

Motor Trades Association of Australia

Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Mr Gregson

I write on behalf of the Motor Trades Association of Australia (MTAA), of which the Automotive Parts Recyclers Association of Australia (APRAA) and the Australian Motor Bodies Repairers Association (AMBRA) are Affiliated Trade Associations, in relation to the Exclusive Dealing Notification lodged by Suncorp Metway Insurance Limited (Suncorp) on 20 February 2007 (Notification N92827).

Given the past discussions between MTAA and the Commission on issues relating to motor vehicle insurance and repair related notifications, the Association is deeply concerned by the failure of the Commission to formally advise of Suncorp's Notification Application and to seek the Association's views. The comments set out below have thus been compiled in the relatively short period available to the Association because of that.

Suncorp's desire to undertake exclusive dealing conduct in the form of nominating parts suppliers to members of its Recommended Repairers network has serious implications for consumers as well as the motor trades. MTAA believes that the approval of such conduct by the Commission will result in a lessening of competition and restriction of business relationships and the number of those who supply parts to repairers.

In light of the recent merger between Suncorp and Promina Group, I note that the 2005 Productivity Commission Inquiry Report into Smash Repair and Insurance concluded that respectively, the two companies held market shares of twenty two and twenty per cent. Based upon these figures Suncorp now holds in excess of forty per cent of market share.

MTAA would like to address points raised by Suncorp in its notification application; specifically:

- *SMIL provides motor vehicle insurance in all states and territories ("the Product").*

Recommended Repairers, (and other repairers nominated by the Applicant on an ad hoc basis collectively called "Recommended Repairers"), supply goods and services in relation to the repair of motor vehicles ("Repair Services").

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Suppliers of motor vehicle parts, nominated by the Application on an ad hoc basis, (collectively called "Parts Suppliers), supply goods and services to the Recommended Repairers in relation to Repair Services.

The Notification will provide Suncorp with the opportunity to direct repairers it has "recommended" to obtain parts from any supplier Suncorp may choose. As the Application does not describe the limitation of this conduct, the ad hoc contracting of a repairer who is not normally part of the Suncorp Recommended Repairer network could well be included under the proposed conduct.

Similarly there does not appear to be any detail of the relationships or contracts between a supplier and Suncorp.

- *Provide the benefit to Recommended Repairers who would not otherwise be able to enjoy the benefit.*

The benefits that Suncorp believes will be provided to its Recommended Repairers are not clearly stated or examined in the Application. I note that whilst the Application clearly states that "repairers elect to become Recommended Repairers" (Form G, page 2) it is implied that a failure to source motor vehicle parts from a nominated parts supplier will cause the revocation of Recommended Repair status. MTAA believes that simply retaining Recommended Repairer status does not constitute a benefit given that:

- a) repairers must, when sourcing parts, consider manufacturer's guidelines, industry and safety standards and legislative requirements; and
- b) the Application does not identify the nominated parts suppliers and indeed the range of parts to which the Notification is to apply, making it difficult to determine if the above requirements have been considered by Suncorp.

Indeed should the Notification be approved, the Association believes that Recommended Repairers will lose the ability to select their own suppliers and to support local and other appropriate businesses.

- *The Applicant proposes to supply the benefits associated with being a Recommended Repairer to its Recommended Repairers on the condition that the Recommended Repairer must acquire its motor vehicle parts from Parts Suppliers.*

Given the market power of Suncorp as one of the top four motor vehicle insurers in Australia, its ability to direct repair work is significant. Therefore, any repairer who would exclude its business from the potential to be a recommended repairer is cutting-off the potential to acquire a significant business stream. However, many repairers may have a variety of reasons to not seek supply of parts or services from businesses from whom Suncorp insists they must under this notification. Such reasons may include support for local business, quality of parts or services known from past experience and volume or loyalty discounts the repairer may receive from other suppliers. There is thus a significant potential for Suncorp to adversely affect the existing motor vehicle repair trade, suppliers to that trade and motor vehicle auction houses. It is the Association's view that in considering this point, the Commission should not underestimate the existing ability of insurers to direct vehicles for repair to repairers they recommend.

If the repairer disagrees with the insurers request to use certain parts or repair methods the Motor Vehicle Insurance and Repair Industry Code of Conduct states:

If repairs are carried out under a contract between the Insurer and a Repairer, where an Insurer requires a Repairer to use a repair method or part that differs from that recommended by the Repairer, and the Insurer and Repairer are unable to reach agreement to that change, the Insurer will provide such a requirement in writing (7.4); and

Where the Insurer provides a written requirement under sub-clause 7.4 the Insurer agrees to pay the direct loss or liability incurred by the Repairer by reason of a quality, structural, presentation or safety defect caused by complying with the requirement. The Repairer must immediately notify the Insurer of any claim made against the Repairer that may give rise to a claim under this sub-clause. The Insurer is not liable to pay any loss or liability incurred by the Repairer to the extent that the loss or liability arises from faulty workmanship (7.5).

Relying upon the right expressed in that provision, repairers may well, in certain circumstances, wish to differ from an insurer's prescription, taking into consideration the nature of the repair and the age of the vehicle, and the Association would not wish to see the Notification used to limit or restrict that right or such use.

- *Promote competition in the relevant markets by encouraging competitors to offer similar benefits.*

MTAA believes that should the notification be agreed to, that other motor vehicle insurance companies will also undertake similar moves to nominate parts suppliers. This would have a significant lessening of competition as:

- a) smaller parts suppliers are likely to be overlooked in favour of large suppliers, leading to market concentration;
 - b) competition between repairers would be reduced given the inability of repairers to negotiate parts prices with their preferred suppliers leading to the creation of similarly priced quotations by members of Recommend Repairers network competing for business; thus
 - c) reducing the insurers' ability to choose the repairer with the lowest margin leading to an increase in policy premiums.
- *The Applicant does not force repairers to become Recommended Repairers.*

Whilst this is a true statement, given Suncorp's market power and the wide application of this Notification, most repairers would find themselves subject to the activity covered by this Notification, because of absence of market power sufficient to resist.

- *If the Recommended Repairer elects to acquire motor vehicle parts from a Parts Supplier, the Recommended Repairer will be able to take advantage of the benefits associated with being a Recommended Repairer of the Applicant.*

No benefits have been outlined in this Notification and MTAA believes consequently that no objective assessment of the Notification can be made.

- *If a Recommended Repairer elects not to acquire motor vehicle parts from a Parts Suppliers, the Recommended Repairer will not be able to take advantage of the benefits associated with being a Recommended Repairer of the Applicant.*

Again, without the benefits being specified, there is no reference as to what such benefits might include.

- *Assist the Applicant to achieve greater business efficiencies and quality control in relation to the supply of the Product to policy holders;*

The Association believes that Suncorp, through this notification process, seeks only to legitimise the use of its substantial market power in order to drive down prices and to compress margins of body repairers in what is already a highly competitive market, but at the cost of insureds.

- *Promote competition in the relevant markets by encouraging competitors to offer similar benefits.*

This could also be read as to force other competitors in the relevant markets into proposing similar action which MTAA believes would further restrict competition and choice for repairers, parts suppliers and insureds.

- *The proposed conduct will not lessen competition in the market for the relevant Products as: Competition in the relevant markets is vigorous and there are many competitors who are able to provide the relevant Products; and*

The number of Recommended Repairers potentially affected by the proposed conduct will not be significant due to the large number of Parts Suppliers nominated by the Applicant.

The failure of Suncorp to disclose its intended parts supplier(s) makes it difficult to determine the future of the parts supply market. However, it is the Association's opinion that by permitting Suncorp to influence that market by directing purchases then concentration is inevitable as those parts suppliers excluded from the arrangements will suffer a reduction in business. There is nothing in this Notification that precludes, ultimately, a solus supplier regime.

- *The Applicant submits that the benefits of the proposed conduct as outlined will outweigh any possible detriment considered to arise from the conduct.*

Should this conduct be approved by the Commission, the motor vehicle repair trade and those businesses that supply goods and services to repairers will suffer considerable adverse affects. The Association believes that at present there is substantial competition in the market and that such conduct would negatively impact the benefits of that free and competitive market.

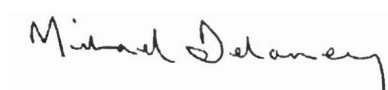
The determining factor in repairers obtaining an authority to repair a vehicle from an insurer is that the price is competitive. Whilst insurers use various methods to ensure the price a repair offers is competitive, the overarching fact is that an insurer will not authorise repairs that are not competitively priced. It is therefore in the repairer's interest in obtaining repair work that they ensure their suppliers are competitive. Given this there is no need for the insurers to be granted the opportunity by the Commission to become involved in directing repairers to use particular suppliers. If the Commission was to allow activity proposed under this Notification it would

effectively be giving support for the misuse of market power in the industry sectors that support the motor vehicle repair trade.

In conclusion, MTAA believes that the use of exclusive dealing with regards to the supply of parts may result in a closed-market system which benefits a few parts suppliers to the detriment of the majority, which in fact lessens the principles of competition. In addition, the proposed public benefits of this arrangement have not been disclosed and would in any event in the Association's view be minimal.

I would therefore request that the Australian Competition and Consumer Commission investigate this matter further, with a view to denying the Suncorp Notification.

Yours sincerely

A handwritten signature in black ink that reads "Michael Delaney". The signature is written in a cursive style and is positioned above the typed name.

MICHAEL DELANEY
Executive Director

8 March 2007