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Mr Scott Rogers  
Manager, Competition Policy Unit  
The Treasury  
Langton Crescent  
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Via email: [competition@treasury.gov.au](mailto:competition@treasury.gov.au)

Dear Mr Rogers

Thank you on behalf of the Motor Trades Association of Australia Limited (MTAA) Board and Members for the opportunity to make a further submission in regard to misuse of market power.

MTAA, representing the nation's retail, service, repair, recycling and associated industries of the Australian automotive sector requests the Government include the Harper Competition Policy Review Panel recommendation for change to Section 46, as is and in its entirety; as part of reforms of competition and consumer law.

While ultimately the Harper Review Panel recommendation is not as strong as MTAA and members originally sought, MTAA is comfortable that 'Option F' as outlined in the *'Options to strengthen the misuse of market power'* Discussion Paper, delivers a workable compromise. However, any changes to the recommendation would, in the opinion of MTAA, dilute its intent to the point of status quo.

It is not acceptable to do nothing. MTAA agrees with many of its kindred associations, the ACCC and others that the current Section 46 does not fulfil the intended purpose.

MTAA and Members seek an 'Effects Test' and other changes to Section 46 not to punish big business or stifle competition, but to provide the necessary tools to dive deeper into highly complex markets or discrete markets within those markets. This will provide increased capability and capacity to bring potential misuses of market power by a dominant player to light. It will also enable increased powers to those accountable to investigate, who are currently hampered by inefficient drafting.

This will ensure consumer protection remains as important as the promotion of competition by ensuring the competition process is preserved.

MTAA Member, the Victorian Automobile Chamber of Commerce (VACC), has provided in its submission to this Discussion Paper consultation, details of the concerns of various automotive industries including examples, underpinning these concerns. Similar submissions and examples from other MTAA members paint a similar picture.

Previous submissions by MTAA predecessor, the Australian Motor Industry Federation (AMIF) also raised these important differences as the competition process has matured and become more complex through vertical integration and the arrival of other business models.

The adoption of the Review Panel recommendation will bring Australian competition policy into alignment with best practice in other international jurisdictions. It is these jurisdictions that appear to have recognised the importance of all business, a protected and unambiguous competition process to enable growth, and the mechanisms to afford all business that opportunity.

MTAA and its members represent businesses that constitute the nation's largest single industry small business group with close to 100,000 businesses, employing more than 320,000 Australians with an aggregate annual turnover of \$208b.

Many of these businesses are strong and successful and making enormous contributions to their communities, their nation and its connectivity through road transport.

Suggestions by some suggesting competition could 'chill' as a result of an effects test being introduced fail to recognise that freezing out and forcing the closure of small business through misuse of market power; and an inability of small business to 'call out' and prove such behaviour through existing provisions; will ultimately cause winter wasteland for all business.

Please do not hesitate to contact the MTAA Secretariat should you require any additional information.

Yours Sincerely

MTAA National Secretariat

Canberra

12 February 2016