



26th October 2017

The Commissioner

Competition Commission
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Pretoria

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Dear Sir

LINDSAY SAKER SUBMISSION ON THE DRAFT CODE OF CONDUCT FOR COMPETITION IN THE SOUTH AFRICAN AUTOMOTIVE INDUSTRY – VEHICLE REPAIR AND SERVICING AND PARTS SUPPLY

Background

The Competition Commission has issued for comment, a draft code of conduct which seeks to broaden the participation in the automotive sector and encourage access and growth for Historically Disadvantaged Individuals (HDI's).

Motus Vehicle Retail (LINDSAY SAKER) is a division of Motus Corporation (Motus), a subsidiary of Imperial Holdings Limited, a JSE-listed company and operates the largest dealer network in South Africa consisting of 287 dealerships, of which 198 are new vehicle franchise dealers.

The Franchise Dealer

Franchise vehicle dealers operate under a franchise agreement (otherwise known as a dealer agreement) wherein the franchisee (or the Approved Dealer) agrees to the terms of operating the business as a function of a vertical relationship. Based on a wealth of opinion, these arrangements are not anti-competitive, but rather do enhance inter-brand competition and result in pro-competitive gains and outcomes, ultimately benefitting the consumers. Being the largest dealer group, LINDSAY SAKER operates franchise dealers of almost every vehicle brand across all vehicle types from passenger to heavy commercial.

As with any franchise, be it a McDonalds or a Pick 'n Pay family store, in order to carry the name and benefit from the brand recognition and brand equity behind the name, a franchise dealer is required to play its part in this enterprise. The advent of the Consumer Protection Act, 68 of 2008 (CPA) gave rise to highly prescriptive franchising rules and processes offering a significant degree of protection to franchisees by granting them the status of a consumer for most provisions of the CPA while also requiring a full and detailed prospectus to be provided to a potential franchisee at least 10 business days prior to concluding a franchise arrangement. The Prospectus requires the franchisor to fully disclose the key points of the brand, including auditor-signed financial declarations, support structures, negatives to be aware of and franchise requirements.

Due to the CPA, any person wishing to become a franchise dealer fully understands the costs, returns on investment and risks before entering into such a relationship. As vehicle brands form part of massive global corporations, the need for a consistent look and feel for premises and a guarantee

of absolute quality and safety for consumers and their vehicles is paramount and unfortunately comes at a significant cost, in some cases upwards of R100,000,000.00 per dealer.

In return for such large-scale investment, franchisees require certain guarantees to provide a possible return to their funders, shareholders and employees. If a dealer cannot be sustainable, no investment can take place. In this regard, vertical arrangements are necessary. The Competition Tribunal has ruled on several occasions on vertical arrangements with the Competition Appeal Court also wading in to the matter. The general outcome from the case law is that it was found that when examining exclusive vertical agreements, a question that must be asked is “whether the exclusionary right will give one or both parties to the arrangement the power to raise prices in the market”, and to balance the “diminution of intra-brand competition against the pro-competitive impact of same arrangement on inter-brand competition.” The Commission also found that the “exclusive dealing” clauses “do not have the effect of substantially lessening or preventing competition in the market”. The Commission was also satisfied that the “pro-competitive gains outweigh any anti-competitive effects”.

In a market with upwards of 50 passenger vehicle brands (almost 4,000 model derivatives), selling only 550,000 units through 2000 dealers, competition for survival and market-share is intense. Franchisors invest heavily in their dealers through special incentives, targets and schemes to promote their particular brand over all others and to give support to the investments made by the franchisee.

Without a franchisor, the franchisee cannot exist and therefore it is vital to ensure the viability of OEM's and Importers. With the number of franchised dealers in LINDSAY SAKER, the recent disinvestment of General Motors, Chery, Dodge and Chrysler has seen those branded dealers either close or have to desperately find a new brand to replace with (each with massive new investment, training, tooling et al) which all places jobs at risk and consumers choice, safety and access to innovation and transport at risk.

Even where the franchisor is a stable player, franchise dealers face immense sustainability hurdles, from operating in one of the most competitive industries in the country, to compliance with upwards of 90 pieces of legislation, to offering a safe product that is affordable to a consumer and ensures a safe investment for that consumer.

The effect of the Draft Code on LINDSAY SAKER dealers

From a dealer perspective, the code as drafted would, we believe, have a disastrous effect on the investments made by LINDSAY SAKER, the thousands of jobs supported directly by LINDSAY SAKER, the down-stream jobs and EME/SMME's that supply LINDSAY SAKER with everything from client gifts to wheels to valet services.

Add to this the fact that if the draft code is published in its current form, with upwards of 75% of consumer sales being financed, any risk to the safety or security of the vehicle being financed will require the bank/ credit provider to relook at its lending and risk models. The effect of this would be tougher credit approval criteria due to higher asset risk as well as greater (and costlier) undertakings by dealers to underwrite liability and risk that a bank/ credit provider may face due to safety concerns of the consumer. Not only will consumers have less access to vehicles (vital in achieving economic mobility) but dealers will struggle to remain solvent, leading to more closures and job losses.

Expanding on the above, the code does not take into account the significant investment made by Franchise Dealers (many of whom are independent and self-funded, not part of groups) not only to meet the Corporate Identity requirements of the OEM but also with regard to workshops, service, parts, training, dealers and operating systems (often linked to the OEM globally).

LINDSAY SAKER believes that many of the elements that seeks to be regulated in the draft code are already governed by highly prescriptive legislation including, but not limited to, the CPA, National Credit act, Financial Advisory and Intermediary Services Act, Competition Act, Employment Equity Act and so forth and any attempt to rewrite such existing laws into a voluntary code will lead to uncertainty for both business and consumers alike. Further, we feel that the impact on consumers will be dire. Without the training and expertise of technicians to work on exceptionally complex machinery, the time and ability to diagnose issues will increase (with a resultant increase in labour and overall costs to the consumer), leasing or borrowing special tools and equipment by independent service providers who have no training on how to use the equipment or how to calibrate it or interpret the outcomes of the diagnostic machinery will lead to incorrect determinations of issued and cause major safety risk to consumers. This is exacerbated in cases where the vehicles are more advanced in terms of connectivity and systems

Using the Code to promote transformation

LINDSAY SAKER is dedicated to transformation and has articulated such in its business strategy with 68% of all staff in the group being black and representation at all levels being targeted as part of the KPA's of CEO's and other senior executives.

If the nature of the business and its very model significantly threatened by the proposed code, it is highly likely that all the work undertaken to date may be scuppered and the transformation goals internally set becoming impossible to achieve.

Conclusion

Being the largest dealer business in South Africa representing almost all franchise brands as well as several in-house used car brands, LINDSAY SAKER is a significant employer and investor in the economy. It is our submission that the proposed document published for comment will not achieve the goal of transformation or of opening up the market, but will rather lead to economic turmoil, with massive disinvestment, wholesale job losses and consumers paying more, receiving less value and protection and ultimately placing their lives at risk.

It is for this reason that LINDSAY SAKER supports the submission of the National Automobile Dealers Association.

Yours faithfully,



Denton Thiele
Managing Director

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