



Our ref: N41001; N93063; N93988
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22 December 2020

Mark Robinson
General Manager, Ownership Experience
Subaru (Aust) Pty Limited
4 Burbank Place
Norwest, NSW, 2153

By email: [REDACTED]

Dear Mr Robinson

Subaru Aust Pty Limited - Use of exclusive dealing notifications

In light of the ACCC's recent consideration of a notification lodged by Mitsubishi Australia in relation to extended warranty arrangements, I am writing to enquire about the extent to which Subaru (Aust) Pty Limited (**Subaru**) continues to rely upon the protections provided by three exclusive dealing notifications previously lodged with the Australian Competition and Consumer Commission (**ACCC**).

I note Subaru lodged the following notifications in 2006, 2007 and 2009, in respect of which the ACCC advised it would not take further action at that time:

- [N41001](#) (2006)—regarding the supply of extended warranty services to owners of vehicles on condition the owner acquires aftersales servicing and support services from a Subaru dealer (and refusal to supply extended warranty services if the owner does not comply with this condition).
- [N93063](#) (2007)—regarding the supply of extended warranty services to purchasers of used Subaru vehicles which meet certain criteria on condition the purchaser acquires aftersales servicing for the vehicle from a Subaru service provider (and refusal to supply extended warranty services if the purchaser does not comply with this condition).
- [N93988](#) (2009)—regarding the supply of extended warranty services to purchasers of genuine Subaru accessories on condition the purchaser acquires the accessories and fitting services from authorised Subaru dealers.

The ACCC may revisit a notification at any time and take steps to remove the protection provided by any notification. Triggers for review might include complaints from those affected by the notified conduct, a change in market conditions or new information coming to light. As you may be aware, following changes to Australia's competition laws in 2017, third line forcing is no longer a per se breach of the *Competition and Consumer Act 2010* and the ACCC can only revoke a notification if it is satisfied that the notified conduct:

- has the purpose, effect or likely effect of substantially lessening competition, and
- in all the circumstances, will not result in likely public benefit which would outweigh the likely public detriment.

To understand whether Subaru is relying on the notifications, the ACCC is seeking the following information in respect of each notification:

- Is Subaru engaging in the conduct the subject of the notification?
- If yes, please provide a detailed description of the extended warranty being offered by Subaru.
- If Subaru is not using this notification, would Subaru consider withdrawing the notification?

A copy of this letter and your response (subject to any request for material to be excluded) will be placed on the public register.

I would appreciate a response from Subaru to this enquiry by 31 January 2021.

If you would like to discuss any part of this letter, please contact Andrew Mahony on 03 9290 1983 or by email to Andrew.Mahony@accc.gov.au.

Yours sincerely



David Jones
General Manager
Competition Exemptions