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3 February 2006

Mr Scott Gregson  
Acting General Manager - Adjudication  
Adjudications Branch  
Australian Competition and Consumer Commission  
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SYDNEY NSW 2000  
**By hand**

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Ho Chi Minh City

Dear Scott

**Third Line Forcing Notification - Toyota Motor Corporation Australia Limited**

We **enclose** the following:

- 1 A Form G Notification of conduct referred to in subsections 47(6) and (7) of the *Trade Practices Act 1974*, lodged on behalf of Toyota Motor Corporation Australia Limited;
- 2 A submission in support of the Notification; and
- 3 A cheque in the sum of \$1,000 for lodgement fee.

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

Yours sincerely

**Alexis Dyson**  
Paralegal  
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Email alexis.dyson@phillipsfox.com  
Encl

**Paul Holm**  
Partner



## Form G

Commonwealth of Australia  
*Trade Practices Act 1974 - sub-section 93(1)*

### EXCLUSIVE DEALING NOTIFICATION

To the Australian Competition and Consumer Commission:

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

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(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1 (a) Name of person giving notice

Toyota Motor Corporation Australia Limited (ACN 009 686 097) (TMCA)

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

Manufacture, supply and distribution of motor vehicles and associated products and services, including the wholesale supply of Daihatsu motor vehicle components and parts and associated products and services to agents authorised by TMCA to service Daihatsu motor vehicles ("**Authorised Daihatsu Service Agents**")

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

c/- Ms Susan Yee-Kong, Special Counsel, Phillips Fox, 201 Elizabeth St, Sydney NSW 2000

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

Parts (including air conditioners), accessories and components for Daihatsu motor vehicles

(b) Description of the conduct or proposed conduct

Persons appointed as Authorised Daihatsu Service Agents by TMCA will be required to acquire parts, accessories and components from Eastpoint Pty Ltd

(ACN 008 687 367) (trading as Autoparts)

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

Authorised Daihatsu Service Agents in Western Australia

(b) Number of those persons -

(i) At present time 9

(ii) Estimated within the next year 9

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

<b>Name</b>	<b>Address (being the principal place of business)</b>
Suave Holdings Pty Ltd ACN 050 219 899 (trading as Melville Toyota)	5 Carr Place Melville WA 6156
Quayside Enterprises Pty Ltd ACN 074 110 615 (trading as Mandurah Toyota)	285 Pinjarra Road Mandurah WA 6210
Aceway Nominees Pty Ltd ACN 077 576 802 (trading as City Toyota)	63 Adelaide Terrace East Perth WA 6004
SWGT Pty Ltd ACN 098 706 051 as Trustee for the SWGT Unit Trust ACN 056 283 552 (trading as Grand Toyota)	Cnr Waneroo Road & Lancaster Road Wangara WA 6065
Midwest Pty Ltd ACN 008 751 997 (trading as Midwest Toyota)	339 Marine Terrace, West End, WA 6530
Ridgerack Pty Ltd ACN 065 006 359 (trading as Albany Toyota)	352 – 368 Albany Highway, Albany, WA 6330
Action Bay Pty Ltd ACN 053 428 569 (trading as Goldfields Toyota)	58-68 Boulder Road Kalgoorlie WA 6430
Alcomite Investments Pty Ltd ACN 008 896 008 (trading as Midland Toyota)	163 Great Eastern Highway Midland WA 6056
Pittard Motors Pty Ltd ACN 093 085 780 (trading as Terry Pittard Used Cars)	77 Spencer Street Bunbury WA 6230

- 4 (a) Names and address of person authorised by the person giving this notice to provide additional information in relation to this notice

**Name**

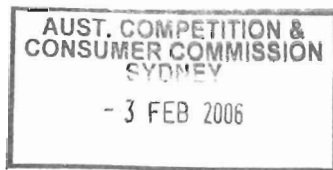
**Address**

Ms Susan Yee-Kong

c/o Phillips Fox, 201 Elizabeth St, Sydney  
NSW 2000

Dated 3 February 2005

Signed by/on behalf of the applicant  
giving notice



  
\_\_\_\_\_  
(Signature)

Susan Yee-Kong  
\_\_\_\_\_  
(Full Name)

(Full Name)

Special Counsel, Phillips Fox  
\_\_\_\_\_  
(Description)

(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 the 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 authorised 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 sub-section 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 sub-section 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 sub-section 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 sub-section 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.

## Notification application - supporting submission

This submission supports a notification of third line forcing lodged by Toyota Motor Corporation Australia Limited (ACN 009 686 097) (TMCA) with the Australian Competition and Consumer Commission (the **Commission**) on 3 February 2006.

### Background

The previous third line forcing notification lodged in relation to this conduct (No. N40703) was lodged by TMCA on 5 April 2004, and legal immunity provided by the notification commenced on 19 April 2004. This notification allowed TMCA to require certain persons appointed as Daihatsu Dealers to acquire parts and accessories from authorised suppliers, namely Daihatsu, and other Daihatsu Dealers and Eastpoint Pty Ltd trading as Autoparts.

TMCA is engaged in the manufacture, supply and distribution of motor vehicles and associated products and services, including the wholesale supply of Daihatsu motor vehicles and associated products and services to authorised Daihatsu dealers. TMCA had assumed responsibility for the Daihatsu franchise throughout Australia in July 2000.

In March 2005 TMCA announced that it was winding down the Daihatsu vehicle sales arm of its Australian operations due to the competitive sales environment and the future outlook for the brand in the small car segment. Sales of Daihatsu vehicles are scheduled to end on 31 March 2006.

TMCA will continue to supply Daihatsu parts and servicing, and to support Daihatsu warranties, through certain TMCA service centres.

### The notified conduct

TMCA is proposing to change its current notified arrangements in Western Australia, such that persons appointed as Authorised Daihatsu Service Agents acquire parts and accessories from Eastpoint Pty Ltd (ACN 008 687 367) (trading as Autoparts). The changes to the arrangement will be implemented by way of an agreement between TMCA and certain existing Toyota dealers in Western Australia.

As a commercial decision, Daihatsu will not be actively seeking to supply parts and accessories to Authorised Daihatsu Service Agents and will be advising Authorised Daihatsu Service Agents to place orders with Autoparts. Nonetheless, under the terms of its arrangements with Autoparts, Daihatsu remains entitled to distribute parts and accessories to Authorised Daihatsu Service Agents and should Authorised Daihatsu Service Agents elect to place orders with Daihatsu, such orders will be considered on a case by case basis in light of Daihatsu's commercial objectives.

Sections 47(6) and 47(7) of the *Trade Practices Act 1974* (the **Act**) prohibit conduct which constitutes third line forcing. To the extent that the proposed arrangements would constitute

third line forcing within the meaning of either section 47(6) or section 47(7), the conduct is hereby notified under section 93 of the Act.

## **Competition analysis**

### **Relevant market**

The relevant market is the Australian market for the retail sale of motor vehicles, parts and accessories for the following reasons:

1. From an economic point of view, one brand of passenger vehicle is broadly substitutable for any other brand of passenger vehicle.
2. There is no single brand market for parts of a particular brand vehicle, as there is a high degree of substitutability between genuine parts and non-genuine parts: *Regents Pty Ltd v Subaru (Aust) Pty Ltd* (1998) ATPR 41-647.
3. The ease with which parts and accessories can be transported between States.

### **Impact of proposed changes**

The proposed changes do not change the degree or character of the impact of the conduct on consumers or the market from that for which legal immunity was provided in 2004. In fact, the changes will result in greater consumer benefit insofar as existing Daihatsu owners will continue to be able to obtain genuine Daihatsu parts and repairs for their vehicles. Consumers will continue to be able to acquire both genuine and non-genuine parts and accessories from a variety of competing suppliers, including Authorised Daihatsu Service Agents.

More generally, the Australian market for the retail sale of motor vehicles, parts and accessories is a highly competitive market with a number of globally based manufacturers competing vigorously for sales.

On the supply side, this presently includes the domestic manufacturing facilities of four multinational companies,. It also includes a number of overseas manufacturers who face low and reducing barriers to entry into the market.

### **Conclusion**

In light of the above, it is submitted that the proposed conduct will not have the purpose or likely effect of substantially lessening competition in any market.

### **Public benefits**

As noted above, Autoparts will be in a position to order parts and accessories in bulk quantities, thus saving on freight costs and ensuring greater efficiency. TMCA would expect that, due to the competitive nature of this market, such efficiency savings will be passed on to Authorised Daihatsu Service Agents and consumers, such that they are able to acquire genuine parts and accessories at a lower price than present.

Furthermore, the proposed arrangements will continue to ensure that only genuine parts and accessories are used by Authorised Daihatsu Service Agents when providing automotive services to consumers, thus resulting in a high degree of quality control. This in turn will

protect consumers, and ensure that the express guarantees and warranties provided by Daihatsu in relation to genuine parts and service can be maintained.

Finally, customer service will be enhanced as stocks of Daihatsu parts and accessories will be held by Autoparts in Western Australia, allowing a more timely supply to Authorised Daihatsu Service Agents and consequently to vehicle owners.

### **Detriment**

It is submitted that the proposed conduct will result in no detriment.

### **Assessment**

It is submitted that the proposed conduct will give rise to demonstrable public benefits for both Authorised Daihatsu Service Agents and end-consumers of Daihatsu products and that the public benefits clearly outweigh any potential detriment.

For these reasons and based on the information provided in this submission and the Form G Notification which it supports, it is submitted that the notified conduct should not be opposed by the Commission.

### **Further information**

If the Commission requires any further information in relation to this submission, it should not hesitate to contact Ms Susan Yee-Kong, by way of the contact details below.

#### **Susan Yee-Kong**

Special Counsel

Phillips Fox

Phone: 02 9286 8061

3 February 2006