

## IGA Response to the Retained Motor Vehicle Block Exemption Regulation Consultation

This reply is on behalf of the Independent Garage Association (IGA), 201 Great Portland Street, London, W1W 5AB.

The IGA is a member association of the Retail Motor Industry Federation, which was founded in 1913 to represent the interests of the retail motor industry. We are the largest and most prominent trade body in the independent garage sector, representing over 35,000 independent garage businesses across the UK.

In order to keep its members up to date, the IGA, as a trade body, is in constant contact with members, offering them helpline support, holding regional meetings, and providing regular industry updates with information that may be applicable to their business and the services they offer to their customers. From these interactions, and the feedback received from our members, the policies and objectives of the IGA are formed.

Please find below the IGA's responses to the individuals questions posed by the CMA in relation to the proposed MVBEO and the CMA's proposed recommendations to the Secretary of State for Business, Energy and Industrial Strategy, on the MVBEO as a replacement to the MVBER which are due to expire in May 2023.

### **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?

#### **Q1 RESPONSE:**

Yes, The IGA agrees that replacing the retained MVBER with MVBEO is preferable to letting MVBER lapse without a replacement. Furthermore, this is an opportunity to vary the MVBER to take into account advancements in vehicle technology.

#### ***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 (e.g., time spent with consultants).

#### **Q2 RESPONSE:**

Should the retained MVBER be allowed to expire without a suitable replacement, the greatest impact is likely to be felt by the consumer. The VMs would have the potential to restrict access to essential repair and maintenance information, so therefore the absence of competition and free market forces would have the potential to place the VMs in a monopoly position.

**Question 3:** Relative to current arrangements, if the retained MVBBER 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

### **Q3 RESPONSE**

The IGA is of the view that should the retained MVBBER be allowed to expire it would have a significant negative impact on consumers.

## **Changes to the scope or definitions in the retained MVBBER**

### ***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?

### **Q4 RESPONSE**

The IGA does NOT agree with the CMA's position to limit the scope of block exemption to three & four wheeled vehicles and is of a mind that the scope of MVBE0 should be extended to include two wheeled vehicles. Today's motorcycles use almost identical engine management, power control and ABS technology as other vehicles. Therefore, to ensure their owners the same freedom of choice as other vehicle users, the MVBE0 should be extended to include two wheeled vehicles.

**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 MVBE0?

### **Q5 RESPONSE**

The IGA is minded that the definition of 'motor vehicle' should have its scope expanded to include two wheeled vehicles, but NOT to include agricultural machinery, tractors, forestry and construction vehicles as these by and large tend to be commercial vehicles and as such, not directly used by consumers.

**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?

### **Q6 Response**

The IGA agrees with the CMA's position that the definition of 'spare parts' may need some updating. The IGA would suggest that the CMA consider in-vehicle software be included, to take into account potential future changes to in-vehicle data usage, and advance vehicle systems. Failure to include in-vehicle software has the potential to restrict consumer service and repair choice and allow VMs to monopolise the updating process of in-vehicle software service adjustments.

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

**Q7 RESPONSE**

The IGA agrees that there should be a definition of ‘technical and vehicle information’ in the MVBEO and the MVBEO Guidance, but also that this should be further extended to include in vehicle data and software.

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

**Q8 RESPONSE**

The IGA agrees that the definition of ‘agency agreement’ and ‘subcontractor agreement’ should be considered by the CMA in any CMA MVBERO Guidance.

***Impact Questions***

**Question 9:** How would the proposed changes recommended by the CMA with regards to the definitions included in any MVBEO 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

**Q9 RESPONSE**

If the proposed changes recommended by the CMA were adopted, along with the inclusion of in-vehicle data and vehicle software, this would have a moderate positive impact on IOs.

**Question 10:** How would the proposed changes recommended by the CMA with regards to the definitions included in any MVBEO 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

**Q10 RESPONSE**

If the proposed changes recommended by the CMA were adopted, along with the inclusion of in-vehicle data and vehicle software, this would have a moderate positive impact for consumers, safeguarding consumer choice and ensuring fair market forces are kept in play.

**Question 11:** How would retaining the current scope of the retained MVBBER 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

#### **Q11 RESPONSE**

The IGA is of the view that retaining the current scope and not extending this to include two wheeled vehicles would continue to adversely affect those consumers who rely on two wheeled transport as an affordable option for mobility, by it having the potential to restrict IOs ability to service this consumer sector. Therefore, maintaining the current scope would have a significant negative impact on IOs.

#### ***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 MVBE0? If not, what are the reasons and evidence that warrant a change to the market share threshold in the proposed MVBE0?

#### **Q12 RESPONSE**

The IGA agrees with the CMA's proposed recommendation to retain the current market share threshold in the proposed MVBE0.

##### ***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

#### **Q13 RESPONSE**

The IGA is of the view that the impact on IOs would be moderately negative if the market share threshold was increased. This would have the potential to give larger players the opportunity to exert greater influence over market forces, thus restricting consumer choice.

**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

#### **Q14 RESPONSE**

The IGA is of the view that the impact on IOs would be negligible, if the market share threshold was decreased.

#### ***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?

#### **Q 15 RESPONSE**

The IGA agrees with the CMA's recommendation to keep the current hardcore restrictions described in the retained MVBER in an MVBRO.

**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?

#### **Q16 RESPONSE**

The IGA agrees with the CMA's recommendation to maintain the current hardcore restrictions relating to spare parts and its suggestion to consider further guidance on residual and novel 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

#### **Q17 RESPONSE**

The IGA feels that the likely impact on IOs in the service and repair sector, which the IGA represents, would be moderately positive, as the addition of access to in-vehicle data and software systems would ensure continued consumer choice as vehicle technology advances and the need for access to in-vehicle data and software systems expands. This may, in the long term, require changes to vehicle type approval to ensure VMs are compelled to make in-vehicle data and software accessible to IOs via third party equipment providers, thus ensuring competition and protecting consumer choice for their service and repair needs.

**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

**Q18 RESPONSE**

The IGA feels that if the definition of spare parts were updated to reflect technological developments and expanded to incorporate OEM approved/supplied vehicle data and software systems, this would have a significantly positive impact to IOs.

**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 MVBEO?

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

**Q19 RESPONSE**

The IGA feels that if the current hardcore restrictions were retained in the MVBEO, without being updated to take into account the technological advances within modern motor vehicles, it would have a moderately negative impact on independent operators.

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

**Q20 RESPONSE**

To protect consumer choice for vehicle service, maintenance and repair going forwards, the hardcore restrictions relating to vehicle parts need to take into account the importance of in-vehicle data and software, and the ability of third-party equipment providers, to provide vehicle access to IOs, enabling them to undertake everyday service adjustments and system updates.

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

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

**Q21 RESPONSE**

The IGA feels that retaining the current hardcore restrictions laid out in the retained MVBER in the proposed MVBEO has the potential to have a significantly negative impact on consumers in the future if in-vehicle data and software are not included in the future hardcore restrictions.

### ***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?

#### **Q22 RESPONSE**

The IGA agrees with the CMA's recommendation that the current list of excluded restrictions in Article 10(2) of the VABEO should be maintained.

#### ***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

#### **Q23 RESPONSE**

The IGA is of the view that there would be a negligible impact on IOs if the current excluded restrictions in Article 10(2) of the VABEO were retained.

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

#### **Q24 RESPONSE**

The IGA feels that by CMA retaining Article 10(2), the parts supply to IOs would be no better or no worse than it is currently, and this would also offer an element of protection to both competition in the parts supply aftermarket and to consumers in terms of aftermarket parts pricing.

**Question 25:** How would retaining the current excluded restrictions used in the retained MVBEO impact consumers?

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

#### **Q25 RESPONSE**

The IGA feels that retaining the current excluded restriction used in the retained MVBEO would have a moderately positive impact on consumers, as it would offer an element of protection to both competition in the parts supply aftermarket and aftermarket parts pricing.



## ***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?

### **Q26 RESPONSE**

The IGA is of the view that access to technical information should be treated as an excluded restriction to ensure fair competition and protect consumer choice.

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

### **Q27 RESPONSE**

The CMA could recommend type approval requirements to ensure the potential technological advances in vehicles do not enable VMs to restrict IOs access to in-vehicle data for such things as fault code reading, service indicator resets and replacing service parts, such as the brake pads used in electric parking brakes. However, access to security related data should be restricted unless accessing via an approved scheme, similar to the SERMI scheme proposed by the EU.

**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?

### **Q28 RESPONSE**

The IGA are of the view that the CMA should 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.

**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?

### **Q29 RESPONSE**

The IGA agrees that the treatment of access to technical and vehicle information as an essential input should be extended to other essential inputs such as availability of tools, training, in-vehicle data and in-vehicle software, as well over the air, remote connectivity to vehicles.

**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?



### **Q30 RESPONSE**

The IGA is of the view that the definition of ‘independent operator’, does need to be updated to take into account the future potential for the need for in-vehicle data to be accessed during periodic roadworthiness testing, and also by third party diagnostic equipment providers, to ensure greater competition in the availability of aftermarket tools and equipment.

### ***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

### **Q31 RESPONSE**

The IGA is of the view that if restrictions on access to technical information were treated as an excluded restriction, this proposal would have a moderate negative impact on IOs.

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

### **Q32 RESPONSE**

If access to technical information was treated as an excluded restriction rather than a hardcore restriction, there would still be opportunity for VMs to restrict access to IOs, therefore we are of the view that access to technical data should be a hardcore restriction. Looking ahead to future vehicle technologies, not making this a hardcore restriction could result in VMs stifling competition and therefore consumer choice. However, appropriate controls need to be in place to ensure vehicle security access should only be available to IOs who are part of a recognised vetting and verification scheme similar to the SERMI scheme proposed in the EU.

**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

### **Q33 RESPONSE**

The IGA is of the view that if the restrictions on access to technical and in-vehicle information were addresses solely in any CMA MVBEQ Guidance, this would have a moderate negative impact on IOs.

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

### **Q34 RESPONSE**

The IGA is of the view that a Guidance only approach on the access to technical and in-vehicle data would provide the opportunity, for those VMs minded to do so, to circumvent the spirit of the Guidance, which would in turn have the potential to restrict competition and limit consumer choice. We strongly agree that there could be potential enforcement difficulties.

**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 MVBE0? Please provide reasoning for your answer.

### **Q35 RESPONSE**

To ensure fair competition and consumer choice, we are of the view that data associated with vehicle routine service requirements, vehicle fault codes, component programming, component calibration, service indicator reset, vehicle emissions, accessory programming and software updates, should be covered by any excluded or hard restrictions under the UK MVBE0. In addition to the above, there should be provision for access to security related information provided that the entity requesting that information is bona fide and is registered under an appropriate security vetting scheme similar to the SERMI scheme suggested by the EU.

### ***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 MVBE0 Guidance on the issue of warranty restrictions?

### **Q36 RESPONSE**

The IGA agrees with the CMA's proposed recommendation to provide updated guidance in any CMA MVBE0 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 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

### **Q37 RESPONSE**

The IGA is of the view that issues addressed in this area by way of any CMA MVBE0 Guidance would have a moderate negative impact on IOs, compared to direct changes to the proposed MVBE0, which in our view would a moderately positive impact on IOs and on consumers.

### ***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?

#### **Q38 RESPONSE**

The IGA is of the view that limits on the number of authorised repairers within a brand, that meet the qualitative criteria, does indeed pose a competition issue, and has potential to cause detriment to consumers and limit consumer choice.

The IGA agrees with the CMA's 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

#### **Q39 RESPONSE**

The IGA is of the view that if issues in this area were addressed in any CMA MVBE0 Guidance, rather than in direct changes to the proposed MVBE0 itself, this would have a negligible impact on IOs.

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

#### **Q40 RESPONSE**

The IGA is of the view that the qualitative requirements set by VMs, by nature, limits the number of IOs wishing to become authorised repairers, due to the sometimes-huge investment required for a limited return.

### ***Duration of MVBER***

#### ***Policy question***

**Question 41:** The CMA invites views from interested stakeholders on the proposed six-year duration of the MVBE0.

#### **Q41 RESPONSE**

The IGA would support a six-year duration of the MVBE0, but would suggest a review at the end of year three to allow further consideration on the effectiveness of the MVBE0 and also to consider any step changes in vehicle technology.

## ***Other Provisions***

### ***Policy question***

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

### **Q42 RESPONSE**

The IGA has no additional proposals or recommendations, at this time, in respect of the other provisions in the MVBO. However, the IGA would request the right to highlight any competition issues that may develop as a result of changes in vehicle technology to the CMA, and any consumer detriment that becomes apparent, due to any attempts by VMs to circumvent either the letter or spirit of the proposed MVBE0 or any accompanying Guidance the CMA publishes alongside the MVBE0.