

CASE EC/02UB

**NOTICE REGARDING THE COMMISSION'S ACCEPTANCE OF
COMMITMENTS IN THE CAR WARRANTIES CASE**

10 OCTOBER 2022

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I. INTRODUCTION AND EXECUTIVE SUMMARY

The Commission's investigation

1. The Competition Commission ("**Commission**") has conducted an investigation under section 39 of the Competition Ordinance (Cap. 619) ("**Ordinance**") into agreements between certain passenger car manufacturers and their respective importers, distributors or authorised dealers in Hong Kong ("**Distributors**").
2. In particular, the Commission has investigated whether these agreements mandate the imposition of restrictive warranty terms and conditions on passenger car owners in Hong Kong ("**Warranty Restrictions**").¹ The Warranty Restrictions in question tie, or may appear to the car owner to tie, the continuous validity of the relevant warranty to their cars being repaired and/or maintained exclusively at authorised repair centres, regardless of whether the maintenance or repair item is covered by the warranty. As a result, car owners who visit independent workshops during the warranty period may risk having their warranty voided on the basis that their passenger car was not serviced and/or repaired at an authorised repair centre.
3. The Commission is concerned that these Warranty Restrictions may deter passenger car owners from using independent workshops during the warranty period, and restrict the ability of independent workshops to compete with authorised repair centres. This may in turn unduly reduce car owners' choice of service and ultimately lead to higher prices for maintenance and repair services in Hong Kong.
4. The Commission therefore takes the view that by agreeing to impose the Warranty Restrictions on passenger car owners, each Distributor may have made and given effect, and be giving effect to an agreement which could potentially prevent, restrict or distort competition in the brand-specific maintenance and repair services markets in Hong Kong, in contravention of section 6(1) of the Competition Ordinance ("**First Conduct Rule**").
5. The present notice concerns the Warranty Restrictions imposed by seven Distributors (each referred to as a "**Relevant Distributor**") in relation to 17 passenger car brands, as follows:

Distributor	Car brand
Cartel Motors Limited (" Cartel Motors ")	Cartel Motors is the sole Distributor of Citroen passenger cars in Hong Kong

¹ As further defined in paragraph 24 below.

Dah Chong Hong Holdings Limited (“ DCH ”)	DCH is the sole Distributor of Honda and Nissan passenger cars in Hong Kong
Inchcape International Holdings Limited (“ Inchcape ”)	Inchcape is the sole Distributor of Jaguar, Land Rover, Toyota, and Lexus passenger cars in Hong Kong
Kam Lung Motor Group Limited (“ KLM ”)	KLM is the sole Distributor of Kia, Volkswagen and Audi passenger cars in Hong Kong
Motor Image (HK) Limited (“ Motor Image ”)	Motor Image is the sole Distributor of Subaru passenger cars in Hong Kong
Sime Darby Motor Group (HK) Limited (“ Sime Darby ”)	Sime Darby is the sole Distributor of BMW, MINI, Mitsubishi and Suzuki passenger cars in Hong Kong
Vang lek Holdings Limited (“ Vang lek ”)	Vang lek is the sole Distributor of Mazda and Ford passenger cars in Hong Kong

Acceptance of Commitments offered by the Relevant Distributors

6. Each of the Relevant Distributors have separately offered commitments under section 60 of the Ordinance to take and refrain from particular actions, primarily relating to the removal of the Warranty Restrictions (“**Commitments**”).
7. In accordance with the requirements of section 2, Schedule 2 of the Ordinance, on 1 August 2022, the Commission commenced a public consultation by giving notice of the Commitments, including its proposal to accept the Commitments, and requesting parties to make representations by 15 August 2022 (“**Public Consultation**”).²
8. During the Public Consultation, the Commission received 9 representations on the Commitments by the deadline of 15 August 2022, which have been published on its website.

² See further the Commission’s Notice issued under section 2 of Schedule 2 of the Competition Ordinance regarding the Commission’s proposal to accept commitments in car warranties case (EC/02UB), published on 1 August 2022, which is available on its website.

9. Under section 60(6) and Schedule 2, section 4 of the Ordinance, where the Commission accepts a commitment, it must as soon as practicable afterwards give notice in writing of that decision to the person who made the commitment, register the commitment on the Register of Commitments, and publish the commitment on its website or in any other manner the Commission considers appropriate.
10. Accordingly, the Commission issues the present notice to give notice of, and explain its decision regarding, the acceptance of the Commitments. The Commitments are also published today in the Register of Commitments, which is available on the Commission's website and at its offices during ordinary business hours.
11. The remainder of the notice sets out further details regarding:
 - (a) the relevant factual background (Part II);
 - (b) the competition concerns identified by the Commission (Part III);
 - (c) the Commitments offered by the Relevant Distributors (Part IV);
 - (d) the representations received on the Commitments (Part V); and
 - (e) the Commission's acceptance of the Commitments (Part VI).

II. RELEVANT FACTUAL BACKGROUND

Distribution, maintenance and repair of new passenger cars in Hong Kong

12. In the context of this notice, a passenger car refers to a road motor vehicle, other than a motorcycle, intended for the carriage of passengers and designed to seat no more than nine persons (including the driver), which are purchased by, and for the use of, private individuals.³

Distribution arrangements

13. The vast majority of manufacturers of passenger cars do not sell their cars to consumers in Hong Kong directly. Instead, car manufacturers organise the sale of their new passenger cars on the basis of exclusive import, distribution or dealership agreements with Distributors (“**Distribution Agreements**”).
14. The Distribution Agreements typically cover (i) the import and distribution of new passenger cars; (ii) the provision of related products and services (such as the sale of spare parts); (iii) the exclusive management by the Distributor of the brands’ show rooms and authorised repair centres; (iv) the provision by the authorised repair centres of maintenance and repair services to customers; and (v) the provision of warranties to passenger car owners.

Maintenance and repair services

15. Maintenance and repair services are after-sales services (i.e. services provided after the sale of a primary product).
16. Maintenance services entail regular inspections and/or servicing of a vehicle’s parts and fluids. The warranty documentation issued by Distributors may sometimes recommend or require that maintenance services be obtained according to a particular schedule.
17. Repair services deal with a malfunctioning or damaged vehicle, or vehicle parts. Two types of repairs can be distinguished:
- (a) **Warranty Repairs** are those which are necessitated as a result of manufacturing defects covered by a warranty. Warranty Repairs are performed by authorised repair centres, usually at no additional cost to the passenger car owner while the warranty is valid; and

³ This includes internal combustion engines powered by gasoline, diesel fuel, or liquefied petroleum gas and new forms of motorisation (hybrid and electric engine). Commercial vehicles (including taxis and other vehicles used solely for commercial usage) are not part of the Commission’s investigation and are therefore not further discussed in this notice.

- (b) **Non-Warranty Repairs** are repairs unconnected to manufacturing defects covered by a warranty and are usually provided at an additional cost to the passenger car owner. For example, a Non-Warranty Repair could be one necessitated as a result of an accident.
18. In Hong Kong, maintenance and repair services for passenger cars are provided either by authorised repair centres or independent workshops.
- (a) **Authorised repair centres** are repair centres designated by a specific car manufacturer to carry out maintenance and repair services for one or more specific car brands. In Hong Kong, authorised repair centres are typically owned and operated by the manufacturer's exclusive Distributor. Authorised repair centres usually provide services only with respect to those brands of passenger cars that are distributed by their parent or affiliated Distributor.
- (b) In contrast, **independent workshops** are not owned by or affiliated with any Distributor in Hong Kong.⁴ They are often small workshops with fewer employees, and tend to provide maintenance and repair services for a number of different passenger car brands.

The Relevant Distributors and passenger car brands

19. The Relevant Distributors distribute a number of international passenger car brands, which together account for the majority of the passenger cars in circulation in Hong Kong. By way of further detail:
- (a) **Cartel Motors.** Cartel Motors is the sole Distributor of Citroen passenger cars in Hong Kong. Cartel Motors has appointed Challenger Auto Service Limited as its authorised repair centre in Hong Kong.
- (b) **DCH.** DCH distributes a number of passenger and commercial vehicles in Hong Kong. DCH distributes Honda and Nissan passenger cars through two wholly-owned subsidiaries:
- (i) Reliance Motors Limited is a subsidiary of DCH, and the sole Distributor of Honda passenger cars in Hong Kong. Reliance Motors Limited does not provide repair and maintenance services. Dah Chong Hong (Motor Service Centre) Limited operates the authorised repair centres for Honda passenger cars in Hong Kong.
- (ii) Honest Motors Limited, a subsidiary of DCH, is the sole Distributor of Nissan passenger cars in Hong Kong. Honest Motors Limited does not provide repair and maintenance services. Dah Chong Hong (Motor Service Centre) Limited operates the authorised repair centres for Nissan passenger cars in Hong Kong.

⁴ In the Commitments, independent workshops are referred to as Non-Authorised Repair Centres.

- (c) **Inchcape.** Inchcape is the sole Distributor of several global car brands. In Hong Kong, it distributes Jaguar, Land Rover, Toyota and Lexus through two wholly-owned subsidiaries:
- (i) British Motors Limited is a subsidiary of Inchcape and the sole Distributor of Jaguar and Land Rover passenger cars in Hong Kong. It also operates the Land Rover and Jaguar authorised repair centres in Hong Kong.
 - (ii) Crown Motors Limited is a subsidiary of Inchcape and the sole Distributor of Toyota and Lexus passenger cars in Hong Kong. It also operates the authorised repair centres for these car brands in Hong Kong.
- (d) **KLM.** KLM imports and distributes several automotive brands in Hong Kong, including Audi, Volkswagen and Kia through two wholly-owned subsidiaries:
- (i) Kam Lung Motors Limited is a subsidiary of KLM and the sole Distributor of Audi and Volkswagen passenger cars in Hong Kong. The Audi and Volkswagen dealerships were transferred respectively from DCH and Volkswagen Hong Kong Limited to KLM in July 2020. Kam Lung Motors Limited operates Audi and Volkswagen's authorised repair centres in Hong Kong.
 - (ii) Kia Motors (Hong Kong) Limited is a subsidiary of KLM and the sole Distributor of Kia passenger cars in Hong Kong. Kia Motors (Hong Kong) Limited also operates Kia's authorised repair centres in Hong Kong.
- (e) **Motor Image.** Motor Image is the sole Distributor of Subaru passenger cars in Hong Kong. Motor Image also operates the only authorised repair centre for Subaru in Hong Kong.
- (f) **Sime Darby.** Sime Darby imports and distributes several automotive brands in Hong Kong, including BMW, MINI, Mitsubishi and Suzuki via the following wholly-owned subsidiaries:
- (i) BMW Concessionaires (HK) Limited is the sole Distributor of BMW and MINI passenger cars in Hong Kong. BMW Concessionaires (HK) Limited also operates the BMW and MINI authorised repair centres in Hong Kong.
 - (ii) Universal Cars Limited is the sole Distributor of Mitsubishi passenger cars in Hong Kong. Sime Darby Motor Services Ltd. operates the Mitsubishi authorised repair centre in Hong Kong.
 - (iii) Island Motors Limited is the sole Distributor of Suzuki passenger cars in Hong Kong. Sime Darby Motor Services Ltd. operates the Suzuki authorised repair centre in Hong Kong.

- (g) **Vang lek.** Vang lek distributes Mazda and Ford passenger cars in Hong Kong via two wholly-owned subsidiaries:
- (i) Vang lek Motors (Hong Kong) Limited is the sole Distributor of Mazda passenger cars in Hong Kong. It also operates the Mazda authorised repair centre for Mazda in Hong Kong.
 - (ii) Venture Motors Limited is the sole Distributor of Ford passenger cars in Hong Kong, since the transfer of the Ford dealership from Inchcape in July 2020. Venture Motors Limited also operates Ford’s authorised repair centre in Hong Kong.

Warranties and the Warranty Restrictions

20. It is a standard practice in Hong Kong for car manufacturers and their Distributors to offer a warranty to customers upon the purchase of a new passenger car. In particular:
- (a) A standard warranty is typically offered at no additional cost by a car manufacturer and/or its Distributor upon the purchase of a new passenger car (“**Standard Warranty**”). A Standard Warranty typically provides for a comprehensive “bumper to bumper” coverage and its duration ranges between two and five years depending on the car brand.
 - (b) A complimentary extended warranty is a warranty lasting for a specified period after expiry of the Standard Warranty (e.g. an additional two or three years), which is typically provided at no additional cost by a car manufacturer and/or its Distributor upon the purchase of a new passenger car and which usually covers only certain parts of a passenger car (e.g. powertrain) (“**Complimentary Extended Warranty**”). Unlike the Standard Warranty, Complimentary Extended Warranties are not systematically offered to car owners in Hong Kong.
21. In addition to Standard and Complimentary Extended Warranties, optional extended warranties may be offered to customers for an additional charge during or after the Standard Warranty period. Customers can choose to purchase an optional warranty to extend the period of the coverage of the Standard Warranty (“**Optional Extended Warranty**”).
22. As further explained in section III below, the Commission’s investigation focuses on Standard and Complimentary Extended Warranties, rather than Optional Extended Warranties.
23. Warranties may contain a number of terms and conditions, most of which do not raise competition law issues. For example, the Commission does not have competition concerns with clauses which:
- (a) recommend or require periodic maintenance services to be performed on the vehicle;

- (b) require Warranty Repairs to be carried out at authorised repair centres (since such repairs will usually be performed at no additional cost under the warranty); or
- (c) decline to provide Warranty Repairs for defects or damages caused by third parties.
24. However, the Commission has identified competition concerns with respect to the following terms and conditions (that is, the **Warranty Restrictions**):
- (a) terms and conditions which explicitly require customers to have maintenance and/or repair services performed exclusively at authorised repair centres in order to maintain the validity of the warranty; or
- (b) terms and conditions which are reasonably likely to lead customers to believe that their warranties will be invalidated if their cars are not being maintained and/or repaired at authorised repair centres.
25. The Commission has identified Warranty Restrictions in the warranty terms and conditions offered by each of the Relevant Distributors. The scope of the Warranty Restrictions varies from one car brand to another. For some car brands, the Warranty Restrictions apply both to maintenance and repair services, whilst for others, the restrictions are limited to maintenance services, as indicated in the table below.

Relevant Distributor	Car brands	Scope of Warranty Restrictions	
		Maintenance Services	Repair Services
Cartel Motors	Citroën	✓	✓
DCH	Honda	✓	✓
	Nissan	✓	✓
Inchcape	Jaguar	✓	✓
	Land Rover	✓	✗
	Toyota	✓	✓
	Lexus	✓	✓
KLM	KIA	✓	✓
	Audi	✓	✓
	Volkswagen	✓	✓
Motor Image	Subaru (prior to June 2020)	✓	✓

Relevant Distributor	Car brands	Scope of Warranty Restrictions	
		Maintenance Services	Repair Services
	Subaru (since June 2020)	X	X
Sime Darby	BMW	✓	✓
	MINI	✓	✓
	Mitsubishi	✓	✓
	Suzuki	✓	✓
Vang lek	Mazda	✓	✓
	Ford (prior to July 2020)	✓	✓
	Ford (since July 2020)	X	X

Based on terms and conditions of Standard Warranties and / or Complimentary Extended Warranties in force as at the date of this notice.

26. As will be explained in the next section, the Commission takes the view that these Warranty Restrictions are susceptible to giving rise to competition law concerns.

III. COMPETITION CONCERNS IDENTIFIED BY THE COMMISSION

Framework for assessment

27. The Distribution Agreements in place between each car manufacturer and its Distributor constitute vertical agreements.
28. The Commission's Guideline on the First Conduct Rule ("**FCR Guideline**") recognises that whilst vertical agreements frequently improve economic efficiency within a chain of production or distribution, some vertical agreements may, nonetheless, cause harm to competition. This may be the case where vertical agreements include restrictions which foreclose existing competition or limit the scope for market entry or expansion.⁵
29. The Commission has assessed whether the Warranty Restrictions may have the actual or likely effect of preventing, restricting or distorting competition in Hong Kong within the meaning of the First Conduct Rule.

Existence of an agreement

30. Each Distribution Agreement amounts to an agreement within the meaning of section 2(1) of the Ordinance.
31. As explained in paragraph 14 above, Distribution Agreements provide amongst other things for the provision of warranties to passenger car owners, which typically include the terms of the car manufacturer's warranty. Whilst the exact wording and content of the manufacturer's warranty are not always set out in the Distribution Agreements themselves (e.g. it may be set out in a separate document and changed periodically by the manufacturer), a provision for their adoption is generally made in the agreement.
32. By entering into such Distribution Agreements, each Distributor therefore implicitly (if not explicitly) agrees to accept the warranty terms and conditions from the manufacturer and to

⁵ FCR Guideline, paragraphs 6.6 to 6.9.

reflect or implement them in the Standard and Complimentary Extended Warranties offered to passenger car purchasers in Hong Kong.

33. The Commission therefore takes the view that each relevant Distribution Agreement, including the warranty terms and conditions offered to purchasers of passenger cars in Hong Kong pursuant to these agreements, amounts to an agreement within the meaning of the First Conduct Rule.⁶

Relevant market definition

34. When assessing anti-competitive effects, the exercise of defining the relevant market assists in identifying in a systematic way the competitive constraints that undertakings face when operating in a market.⁷

Product market definition

35. While the Commission has not reached a conclusion on the relevant market, as set out below, there is a reasonable basis to consider that the relevant product market for the purpose of assessing the Warranty Restrictions comprises the brand-specific markets for **repair and maintenance services**, which consist of distinct relevant markets for the provision of maintenance and repair services for each passenger car brand.
36. This is based on the following considerations:
- (a) **Maintenance and repair services markets are aftermarkets distinct from the market for the sale of new cars.** The sale of new passenger cars and the provision of maintenance and repair services are distinct products: the latter are after-market services consumed by car owners. In line with the Commission's guidance relevant to aftermarkets,⁸ the primary product (i.e. sale of the new passenger car) cannot be deemed to form a 'system market' with the secondary product (i.e. the provision of maintenance and repair services). Indeed, purchasers of new passenger cars typically do not engage in whole life costing i.e. factor in the subsequent cost of maintenance and repair services at the time

⁶ This view is consistent with the established case law of the Court of Justice of the European Union ("CJEU"), which the Competition Tribunal has indicated is "of obvious value in relation to the interpretation and application of the first conduct rule" (CTEA 1/2017 *Competition Commission v Nutanix Hong Kong Limited* [2019] HKCT 2, para. 24). With respect to the term "agreement" in Article 101 of the Treaty on the Functioning of the European Union, the CJEU has held that documents, circulars etc. issued by the manufacturer to its authorised distributors in the course of the continuing authorised network arrangement fall within the scope of the overarching agreement between the manufacturer and the distributor. See for instance Case 107/82, *AEG v European Commission* EU:C:1983:293, paragraphs 38-39; Joined Cases 25 and 26/84, *Ford and Ford Europe v European Commission* EU:C:1984:80. See also Case T-41/96, *Bayer v European Commission*, EU: T:2000:242, paragraphs 67 and 173.

⁷ FCR Guideline, paragraph 3.21. The Commission's Guideline on the Second Conduct Rule ("**SCR Guideline**") sets out the Commission's approach to market definition in further detail.

⁸ See paragraph 2.24 the SCR Guideline.

of purchase of a new car. This is because maintenance and repair services costs are likely to be relatively low compared with the purchase price of a new passenger car and, more importantly, these costs are difficult to determine in a timely manner and with a sufficient degree of predictability at the time of purchase.

- (b) **Brand-specific maintenance and repair services markets.** From a supply-side perspective, competition for maintenance and repair services is structured around the Distributors and their affiliated authorised repair centres. Authorised repair centres tend to have access to relevant training, technical tools and spare parts only for those brands of passenger cars that they are authorised to provide maintenance and repair services for. Therefore, they do not exert any supply-side competitive constraint for maintenance and repair services of other car brands. From a demand-side perspective, consumers are not likely to deem repair and maintenance services provided by authorised repair centres of different car brands as substitutable. It is therefore appropriate to define the market according to each brand, despite independent workshops generally being able to provide maintenance and repair services to multiple car brands.
- (c) **The brand-specific maintenance and repair services market definition is supported by the experience in other jurisdictions.** Competition authorities in other jurisdictions, including the European Union,⁹ have adopted a similar approach and identified brand-specific markets for repair and maintenance services. The Commission has not identified any Hong Kong-specific market features that would lead it to reach a different conclusion in this respect.

Geographic market definition

37. There is a reasonable basis to consider that the relevant geographic market for the provision of repair and maintenance services comprises the **Hong Kong Special Administrative Region**.
38. This is based on the following considerations:
- (a) The relevant geographic markets are unlikely to consist of different local areas within Hong Kong for the following reasons: (i) customers requiring maintenance and repair services are generally able to drive to workshops; (ii) certain brands have only one workshop serving all of Hong Kong; (iii) authorised repair centres and independent workshops tend to market their services across Hong Kong; and (iv) the infrequent and relatively costly nature of these services means customers are likely to search beyond their local area.

⁹ European Commission Notice “*Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts of motor vehicles.*” (OJ C 138,28.5.2010); See also Decision of the Portuguese Competition Authority in *Ford*, PRC/2015/1, 4 August 2015.

- (b) The relevant geographic markets are unlikely to extend beyond Hong Kong. Most car owners are unlikely to procure maintenance and repair services outside of Hong Kong because of the travel costs and time required, as well as regulatory constraints (such as licence requirements to drive in another jurisdiction). In addition, authorised repair centres and independent workshops in Mainland China and Macau are unlikely to be able to exert any supply-side constraint due to the high costs required to start operating in Hong Kong as well as, in the case of authorised repair centres, territorial restrictions in their respective Distribution Agreements.

Assessment of effects

39. Based on its investigation, the Commission is concerned that the Warranty Restrictions contained in Standard Warranties and Complimentary Extended Warranties offered by the Relevant Distributors may give rise to anti-competitive effects in the markets for brand-specific repair and maintenance services in Hong Kong.¹⁰
40. This is based on the following main considerations:
- (a) A significant proportion of passenger cars in circulation in Hong Kong are covered by a Standard Warranty or a Complimentary Extended Warranty. The proportion of passenger cars under warranty varies from one brand to another, but generally the percentage is around 20 to 30 per cent.¹¹
- (b) Warranty Restrictions appear to have a lock-in effect on passenger car owners, discouraging them from seeking to have their cars serviced and/or repaired at independent workshops during the warranty period. In this respect:
- i. A majority of respondents to the Commission's survey of car owners conducted in March 2022¹² confirmed that they would be willing to service and/or repair their cars at independent workshops during the warranty period if they had the choice. This is consistent with data collected from the Relevant Distributors which suggests a significant drop in the usage rate of authorised repair centres after expiry of the Standard Warranty. The drop off-rates vary from one car

¹⁰ The Commission has focused its investigation on Warranty Restrictions in Standard Warranties and Complimentary Extended Warranties. Whilst similar restrictions may apply in Optional Extended Warranties, the potential foreclosure effects would be less significant. This is because the Optional Extended Warranties are bought separately, consumers are generally aware of the restrictions at the time of purchase and, as many consumers will opt not to purchase an Optional Extended Warranty, independent workshops have an opportunity to compete for the services in question. Therefore, Warranty Restrictions in Optional Extended Warranties are not further considered.

¹¹ Estimates based on data from the Department of Transport on the number of licensed private cars.

¹² See Commission's press release of 3 March 2022.

brand to another but in most cases the drop is significant, in some cases as high as 30 to 50 percentage points.

- ii. Whilst this decrease might in part be explained by customers choosing to service older cars less, the fact that some independent workshops have indicated that they generate limited revenues from servicing cars under warranty is consistent with such a lock-in effect. Notably, a majority of respondents to the Commission's survey of independent workshops conducted in March 2022¹³ estimated that revenues derived from maintenance services for passenger cars under warranty ranged between 5 and 25 percent whilst repair services accounted for less than 15 percent of their 2021 revenues.
- (c) Even if in practice authorised repair centres may seldom refuse a warranty claim on the basis of the Warranty Restrictions, the low rate of warranty claim rejections and/or voided warranties may be a result of the said restrictions. That is, there would be no need to reject warranty claims or void warranties if consumers comply with the Warranty Restrictions at the outset. In addition, consumers do not know *ex-ante* the likelihood of a warranty claim being rejected or whether a Distributor would be unlikely to void a warranty. Consequently, even if not generally enforced, the Warranty Restrictions are still likely to have a lock-in effect on customers.
 - (d) The Commission is concerned that the likely lock-in effect of the Warranty Restrictions may render independent workshops less able to compete effectively for passenger cars under warranty. The independent workshops may therefore be foreclosed from a part of the brand-specific repair and maintenance markets. Moreover, some customers locked-in because of the Warranty Restrictions may continue to use their usual service provider even after expiry of the warranty (i.e. an authorised repair centre which has the maintenance and repair records of the car). This could potentially further increase the difficulty for independent workshops to compete with authorised repair centres.
 - (e) The pricing data collected by the Commission suggests that authorised repair centres tend to charge higher prices for repair and maintenance services compared to independent workshops. Whilst such price differences may in part reflect differences in the scope and quality of service provided (rather than necessarily reflecting the lock-in effect), it is notable that a significant number of authorised repair centres offer discounts for maintenance and repair services around the time the Standard Warranty and/or Complimentary Extended Warranty expires. This suggests that whilst authorised repair centres are prepared to lower their prices to retain customers after expiry of the

¹³ See Commission's press release of 3 March 2022.

warranty, they face weaker competition from independent workshops during the warranty period which allows them to charge higher prices.

41. Finally, the Commission does not consider that the presence of Warranty Restrictions could be justified on the basis that only authorised repair centres are capable of safely carrying out repair or maintenance services. If this argument were true, independent workshops should not be allowed to carry out the relevant services at all (and not only during the warranty period). In addition, a number of measures have already been implemented to ensure the safety of the vehicle in both independent workshops and authorised repair centres in Hong Kong (e.g. through legislation and technical regulations).

IV. COMMITMENTS OFFERED BY THE RELEVANT DISTRIBUTORS

42. This section provides a high level summary of the Commitments.
43. The Commitments offered by each of the Relevant Distributors are the same in substance to each other, other than the Commitments offered by Motor Image. Motor Image's Commitment reflects the fact that the Warranty Restrictions only relate to the period prior to June 2020, as shown in the table in paragraph 25 above.¹⁴
44. The Commitments are also the same in substance to the versions which were consulted upon in the Public Consultation (with one minor exception in the case of the Commitments offered by Sime Darby¹⁵).

Relevant legal framework

45. Under section 60 of the Ordinance, the Commission may accept a commitment from a person to: (a) take any action; or (b) refrain from taking any action, where it considers this appropriate to address its concerns about a possible contravention of a competition rule. The Ordinance does not require parties offering commitments to make any admission of a contravention.
46. If the Commission accepts commitments, it will terminate its investigation and not bring proceedings in the Competition Tribunal regarding the matters covered by the commitments. This is subject, however, to the ability of the Commission to withdraw its acceptance of commitments under the circumstances provided for in section 61 of the Ordinance, including where there has been a material change of circumstances or the person giving the commitment has failed to comply with them.¹⁶
47. In terms of procedure, Schedule 2 of the Ordinance requires the Commission to consult on proposed commitments before it accepts them and consider any representations received on the proposed commitments. If the Commission accepts the commitments following this consultation,

¹⁴ For ease of readability, the descriptions of the Commitments below use the paragraph numbering in the Commitments offered by the Relevant Distributors other than Motor Image. The Commitment for Motor Image has different numbering since certain aspects of the substantive commitment offered by the other Relevant Distributors are not relevant to it.

¹⁵ Following the commencement of the consultation, the Commission agreed with Sime Darby to make an amendment of recital 3 of the Commitments regarding the contractual arrangements for the imposition of the Warranty Restrictions.

¹⁶ Where the Commission has the requisite basis to consider a party making the commitment has failed to comply with the commitment, it may either (a) withdraw acceptance of the commitment under section 61 of the Ordinance; or (b) apply to the Tribunal for one or more of the orders in section 63 of the Ordinance.

under section 64 of the Ordinance, it is required to register the commitments on its Register of Commitments.

Summary of Commitments

Scope

48. The Commitments apply to any Relevant Term(s):
- (a) included in any current or future Standard and/or Complimentary Extended Warranty;
 - (b) issued by the Relevant Distributors to purchasers of new passenger cars; and
 - (c) relating to the specific car brands identified in clause 1.1(m) of each of the Commitments.
49. Pursuant to clause 2.1 of the Commitments, a Relevant Term refers to any term that provides, or is liable to lead a passenger car owner to believe, that a Standard and/or Complimentary Extended Warranty may or will be invalidated, or a claim made thereunder may or will be rejected, on the basis that maintenance or repair services were conducted at an independent workshop.
50. For the avoidance of doubt, clause 2.2 clarifies those terms which do not fall within the scope of the Commitments, including (i) terms requiring warranty repairs to be performed at authorised repair centres; (ii) terms permitting a warranty claim to be rejected if the damage is caused by maintenance or repair services carried out by third parties; and (iii) terms relieving authorised repair centres from having to reimburse passenger car owners for repair and maintenance services conducted at an independent workshop.

Substantive commitments

51. The intended purpose of the Commitments is to address the competition concerns described in Part III, by seeking to ensure a level playing field between authorised repair centres and independent workshops in the markets for the provision of brand-specific maintenance and repair services in Hong Kong.
52. Under clauses 2.3 and 2.4 of the Commitments, the Relevant Distributors commit:
- (a) not to enforce any Relevant Term in their existing Standard Warranty or Complimentary Extended Warranty relating to relevant passenger car brands identified in the Commitments; and
 - (b) to ensure that the Relevant Terms are not included in any new Standard Warranty or Complimentary Extended Warranty issued to passenger car owners in Hong Kong, if

applicable after having obtained the necessary agreement and/or approvals from the relevant car manufacturers.

53. In furtherance of this obligation, clause 2.5 of the Commitments provides that each Relevant Distributor will amend, if applicable after having obtained the necessary agreement and/or approvals from the relevant car manufacturers, the contractual documentation relating to a Standard Warranty or Complimentary Extended Warranty and containing the Relevant Terms by:
- (a) removing any Relevant Term; and
 - (b) adding clear and unambiguous language in a prominent place confirming that maintenance and repair services may be conducted at independent workshops without this invalidating the warranty or leading to warranty claims being rejected.
54. To ensure publicity of the new measures, the Commitments also provide in clause 2.6 that the Relevant Distributors will issue a communication aimed at passenger car owners benefitting from any existing Standard Warranty or Complimentary Extended Warranty, which will confirm in clear and unambiguous language that maintenance and repair services may be conducted at any independent workshop without this risking invalidating the warranty or leading to warranty claims being rejected.¹⁷

Timeframes

55. The Relevant Distributors will implement the commitments in clauses 2.3 and 2.4 immediately whilst other commitments (i.e. the amendments to the contractual documentation and the communications referred to respectively in clauses 2.5 and 2.6) will be implemented within 90 calendar days from the entry into force of the Commitments.
56. The Commitments will remain in place for a five-year period, pursuant to clause 4.2.

Reporting, compliance and monitoring

57. Pursuant to clauses 3.1 to 3.5, the Relevant Distributors will conduct the following reporting activities in order to enable the Commission to monitor and ensure compliance with the Commitments:
- (a) **Written report.** Within 120 calendar days from the entry into force of the Commitments, each Relevant Distributor will provide a written report to the Commission confirming its

¹⁷ In deciding how to comply with this requirement it is for the Relevant Distributors to comply with applicable laws and regulations including the Personal Data (Privacy) Ordinance (Cap. 486).

compliance with the Commitments and providing the Commission with supporting documents and evidence.

- (b) **Annual compliance statement.** Each Relevant Distributor will also provide an annual compliance statement to the Commission, signed by an authorised officer confirming that to the best of his/her knowledge the Relevant Distributor continues to abide by the Commitments.

Other matters

58. The Commitments do not constitute an admission by the Relevant Distributors of a contravention of a competition rule (see recital 6 of the Commitments).
59. In accordance with section 60(4) of the Ordinance, upon acceptance of the Commitments by the Commission, the Commission will not continue its investigation, or bring proceedings in the Tribunal, with regard to the matters (i.e. the specific Warranty Restrictions relating to the identified car brands) that are addressed in the Commitments.

V. REPRESENTATIONS RECEIVED ON THE COMMITMENTS

60. The Commission received nine representations during the course of the Public Consultation, namely representations:
- (a) from an industry association: Hong Kong Vehicle Repair Merchants Association (“HKVRMA”);
 - (b) from the Consumer Council (“Council”);¹⁸
 - (c) from Prof Travis Ng of the Chinese University of Hong Kong (“Prof Ng”); and
 - (d) from six private citizens.
61. While a number of comments and/or suggestions were made, having carefully considered all representations received, the Commission considers that the Commitments are appropriate and that no further variation of the Commitments is necessary to address its concerns about a possible contravention of the First Conduct Rule.
62. Below is a brief summary of some key comments received and the Commission’s response.

Comments on the scope and duration of the Commitments

63. The Council raised various issues about the scope of the Commitments, including suggesting that the scope of the Commitments be expanded to cover second-hand, refurbished, parallel-imported cars and motorcycles. In response, the Commission notes that the Commitments will also benefit second-hand cars with warranties still in force, whereas the remainder of the suggested inclusions go beyond the scope of the investigation, which is focused on new passenger cars distributed in Hong Kong.
64. Another representation suggested that the five-year duration of the Commitments is insufficient and should be extended. The Commission is of the view that five years is proportionate and sufficient to address its concerns. In any event, it will remain alert to market developments even after this five-year period and intervene if needed.

Comments on Warranty Repairs

65. The Council suggested that the Commitments should expressly prohibit Relevant Distributors from requiring that Warranty Repairs be performed at authorised repair centres. The Commission

¹⁸ The Consumer Council’s submission was received after the stipulated deadline of 6pm on 15 August 2022, albeit less than two hours thereafter. Based on a consideration of all of the relevant factors, the Commission has exercised its discretion to take the Consumer Council’s representation into account.

is of the view that this requirement is unlikely to raise concerns about a possible contravention of the First Conduct Rule in view of the fact that Relevant Distributors typically bear the costs of these Warranty Repairs and that they should therefore be allowed to specify where the Warranty Repairs must be conducted.

Comments on the use and purchase of parts, accessories and service manuals

66. Certain representations suggested that the use of third-party/aftermarket parts and accessories should not void the warranty. The Commission considers that voiding a warranty solely on the basis that third party/after-market parts were used would raise concerns. However, such concerns are unlikely to arise in practice, as car warranty policies in Hong Kong typically do not require car owners to use original parts and accessories. While most warranties do not cover damage resulting from the use of non-genuine parts and accessories, this limitation is unlikely to raise concerns about a possible contravention of the First Conduct Rule as the Relevant Distributors should not be expected to provide warranty protection as a result of damage caused by third parties' parts and accessories.
67. Other representations suggested that independent workshops should have improved access to genuine parts, service manuals, catalogues and relevant software to compete with authorised repair centres. These suggestions go beyond the scope of the current investigation.

Comments on dispute resolution

68. A number of representations suggested that authorised repair centres might improperly allege that damage was caused by independent workshops. Based on its investigation, the Commission does not have evidence to suggest that acceptance of the Commitments is likely to bring about a significant increase in warranty claim disputes. It is therefore of the view that requiring the Relevant Distributors to agree to a specific *ad hoc* dispute settlement mechanism as part of the Commitments would be disproportionate.

Comments on safety concerns

69. The Commission notes that some individual representations have raised safety concerns regarding independent workshops and suggested that they should be required to be registered with the Electrical and Mechanical Services Department. The Commission has not, however, found evidence to support the claim that independent workshops may not be carrying out maintenance and repair services to the required safety standards.

Comments on possible impact of commitments on price and service quality

70. The Council expressed concern that distributors suffering a loss of revenue as a result of car owners seeking repair and maintenance services elsewhere may seek to transfer such loss to

consumers by increasing car prices or reducing the scope or quality of their services. The Commission considers this concern to be unwarranted as there is strong competition in the passenger cars market and there will be greater competition in the brand-specific maintenance and repair services markets resulting from the Commitments. Any attempt to increase car prices will likely result in the loss of customers to other car brands and other out-of-market options such as second-hand cars and other transport options. Similarly, any reduction in the scope or quality of maintenance and repair services will likely be constrained by car owners' ability to switch to independent workshops.

Comments on market definition, alleged pro-competitive benefits and tacit collusion risks

71. Professor Ng suggested that the Commission could use an alternative market definition from that proposed in its notice comprising the general car market rather than distinguishing brand-specific maintenance and repair services. While section 60 of the Ordinance does not require the Commission to reach a firm conclusion on market definition to resolve a case by commitments, the Commission notes that its investigation does not in any event support the existence of a single market since, as explained in paragraph 36(a) above, purchasers of new passenger cars typically do not engage in whole life costing. This view is consistent with the market definition used in other jurisdictions and the Commission has not identified any features of the Hong Kong market in favour of a different market definition.
72. Prof Ng also suggested that the Commission should have considered as part of its competitive assessment that Warranty Restrictions may increase the resale value of cars and reduce the costs of offering warranties. The Commission has not found evidence in support of these alleged benefits, nor have they been raised by the Relevant Distributors during the investigation. Even if the alleged benefits were substantiated, they would likely be outweighed by the restrictions resulting from the Warranty Restrictions.
73. Finally, Prof Ng expressed concern that the Commitments might facilitate tacit collusion as by removing their Warranty Restrictions at the same time, the Relevant Distributors might align their cost structures and in turn increase prices for repair and maintenance services. It is not clear to the Commission that costs structures would be more aligned in a scenario where the Relevant Distributors permit maintenance and repair services to be performed at independent workshops than the previous scenario, and it considers the concern to be hypothetical.

VI. COMMISSION'S ACCEPTANCE OF THE COMMITMENTS

74. In light of the foregoing and having carefully considered the representations received, the Commission considers that the Commitments are appropriate to address its concerns about a possible contravention of the First Conduct Rule.
75. In particular, the Commitments will result in the complete removal of the Warranty Restrictions imposed by the Relevant Distributors in any existing Standard Warranty and/or Complimentary Extended Warranty within 90 days from their acceptance. The Commitments will also ensure that the Relevant Distributors will not be able to incorporate the Warranty Restrictions in any new Standard Warranty or Complimentary Extended Warranty. The Commitments will thus resolve the Commission's competition concerns in an effective and timely manner.
76. Having regard to the factors in paragraph 2.2 of its *Policy on Section 60 Commitments*, the Commission also considers that the Commitments provide an appropriate enforcement response in the circumstances of this case:
- (a) **Seriousness of the conduct.** The Warranty Restrictions do not constitute cartel conduct involving competitors. The Commission considers that the Commitments provide a resolution to its concerns which is proportionate to the context of the conduct and the harm caused or likely to occur.
 - (b) **Ability to address competition concerns.** As described in paragraphs 51 to 54 and 75 above, the Commitments will address the Commission's concerns in a targeted and effective manner by ensuring that any Warranty Restrictions will not be enforced and/or included in warranty documentation, and consumers will be duly informed.
 - (c) **Effective implementation and monitoring.** As described in paragraphs 55 to 57 above, the Commitments include specific provisions to ensure *their* timely and effective implementation as well as ongoing monitoring by the Commission.
 - (d) **Other factors mentioned in paragraph 2.2 of the Policy.** The Relevant Distributors have engaged with the Commission in good faith throughout the investigation and the Commission has not identified any severity factors mentioned in the Commission's Enforcement Policy, timing considerations or other elements which would militate against the appropriateness of the Commitments.
77. The Commission therefore gives notice that, in exercise of its powers under section 60 of the Ordinance, it has decided to accept the Commitments, and not to continue its investigation or bring proceedings in the Tribunal against the Relevant Distributors. In accordance with section 64 of the Ordinance, the Commitments are published in the Register of Commitments, which is available on the Commission's website and at its offices during ordinary business hours.

78. Finally, and for the avoidance of doubt, the Commission's acceptance of the Commitments reflects the specific circumstances of the case and relevant market context. It is not necessarily indicative of the Commission's enforcement approach in other cases or market contexts and does not bind the Commission in this respect.