

Our ref: PRH:TEG

14 May 2004

Mr Tim Grimwade  
Adjudications  
Australian Competition and Consumer Commission  
Level 7, Angel Place  
123 Pitt Street  
Sydney NSW 2000

FILE No:
DOC: D04/22499
MARS/PRISM: 19560

120 Collins Street  
Melbourne VIC 3000  
PO Box 4301PP  
Melbourne VIC 3001  
Australia  
DX 147 Melbourne  
Tel +61 3 9274 5000  
Fax +61 3 9274 5111  
www.phillipsfox.com

Adelaide  
Brisbane  
Canberra  
Melbourne  
Perth  
Sydney  
Auckland  
Wellington  
Hanoi  
Ho Chi Minh City

**By hand**

Dear Mr Grimwade

**Hino Motor Sales Australia Limited (Hino) notification lodged under section 93 of the Trade Practices Act 1974**

We **enclose** a notification in respect of conduct which may raise issues under the third line forcing provisions of the *Trade Practices Act 1974* (the **Act**). The notification relates to conduct by Hino.

We enclose:

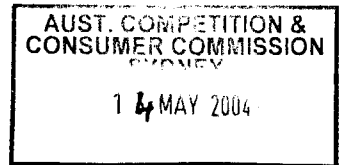
- a Form G; and
- a cheque for \$1000, being the fee for lodgement of a third line forcing notification by a limited company.

Yours sincerely

**Paul Holm**  
Partner  
Direct +61 2 9286 8035  
Email paul.holm@phillipsfox.com

encl

Commonwealth of Australia  
Trade Practices Act 1974 - sub section 93(1)



N. 031296

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(6) or (7) of that Act in which the person giving notice engages or proposes to engage.

1 (a) Name of Person Giving Notice:

Hino Motor Sales Australia Limited (**Hino**)

ABN: 74 064 989 724

Address: 6-10 Parraweena Rd, Taren Point, NSW, Australia

(b) Short description of business carried on by that person:

Hino is an importer and exclusive Australian wholesale distributor of Hino light to heavy weight trucks and buses (**Hino Vehicles**).

Hino wholesales the Hino Vehicles to authorised Hino dealers who are persons that have entered into Dealer Agreements with Hino (**Hino Dealer**). The Hino Dealer retails the Hino Vehicles to end users.

The commercial arrangements between Hino and each Dealer are governed by a Dealer Agreement. In essence the Dealer Agreement gives the Dealer the right to acquire Hino Vehicles, parts and accessories from Hino at wholesale prices and to market and sell those vehicles from a specified dealership site.

Toyota Finance Australia Limited, trading as Hino Financial Services (**Hino Finance**) is a financial services company that provides finance to the Dealers to allow them to purchase their 'floor stock' of Vehicles. These are the Vehicles that the Dealer has on display at their dealership site. This form of finance is known as a 'floor plan facility'. The Hino Dealer Agreement currently requires that all dealers maintain minimum 'floor stock' and have a floor plan facility in place, but does not specify the supplier of this facility.

Under the floor plan facility Hino becomes entitled to payment for Hino Vehicles from the financier upon delivery to the Hino Dealer. Under its arrangements with Hino Dealers, Hino contributes to the interest charge for this finance at the rate currently offered by Hino Finance for the first 60 days, or until the Hino Vehicle financed is sold, whichever occurs sooner. The floor plan is therefore interest free to Hino Dealers for this period, or if the rate charged by their financier is higher than the Hino Finance rate, they only need pay the additional interest charge above that that would have been charged by Hino Finance. Currently approximately half the Hino Dealers have floor plan facilities with Hino Finance. The remainder have floor plan facilities with a range of other financial institutions.

Hino and Hino Finance are related bodes corporate and are ultimately subsidiaries of the same Japanese company.

**(c) Address in Australia for service of documents on that person:**

c/- Paul Holm  
Partner  
Phillips Fox  
255 Elizabeth Street  
SYDNEY NSW 2000

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

Supply of vehicles and finance.

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

Hino Proposes to make it a condition of the Dealer Agreement that Dealers acquire their floor plan facility from Hino Finance.

It is submitted that the proposed arrangements will not have a significant anti-competitive effect in the market for the provision of financial services. Financial services, including the provision of a floor plan facility to motor vehicle dealers, are service supplied by a large number of competing financial institutions, including all the major banks. Such facilities are common in the motor vehicle industry and the requirement that the existing 35 Hino Dealers acquire such services exclusively from Hino Finance will not lessen competition in this market.

The market for retailing of Vehicles has a significant number of participants retailing a number of brands of competing vehicles. Hino Dealers ability to compete in this market will not be affected as Hino will continue to meet the cost of finance for the first 60 days, or until the Hino Vehicle is sold, under all floor plan facilities provided by Hino Finance.

The proposed conduct provides public benefit in that:

- Hino intends to introduce an electronic vehicle ordering system where Dealers will be able to order Vehicles and obtain finance on-line. It will provide Dealers with one point from which to order Vehicles and access their floor plan facility. This facility will reduce transaction costs for Hino, Hino Dealers and Hino Finance. Such a system will not be possible where a large number of different floor plan financiers is being used by Hino Dealers.
- Hino will remain able to agree competitive rates for finance from Hino Finance, because of increased efficiency of the ordering system and increase in financing services provided to Hino dealers.
- As Hino will remain responsible for the interest charge for the initial period of 60 days, or until the financed Hino Vehicle is sold, it will be in its interests to keep interest rates competitive. This will prevent Hino Finance exploiting its position as sole supplier of such facilities to Hino dealers. Hino also

remains reliant on Hino Dealers to retail its products effectively and efficiently and therefore will not allow any such exploitation to occur.

- Hino will receive same day payment of the purchase price from Hino Finance. Under existing arrangements with third party finance providers, payment can be delayed for up to approximately 5 days from delivery. This improvement in cash flow will reduce costs for Hino, which may be reflected in the wholesale pricing of Hino Vehicles, and retail prices with attendant consumer benefits. Please note however that actual wholesale Hino Vehicle pricing remains subject to market forces, including the value of the Australian dollar. Retail prices remain at Hino Dealer's discretion.

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

Dealers and potential dealers of Hino Vehicles.

**(b) Number of those persons:**

(i) at the present time: 35

(ii) within the next year: approximately 35

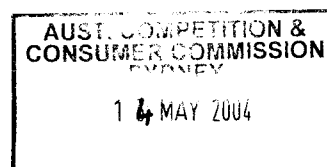
**(c) Where the number of persons stated in item 3(b)(i) is less than 50, their names and addresses:**

(See Confidential Annexure 1).

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

Paul Holm, Phillips Fox, 255 Elizabeth Street, Sydney NSW 2000

DATED: 14 May 2004



Signed on behalf of the person giving this notice

Paul Holm

Partner

Phillips Fox

# HINO DEALER LISTING

## CONFIDENTIAL

**Best Hino**9 Cary Street *Phone: 02 4323 7145*Wyoming NSW 2250 *Fax: 02 4323 1515***Best Hino - Sydney**253-259 Cnr Coward & Kent St *Phone: 02 9700 9554*Mascot NSW 2020 *Fax: 02 9700 9552***Brown & Hurley**100 Pacific Highway *Phone: 02 6652 2155*Coffs Harbour NSW 2450 *Fax: 02 6651 1209***Brown & Hurley (Tamworth)**81A Barnes Road *Phone: 02 6762 2922*Tamworth NSW 2340 *Fax: 02 6762 2933***Brown & Hurley (Taree)**c/- 100 Pacific Highway *Phone: 04 0865 2498*Coffs Harbour NSW 2450 *Fax:***Cardiff Truck & Bus City**Cnr Park Ave and Searle Street *Phone: 02 4957 9066*Kotara NSW 2289 *Fax: 02 4957 9088***City Hino**662 Woodville Road *Phone: 02 9681 8111*Guildford NSW 2161 *Fax: 02 9754 1741***Hartwig Trucks**266 Hammond Avenue *Phone: 02 6937 8500*Wagga Wagga NSW 2650 *Fax: 02 6937 8511***Muswellbrook City Hino**113 Maitland Street *Phone: 02 6543 3066*Muswellbrook NSW 2333 *Fax: 02 6543 3389***Southern Truck Centre**12 Wycombe Street *Phone: 02 6299 6433*Queanbeyan NSW 2620 *Fax: 02 6297 3904***Tory Hino**Cnr Princes Hwy & Miall Way *Phone: 02 4256 3022*Albion Park Rail NSW 2527 *Fax: 02 4256 2735***West Orange Motors**32 Forbes Road *Phone: 02 6361 1000*Orange NSW 2800 *Fax: 02 6361 3815***Peter Kittle Motor Co**46 Stuart Highway *Phone: 08 8952 5500*Alice Springs NT 0870 *Fax: 08 8953 0847*

CONFIDENTIALITY  
GRANTED

**Vanderfield (Darwin) Hino**

Lot 1681 Stuart Highway Phone: 08 8932 4200  
 Pinelands NT 0829 Fax: 08 8932 4211

**Bell & Moir Corporation**

81-83 Camoowal Street Phone: 07 4743 3066  
 Mt Isa QLD 4825 Fax: 07 4743 9355

**Cairns Trucks & Tractors**

682 Bruce Highway Phone: 07 4044 4440  
 Cairns QLD 4870 Fax: 07 4054 7300

**Don West Toyota**

282 Queen Street Phone: 07 4783 1600  
 Ayr QLD 4807 Fax: 07 4783 4802

**Gold Coast Truck Centre**

34 Spencer Road Phone: 07 5596 3599  
 Nerang QLD 4211 Fax: 07 5596 4217

**Hi-Way 1 Truck & Tractor**

339 Muns Road Phone: 07 5445 1122  
 Forest Glen QLD 4556 Fax: 07 5445 1866

**Hi-Way 1 Truck & Tractor**

Cnr Bruce Hwy & Laurenceston R Phone: 07 5480 5000  
 Gympie QLD 4570 Fax: 07 5482 2023

**Ian Weigh Motors**

Cnr Fitzroy & Denison Street Phone: 07 4924 5200  
 Rockhampton QLD 4700 Fax: 07 4924 5202

**Mackay Hino**

Cnr Nubo Rd & Shakespeare St Phone: 07 4951 9000  
 Mackay QLD 4740 Fax: 07 4951 1689

**Prinemovers (NQ) Pty Ltd**

23-27 Langton Street Phone: 07 4779 0077  
 Garbutt QLD 4814 Fax: 07 4779 0516

**Sei Fleet Hino**

59 Kitchener Road Phone: 07 3361 0033  
 Kedron QLD 4031 Fax: 07 3361 0034

**Tait Motors**

54 Russell Street Phone: 07 4671 7300  
 Goondiwindi QLD 4390 Fax: 07 4671 7390

**Vanderfield Hino**

21 Carrington Road Phone: 07 4633 4822  
 Toowoomba QLD 4350 Fax: 07 4633 1853

**Barry Maney Sales**

199 Jubilee Highway West Phone: 08 8721 3400  
 Mt Gambier SA 5290 Fax: 08 8721 3444

CONFIDENTIALITY  
 GRANTED

**CIVIL HINO**

569 South Road  
Regency Park SA 5010  
Phone: 08 8243 8100  
Fax: 08 8345 5538

Shane Grover Hino  
18 Young Street  
Port Augusta SA 5700  
Phone: 08 8642 3433  
Fax: 08 8642 3787

Co Operative Motors  
267 Argyle Street  
Hobart TAS 7000  
Phone: 03 6230 1901  
Fax: 03 6231 3955

Bendigo Truck Centre  
12-16 Sullivan Street  
Golden Square VIC 3555  
Phone: 03 5440 9111  
Fax: 03 5440 9119

Bendigo Truck Centre (Parts Br  
1034 Etihadia Avenue  
Mildura VIC 3502  
Phone: 03 5022 7655  
Fax: 03 5022 7955

CMI Hino  
326 Boundary Road  
Laverton North VIC 3026  
Phone: 03 9931 6500  
Fax: 03 9931 0530

ISR Truck City (Geelong) Pty L  
20 Edol's Street  
North Geelong VIC 3215  
Phone: 03 5278 9844  
Fax: 03 5278 7739

Jacob Hino  
175 Melbourne Road  
Wodonga VIC 3690  
Phone: 02 6024 7100  
Fax: 02 6024 6024

Whitchorse Hino  
67-75 Princes Highway  
Dandenong South VIC 3175  
Phone: 03 9791 6533  
Fax: 03 9791 3077

WA Hino Sales and Service  
24-26 Kewdale Road  
Weshpool WA 6106  
Phone: 08 9351 2000  
Fax: 08 9351 2011

CONFIDENTIALITY  
GRANTED