

ACCC Flags Continued Interest in Automobile Industry

IN SHORT

The Background: An Australian Competition and Consumer Commission ("ACCC") study found that a mandatory scheme to share technical information is the only way to achieve a competitive aftermarket in the automotive industry.

The Situation: This is the latest in a pattern of conduct and statements by the ACCC that indicate a continuing focus on competition in the automobile industry and conduct by market participants.

Looking Ahead: Businesses involved in the automobile industry, including manufacturers, retailers and repairers, should heed the warning signs and act accordingly to avoid falling afoul of an ACCC action.

The ACCC chairman, addressing the Australian Automotive Aftermarket Association ("AAAA"), outlined the agency's findings from its recent ACCC car retailing industry market study. In particular, the study concluded that voluntary commitments by car manufacturers to share technical information with independent repairers have failed, and that the only way to achieve a competitive aftermarket that allows consumers a choice of providers to repair and service their cars is a mandatory scheme. These statements are the latest steps by the ACCC that highlight the regulator's continuing prioritization of competition and consumer law issues in the automobile industry.

Findings of the Market Study

The ACCC chair identified that car manufacturers can control who has access to the complex technical information and data required to repair cars and often use this control to favor their own dealers and preferred network repairers over independent repairers. He outlined that, despite voluntary commitments by manufacturers to provide independent repairers with the same access to technical information as dealers and preferred repairers, these independent repairers have still difficulties accessing the information, and therefore a mandatory scheme is required.



The findings of the market study, and the ACCC chair's comments, highlight a continuing focus by the ACCC on the automobile industry and its participants.



The ACCC chair also highlighted the market study's findings that there are "fundamental issues" with the ability of consumers to enforce their consumer guarantee rights under the Australian Consumer Law ("ACL"), and that car manufacturers should:

- Update their complaint-handling systems and improve their approach to handling consumer guarantee claims; and
- Update their logbooks and service manuals to remove misleading statements that new cars must be serviced only by authorized dealers in order to maintain the warranty.

ACCC Focus on the Automobile Industry

The findings of the market study, and the ACCC chair's comments, highlight a continuing focus by the ACCC on the automobile industry and its participants, especially considering:

- The ACCC's Final Report on the New Car Retailing Industry, published in December 2017, which found that there are material deficiencies in the way that consumers are able to enforce their rights against car manufacturers and dealers. The report raised concerns about the conduct of market participants, including in relation to provision of information about fuel consumption or emissions and information and data required to repair and service new cars.
- The ACCC's 2018 Enforcement and Compliance Priorities, which include a focus on consumer issues in new car retailing, including responses by retailers and manufacturers to consumer guarantee claims and other matters identified in the New Car Retailing Report.
- A declaration by consent in April 2018 by the Federal Court of Australia that a major car manufacturer pay \$10 million in penalties for engaging in unconscionable conduct when dealing with complaints, one of the largest-ever penalties under the ACL.

Taken together, these demonstrate that competition and consumer law compliance within the automobile

industry is on the ACCC's radar. In particular, it is significant that the ACCC has prioritized consumer issues in new car retailing in 2018, after previously also stating this as an issue in 2017. Product safety is also an enduring priority. This highlights that there has been, and will continue to be, a continuing and long-term focus by the regulator. Businesses involved in the industry should heed the warning signs and act accordingly to ensure compliance with both Australian competition law and Australian consumer law.

TWO KEY TAKEAWAYS

1. Competition and consumer issues across the automobile industry are a continuing priority for the ACCC, which will be quick to investigate any suspected breaches of the Australia's Competition and Consumer Act ("CCA") by car manufacturers, retailers or repairers.
2. Businesses involved in the automobile industry should take care to ensure compliance with the CCA and take steps to reduce their legal risk, to avoid the prospect of an ACCC action and significant fines.

CONTACT



Prudence Smith
Sydney

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