

**Automotive Aftermarket Provisions necessary
following the expiry of Motor Vehicles Block
Exemption Regulation EC 1400/2002 (MVBER)**

**A Submission by Representatives of the UK
Independent Automotive Aftermarket**

**In Response to the Communication of the European
Commission dated 22nd July 2009**



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1. Representatives of the UK Independent Automotive Aftermarket

This document is prepared on behalf of several organisations, representative bodies, and interested groups and individuals collectively representing as the UK Independent Automotive Aftermarket, (UKIAA), henceforward referred to as 'the group'.

It has been prepared by the Automotive Aftermarket Liaison Group, an informal forum for a number of trade organisations operating in the independent automotive aftermarket who meet regularly, but informally, to discuss matters of common interest. In so doing they increase the effectiveness of their activities and often find means of achieving a common end without costly duplication of effort.

The members of the AALG are (in alphabetical order):

A1 Motor Stores
Automotive Distribution Federation
Federation of Engine Remanufacturers
Garage Equipment Association
Group Auto Union (UK & Eire) Ltd
Independent Battery Distributors Association
National Tyre Distributors Federation
Retail Motor Industry Federation (Independent Garage Association)
Society of Motor Manufacturers and Traders (Aftermarket Section)

Broadly the objectives of the group are:

- a) To facilitate the exchange of information between associations/groups on subjects affecting their members
- b) To be a forum for discussion with third parties whose activities affect the independent aftermarket
- c) To address issues on which collaborative action on behalf of the independent aftermarket would be more successful than individual uncoordinated action by each association/group, and then to agree which organisation should take the lead.

Formation of the UK 'Right to Repair' Campaign was initiated by the AALG, and that Campaign, and this submission, is supported by all AALG members plus others.

2. Preamble – an appreciation of the Communication of the European Commission on the future of MVBBER in the Automotive Aftermarket

The recent publication of the European Commission's assessment on the operation of MVBBER and its replacement or renewal is welcomed by UKIAA. In particular, the separation of the primary automotive market from the aftermarket is recognised as appropriate. The extension of MVBBER for the primary market will be welcome for those operating in that sector, particularly in view of current economic circumstances, and gives time for further assessment of the future regulatory needs.

In addressing the Commission's suggestions for future aftermarket regulations we must first point out that our overall aim is to seek a fair and equitable market in which independent operators can deliver consumer satisfaction by providing high quality service and repair to vehicles in use on the roads of Europe. Given that the independent element of the aftermarket is comprised of several strata in supply of parts, materials, tools, training, equipment, recovery etc., (rather than the condensed structure of Vehicle Manufacturers (VMs) and their dealer networks), it can be recognised that a regulatory framework capable of encouraging cohesive action by the various market operators is the best way in which the potential for consumer detriment, which could be caused by lack of proper scope for repair, can be addressed.

Since the introduction of the current MVBBER the independent aftermarket has identified several areas where what was anticipated as a liberalising measure was circumvented by Vehicle Manufacturers (VMs). It is hoped that any replacement measures introduced by the Commission recognise the tendency of Vehicle Manufacturers to attempt to use their considerable resources to neutralise the independent sector's activities which consequently, can result in a very palpable consumer detriment through lack of choice, inconvenience and monopoly pricing.

The ability to police and control any new measure is of paramount importance. The DG Competition's assertion of lack of claims made under the current Regulation and the perceived lack of substance in claims that were made by stakeholders, such as consumers and aftermarket operators, leads the group to believe that common understanding of the Regulation was poor and the terms of the current MVBBER were too complex.

It should be remembered that operators in the aftermarket, except for those within the VM and franchised dealer networks, are generally small or medium sized enterprises (SMEs). It is extremely difficult for such businesses to plan and operate in a market where the competitive advantages are perceived as being wielded by powerful competitors and where the legal remedies appear remote, uncertain and beyond the financial resources of SMEs. Similarly it is difficult to convince consumers that abandoning the service offering of the networks has little risk. Language used by VMs tends to confuse consumers, for example, misuse of the term 'genuine' in respect of replacement parts. Therefore the replacement measures must be unequivocal in provisions and mechanisms to provide legal certainty to operators in the market and reassurance to consumers.

3. Assessment of the future requirements of a BER for the Automotive Aftermarket

The Commission's Communication and Impact Assessment documents present options for the future regulatory framework. It is not felt necessary to review each of these in turn as our preamble has already established the arena in which we feel the market should operate and it is clear to us that Options 1 and 2 do not provide the environment in which the independent sector of the aftermarket can exist, serve the consumer, and prosper.

To this end the group strongly recommends the introduction of a new Automotive Aftermarket Block Exemption Regulation supported by clear and unambiguous guidelines. Such guidelines should be sufficient to provide for identified infringements to be referred and, where possible, fast tracked through to a conclusion. The group wishes to make clear that it is not looking for the prosecution of infringing parties; on the contrary, it merely wishes to promote proper access to requisite information to effect repair and maintenance on behalf of its customers and that such information can be defined and encapsulated within the guidelines.

This submission therefore recommends an amalgamation of 3 + 4 resulting in a new measure of Option '4 plus', this includes the clear and concise guidelines referred to in option 3. It should be noted that the group has adopted this position contrary to its previously stated position of seeking full exemption status, without guidelines, and this amelioration is designed to facilitate the Commission's task in formulating a new measure for the Aftermarket.

By reference to previous regulatory provisions and the market activities experienced by operators in the independent sector, plus evaluation of likely technological developments we can postulate the various areas and topics which will demand inclusion in the new regulatory measures. In particular, accelerating technology in vehicles and in business systems will require monitoring for potential competitive disadvantage and consumer detriment.

Therefore, the group's opinion is that any new regulatory measure should address the following issues:

A. The new measure should, in every way possible, seek to apply all rules, constraints, and accesses contained within other forthcoming EU regulations and directives, so as to give independent operators and their customers' confidence and legal certainty in operating, servicing and repairing vehicles without compulsion or necessity to use the VM's repairer networks.

Arguing a case in the absence of specific hard-core restrictions will be a very costly exercise. This will, most probably, deter small and medium-sized enterprises from pursuing their rights, and those of the consumer.

Individual case decisions will undoubtedly imply a significant degree of uncertainty. They normally require economic evaluations and legal opinions, the cost of which will be

excessive for small and medium-sized enterprises. Given that VMs already dominate the markets for spare parts and repairs, any regulatory mechanism which makes it costly for SMEs to access legal certainty must be avoided.

B. The current MVBBER introduced some important provisions regarding the distribution of spare parts by independent operators. It also gave their customers, the service and repair workshops, rights and opportunities to improve their equipment, knowledge and facilities to maintain vehicles of ever-increasing complexity.

i. It allowed original equipment (OE) suppliers to double-brand their manufactures with their own trade mark alongside that of their customer, the Vehicle Manufacturer. The facility for removing a faulty or exhausted part from a vehicle and easily identifying the maker, so as to specify a like replacement, has proved a great benefit to service workshop personnel and consumers, and has had a significant effect on creating demand for 'original' parts to the benefit of the manufacturer of the part in question, and to the chagrin of those who wish to peddle inferior quality items.

ii. Allied to the above, is the freedom for OE suppliers to supply their product directly to independent aftermarket distributors. Although there are still some ambiguous reports of 'tied' or 'captive' parts, in general this situation has improved as a consequence of the current MVBBER. This has brought competition to what was, previously, a monopoly supply situation via car companies and franchised dealers, to the clear benefit of consumers. It should be pointed out, however, that the Regulation allows sales of products only to independent repairers and service providers, not to parts distributors. This is an obviously unintended consequence of the original formulation of the Regulation, which requires correction.

iii. Unequivocal terms to identify the status of replacement components were problematic until the introduction of the present MVBBER. That Regulation introduced the terms 'Original' and 'Matching Quality' to the market and it is clear that these terms are now common currency and helpful to all in the market. The principle of self-certification of parts quality has not presented any significant problems for the market or consumers, although this will continue to be monitored by the aftermarket. The group considers that these terms and the legitimacy they assert must be retained in any future measure.

iv. Electronic data is essential for the repair or maintenance of vehicles, which are increasingly 'computers on wheels'. Art. 4(2) MVBBER included a specific provision to facilitate the access to such technical information by independent operators; however the benefit of this provision has proved difficult to utilise. Spurious arguments such as intellectual property infringements and vehicle security are used to distort the market and defy the Regulation.

Previous claims with regard to intellectual property rights (IP) are by most now believed to be a specious argument because, as has been made clear in the Euro 5 negotiations, repairers do not want to get 'inside' vehicle operating systems but merely need access to external re-commissioning via pass-through protocols and are aware that this service must be purchased from the provider.

The group represents responsible businesses within the aftermarket and is aware of the sensitivities of police authorities and government departments that any action that could reduce the effectiveness of vehicle security should be avoided. However, to withhold all access to what has been misnamed 'security information' is anti-competitive and detrimental to the overall ambitions of safer and cleaner roads for Europe. To this end the group would propose an immediate access to all information that would not compromise onboard anti-theft devices, but warns that competitive instincts may encourage VMs to interpret 'security' in a manner likely to restrict access.

v. The group considers that technical information relating to parts and components are of equal importance in the delivery of quality service and repair. Information for parts manufacturers, be it for supply to the VMs production line or via a secondary route to market, should not be withheld in an anti-competitive manner.

Increasingly components have integral software but are delivered to the manufacturer in a 'dumb' state. The manufacturer 'flashes' the component memory prior to inclusion onto a vehicle or distribution as a spare part. This can preclude the original manufacturer from distributing his components through any secondary route to market and provides a monopolistic position for the VM by rendering parts that could be available through secondary sources captive to the VM network. The group feels most strongly that this information should also be made available to independent operators.

The tyre distribution sector of the independent automotive aftermarket provides early illustrations of the difficulties experienced through evolving and emerging technology and particularly restrictions on the timely circulation of appropriate technical information.

Tyre retailers, especially the chains with sizable fleet business, see cars within three months of them being registered. With some tyres lasting less than 10,000 miles (16,000km) higher mileage consumers find that frequency of tyre wear and tyre wear patterns mean they are looking at tyre replacement every three to six months. With ESP and electronic wheel alignment systems that require electronic calibration, (some systems for wheel removal require re-calibration by dealers), tyre retailers are increasingly realising they need to be electronically enabled, yet find it impossible to obtain, in a commercially viable manner, equipment with generic functionality.

Other examples include problems with tyre pressure monitoring systems, where the only way in which the tyre pressure monitoring system light can be re-set is via the main dealer. This intervention occurs not only when the vehicle suffers a puncture but also if the tyre pressure monitoring systems (TPMS) sensors require replacement. Tyre retailers and distributors report that there are still several applications, particularly regarding TPMS sensors, where vehicles must go back to the dealer.

Modern suspension technology includes various protocols to proceed through before the vehicle can be jacked to, for instance, change a tyre. Whilst the standard VM response is that 'it's in the handbook', there are many vehicles, especially in the fleet and rental markets, where the vehicle handbook is not available to the driver. Additionally, independent publishers of data typically take up to three years to recognise demand for the

information, before they consider including it in their product portfolio, whereupon they experience problems with data formats.

With certain 4x4 vehicles if a particular mode in the suspension system is not engaged and the wheel is accidentally spun backwards it immobilises the vehicle. Air suspension systems require certain suspension locking procedures to be performed before jacking the car; if not, the suspension will be damaged with a typical rectification cost of £350 per wheel. This information is not freely available.

Tyre technology changes bring increased opportunity for obfuscation in technical information access, with consequent consumer detriment. A prominent VM, for example, has amended the tyre fitment policy on SUV models following complaints from customers that only dealers could change the tyres; this removed a monopoly opportunity. A major tyre manufacturer recently announced a tyre which contained a 'chip' with the ability to report a wide range of performance information to the vehicle's systems. The opportunities to incorporate 'lock-out' features requiring re-commissioning the system at a main dealer once a tyre has been replaced can be easily appreciated.

vi. Roadside breakdown and recovery operators similarly encounter vehicles far closer to the point of introduction to the market. Their need for immediate and straightforward access to diagnostic and re-commissioning information can be readily understood.

There are, also, the particular needs of those indirectly involved in the repair or servicing of motor vehicles, i.e. manufacturers of multi-brand diagnostic equipment, publishers of multi-brand databases, providers of roadside assistance, or parts wholesalers supplying workshops with parts and related information. The Explanatory Brochure on MVBBER, issued by the Commission in 2002, stated that these persons should receive the data, and are entitled to pass it on to other independent operators (*Question 92*). Otherwise, the creation of multi-brand products would become not feasible in practice. The group thinks this is an area in which future legislation needs to be more clearly written, and should require car companies to make data available in a format which enables independent operators to include such data in their multi-brand products.

vii. Quite apart from the welcome introduction in the current MVBBER of non-network servicing of vehicles during the initial warranty period, DG Competition have noted the current trend towards using extended warranty as a method of ring-fencing future service requirements within franchised networks. The group abhors this anti-competitive practice. Given the current alarming reduction in the number of franchised dealers and authorized repairers, the restriction upon the consumer's ability to obtain convenient and economical servicing and repair, and the artificial exclusion of alternative service and repair providers, combines to create a considerable consumer detriment. To address this detriment, clauses in warranty, extended warranty, leasing, and service agreements forcing servicing and repair only with the VMs' networks and restricting the fitment of non-network supplied replacement components and materials must be prohibited.

We are certain that DG Competition is also aware of detrimental effect of the denial of warranty where a vehicle owner has exercised their right to use non-franchised service provision or been placed in an emergency situation where the Dealer could not assist. Often the customer will seek retribution from the service provider. Once challenged by IAM representatives, the warranty denial decision is often overturned as a gesture of goodwill to the consumer, with the caveat that 'with franchised service this would never have happened'. Thus the consumer is severely inconvenienced and confidence in the IAM is reduced.

4. Concluding Remarks

The consumers' interests have always been at the forefront in discussions on the future form of competition law affecting the automotive market. This group supports this approach.

Consumers' affordable mobility largely depends on the facility to have vehicles serviced and repaired at a reasonable cost, and with minimum inconvenience. Over the lifetime of a vehicle, over the lifetime of a vehicle the owners will spend about the same amount on maintenance and repair as was spent on the purchase of the vehicle.

Effective competition on each level of the automotive aftermarket is of the essence when it comes to fostering innovation and keeping mobility affordable.

In Europe's independent multi-brand automotive aftermarket, 835.000 companies, **check with SG** predominantly SMEs, provide competitive components and quality services. 4.6 million people are employed in component production, distribution and the servicing of vehicles. In compliance with the EU's SME policy and the Lisbon Strategy, improving the business environment for the small and medium enterprises in the automotive aftermarket clearly means maintaining a legal framework which, with guidelines, will foster fair and effective competition in the markets for automotive spare parts and servicing.

In conclusion the group believes that an aftermarket-focused block exemption regulation accompanied by clear and concise guidelines, the latter being regularly reviewed to maintain focus on technological advancement and new power sources within vehicles, will produce significant consumer benefits, promotion of SMEs and consequent employment opportunities in Europe's automotive aftermarket.

Members of the group are available for explanation, discussion and expansion of these points. In the first instance any queries should be addressed to Mr. Bob Davis, Secretary to the UK Right to Repair Campaign.