

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 4562

28 March 2024



**Invitation for Public Comment on the Amendments to the
Guidelines for Competition in the South African Automotive
Aftermarket**

1. The Competition Commission of South Africa intends amending its Guidelines for Competition in the South African Automotive Aftermarket first published on 29 January 2021 in terms of section 79(1) of the Competition Act No. 89 of 1998 (as amended). The draft amendments to the Guidelines are attached hereto.
2. Stakeholders and interested parties are invited to submit comments within a period of 30 business days from the date of publication of this notice in the Government Gazette to the Advocacy Division of the Competition Commission of South Africa for the attention of Ms. Daniela Bove, email: DanielaB@compcom.co.za and Ms. Sewela Moshoma email: SewelaM@compcom.co.za.
3. A complete copy of the Guidelines for Competition in the South African Automotive Aftermarket is accessible from the Competition Commission South Africa's website at: <https://www.compcom.co.za/wp-content/uploads/2021/07/Guidelines-for-Competition-in-the-South-African-Automotive-Aftermarket.pdf>.

Amendment to Definitions

1. The definitions in the Guidelines are hereby amended or inserted–

(a) by substituting the definition of “Commercially Sensitive Information” with the following definition:

“Competitively Sensitive Information” means trade, business or industrial information that has economic value to a firm and its business strategy and is generally not available to or known by others and shall include but is not limited to prices, customer lists, production costs, quantities, turnovers, sales, capacities, marketing plans, risks, investments, technologies, research and development programmes and their results.

(b) by substituting the word “Commercially” with “Competitively” in the following definition:

“Information Barriers” means measures within an organization that are created to prevent exchanges of Competitively Sensitive Information or communication that could lead to conflicts of interest and/or constitute a prohibited practice in terms of the Act.

(c) by inserting a new definition of “intermediary:”

“Intermediary” means a firm or association of firms authorised to act on behalf of ISPs to access technical information for the purpose of servicing, maintaining and repairing Motor Vehicles.

(d) by substituting the definition of “Spare Part” with the following definition:

“Spare Parts” means replacement products for worn, defective or damaged components, parts or accessories of a Motor Vehicle. Accessories are parts or fittings attached to or carried by a motor vehicle for purposes of enhancing or altering its comfort, appearance, function or performance. Accessories include but is not limited to spoilers, fenders, grills, carpets, and alloy wheels.

Amendment to Section 6 – Appointment of Motor-body repairers by OEMs

2. The following new paragraphs are hereby inserted:
 - (a) Paragraph 6.4. - It is also common that OEMs can place limits on the number of motor body repairs approved in a particular designated geographic area. The rationale advanced by OEM's for limiting the number of repairers is typically related to a cost/investment justification vis-a-vis market saturation or insufficient volume of work available in the area concerned.
 - (b) Paragraph 6.9.2. - OEMs should approve any Motor-body Repairer applicant that meets their standards and specifications. However, when deciding on the number of Motor-body Repairers in a particular Designated Geographic Area, OEMs must make their assessment on a case-by-case basis, should cater for as much entry as possible for HDIs to participate and not limit their decision whether or not to approve a Motor-body Repairer to prevailing market conditions or low volumes of work in the Designated Geographic Area concerned.

Amendment to Section 7 – Appointment of service providers and Allocation of Work by Insurers

3. The following new paragraphs are hereby inserted:
 - (a) paragraph 7.8.2 - Insurers should, approve any Motor-body Repairer applicant that meets their standards and specifications, to undertake repairs on out-of-warranty Motor Vehicles. However, when deciding on the number of Motor-body Repairers in a particular Designated Geographic Area, Insurers must make their assessment on a case-by-case basis, should cater for as much entry as possible for HDIs to participate and not limit their decision whether or not to approve a Motor-body Repairer to market demand and the volume of claims and work available in a Designated Geographic Area.

Amendment to Section 9 – Preventing Anti-Competitive Information Sharing by Multi-Brand Dealerships

4. The word “Commercially” is substituted with “Competitively” in the following paragraphs:
 - (a) paragraph 9.1. – The Commission is concerned about the exchange of

Competitively Sensitive Information between Approved Dealers that sell new Motor Vehicles and products of competing OEMs (i.e. multi-brand dealerships).

- (b) paragraph 9.2. – The guideline introduces measures which OEMs and Approved Dealers should heed regarding the management of Competitively Sensitive Information which may affect competition.
- (c) paragraph 9.3. – The following principles will be applicable in relation to the exchange of Competitively Sensitive Information:
 - (d) paragraph 9.3.2. – Approved Dealers that sell new Motor Vehicles and products of competing OEMs shall ensure that no Competitively Sensitive Information is provided or shared with competing OEMs.
 - (e) paragraph 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 Competitively Sensitive Information between them and competing OEMs. These Information Barriers include but are not limited to the following:
 - (f) paragraph 9.3.3 (b) – To the extent that an employee of an Approved Dealer has access to Competitively 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.
 - (g) paragraph 9.3.3 (c) – Employees of OEMs and Approved Dealers involved in the automotive value chain must sign undertakings not to share Competitively 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.

5. Paragraph 9.3.3. d) is hereby substituted with the following paragraph:

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 Competitively Sensitive Information between competitors, including the *Guidelines on the Exchange of Competitively Sensitive Information between Competitors under the Competition Act No.89 of 1998* and section 4 of the Act (restricted horizontal practices) in particular.

Amendment to Section 11 – The Bundled sale of motor vehicles with value added products

6. Paragraph 11.1 is hereby substituted with the following paragraph:

(a) In South Africa, when consumers buy a new, demo and/or second-hand 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.

7. Paragraph 11.1 is hereby substituted with the following paragraph:

(a) The Guidelines that follow provide for the unbundling of Maintenance Plans and Service Plans at the point of sale from the purchase price of a new, demo and/or second-hand 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.

8. The word “new” is hereby deleted from the following paragraphs:

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

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

9. Paragraph 11.6.3 is hereby substituted with the following paragraph:

- (a) 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 and notified of the right to cancel the Value-Added contract and/or receive a refund of the value of the balance of the product by Approved Dealers.

10. The word “Commercially” is substituted with “Competitively” in the following paragraphs:

- (a) paragraph 11.6.4.4 a) - 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 Competitively Sensitive Information; and

Amendment to Section 12 – Access to Technical Information and OEM-training for ISPs

11. The following new paragraphs are hereby inserted:

- (a) paragraph 12.2. – ISPs may incur expenses and experience administrative challenges in accessing OEM-technical information individually. ISPs may therefore appoint or use the services of an Intermediary to access OEM-technical information on their behalf.

12. Paragraph 12.3.1. is hereby substituted with the following paragraph:

- (a) OEMs must make available to ISPs or their Intermediaries, 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.

13. Paragraph 12.3.2. is hereby substituted with the following paragraph:

- (a) Access by ISPs or their Intermediaries 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 or their Intermediaries meeting their accreditation requirements.

14. Paragraph 12.3.3. is hereby substituted with the following paragraph:

- (a) Technical information, to which access shall be permitted to ISPs or their Intermediaries includes, but is not limited to the following:

15. The following new paragraph is hereby inserted:

- (a) paragraph 12.3.3 j) – part numbers on quotations and invoices.

16. Paragraph 12.3.4. is hereby substituted with the following paragraph:

- (a) 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 or Intermediary must sign a confidentiality undertaking.

EXPLANATORY NOTE ON THE PROPOSED AMENDMENTS TO THE GUIDELINES FOR COMPETITION IN THE SOUTH AFRICAN AUTOMOTIVE AFTERMARKET, 2024

1. PROPOSED AMENDMENT TO DEFINITIONS

1.1. Paragraph 2.4.

The proposed substitution of the phrase “Commercially Sensitive Information” with the phrase “Competitively Sensitive Information” will align the definition with the Guidelines on the Exchange of Competitively Sensitive Information, issued by the Competition Commission in 2023 and accessible on the Commission’s website at: <https://www.compcom.co.za/wp-content/uploads/2023/08/GUIDELINES-ON-THE-EXCHANGE-OF-COMPETITIVELY-SENSITIVE-INFORMATION.pdf>.

1.2. Paragraph 2.12.

The proposed substitution of the word “Commercially” with “Competitively” in the definition of “Information Barriers” will align the definition with the Guidelines on the Exchange of Competitively Sensitive Information, issued by the Competition Commission in 2023.

1.3. Paragraph 2.14.

The proposed introduction of a new definition of “Intermediary” is to allow intermediaries’ access to OEM-technical information on behalf of a group of Independent Service Providers (ISPs), and therefore limit the burden (financial and administrative) faced by ISPs to individually access the technical information from OEMs.

1.4. Paragraph 2.26.

The proposed new definition of “Spare Parts” expands the definition to include accessories and to provide a non-exhaustive list of accessories.

2. PROPOSED AMENDMENT TO SECTION 6: APPOINTMENT OF MOTOR-BODY REPAIRERS BY OEMS.

2.1. Paragraph 6.4.

The proposed insertion of a new paragraph 6.4. is to align the Guidelines with the Competition Commission's issued Practice Note on promoting competition and inclusion in supplier panels, issued in 2022 and accessible on the Commission's website at https://www.compcom.co.za/wp-content/uploads/2022/02/Practice-Note-for-promoting-competition-and-inclusion-in-supplier-panels_2022.pdf. In its amended form paragraph 6.4 will acknowledge the considerations of OEMs, including low volume and insufficient work that might affect the ability to onboard Motor-Body Repairers.

2.2. Paragraph 6.9.2.

The proposed amendment of paragraph 6.9.2. is to align the Guidelines with the Competition Commission's issued Practice Note on promoting competition and inclusion on supplier panels, issued in 2022 and accessible at: https://www.compcom.co.za/wp-content/uploads/2022/02/Practice-Note-for-promoting-competition-and-inclusion-in-supplier-panels_2022.pdf. In its proposed amended form paragraph 6.9.2 will allow for a consideration of various factors when on-boarding MBRs on a case-by-case basis.

3. PROPOSED AMENDMENT TO SECTION 7: APPOINTMENT OF SERVICE PROVIDERS AND ALLOCATION OF WORK BY INSURERS

3.1. Paragraph 7.8.2.

The introduction of a new paragraph 7.8.2. is to align the Guidelines with the Competition Commission's issued Practice Note on promoting competition and inclusion on supplier panels, issued 2022 and accessible at: https://www.compcom.co.za/wp-content/uploads/2022/02/Practice-Note-for-promoting-competition-and-inclusion-in-supplier-panels_2022.pdf. The introduction of paragraph 7.8.2 will allow for a consideration of various factors when on-boarding service providers on a case-by-case basis.

4. PROPOSED AMENDMENT TO SECTION 9: PREVENTING ANTI-COMPETITIVE INFORMATION SHARING BY MULTI-BRAND DEALERSHIPS

4.1. Paragraphs 9.1.; 9.2.; 9.3.; 9.3.2.; 9.3.3.; 9.3.3 (b); 9.3.3 (c).

The proposed substitution of the word “Commercially” with “Competitively” will align these paragraphs with the proposed substituted definition in paragraph 2.4. of the Guidelines.

4.2. Paragraph 9.3.3. d).

The proposed substitution of the word “Commercially” with “Competitively” and the insertion of “under the Competition Act No.89 of 1998” is to align the paragraph with the proposed substitution of the definition in paragraph 2.4. of the Guidelines and to provide the full citation of the Guidelines on the Exchange of Competitively Sensitive Information issued by the Commission in 2023.

5. PROPOSED AMENDMENT TO SECTION 11: THE BUNDLED SALE OF MOTOR VEHICLES WITH VALUE ADDED PRODUCTS

5.1. Paragraph 11.1.

The proposed insertion of the words “demo and/or second hand” clarifies that the provisions for the unbundled sale of motor vehicles with value added products applies to new, demo and/or second-hand vehicles at the point of sale.

5.2. Paragraph 11.6.1.1.

The proposed deletion of the word “new” will clarify that the provisions for the unbundled sale of motor vehicles with value added products applies to new, demo and/or second-hand vehicles at the point of sale.

5.3. Paragraph 11.6.1.2.

The proposed deletion of the word “new” will clarify that the provisions for the unbundled sale of motor vehicles with value added products applies to new, demo and/or second-hand vehicles at the point of sale.

5.4. Paragraph 11.6.3.

The proposed insertions of the phrases “and notified of” and “by Approved Dealers” will require Approved Dealers to notify consumers of their right to cancel Maintenance and/or Service Plans where it is not feasible to transfer the Plans to replacement Motor Vehicles, in the instance where the Motor vehicle is written off.

5.5. Paragraph 11.6.4.4 a)

The proposed substitution of the word “Commercially” with “Competitively” will align the paragraph with the proposed substituted definition of “Competitively Sensitive Information” in paragraph 2.4. of the Guidelines.

6. PROPOSED AMENDMENT TO SECTION 12: ACCESS TO TECHNICAL INFORMATION AND OEM-TRAINING FOR ISPs**6.1. Paragraph 12.2.**

The proposed introduction of a new paragraph 12.2. will allow for intermediaries' access to OEM-technical information on behalf of a group of ISPs, and therefore limit the burden (financial and administrative) faced by ISPs to individually access the technical information from OEMs and will align the paragraph with the newly introduced definition of “Intermediary” in paragraph 2.14. of the Guidelines.

6.2. Paragraph 12.3.1.; 12.3.2.; 12.3.3.

The proposed insertion of the phrase “or their intermediaries” will align the paragraphs with the newly introduced definition of “Intermediary” in paragraph 2.14. of the Guidelines.

6.3. Paragraph 12.3.3 j)

The proposed introduction of the phrase “part numbers on quotations and invoices” will clarify that they constitute technical information as contemplated in the Guidelines and that OEMs should give access to part numbers and quotations on invoices to ISPs.

6.4. Paragraph 12.3.4.

The proposed insertion of “or intermediaries” is to align the paragraphs with the newly introduced definition of “Intermediary” in paragraph 2.14. of the Guidelines.