



**competition commission**  
south africa

## MINUTES OF THE AUTOMATIVE AFTERMARKET STEERING COMMITTEE MEETING

Date : 27 November 2017

Time : 10h00

Venue : ICU Boardroom, Competition Commission Offices,  
Travenna Campus, Sunnyside, Pretoria

### 1. WELCOME & APOLOGIES

- 1.1 Ms Khanyisa Qobo of the Competition Commission ("Commission") welcomed all those present at the meeting and thanked them for attending
- 1.2 She indicated that the meeting was on record for minute-taking purposes and requested that anyone who was in objection to indicate so. There was no objection to the recording of the meeting.
- 1.3 The attendance register was circulated for signature
- 1.4 Apologies were received and noted from Messrs Tony King of SA Allied Repairs and Salvage Association, Gunther Schmidt of Right to Repair and Ms Jeanne Esterhuizen of RMI.

### 2. ADOPTION OF AGENDA

The agenda was adopted without amendments.

### 3. UPDATE ON STAKEHOLDER ENGAGEMENTS

- 3.1 In updating the meeting on the stakeholder engagements, Ms Qobo highlighted that since the last Steering Committee ("Committee") meeting of 17 May 2017, the following had transpired:
  - a) the Commission had published the first draft of the Code of Conduct for competition in the South African Automotive Industry ("Code").
  - b) the Commission had engaged with multiple industry stakeholders with a view to testing the provisions before taking it to the public for comments.
  - c) the draft Code was published on 22 September 2017 and the closing date was 03 November 2017.
  - d) The Commission was in the process of incorporating the comments received, engaging further with stakeholders that had made submissions to clarify concerns

raised and to find common ground where there were big divergences and finding consensus on contentious issues.

- e) a large number of stakeholders had either endorsed or shown support for the Code.
- f) The Commission also met with government entities to appraise it of developments and further engagements would be on-going.

#### **4. SUMMARY OF DRAFT CODE OF CONDUCT**

Ms Qobo highlighted the salient features of the Draft Code, as follows:

##### **4.1 Preamble**

This section of the document speaks to the overall aim of what the Code seeks to achieve and is the “certificate” of which the signatories would essentially be signing and committing to.

##### **4.2 Section 2: Purpose and Objectives of the Code of Conduct**

This section lists what the outcomes are that the Competition Commission is looking for and the envisaged market changes. It also summarises the essence of the Code.

##### **4.3 Section 3: Definitions**

This section speaks to the content of the Code and zeros-in on spare parts, policies and plans. Many of the definitions are drawn from international jurisdictions, however in some instances, certain definitions have been developed based on engagements with stakeholders.

##### **4.4 Section 4: Sale of Motor Vehicles**

This section is the starting point of the entire value chain that the Code focuses on.

- a) Section 4.1 puts special emphasis on the proposed reforms at the point of sale and advocates for greater ownership of dealerships by Historically Disadvantaged Individuals (HDIs). It also touches on competition behaviours that the Commission would like to see, including the establishment of premises and how they operate so that this is done in a way that they are not able to coordinate prices and share sensitive information.

- b) Section 4.2 addresses the selection of dealers and issues of exclusive geographic location or demarcation of dealerships.
- c) Section 4.3 advocates for different models of dealerships in order to lower the barriers to entry that can be prohibitive to new entrants. OEMs are encouraged to develop other models perhaps similar to those that exist in Europe and other jurisdictions where they have smaller land or space size. It also addresses supply chain issues so that they do not create barriers to entry through onerous obligations on prospective dealers.
- d) Section 4.4 deals with policies and plans with specific focus on maintenance and service plans. The essence of which is that plans and policies sold to vehicle purchasers should be transparent thereby providing, for instance, details of what is included and excluded in the cost and that the plans and policies should be accessible to independent service providers.
- e) Section 4.5 addresses transparency with special focus on consumer issues as to what ought to be disclosed to customers upfront, part of which includes the unbundling of the maintenance and service plans from the actual price of the motor vehicle so that costs are delineated

#### 4.5 Section 5: Maintenance Service and Repair Work

This section is core to the Code and addresses access of independent service providers to in-warranty work for maintenance service and repair work to motor vehicles. It addresses both OEMs and insurers.

#### 4.6 Section 6: Access to Technical Maintenance Information

This section and those that follow are essentially enablers of Section 5 and advocate for access to technical information to 'enable' independent service providers to be able to maintain, service or repair motor vehicles.

#### 4.7 Section 7: Parts and Accessories

The salient features of this section of the Code were highlighted as follows:

- a) It advocates for the introduction of 'equal matching parts' in addition to identical and OEM branded parts.
- b) It addresses the certification, use and distribution of the 'equal matching parts' parts.
- c) In respect to the use of 'equal matching parts', it advocates that the warranties should remain valid and not become void once the said 'equal matching parts' are used.

d) In respect of sale and distribution of 'equal matching parts', it advocates that restrictions are removed so that consumers are allowed to have three options when they need to use a part.

#### 4.8 Section 8: Sale of Special Equipment and Special Tools to Dealers and Independent Repairers

This section is another enabler advocating that OEMs and dealers should avail tools and special equipment to independent service providers through means other than selling, such as lending, leasing or hiring, taking into consideration the security-related issues. It was noted that there were strong objections to this Section by some OEMs.

#### 4.9 Section 9: Training

This section is meant to enable independent service providers to partake in this market. It advocates for OEMS to provide independent service providers with training on parts and product-specific training at a reasonable cost and essentially certify them to be recognised as being able and competent to undertake such work.

The balance of the sections of the Code relate to its administration, as follows:

#### 4.10 Section 10: Status of the Code

This section speaks to the validity of the Code. Making it clear that it is voluntary and is complementary to all existing statutory and legislative frameworks that govern the industry.

#### 4.11 Section 11: Implementation

This section proposes 12 months preparatory period for implementation.

#### 4.12 Section 12: Monitoring and Adherence to the Code

This section speaks to the monitoring mechanism. This will be by way of Annual Reports that will be submitted to the Competition Commission, which will be published. The data will be in an aggregated format so that commercially sensitive information is not in the public domain.

#### 4.13 Section 13: Review of the Code

This section stipulates that the Code will be periodically reviewed and may be replaced or cancelled, depending on what is transpiring in the industry at any given time.

#### 4.14 Section 14: Dispute Resolution

This section recommends that the Motor Industry Ombudsman of South Africa (MIOSA) will manage disputes resolution arising from the implementation of the Code recognising that the Competition Commission will remain the relevant body for competition matters and the National Consumer Commission for consume-related matters.

### 5. PUBLIC AND INDUSTRY RESPONSE TO DRAFT CODE

In discussing this item, Ms Qobo mentioned that there were concerns received from various stakeholders including the OEMs. She noted that there is a general concern about opening up the market and thereby all the related provisions within the Code.

5.1 She then took the meeting through various concerns raised as follows:

- a) *Warranties* – Most OEMs, as the holders of the warranties, have reservations about the proposed interventions. There is a general view that they should have the right to choose or approve who would take on the work.
- b) *Liability*- Who incurs liability when a vehicle is serviced by an independent service provider and who incurs liability in the use and fitment of 'equal matching parts'? It was noted that the draft code was silent on these issues.
- c) *Safety* – How would safety be ensured with the use and fitment of 'equal matching parts' given that the regulatory environment of standards is imperfect and there is room or risk for fake parts coming in?
- d) *Investments* – there is a sentiment that the OEMs and Dealers have invested highly in infrastructure and opening up this market without recognition of this investment would harm existing businesses and may also result in job losses.
- e) *Intellectual Property* – the Code makes provision for access to technical information. The view is that this should be purchased and also be conditional so that OEMs and dealers are not opening up their proprietary information for anyone to be able to use as they deem fit.
- f) *Training and access to tools* – the view is that this should be at a cost to the recipient so that the burden of providing this should not be on the OEM or the dealer and that access should be regulated or conditional.
- g) *Plans and Policies* – some OEMs are of the view that maintenance and service plans cannot be unbundled from the actual cost of the motor vehicle as this will

disadvantage consumers, as it was currently offered as “complementary”. The view is that consumers already get this package upfront and are well incentivised to use it essentially for free. The Commission put it on record that unbundling was already happening in other jurisdiction, thus making this matter debatable.

- h) *Dispute Resolution*- There are concerns about the proposed dispute resolutions mechanism and whether or not MIOSA is the appropriate body to manage disputes that would arise from the Code.
- i) *The Scope of the Code and the jurisdiction of the Commission* – There are some comments that the scope of the Code duplicates the efforts of other legislation in place such as BBBEE and Consumer Protection legislation, to which the industry already complies and accounts to Government on. Additionally, there are some submissions which challenge the Commission’s jurisdiction on the matters raised in the Code. It is argued that the Commission has not clearly defined the competition problem it seeks to solve as the industry already has many competing players and as such, is competitive.

5.2 Ms Qobo said that there were many nuances in the concerns raised, which she had summarised. Further, the approaches from different stakeholder were vastly different, with some being outright dismissive of the Code and some coming forward with constructive input to the Code.

5.3 One delegate requested if the slide presented at the meeting would be shared with the meeting. Ms Qobo agreed that this would be done.

5.4 In finalising this item, Ms Qobo mentioned that the Commission had received numerous comments from the public; both from private individuals and from associations and corporate entities.

5.5 She mentioned that submissions received were uploaded onto the Commission website for public access. However, comments received from individuals would not be uploaded.

5.6 She also mentioned that certain respondents had requested that their comments be treated as confidential. She informed the meeting that in those cases, the respondents had been requested to provide the Commission with non-confidential versions of the comments which could then be uploaded to the Commission website for public access.

## **6. WAY FORWARD: TIMELINES AND ACTIVITIES**

- 6.1 In providing the way forward, Ms Qobo mentioned that at the last meeting, a four-step process was proposed whereby the Commission would firstly, produce the first draft, have a public consultation, produce a final draft and implement. However, it has not been as easy as anticipated and subsequently, two further steps have had to be added to the process.
- 6.2 The Commission will produce a second draft which it will invite only the stakeholders that made submissions to comment on. The Commission will then engage further with a view to working on the final draft and implementation.
- 6.3 It was noted that from a timeline perspective:
- a) The Commission will produce a second draft before end of March 2018 and thereafter engage stakeholders, for approximately 6 weeks.
  - b) Engagements between now and Feb 2018 are to iron out solutions on matters raised in Draft 1, as outlined in the presentation (Item 5 above).
  - c) It is envisioned that Draft 2 will be more acceptable to a wider group and be implementable.
  - d) It is anticipated that the process will be concluded by July 2018.
  - e) Current stakeholder engagements are to address concerns raised and incorporate proposed solutions by the relevant stakeholders on their specific concerns. These will be captured in Draft 2 of the Code.
- 6.4 The meeting then took a Questions from the floor and the following issues were addressed.
- a) A member of the Committee asked how the Commission would stop current anti-competitive conduct underway that is causing harm to competition.  
  
Ms Anisa Kessery from the Competition Commission responded that in instances where it was alleged that anticompetitive conduct was being engaged in, parties could file a complaint with the Commission. If the anticompetitive conduct that was being engaged was causing harm, there was also provision in the Competition Act for applying for interim relief from such conduct.

- b) A member of the Committee asked if the second draft will be produced in Mid-March, if those that have commented on Draft 1 will be engaged before then.

This was confirmed to the affirmative by Ms Qobo.

- c) A representative from the NRCS mentioned that the NRCS looked forward to further interaction with the Competition Commission on the Code before its implementation, as it has serious concerns that could jeopardise the implementation date. The NRCS was therefore requesting an earlier interaction with the Commission. The request was accepted by Ms Qobo.

- d) A member of the Committee asked if the scheduling of meetings could be done immediately, in order to allow members ample time to prepare. The request was noted for action.

Ms Qobo also mentioned that most OEMs had responded either individually or under the umbrella of NAAMSA. However, the Commission would still want to have individual submissions from the OEMS as these are market conduct issues that needed specific OEM views.

- e) Another member asked if the Committee Members could have a list of stakeholders that the Competition Commission would be engaging with.

Ms Qobo responded that the Commission would not be sending out the list of stakeholders. However, it would contact the relevant stakeholders to schedule a meeting.

## **7. OTHER BUSINESS**

There being no further matters for consideration, the meeting was adjourned.





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**AUTOMOTIVE AFTERMARKET  
STEERING COMMITTEE MEETING: CODE OF CONDUCT  
27 NOVEMBER 2017, 10H00- 12H00**

**AGENDA**

<b>Item</b>	<b>Responsible</b>	<b>Action</b>	<b>Annexure</b>
1. Welcome & Apologies.	Chairperson		Attendance Register.
2. Adoption of Agenda.	Meeting	Decision	
3. Update on Stakeholder Engagements (to brief the steer com of parties we have engaged since the May meeting)	Meeting	Noting	
4. Summary of Draft Code of Conduct	Meeting	Noting	
5. Public and Industry response to Draft Code	Meeting	Noting	
6. Way Forward: Timelines and activities	Meeting	Discussion	
7. Other Business	Meeting		

## MEETING ATTENDEES

No	Name and surname	Organisation	Attendance
1.	Aleeshen Kisten	Collision Repairs Co-operative	Present
2.	Andre Van Der Merwe	South African Towung & Recovery Association (SATRA)	Present
3.	Anisa Kessery	Competition Commission	Present
4.	Boniswa Maseko	APMMA	Present
5.	Brandon Cohen	National Association of Automobile Manufactures of South Africa	Present
6.	Deon Smith	Collision Repairers Cooperative	Present
7.	Eddie Martin	South African Motor Body Repairers Association	Present
8.	Film Ho	Right to Repair	Present
9.	Gary McCraw	National Automobile Dealers Association	Present
10.	Gunter Schmitz	Right to Repair SA	Present
11.	Duncan Mutengwe	NRCS: National Regulator for Association of South Africa	Present
12.	Dries van Tonder	NRCS: National Regulator for Association of South Africa	Present
13.	Hedley Judd	RMI: Motor Industry workshop association of South Africa	Present
14.	Khanyisa Qobo	Competition Commission	Present
15.	Les McMaster	MIWA	Present
16.	Jakkie Olivier	RMI: Motor Industry workshop association of South Africa	Present
17.	Pieter Niembo	RMI: Motor Industry workshop association of South Africa	Present
18.	Mkhululi Mlota	Department of Trade and Industry	Present
19.	Mziwodumo Rubushe	Competition Commission	Present
20.	Nico Esterhuizen	South African Insurance Association	Present
21.	Sisa Mbangxa	African Panel Beaters and Motor Mechanics Association	Present
22.	Steve Kessell	Collision Repairers Association	Present