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24 June 2019

Jacqueline Downes
Allens

Via email only

CC: Felicity McMahon

Dear Ms Downes

Application for merger authorisation MA1000018 – market feedback and the ACCC's preliminary views

I refer to the application for authorisation lodged by AP Eagers Limited (**AP Eagers**) for its proposed acquisition of the ordinary shares in Automotive Holdings Group Limited (**AHG**) that it does not already own (**proposed acquisition**).

The ACCC has released a document providing a summary of the issues raised during the consultation process, both publicly and confidentially (in a de-identified form), and to outline the preliminary views of the ACCC in response to the key issues. The market feedback and preliminary views are set out in the attachment to this letter.

The merger authorisation process is public, and the ACCC has consulted with a wide range of interested parties in relation to the proposed acquisition. All public submissions received are on the public register https://www.accc.gov.au/public-registers/mergers-registers/merger-authorisations-register/ap-eagers-limited-proposed-acquisition-of-automotive-holdings-group-limited. The ACCC also received a number of confidential submissions and these have not been placed on the public register.

This letter will be published on the public register. You can forward this letter to anybody who may be interested.

You are able to provide a submission in response to the issues raised in this letter. It must be provided by no later than **4.00pm on Wednesday, 3 July 2019** for the ACCC to take it into account.

Key issues

As outlined in the attachment, a key issue for the ACCC is whether it can be satisfied that the proposed acquisition would not be likely to substantially lessen competition in the Newcastle and Hunter Valley region. As such, the ACCC is seeking further submissions regarding:

1. the consequences of the proposed transaction in the Newcastle and Hunter Valley region, and in particular whether the bargaining power of the car manufacturers is likely to mitigate the increased market share and scale of the combined entity

2. the number of (and which) AP Eagers and/or AHG dealerships in the Newcastle and Hunter Valley region that would potentially need to be divested in the event the proposed acquisition would be likely to substantially lessen competition so as to avoid a substantial lessening of competition

The ACCC is also seeking information about:

3. the value and size of discounts offered by new car retailers on the sale of a new car.

Making a submission

Due to the statutory timeframe, we request that you provide your submission by no later than **4.00pm on Wednesday, 3 July 2019**. Under the Act the ACCC may, but need not, take into account submissions received after this date.

Submissions should be emailed to APEagers-AHG-Mergers@accc.gov.au with the subject [your company name]: MA1000018 – submission.

Alternatively, if you would like to provide comments orally, please contact Nigel Vise on 03 9290 1468 or nigel.vise@accc.gov.au to organise a suitable time.

The public register and requesting confidentiality

Authorisation is a public process. The ACCC must keep a public register of documents relating to the application for merger authorisation, including submissions made by interested parties. The ACCC's public register can be found at the following link: Merger authorisations register.

All submissions (including yours) will be published subject to confidentiality claims. You may request that your submission, or parts of it, be excluded from the public register for confidentiality reasons. For example, if your submission contains commercially sensitive information or if revealing that you have made a submission could cause you commercial harm. You must make your claim for confidentiality at the time of providing the submission to the ACCC and all claims must be substantiated.

Refer to the ACCC's Guidelines for excluding information from the public register for any requests for material to be excluded from the public register.

Next steps

The ACCC must issue a determination in relation to this merger authorisation application by 26 July 2019, unless the applicant agrees to extend this timeframe.

Yours sincerely

Scott Gregson
Executive General Manager
Merger and Authorisation Review Division

Application for merger authorisation MA1000018 - the ACCC's preliminary views

The ACCC is currently considering an application for authorisation lodged by AP Eagers Limited (AP Eagers) for its proposed acquisition of the ordinary shares in Automotive Holdings Group Limited (AHG) that it does not already own (**proposed acquisition**).

This document provides a summary of the issues raised in submissions, and provides the ACCC's preliminary views about the key issues.

The legal test for merger authorisation

The ACCC may grant authorisation if it is satisfied that either:

(i) The proposed acquisition would not be likely to substantially lessen competition, or

(ii) The likely public benefit from the proposed acquisition outweighs the likely public detriment.

The ACCC may grant merger authorisation subject to conditions including, but not limited to, a condition that a person must give and comply with an undertaking under section 87B of the *Competition and Consumer Act* (2010) (the Act).

The application for merger authorisation

AP Eagers is seeking authorisation on the basis that the proposed acquisition does not substantially lessen competition (consistent with the first limb of the authorisation test). While AP Eagers briefly refers to public benefits from operational and corporate efficiencies and the Bidder's Statement annexed to AP Eagers' application for authorisation refers to an estimated $13.5m per annum in savings because of the proposed acquisition, no further details are provided.

Similarly, interested party submissions did not focus on the likely public benefits from the proposed acquisition.

Therefore at this time, the primary focus of the ACCC's consideration of the application for authorisation is on whether the ACCC can be satisfied that the proposed acquisition would not be likely to substantially lessen competition.

Public consultation

The ACCC tests the claims made by an applicant in support of an application for authorisation, and by others who may support or oppose authorisation, through an open and transparent public consultation process.

In response to the application for authorisation of the proposed acquisition, the ACCC sought the views of over 270 interested parties, including dealerships, financiers, fleet customers, car and truck/bus manufacturers, industry associations and online car sale platforms.

The ACCC has received a range of market feedback which is summarised below, including de-identified feedback that the ACCC has received in confidential submissions. Public submissions are available on the Merger Authorisations Register.

Overview of the proposed acquisition

AP Eagers is proposing to acquire AHG. These are the two largest networks of car dealerships in Australia. AP Eagers owns 110 car dealerships and 33 truck/bus dealerships across numerous states in Australia. AHG owns 150 dealerships. A combined entity would comprise 13 per cent of car dealerships nationally. Based on feedback it appears that the next largest network is around 3 per cent meaning that a combined AP Eagers and AHG would be significantly larger than any other dealership group.

The main areas of overlap between AP Eagers and AHG are in Melbourne, Sydney, Brisbane and the Newcastle and Hunter Valley region.

ACCC consideration

In Melbourne, Sydney and Brisbane, based on current information, the ACCC considers that there would be sufficient alternative dealers such that the proposed acquisition would not be likely to have the effect of substantially lessening competition in these areas.

However, in the Newcastle and Hunter Valley region[1], AP Eagers and AHG are the two largest networks of dealerships and each other's most significant competitor. The combined entity would own 36 of 78 (46 per cent) total new car dealerships[2] in the region and be the sole dealer supplying 7 car brands. Considering only the top ten best-selling brands[3], AP Eagers and AHG own 54 per cent of dealerships in the Newcastle and Hunter Valley region. Taking a narrower view and considering dealerships selling the top ten brands in metropolitan Newcastle only, AP Eagers and AHG operate 17 out of a total of 22 dealerships, giving the combined entity 77 per cent of dealerships.

Based on our current understanding of car dealerships in the Newcastle and Hunter Valley region, a list of all dealership sites and a map of the dealership sites selling the ten best-selling brands in the Newcastle and Hunter Valley region are annexed.[4]

The ACCC is continuing to consider the potential impact of the proposed acquisition on the supply of manufacturer authorised parts and new car servicing in the Newcastle and Hunter Valley region.

The ACCC is also considering issues around the retail supply of trucks and buses in Melbourne.

Areas where the ACCC is likely to have concerns

Newcastle and the Hunter Valley

The ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition in the retail supply of new cars in the Newcastle and Hunter Valley region.

The ACCC considers that the aggregation of AP Eagers' and AHG's dealers in the Newcastle and Hunter Valley region would remove the largest competitor for each of them and is likely to result in increased prices paid by consumers, resulting in consumer harm.

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1 The ACCC has not reached a definitive view on which towns form part of the Newcastle and Hunter Valley region. However, at its broadest the ACCC considers this region would include metropolitan Newcastle (comprising Central Newcastle, Cardiff, Gateshead and Bennetts Green), Maitland/Rutherford, Cessnock, Singleton and Port Stephens.

2 In this letter we have counted dealerships by dealership sites.

3 Listed in the AP Eagers Bidder's Statement, p.16 (Annex 02.01.03 of AP Eagers' application).

4 The list and map are based on AP Eagers' application (Annexes 04.01 and 04.02) and a submission from AHG (published on the ACCC public register on 22 May 2019) and cross-checked against online material where required. We have observed that some independently-owned dealerships in this list stock very low numbers of new cars and may be less of a constraint on a combined AP Eagers and AHG. Dealerships that predominantly sell utes and vans, but do offer SUVs, are also included.

The ACCC considers that given the industry practice of discounting and not selling at recommended retail price (RRP), price increases would most likely take the form of a reduced level of discounting.

The ACCC considers that consumers are unlikely to sufficiently constrain the combined entity from raising prices because: the actual price likely to be paid is opaque; online and telephone based research would be unlikely to reveal the true price that could be paid; consumers will assume different dealers have different owners (especially within the same brand) when in fact they are in the same dealer network; and consumers appear to be purchasing within relatively localised areas.

Manufacturers may impose some pricing constraint as dealers increasing their prices would not be in the interests of the manufacturers if it resulted in decreased volumes. Manufacturers may have ways to limit the ability of the combined entity from doing this. However, manufacturers do not have transparency over prices actually paid by consumers and in any case, their focus is on volume, not price. Accordingly, the ACCC is not presently satisfied based on the information before it that it can rely on manufacturers as an effective constraint.

AP Eagers submits that it does not set pricing centrally, that pricing is at the discretion of each dealer principal and dealer principals are remunerated with a share of profit from the dealerships they manage. AP Eagers submits that these factors mean that the proposed acquisition will not change the level of competition between AP Eagers and AHG dealers. The ACCC considers that even where internal policies may act to promote competition, they can be varied at any time and the combined entity would have an incentive to maximise revenue and profit. Accordingly, the ACCC does not consider AP Eagers' internal policies to provide a sufficient constraint.

The ACCC's concerns around the potential for the proposed acquisition to substantially lessen competition in the Newcastle and Hunter Valley region may be addressed by the divestiture of certain dealerships by AP Eagers or the combined entity. The Act provides a mechanism for AP Eagers to offer a court enforceable undertaking to the ACCC to divest specified assets.

New car retailing

Geographic market

At this stage, the ACCC considers that there is persuasive evidence that the Newcastle and Hunter Valley region, or part thereof, forms a distinct and separate market to Sydney and/or the Central Coast for new car retailing. The ACCC considers that Sydney imposes a degree of constraint on the Newcastle and Hunter Valley region (although perhaps not vice-versa), however, the two areas form separate markets.

Pump-in/pump-out reports[5] and submissions demonstrate that under current pricing structures the majority of sales for dealers in the Newcastle and Hunter Valley region are to customers within that region. Where a dealer sells cars outside its Primary Marketing Area (PMA),[6] it is generally into neighbouring PMAs. Similarly, where other dealers sell into a dealer's PMA, it is also generally from dealers in neighbouring PMAs. While some people resident in Newcastle and the Hunter Valley do buy cars from Sydney, it is unclear to what extent these people are already travelling to Sydney for other purposes. It may also be the

[5] Pump-in/pump-out reports are provided by manufacturers to dealers. They show how many of the manufacturer's cars sold to customers within a dealer's PMA were sold by other dealers (pump-in) and how many of the dealer's sales were to customers in another dealer's PMA (pump-out).

[6] A Primary Marketing Area is a territory defined by reference to a number of post codes where a dealer generally has exclusive rights to undertake local marketing and where a dealer is generally expected to focus their sales efforts.

case that new vehicles sold into the Newcastle and Hunter Valley region from Sydney dealers are actually fleet sales, given the presence of a number of large mining companies in this region.

Interested parties' submissions expressed a range of views about consumer willingness to travel to acquire a new car. Data provided by manufacturers show that the majority of their customers travel less than 35km to purchase a new car, although they do travel further in non-metropolitan areas.

Dealers in the Newcastle and Hunter Valley region submit that customers will generally not travel outside the Hunter Valley to purchase a vehicle although a Sydney dealer submitted that it does make some sales to customers in Newcastle and the Hunter Valley region.

Dealers submit that customers will travel some distance if the savings are big enough and that some sales take place over the internet or by telephone.

The travelling distance to Sydney entails a considerable amount of time and inconvenience, such that many consumers from a regional area may not be willing to undertake it specifically for the purpose of negotiating a new car purchase. However, if a person is travelling to Sydney for another purpose, inconvenience may not be an issue.

People who live in Cessnock and Maitland are more likely to travel to Newcastle regularly for other reasons rather than the reverse. On this basis, the ACCC is considering whether there is a degree of asymmetry in geographic substitution between Cessnock/Maitland and Newcastle. As Singleton is further from Newcastle than Cessnock and Maitland/Rutherford, the ACCC is also considering whether dealers located there are strong competitors to Newcastle dealers.

Substantial lessening of competition – new cars

At this stage, the ACCC considers that it is likely that the proposed-acquisition would result in reduced price competition for new cars by removing the largest competitor faced by each of AP Eagers and AHG in the Newcastle and Hunter Valley region and giving them the opportunity to reduce the level of discounts they offer. The ACCC does not consider that consumers would have the ability to sufficiently constrain this behaviour by switching to alternative suppliers. The ACCC is not currently satisfied that dealer obligations contained in agreements with manufacturers would not be able to sufficiently constrain that behaviour but is continuing to investigate this.

The combined entity would have significant market share in the Newcastle and Hunter Valley region, including a majority of the top ten brands. The combined entity would have 36 out of 78 dealer sites in the Newcastle and Hunter Valley region. However, its brands in that region are generally skewed towards the most popular and highest volume brands. Post-acquisition the combined entity would have approximately 53 per cent of the dealership sites selling the top ten brands in the Newcastle and Hunter Valley region and 77 per cent in metropolitan Newcastle.

Submissions suggest that pricing for new cars is opaque. While the manufacturers' RRPs are transparent, submissions were consistent that virtually no cars are sold at this price. Prices are almost always discounted and the extent of the discount appears to be dependent on a range of factors and variables.

Dealers expressed differing views about online sales and its impact on price. However, it appears that online sales are minimal.

The ACCC considers that this opacity of pricing means that while consumers can research the manufacturer's RRP and prices for late model used cars online, this would not inform them of the actual price they would pay at a particular dealer for a particular model of new car.

Reviews of online car sales sites and dealer websites demonstrate that advertised prices for new cars are generally at or above RRPs and ‘demo’ models have generally covered reasonable mileage meaning they are often not a reliable indicator of the price that can be paid for a new car.

The ACCC also understands that dealers will generally not offer their best price over the phone and use phone calls as an opportunity to convince prospective purchasers to visit their dealership.

Submissions were consistent that consumers now generally only visit one to two dealers before making a purchase. Many dealer groups continue to use the names of the previous owner of a dealership (such as Klosters), creating the illusion of separate ownership and competition. Consumers only visiting two dealerships may think they are shopping around to get a better price without realising that they have visited commonly owned dealerships.

For these reasons, the ACCC considers that customers with a willingness to travel relatively long distances if the savings are large enough are unlikely to have sufficient information to assess the magnitude of possible savings and prompt them to travel. The ACCC also considers that these factors act to limit the level of constraint that consumers can impose and that in view of the level of consolidation, consumers in Newcastle and the Hunter Valley region may face increased prices without being aware of it.

The ACCC considers that the proposed acquisition may reduce the incentive for the combined entity to compete as aggressively for customers from its own PMAs. By removing the competitive tensions of two strong competitors, the combined entity could potentially continue to undercut the remaining competitors, but with lower discounts than previously, or by offering an inferior customer experience (such as spending less time with customers describing the car’s features, or inferior showrooms and waiting areas). Removal of one of the two largest competitors in the region may also lead smaller dealers to compete less on price.

The ACCC received submissions that demonstrate there are reasonable profit margins from sales at manufacturer RRP although they decrease as the price of the car decreases. The ACCC is also aware of instances where consumers have received considerable discounts, in the thousands of dollars, on the purchase of new cars. Accordingly, it appears that some dealers do offer quite large discounts. The ACCC is continuing to investigate the extent to which this level of discounting would be reduced by the proposed acquisition.

In view of the lack of transparency of discounted prices, the ACCC is considering whether the combined entity would be able to significantly reduce its level of discounting in the Newcastle and Hunter Valley region, without consumers being aware of the change. Similarly, the ACCC is considering the extent to which the competing dealerships in the Newcastle and Hunter Valley region would act to constrain such an approach, particularly in circumstances where they may face higher operating costs relative to the combined entity and may also benefit from reduced competition.

The ACCC also considers that to the extent that synergies from the proposed acquisition reduce operating or acquisition costs for the combined entity, it may be less willing to pass any or all of these savings on to consumers where it faces limited constraint from smaller dealer groups. In such a case the combined entity may still undercut competing dealers, but not by as much as it would in a more competitive market.

Most manufacturers who made submissions did not express concerns about the proposed acquisition. Submissions show that manufacturers use key performance indicators (KPIs) and bonuses to incentivise dealers to sell the maximum number of new cars. The ACCC understands that each manufacturer uses a different structure. However, in general these processes involve setting sales targets to be achieved by dealers and paying bonuses based on the volume of sales achieved. Further the ACCC understands that in some cases manufacturers also place targets on customer service and satisfaction levels and will consider additional factors, such as the level of sales within a dealer's PMA.

Manufacturers submit that they do not have any visibility over the actual price a new car is sold for or the level of discount applied. The general lack of visibility over price may mean that in a market where consumers have a preference to purchase a car locally in the Newcastle and Hunter Valley Region, the combined entity could raise prices by reducing the level of discounts without manufacturer KPIs affecting their ability to do so. As long as volumes didn't decrease significantly, manufacturers would most likely not have any concerns if they did identify changes.

The ACCC considers that the transparency of manufacturer RRPs and the opacity of the actual price that will or may be paid act to reduce price elasticity of demand for consumers in the market. It is likely that consumers who approach a dealer for a price have already decided to buy a car and have most likely identified a preferred model. They will almost always be informed about the RRP and may expect to pay somewhere close to that price. Many consumers may not be aware of the level of discounting. While a consumer will seek to negotiate the best deal they can get, it is likely that many would be prepared to pay close to the RRP if they had to. Accordingly, it is likely that increases in price payable that were still below the RRP would have limited impact on the level of consumer demand meaning that decreased discounting may not impact sales volumes.

Further, as the combined entity will operate dealerships covering a majority of the best-selling brands in the Newcastle and Hunter Valley region, the combined entity could seek to increase prices uniformly across its network (with a potential decrease in sales volume), while retaining each manufacturer's existing market share. If this was to occur, the lack of manufacturer visibility over pricing would mean it would be difficult for them to ascertain the cause of any decrease in sales in the regional market.

AP Eagers submits that pricing is at the discretion of its individual dealer principals. The ACCC is continuing to investigate this. Nonetheless, the ACCC considers that internal policies or approaches act as an insufficient guarantee of continuing competition as they can be unilaterally varied or amended at any time.

The ACCC considers that manufacturers and each of AP Eagers and AHG currently have processes in place that seek to promote competition between dealerships. However, the combined entity's dealer principals and sales managers would know that competing with each other would ultimately affect the combined entity's revenue and profit. This knowledge could affect their willingness to discount in order to win business from each other. It is likely that dealer principals within a group would be motivated to compete most strongly against competing groups, rather than each other. Increasing the combined entity's concentration in a regional market could therefore lead to reduced discounting and competition.

One manufacturer submits that the level of competition between dealerships owned by separate corporate groups is more intense than competition between dealerships under the same corporate ownership.

Further, the ACCC considers that fierce competition between two commonly owned dealerships would be likely to have the effect of decreasing margin/profit without increasing their overall volume. This would not be in the commercial interests of the common owner. In such a situation the ACCC considers that the common owner would have an incentive to seek to limit the extent of the rivalry between the two dealerships.

Finally, some manufacturers submit that they use market share limits to restrict the number of dealerships of their brand that a dealer group can own in a specified region. They state that these are used as a means of limiting consolidation and promoting competition between their dealers. The ACCC considers that the use of these limits demonstrates a belief by manufacturers that too much aggregation is not beneficial to competition.

The ACCC seeks further submissions regarding:

1. **the consequences of the proposed transaction in the Newcastle and Hunter Valley region, and in particular whether the bargaining power of the car manufacturers is likely to mitigate the increased market share and scale of the combined entity.**
2. **the number of (and which) AP Eagers and/or AHG dealerships in the Newcastle and Hunter Valley region that would potentially need to be divested in the event the proposed acquisition would be likely to substantially lessen competition so as to avoid a substantial lessening of competition.**
3. **the value and size of discounts offered by new car retailers on the sale of a new car.**

Barriers to entry and expansion

Interested parties submit that barriers to entry into new car retailing are significant. New entry would require the offer of a PMA from a manufacturer. Submissions were generally consistent that the market is mature and well serviced by dealers and established brands are unlikely to offer new PMAs and the vast majority of major brand PMAs are already taken. Submissions also state that once a PMA was obtained it would cost many millions of dollars to source appropriate land and construct necessary facilities, such as show rooms and workshops. Some submissions also point out that it is extremely difficult to find appropriate land in metropolitan areas.

Public benefits

The focus of AP Eagers' submission is on the impact of the proposed acquisition on competition. It does describe some productive and operational and corporate efficiencies in its submission, but does not place a value on these. AP Eagers submits that the public benefits will provide AHG shareholders the opportunity to benefit from AP Eagers' proven management expertise, participate in the potential upside from AP Eagers' future growth strategy and potentially benefit from the greater scale and long term prospects of a larger business.

In its Bidder's Statement annexed to AP Eagers' application and released to the ASX, AP Eagers estimates that productive and operational efficiencies would result in an estimated $13.5m per annum in savings.

This equates to roughly $52,000 per dealership per annum or approximately $1,872,000 per annum across the Newcastle and Hunter Valley region. The ACCC understands that new car dealerships face considerable operating expenses and that rent can often be tens of thousands of dollars per month. In view of the considerable operating costs faced by a dealership, we consider that this saving does not form a large portion of overall costs.

The ACCC considers that the likely public benefits of the proposed acquisition are unlikely to outweigh the public detriment from any likely substantial lessening of competition in the Newcastle and Hunter Valley region.

We consider that the vast majority of the identified benefits would still be achieved if AP Eagers were to divest dealerships in the Newcastle and Hunter Valley region to address any competition concern.

Areas the ACCC is continuing to consider

Distribution of parts

The ACCC considers that aggregation of dealerships in the Newcastle and Hunter Valley region may also remove a potential constraint for the supply of authorised parts and technical information such as computer access codes to independent mechanics in particular.

The ACCC is considering the extent to which the combined entity could restrict the supply of parts to smaller dealers or independent mechanics, as well as restricting independent mechanics' access to computer access codes. Submissions state that there are a limited number of dealerships for each brand that act as distributors of manufacturer authorised parts. Other dealers and independent repairers then purchase parts from these dealer distributors.

Submissions suggest that approaches to the supply of parts and computer codes to independent repairers can depend on the individual distributor or dealer and some distributors or dealers make accessing parts and computer codes by independent mechanics difficult. There is no suggestion that AP Eagers or AHG have a policy of doing this.

Submissions also raise the importance of dealers and mechanics being able to access parts quickly, in order to complete same-day repairs. Where parts cannot be accessed locally, there are usually delays in obtaining them. This delays the repair and causes customer frustration.

An industry association submitted that some parts, generally electronic components, require access codes to integrate them into other systems in cars. It submitted that some dealers refuse to assist independent mechanics with these codes, charge excessive prices or cause undue delays.

The ACCC understands that the Australian Government Department of the Treasury is currently consulting on a mandatory code to regulate this issue.

The ACCC is considering the extent to which AP Eagers and AHG compete in the supply of parts, particularly in the Newcastle Hunter Valley region, and whether the proposed acquisition could give the combined entity the ability to foreclose local supply of parts for some brands.

The ACCC is also considering whether the increased aggregation of dealerships for certain brands would give the combined entity, or other dealerships in the Newcastle and Hunter Valley region, an increased ability to foreclose or delay independent mechanics' access to computer access codes.

Servicing

The ACCC is considering the extent to which the proposed acquisition could affect the market for car servicing in the Newcastle and Hunter Valley region.

Submissions demonstrate that consumers prefer to have cars serviced locally and are unwilling to travel far for servicing.

While there are many independent mechanics that can service new cars, there are barriers to them attracting business. A consumer survey conducted as part of the ACCC's New Car Retailing Final Report indicated that almost nine out of ten purchasers of new cars have their car serviced by an authorised dealer during the manufacturer's warranty period.[7] Submissions also show that purchasers tend to start out having new cars serviced by dealers, with the number dropping off over time, especially once capped-price servicing and manufacturer warranty periods expire. The submissions received by the ACCC showed lower levels of initial retention than were reported in the ACCC survey.

As noted above, independent mechanics also face the need to obtain manufacturer authorised parts and computer access codes, typically from dealers. An industry association reported that some dealers can be difficult in dealings with independent mechanics.

The proposed acquisition will lead to increased aggregation of dealers for some brands. The ACCC is considering the extent to which this aggregation could reduce competition between dealers for servicing and increase barriers faced by independent mechanics.

Supply of fleet vehicles in the Newcastle and Hunter Valley region

The ACCC is continuing to consider the effect of the proposed acquisition in relation to fleet sales, as a result of the aggregation of dealerships in the Newcastle and Hunter Valley region. The ACCC is considering the extent to which the proposed acquisition could impact smaller fleet purchasers, which are solely located in the Newcastle and Hunter Valley region.

Supply of commercial vehicles in Melbourne

The proposed acquisition will aggregate a number of commercial vehicle dealerships under the combined entity. This will remove AHG as a competitor for the supply of commercial vehicles in Melbourne. The ACCC is considering the extent to which this aggregation could give the combined entity the ability to raise prices for new commercial vehicles in Melbourne.

Areas where the ACCC is unlikely to have concerns

Acquisition of dealerships

Concerns were also raised that the proposed acquisition would reduce options for owners wanting to sell their dealerships. AP Eagers and AHG are large acquirers of dealerships and dealership groups nationally. The proposed-acquisition would remove one of these options, potentially affecting the ability of owners to sell their dealerships and reducing the price they could sell for.

The ACCC considers that the proposed acquisition is unlikely to substantially lessen competition for the acquisition of existing dealerships. AHG will be removed as a potential acquirer of independent dealers. However, AP Eagers will remain as a potential acquirer (subject to s.50 of the Act). The ACCC also understands that there are privately owned dealership groups that acquire other dealers as well as international companies and in some instances private equity.

New car retailing in Melbourne, Sydney, Brisbane and nationally

Most submissions did not express concerns around aggregation of AP Eagers and AHG in Melbourne, Sydney or Brisbane. One submission raised concerns about Brisbane. At this stage the ACCC is unlikely to have any concerns around new car retailing in Melbourne, Sydney and Brisbane.

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[7] ACCC, New Car Retailing Final Report, p. 42.

The aggregation in Melbourne and Sydney will be minimal, with AP Eagers operating four dealerships in each city. AP Eagers operates a single non-luxury dealership in Melbourne. The combined entity will operate 31 and 22 dealership sites in each of Melbourne and Sydney, respectively.

Based on the numbers of alternative dealership sites submitted by AP Eagers in its application – 260 in Sydney and 221 in Melbourne – the combined entity will have approximately 14 per cent of the dealer sites in Melbourne and 9 per cent of the dealer sites in Sydney. While there may be more localised markets than Melbourne and Sydney, there will remain a large number of alternative, competing dealers in any localised market that will constrain the combined entity.

The combined entity will have 22 of 176 dealership sites in Brisbane, giving it 12 per cent of the dealership sites in Brisbane. The dealership sites of both parties are spread across the metropolitan region. There is limited aggregation in any one area, and each dealership site has a number of competing dealership sites within reasonable proximity that are likely to act as a constraint on the combined entity.

Nationally the combined entity will have approximately 13 per cent of new car dealerships. The ACCC has not identified any national effects that could arise from the proposed acquisition. It may have increased bargaining power in dealings with manufacturers. However, manufacturers generally did not express concerns about this.

Wholesale supply of used cars

No concerns have been raised around the wholesale supply of used cars and the ACCC considers that the proposed acquisition is unlikely to substantially lessen competition in any market for the wholesale supply of used cars.

Used car retailing

No concerns were raised about the supply of used cars. The ACCC considers that the proposed acquisition is unlikely to substantially lessen competition in any market for the retail supply of used cars.

The ACCC considers that used cars are likely to form a separate market to new cars. Submissions generally consider that there is a limit to which new and used vehicles can be considered substitutable, due to the different supply and demand characteristics of the two products.

The ACCC observes that there are a large number of independent retailers of used cars and these, along with dealer operated used car yards and online vehicle marketplaces, will operate to constrain the combined entity.

Supply of insurance and finance

The ACCC considers that customers are free to organise their own insurance and finance, independent of the dealer from whom the vehicle was purchased.

The ACCC considers that there are a large number of suppliers of insurance and acquirers of finance products. The ACCC considers that the proposed acquisition will not substantially reduce the number of potential acquirers of finance products, nor will it substantially reduce the number of sellers of insurance products.

Dealer sites

Concerns were expressed by some dealers and a manufacturer that the combined entity could seek to tie up land at strategic sites, resulting in excluding smaller dealers from accessing those sites, thus removing them from the contemplation of prospective customers attending those sites. Due to the number of dealerships, and range of brands, that the combined entity will operate in many localities, this control could occur via outright ownership or leasing of the site, or as a result of the combined entity clustering its dealerships in a location where it is difficult for smaller dealers to gain access, either because of limited availability of space or because of the possibly increased costs (such as rent) that may be incurred.

The ACCC considers that to the extent that this did occur it would be likely to arise from the competitive nature of the combined entity, rather than increased market power resulting from the proposed acquisition. Further, the ACCC understands that generally manufacturer approval is required to move the location of a dealership and some manufacturers can be resistant to this.

Bargaining power and wholesale pricing

Dealers have expressed the view that the proposed acquisition could increase the combined entity's bargaining power with manufacturers. These dealers are concerned that this could lead to the combined entity gaining better wholesale prices or bonuses from manufacturers that smaller dealers are not able to access. Some dealers also submit that increased bargaining power could enable the combined entity to direct or unduly influence manufacturers on where they could, and could not, allow new PMAs, to minimise new competing dealerships close to the combined entity's dealerships.

Some submissions also assert that this conduct is already occurring.

Some manufacturers submit that the proposed acquisition could act to increase the combined entity's bargaining power, however the nature of the relationship means that manufacturers could manage this increased bargaining power.

Manufacturers submit that wholesale pricing is fixed for all dealers in the manufacturer's network.

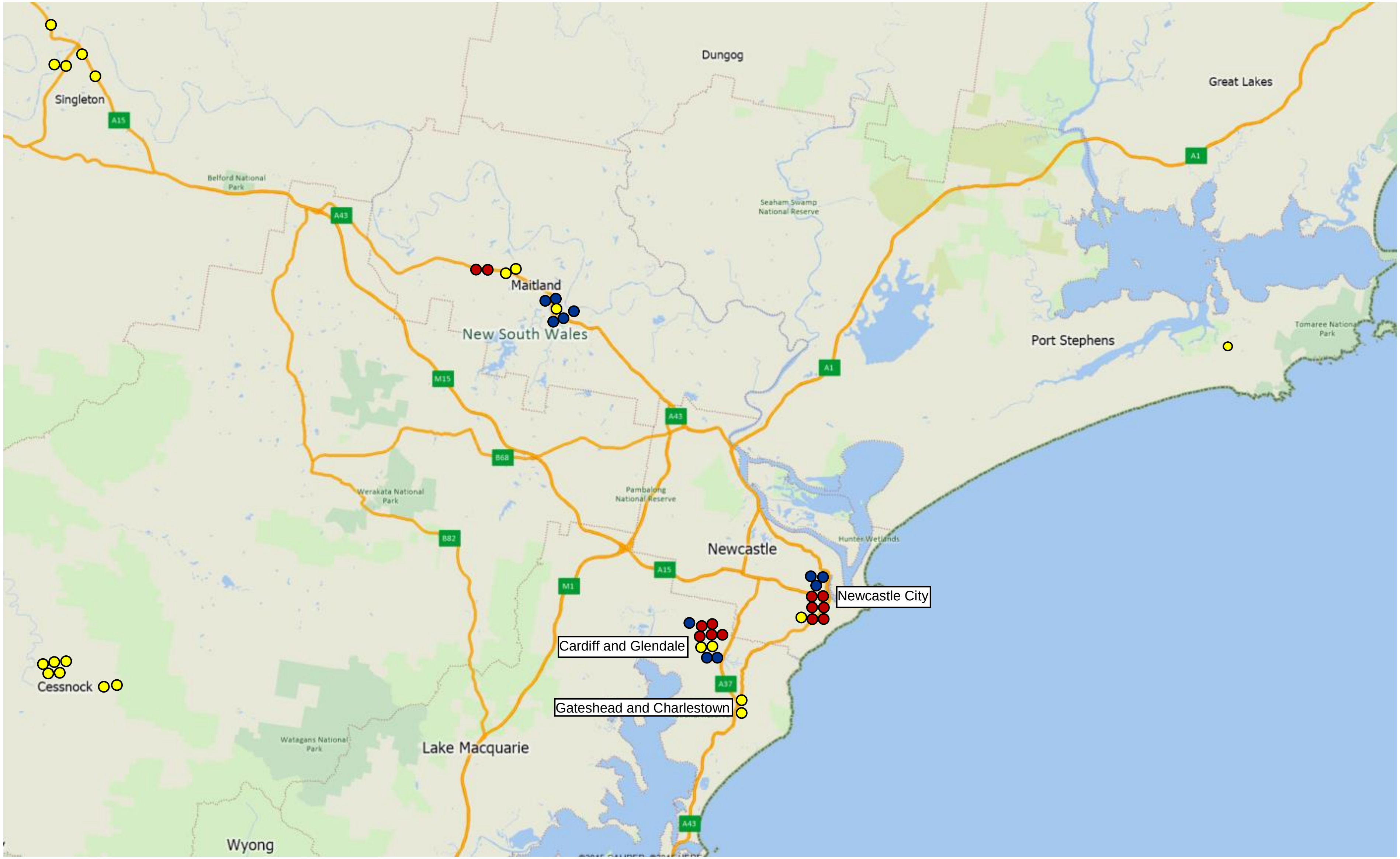
Given the bargaining power of manufacturers, increased bargaining power for the combined entity can have a pro-competitive affect and bring benefits to consumers.

Annexure 1 – List of dealership sites in the Newcastle and Hunter Valley region

Brand	A.P. Eagers	AHG	Competing dealers
Top 10 brands			
Toyota		Cardiff	Cessnock Gateshead Maitland Newcastle Port Stephens Singleton
Mazda		Newcastle Maitland Glendale	Singleton
Hyundai	Cardiff Newcastle Rutherford		Cessnock
Mitsubishi	Newcastle		Cessnock Maitland Cardiff Gateshead
Ford	Cardiff Newcastle Rutherford		Cessnock Singleton
Holden		Newcastle	Cessnock Cardiff Maitland Singleton
Kia		Cardiff Maitland Newcastle	Cessnock
Nissan	Cardiff Newcastle	Maitland	Cessnock Singleton
Volkswagen	Newcastle Cardiff	Maitland	
Honda	Cardiff Newcastle	Maitland	
Other brands represented in the Newcastle and Hunter Valley region			
Alfa Romeo			Newcastle
Audi		Newcastle	
BMW	Newcastle		
Chrysler			Cessnock

Dodge Jeep			Bennetts Green Newcastle
Citroen			Gateshead
Fiat			Newcastle
Great Wall			Maitland
Haval			Maitland
Isuzu		Cardiff Rutherford	Newcastle City
Jaguar Land Rover			Bennetts Green
LDV		Glendale Beresfield	
Lexus			Newcastle
Mercedes-Benz			Bennetts Green
MG			Bennetts Green
Mini	Newcastle		
Peugeot			Gateshead
RAM			Newcastle
Renault			Newcastle Gateshead
Skoda		Newcastle	
SsangYong			Cardiff
Subaru		Glendale Newcastle Maitland	
Suzuki	Newcastle		Maitland Cardiff
Volvo			Newcastle

Annexure 2 – Map of dealership sites in the Newcastle and Hunter Valley region selling the ten most popular brands



Blue: AHG
Red: A.P. Eagers
Yellow: Competitors