



Australian Competition & Consumer Commission

PO Box 1199  
Dickson ACT 2602  
470 Northbourne Ave  
Dickson ACT 2602  
Australia  
Ph (02) 6243 1111  
Fax (02) 6243 1199

Our Ref: C2004/270  
Your Ref: MEL\_CORP/7051816\_1  
Contact Officer: Stefanee Lovett  
Contact Phone: (02) 6243 1359

9 June 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. I refer also to the Commission's letter dated 26 May 2004 advising Holden Limited (Holden) that it did not intend to take further action in this matter at that stage.

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.



The Commission has received a letter of concern relating to the possible withholding of supply of Holden Products as provided for in the notification. As noted in the Commission's letter dated 26 May, you have clarified that the conduct has been amended so that Holden does not intend to withhold supply of all Holden Products, but rather withhold supply of special offers in relation to certain Holden Products. I note that you provided this confirmation by way of an email.

Given there is some doubt as to the effect of a subsequent amendment to a notification, and in order to alleviate the ongoing concerns of interested parties and ensure that the notified conduct results in the claimed public benefits, I would ask you to advise the Commission in writing of:

- the "Holden Products" to which the notification relates;
- whether it is in fact the case that the supply of these Holden Products will be withheld, or simply that a discount in relation to the supply of these Holden Products will be withheld from non-participating Holden retailers; and
- if it is intended that supply be withheld, how the withholding of such products is likely to impact on Holden retailers not part of the Holden Retail Advertising Program.

A copy of this letter has been placed on the Commission's public register.

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

Yours sincerely

Handwritten signature of Tim Grimwade, consisting of a stylized 'T' followed by a cursive 'Grimwade'.

Tim Grimwade  
General Manager  
Adjudication Branch