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**December 2012**

## **The Market Court prohibits KIA's requirement that cars must be serviced at authorized workshops in order for the new car warranty to apply – KIA owners may now service their cars in any car workshop**

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*On 4 December 2012 the Market Court issued its judgment in case MD 2012:13, Svenska Bildelsgrossisters förening v. Kia Motors Sverige AB regarding KIA's conditional new car warranty.*

*The Market Court ordered KIA, under a penalty of a fine of SEK 5 million, to cease applying the condition that stipulated that car owners were required to service their cars at authorized KIA workshops in order for the warranty for new cars to last for seven years. The Market Court's judgment cannot be appealed. The Court held that the object of the clause was to restrict competition in the market for service of KIA cars. Thus KIA owners are now free to service their car where they want and still qualify for the warranty. Elisabeth Eklund, partner, and Oscar Jansson, associate, comment below on the judgment.*

### **Background to the case**

Sveriges Bildelsgrossisters Förening (the Association of Swedish Car-Parts Wholesalers) ("SBF") that comprise of a number of suppliers of spare parts for cars filed a complaint against KIA to the Swedish Competition Authority in August 2010, alleging that KIA acted in breach of the Competition Act (2008:579) since it had introduced a clause in its new car warranty which meant that service had to be performed by authorized workshops for the seven-year new car warranty to apply. SBF argued that the clause was contrary to both the prohibition of anti-competitive agreements and the prohibition of abuse of a dominant position. KIA had in 2007 launched its seven-year new car warranty for the model Kia Cee'd and started the warranty for all its models in 2010. The requirement for authorized service in order for the warranty to be valid for seven years was however applied only in Sweden. A new car warranty is normally provided during a given time period so a new car can be repaired free of charge if there is a failure as regards materials, components or assembly. The consequence of KIA's requirements for authorized service meant that if a customer turned to a non-authorized workshop the seven-year warranty did not apply, but instead a reduced warranty of three years.

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The Competition Authority wrote of its investigation in February 2011 and concluded that there were not sufficient grounds to investigate KIA's clause in the new car warranty. SBF however chose to pursue the matter and used its subsidiary right of action under the Act, which provides for that a private party may initiate an action in competition cases in the Market Court as the first and last instance if the Competition Authority chooses not to do so. SBF brought an action against KIA in the Market Court in May 2011, claiming that KIA should be required to cease to apply the disputed warranty condition under a penalty of fine of SEK 500 000.

The Competition Act prohibits anti-competitive agreements both among competitors (for example different manufacturers of cars) and parties that are active on different stages in the distribution chain (manufacturers and dealers and workshops, so-called vertical agreements). The aftermarket for cars (servicing and repairs) has long incurred interest from the competition authorities. The European Commission has for example, as EU's competition authority, issued special rules in the form of the so-called Block Exemption for the Motor Vehicle Sector in order to ensure that competition in the aftermarkets for service and repair work.

**The Market Court's judgment**

The Market Court ordered KIA under a penalty of SEK five million to cease to apply the disputed clause which meant that the service could only be performed by an authorized KIA dealer in order for the seven year warranty to apply.

KIA had argued that the agreement criterion was not satisfied, which is a prerequisite for the application of the prohibition of anti-competitive agreements and denied that the contested clause had any impact on the aftermarket because KIA constituted a very small part of the market.

The Market Court found that the KIA workshops were undertakings in the definition of the Competition Act and that the agreement criterion was met since the warranty condition was part of the standard agreement between KIA and the KIA workshops also had acted in accordance with the clause. The Court therefore concluded that there must have been a common will of KIA and the authorized workshops to act towards customers in accordance with the contested warranty clause as in the case, and this finding was also confirmed by the invoked service and warranty books and pamphlets regarding the warranty.

As regards the definition of the relevant market which is the starting point for assessing KIA's market share SBF argued that the relevant market was brand-specific and related to service and maintenance of KIA cars in Sweden. KIA however argued that the market was part of a larger market system that consisted of both the market for car sales but also of the aftermarket consisting of service, repairs and spare parts in Sweden based on the view that customers regard the entire vehicle lifecycle when purchasing a new car.

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The Market Court's assessment was based on consumer preferences in the selection of products but also took into consideration how quickly and at what cost in relation to the increased revenue a workshop could switch production to service KIA cars. The Market Court did not consider that KIA had shown that enough consumers took into account the after sales costs when buying a car. The Market Court did neither regard that there was any substitution implying that other workshops would not begin to provide services for KIA cars in case of a smaller price increase because many workshops, in response to a small but permanent increase in the price of KIA service, would not reconfigure their business relatively quickly, efficiently and without significant costs to include the KIA service. The Market Court therefore defined the relevant market as the market for the service and repair of KIA cars in Sweden. The Court found that KIA along with the authorized KIA workshops had a market share of approximately 80 % in this market.

The Market Court then examined whether the current warranty clause had an anti-competitive object or effect. The Court found that the warranty clause prevented non-authorized workshops which undertook to service KIA cars from offering periodical service of these cars in accordance with the seven-year warranty. As a consequence of that, independent garages were excluded from the periodical services. They also missed out the possibility to compete for repair works in connection with the service. The Court therefore found that a warranty term of the kind at hand, through the inevitable foreclosure, objectively speaking, should be regarded as having as one of its purposes to limit competition as regards periodical service of KIA cars.

As for the requirement that an anti-competitive agreement shall have an appreciable effect the Market Court found that there was an appreciable restriction of competition by reference to the high market share of 80%.

In the event that the current warranty clause would be considered as anti-competitive KIA argued that the conditions for exemption under the so-called Block Exemption for the Motor Vehicles Sector or an individual exemption under the Competition Act was met. The Market Court found that the block exemption was not applicable due to KIA's high market share as the exemption has a market share threshold of 30% in order for the exemption to apply.

As to the criteria for an individual exemption, the Market Court stated in its judgment that the restriction went too far in relation to the potential benefits for consumers. The Market Court considered that it was sufficient that the periodical service under the seven-year warranty, just as for other new car warranties, should be subject to the requirement of good workmanship. The Market Court therefore considered that KIA's warranty clause was too extensive for it to be deemed necessary by the considerations that must be made in accordance with the conditions for exemption.

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**Conclusions**

The Market Court judgment demonstrates once again that the Competition Authority's priorities in what cases it chose to pursue are not do not necessarily reflect that the issue is not worth pursuing. This is one of several cases where the Competition Authority has decided not to initiate an action, and the private party has successfully used its subsidiary right to action in the Market Court.

Although Kia has a very small share of the total automotive aftermarket the judgment is principally very interesting and the first example in Sweden on how competition in the aftermarket is questioned.



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