

29 May 2020

[REDACTED]

By email only [REDACTED]

Dear [REDACTED]

### **Official Information Act 1982 #19.156 - Volkswagen**

1. We refer to your request received on 9 March 2020 for information about:
  - 1.1 whether the Commerce Commission (Commission) is intending to prosecute Volkswagen (VWAG) regarding the diesel emissions scandal; and
  - 1.2 if the Commission is not planning any action, whether any other branch of government is, or who else you should contact in relation to the matter.
2. We have treated this as a request for information under the Official Information Act 1982 (OIA).
3. On 6 April 2020, the Commission extended the time limit by which we must make a decision on your request to 29 May 2020.

### **Our response**

4. We have decided to grant your request. The Commission is not intending to prosecute or take any other action against VWAG in relation to the diesel emissions 'scandal' at present.
5. In 2018, the Commission issued compliance advice to European Motor Distributors Limited (EMD) in relation to its supply of VWAG (and other) vehicles which:
  - 5.1 were explicitly described as complying with particular European emissions standards and/or having associated emissions characteristics, when in fact those standards and/or characteristics had not been properly achieved; and/or
  - 5.2 were supplied on the implicit understanding that they complied with the relevant New Zealand certification regime, which in fact such compliance was based on improperly achieved certification.

6. VWAG's head office is in Germany. VWAG has no subsidiary company or legal presence in New Zealand. EMD is a separate legal entity under different corporate ownership.
7. EMD holds the sole New Zealand import and distribution rights for the Volkswagen brand (in addition to the Audi, Skoda and Porsche brands). EMD imports European specification vehicles directly from VWAG in Germany and is responsible for all aspects of compliance, sales and marketing within New Zealand. However, EMD relies on information and specifications provided by VWAG for all marketing.
8. EMD engaged fully and co-operatively with the Commission and advised that it would work with VWAG to apply fixes to all affected vehicles to resolve any issues. It identified approximately 9000 vehicles in New Zealand, supplied between 2008 and 2016, across the Volkswagen, Audi, Skoda and Porsche brands which contained the defeat device.<sup>1</sup>
9. This total consists of predominantly vehicles imported by EMD, however it also includes second hand or grey market vehicles, imported by third parties from other regions. EMD undertook to offer and provide the relevant software update to all affected vehicles in New Zealand, regardless of their origin. The cost of providing the update and any remedial work was met by VWAG.
10. We considered the Commission's Enforcement Response Guidelines,<sup>2</sup> in particular the extent of harm, seriousness of the conduct and public interest. The Commission also considered the practicality of investigating and serving documents on VWAG in Germany.
11. On balance, we considered that compliance advice was the appropriate outcome. You can find further information about compliance advice and the Commission's other enforcement responses in the Enforcement Response Guidelines available on our website.
12. The Commission is not aware of any New Zealand Government department(s) taking action against Volkswagen in relation to diesel emissions.
13. Please note the Commission will be publishing this response to your request in the Official Information Act register on our website.<sup>3</sup> Your personal details will be removed from the published response.

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<sup>1</sup> In September 2015, the United States Environmental Protection Agency (EPA) issued a notice of violation to VWAG, having identified software in some diesel vehicles which activated specific emissions controls during laboratory testing (the defeat device). The defeat device ensured that, during laboratory testing, the vehicle emissions, specifically Nitrogen Oxide (NOx), were below permitted levels when this may not in fact have been the case during normal use.

<sup>2</sup> <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-response-guidelines>

<sup>3</sup> <https://comcom.govt.nz/about-us/requesting-official-information/oia-register>

14. Please do not hesitate to contact us at [uia@comcom.govt.nz](mailto:uia@comcom.govt.nz) if you have any questions about this request.

Yours sincerely

*Mary Sheppard*  
OIA Coordinator

Released under the Official Information Act 1982