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Dear Mziwodumo

Draft Code of Conduct for Competition in the South African Automotive Industry

We thank you for the opportunity to provide comments on the proposed draft Code of Conduct for Competition in the South African Automotive Industry (Code) for your consideration.

1. Objectives of the Code

The Code includes numerous provisions that seek to facilitate inclusion of independent service providers in the provision of automotive aftermarket services. An objective set of standards that will apply to providers of such services would have to be developed to ensure that services rendered, and products sold to consumers are of a high standard across the board.

2. Independent service providers

Reference is made to the removal of restrictions on repairs and maintenance work being carried out by independent service providers (ISP) while vehicles are under warranty. In order to ensure that the value of vehicles is not impacted in the event of deficient repairs or service by ISPs, we recommend that:

2.1. it be required of ISPs to provide third party guarantees or warranties in respect of the services they render and the products they supply; and

2.2. in all instances where a requirement exists to allow or facilitate the use of ISPs, such permission should be on condition that the objective standards referred to in paragraph 1 above are adhered to.

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3. Spare Parts

We further recommend that in all instances where the use of spare parts of matching quality is allowed, this should be on condition that such parts are accredited by the SABS or SANAS. This is, for example, stated in 7.1.2 of the draft Code however the fact that this is again stated in 7.2.1 but not in 7.2.2 may be interpreted to mean that a different standard applies.

4. Technical information

4.1. The requirement to make all technical maintenance information available to ISPs may infringe the intellectual property rights of manufacturers and may be contrary to contractual undertakings. We therefore recommend that such information be carved out from paragraph 6 of the Code.

4.2. In addition, we recommend that, similar to the provisions of 8.3, information that may affect the safety and security of consumers be carved out of the application of paragraph 6.

5. General

We submit that some of the language used in the draft Code is vague or ambiguous and interpretation issues may therefore arise. For example, the requirement to not engage in 'conduct that will prevent or impede' (paragraph 4.2.4) is broad and we recommend that it be narrowed to clarify that an objective standard will be applied, to expressly cater for conduct that is reasonable.

6. Conclusion

We trust that our submissions and recommendations will be considered favourably. Please feel free to contact us if clarification or discussion is required.

Regards

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