

## **SMMT RESPONSE TO Retained Motor Vehicle Block Exemption Regulation Consultation**

From: Competition and Markets Authority

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### **PART ONE: Introduction**

1. The Society of Motor Manufacturers and Traders (**SMMT**) is one of the largest and most influential trade associations in the UK. We support the interests of the UK automotive industry at home and abroad, promoting the industry to government, stakeholders, and the media.
2. The automotive industry is a vital part of the UK economy and integral to supporting the delivery of the agendas for levelling up, net zero, advancing global Britain, and the plan for growth. We contribute £60 billion turnover and £12 billion value added to the UK economy, and invest around £3 billion each year in R&D. With more than 155,000 people employed directly in manufacturing and some 800,000 across the wider automotive industry, we account for 11% of total UK exports with more than 150 countries importing UK produced vehicles, generating £74 billion of trade. More than 30 manufacturers build more than 70 models of vehicles in the UK, supported by more than 2,500 component providers and some of the world's most skilled engineers. The automotive sector also supports jobs in other key sectors – including advertising, chemicals, finance, logistics and steel. Many of these jobs are outside London and the Southeast, with wages that are around 14% higher than the UK average.
3. Within the automotive industry, the aftermarket sector supports more than 350,000 jobs and ensures the ongoing safe and compliant operation of the 40+ million vehicles in use. More than 23,000 MOT test stations conduct in excess of 40 million inspections each year. The sector has a turnover of more than £50 billion and delivers an economic Gross Value Added of £12.7 billion
4. Automotive is one of the UK's most valuable economic assets, embedded in communities across the country. The sector is fundamental to the delivery of government's priorities: reaching net-zero, levelling-up, Covid-19 recovery, the global trade agenda, and economic growth.
5. The SMMT welcomes the opportunity to share our emerging views on the retention and potential reform of the Motor Vehicle Block Exemption Regulation (EU Regulation 461/2010) (**MVBER**) which has a significant and differing impact across our broad sector. The overriding position of all sector stakeholders represented by SMMT, with many in competing activities, is that the essence of the MVBER should be retained and embodied into UK law as the Motor Vehicle Block Exemption Order (**MVBEO**).
6. In submitting these views, the SMMT notes the brevity of the consultation period, and that the consultation has been held over the summer period, when many automotive businesses, with whom the SMMT would consult, are subject to summer shutdown. In combination, this has necessitated a less complete process of analysis and discussion, than would otherwise have been the case.

7. As noted by the European Commission in the report [28/05/2021 Com 2021/264] (**Evaluation Report**) a principal objective of the MVBER, and consequently MVBEO, is to provide legal certainty. So where the CMA have made policy suggestions, the preference would be for of a longer more detailed consultation on the detail of specific changes to the MVBEO. This would also provide greater legal certainty for all parties. Consequently, in the absence of a detailed consultation, several answers express an interest in receiving further guidance, to further the evolution of the MVBEO.

## Background

8. The SMMT has already submitted a response to the CMA (21/07/2021) in regard to the retained vertical block exemption regulation (**VABER**), and SMMT welcomes the newly introduced Vertical Agreements Block Exemption Order (**VABEO**) and related guidance
9. As the CMA is aware, but worth going on record, in the recent context of Brexit and the appetite for removal of EU originating regulation, the current MVBER has evolved in close and periodic consultation with the sector, consumer groups, and national competition authorities, across the automotive sector since the run up to its first inception in legislation in October 2002 (1400/2002) (effective October 2003). MVBER has provided a balanced framework, set in legislation, through which the competing interests of the principle automotive stakeholders interact for the benefit of consumers. It is not a regulation to be dropped without consequent substantive disruption (cost, legal uncertainty) to the sector and subsequent detriment to consumers (in the cost and competitive service and repair provision for the lifetime of the vehicle). Equally, it is not a regulation to substantively alter without a deeper and more extensive process and time for consultation.
10. In parallel to the CMA's review, the European Commission undertook an extensive review of the MVBER, as reported in their Evaluation Report. In it, the Commission concluded that the underlying objectives for the MVBER were still current and relevant, and consequently that the MVBER should be renewed. The Commission also referenced certain aspects in the workings of the sector that, due to market and technological changes would merit ongoing scrutiny (for example in regard to the questions around access to data, and the treatment of the parts markets). The sector has been accustomed to the Commission's linear process of periodic consultation on detailed changes to the MVBER. This process supports a considered evolution of the regulatory approach, and is reflected in the longevity of this regulation. A weakness with the MVBER (2010) is the extended period between reviews. SMMT would encourage the CMA to adopt the detail of the Commission's methodical approach, but to take advantage of the CMA's exclusive role for the UK market, on a more frequent basis, to keep pace with and in support of market and technology changes.
11. SMMT is not aware of a UK equivalent to the Evaluation Report, and consequently the sector's expectation is that the CMA shall renew the MVBER into the MVBEO, without substantive changes; and that such changes as may be introduced would be in synergy or compatible with any changes that evolve through the MVBER. In this context, SMMT notes and welcomes the frequent reference to the issue of additional guidance by the CMA.
12. SMMT has provided answers to those individual CMA questions, which are not quantitative, and where there are stakeholder views received from members. In view of the timing and length of the CMA consultation, (noted in paragraph 6 above), the SMMT would encourage the CMA to allow a longer period for stakeholder reflection and consultation on any changes to be made, through the process of issuing the draft then final guidance.

## **PART TWO: SMMT Response to Specific 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 MVBER with a MVBEO, rather than letting it lapse without replacement or renewing without varying the retained MVBER?**

13. Yes, this recommendation is supported by all sections of SMMT membership.

### *Impact Questions*

**Question 2: Relative to current arrangements, if the retained MVBER 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).**

14. This would result in substantive legal uncertainty, and consequent cost and expense. Specifically, in the absence of clarity otherwise provided by renewing the legislation, businesses would need to 'self-assess' the compatibility of their sector contracts, on a case-by-case basis, with the residual competition legislation (Chapter I under the Competition Act 1998).
15. A self-assessment invariably comprises, the coordination of legal advice, with economic analysis, which requires a budget for the external fees, as well as additional management and operational time to assist with and process the advice and findings. Hence the benefit of the additional legislative framework provided by the MVBEO and guidance, which helps provide a common sector understanding, greater legal certainty, and so reduces the need for the external budget, time and resource on a self-assessment, is supported by the industry.

**Question 3: Relative to current arrangements, if the retained MVBER 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 MVBER**

### *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?**

16. Other associations, or the manufacturers concerned, would be better placed to address this question.

**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?**

17. Yes, agree.

**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?**

18. More information is required on the scope of what is proposed to be covered, and more time to consider this further information.

**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?**

19. Yes to ensure certainty and consistency. It is important to have clarity on the scope and that it relates only to information that is necessary/essential for the carrying out of repairs and maintenance. An issue arises where the scope is extended into areas such as connected data, or analytics, which have a commercial value (or required an IPR investment). It would be useful to have guidance on the commercial treatment of certain information of a commercial value, although views differ on whether this should extend to also include a standardised contract or framework, or continue to allow market participants to determine their own framework based on their business needs.

20. This issue would benefit from wider consultation and more time. The SMMT Aftermarket section would submit that data is necessary for even competition in service and repair. Without it the aftermarket believes there would be significant consumer detriment as VM/franchise would have advance notice and added information over other operators.

21. In the alternate, from an OEM perspective, the data market is emerging, and it may be premature to consider a scope change now. There is current and underlying support for repair and maintenance data provided to franchise dealers to be provided to aftermarket equivalents.

**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?**

22. These definitions are noted as addressed in the VABEO, so any clarification should be consistent with the VABEO Guidelines.

*Impact Questions*

**Question 9: How would the proposed changes recommended by the CMA with regards to the definitions included in any MVBEQ 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

23. Any clarification that provides greater legal certainty would be welcome

**Question 10: How would the proposed changes recommended by the CMA with regards to the definitions included in any MVBEQ 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

24. Any clarification that provides greater legal certainty would be welcome

**Question 11: How would retaining the current scope of the retained MVBER in the proposed MVBEQ (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

25. As per [16] above

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

26. Yes, the CMA reasoning is agreed for this context.

*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 MVBE0? If not, what are the reasons and evidence that would warrant a change to the current hardcore restrictions?**

27. Yes, these restrictions are generally understood and accepted across the sector.

**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 MVBE0 would be necessary in order to address the issues?**

*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 MVBE0 Guidance, rather than in direct changes to the proposed MVBE0 itself?**

Noting that the scope or detail of a proposal for a change is not fully formed in the consultation document, legal certainty would be preferred but that given the time available guidance may be the only practicable route available.

- 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 MVBEQ?**

- 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.**

28. On the basis that the current position continues, then there would be a negligible impact. However, retaining the current framework would be positively received by the sector. The stakeholders are familiar with the current regulatory framework. Ongoing access to OE tools is important.

**Question 21: How would retaining the current hardcore restrictions used in the retained MVBER in the proposed MVBEQ 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?**

29. As per paragraph [28] above.

*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) 61 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.**

30. No comment at this stage

**Question 25: How would retaining the current excluded restrictions used in the retained MVBER in the proposed MVBEO impact consumers?**

(CMA - Is this a typo, and a reference to the VABEO? They should be retained in the VABEO)

- 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?**

31. It is submitted that the consultation does not provide sufficient detail on this proposal to enable a substantive response in the consultation time allowed. (paragraph 18 above). Excluded restrictions in the MVBEO are supported subject to proper time for proper consultation. Failing this, then clarification should be considered in the forthcoming guidance.



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

32. No comment at this stage

**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?**

33. There is a dependency between the current MVBBER and the EU Regulation 218/858. In this regard it is noted that the Department for Transport are yet to set out the detail of the forthcoming GB Type approval scheme, but which it is understood will continue to retain the definition of ‘technical and vehicle information’ in UK law.

**34. 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?**

35. The proposal aired in this consultation would benefit from more detail. If the CMA were to extend the definition, in further consultation with industry, there would need to be clarity on the parameters between free and chargeable information. The latter being of commercial value and currently outside of the current ambit in EU Regulation 2018/858.

**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?**

36. We are not aware of this being a barrier, so there would be no need to update this definition.

#### *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 MVBE0?**

- 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.**

37. This is the crux of the issue and the timing and shortened consultation time is reflected in this nil response to these questions 31,32,33.

**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 MVBE0 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.**

38. Certainty would be preferable with full timely consultation with stakeholders, but in view of the timeframe and absence of consultation on a specific proposal to change the MVBE0, then the pragmatic approach would be to address this in guidance. This may afford a greater opportunity to get into further detail and provide examples.

**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 MVBE0? Please provide reasoning for your answer.**

39. Again to answer this, there needs to be more detail in what the CMA envisages including within this scope. There would be a need to be very clear on the definitions and scope.

*Vehicle warranties and repair/maintenance carried out by independent providers*

*Policy questions*

**Question 36: Do you agree with the CMA's proposed recommendation to provide updated guidance in any CMA MVBE0 Guidance on the issue of warranty restrictions?**

40. The boundaries are well established amongst the sector stakeholders in regards to Manufacturer and Dealer based or Extended warranties. If the work is to be undertaken at the expense of the Manufacturer then this is undertaken at the franchise outlet using original parts or equipment (as defined in Article 55(5) of retained EU Regulation 2018/858). Perhaps the CMA should consider exercising more targeted intervention, through correspondence and reminders, where a concern over mis-selling or bundling arises.

*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 MVBE0 Guidance, rather than in direct changes to the proposed MVBE0 itself?**

There would be a preference to provide the further detail in the guidance, as the legal position remains the same.

- 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?**

- 41. There is a need to ensure and balance adequate competitive representation in locations best suited to customers as may be informed by customer feedback, data analytics, performance and customer experience.

*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 MVBE0 Guidance, rather than in direct changes to the proposed MVBE0 itself?**

Legal certainty is better, but if this is not possible given the timeframe, than we would look for Guidelines.

- 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.**

- 42. Guidelines allows for greater explanation and inclusion of examples.

*Duration of MVB0R*

*Policy question*

**Question 41: The CMA invites views from interested stakeholders on the proposed six-year duration of the MVBE0.**

43. This proposal is agreed, to help keep the framework aligned with the changes in the product, and consumer engagement on a more timely basis.

*Other Provisions*

*Policy question*

**Question 42: The CMA invites views on the above proposed recommendations in respect of the other provisions in the MVBE0.**

44. If substantive changes or divergence from the renewed MVB0R were to be proposed by the CMA, then (as stated at the outset (paragraph 7)) all stakeholders would seek legal certainty on their understanding of such changes, through an extended period of full and detailed consultation of specific changes.

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