

Our Ref: 2288303
Your Ref:

2 June 2005

Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Sir

Notification of Proposed Third Line Forcing Conduct

We act for Mitsubishi Motors Australia Limited ("**MMAL**").

We enclose a "Form G" exclusive dealing notification regarding our client's proposed "third line forcing" conduct, together with a cheque for \$1,000 in payment of the lodgement fee.

By way of background:

- MMAL is the Australian manufacturer and importer of "Mitsubishi" brand motor vehicles ("**Vehicles**") and related parts and accessories;
- MMAL has appointed a network of franchisees ("**Dealers**") in Australia authorised to market and sell Vehicles and related parts and accessories to end-user purchasers ("**Customers**"), and to provide services including after-sales maintenance, servicing and repair of Vehicles ("**Servicing**");
- MMAL intends to offer, through an arrangement with a subcontracted third-party provider, "24 hour roadside assistance" for a set term to Customers purchasing Vehicles ("**Roadside Assistance Program**"). This will enable qualifying Customers to obtain services such as emergency mechanical breakdown assistance, battery replacement, jump-starting and towing for Vehicles if required, as well as medical assistance. A condition of continuing eligibility for the Roadside Assistance Program will be a requirement that Customers obtain regular scheduled Servicing from Dealers; and
- MMAL also proposes to establish a "rewards program" involving the award of points to Customers each time their Vehicles are serviced by Dealers. These points will be redeemable for goods or services provided by MMAL or its subcontracted suppliers ("**Rewards Program**").

The proposed conduct can be described as MMAL:

- supplying, or offering to supply, Roadside Assistance Program services and Reward Program services to Customers on the condition that the Customers acquire Servicing from Dealers; or
- refusing to supply Roadside Assistance Program services and Reward Program services to Customers for the reason that the Customers have not acquired, or have not agreed to acquire, Servicing from Dealers.

As the proposed conduct may contravene section 47(1) of the Trade Practices Act 1974 ("**Act**") (given sections 47(6) and 47(7) of the Act), MMAL wishes to notify particulars of it to the Australian Competition and Consumer Commission ("**ACCC**") as provided for under section 93(1) of the Act.

We submit that the likely benefit to the public from the proposed conduct will outweigh any likely detriment, and that accordingly the ACCC ought not issue a notice under section 93(3A) of the Act in response to this notification. Likely public benefits of the conduct include:

- the Rewards Program and Roadside Assistance Program will provide direct benefits to participating Customers. Customers may need to pay extra to obtain similar benefits through, for example, membership of motoring associations providing services similar to the Roadside Assistance Program services;
- it may encourage other car servicing organisations to offer value-added services such as reward or rebate programs or more competitive pricing or other terms (thereby promoting competition); and
- the Servicing of Vehicles by Dealers includes the following benefits:
 - Dealers have direct access to current MMAL service information about Vehicles and will, for example, be able to warn Customers of any safety recalls;
 - Dealers report Servicing data to MMAL allowing the identification of systemic issues with Vehicles which may require wider rectification or recall, while third-party servicing organisations generally do not. The proposed conduct may encourage more vehicles to be Serviced through Dealers and thus result in a greater flow of technical data to MMAL, resulting in the general public benefit of potentially safer Vehicles. MMAL may also be better able to contact Vehicle owners in the event of a recall (as ownership details are reported by Dealers); and
 - Dealers have access to specialised training and equipment provided to them exclusively by MMAL which may enable them to Service Vehicles more effectively.

We submit that there will be no public detriment resulting from the conduct because:

- participation in the Rewards Program and Roadside Assistance Program will be optional. The freedom of Customers to choose to have their Vehicles serviced by non-Dealers will not be restricted, and Customers servicing their Vehicles elsewhere may join third-party motoring associations that offer similar benefits to the Roadside Assistance Program; and

- participating Customers may choose from a range of Dealers from which to obtain Servicing, and are not required to return to a single specific Dealer. There are currently approximately 200 Dealers Australia-wide.

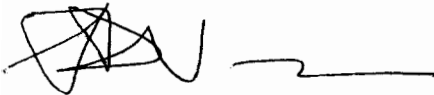
We are instructed that the Roadside Assistance Program and Rewards Program may not be offered if the proposed condition of regular scheduled Dealer Servicing is not allowed to stand.

If you have any queries, please do not hesitate to contact the writer.

We look forward to hearing from you.

Yours faithfully

THOMSON PLAYFORD



Stephen Voss

Partner

Direct Line: (08) 8236 1305

Email Address: svoss@thomsonplayford.com.au

Form G

Commonwealth of Australia

Trade Practices Act 1974 — Subsection 93 (1)

EXCLUSIVE DEALING: NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974* of particulars of conduct or of proposed conduct of a kind referred to in subsection 47 (2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) of (d), of that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)

1. (a) Name of person giving notice:

Mitsubishi Motors Australia Limited ABN 53 007 870 395 (“MMAL”)

(See Direction 2 on the back of this Form)

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

The wholesale supply of “Mitsubishi” brand motor vehicles (“Vehicles”) and related parts and accessories to authorised dealers appointed by MMAL (“Dealers”), and the promotion of the Vehicles and Dealer network

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

**C/- Stephen Voss
Partner
Thomson Playford Lawyers
101 Pirie Street
ADELAIDE SA 5000**

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

The after-sales servicing of Vehicles by Dealers (“Servicing”);

“24 hour roadside assistance” services offered to end-user purchasers of Vehicles (“Customers”), which may include emergency mechanical breakdown assistance, vehicle access in the event of lost keys or lock-outs, towing, jump-starting and battery replacement, as well as emergency medical assistance (“Roadside Assistance Program”); and

A “Reward program” offered to Customers, including the award of points redeemable for goods or services (“Reward Program”).

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

The proposed conduct can be described as MMAL:

- (i) **supplying, or offering to supply, Roadside Assistance Program services and Reward Program services to Customers on the condition that the Customers acquire Servicing from Dealers; or**
- (ii) **refusing to supply Roadside Assistance Program services and Reward Program services to Customers for the reason that the Customers have not acquired, or have not agreed to acquire, Servicing from Dealers.**

(See Direction 4 on the back of this Form)

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

New Customers from 20 June 2005.

(b) Number of those persons —

(i) At present time:

0

(ii) Estimated within the next year:

60,000

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

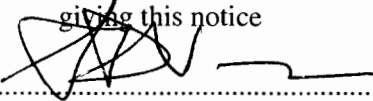
Not applicable

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

**Stephen Voss
Partner
Thomson Playford Lawyers
101 Pirie Street
ADELAIDE SA 5000**

Dated **2 | 6 | 2005**

Signed by/on behalf of the person
giving this notice



(Signature)

STEPHEN DOUGLAS VOSS

(Full Name)

LAWYER

(Description)

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 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 authorized 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 that 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.