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Our ref SDV:GJL:4529907

20 November 2020

susie.black@accc.gov.au

Ms Susie Black
Director, Competition Exemptions
Australian Competition and Consumer Commission

Electronic

Dear Madam

Mitsubishi Motors Australia Limited – Notification of Exclusive Dealing

We refer to your letter dated 21 October 2020 and adopt the definitions in our letter of even date.

We **enclose**, via the confidential Sharefile link below, copies of documents sent, received, or considered by Senior Officers of MMAL that discuss the need for, purpose or development of the Notified Conduct during the period from 1 December 2018 to 11 September 2020:

[CONFIDENTIAL] [REDACTED]

Certain information in this letter is confidential to MMAL, as are the documents available via the Sharefile link above. MMAL requests that the ACCC not disclose the confidential information in this letter and its enclosures to any other person, except on the following basis:

- 1 there is no restriction on the internal use, including future use, that the ACCC may make of the information consistent with its statutory functions
- 2 the information may be disclosed to the ACCC's external advisors and consultants on the condition that each such advisor or consultant is informed of the obligation to treat the information as confidential; and
- 3 the ACCC may disclose the information to third parties (in addition to its external advisors or consultants) if compelled by law, or in accordance with section 155AAA of the CCA.

To the extent that the ACCC considers that it is necessary to disclose the information in this letter to third parties, MMAL requests that the ACCC consult with it prior to any such disclosure.

1 Methodology used to conduct searches

MMAL was unable to conduct searches using the term 'warranty'. As you will appreciate, this term is commonly used within MMAL, and its use predates the Notified Conduct. As such, it was impractical to conduct searches using this term.

Instead, MMAL has used the following keyword searches to identify potentially responsive documents:

- (a) 'Diamond Advantage';

- (b) 'MiOwn' (this was the internal term used to refer to the Notified Conduct prior to its launch);
- (c) '10 year warranty';
- (d) '10/10';
- (e) 'MiCar'.

MMAL considers that the above search terms have identified all (or the overwhelming majority) of documents that would be responsive to the ACCC's document request. MMAL is not aware of any responsive documents that have been omitted from its response.

For the avoidance of doubt, MMAL has not produced documents subject to legal professional privilege (except in certain cases where privileged material has been redacted from the documents).

2 Observations regarding content of documents

We hope that it will be apparent from your review of the documents that they support the position put forward by MMAL in the Notification (as well as our letters dated 23 October 2020 and 16 November 2020).

We otherwise set out some particular observations arising from the documents below.

- (a) The primary purpose of the Warranty is to increase brand loyalty (that is, to increase the likelihood that current purchasers of Mitsubishi Vehicles will continue to purchase Mitsubishi Vehicles in the future: [CONFIDENTIAL] [REDACTED])
- (b) MMAL launched the Warranty in order to better compete with warranties offered by rival OEMs: [CONFIDENTIAL] [REDACTED] MMAL considered that other OEMs (such as Kia) were able to build strong brand recognition using generous warranty offerings: [CONFIDENTIAL] [REDACTED]
- (c) [CONFIDENTIAL] [REDACTED]
- (d) MMAL did not consider that the 10 year Warranty would cause it to capture all Mitsubishi Vehicle servicing during that period. [CONFIDENTIAL] [REDACTED]
- (e) The retention figures contained in Confidential Annexure 1 to our letter of 16 November 2020 (which are already modest) are optimistic figures that have been calculated on a conservative basis for provisioning purposes: [CONFIDENTIAL] [REDACTED]
- (f) MMAL is developing strategies to ensure the requirements of the Warranty are clearly communicated to consumers (and, indeed, considers that the success of the program is dependent on consumer understanding): [CONFIDENTIAL] [REDACTED]

We caution the Notified Conduct has naturally evolved over the significant period of time captured by the document request, and that some information in the documents produced is no longer accurate.

- (g) [CONFIDENTIAL] [REDACTED]

(h) [CONFIDENTIAL] [REDACTED]

Having regard to the above, we encourage the ACCC to contact us if it considers that any information in the response to the document request raises concerns (as it is likely that these concerns have already been superseded by the development of the Warranty program).

Please contact us if you have any questions regarding the above.

Yours faithfully
THOMSON GEER

[REDACTED]

[REDACTED]

Stephen Voss

Partner

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