



***competition*commission**
south africa

**BACKGROUND NOTE: GUIDANCE ON REPAIR, SERVICE,
AND MAINTENANCE MARKETS.**

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BACKGROUND NOTE TO THE COMMISSION'S GUIDANCE ON REPAIR, SERVICE, AND MAINTENANCE MARKETS.

1. Background and context

1. Electronic devices and appliances are a ubiquitous feature of modern life helping businesses and households to communicate, access information, and ease daily tasks. In South Africa, mobile phone ownership is nearly universal with 96.1% of households reporting that they own at least one mobile phone.¹ Household spending on technology and durables in the third quarter of 2024 was R 214 billion and South Africa's appliance or household durables market size is approximately R 69 billion.²
2. Consumer electronics purchases are set to continue growing, driven by demand for affordable high-quality devices, innovations in financing options to enhance affordability, and increased access to the internet driving demand for connected and smart devices in the home.³ For larger purchases, such as appliances and televisions, increases in disposable income drive consumers to purchase new products.⁴
3. This rising demand brings challenges for the industry and society. These include the effects of currency volatility on imported components or devices; high tariffs on imported raw materials; the risk of supply chain disruptions and growing electronic waste (e-waste), which is projected to reach 74.4 million tonnes globally per year by 2030.⁵ The Department of Forestry, Fisheries, and the Environment estimates

¹ Statistics South Africa (2023), "General Household Survey, 2023", Available online:

<https://www.statssa.gov.za/publications/P0318/P03182023.pdf>

² NielsenIQ (2024), "NIQ Retail Barometer: South Africans spend R214 billion on FMCG and durable goods in Q3 2024", Available online: <https://nielseniq.com/global/en/news-center/2024/niq-retail-barometer-south-africans-spend-r214-billion-on-fmcg-and-durable-goods-in-q3-2024/>; NIQ; Grand View Research (2024), "South Africa Household Appliances Market Report", Available online: (site's report summary) <https://www.grandviewresearch.com/industry-analysis/south-africa-household-appliances-market-report>

³ Birguid (2024), "South Africa Consumer Electronics Industry Analysis", Available online: https://birguid.co.za/wp-content/uploads/2024/08/Birguid_SA-consumer-electronics-industry-analysis_Executive-summary.pdf

⁴ Reuters (2025), "MTN South Africa aims to boost 4G adoption with budget smartphones", Available online: <https://www.reuters.com/business/media-telecom/mtn-south-africa-aims-boost-4g-adoption-with-budget-smartphones-2025-05-05/>

⁵ Moyo T, Sadan Z, Lötter A, Petersen J. Barriers to recycling e-waste within a changing legal environment in South Africa. *S Afr J Sci.*2022;118(Special issue: Waste as a Resource), Art. #12564. <https://doi.org/10.17159/sajs.2022/12564>; Birguid (2024), "South Africa Consumer Electronics Industry Analysis", Available online: https://birguid.co.za/wp-content/uploads/2024/08/Birguid_SA-consumer-electronics-industry-analysis_Executive-summary.pdf

that South Africa generates an estimated 300 000 tonnes of e-waste annually, which accounts for 5 – 8% of the country's municipal solid waste.⁶

4. Alongside these demand-side challenges that affect purchasing and disposal, there are also concerns about the supply-side behaviour of firms through the adoption of “planned obsolescence”.⁷ Advocates of this view of the strategies of manufacturers argue that products are intentionally designed to reduce their lifespans and compel consumers to purchase new replacement products.
5. The alleged strategies for planned obsolescence include designing products with weak points so that they break down after limited use; using software to reduce a product's performance over time; and designing products in a way that prevents repairs or upgrades.⁸ The evidence that planned obsolescence is a widespread and deliberate strategy is mixed. However, there have been regulatory findings and sanctions for behaviours that could be associated with the strategy in France, Italy, and Australia.⁹
6. Regardless of whether such a strategy exists, the trends of growing e-waste and the tendency to replace rather than repair are clear. Policymakers throughout the world have responded to the challenges posed by increased demand and consumption of electronics through policy instruments aimed at i) reducing the environmental impact of electronics consumption and disposal and ii) extending the lifespan of electronic goods to promote more sustainable consumption:

6.1. Extended Product Responsibility (ERP): EPR is a policy approach that uses economic instruments to set incentives for the collection and recovery of materials at the post-consumer stage of the product life cycle. EPR is characterised by shifting the responsibility for managing products at the end of

⁶ The Future of Sustainability (2023), “Surmounting mountains of E-waste”, Available online:

https://issuu.com/topcomedia/docs/esq_magazine_issuu/44?e=47&o=1

⁷ Australian Government Productivity Commission (2021), “Right to Repair: Productivity Commission Inquiry Report”, Available online: <https://www.pc.gov.au/inquiries-and-research/repair/report/>

⁸ Australian Government Productivity Commission (2021), “Right to Repair: Productivity Commission Inquiry Report”, Available online: <https://www.pc.gov.au/inquiries-and-research/repair/report/>

⁹ Kayali, L (2020), “Apple fined EUR25M in France for misleading consumers about slowed-down iPhones,” Available online: <https://www.politico.eu/article/apple-fined-e25m-in-france-for-misleading-consumers-about-slowed-down-iphones/>; BBC (2018), “Apple and Samsung fined by Italian authorities over slow phones”, Available online: <https://www.bbc.com/news/technology-45963943>

their life cycles to producers and away from municipalities and taxpayers.¹⁰ South Africa published S18 Regulations to the National Environmental Management: Waste Act on 5 November 2020. The regulations, which came into effect on 5 May 2021, made ERP mandatory for the Electrical and Electronic Equipment, Lighting, and Paper and Packaging Sectors. In March 2023, the legislation was extended to include portable batteries, lubricant oils, and pesticides.¹¹ The introduction of this legislation reflected similar developments in other regions such as the European Union, United Kingdom, Canada, Japan and some states of the United States.

6.2. Eco-Design Regulations: Eco-Design Regulations aim to improve the sustainability of products by improving their circularity¹², energy performance, recyclability and durability.¹³ Examples of jurisdictions with Eco-Design Regulations include the European Union and United Kingdom.

6.3. Right to Repair: Right to Repair is a regulatory approach that aims to remove access barriers to repairs that may prevent repairs and maintenance to extend product lifecycles when it is economically and technically feasible. These include legal obstacles and limitations on the availability of spare parts and information.

6.4. Right to Repair measures reflect the functioning of aftermarkets – markets for parts, repairs and services purchased *after* the initial purchase of a product from the Original Equipment Manufacturer (OEM). In these aftermarkets, consumers' ability to access parts and services may be determined to a large extent by the OEM itself. In some instances, OEMs may have an incentive to restrict consumers' ability to access these aftermarkets by preventing third parties from providing repair and maintenance services. These restrictions,

¹⁰ Organisation for Economic Co-operation and Development (2024), "Extended Producer Responsibility: Basic facts and key principles", Available online: https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/04/extended-producer-responsibility_4274765d/67587b0b-en.pdf

¹¹ eWASA (n.d.), "Extended Producer Responsibility (EPR) in South Africa", Available online: <https://ewasa.org/epr/>

¹² Circularity refers to design and production practices aimed at reducing waste by making it easier to recycle products or their components.

¹³ European Commission (n.d.), "Ecodesign & sustainable products regulation — EU law on product requirements and labelling", available online: https://ec.europa.eu/info/green-deal/industry/industrial-standards/ecodesign-sustainable-products-regulation_en

under certain circumstances, may lead to a lessening of competition, and consumer harm.

7. The Commission developed and released The Guidelines for Competition in South African Automotive markets in 2021 in response to allegations of anti-competitive conduct in automotive repair, service, and maintenance markets. The conduct implicated several actors in the value chain including OEMs, insurers, and authorised auto repair, service, and maintenance providers. The Commission has subsequently observed that similar concerns have emerged regarding electronic devices, appliances, digital equipment and other durable goods.
8. The purpose of this background note is to a) illustrate the need for provisions and guidance targeted at the right to repair, b) discuss the economic principles underpinning how the Commission (and regulators in generally) would assess conduct in repair markets and c) review international experience on aftermarkets and instances where conduct may raise competition concerns. The background note is prepared in support of the Commission's guidance on repair, service, and maintenance markets, a draft of which is to be published in the Government Gazette alongside this background note.

2. Economic framework for aftermarkets: repairs, service, and maintenance

9. Repair and maintenance services are aftermarkets – markets for goods and services purchased after the initial purchase of a product in the primary market.¹⁴ Aftermarkets are distinct in that participation, whether as an Independent Service Provider (ISP) or consumer, is determined by the OEM, which is active in the primary market. Depending on the commercial choices made by the OEM regarding its participation in the repair, service, and maintenance market, an OEM may have an incentive to restrict competition by preventing ISPs from providing repair and maintenance services to consumers.¹⁵
10. Robust competition in aftermarkets can benefit consumers in numerous ways:¹⁶

¹⁴ Lang, J.T. (2011), "Practical aspects of Aftermarket in European Competition Law". Competition Policy International, Volume 7(1)

¹⁵ United States FTC and DOJ (2018), FTC submission_Aftermarkets.pdf

¹⁶ Australian Government Productivity Commission (2021), "Right to Repair: Productivity Commission Inquiry Report", Available online: <https://www.pc.gov.au/inquiries-and-research/repair/report/>

- 10.1. Competition can ensure that consumers have access to affordable and high-quality repair and maintenance services for their goods.¹⁷
- 10.2. Competition could also contribute to extending product lifecycles and the development of markets for refurbished goods in support of sustainability principles.¹⁸
- 10.3. Lastly, competition in repair and maintenance markets may also promote innovations in products that enhance the quality, convenience and variety of repair services on offer to consumers.¹⁹
- 10.4. Conversely, where the functioning of aftermarkets is inhibited or restricted by the OEM, this can lead to poorer outcomes for consumers through high prices or limited choice for repairs, services, and maintenance.²⁰
11. Repair and service markets can be structured in different ways that influence the nature of competition within them.²¹ These configurations are based on the business models or strategic choices of OEMs as well as the technical characteristics of primary products:
 - 11.1. *A market for systems:* A system market is a market where the OEM good and the secondary market are defined as one single market. This will be the case where buyers account for the cost of secondary products and services when purchasing the primary product, a behaviour known as “whole life costing”.²² In systems markets, competition takes place in the primary market since consumers do not separate repairs from the primary purchase when making their purchasing decisions.

¹⁷ Australian Government Productivity Commission (2021), “Right to Repair: Productivity Commission Inquiry Report”, Available online: <https://www.pc.gov.au/inquiries-and-research/repair/report/>; Australian Competition & Consumer Commission (2021), “Agricultural Machinery Market Study 2021”, available online: <https://www.accc.gov.au/by-industry/agriculture/agricultural-machinery-market-study-2021>

¹⁸ European Union (2024), OJ_L_202401799_EN_TXT.pdf; European Commission (2023), CELEX_52023SC0059_EN_TXT.pdf.

¹⁹ Federal Trade Commission and United States Department of Justice (2018), “Competition Issues in Aftermarkets”, OECD Competition Committee Submission

²⁰ Federal Trade Commission (2021), “Nixing the Fix: An FTC Report to Congress on Repair Restrictions”, Available online: https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf

²¹ Lang, J.T. (2011), “Practical aspects of Aftermarket in European Competition Law”. Competition Policy International, Volume 7(1).

²² Lang, J.T. (2011), “Practical aspects of Aftermarket in European Competition Law”. Competition Policy International, Volume 7(1); Federal Trade Commission and United States Department of Justice (2018), “Competition Issues in Aftermarkets”, OECD Competition Committee Submission

11.2. *Multiple markets:* Multiple markets describe a situation where there are distinct markets for the primary and secondary products. Multiple markets arise where customers are restricted to using several secondary products that are compatible with the primary product or because of the high costs of switching to another primary product. Competition concerns are most common where there are multiple markets.²³

11.3. The distinction between systems and multiple markets is central to competition analysis in aftermarkets. In some circumstances, competition in the primary market may constrain behaviour in secondary markets because consumers take account of the lifetime costs of ownership when purchasing the primary product. In other cases, customers may be effectively "locked-in" after purchasing the primary product, allowing an OEM to exercise market power in aftermarket products or services notwithstanding competition in the primary market. This distinction has featured prominently in competition law and economic analysis of aftermarkets.

11.4. *Dual markets:* In dual markets, consumers can choose any combination of primary and secondary products since secondary products are compatible or perceived to be compatible with all primary products.²⁴

12. Linked to the nature of the market is the strategy employed by the OEM for providing aftermarket services. The strategy used by the OEM will carry implications for the nature and extent of competition in these markets.²⁵ For example:

12.1. OEMs may offer repairs and maintenance themselves or solely through a network of authorised affiliates.

12.2. OEMs may not participate at all in aftermarkets. In these cases, repairs and maintenance are provided by ISPs or by consumers themselves.

²³ Eastman Kodak Co. v Image Technical Services, 504 U.S. 451 (1992); Lang, J.T. (2011), "Practical aspects of Aftermarket in European Competition Law". Competition Policy International, Volume 7(1);

²⁴ Lang, J.T. (2011), "Practical aspects of Aftermarket in European Competition Law". Competition Policy International, Volume 7(1).

²⁵ Australian Government Productivity Commission (2021), "Right to Repair: Productivity Commission Inquiry Report", Available online: <https://www.pc.gov.au/inquiries-and-research/repair/report/>

12.3. Lastly, OEMs may participate in aftermarkets alongside independent suppliers of aftermarket goods and services.

13. The commercial decisions made by OEMs, as the suppliers of the primary product, may restrict the repair and maintenance options available to consumers. However, limited participation in repair and maintenance markets may not always mean harm to consumers.²⁶ A lack of an active aftermarket may also reflect a situation where there is a general lack of demand for maintenance or repairs such as a durable product that does not require regular repairs or maintenance or a product where replacement is cheaper than repairs.

Anti-competitive conduct in aftermarkets

14. Anti-competitive conduct in repair, service, and maintenance markets may arise where OEMs are active in the repair, service, and maintenance market (themselves or through authorised repairs) and face market conditions that confer them with market power. Market conditions that may be associated with the existence of market power in aftermarkets include:

14.1. *The ratio of “locked-in” consumers to new purchases:* There is a higher likelihood of anti-competitive behaviour in instances where the number of new customers is smaller relative to the number of existing customers. This is because new customers may be deterred by the knowledge (if it is available) of higher aftermarket prices and therefore choose competing and cheaper alternatives. On the contrary, existing customers may not be able to quickly switch in response to higher prices.²⁷

14.2. *The ability to price discriminate in favour of new purchasers:* In instances where firms can credibly identify and separate new customers from existing customers, suppliers may have an incentive to charge lower prices to new

²⁶ Federal Trade Commission and United States Department of Justice (2018), “Competition Issues in Aftermarkets”, OECD Competition Committee Submission; Lang, J.T, (2011), “Practical aspects of Aftermarket in European Competition Law”. Competition Policy International, Volume 7(1);

²⁷ Bishop, S & Walker, M (2010) “The Economics of EC Competition Law: Concepts, Application and Measurement”, para 6 – 022;

customers to encourage their entry into the market and higher prices to existing customers who are “locked-in”.²⁸

14.3. *The size of switching costs:* Switching costs may discourage customers from changing to more affordable aftermarket suppliers in cases where the cost of switching is higher than the benefits or savings that flow from making the switch. Switching costs will typically be higher for complex and durable goods that are difficult to replace.²⁹

14.4. *The quality of information available to customers:* Market power in aftermarkets could be strengthened by whether consumers made their primary market purchases in possession of information about the need and price of aftermarket products. Where this information is not available, the link between the primary and aftermarket is weakened, creating the conditions for market power in the aftermarkets. Linked to the quality of information is whether customers have a sophisticated understanding of the market.³⁰

14.5. *The number of markets where the selling firm is active:* Firms that behave opportunistically in the supply of secondary market products or services could develop a reputation for doing so. In these instances, anti-competitive behaviour could negatively affect sales of its other products as well as of the primary market product. The importance of reputation may affect a firm's incentive to engage in anti-competitive behaviour in the secondary market.³¹

14.6. *The strength of system competition:* There is often a link between the degree of competition in primary market and that in the secondary market. As consumers typically purchase a combination of the primary and secondary products, it will be the total cost of these that is important. It is, therefore,

²⁸ Bishop, S & Walker, M (2010) “The Economics of EC Competition Law: Concepts, Application and Measurement”, para 6 – 023.

²⁹ Bishop, S & Walker, M (2010) “The Economics of EC Competition Law: Concepts, Application and Measurement”, para 6 – 024.

³⁰ Bishop, S & Walker, M (2010) “The Economics of EC Competition Law: Concepts, Application and Measurement”, para 6 – 025.

³¹ Bishop, S & Walker, M (2010) “The Economics of EC Competition Law: Concepts, Application and Measurement”, para 6-026.

possible for manufactures to earn low margins in the primary market and higher margins in the secondary market.³²

15. Following from this are several categories of behaviours that can be undertaken in aftermarkets with the effect of impeding competition:

15.1. **Anti-competitive tying:** Tying is when the sale of one product (the tying product) by a firm is conditional on the customer also purchasing a second product (the tied product) from the same firm. OEM restrictions on aftermarket parts or services such as requiring customer to use only OEM (or OEM-authorized) parts and repairers may be perceived as an attempt to engage in anti-competitive tying.³³ This conduct may be explicitly stated by the manufacturer or implicitly through the OEMs refusing to sell products separately of a bundle of other, unrelated goods or by voiding warranties where the customer does not use the OEM in the aftermarket.³⁴

15.2. **Refusals to deal:** An OEM could also harm competition in the aftermarket by refusing to supply products to downstream competitors in the aftermarket. In practice, these refusals can take on various forms: refusing to disclose technical information required by competitors to effectively compete; price discrimination aimed at raising aftermarket rivals' costs; refusals to supply spare parts or unreasonable delays in doing so; or any other conduct aimed at raising rivals' costs.³⁵

15.3. **Intellectual property restrictions:** Repair and maintenance services may require divulging information and parts that are proprietary and protected by a patent or another intellectual property (IP) right creating potential risks for the OEM. While the protection of IP rights can provide an incentive for firms to

³²Bishop, S & Walker, M (2010) "The Economics of EC Competition Law: Concepts, Application and Measurement", para 6 – 027.

³³ Hilti AG v Commission (Case C-53/92 P, 1994).

³⁴ Organisation for Economic Co-operation and Development (2017), "Competition Issues in Aftermarkets", Available online: https://www.oecd.org/content/dam/oecd/en/publications/reports/2017/04/competition-issues-in-aftermarkets_a9413c03/82258734-en.pdf

³⁵ Organisation for Economic Co-operation and Development (2017), "Competition Issues in Aftermarkets", Available online: https://www.oecd.org/content/dam/oecd/en/publications/reports/2017/04/competition-issues-in-aftermarkets_a9413c03/82258734-en.pdf; European Commission, Hugin/Liptons Decision (1977); Hugin v Commission (Case 22/78, 1979); CEHR v Commission (Case T-712/14, 2017).

innovate, IP restraints that extend beyond protecting the rights of an IP holder, and ultimately prevent competition, may warrant scrutiny.³⁶

- 15.4. **Design and marketing choices:** Design-related restrictions may include software locks, digital authentication systems, embedded diagnostics, restrictions on interoperability, and other technological measures that increase the cost or complexity of repairs by ISPs. Such restrictions may have legitimate objectives, including safety, cybersecurity, or quality assurance, but may also have the effect of limiting competition where they unnecessarily restrict independent repair activities.

3. Interventions in repair, service, and maintenance markets

16. Internationally, approaches to interventions in repair, service, and maintenance markets fall into three categories:

- 16.1. **Competition law and policy** where the aim is to remove restrictions that impair competition and harm consumers through higher prices or limited choice. The potential problems discussed above are typically the subject of competition law interventions.

- 16.2. **Sustainability regulations** focused on Right to Repair as a complementary tool to other policies aimed at more environmentally sustainable production and consumption.

- 16.3. **Consumer protection** which is more narrowly focused on ensuring that warranty terms do not restrict consumer choices through being overly restrictive.

17. These approaches are not mutually exclusive and share many common elements regarding the repair, service, and maintenance obligations placed by OEMs on

³⁶ Organisation for Economic Co-operation and Development (2017), "Competition Issues in Aftermarkets", Available online: https://www.oecd.org/content/dam/oecd/en/publications/reports/2017/04/competition-issues-in-aftermarkets_a9413c03/82258734-en.pdf; Australian Government Productivity Commission (2021), "Right to Repair: Productivity Commission Inquiry Report", Available online: <https://www.pc.gov.au/inquiries-and-research/repair/report/>; Federal Trade Commission (2021), "Nixing the Fix: An FTC Report to Congress on Repair Restrictions", Available online: https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf

ISPs. Below we provide an overview of interventions in other markets related to the right to repair.

3.1 Competition Law and Policy

18. There have been several investigations into the state of competition in repair and maintenance markets by competition authorities and other policymakers.

3.1.1 Selected international case precedent on repair, service and maintenance markets.

19. The legal and economic approach to the analysis of repair, service and maintenance markets has been developed through several important decisions in the United States and the European Union. These cases form the foundation for how competition authorities, practitioners and courts assess market definition, market power and anti-competitive conduct in aftermarket. They also illustrate the circumstances under which restrictions on access to spare parts, technical information, repair services and complementary products may raise competition concerns.

20. *Hugin Kassaregister AB v Liptons (1977 and 1979)*

20.1. *Hugin / Liptons* concerned Hugin's refusal to supply spare parts for Hugin cash registers to Liptons, which was an independent repair, maintenance, service, reconditioning and rental provider of Hugin cash registers. Consequently, Liptons purchased spare parts from Hugin and had done so since the late 1950s developing a substantial business servicing and reconditioning Hugin machines.³⁷

20.2. Liptons was appointed as the main agent to sell Hugin cash registers in England, Scotland, and Wales with the right to service and repair cash registers in 1969. At this point, the commercial relationship was between the Hugin's importer and Lipton. In 1972, a newly created Hugin subsidiary entered the England, Scotland, and Wales market and following the expiry of the

³⁷ Hugin/Liptons, Commission Decision 78/68/EEC, OJ 1978 L 22/23, paras 7–17

original agency agreement in May 1972 supplies of Hugin parts ceased to Lipton ceased in October 1972.³⁸

20.3. The impugned conduct was Hugin's policy to supply Hugin spare parts within their own distribution and service network through:³⁹

20.3.1. Refusing to supply spare parts to Liptons for the servicing and repair of Hugin cash registers.

20.3.2. Refusing requests by Liptons to purchase spare parts from Hugin and its subsidiaries.

20.3.3. Preventing subsidiaries and distributors in other European Union member states from supply spare parts outside the Hugin distribution network.

20.3.4. Maintaining a policy that made spare parts available to Hugin companies and authorised dealers only for their own use and not for resale.

20.4. Hugin's justification for their conduct was that cash registers, being technically complex products, required specialist knowledge, training, manuals and service support. Unrestricted third-party repairs, Hugin argued, could be result in inferior work that risked damaging Hugin's reputation and goodwill. Hugin also argued that spare parts were an integrated component of its maintenance and service business and not a separate product.⁴⁰

20.5. In its assessment, the Commission treated Hugin spare parts as a distinct market arguing that Hugin spare parts were not substitutable with parts made by competing manufacturers. The Commission's reasoning did not account for lifecycle costs; consumers' ability calculate the lifecycle cost at the time of purchase; or Hugin's competitive position in the primary market. Rather, it was based on technical exclusivity and dependence. The Commission therefore concluded that at the moment of purchase, a consumer became

³⁸ Hugin/Liptons, Commission Decision 78/68/EEC, OJ 1978 L 22/23, paras 7–17

³⁹ Hugin/Liptons, Commission Decision 78/68/EEC, OJ 1978 L 22/23, paras 18–29, 42–46.

⁴⁰ Hugin/Liptons, Commission Decision 78/68/EEC, OJ 1978 L 22/23, paras 51–58.

dependent on Hugin for spare parts and repair and maintenance of their matching. This dependence granted Hugin market power through a dominant position in the market for Hugin spare parts and associated maintenance and repairs.⁴¹

20.6. The Commission found that Hugin's refusal to supply prevented independent firms from competing in the maintenance, repair and reconditioning of Hugin cash registers as spare parts were indispensable for doing so. Customers of Hugin cash registers found to have been deprived of their freedom to choose alternative service providers, forcing them to rely on Hugin and its authorised network for maintenance and repairs. Hugin's conduct was also found to have restricted competition in related markets for i) maintenance and repair services; ii) reconditioned Hugin cash registers; and iii) rental markets for Hugin cash registers.⁴²

20.7. The Court of Justice of the European Communities overturned the Commission's decision on the basis that Article 86 of the TFEU only applied to conduct capable of affecting trade between Member States. The Court however held most of the principles applied by the Commission in the original decision. A key divergence between the Court and Commission concerned whether and how end-users participated in the markets for services and parts. Whereas the Commission reasoned that purchasers of Hugin cash registers participated in the spare parts markets, the Court held that end-users purchased maintenance and repair services with technicians then being the customers for spare parts. However, the Court agreed that there was a separate market for Hugin spare parts.⁴³

20.8. In conclusion, the Court largely accepted the Commission's aftermarket economics and dominance analysis, however it overturned the decision because the Commission failed to establish the requirement under Article 86 that the conduct affected trade between Member States.

⁴¹ Hugin/Liptons, Commission Decision 78/68/EEC, OJ 1978 L 22/23, paras 31 – 41, 59 – 68.

⁴² Hugin/Liptons, Commission Decision 78/68/EEC, OJ 1978 L 22/23, paras 69–79.

⁴³ Hugin Kassaregister AB v. Commission, Case 22/78 [1979] ECR 1869, paras 15–23, 31–42.

21. Eastman Kodak co. v. Image Technical Services Inc., 504 U.S. 451 (1992)

21.1. Eastman Kodak concerned Kodak's efforts to restrict independent service organisations from offering repair services to customers and steering customers towards Kodak's service. The primary market was the market for photocopiers and micrographic equipment with the aftermarkets being the markets for parts and service. The impugned conduct was wide-ranging with evidence showing that Kodak:⁴⁴

21.1.1. Sold replacement parts only to customers who used Kodak's service or serviced their own equipment.

21.1.2. Restricted OEMs from selling compatible parts to Independent Service Organisations (ISOs).

21.1.3. Placed pressure on equipment owners and distributors not to supply parts to ISOs.

21.1.4. Restricted access to used machines and other alternative sources of spare parts.

21.2. Kodak argued that it was subject to systems competition as competition in the equipment market constrained parts and service prices since customers engaged in lifecycle costing when making their purchasing decisions. As such, Kodak argued that it was constrained by competition in the primary market, which prevent it from exercising market power in aftermarkets despite its high market share in the parts and services market. Accordingly, Kodak argued that it could not exercise market power in aftermarket as it would lose equipment sales.⁴⁵

21.3. The Supreme Court rejected Kodak's reasoning holding that a lack of market power in the primary market does not necessarily preclude market power in derivative aftermarkets and that in some circumstances, a single brand can constitute a relevant market.⁴⁶

⁴⁴ Eastman Kodak Co. v. Image Technical Services Inc., 504 U.S. 451 (1992), 458–463.

⁴⁵ Eastman Kodak Co. v. Image Technical Services Inc., 504 U.S. 451 (1992), 465–477.

⁴⁶ Eastman Kodak Co. v. Image Technical Services Inc., 504 U.S. 451 (1992), 481–486

21.4. In coming to this conclusion on the relevant markets, the Supreme Court had asked what were the commercial realities faced by Kodak equipment owners. Specifically, the Supreme Court asked whether these commercial realities warranted treating Kodak parts as a distinct market and Kodak service as a distinct market. The Court held that there was sufficient evidence to conclude that Kodak-specific aftermarkets could constitute relevant antitrust markets. Kodak parts were not interchangeable with other manufactures parts and Kodak equipment owners did not have substitutes once they have purchased Kodak machines.⁴⁷

21.5. In response to Kodak's assertion that it was subject to systems competition, the Supreme Court examined whether customers could accurately calculate lifecycle cost when purchasing Kodak's equipment. Lifecycle pricing in this instance was found to be difficult since consumers lacked crucial information on future repair costs; future parts prices; future service prices; breakdown rates; and downtime costs over the equipment's lifespan.⁴⁸

21.6. Furthermore, the evidence suggested that switching costs were also found to be prohibitively high. Kodak equipment involved large sunk investments and customers bought complimentary products that only worked with Kodak equipment. These realities showed that once purchased, Kodak customers were locked into Kodak services and sparts allowing Kodak to exploit its position in the aftermarket without a corresponding loss of equipment sales.⁴⁹

21.7. The Supreme Court ultimately held that Kodak failed to show that competition in primary market for equipment constrained equipment in the aftermarkets.⁵⁰

22. *Hilti AG v Commission (1994)*

⁴⁷ Eastman Kodak Co. v. Image Technical Services Inc., 504 U.S. 451 (1992), 481-482.

⁴⁸ Eastman Kodak Co. v. Image Technical Services Inc., 504 U.S. 451 (1992), 473-477

⁴⁹ Eastman Kodak Co. v. Image Technical Services Inc., 504 U.S. 451 (1992), 476-477

⁵⁰ Eastman Kodak Co. v. Image Technical Services Inc., 504 U.S. 451 (1992), 476-477

22.1. Hilti AG, a Liechtenstein-based manufacturer of power-actuated fastening (PAF) systems used in the construction industry. Hilti AG's product range included nail guns, cartridge strips, cartridges, and nails. A complete PAF system therefore consisted of the nail gun as well as compatible nails and cartridge strips used to fasten construction materials. Several independent manufactures produced and distributed nails that were compatible with Hilti's nail guns and since the 1960s other independent manufacturers manufactured nails designed specifically for use in Hilti nails gun. Some specialised in the exclusive production of these nails. In its investigation, the European Commission found that Hilti had engaged in a range of practices intended to hinder the entry and expansion of independent producers who were capable of producing nails compatible with Hilti nails.⁵¹

22.2. Hilti's conduct included:⁵²

22.2.1. Tying nails and cartridges to Hilti nail guns by representing that only Hilti consumables should be used with Hilti tools, thereby treating the PAF system as closed.

22.2.2. Levering its posting in cartridge strips by refusing to sell cartridge strips to customers who purchased nails from independent manufacturers.

22.2.3. Pressuring distributors and customers not to deal with competing nail manufacturers.

22.2.4. Using intellectual property and regulatory complaints to discourage independent producers from manufacturing or marketing nails that were compatible with Hilti nail guns.

22.2.5. Seeking to ensure that users of Hilti nail guns would purchase Hilti nails rather than compatible alternatives offered by independent rivals.

22.3. In its justification of the impugned conduct, Hiltu argued that the relevant market was a systems market as Hilti's nail guns, nails, and cartridge strips formed an indivisible fastening system. These products therefore could not be

⁵¹ Hilti AG v Commission, Case C-53/92 P [1994] ECR I-667, paras 7–16, 67–73

⁵² Hilti AG v Commission, Case C-53/92 P [1994] ECR I-667, paras 11–16, 74–90.

viewed as separate products. Consequently, Hilti argued that it was constrained in the broader market for construction fastening systems, which included alternative fastening methods including drilling and screwing systems. Based on its description of the market, Hilti submitted that it was constrained from exercising market power.⁵³

22.4. The Commission and the Court, on subsequent appeal, rejected Hilti's argument that the market was a broad market including all fastening systems. Rather, separate product markets existed for i) nail guns; ii) cartridge strips and cartridges; and iii) nails. In reaching this conclusion, the Court had regard to several facts on the commercial realities in these markets:⁵⁴

22.4.1. Cartridge strips and nails were specifically manufactured and purchased for use with a single brand of nail gun.

22.4.2. Independent producers had a long history of manufacturing nails specifically designed for Hilti tools, which was indicator of a separate market for compatible nails.

22.4.3. European Community competition law permitted independent manufacturers to produce compatible products provided that doing so did not infringe on intellectual property rights.

22.4.4. PAF systems had unique technical characteristics, making them the preferred fastening solution in many construction applications. Users regarding alternatives as impractical substitutes with market share analysis confirmed the limited substitutability between systems.

23. Confédération européenne des associations d'horlogers-réparateurs (CEAHR) v Commission (2017)

23.1. This case concerned several Swiss luxury watch manufacturers that progressively stopped supplying spare parts to independent watch repairers. The complaint was brought by an industry association representing independent watch repairers, the Confédération européenne des associations d'horlogers-

⁵³ Hilti AG v Commission, Case C-53/92 P [1994] ECR I-667, paras 32–39.

⁵⁴ Hilti AG v Commission, Case C-53/92 P [1994] ECR I-667, paras 41–56.

réparateurs (CEAHR). The independent repairs alleged that manufacturers were using “selective repair systems” and restrictions on access to spare parts to foreclose competition in the repair and maintenance of prestige watches.⁵⁵

23.2. The alleged conduct included:⁵⁶

23.2.1. Progressively refusing to supply spare parts to independent watch repairers and limiting access to spare parts to authorised repairers within their repair networks.

23.2.2. Establishing exclusive repair systems where repairers could only obtain authorisation if they met specific requirements related to training, experience, equipment, tools, stockholding and premises.

23.2.3. Restricting authorised repairers from reselling spare parts to unauthorised independent repairers.

23.2.4. Creating authorised repair networks and in-house repair centres with access to brand-specific spare parts, technical information, and specialised tools required to service luxury watches.

23.3. In justification of their conduct, the manufacturers argued that as sophisticated products, prestige watches required specific expertise to ensure high-quality repairs and the proper functioning of the watches. Repairers, therefore, needed to possess the necessary training, experience, tools, equipment and technical knowledge to offer repairs. Manufacturers further contended that prestige watches were becoming more complex and technically sophisticated, which justified limited access to spare parts only to those repairers who met stringent technical and professional standards. Other justifications for limiting repairs to authorised dealers included the need to

⁵⁵ *Confédération européenne des associations d'horlogers-réparateurs (CEAHR) v Commission*, Case T-712/14 [2017] ECLI:EU:T:2017:748, paras 1–17, 27–35.

⁵⁶ *Confédération européenne des associations d'horlogers-réparateurs (CEAHR) v Commission*, Case T-712/14 [2017] ECLI:EU:T:2017:748, paras 12–15, 17–18, 21–23.

maintain uniform and high repair standards, preventing counterfeiting and preserving the quality, reliability, brand image and exclusivity of the watches.⁵⁷

23.4. The Commission's assessment found that the market for prestige watches constituted the primary market with the markets for repair services and spare parts being the secondary market or aftermarkets. The complainants argued that manufacturers held market power in the repair services and spare parts markets because they were controlled by each manufacturer. The General Court accepted that separate aftermarkets could exist for repair services and spare parts associated with particular watch brands.⁵⁸

23.4.1. There was limited substitutability between the repair services for different watch brands. Therefore, repair services could be considered brand-specific markets.

23.4.2. Spare parts were generally brand-specific and therefore not interchangeable across manufacturers.

23.4.3. In cases where viable substitutes existed, consumers preferred original branded parts to preserve the value of the watches.

23.5. Despite finding that separate markets existing and that dominance could not be ruled out, the Commission and Court found that the conduct did not contravene Articles 101 or 102 for the following reasons:⁵⁹

23.5.1. The repair systems established by manufacturers were not closed from competition since manufacturers did not reserve repairs exclusively to themselves. Rather, independent repairers could become authorised repairs provided they met objective criteria relating to: i) training; ii) experience; iii) equipment; iv) tools; v) stock of these spare parts; and vi) premises.

⁵⁷ *Confédération européenne des associations d'horlogers-réparateurs (CEAHR) v Commission*, Case T-712/14 [2017] ECLI:EU:T:2017:748, paras 18, 21, 60–70.

⁵⁸ *Confédération européenne des associations d'horlogers-réparateurs (CEAHR) v Commission*, Case T-712/14 [2017] ECLI:EU:T:2017:748, paras 13–16, 121–125.

⁵⁹ *Confédération européenne des associations d'horlogers-réparateurs (CEAHR) v Commission*, Case T-712/14 [2017] ECLI:EU:T:2017:748, paras 17, 21–24, 94–98, 106–111.

23.5.2. Competition in the repair markets still existed on several dimensions, specifically between authorised repairers and between authorised repairers and manufacture in-house repairs.

23.5.3. Independent repairers were allowed to join authorised networks, provided they met the criteria and there was evidence that many had done so. Further, authorised repairers could also often repair multiple brands and were not prohibited from doing so.

23.6. The Commission and Court found that the manufacturer's objective justifications were plausible and held that preserving product and ensuring proper use are recognised justifications for qualitative systems. The Court also accepted counterfeiting and technical complexity as legitimate justification.⁶⁰

23.7. It is important to note that the Court distinguished these factors from mere prestige by referring to an earlier decision in *Pierre Fabre Dermo-Comsetique*, which held that preserving image is not, by itself, a legitimate objective capable of justifying restrictions of competition.⁶¹

23.8. Regarding the Article 101 infringement of cartel conduct by the manufacturers, the Commission rejected this theory as the evidence showed that manufacturers acted independently, adopted different policies, and did not act simultaneously.⁶²

24. These decisions collectively demonstrate that competition concerns in repair, service, and maintenance markets are most likely to arise where consumers are locked in and where OEMs have the ability to restrict access to spare parts, technical information, repairs services or complementary products or services. Further, the decisions highlight that an assessment of anti-competitive conduct in these markets requires careful consideration of the commercial realities such as

⁶⁰ *Confédération européenne des associations d'horlogers-réparateurs (CEAHR) v Commission*, Case T-712/14 [2017] ECLI:EU:T:2017:748, paras 60–70, 73–81

⁶¹ *Confédération européenne des associations d'horlogers-réparateurs (CEAHR) v Commission*, Case T-712/14 [2017] ECLI:EU:T:2017:748, paras 65–67.

⁶² *Confédération européenne des associations d'horlogers-réparateurs (CEAHR) v Commission*, Case T-712/14 [2017] ECLI:EU:T:2017:748, paras 19, 126–132.

switching costs, interoperability, information asymmetries and potential efficiency justifications.

3.1.1 Regulations and guidelines on vertical restraints

25. The contemporary approach to aftermarket restrictions in both the European Union and the United Kingdom reflects principles developed through competition-law enforcement and case law. These principles have subsequently been codified in block exemption regulations and associated guidance governing vertical agreements, repair markets and spare-parts distribution.

European Commission

26. In the European Union, access to spare parts by end users, independent repairs, wholesalers and service providers is covered by the European Commission's Regulations and Guidelines on Vertical Agreements. The European Commission accepts that vertical arrangements such as exclusive distribution, selective distribution and authorised dealer networks may have positive effects such as improving distribution, quality control, incentivising investment and customer services. As such, qualifying vertical agreements may benefit from a block exemption under the Vertical Block Exemption Regulation (VBER).⁶³

27. The VBER creates a safe harbour for vertical agreements where both the upstream and downstream firms hold market shares of 30% or less and the agreement does not contain hardcore restrictions – serious restrictions of competition.⁶⁴ If an agreement contains a hardcore restraint, it falls outside of the VBER safe harbour and must be assessed individually under Article 101 TFEU. Hardcore restraints include:

27.1. Resale price maintenance.⁶⁵

27.2. Restrictions on passive sales to customers outside designated territories.⁶⁶

⁶³ European Commission (2022), *Guidelines on Vertical Restraints*, para 12 – 17;

⁶⁴ European Commission (2022), Vertical Block Exemption Regulations, Article 3.

⁶⁵ European Commission (2022), Vertical Block Exemption Regulations, Article 4(a)

⁶⁶ European Commission (2022), Vertical Block Exemption Regulations, Article 4(b) – (d).

27.3. Restrictions that prevent effective use of the internet for sales.⁶⁷

27.4. Restrictions on cross-suppliers in selective distribution systems.⁶⁸

27.5. Restrictions on access to spare parts by end users, independent repairers, wholesalers, or service providers.⁶⁹

28. The European Commission does not consider authorised repair networks as inherently problematic and distinguishes between controlling the quality of repairs through authorised networks and excluding independent repairs from competing. Therefore, restrictions that prevent end users, independent repairers, wholesalers or service providers from obtaining spare parts are treated as a hardcore restriction that falls outside of the VBER.

29. The Guidelines further acknowledge that restrictions may arise indirectly through restricting the supply of technical information, diagnostic information, specialised equipment or other inputs that are necessary for repairers to use their spare parts effectively.

30. In addition to the general VBER framework, the European Commission has adopted a sector-specific regime for motor vehicles. The Motor Vehicle Block Exemption Regulation (MVBER) and supplementary guidelines reflect the Commission's view that repair, maintenance and spare-parts aftermarkets in the motor vehicle sector are particularly vulnerable to foreclosure. The additional provisions under the MVBER include:

30.1. Stronger protection for access to spare parts: The MVBER places particular emphasis on preserving competition in motor vehicle spare-parts and repair aftermarkets and protecting the ability of independent operators to compete with authorised networks.⁷⁰

⁶⁷ European Commission (2022), Vertical Block Exemption Regulations, Article 4(e)

⁶⁸ European Commission (2022), Vertical Block Exemption Regulations, Article 4(e)

⁶⁹ European Commission (2022), Vertical Block Exemption Regulations, Article 4(f)

⁷⁰ European Commission (2022), Motor Vehicle Supplementary Guidelines, para 59 – 61.

- 30.2. Technical information: The supplementary guidelines recognise that access to technical information, diagnostic tools, software, training and repair data may be necessary for independent repairers to compete effectively.⁷¹
- 30.3. Competition constraints: The MVBBER recognise that competition in the primary market for vehicle sales may not constrain conduct in repair and maintenance markets.⁷²
31. Under the European Commission's approach to hardcore restraints, parties found to be restricting access to spare parts may demonstrate that the agreement qualifies for an individual exemption under Article 101(3) TFEU. Doing so requires that they meet all of the following cumulative requirements:
- 31.1. The agreement generates efficiencies.
- 31.2. Consumers receive benefits that outweigh the harms of the restriction.
- 31.3. The restriction is indispensable.
- 31.4. Competition is not eliminated by the restriction.
32. If the parties are unable to satisfy the requirements for an individual exemption under Article 101(3), the agreement remains prohibited under Article 101(1). The restrictive provisions may be deemed unenforceable and may expose the parties to enforcement action, including the imposition of administrative fines.

United Kingdom

33. In the United Kingdom, agreements that prevent or restrict end users, independent repairers, wholesalers and service providers from obtaining spare parts directly from the manufacturers of those spare parts are also a hardcore restriction.⁷³ The Competition and Market Authority (CMA) Vertical Agreements Block Exemption Order (VABEO) 2022 exempts qualifying vertical agreements from the Chapter 1 prohibition in the Competition Act 1998. This prohibition prohibits agreements and concerted practices "*which have as their object or effect the prevention, restriction*

⁷¹ European Commission (2022), Motor Vehicle Supplementary Guidelines, para 62 – 68.

⁷² European Commission (2022), Motor Vehicle Supplementary Guidelines, para 10 – 17.

⁷³ Competition and Markets Authority (2022), Vertical Agreements Block Exemption Order, Section 8.

or distortion of competition within the UK and which may affect trade within the UK".⁷⁴

34. The VABEO established a safe harbour for vertical agreements where the supplier and buyer each hold market shares of 30% or less and where the agreement does not contain hardcore restrictions.⁷⁵ The hardcore restrictions prohibited by VABEO are the same as those prohibited by the VBER.⁷⁶ The guidance also recognises that restrictions on repair market competition may arise through indirect means, such as limiting access to technical information, diagnostic information, specialised equipment or other inputs required by independent.
35. The CMA similarly does not regard authorised repair networks as inherently problematic and distinguished between arrangements that are required for maintaining quality standards and those that foreclose independent operators. The presence of a hardcore restriction, such as restrictions on repairs, does not automatically render an agreement unlawful. Rather, the agreement no longer enjoys the VABEO safe harbour and requires an individual assessment.
36. The parties may demonstrate that the agreement generates sufficient efficiencies and benefits to justify the restriction. The parties must generally demonstrate that:
- 36.1. The agreement contributes economic benefits.⁷⁷
 - 36.2. Consumers receive a fair share of the resulting benefits.⁷⁸
 - 36.3. The restriction is indispensable to achieving those benefits.⁷⁹
 - 36.4. The statement does not eliminate competition in respect of a substantial part of the products concerned.⁸⁰
37. Where these requirements cannot be satisfied, the agreement remains prohibited under the Chapter I prohibition of the Competition Act 1998. The restrictive

⁷⁴ Competition and Markets Authority (2022), Vertical Agreements Block Exemption Order, para 1.1 – 1.10

⁷⁵ Competition and Markets Authority (2022), Vertical Agreements Block Exemption Order, para 3.1 – 3.15

⁷⁶ Competition and Markets Authority (2022), Vertical Agreements Block Exemption Order, para 8.2

⁷⁷ Competition and Markets Authority (2022), Vertical Agreements Block Exemption Order, para 10.30(a)

⁷⁸ Competition and Markets Authority (2022), Vertical Agreements Block Exemption Order, para 10.30(b)

⁷⁹ Competition and Markets Authority (2022), Vertical Agreements Block Exemption Order, para 10.30(c)

⁸⁰ Competition and Markets Authority (2022), Vertical Agreements Block Exemption Order, para 10.30(d)

provisions may be unenforceable and may expose the parties to CMA enforcement action, including financial penalties.

3.1.2 Regulatory interventions

38. In addition to individual enforcement cases, regulatory authorities have undertaken market inquiries and regulatory interventions to assess and improve the functioning of repair, service and maintenance markets. Unlike competition cases, which examine the conduct of firms, these inquiries examined broader market features and sought to identify structural barriers to effective competition and opportunities for policy reform.

Australia

39. *Productivity Commission of Australia:* The Australian Productivity Commission undertook an inquiry into the Right to Repair in Australia. The scope of the inquiry was to examine the costs and benefits of strengthening the right to repair in Australia. The scope further included an assessment of the legal, regulatory, and non-regulatory frameworks and their impact on consumers ability to repair faulty products.

39.1. To assess whether competition in Australian repair markets was being restricted to the detriment of consumers, the inquiry's framework considered the level of competition in repair markets. This assessment included whether measures such as concentration, barriers to entry, and profit margins indicated a lack of competition and whether there were specific instances of manufacturers restricting competition through limits on third party access to repair supplies or relevant information.

39.2. The assessment of whether repair restrictions harmed consumers focused on i) the extent to which consumers are locked-in to the repair markets making switching to an alternative manufacturer costly or difficult; ii) the extent to which consumers can estimate repair costs and factor them into purchasing decisions in the primary market; iii) the size of the repair market relative to the primary market since a larger repair market would strengthen the manufacturer's incentive to limit competition; iv) whether manufacturers have

financial ties to the repair market since these ties could provide financial benefits to restricted competition; v) whether primary market competition leads to lower prices that compensate consumers for restricted competition in the repair market; vi) any adverse non-price outcomes for consumers; and vii) whether the risks from third party repairs are limited.

39.3. The Inquiry concluded that *“there is no evidence of a systemic competition problem across all product repair markets.”*⁸¹ However, the inquiry identified several markets where manufacturer restrictions may restrict competition and cause consumer harm as a result.

39.3.1. *Agricultural machinery:* The inquiry found that manufacturers and dealer restrictions on repairs were harming owners through higher prices for repairs, reduced access and choice, and financial risk stemming from repair delays.

39.3.2. *Mobile phones and tablets:* While the inquiry found evidence of harm in this market, it concluded that it was insufficient to justify policy or regulatory intervention. The inquiry recommended that the Australian Competition and Consumer Commission (ACCC) undertake a market study.

39.3.3. *Medical devices:* The inquiry concluded that regulations aimed at reducing safety risks may themselves encourage repair restrictions. These regulations may generate harms through delays and higher repair costs. The inquiry recommended that the government conduct a review of device regulations to assess the balance between repair access and safety.

39.3.4. *Prestige watches:* The inquiry noted that while repair barriers from overseas manufacturers (e.g. restrictions on spare parts, refusals to provide repair equipment and components, and restrictions on supplying information) are unlikely to lead to substantial consumer harms, these

⁸¹ Australian Government Productivity Commission (2021), “Right to Repair: Productivity Commission Inquiry Report”, Available online: <https://www.pc.gov.au/inquiries-and-research/repair/report/>

practices may have a damaging effect on the viability of small independent watch repair businesses.

40. *ACCC Farm Machinery Inquiry*: The ACCC's inquiry examined competition and fair-trading issues in the markets for the direct sale of agricultural machinery and for after-sales services such as repairs.⁸² The inquiry investigated whether manufacturer-imposed warranty limitations and technological restrictions could impede competition in the aftersales market. Furthermore, the control over and use of the data generated from machinery and other sources on farms was highlighted as an emerging issue. Lastly, the inquiry also probed the existence of franchise agreements that include geographical restrictions on competition through assigning an area of responsibility or prime marketing area to agricultural machinery dealerships.⁸³

40.1. The inquiry found that general consumer guarantees did not apply to machinery purchases since these were not ordinarily used for personal, domestic or household purposes. It also found that many warranties have significant limitations that are not fully understood by customers and that reportedly failed to consider the cost and complexity of operating and maintaining machinery. Regarding access to tools, technical information and parts, the inquiry found that farmers and independent repairs had limited access or no access to the diagnostic software tools required to carry out repairs. Lastly, concerns were raised regarding the interoperability between brands or between older and newer machinery as well as a lack of clarity on how consumer data is used.⁸⁴

40.2. To remedy the adverse findings on the state of competition in the aftersales market, the inquiry made several recommendations:⁸⁵

40.2.1. The inclusion of agricultural machinery in the existing motor vehicle service and repair information sharing scheme, which mandates

⁸² Australian Competition & Consumer Commission (2021), "Agricultural Machinery Market Study 2021", Available online: <https://www.accc.gov.au/by-industry/agriculture/agricultural-machinery-market-study-2021>

⁸³ Australian Competition & Consumer Commission (2021), "Agricultural Machinery Market Study 2021", available online: <https://www.accc.gov.au/by-industry/agriculture/agricultural-machinery-market-study-2021>

⁸⁴ Australian Competition & Consumer Commission (2021), "Agricultural Machinery Market Study 2021", available online: <https://www.accc.gov.au/by-industry/agriculture/agricultural-machinery-market-study-2021>

⁸⁵ Australian Competition & Consumer Commission (2021), "Agricultural Machinery Market Study 2021", available online: <https://www.accc.gov.au/by-industry/agriculture/agricultural-machinery-market-study-2021>

access to diagnostic, repair, and service information on fair and reasonable commercial terms and in real time to promote competition among vehicle repairers. At the time of the inquiry, only passenger and light goods vehicles were covered by the scheme.

40.2.2. The inclusion of agricultural machinery in any broader right to repair scheme that Australia may adopt in the future.

40.2.3. Manufacturers and dealers provide clear and concise information to purchasers about warranties at the earliest opportunity in the sales process and before the point of sale.

40.2.4. Manufacturers and dealers provide information on how the data generated by farm machinery could be used and aggregated by manufacturers at the earliest opportunity in the sales process and before the point of sale.

40.2.5. Manufacturers continue to adopt ISO data standards to promote interoperability across brands.

40.2.6. Developing guidance materials to assist purchasers of agricultural machinery to understand their business and consumer rights.

South Africa

41. *Competition Commission of South Africa Automotive Aftermarket Guidance:* The Guidelines for Competition in the South African Automotives Aftermarkets have been in effect since July 2021. These guidelines emerged in response to several allegations of anti-competitive conduct in the automotives aftermarket value chain. The alleged conduct included exclusionary agreements or arrangements between OEMs and approved motor-body repairers; the exclusion of ISPs from the markets for service and maintenance and Mechanical Repairs for In-Warranty Motor Vehicles; unfair work allocation by insurers; restrictions on the sale of original spare parts to ISPs; high entry barriers for small and medium enterprises (SMEs) and historically disadvantaged individuals (HDIs); and lack of competition and consumer choice in the sale and fitment of spare parts. The objectives of the

guideline are to correct for these adverse market features and enhance participation by SMEs and HDIs in the automotive aftermarkets value chain.

41.1. The guidelines serve to enable ISPs to provide in-warranty service, maintenance and repair work if consumers choose to make use of their services. Consumers are also permitted to choose between original and non-original spare parts for the duration of the in-warranty period. In the case of damage from using non-OEM parts, OEMs may not unilaterally void a warranty but should assess the damage and liability at their own cost. The guidelines further include measures to ensure that ISPs have access to spare parts and to the information and technical training required to serve consumers. However, this access may be made subject to training from the OEMs at a reasonable cost.

41.2. Other measures covered by the guidelines include measures to improve transparency in the appointment of repair service providers by insurance companies; unbundling the price of value-added service and maintenance plans from vehicle prices to allow consumers to exercise greater choice; restrictions on ISPs on-selling OEM parts to third-parties; measures to establish fair and transparent processes for selecting approved dealers by OEMs; and a prohibition on anti-competitive information sharing between market participants.

3.2 Sustainability measures

42. Other jurisdictions have pursued regulatory interventions aimed at promoting durability, repairability and sustainable consumption. These measures are motivated by environmental objectives but address some the same issues as those identified in competition cases and inquiries namely, access to parts, repair information, software, and ISPs.

43. The European Union (EU) and United Kingdom's (UK) respective repair directives are part of each jurisdictions' Eco-Design Regulations.⁸⁶ ⁸⁷ The Eco-Design

⁸⁶ Directive 2024/1799 of the European Parliament and the Council of 13 June on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394 and Directive (EU) 2019/7771 and 2020/1828.

⁸⁷ United Kingdom (2021), "The Ecodesign for Sustainable Products Regulations 2021 (UK SI 2021/745) — contents", Available online: <https://www.legislation.gov.uk/ukSI/2021/745/contents/made>

Regulations include interventions that outline requirements for more sustainable product design and requirements for consumers to have more information concerning a good's durability and repairability at the point of sale. In both jurisdictions, these regulations apply to a specific set of goods.⁸⁸ As such, the enforcement of a specific right to repair is therefore limited to those goods. Lastly, both regulations address only products that are out of warranty or beyond the seller's legal guarantee period.⁸⁹

European Union

44. European Union Repair Directive: The EU Repair Directive requires manufacturers to provide spare parts, repair and maintenance information as well as any related software tools, firmware, or auxiliary items. Manufacturers are prohibited from using techniques or contractual clauses that impede the repair of goods covered by repairability requirements. Furthermore, information on the obligation to repair and related services must be made available to the market for the entire duration of the repair obligation. Lastly, repair prices must not be so high as to disincentivise consumers from exercising their right to have their goods repaired.

44.1. To facilitate competition in the repair market, the Directive includes a voluntary repair information form that ISPs may choose to provide customers. This form captures the defect details, repair price, and repair duration and is valid for 30 days. This 30-day period allows customers to shop around for more affordable repair options.

44.2. To further encourage repairs, the European Commission (EC) maintains a list of repairs providers and refurbished goods retailers in member states. Members states are required to take at least one measure to promote repairs. Lastly, sellers may loan consumers equivalent goods for the duration of the

⁸⁸ European Union: Household washing machines, household washer-dryers, household dishwashers, refrigerators, electronic displays (including televisions), welding equipment, vacuum cleaners, servers and data storage products, mobile phones, cordless phone and slate tablets, household tumble dryers, goods incorporating lights means of transport batteries.

United Kingdom: Household washing machines, household washer dryers, refrigerators, electronic displays, welding equipment, electric motors.

⁸⁹ United Kingdom (2021), "The Ecodesign for Sustainable Products Regulations 2021 (UK SI 2021/745) — contents", Available online: <https://www.legislation.gov.uk/ukSI/2021/745/contents/made>; Directive 2024/1799 of the European Parliament and the Council of 13 June on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394 and Directive (EU) 2019/7771 and 2020/1828.

repairs. The directive includes a 12-month guarantee extension from the date when it came into effect.

United Kingdom

45. UK Eco-design for Energy-Related Products and Energy Information Regulations:

These regulations include provisions aimed at extending the life of certain products by making manufacturers, authorised representatives, and importers legally obliged to make spare parts available for the products for a period of between 7 to 10 years after the last unit of the model has been placed on the market. The exact duration of the obligation depends on the product in question.

45.1. Under the regulations spare parts must be replaceable using commonly available tools and without causing permanent damage to the equipment or the components thereof. Manufacturers must make repair and maintenance information available to professional repairers and publish the process for becoming a professional repairer on the manufacturer's website. Professional repairers must: (i) demonstrate technical expertise for repairs, and (ii) insurance for liability arising from their activities. Professional repairers must be provided with the required maintenance information within one working day of having made the request.⁹⁰

3.3 General consumer protection

46. The United States' recent approach to the Right to Repair is focused on protecting the rights of consumers under the Magnuson-Moss Warranty Act (MMWA) at the federal level. At the same time, several states have passed right to repair laws intended to protect consumers' right to choose where they repair their products. Unlike the MMWA, the state laws often cover a subset of goods, which differs according to state.

United States of America

47. *United States report to Congress:* At the direction of the United States Congress, the Federal Trade Commission (FTC) gathered evidence on the types of repair

⁹⁰ United Kingdom (2021), "The Ecodesign for Sustainable Products Regulations 2021 (UK SI 2021/745) — contents", Available online: <https://www.legislation.gov.uk/ukSI/2021/745/contents/made>

restrictions that consumers and repairers had encountered.⁹¹ The FTC also solicited responses and justifications for these restrictions from manufacturers. This process was motivated by a concern about the manufacturers' potential to limit repairs by consumers and repair shops and how those limitations could raise costs, limit choice and impact consumers' rights under the MMWA. The MMWA prohibits *"warrantors or consumer products from conditioning warranties on a consumer using any article or service which is identified by brand name unless the article or service is provided for free or the warrantor obtains a waiver from the Commission."*⁹²

47.1. Based on the evidence gathered, the FTC found that repair restrictions diluted the effectiveness of the above provision of the MMWA and *"steered consumers into manufacturers repair networks or to replace products before the end of their useful lives"*.⁹³ These issues included access to information, manuals, spare parts and tools. To take this forward, the FTC committed to considering reinvigorated regulatory and law enforcement options alongside consumer education.

47.2. As a follow-up, the FTC issued a Policy Statement on Repair Restrictions imposed by Manufacturers and Sellers.⁹⁴ The Policy Statement noted that unlawful repair restrictions have not been a priority area for enforcement, therefore the FTC would commit more resources to combating these practices through prioritizing investigations under the MMWA and the Federal Trade Commission Act. The FTC urged the public to submit complaints to assist with better enforcement of the MMWA and its regulations. It further committed to scrutinising repair restrictions for violations of antitrust laws and to consider whether restrictions could constitute unfair acts or practices under the FTC Act. Lastly, the FTC committed to using an interdisciplinary approach to the issue

⁹¹ Federal Trade Commission (2021), "Nixing the Fix: An FTC Report to Congress on Repair Restrictions", Available online: https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf

⁹² Federal Trade Commission (2021), "Nixing the Fix: An FTC Report to Congress on Repair Restrictions", Available online: https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf

⁹³ Federal Trade Commission (2021), "Nixing the Fix: An FTC Report to Congress on Repair Restrictions", Available online: https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf

⁹⁴ Federal Trade Commission (2021), "Policy Statement of the Federal Trade Commission on Repair Restrictions Imposed by Manufacturers and Sellers", Available online: https://www.ftc.gov/system/files/documents/public_statements/1592330/p194400repairrestrictionspolicystatement.pdf

by using resources from throughout the agency and collaborating with state law enforcement agencies and policymakers to ensure compliance and update laws and regulations.⁹⁵

47.3. In addition to the federal initiatives spearheaded by Congress and the FTC, several states⁹⁶ have passed right to repair laws (see Annexure 1) covering a variety of products and imposing different requirements onto manufacturers. While they differ in product coverage, all these laws emphasize fair and reasonable access to repair materials for owners and independent repairs; many ban practices that tie warranties or device function to the use of OEM parts or service providers; some specify mandatory support durations and prohibit design or software practices that impede independent repairs.

4. Conclusion

48. International experience shows that concerns in repair, service and maintenance markets have been addressed using a combination of competition law enforcement, market inquiries, sustainability regulation and consumer protection measures. While these instruments differ, they seek to address a common set of barriers to repair such as restrictions on access to parts, technical information, diagnostic tools and software in order to open the market to allow for more choice and lower prices. Taken together, these instruments and interventions suggest that broader Right to Repair framework may have far reaching benefits for society spanning economic inclusion and environmental sustainability.

49. Competition law has played an important role in developing the analytical framework for assessing repair restrictions. The cases reviewed above have been instrumental in shaping principles concerning market definition, the assessment of market power, and the assessment of anti-competitive conduct. The Commission has taken these lessons and applied in developing its Guidance on Competition in Repair, Service, and Maintenance Markets. The purpose of the guidance to

⁹⁵ Federal Trade Commission (2021), "Policy Statement of the Federal Trade Commission on Repair Restrictions Imposed by Manufacturers and Sellers", Available online: https://www.ftc.gov/system/files/documents/public_statements/1592330/p194400repairrestrictionspolicystatement.pdf

⁹⁶ California, Colorado, Maine, Massachusetts, Minnesota, New York, Oregon, Washington

improve the functioning of repair markets and lower barriers to entry and expansion for SMMEs in line with the objectives of the Act.

50. Through encouraging the pro-competition development of repair, service, and, maintenance markets, the Commission's guidance will contribute to facilitating broader economic participation and supporting South Africa's sustainability goals by extending product lifespans, encouraging more efficient use of electronic devices and appliances as well as more affordable repair and servicing options for consumers.

5. Annexure 1: Details of State-level Right to Repair Laws in the USA

State	Law/Act Name	Scope & Coverage	Key Requirements & Features
Massachusetts	Right to Repair Law (2012, amended 2020)	Automobiles (including vehicles with telematics)	Full access to service/repair info, tools, software for owners and independent repairers; open data platform for telematics
Maine	Right to Repair Law (2023)	Automobiles (new vehicles from 2025)	Wireless access to diagnostic data via interoperable, owner-authorized platforms; penalties for denying access
New York	Digital Fair Repair Act	Digital electronic devices (excluding motor vehicles, gaming consoles, medical devices, home appliances)	OEMs must provide same diagnostic/repair info, parts, tools to consumers and independents as to authorized providers
Colorado	Consumer Right to Repair Powered Wheelchairs Act Consumer Right to Repair Agricultural Equipment Act Consumer Right to Repair Digital Electronic Equipment Act	Powered wheelchairs, agricultural equipment, all electronic devices (from July 2021)	Manufacturers must provide parts, tools, software, documentation on fair terms; bans on software locks impeding repairs

State	Law/Act Name	Scope & Coverage	Key Requirements & Features
Minnesota	Digital Fair Repair Act	Electronic products (from July 2021), home appliances, enterprise electronics	Manufacturers must offer documentation, parts, tools to public/independents on fair terms; bans on warranty voiding for repairs
California	California Right to Repair Act	Electronics and appliances (devices \$50–\$99.99: 3 years support; >\$100: 7 years support)	Replacement parts, tools, documentation must be available on fair terms; bans on design practices impeding repairs
Oregon	Right to Repair (Consumer Electronic Equipment) Law	Consumer electronics (retroactive to 2015; smartphones from 2021)	Access to spare parts, tools, manuals, diagnostics; bans on software tying components; certification allowed for sensitive parts
Washington	Right to Repair Act Mobility Equipment Repair Act	Digital electronic products (from 2021), powered wheelchairs	Manufacturers must provide parts, tools, documentation on equitable terms; bans on software preventing repairs