

UK competition law: Motor Vehicle Block Exemption Regulation

Consultation Document

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1. About the Consultation

Introduction

- 1.1 The purpose of this consultation is to seek views on the CMA's proposed recommendation to the Secretary of State for Business, Energy and Industrial Strategy (Secretary of State) as to whether or not the existing retained Motor Vehicle Block Exemption (the retained MVBER) should be renewed or varied when it expires on 31 May 2023.¹
- 1.2 The retained MVBER exempts vertical agreements relating to the purchase, sale or resale of spare parts for motor vehicles and to the provision of repair and maintenance services for motor vehicles.²
- 1.3 The Competition Act 1998 (the Act) prohibits anticompetitive agreements between businesses (known as the Chapter I prohibition).³ The prohibition applies to agreements and concerted practices between undertakings and to decisions by associations of undertakings (eg trade associations) which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom (UK) and which may affect trade within the UK.
- 1.4 However, section 9(1) of the Act provides that an agreement is exempt from the Chapter I prohibition if it:
 - (a) contributes to
 - (i) improving production or distribution, or
 - (ii) promoting technical or economic progress
 - (b) while allowing consumers a fair share of the resulting benefit; and
 - (c) does not
 - (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or

¹ Regulation 461/2010 on the application of Article 101(3) of the TFEU to categories of vertical agreements and concerted practices in the motor vehicle sector. The MVBER is one of the 'retained exemptions' from EU law that was retained in UK law after EU law generally ceased to have effect in the UK on 1 January 2021, as a result of a combination of the operation of the European Union (Withdrawal) Act 2018 and the Competition (Amendment etc.) (EU Exit) Regulations 2019, as amended by the Competition (Amendment etc.) (EU Exit) Regulations 2020.

² Vertical agreements are agreements entered into by businesses operating at different levels of the supply chain.

³ The Act, section 2.

- (ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.
- 1.5 An agreement may be individually recognised as exempt by a competition authority or a court and, in addition, certain types of agreement will be treated as automatically exempt if they meet conditions set out in a ‘block exemption’ regulation or order applicable to that category of agreements.
- 1.6 Block exemptions have several benefits for businesses. First, they provide legal certainty to businesses as they enable them to know in advance how to ensure that their agreements comply with competition law. Second, they avoid placing on businesses the burden of scrutinising a large number of agreements that are likely to satisfy the requirements for exemption under section 9(1) of the Act. Third, the existence of a block exemption also ensures consistency of approach by providing a common framework for businesses to assess their agreements against the Chapter I prohibition.
- 1.7 Block exemptions also help to ensure that the CMA does not need to spend time scrutinising what are essentially benign agreements, and so is able to concentrate its resources on other matters that are more likely to give rise to significant competition concerns. In this regard, the CMA notes that the various conditions of the current block exemptions ensure that they are unlikely to apply to agreements that may give rise to significant competition concerns.⁴
- 1.8 The retained MVBER sets out a block exemption from the Chapter I prohibition that applies to certain categories of agreements related to the purchase, sale, and resale of spare parts for motor vehicles, and to the provision of repair and maintenance services for motor vehicles. Vertical agreements for these aftermarkets benefit from the block exemption only if, in addition to the conditions set out in the retained MVBER, they also comply with the conditions of the Vertical Agreements Block Exemption Order 2022 (VABEO).
- 1.9 Vertical agreements for the purchase, sale and resale of new motor vehicles also used to be covered by the MVBER,⁵ but it was determined in 2013 that they should be subject to assessment under the Vertical Agreements Block Exemption Regulation (VBER), which has now been replaced in the UK by the VABEO

⁴ For example, through the operation of the market share threshold and list of hardcore and excluded restrictions.

⁵ European Commission Regulation No. 1400/2002.

- 1.10 The MVBER was retained in UK law⁶ following the UK's withdrawal from the European Union (EU) and the end of the Transition Period,⁷ and is due to expire on 31 May 2023.
- 1.11 Following a preliminary review of the various issues, the CMA is proposing to recommend that the Secretary of State replace the retained MVBER with a Motor Vehicle Block Exemption Order (MVBEAO).
- 1.12 The retained MVBER regime pursues general and specific objectives designed to ensure that the requirements of section 9(1) of the Act are met. The specific objectives of the retained MVBER regime are:⁸
 - (a) to provide legal certainty to UK stakeholders in the motor vehicle sector as to which vertical agreements can be presumed to be exempt for the purposes of the Chapter I prohibition;
 - (b) to reduce the risk of 'false positives' (ie over-exemption) and 'false negatives' (ie under-exemption);
 - (c) to provide a common framework of assessment for businesses, in order to ensure consistency and certainty in the application of the Chapter I prohibition; and
 - (d) to ensure effective competition in the motor vehicle aftermarket sector.
- 1.13 Since the legal, economic and factual background has changed since the retained MVBER first came into force, the CMA is considering whether the retained MVBER regime and its objectives remain appropriate, taking into account the specific features of the UK economy and the needs of British consumers.
- 1.14 In its review of the retained MVBER (formally launched in March 2022), the CMA has met certain stakeholders in order to gather views on the operation of the retained MVBER regime in the UK. Furthermore, to the extent that such issues are also relevant to the review of the retained MVBER, the CMA has also drawn on relevant input to its previous review of the retained VBER.⁹ In

⁶ See fn1 above.

⁷ Previously, the EU MVBER applied in the UK and provided an automatic exemption for vertical agreements meeting their conditions. The block exemption set out in this Regulation is substantively the same as the retained MVBER except that it applies to the EU rather than the UK.

⁸ In addition to the retained MVBER, the European Commission has published guidance (EU Supplementary Guidelines) that provide high-level guidance on the application of the MVBER and on the circumstances in which an agreement for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles may restrict competition and, if it does, whether it can benefit from an individual exemption in the absence of an applicable block exemption.

⁹ As explained in paragraph 4.1–4.2, one of the conditions for the benefit of the retained MVBER to apply is that the general conditions of the VBER are all met.

particular, the CMA has taken into account the views expressed by representatives from the automotive industry.¹⁰

- 1.15 The CMA has also taken into consideration the evidence from the European Commission's review of the equivalent block exemption at European Union level (EU MVBER). The European Commission officially launched the evaluation process for the EU MVBER in December 2018 (the Evaluation) at a time when the UK was still a member of the European Union.¹¹ This Evaluation was based on a broad range of information sources: the European Commission's monitoring and enforcement activities in the sector; a public consultation with stakeholders; a fact-finding study regarding the evolution of the motor vehicle sector between 2007 and 2017; and two targeted consultations with national competition authorities (NCAs) to (i) gather data on the NCAs' enforcement of the EU MVBER regime and equivalent national rules; and (ii) collect their opinions on the performance of the EU MVBER regime.
- 1.16 In the following sections of this consultation document, we set out:
 - (a) an overview of the CMA's general recommendation (Part 2);
 - (b) the key features of the UK motor industry and aftermarket sector (Part 3);
 - (c) the analysis and specific recommendations in relation to each of the key substantive issues at play (Part 4);
 - (d) the proposed duration of the new block exemption (Part 5); and
 - (e) the proposed provisions relating to the transitional period, cancellation in individual cases and obligation to provide information (Part 6).

Scope of this consultation

- 1.17 In accordance with sections 6(1) and 8(1) of the Act,¹² this consultation document seeks views on the CMA's proposed recommendation to the

¹⁰ [Retained Vertical Agreements Block Exemption Regulation consultation document](#). See in particular [Annex D: Evidence gathering](#) setting out the views expressed at the roundtable sessions held by the CMA as part of the review process.

¹¹ EC (2021), [Commission Evaluation Report on the operation of the Motor Vehicle Block Exemption Regulation \(EU\) No 461/2010](#) (Evaluation Report).

¹² Under section 6(1) of the Act, if agreements which fall under a particular category of agreements are, in the opinion of the CMA, likely to be exempt agreements, the CMA may recommend that the Secretary of State make an order specifying that category for the purposes of this section.

Under section 8(1) of the Act, before making a recommendation under section 6(1), the CMA must publish details of its proposed recommendation in such a way as it thinks most suitable for bringing it to the attention of those likely to be affected; and consider any representations about it which are made to it.

Secretary of State to replace the retained MVBER when it expires on 31 May 2023 with an MVBEO. As outlined in more detail below, this document includes consultation questions that stakeholders are invited to consider when providing their views on the CMA's proposed recommendation.

- 1.18 The overview of the CMA's proposed recommendation in Section 2 set out some high-level consultation questions. The sections in which the CMA addresses its detailed proposed recommendations (Sections 4 to 6) contain both policy and impact questions.
- 1.19 Responses to the policy questions will inform our final recommendation to the Secretary of State. The responses to the impact questions will be used to inform the preparation by BEIS of impact assessments for any block exemption order that the Secretary of State may decide to make. Accordingly, responses to the present consultation may be shared with BEIS. For convenience, the list of consultation questions is set out in full in Annex A.
- 1.20 As explained further below, following the consultation initiated by this consultation document, the CMA will prepare its final recommendation to the Secretary of State.
- 1.21 The CMA envisages preparing guidance to accompany any MVBEO (CMA MVBEO Guidance). In the meantime, the [EU Supplementary Guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles](#) (EU Supplementary Guidelines) remain relevant to interpreting the retained MVBER.¹³
- 1.22 This consultation on the retained MVBER is distinct from the European Commission's review of the MVBER, which applies in the EU.

Consultation process

How to respond

- 1.23 We are publishing this consultation document on the CMA webpages and drawing it to the attention of a range of stakeholders to invite comments. We welcome comments on the proposed recommendation to the Secretary of State on the introduction of any MVBEO, as well as the specific issues we address in the proposed recommendation.

¹³ As set out in the CMA's [Guidance on the functions of the CMA after the end of the Transition Period](#) (CMA 125) at paragraph 4.36, such guidance constitutes a relevant statement of the European Commission to which the CMA, concurrent regulators and UK courts must have regard after 31 December 2020.

- 1.24 We encourage you to respond to the consultation in writing (by email) using the contact details provided below. Please provide supporting evidence or examples for your views where possible.
- 1.25 When responding to this consultation, please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make clear who you are representing and their role or interest.
- 1.26 In accordance with our policy of openness and transparency, we will publish non-confidential versions of responses on our webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, please provide at the same time a non-confidential version for publication on our webpages which omits that material and which explains why you regard it as sensitive (see also paragraph 1.35 below).

Duration

The consultation will run from 21 July to 22 August. Responses should be submitted by email by 5:00 p.m. on 22 August 2022 and should be sent to: mvberreview@cma.gov.uk.

Compliance with government consultation principles

- 1.27 In preparing this consultation document, the CMA has taken into account the published [government consultation principles](#), which set out the principles that government departments and other public bodies should adopt when consulting with stakeholders. Statement about how we use information and personal data that is supplied in consultation responses
- 1.28 Any personal data that you supply in responding to this consultation will be processed by the CMA, as controller, in line with data protection legislation. This legislation is the General Data Protection Regulation 2016 (GDPR) and the Data Protection Act 2018. ‘Personal data’ is information which relates to a living individual who may be identifiable from it.
- 1.29 We are processing this personal data for the purposes of our work. This processing is necessary for the performance of our functions and is carried out in the public interest, in order to take consultation responses into account and to ensure that we properly consult on the proposed recommendation to the Secretary of State before it is finalised.
- 1.30 For more information about how the CMA processes personal data, your rights in relation to that personal data, how to contact us, details of the CMA’s

Data Protection Officer, and how long we retain personal data, see our [Privacy Notice](#).

- 1.31 Our use of all information and personal data that we receive is also subject to Part 9 of the Enterprise Act 2002. We may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need to exclude from publication, so far as practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, please identify the relevant information, mark it as 'confidential' and explain why you consider that it is confidential. When submitting your response please also let us know if you wish to remain anonymous.
- 1.32 Please note that information and personal data provided in response to this consultation may be the subject of requests by members of the public under the Freedom of Information Act 2000. In responding to such requests, we will take fully into consideration representations made by you in support of confidentiality. We will also be mindful of our responsibilities under the data protection legislation referred to above and under Part 9 of the Enterprise Act 2002.
- 1.33 If you are replying by email, this statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

Next steps

- 1.34 After the consultation, the CMA will prepare its final recommendation to the Secretary of State.
- 1.35 The CMA will publish the final version of the recommendation to the Secretary of State on its webpages at <http://www.gov.uk/cma>. The CMA will also publish the responses received during the consultation (with any confidential information redacted). These documents will be available on our webpages and respondents will be notified when they are available.

2. The CMA's proposed recommendation

- 2.1 The CMA's proposed recommendation to the Secretary of State is that it would be appropriate to replace the retained MVBER when it expires on 31 May 2023 with a motor vehicle block exemption order (MVBER) that is tailored to the needs of businesses operating in the UK and UK consumers.¹⁴
- 2.2 The CMA's proposal is that any MVBER would be broadly similar to the retained MVBER that expires on 31 May 2023, in order to ensure the continuity of the current regime for businesses, while making some amendments to improve the block exemption and reflect market developments.
- 2.3 The CMA's proposed recommendation reflects the consensus in the evidence we reviewed that a motor vehicle block exemption is a relevant and useful tool for businesses that increases legal certainty compared to a situation where businesses would have to rely solely on self-assessment.¹⁵
- 2.4 The Evaluation indicates that the MVBER regime has been efficient, and that the costs resulting from assessing compliance of vertical agreements in the motor vehicle sector with competition law are proportionate to the benefits brought by the block exemption regime. Absent the latter, the costs would have been higher. Moreover, the Evaluation has shown that the framework provided by MVBER, VBER, EU Supplementary Guidelines and EU Vertical Guidelines and other relevant legislation is coherent and consistent.¹⁶
- 2.5 Given the evidence in favour of a block exemption for motor vehicle aftermarket agreements, the CMA is proposing that there should continue to be a safe harbour and that letting the retained MVBER expire without providing for replacement is not currently appropriate in the UK. In this context, the CMA considers that motor vehicle aftermarket agreements falling within the current 'safe harbour' are likely to continue to satisfy the requirements for exemption under section 9(1) of the Act.
- 2.6 However, the evidence we have seen thus far also indicates that the retained MVBER regime should be revised in certain respects. The evidence indicates certain issues with the retained MVBER that may need to be addressed, including issues on the definition of 'motor vehicle' (paragraphs 4.19 to 4.20)

¹⁴ The replacement will result in the adoption of a UK block exemption order under section 6 of the Act (Part I of the Act), the provisions of which will be interpreted in accordance with section 60A of the Act (see the CMA's Guidance on the functions of the CMA after the end of the Transition Period (Brexit Guidance), paragraphs 4.18–4.24).

¹⁵ Preliminary feedback received from UK stakeholders and Evaluation Report.

¹⁶ Evaluation Report, pp12-13.

and ‘spare parts’ (paragraph 4.21), as well as access to technical and vehicle information (paragraphs 4.56 – 4.77). We address these specific recommendations in more detail in Part 4.

- 2.7 The CMA is minded to provide further clarity in relation to certain issues by way of revised guidance, instead of recommending that the Secretary of State address the issue in the block exemption itself. These issues are covered in more depth in Part 4, but include:
- (a) Vehicle warranties and repair/maintenance carried out by independent providers (paragraphs 4.78 – 4.83).
 - (b) Limits on the numbers of authorised repairers within a brand network (paragraphs 4.84 – 4.91).
- 2.8 While it is important to ensure that the scope of any future MVBE0 is clearly set out and codified in the MVBE0, an advantage of providing greater clarity through guidance is that the guidance can, in principle, be adapted to reflect important market developments that the CMA becomes aware of during the life of the block exemption. The main disadvantage is that guidance provides less legal certainty than changes to the text of the block exemption itself. Conversely, making clarificatory changes in the text of the block exemption provides a greater degree of legal certainty than providing additional guidance but also less flexibility to make additional clarifying changes during the life of the block exemption.
- 2.9 The CMA has also been mindful of the approach proposed in the EU by the European Commission. The CMA is conscious that there may be advantages in divergence from the EU in certain circumstances – for example to address features specific to UK markets and better protect UK consumers. Equally, the CMA recognises that, all things being equal, there can also be benefits in consistency between the EU and the UK block exemptions, particularly for businesses with activities in both the UK and the EU (eg by reducing compliance costs). We have sought to be guided by what is best for UK consumers and businesses when balancing these considerations.
- 2.10 In relation to the application of the VABEO to motor vehicle distribution, the CMA is not proposing any changes. This is based on the fact that, according to the Evaluation, there are no indications of market failure or actual or potential consumer harm that would justify distinguishing motor vehicle distribution from the distribution of other durable goods.¹⁷ Therefore, the

¹⁷ Evaluation Report, p13.

application of the VABEO appears appropriate for motor vehicle distribution. By contrast, in relation to vehicle repair and maintenance as well as the supply of spare parts, the CMA considers that there are features and competitive constraints in those markets which justify the existence of a separate and specific block exemption. We address these features in the following paragraphs.

- 2.11 So far as concerns the motor vehicle repair market, intra-brand competition within authorised networks is limited by strict and detailed quality criteria and the large investments that authorised repairers are required to make. This is why it is important that independent repairers continue to exert vital competitive pressure on authorised repairers and ensure that consumers can enjoy choice in provision and prices. These operators can only continue to exert such pressure if they have access to key inputs such as spare parts, tools, training, technical information and vehicle-generated data. The current regime aims to support competition in these markets and therefore remains appropriate but may require updating to take account of technological progress.¹⁸
- 2.12 The Evaluation also shows that many authorised repairers may have a high market share in the market for repairs on newer passenger cars and light commercial vehicles. The CMA's view is that it would therefore not be appropriate to increase the market share threshold of the MVBER. This is to ensure that the benefit of the block exemption does not extend to agreements between those repairers that have a high market share and their suppliers.¹⁹
- 2.13 The evidence suggests that the current market share threshold (30%) remains appropriate, and we are not proposing to change it:
 - (a) In our meetings with UK stakeholders this was not mentioned as an area of concern;
 - (b) The UK stakeholder community's views are consistent with the views of the majority of respondents to the European Commission's Evaluation and NCAs on this issue;
 - (c) No enforcement issues have been identified at UK and EU level as a result of the current thresholds.

¹⁸ Evaluation Report, p14.

¹⁹ Extending the benefit of the block exemption to agreements entered into by businesses with market power would be likely to negatively affect competition and consumers.

- 2.14 The Evaluation also showed that the motor vehicle spare parts market appears to have features and competitive constraints that (indirectly) reduce the choice available to end consumers (see paragraph 4.44). In particular, it is vital to ensure that parts bearing the motor vehicle manufacturer's brand face competition from those supplied by the original equipment suppliers (OES) and by other parties. This maintains price pressure on those markets, which in turn places downward pressure on prices on the repair and maintenance markets, since spare parts make up a large percentage of the cost of the average repair.²⁰ The CMA therefore considers that special treatment of these markets continues to be merited.²¹
- 2.15 Overall, the current retained MVBER regime has proven to be appropriate and adapted to diverse situations. The CMA therefore does not consider that major changes to the existing rules are warranted. However, it also observes that some provisions may need updating, in particular to reflect the importance that access to data already has as a factor of competition and the likelihood that it will become even more important in the future.

²⁰ EU Supplementary Guidelines, paragraph 15.

²¹ Evaluation Report, p14.

3. The UK motor vehicle industry

Overview

- 3.1 The motor vehicle industry in the UK has a complex supply chain comprised of vehicle manufacturers, spare parts manufacturers, dealers in motor vehicles, and authorised and independent repairers and parts distributors. Of particular relevance to the retained MVBER are those goods and services related to the repair and maintenance of vehicles and the supply of spare parts, which together form the UK aftermarket sector. Vertical agreements related to these aftermarkets have been the sole focus of the MVBER regime since 2013.²² As set out below, these entities coexist and interact at different levels of the supply chain.
- 3.2 In terms of vehicle distribution, manufacturers and their importers act as suppliers, providing vehicles primarily to private individuals and companies. Some of the latter are professional transport and mobility operators (such as vehicle rental or leasing firms)²³ while others are active in other sectors but use motor vehicles to transport goods and workers.²⁴
- 3.3 Both repair and maintenance services as well as the supply of spare parts comprise the so-called ‘aftermarket’ sector. This sector is concerned with goods and services that follow the initial sale of an automotive by an original equipment manufacturer (OEM).²⁵ With regard to repair and maintenance, service providers are authorised repairers²⁶ (companies with formal contractual arrangements with motor vehicle suppliers) and independent repairers. On the demand side, the main actors are private individuals and companies.
- 3.4 Spare parts are provided by OES,²⁷ either directly or through the vehicle manufacturers, and by independent suppliers which – in contrast to OES – do

²² See paragraph 4.3 below.

²³ See EU Supplementary Guidelines, paragraph 51. For the purposes of the VABEO, and in particular as regards the application of Article 8(2)(c) VABEO, the notion of ‘end users’ includes motor vehicle leasing companies.

²⁴ Please note that, as mentioned in paragraph 1.9, agreements relating to the distribution of vehicles are not within the scope of the retained MVBER. Instead, these vertical agreements are covered by the VABEO.

²⁵ ‘OEM’ refers to vehicle manufacturers; OEMs also distribute parts and set service requirements for workshops in their franchised network.

²⁶ The CMA notes that some stakeholders consider the term ‘authorised’ to be prejudicial against the independent aftermarket. The term is used here simply to reflect the language used in the retained MVBER and Supplementary Guidelines.

²⁷ These are the manufacturers of the parts used for the initial assembly of the vehicle. OES also provide parts for aftermarket purposes.

not supply parts for vehicle assembly. Their primary clients are repairers, and to a lesser extent fleet operators and private individuals.²⁸

- 3.5 The UK automotive aftermarket sector employs around 350,000 workers, in about 35,000 small businesses. The UK aftermarket sector is the fourth largest in Europe (and ninth largest in the world), contributing an estimated £12.2 billion to the economy each year.²⁹ The UK market for maintenance and repair of motor vehicles was 211% larger in 2017 as compared to 2008, and is projected to grow at 2.3% per annum during 2023 to 2028.³⁰
- 3.6 The aftermarket sector encompasses both authorised dealer networks and repairers (who have formal contractual arrangements with motor vehicle suppliers) and independent repairers. There are over 35,000 'all makes'³¹ independent repairers across the UK, as well as around 4,800 active franchised dealers. Independent repairers and operators are an important part of the UK aftermarket sector and offer consumers choice on where and how their vehicles are serviced and repaired. They exert 'vital competitive pressure' on authorised networks in terms of services and prices.³² Independent operators conduct the vast majority of MOT tests, accident repairs, windscreen repairs/replacements and other vehicle related services. Authorised repairers form a similarly important part of the UK aftermarkets, particularly for owners of newer passenger vehicles, for whom they play a significant role in, amongst other things, honouring warranties and sourcing OEM-branded spare parts.³³

Market developments

- 3.7 In making its proposed recommendation, the CMA is mindful that the sector has undergone several changes since the adoption of the EU MVBER in 2010. Three factors in particular are worth considering:

²⁸ Evaluation Report, p3.

²⁹ Society of Motor Manufacturers and Traders (SMMT) (2017). *The importance of the UK aftermarket to the UK economy*, p5; as of 2017, the UK was also the third largest market in Europe for automotive spare parts distributors, as per the EC's [Consultation Study Final Report](#), p112. IBISWorld data from June 2022 suggests the UK motor vehicle maintenance and repair market generates £28.2bn in revenue, although it should be noted that the market definition used in the report also includes car washing services.

³⁰ EC [Consultation Study Final Report](#), p83; IBISWorld (June 2022). *Report: Motor Vehicle Maintenance & Repair in the UK*, p7.

³¹ 'All makes' repairers, as their name suggests, service and repair all makes and model of car; see also [Car Dealer Magazine](#), February 2021.

³² Commission Staff Working Document of the Motor Vehicle Block Exemption Regulation (EC Staff Working Document), p53.

³³ EC Staff Working Document, p54.

- (a) First, the sector is experiencing substantial technological evolution, particularly in relation to communications technologies and the growing importance of in-vehicle data.
 - (b) Second, there is a constant pressure to reduce emissions in light of the UK's [Net Zero Strategy](#) and to shift towards more environmentally friendly fuels and power trains. The increasing adoption of EVs and alternate fuel vehicles (AFVs) will necessitate further training for mechanics.³⁴
 - (c) Third, the sector will need to face the post-COVID-19 world and the likelihood that mobility patterns may, to some extent, have permanently changed.³⁵ Fuel price increases are also projected to contribute to a fall in car usage during 2022-23.³⁶
- 3.8 Following meetings with UK stakeholders, the CMA is conscious that the increasing sophistication of automotive telematics (and issues around access to, and use of, this vehicle-generated data) and evolving distribution models within the UK such as OEMs shifting towards an agency model or introducing direct sales platforms, are likely to impact the competitive dynamics of the sector in the coming years.³⁷
- 3.9 It therefore seems likely that some parts of the motor vehicle sector will evolve rapidly over the coming years and that this will have an impact on the conditions of competition that cannot currently be quantified.³⁸
- 3.10 Statistics show that the size of the UK market for repair and maintenance services increased between 2007 and 2017, with revenue growth projected to resume from 2023 onwards after a period of negative growth during 2018 to 2023.³⁹ They also show a decreasing trend in the density of the authorised networks, which could be due to several factors, including the continuing movement observed toward consolidation of authorised dealer networks, or the need to incur greater investments to meet the demands of digital technologies and hybrid/ electric power trains.⁴⁰

³⁴ IBISWorld (2022). *Industry Report G45.200: Motor Vehicle Maintenance & Repair in the UK*, p15.

³⁵ As per IBISWorld data from June 2022, new car purchases are forecast to fall over the course of the year, compounding the sharp decline in vehicle sales that was seen during the height of the pandemic.

³⁶ IBISWorld (2022). *Industry Report G45.200: Motor Vehicle Maintenance & Repair in the UK*, p2.

³⁷ See also, for example, EC/TRL (2017) [Final Report: Access to In-vehicle Data and Resources](#), and relevant industry reports from [Deloitte](#) and [Accenture](#).

³⁸ Evaluation Report, p13.

³⁹ IBISWorld figures from June 2022 suggest that the industry will see negative annual growth of -1.1% during the period from 2018 to 2023 before recovering in the period 2023-2028. See: IBISWorld (2022). *Industry Report G45.200: Motor Vehicle Maintenance & Repair in the UK*, p7, p14.

⁴⁰ Evaluation Report, p4.

- 3.11 The market for spare parts supply in selected Member States covered in the Evaluation increased by almost 30% in terms of sales value between 2007 and 2017.⁴¹ Over the same period, parts manufacturers registered a stable operating margin, averaging around 6-7%.⁴² Revenues in the UK motor vehicle parts retail and wholesale sectors are both projected to grow during 2022 through 2027.⁴³
- 3.12 The EC's Evaluation indicates that independent operators competing with authorised repairers on the repair and maintenance markets may still face difficulties in accessing the inputs they need to repair and maintain vehicles.⁴⁴ These inputs include spare parts, technical information, tools, training, and data, with the latter of increasing importance. This issue may become more pronounced with the increased use of on-board digital technologies and the development of alternative fuel vehicles that require specific expertise, tooling and spare parts.⁴⁵

⁴¹ Evaluation Report, p4; the UK market for spare parts supply was around 7% larger in 2017 as compared to 2008 in terms of sales value, see EC Consultation Study Final Report, p112.

⁴² Evaluation Report, p4.

⁴³ IBISWorld (2021). *Industry Report G45.320: Motor Vehicle Parts Retailers in the UK*, p7; IBISWorld (2021). *Industry Report G45.310: Motor Vehicle Parts Wholesaling in the UK*, p7.

⁴⁴ EC Staff Working Document, p44

⁴⁵ EC Staff Working Document, p54.

4. Retained MVBER

Overview of the block exemption

- 4.1 The current regime applicable to vertical agreements in the motor vehicle sector consists of the general block exemption rules, as set out in the VABEO and the VABEO Guidance,⁴⁶ sector-specific block exemption provisions, as provided for in the retained MVBER, and the EU Supplementary Guidelines. The retained MVBER expires on 31 May 2023.
- 4.2 In the aftermarkets for the provision of repair and maintenance services and the distribution of spare parts, vertical agreements fall under the scope of the VABEO and retained MVBER if (i) neither party's market share exceeds 30%; (ii) the agreements do not contain any hardcore restrictions (as listed in Article 8 VABEO); and (iii) the agreements do not contain any sector-specific hardcore restrictions (as listed in Article 5 retained MVBER).⁴⁷
- 4.3 Since June 2013, the MVBER has applied only to agreements involving the aftermarkets (ie vertical agreements relating to spare parts and repair and maintenance services), and not to vertical agreements for the purchase, sale or resale of new motor vehicles.⁴⁸ The latter are treated the same way as any other vertical agreements (ie such arrangements should be assessed by reference only to the VABEO and the VABEO Guidance).
- 4.4 As mentioned above, vertical agreements involving the aftermarkets benefit from the block exemption only if, in addition to the conditions set out in the VABEO, they also comply with the retained MVBER. The recitals to MVBER set out the specific characteristics of the motor vehicle aftermarkets that justify the approach of imposing additional and specific block exemption conditions for the aftermarket sector:⁴⁹
 - (i) Price increases for individual repair jobs are only partially reflected in increased reliability of modern cars and lengthening of service intervals. These trends are linked to technological evolution and to the increasing complexity and reliability of automotive components that the vehicle manufacturers purchase from OES. Such suppliers sell

⁴⁶ See [Competition Act 1998 \(Vertical Agreements Block Exemption\) Order 2022](#) and [Vertical agreements block exemption order guidance \(publishing.service.gov.uk\)](#).

⁴⁷ MVBER's hardcore restrictions are: (i) restricting the sale of spare parts by members of a selective distribution system to independent repairers; (ii) restricting the sale by a supplier of spare parts, repair tools or diagnostic equipment to independent distributors, repairers or end-users; (iii) restricting a supplier's ability to place its logo or trade mark on components or spare parts that it sells to manufacturers of motor vehicles.

⁴⁸ Articles 2 and 3 retained MVBER.

⁴⁹ Recitals 11-15 retained MVBER.

their products as spare parts in the aftermarket both through the vehicle manufacturers' authorised repair networks and through independent channels, thereby representing an important competitive force in the motor vehicle aftermarket. The average costs borne by consumers for motor vehicle repair and maintenance services represent a very high proportion of total consumer expenditure on motor vehicles.⁵⁰ Price increases may be indicative of insufficient competitive pressure which in turn justifies the need for a block exemption to ensure that the scope for competition from independent players is viable.

- (ii) Competitive conditions in the motor vehicle aftermarkets also have a direct bearing on public safety, in that vehicles may be driven in an unsafe manner if they have been repaired incorrectly, as well as on public health and the environment, as emissions of carbon dioxide and other air pollutants may be higher from vehicles which have not undergone regular maintenance work.⁵¹ Strong competition in the aftermarkets, including the competitive pressure exerted by independent channels, is therefore ancillary to the promotion of public safety and public health.
- 4.5 Effective competition on aftermarkets depends on the degree of competitive interaction between authorised repairers, as well as between authorised and independent operators, including independent spare parts suppliers and repairers. The ability to compete depends on unrestricted access to essential inputs such as spare parts and technical information.

General recommendation

- 4.6 In general, UK stakeholders were strongly in favour of the retention of a specific block exemption for the motor vehicle aftermarket sector and considered that there would be significant negative consequences for the sector and for consumers if it were to expire without replacement.⁵² Given substantial market developments since 2010, a few UK stakeholders considered that it would be appropriate to carry out a comprehensive review of the regulation.⁵³

⁵⁰ Retained MVBER, recital 11.

⁵¹ Retained MVBER, recital 12.

⁵² Meetings with IAAF/UK AFCAR; Anonymous 1; NFDA; SMMT.

⁵³ Meetings with NFDA; Anonymous 1. The NFDA were of the opinion that any UK MVBER should be expanded to cover automotive sales.

- 4.7 As mentioned in Part 2, the CMA is minded to recommend that there continues to be a safe harbour for some vertical agreements related to the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles. The CMA provisionally considers that letting the retained MVBER expire without providing for a replacement is currently not appropriate in the UK.

Policy question

Question 1: Do you agree with the CMA's proposed recommendation to the Secretary of State to make a Block Exemption Order to replace the retained MVBER with a MVBE0, rather than letting it lapse without replacement or renewing without varying the retained MVBER?

Impact Questions

Question 2: Relative to current arrangements, if the retained MVBER were allowed to expire, how would the absence of legal certainty and clarity affect your business or those that you represent? Please describe the scale of any legal or expert advice needed (eg time spent with consultants).

Question 3: Relative to current arrangements, if the retained MVBER were allowed to expire, how would the absence of legal certainty and clarity impact consumers?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Changes to the scope or definitions in the retained MVBER

Current regime

- 4.8 The scope and definitions of the retained MVBER are included in Article 1. These provisions are an important part of the regime as they set out the types of agreements that may benefit from the block exemption provided by the retained MVBER.

- 4.9 The current material scope of the retained MVBER⁵⁴ was set in 2010 following a full analysis of the sector, which showed, *inter alia*, that there were certain features and competition constraints⁵⁵ on the markets for spare parts for four-wheeled vehicles.⁵⁶
- 4.10 The retained MVBER includes, among others, the following two definitions:
- (a) ‘motor vehicle’: Article 1(g) of the retained MVBER currently defines a ‘motor vehicle’ as a “self-propelled vehicle intended for use on public roads and having three or more road wheels.”
 - (b) ‘spare parts’: Article 1(h) of the retained MVBER defines ‘spare parts’ as goods which are to be installed in or upon a motor vehicle so as to replace components of that vehicle, including goods such as lubricants which are necessary for the use of a motor vehicle, with the exception of fuel.
- 4.11 The EU Vertical Agreements Guidelines set out that an agreement will generally be defined as an agency agreement where property in the contract goods bought or sold does not vest in the agent, or the agent does not himself supply the contract services.⁵⁷
- 4.12 The EU Vertical Agreements Guidelines set out that subcontracting agreements are those in which the subcontractor undertakes to produce certain products exclusively for the contractor, and that these will generally fall outside Article 101(1) of the Treaty (the equivalent of the Chapter I prohibition at EU level) provided that the technology or equipment is necessary to enable the subcontractor to produce the products.⁵⁸

Recommendations

- 4.13 The CMA proposes to recommend that:

- (a) the current material scope of the retained MVBER should be maintained, ie with the notion of ‘motor vehicle’ being limited to three and four-wheeled vehicles (paragraphs 4.15 – 4.20);

⁵⁴ Articles 1(g) and 4 of the retained MVBER.

⁵⁵ Namely: (i) OES’ contractual arrangements with vehicle manufacturers (eg so-called tooling arrangements); and (ii) incentives given to authorised repairers to purchase most of their supplies of parts directly from the OEM.

⁵⁶ See para 64 et seq of EC Staff Working Document; EC (2009) *The Future Competition Law Framework applicable to the motor vehicle sector*, Impact Assessment and Section 4 of the London Economics study on *Developments in car retailing and after-sales markets under Regulation N° 1400/2002*.

⁵⁷ For the applicable guidance in the UK please see paragraphs 4.8-4.33 of the VABEO Guidance. *Vertical agreements block exemption order guidance (publishing.service.gov.uk)*

⁵⁸ For the applicable guidance in the UK please see paragraph 4.34 of the VABEO Guidance.

- (b) the definition of ‘spare parts’ be potentially updated to reflect technological developments and to capture clearly other relevant goods necessary for the use of the motor vehicle (paragraphs 4.21 and 4.38 – 4.48);
- (c) a new definition of ‘technical and vehicle information’ be included in any MVBERO, (though this depends on whether we recommend treating any restrictions on access as excluded restrictions; if the CMA recommends that the issue be dealt with in the CMA MVBERO Guidance, then the definition should also be dealt with in that Guidance) (paragraph 4.74);
- (d) any issues and submissions made in relation to the notion and operation of ‘agency agreements’ and ‘subcontracting’ be considered in the context of our review of the CMA MVBERO Guidance (paragraphs 4.23 – 4.24).

4.14 We explain each of these recommendations in further detail below, summarising the stakeholder feedback taken into account in reaching the proposed recommendations.

Material scope

- 4.15 At the UK level, stakeholders did not raise any significant concerns about the current scope of the retained MVBER. However, the CMA acknowledges that a majority of respondents to the Evaluation considered that the scope should be widened to also cover two-wheeled vehicles and some vehicles not meant for roads (eg agricultural machinery, tractors and forestry vehicles, and construction vehicles).
- 4.16 In meetings with the CMA, one UK stakeholder suggested that the question of two-wheeled vehicles needed to be considered further, given the increased sophistication of motorcycles and other two-wheelers, as well as the proliferation of urban-focused microcars.⁵⁹
- 4.17 While the CMA acknowledges that there may well be similarities between the features and competitive conditions in four-wheeled and two-wheeled vehicles markets, the CMA does not have any concrete evidence or indications that the competition constraints identified in relation to four-wheeled vehicles are also present, at least to the same extent, in two-wheeled aftermarkets.
- 4.18 The CMA’s current assessment is therefore that the current scope remains appropriate, a view which was shared by the majority of NCAs in the

⁵⁹ Meeting with IAAF/UK AFCAR.

Evaluation. The CMA, however, invites any views and evidence from interested stakeholders in relation to this issue.

Definitions in the retained MVBER

- 4.19 The Evaluation and engagement with UK stakeholders has shown that, in general, the definitions in the retained MVBER remain useful and appropriate, with a few exceptions which we address below:
- (a) ‘motor vehicle’: as noted above at paragraph 4.15, a majority of respondents to the Evaluation considered that the scope should be widened to also cover two-wheeled vehicles and some vehicles not meant for roads (eg agricultural machinery, tractors and forestry vehicles, construction vehicles);
 - (b) ‘spare parts’: respondents to the Evaluation considered that the definition was sufficiently clear, although some suggested it could be updated to reflect technical developments and that the word ‘component’ should not be used as this term would not usually describe certain goods included in the definition such as lubricants.⁶⁰
- 4.20 As noted at paragraph 4.17 above, the CMA provisionally considers that the current scope of the block exemption should be maintained. However, if the final recommendation and the Secretary of State decision is to extend the scope to other vehicles, then the definition of ‘motor vehicle’ will need to be updated accordingly.
- 4.21 In relation to the definition of ‘spare parts’ the CMA provisionally considers that, for the most part, the definition is clear and comprehensive but may be in need of some updating to reflect technological developments and to clearly capture other relevant goods necessary for the use of the motor vehicle. The CMA is therefore inviting views from stakeholders on how the definition should be modified in order to reflect such developments and whether the reference to ‘components’ should be removed in order to clearly capture all goods which are necessary for the use of a motor vehicle.
- 4.22 Finally, as noted above, depending on what the final recommendation is on the issue of ‘access to technical and vehicle information’, we are likely to recommend the addition of a definition of such information in the MVBE0 itself or in the CMA MVBE0 Guidance. This issue is discussed in detail at paragraph 4.74.

⁶⁰ EC Staff Working Document, p110.

Definitions in the EU Vertical Agreements Guidelines and/or EU Supplementary Guidelines

- 4.23 At UK and EU level, certain stakeholders also raised a number of issues around definitions which are contained in guidance (EU Vertical Agreements Guidelines and/or EU Supplementary Guidelines). We list these issues below:
- (a) 'Agency agreement': during the Evaluation, some NCAs noted that the EU Vertical Agreements Guidelines lacked the necessary detail to assess the distinction between independent traders and agents acting on behalf of a supplier, especially with regards to legal and/or commercial risks. The majority of respondents considered that the provisions on agency agreements in the EU Vertical Agreements Guidelines provided very little legal certainty.⁶¹
 - (b) 'subcontractor agreement': some NCAs questioned whether practices commonly known as "tooling arrangements", whereby vehicle manufacturers prohibit OES from using the original tools (or parts thereof) to manufacture parts for aftermarket supply under the suppliers' own brands, could constitute genuine subcontracting agreements and thus not be caught by Article 101 of the Treaty (the equivalent of the Chapter I prohibition at EU level).
- 4.24 The CMA considers that these issues should be considered in the context of any future CMA MVBEQ Guidance by reference to the position set out in the VABEO Guidance. To the extent that the issues listed above are not sufficiently addressed in the VABEO Guidance, the CMA will consider whether additional and specific guidance for the aftermarket sector should be added to the CMA MVBEQ Guidance.

Policy Questions

Question 4: Do you agree with the CMA's position to limit the scope of the block exemption to three and four-wheeled vehicles? If not, what are the reasons and evidence that warrant an extension of the scope of the block exemption?

Question 5: Do you agree with the CMA's proposed recommendation not to amend the definition of 'motor vehicle' unless it proposes to recommend a change to the material scope of the MVBEQ?

⁶¹ See p69 *et seq.*, paragraph 2.2, EC Staff Working Document; one UK stakeholder (NFDA) has recommended that definitions of 'agent' and 'genuine agent' be added to Article 1 of the MVBER.

Question 6: Do you agree with the CMA's position that the definition of 'spare parts' may need some updating to improve clarity and to reflect technological developments? If so, which aspects need modification? Are there any other changes that you consider should be made?

Question 7: Do you agree that there should be a definition of 'technical and vehicle information' either in the MVBE0 or in the CMA MVBE0 Guidance depending on what recommendation the CMA makes about access to such information?

Question 8: Do you agree that the definitions of 'agency agreement' and 'subcontractor agreements should be considered by the CMA in any future CMA MVBE0 Guidance?

Impact Questions

Question 9: How would the proposed changes recommended by the CMA with regards to the definitions included in any MVBE0 impact your business's operations or the operations of those you represent? Please provide the reasoning behind your answer.

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 10: How would the proposed changes recommended by the CMA with regards to the definitions included in any MVBE0 impact consumers? Please provide the reasoning behind your answer.

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 11: How would retaining the current scope of the retained MVBER in the proposed MVBE0 (as opposed to extending it to two-wheeled vehicles) impact your

business's operations or the operations of those you represent? Please provide the reasoning behind your answer.

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Market definition and market share thresholds

Current regime

- 4.25 Article 4 of the retained MVBER provides a safe harbour for vertical agreements relating to the conditions under which the parties may purchase, sell or resell spare parts for motor vehicles or provide repair and maintenance services for motor vehicles on condition that the conditions of the VABEO are met. These conditions include the requirement that the market share held by the supplier does not exceed 30% of the relevant market on which it sells the contract goods or services and the market share held by the buyer does not exceed 30% of the relevant market on which it purchases the contract goods or services.
- 4.26 Whether a particular agreement may benefit from exemption under the retained MVBER depends, *inter alia*, on market share. Correct market definition is therefore an important factor in any assessment. In some circumstances, it may be appropriate to define a single relevant market as including a primary product such as motor vehicles and a secondary product such as spare parts, taking into account, *inter alia*, the life-time of the motor vehicle as well as the preferences and buying behaviour of the users.⁶² In such cases, the relevant market shares would be those for the whole (multi-brand) system rather than for repair and maintenance and the supply of spare parts.

⁶² See [Market Definition](#) (OFT 403), in particular Part 6. See also paragraph 56 of Commission notice on the definition of the relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997.

Recommendations

- 4.27 For the reasons set out below, the CMA is proposing to recommend that the current market share threshold (30%) should be maintained.
- 4.28 UK stakeholders did not raise significant concerns related to the existing market share thresholds, although one stakeholder suggested that the raw market share of OEMs belied their actual influence over their authorised retail network.⁶³
- 4.29 The evidence from the Evaluation is consistent with the views expressed by UK stakeholders. The majority of respondents and NCAs considered that the thresholds were appropriate. A few stakeholders suggested that they were too high and that very few players actually reach 30% market share due to the increase in direct sales by manufacturers. Others suggested the threshold might be too low.⁶⁴ This appears to indicate that the current market share threshold of 30% seems to have been appropriate and to remain relevant today.⁶⁵
- 4.30 To date, the CMA has not identified any category of agreements that are unable to benefit from the exemption because of the parties' market share, but which are likely to meet the conditions for individual exemption under section 9(1) of the Act; the identification of such a category would have been an indication that the threshold was set too low. Similarly, the CMA has not found any elements that have led it to consider withdrawing the exemption from any agreement or category of agreements in the motor vehicle sector. If it had, that might suggest that the exemption threshold was set too high.
- 4.31 The majority of respondents and NCAs considered that the thresholds were appropriate. A few stakeholders suggested they were too high and that very few players actually reach a 30% market share due to the increase in direct sales by manufacturers. Others suggested the threshold might be too low. Questions were also raised about appropriate market definitions, including whether these should be brand-specific and the extent to which market definition should depend on the nature of the repairs (ie complex repairs

⁶³ Meeting with NFDA.

⁶⁴ In particular, some respondents considered the 30% market threshold to be too low if '(i) the market for repair and maintenance (insofar as it is separate from the market for the sale of new motor vehicles) were considered to be brand-specific; and (ii) the market shares of authorised repairers (even if legally they are separate companies) were attributed to vehicle manufacturers, or if these were used as a proxy for the position of vehicle manufacturers on the upstream market, this would imply that vehicle manufacturers' agreements regarding repair, maintenance and spare parts could not benefit from the exemption'; see p157 of the EC Staff Working Document.

⁶⁵ Evaluation Report, pp5-6.

where there are limited alternative suppliers might justify a brand-specific definition).

- 4.32 In relation to any possible difficulties in defining relevant markets in the aftermarket sector, the CMA notes that its Guidance on Market Definition provides guidance on the rules, criteria and evidence which the CMA has regard to when considering market definition issues.⁶⁶ The CMA considers that this guidance should serve as the basis for assessing market definition and that therefore it is not necessary or indeed appropriate to address this issue in the context of the review of the block exemption itself.
- 4.33 As regards the market share threshold, the evidence the CMA has seen is not sufficient to conclude that a higher market share threshold would be appropriate, or indeed which alternative level would be appropriate. The CMA therefore considers that the current market share threshold remains an appropriate threshold and is not minded to recommend changes to it.

Policy Questions

Question 12: Do you agree with the CMA's proposed recommendation to retain the current market share threshold in the proposed MVBE? If not, what are the reasons and evidence that warrant a change to the market share threshold in the proposed MVBE?

Impact Questions

Question 13: What would be the likely impact on your business's operations or the operations of those you represent if the market share threshold was increased?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

⁶⁶ *Market Definition* (OFT 403), in particular Part 6. The CMA will also have regard to the European Commission's Notice on the definition of relevant market, OJ C 372, 9 December 1997, which is a relevant statement of the European Commission for the purpose of section 60A of the Act.

Question 14: What would be the likely impact on your business's operations or the operations of those you represent if the market share threshold was decreased?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Hardcore restrictions

Current regime

- 4.34 Vertical agreements relating to the motor vehicle aftermarkets which contain certain 'hardcore' restrictions will not benefit from the 'safe harbour' outlined in Article 4 of the retained MVBER.
- 4.35 Specifically, in order to benefit from the block exemption provided by the retained MVBER the agreements must not contain any of the hardcore restrictions set out in the VABEO and in the retained MVBER. Where an agreement includes a hardcore restriction that agreement is likely to fall within the scope of the Chapter I prohibition. Such inclusion also gives rise to the presumption that the agreement is unlikely to fulfil the conditions for exemption from the Chapter I prohibition, for which reason the retained MVBER does not apply. However, undertakings have the possibility to raise an efficiency justification under section 9(1) of the Act.
- 4.36 Article 8(2)(e) of the VABEO describes it as a hardcore restriction for an agreement between a supplier of components and a buyer who incorporates those components, to restrict the supplier's ability to sell its components as spare parts to end-users, repairers, wholesalers or other service providers not entrusted by the buyer with the repair or servicing of its goods. Articles 5(a), (b) and (c) of the retained MVBER lay down three additional hardcore restrictions relating to agreements for the supply of spare parts.⁶⁷

⁶⁷ One of the objectives of the retained MVBER is to protect access by spare parts manufacturers to the motor vehicle aftermarkets, ensuring that competing brands of spare parts continue to be available to both independent and authorised repairers, as well as to parts wholesalers. Alternatives for parts bearing the trademark of the motor vehicle manufacturer (OEM parts) include original parts manufactured and distributed by original equipment suppliers (OES parts), while other parts matching the quality of the original components are supplied by 'matching quality' parts manufacturers.

4.37 The hardcore restrictions in Article 5 of the retained MVBER are:

- (a) the restriction of the sales of spare parts for motor vehicles by members of a selective distribution system to independent repairers which use those parts for the repair and maintenance of a motor vehicle;⁶⁸
- (b) the restriction, agreed between a supplier of spare parts, repair tools or diagnostics or other equipment and a manufacturer of motor vehicles, of the supplier's ability to sell those goods to authorised or independent distributors, repairers or end users; and
- (c) the restriction, agreed between a manufacturer of motor vehicles which uses components for the initial assembly of motor vehicles and the supplier of such components, of the supplier's ability to place its trade mark or logo effectively and in an easily visible manner on the components supplied or on spare parts.⁶⁹

Recommendations

- 4.38 For the reasons set out below, the CMA is proposing to recommend that the current list of hardcore restrictions in the retained MVBER should be maintained. Taking into account the fact that certain restrictions on access to spare parts are already treated as hardcore restrictions, the CMA is proposing to recommend that further guidance on this matter be issued in order to address residual and novel issues reported by stakeholders. The only exception to this relates to a possible modification of the definition of 'spare parts' in the retained MVBER to take account of technical developments and relevant products currently not covered by the definition.
- 4.39 In meetings with the CMA, UK stakeholders did not voice specific or significant concerns with the current range of hardcore restrictions contained in the retained MVBER.⁷⁰ There were strong concerns expressed about

⁶⁸ This provision is most relevant for a particular category of parts, sometimes referred to as captive parts, which may only be obtained from the motor vehicle manufacturer or from members of its authorised networks. If a supplier and a distributor agree that such parts may not be supplied to independent repairers, this agreement would be likely to foreclose such repairers from the market for repair and maintenance services and fall foul of the Chapter I prohibition.

⁶⁹ In order to improve consumer choice, repairers and consumers should be able to identify which spare parts from alternative suppliers match a given motor vehicle, other than those bearing the car manufacturer's brand. Putting the trade mark or logo on the components and on spare parts facilitates the identification of compatible replacement parts which can be obtained from OES. By not allowing this, motor vehicle manufacturers can restrict the marketing of OES parts and limit consumers' choice in a manner that runs counter to the Chapter I prohibition.

⁷⁰ Meeting with Anonymous 1; meeting with IAAF/UK AFCAR (who suggested the current hardcore restrictions should be retained in any MVBER); meeting with NFDA, who suggested more guidance may be needed to safeguard against the application of indirect restrictions that might inhibit price or other forms of competition (particularly in the context of non-genuine agency arrangements).

access to technical and in-vehicle information (see paragraph 4.63) and some UK stakeholders representing the independent aftermarket sector outlined their concerns with the increasing difficulty in sourcing and fitting certain replacement parts produced by OEMs which could only be sourced through the OEM's authorised network.⁷¹ According to these stakeholders, QR codes, OEM-produced diagnostic tools and specific software were increasingly needed to activate spare parts from OEMs; this was particularly a problem with Advanced Driver Assistance Systems (ADAS).

- 4.40 One UK stakeholder representing the franchised dealers sector noted the substantial supply chain issues that were currently affecting the market for spare parts.⁷² However, there were no specific suggestions that such issues should be addressed via an expansion of the current list of hardcore restrictions.
- 4.41 We set out below the CMA's provisional assessment of the issues relating to the operation of the hardcore restrictions relating to the supply of spare parts, starting with an explanation of why the European Commission considered it necessary to protect access to spare parts and the CMA's provisional assessment of the extent to which there is a continued need for such protection.
- 4.42 In its 2009 Communication, the European Commission observed that there were often large differences in price between parts sold or resold by a motor vehicle manufacturer and alternative brands of parts. The availability of alternatives brought considerable benefits to consumers, in terms of both choice and price. Thus, the European Commission considered it necessary to protect spare parts manufacturers' access to the motor vehicle aftermarkets, in particular through the identification of three hardcore clauses in the EU MVBER, thereby ensuring that competing brands of spare parts continued to be available.
- 4.43 The Evaluation showed that this objective of protecting spare parts manufacturers' access to the motor vehicle aftermarkets has been partially met. First, alternatives are usually available for the most common parts used in motor vehicle maintenance, and independent repairers often use such parts to repair and maintain customers' vehicles.⁷³ Secondly, although some stakeholders have indicated that independent repairers still face certain difficulties, there have been no antitrust complaints to the European

⁷¹ Meeting with IAAF/UK AFCAR.

⁷² Meeting with NFDA.

⁷³ See Annex 4 to EC Staff Working Document, pp175-177.

Commission in this area that would indicate more than a limited likelihood of finding an infringement of competition law.

- 4.44 As to the continued need to protect access to spare parts, the spare parts markets generally seem to be characterised by two competitive constraints in particular. First, OES' contractual arrangements with motor vehicle manufacturers may prevent or hamper the former from supplying the aftermarket directly, in competition with parts sold to the vehicle manufacturers and then resold as spare parts. In particular, there are so-called "tooling arrangements" which sometimes place requirements on OES to transfer intellectual property rights to their OEM customers.⁷⁴ Secondly, agreements between OEMs and authorised repairers may oblige or incite the latter to purchase most of their supplies of parts directly from the motor vehicle manufacturer.
- 4.45 Other issues were raised in the meetings the CMA held with stakeholders. As noted above, one UK stakeholder referred to the increasing importance of access to software in order to be able to fit spare parts. This stakeholder explained that these codes and software were increasingly needed to activate spare parts from OEMs; this was particularly a problem with ADAS.⁷⁵
- 4.46 However, taking into account the fact that certain restrictions on access to spare parts are already treated as hardcore restrictions, the CMA is not proposing to amend the list of hardcore restrictions in light of these concerns as it considers that the list of hardcore restrictions remains appropriate.⁷⁶ No additional clauses that should have been considered either as general conditions for the application of the block exemption, or as hardcore restrictions were identified.⁷⁷
- 4.47 Instead, the CMA is proposing to recommend that further guidance on this matter be issued in order to address residual and novel issues reported by stakeholders. The CMA provisionally considers that it is not necessary to enshrine these considerations in legislation and that clarifications on the

⁷⁴ Tooling is the process of designing and engineering the tools used to manufacture components. In the context of the motor vehicle industry, tooling relates to designed tools that automakers use to forge vehicle parts. Tooling arrangements amount to a restriction agreed between a supplier of spare parts, repair tools or diagnostic or other equipment and a manufacturer of motor vehicles, which limits the supplier's ability to sell these goods to authorised and/or independent distributors and repairers. As set out at paragraph 23 of the EU Supplementary Guidelines these arrangements are one example of possible indirect restrictions under Article 5(b) of the retained MVBER.

⁷⁵ Meeting with IAAF/UK AFCAR.

⁷⁶ The EU is similarly not proposing to make any changes to the hardcore and excluded restrictions in the EU MVBER. In previous consultations regarding the review of retained block exemptions (ie, retained VBER and retained HBERs) we received feedback from stakeholders about the cost of compliance arising from possible divergence between the EU block exemption and the UK BEO. This is a consideration which the CMA has taken into account in its proposed recommendation.

⁷⁷ Evaluation Report, p6.

scope of the relevant statutory provisions in the CMA MVBEQ Guidance would be a proportionate way to address the issues identified. In particular, consideration will need to be given to the need to access certain software systems in order to fit certain spare parts, and how restrictions at software level can render physical access to spare parts meaningless.

- 4.48 We have in addition considered whether there is a need to modify the definition of ‘spare parts’. Article 1(h) of the retained MVBER defines ‘spare parts’ as goods which are to be installed in or upon a motor vehicle so as to replace components of that vehicle, including goods such as lubricants which are necessary for the use of a motor vehicle, with the exception of fuel. As noted above, respondents to the Evaluation considered that the definition was sufficiently clear, although some suggested it could be updated to reflect technical developments and that the word “component” should not be used as this term would not usually describe certain goods included in the definition such as lubricants.⁷⁸ We are, as mentioned in paragraph 4.21, interested in stakeholders’ views on whether to amend the definition of ‘spare parts’ in the MVBEQ and, if so, what changes would be appropriate to account of technical developments and relevant products currently not covered by the definition.

Policy questions

Question 15: Do you agree with the CMA’s recommendation to retain the current hardcore restrictions in the retained MVBER in any MVBEQ? If not, what are the reasons and evidence that would warrant a change to the current hardcore restrictions?

Question 16: Do you agree with the CMA’s recommendation to maintain the current hardcore restrictions relating to spare parts and consider, in due course, whether further guidance is needed to address residual and novel issues reported by some stakeholders? If not, what changes to the MVBEQ would be necessary in order to address the issues? Please provide the reasoning behind your response.

Impact questions

Question 17: What would be the likely impact on your business’s operations or the operations of those you represent if novel and residual issues relating to spare parts were addressed in any CMA MVBEQ Guidance, rather than in direct changes to the proposed MVBEQ itself?

⁷⁸ EC Staff Working Document, p113.

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 18: What would be the likely impact on your business's operations or the operations of those you represent if the definition of spare parts were to be updated to reflect technological developments and to clearly capture all relevant goods necessary for the use of the motor vehicle?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 19: What would be the likely impact on your business's operations or the operations of those you represent if the current hardcore restrictions were retained in any MVBER?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 20: Please provide a short explanation highlighting your reasoning for your answer above.

Question 21: How would retaining the current hardcore restrictions used in the retained MVBER in the proposed MVBER impact consumers?

- a) Significant positive impact
- b) Moderate positive impact

- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Excluded restrictions

Current regime

- 4.49 Under the VABEO, the presence of so-called excluded restrictions in a vertical agreement does not result in the loss of the exemption for the entire agreement but only for the clauses constituting excluded restrictions under the VABEO (even if the parties to the vertical agreement do not exceed the market share thresholds set out in the VABEO). The excluded restriction must be individually assessed to establish whether it benefits from the individual exemption under section 9 of the Act.
- 4.50 Article 10(2) VABEO contains a closed list of vertical restrictions that are excluded from the benefit of the block exemption:
- (a) any non-compete obligation, the duration of which is indefinite or exceeds five years (and a non-compete obligation which is automatically renewable beyond a period of five years is deemed to have been concluded for an indefinite duration);
 - (b) any direct or indirect obligation causing the buyer, after termination of the agreement, not to manufacture, purchase, sell or resell any goods or services; and
 - (c) any direct or indirect obligation causing the members of a selective distribution system not to sell the brands of particular competing suppliers.
- 4.51 The retained MVBER does not currently include any excluded restrictions.

Recommendations

- 4.52 The CMA is proposing to recommend that the current list of excluded restrictions in Article 10(2) of the VABEO be maintained. The CMA is seeking views on whether to recommend that a new excluded restriction relating to access to technical and vehicle information be added in the MVBER (see paragraphs 4.60 to 4.77).
- 4.53 In meetings between the CMA and UK stakeholders no specific concerns were expressed in relation to the current list of excluded restrictions. There

were strong concerns expressed about access to technical and vehicle information although there were no specific suggestions that such issues should be addressed via an expansion of the current list of excluded restrictions.

- 4.54 Evidence from the Evaluation suggested that the current list of excluded restrictions remains appropriate.⁷⁹
- 4.55 The CMA is provisionally of the view that, in general, the current list of excluded restrictions remains appropriate. This is subject, however, to the possible introduction of new excluded restriction relating to access to vehicle information, which we address in more detail in paragraphs 4.56 – 4.77 below.⁸⁰

Policy questions

Question 22: Do you agree with the CMA’s recommendation that the current list of excluded restrictions in Article 10(2) of the VABEO be maintained? If not, what are the reasons and evidence that would warrant a change to the current list of excluded restrictions?

Impact questions

Question 23: What would be the likely impact on your business’s operations or the operations of those you represent if the current excluded restrictions in Article 10(2) of the VABEO were retained? Please provide the evidence and reasoning behind your answer.

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

⁷⁹ See Evaluation Report, p6, and EC Staff Working Document, p36.

⁸⁰ The EC is not proposing to make any changes to the hardcore and excluded restrictions in the EU MVBER. In previous consultations regarding the review of retained block exemptions (ie, retained VBER and retained HBERs) we received feedback from stakeholders about the cost of compliance arising from possible divergence between the EU block exemption and the UK BEO. This is a consideration which the CMA has taken into account in its proposed recommendation.

Question 24: Please provide a short explanation highlighting your reasoning for your answer above.

Question 25: How would retaining the current excluded restrictions used in the retained MVBER in the proposed MVBE0 impact consumers?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Restrictions on access to technical information and vehicle data

Current regime

- 4.56 Paragraphs 62 to 68 of the EU Supplementary Guidelines set out guidance on the situations in which qualitative selective distribution agreements concluded with authorised repairers and/or parts distributors may be caught by the Chapter I Prohibition of the Act if, within the context of those agreements, one of the parties acts in a way that forecloses independent operators from the market, by failing to release technical repair and maintenance information to them.
- 4.57 The EU Supplementary Guidelines clarify at paragraph 62 that the notion of 'independent operators' includes independent repairers, spare parts manufacturers and distributors, manufacturers of repair equipment or tools, publishers of technical information, automobile clubs, roadside assistance operators offering inspection and testing services, and operators offering training for repairers.
- 4.58 The EU Supplementary Guidelines set out at paragraph 65 some of the factors which are taken into account when considering whether a restriction on access to technical information or vehicle data may be caught by the Chapter I prohibition:
- (a) whether the item in question is technical information, or information of another type, such as commercial information, which may be legitimately withheld;

- (b) whether withholding the technical information in question will have an appreciable impact on the ability of independent operators to carry out their tasks and exercise a competitive constraint on the market;
 - (c) whether the technical information in question is made available to members of the relevant authorised repair network: if it is made available to the authorised network in whatever form, it should also be made available to independent operators on a non-discriminatory basis;
 - (d) whether the technical information in question will ultimately be used for the repair and maintenance of motor vehicles, or rather for another purpose such as for the manufacturing of spare parts or tools.⁸¹
- 4.59 The CMA notes that there is retained EU law dealing with the issue of access to vehicle repair and maintenance information.⁸² In line with the position set out at paragraph 65 of the EU Supplementary Guidelines, when assessing whether a certain restriction of access to technical and vehicle information the CMA will take into account the relevant provisions in this legal instrument.

Recommendations

- 4.60 The CMA has identified two options for addressing the issues discussed below:
- (a) treating access to technical and vehicle information as an excluded restriction; or
 - (b) dealing with the issue in any CMA MVBEQ Guidance with a reference to a possible cancellation of the benefit of the block exemption in individual cases.
- 4.61 On balance, the CMA proposes to recommend that the issue be addressed by adding an excluded restriction to the MVBEQ.
- 4.62 A lack of appropriate access to necessary technical information and vehicle data can cause the market position of independent operators to decline, leading to consumer harm, in terms of a significant reduction in choice of spare parts, higher prices for repair and maintenance services, a reduction in choice of repair outlets and potential safety problems.

⁸¹ Information used for fitting a spare part to or using a tool on a motor vehicle should be considered as being used for repair and maintenance, while information on the design, production process or the materials used for manufacturing a spare part should not be considered to fall within category and may therefore be withheld.

⁸² Regulation (EU) 2018/858 of 30 May 2018, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC.

- 4.63 In meetings with the CMA, certain UK stakeholders representing the aftermarket sector highlighted their concerns related to access to data, and the rapid changes in the sector that were being driven by the increasing volume of vehicle-generated data within ‘connected vehicles’, as well as the difficulties faced in securing the required information from OEMs needed for vehicle repair and maintenance.⁸³ One UK stakeholder also emphasised the importance of vehicle data for its sector in terms of protecting the ability to create and develop innovative and fairly-priced product and service offerings for consumers.⁸⁴ The same stakeholder noted that some OEMs were able to restrict access to vehicle on-board diagnostics (OBD) ports by preventing third party devices from connecting, which prevented certain companies from accessing vehicle data directly from the vehicle.⁸⁵ In addition, one stakeholder noted that the retained EU law regarding vehicle type approval which also deals with the issues of access to technical and vehicle information is no longer fit-for-purpose in light of technological and market developments which took place over the past few years.⁸⁶
- 4.64 The concerns expressed by some UK stakeholders have also been considered at EU level, including when the UK was still a member-state. In its 2009 Communication,⁸⁷ the European Commission noted that independent repairers provided consumers with an alternative channel for the upkeep of their motor vehicles and were a source of vital competitive pressure, as their business models and operating costs were different from those in the authorised networks. Independent repairers’ ability to compete depended on unrestricted access to essential inputs such as spare parts, tools, training and technical information. It therefore considered it necessary to safeguard this access, as well as to deter suppliers and/or their authorised repairers from using other indirect means to foreclose independent repairers, such as by misusing warranties.
- 4.65 The Evaluation broadly confirmed that one of the original objectives of the EU MVBER, specifically to enable independent repairers to compete with the

⁸³ Meeting with IAAF/UK AFCAR; the NFDA noted issues related to OEMs receiving the majority of vehicle generated data, as OEMs were in increasing competition with their own dealer networks given changes in industry structure, with the importance of maintaining strong intra-brand competition emphasised. IAAF/UK AFCAR were of the view that these issues should be further addressed in an update to the EU Supplementary Guidelines and aligned with the vehicle type approval legislation to provide the detailed technical requirements.

⁸⁴ Meeting with Anonymous 1.

⁸⁵ Meeting with Anonymous 1; this stakeholder also noted that the issue was compounded by the terms and conditions used by OEMs when they provided limited access to data; this included a restricted approach to the price, timing, and format by which functional data could be accessed.

⁸⁶ Meeting with Anonymous 1.

⁸⁷ On 22 July 2009 the Commission adopted a Communication, *The Future Competition Law Framework applicable to the motor vehicle sector* (2009 Communication), setting out seven areas which were found to be problematic from a competition perspective. The 2009 Communication was accompanied by an impact assessment containing, inter alia, a Technical Annex No 1 which restates the seven areas in which competition was found to be problematic.

manufacturers' networks of authorised repairers, had been at least partially achieved.⁸⁸ Since the Commission adopted the four Technical Information decisions in 2007,⁸⁹ and included the lessons learned in the EU Supplementary Guidelines, no robust complaints have been brought to its attention on this specific point. However, independent operators that compete with authorised repairers still report difficulties in accessing the inputs they need to repair vehicles (eg issues with obtaining full or up-to-date information and restrictions on access to in-vehicle data).⁹⁰ This view is supported by some NCAs, which also refer to difficulties for independent repairers to obtain timely access to inputs for repair and maintenance. While some of these issues may be linked to these operators' (often multi-brand) business models, and to the major investments needed to be able to repair increasingly technologically advanced motor vehicles, it cannot be excluded that some of the difficulties encountered may be due to restrictions on access to essential inputs such as technical and vehicle information.

- 4.66 Based on the above, the Evaluation found that the objective continues to be relevant, in that independent repairers continue to provide an important value proposition for consumers, although some behaviour by market players may need deeper scrutiny, notably in light of recent market developments concerning the increased importance of data access.
- 4.67 Restrictions on access to data are one of the main competition issues to have been identified in the Evaluation. In particular, some NCAs were of the view that new business models, new technologies and recent market developments should be considered in the provision of further clarification and guidance on the MVBER rules. They noted that data collected by vehicles 'has the potential to support a wide range of innovative services', including:
- (a) Remote prognostics and diagnostics.
 - (b) Accident and breakdown insurance.
 - (c) Navigation.
 - (d) Fleet management.
 - (e) Leasing and car-sharing.

⁸⁸ Evaluation report, pp8-9.

⁸⁹ See cases AT. 39140 - *DaimlerChrysler*, AT. 39141- *Fiat*, AT. 39142 - *Toyota Motor Europe* and AT. 39143 - *Opel*.

⁹⁰ About 10% of the informal submissions received by the European Commission since 2010 concerned restrictions on restrictions on access to repair and maintenance information / vehicle data.

- (f) Traffic management.
 - (g) Usage-based insurance.
 - (h) Infotainment.
- 4.68 As part of the Evaluation, many parts dealers, parts manufacturers and repairers referred to the need to make access to technical information a condition to benefit from the exemption or, as an alternative, to recognise the failure to provide such access as a competition law violation.⁹¹
- 4.69 NCAs and stakeholders further stressed the importance of coherence between any future legislation on access to in-vehicle data and the MVBER regime.⁹²
- 4.70 The Evaluation concluded that in-vehicle data, or the information derived from it (such as the fact that a vehicle has a particular fault, or needs a routine service), may be considered an essential input for repair and maintenance. Where such data or information is not available from other sources, and is supplied to authorised repairers, it should therefore also be supplied on an equal basis to independent operators that compete with those repairers. However, the Evaluation found that access to data, like access to other essential inputs, should be seen as a subset of the specific objective of enabling independent repairers to compete with the manufacturers' networks of authorised repairers, rather than as a separate objective.⁹³ Although the Evaluation did not lead to changes being made to the EU MVBER in order to address access issues, there was a recognition of a potential issue:
- 'Based on the above, the evaluation finds that **the objective continues to be relevant**, in that independent repairers continue to provide an important value proposition for consumers, although some behaviour by market players may need deeper scrutiny, notably in light of recent market developments concerning the increased importance of data access'*⁹⁴
- 4.71 We have considered the various policy options available to the CMA. In light of the evidence set out above as well as the concerns expressed by a number

⁹¹ Factual summary of the contributions received in the context of the public consultation on the evaluation of the Motor Vehicles Block Exemption Regulation (EU) No 461/2010, p8.

⁹² Some respondents suggested that the recitals of the MVBER regime should make reference to any relevant future legislation and note the MVBER regime's consistency with wider data-related objectives (eg, in relation to the data economy and data strategy). See p59 and p128 of the EC Staff Working Document.

⁹³ EC Staff Working Document, p56.

⁹⁴ Evaluation Report, p9.

of interested stakeholders, the CMA has identified two policy options which it considers to offer the most appropriate and proportionate solutions.

- 4.72 The first option would be **to treat restrictions on access to technical and vehicle information as excluded restrictions**; this is the CMA's preferred option. The CMA provisionally considers that given the potential of such restrictions to restrict competition between authorised and independent providers, it would be appropriate to ensure that these are self-assessed by businesses on a case-by-case basis, taking account of the specific circumstances. This would mean that, while a specific restriction on access to information would not benefit from the block exemption, the remainder of the agreement could still benefit from it provided the general conditions are all met. In reaching this provisional view the CMA has taken into account the following considerations:
- (i) First, the evidence does not suggest that the legal threshold for the CMA to recommend that a certain type of agreement or vertical restraint be block exempted is met. This is because, under section 6(1) of the Act the CMA can only recommend that certain types of agreements should be block exempted where, in its opinion, it is likely that these will satisfy the conditions in section 9(1) of the Act. The evidence available to the CMA calls into question whether restrictions on access to technical and vehicle information are likely to satisfy those conditions.
 - (ii) Second, the CMA acknowledges that adding an excluded restriction would impose an additional burden on the businesses in question.⁹⁵ However, the CMA is provisionally of the view that any such costs for businesses may potentially be outweighed by the benefits of ensuring that there is an appropriate level of access to information across the whole sector, translated into increased competition between authorised and independent aftermarket players, as well as on greater choice and lower prices for consumers using these services.
 - (iii) Finally, the CMA accepts that the treatment of these restrictions as 'excluded' could potentially increase the degree of legal uncertainty (in comparison to the current position). However, the CMA considers that this risk could be sufficiently mitigated by the issuance of revised guidance which could assist and help businesses to carry out the self-assessment and to distinguish restrictions which meet the conditions

⁹⁵ In particular, the CMA notes that there could be an additional cost for certain businesses as a result of divergence between the position at UK and EU level.

in section 9(1) of the Act from other restrictions which breach the Chapter I prohibition. In addition, as noted above, the exclusion of these specific restrictions from the scope of the MVBEQ would not prevent the remainder of the agreements from potentially benefiting from the block exemption.

- 4.73 The second policy option which the CMA is consulting on is **to address the issue of access to information solely in the CMA MVBEQ Guidance with a reference to a possible cancellation of the benefit of the block exemption in individual cases**. This option is consistent with the recognition that the competition issue of access to information is multi-faceted and complex, thereby lending itself to being best addressed by way of guidance rather than by imposition of a fairly narrow and rigid set of prescriptive provisions. However, the CMA is also mindful of the possible drawbacks associated with this option:
- (i) Given the non-binding nature of the guidance, there is a risk that the abovementioned competition concerns would, to some extent, remain unaddressed.
 - (ii) There could be potential enforcement difficulties if the CMA were to take action against a restriction on access to information where all the conditions of the block exemption are met. This means that, in practice, this option is only effective if coupled with a reference in the CMA MVBEQ Guidance to the mechanism by which the CMA is entitled to withdraw the benefit of the block exemption in individual cases.⁹⁶ The CMA MVBEQ Guidance would provide guidance on the circumstances in which it would be likely that the CMA would consider exercising this prerogative.
 - (iii) This option could place an additional burden on the CMA to consider requests for cancellation in individual cases (ex officio or upon request).⁹⁷
- 4.74 The CMA is minded to recommend that the approach to the treatment of restrictions on access to technical and vehicle information (as reflected in the two policy options set out above) should also extend to access to other essential inputs necessary for repair and maintenance (eg availability of tools

⁹⁶ This option would however not allow the CMA to take enforcement action against past breaches, given the fact that the cancellation of the block exemption cannot not apply retrospectively.

⁹⁷ Consideration of such requests would be subject to the CMA's prioritisation principles. *Prioritisation principles for the CMA (CMA116)*.

and training to independent operators) in accordance with paragraph 68 of the EU Supplementary Guidelines.

- 4.75 A question which is closely linked to the consideration of the two options set out above is how to best define ‘technical and vehicle information’ for the purposes of ensuring that only information which amounts to an essential input for repairs and maintenance carried out by independent operators is caught.⁹⁸ In defining ‘technical and vehicle information’ the CMA is minded to have regard to the definitions in the EU Supplementary Guidelines and in Regulations (EU) 2018/858 of 30 May 2018, (EC) No 715/2007 and (EC) No 595/2009.⁹⁹ However, the CMA is seeking views from stakeholders on whether, and if so how, these definitions can be updated or improved in order to capture information which amounts to an essential input for independent providers.¹⁰⁰ The same considerations apply to the possible need to update the definition of independent operators (currently in the EU Supplementary Guidelines) to take account of new players who may require access to information as an essential input.¹⁰¹
- 4.76 The CMA has also considered other alternative policy options. For the reasons set out below the CMA is not minded to recommend these options in its final recommendation to the Secretary of State.

- (a) **To treat restrictions on access to technical information as hardcore restrictions.** The CMA provisionally considers that this option is not appropriate. This is because a blanket approach to restrictions on access to information would not take account of the various situations where

⁹⁸ If the final decision of the Secretary of State is to treat restrictions on access to technical and vehicle information as ‘excluded restrictions’ then the definition should be contained in the MVBEKO. However, if the decision is to address this matter in the CMA MVBEKO Guidance only, then the definition should be set out in the guidance rather than in the block exemption.

⁹⁹ Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC provides, inter alia, for a system for disseminating repair and maintenance information in respect of motor vehicles. The CMA will take these retained Regulations into account when assessing cases of suspected withholding of technical repair and maintenance information.

¹⁰⁰ The CMA notes that the EC’s [draft revised Supplementary Guidelines](#) refer at para.62a to three factors which should be considered when determining whether a particular restriction amounts to a restriction of an essential input caught by Article 101 TFEU:

- a) whether withholding the item in question will have an appreciable impact on the ability of independent operators to carry out their tasks and exercise a competitive constraint on the market;
- b) whether the item in question is made available to members of the relevant authorised repair network; if it is made available to the authorised network in whatever form, it should also be made available to independent operators on a non-discriminatory basis;
- c) whether the item in question will ultimately be used for the repair and maintenance of motor vehicles, or rather for another purpose, such as for the manufacturing of spare parts or tools.

The draft revised Supplementary Guidelines (para.62) also state that an essential input may include technical information, tools, training and vehicle-generated data that are essential for repair and maintenance.

¹⁰¹ If the CMA’s final recommendation is to recommend treating these restrictions as ‘excluded’, the CMA will also consider recommending the introduction of the definition of independent operator in the MVBEKO itself.

those restrictions are warranted and are imposed in the best interest of consumers (eg vehicle safety, cyber security, brand reputation), thereby potentially meeting the conditions for individual exemption under section 9(1) of the Act. Furthermore, treating these restrictions as ‘hardcore’ would mean that the entire agreement containing such restrictions would lose the benefit of the exemption. Such approach, in the CMA’s provisional view, is disproportionate.

- (b) **To retain the status quo**, or, in other words, **to block exempt all restrictions on access to technical and vehicle information where the conditions of the VABEO and MVBER are met**. The CMA sets out below the reasons why it provisionally considers that this option is not appropriate:
- (i) This option does not sufficiently take into account the fact that access to information may constitute an input which is essential to ensure that there is a level-playing field and rivalry between authorised and independent aftermarket players.
 - (ii) Moreover, the importance of access to information is very likely to increase over the next few years with the advent of digital and interconnected vehicles and the growing relevance of electric vehicles.
 - (iii) All of these factors, taken together, mean that retaining the status quo may not address the competition concerns mentioned above and could lead to block exempting restrictions which in the CMA’s opinion may not meet the conditions for individual exemption under section 9(1) of the Act. As mentioned above, under section 6(1) of the Act the CMA can only recommend that certain types of agreements should be block exempted where, in its opinion, it is likely that these will satisfy the conditions in section 9(1) of the Act. The evidence available to the CMA calls into question whether these types of restrictions are likely to satisfy those conditions.

- 4.77 Of the four options considered above, on balance, the CMA is minded to recommend that the Secretary of State pursue the option of treating restrictions on access to technical information as excluded restrictions. As mentioned in paragraph 4.71, given the potential for these restrictions to distort competition between authorised and independent providers, it would be appropriate to ensure that these are self-assessed by businesses on a case-by-case basis, taking account of the specific circumstances.

Policy questions

Question 26: Do you have any views on whether restrictions on access to technical information should be treated as excluded restrictions in the MVBE0 or whether this issue is best addressed by way of guidance coupled with the mechanism for removal of the benefit of the block exemption in individual cases?

Question 27: Are there any other mechanisms which the CMA should consider in order to address the issues identified?

Question 28: Should the CMA define ‘technical and vehicle information’ by reference to the relevant definitions in the EU Supplementary Guidelines and in Regulations (EU) 2018/858 of 30 May 2018, (EC) No 715/2007 and (EC) No 595/2009? If not, how should this be defined in order to capture information and other inputs which amount to an essential input for independent providers?

Question 29: Do you agree that the treatment of access to technical and vehicle information as an essential input should extend to other essential inputs such as availability of tools and training to independent operators? Are there any other essential inputs which the CMA should consider?

Question 30: Does the definition of ‘independent operator’ in the EU Supplementary Guidelines need to be updated to take account of new players who may require access to information as an essential input?

Impact Questions

Question 31: What would be the likely impact on your business’s operations or the operations of those you represent if restrictions on access to technical information were treated as excluded restrictions in any MVBE0?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 32: Please provide a short explanation highlighting your reasoning for your answer above.

Question 33: What would be the likely impact on your business's operations or the operations of those you represent if restrictions on access to technical and vehicle information were addressed solely in any CMA MVBEQ Guidance?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 34: Please provide a short explanation highlighting your reasoning for your answer above.

Question 35: Which types of vehicle collected data would offer the most benefits to your business operations if it were an excluded restriction in any UK MVBEQ? Please provide reasoning for your answer.

Vehicle warranties and repair/maintenance carried out by independent providers

Current regime

4.78 Qualitative selective distribution agreements may also be caught by the Chapter I prohibition if the supplier and the members of its authorised network explicitly or implicitly reserve repairs on certain categories of motor vehicles to the members of the authorised network. This might happen, for instance, if the manufacturer's warranty vis-à-vis the buyer, whether legal or extended, is made conditional on the end user having repair and maintenance work that is not covered by warranty carried out only within the authorised repair networks.¹⁰² In addition, warranty conditions must not require the use of the vehicle manufacturer's brand of spare parts in respect of replacements not covered by the warranty terms.

¹⁰² EU Supplementary Guidelines, paragraph 69. However, if a supplier legitimately refuses to honour a warranty claim on the grounds that the situation leading to the claim in question is causally linked to a failure on the part of a repairer to carry out a particular repair or maintenance operation in the correct manner or to the use of poor-quality spare parts, this will have no bearing on the compatibility of the supplier's repair agreements with the competition rules.

Recommendations

- 4.79 The CMA's proposed recommendation is to produce additional and updated guidance to make clear that the clauses contained in all the documents proposed to consumers by OEMs/ authorised dealers or repairers should clearly state the consumer's right to use the services of an independent repairer without losing the benefit of the warranty.
- 4.80 Several UK stakeholders, in meetings with the CMA, voiced concerns over contracted dealer non-compliance with the current warranty regime (see paragraph 4.78 above) and noted that customers still faced issues when they had, or planned to, have their vehicles serviced in the independent aftermarket.¹⁰³
- 4.81 The Evaluation revealed that warranty restrictions may still be prevalent: almost 40% of all vertical restrictions identified by NCAs in their enforcement activities related to abuses of warranties, while 49% of respondents to the public consultation indicated that they had encountered this restriction in their agreements. Moreover, this restriction also featured in the top three alleged vertical restrictions in the context of informal submissions concerning the motor vehicle sector received by the Commission over the last 10 years.¹⁰⁴ Some NCAs stressed the importance of keeping an explicit reference to the warranty restrictions in the EU Supplementary Guidelines. In the same vein, NCAs highlighted the importance of ensuring that the clauses contained in all the documents proposed to consumers by OEMs/ authorised dealers or repairers clearly state the consumer's right to use the services of an independent repairer without losing the benefit of the warranty.¹⁰⁵
- 4.82 The CMA considers that consumers should have the choice of having their vehicles serviced or repaired by independent providers without running the risk of seeing their warranties invalidated as a result of this.¹⁰⁶ The CMA agrees with the findings of the Evaluation and the views expressed by some NCAs that the current guidance may not be sufficiently clear and comprehensive, and that this may have contributed to the issues mentioned above.¹⁰⁷ While the CMA is not proposing to make changes to the retained MVBER itself,¹⁰⁸ it is minded to produce additional and updated guidance to make clear that the clauses contained in all the documents proposed to

¹⁰³ Meeting with IAAF/UK AFCAR. An anonymous stakeholder noted the increased relevance of warranty issues in relation to the proliferation of EVs, and the use of warranties by manufacturers to keep automotive batteries as 'black boxes'.

¹⁰⁴ EC Staff Working Document, p175-177, pp172-173.

¹⁰⁵ EC Staff Working Document, pp175-177, p174.

¹⁰⁶ Subject to certain exceptions such as the ones set out in paragraph 69 of the Supplementary Guidelines.

¹⁰⁷ EC Staff Working Document, p171.

¹⁰⁸ The CMA notes that this is consistent with the position adopted by the EC at EU level.

consumers by OEMs/ authorised dealers or repairers should clearly state the consumer's right to use the services of an independent repairer without losing the benefit of the warranty.¹⁰⁹

- 4.83 Finally, the CMA notes that it is minded to keep this issue under review with a view to reassessing the position upon expiry of any future block exemption.¹¹⁰

Policy questions

Question 36: Do you agree with the CMA's proposed recommendation to provide updated guidance in any CMA MVBEQ Guidance on the issue of warranty restrictions?

Impact questions

Question 37: What would be the likely impact on your business's operations or the operations of those you represent if issues in this area were addressed in any CMA MVBEQ Guidance, rather than in direct changes to the proposed MVBEQ itself?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Limits on the numbers of authorised repairers within a brand network

Current regime

- 4.84 Competition between authorised and independent repairers is not the only form of competition that needs to be taken into account when assessing the compatibility of authorised repair agreements with the Chapter I prohibition. Paragraph 70 of the EU Supplementary Guidelines provides that one of the main factors driving intra-brand competition relates to the conditions of access to the network established under standard authorised repairer agreements. In view of the generally strong market position of networks of authorised

¹⁰⁹ This is consistent with the views expressed by some national competition authorities during the Evaluation.

¹¹⁰ It should be noted that the proposed duration of the UK VABEO is six years.

repairers, their particular importance for owners of newer motor vehicles, and the fact that consumers are not prepared to travel long distances to have their cars repaired, the EU Supplementary Guidelines make clear that it is important that access to authorised repairer networks should generally remain open to all firms that meet defined quality criteria. It is also stated in the EU Supplementary Guidelines that imposing quantitative selection criteria is likely to cause the agreement to fall within the scope of the Chapter I prohibition.

- 4.85 Paragraph 71 of the EU Supplementary Guidelines provides that agreements which oblige authorised repairers also to sell new motor vehicles are likely to be caught by the Chapter I prohibition. This is because any such obligations are not required by the nature of the contract services and its impact would be to severely restrict access to the authorised repair network, thereby reducing competition without bringing about corresponding benefits for consumers.¹¹¹

Recommendation

- 4.86 As discussed below, given the uncertainty as to whether the introduction of certain restrictions which indirectly limit the number of repairers falls within the scope of the Chapter I prohibition, the CMA is minded to provide guidance on this issue in the context of the MVBER Guidance in order increase legal certainty.
- 4.87 In meetings between the CMA and UK stakeholders, no specific concerns about this issue were raised. The evidence gathered during the Evaluation indicated that NCAs were generally of the view that the guidance has provided sufficient legal certainty but also suggested that the effectiveness of the MVBER regime could be improved if further clarification were provided for certain areas. For example, NCAs pointed out during the Evaluation that further guidance and examples of quantitative requirements that would likely fall outside of Article 101 of the Treaty (the equivalent of the Chapter I prohibition in the UK) would be merited.¹¹²
- 4.88 However, only a small share of respondents to the EC's public consultation considered that the guidance had provided a sufficient level of legal certainty, with a larger share of respondents considering that this had only achieved little or very little legal certainty. In addition, 38% of respondents to the

¹¹¹ This paragraph also refers to the possibility of establishing an obligation on authorised repairers to sell new motor vehicles may be permissible for a limited period of time in order to protect new entry.

¹¹² EC Staff Working Document, p181-182.

Evaluation declared to have encountered this restriction in their agreements.¹¹³

- 4.89 Furthermore, vehicle manufacturers have flagged in the Evaluation that courts in different countries are giving diverging assessments of the extent to which vehicle manufacturers can adopt measures that indirectly limit the number of authorised repairers, thereby undermining legal certainty. Considering the growing technical complexity of vehicles and the increasing investment cost for repairers, vehicle manufacturers see a significant risk of underinvestment if they are not allowed to place quantitative limits on the number of authorised repairers. They say that this would undermine service quality as well as the reputation of the brand, since consumers associate authorised repairers with the brand they represent. In contrast, associations representing dealers, parts' dealers and repairers have argued that the refusal by a supplier to re-approve a repairer meeting the qualitative selective criteria should constitute a hardcore restriction.¹¹⁴
- 4.90 However, the Evaluation concluded that despite a general decrease in the number of authorised repairer outlets from 2007 to 2017, as well as a reduction in the total number of contracts signed by motor vehicle manufacturers with authorised repairers, there was no evidence of any generalised practices on the part of suppliers to refuse network entry to candidate repairers that met the applicable quality criteria.¹¹⁵
- 4.91 The CMA considers that the views expressed by NCAs and vehicle manufacturers demonstrate that there is a degree of uncertainty around the question of whether certain restrictions which indirectly limit the number of repairers fall within scope of the Chapter I prohibition in the first place¹¹⁶ The CMA is therefore minded to provide guidance on this issue in the context of the MVBEKO Guidance in order increase legal certainty. In reaching this provisional view, the CMA has taken into consideration that, under the VABEO, it is possible to have quantitative restrictions in selective distribution systems provided the general conditions of the VABEO are met.¹¹⁷ In the absence of good reason for distinguishing agreements in the motor vehicle aftermarkets, we are of the provisional view that we should not recommend the inclusion of a specific provision in the MVBER that removes the exemption for such arrangements.

¹¹³ EC Staff Working Document, p181-182.

¹¹⁴ EC Staff Working Document, p182.

¹¹⁵ Evaluation Report, p10.

¹¹⁶ If certain restrictions are not within scope of the Chapter I prohibition then it is not necessary to assess whether they meet the conditions of the block exemption or the conditions of section 9(1) of the Act.

¹¹⁷ Paragraphs 10.84 and 10.90 of the CMA VABEO guidance.

Policy questions

Question 38: Do you have any views on whether limits on the number of authorised repairers within a brand pose a competition issue in the UK? Do you agree with the CMA proposed recommendation of providing further guidance on this issue instead of introducing changes to the block exemption itself?

Impact questions

Question 39: What would be the likely impact on your business's operations or the operations of those you represent if issues in this area were addressed in any CMA MVBE0 Guidance, rather than in direct changes to the proposed MVBE0 itself?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 40: Please provide a short explanation highlighting your reasoning for your answer above.

5. Duration of MVBER

- 5.1 The current retained MVBER has a duration of ten years and is due to expire on 31 May 2023.
- 5.2 Under section 6(7) of the Act, a block exemption order may provide that the order is to cease to have effect at the end of a specified period. The CMA proposes that the MVBEO should include such a provision.
- 5.3 Part of the benefit of the MVBEO expiring after a specified period is that it provides the opportunity for the CMA to conduct a further review of the regime, taking account of market developments since the last review.
- 5.4 The CMA is provisionally minded to recommend a duration for the MVBEO of six years. This relatively short duration would enable the CMA to carry out a review of the block exemption at an early stage taking account of likely significant ongoing developments in the sector (see Part 3) ahead of the phase-out date for the sale of new petrol and diesel cars and vans in 2030.¹¹⁸ The CMA is concerned that, given those significant ongoing developments, a longer duration could render the block exemption obsolete before its expiry date. In meetings with the CMA, UK stakeholders expressed support for the MVBEO having a shorter duration.¹¹⁹
- 5.5 Despite the proposed duration being shorter than the duration of the retained MVBER, the CMA considers that a six-year period is sufficiently long to provide a reasonable degree of legal certainty for businesses.
- 5.6 The CMA also considers that a six-year duration has the merit of enabling the review of the UK VABEO (due to expire on 1 June 2028) to be completed ahead of the expiry of the MVBEO (which assuming the CMA recommends this duration to the Secretary of State – and this is accepted - would expire on 31 May 2029). Considering the interplay between the VABEO and the MVBEO, the CMA considers that having a one-year gap between the expiry of these block exemptions is appropriate.

Policy question

Question 41: The CMA invites views from interested stakeholders on the proposed six-year duration of the MVBEO.

¹¹⁸ The CMA notes that this duration would also be consistent with the proposed duration of the new EU MVBER.

¹¹⁹ Meeting with IAAF/UK AFCAR, who stated that this was conditional on any MVBEO being aligned with the updated requirements in vehicle type approval/data access legislation; meeting with Anonymous.

6. Other Provisions

Transitional period

- 6.1 The CMA considers that the MVBE0 should provide for a transitional period of one year. This means that the Chapter I prohibition would not apply during a period of one year from the date on which the MVBE0 comes into effect in respect of agreements already in force on that date which (i) do not satisfy the conditions for exemption provided for in the MVBE0, but (ii) on that date, satisfied the conditions for exemption provided for in the retained MVBER.¹²⁰ In other words, existing agreements that meet the conditions of the retained MVBER could continue to benefit from its terms for a year after its expiry, whereas agreements entered into after its expiry would need to meet the conditions of the new UK MVBER to benefit from the block exemptions.
- 6.2 The CMA is therefore proposing to recommend that the MVBE0 have a transitional period of one year to allow businesses that wish to take advantage of the ‘safe harbour’ to review and (if necessary) revise their agreements.

Cancellation in individual cases

- 6.3 Section 6(6)(c) of the Act provides that a block exemption order may provide that if the CMA considers that a particular agreement is not an exempt agreement,¹²¹ it may cancel the block exemption in respect of that agreement. The CMA proposes that the MVBE0 should contain such a provision. The CMA proposes that any cancellation, ie withdrawal of the benefit of the MVBE0 in an individual case, should be in writing, and that the CMA should first give notice in writing of its proposal and consider any representations made to it before making a decision to cancel the block exemption in respect of that agreement. The CMA proposes that any notice should state the facts on which the CMA bases its decision or proposal and its reasons for making it. The CMA envisages that these provisions would be similar to those in the Vertical Agreements Block Exemption Order 2022 and those that have been proposed for the Horizontal Block Exemption Orders.¹²²

¹²⁰ Unless the benefit of the block exemption is cancelled, or otherwise varied or revoked, in accordance with the provisions of the MVBE0 or the Act.

¹²¹ Exempt agreement means an agreement which is exempt from the Chapter I prohibition as a result of section 9 of the Act (the Act, section 6(8)).

¹²² See the CMA’s [final recommendation](#) on the retained VABER, and [Competition Act 1998 \(Vertical Agreements Block Exemption\) Order 2022](#).

- 6.4 The CMA is therefore minded to recommend that the MVBE0 provides for the CMA to cancel the benefit of the block exemption in individual cases to ensure that the ‘safe harbour’ is only available for those agreements that satisfy the conditions for exemption under section 9 of the Act. The CMA considers that this provision is likely only to be used in exceptional circumstances and that the proposal to provide notice in writing and to consider any representations would ensure that the provision was used appropriately.

Obligation to provide information

- 6.5 Section 6(5) of the Act provides that a block exemption order may impose obligations subject to which a block exemption is to have effect and section 6(6)(b) of the Act provides that a block exemption order may provide that if there is a failure to comply with an obligation imposed by the order, the CMA may, by notice in writing, cancel the block exemption in respect of the agreement. The CMA proposes that the MVBE0 should impose an obligation for parties to provide the CMA with information in connection with those vertical agreements within the scope of the MVBE0 to which they are a party if requested to do so and that failure to do so without reasonable excuse should result in cancellation, ie withdrawal, of the block exemption.
- 6.6 The CMA proposes that the obligation should be for businesses to supply the CMA with such information in connection with those relevant vertical agreements to which they are a party as the CMA may require within ten working days from the date on which the party receives notice in writing of the request or within such longer period of working days commencing with the relevant day as the CMA may, having regard to the particular circumstances of the case, agree with the person in writing.¹²³ The CMA also proposes that if it proposes to cancel the block exemption, it should first give notice in writing of its proposal and consider any representations made to it. The CMA envisages that these provisions would be similar to those in the Vertical Agreements Block Exemption Order 2022 and those proposed for the Horizontal Block Exemption Orders.
- 6.7 The CMA is therefore proposing to recommend that the MVBE0 provide for an obligation to provide information to ensure that the CMA is in a position to assess whether an agreement that benefits from the block exemption is one that satisfies the conditions for exemption under section 9 of the Act. This

¹²³ The CMA is minded to clarify in any CMA MVBE0 Guidance that where appropriate, it will seek to give recipients of large information requests advance notice so that they can manage their resources accordingly. The CMA is also minded to clarify that, in certain circumstances and, where it is practical and appropriate to do so, it may send the information request in draft.

provision would also enable the CMA to investigate instances where competition law concerns arise from parallel networks of similar restraints.¹²⁴

Policy question:

Question 42: The CMA invites views on the above proposed recommendations in respect of the other provisions in the MVBE0.

¹²⁴ The process for providing representations where a response contains commercially sensitive information or details of an individual's private affairs and the sender considers that disclosure might significantly harm their interests or the interests of the individual, is explained in Chapter 7 of the Guidance on the CMA's investigation procedures in Competition Act 1998 cases: CMA8, which the CMA will have regard to when exercising the power in Article 12(1) VABEO.

Annex: Consultation Questions

General recommendation

Policy question

Question 1: Do you agree with the CMA's proposed recommendation to the Secretary of State to make a Block Exemption Order to replace the retained MVBER with a MVBEO, rather than letting it lapse without replacement or renewing without varying the retained MVBER?

Impact Questions

Question 2: Relative to current arrangements, if the retained MVBER were allowed to expire, how would the absence of legal certainty and clarity affect your business or those that you represent? Please describe the scale of any legal or expert advice needed (eg time spent with consultants).

Question 3: Relative to current arrangements, if the retained MVBER were allowed to expire, how would the absence of legal certainty and clarity impact consumers?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Changes to the scope or definitions in the retained MVBER

Policy Questions

Question 4: Do you agree with the CMA's position to limit the scope of the block exemption to three and four-wheeled vehicles? If not, what are the reasons and evidence that warrant an extension of the scope of the block exemption?

Question 5: Do you agree with the CMA's proposed recommendation not to amend the definition of 'motor vehicle' unless it proposes to recommend a change to the material scope of the MVBEO?

Question 6: Do you agree with the CMA's position that the definition of 'spare parts' may need some updating to improve clarity and to reflect technological

developments? If so, which aspects need modification? Are there any other changes that you consider should be made?

Question 7: Do you agree that there should be a definition of ‘technical and vehicle information’ may be needed either in the MVBE0 or in the CMA MVBE0 Guidance depending on what recommendation the CMA makes about access to such information?

Question 8: Do you agree that the definitions of ‘agency agreement’ and ‘subcontractor agreements should be considered by the CMA in any future CMA MVBE0 Guidance?

Impact Questions

Question 9: How would the proposed changes recommended by the CMA with regards to the definitions included in any MVBE0 impact your business’s operations or the operations of those you represent? Please provide the reasoning behind your answer.

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 10: How would the proposed changes recommended by the CMA with regards to the definitions included in any MVBE0 impact consumers? Please provide the reasoning behind your answer.

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 11: How would retaining the current scope of the retained MVBER in the proposed MVBE0 (as opposed to extending it to two-wheeled vehicles) impact your

business's operations or the operations of those you represent? Please provide the reasoning behind your answer.

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Market definition and market share thresholds

Policy Questions

Question 12: Do you agree with the CMA's proposed recommendation to retain the current market share threshold in the proposed MVBE? If not, what are the reasons and evidence that warrant a change to the market share threshold in the proposed MVBE?

Impact Questions

Question 13: What would be the likely impact on your business's operations or the operations of those you represent if the market share threshold was increased?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 14: What would be the likely impact on your business's operations or the operations of those you represent if the market share threshold was decreased?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact

- e) Significant negative impact

Hardcore restrictions

Policy questions

Question 15: Do you agree with the CMA's recommendation to retain the current hardcore restrictions in the retained MVBER in any MVBE0? If not, what are the reasons and evidence that would warrant a change to the current hardcore restrictions?

Question 16: Do you agree with the CMA's recommendation to maintain the current hardcore restrictions relating to spare parts and consider, in due course, whether further guidance is needed to address residual and novel issues reported by some stakeholders? If not, what changes to the MVBE0 would be necessary in order to address the issues?

Impact questions

Question 17: What would be the likely impact on your business's operations or the operations of those you represent if novel and residual relating to spare parts were addressed in any CMA MVBE0 Guidance, rather than in direct changes to the proposed MVBE0 itself?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 18: What would be the likely impact on your business's operations or the operations of those you represent if the definition of spare parts were to be updated to reflect technological developments and to clearly capture all relevant goods necessary for the use of the motor vehicle?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact

e) Significant negative impact

Question 19: What would be the likely impact on your business's operations or the operations of those you represent if the current hardcore restrictions were retained in any MVBER?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 20: Please provide a short explanation highlighting your reasoning for your answer above.

Question 21: How would retaining the current hardcore restrictions used in the retained MVBER in the proposed MVBER impact consumers?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Excluded restrictions

Policy questions

Question 22: Do you agree with the CMA's recommendation that the current list of excluded restrictions in Article 10(2) of the VABEO be maintained? If not, what are the reasons and evidence that would warrant a change to the current list of excluded restrictions?

Impact questions

Question 23: What would be the likely impact on your business's operations or the operations of those you represent if the current excluded restrictions in Article 10(2)

of the VABEO were retained? Please provide the evidence and reasoning behind your answer.

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 24: Please provide a short explanation highlighting your reasoning for your answer above.

Question 25: How would retaining the current excluded restrictions used in the retained MVBER in the proposed MVBE0 impact consumers?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Restrictions on access to technical information and vehicle data

Policy questions

Question 26: Do you have any views on whether restrictions on access to technical information should be treated as excluded restrictions in the MVBE0 or whether this issue is best addressed by way of guidance coupled with the mechanism for removal of the benefit of the block exemption in individual cases?

Question 27: Are there any other mechanisms which the CMA should consider in order to address the issues identified?

Question 28: Should the CMA define ‘technical and vehicle information’ by reference to the relevant definitions in the EU Supplementary Guidelines and in Regulations (EU) 2018/858 of 30 May 2018, (EC) No 715/2007 and (EC) No 595/2009? If not, how should this be defined in order to capture information and other inputs which amount to an essential input for independent providers?

Question 29: Do you agree that the treatment of access to technical and vehicle information as an essential input should extend to other essential inputs such as availability of tools and training to independent operators? Are there any other essential inputs which the CMA should consider?

Question 30: Does the definition of ‘independent operator’ in the EU Supplementary Guidelines need to be updated to take account of new players who may require access to information as an essential input?

Impact Questions

Question 31: What would be the likely impact on your business’s operations or the operations of those you represent if restrictions on access to technical information were treated as excluded restrictions in any MVBEQ?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 32: Please provide a short explanation highlighting your reasoning for your answer above.

Question 33: What would be the likely impact on your business’s operations or the operations of those you represent if restrictions on access to technical and vehicle information were addressed solely in any CMA MVBEQ Guidance?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 34: Please provide a short explanation highlighting your reasoning for your answer above.

Question 35: Which types of vehicle collected data would offer the most benefits to your business operations if it were an excluded restriction in any UK MVBE? Please provide reasoning for your answer.

Vehicle warranties and repair/maintenance carried out by independent providers

Policy questions

Question 36: Do you agree with the CMA's proposed recommendation to provide updated guidance in any CMA MVBE Guidance on the issue of warranty restrictions?

Impact questions

Question 37: What would be the likely impact on your business's operations or the operations of those you represent if issues in this area were addressed in any CMA MVBE Guidance, rather than in direct changes to the proposed MVBE itself?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Limits on the numbers of authorised repairers within a brand network

Policy questions

Question 38: Do you have any views on whether limits on the number of authorised repairers within a brand pose a competition issue in the UK? Do you agree with the CMA proposed recommendation of providing further guidance on this issue instead of introducing changes to the block exemption itself?

Impact questions

Question 39: What would be the likely impact on your business's operations or the operations of those you represent if issues in this area were addressed in any CMA MVBE Guidance, rather than in direct changes to the proposed MVBE itself?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 40: Please provide a short explanation highlighting your reasoning for your answer above.

Duration of MVBER

Policy question

Question 41: The CMA invites views from interested stakeholders on the proposed six-year duration of the MVBEO.

Other Provisions

Policy question

Question 42: The CMA invites views on the above proposed recommendations in respect of the other provisions in the MVBEO.