



competition commission
south africa

**Guidelines for Competition in the South African Automotive
Aftermarket Industry**

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Draft for comment

Written comments must be submitted to Advocacy@compcom.co.za

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1. PREFACE

- 1.1 These guidelines have been prepared in terms of section 79(1) of the Competition Act No. 89 of 1998, as amended (“the Act”) which provides that the Competition Commission (“Commission”) may prepare guidelines to indicate its approach on any matter falling within its jurisdiction in terms of the Act. These guidelines are not binding on the Commission, the Competition Tribunal or the Competition Appeal Court in the exercise of their respective discretion, or their interpretation of the Act.
- 1.2 This process was triggered by multiple complaints the Commission received in from various independent players in the automotive aftermarket as well as members of the public. These parties raised concerns about alleged anti-competitive practices, such as pricing behaviour in the automotive aftermarket, and agreements that foreclose independent players at all levels of the automotive value chain.
- 1.3 These guidelines provide practical guidance for the Automotive industry, with the aim of transforming the automotive aftermarket and encouraging competition through greater participation of small businesses as well as historically disadvantaged groups.

2. DEFINITIONS

The following terms are applicable to these guidelines -

- 2.1. “**Act**” means the Competition Act no. 89 of 1998, as amended;
- 2.2. “**Agreement**” means any consensus, contract, arrangement or understanding between two or more parties that purports to establish a relationship between

them, whether or not legally enforceable, that the parties consider binding upon them;

- 2.3. “**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, the sale and resale of Spare Parts and the service and maintenance of motor vehicles;
- 2.4. “**Approved Service Providers**” means all legal persons (including individuals, local and foreign companies, partnerships or trusts) that are currently appointed to an OEM or Insurer’s Network to provide service and maintenance work, Mechanical Repairs, and/or Motor-body repairs. Approved service providers exclude Approved Dealers, as defined herein;
- 2.5. “**Automotive Aftermarket Industry**” means for the purposes of these guidelines, the after-sale market which includes motor vehicle Spare Parts, tools and components and maintenance and repair services, sold to consumers after the sale of the Motor Vehicle. The aftermarket includes companies involved in the manufacturing (original equipment manufacturers), distribution, retail, service and repairs of motor vehicles;
- 2.6. “**Commercially Sensitive Information**” means trade, business or industrial information that has economic value to a firm and its business strategy and that is generally not available to or known by others;
- 2.7. “**Commission**” means the Competition Commission of South Africa;
- 2.8. “**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;

2.9. “**Consumer Protection Act**” means the Consumer Protection Act No. 68 of 2008, as amended;

2.10. “**Extended Warranty**” is an optional and additional Warranty that a consumer can purchase to extend the application of an initial Warranty;

2.11. “**Historically Disadvantaged Individual**” or “**HDI**” means:

2.11.1. 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;

2.11.2. an association, a majority of whose members are individuals referred to in paragraph 2.11.1;

2.11.3. a legal person, other than an association, and individuals referred to in paragraph 2.11.1 own and control a majority of its issued share capital or members’ interest and are able to control a majority of its votes; or

2.11.4. a legal 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;

2.12. “**Independent**” or “**Independent Service Providers**” or “**ISP**” means all legal persons (including individuals, local and foreign companies, partnerships or trusts) that are not appointed as an approved service provider to an OEM’s or Insurer’s Network to undertake service and maintenance work, Mechanical Repairs, or Motor-body repairs on a Motor Vehicle;

2.13. “**Information Barriers**” means measures 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;

- 2.14. “**Insurer**” means a legal person 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;
- 2.15. “**Insurers’ Network**” refers to Insurer-Approved Service Providers;
- 2.16. “**Liability**” means responsibility for the consequences of another’s acts or omissions, enforceable by a civil (damages) or criminal remedy;
- 2.17. “**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;
- 2.18. “**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;
- 2.19. “**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;
- 2.20. “**Motor-body Repairer**” means a service provider that undertakes Motor-body Repairs;
- 2.21. “**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;
- 2.22. “**Motor Vehicle Repairs**” means classes of repair work undertaken by service providers including examining Motor Vehicles, diagnosing and detecting faults in

Motor Vehicles, adjusting, servicing and maintaining Motor Vehicles, replacing components of Motor Vehicles and painting or treating the surface of Motor Vehicles;

- 2.23. **“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;
- 2.24. **“OEM”** means original equipment manufacturer as well as any legal person over which it has direct or indirect control and includes an importer of Motor Vehicles;
- 2.25. **“OEM Franchisee”** is a legal person who buys into an OEM by purchasing the right to sell the OEM’s goods or services under its existing business model and trademark;
- 2.26. **“OEM’s Network”** refers to OEM-Approved Service Providers;
- 2.27. **“Scratch and Dent Cover”** means insurance that covers the repair of small dents, chips and scratches in the event of accidental damage to the bodywork of a Motor Vehicle;
- 2.28. **“Service Plan”** refers to a non-insurance product covering the service of a Motor Vehicle and components and parts of a Motor Vehicle that may need replacing when it is due for a service, exclusive of normal wear and tear. A Service Plan is used at specified pre-determined times or stipulated mileage;
- 2.29. **“Service Provider”** means any legal person lawfully engaged in the business of effecting service, maintenance and Motor Vehicle Repairs to Motor Vehicles;

2.30. “**Small Enterprise**” means an enterprise as defined as a “*small business*” in the Competition Act;

2.31. “**Spare Parts**” means replacement products for worn, defective or damaged components of a Motor Vehicle;

2.31.1. “**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 or marked with the trademark of the OEM;

2.31.2. “**non-original spare parts**” are Spare Parts that carry a 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;

2.32. “**Tribunal**” means the Competition Tribunal;

2.33. “**Value-added Products (VAPs)**” means add-on cover for maintenance, service and Motor Vehicle Repairs, such as Maintenance Plans, Service Plans, Extended Warranty and Scratch and Dent Cover;

2.34. “**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;

2.34.1. “**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;

2.34.2. “**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.

3. INTRODUCTION

- 3.1. Over the past decade, the Commission has received complaints regarding restrictive agreements between OEMs and various Automotive Aftermarket Industry participants, including dealers and insurers, across the value chain. Some of the competition concerns identified are: the exclusion or foreclosure of ISPs in the markets for the service and maintenance, Mechanical Repairs and Motor-body Repairs of in-warranty motor vehicles; unclear and allegedly unfair allocation of work by Insurers in the allocation of Motor-body Repairs; restrictions on the sale of OEM branded parts and components to ISPs; high barriers to entry that exclude small and historically disadvantaged persons from becoming authorised dealers; and a lack of competition and consumer choice in the sale and fitment of Spare Parts.
- 3.2. The Commission notes that similar constraints to competition in the automotive aftermarket have been identified in other jurisdictions. In developing these guidelines, the Commission conducted a review and comparison of the work being undertaken by competition authorities in other jurisdictions, including by the National Development and Reform Commission of China, Federal Anti-monopoly Service of Russia, the European Commission, the Federal Trade Commission in the United States and the Australian Competition and Consumer Commission. In these jurisdictions, such complaints have been approached in several ways, including enforcement and interventions which have led to the promulgation of regulations or voluntary codes of conduct or guidelines. These initiatives have emphasised the importance of ensuring effective competition and facilitating transparency and consumer choice.
- 3.3. The principles outlined in these guidelines are based on the Commission's experience through its advocacy and investigative work relating to various anti-competitive concerns identified in the Automotive Aftermarket Industry as well as

guidance from other jurisdictions in relation to competition between OEMs, ISPs, dealers and insurers.

4. OBJECTIVES

- 4.1. These guidelines only apply to the Automotive Aftermarket Industry.
- 4.2. These guidelines pertain to all motor vehicles traded in and registered within the Republic of South Africa.
- 4.3. These guidelines are directed at addressing constraints to competition in the Automotive Aftermarket Industry and to promote compliance with the spirit, intent and objectives of the Act by encouraging relevant stakeholders to adopt and promote principles of effective competition regulation for a growing and inclusive economy.
- 4.4. These guidelines are intended to promote transparent, informed, effective and co-operative relationships between the relevant stakeholders in conducting their business with each other and in the provision of services to consumers.
- 4.5. The specific objectives of the guidelines are to promote principles and remedies that:
 - 4.5.1. Lower barriers to entry and ensure that a greater number of firms have an opportunity to undertake service and maintenance work, Mechanical Repairs and Motor Vehicle Repairs within the period covered by the Motor Vehicle's Warranty;
 - 4.5.2. Increase consumer choice and facilitate competition and competitive pricing in the markets for:
 - 4.5.2.1. New motor vehicles;
 - 4.5.2.2. Spare parts; and

4.5.2.3. Value-added products

4.5.3. Increase transparency and facilitate consumer choice in relation to the service, maintenance, Mechanical and Motor-body Repairs of Motor Vehicles.

4.6. These guidelines seek to achieve these objectives by encouraging stakeholders to adopt measures that:

4.6.1. Widen 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;

4.6.2. Ensure that Independent Service Providers can undertake in-warranty service and maintenance work and in-warranty Motor-body Repairs;

4.6.3. Allow for greater consumer choice and product competition in the retail of Service Plans and/or Maintenance Plans; and

4.6.4. Ensure the fair allocation of Motor-body Repairs amongst Approved Service Providers based on their competitive merits such as service, quality of work and price.

5. LEGISLATIVE FRAMEWORK

5.1. The purpose of the Act, as described in section 2, is to *inter alia* ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy and to promote a greater spread of ownership, in particular to increase the ownership stakes of Historically Disadvantaged Individuals.

5.2. Transformation in the Automotive Aftermarket Industry aims to encourage access for Historically Disadvantaged Individuals. This guideline provides the Commission's approach to promote transformation in the Automotive Aftermarket Industry by the inclusion of small businesses and HDIs to enter into, participate and expand within the Automotive Aftermarket Industry.

5.3. The core principles applicable to each category of industry stakeholder are set out below.

6. EXCLUSION OR FORECLOSURE OF ISPs IN THE MARKET FOR SERVICE AND MAINTENANCE, MOTOR-BODY REPAIR, NON-STRUCTURAL AND MECHANICAL REPAIRS OF INSURED VEHICLES AND/OR VEHICLES UNDER WARRANTY

6.1. In keeping with the purpose of the Act referred to above, the guidelines provided in this sections introduces the concept of affording consumers a choice of Service Providers and encouraging a fair allocation of work, for Approved Service Providers and ISPs, for in-warranty service and maintenance work, Motor-body Repairs and Non-Structural Repairs and Mechanical Repairs without effecting the validity of the Warranty. The Commission believes that such constraints to effective entry and participation by ISPs must be remedied by OEMs by approving any Service Providers that meet their standards and specifications to undertake such services during the Warranty period. In this regard, OEMs must disclose and make public the quality criteria in their appointment of Service Providers. The Commission is of the view that OEMs must conduct themselves in a manner which is not exclusionary and exploitative.

6.1.1. OEMs must approve any Service Providers that meet their standards and specifications, to undertake service and maintenance work, motor-body repairs, non-structural repairs and mechanical repairs on Motor Vehicles during the Warranty period, including applicants who seek approval for service and maintenance-only workshops.

6.1.2. OEMs must not prohibit Approved Service Providers or Approved Dealers from carrying out service and maintenance work, motor-body repairs, non-structural repairs and mechanical repairs on Motor Vehicles of other brands.

- 6.1.3. Service Providers that are approved to provide service and maintenance work, motor-body repairs, non-structural repairs and mechanical repairs on behalf of OEMs (excluding Approved Dealers), must be able to opt to provide their services to a specific OEM (uni-branded workshop) or to multiple OEMs (multi-branded workshop).
- 6.1.4. The OEM is not obligated to pay for any service and maintenance work, motor-body repairs, non-structural repairs and mechanical repairs undertaken by an ISP during the warranty period.
- 6.1.5. OEMs must support and promote the right of consumers to seek service and maintenance work, motor-body repairs, non-structural repairs and mechanical repairs for their Motor Vehicles at a Service Provider of their choice, regardless of whether that Service Provider is an Approved Service Provider, Approved Dealer, an ISP or not.
- 6.1.6. OEMs must advise consumers, in clear and explicit terms, that they are not compelled to conduct in-warranty service and maintenance, motor-body repairs, non-structural repairs and mechanical repairs only at Approved Dealers or Approved Service Providers.
- 6.1.7. Dealers and ISPs must disclose to consumers, in clear and explicit terms, the risk of liability for Consequential Damage and the potential voiding of the Warranty cover on the Motor Vehicle.
- 6.1.8. OEMs must not enter into exclusive arrangements, either with one or more Service Providers, for effecting service and maintenance work, motor-body repairs, non-structural repairs and mechanical repairs on an OEM's Motor Vehicles within a designated geographic area.
- 6.1.9. OEMs must not appoint and/or authorise any Service Provider for an unreasonably lengthy term, and must not continuously renew the appointment of the same Service Provider, if such appointment or renewals are to the unreasonable exclusion of the appointment of other Service Providers capable of effecting repair and/or maintenance work on an OEM's Motor Vehicle within a designated geographic area.

7. PROMOTING ENTRY AND PARTICIPATION IN DEALERSHIP MARKET & PREVENTING ANTI-COMPETITIVE INFORMATION SHARING

7.1. The guidelines in this section introduce measures targeted to reduce financial barriers created by the requirements imposed by OEMs for accessing facilities of dealerships. The requirements for dealerships must be reasonable and must not require Approved Dealers to make investments that are not required as a result of an objective OEM standard. The guideline also introduces measures which OEMS and Dealerships should take into account regarding the management of commercially-sensitive information which may affect competition. The following principles will be applicable:

- 7.1.1. OEMs must establish fair processes for the selection of Dealers who meet the specific OEM's requirements.
- 7.1.2. Dealers must be selected based on a realistic evaluation conducted by the OEMs of the market potential for Dealers in a designated geographic area.
- 7.1.3. OEMs must publish the terms and conditions used to assess and select Dealers on their websites and/or other suitable media.
- 7.1.4. OEMs must disclose reasons to applicants for rejection of dealership applications.
- 7.1.5. OEMs must grant rejected applicants first right of refusal should an opportunity for the establishment of a new dealership arise.
- 7.1.6. OEMs must not impose onerous obligations on prospective Dealers. The requirements for Dealers must be reasonable and have an economic rationale, particularly in relation to the size of land, show-rooms, furniture, fittings and finishes.
- 7.1.7. OEMs must 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).

- 7.1.8. OEMs must approve multiple suppliers for required branding and corporate identity elements of dealerships, from which Dealers can procure. OEMs must not forbid or penalise Dealers from purchasing the said goods from such approved alternative suppliers if they are of like kind and quality.
- 7.1.9. 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.
- 7.1.10. 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.
- 7.1.11. Dealers that sell new Motor Vehicles and products of competing OEMs must implement Information Barriers and measures to ensure that there is no exchange of Commercially Sensitive Information between employees of Dealers and competing OEMs. These Information Barriers include but are not limited to the following:
 - a) A person elected to sit on the board of directors of an OEM or Dealer must 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 must be no common shareholders, executive managers and directors appointed to the boards of competing OEMs and Dealers.
 - b) 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.

- c) 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.
- d) 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.
- e) 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.

8. PROMOTING INCLUSIVE AND FAIR ALLOCATION OF REPAIR WORK BY INSURERS

8.1. The principles that follow are designed to encourage a fair allocation of work amongst Insurer Approved Service Providers and promote inclusivity in the selection of Motor-body Repairers into the Insurers' Network. For instance, Insurers must implement specific measures to broaden the allocation of work to ISPs, offer consumers a choice of approved repairers within their geographic area and refrain from entering into exclusivity arrangements with Service Providers within a designated geographic area:

- 8.1.1. Insurers must approve any Service Providers that meet their standards and specifications, to undertake service and maintenance work, motor-body repairs, non-structural repairs and mechanical repairs on Motor Vehicles during the Warranty period.

- 8.1.2. Insurers must not prohibit Approved Service Providers or Approved Dealers from carrying out service and maintenance work, motor-body repairs, non-structural repairs and mechanical repairs on Motor Vehicles of other brands.
- 8.1.3. Insurers must advise consumers, in clear and explicit terms, that they have a right to have the service and maintenance work, motor-body repairs, non-structural repairs and mechanical repairs of their vehicles undertaken by any service providers of their choice, whether Approved Providers or ISPs.
- 8.1.4. Insurers must ensure fair allocation of work amongst OEM and insurer-Approved Service Providers.
- 8.1.5. Insurers must publish a list of all their Approved Service Providers on their websites and/or other suitable media.
- 8.1.6. Insurers must offer consumers a choice of approved repairers within their geographic area from which they can select to repair their Motor Vehicles.
- 8.1.7. Insurers must not appoint an exclusive Service Provider within a designated geographic area.
- 8.1.8. Insurers must not appoint any Service Provider for an unreasonably long term and should not continuously renew the appointment of the same Service Provider, if such appointment or renewals are to the unreasonable exclusion of the appointment of other Service Providers capable of effecting repair and/or maintenance work on Motor Vehicles within a designated geographic area.

9. EXCLUSION OR FORECLOSURE OF DISTRIBUTORS OF NON-ORIGINAL SPARE PARTS, COMPONENTS, TOOLS & EQUIPMENT FROM DISTRIBUTING PARTS COMPETING WITH THE OEM'S BRAND IN-WARRANTY

9.1. The principles that follow introduce the concept of “non-original spare parts” in order to mitigate against restrictive practices that foreclose the distribution of Original Spare Parts to ISPs. The rationale is to increase consumer choice in the fitment of In-warranty Spare Parts. The premise is to give Motor Vehicle owners the opportunity to choose between original and non-original Spare Parts without the risk of voiding the Warranty. Furthermore, OEMs and/or Approved Dealers must make available Original Spare Parts and components to ISPs, save for parts that are linked to the motor vehicle’s security systems. The principles are as follows:

- 9.1.1. OEMs and/or Approved Dealers must allow consumers to fit “non-original spare parts” where the specific part’s Warranty has expired, without voiding the balance of the Motor Vehicle’s Warranty.
- 9.1.2. OEMs and/or Approved Dealers must allow consumers to fit such non-original Spare Parts at a Service Provider of their choice, whether an Approved Dealer or an ISP.
- 9.1.3. OEMs and/or Approved Dealers and Independent Service Providers must make consumers aware, in clear and explicit terms, the risk of liability that arises from damage to the Motor Vehicle, including Consequential Damage, as a result of the Spare Part or the fitment thereof.
- 9.1.4. OEMs and/or Approved Dealers must make available Original Spare Parts and components, through sales and distribution, to ISPs where required.
- 9.1.5. Conditional sale and distribution of Spare Parts or components must only be reserved for those items that are linked to the Motor Vehicle’s security systems.

- 9.1.6. The security-related items referred to above are those that directly or indirectly interfere with anti-theft devices.
- 9.1.7. 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.
- 9.1.8. OEMs may 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 trademark or logo effectively and in an easily visible manner on the said item.
- 9.1.9. OEMs may not set minimum retail prices for Spare Parts and components.
- 9.1.10. OEMs may not restrict a Service Provider's ability to sell Spare Parts.

10. THE BUNDLED SALE OF MOTOR VEHICLES WITH VALUE ADDED PRODUCTS

10.1. The principles that follow provide for the unbundling of maintenance and Service Plans at the point of sale from the purchase price of the Motor Vehicle. At the point of sale, Dealers and financiers must provide the consumer with details of all inclusions and exclusions included in the Service and Maintenance Plans. This will allow consumers to exercise choice regarding whether to purchase the Maintenance or Service Plan and make servicing a more affordable option for South Africans, whilst allowing for more players to provide such Value-Added services for consumers whose vehicles are in-warranty. The principles are as follows:

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

- a) purchase value-added products (such as Maintenance Plans, Service Plans and extended warranties) separately from a new Motor Vehicle;
- b) purchase value-added products with a new Motor Vehicle;
- c) purchase value-added products from any provider of their choice;
- d) refuse to purchase value-added products;
- e) select the duration of Maintenance Plans and Service Plans on a new Motor Vehicle;
- f) purchase a value-added product at any time after the purchase of the Motor Vehicle; and
- g) 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 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:

- a) the purchase price of the Motor Vehicle;
- b) the purchase price of Maintenance Plans and Service Plans;
- c) the purchase price of other value-added products.

10.1.3. At the point of sale of a Motor Vehicle, Dealers must disclose to consumers all 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.

10.1.4. 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:

- a) the average costs for each service interval (at the time of sale of the Motor Vehicle);
- b) 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
- c) the interest that a consumer will incur on the upfront payment of the Maintenance Plan and Service Plan.

10.1.5. At the point of sale of a Motor Vehicle, Dealers must provide the consumer with a complete disclosure of:

- a) 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;
- b) any other information, as required by any other applicable legislation.

11. LACK OF ACCESS TO TECHNICAL INFORMATION BY ISPs

11.1. Access to technical information remains a prerequisite for effective competition in the automotive aftermarket. Lack of access to technical information by ISPs can result in the loss of competitive strength to the advantage of competitors within the approved network leading to consumer harm. The principles that follow encourage OEMs to make available maintenance and repair technical information

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:

- a) unequivocal Motor Vehicle identification;
- b) service handbooks;
- c) technical manuals;
- d) component and diagnosis information;
- e) wiring diagrams;
- f) diagnostic trouble codes (including manufacturer specific codes);
- g) software calibration identification number applicable to a Motor Vehicle type;
- h) information provided concerning, and delivered by means of, proprietary tools and equipment;
- i) data record information and two-directional monitoring and test data;
- j) operational software.

11.1.3. In instances where an OEM discloses proprietary information or other intellectual property belonging to the OEM, it must 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. LACK OF ACCESS TO OEM-TRAINING FOR ISPs

12.1. ISPs require support to access OEM brand specific training. The principles that follow require OEMs to make independent decisions on providing technical training either to official Dealers or to ISPs.

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 must encompass the methods used to effect Motor-body and Mechanical Repair, service and maintenance and fitment works on the Motor Vehicle.

13. CONCLUSION

13.1. These guidelines present the approach that the Commission considers in maintaining and promoting competition in the Automotive Aftermarket Industry.

13.2. These guidelines are not exhaustive and will not affect the discretion of the Commission and/or the Tribunal and courts to pursue anti-competitive conduct through enforcement, taking into account the market circumstances and the nature of the conduct on a case-by-case basis.

13.3. Should market participants be uncertain as to whether conduct may potentially contravene the Act, such market participants should approach the Commission for further guidance.