

2023 No.

COMPETITION

The Competition Act 1998 (Motor Vehicle Agreements Block Exemption) Order 2023

Made - - - -

Laid before Parliament

Coming into force - -

1st June 2023

The Competition and Markets Authority has recommended that the Secretary of State make an order specifying certain categories of agreements relating to the motor vehicle aftermarket for the purposes of section 6 of the Competition Act 1998(a)(“the Act”).

In accordance with section 8 of the Act(b), before making the recommendation the Competition and Markets Authority published details of the proposed recommendation and considered the representations about it which were made to it(c).

The Secretary of State has decided to give effect to the recommendation without modifications and makes the following Order in exercise of the powers conferred by sections 6(2), (5), (6) and (7) and 71(3) of the Act.

Citation, commencement and extent

1.—(1) This Order may be cited as the Competition Act 1998 (Motor Vehicle Agreements Block Exemption) Order 2023 and comes into force on 1st June 2023.

(2) This Order extends to England and Wales, Scotland and Northern Ireland.

Interpretation

2.—(1) In this Order—

“aftermarket goods” means any of the following—

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- (a) 1998 c. 41. Section 6 was amended by paragraph 2 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 (c. 24) to give the function of making recommendations to the Competition and Markets Authority. The Competition and Markets Authority was established by section 25 of that Act. This function was previously the responsibility of the Director General for Fair Trading and then the Office of Fair Trading. Other amendments to section 6 were made by paragraph 38 of Schedule 25 to the Enterprise Act 2002 (c. 40) and S.I. 2004/1261. See article 3(2) for the definition of motor vehicle aftermarket agreements.
- (b) Section 8 was amended by paragraph 38 of Schedule 25 to the Enterprise Act 2002 and paragraph 3 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.
- (c) The Competition and Markets Authority’s proposed recommendation and responses to its consultation can be found online at <https://www.gov.uk/government/consultations/retained-motor-vehicle-block-exemption-regulation-consultation> or obtained by writing to Competition and Markets Authority, The Cabot, 25 Cabot Square, London E14 4QZ.

- (a) spare parts;
- (b) any software required to repair or replace a part of, or system in, a motor vehicle, together with any code required to activate or configure that software;
- (c) liquids used in the breaking system, steering system, engine or elsewhere in a motor vehicle as a coolant, lubricant, cleaner or otherwise, in so far as the liquids are necessary for the use of the motor vehicle, but not fuel;

“authorised distributor”, in relation to motor vehicles of a particular make, means a person who—

- (a) distributes aftermarket goods for such vehicles, and
- (b) operates within the distribution system set up by a supplier of such vehicles;

“authorised repairer”, in relation to motor vehicles of a particular make, means a person who—

- (a) provides repair and maintenance services for such vehicles, and
- (b) has entered into contractual arrangements with a supplier of such vehicles for those purposes;

“the block exemption”, in relation to the category of agreements specified in this Order, means the exemption from the Chapter 1 prohibition^(a) arising by virtue of this Order;

“connected undertakings”, in relation to a party to an agreement, means—

- (a) undertakings in relation to which the party to the agreement, directly or indirectly—
 - (i) has the power to exercise more than half the voting rights,
 - (ii) has the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking, or
 - (iii) has the right to manage the undertaking’s affairs;
- (b) undertakings which directly or indirectly have, in relation to the party to the agreement, any of the rights or powers listed in paragraph (a);
- (c) undertakings in relation to which an undertaking referred to in paragraph (b) has, directly or indirectly, any of the rights or powers listed in paragraph (a);
- (d) undertakings in relation to which the party to the agreement, together with one or more of the undertakings referred to in paragraph (a), (b) or (c), or in relation to which two or more of the undertakings referred to in paragraph (b) or (c), jointly have any of the rights or powers listed in paragraph (a);
- (e) undertakings in relation to which any of the rights or the powers listed in paragraph (a) are jointly held by—
 - (i) parties to the agreement or their respective connected undertakings referred to in paragraphs (a) to (d), or
 - (ii) one or more of the parties to the agreement or one or more of their respective connected undertakings referred to in paragraphs (a) to (d) and one or more third parties;

“distribution system” means a system for distributing motor vehicles of a particular make;

“goods” includes data which are produced and supplied in digital form;

(a) For the meaning of “Chapter 1 prohibition”, see section 2(8) of the Competition Act 1998 (“the Act”).

“independent distributor”, in relation to motor vehicles of a particular make, means a person who—

- (a) distributes aftermarket goods for such vehicles, and
- (b) is not an authorised distributor;

“independent repairer”, in relation to motor vehicles of a particular make, means a person who—

- (a) provides repair and maintenance services for such vehicles, and
- (b) is not an authorised repairer;

“motor vehicle” means a self-propelled vehicle intended for use on public roads and having three or more road wheels;

“original part” means a component of a motor vehicle which is, or is to be, used for the initial assembly of a motor vehicle;

“part” means an original part or a spare part;

“spare part” means a component of a motor vehicle which is, or is to be, installed in or on a motor vehicle to replace—

- (a) an original part, or
- (b) a component of a motor vehicle which replaced an original part;

“supplier”, in relation to any goods referred to in this Order, means—

- (a) the manufacturer of the goods, or
- (b) an importer of the goods into the United Kingdom;

“system”, in relation to a motor vehicle, means an assembly of parts combined to perform one or more functions in a motor vehicle;

“the VABEO” means the Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022(a);

(2) For the purposes of this Order, the terms “party” and “undertaking” include their respective connected undertakings.

Block exemption

3.—(1) The category of agreements and concerted practices identified in article 3(2) as motor vehicle aftermarket agreements (“MVA agreements”) is specified for the purposes of section 6 of the Competition Act 1998(b) (and accordingly a block exemption(c) applies in respect of MVA agreements).

(2) MVA agreements are agreements or concerted practices which—

- (a) would fall within the category of agreements specified in article 3 of the VABEO, but for article 3(6)(a) of that Order (subject matter falling within another block exemption order), and
- (b) relate to the conditions under which the parties may—
 - (i) purchase, sell or resell aftermarket goods for motor vehicles, or
 - (ii) provide repair and maintenance services for motor vehicles.

(a) S.I. 2022/516.

(b) Agreements which fall within a category specified for the purposes of section 6 are exempt from the Chapter 1 prohibition. See section 6(3) of the Act.

(c) For the meaning of “block exemption”, see section 6(4) of the Act.

Block exemption subject to conditions and obligation

- 4.—(1) The block exemption has effect in relation to a particular MVA agreement subject to—
- (a) the conditions in articles 6 (market share thresholds), 8 (hardcore restrictions) and 10 (excluded restrictions) of the VABEO,
 - (b) the conditions in articles 5 (hardcore restrictions: MVA) and 6 (excluded restriction: MVA), and
 - (c) the obligation in article 9 (obligation to provide information).
- (2) For the purposes of paragraph (1)(a), the MVA agreement is to be treated as an agreement to which the VABEO applies.

Hardcore restrictions: MVA

5.—(1) The condition in this article is that the MVA agreement must not contain a hardcore restriction within the meaning of paragraph 2.

(2) A hardcore restriction is one or more provisions which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object—

- (a) the restriction of sales of aftermarket goods by members of a selective distribution system to independent repairers who use or want to use those aftermarket goods for the repair and maintenance of motor vehicles,
- (b) the restriction, agreed between—
 - (i) a supplier of aftermarket goods or repair or diagnostic tools, and
 - (ii) a supplier of motor vehicles,

of the ability of the supplier in paragraph (i) to sell any of the goods referred to in that paragraph to distributors, repairers or end-users, or

- (c) the restriction, agreed between—
 - (i) a supplier of motor vehicles which uses original parts supplied by another supplier, and
 - (ii) the supplier of such parts,

of the ability of the supplier in paragraph (ii) to place its trade mark or logo effectively and in an easily visible manner on the original parts or on any spare parts intended to replace those parts.

(3) In this article—

“distributor” means an authorised distributor or an independent distributor;

“repairer” means an authorised repairer or an independent repairer;

“selective distribution system” means a distribution system set up by a supplier of motor vehicles of a particular make, where—

- (a) the supplier undertakes to sell such vehicles, either directly or indirectly, to authorised distributors on the basis of specified criteria, and
- (b) those distributors undertake not to sell such motor vehicles to independent distributors within the territory reserved by the supplier to operate that system.

Excluded restriction: MVA

6.—(1) The condition in this article is that the MVA agreement must not contain the excluded restriction within the meaning of paragraph 2.

- (2) The excluded restriction is a restriction of the ability of an independent operator to access—
- (a) technical or vehicle information, or
 - (b) tools or training,

which is necessary for the repair and maintenance of motor vehicles of a particular make.

(3) For the purposes of paragraph 2, access to technical or vehicle information, tools or training is only necessary if (among other things) a supplier of motor vehicles of that make—

- (a) uses it for repair and maintenance services, or
- (b) provides it to its authorised repairers, authorised distributors or other authorised partners for those purposes.

(4) The restriction is not an excluded restriction if it falls within article 5(2)(b) (hardcore restrictions: MVA).

(5) In this article—

“authorised partner”, in relation to a supplier, means a person with whom the supplier has entered into a contract for services;

“independent operator”, in relation to a make of motor vehicle, means a person, other than an authorised repairer or an authorised distributor, who is directly or indirectly involved in the repair and maintenance of motor vehicles of that make, and includes—

- (a) an independent repairer,
- (b) a supplier or independent distributor of spare parts,
- (c) a supplier or independent distributor of repair tools,
- (d) a publisher of technical information,
- (e) an automobile club,
- (f) a roadside assistance operator,
- (g) a person who provides inspection and testing services, and
- (h) a person who provides training to independent repairers;

“technical information” means information which is required for—

- (a) diagnosing, servicing or inspecting a motor vehicle,
- (b) preparing a motor vehicle for road worthiness testing,
- (c) repairing a motor vehicle or re-programming or resetting a system on a motor vehicle,
- (d) providing remote diagnostic support to a motor vehicle, or
- (e) the installation of one or more parts in or on a motor vehicle;

“technical or vehicle information” means technical information or vehicle information;

“vehicle information” , in relation to a motor vehicle, means data which is—

- (a) generated by a system in the motor vehicle, and
- (b) is required for the purposes of providing repair and maintenance services in respect of the motor vehicle.

Effect of breach of conditions

7.—(1) The block exemption is cancelled in respect of the MVA agreement if the agreement is in breach of—

- (a) the condition in—

- (i) article 6 (market thresholds) or 8 (hardcore restrictions) of the VABEO, or
 - (ii) article 5 (hardcore restriction: MVA), or
- (b) the condition in—
- (i) article 10 (excluded restrictions) of the VABEO, or
 - (ii) article 6 (excluded restriction: MVA),
- and the agreement contains one or more excluded restrictions which are not severable from the agreement.

(2) If the agreement is in breach of a condition in article 10 of the VABEO or article 6, but each excluded restriction is severable from the agreement, the block exemption is cancelled in respect of each excluded restriction only.

Timing of cancellation: breaches of conditions

8.—(1) The cancellation referred to in article 7 (effect of breach of conditions) takes effect from when the breach occurs, except where paragraph 2 applies.

(2) This paragraph applies where—

- (a) the MVA agreement is in breach of the condition in article 6 of the VABEO (market share thresholds), and
- (b) the MVA agreement—
 - (i) is not in breach of any other condition in the VABEO or this Order, or
 - (ii) is in breach of article 6 of the VABEO or article 6 (excluded restrictions: MVA), but article 7(2) (excluded restrictions are severable) applies.

(3) Where paragraph (2) applies—

- (a) article 7(2) to (4) of the VABEO (grace period if market share initially not more than 30%) applies to the MVA agreement, and
- (b) the cancellation takes effect from the end of the grace period referred to in article 7(2) or (3), whichever is relevant.

Obligation to provide information

9.—(1) A party to an agreement or concerted practice in respect of which the benefit of the block exemption is claimed must provide to the CMA^(a) such information in connection with the agreement or concerted practice as the CMA may request by notice in writing.

(2) The party must provide the information within—

- (a) the period of ten working days^(b) starting with the relevant day, or
- (b) if, having had regard to all the circumstances of the case, the CMA has agreed in writing a longer period of working days starting with the relevant day, the agreed period.

(3) Where the CMA considers that the party has failed to comply with the obligation in this article without reasonable excuse, the CMA may, on the assumption that the block exemption would otherwise apply, cancel the block exemption in respect of the agreement or concerted practice by notice in writing, subject to paragraph 4.

(4) Before cancelling the block exemption in respect of the agreement or concerted practice, the CMA must—

(a) For the meaning of “the CMA”, see section 59(1) of the Act.

(b) For the meaning of “working day”, see section 59(1) of the Act.

- (a) give notice in writing to the party of its proposal to cancel the block exemption in respect of the agreement or concerted practice, and
 - (b) consider any representations made to it.
- (5) In this article, “relevant day” means—
- (a) where article 11(a)(i) (notice given directly) applies, the day on which the party receives the notice;
 - (b) where article 11(b) (notice given via publication) applies, the day on which the notice is published,

except that if the day referred to in sub-paragraph (a) or (b) is not a working day, “relevant day” means the next working day after that day.

Cancellation in individual cases

10.—(1) This paragraph applies where the CMA considers that a particular MVA agreement is not exempt from the Chapter 1 prohibition as a result of section 9 of the Competition Act 1998.

(2) Where this paragraph applies, the CMA may cancel the block exemption in respect of the MVA agreement by notice in writing, subject to paragraph (3).

- (3) Before cancelling the block exemption in respect of the MVA agreement, the CMA must—
- (a) give notice in writing of its proposal to cancel the block exemption in respect of the MVA agreement, and
 - (b) consider any representations made to it.

Notices in writing

11. For the purposes of articles 9 and 10, notice in writing is to be given—

- (a) in the case of—
 - (i) a request, by the CMA giving notice in writing of its request for information to the party in question;
 - (ii) a proposal or decision, by the CMA giving notice in writing of its proposal or decision to those persons whom it can reasonably identify as being parties to the agreement or concerted practice in question, or
- (b) where it is not reasonably practicable for the CMA to comply with paragraph (a), by the CMA publishing its request for information, proposal or decision in—
 - (i) the register maintained by the CMA under rule 20 of the CMA’s rules set out in the Schedule to the Competition Act 1998 (Competition and Markets Authority’s Rules) Order 2014(a),
 - (ii) the London, Edinburgh and Belfast Gazettes,
 - (iii) at least one national daily newspaper, and
 - (iv) if there is in circulation an appropriate trade journal which is published at intervals not exceeding one month, in such trade journal,

stating the facts on which it bases the request, proposal or decision, and its reasons for making it.

(a) S.I. 2014/458, to which there are amendments not relevant to this instrument.

Transitional provision

12.—(1) An agreement or concerted practice which—

- (a) immediately before 1st June 2023 was exempt from the Chapter 1 prohibition by virtue of the retained MVBBER, and
- (b) on 1st June 2023 would not otherwise be an agreement or concerted practice to which the block exemption applies,

is to be treated as an agreement to which the block exemption applies until the end of 31st May 2024, subject to paragraphs (3) to (4).

(2) Such an agreement or concerted practice is to be known as a “pre-existing MVA agreement”.

(3) The block exemption does not apply to any obligation in a pre-existing MVA agreement which was an excluded restriction within the meaning of article 10(2) of the VABEO immediately before 1st June 2023.

(4) Articles 9 to 11 apply to a pre-existing MVA agreement as they apply to an MVA agreement.

(5) In this article, “the retained MVBBER” means Commission Regulation (EU) No 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector^(a).

Expiry

13. This Order ceases to have effect at the end of 31st May 2029.

Parliamentary Under Secretary of State
Department for Business and Trade

(a) EUR 2010/330, as amended by S.I. 2019/93 and 2022/1271.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is a block exemption Order under section 6 of the Competition Act 1998 (“the Act”). It gives effect to the Competition and Market Authority’s (“CMA”) recommendation that certain agreements relating to the motor vehicle aftermarket (“MVA agreements”) constitute a category of agreements which are likely to be exempt from the prohibition against anti-competitive agreements in Chapter 1 of the Act (“the Chapter 1 prohibition”).

The Order replaces retained Commission Regulation (EU) No 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector (“the MVBER”) (EUR 2010/461), which expires on 31 May 2023.

Under article 3 of the Order, MVA agreements are specified for the purposes of section 6 of the Act, with the effect that a block exemption from the Chapter 1 prohibition applies to MVA agreements. The block exemption has effect in respect of a particular MVA agreement subject to the conditions and obligation referred to in article 4 (see also articles 5 and 6). These include the conditions which apply to vertical agreements in the Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022 (S.I. 2022/516).

Breach of a condition will result in the block exemption being cancelled in respect of the agreement, except in the case of an excluded restriction which is severable from the agreement (see article 7). In addition, the CMA may cancel the block exemption in respect of an agreement if: (i) a party to the agreement fails to provide information to it (see article 9) or (ii) the CMA considers that the agreement is not one which is exempt from the Chapter 1 prohibition as a result of section 9 of the Act (see article 10).

The Chapter 1 prohibition does not apply for 12 months to agreements in this sector which were exempt from the Chapter 1 prohibition immediately before 1st June 2023 by virtue of the retained MVBER and would not otherwise meet the conditions for exemption under this Order (see article 12).

The block exemption applies from 1st June 2023 and will cease to have effect at the end of 31st May 2029 (see article 13).