ADPA
Automotive Data Publishers' Association

ADPA.EU

MVBER

ADPA position paper

SAFETY - SUSTAINABILITY - AFFORDABILITY

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Notice

This document is the detailed position from ADPA with a view to the evaluation of the Motor Vehicle Block Exemption Regulation 2023/822.

ADPA remains of course available to discuss it further with relevant institutions and fellow stakeholders.

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Executive summary

- The MVBER regime remains extremely relevant, as:
    - Each vehicle manufacturer continues to be by far the largest supplier of aftermarket services for its brand-specific aftermarket;
    - Competition for the provision of aftermarket services remains crucial for consumers;
    - The MVBER has proven its effectiveness;
    - The Vertical Block Exemption Regulation is insufficient to tackle automotive aftermarket specificities.

- The Motor Vehicle Block Exemption Regulation should be updated to reflect market realities:
    - Restriction on access to essential inputs should qualify as hardcore restrictions, or as excluded restriction as in the United Kingdom's Motor Vehicle Block Exemption Order;
    - Powered two-wheelers should be included in the scope of the MVBER.

- Supplementary Guidelines should be upgraded to reflect new commercial and technical practices. In particular:
    - The proportionality principle should be applied beyond security;
    - The list of examples of technical information should be extended;
    - Commercial and technical conditions for accessing technical information should be considered;
    - The list of examples of essential inputs should be extended to cover the raise of telematics;
    - Provisions on warranty should be improved.

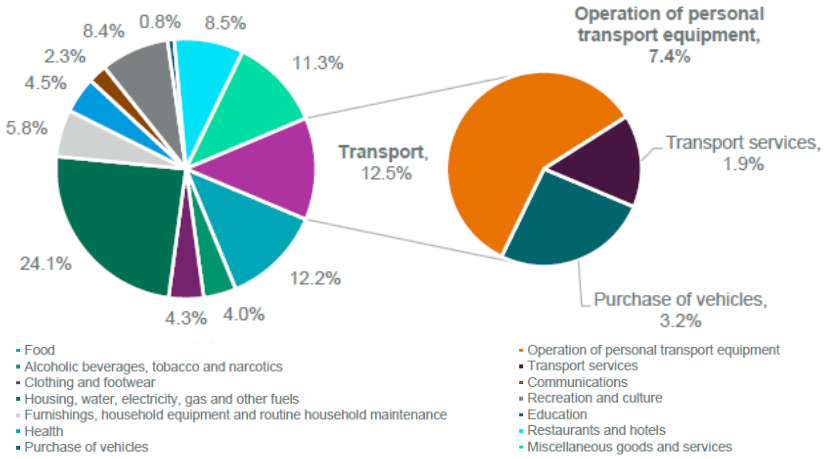
Introduction: The continued relevance of the MVBER regime

Competition in the provision of aftermarket operations remains crucial for consumers and society.

Mobility continues to be one of the main expenses for European households, with one in every eight euros spent by the average European allocated to this category , and within mobility, the cost of operating a road vehicle (including its repair and maintenance) is itself one of the most important subcategories.

Consumption expenditure of European households in 2022 by consumption purpose

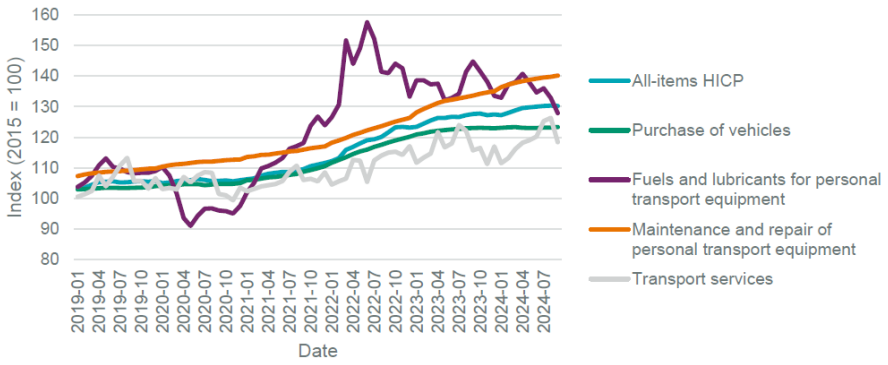
Source: Eurostat, Ricardo



Over the last years, prices for aftermarket products and services have constantly increased, often above inflation. They have been driven up by various factors, including the relative monopoly of vehicle manufacturers for the replacement of visible spare parts in some countries (until the recent revision of the Design protection framework), as well as by the increasing costs imposed by vehicle manufacturers on independent operators upstream the value chain (e.g. the sharp increase in fees imposed on publishers of technical information), which have to be echoed to the end-customer.

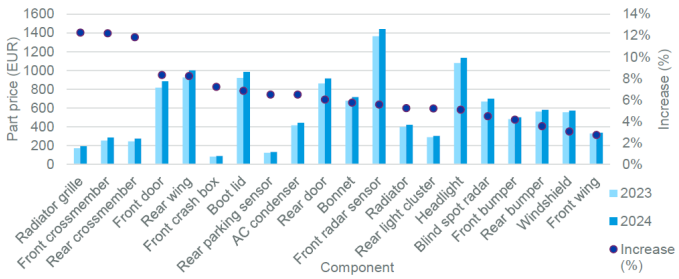
Price development of transport-related consumption since 2019, compared to inflation (HICP)

Source: Eurostat, Ricardo



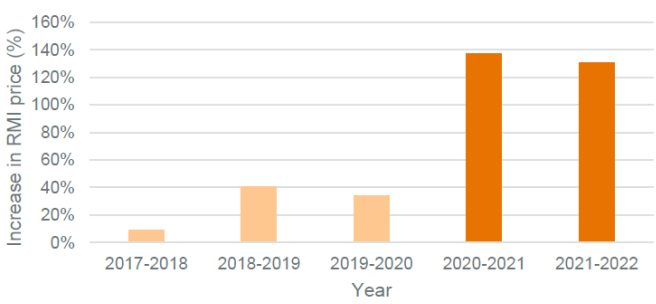
Increase in part prices for representative vehicle types in Germany between 2023 and 2024

Source: GDV, Ricardo



Average increase in the price of RMI faced by a data publisher across four vehicle manufacturers

Source: ADPA, Ricardo



This creates an important issue regarding the affordability of road mobility (especially as vehicle manufacturers' strategies already increase the purchasing cost[1]). Road mobility remains essential in European societies for the daily and professional activities of individuals, for the transportation of goods and resilient supply chains, and for public services. Yet, the increasing cost of repair and maintenance operations creates specific issues in terms of safety and sustainability[2]. Less expensive operations, on the contrary, would mean a more frequent and more thorough use of aftermarket services, maintaining under optimal conditions the overall roadworthiness of the car park over the lifetime of vehicles.

Market trends continue to justify the existence of the MVBER.

The structure of the automotive aftermarket has not fundamentally changed. Vehicle manufacturers and their networks remain by far the main providers of aftermarket services and products on their respective brand-specific aftermarkets, and even the largest of the competing independent operators remain far behind. Independent operators upstream the value chain remain also largely dependent on the vehicle manufacturers to access the essential inputs they need to perform their specific job and to exert competitive pressure – and this trend could be reinforced by the increasing complexity of vehicles.

While investigations at European Union level haven't focused yet on vertical restraints or potential abuses of dominance, four antitrust cases[3] since 2005 have resulted in over 4,3 billion euros in fines for nearly all vehicle manufacturers (except the whistleblowers of course, and new entrants) and their representative association, ACEA. The regularity, the variety and the magnitude of these cases show a well-established pattern of vehicle manufacturers not complying with competition rules. And if they are not hesitating to collude with their competitors to bypass antitrust rules, there is no reason to imagine they would not consider anticompetitive vertial restraints or abusing their dominant position on their respective aftermarket or colluding within their authorised networks – especially if no sector-specific rule would apply.

Antitrust cases involving vehicle manufacturers

Case	Date	Topic	Timeframe of the	Involved	Total fines
AT.36623	05.10.2005	Obstructing new car exports	01.1997-09.2003	1	49.500.000€
AT.39824	19.07.2016	Trucks cartel	1997-2011	5	2.926.499.000€
AT.40178	08.07.2021	Restricting competition in emission cleaning for new diesel passenger cars	25.06.2009-01.10.2014	3	875.189.000€
AT.40669	01.04.2025	End-of-life vehicles recycling cartel	29.05.2002-14.09.2017	17	457.942.000€

Source: European Commission

Such anti-competitive trends could be facilitated by the emergence of new commercial and technical practices negatively impacting undistorted competition. The increasing complexity of vehicles makes it even more necessary to ensure reliable and affordable aftermarket services. Connectivity, electrification, cybersecurity, among others, could easily be misused to prevent innovation and competition from the independent aftermarket. Various (contractual) obligations imposed on independent operators can also have a similarly detrimental effect.

The MVBER has proven its effectiveness.

The independent automotive aftermarket is all in all aware of what it owes to the existence of the MVBER regime, and how it enables it to provide innovative, competitive alternatives to the products and services of vehicle manufacturers and their networks. It is commonly accepted in the sector that it is the MVBER which helps competition in the aftermarket sector and that, while it is perfectible, an aftermarket without the MVBER would be subject to systemic anti-competitive practices, reducing consumer choice, limiting innovation and raising costs over the lifetime of the vehicles.

[1] Institut Mobilités en Transition, *Le vrai du faux sur les causes de l'augmentation des prix des véhicules entre 2020 et 2024*, 05.2025

[2] Ricardo, *The benefits of vehicle repair and maintenance on safety and sustainability*, 13.02.2025, in particular pp. 4-7 for safety and 8-11 for sustainability

[3] AT.36623, AT.39824, AT.40178, AT.40669

The existing provisions enabling competition in the automotive aftermarket, which were quite forward-looking and innovative at their time, have enabled European aftermarket companies to innovate and become worldwide leaders in their sector. The main companies for technical information, tools and parts distribution, are European, and are part of a larger ecosystem which could not develop elsewhere due to the inexistence of a similar framework in other parts of the world (at least until recently). However, for this situation to continue, the rules need a serious upgrade to give European aftermarket companies effective opportunities to innovate and compete.

In the previous evaluation phase, most of the respondents have clearly indicated that the MVBER regime remained needed and useful to tackle systemic threats to effective competition. While many called for additional guidance, it nevertheless underlined that the root grounds for the MVBER to exist were still valid, and that businesses, consumers and competition authorities alike benefitted from the guidance it provides.

In particular, highlighting which types of clauses are hardcore when agreed between companies with market shares below the statutory threshold renders very clear how the European Commission might view such clauses when agreed between companies enjoying above-threshold market shares[4].

Also worth noticing is the worldwide lighthouse effect of the MVBER and of the provisions ensuring competition between vehicle manufacturers and their networks and the independent automotive aftermarket. In some cases, public authorities and competition authorities have largely used the wording of these European provisions to enhance effective competition in their respective markets. This showcases the universal validity of the diagnostic and of the remedies included in the MVBER.

The VBER is insufficient for the automotive sector.

The sector-specific Block Exemption Regulation and the Supplementary Guidelines continue to serve important purposes. If they did not exist and only the Vertical Block Exemption Regulation regime would apply, independent, competitive aftermarket services would be more difficult to access for consumers.

The VBER does not contain the hardcore clauses which are at the core of the MVBER and which remain essential to ensure some competition in the trade of replacement spare parts, a financially important component of the repair and maintenance operations over the long lifetime of vehicles. Without access to captive parts, as addressed in the first sector-specific hardcore clause, independent repairers would likely be foreclosed from the market.

Similarly, the VBER and its Guidelines don't mention the concept of essential inputs, which helps independent operators to access items which are needed to perform repair and maintenance operations under similar competitive conditions as the vehicle manufacturers and their networks.

The present VBER also fails to state that the anti-competitive effects of a distribution system are strengthened in ways incompatible with Art. 101 (3) TFEU where a manufacturer conditions a warranty on the product being serviced or repaired only within its network or with its services and products. The principles codified in Paragraph 69 of the Supplementary Guidelines should continue to apply in the motor vehicle sector, as demonstrated by the interest of National Competition Authorities in this clause during the last evaluation process.

So the MVBER and its Supplementary Guidelines remain vital in complementing the general VBER by addressing specific issues of the automotive sector.

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After the "wait and see" period announced in 2023 to accompany a short-term and very limitedly updated MVBER regime, it is time to go for more important updates. ADPA ihas identified several issues and potential remedies which would comfort competition in the automotive aftermarket by fitting the MVBER regime with new trends. As Executive Vice-President Teresa Ribera said in a speech: "Modernising, it's about adapting for today's challenges". Today's challenges in the automotive aftermarket are numerous and multi-faceted, and the MVBER, if upgraded, could largely remedy them.

[4] Becker/Simon, in: MüKo WettbR, 3rd ed 2020, Einl. para. 6 f.; Funke, in: Berg/Mäsch, 3rd ed. 2018, Einführung zum Kartellrecht für den Automobilsektor, para. 7.

1. Qualifying restrictions on access to essential inputs as hardcore or excluded restriction

Situation

Access to essential inputs is paramount to ensure competition between vehicle manufacturers and their networks and independent operators. This is rightly mentioned in the Supplementary Guidelines, but not in the Regulation itself.

Issue

Hardcore restrictions are presumed to violate competition law and are automatically void under Article 101(1) TFEU unless exempted. As restrictions on essential inputs (like spare parts, tools, diagnostic equipment, or technical data) are not listed as hardcore or excluded:

- There is a less deterrent effect and no automatic loss of the safe harbour;
- Enforcement is more difficult as Supplementary Guidelines are not binding on the courts, unlike hardcore or excluded restrictions enshrined in the Regulation itself.

By not classifying restrictions on essential inputs as hardcore or excluded restrictions, the MVBER:

- Sends a weaker signal to manufacturers about what is unacceptable;
- Potentially allows anticompetitive practices to persist under the radar;
- Undermines effective enforcement and protection of aftermarket competition.

Recommendation

Restrictions on the access to essential inputs should be mentioned directly in the relevant article of the Regulation as a hardcore or, as in the United Kingdom's MVBEO, excluded restriction. Including these restrictions as hardcore or excluded would enhance legal clarity, offer stronger incentives for compliance, strengthen the effectiveness of the competition rules, and better protect consumers and independent businesses (in particular, but not only, SMEs).

Proposal for the inclusion as a hardcore restriction (other options could be proposed for an excluded restriction)

Regulation of 2010 – Article 5 (restrictions that remove the benefit of the block exemption — hardcore restrictions)	The exemption provided for in Article 4 shall not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object: (a) the restriction of the sales of spare parts for motor vehicles by members of a selective distribution system to independent repairers which use those parts for the repair and maintenance of a motor vehicle; (b) the restriction, agreed between a supplier of spare parts, repair tools or diagnostic or other equipment and a manufacturer of motor vehicles, of the supplier's ability to sell those goods to authorised or independent distributors or to authorised or independent repairers or end users; (c) the restriction, agreed between a manufacturer of motor vehicles which uses components for the initial assembly of motor vehicles and the supplier of such components, of the supplier's ability to place its trade mark or logo effectively and in an easily visible manner on the components supplied or on spare parts~~.~~**;** **(d) the restriction of the access of independent operators to essential inputs.**
Supplementary Guidelines of 2023—Paragraph (16)	In order to address particular competition issues arising on the motor vehicle aftermarkets, the General Vertical Block Exemption Regulation is supplemented with ~~three~~ **four** additional hardcore restrictions in the Motor Vehicle Block Exemption Regulation 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 Section III of these Guidelines.
Supplementary Guidelines of 2023—Paragraph (21)	Article 4(f) of the General Vertical Block Exemption Regulation describes it as a hardcore restriction for an agreement between a supplier of components and a buyer who incorporates those components, to prevent or restrict the supplier's ability to sell its components to end-users, independent repairers, wholesalers or other service providers not entrusted by the buyer with the repair or servicing of its goods. Article 5(a), (b) and (c) of the Motor Vehicle Block Exemption Regulation lay down ~~three~~ **four** additional hardcore restrictions relating to agreements for the supply of spare parts.

2. Applying the proportionality principle for all legitimate concerns

Situation

In the revision of 2023, the European Commission rightfully introduced a new paragraph (62b) in the Supplementary Guidelines to address the possible questions arising from the need to provide input on one side, and the need to optimise the security on the other side. In a balanced approach, the European Commission specified that: "When considering withholding on security grounds a particular item that is essential for repair and maintenance, such as those belonging to the categories of input set out in paragraph 62 of these Guidelines, parties should assess whether withholding the item in question would be a proportionate means to address the security concerns at issue. They should therefore examine in particular whether less restrictive measures would suffice."

Issue

However, such tensions between potentially appearing conflicting obligations (sharing information on the one hand, other concerns on the other hand) are frequent. Beyond security, concerns on cybersecurity, anti-tampering and data protection create sometimes doubt and confusion. Provisions in other European Union's legislations have sometimes disregarded the need for fair competition enshrined in the TFEU.

The SERMI Delegated Regulation 2021/1244 has somehow clarified which technical information could be withheld on the ground of security (in the sense of anti-theft). It is echoed in the paragraph (65) of the 2023 Supplementary Guidelines. However, vehicle manufacturers sometimes have a very broad understanding of what falls within the scope of SERMI[5], while Point 2.1.3. of Appendix 3 in the Annex of Delegated Regulation 2021/1244 specifies that "'security-related repair and maintenance information' or 'security-related RMI' shall mean the information, software, functions and services required to repair and maintain the features that are included in a vehicle by the manufacturer to prevent the vehicle from being stolen or driven away and to enable the vehicle to be tracked and recovered". The fact that vehicle manufacturers claim they can withhold such information without taking into consideration the anti-competitive effect of doing so is highly problematic.

The ruling of the European Court of Justice in a case opposing German's aftermarket association GVA and Scania[6] confirmed that even where an item of technical information (in this case, the VIN) constitutes personal data, Article 61 (1) of the Type Approval Regulation 2018/858 constitutes a legal obligation for the purposes of Article 6(1)(c) of the General Data Protection Regulation 2016/679, allowing for the lawful processing and disclosure of the said item to independent operators. But here again, the fact that vehicle manufacturers can withhold the VIN without competition-law based compliance mechanisms is problematic.

The Euro 7 regulation 2024/1257 has introduced a similar principle as the new paragraph (62b) of the Supplementary Guidelines in its Article 4(9), stating that "Manufacturers shall not deny access on anti-tampering grounds to information, tools or processes required to develop, install and activate compatible aftermarket replacement parts meeting the technical requirements of the manufacturer unless they can demonstrate that withholding information, tools and processes in question is a proportionate means in addressing the antitampering concerns at issue." This is the result of amendments adopted by the European Parliament, showing that there are concerns that perfectly legitimate concerns could be misused or even abused to withhold information.

Recommendation

The Supplementary Guidelines should be extended to cover in a holistic manner other cases, beyond security, to underline that withholding essential inputs to address legitimate concerns should not be done lightly as it might have severe implications for competition. In particular, vehicle manufacturers should be entitled to withhold such items only in the case they can demonstrate that withholding the specific essential input at hand is a proportionate mean and the least restrictive measure to address legitimate concerns at issue.

[5] Examples available upon request

[6] European Court of Justice, C-319/22, 09.11.2023

Proposal

Supplementary Guidelines of 2023 – Paragraph (62b)	When considering withholding ~~on security grounds~~ a particular item that is essential for repair and maintenance, such as those belonging to the categories of input set out in paragraph 62 of these Guidelines, **on the grounds of legal requirements covering for example security, cybersecurity, anti-tampering, or data privacy,** parties should ~~assess whether~~ **be able to demonstrate that** withholding the item in question would be a proportionate means to address the ~~security~~ concerns at issue. They should therefore examine in particular whether less restrictive measures would suffice.

3. Extending the list of examples of technical information

Situation

In 2023, the European Commission rightfully expanded the list of examples of technical information to take into account new legislative developments (in particular the more recent Type Approval Regulation 2018/858) and new technological developments (in particular the uptake of ADAS and electric vehicles, and activation codes for replacement parts).

Issue

It remains difficult for independent operators to access some items of technical information which are essential to perform the servicing of vehicles.

The lack of calibration information, of granularity of the information (e.g. how to repair or replace a single cell instead of replacing the entire battery back, which is less economical and less ecological), and of safety information (e.g. chemical, electric, environmental and thermic hazards linked to batteries) is particularly hindering the servicing of the newest vehicles.

High cost of batteries

Source: KTI, ZDK

Manufacturer	Volkswagen	MG	Mercedes	Tesla
Model	ID.3	Marvel R	EQC	Model 3
Price of the vehicle	39.995€	39.487€	59.900€	35.705€
Price of the new battery	23.600€	53.121€	41.863€	11.597€
Price of a replacement battery	N/A	N/A	29.934€	5.798€

More generally, for all vehicles, the lack of access to maintenance schedules and to individual built-in features[7] renders the diagnostics and the repair and maintenance operations more difficult (and therefore more time-consuming and more costly).

Another issue lies with the updates and amendments[8] made by vehicle manufacturers to their databases of technical information. Currently, such updates and amendments are not notified to independent operators and not singled out, but simply embedded in the relevant website or portal without any warning. This is suitable for repairers who would consult the vehicle manufacturers' websites or portals for each individual service on each specific vehicle. However, this common practice is not suitable for independent operators upstream the value chain. They indeed access the vehicle manufacturers' websites or portals even before a vehicle arrives in a workshop, to build solutions which are ready to use for the repairers. Independent operators upstream the value chain have no visibility on which information was updated and when. By consequence, their multi-brand databases and independent spare parts catalogues risk not being up-to-date, causing possible errors and subsequently unnecessary safety, environmental performance and warranty problems. Today, keeping databases and catalogues up-to-date requires a constant and costly search for "needles in the haystack", and updates are generally found "randomly".

[7] Examples available upon request

[8] Examples available upon request

Recommendation

While it is important to keep an open definition that due to "technological progress […] the notion of technical information is fluid", an update of the list of explicit examples could help clarify that the provision of these items is not open to interpretation. The first thing would be to include directly in the Supplementary Guidelines the list of items of repair and maintenance information listed in Annex X of Type Approval Regulation (EU) 2018/858 (a potential Delegated Act, expected in the upcoming months, might update this list – additional items which would be included at this occasion should also be included in the revised Supplementary Guidelines). Another upgrade would be to include new items of technical information. It should also be made mandatory to proactively notify amendments to technical information.

For the purpose of readability, the entire paragraph 66 might also be rewritten as a list.

Proposal

Supplementary Guidelines of 2023—Paragraph (66)	Technological progress implies that the notion of technical information is 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, **information on software versions and updates (including those allowing for continued compatibility of spare parts with the vehicle), batteries' state of health, batteries' state of certified energy and batteries' state of certified range,** motor vehicle identification numbers or any other motor vehicle identification methods, **built-in and configurations individual features of the vehicle,** parts catalogues, **information for the smallest repairable or replaceable element of a larger system,** repair and maintenance procedures, working solutions resulting from practical experience and relating to problems typically affecting a given model or batch, **technical specifications about the vehicle (including engine power, torque, emission test values), information on the safe handling of vehicles and of their components against various hazards, service schedules, technical service bulletins,** 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 **or part number** and any other information necessary to identify**, install and activate** the correct car manufacturer-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)**, as well as calibration information and compatibility information for parts (in particular lubricants),** also constitute technical information (1), as do the activation codes ~~**needed**~~ **used** to install certain replacement parts. The relevant requirements and lists of items set out in Regulation (EU) 2018/858 **and its subsequent amendments (in particular technical specifications references regarding fluids including on lubricants, brake fluids and cooling liquids; service handbooks and maintenance records; technical manuals; component and diagnosis information (including minimal and maximal theoretical values for measurements); wiring diagrams (including fuses); diagnostic trouble codes; information provided concerning, and delivered by means of, proprietary tools and equipment; data record information and two-directional monitoring and test data; standard work units or time periods for repair and maintenance tasks if they are made available to authorised dealers and repairers of the manufacturer either directly or through a third party)** should also be used as a guide to what the Commission views as technical information for the purposes of applying Article 101 of the Treaty. **Amendments and updates to items of technical information constitute technical information and shall be proactively and precisely notified and described in detail to independent operators.** **For maintenance records to be meaningful, independent operators should have the possibility to update them with operations and potential changes to the initial configuration as performed during the servicing of vehicles.**

Or, as a list:

Supplementary Guidelines of 2023—Paragraph (66)	Technological progress implies that the notion of technical information is fluid. Currently, particular examples of technical information **to be used as a guide to what the Commission views as technical information for the purposes of applying Article 101 of the Treaty** 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, • **information on software versions and updates (including those allowing for continued compatibility of spare parts with the vehicle),** • **batteries' state of health, state of certified energy and state of certified range,** • motor vehicle identification numbers or any other motor vehicle identification methods, • **built-in and configurations individual features of the vehicle,** • parts catalogues, • **information for the smallest repairable or replaceable element of a larger system,** • repair and maintenance procedures, • working solutions resulting from practical experience and relating to problems typically affecting a given model or batch, • **technical specifications about the vehicle (including engine power, torque, emission test values)** • **information on the safe handling of vehicles and of their components against various hazards,** • **service schedules,** • **technical service bulletins** 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 **or part number** and any other information necessary to identify**, install and activate** the correct car manufacturer-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)**,** • **calibration information;** • **compatibility information for parts (in particular lubricants), and ~~also constitute technical information (1), as do the~~ activation codes ~~needed~~ used to install certain replacement parts.** • the relevant requirements and lists of items set out in Regulation (EU) 2018/858 **and its subsequent amendments, in particular technical specifications references regarding fluids including on lubricants, brake fluids and cooling liquids, service handbooks and maintenance records; technical manuals; component and diagnosis information (including minimal and maximal theoretical values for measurements); wiring diagrams (including fuses); diagnostic trouble codes; information provided concerning, and delivered by means of, proprietary tools and equipment; data record information and two-directional monitoring and test data; standard work units or time periods for repair and maintenance tasks if they are made available to authorised dealers and repairers of the manufacturer either directly or through a third party. ~~should also be used as a guide to what the Commission views as technical information for the purposes of applying Article 101 of the Treaty~~.** **Amendments and updates to items of technical information constitute technical information and shall be proactively and precisely notified and described in detail to independent operators.** **For maintenance records to be meaningful, independent operators should have the possibility to update them with operations and potential changes to the initial configuration as performed during the servicing of vehicles.**

4. Taking into account commercial and technical conditions to access to technical information

Situation

Independent operators should be able, as conveyed by both the MVBER and the Type Approval Regulation 2018/858, to access technical information from the vehicle manufacturers. The materialisation of this statutory right is usually dependent on a contractualisation of the relationship between both parties and materialises through the technical infrastructure put in place.

Issue

The terms imposed on independent operators do not ensure sufficient access that would meet the competition law standards, in particular:

- High flat and progressive fees, which have dramatically increased over the years[9];
- Restrictions on the customer basis of the independent operators[10];
- Restrictions on the possibility to use the information in some linguistic versions[11];
- Obligations to delete information received and paid for after expiry or termination of the agreement[12].

The same way, the technical conditions for accessing, searching and using the databases of technical information from the vehicle manufacturers are often preventing them from performing their specific job in the value chain:

- Search functions in a number of vehicle manufacturers' websites or portals for RMI are designed in a manner that is often unusable for independent operators at other levels of the supply chain than repairers, and in particular not suitable for the wholesale level of data publishers. Multi-brand publishers of technical information generally use these interfaces to search for the necessary RMI and/or for spare parts identification (SPI). However, in order to allow access, these online resources often require the Vehicle Identification Number (VIN) as an entry key, as prerequisite for any query. This VIN is only available when the car comes to a repair shop (i.e. at retail level). Although VINs should be available ex ante to all independent operators (according to legislation and caselaw), they are in practice often not available to independent operators operating upstream, such as publishers and distributors of spare parts, which are therefore severely restricted in the range of services they can offer. Alternative search methods (based for instance on the vehicle's description or on "product features") are sometimes not (or no longer) made available, and are often not as precise as VIN-based information[13].
- Moreover, vehicle manufacturers are now using Application Programming Interfaces (APIs) forcing independent operators to establish an electronic interface to their websites or portals. While these solutions are not an issue as such, the way they are used is actually hindering data publishers from competing effectively. Often, these APIs are designed in a manner that does not allow an online access to the entire database of the vehicle manufacturers, but it offers only a restricted "query-response" function to limited datasets preselected by the vehicle manufacturer. Moreover, the list of queries which can be performed is not necessarily communicated to independent operators, and by consequence they are not always in a position to know how to access the bits of technical information they would need. This is becoming even more problematic as some vehicle manufacturers try to impose such APIs as the only method of access to technical information for independent operators upstream the value chain, denying their right to other access methods such as the traditional webportal (as foreseen in article 61.2 of the Type Approval Regulation 2018/858).
- Publishers of multi-brand technical information databases often cannot retrieve RMI or SPI in a machine-readable and downloadable format. By consequence, automated data processing is not possible. The work is done manually, creating prohibitive and unnecessary overheads for independent operators and lead time for solutions to be developed.
- Vehicle manufacturers sometimes embed subsets of technical information (e.g. battery target values, diagnostic trouble codes) in different proprietary instruments and tools. For example, Diagnostic Trouble Codes (DTCs) are now embedded in their proprietary diagnostic tools or routines or in diagnostic information packages in a bundled form. Also, battery voltage target values are sometimes no longer made available, and often only the test result

[9] [10] [11] [12] [13] Examples available upon request

("good"/"bad") can be accessed via the proprietary tool of the car manufacturer[14]. Independent operators are therefore forced to purchase the (full) diagnostic information package, when the information they actually need could or should be available in the RMI package. As a result, critical technical information is not any longer made available for independent operators in an unbundled form and through suitable means. In a similar way, certain items of RMI are embedded in "service bulletins" and made available to the authorised network only. Moreover, information regarding dynamic maintenance plans and service schedules (i.e. information about when a service is due and on which vehicle features it has to be executed) are often not made available in a user-friendly and unencrypted manner. With ongoing technological developments, such restrictions will become increasingly problematic for the entire ecosystem of the independent automotive aftermarket. Independent operators need access to "raw" technical information in a complete and timely manner, and not via a proprietary product (e.g. a proprietary diagnostic tool) or service other than the central website or portal intended to this end or in the form of processed diagnostics test results. In general, access must include reference values and drawings (at least those, which are not based on other values or calculations within the vehicle, or are not related to the communication of a diagnostic tool or vehicle-specific identifiers), and which are technically suitable for extraction and publishing, regardless of their origin and purpose.

Recommendation

Without going into technical details, which are not within the remit of competition legislation, the Supplementary Guidelines should more clearly define general principles to highlight that some commercial and technical practices might be accounted as unlawful hindrances and restrictions of competition, or on the contrary might satisfy the requirements of competition law, confirming and complementing the principles of the 2007 Commitment decisions[15].

Proposal

Supplementary Guidelines of 2023 – Paragraph (67)	The way in which technical information is supplied is also important for assessing the compatibility of authorised repair agreements with Article 101 of the Treaty. Access should be given upon request and without undue delay, the information should be provided in a usable form, and the **reasonable and proportionate** price charged should not discourage access to it by failing to take into account the extent to which the independent operator uses the information **or otherwise deter independent operators from accessing the information. The remuneration should be based on the costs of providing access, but can exceed such costs to a limited extent, provided it does not discourage access.** 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. **As a general rule, in order to cater for the specific needs of independent operators competing at different levels of the aftermarket supply chain, vehicle manufacturers should ensure access to technical information in a granularity and format suitable for the intended usage, allowing independent operators to develop their own unique multi-brand solutions. There should be no dependency, unless technically justified, on information or processes embedded in the vehicle, the vehicle manufacturer's diagnostic tools, its product or services. All technical information should be made available in a proportionate and unbundled form, even where authorised repairers receive it only as elements embedded in brand-specific tools, and should not be made dependent on the purchase of a diagnostic tool or a vehicle supplier's product or service. Technical information and spare parts identification information should be provided in electronically accessible, machine-readable, downloadable and processable form through adequate arrangements ensuring that the provision of such information is proportionate to specific independent operators' needs. Updates should be appropriately singled out in the supplier's websites/portals and be proactively communicated or made visible in separate resources (e.g. specific webpages or separate lists), so as to enable all independent operators, in particular publishers, to keep relevant databases and catalogues up-to-date, and constantly reliable and accurate.** **Search functions and interfaces allowing an online consultation of the supplier's technical information websites/portals should be designed in a manner that is usable and searchable for all independent operators and their specific activities at the relevant levels of the aftermarket supply chain.** Article 101 of the Treaty does not, however, oblige a supplier to provide technical information in a standardised format or through a defined technical system, such as standard EN ISO 18541 – 2014 or any format or technical system provided for by Commission Regulation (EC) No 295/2009 of 18 March 2009 concerning the classification of certain goods in the Combined Nomenclature (2).

[14] Examples available upon request

[15] European Commission, Decisions COMP/E-2/39.140, COMP/E-2/39.141, COMP/E-2/39.142, COMP/E-2/39.143, 13.09.2007

5. Fitting the list of examples of essential inputs to telematics

Situation

Aftermarket services require interaction with the vehicle, not just observation. Vehicle-generated data allows for insights, but not actions. For example:

- A remote diagnostic service can detect an issue, but cannot reset a fault code or trigger a calibration;
- A fleet management system can see a door is unlocked, but cannot lock it remotely;
- A service provider might detect low tire pressure, but cannot trigger a driver alert on the dashboard.

Without access to in-vehicle functions and resources, the aftermarket provider must rely on the driver to act, which reduces automation, convenience, and service quality. Under such circumstances aftermarket providers cannot compete effectively, as they cannot exert competitive pressure on vehicle manufacturers and their authorised networks.

Access to in-vehicle functions and resources would give independent operators the ability to interact with and control certain aspects of the vehicle, such as:

- Resetting or clearing diagnostic trouble codes (DTCs);
- Sending alerts to the driver via the infotainment system;
- Triggering over-the-air (OTA) software updates;
- Remotely unlocking/locking doors or immobilising the vehicle;
- Activating cabin pre-conditioning (e.g. heating or cooling);
- Using the in-vehicle network (e.g. CAN bus) to run diagnostics or modify settings.

These are essential for:

- Delivering actionable services (e.g. predictive maintenance that also schedules service);
- Improving user experience (e.g. direct alerts in the car, not just via phone apps);
- Enabling automation (e.g. autonomous fleet management);
- Ultimately, levelling the playing field with vehicle manufacturers, who already use these capabilities in their own services;
- Ensuring the continuous roadworthiness of the vehicles, in particular its safety (e.g. low pressure in the tire) and its environmental performance.

Issue

In 2023, the European Commission rightfully included vehicle-generated data in the list of examples of essential inputs required by independent operators mentioned in the paragraph (62) of the Supplementary Guidelines, as well as a dedicated paragraph (67a). However, this is only one aspect of the wider competition issue created by telematics. Access to in-vehicle functions and resources is as important for independent operators to be able to exert competitive pressure on vehicle manufacturers and their networks (e.g. by being to contact autonomously their customers), but is currently not covered by the MVBER.

A 2019 report alerted that lack of competition for the provision of such services, due to a proprietary telematic systems, would have an enormous cost for the consumers: “consumers would have to carry the burden of a spend increase by €15 billion in 2025 or an additional 9% compared to today. A further increase to €32 billion annual loss for consumers is expected by 2030.”[16]

[16] Quantalyse & Schönenberger Advisory Services, *The automotive digital transformation and the economic impacts of existing data access models*, 03.2019

Recommendation

In-vehicle functions and resources should be included in the list of examples of essential inputs to be made available to independent operators. It is necessary for competition law to remedy this issue, especially as the announced Guidance on the Data Act for the automotive aftermarket is likely to focus on data only (and not on in-vehicle functions and resources) and as there is no set timeline for a potential sector-specific legislation envisaged in the Action Plan for the Automotive Sector[16].

Proposal

Supplementary Guidelines of 2023 – Paragraph (62)	Purely qualitative selective distribution may fall outside the scope of Article 101(1) of the Treaty provided that the three conditions set out in paragraph 43 of these Guidelines are met. This being said, qualitative selective distribution agreements concluded with authorised repairers and/ or parts distributors may be caught by Article 101(1) of the Treaty if, within the context of those agreements, one of the parties acts in a way that forecloses independent operators from the market, for instance by failing to release to them inputs such as technical information, tools, training, ~~and~~ vehicle-generated data **and in-vehicle functions and resources**, that are essential for repair and maintenance. In that context, the notion of independent operators includes independent repairers, **remote service providers,** spare parts manufacturers and distributors, manufacturers and distributors of repair equipment or tools, publishers of technical information and publishers of vehicle-generated data, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers.
Supplementary Guidelines of 2023 – Paragraph (67a)	To the extent that vehicle-generated data **and in-vehicle functions and resources** ~~is~~ **are** essential for repair and maintenance, the considerations set out in paragraphs 62 to 67 of these Guidelines also apply to its availability for independent operators. To determine whether a particular item of vehicle-generated data constitutes an essential input for repair and maintenance activities, the criteria set out in paragraph 62a of these Guidelines are to be taken into account. In this context, existing standards and the relevant requirements of Regulation (EU) 2018/858 should be used as a guide (3).

6. Improving the provisions on warranty

Situation

One of the most tangible impacts and a direct benefit for consumers of the MVBER regime is the possibility to use the services of the independent aftermarket for non-warranty work during the warranty period.

The Supplementary Guidelines emphasise that vehicle manufacturers may not normally condition warranties on the vehicle being exclusively serviced by authorised repairers, or exclusively with parts of a particular brand. Even during the warranty period, a consumer should be free to choose an independent repairer and aftermarket parts. As several NCAs have observed in response to recent consultations from the European Commission[17], these guidelines are helpful for competition and consumer choice.

Issue

However, respondents to public consultations have also underlined that misuse of warranties is still a common restriction in the European Union:

- Almost 40% of all vertical restrictions identified by the NCAs in their enforcement activities are related to abuses of warranties;
- 49% of respondents to the public consultation indicated that they had encountered this restriction in their agreements;
- This restriction features in the top three alleged vertical restrictions complained of to the Commission in the decade preceding the public consultation;
- Out of 41 respondents that stated to have encountered this type of restriction, 23 declared that the dispute had been solved through - sometime complex and time-consuming - negotiations, and 8 said that the dispute had gone to court. In 5 cases, the relevant court found a breach of EU competition law.

Several NCAs reported that consumers seem generally reluctant to use the services of an independent repairer during the warranty period or warranty extension period, as vehicle manufacturers or their importers and members of their

[17] European Commission, *Evaluation Report on the operation of the Motor vehicle Block Exemption Regulation (EU) No 461/2010 & Staff Working Document accompanying the Evaluation Report*, 28.05.2021

authorised networks convey, either directly or indirectly, the message that the warranty would be void if the repair and maintenance work was carried out outside the authorised repair networks.

NCAs also emphasised that the current Guidance given on the misuse of warranties is not clear enough regarding complex warranty conditions or long warranty periods steering vehicle owners towards authorised repairers. It is in line with their opinion that the SGL could be clearer "as regards the distinction between legal (statutory) warranties, extended (contractual) warranties, and warranty extensions (often issued in combination with maintenance contracts)".

Additionally, certain NCAs indicated that it is not clear whether authorised repairers may legitimately refuse to honour the manufacturer's warranty on a whole element of a vehicle, if an alternative brand of spare parts has been used to replace a particular part of that system.

Finally, they stressed that the clauses contained in all the documents proposed to consumers by vehicle manufacturers and/or their authorised dealers or repairers (including for second-hand vehicles) should clearly state the consumer's right to use the services of an independent repairer without losing the benefit of the warranty.

Despite these numerous issues highlighted during the previous round of evaluation and the request of National Competition Authorities to get additional guidance, the provisions on warranty in the Supplementary Guidelines from 2010 were not updated.

There is also the risk that a vehicle manufacturer could refuse to honour a warranty claim on the ground 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, which itself results from the vehicle manufacturer restricting access to essential inputs such as captive parts or updated technical information. In other words, hindering independent operators from accessing essential inputs is a way to make warranty conditions anticompetitive.

Recommendation

The dedicated paragraph of the Supplementary Guidelines should be updated to tackle uncertainties raising for example from the deployment of extended warranties. It could also be envisaged that being part of a selective distribution system comes with requirements in terms of sharing of information regarding warranties. Vehicle manufacturers should also be incentivised to respect their obligations under the MVBER regime if they wish to be able to refuse honouring a warranty claim.

Proposal

Supplementary Guidelines of 2023 – Paragraph (69)	Qualitative selective distribution agreements may also be caught by Article 101(1) of the Treaty if the supplier and the members of its authorised network explicitly or implicitly reserve repairs on certain categories of motor vehicles to the members of the authorised network. This might happen, for instance, if the manufacturer's warranty **on a vehicle or on one or more of its components** vis-à-vis the buyer, whether legal or extended **in terms of duration, scope or otherwise**, is made conditional on the end user having repair and maintenance work that is not covered by warranty carried out only within the authorised repair networks. The same applies to warranty conditions which require the use of the manufacturer's brand of spare parts **or the use of another specific brand** in respect of replacements not covered by the warranty terms. 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 exception in Article 101(3) of the Treaty. **The same applies if end-users are led to believe that the warranty, wherever stipulated and in whatever form, will be invalidated if the work is carried out by an independent operator or by using independent spare parts. The fact that the servicing or parts restrictions are not set out in the vehicle supplier's warranty but are instead found in an extended warranty issued by the authorised network or arranged through a third party will not generally alter the assessment. The decisive element is whether the servicing or parts restriction, whether conveyed directly or indirectly, is a factor within the control of one or more of the parties to the network of selective distribution agreements.** However, if a supplier legitimately refuses 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, this will have no bearing on the compatibility of the supplier's repair agreements with the competition rules**, with the exception of the case where such failure from the independent operator is linked to the non-compliance of the vehicle manufacturer with its obligations under the MVBER**.

	The same principles apply where other benefits related to the malfunctioning of a part or vehicle, such as towing services, the provision of a replacement vehicle and other benefits commonly referred to as "mobility warranties", are made conditional on regular servicing or accident repair being undertaken within the authorised network or the use of certain spare parts for regular servicing or accident repair. **Vehicle manufacturers should duly inform vehicle purchasers, in the relevant sales contracts and user manuals, by placing prominently a notice clarifying that the warranty applies irrespective of the choice of vehicle owners to have regular servicing or accident repair work undertaken at an authorised or an independent workshop, during any statutory or contractual warranty period. Moreover, in order to ensure a consistent behaviour by all member of authorised repairer networks, all members of such networks should be obliged to duly inform the vehicle manufacturer about any denial of warranty and the latter should assist them in ensuring that the reasons used for such a denial are justified and compliant with the MVBER-regime.**

7. Giving the same protection to two-wheelers

Situation

Like motor vehicles, motorised two-wheelers are costly and complex products designed for use over a long period of time, during with they require regular servicing, maintenance and repair. Motorcycles are used not just for pleasure, but for the daily business commute (especially in urban areas in France, Italy, and Spain) and for commercial purposes (such as food delivery).

Issue

Regulation and the trend towards electric mobility have driven up the complexity and cost of two-wheelers; their suppliers enjoy high shares in the markets for spare parts and are the only original source for technical information. However, they are currently not covered by the Motor Vehicle Block Exemption Regulation.

Recommendation

Very similar reasons that have led the European Commission to enact a sector-specific regulation for motor vehicles justify corresponding rules for two-wheelers also. The easiest way to do so would be to include powered two-wheelers in the scope of the Motor Vehicle Block Exemption Regulation. The overlap in the involved stakeholders (vehicle manufacturers on one hand, independent aftermarket on the other hand) for two-wheelers and three or four-wheelers would make it easy for them to rapidly and efficiently apply rules that they already know.

Proposal

Regulation of 2010 – Article 1.1. (g)	'motor vehicle' means a self-propelled vehicle intended for use on public roads and having ~~three~~ **two** or

8. Covering republishers as independent operators

Situation

Republishers of technical information play a resembling role as publishers by providing a single, multi-brand access to technical information. While they do not modify the technical information received from vehicle manufacturers (unlike publishers who rework the wording, the graphic design, add their own knowledge, etc.), they also restructure this information for their customers to be able to perform efficient searches based on the same search method across all brands (like publishers). Their role is therefore important.

Issue

Republishers face the same issues and challenges in accessing technical information from the vehicle manufacturers. However, they are not explicitly mentioned in the Supplementary Guidelines and therefore are less well protected against restrictions on access to technical information. In some extreme cases, vehicle manufacturers even refuse to give them access to some items of technical information, or even to engage entirely with them[18].

Recommendation

The republishers should be mentioned in the list of examples of independent operators.

Proposal

Supplementary Guidelines of 2023 – Paragraph (62)	Purely qualitative selective distribution may fall outside the scope of Article 101(1) of the Treaty provided that the three conditions set out in paragraph 43 of these Guidelines are met. This being said, qualitative selective distribution agreements concluded with authorised repairers and/ or parts distributors may be caught by Article 101(1) of the Treaty if, within the context of those agreements, one of the parties acts in a way that forecloses independent operators from the market, for instance by failing to release to them inputs such as technical information, tools, training and vehicle-generated data, that are essential for repair and maintenance. In that context, the notion of independent operators includes independent repairers, spare parts manufacturers and distributors, manufacturers and distributors of repair equipment or tools, publishers **and republishers** of technical information and publishers **and republishers** of vehicle-generated data, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers.

9. Giving long-term perspectives

Situation

The MVBER is a well-established regime which has guided competition between vehicle manufacturers and their networks on one side, and the independent aftermarket on the other side, for nearly four decades.

Issue

The last renewal of the MVBER, in 2023, for five years only, has raised questions in the market as to whether the European Commission intended to maintain the MVBER beyond 2028, with companies in the independent aftermarket facing doubts as to their ability to continue innovating and competing if this were not the case. Market operators need stability and foreseeability.

Recommendation

The future MVBER should be prolonged for 15 years. It would offer legal certainty and business clarity to the entire market. Potential market developments (e.g. commercial practices and technological processes) could always be temporarily addressed at a later stage, if needed, via an update of the FAQ document, before being echoed in a post-2043 MVBER regime.

Proposal

Regulation of 2010 – Article 8 (period of validity)	This Regulation shall enter into force on 1 June 2010. It shall expire on 31 May **2043**.

[18] Examples available upon request

10.Facilitating monitoring and enforcement

Situation

Effective and regular monitoring as well as timely and deterrent enforcement are key to secure compliance from the stakeholders with the spirit and the letter of the MVBER regime.

Issue

Enforcement activities under the MVBER regime are difficult for the independent operators, as:

- They are or want to be in a business relation with the vehicle manufacturers and want to avoid potential retaliation;
- Their time and financial constraints are stricter, and they might lack the necessary skills and resources to collect the detailed evidence that is usually required by competition authorities to initiate a formal investigation;
- Due to the local dimension of automotive aftermarkets, individual competition issues typically materialise within a limited geographic territory and have a limited economic impact, not reaching the requirements set by competition authorities to initiate a formal investigation.

This explains why only a limited number of cases have been brought forward until now.

Recommendation

Due to the practice and processes for enforcement mechanisms being in the remit of Regulation 1/2003 and Directive 2019/1, the Supplementary Guidelines might not be amended to include guidance on the systematic and rapid handling of complaints, based on similar provisions detailed in Article 65(3) of the Type Approval Regulation 2018/858, which would have enabled to increase legal coherence, certainty and deterrence against non-compliance or loose interpretation.

However, the European Commission could revise its practices outside of the MVBER text, in particular to acknowledge the role of trade associations acting as umbrellas and to foresee a mechanism for systematic exchange of information between competition authorities to monitor how individual cases might depict a larger, more systemic issue.

Proposal

Regulation of 2010 – Article 7 (monitoring and evaluation report)	The Commission will monitor the operation of this Regulation and draw up a report on its operation by 31 May **2041** at the latest, having regard in particular to the conditions set out in Article 101(3) of the Treaty.
New processes for competition authorities (European Commission and NCAs)	**Where an independent operator or a trade association representing independent operators files a complaint to a national competition authority on the failure of the manufacturer or of a member of its selective distribution system to comply with this Regulation and its Supplementary Guidelines, the national competition authority shall carry out an audit in order to verify compliance by the manufacturer or the member of its selective distribution system. The results of that audit shall be communicated to the independent operator or trade association concerned within two months of the request.** **In case of overlap between the requirements of this Regulation and these of Regulation (EU) 2018/858 and its subsequent amendments, the national competition authority shall request the approval authority that granted the whole vehicle type-approval to investigate the complaint and subsequently to ask for evidence from the vehicle manufacturer demonstrating that the system that the vehicle manufacturer has in place is in compliance with these requirements. The results of that investigation shall be communicated to the national competition authority and the independent operator or trade association concerned within three months of the request.** **The European Commission and National Competition Authorities should exchange annually, within the European Competition Network, on cases brought to them by independent operators or their trade associations, and their response to these cases, relevant to the Motor Vehicle Block Exemption Regulation. In case of converging individual cases which haven't be taken up by one or more National Competition Authorities for further investigation, the European Commission might decide to open an investigation on the questioned practice.**

Conclusion: Maintaining and modernising the MVBER regime

The European Commission has a rare opportunity to concretely and significantly improve the effectiveness of competition in a sector impacting directly every European household, as well as businesses and public authorities: the cost of road mobility and of the operation of vehicles over their lifetime.

Commercial and technical practices and developments, whether ancient or new, justify to not only maintain the principles of the MVBER regime, but also to modernise its details. Targeted updates in the Regulation and in the Supplementary Guidelines would improve legal certainty, innovation and competition.

This is in particular true for access to essential inputs in general, and to technical information in particular. Considering the increasing complexity of vehicles, having access to reliable and affordable technical information is key to ensure the continuous roadworthiness of vehicles.

With a view to competition in the entire aftermarket, beyond the provision of technical information as an essential input, ADPA also supports any other measure improving effective competition between vehicle manufacturers and their authorised networks and the independent operators at all the levels of the value chain, e.g. strengthening rules against anti-competitive warranty conditions and facilitating the trade of spare parts and the use of multi-brand tools.

As Executive Vice-President Teresa Ribera perfectly summarised in her first public speech as Executive Vice-President of the European Commission in charge of competition:

> "Competition policy has played a fundamental role in shaping the Single Market. […] For decades, this approach has delivered remarkable results. […]
>
> But nothing remains immutable. […] We need to rethink all of our tools and how we use them, to make sure they are fit for the new realities. […]
>
> It doesn't mean of throw away the compass [of competition], on the contrary, we need to modernise it. […] We should keep the core principles of fairness, openness, and efficiency, but adapt them to meet today's market realities. This means making sure competition rules support the European economy in the clean and digital transitions. […] Shielding our companies from competition would be a trap. It would raise prices, reduce consumer choice, and weaken our companies in the long run. […]
>
> If we want investors to put up their money, they need to feel that the market is fair, stable, and predictable. […] That's why the first and main incentive for private investment is confidence in a competitive market over the long term. So, competing on the merits, to invest, take risks, and innovate. […]
>
> Platforms and big tech companies play a central role in our economy. Some of these platforms have become gatekeepers, controlling access to customers, data, and market opportunities. […]
>
> And we, as regulators, enforcers, and policymakers, must keep up. If our enforcement decisions come after the market has already shifted, then our intervention loses its impact. If businesses are left in the dark for too long, they will lose trust, and investment will go elsewhere."

A concrete, tangible materialisation of these essential principles would be to maintain and modernise the MVBER regime.

Annex 1 - Proposed, consolidated amendments

To the Motor Vehicle Block Exemption Regulation 461/2010

Article 1.1.g (definitions)	'motor vehicle' means a self-propelled vehicle intended for use on public roads and having ~~three~~ **two** or more road wheels;
Article 5 (restrictions that remove the benefit of the block exemption — hardcore restrictions)	The exemption provided for in Article 4 shall not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object: (a) the restriction of the sales of spare parts for motor vehicles by members of a selective distribution system to independent repairers which use those parts for the repair and maintenance of a motor vehicle; (b) the restriction, agreed between a supplier of spare parts, repair tools or diagnostic or other equipment and a manufacturer of motor vehicles, of the supplier's ability to sell those goods to authorised or independent distributors or to authorised or independent repairers or end users; (c) the restriction, agreed between a manufacturer of motor vehicles which uses components for the initial assembly of motor vehicles and the supplier of such components, of the supplier's ability to place its trade mark or logo effectively and in an easily visible manner on the components supplied or on spare parts~~.~~**;** **(d) the restriction of the access of independent operators to essential inputs.**
Article 7 (monitoring and evaluation report)	The Commission will monitor the operation of this Regulation and draw up a report on its operation by 31 May **2041** at the latest, having regard in particular to the conditions set out in Article 101(3) of the Treaty.
Article 8 (period of validity)	This Regulation shall enter into force on 1 June 2010**.** It shall expire on 31 May **2043**.

To the Supplementary Guidelines to the MVBER 2023/822

Paragraph 62	Purely qualitative selective distribution may fall outside the scope of Article 101(1) of the Treaty provided that the three conditions set out in paragraph 43 of these Guidelines are met. This being said, qualitative selective distribution agreements concluded with authorised repairers and/ or parts distributors may be caught by Article 101(1) of the Treaty if, within the context of those agreements, one of the parties acts in a way that forecloses independent operators from the market, for instance by failing to release to them inputs such as technical information, tools, training**,** ~~**and**~~ vehicle-generated data **and in-vehicle functions and resources**, that are essential for repair and maintenance. In that context, the notion of independent operators includes independent repairers, **remote service providers,** spare parts manufacturers and distributors, manufacturers and distributors of repair equipment or tools, publishers **and republishers** of technical information and publishers **and republishers** of vehicle-generated data, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers.
Paragraph (62b)	When considering withholding ~~**on security grounds**~~ a particular item that is essential for repair and maintenance, such as those belonging to the categories of input set out in paragraph 62 of these Guidelines, **on the grounds of legal requirements covering for example security, cybersecurity, anti-tampering, or data privacy,** parties should ~~**assess whether**~~ **be able to demonstrate that** withholding the item in question would be a proportionate means to address the ~~**security**~~ concerns at issue. They should therefore examine in particular whether less restrictive measures would suffice.

Paragraph (66)

Technological progress implies that the notion of technical information is 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, **information on software versions and updates (including those allowing for continued compatibility of spare parts with the vehicle), batteries' state of health, batteries' state of certified energy and batteries' state of certified range,** motor vehicle identification numbers or any other motor vehicle identification methods, **built-in and configurations individual features of the vehicle,** parts catalogues, **information for the smallest repairable or replaceable element of a larger system,** repair and maintenance procedures, working solutions resulting from practical experience and relating to problems typically affecting a given model or batch, **technical specifications about the vehicle (including engine power, torque, emission test values), information on the safe handling of vehicles and of their components against various hazards, service schedules, technical service bulletins,** 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 **or part number** and any other information necessary to identify**, install and activate** the correct car manufacturer-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)**, as well as calibration information and compatibility information for parts (in particular lubricants),** also constitute technical information (1), as do the activation codes ~~**needed**~~ **used** to install certain replacement parts. The relevant requirements and lists of items set out in Regulation (EU) 2018/858 **and its subsequent amendments (in particular technical specifications references regarding fluids including on lubricants, brake fluids and cooling liquids; service handbooks and maintenance records; technical manuals; component and diagnosis information (including minimal and maximal theoretical values for measurements); wiring diagrams (including fuses); diagnostic trouble codes; information provided concerning, and delivered by means of, proprietary tools and equipment; data record information and two-directional monitoring and test data; standard work units or time periods for repair and maintenance tasks if they are made available to authorised dealers and repairers of the manufacturer either directly or through a third party)** should also be used as a guide to what the Commission views as technical information for the purposes of applying Article 101 of the Treaty.

Amendments and updates to items of technical information constitute technical information and shall be proactively and precisely notified and described in detail to independent operators.

For maintenance records to be meaningful, independent operators should have the possibility to update them with operations and potential changes to the initial configuration as performed during the servicing of vehicles.

Paragraph (66)

(same content as previously, but presented as a list for better readability)

Technological progress implies that the notion of technical information is fluid. Currently, particular examples of technical information **to be used as a guide to what the Commission views as technical information for the purposes of applying Article 101 of the Treaty** 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,
- **information on software versions and updates (including those allowing for continued compatibility of spare parts with the vehicle),**
- **batteries' state of health, state of certified energy and state of certified range,**
- motor vehicle identification numbers or any other motor vehicle identification methods,
- **built-in and configurations individual features of the vehicle,**
- parts catalogues,
- **information for the smallest repairable or replaceable element of a larger system,**
- repair and maintenance procedures,
- working solutions resulting from practical experience and relating to problems typically affecting a given model or batch,
- **technical specifications about the vehicle (including engine power, torque, emission test values)**
- **information on the safe handling of vehicles and of their components against various hazards,**
- **service schedules,**
- **technical service bulletins** 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 **or part number** and any other information necessary to identify**, install and activate** the correct car manufacturer-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)**,**
- **calibration information;**
- **compatibility information for parts (in particular lubricants), and ~~also constitute technical information (1), as do the~~ activation codes ~~needed~~ used to install certain replacement parts.**
- the relevant requirements and lists of items set out in Regulation (EU) 2018/858 **and its subsequent amendments, in particular technical specifications references regarding fluids including on lubricants, brake fluids and cooling liquids, service handbooks and maintenance records; technical manuals; component and diagnosis information (including minimal and maximal theoretical values for measurements); wiring diagrams (including fuses); diagnostic trouble codes; information provided concerning, and delivered by means of, proprietary tools and equipment; data record information and two-directional monitoring and test data; standard work units or time periods for repair and maintenance tasks if they are made available to authorised dealers and repairers of the manufacturer either directly or through a third party. ~~should also be used as a guide to what the Commission views as technical information for the purposes of applying Article 101 of the Treaty~~.**

Amendments and updates to items of technical information constitute technical information and shall be proactively and precisely notified and described in detail to independent operators.

For maintenance records to be meaningful, independent operators should have the possibility to update them with operations and potential changes to the initial configuration as performed during the servicing of vehicles.

Paragraph (67)

The way in which technical information is supplied is also important for assessing the compatibility of authorised repair agreements with Article 101 of the Treaty. Access should be given upon request and without undue delay, the information should be provided in a usable form, and the **reasonable and proportionate** price charged should not discourage access to it by failing to take into account the extent to which the independent operator uses the information **or otherwise deter independent operators from accessing the information**. **The remuneration should be based on the costs of providing access, but can exceed such costs to a limited extent, provided it does not discourage access.** 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.

As a general rule, in order to cater for the specific needs of independent operators competing at different levels of the aftermarket supply chain, vehicle manufacturers should ensure access to technical information in a granularity and format suitable for the intended usage, allowing independent operators to develop their own unique multi-brand solutions. There should be no dependency, unless technically justified, on information or processes embedded in the vehicle, the vehicle manufacturer's diagnostic tools, its product or services. All technical information should be made available in a proportionate and unbundled form, even where authorised repairers receive it only as elements embedded in brand-specific tools, and should not be made dependent on the purchase of a diagnostic tool or a vehicle supplier's product or service. Technical information and spare parts identification information should be provided in electronically accessible, machine-readable, downloadable and processable form through adequate arrangements ensuring that the provision of such information is proportionate to specific independent operators' needs. Updates should be appropriately singled out in the supplier's websites/portals and be proactively communicated or made visible in separate resources (e.g. specific webpages or separate lists), so as to enable all independent operators, in particular publishers, to keep relevant databases and catalogues up-to-date, and constantly reliable and accurate.

Search functions and interfaces allowing an online consultation of the supplier's technical information websites/portals should be designed in a manner that is usable and searchable for all independent operators and their specific activities at the relevant levels of the aftermarket supply chain. Article 101 of the Treaty does not, however, oblige a supplier to provide technical information in a standardised format or through a defined technical system, such as standard EN ISO 18541 – 2014 or any format or technical system provided for by Commission Regulation (EC) No 295/2009 of 18 March 2009 concerning the classification of certain goods in the Combined Nomenclature (2).

Paragraph (67a)

To the extent that vehicle-generated data **and in-vehicle functions and resources** ~~**is**~~ **are** essential for repair and maintenance, the considerations set out in paragraphs 62 to 67 of these Guidelines also apply to its availability for independent operators. To determine whether a particular item of vehicle-generated data constitutes an essential input for repair and maintenance activities, the criteria set out in paragraph 62a of these Guidelines are to be taken into account. In this context, existing standards and the relevant requirements of Regulation (EU) 2018/858 should be used as a guide (3).

Paragraph (69)

Qualitative selective distribution agreements may also be caught by Article 101(1) of the Treaty if the supplier and the members of its authorised network explicitly or implicitly reserve repairs on certain categories of motor vehicles to the members of the authorised network. This might happen, for instance, if the manufacturer's warranty **on a vehicle or on one or more of its components** vis-à-vis the buyer, whether legal or extended **in terms of duration, scope or otherwise**, is made conditional on the end user having repair and maintenance work that is not covered by warranty carried out only within the authorised repair networks. The same applies to warranty conditions which require the use of the manufacturer's brand of spare parts **or the use of another specific brand** in respect of replacements not covered by the warranty terms. 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 exception in Article 101(3) of the Treaty.

The same applies if end-users are led to believe that the warranty, wherever stipulated and in whatever form, will be invalidated if the work is carried out by an independent operator or by using independent spare parts. The fact that the servicing or parts restrictions are not set out in the vehicle supplier's warranty but are instead found in an extended warranty issued by the authorised network or arranged through a third party will not generally alter the assessment. The decisive element is whether the servicing or parts restriction, whether conveyed directly or indirectly, is a factor within the control of one or more of the parties to the network of selective distribution agreements.

However, if a supplier legitimately refuses 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, this will have no bearing on the compatibility of the supplier's repair agreements with the competition rules**, with the exception of the case where such failure from the independent operator is linked to the non-compliance of the vehicle manufacturer with its obligations under the MVBER**.

The same principles apply where other benefits related to the malfunctioning of a part or vehicle, such as towing services, the provision of a replacement vehicle and other benefits commonly referred to as "mobility warranties", are made conditional on regular servicing or accident repair being undertaken within the authorised network or the use of certain spare parts for regular servicing or accident repair.

Vehicle manufacturers should duly inform vehicle purchasers, in the relevant sales contracts and user manuals, by placing prominently a notice clarifying that the warranty applies irrespective of the choice of vehicle owners to have regular servicing or accident repair work undertaken at an authorised or an independent workshop, during any statutory or contractual warranty period. Moreover, in order to ensure a consistent behaviour by all member of authorised repairer networks, all members of such networks should be obliged to duly inform the vehicle manufacturer about any denial of warranty and the latter should assist them in ensuring that the reasons used for such a denial are justified and compliant with the MVBER-regime.

Annex 2 - Used acronyms

ACEA Association des Constructeurs Européens d'Automobiles

ADPA Automotive Data Publishers' Association

API Application Programming Interface

CAN Controller Area Network

DTC Diagnostic Trouble Code

HICP Harmonised Index of Consumer Prices

GDV Gesamtverband der Deutschen Versicherungswirtschaft

IAM Independent Automotive Aftermarket

MVBEO Motor Vehicle Block Exemption Order

MVBER Motor Vehicle Block Exemption Regulation

NCA National Competition Authority

OTA Over the Air

RMI Repair and Maintenance Information

SERMI Security related Repair and Maintenance Information

SGL Supplementary Guidelines

SMEs Small and Medium Enterprises

SPI Spare Parts Identification

TAR Type Approval Regulation

TFEU Treaty on the Functioning of the European Union

VBER Vertical Block Exemption Regulation

VIN Vehicle Identification Number

ZDK Deutsches Kraftfahrzeuggewerbe

Annex 3 - References

Reports & studies

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About ADPA Members

ADPA Members are worldwide pioneers and leaders for the repairability of increasingly complex goods providing aggregated, harmonised, intelligible and ready-to-use technical information for the repair, maintenance and servicing of over 280 million vehicles from more than 40 different manufacturers on European roads ensuring their roadworthiness, safety and environmental performance over their lifetime in a reliable, timely and affordable way.

About ADPA - Automotive Data Publishers' Association

ADPA, the Automotive Data Publishers' Association, aims to ensure fair access to automotive data and information needed for servicing, repairing and maintaining road vehicles.

It advocates for international, European and national legislations maintaining and improving competition and consumers' choice in the automotive aftermarket by preventing or limiting the establishment of brand-specific monopolies.

Founded in 2016 and based in Brussels, ADPA is a Member of AFCAR, the Alliance for the Freedom of Car Repair in the European Union, and FAAS, the Forum on Automotive Aftermarket Sustainability.

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