

9 October 2020

Attention: Mr Andrew Mahony

Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

By email: adjudication@accc.gov.au

Dear Mr Mahony

Exclusive dealing notification RN1000433 lodged by Mitsubishi Motors Australia Limited – interested party consultation

1 Overview

- 1.1 Bapcor Limited (**Bapcor, We**) is a leading distributor and retailer of automotive aftermarket parts, accessories and equipment, and provider of independent automotive aftermarket services, in Australia. We operate in the automotive aftermarket parts wholesale, automotive aftermarket parts retail and automotive aftermarket services industries.
- 1.2 We appreciate the opportunity to provide comments on the exclusive dealing notification lodged by Mitsubishi Motors Australia Limited (**MMAL**) on 11 September 2020 (the **Notification**) and communicated by the ACCC in its consultation letter dated 17 September 2020.
- 1.3 Under the Notification, MMAL proposes to introduce a 10 year (or 200,000 km, whichever occurs first) warranty to purchasers of new Mitsubishi vehicles on the condition that the purchaser exclusively acquires automotive aftermarket servicing from an MMAL dealer or service centre (**Proposed Amended Warranty**, as contained in Annexure 1 to the Notification).
- 1.4 We consider the Proposed Amended Warranty to have the likely effect of substantially lessening competition in the industries in which we operate and that, in all the circumstances, this effect would not be offset by public benefits.
- 1.5 The above issues are each addressed in turn below.

2 Consideration of anti-competitive effects

- 2.1 We own and operate a wide range of automotive aftermarket wholesale and retail businesses across over 1,000 sites throughout Australia, including:
 - (1) trade distributors and specialist wholesalers (collectively, **Wholesalers**), namely Burson Auto Parts, AAD, AADi Australia, Baxters, Bearing Wholesalers, Commercial Truck Parts Group, Diesel Distributors, Federal Batteries, JAS Oceania, MTQ Engine

Systems, Precision Equipment, Premier Auto Trade and Roadsafe Automotive Products & Topperformance Products; and

- (2) retailers, namely Autobarn, Autopro, Opposite Lock and Sprint Auto Parts.
- 2.2 Our Wholesalers are primarily engaged in the distribution of automotive aftermarket parts to independent automotive aftermarket service providers (**Independent Service Providers**), along with automotive manufacturers' service centres and automotive aftermarket parts retailers. Independent Service Providers rely upon automotive aftermarket parts wholesalers to provide servicing and repairs.¹ Products sold by wholesalers to Independent Service Providers include, but are not limited to, filters, oils, transmission components, brakes, shock absorbers, gaskets, springs, water blades, exhaust systems, audio equipment, engines, electrical components, tyres and batteries.²
- 2.3 Our retailers are also engaged in the retail of automotive aftermarket parts via a network of company-owned, franchise and satellite stores around Australia. Our retailers primarily market and sell to retail customers, noting that some sales are also to smaller Independent Service Providers.
- 2.4 In addition, we own and operate a number of company-owned and franchised Independent Service Providers, namely Midas and ABS. Our Independent Service Providers are engaged in automotive servicing and repairs.
- 2.5 The Proposed Amended Warranty states that a customer will be eligible for the 10 year (or 200,000 km, whichever occurs first) warranty where the following conditions are met:
- (1) all scheduled services are performed within the authorised MMAL dealer network; and
- (2) the vehicle is serviced in accordance with the service schedule at the specified servicing intervals for the duration of the warranty.
- 2.6 The Proposed Amended Warranty is likely to have the effect of dissuading retail customers of Mitsubishi vehicles from using Independent Service Providers to service their Mitsubishi vehicles as to do so may void the Proposed Amended Warranty for up to 10 years after purchase. This is likely to be compounded by the fact that owners of new vehicles tend to spend more on vehicle maintenance and accessories than owners of older vehicles.³
- 2.7 Paragraph 1.7(d) of the Notification attempts to draw a distinction between 'repairs' and 'servicing', noting that retail customers may have their Mitsubishi vehicles repaired 'from an independent repairer or service centre without affecting the 10 year Warranty'. However, Annexure 1 to the Notification contains a number of exclusions that may void the warranty, such as 'improper' repairs, repairs arising from the fitment of 'non-genuine parts' not made or approved by MMAL and repairs arising from the incorrect fitment of non-genuine parts where installation was performed outside the MMAL network. The effect of the Proposed Amended Warranty will be to encourage the purchase of genuine MMAL parts and accessories and discourage purchasing of equivalent non-OEM parts from the aftermarket industry. It is important to note that the fitment of non-OEM parts to a new vehicle by an Independent Service Provider would not otherwise void a consumer's statutory guarantee rights. We submit that any attempt to void a consumer's rights under the Proposed Amended Warranty due to the fitment of 'non-genuine parts' that are not made or approved by MMAL may be inconsistent with a consumer's statutory rights.

¹ IBISWorld, Industry Report F3504: Motor Vehicle New Parts Wholesaling in Australia (June 2019), pp 6-7.

² Ibid., p 11.

³ Ibid., p 8.

- 2.8 The requirement to obtain servicing within the MMAL network encourages customers to remain within the network for repairs. The distinction between 'repairs' and 'servicing' will exacerbate consumer misunderstanding of warranty and servicing requirements. We consider the distinction between 'servicing' and 'repairs' to be illusory (particularly given that vehicle repairs are often carried out as a result of recommendations provided at the time of vehicle servicing). In practice, the requirement to service within the MMAL network would have the likely effect of dissuading retail customers of Mitsubishi vehicles from using Independent Service Providers to repair their Mitsubishi vehicles. It is acknowledged that consumers seeking repairs generally return to the dealership service centre to access genuine parts.⁴ Therefore, the Proposed Amended Warranty, and the potential consumer concern that the extended warranty may be voided if a purchaser seeks servicing or repairs of their vehicle outside the network, will have the likely impact of extending the relationship with the dealership, thus limiting competition.
- 2.9 Independent Service Providers, including those owned and operated by Bapcor, will be directly affected as owners of Mitsubishi vehicles will be dissuaded from having their cars serviced and repaired outside the MMAL network. Any existing consumer misunderstanding as to their ability to choose a vehicle repairer outside the MMAL network, is likely to be exacerbated by the Proposed Amended Warranty. This will have the likely effect of substantially lessening competition in the automotive aftermarket services industry, especially for Mitsubishi vehicles.
- 2.10 Wholesalers and retailers, including those owned and operated by Bapcor, will be indirectly affected as there will be decreased demand for non-OEM parts by Independent Service Providers and retail customers. This will have the likely effect of substantially lessening competition in the automotive aftermarket wholesale and retail industries.
- 2.11 We note that Mitsubishi's market share of new car sales is 7.8%. If ACCC allows MMAL's exclusive dealing, as outlined in the Notification, we consider it likely that other vehicle manufacturers will follow MMAL's lead and will implement similar warranties and conditions. This is likely to compound the effect on Independent Service Providers, wholesalers and retailers, thereby further lessening competition in the automotive aftermarket services, wholesale and retail industries.

3 Consideration of benefits

- 3.1 MMAL asserts a number of public benefits associated with the Proposed Amended Warranty, including (at paragraph 5 of the Notification):
- (1) cost savings;
 - (2) ensuring that vehicles are serviced with a higher degree of care and skill; and
 - (3) as the Proposed Amended Warranty is transferable, the resale value of vehicles will be improved and the rights available to second-hand purchasers will increase.
- 3.2 In respect of asserted cost savings, purchasers of Mitsubishi vehicles already have extensive rights under Australian Consumer Law (**ACL**) including, but not limited to, a statutory right to purchase the vehicle free from defects. Although the warranty may give the impression of extending consumer rights at no cost, this asserted benefit is illusory as consumers already

⁴ IBISWorld, Industry Report S9419: Motor Vehicle Engine and Parts Repair and Maintenance in Australia (March 2019), p 20.

possess remedies under ACL in the event of defects, including the right to replacement or refund of vehicles due to major failures.

- 3.3 In respect of asserted higher care and skill, we do not consider this to be necessarily the case. First, it is not necessarily the case that OEM parts are superior to non-OEM parts. Non-OEM parts may be of a similar, same or higher quality than the equivalent OEM part. Secondly, the services and repairs offered by Independent Service Providers are, by their nature, independent, and are able to advise customers of the most appropriate and cost effective solution. By contrast, MMAL is likely to be more inclined to use its own parts in servicing and repairing vehicles, even if a lower cost, equivalent or superior non-OEM part is available in the market. There is also no evidence that we are aware of to support the inference that a manufacturer's authorised dealer or service centre will service vehicles with a higher degree of care and skill than an independent service centre. In fact, it is our view that a significant proportion of consumers choose to service their vehicles with an Independent Service Provider as they consider it is better value for money.
- 3.4 In respect of asserted benefits associated with transferability, second-hand vehicles continue to be covered by consumer guarantees, which exist alongside those offered by the Proposed Amended Warranty (such as the consumer's right to replacement or refund of a vehicle due to a major failure). We therefore consider the asserted benefits associated with the Proposed Amended Warranty in respect of second-hand Mitsubishi vehicle owners to be overstated.

4 Consideration of public detriment

- 4.1 MMAL asserts in paragraph 6 of the Notification that there are no public detriments associated with the Proposed Amended Warranty. We consider this to be incorrect, with at least two significant public detriments of concern.
- 4.2 First, Mitsubishi (and, if successful, potentially other automotive manufacturers) will retain and extend its market power for a longer period, thereby limiting consumer choice in servicing, repairs and parts. This reduction in consumer choice may result in inferior consumer outcomes, including potentially the discouragement of independent servicing and repair activities and the use of OEM parts in favour of lower cost equivalent or potentially superior non-OEM parts.
- 4.3 Secondly, Mitsubishi (and, if successful, potentially other automotive manufacturers) may, with its market power, raise prices for servicing, repairs and parts and / or be less motivated to improve the quality or variety of its services, repairs or parts. In our experience, the cost to service a vehicle has traditionally been higher with a vehicle manufacturer's authorised dealer than with an Independent Service Provider. As the ACCC has previously noted, manufacturers and dealers may also have incentives to steer more service or repair work back to authorised dealers by denying access to parts, which may reduce competition and raise prices⁵.
- 4.4 We consider the public detriment resulting from the Proposed Amended Warranty to outweigh any public benefit.

For the reasons set out above, we oppose MMAL's Notification and respectfully request its revocation.

⁵ New Car Retailing Industry: A market study by the ACCC (December 2017), p 135.

Yours faithfully



Darryl Abotomey
Chief Executive Officer & Managing Director
Bapcor Limited