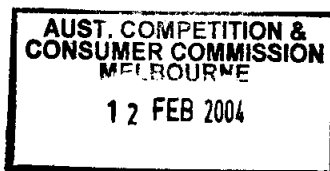


# MALLESONS STEPHEN JAQUES



Regional Director  
Australian Competition and  
Consumer Commission  
Level 35, The Tower  
360 Elizabeth Street  
Melbourne Centre  
Melbourne Vic 3000

12 February 2004

A Bodger  
Partner  
Direct line  
(61 3) 9643 4069

FILE No:
DOC: D04/6503
MARS/PRISM:

Dear Sir/Madam

## **Holden Limited - Notification of Third Line Forcing Exclusive Dealing**

We act for Holden Limited ("**Holden**").

We enclose for lodgement an exclusive dealing notification on behalf of Holden together with a cheque for the applicable lodgement fees of \$1,000.00.

Please do not hesitate to contact Amanda Bodger should you have any queries or comments.

Yours faithfully

*Mallesons Stephen Jaques*

Encls. 1

**COMMONWEALTH OF AUSTRALIA  
TRADE PRACTICES ACT 1974 - Subsection 93(1)  
EXCLUSIVE DEALING: NOTIFICATION**

**TO THE AUSTRALIAN COMPETITION & 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(6) or (7) of that Act in which the person giving notice engaged or proposes to engage.

**1 (a) Name of person giving notice:**

Holden Limited (ABN 84 006 893 232) ("**Holden**")

**(b) Short description of business carried on by that person**

Holden manufactures and distributes motor vehicles, engines, components and parts.

**(c) Address in Australia for service of documents on that person**

C/- Amanda Bodger  
Mallesons Stephen Jaques  
Level 28, Rialto  
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:**

Products and services supplied by Holden being motor vehicles, engines, components and parts ("**Holden Products**").

The Holden Retail Advertising Programme ("**HRAP**") is an unincorporated association, which operates as follows:

- (a) Holden collects an amount from participating retailers for each new Holden passenger and light commercial vehicle delivered to the retailer for sale to private and business fleet buyers (including taxi operators), up to a maximum amount per year;
- (b) Holden contributes funds to the HRAP to match the retailers' contribution on a 50/50 basis;
- (c) an HRAP committee is established comprising:
  - (i) eight retailer delegates, including one delegate from each major capital city and one rural delegate from Queensland, New South Wales and Victoria; and
  - (ii) eight Holden members;

- (d) the HRAP committee meets regularly to prepare advertising briefs which include the car lines promoted by the campaign, objectives of the campaign etc and to purchase advertising; and
- (e) retailers have the option not to participate in the HRAP. In practice, retailers do exercise this right.

The HRAP relates only to vehicles supplied by Holden to its retailers; it does not cover vehicles sold directly to the public through Holden's fleet sales division.

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

Holden proposes to enter into arrangements with its retailers pursuant to which Holden will:

- (a) supply or offer to supply a Holden Product on the condition that the Retailer is and remains a member of the HRAP;
- (b) 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;
- (c) refuse to supply a Holden Product for the reason that that the retailer is not or has not agreed to become and/or remain a member of the HRAP; and/or
- (d) refuse to give or allow a discount, allowance, rebate or credit in relation to 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.

**Examples of the proposed conduct are set out below**

Holden proposes to offer HRAP retailers special deals on vehicles, which include certain car features (such as air-conditioning or alloy wheels) free of charge. The special offers will not be available to retailers who do not participate in the HRAP.

The proposed conduct will be of benefit to the public as it will:

- provide Holden customers with the opportunity to obtain Holden Products at discounted rates or with additional benefits;
- increase the effectiveness of competitive brand retail advertising and build greater awareness of the Holden brand and participating dealerships through effective retail programs;
- achieve economies of scale and increase advertising power of smaller participating retailers so they can more effectively compete with larger Holden and other brand retailers;
- promote consistency of advertising quality, theme and message into the marketplace; and

- promote competition in the relevant markets by encouraging competitors to offer similar value added services.

The proposed conduct will not lessen competition in the markets for the relevant products and services as:

- competition in the relevant markets is extremely vigorous and there are many competitors;
- the number of retailers potentially affected by the proposed conduct is insignificant compared to the total number of retailers in the Australian automotive industry; and
- retailers will remain free to choose not to participate in the HRAP programme.

The applicant believes that the benefits from the proposed conduct outlined above will outweigh any possible detriment considered to arise from the conduct.

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

New and existing Holden retailers.

**(f) Number of those persons**

There are currently 296 Holden retailers.

**(g) Where 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 is:**

Amanda Bodger  
Mallesons Stephen Jaques  
Level 28, Rialto  
525 Collins Street  
Melbourne Vic 3000

Dated: 12 February 2004

Signed on behalf of the person giving this notice:



Amanda Bodger

Solicitor



## DIRECTIONS

- 1 If there is insufficient space on this form for 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 subsection 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 subsection 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 subsection 93(7A) of the Act (“**the prescribed period**”) unless the Commission gives a notice under subsection 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 30 June 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 subsection 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 subsection 93(3A) of the Act. The notification comes into force when the decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 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.