



14th November 2016

Australian Competition and Consumer Commission
Consultation Hub
New Car Retailing Industry - a market study by the ACCC

Email: newcars@acc.gov.au

Dear Sir/Madam

Re October 2016 Issues Paper - New Car Retailing Industry - a market study by the ACCC

1. Introduction

1.1 The Motor Trades Association – Queensland (MTA Queensland) (the Association) responds to the Australian Competition and Consumer Commission’s (ACCC) invitation for submissions to its October 2016 Issues Paper *New Car Retailing Industry - a market study by the ACCC* (the Study). The MTA Queensland’s comments are on behalf of its constituent divisions and are confined to issues which relate to the interest of Queensland’s automotive value chain which includes franchised new car dealers, independent mechanical and motor body repairers, recyclers and other discrete automotive professions and services.

1.2 The MTA Queensland notes for the purpose of the Study a ‘new car’ is defined ‘as a car purchased by an Australian consumer and which has not previously been registered’. This correlates with the Association’s policy nomenclature for defining a new car. The focus of the Study is confined to ‘passenger vehicles, four wheel drive vehicles and vans’.

1.3 The Association submits views in relation to Section 2 of the Issues Paper generated by the Study relating to ‘consumer guarantees, warranties and new cars’ and related issues.

1.4 The issues raised by the Study are considered to be directly relevant to the operation of the new car market in Australia and the consumer protection framework established by the Australian Consumer Law (ACL).

2. Context

2.1 The Study occurs at a time of structural and technological change in the automotive value chain. Australia’s domestic manufacturing of motor vehicles will cease; transition to automated vehicles inevitably will involve a transition to hybrid and plug-in electric motor vehicles. The change from fossil fuels as the main energy source for transportation and the progressive displacement of the internal combustion engine means that Australia’s society and the economy will undergo fundamental transformations.

2.2 The automotive value chain will continue to experience significant challenges and technological disruptions for the foreseeable future. A number of these disruptions will significantly impact the business model that has underpinned dealership economics. Perhaps the most profound impact will be the fading and diminution of prime marketing areas by the impact of electronically based transactions. Although

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franchise agreements are likely to continue to be based on spatial market zoning, these are no longer enforceable.

2.3 The automotive market for each dealership extends regionally and nationally and correspondingly competition is now regional, national and in some cases international. In addition horizontal entry into car markets has occurred through salary packaging enterprises offering motor vehicles in cost-effective financial and taxation structures and companies using fleet purchases to provide vehicle fringe benefits for their employees. In respect of technology disruptions, the advent of plug-in electric cars, hybrid vehicles and autonomous vehicles is likely to impose profound changes on the business model that has stood the industry in good stead during the twentieth century.

2.4 There is the likelihood that increasing economies of scales will be required to sustain profitability in the automotive industry and this is likely to lead to further economic consolidation. Spatially, the value of real estate is changing significantly and dramatically in the capital cities and the opportunity costs of continuing to hold large vehicle inventories on valuable sites will be a difficult business decision to justify. Pop-up dealerships/stores are trading in some of Australia's major retail centres and this trend is likely to intensify in the future.

3. Consumer guarantees, warranties and new cars

3.1 The MTA Queensland is of a view that there is a definitive lack of understanding of the consumer protection framework as it applies to new car purchases. This deficiency in being unaware or having a working understanding of the provisions of the ACL extends, in particular to the statutory guarantee over the purchase of a 'new' motor vehicle for private or business use (less than \$40,000). It is apparent at all levels of the automotive value chain including manufacturers and distributors; franchised dealers; sales representatives; repairers; servicing entities; car purchasing executives in businesses and consumers.

3.2 The automotive value chain is dominated by private incorporated businesses mostly linked in vertical supply chains with formal rigid and complex commercial supply agreements that often impose robust commercial performance criteria in respect of 'new car' and original equipment (OEM) promotions and sales, for example franchised new car dealerships. In these circumstances, the ACCC must appreciate that the main efforts of distributors, retailers and authorised repairers is the performance of the commercial obligations in the commercial treaty/agreement they operate under.

3.3 It is challenging therefore for commercially oriented entities in a highly competitive marketing environment to understand and appreciate that 'new cars' are sold under the aegis of a statutory guarantee that has a 'reasonable' time span and that take precedence over the commercial treaties/agreements provided by the manufacturer's warranty and subsequently by the extended warranty offered by the dealer or other downstream entities in the value chain.

3.4 The commercial focus of the automotive value chain means that sales teams are well briefed on commercial issues. At the point of sale, the commercial warranties offered by the dealer on behalf of the manufacturer are a selling feature and a point of market differentiation. For example warranties of five to seven years are now quite common in the 'new car' market.

3.5 Inevitably, sales teams are able to brief customers comprehensively in regard to manufacturers' warranties which are time certain and prescriptive. The manufacturer or distributor provides clear and definitive guidelines to dealers in regard to the warranty that is to accompany the sale of a 'new car' and the commercial obligation that is being entered to remedy manufacturing faults by the dealer on behalf of the manufacturer.

3.6 Similarly, sales teams are well briefed in regard to extended warranties which can leverage vehicle sales, in particular 'road side' assistance arrangements which are now increasingly common. This again is a commercial contract between the buyer and the seller.

3.7 The issue of the statutory guarantee is significantly different. Sales teams generally are limited in their awareness that a 'new car' transaction invokes a statutory guarantee with rights and obligations for the parties enshrined in the ACL. Correspondingly 'new car' buyers are largely unaware that they have recourse to remedies under a statutory guarantee in respect of a 'new car' purchase.

3.8 This deficiency appears to extend across the value chain and includes manufacturers and distributors, dealers and authorised repairers of 'new cars'. In these circumstances usually, consumers are not briefed on their statutory rights in respect of a 'new car' fault remedy at the time of the purchase of a 'new car'. Sales teams usually do not have the knowledge needed to undertake such a briefing, thus the statutory guarantee is a 'market neutral' issue in relation to the actual selling of the motor-vehicle.

3.9 The MTA Queensland is of the view that comprehensive training programmes should be available to familiarise all the automotive value chain participants relevant to 'new car' sales; 'new' equipment sales and authorised repairs with the intent, obligations and provisions of the statutory guarantee as it applies to 'new cars' and the consumer protection afforded by the ACL.

3.10 The Association has formed a view that if a wider and deeper knowledge of the statutory guarantee existed, remedies for consumers in respect of 'new cars' would be expedited. This means that the franchised car dealers need recourse to the manufacturer if they are to properly comply with the intent of the statutory guarantee. For this to happen the manufacturer must comprehend the provisions of the ACL in respect of the product they manufacture, otherwise the systems will inevitably fail the consumer to the detriment of the value chain.

3.11 Further, if consumers were properly aware of the guarantee under the ACL in respect of 'new cars' and if the system was operating effectively, it is unlikely that a 'lemon law' would be demanded by consumers as they could seek and achieve remedies to 'new car' faults by recourse to the statutory guarantee.

3.12 The MTA Queensland is a major Registered Training Organisation (RTO) providing automotive related training across Queensland as well as internationally. The Association would be pleased to discuss the provision of training to the automotive value chain in respect of the ACL statutory guarantee and other consumer related issues.

4 The Consumer and the ACL

4.1 The Study's issues deal exclusively with the obligation on the supplier of goods traded in the automotive value chain. There is a lack of any observations about consumer behaviour and obligations.

4.2 As mentioned in 3.11, consumers are not properly aware of their rights resulting in a push for redundancy in statutory protection and even duplications of warranties may not be sufficient protection if consumers are unaware of the remedies available under the existing framework.

4.3 There is a conspicuous absence in the Study of obligations the consumer must assume. These should include a familiarisation with the statutory provisions protecting consumers and an understanding of the dynamics of the market in which they intend making a purchase.

4.4 Consumers cannot and should not be statutorily protected from making an ill-informed or sub-optimal decision. Recourse to the ACL or the statutory guarantee should not be to remedy a 'bad decision' but only to remedy a 'bad product'. The Study should recognise that unconscionable behaviour can occur on both the buyer and the seller sides and that dealers' reputation and standing can be harmed by consumers seeking remedies that are without merit.

5. Related Issues

5.1 Proprietary information and data accessibility along the automotive value chain in some cases appears to be addressed by existing arrangements in the market through paid subscription services for Independent repairers. Anecdotally, the MTA Queensland is of the view that access to information does not constitute a significant issue where there is a 'sound working relationship' between parties.

However, without an agreed or accepted reporting framework for breaches of the current Agreement the lack of compliance has been difficult to quantify.

As per the principles of the current Agreement by all parties we acknowledge that there must be a balanced solution:

- The repairer should be able to access all information required for the diagnosis, body repair, servicing, inspection, periodic monitoring, and reinitialising of the vehicle, in line with the service and repair information manufacturers provide their authorised dealers and repairers.
- That the motor vehicle component manufacturers and Original Equipment Manufacturers [OEM] have a right to protect intellectual property and should be able to obtain a return on product development and capital investment in unique or proprietary technologies.

5.2 A future issue that may arise is electronic log book displacement of traditional paper documentation. In particular, the ownership and storage of log-book and vehicle data by third parties is likely to become an issue that will need future resolution.

5.3 The MTA Queensland submits that the ACCC should consider the threshold price for commercial vehicles to be eligible for protection under the statutory guarantees. The Association has reviewed the pricing structure of commercial vehicles and considers it may be appropriate to increase this to \$50,000 per vehicle and this should be incrementally adjusted for CPI annually. We are particularly sensitive to the small business community which does not have the leverage to negotiate significant discounts on their commercial vehicles and yet want to have equipment with high levels of safety. Adjustment to the trigger point to the guarantee would be of assistance to the small/medium enterprises.

6 Recommendations

6.1 The MTA Queensland recommends:

- (a) The ACCC collaborate with the automotive value chain to develop a training program to equip salespersons with the knowledge to comprehensively inform 'new car' buyers about the statutory guarantee available to all private use 'new cars' and business vehicles below \$40,000.
- (b) The ACCC develop a document:
 - that explains in plain English the protections offered to consumers by the statutory guarantee;
 - that comprehensively details how the validity of the guarantee is determined; and
 - carefully makes clear the difference between the statutory guarantee and the commercial warranties that are packaged as part of the transaction.
- (c) Before considering a 'lemon law', the ACCC allow the educative recommendations (a) and (b) to achieve traction so that an evaluation can be undertaken to determine if a 'lemon law' is needed to reinforce the consumer protections.
- (d) that the ACCC should consider the threshold price for commercial vehicles to be eligible for protection by the statutory guarantees.

7 MTA Queensland background

7.1 The MTA Queensland is the peak organisation in the State representing the specific interests of businesses in the retail, repair and service sector of Queensland's automotive industry located in the State. There are some 13,000 automotive value chain businesses employing in excess of 90,000 persons generating in excess of \$14.5 billion annually. It is an industrial association of employers incorporated pursuant to the *Industrial Relations Act* of Queensland. The Association represents and promotes issues of relevance to the automotive industries to all levels of Government and within Queensland's economic structure.

7.2. The Association is the leading automotive training provider in Queensland offering nationally recognised training, covering technical, retail and the aftermarket phases of the motor trades industry through the MTA Institute (MTAI) - a registered training organisation. It is the largest automotive apprentice trainer in Queensland employing in excess of 35 trainers geographically dispersed from Cairns to the Gold Coast and Toowoomba and Emerald. The MTAI last financial year accredited courses to in excess of 1,600 automotive apprentices and trainees.

8 Conclusion

8.1 We would be please to provide further comment on any matters in our submission that may require further clarification or amplification.

Thank you for your consideration.

Yours sincerely



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