



Motor Trades Association of Australia

FILE No:	
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MARS/PRISM:	

Mr Graeme Samuel
 Chairman
 Australian Competition & Consumer Commission
 PO Box 1199
 Dickson ACT 2602

Dear Mr Samuel

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

The Subaru Notification

I refer to the notification dated 21 October 2003 lodged on behalf of the abovementioned companies by Minter Ellison. The proposal involves notification applications in relation to finance, leasing and insurance arrangements between Subaru (Aust) Pty Ltd and the other Companies

MTAA on behalf of its Member, the Australian Automobile Dealers Association (AADA) has examined the proposal and believes that the proposed conduct is discriminatory as between Subaru dealers, that there is little or no demonstrated public benefit from the proposed conduct and in fact there may be public detriment arising from it. MTAA therefore wishes to request that the ACCC give a notice under s.93(3A) of the Trade Practices Act withdrawing the protection afforded by the Notification.

In support of its views MTAA asks that the ACCC consider the following comments on the notification:

the proposal requires a dealer who holds a Subaru franchise, which he will generally hold in conjunction with franchises for one or more brands, to have an arrangement with GMAC in order for discounts or benefits to be provided in relation to finance leasing and insurance. While there is an argument that a Subaru dealer should be required to have an arrangement with GMAC in relation to the Notification proposal for finance benefits, it should not be necessary that insurance and leasing benefits provided by Swann and Interleasing are also tied to a floor plan arrangement between a dealer and GMAC. There is no obvious reason why Subaru could not negotiate an arrangement whereby all dealers selling its brand could be provided with the insurance and leasing offers;

in the light of the above comments, in MTAA's view the notification by Subaru discriminates against those Subaru dealers who for sound commercial

AUST. COMPETITION &
 CONSUMER COMMISSION
 CANBERRA

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Motor Trades Association House, 39 Brisbane Avenue, Barton ACT 2600

PO Box E368, Kingston, ACT 2604

Telephone: + 61 2 6273 4333. Facsimile: + 61 2 6273 2738.

Email: mtaa@mtaa.com.au A.B.N. 66 008 643 561

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reasons do not have their floor plan finance with GMAC. MTAA believes that Subaru should be required to offer benefits to all Subaru dealers in a consistent and non-discriminatory manner. MTAA notes that s.51AC (3) (f) makes reference to the extent to which a supplier's conduct is consistent in similar transactions between the supplier, here Subaru, and the other like business consumers, here all Subaru dealers;

the proposal by Subaru does not of itself state that Subaru dealers' arrangements with GMAC will cause them to receive benefits but, in paragraph 1.13, merely states that such dealers "may receive rights or benefits";

paragraph 1.92 mentions "limited promotions" but the submission makes no attempt to provide details of such;

the notification is clearly one seeking to impose third-line forcing provisions by Subaru on its dealers. It does not however state this clearly and, in paragraph 2.1, seeks to state that the notified conduct does not contravene ss 47(6) and 47 (7) of the Act; and

the submission makes no attempt to propose where the notified conduct would have any public benefit.

MTAA submits that the proposed conduct is discriminatory as between Subaru dealers. If there is any public benefit associated with the proposal it is likely to be outweighed by the likely public detriment. MTAA therefore requests that the Commission withdraw the protection afforded by the notification.

General Concerns on Developments in Dealer Financing Arrangements

The Notification by Subaru, which is the latest of a number to be offered by the company in recent times was discussed by the Board of AADA at its Annual General Meeting on 4 December. AADA resolved to oppose the Notification and requested MTAA to advise the ACCC of its opposition to it. AADA believes that the conduct should not be authorised by the ACCC. More generally AADA believes that there is good reason for the ACCC to examine the question of finance arrangements in this sector with a view to re-affirming the rules of competitive conduct. Dealers report that the insistence by suppliers on providing finance has caused the situation to develop where dealers are increasingly forced to accept uncompetitive finance arrangements in order to obtain supply of particular brands. One dealer with multiple franchises may now be required to finance his stock through arrangements with up to five or more finance companies, each financial arrangement being an apparent condition of supply of product. MTAA believes that it is not in the interest of the consumer for the dealer to be unable to offer the most competitive finance arrangements possible.

Other Submissions

MTAA's attention has been drawn to the submission made on this matter by Esanda. MTAA believes that the matters of law and in particular the views expressed therein regarding public benefit and public detriment are strongly endorsed. MTAA also agrees that if the Subaru notification is allowed to stand then it will be a clear signal for other suppliers to seek to follow suit and insist that its dealers only offer finance through the supplier's related entity

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finance company. MTAA believes that it would appropriate for the ACCC to announce immediately that such conduct is anti-competitive and will not be allowed to stand. A decision of this kind was earlier taken by the ACCC's predecessor in relation to an application by Ford to be allowed to engage in solus trading. That had the effect of maximising competition, maximising inter-brand competition and maximising consumer choice. The ACCC should act similarly in this case.

Yours sincerely



MICHAEL DELANEY
Executive Director
3 December 2003