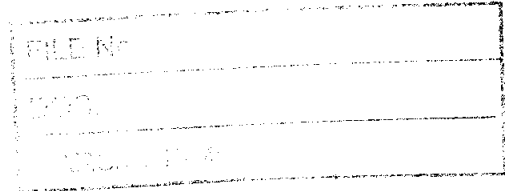


17 May 2004

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



Dear Sir

Subaru (Aust) Pty Ltd - Customer Loyalty Reward Program

We act on behalf of Subaru (Aust) Pty Ltd (**Subaru Australia**) and enclose:

- a notification under section 93(1) of the *Trade Practices Act 1974 (TPA)*; and
- cheque for \$100 as payment of the required lodgement fee.

1. Background

- 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 (**Subaru Dealers**). Under a Dealer Sales and Service Agreement, the Subaru Dealers sell Subaru motor vehicles, spare parts and accessories in the retail market. The Subaru Dealers also service Subaru motor vehicles.
- 1.3 Subaru Australia plans to offer an incentive and reward program (**Loyalty Reward Program**) to consumers of Subaru motor vehicles (**Owners**). Under the Loyalty Reward Program, Owners will be rewarded loyalty points for every time they have their Subaru motor vehicle serviced by a Subaru Dealer. The loyalty points will be redeemable against Subaru Australia for rewards including additional services and Subaru-branded merchandise and events (rallies, motor shows and drive days). Subaru Australia will sub-contract the supply of these rewards via separate agreements with third party retailers and service providers (**Retail Partners**). It is anticipated that the accrued loyalty points will be transferable to new owners, and between an Owner's Subaru vehicles.

2. Notified Conduct

2.1 The notified conduct may be formulated as:

- (a) the supply of goods or services by Subaru Australia to Owners on the condition that the Owner will acquire after-sales servicing and support services from a Subaru Dealer;
- (b) Subaru Australia refusing to supply goods and services to an Owner for the reason that the Owner has not acquired after-sales servicing and support services from a Subaru Dealer;
- (c) Subaru Australia supplying loyalty program services to Owners on the condition that the Owner will acquire after-sales servicing and support services from a Subaru Dealer; and
- (d) Subaru Australia refusing to supply loyalty program services to Owners for the reason that the Owner has not acquired after-sales servicing and support services from a Subaru Dealer.

2.2 Our client appreciates that the conduct described in paragraph 2.1 may be construed as falling within the prohibitions contained in section 47(6) and 47(7) of the TPA. Accordingly, it wishes to notify the conduct under section 93(1) of the TPA. For the reasons discussed in section 3, we submit that the public benefits associated with the conduct clearly outweigh any public detriment caused by the conduct.

3. Competition Issues

3.1 We submit on behalf of our client that the Commission should not serve a notice under section 93(3A) of the TPA. This is 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 The conduct notified by Subaru Australia comprises an *optional* purchase of a second product by the Owners from a range of nominated suppliers (ie any Subaru Dealer). Owners retain their genuine choice to deal with any servicing supplier on the competitive terms offered by those suppliers. They can choose, on the normal commercial basis of quality and price, whether or not to purchase parts or servicing alone from any supplier, or to accept Subaru Australia's terms for the package of Subaru Dealer servicing and the Loyalty Reward Program. By retaining Owners' genuine choice, the conduct is not inherently anti-competitive.

3.3 In any event, we do not believe that the notified conduct will have any adverse affect on competition in any of the relevant markets. We consider that the relevant markets for assessing this notification are the regional markets for motor vehicle parts, servicing and support. These markets are highly competitive. The maximum effect of the conduct can be considered in proportion to Subaru Australia's share of the retail motor vehicle market, which is approximately 3.5%. Accordingly, we do not consider that the conduct will distort demand, create barriers to entry or otherwise harm competition in the market. Further information in relation to the market can be provided to the Commission if requested.

- 3.4 Moreover, there is inherent public benefit in the conduct. Owners can buy the package of parts or servicing from Subaru Dealers, and the Loyalty Reward Program offered by Subaru Australia, at a genuine saving on the total price of the products and services if they were brought separately in competitive markets. The conduct will therefore result in lower prices for Owners. It will also increase competition in the markets for both servicing and motor vehicles, due to the competitive pressure placed on other servicing providers and motor vehicle distributors to offer comparable value-added services.
- 3.5 We believe that the notified conduct will have little, if any, public detriment. While some Owners may consider that their choice of parts or service provider is limited by the exclusive availability of the Loyalty Reward Program through Subaru Dealers, Owners' genuine choice to deal with any service provider based on the competitive terms offered by those providers is not restricted. Overall, the effect of the conduct discussed above on the relevant markets is insignificant and is outweighed by the benefits to Owners.

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 Peter George or Ameet Bains of our office.

Yours faithfully

MINTER ELLISON



Contact: Ameet Bains Direct phone: +61 3 8608 2063 Direct fax: +61 3 8608 1084
Email: ameet.bains@minterellison.com
Partner responsible: Peter George Direct phone: +61 3 8608 2634
Our reference: PAG 80-4494204

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 that person:

Wholesale supply of imported motor vehicles, spare parts and accessories, and associated services to authorised dealers (Subaru Dealers).
- (c) Address in Australia for service of documents on that person:

C/- Ameet Bains
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:

After-sales servicing and support of Subaru motor vehicles
Retail goods and services provided by Subaru Australia and third party retailers and service providers
Loyalty program services, including awarding points to owners of Subaru motor vehicles (Owners) and promotional and other support services.
- (b) Description of the conduct or proposed conduct:
 - (i) *Subaru Australia supplying, or offering to supply, goods and services on the condition that Owners will acquire after-sales servicing and support services for their Subaru motor vehicle from a Subaru Dealer.*
 - (ii) *Subaru Australia refusing to supply, or offer to supply, goods and services to Owners, for the reason that the Owners have not acquired, or have not agreed to acquire, after-sales servicing and support services for their Subaru motor vehicle from a Subaru Dealer.*
 - (iii) *Subaru Australia supplying, or offering to supply, loyalty program services to Owners on the condition that the Owner will acquire after-*

sales servicing and support services for their Subaru motor vehicle from a Subaru Dealer; and

(iv) *Subaru Australia refusing to supply, or offer to supply, loyalty program services to Owners for the reason that the Owner has not acquired, or has not agreed to acquire, after-sales servicing and support services for their Subaru motor vehicle from a Subaru Dealer.*

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

Owners

(b) Number of those persons:

(i) At the present time:

Approximately 300,000

(ii) Estimated within the next year:

330,000

(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:

*Ameet Bains
Minter Ellison Lawyers
525 Collins Street
MELBOURNE VIC 3000*

DATED

11th Aug, 2004

SIGNED by/on behalf of the applicant

Anthony Ross Thomas

(Signature)

ANTHONY ROSS THOMAS

(Full Name)

COMPANY SECRETARY

(Description)

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practices Act 1974* ('the Act'), it comes into force at the end of the period prescribed for the purposes of sub-section 93(7A) of the Act ('the prescribed period') unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before June 30 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under sub-section 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct or a kind referred to in sub-section 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.