shall not at any time during the currency of this Agreement purchase for or use in connection with his business any replacement parts or new or replacement assembled units or accessories other than parts as defined by Clause 1(b) of this agreement.'

Colt Car Company Limited

Dealer Agreement

3.3

'Colt Parts'. 'All parts and new and replacement assembled units manufactured by or on behalf of the Manufacturer* and marketed by the Company.'

'Only Genuine Parts to be used.

- (b) The Dealer shall in repairing and servicing Colt Vehicles use (and only use) Colt Parts as herein defined and proprietary parts approved by the Manufacturer.'

Datsun (United Kingdom) Limited

Dealer Franchise

Agreement Standard Provisions

18

'The Dealer shall not directly or indirectly acquire sell supply fit or install in any Vehicle supplied by the Company whether to the Dealer or otherwise any parts other than genuine parts supplied by or on behalf of the Company.'

* Mitsubishi Motors Corporation of Tokyo, Japan.

Fiat Auto (United Kingdom) Limited

Dealer Agreement

1(2)

24(5)

'Parts for Vehicles being Parts which are manufactured by, or for and under the control of, the Manufacturer* and imported or distributed for sale in the United Kingdom by the Company, as the same are described in lists issued from time to time by the Company.'

'The Dealer agrees that all Parts purchased by it for use in its own premises or for re-sale shall be purchased by it from the Company or from such other person, firm or company as the Company may specify as aforesaid and, without prejudice to the generality of the foregoing, the Dealer shall not in particular use, fit, install, or recommend for use, fitting or installation in a Vehicle any parts other than Parts as defined in Clause 1(2) above and nor shall the Dealer acquire, sell, supply or distribute any parts other than Parts defined as aforesaid for such a purpose.'

Ford Motor Co Limited

Main Dealer Agreement

Standard Provisions

4F(b)

'The Dealer shall not without the prior written consent of the Company stock display or promote the sale of or offer or advertise for sale parts (excluding accessories) which are of the same description as and competitive with Parts which the Company is currently able to supply.'

'Parts' are defined in Clause 1 of the Standard Provisions as 'components of Motor Vehicles and of Industrial Units manufactured or supplied by the Company or by such sources as the Company may designate from time to time.'

Lada Cars Limited

Dealer Agreement

44(e)(f)

'The Dealer undertakes with Lada Cars:

To stock, supply and fit to Vehicles sold by Lada Cars only Parts as defined in this Agreement or such other Parts as Lada Cars may from time to time approve; and

Not directly or indirectly to acquire, sell, supply, use, fit or install in any Vehicles sold by Lada Cars any parts other than Parts in accordance with this Clause;'

'Parts—all components, replacements and exchange parts and new or replacement or exchange engines or other assembled components or units supplied by Lada Cars for Vehicles.'

* FiatAuto SpA of Turin, Italy.

Letter of Intent

Lucas Batteries Limited

‘In particular, Lucas Batteries expect that you will:

- Neither use nor sell goods which are of a similar description to those supplied by Lucas Batteries, unless specifically agreed between us.
- Refrain from taking up any franchise with a company who supplies goods of a similar description to those supplied by Lucas Batteries.’

Letter of Intent

Lucas Electrical (Parts and Service) Limited

1. ‘The prime responsibilities that you have towards us are actively to sell Lucas products and provide service so that you maximise market penetration. To meet these responsibilities and pursue the objectives effectively your premises and resources must meet the qualifying standards which we will specify . . .

These standards currently include:

(a) A comprehensive range and depth of stock of the product which we have agreed to supply and which is in our opinion necessary to maximise sales penetration in your operating areas. This will cover your total requirements of spares and exchange units for both Lucas equipment and items covered in our all-makes programme, together with wiper arms and blades, bulbs, sealed beam light units, cable and cable sundries.’

2. ‘In particular we would expect that you would:

(a) Neither use nor sell goods either new or repaired which are of a similar description to those supplied by Lucas Electrical Parts and Service unless specifically agreed between us.

(b) Refrain from taking up any franchise without our prior discussion and agreement with a Company who supplied goods of a similar description to those supplied by Lucas Electrical Parts and Service.

3. Any action which you take which is interpreted by the Area Manager as contravening the loyalty of your purchasing obligations will be subject to disciplinary action. This will only be implemented through the SOC in the form of a penalty of 5 per cent per month reduction in terms in total until such time as the Area Manager is satisfied that you have fulfilled your obligations.

In the event of any significant breach of the obligations specified above, then it is understood and agreed that this could result in the immediate termination of the appointment.’

Lucas Girling Limited

Letter of Intent

'Your primary responsibility and target is to sell the specific Girling products and service incorporated in this agreement . . . To meet this responsibility effectively requires that:

1. All other products for Girling Brake Systems sold by you, but not covered by this commitment should be of Girling approved manufacture and obtained from one of our recommended suppliers.
4. Neither to use or sell goods that are competitive with those supplied by us, unless discussed and specifically agreed between us.'

Lotus Cars Limited

Dealer Service Agreement

3.4
3.5
13.4

'The Service Dealer shall stock supply and fit to Vehicles only Service Parts.'

'All Service Parts shall be purchased by it only from the manufacturer at prices . . . and according to terms and conditions as set out in the United Kingdom price list for such Service Parts as at the time of purchase . . .'

''Service Parts'' shall mean such replacement parts for Vehicles that are to Lotus specifications, obtained from approved sources only, and as set out in the current Manufacturer's Price List for replacement parts to Vehicles.'

Mazda Car Imports (Great Britain) Limited

Dealer Agreement
5(4)

RX7 Dealer Agreement
6(4)

Polski/Fiat Dealer Agreement
5(4)

Wartburg Dealer Agreement
13(a)

'The Dealer agrees with the Company:

. . . not to offer for sale replacement parts or accessories for Mazda (Polski/Fiat) Vehicles other than those replacement parts or accessories supplied by the Company.'

'The Dealer shall purchase all Parts from the Company and not elsewhere or in the case of accessories not dealt in but approved by the Company and further shall not purchase, sell, deliver, use or cause to be purchased, sold, delivered or used any parts other than those supplied by the Company.'

Mercedes Benz (United Kingdom) Limited

Dealer Agreement
20

'The Dealer agrees not to supply parts for Mercedes Benz Products other than those supplied or approved by the Company.'

Peugeot Automobiles (United Kingdom) Limited

*Parts Distribution
Agreement
4(1)(a)*

'The Distributor shall purchase from Peugeot UK . . . such parts as may be required by the Distributor to fulfil his obligations hereunder. The Distributor shall not purchase Parts from any person other than Peugeot UK.'

*Main and Direct
Dealer Agreements
9(3)*

'The Main (Direct) dealer shall not at any time without the prior approval in writing of Peugeot UK:

- (a) Purchase any Parts for resale (whether as separate items or in connection with repairs) other than from Peugeot UK or the Parts Distributor as the case may be or sell Parts obtained from any other source.'

'Parts' are defined as 'parts of and accessories for Peugeot Vehicles which are approved as such by the Manufacturer¹ or Peugeot UK and are new and unused (or, in the case of exchange items, are unused since reconditioning).'

Porsche Cars Great Britain Limited

*Franchise Agreement
26(1)
26(2)*

'The Porsche Centre shall not use or supply spare parts other than Porsche Spare Parts supplied by the Concessionaire for:

- either
- (i) repairs carried out under the Porsche Product Warranty; or
 - (ii) repairs which in the opinion of the Concessionaire affect safety.

For repairs other than such repairs as are referred to in sub-clause (1) of this Clause Spare Parts supplied by the Concessionaire must be used by the Porsche centre unless:

- (i) the Concessionaire has authorised the Porsche Centre in writing to use such spare parts manufactured by other persons firms or companies; and
- (ii) the customer is notified in writing of the fact that contrary to his justifiable expectations spare parts are being affixed which have not been manufactured by the Manufacturer² or supplied by the Concessionaire.'

¹ SA Automobiles Peugeot.

² Dr Ing hcF Porsche Aktiengesellschaft of Stuttgart Federal Republic of Germany.

Reliant Motor Public Limited Company

*Dealer Franchise
Agreement*
3

'(a) The Manufacturer shall sell or procure to be sold to the Dealer and the Dealer shall purchase only from the Manufacturer or from such sources as the Manufacturer may from time to time direct all his requirements of the products for sale.'

'The products shall mean such of the . . . parts or accessories supplied or approved by the Manufacturer for the Manufacturer's vehicles as are enumerated in the Schedule hereto.'

Renault UK Limited

Dealer Agreement
21(b)
21(c)

'Except with the prior consent of the Company only Renault parts may be sold for the purpose of, or in connection with, fitting the same to Renault vehicles.'

The Dealer shall purchase his requirements for sale of Renault parts from the Company or from such sources as the Company may direct in accordance with such purchasing methods and procedures as the Company may from time to time specify.'

'Renault parts' are defined in Clause 1(f) as 'spare parts and replacement assembled units manufactured or approved by the Company or the Parent Company for Renault vehicles.'

Saab (Great Britain) Ltd

*Agreement and
Operating
Standards*
19

'The Dealer shall only stock and supply parts and accessories for SAAB vehicles which have been supplied or approved by the Company.'

Skoda (Great Britain) Limited

Distributor Agreement
27

Dealer Agreement
25

' . . . shall not purchase, sell, deliver or cause to be purchased, sold or delivered any spare parts for the vehicles other than those supplied by Skoda unless Skoda's permission is first obtained.'

Subaru (United Kingdom) Limited

*Dealer Sales
Agreement*
12

'During the currency of this Agreement the Dealer agrees:

- (1) To purchase all Spares for Vehicles and used Subaru Motor Vehicles from the Company and not elsewhere and not to purchase, sell, deliver or use or cause to be purchased, sold, delivered or used any spare parts, components, accessories, assemblies and additional equipment for Vehicles nor for used Subaru Motor Vehicles other than Spares supplied by the Company unless the Company otherwise agrees in writing.'

Talbot Motor Company Limited

Chrysler Dealer Terms Agreement

1

Chrysler Dealer Agreement

14

15

'... Chrysler agrees to sell and the Dealer agrees to purchase his requirements of Vehicles and Vehicle Parts from Chrysler or from such sources as Chrysler may from time to time direct for resale ...'

'The Dealer agrees not to acquire for sale or sell any goods of the same description as Vehicle Parts unless such parts are approved and identified by Chrysler.'

'The Dealer agrees not to sell or acquire for sale at the approved trading locations to which this Agreement relates any vehicles or vehicle parts of the same description as the Vehicles or Vehicle parts supplied hereunder without the written consent of Chrysler.'

'Vehicle Parts' are defined as 'vehicle components supplied by Chrysler or from such other sources as Chrysler may decide from time to time and include "service parts", "listed proprietary parts", "reconditioned units" and "accessories".'

Toyota (Great Britain) Ltd

Direct Dealer Agreement

3.1

'The Dealer shall purchase all his requirements of Toyota Products for resale from the Company or as may be prescribed or (subject to the approval of the Company) from other Toyota Dealers but not elsewhere.'

'Toyota Products' means 'new and unused Toyota Vehicles and Toyota Parts.'

VAG (United Kingdom) Limited

Dealer Agreement 25(a)

'Insofar as the Company offers Parts for Vehicles, the Dealer shall sell such Parts and shall utilise them in his workshop. For warranty repairs only such Parts may be used. The Dealer may also sell parts and accessories which are approved by the Company and have no special importance as to the safety and quality standards of Vehicles.'

'Parts' means parts and exchange parts, assembled units and exchange assembled units and accessories for vehicles being parts, assembled units and accessories marketed or approved for marketing by the Company in the United Kingdom.

APPENDIX C

Extracts from the submissions of consumer organisations

AUTOMOBILE ASSOCIATION

1. There appears to be less monopoly in the provision of spare parts now than ever before. This is due to three basic reasons:

- (a) the development of manufacturers' 'all-makes' parts, such as Unipart, Mopar* and Motorcraft;
- (b) the effect of industrial disputes in forcing car manufacturers to spread their purchases among several component manufacturers; and
- (c) the need to provide parts for imported vehicles and to compete with foreign manufacturers for exports.

2. In the case of major components—such as engines—made by the car manufacturers themselves, a monopoly is inevitable because it is only by means of large-scale production that prices can be kept to a reasonable level.

3. It is reasonable for car manufacturers to insist that only 'Original Equipment' (OE) parts are fitted during the warranty period, as they cannot be expected to assess the quality of competitors' products. Outside that period it is doubtful if they are justified in insisting that dealers shall stock only OE parts.

4. In drawing up contracts for the supply of component parts some car manufacturers deny to the component manufacturers the freedom to sell their products on the open market. This leads to the fixed pricing of parts and, in the Association's opinion, is wrong.

5. When dealers may sell only OE parts, owners are encouraged to buy parts at 'High Street' shops on a 'Do-It-Yourself' basis. This is often quite satisfactory, but it does favour the sale of spurious and counterfeit parts. If dealers were permitted to sell a variety of makes, they would be more likely than shops or DIY owners to notice sub-standard parts. Furthermore, restrictions on dealers' freedom of choice provide importers with opportunities to sell cut-price products in the High Street.

6. Restrictions imposed by car manufacturers force component manufacturers to charge higher prices for replacement parts than would otherwise be necessary. It is true that the situation is improving as car manufacturers seek to establish a 'single-tier' pricing system both for OE and for replacement parts. Unfortunately, however, it is impossible to discover whether single-tier pricing has lowered the price of replacement parts or raised the price of OE parts in order to keep them both on the same level.

7. There is no doubt that car manufacturers make a substantial profit on the sale of spare parts; but, overall, their profits are not excessive. If any

* (Now Motaquip.)

action were taken which reduced the sales of components or which decreased profit margins, the probable consequences would be large increases in car prices. It is, nevertheless, likely that importers would thereby be more adversely affected than British manufacturers.

8. Whilst it might well be comparatively easy to control the marketing activities of companies dealing in small numbers of parts, it must be remembered that a typical motor car is constructed from about fifteen thousand separate parts. When this figure is necessarily multiplied by the many different types of cars in use, the result is a grand total of several hundred thousand diverse car parts which have to be kept available at any one time.

CONSUMERS' ASSOCIATION

From our very limited price survey it would seem that the customer can get a rather better deal where competition is more vigorous. With slow-moving parts or parts supplied under warranty competition is just about non-existent. The situation with slow-moving parts is, probably, unalterable. There may be restrictions to competition via the use of the copyright laws. There is some evidence, for example, that assemblers seek to restrict competition in the replacement exhaust markets. Equally, the increasing hold of the assemblers over the replacement equipment market may have dampened competition in this area. The Commission is in a better position than we are to ascertain the facts.

As far as the supply of parts under warranty goes though, the picture is rather clearer. Such parts can often be obtained by garages from sources other than the assembler but for one reason or another, are not. Assemblers argue that, given their responsibilities during the warranty period, they are entitled to require franchised garages to fit only 'genuine' parts or otherwise not to honour the warranty. Whilst it does seem to us entirely reasonable for assemblers to require the fitting of parts to a particular (and high) specification during the warranty period it seems unreasonable to assume that only 'genuine' parts are capable of meeting such specifications. But competing component manufacturers should, we believe, have the opportunity to put their alternatives before the public—perhaps on an 'approved' list issued by the assembler. The component manufacturer would guarantee his own products. An assembler's refusal to allow a component manufacturer, particularly the manufacturer of the original equipment, access to such a list could, perhaps, then form the basis of an anti-competitive practice reference.

Outside the warranty period it would seem that assemblers are gaining an increasing hold over the market. We are, naturally, concerned at the dampening effect this could have on the market and we hope the Commission will fully investigate this apparent tendency to reduce competition.

Finally, we must emphasise that although the price of car spares is important to customers, so are quality and availability. A cheap light bulb that fails after a week is no bargain. And having a car off the road for a long period while the garage searches for the requisite part is no mean inconvenience.

We have been unable to investigate, for example, quality differences between parts marketed under the assembler's label and those marketed by reputable component manufacturers. We hope the Commission will. Neither have we looked at the effect on parts availability of greater competition. Again though, we hope the Commission will.

We believe greater price competition is both necessary and desirable, with suitable guarantees of quality and availability from the component manufacturers.

NATIONAL CONSUMER COUNCIL

Supply of car parts under warranty

In practice, when consumers make claims under warranty they are likely to use an authorised dealer of the make concerned and not to specify themselves the precise brand of replacement parts to be used. Their assumption would probably be that they would be manufacturers' authorised spare parts. In principle we would like to see a situation in which the repairer was able to use the car parts which appeared to him to give best value for money, even at this stage of the repair life of a car. It would seem however unlikely that in practice the removal of an obligation to use the manufacturers' own authorised parts under warranty would result in any considerable change in the everyday transactions of repairers.

Supply of spare parts outside warranty

It is our view that consumers' interests would be best served by vigorous competition in the supply of spare parts outside warranty. This means that no obstacles should be placed in the way of component manufacturers and dealers who wish to offer for sale spare parts for any car which are made to the appropriate specification. In particular we would be reluctant to accept that questions of copyright should be allowed to prevent the supply of such parts. Parts will often be made to the vehicle manufacturers' specification and even where a component manufacturer has been involved in substantial design work this will have taken place within the overall design of the motor car. Also the specialist component manufacturer who supplies the original equipment will have had a very large return for his investment in design.

Safety

Consumers would obviously be concerned if freedom to supply spare parts produced parts which were unsuitable or unsafe. However, limiting access to the market may not be the best way to deal with this problem. The supply of spare parts which claim to be suitable and to meet a specification but which do not is fraudulent and should be dealt with as such. And consumers' rights to receive recompense if spare parts prove to be defective should also be improved. This could be done by the Government accepting the proposals of the Law Commission for the imposition of strict liability on manufacturers and importers.

Recommended retail prices

The NCC considers that recommended retail prices are appropriate as an indication from manufacturers to retailers of what a manufacturer thinks a reasonable selling price might be. We do not consider that the fact that there is a recommended retail price is of direct interest to the individual consumer. What matters is the price which is charged in practice at point of sale. Obviously it may be helpful to retailers to have RRPs when dealing with a very wide diversity of products such as car parts. However we think that if there is any question that RRPs are being set at levels which are not reasonable or fair then it is more important to prevent this practice than to preserve the RRP for the retailer. In particular we believe that the use of RRPs in double pricing generally works against the interests of consumers.

THE ROYAL AUTOMOBILE CLUB

The RAC are aware that, in general, franchised motor dealers are required to purchase replacement car parts from the manufacturer or the importer of the make of car to which the franchise applies. Also that, in general, car parts will be supplied by manufacturers and importers to franchised dealers only. The exception to this is that certain components not manufactured by the vehicle manufacturer, but 'bought in' by them and fitted as original equipment, can often be obtained from motor factors and from 'High Street' outlets. Examples are brake and clutch components, filters, ignition system components, starter motors, dynamos and alternators.

In considering the overall situation, the RAC have no evidence to suggest that the present situation is operating to the detriment of the consumer to any significant extent. In the case of the 'bought in' items referred to, for example, there is not, to our knowledge, any significant difference in the price to the consumer if such items are purchased from franchised dealers or from 'free' outlets.

In some respects the present system offers a valuable degree of consumer protection in that parts purchased from franchised outlets should, in consequence, be 'genuine' parts. There is already widespread concern with regard to the possible safety hazards arising from the fitment of imported, spurious parts to motor vehicles. If franchised dealers were free to purchase parts, other than from manufacturers and importers, the number of possible outlets for spurious parts could be greatly increased, even if they are unwittingly purchased. Similarly, if manufacturers and importers made their genuine parts freely available to other outlets this could also provide opportunities for spurious parts, masquerading as genuine, to be sold alongside them with little fear of detection. There are also other possible implications in respect of vehicles under warranty which could act to the detriment of the consumer were replacement parts freely available other than through manufacturers' franchised dealers and originally supplied other than by the manufacturer or importer.

On balance, therefore, the possible advantages to the consumer of a free market in car parts could well be outweighed by the disadvantages, with particular reference to road safety.

APPENDIX D

Questionnaires

1. Questionnaires were used for two purposes: to establish whether or not a complex monopoly exists and as part of the process of gathering information on the replacement parts market.

I Establishment of a complex monopoly

2. To establish whether a complex monopoly situation existed in the wholesale supply of replacement car parts it was necessary to establish the total wholesale supply of such parts in the United Kingdom.

3. It was not possible to obtain from official sources reliable estimates of the total wholesale supply in the United Kingdom of replacement parts for cars. The Business Statistics Office (BSO) publishes an analysis of sales of all products by United Kingdom manufacturers but, as far as parts for cars are concerned, the published information does not distinguish between sales of parts for incorporation in new cars (original equipment or OE) and sales of replacement parts, or between parts for cars and parts for commercial vehicles, or between export sales and sales in the United Kingdom. We therefore had to undertake our own inquiries.

4. The estimate of the total wholesale supply was made in respect of 1980 and is the sum of estimates of these items:

- (i) parts (including imported parts) supplied by car manufacturers and/or importers;
- (ii) parts (including imported parts) supplied by manufacturers (other than car manufacturers) in the United Kingdom; and
- (iii) other imported parts.

5. The definition of car parts used was 'items that are normally included as standard equipment when the car is sold new, with the exception of in-car entertainment and liquids, eg oil'. The definition used thus includes tyres and batteries and excludes accessories.

Parts supplied by car manufacturers and/or importers

6. We asked 38 car suppliers for their total sales in the United Kingdom of replacement parts for cars in 1980. Replies were received in respect of all 38, and the total value of sales reported was £629.1 million.

Parts supplied by United Kingdom manufacturers (other than car manufacturers)

7. In the absence of a comprehensive register of establishments making replacement parts for cars, we sought the help of the BSO. The BSO has a comprehensive register of manufacturing establishments, classified by industry, which is among other things used for the statutory quarterly inquiries into manufacturers' sales. The BSO is precluded by the terms of the Statistics of Trade Act 1947 from disclosing any information relating to individual

undertakings, and could not therefore let us have the names of manufacturers of car parts; but it was possible for the BSO to select certain establishments from its register and send them a questionnaire on our behalf. When we told the BSO what returns had been received the latter was able to provide factors—at a sufficiently aggregated level to prevent any possible disclosure of information about any individual undertaking—to enable us to make estimates for non-response and for establishments too small to be in scope of the quarterly inquiries.

Selection of establishments for mailing

8. The BSO maintains a list of some 4,500 products codes covering the complete range of goods manufactured in the United Kingdom. From these, we selected all those (61 in number) which defined, or included, parts for cars. From its records the BSO selected those establishments recorded as selling one or more of these products and with 25 or more employees. From the resultant list the BSO removed establishments belonging to the car manufacturers who had been asked to supply information directly to us as described above.

9. Respondents were asked to provide information on their total sales of car parts in the United Kingdom, specifying separately (i) sales direct to car manufacturers (including both original equipment and replacement equipment), (ii) sales of parts to other component manufacturers (whether for incorporation in their products or for onward distribution), and (iii) all other sales of replacement car parts in the United Kingdom. Items (i) and (ii) were sought separately in order to avoid double counting. The replies to item (iii) provided the information needed by us.

Response

10. After rigorous checking to prevent any direct or indirect disclosure, the BSO was able to tell us for each industry or group of industries, the response to our inquiry in terms of total sales in 1980. Overall, information was received in respect of 619 out of 905 establishments mailed (68 per cent). According to BSO records, these 619 establishments accounted for more than 80 per cent of the total sales in 1980 of all the establishments mailed.

11. The allowance made for non-response is based on the assumption that the non-respondents in each industry or group of industries supply replacement car parts in the same ratio to their total sales as respondents. Such an assumption could lead to an overestimate of the value of replacement parts supplied by non-respondents, because one reason for not responding is that the establishment is not engaged at all in the supply of car parts. However, the BSO compared the sales by respondents of products on our list with sales of those products by all the establishments mailed, and that evidence suggests that the assumption is not unreasonable.

12. In addition to the estimate for non-response an estimate was made of sales by establishments with less than 25 employees, in the industries listed below. The factors used were those used by BSO in estimating the sales of small firms.

13. As a result of our inquiries as described above we estimate that the total supply of replacement car parts in the United Kingdom by United Kingdom manufacturers (other than car manufacturers) in 1980 was £707 million, as shown in Table 1.

TABLE 1 Estimate of the supply of replacement car parts in the United Kingdom by United Kingdom manufacturers (other than car manufacturers) in 1980

BSO Industry code	Description	Sales of replacement car parts in the UK (£'000)	Grossing factors		Estimated total sales of replacement car parts in the UK (£ million)
			Non- response	Small firms	
4910	Rubber	227,660	1.115	1.032	262.0
3810	Motor vehicle manufacturing establishments employing:				
	(a) more than 100	169,172	1.308	1.111	264.8
	(b) between 25 and 100	10,980	1.552		
3691	Electrical equipment for motor vehicles, etc	48,992	1.300	1.040	66.2
3540	Scientific and industrial instruments and systems				
3692	Primary batteries	28,398	1.450	1.030	42.4
4291	Asbestos	23,294	1.403	1.019	33.3
3492	Precision chains	13,069	1.142	1.499	22.4
3331	Pumps				
4630	Glass	5,865	1.115	1.065	7.0
4960	Plastics products	3,151	1.460	1.152	5.3
Various	30 other industries	3,240	1.101	not applied	3.6
Totals		533,821			707.0

Other imported parts

14. In seeking information from car suppliers and from United Kingdom component manufacturers we asked respondents to include in their sales of replacement car parts any that had been 'bought in' (whether from United Kingdom or overseas sources). We therefore needed to add an estimate for replacement car parts imported other than by car suppliers or United Kingdom component manufacturers.

15. To do this, we built up our own register of 'importers of replacement car parts' using published registers of importers plus lists of companies which were or might be importers of replacement car parts. These lists were provided

by SMMT, the British Battery Makers Society, the National Tyres Distributors' Association, the Motor Factors' Association, and various manufacturers. Names of suppliers were also obtained from advertisements in specialist journals. Oil companies and retail chains were also investigated to examine the extent to which these organisations imported replacement car parts for sale in their retail outlets. In the time available, it was not possible to develop a comprehensive register of possible importers, but the register created is believed to include all the major importers. It is likely, therefore, that the importers not brought on to the register are numerous but small. In making allowances for specialist importing companies that were not included in our register, it has been assumed that those on the register accounted for two-thirds of the supply of imported replacement car parts by all specialist importers.

16. In the case of tyres, we decided after consultation with the British Rubber Manufacturers Association (BRMA) that a very comprehensive measure of direct imports could be made by using Overseas Trade Statistics in conjunction with statistics supplied to BRMA from British tyre manufacturers. The estimated value was £47 million.

17. Omitting specialist tyre importers, we sent questionnaires to 222 companies and received replies from 178 (80.2 per cent). These recorded total sales of imported car parts of a little less than £51 million. Allowing for non-response, and adding 50 per cent as the estimate of imported part sales by importers not included in the register, there resulted an estimate of £95 million for replacement car parts other than tyres. Adding £47 million for tyres, we estimate that the supply of imported replacement parts for cars, other than by car suppliers or British component manufacturers, amounted in 1980 to £142 million.

Total supply

18. We estimate that the total wholesale supply of replacement car parts in the United Kingdom in 1980 was as follows:

	<i>(£ million)</i>
Supplied by car suppliers	629.1
Supplied by UK manufacturers (other than car suppliers)	707.0
Imported and supplied by other companies	142.0
Total	1,478.1 (say 1480)

II The replacement parts market

19. During the Commission's enquiries into the structure of the business of wholesaling car parts many representative bodies and individual firms were consulted; they are listed in Appendix A. In addition questionnaires were

sent to component manufacturers, factors and franchised and non-franchised garages. Their replies confirmed the information obtained by other means and are reflected in much of what is contained in Chapters 2 to 5. The following notes are therefore confined to the main points.

Component manufacturers

20. The purpose of the survey of component manufacturers was to discover how their products are distributed between the different parts of the market and their assessment of the effect on them of exclusive dealing within the car supplier's franchised networks.

21. Fifty-one completed questionnaires were received from the larger enterprises and 59 from smaller firms representing response rates of 95 and 45 per cent respectively. Tyre manufacturers are not included among these because their products are not to any significant extent distributed through the franchised networks as are other replacement parts. The 110 manufacturers represent total annual sales of nearly £500 million, 97 per cent of which is accounted for by the 51 large firms.

22. The total sales of the larger manufacturers were divided between:
- car manufacturers' for sale as RE 23 per cent
 - component manufacturers' own outlets 28 per cent
 - independent factors and fitting centres 36 per cent

and only 2 per cent directly to car suppliers' franchised dealers. The balance of sales was spread between various customers including transactions between component manufacturers themselves.

23. There was a high level of agreement that sales to franchised dealers could be increased if there were unrestricted competition, their incentives being fast delivery, a wide range of parts and lower prices. In a free market, however, component manufacturers would in some cases also be competing with their own products, sold to the car manufacturers for marketing as RE.

Factors

24. Questionnaires were returned by 66 factors (a response of 73 per cent) representing total sales of £235 million, of which the 25 largest accounted for 90 per cent. 98 per cent of their merchandise came from United Kingdom sources; their sales were 51 per cent to non-franchised garages, 11 per cent to cash-and-carry warehouses and retail shops, 6 per cent to car fleet operators, 5 per cent to fitting centres and 20 per cent in retail sales and sales to other wholesalers. Only 7 per cent of their sales were to franchised garages, no factors reporting significant sales to them of competitive parts on a regular basis, such business being normally confined to those occasions when the franchisor is unable to supply.

25. Two-thirds of the factors, representing over 90 per cent of the sales, believed that they could increase their business if franchised garages were

free to buy components from sources of their choice, the main incentives being faster delivery, lower prices and a wide range of goods. The biggest expected increase was in British made parts for imported cars. Seventy-three per cent of those replying, representing 96 per cent of total sales, estimated that their increased business in such parts would exceed 10 per cent.

Franchised garages

26. Completed questionnaires were received from 42 of the 50 largest car distributors, many having more than one franchise, and from 214 smaller dealers (65 per cent of those mailed) representing all the main makes of car, British and foreign, sold in the United Kingdom.

27. Retail sales (other than sales of parts used in repair and servicing) accounted for about 70 per cent of total replacement car part sales by the large distributors, compared with 40 per cent of those by the smaller dealers. This is presumably because the large distributors often act as suppliers to the smaller dealers, who use most of their parts for servicing and repairs. The large distributors, and also the smaller dealers in foreign makes, obtained more than 90 per cent of their parts from their franchisor. More than 90 per cent of these dealers obtained clutch and brake parts exclusively from their car supplier; this was less often the case with batteries. Smaller dealers in British makes obtained about 80 per cent of their parts from their car supplier, and about 60 per cent of these dealers obtained clutch and brake parts exclusively from their car supplier. Few dealers declared themselves to be dissatisfied and some 50 per cent of the total, large and small, were 'very satisfied' with the range and quality of the parts supplied to them and the service they received. There was rather less satisfaction with prices; 12 per cent of the large and 25 per cent of the small dealers being 'very satisfied' while at the other end of scale about 20 per cent of both groups were not satisfied, the greatest emphasis being on the prices of imported parts for Continental cars.

Non-franchised garages

28. Two sample areas were selected, centred on Reading and on Merseyside/Cheshire. In all 190 completed returns were received representing 54 per cent of the non-franchised garages mailed. Forty-six per cent of the total had an annual turnover of less than £100,000, 45 per cent between £100,000 and £0.5 million, 9 per cent being larger.

29. The sale or consumption of spare parts is a greater proportion of the turnover of the smaller garages, presumably because their workshop activity is higher in relation to sale of fuel and second-hand cars. The great majority, 83 per cent, of non-franchised garages undertake both repair and servicing for all makes of car. A few specialise.

30. The main source of parts for non-franchised garages is the motor factor, the next being car and components manufacturers' own distributors and dealers. Cash-and-carry warehouses are a minor source.

31. Around 45 per cent of those in the survey gave the opinion that parts supplied by factors, or the all-makes ranges of the car suppliers, were equal in quality to the car suppliers' 'genuine parts' for their own vehicles and were also cheaper. About 20 per cent considered them to be of slightly poorer quality but better value for money; about one-third of respondents did not reply to this question and a very small proportion (around 2 per cent) thought such parts were unacceptable.

APPENDIX E

Retail price survey

1. The 1979 Family Expenditure Survey showed that 6.0 per cent of households' budgets was spent on the maintenance and running of motor vehicles, and another 5.1 per cent on net purchases of motor vehicles, spares and accessories. For the highest income households these figures were 13.3 per cent and 12.6 per cent respectively. Expenditure on car parts, therefore, is likely to be a significant part of a car owner's expenditure.

2. We carried out a survey of the prices of selected replacement parts for popular models of British and imported cars. The purpose of this survey was to compare retail prices in the franchised sector with those in the rest of the market.

Survey design

3. After consultation with the SMMT and BAPPCO the following list of parts and cars was chosen:

Spark plugs	Mini 1000 cc
Oil filters	Marina 1300 cc
Rear brake shoes (or pads)	Cortina 1600 cc Mk IV ohc
Alternators	Escort 1300 cc Mk II
Exhaust systems	Chevette 1256 cc 3 door
Front wings	Avenger 1600 cc
Clutch driven plates	Renault R4 845 cc
Rear shock absorbers	Fiat 127 903 cc
Water pumps	Datsun 120 Y 1171 cc
	VW Golf 1093 cc
	Volvo 244 DLM 2127 cc
	(all Nov 1977 models)

4. We recognise that this list contained only relatively fast-moving parts. Since the object of our exercise was to compare prices in the franchised and non-franchised sectors we needed to select parts which were sold through both sectors and were subject to competition. This meant that captive parts could not be included in the survey. Since these also tend to be the slower-moving parts, our selection was necessarily limited to the fast-moving parts and to this extent was not representative of the parts market as a whole.

5. We also recognised that the list of cars, although including some of the most popular models and incorporating a range of engine size and price and including some models no longer produced, did not represent a particularly large fraction of the car parc. However, there is considerable standardisation of components within the industry and it was clear that some of the parts we had selected would fit models outside our selected range thus widening our effective coverage of the car parc.

6. It was clear that one of the major problems with the survey would be that the parts of a particular type designed for a particular model of car would be unlikely to be all of the same quality. We therefore decided to adopt the following procedure to make sure that we were comparing the prices of identical products.

- (1) We wrote to vehicle manufacturers asking them for the names of the suppliers of their RE parts for the list of parts and cars specified.
- (2) We wrote to the suppliers named in (1) asking them whether they marketed an identical product in the United Kingdom under any other brand name.

During this stage it became apparent that there would be difficulties involved in making valid price comparisons for front wings; these were therefore dropped from the survey.

7. A survey of the retail prices of eight parts for eleven cars was carried out in Cambridge (pilot survey), Brighton and Leeds in August 1981. Information was obtained from the following:

	<i>Number approached</i>	<i>Not applicable</i>	<i>Refused/ no reply</i>	<i>Usable replies</i>
Franchised garages	65	5	14	46
Non-franchised garages	287	135	33	119
Petrol stations	58	20	28	10
Fitting centres	20	6	2	12
Shops	40	11	5	24
Total	470	177	82	211

The outlets which were 'not applicable' were those which had ceased trading, changed their business or did not sell car parts. Excluding these outlets the effective response rate was 72 per cent.

8. Two important limitations of the survey need to be noted before we turn to a summary of the findings. First, while results were received and studied for all eight parts we were only able in the time available to carry out a comprehensive analysis of results for spark plugs, oil filters, water pumps, and clutch driven plates for the 11 vehicles. Excluding one instance where an exchange part was supplied by a vehicle importer, which made price comparison more difficult, we therefore analysed the results completely for a total of 43 parts. Secondly, the survey was carried out in August 1981 and so does not reflect any developments that may have taken place since that time.

9. We were also aware, when comparing prices between types of sales outlets, that different levels of service may be offered. One vehicle manufacturer emphasised that franchised garages offer service, high availability of stock, and technical advice and that the parts they sell carry warranties. However, we noted that most reputable component manufacturers also offer warranties with their parts. An adequate level of availability seems to be offered by

other outlets as well as franchised garages. Specialist repairers also offer technical advice. These are clearly matters for the consumer to take into consideration.

10. An important issue in comparing prices in our sample concerned the comparability of quality. The vehicle manufacturers repeatedly emphasised to us that their own approved parts and, where applicable, all-makes parts were made to the highest standards; it therefore seemed necessary that, in comparing the prices at which these parts sold with the prices for competing parts, we should have some evidence that the qualities were comparable. The component manufacturers who supplied these parts to the vehicle manufacturers told us that, in some cases, identical parts were marketed under the component manufacturers' own names. We therefore defined two groups of parts:

Group A

A1. Parts supplied by the vehicle manufacturer or importer.

A2. Parts supplied by a vehicle manufacturer under an all-makes programme.

A3. Parts supplied by a component manufacturer and declared by him to be identical with the part supplied by him to the vehicle manufacturer.

Group B

Parts not falling within Group A but supplied by reputable British or foreign component manufacturers.

General findings relating to all eight parts

Franchised garages

11. All of the vehicle manufacturers and importers had recommended retail prices (RRP) for the replacement parts in our sample.

12. We found that franchised garages tended to stock the selected parts only for the car of their car supplier's make. Of the 46 franchised garages twelve were franchisees of vehicle manufacturers who offered all-makes programmes but at the time of our survey none of these were stocking the complete all-makes programme offered. Three garages whose franchisor did not run an all-makes programme also stocked some parts for makes of car other than that supplied by their franchisor.

13. Most franchised garages had in stock all the selected parts for their own makes; of the 448¹ parts surveyed only 35 (8 per cent) were out of stock at the time of the survey. Three said that they charged a price for parts sold over the counter to the public different from the price for the same part incorporated into a repair bill. No franchised garages admitted to charging any price other than the RRP for a part used for a repair. Eleven of the franchised garages were offering a free-fit exhaust service although one of these services was a special offer at the time of the survey.

¹ Of the 46 franchised garages, there were ten which each stocked two of the models of car surveyed. There were eight parts in the sample, so the total number of parts surveyed was $56 \times 8 = 448$.

Non-franchised garages

14. The non-franchised garages were less likely to keep stocks of parts. Most of them would service or repair any type of car (six of the 119 non-franchised garages specialised in a particular make and three said that they repaired only British cars) so the demand for parts for their work is rather unpredictable. The cost of stocking parts can be high, and the garage owners know that in general they can obtain parts very quickly. Garage owners told us of factors from whom they could receive a delivery within 20 minutes of telephoning, of factors who sent vans round every few hours, and of local factors where they could go and pick up the parts that they needed. Some also used franchised garages; of the 119, 47 (40 per cent) mentioned that they used the franchised garages or main agents as the source of supply for some or all of their parts. Many non-franchised garages (42 out of 119) said that it was their policy to sell at the manufacturer's RRP; others sold at a discount, and some sold at prices above the RRP.

Petrol stations

15. Of the petrol stations approached those which sold car parts generally stocked only spark plugs and perhaps oil filters, although a few did stock a wider selection of parts. Most said that they sold parts at their supplier's RRP.

Fitting centres

16. Ten of the twelve fitting centres normally stocked exhausts (generally Group B parts) for some or all of the cars on our list. Of these ten, six supplied and fitted all these exhausts at a price below the component manufacturer's RRP for the part itself, and also below the fitted price of those franchised garages where a fitting charge was made. For models for which some franchised garages were offering a free-fit service, however, fitting centres were not always a cheaper source of supply for the fitted product. Two fitting centres said that they sold parts over the counter at a lower price than the fitted price.

Shops

17. Most of the 24 shops stocked a big range of parts, although they tended to be stronger on parts for British cars. Halfords, for example, normally stocked plugs and filters for all our models, brake shoes for all but two, water pumps for all but three, and alternators for the British cars. Motorist Discount Centres stocked oil filters, plugs, brake shoes, clutch plates, water pumps and alternators for all the British cars and the Datsun, and filters, plugs and brake shoes for most of the other foreign cars. Shops were occasionally suppliers to non-franchised garages, because of their large stock range. Apart from Lucas Services, whose business is very largely wholesale, none of the shops sold at their supplier's RRP; all offered lower prices.

18. As a separate part of the exercise we asked establishments which did not hold any stock, or did not stock the parts which interested us, how they obtained parts. The respondents were mainly non-franchised garages and the answers were very varied. Some obtained their parts from main agents and

then sold to their own customers. Some habitually used a particular factor or even a retail shop which was reliable and held large stocks of parts. Some garages bought from component manufacturers' representatives when they came round with special offers. Some would telephone the factors for the best deal they could get, and therefore could not tell beforehand what make of part they were likely to buy or what they might charge their customers.

Results for spark plugs, oil filters, water pumps and clutch plates

19. Vehicle manufacturers' parts (Group A1) were generally sold at RRP by their franchised garages and were generally stocked only by such outlets. Oil filters and spark plugs, however, were also stocked, in 15 out of the 22 cases, by non-franchised outlets. Of these 15 cases, ten were being sold by non-franchised outlets at prices which, on average, were below the vehicle manufacturer's RRP.

20. All-makes parts (Group A2) were available, from one or more vehicle manufacturer, for all the 43 parts. These parts were also in general sold by franchised outlets at the vehicle manufacturer's RRP. For seven of the 43 parts the all-makes RRP was the same as the vehicle manufacturer's RRP for A1 parts; for 17 it was lower and for 19 it was higher. Thirteen of the 22 all-makes plugs and filters were available from non-franchised outlets; in seven cases they were sold at prices which on average were below the average all-makes RRP, in four cases at average prices above the average all-makes RRP and in two cases they were sold at the average all-makes RRP.

21. In nine cases out of the 43, Group A3 parts were not sold by non-franchised outlets. For 28 of the remaining 34 parts the average selling price at non-franchised outlets was below the price at which A1 parts were available in the franchised sector. In only six cases were the prices of A1 parts found to be lower than those of A3 parts. Within the non-franchised sector shops sold at particularly low prices. In 24 of the 26 cases where shops were selling A3 parts their selling prices were below those of the vehicle manufacturers for identical parts.

22. In 36 out of 43 cases the average selling price of Group B parts was below the price at which A1 parts were available in franchised outlets. Shops again sold at particularly low prices. For 40 of the 43 parts Group B parts were sold by shops at prices which, on average, were below the prices for A1 parts sold in franchised garages. The differences were quite considerable: average shop prices for the Group B part were about £1.50 or 40 per cent below the RRP for the A1 part for a set of four spark plugs, up to £2.50 (50 per cent below RRP) for oil filters and generally more than £2.50 for water pumps and clutch driven plates.

23. Parts for the two Ford, two BL and the Volvo cars conformed consistently to this pattern of higher prices in franchised garages. For each of the other models there was at least one part for which the price of an A1 part was below the average either for A3 parts or B parts. However, these cases were confined to oil filters and water pumps.

APPENDIX F

Overseas legislation

1. We have not attempted a comprehensive study of overseas legislation and case law relating to exclusive purchasing. The following is a summary of the main features of the law relating to exclusive purchasing in the EEC and in certain other foreign countries, with special reference to car parts.

The EEC

2. Article 85 of the Treaty of Rome seeks to control the combined efforts of companies to restrict competition. It provides as follows:

'1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;
 - any decision or category of decisions by associations of undertakings;
 - any concerted practice or category of concerted practices;
which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
 - (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.'

3. Regulation 19/65 authorised the Commission to issue a block exemption in respect of agreements which fell within certain limitations. They accordingly issued Regulation 67/67. Article 1 of this Regulation states:

- '1. Pursuant to Article 85(3) of the Treaty and subject to the provisions of this Regulation it is hereby declared that until 31 December 1982 Article 85(1) of the Treaty shall not apply to agreements to which only two undertakings are party and whereby:
- (a) one party agrees with the other to supply only to that other certain goods for resale within a defined area of the common market; or
 - (b) one party agrees with the other to purchase only from that other certain goods for resale; or
 - (c) the two undertakings have entered into obligations, as in (a) and (b) above, with each other in respect of exclusive supply and purchase for resale . . .

Agreements fulfilling these conditions are not, therefore, subject to notification to the EEC Commission.

4. Regulation 67/67 expires at the end of 1982. A redraft of the Regulation is at present being considered by the Commission.

5. One case which is relevant to this inquiry and has been decided under EEC law is that of BMW. In January 1973 BMW introduced a new standard form of agreement with its German dealers and notified the agreement to the EEC Commission. In it the dealers undertook:

- (i) not to sell the goods covered by the agreement to dealers not authorised by BMW, unless such sales were of genuine BMW parts for repair;
- (ii) not without the consent of BMW to sell directly or indirectly products of competing makes as specified below:
 - new vehicles of another make;
 - spare parts, exchange parts and accessories of other makes to other dealers;
 - parts of other makes, which are not of the BMW standard of quality to the customer for repair purposes; this does not apply to parts which are of no particular importance for the safety of BMW vehicles; the consent of BMW may not be withheld if reasonable cause is shown, and in this respect the economic circumstances of the BMW dealer are to be taken into consideration.'

6. The Commission decided¹ that some of the clauses in these arrangements restricted and distorted competition and the agreements were thus contrary to Article 85(1). Because of the prohibition on BMW dealers regarding trade in non-BMW vehicles and parts, other manufacturers of vehicles and parts were to some extent prevented from using the German BMW dealers as sales intermediaries. However, the Commission accepted that the distribution system could contribute both to improving the production and distribution of goods and to promoting technical progress; they therefore granted an exemption under Article 85(3).

¹ CMLR Volume 15 1975 I D44.

France

7. An agreement on the sale of parts has recently been made between the French Ministry for the Economy and Finance and all the French vehicle manufacturers, all foreign manufacturers selling to France and all but three importers. The position of the three importers who refused to sign has been referred to the Commission de la Concurrence. The effect of the agreement is that in future franchised distributors will be able to purchase non-captive replacement parts directly from the manufacturers of the parts provided that:

- (a) the technical specifications for such parts are the same as for the parts that the component manufacturer supplies to the vehicle manufacturer;
- (b) the parts are obtained from a component manufacturer who is the supplier to the vehicle manufacturer of the original equipment or of the replacement parts for the model concerned.

Vehicle manufacturers' contracts with their franchised distributors must show and calculate separately the sales targets and annual discounts for:

- (a) motor vehicles;
- (b) captive replacement parts;
- (c) competitive replacement parts.

Germany

8. The Motor Industry Association (Verband der Automobilindustrie) told us that car manufacturers in Germany did enter into exclusive purchasing agreements with respect to the purchase of replacement car parts, but drew our attention to sections 18 and 26 of the German Law against Restraints of Competition, Section 18 allows the cartel authority to declare void or prohibit agreements between parties which impose on one of the parties, among other things, 'restrictions as to the purchase of other goods or commercial services from, or their sale to, third parties'. Section 26 says:

- (1) Enterprises or associations of enterprises shall not incite another enterprise or association of enterprises to refuse to sell or purchase with intent unfairly to harm certain enterprises.
- (2) Market dominating enterprises, associations of enterprises . . . shall not unfairly hinder, directly or indirectly, another enterprise in business activities which are usually open to similar enterprises . . . Sentence 1 shall also apply to enterprises and associations of enterprises, insofar as suppliers or purchasers of a certain type of goods or commercial services depend on them to such an extent that sufficient and reasonable possibilities of dealing with other enterprises do not exist.'

9. A recent case in Germany concerned Volkswagen. VW's dealer contract read:

'Insofar as VWAG supplies original spare parts and replacement parts, the dealer is obliged, when engaged in his VW and Audi business, to sell these parts and use them in his repair shop. This does not apply to parts which are of no importance for the safety and quality of VW and Audi cars.'

In March 1979 the Federal Cartel Office (FCO) ordered VW to remove from its agreements contractual restrictions requiring its contract dealers and workshops (VAG-Betriebe) to use only Volkswagen's own original spare parts for repairing Volkswagen's cars, insofar as VAG-Betriebe were thereby prevented from using spare parts manufactured by Volkswagen suppliers which were exactly the same as the parts which were purchased as original spare parts (Identteile) by Volkswagen under the terms of the supply contracts for the production of new vehicles and provided that VAG-Betriebe were not carrying out work for Volkswagen under warranty or at its expense. VW was prohibited from entering into any further agreements of this kind. The FCO also prohibited VW from applying other obligations, eg the requirement to carry a particular level of stock, with regard to identical parts to the extent that such restrictions resulted in exclusive purchasing of spare parts by the dealers from VW.

10. VW lodged a complaint against this decision with the Higher Regional Court in Berlin. The Regional Court confirmed the FCO's decision on the prohibition of contractual restrictions on identical parts but did not confirm the prohibition of other obligations.

11. However, the Federal Supreme Court in Karlsruhe, in its decision of 22 September 1981, upheld all the restrictions and obligations imposed by VW. The Regional Court had based its decision on the existence of an unfair restriction on the normal business activities of VAG-Betriebe, parts manufacturers and wholesalers under section 26(2) of the Law against Restraints of Competition. The Federal Supreme Court agreed that a restriction existed but not that it was unfair. It said:

'An assessment as to whether the obligations regarding purchase and use imposed on the VAG enterprises are unfair... must be based on the peculiarities of the market for motor vehicle spare parts... Involvement in competition by a motor vehicle manufacturer does not end with the sale of new cars but must, especially, take into account the fact that motor vehicles being technically complicated will during their relatively long period of use, be subject to constant wear and also prone to damage, they therefore require regular servicing and checks and, if the occasion arises, repairs... The suitability of a motor vehicle for its proposed use thus depends to a significant extent on the existence of an aftersales and spare parts service tailored to the individual vehicle... The manufacturer's interest—based on the above reasons—in the setting up and development of a reliable aftersales service network may be extended to the details of his organisation and the services offered by him. The obligation regarding the purchase and use of spare parts imposed... on the VAG enterprises... puts [VW] in the position of being able to advertise a spare parts supply of uniform quality for servicing and repairs in any VAG enterprise and of inspiring confidence in its customers as a result.'

The decisions of the Federal Cartel Office and the Higher Regional Court were thus set aside and VW was allowed to retain its dealer agreement in the original form.

Italy

12. Italy has no legislation relating to exclusive purchasing as such. Its basic principle regarding competition is laid down in Article 2595 of the Civil Code (1942) which states that competition must be conducted in such a way as not to injure the interests of the national economy and within the limits established by the law. The section on unfair competition, however, appears to deal only with matters relating to patents and trade marks.

13. A Bill to Protect the Freedom of Competition dealing with restrictive business practices and the abuse of dominant market positions was presented to Parliament in 1964 but did not become law.

Sweden

14. Section 5 of the Restraints of Competition Act states that:

'A restraint of competition shall be deemed to have a harmful effect if, contrary to the public interest, it unduly affects the formation of prices, restrains productivity in business, or impedes, or prevents the trade of others.'

Only two kinds of business practice are forbidden outright: resale price maintenance and tender cartels. If a practice is judged by the Market Court to be harmful negotiations are arranged with the defendants with a view to eliminating the harmful effects.

Japan

15. The Act concerning Prohibition of Private Monopoly and Maintenance of Fair Trade states in section 19 that no entrepreneur shall employ unfair business practices. Unfair business practices are defined (section 2(9)) to include among others:

- (i) unreasonably inducing or coercing customers of a competitor to deal with oneself; and
- (ii) trading with another party on such conditions as will restrict unjustly the business activities of the said party.

16. According to the OECD:

'In June 1979 the Fair Trade Commission concluded a report on trade in the automobile industry and, since July, has studied the problems involved and measures for improving the situation. On the basis of the survey and the subsequent study, the FTC, in November of the same year, has advised automobile manufacturers and their own sales companies to review and amend contracts with dealers, especially in connection with forced sales and rebates, and to conduct their business accordingly. The guidance was issued for the purpose of introducing fairness into business transactions.'¹

¹ OECD 1980 Annual Report on Competition Policy. Page 66.

USA

17. An exclusive purchasing contract is often known in the USA as a 'requirements contract', ie a condition that a certain enterprise purchase all its requirements of certain goods from a particular supplier.

18. Exclusive purchasing arrangements are governed principally by section 3 of the Clayton Act, which reads as follows:

'It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented for use, consumption or resale . . . or fix a price charged therefore or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser therefore shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodity of a competitor of the lessor or seller where the effect of such lease, sale or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.'

In other words, an exclusive dealing contract is not *per se* illegal, it is only illegal where it may substantially lessen competition or tend to create a monopoly.

19. In certain circumstances section 1 of the Sherman Act may also be applicable. This reads:

'Every contract, combination in the form of trust or otherwise or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal.'

20. A number of cases have arisen under section 3 of the Clayton Act challenging the legality of exclusive dealing arrangements between automotive manufacturers and their dealers with respect to replacement parts. In *Pick Manufacturing Co v General Motors Corp* (1931),¹ the Court upheld a contract of the Chevrolet division of General Motors which required that dealers sell 'genuine, new Chevrolet parts and accessories' and 'not sell, offer for sale or use in the repair of Chevrolet motor vehicles and chassis, second-hand or used parts or any part or parts not manufactured or authorized by the Chevrolet Motor Co'. The Court upheld the contract, ruling that it did not substantially lessen competition or tend to create a monopoly. In doing so the Court particularly noted that the provision applied only to the repair of the manufacturer's cars, leaving the dealer free to use parts of his own choosing in repair of other manufacturer's cars; that the manufacturer had a legitimate interest in protecting his goodwill; that automobiles are complicated mechanisms the faulty repair of which was both possible and, if occurring, serious; and that competition in the sale of replacement parts generally had substantially increased during the period that the restrictive provisions were enforced.

¹ 80.F.2d.641 (7th Circuit 1935) affirmed *per curiam* 299 US 3 (1931).

21. This issue was again raised in *Miller Motors v Ford Motor Company* (1958).¹ The facts in this case were somewhat more complicated than in *Pick*, *supra*. Ford apparently had two different contractual provisions during the relevant period involved in the case. First, Ford prohibited dealers from selling replacement parts for Lincolns and Mercurys except genuine (ie Ford manufactured or approved) Lincoln and Mercury parts, unless Ford was unable to supply them or a purchaser expressly requested some other part. Later, the contractual provision was modified to require dealers not to sell as genuine Lincoln and Mercury parts any part which was not in fact a genuine Lincoln or Mercury part. The Court found that Ford insisted that its dealers purchase and carry a volume of Ford parts and accessories as a condition of continuing as a dealer. Citing the decision in *Pick*, the District Court stated that:

'Ford had the undoubted right to require plaintiff not to sell as genuine parts any parts that were not genuine, and might have required plaintiff to use only parts and accessories supplied by Ford in repairing Lincoln and Mercury automobiles.'

The Court noted additionally, however, that Ford was requiring its dealers to carry replacement parts which were not needed for repairs: parts such as seat covers, anti-freeze and the like. As to these, the Court found no evidence that Ford's competitors were excluded from the market and therefore no violation of section 3 and gave judgment for the defendant.

22. The Court of Appeals, while upholding the District Court's decision because there was no evidence (in this private antitrust suit) of injury to the plaintiff, was more inclined to find a violation of section 3 than was the District Court:

'It may be noted that the requirement that the dealer shall stock Ford parts "reasonably comparable to the current demand" is ambiguous, for the term may mean the current demand for all such parts whether Ford-manufactured or approved, or otherwise, or it may mean the current demand for Ford or Ford-approved parts only. If it means the former, then the formula . . . may raise serious antitrust questions, if the record should show an attempt thereby to compel the dealer to overstock the Ford-manufactured or Ford-approved parts, consequently interfering with his ability to stock rival replacement products and restricting freedom of choice by automobile owners.'

23. Exclusive purchasing arrangements have also been challenged under section 3 by the Federal Trade Commission. In *Harley-Davidson Motor Co* (1954)² the Commission found that *Harley-Davidson's* informal agreement with its 800 independently-owned franchise dealers, prohibiting them from dealing in competitor component parts, accessories or oil, violated section 3. Critical to the Commission's decision, however, was its finding that:

¹ 149 F Supp 790 (MDNC 1957) affirmed 252 F.2d 441 (4th Circuit 1958).

² 50 FTC 1047 (1954).

'these agreements [were] between the largest domestic manufacturer of motor-cycles and its large and effective dealer organisation in a field where the bonds between the motor-cyclist and the dealer are especially strong.'

Moreover, the evidence showed that competitors actually lost business and that a manufacturer of competitive lightweight motor-cycles had been almost completely excluded from the market as a result of the provision.

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