



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: C2004/270  
Contact Officer: Stefanee Lovett  
Contact Phone: (02) 6243 1359

27 February 2004

Mr Michael Delaney  
Executive Director  
Motor Trades Association of Australia  
PO Box E368  
KINGSTON ACT 2604

Dear Mr Delaney

**Notification of Exclusive Dealing lodged by Holden Limited (N40688)  
re: Holden Retail Advertising Programme**

The Australian Competition and Consumer Commission (the Commission) has received a notification from Holden Limited in relation to the offering of discounts to members of a retail advertising program. I am writing to you as a party that may be interested in providing a submission to the Commission in relation to this application.

As you may be aware, the competition provisions of the *Trade Practices Act 1974* (the Act) prohibit certain forms of anti-competitive conduct or arrangements. Section 47 of the Act prohibits conduct known as exclusive dealing where it has the purpose or effect of substantially lessening competition. Generally speaking, exclusive dealing involves one business trading with another, imposing restrictions on the other's freedom to choose with whom, or in what, it deals.

Sub-sections 47(6) and 47(7) of the Act specifically prohibit conduct known as 'third line forcing' which involves the supply of goods or services on condition that the customer also acquire goods or services from a third party. Third line forcing conduct is currently a per se provision, meaning that it amounts to a contravention of the Act regardless of its effect on competition.



### *Notification process*

Businesses may obtain immunity in relation to conduct that might be at risk of breaching the exclusive dealing provisions of the Act by lodging a 'notification' with the Commission. Once lodged, immunity for the notified conduct commences automatically (or in the case of third-line forcing, after 14 days). The Commission may proceed to revoke a third-line forcing notification where it is satisfied that the likely benefit to the public from the proposed conduct will not outweigh the likely detriment to the public from the proposed conduct.

### *Third line forcing notification lodged by Holden Limited*

Holden Limited lodged a notification involving third line forcing conduct with the Commission on 12 February 2004. Statutory immunity for the conduct outlined in the notification commenced on 26 February 2004.

The conduct is described in the notification as Holden proposing to enter into arrangements with its retailers in relation to the Holden Retailer Advertising Program (HRAP) pursuant to which Holden will:

- give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to a Holden Product on the condition that the retailer is and remains a member of the HRAP;
- refuse to give or allow a discount, allowance, rebate or credit in relation to a Holden Product for the reason that the retailer is not or has not agreed to become and/or remain a member of the HRAP.

### *Request for submissions*

To assist the Commission in its consideration of these notifications it would be helpful to obtain your views on the likely public benefits and detriments. That is, we would ask that any submission you may wish to make focuses on the public benefits claimed by Holden Limited and any detriments to the public that might flow from the proposed conduct, particularly from any potential lessening of competition.

I have enclosed a copy of the Holden Limited notification and supporting submission.

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.

You may request that information you provide in a submission to the Commission be treated as confidential and not placed on the public register. The Commission may take into account information for which it grants confidentiality, even if that information is not publicly available. 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](mailto:adjudication@acc.gov.au).

The closing date for submissions is **12 March 2004**. A copy of this letter has been placed on the Commission's public register.

Should you have any questions or wish to discuss any aspect of the above notification, please contact Stefanee Lovett on (02) 6243 1359.

Yours sincerely



Gavin Jones  
A/g Director  
Adjudication Branch

## GUIDELINES FOR CONFIDENTIALITY CLAIMS

### Notifications

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

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 s 89 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.

Information or documents granted confidentiality may be used by the Commission pursuant to its powers generally under the *Trade Practices Act*.

Last Updated: 12 December 2002