

Competition Authority shows collaborative stance in dropping case against Ford

January 28 2016 | Contributed by [Morais Leitão, Galvão Teles, Soares da Silva & Associados](#)

Restrictive clauses and relevant market

Restrictive agreement

Commitments and conditions

Comment

AUTHOR

**Miguel Cortes
Martins**



In 2015 the Portuguese Competition Authority investigated Ford Lusitana SA⁽¹⁾ for restrictions in warranty extension agreements which prevented consumers from undertaking maintenance and repair operations at independent repair workshops. In September 2015 the Competition Authority closed the case following its acceptance of commitments by Ford and the imposition of conditions. The case exemplifies the Competition Authority's increasingly collaborative and assertive attitude in addressing antitrust conduct.

Restrictive clauses and relevant market

In December 2014 the Competition Authority noticed the following footnote to the terms and conditions of the FordProtect agreement on the Ford website:

"Exclusions

The FordProtect warranty will automatically expire... If the vehicle has not been subject to periodical maintenance inspections at Ford dealers in accordance with the applicable Ford maintenance schedule...

Customer's Obligations

1. The vehicle must be delivered to a Ford dealer within a period of not more than seven days after the date of the malfunctioning. The FordProtect warranty is not applicable to repairs not made in Ford's dealer workshops or others appointed by them; as such, the amounts expended by the customer for the payment of repairs in non-authorised workshops will not be reimbursed.

2. The vehicle must have performed all the periodical inspections contained in the Ford Maintenance Guide at Ford dealers and must possess the records of such inspections duly stamped and signed."

The Competition Authority defined the relevant market as the provision of assistance, repair and after-sale maintenance services limited by brand (in this case, Ford). It concluded that the relevant geographic dimension of this market corresponded to the Portuguese territory, since car manufacturers such as Ford organise their commercial networks at a national level. The Competition Authority further noted that according to EU jurisprudence, agreements covering the totality of a member state's territory have, by their very nature, the effect of reinforcing segmentation of the markets on a national basis.

Restrictive agreement

Regarding the restrictive nature of the agreement, the Competition Authority held that the warranty or extension of the warranty should not be denied to customers who undertake all repair and maintenance operations with independent dealers. The Competition Authority concluded that this type of restriction may result in the closure of independent repair workshops, which may ultimately affect the price of repair and maintenance services. It was therefore held that the abovementioned clauses constituted a potential violation of both Article 9 of the Competition Law⁽²⁾ and Article 101 of the Treaty on the Functioning of the European Union.

Commitments and conditions

In July 2015 Ford submitted an extensive set of commitments to alleviate the Competition Authority's antitrust concerns. In particular, Ford vowed to eliminate all clauses limiting or invalidating Ford warranties for maintenance and repair operations not undertaken within Ford's official network. It also committed to submit an annual report to the Competition Authority containing any amendments made to warranty terms and conditions. Finally, the company committed to replace the relevant clauses and inform its official network and customers of the new terms and conditions.

The Competition Authority concluded that Ford's commitments adequately alleviated its concerns, providing customers with "more freedom of choice for the provision of car repair and maintenance services". The Competition Authority also imposed a set of conditions to implement Ford's commitments, in order to ensure the company's swift compliance with antitrust law and the elimination of the abovementioned competition concerns. These conditions included amendments to Ford's website and periodic reports on potential amendments to terms and conditions and warranty extensions.

Comment

The Competition Authority demonstrated a collaborative stance in this case, with greater focus on eliminating risks to competition rather than on following the proceedings to the end and condemning the company. The Competition Authority has actively endorsed this open-minded approach, which is expected to become more prevalent in future as an incentive for companies and individuals to focus on eliminating potential anti-competitive conduct rather than pursuing extensive litigation. This is one of the more desirable ways for public agencies to operate in the 21st century, since it encourages citizens and organisations to collaborate in the application of the law – thus strengthening it in the process.

For further information on this topic please contact [Miguel Cortes Martins](#) at [Morais Leitão Galvão Teles Soares da Silva & Associados](#) by telephone (+351 21 381 74 00) or email (mcmartins@mlgts.pt). The [Morais Leitão Galvão Teles Soares da Silva & Associados](#) website can be accessed at www.mlgts.pt.

Endnotes

(1) Case PRC 2015/1, available at www.concorrenca.pt.

(2) Law 19/2012.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).