

## Warranty Conditioned on Use of Branded Supplies

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From time to time the Commission is made aware of certain commercial practices which are potentially anti-competitive and which are likely to result in significant harm to consumer welfare. When this occurs the Commission's role is to investigate the complaint. However, it is also necessary to remind businesses of the need to be fair in their transactions.

Lately, a fairly common complaint to the Commission is that certain suppliers of business and other mechanical equipment are requiring that consumers who purchase their equipment, utilise consumable supplies (maintenance or replaceable parts) only of the supplier's brand, as a condition of the product's warranty.

This practice usually occurs in a scenario where a consumer purchases a branded piece of office/mechanical equipment from a local agent. That consumer then decides to purchase for that equipment, consumables from a different supplier but which are compatible with his equipment. The first supplier/agent of the branded equipment recognises that the consumer has used consumables that are not specific to the brand and informs the consumer that unless he reverts to the original brand of consumables he risks voiding the supplier's warranty.

The question that arises therefore from this this type of practice is whether or not suppliers can or should require that customers use consumables only from the suppliers themselves or a specifically named supplier as a condition of their warranty.

This type of practice being described may be described as "exclusive dealing". Exclusive dealing in the Fair Competition Act is described as:

"any practice whereby a supplier of goods

(a) as a condition of supplying the goods to a customer, requires that customer to

(i) deal only or primarily in goods supplied by or designated by the supplier or his nominee; or

(ii) refrain from dealing in a specified class or kind of goods except as supplied by the supplier or his nominee";

The Act further states that:

“if it finds that exclusive dealing or market restriction is likely to

(a) impede entry into or expansion of an enterprise in the market;

(b) impede the introduction of goods into or expansion of sales of goods or the provision of services in the market; or

(c) have any other exclusionary effect in the market, with the result that competition is or is likely to be lessened substantially.

(3) The Commission may direct the supplier referred to in subsection (2) to discontinue engaging in market restriction or exclusive dealing and require that supplier to take such other action as, in the Commission’s opinion, is necessary to restore or stimulate competition in relation to the supply of goods or services in the market.

In regard to the above scenarios therefore an interpretation of the law is that yes a supplier or brand agent can condition his written or implied warranty on the consumer using a specific article or service that conforms to prescribed specifications. Such specifications may include articles of an identified brand, trade, or corporate name, and may be so specified if the use of the alternative poses any threat to the performance of the equipment. In such instances the dealer’s actions are justified. If however the inclusion of conditions is intended to restrict or impede a competing brand, this action would be deemed a restriction of competition and may be prohibited.

Usually where it can be demonstrated that consumables from another brand have been used frequently without any harm to the equipment, it may be difficult to show that the use of such consumables represent a real threat to the proper functioning of the equipment.

A supplier who is found to be in breach of the Act is subject to the following penalties:

- A fine of \$150,000 or 6 months imprisonment, or both, if the person is an individual.

- A fine of \$500,00 or 6 months imprisonment, or both, if the person is a corporate entity.

