

FILE No.
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18 June 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 - Third line forcing notifications

We act on behalf of Subaru (Aust) Pty Ltd (**Subaru Australia**). We refer to our previous correspondence with Commission Project Officers, Scott Philp and Stefanee Lovett.

We wish to withdraw the three notifications lodged with the Commission on 17 May 2004, under section 93(1) of the *Trade Practices Act 1974 (TPA)*, regarding Subaru Australia's proposed:

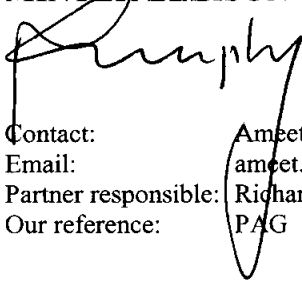
- Trade Customer Incentive Program;
- Customer Loyalty Reward Program; and
- Repairer Incentive Program.

In place of these notifications, we enclose three new notifications for the proposed conduct, each of which incorporates the amendments recommended by the Commission in our discussion with Scott and Stefanee on 28 May 2004. We have also enclosed a cheque for \$300 as payment of the required lodgement fees.

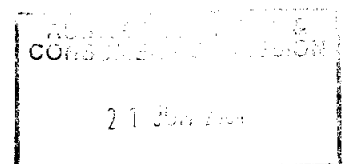
If you have any questions in relation to the enclosed notifications or require any further information, please do not hesitate to contact Richard Murphy or Ameet Bains of our office.

Yours faithfully

MINTER ELLISON



Contact: Ameet Bains Direct phone: +61 3 8608 2063 Direct fax: +61 3 8608 1084
Email: ameeet.bains@minterellison.com
Partner responsible: Richard Murphy Direct phone: +61 3 8608 2705
Our reference: PAG 30-4494204



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, including supply of spare parts to authorised dealer distributors (Wholesale 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:

Subaru spare parts and accessories

Retail goods and services provided by Subaru Australia and third party retailers and service providers

Loyalty program services, including awarding points to nominated motor vehicle repairers who repair Subaru motor vehicles and promotional and other support services.

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

Subaru Australia intends to establish a network of preferred repairers within Australia (Repairers). Repairers will be required to meet specified product and customer service standards in order to qualify for brand marketing support from Subaru Australia.

To promote maximum standards of product and customer service to consumers of Subaru motor vehicles, Subaru Australia plans to offer Repairers an incentive and reward program (Repairer Incentive Program). Under the Repairer Incentive Program, Repairers will be awarded loyalty points for

every purchase of spare parts that they make from their geographically proximate Wholesale Dealer. The loyalty points can be redeemed by the Repairers against Subaru Australia for rewards including Subaru-branded merchandise and events (rallies, Motor shows and drive days) and overseas holidays. Subaru Australia will sub-contract the supply of these rewards via separate agreements with third party retailers and service providers.

The Repairer's status as 'preferred' is not tied to their purchases from any single Wholesale Dealer.

This conduct can be characterised as:

- (i) *Subaru Australia supplying, or offering to supply, loyalty program services to Repairers on the condition that the Repairer will acquire Subaru parts from a nominated Wholesale Dealer; and*
- (ii) *Subaru Australia refusing to supply, or offer to supply, loyalty program services to Repairers for the reason that the Repairer has not acquired, or has not agreed to acquire, Subaru parts from a nominated Wholesale Dealer.*

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

Repairers

- (b) Number of those persons:

- (i) At the present time:

Nil

- (ii) Estimated within the next year:

100

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

Not applicable

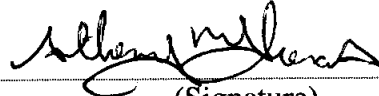
4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

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

DATED

17th June , 2004

SIGNED by/on behalf of the applicant



(Signature)

ANTHONY ROSE 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.

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 consumers of Subaru motor vehicles (Owners) and promotional and other support services.

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

Subaru Australia plans to offer an incentive and reward program (Loyalty Reward Program) to 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.

This conduct can be characterised as:

- (i) *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*
- (ii) *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 *17th June*, 2004

SIGNED by/on behalf of the applicant

Anthony Rose Thomas

(Signature)

ANTHONY ROSE 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.

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 Ltd (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, including supply of spare parts to authorised dealer distributors (Wholesale 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:

Subaru spare parts and accessories

Retail goods and services provided by Subaru Australia and third party retailers and service providers

Loyalty program services, including awarding points to trade customers, including independent and franchised mechanical repair shops, and independent and franchised parts and accessories retailers (Trade Customers) and promotional and other support services.

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

Subaru Australia plans to develop a marketing relationship with Trade Customers by establishing a loyalty program (Trade Customer Incentive Program). Under the Trade Customer Incentive Program, Trade Customers will be awarded points for purchasing nominated Subaru spare parts from Wholesale Dealers. Trade Customers will be able to redeem designated amounts of points for a variety of goods and services supplied by Subaru Australia. These rewards will include Subaru-branded merchandise, events

(rallies, motor shows and drive days) and overseas holidays. Subaru Australia will sub-contract the supply of these rewards via separate agreements with third party retailers and service providers.

This conduct can be characterised as:

- (i) *Subaru Australia supplying, or offering to supply, loyalty program services to Trade Customers on the condition that the Trade Customer will acquire their Subaru parts and/or accessories from a Wholesale Dealer;*
- (ii) *Subaru Australia refusing to supply, or offer to supply, loyalty program services to Trade Customers for the reason that the Trade Customer has not acquired, or has not agreed to acquire, their Subaru parts and/or accessories from a Wholesale Dealer;*
- (iii) *Subaru Australia giving or, or offering to give, discounts, allowances, rebates or credits to Trade Customers on the condition that the Trade Customer will acquire their Subaru parts and/or accessories from a Wholesale Dealer; and*
- (iv) *Subaru Australia refusing to give, or offer to give, discounts, allowances, rebates or credits to Trade Customers for the reason that the Trade Customer has not acquired, or has not agreed to acquire, their Subaru parts and/or accessories from a Wholesale Dealer.*

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

Trade Customers

- (b) Number of those persons:

- (i) At the present time:

Nil

- (ii) Estimated within the next year:

1,000

- (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:

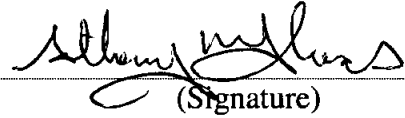
*Ameet Bains
Minter Ellison Lawyers
525 Collins Street
MELBOURNE VIC 3000*

DATED

17th June

, 2004

SIGNED by/on behalf of the applicant



(Signature)

ANTHONY ROSS THOMAS

(Full Name)

COMPANY SECRETARY

(Description)

DIRECTIONS

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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.

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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.

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