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Our ref: RN10000433
Contact officer: Steven Lee
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21 October 2020

Stephen Voss
Partner
Thomson Geer

By email: [REDACTED]
Cc: [REDACTED]

Dear Mr Voss

Re: Exclusive dealing notification RN10000433 lodged by Mitsubishi Motors Australia Limited – market feedback

I refer to the notification of exclusive dealing lodged by Mitsubishi Motors Australia Limited (**MMAL**) on 11 September 2020.

Issues raised by interested parties

The Australian Competition and Consumer Commission (**ACCC**) has consulted a range of interested parties. **Attachment A** sets out a summary of the issues raised by interested parties to date, both publicly and confidentially (in a de-identified form).

The summary and comments should not be regarded as representing the ACCC's view, or an exhaustive review of the concerns it may have, or of the concerns being raised by interested parties.

The ACCC requests a response from MMAL to each of the issues outlined at **Attachment A**.

Request for information and documents

In addition, to assist in the ACCC's assessment of the exclusive dealing notification, please:

- (a) provide all documents sent, received or considered by Senior Officers¹ of MMAL that discuss the need for, purpose or development of the Notified Conduct (as defined below in Attachment A), during the period from 1 December 2018 to 11 September 2020;
- (b) explain the ways, and extent to which, Mitsubishi dealers and service centres compete with other Mitsubishi dealers and service centres in the provision of servicing for new Mitsubishi vehicles; and

¹ 'Senior Officers' means the CEO, executive officers and any staff reporting directly to the CEO.

- (c) explain the ways, and extent to which, Mitsubishi dealers and service centres are constrained in the supply of servicing for Mitsubishi vehicles (for example, in relation to the up-front vehicle cost and ongoing servicing costs) by dealers and service centres of other manufacturer brands.

Next steps

I request the above information and documents and your response to the issues summarised at **Attachment A** by **4 November 2020**.

Subject to our consideration of any request for exclusion from the public register, a public version of your response to this letter with confidential information redacted will be placed on the ACCC's public register.

This letter will also be published on the public register.

If you wish to discuss the issues identified in **Attachment A** or the document request, or wish to explain some of your responses to the information request, please contact Steven Lee on (02) 6243 1347 or at steven.lee@acc.gov.au.

Yours sincerely



Susie Black
Director
Competition Exemptions

Attachment A

The notified conduct

With reference to section 3.1 of the exclusive dealing notification lodged by MMAL (**Notification**), the notified conduct may be described as follows (the **Notified Conduct**):

- (a) 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;
- (b) on the condition that those purchasers exclusively acquire aftermarket servicing for their new Mitsubishi Vehicles from an MMAL Dealer and/or Service Centre.

The ACCC's market inquiries

The ACCC received over 200 submissions from independent servicing and repair businesses, aftermarket suppliers, industry associations, consumer groups, government entities, members of the public and other private businesses.

The majority of submissions oppose the Notification. Below is a non-exhaustive summary of the concerns raised in submissions. This summary includes concerns raised in submissions that were partially or wholly excluded from the ACCC's public register.

We note that while many submissions raise similar issues, there are some differences in the way the points are made, such that MMAL may wish to review all the submissions to fully inform its response to the issues raised.

Competition effects of the Notified Conduct

Impact on independent servicing and repair businesses

A significant proportion of submissions raise concerns about the impact of the Notified Conduct on competition, including by affecting the viability of independent service and repair businesses (hereafter referred to as independent mechanics) and their ability to remain a competitive constraint on MMAL.

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.

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.

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.

Consumer choice

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.

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.

Information asymmetries

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

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.

Access to technical information and data

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.

Proliferation of conduct

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.

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.

Public benefits and detriments

In deciding whether to issue a notice to revoke the protection afforded by a notification, the ACCC first assesses whether the notified conduct has the purpose or is likely to have the effect of substantially lessening competition. If so, the ACCC then assesses whether the notified conduct would result, or be likely to result, in a public benefit that would outweigh the public detriment of the notified conduct. The ACCC's assessment of public benefits largely focuses on how the conduct may provide value to the community generally.

MMAL submits there are significant public benefits associated with the Notified Conduct. MMAL submits that the Notified Conduct will:

- provide cost savings to purchasers of new Mitsubishi vehicles who might otherwise purchase costly extended warranties from third parties
- enable MMAL to ensure Mitsubishi vehicles that benefit from the Notified Conduct are serviced with a high degree of care and skill, and
- improve the resale value of Mitsubishi vehicles and rights available to second-hand purchasers because the extended warranty is transferable to subsequent owners.

MMAL submits there are no public detriments associated with the Notified Conduct.

Claimed public benefits

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.

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

Terms and conditions

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.

Quality and price of servicing

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.

Impact on consumers and businesses in remote/regional locations

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.