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RE: Motor Vehicle Block Exemption Regulation (MVBER)

Dear Competition and Markets Authority,

Thank you for inviting comments to the MVBER consultation published on 21st July 2022.

We are responding on behalf of LKQ Euro Car Parts, the UK's leading distributor of independent car parts with around 10,000 employees and 280 branches across the UK. We serve over 35,000 independent garages in the UK.

We broadly support the CMA's proposal to extend the existing MVBER into an MVBEO.

We vehemently support improved definitions around motor vehicle and spare parts, access to technical and vehicle information as well as additional clarity around warranties. We share the CMA's view that *'it is important that independent repairers continue to exert vital competitive pressure on authorized repairers and ensure that consumers can enjoy choice in provision and price'*. However, as we will set out below we consider that the ability to exert such pressure is being eroded by technological restrictions, mis-information by OEM's and 'bundling' of products and exclusive access to consumers via their vehicles.

The MVBEO needs to address these areas. We would also point out that the CMA's powers are broad reaching and even enquiring about issues without launching a formal investigation has an appreciable effect on competition. We are not aware of any significant CMA investigations or enquiries into the OEM's and authorised dealers behaviours under the existing MVBER, and we feel the lack of any enquiry or investigation has emboldened behaviour. Assertion of the new MVBEO and clear guidance of definitions with examples of what would be considered inappropriate behaviour would greatly improve the competitive arena in the UK independent workshops and spare parts marketplace to the considerable benefit of the consumer.

LKQ Euro Car Parts would wish to draw to the CMA's attention the number of cases that have been submitted to the ECJ in recent years regarding access to data and technical information and the avoidance by OEM's to provide information and access to data and tooling. This is restricting

competition for the provision of independent aftermarket parts and the use of independent workshops so reducing competition and creating high prices for consumers.

The CMA should note that the recent cases regarding access to data, availability of data and the process of data, as well as restrictions on access to the data port have been brought by trade associations. Given the small and fragmented nature of workshops in the UK and Europe, there is not the knowledge or resources to challenge large multi-national OEM's. These cases also take considerable time and effort, which in these instances although access should be granted the arguments are around the type, frequency and cost of the access. Additional guidance or interpretation would remove the need for such cases and even the ability for workshops to submit even anonymously would assist that OEM's should not restrict access to the market with technical obstacles or bundling activity.

We would wish to point out that the coding of parts and number of captive parts (where there is no alternative other than the manufacturers part) by OEM's has been increasing considerably and that this is resulting in less options, decreased availability and higher prices for consumers. The CMA have previously indicated that they consider aftermarket to be separate from authorised dealers and also that single products and restrictions or exclusivity can infringe competition law. Captive parts are creating monopolies and restrictions on trade.

Our European survey of 1364 garages has shown:

- On average the share of captive parts in a bundle of spare parts is 23% representing a value of 35% of that bundle.
- 86% of these captive parts are sold at a higher price than the average market price for a similar part with a 33% price difference. 91% of workshops forward this higher price to its customer.
- On average 18% of spare parts now need some form of coding.
- 70% of workshops feel this has increased since 2015 by a factor of 6.
- 96% of workshops believe Vehicle Manufacturers and authorised dealers should be more open and transparent about the fact that use of independent garages is permitted under their warranty.
- 71% of workshops has had a customer claim their vehicle warranty is invalidated by use of a non-vehicle manufacturer/ authorised dealer garage.
- 93% of workshops feel restricted to working on particular vehicles because of lack of repair and maintenance information access.
- 76% of workshops consider the inability to provide electronic service book input is a deterrent to customers using independent garages. Service history affects the value of a car and the increasing use of electronic information and bundling with 'software updates' or breakdown services creates consumer inertia to use independent garages.
- 86% of workshops think vehicle manufacturers restrict access to parts and data to the detriment of independent garages.
- 79% believe restrictions on access to parts/data will get worse with electrification, ADAS systems and hybrid technology.

We have contributed to the UK AFCAR reply and fully support their response. However, we would wish to make the following additional points in relation to the following questions/ subjects:

- As recognised by the CMA, in paragraph 1.3 of the Consultation, the Competition Act prevents the restriction or distortion of markets and competition. The CMA recognise that 'markets' may be geographic and or relate to individual parts and/ or services. The principles of both Chapter I and Chapter II of the Competition Act recognise that agreements and dominant entities should not be '*applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage*'. Data, information, warranties and access to tools, information and consumers in the automotive industry are separate

markets. There should be a clear link within the MVBER to this overarching principle that there 'should be no discrimination' and equal treatment between OEM's/ authorised dealers and the independent workshops to carry clearly through the intent of Chapter I and II. This would remove the more technical and literal interpretation of MVBER definitions which change with technological development. This would provide broad protection and a deterrent to ensure no undue discrimination for access to 'markets' created by OEM's by independent workshops. OEM's would need to be able to demonstrate that they are not applying 'dissimilar conditions to equivalent transactions' across a broad range of parts and services.

- Paragraph 2.11 and Q6 - The increase in captive parts. We have seen increasing cases of parts requiring specific software and activation which can only be done with an OE tool. In addition, after its installation the vehicle has to be taken to a dealer for activation where upon the dealer will refuse, as they did not fit the parts and/or they are not OE parts and/or they don't have capacity. Availability of OE tools and reasonable pricing to acquire needs to be made clear. Access to tools restricts access to markets. Restricting access to calibrate parts, creates monopolies, costs consumers more and delays access to vehicles. This is particularly true after collisions and authorised repairers need to get dealers to calibrate ADAS systems. The cost and delay causes increased cost to insurers which in turn is passed on to consumers.
- Q 36 - With regards to warranties we are aware of practices that discourage and mislead consumers into thinking that they must use the VM's authorised dealers otherwise the warranty is void. This can easily be resolved by simple guidance or a statement or poster, which independent garages can use to inform the public.
- Whilst fully accepting the need for cybersecurity it must not be used to prevent effective competition. Vehicle Manufacturers could abuse cybersecurity to restrict access by controlling who, how and with what parts on any service or repair. Both LKQ Euro Car Parts and the independent aftermarket believe consumer safety is paramount, which is why we and they invest in training, accreditation and ensuring the quality of parts fitted are from reputable manufacturers. Software and cybersecurity is not exclusive to the automotive industry and the design of systems, tools, access protocols and independent authorisation agencies or remote verification codes are used in other industries to allow a right of repair, access to platforms and safety of consumers. Standard industry frameworks and licences, independent security agencies funded by reasonable licence fees can be utilised to provide a safe and open market. Cybersecurity, intellectual property and restricted access to tools should not be used to restrict market access when the security can and should be designed to give safe access. As vehicles become more 'connected' then the need for this to be addressed increases.
- We would also support an improved mechanism of market surveillance to report any potential infringements of the MVBER/MVBER. The CMA has many enforcement rights, but simply allowing more reporting, making more informal enquiry and questioning approaches by vehicle manufacturers will have an appreciable effect on competition. Whilst the rights may exist the availability, cost and risks to smaller organisations often put them beyond use against large multi-national manufacturers of vehicles or software providers.

To show our commitment to the regulations and the need for competition in the aftermarket industry we would be happy to expand or discuss any of the above points in writing or in a meeting if that may be of assistance. We would also be happy to facilitate a forum of our customers or to participate with other distributors, customers, suppliers within the automotive industry to ensure that access to parts, services and a right to repair remains affordable to all UK consumers.

Yours sincerely

Andy Hamilton
Group Chief Executive Officer
LKQ Euro Car Parts