



Australian Competition & Consumer Commission

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26 May 2004

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

Dear Mr Delaney

**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 by Holden Limited. Immunity conferred by the notification commenced on 26 February 2004. I refer also to previous correspondence by the Commission with the Motor Trades Association of Australia (MTAA) regarding this matter.

The conduct the subject of the notification is described 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 the MTAA's concerns in relation to the description of the conduct whereby Holden could withhold supply if a retailer is not or has not agreed to become or remain a member of the HRAP. The Commission has sought clarification of this issue and confirmed 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. In effect, the Commission has confirmed that the conduct notified is specifically:

- 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.

That is, from time to time Holden may 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.

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 Holden retailers were not supplied with Holden Products by reason of not being a member of the HRAP. I would encourage you to provide information to this effect if you become aware of it.

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.

The Commission appreciates the MTAA's interest and input into this matter.

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