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Australian Competition & Consumer Commission
Adjudications Branch
GPO Box 3131
Canberra, ACT 2601
Via Email: adjudication@acc.gov.au

REF: "AA1000408 – The Royal Automobile Club of Queensland Limited – submission".

Submission by the Motor Trades Association of Australia Limited (MTAA) into the Application for Reauthorisation of The Royal Automobile Club of Queensland Limited (RACQ) Reciprocal Warranty Repair Scheme that was introduced in 2013, submitted to the ACCC on 5 December 2017 (AA1000408).

Dear ACCC Adjudication team,

This submission is provided as a public submission.

The Motor Trades Association of Australia Limited (MTAA) does not necessarily object to or support the application by the Applicant for reauthorisation of a Reciprocal Warranty Repair Scheme (AA1000408), but raises the following matters for consideration by the ACCC in its deliberations.

Overview

MTAA Limited and Members are increasingly concerned regarding the use and impact of 'network' or 'global' cost / price mechanisms particularly in automotive industry sectors undergoing significant structural adjustment.

While recognising the use of such mechanisms can improve competition and potentially provide benefits to consumers by containing costs, improving efficiencies and increasing productivity, they can also distort and undermine cost and price transparency, particular in consolidating markets or markets with dominant participants leading to business constraint and ultimately consumer detriment from reduced market choice.

MTAA also understands that the proposed arrangements outlined in the application for reauthorisation may also provide surety and clarity between independent businesses operating as preferred suppliers to the Applicant, prevent potential disputation, gouging and other unwanted behaviours in the conduct of warranty repair work.

However, central to the application by the Applicant for reauthorisation of its Reciprocal Warranty Repair Scheme is a mechanism of cost / price control and potential impact this may have more broadly.

Specific matters

MTAA raises the following considerations for the attention of the ACCC as it considers the application for re-
authorisation:

- The MTAA does not question the short term benefits for customers under the Applicant's Reciprocal Warranty Repair Scheme as it allows warranty repairs to be undertaken without cost to the Applicant's Members in multiple Queensland locations at a 'uniform' rate. However, MTAA holds the position that any attempt by the Applicant to fix, maintain and control labour costs should not financially disadvantage the Applicant's Approved Repairers by undertaking work based on an Applicant set network labour rate that is less than that provided to any customer within their market or does not reflect the costs of providing the repair with a reasonable and market acceptable rate of profitability.
- MTAA questions the validity of using a mechanism to fix, maintain and / or control labour costs at a rate lower than that charged to other customers within individual geographically dispersed automotive repair markets as a rationale for a discrete area such as warranty repairs, which even the applicant admits is a minor area in the overarching motor vehicle repair market.
- MTAA respectfully suggests the ACCC looks further into how the hourly repair labour rate is agreed upon or determined. MTAA notes that the Applicant acknowledges the unfairness of a networked hourly rate due to variation in the costs of operating an automotive repair business in geographically dispersed locations. This contrasts with the Applicants' efforts to set an economically workable hourly labour rate with no transparency on how this rate is determined or updated. Furthermore, there is no transparency or research on beneficiaries of the scheme, nor is there evidence from the Applicant's Approved Repairers of input or agreement to an Applicant predetermined hourly rate. It also removes the ability of Applicant Approved Repairers to negotiate between themselves the costs of completing warranty repairs. This is particularly important considering that each business (and not the Applicant) are privy to their operating costs.
- MTAA respectfully suggests that imposed network labour rates diminish individual business cost transparency and are against sound accounting practices and at odds with Federal and State Government programs and activities; as well as those of organisations representing small business such as MTAA; who are encouraging small business sustainability by improving knowledge and understanding of actual business costs and subsequent pricing of services / products including reasonable profit margins.
- It is suggested the ACCC deliberations should closely examine the interrelationship between potential consumer benefit of known network cost containment mechanisms contained in the application to potential business constraint and effective competition resulting from the imposition of such mechanisms. MTAA contends that such mechanisms, when combined with other constraints, can potentially lead to a reduction of the number of businesses resulting in reduced consumer choice.
- As the Applicant states that the number of disputes between Applicant Approved Repairers is minimal, MTAA therefore questions the need for the applicant to fix, maintain and control labour costs.

- MTAA is of the opinion from experience in other automotive industry sectors that there is potential for indirect, ongoing and strategic benefits from fixing, maintaining and controlling labour costs in relation to conducting warranty repairs, contrary to the Applicant's assertions otherwise.
- Based on experience in other automotive sectors, MTAA is concerned that reauthorisation of the application in such a discrete area as warranty work, against a background of industry structural adjustment, may ultimately be used as a benchmark for a potential widening of scope for an hourly labour rate for all Applicant repair work by its Approved Repairers, regardless of the business costs for individual Applicant Approved Repairers.
- MTAA questions the legality of contracts that include price setting between Applicant's Approved Repairers that may and may not be competing within the same market. It is also unclear whether the reciprocal warranty repair scheme forms part of broader contractual arrangements between the applicant and its preferred suppliers, and whether this intersect raises other matters requiring further investigation.
- Although the Applicant has operated the reciprocal warranty scheme for over 5 years, there is seemingly a lack of disclosure, transparency and an effective reporting system with direct visibility over warranty claims and the worthiness of continuation of the scheme.
- MTAA notes the Applicant's survey and the response rate of only 22.8% (68 Applicant Approved Repairers). MTAA also notes the Applicant survey finding detail that there were no non-payments of warranty claims back-charged to the original repairer and in particular notes the warranty work constitutes less than 0.04% of all jobs. Again this raises the question of the need for the Applicant to fix, maintain and control labour costs.
- MTAA respectfully suggests the ACCC seeks clarity on the industrial dispute mechanism used by the Applicant, including appropriate mediation mechanisms (and whether the Applicant is the mediator), to resolve disputes between the Applicant and Applicant Approved Repairers when undertaking warranty repairs.
- In the following breakout box, MTAA has provided a hypothetical case study to highlight some of the matters raised in this submission.

Hypothetical Case Study:

- Repairer *ABC Repairs* in the Brisbane suburb of Wacol undertakes the original warranty repair work in accordance with requirements and arrangements as an Applicant Approved Repairer and as a professional and qualified repair business in its own right.
- The consumer takes a driving holiday using the repaired vehicle to North-West Queensland and the car breaks down outside Mt Isa.
- The vehicle is taken to another Applicant Approved Repairer, *XYZ Repairs*, at Mt Isa.
- Diagnostic investigations reveal that the cause of the breakdown is directly related to the warranty work carried out by *ABC Repairs* in suburban Brisbane.
- *XYZ repairs* in Mt Isa has a substantially different cost base due to its geographic location, impacts of competition for qualified labour, and other direct and indirect costs. In order to secure and retain labour in a market constrained by a severe shortage of supply, *XYZ Repairs* provides its technicians above the award wage rates and also other employee benefits, which are reflected in total business costs including labour costs.
- As an Applicant Approved Repairer, the proprietor of *XYZ Repairs* is bound by the Terms and Conditions contained in the preferred supplier contract, including the Reciprocal Warranty Repair Scheme authorised by the ACCC.
- The reciprocal rate, as determined by the Reciprocal Warranty Repair Scheme, is equivalent to the costs incurred by *ABC Repairs* in suburban Brisbane on the Original warranty work.
- *XYZ Repairs* incurs a substantial loss on the warranty repair work undertaken.
- The loss is due to the actual direct and indirect costs of the Mt Isa business not able to be reflected.
- While MTAA concedes the consumer has not been necessarily disadvantaged, competition has been constrained by the setting of prices beyond the control of the business proprietor.

Conclusion

MTAA suggests investigations and deliberations include potential negative impacts of an imposed network labour rate on the integrity of market competition and the ability of independent Applicant Approved Repairers to fairly and reasonably compete unconstrained.

MTAA is of the opinion that as markets consolidate and competition parameters are realigned, the influence and potential impact of network labour rates and other network based pricing mechanisms will require increased scrutiny to prevent unintended market concentration and dilution of consumer choice.

MTAA is concerned that if approved, this re-authorisation may set a precedent that may provide a catalyst for wider application using the authorised activity as a benchmark.

MTAA respectfully suggests that the ACCC in its deliberations seeks surety that the Applicant's Approved Repairers will not be financially disadvantaged by undertaking work by other Applicant Approved Repairers whose work is at a standard below their own.

MTAA would also suggest that if the ACCC were to duly authorise the application, that a condition would be included that provides revocation in accordance with Regulations within the 5 year re-authorisation period, if evidence is found that the Applicant's Approved Repairers are being disadvantaged or constrained by the Reciprocal Warranty Repair Scheme's operation.

Please do not hesitate to contact MTAA should you require any additional clarity or further information regarding this submission or more generally.

MTAA National Secretariat