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Susie Black
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Dear Ms Black

Submission - National Honda Dealer Council Limited application for authorisation AA1000528 (Application)

We refer to your letter dated 25 August 2020 inviting Honda Australia Pty Ltd (**Honda**) to make a submission on the Application by National Honda Dealer Council Limited (**the NHDC**) for authorisation, including interim authorisation, to engage in collective bargaining in connection with discussions relating to Honda's new business model in Australia.

Honda does not oppose the Application in principle. We advised the NHDC that authorisation for collective bargaining is necessary to allow discussions between Honda and the NHDC in relation to certain topics that may raise issues relating to competition between dealers. However, we consider that authorisation should be granted subject to certain conditions, and for a shorter period of time, for the reasons set out in this submission. In response to the Application, we would also like to take this opportunity to provide some more context around the restructure of Honda's business in Australia, and the impact of our new model on customers.

Honda's new model

As announced in March this year, following a business review, Honda determined that it was necessary to make changes to its business model in Australia in order to maintain a viable and sustainable business and to enable Honda to compete in the highly competitive Australian automotive market.

The Australian automotive industry has been facing, and continues to face, numerous challenges that have made trading conditions increasingly difficult at all levels within the industry. The current business model is unsustainable, with adverse impacts being felt by customers, dealers and Honda alike. The changes to our business model seek to ensure both Honda's and our dealers' businesses remain sustainable, which is why we have been working with our dealer network to seek to ensure that this objective is achieved under our new model.

Our new model seeks to create an enhanced, consistent and premium Honda brand experience for both customers and dealers. The key elements are:

- **Our relationship with dealers:** implementing a new agency model in relation to the sale of new Honda vehicles. Our dealer network will be selling vehicles on our behalf, rather than in their own right. This will apply to the sale of new vehicles only and will not capture other parts of the business such as accessories, servicing, parts, used cars, finance and insurance.
- **Transparent pricing:** Honda's current intention is to adopt a 'one price everywhere' policy for customers so that they can have access to transparent and consistent pricing, set by Honda as principal, regardless of which dealership they enter, without the hassle of haggling over price.
- **Enhanced customer experience:** focusing more on customer experience and quality of service, rather than volume of sales.

The current intention is that the new model will be implemented by July 2021.



Health & Safety
AS 4801



Environment
ISO 14001

The new model will not reduce competition in the Australian automotive market. That market is highly competitive, with many competing vehicle manufacturers and models. Honda's market share is less than 4%. The operational changes being made to Honda's business are designed to assist Honda in being able to continue to compete effectively in the market, to the benefit of consumers and our dealers.

Under the new model, Honda vehicles will still need to be priced competitively in order to attract consumer sales. Honda dealers will continue to compete for new vehicle sales against dealers selling new vehicles made by other car manufacturers. Honda dealers will also continue to compete against each other in relation to trade-ins and customer service as well as parts and accessories, servicing and other aftersales products.

Ultimately our aim in transitioning to this new model is to improve the customer's experience in purchasing our vehicles. Customers will still have access to the same quality engineering and reliable models, but they will also receive a consistent, outstanding purchasing experience, no matter which dealer they visit. The intention is to provide customers with clarity and certainty when they are buying a new car so that they feel fully empowered and aware of what they will pay before setting foot in a dealership.

Engagement with dealers

We are aware that our new model is new to the Australian automotive industry, which is one of the reasons we have been engaging with the NHDC and our dealer network in relation to our restructure since March this year. There has been ongoing consultation with the NHDC regarding the impact of the new model and the proposed terms of the new agreement specifically since at least May. A copy of the draft agreement was first provided to the NHDC on 29 May 2020. We consider the consultation process to date has been collaborative and constructive. We have continually demonstrated our willingness and enthusiasm to engage with dealers, including by seeking out and taking on board feedback for the new model where possible, and will continue to do so.

At no point have we placed undue pressure on dealers, or implied that an ongoing relationship may be impacted by delays. It is important however that discussions with the dealers progress promptly and efficiently to ensure the new model can be implemented by July 2021.

Terms of authorisation

As noted above, while we do not oppose the interim authorisation sought by the NHDC in principle, we make the following submissions in relation to the proposed terms of the authorisation:

(a) **Duration of the authorisation**

The Application seeks authorisation for a period of 11 years on the basis that the draft agreements for the new model are for an initial term of five years, with an option to renew the agreement for a further five years. We consider that granting the authorisation for an 11-year period would be inappropriate given:

- the fundamental reason and basis for the Application is the new model being introduced by Honda;
- the conduct sought to be authorised is for the dealers to discuss the terms of the new model;
- the new model is intended to be finalised and implemented by July 2021; and
- contrary the Application [REDACTED]

In our view, authorisation should therefore only be given for the period up until the new agency agreement has been executed by the dealers (which is expected to occur before June 2021). If, after June 2021, there was a continuing basis or need for authorisation a further application could be made to the ACCC at that time.

(b) **Conditions**

Honda also considers it appropriate that the authorisation requested by the NHDC is granted subject to the following conditions:

- **Certainty as to the identity of dealers**

That the NHDC must provide Honda with a list of the dealers it is representing, being those who are covered by the authorisation, and notify Honda promptly should this list change. We note that, to date, the NHDC has not consented to the ACCC providing Honda with a copy of Confidential Annexure A, which sets out the details of those dealers on behalf of whom the Application is made. Honda proposes this condition because, in order for negotiations to continue from a practical perspective, Honda will need to know which dealers are covered by the authorisation, and which dealers are negotiating separately, at any point in time. If it is not clear which dealers are covered by the authorisation, it creates a risk that there may be prohibited conduct by dealers who are not covered.

- **Non-discrimination against other dealers**

Honda considers that, while dealers should be free to choose to be represented by the NHDC in the negotiations, there should not be any penalty for any dealers who do not want to be represented by the NHDC. Further, the NHDC may have greater bargaining power than any dealer individually. Honda therefore proposes that, as a condition of authorisation, the NHDC and the dealers covered by the authorisation should be required:

- not to pressure any dealer to be represented by the NHDC or become covered by the authorisation;
- not to seek, in negotiating with Honda, that dealers not covered by the authorisation receive any terms less favourable than the dealers covered by the authorisation; and
- to respect the confidentiality of any negotiations between Honda and a dealer not covered by the authorisation.

Please do not hesitate to contact us if you have any queries or would like to discuss any aspect of this submission.

Yours sincerely



Robert Thorp
General Manager – Product, Customer & Communications / Company Secretary
Honda Australia Pty Ltd