



**COMMENTS SUBMITTED TO THE COMPETITION COMMISSION IN RESPECT OF THE DRAFT CODE OF CONDUCT FOR  
COMPETITION IN THE AUTOMOTIVE INDUSTRY**

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**Type of stakeholder:** Industry representative body

**Submitted to:** Mr Mziwodumo Rubushe: [MziwodumoR@compcom.co.za](mailto:MziwodumoR@compcom.co.za)

**About the SAIA:** The South African Insurance Association NPC (SAIA) is the representative body for the short-term insurance industry of South Africa. The SAIA represents the interests of 60 short-term insurers (inclusive of reinsurers). These 60 insurers (inclusive of reinsurers) collectively account for more than 90% of the short-term insurance market measured by premium income.

## **1. General comments on the Draft Code of Conduct for competition in the automotive industry:**

The South African Insurance Association (SAIA) supports the objectives of the Draft Code of Conduct for competition in the automotive industry (the code). We understand that the objectives of the code are to simplify the entry requirements in order to trade in the repair and maintenance market and to also allow customers, of the repair and maintenance market, a wider choice in terms of service providers to repair and / or service motor vehicles under warranty.

### **1.1 Application of the code to the short-term insurance industry:**

Within the context of short-term insurance, it is the repair sub-sector of the automotive aftermarket that is highly relevant to us.

The insurance industry provides motor vehicle owners with indemnification in the event of a loss or damage, for example a motor vehicle accident. The insurer has a contractual obligation to indemnify a policyholder who submits a valid claim, in the event of damage to the policyholder's motor vehicle. The indemnification responsibilities of the insurer could be exercised in one of two manners. Firstly the insurer could assess and quantify the damage, and then make a cash payment to the policyholder. It would then be the choice of the policyholder to repair the damaged motor vehicle, however the insurer will not take any responsibility for the quality of repairs made subsequent to the payment. Alternatively, the insurer could, based on the contractual arrangement with the policyholder, have the damaged motor vehicle repaired. The repair process is preferred by most insurers and is also encouraged by SAIA as it significantly contributes to jobs creation, quality control, lower repair costs, the transformation objectives of Government and the insurance industry as well as a sustainable insurance market.

It is within this context that the SAIA submits to the Competition Commission (the Commission) that when reading the code, insurers have the contractual right to choose a service provider and not be subjected to the complete discretion of policyholders, as we deem ourselves the "customer" of the service provider in the event of an insurance claim. Without the right to choose the repairer, as insurer, the objectives of the Commission will not be achievable as insurers would be forced to settle claims in cash as insurers would not want to be held liable for future claims because of potentially faulty workmanship. Such a situation must be avoided due to the severe negative outcomes for all, which could ultimately lead to a lack of support for the code.

Further to the above, the SAIA submits that the code is vague and unclear in many sections in terms of its meaning and intention. We therefore request further consultation on the code in order to prevent any misunderstandings and a lack of support thereon. We foresee that considerable more time will have to be spent in order to agree on a code that will achieve the desired objectives of the

Commission whilst ensuring certainty and practicality. We also propose that the code clearly demarcates the respective roles and responsibilities of Original Equipment Manufacturers (OEMs) and insurers.

**1.2 Conclusion:**

As a closing general remark, the SAIA submits that quality repairs are essential for the safety of our policyholders, the reputation and sustainability of the insurance industry and the economy at large. We expect our service providers, independent or approved, to provide quality and effective repairs. This is largely achieved through the use of modern repair technology and effective repair standards. Technology, in general, is a challenge for many service providers because of the fast pace of motor technology. Without adequate and effective repair standards, supported by relevant and modern technology, the outcome for many motor vehicle owners, could be disastrous with many unintended consequences. A reasonable repair standard, as used by SAIA members for assessing the quality of motor body repairers in the out of warranty repair environment, is essential and reasonable, given the risks.

**2. Specific comments on the Code:**

CLAUSE	HEADING	COMMENTS
<p><b>3.7</b></p> <p><b>“independent service provider”</b></p>	<p><b>Definitions</b></p>	<ul style="list-style-type: none"> <li>• Currently no legal requirements are set to open a motor body repairer business. Any person, irrespective of trade, skills or experience can open a motor body repair shop. This poses a risk for all motor vehicle owners, especially considering the enormous complexities of repairing motor vehicles which over time will only increase in complexity.</li> <li>• We propose that the definition of <i>“independent service provider”</i> should include a minimum standard in order to ensure that a person making use of this service provider will know it is an organisation that can repair at a certain quality.</li> </ul>

CLAUSE	HEADING	COMMENTS
<p><b>3.13</b></p> <p><b>“Policies and Plans”</b></p>	<p><b>Definitions</b></p>	<ul style="list-style-type: none"> <li>• We submit that the terms “<i>maintenance plan</i>” and the “<i>service plan</i>” referred to in clause 3.13 are not financial products as they are deemed to be pre-paid service arrangements. These are arrangements between the OEMs and buyers of motor vehicles.</li> <li>• The Financial Services Board (FSB) has also in the past indicated that these products offered by OEMs and motor dealers, not deemed to be insurance products.</li> </ul>
<p><b>3.18</b></p> <p><b>“Spare parts of matching quality”</b></p>	<p><b>Definitions</b></p>	<ul style="list-style-type: none"> <li>• We propose that “Green Parts” be added as a fourth category to spare parts. In many instances, a new motor vehicle is written-off as uneconomical to repair. However, the spare parts of that vehicle are of a very good quality and condition and could be used for the repair of a motor vehicle. These spare parts are already complying with Original Equipment or related standards but are available to the Motor Body Repairers (MBRs) at a much lower cost, without risk to the motor vehicle owner.</li> <li>• The use of “Green Parts” is a standard and acceptable practice and the Ombudsman for Short-Term Insurance also supports the use of same as outlined in this publication: <a href="http://www.osti.co.za/the-use-of-pirate-and-second-hand-parts-in-the-repair-of-motor-vehicles.-(2009).html">http://www.osti.co.za/the-use-of-pirate-and-second-hand-parts-in-the-repair-of-motor-vehicles.-(2009).html</a></li> </ul>
<p><b>3.18.3</b></p>	<p><b>Definitions</b></p>	<ul style="list-style-type: none"> <li>• To the best of our knowledge, we submit that the South African Bureau of Standards (SABS) do not have the</li> </ul>

CLAUSE	HEADING	COMMENTS
<p><b>“Spare parts of matching quality”</b></p>		<p>facilities to determine whether a spare part is of matching quality.</p> <ul style="list-style-type: none"> <li>• A SANAS-accredited testing facility is also not available at this stage.</li> <li>• We therefore submit that approvals that already exist in other markets such as in the European Union (EU) or International Organisation for Standardisation (ISO) standards are adopted by the SABS, where the models and spare parts are the same, used and sold in South Africa.</li> </ul>
<p><b>4.4.1</b></p>	<p><b>Sale of Policies and Plans</b></p>	<ul style="list-style-type: none"> <li>• Please refer to our comments on 3.13 above. We understand these <i>“policies and plans”</i> to exclude insurance products and to be irrelevant to the code.</li> </ul>
<p><b>4.4.2</b></p>	<p><b>Sale of Policies and Plans</b></p>	<ul style="list-style-type: none"> <li>• We submit that the OEMs must, on a pro rata basis, refund the motor vehicle owner or the financier of the motor vehicle for the upfront service charges paid, such as the <i>“maintenance plan”</i> or the <i>“service plan”</i>, in the event that the motor vehicle is written-off as unrepairable or uneconomical to repair. If not, the motor vehicle owner remains liable to the financier, or has paid for a service that can never be used.</li> </ul>
<p><b>4.4.2.4</b></p>	<p><b>Sale of Policies and Plans</b></p>	<ul style="list-style-type: none"> <li>• We submit that this clause relates to the relationship between the OEM and consumer only. We therefore request that the reference to <i>“insurer”</i> be removed.</li> </ul>

CLAUSE	HEADING	COMMENTS
4.5.1.2	Consumers' Rights to Information	<ul style="list-style-type: none"> <li>• Please refer to our comments on 3.13 above. We understand these <i>"policies and plans"</i> to exclude insurance products.</li> </ul>
4.5.1.4	Consumers' Rights to Information	<ul style="list-style-type: none"> <li>• We submit that the Financial Advisory and Intermediaries Services (FAIS) Act might be applicable in this context.</li> <li>• We are uncertain as to how the Financial Services Board Act applies herein.</li> </ul>
4.5.3	Consumers' Rights to Information	<ul style="list-style-type: none"> <li>• Please refer to our comments on 3.13 above. We understand these <i>"policies and plans"</i> to exclude insurance products.</li> </ul>
5.1	Maintenance, Service and Repair Work	<ul style="list-style-type: none"> <li>• We propose that definitions be included for: <ul style="list-style-type: none"> <li>○ <i>"Exclusively"</i>; and</li> <li>○ <i>"OEM'S motor vehicles"</i>. (We understand that OEM's motor vehicles refers to motor vehicles under warranty but request certainty and clarity.)</li> </ul> </li> <li>• If this clause refers to the appointment of only one or two service providers in a geographical area, we propose that the sentence be amended to read as follows: <p style="margin-left: 40px;"><i>"OEMs and Insurers shall not appoint <b>an exclusive</b> service provider for effecting repair and/or maintenance work on an OEM's motor vehicles within a designated geographic area."</i></p> </li> </ul>

CLAUSE	HEADING	COMMENTS
		<ul style="list-style-type: none"> <li>• We further submit that “<i>geographic area</i>” is not defined and could be problematic if left open for interpretation.</li> <li>• It is also important to note that, in certain cases, an insurer would prefer to use specific motor body repairers due to a low number of clientele in the area and by using specific service providers the sustainability of the service provider is ensured. We consider this essential for our own service delivery to our policyholders. In many areas, the number of service providers exceed the supply of work, due to the fact that only ±35% of motor vehicles are insured. It is therefore preferable to use specific service providers, to ensure they are and remain sustainable businesses that deliver quality repairs because of the capital intensive nature of setting up a modern motor body repair shop, rather than utilising too many unsustainable service providers.</li> </ul>
5.2	<b>Maintenance, Service and Repair Work</b>	<ul style="list-style-type: none"> <li>• We propose that a definition be included for: <ul style="list-style-type: none"> <li>○ “<i>Excessively long</i>”</li> <li>○ “<i>OEM’S motor vehicles</i>”. (We understand that OEMs motor vehicles refers to motor vehicles under warranty but request certainty and clarity.)</li> </ul> </li> <li>• We assume that the term “<i>appoint</i>” refers to a contractual relationship and propose that the term is changed to “<i>contract</i>”.</li> <li>• We further propose that an insurer provide a standard that must be met for re-contracting of a service provider.</li> </ul>

CLAUSE	HEADING	COMMENTS
		<ul style="list-style-type: none"> <li>• Without long term agreements, our objective of effective transformation could also be negatively impacted.</li> <li>• In many areas, the number of potential service providers exceeds the volume of work. It is therefore preferable to use specific service providers, to ensure they are and remain sustainable businesses that deliver quality repairs because of the capital intensive nature of setting up a modern motor body repair shop rather than utilising too many unsustainable service providers.</li> </ul>
5.3	<b>Maintenance, Service and Repair Work</b>	<ul style="list-style-type: none"> <li>• The SAIA submits that we are in agreement with this clause provided it is on the basis that the insurer has the right to choose the repair, due to its contractual obligation to repair the motor vehicle. On this basis, it will be the insurer that appoints the independent service provider.</li> <li>• Any independent service provider used by an insurer must, however, demonstrate to the insurer that they are able to repair motor vehicles at an acceptable quality. We cannot allow any service provider to repair the motor vehicles of our policyholders and compromise the safety of our clients. An acceptable standard of work is a minimum requirement to contract with an insurer and for any motor vehicle owner.</li> </ul>



CLAUSE	HEADING	COMMENTS
5.4	Maintenance, Service and Repair Work	<ul style="list-style-type: none"> <li data-bbox="1249 204 2141 363">• We submit that insurers are still responsible for determining who must repair the vehicle in the event of an insurance claim, despite the motor vehicle being under a “<i>Maintenance plan, Service Plan, Warranty or Extended Warranty</i>”.</li> <li data-bbox="1249 421 2141 746">• There are certain conditions that must be met before payment is made to the independent service provider, namely that the workmanship is done properly and the costs are not excessive (reasonable). Excessive costs of repairs results in increased costs to claims potentially leading to premium increases. Conditions must be set to the independent (and approved) service provider before repairs should be made.</li> </ul>
5.5	Maintenance, Service and Repair Work	<ul style="list-style-type: none"> <li data-bbox="1249 777 2141 936">• The SAIA submits that we are in support of this clause. Insurers are guided by the Financial Sector Charter (FSC) in terms of procurement allocation and would use the FSC as the basis for compliance.</li> <li data-bbox="1249 994 2141 1109">• We further submit that we would appreciate further engagement with the Commission on the “<i>specific measures</i>” referred to in this clause</li> </ul>
7.2.1	The Use of Spare Parts	<ul style="list-style-type: none"> <li data-bbox="1249 1137 2141 1214">• We submit that the term “<i>insurer</i>” should be used in this context as the insurer has the right to determine the repair.</li> </ul>
7.2.3	The Use of Spare Parts	<ul style="list-style-type: none"> <li data-bbox="1249 1243 2141 1442">• The SAIA submits that we are in agreement with this clause provided it is on the basis that the insurer has the right to choose the repair, due to its contractual obligation to repair the motor vehicle. On this basis, it will be the insurer that appoints the independent service provider.</li> </ul>

CLAUSE	HEADING	COMMENTS
		<ul style="list-style-type: none"> <li>We submit that we interpret this clause in respect of the use of spare parts and is conditional on the proviso that a valid insurance claim exists.</li> </ul>
7.3.1	<b>The Distribution and Sale of Spare Parts</b>	<ul style="list-style-type: none"> <li>We propose that the terms “<i>publish</i>” and “<i>maintain</i>” be defined.</li> <li>We submit that “<i>various associations</i>” should be defined further as the use of the term in this context is very wide. We therefore propose that this clause should rather refer to associations in respect of “importers” and “manufacturers”.</li> </ul>
8.	<b>Availing of special equipment and tools to dealers and independent repairers</b>	<ul style="list-style-type: none"> <li>We propose that “<i>special equipment and tools</i>” is defined.</li> </ul>
9.2	<b>Training</b>	<ul style="list-style-type: none"> <li>We submit that the employee (spray painter and panel beater) should be certified and not just the service provider. This information must be made available to insurers.</li> <li>We propose an annual review and renewal of the certification process to keep abreast of changes in the automotive environment particularly with respect to technology and for changes in repair staff.</li> </ul>
9.3	<b>Training</b>	<ul style="list-style-type: none"> <li>We propose that the definition of “<i>independent service provider</i>” in 3.7 should be aligned with clause 9.3 in that the definition should provide for whether the service provider is the holder of a certificate or not.</li> </ul>

CLAUSE	HEADING	COMMENTS
10.2	Status of the Code	<ul style="list-style-type: none"> <li>• Please clarify the interpretation of this clause as we are of the view that it should be re-phrased.</li> </ul>
12.1	Monitoring and Adherence of the Code	<ul style="list-style-type: none"> <li>• Please advise whether the submission of reports can be done at industry association level.</li> </ul>
12.2	Monitoring and Adherence of the Code	<ul style="list-style-type: none"> <li>• We submit that “<i>transformation initiatives</i>” referred to in this clause should align with the FSC for insurers.</li> </ul>

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