Draft CMA Guidance on

Motor Vehicle Agreements

CMA Guidance

18 April 2023





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## 1. Introduction and purpose of this Guidance

### Purpose of this Guidance

1.1 This guidance (Guidance) explains how the CMA applies the Chapter I prohibition to certain agreements in the motor vehicle sector. In particular, it 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 Motor Vehicle Block Exemption Order 2023 (MVBEO). [1]

1.2 This Guidance also includes the interpretation of certain provisions of the Vertical Agreements Block Exemption Order 2022 (VABEO) insofar as they

apply to agreements in the motor vehicles sector.[2] This Guidance is without prejudice to the applicability of the Vertical Agreements Block Exemption Order Guidance (VABEO Guidance) and is therefore to be read in conjunction with and as a supplement to the VABEO Guidance.[3]

1.3 This Guidance applies to both vertical agreements and concerted practices [4] relating to the conditions under which the parties may purchase, sell or resell aftermarket goods and/or provide repair and maintenance services for motor vehicles and in that respect it corresponds to the scope of the MVBEO. As explained in Part 3 of this Guidance, the MVBEO does not apply to vertical agreements for the purchase, sale or resale of new motor vehicles. Such agreements are treated in the same way as any other vertical agreements (ie such arrangements should be assessed by reference to the VABEO and the VABEO Guidance). However, this Guidance does cover certain elements of vertical agreements relating to the purchase, sale or resale of new motor vehicles.

1.4 This Guidance is without prejudice to the possible parallel application of the Chapter II prohibition to vertical agreements in the motor vehicle sector, or to the relevant case law on the application of the Chapter I prohibition to such vertical agreements.

1.5 Unless otherwise stated, the analysis and principles set out in this Guidance apply to all levels of trade. The terms 'supplier' and 'distributor' are used for all levels of trade.[5] The VABEO and the MVBEO are collectively referred to as 'the Block Exemption Orders'.

1.6 This Guidance must be applied to each case having regard to the individual factual and legal circumstances.

**Structure of the Guidance**

1.7 This Guidance is structured as follows:

[1] The draft MVBEO can be accessed here.

[2] Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022.

[3] Vertical Agreements Block Exemption Order guidance (CMA166)

[4] References in this Guidance to 'agreement' should be taken also to include concerted practices.

— Part 2: Legal framework

— Part 3: Scope of the MVBEO and relationship with the VABEO

— Part 4: The hardcore provisions in the MVBEO

— Part 5: The assessment of specific restraints

— Part 6: Obligation to provide information to the CMA

— Part 7: Cancellation of the MVBEO

— Part 8: Duration of the MVBEO

1.8 In this Guidance, we use a number of defined terms and abbreviations:

**Block exemption** An exemption for particular categories of agreement from the Chapter I prohibition.

**Block Exemption Orders** Within the context of this Guidance, the VABEO and MVBEO collectively.

**CA98** Competition Act 1998.

**Chapter I prohibition** The prohibition on anti-competitive agreements contained in Part I, Chapter I of the Competition Act 1998.

**Chapter II prohibition** The prohibition on abuse of a dominant position contained in Part I, Chapter II of the Competition Act 1998.

[5] Retail level distributors are commonly referred to in the motor vehicle sector as 'dealers'. 'Supplier', 'authorised distributor', and 'independent distributor' are defined at Article 2(1) of the MVBEO.

**Retained EU case law** Any principles laid down by, and any decisions of, the Court of Justice of the

European Union, as they have effect in EU law immediately before 31 December 2020, subject to certain exceptions, as those principles and decisions are modified by or under domestic law from time to time.

**Section 9 exemption** Section 9(1) CA98 which sets out the conditions for an agreement to be exempt from the Chapter I prohibition.

**TFEU** Treaty on the Functioning of the European Union.

**Undertaking** Any natural or legal person (or other entity) engaged in economic activity (eg companies, firms, partnerships, sole traders, public entities), regardless of its legal status and the way it is financed.

**VABEO** The Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022.

**VABEO Guidance** CMA Guidance on the Vertical Agreements Block Exemption Order 2022.

**2. Legal Framework**

2.1 This Part gives a brief overview of the Chapter I prohibition and the exemption

regime on which basis the MVBEO has been made.

2.2 This part is structured as follows:

(a) The Chapter I prohibition

(b) The Section 9 exemption

(c) Block exemption

The Chapter I prohibition

2.3 Competition law is designed to protect businesses and consumers from anti-competitive behaviour.

The law prohibits arrangements which restrict or distort competition in order to deliver open, dynamic markets and enhanced productivity, innovation and value for customers. To this end, the CA98 prohibits:

(a) agreements which prevent, restrict or distort competition (Chapter I prohibition); and

(b) conduct which constitutes an abuse of a dominant position (Chapter II prohibition).

2.4 The Chapter I prohibition (section 2 CA98) prohibits agreements or concerted practices between undertakings or decisions by associations of undertakings which have as their object or effect the prevention, restriction or distortion of competition within the UK, and which may affect trade within the UK.

2.5 The objective of the Chapter I prohibition is to ensure that undertakings do not use agreements to prevent, restrict or distort competition on the market to the ultimate detriment of consumers. It is designed to protect not only the immediate interests of individual competitors or consumers but also to protect the structure of the market and thus competition as such.[6]

2.6 The Chapter I prohibition only applies where agreements have as their object or effect an appreciable restriction of competition within the UK or a part of it.

[6] Judgment of 4 June 2009, T-Mobile Netherlands and Others, C-8/08, EU:C:2009:343, paragraphs 38-39; judgment of 19 March 2015, Dole Food and Dole Fresh Fruit Europe v Commission, C-286/13 P, EU:C:2015:184, paragraph 125.

2.7 The effect of an agreement has to be assessed in its context, including where the agreement might combine with others to have a cumulative effect on competition.[7] An agreement cannot be isolated from its context and the existence of similar contracts can be taken into account insofar as all the

contracts of that type as a whole are such as to restrict competition. Where there is a network of similar agreements concluded by the same supplier, the assessment of the effects of that network on competition applies to all the individual agreements making up the network. [8]

2.8 In some circumstances businesses can benefit from an exemption from the Chapter I prohibition. The following sub-sections set out the framework for the application of the Section 9 exemption and block exemptions.

The Section 9 exemption

2.9 The CA98 provides that some agreements that restrict competition are exempt from the Chapter I prohibition where they satisfy certain conditions.

2.10 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 (the Section 9 Exemption).[9] 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.

2.11 An agreement that satisfies the conditions set out in the Section 9 exemption is exempt from the Chapter I prohibition from the moment that the conditions in the Section 9 exemption are satisfied and for as long as that remains the

[7] Judgment of 12 December 1967, SA Brasserie de Haecht v Consorts Wilkin-Janssen 23/67, EU:C:1967:54, paragraph 415; judgment of 28 February 1991, Delimitis v Henninger Bräu, C-234/89, EU:C:1991:91, paragraph 14.

[8] Judgment of 8 June 1995, Langnese-Iglo GmbH v European Commission, T-7/93, EU:T:1995:98 , paragraph 129; Judgment of 8 June 1995, Schöller Lebensmittel GmbH & Co. KG v European Commission, T-9/93, EU:T:1995:99, paragraph 95.

[9] 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.

case. The parties involved in such an agreement do not need to seek any authorisation from the CMA. They need to satisfy themselves, based on a self-assessment, that the agreement fulfils the conditions for the Section 9 exemption.

**Block exemption**

2.12 Under the CA98, the Secretary of State may make a 'block' exemption order that exempts from the Chapter I prohibition any particular categories of agreement which the CMA considers are likely to satisfy the conditions for exemption under the Section 9 Exemption. This allows companies to have confidence that, if their agreement meets the conditions of the block exemption, it does not infringe the Chapter I prohibition, without needing to scrutinise that agreement against each of the conditions in the Section 9 exemption. The benefits of such a block exemption include reducing the burden of assessing compliance with UK competition law for the parties to the agreement.

2.13 An agreement that falls within a category specified in a block exemption (and that satisfies the conditions specified in the block exemption) will not be prohibited under the Chapter I prohibition and is enforceable by the parties to the agreement. The parties to the agreement need to satisfy themselves that the agreement meets the conditions set out in the block exemption and be in a position to prove that the agreement benefits from the block exemption.

2.14 Where an agreement has as its object or effect an appreciable restriction of competition but does not fall within the terms of the MVBEO, consideration will need to be given by the parties to the following questions:

(a) Should it be amended so as to bring it within the terms of the MVBEO?

(b) Does it fulfil the conditions for the Section 9 exemption?

2.15 The Chapter I prohibition only applies to agreements implemented, or

intended to be implemented, in the UK.[10] However, an agreement between parties located outside the UK may be found to infringe UK competition law if the agreement is implemented, or intended to be implemented, in the UK and has as its object or effect the restriction of competition within the UK. Such an agreement will need to fall within the terms of the VABEO and MVBEO in order to benefit from the block exemption provided by the MVBEO.

[10] Section 2(3) CA98. Note that the UK government has committed to amending the Chapter I prohibition so that it can apply to agreements, concerted practices and decisions which are implemented outside of the UK, depending on the effects of the conduct within the UK. See: Department for Business, Energy, and Industrial Strategy (2022) Reforming competition and consumer policy: government response.

2.16 The MVBEO does not exempt agreements from the application of provisions equivalent to the Chapter I prohibition which apply outside the UK, such as Article 101 TFEU.

2.17 Further details on the application of the Chapter I prohibition and the Block Exemption Orders to motor vehicle aftermarket agreements (paragraph 3.2) are provided in the remainder of this Guidance.

**3. Scope of the MVBEO and relationship with the VABEO**

3.1 The MVBEO only applies to vertical agreements involving aftermarkets for the provision of repair and maintenance services, and the distribution of aftermarket goods, and not to vertical agreements for the purchase, sale or resale of new motor vehicles.[11] The latter are treated in the same way as any other vertical agreements (ie such arrangements should be assessed by reference to the VABEO and the VABEO Guidance).

3.2 Article 3(2) of the MVBEO sets out that motor vehicle aftermarket agreements (MVA agreements) are agreements or concerted practices which relate to the conditions under which parties may purchase, sell or resell aftermarket goods for motor vehicles, or provide repair and maintenance services.[12]

3.3 The distinction that the framework makes between the markets for the sale of new motor vehicles and the motor vehicle aftermarkets reflects the differing competitive conditions on these markets.

3.4 Previously, there have been no significant factors which justify distinguishing the new motor

vehicle distribution sector from other economic sectors and requiring the

application of rules different from and stricter than those in the VABEO.

Consequently, the application of a market share threshold of 30%,[13] the non-exemption of certain vertical restraints and the conditions provided for in the

VABEO will normally ensure that vertical agreements for the distribution of

new motor vehicles satisfy the conditions laid down in the Section 9

exemption without the need for any additional requirements over and above

those applicable to other sectors. That said, the CMA is aware of new distribution models recently becoming more prevalent in the motor vehicle distribution sector (direct and agency-type models), which have the capacity to reduce competition, particularly intra-brand competition. While too early to predict the impact of these models accurately, the CMA may consider these developments periodically and intervene in circumstances where they may not be operating in the best interests of consumers. This may occur irrespective of whether a party is claiming the benefit of block exemption.[1]

3.5 As regards vertical agreements relating to the conditions under

which the parties may purchase, sell or resell aftermarket goods for motor

vehicles and/or provide repair and maintenance services for motor vehicles,

the MVBEO applies from 1 June 2023. In order to be exempted pursuant to

Article 3 of the MVBEO, those agreements not only need to fulfil the

conditions for an exemption under the VABEO but must also not contain any

serious restrictions of competition, commonly referred to as hardcore

restrictions as listed in Article 5 of the MVBEO.

3.6 These supplementary hardcore restrictions are designed to address specific

competition concerns in the motor vehicle aftermarket sector. Given the

[11] MVBEO, Article 3

[12] In order to be classed as an MVA agreement, the agreement must also fall within the category of agreements specified in Article 3 of the VABEO, but for Article 3(6)(a) of the VABEO (ie subject matter that falls within another block exemption order). See MVBEO, Article 3(2)(a).

13 VABEO, Article 6.

[1] In such circumstances, the CMA may consider exercising its market investigation powers. Moreover, as far as different types of agency (including non-genuine agency) agreements are concerned, where a more targeted investigation under the Act into any particular restrictions comprised in such agreements arises, the CMA would consider whether, in light of the particular circumstances, it would be appropriate to rely on rule 5(3) of the Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014 in order to address any proposed infringement decision to suppliers of motor vehicles imposing the restrictions only (ie not to the counterparties on which the restrictions are imposed).

generally brand-specific nature of the markets for repair and maintenance services and for the distribution of spare parts, competition on those markets is inherently less intense compared to that on the market for the sale of new motor vehicles. While reliability has improved and service intervals have lengthened thanks to technological improvement, competition concerns remain due to an upward trend in prices for individual repair and maintenance jobs. On the spare parts markets, parts bearing the brand of the motor vehicle supplier face competition from those supplied by original equipment suppliers (OES) and by other parties. This competition is important as it maintains price pressure on those markets, which in turn maintains pressure on prices on the repair and maintenance markets, since spare parts make up a large percentage of the cost of the average repair. Moreover, repair and maintenance as a whole represent a very high proportion of total consumer expenditure on motor vehicles, which itself accounts for a significant slice of the average consumer's budget.

3.7 The VABEO is supplemented with three additional hardcore restrictions in the MVBEO applying to agreements for the repair and maintenance of motor vehicles and for the supply of spare parts. Further guidance on those additional hardcore restrictions is given in Part 4 of the Guidance.

3.8 The MVBEO also contains a new excluded restriction. As a result, a restriction of the ability of an independent operator to access technical or vehicle information, or tools or training will not gain the benefit of exemption.[14] Further guidance on the excluded restriction is also given in Part 5 of the Guidance.

[14] MVBEO, Article 6(2).

**4. The hardcore provisions in the MVBEO**

**Introduction**

4.1 Agreements will not benefit from the MVBEO if they contain hardcore restrictions. These restrictions are listed in Article 8 of the VABEO and Article 5 of the MVBEO. As hardcore restrictions are serious restrictions of competition for which it is presumed that they generally restrict competition, the CMA will apply the following principles when assessing agreements under

the MVBEO:

(a) where a hardcore restriction is included in an agreement, that agreement is likely to fall within the scope of the Chapter I prohibition;

(b) the inclusion of a hardcore restriction in an agreement will have the effect of cancelling the benefit of the block exemption provided by the VABEO and/or the MVBEO in relation to that agreement; and

(c) an agreement that includes a hardcore restriction is unlikely to fulfil the conditions of the Section 9 exemption. However, an undertaking may demonstrate that, in the individual case, such an agreement exceptionally falls outside the scope of the Chapter I prohibition or demonstrate pro-competitive effects under the Section 9 exemption.

4.2 One of the objectives of the CMA's competition policy for the motor vehicle sector is to protect access by suppliers of aftermarket goods to the motor vehicle aftermarkets, thereby ensuring that competing brands of aftermarket goods continue to be available to both independent[15] and authorised repairers,[16] as well as to both independent[17] and authorised distributors.[18]

[15] In accordance with Article 2(1) MVBEO "independent repairer", in relation to motor vehicles of a particular make, means a person who—

(a) provides repair and maintenance services for such vehicles, and

(b) is not an authorised repairer.

[16] In accordance with Article 2(1) MVBEO "authorised repairer", in relation to motor vehicles of a particular make, means a person who—

(a) provides repair and maintenance services for such vehicles, and

(b) has entered into contractual arrangements with a supplier of such vehicles for those purposes.

[17] In accordance with Article 2(1) MVBEO, "independent distributor", in relation to motor vehicles of a particular make, means a person who—

(a) distributes aftermarket goods for such vehicles, and

(b) is not an authorised distributor.

[18] In accordance with Article 2(1) MVBEO "authorised distributor", in relation to motor vehicles of a particular make, means a person who—

(a) distributes aftermarket goods for such vehicles, and

(b) operates within the distribution system set up by a supplier of such vehicles.

4.3 Aftermarket goods means any of the following:

(a) spare parts;[19]

(b) any software required to repair or replace a part of, or system in, a motor vehicle, together with any code required to activate or configure that software;

(c) liquids used in the breaking system, steering system, engine or elsewhere in a motor vehicle as a coolant, lubricant, cleaner or otherwise, in so far as the liquids are necessary for the use of the motor vehicle, but not fuel.

Restriction of the ability to sell components as spare parts

4.4 Article 8(2)(e) of the VABEO describes it as a hardcore restriction for an agreement between a supplier of components and a buyer who incorporates those components, to restrict the supplier's ability to sell its components as spare parts to end-users, repairers, wholesalers or other service providers not entrusted by the buyer with the repair or servicing of its goods. Article 5(2)(a), (b) and (c) of the MVBEO lay down three additional hardcore restrictions relating to agreements for the supply of spare parts. We address these hardcore restrictions in turn below.

Restriction of sales of aftermarket goods by members of a selective distribution system to independent repairers

4.5 Article 5(2)(a) of the MVBEO concerns the restriction of sales of aftermarket goods by members of a selective distribution system to independent repairers who use or want to use those aftermarket goods for the repair and maintenance of motor vehicles.

4.6 This provision is most relevant for a particular category of parts, sometimes referred to as ‘captive parts’, which may only be obtained from the motor vehicle supplier or from members of its Authorised Networks. If a supplier and a distributor agree that such parts may not be supplied to independent repairers, this agreement would be likely to foreclose such repairers from the market for repair and maintenance services and consequently breach the Chapter I prohibition.

[19] Pursuant to Article 2(1) MVBEO “spare part” means a component of a motor vehicle which is, or is to be, installed in or on a motor vehicle to replace—

(a) an original part, or

(b) a component of a motor vehicle which replaced an original part.

See also the definition of 'part' which is defined as original part (component of a motor vehicle which is, or is to be, used for the initial assembly of a motor vehicle) or spare part (see definition above).

**Restriction of a supplier's ability to sell aftermarket goods or repair and maintenance tools to distributors, repairers and end-users**

4.7 Article 5(2)(b) of the MVBEO concerns any direct or indirect restriction agreed between a supplier of aftermarket goods or repair or diagnostic tools, and a supplier of motor vehicles, which limits the former supplier's ability to sell these goods to distributors, repairers and end-users.

4.8 So-called 'tooling arrangements' between component suppliers and suppliers of motor vehicles are one example of possible indirect restrictions of the type set out in Article 5(2)(b).[20] Generally, the Chapter I Prohibition does not apply to genuine sub-contracting arrangements whereby a supplier of motor vehicles:

(a) provides a tool to a component supplier of motor vehicles which is necessary for the production of certain components;

(b) shares in the product development costs; or

(c) contributes necessary intellectual property rights,[21] or know-how, and does not allow this contribution to be used for the production of parts to be sold directly in the aftermarket.

4.9 On the other hand, the agreement at issue will not be considered to be a genuine sub-contracting arrangement. if a supplier of motor vehicles:

(a) obliges a component supplier to transfer its ownership of such a tool, intellectual property rights, or know-how;

(b) bears only an insignificant part of the product development costs, or

(c) does not contribute any necessary tools, intellectual property rights, or know-how.

[20] Reference should be made in this respect to the Commission notice of 18 December 1978 concerning its assessment of certain subcontracting agreements in relation to Article 85(1) of the EEC Treaty (1) (the Commission Sub-contracting Notice).

[21] Where the supplier of motor vehicles provides a tool, intellectual property rights (IPR) and/or know-how to a component supplier, this arrangement will not benefit from the Commission Sub-contracting Notice if the component supplier already has this tool, IPR or know-how at its disposal, or could, under reasonable conditions obtain them, since under these circumstances the contribution would not be necessary.

4.10 In these circumstances the agreement may be caught by the Chapter I prohibition and be examined pursuant to the provisions of the Block Exemption Orders.[22]

**Restriction of an original parts supplier's ability to place its trade mark or logo on parts**

4.11 Article 5(2)(c) of the MVBEO relates to the restriction agreed between a supplier of motor vehicles which uses original parts supplied by another supplier and the supplier of such parts, of the ability of the latter to place its trade mark or logo effectively and in an easily visible manner on the original parts or on any spare parts intended to replace those parts.

4.12 In order to improve consumer choice, repairers and consumers should be able to identify which spare parts from alternative suppliers match a given motor vehicle, other than those bearing the motor vehicle supplier's brand. Allowing the suppliers of these original parts to place their trade mark or logo on the parts facilitates the identification of compatible replacement parts which can be obtained from these suppliers. By not allowing this, suppliers of motor vehicles can restrict the marketing of original parts by OESs and limit consumers' choice in a manner that runs counter to the provisions of the Chapter I prohibition.

[22] When assessing sub-contracting arrangements relating to the aftermarket sector, in addition to the present Guidance, the CMA will have regard to the VABEO Guidance (Part 4). In accordance with section 60A CA98, the CMA will also have regard to the Commission Sub-Contracting Notice.

**5. The assessment of specific restraints**

5.1 Parties to vertical agreements in the motor vehicle sector should use this Guidance as a supplement to, and in conjunction with, the VABEO Guidance in order to assess the compatibility of specific restraints with the Chapter I prohibition. Some of the aspects covered in this Part are not directly related to application of the relevant block exemptions to MVA agreements but are

nonetheless relevant in the wider context of the motor vehicle aftermarket sector.

5.2 This Part gives particular guidance on the following issues:

(a) access to essential inputs by independent operators (paragraphs 5.3 – 5.31);

(b) restrictions on the use of matching-quality parts (paragraphs 5.32– 5.36);

(c) warranty restrictions (paragraphs 5.37– 5.43):

(d) access to authorised repairer networks (paragraphs 5.44– 5.48);

(e) codes of conduct (paragraphs 5.49 – 5.50);

(f) other restrictions covered by the VABEO Guidance

(i) single branding (paragraphs 5.52–5.65);

(ii) selective distribution (paragraphs 5.66– 5.84).

**Access to essential inputs by independent operators**

**Excluded restriction**

5.3 Article 6 of the MVBEO excludes a particular type of obligation found in MVA agreements from the benefit of the block exemption provided by the MVBEO irrespective of whether not the market share threshold in Article 6 of the VABEO is exceeded. This is referred to as an 'excluded restriction'.

5.4 Excluded restrictions are those obligations for which it cannot be assumed with sufficient certainty that they fulfil the conditions for exemption under the section 9 exemption. There is no presumption that the excluded restriction specified in Article 6(2) of the MVBEO falls within the scope of the Chapter I prohibition or otherwise fails to fulfil the conditions for the Section 9 exemption. The exclusion of this restriction means only that they are subject to an individual assessment under the Chapter I prohibition on a case-by-case basis. Moreover, unlike for hardcore restrictions, the exclusion from the block exemption provided by Article 6 of the MVBEO is limited to the specific restriction in question. If that obligation is capable of being severed from the rest of the vertical agreement, then the remainder of the MVA agreement continues to benefit from the VABEO. The ordinary rules of severance will apply.[23]

5.5 This part of the Guidance covers the excluded restriction in Article 6(2) of the MVBEO Guidance.

**Scope of the MVBEO excluded restriction**

5.6 The MVBEO excluded restriction is a restriction of the ability of an independent operator to access:

(a) technical or vehicle information, or

(b) tools or training,

which is necessary for the repair and maintenance of motor vehicles of a particular make.[24]

5.7 Access to technical or vehicle information, tools or training is only necessary if (among other things) a supplier of motor vehicles of that make:

(a) uses it for repair and maintenance services, or

(b) provides it to its authorised repairers,[25] authorised distributors,[26] or other authorised partners[27] for those purposes.[28]

5.8 Vehicle information means data which is i) generated by a system in the motor vehicle, and ii) required for the purpose of providing repair and maintenance services in respect of the motor vehicle.[29]

5.9 Technical information means information which is required for:

(a) diagnosing, servicing or inspecting a motor vehicle a motor vehicle;

[23] The rules on severance are outside the scope of this guidance. The relevant principles were considered by the Supreme Court in the context of the common law doctrine of restraint of trade in Egon Zehnder Ltd v Tillman [2020] AC 154 (see, in particular, paragraphs 85 to 87).

[24] Article 6(2) MVBEO.

[25] See footnote 16.

[26] See footnote 18.

[27] Article 6(3) MVBEO.

[28] Article 6(3) MVBEO.

[29] Article 6(5) MVBEO.

(b) preparing a vehicle for road worthiness testing;

(c) repairing a motor vehicle or re-programming or resetting a system on a motor vehicle;

(d) providing remote diagnostic support to a motor vehicle; or

(e) the installation of one or more parts in or on a motor vehicle.[30]

5.10 The inputs listed in Article 6(2) MVBEO are required by independent operators in order to compete effectively when providing repair and maintenance services. In this context, 'independent operator' in relation to a make of motor vehicle means a person, other than an authorised repairer or an authorised distributor, who is directly or indirectly involved in the repair and maintenance of motor vehicle of that make, and includes:

(a) an independent repairer;

(b) a supplier or independent distributor of spare parts;

(c) a supplier or independent distributor of repair tools;

(d) a publisher of technical information;

(e) an automobile club;

(f) a roadside assistance operator;

(g) a person who provides inspection and testing services, or

(h) a person who provides training to independent repairers.[31]

**General considerations for the assessment of an excluded restriction**

5.11 The assessment of an excluded restriction should be carried out in stages. First, it is necessary to determine whether the vertical restraint falls within the scope of the excluded restriction in Article 6 MVBEO. Second, if the restriction is 'excluded', it is necessary to establish whether it complies with the Chapter I prohibition.[32] The sections below reflect, and provide guidance on, this twostage assessment.

[30] Article 6(5) MVBEO.

[31] Article 6(5) MVBEO.

[32] It should also be noted that withholding a particular item, such as an essential input belonging to the categories set out in Article 6(2) MVBEO, that is made available by suppliers of motor vehicle to members of the relevant authorised repair network, may amount to an abuse under Chapter II where a dominant supplier withholds such an item from independent operators.

**Assessment of the restriction under the MVBEO**

5.12 As mentioned above, determining whether an MVA agreement contains a restriction of the ability of an independent operator to access technical or vehicle information, tools or training which amounts to an excluded restriction for the purposes of the MVBEO is the first step. As part of that assessment, it

is necessary to consider whether a specific input falls within the scope of the excluded restriction and is a type of input which is essential for independent operators to access. To that end it should be established whether the restriction qualifies as 'excluded' in accordance with the definitions and criteria laid down in Article 6(2) and (3) MVBEO (see paragraph 5.6 and 5.7).

5.13 If the input falls into that category of excluded restriction, then the corresponding restriction on access will not benefit from the block exemption provided by the MVBEO. In such a case, it will be necessary to proceed to the second stage of the assessment to determine whether the restriction complies with the Chapter I prohibition.[33]

**Assessment of the restriction under the Chapter I prohibition**

5.14 If the restriction on access is to one of the inputs listed in Article 6(2) MVBEO and is an excluded restriction, it does not benefit from the block exemption provided by the MVBEO and the restriction will need to be assessed under the Chapter I prohibition. At this stage, it is necessary to consider, amongst other things, whether access to the input listed in Article 6(2) MVBEO is being given is a manner which does not place the independent operator at a disadvantage as regards the provision of repair and maintenance services compared to authorised repairers, authorised distributors and other authorised partners (together 'Authorised Network').[34] Again the purpose of this second stage of the assessment, is to ensure that access to the essential inputs listed in Article 6(2) MVBEO is not given to independent operators in a manner which may restrict competition between them and the Authorised Network, nor in a manner that places the Authorised Network at a disadvantage to the independent operator.

5.15 If a supplier of motor vehicles uses one of the inputs listed in Article 6(2) MVBEO for the purposes of providing repair and maintenance services, or provides it to its Authorised Network for those purposes, then an outright

[33] It should also be noted that, in accordance with Article 6(4) MVBEO, a restriction is not an excluded restriction if it falls within article 5(2)(b) MVBEO. In this case, the restriction is to be treated as a hardcore restriction.

[34] In cases where the supplier of motor vehicles distributes aftermarket goods or provides repair and maintenance services directly, any restrictions on access to the essential inputs listed in Article 6(2) of the MVBEO which place independent operators or the Authorised Network (or members of

it) at a disadvantage vis-à-vis the supplier of motor vehicles, the CMA is likely to apply the same principles for determining whether such restrictions breach competition law.

prohibition to grant access to the independent operator will fall squarely within

the scope of the excluded restriction.

5.16 When considering whether withholding or restricting access to one of the

essential inputs listed in Article 6(2) MVBEO may lead the agreement at issue

to infringe the Chapter I prohibition, a number of additional factors should be

considered, including whether:

(a) Withholding the input in question will have an appreciable impact on the

Ability of independent operators or the Authorised Network (or members of it) to operate on the market and exercise a

competitive constraint on each other or the supplier of motor vehicles.

(b) The input in question will ultimately [35] be used for the repair and

maintenance of motor vehicles, or rather for a different purpose, [36] such as for the manufacturing of spare parts or tools. If the input in question is

going to be used for a purpose other than repair and maintenance then, in

principle, any restrictions on access are likely to be less problematic.

(c) The restrictions are warranted by benefits provided to consumers (eg

vehicle safety, cyber security, environmental protection, brand reputation),

and meet the conditions of the Section 9 exemption. When considering

withholding a particular item that is essential for repair and maintenance,

such as those belonging to the categories of input listed in Article 6(2)

MVBEO, for example on security grounds, parties should assess whether

withholding the item in question would be a proportionate means to

address the security concerns at issue. They should in particular examine

whether less restrictive measures would suffice.

5.17 Restrictions on access to one of the inputs listed in Article 6(2) MVBEO may

be driven by suppliers of motor vehicles. In these instances, suppliers of

motor vehicles in particular should carefully assess the implications of any

restrictions imposed on other market participants (both authorised and

independent providers) under the CA98.[37]

[35] Such as information supplied to publishers for resupply to motor vehicle repairers.

[36] Information used for fitting a spare part to or using a tool on a motor vehicle should be considered as being used for repair and maintenance, while information on the design, production process or the materials used for manufacturing a spare part should not be considered to fall within this category and may therefore be withheld.

[37] In any possible investigation under the Act into these restrictions, the CMA would consider whether, in light of the particular circumstances, it would be appropriate to rely on rule 5(3) of the Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014 in order to address any proposed infringement decision to suppliers of motor vehicles imposing the restrictions only (ie not to the counterparties on which the restrictions are imposed).

**Assessment of restrictions on access to technical information**

5.18 Suppliers of motor vehicles provide their authorised repairers with the full scope of technical information (defined in paragraph 5.9) needed to perform repair and maintenance work on motor vehicles of that particular make and are often the only companies able to provide repairers with all of the technical information that they need on the brands in question. In such circumstances, if the supplier of motor vehicles fails to provide independent operators with appropriate access to its brand-specific technical repair and maintenance information, possible negative effects stemming from its agreements with authorised repairers and authorised distributors could be strengthened and cause the agreements to give rise to competition concerns.

5.19 Moreover, a lack of access to necessary technical information could cause the market position of independent operators to decline, leading to consumer harm in terms of a significant reduction in choice of spare parts, higher prices for repair and maintenance services, a reduction in choice of repair outlets and potential safety problems. In those circumstances, the efficiencies that might normally be expected to result from certain restrictions on access to technical information (see paragraph 5.16) would likely not be such as to offset these anti-competitive effects, and the agreements in question would consequently be likely to give rise to competition concerns.

5.20 In order to determine whether a restriction on access to a particular item of technical information amounts to an excluded restriction it is necessary to determine whether it falls into the corresponding definition laid down in Article 6(5) of the MVBEO. It is also necessary to take account of the general

considerations for assessment under the MVBEO (see paragraphs 5.12 –

5.13).

5.21 Technical information should be distinguished from information of other types,

such as commercial information, [38] which is not within scope of the excluded

restriction.

5.22 To the extent that technical information is necessary for the repair and

maintenance services of motor vehicles of a particular make, and restrictions

on access to such information are characterised as 'excluded' under Article

6(2) and (3) MVBEO, the general considerations for assessment under the

[38] For the purposes of this Guidance, commercial information is information that is used for carrying on a repair and maintenance business but is not needed to repair or maintain motor vehicles. Examples include billing software, or information on the hourly tariffs practised within the Authorised Network.

Chapter I prohibition (paragraphs 5.14 –5.16) also apply to any such

restrictions.

5.23 The individual assessment of any such restrictions under the Chapter I

prohibition should also have regard to the existing standards and the relevant

requirements of retained Regulation (EU) 2018/858 of the European

Parliament and of the Council of 30 May 2018 on the approval and market

surveillance of motor vehicles and their trailers, and of systems, components

and separate technical units intended for such vehicles.[39]

5.24 Retained Regulation (EU) 2018/858, provides, inter alia, for a system for

disseminating repair and maintenance information in respect of motor

vehicles. As mentioned above, the CMA will take these Regulations into

account when assessing cases of suspected withholding of technical repair

and maintenance information.[40]

5.25 Technological progress means that the notion of technical information is

necessarily fluid. Currently, particular examples of technical information

include software, fault codes and other parameters, together with updates

which are required to work on electronic control units, advanced driver-assistance systems and battery management systems for electric vehicles

with a view to introducing or restoring settings recommended by the supplier,

motor vehicle identification numbers or any other motor vehicle identification methods, parts catalogues, repair and maintenance procedures, working solutions resulting from practical experience and relating to problems typically affecting a given model or batch, and recall notices as well as other notices identifying repairs that may be carried out without charge within the authorised repair network. The part code and any other information necessary to identify the correct motor vehicle supplier-branded spare part to fit a given individual motor vehicle (that is to say the part that the car manufacturer would generally supply to the members of its authorised repair networks to repair the vehicle in question) also constitute technical information,[41] as do the activation codes needed to install certain replacement parts. The relevant requirements and lists of items set out in retained Regulation (EU) 2018/858 should also be used as a guide as to what the CMA views as technical information for the purposes of applying the Chapter I prohibition.

[39] Amended by The Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) Regulations 2019. This includes the availability to independent operators of such data to carry out repair and maintenance activities supported by wireless wide area networks. See Article 61(11) of retained Regulation (EU) 2018/858.

[40] The references to retained Regulation (EU) 2018/858 should be read as referring to any possible legal instrument which may supersede it during the currency of this Guidance.

[41] The independent operator should not have to purchase the spare part in question to be able to obtain this information.

5.26 The way in which technical information is supplied is also an important factor for assessing the compatibility of authorised repair agreements with the Chapter I prohibition and the Section 9 exemption. The general principle is that this information should be provided in a manner which does not place independent operators at a disadvantage vis-à-vis Authorised Networks. Access should be given upon request and without undue delay, the information should be provided in a usable form, and the price charged should not discourage access to it by failing to take into account the extent to which the independent operator uses the information. A supplier of motor vehicles should be required to give independent operators access to technical information on new motor vehicles at the same time as such access is given

to its authorised repairers and should not oblige independent operators to purchase more than the information necessary to carry out the work in question.

**Assessment of restrictions on access to vehicle information**

5.27 The general considerations for individual assessment under the Chapter I prohibition set out above (paragraphs 5.14 – 5.16(c)) apply to any restrictions on access to vehicle information (defined in paragraph 5.8) which are characterised as 'excluded' under Article 6(2) and (3) MVBEO.

5.28 In addition to those considerations, the individual assessment of any such restrictions under the Chapter I prohibition should have regard to the existing standards and the relevant requirements of retained Regulation (EU) 2018/858.

**Assessment of restrictions on access to tools and training**

5.29 'Tools' in this context includes electronic diagnostic and other repair tools, together with related software, including periodic updates thereof, and aftersales services for such tools.

5.30 In order to establish whether a restriction on access to tools and training amounts to an 'excluded restriction' under the MVBEO, it is necessary to take account of the general considerations set out in paragraphs 5.12 – 5.13.

5.31 If the restriction in question is excluded then its individual assessment under the Chapter I prohibition should have regard to the criteria set out in paragraphs 5.14 – 5.16(c) of this Guidance.

**Restrictions on the use of matching-quality parts**

5.32 The availability of a wide range of suitable aftermarket goods brings considerable benefits to consumers, especially since there are often significant differences in price between parts sold or resold by a supplier of motor vehicles and other alternative parts which can be sourced from other suppliers.

5.33 'Original parts' means a component of a motor vehicle which is, or is to be, used for the initial assembly of a motor vehicle.[42] These are parts manufactured according to the specifications and production standards

provided by the motor vehicle supplier and typically bear the trademark of that supplier.

5.34 Alternative parts include i) original parts manufactured and distributed by original equipment suppliers (OES parts), as well as ii) other parts matching the quality of the original parts supplied by 'matching quality' parts manufacturers.

5.35 Access to OES parts is already protected by the operation of the relevant hardcore restrictions (see Part 4 of this Guidance).

5.36 Suppliers of motor vehicles should carefully assess the imposition of any restrictions on their authorised repairers and distributors to use matching quality parts. In order to be considered as 'matching quality', parts must be of a sufficiently high quality that their use does not endanger the reputation of the Authorised Network in question. As with any other selection standard, the supplier of motor vehicles may bring evidence that a given spare part does not meet this requirement.

**Warranty restrictions**

5.37 The imposition of certain warranty restrictions may result in the foreclosure of independent repairers. [43] It may also result in the closing of alternative channels for the production and distribution of aftermarket goods, which ultimately may have a bearing on the price that consumers pay for repair and maintenance services. We set out below two examples of such restrictions

[42] Article 2(1) MVBEO.

[43] The assessment of these restrictions is in principle the same irrespective of the document in which they appear (eg contract or service booklet).

(servicing and parts restrictions) which are likely to be caught by the Chapter I prohibition.[44]

5.38 Qualitative selective distribution agreements may be caught by the Chapter I prohibition if the supplier and the members of its Authorised Network explicitly or implicitly reserve repairs of certain categories of motor vehicles to the members of the Authorised Network. This might happen, for instance, if the motor vehicle supplier's warranty vis-à-vis the buyer, whether standard or

extended,

45 is made conditional on the end user having repair and

maintenance work that is not covered by warranty carried out only by

members of the Authorised Network.

5.39 Warranty conditions which require the use of spare parts bearing the motor

vehicle supplier's brand (OEM parts) in respect of replacements not covered

by the warranty terms may similarly be caught by the Chapter I prohibition. It

also seems doubtful that selective distribution agreements containing such

practices could bring benefits to consumers in such a way as to allow the

agreements in question to benefit from the Section 9 exemption.[46] However,

the Chapter I prohibition does not prevent a supplier (or any other warranty provider) from legitimately refusing

to honour a warranty claim 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 use of poor-quality spare parts.

5.40 The fact that the extended warranty containing the servicing or parts

restriction is arranged through a third party does not change the assessment.

The decisive element is whether the servicing or parts restriction is a factor

within the control of one or more of the parties to the network of selective

distribution agreements and therefore whether its implementation is likely to

foreclose independent repairers or foreclose alternative channels for

distribution of aftermarket goods.

5.41 Another relevant consideration is whether an extended warranty is being sold

years after the purchase of the vehicle. This is because years after the vehicle

purchase, authorised dealers do not enjoy the same degree of privileged

access to customers as they do in the period shortly after the purchase. As a

consequence, alternative providers of extended warranties, such as chains of

independent repairers and insurance firms are less likely to face significant

[44] These warranty restrictions are likely to cause or strengthen the anti-competitive effects of the agreements between the supplier of motor vehicles and its authorised repairers and distributors.

[45] The fact that the servicing or parts restrictions are not set out in the vehicle supplier's standard warranty but are instead found in an extended warranty issued by the Authorised Network at the moment of the sale of the motor vehicle (or shortly thereafter) will not generally alter the assessment of the said restrictions.

[46] Paragraphs 5.32 to 5.36 deal with the issue of restrictions on the use of matching-quality parts.

barriers preventing them from offering their products to vehicle owners. In such circumstances, it seems less likely that independent repairers could face a significant foreclosure effect even if car warranties issued by suppliers of motor vehicles or their Authorised Networks contained servicing or parts restrictions.

5.42 Further to the restrictions set out above, any other warranty restrictions which indirectly limit the consumer's right to source repair and maintenance services from independent repairers are likely to be within scope of the Chapter I prohibition.

5.43 Terms and conditions proposed to consumers by suppliers of motor vehicles or their Authorised Networks that clearly state the consumer's right to use the services of an independent repairer without losing the benefit of the warranty are unlikely to give rise to competition concerns.

**Access to authorised repairer networks**

5.44 Competition between authorised and independent repairers is not the only form of competition that needs to be taken into account when analysing the compatibility of selective distribution networks for repair and maintenance services and authorised repair agreements[47] with the Chapter I prohibition. Parties should also assess the degree to which authorised repairers within the relevant network are able to compete with one another.

5.45 One of the main factors driving this competition relates to the conditions of access to the network established under the standard authorised repairer agreements. In view of the generally strong market position of networks of authorised repairers, their particular importance for owners of newer motor vehicles, and the fact that consumers are not prepared to travel long distances to have their cars repaired, the CMA considers it important that access to the authorised repair networks should generally remain open to all

firms that meet defined and proportionate quality criteria.[48]

[47] Agreements entered into between suppliers of motor vehicles and each of their authorised repairers. These agreements typically admit the repairer to the Authorised Network and set out the standards and audit checklists along with additional requirements to become and remain an authorised repairer.

[48] Qualitative criteria can only limit the number of distributors indirectly by imposing conditions that cannot be met by all distributors, for instance the training of sales personnel, the service to be provided at the point of sale, the product range to be sold, or the advertising and presentation of the products See for example Case T-88/92 Groupement d'achat Édouard Leclerc v Commission, EU:T:1996:192,paragraphs 125 onward. See also paragraph 7.7 of this Guidance which refers to the possible cumulative effects of parallel networks of selective distribution systems based on qualitative criteria that have the indirect effect of foreclosing more efficient competitors.

5.46 Submitting applicants to quantitative selection is likely to cause the agreement to be prohibited under the Chapter I prohibition.[49]

5.47 A particular case arises when agreements oblige authorised repairers also to sell new motor vehicles. Such agreements are likely to be caught by the Chapter I prohibition since the obligation in question is not required by the nature of the contract services. Moreover, for an established brand, agreements containing such an obligation would not normally be able to benefit from the Section 9 exemption, since the impact would be to severely restrict access to the authorised repair network, thereby reducing competition without bringing corresponding benefits to consumers. However, in certain cases, a supplier of motor vehicles wishing to launch a brand on a particular geographic market might initially find it difficult to attract distributors willing to make the necessary investment unless they could be sure that they would not face competition from 'stand-alone' authorised repairers that sought to freeride on these initial investments. In those circumstances, contractually linking the two activities for a limited period of time could have a pro-competitive effect on the motor vehicle sales market by allowing a new brand to launch and would have no effect on the potential brand-specific repair market, which would in any event not exist if the motor vehicles could not be sold in the first place. The agreements in question would therefore be unlikely to be caught by the Chapter I prohibition.[50]

5.48 In the vast majority of cases, vehicle suppliers use qualitative criteria in order

to select their authorised repairers. A question therefore arises as to whether a requirement not to be authorised to repair vehicles of another supplier's brands is a valid qualitative requirement. To determine this, it is necessary to examine whether or not this requirement is objective and required by the nature of the service. In principle, there is normally nothing in the nature of repair services for one brand that requires them to be carried out exclusively by firms that are not authorised to repair other makes of motor vehicles. Such an obligation therefore normally amounts to a non-qualitative criterion that may restrict competition on the relevant market, namely the market for repair and maintenance services of the concerned brand.

[49] Quantitative criteria limit the potential number of dealers more directly by, for instance, fixing the number of dealers. For further general guidance on the issue of selective distribution models please see VABEO Guidance (Part 10) and paragraphs 5.67 to 5.85 of this Guidance.

[50] For further guidance on the assessment of selective distribution systems please see paragraphs 4.66 to 4.84 and VABEO Guidance (Part 10).

**Codes of Conduct**

5.49 The history of competition enforcement in this sector shows that restrictions arise directly as a result of explicit contractual obligations or indirectly through obligations or other means which nonetheless achieve the same anticompetitive result.[51] Suppliers of motor vehicles wishing to influence the competitive behaviour of a member of its Authorised Network may, for instance, resort to threats or intimidation, warnings or penalties. They may also delay or suspend deliveries or threaten to terminate the contracts of distributors that fail to observe a given price level, or place operational, invoicing or marketing constraints on members of the Authorised Network from implementing or advertising customer discounts or other incentives (or, in the case of certain non-genuine agency models, restrict the practical ability of the member of the Authorised Network from being able to share its margin or commission with the customer or to record this properly for accounting purposes). Finally, the imposition of onerous or variable terms, including any threat to terminate or withhold or deny re-appointment to the supplier's network, which allows a supplier of motor vehicles to reduce margins, change standards or impose significant investment demands unilaterally on members of its Authorised Network, or interfere with or constrain their broader activities (outside of the distribution and servicing of the supplier's brand of new vehicles), may also give rise to concerns where this has the potential to limit their competitive independence and their ability to deliver the best outcomes for consumers. Transparent relationships between contracting parties would normally reduce the risk of motor vehicle

suppliers being held responsible for using such indirect forms of pressure

aimed at achieving anticompetitive outcomes.

5.50 Adhering to a Code of Conduct, which promotes fair business practices, is one means of achieving greater

transparency in commercial relationships between parties. Such codes may

inter alia provide for adequate notice periods for contract termination, which may be

determined by reference to the contract duration and investments required by the motor vehicle supplier, for compensation to be

given for outstanding relationship-specific investments made by the member of the Authorised Network in

case of early termination without just cause, for reasonable safeguards on variations to agreements and associated terms (including investment demands) imposed unilaterally by the motor vehicle supplier once the member of the Authorised Network is already committed to the agreement, which should be fair and predictable, for proper and meaningful consultation by the motor vehicle supplier on agreement and network changes before implementation, as well as for arbitration as an

alternative mechanism for dispute resolution. If a supplier incorporates such a

Code of Conduct into its agreements with distributors (including agents) and repairers, makes it

publicly available and complies with its provisions, this will be regarded as a

relevant factor for assessing the supplier's conduct in individual cases.

Other restrictions covered by the VABEO Guidance

5.51 This section covers a number of vertical restraints which are particularly

relevant to the motor vehicle sector and are already covered by the VABEO

Guidance. Its purpose is to provide further guidance in the specific context of

the motor vehicle industry and it should be read alongside the VABEO

Guidance.

**Single branding obligations**

**Assessment under the Block Exemptions**

5.52 Pursuant to Articles 6(1)(a) and 10(2)(a) of the VABEO, a motor vehicle

supplier and a distributor having a share of the relevant market that does not

exceed 30% may agree on a single-branding obligation that obliges the

[51] For an overview of relevant enforcement cases in this sector see here.

distributor to purchase motor vehicles only from the supplier or from other

firms designated by the supplier, on condition that the duration of such noncompete obligations is limited to five years or less.

5.53 The same principles apply to agreements between suppliers of motor vehicles and members of their Authorised Networks. A renewal beyond five years requires explicit consent of both parties, and there should be no obstacles that hinder the distributor from effectively terminating the non-compete obligation at the end of the five-year period.

5.54 Non-compete obligations are not covered by the Block Exemption Orders when their duration is indefinite or exceeds five years, although as they are excluded restrictions for the purposes of the VABEO, in those circumstances the Block Exemption Orders would continue to apply to the remaining part of the vertical agreement.[52] The same applies to non-compete obligations that are tacitly renewable beyond a period of five years. Obstacles, threats of termination, or intimations that single-branding will be re-imposed before a sufficient period has elapsed to allow either the distributor or the new supplier to amortise their sunk investments would amount to a tacit renewal of the single-branding obligation in question.

5.55 Pursuant to Article 10(c) of the VABEO, any direct or indirect obligation causing the members of a selective distribution system not to sell the brands of particular competing suppliers, are not covered by the exemption (such an obligation is an excluded restriction). Particular attention should be paid to the manner in which single branding obligations are applied to existing multibrand distributors, in order to ensure that the obligations in question do not form part of an overall strategy aimed at eliminating competition from one or more specific suppliers, and in particular from newcomers or weaker competitors. This could be a form of collective boycott. This type of concern could arise in particular if the market share thresholds indicated in paragraph 5.59 of this Guidance are exceeded and if the supplier applying this type of restriction has a position on the relevant market that enables it to contribute significantly to the overall foreclosure effect.[53]

5.56 Non-compete obligations in vertical agreements do not constitute hardcore restrictions, but depending on the market circumstances, can nonetheless have negative effects which may cause the agreements to fall within the

[52] If that obligation is capable of being severed from the rest of the vertical agreement, then the remainder of the vertical agreement continues to benefit from the VABEO. The ordinary rules of severance will apply (see further paragraph 5.4 above).

[53] Commission notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (de minimis), OJ C 368, 22.12.2001, p. 13, a statement of the European Commission for the purpose of section 60A CA98.

scope of the Chapter I prohibition.[54] However, non-compete obligations may also have positive effects which may justify the application of the Section 9 exemption. They may in particular help to overcome a 'free-rider' problem, by which one supplier benefits from investments made by another. A supplier may, for instance, invest in a distributor's premises, but in doing so attract customers for a competing brand that is also sold from the same premises. The same applies to other types of investment made by the supplier which may be used by the distributor to sell motor vehicles of competing supplier of motor vehicles, such as investments in training. Another positive effect of non-compete obligations in the motor vehicle sector relates to the enhancement of the brand image and reputation of the distribution network. Such restrictions may help to create and maintain a brand image by imposing a certain measure of uniformity and quality standardisation on distributors, thereby increasing the attractiveness of that brand to the final consumer and increasing its sales. At the same time, the sector has operated successfully with many multi-branded dealerships previously, and the CMA recognises that many of the investments made at the distribution level are or have been made or funded by members of the Authorised Network themselves, not the supplier, whether in terms of premises, infrastructure, systems or training. It follows that the basis for any claim that non-competes are necessary to avoid free-riding or protect brand image would be carefully scrutinised.

5.57 Apart from direct means to tie the distributor to its own brand(s), a supplier may also have recourse to indirect means having the same effect. In the motor vehicle sector, such indirect means may include qualitative standards specifically designed to discourage the distributors from selling products of competing brands,[55] bonuses made conditional on the distributor agreeing to sell exclusively one brand, purchase or sales targets (and bonuses or rebates attached to them) or certain other requirements such as the requirement to set up a separate legal entity for the competing brand or

the obligation to display the additional competing brand in a separate showroom in a geographic location where the fulfilment of such a requirement would not be eco-nomically viable (for example sparsely populated areas).

5.58 The block exemption provided for by the VABEO covers all forms of direct or indirect non-compete obligations provided that the market shares of both the supplier and the distributor do not exceed 30% and the duration of the noncompete obligation does not exceed five years. However, even in cases where individual agreements satisfy those conditions, the use of non-compete obligations may result in anti-competitive effects not outweighed by their positive effects. In the motor vehicle industry, such net anti-competitive effects could in particular result from cumulative effects leading to the foreclosure of competing brands. As explained below, the CMA may in these circumstances consider triggering the cancellation mechanism under Article 13(1) VABEO.

[54] As regards the relevant factors to be taken into account to carry out the assessment of non-compete obligations under the Chapter I prohibition, see the relevant section in the VABEO Guidance, in particular paragraphs 9.4 to 9.8.

[55] See cases BMW, IP/06/302 — 13.3.2006 and Opel 2006, IP/06/303 — 13.3.2006.

5.59 For the distribution of motor vehicles at the retail level, foreclosure of this type might be less likely to occur in markets where all suppliers have market shares below 30% (noting that this is not an absolute indicator of the absence of market power) and where the total percentage of all motor vehicle sales that are subject to single-branding obligations on the market in question (that is to say the total tied market share, i.e. the part of its market share sold under a single branding obligation) is below 40%.[56] In a situation where there is one nondominant supplier with a market share approaching or of more than 30% of the relevant market whereas all other suppliers' market shares are below 30%, cumulative anticompetitive effects are unlikely as long as the total tied market share does not exceed 30%.

5.60 Access to the relevant market for the sale of new motor vehicles and competition in that market may be significantly restricted as a result of the cumulative effect of parallel networks of similar vertical agreements containing single branding obligations. The CMA's cancellation power under Section 6(6) CA98 and Article 13(1) VABEO only extends to individual cases (ie a

particular vertical agreement).[57] In relation to networks of agreements which do not fulfil the conditions for individual exemption under the Section 9 exemption, the CMA may however recommend to the Secretary of State the variation or revocation of the VABEO under section 8(3) CA98. Such variation or revocation by the Secretary of State would have the effect of cancelling the benefit of block exemption provided by the VABEO in relation to the network of vertical agreements at issue. We set out below set out some of the considerations that the CMA may take into account when making any such recommendation to the Secretary of State.[58]

5.61 With regard to the assessment of minimum purchasing obligations calculated on the basis of the distributor's total annual requirements, it may be justified to withdraw the benefit of the block exemption if cumulative anticompetitive effects arise even if the supplier imposes a minimum purchasing obligation that is below the 80% limit established in Article 10(5) of the VABEO. The parties need to consider whether, in the light of the relevant factual circumstances, an obligation on the distributor to ensure that a given percentage of its total purchases of motor vehicles bear the supplier's brand will prevent the distributor from taking on one or more additional competing brands. From that perspective, even a minimum purchasing requirement set at a level lower than 80% of total annual purchases will amount to a singlebranding obligation if it obliges a distributor wishing to take up a new brand of

[56] See VABEO Guidance, paragraphs 10.37 to 10.56, in particular 10.49.

[57] This reference to the cancellation mechanism under the VABEO, rather than the MVBEO, is based on the fact that the vertical restraint at issue relates to the sale and purchase of new vehicles which is covered by the VABEO.

[58] See Part 13 of the VABEO Guidance.

its choice from a competing supplier of motor vehicles to purchase so many motor vehicles of the brand that it currently sells that the distributor's business is made economically unsustainable.[59] Such a minimum purchasing obligation will also amount to a single branding obligation if it forces a competing supplier to split its envisaged sales volume in a given territory over several distributors, leading to duplication of investments and a fragmented sales

presence.

**Assessment of single-branding obligations outside the scope of the Block Exemption Regulations.**

5.62 Parties may also be called upon to assess the compatibility with the competition rules of single-branding obligations in respect of agreements that do not qualify for block exemption because the parties' market shares exceed 30% or where the duration of the agreement exceeds five years. Such agreements will therefore be subject to individual scrutiny in order to ascertain whether they are caught by the Chapter I Prohibition and if so, whether efficiencies offsetting any possible anti-competitive effect can be demonstrated. If that is the case, they may be able to benefit from the Section 9 exemption. For assessment in an individual case the general principles set out in the VABEO Guidance will apply.

5.63 In particular, agreements entered into between a supplier of motor vehicles or its importer, on the one hand, and members of the Authorised Network, on the other, will fall outside the Block Exemption Orders when the market shares held by the parties exceed the 30% threshold, which is likely to be the case for most such agreements. Single-branding obligations that will need to be assessed in such circumstances include all types of restriction that directly or indirectly limit the ability of members of the Authorised Network to obtain original or matching quality spare parts from third parties. However, an obligation on an authorised repairer to use original spare parts supplied by the supplier of motor vehicles for repairs carried out under warranty, free servicing and motor vehicle recall work would not be considered to be a single-branding obligation, but rather an objectively justified requirement.

5.64 Single-branding obligations in agreements for the distribution of new motor vehicles will also need to be individually assessed where their duration

[59] For instance, if a dealer purchases 100 cars of brand A in a year to meet demand, and wishes to buy 100 cars of brand B, an 80 % minimum purchasing obligation as regards brand A would imply that the following year, the dealer would have to buy 160 brand A cars. Given that penetration rates are likely to be relatively stable, this would likely leave the dealer with a large unsold stock of brand A. It would therefore be forced to dramatically reduce its purchases of brand B in order to avoid such

a situation. Depending on the specific circumstances of the case, such a practice can be viewed as a single-branding obligation.

exceeds five years or/and where the market share of the supplier exceeds 30%, which may be the case for certain suppliers. In such circumstances, the parties should have regard not only to the supplier's and buyer's market share, but also to the total tied market share taking into account the thresholds indicated in paragraph 5.59. Above those thresholds, individual cases will be assessed in accordance with the general principles set out in Part 10 of the VABEO Guidance.

5.65 Outside the scope of the Block Exemption Orders, the assessment of minimum purchasing obligations calculated on the basis of the distributor's total annual requirements will take into account all the relevant factual circumstances. In particular, a minimum purchasing requirement set at a level lower than 80% of total annual purchases will amount to a single-branding obligation if it has the effect of preventing distributors from dealing in one or more additional competing brands.

**Selective distribution**

**Selective distribution in the motor vehicle sector**

5.66 A selective distribution system means a distribution system set up by a supplier of motor vehicles of a particular make, where:

(a) the supplier undertakes to sell such vehicles, either directly or indirectly, to authorised distributors on the basis of specified criteria, and

(b) those distributors undertake not to sell such motor vehicles to independent distributors within the territory reserved by the supplier to operate that system.[60]

5.67 Selective distribution is currently the predominant form of distribution in the motor vehicle sector. Its use is widespread in motor vehicle distribution, as well as for repair and maintenance and the distribution of spare parts.[61]

[60] Article 5(3) of the MVBEO.

[61] The CMA notes that there is currently some evidence of suppliers of motor vehicles shifting towards an agency-based distribution model. When adopting such a distribution model, suppliers of motor vehicles should ensure that the arrangements pertaining to the distribution system comply

with competition law, the criteria for which are strict. For further guidance on the assessment of agency agreements, including guidance on the implications of the distinction between 'genuine' (where the agency agreement falls outside of the scope of the Chapter I prohibition) and 'non-genuine' agency (where the agency agreement may fall within scope of the Chapter I prohibition) please see VABEO Guidance (Part 4). In particular where agency agreements are 'non-genuine' and therefore may fall within scope of the Chapter I prohibition, suppliers of motor vehicles (the principal) should ensure that the agent should be left free, both in principle and in practice, to reduce the effective price paid by the customer without reducing the income due to the principal. In these cases, an obligation (including the application of any unnecessary operational or administrative requirements) preventing or restricting the non-genuine agent from sharing its remuneration with the customer, irrespective of whether the remuneration is fixed or variable, is a hardcore restriction under Article 8(2)(a) of the VABEO.In relation to the possible cumulative effects of networks of agency agreements please see paragraph 7.7 of this guidance.

5.68 To assess the possible anti-competitive effects of selective distribution under Chapter I, a distinction needs to be made between purely qualitative selective distribution and quantitative selective distribution. As is explained further below, qualitative selective distribution is normally not caught by the Chapter I prohibition.

5.69 In purely qualitative selective distribution, distributors and repairers are only selected on the basis of objective criteria required by the nature of the product or service, such as the technical skills of sales personnel, the layout of sales facilities, sales techniques and the type of sales service to be provided by the distributor.[62] The application of such criteria does not put a direct limit on the number of distributors or repairers admitted to the supplier's network. Purely qualitative selective distribution is in general considered to fall outside of the scope of the Chapter I prohibition for lack of anti-competitive effects, provided that three conditions are satisfied. First, the nature of the product in question must necessitate the use of selective distribution, in the sense that such a system must constitute a legitimate requirement, having regard to the nature of the product concerned, to preserve its quality and ensure its proper use. Second, members of the Authorised Network must be chosen on the basis of objective criteria of a qualitative nature which are laid down uniformly for all potential resellers and are not applied in a discriminatory manner. Third, the criteria laid down must not go beyond what is necessary.

5.70 While qualitative criteria limit the number of distributors or repairers indirectly,

by imposing conditions that cannot be met by all of them, quantitative criteria limit the number of distributors or repairers directly by, for instance, fixing their number. Networks based on quantitative criteria are generally held to be more restrictive than those that rely on qualitative selection alone and are accordingly more likely to be caught by the Chapter I prohibition.

5.71 If selective distribution agreements are caught by the Chapter I prohibition, the parties will need to assess whether their agreements can benefit from Section 9 exemption either under the Block Exemption Orders, or individually.

[62] It should be recalled however that, in accordance with the established case law, purely qualitative selective distribution systems may nevertheless restrict competition where the existence of a certain number of such systems does not leave any room for other forms of distribution based on a different way of competing. This situation will generally not arise on the markets for the sale of new motor vehicles, on which leasing and other similar arrangements are a valid alternative to outright purchase of a motor vehicle, nor in the markets for repair and maintenance, as long as independent repairers provide consumers with an alternative channel for the upkeep of their motor vehicles. See for example Case T-88/92 Groupement d'achat Édouard Leclerc v Commission [1996] ECR II-1961.

**The assessment of selective distribution under the Block Exemption Regulations**

5.72 Selective distribution agreements will be assessed in accordance with the general principles set out in Part 10 of the VABEO Guidance. The Block Exemption Orders exempt selective distribution agreements, irrespective of the nature of the product or of the nature of the selective criteria applied, whether quantitative or qualitative, so long as the parties' market shares do not exceed 30%. However, that exemption is conditional on the agreements not containing any of the hardcore restrictions set out in Article 8 of the VABEO and Article 5 of the MVBEO, or any of the excluded restrictions described in Article 10 of the VABEO and Article 6 of the MVBEO that cannot be severed from the rest of the agreement.

5.73 There are three hardcore restrictions in the VABEO which relate specifically to selective distribution and are particularly relevant in the context of the motor vehicle industry. Article 8(2)(c)(i) VABEO describes as hardcore the restriction of the geographical area into which, or of the customers to whom, the members of a selective distribution system may actively or passively sell the contract goods or services.

5.74 Article 8(2)(c)(ii) of the VABEO describes as hardcore the restriction of crosssupplies between members of a selective distribution system operating at the

same or different levels of trade. Article 8(2)(c)(iii) of the VABEO describes as hardcore agreements restricting active or passive sales to end users by members of a selective distribution system operating at the retail level of trade, without prejudice to the restrictions mentioned in Article 8(4)(a) of the VABEO. Those three hardcore restrictions have special relevance for motor vehicle distribution

5.75 For the purposes of the application of the Block Exemption Orders, and in particular as regards the application of Article 8(2)(c)(iii) of the VABEO, the notion of 'end users' includes leasing companies.[63] This means in particular that distributors in selective distribution systems may not be prevented from selling new motor vehicles to leasing companies of their choice. However, a supplier using selective distribution may prevent its distributors from selling new motor vehicles to leasing companies when there is a verifiable risk that those companies will resell them while still new. A supplier can therefore require a dealer to check, before selling to a particular company, the general leasing conditions applied so as to verify that the company in question is indeed a leasing company rather than an unauthorised reseller. However, an obligation on a dealer to provide its supplier with copies of each leasing

[63] See footnote 100 VABEO Guidance.

agreement before the dealer sells a motor vehicle to a leasing company could amount to an indirect restriction on sales.

5.76 The notion of 'end users' also encompasses consumers who purchase through an intermediary. An intermediary is a person or an undertaking which purchases a new motor vehicle on behalf of a named consumer without being a member of the distribution network. Those operators perform an important role in the motor vehicle sector, in particular by facilitating consumers' purchases of motor vehicles in other countries. Evidence of intermediary status should as a rule be established by a valid mandate including the name and address of the consumer obtained prior to the transaction. The use of the

internet as a means to attract customers in relation to a given range of motor vehicles and collect electronic mandates from them does not affect intermediary status. Intermediaries are to be distinguished from independent resellers, which purchase motor vehicles for resale and do not operate on behalf of named consumers. Independent resellers are not to be considered as end users for the purposes of the Block Exemption Orders.

The assessment of selective distribution under the Chapter I prohibition

5.77 As paragraph 10.86 of the VABEO Guidance explains, the possible competition risks brought about by selective distribution include a reduction in intra-brand competition and, especially in case of cumulative effect, foreclosure of certain type(s) of distributors, as well as the softening of competition and facilitation of collusion between suppliers or buyers, due to the limitation of the number of buyers.

5.78 To assess the possible anti-competitive effects of selective distribution under the Chapter I prohibition, a distinction needs to be made between purely qualitative selective distribution and quantitative selective distribution (see paragraphs 5.66 – 5.71).

5.79 In addition, when assessing the competitive impact of MVA agreements involving selective distribution, the parties should be aware of the importance of preserving competition both between the members of authorised repair networks and between those members and independent repairers. To this end, particular attention should be paid to three specific types of conduct (covered above) which may restrict such competition, namely preventing access of independent operators to essential inputs (paragraphs 5.3– 5.31), warranty restrictions to exclude independent repairers (paragraphs 5.37 – 5.43), or making access to authorised repairer networks conditional upon nonqualitative criteria (paragraphs 5.44– 5.48). Similarly, the anti-competitive foreclosure effects could stem from other types of vertical agreements that limit, directly or indirectly, the number of service partners contractually linked to a supplier of motor vehicles.

5.80 The fact that a network of agreements does not benefit from the block

exemption because the market share of one or more of the parties is above the 30% threshold for exemption does not imply that such agreements are illegal. Instead, the parties to such agreements need to subject them to an individual analysis to check whether they fall under the Chapter I prohibition and, if so, whether they may nonetheless benefit from the Section 9 exemption.

5.81 As regards the specificities of new motor vehicle distribution, quantitative selective distribution will generally satisfy the conditions laid down under the Section 9 exemption if the parties' market shares do not exceed 40%. However, the parties to such agreements should bear in mind that the presence of particular selection standards could have an effect on whether their agreements satisfy the conditions in the Section 9 exemption. For instance, although the use of location clauses in selective distribution agreements for new motor vehicles, that is to say agreements containing a prohibition on a member of a selective distribution system from operating out of an unauthorised place of establishment, will usually bring efficiency benefits in the form of more efficient logistics and predictable network coverage, those benefits may be outweighed by disadvantages if the market share of the supplier is very high, and in those circumstances such clauses might not be able to benefit from the Section 9 exemption.

5.82 Individual assessment of selective distribution for authorised repairers also raises specific issues. Insofar as a market exists for repair and maintenance services that is separate from that for the sale of new motor vehicles, this is considered to be brand-specific.[64] On that market, the main source of competition results from the competitive interaction between independent repairers and authorised repairers of the brand in question.

[64] In some circumstances, a system market which includes motor vehicles and spare parts together may be defined, taking into account, inter alia, the life-time of the motor vehicle as well as the preferences and buying behaviour of the users. See Market Definition (OFT 403). The CMA will also have regard to the European Commission's Notice on the definition of relevant market, OJ C 372, 9 December 1997, p.5, paragraph 56, which is a statement of the European Commission for the purpose of section 60A CA98. One important factor is whether a significant proportion of buyers make their choice taking into account the lifetime costs of the motor vehicle or not. For instance,

buying behaviour may significantly differ between buyers of trucks who purchase and operate a fleet, and who take into account maintenance costs at the moment of purchasing the motor vehicle and buyers of individual motor vehicles. Another relevant factor is the existence and relative position of part suppliers, repairers and/or parts distributors operating in the aftermarket independently from supplier of motor vehicles. In most cases, there is likely to be a brand-specific aftermarket, in particular because the majority of buyers are private individuals or small and medium-size enterprises that purchase motor vehicles and aftermarket services separately and do not have systematic access to data permitting them to assess the overall costs of motor vehicle ownership in advance.

5.83 Independent repairers in particular provide vital competitive pressure as their business models and their related operating costs are different from those in the Authorised Networks. Moreover, unlike authorised repairers, which to a large extent use suppliers of motor vehicles-branded parts, independent garages generally have greater recourse to other brands, thereby allowing a motor vehicle owner to choose between competing parts. In addition, given that a large majority of repairs for newer motor vehicles are typically carried out in authorised repair shops, it is important that competition between authorised repairers remains effective, which may only be the case if access to the networks remains open for new entrants.

5.84 The current legal framework makes it possible for the CMA to protect competition between independent and authorised repairers, as well as between the members of each authorised repairer network. In particular, the fact that the market share threshold for exemption of qualitative selective distribution is set at 30% provides scope for the CMA to act (ie where the market share thresholds are exceeded) if an MVA agreement gives rise to competition concerns.

**6. Obligation to provide information to the CMA**

6.1 Article 9(1) of the MVBEO requires any party to an agreement or concerted practice to supply the CMA with such information as it may request in connection with that agreement or concerted practice. This allows the CMA to monitor agreements and to require parties to provide information, for example, if a complaint is made about the agreement.

6.2 The CMA will make requests for information in writing. They must be complied

with within ten working days, or within such longer period of working days as the CMA may, having regard to the particular circumstances of the case, agree with the person in writing. Where the CMA considers that the party has failed to comply with the request without reasonable excuse, it has the power to cancel the block exemption by notice in writing in respect of any MVA agreement to which the request relates (Article 9(3) of the MVBEO) subject to: (a) giving notice in writing of its proposal; and (b) considering any representations made to it.

6.3 In appropriate cases, the CMA will seek to give recipients advance notice of information requests, and where it is practical and appropriate to do so, the CMA may send the information request in draft. The CMA can then take into account comments on the scope of the request, the actions that will be needed to respond and the deadline by which the information must be received. The time frame for comment on the draft will depend on the particular circumstances of the case, including the nature and scope of the request.

6.4 The process for providing representations, where a response contains commercially sensitive information or details of an individual's private affairs and the sender considers that disclosure might significantly harm their interests or the interests of the individual, is explained in Chapter 7 of the Guidance on the CMA's investigation procedures in Competition Act 1998 cases (CMA8), to which the CMA will have regard when exercising the power in Article 9(1) MVBEO.

**7. Cancellation of the MVBEO**

7.1 Not complying with the general conditions defined in the VABEO and of the MVBEO will have the effect of cancelling all or part of the block exemption in relation to a particular agreement. The CMA may also cancel the block exemption in relation to a particular MVA agreement (Article 10 of the MVBEO) and for failure to comply (without reasonable excuse) with the obligation to provide information (see Part 6 above)(Article 9 of the MVBEO).

We address each of these cancellation mechanisms in turn in the paragraphs below.

**Breach of any of the general conditions**

7.2 Failure to comply with the conditions imposed by Articles 5 or 6 of the MVBEO or Articles 6, 8, 10 of the VABEO will have the effect of cancelling the block exemption in relation to all or part of the MVA agreement to which the breach relates. This means that all or part of the vertical agreement will no longer benefit from the block exemption provided by the MVBEO and the undertakings must ensure that the agreement does not infringe the Chapter I prohibition, either by removing any relevant infringing provision or by ensuring its agreement fulfils the conditions for the Section 9 exemption.

**Cancellation of the block exemption in individual cases**

7.3 Under section 6(6)(c) CA98, a block exemption order may provide that, if the CMA considers that a particular agreement is not an exempt agreement, it may cancel the block exemption in respect of that agreement. This is to ensure that the MVBEO is only available for those agreements that satisfy the conditions for the Section 9 exemption.

7.4 The CMA may cancel the block exemption in relation to a particular MVA agreement in two situations:

(a) Pursuant to Article 10(2) MVBEO, the CMA may cancel the block exemption in relation to a particular vertical agreement which is not one which is exempt from the Chapter I prohibition under the Section 9 exemption.

In order to do so, the CMA first gives notice in writing of its proposal to those persons whom it can reasonably identify as being parties to the relevant vertical agreement.[65] This notice should state the facts on which the CMA bases its request, decision or proposal and its reasons for making it. The CMA shall consider any representations made to it (Article 10(3) MVBEO).

(b) In case of a failure to comply with the obligation imposed by Article 9(1) without reasonable excuse (Article 9(3) MVBEO), ie not providing the CMA

with the information it requires.

7.5 A cancellation decision can only have ex nunc effect, which means that the exempted status of the agreements concerned will not be affected until the date at which the cancellation becomes effective.

**Cancellation of the block exemption in cases involving networks of vertical agreements**

7.6 The conditions for the Section 9 exemption may, in particular, not be fulfilled when access to the relevant market or competition on that market is significantly restricted by the cumulative effect of parallel networks of similar vertical agreements entered into by competing suppliers or buyers. The CMA's cancellation power under Section 6(6) CA98 and 10(2) MVBEO only extends to individual cases (ie a particular vertical agreement). In relation to networks of agreements which do not fulfil the conditions for individual exemption under the Section 9 exemption, the CMA may however recommend to the Secretary of State the variation or revocation of the VABEO under section 8(3) CA98 (CMA recommendation).[66] Such variation or revocation by the Secretary of State would have the effect of cancelling the benefit of block exemption provided by the MVBEO in relation to the network of vertical agreements at issue. We set out below set out some of the considerations that the CMA may take into account when making any such recommendation to the Secretary of State.

7.7 Parallel networks of MVA agreements or agreements relating to the sale and purchase of new vehicles are to be regarded as similar if they contain restraints producing similar effects on the market. Such a situation may arise for example when, on a given market, certain suppliers have in place purely

[65] Or, where it is not reasonably practicable for the CMA to give such notice, by publishing its proposal in (i) the register maintained by the CMA under rule 20 of the CMA's rules set out in the Schedule to the CA98 (CMA's Rules) Order 2014(a); (ii) the London, Edinburgh and Belfast Gazettes; (iii) at least one national daily newspaper; and (iv) if there is in circulation an appropriate trade journal which is published at intervals not exceeding one month, in such trade journal, stating the facts on which the CMA bases the proposal, and its reasons for making it. See Article 11(b) MVBEO.

[66] The Secretary of State may also vary or revoke a block exemption without any previous recommendation from the CMA (Section 8(5) CA98).

qualitative selective distribution while other suppliers have in place quantitative selective distribution or agency distribution models.[67] Such a situation may also arise when, on a given market, the cumulative use of qualitative criteria forecloses more efficient distributors. In such circumstances, the assessment must take account of the anti-competitive effects attributable to each individual network of agreements. Where appropriate, the recommendation of variation or revocation may concern only a particular qualitative criterion or only the quantitative limitations imposed on the number of authorised distributors.

7.8 Responsibility for an anti-competitive cumulative effect can only be attributed to those undertakings which make an appreciable contribution to it. Agreements entered into by undertakings whose contribution to the cumulative effect is insignificant do not fall under the scope of the Chapter I prohibition and should therefore not be subject to the cancellation mechanism. The assessment of such a contribution will be made in accordance with the criteria set out in this Guidance and Part 10 of the VABEO Guidance.

[67] In the case of agency distribution systems, a further distinction between 'genuine' (outside of the scope of the Chapter I prohibition) and 'non-genuine' agency (within scope of the Chapter I prohibition) is a relevant consideration to ascertain whether the distribution system complies with competition law and whether there may be cumulative effects arising from parallel networks of agency agreements. For further guidance please see Part 4 of the VABEO Guidance.

**8. Duration of the MVBEO**

8.1 The MVBEO applies from 1 June 2023 and will cease to have effect at the end of 31st May 2029 (Article 13).

8.2 A transitional provision also ensures that the Chapter I prohibition does not apply for 12 months to pre-existing agreements in this sector which were exempt from the Chapter I prohibition immediately before 1st June 2023 by virtue of the retained MVBER and would not otherwise meet the conditions for exemption under this Order (Article 12). [68]

8.3 The CMA also has the power by virtue of section 8(3) CA98 to recommend variation or revocation of a block exemption order, if in its opinion, such a course would be appropriate. Where industry participants or public authorities

call for an earlier review by the CMA, they will need to explain why the block exemption needs reviewing and the detriment that will arise in the absence of a review.

[68] However, the block exemption does not apply to such pre-existing agreements that include an excluded restriction within the meaning of Article 10(2) of the VABEO immediately before 1st June 2023 (Article 12(3) MVBEO).