



***competition* commission**
south africa

**CODE OF CONDUCT FOR COMPETITION IN THE SOUTH
AFRICAN AUTOMOTIVE INDUSTRY**

AS AT 01 AUGUST 2018

FINAL DRAFT

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FINAL DRAFT

1. PREAMBLE

- 1.1 This is a voluntary Code of Conduct (“Code”) aimed at promoting competition in the South African automotive industry. This Code has been drafted by the Competition Commission of South Africa (“Commission”), in consultation and with input from stakeholders in the automotive industry.
- 1.2 The signatories to this Code commit to the advancement of the objectives of the Competition Act No. 89 of 1998, as amended, (“Act”), which are:
- 1.2.1 to promote the efficiency, adaptability and development of the economy;
 - 1.2.2 to provide consumers with competitive prices and product choices;
 - 1.2.3 to promote employment and advance the social and economic welfare of South Africans;
 - 1.2.4 to expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;
 - 1.2.5 to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and
 - 1.2.6 to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged individuals.

2. PURPOSE AND OBJECTIVES OF THE CODE OF CONDUCT

- 2.1. The Code is directed at addressing constraints to competition in the automotive aftermarket industry. The specific objectives of the Code are:

- 2.1.1. to lower barriers to entry and ensure that a greater number of firms have an opportunity to undertake in-warranty service and maintenance work, in-warranty mechanical repairs, and in-warranty motor vehicle body repairs;
 - 2.1.2. to promote greater ownership of dealerships and other business in the automotive sector by historically disadvantaged individuals;
 - 2.1.3. to increase consumer choice and facilitate competition and competitive pricing in the markets for:
 - 2.1.3.1. new vehicles
 - 2.1.3.2. spare parts
 - 2.1.3.3. value-added products;
 - 2.1.4. to increase transparency and facilitate consumer choice in relation to the service, maintenance, mechanical and motor-body repairs of vehicles.
- 2.2. The Code seeks to achieve these objectives by, *inter alia*:
- 2.2.1. widening the pool of approved service providers who can undertake in-warranty service and maintenance work, in-warranty mechanical repairs, and in-warranty motor-body repairs;
 - 2.2.2. ensuring that independent service providers can undertake in-warranty service and maintenance work and in-warranty motor-body repairs;
 - 2.2.3. allowing for greater consumer choice and product competition in the retail of service plans and/or maintenance plans;
 - 2.2.4. ensuring the fair allocation of motor-body repairs amongst approved service providers;

- 2.2.5. ensuring that there are no unfair restrictions on the sale or distribution of original spare parts;
- 2.2.6. allowing greater consumer choice in choosing suitable spare parts for repairs and maintenance of their motor vehicles; and
- 2.2.7. promoting the entry of historically disadvantaged individuals as owners of dealerships.

3. DEFINITIONS

The following definitions apply for the purposes of this Code:

- 3.1. “**Act**” means the Competition Act no. 89 of 1998;
- 3.2. “**Agreement**” means any contract, arrangement or understanding between two or more parties that purports to establish a relationship between them, whether or not legally enforceable;
- 3.3. “**Approved Dealer**” or “**Dealer**” means a business enterprise that is appointed as an OEM franchisee or subsidiary, whose business is in the sale and resale of new and/or used motor vehicles, spare parts and the service and maintenance of motor vehicles;
- 3.4. “**Approved Service Providers**” means all juristic persons (including persons, partnerships or trusts) and legal persons that are currently appointed to a particular OEM or insurer’s network to provide service and maintenance work, mechanical repairs, and/or auto-body repairs. Approved service providers exclude approved dealers, as defined herein;
- 3.5. “**Chinese Walls**” means information barriers within an organization that are created to prevent exchanges of commercially sensitive information or communication that could lead to conflicts of interest and/or collusion;

- 3.6. “**Commercially Sensitive Information**” means trade, business or industrial information that has a particular economic value to a firm and its business strategy and that is generally not available or known by others;
- 3.7. “**Consequential Damage**” means injury or harm that does not ensue directly and immediately from the act of a party, but only as a result of a consequence or from some of the results of such act, and that may be compensated by a monetary award;
- 3.8. “**Consumer Protection Act**” means the Consumer Protection Act No. 68 of 2008, published in the Government Gazette (No. 32186);
- 3.9. “**Effective Date**” means the date from which the Code is applicable, namely 3 months from the date of signing by Signatories.
- 3.10. “**Extended Warranty**” is an optional and additional warranty that a consumer is able to purchase to extend the application of the warranty;
- 3.11. “**Historically Disadvantaged Individual**” or “**HDI**” means:
- 3.11.1. one of a category of individuals who, before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), came into operation, were disadvantageded by unfair discrimination on the basis of race;
 - 3.11.2. an association, a majority of whose members are individuals referred to in paragraph.3.10.1;
 - 3.11.3. a juristic person other than an association, and individuals referred to in paragraph 3.10.1 that own and control a majority of its issued share capital or members’ interest and are able to control a majority of its votes; or

- 3.11.4. a juristic person or association, and persons referred to in the above paragraphs that own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes;
- 3.12. **“Independent”** or **“Independent Service Providers”** or **“ISP”** means all juristic persons (including persons, partnerships or trusts) and legal persons that are not appointed to as an approved service provider to an OEM's or insurer's network to undertake service and maintenance work, mechanical repairs, or auto-body repairs within and that conduct such business in compliance with the laws of the Republic of South Africa;
- 3.13. **“Insurer”** means a person or legal entity registered or deemed to be registered as a short-term insurer under the Short Term Insurance Act 53 of 1998, that provides and sells motor insurance cover for loss or damage to a motor vehicle;
- 3.14. **“Insurer network”** refers to insurance-approved service providers;
- 3.15. **“Liability”** means responsibility for the consequences of another's acts or omissions, enforceable by a civil (damages) or criminal remedy;
- 3.16. **“Maintenance Plan”** refers to a non-insurance product, covering the regular maintenance of a motor vehicle on components and parts that includes wear and tear. A maintenance plan is used at specified pre-determined times or stipulated mileage;
- 3.17. **“Mechanical Repair”** means the restoration or replacement of the working parts of a motor vehicle, such as the engine and operational software, including replacement and programming of a motor vehicle's electric and electronic components;
- 3.18. **“Motor-body Repair”** means the work undertaken to mend, restore, refinish, and replace, *inter alia*, the bodywork, frames, windshields, and window glass of motor vehicles;

- 3.19. “**Motor Vehicle**” means any vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity or any other means;
- 3.20. “**Non-structural Repair**” means work undertaken to restore the damaged interior and exterior parts of a motor-vehicle, that do not have an intrinsic bearing on the mechanical functioning of the motor vehicle, including plastic, aluminium and steel parts;
- 3.21. “**OEM**” means original equipment manufacturer as well as any juristic person or legal person over which it has direct or indirect control and includes an importer of motor vehicles;
- 3.22. “**OEM network**” refers to OEM-approved service providers;
- 3.23. “**Service Plan**” refers to a non-insurance product covering the service of a motor vehicle components and parts of a motor vehicle that may need replacing when the motor vehicle is due for a service, exclusive of normal wear and tear. A service plan is used at specified pre-determined times or stipulated mileage;
- 3.24. “**Service Provider**” means any person lawfully engaged in the business of effecting service, maintenance and repairs to motor vehicles;
- 3.25. “**SMME**” means a small, medium and micro enterprise as defined in the National Small Business Amendment Act of 2003, as amended.
- 3.26. “**Spare Parts**” means replacement products for worn, defective or damaged components of a motor vehicle;
- 3.26.1. “**original spare parts**” are spare parts produced by the OEM or for the OEM under its instruction/order by a manufacturer and in accordance with specifications and production standards provided by the OEM, as well as those distributed by the OEM or

any other authorised distributors of the OEM and marked with the trademark of the OEM;

3.26.2. “**non-original spare parts**” are spare parts that carry a legitimate warranty from its manufacturer, but that are not distributed by the OEM or its approved network and are not marked with the OEM’s trademark;

3.27. “**Value-added Products**” or “**VAPs**” means add-on cover for maintenance, service and repair of a motor vehicle, such as maintenance plans, service plans, extended warranty and scratch and dent cover.

3.28. “**Warranty**” is an obligation by the OEM to replace or repair certain components or parts of a motor vehicle that need replacement or repair due to a manufacturing or factory defect or malfunction;

3.28.1. “**In-warranty**” means the period in which a manufacturer has an obligation to repair or replace any part of the motor vehicle which proves defective in materials or workmanship;

3.28.2. “**Out-of-warranty**” means the period in which a motor vehicle’s manufacturer’s warranty (or extended warranty) has expired and in which the manufacturer has no obligation to repair or replace defective materials or workmanship.

4. SERVICE AND MAINTENANCE OF IN-WARRANTY MOTOR VEHICLES

4.1. Widening the Pool of Approved Service Providers who undertake Service and Maintenance Work

- 4.1.1. OEMs must approve any service providers that meet their standards and specifications, to undertake service and maintenance work on motor vehicles during the warranty period, including applicants who seek approval for service and maintenance-only workshops.
- 4.1.2. OEMs will commit to increase the number of service providers that meet their respective standards and specifications to undertake service and maintenance work during the warranty period.
- 4.1.3. OEMs may not prohibit approved service providers or approved dealers from carrying out service and maintenance work on motor vehicles of other brands.
- 4.1.4. Service providers that are approved to provide service and maintenance work on behalf of OEMs (excluding approved dealers), may opt to provide their services to a specific OEM (uni-branded workshop) or to multiple OEMs (multi-branded workshop).

4.2. Promoting Entry and Participation of HDIs in the Service and Maintenance Market

- 4.2.1. OEMs will promote the entry of historically disadvantaged individuals into an OEM's network of service and maintenance service providers.
- 4.2.2. OEMs will implement specific measures to give effect to this, including through subsidisation of capital, facilities, tools, equipment and training required to meet the OEM's standard.

4.3. Increased Consumer Choice of Service & Maintenance Service Providers In-Warranty

- 4.3.1. Consumers may service and maintain their motor vehicles at a service provider of their choice, regardless of whether or not that service provider is an approved service provider, approved dealer or an ISP.
- 4.3.2. Any service and maintenance work undertaken by an ISP in-warranty will not result in an automatic voiding or cancellation of the motor vehicle's warranty.
- 4.3.3. Consumers must be advised, in clear and explicit terms, that they are not compelled to conduct in-warranty service and maintenance only at approved dealers or approved service providers.
- 4.3.4. Any liability that arises from damage, including consequential damage, to the motor vehicle will be resolved in terms of the Consumer Protection Act or any other applicable legislation.
- 4.3.5. Dealers and ISPs must disclose to consumers, in clear and explicit terms, the above liability provisions.

5. MOTOR-BODY REPAIRS OF IN-WARRANTY MOTOR VEHICLES

5.1. Widening the Pool of Motor-Body Repairers (MBRs)

- 5.1.1. An OEM must approve any service provider that meets its standards and specifications, to undertake motor-body repairs during the warranty period.
- 5.1.2. OEMs must commit to increase the number of approved motor-body repairers who meet their respective standards and specifications.

5.2. Promoting Inclusivity in the Selection of OEM-approved MBRs

- 5.2.1. OEMs must promote the entry of motor-body repairers that are historically disadvantaged individuals into an OEM network of motor-body repairers.
- 5.2.2. OEMs will implement specific measures to give effect to this, including through subsidisation of capital, facilities, tools and equipment and training required to meet the OEM standard.
- 5.2.3. OEMs and insurers may not enter into exclusive arrangements, either with one or more service providers, for effecting motor-body repairs on an OEM's motor vehicles within a designated geographic area.
- 5.2.4. OEMs may not appoint and/or authorise any service provider for an excessively long term, and must not continuously renew the appointment of the same service provider, if such appointment or renewals are to the exclusion of the appointment of other service providers capable of effecting repair and/or maintenance work on an OEM's motor vehicles within a designated geographic area.

5.3. Increased Consumer Choice of MBRs in-warranty

- 5.3.1. Consumers may repair their motor vehicles at a service provider of their choice, whether an approved service provider or an ISP.
- 5.3.2. Any motor-body repairs undertaken by an ISP during the warranty period will not result in an automatic voiding or cancellation of the motor vehicle's warranty.
- 5.3.3. Consumers must be advised, in clear and explicit terms, that they are not compelled to conduct motor-body repairs only at approved dealers or approved service providers.

5.3.4. Any liability that arises from damage, including consequential damage, to the motor vehicle will be resolved in terms of the Consumer Protection Act or any other applicable legislation.

5.3.5. Dealers and ISPs must disclose to consumers, in clear and explicit terms, the above liability provisions.

5.4. Increased entry and participation of ISPs in the non-structural motor-body repair market

5.4.1. Insurers may appoint and consumers may choose to appoint ISPs to undertake non-structural work on motor vehicles during the warranty period.

5.4.2. Any non-structural work undertaken by an ISP during the warranty period will not result in an automatic voiding or cancellation of the motor vehicle's warranty.

5.4.3. Consumers must be advised, in clear and explicit terms, that they are not compelled to conduct non-mechanical repairs only at approved dealers or approved service providers.

5.4.4. Any liability that arises from damage, including consequential damage, to the motor vehicle will be resolved in terms of the Consumer Protection Act or any other applicable legislation.

5.4.5. Dealers and ISPs must disclose to consumers, in clear and explicit terms, the above liability provisions.

6. MECHANICAL REPAIRS OF IN-WARRANTY MOTOR VEHICLES

6.1. Widening the Pool of Service Providers who undertake Mechanical Repairs

6.1.1. An OEM must approve any service provider that meets its standards and specifications to undertake mechanical repairs on motor vehicles during the warranty period.

6.1.2. OEMs must commit to increase the number of service providers who meet their respective standards and specifications to undertake mechanical repairs during the warranty period.

6.1.3. OEMs may not prohibit approved service providers from carrying out mechanical repairs on motor vehicles of other brands.

6.1.4. Service providers that are approved to undertake mechanical repairs on behalf of OEMs, may opt to provide their services to a specific OEM (uni-branded workshop) or to multiple OEMs (multi-branded workshop).

6.2. Promoting Entry and Participation of HDIs in the Mechanical Repairs Market

6.2.1. OEMs must promote the entry of mechanical repairers who are historically disadvantaged individuals into the OEM network of mechanical repairers.

6.2.2. OEMs will implement specific measures to give effect to this, including through subsidisation of capital, facilities, tools and equipment and training required to meet the OEM standard.

6.3. Increased Consumer Choice of Mechanical Repairs Service Providers in-warranty

- 6.3.1. Consumers may conduct mechanical repairs at a service provider of their choice, whether an approved service provider or an ISP.
- 6.3.2. The OEM is not obligated to pay for any mechanical repairs undertaken by an ISP during the warranty period.
- 6.3.3. Any mechanical repairs undertaken by an ISP during the warranty period will not result in an automatic voiding or cancellation of the motor vehicle's warranty.
- 6.3.4. Consumers must be advised, in clear and explicit terms, that they are not compelled to conduct mechanical repairs only at approved dealers or approved service providers.
- 6.3.5. Any liability that arises from damage, including consequential damage, to the motor vehicle will be resolved in terms of the Consumer Protection Act or any other applicable legislation.
- 6.3.6. Dealers and ISPs must disclose to consumers, in clear and explicit terms, the above liability provisions.

7. INSURERS

7.1. Fair Allocation of Work by Insurers

- 7.1.1. Insurers must ensure fair allocation of work amongst OEM and insurance-approved service providers.

7.1.2. Insurers will broaden the allocation of work to HDI-owned and HDI-operated firms. Insurers will implement specific measures to give effect to this.

7.1.3. Insurers will publish a list of all their approved service providers on their websites and/or other suitable media.

7.1.4. Insurers will offer consumers a choice of approved repairers within their geographic area from which they can select to repair their motor vehicles.

7.1.5. Insurers will not appoint an exclusive service provider within a designated geographic area.

7.2. Promoting Inclusivity in the Selection of Motor-Body Repairers into the Insurance Network

7.2.1. Insurers will not appoint any service provider for an excessively long term and will not continuously renew the appointment of the same service provider, if such appointment or renewals are to the exclusion of the appointment of other service providers capable of effecting repair and/or maintenance work on motor vehicles within a designated geographic area.

7.2.2. Insurers will give preference to historically disadvantaged individuals in appointing service providers to their network. Insurers must implement specific measures to give effect to this.

7.2.3. Insurers must report to the Commission their aggregate annual spend and volume allocated to historically disadvantaged service providers. (Refer to Annexure B: Compliance Reporting Guideline).

8. SPARE PARTS, COMPONENTS, TOOLS & EQUIPMENT

8.1. Increased Consumer Choice in the Fitment of Spare Parts In-Warranty

- 8.1.1. Consumers may fit non-original spare parts where the specific part's warranty has expired, without voiding the balance of the motor vehicle's warranty.
- 8.1.2. Consumers may fit such non-original spare parts at a service provider of their choice, whether an approved dealer or an ISP.
- 8.1.3. Any liability that arises from damage to the motor vehicle, including consequential damage, as a result of the spare part or the fitment thereof, will be resolved in terms of the Consumer Protection Act or any other applicable legislation.

8.2. Competitive Pricing and Increased Product Choice in the Distribution and Sale of Spare Parts, Components, Tools & Equipment

- 8.2.1. OEMs and/or approved dealers must make available original spare parts and components, through sales and distribution, to ISPs where required.
- 8.2.2. Conditional sale and distribution of spare parts or components will only be reserved for those items that are linked to the motor vehicle's security systems.
- 8.2.3. OEMs may not enter into any agreements with manufacturers or suppliers of spare parts, components, tools or equipment to restrict the manufacturer or supplier's ability to sell those goods to service providers or end users, except for those spare parts, tools or components that are protected by intellectual property rights or are linked to a motor vehicle's security systems.

8.2.4. The security-related items referred to above are those that directly or indirectly interfere with anti-theft devices.

8.2.5. OEMs must not enter into any agreements with manufacturers of spare parts, components, tools or equipment, that will restrain the manufacturer or supplier's ability to place its trade mark or logo effectively and in an easily visible manner on the said item.

8.2.6. OEMs must not set minimum retail prices for spare parts and components.

8.2.7. OEMs must not restrict a service provider's ability to sell spare parts.

9. DEALERSHIPS

9.1. Promoting Inclusivity in the Selection of Dealers

9.1.1. OEMs must establish fair processes for the selection of dealers who meet the specific OEM's requirements.

9.1.2. Dealers will be selected based on a realistic evaluation conducted by the OEMs of the market potential for dealers in a designated geographic area.

9.1.3. OEMs must publish the terms and conditions used to assess and select service providers to become approved service providers within their network on their websites and/or other suitable media.

9.1.4. OEMs must give preference to historically disadvantaged individuals in appointing dealers to the OEM's network. OEMs will implement specific measures to give effect to this, including the subsidising or funding of new HDI entrants.

9.1.5. OEMs must disclose reasons to applicants for rejection of dealership applications.

9.1.6. Historically disadvantaged applicants whose applications were rejected will be granted first right of refusal should new opportunities for dealerships arise, assuming they meet the relevant criteria of each OEM concerned.

9.2. **Reducing Barriers Created By Onerous Requirements For Facilities of Dealerships**

9.2.1. OEMs must not impose onerous obligations on prospective dealers. The requirements for dealerships must be reasonable and have an economic rationale, particularly in relation to the size of land, show-rooms, furniture, fittings and finishes.

9.2.2. OEMs may not require authorised dealers to make further investments within established facilities if such investments are not objectively required as a result of the standards of the OEM, such as, for example, due to changes in corporate identity, models of motor vehicles to be sold and/or technologies to be used by official dealers (which list is not exhaustive).

9.2.3. OEMs must approve multiple suppliers for required branding and corporate identity elements of dealerships, from which dealers can procure. OEMs may not forbid or penalise dealers from purchasing the said goods from such approved alternative suppliers if they are of like kind and quality.

9.2.4. OEMs and approved dealers will, in their procurement of goods, support businesses owned by historically disadvantaged individuals and SMMEs.

9.3. **Preventing Dealers Who Sell Competing Motor Vehicles & Products From Exchanging Commercially Sensitive Information**

9.3.1. Dealers that sell new motor vehicles and products of competing OEMs must ensure that they do not engage in price co-ordination. Specifically,

the prices of competing motor vehicles and products will be determined by different individuals within the dealership. Persons setting prices for new motor vehicles and products of competing OEMs must do so independently of each other.

9.3.2. Dealers that sell new motor vehicles and products of competing OEMs must ensure that no commercially sensitive information is provided or shared with competing OEMs.

9.3.3. Dealers that sell new motor vehicles and products of competing OEMs must implement “Chinese walls” and measures to ensure that there is no exchange of commercially sensitive information between employees of dealers and competing OEMs.

9.3.4. The measures referred to in the preceding paragraph include but are not limited to the following:

9.3.4.1. A person elected to sit on the board of directors of an OEM or dealer may not at the same time be a director on the board of directors, or a member of the executive team, or a shareholder, or an employee occupying a marketing position, of any competitor or customer. For the sake of completeness, this means that there may be no common shareholders, executive managers and directors appointed to the boards of competing OEMs and dealers.

9.3.4.2. OEMs and dealers must keep separate, internal accounts for downstream retail offerings in a way that permits the profitability of these retail products to be monitored.

9.3.4.3. To the extent that an employee of a dealer and/or competing OEM has access to commercially sensitive information pertaining to its competitors or customers, the employee must ensure that he/she does not communicate such competitively sensitive

information to any other personnel, or facilitate or permit the use of such information by its competitors and customers, other than such information in aggregated, historical or summary form.

- 9.3.4.4. Employees of OEMs and dealers involved in the automotive value chain must sign undertakings not to share commercially sensitive information with employees of customers and competitors. The undertakings must be stored by the OEMs and dealers.
- 9.3.4.5. OEMs and dealers must implement internal training to ensure that its employees are aware of and understand the provisions of the Act that are relevant to the exchange of commercially sensitive information between competitors, including section 4 of the Act (restricted horizontal practices) in particular.

10. SALE OF MOTOR VEHICLES

10.1. Recognising Consumer Rights In The Sale of Value-added Products

10.1.1. OEMs must recognise and promote a consumer's choice to the following, which will not void the warranty:

- 10.1.1.1. purchase value-added products (such as maintenance plans, service plans and extended warranties) separately from a new motor vehicle;
- 10.1.1.2. purchase value added products with a new motor vehicle;
- 10.1.1.3. purchase value-added products from any provider of their choice;
- 10.1.1.4. refuse to purchase value-added products;

- 10.1.1.5. select the duration of maintenance plans and service plans on a new motor vehicle;
 - 10.1.1.6. purchase a value-added product at any time after the purchase of the motor vehicle; and
 - 10.1.1.7. transfer a maintenance plan and/or a service plan to a replacement motor vehicle in the instance where the motor vehicle is written off by the Insurer. In instances where there is no replacement motor vehicle after a vehicle write-off, the consumer must be afforded the right to cancel the value-added contract and/or receive a refund of the value of the balance of the product.
- 10.1.2. At the point of sale of a motor vehicle, dealers must provide the consumer with a complete disclosure of:
- 10.1.2.1. the purchase price of the motor vehicle;
 - 10.1.2.2. the purchase price of maintenance plans and service plans;
 - 10.1.2.3. the purchase price of other value-added products.
- 10.1.3. OEMs and third party providers of value-added products are encouraged to design and develop products that consumers can use at a service provider of their choice.

10.2. Recognising Consumers' Rights to Information

- 10.2.1. Consumers are entitled to full disclosure of information regarding the maintenance and repair of their motor vehicle, as well as the terms and conditions under which they are required and/or permitted to maintain and repair their motor vehicle.

10.2.2. At the point of sale of a motor vehicle, dealers and, where appropriate, finance providers must provide the consumer with details of all inclusions and exclusions included in the maintenance plans and service plans, including the following information:

10.2.2.1. the average costs for each service interval (at the time of sale of the motor vehicle);

10.2.2.2. the average cost of the parts covered by the maintenance plan and service plan that commonly require replacement at specific kilometre intervals or upon the motor vehicle attaining a specific age; and

10.2.2.3. the interest that a consumer will incur on the upfront payment of the maintenance plan and service plan.

10.2.3. At the point of sale of a motor vehicle, dealers must provide the consumer with a complete disclosure of:

10.2.3.1. dealer commissions and other commissions that may arise from commercial arrangements between the OEM, the dealer and other third parties, to the extent that it does not comprise commercially sensitive information;

10.2.3.2. any other information, as required by any other applicable legislation.

11. ACCESS TO TECHNICAL INFORMATION

11.1. Provide ISPs access to OEM-technical information to effect service and maintenance and/or motor-body repairs

11.1.1. OEMs must make available to ISPs the OEM-technical information relating to its motor vehicles, on the same terms offered to its approved service providers, where applicable. Such access by ISPs to information excludes security-related information that permits interference in motor vehicle security systems.

11.1.2. Technical information, to which access must be permitted to ISPs includes, but is not limited to, the following:

11.1.2.1. unequivocal motor vehicle identification;

11.1.2.2. service handbooks;

11.1.2.3. technical manuals;

11.1.2.4. component and diagnosis information;

11.1.2.5. wiring diagrams;

11.1.2.6. diagnostic trouble codes (including manufacturer specific codes);

11.1.2.7. software calibration identification number applicable to a motor vehicle type;

11.1.2.8. information provided concerning, and delivered by means of, proprietary tools and equipment;

11.1.2.9. data record information and two-directional monitoring and test data;

11.1.2.10. operational software.

11.1.3. In instances where an OEM discloses proprietary information or other intellectual property belonging to the OEM, it will be entitled to impose reasonable conditions, including the requirement that the ISP must sign a confidentiality undertaking.

11.1.4. OEMs must provide ISPs access to coding and programming systems for in-warranty and out-of-warranty motor vehicles, at a reasonable fee where applicable.

12. ACCESS TO OEM-TRAINING

12.1. Provide ISPs Access to OEM Training

12.1.1. OEM's and/or Dealers must provide training (or provide access thereto) to employees of ISPs who request parts or product-specific training, at a reasonable cost that may not exceed that imposed on employees of approved service providers. Such training will encompass the methods used to effect motor-body and mechanical repair, service and maintenance and fitment works on the motor vehicle.

12.1.2. OEMs must provide the relevant employees of ISPs with certification of successfully completed training. These certificates will effectively categorise the trained ISP as being competent and having the knowledge to effect the relevant maintenance, service or repairs on a particular OEM's motor vehicle.

13. STATUS OF THE CODE

- 13.1. The signatories to this Code voluntarily commit to adhere to the provisions herein.
- 13.2. The terms of this Code do not supersede any other obligations that bind the signatories, whether such obligations are statutory and/or voluntary in nature.

14. IMPLEMENTATION

- 14.1. The Code shall take effect from three (3) months after the date of signature of the Code by signatories.
- 14.2. Each signatory to this Code will be responsible to take steps to give effect to its terms.
- 14.3. Signatories must advertise and/or undertake initiatives to create awareness about the Code to consumers, the industry and other relevant stakeholders.

15. MONITORING OF ADHERENCE TO THE CODE

- 15.1. The Commission will monitor compliance to the Code for a period of five (5) years from the effective date.
- 15.2. The signatories of this Code are required to submit a compliance report against the principles set out, to the Commission every year, starting twelve (12) months from the effective date, as per 15.1 above (Refer to Annexure B, Compliance Reporting Guideline).

15.3. Compliance Reports must be submitted to the following email address:

advocacy@compcom.co.za.

15.4. The Commission may aggregate and publish the annual compliance reports submitted by the signatories.

16. REVIEW OF CODE

16.1. The Code will remain valid until amended, replaced or withdrawn by the Commission, in consultation with the automotive industry participants.

17. DISPUTE RESOLUTION

17.1. Any disputes arising from the application and implementation of this Code must be directed to the Commission for dispute resolution. The Commission may refer such disputes to any relevant authority, where necessary.

18. SIGNATURE

Signed at _____ on this ___ day of _____ (month) 2018.

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Tembinkosi Bonakele, Commissioner
Competition Commission of South Africa

WITNESS - Name & Signature

WITNESS - Name & Signature

By inserting my signature below, I/we agree to adhere to the provisions of this Code.

Signed at _____ on this ___ day of _____ (month) 2018 by

_____ in his/her capacity as _____

of _____ (organisation).

Signature

WITNESS - Name & Signature

WITNESS - Name & Signature

(Signatories to initial each page of the Code)