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Mr David Hatfield
Director
Adjudication
Australian Competition and Consumer Commission

Electronic

Dear Sir

N10000505 – Caravan Trade & Industries Association Queensland – Exclusive dealing notification – interested party consultation

We act for Exhibitions and Trade Fairs Pty Ltd (**ETF**).

We refer to your letter to ETF dated 18 October 2019. ETF is grateful for the opportunity to provide submissions on the exclusive dealing notification lodged on behalf of the Caravan Trade and Industries Association of Queensland (**CTIAQ**).

ETF is concerned that the exclusive dealing conduct notified by CTIAQ (**Conduct**) may have the purpose or likely effect of substantially lessening competition in the market for:

- 1 the provision of caravan, motor home, camper van, fifth-wheel trailer, popup camper and truck camper (also known as a travel trailer and a camper trailer) (**Recreational Vehicle**) trade show services to Recreational Vehicle retailers (that is, actual and potential Recreational Vehicle trade show exhibitors) in Queensland (**Exhibitors**); and
- 2 the provision of Recreational Vehicle trade show services to Recreational Vehicle trade show attendees (that is, actual or potential purchasers of Recreational Vehicles) in Queensland (**Attendees**),

whether through Recreational Vehicle-only trade shows or through broader outdoor camping trade shows (**Relevant Market**).

We set out ETF's particular submissions below.

1 Background regarding CTIAQ

CTIAQ is a member of the Caravan Industry Association, which describes itself as representing over 3,500 businesses across the caravanning and camping industry supply chain.¹

CTIAQ is a major participant in the Relevant Market. Based on ETF's understanding of the Relevant Market, ETF sets out below an approximate summary of the trade shows conducted in the Relevant Market each year:

¹ Caravan Industry Association of Australia, "Who Are We?" (Web Page), <<https://www.caravanindustry.com.au/who-is-caravanindustry>>.

Name	Location	Organiser	Exhibitors	Estimated No of Attendees
Let's Go Brisbane Caravan and Outdoor Expo	Brisbane	CTIAQ	110	19,500
Let's Go Queensland Caravan and Camping Supershow	Brisbane	CTIAQ	300	60,000
Let's Go Gold Coast Caravan and Outdoor Expo	Gold Coast	CTIAQ	125	7,500
Sunshine Coast Caravan and Outdoor Expo	South East Queensland	CTIAQ	95	15,000
South Queensland Caravan, Camping, Boating & Fishing Expo	South East Queensland	Australian Events	160	14,000
The Queensland Outdoor Adventure and Motoring Expo	Toowoomba Region	Australian Events	150	17,000
Gold Coast Caravan and Camping Expo plus Home and Outdoor Living Ideas	Gold Coast	Australian Events	160	13,000
Fraser Coast Expo	Fraser Coast	Australian Events	140	11,000
Cairns Home Show & Caravan, Camping, and Boating Expo	Far North Queensland	Australian Events	132	15,000
Townsville Caravan, 4X4 and Outdoor Adventure Expo	North East Queensland	Australian Events	100	12,000
Mackay Home Show & Caravan Camping Expo	North East Queensland	Australian Events	127	12,700
Cleveland Caravan, Camping, Boating and 4x4	Brisbane	Australian Events	130	17,000
Sunshine Coast Home Show & Caravan, Camping & Boating Expo	South East Queensland	Australian Events	200	13,000
Moreton Bay Caravan, Camping, Boating & 4x4 Expo	South East Queensland	Australian Events	160	20,000
Rockhampton Expo	Central Queensland	Australian Events	126	14,000
National 4x4 Outdoors Show, Fishing & Boating Expo	Brisbane	ETF	211	30,000

Of the above shows, the most significant is the 'Let's Go Queensland Caravan & Camping Supershow' (**Supershow**), which is organised by CTIAQ.

ETF instructs us that a significant proportion of Exhibitors in the Relevant Market participate in the Supershow. These Exhibitors may *also* exhibit at other trade shows, but will always (or almost always) exhibit at the Supershow.

That is, the competition for these Exhibitors is focussed on persuading them to exhibit at *additional* trade shows, rather than persuading them to abandon the Supershow for another trade show. The Supershow also attracts the largest number of Attendees of the trade shows listed above (reinforcing its importance to Exhibitors).

2 Market definition

ETF has defined the Relevant Market in its introduction to this letter. ETF considers that this market definition is not controversial, but is available to discuss the definition if required.

ETF notes that, while it has defined the geographic scope of the Relevant Market as Queensland, and CTIAQ's notification implies this geographic market, nothing in the notification in fact restricts its scope to Queensland. CTIAQ could engage in the Conduct throughout Australia on the notification as lodged. The notification also fails to particularise how the Conduct will in fact be implemented.

Separately to the above, ETF also notes that there may be a number of Relevant Markets with varying geographic dimensions. For example, it is not clear that an Exhibitor or Attendee would view a trade show based in Far North Queensland as a substitute for a trade show based in South East Queensland.

Regardless of the geographic scope of the Relevant Market(s), ETF notes that trade shows (including trade shows in the Relevant Market) are a form of two-sided market. An increase in participation by Exhibitors increases the value of a trade show to Attendees, and vice versa. The reverse is also true (a decrease in the number of Exhibitors decreases the value of the trade show to Attendees).

It also goes without saying that, to the extent that Relevant Market is a two-sided market, the organiser of a trade show (such as CTIAQ) can recoup profits lost from offering discounts to one side of the market (Exhibitors) by increasing prices charged to the other side of the market (Attendees) and *visa versa*.

3 Concerns regarding Conduct

ETF has significant concerns regarding the Conduct, which are broadly summarised below. ETF would welcome the opportunity to discuss these concerns in more detail.

3.1 Reduction of competition

As noted above, a significant proportion of Exhibitors participate in the Supershow. If these Exhibitors exclusively acquire trade show services from CTIAQ, it will significantly reduce competition for the supply of trade show services to Exhibitors in the Relevant Market (and negatively impact Attendees, as discussed in sections 3.3 and 3.4 below).

This reduction in competition appears to be by design. While traditional efficiency justifications for loyalty rebates or discounts may focus on economies of scale or incentives to sell increased numbers of products, CTIAQ's notification expressly indicates that the purpose of the Conduct is to '*encourage CTIAQ members to decrease the number of events they attend*' (or, more properly, to decrease or eliminate their attendance at non-CTIAQ events). This has the consequence of rendering competing shows non-competitive or less competitive (see section 3.3 below).

3.2 Leverage of Supershow

As noted above, ETF considers that, within the Relevant Market, the Supershow is considered to be the most critical to caravan, motor home, and camping trailer Exhibitors, and that a significant proportion of such Exhibitors will always attend the Supershow. That is, this part of the Relevant Market is non-contestable.

To the extent that some share of the Relevant Market is non-contestable, the Conduct may permit CTIAQ to leverage this non-contestable share of the market by imposing exclusivity restrictions on the contestable share of the market.

For example, if CTIAQ offers discounts to its trade shows on condition of exclusivity, then this offer may be compelling to Exhibitors who would have appeared at the Supershow in any event. CTIAQ competitors would struggle to offer similar discounts, as those discounts would need to be substantial enough to address both the competing show, and the foregone discounts on the Supershow.

3.3 Reduction of quality of non-CTIAQ trade shows

As noted above, the Relevant Market is two-sided. To the extent that the Conduct causes a substantial reduction in Exhibitor numbers for non-CTIAQ trade shows, this will in turn reduce the quality and viability of those non-CTIAQ trade shows.

This reduction in quality may also create a 'feedback loop', where Attendees prefer CTIAQ exhibitions due to the increased number of Exhibitors at those exhibitions, which in turn causes more Exhibitors to favour the CTIAQ exhibitions.

To the extent that this damages the financial viability of competing trade shows, the Conduct may reduce the number of trade shows available to Attendees (and so harm consumer welfare). The Conduct may also reduce the diversity of available Exhibitors (and, consequentially, product categories available to Attendees).

3.4 Risk of increased prices to Attendees

CTIAQ's notification does not identify any economies of scale or similar benefits flowing to CTIAQ (as distinct from its members) as a result of the Conduct.

To the extent that CTIAQ wishes to maintain similar profit margins following the Conduct, there is a risk that CTIAQ may recoup its losses (or reduced profits) on the Exhibitor side of the Relevant Market by increasing prices on the Attendee side of the Relevant Market.

It goes without saying that, to the extent that the Conduct enhances CTIAQ's market power, this may ultimately permit CTIAQ to also increase prices charged to Exhibitors.

4 Purported public benefits flowing from Conduct

ETF does not accept that the Conduct will create the public benefits identified in section 5 of the CTIAQ notification, or that the Conduct is required for those benefits to be realised.

It goes without saying that, to the extent that ETF relies on any purported public benefits, it must prove that the Conduct will cause those benefits; the benefits will not be relevant if they would have occurred irrespective of whether the conduct was notified.²

² See generally *Australian Competition and Consumer Commission v Australian Competition Tribunal* (2017) 254 FCR 341, 356 (Besanko, Perram and Robertson JJ); quoted in *Re Tabcorp Holdings Ltd* [2017] ACompT 5, [31] (Middleton J, Members Latta and Abraham).

4.1 Purported benefits relating to compliance and safety

Insofar as CTIAQ relies on benefits relating to safety, CTIAQ can already use its existing revenue to create and improve accreditation programs for its members, if it so desires (that is, it is not clear whether the Conduct will *cause* this benefit).

Critically, CTIAQ also has no regulatory safety role. Instead, its 'safety' and/or 'certification' related activities primarily serve a marketing function (that is, to differentiate CTIAQ from its competitors). All Recreational Vehicles must already comply with stringent safety requirements (including annual safety inspections).³

In the premises, it is inappropriate to describe CTIAQ's product differentiation strategy as a public good. Moreover, even if the Conduct can be described in this manner (which is denied), accreditation can be anti-competitive where it has an exclusionary effect (for example, where it excludes certain Exhibitors denied certification from the Relevant Market).

4.2 Purported benefits relating to CTIAQ members attending at fewer trade shows

This purported public benefit is misconceived for three reasons.

Firstly, nothing prevents CTIAQ members from choosing to exhibit at fewer events even in the absence of the Conduct. In any event, the Conduct is not directed towards quantity of events, but rather exclusivity of events (for example, following the implementation of the Conduct, a CTIAQ member may in fact attend *more* CTIAQ trade shows).

Secondly, this limb of CTIAQ's notification assumes that members that attend fewer trade shows will invest additional resources into their remaining trade shows (when no evidence showing this has been provided).

Thirdly, this limb impliedly represents that all trade shows are homogenous and perfectly substitutable (such that, if a CTIAQ member invests more resources in fewer trade shows, this will always result in a higher quality offering being provided to Attendees).

In fact, trade shows within the Relevant Market are highly differentiated. By way of example, and as noted above, CTIAQ markets its trade shows on the basis of safety and certification. ETF offers a range of features at its trade shows, including (but not limited to): product training; proving ground 4WD driver training, experiential interviews and cooking and survival demonstrations; and various vehicle entertainment packages.

The Conduct will not improve this dynamic competition (and, for the reasons given above, may harm this competition).

4.3 Purported benefits relating to discounts offered to CTIAQ members

Even if this were a public benefit (which is not admitted), it should be given little weight, as it is directed to a small number of persons, rather than being spread widely throughout the community.⁴

4.4 Purported benefits relating to other organisations engaging in the Conduct

For the reasons given in these submissions, the Conduct is harmful to competition, and would be harmful to competition even if it were implemented by other organisations. In any event, it is erroneous to equate increased competition with public good (or reduced competition with public detriment).⁵

³ See generally Queensland Government, 'Certificate of inspection vehicle types and requirements' (Web Page), <<https://www.qld.gov.au/transport/buying/vehicleinspection/periodicinspection/vehicletypes>>.

⁴ See generally *Re Howard Smith Industries Pty Ltd* (1977) 28 FLR 385, 391-392 (Northrop J, Members Walker and Johns).

⁵ *Re 7-Eleven Stores Pty Ltd* [1994] ATPR ¶41-357, 42,654 (Lockhart J, Members Brunt and Aldrich).

5 Public detriment

For the reasons given in these submissions, the Conduct will cause public detriment.

6 Balancing of purported public benefits against public detriments

Even if the Conduct did create the purported public benefits (which is not admitted), ETF considers that these public benefits do not outweigh the detriment likely to result from the Conduct (as described in this submission).

Please let us know if you have any questions or require any further information.

Yours faithfully
THOMSON GEER



Stephen Voss

Partner

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A rectangular grey box redacting the contact information (phone and email) for Stephen Voss.