



Australian Automotive Aftermarket Association

Competition Policy Review
Response to Draft Report
17 November 2014

The Australian Automotive Aftermarket Association Ltd (AAAA) is the national industry association representing manufacturers, distributors, wholesalers, importers, mechanical repair & modification services and retailers of automotive parts and accessories, tools and equipment in Australia.

The Association has over 1700 member companies in all categories of the Australian automotive aftermarket and includes major national and multi-national corporations as well as a large number of Australian owned small and medium size businesses. Member companies are located in metropolitan, regional and rural Australia.

Suite 16, Building 3, 195 Wellington Road
Clayton, Victoria 3168 AUSTRALIA
03 9545 3333

www.aaaa.com.au

Executive Summary

The opportunity to contribute to this landmark review of competition policy is welcomed by the Australian Automotive Aftermarket Association (AAAA) as an opportunity for an honest, transparent and open assessment of our ability to create and maintain competition in this country. **Australian markets are at their healthiest when flourishing through fair competition. It is time to translate the dialogue into a practice of enforcement and communication that underpins this core belief.**

Our expertise in working within the competition regulatory regime is based on the extensive experience of our membership: the independent automotive aftermarket industry. We have initiated and participated in many discussions with government regarding competition and consumer protection. The key concerns of the independent aftermarket are issues of uncompetitive behaviour, specifically, concerns with misleading and confusing documentation relating to warranties and consumer guarantees, the sharing of vehicle repair and service related data between car manufacturers and the independent aftermarket, and misleading “capped price” service contracts.

All of these issues are concerned with market behaviour by larger entities to the detriment of small businesses and consumers. We contend that many of these issues involve anticompetitive behaviour by large global commercial entities. Whilst our industry concerns are specific to our sector, it is very important that we point out that we are not discussing activity that affects only the bottom line of a few small to medium sized enterprises in one industry sector. Our experience with anti-competitive behaviour affects every household in Australia. These are not marginal issues – **every household is affected by anti-competitive behaviour in the Australian automotive service and repair sector.**

To expedite the process of responding to the Draft Report, we have provided the following summary table. This table provides feedback on each of the areas requested by the Panel that have the highest impact upon our sector.

R#	Panel Recommendation	AAAA View
R1	Competition Principles	Agree
R9	Parallel Imports	Agree. Many of the concerns regarding consumer safety, counterfeit products and inadequate enforcement can be addressed through regulation and consumer information. Discussion on this matter is often misinformed and fuelled by exaggerated claims of the consequences. We address this matter in further detail in this submission.
R11	Regulatory Review	<p>Agree. However, we would also like to express that in our experience the regulatory review process is often misinformed. Lack of economic and competition knowledge within some government agencies can result in regulatory impact statements that lack substance and do not quantify the effect of specific recommended regulatory change on relevant markets. The affect on competition is often not examined and regulatory impact statements seeks to quantify three simplified actions:</p> <ul style="list-style-type: none"> (1) no change, (2) all of the suggested changes, or (3) all of the changes with a delay. <p>The actual market impact of each regulatory change is either under estimated or not addressed. Transparency of economic models is rarely provided to the market.</p>
R12	Standards Review	Agree. We support nationally harmonised government-mandated vehicle standards to protect consumer and community safety. We support a regime of adopting, implementing and enforcing these standards on a national basis.
R20	Definition of Market	Agree. Change to the definition maintains relevance and anticipates global changes to markets and products.
R21	Extra-Territorial Reach of the Law	Agree. The reach of any Australian law should have the effect of supporting competition and the interests of consumers. The issue here is whether goods and services are provided into our market, not the business address of the supplier.
R24	Price Signalling	We support reform in this area and we agree that concerted practices that have the purpose, effect or likely effect of substantially lessening competition should be the primary intent of laws relating to anti-competitive disclosure of information. For more information on 'concerted practices' please see additional

R#	Panel Recommendation	AAAA View
		information on data sharing practices in the automotive repair and service industry contained in this submission (Choice of Repairer).
R25	Misuse of Market Power	We agree that the provision be reformulated so that it targets anti-competitive conduct that has the purpose, effect or likely effect of substantially lessening competition. Our industry experience is that re-framing would allow simplification and the interpretation of 'intent' would ensure that misuse of power is more likely to be prosecuted than is currently the case. More information on our position in relation to misuse of market power is contained in this submission.
R26	Price Discrimination	We agree with the recommended approach and that reform of parallel imports is a more efficient and effective tool.
R27	Vertical Restrictions	We agree, and our experience is that third-line forcing is too narrow in definition to capture uncompetitive practices that occur between buyers and sellers in the market. These existing uncompetitive arrangements are often specifically designed to get around Competition Law. The true test should be the effect: if the effect is to lessen competition the arrangements should be judged accordingly. For more information on this issue see Choice of Repairer section in this submission.
R28	Exclusive Dealing	We agree that section 47 should apply to all forms of vertical conduct rather than specified types of vertical conduct.
R39	Establishment of the Australian Council for Competition Policy	Agree.
R40	Role of the Australian Council for Competition Policy	Agree. More information on our views regarding specific market design can be found in this submission
R41	Market Studies Power	Agree. More information on our views regarding specific market design can be found in our section on Choice of Repairer.
R42	Market Studies requests	Agree. However, the definition of market participants should be extended to include industry associations.

R#	Panel Recommendation	AAAA View
R43	Annual Competition Analysis	Agree. Annual analysis should also include commentary on the developments that are slow to be resolved. Resolving competition in the automotive repair and service industry has taken over five years to address and remains unresolved at the present time.
R45	ACCC Functions	We agree that competition and consumer functions should be retained within the ACCC (with improved governance).
R47	ACCC Governance	We note that the Draft Report canvasses two options for how this Board might be configured. In our view an advisory structure will have limited value and we favour the option of replacing the current Commission with a Board comprising executive members, and non-executive members with business, consumer and academic expertise (with either an executive or non-executive Chair of the Board).
R49	Small Business Access to Remedies	Agree. There is a lack of communication on the status of disputes and our industry would welcome a more active position to test the law. Our view is that a 'once off test' of the law would have wide reaching benefits for competition in our industry.
	Industry Codes	Industry Code development is often seen to be an alternative to government regulation. However, the development of these codes must comply with ACCC guidelines. When unequal power relationships exist, there is a potential for codes of conduct to sanction uncompetitive behaviour. The ability for any party to refer a voluntary code to the ACCC for review should be enhanced. This could possibly be undertaken on a fee for service basis. We also agree that the definition of voluntary and mandatory codes is confusing.

We welcome the competition principles within the report, and in particular the paradigm shift away from protecting competitors, toward protecting long-term consumer interests is welcome. For example, this statement in the Draft Report has our full support:

In general, all prohibitions should focus on protecting competition and not individual competitors; that is, business and trading conduct should be prohibited if it has the purpose, or would have or be likely to have the effect, of substantially lessening competition. That gives all firms, big and small, an opportunity to compete on merit (that is, based on the value to consumers of the competing products they offer).

Parallel Imports

R9	Parallel Imports
R26	Price Discrimination

In regard to our industry, the discussion regarding recommendations 9 and 26 are linked. Parallel imports and price discrimination are currently in the public domain as active regulatory discussions in the automotive sector. These issues have received public attention due to the consideration of both parallel imports and importation of second hand vehicles by the Productivity Commission. These issues are related. Our current regulatory regime for both parallel imports of new vehicles and the importation of second hand vehicles (under 5 years of age) restricts competition for the sale of motor vehicles in Australia. As a result we address both issues in this section.

Under the mantra of consumer protection, community safety and environmental performance, parallel imports and the large-scale importation of second hand vehicles into Australia has been restricted through the Motor Vehicle Standards Act 1989. However, due to a recent recommendation from the Productivity Commission, consideration is now being given to the relaxation of these rules and for Australia to follow New Zealand in allowing grey vehicle imports.

While currently there exists a general 5% tariff applying to all automotive imports (and an additional \$12,000 customs duty on second hand vehicles), this duty is rendered redundant via the ability of importers to claim exemption from the \$12,000 duty if prior approval is granted. Approximately 98% of imports are granted some form of concessional treatment.

Appropriately, the Productivity Commission's request for reconsideration is due to the inability to import a large number of under 5 year old second hand vehicles that would meet Australian Design Rule standards. Applications for import 'can only be made in respect of a single used imported vehicle' (sections 13C (2), 16(3)) while automotive workshops are prohibited from importing more than 100 used vehicles in each vehicle category in a 12-month period (Part 3 (6a)).

These restrictions cause distortions in the market by raising the price of used vehicles and reducing consumer choice. The Productivity Commission recommendations would not see a total deregulation of the import market; instead consumer protection, community safety, and environmental performance standards would be maintained through regulatory standards applicable to all vehicles sold in Australia.

Parallel Vehicle Imports in New Zealand

New Zealand began easing import restrictions in the 1980s as part of a comprehensive program of economic reforms. The widespread availability of used imports prompted official importers to reduce the price of brand new cars, and in 1998 New Zealand became one of the few countries in the world to remove all import tariffs on motor vehicles.

Used-vehicle import totals are now higher than those of vehicles first registered in New Zealand. In 2006, 123,390 ex-overseas vehicles were registered, compared to 76,804 brand new vehicles. 94.6 per cent of these imports come from Japan.

Used vehicles must, with some exceptions, be right-hand drive, and they must comply with recognised European, Australian, Japanese, or American emission and safety standards, or they are ineligible for import to New Zealand. Certification is undertaken by NZ Transport Agency-approved certifiers, and the applicable standards depend on vehicle type and date of manufacture or first registration. The certification process includes a physical vehicle inspection as well as the sighting of documentary evidence provided by the importer, showing compliance with New Zealand legal requirements.

Under Vehicle Standards Compliance Amendment Rule 2013, all vehicles (including grey imports) must pass a *Warranty of Fitness* (WoF) inspection prior to use on the road and then again at the three year anniversary of the vehicle's first registration. Light vehicles over three years old must undergo annual WoF inspections, while vehicles registered prior to 1 January 2000 must attain a WoF every six months.

2005 research from the Monash University Accident Research Centre found that the used imports were as safe as those sold new when compared on a year of manufacture basis, and that the difference in crashworthiness performance between used imported vehicles and new vehicles was attributable to the date of manufacture rather than its previous use in its country of origin. A second hand Toyota Corolla (2006 automatic hatchback model) of similar mileage is on average almost 20 per cent cheaper in New Zealand than in Australia.

While odometer fraud was initially noted as a problem following removal of second hand vehicle import barriers (estimated at between 10% and 30%), the New Zealand Government responded in 2010 with the introduction of the Motor Vehicle Sales Amendment Act 2010 to increase consumer protection and promote 'informed purchasing decisions' in relation to motor vehicle sales.

The importation of second hand cars puts downward pressure on vehicle prices and increases consumer choice. As experienced in New Zealand, deregulation of grey imports will allow more cars into the Australian second hand vehicle market, enabling better price competitiveness. Such

regulatory changes could also make new cars cheaper, particularly sports and luxury models which often cost twice or three times as much in Australia as they do overseas - a brand-new Porsche 911 Carrera coupe costs from \$206,500 in Australia, but as little as US\$84,300 (\$96,400) in the US.

The increase in second hand vehicles in the automotive market will see a dire need for the sharing of diagnostic information within the industry. The increased independence of the consumer and their vehicle purchasing options will see a diminishing reliance on dealerships and require appropriate legislation to support the expansion of consumer choice in the automotive market.

We support reducing the barriers to the importation of quality second hand vehicles and personally imported new vehicles (aligned to the Australian Standards and under five years old). We also support the consolidation of concession scheme arrangements. The irrational and self-interested assertion that cars will be imported without the means for repair or spare parts is not correct. A wide range of consumer goods including technology and white goods are directly imported into this country and repair, spare parts and servicing occurs. If cars are imported into this country, provided we have access to OEM controlled technical and diagnostic information, the market for repair, service and spare parts will respond. We already have one of the most diverse car parcs in the world (relative to our population) and we have found a way to commercially repair and maintain these vehicles.

It would appear that the Australian market has anti-competitive characteristics that are actively leveraged by mainstream importers. These importers leverage our distance from world markets and in many of our industries sectors it is clear that we pay over the odds for goods and services that are cheaper in overseas markets. If we can introduce measures that provide the motor vehicle market with 'safety net' parity opportunities, we should do so.

There will be a push back on this issue from vehicle importers and dealerships; they will assert that the "floodgates will open" and there will be numerous comments about an inability to source parts and service these vehicles.

Our view is that this outcry will be vastly overstated and driven by commercial self-interest. We doubt that there will be an avalanche of imports of new vehicles, indeed, if the mainstream vehicle importers appropriately price their vehicles and value-add, the consumer will continue to buy cars through authorised dealerships.

There would appear to be a great deal of unnecessary and ill-informed noise on this issue. Our view is that we do need this reform because it keeps the industry competitive. At a particular price point, it will be beneficial for consumers to directly import vehicles and the challenge for our current vehicle importers is to maintain their competitive edge, just as it is for every other producer or retailer of goods in Australia. Reform of the importation of specialist, enthusiast and second hand vehicles will produce competitive pressure to the benefit of consumers.

Vehicle Servicing Choice of Repairer

R24	Price Signalling
R27	Vertical Restrictions

The servicing of vehicles in Australia is conducted by the service and repair industry¹: “authorised” dealerships and the independent repair industry. The independent repair industry performs the vast majority of repairs for vehicles over four years of age. However, the vehicle importers and manufacturers are increasingly restricting the flow of vehicle repair and service data to their dealerships for the life of the vehicle, reducing competition and consumer choice and most importantly, risking the safety of drivers and passengers. This issue was the subject of a Commonwealth Government inquiry and the government has formally expressed the view that restricting the availability of vehicle repair and service data has the potential for consumer detriment (in relation to safety and competition).

We note and support the emphasis on the importance of protecting competition and the consumer. AAAA strongly submits that these objectives will only be achieved through a greater emphasis on fair competition in the industry, reduction of the protection of vested interests, and full disclosure of information to the consumer’s nominated repairer.

This is not at present the case in relation to the consumer’s ability to choose who they want to maintain or repair their vehicle. At present vehicle importers restrict access to much of the information required to repair or maintain complex modern vehicles to authorised dealerships. This means that it can be difficult and challenging for independent repairers to repair these vehicles, limiting competition and increasing costs for consumers.

It is our policy position that the development and implementation of an Industry Code of Conduct for Vehicle Data Sharing is the most effective way to introduce an industry-wide solution to address the data/tool access requirements of the independent aftermarket. Many other global jurisdictions including the European Union and United States have introduced requirements for OEMs to provide full disclosure of information to the car owner’s nominated repairer.

For further information and a full explanation of why data sharing is relevant to competition review please refer to Consumer Rights: Sharing of Repair Information in the Automotive Industry, AAAA’s submission to the Commonwealth Consumer Affairs Advisory Council at:
<http://www.aaaa.com.au/files/issues/AAAA%20CCAAC%20Repair%20Information%20Submission%20Final.pdf>

We support the aggregation of the terms relating to third line forcing and the term ‘vertical restrictions’ is relevant to, and appropriate for our industry. Despite a range of uncompetitive practices within the automotive industry, we have been unable to gain full traction on prosecution of anti-competitive behaviour because the restriction of automotive repair information and data to ‘authorised dealerships’ does not fit the definition of third line forcing. The Review recommends simplifying the many definitions of third line and ‘full’ forcing and replaces it with a general definition of **vertical restrictions**. This is a welcome initiative. Under a new broader definition any

¹ Further detail about the market players and competition in this industry is available in Appendix One

vertical restriction that has the effect of lessening of competition could be investigated and prosecuted.

R25 Misuse of Market Power

Section 46

Changes to section 46 governing the misuse of market power to bring it into line with other prohibitions by focusing on protecting competition and not competitors. While the threshold test of 'substantial degree of market power' is well understood, the central element of 'taking advantage of market power' is difficult to interpret and apply in practice. We recommend that the provision be reformulated so that it targets anti-competitive conduct that has the purpose, effect or likely effect of substantially lessening competition. And we agree.

Draft Recommendation — Misuse of market power

*The Panel considers that the primary prohibition in section 46 should be re-framed to prohibit a corporation that has a substantial degree of power in a market from engaging in conduct if the proposed conduct has the purpose, or would have or be likely to have the effect, of substantially lessening competition in that **or any other market**.*

Our view is that we would agree – clearly the emphasis should be on protecting competition rather than competitors. However, we do note that much of the force of any final recommendation and implementation will be in the definitions. As noted in the Draft Report the definition of 'substantial degree of power' will determine the degree to which the misuse of market power is recognised and prosecuted. As the paper notes, it is difficult to see the relative power of players and the definition of the market will be a key issue.

As mentioned in the previous section, the independent repair sector has raised issues regarding the behaviour of vehicle importers and their imposition of uncompetitive practices through service and repair information and warranty advice to consumers. Given that these importers are the sole source of a vehicle brand, they have significant market power in the supply of their particular brand of vehicle. However, these brands may represent a small proportion of the total supply of new vehicles into the market. Does this represent significant market power? The practices are clearly uncompetitive and not in the long-term interests of consumers, but the volumes may be small.

We know that the definitions of 'abuse', of 'market power' and 'long term interest of consumers' are yet to be articulated. Despite this, we agree with the thrust of the Panel's view on how the misuse of market power section 46 should be re-framed to prohibit a corporation that has a substantial degree of power in a market from engaging in conduct if the proposed conduct has the purpose, or would have or be likely to have the effect, of substantially lessening competition in that or any other market. We welcome the inclusion of a reference to lessening competition in other markets: vehicle importers use their monopoly importing position to lessen competition in the automotive repair and service industry.

The Review Panel proposal is that a defence against this charge can be mounted on the basis that misuse of market power would be a rational business decision by a corporation that did not have a

substantial degree of power in the market; and the effect or likely effect of the conduct is to benefit the long-term interests of consumers. We would support this defence if the word 'and' is maintained, the long term interests of consumers would appear to be the most important element in this defence and is clearly the primary rationale for all competition laws. We also agree that the onus of proving that the defence applies should fall on the corporation engaging in the conduct.

Competition Institutions

R40	Role of the Australian Council for Competition Policy
R41	Market Studies Power
R42	Market Studies requests
R43	Annual Competition Analysis
R45	ACCC Functions
R47	ACCC Governance

In previous AAAA submissions on competition policy, we have provided critical feedback on the operation of our competition institutions. In particular we have been critical about the delay in rulings and the enforcement of these rulings. We welcome the Panel's assessment of Australia's competition institutions — their current performance and preparedness for the future — and we agree with the assessment that there is a clear gap in Australia's competition framework.

Our previous experience in raising critical competition issues has required our direct representation to Ministers and to Parliament to investigate industry-specific concerns. We therefore agree that *Australia needs an institution whose remit encompasses advocating for competition policy reform and overseeing its implementation*. The competition issues within industries are often unique to that particular industry and it can be difficult for broad competition law to anticipate every anti-competitive practice that occurs in industry-specific contexts.

The Federal Government (Commonwealth Consumer Affairs Advisory Committee) inquiry into data sharing the automotive repair industry is an example of a failure of our current system to undertake market specific inquiries and to be active in identifying uncompetitive trends and responding to these trends. In other global markets including Europe and the US, the automotive data sharing issues, that we are only now addressing in Australia, have been under active consideration for some time.

We support the recommendation of replacing the National Competition Council (NCC) with a new national competition body, the Australian Council for Competition Policy (ACCP). Our support is based on the ability of this new body to be a competition policy advocate and educator. The power to undertake market studies will put our competition policy to the test in specific markets and could potentially initiate reform before consumer and competition detriment; resulting in recommendations to relevant governments on changes to anti-competitive regulations or to the ACCC for investigation of breaches of the law.

Our experience with the ACCC has been lengthy and we have a view that the response time is slow. We are in agreement that the ACCC is an effective body, but we also agree that governance could be strengthened with input from individuals free of responsibility for its day-to-day operations. We note that the Draft Report canvasses two options for how this Board might be configured. In our view an advisory structure will have limited value and we favour the option of replacing the current Commission with a Board comprising executive members, and non-executive members with

business, consumer and academic expertise (with either an executive or non-executive Chair of the Board).

We are also in agreement that:

1. The credibility of the ACCC would be strengthened with additional accountability to the Parliament through regular appearance before a broadly-based Parliamentary Committee.
2. The ACCC should not undertake competition policy advocacy and education. We feel that this function does not receive the level of attention that is required and the recommendation to allocate this function outside of the ACCC may result in increased attention to advocacy and education.

R49 Small Business Access to Remedies

In our experience ACCC processes are lengthy and difficult for small business to navigate. AAAA has a long history of communication with the ACCC as a party to enquiries as well as an advocate for open competition. AAAA has on numerous occasions written to the ACCC with concerns about anti-competitive practice. Although we have had a long relationship and engaged in extensive dialogue, this has not yet been productive in altering market behaviour – a reflection shared by others across the Australian business landscape.

We have worked very hard to bring issues to the attention of the ACCC, and whilst we have received rulings that confirm our concerns regarding anti-competitive or misleading behaviour, this has not led to commensurate and appropriate enforcement and communication. Nine years after we started a conversation about new car warranties, the same anti-competitive behaviour continues.

Communication to the market regarding anti-competitive practices is not sufficient to alter market behaviour by commercial entities. While the ACCC has adopted policy positions against anti-competitive practices, this is not secured through enforcement action. With the cost of litigation high and the process lengthy, there is a clear reluctance to prosecute. Car companies and dealerships are aware of the very low chance of detection, let alone actual prosecution for anti-competitive behaviour. Without the establishment of a precedent through a successful prosecution, there is little incentive for larger entities to play by the rules. As a result, small to medium sized enterprises have to endure an uneven playing field, where large players operate outside the boundaries of competition law. The general thrust of the Panel's recommendations indicate that the Panel is aware of both the issues and the affect on small business and we are in support of the direction of the discussion that would promote an improved environment for small business to seek timely remedies.

Small and medium enterprises (SMEs) make up approximately 70% of the Australian economy as well as the vast majority (85%) of AAAA membership. These smaller entities rely upon membership-based organisations (industry and commerce associations) to represent their interests. A mechanism for industry bodies to raise issues and to receive regular communication on matters is a sound method for enabling small business access to rulings and remedies.

The communication shortcomings of the system require reform. At present, complainants are not privy to dialogue between the ACCC and organisations accused of anti-competitive conduct, nor are they informed about the progress being made into an investigation - an investigation that directly affects their ability to compete. SMEs, such as independent repairers, become observers to the process rather than active participants.

There should be clear access points in the complaints process, a clear level of understanding of whether the ACCC is actually investigating an issue and what their ruling is on the matters.

We would maintain that an 'on the spot fine' mechanism, publically naming organisations and public statements of concern are all instruments that should be considered within a range of sanctions that can deter anti-competitive behaviour. There is a tendency for anti-competitive behaviour to return to the market as soon as the ACCC stops paying attention. A revised competition enforcement regime should anticipate this trend for re-offending and fines or sanctions should therefore escalate for recidivist behaviour.

Appendix 1:

The Market Players

The automotive mechanical repair and service industry is comprised of Original Equipment Manufacturers (OEM), their authorised dealers and the Automotive Aftermarket (AA). The OEM sector manufactures components for supply to the vehicle producers and the vehicle producers (located in Australia and overseas) supply new cars into the Australian market.

The Australian automotive aftermarket is comprised of manufacturers, re-manufacturers, importers, distributors, wholesalers, resellers and retailers of automotive parts, accessories, tools and equipment as well as businesses engaged in the retail repair and service of vehicles. It is estimated that the Australian automotive industry in its entirety employs more than 400,000 people, with around 60,000 individual businesses represented.

The proliferation of vehicle models and configurations is a unique characteristic of the Australian market. The Australian new vehicle market is one of the most competitive in the world with 340 vehicle models for sale in the domestic market. In recent years tariff reductions and low interest rates have combined with an expanding economy to give strong growth in the new vehicle market. This has attracted new entrants to the market and increased marketing activity by brands with a long established presence in Australia. A change in consumer preferences, combined with high fuel prices has seen a big shift towards smaller more fuel efficient vehicles in recent years and the market share of locally manufactured vehicles has fallen to below 10% of vehicles sold for the first time ever. This profile of a large number of imports, one of the largest model ranges on offer in the world and changing consumer preferences provides a fertile ground for consumer detriment due to confusion about new car warranties, service and repair.

New car dealers are part of the OEM supply chain. Australian dealers operate under franchise arrangements with the manufacturer and many operate multi-brand dealerships. In May 2014 IBIS World estimated that there are 4,776 dealers in Australia², with revenue of \$74 billion. But the role of the dealer is changing. Whilst, from an outside observer perspective these dealerships appear to be primarily concerned with selling cars, it is recognised by industry analysis³ that the dealership business model is now dependent, not upon new car sales but upon finance & insurance and on service & parts:

- *It has long been noted that the average dealer – once dealership overheads are allocated – generally struggles to break even in the core activity of selling new vehicles and it is not uncommon for them to be marginally unprofitable.*
- *As the name implies ‘fixed operations’ (parts and service) tends to provide a far more regular or fixed income stream than the notoriously volatile vehicle departments which tend to go up and*

² IBIS World Motor Vehicle Dealers Market Research Report | ANZSIC G3911 | May 2014

³ All quotes in italic below: Deloitte Motor Industry Services Australian Industry Overview 2012

down through product and economic cycles. The selling gross contribution from the vehicle departments is lower and more volatile than that of parts and service (fixed operations).

- *This valuable and predictable income stream plays a vital role in helping to offset the profitability drain commonly experienced in the vehicle departments.*
- *Strong fixed operations will assist in absorbing a significant portion of the dealership overhead expenses, enabling the dealership to weather the monthly sales peaks and troughs commonly associated with the automotive industry.*

Dealerships are the vehicle manufacturer's distribution channel and selling new cars to the Australian consumers through franchised dealerships is now dependent upon the profitability of dealership's fixed operations. It is in the car manufacturer's best interests that dealerships make a good margin from service and repair. There is also very little profit in manufacturing vehicles so the majority of the car manufacturer's profits are derived from the sale of OEM branded parts, tools and equipment. Dealerships are required to exclusively source parts from the OEM under their franchise agreements, creating a captive market for the sale of 'genuine parts' to the consumer via this channel. As a result the global car giants are becoming more aggressive in channelling (or capturing) consumers into their dealership service and repair workshops.

- *Many brands have embarked on attractive vehicle servicing programs, similar to Toyota's Service Advantage program, with the aim of keeping their customers in the franchise dealership network.*

The crowded Australian market amplifies the need to capture customers in the dealership networks and this has substantially exacerbated the anti-competitive behaviour in the market. This business model has promoted an environment of uncompetitive behaviour that is directly contrary to the Australian Consumer Law.

It is estimated that there are approximately 19,000 independent repair workshop sites in Australia. This includes general motor vehicle servicing and tuning as well as specialist areas such as air conditioning and brake servicing, automatic transmission servicing and LPG fitting. Tyre chains that complete mechanical repairs and mobile repairers are also included in these figures.

In the Australian automotive market, consumers patronise both dealership and independent repair providers. It's not appropriate or germane to include all of the substantial data and details of this patronage. The purpose of describing the market above is to lay the foundation for the case study regarding uncompetitive behaviour and the failure of the regulator to enforce compliance with Australia's consumer laws. But as a general summary, the car dealerships have the lion's share of the market for vehicles that are under four years of age. After the 4 year mark, car owners tend to use the independent market.

Competition in the Automotive Aftermarket

There is no legal requirement for a car owner to use an “authorised dealership” for car servicing during the warranty period. The manufacturers warranty will not be voided if the car owner uses an independent provider rather than the dealership. Dealerships do not have full coverage of all regions, are not necessarily the best value for money and particularly in outer metropolitan and in rural areas it is common to exclusively use an independent repairer rather than a dealership. In this market as is the case in Europe and the US; the consumer is able to choose their repairer if the repairer is qualified and the replacement parts used are ‘fit for purpose’. In Australia this choice exists in theory rather than practice because of misleading warranty information and confusing warranty conditions. Consumers are led to believe that they are tied to a specific dealer network and effectively deprived by deception of their statutory rights.

Dealers often include warranty recommendations that any servicing performed is carried out using ‘genuine parts’. Due to the multitude of brand name products available on the market, the nature of the word ‘genuine’ is ambiguous and misleading, encouraging consumers, through fear of warranty rejection, to take what may be interpreted as the only option of servicing their vehicle at a dealer network paying premium prices for so called ‘genuine parts’ when alternative equivalent quality parts are available at lower cost.

This is not a small issue. Each year we estimate that Australian vehicle owners spend about \$20 billion on parts and services. A fair and competitive market is critical for Australian vehicle owners and the expenditure on vehicle repairs has a considerable impact upon household income, on the ability for families and individuals to work and care for family members.

Appendix 2:

Recommendation 42 Market Studies

Our support of Recommendation 42 would allow our industry to advocate for a study of anti competitive behaviour in relation regarding new car warranties. There is a clear requirement for investigation and national leadership to provide a clear definition of the differences between statutory rights and express warranties/extended warranties/extended service contracts in use in the Australian automotive, electronics and whitegoods markets to ensure consistency and clarity in the terminology used.

In our view the term ‘warranty’ should be subject to restrictive use, must be clearly defined and delineated from other service options including insurance and service contracts. Despite the introduction of the Australian Consumer Law that uses the term ‘Consumer Guarantee’ the term ‘warranty’ is in more common use and the terminology is open to abuse. Consumers are tricked into ‘extended warranties’ that are simply service contracts.

The term ‘fixed price’ or ‘capped price’ servicing is also widely abused in the automotive industry. In our view, these service offers now bundled into the sale of virtually every new vehicle sold in Australia present a range of competition issues including:

- the potential for price signalling between manufacturers through their accessibility of future prices;
- no legitimate basis for some of the future representations made;
- potential for third-line forcing when the manufacturers are promoting and funding the discount offered at the dealerships;
- questionable claims about enhancing the resale value of vehicles;
- low price servicing claims not capable of substantiation when compared to independent aftermarket servicing; and perhaps most importantly
- the agreements of themselves between the dealerships and the manufacturers are substantially lessening competition.

All new and used vehicle warranty documentation and representations should contain clear explanations so that consumers fully understand their entitlements under the various warranties and consumer guarantees. It is our view that the ACCC 2005 statement on the use of automotive parts that are ‘fit for purpose’ should be printed on all warranty material for all vehicles.

All documentation and representations should contain appropriate product disclosure statements. If the extended warranty or “capped price” service contracts are to contain conditions that result in commissions or payments to the dealer, these relationships should be disclosed to the consumer. Reforms in the finance sector that require full disclosure by financial advisors are a good example: if it’s good enough for the finance sector it is certainly good enough to introduce into the car repair sector.