

Retained Horizontal Block Exemption Regulations: BVRLA Response to CMA Call for Inputs

1 Introduction

- 1.1 This document sets out the British Vehicle Rental and Leasing Association (**BVRLA**)’s response (**the Response**) to the CMA’s Call for Inputs on the Retained Horizontal Block Exemption Regulations (**Retained HBER**).
- 1.2 The BVRLA has previously contributed to the CMA’s Retained Vertical Block Exemption Regulation (**Retained VBER**) consultation. The BVRLA also submitted a position paper to the CMA outlining the key Retained VBER issues of interest to BVRLA members in June 2021 (**the BVRLA Position Paper**). This response should be read in conjunction with those documents.
- 1.3 The BVRLA represents the demand side of the automotive industry. Our members acquire vehicles for the purposes of operating rental, leasing and fleet management businesses. BVRLA members own and operate more than four million cars, vans and trucks. They spend more than £30 billion upgrading their fleets each year and are responsible for buying around 50% of new vehicles sold annually in the UK, including 83% of vehicles manufactured in the UK for sale in the UK.
- 1.4 Given that some of the questions in the CMA’s Call for Input document are of less relevance to BVRLA members, the association has chosen to focus on the questions which have the biggest impact on its members: the exchange of information in dual distribution arrangements.
- 1.5 As the CMA is aware, the European Commission is consulting in parallel in this respect and proposing to address information exchange in its updated horizontal guidelines, including in the context of dual distribution systems where a manufacturer is both a supplier to its distributors, but also a competitor to those distributors due to its own direct sales channels. The position of BVRLA members is similar to that of distributors in such a dual distribution system, but they are classified as “end users” within the VBER framework, as they acquire the vehicles for their own use (i.e. provision of leasing or rental services) – albeit that they are also increasingly in competition with motor vehicle manufacturer’s own leasing and rental businesses.

2 BVRLA Response to CMA Call for Inputs

Context

- 2.1 At present there is a lack of guidance to ensure fair data access and provision where suppliers operate dual distribution systems. This is especially problematic for the automotive sector, which is experiencing rapid and significant technological change that has made data critical to commercial success and customer offerings. This problem will grow with the increasing prevalence of “connected cars” where the presence of detailed on-board vehicle and driver data is already disrupting existing business models.
- 2.2 Connected vehicles have the potential to provide multiple consumer benefits, but the application of restrictions or requirements around access to vehicle and driver/customer data, in particular by vehicle manufacturers, has the potential to damage competition in the automotive sector.

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- 2.3 Motor vehicle manufacturers are increasingly engaging in dual distribution by setting up their own leasing and rental operations to compete with those of independent leasing and rental companies. To the extent that motor vehicle manufacturers have their own leasing or rental businesses, and if they are trying to increase sales via their own channels, access to in-vehicle and independent competitor customer data generated by the activities of BVRLA members, through their rental, leasing and fleet management businesses, can provide a significant competitive advantage.
- 2.4 For example, it is an increasingly common requirement imposed by motor vehicle manufacturers that leasing companies must supply them with details of the leasing company's customer (i.e. the lessee of the vehicle). Providing the personal data of these customers may enable motor vehicle manufacturers to promote their rival offerings to customers of independent leasing companies when the leasing contract is due to expire. This is confidential and competitively-sensitive data to the leasing company in this scenario, and if access to such information were to be demanded, this could distort and reduce competition by allowing manufacturers to capture additional business.

Proposed amendment

- 2.5 In order to address this concern, both in the automotive sector and more widely, the BVRLA considers that the CMA should make clear in the HBER Guidelines that suppliers operating dual distribution systems may not restrict 'end users' from accessing data generated by goods supplied nor require 'end users' to disclose any data of the user of the goods supplied other than what is strictly necessary to enable the use of the goods.
- 2.6 The key points which should be included in such guidance are:
- (a) It should be recognised that data generated by goods acquired by a distributor or end user may be competitively-sensitive and that the acquirer should not be forced to share such data with the supplier (including but not limited to motor vehicle manufacturers) without an objective justification;
 - (b) Suppliers (including but not limited to motor vehicle manufacturers) which operate a dual distribution model may:
 - (i) Where they have access to such data, not deny, limit, delay or otherwise impose unfair requirements for access to any data generated by the goods acquired by the distributor or end user; and
 - (ii) may only require their customers to disclose the personal data of the ultimate users of the products or services where strictly necessary in order to enable the provision of those goods or services; and
 - (c) Where personal data of the ultimate users is provided to the manufacturer, access to that data should be subject to internal firewalls within the manufacturer, preventing it from being used by the manufacturer's marketing/customer acquisition teams to secure competitive advantage.

Justification

- 2.7 Introducing clear guidance on these points would go some way to minimising the harms to competition which could arise from any ability of suppliers operating dual distribution models to utilise data relating to their distributors' activities, for example to capture downstream customers of their direct counterparties.

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- 2.8 In the context of dual distribution arrangements, where the supplier sells its products via distributors but also through its direct sales channels, it is recognised that any information provided by the distributor to the supplier in respect of its sales practices, customers, or customer usage data risks reducing competition. Given that suppliers and distributors will be competitors in this context, such information exchange may be characterised as giving rise to competition law concerns. The fact that these exchanges will be one-way (e.g. the information being provided by the distributor to the supplier only) reflects the unequal bargaining power of the parties in such context, which the supplier may be able to use to the disadvantage of its distributor and therefore reduce downstream competition. The same competition concern applies in motor vehicle manufacturers' relationships with leasing and rental companies where the manufacturer operates its own leasing or rental businesses.
- 2.9 There is currently a lack of clarity around when such horizontal information exchange would be in breach of the competition rules. Where a supplier has a dominant position, requiring the provision of information and data by end consumers or end users may amount to an abuse of dominance (in breach of Chapter 2 of the Competition Act 1998 in the UK). This is arguably the case in respect of all manufacturers' relationships with distributors or end-users who have acquired their vehicles, as they may be the only source for such data. Indeed, companies already dealing with a particular manufacturer (and unable to practicably do otherwise) may be particularly vulnerable in this context, with the potential consequence that the competition between distribution and leasing companies could be eliminated by manufacturers providing such services in-house, which will have lasting negative effects for consumers through loss of choice and competition.

3 Closing

- 3.1 The BVRLA would welcome further engagement with the CMA on the issue of exchange of information in dual distribution arrangements.

About the BVRLA

The BVRLA represents over 1000 companies engaged in vehicle rental, leasing and fleet management. Our membership is responsible for a combined fleet of four million cars, vans and trucks – one-in-ten of all vehicles on UK roads.

BVRLA members represent the demand-side of the automotive industry, buying around 50% of new vehicles, including over 80% of those manufactured and sold in the UK. In doing so, they support almost 500,000 jobs, add £7.6bn in tax revenues and contribute £49bn to the UK economy each year.

Together with our members, the association works with policymakers, public sector agencies, regulators, and other key stakeholders to ensure that road transport delivers environmental, social and economic benefits to everyone. BVRLA members are leading the charge to decarbonise road transport and are set to register 400,000 new battery electric cars and vans per year by 2025.

BVRLA membership provides customers with the reassurance that the company they are dealing with adheres to the highest standards of professionalism and fairness.

The association achieves this by reinforcing industry standards and regulatory compliance via its mandatory Codes of Conduct, inspection regime, government-approved Alternative Dispute Resolution service and an extensive range of learning and development programmes.

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