CLEPA
European Association of Automotive Suppliers

22 January 2016

CLEPA Position Paper

on warranty between two commercial parties[1]

This position paper is a statement on how the industry is considered to work on Warranty as a whole from the view of the automotive suppliers. CLEPA considers that Warranty should be used as an instrument to improve quality and durability of products. This position paper has been drafted in the interest of a level playing field to act as a basis for fruitful discussions and agreeable relationships between the OEMs, Tier1s and suppliers throughout the automotive industry.
This Position Paper is not binding and it is entirely up to each CLEPA member to negotiate the Warranty Terms and Conditions independently.

1. Warranty Principles and Issues

a. It is important that Warranty Agreements between the parties are connected to, and finalised as part of, the contract and driven by quality, reliability improvement and early problem resolution criteria and not primarily as a financial cost recovery process.

b. Warranty Agreements must be clear and should avoid involvement of third parties who manage the warranty process and whose reimbursement is based on financial recovery.

c. Extended warranties, over and above the OEM warranty sold to the consumer or provided by the dealer organisation through an insurer should not be extended to the supplier.

d. Changes in warranty terms and conditions are to be agreed mutually between the parties in writing.

e. Warranty always relates to one specific product identified in an agreement by specification in relation to defined applications and proper use.

f. A warranty case is a failure to meet the agreed specification, where such failure must have caused a defect in the product delivered. A product shall be free of defects if it complies with the agreed specification.

g. The warranty period starts from the date of delivery of the product to the vehicle manufacturer. Or on the date of registration/ change of ownership if so agreed upon between the parties.

h. Supportive and open communication, together with fairness between all parties, is required to deliver effective root cause analysis and timely implementation of solutions.

2. Warranty Process

[1] The terms under which the costs for a vehicle recall action or service campaign is undertaken shall be agreed separately from the standard warranty provisions since it is not a warranty issue.

This chapter has taken into consideration the official publications from AIAG-CQI 14 as well as the VDA Field Failure Analysis Procedure

a. Availability of Warranty Returns – OEM's commitment to collect suspect and failed warranty parts and make these available to the Supplier to undertake analysis and reporting. The warranty parts must be returned regularly and in a timely manner (which should be compatible with timelines used in the industry) and in sufficient quantities to form a statistically significant representative sample. If required and where applicable, mating parts should be provided in order to identify warranty failure modes to enable corrective actions.

b. Availability of Warranty Data – In order to complete root cause analysis, additional information may be required in respect to the application of the suspect defective part and the environment within the system. In some circumstances vehicle service history and changes to vehicles and applications should be available to understand the circumstances of the defect and the real root cause.

c. Information from Dealers – It is necessary to make correct and complete information available to Suppliers via OEM's in order to understand the circumstances of the defect and the real root cause of the failure.

d. Access to Dealers - Access to Dealers (in conjunction with the OEM) is not the norm but proper and correct diagnosis is required in order to achieve a 'first time fix', minimise warranty repair costs, reduce unnecessary removals, minimise No Trouble Found (NTF) and assist in root cause investigation.

e. Supplier Reporting on Warranty Parts – The Supplier shall analyse and report on an agreed representative sample of returned parts. Problem recognition and corrective actions are to be verified where applicable. Suppliers are required to report findings of analysis of warranty parts via input into specific recording systems.

f. Corrective Action Implementation – The OEM shall take prompt and effective action on OEM and /or supplier responsible concerns.

3. Warranty Data

a. Warranty data management should be done on an electronic basis and be made available to Suppliers in a timely manner. Suppliers should have full access to warranty data held by the OEM.

b. Access to warranty data should be made available free of cost due to technical necessity.

c. Warranty data must be comprehensive, consistent, uniform and accurate to facilitate effective warranty problem solutions and should include historical warranty data and associated divisors (vehicle volumes), in order to facilitate complete root cause analysis.

d. Defect coding should be as specific as possible and supported by written description (verbatim).It is beneficial to harmonise warranty data exchange between Suppliers and OEM's through the development of common data formats/standards, in order to facilitate rapid data analysis.

e. Data on parts not returned to the supplier should be provided on a monthly basis.

4. Warranty Terms and Conditions

a. Supplier Warranty Period

i. Warranty Agreements are necessary to define, at a minimum: warranty period; warranty failure criteria; and cost elements.

ii. Quality/Reliability (Q/R) targets do not define the warranty period. The warranty period (time and/or mileage) is as stated in the warranty contract. To establish separately agreed Q/R targets between the supplier and the OEM, and to achieve a reliability/confidence level compatible with the targets, there should be reference to the design (i.e. materials, technical solution, interfaces, environment etc.). Q/R targets and associated reliability/confidence levels are typically demonstrated in an agreed validation program.

iii. The Directive 1999/44/EC (May 25, 1999) is a Directive in favour of consumers. Companies are not consumers. Only in the relationship between the consumer and the seller is the 2 years warranty period mandatory. Within the parties of the supply chain this period can be reduced by agreement.

b. Financial Resolution of Claims

i. Warranty Costs – Require OEM's to verify the validity and consistency of warranty expenses reimbursed through its network and to provide verification paperwork to Suppliers on request.

ii. Determining Supplier Responsibility

To establish supplier responsibilities, the OEM shall forward a statistically relevant quantity of exchanged parts out of an agreed sample market.

c. Cost Structure Breakdown

i. Parts – Supplier selling price to OEM is the initial orientation.

ii. Labour – at agreed labour rates and agreed Remove & Refit (R&R) time. Should be able to limit R&R time to the time of the 'typical' application.

iii. Handling – an agreed percentage of the parts price, based on standard proven cost.

iv. Consequential costs[2] – may be limited to direct and foreseeable costs. It would be beneficial where possible, to limit the costs and expenditures to an agreed cap.

v. Costs to be paid by the supplier, should take into account the supplier's economic situation, the nature, scope and duration of the business relationship. Possible causative or responsible contributions by the purchaser and a particularly disadvantageous situation of installation of the suppliers part should also be taken into due consideration. Damages, cost and expenditures which shall be paid by the supplier should be proportional to the value of part being delivered.

[2] The terms consequential, direct and foreseeable are not as used in terms of liability laws. In the context of this paper these terms are related to warranty costs.

vi. Warranty costs must be visible and transparent throughout the supply chain. Any debiting and / or cost deduction is subject to agreement between the parties.

d. Supplier Responsibility for No Trouble Found (NTF)

To ensure trust of the OEM into the analysis system of the supplier it is important to agree on the analysis process (According to VDA Field Failure Analysis or AIAG CQI 14). Therefore no cost sharing should be established before a joint NTF exercise has been accomplished to eliminate failures within the process or system.

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Attachment

CLEPA
THE EUROPEAN ASSOCIATION OF AUTOMOTIVE SUPPLIERS
COMPETITION AND ANTITRUST POLICY

1. CLEPA Position

The CLEPA member companies' business is the development, production and supply of automotive technologies, services, parts and components to vehicle manufacturers and the aftermarket. As a European trade association CLEPA's purpose is to promote the interests of its members and to facilitate their respective aims and objectives and activities. CLEPA is determined to carry out this role and its related activities diligently and with the utmost integrity, solely through legitimate means and to maintain policies and procedures which will ensure against any violation of applicable laws particularly antitrust laws. This policy statement (the "Policy") encompasses the corresponding principles and procedures which shall govern CLEPA's role and its activities.

2. Reminder of Relevant Antitrust Rules

The most important antitrust statute relating to the association's activities is Art. 101 of the Treaty on the Functioning of the European Union which prohibits "*agreements between undertakings, decisions by associations of undertakings and concerted practices ……, which have as their object or effect the prevention, restriction or distension of competition*". The antitrust laws in most countries which may have jurisdiction over CLEPA and its members differ only in detail and in each case prohibit as anticompetitive, in particular, agreements and concerted practices between two or more competitors that cover prices or price elements, allocation of customers, allocation of geographic markets, quantities in production and supply or capacities. In addition, agreements between suppliers and customers, such as exclusive supply or purchase commitments, territorial limitations, agreements on resale prices and other limitation of sales to specified customers or classes of customers, are also prohibited and/or restricted in many countries by the relevant anti-trust rules.

3. The Principles of Compliance

3.1. General Rule

CLEPA shall comply fully with all applicable laws and in particular shall ensure that its activities do not lead to any violations of relevant antitrust laws. In support of this Policy, the CLEPA Executive shall be diligent to ensure that all new programmes and activities of CLEPA or changes in existing programmes and activities do not generate any antitrust violations, where necessary, any such programmes or activities that are proposed shall be referred to CLEPA's legal advisors for review. This approach shall also apply to the establishment, terms of reference and conduct of CLEPA's Working Group's, Committees and meetings.

3.2. Restricted and/or Prohibited Activities

CLEPA adopts a zero tolerance approach toward and will not condone, support or facilitate in any way any agreements and concerted actions between competitors which infringe applicable antitrust laws such as:

- Price fixing (including fixing of price components, etc.);
- Fixing of market relevant trading conditions;
- Allocation of products and/or geographic markets;

- Allocation of customers;
- Joint distribution / joint purchasing;
- Production and capacity.

3.3. Exchange of Information

The programmes and activities of CLEPA may involve the collection and analysis of information from its members where there are legitimate objective reasons for such work, for example, to analyse industry trends or to canvass opinions on pending legal or regulatory developments.
The collection and analysis of such information will be undertaken by CLEPA staff and not its members and only after consultation with CLEPA's legal advisors.

Any dissemination of information shall be undertaken in a manner that prevents the disclosure of market sensitive information between competitors which could give rise to an agreement or concerted practice between competitors which infringes anti-trust laws.
CLEPA will ensure where necessary that information collected is aggregated and anonymised before disclosure and that, the disclosure of market sensitive information including but not limited to:

- strategies, supplier selection;
- sales prices, rebates, market relevant sales conditions;
- sales and production;
- capacity, capacity utilisation and production costs; and
- investments and price relevant cost factors.

which identifies specific members, customers or transactions does not occur.

CLEPA will not condone, facilitate or support members who seek the collection, analysis and dissemination of information by or through CLEPA for any illegitimate purposes or which would constitute a breach of anti-trust laws.

<u>Market Studies</u>

In order to ensure compliance with applicable anti-trust laws, in conducting market studies, benchmarking and similar activities, CLEPA shall not allow the attribution of specific information to a specific member company customer or transaction.

- Sensitive information will be published in aggregated form;
- Information shall always be collected from at least 5 different member companies and competitors; and
- Information shall be anonymised so that individual companies or customers shall not be capable of identification.

<u>Benchmarking</u>

Before undertaking any benchmarking exercise CLEPA will undertake an antitrust self-assessment, that shall be recorded for audit purposes.

Where CLEPA undertakes or assists in benchmarking exercises and competitors are taking part in such benchmarking, CLEPA will adopt the principle that market sensitive data shall only be benchmarked, if such data is

- derived from at least 5 companies,

□□aggregated and anonymised; and
□□historic in nature (i.e. more than 12 months old)

CLEPA shall not undertake or facilitate direct benchmarking between competitors nor frequent benchmarking if it involves market sensitive data and if identification of the individual member companies in question is facilitated.

3.4. Recommendations

CLEPA shall not make any recommendations on pricing or other market sensitive terms.

Recommendations of CLEPA shall not be binding on individual members.
Recommendations of CLEPA shall not constitute or lead to agreements or concerted practices amongst competitors.

4 Compliance Procedures

The following procedures shall apply to the activities of CLEPA and its Working Groups and Committees:

- Prior to the instigation of any activity or programme and any members' participation therein the approval of the CLEPA Executive and if necessary its legal advisor as to its compliance with applicable anti-trust laws shall be required;
- Any Working Group or Committee established to undertake any activity or programme on behalf of CLEPA (which may or may not include CLEPA member representatives) shall have a CLEPA staff member appointed to oversee the activities of that Working Group or Committee. Any meetings of such Working Groups or Committees shall wherever practicable include the relevant appointed CLEPA staff member responsible for such activity or programme and shall always have a duly appointed Chair;
- All meetings or discussions or debates whether to be conducted in person or by telephone or video conference or other media ('meeting') shall have a written agenda which shall be approved in advance by the relevant appointed CLEPA staff member and the Chair of the meeting, shall set out in reasonable detail the purpose of the meeting and all matters to be discussed and shall be made available to all participants before the meeting;
- A reminder of the CLEPA Competititon and Anti-Trust Compliance Policy and the need for complete adherence to it by all participants shall be the first agenda item at every meeting and wherever practical copies of the Policy shall be available for reference at every meeting;
- All meetings shall be minuted accurately and completely and the minutes of the meetings shall require the approval of the Chair prior to their circulation to the members; The minutes of all meetings shall be provided to the relevant appointed CLEPA staff member.
- It shall be a condition of participation in any CLEPA activity or programme including any Working Groups or Committees and attendance at any meetings thereof undertaken by CLEPA that participants have received a copy of the Policy, have received approved training in relation to it or have read and accepted the CLEPA Competition Compliance Anti-trust Policy.

5. Communication and Training

5.1 Communication

This Policy shall be circulated to all CLEPA staff and made available to all CLEPA's members via the CLEPA Web Site and/or other appropriate media. Copies of the Policy shall be placed in

visibly prominent positions in all CLEPA offices and meeting rooms Copies of the Policy shall be provided to all participants in CLEPA activities or programme including all participants in any Working Groups or Committees.

5.2 Training

All CLEPA staff and members' representatives participating in any CLEPA activity or programme including those participating in any Working Group or Committee and attendees at any meetings thereof shall be required either (i) to undergo approved training in relation to the Policy or (ii) declare that they have read and accept the CLEPA Competition compliance Anti-trust Policy Statement and shall comply fully with the Policy.
Approved training shall be in a standardised form validated by CLEPA's legal advisor or the LAG and may consist of face to face training, webinars or elearning via the CLEPA web site;
A register shall be compiled and maintained to ensure that all participants in CLEPA activities and programmes are fully familiar with and have been trained in relation to this Policy

6. Common Responsibility

- CLEPA shall take all appropriate measures to ensure its activities and programmes are in compliance with this Policy.
- The relevant appointed CLEPA staff member shall ensure that Working Groups and Committees are established in accordance with this Policy and will endeavour to ensure that they conduct their business and meetings in accordance with this Policy.
- The relevant appointed CLEPA staff member shall be entitled to stop any activity including any meeting that is not fully compliant with this Policy and shall report immediately any suspected compliance issues to the CLEPA Executive and/or its legal advisor.
- The Chair of Working Groups and Committees shall support the relevant appointed CLEPA staff member in ensuring that the activities of such Working Groups and Committees including in particular the convening and conduct of any meetings are in full compliance with this Policy.

Notwithstanding the foregoing it is the responsibility of each CLEPA member to ensure that it and its representatives when involved in the activities of CLEPA:

- shall not undertake any activity which is an infringement of applicable competition law or anti-trust rules, including entering into any prohibited agreements or exchanges of market sensitive information with competitors;
- shall fully comply with the CLEPA Competition Law and Anti-trust Policy and avoid any activity which is non-compliant e.g. attending informal meetings with competitors without an approved detailed agenda;
- Shall support the relevant appointed CLEPA staff member and Working Group and Committee Chairs in ensuring the CLEPA Competition Law and Anti-trust Policy is complied with in full;
- Shall be vigilant and protest any conduct or behaviour which is an actual or potential infringement of the CLEPA Competition Law and Anti-trust Policy

Compliance with this Policy is a condition of membership of CLEPA.