



Submission to the ACCC

on Mitsubishi Motors Australia Limited's
exclusive dealing notification RN10000433

9 October 2020

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mycar Tyre & Auto makes the following submission to the Australia Competition & Consumer Commission in response to exclusive dealing notification RN10000433 lodged by Mitsubishi Motors Australia Limited on 11 September 2020.

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1. Introduction

Mitsubishi Motors Australia Limited (**MMAL**) currently offers a five year new vehicle manufacturer's warranty where purchasers may service their vehicles at repairers other than Mitsubishi Service Centres without voiding the warranty. MMAL has notified the ACCC (exclusive dealing notification RN10000433 (**MMAL notification**)) that it will provide extended warranties (comprising an extra five years beyond the five year manufacturer's warranties) (**notified warranty**) but conditional upon purchasers servicing their vehicles only with Mitsubishi Service Centres (**notified conduct**).

Tyre and Auto Pty Ltd trading as mycar Tyre & Auto (**mycar**) is an independent nationwide automotive service and repair business. **mycar** objects to the notified conduct and requests that the ACCC revoke the MMAL notification. We agree with the comments made by AAAA in response to the MMAL notification and outline below our specific concerns.

For the purpose of this submission, references to:

- **AAAA Response** means the [AAAA Response to ACCC New Car Retailing Industry Market Study Issues Paper](#) published November 2016.
- **ACCC NCRI** means the ACCC final report [New Car Retailing Industry | A market study by the ACCC](#) published 14 December 2017.
- **ACL** means the Australian Consumer Law as set out in the Competition and Consumer Act 2010 (Cth).
- **Consumer guarantees** means the consumer rights required by the ACL to be provided by businesses for most consumer goods and services they sell.
- **Dealer service centres** means a manufacturer authorised service repair centre and dealers providing servicing and repair service for their specific make of vehicle.
- **Independent Repairer** means an automotive servicing, maintenance and repair business not aligned to any manufacturer or dealer.
- **Mitsubishi Service Centres** means MMAL authorised service repair centres and dealers that provide servicing and repair services for Mitsubishi vehicles.

2. Summary

We ask the ACCC to revoke the MMAL notification on the basis that the notified conduct is likely to result in:

- Substantially lessened competition; and
- public detriment greater than any public benefit.

We object to the notified conduct due to concerns in relation to Mitsubishi vehicles and on the basis that it will set a precedent that other manufacturers will follow. Any precedent will amplify concerns across the entire automotive aftermarket industry, catastrophically impacting competition in a market which already faces significant obstacles to competition, causing public detriment both economically as well as impacting community safety.

We believe that allowing the notified conduct will exacerbate existing concerns about the industry highlighted in the AAAA Response and the final ACCC NCRI. We have referenced below relevant comments from both the AAAA Response and the ACCC NCRI.

Even without the notified conduct the industry has identified that:

'The market place for automotive repair and maintenance does not trade fairly. The current market conditions foster anti-competitive behaviour, which effectively leads to less competition, fewer service providers, loss of choice and higher prices.' [AAAA Response p17]

Market conditions will only worsen for consumers and Independent Repairers if the notified conduct is allowed.

While consumers will still have the ability to decide which type of new vehicle they wish to purchase, the effect of the notified warranty will be the likely elimination of the aftermarket industry, in respect of supplying goods and services for the repair and servicing of new vehicles, for an extended period of time.

3. Lessening competition

'What is not welcome or acceptable is manifestly anticompetitive practices that starve a sector of work due to the monopolistic control over technology and the unequal power relationships... A failure to address the systemic competition issues in our industry will see a sharp decline in the numbers of independent workshops in Australia over the next five years and the price of this decline in competition and choice will be paid by every Australian car owner.' [ACCC NCRI p50]

This comment was made by ACCC in relation to the restrictive disclosure by manufactures about the technology used in their vehicles. However, the argument is equally applicable to monopolistic control of servicing during warranty period. Further arguments were provided later in the ACCC NCRI:

'The ACCC's view is that consumers benefit from competitive aftermarkets for the repairing and servicing of new cars, and that consumers also benefit from having a choice of providers to repair and service new cars.' [p129]

3.1 Competition needs to increase

'Competition in markets for the supply of aftermarket services is less competitive as a result of factors including:

- *the ability and incentives of car manufacturers and their dealers to impede competition in profitable aftermarkets by controlling access to necessary inputs such as the technical information needed to repair and service a new car*
- *consumer misunderstanding about warranty and servicing requirements (including the misconception that manufacturer warranties require new cars to be serviced at a dealership)*
- *high switching costs once consumers have purchased a particular brand or make of car.'* [ACCC NCRI p4]

We oppose the MML notification and believe that rather than loosening the constraints on competition in the automotive aftermarket industry, the ACCC should increase controls to address the problem areas identified in the ACCC NCRI. The ACCC should be making it easier for consumers to go to Independent Repairers, to increase the level of competition, rather than making it harder for consumers to use Independent Repairers.

The notified conduct would lessen competition because, in relation to Mitsubishi cars, it would effectively remove the few new cars that are serviced outside dealerships in the 0-5 year period as well as the 5-10 year period that is currently the main market of Independent Repairers. If this sets a precedent, and other manufacturers follow with similar notified conduct, it potentially undermines any competition from Independent Repairers.

The average consumer completes logbook servicing (servicing according to a schedule set by the manufacturer) with the dealer service centre until about 5.5 years after purchasing their new vehicle. It is more common for vehicles over five years old to be serviced with Independent Repairers as opposed to dealer service centres. Any restriction around access to these consumers will significantly impact the aftermarket industry and eliminate competition.

'The available data does reveal a consumer demand pattern in which the vast majority of vehicles aged one to three years are serviced by the dealer that sold the car. The majority market share for independent repairers occurs at approximately 4.5 to 5.5 year old vehicles or cars with 80,000 to 120,000 kilometres on the odometer. We are of the view that this market demand pattern is caused by a deliberate strategy by the car companies to confuse consumers into thinking that they need to return the car to the dealership for scheduled servicing to maintain warranty coverage' [AAAA Response p11]

3.2 Competition provided by Independent Repairers

The ACCC is of the view that the competitive discipline imposed by independent repairers on the aftermarkets for the repair and servicing of new cars remains valuable and of benefit to consumers, and that consumers also benefit from having a choice of providers to repair and service new cars. [ACCC NCRI p3]

We agree with the ACCC that it is crucial to keep Independent Repairers viable to provide competition in the market. The knock on effect on the rest of the market, if Independent Repairers are not sustainable, would not be limited to particular types of vehicles but to the servicing and parts of all vehicles and the safety of all vehicles on the road.

The impact will not just be on servicing, it will also be on repairs. If the MMAL notification is not revoked purchasers will be more likely to use Mitsubishi Service Centres for repairs either because they might assume they have to do so to maintain the warranty, or because they'll be more likely to take their vehicles to Mitsubishi Service Centres for all repairs since they have been taking their vehicle to Mitsubishi Service Centres for servicing anyway. The requirement to obtain servicing at Mitsubishi

Service Centres to maintain the notified warranty encourages consumers to continue going to Mitsubishi Service Centres, even for repair in between services.

Independent Repairers will lose a significant amount of business making it less sustainable to operate as an Independent Repairer and, as Independent Repairers withdraw from the market, competition will lessen substantially.

We believe that the extension of a warranty period, even without the notifiable conduct, would lessen competition in the market given the tendency of consumers to return to dealer service centres during the period of the warranty and the focus of Independent Repairers on vehicles outside the warranty period.

3.3 Funnelling consumers to dealer service centres

The ACCC found that manufacturers have found more profit in aftermarket care than in the sale of new vehicles:

‘Evidence gathered for this study indicates that markets for the repair and service of new cars still under warranty are less competitive than markets for the sale of new cars.’ [ACCC NCRI p41]

In consequence, manufacturers try to funnel consumers to their dealer service centres:

‘A further consequence of the new car sales and aftermarkets relationship is that it provides an incentive to car manufacturers and authorised aftermarket suppliers to limit competition in aftermarkets. A pricing strategy of low new car prices can only be profitable overall if sufficient profits can be earned in aftermarkets, and competition may undermine this. The incentive to create obstacles to aftermarket competition plays out in a number of areas examined in this study, including in relation to:

- *information provision to consumers about warranties and consumer guarantees*
- *access to data and information needed to repair and service cars*
- *parts pricing and access to parts and tools.’ [ACCC NCRI p30]*

A further bullet point in creating obstacles, is extending warranties particularly if it is locked into servicing.

MMAL argue that the notified conduct does not prevent purchasers from using Independent Repairers and relying on alternate contractual warranty or statutory rights (MMAL paras 5(b)(ii) and 6.10).

However, the notified conduct will move consumers away from Independent Repairers because it is highly unlikely that a reasonable consumer would reject the ten year warranty, presented free of charge and as part of the sale, and because of existing consumer confusion.

The consumer does not exercise any choice or discretion to purchase the extended warranty that is provided with the notified conduct. The consumer may be railroaded into obligated servicing and repairs with Mitsubishi Service Centres. Consumers cannot make an informed decision; they may be sold an extended warranty on the premise that there is no up-front cost, however, they will not know the full cost of servicing over the term of the warranty at the time of purchase.

The consumer may be confused from a lack of transparency about what the warranty covers, the extent of their statutory rights, the cost of servicing and parts through Mitsubishi Service Centres compared with Independent Repairers. Consumers might also believe all repairs should to be completed by Mitsubishi Service Centres using genuine parts to maintain the warranty.

3.4 Barriers to accessing technical information from manufacturers

There is already reduced competition in the automotive aftermarket due to increased and advanced technology that locks consumers into servicing with dealer service centres who have the technical capability to assess their make of vehicles. Independent Repairers face continuous barriers in seeking technical information from manufacturers which affects Independent Repairers' ability to effectively and efficiently diagnose problems with vehicles. Dealers are using this as a means to lock out Independent Repairers. It is another example of dealers/manufacturers trying to push Independent Repairers out of the market, which they are already doing more in Australia than in other jurisdictions.

'Car manufacturers have legitimate concerns about the sharing of some environmental, safety and security-related technical information to repair and service new cars. Regardless, in other jurisdictions this information and data is securely shared with vetted independent repairers, and subject to safeguards to enable it to be shared. Stakeholders provided limited information about whether the sharing of technical information in other jurisdictions has affected the rates of car thefts.' [ACCC NCRI p10]

ACCC have noted that these restrictions are to impede competition:

'Car manufacturers and dealers sometimes restrict access to certain parts for legitimate reasons that may benefit consumers. This includes parts which can compromise car security and encourage theft. However, a further motive for restricting access may be to steer more repair and service work back to authorised dealers and preferred repairer networks. This can reduce competition for servicing or repair work and raise prices.' [ACCC NCRI p13]

'The vertical relationships in the authorised supply chains and manufacturers' ownership of critical data, tools and information, mean manufacturers and their dealer networks have the

ability and incentive to impede competition in aftermarkets. For example by limiting access to the information and data required by independent repairers to repair and service new cars.'

[ACCC NCRI p24]

The notifiable conduct is another attempt to impede competition.

If MMAL was genuinely concerned about a high level of service being provided to customers (and an inconsistent level of service being provided by Independent Repairers) they would make available to Independent Repairers, the technical and diagnostic information that the ACCC and AAAA identify as being kept from Independent Repairers.

The commercial incentive for MMAL to prevent consumer access to rivals (i.e. which includes a range of submarkets within the aftermarket industry e.g. parts manufacturers and/or distributors, vehicle servicing, modifications etc) is the resulting increase in profits.

3.5 Decreased competition leads to public detriment

Potential public benefit comes from the extension of warranty but not from the restriction in choice.

Most of the arguments in favour of the change put forward by MMAL relate to the notified warranty, not to the notified conduct which is restricting vehicle servicing to Mitsubishi Service Centres only.

There is arguable public benefit to the notified warranty (provided consumers understand the limitations and exceptions under the warranty, that they have sometimes greater consumer guarantee rights and remedies, and they understand the potential cost difference between a dealer service centre and an Independent Repairer). However, the notifiable conduct causes public detriment given:

- lack of choice;
- restricted locations (particularly prejudicing remote consumers);
- increased cost (financial and time) to consumers;
- decrease in the quality of service since dealer service centre consumers will be captive;
- the probable decrease in aftermarket competition, since most consumers service their vehicle with dealers during warranty;
- decreased competition will increase prices;
- decrease in Independent Repairers resulting in loss of livelihood, loss of jobs, loss of apprenticeship schemes; and
- decrease in safety on the roads due to delayed or cancelled servicing due to the increased costs.

If MMAL is permitted to have control over all areas of supply and limit competition it is more likely that increasing profits will take priority over the quality of products and service standards. By way of

example, MMAL will be incentivised to use its own parts through its own distribution networks even if a superior aftermarket part is more readily available in the market.

If aftermarket parts are affected due to reduced demand and their profitability drops, they may change their business models leading to increased cost of supply of parts to Independent Repairers which in turn will affect the profitability and viability of Independent Repairers.

4. Public detriment

'...rather than relying on innovative products and superior customer service, the drive to increase car servicing and parts revenue in dealerships has resulted in restrictive trade practices, consumer warranty confusion and add-on products that restrict choice and erode consumer rights well into the future. ... The pressure applied to dealers to up-sell and replace parts may also be a factor. It is simple economic logic that incentives paid as a reward for selling car manufacturers' branded parts will result in more parts sales and higher costs for consumers.'

[AAAA Response pp9-10].

4.1 Freedom to choose repairers restricted

Presently, consumers are free to choose their repairer without this conduct affecting their manufacturer's warranty. However, the notified conduct will prescribe requirements, including mandatory servicing with Mitsubishi Service Centres, that must be met to maintain the notified warranty.

Even without the offer of an extended warranty, consumers falsely believe they must service their vehicles with the manufacturer or dealer to maintain the manufacturer's warranty and they are likely to take the vehicles to those service centres for any repairs in between too.

'While consumers have the right to choose who services and repairs their new car, the ACCC Consumer Survey indicates that almost nine out of ten consumers go to authorised dealer service centres while their cars are under warranty. Consumers gave a range of reasons for this ... reasons related to consumer misunderstanding of warranty and servicing requirements, such as views that dealership servicing is mandatory, either under warranty or according to the logbook (32 per cent).' [ACCC NCRI p42]

MMAL claims:

Purchasers will be more likely to rely on the above alternate rights if price increases by MMAL Dealers and/or Service Centres make it uneconomical for purchasers to service their vehicles with an MMAL Dealer and/or Service Centre. [MMAL notification para 6.11(b)]

The option exists for the consumer to take their Mitsubishi vehicle for servicing elsewhere but, realistically, the consumer is unlikely to take that option because they are not likely to compare prices and because they feel bound to use the Service Centre to maintain the warranty.

4.2 Increased costs

'ACCC accepts that there is anecdotal evidence of consumer detriment as a result of high parts prices.' [ACCC NCRI p144]

MMAL's public benefit claim that *the notified conduct will provide cost savings to purchasers of new Mitsubishi Vehicles who might otherwise purchase costly extended warranties from third parties* [MMAL notification para 5.1(a)] is disputed because:

- The consumer does not have to purchase an extended warranty in which case there is no cost savings.
- The consumer has ACL rights to purchase the vehicle free from defects and this is at no cost.
- The cost of purchasing an extended warranty (from a third party other than MMAL) could be offset by the ability of a consumer to choose an Independent Repairer who might charge less for repairs and servicing than Mitsubishi Service Centres.

MMAL claims that *Purchasers who consider whole of life costs are more likely to purchase non-Mitsubishi Vehicles in response to an increase in the servicing costs of Mitsubishi Vehicles.* [MMAL notification 6.13(b)]. Is MMAL saying they have increased servicing costs and so consumers are less likely to purchase Mitsubishi vehicles? MMAL then says at para 6.13(c) that *this is likely to render any price increases following the notified conduct unprofitable (either because purchasers will switch to independent service centre, or because price increases will cause such purchasers to cease purchasing Mitsubishi Vehicles).*

However, MMAL will still have a captive market of purchasers from the relevant period until the hypothetical increase in servicing costs is so high that future purchasers decide not to buy Mitsubishi vehicles. This captive market will be servicing their vehicles with Mitsubishi Service Centres for the next 10 years. The alternative is the very high switch cost identified in the ACCC NCRI.

- *'Consumers generally do not appear well informed about prices for parts, prices are not transparent, and it is difficult for consumers to contractually avoid paying inflated prices for parts prior to purchase of a car. It may therefore lead to poor decisions about the purchase of new cars.*
- *New cars are expensive and switching costs for consumers to change vehicles are high, meaning that it is very costly to avoid high prices in aftermarkets.*
- *Excessive prices for parts reduce incentives to repair cars, and can induce sales of new cars earlier than would occur if parts were sold at lower prices (parts are around 45– 50 per cent of the costs of repairing cars).'* [ACCC NCRI p143]

Consumers are unable to make informed choices. A consumer will not know the cost of servicing and parts, nor have the understanding or ability to compare Mitsubishi Service Centre costs with Independent Repairer costs, but will be committed to MMAL from the time of purchase. Any switch costs would be significant due to the steep depreciation in vehicle values and warranties that might only apply to the first owner of a vehicle.

Dealer service centres are known to contact customers to upsell when a vehicle is with the service centre for routine servicing. Once the purchaser has committed to servicing with MMAL, MMAL can unilaterally increase labour and parts costs and purchasers will be pressured to pay the increased costs just to maintain the notified warranty.

- *... consumers are readily able to acquire information about the upfront costs of a new car but it is more difficult to get information about the cost and quality of servicing and parts options. This can mean that consumers do not make the choices that they would have made if they were better informed.*
- ***The existence of consumers who are 'captive' can also be a source of market failure. A particular question for this study was whether consumers may be 'captive' in relation to the supply of aftermarket services and goods for new cars, including repair, servicing and replacement parts. If consumers are captive in these aftermarkets it may result in them paying higher prices than they would if the aftermarkets were effectively competitive.*** [ACCC NCRI p19]

The notified conduct does not improve the information deficit for consumers, instead it exacerbates the captivity of consumers.

The notified warranty is not to hook the sale of the vehicle benefiting the consumer, rather the hook to stay with dealer for repairs benefiting the dealer. MMAL says that if the consumer decides that the

extended warranty does not in fact benefit the consumer then the consumer can opt not to utilise it. However, given consumers are not well informed about the cost of parts and after market servicing, in comparison to the cost of new vehicles, they are unlikely to be aware of the benefit to the dealer rather than to the consumer.

'Academic work on aftermarket pricing suggests that harm to consumers is more likely where: ... switching in the primary market is costly; there are large numbers of consumers uninformed about aftermarket prices' [ACCC NCRI p143]

4.3 Manufacturers and dealers prioritising profit

Dealers are pushing change in the direction of the notified conduct to expand their market for parts and aftermarket sales, rather than competing for new vehicle sales, to increase profit.

'Manufacturers and authorised dealers generally earn higher profit margins from aftermarket services than from new car sales. For dealers, although parts sales and repair and service account for 15 per cent of revenue, these aftermarket services contribute to 49 per cent of gross profit. The average net profit margin for dealers is approximately 1.7 to 1.8 per cent...

A common pricing strategy for car manufacturers and authorised dealers is to discount new car prices to maximise sales of aftermarket services. This strategy reflects that consumers have more choices available at the time of the new car sale than they do in aftermarkets for repair, service and replacement parts after the sale.' [ACCC NCRI p4]

'Replacement parts can generate a higher proportion of car manufacturers' profits relative to new car sales due to their higher margins'. [ACCC NCRI p40]

ACCC has documented mark-ups on 'genuine' manufacturer parts that are not in keeping with actual costs - see the example of building a replacement vehicle from new parts which costs \$114,0081 for \$21,000 vehicle (AAAA NCRI p140, s5.3). This shows the mark up on a manufacturer's own prices without further considering the benefit of competition for better, more specialised or more modern, products.

4.4 Community impact and consumer experience

'Effective information sharing would enhance competition and improve consumer outcomes

- *... car manufacturers have an incentive to limit access by independent repairers to technical information to steer service work to authorised dealers and repair work to preferred repairer networks.*

- *This is impacting the ability of independent repairers to effectively and efficiently compete in the aftermarkets for the repair and servicing of new cars.*
- *It is also causing detriment to consumers in the form of increased costs, inconvenience and delays when having their new car repaired or serviced, and thereby reducing the choices available to consumers for the repairing and servicing of new cars.*
- *Consumer switching in the new car market is unlikely to provide strong competitive discipline on manufacturers and dealers in aftermarkets, and any benefit of competition in the sale of new cars to consumers does not offset the impact of less competitive aftermarkets. The ACCC's view is that consumers benefit from competitive aftermarkets for the repairing and servicing of new cars, and that consumers also benefit from having a choice of providers to repair and service new cars.'* [ACCC NCRI p11]

MMAL have approximately 198 Mitsubishi Service Centres [MMAL notification para 3.2(b)]. To maintain the notified warranty, the notified conduct would require consumers, particularly in regional areas, to potentially drive hundreds of kilometres to access a Mitsubishi Service Centre. This increases the cost for consumers to benefit from the warranty who may feel compelled to drive hundreds of kilometres, including in situations where they are confused about the distinction between warranties and consumer guarantees.

If the MMAL notification is not revoked, the notified warranty and notified conduct will result in:

- less competition, resulting in increased aftermarket servicing and parts costs, and no restrictions on Mitsubishi Service Centres increasing its parts and servicing pricing;
- increased household expenditure and total cost of car ownership due to the point above;
- safety on roads will reduce if servicing is delayed due to
 - inconvenient servicing locations,
 - lack of available bookings at a Service Centre, or
 - reduced affordability resulting from increased costs of servicing, repairs, and parts,
- consumer inconvenience and frustration from not being able to use a more conveniently located repairer (especially in remote areas or if travelling);
- increased towing costs to the consumer if their vehicle requires towing and the nearest Service Centre is much further away than the consumer's local Independent Repairer;
- increasing dissatisfaction in consumers where personalised service and quality levels at Service Centres drop due consumers comprising a captive market and Service Centres have no incentive to provide better or empathic service or to tailor service to consumer need;

- manufacturers having more opportunity to exploit and perpetuate misinformation;
- a negative impact on the Australian economy in terms of Independent Repairer closures and the resultant job losses and decreased viability of apprenticeship schemes; and
- a risk of losing experienced technicians if Independent Repairers are pushed out of market.

Public detriment will be suffered through lack of an independent view about the vehicle. This is supported by ACCC findings that dealers are not providing the objective warranty advice that Independent Repairers provide. Dealer service centres will also only recommend manufacturer parts when there may be other parts that are better.

'Given the nature of commercial relationships between manufacturers and dealers, dealers are frequently in the challenging position of balancing their ACL obligations to customers, safeguarding their own financial interests and maintaining a long term commercial relationship with their manufacturer. These commercial arrangements can have the effect of denying or making it difficult for consumers to readily access the remedies to which they are entitled.' [ACCC NCRI p8]

5. Monopolistic control over servicing sets precedent for other manufacturers.

Mitsubishi is small but the MMAL notification could set a precedent that all dealers follow meaning that dealers have the majority of the market during the warranty period. If the standard warranty period pushes out for all dealers to 10 years then that is the average age of cars on the road and it effectively eliminates Independent Repairers.

While MMAL's market share is only 7.8% (MMAL notification para 4.2(a)), if the ACCC does not revoke the MMAL notification it is highly likely other new vehicle manufacturers will follow suit to provide similar warranties that lock consumers into aftermarket care. This will further lessen competition between vehicle manufacturers and the automotive aftermarket industry.

This would result in public detriment because vehicle manufacturers:

- will retain all the market power for an extended period of time; and
- with such a monopoly, are likely to raise prices for parts and repairs for a sustained period, produce lower quality products and customer service standards with no corresponding reduction in price or any product variety.

This reduced competition will drive up prices for aftermarket servicing and parts and drive up the total cost of car ownership. Combined, these factors reduce safety on the road by encouraging or forcing consumers to put off or avoid servicing and repairing their vehicle.

6. Exacerbates consumer confusion

6.1 Consumer confusion about what voids manufacturer warranties

The ACCC NCRI noted that historically, manufacturers and dealers (whether through lack of transparency or intentionally misleading misrepresentations) have fuelled false consumer beliefs that new vehicles must be serviced (and repaired using genuine parts) at a dealership to maintain manufacturers' warranties.

'The ACCC is concerned that despite manufacturers indicating that manufacturers' warranties do not contain an explicit requirement that a new car is to be serviced by an authorised dealer, a false impression that this is the case may be created by information contained in materials supplied by manufacturers (such as in logbooks and service manuals, and in some cases, verbal representations made by dealers).

The ACCC is concerned with many of the statements made in the logbooks and service manuals that it reviewed. Some statements are directly false – for example, the express statement that authorised dealers must carry out services and repairs, when this is not a requirement of the manufacturer's warranty. The ACCC considers that certain statements make representations that are likely to contravene the ACL, and may also raise competition concerns under the CCA.'

[ACCC NCRI pp56-57]

'Contributing to this misunderstanding are direct and implied representations made by a number of manufacturers in their logbooks and service manuals to the effect that authorised dealers must carry out services or repairs (or that original equipment (OE) parts must be used). Many of these representations are likely to contravene the provisions of the ACL, and may also raise competition concerns under the CCA.' [ACCC NCRI p6]

Following the release of the ACCC NCRI, various government bodies (including ACCC, ASIC, state and territory consumer affairs and fair trading departments) jointly published [Motor vehicle sales & repairs - an industry guide to the Australian Consumer Law](#) on 3 December 2018. The industry guidance confirms:

'Logbook and service manual claims that may be misleading include:

- 1. Explicit statements that dealers must carry out services and repairs.*
- 2. References to dealers (instead of repairers generally) in the context of information about servicing or repairs.*

Note also, if the manufacturer's warranty requires a vehicle to be serviced by a dealer, this may constitute anti-competitive conduct under the Competition and Consumer Act 2010.' [p28]

If the notified conduct is not revoked, MMAL can require its purchasers to service their vehicles only with Mitsubishi Service Centres for 10 years to maintain the extended warranty. This notified conduct:

- does not assist in clarifying existing consumer confusion over manufacturer warranties;
- does not show that consumers are free to choose their repairer and still maintain their manufacturer warranty; and
- encourages and almost legitimises dealer and manufacturer misrepresentations fuelling false consumer beliefs surrounding manufacturer warranties.

6.2 Consumers are unaware of their statutory rights at purchase

'The ACCC has been told, in response to the consumer and small business questionnaire conducted for this study, that some dealers and third party suppliers of extended warranties do not disclose important details about the extended warranty that would allow the consumer to assess its value to them, including the full cost of the product and any cover exclusions. This makes it even more difficult for consumers to make informed purchasing decisions.' [ACCC NCRI page 52]

The notified conduct would increase consumer confusion or lack of awareness of statutory rights not connected to warranties. Consumers remain confused and unaware of:

- their entitlement to, and the extent of, statutory consumer guarantees; and
- the narrow application of warranties.

For reasons including:

- continued manufacturer and dealer focus on warranties;
- consumer information fatigue and decision fatigue at purchase;
- the limited provision of consumer guarantee information; and/or
- the impression from manuals and logbook documents provided with the vehicle.

6.3 Consumers are unaware of their statutory rights when seeking remedies

'The ACCC is concerned that manufacturers' interactions with consumers when a complaint is received usually take place within the manufacturer's warranty framework to the exclusion of the consumer guarantees.'

ACCC investigations confirm that in dealing with consumer complaints or enquiries about cars that have experienced a failure, manufacturers and dealers predominantly refer to their warranty or 'goodwill' policies, much as they did prior to the introduction of the ACL in 2011. However, warranty obligations and goodwill policies are voluntary in nature and subject to terms and conditions, and are generally not closely aligned with the ACL framework.' [ACCC NCRI p62]

'The ACCC's concern is that where manufacturers and dealers focus on warranty obligations to the exclusion of their consumer guarantee obligations, this can result in a culture of repair from the outset without reference to a consumer's ACL rights to a replacement or refund where there has been a major failure. ...'

The ACCC is especially concerned where cars have known major systemic mechanical failures and consumers are asked to come in for repeated unsuccessful repairs under warranty. Under the consumer guarantees, these consumers are entitled to a replacement or refund. If manufacturers or dealers provide alternative remedies in response to a major failure, they are at risk of non-compliance with the ACL.' [ACCC p65]

Manufacturers and dealers:

- fail to inform complainant consumers of their ACL right to remedies (e.g. failing to provide a remedy by claiming the incident occurred outside the warranty period); and
- provide remedies less extensive than provided under consumer guarantees (e.g. continually repair vehicles rather than providing consumer guarantee remedies where there are major failures with vehicles).

7. The MMAL warranty may not provide benefit to consumers

The warranty document annexed to MMAL's notification comprises provisions relating to the new car manufacturer's warranty as well as the 10 year notified warranty.

The document fails to specify to the purchaser that the manufacturer's warranty on the vehicle applies even if serviced with Independent Repairers in the first five years. We do not believe a reasonable consumer will understand:

- that they don't have to service their vehicle at a Mitsubishi Service Centre to maintain their manufacturer's warranty; or
- or be aware of the list of exceptions to the warranty.

For example, the MMAL warranty states:

Protect Your Warranty

Regularly maintaining your Mitsubishi vehicle in accordance with the recommended service schedule at a Mitsubishi Dealer is the best way to protect your new car. By having your vehicle maintained by a Mitsubishi Dealer, it is understood that your vehicle is being serviced by Mitsubishi experts and will be fitted with Mitsubishi Genuine Parts. Doing this maintains your Mitsubishi vehicle and your warranty in the best condition. Non-genuine parts are not covered by your New Car Warranty. If a non-genuine part is fitted to your vehicle, and the part causes any damage, the damage will not be covered by your New Car Warranty. MMAL does not approve the fitment of aftermarket performance enhancing products such as (but not limited to) power chips, force induction products, suspension components, exhaust modifications etc. [MMAL notification p15.]

What Is Not Covered ...

Repairs, parts replacement or adjustments required as a result of improper vehicle use or negligence. Improper vehicle use and negligence includes, but is not necessarily limited to: ...

- Lack of proper care or attention as defined in the Owner's Manual

- Improper adjustment, repair, tampering or modifications by a non-Mitsubishi Dealer

• Repairs, parts replacement or service adjustments required as a direct result of a vehicle accident

Repairs or parts replacement required as a result of inadequate or improper servicing and maintenance, including but not limited to:

- Failure to carry out servicing at the intervals and in accordance with the schedule service as specified for each vehicle type (see our website mitsubishimotors.com.au or contact 1300 13 12 11 for more details)
- Fitment of parts, accessories or add on equipment that are not made or approved by MMAL
- The use of oils, fluids, lubricants, additives and coolants that do not meet MMAL specification
- Repairs or parts replacement required as a result of fitment of non-genuine parts, accessories or add on equipment that are not made or approved by MMAL
- Repairs or parts replacement required as a result of incorrect fitment of nongenuine parts and/or accessories where installation was performed by a non-Mitsubishi Dealer or repairer
- Minor seeping of oil or fluids from seals and/or gaskets which cause no material decrease in the level of such fluids [MMAL notification p17.]

If MMAL's notified warranty only covers genuine manufacturer's defects in materials or factory workmanship, then reasonably skilled servicing and maintenance by any accredited/licensed Independent Repairer should suffice and have no impact on whether the defect exists anyway. The servicing shouldn't "cause" the defects which are likely to be inherent in an affected vehicle anyway. Further, regardless of the notified warranty, any such defect would give rise to consumer guarantee rights and remedies under the ACL. The notified warranty is less beneficial to the consumer than ACL rights given, as an example, consumer guarantees do not require the consumer to exclusively service the vehicle with the manufacturer in order to obtain a remedy.

However, the reasonable consumer is unlikely to be aware of this. The main purpose of the notified warranty appears to be to restrict competition which will result in greater profits for MMAL and not provide a public benefit outweighing the public detriment.

In addition, there would be no restriction on manufacturers imposing other obligations on consumers in the future to maintain such warranties.

8. Disputed claims from MMAL notification

8.1 Skill and quality of workmanship by Independent Repairers

'New car retailers have featured in the ACCC's top ten most complained about traders for 24 out of the last 25 months preceding September 2017. In 2017, nearly 20 per cent of contacts received by the ACCC about consumer guarantee issues have concerned motor vehicles, the second largest industry category of such contacts received.' [ACCC NCRI p58]

MMAL claims that:

Given the significant maximum potential duration of the Warranty, it is necessary for MMAL to ensure that it is able to control servicing quality in order to be able to offer the ten year Warranty. [MMAL notification 5.1(b)(i)]

... the notified conduct enables MMAL to ensure that Mitsubishi Vehicles that benefit from the ten year Warranty are serviced with a high degree of care and skill (as MMAL is able to exercise significantly greater control over its Dealers and Service Centres than it is able to exercise over independent service centres). [MMAL notification para 5.1(b)]

The ACL provides consumer protections to ensure Independent Repairers provide servicing and repairs with due care and skill.

We do not consider that the notified warranty provides the public benefit of ensuring that vehicles serviced under the notified warranty are serviced with a “high degree of care and skill” beyond the high degree of care and skill ordinarily provided by Independent Repairers. MMAL’s ability to “exercise significantly greater control over its Dealers and Services Centres” who will, under the notified warranty, exclusively provide the scheduled services moreover is problematic given such relationships are highly susceptible to abuses of power.

Independent Repairers, including **mycar**, show an equally high degree of care and skill. In the case of **mycar**, technicians are supported by central resources, training, and assistance with licensing and regulatory requirements. The industry, as a whole, is heavily regulated and audited externally and internally.

There is no evidence that dealers provide a higher degree of care and skill than Independent Repairers. The opposite is intuitively true given Independent Repairers work on a greater variety and complexity of vehicles including older vehicles and a range of makes. Technicians in dealer service centres potentially rely more on diagnostic equipment than their own knowledge:

‘Increasing technology is not the sole cause for increases in consumer expenditure – there are trends in the industry that manipulate consumer perception to purchase more expensive car branded parts and the industry is reporting a tendency for the unnecessary replacement of parts. For example, the reliance on sensors can return an error report that a part is faulty. In fact, in many cases, the actual sensor is faulty, requiring a replacement sensor and not a new part. Experienced repairers place a great deal of emphasis on the diagnostic phase to ensure that parts are not being unnecessarily replaced due to poor diagnosis and faulty sensors. Independent

operators seek to reduce the cost of the repair and not to inflate the final price due to unnecessary part replacement' [AAAA Response p11]

The independence of Independent Repairers from manufacturers provides advantage to consumers in terms of unbiased and unconflicted advice about their vehicle. Independent Repairers are impartial when it comes to defects diagnosed during servicing and will advise consumers to return their vehicle to the dealership to remedy the defect. Independent Repairers are more impartial in offering remedies relating to manufacturer defects and the loss of access to Independent Repairers is likely to cause public detriment, for example:

- if a consumer goes to a dealer service centre, the service centre may not be able to offer proper impartial remedies due to commercial relationships between the dealer and manufacturer; and
- since the manufacturer should indemnify the provider of the remedy, it is inappropriate for the dealer service centre to seek the manufacturer's approval to provide such remedy.

Concerns are further supported by evidence that dealer service centres are not being paid properly by manufacturers for warranty issues. Manufacturers pay less to deal with a warranty issue than the time it will always take to repair:

'Manufacturers' warranty policies and procedures generally provide standard repair times that cap the time which a dealer is able to claim with respect to a particular category of remedial work. Dealers and their industry bodies have raised concerns that manufacturers' standard repair times are often capped at unreasonably short durations and do not accurately reflect the time needed to complete increasingly complex repairs.' [ACCC NCRI p88.]

8.2 Purchasers remain free to service and repair vehicles with Independent Repairers

MMAL says that *'Purchasers will remain able to obtain repairs (as distinct from servicing), including repairs undertaken pursuant to the consumer guarantees, from an independent repairer or service centre without affecting the 10 year Warranty.* (paragraph 1.7(d) of MMAL's submissions)

It is likely there will be a significant reduction in consumers choosing to obtain repairs (as distinct from servicing) from Independent Repairers while under the notified warranty because:

- consumers may be unsure of their rights and/or are concerned that they will void the notified warranty;
- data shows that almost nine out of ten consumers go to dealer service centres while their vehicle is under warranty

'While consumers have the right to choose who services and repairs their new car, the ACCC Consumer Survey indicates that almost nine out of ten consumers go to authorised dealer service centres while their cars are under warranty. [ACCC NCRI p42];

- there is a lack of transparency as the notified warranty does not express what is permitted; and
- there are many examples of manufacturers using the consumer's choice to have aftermarket parts fitted to their vehicle and/or receive services from an Independent Repairer as an excuse to deny warranty claims while failing to inform consumers of their rights to a remedy outside of the warranty (e.g. under the ACL). There is often an unwillingness to put the reason for the denial in writing as well as a lack of satisfactory evidence in support:

'numerous examples of warranty remedies that have been refused due to the vehicle being serviced outside the dealership network and/or where aftermarket parts have been fitted, and we hear of many instances directly from consumers regarding their inability to enforce their statutory rights where a warrantable defect has been identified. Our advice to all consumers is to ask the dealership to put their warranty repair response and reason for denial of warranty in writing. In approximately half of the cases that we deal with directly the dealer will subsequently decide to complete the repair under warranty.' [AAAA Response p16]

We agree with MMAL's claim that *Independent service centres may service fewer Mitsubishi Vehicles as a result of the notified conducts.* [MMAL notification para 3.2(c)(i)]. However, MMAL's next two points raise concerns:

3.2(ii) It is open to independent service centres to apply to become an MMAL Service Centre. MMAL will consider such requests based on (among other factors) its existing representation in an area.

3.2(iii) MMAL's preference is to appoint full service MMAL Dealers (who are able to both supply Mitsubishi Vehicles and also provide servicing and repair services) in metropolitan or regional areas. However, MMAL has appointed standalone Service Centres in rural or remote areas previously, as well as in metropolitan areas where there has been no immediate ability to appoint an MMAL Dealer.

We believe MMAL are unlikely to approve applications by Independent Repairers to become a Mitsubishi Service Centre unless the Independent Repairer:

- Agrees to work exclusively on Mitsubishi vehicles; and/or
- the location is very remote where there will never be a Service Centre nearby.

Further, what hoops would an Independent Repairer have to jump through and at what cost in seeking approval? There is no guarantee any Independent Repairer's application would be approved and so all the power is with MMAL.

8.3 Impact on prices

MMAL says '...the ability of any participant in the above markets to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously is severely limited. [MMAL notification para 4.3]

We disagree. For the limited portion of the market that the dealership is targeting, those consumers have limited choice and are likely to pay more for parts from the manufacturer as the dealership will have less motivation to provide exceptional and competitive service as the customer's return is guaranteed.

8.4 Lessening competition

We strongly dispute MMAL's claim that *the notified conduct is very unlikely to be capable of substantially lessening competition* (sic) [MMAL notification para 6.14]:

- Consumers will be restricted in their ability to make price comparisons;
- Independent Repairers will be unable to exert price pressure;
- Independent Repairers will be pushed out of the market; and
- competition will be lessened substantially.

8.5 Market for contractual warranties

MMAL says that: *The introduction of the ten year Warranty (accompanied by the five year Warranty) does not in any way impede the ability of those firms to offer rival warranties, or prevent consumers from relying on those rival warranties in preference to the ten year Warranty.* [MMAL submission 6.8]. It is unlikely that consumers will appreciate the difference in the warranties provided and surely providing something for nothing (or apparently nothing as the consumer is unlikely to appreciate the cost of the exclusive servicing obligation at the time of vehicle purchase) will eliminate the market for contractual extended warranties.

8.6 Historic notifications

MMAL lists notifications which it says are similar [MMAL notification para 8]. We note the notifications are dated as follows:

- Subaru N93063 13 July 2007
- Subaru N41001 2 August 2006
- GM Holden N41012 1 September 2006
- Hyundai N98055 19 December 2014

mycar was not aware of these prior notifications but, if made aware at the time, would have made submissions seeking revocation of each of those notifications. These prior notifications can be distinguished from the specific circumstances of the current notified conduct. In any event, the market and landscape have changed:

- Of the four notifications, the GM Holden and the two Subaru notifications predate the commencement of the Australian Consumer Law which now offers clearer guarantees to consumers.
- All four notifications predate the competition concerns and issues within the automotive aftermarket raised in the December 2017 *New Car Retailing Industry A market study by the ACCC*:
 - action is required to increase rather than decrease competition;
 - neither the notification nor these historic notifications ameliorate these concerns or issues; and
 - the concerns and issues raised need to now be addressed and the notification revoked.

9. Impact on mycar

mycar is an independent, company owned, national automotive repair and maintenance provider. With 1326 employees, including 366 apprentices, **mycar** is one of the largest employers in the automotive service and repair industry and the largest single employer of apprentice motor mechanics in Australia.

mycar operates 265 stores across the following metropolitan, country town, and regional city locations:

State/Territory	VIC	QLD	NSW	ACT	TAS	SA	WA	NT	TOTAL
Stores	76	60	67	12	4	17	25	4	265
Metro	61	36	38	-	-	15	23	-	173
Country Town	10	4	11	-	2	2	2	1	32
Regional City	5	20	18	12	2	-	-	3	60

At **mycar** our mechanics and apprentices are trained to work on all makes and models of vehicles including newer and older vehicles. Most of the newer vehicles we service are through fleet affiliations, whereas the majority of the vehicles we service for our ‘mum and dad’ customers and are between 5 to 10 years old.

mycar Tyre & Auto’s business model, and capacity to train apprentices, depends on the ability to service and repair this wide selection of vehicles. The loss in sales will affect the business’s profitability, employee numbers will need to be reviewed, employees will need to be let go, and the business will not be able to take on the number of apprentices it currently does. An impact on our wider profitability might also impact on our ability to perform the less profitable roadworthy inspections which we (or our technicians depending on the licencing requirements in each state or territory) are licensed to provide in NSW, VIC, WA, QLD, ACT and NT.

If the notified conduct is not revoked, **mycar** is likely to see a significant reduction in the number of Mitsubishi vehicles for servicing, particularly those aged 6 to 10 years. A flow on effect, as stated in the submission above, is a reduction in repair work with these same vehicles then less likely to visit **mycar** and more likely to return to Mitsubishi Service Centres for repairs.

If the notified conduct is allowed, other manufacturers are likely to follow with similar notifications requiring their purchasers to only service their vehicles with dealer service centres. **mycar** would then see far fewer vehicles for servicing and, particularly, fewer vehicles aged 6 to 10 years.

In 2019, **mycar** performed servicing on over 2.5 million vehicles and over 1 million of those vehicles were aged 6 to 10 years. For the last three years **mycar** has consistently serviced cars aged 6-10 years at

approximately twice the number of cars aged 0-5 years. Compared to other makes of vehicles, we service relatively more newer Mitsubishi vehicles but still with about one and a half times as many older cars serviced compared to newer cars.

The proportion of the business that relates to Mitsubishi vehicles reflects the proportion of the market Mitsubishi say they serve (around 7%). So, any impact on a portion of the market (whether just Mitsubishi or also other manufacturers) can be expected to hit our business to the corresponding degree as the market share that manufacturer commands.

More information about the impact of Mitsubishi on the **mycar** business is reflected in further statistics from 2019:

- 37.3% of Mitsubishi vehicles serviced were aged 6 to 10 years;
- logbook servicing was performed on 59.5% of all Mitsubishi vehicles serviced;
- of those Mitsubishi logbook services, 42.7% was on vehicles aged 6 to 10 years.



10. Revocation of MMAL notification sought

For the reasons set out above, **mycar** believes that MMAL's notified conduct is likely to substantially lessen competition in the automotive repair and servicing industry and the notified conduct will cause greater public detriment than any public benefit. We oppose MMAL's notification and respectfully request its revocation.

11. *References and links*

Response to the Australian Competition & Consumer Commission New Car Retailing Industry Market Study Issues Paper | Australian Automotive Aftermarket Association | November 2016 accessible at

<https://www.accc.gov.au/system/files/Australian%2520Automotive%2520Aftermarket%2520Association.pdf>

Response to the Australian Competition & Consumer Commission New Car Retailing Industry Market Study Draft Report | Australian Automotive Aftermarket Association | September 2017 accessible at

<https://www.accc.gov.au/system/files/Australian%20Automotive%20Aftermarket%20Association%20-%20September%202017.pdf>

New Car Retailing Industry | A market study by the ACCC | 14 December 2017 accessible at

<https://www.accc.gov.au/publications/new-car-retailing-industry-market-study-final-report>