



HERBERT
SMITH
FREEHILLS

Tom Leuner
General Manager, Merger Investigations Branch
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

29 May 2019
Ref MA1000018-1
By email

Dear Mr Leuner

**Application for merger authorisation by APE dated 29 April 2019 -
AHG submission**

We refer to the ACCC's letter of 9 May 2019 regarding APE's application for merger authorisation (**authorisation application**).

Enclosed with this letter and titled 'Attachment B' is AHG's submission on the authorisation application.

Please contact us should you wish to discuss the contents of the submission.

Yours sincerely

Liza Carver
Regional Head of Practice (CRT) Australia
Herbert Smith Freehills

+61 2 9225 5574
+61 414 926 310
liza.carver@hsf.com

Ashna Taneja
Solicitor
Herbert Smith Freehills

+61 2 9225 5469
+61 2 9322 4000
ashna.taneja@hsf.com



Attachment B: clarifications and corrections to merger authorisation application filed by APE on 29 April 2019

AHG makes the following clarifications and corrections to the public version of the authorisation application filed by APE on 29 April 2019 (**authorisation application**), available on the ACCC's register as at 29 May 2019.

AHG has sought to identify factual information that requires material corrections and clarifications relating to AHG only, and to verify the necessary corrections or clarifications, to the extent possible in the limited time available between 9 May 2019 and 29 May 2019. AHG has, at the same time, been involved in responding to ACCC requests for further information and documents in connection with the authorisation application.¹ AHG has not reviewed any of the annexures to the authorisation application in preparing this submission.

AHG further notes that:

- if it becomes aware of further material corrections or clarifications, it will provide the ACCC that information at that time;
- it has not considered whether there are material omissions in the APE application;
- in preparing this submission, it has not considered (and should not be taken to have explicitly or implicitly agreed or disagreed with) any non-factual information contained in the APE authorisation application. In particular, AHG has not considered any conclusions said to flow from the factual information in the submission nor issues of legal interpretation, for example as to the appropriate market definition, the basis for the calculation of market shares, nor the assessment or conclusions about competitive effects, merger efficiencies or public benefits.

Item	Section/reference	Clarification or correction
1.	Table 1: Summary of AP Eagers and AHG share estimates (page 7)	The figures for AHG are consistent with AHG's own understanding of its market shares. AHG has reviewed the market share figures on the basis presented in the submission for factual accuracy only. As noted above, AHG has not considered whether the market definition adopted or the basis of share calculation is appropriate.
2.	Table 2: AP Eagers and AHG information – Question 1.3: Description of business activities (pages 9 – 10; see also footnotes 5 and 6)	For the purposes of its ordinary course business and record keeping, AHG appears to classify and calculate the number of dealerships it has differently from APE. APE's approach to classification and calculation is set out at footnotes 5 and 6 of the authorisation application on page 10. With some small variations for specific brands, APE treats each brand sold as a separate "dealership", even if some of those brands are sold from the same location. By contrast, what AHG calls a "dealership" refers and

¹ We refer to the letters of 22 May 2019 and 27 May 2019 from Herbert Smith Freehills to the ACCC.



Item	Section/reference	Clarification or correction
		<p>corresponds to its physical location (this is referred to in the authorisation application as a “dealership site” or “dealership location”).</p> <p>For the purposes of its ordinary course business and record keeping, AHG also calculates the number of franchises it has and so, for completeness, provides that information to the ACCC. This calculation is the total number of brands sold at each dealership. To illustrate this approach, if a dealership sold Toyota, Ford and Hyundai brands, it would be considered to have 3 franchises, and be one dealership.</p> <p>Taking this approach, AHG:</p> <ul style="list-style-type: none">• represents 26 car brands and 10 commercial, truck and bus brands;• has 148 car franchises and 33 truck and bus franchises;• has 95 new car and 11 new truck dealership locations across Australia; and• owns 9 new car dealerships in New Zealand. <p>AHG has 181 franchises and 115 dealerships across Australia and New Zealand.</p>
3.	Table 2: AP Eagers and AHG information – Question 1.4: Email address for service (page 10)	Since the authorisation application was filed (ie on 29 April 2019), AHG’s email address for service has been updated to liza.carver@hsf.com .
4.	Table 3: Summary of products and services supplied by AP Eagers and AHG – Used vehicle retailing and wholesaling (page 17)	<p>Carlins Automotive Auctioneers (Carlins) is not wholly owned by AHG, and is not operated by AHG.</p> <p>AHG has a 51% shareholding in Carlins (the other 49% is owned by Robert Carlin). Carlins is operated independently of AHG. There is no crossover in senior management (including the respective boards) as between AHG and Carlins. AHG does not have any nominee directors on Carlins’ board.</p>
5.	Table 3: Summary of products and services supplied by AP Eagers and AHG – Smash repairs (page 18)	<p>AHG is a supplier of smash repairs. AHG has 2 smash repair locations in Australia, which are:</p> <ul style="list-style-type: none">• City Motors (West Perth, WA);• Western Pacific Autobody (Bassendean, WA).
6.	Table 3: Summary of products and services supplied by AP Eagers and AHG – Refrigerated and other logistics (page 19)	This product/service category should also include motorbike distribution and parts distribution (these are also services that AHG provides).



Item	Section/reference	Clarification or correction
7.	Table 4: Manufacturers for which AP Eagers and AHG supply new cars and replacement parts (page 20)	AHG supplies new cars and replacement parts for Mercedes-Benz Cars and Volvo. There should therefore be a tick next to each of these OEMs.
8.	Table 5: Manufacturers for which AP Eagers and AHG supply new trucks and OEM replacement parts (page 21)	AHG does not supply new trucks or OEM replacement parts for Higer or JAC. There should therefore be a cross next to each of these OEMs.
9.	Table 6: Summary of AP Eagers' and AHG's new vehicle dealerships in Australia (page 21)	As set out above in item 2, AHG classifies and calculates the number of dealerships that it has differently from APE. Applying AHG's approach, AHG has the following number of new vehicle dealerships in Australia: <ul style="list-style-type: none">• NSW: 33 (with 54 franchises)• Victoria: 25 (with 35 franchises)• Tasmania: 0• Queensland: 14 (with 31 franchises)• South Australia: 0• Northern Territory: 0• Western Australia: 34 (with 51 franchises)• Australia: 106 (with 171 franchises)
10.	Table 7: Summary of AP Eagers' and AHG's new car dealerships in Australia (page 22)	As set out above in item 2, AHG classifies and calculates the number of dealerships that it has differently from APE. Applying AHG's approach, AHG has the following number of new car dealerships in Australia: <ul style="list-style-type: none">• NSW: 31• Victoria: 23• Tasmania: 0• Queensland: 10• South Australia: 0• Northern Territory: 0• Western Australia: 31• Australia: 95



Item	Section/reference	Clarification or correction
11.	Table 8: Summary of AP Eagers' and AHG's new truck and bus dealerships in Australia (page 22)	As set out above in item 2, AHG classifies and calculates the number of dealerships that it has differently from APE. Applying AHG's approach, AHG has the following number of new truck and bus dealerships in Australia: <ul style="list-style-type: none">• NSW: 2• Victoria: 2• Tasmania: 0• Queensland: 4• South Australia: 0• Northern Territory: 0• Western Australia: 3• Australia: 11
12.	Question 5 – 5.1: Overview of Australian motor vehicle supply chain – (a) import of vehicles and automotive parts (page 23)	The application states that motor vehicle manufacturing operations have been withdrawn from Australia since 2017. This is only correct in respect of passenger vehicles. In respect of trucks, Volvo Group still produces Volvo and Mack trucks at its Wacol plant in Brisbane, and Iveco produces a range of Acco trucks at Dandenong South in Melbourne.
13.	Question 6 – 6.1: Wholesaling of used vehicles (page 47)	For the purposes of clarification, AHG is also active in the wholesaling of used vehicles. It is not uncommon for dealerships to, on occasion, engage in wholesale activity for used vehicles that are deemed excess stock or not able to be retailed. These used vehicles are sold wholesale either through an auction house, or third party dealerships. Carlins is one of many auction houses that AHG uses for the wholesaling of used vehicles.
14.	Question 8 – 8.1: the geographic locations in which the product or service is manufactured, distributed or supplied – Victoria (page 49)	As set out above in item 2, AHG classifies and calculates the number of dealerships that it has differently from APE. Applying AHG's approach, AHG has: <ul style="list-style-type: none">• 23 car dealerships in Greater Melbourne (including the Mornington Peninsula);• 2 truck dealerships in Melbourne.