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Proposed acquisition of Automotive Holdings Group by AP Eagers Limited

Submission in response to the ACCC's letter outlining market feedback and preliminary views published on 24 June 2019

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1 Executive summary

On 24 June 2019, the ACCC issued its letter outlining market feedback and preliminary views (***Transparency Letter***) in relation to the proposed acquisition by A.P. Eagers Limited (***AP Eagers***) of Automotive Holdings Group Limited (***AHG***) (the ***Proposed Acquisition***).

In the Transparency Letter the ACCC identified one area that it considered likely to raise concerns and four areas that it is continuing to consider, namely:

(a) areas where the ACCC is likely to have concerns (this is discussed in more detail in section 2 of this document):

(i) new car retailing in the Newcastle and Hunter Valley region;

(b) areas the ACCC is continuing to consider (this is discussed in more detail in section 3 of this document):

(i) distribution of parts in the Newcastle and Hunter Valley region;

(ii) car servicing in the Newcastle and Hunter Valley region;

(iii) supply of fleet vehicles in the Newcastle and Hunter Valley region; and

(iv) the supply of commercial vehicles in Melbourne,

(c) the ACCC has also identified the following areas as unlikely to be of concern (this is discussed in more detail in section 4 of this document):

(i) the removal of AHG impacting acquisitions of dealerships;

(ii) new car retailing in Melbourne, Sydney, Brisbane and nationally;

(iii) wholesale supply of used cars;

(iv) used car retailing;

(v) supply of insurance and finance;

(vi) removal of access for smaller dealers to operate from strategic sites; and

(vii) bargaining power and wholesale pricing.

AP Eagers agrees with the ACCC's preliminary view that the areas described in (c) above raise no concerns.

This paper is dedicated to responding to the areas in which the ACCC has considered that the Proposed Acquisition will likely raise concerns or that the ACCC is continuing to consider. For the reasons outlined in this paper, none of these areas give rise to any actual or potential substantial lessening of competition as a result of the Proposed Acquisition.

2 Areas where the ACCC is likely to have concern

AP Eagers disagrees with the ACCC's preliminary view that the Proposed Acquisition is likely to substantially lessen competition in the retail supply of new cars in the Newcastle and Hunter Valley region.

Although AP Eagers disagrees with the ACCC's preliminary position with respect to new car retailing in the Newcastle and Hunter Valley region, in order to secure the ACCC's approval so that AP Eagers can proceed with the acquisition of AHG quickly, AP Eagers intends to provide the ACCC with an undertaking to divest its dealerships in Newcastle and the Hunter Valley. This is without prejudice to AP Eagers' view that the appropriate scope of the geographic market for the supply of new vehicles is national in scope and that AP Eagers disagrees with the views expressed by the ACCC in its Transparency Letter regarding the effect of the Proposed Acquisition on competition in the Newcastle and Hunter Valley region. The scope of the business AP Eagers proposes to divest encompasses all of AP Eagers' new car retailing dealerships in the Newcastle and Hunter Valley region and operations, including servicing, the supply of spare parts and the supply of fleet vehicles. Accordingly, AP Eagers considers that the divestment comprehensively addresses all of the ACCC's concerns with respect to new car retailing in the Newcastle and Hunter Valley region, as well as any issues that the ACCC is continuing to explore in relation to the distribution of parts, the supply of car servicing and the supply of fleet vehicles in the Newcastle and Hunter Valley region.

While AP Eagers does not consider that the Proposed Acquisition gives rise to any concerns in relation to:

- the supply and distribution of parts in the Newcastle and Hunter Valley region (**section 3.1** of this submission);
- the supply of servicing in the Newcastle and Hunter Valley region (**section 3.2** of this submission); and
- the supply of fleet vehicles in the Newcastle and Hunter Valley region (**section 3.3** of this submission),

AP Eagers is offering to divest all of its operations in the Newcastle and Hunter Valley region, including parts distribution operations, servicing activities and fleet sales capabilities. Accordingly, any concerns in relation to these areas will be addressed through this divestment.

2.1 The supply of new passenger vehicles in the Newcastle and Hunter Valley region

The ACCC has based its preliminary view that the Proposed Acquisition will have the effect or the likely effect of substantially lessening competition in the retail supply of new cars in the Newcastle and Hunter Valley region on the following:

(a) **first**, the aggregation of AP Eagers' and AHG's dealers would remove the largest competitor for each of AP Eagers and AHG;

(b) **second**, that the Newcastle and Hunter Valley region and the Sydney region are separate geographic markets;

(c) **third**, AP Eagers could change its model from a decentralised model that promotes competition between its dealers;

(d) **fourth**, the price of a new vehicle is opaque – online prices are reflective of the recommended retail price (***RRP***) (rather than discounts) and prices given over the phone are typically not the best prices available; and

(e) **finally**, limits on the number of dealers in an Original Equipment Manufacturer (***OEM***) network that may be held by a common owner indicates that the OEM's believe too much concentration with a single ownership group is harmful to competition.

We consider each of these points in turn below.

(a) Removal of largest competitor for each of AP Eagers and AHG

The ACCC has formed a preliminary view that AP Eagers and AHG are each other's largest competitor in the Newcastle and Hunter Valley region. AP Eagers disagrees with this position and considers that strong competition will remain after the Proposed Acquisition is implemented between AP Eagers dealers in the Newcastle and Hunter Valley region as well as nationally and also from dealers owned by other entities both in the Newcastle and Hunter Valley region (eg, McCarroll's of Moss Vale Pty Ltd, Kelly Trotter Motor Group Pty Ltd, Heritage Motor Group Pty Ltd, Cessnock Automotive Pty Ltd and various independents) and nationally.

On the basis of the points set out in relation to pricing opacity below, geographic market and changing from a decentralised business model, AP Eagers considers that all of its dealerships will continue to be constrained by competition from independent dealerships and between AP Eagers dealerships, both within and outside the Newcastle and Hunter Valley region. After the Proposed Acquisition is implemented, AP Eagers' dealerships will continue to compete with one another. This is particularly the case since a key tenet of the dealer franchise model is intra-OEM dealer network competition facilitated by dealer agreements and KPIs which focus heavily on incentivising dealers to sell volume. As has been described in previous submissions,[1] achieving OEM-set KPIs is essential to the profitability and viability of all dealerships. Accordingly, given the competitive pressure that the merged entity's dealerships will continue to face from the Central Coast and Sydney region, it is highly unlikely that AP Eagers' dealerships in the Newcastle and Hunter Valley region could raise prices (or reduce discounting) without jeopardising their ability to achieve KPIs and therefore the viability of the individual dealership businesses. Suttons, the owner of 16 passenger and commercial vehicle dealerships in both the Sydney and Newcastle regions, in its submission to the ACCC dated 24 May 2019 (***Suttons Submission***), at paragraph 2, states that '*if prices increased in Newcastle, consumers would drive for a few hours to purchase a new car, or use the threat of switching to an alternative dealership in order to negotiate a larger discount*'.

Dealerships with common ownership competing vigorously against one another is accepted by industry participants as a reality of the industry and evidenced in the following submissions:

- **Suttons Submission**: '*dealerships are run as independent, standalone entities: dealers within the group compete against each other for customers, and each dealership remunerated according to its performance and seeks to maximise its own revenue*'; and
- **Jaguar Land Rover** submission dated 30 May 2019: '*individual dealerships within the same dealership groups generally compete as vigorously against one another for sales as they do against dealerships from outside of the group, with the best run dealership groups invariably encouraging high levels of intra-group competition to maximise overall sales of the group and ensure that each dealership is itself viable in its own right*'.

Accordingly, for the reasons set out in both this section and the sections below, AP Eagers believes that it is not correct to categorise AHG as AP Eagers' most significant competitor since all dealerships, regardless of ultimate corporate ownership, compete vigorously and will continue to do so after the Proposed Acquisition.

(b) The Sydney region and the Newcastle and Hunter Valley region as separate geographic markets

The ACCC has formed the view that the Newcastle and Hunter Valley region is a separate geographic market, for example, from the Sydney region. AP Eagers disagrees with this characterisation. The supply of new vehicles in the Newcastle and Hunter Valley region is constrained by competition from suppliers based in the Sydney region as well as across Australia. As stated in RBB Economics' report dated 23 April 2019 entitled *An assessment of local market definition for new car dealership sites in Newcastle and Brisbane* (***RBB Report***), at present, on average, 21% of new vehicles purchased by customers based in Newcastle are purchased from

[1] See AP Eagers' Merger Authorisation Application dated 29 April 2019, page 30; Suttons' submission to the ACCC dated 24 May 2019.

outside of the Newcastle region, with that figure being significantly higher for some of the more popular brands.[2] Furthermore, the RBB Report makes the following observations in respect of the geographic market:

- the geographic market includes the Sydney region if enough customers would travel there in the event of a moderate price increase;
- transport costs for a vehicle are low when compared to the cost of the vehicle;
- the drive from Newcastle to Sydney is relatively short; and
- consumers have the ability to compare prices online.

Currently, over **one in five** new vehicle customers in the Newcastle and Hunter Valley region travel outside of the Newcastle and Hunter Valley region to purchase their new vehicle, an already significant proportion. It is therefore logical to suggest that if prices were to rise, an increasingly significant number of customers would source new vehicles from outside of the Newcastle and Hunter Valley region. It is also likely that dealers from other regions would see an opportunity and begin targeting the Newcastle and Hunter Valley region. This would presumably lower sales volumes for dealerships in the Newcastle and Hunter Valley region. Accordingly, the movement of sales to outside of the Newcastle and Hunter Valley region would ultimately render price increases / reduced discounting unprofitable as it would make it difficult for the dealers raising prices to satisfy volume based KPI targets.

This is also supported by third party submissions to the ACCC in relation to the Proposed Acquisition. The Suttons Submission states:

> '*if prices increased in Newcastle, consumers would drive for a few hours to purchase a new car, or use the threat of switching to an alternative dealership in order to negotiate a larger discount*'.

The ACCC has observed that the volumes of sales between the Sydney region and the Newcastle and Hunter Valley region is not particularly high. However, even if this point is conceded, which does not appear consistent with the evidence above and as provided in both the RBB Report and the pump-in / pump-out evidence submitted to the ACCC, any lack of movement by customers in purchasing cars outside of their Primary Market Area (***PMA***) is a function of the market for passenger vehicles being national in scope, with price transparency and mobility among consumers (and the goods they are purchasing) facilitating consumers securing the best price for a vehicle with a locally located dealer, without the need to personally travel significant distances. To this point, Suzuki notes in its submission dated 24 May 2019 that:

> *the increased utilisation of the internet has and will continue to change the consumers' buying. That is, they can now avail far greater information, over a much broader area that impact their decision in regards to offers, availability and pricing. Accordingly, if the deal is right – distance can be overcome or is an instrument to negotiate the same deal locally.*

This view indicates that consumers would be generally willing to travel between regions if prices in a region were raised. It also highlights the national scope of the new car retailing market as prices nationally provide constraints in local geographies.

The ACCC has queried whether a large number of sales into the Newcastle and Hunter Valley region may be fleet sales. From AP Eagers' understanding of, and experience in, the supply of new passenger vehicles in Newcastle and Sydney, AP Eagers does not believe this to be the case.

[2] *RBB Report* page 11.

In the Transparency Letter, the ACCC also stated that it is more likely that people living in Cessnock and Maitland will travel to Newcastle to purchase new vehicles rather than the reverse. AP Eagers believes that this view has led the ACCC to not fully take into account the competitive constraint that dealerships in Cessnock and Maitland impose, and will continue to impose, on new car retailing in Newcastle. As has been outlined in respect of the constraint placed on new car retailing in the Newcastle and Hunter Valley region by the Sydney region, if prices were to rise in the Newcastle and Hunter Valley region then customer flows to outside of the region would likely increase. Such a price increase would therefore be rendered unprofitable due to the likely loss of sales volumes required to meet KPI targets. The points made in respect of the constraint placed on the Newcastle and Hunter Valley region are all applicable, and magnified, when considering the constraints placed on dealers in the Newcastle region by dealers in the Hunter Valley region.

No barriers exist to prevent domestic customers acquiring vehicles from regions outside those in which they reside. The speed, access and cost of digital communication means that customers throughout Australia can readily ascertain prices for vehicles in any other part of Australia. Furthermore, motor vehicles are portable, they are designed to move by road and they are not perishable. As such, new passenger vehicles can be easily transported after the purchase from the dealership to the customer's residence by the customer. There are also no specific regulatory or other practical constraints to motor vehicles in any region being sold interstate, beyond any State licence required to operate a vehicle dealer business generally or vehicle registration with the relevant State transport authority.

(c) AP Eagers could switch from a decentralised model which incentivises competition between AP Eagers' dealers

The ACCC considers that AP Eagers could change its internal policies to remove incentives from dealers within its network competing with one another. AP Eagers disagrees with this view for the following reasons:

- incentives for achieving KPI targets in place for individual dealers are set and established by OEMs. KPI frameworks are standardised across an OEM's dealer network nationally (applicable to all dealers regardless of ownership) and targets are set on an individualised basis, taking into account factors such as population density and socio-economic status of the PMA. AP Eagers' dealerships are very limited in their ability to influence or change these targets, and are not able to influence targets more than any other dealer. This has been acknowledged by the ACCC in its Transparency Letter and supported by OEM submissions to the ACCC in relation to the Proposed Acquisition;
- certain OEMs require individual investment from the dealer principal running the dealership – this is often in the form of the dealer principal owning shares in the corporate entity that holds the dealership;
- such a change would provide opportunity to dealers from other regions to effectively increase sales by targeting the Newcastle and Hunter Valley region on the basis that prices are too high. As set out in section 2.1(b) above, AP Eagers considers that dealerships in the Newcastle and Hunter Valley region could not profitably raise prices. This view is based on the opinion that such a price increase would lead to:
  - consumers looking outside of the Newcastle and Hunter Valley region;
  - dealers operating in other regions seeing an opportunity to aggressively sell into the Newcastle and Hunter Valley region;
- it would not be practical to change policies for one small segment of AP Eagers' business (and not others); and

- such a change would disadvantage OEMs, thereby risking damaging the relationship between AP Eagers and the OEMs, which AP Eagers would strive to avoid.

These reasons illustrate that AP Eagers' decentralised business model could not be changed in a material way as it is almost entirely dictated by the way in which the market for new passenger vehicles operates, as led and influenced by the individual OEMs. This view is further supported in submissions from third parties which state:

- **Mitsubishi submission** dated 23 May 2019: '*Mitsubishi does not consider that the proposed acquisition will increase the likelihood of 'sales' sharing between dealerships as there is competition between dealers of the same group, and dealer principals have an individual incentive to maximise their own sales. This type of behaviour would also be contrary to the dealership agreements*';
- **Suttons Submission**: '*Suttons considers that it is unlikely that a combined AP Eagers-AHG could share sales between dealerships in order to ensure the group as a whole met manufacturer KPIs. This is because dealerships are run as independent, standalone entities: dealers within the group compete against each other for customers, and each dealership remunerated according to its performance and seeks to maximise its own revenue*'; and
- **Fennessey's submission** dated 23 May 2019: '*the power held by the car makers and how they act [is] the important key to all Dealers['] futures. [It is my] view that [the Proposed Acquisition poses] no risk to the ongoing intense competition and that groups small and large are and will continue to be the mechanism for delivering positive and sustainable consumer outcomes*'.

The quoted submissions illustrate that AP Eagers' decentralised dealership model is not just a commercial choice. Rather, it is a reflection of an industry structure underpinned by standardised national dealer agreements created by OEMs which reflects OEM's intentional design to encourage rigorous competition among dealers within the same OEM brand network. Furthermore, even if AP Eagers had the freedom to alter its business structure, it would be entirely impractical to alter its business models for one relatively small region and would likely negatively impact AP Eagers' relationships with its OEMs.

(d) Pricing opacity

The ACCC has observed that online sales of new passenger vehicles are a small proportion of overall sales. Whilst this may be true, it does not properly reflect the way in which online platforms and aggregators operate, and their impact on the negotiation of vehicle sales between customers and dealers. Many sales involve an online component, with the actual sale of the new vehicle taking place in the dealership. By way of example, if a customer is looking at a vehicle on carsales.com.au (***Carsales***) and sends an enquiry to a dealer, the dealer will be notified of the enquiry and put in contact with the customer. Carsales' involvement in the sale will then end as the dealer begins to interact with the customer through other channels, such as phone, email or in-person. Should the contact generated by the aggregator progress to a sale, the sale would not be an 'online sale', despite having a significant online component.

With respect to finding best prices available online, all that is required is for one dealer to advertise a lowered price and this will reveal to the consumer what the potential best price would be. Given that meeting KPIs is an essential aspect of running a viable dealership, if a single dealer is highly motivated to move stock to satisfy KPI targets and advertises online (as is almost universal across dealerships in Australia), the consumer is able to effectively discover the best price available for the particular make and model of the car (including next best or competing alternatives). The frequency with which customers use online prices in negotiations is supported by:

- the Suttons Submission which states:

  'the internet makes it easy for consumers to cross shop between dealerships in different areas. Suttons advertises its entire inventory online. It is common for a consumer to pull up online advertisements and prices during a negotiation'; and

- a submission from an unnamed original equipment manufacturer and importer dated 17 May 2019 (***Unnamed OEM Submission***) observes that:

  '*[c]ustomers use online searches as leverage and will pressure a dealer to price match*'.

Additionally, if prices were to rise in Newcastle and Hunter Valley region, consistent with the fact that the scope of the geographic market is wider than the Newcastle and Hunter Valley region, AP Eagers believes that the region would be heavily targeted by Sydney and Central Coast based dealerships. Since the supply of new passenger vehicles in Australia is so competitive and selling volume drives dealership profitability and viability, it is logical that if dealerships in the Newcastle region raised prices, dealers from other regions would view this as an opportunity to sell vehicles into the Newcastle and Hunter Valley region.

Finally, there are other avenues available to customers to determine the best price for a vehicle. For example, consumers will often test drive a vehicle at a dealership to confirm they are happy with the make / model / variant, and then engage a vehicle broker to source the vehicle from a dealer who is able to offer the best price. Vehicle brokers use a national network to obtain the best available prices, further supporting the proposition that the retail supply of new vehicles is national in scope. the Unnamed OEM Submission notes that:

> '*[b]rokers, act as agents for buyers who don't want to deal with car dealers; the brokerage sites will inform customers on what kind of discounts can be achieved due to their relationships with dealers and volume discounts*'.

The ACCC's preliminary view is that new passenger vehicle prices are opaque as online prices are often not the dealers' best and prices are not provided to customers over the phone.

In AP Eagers' experience, this is simply not the case. AP Eagers disagrees that many dealers would not provide best available prices over the phone. Dealers will treat every price inquiry seriously, and even more so where a customer is able to communicate a price that they have been given by a different dealer, so as to draw on the price competitiveness between the two dealers. For example, when a customer calls a dealership in another region and provides a price the customer has been given by a local dealer, the dealer from the other region will provide a competitive price in response. Additionally, the conversation between a dealer and a consumer located locally and a consumer located in another region will be different with respect to how open the dealer is about price. This is supported by third party submissions to the ACCC in relation to the Proposed Acquisition. As stated in the Suttons Submission:

> '*[i]f a customer calls from Newcastle, however, dealers know that they only have one chance to finalise the deal*'.

3 Areas the ACCC is continuing to consider

The ACCC has identified the following as areas that it is continuing to consider:

- distribution of parts in the Newcastle and Hunter Valley region;
- car servicing in the Newcastle and Hunter Valley region;
- supply of fleet vehicles in the Newcastle and Hunter Valley region; and

- the supply of commercial vehicles in Melbourne.

AP Eagers' considers that these areas should not be of concern to the ACCC. AP Eagers' specific reasons are provided in sections 3.1 to 3.4 below.

3.1 Distribution of parts in the Newcastle and Hunter Valley region

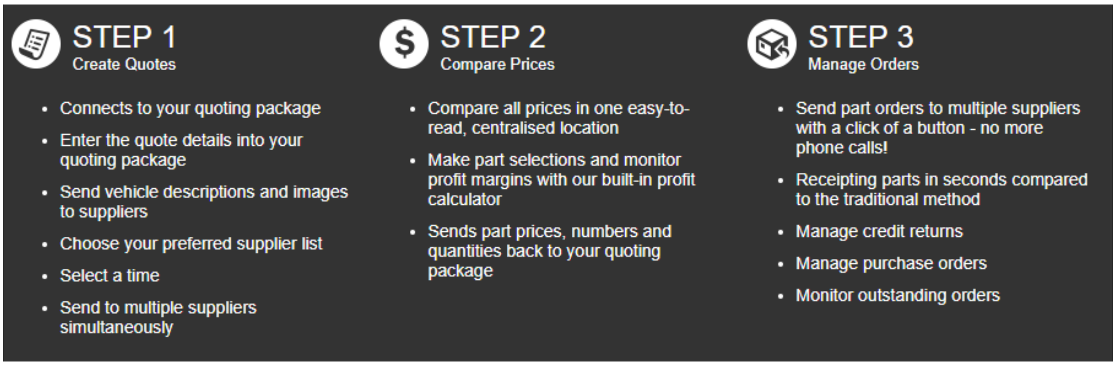
In the Transparency Letter, the ACCC has stated that it is continuing to consider whether the Proposed Acquisition will have the effect or likely effect of substantially lessening competition in the supply of parts by allowing the merged entity to restrict parts distribution to other dealers in OEM networks and trade customers. AP Eagers submits that the Proposed Acquisition will not have this effect.

With respect to distributing parts to non-AP Eagers owned dealers in the dealer network, AP Eagers considers that such concerns have no basis. Dealers have direct access to, and direct communication channels with, the OEMs and are able to raise any issues with parts distribution directly with the OEM or through dealer councils. Furthermore, OEM's have a real interest in ensuring that parts are widely and easily available and both parts and servicing prices are reasonable across the network for customers. If the cost of parts and servicing were to rise in particular regions due to the restriction of supply, it is highly likely that the relevant OEM would become involved as such practices would harm the brand in the customer's mind. As is the case with all aspects of a dealer's business, OEMs have the ability to revoke rights to distribute parts on a wholesale basis.

With respect to independent mechanics, there are a number of factors which act as constraints and will continue to ensure the competitiveness of the merged entity in distributing parts in the Newcastle and Hunter Valley region:

- **The scope of the geographic market for the supply of parts is wider than the Newcastle and Hunter Valley region**: Recommended prices for genuine-OEM parts are set at a national level and there is consistency in pricing nationally. This reflects the fact that the scope of the geographic market is national. Parts are on the whole very small and able to be transported across long distances. There is no practical or legal restriction or impediment in doing so. Consequently, it is common for trade customers to purchase parts outside of their area, and have them delivered to their workshops. Accordingly, if there were any increase in prices for the supply of parts in the Newcastle and Hunter Valley region, customers would simply source these parts from outside of that region. The fact that the scope of the geographic market is wider than the Newcastle and Hunter Valley region means that any deterioration in the quality of supply or increase in prices would be unsustainable.
- **National pricing tools**: Supporting the fact that the geographic market for the supply of parts is national in scope, there are national pricing tools available to trade customers to facilitate price discovery and ensure that trade customers can obtain the desired products for the best prices available, or negotiate lower prices with local suppliers. Trade customers often use online systems, for example 'PartsCheck' to obtain the most competitive pricing. Note that PartsCheck is 100% free to repairers to use (parts suppliers are required to pay for access to the software and platform). As described at page 88 of AP Eagers' Merger Authorisation Application dated 29 April 2019, PartsCheck allows trade customers to request quotes from suppliers for their replacement parts (including parallel importers) in order to price comparison. PartsCheck, owned and operated by ASX-listed MYOB Group Limited, '*enables direct communication between repairers and suppliers Australia wide and simplifies the process of managing quotations, purchasing*

and receipting in a centralised location.'[3] The process for repairers is illustrated in the screenshot below (as taken from the PartsCheck website).[4]



A small selection of testimonials in the screenshots below from the PartsCheck website provide further support for the fact that such websites facilitate price discovery and allow independent repairers to obtain competitive pricing for parts.[5]

[3] PartsCheck website, accessed 1 July 2019, <https://www.partscheck.com.au/global/index.php>.
[4] Ibid.
[5] More available from the PartsCheck website, accessed 1 July 2019, <https://www.partscheck.com.au/global/testimonials.php>.

Since signing up to PartsCheck and becoming familiar with its features, I've found it to be a huge benefit within our business. PartCheck not only allows you to save time on data entry but also gives you the added bonus of sourcing parts from multiple suppliers for the best possible price. I couldn't imagine going back to the old method.

Marcus
Great Southern Smash Repairs

We are happy with PartsCheck. It is definitely helping us with more business in that it has helped us with the repairer side of our business. With full vehicle information including photos, it is easier to submit requests for the parts the repairer wants and also add parts to make a more accurate quote .PartsCheck works well on the repairer side, enabling them to send quotes to multiple suppliers. Being a free tool for repairers, it's a time saver at both ends.

Jerome McGee
Jackson Motor Company

My experience with Partscheck has been fantastic, the transition was really easy. I have found that Partscheck is very simple to use and saves me a lot of time in sourcing part prices from different suppliers and comparing those prices to get the best deal. I can now track all my parts and prices in one place instead of multiple emails and phone calls. I no longer have to manually type in part numbers and prices line for line. Partscheck uploads this all for me into my quote package and I get my quotes on time when I want them so I have more time to focus of other areas of my business.

Gene

Why have we had to wait for so long until someone came up with this product??? Thank you Parts Check!!!! The time saving is fantastic, the extra dollars we can make by sourcing the best price is great, the time saved on data entry. If you're not on this system you're crazy and it's FREE to us repairers.

John Walker

Parts check has been a god sent for us. Since using parts check it has eliminated a lot of double entering of parts numbers & prices for our parts dept and a lot of time on the phone chasing best prices.

Literally by the click of a button we will have access to several of our suppliers part number & prices for all quoted parts. We then select the items that are best by a click of a button & automatically we can import into our estimating system & place an order for the parts. Parts price comparison & ordering done! And it is No cost to the Repairer.

Kristie Pate

Since finding out about PartsCheck and implementing it into our business it has changed so much! No longer am I spending hours on the phone trying to locate suppliers, chasing down parts or their ETA's. It's all there with a few clicks of a mouse. Prices, part numbers and you can see your profits from one supplier to the next. Being able to request Repair Procedures that are exact to the part we require replacing has been amazing. As soon as the prices are available, so are the procedures. We could not ask for a better service than that! The ParksCheck program and staff are amazing and you're always on top of everything. You have made my life so much easier in so many ways, we can't thank you enough.

Kelly
Mick Cramer Spray Painter and Smash Repairs

- **Parallel importers**: Parallel importers provide a further constraint on parts distribution in a region as they offer genuine-OEM parts (imported from another country). These parts are readily available for trade customers through online channels (including, for example, through PartsCheck as explained above) and directly.
- **Influence of, and downward pressure from, OEMs**: It is in the interest of each OEM to ensure that parts and relevant computer codes are easy to access for independent repairers. As outlined above, the restriction of parts distribution would ultimately negatively impact affected brands and therefore likely trigger OEM-involvement. Additionally, if a business was charging independents and other dealers higher prices for parts, these entities would have the option of approaching other distributors representing that particular brand.

Finally, AP Eagers considers that the merged entity would continue to be constrained as other authorised dealers and independent mechanics purchase parts on a commercial basis and are therefore highly attuned to the cost of OEM-branded parts. Accordingly, if the merged entity attempted to raise prices, it would be quickly recognised, the relevant OEMs would likely be alerted and trade customers would begin considering alternative options. The price discovery mechanisms outlined above would assist this.

3.2 Car servicing in the Newcastle and Hunter Valley region

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. The ACCC is predominantly considering:

- the fact that consumers prefer to have their cars serviced locally;
- while there are many independent mechanics that can service new cars, there are barriers to them attracting business; and
- purchasers tend to start out having new cars serviced by dealers, with the number dropping off over time.

The ACCC's primary concern is the difficulty that independent mechanics may face in their attempts to obtain OEM-authorised parts and computer access codes, typically from dealers. It is AP Eagers' view that this should not raise concerns. Existing competition and diversity within the supply of servicing and repairs is already extremely high. IBISWorld has estimated that there are approximately 25,000 manufacturer-authorised and independent car repair and service centres, which operate across 39,000 outlets in Australia.[6] This competitiveness is also replicated in the Newcastle and Hunter Valley region.

AP Eagers also reiterates that OEM-branded parts are available for purchase by any repairer, including independent repairers. Independents that provide servicing are also able to use non-branded replacement parts which are generally sold by third parties. In contrast, however, dealer agreements often require that authorised dealers, in carrying out vehicle servicing and repairs, only use genuine-OEM replacement parts obtained through the OEM's distribution chain. AP Eagers submits that independent mechanics provide a strong level of competition, particularly given they are able to use OEM-branded parts and non-genuine parts in servicing to suit the customer's need.

Furthermore, as the ACCC has noted in the Transparency Letter, the price of repairs and servicing is capped by a number of OEMs, which means that dealers are limited in their ability to raise prices. This will remain the case after the Proposed Acquisition is implemented.

Lastly, the Federal Government's proposed *Mandatory scheme for the sharing of motor vehicle service and repair information* is set to be implemented in 2019 and will mandate an access scheme for independent service and repair providers. This scheme will supersede the current *Agreement on Access to Service and Repair Information for Motor Vehicles* which was signed by peak industry associations representing manufacturers and independent repairers in 2014.

3.3 Supply of fleet vehicles in the Newcastle and Hunter Valley region

In the Transparency Letter, the ACCC indicated that it is continuing to consider the effect of the Proposed Acquisition on fleet sales, particularly in relation to the impact of the aggregation of dealerships in the Newcastle and Hunter Valley region.

AP Eagers considers that there is strong competition for fleet sales coming from both inside and outside of the Newcastle and Hunter Valley region and that this will not change following the

[6] As at March 2017. Source: IBISWorld, Motor Vehicle Engine and Parts repair and Maintenance in Australia (March 2017), referred to in the New Car Retailing Industry Report.

Proposed Acquisition. Importantly, the scope of the geographic market for the supply of fleet vehicles is national, and therefore competition for the supply of fleet vehicles comes from dealerships based anywhere in the country. This is in large part due to the fact that fleet sales often involve the sale and purchase of a number of passenger vehicles, generally on a commercial basis. Fleet customers are usually commercial entities that are investing in, or purchasing, a number of vehicles. They are usually sophisticated customers with procurement professionals involved in the negotiation and sourcing of fleet vehicles (whether using internal professionals or outsourced services). Accordingly, fleet customers exercise a large degree of countervailing buyer power and have significant incentives to shop around for the best deal. It is highly likely that, given the significance of the purchase (ie, multiple vehicles), customers purchasing fleet vehicles explore their options across a number of regions. This is the case for small and large fleet purchasers alike, as both small and large fleet customers are purchasing a number of vehicles on a commercial basis and are also sophisticated purchasers and negotiators. Of new passenger vehicles sold by AP Eagers' dealerships in the Newcastle and Hunter Valley region in 2018, approximately 23% of sales were fleet sales.

Whether or not fleet customers have their own internal procurement professionals, fleet customers of all sizes also have the option of procuring vehicles through professional fleet management organisations (eg, Leaseplan and McMillan Shakespeare). The involvement of fleet management organisations selling to fleet customers is significant. The Sutton Submission, at paragraph 19 states:

> '*[m]ost fleet sales are through fleet management organisations who run tenders with dealerships to get the best price, and arrange the purchases*'.

These fleet management organisations operate on a national basis and will source passenger vehicles at the best price, with location being a secondary concern. With these national arrangements in place, inter-state sales are facilitated to provide the end customer with the best price regardless of the customer's or the vendor's location.

For the reasons set out above, AP Eagers considers that the geographic scope of the supply of fleet vehicles sales is national and extremely competitive. These competitive conditions will continue post-merger. The Proposed Acquisition will not have the effect or the likely effect of substantially lessening competition in the supply of fleet vehicles in the Newcastle / Hunter Valley region.

3.4 Supply of commercial vehicles in Melbourne

In Melbourne, after the Proposed Acquisition is implemented, AP Eagers' commercial vehicle dealerships would expand by the modest addition of two dealership locations and four brands. Given this modest increment, AP Eagers does not believe that the supply of commercial vehicles in Melbourne should give rise to any competition concerns, and accordingly it could not be said that the Proposed Acquisition would have the effect or the likely effect of substantially lessening competition in this area. The reasons for this are set out in the points below.

- **Modest combined market share**: Although AP Eagers considers that the geographic scope of the market is national, considering Victoria alone, AP Eagers estimates that there are at least 45 commercial vehicle supplier locations based throughout Victoria, supplying at least 82 brands (**Annexure A** sets out AP Eagers, AHG and competitor dealerships in Victoria based on AP Eagers' industry knowledge). In 2018, 11,891 commercial vehicles were sold into Victoria.[7] In this context, AP Eagers' share is modest. AP Eagers' Victorian dealerships sold 1,051 new units in total. This equates to a modest

[7] *Source: VFACTS December 2018 Victoria Report supplied by Federal Chamber of Automotive Industries (FCAI).*

share of 8.8% of the supply of new commercial vehicles in Victoria. AP Eagers estimates that AHG's commercial vehicle dealerships in Victoria currently supply around 900 new commercial vehicles annually, which equates to a 7.6% share of the supply of new commercial vehicles in Victoria. Accordingly, the merged entity will have a relatively modest combined share of 16.4% of the supply of new commercial vehicles in Victoria.

- **PMA size**: PMAs for the supply of commercial vehicles are not limited to the city of Melbourne, but instead stretch hundreds of kilometres across Victoria. Accordingly, the geographic region for the supply of commercial vehicles is, at a minimum, Victoria, and as outlined above, is in AP Eagers' view national. The market for the supply of commercial vehicles is national given RRPs are set at a national level and many customers have business operations that are Australia-wide or span multiple states. Further, because commercial vehicles are designed for long range travel, the retail location of the vendor is unlikely to be overly important to the customer. The expense of a commercial vehicle, and the commercial nature of the customer base further supports the market's national characterisation, and the appetite for the customer to search widely for competitive pricing and supply.
- **The scope of the geographic market for the supply of commercial vehicles is national**: Given the expense, bespoke nature of commercial vehicles and significance of the purchase to the business, customers will search far and wide for competitive quotes for commercial vehicles. The scope of the geographic market is therefore wider than Melbourne, and in AP Eagers' view, is national in scope. Accordingly, any increment to AP Eagers' position in the supply of commercial vehicles in Melbourne will not improve AP Eagers' ability to increase prices or reduce service quality in Melbourne as AP Eagers will continue to face competition from third party suppliers of commercial vehicles based outside of Melbourne, including in Victoria and interstate, as well as across the country.
- **Vehicle expense and customer type**: Commercial vehicles are, in many cases, bespoke, very expensive and purchased by commercial customers for their business. The price for a single prime mover is upwards of $250,000 and heavy duty bespoke vehicles command prices of over $500,000. In almost all cases, purchasers of commercial vehicles are commercial customers, with sophisticated negotiating capabilities, often with dedicated teams of procurement professionals. They also have a business interest in securing the best price and are either incentivised or required by internal procurement policies to obtain competitive quotes and prices. Given the significance of the purchase to the purchaser business and the fact that the commercial vehicle will often be integral to the customer's business, customers are incentivised to search across a broad range of regions to secure the most favourable price. Furthermore, in many cases, customers will purchase and maintain fleets of commercial vehicles. In these instances, the incentive to search across a number of geographies for the best price is magnified.
- **Some commercial vehicle dealers compete with manufacturers for retail and fleet sales**: In some cases, retailers of commercial vehicles (such as AP Eagers and AHG) also compete with OEMs for retail and fleet sales (eg, Daimler Truck's Melbourne, Somerton, located at 24 Hume Highway, Somerton, Victoria, 3062, which competes with AP Eagers' and AHG's own Daimler dealerships). This competition arises where manufacturers set up a dealership to directly sell commercial vehicles to customers. This creates a highly competitive landscape in the supply of commercial vehicles as dealers are competing with OEMs that manufacture the vehicles being sold. The OEMs competing for the supply of new commercial vehicles provide a further competitive constraint on the merged entity as these OEMs have a deep understanding of the retail market and would therefore be able to respond with competitive pricing or supply in the

event that the merged entity attempted to increase prices or reduce service quality to customers.

For the reasons set out in the points above, it is AP Eagers' view that the ACCC should not be concerned about the supply of commercial vehicles in Melbourne. The Proposed Acquisition will not have the effect or the likely effect of substantially lessening competition in the supply of commercial vehicles in Melbourne.

* * * * *

Annexure A - Commercial Vehicle Dealerships / Suppliers in Victoria

No.	Manufacturer	Dealership	Address	Postcode
AP Eagers Dealerships				
1.	Iveco	Adtrans Truck Centre	Cnr Raymond & Boundary Road, Laverton North	3026
2.	Freightliner	Whitehorse Truck Centre	75 Princes Hwy, Dandenong South	3175
3.	Fuso	Whitehorse Truck Centre	75 Princes Hwy, Dandenong South	3175
4.	Iveco	Melbourne Truck Centre	Cnr South Gippsland Hwy & Quantum Close, Dandenong	3175
5.	Mercedes-Benz Trucks	Whitehorse Truck Centre	75 Princes Hwy, Dandenong South	3175
6.	Fuso	Fuso Port Melbourne	Unit 7, 335 Ingles Street, Port Melbourne	3207
AHG Dealerships				
1.	Freightliner	Daimler Trucks Laverton	423 Boundary Road, Truganina	3029
2.	Fuso	Daimler Trucks Laverton	423 Boundary Road, Truganina	3029
3.	Mercedes-Benz Trucks	Daimler Trucks Laverton	423 Boundary Road, Truganina	3029
4.	Hino	Prestige Hino	43-63 Princes Highway, Dandenong South	3175
Competitor Dealerships				
1.	Fuso	Daimler Trucks Somerton	24 Hume Highway, Somerton	3062
2.	Freightliner	Daimler Trucks Somerton	24 Hume Highway, Somerton	3062
3.	Mercedes-Benz Trucks	Daimler Trucks Somerton	24 Hume Highway, Somerton	3062
4.	Scania Trucks	Scania Australia Pty Ltd	212-216 Northbourne Road Campbellfield	3061
5.	Isuzu	Westar Truck Centre Campbellfield	Cnr Hume Hwy & Northbourne Road, Campbellfield	3061
6.	Iveco Daily	Westar Truck Centre Campbellfield	Cnr Hume Hwy & Northbourne Road, Campbellfield	3061
7.	Iveco Daily	Van World	940 Sydney Road, Coburg	3058

8.	Fiat Professional Trucks	Van World	940 Sydney Road, Coburg	3058
9.	Western Star	Westar Trucks Derrimut	1 Australis Drive, Derrimut	3026
10.	MAN	Westar Trucks Derrimut	1 Australis Drive, Derrimut	3026
11.	Dennis Eagle	Westar Trucks Derrimut	1 Australis Drive, Derrimut	3026
12.	Isuzu	Westar Trucks Derrimut	1 Australis Drive, Derrimut	3026
13.	Kenworth	Kenworth Trucks	355 Fitzgerald Road, Derrimut	3030
14.	DAF Trucks	Kenworth Trucks	355 Fitzgerald Road, Derrimut	3030
15.	Volvo Trucks	CMV Truck & Bus Melbourne	392 Boundary Road, Derrimut	3026
16.	Mack Trucks	CMV Truck & Bus Melbourne	392 Boundary Road, Derrimut	3026
17.	UD Trucks	CMV Truck & Bus Melbourne	392 Boundary Road, Derrimut	3026
18.	Volvo Buses	CMV Truck & Bus Melbourne	392 Boundary Road, Derrimut	3026
19.	Scania	Scania Trucks	125 Boundary Road, Laverton	3028
20.	Hino	CMI Hino	326 Boundary Road, Laverton	3028
21.	Volvo Trucks	CMV Truck & Bus Clayton	1683 Centre Road, Clayton	3168
22.	Kenworth	Hallam Truck Centre	217 Prices Highway, Dandenong	3175
23.	DAF Trucks	Hallam Truck Centre	217 Prices Highway, Dandenong	3175
24.	Mack Trucks	CMV Dandenong	77 Princes Highway, Dandenong	3175
25.	UD Trucks	CMV Dandenong	77 Princes Highway, Dandenong	3175
26.	Western Star	Patterson Cheney Trucks	55 Kirkham Road, Dandenong	3175
27.	MAN Trucks	Patterson Cheney Trucks	55 Kirkham Road, Dandenong	3175
28.	Dennis Eagle Trucks	Patterson Cheney Trucks	55 Kirkham Road, Dandenong	3175
29.	Isuzu Trucks	Patterson Cheney Trucks	55 Kirkham Road, Dandenong	3175

30.	Scania Trucks	Scania Australia	66 Greens Road, Dandenong	3175
31.	Kenworth	Bayswater Truck Centre	97 Canterbury Road, Bayswater	3153
32.	DAF Trucks	Bayswater Truck Centre	97 Canterbury Road, Bayswater	3153
33.	Fiat Professional Vans	Southern Euro Commercial Vehicles	72-78 Frankston – Dandenong Road, Dandenong South	3175
34.	Mercedes-Benz Vans	Mercedes-Benz Melbourne Vans	135 Kings Way, South Melbourne	3205
35.	Mercedes-Benz Vans	Mercedes-Benz Brighton	988 Nepean Highway, Moorabbin	3189
36.	Mercedes-Benz Vans	Mercedes-Benz Berwick	518 Princes Highway, Berwick	3806
37.	Mercedes-Benz Vans	Mercedes-Benz Waverley	769 Springvale Rd, Mulgrave	3170
38.	Mercedes-Benz Vans	Mercedes-Benz Fairfield	484 Heidelberg Rd, Fairfield	3078
39.	Renault Vans	Essendon Renault	600 Mount Alexander Road, Moonee Ponds	3039
40.	Freightliner	Hartwig's Trucks	1 Travelstop Way, Lavington	2641
41.	Mercedes-Benz Trucks	Hartwig's Trucks	1 Travelstop Way, Lavington	2641
42.	Fuso	Hartwig's Trucks	1 Travelstop Way, Lavington	2641
43.	Western Star	Hartwig's Trucks	1 Travelstop Way, Lavington	2641
44.	MAN	Hartwig's Trucks	1 Travelstop Way, Lavington	2641
45.	Dennis Eagle	Hartwig's Trucks	1 Travelstop Way, Lavington	2641
46.	Freightliner	Hartwig's Trucks	320 Midland Highway, Shepparton	3630
47.	Mercedes-Benz Trucks	Hartwig's Trucks	320 Midland Highway, Shepparton	3630
48.	Fuso	Hartwig's Trucks	320 Midland Highway, Shepparton	3630
49.	Western Star	Hartwig's Trucks	320 Midland Highway, Shepparton	3630

50.	MAN	Hartwig's Trucks	320 Midland Highway, Shepparton	3630
51.	Dennis Eagle	Hartwig's Trucks	320 Midland Highway, Shepparton	3630
52.	Kenworth	Twin City Truck Centre	255 McKoy Street, West Wodonga	3691
53.	DAF Trucks	Twin City Truck Centre	255 McKoy Street, West Wodonga	3691
54.	Iveco	Blacklock's Truck Centre	190 Melbourne Road, Wodonga	3691
55.	Isuzu Trucks	Blacklock's Truck Centre	190 Melbourne Road, Wodonga	3691
56.	Hino	Jacob Hino Wodonga	3 Melrose Drive, Wodonga	3690
57.	Volvo Trucks	CMV Truck & Bus Albury/Wodonga	221 McKoy Street, West Wodonga	3690
58.	UD Trucks	CMV Truck & Bus Albury/Wodonga	221 McKoy Street, West Wodonga	3690
59.	Mack Trucks	CMV Truck & Bus Albury/Wodonga	221 McKoy Street, West Wodonga	3690
60.	Kenworth	Graham Thomson Motors	138 New Dookie Road, Shepparton	3630
61.	DAF Trucks	Graham Thomson Motors	138 New Dookie Road, Shepparton	3630
62.	Iveco	North East Iveco Shepparton	6 Wheeler Street, Shepparton	3630
63.	Hino	Hino Geelong	11 Industrial Place, Breakwater	3219
64.	Hino	Bendigo Truck Centre	12-16 Sullivan Street, Golden Square	3555
65.	Iveco	Bendigo Truck Centre	12-16 Sullivan Street, Golden Square	3555
66.	Isuzu	Winter & Taylor Isuzu	10 School Road, Corio (Geelong)	3214
67.	Iveco	Winter & Taylor Isuzu	10 School Road, Corio (Geelong)	3214
68.	Iveco	Ballarat Iveco	5 Zenith Drive, Ballarat	3350
69.	Isuzu	Ballarat Isuzu	365 Dowling Street, Ballarat	3350
70.	Volvo	Johnsons Truck & Coach Service	579 Benetook Avenue, Mildura	3501

71.	Mack Trucks	Johnsons Truck & Coach Service	579 Benetook Avenue, Mildura	3501
72.	UD Trucks	Johnsons Truck & Coach Service	579 Benetook Avenue, Mildura	3501
73.	Hino	Johnsons Truck & Coach Service	579 Benetook Avenue, Mildura	3501
74.	Kenworth	Mildura Truck Centre	293 Benetook Avenue, Mildura	3501
75.	DAF Trucks	Mildura Truck Centre	293 Benetook Avenue, Mildura	3501
76.	Isuzu	Mildura Truck Centre	293 Benetook Avenue, Mildura	3501
77.	Volvo	CMV Truck & Bus Gippsland	17 Standling Street, Traralgon	3844
78.	UD Trucks	CMV Truck & Bus Gippsland	17 Standling Street, Traralgon	3844
79.	Mack Trucks	CMV Truck & Bus Gippsland	17 Standling Street, Traralgon	3844
80.	Kenworth	Gippsland Truck Centre	180 Princes Highway, Bairnsdale	3875
81.	DAF Trucks	Gippsland Truck Centre	180 Princes Highway, Bairnsdale	3875
82.	Isuzu	Gippsland Truck Centre	180 Princes Highway, Bairnsdale	3875