

SUBMISSION

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

FROM

**SOUTH AFRICAN BLACK AUTOMOTIVE CHAMBER
OF COMMERCE & INDUSTRY
(SABACCI)**



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ATTENTION : Mr Mziwodumo Rubushe

The Commissioner

Kindly receive the following submissions from the above chamber of commerce. Note that some of the submissions will be in PARAGRAPH form while some will be shown in red fonts.

1. PARG. 3(pg. 1)

This paragraph states that 'will bind various original equipment manufacturers, government bodies and industry associations who will become signatories to it', and yet the PREAMBLE states that 'it is a voluntary Code of Conduct' ("Code"). This sounds contradictory.

Given the political history of our country, and the experience we all have seen playing itself, SABACCI wishes to submit its arguments on the bases of the following matters:-

1.1. THE LAND ISSUE

The voluntary 'willing seller, willing buyer'. This never worked and 23 years down the line while black people are suffering. In fact it is now causing political problems in terms of 'land grabs'. Voluntary Code in South African situation is merely testing the patience of the majority of the poor black particularly the Africans.

1.2. BLACK ECONOMIC EMPOWERMENT

While it started as voluntary act, government has now realized that the same attitude that prevailed in the land issue, prevails in the economic space, white people are naturally NEVER WILLING if it comes to sharing with black people until it is compulsory and there is a punitive measure in place. Fronting has even become a criminal offence and punishable by law and carries a jail sentence.

1.3. OUR SUBMISSION

Given the above SABACCI wishes to submit that :-

1.3.1. This Code be compulsory

1.3.2. It should carry *economical punitive measures* such as 30% tax of the annual gross earnings of that company. We further recommend that such tax fines collected, be used deposited into a specific account for the sole use in the development of black companies empowerment.

4. The intended outcomes of the Commission's advocacy are as follows:

SABACCI ADDED INTENDED OUTCOME

4.8. Since the automotive standard quality standard can be very expensive to implement:

Without lowering the quality, South Africa should set acceptable attainable minimum South African Automotive Industry Quality Standards which will regulate, guide or guard the various activities in the industry from Manufacturing, Supply, Distribution, Retail, Repair, and disposal of vehicles. This standard could be offered in form of levels e.g. (A, B and C) where "A" allows a service provider to offer a certain service, and "B" and "C" respectively, which standard if attained, the equivalent accreditation, approval should be granted accordingly and limited to such level.

This would allow HDI service provider to have the opportunity to start giving service from an easily attainable low level "A" and graduate to higher level "C" than pushing for a one and single level which may be hard to get.

- 4.9. Insurance companies should function in a similar approval process like Medical Schemes. The service provider needs only to submit details of vehicle to be repaired, and the service provider own credentials or code. The Insurance is to provide an authorization number.
- 4.10. Payment to be done within 48hrs after insurance has received the "happy Customer" client.

PARAGR. 2.3 (pg.7)

The Code seeks to achieve these market changes through inter alia:

- 2.3.10. For OEMs to separate the costs of a vehicle from the costs of Maintenance & Service Plans, **insurance costs, Registration & Administration costs** at the point of sale of a vehicle.

- 2.3.11. For OEMs to provide product and parts-manufacturing assistance to independent service providers. This will include providing technical support required in the manufacturing of the part, from required Quality Standard, the part drawing, tooling, the actual manufacturing to delivery of a part.

PARG. 3.

DEFINITIONS

The following definitions apply for the purposes of this Code:

- 3.1. **“Agreement”** includes any contract, arrangement or understanding whether or not legally enforceable, **verbal or written.**

PARG. 4.

SALE OF MOTOR VEHICLE

4.2. Selection of Dealers (Pg.13)

4.2.1. OEMs shall establish fair and transparent processes for the selection of dealers who meet the OEM's respective compliance requirements. **The compliance requirements must be POSSIBLE and achievable, in which case HDI with interest, passion AND THE RIGHT ENTREPRENEURAL INTENT, must BE GIVEN THE REQUIRED ASSISTANCE TO ENABLE QUALIFICATION.**

4.2.3. OEMs shall give preference to historically disadvantaged persons in appointing dealers to the OEM's network. OEMs shall implement specific measures to give effect to this. **OEMs shall submit a full written plan or measures to be put in place in line with this intention. The Competitions Commission to view such plan involving the various stake holders especially from the HDI.**

- 4.3.4. OEMs and Dealers shall support those businesses owned by historically disadvantaged persons in their procurement of goods. (How is this intent going to be monitored?)

PARG. 5.

MAINTENANCE, SERVICE AND REPAIR WORK

- 5.2. OEMs and Insurers shall not appoint any service provider for an excessively long term, and shall 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. Let us specify and agree on the duration (A period of between 3 to 5 years is quite reasonable)
- 5.4. Insurers shall not withhold payment to Independent service provider who effect repair and maintenance work on a motor vehicle whilst the motor vehicle is under a Maintenance Plan, Service Plan, Warranty or Extended Warranty. HDIs should be paid at least within 48hrs after submission of invoice.

5.5. OEMs and Insurers shall give preference to historically disadvantaged persons in appointing service providers to the OEM's network. OEMs and Insurers shall implement specific measures to give effect to this.

* The specific measures and plans to be submitted to the CC where HDI representative shall be presented to see if those measures do fulfill the intended goal.

* Representation in participation should be at least directly proportional to the race population % in that area/geographically.

PARG. 7.2. The use of spare parts

7.2.1. OEMs shall not forbid Consumers or Service Providers (whether independent or authorized), from using spare parts of matching quality whilst the motor vehicle is covered by the Warranty, provided that the spare parts of matching quality are accredited by the SABS or through a SANAS-accredited laboratory, Or if imported, carry the certification from its OEM, which certification can be verified from its original source.

7.3. The Distribution and Sale of Spare Parts

- 7.3.2. OEMs shall not restrict Service Providers from accessing spare parts of matching quality or their ability to purchase original spare parts or identical spare parts from alternative channels (e.g. parallel imported spare parts). **As long as these parts' certification can be proven and or produced in case such need arises.**

PARG. 14.

DISPUTE RESOLUTION

- 14.1. Disputes arising from the application of this Code shall be referred to the MIOSA for resolution. **Composition and representation of the MIOSA and the NRCS should display the participation of the HDIs in a reasonable way**
- 14.2. All service providers shall register with MIOSA, for the purposes of dispute resolution. **(Is this registration at a cost or not?)**