



Australian Competition & Consumer Commission

PO Box 1199
Dickson ACT 2602
470 Northbourne Ave
Dickson ACT 2602
Australia

Ph (02) 6243 1111
Fax (02) 6243 1199

Our Ref: C2003/383
Contact Officer: Danielle Staltari
Contact Phone: (02) 6243 1362

10 April 2003

Mr Michael Wilton
Partner
Deacons
GPO Box 4592
MELBOURNE VIC 3001

Dear Mr Wilton

Notification of Exclusive Dealing – Michelin Australia Pty Ltd (N91085)

I refer to the above third line forcing notification lodged by Michelin Australia Pty Ltd (Michelin Australia) on 18 March 2003 with the Australian Competition and Consumer Commission (the Commission). Legal immunity from the *Trade Practices Act 1974* (the Act) commenced on 1 April 2003. This notification has been placed on the Commission's public register.

Description of the notified conduct

The notification details a proposed arrangement in which Michelin Australia proposes to allow some of its dealers a rebate on new truck and bus tyres if they also acquire retreaded recamic-branded tyres from franchisees of Michelin Australia's recamic retreading system.

I note that Michelin Australia has claimed confidentiality for the size of the rebate and the specific conditions which dealers must satisfy to receive the rebate.

The Commission is often reluctant to accept a claim for confidentiality in relation to the size of any discount associated with the proposed third-line forcing arrangements. The Commission often forms the view, that in certain circumstances, the size of the discount is critical in assessing the likely detriment and as such, those details should be made available for interested party comment. Having regard to the market characteristics associated with the current notification and having regard to the size of the proposed discount, the Commission does not at this time object to the claim for confidentiality.



However, the Commission is of the view that any change in the proposed level of discount would constitute a variation in the conduct notified and would not be protected under the current notification.

Overpayment of fee

A fee of \$1000 was paid in respect of the notification lodged by Michelin under section 93(1) of the Act for conduct pursuant to section 47(6) of the Act. The fees payable to the Commission for applications or notices are detailed in the Trade Practices Regulations. A fee of \$100 is payable by proprietary limited companies.

I will forward a reimbursement for \$900 at a later date once the cheque has been processed by the Commission.

Conclusion

On the basis of the information that you have provided, it is not intended that further action be taken in relation to the notification lodged by Michelin Australia.

As with any notification, please note that the Commission may act to remove the immunity afforded by this notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

This letter has been placed on the Commission's public register. If you wish to discuss any aspect of this matter, please contact Danielle Staltari on (02) 6243 1362.

Yours sincerely



Tim Grimwade
General Manager
Adjudication Branch