

Australian Competition & Consumer Commission

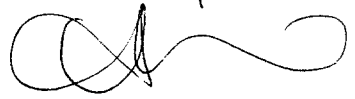
PO Box 1199
Dickson ACT 2602
470 Northbourne Ave
Dickson ACT 2602
Australia
Ph (02) 6243 1111
Fax (02) 6243 1199

Our Ref: C2003/1420
Contact Officer: Amanda Dadd
Contact Phone: 02 6243 1391

24 November 2003

Name
Address

Letter sent to attached
list of interested parties.


24/11/03.

Dear name

**Notifications lodged by Subaru (Aust) Pty Limited and others
(N40609, N40610, N40611 and N40612)**

The Australian Competition and Consumer Commission ("the Commission") has received the abovementioned third line forcing notifications (N40609, N40610, N40611 and N40612) from Subaru (Aust) Pty Limited ("Subaru"), General Motor Acceptance Corporation ("GMAC"), Swann Insurance (Australia) Pty Ltd ("Swann") and Interleasing (Australia) Limited ("Interleasing") respectively.

Notification N40609 lodged by Subaru

Conduct relating to Subaru Dealers

The above notification was lodged by Subaru and relates to Subaru providing a discount, allowance, rebate or credit in relation to the supply of Subaru vehicles to Wholesale Dealers on condition that the dealer acquire wholesale finance from General Motors Acceptance Corporation ("GMAC"). The notification also relates to Subaru refusing to provide any such discount, allowance, rebate or credit if dealers do not acquire wholesale finance from GMAC.

Conduct relating to consumers

The notification relates to Subaru supplying goods or services or providing a discount, allowance, rebate or credit in relation to the supply of Subaru vehicles to consumers on condition that:

- consumers acquire finance from GMAC; and/or
- acquire insurance from Swann Insurance (Australia) Pty Ltd ("Swann").



The notification also relates to Subaru refusing to supply goods or services or provide any such discount, allowance, rebate or credit if consumers have not satisfied the above conditions.

Notification N40610 lodged by GMAC

The above notification was lodged by GMAC and is related to notification N40609 lodged by Subaru.

The notification relates to GMAC offering a discount, allowance, rebate or credit in relation to the supply of finance services to consumers who purchase Subaru motor vehicles on condition that the consumers acquire their vehicle from a Wholesale Dealer.

The notification also relates to GMAC refusing to offer a discount, allowance, rebate or credit to consumers who do not satisfy the above condition.

Notification N40611 lodged by Swann

The above notification was lodged by Swann and is related to notification N40609 lodged by Subaru.

The notification relates to:

- Swann supplying insurance, or offering a discount, allowance, rebate or credit on insurance, to consumers of Subaru motor vehicles on condition that they acquire their vehicle from a Wholesale Dealer;
- Swann refusing to supply insurance, or refusing to offer a discount, allowance, rebate or credit on insurance, to consumers if they do not acquire their vehicle from a Wholesale Dealer;
- Swann supplying to Dealers the right to offer insurance products to consumers on condition that Dealers acquire wholesale finance from GMAC; and
- Swann refusing to supply to Dealers the right to offer insurance products to consumers on condition that Dealers acquire wholesale finance from GMAC.

Notification N40612 lodged by Interleasing

The above notification was lodged by Swann and is related to notification N40609 lodged by Interleasing.

The notification relates to:

- Interleasing supplying full service leasing services, or offering a discount, allowance, rebate or credit on full service leasing services, to consumers of Subaru motor vehicles on condition that they acquire their vehicle from a Wholesale Dealer;

- Interleasing refusing to supply full service leasing services, or refusing to offer a discount, allowance, rebate or credit on full service leasing services, to consumers if they do not acquire their vehicle from a Wholesale Dealer;
- Interleasing supplying to Dealers the right to offer leasing service products to consumers on condition that Dealers acquire wholesale finance from GMAC; and
- Interleasing refusing to supply to Dealers the right to offer leasing service products to consumers on condition that Dealers acquire wholesale finance from GMAC.

Background

By way of background, the Commission is the Commonwealth agency responsible for administering the *Trade Practices Act 1974* (“the Act”). A key objective of the Act is to prevent anticompetitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.

The Act, however, recognises that the public interest may not always be met by the operation of competitive markets. Notification provides immunity from prosecution by the Commission and any other party for potential breaches of the exclusive dealing provisions of the Act. Third line forcing conduct involves the supply of goods or services on condition that the purchaser acquire a second good or service from another supplier.

Under the notification process, immunity for third line forcing conduct is obtained automatically 14 days after lodgement, and continues unless the Commission issues a notice revoking the immunity. The Commission may issue a notice revoking the immunity if the likely public benefit from the notified conduct would not outweigh the likely detriment.

A guide is enclosed which outlines the notification process under the Act.

Proposed Promotions

The notifying parties have submitted to the Commission that Wholesale Dealers will be invited to participate in promotions and that these promotions would be offered to consumers initially through Wholesale Dealers and would include:

- a discounted rate of finance on Subaru Finance (GMAC) retail financing products to consumers who purchase a new Subaru motor vehicle from a Wholesale Dealer; and/or
- an insurance rebate to consumers who purchase a new Subaru motor vehicle from a Wholesale Dealer; and/or
- an insurance rebate to new motor vehicle consumers who purchase a Subaru Insurance comprehensive motor vehicle policy from Swann.

The parties have submitted that insurance rebates offered to consumers will typically be in the range of \$100 to \$3 000. On a base model Subaru Outback Wagon sold at the recommended retail price of \$38 180, with a discounted interest rate of 4.99 per cent,

consumers would save around \$1 150 over the term of a three year hire purchase arrangement.

Similarly, under the arrangements between Subaru and Interleasing, Wholesale Dealers will be invited to offer Subaru Full Service Leasing products to their retail consumers on behalf of Interleasing. It is currently anticipated by the notifying parties that both Subaru Insurance and Full Service Leasing products will be made available to consumers via all Subaru authorised dealers after a commercial pilot period.

The notifying parties have informed the Commission of an upcoming promotion which, in their view, falls within the bounds of the notifications. Under the promotion, Subaru Finance (GMAC) will offer consumers a discounted rate of interest on their vehicle finance (5.99 per cent per annum) plus a \$1 500 insurance rebate which may be applied towards insurance with any insurer. The promotion will run from 14 November 2003 and run for a period of four weeks.

Public benefits

The parties lodging the notifications have claimed that the conduct results in the following public benefits:

- consumers will be offered less expensive finance with which to acquire motor vehicles;
- consumers will be offered a contribution towards rising insurance costs;
- the corporate and commercial relationships between Subaru, GMAC and Swann will enable each company to offer a more competitive product and foster business efficiency;
- the operation of a more competitive finance product will encourage competitors of Subaru, GMAC, Swann and Interleasing to offer similar value-added services and promote competition in the relevant markets; and
- consumer welfare will be enhanced via the reduction in the cost of motor finance, leasing and insurance.

Public detriment

The notifying parties have submitted to the Commission that the markets in which the notified conduct is likely to impact are:

- the market for providing wholesale financial services to motor vehicle dealers;
- the retail market for motor vehicles;
- the retail market for consumer finance; and
- the retail market for general insurance.

In relation to the possibility of public detriment arising as a result of the notified conduct, the notifying parties have submitted that the conduct will not have any adverse effect on competition in any of the relevant markets. The notifying parties have submitted that the relevant markets are highly competitive and that the conduct is unlikely to create barriers to entry or otherwise harm competition.

The notifying parties noted that some non-wholesale Subaru dealers may regard the conduct as disadvantageous as it is not available to them, however, it was submitted that the notified conduct does not limit the choice of dealers or consumers, who remain free to obtain motor vehicle finance from the financier of their choice. Similarly, consumers remain free to deal with the insurer or full service leasing service provider of their choice.

Consultation with potentially interested parties

As a potentially interested party you are invited to make a written submission to the Commission regarding the likely public benefits and effects on competition of the notified conduct. A copy of the notifications and supporting submissions are enclosed.

You may wish to comment on any of the above claimed public benefits.

The Commission would also welcome comments on the likely competitive effects of the proposed conduct. In particular, you may wish to comment on the following issues:

- the market or markets that the notified conduct is likely to impact - in assessing detriment, the Commission will examine whether the proposed conduct will, or is likely to, result in a lessening of competition in relevant markets;
- the current levels of competition in the market(s) – to what extent do Subaru, GMAC, Swann and Interleasing face vigorous and effective competitors in the market(s)?;
- price and quality – you may wish to comment on the possible impact of the conduct on the price and/or quality of products and/or services in the market(s); and
- the availability of substitutes – you may wish to comment on the degree to which products and/or services provided by Subaru, GMAC, Swann or Interleasing are substitutable with other products and services available in the relevant market(s). For example, what other options do Subaru Dealers have in acquiring wholesale finance?

The Commission asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose. The Commission may, where it is deemed appropriate, supplement written submissions with discussions with relevant parties on a mutually convenient basis.

Should you lodge a submission with the Commission you may request that information included in the submission be treated as confidential and not placed on the public register or the Commission's website. In such circumstances you must justify why the Commission should treat such information as confidential, otherwise it would be expected to be made public. The Commission may take confidential information into account during its assessment of a notification. Guidelines for seeking confidentiality are attached for your information.

If you wish to lodge a submission please address the submission to:

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
Dickson ACT 2602

Submissions can also be lodged by e-mail to: adjudication@acc.gov.au.

If you intend to provide a submission in relation to the notifications, I would be grateful if you could do so by **12 December 2003**.

Should you have any queries, or if you wish to discuss any aspect of this matter, please contact Ms Amanda Dadd on 02 6243 1391.

Yours sincerely

Isabelle Arnaud
Director
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the Commission assesses applications for authorisation is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the Commission to maintain a public register in respect of authorisation applications.

Applicants and interested parties can request that a submission, or a part of a submission, be excluded from the public register.

The Commission is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or processes;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

The Commission also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The Commission expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the Commission:

- (a) where the request is that a whole document be excluded, the words “**Restriction of Publication Claimed**” should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words “**Restriction of Publication of Part Claimed**” should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

However, even if a document does not meet these technical requirements, the Commission may still grant confidentiality where, in the Commission's view, it is desirable to do so.

If the Commission denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the Commission will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the Commission will return the original material and destroy all associated copies. The Commission will not consider this material when reaching its decision.

If the Commission does not receive a response within the specified period, the original material will be placed on the public register.

Title	Position	First Name	Last Name	Address Line 1	Address Line 2	City	State	P Code
Mr	Managing Director	Ian	Baile	CGU Insurance	Level 8, 10 Spring Street	SYDNEY	NSW	2000
Mr	General Manager	Anthony	Common	Australian Unity and General Insurance Ltd	Floor 5, 114 Albert Road	SOUTH MELBOURNE	VIC	3205
Mr	Chief Executive Officer	Roger	Cracknell	ABS Building Society	97 Faulkner Street	ARMIDALE	NSW	2350
Mr	Executive Director	Michael	Delaney	Motor Trades Association of Australia	PO Box E368	KINGSTON	ACT	2604
Mr	General Manager	David	Gration	Suncorp Metway Ltd	GPO Box 1453	BRISBANE	QLD	4001
Ms	Managing Director	Gail	Kelly	St George	Locked Bag 1	KOGARAH	NSW	1485
Mr	Executive Director	James	Larkey	Australian Association of Permanent Building Societies	PO Box 9021	DEAKIN	ACT	2600
Mr	Chief Executive Officer	Steve	Lave	Credit Union Services Corporation Australia Ltd	GPO Box 4720	SYDNEY	NSW	2001
Mr	Managing Director	Andrew	Lindberg	AWB Limited	528 Lansdale Street	MELBOURNE	VIC	3000
Mr	Deputy Chief Executive	Phillip	Maguire	Insurance Council of Australia Ltd	Level 3, 56 Pitt Street	SYDNEY	NSW	2000
Mr	Chief Executive Officer		McFarlane	ANZ Banking Group Limited	100 Queen Street	MELBOURNE	VIC	3000
Mr	Executive Director	Lauchlan	McIntosh	Australian Automobile Association	GPO Box 1555	CANBERRA	ACT	2601
Mr	CEO	Andrew	Mohl	AMP Limited	33 Alfred Street	SYDNEY	NSW	2000
Mr	Chief Executive Officer	David	Morgan	Westpac Banking Corporation	341 George Street	SYDNEY	NSW	2000
Mr	Chief Executive Officer	David	Murray	Commonwealth Bank	GPO Box 2719	SYDNEY	NSW	2001
Mr	Managing Director	Craig	Stanley	Zurich Insurance	14 Brassey Street	ASCOT	QLD	4007
Mr	Chief Executive Officer	Mike	Wilkins	Royal & SunAlliance Insurance Australia Limited	Locked Bag 9000	CHATSWOOD DC	NSW	2067
	Chief Executive Officer			Credit Union Australia	GPO Box 100	BRISBANE	QLD	4001
	Chief Executive Officer			GGE Capital Finance Australia Ltd	572 Swan Street	RICHMOND	VIC	3121
	Chief Executive Officer			Lease Plan Australia Limited	PO Box 6297	ST KILDA CENTRAL	VIC	8008
	Chief Executive Officer			The Leasing Centre (Aust) Pty Limited	P.O. Box 1112	BURWOOD NORTH	NSW	2134
	Chief Executive Officer			GFO Insurance	56 Pitt Street	SYDNEY	NSW	2000
	General Manager			Sydney City Subaru	370-380 Parramatta Road	PETERSHAM	NSW	2049
	General Manager			Subaru Glen Waverley	1 Rosemary Court	GLEN WAVERLEY	VIC	3150
	General Manager			Subaru Doncaster	560 Doncaster Road	DONCASTER	VIC	3108
	General Manager			Highway Subaru	3499 Pacific Highway	SPRINGWOOD	QLD	4127
	General Manager			Zuyps Gold Coast	83 Ferry Road	SOUTHPORT	QLD	4215
	General Manager			Ehlen Subaru	114 Brighton Road	GLENELG	SA	5045
	General Manager			United Motors	31 West Terrace	ADELAIDE	SA	5000
	General Manager			Capital Subaru	47 Newcastle Street	FYSHWICK	ACT	2609
	General Manager			Performance Subaru	314 Macquarie Street	HOBART	TAS	7000
	General Manager			Peter Donnelly Subaru	4 Yarnough Place	NARELLAN	NSW	2567
	General Manager			Morgan's Motors	3 Day Street	DARWIN	NT	800
	General Manager			CBRC Leasing Pty Ltd	4 Bay Road	MOUNT GAMBIER	SA	5290
	General Manager			Peel Subaru	16 Pantou Road	MANDURAH	WA	6210
	General Manager			CPS Credit Union Co-Operative (ACT) Limited	Locked Bag 1000	MAWSON	ACT	2607
	Branch Manager			AGC Limited	48 Woods Street	DARWIN	NT	800
	Chief Executive Officer			Australian Consumers Association	57 Carrington Road	MARRICKVILLE	NSW	2204
	Executive Director			Australian Insurance Institute	31 Queen Street	MELBOURNE	VIC	3000
	General Manager			Hilwara Star Motors	37-39 Burrell Street	WOLLONGONG	NSW	2500
	Manager			North Subaru Pty Ltd	14 Buckingham Drive	WANGARA	WA	6065