

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 46

29 JANUARY 2021



competitioncommission
south africa

Guidelines for Competition in the South African Automotive

Aftermarket

10 December 2020

Final

Guidelines for Competition in the
Automotive Aftermarket



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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 (“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. Over the past decade, the Commission has received complaints regarding allegations of anti-competitive conduct in the aftermarket value chain. The allegations include exclusionary agreements and/or arrangements between OEMs and Approved Motor-body Repairers; the exclusion or foreclosure of Independent Service Providers in the markets for the service and maintenance and Mechanical Repairs for In-Warranty Motor Vehicles; unfair allocation of work by Insurers; restrictions on the sale of Original Spare Parts to ISPs; high barriers to entry that exclude small and medium enterprises (SMEs) and historically disadvantaged individuals (HDIs) from becoming Approved Motor-body Repairers and Approved Dealers; and a lack of competition and consumer choice in the sale and fitment of Spare Parts.
- 1.3. The Commission has been working with the industry since early 2017 to resolve these market issues. The Commission initially facilitated an advocacy program towards an industry voluntary Code of Conduct. After two years of engagements and consultation, the stakeholders failed to reach consensus and/or to commit to meaningful pro-competitive reforms in response to the challenges posed.

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- 1.4. These Guidelines therefore provide practical guidance for the automotive aftermarkets industry, intended to promote inclusion and to encourage competition through greater participation of small businesses as well as historically disadvantaged groups.

2. DEFINITIONS

- 2.1. **“Act”** means the Competition Act no. 89 of 1998, as amended.
- 2.2. **“Agreement”** means any consensus, contract, arrangement, 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. **“Automotive Aftermarket”** means for these Guidelines, the after-sale market which includes maintenance and repair services and related value added products, Mechanical Repairs, Structural Repairs and Non-Structural Repairs to Motor Vehicles, the sale of motor vehicle Spare Parts, tools and components and the sale and administration of Motor Vehicle Insurance.
- 2.4. **“Commercially Sensitive Information”** means trade, business, industrial information and data stored electronically or in the cloud that has economic value to a firm and its business strategy and that is generally not available to or known by others.
- 2.5. **“Commission”** means the Competition Commission of South Africa.
- 2.6. **“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.
- 2.7. **“Dealer”** means a business enterprise whose business is in the retail of new and/or used motor vehicles, the sale and resale of Spare Parts and the service, maintenance, and Mechanical Repairs of motor vehicles but excludes Motor-body Repairers, as defined herein. For purposes of these Guidelines, an Approved Dealer means a Dealer that is appointed by an OEM.
- 2.8. **“Designated Geographic Area”** means a local (municipal), district, regional or provincial area.

- 2.9. “**Extended Warranty**” is an optional and additional Warranty that a consumer can purchase to extend the application of a Warranty.
- 2.10. “**Historically Disadvantaged Individual**” or “**HDI**” means 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;
- 2.10.1. an association, a majority of whose members are individuals referred to in paragraph 2.10.
- 2.10.2. a legal person, other than an association, and individuals referred to in paragraph 2.10.1 own and control a majority of its issued share capital or members’ interest and are able to control a majority of its votes: or
- 2.10.3. 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.
- 2.11. “**Independent Service Providers**” or “**ISP**” means all Dealers and Motor-body Repairers, who are not appointed as an Approved Dealer or Approved Motor-body Repairer as defined herein.
- 2.12. “**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 constitute a prohibited practice in terms of the Act.
- 2.13. “**Insurer**” means a legal person licensed as an insurer in terms of the Insurance Act, No. 18 of 2017, that provides and sells motor insurance cover for loss or damage to a Motor Vehicle, and any person acting on their behalf including brokers, intermediaries, underwriters and assessors.
- 2.14. “**Liability**” means responsibility for the consequences of one’s acts or omissions, enforceable by a civil (damages) or criminal remedy.

- 2.15. “**Maintenance Plan**” refers to a non-insurance product, covering the regular maintenance and repairs of a Motor Vehicle on components and parts that include wear and tear. A Maintenance Plan is used at specified pre-determined times or stipulated mileage.
- 2.16. “**Mechanical Repair**” means the restoration or replacement of the working parts of a Motor Vehicle, such as the engine and operational software, including diagnosing and detecting faults in Motor Vehicles, and the replacement and programming of a Motor Vehicle’s electric and electronic components.
- 2.17. “**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.
- 2.18. “**Motor-body Repairer**” means a business enterprise that performs Structural Repairs and Non-Structural Repairs to Motor Vehicles but excludes Dealers, as defined herein. For purposes of these Guidelines, an Approved Motor-body Repairer means a Motor-body Repairer that is appointed by an OEM (OEM Approved Motor-body Repairs) or an Insurer (Insurer Approved Motor-body Repairs).
- 2.19. “**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.
- 2.20. “**OEM**” means an original equipment manufacturer as well as any legal person over which it has direct or indirect control and includes an importer of Motor Vehicles.
- 2.21. “**Safety Systems**” refers to parts, components or systems, the failure of which may directly or indirectly endanger the life or limb of passengers in the vehicle.
- 2.22. “**Security Systems**” refers to anti-theft devices which prevent the

operation of a Motor Vehicle without the fob (an electronic device used typically in place of a key) programmed for that Motor Vehicle including the transponder chip, sensors and other devices that disable or protect the Motor Vehicle. Security Systems include but are not limited to the coding of keys, engine control unit, body control unit, audio or infotainment unit, instrument cluster, injector pump, which share a rolling code program to prevent theft or start-up and driving of the Motor Vehicle.

2.23. **“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 a stipulated mileage.

2.24. **“Small and Medium Enterprise” or “SME”** means a small business as defined in the National Small Enterprise Act No. 102 of 1996.

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

2.25.1. **“Original Spare Parts”**, for purposes of these Guidelines, are replacement Spare Parts produced by, on behalf of or under the instructions/order of an OEM and in accordance with specifications and production standards provided by the OEM, as well as those Spare Parts distributed by the OEM or any other authorised distributors of the OEM or marked with the trademark of the OEM.

2.25.2. **“Non-Original Spare Parts”**, for purposes of these Guidelines, are Spare Parts that carry a Warranty from its manufacturer and are legitimate and traceable for sale in the aftermarket, but that are not Original Spare Parts. Non-Original Spare Parts exclude counterfeit Spare Parts.

- 2.26. “**Structural Repair**” means the work undertaken to mend, restore, refinish, and replace, *inter alia*, the bodywork, frames, painting and treating the surface and fixing the glass (if undertaken as part of the foregoing activities) of Motor Vehicles.
- 2.27. “**Value-added Products**” means add-on cover for maintenance, service, and Motor Vehicle repairs, such as Maintenance Plans, Service Plans, Extended Warranty and scratch and dent cover.
- 2.28. “**Vehicle Service Book**” refers to a physical book or the electronic equivalent including data stored electronically or in the cloud which is used to keep a record of any work performed on the Motor Vehicle, when it was done, and by whom.
- 2.29. “**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:
- 2.29.1. “**In-Warranty**” means the period in which an OEM has an obligation to repair or replace any component or part of the Motor Vehicle which proves defective in materials or workmanship.
- 2.29.2. “**Out-of-Warranty**” means the period in which a Warranty (or Extended Warranty) has expired and in which the OEM has no obligation to repair or replace defective components or parts.

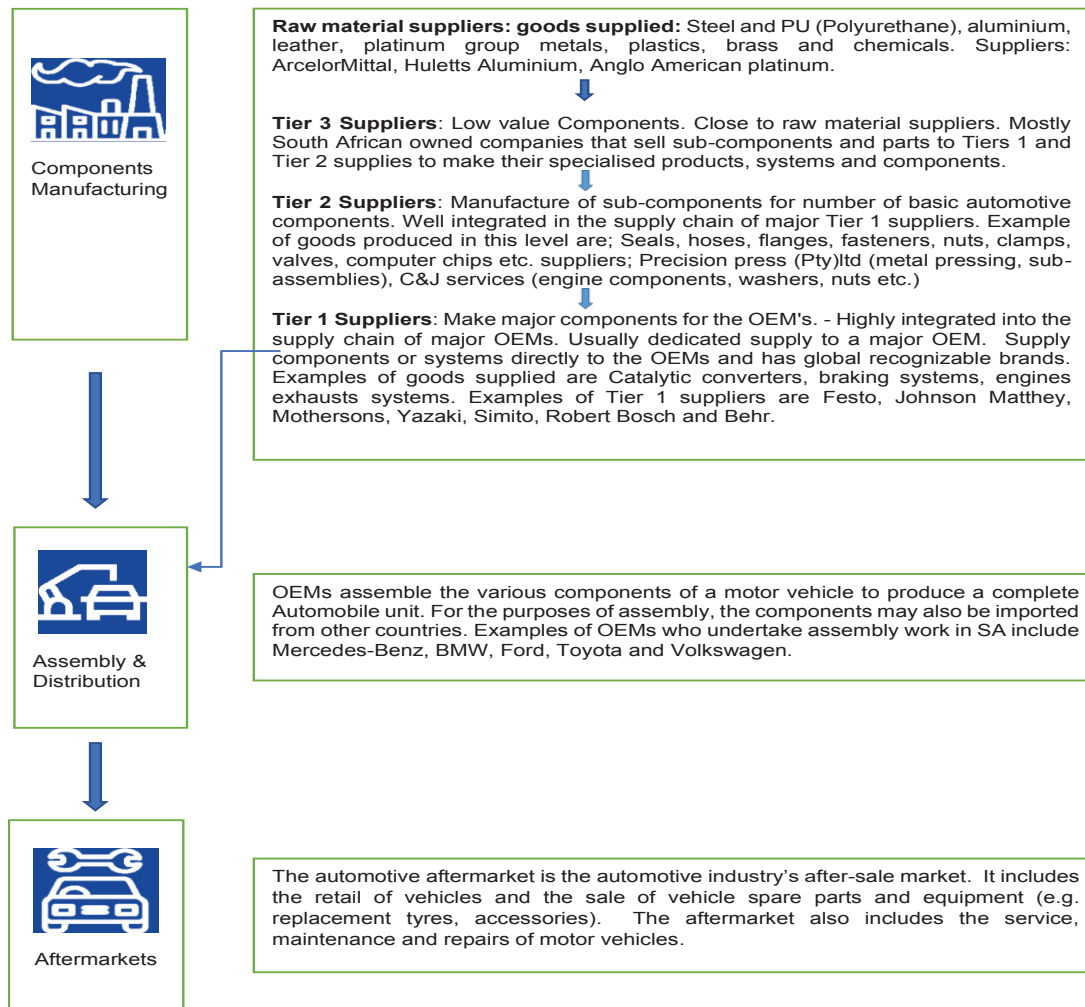
3. INTRODUCTION

The Automotive Value Chain

3.1. Generally, the automotive sector is divided into two related markets, the market for the manufacturing of new Motor Vehicles (usually referred to as “the primary market”) and the after-sales or aftermarket (referred to as “the secondary market”).

3.2. The automotive value chain is depicted in **Figure 1** below:

Figure 1: The Automotive Value Chain



Source: Commission's own compilation from publicly available data

Manufacturing

- 3.3. The manufacturing process includes the following elements: foundry operations, which, whether integrated with Motor Vehicle assembly facilities or independent shops, cast metal products for the production of Motor Vehicles and Motor Vehicle equipment metal shaping and machining, where vehicle parts, including bumper bars, hubcaps and body parts are manufactured in metal galvanizing and electroplating shops which also provide metal coating to inhibit oxidation, prevent corrosion and extend the life of the product Motor Vehicle assembly and Motor Vehicle painting and finishing.¹

Aftermarket: Motor Vehicle Retail, Service, Maintenance and Repairs

- 3.4. The key players in the aftermarket include Repairers (e.g. mechanical, motor-body, structural, non-structural), Dealers and spare- parts suppliers. These parties may either be appointed by an OEM to provide services to their customers or operate independently of such arrangements.
- 3.5. The retail market comprises OEMs, Dealers, importers and distributors. Dealers are often contracted or owned by OEMs and act as agents of the OEMs to sell their Motor Vehicles and provide services to customers. The Approved Dealers form part of listed retail groups which have several divisions, including automotive, fleet management, warehousing, transportation, financial services, and car rental.
- 3.6. Dealerships are dedicated points of sale for each OEM; they represent the OEM to the customer and act as their agents. Examples of Dealerships in South Africa include CMH Group, Lazarus Group, BB group Lindsay Saker and McCarthy Group.

¹ Who owns Whom: The Motor Vehicle Industry, October 2018.

Aftermarket: Financing and Insurance

3.7. Financial institutions (banks) typically provide consumers with finance for the purchase of Motor Vehicles. As a value-added service, Dealerships can sometimes act as intermediaries for accessing finance, when requested by a consumer. At the point of sale, new motor vehicles are covered by a warranty of the OEM, which can be applicable to the entire vehicle and to particular parts and components of the vehicle; OEMs also offer (or sell) value-added products, such as service and maintenance plans, to consumers. There are also 3rd party providers of service and maintenance plans and extended warranties for vehicles out of the warranty period. Finally, Insurance companies cover the costs of repairs to a Motor Vehicle and loss of a Motor Vehicle.

Overview of the South African Industry

3.8. In South Africa, the automotive industry contributes 6.4% to the country's gross domestic product (GDP) (4.0% manufacturing and 2.4% retail) and accounts for 30.1% of the country's manufacturing output. It is the country's fifth-largest exporting sector out of all 104 sectors and accounts for 13.9% of total exports.²

3.9. The manufacturing segment of the industry currently employs more than 110,000 people across its various tiers of activity (from component manufacturing to vehicle assembly).³

3.10. The South African automotive industry consists of twenty-two (22) companies involved in the production of Motor Vehicles (OEMs). In addition, there are twenty-one (21) companies that import and distribute new Motor

² NAAMSA submission to the Competition Commission on the Draft Guidelines for Competition in the South African Automotive Aftermarket Industry dated 30 June 2020.

³ <https://naamsa.net/employment-and-skills/>

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Vehicles in the country. There are approximately five hundred (500) automotive component suppliers, including 180 first-tier suppliers.⁴

3.11. The South African industry value chain is primarily driven by seven (7) OEMs: BMW; Ford; Isuzu; Mercedes Benz; Nissan; Toyota; and Volkswagen.

3.12. These companies make a huge impact on the economies of Gauteng, the Eastern Cape and KwaZulu-Natal. Along with their suppliers, these OEMs are at the centre of the three regional clusters and their socio-economic contribution is vital in contributing to the social upliftment of the communities they serve.

3.13. The OEMs are clustered into four primary geographic areas, each home to one or more OEMs. For instance, Gauteng (Rosslyn, Silverton and Ekurhuleni), has the second-largest concentration of automotive manufacturing in South Africa, with three OEMs (BMW, Ford and Nissan), and approximately 40% of the South African automotive components industry.⁵

3.14. **Table 1** outlines the number of brands and model derivatives in respect of new Motor Vehicles, available to consumers in South Africa.

Table 1: The number of brands and model derivatives of new Motor Vehicles in South Africa (2017)

Segment	Brands	Model derivatives
New cars	55	3458
Light commercials	26	739
Medium commercials	17	185
Heavy commercials	12	132
Extra-heavy commercials	11	540
Buses	9	55

⁴ NAAMSA, SA Automotive industry structure. Available at: https://www.naamsa.co.za/papers/Manufacturer_and_Importers_Location.pdf

⁵ NAAMSA Website at <https://naamsa.net/industry-overview/>.

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Source: NAAMSA⁶

- 3.15. There were an estimated 2078 dealerships in South Africa at the beginning of 2017.⁷
- 3.16. The largest portion of the aftermarket is the vehicle servicing, repairs and parts supply channels, which form approximately 80% of the entire automotive aftermarket industry, both in employment and rand value contributions to the economy.⁸ Motor-body repair encompasses spend in the region of R10 Billion per annum.⁹
- 3.17. Motor insurance is said to account for approximately 45% of the non-life insurance business in the country.¹⁰
- 3.18. Further to this, it is important to note that there are various industry bodies and associations which represent the interests of the various players in the sector, at all levels of the value chain. It is also notable that there are various regulators that are relevant in the different aspects of the automotive sector as well as government departments in the three spheres of government (national, provincial and local).
- 3.19. An important stakeholder in the sector is the consumer, who purchases the Motor Vehicle for use and makes use of the service offered in the aftermarket. It is estimated that approximately a third of households in the country own a Motor Vehicle.

⁶ NAAMSA submission to the Competition Commission on the Draft Guidelines for Competition in the South African Automotive Aftermarket Industry dated 2 November 2017, page 2.

⁷ NAAMSA submission to the Competition Commission on the Draft Guidelines for Competition in the South African Automotive Aftermarket Industry dated 2 November 2017, page 3.

⁸ Tyre, Equipment, Parts Association (TEPA) submission to the Competition Commission on the Draft Guidelines for Competition in the South African Automotive Aftermarket Industry dated 13 March 2020, page 1.

⁹ Collision Repairers Association (CRA) submission to the Competition Commission on the Draft Guidelines for Competition in the South African Automotive Aftermarket Industry dated 2 November 2017, page 1

¹⁰ South African Insurance Association. Annual Review 2020

Policy Developments in the Sector

3.20. The South African automotive industry has been guided by policy objectives as articulated initially in the Motor Industry Development Programme (MIDP) which was subsequently replaced by the Automotive Production and Development Programme (APDP) in 2013. Now, the South African Automotive Masterplan (“Masterplan”), which is expected to come into effect in January 2021 and run until 2035 provides the policy objectives for the next coming period. The Masterplan aims to create a framework to secure greater levels of investments and production.

3.21. The vision of the Masterplan is stated as ‘*A globally competitive and transformed industry that actively contributes to the sustainable development of South Africa’s productive economy, creating prosperity for industry stakeholders and broader society*’. To achieve the vision of the Masterplan, the Department of Trade Industry and Competition (DTIC) set development objectives that will need to be met. These include objectives to:

- a) Grow domestic vehicle production to 1% of global output (projected to reach 140 million units annually by 2035).
- b) Increase local content in South African assembled vehicles to 60% (from 39% in 2015).
- c) Double total employment in the automotive value chain (from 112,000 to 224,000).
- d) Improve automotive industry competitiveness levels to that of leading international competitors.
- e) Achieve industry transformation across the value chain.
- f) Deepen value addition across selected commodities or technologies.¹¹

¹¹ Minister Rob Davies: South African Automotive master plan and Extended Automotive Production and Development Programme. Available at: <https://www.gov.za/speeches/minister-rob-davies-media-statement-south-african-automotive-masterplan-2035-and-extension>. Accessed on [08/02/2019].

3.22. The objectives articulated in the Masterplan align with the objectives of this Guideline, particularly to transformation (inclusion) and growth in the sector. Stakeholders are encouraged to read these Guidelines with the view of the broader policy objectives of the country.

Competition Issues in the Sector

3.23. The Commission notes that similar constraints to competition in the Automotive Aftermarket Industry have been identified in other jurisdictions.

3.24. 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.

3.25. To address these concerns the various Competition Authorities adopted various regulations which include, among others, the following:

- a) The authorized repairers/service providers are obliged by regulation to not only use original parts from approved manufacturers but to also use matching quality parts procured from any other supplier.
- b) Vehicle manufacturers may not hinder their original parts or component suppliers from also supplying their products as spare parts to independent distributors or authorized distributors.

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- c) Authorized repairers are free to procure original parts or parts of matching quality from authorised parts suppliers or independent parts suppliers.
- d) Independent repairers should have access to the vehicle manufacturers' original parts to allow independent repairers to properly maintain and repair vehicles and to compete with the authorized repairers.
- e) Vehicle owners have the right to use any repair shop for non-warranty work, during the warranty period.
- f) Vehicle manufacturers may not make the warranties conditional on the repair and servicing of a motor vehicle within their network or the use of their own branded spare parts.
- g) Vehicle manufacturers are required to make available to authorized and independent repairers' technical information and training required to service/repair motor vehicles.

3.26. 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, broader policy objectives of the country as well as guidance from other jurisdictions concerning competition between OEMs, Insurers, Approved Dealers, Approved Motor-body Repairers and ISPs.

4. OBJECTIVES AND LEGISLATIVE FRAMEWORK

- 4.1. These Guidelines pertain to all Motor Vehicles within the Republic of South Africa.
- 4.2. In line with the spirit, intent and purpose of the Competition Act, these Guidelines are directed at promoting competition in the Automotive Aftermarket, specifically to promote economic access, inclusion and greater spread of ownership for Historically Disadvantaged Individuals (HDIs).
- 4.3. The objectives of the Guidelines are to:
 - 4.3.1. Lower barriers to entry and ensure that a greater number of firms, especially firms owned and operated by HDIs and SMEs have an opportunity to undertake service, maintenance and repair work of Motor Vehicles within the period covered by a Motor Vehicle's Warranty;
 - 4.3.2. Increase transparency and facilitate consumer choice on the service, maintenance and repairs of Motor Vehicles;
 - 4.3.3. Increase consumer choice and facilitate competition in the markets for Spare parts and Value-Added Products.
- 4.4. These Guidelines seek to achieve these objectives by encouraging stakeholders to adopt measures that:
 - 4.4.1. Widen the pool of Approved Dealers and Approved Motor-body Repairers;
 - 4.4.2. Promote the entry (ownership) of HDIs as Approved Dealers;
 - 4.4.3. Ensure that ISP's can undertake In-Warranty service, maintenance and repair work;
 - 4.4.4. Allow for greater consumer choice and product competition in the retail of Service Plans and Maintenance Plans; and
 - 4.4.5. Ensure the fair allocation of work by Insurers to service providers on insurance panels.

5. IN-WARRANTY SERVICE, MAINTENANCE AND REPAIRS BY ISPs

- 5.1. The Guidelines in this section introduce measures for the service, maintenance and repairs of Motor Vehicles during the In-Warranty period.
- 5.2. Independent Service Providers in South Africa have been over the years excluded from undertaking the service, maintenance and mechanical repairs on Motor Vehicles that are In-Warranty. One of the reasons for this is that when a Motor Vehicle which is In-Warranty is serviced, maintained or repaired by a party other than an Approved Dealer, there is the potential risk that certain provisions of the Warranty on the Motor Vehicle may become invalid or void.
- 5.3. The Commission has found that there are information asymmetries and knowledge gaps concerning the rights of consumers and the legal framework regarding warranties.
- 5.4. The following principles will be applicable concerning the service, maintenance and repairs of Motor Vehicles during the warranty period:
 - 5.4.1. OEMs shall recognise and not obstruct a consumer's choice to seek service, maintenance and mechanical repair work for their Motor Vehicles at a service provider of their choice, regardless of whether that service provider is an Approved Dealer or an ISP.
 - 5.4.2. In instances where a consumer chooses to use an ISP during the In-Warranty period, there shall be no obligation on the OEM to pay for any service and maintenance work undertaken by the ISP.
 - 5.4.3. The Motor-body repairs of consumers who have insurance cover shall be undertaken by an Approved Motor-body Repairer during the In-Warranty period, as allocated by an Insurer to the consumer.
 - 5.4.4. Consumers who do not have insurance cover may repair their Motor Vehicles at a service provider of their choice at any point during the Motor Vehicle's lifespan.
 - 5.4.5. To ensure that all the work done on a Motor Vehicle is traceable ISPs are obliged to record such In-Warranty work undertaken by them in their customers' Vehicle Service Books or equivalent

record-keeper.

- 5.4.6. Accordingly, ISPs shall disclose to consumers, in clear and explicit terms, the risk of damage that could arise from the ISP's work, including Consequential Damage to the Motor Vehicle, which may potentially void certain obligations of the OEM in terms of the Warranty.
- 5.4.7. ISPs must disclose to consumers, whether they have adequate commercial insurance cover to perform the work that they will be undertaking on the Motor Vehicle.
- 5.4.8. If any damage is caused to a Motor Vehicle from work done by an ISP, there is a risk that certain provisions of the OEM Warranty will be voided. However, other provisions of the Warranty may remain severable and enforceable. The OEM concerned may conduct an assessment, at its own cost, to ascertain such damage and liability.
- 5.4.9. If there is a dispute, a consumer can approach the relevant authority to investigate the matter. A consumer who suffers harm from a defective product can bring a claim against any party in the supply chain in terms of section 61 of the Consumer Protection Act No. 68 of 2008.

6. APPOINTMENT OF MOTOR-BODY REPAIRERS BY OEMS

- 6.1. OEMs typically appoint a select number of Motor-body Repairers to undertake repair work on their brand's Motor Vehicles during the In-Warranty period (i.e. Approved Motor-body Repairers). Approved Motor-body Repairers are accredited to repair Motor Vehicles of that particular OEM, should they meet the standards and specifications set by the OEM. To attain accreditation and to meet the standards and specifications set by OEMs, prospective Motor-body Repairers are typically required to make large financial, infrastructure and operational investments.
- 6.2. The allocation of repair work to these Approved Motor-body Repairers is administered by Insurers if the Motor Vehicle is insured, upon a claim made

- by their client. The allocation of repair work by Insurers to Approved Motor-body Repairers is only applicable during the In-Warranty period of the Motor Vehicle.¹²
- 6.3. In practice, there are instances where a Motor-body Repairer can attain the accreditation of more than one OEM to repair their Motor Vehicles. There are also instances where Approved Motor-body Repairers enter into a exclusive contracts with a particular OEM, often as a condition of the accreditation. There are also many instances where the contracts between OEMs and Approved Motor-body Repairers are for an indefinite period (“evergreen”). Some of these contracts have been in place for multiple decades.
- 6.4. It is also common that OEMs can place limits on the number of Motor-body Repairers that it approves in a particular Designated Geographic Area. The rationale advanced by OEMs for limiting the number of repairers is typically related to cost/investment justification viz-a-viz market saturation or insufficient volume of work available in the area concerned.
- 6.5. The outcome of these arrangements is such that, in a large geographic area, there may be only one Approved Motor-body Repairer who can service the vehicle of the OEM’s brands; further the same Repairer may also be undertaking repair work of other OEM brands if they are appointed by multiple OEMs.
- 6.6. With few options available for insured consumers, the arrangements can be inefficient, often leading to delays for appointments to repair their Motor Vehicles (long lead times). Further, many consumers are compelled to travel outside of their geographic locations to have their Motor Vehicles repaired at often far-located Approved Motor-body Repairers.
- 6.7. Importantly, the arrangements between the OEMs and Approved Motor-body Repairers, as described above, can lead to foreclosure of prospective new

¹² Insurers appoint separate panels of service providers for the repairs of vehicles out of the warranty period, using Insurer-standards and specifications, rather than the OEM-standards and specifications for the appointment criteria.

entrants. Given South Africa's history of economic exclusion for the majority of the population, the long-term, exclusive contracts, serve to perpetuate exclusion.

6.8. The Commission believes that such constraints to effective entry and participation by ISPs must be avoided by OEMs. The OEMs should also not engage in conduct which is exclusionary.

6.9. The following principles are applicable:

6.9.1. OEMs must adopt measures to promote and/or support the entry of new Motor-body Repairers, with a preference for firms owned by HDIs. Such measures can include, amongst others, expanding the number of Approved Motor-body Repairers per geographic area.

6.9.2. OEMs shall approve any Motor-body Repairer applicant that meets their standards and specifications.

6.9.3. OEMs may not enter into exclusive arrangements, either with one or more Approved Motor-body Repairers, for effecting repairs on an OEM's Motor Vehicles within a Designated Geographic Area.

6.9.4. To promote entry and eradicate long-term legacy arrangements between OEMs and Approved Motor-body Repairers, OEMs shall not appoint and/or authorise any Approved Motor-body Repairers for a period exceeding five (5) years, and must not continuously renew the appointment of the same Approved Motor-body Repairers, if such appointment or renewals are to the unreasonable exclusion of the appointment of ISPs capable of effecting repairs on an OEM's Motor Vehicle within a Designated Geographic Area.

7. APPOINTMENT OF SERVICE PROVIDERS AND ALLOCATION OF WORK BY INSURERS

7.1. The Guidelines in this section introduce measures for the appointment of service providers by Insurers to undertake repairs and the allocation of work thereto.

- 7.2. When a claim is made by an insured consumer, Insurers typically use an electronic system to allocate repair work to a service provider. The system takes into consideration the closest supplier to the client and whether they are approved by the OEM/Insurer to make the repairs on the insured Motor Vehicle.
- 7.3. Insurers allocate repair work to an OEM-approved service provider if the Motor Vehicle is In-Warranty and to an Insurer-approved service provider if the Motor Vehicle is out-of-warranty. The standards and specifications required for Insurer-accreditation are different and less stringent to those required by OEMs.
- 7.4. Insurers can accredit a large volume of service providers to undertake out-of-warranty repairs onto their panels. Some of the large Insurers can have up to 300 service providers, who meet the Insurer standard, appointed onto their panels.
- 7.5. From complaints received, the Commission found that some Insurers:
- 7.5.1. appoint large numbers of service providers onto their panels, but allocate work to a few, repeatedly;
 - 7.5.2. limit the number of Motor-body Repairers whom they appoint within a Designated Geographic Area. Insurers' rationale for the appointment of limited service providers and the allocation patterns is that there is saturation or insufficient volume of work available in the area concerned.
- 7.6. Further, the Commission has found that the application and selection process for the appointment onto insurance panels is deemed unfair and not transparent. There have been allegations that this process is particularly biased against HDI applicants.
- 7.7. The guidelines that follow are designed to encourage a fair allocation of work and promote inclusivity in the selection of Motor-body Repairers onto panels of Insurers.

- 7.8. The following principles will be applicable concerning Insurers:
- 7.8.1. Insurers must adopt measures to promote the fair allocation of work to Repairers on their panels, with a preference for firms owned by HDIs. Such measures can include, amongst others, panel rotation or preferential allocation to HDI firms.
 - 7.8.2. Insurers must approve any Repairer that meet their standards and specifications, to undertake repairs on out-of-warranty Motor Vehicles.
 - 7.8.3. To ensure that the panel appointment process is fair, Insurers shall publish the standards used to accredit Repairers on their websites and/or other suitable media. Also, Insurers shall formally disclose reasons to applicants fully setting out why their applications for panel appointment were rejected.
 - 7.8.4. Insurers shall offer consumers more choice of Repairers within their geographic area, for out-of-warranty repairs.
 - 7.8.5. Insured Motor Vehicles that are In-Warranty will only be allocated for repair to (OEM) Approved Motor-body Repairers.
 - 7.8.6. Insurers shall publish a list of all their Repairers on their websites and/or other suitable media.
 - 7.8.7. Insurers shall not appoint any Repairer to its panel for a period exceeding five (5) years and should not continuously renew the appointment of the same Repairer if such appointment or renewals are to the unreasonable exclusion of the appointment of other Repairers capable of effecting repair and/or maintenance work on Motor Vehicles within a Designated Geographic Area.

8. APPOINTMENT OF DEALERS BY OEMS

- 8.1. The Guidelines in this section introduce measures for the appointment of Approved Dealers by OEMs.

- 8.2. OEMs typically appoint Dealers for the sale of their Motor Vehicles and related spare parts (i.e. Approved Dealers). In addition to retail activities, Approved Dealers operate workshops where they undertake service, maintenance and mechanical work on their brand's Motor Vehicles. Most OEMs appoint Dealers through a franchise agreement, although some OEMs, such as Volvo, have OEM-owned Dealerships.
- 8.3. Dealerships tend to be located in prime locations in large urban centres (cities and metros). There are few to none Approved Dealers located in rural, peri-urban or township centres of the country.
- 8.4. South Africa's Dealership culture is characterised by grand-scale, impressive showrooms. It has been submitted to the Commission that the costs of establishing a Dealership can be exorbitant, with start-up costs for most brands averaging R60 million (ZAR) and upwards. Some of the costly requirements imposed by some OEMs include the procurement of furniture, fittings and finishes internationally. OEM requirements regarding the size and location of premises and land are also cited as a contributor to the high start-up costs. In this market, finance is thus a high barrier to entry.
- 8.5. Further, the Commission has found that application and selection process for the appointment of Approved Dealers is deemed unfair and not transparent. There have been allegations that this process is particularly biased against HDI applicants.
- 8.6. The guidelines that follow are designed to address some of the above concerns. The section includes measures targeted to reduce financial barriers created by the requirements imposed by OEM; measures to promote pro-competitive procurement processes by OEMs and measures to promote the entry of HDIs into the Dealership market.
- 8.7. The following principles will be applicable concerning applications made by prospective Dealers:

- 8.7.1. OEMs shall establish fair and transparent processes for the selection of Approved Dealers who meet the specific OEM's requirements.
 - 8.7.2. Approved Dealers shall be selected based on a realistic evaluation conducted by the OEMs of the market potential for Approved Dealers in a Designated Geographic Area. In keeping with the transformation objectives for the industry, preference must be given to applicants who are owned or controlled by HDIs who objectively meet the specific OEM's requirements.
 - 8.7.3. To ensure that the process is transparent, OEMs shall publish the standards used to assess and select Approved Dealers on their websites and/or other suitable media. Also, OEMs shall formally disclose reasons to applicants fully setting out why their applications for dealership were rejected.
 - 8.7.4. OEMs are required to inform applicants that were rejected on quantitative grounds in a particular geographic area should an opportunity for the establishment of a new dealership arising the same geographic area within 12 months of the date of rejection.
- 8.8. The following principles will be applicable concerning facilities of Dealerships:
- 8.8.1. OEMs must adopt measures to lower financial barriers to entry and promote the participation of HDIs in the Dealership market. These measures can include, amongst others, offering varying iterations of Dealership options to prospective applicants or locating Dealerships in under-serviced geographic areas.
 - 8.8.2. OEMs shall not impose onerous obligations on prospective Dealers. The requirements for Approved Dealers must be reasonable and have an economic rationale, particularly concerning the size of land, showrooms, furniture, fittings, and finishes.

- 8.8.3. OEMs shall not require Approved Dealers to make further investments within established facilities if such investments are not objectively required as a fulfilment of the OEM standard, such as, for example, due to changes in corporate identity, models of Motor Vehicles to be sold and/or technologies to be used by Approved Dealers (which list is not exhaustive).
- 8.8.4. OEMs shall approve multiple suppliers for required branding and corporate identity elements of dealerships, from which Approved Dealers can procure.
- 8.8.5. OEMs must not forbid or penalise Approved Dealers from purchasing the said goods from such approved alternative suppliers if they are of like kind and quality. In line with the Commission's transformation objectives, preference must be given to alternative suppliers who are owned or controlled by HDIs.

9. PREVENTING ANTI-COMPETITIVE INFORMATION SHARING BY MULTI-BRAND DEALERSHIPS

- 9.1. The Commission is concerned about the exchange of Commercially Sensitive Information between Approved Dealers that sell new Motor Vehicles and products of competing OEMs (i.e. multi-brand dealerships).
- 9.2. The guidelines that follow introduce measures which OEMs and Approved Dealers should heed regarding the management of Commercially Sensitive Information which may affect competition.
- 9.3. The following principles will be applicable in relation to the exchange of Commercially Sensitive Information:
- 9.3.1. Approved Dealers that sell new Motor Vehicles and products of competing OEMs shall ensure that they do not engage in price co-ordination. Specifically, the prices of competing Motor Vehicles and products should 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.

- 9.3.2. Approved Dealers that sell new Motor Vehicles and products of competing OEMs shall ensure that no Commercially Sensitive Information is provided or shared with competing OEMs.
- 9.3.3. Approved Dealers that sell new Motor Vehicles and products of competing OEMs shall implement Information Barriers and measures to ensure that there is no exchange of Commercially Sensitive Information between them and competing OEMs. These Information Barriers include but are not limited to the following:
- a) OEMs and Approved Dealers shall keep separate, internal accounts for downstream retail offerings in a way that permits the profitability of these retail products to be monitored.
 - b) To the extent that an employee of an Approved Dealer has access to Commercially Sensitive Information about a specific OEM, that employee shall ensure that he/she does not communicate such information to any competing OEM or facilitate or permit the use of such information by a competing OEM, other than in aggregated, historical or summary form.
 - c) Employees of OEMs and Approved Dealers involved in the automotive value chain must sign undertakings not to share Commercially Sensitive Information with employees of competing OEM's Approved Dealers. The undertakings must be stored by the OEMs and Approved Dealers and be made available to the Commission on request.
 - d) OEMs and Approved Dealers shall 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 the *Guidelines on the Exchange of Information between Competitors* and section 4 of the Act (restricted horizontal practices) in particular.

10. FITMENT AND ACCESS TO SPARE PARTS

- 10.1. There are approximately between 30,000 and 60,000 parts and components in a Motor Vehicle. Spare parts in South Africa are regulated by different regulators such as the South African Revenue Service (SARS) which deals with customs, excise and tax of imported components and the National Regulation for Compulsory Specification (NRCS), which regulates the safety of the following parts: lights, brakes, brake fluids and seals. As it currently stands the industry standards are aligned with the international standards such as European Union regulations.
- 10.2. The Commission recognises that within the aftermarket automotive industry, Spare Parts are disaggregated based on their origin or source.
- 10.3. OEMs appoint manufacturers to manufacture replacement parts (“Original Spare Parts”) for use in the repair of the OEMs brand. The OEM is the holder of the intellectual property rights over the parts’ specifications. Approved Dealers and Approved Motor-Body Repairers are obliged to fit Original Spare Parts in the repairs of motor vehicles.
- 10.4. The same manufacturer who produces spare parts for OEMs can also produce the same, but without the branding of the OEM- these are regarded as “identical” spare parts in the market. Other manufacturers may also produce similar spare parts, sometimes referred to as “equivalent” or “equal-matching” spare parts. In the market for spare parts, there are also spare parts which are mined from damaged motor-vehicles, while functionally safe-regarded as “green” spare parts.

- 10.5. In this Guideline, the Commission has decided to use a more simplified approach and refers to Original and Non-Original Spare Parts. This Guideline's reference to Non-Original parts excludes "counterfeit", "grey" and all illegally-sourced spare parts.
- 10.6. The Commission has received complaints from ISPs and consumers regarding OEMs who refuse to sell them Original Spare Parts for use in the repair of motor vehicles. Such behaviour limits the ability of an ISP to undertake the required repairs, and further limits a consumer's choice to use Original or Non-original Spare Parts for their vehicle.
- 10.7. Further, consumers are also prevented from fitting Non-Original Spare Parts on their motor vehicles during the In-Warranty; should a Non-Original Spare Part be fitted in an In-Warranty Motor Vehicle, this may void the vehicle's Warranty. However, Original Spare Parts tend to be more expensive than Non-Original Spare parts and thus not affordable for some consumers. The guidelines that follow address issues related to access to spare parts and the fitment of spare parts during the In-Warranty period.

Fitment of Non-Original Spare Parts for In-Warranty Motor Vehicles

- 10.8. The principles that follow introduce the concept of the use of Non-Original Spare Parts for In-Warranty Motor Vehicles. The rationale is to increase consumer choice in the fitment of Spare Parts for In-Warranty Motor Vehicles by allowing the Motor Vehicle owners to choose between Original and Non-Original Spare Parts.
- 10.8.1. Consumers can fit Original or Non-Original Spare Parts, at a service provider of their choice, whether an Approved Dealer, Approved Motor-body Repairer, or an ISP, during the In-Warranty period.
- 10.8.2. If there is any damage to the Motor Vehicle from the fitment of Spare Parts by an ISP, there is a risk that certain provision in the Warranty will be voided. However, other provisions of the Warranty may remain severable and enforceable. The OEM or Approved Dealer may conduct an assessment at its own cost to determine the cause

of the damage and if the Warranty is voided. If there is a dispute a consumer can approach the relevant authority to investigate the matter. A consumer that suffers harm from a defective product can bring a claim against any party in the supply chain in terms of section 61 of the Consumer Protection Act No. 68 of 2008. Approved Dealers and ISPs must make consumers aware, in clear and explicit terms, the risk of damage, including Consequential Damage, from the fitment of Spare Parts by an ISP, potentially voiding certain obligations of the OEM in terms of the Warranty.

- 10.8.3. To ensure that all the work done on a Motor Vehicle is traceable ISPs are obliged to record such In-Warranty work undertaken by them in their customers' Vehicle Service Books.

Sale and distribution of Original Spare Parts

10.9. The guidelines that follow are to ensure that OEMs and/or Approved Dealers make Original Spare Parts available to ISPs, where appropriate:

- 10.9.1. OEMs and/or Approved Dealers shall make Original Spare Parts available through sales and distribution, to ISPs where required to perform service, maintenance or repair work.
- 10.9.2. Conditional sale and distribution of Original Spare Parts shall only be reserved for those items that are linked to the Motor Vehicle's Security System.
- 10.9.3. OEMs may not restrict an ISP's ability to procure Original Spare Parts, when required for the purposes of effecting service, maintenance and repair work. OEMs may however impose restrictions or prohibitions on ISPs from on-selling Original Spare Parts to 3rd parties.
- 10.9.4. An OEM shall allow an ISP access to security-critical components subject to the ISP meeting the OEM's accreditation requirements and standards, as per the OEM's global practice.

- 10.9.5. OEMs may not enter into any agreements with manufacturers or suppliers of Spare Parts, tools or equipment to restrict the manufacturer or supplier's ability to sell those goods to ISPs or end users, except for those Spare Parts, tools or equipment that are protected by intellectual property rights or are linked to a Motor Vehicle's Security Systems.
- 10.9.6. OEMs may not enter into any agreements with manufacturers of Spare Parts, 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.
- 10.9.7. OEMs may not set minimum retail prices for Spare Parts.
- 10.9.8. There is no obligation on Approved Dealers to supply Non-Original Spare Parts.

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

- 11.1. In South Africa, when consumers buy a new Motor Vehicle, they are typically sold a Maintenance Plan and/or Service Plan, included in the purchase price of the Motor Vehicle. Most consumers are unaware that the purchase price of the Motor Vehicle is bundled with these value-added products.
- 11.2. OEMs and their Approved Dealers sell these Service and/or Maintenance Plans through a variety of packages, typically as a combination of mileage and time such as 3 years / 60 000km; 4 years / 120 000km; 5 years /150 000km. The package will allow a customer to take their Motor Vehicle in for service or maintenance when required at regular intervals until they reach either the mileage or time limit.
- 11.3. The Commission acknowledges that this bundling may make the

purchasing of these plans easier for some customers who would otherwise have to seek these out separately. However, the Commission notes that some customers can and do purchase these Value-Added Products outside of the standard OEM provided plan from other third-party suppliers.

11.4. The Guidelines that follow provide for the unbundling of Maintenance Plans and Service Plans at the point of sale from the purchase price of the Motor Vehicle. Therefore, it is imperative that at the point of sale, OEMs, Approved Dealers, and financiers disclose to customers the price of the Motor Vehicle and the price of the Value-Added Products separately.

11.5. This will allow consumers to exercise choice regarding whether to purchase the Maintenance Plan or Service Plan and make servicing a more affordable option for South Africans, whilst allowing for more players to provide such Value-Added Products for consumers whose Motor Vehicles are In-Warranty.

11.6. The following principles will be applicable concerning Service and/or Maintenance Plans:

11.6.1. OEMs shall recognise and not hinder a consumer's choice to the following:

11.6.1.1. purchase Value-Added Products (such as Maintenance Plans, Service Plans and Extended Warranties) concurrently and together with a new Motor Vehicle from Approved Dealers;

11.6.1.2. purchase Value-Added Products (such as Maintenance Plans, Service Plans and Extended Warranties) separately from a new Motor Vehicle from Approved Dealers;

11.6.1.3. purchase Value-Added Products from any licensed provider of their choice, including independent/ third-party providers;

- 11.6.1.4. *not* to purchase Value-Added Products (such as Maintenance Plans, Service Plans and Extended Warranties) when purchasing a Motor Vehicle.
- 11.6.1.5. purchase Value-Added Products from a licensed provider at any time after the purchase of the Motor Vehicle.
- 11.6.2. OEMs and independent/ 3rd party providers of Value-Added Products must adopt measures to promote competition and consumer choice in their offerings. Such measures can include, amongst others, offering Service and Maintenance Plans of varying durations of Service and Maintenance Plans;
- 11.6.3. OEMs and independent/ 3rd party providers must 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 or it is not feasible to transfer a Maintenance Plan and/or a Service Plan to a replacement Motor Vehicle, the consumer shall be afforded the right to cancel the Value-Added contract and/or receive a refund of the value of the balance of the product.
- 11.6.4. To promote transparency and allow for product comparisons by consumers at the point of sale of a Motor Vehicle, Approved Dealers are required to:
- 11.6.4.1. provide the consumer with complete disclosure of:
- a) the purchase price of the Motor Vehicle;
 - b) the purchase prices of Service and Maintenance Plans and other Value-Added Products.
- 11.6.4.2. 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.

11.6.4.3. 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 price for each service interval (at the time of sale of the Motor Vehicle).
- b) the average price 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.

11.6.4.4. provide the consumer with complete disclosure of:

- a) Dealer commissions and other commissions that may arise from commercial arrangements between the OEM, the Approved Dealer and other third parties, to the extent that it does not comprise Commercially Sensitive Information; and
- b) any other information, as required by any other applicable legislation.

12. ACCESS TO TECHNICAL INFORMATION AND OEM-TRAINING FOR ISPs

12.1. Access to technical information remains a prerequisite for effective competition in the Automotive Aftermarket. Independent service providers require technical information on Motor Vehicles to undertake effective repairs. The same is applicable for technical training on the repairs of Motor Vehicles. Lack of access to technical information and training by ISPs can result in the loss of competitive strength of ISPs, to the advantage of competitors within the approved network. Further, barriers

related to information and training access can lead to consumer harm and unsafe repairs of their Motor Vehicles.

Access to Technical Information

12.2. The principles that follow encourage OEMs to make available technical maintenance and repair information including information stored electronically or in the cloud.

12.2.1. OEMs must make available to ISPs the OEM-technical information relating to its Motor Vehicles, on reasonable terms and conditions, including terms related to usage, confidentiality and fees that are no less favourable to the terms offered to its Approved Dealers and Approved Motor-body Repairers, where applicable.

12.2.2. Access by ISPs to OEM-technical information includes security-related information that permits access to Motor Vehicle Security Systems, including coding and programming, software, and Safety Systems. Such access must be subject to OEMs' intellectual property and data privacy rights and ISPs meeting their accreditation requirements.

12.2.3. Technical information, to which access shall be permitted to ISPs includes, but is not limited to the following:

- a) unequivocal Motor Vehicle identification;
- b) Vehicle Service Books or its electronic equivalent including data stored electronically or in a cloud;
- 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; and
- j) operational software.

12.2.4. In instances where an OEM discloses proprietary information or other intellectual property belonging to the OEM, it may impose reasonable conditions, including the requirement that the ISP must sign a confidentiality undertaking.

Access to Training

12.3. ISPs require support to access OEM brand- specific training in order to effectively compete with Approved Dealers and Approved Motor-body Repairers. The principles that follow require OEMs to take measures to provide technical training to ISPs.

12.3.1. OEMs and/or Approved Dealers are required to provide training (or provide access thereto) to employees of ISPs who request training, at a reasonable cost that may not exceed that imposed on employees of Approved Dealers. Such training shall encompass the methods used to effect Structural and Mechanical Repair, service and maintenance and fitment works on the Motor Vehicle.

13. IMPLEMENTATION

13.1. These Guidelines are effective from 01 July 2021.

14. MONITORING OF ADHERENCE TO THE GUIDELINES

14.1. Affected parties to this Guideline shall be responsible to take steps to give

effect to its provisions.

- 14.2. The Commission shall conduct periodic impact assessments to monitor compliance of adherence to these Guidelines. Affected parties to this guideline shall be required to submit information and data in response to information requests issued by the Commission in the course and scope of conducting the periodic assessments on the implementation and adherence to the principles set out herein.

15. DISPUTE RESOLUTION

- 15.1. MIOSA was established to assist in resolving disputes that arise in terms of the Consumer Protection Act 68 of 2008 regarding any goods or services provided by the Automotive Industry to consumers, including suppliers who are in turn also consumers within the industry supply chain. The Guidelines should be read in conjunction with these relevant provisions.
- 15.2. Affected parties can also refer disputes directly to the Motor Industry Ombudsman of South Africa (MIOSA) and the National Consumer Commission (NCC) for resolution.
- 15.3. Should market participants be uncertain as to whether conduct may potentially contravene the Competition Act, such market participants should approach the Competition Commission for further guidance.

16. REVIEW OF THE GUIDELINE

- 16.1. The guideline shall remain valid until amended, replaced or withdrawn by the Commission, in consultation with relevant stakeholders.

Guidelines for Competition in the
Automotive Aftermarket



17. CONCLUSION

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

17.2. 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.

-End-