



消費者委員會 CONSUMER COUNCIL

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來函檔號 YOUR REF. EC/02UB
本函檔號 OUR REF. RSD/PPL/22/3 R

15 August 2022

Mr. Jindrich Kloub
Executive Director (Operations)
Competition Commission
19/F South Island Place
8 Wong Chuk Hang Road
Wong Chuk Hang

Dear Mr. Kloub,

Case EC/02UB: Consultation under section 2, Schedule 2 of the Competition Ordinance regarding the Commission's proposal to accept commitments from car distributors in relation to their agreements with car manufacturers

Thank you for the letter dated 1 August 2022 inviting the Council's views on the captioned consultation. Please find attached submission from the Council for your Commission's consideration.

Should you have any queries on the issue, please feel free to contact Dr. Keith KWOK, Head of Research and Survey Division at tel: 2856 8547 or email: keithkwok@consumer.org.hk.

Yours sincerely,

Gilly WONG
Chief Executive
Consumer Council

Encl.

**Consumer Council's Views on the Competition Commission's
Proposal to Accept Commitments in the Car Warranties Case
(EC/02UB)**

1. The Consumer Council (the "Council") refers to the Competition Commission's Notice Issued under Section 2 of Schedule 2 to the Competition Ordinance – Commission's Proposal to Accept Commitments in the Car Warranties Case (EC/02UB) dated 1 August 2022 (the "Notice").
2. The Council is pleased to note that subsequent to the Council's study in 2018 on private car maintenance and repairs which revealed the imposition of restrictive warranty terms on passenger car owners by car distributors in Hong Kong, the Competition Commission ("Commission") has conducted an investigation into the matter and procured the proposed commitments from 7 car distributors under section 60 of the Competition Ordinance to take and refrain from particular actions in relation to the warranty restrictions ("**Commitments**").
3. The Council supports in principle the Commission's proposed acceptance of the Commitments but would like to share the following observations from a consumer protection standpoint for consideration.

A. The relevant consumer considerations

4. The Council considers that:
 - (1) Car owners should be free to choose their supplier for maintenance and repairs without adverse consequences, such as voiding of warranties. They may have a myriad of reasons *not* to prefer the distributor's authorized repair centre, such as the fees and charges involved, convenient proximity of other suppliers, trusted relationship with certain suppliers and wait time for repairs. Indeed, it is noted that at paragraph 38(b) of the Notice, the Commission's survey of car owners conducted in March 2022 indicated that a majority would be willing to service and/or repair their cars at independent workshops during the warranty period if they had the choice to do so.

- (2) Car owners should also be free to undertake customization or modification of their cars and/or use third-party / aftermarket parts and accessories, which in some cases (for instance, sound and lighting systems) may be considered to offer cosmetic or functional improvements or uniqueness to their cars.
- (3) Car owners should be provided with adequate information to make an informed choice. As car warranties normally entail free periodic inspections, the authorized repair centre conducting such inspections should provide adequate information to car owners that allow them to properly decide whether to proceed with its services or that of another supplier. The information provided should allow other suppliers to know exactly what maintenance and repair needs to be done, and to proceed with the same subject to its capabilities and resources.
- (4) By enhancing the availability of competing third-party maintenance and repair services for cars under warranty, it is likely that such competition will result in reduced cost and queuing time for repairs in the long run, thus enhancing consumer interest.

B. The Council's suggestions on the Commitments

5. Scope of vehicles covered by the Commitments

- (1) It appears that under clause 1 of the Commitments, "Standard Warranty" and "Complimentary Extended Warranty" as defined are limited to purchases of new passenger cars. Similarly, paragraph 45(c) of the Notice states that the Commitments apply to warranties issued to purchasers of new passenger cars.
- (2) To the extent that the distributor may also deal with second-hand, refurbished or parallel-imported cars, the same competition concerns identified by the Commission would equally apply to warranties issued to owners of such cars. The Council suggests that such warranties should also be subject to the Commitments.
- (3) It is also noted that motorcycles are excluded from the definition of "passenger car" in the Commitments. To the extent that some distributors may also deal with

motorcycles, the Council suggests that the Commission should consider whether the Commitments should also cover motorcycles.

6. Freedom of choice of supplier, parts and accessories

- (1) The Council notes that the Commitments are silent as to whether the use of third-party / aftermarket parts and accessories and/or modification or customization of the cars would void the warranty. The Council suggests that, provided that the safety and roadworthiness of the cars are not thereby compromised, the warranty should not be voided and the Commitments should so clarify.
- (2) It is also noted that under paragraph 2.2 of the Commitments, terms requiring warranty repairs (i.e. those which are necessitated as a result of manufacturing defects covered by a warranty) to be performed at authorized repair centres do not fall within the Commitments. The Commission's reasoning as set out in paragraph 20(b) of the Notice is that such repairs would usually be performed at no additional cost under the warranty.
- (3) Whilst recognizing the Commission's reasoning, the Council takes the view that the car owner should be at liberty to approach independent workshops to remedy manufacturing defects and that any such action should not affect the validity of the warranty, unless the repair is associated with a safety recall which requires to be performed at authorized repair centres. The Council appreciates that in cases where the manufacturing defect is highly technical, the only practical remedy may well be to have the repair conducted by an authorized repair centre having the requisite knowledge and expertise to do so. Nonetheless, in other cases where independent workshops are equally capable to carry out the repair, there is no reason why the owners should be limited in the remedies available to them. The Council in the past had received comments from the manufacturers that the quality of repair from independent workshops could be very diverse and they had to take up remedial actions at the authorized repair centres afterwards. To ensure consumers can enjoy quality and value for money services, the industry has to be supported by a robust training and development system so that technicians serving at both the authorized repair centres or independent workshops could fulfill the required skills.

- (4) In the Council's experience conciliating cases involving mass product recalls, the lead time for repairs could be very long (up to 1 year) during which the consumer may be kept out of use of the product. The car distributors should have a transparent and well-planned system to handle car safety recall, in particular when the recall involves not only cars imported by the distributor but also parallel imported cars.
- (5) The Council further notes that the distributor would also be permitted to reject warranty claims for damage caused by third-party maintenance or repair services. A concern arises whether a distributor may seek to take unfair advantage of the proviso by improperly alleging that the damage was caused by a third-party supplier, in circumstances when the car owner has no knowledge or expertise to verify such allegation. The Commission may wish to consider whether the distributors should commit to provide a cheap, efficient and impartial dispute resolution mechanism to address such situations. It is also recommended that clause 2.6 of the Commitments clarifies that the notice to car owners should state that notwithstanding the right to reject warranty claims for damage caused by third-party maintenance and repair services, the warranty shall remain intact.

7. Other car distributors

It is noted that the Commission conducted investigation in relation to 7 distributors offering 17 passenger car brands in aggregate. However, as the Council's study in 2018 found, other distributors of at least 4 other car brands have imposed restrictive warranty terms. The Council suggests that the Commission considers whether its investigation should be expanded to cover other car distributors.

C. Other comments

8. The Council appreciates the efforts of the Commission in addressing the problem arising from restrictive warranty terms imposed on car owners and is grateful for the Commissioner's consideration of consumer interests involved.
9. Whilst it is noted that the Commitments would remain effective for a period of 5 years,

the Council trusts that the Commission will closely monitor the distributors' performance and assess the impact on the car maintenance and repair market in determining whether a long-term industry code of practice should be introduced. The Council is particularly concerned that distributors who suffer a loss of revenue as a result of car owners seeking repair services elsewhere may seek to transfer such loss to consumers by increasing car prices or reducing their scope or quality of services.

10. The Council draws attention to the Voluntary Registration Scheme for Vehicle Maintenance Workshops promoted by the Electrical and Mechanical Services Department (EMSD). Workshops registered under the Scheme, currently 1,777 in total, have pledged to operate at a quality level not lower than that specified in the Practice Guidelines for Vehicle Maintenance Workshops issued by the EMSD in terms of the technical, environmental, safety, staff training, service and documentation requirements. The Commission is invited to make reference to the Scheme consequential to its announcement of the Commitments coming into effect.
11. Lastly, the Council invites the Commission to consider the further, broader issue whether a distributor may be able to inhibit competition by third-party suppliers by other means, such as restricting the supply of spare parts at all or by inflated prices, technical information and/or records required by them to supply the services. Not only would such restrictions be contrary to the spirit of the Commitments, but may also have the effect of harming competition in the post-warranty car maintenance and repair market in general. On the other hand, the Council recognizes that with advancements in car manufacturing technology, in particular those involving electric vehicles and computerized automobile systems, distributors and manufacturers may have legitimate interest in protecting their proprietary technology and the like. However, to ensure a fair competition between authorized repair centres and independent workshops, the availability of open-source data that are essential to proper maintenance and repair works is required. Nonetheless, the Council suggests that this is a complex topic of significant consumer interest that warrants further study.

Consumer Council

August 2022