

Draft CMA Guidance on Motor Vehicle Agreements

Consultation Document

18 April 2023



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1. Introduction

- 1.1 The Competition and Markets Authority (CMA) is consulting on draft guidance (Draft Guidance) on the application of the Competition Act 1998 to certain agreements in the motor vehicle sector. In particular, the Draft Guidance applies to agreements for the repair and maintenance of motor vehicles and for the distribution of aftermarket goods for motor vehicles, which are covered by the Competition Act 1998 (Motor Vehicle Agreements Block Exemption) Order 2023 (MVBEO).¹
- 1.2 When finalised, this Guidance is intended to replace in the UK the EU supplementary guidelines on vertical agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles (EU Supplementary Guidelines).²
- 1.3 The Draft Guidance explains how the CMA applies the Chapter I prohibition in the context of vertical restraints in agreements for the repair and maintenance of motor vehicles and for the distribution of aftermarket goods for motor vehicles. The Draft Guidance does also cover certain elements of vertical agreements and concerted practices relating to the purchase, sale or resale of new motor vehicles, even though the MVBEO does not apply to them.
- 1.4 The Draft Guidance reflects the changes introduced in the proposed MVBEO following the CMA's final recommendation to the Secretary of State at the Department for Business, Energy and Industrial Strategy.³
- 1.5 In particular, the Draft Guidance provides an overview of the assessment of a new excluded restriction introduced in the proposed MVBEO. This is a restriction of the ability of an independent operator to access technical or vehicle information, tools or training which are necessary for the repair and maintenance of motor vehicles of a particular make. In light of ongoing technological developments, access to these inputs is essential for independent operators to be able to compete on a level-playing field with authorised networks.
- 1.6 The CMA is inviting comments on the Draft Guidance by 16 May 2023 (5 pm).

¹ The draft MVBEO can be accessed at the link [here](#).

² Accessible at [Commission notice — Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles](#).

³ The CMA's final recommendation can be accessed at the [link here](#).

2. Background

- 2.1 The Competition Act 1998 (CA98) prohibits anticompetitive agreements between ‘undertakings’ (e.g., businesses). This prohibition is known as the Chapter I prohibition.⁴ The Chapter I prohibition applies to agreements and concerted practices between undertakings and to decisions by associations of undertakings (e.g., trade associations) which have as their object or effect the prevention, restriction, or distortion of competition within the UK.
- 2.2 There are many situations where agreements that restrict competition can, on balance, be beneficial to consumers. For this reason, the CA98 provides that agreements can be exempted from the Chapter I prohibition if they meet certain conditions relating to the benefits they produce.
- 2.3 Section 9(1) CA98 sets out the conditions that must all be met for an agreement to benefit from individual exemption from the Chapter I prohibition. Broadly, the agreement must contribute to clear efficiencies. Second, it must provide a fair share of the resulting benefits to consumers. Third, the restrictions on competition that it provides for must be no more than the minimum that is necessary to enable consumers to gain these benefits. Fourth, it must not give the parties to the agreement the opportunity to eliminate competition from a substantial part of the relevant market.⁵
- 2.4 An agreement may be assessed for exemption on an individual basis, applying the conditions set out above. Alternatively, a ‘block exemption’ exempts whole categories of agreements on the basis that agreements within the category would be likely to be treated as exempt if they were assessed individually. If an agreement meets the conditions set out in a block exemption, it is automatically exempt.

The retained Motor Vehicle Block Exemption Regulation (retained MVBBER)

- 2.5 Block exemptions are a feature of both EU and UK competition law. Before the UK’s withdrawal from the EU, the EU MVBBER provided an automatic

⁴ Section 2 of CA98

⁵ The cumulative conditions in section 9(1) CA98 that must be met in full are that the agreement:

(a) Contributes to:

(i) improving production or distribution, or
(ii) promoting technical or economic progress,

while allowing consumers a fair share of the resulting benefit; and

(b) does not:

(i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
(ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

exemption for certain types of vertical agreements meeting its conditions.⁶ Agreements which were exempted from EU competition law under the EU MVBBER were also exempted from the Chapter I prohibition of the CA98.

- 2.6 When the transition period for the withdrawal of the UK from the EU came to an end on 31 December 2020, the EU MVBBER was retained in UK law, as was the VABER. This meant that businesses in the UK could still benefit from the retained MVBBER, provided that their agreements met the relevant conditions.⁷ The retained MVBBER expires on 31 May 2023.

Replacement of the retained MVBBER

- 2.7 On 4 October 2022, the CMA recommended to the Secretary of State for then Department of Business, Energy and Industrial Strategy (now Department of Business and Trade) that the retained MVBBER should be replaced with the MVBE0 updated to reflect market developments. The CMA recommended that the MVBE0 be in place from 1 June 2023 until the 31 May 2029.
- 2.8 The Secretary of State for Business, Energy and Industrial Strategy accepted the CMA's recommendation, and the MVBE0 is due to come into force on 1 June 2023.

Separate Developments in the EU

- 2.9 The EU Commission is separately proposing revisions to the EU Supplementary Guidelines. It published its draft Regulation prolonging the MVBBER, and a draft Communication amending the EU Supplementary Guidelines on the 6 July 2022 for stakeholder comments.⁸ It is expected to respond to the consultation in due course.
- 2.10 In developing the Draft Guidance under consultation, the CMA has been mindful of the EU's proposed approach. A relevant consideration has been that there can be benefits in consistency between the EU and the UK block exemptions, particularly for the various businesses with activities in both the UK and the EU (eg by reducing administrative burdens and compliance costs). However, the CMA has also sought to be guided by what is best for UK consumers and businesses. It therefore intends to address certain issues

⁶ It should be noted that in order for these types of vertical agreements to benefit from the block exemption, in addition to the conditions set out in the EU MVBBER, they also had to comply with the conditions of the EU Vertical Agreements Block Exemption Regulation (VBER).

⁷ The Retained VBER was replaced by The Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022 (VABEO) which has applied in the UK since 1 June 2022 and therefore in order to benefit from the retained MVBBER, their agreements also had to comply with the VABEO once it came into force.

⁸ The EU Commission consultation period ended on the 30 September 2022.

with the retained MVBBER, including issues relating to the definition of ‘spare parts’, and access to technical and vehicle information. In addition, the Draft Guidance takes into account relevant differences between the UK and EU, and between the draft MVBE0 and the equivalent block exemption proposed by the EC, including through the addition of an excluded restriction to the MVBE0 dealing with access to technical or vehicle information, or tools or training (see paragraph 1.5 above).

2.11 The table below summarises the main changes between the CMA’s Draft Guidance under consultation and the EU Supplementary Guidelines, which it will replace when finalised.

Topic	Change
Excluded Restriction	Guidance on the new excluded restriction (the restriction of the ability of an independent operator to access technical or vehicle information, or tools or training).
Warranties	Additional and updated guidance on warranty restrictions.
Access to authorised networks	Further guidance on qualitative and quantitative restrictions within a brand network
Restriction of a supplier’s ability to sell aftermarket goods or repair and maintenance tools to distributors, repairers and end-users	Further guidance, including on genuine sub-contracting arrangements.
Obligation to provide information to the CMA	Guidance on CMA requests for information, in line with other UK BEOs.
Cancellation of the MVBE0	Guidance on the cancellation of the MVBE0, including cancellation of the block exemption in cases involving networks of vertical agreements

3. Scope of the consultation

- 3.1 This consultation seeks the views of the interested parties on the Draft Guidance which is published separately on the consultation page.
- 3.2 After the consultation initiated by this consultation document, the CMA will prepare its final guidance based on the final text of the Block Exemption and taking into account the feedback received as part of this consultation.
- 3.3 This consultation is distinct from the EC's consultation on the draft SGL, which will apply in the EU once finalised.⁹

⁹ The EC's review can be viewed [here](#).

4. Consultation Process

How to respond

- 4.1 We are publishing this consultation on the CMA webpages and drawing it to the attention of a range of stakeholders to invite comments on the Draft Guidance.
- 4.2 We encourage you to respond to the consultation in writing (by email) using the contact details provided in paragraph 4.5 below. Please provide supporting evidence or examples for your views where possible.
- 4.3 When responding to this consultation, please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make clear who you are representing and their role or interest.
- 4.4 In accordance with our policy of openness and transparency, we will publish non-confidential versions of responses on our webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, please provide at the same time a non-confidential version for publication on our webpages which omits that material and which explains why you regard it as sensitive.

Duration

- 4.5 The consultation will run from 18 April to 16 May. Responses should be submitted by email by 5pm on 16 May 2023 and should be sent to mvberreview@cma.gov.uk

Compliance with government consultation principles

- 4.6 In preparing this consultation, the CMA has taken into account the published government consultation principles, which set out the principles that government departments and other public bodies should adopt when consulting with stakeholders.

Statement about how we use information and personal data that is supplied in consultation responses

- 4.7 Any personal data that you supply in responding to this consultation will be processed by the CMA, as controller, in line with data protection legislation. This legislation is the General Data Protection Regulation 2016 (GDPR) and 10 the Data Protection Act 2018. 'Personal data' is information which relates to a living individual who may be identifiable from it.
- 4.8 We are processing this personal data for the purposes of our work. This processing is necessary for the performance of our functions and is carried out in the public interest, in order to take consultation responses into account.
- 4.9 For more information about how the CMA processes personal data, your rights in relation to that personal data, how to contact us, details of the CMA's Data Protection Officer, and how long we retain personal data, see our Privacy Notice.
- 4.10 Our use of all information and personal data that we receive is also subject to Part 9 of the Enterprise Act 2002. We may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, so far as practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, please identify the relevant information, mark it as 'confidential' and explain why you consider that it is confidential.
- 4.11 Please note that information and personal data provided in response to this consultation may be the subject of requests by members of the public under the Freedom of Information Act 2000. In responding to such requests, if you have made any representations about the confidentiality of any information contained in your response, we will take such representations into consideration. We will also be mindful of our responsibilities under the data protection legislation referred to above and under Part 9 of the Enterprise Act 2002.
- 4.12 If you are replying by email, this statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

Next steps

- 4.13 After the consultation, the CMA will prepare the final version of the guidance.
- 4.14 The CMA will publish the final version of the guidance on its webpages at <http://www.gov.uk/cma>. The CMA will also publish the responses received during the consultation (with any confidential information redacted). These documents will be available on our webpages and respondents will be notified when they are available.

5. Consultation Questions

- 5.1 Is the content, format and presentation of the Draft Guidance sufficiently clear? If there are particular parts of the Draft Guidance where you feel greater clarity is necessary, please be specific about the sections concerned and the changes that you feel would improve them.
- 5.2 Do you have any other comments on the Draft Guidance?