



International Distribution Institute

# **The allocation of liabilities for non conformity claims between the members of the network**

Stefano Rovej



## **Background (the reasons why it is crucial to rely on a skilled and professional after-sale distributors network to tackle any kind of non-conformity claims)**

- Capital goods (B2B)
- Case A: warranty terms and conditions granted by the manufacturer to the distributor, and seller (distributor) is responsible toward the customer
- Case B: when manufacturer directly sells to customer, warranty service is granted by the distributor



## **Background (the reasons why it is crucial to rely on a skilled and professional after-sale distributors network to tackle any kind of non-conformity claims)**

### Business reasons

- Capital goods business, long duration and reliability products, complex products, running park.
- Distributors/authorized repairers network with high professionalism: after-sales distributors network is devoted to solve customer's claims (also in case of direct sales)
- Warranty, extended warranties packages and maintenance and repair contracts.



## **Background (the reasons why it is crucial to rely on a skilled and professional after-sale distributors network to tackle any kind of non-conformity claims)**

### Legal reasons

- Warranty as a basic obligation of the distributor as seller, but sometimes also touches the manufacturer
- A “traditional” rule affecting automotive sector in EU: *vertical agreements that do not oblige the authorized repairers within a supplier’s distribution system to honor warranties, perform free servicing and carry out recall work in respect of any motor vehicle of the relevant make sold in the common market amount to an indirect restriction of sales and should not benefit from the exemption (Preamble n.17 to reg. 1400/02, Preamble n.12 to reg. 1475/95)*

## Establishing a skilled distributors network

- Long duration goods, complex products, safety related topics, not predictable warranty costs ask for after-sale service organization where **delegation** from the manufacturer to the distributor is crucial
- High level of delegation implies:
- High level of professionalism, through quality standards and training
- Strict contractual rules and control



## Quality standards, procedures and training

- Quality standards and procedures
- Training: compulsory training programs & incentive programs for participation to training

## Contractual rules

- The distributor has to transfer exactly the same warranty granted by the manufacturer to the distributor
- The distributor is responsible to ensure that the products, whether retailed by it or not, benefit from all campaigns and product improvement programmes on a timely basis.
- Any different / additional warranty independently offered by the distributor is under its responsibility

## Contractual rules

- Set of rules that are a mix of strict rules how to apply the warranty and an extensive delegation to the distributors on how warranty must be performed: warranty manual
- Only original spare parts
- Distributor is responsible to inform the manufacturer about any widespread or significant product defects or deficiency using appropriate tools, documents or processes.
- Distributor to impose corresponding obligation on its authorised repairers





## **Managing the claims Claims reimbursement vs. shift of liability**

- Reimbursement claim by claim is a common rule
- Procedures for claims reimbursement
- Reimbursement rules – tariffs - – limitation period - which documents/evidence – auto-certification?
- Audit right (especially in case of auto-certification)



## **Managing the claims Claims reimbursement vs. shift of liability**

- Pros and cons of a different approach: distributor bears the liability of the warranty
- Distributor should bear a responsibility that is not under its control – as the product behavior is not completely predictable
- Mitigation (of the distributor's liability) factors
- Re-call campaigns and safety related topics must be excluded
- Contractual provisions



## **Managing the claims in particular situations**

Particular situations (long term warranties, strict rules imposed by the customer, such as liquidated damages) may lead to different solutions, including allocating to distributors certain liabilities, or co-participation to warranty costs, or incentive schemes to reduce warranty costs



International Distribution Institute

**Many thanks for your attention**