

Mr Andrew Mahony
RN10000433 Mitsubishi Motors Australia Limited
Australian Competition and Consumer Commission
Via Email: adjudication@acc.gov.au

8 October 2020

Dear Mr Mahony,

RE: Exclusive dealing notification lodged by Mitsubishi Motors Australia Limited (MMAL)

Thank you for your recent communications with [REDACTED] regarding the Exclusive Dealing Notification (the MMAL Notification) lodged by Mitsubishi Motors Australia Limited RN 10000433. We appreciate the opportunity to respond to the MMAL Notification.

As you are aware, [REDACTED] operates under a franchise system in Australia. [REDACTED] grants franchises to businesses under the [REDACTED] brand for the primary activities of selling tyres and undertaking automotive repair and servicing. [REDACTED] operates through more than [REDACTED]

[REDACTED] makes the following comments in response to the MMAL Submission. We have not addressed every issue but have provided some high level comments on areas of most relevance to us and are happy to discuss any of these comments with you in more detail.

In short, we believe that if the ACCC does not revoke the MMAL Notification, it is likely to have the effect of substantially lessening competition in the automotive repair & service industry.

In response to paragraph 3.2(b), 4.2, 5.1(b), 6.3 and 6.5(c) of the MMAL Notification

One aspect of the [REDACTED] is that they are all small businesses with passion for what they do. [REDACTED] as Franchisor assists the Network with promotional activities and operational advice pursuant to the Franchise Agreement to ensure business success, and as a cornerstone of this, [REDACTED] businesses directors and employees are required undertake ongoing training of a certain standard in not just automotive repair and services (relevant to their position) but also are provided operational guidance and strategies to ensure a great customer experience which in turn ensures the quality of services provided to a customer under the [REDACTED]

However, if the ACCC allows this notification in the case of MMAL, and as a result, other new vehicle manufacturers follow this precedent, new vehicle manufacturers will have a monopoly on customers that could potentially be a [REDACTED] business customer (but for, their extended warranty in regards to automotive repair and servicing).

Many businesses have been impacted by COVID 19, and businesses within the [REDACTED] are not immune to this. However, a loss of ½ the primary activities of a [REDACTED] business would have a further significant detrimental affect on [REDACTED] businesses and their ability to maintain employees in an already affected industry. Some of the [REDACTED] businesses are independently owned. We are not privy to MMAL's particular business model & how they have ascertained what their market share is but a [REDACTED]

██████████ business's market share in any case, is significantly smaller. Although the ██████████ is a Australian national network, each particular ██████████ business only obtains profits from customers that book into and obtain a service from their particular business.

The monopoly on the industry (which the terms of the potential warranty may bring), can usually be caused in general from time to time by customers not being suitably guided in regards to their rights under the Competition and Consumer Act 2010 which prevents the practice of exclusive dealing where conditions are attached to a sale of a good (such as a vehicle) that restrict the buyer's freedom of choice to deal with whom or in what they choose. And so, without this knowledge, there is a genuine misbelief that the servicing requirements under their warranty require mandatory dealership. (The ACCC Consumer Survey provided by MAAL indicated that while consumers have the right to choose who services and repairs their new vehicle almost nine out of ten consumers go to dealer service centres while their vehicle is under warranty). However, this misbelief is not unfounded in the circumstances as the MMAL Notification as the attached proposed 10 year warranty does in fact not permit customers the right to choose to obtain alternative automotive repair and servicing if the customer wants to retain the warranty.

We would argue that vehicles serviced by ██████████ businesses are serviced with a "high degree of care and skill" given the amount of guidance & training that is available to ██████████ businesses via the Franchisor in addition to the fact that ██████████ is also at the forefront of tyre retailing technology through a strategy called ██████████ which encompasses digital deployment to stores and consumers from the central source of data. New vehicle manufacturers do not have a high degree of care and skill beyond what is ordinarily provided by ██████████ businesses, to any degree.

Further, ██████████ businesses endeavor to serve customers with the best possible tyre brands, advice, automotive service and price. ██████████ has earned its first-class reputation for premium product, service and highly competitive pricing. If a monopoly for the customer base was to exist, vehicle manufacturers may raise prices for parts and repairs for a sustained period, produce lower quality products with no corresponding reduction in price, and fail to offer any product variety. This will in general lower customer service standards, which is not the ██████████.

Additionally, ██████████ intends to further expand the ██████████ within Australia, which will provide further opportunities for business creation & employment. If a customer obtains MMAL's potential warranty, they may feel the need to drive hundreds of kilometers to access MMAL's dealers (which would increase the cost for the customer to benefit from the warranty). ██████████ as Franchisor assesses the potential of a territory based on the potential market. Understandably if there is little market in certain areas where a territory may be created, it may not be viable for the ██████████ to expand to, thus reduces the potential of business creation and employment in the area.

We would be happy to discuss this submission in more detail or provide any information that you require.

Yours faithfully

██████████
Legal Counsel & Company Secretary