

Analysis of Proposed Consent Order to Aid Public Comment

In the Matter of BMW of North America, LLC, File No. 132 3150

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, a consent agreement applicable to BMW of North America, LLC (“respondent”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

The Respondent’s MINI Division provides purchasers of new MINI passenger cars a Service and Warranty Information Statement (“Warranty Statement”). According to the FTC complaint, language in the Warranty Statement violates the Magnuson-Moss Warranty Act (“Warranty Act”), 15 U.S.C § 2302(c), by conditioning warranty coverage on the consumer’s use of genuine MINI parts and MINI dealers to perform maintenance and repair work.

The FTC enforces the Warranty Act, which regulates consumer warranties and the procedures used to resolve warranty disputes. The broad purposes of the Warranty Act are (1) to improve the adequacy of warranty information available to consumers, and thereby facilitate consumer choice; (2) to prevent deception; and (3) to improve competition in the marketing of consumer products. Among other things, the Warranty Act prohibits a warrantor from conditioning a consumer product’s warranty on the consumer’s use of an article or a service (other than an article or a service provided without charge) which is identified by brand, trade, or corporate name. 15 U.S.C. § 2302(c) (“the anti-tying provision”).

According to the FTC complaint, in connection with the warranty for certain MINI models, respondent has required owners to have routine maintenance, such as oil changes, performed by MINI dealers and to use genuine MINI parts. The complaint alleges that this requirement appears in two places in the Warranty Statement.

First, in order to have a warranty claim approved, owners must demonstrate that they obtained regular maintenance of their vehicles by having a MINI dealer place a stamp in the warranty booklet. *See* Complaint at ¶ 12. Second, the Warranty Statement states that it “is not obligated to pay for repairs that *include non-genuine MINI parts . . .*” (emphasis added). Although respondent provides, with the purchase of its vehicles, a free scheduled maintenance program, many of the models have a three-year maintenance program, but a four-year new vehicle warranty. Thus, according to the complaint, there is one year during the warranty period in which consumers must pay for their maintenance and repair work while being required to use MINI dealers and MINI parts to retain warranty coverage.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future. Specifically, Part I prohibits respondent, in connection with the sale of any MINI Division good or service, from violating any provision of the Warranty Act, including, but not limited to, the anti-tying provision. Part II prohibits respondent, in connection with the sale of any MINI good or service, from misrepresenting that vehicles, in order to operate safely or maintain value, must have maintenance work performed by a MINI dealer. Part II also prohibits respondent from misrepresenting any material fact concerning any warranty or maintenance requirements of any MINI good or service.

Part III requires respondent to send notices to all affected consumers informing them that their warranties are not conditioned on repair work being performed by MINI dealers or on the use of genuine MINI parts.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires respondent to maintain, and make available to the Commission upon written request, copies of Owner's Manuals and Warranty Statements for each motor vehicle sold by respondent. Part V requires dissemination of the order, now and in the future, to persons with responsibilities relating to the MINI Division and the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates that respondent submit an initial compliance report to the FTC, and make subsequent reports available to the FTC, upon request. Part VIII is a provision "sunsetting" the order after twenty (20) years, within certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.