

Case EC/02UB (Car Warranties)

Commitment made by Motor Image (HK) Limited to the Competition Commission pursuant to section 60 of the Competition Ordinance (Cap. 619)

Recitals

- (1) Motor Image (HK) Limited (“**Motor Image**”) agrees to make the following Commitment under section 60 of the Ordinance with the objective of addressing the Commission’s concerns about a possible contravention of the First Conduct Rule in section 6(1) of the Ordinance in respect of warranties for newly purchased Passenger Cars in Hong Kong.
- (2) In particular, the Commission has concerns about distribution agreements in place between distributors of Passenger Cars in Hong Kong and their respective manufacturers, which result in the imposition of Relevant Terms in the Standard Warranties applicable to Passenger Car owners. The Commission has found in its investigation that these Relevant Terms require Passenger Car owners, or lead them to reasonably believe that they are required, to carry out Maintenance Services and/or Repair Services solely at an Authorised Repair Centre to maintain the validity of their warranties. The Commission considers that such terms may foreclose Non-Authorized Repair Centres of Maintenance Services and/or Repair Services in Hong Kong.
- (3) In the case of Motor Image, the Relevant Terms are imposed with respect to Subaru Passenger Cars pursuant to the Subaru Distributorship Agreement in force between Motor Image and Subaru Corporation from 1 July 2017 to 30 June 2022.
- (4) The Commitment is made on a voluntary basis by Motor Image in return for the Commission, in accordance with section 60(4) of the Ordinance, not continuing its investigation and not bringing proceedings in the Tribunal in Case EC/02UB insofar as that investigation or those proceedings relate to matters that are addressed by this Commitment.
- (5) The offering of this Commitment by Motor Image does not constitute an admission by Motor Image of a contravention of the First Conduct Rule.

1. Interpretation

1.1. For the purpose of this Commitment, the following terms shall have the following meanings:

- a. **“Affiliate”** means a subsidiary controlled by Motor Image (if any);
- b. **“Authorised Repair Centre”** means the repair centre(s) in Hong Kong designated by Motor Image to carry out Repair Services and Maintenance Services on Relevant Passenger Cars;
- c. **“Commission”** means the Competition Commission established by section 129 of the Ordinance;
- d. **“Commitment”** means the commitment made by Motor Image hereunder pursuant to section 60 of the Ordinance;
- e. **“Court”** means the Tribunal, and other courts of Hong Kong;
- f. **“Effective Date”** means the date on which Motor Image receives a Notice of Acceptance from the Commission;
- g. **“Maintenance Services”** means the servicing of a Passenger Car’s parts and fluids and/or the inspection of the same;
- h. **“Non-Authorised Repair Centre”** means a repair centre in Hong Kong which carries out Repair Services and/or Maintenance Services on Passenger Cars, other than an Authorised Repair Centre;
- i. **“Notice of Acceptance”** means a notice in writing provided by the Commission to Motor Image under section 60(6)(a) of the Ordinance of the Commission’s decision to accept the Commitment;
- j. **“Ordinance”** means the Competition Ordinance (Cap. 619);
- k. **“Passenger Car”** means 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;
- l. **“Relevant Passenger Car”** means a Passenger Car of the following brand: Subaru;
- m. **“Repair Services”** means the act of performing repair(s) on a malfunctioning or damaged Passenger Car and does not include Maintenance Services;

- n. **“Standard Warranty”** means a warranty typically provided at no additional cost by a car manufacturer and/or its authorised distributor upon the purchase of a new Passenger Car;
- o. **“Tribunal”** means the Competition Tribunal established by section 134 of the Ordinance; and
- p. **“Warranty Repairs”** means Repair Services or Maintenance Services covered by the Standard Warranty.

2. Substantive Commitment

Relevant Terms

- 2.1. For the purpose of this Commitment, a Relevant Term shall be any term in a Standard Warranty that provides, or is liable to lead a Passenger Car owner to reasonably believe (whether alone or in combination with other terms), that the Standard Warranty may or will be invalidated, or a claim made thereunder may or will be rejected on the basis that:
 - a. Maintenance Services were conducted at a Non-Authorised Repair Centre; or
 - b. Repair Services were conducted at a Non-Authorised Repair Centre.
- 2.2. For the avoidance of doubt, the following shall not be a Relevant Term:
 - a. a term requiring Passenger Car owners to perform Warranty Repairs at an Authorised Repair Centre;
 - b. a term permitting the car manufacturer and/or its authorised distributor to reject a claim for Repair Services under a Standard Warranty if the Repair Services are necessitated by: (i) damage caused by prior Repair Services, Maintenance Services or other actions carried out by third parties (including a Non-Authorised Repair Centre); or (ii) a failure by the Passenger Car owner to ensure proper maintenance of the Passenger Car according to the recommended schedule of the car manufacturer and/or its authorised distributor; or
 - c. a term which relieves Motor Image from any obligation to reimburse the Passenger Car owner for Repair Services or Maintenance Services conducted at a Non-Authorised Repair Centre which would have been provided for free under the Standard Warranty.

Cessation of conduct

- 2.3. Motor Image commits not to enforce any Relevant Terms with respect to any existing Standard Warranty applicable to a Relevant Passenger Car and issued on or before the Effective Date.
- 2.4. Motor Image commits, if applicable after having obtained the necessary agreement and/or approvals from the relevant car manufacturers, to ensure that the Relevant Terms are not included in any new Standard Warranty applicable to a Relevant Passenger Car and issued after the Effective Date.

General publication

- 2.5. Within 90 calendar days from the Effective Date, Motor Image will issue a communication aimed at Relevant Car Passenger owners benefitting from any existing Standard Warranty which confirms in clear and unambiguous language that Maintenance Services and Repair Services may be conducted at any Non-Authorised Repair Centre without this risking invalidating a Standard Warranty or leading to claims under a Standard Warranty being rejected.
- 2.6. Notwithstanding clause 2.5, Motor Image remains free to clarify in the same communication that claims made under the Standard Warranty may nevertheless be rejected if they solely concern damage caused by prior Repair Services, Maintenance Services or other actions carried out by third parties.
- 2.7. The communication in clause 2.5 should take the form of a website communication, a direct mailing, a media publication or another means which Motor Image usually relies on to promote their products and services to their customers.

Procurement commitment

- 2.8. Motor Image procures that its Affiliates (if any) shall comply with clauses 2.3 to 2.7 above, to the extent that such Affiliates are related to the obligations of Motor Image under this Commitment.

3. Reporting on compliance with the Commitment

Written report

- 3.1. Within 120 calendar days from the Effective Date, Motor Image will provide a written report to the Commission confirming its compliance with clauses 2.3 to 2.8 above.

- 3.2. The written report shall include, among other things, an explanation of the specific steps taken by Motor Image to comply with the above clauses and copies of supporting documentation, including but not limited to:
- a. copies of relevant internal communications made to relevant staff members informing them that:
 - i. pursuant to clause 2.3, any existing Relevant Terms should not be enforced;
 - ii. pursuant to clause 2.4, the relevant amended version of the Standard Warranty (i.e., not including Relevant Terms) should be issued and applied after the Effective Date; and
 - b. copies of online and offline publications, communications and information leaflets provided to or made available to Relevant Passenger Car owners pursuant to clause 2.5 and the date of their issuance.

Annual compliance statement

- 3.3. Motor Image will provide a compliance statement to the Commission, on an annual basis as set out in clause 3.5, signed by an authorised officer confirming that to the best of his/her knowledge, Motor Image continues to abide by the Commitment set out in clauses 2.3 to 2.8 above.
- 3.4. The compliance statement shall provide the confirmation that with respect to Relevant Passenger Cars, Motor Image has since the Effective Date:
- a. not enforced the Relevant Terms;
 - b. not included Relevant Terms in any new Standard Warranty;
 - c. not included the Relevant Terms in any online or offline publications, communications or information leaflets; and
 - d. not received any complaints or has appropriately dealt with any complaints received regarding its compliance with this Commitment. If such complaints were received, details of the nature of such complaints and how they were dealt with should be provided as part of the compliance statement.
- 3.5. The first compliance statement is due on or before 13 months from the submission of the written report in clause 3.1, while subsequent compliance statements should be provided

every 12 months following the submission of the first compliance statement and for the duration of the Commitment as specified in clause 4.2.

4. Effective Date and duration

- 4.1. This Commitment shall enter into force and take effect from the Effective Date.
- 4.2. This Commitment shall remain in force for a period of five years commencing on the Effective Date unless, at an earlier date, the Commission withdraws acceptance of the Commitment under section 61 of the Ordinance, the Commission accepts from Motor Image a variation of the duration of the Commitment or a new Commitment in substitution for it under section 62(1) of the Ordinance, or the Commission releases Motor Image from the Commitment under section 62(2) of the Ordinance.

5. Transfer or assignment

In the event that any of Motor Image's contractual obligations relating to a Standard Warranty to another party are transferred or assigned to another party, Motor Image will notify to the Commission ahead of time of such transfer or assignment and will use its best endeavours to ensure that this Commitment continues to apply with respect to the transferred or assigned contractual obligations.

6. Miscellaneous

- 6.1. Any written notice or communication to the Commission pursuant to this Commitment shall be delivered by registered mail or by e-mail as follows:

For the attention of Head (Investigations II)
Case EC/02UB
Competition Commission
19/F, South Island Place,
8 Wong Chuk Hang Road,
Wong Chuk Hang, HONG KONG
E-mail: commitments@compcomm.hk

- 6.2. This Commitment is governed by, and shall be construed in accordance with, the laws of Hong Kong. Motor Image agrees that the Court has jurisdiction to determine any proceedings arising out of or in connection with this Commitment and the matters to which it relates, including any proceedings brought by the Commission.

MADE by Motor Image through its authorised signatory:

SIGNED for and on behalf of Motor Image

Date:

Name:

Position: