

# RESTRICTION OF PUBLICATION OF PART CLAIMED

9 October 2020

Analyst Adjudication  
Merger and Authorisation Review  
Australian Competition and Consumer Commission  
Level 17, 2 Lonsdale Street  
Melbourne VIC 3000

ACCC Reference: RN10000433

**Attention: Andrew Mahony**

Dear Andrew

**Mitsubishi Motors Australia Limited – Exclusive dealing notification**

**RN10000433 – Submission**

- 1 We welcome the opportunity to make a submission to the Australian Competition and Consumer Commission (ACCC) regarding the Exclusive dealing notification by Mitsubishi Motors Australia Limited (MMAL) (ACCC Ref: RN10000433) (Notification).
- 2 We note, with some concern, that MMAL has pre-empted the ACCC's decision and has already begun engaging in exclusive dealing conduct,<sup>1</sup> without waiting for the ACCC to assess and make a decision on the impact of this exclusive dealing proposal on competition in relevant markets.

## A. Executive Summary

- 4 On 11 September 2020, MMAL wrote to the ACCC providing notice of exclusive dealing conduct. The relevant conduct is described at paragraph 3.1 of the Notification as:

- (a) *MMAL offering a ten year or 200,000 kilometre (whichever occurs first) Warranty and/or five year or 100,000 kilometre (whichever occurs first) extension of its five year Warranty to purchasers of new Mitsubishi Vehicles;*
- (b) *on the condition that those purchasers exclusively acquire aftermarket servicing for their new Mitsubishi Vehicle from an MMAL Dealer and/or Service Centre.'*

**(Extended Warranty).**

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<sup>1</sup> See AutoTalk Magazine, page 6 "Mitsubishi Lobs Grenade into the New Vehicle Warranty War". The article states that the ten-year warranty offer has started from 1 October 2020.

- 5 We have reviewed the submissions made by the Australian Automotive Aftermarket Association (**AAAA**) and supports the matters raised by the AAAA as set out in its submissions.
- 6 In addition to the matters raised in the AAAA's submissions, we submit that the Extended Warranty is likely to result in a substantial lessening of competition in the aftermarket services market as:
- (a) Allowing MMAL to exclude independent service providers will be likely to result in additional car manufacturers with a substantial share of the new car market following suit with similar extended exclusive warranties; and
  - (b) Given consumers' conduct in reverting to the original dealership for servicing for the period of the warranty, independent service providers are potentially locked out from providing services for double the current usual warranty period, significantly shrinking their potential market, with potentially serious consequences for the financial viability of smaller operators.

## **B. Likely substantial lessening of competition**

- 7 Allowing MMAL to exclude independent service providers will likely result in additional car manufacturers following suit with similar extended exclusive warranties:
- (a) In the Notification, MMAL proposes to offer a 5 year extension of the Base Warranty to purchasers of new Mitsubishi Vehicles, provided that those purchasers *exclusively* acquire aftermarket servicing for their new Mitsubishi Vehicle from an MMAL Dealer and/or Service Centre for the entire base and extended warranty periods.
  - (b) Two other car manufacturers, Hyundai Motor Company Australia Pty Ltd (**Hyundai**) and Subaru (Aust) Pty Ltd (**Subaru**) have previously notified the ACCC of similar exclusive dealing conduct in respect of warranty periods, which the ACCC accepted (ACCC Ref: N98055, N93063 & N241001).
  - (c) According to the Federal Chamber of Automotive Industries' data<sup>2</sup>, in 2019:
    - (i) MMAL held a market share of 7.8%
    - (ii) Hyundai held a market share of 8.1%; and
    - (iii) Subaru held a market share of 3.8%.
  - (d) The ACCC should therefore assess MMAL's Notification in the context of existing exclusive dealing arrangements. This is because MMAL's proposed 10 year warranty means the market share of car manufacturers who offer warranties 5 years and over which exclude aftermarket servicing by independent service providers is 19.7%, or close to one-fifth, of the overall new car market.
  - (e) In this regard, we note that experience has shown that, if accepted by the ACCC, other leading car manufacturers are likely to follow MMAL's lead in offering extended warranties on an exclusive basis. Below is a non-

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<sup>2</sup> See Federal Chamber of Automotive Industries media release, 'New vehicle sales down in challenging 2019 market' dated 6 January 2020, at <http://www.fc.ai.com.au/news/index/view/news/600>; see also Car Advice news article 'VFACTS: 2019 new car sales results' dated 6 January 2020 at <https://www.caradvice.com.au/817278/vfacts-2019-new-car-sales-results/>

exhaustive table which shows the trend on extending warranties, by reference to the dates which car manufacturers introduced or increased their warranty period:<sup>3</sup>

Year	Month	Brand	Warranty offer
1999	-	Hyundai	5 year warranty across the range
2004	December	Mitsubishi	5 year warranty across the range
2011	April	Renault	5 year warranty on passenger cars (but not sports models or vans)
2013	January	Isuzu	5 year/130,000km warranty on the D Max Ute
	November	Isuzu	5 year/130,000km warranty on the MU-X SUV
2014	July	Citroen	6 year warranty across the range (reduced to 3 years in November 2017)
	October	Kia	7 year warranty across the range
2017	January	Skoda	5 year warranty across the range
	February	Jeep	5 year warranty across the range
	July	Honda	5 year warranty across the range (with ad hoc offers of 7 year warranty on selected models)
	November	MG	7 year warranty on selected SUV Models (with passenger cars retaining a 6 year warranty)
2018	February	Citroen	5 year warranty across the range (except vans, which have a 5 year/200,000km warranty)
	February	Peugeot	5 year warranty across the range(except vans, which have a 5 year/200,000km warranty)
	May	Ford	5 year warranty across the range
	July	Holden	5 year warranty across the range
	August	Mazda	5 year warranty across the range
		Hyundai	7 year warranty on selected models during monthly promotions
	September	SSangyong	7 year warranty across the range (increased from 5 year warranty)
	December	Mitsubishi	7 year warranty/150,000km warranty on the Triton Ute, initially as a special offer, which

<sup>3</sup> Car Advice news article, 'Mitsubishi reverts to five-year warranty, offers 10-year coverage on cars serviced at dealers' dated 1 October 2020, at <https://www.caradvice.com.au/889581/mitsubishi-reverts-to-five-year-warranty-offers-10-year-coverage-on-cars-serviced-at-dealers/>

			became permanent for the Triton Ute and most other models
	December	Volkswagen	5 year warranty across the range
2019	January	Subaru	5 year warranty across the range
		Toyota	5 year warranty across the range
	March	MG	7 year warranty across the range
	April	Nissan	5 year warranty across the range
	September	Renault	7 year warranty on selected models for a limited time
	October	Suzuki	5 year warranty across the range (increased from 3 year warranty)
		Hyundai	7 year warranty on most models until December 2019, with intermittent offers on selected models in the first half of 2020
2020	March	Mercedes-Benz	5 year warranty across the range
	April	Volvo	5 year warranty across the range
		Jaguar Land Rover	5 year warranty across the range for a limited time (to June 2020 with an extension to September 2020)
		Renault	7 year warranty on selected models for a limited time
	July	Renault	5 year warranty/ 200,000km warranty on commercial vehicles
	October	Mitsubishi	10 year warranty across the range (but requiring exclusive dealing)

- (f) It is apparent from the above table that, in the past three years, at least 19 car manufacturers increased their minimum warranty period to 5 years. Currently, all of the top 10 brands in Australia<sup>4</sup> have, at minimum, a 5 year warranty.
- (g) Further, at least seven car manufacturers offer or have offered 7 year warranty, including Kia, MG, Hyundai, SsangYong, Mitsubishi, Renault and Haval.

<sup>4</sup> Ranked according to market share, including Toyota, Mazda, Hyundai, Mitsubishi, Ford, Kia, Nissan, Volkswagen and Honda as at 2020 (YTD).

- (h) Media sources have also reported that Kia, which holds a market share of 6.5%, would consider increasing its warranty from 7 years to 10 years if any of its competitors were to offer that length of warranty.<sup>5</sup>
- (i) We are concerned that MMAL's proposed move to a 10 year exclusive warranty may be an attempt to counteract increasing pressure on car manufacturers to share vehicle technical information and the expected increase in competition from independent service providers resulting from their access to that technical information. Even if the Notification is not an attempt to counteract pressures to share technical details, it will have the effect of doing so. Technical data is a means to service vehicles, so if the ability of independent service providers to service vehicles is diminished as a result of the extended exclusive warranty, the availability of data becomes irrelevant.

8 The proposed Extended Warranty potentially locks out independent service providers for double the existing usual warranty period, with serious adverse implications for the size of the servicing market available to independent service providers:

- (a) In the Notification, MMAL proposes to enable the Extended Warranty to be transferable to subsequent owners of the relevant vehicles.<sup>6</sup> Therefore, new Mitsubishi Vehicle owners, as well as any second-hand car purchasers, are incentivised to continue to exclusively acquire aftermarket servicing for the relevant vehicles from a MMAL Dealer and/or Service Centre.

Even if a new Mitsubishi Vehicle owner did not him or herself value the extended warranty, since they have paid for it, whether they value it or not (and given the value is included in the cost of the vehicle), it is rational for the new car owner to maintain it.

- (b) Further, in terms of vehicle owners' behaviour regarding servicing their vehicle:
  - (i) The ACCC's New Car Retailing Industry Market Study (NCRI) found that nearly 9 out of 10 consumers go to dealer service centres while their vehicle is under warranty;<sup>7</sup> and
  - (ii) A study by Roy Morgan<sup>8</sup> has shown that '*motorists continue to show a preference for dealer-run service centres when their vehicle is new or near-new, with a tendency to shift to local garage service centres as the vehicle ages. This is most pronounced at the five-year mark, when many factory warranties or lease-hold agreements expire*'. The below chart shows how motorists' servicing preferences change over time:

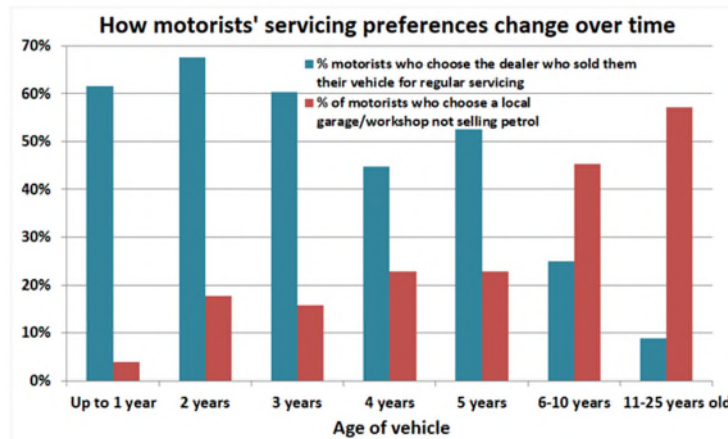
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<sup>5</sup> See [carsguide.com.au](https://www.carsguide.com.au) article, 'https://www.carsguide.com.au/car-news/kia-10-year-warranty-ready-to-fire-73339' dated 5 March 2019.

<sup>6</sup> Notification, [5.1(c)].

<sup>7</sup> NCRI p 42, fn 75.

<sup>8</sup> Roy Morgan Press Release, Finding No. 7757 dated 21 November 2018, available at: <http://www.roymorgan.com/findings/7757-competition-heats-up-in-vehicle-servicing-as-national-fleet-becomes-more-reliable-201811212241>



Source: Roy Morgan Single Source; Base: Australians who are drivers, Oct 2017 to Sept 2018, n=12,295. Chart shows 'Garages/workshop not selling petrol' vs 'Dealer who sold me my vehicle' only, and excludes other kinds of service centres.

### C. Further consideration

- 9 In its Notification, MMAL has not addressed the effect the Extended Warranty would have on the parts market, distinct from the servicing, new car or warranty markets. Separately from where a vehicle is serviced, there is also the choice of what parts are used. As owners must use Mitsubishi centres and Mitsubishi centres use branded parts, this limits the potential for competition by suppliers of Mitsubishi compatible OEM and aftermarket parts.
- 10 Additionally, the Notification has not clearly addressed the extent to which repairs and parts can be undertaken or sourced by independent repairers during the Extended Warranty. There is a high level of confusion and misunderstanding by consumers about the operation of warranties.<sup>9</sup>
- 11 A market study conducted by the ACCC in December 2017 found that consumers experienced a number of difficulties in the handling of extended warranties and consumer guarantees. One of the main issues contributing to these difficulties was the fact that manufacturers focus on warranty obligations to the exclusion of their consumer guarantee obligations.<sup>10</sup>
- 12 Other findings included that:<sup>11</sup>
- “The majority of consumers take their new cars to manufacturer authorised dealers for repairs and service. This appears to be, in part, the result of a mistaken belief that the manufacturer’s warranty requires them to only use an authorised dealer.”
  - “Contributing to this misunderstanding are direct and implied representations made by a number of manufacturers in their logbooks and service manuals to the effect that authorised dealers must carry out services or repairs (or that original equipment (OE) parts must be used). Many of these representations are likely to contravene the provisions of the ACL, and may also raise competition concerns under the *Competition and Consumer Act 2010*.”

<sup>9</sup> ACCC Market Study, ‘New Car Retailing Industry: A market study by the ACCC’ dated December 2017, at [https://www.accc.gov.au/system/files/New%20car%20retailing%20industry%20final%20report\\_0.pdf](https://www.accc.gov.au/system/files/New%20car%20retailing%20industry%20final%20report_0.pdf) (ACCC Market Study)


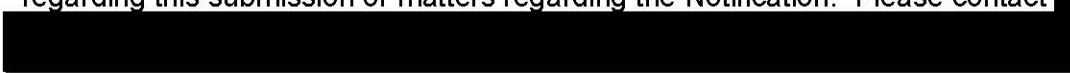
<sup>10</sup> Market Study, p 2.

<sup>11</sup> Market Study, p 6.

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- 13 Permitting conduct proposed in the Notification would legitimise a continuation and extension of a manufacturer-controlled framework which causes consumer difficulties that the ACCC has recognised as already requiring action to address in terms of consumer law and which may also involve competition law concerns. This confusion is exploited by manufacturers as consumers concerned about invalidating their warranty are more likely to return to an authorised dealership.
- 14 Therefore, MMAL should be required to more clearly set out the limits of the warranty regarding:
- (a) The fact that 'repairs' can be undertaken by independent repairers and what is included in the definition of a repair.
  - (b) That car parts used during servicing and 'repairs' need not be acquired exclusively from MMAL Dealer and/or Service Centre.

### D. Conclusion

- 15 We support the AAAA's submissions which also object to MMAL's exclusive dealing notification.
- 16 We object to MMAL's exclusive dealing notification.
- 17 If the ACCC is minded to accept the Notification, the ACCC should require MMAL clarify the scope of repairs and parts that are outside the warranty when offering its Extended Warranty.
- 18 We are available to assist the ACCC if any additional information is required regarding this submission or matters regarding the Notification. Please contact 
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Yours sincerely

