

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and
Consumer Act 2010* (Cth) by **Automotive
Holdings Group Limited**

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1. Person giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Automotive Holdings Group Limited ACN 111 470 038 referred to as (**AHG**) in this Undertaking.

2. Background

The parties to the proposed acquisition

- 2.1. AHG is a publicly listed automotive retailing and logistics group with operations across Australasia. It owns Cova Parts, a reseller of automotive parts, consumables, tools and equipment (**Automotive Parts**), mining and industrial consumables, and truck parts. Cova Parts operates 25 retail stores across Western Australia (**WA**).
- 2.2. AHG also owns the AMCAP business. AMCAP has been an automotive parts distributor in WA since 1968 and was acquired by AHG in 1979. AHG, through its AMCAP division, provides warehousing and distribution of Automotive Parts and accessories to the automotive, commercial and industrial sectors. AMCAP also operates Skipper Transport Parts, a supplier of truck, trailer and bus parts with retail operations in Perth, Brisbane, Sydney, Melbourne and Adelaide.
- 2.3. GPC Asia Pacific Pty Ltd (**GPC**) is a distributor and retailer of aftermarket parts and consumables, tools and equipment, and consumer automotive products in Australia and New Zealand. GPC owns Repco Australia (**Repco**), a retailer of automotive parts to trade and retail customers, and Ashdown-Ingram (**AI**), a retailer of automotive electrical parts to trade, reseller, mining and industrial customers. In WA, GPC operates 37 Repco stores and 8 AI branches.

The Proposed Acquisition

- 2.4. GPC is proposing to purchase 100% of shares outstanding in Cova Parts Pty Ltd, the corporate entity in which the Cova Parts business resides. This entity currently holds the Cova brand and the 25 Cova Parts retail stores (including assets and personnel) but will, prior to the share acquisition by GPC, transfer four of the stores (the stores located in Albany, Esperance, Karratha and Port Hedland), together with associated and complementary assets and personnel to AHG. Accordingly, by its acquisition of Cova Parts Pty Ltd, GPC will only acquire 21 of the 25 stores (listed in Schedule 2 to this Undertaking) (**Proposed Acquisition**).
- 2.5. In July 2015, AHG and GPC contracted to acquire all 25 Cova Parts stores (**Original Proposed Acquisition**). However, AHG will now be retaining the stores in Albany, Esperance, Karratha and Port Hedland (**Retained Stores**).

The ACCC's review

- 2.6. On 26 August 2015, the ACCC commenced its public review of the Original Proposed Acquisition.
- 2.7. The ACCC undertook market inquiries and considered information provided by GPC, AHG, industry participants and others. The purpose of the ACCC's inquiries was to assess whether the Original Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market in Australia in contravention of section 50 of the Act.

The ACCC's competition concerns

- 2.8. The ACCC was concerned that the Original Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in the supply of Automotive Parts to Trade Customers in a number of markets in WA, particularly certain regional markets.
- 2.9. Specifically, the ACCC was concerned that the Original Proposed Acquisition would remove GPC's closest competitor and increase market concentration in a number of regional towns and increase the merged entity's ability and incentive to raise prices and/or decrease service levels. The ACCC also considered that there was unlikely to be timely or sufficient new entry or expansion of a size and scope to competitively constrain the merged entity.
- 2.10. On 17 December 2015, the ACCC announced that it had decided not to grant informal clearance in respect of the Original Proposed Acquisition.
- 2.11. Following the ACCC's announcement, GPC and AHG notified the ACCC of their proposal to revise the Original Proposed Acquisition to exclude the Cows Parts stores in the regional markets of Albany, Esperance, Karratha and Port Hedland (**Regional Markets**), with AHG to retain, manage and operate the Cows Parts stores in those areas under a different brand.
- 2.12. The ACCC was concerned that, if as a result of the Proposed Acquisition, the Cows Parts stores do not continue to operate in the Regional Markets as effective independent competitors to GPC, the Proposed Acquisition may have the effect, or be likely to have the effect of, substantially lessening competition in the Regional Markets.
- 2.13. The ACCC also considered that, having regard to confidential information received during its review, including the matters listed in Confidential Schedule 3, there is a real risk that this may occur.
- 2.14. Therefore, in support of the application for clearance for the Proposed Acquisition, AHG has informed the ACCC that it will continue to operate the Retained Stores in the Regional Markets through its AMCAP division in a way which is similar to how they are currently operated.

The Undertaking remedy

- 2.15. AHG does not consider that the Proposed Acquisition would be likely to substantially lessen competition in the supply of Automotive Parts and accessories to Trade Customers in Albany, Esperance, Karratha and Port Hedland. Without admission, AHG has offered this Undertaking to the ACCC pursuant to section 87B of the Act to address the ACCC's competition concerns as set out above that would otherwise arise as a consequence of the Proposed Acquisition.
- 2.16. The Undertaking aims to achieve this objective and ensure that, for at least the Operating Period, the Retained Stores continue to operate in the Regional Markets as effective independent competitors to GPC by requiring AHG to:
- (a) retain the four Cows Parts stores in Albany, Esperance, Karratha and Port Hedland and continue to own and operate the Retained Stores for a period of at least two years from the completion of the Proposed Acquisition;
 - (b) operate the Retained Stores during the Operating Period as, going concerns, in the ordinary course of business and, in relation to their supply

of Automotive Parts to Trade Customers, in no less than substantially the same manner as operated prior to the Proposed Acquisition;

- (c) provide for the oversight of AHG's compliance with this Undertaking.

3. Commencement of this Undertaking

3.1. This Undertaking comes into effect when:

- (a) this Undertaking is executed by AHG; and
- (b) this Undertaking so executed is accepted by the ACCC
(the Commencement Date).

4. Cessation

Withdrawal and termination

4.1. This Undertaking terminates on the earlier of the date:

- (a) the end of the Operating Period; or
- (b) the date as stipulated in the ACCC's written consent to the withdrawal of this Undertaking pursuant to section 87B of the Act at any time; or
- (c) upon which the ACCC confirms in writing its receipt of notice given in accordance with clause 4.2.

Termination if the parties will not complete

4.2. This Undertaking will terminate if AHG notifies the ACCC in writing that the parties will not complete the Proposed Acquisition and the ACCC confirm in writing its receipt of that notification.

Revocation

4.3. The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

Waiver

4.4. The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or extend the date by which any such obligation is to be satisfied. For the avoidance of doubt, the Operating Period is not a date that may be extended.

5. Retention of the Retained Stores

5.1. Subject to the sale of a Retained Store in accordance with clause 6, AHG must, as a minimum requirement, retain and operate each of the Retained Stores during the Operating Period as a going concern, in the ordinary course of business and, in relation to its supply of Automotive Parts to Trade Customers, in substantially the same manner as at the Commencement Date, including by:

- (a) maintaining the supply of Automotive Parts that are part of the Retained Stores' business to existing Trade Customers in a manner consistent with the supply of those goods to those customers as at the Commencement Date;
- (b) stocking substantially the same range of Automotive Parts in the Retained Stores as stocked as at the Commencement Date;
- (c) maintaining substantially the same levels of staff at the Retained Stores as at the Commencement Date;
- (d) offering Trade Customers substantially the same services and level of service, including in terms of delivery and availability of Automotive Parts, as existed before the Commencement Date;
- (e) continuing to make Ford and Holden original equipment Automotive Parts available to Trade Customers (other than original equipment dealers) of the Retained Stores at Trade Club prices in accordance with the Trade Club terms as offered from time to time by GM Holden Ltd (**Holden**) and Ford Motor Company of Australia Limited (**Ford**), respectively (provided each of Holden and Ford continue to make its trade club program available in respect of its Automotive Parts).

Retained Personnel

5.2. For each of the Retained Stores, AHG must use its best endeavours to retain:

- (a) all employees; and
- (b) all service providers under a contract for service;

who are, in the view of AHG, required to maintain, operate or conduct effectively the Retained Stores (**Retained Personnel**).

5.3. When fulfilling its obligations under clause 5.2, AHG must not procure, promote or encourage the transfer of any of the Retained Personnel from the Retained Stores for a period of six months after the Completion Date.

6. Sale of a Retained Store

- 6.1. During the Operating Period, AHG may only sell a Retained Store to an Approved Purchaser.
- 6.2. The ACCC shall have the discretion to approve or reject in writing the Proposed Purchaser.
- 6.3. Without limiting the ACCC's discretion, in making the decision pursuant to clause 6.2, the factors to which the ACCC may have regard include whether the:
 - (a) Proposed Purchaser will complete the transaction in relation to the Retained Store as contemplated;
 - (b) Proposed Purchaser is independent of GPC;
 - (c) Proposed Purchaser is of good financial standing;

- (d) Proposed Purchaser is able to conduct the supply of Automotive Parts to Trade Customers from the Retained Store effectively; and
 - (e) sale of the Retained Store to the Proposed Purchaser will address competition concerns of the ACCC relating to competition in any market in which the Retained Store operates.
- 6.4. The ACCC may revoke an Approved Purchaser's status as the Approved Purchaser if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 6.5. AHG will notify the ACCC, in writing, within 5 Business Days of the completion of the sale of a Retained Store to an Approved Purchaser.

7. Compliance and monitoring

- 7.1. Within 7 Business Days of the Commencement Date, AHG undertakes to provide the ACCC with a report on:
- (a) the number of automotive part stock keeping units (**SKUs**) available to Trade Customers at each Retained Store as at the date stock take is taken;
 - (b) the frequency of delivery runs to Trade Customers from each Retained Store;
 - (c) the number of staff employed at each Retained Store on the Commencement Date; and
 - (d) revenue from sales of Automotive Parts to Trade Customers at each Retained Store for the most recent financial year.
- 7.2. AHG undertakes to provide a report to the ACCC with updated information of the kind referred to in clause 7.1:
- (a) six months following the Completion Date; and
 - (b) yearly during the term of this Undertaking following the initial report referred to in clause 7.2(a), and
- providing a statement on behalf of AHG either that:
- (c) AHG has complied with its obligations pursuant to the Undertaking in the period being reported on; or
 - (d) AHG has not complied with its obligations pursuant to the Undertaking in the period being reported on and providing details of:
 - (i) the failure to comply, including the nature of and reasons for that failure; and
 - (ii) the steps taken by AHG to remedy that failure.
- 7.3. AHG will respond in a timely manner to all reasonable requests for information or documents made by the ACCC in respect of any report provided to the ACCC pursuant to clauses 7.1 and 7.2 and in respect of its compliance with this Undertaking.

- 7.4. The ACCC may direct AHG in respect of its compliance with this Undertaking to, and AHG must:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within any Undertaking Appointment's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 7.5. If during the term of this Undertaking the ACCC forms the view that AHG has not complied with its obligations under any clause of this Undertaking, the ACCC may request and AHG must appoint an independent auditor to produce a report containing the information set out in clause 7.1 and provide the report directly to the ACCC and AHG. AHG must provide the independent auditor with all reasonable assistance as necessary for the independent auditor to complete the report in a timely manner.
- 7.6. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 7 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 7.7. Nothing in this clause 7 requires the provision of information or documents in respect of which AHG has a claim of legal professional or other privilege.

8. Disclosure of this Undertaking

- 8.1. AHG and the ACCC agree that Confidential Schedule 3 will remain confidential.
- 8.2. Subject to clause 8.1, AHG acknowledges that the ACCC may:
- (a) make this Undertaking publicly available;
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (c) from time to time publicly refer to this Undertaking.
- 8.3. Nothing in clause 8.1 or the confidential parts of this Undertaking referred to in clause 8.1 prevents the ACCC from disclosing such information as is:
- (d) required by law;
 - (e) permitted by section 155AAA of the Act;
 - (f) necessary for the purpose of enforcement action under section 87B of the Act; or
 - (g) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.

- 8.4. Nothing in clause 8.1 or the confidential parts of this Undertaking referred to in clause 8.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

9. Obligation to procure

- 9.1. Where the performance of an obligation under this Undertaking requires a Related Body Corporate of AHG to take or refrain from taking some action, AHG will procure that Related Body Corporate to take or refrain from taking that action.

10. No Derogation

- 10.1. This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by AHG of any term of this Undertaking.
- 10.2. Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that AHG does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

11. Change of Control

- 11.1. In the event that a Change of Control is reasonably expected to occur, AHG must:
- (a) notify the ACCC of this expectation as soon as practicable; and
 - (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on AHG pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified AHG in writing that a section 87B undertaking under this clause is not required.

12. Costs

- 12.1. AHG must pay all of its own costs incurred in relation to this Undertaking.

13. Notices

Giving Notices

- 13.1. Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: mergers@accc.gov.au
 Attention: Executive General Manager
 Merger and Authorisation Review Division

With a copy sent to: mergersucu@accc.gov.au

Attention: Director, Undertakings Compliance Unit
Coordination and Strategy Branch
Merger and Authorisation Review Division

- 13.2. Any notice or communication to AHG pursuant to this Undertaking must be sent to:

Name: David Rowland, Company Secretary and General Counsel

Address: 21 Old Aberdeen Place, West Perth, WA, 6005

Email Address: drowland@ahg.com.au

Fax number: +61 8 9422 7686

With a copy sent to:

Name: Gina Cass-Gottlieb

Address: Level 37, 2 Park St, Sydney, NSW, 2000

Email Address: gcass-gottlieb@gtlaw.com.au

Fax number: +61 2 9263 4111

- 13.3. If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).
- 13.4. If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

- 13.5. AHG must notify the ACCC of a change to its contact details within three Business Days.
- 13.6. Any notice or communication will be sent to the most recently advised contact details and subject to clauses 13.3 and 13.4, will be taken to be received.

14. Defined terms and interpretation

Definitions in the Dictionary

- 14.1. A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

Interpretation

- 14.2. Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

Executed as an Undertaking

Executed by Automotive Holdings Group Limited ACN 111 470 038 pursuant to section 127(1) of the Corporations Act 2001 by:

Signature of director

BRONTE HOWSON

Name of director (print)

12 FEB 2016

Date

Signature of company secretary

DAVID ROWLAND

Name of company secretary (print)

12 FEB 2016

Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the Competition and Consumer Act 2010 on:

17 February 2016

And signed on behalf of the Commission:

Chairman

Date

17/2/16

Schedule 1 – Dictionary and interpretation

1. Dictionary

ACCC means the Australian Competition and Consumer Commission.

Act means the *Competition and Consumer Act 2010* (Cth).

AHG means Automotive Holdings Group Limited ACN 111 470 038.

Approved Purchaser means the person approved by the ACCC under clause 6 of this Undertaking.

Automotive Parts means automotive hard parts, consumables, tools and workshop equipment.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

Change of Control means the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of AHG to any other person or entity, or the sale or transfer of any assets necessary, or which may be necessary, to enable compliance with this Undertaking in its entirety.

Commencement Date means the date described in clause 3.1 of this Undertaking.

Completion Date means the date on which the Proposed Acquisition is completed.

Corporations Act means the *Corporations Act 2001* (Cth).

GPC means GPC Asia Pacific Pty Ltd ACN 097 993 283.

Operating Period is a two year period from the completion of the Proposed Acquisition.

Original Proposed Acquisition is defined in clause 2.5 of this Undertaking.

Proposed Acquisition is defined in clause 2.4 of this Undertaking.

Proposed Purchaser means a person who has approached AHG in relation to acquiring a Retained Store and whose identity has been notified to the ACCC, in writing, by AHG.

Public Mergers Register means the ACCC's public register of merger clearances, available at www.accc.gov.au.

Public Section 87B Undertakings Register means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

Regional Markets is defined in clause 2.11 of this Undertaking.

Related Bodies Corporate has the meaning given to it by section 50 of the *Corporations Act 2001* (Cth).

Related Entities has the meaning given to it by section 9 of the *Corporations Act 2001* (Cth).

Related Parties has the meaning given to it by section 228 of the *Corporations Act 2001* (Cth).

Retained Personnel is defined in clause 5.2 of this Undertaking.

Retained Stores is defined in clause 2.5 of this Undertaking.

Subsidiary has the meaning given by section 9 of the *Corporations Act*.

Trade Club means a membership-based program for independent workshops or repairers.

Trade Customers means independent mechanical workshops and original equipment dealers.

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

2. Interpretation

2.1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:

- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
- (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
- (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;

- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with clause (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
 - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, AHG will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (q) a reference to:
 - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (ii) a party includes its successors and permitted assigns; and

(iii) a monetary amount is in Australian dollars.

Schedule 2 – List of Cows Parts stores included in the Proposed Acquisition

The following is a list of the 21 Cows stores to be sold to GPC as part of the Proposed Acquisition:

- Bunbury
- Belmont
- Bibra Lake
- Busselton
- Canning Vale
- Geraldton
- Joondalup
- Kalgoorlie
- Kelmscott
- Malaga
- Mandurah
- Merredin
- Midland
- Morely
- Myaree
- Narragin
- Northam
- Osborne Park
- Rockingham
- Wanneroo
- Welshpool

Confidential Schedule 3
