



Small and Family Business Division
The Treasury
C/O – GPO Box 2013
Canberra ACT 2601

13 September 2021

Via Email: smallbusinessfranchising@treasury.gov.au

Submission to Treasury – Automotive Franchising

A. EXECUTIVE SUMMARY

1. The concerns that give rise to the proposed reforms outlined by Australian Treasury in its discussion paper titled “Automotive Franchising” released in August 2021 (**Discussion Paper**) *“were only intended to cover new road motor vehicles and excludes all other motor vehicles such as motorbikes, farm machinery and trucks given there was limited evidence submitted at the time to support expanding the scope beyond new cars.”*
2. Nothing has changed.
3. The relationship between manufacturers and dealers of heavy-duty trucks, construction equipment, buses, heavy-duty or marine and industrial engines are fundamentally different to the relationship between car manufacturers and dealers. The concerns identified do not arise in these relationships and accordingly the proposed reforms should not be extended beyond what is currently covered.
4. In particular:
 - a) Manufacturers, dealers and customers have a symbiotic and interdependent relationship with one other where vehicles and engines are made to customer specification unlike new cars;
 - b) Capital expenditure is not mandated on dealers;
 - c) There is strong ongoing support provided by manufacturer to the dealer network;
 - d) Dealer terms are fair and reasonable in all the circumstances;
 - e) Manufacturers reimburse dealers for warranty services and recalls;
 - f) There are no concerns about lack of compensation for termination or non-renewal of dealerships;
 - g) Any disputes are normal commercial matters and are adequately addressed; and

- h) Current regulatory and legal framework adequately regulates the relationship between manufacturers and dealers of heavy-duty trucks, construction equipment, buses, heavy-duty or marine and industrial engines.

B. VOLVO GROUP AUSTRALIA PTY LTD

- 5. Volvo Group Australia Pty Ltd (**VGA**) is responsible for the manufacture and assembly, or importation of Volvo Trucks, Mack Trucks, UD Trucks, Volvo Buses, Volvo Engines, Volvo Construction Equipment within Australia, New Zealand, New Caledonia, Papua New Guinea and the South Pacific Islands.
- 6. VGA is a part of the Volvo Group which is one of the world's largest original equipment manufacturers of heavy-duty trucks, construction equipment, buses and heavy-duty combustion engines as well as a leading supplier of marine and industrial engines. Volvo Group's headquarters are in Gothenburg, Sweden and its shares are listed on NASDAQ in Stockholm, Sweden.
- 7. VGA imports products from Volvo Group and UD, manufactures products locally in Queensland, and distributes the products to dealerships within Australia that are both corporate owned and independently owned.
- 8. VGA has over 40 dealerships across Australia, with the significant majority of the dealerships operating as franchisees and over 50 sub-dealers to those franchisees. VGA supports its dealers through a range of initiatives that invest in dealers, including adaptable pricing structures, marketing campaigns, quarterly governance meetings and other financial assistance for areas such as vehicle warranty, technical and commercial goodwill and dealer incentives.
- 9. VGA's main office is based in Queensland and has a team of approximately 1,200 employees.
- 10. VGA does not supply, distribute or market passenger vehicles or new light goods vehicles.

C. PROPOSED REFORMS

- 11. The proposed reforms relating to automotive industry under the Franchising Code seek to address¹:
 - a) an imbalance in bargaining power between new car dealers as franchisees and car manufacturers as franchisors;
 - b) the significant challenges placed on dealers to balance their Australian consumer law obligations with their need to maintain long-term agreements with manufacturers;
 - c) the failure of car dealers to adequately address consumer complaints and warranty claims;

¹ ACCC, "New car retailing industry: A market study by the ACCC", December 2017, https://www.accc.gov.au/system/files/New%20car%20retailing%20industry%20final%20report_0.pdf; The Australian Senate, "Driving a fairer deal: regulation of the relationship between car manufacturers and car dealers in Australia", March 2021, https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024463/toc_pdf/DrivingaFairerDealRegulationoftheRelationshipbetweenCarManufacturersandCarDealersinAustralia.pdf;fileType=application%2Fpdf; The Honourable Scott Morrison MP and Senator the Hon Michaelia Cash MP, "Backing Australia's family-owned automotive industry", 12 March 2021, <https://www.pm.gov.au/media/backing-australias-family-owned-automotive-industry>.

- d) the excessive capital expenditure requirements placed upon franchisees;
 - e) the hesitancy of car dealers to seek mediation for fear of retaliation by car manufacturers; and
 - f) the lack of notice and/or compensation by manufacturers when terminating or not renewing dealership arrangements.
12. All of these concerns expressly relate to the relationship between car manufacturers and car dealers in respect of passenger vehicles and new light goods vehicles.
 13. They are not concerns that relate to or otherwise arise under the relationship between manufacturers and dealers of heavy-duty trucks, construction equipment, buses, heavy-duty or marine and industrial engines.

D. PURPOSE OF THIS SUBMISSION

14. The Discussion Paper states (emphasis added):

“The Franchising Code regulates all franchise agreements entered into in Australia, and expressly includes all motor vehicle dealership agreements.

*The automotive-specific part introduced to the Franchising Code on 1 June 2020 (and further automotive reforms on 1 July 2021) only apply to new motor vehicle dealership agreements of new passenger road vehicles or new light goods road vehicles. These stem from the ACCC’s 2017 market study into the new car retailing industry which first explored the issue, and the Government’s regulatory analysis of the franchise relationship between car manufacturers and new car dealers. The amendments **were only intended to cover new road motor vehicles and excludes all other motor vehicles such as motorbikes, farm machinery and trucks given there was limited evidence submitted at the time to support expanding the scope beyond new cars.***

Stakeholders are invited to provide evidence to support the consideration of expanding protections for new vehicle dealerships to other parts of the automotive sector.”

15. This submission addresses the issue of whether the current regulatory framework and proposals should be extended to cover the relationship between manufacturers and dealers of heavy-duty trucks, construction equipment, buses, heavy-duty or marine and industrial engines.
16. VGA considers that the proposals should not be extended because there continues to be limited or no evidence to support expanding the scope of regulation beyond the current application. Rather, for the reasons set out in this submission, the evidence clearly supports that the proposals should not be expanded to cover the relationship between manufacturers and dealers of heavy-duty trucks, construction equipment, buses, heavy-duty or marine and industrial engines.

E. VGA’S RELATIONSHIP WITH DEALERS

Nature of relationship

17. The relationship between VGA and its dealers is not characterised by any material imbalance in bargaining power or unfairness.

18. VGA and its dealers effectively operate as commercial partners to supply products and after-sale parts and servicing to customers. In many cases, VGA itself holds direct relationships with customers and needs to work in partnership with its dealers to ensure those customers are adequately serviced.
19. The nature of this relationship stems from the nature of the products themselves.
20. Unlike passenger or light goods vehicles which are manufactured in bulk quantities to standard specifications, heavy-duty trucks and buses, are generally manufactured to particular customer specifications. That means, the relationship between customer, dealer and manufacturer is highly interdependent because the manufacturers can only meet the customer needs through ensuring its dealers are adequately supported.
21. For instance, approximately 70% of trucks manufactured by VGA locally in Queensland are manufactured to specifications different to or beyond the standard, resulting in a joint relationship and responsibility with dealers to deliver transport solutions to customers.
22. A truck for a customer in the harsh climate of remote Western Australia will be very different in specification to a truck for a customer doing metropolitan deliveries in Melbourne, and VGA has to work with the dealers in each location to ensure capability is tailored to the vehicles seen in each dealership.
23. The nature of this dynamic means that the concerns identified in relation to car manufacturers and dealers do not exist in relation to heavy-duty trucks, construction equipment, buses, heavy-duty or marine and industrial engines.
24. The above propositions are supported by the fact that VGA holds long-term relationships with many its dealers. For example, some businesses have been VGA dealers for over 30 years. This longevity is consistent with the relationship with VGA being symbiotic or similar to a partnership than akin to the relationships between car manufacturers and dealers that is the subject of the proposed regulations.

No capital expenditure requirements on dealers

25. VGA does not require its dealers to make capital investments when entering into a new dealership agreement, other than as set out in the following paragraph.
26. Rather, it only requires the franchisee to be in a position to meet certain standards in the management of their dealership. Other than in relation to specialist tooling requirements, it is matter for the dealer to decide whether it requires to invest in any processes or infrastructure to meet these standards and if so, how much investment is required. In VGA's experience, some dealers choose to invest in systems to ensure maintenance with the standards while others are able to meet the standard with little investment.
27. Dealers are generally sophisticated enough to make their own return on investment decisions when determining whether, when, and to what extent, to invest in their business. As the term of dealer agreements are generally 5 years, this provides dealers with adequate opportunity to recoup on any investments made and take a long-term view of the relationship with VGA.

Ongoing support for dealer network

28. VGA supports dealers through a range of both sales-related and non-sales related incentives, which include financial awards and recognition for excellent safety and wellbeing of dealer employees, quarterly rewards for customer satisfaction and financial bonuses for high sales volumes.
29. In 2020, VGA responded to a request from its dealer network for support due to the uncertainty created by COVID-19, and provided very quickly both financial and non-financial support to support the dealers through lockdowns and supply chain disruptions.

Dealer terms are fair and reasonable

30. VGA's dealership agreements are not characterised by²:
 - a) terms that are too short to secure return on investments;
 - b) unilateral variation clauses allowing manufacturers to vary warranty, performance, reimbursement and other terms during the operation of the agreement; or
 - c) uncertainty in agreements relating to reimbursement for claims made by customers due to a fault of the manufacturer.
31. On the contrary, VGA's dealership agreement does not create imbalances in the rights and obligations between VGA and its dealers or contain provisions that materially harm dealers. Many of the provisions not only protect the legitimate interests of VGA but they also support the dealer's business. Those provisions include:
 - a) a standard term of 5 years (with renewal options);
 - b) any variations to be agreed between VGA and the dealer (as opposed to unilateral rights to vary by VGA);
 - c) VGA to reimburse dealers in the event of product recalls;
 - d) VGA to provide financial and administrative assistance for the promotion and advertisement of products;
 - e) the joint preparation of a business plans for the dealer; and
 - f) a clear and effective dispute resolution process.
32. In addition to its contractual obligations, VGA provides a range of support services to its dealers, including product support and rebates for materials handling, parts and financing.

Manufacturers reimburse dealers for warranty services and recalls

33. Unlike some of the concerns raised with car manufacturers and their dealers, VGA does not shift the costs of legislative compliance with warranties and recalls

² ACCC, above n 1, 84-87; Australian Senate, above n 1, 48-49.

to the dealer (which can lead to failure to obtain reimbursement for warranty and recall work³.)

34. On the contrary, VGA's dealership agreement expressly requires it to reimburse its dealers for recall and warranty work undertaken by the dealer.
35. As VGA manufactures a majority of trucks to customer specification and generally has direct customer relationships, it is heavily involved in dealing with warranty issues and product recalls. It does not (and cannot for commercial and legal reasons), pass this responsibility to dealers.
36. Indeed, in many instances where dealers have made adaptations to vehicles that are not expressly covered by warranty, VGA has upheld claims to support the dealership. Other initiatives also include annual rebates and parts handling fees paid to dealers to assist with the provision of warranty work to customers.

No concerns about lack of compensation for termination or non-renewal of dealerships

37. While termination and non-renewal of dealership agreements without adequate compensation may be usual as between car manufacturers and dealers, this is not the experience for dealers of heavy-duty trucks, construction equipment, buses, heavy-duty or marine and industrial engines.
38. The long-term nature of dealer arrangements and the fact that many dealers have been happy to renew those agreements for decades indicates that termination and non-renewal issues are not prevalent for dealers of heavy-duty trucks, construction equipment, buses, heavy-duty or marine and industrial engines.
39. VGA has not terminated a dealer since January 2014. For that dealer (like any other dealer), VGA provided financial support for both technical and commercial goodwill throughout the franchise relationship. As a result, dealers are adequately compensated for the goodwill obtained by the business and do not incur costs in the event their agreement is terminated or not renewed.

Disputes are adequately addressed

40. In light of the nature of heavy-duty trucks, construction equipment, buses, heavy-duty or marine and industrial engines and the dynamic between the manufacturers, dealers and customers of these products, the concerns experienced by car dealers in respect of dispute resolution processes are not applicable to VGA or its dealers.
41. As VGA largely supplies custom built products to customers via dealers, it has no option but to engage fairly and genuinely with dealers in respect of complaints and disputes.
42. VGA has a standard dispute resolution process within its dealership agreements which provides certainty of process and a range of options for dealers who have a complaint.

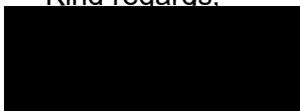
³ Australian Senate, above n 1, 45-46.

43. Complaints from dealers predominantly relate to obtaining sufficient volume of stock at competitive pricing rather than anything related to the exercise of unilateral rights by VGA against dealers that may be unfair or harmful to them
44. There have been no findings by courts or other regulators that manufacturers of heavy-duty trucks, construction equipment, buses, heavy-duty or marine and industrial engines have engaged in the conduct that the proposed reforms in the Discussion Paper seek to address.

Current regulatory and legal framework

45. The current legal and regulatory framework sufficiently and appropriately regulates the conduct of manufacturers of heavy-duty trucks, construction equipment, buses, heavy-duty or marine and industrial engines (like VGA) and their dealers.
46. This framework includes:
 - a) The provisions of the Australian Consumer Law, including the application of the unfair terms regime, consumer guarantees regime, warranties against defects regime and other general prohibitions;
 - b) The Franchising Code of Conduct;
 - c) The collective bargaining exemption under the Competition and Consumer Act 2010 (Cth); and
 - d) VGA also supports dealers with claims from customers outside of manufacturer warranty, in accordance with the Competition and Consumer Act consumer guarantees.

Kind regards,



Richard Singer
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Volvo Group Australia Pty Ltd