

REGULATORY

Shifting gears and driving competition: Proposed changes to the Guidelines for Competition in the South African Automotive Aftermarkets

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The Competition Commission is proposing changes to its Guidelines for Competition in the South African Automotive Aftermarkets (“**Guidelines**”), and interested parties have until 13 May 2024 to comment!

The proposed amendments are in essence twofold and seek to –

- amend certain existing definitions and sections of the Guidelines; and
- introduce new sections to the Guidelines.

In particular, the proposed amendments are aimed at amending –

Section 6 of the Guidelines which deals with the appointment of motor-body repairers by original equipment manufacturers (“OEM”)

The proposed amendment suggests that OEMs “*should approve any*” motor-body repairer applicant that meets their standards and specifications and not limit their decision whether to approve a motor-body repairer to prevailing market conditions or low volumes of work in the area concerned.

Section 7 of the Guidelines which deals with the appointment of service providers and allocation of work by insurers

The proposed amendment suggests that insurers “*should approve any*” motor-body repairer that meets their standards and specifications to undertake repairs on out-of-warranty motor vehicles and not limit their decision on whether to approve a motor-body repairer to market demand, the volume of claims and work available in the area concerned.

Section 9 of the Guidelines which deals with preventing anti-competitive information sharing by multi-brand dealerships

The proposed amendment –

- substitutes the word “Commercially” with “Competitively” where it appears throughout section 9 of the Guidelines; and
- requires OEMS and approved dealers to implement internal training to ensure its employees are aware of and understand the provisions of the Competition Act 89 of 1998 that are relevant to the exchange of Competitively Sensitive Information between competitors.

Section 11 of the Guidelines which deals with the bundled sale of motor vehicles with value added products

The proposed amendment suggests that –

- OEMS, approved dealers and financiers must disclose to their customers the price of the motor vehicle and the price of the value-added products (such as maintenance and service plans) **separately**. Importantly, this must be disclosed at the point of sale; and

- consumers must be afforded and notified of the right to cancel a value-added contract (i.e., maintenance and services plans) and/or receive a refund of the value of the balance of the product by approved dealers in instances where there is no replacement motor vehicle after a write-off or it is not feasible to transfer a maintenance plan and/or a service plan to a replacement motor vehicle.

Section 12 which deals with access to technical information and OEM-training for independent service providers

The proposed amendment –

- provides that independent service providers may appoint or use the services of an intermediary to access OEM-technical information on their behalf. The rationale behind this is that independent service providers may incur expenses and experience administrative challenges in accessing OEM-technical information individually; and
- suggests that OEMs must make available to independent service providers or their intermediaries, the OEM-technical information relating to its motor vehicles on reasonable terms and conditions, including terms of usage, confidentiality and fees that are no less favourable to the terms offered to its approved dealers and approved motor-body repairers.

Interested parties have until **13 May 2024** to comment. Please contact us should you require assistance with this.



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