



HINO MOTOR SALES AUSTRALIA PTY LTD

ABN 74 064 989 724

PO Box 225, Caringbah, NSW 1495

10 September 2021

The Treasury
Small and Family Business Division

Via email: smallbusinessfranchising@treasury.gov.au

Dear Sir/Madam,

Submission – Response to Automotive Franchising Discussion Paper (Discussion Paper)

Thank you for the opportunity to provide this submission in response to the recent Discussion Paper.

Introduction

Hino Motor Sales Australia Pty Ltd (HMSA) is the Australian distributor of Hino brand trucks and buses. HMSA is a wholly owned subsidiary of Hino Motors Limited (Japan) and part of the Toyota Group.

HMSA distributes Hino products via an independent dealer network of 38 dealers. These dealers are currently deemed to be franchisees under the *Franchising Code of Conduct (Code)*, as they operate under 'motor vehicle dealership agreements' as defined by the Code. Hino dealers however are not covered by Part 5 of the Code, which currently applies only to passenger and light commercial motor vehicles.

Under the applicable provisions of the Code Hino dealers currently receive the benefit of:

- A mutual obligation of 'good faith';
- A high degree of transparency via provision of a Disclosure Document and Key Fact Sheet in a specified format; and
- Specific controls over the content and manner of operation of the applicable Dealer Agreements, including as to termination, renewal and dispute resolution.

Need for Further Regulation of Truck Dealerships

The March 2021 Senate inquiry report, *Driving a fairer deal: regulation of the relationship between car manufacturers and car dealers in Australia* found that:



‘...multi-national corporations that are car manufacturers can exploit new car dealers due to a power imbalance. Concerns were raised about the failure of manufacturers to work with dealers to:

- ensure opportunity for recoupment of capital investments;
- ensure unfair contract terms are eliminated from franchise agreements;
- adequately reimburse dealers for warranty and recall work; and
- provide fair and reasonable compensation when dealership agreements are terminated or not renewed.’

As noted in the Discussion Paper, recent changes to the Code and *Australian Consumer Law (ACL)* have sought to address these issues. The Discussion Paper however asks if further actions, like a standalone automotive franchising code or an expansion of the scope of the Code to other types of motor vehicles, including trucks, is necessary.

HMSA notes the statement in the Discussion Paper (referencing the 2017 ‘Industry Codes of Conduct Policy Framework’) that:

‘As a general principle, the Government considers that markets should be free to operate without excessive regulation. It will only prescribe a mandatory industry code in very limited circumstances — when there is robust evidence showing it is necessary to support the efficient operation of a market.’

HMSA submits that there is no market failure in the market for distribution of trucks and buses that justifies either the creation of a standalone automotive franchising code, or an expansion of the provisions currently applying to new passenger vehicles and light commercial vehicles to truck and bus dealer agreements.

No Market Failure

Truck and bus distributors can be distinguished from passenger car and light commercial distributors as they typically have much smaller dealer networks and, by definition, are more dependant upon this concentrated dealer base. In addition, many truck dealerships are multi-franchise, offering two or more brands of trucks and may also sell agricultural and other machinery. Truck dealerships are therefore commonly less dependent upon any one distributor. The ‘power imbalance’ that has been identified in the passenger car sector is therefore less of a feature in the truck sector.

This is demonstrated by the following features of the truck distribution sector:

- A high proportion of corporate owned dealerships; which are themselves large sophisticated commercial entities. In the case of HMSA approximately 67% of its 2020 sales were made by corporate dealerships;



HINO MOTOR SALES AUSTRALIA PTY LTD

ABN 74 064 989 724

PO Box 225, Caringbah, NSW 1495

- A high proportion of multi-franchise dealers, so each dealer is less dependent upon any one brand. (See **Schedule 1**);
- Dealer premises that commonly are smaller, in more industrial areas and involve less capital outlay than car dealerships;
- A smaller number of brands and models than passenger vehicles and these are sold exclusively to business and/or government customers. **Schedule 2** outlines the differences in the Truck and car dealership model.

HMSA has for many years worked closely with the Hino Dealer Council (HDC), which represents the dealership, and any significant changes to its template dealer agreement is first negotiated with the HDC and does not proceed without its agreement. HMSA also has negotiated and agreed to amendments sought by individual dealers, where these have a legitimate commercial rationale. It does not adopt a 'take it or leave it' approach to its dealer agreements.

The Australian truck sector is however highly competitive, and HMSA must be able to set sales performance targets and ultimately be able to manage out a dealer who does not perform. Imposing a minimum dealer agreement term, or further limits upon HMSA's commercial discretion as to whether to renew a dealer agreement, would run counter to this need and potentially could lead to market failure, where a distributor of a quality well priced product may lose market share due to failures in its dealer network that it is unable to effectively address due to regulatory constraints.

Relevantly, in at least the last 20 years, HMSA has not had a formal dispute with a dealer, either under the dealer agreement dispute resolution processes or before the courts. HMSA submits that this fact alone provides significant evidence that there is no market failure in the truck distribution space.

No problem that can't be addressed using existing regulation

As noted above HMSA operates using dealer agreements that are already governed by the terms of the Code (excluding Part 5). In addition, the Australian Consumer Law (ACL) applies to HMSA and the ACL consumer guarantees have applied to trucks supplied by its dealers (irrespective of the transaction value) since 2010 due to the definition of 'consumer transaction' including:

‘...goods consisted of a vehicle or trailer acquired for use principally in the transport of goods on public roads. (Section 3(1)(c) of the ACL)

HMSA submits that no significant problem exists in relation to the truck distribution or sales markets that has not been addressed under existing regulation.



HINO MOTOR SALES AUSTRALIA PTY LTD

ABN 74 064 989 724

PO Box 225, Caringbah, NSW 1495

Self-regulation works

HMSA has supported the HDC and convenes regular meetings between its executive and HMSA senior management. HMSA and the HDC both understand that they are in a symbiotic relationship, and each needs the other.

This existing mechanism works to address any substantive dealership issues and incurs no societal cost.

No Public benefits that outweigh the costs of regulation

As noted above, further regulation of truck dealer agreements:

- Is not necessary because there is no systemic market failure; and
- Would itself be likely distort the efficient operation of the applicable markets by unnecessarily constraining HMSA's ability to actively compete against other brands in the competitive truck retail market.

The costs of regulation in reduced competitive pressure upon dealerships to perform would distort the market for truck sales and provide no discernible public benefit.

Conclusion

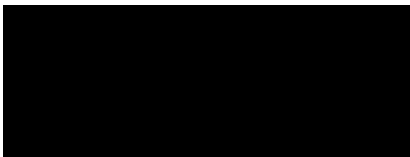
HMSA submits that its current dealer operation provides its franchisees with valuable access to a high quality well priced product and the opportunity to operate their own successful retail operation. Many of its dealers have successful businesses based upon this model.

There is no evidence in relation to the truck distribution market that multi-national truck distributors have exploited dealers, rather the evidence demonstrates a symbiotic relationship and an appropriately regulated industry from which all parties benefit.

Additional regulation is not necessary and would incur greater costs than public benefit.

If you would like any further information, please do not hesitate to contact the signatory.

Yours sincerely



Sam (Takashi) Suda
President and CEO | Hino Motor Sales Australia



HINO MOTOR SALES AUSTRALIA PTY LTD

ABN 74 064 989 724

PO Box 225, Caringbah, NSW 1495



HINO MOTOR SALES AUSTRALIA PTY LTD

ABN 74 064 989 724

PO Box 225, Caringbah, NSW 1495

Schedule 1

Dealer Multi-Franchise List



HINO MOTOR SALES AUSTRALIA PTY LTD

ABN 74 064 989 724

PO Box 225, Caringbah, NSW 1495

Schedule 2

Distinguishing Characteristics of Truck/Car dealerships

Item	Trucks	Passenger Cars
Usage	Business	Private
Volume	Low	High
Complexity	High (bodies, weights, etc)	Low
Modifications	High (wheelbase, lazy axle, etc)	Nil
Technical Knowledge	High (ADRs', fit for purpose, state/federal legislations, etc)	Low to Nil
Dealer stock time	Long (modifications, body builders, etc)	Short
Cash Flow impact	High	Low

Schedule 1 - Dealer Multi-Franchise List

Hino Sales/Service/Parts Dealers - 1 September 2021

Dealer	Suburb	State	Hino			Other Truck Franchises																
			3S	2S	1S	DAF	Kenworth	Volvo Trucks	UD Nissan	Mack	Mercedes Benz	Fuso	Freightliner	Isuzu Trucks	Iveco	International	Scania	Western Star	MAN	Dennis Eagle	Sterling Trucks	
Adtrans Hino	Mascot	NSW	0																			
	Smeaton Grange	NSW	0																			
Barry Maney Hino	Mt Gambier	SA	0			✓	✓															
	Warrnambool	VIC			0																	
Bendigo Truck Centre	Golden Square	VIC	0											✓		✓						
Central Coast Hino	West Gosford		0							✓	✓	✓										✓
City Hino	Arndell Park	NSW	0			✓	✓						✓									
CMI Hino - Adelaide	Regency Park	SA	0																			
	Lonsdale	SA			0	✓	✓	✓	✓	✓												
CMI Hino - Melbourne	Derrimut	VIC	0																			
FRM Hino	Glenorchy	TAS	0																			
	Stony Rise	TAS	0																			
	Youngtown	TAS	0																			
Heath Motor Group Pty Ltd	Pinelands	NT	0																			
	Katherine	NT			0																	
	Kununurra	WA			0																	
Honeycombes Sales & Service	Townsville	QLD	0											✓		✓		✓				
Illawarra Hino	Albion Park Rail	NSW	0								✓		✓	✓	✓							
Jacob Hino	Wodonga	VIC	0																			
Johnson's Truck & Coach Service	Mildura	VIC	0					✓	✓	✓												
Mavin Hino	South Kempsey	NSW	0							✓	✓	✓										
	Taree	NSW	0																			
Milne Bros Hino	Paget	QLD	0																			
	Rockhampton	QLD	0																			
Newcastle Hino	Beresfield	NSW	0							✓	✓	✓		✓								
Northpoint Hino	Port Augusta	SA	0																			
	Roxby Downs	SA			0																	
Orange Hino	Orange	NSW	0							✓	✓	✓										
Pacific Hino	Cairns	QLD	0																			
Prestige Hino	Dandenong South	VIC	0											✓								
Sci-Fleet Motors (Brisbane)	Coopers Plains	QLD	0																			
	Eagle Farm	QLD	0																			
Sci-Fleet Motors (Gold Coast)	Nerang	QLD	0																			
Southern Truck Centre	Queanbeyan	NSW	0					✓	✓	✓												
Southside Truck Centre	South Lismore	NSW	0																			
	Coffs Harbour		0																			
Tait Hino	Inverell	NSW			0																	
	Moree	NSW	0																			
	Goondiwindi	QLD	0																			
Till Hino	Breakwater	VIC	0																			
	Wendouree	VIC	0																			
WA Hino	Welshpool	WA	0																			
Wagga Trucks Hino	Wagga Wagga	NSW	0					✓	✓	✓												
Wideland Hino	Toowoomba		0																			
	Forest Glen	QLD	0																			
	Maryborough	QLD	0									✓	✓				✓		✓			
	Tamworth	NSW	0																			
	Muswellbrook	NSW	0																			
Total Sites			42	3	3																	
			42		6																	