



# Draft Determination

Application authorisation  
lodged by  
National Honda Dealer Council Limited  
in respect of  
collective negotiations with Honda Australia regarding new dealer  
agreements  
Authorisation number: AA1000528

30 October 2020

Commissioners: Sims  
Rickard  
Court  
Ridgeway

## Summary

The ACCC proposes to grant authorisation to enable the National Honda Dealer Council and a group of Honda dealers to collectively negotiate with Honda Australia in relation to the transition of some Honda dealers to a new agency model proposed to be entered into between Honda Australia and the dealers.

The ACCC considers the arrangements are likely to result in some public benefits, including transaction cost savings for all parties. The ACCC considers the arrangements for which authorisation is sought are likely to result in only limited public detriment given Honda Australia and the dealers will continue to face competition from other vehicle manufacturers and service providers, the narrow scope of the proposed conduct, and the voluntary nature of participation in the proposed conduct. Regardless of any collective conduct by Honda dealers, competition between them is likely to be affected by Honda Australia's decision to transition to agency arrangements (which is not the subject of the ACCC's assessment).

The ACCC proposes to grant authorisation until 31 July 2026.

The ACCC invites submissions by 13 November 2020 in relation to this draft determination before making its final decision.

### 1. The application for authorisation

- 1.1. On 21 August 2020, the National Honda Dealer Council Limited (the **NHDC**) lodged application for authorisation AA1000528 with the Australian Competition and Consumer Commission (the **ACCC**). The NHDC is seeking authorisation for itself and a group of Honda Australia Pty Ltd (**Honda Australia**) dealers, to collectively negotiate with Honda Australia in relation to the transition of Honda dealers to a new agency model proposed to be entered into between Honda Australia and the dealers. The group of dealers is comprised of dealers transitioning to Honda Australia's proposed new agency model (the **Dealers**). Any transitioning Honda Australia dealer is free to join the group.
- 1.2. The NHDC seeks authorisation for 11 years. This application for authorisation AA1000528 was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
- 1.3. The ACCC may grant authorisation which provides businesses with legal protection for arrangements that may otherwise risk breaching the competition law but are not harmful to competition and/or are likely to result in overall public benefits. In this instance, legal protection is sought because Honda dealers may be in competition with each other in relation to certain products or services.
- 1.4. The NHDC also requested, and on 16 September 2020, the ACCC granted under subsection 91(2) of the Act, interim authorisation to enable it and the Dealers to commence collective negotiations with Honda Australia while the ACCC is considering the substantive application.

## 2. Background

### Honda Australia's New Model

- 2.1. In March 2020, Honda Australia publicly announced that it intends to replace Dealers' arrangements with a new agency model proposed to be entered into between Honda Australia and the Dealers (the **New Model**), whereby Dealers would deal with consumers as agents of Honda Australia in some respects, rather than in their own right. Honda Australia has announced its current intention is to adopt a 'one price everywhere' policy so consumers have access to transparent and consistent pricing set by Honda Australia. The New Model is to be implemented by July 2021.
- 2.2. Honda Australia advises that the New Model was developed in order to maintain a viable and sustainable business in the face of numerous industry-wide challenges. Honda Australia's stated aim in transitioning to the New Model is to improve the customer's experience in purchasing Honda vehicles.
- 2.3. The NHDC advises that, as presently structured, under the New Model, Dealers would not sell accessories, servicing, parts, used cars and insurance as agents of Honda Australia, meaning that they will continue to offer these products and services in competition with one another. However, the NHDC asserts that, as part of the transition to the New Model, Honda Australia proposes to exercise control over many of those elements and to provide directions to Dealers about how those parts of the business are to be conducted – for example, to require Dealers to use certain providers for services such as insurance, after-market products and oils.
- 2.4. Honda Australia has also announced that it intends to reduce the number of dealerships and models of Honda vehicles sold in Australia. As a result, in moving from current arrangements to the New Model, Honda Australia will terminate agreements with a number of dealers, whereas others will transition to new agency arrangements.
- 2.5. The current application for authorisation is **not** for the New Model, but rather for proposed conduct by Dealers in response to the New Model, and accordingly it is not within the scope of this authorisation process for the ACCC to assess the New Model.

### The NHDC and Honda Australia dealers

- 2.6. The NHDC is an advocacy body for Honda Australia dealers, comprised of representatives nominated by each state and territory council of Honda Australia dealers.
- 2.7. Currently, Honda Australia's dealers sell new and used Honda motor vehicles, and associated financing, insurance, affiliated products, aftermarket products, and pre-delivery and after-sale vehicle servicing and parts. Each dealer has entered into a dealer agreement following individual negotiations with Honda Australia. The ACCC understands there are around 60 Honda Australia dealers, operating over more than 100 sites.
- 2.8. The NHDC submits, and the ACCC has accepted, that the specific Dealers the subject of the authorisation application cannot be publicly disclosed at this point, because doing so would effectively identify which Honda Australia dealers will be terminated, and which will be transitioned to the New Model. The NHDC submits that such a disclosure would be prejudicial to the businesses of the terminated dealers during the period prior to termination and damage the Honda brand more generally. However, the

NHDC agreed to provide Honda Australia with a list of which dealers form the group, prior to the commencement of any collective negotiation.

### 3. The Proposed Conduct

3.1. The NHDC is seeking authorisation for itself and the Dealers to:

- discuss and share information about the proposed New Model (including its terms and the proposed transition from the existing arrangements to the new agency agreements) and,
- to the extent required, collectively bargain with Honda Australia, and
- to the extent required, give effect to any agreements arising from those collective negotiations.

(the **Proposed Conduct**).

3.2. The Proposed Conduct extends to new and used Honda cars, servicing and parts. The Proposed Conduct does not extend to motorbikes, quad bikes, scooters, marine or other vehicles.

3.3. The NHDC itself will not enter into any binding agreements with Honda Australia but will play a role in assisting and supporting the Dealers to discuss the New Model between themselves, and will represent the Dealers in any collective negotiations with Honda Australia. Individual dealers will then enter into individual agreements with Honda Australia which may include terms in respect of which agreement is reached as a result of collective negotiations.

3.4. The NHDC submits that Dealers who elect to participate in the application for authorisation are under no obligation to engage in joint discussions or collective bargaining.

3.5. NHDC has sought authorisation for 11 years.

### 4. Consultation

4.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.

4.2. The ACCC invited submissions from a range of potentially interested parties including Honda Australia, industry associations and government bodies. Two submissions were received in response, from the Australian Automotive Dealer Association (**AADA**) and Honda Australia.<sup>1</sup> The AADA supports the application for authorisation. Honda Australia advises it does not object to the application, but raises a number of concerns (discussed in detail below).

4.3. Public submissions by the NHDC and interested parties are on the Public Register for this matter.

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<sup>1</sup> A list of the parties consulted and the public submissions received is available from the ACCC's public register [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister).

## 5. ACCC assessment

- 5.1. The ACCC's assessment of the Proposed Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
- 5.2. The NHDC has sought authorisation for Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may substantially lessen competition within the meaning of section 45 of the Act. Consistent with subsection 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (authorisation test).

### Relevant areas of Competition

- 5.3. To assess the likely effect of the Proposed Conduct, the ACCC will identify the relevant areas of competition likely to be impacted.
- 5.4. The NHDC submits that the primary products affected are new Honda vehicles, but also Honda used vehicles, servicing and parts.
- 5.5. Depending on the scope of the products and services Honda Australia includes within the New Model, the NHDC submits that the Proposed Conduct has potential to affect competition in the markets for other products and services as well – for example, insurance and aftermarket products.
- 5.6. The ACCC considers that the relevant areas of competition are likely to be those for:
  - the supply of various products and services to consumers, including new cars, used cars, aftermarket products, insurance, servicing and repairs, in various regional markets in Australia
  - the supply of various services to car dealers in Australia, including franchise services, new cars, and parts.
- 5.7. The ACCC does not consider it necessary to precisely define the relevant markets for the purposes of its assessment of the Proposed Conduct.

### Future with and without the Proposed Conduct

- 5.8. In applying the authorisation test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.
- 5.9. The NHDC submits that the competitive dynamics of the relevant markets will change as a result of the New Model regardless of whether authorisation is granted, as Honda Australia intends to introduce the New Model in some form in any event.
- 5.10. The ACCC accepts that in the future without the Proposed Conduct, Honda Australia is likely to introduce the New Model in some form. Therefore, the ACCC accepts that in the future without the Proposed Conduct existing competition between Honda Australia dealers will be significantly reduced, or – in the case of competition for the supply for those products for which the Dealers become Honda Australia agents - eliminated.
- 5.11. The NHDC also submits that, if the Proposed Conduct is not authorised, the Dealers will not be able to share information amongst themselves about their negotiations with

Honda Australia and will be significantly disadvantaged in those negotiations for the transition to the New Model.

5.12. The ACCC considers that, absent the Proposed Conduct, the Dealers are likely to engage in individual negotiations with Honda Australia regarding the transition to the New Model.

## Public benefits

5.13. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that the term should be given its widest possible meaning, and includes:

*...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.<sup>2</sup>*

5.14. The ACCC has considered the following public benefits:

- transaction cost savings
- reduction of information asymmetry
- improved input into contracts, and
- increased competition for the supply of Honda products

## Transaction cost savings

5.15. Collective bargaining enables members of a bargaining group to share some or all of the transaction costs of preparing to negotiate, negotiating, and preparing contracts, and therefore can reduce the total costs incurred by the group. Lower transaction costs mean that negotiations can go further than they would do if transaction costs were higher, which can result in a more efficient outcome. This can potentially make the bargaining group and the target better off.

5.16. The NHDC submits that the Proposed Conduct will reduce the costs of negotiating the new agreements relative to the costs of undertaking a series of separate individual negotiations, including the sharing of legal and other professional costs. The NHDC also submits that collective bargaining will streamline the negotiation process between the Dealers and Honda Australia.

5.17. The ACCC considers that the Proposed Conduct is likely to result in transaction cost savings through:

- allowing Dealers to share (and therefore reduce) the costs of preparing for, and engaging in, negotiations and/or an individual tender process, through identifying and discussing common contractual problems, and sharing the costs of engaging expert advice and/or administrative services
- reducing Honda Australia's costs, should it choose to negotiate with the Dealers collectively.

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<sup>2</sup> Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

## **Reduction of information asymmetry**

- 5.18. Information asymmetry occurs when one party to a negotiation has access to relevant information that the other party does not. Where there is information asymmetry, the party lacking information may accept or contemplate different terms than it would if more information were available to it. Under these circumstances, the outcomes of the negotiation may not capture many of the available efficiencies. Information asymmetry can often be addressed by improving the transparency of market information. If collective bargaining improves the availability and use of information, it has the potential to enable more complete and efficient contracts to be negotiated that better reflect the needs of members of the bargaining group.
- 5.19. The NHDC submits that bargaining power between Dealers and Honda Australia will be 'equalised' as a result of the Proposed Conduct, by allowing Dealers to share information and jointly negotiate issues. The NHDC submits that collective bargaining prevents Honda Australia from being the only party in possession of all the respective trading terms and market information. It further submits that Dealers will be prejudiced if they are excluded from that information and are unable to ascertain the terms negotiated with other Dealers.
- 5.20. The ACCC considers that the Proposed Conduct is likely to result in some public benefit through addressing, in part, an asymmetry of information between each of the Dealers and Honda Australia, and in so doing may facilitate more efficient outcomes from negotiations.
- 5.21. The ACCC considers that there is likely to be information asymmetry between Honda Australia and each of the Dealers. This is because Honda Australia has information about all of the Dealers through its negotiations and arrangements with each of them, whereas each Dealer only has information about Honda Australia through its own negotiations and has very limited information about the other Dealers, and therefore the options available to it in negotiations. If the Dealers are permitted to share information relevant to negotiations, the ACCC considers that this information asymmetry may be addressed in part.

## **Improved input into contracts**

- 5.22. The ACCC accepts that, where there is a significant imbalance of bargaining power between two parties in a negotiation, there may be little or no opportunity for the weaker party to negotiate variations that could result in a more efficient and effective contract overall. One way that parties can seek to redress their disadvantage is to bargain collectively.
- 5.23. Honda Australia submits that it has been engaged in ongoing consultation with the NHDC regarding the New Model and proposed terms of the new agreement since at least May 2020, with a copy of the draft agreement being provided to the NHDC on 29 May 2020. Honda Australia considers the consultation to date has been collaborative and constructive, with Honda Australia demonstrating its willingness and enthusiasm to engage with dealers. Honda Australia submits it has not placed undue pressure on dealers, or implied that ongoing relationship may be impacted by delays.
- 5.24. Honda Australia also submits that the New Model will not reduce competition in the Australian automotive market, because this market is highly competitive and Honda's market share is less than 4%.

5.25. The ACCC has previously noted that there is an imbalance of bargaining power between car manufacturers and new car dealers.<sup>3</sup> The ACCC does not consider that a change in the relative bargaining power of parties to negotiations in and of itself constitutes a public benefit. Rather, the focus of the ACCC's assessment is on the outcome of any changes in relative bargaining power and efficiencies that are likely to be achieved. The ACCC accepts that the Proposed Conduct will allow the Dealers to jointly identify, strategise and propose solutions in relation to standard contract terms they may wish to negotiate. The ACCC considers that the Proposed Conduct is likely to result in a public benefit where the increased input of the Dealers into the agreements results in efficiencies which are mutually beneficial to both the Dealers and Honda Australia.

### **Increased competition for the supply of Honda products**

5.26. The NHDC submits that authorising joint discussions and collective bargaining increases the opportunity for Dealers to be able to have input into the terms negotiated with Honda Australia which preserve the autonomy of Dealers and a greater ability to compete at the dealer level, when compared with the New Model as currently proposed by Honda Australia. The NHDC also submits that the Proposed Conduct is likely to decrease the risk of monopoly conduct by increasing the likelihood that Dealers will have input in order to retain the ability to independently compete in a meaningful way in the market for the sale of Honda products and services after the transition to the New Model.

5.27. The ACCC does not consider there is sufficient evidence currently before it to conclude that increased input into contracts will result in increased competition between Honda dealers, or to increase competition for the supply of Honda products, because it is not clear what level of competition is possible between Honda dealers in different regions, but this is likely to be limited and perhaps only in relation to particular products or services (such as the acquisition of finance, insurance, and aftermarket products, for example).

### **ACCC conclusion on public benefit**

5.28. The ACCC considers that the Proposed Conduct is likely to result in public benefits from:

- reduced transaction costs
- reduced information asymmetry, and
- improved input into contracts.

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<sup>3</sup> See ACCC submission to the Department of Industry, Regulation Impact Statement – franchise relationships between car manufacturers and new car dealers, 13 February 2019 (<https://www.accc.gov.au/system/files/ACCC%20submission%20to%20the%20franchise%20relationships%20between%20car%20manufacturers%20and%20new%20car%20dealers%20RIS%20-%2013%20February%202019.pdf>) and

ACCC Final Report into the New Car Retailing Industry, December 2019, pp78-91 (<https://www.accc.gov.au/publications/new-car-retailing-industry-market-study-final-report>).



## Public detriments

5.29. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

*...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.<sup>4</sup>*

### NHDC view

5.30. The NHDC submits that there is no public detriment likely to result from the Proposed Conduct, due to:

- the move to the New Model regardless of whether or not collective bargaining occurs
- the relatively small share of sales of motor vehicles in Australia held by Honda Australia
- the nature of the Proposed Conduct, being restricted as to scope and voluntary in nature.

### Honda Australia view

5.31. Honda Australia considers it appropriate for the ACCC to minimise the opportunity for detriments by imposing conditions on authorisation, namely:

- the NHDC provide Honda Australia with a list of dealers it is representing, to reduce the risk of prohibited conduct by dealers which are not covered by the authorisation, and
- the NHDC and the Dealers be required:
  - not to pressure any dealer to be represented by the NHDC or become covered by the authorisation
  - not to seek, in negotiating with Honda Australia, that dealers not covered by the authorisation receive any terms less favourable than the Dealers covered by the authorisation, and
  - to respect the confidentiality of any negotiations between Honda Australia and a dealer not covered by the authorisation.

5.32. In response, the NHDC submits that:

- it will disclose the names of those dealers who will be participating as soon as the authorisation comes into force.
- all continuing dealers have been invited to participate and can elect to be included in the group at any time. Those dealers who choose to join are under no obligation to engage in joint discussions or collective bargaining.
- there is no need for the conditions proposed by Honda Australia because there is no suggestion that any of the conduct outlined in the conditions has occurred

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4 Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

or will occur, and the imposition of these conditions would be inappropriate and misleading because it would infer that ACCC intervention in this respect was necessary.

#### ACCC view

5.33. The ACCC considers that collective bargaining has the potential to result in a public detriment by reducing the potential for competition between the parties to the collective bargaining arrangement. To the extent that Dealers negotiate collectively with Honda Australia to supply Honda products and services, there is the potential for reduced competition between the Dealers on the terms on which they supply those products and services. In addition, collective activity (including the sharing of commercial information) between competitors can give rise to additional detriments by increasing the likelihood of coordinated conduct (rather than competition) beyond the terms of the authorised agreement.

5.34. However, as set out in paragraph 5.10 above, in the future (with or without the Proposed Conduct) the ACCC accepts that there will be significantly reduced or eliminated competition between Dealers as a result of the introduction of the New Model by Honda Australia. While this significantly reduces the potential for intra-brand competition between the Dealers it is not as a result of the Proposed Conduct.

5.35. The risk of public detriment arising from the Proposed Conduct is limited because:

- the Proposed Conduct is narrow in scope, in that it can occur only in respect of arrangements for the transition to the New Model
- participation in the Proposed Conduct is voluntary for Honda Australia dealers and Honda Australia. The Dealers and Honda Australia remain free to negotiate their own individual arrangements.
- the constraint provided by inter-brand competition in relation to the supply of new cars will continue i.e. customers have a range of brand options when making a new vehicle purchase
- the constraint provided by independent operators supplying servicing and repairs of vehicles in competition with the Dealers will continue, and
- any information shared between Dealers under the Proposed Conduct is likely to lose relevance over time following the transition into the New Model.

5.36. The ACCC does not propose to impose the conditions requested by Honda Australia, because:

- NHDC has agreed to disclose the names of dealers covered by the authorisation to Honda if authorisation is granted
- Honda Australia remains free to determine what terms it wishes to offer to various Honda dealers (whether in the group or not), what confidentiality requirements it intends to impose on the parties it negotiates with, and whether to negotiate with the bargaining group at all
- each Honda dealer that is transitioning to the New Model remains free to decide whether or not to join the bargaining group, based on their individual circumstances

- dealers who elect to participate in the Proposed Conduct are under no obligation to engage in joint discussions or collective bargaining, and
- there has been no suggestion of discrimination by NHDC and no concerns raised by any Honda dealers.

### **Conclusion on public detriment**

5.37. The ACCC considers that the Proposed Conduct is likely to result in limited public detriment.

### **Balance of public benefit and detriment**

5.38. The ACCC considers that the Proposed Conduct is likely to result in public benefits in the form of:

- transaction cost savings
- reduction of information asymmetry, and
- improved input into contracts.

5.39. The ACCC considers that the Proposed Conduct is likely to result in limited public detriment, because of the narrow scope of the conduct, the voluntary nature of the parties' participation, the constraint provided by competitors, and the limited relevance of the information to be shared after the New Model has been entered into.

5.40. Therefore, for the reasons outlined in this draft determination, the ACCC is satisfied that the Proposed Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Proposed Conduct.

### **Length of authorisation**

5.41. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>5</sup> This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

5.42. In this instance, the NHDC seeks authorisation for 11 years from the date of the ACCC's final determination, on the basis that initial agreements are intended to operate from July 2021 for five years, with a potential to renew for another five years.

5.43. Honda Australia submits that authorisation for the term requested would be inappropriate, because the Proposed Conduct permits the Dealers to discuss the terms of the New Model, which is intended to be finalised and implemented by July 2021. Honda submits that authorisation should be granted for the period up until the new agency agreement has been executed by the dealers (before July 2021).

5.44. On the basis of the information available, the ACCC proposes to grant authorisation until 31 July 2026.

5.45. The ACCC considers that, given the purpose of this authorisation is to negotiate regarding the transition to the New Model, it would be appropriate for the NHDC to

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<sup>5</sup> Subsection 91(1)

separately seek authorisation for any further collective negotiations at the end of the five year agreements.

## 6. Draft determination

### The application

- 6.1. On 21 August 2020, the NHDC lodged application AA1000528 with the ACCC, seeking authorisation under subsection 88(1) of the Act.
- 6.2. The NHDC seeks authorisation for the Proposed Conduct (defined at paragraph 3.1). Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

### The authorisation test

- 6.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Proposed Conduct.
- 6.4. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the Proposed Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.
- 6.5. Accordingly, the ACCC proposes to grant authorisation.

### Conduct which the ACCC proposes to authorise

- 6.6. The ACCC proposes to grant authorisation AA1000528 to enable the NHDC and any Honda Australia dealers transitioning to Honda Australia's proposed new agency model who have already joined the bargaining group, or who choose to join in the future, to:
  - a) discuss and share information about the terms of the termination of existing dealership arrangements between Honda Australia dealers and Honda Australia
  - b) discuss and share information about the proposed terms of the New Model
  - c) collectively negotiate with Honda Australia in relation to the above issues
  - d) individual Dealers to enter into agreements with Honda Australia on the basis of collective negotiations, and
  - e) give effect to any agreements arising from those collective negotiations.
- 6.7. Discussions between NHDC and the Dealers, and negotiations with Honda Australia, may cover the terms of the proposed New Model, including terms and information with respect to:
  - commissions

- circumstances in which capital expenditure will be reimbursed and the nature and calculation of that reimbursement
  - Honda Australia's proposed 'one price everywhere' model for new vehicle pricing
  - compensation and reimbursement for included services
  - vehicle servicing arrangements with Honda Australia
  - arrangements for finance, insurance, oil, aftermarket products, accessories
  - territory boundaries, and
  - processes for termination and transfers of the Dealers' businesses
- 6.8. The conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.
- 6.9. The ACCC proposes to grant authorisation AA1000528 until 31 July 2026. The ACCC notes that engaging in the conduct described at 6.6(a)-(d) beyond the point at which the transition to the New Model has completed would be outside the scope of the authorised Conduct.
- 6.10. This draft determination is made on 30 October 2020.

## Conduct which the ACCC proposes not to authorise

- 6.11. The proposed authorisation does not extend to permit the Dealers or NHDC to:
- agree price or other terms on which Dealers would compete with each other during any transition to the New Model; or
  - agree price or other terms on which Dealers would compete with each other if competition between Dealers is able to be preserved; or
  - coordinate the supply of goods or services to consumers; or
  - share information regarding:
    - personal details of existing Dealer clients and Dealer staff
    - special terms agreed between individual dealers and their clients
    - special terms agreed with providers of services such as insurance, finance and spare parts, or
    - details of existing business plans for the way in which individual dealers currently compete with each other.

## 7. Next steps

- 7.1. The ACCC now invites submissions in response to this draft determination by 13 November 2020. In addition, consistent with section 90A of the Act, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.