

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

*Yes it is imperative for the independent aftermarket that a "level playing field" is maintained thus a MVBBER(O) will continue to be required to ensure the motorist can continue to obtain competitive repairs to their vehicles. There is however a risk that the UK legislation does not completely mirror that within the EU, for example referencing 858/2018 where this has subsequently been modified and updated by the EU. It also means the NI situation unless resolved by a review of all the legal aspects at a higher level could mean there are different arrangements present to the rest of the country.*

### Impact Questions

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 that were to happen at a top level but practical example, the argument used that as long as "certified OE equivalent components" are used the VM cannot invalidate a warranty would no longer be valid, therefore the aftermarket sector would shrink thus our business would be reduced. Attempting to argue on a legal case by case basis would be cost prohibitive. It would also further encourage the VM's to further restrict access to information to enable a repair to be carried out, outside of their networks.*

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**

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?

*Does the UK transpose/maintain the L-cat Reg. No 168/2013 & No 44/2014 and T-cat EU Regulation No 167/2013? Both of these include "access to technical information", so if these 2 pieces of EU legislation are not covered and retained, then it would be very important to have them covered under MVBEO. Your consultation seems to have ignored this. We are already aware of "abuse of position" being carried out on these vehicle categories.*

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?

*Yes, no change, unless the scope of the MVBEO changes*

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?

*Batteries and oils need to be specifically listed as spare parts, software and codes to "activate" a component also need accommodating.*

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

*Yes the definition should be revised to include activation codes – now required for a headlamp for example, software in general, batteries, lubricants and oils*

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?

*Yes, however please be mindful that a VM will attempt to control the vehicle's lifetime of repairs through such arrangements by controlling the information required to effect a repair.*

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

proposed MVBEQ?

*Yes*

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 MVBEQ? If not, what are the reasons and evidence that would warrant a change to the current hardcore restrictions?

*Yes, they are needed to maintain competitiveness for consumers*

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?

*Yes we agree and yes further guidance will be required to maintain a level playing field as technology, for example the VM's may restrict access to the tools required to programme a*

*replacement part, or attempt to restrict access due to “security”. Your question 18 seems to acknowledge these concerns.*

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 MVBEO Guidance, rather than in direct changes to the proposed MVBEO 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 MVBEO?

- 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.

*Hardcore restrictions are fundamental in allowing access to replacement components via the VM's network or the VM's suppliers, although there is already evidence that these restrictions are being abused by the VM's if the restrictions were not present repair by the IMT would become difficult if not impossible.*

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

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?

*Yes agree*

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.

*Keeping the restrictions offers a clarity and support to allow access to spare parts, and the tools and equipment needed.*

Question 25: How would retaining the current excluded restrictions used in the retained MVBER in the proposed MVBEO impact consumers? Is this question correct?

- 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 MVBEO 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?

*MVBEO has more weight than guidance, therefore in MVBEO, however you need to make sure that the subsequent type approval legislation is present and in line with requirements as these provide the legal clarity and technical details.*

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

The definition of Technical and vehicle information is being worked upon by the EU and I assume the CMA, how this is addressed is very important for the consumer as today's vehicle is already a computer on wheels where information is being transmitted to the VM whilst in operation including potential "faults". This information could allow the VM to take an unfair advantage, and even hide behind "security" to prevent a 3<sup>rd</sup> party having the information. The VM's extended vehicle proposal as a solution is not equitable as the 3<sup>rd</sup> party must have real time information and the ability to write back to the vehicle. SERMI is seen as a way around the "security" debate as a SERMI operator should be seen as creditable by the VM.

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 EU already has a wider legislative framework than you are considering, and just looking at 858/2018 is already different than the EU as this has updates not considered by you. Thus NI could find itself with a different playing field than the rest of the UK unless the NI protocol is significantly changed. DFT needs to be in line with you and although there might not be a political enthusiasm to do so closely following the complete EU legislative framework has to be a consideration.*

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?

*Yes, as already mentioned*

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.

*It provides a legal definition, without it then the operators would have to challenge the VM's which would be potentially cost prohibitive*

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.



*Legal clarity would be less if in guidance, and a challenge would be less likely as not affordable for an IMT vs a VM*

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 MVBEO?

Please provide reasoning for your answer.

Vehicle warranties and repair/maintenance carried out by independent providers

*Direct access is required to all vehicle generated information and data that could affect a repair on the vehicle by an independent operator. We in the past have specifically built a fault into a modern vehicle, to find that the driver was contacted via the vehicle's telematics, advising him of a fault and the presence nearby of a dealer able to carry out a repair with a time slot to do it.*

Policy questions

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

*Yes*

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 MVBEO Guidance, rather than in direct changes to the proposed MVBEO 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?

No view on the number of franchises appointed by a particular VM, however VM's are putting requirements upon the IMT to allow access to training and information, if they have to "qualify" as a franchise would to gain access we would see this as uncompetitive.

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 MVBEO Guidance, rather than in direct changes to the proposed MVBEO 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.

*Need to be in the MVBEO not the guidance*

Duration of MVBEO

Policy question

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

*Six years will be fine, the CMA needs to keep abreast of the very fast changing marketplace*

Other Provisions

Policy question

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