

The Lubricant Industry and Competition issues

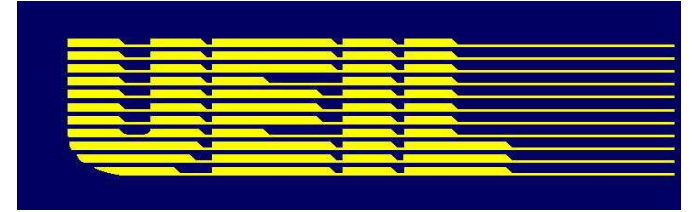
A multiform legal framework

Milan 9 November 2012

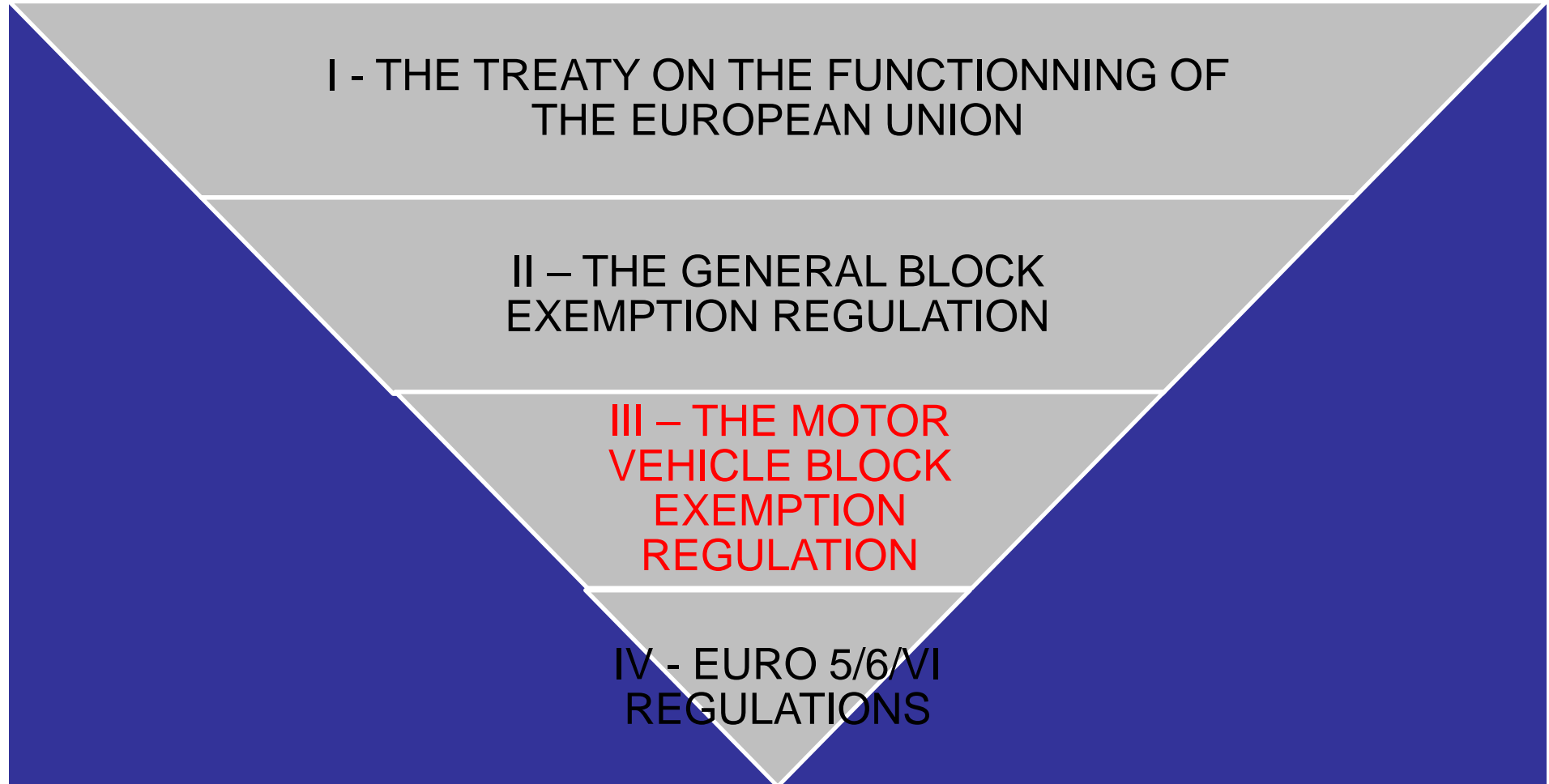


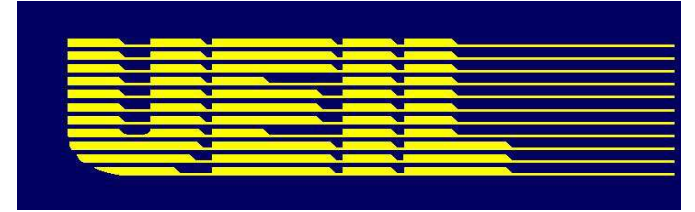
UEIL

Independent Union of the
European Lubricants Industry

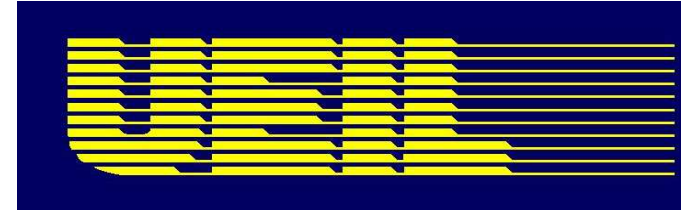


PLAN





I – THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

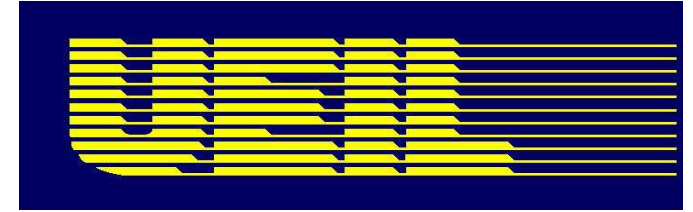


TFEU

➔ Article 101: Prohibition of cartels

➔ Article 102: Prohibition of abuse of a dominant position

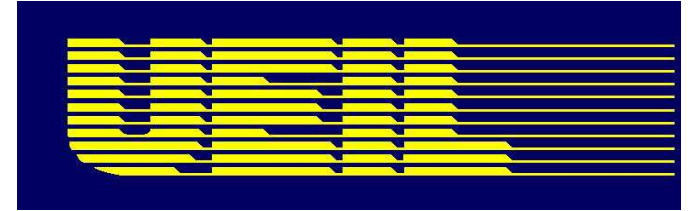
TFEU



Article 101:

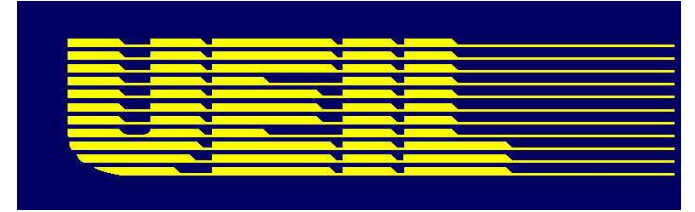
- 1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:
 - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development, or investment;
 - (c) share markets or sources of supply;
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- 2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.
- 3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
 - - any agreement or category of agreements between undertakings,
 - - any decision or category of decisions by associations of undertakings,
 - - any concerted practice or category of concerted practices,
 - which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
 - (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
 - (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

TFEU



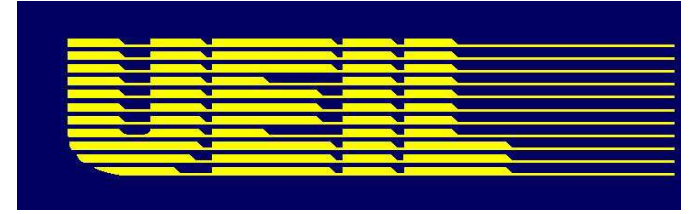
Article 102:

- Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.
- Such abuse may, in particular, consist in:
 - (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
 - (b) limiting production, markets or technical development to the prejudice of consumers;
 - (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

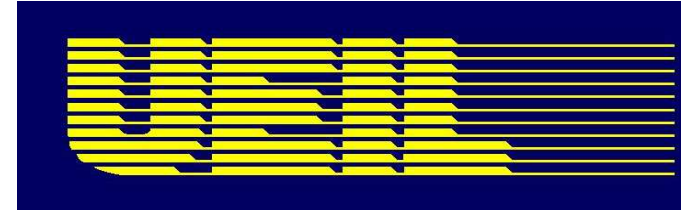


II – THE GENERAL BLOCK EXEMPTION REGULATION

Commission Regulation n°330/2010 of 20 April 2010



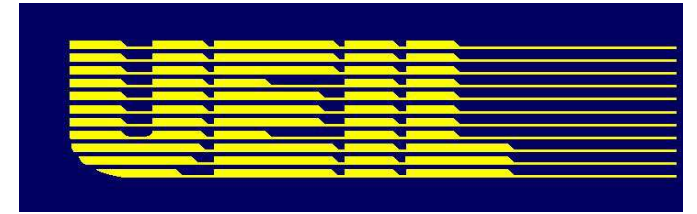
PRESENTATION



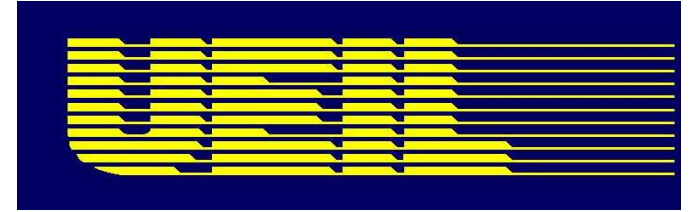
GBER

- ➔ **Concerns all vertical agreements and concerted practices**
- ➔ **Came into force on 1st June 2010**
- ➔ **Will expire on 31 May 2022**

GBER

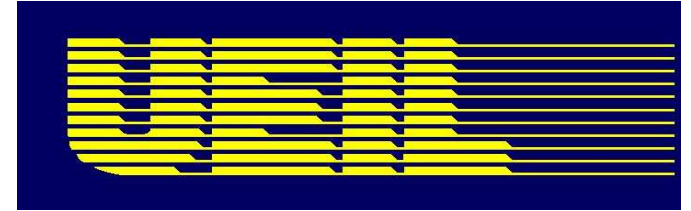


MAIN POINTS OF THE GBER
FOR THE LUBRICANT INDUSTRY



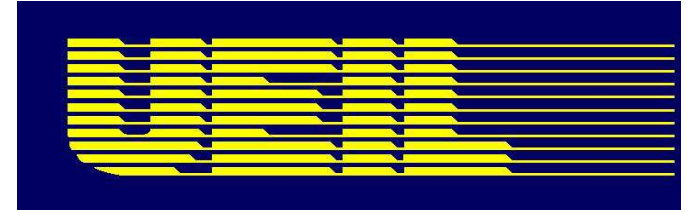
30 % Market Share

- ➡ It can be presumed that, when the market share held by each of the undertakings party to the agreement on the relevant market does not exceed 30 %, vertical agreements which do not contain certain types of severe restrictions of competition generally lead to an improvement in production or distribution and allow consumers a fair share of the resulting benefits.
- ➡ Provisions of the Treaty regarding competition shall not apply to such agreements (exemption)



Excluded restrictions

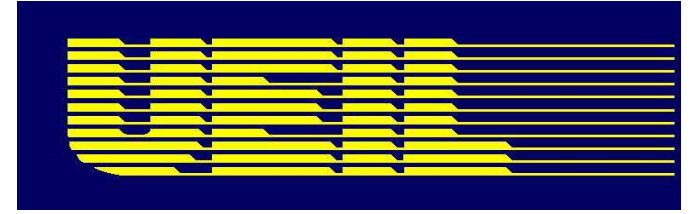
- ▶ The exemption shall not apply when the agreements contain certain types of severe restrictions of competition, notably any direct or indirect non-compete obligation, the duration of which is indefinite or exceeds 5 years.
- ▶ Non-compete obligation means any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell goods or services which compete with the contracts goods or services, or any direct or indirect obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than 80 % of the buyer's total purchases of the contract goods or services and their substitutes on the relevant market.



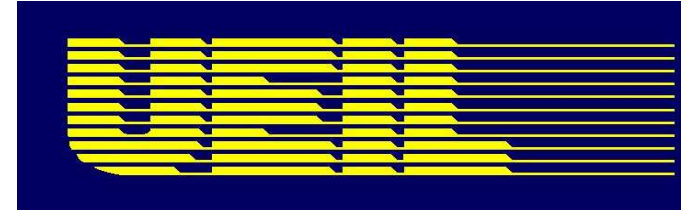
III - THE MOTOR VEHICLE

BLOCK EXEMPTION REGULATION

Commission Regulation n°461/2010 of 27 May 2010



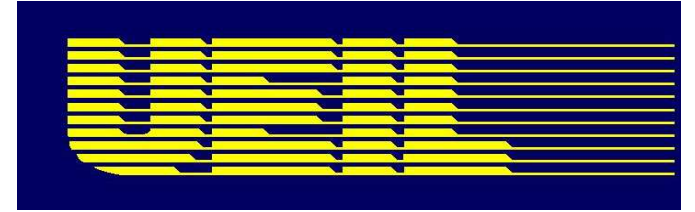
PRESENTATION



MVBER

- ➔ **Concerns vertical agreements and concerted practices in the Motor Vehicle Sector**
- ➔ Motor Vehicle: a self-propelled vehicle intended for use on public roads and having three or more road wheels
- ➔ Came into force on 1st June 2010 and will expire on 31 May 2023
- ➔ Has replaced Regulation n°1400/2002 in the motor vehicle aftermarket sector
- ➔ Will replace Regulation n°1400/2002 in the motor vehicle sale sector on 1st June 2013

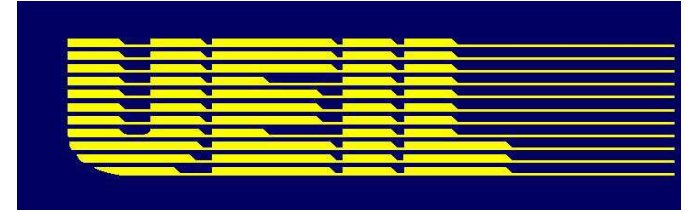
MVBER



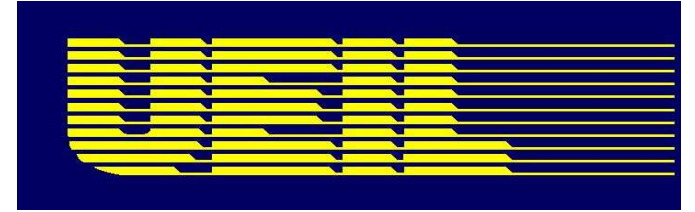
➡ Regulation complemented by:

- Supplementary Guidelines published on 28 May 2010
- FAQ document published on 27 August 2012

MVBER

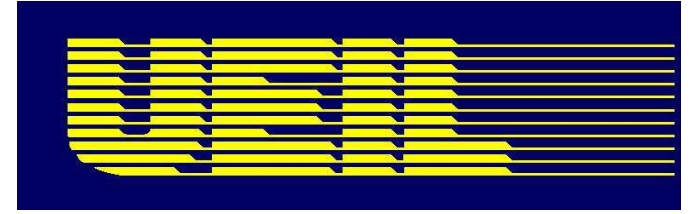


REASONS OF THIS SPECIFIC REGULATION

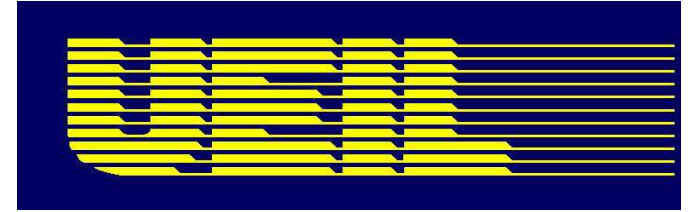


MVBER

- ➔ Need for specific provisions regarding agreements:
 - . for the distribution of spare parts
 - . for the provision of repair and maintenance services
- ➔ Specific characteristics of the motor vehicle aftermarket



MAIN POINTS OF THE MVBER FOR THE LUBRICANT INDUSTRY

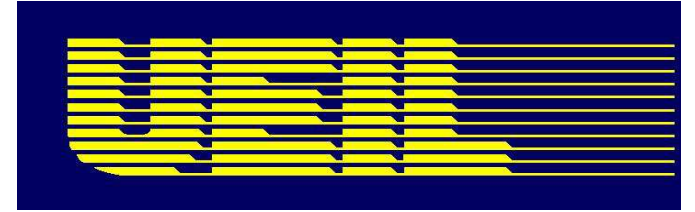


SPARE PARTS

Lubricants are defined as spare parts

ORIGINAL PARTS

Parts manufacturing according to the specifications and production standards provided by the motor vehicle manufacturer for the production of parts for the assembly of the motor vehicle in question

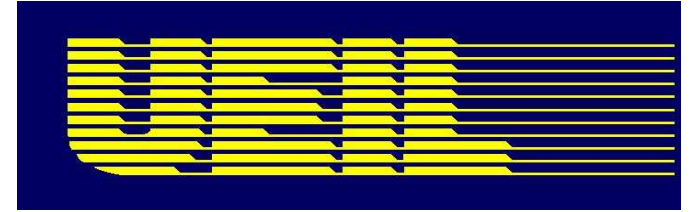


PROOF

It is presumed unless the contrary is proven that parts constitute original parts if the part manufacturer certifies that the parts match the quality of components used for the assembly of the motor vehicle in question and have been manufactured according to the specifications and production standards of the motor vehicle

BURDEN OF PROOF

It is on the motor vehicle manufacturer

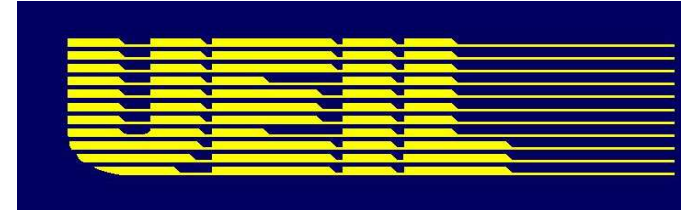


WARRANTIES

➡ May be considered as uncompetitive:

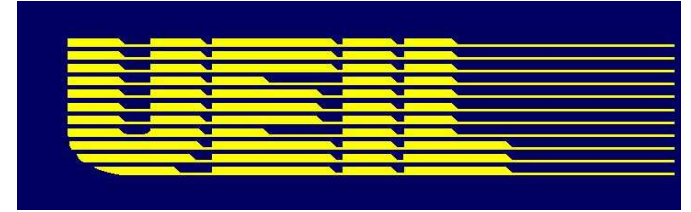
Warranty made conditionnal on the end user having repair and maintenance work that is not covered by warranty carried out only within the authorised repair networks

Warranty conditions which require the use of the manufacturer's brand of spare parts (or spare parts from a designated supplier) in respect of replacements not covered by the warranty terms



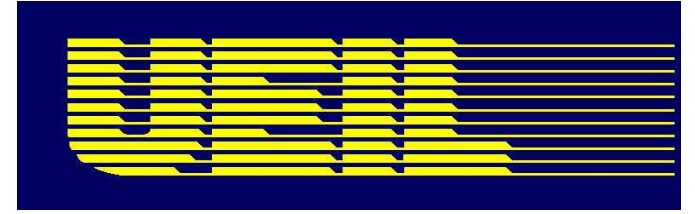
ACCESS TO TECHNICAL INFORMATION

- ➡ May be considered as uncompetitive failing from VM to provide independent operators with appropriate access to its brand-specific technical repair and maintenance information
- ➡ Access should be given upon request and without undue delay
- ➡ The information should be provided in a usable form
- ➡ The price charged should not discourage access to it by failing to take into account the extent to which the independent operator uses the information



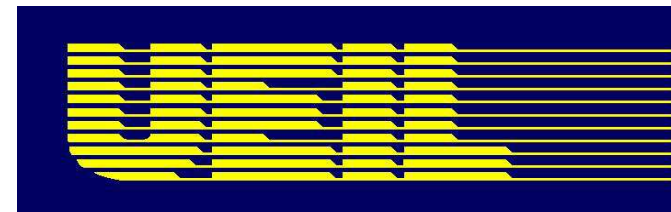
NON-COMPETE CLAUSES

- ➡ Agreements between a VM or its importer, on the one hand, and spare parts distributors and/or authorised repairers, on the other, will fall outside the Block Exemption Regulations when the market shares held by the parties exceed the 30% threshold, which is likely to be the case for most such agreements.
- ➡ In most cases, there is likely to be a brand-specific aftermarket.



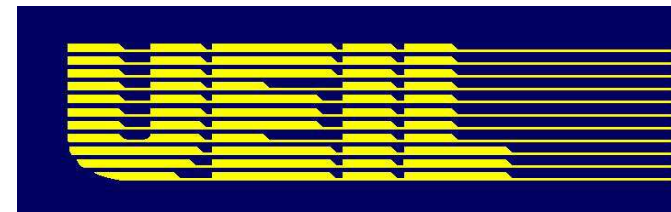
COMPETITION CASE ANALYSIS

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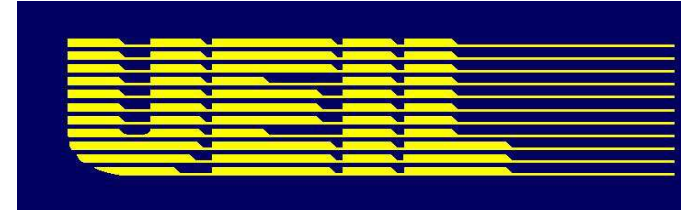
COMPETITION CASE	
ABUSE OF A DOMINANT POSITION	CARTEL
ARTICLE 102 TFEU	ARTICLE 101 TFEU GENERAL BLOCK EXEMPTION REGULATION MOTOR VEHICLE BLOCK EXEMPTION REGULATION

COMPETITION CASE ANALYSIS

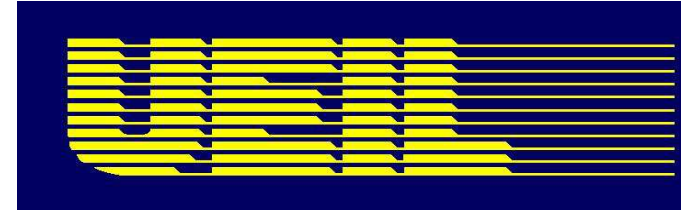


VERTICAL AGREEMENTS AND MARKET SHARE

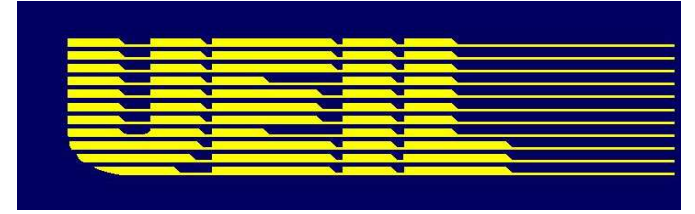
MARKET SHARE \leq 30 %	MARKET SHARE $>$ 30 %
<p>BERs will apply</p> <p>Except if the agreement contains severe restrictions of competition</p> <p>In this case, Article 101 will apply</p>	<p>BERs will not apply</p> <p>Article 101 will apply</p> <p>Individual analysis of the case to assess its impact</p>



IV – TECHNICAL REGULATIONS



PRESENTATION

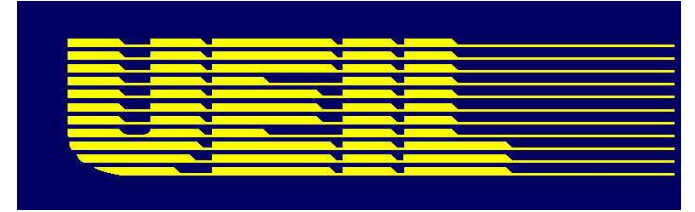


Technical Regulations

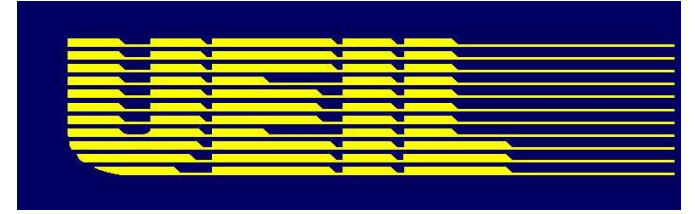
➔ The Euro 5/6 Type-Approval Legislation for Passenger Cars and Light Duty Vehicles

(Regulations n°715/2007, 692/2008, 566/2011, 459/2012)

➔ The Euro VI Type-Approval Legislation for Heavy Duty Vehicles (Regulations n°595/2009, 582/2011, 64/2012)

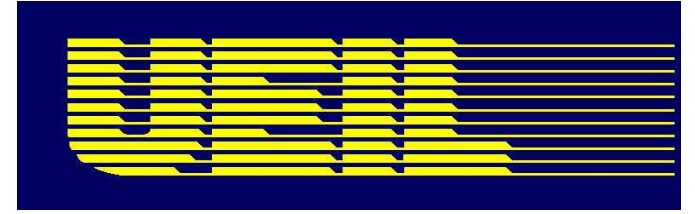


MAIN POINTS FOR THE LUBRICANT INDUSTRY



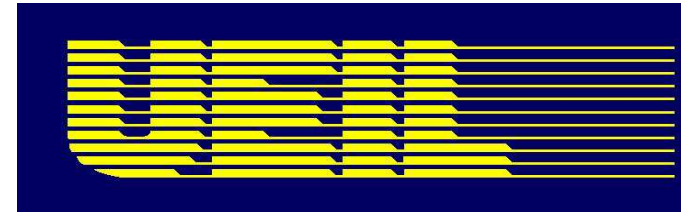
Technical Regulations

- ▶ Manufacturers shall provide unrestricted and standardised access to **vehicle repair and maintenance information** to independent operators through websites using a standardised format in a readily accessible and prompt manner, and in a manner which is non-discriminatory compared to the provision given or access granted to authorised dealers and repairers
- ▶ Such information comprises the technical specifications with regards to spare parts and products to be used for maintenance. This includes access to information on **technical specifications of the lubricants** to be produced and used for maintenance.

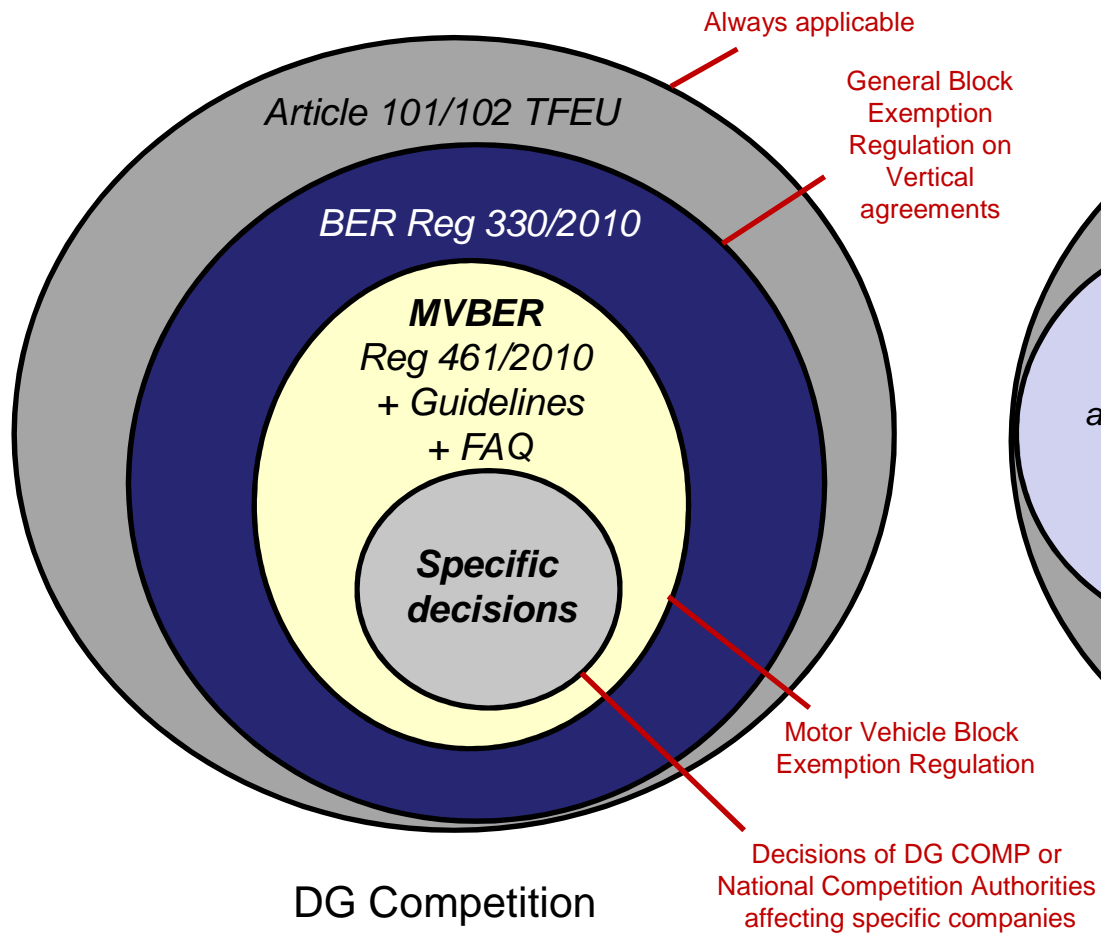


SUMMARY

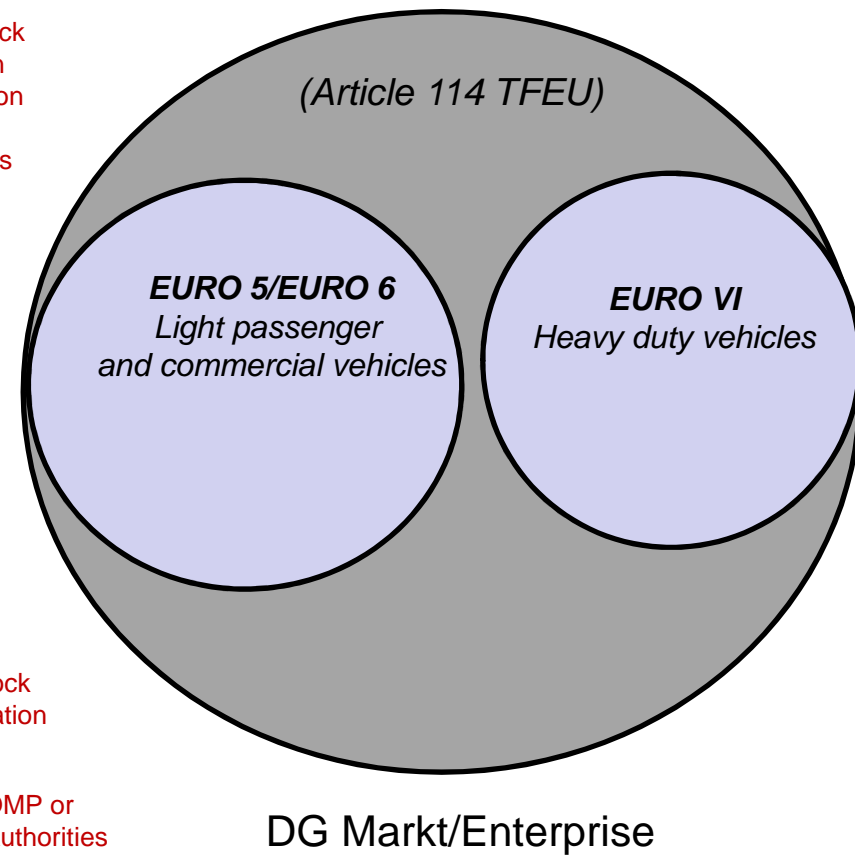
SUMMARY



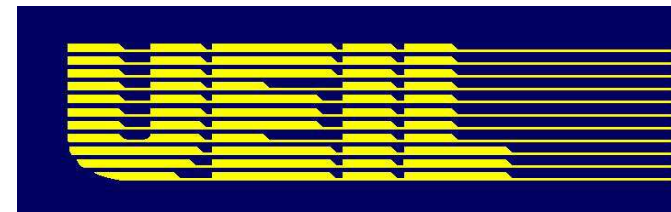
COMPETITION



EU INTERNAL MARKET

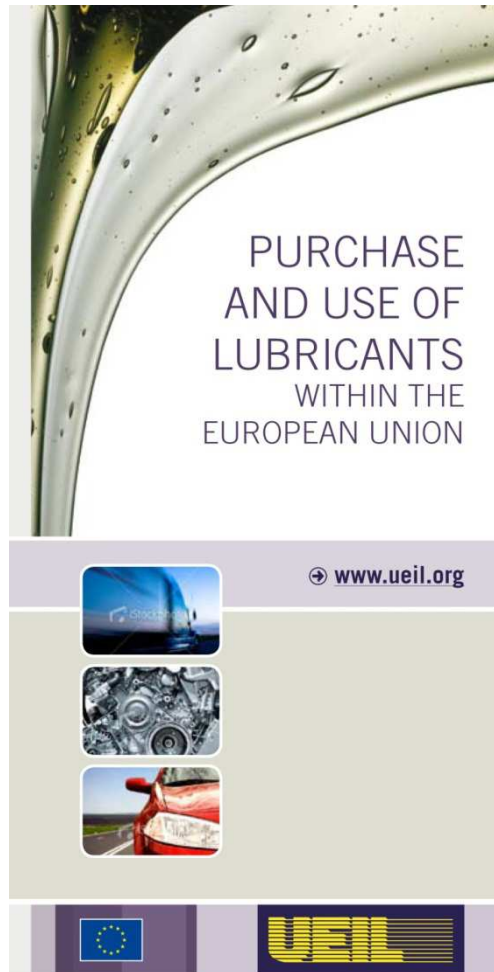
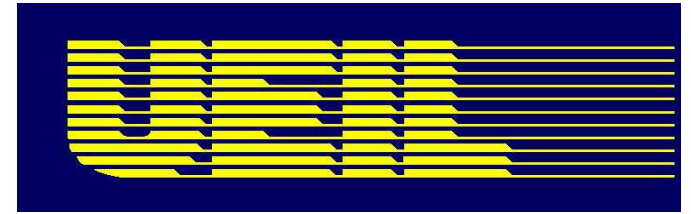


SUMMARY




REGULATIONS	SCOPE	ISSUES
TFEU	All uncompetitive behaviours	Cartel Abuse of a dominant position
GBER	Vertical agreements	30 % Market Share Non-compete Obligation
MVBER	Vertical agreements in the Motor Vehicle Sector	Spare Parts Warranties Access to Technical Information Non-compete Obligation
EURO 5/6	Light Passenger and Commercial Vehicles	Access to Technical Information
EURO VI	Heavy Duty Vehicles	Access to Technical Information

UEIL LEAFLET

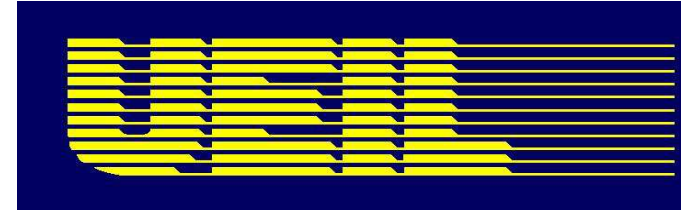


PURCHASE
AND USE OF
LUBRICANTS
WITHIN THE
EUROPEAN UNION

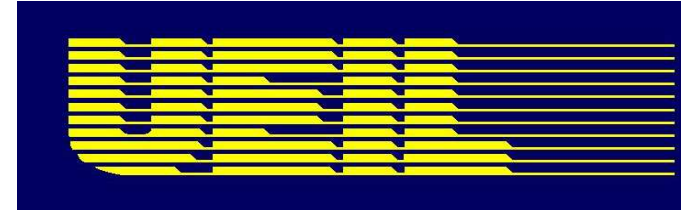
www.ueil.org



The leaflet cover features a large, close-up photograph of a car's headlight and bumper area, showing water droplets on the glass. Below the main title, there is a light grey horizontal bar containing the website address www.ueil.org with a small circular icon to the left. Underneath this bar, there are three small, square images stacked vertically: the top one shows a blue car, the middle one shows a close-up of a car engine, and the bottom one shows a red car. At the bottom of the leaflet, there is a dark blue horizontal bar containing the European Union flag on the left and the UEIL logo on the right.



Grazie per l'attenzione



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