



Mercedes-Benz

Mercedes-Benz  
Australia/Pacific Pty Ltd  
A Daimler Company  
ABN 23 004 411 410

9 October 2015

Adjudication Branch  
Australian Competition & Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

**REGULAR MAIL AND VIA EMAIL:** [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

Dear Sir/Madam

**Mercedes-Benz Australia/Pacific Pty Ltd – Notification of Exclusive Dealing**

Please find enclosed the Form G – Notification of Exclusive Dealing for your consideration.

The lodgement fee of \$100 was paid this morning to Catia of your Finance Department via credit card.

Should you have any queries in relation to the enclosed form, please feel free to contact the writer on (03) 9566 9385 or via email: [marina.jury@daimler.com](mailto:marina.jury@daimler.com).

Yours faithfully

  
Marina Jury  
Corporate Counsel

Encl.



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Mercedes-Benz Australia/Pacific Pty Ltd  
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**Form G**

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsection 93 (1)*

**NOTIFICATION OF EXCLUSIVE DEALING**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1. Applicant**

**(a) Name of person giving notice:**

Mercedes-Benz Australia/Pacific Pty Ltd ACN 004 411 410 (“**MBAuP**”)

**(b) Short description of business carried on by that person:**

MBAuP is an importer and distributor of various brands of motor vehicles, parts and accessories into the Australian market, including Mercedes-Benz, the brand which is the subject of this notification.

MBAuP’s other motor vehicle brands are SMART (small passenger cars), FREIGHTLINER and FUSO (both commercial vehicles). For further information, we refer to MBAuP’s website at <http://www.mbaup.com.au/>.

The Mercedes-Benz distribution network is primarily comprised of in excess of 100 independently owned and operated authorised Mercedes-Benz dealerships and service outlets across Australia (jointly referred to as the “**Mercedes-Benz network**”). In addition, there are seventeen (17) independently owned and operated authorised Mercedes-Benz autobody repairers (also referred to as “paint and panel shops”) in Australia (referred to as the “**Mercedes-Benz Autobody Repairer Network**”).

In addition to the independently owned and operated Mercedes-Benz network, MBAuP itself also operates a number of factory-owned passenger car and

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commercial vehicle dealerships. MBAuP also owns and operates one paint and panel shop, Mercedes-Benz Autobody in Port Melbourne.

MBAuP is part of the Daimler group of companies and is ultimately wholly owned by Daimler AG.

(c) ***Address in Australia for service of documents on that person:***

Attention: Marina Jury  
Corporate Counsel  
Mercedes-Benz Australia/Pacific Pty Ltd  
44 Lexia Place  
Mulgrave VIC 3170

**2. Notified arrangement**

(a) ***Description of the goods or services in relation to the supply or acquisition of which this notice relates:***

The notification relates to the acquisition by members of the Mercedes-Benz Autobody Repairer Network of an Estimating and Bodyshop Management System from a preferred third party supplier.

An Estimating and Bodyshop Management System (“**EBM System**”) is a computer system that manages end to end business operations within a Bodyshop.

It performs the following main functions:

- Estimating;
- Accounting;
- Task management;
- Job Allocation;
- Parts Inventory and ordering;
- People Planner;
- Business Performance Analytics;
- Loan Car Management; and
- Workshop Scheduler.

It is proposed that the same third party supplier will provide software updates, training and user support on an as required basis thereafter to the Mercedes-Benz Autobody Repairer Network.

**(b) *Description of the conduct or proposed conduct:***

MBAuP grants the right to operate an authorised Mercedes-Benz paint and panel shop to independently owned and operated autobody repairers, and supplies services associated with the granting of this right to those repairers.

As a condition of the grant of the right to operate an authorised Mercedes-Benz paint and panel shop, the Mercedes-Benz Autobody Repairers are required to utilise particular computer systems at the premises as prescribed by MBAuP from time to time.

MBAuP intends to prescribe the roll out of a uniform EBM System across its Mercedes-Benz Autobody Repairer Network.

To implement the roll-out of the proposed EBM System, MBAuP proposes to introduce the preferred third party supplier to the Mercedes-Benz Autobody Repairer Network on the condition that the Mercedes-Benz Autobody Repairers acquire the EBM System from the preferred third party supplier (or, potentially, from an alternative supplier approved by MBAuP – see below).

Further, MBAuP proposes to offer a partial reimbursement of the costs associated with the roll-out of the proposed EBM System to the Mercedes-Benz Autobody Repairer Network on the condition that the repairers arrange system installation system by March 31<sup>st</sup> 2016. This financial incentive to the Mercedes-Benz Autobody Repairers aims to ensure that to the extent possible, uniformity of the systems across the Mercedes-Benz Autobody Repairer Network is achieved.

The functionality of the proposed EBM System will assist the Mercedes-Benz Autobody Repairers with the following tasks;

- Estimating;
- Task management;
- Job Allocation;
- Parts Inventory and ordering;
- People Planner;
- Business Performance Analytics;
- Loan Car Management;
- Workshop Scheduler;
- MBAuP Monthly Reports;
- Customer Satisfaction surveys;
- Integration of Parts Catalogues for quotation;
- Updates, new function developments, and training.

While the preferred supplier has submitted an “indicative” pricing proposal for each autobody repairer site to MBAuP for consideration, the final price for the proposed system will require further negotiations between the preferred supplier and each of the Mercedes-Benz Autobody Repairers due to site specific requirements which may have pricing implications.

Even though MBAuP proposes to prescribe the use of the EBM System of the preferred supplier, a Mercedes-Benz Autobody Repairer who wishes to use an alternative supplier will be able to apply for that supplier to be approved by MBAuP and/or Daimler AG. Should an alternative supplier be capable of meeting MBAuP’s and/or Daimler AG’s quality standards and audit requirements, and where it is practical to do so, MBAuP and/or Daimler AG may approve an alternative supplier.

Pending confirmation from the Commission that it does not intend to object to this notification, MBAuP intends to inform the Mercedes-Benz Autobody Repairer Network about the roll-out of the proposed EBM System including the basis of determining the preferred third party supplier.

There is a possibility that the above proposal may involve conduct of the kind described within s47(6) and/or s47(7) of the *Competition and Consumer Act* 2010 (Cth) (“**the Act**”).

**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

**(a) Class or classes of persons to which the conduct relates:**

- Authorised Mercedes-Benz Autobody Repairers; and
- Suppliers of EBM Systems

**(b) Number of those persons:**

**(i) At present time:**

As of the date of this notification, there are seventeen (17) authorised Mercedes-Benz Autobody Repairers.

Within Australia, MBAuP believes that there may be in excess of 10 providers of EBM systems, ranging from large global or national suppliers to small and medium-sized State-based and/or regional/local suppliers.

(ii) *Estimated within the next year:*

MBAuP estimates that within the short to medium term, the Mercedes-Benz Autobody Repairer Network will increase at a modest rate.

In relation to EBM Systems providers, see above.

(c) *Where number of persons stated in item 3 (b)(i) is less than 50, their names and addresses:*

Tony Farrugia Bodyworks	75 Tennant Street	Fyshwick	ACT	2609
Perfect Auto Body	22 O’Riordan Street	Alexandria	NSW	2015
LSR Autobody	41 Hotham Parade	Artarmon	NSW	2064
Miranda Auto Body Pty Ltd	64 captain cook drive	Caringbah	NSW	2229
Pat Coles Auto Body	129 Parramatta Road	Five Dock	NSW	2046
Parramatta Smash Repairs Pty Ltd	607 Church Street	North Parramatta	NSW	2151
MBQ Autobody Pty Ltd	3/210 Evans Road	Salisbury	QLD	4107
H. Harvey Prestige	3-7 Sierra Place	Upper Coomera	QLD	4209
Cafasso Motor Body Repairs	98-100 Richmond Road	Keswick	SA	5035
Mercedes-Benz Bencar Auto Body	84-86 Railway Road	Blackburn	VIC	3130
Marque Motor Body	15-17 Hallam South Road	Hallam	VIC	3803
Mercedes-Benz Brighton Auto Body	988 Nepean Highway	Moorabbin	VIC	3189
Mercedes-Benz Autobody	51 Wharf Road	Port Melbourne	VIC	3205
Weststar Prestige Paint & Panel	28 McIntyre Road,	Sunshine	VIC	3020
Stuttgart Autos	159 Burswood Road	Burswood	WA	6100
Peter Wilkinson and Co	1 Adrian Street	Welshpool	WA	6106
Western Pacific Autobody	2 Purser Loop	Bassendean	WA	6054

**4. Public benefit claims**

(a) *Arguments in support of notification:*

In preparing this notification under section 93(1) of the Act, MBAuP has taken into account the ACCC’s Guide to Exclusive Dealing Notifications of 2011 and the ACCC publication “*Competition issues in franchising supplier arrangements*” of October 2013. The latter publication explicitly acknowledges that “control by franchisors over the way in which franchisees operate is often central to the operation and success of a franchise system”. MBAuP submits that this statement applies to the Mercedes-Benz Autobody Repairer Network,

including in particular, in relation to issues related to the provision of uniform computer systems to the Mercedes-Benz Autobody Repairer Network.

The proposed conduct will benefit the entire Mercedes-Benz Autobody Repairer Network, as the Mercedes-Benz Autobody Repairers will be able to acquire an EBM System at a competitive rate from an experienced and highly reputable supplier, thereby ensuring standardisation of their computer systems. In particular:

- ***Professionalism & Consistency across the Mercedes-Benz Autobody Repairer Network*** - Professionalism and consistency is an important part of the branding of Mercedes-Benz including the Mercedes-Benz Autobody Repairer Network. Protecting the Mercedes-Benz brand reputation by ensuring professionalism, consistency and the same high level of customer experience across the Mercedes-Benz Autobody Repairer Network will benefit all Mercedes-Benz Autobody Repairers and their customers - by way of enhancing the customer experience when visiting a Mercedes-Benz Autobody Repairer and ultimately, promoting consumer choice by preserving the high reputation of the Mercedes-Benz brand. Further, as the EBM System will be procured and installed by the preferred supplier, it will be beneficial to use the same preferred supplier for updates, enhancement training and maintenance.
- ***More efficient and effective bargaining*** - Combining the demand for the EBM Systems will result in significant efficiencies and cost savings to the whole Mercedes-Benz Autobody Repairer Network. By negotiating on behalf of the entire Mercedes-Benz Autobody Repairer Network, MBAuP will be able to obtain more favourable pricing and non-pricing related terms (such as service, reporting, quality assurance, training etc.) than the repairers would otherwise have been able to obtain negotiating those terms individually. The preferred supplier's EBM System has been identified as it provides the latest technology platform, is IPAD friendly and easy to use and it creates efficiencies due to the way it is constructed and can be operated (see below for further detail). The preferred supplier is a very experienced and reputable service provider with a global presence.

- ***Efficiencies and cost savings in relation to MBAuP initiatives to improve performance of Mercedes-Benz Autobody Repairers*** - Rolling out the preferred supplier's EBM system across the entire Mercedes-Benz Autobody Repairer Network will greatly assist MBAuP in implementing, and achieving efficiencies and cost saving in relation to, the following initiatives (by way of an example):
  - (i) ***National Mercedes-Benz Autobody Repairer reporting and benchmarking*** - The proposed EBM System offers reporting and benchmarking capability to allow MBAuP to compare the Mercedes-Benz Autobody Repairer Network on a national level, thus enabling MBAuP to assist autobody repairers to improve business operations. Such benchmarking may include (but are not limited to) customer satisfaction ratings, parts sales performance, productivity and efficiency of facility, customer data integrity, workflow processes, vehicle turnaround times, workshop tool management, customer loan car availability, Paint and materials usage.
  - (ii) ***Incentive program for Mercedes-Benz Autobody Repairers*** – Based on reporting and benchmarking data, MBAuP will be able to establish an Incentive Program for the Mercedes-Benz Autobody Repairer Network, to reward Mercedes-Benz Autobody Repairers for worthy results.
  - (iii) ***Electronic Part Catalogue integration-*** Currently all Autobody Repairers manually input parts from an electronic parts catalogue into their Bodyshop Management system. Following the roll out of the proposed EBM system, this task will be able to be performed through an electronic file transfer hence creating significant efficiencies.
- ***Future enhancements of the proposed EBM System*** - There will also be cost and efficiency gains in relation to future software enhancements. For example, if one of the Authorised Autobody Repairers requests an enhancement, the benefit of that enhancement will be rolled out across the entire Mercedes-Benz Autobody Repairer Network rather than just the one Repairer.



**(b) Facts and evidence relied upon in support of these claims:**

As above.

**5. Market definition**

*Provide a description of the market(s) in which the goods or services described at 2(a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):*

Conservatively, the notified conduct concerns the “market” for the supply and acquisition of EBM Systems. MBAuP considers that the geographic scope of the (narrow) “market” for EBM Systems is, at least, national (if not broader). MBAuP also considers that this “market” is very competitive.

Apart from the preferred supplier, there are other domestic and international suppliers of EBM Systems which are capable of delivering the required services. MBAuP believes that there may be in excess of 10 competing providers of EBM Systems in Australia, with there being in excess of 1,000 customers of EBM Systems (i.e. paint and panel shops) in Australia.

**6. Public detriments**

**(a) *Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:***

MBAuP believes that the public detriment resulting from the proposed conduct will be minimal, if there is any public detriment at all. The primary *potential* public detriment may be that the Mercedes-Benz Autobody Repairers’ choice which EBM System to use will be reduced.

The effect of that reduction in choice, however, is very limited, for the following reasons.

- ***Procurement of EBM System*** – The procurement of the EBM System is a ‘one-off’ expenditure for autobody repairers. Only rarely is a new EBM System implemented by members of the Mercedes-Benz Autobody Repairer Network in Australia. Importantly, the proposed arrangements with the

preferred supplier only extend to the roll-out of the proposed EBM System, and any potential future roll-outs of EBM Systems (whenever this may occur) will be subject to new arrangements with whoever might be the preferred supplier (or suppliers) at the time.

- ***Availability of high quality EBM System at a competitive price from the preferred supplier*** - MBAuP will be able to negotiate improved terms for the entire Mercedes-Benz Autobody Repairer Network. The preferred supplier is an internationally renowned supplier of EBM Systems and it is being used by other valuable global brands in the industry.
- ***Negligible effect on competition in the relevant market*** - The proposed conduct will not have the effect, or be likely to have the effect, of substantially lessening competition in any relevant market. The “market” for EBM Systems is competitive, with in excess of one thousand customers in Australia alone and in excess of 10 domestic and international suppliers which are capable of providing rival EBM Systems in Australia.
- ***Transparency*** - MBAuP will liaise with the Mercedes-Benz Autobody Repairer Network in an open and transparent manner.
- ***Partial reimbursement of costs*** - MBAuP has committed to reimburse a portion of a Mercedes-Benz Autobody Repairer’s expenditure for the proposed EBM System, provided the system is installed by the repairer by March 31<sup>st</sup> 2016.

MBAuP considers that any public detriment which may be identified, would be clearly outweighed by the significant public benefits of the conduct as set out in paragraph 4 above, including the substantial benefits for the entire Mercedes-Benz Autobody Repairer Network in Australia.

**(b) *Facts and evidence relevant to these detriments:***

As above.

7. **Further information**

(a) *Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:*

Marina Jury  
Mercedes-Benz Australia/Pacific Pty Ltd  
44 Lexia Place  
Mulgrave VIC 3170  
(03) 9566 9385  
[marina.jury@daimler.com](mailto:marina.jury@daimler.com)

Dated: 9 October 2015

Signed by/on behalf of the applicant:



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(Signature)

**MARINA JURY**

(Full Name)

**MERCEDES-BENZ AUSTRALIA/PACIFIC PTY LTD**

(Organisation)

**CORPORATE COUNSEL**

(Position in Organisation)