

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Competition Issues in Aftermarkets - Note by Latvia

21-23 June 2017

This document reproduces a written contribution from Latvia submitted for Item 4 of the 127th OECD Competition committee on 21-23 June 2017.

*More documents related to this discussion can be found at
www.oecd.org/daf/competition/aftermarkets-competition-issues.htm*

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1. Market inquiry about territorial restrictions in electric household warranty repair market

1. In 2012 the Competition Council of Latvia (the CC) conducted market inquiry about the availability of warranty services in household electronics markets (Market inquiry).
2. The scope of the Market inquiry was to analyse availability or the reasons for inaccessibility of warranty repair services locally in Latvia for the consumer that chose to purchase goods of the same manufacture but in another geographic area or through parallel distribution channels. During the inquiry the CC analysed agreements between the electrical household appliance manufacturers/official distributors and the warranty repair providers in Latvia. Particularly the CC evaluated restrictions for warranty repair for the goods bought not from the official dealer distribution channel.
3. The warranty service conditions (closeness and availability, speed of repair etc.) can affect consumer choice, dissuading them from purchasing products in another geographic market or parallel distribution channel, thus limiting competition and consumer access to the benefits of the EU market. Free cross border trade in the EU is essential prerequisite for a free and undistorted competition. A price disparity in different EU countries creates possibility for development of parallel import and competition.
4. During the Market inquiry both warranty services offered and restrictions included in contracts were analysed as they were complementary. According to the [Consumer rights protection law](#) a legal warranty is an obligation of the producer or seller¹ to consumer guarantee reduction of the price, compensation, repair or exchange of the goods sold if non-conformity is recognized. The term of the legal warranty is 2 years. A contractual warranty is an additional or extended warranty services offered by the producer or seller (wholesaler or retailer) to attract consumers. Usually if offered by a retailer a contractual condition of warranty is voluntary for costumer for additional charge (not included in a primary product price).
5. The Market inquiry revealed that usually such restrictions to receive repair services covered by the producer warranty were common practice in distribution of different goods (mobile phones, PC etc.). The CC did not find that such territorial restrictions were systematically applied but recognized that such territorial restrictions could demotivate consumer to purchase goods from other distribution channels and create distortion of competition in the primary market. Such conclusion mainly relates to legal warranties and also extended warranties offered by the producers.
6. The CC concluded preliminary that such clauses are likely to restrict competition in the market but decided not to go into detailed analysis to prove effects and actual implementations of such restrictions. The CC sent written recommendations to dealers (producers) to exclude in future such restriction from agreements with repair services.

¹ If producer warranty is shorter than 2 years.

2. Conclusion about primary and secondary market definition from consumer household sector

7. Although conclusions about primary and secondary market were not elaborated in the Market inquiry there could be some conclusions inferred from the Market inquiry about possible market definitions.

8. Since the warranty (legal or contractual) is paid by the manufacturer or the seller, such expenses that could be reasonably foreseen are likely to be included *ex-ante* in the product price. In such consumer product markets any warranty is the complementary service for product sold to customer and cannot be regarded as separate from primary product (goods) market.

9. At the same time there could be situations where a separate market can be defined. For example, if voluntary contractual warranty is offered by a retailer that consumer is entitled to choose for additional payment or refuse when buying a product.

3. Restrictions in public procurements and market definition

10. The CC also receives complaints regards to actions of public bid organizers and restrictions included into procurement documents. Unfortunately in such cases the CC has only powers to express its opinion about restrictions and point out some recommendations. However, some further considerations about restrictions and market definition could be made from opinions given by the CC.

11. In public procurements bid organizers usually request in advance from bidders a certification about warranty obligations and their limitations, as well as to indicate an offer of costs (prices) for repair and maintenance services (for example, cars, medical equipment and other complex equipment). Mainly there are objective reasons for such requirements in public procurement documents but it should not be used intentionally by the procurement bid organizer to limit competition in a procurement.

12. Competition in primary product market (especially intra brand competition) could be undermined by public procurement procedure if requirements included in procurement documents are competition restrictive. For example, a requirement to provide certificate or other documents from producer or official dealer of the product that confirms future fulfilment of warranty. Such a requirement can restrict participation of parallel importers in procurement procedure or sellers from other the EU member states.

13. What concerns the definition of primary product market and secondary market in public procurement it can be pointed out that usually in public procurement bids the demand side influences the way how relevant product in market is offered. In such cases where bidding requirements request to submit also proposal for aftermarket services (can together be called as a market for “system”) should be defined together - consisting of both primary and secondary market. Only in those cases when separate public procurement is organized for secondary market services (for example, maintenance of IT software) separate aftermarket services may be defined.

4. Implementation of competition law in automotive sector

14. The CC has taken up also several cases in automotive sector with regards to anticompetitive warranty conditions. For example, in *KIA case*² the KIA brand car importer AS “KIA Auto” and the local KIA authorised dealers in Latvia agreed on warranty terms and conditions for KIA motor vehicles that infringed the Competition Law of Latvia.

15. To preserve warranty for the purchased the KIA motor vehicle owners were obligated during the warranty period to:

1. carry out all repair and maintenance work that is determined by the manufacturer and not covered by warranty at the KIA authorised dealership;
2. use only original KIA spare parts in repair and maintenance work that is determined by manufacturer and not covered by warranty.

16. The information usually given to owners made them to think that they might lose the KIA car warranty in case they would carry out repair and maintenance work outside the KIA network. Restrictions were expressly stated in *Warranty and repair booklets* (Year 2004 to 2014) and in an official *website* of the KIA car importer AS “KIA Auto” as well as several KIA authorised car dealers.

17. In this case three relevant aftermarkets were defined:

1. warranty repair market for the KIA motor vehicles;
2. repair and maintenance not covered by warranty market for the KIA motor vehicles;
3. motor vehicle spare parts distribution market.

18. First two markets were limited to the KIA motor vehicle brand. What concerns warranty repair market, supply side was taken into account, namely, that warranty repairs for the KIA motor vehicles are carried out only by the KIA authorised dealers. Repair and maintenance market generally is also limited to specific brand motor vehicles - in this case the KIA motor vehicle.³

19. In spare parts for motor vehicles distribution market the determining factor is that in case a motor vehicle owner carries out car repairs and maintenance at his own expense, he is free to choose between original (brand) spare parts and analogue spare parts (produced by manufacturer that is not of the same brand as the owners’ motor vehicle). For this reason motor vehicle spare parts distribution market is not limited to a specific motor vehicle brand.

20. The CC has dealt with similar case concerning warranties for Peugeot motor vehicles. However, no violation of competition law was found.

² For more information see: <http://www.kp.gov.lv/en/aktualitates-en/317-the-competition-council-fines-as-kia-auto>.

³ See Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52010XC0528%2801%29> paragraphs 15 and 57.