

DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 1011

22 SEPTEMBER 2017



competition commission
south africa

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

CALL FOR SUBMISSIONS

1. The Competition Commission of South Africa ("Commission") is conducting advocacy work in the automotive aftermarket industry, with the intention to address anti-competitive behaviour within this industry whilst at the same time promoting the industry's transformation to foster inclusive growth.
2. The Commission has been engaging with numerous private and government entities since early 2017 to fully understand the competitive dynamics that exist within the automotive aftermarket industry. During these engagements, the Commission has paid particular attention to the need to transform this industry to encourage increased economic participation - together with a greater spread of ownership - of historically disadvantaged individuals.
3. The Commission has today, 22 September 2017, published a draft Code of Conduct ("Code") for public comment. The Code has sought to address identified concerns relating to the competitive and transformative dynamics that exist within the automotive aftermarket industry and will bind various original equipment manufacturers, government bodies and industry associations who will become signatories to it.

4. The intended outcomes of the Commission's advocacy are as follows:
 - 4.1. For small and historically disadvantaged independent service providers to undertake service and maintenance work whilst a vehicle is in-warranty;
 - 4.2. For more small, HDI independents to undertake in-warranty auto-body repairs;
 - 4.3. For more historically disadvantaged individuals to own OEM dealerships;
 - 4.4. The use of equal matching spare parts, in addition to OEM and Identical parts, in the repair of motor vehicles.
 - 4.5. The removal of OEM restrictions in the sale and distribution of parts, by retailers whether OEM-approved or independent.
 - 4.6. More price and product options for consumers in the sale of parts.
 - 4.7. Consumer education & awareness of costs entailed in the purchase of a motor vehicle.
5. The Commission invites automotive industry participants (especially small and independent repairers and maintenance service providers), consumers and any other interested party to submit their views and comments on the Code.
6. Kindly note that the deadline for the receipt of all submissions is **03 November 2017**.
7. All submissions must be typed or hand-written (preferably in English) and marked for the attention of Mr Mziwodumo Rubushe and delivered to one of the following addresses:

Email: MziwodumoR@compcom.co.za

Hand Delivery: Office of the Commissioner
 Mulayo Building, Block C, Third Floor
 The DTI Campus,
 77 Meintjies Street, Sunnyside, Pretoria, 0002

Post: Private Bag X23, Lynwood Ridge Pretoria

8. Should you require any assistance in making your submission, please do not hesitate to contact the Commission at the contact details provided herein.
9. Kindly note that in the interest of transparency, the Commission will publish all submissions it receives on its website at www.compcom.co.za. Should your submission

contain any confidential information, as defined in the Competition Act 89 of 1998, as amended, you are able to claim your submission as such, thus precluding the Commission from publishing it. We would however request that you submit a separate copy of your submission redacting all confidential information, which will then be published.

10. The Commission may hold further engagements with stakeholders pertaining to their submissions where necessary. The Commission will consider all submissions it receives in the development of a final Code.
11. The Commission looks forward to receiving your views and opinions in this regard and we thank you for your participation in creating a growing and inclusive economy for all.



***competition* commission**
south africa

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

PUBLISHED ON 22 SEPTEMBER 2017

FOR PUBLIC COMMENT

DEADLINE FOR THE RECEIPT OF COMMENTS IS 03 NOVEMBER 2017

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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, in consultation with industry stakeholders.
- 1.2 The signatories to this Code are Original Equipment Manufacturers ("OEMs") and other participants in the automotive industry including dealers, repair and maintenance service providers, distributors of spare parts, and insurers of motor vehicles. Various government departments and regulators, who are additional signatories, are in support of this Code.
- 1.3 The signatories commit to the advancement of the following objectives of Competition Act no. 89 of 1998, as amended:
- 1.3.1 To promote the efficiency, adaptability and development of the economy;
 - 1.3.2 To provide consumers with competitive prices and product choices;
 - 1.3.3 To promote employment and advance the social and economic welfare of South Africans;
 - 1.3.4 To expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;
 - 1.3.5 To ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and
 - 1.3.6 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 of Conduct is intended to address competition concerns arising from agreements between OEM's and dealers, insurers, and repair and maintenance service providers, which have the effect of substantially lessening or preventing competition and which have created barriers to entry in the automotive industry.
- 2.2. The objectives of the Code are:
 - 2.2.1. For independent service providers to undertake in-warranty mechanical (maintenance and service) work;
 - 2.2.2. For more service providers to participate in the OEM networks, particularly firms owned and operated by historically disadvantaged persons;
 - 2.2.3. For an increase in the number of dealerships owned by historically disadvantaged persons;
 - 2.2.4. For increased choice of service providers for consumers for the service, maintenance and repairs of their vehicles;
 - 2.2.5. For increased product choice and competitive prices for consumers for services and spare parts;
 - 2.2.6. For greater consumer awareness of the costs in the sale of a vehicle, including the costs of maintenance and service plans.
- 2.3. The Code seeks to achieve these market changes through inter alia:
 - 2.3.1. The removal of restrictions on the provision of maintenance and service work of vehicles whilst under warranty;
 - 2.3.2. The removal of restrictions on the number of independent repairers, dealers and independent parts and other service providers within designated geographic areas;
 - 2.3.3. Promoting the ownership of dealerships by HDI's, by reducing onerous requirements related to the facilities of dealerships; allowing for use of alternative suppliers for marketing and corporate identity-related elements of dealerships;
 - 2.3.4. For dealerships who sell new vehicle and products of competing OEMs to ensure that price-setting is not co-ordinated;
 - 2.3.5. Enabling access to the safety and technical specifications of OEM-parts to enable independent service providers to effect repairs;

- 2.3.6. Enabling access by independent service providers to OEM tools through leasing and renting options;
- 2.3.7. Recognition of "Equal Matching Parts"- which have been approved by SABS- for use or installation in repairs, without losing the OEM warranty;
- 2.3.8. For all Service Providers, whether independent or authorised, to be able to sell or distribute Identical or Equal Matching parts without restrictions;
- 2.3.9. For OEMs to provide product and parts-fitment training to independent service providers, including the processes and mechanisms involved in effecting maintenance and repair work on OEM motor vehicles;
- 2.3.10. For OEMs to separate the costs of a vehicle from the costs of Maintenance & Service Plans, at the point of sale of a vehicle.

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.
- 3.2. **“Approved service providers”** means all firms (including persons, partnerships or trusts) who are currently appointed to a particular OEM's distribution network. This includes, but is not limited to, motor vehicle body repairers such as spray painters or panel beaters; mechanical repairers or firms that effect maintenance services on motor vehicles; distributors of spare parts for motor vehicles; and fitment centres. Approved service providers excludes Dealers, as defined herein.
- 3.3. **“Commercially-sensitive information”** means trade, business or industrial information which has a particular economic value to a firm and its business strategy and is generally not available or known by others.
- 3.4. **“Consumer Protection Act”** means the Consumer Protection Act 68 of 2008.
- 3.5. **“Dealer”** or **“Dealership”** means a business enterprise trading in the sale and resale of new and/or used functioning motor vehicles.
- 3.6. **“Historically disadvantaged Individual”** means:
 - 3.6.1. 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 disadvantaged by unfair discrimination on the basis of race;
 - 3.6.2. an association, a majority of whose members are individuals referred to in paragraph (a);
 - 3.6.3. a juristic person other than an association, and individuals referred to in paragraph (a) own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes; or
 - 3.6.4. a juristic person or association, and persons referred to in paragraph (a), (b) or (c) own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes.

- 3.7. “**Independent service providers**” means all firms (including persons, partnerships or trusts) who are not in the appointment of an OEM’s distribution network and who conduct business in compliance with the applicable laws of the Republic of South Africa. This includes, but is not limited to, motor vehicle body repairers such as spray painters or panel beaters; mechanical repairers or firms that effect maintenance services on motor vehicles; distributors of spare parts for motor vehicles; and fitment centres. Independent service providers excludes Dealers, as defined herein.
- 3.8. “**MIOSA**” means the Motor Industry Ombudsman of South Africa, being a non-statutory body established in terms of the Consumer Protection Act 68 of 2008.
- 3.9. “**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;
- 3.10. “**NRCS**” means the National Regulator for Compulsory Specifications, being a statutory body established in terms of the National Regulator for Compulsory Specifications Act 5 of 2008;
- 3.11. “**OEM**” means Original Equipment Manufacturer as well as any firm over which it has direct or indirect control and includes a distributor, importer, manufacturer or dealer of motor vehicles.
- 3.12. “**OEM network**” refers to Approved Service Providers and/or OEM-authorized or approved Dealers.
- 3.13. “**Policies and Plans**” refers to one or a combination of the following:
- 3.13.1. “**Maintenance Plan**” refers to a financial product, covering the regular maintenance of a motor vehicle on components and parts that are subject to wear and tear. A Maintenance Plan is used at specified pre-determined times or stipulated mileage.
- 3.13.2. “**Service Plan**” refers to a financial 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. The Service Plan does not cover components and parts which need replacing or servicing as a result of normal

wear and tear. A Service Plan is used at specified pre-determined times or stipulated mileage.

- 3.13.3. "**Warranty**" is an undertaking by the OEM that should certain components or parts of a motor vehicle need replacement or repair due to a manufacturing or factory defect or malfunction, which is not the fault of the driver, the OEM will replace or repair such component or part. The Warranty is only valid within a stipulated timeframe or mileage limit, as determined by the OEM.
- 3.13.4. "**Extended Warranty**" is an optional and additional warranty that a consumer is able to purchase to extend the application of the Warranty.
- 3.14. "**Repair work**" refers to all work to the vehicle's body (such as panel beating and spray painting) and all mechanical repairs to a motor vehicle's mechanical parts;
- 3.15. "**SABS**" means the South African Bureau of Standards, being a statutory body established in terms of the Standards Act 24 of 1945, continuing to exist in terms of Section 3 of the Standards Act, No. 8 of 2008;
- 3.16. "**SANAS**" means the South African National Accreditation System, the body responsible for carrying out accreditations in respect of conformity assessment, as mandated through the Accreditation for Conformity Assessment, Calibration and Good Laboratory Practice Act (Act 19 of 2006).
- 3.17. "**Service Provider**" includes both independent and approved service providers;
- 3.18. "**Spare parts**" means products and accessories which are to be installed in or on a motor vehicle, which replace worn or damaged components of that vehicle. Spare parts additionally are to be understood to encompass products such as lubricants that are necessary for the use of a motor vehicle, however excludes fuel that is required to operate the vehicle. There are different categories of Spare Parts and they are each defined as follows:
- 3.18.1. "**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/Importer or any other authorised distributors of the OEM/Importer and marked with the trademark of the OEM;

3.18.2. "**Identical spare parts**" are parts produced by the OEM or for the OEM under its instruction/order by a manufacturer, fully equivalent to the specifications and standards of the original spare parts, but not marked with the trademark of the OEM, as well as those spare parts distributed by the OEM/Importer or any other authorised distributors of the OEM;

3.18.3. "**Spare parts of matching quality**" are spare parts that are of the same quality as original or identical parts and which carry legitimate Warranty from its manufacturer, but are not distributed by the OEM/Importer or by the official distributor of the OEM/Importer, and are not marked with the OEM's trademark. Spare parts are deemed to be of matching quality where they have been certified as such by the South African Bureau of Standards or by a testing process through a SANAS-accredited laboratory.

4. SALE OF MOTOR VEHICLES

4.1. Dealers Who Sell Competing Vehicles & Products

4.1.1. Dealers who sell new vehicles and products of competing OEMs shall ensure that they do not engage in price co-ordination. Specifically, the prices of competing vehicles and products shall be determined by different individuals within the Dealership. Persons setting prices for new vehicles and products of competing OEMs shall do so independently.

4.1.2. Dealers who sell new vehicles and products of competing OEMs shall ensure that no commercially-sensitive information is provided or shared with competing OEMs.

4.2. Selection of Dealers

4.2.1. OEMs shall establish fair and transparent processes for the selection of dealers who meet the OEM's respective compliance requirements.

4.2.2. OEMs shall not appoint Dealers exclusively as the sole Dealer within designated geographic areas. Dealers shall be selected based on a realistic evaluation of the market potential for Dealers in a designated geographic area.

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.

4.2.4. OEMs shall not engage in conduct that will prevent or impede a historically disadvantaged person's entry or expansion as a dealer.

4.3. Facilities of Dealerships

4.3.1. The OEM's compliance requirements shall not impose onerous obligations on prospective Dealers. The requirements for facilities of dealerships should be reasonable and have an economic rationale, particularly in relation to the size of land, show-rooms, furniture, fitting and finishes of dealerships.

4.3.2. OEM's shall not require authorised Dealers to make further investments within established facilities within 5 years from their commencement, if such investments are not objectively required for the continuation of the Dealer's normal business operations.

4.3.3. OEM's shall approve and recommend multiple suppliers for required branding and corporate identity elements of dealerships, from which Dealers can procure. OEMs shall not forbid or penalise Dealers from purchasing the said goods from such approved alternative suppliers if they are of like kind and quality.

4.3.4. OEMs and Dealers shall support those businesses owned by historically disadvantaged persons in their procurement of goods.

4.4. **Sale of Policies and Plans**

4.4.1. Policies and Plans sold or provided to Consumers at the sale of a motor vehicle shall not forbid a Consumer from using the services of Independent service providers for repair, service or maintenance work whilst the motor vehicle is covered by the warranty period as well as after the expiration of the warranty period. Policies and Plans sold or provided to Consumers should explicitly indicate as much.

4.4.2. OEMs shall recognise and promote a consumer's choice to:

4.4.2.1. purchase a new motor vehicle separately from a Maintenance Plan, a Service Plan and an Extended Warranty;

4.4.2.2. to select the duration of a Maintenance Plan, a Service Plan and an Extended Warranty on newly purchased vehicle;

4.4.2.3. use any repairer for non-warranty work (service, maintenance, repairs and replacement of parts not covered by a warranty) during both the warranty period and any extended warranty period. This will not have the effect of voiding or cancelling the OEM warranty. In these instances the OEM is not obliged to pay for the repair work;

- 4.4.2.4. use any Independent service provider for Warranty work during the warranty period, provided that the independent service provider uses an Original or Identical Spare Part. In such instances the OEM and insurer shall not withhold payment to the independent service provider.

4.5. **Consumers' Rights to Information**

- 4.5.1. At the point of sale of a motor vehicle, Dealers shall provide the consumer with a complete disclosure of the following costs:

- 4.5.1.1. purchase price of the motor vehicle;
- 4.5.1.2. Policies and Plans included in the purchase price of the vehicle;
- 4.5.1.3. dealer commissions and other commissions, excluding internal commercial costs of the dealership;
- 4.5.1.4. any other related cost and pricing information, as required by the Consumer Protection Act, Financial Services Board Act and any other applicable legislation.

- 4.5.2. Consumers are entitled to a 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.

- 4.5.3. At the point of sale of a motor vehicle, Dealers shall provide the consumer with details of all inclusions and exclusions included in the Policies and Plans, including the following information:

- 4.5.3.1. the average costs (as they exist at the time of sale of the motor vehicle) for each service interval; and
- 4.5.3.2. the average cost of the parts covered by Policies and Plans which commonly require replacement at specific kilometre intervals or upon the motor vehicle attaining a specific age;

- 4.5.3.3. the interest that a consumer will incur on the upfront payment of Policies and Plans.

5. MAINTENANCE, SERVICE AND REPAIR WORK

- 5.1. OEMs and Insurers shall not exclusively appoint a service provider for effecting repair and/or maintenance work on an OEM's motor vehicles within a designated geographic area.
- 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.
- 5.3. Independent service providers shall be entitled to effect maintenance and repair work to a consumer's motor vehicle whilst it is still under Warranty or covered by a Maintenance Plan, Service Plan or Extended Warranty.
- 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.
- 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.

6. ACCESS TO TECHNICAL MAINTENANCE INFORMATION

- 6.1. OEMs shall make available to independent service providers, at no cost, all technical maintenance information relating to its motor vehicles. Such information includes but is not limited to the following:
 - 6.1.1. unequivocal vehicle identification

- 6.1.2. service handbooks
- 6.1.3. technical manuals
- 6.1.4. component and diagnosis information
- 6.1.5. wiring diagrams
- 6.1.6. diagnostic trouble codes (including manufacturer specific codes)
- 6.1.7. software calibration identification number applicable to a vehicle type
- 6.1.8. information provided concerning, and delivered by means of, proprietary tools and equipment
- 6.1.9. data record information and two-directional monitoring and test data
- 6.1.10. operational software

7. PARTS AND ACCESSORIES

7.1. The Certification of Spare Parts

- 7.1.1. Where no South African national standard exists for a spare part, or the said standard is unregulated by the NRCS or other regulatory body as the case may be, the OEM's must make the specifications of their motor vehicle parts publically available.
- 7.1.2. Spare parts of matching quality must be accredited by the SABS or through a SANAS-accredited laboratory, per the applicable laws and regulations of the Republic of South Africa.
- 7.1.3. The obligation to prove that the spare parts are of matching quality shall lie with the manufacturer, supplier or importer of such spare parts.

7.2. The Use of Spare Parts

- 7.2.1. OEMs shall not forbid Consumers or Service Providers (whether independent or authorised), 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.
- 7.2.2. OEMs shall not forbid Service Providers from using spare parts of matching quality for maintenance, service and non-warranty repairs after expiration of the Warranty period.
- 7.2.3. Insurers shall not withhold payments to a Consumer or a Service Provider if the Service Provider, whether independent or authorised, uses spare parts of matching quality.
- 7.2.4. In instances where spare parts of matching quality are used in the maintenance and/or repair of a motor vehicle, the relevant OEM will not be held liable for any defects or damage caused by a defect in the spare part of matching quality.

7.3. The Distribution and Sale of Spare Parts

- 7.3.1. The various associations active within the automotive industry shall publish a list of parts of matching quality and shall maintain the list.
- 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).
- 7.3.3. OEMs shall not set minimum retail prices for spare parts and other services as well as related labour rates of service providers.
- 7.3.4. OEMs shall not enter into any agreements regarding components used for the initial assembly of motor vehicles and with the supplier of such components, which will restrain the supplier's ability to place its trade mark or logo effectively and in an easily visible manner on the components supplied or on spare parts.

7.3.5. OEMs shall not restrict a service provider's ability to sell spare parts.

7.3.6. OEMs shall not restrict the sales of spare parts for motor vehicles by members of the OEM's network to independent service providers, which use those parts for the repair and maintenance of a motor vehicle.

7.3.7. OEMs shall not enter into any agreements with suppliers of spare parts, repair tools or diagnostic or other equipment to restrict the supplier's ability to sell those goods to service providers or end users.

8. AVAILING OF SPECIAL EQUIPMENT AND TOOLS TO DEALERS AND INDEPENDENT REPAIRERS

8.1. OEMs and their Approved service providers shall make available to Independent service providers, at a reasonable cost, the special tools and equipment necessary for the provision of maintenance services and repair work of motor vehicles. This may be done through lending, leasing or hiring out of the special tools and equipment.

8.2. OEMs shall not forbid Approved service providers from lending, hiring out or leasing such special tools and equipment to Independent Service Providers nor restrict the sale or supply of such special tools and special equipment to Independent Service Providers,

8.3. Certain safety and security critical tools, equipment and parts may only be obtained from the OEM or suppliers authorised by the OEM. These safety and security critical tools, equipment and parts are those which directly or indirectly interfere with anti-theft, and the active and passive security systems of a vehicle, specifically, alarm and tracking systems, immobilisers, locking and entry systems, electronic control units, airbags, safety belts and similar products .

8.4. OEMs shall not discriminate between Approved Service Providers and independent service providers in terms of the sale and supply of specialised equipment and tools.

9. TRAINING

- 9.1. OEM's shall make available or alternatively, shall provide training to independent service providers who request parts or product-specific training, at a reasonable cost. Such training will encompass the methods used to effect motor vehicle body and mechanical repair, and fitment works on the motor vehicles that a particular OEM manufactures or supplies.
- 9.2. OEMs shall provide Independent service providers with certification of such completed training. These certificates will effectively categorise the trained independent service provider as being as competent and having the knowledge to effect any maintenance, service or repair work on a particular OEM's motor vehicle.
- 9.3. Such certificates will enable independent service providers to be granted admission to the OEM's network and insurers alike, to effect maintenance and repair work on that particular OEM's motor vehicles.

10. STATUS OF THE CODE

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

11. IMPLEMENTATION

- 11.1. The Code shall take effect, in full, 12 months after its signing.
- 11.2. Each signatory to this Code will be responsible to take steps to give effect to its terms in order to ensure the inclusion and participation of a greater number of service providers, in particular those owned and operated by historically disadvantaged persons, within the automotive industry.

12. MONITORING OF ADHERENCE TO THE CODE

- 12.1. The signatories of this Code shall submit annual reports to the Competition Commission on the implementation and adherence to the principles set out.
- 12.2. The Commission shall prescribe the elements which signatories must report on, which shall include the transformation initiatives effected pursuant to this Code.
- 12.3. The Commission shall aggregate and publish the annual reports submitted by the Signatories.

13. REVIEW OF CODE

- 13.1. The Code shall remain valid until amended, replaced or withdrawn by the Competition Commission, in consultation with the automotive industry participants.

14. DISPUTE RESOLUTION

- 14.1. Disputes arising from the application of this Code shall be referred to the MIOSA for resolution.
- 14.2. All service providers shall register with MIOSA, for the purposes of dispute resolution.

-End-