



**Australian
Competition &
Consumer
Commission**

Our Ref: C2004/1499
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27 April 2005

Ms Laura Smyth
Lawyer
Deacons
GPO Box 4592
MELBOURNE VIC 3001
By facsimile: 03 8686 6505

Dear Ms Smyth

Exclusive dealing notifications N40769 and N40595 – Honda MPE

Thank you for your letter dated 15 April 2005 regarding exclusive dealing notification N40769 lodged by your client, Honda Australia Motorcycle and Power Equipment Pty Ltd (Honda MPE), on 14 September 2004. I note that notification N40769 had erroneously been referred to as notification N70769 in previous correspondence.

You stated in your letter that there are no instances in which Honda MPE has refused to supply Honda products or to give a discount, allowance, rebate or credit in relation to the supply of Honda products on the basis that a customer or other person has acquired or not agreed not to acquire copies of Honda products.

Information provided to the Australian Competition and Consumer Commission (the ACCC), however, suggests that Honda MPE may be actively enforcing the notified conduct in relation to a number of products. In this regard, I request that you:

1. Confirm (or otherwise) earlier advice concerning instances of refusal to supply or offer discounts.
2. Advise of instances where Honda MPE has written to customers concerning the supply of products that Honda MPE has described as 'copy products'.

As you aware, the ACCC may review notified conduct at any stage. In light of concerns raised in relation to Honda MPE's notifications, further consideration is being given in relation to N40769 and N40595 (the Original Equipment Manufacturers (OEM) notification lodged on 24 September 2003). Inquiries of relevant interested parties may be undertaken as part of this process.




To assist the ACCC in considering this matter, I request your response to the following.

3. Please describe all (Honda and non-Honda) products to which Honda MPE considers the notifications apply.
4. Please describe the end use of the products described in question three and potential substitutes for these products.
5. Please provide a comparison of the prices of the products to which Honda MPE considers the notifications apply with the prices of the 'copy products' to which the notifications refer.
6. Are there any products that are substitutable for Honda products to which Honda MPE considers the notifications apply *and* which Honda MPE does not consider constitute 'copy products'? If so, what are the comparative prices of these products?
7. Please provide a list of customers (including contact details) affected by the notified conduct.
8. Please provide an indication of the relative position with respect to market share of each importer, manufacturer, wholesaler, supplier and/or retailer of Honda products, 'copy products' and/or other substitute products to which Honda MPE considers the notifications apply.
9. Is there a history of new competitors entering the supply chain (at any level) of the products to which Honda MPE considers the notifications apply? Please describe any barriers to entry of the supply chain that may exist.
10. What is the status of Honda MPE's and Honda Motor Company Ltd and its associates' copyrights in regard to the products to which the notifications relate?
11. Please clarify the precise role of Honda OEMs, including a description of their involvement in the importation, wholesale, manufacture, supply and/or retail of the products to which Honda MPE considers the notifications apply.

I would appreciate a reply by 11 May 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



Scott Gregson
A/g General Manager
Adjudication Branch