



Australian Competition & Consumer Commission

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Our Ref: C2004/270
Your Ref: MEL_CORP/7051816_1
Contact Officer: Stefanee Lovett
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26 May 2004

Ms Amanda Bodger
Partner
Mallesons Stephen Jaques
Level 28 Rialto
525 Collins Street
MELBOURNE VIC 3000

Dear Ms Bodger

**Re: Exclusive dealing third line forcing notification lodged by
Holden Limited (N40688)**

I refer to the above notification lodged with the Australian Competition and Consumer Commission (the Commission) on 12 February 2004. Immunity conferred by the notification commenced on 26 February 2004.

You have referred to the conduct as Holden proposing to enter into arrangements with its retailers in relation to the Holden Retail Advertising Program (HRAP) pursuant to which Holden will:

- supply or offer to supply a Holden Product on the condition that the Retailer is and remains a member of the HRAP;
- 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 supply 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; and/or
- refuse to give or allow a discount, allowance, rebate or credit in relation not 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.

I note an email sent by you to Stefanee Lovett of this office on 26 February 2004 confirming that Holden is not seeking to withhold supply of Holden Products to retailers who choose not to become a member of the HRAP, but rather, seeking to withhold discounts in relation to the



supply of certain products. That is, from time to time Holden may wish to offer special deals in relation to Holden Products to a retailer on condition that they are and remain a member of the HRAP, or to refuse to offer such special deals in relation to Holden Products for the reason that the retailer is not a member of the HRAP.

The Commission confirms that you have amended the conduct to remove the first and third dot points initially describing the conduct, and that the notified conduct only extends to:

- 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; and
- refuse to give or allow a discount, allowance, rebate or credit in relation not 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.

On the basis of the information provided, it is not intended that further action be taken in this matter at this stage. However, the Commission would be concerned if the conduct initially described in dot points one and three was engaged in, for instance, if Holden retailers were not supplied with Holden Products by reason of not being a member of the HRAP.

Please note, as with any notification, the Commission may act to remove the immunity afforded by this notification at a later stage if it becomes satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

If you have any queries or questions regarding the above, please contact Stefanee Lovett on (02) 6243 1359.

Yours sincerely



Tim Grimwade
General Manager
Adjudication Branch