



Recent developments impacting the UK and EU automotive aftermarket sector – New motor vehicle block exemption order in UK and extended EU motor vehicle block exemption Regulation

12 June 2023

Companies in the automotive aftermarket sector should be aware of two important recent developments regarding competition law exemptions for “vertical” agreements, such as distribution agreements or repair network agreements:

- On 1 June 2023 the [UK Motor Vehicle Block Exemption Order \(MVBEO\)](#) entered into force. This replaces the EU Motor Vehicle Block Exemption Regulation ([MVBBER](#)), which had continued to apply in the UK post-Brexit as retained EU law. The MVBEO, which will be in force until 31 May 2029, will ensure the continuation in the UK of an important automatic exemption from the prohibition on anti-competitive arrangements in respect of vertical agreements which meet certain conditions in respect of:

- the purchase, sale or resale of “aftermarket goods” for vehicles (including spare parts – see further below); and
- the provision of vehicle repair and maintenance services.
- On 17 April 2023 the European Commission ([EC](#)) adopted a [regulation](#) extending the validity of the current EU MVBBER for a further five years, so that it will now expire on 31 May 2028. At the same time, the EC also adopted a [Communication](#) amending its Supplementary Guidelines on the MVBBER.

Overview of the new UK MVBEO

The new UK MVBEO is intended to ensure that businesses are not prevented or disincentivised from entering into agreements that the Competition and Markets Authority (CMA) considers to be overall beneficial and not anti-competitive, for example because they promote efficiencies, lower costs, and/or promote innovation.

In line with the CMA's recommendations following a consultation process, the UK MVBEO is broadly similar to the EU MVBER. However, as discussed further below, there are some important differences to be aware of, in particular in relation to the definition of "spare parts" and a new "excluded restriction" relating to access to technical and vehicle information and tools and training. These amendments were recommended by the CMA to improve the existing legal framework under the retained EU MVBER, and to ensure that the new UK legislation is effective and appropriate for specific UK market conditions.

Under the UK MVBEO, a vertical agreement between companies active in the automotive aftermarket sector will benefit from an automatic exemption from the prohibition on anti-competitive agreements provided that it:

1. Satisfies the conditions of the general block exemption for vertical agreements

The UK Vertical Agreements Block Exemption Order provides a general block exemption for vertical agreements in any sector which meet the conditions set out therein. Broadly, the parties must have market shares of less than 30% of their

respective markets and the agreement must not contain any "hardcore" restrictions of competition (including resale price maintenance, territorial and customer group restrictions, and prevention of effective use of the internet as a sales channel).

2. Does not include any of the additional sector-specific "hardcore" restrictions contained in the UK MVBEO

There are three sector-specific hardcore restrictions:

- restrictions on sales of aftermarket goods (including spare parts, but broader -see below) by members of a selective distribution system to independent repairers;
- restrictions on the ability of a supplier of aftermarket goods, repair tools or diagnostics or other equipment to sell those goods to authorised or independent distributors, repairers or end users; and
- restrictions on the ability of an original parts suppliers to place its trademark or logo effectively on components supplied or on aftermarket goods.

These additional hardcore restrictions are designed to address specific competition concerns in the automotive aftermarket sector, where competition is generally less intense due to the, generally, brand-specific nature of the markets for repair and maintenance services and for the distribution of spare parts and other aftermarket goods.

The hardcore restrictions largely mirror those in the EU MVBER, but with some amendments to various definitions. In particular, where the

EU MVBER refers to "spare parts" in the context of hardcore restrictions, the UK MVBEO refers to "aftermarket goods". These are defined to include spare parts, but also "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, and liquids used in the braking 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)".

3. Does not include restrictions on the ability of an independent operator to access technical or vehicle information, tools or training necessary for the repair and maintenance of particular models.

This is a new provision added to the UK MVBEO which is not included in the EU MVBER. Such restrictions are categorised as "excluded" restrictions rather than "hardcore" restrictions, which means that the block exemption may still apply to the rest of the agreement if it is possible to sever the excluded restriction.

It is intended to address concerns that ongoing technological developments mean that access to these types of inputs is essential for independent operators to be able to compete on a level-playing field with authorised service networks.

On 5 June 2023 the CMA published guidance to accompany the UK MVBEO, which is intended to help businesses to assess whether a particular agreement falls within the scope of the block exemption.



EU MVBER: extended to 31 May 2028 and Supplementary Guidelines updated

The introduction of the UK MVBEO was prompted by the scheduled expiry of the retained EU MVBER on 31 May 2023. However, shortly before the UK MVBEO was laid before Parliament, the EC decided to extend the validity of the EU MVBER in the EU by a further five years, so as to now expire on 31 May 2028 ([Regulation 2023/822 of 17 April 2023](#)).

This followed a consultation process which led the EC to conclude that it should extend the existing rules, to allow for consolidation of currently emerging trends such as those resulting from vehicle digitalisation, electrification and new mobility patterns. It

anticipates that this will happen within the next five years, at which point it will re-assess whether the specific block exemption for vertical agreements in the automotive aftermarket sector is still necessary, and the extent to which any updates or amendments are required.

The EC did not consider that now was the right time to introduce any changes to the sector-specific block exemption. However, at the same time as extending the MVBER the EC did adopt a [Communication](#) amending its Supplementary Guidelines. The updated Supplementary Guidelines clarify various matters, including that:

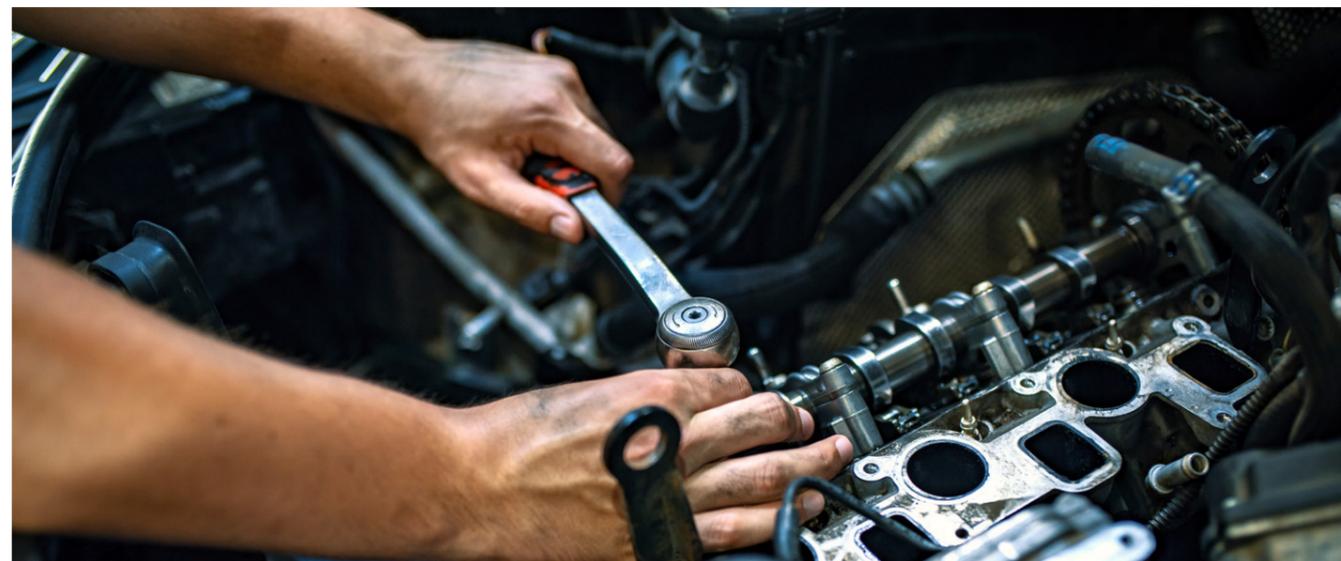
- data generated by vehicle sensors may be an essential input for the provision of repair and maintenance services;

- vehicle suppliers must apply the proportionality principle when considering whether to withhold inputs, such as vehicle-generated data, on the basis of potential cybersecurity concerns; and
- the prohibition on abuse of a dominant position may be applicable where a supplier unilaterally withholds from independent operators an essential input, such as vehicle-generated data.

Vertical agreements relating to the purchase, sale and resale of vehicles

It is important to note that neither the new UK MVBEO nor the extended EU MVBER apply to vertical agreements relating to the purchase, sale or resale of vehicles. Prior to 1 June 2013 the sector-specific motor vehicle block exemption did extend to such agreements (where certain conditions were met). However, since that date such agreements are automatically exempted from the prohibition on anti-competitive agreements, provided that they satisfy the conditions of the general block exemption for vertical agreements (see above).

Nonetheless, the [guidance](#) recently published by the CMA on the application of the UK MVBEO also covers certain elements of vertical agreements relating to the purchase, sale or resale of new motor vehicles, even though the UK MVBEO does not apply to them. This includes additional guidance on single-branding/exclusive supply agreements and selective distribution agreements.



Key contacts

If you have any questions or would like to know how this might affect your business please do get in touch.



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