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CLASS EXEMPTION FOR COLLECTIVE BARGAINING

The Federal Chamber of Automotive Industries (FCAI) is the peak industry body representing the interests of Australian importers and distributors of new motor vehicles and motorcycles. A list of our members can be found on our website www.fcai.com.au.

FCAI's Concerns

The FCAI understands that a key policy driver behind the proposed class exemption is to provide further protection to possible bargaining power imbalances between small business and big business.

On the surface of the draft class exemption, our member's dealer agreements with new motor vehicle dealers would not be a matter for concern. Nearly all, if not all, new motor vehicle dealerships would have turnover exceeding \$10M, particularly when the aggregated turnover test is applied as suggested in the ACCC's draft Guidance Note.

However, the draft class exemption also allows for all franchisees, regardless of turnover or size, to benefit from the class exemption. Presumably this provision assumes that all "franchises" are small business requiring protection from a bargaining imbalance with their franchisor, meeting the policy objectives. However, this changes the context for FCAI members, as in the automotive industry the assumption that all franchises are small business does not hold true. While our members do not operate a 'traditional' franchise model (for example, there are no royalties, commencement fees, vision of employee numbers across the group, etc.) the Franchising Code of Conduct (**Franchising Code**) **automatically deems** motor vehicle dealerships as 'franchises' for the purposes of the Franchising Code (see clause 5(2)(c) of the Franchising Code).

The ownership of new motor vehicle dealership network is characterised, and becoming increasingly dominated by, large well-funded private and publicly listed sophisticated investors (including some with substantial 'private equity' backing), with complex corporate dealership 'conglomerate' structures operating large scale multi-brand and multi-site automotive dealerships. Much consolidation has occurred in recent years and is continuing at a fast pace.

These large dealership corporate groups are substantially resourced and readily equipped with access, internally or through specialist advice, to the best legal, financial, commercial and business advice and analysis. They are utterly different to the traditional 'mum and dad' or small business franchisee. The current ownership model of new motor vehicle dealerships in Australia is set out in the attached ownership chart, which makes clear that in the vast majority of cases, new motor vehicle dealership corporations own 5 or more dealerships, often across multiple brands.

Put simply, FCAI's view is that it would be wrong to allow *all* new motor vehicle dealers, regardless of their size and scale, to collectively bargain with their motor vehicle manufacturer franchisors, just because they are deemed to be "franchisees" for the purposes of the Franchising Code. This is because, for the reasons outlined above, the assumption that "franchisees" are, by their nature, small businesses are simply not correct when it comes to many automotive franchisees.

Separately, and to further emphasise the point of the size and scale of some dealer corporate groups, as at the date of this submission the ACCC is assessing AP Eagers Limited's merger authorisation application for its proposed acquisition of Automotive Holdings Group Limited (<https://www.accc.gov.au/public-registers/mergers-registers/merger-authorisations-register/ap-eagers-limited-proposed-acquisition-of-automotive-holdings-group-limited>). Clearly, should this merger proceed, the combined group will be enormous. FCAI notes that some submissions to that merger approval process have indicated the merger may create an imbalance of bargaining power which would enable the merged group to dictate to FCAI manufacturer members the terms of new vehicle supply in Australia. FCAI understands that the merged group would be of a size and scale that would dwarf many FCAI members, having regard to the fact that both of these entities are publicly listed on the Australian Stock Exchange with significant market capitalisation. We think it would therefore result in an absurdity if a merged group such as AP Eagers/AHG Limited could collectively bargain with their franchisors side by side with smaller motor vehicle dealers.

While the draft class exemption references a \$10 million turnover ceiling as an indicator of an eligible small business, the FCAI's view is that *not* applying the same turnover ceiling to franchisees as eligible entities is flawed. This is supported in the ACCC's statement within the draft Guidance Note that "Collective bargaining by groups of larger businesses has greater potential to raise competition concerns....". As explained above, new motor vehicle dealerships are dominated by large businesses, the very group that the ACCC notes raises concerns about from a competition perspective if they are allowed to collectively bargain.

Possible Solution

FCAI is of the view that the proposed class exemption should include the following minor amendment, to address the above-mentioned concerns:

5. Definitions

franchise agreement has a meaning affected by the Franchising Code, excluding motor vehicle dealership agreements.

The FCAI believes that including these additional words will still allow those genuine small new motor vehicle dealerships that meet the definition of an 'eligible corporation' in the proposed class exemption to seek a class exemption, and therefore obtain the benefits of the class exemption. The suggested amendment would not undermine the intent of the class exemption.

Please feel free to contact me to discuss this further as necessary.

Yours sincerely,



Tony Weber
Chief Executive

SUMMARY DASHBOARD



NUMBER OF DEALER

3,010
dealerships



LARGEST DEALER GROUP

AUTOMOTIVE HOLDINGS GROUP (AHG)

120
dealerships

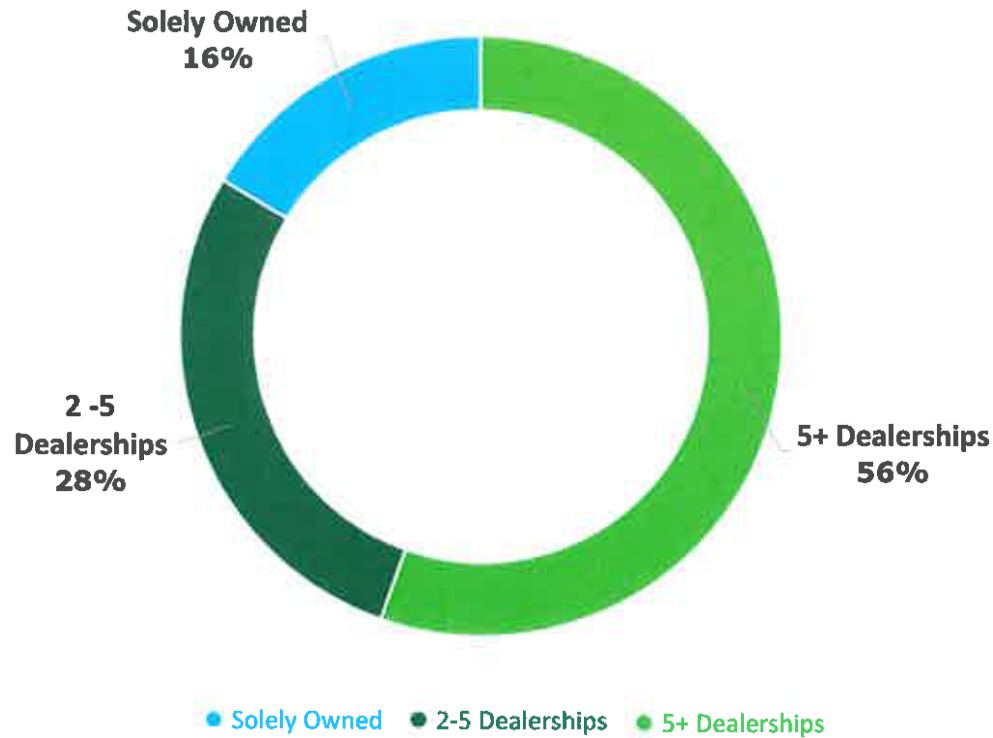


NUMBER OF SOLELY OWNED

492
dealerships



GROUP OWNERSHIP



TOP 5 LARGEST DEALER GROUP

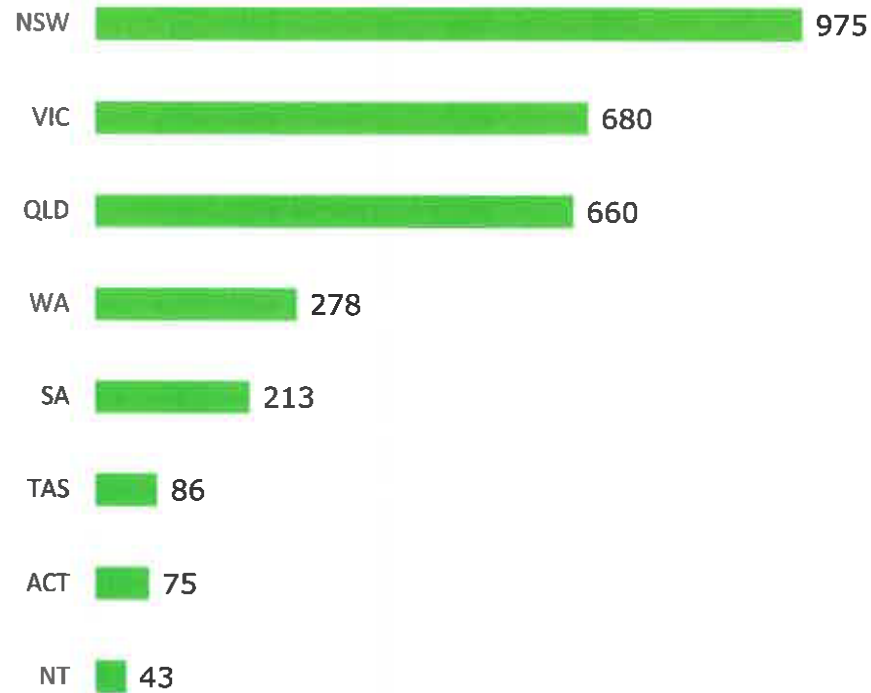
AHG	4%
AP EAGERS	4%
AUTOPACT	3%
PETER WARREN GROUP	2%
TONY WHITE GROUP	2%

of the total Industry

SUMMARY DASHBOARD



DEALERSHIPS BY GEOGRAPHY



OWNERSHIP BY GEOGRAPHY

