



Carsales.com Limited

Second submission to the ACCC regarding Gumtree's Proposed Acquisition of Cox Australia Media Solutions

- 1 Carsales.com Limited (**Carsales**) refers to the Australian Competition and Consumer Commission's (**ACCC**) letter of 16 March 2020 setting out its preliminary views regarding the application by Gumtree AU Pty Limited (**Gumtree**) for merger authorisation (the **Application**) of its proposed acquisition of Cox Australia Media Solutions Pty Limited (**CAMS**)¹ (the **proposed transaction**).
- 2 This submission does not repeat Carsales' submissions of 10 February 2020 (**initial submission**), but comments briefly on certain key issues arising from the ACCC's letter.
- 3 In short, Carsales agrees with many of the ACCC's preliminary views and considers that:
- there is strong and direct competition between the parties for dealer listings;
 - any potential for the proposed transaction to enhance competition by creating a stronger competitor to Carsales is outweighed by the immediate loss of significant, direct competition between the parties;
 - the competitive constraint imposed by Facebook Marketplace is overstated and speculative; and
 - any public benefits are overstated and will not outweigh the lessening of competition resulting from the proposed transaction.

Strong and direct competition between the parties for dealer listings

- 4 For the reasons discussed in paragraphs 71 to 98 of Carsales' initial submission, Carsales agrees with the ACCC's key preliminary conclusions that:
- there is significant competition between Gumtree and Carsguide/Autotrader (particularly for dealer listings);² and
 - the proposed transaction will reduce the number of competitors by combining two of the largest listings platforms in an already concentrated market.³
- 5 The ACCC's letter also observes that platforms other than Carsales are especially likely to compete with each other for dealers that multi-home and want to also list on an alternative platform to Carsales.⁴ This dynamic is effectively acknowledged by the Application, which states that dealers typically list on average on 1.4 listings platforms⁵ –

¹ CAMS operates the online platforms CarsGuide.com.au (**Carsguide**) and Autotrader.com.au (**Autotrader**). Collectively, Carsales refers to Gumtree (and its parent eBay Inc.) on the one hand, and CAMS (including Carsguide and Autotrader as the case may be) on the other hand, as the 'parties' in this submission.

² [2.19].

³ [2.20].

⁴ [2.21].

⁵ Application pages [12] and [34].

suggesting that a significant portion of dealers are also selecting from among a smaller cohort of platforms to be the secondary listing platform to Carsales.

6 On the basis of those conclusions, and particularly in circumstances where Drive and Trading Post have only marginal competitive influence, Facebook is differentiated and imposes a limited direct constraint, and there is a little basis to conclude that new entry is likely, it seems clear that substantial competition would be lost between Gumtree and CAMS.

Any stronger constraint on Carsales is outweighed by the loss of direct competition between the parties

7 The ACCC's letter identifies that it is weighing the extent to which the proposed transaction may enhance competition in the market for the supply of online automotive classified services by creating a more vigorous and effective competitor against the loss of competition between Gumtree and Carsguide/Autotrader.⁶

8 Carsales does not consider either that the proposed transaction is necessary to create a stronger competitor to Carsales, or that any enhancement in competition that may potentially result would outweigh the lessening of competition caused by eliminating competition between Gumtree and Carsguide/Autotrader.⁷ In response, Carsales makes the following three points.

9 First, the weighing exercise contemplated by the ACCC involves comparing a clear and certain loss of competition between the parties (described in paragraphs 74-96 of the initial submission and paragraphs 4-6 above), with a potential and fairly theoretical enhancement of competition between the merged entity and Carsales. Carsales submits that both the magnitude of the different impacts upon competition and their likelihood of occurring require careful consideration and comparison. In contrast to the lost competition between Gumtree and Carsguide/Autotrader, Carsales submits that the potential for enhanced competition between the merged firm and Carsales is highly speculative and theoretical.

10 The ACCC's balancing in this matter of the immediate loss of competition between the parties with the potential enhancement of competition that might result from the proposed transaction is different from the competitive assessment that it was required to make in *Vodafone/TPG*.⁸ Unlike in *Vodafone/TPG*, where the evidence demonstrated only limited *existing* competition between the merger parties (as TPG was not itself a mobile network operator), here there is a direct horizontal overlap and "significant" competition between the merger parties that would be lost as a result of the proposed transaction.

11 **[Confidential]** [REDACTED]. Conversely, the survey conducted by the

⁶ [2.23].

⁷ [2.21].

⁸ See e.g. *Vodafone Hutchison Australia Pty Limited v Australian Competition and Consumer Commission* [2020] FCA 11 (*Vodafone/TPG*), [7], [11] and [527]-[532].

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independent Motor Traders' Association of New South Wales (**MTA NSW**) indicates that 74% of responsive members considered that the proposed transaction would result in less, rather than more, competition.⁹

12 Second, there is thin factual support in the Application for the proposition that the merged entity could compete more effectively against Carsales than the parties (and particularly Gumtree) could independently. Carsales agrees with the ACCC's preliminary views that the proposed transaction is unnecessary: (i) to enable investment in product development and innovation; (ii) to implement competitive responses to Carsales; or (iii) to create a more effective listings platform.¹⁰ Carsales' initial submission addressed in detail the suggestion that the proposed transaction was necessary to arrest any decline by Gumtree and enable it to grow,¹¹ and the substantial competitive constraint that Gumtree (and Carsguide) currently impose on Carsales.¹²

13 Third, the only merger-specific basis identified on which the proposed transaction could potentially create a more effective competitor to Carsales is through network effects realised by combining the parties' inventories.¹³ However, if it is concluded that the proposed transaction is necessary to create network effects that will enable Gumtree to challenge Carsales, it appears difficult to avoid the conclusion that network effects also create substantial barriers to entry. Put differently, if Gumtree, one of the largest and best-resourced competitors in the market, cannot obtain organically sufficient scale to generate positive network effects, then network effects must necessarily operate to impose an insurmountable barrier to new entry. In those circumstances, because the ACCC's analysis implies that granting authorisation for the proposed transaction would involve locking-in a concentrated market structure that is insulated from new entry, Carsales submits that it is imperative that the ACCC has a very high degree of confidence that the potential enhancement of competition against Carsales is likely to arise.

The competitive constraint imposed by Facebook Marketplace is overstated

14 Carsales agrees with the ACCC that the differences in Facebook Marketplace's business model, as compared to the other automotive listings platforms, requires careful consideration of the extent of the competitive constraint it imposes.¹⁴

15 The Application states that dealers cannot directly list on Facebook Marketplace,¹⁵ but do so through syndication arrangements that effectively duplicate inventory. Accordingly, the extent to which Facebook Marketplace will be a direct and significant competitive constraint on the merged entity in the supply of listings services to dealers is

⁹ The MTA NSW's submission of 12 February 2020, page [6].

¹⁰ [2.44].

¹¹ Initial submission, [15]-[35].

¹² Initial submission, e.g. [59]-[63].

¹³ [2.22].

¹⁴ [2.24].

¹⁵ Application page [45].

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unclear and likely limited.¹⁶ Carsales has commented in greater detail on this issue in paragraphs 99-104 of its initial submission.

16 Carsales considers that the submission from Facebook itself that the Application overemphasises the position of Facebook Marketplace in automotive listings must be given appropriate weight in the ACCC's final determination.¹⁷

Any public benefits are overstated and unlikely to outweigh the lessening of competition

17 Carsales agrees with the ACCC's preliminary view that it is not clear that the proposed transaction is necessary to enable lower risk investment in product development and innovation by the merged entity.¹⁸ For the reasons set out in Carsales' initial submission, it considers that such investments could and would occur absent the proposed transaction. In particular (as noted in the Application), due to the importance of network effects, each listings platform already has strong incentives to attract dealer listings, as dealers can switch easily and a reduction in dealer listings creates a risk of losing audience, which would in turn lead to a further loss of dealers.¹⁹

18 Carsales submits that no material public benefits are likely to arise from the cost synergies and lower search costs claimed to be delivered by the proposed transaction. Even if the ACCC ultimately decides that any public benefits do arise, they should be afforded little weight, for the following reasons:

- there is no direct pass-through mechanism for any cost synergies. The Application itself explicitly contemplates that any efficiencies and synergies that result from the proposed transaction will be internalised and reinvested to promote further growth.²⁰ It is unclear how, in those circumstances, any consumer benefit can be identified or given material weight;
- any benefits arising from the claimed revenue and cost synergies are likely to accrue primarily to Gumtree's US parent eBay Inc. and its shareholders, a substantial proportion of which are institutional and a large majority of which are not headquartered in Australia;²¹ and
- lower search costs should be attributed little weight as search costs are already very limited. As the Application itself notes, buyers are already likely to browse multiple sites to maximise their access to the available inventory and to find the right vehicle for them (in many cases for free).²² Further, there is substantial inventory duplication across the industry and wide coverage on other listings platforms, meaning the reduction in search costs attributable to consolidating Gumtree and Carsguide/Autotrader's inventory is likely to be very low.

¹⁶ Application page [45].

¹⁷ Facebook's submission of 12 February 2020, page [2].

¹⁸ [2.44].

¹⁹ Application page [76].

²⁰ Application, section [9.3].

²¹ See, e.g. <https://money.cnn.com/quote/shareholders/shareholders.html?symb=EBAY&subView=institutional>

²² Application, pages [34] and [66].

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19 As to the prospect of substantial public benefit arising from the proposed transaction, Carsales encourages the ACCC to pay close regard to the independent MTA NSW survey, which shows 76% of responsive members considered that the proposed transaction would *not* be beneficial to the industry.

Confidentiality

20 The parts of this submission marked '[**Confidential**]' and highlighted in grey are confidential and commercially sensitive to Carsales. Carsales requests that those parts of the submission be withheld from the public register and that the ACCC does not disclose any confidential information to any third party, subject to the following:

- there is no restriction on the internal use, including future use, that the ACCC may make of the confidential information consistent with the ACCC's statutory functions;
- confidential information may be disclosed to the ACCC's external advisors and consultants on the condition that each such advisor or consultant will be informed of the obligation to treat the information as confidential; and
- the ACCC may disclose the confidential information to third parties (in addition to its external advisors or consultants) if compelled by law or in accordance with section 89(7) or section 155AAA of the *Competition & Consumer Act 2010*.

21 Carsales has provided both a confidential version and a public register version of this submission with the confidential information redacted.

27 March 2020