

May 2020

Dear MIWA Member

Competition Commission Guidelines for Competition in the Automotive Industry -Aftermarket

What is the impact for RMI Aftermarket members?

Please note, that the following document provides an explanation of the Guidelines and does not constitute legal advice. Should the Guidelines, as published by the Competition Commission not, in your opinion, be followed correctly, this practice should be reported to the Competition Commission. Complaint forms can be downloaded from the Commission website www.compcom.co.za.

It should be noted that these guidelines cannot replace any other previously published legislation currently in place.

The final Guidelines published in December by the Competition Commission will come into effect on 1 July 2021. They are correctly referred to as the Competition Commission Guidelines for Competition in the Automotive Industry – Aftermarket. The company that has been lobbying for these guidelines is the Right to Repair South Africa (R2RSA), a Section-21 not-for-profit organisation that has been advocating for freedom of repair choice for vehicle owners over the last six years.

The Guidelines have distinct implications for consumers, OEM's and aftermarket workshops (referred to as independent service providers or ISPs). They also highlight the critical and urgent need for sharing of information and training.

RMI aftermarket principles and purpose of the code:

- a. Provide choice and protection to consumers.
- b. Requirement of trading to be transparent and up-front:
 - i. Ensure suitably qualified staff and training.
 - ii. Only perform work the workshop is qualified and able to do.
 - iii. Subject to certain conditions, In-Warranty service acceptable but not allowed to do In Warranty repairs.
- c. Accreditation:
 - i. Ensure statutory compliance.
 - ii. Grading to confirm correct equipment and adequate knowledge.
- d. Practice business in ethical and equitable manner.

Here is what you need to know

• **Do ISP's need to be accredited?**

There is no direct reference in the guidelines that require ISP's to be accredited, except where access is required to security-critical components, in which case OEM / manufacturer accreditation is required.

- Know the difference between a warranty and a maintenance and/or service plan
 - The warranty is the product (vehicle) fit for purpose assurance that is linked to the vehicle.
 - The maintenance and/or service plan is a financial agreement/contract between the OEM and the vehicle owner.

• **Are ISP's allowed to undertake in-warranty work?**

The concept of in-warranty work will refer ONLY to services under warranty. Repairs under warranty will not be allowed as there is no provision in the Guidelines for this. ISP's will not be reimbursed by the warrantee issuer (OEM's) for any repair work done.

• **If I service a car under warranty, will it impact the warranty?**

A consumer can service a car under warranty without impacting the warranty of the car BUT a repair on a warranty part can only be done by an Original Equipment Manufacturer (OEM) appointed dealer.

• **If I service a car under warranty what records should be maintained?**

You must record the service as per the requirements of the Original Equipment Manufacturer (OEM). At the time of publishing this newsflash, no indication has been received from the OEM's as to what these requirements are.

- All the work carried out on a motor vehicle must be traceable.
- Record such in-warranty services undertaken in the customers' Vehicle Service Books or via an equivalent system.

The recommended process should be as follows:

Procedure when an in-warranty vehicle enters an ISP workshop the following must be recorded.

- The vehicle received date and time.
- All the vehicle details i.e.
 - client name
 - VIN No
 - Engine No

- Mileage
- Colour
- Registration number
- and any other details that may assist the factory to identify the vehicle.
- The service schedule must be exactly as per the specifications of the warrantee issuer / manufacturer.
- Correct procedures completed, checked and carried out.
- Correct parts are used
 - When using branded aftermarket parts the manufacturers brand and part number must be used.
- Correct lubrication viscosities and specifications are used.
 - For ease of use we suggest that the brand and specifications are printed on the Job card and invoice.
- The service must be recorded in the service book and ideally captured electronically.
 - An electronic system is preferable in allowing for continuity in the traceability of parts and services performed.

This will ensure that there is a backup record in the case where there is a deliberate attempt to question or query a service.
- Correct service and Repair Times as per (OEM) specifications.
 - Digital workshop management systems such as Haynes Pro, or any other similar software programme, will provide this information to all MIWA members.
- Job cards with costings and invoices must be signed before any work commences. This will confirm that the client is fully aware of the service and has provided the necessary approval.

It is essential that ISP's communicate the correct requirements with customer's and they are made aware of the potential risks of damage that could arise from ISP work. This may potentially void certain obligations of the OEM in terms of the warranty.

Please ensure you ask the following questions to ensure full transparency and understanding.

- Is the car still under warranty?
- Do you have a maintenance or service plan?
- If under warranty, please confirm it is for a routine service only.

Can I fit non-original spare parts to a car under warranty or do you need to only fit genuine parts?

- Non-Original parts, being un-branded parts or parts with no legitimate traceability, should never be used in a service of a vehicle. Only parts made by an Original Parts manufacturer who has a recognised brand and a valid Original Parts warranty can be used in the servicing and maintenance of consumer vehicles.

If my client wants an original part but still wants to service with me how does the pricing work?

- Original parts (as per above) are available from all leading aftermarket parts distribution outlets. Costing will be as per your normal business pricing model.

Are there any restrictions on parts?

- The restriction on any parts would potentially be limited to the use of Non-Original parts as per the definition above, where warranty implications would apply to the non-branding and lack of traceability of the Non-Original parts.

Will I be given access to security-critical components?

- Yes, subject to the member meeting the OEM's accreditation requirements and standards, as per the OEM's global practice.

What information can I have access to?

- You have the right to access any OEM technical maintenance and repair information readily available, including information stored electronically or in the cloud. In essence, the OEM is obliged to:
 - Make available to members their OEM-technical information relating to the motor vehicle:
 - 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.
 - Allow access by members to OEM-technical information, including security-related information that permits access to motor vehicle security systems, including coding and programming and software and safety systems. Such access must be subject to OEM's intellectual property and data privacy rights and ISPs meeting their accreditation requirements.

What technical information is included?

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

- Unequivocal motor vehicle identification.
- Vehicle service books or their electronic equivalent including data stored electronically or in a cloud.
- Technical manuals.
- Component and diagnosis information.
- Wiring diagrams.
- Diagnostic trouble codes (including manufacturer specific codes).
- Software calibration identification number (SCN coding) applicable to a motor vehicle type.
- Information provided concerning and delivered utilising, proprietary tools and equipment and
- Data record information and two-directional monitoring of test data and operational software.

Is there a confidentiality agreement?

- The Guidelines say in instances where an OEM discloses proprietary information or other intellectual property belonging to the OEM, the OEM may impose reasonable conditions, including the requirement that the member must sign a confidentiality undertaking.

Do we need to consider additional training?

- Access to training is a key component in terms of the implementation of the Guidelines. To effectively compete with Approved Dealers and Approved Motor-body Repairers, our members will require support to access OEM brand-specific training and OEMs will need to take measures to provide technical training to members. At this point, we are not sure of exactly how much training will be required.

Will there be a cost for this training?

- The cost of the training must be provided at a reasonable price that may not exceed that imposed on Approved Dealers and the training must be sufficiently comprehensive to encompass the methods used to effect structural and mechanical repairs, servicing, maintenance and fitment work on the motor vehicle.

In Closing

We acknowledge that the above document may not answer all the questions related to the Guidelines. There are still certain clauses that need further clarification and we are of the opinion that as we roll out the Guidelines from 1 July 2021, we will receive further clarity on these.

If you have any further queries please do not hesitate to contact our MIWA National Chairman Dewaldt Ranft on dewald@dyno-tech.co.za or our National Vice Chairman, Les Mc Master on lesm@m-centre.co.za.