



Motor Vehicle Block Exemption Regulation (MV-BER)

Introduction

This paper has been prepared by the UK AFCAR group which is derived from the European group of the same name. The aim of the group is to ensure the rights of the independent aftermarket are upheld in the post Brexit era, specifically to enable all multi-brand operators to be able to access technical information, supply spare parts of matching quality to original equipment (OE) parts and perform service, maintenance and repair (SMR), with which to provide vehicle owners with a choice of the supply of repair and maintenance services as part of an open, competitive and transparent marketplace.

The group is a mixture of trade associations and commercial organisations. Trade associations included in the group are: ABP (Association of Bodyshop Professionals), GEA (Garage Equipment Association) IAAF (Independent Automotive Aftermarket Federation), NTDA (National Tyre Distributors Association) and the UKLA (UK Lubricants Association). A representative from the SMMT (Society of Motor Manufacturers and Traders) also attends meetings, on behalf of the Society's aftermarket members, but SMMT is feeding through to this process directly given the wide-ranging views held amongst its broad membership base.

Commercial organisations include the AA, AAG (Alliance Automotive Group), Halfords, LKQ Euro Car Parts, Kwik-Fit and the RAC.

This is a summary document. We are happy to expand on any subject and provide detailed supporting evidence if required.

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The UK Automotive Aftermarket

The UK automotive aftermarket employs around 350,000 men and women, about 75,000 more than employed in all vehicle and engine manufacturing and their supporting supply chains.¹

Independent motor trade (IMT) repairers accounts for 78% of UK Service Maintenance & Repair (SMR) light vehicle aftermarket by volume (workshop entries)². Additional to this, independent operators conduct the vast majority of MOT tests, accident repairs, windscreen repairs/ replacement mobile/driveway repairs and other services.

In contrast OEM networks hold just 29% of SMR work by value². This is highly profitable for OEMs, particularly replacement parts (aka spare parts). This huge profit element is largely invisible to UK authorities as all OEMs are foreign-owned, but is important as they cross-subsidise the sale of new vehicles, especially for volume OEMs. Whilst their UK dealers benefit from a much smaller share of the OEM spare parts value chain, they are still expected to subsidise their new vehicle sales operation (officially termed 'overhead absorption') from aftermarket activities.

There are over 35,000 'all-makes' IMT repairers of various types, located in every city and town and most villages throughout the UK. In contrast, on average there are fewer than 200 single-brand franchised dealers³ for each OEM marque represented in the UK.

IMT service is therefore much more accessible and personal. Together with their much lower hourly labour rates and lower parts prices, IMT repairers consistently gain higher customer satisfaction ratings⁴.

The IMT repairer typically employ 3 to 4 operatives with their business model relying on maximum utilisation of workshop space. Many jobs are accepted without a prior booking. Customers usually expect same-day (often 'while you wait') service. The IMT repairer generally will not attempt to stock spare parts to match this unpredictable demand relying instead on fast, just-in-time deliveries from an all-makes parts supplier. For SMR work, each IMT repairer obtains this service from a local IAM all-makes parts distributor, popularly called a motor factor, typically offering 'within-the-hour' deliveries. Large investments in facilities, technology, training and stock throughout the IAM have made this possible. There are around 2,200 all-makes motor factor locations in the UK, so on average they are much closer to the IMT repairer than the relevant (single marque) contracted distributor.

The IMT repairer sometimes chooses, or has no alternative, but to buy parts from the OEMs contracted distributor, because they are 'captive' or otherwise unobtainable from their normal supplier⁵.

IAM parts distributors' major suppliers are Tier 1 parts manufacturers, who also develop and supply the same parts to the OEM vehicle assemblers and their aftermarket (OES) programmes. In the legislation these are called Original Quality parts. Generally, IMT repairers can buy these parts at

¹ Frost & Sullivan for SMMT: *THE IMPORTANCE OF THE UK AFTERMARKET* June 2016; ONS Mar 2020 2019 Provisional 2019; Dec 2019 - 2018 benchmarked to BRES/ABS.

² GiPA research conducted each year with 3,000 UK motorists.

³ Franchised dealers are termed Authorised Distributors or Authorised Repairers in the legislation. UK AFCAR consider the word Authorised to be highly prejudicial, implying that Independent all-makes repairers and distributors are 'unauthorised'. We prefer the description 'Contracted' which is used throughout the remainder of this document.

⁴ GiPA research for example.

⁵ GiPA research conducted annually amongst 1,000 UK repairers and parts distributors.

significantly lower prices from IAM distributors than from contracted distributors, due to the simpler value chain, economies of scale and more efficient logistics. IAM distributors can also buy Original Quality parts from Tier2 suppliers (sub-contractors to Tier1s) and from other parts manufacturers which supply spare parts certified to be of OE Matching Quality. The latter tend to be supplied at lower prices still.

The IAM is therefore the predominant and essential enabler of affordable mobility to UK consumers and businesses by providing choice for vehicle owners in the provision of SMR. For this to continue, IMT workshops need immediate and efficient access to a vehicle and its electronic and mechanical systems (to diagnose it), to repair and maintenance information⁶ (to service it), to replacement parts identification and delivery (to fix it) and to update digital service records for the vehicle (to record what work has been completed).

General Assessment of Current MV-BER on UK Aftermarket

The MV-BER and the Supplementary Guidelines have contributed to competition in IAM of automotive spare parts and SMR to some extent. The MV-BER has acted as a safety net against OEMs' attempts to monopolise the aftermarket, so making consumer choice possible.

IAM repairers currently have access to spare parts and Tier1 parts manufacturers. IAM parts distributors are able to supply the entire aftermarket. RMI is also accessible, although not to the extent envisioned when the regulation was introduced. IMT repairers can (theoretically) work on newer vehicles without invalidating the OEM warranty. The present MV-BER framework has helped to outweigh the privileged position and significant market share that OEMs enjoy in parts and servicing markets.

Particularly in view of expected developments of micro-EV vehicles within inner city areas, UK AFCAR suggest that powered 2-wheel vehicles (above 1kw motor) be included in future MV-BER.

Regrettably, various technical and market changes are handing OEMs the opportunity to stifle this competition which will be to the long-term detriment of motorists and businesses.

On the one hand, competition has generally intensified for those parts which are widely available to the independent aftermarket, primarily due to the very existence of the MV-BER.

However, on the other hand, increasingly more parts are being taken out of the competitive arena and are being classified as 'captive' parts. With their massive resources, OEMs are trying to gain a higher share of the aftermarket by designing systems to exclude IMT repairers and gaining monopoly powers over many key areas, including ADAS⁷ and EV⁸ systems, denying competitive choice to the UK consumer.

⁶ Generally called RMI.

⁷ ADAS = Advanced Driver Assistance Systems, such as adaptive speed control.

⁸ EV = vehicles with electric powertrains

Trade in Spare Parts & Diagnostic Equipment

Original Quality and Matching Quality Spare Parts

Legal reference Points (19) and (20) of the 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 (2010/C 138/05).

The well-understood legal definitions of Original Quality and Matching Quality spare parts (see above) have been useful in several contexts and should be retained. Beyond the original intention of specifying which parts contracted repairers would be allowed to buy from IAM distributors (which hardly happens in practice – see below), the definitions are widely used in public sector tenders, industry codes of practice, end-customer information etc. Removal would leave only OEM-brand parts with a legal definition and would thus remove competition in areas of the aftermarket governed by formal tenders and enforceable CoPs.

UK AFCAR members request that the current definitions be retained.

Spare Parts Purchases by Contracted Repairers from IAM Distributors

The legal definitions of Original Quality and Matching Quality were originally introduced to allow/encourage contracted (aka Authorised) repairers to use non-OEM/VM branded parts without compromising quality standards.

In practice, contracted distributors/repairers rarely buy parts which compete directly with those available from their VM. The principal reason is that their buying terms are crucially dependent on cumulative volume-sensitive rebates and minimum sourcing requirements. The rebate trigger points are set unilaterally by the OEM and are frequently adjusted to allow little headroom to buy from the IAM. Allowed unfettered access to contracted distributors'/ repairers' premises, OEM representatives have the power to alter (or threaten to alter) other unregulated, non-monetary terms of trade. Sanctions include refusing the return of old parts without consignment bill or original packaging, denying the allocation of specially requested car models and charging full fees for mandatory training courses – all linked to attainment of parts quotas and absence of non-OEM brand parts.

UK AFCAR members request that minimum purchasing requirements, related rebate structures and other anti-competitive tactics should not be permitted in future UK MV-BER legislation.

In contrast, contracted distributors/ repairers are happy to buy parts from 'all-makes' IAM distributors when repairing a vehicle outside their OEM's brand. This could be for a fleet repair contract or refurbishment of a trade-in vehicle.

Even this as an opportunity is gradually being foreclosed to IAM parts distributors. Many OEMs have introduced a second or third range of parts with different branding and market positioning. These can be lower-priced parts for their own marque or for all-makes applications. The latter are sourced from the same Tier1 and Matching Quality suppliers used by IAM distributors, with whom they compete directly throughout the aftermarket. UK AFCAR members suspect that the very high margins achieved on captive parts allows price subsidisation on these competitive parts. Increasingly, most OEMs are offering alternative brands of 'competitive' parts at lower prices (e.g. Stellantis Eurorepar, Renault Motrio) to compete with IAM in this sector

Dual Branding

Legal reference

Article 5(c) of Commission Regulation (EU) No 461/2010; Point (24) of the Supplementary Guidelines (2010/C 138/05)

Tier1 suppliers are currently allowed to place their logos on parts used in original vehicle assembly. This gives some assurance to an IAM repairer (and their customer) when replacing the part supplied by an IAM distributor with the same branding. OEMs can try to restrict this by:

- OEM logo taking more and more space on the part;
- Parts becoming smaller, making it sometimes impossible to place a second logo;
- Restrictions coming from the OEM-owned tooling which contain the OEM logo.

UK UFCAR suggest that Tier1s be allowed to put more information on the parts, possibly in the form of a QR code, which could lead to correct replacement part number, fitting and calibration information etc.

Access to OEM 'Captive Parts'

Legal reference

Article 5(b) of Commission Regulation (EU) No 461/2010; Point (23) of the Supplementary Guidelines (2010/C 138/05)

Since 2010, there has been an increase in the number of parts produced by Tier1 parts manufacturers which are not available in their branding to the aftermarket, due to OEM actions. These are called captive parts.

As previously stated, we are seeing an increasing proportion of these. Their price is significantly higher than similar parts which are not captive, thus penalising the consumer and rewarding the monopolistic OEM. Some common causes of captivity are:

- A 'gentleman's agreement' between OEM and Tier1 not to supply to IAM as an unwritten condition of obtaining original equipment business on new models - even though there is no IPR, tooling ownership or economic justification for this. Examples of such parts are ADAS spare parts, NOx sensors, ECUs, engine management sensors, EGR valves, ABS pumps and nearly all EV/ Hybrid parts.
- OEM claiming IP rights or tooling ownership, even though the Tier 1 developed and manufactured the parts, so undoubtedly has the knowhow to manufacture the part unaided by the OEM. This is actually illegal under current law but difficult in practice for a Tier1 to enforce.
- Prohibitively high costs for tooling also in effect create more captive parts.
- Parts where some special coding or software is integral to the functioning part but is only issued by the OEM. If OEMs do not license such software or license tooling rights to the Tier1 suppliers, such parts will be exclusively limited to their contracted repair network. An IMT repairer can perhaps obtain the part from the relevant contracted repairer but this is expensive and time-consuming - and immediately informs his competitor that a particular vehicle has 'slipped through the net' into the independent sector.
- OEMs placing branding and logos on 'must-match' externally visible parts. For example: when only one headlamp needs replacing after a collision, using an (otherwise identical) IAM part without the VM logo would not be acceptable to the consumer or accident insurer. If Tier1 attempted to supply the part with OEM branding to the IAM, they would be challenged under trademark legislation.

UK AFCAR request that new legislation should be framed so Tier1s will be allowed to distribute the totality of their manufactured range to the aftermarket and to incorporate any relevant software or coding licences (purchased from OEM at specified, reasonable prices).

Access to OEM-Brand Captive Parts by IAM Repairers and Parts Distributors.

In general, IAM repairers can buy OEM brand parts, including captive parts, from the nearest OEM contracted parts distributor for the relevant marque. However, due to the larger distances involved (and high prices) this does not meet the 'one-stop-shop/ just in time' requirements of the IMT repairer, which their local IAM parts distributor generally provides.

Parts manufactured by a Tier 1 supplier to the OEM and where the OEM is making an (invalid) claim for IP rights or for ownership of tooling:

Under current MV BER, many Tier1 parts suppliers are unwilling/ unable to supply their full parts range to IAM distributors. This is because OEMs are spuriously claiming tooling and IP rights to OEM spare parts, with a view to make them captive parts, in the aftermarket, with monopolistic pricing. Alternatively, they may 'license' this tooling/ IP back to the Tier 1 supplier, thus increasing the aftermarket pricing of those licensed spare parts. This is illegal "if the parts manufacturer already has such tooling, IP rights or know-how – or under reasonable conditions could obtain them" - refer Supplementary Guidelines, Item 23. These conditions are almost always satisfied by Tier 1 parts suppliers. Unfortunately (but understandably) they are reluctant to pursue a legal remedy against important OEM customers.

The current MV-BER did not foresee the possibility/right that independent wholesalers may purchase OEM-branded spare parts (including captive) at the wholesale level.

OEMs are allowed under current legislation to prevent their contracted distributors from supplying IAM parts distributors. This prevents IAM distributors from holding stock of OEM brand parts, including captive parts, and thus being able to be the one-stop-shop.

The Q&A document⁹ that accompanied MV-BER suggested that IAM distributors should be able to obtain a single OEM brand part from a contracted distributor, provided it could be proved the part was for immediate sale to an IMT repairer. This so-called Purchase Agent¹⁰ Workaround is not practicable on cost grounds and, in the UK, several major OEMs appear to have instructed their distributors not to co-operate.

UK AFCAR strongly recommends that future UK legislation should ensure the availability of spare parts from OEMs or Tier1s be increased within the IAM. In cases where there is a monopoly on spare parts (OEM) or a duopoly (OEM and Tier1) there should be an obligation of OEMs and Tier1 to sell their products to the independent distribution. The new MV-BER should require OEM's contracted distributors to also supply the independent wholesalers without restriction, for the sake of competition in the aftermarket and for more consumer choice.

⁹ http://ec.europa.eu/competition/sectors/motor_vehicles/legislation/faq_de.pdf, at nr. 12.

¹⁰ Sometimes called Executive Agent Workaround.

New Trends for Spare Parts being made ‘Technologically Captive’ by OEMs

New forms of ‘parts captivity’ have emerged in recent years, mainly due to the development of proprietary security control technologies in the vehicle and embedded in the parts themselves. Digitalisation within the automotive industry has enabled OEMs to implement new measures to manage safety and security of the vehicle. With cybersecurity shortly to become a legal requirement, we expect this trend to accelerate.

UK AFCAR wishes to emphasise that it does not challenge the fact that the safe and secure interoperability of spare parts needs to be ensured. In today’s complex and interconnected vehicles, security measures are needed to ensure the functioning and system integrity of the vehicle, including when spare parts are installed during the maintenance or repair of a vehicle. However, this must be done in a manner to enable effective competition in the market for spare parts. Mechanisms must be made available and put in place, to enable the safe and secure installation of spare parts from the independent aftermarket and delivered at proportionate cost.

Similar remarks apply to the retrofitting of IAM accessories by IAM installers – e.g. Towbars

Codes & software needed to activate spare parts from Tier1 manufacturers.

One such new implementation of security measures which is predominantly used by OEMs is the coding or software *activation* of a spare part¹¹ as it is installed in a vehicle. These activations (via scanning QR codes or input of unlocking code via a diagnostic tool or by special software download) provides the final step to make the part usable within the vehicle and is proprietary for each vehicle manufacturer. In the current scenario, OEMs provide these activation codes/QR codes only to their own network, often only by mandating the use of the OEM’s own proprietary diagnostic tools.

However, independent multi-marque diagnostic tools/ scan tools in current use within IMT workshops are not able to scan/ read the required information from the Tier-1 spare part in order to complete the part verification process. These OEM coded spare parts can only be read by the proprietary diagnostic tool/ scan tool of the OEM. With part(s) traceability becoming more important due to increasing need for security, OEMs mandating their own diagnostic tool/ scan tool has the potential to close the market for independent diagnostic tool manufacturers.

Instead, IMT repairers using independent multi-marque scan tools/ diagnostic tools must have a fair chance to compete and be able to register OEM-coded spare parts. These tools should be enabled to use the pass-through mechanism to go online and connect with the OEMs system/backend server to successfully integrate the part with the vehicle. The diagnostic tool must be allowed to read the required type-number and hardware version number from the OEM-coded spare part and verify the values against the list of validated values (i.e. spare part number/ version number pair) stored in the vehicle manufacturers backend server to complete the part integration process with the vehicle.

Codes & software needed to activate spare parts independent parts manufacturers.

Whereas Tier 1 parts suppliers have a business relationship with the OEMs, enabling them to liaise on both sides for security mechanisms, there is no such provision currently for independent parts manufacturers. Currently, these independent manufacturers of Matching Quality parts have no

¹¹ *At the repairer level, the vehicle does a final handshake or a check of authentication code of the vehicle manufacturer as the part is installed in the vehicle. In addition, configuration information of the part including the type-number, hardware version number etc are verified against the information stored in the vehicle manufacturers configuration management backend server. Diagnostic tools are required to read this information from the spare part and connect to the VMs backend to verify the information. Once the part is identified as a validated part, the spare part is successfully integrated with the vehicle.*

possibility to obtain to create signatures/ activation codes in cooperation with OEMs. They will become unable to produce spare parts that are recognised by newer vehicles.

Independent part producers must have the capability to develop a “security code creation business relationship” with OEMs to be able to produce spare parts on an equal basis to Tier1 suppliers.

Under this “security code creation business relationship”, independent parts producers must have the ability to receive the necessary development, product specific compatibility and interoperability requirements from the vehicle manufacturers to code parts to vehicles.

For those parts covered by existing type approval requirements, such as braking or lighting, the vehicle manufacturer must provide the requirements and parts developed in accordance with these requirements need to continue to be tested and validated by an independent authority so that they do not cause any safety/security concern”

Once validated, the vehicle manufacturer needs to verify the part as a validated part relevant for the specific vehicle type. The part number and the hardware version number of the part needs to be included in the configuration management system of the vehicle manufacturer along with the list of permissible validated parts for a specific vehicle type, before it can be sold in the market as a spare part relevant for a specific vehicle type.

Independent multi-marque scan tools/ diagnostic tools must be able to read the part number and hardware version number of validated and certified spare parts developed by independent parts producers. During the repair process, it should be possible for these independent multi brand scan tools/ diagnostic tools to be able to use the pass-through mechanism to go online and connect to the vehicle manufacturers backend server. It should be possible to verify the part number and hardware version number of the independent spare part with the vehicle manufacturers backend server and complete the part integration with the vehicle.

An unregulated environment supporting the possibility of coding of spare parts in a proprietary manner closes the market for customer choice and mandates that only those parts can be installed within the vehicle that is selected by each individual vehicle manufacturer. This affects the independence of the UK aftermarket where the vehicle manufacturer as the competitor had full control and can set terms on the functioning of the independent aftermarket.

Recommendations of UK AFCAR:

1. OEMs should not be able to monopolise the entire aftermarket environment by introducing proprietary security measures like QR codes/ software activation to the selected few suppliers of their own choice. Such measures should not be used to restrict both, Tier 1 and independent parts producers from the ability to compete (i.e. develop and sell spare parts) and thus deny the entire independent aftermarket a competitive choice.
2. Tier1 suppliers should get a licensing agreement (or equivalent) for the parts codes for supply of their own parts to the independent aftermarket but combined with measures whereby independent multi-marque tools and test equipment are enabled to read the codes to avoid the obligatory use of the proprietary OEM test equipment (the forced use of the OEM equipment for codes being another means to restrict competition).
3. Independent parts producers need to be able to form a “security code creation business relationship” with the vehicle manufacturers and have the capability to develop independent parts that are compatible with the vehicle type. This must include the ability to receive relevant product development requirements from the vehicle manufacturers, including safety and security requirements and other product requirements related to compatibility and interoperability. Also, the ability to test the developed spare parts through neutral third-party

- test houses and to perform integration testing with the vehicle manufacturer for their developed part and obtain the required certificate/ signature for a validated part
4. Independent multi-marque scan tools should be able to verify the vehicle manufacturers signature and the corresponding part number and version number against the information stored in vehicle manufacturers backend.
 5. Independent parts should be able to be activated using independent scan tools/ diagnostic tools with the vehicle type.

Servicing, Maintenance and Repair during the Warranty Period

Legal reference

Point (69) of the Supplementary Guidelines (2010/C 138/05)

General assessment:

This important provision in current MV-BER Guidelines has much helped the competitive situation in the aftermarket compared with 2010. However, problems remain, mainly due to the vehicle manufacturers continuing to mislead the consumer and to undermine IAM parts and services.

Positive impacts:

After 2010, some contracted repairers still tended to invalidate the warranty if the vehicle had been serviced by IMT operators. However, the clear wording of the regulation ensured that such situations were quickly resolved in favour of the IMT repairer, normally without recourse to the courts.

Continuing Problems:

Despite clear rules and successful legal claims, the non-compliance by contracted dealers/ repairers of this obligation still exists and is a well-known problem in the market. Contracted dealers/ repairers still use various subtle means to influence customers:

- Oral misinformation to the consumer about warranty obligations to make them uncertain about his/ her rights.
- Oral misinformation to the consumer of the unclear consequences of using non-OEM/OES spare parts or servicing his car outside the OEM contracted network and making the consumer believe it is more advantageous (warranty-wise) to service his car in the contracted network.
- However, we have come across instances where the OEM has expressly stipulated in writing instructing their network to invalidate warranties if non-OEM-branded parts are used, PSA being an example and when challenged they have capitulated. So, in these cases it is an express written instruction¹².
- Through use of extended maintenance plans included in the vehicle sale contracts.
- OEMs bundling 'Free Servicing' into the price of a new car. This denies potential business to independent SMR operators, because the car owner would feel that they are 'paying twice' for a service. OEMs or their dealers should not be allowed to bundle 'free servicing' offers with the sale of a new or nearly new vehicle. Instead, the servicing element should be shown

¹² An example of this can be found at https://www.ueil.org/wp-content/uploads/2020_January_OEMBulletin_PSA.pdf

Firstly, UEIL has been made aware that PSA had disseminated a technical circular letter to its network in France stating it was compulsory to use lubricants approved by PSA. Secondly, UEIL has been informed that some customers in the UK had experienced issues with PSA dealerships who had invalidated warranties due to using an engine oil which had not been approved by PSA. Then we have drawn PSA's attention to the fact that such statement and behaviour were clearly illegal and constituted a breach of EU regulation.

separately with the vehicle buyer able to choose whether to accept this element, or not. The price of the servicing element to be such that another owner of a similar car can purchase servicing at that price at that location.

- Some OEMs are demanding that vehicles under warranty are serviced using specific parts (e.g. lubricants, tyres) not available to the IAM repairer through its' normal independent wholesale suppliers. The OEM does not release the technical specification of these products to allow a competitive product to be offered and is able to change 'monopolistic' prices. For the benefit of the consumer and OEM should not be allowed to specify a captive product without first releasing the full technical specification.
- Some OEMs are also applying an extended warranty to OEM branded parts and at the same time a reduced warranty for non-OEM branded parts.
- We have recent examples of KIA UK now requiring additional proof of IAM servicing within their 7-year warranty period from the end consumer. They demand a copy of the IAM repairer's invoice showing actual IAM part numbers and IAM lubricant type (ostensibly to prove correct, matching quality parts used), in order to honour their warranty. This is an underhand way of conducting competitor research and can be used as a "subtle" way of influencing the consumer to remain with the franchised dealer during the warranty period. If necessary, the product (but not price) information can always be obtained from the OEM direct from the IMT repairer.
- OEMs can sometimes block the installation of parts or the use of tools during the warranty period, unless an (expensive) code is bought.

UK AFCAR members therefore request that Point (69) of the Supplementary Guidelines (2010/C 138/05) be carried forward into future MV BER legislation.

Access to Technical Information (RMI)

Legal reference

Point (62) of the Supplementary Guidelines (2010/C 138/05)

General Assessment and Remaining Issues

The provisions of the sector specific Guidelines granting access to technical information to independent operators is one of the most vital elements of the competition law instrument for the automotive aftermarket. For good reasons it was included in Regulation (EC) No 1400/2002. Even today it protects independent repairers at the retail level and independent operators throughout the IAM. All these operators depend on technical information from the OEM as dominant player, in order to offer competitive products and services. This increases choice for consumers and keeps the price of repairs down, by putting competitive pressure on OEM's networks.

The definition of technical information in Point (62) is more fluid than in the more prescriptive RMI provision in Vehicle Type-Approval Regulation (EU Reg. 2018/858) but both complement each other.

The 2010 MV-BER framework recognised that access to technical information, tools and training continues to be a prerequisite for effective competition in the automotive aftermarket.

Independent spare parts distributors depend on accurate technical information, which they provide alongside spare parts to IMT workshops. This is generally supplied by independent data publishers. Each publisher aggregates, structures and harmonises the disparate proprietary technical information from all OEMs and all vehicle models into a single standardised multi-brand RMI. From their daily

experience, UK AFCAR members fully confirm the problems described in the recent RICARDO Report¹³, resulting from incomplete or out-of-date RMI platforms¹⁴.

The competitiveness of IAM spare parts distributors depends on the ability of their cataloguing systems to provide an unequivocal identification of the vehicle and its related spare parts for a 100% accurate spare parts delivery. Where inaccuracies occur, IMT repairers receive the wrong parts causing inefficiencies and costs to the repairer (sub-optimal workshop utilisation), the suppliers (an additional delivery and processing a returned item) and most certainly for the end customer. Where there are uncertainties in parts identification, the IAM distributor will often feel it necessary to deliver a selection of possible parts, from which the repairer can choose – again very inefficient and costly.

Although obliged by regulation (EU) 2018/858 (effective September 2020) to supply full RMI in bulk, machine-readable format for all vehicles Euro5/V onwards, OEMs are refusing to comply. Those having the most precise vehicle and spare parts information will be most likely to sell the parts needed. OEMs seem determined to retain their privileged position by withholding technical information needed to accurately applicate/cross-reference both Original quality and Matching Quality spare parts, by claiming intellectual property rights over such information.

As vehicle technology becomes more advanced, the extent of regular training of IMT technicians is at unprecedented levels and is expanding rapidly. Many IAM training providers are helping to drive these necessary advances. These training providers require ready and prompt access to relevant OEM training materials and tools to enable IMT technicians to train to work on these newer vehicle types.

UK AFCAR Recommendations

Provisions enshrined in competition law providing access to technical information for independent operators should be continued after 2023. They are the vital umbrella only under which the detailed technical specifications of the Vehicle Type-Approval Regulation make sense. The scope of technical information is much more comprehensive in the Motor Vehicle Block Exemption Regulation, as it specifies that technical information continuously evolves due to technological progresses. This inclusive definition should be kept.

However, the provisions of Point (62) of the sector specific Guidelines should be modernised by adapting them to ‘technical progress’ to avoid new forms of hindrances/ obstructions created by vehicle manufacturers. This should include:

- (a) That the OEM itself is benchmark for technical information, both where contracted repairers use the technical information and where the OEM performs repair and maintenance operations remotely themselves (e.g., pass-through).
- (b) This responsibility to remain with the OEM for the full lifetime of vehicles in operation.
- (c) Full RMI/ technical information should be given in a bulk, machine-processable format, as specified in 2018/858 for all vehicles Euro 5/ V onwards.
- (d) Software, activation codes and recalibration specification for sensors should become an essential part of technical information.
- (e) IAM repairers should be allowed to update on-line digital service records, specifying what work has been carried out on a particular vehicle. It is now common practice for OEMs to hold details of a vehicles’ service/ repair history on their private servers, rather than issuing the traditional paper-based Service Book. However, IAM repairers are prevented from obtaining

¹³ RICARDO Report: “The Motor Vehicle Block Exemption Regulation (MV-BER): An essential piece of legislation for providing repair and maintenance information in the automotive aftermarket. Final report for the Automotive Data Publishers Association (ADPA), 24th March 2021

access to this record and therefore cannot confirm that a service or repair has taken place to OEM specifications. This naturally generates dissatisfaction with the vehicle owner because the resale value of that vehicle is significantly reduced if a 'complete service record' cannot be demonstrated to a potential purchaser. The result is an unfair advantage to the contracted repairer vis a vis the independent repairer.

- (f) Ready availability of OEM training materials and tools to accredited IAM technical training providers.

Interrelationship between V-BER and MV-BER

Although V-BER is important for OEMs and their contracted distributors, its revision has few direct consequences for UK AFCAR members with the major provisos that:

- a) MV-BER continues to exist, preferably with the improvements described above.
- b) MV-BER continues to have primacy over V BER in the automotive aftermarket.

Enforcement mechanisms of the MV-BER

By far the biggest problem has been the enforcement of the many important and valuable provisions of the MV-BER.

Various avenues have been pursued to obtain enforcement:

1. The European Commission directorate DG GROW. In all cases DG GROW has been supportive of the IAM position. However, they have no direct enforcement powers.
2. Via national type approval authorities, who have been the official custodians of MV-BER. This has been unsuccessful as a number of national type approval authorities indicated that the enforcement of the MV-BER is not their priority. Addressing these authorities under the Vehicle Type Approval Regulation has also proved to be a complete dead end. They are not equipped to judge on technical issues with competition relevance and, as they source their main revenues from the testing of vehicles, i.e., from vehicle manufacturers¹⁵, they have no incentive to act on behalf of the IAM.
3. Seeking dialogue with OEMs: Letters sent to vehicle manufacturers depicting the problem remained either unanswered or produced a completely evasive answer.
4. Litigation. Most IAM operators are SMEs which would not have the financial resources to oppose the mighty OEMs in an extended court case. In rare cases, national trade associations have attempted legal action. This is not straightforward as the associations have first to raise funds before pursuing a case. At best, this has produced a positive result on a single issue in a single EU members state.

UK AFCAR strongly hope that our withdrawal from the EU will result in a forum for faster, cheaper process for resolving disputes around interpretation of MV-BER and Type Approval legislation.

This could be via an expert, properly resourced section of the CMA or perhaps via a truly independent Ombudsman. Enforcement notices could be issued, followed by legal action in extreme circumstances.

¹⁵ On the basis of positive interpretation by DG GROW on electronically processable spare parts, the German IAM parts distributor association, the GVA, tried this route with a case regarding spare parts identification information against BMW (because this was one of the first type-approved Euro 5 vehicles at the time, type approved in Ireland) but the ROI type-approval authority proved to have no interest in pursuing this case. They only started to examine after heavy pressure from DG GROW. The case ended when the ROI type-approval authority declared that there is no problem.

UK AFCAR will be pleased to highlight areas in current UK legislation (e.g. non-observance by OEMs of the provisions of 2018/858) where clear breaches are believed to be widespread.