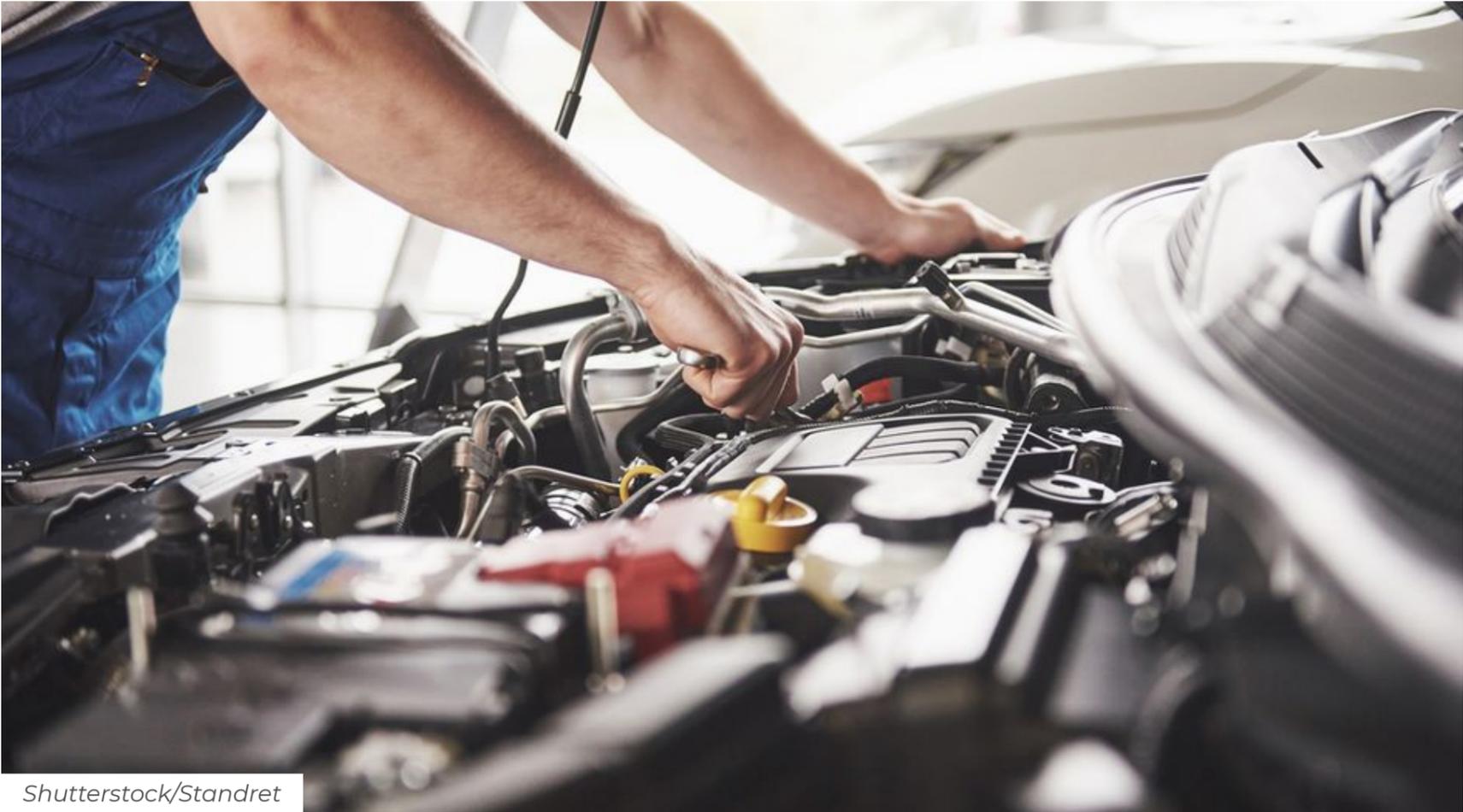


Malaysian enforcer slams vertical agreements in automotive sector

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Vertical agreements between car manufacturers and insurance companies are causing competition foreclosure in the accident repair market, Malaysia's competition authority has found.

Malaysia's Competition Commission (MyCC) [published](#) a draft 302-page report on Friday after concluding sweeping market inquiries into the port logistics and motor vehicle warranty sectors. The agency has launched a public consultation period that will run through 2 July and culminate with a final report and recommendations.

The authority explained that consumers have two options following a car accident – send their car to a workshop approved by the PIAM Approved Repairers Scheme (PARS) or send their car to a car manufacturer's franchise workshop. PIAM refers to the General Insurance Association of Malaysia.

Agreements and partnerships between car manufacturers and insurance companies usually stipulate a set of key performance indicators that insurance companies must adhere to “by directing [a] certain number of insured new cars to franchise workshops”, the MyCC found.

That may have the effect of excluding or foreclosing PARS workshops in the market for repairing cars under warranty, the agency concluded. To meet the performance indicators contained in the agreements, “insurance companies

will expand efforts to encourage consumers to engage the services of franchise workshops,” the MyCC found.

“In many cases where consumers still choose to send their new cars to PARS [or] independent workshops, insurance companies would issue indemnity letters to be signed by consumers that states that their entire car warranty would be voided,” the agency said.

The authority noted that PARS workshops must meet certain levels of service, quality, professionalism and competency to obtain certification, as well as having “considerable capital investment”.

“Given that PARS workshops should be on par with franchise workshops in terms of skill, competency and equipment levels, customers should be free to choose between these workshops,” the MyCC wrote. “However, this is not the case in practice.”

The authority said that with less competition due to the arrangements with insurance companies, “franchise workshops can potentially charge higher prices for services and car parts.”

“Insurers would have to pay for higher prices for vehicle repair and this translates to inflated insurance premium costs to consumers down the line,” the MyCC explained.

The agency recommended launching a deeper probe into the competition concerns surrounding the vertical arrangements between car manufacturers and insurance companies. Feedback has revealed that if the warranties are valid for five years, independent workshops would typically be foreclosed for half of a car’s typical 10-year lifespan, the MyCC concluded.

The vertical agreements may weaken consumers’ incentive to use an independent workshop, which may offer cheaper or better services, the MyCC said. Further investigations are necessary to preserve competition and enhance the competitive pressure that the independent workshops put on authorised franchise workshops, it added.

The agency said it would issue warning letters to companies “found to be involved in such anticompetitive behaviour, and enforcement action will be taken if the situation is not remedied within a reasonable timeframe”.

The inquiry also found that warranty restrictions imposed by car manufacturers may harm competition in the repair and service sector. It recommended encouraging carmakers to remove warranty clauses that restrict customer freedom.

The government should increase the promotion and visibility of the “Right to Repair” initiative through programmes and campaigns. “Right to Repair” refers to the concept that consumers can have their products repaired at a competitive price and without barriers.

“To ensure that independent workshops are able to fairly compete in the market, there is a need for a fair and competitive regulatory environment that enables freedom of choice for consumers and that gives aftermarket SMEs a chance to stay in business, especially for the repair of modern, technologically complex vehicles,” the MyCC wrote.

Lydia Kong, a partner at Wong & Partners in Kuala Lumpur, said the agency’s recommendations show “gradual convergence with the antitrust laws in more matured jurisdictions such as in the European Union, where the liberalisation of the automotive spare parts and aftermarket have taken place decades ago”.

She noted that Europe has addressed making warranties conditional on repair and servicing of vehicles within an authorised network and allowed access to technical information related to vehicles by independent workshops – essentially allowing consumers greater choice when repairing and servicing their cars.

Following the MyCC’s recommendations and conclusions, carmakers should seek further clarity on some issues, Kong suggested, including whether warranty conditions can require the use of branded spare parts when making replacements.

She also suggested they inquire whether it is allowed to “legitimately refuse to honour warranties where the claim is linked to a failure of a specific spare part or repair provided by the independent supplier”.

“All in all, the recommendations recognise the importance of liberalising the aftermarket, however further clarification is still required on the scope of the recommendations to ensure a stable and resilient automotive market in the country,” Kong said

Chew Phye Keat, a partner at Raja, Darryl & Loh in Kuala Lumpur, said the MyCC should also consider the market realities of Malaysia being a developing economy with a high percentage of small and medium-sized businesses.

He said that the repairers markets in EU and Singapore may be different, as they are developed economies with arguably a negligible number of “make shift small time repairers” and the difference in standards between the independent workshops and the franchised workshops is negligible which enable them to compete for the same customers.

The market reality in Malaysia is that there is a wide spectrum of workshops with vastly differing competencies, from make-shift repairers “operating under a tree” to high class workshops offering free wi-fi and TV in a lounge while customers wait for repairs to be done, he said.

Chew said that it is understandable that automotive companies may have “the short end of the stick” when car buyers within the warranty period go to workshops “who do less than a satisfactory job”, which gives rise to a warranty

claim which should not have happened in the first place.

He said there is statistical data for this “frequent occurrence” and this possibly forms the basis for why warranty clauses requiring all repairs for in-warranty cars to be done in franchised workshops was conceived in the first place. “It is undeniable that the automotive company has the moral and legal right to reject warranty claims which were caused by the negligence of the car buyer using an unqualified repairer who has caused unnecessary damage to the car.”

Chew said that PARS workshops may not be trained in the maintenance and repair of a particular brand of car but admitted to a certain extent “a car is still a car” and an experienced mechanic may be well trained enough to deal with multiple brands competently.

From a wider perspective, Chew said it is arguable whether the size of the in-warranty car population was so large as to cause a significant anticompetitive effect even if the warranty clause did have the impact of preventing the independent workshops from competing with the franchised workshops.

“The percentage of in-warranty cars on the road may well be insignificant compared to the total number of cars on the road which of course begs the question whether the independent repairers are being truly deprived of competition,” he added.

The government is holding two webinars – on Thursday for industry players and the public and Friday for government agencies – to hear feedback on the draft report. Those consultation periods will collect views from relevant stakeholders and be incorporated into the final report.

The agency has also [invited](#) written feedback through its website.

Documents

[Draft report - port logistics and motor vehicle warranties - Malaysia's Competition Commission - 27 May 2021](#)



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