



**National Honda Dealer Council Limited –  
Application for authorisation AA1000528  
Interim authorisation decision  
16 September 2020**

**Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of the application for authorisation AA1000528, lodged by the National Honda Dealer Council Limited (**NHDC**), on behalf of a number of Honda Australia Pty Ltd (**Honda Australia**) dealers, on 21 August 2020. The group of dealers is comprised of dealers transitioning to Honda Australia's proposed new agency model (the **Dealers**). Any transitioning Honda Australia dealer is free to join the group.
2. Interim authorisation is granted to enable the NHDC and the Dealers to:
  - discuss and share information about the terms of the termination of existing dealership arrangements between Honda Australia dealers and Honda Australia,
  - discuss and share information about the proposed terms of a new agency model proposed to be entered into between Honda Australia and the Dealers (the **New Model**), whereby dealers would deal with consumers as agents of Honda Australia in some respects rather than in their own right, and
  - commence collective negotiations with Honda Australia in relation to the above issues.
3. Discussions between NHDC and the Dealers, and negotiations with Honda Australia may cover terms and information including, but not limited to:
  - commissions
  - circumstances in which capital expenditure by Dealers will be reimbursed by Honda Australia and the nature and calculation of that reimbursement
  - Honda Australia's proposed 'one price everywhere' model for new vehicle pricing
  - compensation and reimbursement for included services
  - vehicle servicing arrangements with Honda Australia
  - arrangements for finance, insurance, oil, aftermarket products, accessories
  - territory boundaries, and
  - processes for termination and transfers of the Dealers' businesses.(the **Proposed Conduct**).
4. The Proposed Conduct does not extend to:
  - a. agreeing price (or other terms on which Dealers currently compete with each other) during any transition to the New Model
  - b. agreeing price, or other terms on which Dealers would compete with each other, for any products or services for which competition between Dealers is possible under the New Model.

- c. sharing information regarding:
  - i. personal details of existing Dealer clients and Dealer staff
  - ii. special terms agreed between individual Dealers and their Dealer clients
  - iii. special terms agreed with providers of services such as insurance, finance and spare parts, or
  - iv. details of existing business plans for the way in which individual Dealers do, or may in future, compete with each other.
- 5. In addition, interim authorisation is not granted to permit entering into or giving effect to any binding agreements between any Dealers and Honda Australia as a result of collective negotiations. The entry into and giving effect to binding agreements following collective negotiations will be considered as part of the ACCC's substantive authorisation assessment.
- 6. Interim authorisation commences immediately and remains in place until it is revoked, the application for authorisation is withdrawn, or the ACCC's final determination comes into effect.

### **The application for authorisation**

- 7. The NHDC is an advocacy body for Honda Australia dealers, comprised of representatives nominated by each state and territory council of Honda Australia dealers. The NHDC has applied for authorisation on behalf of the Dealers.
- 8. Currently, Honda Australia's dealers sell new and used Honda motor vehicles,<sup>1</sup> and associated financing, insurance, affiliated products, aftermarket products, and pre-delivery and after-sale vehicle servicing and parts. Each dealer has an individual dealer agreement with Honda Australia. The ACCC understands there are currently around 60 Honda Australia dealers, operating over more than 100 sites.
- 9. Honda Australia has publicly announced that it intends to replace those dealers' arrangements with the New Model, whereby dealers would deal with consumers as agents of Honda Australia in some respects rather than in their own right.
- 10. The NHDC advises that, as presently structured, under the New Model, Dealers would not sell accessories, servicing, parts, used cars and insurance as agents of Honda Australia, meaning that they will continue to offer these products and services in competition with other Honda dealers. However, as part of the transition to the New Model, NHDC asserts that Honda Australia proposes to exercise greater control over many of those aspects of the Dealers' businesses.
- 11. Honda Australia has also announced that it intends to reduce the number of dealerships and models of Honda vehicles sold in the Australian market. As a result, in moving from current arrangements to the New Model, Honda Australia will terminate agreements with a number of dealers, whereas others will transition to new agency arrangements.
- 12. The NHDC submits, and the ACCC has accepted, that the specific Dealers the subject of the authorisation application cannot be publicly disclosed at this point, because doing so would effectively identify which Honda Australia dealers will be terminated, and which will be transitioned to the New Model. Such a disclosure would be prejudicial to the businesses of the terminating dealers during the period prior to termination and damage the Honda brand more generally.

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<sup>1</sup> NHDC advises the proposed conduct relates to cars only and does not include motorbikes, quad bikes, scooters, marine or other vehicles.

13. The NHDC seeks authorisation for the conduct described in paragraphs 2 -3 above. Authorisation is also sought to give effect to any agreements arising from those collective negotiations.
14. The NHDC advises that all dealers who are transitioning to the New Model will be welcome to join the group of Dealers if they wish to.
15. The NHDC submits the Proposed Conduct is likely to result in public benefits when compared to a transition to the New Model without collective negotiations, including greater competition between Dealers, transaction cost savings and efficiencies, decreased risk of monopoly conduct, reduction of information asymmetry, improved relationships and communication, and equalisation of bargaining power. The NHDC considers that there is no public detriment likely to result from the proposed conduct.
16. The NHDC seeks authorisation for 11 years.

### **The authorisation process**

17. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

### **Interim authorisation**

18. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the Proposed Conduct while the ACCC is considering the substantive application.
19. The NHDC requested interim authorisation on the basis that:
  - Honda Australia is requiring immediate responses from the Dealers to the New Model, and therefore there is a need for the Dealers to act promptly. Dealers seek interim authorisation to be able to commence discussions and negotiations as soon as possible.
  - there is a risk that, because Honda Australia proposes to remove a number of dealers from the dealer network, delays in commencing negotiations places the ongoing relationship of Dealers with Honda Australia in jeopardy.
20. Honda Australia submits that it has not placed any undue pressure on dealers, or implied that an ongoing relationship may be impacted by delays. It submits that it is important however that discussions with dealers progress promptly and efficiently to ensure the New Model can be implemented by July 2021.

### **Consultation**

21. The ACCC invited submissions from a range of potentially interested parties including Honda Australia, industry associations and government bodies. Two submissions were received in response, from the Australian Automotive Dealer Association (**AADA**) and Honda Australia.
22. The AADA is supportive of the application for authorisation. The AADA considers that there would be no detriment resulting from authorisation, and that authorisation will result in public benefits through improving the bargaining position of Dealers in a market presently characterised by a power imbalance; providing Dealers with the opportunity to negotiate to retain aspects of competition that would otherwise be lost as a result of the transition to the New Model; and negotiation cost savings.
23. Honda Australia supports the NHDC's application in principle. It notes in respect of the introduction of the New Model that Honda Australia dealers will continue to compete

against each other in relation to trade-ins and customer service as well as parts and accessories, servicing and other aftersales products.

24. Honda Australia also submits that the following conditions of authorisation should apply:

- the term of the authorisation should be limited to the period up until new agency agreements have been executed by the Dealers.
- the NHDC provide Honda Australia with a list of the dealers it is representing, being those who are covered by the authorisation, and notify Honda Australia promptly should this list change, and
- authorisation, including interim authorisation, should be subject to a non-discrimination condition preventing NHDC from discriminating against dealers in negotiations who choose not to be represented by the NHDC.

25. In response the NHDC submitted that:

- the NHDC agrees that Honda Australia would need to know the identity of dealers covered by the authorisation if authorisation is granted, and the NHDC would disclose to Honda the names of dealers protected by the authorisation as soon as the authorisation comes into force.
- there has been no discrimination to date. The NHDC invited all dealers who are transitioning to the New Model to participate in the application for authorisation and each Dealer has been able to make their own decision whether they participate or not. Further, the NHDC submits that Dealers who elect to participate in the application are under no obligation to engage in joint discussions or collective bargaining.

26. The ACCC, for the purposes of assessing the application for interim authorisation:

- considers that it is unnecessary to determine the appropriate length of the authorisation and will consider the issue in its consideration of the substantive application for authorisation;
- considers that once this interim authorisation is in force it will, as a practical matter, be necessary for the NHDC to provide Honda Australia with a list of represented Dealers. In circumstances where the NHDC has offered to provide Honda Australia with this information and expects that the NHDC will do so in due course following the grant of this interim authorisation, the ACCC considers it unnecessary to impose a condition of authorisation.
- Accepts the NHDC's submission that there is no need for a condition preventing discrimination against dealers who do not join the bargaining group. The ACCC considers that it would be inappropriate to impose such a condition where: there has been no suggestion of discrimination to date; the NHDC has invited all dealers transitioning to the New Model to participate; and Dealers may elect not to participate in joint discussions and collective bargaining.

27. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website [www.accc.gov.au/authorisations](http://www.accc.gov.au/authorisations).

### **Reasons for decision**

28. The ACCC has considered the grant of interim authorisation in respect of the application for authorisation AA100052 in accordance with the Act. In granting interim authorisation, the ACCC considers that:

- any reduction in competition between the Dealers during the period of this interim authorisation appears likely to be primarily due to Honda Australia

introducing the New Model, rather than due to the Dealers engaging in collective bargaining

- it is unlikely that the competitive dynamics in any market will be materially impacted by allowing the Dealers to begin collective bargaining with Honda Australia. In the event final authorisation is not granted, the granting of interim authorisation will not prevent the relevant markets from returning to substantially their current state (recognising that this 'current state' may change significantly as a result of the transition to the New Model, but that as noted above this would be due to the changes introduced by Honda Australia rather than due to collective bargaining pursuant to this interim authorisation), and
- there is some urgency to the request for interim authorisation given that Honda Australia is proposing to implement the New Model by July 2021.

### **Reconsideration of interim authorisation**

29. The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.