



16 March 2020

Automotive Franchising Group  
Department of Industry, Science, Energy and Resources  
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To: The Automotive Franchising Group

**Re: Exposure Draft of the Competition and Consumer (Industry Codes – Franchising) Amendment Regulations 2020**

**1. Introduction**

1.1 The MTA Queensland (The MTA Queensland) or (The Association) submits views on the Exposure Draft of the Competition and Consumer (Industry Codes – Franchising) Amendment (New Vehicle Dealership Agreements) Regulations 2020 (Exposure Draft Regulation) for consideration by the Automotive Franchising Group.

1.2 This Exposure Draft Regulation proposes to amend the *Competition and Consumer (Industry Codes – Franchising) Regulation 2014*. Commencing with the Australian Competition and Commission's October 2016 *New Car Retailing Industry – a market study*, the MTA Queensland has closely followed developments and has been a consistent participant in the consultations and discussions.

1.3 The comments contained in this submission reflect the views, issues and concerns from the perspective of the MTA Queensland's franchised new motor vehicle dealers and the participants in the automotive value chain.

**2.1 Overview**

2.1 The MTA Queensland urges the Automotive Franchising Group (the Group) to take care and consideration in respect of the issues involved in implementing a statutory redress to the imbalance of market and economic power that currently exists in the framework regulating the economic relationship between Franchised New Car Dealers (FCD's) and vehicle manufacturers (OEMs) that are the franchisors.

**Motor Trades Association Queensland**

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2.2 FCD's are an efficient, complex and critical participant in the automotive value chain and have traditionally performed an important role in the national economy. They have provided an effective method of servicing the motoring needs of a modest, geographically widespread market. In addition, they have been an integral economic driver in metropolitan, regional and remote economies.

2.3 OEMs either directly or through their distributors have ultimate control of new vehicle supply to FCDs and therefore have a controlling position in any franchising arrangement and are in a position to exert this power on the automotive value chain as a whole. Any statutory redress to the imbalance in the new car franchising framework must be undertaken cautiously because of the implications for the value chain in its entirety.

2.4 The Australian Competition Commission Chairman Rod Sims is on the record, observing that Australia is a nation with a high level of economic concentration and the Association is of the view that the level of concentration in beneficial ownership in new car franchising has increased and is likely to undergo further consolidation. It would appear important that any redress is supportive of independent franchisees so that competition is encouraged.

2.5 The Association advocates that the Exposure Draft Regulation redressing the imbalance in the new vehicle franchise arrangements ensures equity for all stakeholders. In addition to the FCDs and OEMs, the circumstances and unintended consequences for independent participants in the automotive value chain, consumers, repairers, and communities of the metropolitan, regional and remote economies need to be considered.

### **3. Context**

3.1 From the mid-20<sup>th</sup> Century, the marketing of vehicles through networks of franchised car dealers with exclusive prime marketing areas (PMAs) has provided good outcomes for stakeholders. This marketing model has been able to provide the nation's private and commercial motoring needs in a unique and challenging environment.

3.2 Australia's automotive market is somewhat unique. It is sub-optimal in scale growing to total approximately 1.18 million new car sales per annum. On average, the new car market has seen year on year growth from 2011 onwards. Since 2017, a market contraction of some nine percent over 23 months has occurred and there are indicators that a recovery may be delayed for some time due to developments in the national and global economies.

3.3 The market has some distinguishing characteristics: until recently (2017) it had local vehicle manufacturing although it lacked the necessary economies of scale. In spite of being a 'right hand drive' market and geographically widespread it has been able to support a very high number of brands and models by world standards. More than fifty different car manufacturers sell vehicles in Australia. This provides consumers with outstanding choices of price, category and make of vehicle.

3.4 The market is now exclusively an import market and is undeniably characterised by statutory intervention. Australia has a robust framework of vehicle regulations and import arrangements that are intended to protect public safety and ensure the quality of vehicles offered for sale to the motoring public.

3.5 Traditionally, OEMs favoured 'franchising' as the business model to access Australia's motoring market. There were distinct advantages: the cost of actually operating market outlets did not impact the OEM business model as the 'franchisees' each with its PMA were independent owner operated with costs directly managed by the owner. Further, the OEMs balance sheet is enhanced by the FCD purchasing the vehicles its stocks, therefore managing risk and cashflows for the OEM. The draft regulations currently omit the obligation of OEMs to buy back stock in the event of non-renewal.

3.6 As Australia's automotive has always been highly competitive, FCDs were required as part of their 'franchising agreement' to invest in infrastructure and high visibility branding which was usually associated with an exclusive property that displayed branded vehicles and promoted sales in a mutually beneficial arrangement.

3.7 As the motor vehicle market for new cars came under sustained pressure and margins accruing to both OEMs and FCDs contracted, the franchising model that served the industry well during the twentieth Century experienced difficulties in accommodating the demands of franchised stakeholders to protect existing margins.

3.8 Previously the ACCC identified in its automotive market study that the tenure was an issue of concern, however it has not been addressed in the Draft Regulations. Historically, the lack of tenure and the increasing use of agreements that span as little as one year is a major facilitator of the power imbalance.

#### **4 Developments and Disruptions**

4.1 In Australia, the automotive value chain is experiencing both technology disruption and structural market disruption. Both these forces have placed economic demands on participants in the automotive value chain with the most severely impacted being OEMs and FCDs.

4.2 The technology evolution which will transition manufacturing from the current generations of internal combustion engined (ICE) vehicles to electric vehicles will have a profound influence on the business model used by FCDs. There will be new requirements for skills, equipment and servicing intervals. In addition, there will be the issues of the status and valuations of redundant stock.

4.3 In many jurisdictions globally, e.g. in the European Union, the United Kingdom, and China, the decision has been made to cease ICE manufacture and a statutory embargo on the sale of new fossil fuel powered vehicles. A number of fundamental social changes reinforce this trend and requires legislators to act on changed community values. These include changed environmental norms, a change in demographics of younger populations no longer viewing personal private motor vehicle ownership as high consumer preference for their standard of living, and the rise of public transport as the preferred mode of mobility.

4.4 In Australia, technology disruption has been relatively modest with the OEMs majors preferring to service significant 'left hand drive markets.' Tesla has been the main participant and it has confined activities to the upper end of the market. Australia, however, has experienced severe structural market disruption. The market has changed in both relative and absolute terms. There was an initial change to the demand patterns in the automotive market to smaller vehicles with more economical operating parameters being preferred when the 'oil shocks' impacted. Subsequently during the GFC consumer demand again changed showing a preference for Sports Utility Vehicles (SUVs) which replace multiple cars in families with a single 'multi-use' vehicle.

4.5 More recently, the car market has experienced an absolute contraction in the sales of new cars. It would appear the market has undergone a structural change and the demand for motor cars no longer commands the expenditure priorities it once enjoyed. Consumers are substituting public transport and the new general 'on call' taxi services in favour of private vehicle ownership.

4.6 The servicing of Australia's automotive market has undergone some fundamental changes. FCD's traditionally were allocated PMA which provided a high degree of exclusivity. Recently, the traditional marketing model has come under concerted pressure. The OEMs from time to time flirted with a vertically integrated model but previously reverted to the franchised dealer model because of costs, cash flow and balance sheet benefits. Tesla and Subaru have recently implemented sophisticated marketing models based on vertical integration. Additionally, the market has seen the development of effective 'on-line' vehicle selling businesses which do not require the same levels of financial investment and exposure that FCDs must carry.

4.7 In addition to these disruptions, the market has been distorted by 'salary packagers' who sell cars as a collateral service for tax effective salary engineering and 'buyer's brokers' who act on behalf of a consumer to secure a sale on most favourable terms in return for a commission.

## **5 Recommendations**

5.1 As submitted above, the MTA Queensland requests the Group act with the utmost care in the finalisation of the framework regulating the franchising commercial arrangements between FCDs and OEMs. Inevitably, there will be unintended consequences for other participants in the value chain.

5.2 The Association is of the view there is merit in the FCDs claims that they are disadvantaged by the existing framework where the ultimate power resides with the transnational OEMs that make their corporate interests a priority rather than the interests of Australian domiciled stakeholders.

5.3 It appears some redress is warranted, but it is difficult to distinguish the effects attributable to the evolving changes in the car market resulting from technical and market disruptions and those effects caused by unfair use of market power by transnational OEMS. The Association advocated that any statutory redress in the Exposure Draft Regulation be 'light touch' intended only to ensure equity, and the Group undertake ongoing monitoring to confirm the balance is maintained.

5.4 The Association considers it reasonable to place regulatory obligations on OEMs to buy back stock in the event of non-renewal. As mentioned above, by not requiring OEMs to buy back stock, there is an incentive for OEMs to load their franchisees with stock and parts before a non-renewal notice is issued.

5.5 The Association urges the Group to further consider the issue of tenure as this was identified by the ACCC as an issue of concern in its automotive market study. The lack of tenure and the increasing use of agreements that span as little as one year is a major cause for the power imbalance. The Association is of the view that the term must be regulated to a minimum of five years.

5.6 In finalising the Exposure Draft Regulation, the MTA Queensland urges the Group to take care to avoid the introduction of market rigidities as these are likely to result in undesirable outcomes over the medium to longer terms. Any costs that are introduced by statutory rigidities will inevitably have to be passed on to consumers as higher new vehicle purchase costs. Australia's new vehicle market could be expected to contract and distort further as consumers respond to price increases because OEMs and FCDs would protect their margins against any statutory cost impost.

5.7 Perhaps, more importantly, the transnational OEMs are likely to reorder their rankings of marketing models if they are faced with contracting margins. The long-held franchising model may lose its pre-eminence and OEMs could be expected to explore the available options including vertically integrated marketing models; greater use of 'on-line' electronic marketing and third-party alliances with financial planners and buyer's brokers as well as the appointment of independent servicing agencies.

5.8 The range of business models and marketing options has increased due to the extension of OEM warranties and the statutory guarantees that apply to new vehicle sales. The Group, in monitoring the balance of power in franchising arrangements should carefully evaluate the cost impacts on consumers and FCDs of the warrants and statutory guarantee that dealers are required to perform as part of their commercial arrangements with OEMs.

## **6 Background**

6.1 The MTA Queensland is the peak organisation in the State representing the specific interests of businesses in the retail, repair and service sector of Queensland's automotive industry located in the State. There are some 15,500 automotive value chain businesses employing approximately 88,500 persons generating in excess of \$20 billion annually. It is an industrial association of employers incorporated pursuant to the *Fair Work Act* 2009. The Association represents and promotes issues of relevance to the automotive industries to all levels of Government and within Queensland's economic structure.

6.2 Australia's first automotive hub, the MTA/Q, has been established in specially prepared space at the corporate office. The hub is an eco-system that supports innovation for the automotive industry.

6.3 The Association is the leading automotive training provider in Queensland offering nationally recognised training, covering technical, retail and the aftermarket phases of the motor trades industry through the MTA Institute - a registered training organisation. It is the largest automotive apprentice trainer in Queensland employing trainers geographically dispersed from Cairns to the Gold Coast and Toowoomba and Emerald.

Thank you for your deliberation.

Yours sincerely

A handwritten signature in black ink, appearing to read "Brett Dale". The signature is written in a cursive, flowing style.

Dr Brett Dale DBA  
Group Chief Executive  
MTA Queensland