



Australian  
Competition &  
Consumer  
Commission

Our Ref: C2004/1499  
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30 March 2005

Mr Michael Wilton  
Partner  
Deacons  
GPO Box 4592  
MELBOURNE VIC 3001

Dear Mr Wilton

**Exclusive dealing notification N40769**

I refer to the above exclusive dealing notification lodged with the Australian Competition and Consumer Commission (the ACCC) by your client, Honda Australia Motorcycle and Power Equipment Pty Ltd (Honda MPE), on 14 September 2004 (the notification). Concerns have been raised with the ACCC that Honda MPE may be engaging in conduct beyond the ACCC's understanding of the scope of the notification.

**The notification**

The notification concerns the following conduct, engaged in by Honda MPE, which potentially constitutes exclusive dealing:

- Supplying or offering to supply Honda products, whether or not at a particular price, on the condition that:
  - the person to whom Honda supplies or offers or proposes to supply Honda products (Person Supplied); and/or
  - related bodies corporate of the Person Supplied, and persons controlled by or associated with (within the meaning of the *Corporations Act* 2001) the Person Supplied (Affiliates)

will not acquire copy products and will not re-supply copy products.



- Giving, allowing, or offering to give or allow a discount, allowance, rebate or credit in relation to the supply or proposed supply of Honda products on condition that the Person Supplied and its Affiliates will not acquire copy products and will not re-supply copy products.
- Refusing to supply Honda products, whether or not at a particular price, for the reason that the Person Supplied and/or its Affiliates have acquired or have not agreed not to acquire copy products.
- Refusing to give, allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of Honda products for the reason that the Person Supplied and/or its Affiliates have acquired or have not agreed not to acquire copy products.

In its letter of 20 October 2004 to Honda MPE, the ACCC advised that no further action would be taken with regard to the notified conduct at that stage, on the basis that the term 'copy products' was understood to mean copies of genuine Honda products which are deceptively similar to genuine Honda products, and which may contravene the copyright held by Honda's parent company, Honda Motor Company Ltd. The ACCC's letter noted that immunity from the notification would not extend to products that compete with Honda's products outside this definition of 'copy products'.

#### **Concerns submitted to the ACCC**

Information provided to the ACCC raises concerns that Honda MPE may have applied the term 'copy product' to non-Honda products that are not deceptively similar to genuine Honda products. In particular, it is suggested that Honda MPE may have refused to supply Honda products to companies which deal in certain engines on the basis that the design of these engines is similar to the design of Honda engines and engine components are interchangeable with Honda engine components.

#### **Request for further information**

As advised in the ACCC's letter of 20 October 2004, the ACCC may review a notification at any stage.

To assist the ACCC's consideration of the concerns raised in the context of the notification, I would be grateful if Honda MPE could please advise:

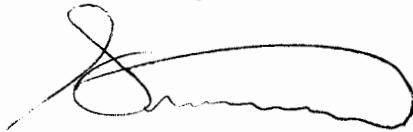
- Which non-Honda products it has deemed to be 'copy products' and on what basis it considers these products to be deceptively similar to genuine Honda products?
- Whether there have been any instances in which the supply of Honda products deemed to be copy products has been refused on the basis that the Person Supplied and/or its Affiliates have acquired or have not agreed not to acquire copy products and if so, which copy products were involved?

- Whether there have been any instances in which a discount, allowance, rebate or credit in relation to the supply Honda products has been refused for the reason that the Person Supplied and/or its Affiliates have acquired or have not agreed not to acquire copy products and if so, which copy products were involved?

I would appreciate your reply by 15 April 2005.

If you wish to discuss any aspect of this matter, please do not hesitate to contact Claire Woods on 02 6243 1236.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', with a large, stylized loop at the end.

Scott Gregson  
A/g General Manager  
Adjudication Branch