

Our Ref: PAC:991211

14 September 2020

Attention: Mandy Bendelstein

Assistant Director
Merger and Authorisation Review Division
Australian Competition and Consumer Commission
Level 20, 175 Pitt Street
SYDNEY NSW 2000

Restriction of Publication Claimed

Dear Ms Bendelstein

National Honda Dealer Council - Application for Authorisation AA1000528

Thank you for your email of 4 September 2020 and the two submissions that were attached.

Our client is pleased that both submissions are supportive of its application for authorisation (**Application**).

Our client agrees with and endorses the matters contained in the submission by the Australian Automotive Dealer Association.

In relation to the submission by Honda:

- The Application has only become necessary as a result of Honda's decision to introduce the New Model. Honda wishes to progress negotiations regarding the proposed agency arrangements but dealers have been unable to discuss certain important aspects of the new model collectively. We note this is confirmed by Honda in its submission.
- The Application does not suggest the New Model will result in a lessening of competition in the national automotive market, just in competition between Honda dealers for new Honda vehicles.
- Honda is correct to say that, under the New Model, dealers will be selling new vehicles on behalf of Honda rather than in their own right. It is also correct to say that, at least as presently structured, accessories, servicing, parts, used cars and insurance would not be sold by dealers on behalf of Honda. However, as outlined in the Application and previous communications with the ACCC, Honda proposes to exercise control over many of those other elements and provide directions to dealers about how those parts of the business are to be conducted. **[Redacted pursuant to confidentiality claim].**

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- The 11 year duration was designed to provide for the negotiations leading up to the July 2021 launch of the New Model and the implementation of the New Model during the initial 5 year term together with the negotiations in 2026 and the balance of that 5 year term. Whether it is for a new term or the renewal of the initial term, there will be further negotiations in 2026. The authorisation will, therefore, have ongoing utility. Our client believes the 11 year duration is appropriate but submits that the authorisation should at least run until the conclusion of the 2026 negotiations.
- There is no need for Honda to know the identity of participating dealers at this stage. However, our client naturally agrees Honda would need to know the identity of those dealers if the Application has been approved. Honda has already been advised that the names of those dealers will be disclosed as soon as the authorisation comes into force.
- There is no discrimination. All continuing dealers have been invited to participate in the Application. Each dealer has been able to make their own decision whether they participate or not. Dealers can elect to be included in the authorisation at any time. Even if they do elect to participate in the application, dealers are under no obligation to engage in joint discussions or collective bargaining.
- There is no need for the three conditions proposed by Honda as there is no suggestion (and could not be any suggestion) that any of the conduct outlined in the conditions has occurred or will occur. If necessary, our client is happy to provide assurances to the ACCC in the terms of the proposed conditions. However, our client would oppose those matters becoming express terms of the authorisation as, otherwise, there would be an inference that it became necessary for the ACCC to intervene as our client and/or other participating dealers have:
 - pressured dealers to be represented by the NHDC or become covered by the authorisation;
 - sought, in negotiating with Honda, that dealers not covered by the authorisation receive terms less favourable than the dealers covered by the authorisation; and
 - failed to respect the confidentiality of any negotiations between Honda and a dealer not covered by the authorisation.

Our client submits that it would be completely inappropriate and misleading for that impression to be created. It would be prejudicial to our client and participating dealers and also potentially divisive if non-participating dealers were led to believe that our client and other dealers were acting improperly or seeking to obtain an unfair advantage.

If you would like us to address any other issues arising from the submissions, please let us know.

Yours faithfully



Peter Campbell
Partner
HWL Ebsworth Lawyers

