

23 October 2015

## **CLEPA Position Paper**

### **China draft Automobile Sales' Methods**

CLEPA welcomes the initiatives of the Chinese government to introduce a regulatory framework for the Chinese Automobile Industry, aimed at protecting the interests of all stakeholders in the Chinese aftermarket supply-chain, which would safeguard a truly competitive level-playing field for all parties concerned, as well as preserving freedom of choice for the end-consumer, in the provision of repair and maintenance services.

Following in the spirit of the EU laws and guidelines, which sets out a competition regulatory framework for the EU automotive independent aftermarket business, CLEPA, the European Association of Automotive Suppliers supports the Chinese authorities in clarifying and defending the rights of the automotive components and parts suppliers under the Chinese Automobile Sales Methods' law, by upholding and preserving the following benchmarks:

- The possibility for all actors (the components and parts suppliers, the independent operators and workshops), to be able to obtain full and non-discriminatory access to all spare parts, Repair and Maintenance Information (processed in useable electronic formats), and the relevant diagnostics tools and training, at a fair and competitive fee.
- In-vehicle information must be accessible for all independent operators via the OBD port or wirelessly via an interoperable standardized and secure in-vehicle open telematics platform.
- The ability of authorized dealers to source genuine OE spare parts and spare parts of matching quality or services from the supplier of their choice to independent operators.
- The OE-components and parts suppliers should be free to sell spare parts and provide services directly to the independent aftermarket, without any restriction. This would include OE suppliers being able to utilise tools, know-how and IP, which either the OE supplier has created or, if received from the vehicle manufacturer, which the OE supplier would have been able to have created from its own resources. (especially, but not limited to by re-engineering). A car manufacturer should not be entitled to use against an OE supplier the tooling and / or IP rights acquired from the said OE supplier to, directly or indirectly, restrict the ability of this OE supplier from selling to the independent aftermarket.
- The components parts supplier should be able to apply its own Trade Mark or logo and its own Part Number to the parts supplied to the vehicle manufacturer.
- The vehicle manufacturer's warranty terms should not explicitly or implicitly reserve repair and / or maintenance work only to members of their authorised networks, but instead this should be extended to the independent repair networks.

CLEPA calls for a definition on automotive "equivalent quality spare parts", supplied by the component parts supplier, as distinct from "OE parts" and parts of inferior quality.

Furthermore, for the benefit of the environment, CLEPA takes the view that remanufactured automotive parts should be considered as quality parts, fulfilling a function which is at least equivalent compared to the original part, having been restored from an existing part (core), using standardized industrial processes in line with specific technical specifications and offering the same warranty as a new part. As such, they should not be subject to any trading restrictions.

*CLEPA defends the rights of automotive parts and components suppliers by clarifying that:*

- *the IP/ tooling, even if financed partially or through the piece price by the vehicle manufacturers (OEs), can be used by part suppliers to sell to the independent aftermarket (IAM).*
- *Where the OEs require title to the tooling/IP, such title shall not be abused by the OEs to prevent or restrict sales to the IAM.*
- *Where the OEs are entitled to compensation for the supplier's use of the tooling/IP for the IAM, such compensation should only be calculated in proportion to the manufacturing cost of the tooling/IP and not be determined as a percentage of the IAM price. The OEs should only be allowed to claim an adequate share of tooling/IP usage for IAM vs. total usage (for the OEs and IAM purposes), related to (as the adequate percentage of) the actual manufacturing costs of the tooling/development cost of the IP (as financed by the OEs). The current practice in Europe is that OE's are using tooling/IP ownership to request compensation for "lost" OES sales. In any case, the supplier's contribution/ compensation for the tooling/IP usage for IAM purposes should not be linked to actual sales figures by the suppliers to the IAM.*
- *Regarding the customization of the core product to the specific engine environment, e.g. interfaces, a clarification would be helpful, to prevent the OEs from abusing their contribution to customization, with the intent of hindering the supplier's access to the IAM. Ideally, the legislation should include explicit stipulations that any contribution the supplier would have to pay to the OEM for such usage of OEs financed customization be adequate or – ideally - free of charge.*

Whilst respecting the points highlighted above, CLEPA would fully support the draft Chinese Automobile Sales' Methods.

## **ANNEX**

### **Article 21 - ORIGINAL TEXT:**

“The auto supplier (including auto manufacturer, seller or importer) shall not restrict the parties to which auto parts manufacturers sell the products, unless:

- a). the auto suppliers independently own the IP rights, or
- b). jointly own the IP rights together with, share the R&D costs with, or
- c). provide the manufacturing know-how/technology and tooling to the auto parts manufacturers.

The auto suppliers should also not limit auto dealers or aftermarket service providers from re-selling the auto parts.”

### **CLEPA’s SUGGESTION:**

The auto supplier (including auto manufacturer, seller or importer) shall not restrict the parties to which auto parts manufacturers sell the products, (i.e. that “unless” shall not apply) where:

- a). the IP, know-how/technology or tooling have been created by the auto parts supplier , and, or
- b) the IP, know-how/technology or tooling was created by the auto supplier, where the auto parts supplier would have had the resources and/or the technical capacity, at his disposal, to create this himself, (especially but not limited to by re-engineering).

Where this is not the case, the only restriction which may be imposed on the auto parts supplier is a compensation to be paid by him to the auto supplier, which must not exceed the share of the auto supplier’s financial contribution to the auto parts supplier, for the creation of that IP, know-how/technology or tooling, in proportion to the share of the auto parts’ usage of that IP, know-how/technology or tooling, for parts sales to other customers, other than the auto supplier.

NB - The enforcement of the auto suppliers’ IP rights shall not violate the “Anti-Monopoly Law” or “Prohibition of the Abuse of IP Rights”, to restrict or exclude competition.

The auto suppliers should also not limit auto dealers or aftermarket service providers from re-selling the auto parts.

### **Article 23(1) – ORIGINAL TEXT:**

“The original spare parts hereof mean the qualified parts provided or certified by the auto suppliers, manufactured according to the assembly parts specification and production standard”.

### **CLEPA’s SUGGESTION:**

**Article 23(1) "Original spare parts"** hereof mean parts of OE quality, which include both "OEM parts" with an OEM’s Trade Mark and parts of OE suppliers without an OEM’s logo, bearing the OE supplier’s Trade Mark, being manufactured according to the OE assembly parts specification and production standard.

**Article 23(2) – ORIGINAL TEXT:**

“The non-original spare parts hereof mean the parts have not been certified by the auto suppliers, but the quality of which matches the original parts specification and standard”.

**CLEPA’s SUGGESTION:**

**Article 23(2) “Equivalent quality spare parts”** are not original parts but constitute quality parts if the part manufacturer certifies that the parts are equal to the quality of the components used for the assembly of the motor vehicle in question and have been manufactured according to at least the specifications and production standards of the OEM. They are defined as those parts or equipment which are proved to match the national quality standard and not to endanger the operation of the vehicle. This can be proved by both supplier's own test reports or the quality certificates issued by industry association or any recognized institution.

**CLEPA is the European Association of Automotive Suppliers.**

116 of the world's most prominent suppliers for car parts, systems and modules and 23 National trade associations and European sector associations are members of CLEPA, representing more than 3 thousand companies, employing more than 5 million people and covering all products and services within the automotive supply chain. Based in Brussels, Belgium, CLEPA is recognized as the natural discussion partner by the European Institutions, United Nations and fellow associations (ACEA, JAMA, MEMA, etc).

**Facts about the European automotive industry**

- Some **12 million** people are employed in the European automotive industry
- European automotive suppliers directly employ **5 million** people
- European automotive suppliers invest **€18bn** in RDI per year. They are the biggest private investor into research and innovation
- Per year, **18 million** vehicles are manufactured in Europe, contributing to the stability and growth of the European economy