



Australian Automotive Dealer Association Ltd.

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The Sir Jack Brabham Automotive Centre of Excellence

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Dear General Manager

AUSTRALIAN AUTOMOTIVE DEALER ASSOCIATION (AADA) SUBMISSION INTO OPTIONS TO STRENGTHEN THE MISUSE OF MARKET POWER LAW

AADA welcomes the opportunity to provide a submission to the Treasury (Market and Competition Policy Division) in respect to its request for feedback and comments regarding the Options to Strengthen the Misuse of Market Power Law discussion paper (discussion paper).

2. Preamble

2.1. On 6 March 2015, Professor Ian Harper, Chair of the Competition Policy Review Panel, presented the Competition Policy Review (Harper Review) to the Hon. Bruce Billson MP, Minister for Small Business that made 56 recommendations to reform Australia's competition policies, laws and institutions. The Harper Review was released to the public on 31 March 2015.

2.2. Recommendation 30 of the Harper Review recommended options to strengthen the misuse of market power law. The recommendation stated the primary prohibition in section 46 of the *Competition and Consumer Act 2010* (CCA) should be re-framed to prohibit a corporation that has a substantial degree of power in a market from engaging in conduct if the proposed conduct has the purpose, or would have or be likely to have the effect, of substantially lessening competition in that or any other market.

To mitigate concerns about inadvertently capturing pro-competitive conduct, the legislation should direct the court, when determining whether conduct has the purpose, effect or likely effect, of substantially lessening competition in a market, to have regard to:

- the extent to which the conduct has the purpose, effect or likely effect of increasing competition in the market, including by enhancing efficiency, innovation, product quality or price competitiveness; and
- the extent to which the conduct has the purpose, effect or likely effect of lessening competition in the market, including by preventing, restricting or deterring the potential for competitive conduct in the market or new entry into the market.

2.3. On 24 November 2015 Treasurer the Hon. Scott Morrison MP released the 'Australian Government Response to the Competition Policy Review'. With regard to Harper Review recommendation 30: Misuse of market power, the Government noted the recommendation and acknowledged the concerns raised in submissions to the Harper Review about the operation of the misuse of market power provision. The Government committed to further consultations on options to reform the provision and to release a discussion paper on this topic.

2.4. On (date) December 2015, Treasury released a discussion paper, the purpose of which was to seek the views of interested parties on options to strengthen the misuse of market power provision (section 46) of the CCA.

3. Australian Motor Vehicle Market

3.1. The *Motor Vehicle Standards Act 1989* provides the regulatory framework for the entry of new and used vehicles into Australia. In 2015 approximately 1.1 million new vehicles entered the Australian market. These vehicles are required, among other things, to be compliant with Australian Design Rules (ADRs). Consumer choice is not lacking with over 67 brands and 350 models competing for market share. There are approximately 17.2 million used vehicles in Australia and the average age of the Australian fleet is 10 years which is older than in comparable countries – Great Britain (7.3 years) and Japan (7.5 years).

3.2. The Australian market is highly competitive and Australia has more brands for sale than in Canada (49) with sales of 1.6 million, the United States (51) with sales of 13 million and the United Kingdom (53) with sales of 2.2 million.

4. AADA

4.1. AADA is the peak industry body representing franchised new car dealers in Australia. There are over 1,500 new car dealers in Australia that operate approximately 2,600 new vehicle outlets. Motor vehicle dealership agreements are subject to the *Franchising Code of Conduct* which regulates the conduct of the distributor (franchisor) and dealer (franchisee). Dealerships range from family-owned small businesses to larger businesses and two public companies operating in the regions, metropolitan areas and across all States and Territories.

4.2. The authorised dealer network generates annual revenue of more than \$72 billion, pays wages in excess of \$5.6 billion annually, employs in excess of 66,000 people and has invested around \$17 billion in facilities.

5. Strengthening the Misuse of Market Power Law

5.1. AADA supports the Government's commitment to reviewing the recommendations of the Harper Review. As home to one of the world's most competitive right hand drive markets, Australia's automotive dealer network is an important stakeholder in the review of competition policies, laws and institutions.

5.2. AADA supports Recommendation 30 of the Harper Review and its intentions to strengthen the misuse of market power law. AADA supports amendments to the CCA that have the purpose of increasing competition and providing protections against a firm with substantial market power engaging in activity that will harm other firms and the consumer. This reform would discourage those with substantial market power from misusing their market power to damage competitors or prevent entry into the market, thus reducing competition which could create negative outcomes for the consumer.

5.3. AADA is concerned the amendments may create unintended consequences of 'competitive chill' and increased red tape for firms looking to expand through takeovers. AADA is confident however, that the greater market functionality, enhanced opportunities for the business sector and the generation of increased competition for consumers will offset these potential outcomes.

6. Conclusion

6.1. With this in mind, AADA supports Option F presented in the discussion paper to amend the existing provision by adopting the full set of changes recommended by the Harper Panel. This provision would prohibit corporations that have a substantial

degree of power in a market from engaging in conduct for the purpose of eliminating or substantially damaging a competitor, preventing the entry of a person into a market, or deterring or preventing a person from engaging in competitive conduct.

If you require further information please contact me on mobile 0400 366 535, email bmcdonald@aada.asn.au or our Policy Director, Michael Deed mobile 0417 742 956, email mdeed@aada.asn.au.

Yours faithfully

A handwritten signature in black ink, appearing to read "B. J. McDonald", is placed on a light grey rectangular background.

Bruce McDonald
Chief Executive Officer