



## Motor Trades Association of Australia

Scott Rogers  
Competition and Consumer Policy Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Mr Rogers

Thank you for the opportunity to offer comment on the adequacy of the current interpretation of the term 'understanding' in the *Trade Practices Act 1974* (TPA) to capture anticompetitive conduct.

MTAA is the peak national representative organisation for the retail, service and repair sector of the Australian automotive industry. As part of its representative role, the Association represents the interests, at a national level, of over 100,000 retail motor trade businesses which have a combined turnover of over \$160 billion and employ more than 308,000 people. MTAA is, therefore, the largest 'stand-alone' small business association in Australia. The Association is a federation of the various state and territory motor trades associations, as well as the Service Station Association (SSA) and the Australian Automobile Dealers Association (AADA). MTAA also has a number of Affiliated Trade Associations (ATAs), which represent particular sub-sectors of the retail motor trades ranging from farm machinery dealers to automotive parts recycling.

At this point in time MTAA believes the current meaning of 'understanding' in section 45 of the TPA is adequate. MTAA would therefore not support any change to section 45 to further define the meaning of understanding. Equally, the Association would not recommend any changes be made to the TPA that might influence judicial interpretation of the term 'understanding'.

MTAA suggests also that if the Government is considering amending the Act to allow the Courts to 'infer' conduct then that is an issue which should be considered in a context wider than just section 45 of the TPA.

MTAA would therefore recommend that prior to the Government making any changes to section 45, it seek the views of stakeholders on the broader issue of whether, as a general rule, the Act should be amended to allow Courts to 'infer' behaviour.

I trust these comments are of use to you.

Yours sincerely

**MICHAEL DELANEY**  
**Executive Director**

30 March 2009