



Our ref: MA1000018
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5 July 2019

Dear interested party,

AP Eagers' proposed acquisition of AHG – consultation on proposed divestment

I refer to the application for merger authorisation lodged by AP Eagers Limited (**AP Eagers**) for its proposed acquisition of the ordinary shares in Automotive Holdings Group Limited (**AHG**) that it does not already own (**proposed acquisition**).

The purpose of this letter is to seek stakeholder feedback on the divestiture undertaking proposed by AP Eagers.

AP Eagers has offered the ACCC a court enforceable undertaking to sell the AP Eagers new car retailing and related businesses in the Newcastle and Hunter Valley region to address the ACCC's competition concerns set out in the market feedback letter dated 24 June 2019 (available at this [link](#)). The divestiture (via either a share or asset sale) must be completed within a defined period to an ACCC approved purchaser (the **divestment proposal**). AP Eagers would retain the AHG new car retailing and related businesses in the Newcastle and Hunter Valley region if the proposed acquisition is completed. To view a copy of the divestiture undertaking proposed by AP Eagers, please refer to the ACCC public register: [link](#).

The ACCC is seeking the views of market participants on whether the divestiture undertaking would address the competition concerns identified and create an effective, long term competitor for new car retailing and related supplies and services in the Newcastle and Hunter Valley region. An overview of the divestment proposal and a list of questions you may wish to address in your submission is at **Attachment A**.

Making a submission

Due to the statutory timeframe, we request that you provide your submission by no later than **4.00pm on Friday, 12 July 2019**. The ACCC has discretion whether to take into account submissions received after this date.

Submissions should be emailed to APEagers-AHG-Mergers@accc.gov.au with the subject [your company name]: MA1000018 – consultation on divestment.

If you would prefer to provide comments by telephone, please contact Elizabeth Elias on 02 6243 1104 or Jessie-Grace Stephenson on 02 9102 4064 to organise a suitable time.

The public register and confidentiality

Authorisation is a public process. The ACCC must keep a public register of documents relating to the application for merger authorisation, including submissions made by interested parties. The ACCC's public register is available at the following link: [Merger authorisations register](#).

All submissions (including yours) will be published subject to confidentiality claims. You may request that your submission, or parts of it, is excluded from the public register for confidentiality reasons. For example, if your submission contains commercially sensitive information or if revealing that you have made a submission could cause you commercial harm. You must make your claim for confidentiality at the time of providing the submission to the ACCC and all claims must be substantiated.

If you wish to make such a request, please refer to the [ACCC's Guidelines](#) for excluding information from the public register.

Next steps

The ACCC must issue a determination in relation to this merger authorisation application by 26 July 2019, unless this timeframe is extended.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'DMcCracken-Hewson', with a long horizontal flourish extending to the right.

Daniel McCracken-Hewson
A/g General Manager
Merger Investigations Branch

Attachment A

Overview of divestment proposal

AP Eagers' divestment proposal includes:

- All of AP Eagers' new car retailing dealerships and related business sites in the Newcastle and Hunter Valley region, as outlined in the table below (**divestiture business**).

Table 1: AP Eagers' dealerships and related sites in Newcastle/Hunter Valley Region

Dealership/site	Address
Cardiff Ford	369 Main Road, Cardiff NSW 2285
Cardiff Honda	2 Sturt Road, Cardiff NSW 2285
Cardiff Hyundai	2 Sturt Road, Cardiff NSW 2285
Cardiff Nissan	367 Main Road, Cardiff NSW 2285
Highway Ford	190-198 New England Highway, Rutherford NSW 2320
Highway Hyundai	190-198 New England Hwy, Rutherford NSW 2320
Kloster BMW	934 Hunter Street, Newcastle West NSW 2302
Kloster Ford	Cnr Tudor St & Gordon Av, Hamilton NSW 2303
Kloster Honda	24-26 Tudor Street, Hamilton NSW 2303
Kloster Hyundai	14-22 Tudor Street, Hamilton NSW 2303
Kloster Mini Garage	2 Sturt Road, Newcastle West NSW 2303
Kloster Mitsubishi	49-57 Tudor Street, Hamilton NSW 2303
Kloster Nissan	33-35a Tudor Street, Hamilton NSW 2303
Kloster Suzuki	37-43 Tudor Street, Hamilton NSW 2303
Kloster Volkswagen	49-57 Tudor Street, Hamilton NSW 2303 2 Sturt Road, Cardiff NSW 2285
Kloster Ford (service site)	185-189 Adelaide Street, Raymond Terrace
Kloster Parts	12 Albert Street, Wickham NSW
Kloster Volkswagen (warehousing)	31 Gordon Avenue, Hamilton, NSW

- Includes the following assets necessary for the effective operation of the divestiture business:
 - long term leases of AP Eagers owned land that dealership sites are located on
 - leases of third party owned land that dealership sites are located on (subject to third party consents)
 - dealership agreements with manufacturers (subject to third party consents)
 - licences/permits, unsold new vehicle and parts stock, and fittings, fixtures and equipment on site, and
 - employees that are directly or primarily involved in the divestiture business.

- At the option of an ACCC approved purchaser, a transitional technical assistance agreement to supply any technical assistance that is required by the purchaser, in order to operate the divestiture business.
- At the option of an ACCC approved purchaser, a transitional supply agreement for any goods or services that are required in order for the approved purchaser to be established as a viable, effective, stand-alone, independent and long-term competitor for new car retailing and related supplies and services in the Newcastle and Hunter Valley region.

The ACCC will review and approve or reject any proposed purchaser of the divestiture business.

Questions for market participants

We have set out below a list of questions you may wish to address in your submission. If there are other issues that you consider relevant to the ACCC's consideration of the divestment proposal and undertaking, please provide views on those issues in your response.

1. Is the divestment proposal and undertaking sufficient to replace any loss of competition resulting from the proposed acquisition? Why or why not?
2. Does the undertaking include all necessary assets and personnel that a purchaser would require to effectively operate the divestiture business? If not, please describe the necessary assets and personnel required to operate the divestiture business effectively, in particular:
 - a. Licences or permits, including any third party and/or government consents (aside from consents by landowners or manufacturers).
 - b. Any assets, personnel and/or distribution arrangements of the corporate owner of the business, not managed or held by the divestiture business (for example, of AP Eagers' head office).
3. If AP Eagers were to act as the long-term lessor for some of the divestiture business sites would you have concerns? If so, please identify options for dealing with these concerns.
4. What factors do car manufacturers generally take into account when considering an application to transfer a dealership agreement to a new owner? In your experience, what reasons are typically relied upon by a manufacturer to reject an application?