

CMA consultation on Draft Guidance on Motor Vehicle Agreements

Submission of The Society of Motor Manufacturers and Traders Limited

18 May 2023

1. The Society of Motor Manufacturers and Traders Ltd (SMMT) is one of the largest and most influential trade associations in the UK. It supports the interests of the UK automotive industry at home and abroad, promoting the industry to government, stakeholders and the media.
2. The automotive industry is a vital part of the UK economy and integral to supporting the delivery of the agendas for levelling up, net zero, advancing global Britain, and the plan for growth. Automotive-related manufacturing contributes £67 billion turnover and £14 billion value added to the UK economy, and typically invest around £3 billion each year in R&D. With more than 182,000 people employed in manufacturing and some 780,000 in total across the wider automotive industry, we account for 10% of total UK goods exports with more than 150 countries importing UK produced vehicles, generating £77 billion of trade. More than 25 manufacturers build over 70 models of vehicles in the UK, plus an array of specialist small volume manufacturers, supported by some 5,000 supply chain businesses and some of the world's most skilled engineers. Many of these jobs are outside London and the Southeast, with wages that are around 14% higher than the UK average.
3. SMMT also counts more than 200 members engaged in the aftermarket for service, repair, maintenance and MOT inspections, both independent and franchised operators. This sector contributes £12.7 billion to the UK economy, carries out 32,401,028 MOT tests each year and supports in excess of 350,000 jobs across 54,000 businesses. The automotive sector also supports jobs in other key sectors – including advertising, finance and logistics.
4. We welcome the opportunity to respond to the consultation on the draft Guidance (Paragraphs referenced below are to those in the draft Guidance and Articles are to those in the MVBEO). It is regrettable, however, that the timescale for response has been short, and that the MVBEO was finalised some two weeks after the draft Guidance was published which makes an assessment of the latter somewhat difficult, given the changes made in the finalised Order.
5. In our response of 1st March to the draft MVBEO technical consultation we highlighted the need to ensure that the scope of the definition of 'aftermarket goods' is clear and in setting out requirements on the provision of technical and vehicle information, does not go beyond what is necessary for the repair and maintenance of a vehicle.
6. We regard the draft Guidance as well-balanced in setting out the criteria and assessment exercise required to determine how a MVA can benefit from the block exemption in the MVBEO. We repeat our earlier assertion here and in particular that with SMMT member businesses operating in a pan-European environment within which their factory systems are set up, there is alignment with the EU Motor Vehicle Block Exemption Regulation definition of "spare parts" in order to avoid inconsistent interpretations and issues arising.
7. In providing examples and additional detail in the draft Guidance, we regard these as helpful and not divergent from the EU MVBER, however, it would be useful if the CMA could clarify that that is indeed the case – echoing the point made in paragraphs 5 and 6 of this submission above.
8. We note that the draft Guidance refers to the draft MVBEO. The final Guidance needs to be updated throughout to refer to the correct Articles of the final MVBEO 2023 No. 501 and some of its revised definitions, for example, in Paragraphs 5.6 to 5.9, reference to 'technical information' is now replaced by

'information' 'repair and maintenance information' and 'vehicle information' as defined in Articles 6(3) and 6(6).

9. A further example is the copy-out of Article 5 (definition of aftermarket goods) set out in Paragraph 4.3 of the Guidance which needs to reflect the changes made in the MVBE0.
10. The Guidance provides clarification on the application of the Article 6 excluded restriction. Article 6(2) scopes the restriction on access to information, tools or training where it is "for the purposes of providing repair and maintenance services for motor vehicles of a particular make". Paragraph 5.16 of the Guidance addresses this requirement in referring to additional factors to be considered regarding restricting access to 'essential inputs' (noting that the latter terminology is not in the Order itself). Sub-paragraph 5.16(b) requires consideration of whether '(b) the input in question will ultimately be used for the repair and maintenance of motor vehicles, or rather for a different purpose...'. Paragraph 5.12 of the Guidance refers to consideration of the 'type of input which is essential for independent operators to access'. It would be helpful for clarity and consistency for the Order's terminology to be referred to in the Guidance.
11. We welcome the clarification on warranty restrictions set out in Paragraphs 5.37 to 5.43 and the confirmation that commercial information is outside the scope of the excluded restriction (Paragraph. 5.21). On the Article 6 excluded restriction, the examples of consumer benefits given in Para. 5.16(c) as additional factors for consideration are helpful as is the reference to proportionality.
12. Paras. 5.23 to 5.25 refer to the retained Regulation (EU) 2018/858 – for the relevant requirements specified there in order to assess individual restrictions on access to technical information (again as stated above, it would be helpful to apply terminology that is consistent with the MVBE0). Members support parity with the EU position, as mentioned above, however some uncertainty arises in the reference to EU Type Approval. It is not certain what status this retained regulation will hold, in the light of the Retained EU Law (Revocation and Reform) Bill currently in parliament. Even if it is preserved, the type approval scheme that operates in Great Britain is the Provisional GB Type Approval Scheme which does not refer to Reg (EU) 2018/858. The Full GB Type Approval Scheme (for new models from 2024) does refer to the EU Regulation but the provisional scheme is likely to be used up to early 2026. The draft Guidance is neither clear nor future-proof on reference to EU regulation. Additionally, Para. 5.24 refers to the repair and maintenance information system operated in the EU, now known as SERMI, although we understand that this system will not be mandated within the GB Type Approval scheme. To resolve this ambiguity, therefore, perhaps reference could be limited to "*the existing standards and relevant requirements of the GB legislation on the approval and market surveillance of motor vehicles*" in the relevant Paragraphs.
13. We welcome the clarification throughout the draft Guidance on the requirement that the specified manner and timing of supply/access to information does not disadvantage the independent operator (Para 5.26).