

# New competition and service guidelines for the Automotive Aftermarket

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In December 2020, the Competition Commission issued the final Guidelines for Competition in the South African Automotive Aftermarket effective as of 1 July 2021. The Guidelines seek to address the constraints to competition in the Automotive Aftermarket Industry. Although the Guidelines are not binding on the Commission, the Competition Tribunal or the Competition Appeal Court, they do indicate the Commission's approach to the behaviour of parties in the Automotive Aftermarket industry.



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One of the prominent features of the Guidelines relates to the exclusion of Independent Service Providers from the market for the service, maintenance and repair of insured vehicles and/or vehicles under warranty. Prior to the issuing of the Guidelines, the Commission received complaints regarding the exclusionary agreements between Original Equipment Manufacturers (OEMs) and approved motor-body repairers which ultimately resulted in the exclusion 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 Independent Service Providers; high barriers to entry that exclude SMEs and historically disadvantaged individuals 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. ”*

In keeping with the purpose of the Competition Act, the Guidelines encourage an environment where consumers are allowed an opportunity to exercise their discretion and choose their preferred service provider. In terms of the Guidelines, OEMs must not obstruct a consumer's choice to service, maintain and have mechanical repair work done on their motor vehicles at a service provider of their choice, irrespective of whether that service provider is an approved dealer or an Independent Service Provider. That said however, when a consumer does choose to use an Independent Service Provider during the in-warranty period, there shall be no obligation on the OEMs to pay for any service and maintenance work undertaken by the Independent Service Provider.

In the case of an insured consumer, the motor-body repairs must still be undertaken by an approved motor-body repairer as allocated by their insurer during the in-warranty period. Consumers who do not have insurance cover, however, may repair their motor vehicles at a service provider of their choice at any point during their motor vehicle's lifespan.

The Guidelines also impose certain obligations on Independent Service Providers who will be required to disclose to consumers the risk of current and consequential damage that could arise from their work. This must include disclosing the risk of damage, which may potentially void certain obligations of the OEM in terms of a vehicle's warranty. Importantly, Independent Service Providers must disclose to consumers whether they have adequate commercial insurance cover to perform the work that they will be undertaking on the motor vehicle. If any damage is caused to a motor vehicle from work done by an Independent Service Provider, the consumer bears a risk that certain provisions of the OEM warranty will be voided. This will, however, not be a complete cop-out for OEMs as the other provisions of the warranty may remain severable and enforceable.

A consumer who suffers harm or gets into a dispute with an OEM or an Independent Service Provider may approach the Motor Industry Ombudsman of South Africa and/or the National Consumer Commission for resolution.

The Guidelines will certainly go a long way in encouraging competition in the South African Automotive Aftermarket by allowing more service providers to service customers going forward. There may potentially be many benefits to the economy as a whole as a result of this change but only time will tell.

## ABOUT THE AUTHOR

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