

COMMISSION

COMMISSION DECISION

of 13 September 2007

relating to a proceeding pursuant to Article 81 of the EC Treaty

(Case COMP/E-2/39.141 — Fiat)

(notified under document number C(2007) 4274)

(Only the English text is authentic)

(2007/841/EC)

- (1) This decision adopted pursuant to Article 9(1) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty⁽¹⁾ is addressed to Fiat Auto SpA (hereinafter 'Fiat') and concerns the supply of technical information for the repair of vehicles of the Fiat, ALFA Romeo and Lancia brands.
- (2) Technical information consists of data, processes and instructions which are necessary to check, repair and replace defective/broken/used parts of a motor vehicle or to fix failures in any of a vehicle's systems. It includes seven main categories:
- basic parameters (documentation of all reference values and set points of the measurable values concerning the vehicle, such as torque settings, brake clearance measurements, hydraulic and pneumatic pressures),
 - diagrams and descriptions of stages in repair and maintenance operations (service handbooks, technical documents such as work plans, descriptions of tools used to carry out a given repair, and diagrams such as wiring schematics or hydraulics),
 - testing and diagnosis (including diagnostic fault/trouble-shooting codes, software and other information needed to diagnose faults on vehicles) – much, but not all, of this information is contained in specialised electronic tools,
 - codes, software and other information needed to re-program, re-set or re-initialise the electronic control units (ECUs) embarked on a vehicle. This category is linked to the preceding one, in that often the same electronic tools are used to diagnose the fault, and then make the necessary adjustments via the ECUs to deal with it,
 - spare parts information, including parts catalogues with codes and descriptions, and vehicle identification methods (that is to say, data relating to a specific vehicle which enable a repairer to identify the individual codes for the parts fitted during vehicle assembly, and to identify the corresponding codes for compatible original replacement parts for that specific vehicle),
 - special information (recall notices and notification of frequent faults),
 - training materials.
- (3) In December 2006, the Commission opened proceedings, and addressed a preliminary assessment to Fiat, containing the preliminary view that Fiat's agreements with its after-sales service partners raised concerns as to their compatibility with Article 81(1) of the EC Treaty.
- (4) In the Commission's preliminary assessment, Fiat seemed to have failed to release certain categories of technical repair information well after the end of the transitional period provided for in Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector⁽²⁾. Moreover, at the time that the Commission's investigation was launched, Fiat had still not put in place an effective system to allow independent repairers to have access to technical repair information in an unbundled manner. Although Fiat improved the accessibility of its technical information over the course of the Commission investigation, notably by setting up a website (the TI website) in June 2005 designed for that purpose, the information made available to independent repairers seemed to be still incomplete.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1. Regulation as last amended by Regulation (EC) No 411/2004 (OJ L 68, 6.3.2004, p. 1).

⁽²⁾ OJ L 203, 1.8.2002, p. 30.

- (5) That preliminary assessment found that the relevant markets affected by the practice at issue were the market for the provision of repair and maintenance services for passenger cars, and the market for the provision of technical information to repairers. The Fiat authorised networks had very high market shares on the first of these markets, while on the second, Fiat was the only supplier able to offer all of the technical information needed by repairers of its vehicles.
- (6) In essence, Fiat's service and parts distribution agreements require the members of its authorised networks to carry out a full range of brand-specific repair services, and act as spare parts wholesalers. The Commission is concerned that possible negative effects stemming from such agreements could be strengthened by Fiat's failure to provide independent repairers with appropriate access to technical information thereby foreclosing firms which would be willing and able to offer repair services through a different business model.
- (7) The Commission's preliminary conclusion was that Fiat's arrangements for providing its technical information to independent repairers did not correspond to the latter's needs either as regards the scope of the information available or as regards its accessibility, and that such a practice, in combination with similar practices by other car manufacturers, could have contributed to a decline in the market position of independent repairers. In turn, this could have caused considerable consumer harm in terms of a significant reduction in choice of spare parts, higher prices for repair services, a reduction in choice of repair outlets, potential safety issues, and a lack of access to innovative repair shops.
- (8) Moreover, Fiat's apparent failure to provide independent repairers with appropriate access to technical information might prevent the agreements with its after-sales service partners from benefiting from the exemption granted by Regulation (EC) No 1400/2002, since according to Article 4(2) of the Regulation, the exemption granted therein does not apply where the supplier of motor vehicles refuses to give independent operators access to any technical information, diagnostic and other equipment, tools, including any relevant software, or training required for the repair and maintenance of these motor vehicles. As clarified in recital 26 of the Regulation, the conditions of access must not discriminate between authorised and independent operators.
- (9) Finally, the Commission came to the preliminary view that in the context of lack of access to technical repair information, the agreements between Fiat and its authorised repairers were unlikely to benefit from the provision of Article 81(3).
- (10) On 22 January 2007, Fiat offered commitments to the Commission in order to meet the competition concerns addressed in the preliminary assessment.
- (11) According to those commitments, the principle determining the scope of the information to be provided is that of non-discrimination between independent and authorised repairers. In this light, Fiat will ensure that all technical information, tools, equipment, software and training required for the repair and maintenance of its vehicles which is provided to authorised repairers and/or independent importers in any EU Member State by or on behalf of Fiat is also made available to independent repairers.
- (12) The commitments specify that 'technical information' within the meaning of Article 4(2) of Regulation (EC) No 1400/2002 includes all information provided to authorised repairers for the repair or maintenance of Fiat, ALFA Romeo and Lancia motor vehicles. Particular examples include software, fault codes and other parameters, together with updates, which are required to work on electronic control units (ECUs) with a view to introducing or restoring settings recommended by Fiat, vehicle identification methods, parts catalogues, working solutions resulting from practical experience and relating to problems typically affecting a given model or batch, and recall notices as well as other notices identifying repairs that may be carried out without charge within the authorised repair network.
- (13) Access to tools includes access to electronic diagnostic and other repair tools, together with related software, including periodic updates thereof, and after-sales services for such tools.
- (14) The commitments shall bind Fiat and its connected undertakings but shall not be directly binding on independent importers of Fiat's vehicle brands. In those Member States in which Fiat distributes Fiat, ALFA Romeo and/or Lancia vehicles via independent importers, Fiat has therefore agreed to make its best efforts to contractually oblige these undertakings to supply Fiat with any technical information or language versions of technical information that they have provided to authorised repairers in the Member State concerned. Fiat has committed itself to place this technical information or language versions on its TI website without delay.

- (15) According to recital 26 of the Regulation, Fiat is not obliged to provide independent repairers with technical information that would enable a third party to bypass or disarm on-board anti-theft devices and/or recalibrate⁽¹⁾ electronic devices, or to tamper with devices which limit a vehicle's performance. As with any exception under EU law, recital 26 is to be interpreted narrowly. The commitments note that if Fiat were to invoke this exception as a reason for withholding any technical information from independent repairers, it has committed itself to ensure that the information withheld is limited to that necessary to provide the protection described in recital 26, and that the lack of the information in question does not prevent independent repairers from carrying out operations other than those listed in recital 26, including work on devices such as engine management ECUs, airbags, seatbelt pre-tensioners, or central locking elements.
- (16) Article 4(2) of Regulation (EC) No 1400/2002 provides that technical information must be made available in a way that is proportionate to independent repairers' needs. This implies both unbundling of information and pricing that takes account of the extent to which independent repairers use the information.
- (17) In line with this principle, the commitments specify that Fiat will include on the TI website all technical information relating to models launched after 1996, and will ensure that all updated technical information is on the TI website or on any successor site at all times. Moreover, Fiat will at all times ensure that the website may be easily located and provides an equivalent level of performance to the methods used for providing technical information to members of its authorised networks. When Fiat or another undertaking acting on Fiat's behalf makes a piece of technical information available to authorised repairers in a particular EU language, Fiat will ensure that this language version of the information is placed on the TI website without delay.
- (18) The following three categories of technical information are not yet on the TI website, but Fiat has committed itself to place them there by 31 December 2007:
- translations in local languages of technical information currently not in Fiat's possession, but to be provided by its independent importers in the EU Member States concerned,
 - notices identifying repairs that may be carried out without charge within the authorised repair network, and
 - identification of the mediation centres referred to in paragraph 21 below.
- (19) The commitments specify that Fiat's access fee structure for the site will be based on the cost of a yearly subscription to the full bundle of the CD-ROMs that it provides to its authorised repairers; namely EUR 3 356, plus EUR 65 for the parts catalogue and an additional monthly subscription fee of EUR 134 for updates. However, in order to respect the proportionality requirement laid down in the Regulation, Fiat agrees to provide for a *pro rata* breakdown into monthly, daily, and hourly time windows at a price for each brand of EUR 3 per hour, EUR 22 per day and EUR 350 per month. Fiat agrees to maintain this access fee structure, and not to increase fee levels above the average inflation rate within the EU during the whole currency of the commitments.
- (20) Fiat's commitments are without prejudice to any current or future requirement established by Community or national law which might extend the scope of the technical information that Fiat is to provide to independent operators and/or might set out more favourable ways for such information to be provided.
- (21) If an independent repairer or association of such repairers so requests, Fiat has committed itself to accept a mediation mechanism for settling disputes relating to the provision of technical information. The mediation will take place in the Member State where the requesting party's registered seat is located under the rules of a recognised local mediation centre. Mediation will not prejudice any right to file an application with the competent national court.
- (22) The Decision finds that, in view of the commitments, there are no longer grounds for action by the Commission. The commitments will be binding until 31 May 2010.
- (23) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 9 July 2007.

⁽¹⁾ i.e. to modify the original settings of an ECU in a way not recommended by Fiat.