The objective of the investigation. The conclusions of the report.

The object and the scope of the investigation

In February 2009, through the Order no. 69 of the President of the Competition Council, a sector inquiry on the market for motor vehicle spare parts was opened, under Article 26 of the Competition Law no. 21/1996, as amended.

The investigation was carried out by the competition authority using a proactive monitoring tool for markets, through which a comprehensive analysis and the assessment of the competition is conducted on the national market.

The sector inquiry aimed at identifying the mechanisms of the market, in order to identify and correct any flaw on competition.

To achieve this objective, a market research was carried out at the national level, in this sector: vehicle manufacturers, parts dealers, automobile dealers, service units (repairers). In addition, insurance companies were surveyed.

Another activity, not less important than the market research, was the identification and the analysis of the legal framework specific to this sector.

During the investigation a survey among consumers was conducted. The questionnaire contained 15 questions and was available online for approx. 3 months on the Competition Council’s website. At the end of the period allocated to the survey, 646 responses belonging to private individuals were validated. Results are presented in a distinct chapter of this Report.

The main conclusions resulted from the analysis on the spare parts for automotive market and the proposals of the investigation team are discussed below.
The conclusions of the Report.

1. The spare parts market is a low concentrate market. (The degree of market concentration, HHI\(^1\)=463/2010)

The spare parts for automotive market is a market on which thousand of firms are activating. Auto spare part dealers hold about three-quarters of the value of sales of the spare parts estimated\(^2\) for 2008-2010 (the dealer’s share is rising up from year to year). A total of 11 traders were holding in 2010, almost one third of the turnover estimated for the entire market (rising up from one quarter, in 2008). **However, after application of Herfindahl-Hirschman Index, which is measuring the market concentration, it was shown that the spare parts market is weakly concentrated.** Based on 23 known market shares (of the largest traders and dealers in the market) and the (very relaxed) hypothesis that the rest of the firms are holding less than 5% market shares, an upper limit of the HHI was estimated. For each of the three years (2008, 2009 and 2010) an upper limit of the HH Index below 500 resulted.

It is worth mentioning that this degree of concentration is estimated for the entire market. In a particular case, given the criteria for defining the relevant market (segmentation of the spare parts in original and non-original parts, as well as their sub segmentation according to the car brand) and given that a replacement part is in itself a distinct market, not being interchangeable with another, the market shares can differ significantly (e.g., if parts have visible\(^3\) origin, for which legal protection is granted under the patents law on models and drawings, monopolies can exist.).

2. Competition Council proposes to amend national legislation with respect to the design protection by introducing a "repair clause" in order to open the competition on visible spare part market. The proposal is addressed to the Ministry of Economy, Trade and Business Environment, ministry to which the State Office for Inventions and Trademarks is under its authority, the sole authority which insures the protection of drawings and models.

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\(^1\)Herfindahl-Hirschman Index indicates the extent to which a small number of companies is a big part of the market. Issued as a possible indicator of market power or competition between companies. When HHI is lower than 1000, the market concentration is considered poor.

\(^2\)The estimated value of the market includes the sales car dealers, importers, producers of parts and domestic car manufacturers.

\(^3\)Integrated visible parts (car body panels: bumpers, doors, wing, hood), lighting units (beacon, stop), car windows (glass side windshield, rear window, mirror).
The protection of drawings/models

Under the Directive 98/71/EC (transposed into Romanian legislation by Law nr. 129/1992 with subsequent amendments), the design or industrial model\(^4\) which meets certain conditions is protected for one or more periods of five years, with the possibility of extending it to up to 25 years from the date of filing the application. The main purpose of the drawings and model protection is to grant exclusive rights to the appearance of the product.

Automotive sector is the most affected by the Directive. According to ECAR\(^5\), in 2005, in EU-27 there were approx. 260 million cars in need of maintenance and repair. Market for repairs, also called the secondary market, was worth approx. 84 billion Euros, of which nearly 44 billion were parts.

**Repair clause**

*Repairs clause* stipulates that **protection is not provided for** a drawing or model which is **one** piece of a product used in repairing of a complex product in order to restore its original appearance.

\[\text{! Repair clause is applicable only to visible parts} \text{ (in automotive sector, may be body parts, lighting units, car windows) on the secondary market} \text{ (replacing parts market) from the moment that the complex product (the automotive) is traded on the primary market (market of primary manufacture of the components) by the right holder or with his consent.}\]

The repair clause provides to the auto manufacturers the design protection, the exterior aspect of their components (on the primary market) and fully support for their core business-production and sales of new cars. Extending protection to the parts that replace the original parts, for repairing, results in unjustified monopoly of the car manufacturers on the secondary spare parts market.

**Liberalization of the spare part market**

It is necessary to amend national legislation on the protection of drawings and models because its **current form allows the extension of the protection given to the parts from the primary market on the secondary market as well.** The result is the **creation of a monopoly on the secondary market**; every car manufacturer became the sole provider of the visible spare parts

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\(^4\)The exterior aspect (aesthetic) new, of a two or three-dimensional product, having a utilitarian function.

\(^5\)Alliance of some independent European organizations representing manufacturers of auto parts, auto parts distributors, independent repairers. ECAR was involved in drafting legislation on protection of designs/models.
for its vehicles. Thus, only auto manufacturers as the right holders could produce and distribute this type of parts within the Union Europe. As these parts are for a particular model only and are not interchangeable with other automotive parts, competition is completely excluded.

Introduction on the Romanian market of some visible parts of poor quality and unsafe for the consumer, after the opening on the spare parts market, would be supervised by the national technical body – R.A.R. – which is responsible for approval/ certification of the used products on road vehicles. R.A.R. could refuse certification, sale or utilization of the road vehicles, if the parts present a serious risk to the road safety or harm significantly the environment and/or the public health.

Changing domestic legislation is permitted to the state members under ART. 14 of Directive 97/91/CE which contains a transitional provision that State Members maintain their existing laws in this regard and change them only in the scope of liberalization of the spare parts market exchange.

Observing that the Directive 98/71/CE does not ensure a smooth functioning of the internal market with respect to the protection of the drawings/ models, the European Commission proposed to amend it in September 2004. Commission underlined that, due to fragmentation and uncertainty about development of Community rules on protection on drawings in EU, Europeans do not know in which Member States are permitted or not the acquisition of certain spare parts and are disadvantaged, in some parts of the Community, regarding to choosing between competing parts. For the same reason, spare parts producers, especially IMM’s, cannot use economies of scale offered by a unique market and are discouraged from investing and creating jobs. A sensitive issue derived from its current form of the Directive which requires urgent resolution is the impact on the personal and moral integrity of the business people, considered to be correct in countries where protection for spare parts does not exist and criminals in countries where there is protection is grated for this type of parts.

By adopting Regulation No. 6-2002 on Community models and drawings, the European Commission took a first step to remedy the shortcomings created by the current form of the Directive. At art. 110(1), the Regulation contains a transitional provision by which protection is not granted under the title of Community model or drawing or model which is part of a complex drawing used to allow the repair of this complex product in order to restore its original appearance (so-called “repairs clause”). Therefore, at the Community level, unlike some national regimes, protection is not granted for the exterior aspects of the visible spare parts.

In December 2007, the European Parliament approved the European Commission’s proposal on modifying Directive by introducing repair clause. Moreover, according to the proposed
amendments, consumers will be adequately informed about the origin of the product used to repair, so that they can choose, with full knowledge between the competing products choices offered for repair.

The directive on amending Directive 98/71/EC on the legal protection of drawings and models is still not applicable before it would be adopted by the Council of EU.

By this date, 10 State Members⁶ have applied the transitional provision of the directive, following up Commission’s invitation to open its spare parts market.

Romania belongs to the states which extend the protection of the exterior appearance of the spare parts. The consequence is that a car owner whose visible spare parts are protected is forced to accept exclusively the use of the spare parts provided by the manufacturer of the car. In this way, the consumer cannot choose and the competition on this type of spare parts market does not exist.

3. The Competition Council proposes that the sale of counterfeit products utilized on road automotive, to be considered felony and not contravention. The actual provisions of O.G. nr. 80/2000 are not correlated with the law nr. 84/1998 on trademarks and geographical indicators. The proposal is addressed to the Ministry of Transportation and Infrastructure, under which the Romanian Automobile Registry is, authority and technical service for approval, certification and supervision of introducing on the market of the new exploitation materials.

The provisions of O.G. nr. 80/2002 concerning the approval and certification of products and exploitation materials utilized for road vehicles, as well as the conditions of their introduction on the market, regarding the sanctions applied for sales of pirate/counterfeit parts, do not correlate with those provided for the same act, by Law nr. 84/1998 on trademarks and geographical indications.

Thus, according to O.G. nr. 80/2000, marketing of pirated or counterfeit products constitutes a contravention and in accordance to the Law nr. 84/1998 on trademarks and geographical indications, counterfeiting of a trademark is an offence punishable by imprisonment from 3 months up to 3 years or a fine from 50,000 lei up to 150,000 lei.

⁶Spain, United Kingdom, Italy, Belgium, Netherlands, Luxembourg, Ireland, Hungary, Latvia, Poland, plus Germany, with legislation which provides protection on spare parts, but ensuring coexistence of the market participants, and Greece, which has a clause on repairing combined with a term on protection of 5 years and a fair and reasonable remuneration.
The correlation of the provisions could have the effect of reducing the spare parts market counterfeit, whose share is perceived by the industry to be about 30% from the total.

4. Competition Council proposes the regulation of reconditioned parts. The proposal is addressed to the Ministry of Transport and Infrastructure under whose authority the Romanian Auto Register is placed, the authority responsible for technical service and for approval of certification and supervision of introducing on the market of the products and new exploitation materials.

Companies that sell remanufactured parts do not have to go through the procedure of approval/ certification for their marketing, such as those who are selling new parts, as defined in O.G. nr. 80/2000.

Thus, this category of auto spare part dealers enjoys an advantage in the marketing of parts (because they are exempted from the steps of approval/ certification and payment of taxes to RAR).

Furthermore, we must take into account the possible negative effect on final users (could be major parts of the vehicle systems and use of other parts which are not certified could lead to the change of the certified characteristics, with impact on traffic safety or environment).

According to R.A.R., reconditioned parts are not included in the product and new materials operating category, which are subject to the provisions of the order of Ministry of Transportation, Construction on Tourism nr. 2131/2005. The regulation does not contain legal provisions on introducing on the market and sale of this type of part, but regulations that established the methodology and conditions for authorization the methodology and the conditions for authorization economic operators carrying out repairs, maintenance, adjustment, changes construction, reconstruction of road vehicles and the dismantling of the disabled vehicles.

!It is important to underline that the retreaded envelopes previous to the first mounting after retreading, but within the warranty period, unused, are considered new products.

Given that the reconditioning activity is similar to the retreading of tires, after which a product is brought into a similar state to the original, it would need that the remanufactured parts to meet the conditions and requirements applied in the case of any other product considered new on the basis of any specified ordinance.
5. The appeal of the National Consumer Protection Authority regarding the abuse of the warranty of the auto dealers: application of the rules on consumer protection and their informal campaigns.

According to the car owners who had participated in the online survey conducted in investigation, there are auto dealers that impose the buyer, by the contract of purchase, to make all its repairs only at their auto dealership or suggest, from the moment of purchasing, that the warranty is lost if they go to other than the network auto repairers.

The procurement contract between the dealer and final user is the responsibility of the NAPC, the institution who is able to detect and sanction such abuses on the part of car sellers.

Almost three quarters of survey participants were forced to accept the use of the mark of auto manufacturer in operations that are not under warranty service. The contracts between automakers and auto dealers or between the manufacturer representative and the regional dealer, received during the investigation, do not contain clauses by which the constructors require exclusive use of their brands. In contracts is stated that they may use equivalent quality parts for repairs not covered by the warranty.

Consequently, imposing the brand to the auto manufacturer is an abuse of dealers in relation to their clients, the car buyers. The dealers, taking advantage of poorly informed consumers with regard to what they could impose or not to the car dealer, are notifying the consumers verbally, or by the purchasing contract, that it is necessary to use auto parts bearing the manufacturer’s brand, even if the repairs are not subject to warranty and the cost is supported by the owner of the car.

According to art. 10 a) of O.G. nr. 21/1992 on protection of the consumers, “the freedom to make decisions to purchase products and services without requiring unfair terms in contracts or which may favor the use of unfair trade practices in sales, likely to influence their choice” is a consumer right when concluding contracts. Under the same ordinance, violation of this provision is a contravention and it is fined from 2,000 to 20,000 lei.

6. Intensification of R. A. R. control regarding the sale of spare parts resulted from dismantling and counterfeit parts.

Although national legislation prohibits marketing for reuse the systems, equipment, spare parts and technical entities concerning traffic safety, as well as the marketing for reusing the car body/chassis of the vehicle removed from use, taught for dismantling, it appears that the
marketing of such parts is currently carried out unimpeded, with diverse offerings (including online) for auto parts whose trade is prohibited by law. *These facts are contravention and are sanctioned with a fine by the R.A.R. staff.*

Companies that have participated in market research conducted by the Competition Council consider that the marketing of spare parts resulting from dismantling, as well as the counterfeit ones are constituting a public danger and source of tax evasion.

Regardless the type of work they perform on the auto market (merchant-importer or not) car dealers, repairers, car manufacturers), companies who responded to the competition authority are considering that there exists counterfeit spare parts in the market to a considerable percentage. The perception of the people who are active on the spare parts market is that the share of the counterfeit spare parts in Romania is about 27%, way above the EU (10%).

### 7. The simplification and the accessibility of the certification/ approval procedure of the spare parts, applied by R.A.R. – administrative barrier

The procedure for approval/certification of R.A.R. is considered by the importers of spare parts an administrative barrier to market entry. They argue that the procedure is heavy, complex and ambiguous.

Importers have indicated as the main issue the certification granted to an owner and not to a brand. Therefore, R.A.R. does not certify that a product respects the legal provisions, but states that an importer could sell that product, another importer with a similar product will have to follow the same certification process of certification. Concerning this issue, in the discussions with the R.A.R. representatives, they denied this thing. *These different interpretations show that there is a need for improvement and a clearing of the aspects of the processes used by the technical authority in the field.*

Another deficiency of the actual legislation on the approval/certification raised by those presented on the market is that, in the control process there is not sufficient information regarding the certification agencies that R.A.R. would have or should have links in EU countries. Therefore, even though a product is internationally approved in one of the European Union member states, R.A.R. does not have this information and, consequently, it requires the importer to prove the existence of such approvals. Even the importer would like to do this proof, the information requested by R.A.R. are inconclusive (in the sense of the description of the document to be presented, of the issuer for each country of the Union etc.).

**Unclear legislation is invoked by the importers of tires (warranty conditions, limit use, etc.).** The presence on the market of the second-hand tires constitutes the most important matter which needs to be remediated. According to traders, *the commercialization of this type of envelopes is not verified and the sellers have no warranty/certification stating*
the fact that they could be used in good conditions, with negative consequences for the final user and the road users.

Among the proposed solutions by the operators from the auto sector for improving the specific legislation and to clarify certain aspects of interpretation, we mention:

- The existence of a unique guide for regulations on trading of the spare parts activity so that the RNTR\(^7\) technical norms be more appropriate structured and be more accessible to the concerned subjects.
- Simplifying the bureaucratic procedures concerning the approval/ certification process and the involvement of RAR regarding the product certification for the purposes of their testing, at the importer’s request.
- Cooperation (information exchange) with the approval authorities/ bodies certification from other states members of EU to obtain information on approved products in other states.

Conclusion on relationship between the insurer and suppliers/ approved repairs.

In order to identify the mechanism of the insurer- provider relationship agreed on parts and respectively insurer- authorized repairer, during the investigation there were interviewed insurance companies as well. Asked about the criteria for selection of the spare parts dealers with which they collaborate, the companies mentioned that there are not imposed eligibility requirements for the spare part suppliers. **Any provider which operates in accordance with the Romanian law may conclude a cooperation agreement.** Following the required qualifications (IT system of automatically interrogation of the database for marketed parts, nationwide, wide range of auto parts, short delivery time) it is found that it could be performed by the spare parts suppliers in the high and very high category, which have financial and logistic capacity.

**According to the insurance companies, such collaboration aimed, primarily, the satisfaction of the client’s requirements, but also reduces car repair costs.**

The most often reason invoked by the insurance companies to conclude agreements with units of auto service is customer satisfaction (the insured), who will enjoy the repair made in priority basis, and will take the vehicle in service immediately after the repair, without waiting for the repair payment.

92% of the repairers who responded to the Competition Council during the investigation * whether they are part of the authorized segment or not) have signed collaboration agreements with insurance companies. **The most common argument they have mentioned on cooperation with insurers is the increased activity.**

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\(^7\) National Regulation on Road Transport
Although the repairers are complaining about the quality of the relationship with the insurer, claiming delays in payment repairers made or the obligation to use in repairers only spare parts delivered by approved suppliers, however, they continue working with that insurance companies accepting the conditions set by mutual agreement, conventions or collaboration protocols.

The report is structured in 7 chapters and annexes, as follows:

- **Chapter 1** provides definitions, concepts, competition rules and regulations specific to the automotive sector;
- **Chapter 2** is describing the evolution of spare parts automotive market;
- **Chapter 3** contains examples of previous decisions related to the definition of relevant market;
- **Chapter 4** contains information on regulation for the protection of industrial design (protection of the exterior design elements for cars);
- **Chapter 5** describes the role of the insurance companies in the auto sector;
- **Chapter 6** contains the results of the survey conducted among consumers;
- **Chapter 7** contains data and information about the national vehicle fleet on various criteria (age, county/region, fuel type).
- **Annexes.**