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<http://competitionpolicyreview.gov.au/submissions/>

AMIF Submission on the Draft Report on the Review of National Competition Policy

Dear Mr Harper

Thank you for the opportunity to provide a further submission in relation to the Draft Report of the Review of National Competition Policy. The Australian Motor Industry Federation (AMIF) has also welcomed the opportunity to discuss this Review with you, Panel Members, Treasury Officials and the Review Secretariat in recent weeks.

The following submission draws on key themes in the Federation's original submission to the discussion paper. It also details responses, suggestions and some alternative recommendations to the recommendations.

General Overview

AMIF respectfully suggests future competition and consumer policy must better balance the application of economic theories with social welfare needs and the ongoing core policy objectives of government to protect the community and the consumer.

AMIF suggests that in reaching final recommendations, the panel needs to test the full potential implications and impacts of some of the draft recommendations particularly in some markets and / or industries such as automotive. AMIF remains available to the Review, the Treasury Department and Government if they would like to exercise an opportunity to test theories underlying suggested changes in the retail motor trades market which constitutes the largest small business sector in the nation.

AMIF supports the need for the nation's competition policy, laws and regulations to be anticipatory, proactive, and progressive and welcomes many of the observations and findings contained in the draft report. AMIF is also concerned in regard to the implications of some recommendations on small business and the automotive retail, service, repair, recycling and associated sectors.

AMIF looks forward to continuing to provide whatever assistance the Review Secretariat may require.

Yours Sincerely

AMIF Secretariat

17 November 2014

RESPONSES TO RECOMMENDATIONS AND POSITION

DRAFT RECOMMENDATION 1 – Competition principles

AMIF RESPONSE– Qualified Support with further considerations:

AMIF broadly supports the principle that competition policy should focus ‘on making markets work in the long term interests of consumers’, as outlined in Recommendation 1 and notes the Review Panel’s statement in the Discussion Paper that Competition Policy is a ‘set of policies and laws that protects, enhances and extends competition’.

AMIF notes the object of the *Competition and Consumer Act (CCA) (Cth) 2010* (Section 2), states:

‘The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection’. AMIF suggests that future focus for competition policy should not lose sight of a requirement to balance economic drivers with social welfare, community and consumer protection considerations.

Guiding Principles:

The guiding principles are generally supported, but again AMIF wonders whether they are the right set of guiding principles given an apparent bias towards competition policy and applicability to government services and products.

AMIF suggests any new guiding principles should be mindful, if not reflective, of the current object of the CCA and the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices¹, as well as and interpretations / definitions / amendments that have occurred since the Hilmer Review.

It is also suggested the principles should also reflect additional broad government policy objectives of community protection, consumer protection, equity and equality. As the first definitive work in competition policy in 20 years, there still remains an opportunity to better define and clarify the construct of competition policy and public interest.

AMIF remains concerned about potential application, interpretation or activation of any final policy by other government jurisdictions. While cognisant of the necessary constitutional constraints, AMIF suggests their remains an opportunity to further explore a new improved compact between Federal, State and Local government regarding the achievement of competition policy objectives. A start for this new compact may be a detailed examination of an incentive methodology, as recommended in the draft report. Incentives may be positive in terms of monetary reward through grants and assistance or preventative by way of fines or other methods to extract required consistency and universal application.

AMIF supports guiding principles being subject to a public interest test, but cautions on the definition of public interest in terms of its application to competition policy. The term ‘Public Interest’ should not be defined in purely economic terms and equal weight must be provided to social welfare considerations and the broad policy objectives of community and consumer protection, including the ability of small business to compete.

AMIF contends that within its membership constituency there are increasing examples where the definition of public interest from an economic perspective, without balancing social or future consumer impact potential; and giving proper consideration to the intricacies of the market and products or services within that market; have radically and permanently altered markets – in some circumstances, AMIF would argue, to the long term detriment of consumers.

¹ <http://unctad.org/en/docs/trdbpconf10r2.en.pdf> (accessed on 26 September 2014)

Draft Recommendation 2 - Human services

AMIF RESPONSE: Agreed - with suggestions

AMIF generally supports the recommendations of the Review Panel, but suggests that it should not stop at Human Services, but make Human Services a component of an overarching agreement that addresses concerns highlighted in AMIF's response to Recommendation 1. That is for there to be an intergovernmental agreement, charter or accord where other Government jurisdictions not only agree to be bound by the same principles, but the room for alternative interpretation or application is reduced and the regulations / requirements are streamlined.

AMIF suggests greater simplification and reduction in red tape and cost to business could be addressed by greater concentration in this area. AMIF understands there is only so much the Commonwealth can do, but it is the combined impost of differing government jurisdictions application of competition policy, where the real issues of red tape burden potentially reside.

Draft Recommendation 3 - Road transport

AMIF RESPONSE – Qualified Agreement - The need to thoroughly review future road user pricing methodologies is supported, but only if the social welfare impacts on motorists and a nation reliant on road transport - including linkages across the economy are properly understood, tested and are supported by the majority of Australians:

The suggestion that road transport funding to the States can be adjusted by introduction of new cost-reflective road pricing is an extreme policy shift that AMIF suggests does not given adequate weight to social welfare consequences in its current form. AMIF contends that this recommendation appears theoretical and ignores the practical day-to-day costs applied to all motorists in taxes and charges applied to vehicle purchase and use. It also appears silent on the underlying causation of road usage by different demographics in different locations and the linkages with availability of other forms of public transport and affordability.

The existing road network was developed as public infrastructure and whilst AMIF understands the need for alternative methods of establishing or maintaining critical road infrastructure, and the nation's ability to pay for it into the future, any change to pricing methodologies will have unforeseen negative consequences, if not tested for social welfare consequences as well as economic benefit.

Government must continue to recognise its ongoing role in infrastructure investment, the diversification of road users, the lack of viable alternatives to road transport; and connectivity of Australians in a physical sense, particularly in regional and rural Australia.

AMIF foreshadows many difficult issues for a Government that was to attempt to broadly apply the Productivity Commissions thinking as expressed on page 135 of the draft report, without further detailed analysis and modelling of different proposals and consumer ownership of any proposed change.

That is not to say however that the issue should not be looked at. Ongoing reliance on raising revenue from potentially outdated, inconsistent, and in some cases unconscionable, taxes and other charges applied to motorists and road infrastructure users, are ripe for reform.

AMIF suggests that the level of direct and indirect taxation currently applied to the fulcrum of road transport and motorists is currently disproportionate to the cost to Government and its obligations to public infrastructure and is used to subsidise other national requirements.

Draft Recommendation 6 - Taxis

AMIF RESPONSE - Qualified agreement of deregulation, but do not lose sight of the reasons for regulation in the first place:

This AMIF contends the example of the taxi Industry is a sharp example within the Draft Report of where a full and qualified definition of Public Interest is of paramount importance. The public interest must predominate when deregulation of whole industries is suggested.

AMIF supports competition and deregulation of industries involved in public transport (including taxis), but only where the public interest, which must include public safety and community and consumer protection considerations, are not jeopardised.

The regulation of the taxi industry largely mitigated or removed identified risks to public safety and consumer protection, potentially exacerbated by competition.

AMIF is acutely aware of changing community and consumer requirements and the intersection of information communications technology and mobility. This convergence is translating into new business models and new products and services. On one level, the arrival of these new service and product offerings are a clear output of this convergence, but are also a clear response to changing consumer demands brought about by this convergence. They are welcomed and should be encouraged, after all is this not what competition policy is all about?

However, new products and services should not ignore other community expectations or if they are ignorant of, or deliberately circumvent, underlying public interest defined by the community's expectations for safety and protection and government's responses to those needs. Emphasis on economic benefit above the lessons learned in the creation of a regulated market, will ultimately be to consumer detriment.

The standards applied to public transport; the licenses required; and the monitoring and enforcement of regulations; all combine to assure the community these safety, protection and consumer welfare risks are mitigated or removed.

AMIF contends that rather than zealously rush to deregulate to accommodate these new players under the auspices of improved competition, consumer demand and lower prices, that the public interest defined in part by standards and regulations to protect are given equal and equitable weight.

AMIF strongly suggests that new and emerging players with different or new services and products, must be accommodated and competition policy must encourage their entry, but not to the detriment of community safety, protection and welfare, which must remain overriding considerations.

AMIF believes this area of public policy serves as an early warning of future difficulties and why any recommendations and change to future competition policy must strike the right balance between economic deliverables and social welfare considerations.

Draft Recommendation 7 - Intellectual property review

AMIF RESPONSE – Agreed with suggestions:

AMIF supports this recommendation with one caveat. AMIF does not believe the Productivity Commission is the right suggestion to undertake the independent review. This should not be taken as any negative reflection on the PC, rather recognition, like the review has recognised, that the whole issue of intellectual property is highly complex, global, and comes at a point in time never envisaged by policy makers.

The outcomes of an independent inquiry into IP will have policy and regulatory implications across governments and industries and therefore AMIF suggests that any independent review be conducted by a specialist and expert review panel, specifically assembled to represent all interests as far as practicable. It may include academics, IP legal specialists, world authorities, industry associations and IP businesses. It should draw on companion investigations either recently completed or underway in European and US jurisdictions.

Draft Recommendation 9 – Parallel imports

AMIF RESPONSE - Do not agree:

AMIF does not support this recommendation purely on the basis that the public interest test would not be satisfied due to negative impacts on community safety and reduced consumer protection.

Also to be considered, but largely not addressed in either the discussion paper or the draft report is the ‘bundling’ of concepts and products under the banner of parallel imports.

AMIF is frustrated by an apparent lack of understanding of the difference between highly complex products such as an automobile, and books and publications. That is not to suggest that there may not be issues in regard to the parallel importation of other goods and services, but that is not for AMIF to comment.

It is obvious to AMIF that there appears to be little appetite to properly understand the potential consumer consequences of allowing parallel importation of a highly complex product such as the contemporary motor vehicle and the specifications applied to make cars suitable for reliable use in the Australian environment.

It is AMIF's belief that removing restrictions for the parallel importation of motor vehicles will not translate to greater choice of vehicles at reduced prices to Australian Consumers.

AMIF is of the opinion that no case has been presented that demonstrates market failure, and therefore the need for government intervention, in the supply of new motor vehicles to Australian consumers, but that there is a need for continued consumer protection.

AMIF suggests improvements in competition could be enhanced through other policy levers such as the removal of the Luxury Car Tax.

AMIF asserts that there appears to be a lack of understanding regarding the differences between vehicle standards and vehicle engineering specifications. The former provides consumers the foundations for protection, safety, environmental compliance and meeting expectations; while the latter ensures the highly complex vehicle product meets Australian consumer's operational expectations in the Australian environment.

AMIF is currently opposed to any large-scale opening of the automotive market to parallel imports (taken to mean the personal importation of new vehicles) or grey imports (taken to mean the importation of second hand vehicles).

AMIF strongly suggests that if any change to restrictions on parallel or grey imports were to be entertained, then significant further work is required to test public interest by more detailed analysis on all potential risks and mitigation programs required to address those risks.

Significant risks to consumer protection, safety and welfare include:

- Differing safety equipment;
- Potential lack of available parts for grey and parallel imported models;
- Lack of certainty surrounding manufacturer / dealer support in Australia;
- Applicability of international warranty and warranty application in the Australian context;

- Ongoing serviceability, repair and recycling;
- Incompatibility of imported models with Australian Fleet;
- Not specified or equipped for the Australian conditions,
- Not compatible with unique Australian Fuel Standards;
- Unknown provenance (e.g. date of manufacture, odometer reading, written-off status, service history, etc.);
- Uncertainty in terms resale / residual values;
- Potential inability to obtain vehicle finance and insurance, initial and ongoing;
- Undermining of an already highly competitive and volatile new car retail market and further de-stabilisation of the Australian used car market;
- Lack of clarity on consumer recourse in the event of complaint (ACCC jurisdiction; international law; ACL provisions); and
- Placing potentially too much accountability on Australian consumers to be 'buyer beware'.

The Review panel can see AMIF's full submission to the Review of the Motor Vehicle Standards Act at https://www.infrastructure.gov.au/vehicles/mv_standards_act/2014_submissions.aspx for further details responses to this issue.

Rather than a blanket removal of restrictions on Parallel imports, AMIF strongly recommends that the emphasis in the recommendation is that existing provisions are retained, but an improved methodology is introduced to test for consumer detriment and take into account highly complex products.

Draft Recommendation 10 – Planning and zoning

AMIF RESPONSE – Do not agree:

Constitutional sovereignty issues aside, AMIF suggests the fundamental principle of planning regimes is amenity, rather than economics or competition. AMIF suggests it would be difficult for government jurisdictions, particularly local government, to amicably intersect two concepts of amenity and competition in making judgements about planning and zoning.

AMIF would argue there is sufficient scope for all players to search, find and be approved to expand into new markets in towns, and suburbs. It is inappropriate to force councils or tribunals to consider competition as a planning issue. If required to do so, almost all applications would receive approval on competition grounds alone.

It is a given of the current planning arrangements that a new application which proposes to introduce new business to a location, will bring with it new competition to that market. The real question at issue is whether the application meets the planning standards applied to that place and meets with community expectations of development and amenity.

While AMIF accepts that NIMBY (not in my backyard) can be a problem for new development of business premises; as can the market power of large businesses be an influencer over stifling competition from other players in the same market, AMIF strongly disagrees that all planning schemes must be amended to include competition issues.

There is a balance that should be applied; competition in a market should not be the decider of whether a particular planning application has merit. It is an element of competition that businesses vie for the best locations and pay for the best positions for building businesses that fit within amenity, zoning and planning arrangements. It is common and good for competition that existing businesses in good sites may be bought out by competitors for current use or conversion to a compatible use in another industry.

AMIF does not believe that Planning Schemes are substantially holding back or lessening competition in Australia.

Draft Recommendation 11 – Regulation review

AMIF RESPONSE – Do not agree – in current form, but support if part of intergovernmental agreement

It is proposed that: “All Australian Governments, including local government, should review regulations in their jurisdictions to ensure unnecessary restrictions on competition are removed.” AMIF suggests recommendations 11 is so broad as to be impractical to implement.

Whilst we understand the drive to reduce unnecessary regulation (also known as red tape) we can't see how all levels of government will see their way clear to identify and review regulations that are deemed to cause unnecessary restrictions on competition, without clear direction and process. This recommendation appears to be impractical in its current form and unlikely to be achieved by any government.

AMIF suggests that if an intergovernmental accord or agreement can be developed and include incentives and penalties for compliance and consistency of application, then an inclusion in actions required under the agreement could the type of review specified in Recommendation 11. AMIF would suggest that armed with improved competition policy objective, principles and definitions (where appropriate), the terms of reference for such a review could be better identified, and process better mapped and desired outcomes more likely to be achieved.

Draft Recommendation 12 – Standards review

Draft Recommendation 13 – Competitive neutral policy

Draft Recommendation 14 – Competitive neutrality complaints

Draft Recommendation 15 – Competitive neutrality reporting

AMIF RESPONSE – Generally all agreed:

Agree that Non- Government standards such as those produced by Australian Standards (a company, not a government body but often mistaken for one) should be subject to stringent testing as to the application of a public interest test to the formation and or review of standards they produce. The same application as applied to Government Regulations.

While broadly agreeing with recommendations 12 through 15, AMIF does raise the observation that there are occasions when the Commonwealth is the only entity with the capacity to make things happen in the national public interest, such is the scale or national importance of the infrastructure improvement. Some of the largest most defining national infrastructure projects would not have occurred if Competitive Neutrality was the only consideration.

Draft Recommendation 17 – Competition law concepts

AMIF RESPONSE – Agreed

Draft Recommendation 18 – Competition law simplification

AMIF RESPONSE – Agreed that this should be subject to further review to fully identify and understand potential consequences before any change.

Draft Recommendation 19 – Application of the law to government activities

AMIF RESPONSE - Agreed

Draft Recommendation 20 – Definition of market

AMIF RESPONSE - Agreed

AMIF is in agreement with this recommendation. It needs to be stated that by agreeing to this recommendation, it should not be interpreted that AMIF supports parallel imports of motor vehicles or other potential areas identified with the potential to negatively impact the automotive industry. AMIF's position is that as a definition in the broad sense the recommendation makes sense, but overarching public interest and other considerations still must still apply and cautions that this definition is not one that leads to misinterpretation or could be seen to be at odds with other provisions of the CCA.

Draft Recommendation 21 – Extra-territorial reach of the law

AMIF RESPONSE - Neutral

While AMIF understands the intent of the recommendation it is not satisfied how it might be applied in reality.

Draft Recommendation 22 – Cartel conduct prohibition

AMIF RESPONSE – Agree with some Do not agree with others:

AMIF agrees with the retention of civil and criminal prohibitions.

AMIF does not agree with the need to simplify provisions if the intent of provisions are lost and no longer serve to dissuade behaviours of cartel conduct. AMIF would argue that when the ACCC is afforded the resources to investigate an issue in depth, then it has proven it has the capacity to address inappropriate behaviours for which the provision was designed.

AMIF believes any simplification or reduction in the cartel conduct provisions takes away from the very issues that provisions were designed to address. Deterrence is a key driver and AMIF is concerned that without such deterrence being as rigid as possible then opportunities will be presented and achievements made to date for small business will be placed in jeopardy.

Draft Recommendation 23 – Exclusionary provisions

AMIF RESPONSE- Neutral

Draft Recommendation 24 – Price signalling

AMIF RESPONSE- Agree – provided there is no loss of current purpose in the extension to S45 to capture the provisions in Division 1A.

Draft Recommendation 25 – Misuse of market power

AMIF RESPONSE – Agree to Effects Test Do not agree to other suggested actions in current form:

AMIF suggests that attempts to minimise impacts on pro-competitive conduct, including some of the suggested actions in Recommendation 25, would reduce the effectiveness of the current provisions that encourage appropriate behaviours.

AMIF believes that greater examination of sections within a market through a comprehensive effects test could highlighted potential consequences.

Vertical operations are pro-competition in markets where there are low combined market share and concentration. However, AMIF would argue that once the structure of the market changes (as it has with the general insurers) and it becomes concentrated, in a specific product area such as motor vehicle insurance, it is naive to expect a small family business can survive unrestrained competition.

In the market of motor vehicle insurance provision, two powerful players effectively control 80% of the motor vehicle insurance market. One insurance group was allowed to be acquired by the largest player in the market, while another substantial player, also consisting of several brands, was acquired by the second largest player with both transactions ultimately seen as pro-competitive.

Unknown to consumers and largely unknown to policy makers and regulators, is that many of the popular and well known of car insurance brands are now owned by only two large market participants.

They may appear to be different product offerings, may be administered separately, have their own target markets, own price points etc. But dig further and the vertical integration in the 'back of house' for all brands is of a level which impacts small business competitors.

AMIF pointed to these issues in its submission to the Discussion Paper and reiterates to the Review Panel, that far deeper investigation into the social welfare consequences and long term consumer detriment must occur through an effects test.

AMIF believes competition law should continue to constrain corporates with substantial market power from exercising that power in a manner that controls prices either by using price discrimination or predatory pricing, refusal to deal, exclusive dealing and / or leverages off other partnerships, joint ventures or associations to squeeze supply and/ or control demand.

AMIF supports the suggested Effects Test. AMIF's predecessor, the Motor Trades Association of Australia (MTAA) and more than 17 other peak industry associations formed a Fair Trading Coalition that called for an Effects Test in its submission to the Review of the Trade Practices Act in July 2002 (Pg. 27-29).

AMIF believes an Effects Test properly allows all sectors of a market to be investigated so that potential consequences to which AMIF has referred throughout this submission can be identified and mitigate in an appropriate manner.

AMIF agrees dominant market players should be accountable for any negative financial impact on their smaller competitors, if they are found to have purposely damaged these smaller businesses, and that the effects test should be evidenced based.

Draft Recommendation 26 – Price discrimination

AMIF RESPONSE - Do not agree:

Draft Recommendation 27 – Third-line forcing test

AMIF RESPONSE - Do not agree:

Under no circumstances should the existing sections 47 (6) or (7) be diluted or removed from the existing arrangements which prohibit Third –Line Forcing as a per se breach. If sections 47 (6) and (7) were to be relaxed, so many anti-competitive actions which currently are in breach or require notification or authorisation could be freely applied to the detriment of consumers, competition and the public interest.

For example, AMIF can point to a current situation where a supplier of wholesale motorcycles is seeking to require that its franchisees only provide finance and insurance services from its own company supplier. This not only impacts the ability of franchisees to offer the community a choice of financial and insurance products, but potentially restricts choice to consumers at point of sale. AMIF argues that this lessens competition, places more burden on consumers and encourages practices that discourage competition.

The current provisions required the motorcycle manufacturer to notify the ACCC who are now investigating the application. AMIF believes suggested recommendation would weaken the intent of the provisions and increase the likelihood of negative impact on small business.

Another potential outcome AMIF could envisage is the issue highlighted in AMIF’s submission to the discussion paper. For example a major insurance company may instruct preferred smash repairers to buy replacement parts only from a joint venture that the insurer has entered into with a multinational parts supplier or a particular parts recycling business. If the smash repairer does not agree then the repair job will mysteriously go elsewhere.

While AMIF understands the desire to simplify such provisions and enhance a pro-competitive environment; AMIF remains concerned that all the suggested changes will do is open the floodgates to unintended consequences. For example AMIF believes potential negative impacts of vertical integration would be facilitated by the removal of the third-line forcing provisions.

In the parts supply example given above there may be many suppliers of parts and plenty of competition, but only the one insurer anointed supplier. Therefore the outcome would be that one large insurer would effectively force all quoting small business smash repairers to buy from one source, clearly to its advantage and to the disadvantage to the smash repairers and harmful to the choice of consumers. Ultimately other small business parts suppliers would find it difficult to compete and be forced out of the parts market. The trend would then be towards an unwelcome spare parts monopoly.

Forcing purchase of goods or services from a particular third party is anti-competitive in its nature and should not be encouraged in the CCA.

Draft Recommendation 28 – Exclusive dealing coverage

AMIF RESPONSE – Agreed

Draft Recommendation 29 – Resale price maintenance

AMIF RESPONSE – Agreed

Draft Recommendation 30 - Mergers

AMIF RESPONSE – Agree with elements but do not agree with Recommendations overarching theme:

AMIF agrees that there should be further consultation between the ACCC and business representatives (particularly small business representatives with the objective of delivering more timely decisions.

AMIF believes that the apparent current inability for policy makers and regulators to see or comprehend future potential impacts of decisions requires current merger provisions to be retained if not strengthened.

They should not be simplified or relaxed as proposed in the draft recommendations because in the opinion of AMIF to do so would exacerbate an issue plaguing the interpretation of competition law already. No, the examples are there in all industries, the inability by regulators to see or to comprehend future impacts of those decisions taken for the 'public benefit'. It would appear to this author that this argument has not been fully thought through as is testament to the current budget 'dilemma' faced by both the public but also industry and in particular that of SME's.

SME are the largest employer in Australia, so the question must be asked why regulators allow for mergers /takeovers such as Insurance Australia Group / Wesfarmers or Suncorp's takeover and buyout of the Promina Group both decisions have led to over 80% of the MV insurance market in the hands of two players. The public will not see a reduction in real terms of premiums and the repair industry will be forced to further reduce costs and the public will have less choice in who or where the vehicle is repaired. This scenario does not account for the thousands of SME employees who will lose their jobs as these entities put further downward pressure on businesses.

Changes to participants in the Insurance Industry over recent years are a further example of the level of sophistication in the application of current competition policy. Recent mergers and acquisitions on face value would appear to be pro-competitive and insurance companies would argue outcome delivered include enhanced competition, lower prices and lower premiums to Australian consumers.

Even when AMIF raised concerns regarding some of these acquisitions and mergers, due to the concentration of market power in specific sub markets and the potential for long term consumer detriment, the outcome was still determined to be pro-competitive and allowed.

It unfortunately has come as no surprise to AMIF that when afforded an opportunity to properly explain the impacts of these mergers and acquisitions; vertical integration of the motor vehicle insurance; and the resulting concentration of market power; that policy makers and regulators have been genuinely surprised by the nature of the market and issues impacting businesses such as motor body repairers.

Draft Recommendation 31 – Secondary boycotts enforcement

AMIF RESPONSE - Agreed:

Draft Recommendation 32 – Secondary boycotts proceedings

AMIF RESPONSE – Do not Agree:

AMIF is concerned that the elevation of proceedings will also disadvantage small business, due to their limited or non-existent ability to pay for the necessary legal advice that would be necessary in those jurisdictions.

AMIF is also concerned that by recommending other jurisdictions than those that currently apply could become the preferred choice of the major market players again placing further pressure on small businesses ability to raise issues or complaints.

Draft Recommendation 34 – Authorisation and notification

AMIF RESPONSE – Do not Agree:

AMIF suggests that the current arrangements should be retained. The current authorisation and notification process provides an appropriate level of assurance to all business, but particularly small business. The current authorisation and notification process notification and authorisation process

Draft Recommendation 35 – Block exemption power

AMIF RESPONSE - Neutral:

AMIF suggests more work is required to ascertain if exemptions based on before frameworks are developed and care should be exercised in regard to the EU or UK block exemptions frameworks are required

Draft Recommendation 36 – Section 155 notices

AMIF RESPONSE - Agreed

Draft Recommendation 37 – Facilitating private actions

AMIF RESPONSE - Agreed

Draft Recommendation 39 – Establishment of the Australian Council for Competition Policy

AMIF RESPONSE - Neutral

AMIF can see both positives and negatives with the proposed recommendation.

AMIF is of the view that greater synergies, improved streamlining of activity, and reduced costs to government may be better achieved by allowing the ACCC to perform the roles identified in addition to education advice and enforcement activities/

Under this model the ACCC would be accountable for the whole policy function as outlined for the ACCP. It would still see the NCC disbanded and the competition policy capability in Treasury and other government departments redirected to the ACCC.

AMIF suggests that with mooted improved governance and oversight contained in other draft report recommendations; adequate resourcing (which clearly it has not had in more recent times); and clearly defined separation of powers; that this option would reduce any likelihood of unintended duplication, costs of establishing and maintaining a separate organisation and remove the potential for disconnects between policy formation, implementation and enforcement. During a period of government service consolidation and

AMIF remains unconvinced that a need for such a Council has been demonstrated.

However, if it were to be established, then AMIF agrees the NCC and its functions be incorporated into the ACCP. AMIF also suggests that any competition policy capability within the Departments of Treasury, Finance, ACCC and any other government department and / or agency, be incorporated into the ACCP.

There would be an onus to ensure a cohesive, consistent and proactive linkage between the ACCP and the ACCC, government departments and other stakeholders.

Draft Recommendation 40 – Role of the Australian Council for Competition Policy

AMIF RESPONSE- Agreed:

If the ACCP were to be established then AMIF agrees with its role as described in recommendation 40.

Draft Recommendation 41 – Market studies power

AMIF RESPONSE - Agreed:

Draft Recommendation 42 – Market studies requests

AMIF RESPONSE - Agreed:

Draft Recommendation 43 – Annual competition analysis

AMIF RESPONSE- Agreed:

Draft Recommendation 44 – Competition payments

AMIF RESPONSE – Agreed:

Draft Recommendation 45 – ACCC function

AMIF RESPONSE – Agreed:

Draft Recommendation 46 – Access and pricing regulator functions

AMIF RESPONSE Agreed:

Draft Recommendation 47 – ACCC governance

AMIF RESPONSE - Agreed:

Draft Recommendation 48 – Media Code of Conduct

AMIF RESPONSE- Agreed:

Draft Recommendation 49 – Small business access to remedies

AMIF RESPONSE - Agreed:

In addition AMIF considers there to be merit in the exploration of potential criminal and / or civil penalties for proven retributive conduct.

AMIF believes having such penalties would encourage more small businesses to come forward and raise cases of abuse of market power, cartel conduct, third-line forcing etc.

A penalty regime for companies who deliberately and are proven to have interfered with supply chains, set unfair terms and conditions, apply inappropriate fees and charges, or bullied or harassed a small business competitor, among other actions, would provide protection to small businesses who decided to report.

AMIF can point to many examples of potentially improper conduct and behaviour, and in some circumstances have even obtained legal advice on behalf of some constituents, who subsequently failed to act due to fear of reprisals or retribution.

Draft Recommendation 50 – Collective bargaining

AMIF RESPONSE - Agreed:

Many of the issues in terms of competition policy application comes down to the ability of a small business to effectively negotiate and not be Overridden by a power powerful market player.

The opportunity for small businesses to collectively bargain is under-utilised because most small business owners are intimidated by the thought of taking action that may be seen by the bigger and more powerful bargaining party as provocative, intimidating and most small businesses in the retail motor trades feel powerless and fearful of retaliation and retribution.

However, that is not to say that AMIF does not want collective bargaining to work as it was intended therefore changes must be made to allow anonymity of the bargaining group and representation by associations or agents. Therefore we suggest that the ACCC be permitted to facilitate collective bargains via a process designed to ensure that small business owners can realistically collectively bargain with franchisors, suppliers, and contractor's etc.

AMIF suggests that provision could be drafted so that on a scale of action there was a corresponding anonymity. For example a peak association such as AMIF {or any one of its members} could represent a group of businesses, who believe they are being unfairly targeted and wish to take collective bargaining, but in the first stages would be able to maintain their anonymity, but later if the matter progressed to court, then businesses would be required to. Provide full details as part of the provision of evidentiary material.

It is for this reason that a penalty regime be introduced for behaviour or actions that were shown to be retaliatory or in retribution.

AMIF is of the opinion that collective bargaining is central to many of the issues facing small businesses in the retail motor trades.

Linkages should be established with the new Small Business Ombudsman Office and with expertise and skills within the ACCC.

AMIF is also of the view that should the ACCP be adopted by Government then a central area of focus should be established which acts as a 'clearing house' for any policy development, studies, research undertaken to ensure small business interests were considered.



Draft Recommendation 51 – Retail trading hours

AMIF RESPONSE – Do Not Agree:

AMIF does not believe this is a recommendation that should be in the draft report.

Ends.