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RAC response to CMA recommendations on the Retained Motor Vehicle Block Exemption Regulation Consultation

About the RAC

The RAC provides complete peace of mind to 13 million UK private and business drivers, whatever their motoring needs. We provide breakdown assistance, with a 1,600-strong branded patrol workforce attending more than two million breakdowns every year, fixing on average four out of five vehicles at the roadside.

Additional products include insurance, a used car buying and EV leasing website, vehicle inspections and checks, legal services or up-to-the-minute traffic and travel information.

The RAC also works to support the interests of its members and UK drivers on the most important motoring issues which it identifies via the annual RAC Report on Motoring and the RAC Opinion Panel. The Report on Motoring is the longest running analysis of driver opinion in the UK having been published every year since 1989. The 2021 RAC Report on Motoring can be found [here](#). The RAC website can be found at www.rac.co.uk.

General recommendation

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 MVBBER with a MVBEO, rather than letting it lapse without replacement or renewing without varying the retained MVBBER?

Yes. We believe it is essential that the core arrangements of the MVBBER are either retained or replaced. Allowing the MVBBER to expire without replacing it would have a catastrophic impact on the vehicle aftermarket and would be extremely uncompetitive for consumers and could result in a number of independent garages and recovery organisations going out of business.

Question 2: Relative to current arrangements, if the retained MVBBER 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).

If the retained MVBBER were to be allowed to expire we believe it would have an extremely negative impact on consumers. In the case of our business, which primarily sells breakdown cover, the impacts could result in the following:

- Increased difficulty accessing data from vehicles through diagnostics devices as there is a risk that those diagnostic ports will become less standardised. While we accept that manufacturers may want to keep certain information, any information/systems that can be shared with authorised and independent operators that benefits the consumer at roadside or during repair/servicing/MOTs is highly desirable.
- Authorised dealers, independent garages and those in the repair industry should continue to have access to technical information and breakdown organisations should also have access to necessary information and parts to enable them to fix at roadside as much as possible. If they do not, then drivers might find that vehicles cannot be repaired at roadside and the cost of subsequently using a garage will be more expensive.
- General servicing costs would increase as garages would not have access to the right technical information or parts, which would give dealerships a far bigger competitive advantage, and consequently less choice for the consumer. There is also separately a



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risk that access ports (diagnostic boxes) become more expensive for independent repairers to access, if they are even able to at all.

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

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?

Generally, we agree as this is the de facto position of the current regulations, however we are unsure why motorised two-wheel vehicles are not within scope. We worry that motorcyclists will not benefit from the same competitive landscape as those that own a three or four-wheeled vehicle.

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 MVBER?

We agree with this.

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?

We agree with this, and concur with the UK AFCAR view on changes to be made:

"The existing definition should be revised to address the requirements for access to software to update components and in-vehicle systems, together with activation/configuration codes for replacement parts and components. Additionally, lubricants and fluids should be more clearly identified as 'spare parts'. We therefore propose the following revised definition:

'spare parts' are goods and services, with any activation information (activation/authentication code) where required, for spare parts which are to be installed in or on a motor vehicle so as to replace or update components/embedded systems of that vehicle including hardware and software components and their constituent elements and goods such as lubricants and fluids, which are necessary for the use and operation of a motor vehicle, with the exception of fuel.'

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



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We would strongly agree with this, though would like to reiterate our position that it is vital for the vehicle aftermarket to have access to certain data information within the vehicle for the purposes of diagnosing a problem, fixing the fault and for the safety of both the driver and the mechanic.

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?

We agree

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

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

Question 11: How would retaining the current scope of the retained MVBER in the proposed MVBEO (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

Motorcycle breakdowns only represent a small number of overall breakdown volumes.

Market definition and market share thresholds

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

Yes, we agree.

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



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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

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

We agree.

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 MVBE would be necessary in order to address the issues?

We agree with the recommendation, and we also agree that other spare parts might need to come into scope in due course to reflect changes within the spare parts market which could include new technology. Future guidance without legislative changes could mean that anti-competitive practices might occur, so we would expect there to be some sort of enforcement mechanism if this does occur. The guidance would also need to be revisited as technology will rapidly progress and risk leaving the regulatory and guidance framework behind.

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 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 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 MVBE?

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



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

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

It is important for the RAC, as a breakdown business, to have access to spare parts and to be able to use these spare parts to fix a vehicle at roadside where necessary. If this cannot be done, the RAC would effectively just be operating a tow service to drivers to recover the vehicle for repairs to be done elsewhere (most likely the dealership or an authorised repairer only). This could cause significant disruption for drivers, the police and highways authorities and would fundamentally impact on our business operations as we currently fix around four-out-of-five breakdowns at the roadside.

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

Excluded restrictions

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?

We agree with this.

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.

We believe the current list is sufficiently reasonable at this stage and would not have a negative impact on the RAC. Things like non-compete obligations are generally accepted in business practice and contractual agreements.

Question 25: How would retaining the current excluded 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

Restrictions on access to technical information and vehicle data

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?

Our view is that this should be treated as an 'excluded restriction'. It is vitally important that the aftermarket sector can access certain types of technical information to diagnose a fault and be able to repair it based on this knowledge. This will also allow repairers to use the correct spare parts to be able to fix the vehicle. While we accept that manufacturers will not want to allow access to certain commercially sensitive information that puts them at a disadvantage, we believe it is for the benefit of the aftermarket sector and consumers that technical information can be accessed. We worry that removing the benefit in individual cases would become burdensome and complex as vehicles become more connected with new technology installed in the vehicle.

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

We believe the following areas could be of interest:

- Diagnostic port access: While regulations could impose that access to diagnostic ports must be available, it is important that this allows for universal access rather than new ports being installed into vehicles which makes it more difficult and expensive for the aftermarket to access technical vehicle data.
- Branded parts: We also feel that the fitting of parts with logos, batteries and access to ADAS and technical information to re-initiate vehicles is vitally important for independent repairers and operators such as breakdown and roadside assistance organisations.

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?

The RAC refers our response here to that of the UK AFCAR response:

"As mentioned in several points before, the EU has a wider automotive legislative framework to define the technical requirements for the vehicle manufacturers, such as the implementing acts related to (EU) 2018/858, as well as other legislation that supports access the vehicle generated data (e.g. (EU) 2021/1244 and the Data Act).

Critically, without reference to these wider EU legislative documents, the MV-BEO would potentially have a reverse and counter-productive impact in the UK, in that it would describe the 'what' was needed to be provided, but not the 'how'. This would have the effect of legitimising the vehicle manufacturers to be able to decide on the wide range of conditions that would define the data, information, access and functional aspects in a way which would distort competition as the vehicle manufacturers operate as 'system administrator' and as arbitrator of the 'rights and roles' of the repair process.

This is a critical point and needs to be urgently discussed with other UK Governmental departments to avoid this divergence and unintended outcome."



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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?

We would support this measure, particularly. Training would only be required if equipment (either tools or information systems) were sufficiently complex that would require independent operators take undertake it.

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?

The RAC is not opposed to this.

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 MVBEO?

- 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.

Our reasoning has been documented throughout this response.

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 MVBEO 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.

Given the non-binding nature of the guidance, there is a risk that competition concerns would not be addressed, and because of this, we would be concerned that unless there is specific enforcement attached, that it would become much more difficult for independent operators to access technical and vehicle information.

We would also be concerned about the burden this would have on the CMA in terms of identifying specific restrictions and maintaining such guidance. In addition, as technology and data evolves, updating the guidance regularly would become more difficult so it would be better to treat this area as an excluded restriction, at least initially.



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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.

The RAC would like to understand what is meant by 'collected' data. We would agree with the following comments from UK AFCAR:

"We suggest avoiding any attempt to define what specific data is needed, but to be more generic in relation to the direct access to vehicle generated data/information that is used for e.g. vehicle diagnostics, prognostics, predictive services, repair and maintenance services, or periodic technical inspection, whether actually used by the vehicle manufacturer's authorised repairers, or the vehicle manufacturer themselves for their own services, or not. For effective competing services, access for independent repairers to the above types of data for their own diagnostics, repair and maintenance services is critically important and not to be restricted simply to the same data/information and resultant business models as used by a vehicle manufacturer.

Access to data by independent repairers needs to be as direct as possible, to ensure the delay between the data being generated to when it is processed is minimised to provide the best 'quality' of data."

Vehicle warranties and repair/maintenance carried out by independent providers

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?

We would support this

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

Limits on the numbers of authorised repairers within a brand network

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?

We agree that further guidance is probably the best option at present.

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.

We have no further comments to add.

Duration of MVBER

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

We agree with the proposed six-year duration, though we would encourage the CMA to engage with stakeholders at least a year prior to the expiry of the MVBER to ensure developments in technology can be taken into account for the renewal of the order. At this stage, we would support the order being renewed, however we feel the length of the Order is sufficient to take into account the huge changes that are likely to take place in the automotive sector. This not only includes the shift towards zero-tailpipe emissions vehicles but also cars being fitted with increasingly autonomous technology and advanced driving aids.

Other Provisions

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

Our overall view remains that consumers must be able to benefit from the following:

- They should be able to have choice in where they get their vehicle serviced and repaired
- Authorised dealers, independent garages and those in the repair industry should continue to have access to technical information and breakdown organisations should also have access to necessary information and parts to enable them to fix at roadside as much as possible.
- Challenges will remain in terms of online immobilisers and security systems, and we would encourage the CMA to consider ways to allow repairers (such as breakdown organisations and garages) to access securely such systems for the benefit of consumers.
- Technological changes will come quickly in the upcoming decade and the CMA must allow for MVBER to be reviewed if anti-competitive practices come to light even during the six-year period if necessary.

Please address any comments or further contact to:

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