



**Australian
Competition &
Consumer
Commission**

Faxed 6/7/06
SC

Our Ref: N31625
Your Ref: PRH 0391182 SZY
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6 July 2006

Ms Susan Yee-Kong
Special Counsel
Phillips Fox
201 Elizabeth Street
SYDNEY NSW 2000

By facsimile: (02) 9283 4144

Dear Ms Yee-Kong

Third line forcing notification lodged by Toyota Motor Corporation Australia Ltd (N31625)

I refer to the above third line forcing notification lodged with the Australian Competition and Consumer Commission (the ACCC) on 13 June 2006. The notification has been placed on the ACCC's public register.

You have described the conduct as follows:

1. Toyota Motor Corporation Australia Ltd (TMCA) proposes to only give or allow, or offer to give or allow, rebates and/or discounts in relation to the wholesale price of the supply of motor vehicles and parts to those dealers that:
 - (a) are current members of the Toyota Dealers Advertising Association (TDAA) and
 - (b) comply with the terms and conditions of national or regional advertising campaigns (Declared Campaign) developed by the TDAA.
2. TMCA also proposes to refuse to give or allow, or to refuse to offer to give or allow, rebates and/or discounts in relation to the supply of motor vehicles and parts to those dealers that are:
 - (a) not current members of the TDAA, or
 - (b) members that have not complied with the terms and conditions of a TDAA Declared Campaign to which the rebate and/or discount relates.

Section 93(1) of the *Trade Practices Act 1974* (the Act) allows persons to notify conduct of a kind referred to in the exclusive dealing sub-sections of section 47 of the



Act. A notification is therefore only valid if it concerns conduct that falls within the description of section 47 and it only provides protection to conduct that falls within the description of section 47.

On the basis of the information you have provided, I do not consider the requirement that dealers comply with the terms and conditions of TDAA Declared Campaigns (as set out in 1(b) and 2(b) above) in itself is conduct described in section 47 of the Act. For this reason, I hold the view that the notification does not provide any protection in relation to such conduct. Further, the notification does not provide protection to the agreed terms and conditions of TDAA Declared Campaigns.

Whether or not the terms and conditions of TDAA declared campaigns raise concerns under the competition provisions of the Act is a matter TMCA should consider. While some agreements or requirements restricting the activities of dealers may be less likely to raise concerns (such as requirements to provide full particulars of price), other restrictions in some circumstances (such as agreements that might restrict the pricing decisions of dealers) could raise concerns.

Legal immunity conferred by the notification came into force on 27 June 2006.

On the basis of the information that you have provided, it is not intended that further action be taken in this matter at this stage.

As with any notification, please note that the ACCC may act to remove the immunity afforded by the notification 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.

A copy of this letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Sharon Clancy on (02) 6243 1217.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', with a long horizontal flourish extending to the right.

Scott Gregson
General Manager
Adjudication Branch