



UK AFCAR response to the Competition and Market's Authority's consultation on the renewal of MV-BER

29 August 2022

UK AFCAR welcome and support the CMA's recommendations to maintain, revise and improve the MV-BER into an MV-BEO as an important legislative pillar that supports both the principles and the framework of effective competition in the UK automotive aftermarket.

We also welcome the aspects that are both logical and needed to address the compliance requirements since the current MV-BER was implemented, as well as changes in the sector created by new technologies and business models.

The MV-BERs which the EU passed 2002 and 2010 provided for a sector-specific competition framework that contributed to keeping individual mobility affordable for consumers by protecting competition in automotive aftermarkets. It is important that the UK maintains appropriate measures to protect competition to the advantage of consumers, especially in times in which the overall cost of mobility continues to rise. Therefore, consumer choice in repair and maintenance services as well as spare parts should be the objective of the future national competition framework. As we will show in our submission, this consumer choice hinges not only on the market presence of independent multi-brand repairers, but also on a functioning multi-brand supply chain of suppliers of spare parts (Tier 1 and independent), garage and test equipment, standardised multi-brand repair information databases, etc. – i.e. the complete independent aftermarket 'value chain'.

This consultation seeks to address some of the existing issues where vehicle manufacturers have not provided satisfactory access to certain requirements, as well as updating important elements to better clarify these requirements, or to address changes in the aftermarket since the 2010 revision.

Revisions to improve the legal clarity and the ability to challenge any non-compliance issues are necessary and it is also important to avoid disparity in the requirements between Northern Ireland and Great Britain, but UK AFCAR have significant concerns that all these revisions and the corresponding alignment can be achieved before the current MV-BER expires.

UK AFCAR would like to underline that first and foremost it is very important to adopt a future MV-BEO, maintaining and improving the current Aftermarket provisions. UK AFCAR has therefore provided some proposals for amendments in this document, in particular regarding definitions for 'technical and vehicle information'.

However, in the longer term, it will also be important to have more detailed legal and technical provisions that define how the requirements of the MV-BEO need to be fulfilled. This would also require a link to UK vehicle type approval legislation that would also need to be revised to include detailed technical requirements that support the intent of the MV-BEO and ultimately ensure effective competition in the automotive aftermarket.

As a more detailed clarification of UK AFCAR's view of the approach and proposals that are made in this consultation, we would like to comment on some of the points that are contained in the consultation below:

1.3 As recognised by the CMA in the consultation's introduction (point 1.3), the Competition Act prevents the restriction or distortion of markets and competition. The CMA also recognises 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, replacement parts, warranties, technical training, technical information and access to tools and equipment, as well as consumers in the automotive industry are all separate markets. There should be a clear link within the MVBE0 to this overarching principle that there 'should be no discrimination' and equal treatment between OEM's/ authorised dealers and the different independent operators to carry clearly through the intent of Chapter I and II. This would remove the more technical and literal interpretation of MVBE0 definitions which change with technological development. This would provide broad protection and a clearer deterrent to ensure that there is no undue discrimination for access to 'markets' created by OEMs for independent operators. OEMs 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.

1.6 The critically important benefit of Block Exemption providing 'legal certainty' is only achieved if clear and un-ambiguous requirements are contained in the appropriate part of the legislation.

However, in the case of MV-BEO, as these requirements are often technical and must ensure clarity of the 'how' a requirement must be fulfilled by vehicle manufacturers, this may not be possible if they are only described in the guidelines.

This is recognised in point 1.12 of the consultation, but there is no proposal of how clear technical requirements would be detailed and met by the vehicle manufacturers. Later in the consultation in point 4.75, there is reference to (EU) 2018/858 (2018 version), but although this vehicle type approval Regulation describes the political intent, unless reference to the subsequent Implementing Acts which have been developed in the EU since the 2018 version was implemented are also included (e.g. (EU) 2019/2144, (EU) 2020/683 and (EU) 2021/1244) in the revised MV-BEO, then legal certainty is unlikely to be achieved. **Importantly, this could create the opposite to the intention of the MV-BEO by creating what needs to be implemented, but not being able to describe the details of how this must be done to ensure effective competition.** Without these technical details being fully described to ensure legal clarity, the likely outcome is that this will legitimise the vehicle manufacturers' ability to implement their individual and proprietary solutions that impose their qualitative access conditions, restricting and distorting competition. This would undermine and circumvent the fundamental intent of the MV-BEO to provide effective competition in the UK Aftermarket to the detriment of independent operators and consumers.

Additionally, point 1.7 would not be fulfilled for the vehicle manufacturer requirements that apply to the Aftermarket and would impose higher levels of scrutiny by the CMA to ensure that effective competition was possible.

1.13 We fully agree that legal, economic and factual aspects have changed since the current MV-BER was implemented. To ensure that effective competition remains possible and can continue to fulfil the requirements of the Competition Act, revisions to MV-BER to accommodate technical progress are required.

2.7 The proposal to provide further clarity is both welcome and is necessary, but this needs to be detailed, un-ambiguous and provide true legal certainty, which may not be possible to do in supplementary guidelines, particularly for 'technical and vehicle information', which is likely to be dependent on the detailed technical requirements mentioned in Part 4, which will need to have a more robust legal basis than being only in the supplementary guidelines (e.g. also in vehicle type approval legislation), to ensure that they are not ambiguous and are enforceable on a practical basis).

2.9 We fully agree that features that are specific for the UK and protect UK consumers are advantageous, but that legislative divergence should be avoided wherever possible. There are critical issues of supplying replacement parts throughout the GB and Northern Ireland if the requirements are different and therefore legislation (MV-BER and vehicle type approval RMI requirements both in the EU and in the UK) should be aligned as closely as possible, not just for these replacement parts, but also the details of access to technical repair and maintenance information (RMI) and to the vehicle generated data. The details of how independent operators can conduct their business in open and effective competition with vehicle manufacturers (who are now active as direct providers of Aftermarket services) and their authorised repairers must be detailed in legislation and not be under the arbitrary and proprietary control of every vehicle manufacturer who acts as 'system administrator' for the vehicles that they manufacture and who can set the 'rights and roles' of who can do what with these vehicles under the guise of 'safety' or 'security'. At best this would legitimise the vehicle manufacturers implementing replication of their specific business

models (and not supporting effective competition) and at worst, supporting their ability to implement an 'abuse of dominant position' to fully control their competitors (as mentioned above in point 1.6).

2.11 This point supports the approach described in 2.9 above, but alludes only to the 'what' should be implemented. The 'how' these requirements are then implemented by vehicle manufacturers 'makes or breaks' the ability to compete.

For example, the control of access to the vehicle and its data, functions and resources defines the ability to offer effective competing services. Many of these services start when the vehicle is being driven with remote access to the vehicle, as well as when a vehicle is stationary in the workshop. Currently, these access restrictions are being implemented by many vehicle manufacturers and have multiple levels of control, including registration (i.e. declarations to identify their competitors and the specific vehicle – and with this, the ability to identify who the vehicle owner (which is already frequently being used by vehicle manufacturers to offer the vehicle owner alternative services), direct costs to access a vehicle data interface, costs of codes to allow replacement parts, blocks to non-OEM parts (even if these parts have been type approved by independent parts manufacturers), restrictions on what can be conducted on a vehicle and much more.

However, we believe that solutions to all these requirements may be outside of the scope of only the MV-BEO and would need to be addressed in other legislation that applies to the UK Aftermarket – in particular the vehicle type approval requirements.

2.15 This point acknowledges what is described in point 2.11 above, **but we have serious concerns if these access conditions are not addressed now.** Please see our further explanation and supporting evidence in our response to question 28.

4.5 Although competition continues to exist between authorised repairers and independent operators at a local level, it is now much more than 'just' access to spare parts tools, equipment and technical information.

The ability to provide effective competition in the provision of Aftermarket services that provide vehicle owners and operators with competitive choices and affordable mobility relates to all aspects of the 'repair process' that involves the whole range of 'independent operators:

- The repair process begins when a vehicle requires some form of repair or maintenance.
- This work requirement is typically identified by a fault occurring with the vehicle (e.g. a component failure, a puncture to a tyre, a mechanical breakage such as a broken spring, exhaust system failure or even an accident) or is maintenance related such as a scheduled service (i.e. annually) or is bespoke, relating to the operation of the vehicle in terms of driving conditions (e.g. number of journeys, distance travelled on each journey, driver's driving style).
- These different aspects frequently require a diagnostic process to accurately identify the cause of the fault, or the details of the replacement parts needed, or ultimately to allow a replacement part to be fitted and activated within a vehicle's system.
- The preliminary diagnostic 'identification process' identifies not only the tools and replacement parts needed, but the resources at the workshop to allow the work to

be conducted and completed (e.g. tools, equipment, trained technicians, technical information and replacement spare parts)

- If the vehicle is brought to the workshop by the driver, then this 'repair process' can be conducted directly on the vehicle (this is the 'classical competition' between repair workshops at a local level).

However, the vehicle has become a 'computer on wheels' with not only remote wireless access when it is being driven, but is also an 'IT system platform' in its own right.

Now the start of the 'repair process' is increasingly being conducted remotely when the vehicle is being driven, using embedded applications in the vehicle, such as 'embedded diagnostics' and the monitoring of the vehicle generated data to provide the basis for predictive and/or bespoke repair and maintenance services.

This has led to a range of new business services which are implemented and controlled by the vehicle manufacturer. Effective competition now starts *in the vehicle* when it is being driven, with direct access to the dynamic vehicle generated data and the corresponding in-vehicle resources and functions to implement embedded applications that use 'edge computing' technologies that process the data to provide the information needed to support a diagnostic, service or repair offer. There is also often *predictive* analysis of the vehicle's data to identify when maintenance requirements will be needed and what parts will be required, or an imminent failure to avoid a breakdown. In turn, remote access to the vehicle also allows a workshop to prepare for a vehicle's arrival by allocating workshop resources (e.g. vehicle lifts, equipment, technicians, replacement parts etc.) to reduce the ensuing cost of repair by up to 50%.

(I show a link below to a video from Volvo Trucks to illustrate the point. This video is 9 years old – which shows how long this type of remote function has been in the market – but the video succinctly illustrates the advantages, not only to fleet operators, but to the workshop's ability to use the remote data to reduce the time and cost of repairs/service and maintenance to provide competitive offers for individual vehicle owners and increasingly to 'mobility as a service' providers. https://www.youtube.com/watch?v=rf8x_jertss)

Independent operators do not have the equal ability to access the vehicle, its resource, functions and data as is available to the vehicle manufacturers, who in turn work with their authorised repairers.

This is already having a significant impact on the abilities for independent operators to compete. What limited information is being offered to independent operators from some vehicle manufacturers is very limited in its scope, is not 'real time', is expensive, requires a 'double contract' with the vehicle owner (enforced by the method being implemented by the vehicle manufacturer to provide access to the vehicle's data) and illustrates how the ability to compete is being controlled and distorted.

Vehicle manufacturers themselves are now providing both direct and indirect Aftermarket services using the remote access to the vehicle – none of which is available to independent operators. **Vehicle manufacturers are operating as 'system administrator' and as arbitrator of the 'rights and roles' of the repair process.**

This is already a significant competition issue that distorts the ability to compete at the local workshop level (i.e. the vehicle manufacturer provides information to their authorised repairers to the detriment of independent operators), but is an increasing issue to 'mobility

as a service' providers who cannot access the remote data of their key assets – the vehicle – to allow competing rental or leasing offers.

All aspects of the 'repair process' form the 'essential input' and are therefore the basis of the ability to compete at the point where competition starts – remotely in the vehicle as well as at the workshop level.

These evolving business models and their impact on competition were recognised by the European Commission (e.g. Motor Vehicle Working Group sub group on 'access to data', the TRL study, AFCAR study on Extended vehicle (ExVe)), who are also in the process of revising the MV-BER, but importantly, are also implementing other legislation (e.g. type approval regulation revisions, the Data Act, General Safety Regulation, Cybersecurity Act) to provide a wider legislative framework to support access for independent operators to the vehicle, its data, functions and resources.

Without this wider legislative framework in UK legislation, there will be significant divergence that not only impacts Northern Ireland and GB, but which will not provide the legal clarity necessary to ensure effective competition and compliance that in turn will undermine the principles and legislative intent of the MV-BEO.

UK AFCAR response to the questions contained in the consultation:

Q1. 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?

Yes.

Q2. 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 (e.g. time spent with consultants).

Should the existing MV-BER not be renewed, UK AFCAR feel strongly that this would be detrimental to both businesses and consumers. This would not only remove the principles and intent of ensuring effective competition in the UK automotive aftermarket, which is based on the corresponding legal certainty. In the absence of legal certainty, the ability of (typically SME aftermarket businesses) to challenge any abuse of competition in the sector would be significantly reduced due to both the absence of sector-specific legal provisions as the basis for any legal challenge, but also due to the highly disproportionate resources available to the differing parties (i.e. an SME v multinational corporations) and the

proportionality of the 'risk/reward' of pursuing legal challenges for SME's. Furthermore, as Aftermarket SMEs are dependent on the vehicle manufacturers as the single source of e.g. technical information, they fear retaliatory measures from the vehicle manufacturers, which would endanger their business.

Concerning the 2nd part of this question:

As an alternative aspect, the costs to challenge vehicle manufacturers over non-compliance issues is reflected in the current three cases that are before the ECJ (please see Annex 3), where the costs are in the hundreds of thousands of Euros, which have been collected over a long period through aftermarket sector associations, illustrating the practical problems of being able to challenge vehicle manufacturers, especially as an SME.

If you require a more detailed response to this part of the question, we would be able to provide further details.

Q3. 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

UK AFCAR believe that a significant negative impact would exist if the MV-BER was allowed to lapse without renewal.

It would weaken, and in the mid-term, even make the independent, multi-brand service value chain disappear. This in turn, would eliminate the important competitive pressure between the vehicle manufacturers' contracted network and the multi-brand repair ecosystem. The consequences would be the reduction (even loss) of competitive price pressure for repair services and spare parts, which is crucially important in times where consumers' purchasing power is under tremendous pressure (e.g. post-Covid, Ukrainian war, inflation). The consequence would also be the weakening (or even disappearance) of the multi-brand automotive aftermarket as an important industry sector that traditionally ensures the 'repairability' and environmental sustainability of vehicles throughout their lifetime. This feature is also important in the context of the UK's Net Zero Strategy.

As a further aspect, the MV-BER's hardcore restrictions seek to ensure effective choices in relation to replacement parts. However, independent workshops are increasingly having to buy OEM parts at higher prices, often with additional costs to access a code to enable the part to be activated once it has been fitted to a vehicle. These costs are being passed on directly to the consumer. We also feel that the wider issue of both the choice and the cost related to the whole vehicle repair process (e.g. repair a fault as opposed to the replacement of the complete component normally conducted as part of a vehicle manufacturer's repair process) would be significantly and detrimentally impacted. Additionally, there is a significant merging and consolidation within the vehicle manufacturers that creates not only larger global companies, but which are increasingly remote from the UK with Head Offices, centralised functions and regional hubs outside of

the UK (e.g. Stellantis). This leaves a 'local' sales office in the UK, but this consolidation is already creating significant problems for independent operators who are now having to contact European support centres for any technical support requirements that is proving to be both difficult and expensive.

Quite simply, MV-BER is fundamental to the ability of supporting effective competition, consumer choice and ensuring pressure to lower vehicle repair and maintenance costs.

Q4. 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?

No.

UK AFCAR believe that the scope of the MV-BEO should not be limited to three or four wheeled vehicles.

There are two aspects concerning why the scope of the MV-BEO should be extended to include L-category' vehicles.

Firstly, there is an increasing trend for new 'micro electric 4 wheeled vehicles' to be type approved under 'L-Cat' requirements (type 'L7' vehicles) and whilst we recognise that these would remain as '4 wheeled vehicles', there needs to be a link to the legislation that supports access to the repair and maintenance information in the L-category type approval legislation. However, L-Cat. vehicles are predominately 2 wheeled vehicles and there is an increasing trend for electric 2 wheeled vehicles to be used as individual transport in urban environments.

Secondly, there are increasing issues for independent operators to be able to offer effective competing vehicle repair and maintenance services for L-Category vehicles without the current benefits of the MV-BER requirements.

Therefore, the inclusion of L-category vehicles into the MV-BEO would help support effective competition and benefit consumer choice in a rapidly developing change towards electrically powered vehicles. It should also be noted that (EU) 2018/858 only applies to M, N and O vehicle categories, so reference to L-Category legislation that supports access to the vehicle repair and maintenance information (i.e. (EU)No. 168/2013) should also be included in the scope of the MV-BEO.

Additionally, we also propose that the scope of the MV-BEO should also be extended to include T-category vehicles (agricultural and forestry vehicles), as these types of vehicles are technically advanced and there are significant restrictions being imposed by the T-category vehicle manufacturers over the abilities of independent operators to diagnose, repair, service and maintain these vehicles. However, in the time frame of this consultation UK AFCAR have been unable to investigate these issues in sufficient depth to provide the supporting evidence for T-category vehicles should be included, so propose their inclusion could be considered as part of the next review of the MV-BEO.

Q5. 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 MV-BEO?

UK AFCAR agree that no change to the definition of 'motor vehicle' should be made, unless the scope of the MV-BEO is changed.

Q6. 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?

Yes.

The existing definition should be revised to address the requirements for access to software to update components and in-vehicle systems, together with activation/configuration codes for replacement parts and components. Additionally, lubricants and fluids should be more clearly identified as 'spare parts'. We therefore propose the following revised definition:

'spare parts' means goods (including lubricants and fluids) or software, including any activation information (activation/authentication code) where required, which are to be installed in or on a motor vehicle so as to replace or update components or systems of the vehicle, which are necessary for the use or operation of a motor vehicle, with the exception of fuel

It is also worth noting that 'spare parts' should not be considered to describe parts which could be perceived as inferior to those parts used in the manufacturing of the vehicle, or offered as replacement parts by vehicle manufacturers. Many independent aftermarket parts manufacturers produce parts that are equal, or often better quality than those parts used or sold by the vehicle manufacturers (e.g. vehicle manufacturers offer an 'upgrade' to the brakes of their performance vehicle models, which uses brake components from the Tier 1's aftermarket product range). Aftermarket parts manufacturers invest heavily in the time, knowledge, skill and resources that goes into developing OEM quality parts for the marketplace. For example, the lubricants and fluids under the brand of a vehicle manufacturer, do not come a refinery, base oil plant or blending facility that is owned by the vehicle manufacturer. Indeed, parts are increasingly outsourced to third party suppliers and the vehicle manufacturers are increasingly simply product specifiers and vehicle assemblers rather than full manufacturers.

Q7. Do you agree that there should be a definition of 'technical and vehicle information' either in the MVBE0 or in the CMA MVBE0 Guidance depending on what recommendation the CMA makes about access to such information?

Yes.

UK AFCAR consider that a new definition for 'technical and vehicle information' is needed to address technical progress, as this would provide better legal clarity and reflect the 'essential inputs' needed for effective competition.

However, access to technical information is an evolving notion, driven by technological progress and by the new opportunities that in-vehicle digitalisation is creating¹. Digitalisation is not only leading to radical changes in vehicle design and traditional Repair & Maintenance operations, but is also triggering a range of innovative, data-driven offerings in wider mobility service markets, which will make connected cars more and more akin to “platforms”, through which consumers will access innovative services (e.g. predictive maintenance) and products (e.g. infotainment Apps).

Many features and functions of connected cars depend on the in-vehicle telematics systems. Large numbers of built-in sensors generate data through the usage of the car and which, when processed by the on-board computation resources of the vehicle, will trigger a variety of interactions with the driver as well as off-board platforms. Moreover, the Human Machine Interface (HMI) will enable safe, real-time and bi-directional communication with the driver, while continuous, real-time monitoring of the status of the vehicle will bring about new services (for example to prevent or predict breakdowns) and allow for more cost efficient and sustainable use of vehicles.

However, as in-vehicle telematics systems of connected cars are being designed as closed, proprietary digital platforms, OEMs are increasingly gaining “gatekeeper power” over real-time in-vehicle data, functions and resources, as well as privileged access to the in-vehicle HMI. As a result, Independent Operators are not able to access and process quality data which are indispensable for developing alternative products or services in competition with the OEMs or their authorised networks. In such a case, customers (consumers and businesses) would be deprived of innovative, competing offerings from a variety of potential providers, such as remote prognostic/diagnostics tools or predictive maintenance services. In other words, competition on the merits cannot be effective without the required (bi-directional, real-time) access by independent operators to in-vehicle data, functions and resources.

As a result, the ongoing digitalisation of the automotive sector is inevitably transforming and broadening the notion itself of “technical information”, which now refers to a wider set of essential inputs, including both the traditional repair & maintenance information (“RMI”) and “in-vehicle generated” data.

Therefore, when addressing the legislative measures required to ensure effective competition in data driven services in the UK, it is absolutely vital that the benchmark for access to such “in-vehicle generated data” will be correctly detailed and defined. The benchmark can no longer remain only the authorised repairer, but the effective ability for independent operators to remotely communicate with the vehicle, its data, resources and functions as well being available to independent operators.

A solution which addresses the needs of all independent operators in the aftermarket supply chain is required. These independent operators enable independent workshops to offer services in direct competition with those of the authorised repairers. Traditionally, this has been required for the e.g. the provision of diagnostic tools or repair and maintenance

¹ Cf. Summary of the contributions of the National Competition Authorities to the evaluation of the Motor Vehicle Block Exemption Regulation (EU) No 461/2010, p. 9.

information. Modern vehicles also produce data, generated through the use of the vehicle, which may be processed into information to support corresponding services. This is becoming essential for the provision of data driven diagnostics, repair and maintenance services. Independent Operators, that include workshops, leasing and rental companies and fleet operators, require access to such data in order to offer services which can compete with those of the vehicle manufacturer. Services such as 'First Notification of Service' or 'Predictive Maintenance' rely on access to such data and the ability to process it (normally within the vehicle). If they want to offer services in competition with the vehicle manufacturer, they need independent operators in the supply chain who can enable services to be developed through the provision of access to the required data and vehicle functions/resources. 'Data', as is made available to the Authorised Repairs by the vehicle manufacturers, is not sufficient, as it is normally already pre-processed into information.

Generally speaking, vehicle manufacturers will process the in-vehicle generated data themselves and only provide the information on the service intervention required to the authorised repairer. If independent operators only get access to such information, they will be prevented from implementing their own business models, reducing innovation and competition in the market and consumer choice. In the context of 'connected vehicles', such models depend on real time access to the full extent of accessible data. The MV-BEO needs to enable the ability of independent operators in the aftermarket supply chain to get on-board access to in-vehicle data, as is technically sustained and accessible on the vehicle (and as such in principle is available to the vehicle manufacturers for the provision of aftermarket services. Only in that way can Independent Operators offer competitive and differentiated services.

However, as mentioned previously, although technical progress has enabled remote access to a vehicle and its live data, with embedded functions that collect and process the in-vehicle generated data and direct communication with the driver via the in-vehicle displays, the technical requirements needed to fulfil this direct access to the vehicle, its data, functions and resources needed by independent operators may:

- a) not be only under the MV-BEO.
- b) be reliant on a wider legislative framework that does not yet exist in UK law.

UK AFCAR therefore propose a new definition for 'technical and vehicle information':

'Technical information' means: all types of information objectively available to a supplier of a motor vehicle and relating to any technical specifications, functions and capabilities of that motor vehicle, including - but not limited to:

- *information for identifying the vehicle and its installed components, functions and services, including the activation state of such components, function and services*
- *all information necessary to perform any type of diagnostic, repair and maintenance service, including all information related to safe and secure operation of the repair process and all necessary training information*
- *information stored in the vehicle describing its current and historical state of the vehicle and its components and functions*

- *codes used for installing and activating spare parts*
- *Information required for accessing vehicle data, functions and resources including data structures, data formats, vocabularies and all information required for the development of a means of access*
- *information required for the development of independent diagnostics solutions, including diagnostic codes and parameter target values*
- *Documentation of any software interfaces (APIs) required for the access and retrieval of all specified technical information*
- *updates to any of the above technical information irrespective of its intended use and regardless of whether the motor vehicle supplier, its authorised network or its authorised partners make use themselves of such information.*

This new definition should be included directly in the MV-BEO to provide the legal basis, but also be supported by additional text in the guidelines (also see our response to Q27 and Annex 1) to provide additional clarity of the access requirements.

However, we assume that the necessary legislative revisions required in other vehicle related legislation (e.g. vehicle type approval legislation, Data Act, Cybersecurity) will be created to support both the intent of the MV-BEO and the wider technical requirements that need to be fulfilled by vehicle manufacturers to comply with the definition and guidance where it may not be adequately covered by, or is out of scope of, the MV-BEO. We therefore respectively propose the possible text for the guidelines: please see annex 1

Q8. [Do you agree that the definitions of ‘agency agreement’ and ‘subcontractor agreements should be considered by the CMA in any future CMA MVBE0 Guidance?](#)

Yes. UK AFCAR consider that there should be a definition of ‘agency agreement’ and ‘sub-contractor agreement in the future MV-BEO’

However, UK AFCAR consider that the impact of vehicle manufacturers’ ‘agency agreements’ and ‘sub contractors’ may evolve into the control of the vehicle’s repair and maintenance requirements, and with this implementing the ability of the vehicle manufacturer to control independent operators through proprietary qualitative requirements. Please see our response to Q38 for further details.

It would enhance legal certainty if these terms were clearly defined. In particular, relationships between component suppliers and vehicle manufacturers will rarely meet the criteria for a subcontractor relationship, as defined in the 1978 Subcontracting Notice that the European Union relies on: Automotive component suppliers normally have know-how of their own and have experts in their field (by way of example, Hella or Valeo for automotive lighting systems as well as Bosch, Denso or NGK for ignition technology).

Q9. [How would the proposed changes recommended by the CMA with regards to the definitions included in any MVBE0 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

UK AFCAR believe that the CMA's proposed changes will provide only moderate positive impact. However, the changes proposed by UK AFCAR would provide better legal certainty, as well as helping to address technological developments. For businesses, this provides improved certainty when quoting for repair and maintenance work, improved abilities to plan supplier/buyer relationships and improved parts stocking requirements.

Q10. How would the proposed changes recommended by the CMA with regards to the definitions included in any MVBE0 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

UK AFCAR believe that the CMA's proposed changes will provide only moderate positive impact. However, the changes proposed by UK AFCAR would provide better legal certainty, as well as helping to address technological developments. For consumers, improved choices, shorter repair and maintenance lead times and lower costs.

Q11. How would retaining the current scope of the retained MVBER in the proposed MVBE0 (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

Although this question appears to relate to the current market, our answer relates to the changes to this marketplace that are already happening, but which we believe will significantly increase as explained in our response to Q4.

UK AFCAR believes that retaining the current scope of the future MVBERO would have an increasing negative impact, as L-Category and T-Category vehicles are missing from the scope and would therefore not have the necessary provisions on access to technical information, unless these EU legislations are transposed into UK law.

Q12. Do you agree with the CMA's proposed recommendation to retain the current market share threshold in the proposed MVBEO? If not, what are the reasons and evidence that warrant a change to the market share threshold in the proposed MVBEO?

Yes.

UK AFCAR agrees that the current market thresholds should be retained in the MV-BEO. The present market share threshold is in line with the corresponding market share thresholds for general vertical restraints in the UK (and the EU). As has been observed during the review of the general framework for vertical restraints, as well as in the context of sector-specific competition framework, it would be inappropriate to extend the benefit of the safe harbour to companies with a higher market share than 30%.

Q13. 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

Q14. 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**

Q15. Do you agree with the CMA's recommendation to retain the current hardcore restrictions in the retained MVBER in any MVBEO? If not, what are the reasons and evidence that would warrant a change to the current hardcore restrictions?

Yes.

UK AFCAR supports the retention of the hardcore restrictions in the MV-BEO. All three of them are relevant for effective competition in automotive aftermarkets, without which competitive choices would decrease, and the cost of individual mobility would likely increase for consumers.

Q16. 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? Please provide the reasoning behind your response

Yes.

UK AFCAR agree with the CMA's recommendation to maintain the hardcore restrictions.

Under the current sector-specific framework, vehicle manufacturers must not impede the ability of authorised repairers to sell spare parts to independent repairers. These would not be able to compete effectively (and ensure consumer choice) without access to all spare parts that might be required for a particular repair or maintenance job. In the absence of the present sector-specific requirements, a vehicle manufacturer could try to prevent its authorised repairers from selling spare parts to independent repairers who need a specific part for a customer's vehicle. This would undermine the ability of independent repairers to service or repair vehicles, as most servicing or repair jobs require at least some "captive" spare parts, i.e. parts for which no alternative exists from independent suppliers. For a considerable number of spare parts, there are no substitutes from third-party suppliers - this applies not only to components that are rarely in demand, but also in cases where intellectual property rights limit the number of potential suppliers to only the vehicle manufacturer.

Beyond the status quo, the CMA should consider enhancing the current hardcore restriction by replacing the term "independent repairer" with "independent operator", which would enhance the ability of independent wholesalers to source spare parts from the vehicle manufacturer or its network and, in turn, the ability of independent repairers to source all parts at competitive prices from wholesalers, rather than having to resort to the authorised repairer as their immediate competitor (at retail prices). The ability of independent repairers to compete effectively with the authorised network hinges on their ability to obtain all parts in a cost-efficient manner, best afforded by purchasing all parts for a specific repair or maintenance job from a single source at wholesale prices (cf. Becker/Simon, in: MÜKo WettbR, 3. ed. 2020, art.5 para. 12). Such a special rule would improve the availability of spare parts and increase the number of service outlets in which complex products can be repaired. This would prove particularly useful in rural areas, where repair for complex products might otherwise be difficult to reach.

As under the current sector-specific framework, vehicle manufacturers must not impede the ability of their component suppliers to sell the same products as spare parts to any aftermarket operator. This sector-specific provision covers authorised as well as independent aftermarket operators, on the wholesale and repair level, and is therefore to be preferred over the similar provision in the general framework for vertical restraints. Direct sales of spare parts from the component manufacturer to the independent and authorised aftermarket are more efficient than indirect sales of the same product via the vehicle manufacturer. The component manufacturer's ability to sell directly to the entire aftermarket should be protected, as it is often the only source of competition. The same holds true for specialist garage tools and equipment.

Beyond the status quo, the CMA should consider enhanced guidance on the highly exceptional circumstances in which vehicle manufacturers may limit the ability of component suppliers to sell their products as spare parts directly to the aftermarket.

Without the sufficient detail, it may lead to controversy with regard to the appropriateness

of conditions under which the subcontractor could obtain the knowledge or operating resources itself. Future guidelines should clarify this point.

There is also a need for guidance in situations where the supplier's ability to supply its products as spare parts to wholesalers hinges on its ability to use tools owned by its original equipment customer – e.g. the vehicle manufacturer. An example would be where the acquisition of a second set of tools for supplying the aftermarket would be too costly. In cases where the vehicle manufacturer must allow the contractor to use such a tool as an Essential Facility, the question of the amount of a corresponding usage fee arises. In practice, this often gives rise to controversial and protracted discussions. It would therefore be helpful to include guidance in the guidelines on how to determine an appropriate fee. The cost of the tool and the share of its use for aftermarket supply might form an appropriate basis for doing so.

Additionally, as under the current competition framework, component suppliers should remain able to apply their logo or trademark to products they supply to vehicle manufacturers.

Beyond the status quo, the CMA may want to clarify that this principle applies to any product which a component manufacturer supplies to a vehicle manufacturer, regardless of whether the vehicle manufacturer installs the product in a vehicle as original equipment or re-sells the product for use as a spare part.

Although these restrictions already exist in the MV-BER, unfortunately the requirements are not being fulfilled by some vehicle manufacturers. We believe that further guidance to create better legal certainty and to clarify the consequence of non-compliance is needed now, and not 'in due course', as these hardcore restrictions are frequently being abused. Vehicle manufacturers apply pressure on their Tier 1 or 2 suppliers to block their ability to supply parts into the Aftermarket in a number of ways, which creates a position where those suppliers know that the hardcore restrictions exist, but that they have no practical way to challenge the vehicle manufacturer without jeopardising their commercial relationship and future business activities with their customers – the vehicle manufacturers. The revision of the guidance may help clarify what vehicle manufacturers must not do, but this is difficult for suppliers to bring to the attention of the legislator if there is an issue. There needs to be a way of the CMA to independently assess if Tier 1/Tier 2 suppliers are unable to market their products to the Aftermarket and then for the vehicle manufacturers to be penalised. UK AFCAR therefore propose that a dedicated 'whistle-blower' scheme be implemented by the CMA to provide the ability to report this type of dissuasive actions from the vehicle manufacturers with their suppliers, or for other non-compliance issues. This could be included as part of the corresponding guidance, but UK AFCAR feel that this would be better if it were addressed directly in the MV-BEO to provide the legal certainty of the requirements.

Q17. What would be the likely impact on your business's operations or the operations of those you represent if novel and residual issues relating to spare parts were addressed in any CMA MVBE0 Guidance, rather than in direct changes to the proposed MVBE0 itself?

a) Significant positive impact

- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

If 'residual and novel issues' were addressed only in the MV-BEO guidance, then UK AFCAR consider that this would be too weak in terms of ensuring legal certainty and would not provide any improvement in the ability to challenge non-compliance issues.

Should a vehicle manufacturer fail to comply with the requirements, it would be more difficult to impose consequences, due to the lack of legal certainty. In summary, it may be better than nothing, but would lack fully effective means to resolve the actions of the vehicle manufacturers to address the 'residual and novel issues' at hand.

Addressing issues in the MVBE0 itself is likely to have a more binding effect and result in greater legal certainty. Therefore, merely addressing the same issues in Guidance would be seen as negative.

By way of example, the European Commission (sensibly) expressed in the Supplementary Guidelines that a vehicle manufacturer's distribution system may be caught by Art. 101 TFEU where it refuses to admit a repairer even though the repairer meets all of the vehicle manufacturer's qualitative criteria; such behaviour lessens intra-brand competition. However, as these Guidelines do not bind the courts of the EU member states, they failed to prevent extensive and expensive litigation on the issue.

Guidance may have the advantage of being more detailed, which is why a combination of addressing all key issues in the (more binding) MVBE0 itself and (more detailed) Guidance should be the best policy option.

Q18. 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

UK AFCAR consider that there would be a significant positive impact if the definition of 'spare parts' were to be updated.

Therefore, UK AFCAR would welcome a revised definition of 'spare parts' to include the technological developments of the peripheral requirements related to the integration and function of replacement parts to a vehicle. There are a range of non-fungible aspects concerning how replacement parts are being controlled by vehicle manufacturers to the detriment of the ability for independent operators to compete and these aspects need to be addressed in both generic and specific requirements as part of a revised definition.

Our response to both this question and to Q6 includes this proposed revised definition:

'spare parts' means goods (including lubricants and fluids) or software, including any activation information (activation/authentication code) where required, which are to be installed in or on a motor vehicle so as to replace or update components or systems of the vehicle, which are necessary for the use or operation of a motor vehicle, with the exception of fuel.

Q19. 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 MVBER?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

UK AFCAR consider that a significant positive impact would be provided if the hardcore restrictions were maintained.

Q20. Please provide a short explanation highlighting your reasoning for your answer above.

As we have briefly alluded to in our response to Q15, the hardcore restrictions are fundamental in providing access to those replacement parts to be made available from the vehicle manufacturer's selective distribution system or the vehicle manufacturer's component/parts suppliers. Although these hardcore restrictions are not always respected by vehicle manufacturers, these clear and fundamental requirements form the basis of the principle of access to these parts, without which the repair and maintenance of vehicles by independent operators would be increasingly difficult, if indeed possible at all. Also see our response to Q16.

Q21. How would retaining the current hardcore restrictions used in the retained MVBER in the proposed MVBER impact consumers?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

For consumers, improved choice, shorter repair and maintenance lead times and lower costs.

Q22. 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?

Yes.

Q23. 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) 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

Q24. Please provide a short explanation highlighting your reasoning for your answer above.

UK AFCAR considers that retaining these excluded restrictions will continue to provide better legal certainty and support access to replacement spare parts, tools and equipment.

Q25. How would retaining the current excluded restrictions used in the retained MVBER in the proposed MVBE0 impact consumers?

- a) Significant positive impact
- b) Moderate positive impact
- c) **Negligible impact**
- d) Moderate negative impact
- e) Significant negative impact

We believe that there is a 'typo' error in this question in that 'MVBER' is intended to be 'VABER' and therefore our response refers to the VABER:

UK AFCAR considers that retaining these excluded restrictions will continue to benefit consumers by supporting improved choices, shorter repair and maintenance lead times and lower costs.

Q26. Do you have any views on whether restrictions on access to technical information should be treated as excluded restrictions in the MVBE0 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?

UK AFCAR believe that access to technical information should be treated as an excluded restriction directly in the MV-BEO.

The critical importance of technical information would justify elevating the issue. Compared to mere guidance, a hardcore restriction or excluded restriction would send a stronger message and reinforce legal certainty. As a basis for such a future provision, the CMA may wish to consider Art. 4 para. 2 of the former EU Motor Vehicle Block Exemption Regulation 1400/2002 (albeit with updated definitions of “independent operator” as well as “technical information” and extending to vehicle-generated data).

Equally, reference to the wider automotive sector legislative framework, such as the vehicle type approval regulation’s implementing acts (i.e. secondary legislation) that addresses the technical requirements and obligations for the vehicle manufacturers concerning how to provide independent operators with access to vehicle repair and maintenance information, is likely to also be a fundamental requirement to provide technical details and legal clarity.

Ultimately, the effect of any future text will depend on effective and sufficiently deterrent enforcement. The mechanism for removing the benefit of the block exemption is rarely used and might not suffice to motivate continuous compliance.

To illustrate some of the (literally) day-to-day problems faced by independent operators when trying to obtain and use technical information, tools and replacement parts from vehicle manufacturers, please Annex 2.

Q27. Are there any other mechanisms which the CMA should consider in order to address the issues identified?

This may depend on the legislative wording and the corresponding location of this wording as to what else may need to be considered (i.e. the legislative text in other legislation). However, by combining “excluded restrictions” (extended by ‘technical information’) in a future MV-BEO with more details in the guidelines to implement the fundamental principles of competition would already provide a set of robust legal instruments under UK competition law.

By way of further explanation, the ‘technical and vehicle information’ is a wide set of requirements, which in the EU are also being addressed in terms of the definition (i.e. scope, technical attributes, rights of ownership, conditions of access, the ability to process data/information both in the vehicle as well as off-board) and the access requirements that are likely to be part of a legislatively defined framework (e.g. based on the SERMI scheme and possible future revisions of the scheme). These requirements also need to be specified in UK secondary legislation (as they do not currently exist), or directly reference the wider EU requirements to ensure clarity of the vehicle manufacturers obligations.

(N.B. UK AFCAR are working on a proposal for ‘access to data’ for independent operators, but this proposal will not be finalised for some weeks. We would be pleased to forward this to the CMA as soon as it is finalised).

Q28. 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?

Although as described in point 4.75 of the consultation, it is necessary to define ‘technical and vehicle information’, it is equally important to link this to the detailed technical requirements that also need to be included in legislation that describe the obligations of the vehicle manufacturer to provide access for independent operators.

Although 2018/858 is now the primary Regulation (under which both 715/2007 and 595/2009 are now replaced) that includes the requirements for ‘repair and maintenance information’ (RMI), it is the European Commission’s delegated acts and implementing acts (e.g. (EU) 2019/2144, (EU) 2020/683 and (EU) 2021/1244) which contain the technical details that describe the obligations of *how* the vehicle manufacturer must fulfil the requirements contained in (EU) 2018/858.

Without the UK secondary legislation either covering these detailed technical requirements, or directly referencing the EU’s delegated and implementing acts, then the MV-BEO will not resolve the distortion of competition that is likely to otherwise occur and the MV-BEO would potentially have a reverse and counter-productive impact on the UK automotive aftermarket.

This would have the effect of legitimising the vehicle manufacturers to be able to decide on the wide range of conditions that would define the data, information, access and functional aspects in a way which would distort competition (see our comments in 4.5 above), as the vehicle manufacturers operate as ‘system administrator’ and as arbitrator of the ‘rights and roles’ of the repair process.

This is a critical point and needs to be urgently discussed with other UK Governmental departments to avoid this divergence and unintended outcomes.

Q29. 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?

Yes.

UK AFCAR believe that the increasing complexity of today’s vehicles requires a skilled and well equipped workforce in the UK Aftermarket.

Many independent operators commit significant time and money for both training and equipment to ensure that they can work on these evolving technologies within the vehicle, as this is a critical aspect of being able to offer competitive services.

Equally, vehicle manufacturers are restricting access to their training courses (i.e. ‘no availability for the next 2 years’), or are stating that unless their specific training course has been completed, then independent operators cannot work on that vehicle manufacturer’s vehicles, even if that independent operator has successfully completed a nationally recognised course (e.g. City and Guilds, IMI etc.). For independent operators to complete

specific vehicle manufacturer's training courses for all makes and models of vehicles is impractical, non-economic and contrary to the intent of supporting a multi-marque independent aftermarket. It is also used as the justification for vehicle manufacturers to block access to parts, tools and equipment for independent operators.

Captive parts should also be considered as an essential input, i.e. parts supplied by the vehicle manufacturer for which no substitute exists from other suppliers.

For the avoidance of doubt, UK AFCAR also consider that activation or software codes, as well as independent operators being able to update the vehicle's service history are essential inputs.

Q30. 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?

Yes.

The definition in the EU's supplementary guidelines requires updating to reflect the wider 'value chain' of independent operators in the UK Aftermarket. We therefore propose:

'Independent operator' means: all undertakings that use technical and vehicle information which includes, repairers, spare parts manufacturers and distributors, manufacturers of repair equipment or tools, remanufacturers of spare parts, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers, but who operate neither as members of a distribution system set up by a specific motor vehicle supplier, nor as an authorised partner of that supplier.

Q31. 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 MVBEQ?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Q32. Please provide a short explanation highlighting your reasoning for your answer above.

Although UK AFCAR believe that putting 'technical information' into excluded restrictions in the MV-BEQ is in principle good, in that it will continue to provide better legal certainty and support access to more detailed technical and vehicle information, we hold concerns over the ability of independent operators to challenge a vehicle manufacturer, simply because it is so difficult for SME's to challenge a multi-national organisation as described in our response to Q2. (see also Annex 3).

Equally, by treating any restriction to the access of technical and vehicle information in the MV-BEO as an exclusion, then how a vehicle manufacturer would need to provide this access must be detailed and unambiguous to ensure legal clarity.

Q33. 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

Q34. Please provide a short explanation highlighting your reasoning for your answer above

UK AFCAR believe that this would not be the best solution, as it will have a weaker legal basis, is likely to lack legal clarity concerning detailed technical requirements and hence be more difficult (in an already difficult practical situation) to enable a challenge to a vehicle manufacturer who may be considered to be non-compliant.

Q35. 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.

UK AFCAR have a concern over the wording of this question. The use of the word 'collected' implies that it is already selected and perhaps processed by a vehicle manufacturer or third party.

This would fundamentally be an issue, as the quality of the data defines the quality of the competing service offer.

We suggest avoiding any attempt to define what specific data is needed, but to be more generic in relation to the direct access to vehicle generated data/information that is used for e.g. vehicle diagnostics, prognostics, predictive services, repair and maintenance services, or periodic technical inspection, whether actually used by the vehicle manufacturer's authorised repairers, or the vehicle manufacturer themselves for their own services, or not. For effective competing services, access for independent operators to the above types of data for their own diagnostics, repair and maintenance services is critically important and not to be restricted simply to the same data/information and resultant business models as used by a vehicle manufacturer.

A simple example is that the vehicle manufacturer's solution is often based on the evaluation of *information* that has been derived from their processing of data to support the replacement of a faulty part, whereas independent operators frequently will analyse the

pre-processed data in a different way to establish that a repair of the component is possible, at a lower cost to the consumer.

As soon as data is processed or transferred off-board a vehicle, the quality of the data becomes increasingly compromised in terms of its relevance (i.e. not real-time, reduced granularity) or through processing more restricted in the value of its use.

Therefore, the access to this data by independent operators needs to be as direct as possible, to ensure the delay between the data being generated to when it is processed is minimised to provide the best 'quality' of data.

This is normally achieved by processing as close to the data source as possible and not being restricted to accessing pre-processed data (often already transformed into 'information') before it is made available via a vehicle manufacturer's server.

Q36. Do you agree with the CMA's proposed recommendation to provide updated guidance in any CMA MVBE0 Guidance on the issue of warranty restrictions?

Yes.

The public consultation carried out by the European Commission revealed that restrictive warranties are still a problematic phenomenon. Almost 40% of all vertical restrictions identified by the National Competition Authorities (NCAs) in their enforcement activities are related to abuses of warranties, while 49% of respondents to the public consultation indicated that they had encountered this restriction². Notably, this restriction features in the top three alleged vertical restrictions complained of to the Commission over the last 10 years³. Moreover, the Commission's Evaluation Report points out that, out of 41 respondents that stated to have encountered this type of restriction, 23 declared that the dispute had been solved through (sometime complex and time-consuming) negotiations, and 8 said that the dispute had gone to court. In five cases, the relevant court found a breach of EU competition law⁴.

Several NCAs reported that consumers seem generally reluctant to use the services of an independent repairer during the warranty period or warranty extension period, as OEMs or their importers and members of their authorised networks convey, either directly or indirectly, the message that the warranty will be voided if the repair and maintenance work is carried out outside the authorised network. They also emphasise that the current guidance given on the misuse of warranties is not clear enough regarding complex warranty conditions or long warranty periods steering vehicle owners towards authorised repairers. Moreover, they indicate that the SGL could be clearer "as regards the distinction between legal (statutory) warranties, extended (unilateral) warranties, and warranty extensions (often issued in combination with maintenance contracts)"⁵. Additionally, certain NCAs indicate that it is not clear whether authorised repairers may legitimately refuse to honour the manufacturer's warranty on a whole element of a vehicle, if an alternative brand of spare parts has been used to replace a particular part of that system. Finally, they stress that the clauses contained in all the documents proposed to consumers by

² European Commission, Commission Evaluation Report on the operation of the Motor Vehicle Block Exemption Regulation (EU) No 461/2010, Staff Working Document (SWD) {COM(2021) 264}, 28 May 202, p. 174

³ Idem p. 151

⁴ Idem p.105

⁵ Idem p.174

OEMs/authorised dealers or repairers (including for second-hand vehicles) should clearly state the consumer's right to use the services of an independent repairer without losing the benefit of the warranty.

Consumers experience uncertainty in four key areas:

- Uncertainty regarding what constitutes a “warranty”. Consumers still struggle to understand whether their freedom to choose between authorised/brand-specific and independent/multi-brand repairers is equally guaranteed, irrespective of the nature of the warranty (statutory or contractual) and regardless of the type of document by which the conditions are communicated to the consumer.
- Uncertainty regarding “mobility warranties”. The same considerations apply where other benefits related to the malfunctioning of a part or vehicle (such as towing services, the provision of a replacement vehicle and other benefits commonly referred to as “mobility warranties”) are conditional on the use of certain spare parts for regular servicing or accident repair, or regular servicing or accident repair being undertaken within the authorised network.
- Uncertainty regarding the interpretation of the causal link that must exist between the defect/damage caused by servicing/repair/use of alternative spare parts by an independent workshop and a denial of warranty. This causal link should be made clearer and be better communicated to consumers. Moreover, the burden of proving such a causal link should rest with the issuer of the warranty, as consumers are generally not in a position to technically assess and demonstrate the absence of such a link at the moment a warranty claim is made. This problem is exacerbated by the vehicle manufacturers withholding key technical information, such as the specification of the engine oil.
- Lack of adequate information to consumers. Vehicle manufacturers and their networks should not distort competition by misleading consumers, notably at the moment of the vehicle sale. Ideally, vehicle suppliers should provide, in the sale contract and user manuals, a prominent notice clarifying that the warranty is not conditional on regular maintenance or accident repair being undertaken by a particular repair network.⁶ Moreover, the conditions for compliance with competition rules of OEMs’ selective distribution systems should be further clarified. In particular, as vehicle manufacturers already monitor their networks on a number of compliance issues, including criteria regarding the customer’s experience, they should require the members of their networks to inform them of any denial of warranty and should assist them in ensuring that the reasons used for any such a denial are justified and compliant with the competition law framework.

UK AFCAR strongly emphasise that the problems described above apply fully to the UK Aftermarket as well.

⁶ A comparable proposal has been tabled in the Congress of the United States, stating that “Consumers have the right to choose where to get their vehicles serviced, included during the warranty period, both statutory and extended. The warranty can be revoked following the use of independent service/parts only if the vehicle manufacturer can demonstrate that the fault is directly linked to/caused by this specific independent service/part”. See US Congress, *A bill to ensure consumers have access to data relating to their motor vehicles, critical repair information, and tools, and to provide them choices for the maintenance, service, and repair of their motor vehicles, and for other purposes*, H.R. 6570, 2 February 2022, p.6

The CMA could consider phrasing updated Guidance on warranties in the spirit of the following example. It is based on the current EU Supplementary Guidelines (black), with additions (green) and deletions (red), all based on recent enforcement experience as well as the informal guidance given in the European Commission's 2012 FAQ document:

*(69.1) Qualitative selective distribution agreements ~~may also be~~ **are likely** caught by Article 101(1) of the Treaty if the supplier and the members of its authorised network explicitly or implicitly reserve repairs on certain categories of motor vehicles to the members of the authorised network. This might happen, for instance, if ~~the a~~ manufacturer's warranty vis-à-vis the buyer, whether ~~legal-statutory~~ **or extended in term, scope or otherwise**, is made conditional on the end user having repair ~~and-or~~ maintenance work that is not covered by warranty carried out only within the authorised repair networks. The same applies to warranty conditions which require the use of the manufacturer's brand of spare parts, **or the use of another specific brand**, in respect of replacements not covered by the warranty terms. **These two types of restriction are likely to cause the agreement between the vehicle manufacturer and its authorised dealers or repairers to infringe EU competition rules, as it is unlikely ~~it also seems doubtful~~ that selective distribution agreements containing-enabling such practices could bring benefits to consumers in such a way as to allow the agreements in question to benefit from the exception in Article 101(3) of the Treaty. For the purpose of these Supplementary Guidelines, a "warranty" is any statutory or commercial guarantee as defined in Art. 2 (12) Directive (EU) 2019/771.***

*(69.2) **The fact that the servicing or parts restrictions are not set out in the vehicle supplier's warranty but are instead found in an extended warranty issued by the authorised network or arranged through a third party will not generally alter the assessment. Irrespective of where the restriction is stipulated, it is likely to lead consumers to believe that the warranty will be invalidated if servicing work is carried out in independent garages or if alternative brands of spare parts are used. The decisive element is whether the servicing or parts restriction, whether conveyed directly or indirectly, is a factor within the control of one or more of the parties to the network of selective distribution agreements. However, if a supplier legitimately refuses to honour a warranty claim to the extent ~~on the grounds~~ that the situation leading to the claim in question is causally linked to a failure on the part of a repairer to carry out a particular repair or maintenance operation in the correct manner or to the ~~failure of a spare part provided by a third party~~ **use of poor quality spare parts**, this will have no bearing on the compatibility of the supplier's repair agreements with the competition rules.***

*(69.3) **The same principles apply where other benefits related to the malfunctioning of a part or vehicle (such as towing services, the provision of a replacement vehicle and other benefits commonly referred to as "mobility warranties") are made conditional on the use of certain spare parts for regular servicing or accident repair, or regular servicing or accident repair being undertaken within the authorised network.***

*(69.4) **Vehicle manufacturers should duly inform vehicle purchasers, in the relevant sales contracts and user manuals, by placing prominently a notice clarifying that nothing restricts***

the ability of vehicle owners to have regular servicing or accident repair work undertaken at a workshop of their choice, including independent multi-brand repairers, during any statutory or contractual warranty period. Moreover, in order to ensure a consistent behaviour by all member of authorised repairer networks, members of such networks should duly inform the vehicle manufacturer about any denial of warranty and the latter should assist them in ensuring that the reasons used for such a denial are justified and compliant with the MVBEO regime”

Q37. 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 MVBEO Guidance, rather than in direct changes to the proposed MVBEO itself?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

As stated above, legal clarity may be improved, or suggestions for improvement may be included, but if these revisions are only in the guidance documents, it will compromise the legal basis and the ability to apply meaningful and effective enforcement conditions, which as described above are already a significant problem.

Q38. 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?

UK AFCAR have concerns over the wider impact of this proposal.

On the surface, this question relates to the number of authorised repairers under a specific vehicle manufacturer’s brand, on which we do not have any specific view but we feel that this may have a ‘spill over’ effect on the position of independent operators who may have to comply with proprietary requirements of vehicle manufacturers when repairing vehicles, as ‘agency’ models become more prevalent and the focus of the vehicle manufacturer becomes ‘where and by whom’ their vehicles are repaired.

As mentioned in point 4.87, the details of the quantitative aspects require further clarification, but UK AFCAR also consider that the qualitative requirements are potentially a greater issue.

These qualitative requirements are already (and increasingly) being applied to independent operators by vehicle manufacturers.

Independent operators work on a wide range of vehicles and invest heavily in training, tools and equipment. This ability to receive technical training from a range of providers that creates the technical skills and competency of the independent operator is then augmented by access to specific technical information from a vehicle manufacturer that is related to a specific vehicle, when needed.

Were this training, tools, equipment and processes to become specific to every vehicle manufacturer, the costs, choices and ability to offer any effective competitive services would be severely compromised, if possible at all.

To avoid the independent operators (to the detriment of consumers) becoming a 'sub-set' of the vehicle manufacturer's business model, with limited choice and distorted competition, we would like to better understand the basis and objectives of this proposal. Equally, we would welcome an opportunity to discuss the implications of this proposal to ensure a thorough understanding of what is being proposed and the implications that this may, or may not, have on the intent of the MV-BEO and UK competition law.

Q39. 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 MVBEQ Guidance, rather than in direct changes to the proposed MVBEQ itself?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

As can be seen in our response to Q38, we consider a *potentially serious* problem, but this will be impacted by the way that legislation is implemented to define how competition is supported. Our answer to this question is therefore based on the assumption that relevant legislation will exist and that vehicle manufacturers cannot 'simply' impose their proprietary qualitative or quantitative requirements on independent repairers that would allow them to control the market.

Q40. Please provide a short explanation highlighting your reasoning for your answer above.

UK AFCAR consider that if there is a potential impact on the Aftermarket (to be clarified), then being in the MV-BEQ guidance is likely to be insufficient, so would be better directly in the MV-BEQ.

Q41. The CMA invites views from interested stakeholders on the proposed six-year duration of the MVBEQ.

UK AFCAR understand that the automotive sector is in a dynamic evolution of vehicle technology and changing consumer vehicle use models.

We agree that it is therefore appropriate to renew MV-BEQ for six years.

However, many of these new 'vehicle centric' business models relate to the access to, and the use of, data. These are the same issues as impact other industry sectors therefore it seems likely that the MV-BEQ alone will not be able to fully address many of the changing market conditions, and with them, more detailed obligations and technical requirements.

These may be addressed in other sector-specific legislation (e.g. Data Act, Cybersecurity Act, vehicle type approval regulations) and these *may* address these evolving requirements, but MV-BEO remains important to establish the principles, and to define, the basis of effective competition.

Therefore, our view is to keep the six year period, **but be aware of the principles and requirements that still need to exist in the wider legislative framework to fully address technical progress and the changes to where and how effective competition is supported in legislation.**

Q42. [The CMA invites views on the above proposed recommendations in respect of the other provisions in the MVBEO.](#)

Please see our response in the first section of this UK AFCAR response

