



Australian Automotive Dealer Association Ltd.

ACN: 167 598 085

The Sir Jack Brabham Automotive Centre of Excellence

8/2728 Logan Road, Eight Mile Plains, Brisbane Queensland 4113

CEO - Patrick Tessier
P.O. Box 4072 McKinnon Victoria 3204
+61 3 9576 9944
0412 685 857
ptessier@aada.asn.au

Strategic Operations Director
Steve Ghost
0411 246 315
sgghost@aada.asn.au

Policy Director
Michael Deed
07 3237 8711
mdeed@aada.asn.au

Directors

Chairman & QLD - Ian Field
0419 729 763
ifield@aada.asn.au

NSW - Terry Keating
0418 668 277
terry.keating@jtfossey.com.au

VIC - Leigh Smith
0411 266 977
leighsmith@ws.com.au

SA - Hillar Puvi
0418 803 691
hpuvii@formulamg.com.au

TAS - Marcus Birrell
0407 872 052
marcusbi@motors.com.au

ACT - Richard Rolfe OAM
0411 189 714
richard.rolfe@audicc.com.au

NT - Dave Russell
0417 926 337
daver@bridgetoyota.com.au

Appointed - Martin Ward
0418 855 455
mward@apeagers.com.au

Appointed - Geoff Pickering
0417 197 655
geoff@pickering.com.au

Appointed - Mike Claridge
0402 131 660
mclaridge@claridgeholden.com.au

Appointed - Paul Warren
0418 233 332
paul.warren@peterwarren.com.au

Appointed - Anthony Altomonte
02 9418 5588
aaltomonte@alto.com.au

Appointed - Lou DiVirgilio
0417 755 200
lou.divirgilio@dvig.com.au

Appointed - Chad Davies
0418 420 789
cdavies@nsw.ahg.com.au

Secretary - Paul Moni
0419 481 000
paul@monisolutions.com

Legal Advisers - HWL Ebsworth
estents@hwle.com.au

Business Advisers - BDO Australia
mark.ward@bdo.com.au

24 November 2014

Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Lodge online at www.competitionpolicyreview.gov.au

Dear Competition Policy Review Secretariat

AUSTRALIAN AUTOMOTIVE DEALER ASSOCIATION LIMITED (AADA) COMPETITION POLICY REVIEW: DRAFT REPORT SEPTEMBER 2014

We refer to our previous submission to the Competition Policy Review Panel and welcome the opportunity to comment on the Draft Report and note the 52 Draft Recommendations to reinvigorate Australia's competition policy to help Australia meet the economic challenges and opportunities both now and in the future. While a number of recommendations including international price discrimination, planning and zoning, retail trading hours, unfair and unconscionable conduct relate to franchised new motor vehicle dealers and apply in local jurisdictions our submission will focus on the "public interest" test as a central tenet of competition policy principles and Draft Recommendation 9 – Parallel Imports.

AADA is the peak industry body representing franchised new car dealers in Australia. There are over 1500 new car dealers in Australia that operate something in the order 2600 new vehicle outlets. Motor vehicle dealership agreements which number in excess of 4000 are subject to the *Franchising Code of Conduct* which regulates the conduct of the participants. Dealerships range from family-owned small businesses to larger businesses and two public companies operating in the regions, metropolitan areas and across the States and Territories. The authorised dealer network generates revenue in excess of \$72 billion, employs in excess of 66,000 people, pays wages in excess of \$5.6 billion and has invested around \$17 billion in facilities.

Competition Policy

AADA believes the review of competition policy is timely and "modernised" competition law is necessary to both recognise global forces of change on the Australian economy and the need to meet the challenges of:

- the industrialisation of developing nations and, in particular, the rise of Asia and the growing Asian middle class;
- ageing of the Australian population and falling workforce participation; and
- diffusion of digital technologies with the potential to disrupt established patterns of economic policy.

A review of competition policy “per se” is not a panacea to stimulate economic growth and enhance Australia’s competitiveness in a global economy but should be part of a package of other economic reform measures including trade liberalisation, a broad ranging review of Australia’s taxation system including international tax minimisation, removal of the luxury car tax (LCT), review of work practices and industrial relations, reduction of regulatory burdens and skills enhancement. These and other reform measures must be clearly articulated and communicated to the Australian community so that the community understands the need for reform.

Draft Recommendation 1 – Competition Principles

We accept the Panel’s endorsement that competition policy should focus on making markets work in the long-term interests of consumers and should be subject to a “public interest” test, so that :

- the principle should apply unless the costs outweigh the benefits; and
- any legislation or government policy restricting competition must demonstrate that it is in the public interest, and the objectives of the legislation or government policy can only be achieved by restricting competition.

The “public interest” test in Draft Recommendation 1 of the Report is not consistent with Recommendation 5.4 of the Productivity Commission Report into Australia’s Automotive Manufacturing Industry which refers to the large-scale importation arrangements of second-hand motor vehicles:

The Australian Government should progressively relax restrictions on the importation of second-hand passenger and light commercial vehicles. The new regulatory arrangements for imported second-hand vehicles should be developed in accordance with the outcomes of the Australian’s Government’s current review of the Motor Vehicle Standards Act 1989 and should...

2. Be preceded by a regulatory compliance framework that includes measures to provide appropriate levels of community safety, environmental performance and consumer protection.

In AADA’s submission to the Department of Infrastructure and Regional Development (DIRD) on the 2014 Review of the *Motor Vehicle Standards Act 1989* we stated that the Government has a fiduciary duty of care in the protection of the health and safety of the people of the Commonwealth of Australia and supported the public policy objectives of:

- community protection (through vehicles that are safe and have low emissions);
- consumer protection (through vehicles that meet buyers expectations and are theft resistant); and
- competition (through vehicles that are readily available and reasonably priced).

While AADA members are not afraid of competition we submitted that community and consumer protection (“public interest” test) far outweighed the benefits and costs of allowing large-scale importation of second-hand vehicles into Australia.

AADA’s submission to DIRD in support of a “public interest” test included consideration of the following:

- lack of provenance of such vehicles;
- Australian Consumer Law (ACL) issues on warranties and recalls;
- improvements in vehicle safety of new vehicles have contributed significantly to road trauma reduction;
- technology plays an important role in vehicle safety and newer vehicles in the main are safer than older vehicles;

- consumer choice should be given a lower priority than safety and the environment;
- vehicle age increases the odds of being involved in a fatal vehicle crash;
- there has been a progressive improvement in motor vehicle emission standards;
- average age of Australian vehicles is older than in comparable countries;
- Australia's trade liberalisation policies and free trade agreements (FTAs) have resulted in intense competition and higher specification of motor vehicles in the high volume market segment; and
- independent studies commissioned by the Federal Chamber of Automotive Industries (FCAI) indicate that for the vast majority of the Australian new car market a model is cheaper in Australia than in the United Kingdom and New Zealand.

AADA's submission to the DIRD on the 2014 Review of the *Motor Vehicle Standards Act 1989* is on the public record at:

https://www.infrastructure.gov.au/vehicles/mv_standards_act/2014_submissions.aspx

AADA understands that while no decision has been taken by the Australian Government to reduce restrictions on the importation of second-hand motor vehicles it has been encouraged by Ministerial statements that "the Government has no intention of allowing Australia to become the dumping ground for other countries' old second hand vehicles."

In these circumstances the public interest in terms of community and consumer protection is greater than any perceived net benefit to the community through the large-scale importation of used motor vehicles.

Competition Policy Review Draft Recommendation 9 – Parallel Imports

Draft Recommendation 9 states that remaining restrictions on parallel imports should be removed unless it can be shown that:

- they are in the public interest; and
- the objectives of the restrictions can only be achieved by restricting competition.

The Competition Policy Review Panel considers parallel import restrictions are similar to other import restrictions (such as tariffs) in that they benefit local producers by shielding them from international competition and is expected to deliver net benefits to the community. Current and proposed FTAs in respect of the removal of tariffs on imported motor vehicles will increase competition in Australia's highly competitive retail new motor vehicle market through a combination of lower prices and/or higher specification levels. In the same context we submit there is no logical reason for the retention of the LCT as an inequitable tax on the motoring public given motor vehicle manufacturing in Australia will cease in 2017.

AADA's statement that Australia's retail new car market is highly contestable and sub-optimal by global standards is indicated by new vehicle sales of just over 1.1 million units in 2013 or 1.4 per cent of the 82 million passenger and commercial vehicles sold globally. Currently, 90 per cent of all new vehicles in Australia are imported and the average age of all vehicles registered in Australia is around 10 years. There are over 66 brands and 350 models competing for market share compared to 51 brands in the United States which has a market of around 13 million annually. The Australian market is fragmented and is one of the most highly competitive in the world.

In addition, as mentioned previously Australia's trade liberalisation policies have resulted in one of the most open and competitive markets in the world and have brought many benefits to the community through choice and lower pricing.

There are currently no restrictions on an entity seeking to become a full volume importer of new vehicles into Australia. A recent example is Tesla Motors which designs and manufactures premium electric motor vehicles.

Reduction of barriers to personal importation of new vehicles and the importation of quality second-hand vehicles – Option 7 2014 Review of the Motor Vehicle Standards Act 1989

AADA submits there is little evidence of market failure or international price discrimination which would suggest a need for reduction of barriers to personal importation of new vehicles and large-scale importation of quality second hand vehicles. Any regulatory framework for importation of such vehicles should be identical to the conditions imposed on a full volume importer to ensure a level playing field.

A new regulatory framework to reduce barriers on the personal importation of new vehicles and the personal/large-scale importation of quality second-hand vehicles carries a number of risks including:

- lack of provenance of such vehicles;
- erosion of the authorised dealer network and its investment of over \$17 billion in facilities;
- free riding on the brands and the authorised dealer network;
- lack of evidence of ANCAP or equivalent rating;
- non-compliance with Australian Design Rules (ADRs);
- vehicles not designed for Australian conditions including fuel specifications;
- lack of global Vehicle Identification Number (VIN);
- asymmetry of information;
- licensing of Importer;
- consumer recourse against importer;
- lack of manufacturer warranty and vehicle recall procedures;
- reduced consumer protection under ACL;
- jurisdictional shopping as there are no harmonised registration procedures; and
- faceless transactions through online purchasing.

These vehicles can currently enter the Australian fleet through the Specialist and Enthusiast Vehicles Scheme (SEVS) and the Registered Automotive Workshop Scheme (RAW).

AADA does not believe the removal of restrictions on parallel imports will increase competition and the development of a regulatory framework which would involve Customs and other agencies may well outweigh any perceived net benefit to the community.

We would welcome the opportunity to provide any further assistance to the Review Panel. Please do not hesitate to contact me on 03 9576 9944 or email ptessier@aada.asn.au or Policy Director Michael Deed on 07 3237 8711 or email mdeed@aada.asn.au

Yours faithfully



Patrick Tessier
Chief Executive Officer