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Our ref SDV:GJL:4529907

16 November 2020

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Ms Susie Black  
Director, Competition Exemptions  
Australian Competition and Consumer Commission

**Electronic**

Dear Sir

**Mitsubishi Motors Australia Limited – Notification of Exclusive Dealing**

We refer to your letter dated 21 October 2020.

Mitsubishi Motors Australia Limited (**MMAL**) responds to the issues outlined at Annexure A to that letter, and the information request on page 1 of the correspondence, below. MMAL will respond to your document request separately. In this letter, defined terms take their meaning from MMAL's notification lodged on 11 September 2020 (**Notification**), unless the contrary intention appears.

Certain information in this letter is confidential to MMAL. MMAL requests that the Australian Competition and Consumer Commission (**ACCC**) not disclose the confidential information in this letter and its enclosures to any other person, except on the following basis:

- 1 there is no restriction on the internal use, including future use, that the ACCC may make of the information consistent with its statutory functions
- 2 the information may be disclosed to the ACCC's external advisors and consultants on the condition that each such advisor or consultant is informed of the obligation to treat the information as confidential; and
- 3 the ACCC may disclose the information to third parties (in addition to its external advisors or consultants) if compelled by law, or in accordance with section 155AAA of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

To the extent that the ACCC considers that it is necessary to disclose the information in this letter to third parties, MMAL requests that the ACCC consult with it prior to any such disclosure.

**1 Preliminary comments regarding submissions against Notification**

MMAL notes that the ACCC has received over 200 submissions in relation to the Notified Conduct, and that the majority of these submissions oppose the Notification.

As at the date of this letter, 147 submissions are available on the public register for the Notification. Of these submissions, the vast majority (124) are from independent service centres and/or aftermarket parts suppliers (that is, direct competitors to MMAL Dealers and/or Service Centres).

Such competitors have an interest in opposing the Notified Conduct if they consider that it will reduce their own profits (irrespective of any benefits to consumer welfare that may flow from the Notified Conduct). The ACCC should consider this self-interest when determining how much weight to give to these submissions.

Moreover, while the scale of submissions received appears to suggest widespread opposition amongst independent service centres to the Notified Conduct, many of the responses given appear to be based on a template response prepared by an industry lobby group (**Template Response**).

A comprehensive example of the Template Response is contained in the submission made by Anthony Car & Head.<sup>1</sup> That submission copies the Template Response in almost its entirety, together with the instructions made by the industry lobby group to its members. As is apparent from the Anthony Car & Head submission:

- (a) the industry lobby group requested that its members make submissions opposing the Notified Conduct;
- (b) the industry lobby group provided a table of pre-prepared arguments against the Notified Conduct that could be '*selected*' by members;
- (c) the industry lobby group recommended that members '*use no more than three*' arguments (presumably to avoid the appearance of identical submissions being made against the Notified Conduct).

At least 61 submissions have copied from the Template Response (typically on a word for word basis).<sup>2</sup> A further 18 submissions have used template language seemingly developed by Ultra Tune.<sup>3</sup> These template responses tie in with a broader lobbying campaign that has been commenced by a range of industry lobby groups.<sup>4</sup>

A number of consumers (including current and potential future owners of Mitsubishi Vehicles) have made submissions supporting the Notified Conduct (including submissions noting that they

<sup>1</sup> Anthony's Car & Head Centre (12 October 2020).

<sup>2</sup> Highfields Mechanical & Offroad / HiMech Auto Solutions (2 October 2020); Steve Sorensen Mechanical (2 October 2020); AutoPlus Pty Ltd (5 October 2020); A.D.M. Motors (7 October 2020); A-One Mechanics (7 October 2020); Auto Europe (7 October 2020); Auto Stop Pty Ltd (7 October 2020); Autoplus WA (7 October 2020); BestDrive Ferntree Gully (7 October 2020); BM Tech (7 October 2020); Continental Bestdrive Wanneroo (7 October 2020); First Class Automotives (7 October 2020); Geoff Conley Automotive (7 October 2020); Geraldton 4WD Service and Repair (7 October 2020); Highton Automotive Service (7 October 2020); MotorActive (7 October 2020); Rapid Tune Pty Ltd (No 1) (7 October 2020); Rapid Tune Pty Ltd (No 2) (7 October 2020); South Coast Auto Services (7 October 2020); Towers Automotive (7 October 2020); Twin Cities Automotive (7 October 2020); Underwood Car Care (7 October 2020); Andrews Autos (8 October 2020); Auto Leaders (8 October 2020); Blackwood Dyno Tune and Service (8 October 2020); Bob Romano Auto Care & Performance (8 October 2020); Borough Tyre & Auto (8 October 2020); Bosch Car Service Council AU & NZ (8 October 2020); Continental Bestdrive Subiaco (8 October 2020); D & M Automotive Service Centre (8 October 2020); Daniello's Automotive Centre (8 October 2020); Disc Brakes Australia (8 October 2020); Future Auto Service Centres / Hondacare (8 October 2020); Future Auto Service Centres Pty Ltd (8 October 2020); Harden Bearings & Hardware (8 October 2020); Jackmans Garage Pty Ltd (8 October 2020); Major Auto Technics (8 October 2020); Mammi Motors (8 October 2020); Maryborough Service Centre (8 October 2020); Port Adelaide Auto Repairs (8 October 2020); Rawson Motors (8 October 2020); The Garage Miami (8 October 2020); Ultra Tune Toowoomba West (8 October 2020); Warragul Automotive (8 October 2020); Westernport Automotive Services (8 October 2020); Woodward's Auto Repairs (8 October 2020); ABS Automotive (9 October 2020); An Interested Party (No 3) (9 October 2020); An Interested Party (No 5) (9 October 2020); Berwick Auto Electrics and Mechanical (9 October 2020); GUD Holdings Limited (9 October 2020); J&F Motors (9 October 2020); Maranoa Mechanical (9 October 2020); Midas Australia Pty Ltd (9 October 2020); mycar Tyre & Auto (9 October 2020); Ryco Group (9 October 2020); Torrisi Automotive (9 October 2020); Uneek4x4 Australia (9 October 2020); An Interested Party (No 2) (12 October 2020); Anthony's Car & Head Centre (12 October 2020); CSM Service Bodies (12 October 2020).

<sup>3</sup> Ultra Tune Beenleigh (7 October 2020); Ultra Tune Fortitude Valley (7 October 2020); Ultra Tune Belmont (8 October 2020); Ultra Tune Bundaberg (8 October 2020); Ultra Tune Carindale, Morningside, Macgregor (8 October 2020); Ultra Tune Croydon (8 October 2020); Ultra Tune Greensborough (8 October 2020); Ultra Tune Rockingham (8 October 2020); Ultra Tune Capalaba (9 October 2020); Ultra Tune Carlisle (9 October 2020); Ultra Tune Epping (9 October 2020); Ultra Tune Essendon (9 October 2020); Ultra Tune Hawthorn (9 October 2020); Ultra Tune Highpoint (9 October 2020); Ultra Tune Malvern East (9 October 2020); Ultra Tune Milton (9 October 2020); Ultra Tune Willeri Drive (9 October 2020); Ultra Tune Seaford (12 October 2020).

<sup>4</sup> 'AAAA leads charge against Mitsubishi 10-year warranty', *Motoring* (online, 15 October 2020) <<https://www.motoring.com.au/aaaa-leads-charge-against-mitsubishi-10-year-warranty-126815/>>.

would have their Mitsubishi Vehicles serviced with an MMAL Dealer or Service Centre even in the absence of any requirement to do so).<sup>5</sup>

## 2 Competition effects of the Notified Conduct

### 2.1 Impact on independent servicing and repair businesses

#### (a) 'Lock out' of independent service centres

Some submissions express concern that consumers already operate under the mistaken impression that they must service their vehicles with an OEM-authorized Dealer or Service Centre, and that implementing the Notified Conduct will effectively 'lock out' independent service centres for the full 10 year period:

*Submissions note that independent mechanics are often unable to service Mitsubishi vehicles for the warranty period because consumers consider they need to take their vehicle to a Mitsubishi service centre to maintain the warranty, even where the terms of Mitsubishi's existing five year warranty allow customers to use an independent mechanic without affecting their warranty (provided the vehicle is serviced in accordance with manufacturers' specifications).*

*Submissions raise concerns that the 10 year extended warranty is on condition that consumers must service their vehicle exclusively with Mitsubishi and that this effectively locks out independent mechanics for the full 10-year period (the restriction of consumer choice is discussed further below). Submissions note that servicing forms a large portion of revenue for many independent mechanics, and independent mechanics that focus on servicing and repairing Mitsubishi vehicles may be substantially impacted by the Notified Conduct.*

Respectfully, these concerns are unfounded. As set out in **Confidential Annexure 1** to this letter, MMAL's experience is that only [CONFIDENTIAL] of purchasers of new Mitsubishi Vehicles continue to service their vehicles with an MMAL Dealer or Service Centre five years after purchase. Of course, as noted in the Notification, Mitsubishi Vehicles comprise only a small fraction of the total number of new vehicles sold each year (see further below).

MMAL expects this retention percentage to increase slightly to [CONFIDENTIAL] as a result of the Notified Conduct (again, emphasising that this represents only a small fraction of the total Australian vehicle population). This still leaves a significant proportion of Mitsubishi Vehicles able to be serviced by independent service centres. By year 10, MMAL's expected retention percentage arising from the Notified Conduct decreases significantly to [CONFIDENTIAL]

In its Notification, MMAL noted that it accounted for only 7.8% of the market for the supply of new motor vehicles. That number was based on VFACTS figures from 2019. In the 2020 calendar year to date, MMAL's market share has declined to 6.4% (and it has declined to 6.1% in the period between April 2020 and October 2020). The purpose of the Notified Conduct is to (inter alia) increase the attractiveness of new Mitsubishi Vehicles to consumers, and so make MMAL (through its Dealers) more competitive in the market for the supply of new vehicles. This is a public benefit that should be considered when evaluating the Notification.

In any event, the effect of the market share data above is that, even if the submissions were correct (which is denied):

- (i) independent service centres would continue to be able to service new vehicles supplied to the market by other OEMs (93.6% of new vehicles supplied to the market each year);

<sup>5</sup> Austen Evans (20 September 2020); An Interested Party (21 September 2020); Gerard Elijzen (23 September 2020); Jerome Harris (22 September 2020).

- (ii) independent service centres would continue to be able to service Mitsubishi Vehicles over 10 years of age (comprising 42.5% of Mitsubishi Vehicles currently registered).

Separately, and as noted above, the submissions apparently proceed on the basis that consumers mistakenly believe that they must service their vehicles with an OEM Dealer or Service Centre, even where there is no contractual obligation to do so.

This position is incorrect, as evidenced by the data above. Consumers are well aware of their rights under the *Australian Consumer Law* (Cth) (**ACL**) (see section 2.3 below). If consumers acquire services from MMAL Dealers or Service Centres, it is because they have chosen to acquire those services.

However, even if the premise of the submissions were correct, this would only mean that the submissions themselves are misconceived. The Notified Conduct is not MMAL offering a 10 year Warranty. As described in your letter, the Notified Conduct is:

- (i) *'MMAL offering a 10 year or 200,000 kilometre (whichever occurs first) Warranty, which can also be described as a five year or 100,000 kilometre (whichever occurs first) extension of its current five year Warranty, to purchasers of new Mitsubishi Vehicles';*
- (ii) *'on the condition that those purchasers exclusively acquire aftermarket servicing for their new Mitsubishi Vehicles from an MMAL Dealer and/or Service Centre'.*

(Emphasis added).

If the effect of the submissions is that consumers consider that they need to acquire servicing from MMAL Dealers or Service Centres regardless of any contractual obligation to do so, then that behaviour would presumably continue even in the absence of any exclusivity requirement. If that were the case, the Notified Conduct would not impact competition (as it would not alter existing consumer behaviour).

(b) **Repair work identified through routine servicing**

Certain submissions allege that a significant proportion of repair work is identified through routine servicing, and so the Notified Conduct will result in less work for independent service centres:

*Further, despite the distinction made at paragraph 1.7(d) of the Notification between repairs and servicing, several submissions note that a significant proportion of repair work is identified through routine servicing. According to these submissions, this may mean that, in practice, the Notified Conduct will result in less repair work as well as servicing work for independent mechanics in relation to Mitsubishi vehicles. Submissions also note that many consumers do not understand the difference between servicing and repairing a vehicle, which may increase the possibility of a consumer unintentionally voiding the 10 year extended warranty.*

This position is not consistent with the wide variety of scenarios in which repair work is ordinarily identified and carried out, which we describe below.

Scenario	Repairer
Consumer damages vehicle, takes vehicle to crash repairer	Consumer or (where relevant) insurer choice of crash repairer.

<p>Consumer identifies other issue with vehicle (e.g. clutch failure), takes vehicle to service centre.</p>	<p>Consumer or (where relevant) insurer choice of service centre.</p>
<p>Consumer presents vehicle for non-scheduled service (see section 4 below), service centre identifies potential repair work</p>	<p>The choice of repairer will depend on a range of factors.</p> <ul style="list-style-type: none"> <li>• If the vehicle is insured, the consumer may wish to claim the repair on their insurance, in which case they will present the vehicle to a repairer approved by their insurer.</li> <li>• If the nature of the work is such that there has been a failure to comply with the consumer guarantees, the consumer is free to choose their own repairer, and then seek the costs of that repair from the vehicle supplier / manufacturer. There would be no additional incentive for such a consumer to service their vehicle with an OEM Dealer or Service Centre (which position is unchanged by the Notified Conduct).</li> <li>• Alternatively, in the event of a major failure, the consumer would be entitled to reject the vehicle and seek a refund of the purchase price paid for the vehicle (which position is unchanged by the Notified Conduct).</li> <li>• If the repair is covered by an OEM warranty or extended warranty, the consumer will service the vehicle in accordance with that warranty (which position is unchanged by the Notified Conduct).</li> <li>• If none of the above factors apply, the choice of repairer is likely to be influenced by the cost and timeframe for the repair work.             <ul style="list-style-type: none"> <li>○ If the repair work is low-cost and can be completed rapidly, it may be commissioned at the same time as the service.</li> <li>○ Conversely, if the repair work is high-cost or will involve denying the consumer the use of their vehicle for a significant period, the consumer is much more likely to explore alternate options</li> </ul> </li> </ul>

	for the repair work.
Consumer presents vehicle for scheduled service, service centre identifies potential repair work	As above.

As is apparent from the above, there is only a limited range of circumstances in which a consumer may engage an MMAL Dealer or Service Centre to undertake repair work, and the Notified Conduct is unlikely to alter this position.

(c) **Impact on spare parts**

Some submissions express concern that the Notified Conduct will result in higher prices for Mitsubishi Vehicle spare parts:

*Submissions note that the Notification does not address the impact of the Notified Conduct on the availability or supply of spare parts, including Original Equipment Manufacturer parts. Submissions argue the Notified Conduct will reduce the volume of parts that are suitable for Mitsubishi vehicles and result in higher prices for those parts over time.*

The Notified Conduct is incapable of impacting the volume of parts that are suitable for Mitsubishi Vehicles, insofar as it will not alter the frequency with which spare parts are installed on MMAL vehicles.

MMAL additionally does not consider that the Notified Conduct will result in increased prices for non-genuine spare parts.

- (i) As noted above, MMAL anticipates that the Notified Conduct will only result in a small increase in customer service retention. This small increase is unlikely to impact economies of scale associated with the manufacture or supply of aftermarket parts.
- (ii) In line with the above, MMAL notes that no submitter has provided data on the price increases anticipated as a result of the Notified Conduct.
- (iii) This is particularly the case for generic aftermarket parts that can be used across a range of OEM brands or vehicle models (for example, tyres, oil filters, windscreen wipers, fan belts, and brake pads), or for parts that require only minor modifications between OEM brands.
- (iv) Any decrease in the volume of available non-genuine aftermarket parts caused by the Notified Conduct (which, as noted above, is likely to be minor) will be perfectly offset by an increase in the volume of genuine parts supplied (and a corresponding decrease in the price of those parts).
- (v) In addition to benefitting consumers, this will also benefit independent service centres, as approximately [CONFIDENTIAL] of MMAL genuine parts are currently acquired by independent service centres.
- (vi) Finally, any narrow focus on sales volumes ignores the significant potential cost advantages that may be realised in the aftermarket spare parts industry in the near future through the adoption of 3D printing.<sup>6</sup> The adoption of 3D printing will necessarily reduce reliance on traditional economies of scale.

<sup>6</sup> See generally Dana Beldiman and Constantin Blanke-Roeser, *An International Perspective on Design Protection of Visible Spare Parts* (Springer, 2017) 119-122; Varun Bhasin and Muhammad Raheel Bodla, 'Impact of 3D Printing on Global Supply Chains by 2020' (Master of Engineering in Logistics Thesis, Massachusetts Institute of Technology, 2014) 62-67.

## 2.2 Consumer choice

Your letter states that:

*A significant proportion of submissions argue the Notified Conduct will negatively affect consumer choice. Submissions argue the Notified Conduct will undermine consumers' ability to choose where to service their car by making consumers feel they have no choice of service provider and by increasing consumers' fear of losing their warranty.*

This position is plainly wrong. The Notified Conduct does not reduce consumer choice; it enhances it by offering consumers the option of a longer Warranty in exchange for exclusivity in relation to scheduled services (but not repairs or other forms of servicing – see section 3.1 below).

As set out in the Notification, consumers who do not wish to take advantage of the extended Warranty have a range of options available to them. Such consumers may rely on:

- (a) MMAL's existing five year Warranty, which is not tied to any exclusivity obligations;
- (b) extended warranty offerings from third party providers (which would not require consumers to service their Mitsubishi Vehicles with MMAL Dealers or Service Centres); and/or
- (c) their consumer guarantee rights (which, again, do not restrict consumers to MMAL Dealers or Service Centres).

MMAL emphasises that MMAL's existing five year Warranty is unaffected by the Notified Conduct, and remains extremely competitive. Of the 47 OEM brands that offer contractual warranties in Australia, only four OEM brands offer warranties of longer than five years.<sup>7</sup>

Your letter also states that:

*Submissions note that alternative and re-conditioned parts provide price competition and assist with the affordability of vehicle maintenance. These submissions raise concerns that the Notified Conduct will reduce innovation and competition in the supply of parts suitable for Mitsubishi vehicles and result in loss of choice for consumers.*

*Submissions also note that this loss of choice would extend to subsequent purchasers of second-hand Mitsubishi vehicles where the 10 year extended warranty has not been voided.*

MMAL has dealt with the impact of the Notified Conduct on aftermarket spare parts at section 2.1(c) above. Otherwise, as noted immediately above, the Notified Conduct only enhances consumer choice.

MMAL notes that this is particularly the case for subsequent purchasers of second-hand Vehicles. If a Mitsubishi Vehicle is not supplied to a subsequent purchaser in trade or commerce (for example, if the subsequent purchaser acquires the vehicle through a private sale), it may be more difficult for that purchaser to rely on the consumer guarantee as to acceptable quality. The existence of the 10 year Warranty significantly increases the rights available to this category of purchaser.

## 2.3 Information asymmetries

Some submissions express concern that the Notified Conduct will contribute to consumer confusion:

*Many submissions argue the Notified Conduct will contribute to existing consumer confusion and misconceptions about manufacturers' warranties, extended warranties and consumer guarantees.*

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<sup>7</sup> Susannah Guthrie, 'New Car Warranty Comparison: What Do You Get From Each Manufacturer?', *CarAdvice* (online, 19 April 2020) <<https://www.caradvice.com.au/838195/new-car-warranty-comparison/>>.

*A number of submissions argue that, when purchasing new Mitsubishi vehicles, consumers will not be provided with full and accurate information about the 10 year extended warranty and their existing consumer rights, which are available outside of manufacturers' warranties.*

MMAL does not agree that consumers do not understand their rights under the ACL.

Based on MMAL's own experiences, consumers are well aware of their consumer guarantee rights, and often use those rights in preference to (or in parallel with) any rights they may have under a contractual warranty. MMAL regularly engages external specialists to provide ACL compliance training to its own staff and has also provided ACL training to its Dealers and Service Centres.

MMAL's own experience of consumer awareness of the ACL and consumer guarantees is also supported by independent research. For example, the *Australian Consumer Survey 2016* found that 71% of consumers had at least a moderate understanding of their rights when purchasing goods or services.<sup>8</sup>

#### 2.4 Access to technical information and data

Certain submissions conflate the Notified Conduct with access to technical information:

*A number of submissions argue the Notified Conduct will exacerbate difficulties currently experienced by independent mechanics in gaining access to technical information and data required to service and repair Mitsubishi vehicles. These submissions refer to existing impediments to competition that are created by barriers to technical information and data.*

*Several submissions also argue the Notified Conduct would undermine efforts in the sector to increase access to car manufacturers' technical information and data by independent mechanics. Submissions note that any improvements in access to this information and data in relation to Mitsubishi vehicles (for example, through Government initiatives to increase access) would be irrelevant to the extent that Mitsubishi vehicles are not available for independent servicing and repair.*

The Notified Conduct is not related to access to the technical information and data required to service and repair Mitsubishi Vehicles.

The Notified Conduct does not in any way hinder the ability of independent service centres to gain access to technical information and data. As noted in our letter dated 23 October 2020, independent service centres already have access to all the information they require to service Mitsubishi Vehicles.

Indeed, it should be apparent from the sheer volume of submissions received in relation to the Notification (and the comments summarised in your letter) that independent service centres plainly consider that they are already able to service Mitsubishi Vehicles to the same quality as MMAL Dealers or Service Centres.

#### 2.5 Proliferation of conduct

Some submissions express concern that, if the Notification is permitted to stand, other OEMs will introduce similar warranty programs:

*Many submissions note it is highly likely other vehicle manufacturers will seek to implement arrangements similar to the Notified Conduct, which would then significantly magnify the negative consequences of the Notified Conduct for independent mechanics.*

<sup>8</sup> Ernst & Young, *Australian Consumer Survey 2016* (EY Sweeney Ref No 25364, 2016) 22-23. The survey noted that, in 2011, 90% of respondents had indicated that they had at least a moderate understanding of their rights when purchasing products or services. The survey suggested that the difference in results was due to the change in wording of the question as opposed to a shift in consumer knowledge. This suggests that the true percentage of consumers with at least a moderate understanding of their rights is likely to be higher than 71%.



*Submissions also note that a high proportion of consumers currently stay with their dealer for servicing while their car is under warranty and, if 10 years becomes the standard warranty period, this may seriously jeopardise the financial viability of independent mechanics, which may result in their exit from the market and a substantial lessening of competition.*

No evidence has been offered in support of this position. No other OEM has made a submission in relation to the Notification, or announced that they will introduce a similar program (whether subject to the success of the Notification or otherwise).

Prior to the Notification, MMAL was only aware of one OEM that was considering introducing a 10 year warranty (Kia).<sup>9</sup> Kia was the first OEM to offer a 7 year warranty in Australia.<sup>10</sup> Its Chief Operating Officer of Kia Australia had previously stated that, as soon as another mass-market brand were to offer a 10 year warranty, he would immediately lobby his Korean head office to increase Kia's 7 year warranty period.<sup>11</sup> However, it is unclear whether that would extend to a warranty similar to the Notified Conduct.

### **3 Public benefits and detriments**

#### **3.1 Claimed public benefits**

Your letter states that:

*A number of submissions dispute the public benefits claimed in the Notification and argue the Notified Conduct will have no net benefits for consumers.*

*Many submissions strongly reject the notion that independent mechanics provide a lower standard of servicing compared to Mitsubishi dealers and service centres. This issue is discussed further below.*

MMAL Dealers and Service Centres provide servicing of the highest quality (see section 3.3 below). However, this submission perhaps misunderstands MMAL's Notification.

- (a) MMAL does not suggest that all independent service centres provide inferior quality servicing to MMAL Dealers or Service Centres.
- (b) Instead, MMAL observes that it is self-evident that the quality of servicing provided by independent service centres will vary from service centre to service centre. While MMAL is able to exert control over the quality of servicing provided by its own Dealers or Service Centres, it plainly cannot exert any control over independent service centres.
- (c) This means that MMAL cannot ensure that independent service centres provide a minimum level of service quality, but can ensure such a minimum level of quality within its own network. This would be the case even if the above submissions relating to access to technical data were accepted.
- (d) In circumstances where MMAL proposes to provide a decade-long Warranty, it is critical that MMAL be able to control the quality of servicing provided in relation to Mitsubishi Vehicles covered by that Warranty.

Your letter goes on to state that:

*Submissions also note that many consumers will not benefit from the full 10 years of the extended warranty period because they will likely void the warranty at some point (which may be unintentional/inadvertent). Similarly, submissions note that purchasers of second-hand vehicles*

<sup>9</sup> Matt Campbell, 'Kia 10-Year Warranty Could Happen, But Why Bother When Competitors Are Still Lagging?', *CarsGuide* (online, 28 January 2020) <<https://www.carsguide.com.au/car-news/kia-10-year-warranty-could-happen-but-why-bother-when-competitors-are-still-lagging-77778>>.

<sup>10</sup> Aiden Taylor, 'Kia Announces Seven-Year Warranty', *CarsGuide* (online, 1 October 2014) <<https://www.carsguide.com.au/car-advice/kia-announces-seven-year-warranty-29695>>.

<sup>11</sup> Mike Costello, 'Kia Australia Ready to Push for 10-Year Warranty', *CarAdvice* (online, 6 March 2019) <<https://www.caradvice.com.au/732897/kia-australia-10-year-warranty-push/>>.

*may find the warranty has been voided unintentionally by a used car dealer conducting a routine inspection and associated repairs*

As to the first point, the mere fact that the Warranty may be voided prior to the conclusion of the full 10 year period does not mean that no public benefit has been provided in relation to the Notified Conduct. Moreover, if the Warranty is voided, it will plainly cease having any impact on competition.

As to the second point, the Warranty merely requires that all scheduled services be completed with an MMAL Dealer or Service Centre. Accordingly, a used car dealer conducting a routine inspection and associated repairs would not void the Warranty.

### 3.2 Terms and conditions

A number of submissions express concern about the terms and conditions associated with the Warranty:

*A number of submissions query whether the terms and conditions of the 10 year extended warranty would result in a positive deal for consumers. These submissions note the lack of clarity in the terms and conditions of the 10 year extended warranty and the discretionary nature of MMAL's obligations to conduct repairs and replace parts.*

*Submissions refer to the exclusions in the terms and conditions of the 10 year extended warranty, such as the exclusion regarding 'any component subject to regular servicing'. These submissions query whether such exclusions will result in the Notified Conduct having any clear benefits for consumers.*

*Several submissions note that the lack of certainty provided by the terms and conditions of the 10 year extended warranty would result in consumers choosing to take their vehicle to Mitsubishi dealers and service centres out of fear of losing the warranty.*

*Submissions also note that consumers may be disappointed and surprised when they are required to pay for components that are not covered by the 10 year extended warranty, despite servicing their vehicle exclusively with Mitsubishi for a number of years.*

MMAL considers that the terms and conditions for its Warranty are clear and capable of being understood by consumers. As noted in its letter dated 23 October 2020, the exclusion referred to in the excerpt above predates the current Warranty.

MMAL's advertising material (which was annexed to its letter dated 23 October 2020) also makes it clear to consumers what they must do to maintain the 10 year Warranty (in addition to emphasising that consumers remain entitled to the five year Warranty if they do not wish to exclusively service their Mitsubishi Vehicles with an MMAL Dealer or Service Centre).

As to consumer disappointment about items not covered by the Warranty, MMAL notes that OEM manufacturer warranties are a mature product, and consumers are well versed with typical items that may be excluded by a manufacturer's warranty. MMAL's Warranty terms are consistent with industry standards.

MMAL has a strong interest in ensuring that consumers understand the 10 year Warranty, and what consumers must do in order to be entitled to the 10 year Warranty. To the extent that the ACCC proposes any amendments to the Warranty terms, MMAL will seriously consider those amendments.

### 3.3 Quality and price of servicing

Some submissions suggest that MMAL Dealers or Service Centres provide lower quality servicing, at higher prices than independent service centres:

*Many submissions argue Mitsubishi consumers do not benefit from the Notified Conduct because they are locked in to sub-optimal servicing whereby, for example, the level and quality of service is*

*lower than that provided by independent mechanics even though the price is the same or higher. These submissions argue independent servicing is of an equivalent or higher standard, provides better customer service and at comparatively lower prices than servicing provided by dealerships. Several submissions provide examples of poor customer experiences with dealer servicing, including in relation to Mitsubishi dealers.*

*Several submissions argue that in some cases dealers reduce the price to consumers of servicing by reducing the quality and standards of servicing in comparison to independent mechanics, which can have negative impacts on a vehicle over time. Submissions also note that consumers would be unlikely to save money by servicing exclusively with a Mitsubishi dealer because they end up paying more for genuine components that need replacing.*

MMAL rejects, in the strongest terms, any suggestion that its Dealers or Service Centres provide servicing of a lower quality than independent service centres. MMAL notes that Roy Morgan survey data indicates broadly identical consumer satisfaction between independent repairers and Dealers.<sup>12</sup>

In addition to the above, MMAL has published 10 years of capped price servicing information on its website for new Mitsubishi Vehicles. This capped price servicing is available whenever a consumer services their Mitsubishi Vehicle with an MMAL Dealer or Service Centre, regardless of whether the consumer does so on an exclusive basis.

The capped price servicing program allows consumers to be confident of the price of their service prior to presenting their Mitsubishi Vehicle for servicing, and also allows consumers to easily compare the price of their MMAL Dealer or Service Centre service to the price of an equivalent service offered by an independent service centre (subject, of course, to that independent service centre being transparent about its pricing).

As to the suggestion that MMAL Dealers or Service Centres reduce the price of their services by deliberately reducing the quality and standard of servicing in comparison to independent service centres, that is a serious allegation, and no evidence has been offered in support of it. MMAL rejects the allegation completely.

As noted in our letter dated 23 October 2020, MMAL publishes periodic maintenance and inspection tables for each model of Mitsubishi Vehicle that it supplies on its website. These schedules set out the actions that must be undertaken at each scheduled service. These actions are also described in the manuals referred to in our 23 October 2020 correspondence. In these circumstances, there is no scope for MMAL Dealers or Service Centres to reduce the quality of services that they provide (as those services are prescribed by MMAL).

### 3.4 Impact on consumers and businesses in remote/regional areas

Your letter states that:

*A number of submissions note that in some regional areas there may be only one Mitsubishi service centre, or none at all. Submissions note that choice of service provider for consumers in these areas may be severely limited. These submissions raise concerns that this may result in consumers having to travel long distances to have their vehicles serviced, or having to void the 10 year extended warranty.*

*Submissions also raise concerns about the impact of the Notified Conduct on regional and remote economies. These submissions note that independent mechanics and other local businesses may lose work to geographically distant Mitsubishi service centres.*

As noted in our letter dated 23 October 2020, 94% of purchasers of new Mitsubishi Vehicles within the past year lived within 40 kilometres of an MMAL Dealer or Service Centre. The

<sup>12</sup> Roy Morgan, 'Competition Heats Up in Vehicle Servicing As National Fleet Becomes More Reliable' (Finding No 7757, 21 November 2018) <<http://www.roymorgan.com/findings/7757-competition-heats-up-in-vehicle-servicing-as-national-fleet-becomes-more-reliable-201811212241>>.

proportion of consumers that are not close to an MMAL Dealer or Service Centre is therefore slight.

Notwithstanding the above, MMAL acknowledges that a very small proportion of rural or regional consumers may void the Warranty, on the basis that there is no MMAL Dealer or Service Centre located near them.

MMAL expects that it is far more likely that such consumers will void their Warranty rather than travel extreme distances (with the effect that the Warranty will be incapable of affecting competition in relation to those consumers).

#### 4 Competition in the provision of servicing for Mitsubishi Vehicles

MMAL Dealers and Service Centres are able to compete with other MMAL Dealers and Service Centres (and, indeed, independent service centres) in the following ways.

Area	Description
Price	While MMAL offers capped price servicing for New Mitsubishi Vehicles, nothing prevents MMAL Dealers or Service Centres from offering lower prices to consumers (for example, in response to price competition from other MMAL Dealers or Service Centres or independent service centres).
Geography	Geography is an important factor in servicing competition. Consumers often 'shop around' for the best price for their Mitsubishi Vehicle, and the MMAL Dealer that they ultimately purchase their vehicle from is not necessarily their closest Dealer.
Non-Scheduled Servicing	<p>In addition to scheduled services, Dealers and Service Centres also offer (and advertise) non-scheduled services. For example, Dealers may advertise 'Holiday Services' that allow consumers to service their vehicles prior to commencing a driving holiday.</p> <p>In addition to resulting in competition for any given service, this form of advertising also promotes competition for scheduled servicing more broadly (insofar as a consumer may be more likely to refer future scheduled services to a Dealer or Service Centre that provides excellent service in relation to a non-scheduled service).</p>
Quality	In addition to the above, Dealers also compete generally on service quality and customer service. MMAL tracks service customer satisfaction by Dealer, and encourages underperforming Dealers or Service Centres to improve their performance.

Please contact us if you have any questions regarding the above.

Yours faithfully  
**THOMSON GEER**



**Stephen Voss**

Partner

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**George Lukic**

Senior Associate

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# Diamond Advantage

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# Capped Price Service– Example of Customer Pricing / Subsidy



# Diamond Advantage

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# Diamond Advtage Benefits

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# Diamond Advantage

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# Diamond Advantage – Service Retention Impact

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