

Market Conduct Division
Treasury

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Treasury Laws Amendment (Competition and Consumer Reforms No.1) Bill 2022: More competition, better prices

The Australian Automotive Dealer Association appreciates the opportunity to comment on the Bill and provides this submission with a commentary on the current situation in regard to competition issues in the automotive industry.

About AADA

The AADA is the peak automotive industry advocacy body and is the only industry association which exclusively represents new car Dealers in every Australian state and territory. There are approximately 1,500 new car Dealers in Australia that operate some 3,100 new vehicle Dealerships. Franchised new car Dealers employ more than 59,000 people directly and generate in excess of \$59 Billion in turnover and sales with a total economic contribution of over \$14 Billion.

The Bill

The Government proposes to legislate to increase penalties under the Competition and Consumer Act (CCA) to a level up to five times greater than the current penalties. These changes formed part of the Government's pre-election policies. The Exposure draft and explanatory memo make it clear that penalties under the CCA have been not increased for some time and the Government regards the current penalties as inadequate.

AADA Recommendations

1. Competition policy and the CCA legislation must be well maintained by Government and kept up to date with changes that occur in the competitive market. It is imperative that the Government is interested and active in this space to prevent anti-competitive behaviours.
2. AADA supports the new penalty regime and proposed penalty increases. Penalties for breaches of the legislation should be meaningful to all players including big businesses and global corporations.
3. Issues of fairness in the market and balanced business relationships are important to franchised Dealers. Good competition policies and laws help to maintain balanced relationships for business and consumers.

AADA Support

AADA supports well defined and well managed competition policies including appropriate penalties for breaches of the Consumer and Competition Act (CCA).

Our comments are made from the perspective of franchised automotive Dealers facing a transitional period in the automotive market. New technologies and new automotive players are emerging. Traditional car companies are refocussing operations to reconsider the future of the auto supply chain. A period of instability and shortage of supply commenced at the start of the COVID-19 pandemic and continues due to global supply restraints.



Australia's passenger cars are all imported and supplied by global Manufacturers. Therefore, while there is healthy competition between Dealers at the retail level, which AADA fully supports, there is also a heavy reliance on a Manufacturer and importer driven decisions taken at corporate head offices overseas.

Good competition laws help to maintain fair relationships between all parties including consumers, Dealers, repairers, and Manufacturers. Fair trading is an imperative for franchised business and small businesses in their contractual and trading relationships with Big Business. Therefore, AADA supports competition laws that are relevant, and where breaches are found, penalties applied must be sufficient to cause others to think about the consequences of poor choices.

AADA supports government policy that tackles competition issues, a government that acts, and understands the importance of fairness in the market.

Misleading conduct, unconscionable conduct, misuse of market power, controlling of competition by forcing competitors out of markets by use of anti-competitive tactics cause all players to be unfairly treated. Consumers can be misled into believing there is full competition where there is less, and markets are distorted. Transparency is especially important. Sunlight is the best disinfectant.

A big business supplier should not be advantaged, just because it is big, powerful, or because it can bully other players when penalties are either avoidable or not a deterrent. Therefore, AADA supports a competition policy and penalties that are a deterrent to all anti-competitive behaviours. Our aim should be to ensure the most competitive market possible.

The Current State of Play in the Automotive Industry

The automotive industry is changing, relationships between Manufacturers and Dealers are under reconsideration. It is important that Dealers see that competition policy is applied evenly and transparently to global suppliers who make their decisions at a head office overseas.

The Australian automotive market is small, right-hand drive, and at the end of a long global supply chain. Franchised Dealers operate in an environment where there is a power imbalance between the franchisor and the franchisee. While relationships in the automotive industry can be mutually beneficial, the power imbalance can on occasion lead to exploitative behaviour.

Some suppliers have changed the way in which they operate in Australia and no longer offer a franchise. Movement towards agency arrangements by car Manufacturers brings with it questions about fairness in decision making, notice periods, negotiations over change, and compensation for non-renewal of a franchise and loss of goodwill embedded in the business.

In some cases, vehicle Manufacturers have decided to exclude premium products from the franchise and sell directly to the public, effectively competing with franchisees within their own brand. There is a need to carefully monitor how these new arrangements and any move to agency is managed with fairness to ensure they are not anti-competitive.

Franchised Dealers Take Legal Action

Recently, some franchised Motor Dealers have found it necessary to take legal action against their former franchisors. Some Holden Dealers, some Honda Dealers, and 38 Mercedes-Benz Dealers have continuing legal actions seeking redress or compensation for decisions taken by their former Franchisors.

- The Mercedes-Benz case commenced to be heard in the Federal Court on 2 August 2022 and is continuing. The Dealers claim includes \$650 Million in compensation.



- Commenting on the GM closure of Holden Dealers Mr Rod Sims, Chair of the ACCC said *“The way Holden withdrew from Australia and managed the process and its relationships with long-standing loyal dealerships, should serve as a lesson to all franchisors of what not to do in managing their relationships with franchisees and treating them fairly and with respect,”* AADA can only agree, and taking the same approach as Mr Sims we expect that lessons will be learnt by Automotive Franchisors.
- The Australian Competition and Consumer Commissions (ACCC) has also lodged legal action in the Federal Court against carmaker Honda for “making false or misleading representations to consumers” about two former authorised Honda dealerships in Victoria and NSW.

Where a supplier decides to change contractual arrangements with franchisees it must be done with fairness, in good faith, with notice and transparent negotiation. Not by exploitation of the power imbalance between an international corporation with a Head office in Stuttgart or Tokyo or Detroit and Dealers in Australia.

Conclusions

- It is of concern to AADA that large multinational companies operating in the Australian market may see the current CCA penalties as a cost of doing business and not as a sufficient deterrent to anti-competitive behaviours.
- It is noticeable that penalties applied in European Union competition cases have been applied at levels over the \$1 billion (AUD) mark for breaches of EU laws. In 2021 carmakers Volkswagen and BMW were fined 875 million euros by the European Commission over restricting competition in emission cleaning technology for new diesel passenger cars¹.
- AADA supports a continuing focus on competition and the upkeep of appropriate provisions in the CCA and ACL. AADA will engage with the Government on all Competition law proposals, being central to good conduct in a fair market, for the benefit of the market and consumers.
- Franchised Dealers are in a special position, independent, yet operating under franchise arrangements which control many aspects of their trading.
- Franchised Dealers will demand a fair go all round, and transparency at every turn, when decisions are to be made by Franchisors that unfairly impacts franchisee business viability or competitiveness in the market.

AADA appreciates the opportunity to comment on proposed legislation and will be pleased to answer questions or provide further information.

Yours Sincerely,



James Voortman
Chief Executive Officer

¹https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3581

