

14 November 2016

Chairman Rodd Simms
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

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Dear Mr Simms

**SUBARU (AUST) PTY LIMITED SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION (ACCC)
NEW CAR RETAILING INDUSTRY – A MARKET STUDY PAPER – OCTOBER 2016**

1. Subaru (Aust) Pty Limited

- 1.1 This submission paper is submitted by Subaru (Aust) Pty Limited (“Subaru Australia”).
- 1.2 Subaru Australia is the exclusive importer and distributor of new Subaru branded motor vehicles in Australia. Unlike many other automotive brands doing business in Australia (which are wholly owned subsidiaries or otherwise related bodies corporate of the actual manufacturer of the motor vehicles), Subaru Australia is only minority owned (8%) by the actual manufacturer of Subaru motor cars (Fuji Heavy Industries Corporation of Japan or FHI). Instead Subaru Australia is majority owned by Inchcape Australia Limited, which in turn is ultimately owned by Inchcape PLC, a global automotive distribution and retailing company listed on the London Stock Exchange.
- 1.3 Since its establishment in 1973, Subaru Australia has developed a network of approximately 114 Authorised Dealers to whom it wholesales new Subaru motor vehicles, and who in turn, retail such motor vehicles to the general public.
- 1.4 In 2015 Subaru Australia sold 43,600 motor vehicles in Australia making it the 9th ranked passenger vehicle brand by market share. Subaru Australia sold 4,016 cars in the month of October 2016 bringing its 2016 year to date total to 38,969 units.
- 1.5 Given the foregoing Subaru Australia is a prominent and active participant in the Australian New Car Retailing industry.

2. Background

- 2.1 On 17 October 2016 the Australian Competition and Consumer Commission (ACCC) released an issues paper into the new car retailing industry entitled “New Car Retailing Industry – a market study by the ACCC” (hereafter referred to as the “Market Study Paper”). The ACCC advised that market study was intended to review industry practices in the sector to assist in identifying risks to consumers and the competitive process.

2.2 The key issues to be covered by the study include:

- (a) compliance with consumer guarantees obligations and the ability of consumers to enforce their rights;
- (b) interaction between consumer guarantees, manufacturer's warranties and dealer's extended warranties;
- (c) the effect on competition and on consumers of post sale;
- (d) service arrangements (such as servicing and repair);
- (e) availability and access to repair and service information and data for new cars;
- (f) false, misleading and deceptive practices in fuel consumption, carbon dioxide (CO₂) emissions, noxious emissions and car performance.

2.3 After carefully considering all of the issues raised in the Market Study Paper, Subaru Australia makes the following submissions.

3. FCAI Submission

- 3.1 As the official distributor of Subaru motor cars in Australia, Subaru Australia is a full and active member of the Federal Chamber of Automotive Industries (FCAI).
- 3.2 Subaru Australia fully supports and reiterates all of the submissions made by the FCAI to the Market Study Paper.
- 3.3 In addition to, or in support of the submissions made by the FCAI, Subaru Australia makes the following submissions:

Specific Responses to Questions posed on the Market Study Paper

4. Chapter 1 – Questions on the structure and operations of the new car retailing industry

4.1 Question 7 - Has competition increased in the new car industry over time and, if so, what is driving this change and how have dealers/manufacturers responded?

4.2 There can be little doubt that competition has increased in the Australian new car market over time. Today Australia is arguably the most competitive new car market in the world with over 67 brands and 350 different model variants, competing in a total annual new car sales market of approximately 1.15 million cars¹. This compares with just 49 brands in a total annual new car sales market of approximately 1.6 million cars in Canada², 51 brands in a total annual new car sales market of approximately 13 million cars in the USA³ and 53 brands in a total annual new car sales market of approximately 2.2 million cars in the UK⁴.

4.3 To put it another way, if the market were to be evenly shared amongst brands, there would be just 17,164 available cars sales per brand in Australia. This compares with 32,653

¹ FCAI Vehicle price and specification comparison webpage 2014 - <https://www.fcai.com.au/specification#section02>

² Ibid

³ Supra 1

⁴ Ibid

available cars sales per brand in Canada, 41,509 available cars sales per brand in the UK and 245,283 available cars sales per brand in the USA.

4.4 In addition independent research commissioned by the FCAI shows that new vehicle car prices in Australia are highly competitive when compared to prices for the same vehicle in overseas markets (on a specification adjusted basis)⁵.

4.5 Question 10 - What is the level of intra-brand competition (for example competition between retailers of the same branded product)?

4.6 In Subaru Australia's experience the level of intra-brand competition for Subaru motor vehicles is relatively high. This is evidenced by the fact various authorised Subaru dealers regularly run independent sales and marketing campaigns and sell new Subaru branded motor vehicles at prices well below the Recommended Driveaway Price (as they are entitled to do).

5. Chapter 2 - Questions on consumer guarantees, warranties and new cars

5.1 Question 11 - When purchasing a new car, what information is given to consumers about their consumer guarantee rights? What information are consumers given about the terms and conditions of the manufacturers' warranties or the dealers' extended warranties? Who provides this information? How is this communicated?

5.2 Subaru Australia informs consumers of their consumer guarantee rights both via its website as well in the content of the Subaru Warranty & Service Handbook that comes with each new vehicle sold.

5.3 The full terms and conditions of the manufacturer's warranty relating to the vehicle can be found in the Warranty & Service Handbook. A summary of the key terms and conditions of the warranty are also available on Subaru Australia's website⁶.

5.4 Subaru Australia also offers manufacture's warranty over genuine Subaru parts and accessories. A link to the full terms and conditions of this warranty is contained on Subaru Australia's website⁷.

5.5 Subaru Australia does not support the sale of dealer underwritten extended warranties.

5.6 Question 12 - What information is given to consumers about the interaction between their consumer guarantee rights, the manufacturer's warranty and, where relevant, the dealer's extended warranty? Who provides this information? How is this communicated?

5.7 Subaru Australia's website includes the following note⁸:

The Subaru New Vehicle Warranty applies in addition to the guarantees, rights and remedies conferred by the Australian Consumer Law and other applicable Commonwealth, State and Territory legislation. The Subaru New Vehicle Warranty

⁵ Supra 1

⁶ <http://www.subaru.com.au/warranty>

⁷ https://s3-ap-southeast-2.amazonaws.com/subaru-com.au/subaru-genuine-parts-and-accessories-warranty_2012.pdf

⁸ <http://www.subaru.com.au/warranty>

does not exclude, affect or limit those guarantees, rights or remedies, except to the extent that their application may lawfully be excluded or limited.

In particular, our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

5.8 The same note is also contained in the Warranty & Service Handbook that comes in the owner's wallet of each new car. Importantly, a link to a pdf version of the Warranty & Service Handbook is also contained on Subaru Australia's website, informing consumers of their consumer rights even before they purchase a Subaru⁹.

6. Chapter 5 – Questions on logbooks, dealer stamps and online logbooks

6.1 **Question 40 – What are the industry trends for providing online logbooks, rather than a paper only copy? What other record keeping methods are available? What are the benefits or challenges of using such methods.**

6.2 Whilst Subaru Australia does not yet have a platform to allow for logbooks to be kept online, it may look to do so in the future. Some of the benefits Subaru Australia foresees in doing so follow:

- (a) It is customer focused, allowing the customer to be able to quickly and easily access their vehicle's service history without having to worry about where the paper copy of the logbook is physically located;
- (b) Will assist in the prevention of the fraudulent stamping of log books. This might be done by unscrupulous private sellers looking to get a better price for their used car;
- (c) Will allow for more confidence in the published service history of the vehicle which will be verified via Subaru Australia.

7. Chapter 6 – Questions on access to repair and service information and data

7.1 **Question 42 – What repair and service information and data exists in relation to new cars? Who controls this information and data?**

7.2 Repair and service information relating to new Subaru cars is controlled by FHI. FHI makes this information available under licence to Subaru Australia. In turn this information is shared with Subaru Australia's authorised dealer network.

7.3 This information is also available in:

- (a) The Vehicle Owner's Manual supplied in the owner's wallet of every new Subaru vehicle;

⁹ Ibid

- (b) Warranty and Service Handbook supplied in the owner's wallet of every new Subaru vehicle;
- (c) Workshop manuals supplied to the authorised Subaru dealer network;
- (d) Service bulletins supplied to the authorised Subaru dealer network;
- (e) Body repair methods which are made available to the smash industry via the VACC.

7.4 Question 43 - What repair and service information and data is shared by manufacturers? How is it shared? With whom is it shared? What conditions are on sharing this information and data?

7.5 Subaru Australia generally does not share repair and service information with other motor vehicle manufacturers, with the exception of Work Instructions on recall campaigns (eg Takata airbag recall), where there is not an authorised Subaru dealer close to the owners location (such as in remote regional locations), in which special arrangements may be made with another manufacturer's authorised dealer to undertake the rectification work on Subaru's behalf.

7.6 Subaru Australia makes repair and service information available to its authorised dealer network and independent repairers in accordance with Industry Agreement on Access to Service and Repair Information¹⁰ and the FCAI Code of Practise relating to The Agreement on Access to Service and Repair Information for Motor Vehicles of 2014¹¹. These Codes collectively acknowledge that there is some information that may not be shared by Subaru Australia. For example, vehicle security, confidentiality arrangements, legislative, regulatory or privacy information is generally not made available for legal reasons or because of a lack of robust monitoring or enforcement mechanisms to ensure suitable the protection of information.

7.7 As a member of the FCAI and under the Voluntary Code, Subaru Australia undertakes the following:

- (a) independent repairers will be granted access to Subaru repair and service information at a reasonable price, in accordance with the following conditions and assumptions:
 - (1) The repair and service information assumes that only new genuine parts will be used in the repair process and may not be applicable where the independent repairer uses non-genuine parts in the repair or maintenance of a Motor Vehicle;
 - (2) All repair and service information are proprietary to Subaru Australia and/or FHI and are subject to applicable copyright, trademarks and other intellectual property rights of FHI. Their production or disclosure is subject to the copyright, trademarks and other intellectual property rights relating to such repair and service information and they remain the exclusive property of FHI and/or Subaru Australia; and

¹⁰ https://www.fcai.com.au/library/publication/agreement_on_access_to_service_and_repair_information_for_motor_vehicles.pdf

¹¹ <https://www.fcai.com.au/library/publication/Voluntary%20Code%20of%20Practice%20e2%80%93%20Access%20to%20Service%20and%20Repair%20Information.pdf>

- (3) The fact that an independent repairer has been given access to repair and service information under the provisions of the Code does not give the independent repairer, or any associated group or organisation, the right to claim or represent themselves as “factory trained”, “authorised dealer”, or make any other representation that would imply Subaru Australia’s endorsement, approval or authorisation of the independent repairer.

7.8 Question 44 - What is the effect of not having some level of access to repair and service information and data? On what basis might repair and service information not be shared? Why?

7.9 As noted above, Subaru Australia makes repair and service information widely available to independent repairers by making the information available for purchase from authorised Subaru dealers.

7.10 Similarly Body repair methods are made available to independent repairers in the smash repair industry via the VACC call centre (1800 025 125). A nominal administration fee is charged to access the information.

7.11 Subaru Australia is also currently working on a project to make repair and service information available via its website. Subaru Australia expects to go live with this project later this month (November 2016).

7.12 In line with the principles espoused in the Industry Agreement on Access to Service and Repair Information, certain vehicle safety, security and environmental compliance information is generally not shared with any third parties, as the sharing of this information could materially compromise the associated vehicle systems which in turn could lead to material detriment to the general public and/or other Subaru owners. Access to this information does not materially affect an independent repairers ability to service a Subaru vehicle or to repair the majority of issues a Subaru vehicle may face.

7.13 Question 45 - Is repair and service information and data presented in a standardised way across manufacturers? How consistent is repair and service information and data in terms of availability and how it is presented across brands?

7.14 Subaru Australia is unable to comment if repair and service information is presented in a standardised way across manufacturers, as we only distribute Subaru vehicles. In any case, repair and service information and body repair methods are readily available to the independent repairers and the smash repair industry.

7.15 Chapter 6 Question 46 - How is repair and service information and data accessed? What controls are there on accessing it?

7.16 Repair and service information is made available to independent repairers through the authorised Subaru dealer network. Year To Date, Subaru Australia have sold approximately 30 repair and service manuals to independent repairers.

7.17 Body repair methods are available to independent repairers through the VACC call centre (1800 025 125) for the smash industry, averaging 50 calls per month requesting access to body repair information and procedures.

7.18 Further, as noted above, Subaru Australia is also currently working on a project to make Subaru related repair and service information available to anyone who wants it, via its

website. Subaru Australia currently expects to go live with this project in late November 2016.

7.19 Chapter 6 Question 47 - What other methods exist for accessing repair and service information and data? What are the benefits or challenges of using such methods?

7.20 As noted above, access to Subaru related repair and service information is widely available. Sources include everything from owner's documents such the Owner's Manual and Warranty and Service Handbook, through to official Body repair methods and Workshop Manuals. Subaru Australia is also working on a project to make manuals available via its website to provide yet another channel through which this information may be accessed. Given the foregoing, Subaru Australia does not currently see a need to consider any further alternate methods for accessing this information.

We thank you for the opportunity to make a submission to this important market inquiry. Should you have any questions regarding this submission we would welcome the chance to further discuss it with you.

Yours sincerely

Subaru (Aust) Pty Limited