

Case EC/02UB (Car Warranties)

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

Recitals

- (1) **Sime Darby Motor Group (HK) Limited (“Sime Darby”)** 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 and/or Complimentary Extended 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 Sime Darby, the Relevant Terms are imposed:
 - (i) with respect to BMW Passenger Cars, pursuant to:
 - a. the Renewal of the BMW Importer Contract in force between its Affiliate BMW Concessionaires (HK) Limited and Bayerische Motoren Werke (“**BMW**”) from 1 January 2019 to 31 December 2020; and
 - b. the BMW Importer Agreement in force between its Affiliate BMW Concessionaires (HK) Limited and BMW from 1 January 2021 to 31 December 2022;

- (ii) with respect to MINI Passenger Cars, pursuant to:
 - a. the Renewal of the MINI Importer Contract in force between its Affiliate BMW Concessionaires (HK) Limited and BMW from 1 January 2019 to 31 December 2020; and
 - b. the MINI Importer Agreement in force between its Affiliate BMW Concessionaires (HK) Limited and BMW from 1 January 2021 to 31 December 2022;
- (iii) with respect to Mitsubishi Passenger Cars pursuant to the Mitsubishi Distributor Agreement in force between its Affiliate Universal Cars Limited and Mitsubishi Motors Corporation from 1 August 2018 to 31 July 2023;
- (iv) with respect to Suzuki Passenger Cars, pursuant to:
 - a. the Suzuki Distributorship Agreement in force between its Affiliate Island Motors Limited and Suzuki Motor Co. Ltd. from 17 March 1986 to 31 March 1988, subsequently renewed on an annual basis until 30 November 2019; and
 - b. the Suzuki Distributorship Agreement in force between its Affiliate Island Motors Limited and Suzuki Motor Corporation from 1 December 2019 to 31 March 2021, subsequently renewed on an annual basis.
- (4) The Commitment is made on a voluntary basis by Sime Darby 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) Where the amendment of the Standard Warranties and/or Complimentary Extended Warranties as provided for in this Commitment requires the agreement or approval of the relevant car manufacturer(s), Sime Darby has provided the Commission with written confirmation prior to the making of this Commitment that the relevant car manufacturer(s) agree(s) to or approve(s) the making of such amendment.
- (6) The offering of this Commitment by Sime Darby does not constitute an admission by Sime Darby 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 Sime Darby (if any);
- b. **“Authorised Repair Centre”** means the repair centre(s) in Hong Kong designated by Sime Darby 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 Sime Darby hereunder pursuant to section 60 of the Ordinance;
- e. **“Court”** means the Tribunal, and other courts of Hong Kong;
- f. **“Complimentary Extended Warranty”** means a warranty lasting for a specified period after expiry of the Standard Warranty, typically provided at no additional cost by a car manufacturer and/or its authorised distributor upon the purchase of a new Passenger Car and which usually covers only certain parts of a Passenger Car (e.g. powertrain);
- g. **“Effective Date”** means the date on which Sime Darby receives a Notice of Acceptance from the Commission;
- h. **“Maintenance Services”** means the servicing of a Passenger Car’s parts and fluids and/or the inspection of the same;
- i. **“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;
- j. **“Notice of Acceptance”** means a notice in writing provided by the Commission to Sime Darby under section 60(6)(a) of the Ordinance of the Commission’s decision to accept the Commitment;
- k. **“Ordinance”** means the Competition Ordinance (Cap. 619);

- l. **“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;
- m. **“Relevant Passenger Car”** means a Passenger Car of the following brands: BMW, MINI, Mitsubishi and Suzuki;
- n. **“Repair Services”** means the act of performing repair(s) on a malfunctioning or damaged Passenger Car and does not include Maintenance Services;
- o. **“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 and does not include the Complimentary Extended Warranty;
- p. **“Tribunal”** means the Competition Tribunal established by section 134 of the Ordinance; and
- q. **“Warranty Repairs”** means Repair Services or Maintenance Services covered by the Standard Warranty or Complimentary Extended 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 or a Complimentary Extended 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 or the Complimentary Extended 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 or a Complimentary

Extended 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 Sime Darby 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 or a Complimentary Extended Warranty.

Cessation of conduct

- 2.3. Sime Darby commits not to enforce any Relevant Terms with respect to any existing Standard Warranty or Complimentary Extended Warranty applicable to a Relevant Passenger Car and issued on or before the Effective Date.
- 2.4. Sime Darby 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 or Complimentary Extended Warranty applicable to a Relevant Passenger Car and issued after the Effective Date.

Amendment of contractual documentation

- 2.5. Within 90 calendar days from the Effective Date, and if applicable after having obtained the necessary agreement and/or approvals from the relevant car manufacturers, Sime Darby will amend any contractual documentation containing the Relevant Terms (such as terms and conditions accompanying a Standard Warranty or Complimentary Extended Warranty) to be issued or made available to purchasers of a Relevant Passenger Car by:
 - a. removing any Relevant Terms; and
 - b. adding clear and unambiguous language in a prominent location, which confirms that Maintenance Services and Repair Services may be conducted at a Non-Authorised Repair Centre without this invalidating a Standard Warranty or a Complimentary Extended Warranty or leading to claims under a Standard Warranty or a Complimentary Extended Warranty being rejected.

- 2.6. Notwithstanding clause 2.5, Sime Darby remains free to clarify in the same contractual documentation that claims made under the Standard Warranty or a Complimentary Extended 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 (including a Non-Authorised Repair Centre).
- 2.7. Within 90 calendar days from the Effective Date, Sime Darby will remove any Relevant Terms or reference thereto from any online or offline publication, communication or information leaflet to be made available to prospective or actual purchasers of a Relevant Passenger Car.

General publication

- 2.8. Within 90 calendar days from the Effective Date, Sime Darby will issue a communication aimed at Relevant Car Passenger owners benefitting from any existing Standard Warranty or Complimentary Extended 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 a Complimentary Extended Warranty or leading to claims under a Standard Warranty or an Extended Warranty being rejected.
- 2.9. Notwithstanding clause 2.8, Sime Darby remains free to clarify in the same communication that claims made under the Standard Warranty or Complimentary Extended 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.
- 2.10. The communication in clause 2.8 should take the form of a website communication, a direct mailing, a media publication or another means which Sime Darby usually relies on to promote their products and services to their customers.

Procurement commitment

- 2.11. Sime Darby procures that its Affiliates, including BMW Concessionaires (HK) Limited, Universal Cars Limited and Island Motors Limited, shall comply with clauses 2.3 to 2.10 above, to the extent that such Affiliates are related to the obligations of Sime Darby under this Commitment.

3. Reporting on compliance with the Commitment

Written report

- 3.1. Within 120 calendar days from the Effective Date, Sime Darby will provide a written report to the Commission confirming its compliance with clauses 2.3 to 2.11 above.
- 3.2. The written report shall include, among other things, an explanation of the specific steps taken by Sime Darby to comply with the above clauses and copies of supporting documentation, including but not limited to:
 - a. copies of amended contractual documentation pursuant to clause 2.5, including the effective date(s) of entry into force of the amended contractual documentation;
 - b. 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 and Complimentary Extended Warranty (i.e., not including Relevant Terms) should be issued and applied after the Effective Date; and
 - iii. pursuant to clause 2.5, the relevant amended contractual documentation should be issued and applied after the Effective Date;
 - c. copies of online and offline publications, communications and information leaflets provided to or made available to Relevant Passenger Car owners pursuant to clauses 2.7 and 2.8 and the date(s) of their issuance.

Annual compliance statement

- 3.3. Sime Darby 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, Sime Darby continues to abide by the Commitment set out in clauses 2.3 to 2.11 above.
- 3.4. The compliance statement shall provide the confirmation that with respect to Relevant Passenger Cars, Sime Darby has since the Effective Date:

- a. not enforced the Relevant Terms;
 - b. not included Relevant Terms in any new Standard Warranty and/or Complimentary Extended 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 Sime Darby 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 Sime Darby from the Commitment under section 62(2) of the Ordinance.

5. Transfer or assignment

In the event that any of Sime Darby's contractual obligations relating to a Standard Warranty or a Complimentary Extended Warranty to another party are transferred or assigned to another party, Sime Darby 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. Sime Darby 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 Sime Darby through its authorised signatory:

SIGNED for and on behalf of Sime Darby

Date:

Name:

Position: