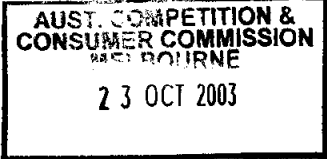


21 October 2003

RIALTO TOWERS 525 COLLINS STREET MELBOURNE
GPO BOX 769G MELBOURNE VIC 3001 AUSTRALIA
DX 204 MELBOURNE www.minterellison.com
TELEPHONE +61 3 8608 2000 FACSIMILE +61 3 8608 1000



Attention: Ms Amanda Dadd

Mr Tim Grimwade
General Manager - Adjudication
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

FILE No:
DOC: DOB 40797
MARS/PRISM:

Dear Sir

Subaru (Aust) Pty Ltd, General Motors Acceptance Corporation, Australia, Interleasing (Australia) Limited and Swann Insurance (Australia) Pty Ltd

We act on behalf of Subaru (Aust) Pty Ltd ('**Subaru Australia**'). We are authorised to lodge the attached notification on behalf of our client and related notifications on behalf of General Motors Acceptance Corporation, Australia ('**GMAC**'), Interleasing (Australia) Limited ('**Interleasing**') and Swann Insurance (Australia) Pty Ltd ('**Swann**'). We enclose:

- notifications under section 93(1) of the *Trade Practices Act 1974* ('**TPA**'); and
- a cheque in the amount of \$600 (\$100x2 + \$200x2) as payment of the required fees.

1. Background

The parties

- 1.1 Subaru Australia imports Subaru-branded motor vehicles and associated spare parts and accessories.
- 1.2 Subaru Australia has established a network of authorised dealers within Australia ('**Dealers**'). Under a Dealer Sales and Service Agreement ('**Dealer Agreement**'), the Dealers sell Subaru motor vehicles, spare parts and accessories in the retail market. The Dealers also service Subaru motor vehicles. The models of Subaru motor vehicles sold by the Dealers include the Liberty, Outback, Impreza and Forester ranges.
- 1.3 Dealers are permitted, but not required, to obtain wholesale (or 'inventory' or 'floorplan') finance from a third party to enable the Dealers to purchase motor vehicle stock from Subaru Australia. Dealers are also permitted, but not required, to offer their customers finance and/or insurance alternatives for their motor vehicles, under agency arrangements with finance and insurance companies.
- 1.4 Amongst other things, GMAC carries on the business of providing wholesale finance to motor vehicle Dealers and retail finance to motor vehicle consumers (including

commercial purchasers). Under an agreement with Subaru Australia, GMAC has an exclusive licence to offer finance products and services under the name 'Subaru Finance' in Australia. GMAC also has an exclusive licence to allow others to offer insurance products and services under the name 'Subaru Insurance'. Those rights may be sub-licensed by GMAC with the consent of Subaru Australia.

- 1.5 Currently, around 26% of Subaru Dealers stock their inventory by utilising wholesale finance from GMAC ('**Wholesale Dealers**'). The remainder of the Dealers use wholesale finance from other providers (including specialist floorplan providers or other commercial credit providers) ('**Non-Wholesale Dealers**'). Wholesale Dealers effect approximately 50% of Subaru new vehicle retail sales.
- 1.6 Swann is a general insurer, offering a range of consumer credit and motor vehicle related products in partnership with financial institutions, motor vehicle and motor cycle manufacturers, dealers and financiers. Subaru Australia has consented to GMAC's proposal to grant Swann a sub-licence to underwrite comprehensive motor vehicle insurance products under the 'Subaru Insurance' brand. At least during its commercial pilot stage, Subaru Insurance will be offered to consumers through Wholesale Dealers.
- 1.7 Interleasing is a wholly-owned subsidiary of GMAC offering full service leasing products in the Australian market. Subaru Australia will grant Interleasing a licence to offer full service leasing and motor vehicle maintenance products under the 'Subaru Full Service Leasing' brand. Again, at least during its commercial pilot stage Subaru Full Service Leasing will be offered to consumers through Wholesale Dealers.
- 1.8 GMAC is a wholly owned subsidiary of General Motors Corporation (incorporated in Delaware, USA). General Motors Corporation has a 20% shareholding in Fuji Heavy Industries Limited, the overseas manufacturer of Subaru-branded vehicles. Fuji Heavy Industries Limited has an 8% shareholding in Subaru Australia. Swann is wholly-owned by CGU Insurance Limited, and is not related to either GMAC or Subaru Australia.

Promotional proposal

- 1.9 Under the various arrangements proposed between Subaru Australia, GMAC and/or Swann, Wholesale Dealers would be invited to offer Subaru Insurance products to their retail customers on behalf of Swann. Wholesale Dealers would also be invited to participate in limited promotions, supported by GMAC and/or Swann, in addition to the extensive program of brand and dealer network promotions sponsored by Subaru Australia. These promotions would be offered to consumers (including commercial consumers) initially through Wholesale Dealers and would include one or a combination of:
 - a discounted rate of finance on Subaru Finance retail financing products to consumers who purchase a new Subaru motor vehicle from a Wholesale Dealer;
 - an 'insurance' rebate to consumers who purchase a new Subaru motor vehicle from a Wholesale Dealer; and/or

- an insurance rebate to new vehicle consumers who purchase a Subaru Insurance comprehensive motor vehicle policy from Swann.
- 1.10 Significant retail savings will accrue to consumers from the additional promotions. For example, the insurance rebates will typically be offered in sums between \$100 - \$3,000. On a base-model Subaru Outback Wagon sold at the recommended retail price of \$38,180, at a discounted interest rate of 4.99% consumers would save approximately \$1,150 over the term of a 36 month hire purchase arrangement (as compared to the current cost of retail finance).
- 1.11 Similarly, under the arrangements between Subaru Australia and Interleasing, Wholesale Dealers would be invited to offer Subaru Full Service Leasing products to their retail customers on behalf of Interleasing.
- 1.12 It is currently anticipated that both Subaru Insurance and Subaru Full Service Leasing products will be made available to consumers via all Subaru authorised dealers after a commercial pilot period.
- 1.13 It is contemplated that a contribution to the discount and rebate savings will be made in part by Subaru Australia and its parent Inchcape Motors Australia Limited and in part by the relevant Dealer, who may reimburse GMAC and/or Swann (as may be relevant). In other words, the means by which the benefit is delivered to the consumer (eg by way of a rebate, discounted premium of interest rate) and the corporation who actually funds the benefit (eg Subaru Australia, GMAC or Swann) may vary for different promotions. Depending on the structure of the relevant subvention payments, Subaru Australia may therefore supply particular rights or benefits, or offer or allow particular discounts, allowances, rebates or credits, to Wholesale Dealers.

2. Notified Conduct

- 2.1 In our view, the notified conduct does not contravene sections 47(6) and (7) of the TPA. From the perspective of Subaru Australia, this is because the mere payment of money does not constitute a service (*Queensland Aggregates Pty Ltd v TPC* (1981) 57 FLR 314 at 318). From the perspective of GMAC, Swann and Interleasing, this is due to the absence of futurity in the consumers' vehicle purchase obligation (*SWB Family Credit Union Ltd v Parramatta Tourist Services Pty Ltd* (1980) 48 FLR 445). In this regard, the purchase of financial services and/or insurance is secondary to that of the motor vehicle - ie. the consumer must acquire the vehicle before they acquire their finance or insurance. On this basis, it would be artificial to characterise GMAC, Swann or Interleasing, the finance and insurance companies, as forcing the consumer to deal with the car dealer. However, our clients are concerned that the conduct could alternatively be characterised in a way which could technically contravene sections 47(6) and (7).
- 2.2 Out of an abundance of caution, in order to minimise the risk of contravening sections 47(6) and (7), Subaru Australia, GMAC, Swann and Interleasing wish to notify the conduct described above under section 93(1).

3. Competition Issues

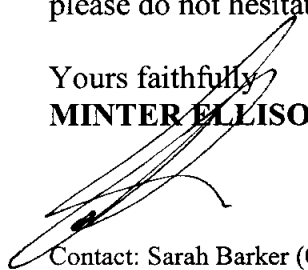
- 3.1 We submit on behalf of our clients that the Commission should not serve a notice under section 93(3A) of the TPA because:
- (a) the conduct in question will not adversely affect competition in any relevant market; and
 - (b) the conduct in question will result in public benefits and no public detriment.
- 3.2 We do not believe that the notified conduct can have any adverse effect on competition in any of the relevant markets. We consider that the relevant markets for assessing this notification are the markets for providing wholesale financial services to motor vehicle dealers, the retail market for motor vehicles, and the retail markets for consumer finance and general insurance. All these markets are highly competitive. For example, Subaru's market share of new passenger vehicles sold in Australia is approximately 3.5%. Accordingly we do not consider that the conduct will create barriers to entry or otherwise harm competition in the relevant markets. Further information in relation to these markets can be provided to the Commission, if requested.
- 3.3 We believe the notified conduct will generate a number of public benefits. First, consumers will be offered less expensive finance with which to acquire motor vehicles, and a contribution towards rising insurance costs, as a result of the proposal. Secondly, the corporate and commercial relationships between Subaru Australia, GMAC (trading as Subaru Finance and, through its Interleasing subsidiary, Subaru Full Service Leasing) and Swann (under its Subaru Insurance policies) will enable each company to offer a more competitive product, and therefore foster business efficiency. Thirdly, the operation of a more competitive finance product will encourage competitors of Subaru Australia, GMAC, Swann and Interleasing to offer similar value-added services, and therefore promote competition in the relevant markets. These factors will ultimately enhance consumer welfare via the reduction in the cost of motor vehicle finance, leasing and insurance.
- 3.4 We believe the notified conduct will have little, if any, public detriment. Some Non-Wholesale Dealers may regard this proposal as disadvantageous as it is not available to them. Nevertheless, Subaru Australia or GMAC are not restricting the choice of Dealers, who remain free to obtain wholesale motor vehicle finance from the financier of their choice on the competitive terms offered by those financiers. Similarly, whilst some consumers may consider that their choice of dealer, financier, full service leasing provider or insurer is limited by the exclusive availability of the offer through Wholesale Dealers, consumers' genuine choice to deal with any financier (or motor vehicle dealer) based on the competitive terms offered by those financiers (or dealers) is not restricted. Similarly, the consumers remain free to deal with the insurer or full service leasing service provider of their choice.

4. Conclusion

- 4.1 For the reasons set out above, we do not believe the Commission should serve a notice under section 93(3A) of the TPA in respect of this notification. This is because the notified conduct will cause little, if any, detriment and will generate public benefits.

If you have any questions in relation to this notification or require any further information, please do not hesitate to contact Sarah Barker of our office.

Yours faithfully
MINTER ELLISON



Contact: Sarah Barker (03) 8608 2168 sarah.barker@minterellison.com
Partner responsible: Peter George (03) 8608 2634
Our reference: PAG 30-3888792

FORM G

COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 - Sub-section 93(1)***EXCLUSIVE DEALING
NOTIFICATION**

To the Australian Competition and Consumer Commission:

Notice is hereby given in accordance with sub-section 93(1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or 9(a), (b), (c) or (d) of that Act in which the person giving notice engaged or proposes to engage.

1. (a) **Name of person giving notice:**

Subaru (Aust) Pty Limited ('Subaru Australia')
ABN 95 000 312 792

(b) **Short description of business carried on by those persons:**

Wholesale supply of imported motor vehicles, spare parts and accessories, and associated services to authorised dealers ('Dealers').

(c) **Address in Australia for service of documents on those persons:**

C/- Sarah Barker
Minter Ellison Lawyers
525 Collins Street
MELBOURNE VIC 3000

2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

Subaru motor vehicles
Wholesale (inventory / floorplan) finance
Retail commercial and consumer finance
Retail general insurance

(b) **Description of the conduct or proposed conduct:**

Subaru (Aust) Pty Ltd giving or allowing or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply of Subaru vehicles to Dealers on condition that Dealers will acquire wholesale finance from General Motors Acceptance Corporation.

Subaru (Aust) Pty Ltd refusing to give or allow a discount, allowance, rebate or credit in relation to the supply of Subaru vehicles to Dealers for the reason that Dealers have not acquired or have not agreed to acquire wholesale finance from General Motors Acceptance Corporation.

Subaru (Aust) Pty Ltd supplying or offering to supply goods or services or giving or allowing or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply of Subaru vehicles to consumers on condition that the consumers will acquire finance from General Motors Acceptance Corporation.

Subaru (Aust) Pty Ltd refusing to supply goods or services or refusing to give or allow a discount, allowance, rebate or credit in relation to the supply of Subaru vehicles to consumers for the reason that the consumers have not acquired or have not agreed to acquire finance from General Motors Acceptance Corporation.

Subaru (Aust) Pty Ltd supplying goods or services or giving or allowing or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply of Subaru vehicles to consumers on condition that the consumers will acquire insurance from Swann Insurance (Australia) Pty Ltd.

Subaru (Aust) Pty Ltd refusing to supply goods or services or refusing to give or allow a discount, allowance, rebate or credit in relation to the supply of Subaru vehicles to consumers for the reason that the consumers have not acquired or have not agreed to acquire insurance from Swann Insurance (Australia) Pty Ltd.

3. (a) Class or classes of persons to which the conduct relates:

*Dealers authorised to sell Subaru motor vehicles.
Consumers of Subaru motor vehicles.*

(b) Number of those persons-

(i) At present time:

Approximately 28,000 Subaru vehicles are sold in Australia per annum, from a network of 108 authorised dealers. Approximately 50% of consumer purchases are from dealers who have acquired wholesale floorplan finance from GMAC ('Wholesale Dealers').

Around 20% of Subaru vehicle purchases from Wholesale Dealers, and 10-15% of total Subaru purchases (approximately 2,800 per annum) are financed by consumers with Subaru Finance. Subaru Insurance is not currently offered.

(ii) Estimated within the next year:

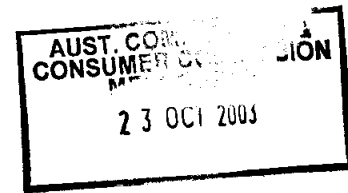
As above. Subaru Insurance has a target to insure 10-15% of all Subaru vehicles sold within 12 months of its launch.

(c) **Where the number of persons stated in item 3(b)(i) is less than 50, their names and addresses.**

Not applicable

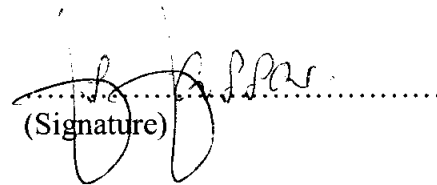
4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:**

*Sarah Barker
Minter Ellison Lawyers
Level 23
525 Collins Street
MELBOURNE VIC 3000*



DATED this ~~22~~ day of October, 2003

SIGNED by/on behalf of Subaru (Aust)
Pty Ltd


.....
(Signature)

Chris Cassar
Retail and Business Development
Manager

FORM G

COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 - Sub-section 93(1)*EXCLUSIVE DEALING
NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given in accordance with sub-section 93(1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or 9(a), (b), (c) or (d) of that Act in which the person giving notice engaged or proposes to engage.

1. (a) Name of person giving notice:

*General Motors Acceptance Corporation, Australia ('GMAC')
ACN 007 480 382*

(b) Short description of business carried on by those persons:

Supply of wholesale (inventory) finance and retail (consumer and commercial) finance services.

(c) Address in Australia for service of documents on those persons:

*C/- Sarah Barker
Minter Ellison Lawyers
525 Collins Street
MELBOURNE VIC 3000*

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

*Subaru motor vehicles
Retail commercial and consumer financial services*

(b) Description of the conduct or proposed conduct:

General Motors Acceptance Corporation, Australia giving or allowing or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply of finance services to consumers of Subaru motor vehicles on condition that the consumers will acquire their vehicle from a Wholesale Dealer.

General Motors Acceptance Corporation, Australia refusing to give or allow a discount, allowance, rebate or credit in relation to the supply of finance

services to consumers of Subaru motor vehicles for the reason that the consumers have not acquired or have not agreed to acquire their vehicle from a Wholesale Dealer.

3. (a) Class or classes of persons to which the conduct relates:

Consumers of new Subaru motor vehicles.

(b) Number of those persons-

(i) At present time:

Approximately 28,000 Subaru vehicles are sold in Australia per annum. Approximately 50% of consumer purchases are from dealers who have acquired wholesale floorplan finance from GMAC ('Wholesale Dealers'). Around 20% of Subaru vehicle purchases from Wholesale Dealers, and 10-15% of total Subaru purchases (approximately 2,800 per annum) are financed by consumers with Subaru Finance.

(ii) Estimated within the next year:

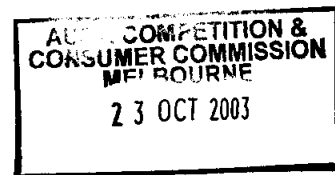
As above.

(c) Where the number of persons stated in item 3(b)(i) is greater than 50 include the relevant names and addresses for your records.

Not applicable

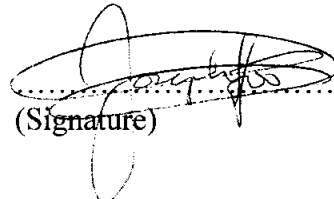
4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

*Sarah Barker
Minter Ellison Lawyers
Level 23
525 Collins Street
MELBOURNE VIC 3000*



DATED this 22ND day of October, 2003

SIGNED by/on behalf of General
Motors Acceptance Corporation,
Australia


(Signature)

Joseph Hoo
Legal Counsel - Asia Pacific

FORM G

COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 - Sub-section 93(1)*EXCLUSIVE DEALING
NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given in accordance with sub-section 93(1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or 9(a), (b), (c) or (d) of that Act in which the person giving notice engaged or proposes to engage.

1. (a) **Name of person giving notice:**

Swann Insurance (Australia) Pty Ltd ('Swann')
ACN 000 886 680

(b) **Short description of business carried on by those persons:**

Supply of retail consumer credit and motor vehicle insurance.

(c) **Address in Australia for service of documents on those persons:**

C/- Sarah Barker
Minter Ellison Lawyers
525 Collins Street
MELBOURNE VIC 3000

2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

Subaru motor vehicles.
General insurance services.

(b) **Description of the conduct or proposed conduct:**

Swann Insurance (Australia) Pty Ltd supplying insurance services to consumers of Subaru motor vehicles on condition that the consumers will acquire their vehicle from a Wholesale Dealer.

Swann Insurance (Australia) Pty Ltd refusing to supply insurance services to consumers of Subaru motor vehicles for the reason that the consumers have not acquired or have not agreed to acquire their vehicle from a Wholesale Dealer.

Swann Insurance (Australia) Pty Ltd giving or allowing or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply of

insurance services to consumers of Subaru motor vehicles on condition that the consumers will acquire their vehicle from a Wholesale Dealer.

Swann Insurance (Australia) Pty Ltd refusing to give or allow a discount, allowance, rebate or credit in relation to the supply of insurance services to consumers of Subaru motor vehicles for the reason that the consumers have not acquired or have not agreed to acquire their vehicle from a Wholesale Dealer.

Swann Insurance (Australia) Pty Ltd supplying to Dealers the right to offer insurance products to consumers on condition that the Dealers will acquire wholesale finance from General Motors Acceptance Corporation.

Swann Insurance (Australia) Pty Ltd refusing to supply to Dealers the right to offer insurance products to consumers for the reason that the Dealers have not acquired or have not agreed to acquire wholesale finance from General Motors Acceptance Corporation.

3. (a) Class or classes of persons to which the conduct relates:

*Subaru authorised dealers.
Consumers of new Subaru motor vehicles.*

(b) Number of those persons-

(i) At present time:

Approximately 28,000 Subaru vehicles are sold in Australia per annum, from a network of 108 authorised dealers. 29 of these dealers are Wholesale dealers. Around 50% of Subaru vehicles are currently sold through Wholesale Dealers. Subaru Insurance is not currently offered.

(ii) Estimated within the next year:

As above. Subaru Insurance has a target to insure 10-15% of all Subaru vehicles sold within 12 months of its launch.

(c) Where the number of persons stated in item 3(b)(i) is greater than 50 include the relevant names and addresses for your records.

Not applicable

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

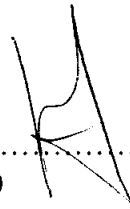
*Sarah Barker
Minter Ellison Lawyers
Level 23
525 Collins Street
MELBOURNE VIC 3000*



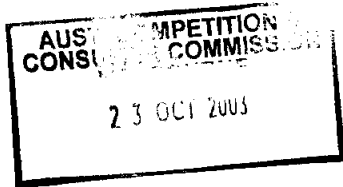
DATED this 21 day of October, 2003

SIGNED by/on behalf of Swann
Insurance (Australia) Pty Ltd

.....
(Signature)



Paul Fleming
Compliance Manager



N40612
Regulation 9

FORM G

COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 - Sub-section 93(1)*EXCLUSIVE DEALING
NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given in accordance with sub-section 93(1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or 9(a), (b), (c) or (d) of that Act in which the person giving notice engaged or proposes to engage.

1. (a) **Name of person giving notice:**

Interleasing (Australia) Limited ('Interleasing')
ACN 008 589 562

(b) **Short description of business carried on by those persons:**

Supply of full service leasing services in relation to motor vehicles.

(c) **Address in Australia for service of documents on those persons:**

C/- Sarah Barker
Minter Ellison Lawyers
525 Collins Street
MELBOURNE VIC 3000

2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

Subaru motor vehicles.
Full service leasing services.

(b) **Description of the conduct or proposed conduct:**

Interleasing (Australia) Limited supplying full service leasing services to consumers of Subaru motor vehicles on the condition that the consumers will acquire their vehicle from a Wholesale Dealer.

Interleasing (Australia) Limited refusing to supply full service leasing services to consumers of Subaru motor vehicles for the reason that the consumers have not acquired or have not agreed to acquire their vehicle from a Wholesale Dealer.

Interleasing (Australia) Limited giving or allowing or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply of full service leasing services to consumers of Subaru motor vehicles on the condition that the consumers will acquire their vehicle from a Wholesale Dealer.

Interleasing (Australia) Limited refusing to give or allow a discount, allowance, rebate or credit in relation to the supply full service leasing services to consumers of Subaru motor vehicles for the reason that the consumers have not acquired or have not agreed to acquire their vehicle from a Wholesale Dealer.

Interleasing (Australia) Limited supplying to Dealers the right to offer leasing service products to consumers on condition that the Dealers will acquire wholesale finance from General Motors Acceptance Corporation.

Interleasing (Australia) Limited refusing to supply to Dealers the right to offer leasing service products to consumers for the reason that the Dealers have not acquired or have not agreed to acquire wholesale finance from General Motors Acceptance Corporation.

3. (a) Class or classes of persons to which the conduct relates:

*Subaru authorised dealers.
Consumers of new Subaru motor vehicles.*

(b) Number of those persons-

(i) At present time:

Approximately 28,000 Subaru vehicles are sold in Australia per annum, from a network of 111 authorised dealers. 29 of these dealers are GMAC Wholesale dealers. Around 50% of Subaru vehicles are currently sold through Wholesale Dealers. No Subaru vehicles are currently subject to full-service leasing arrangements. Subaru Full Service Leasing is to be piloted.

(ii) Estimated within the next year:

As above. Subaru Full Service Leasing has a target to service 1% of Subaru vehicles sold within 12 months of its launch.

(c) Where the number of persons stated in item 3(b)(i) is greater than 50 include the relevant names and addresses for your records.

Not applicable

Australian Competition & Consumer Competition
21 October 2003

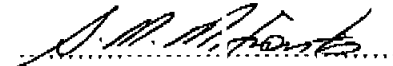
3

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

Sarah Barker
Minter Ellison Lawyers
Level 23
525 Collins Street
MELBOURNE VIC 3000

DATED this 20th day of October, 2003

SIGNED by/on behalf of Interleasing
(Australia) Limited


(Signature)

Michael Mitrovits
Finance Director

