MMAL NATIONAL
DEALER COUNCIL INC.
ABN. 76 484 768 518
PO Box 646
GLENELG SA 5045

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

Email: adjudication@accc.gov.au

Dear General Manager,

Re: Review by the ACCC, of the Sale of Insurance Products by Motor Vehicle Dealers

As the MMAL National Dealer Council (MMAL NDC), we write on behalf of the Mitsubishi Motors Dealer Network in Australia.

Mitsubishi Motors Dealer Network has 183 dealerships, ranging from small rural dealerships, larger provincial dealerships, and metropolitan dealerships, and our network employs over 6,000 people throughout Australia.

The MMAL NDC is aware of the Gilbert and Tobin submission to the ACCC, on Motor Vehicle Dealership Add-On Insurance Reform, made on behalf of insurers (the ICA), acting as a cartel, and also the submission from the Australian Automotive Dealer Association (AADA). And further, the Gilbert and Tobin Response to interested party submission of 14th November 2016.

The MMAL NDC wishes to make it clear that we fully support the position of AADA and its report, and we are very concerned in regard to the behaviour of the Insurers, and the intent and effects of the outcomes they seek, both on consumers and motor dealers.

The MMAL NDC does not support the Gilbert and Tobin proposal on behalf of the ICA, or their Response to interested party submission of 14th November 2016, and at the very least call into question the fairness and, to whom the ultimate benefits their proposal will accrue.

The MMAL NDC share 5 major concerns with the AADA:

1. **Sole focus on the Dealer Channel**

The ICA proposal seeks to limit legitimate compensation, and genuine competition from a Channel of products, rather than particular Products from all channels, within the national market. Many of the products which are highlighted by ASIC are available at similar prices and high commissions in other non-Dealer Channels.

Such action is anti-competitive against the Dealer Channel, which has been developed through the commercial efforts of dealers themselves, over a 40 year period. The Dealer Channel insurance business model has grown because it is, on the whole, beneficial and convenient to the consumer.

Insurers have now formed a Cartel to eliminate the Dealer Channel insurance business model – which is a significant competitor to Banks, Brokers and direct Insurer sales, and they are seeking to benefit themselves from the reduction in competition and less vendors to service. It is highly likely that many dealers will not be able to sustain the Dealer Channel of insurance sales with the ICA proposed commission structure.

The reduction of dealer competition, through this one Channel focus of ASIC and the ICA, will lead to less competition and poor outcomes for consumers.

If ASIC believe the nature of Dealer Channel is problematic, why are they not also applying this same regime to white goods, furniture, travel, marine and caravan sales?

Further, the ICA submission does not deal with their position with the salary packaging/novated lease industry. Are the ICA committed to capping their commissions at 20% also on all similar products sold via that non-Dealer Channel?

It has been put forward that some insurers lobbied inside the ICA for the cap to not apply to all channels retailing similar products, given their own substantial activity with parent organisations who provide such finance and, with salary packaging/novated lease companies not owned or part owned by dealerships.

The ICA and its members have worked hard to ensure their self-interest in distribution of these products in other channels for their benefit.

Insurers need to disclose and justify their relationships and position with commissions to other channels.

2. **Inclusion of comprehensive motor vehicle insurance**

ASIC has implied the product category of motor vehicle insurance (comprehensive car insurance, which covers damage caused by collisions or accidents, severe weather or vandalism as well as theft) is a category which provides good customer value and a high claims ratio.

There is no rationale to include motor vehicle insurance in a capped commission model. It is a good illustration of the anticompetitive behaviour by the ICA, seeking an outcome that will reduce dealer participation in the supply of all insurance products.

3. The arbitrary nature of the proposed 20% cap

An appraisal by the MMAL NDC of dealer profitability, by product category (ie vehicles, parts, service, finance and insurance) indicates that many dealers will be under substantial financial duress if such a low cap is introduced.

There has been no modelling carried out by ASIC or the ICA on the effects on motor dealer viability under a 20% cap.

The MMAL NDC understands that the ICA have already indicated to ASIC that they will reduce premiums by 50%, for example on CCI and GAP.

That means that the future effective commission against today's commissions is 10%, not 20%

The 20% cap, when compared to the recent legislation in the Parliament for the introduction of a cap on commissions on Life Insurance products, reveals a significant bias against the motor industry. The Life Insurance industry, with the ICA, argued for a 80%/70% transition then 60% in the 3rd year and subsequent years, on 1st year life policy commissions. The average commission of motor dealer products is already unlikely to be greater than 60%.

Further, in the case of Life Insurance, the policies are purchased when a consumer has a need such as a mortgage or young family. The policies are renewed, often without review, for decades. The annual premiums are increased by the Life Companies with age, to have the effect of driving at risk individuals out of affording their policy. Once the family home is paid off, or the children have finished their education, many more policies are not renewed. There are very few claims. Very poor consumer value. And, high commissions and renewal commissions.

Life Insurance – ironically like all insurance including those products sold by motor dealers – is the sort of product a consumer hopes to never need.

4. The unrealistic commencement date and transition period

The Life Insurance products legislation again reveals a significant bias against the motor industry. Any transition period of less than 3 years is not going to provide the motor industry the time needed to adjust market pricing in the dealership business model.

There are significant barriers to dealers making their businesses responsive to sudden loss of revenue such as proposed by ASIC and the ICA.

- Dealers do not set the upper limit of vehicle prices. Vehicle Distributors essentially set the drive away prices and dealer have little or no say. Such prices, if they were investigated by ASIC would be found to be extremely low and in most cases cause new vehicles to be sold at a net loss in order to stoke manufacturer market shares. Such sales are also highly competitive between dealers of the same make, as many Vehicle Distributors pay bonuses for market share which are very much needed to make up for the under-pricing of the driveway price by Vehicle Distributors.

- Parts pricing is set by Vehicle Distributors. Again dealers have little discretion to improve margins as Vehicle Distributors publish price guides and the dealer network are also in strong competition with the non-genuine and will-fit suppliers, such as Repco and others.
- Service labour prices are in a highly competitive product category, with strong downward price pressure from non-dealer service centres.
- Used vehicle sales also, receive strong competition from private sellers and other dealers.

On balance, it is the view of the MMAL NDC that many motor dealers will not be able to outlast any pricing transition and their businesses will fail.

5. The failure to explore issues of insurance product design, competition, disclosure, transparency and comparisons of premiums, claims ratios etc

The ICA proposal appears to have one focus. To eliminate the viability and therefore competition of insurance sales in the Dealer Channel and provide easier access to online sales activities of its members.

The MMAL NDC understands that, at least one insurer, made a submission to the ICA for inclusion in the Gilbert & Tobin submissions, that the dealers need MORE than 20% commission and other insurers said they did not want it in the proposal.

The MMAL NDC understands also, at least one insurer, also argued that a 3 year transition is necessary, but the ICA have not disclosed that their own members argued that need either.

This is clear cartel activity by the ICA, without approval, as G&T did not give advice that there was dissention among insurers in the G&T submissions, they just implied that the respondents such as AADA were in dissent.

Under the existing business model, consumers can obtain their vehicle and, all their finance and insurance needs, on the same day the vehicle is purchased, dealing with an entity and people that they have established a relationship with. That is a genuine competitive and consumer advantage of doing business at a dealership. It is not a situation of poor competition.

Dealers are under enormous competitive pressure to provide the package of vehicle, finance and insurance at the best possible pricing and in the easiest framework possible. They compete against Banks, Brokers and other Dealerships for the same business. If finance and insurance prices are too high, consumers simply switch to another dealer who may be offering a better overall package. In this respect the market operates very well.

Typically, finance and insurance arranged outside the Dealer Channel takes far longer to settle – which delays the delivery for the consumer – and often can be less competitive than within the Dealer Channel.

The Dealer Channel customers are also rigorously surveyed by Vehicle Distributors to ensure customer satisfaction, which is not the case in the Broker, Bank and Insurance Company (direct/online) Channels.

A reduction in dealers' commissions will not necessarily deliver consumer benefit in terms of reduced premiums. Conversely it is likely to drive motor dealers out of the sales channel and leave consumers at risk of less competition.

The MMAL NDC understand that on 26th October 2016 the ACCC wrote to the Insurance Council's legal representatives requesting answers to the following questions: -

1. Why the proposed 20% cap is considered an appropriate amount?

2. Why/how would lower commissions result in lower prices to consumers given the lack of price sensitivity of typical consumers of add-on insurance products?

3. Why a cap on commissions is likely to have an effect on problematic sales practices associated with add-on insurance products?

4. The scope of the proposal – does the proposal address all relevant sales channels?

It is apparent that these questions have not been satisfactorily answered, and some not at all, answered in the "Response to interested party submission" by Gilbert and Tobin proposal on behalf of the ICA.

In closing, the MMAL NDC urges your office to reject the anti-competitive application for the Cartel of insurers.

Yours sincerely,

Peter McInnes
Executive Director
MMAL National Dealer Council Inc
9th December, 2016.