



**Australian  
Competition &  
Consumer  
Commission**

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22 September 2005

Mr Michael Wilton  
Partner  
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GPO Box 4592  
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By facsimile: (03) 8686 6505

Dear Mr Wilton

**Exclusive dealing notifications N40557, N40595 and N40769 – Honda MPE**

Thank you for your letter dated 30 August 2005 regarding exclusive dealing notifications N40557, N40595 and N40769 lodged by your client, Honda Australia Motorcycle and Power Equipment Pty Ltd (Honda MPE). Thank you also for the extra information you provided at our meeting on 31 August 2005.

As discussed at our meeting and as raised in earlier correspondence, the Australian Competition and Consumer Commission (ACCC) sought to review the three notifications lodged by Honda MPE. As you are aware, the following two issues of concern were identified:

- the scope of the notifications; and
- the absence of a clear and publicly available definition of 'copy products'.

**Scope of the notifications**

In my letter of 21 July 2005, I raised concern at the apparent increasingly broad scope of the three notifications lodged by Honda MPE.

In your response of 30 August 2005, you advise that Honda MPE intends to withdraw notifications N40557 and N40595 given they have been rendered redundant by the terms of notification N40769. You also advise that Honda MPE is prepared to modify N40769 to make it clear that the notified conduct applies only to authorised Honda dealers and Original Equipment Manufacturers (OEMs).

I welcome Honda MPE's response on this issue. In respect of notifications N40557 and N40595, I would appreciate your confirmation of the date on which Honda MPE wishes to withdraw the notifications.



In respect of notification N40769, I note that the *Trade Practices Act 1974* does not provide for the variation of notifications. However, both notification N40769 and your letter of 30 August 2005 have been placed on the public register and, when read together, clearly identify the parties to whom the notified conduct applies.

I consider that the pending withdrawal of notifications N40557 and N40595 and the clarifying information provided in relation to notification N40769, address the concerns raised with respect to the scope of the notifications.

Given Honda MPE's proposed withdrawal of notifications N40557 and N40595, the remainder of this letter will focus on matters of relevance to notification N40769.

### **Definition of 'copy products'**

In reviewing the three notifications lodged by Honda MPE, the ACCC has considered the public benefit arguments put forward by Honda MPE. The ACCC accepts that, to the extent that the notified conduct minimises the possibility of consumers being misled or harmed by products, it is likely to result in a benefit to the public.

In response to concerns in relation to the absence of a clear and consistent definition of 'copy products', Honda MPE has advised it defines 'copy products' as products that have:

1. the external overall shape and the colour combination the same as or similar to genuine Honda engines; or
2. the external overall shape the same as or similar to genuine Honda engines but the colour combination is different; or
3. main engine component parts that are interchangeable with genuine Honda engine component parts.

As I conveyed in my letter of 21 July 2005, while the first of the above definition appears to address the possibility of consumers being misled by 'copy products', I remain unconvinced that points 2 and 3 of the definition are necessary to ensure consumers are not misled.

I encourage Honda MPE to reconsider this definition of 'copy products' and in particular, to review the second and third elements of the definition.

### **Revocation test**

As you are aware, in order to revoke an exclusive dealing notification the ACCC must be satisfied that the relevant conduct is not in the public interest and that it would result in a substantial lessening of competition.

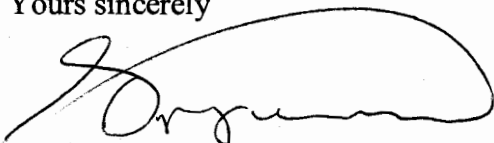
In light of your confirmation that the restrictions imposed by notification N40769 only apply to OEMs and Honda servicing dealers, I am not in a position to conclude that the restrictions would result in a substantial lessening of competition on the information available. It would seem that there remains a significant component of the market in which alternative products can be sold. It is also clear that OEMs & Honda dealers are able to supply non-Honda products that do not meet the definition of 'copy products'.

For these reasons I do not propose that any further action be taken at this stage. Please note that as with any notification, the ACCC may act to remove the immunity afforded by notification N40769 at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

This letter will be placed on the public register.

Your assistance, and that of your client, in responding to our queries has been appreciated. Should you wish to discuss any other aspect of this matter, please do not hesitate to contact Hew Atkin on (02) 6243 1235.

Yours sincerely

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

Scott Gregson  
A/g General Manager  
Adjudication Branch