



# MOTOR VEHICLE BLOCK EXEMPTIONS CONSULTATIONS

## Legal framework

Broadly, anti-competitive agreements or concerted practices are prohibited under competition law (in particular, Article 101 of the Treaty on the Functioning of the EU (TFEU) and its UK equivalent, the Chapter 1 prohibition of the Competition Act 1998). However, these prohibitions do not apply to agreements that fulfil certain conditions for an exemption, notably where the agreement provides sufficient benefits to outweigh its anti-competitive effects. For certain categories of agreements where those conditions are considered likely to be satisfied, so-called 'block exemptions' have been adopted. These allow companies to have confidence that their agreement is legal if it meets the conditions of the block exemption, without any need to scrutinise the entire agreement, thereby minimising the burden on businesses.

One such block exemption is the EU Motor Vehicle Block Exemption Regulation 461/2010 (MVBER), which applies to motor vehicles with at least three wheels and intended for public roads.

## How does MVBER operate?

Primary market: In relation to the market for the purchase, sale and resale of new motor vehicles (primary market), MVBER makes it clear that the primary market will be dealt with under another block exemption, the general Vertical Agreements Block Exemption Regulation 2022/720 (VBER); or, in UK, the Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022 (VABEO).

In general terms, this presumes that vertical agreements in the primary market are legal if:

- they are concluded between companies with relevant market shares of less than 30%; and
- the agreement contains no 'hardcore' restrictions (for example, setting fixed or minimum resale prices; or restricting cross-supplies between selective distributors).

Aftermarkets: In relation to the market for the provision of repair and maintenance services for motor vehicles and the distribution of spare parts (aftermarkets), various restrictions are block exempt under MVBER if the agreement:

- meets the VBER conditions (see above); and
- does not contain any of the specific 'hardcore' restrictions listed in MVBER.
- This means that, for example, the following restrictions do not benefit from the block exemption and would render the entire agreement void and unenforceable:

- restricting authorised dealers (i.e. members of a selective distribution system) from selling spare parts to independent repairers;
- a motor vehicle manufacturer agreeing with a supplier of spare parts, repair tools, diagnostic or other equipment to restrict the supplier's ability to sell those goods to authorised or independent distributors, repairers or end users; or
- a motor vehicle manufacturer agreeing with a supplier of components to restrict the supplier's ability to place its trademark or logo on the components or spare parts.

#### MVBER expiry and consultation

MVBER is due to expire on 31 May 2023 and the European Commission (EC) has consulted upon its extension. In July 2022, the EC issued a [call for evidence](#) on its intention to extend MVBER by 5 years and to update its Supplementary Guidelines on vertical restraints in motor vehicles sale/repair agreements. The EC proposes to amend the Supplementary Guidelines to reflect the importance of access to vehicle-generated data needed for repair & maintenance services as a factor of competition but no other major changes are being proposed.

In parallel, the Competition & Markets Authority (CMA) has proposed a recommendation to the Secretary of State to replace the retained MVBER when it expires on 31 May 2023 with a motor vehicle block exemption order (MVBE) tailored to the needs of UK businesses and consumers. The proposal is that any MVBE would be broadly similar to the retained MVBER that expires on 31 May 2023, to ensure the continuity of the current regime for businesses. Therefore, whilst some amendments may be made to, for example, reflect market developments, the CMA does not consider that any major changes to the existing rules are warranted (for example, it is proposed that relevant market share thresholds and lists of what is regarded as hardcore restrictions will be retained).

However, due to concerns about the increasing importance of access to software in order to be able to fit spare parts (for example, the need for codes/software to activate spare parts from Original Equipment Manufacturers), the CMA is proposing to provide MVBE Guidance on these issues. The CMA has also sought views on whether to treat restrictions on access to technical/vehicle information as ones that are excluded from the block exemption.

With regard to vehicle warranties and repair/maintenance carried out by independent providers, the CMA proposes to provide MVBE Guidance to clarify that clauses in OEMs' and authorised dealers/repairers' documents to consumers should state that consumers can use services of independent repairers without losing warranty benefits.

As regards restrictions on the number of repairers within a brand network, the CMA is also minded to provide MVBE Guidance to reflect its guidance on vertical restraints, which make clear that quantitative restrictions in selective distribution systems are exempt under certain conditions.

The CMA published a [consultation](#) on its proposals in July 2022 and has invited responses by 22 August 2022.

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