



12 February 2016

General Manager  
Market and Competition Policy Division  
The Treasury  
Langton Crescent  
Parkes ACT 2600

Email: [competition@treasury.gov.au](mailto:competition@treasury.gov.au)

Dear Sir / Madam

**Response - *Options to strengthen the misuse of market power*  
Discussion Paper December 2015**

**1. Introduction**

1.1 The Motor Trades Association Queensland (MTA Queensland or the Association) **responds to the Treasurer Scott Morrison's request for submissions to the Discussion Paper 'Options to strengthen the misuse of market power'** (the Paper). Our comments are confined to matters that have direct relevance to our automotive industry value chain membership and their business interests which includes vocational training.

1.2 The Association has advocated in previous submissions that reform of the *Competition and Consumer Act S 46 Misuse of market power Law* - forms a critical part of the overall competition framework that protects the national economic interests and consumer welfare. The strong view is that S46 must be reformed as an economic protocol by incorporating an "economic effects test" as a determinant of the misuse of market power; but at the same time retaining the judicial purpose test as proposed in Option F of the Harper Panel's recommendation.

1.3 In the MTA Queensland's 17<sup>th</sup> November 2015 submission to the Competition Policy Review Draft Report at item 3.2.2 we stated that such a reform:

"... would be both an important functional reform, increasing the effectiveness of the 'market power' provisions of the framework and reinforce the standing of the framework as an 'economically' competent protocol that intends to remedy market distortion and repair market failure."

The Association continues to hold the view that this reform would significantly enhance the competition policy framework and bring it into line with international practice in those countries with whom Australia has formal trading and investment relations.

**MTA Queensland**

**Address** Building 8, 2728 Logan Road, Eight Mile Plains, Qld 4113 **Postal** PO Box 4530, Eight Mile Plains, Qld 4113  
**Tel** (07) 3237 8777 **Toll Free** 1800 177 951 **Email** [info@mtaq.com.au](mailto:info@mtaq.com.au) **Website** [www.mtaq.com.au](http://www.mtaq.com.au)

## **2 Discussion**

2.1 The Association is of the view is that the seminal issue facing the Government is to determine: *the difference* between the legitimate promotion of the corporate interests of an entity with substantial market power and the misuse of corporate power to distort a market in a way that competition is lessened either by damaging the functioning structure of that market or preventing the market entry of new competitors. This then has the microeconomic impact of reducing the real income and welfare of consumers or of creating the macroeconomic outcome of lower economic efficiency to the detriment of the national interest and international competitiveness.

2.2 With this in mind the MTA Queensland submits that reform of S46 is essential.

2.3 The automotive value chain does comprise in part corporations that have a substantial degree of power in the automotive market. This reform would discourage the misuse of market power and dissuade those with substantial market power from damaging competitors or preventing entry into the market or the lessening of any competition to the detriment of consumers.

2.4 The Association does recognise that corporations in the automotive market should be allowed to undertake a legitimate defence of their commercial interests and the Association would support instructions to the court in respect of any legislative reforms that mitigate “market competition chill.” Generally, the automotive market is adversarial and legitimate competition can result in damage or injury to competitors but the misuse of this power should not be able to structurally distort markets for the purposes of S 46.

2.5 The definition of a market in respect of the automotive sector has to be carefully considered as technology and electronic communications has broadened historic market boundaries and markets can be extended to be regional, national or international and market power can be projected to the full coverage of these markets. The reformed S46 must have the competence to regulate this wider and deeper economic geography.

2.6 Historically there have been a number of attempts to reform S46. These have been deprecated by such objections as the loss of legal precedent, the complexity of introducing an economic evaluation process and the “market chill spectre” that could be generated. The MTA Queensland recognises that inevitably there will be unintended consequences but we submit that these will be more than offset by economic efficiencies, greater market functionality, enhanced opportunities for the business sector and the generation of a welfare dividend for consumers.

2.5 The importance of such a reform is recognised and as such the Association acknowledges the likelihood that complex unintended consequences may arise. To mitigate this, we suggest rolling reviews should be part of the framework. The MTA Queensland would be pleased to be involved.

## **3 Conclusion**

3.1 The MTA Q is fully supportive of Option F and would support any reforms, simplifications or enhancements which would make S46 more easily understood and more available to small and medium business participants.

## **5 The MTA Queensland background**

5.1 The MTA Queensland is the peak organisation in the State representing the specific interests of businesses in the retail, repair and service sector of the automotive industry located in Queensland. The 2015 Automotive Environmental Scan data indicates that there are some 13,800

automotive value chain businesses operating within the State employing in excess of 92,000 persons.

5.2 It is an industrial association of employers incorporated pursuant to the *Industrial Relations Act* of Queensland. The Association represents and promotes issues of relevance to the automotive industries to all levels of government and within Queensland's economic structure.

5.3 The Association is the leading automotive training provider in Queensland offering nationally recognised training, covering all aspects of the retail motor trades industry through the MTAIT. It is the largest automotive apprentice trainer in Queensland employing 35 trainers geographically dispersed from Cairns to the Gold Coast and Toowoomba and Emerald. The MTAIT last financial year accredited courses to in excess of 1,600 apprentices and trainees.

Thank you for your consideration.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kellie Dewar', written in a cursive style.

**KELLIE DEWAR**  
General Manager  
MTA Queensland