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South Yarra Vic 3141  
Australia

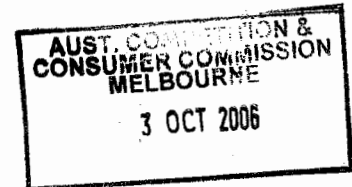
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ABN 30 106 970 941

29 September 2006

## BY COURIER

Scott Gregson  
General Manager  
Adjudication Branch  
Level 42, The Tower  
360 Elizabeth Street  
Melbourne Central  
Melbourne VIC 3000



Dear Mr Gregson

### **Nissan Motor Co. (Australia) Pty Ltd Notification of third line forcing conduct**

We act for Nissan Motor Co. (Australia) Pty Ltd ('**Nissan**'). We are authorised to lodge the attached notification on behalf of Nissan in relation to its proposed arrangement with GE Automotive Financial Services ABN 80 004 187 419 ('**GE Automotive**') which trades as 'GE Money'.

We enclose with this letter a 'Form G' notification under section 93(1) of the Trade Practices Act 1974 (Cth) and a cheque for \$100 as payment of the required lodgement fee.

#### **1 Background**

Nissan is an importer and distributor of Nissan branded motor vehicles, spare parts and accessories. New Nissan branded motor vehicles, spare parts and accessories can only be purchased from an authorised Nissan dealer.

GE Automotive is an automotive financial services provider who supplies finance and insurance products to personal and business customers.

Nissan proposes to enter into an arrangement with GE Automotive in relation to the sale of a new Nissan Maxima ST-L motor vehicle or a new Nissan Maxima Ti motor vehicle ('**Maxima**'). As part of that arrangement GE Automotive will provide finance with an interest rate of 0% for up to 2 years to private consumers who purchase a Maxima from a GE Automotive accredited Nissan dealer and who pay 50% of the Maxima's cost plus dealer delivery and all on road costs up front.

The loss of interest income to GE Automotive will be fully subsidised by Nissan who will re-imburse (or subvent) GE Automotive for the value of the lost interest

charges. To that end, a separate arrangement will exist between Nissan and GE Automotive whereby Nissan agree to subvent the consumer's acquisition of finance from GE Automotive for up to 2 years if that consumer purchases a Maxima from a Nissan dealer. This offer will only be available until 31 December 2006 (but may be ended earlier by agreement between Nissan and GE Automotive) and will not alter the Maxima sale price.

This offer will not apply to Government, fleet or rental company purchasers.

## **2 Section 47(6) and 47(7) of the Trade Practices Act**

As Nissan will not offer to subsidise a consumer's acquisition of finance for up to 2 years for a Nissan Maxima purchase unless that consumer acquires finance from GE Automotive, Nissan understands its conduct may contravene sections 47(6) and 47(7) of the Trade Practices Act. Nissan wishes to notify the Commission of the proposed conduct in accordance with section 93(1).

## **3 Competition issues**

We submit on behalf of our client that the Commission should not serve a notice under section 93(3A) of the Trade Practices Act because:

- (a) the proposed conduct will not adversely affect competition in any relevant market; and
- (b) the proposed conduct will result only in public benefit, with no public detriment.

### **3.1 No adverse affect on competition in the relevant markets**

We consider that the relevant markets for the purpose of assessing this notification are the retail market for motor vehicles and the retail market for consumer finance. Both of these markets are highly competitive and for the following reasons we consider that the notified conduct will not lessen or have an adverse affect on competition in those markets.

The proposed conduct will only affect a minor segment of the overall retail market for motor vehicles. As of August 2006, Nissan comprised 5.5% of the Year to Date total motor vehicle market share. This offer only applies to one vehicle in Nissan's vehicle range – Maxima – which makes up 1.4% of Nissan's vehicle sales. This equates to the offer applying to 0.2% of the total market for motor vehicles. Further, the offer will only be available to private consumers, it does not extend to all Maxima purchasers such as Government, fleet or rental company purchasers.

We also consider that only a minor segment of the overall retail market for consumer finance will be affected by the proposed conduct. Consumers remain free to seek alternative finance options through other financial institutions and credit card providers with no impact on the Maxima purchase price.

Interest free offers of this nature are commonplace in the Australian retail market.

### 3.2 Resulting public benefit

The notified conduct will generate a number of public benefits.

First, the offer will be of benefit to consumers who wish to acquire a new Nissan Maxima as it offers a genuine saving on the amount of interest charged to the consumer.

Second, the creation of a more competitive sales offer for the Maxima will encourage competitors to offer similar value added services and therefore promote competition in the relevant markets.

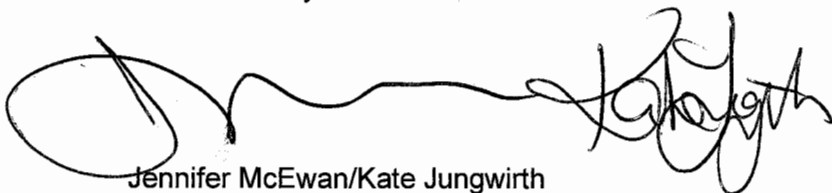
We believe the notified conduct will have little, if any, public detriment as Nissan and GE Automotive are not restricting consumer choice. Potential Maxima purchasers remain free to choose whether or not to accept the proposed offer and whether or not to use GE Automotive as their financier or obtain alternative finance. While some consumers may see their choice of financier as being limited by the exclusive availability of an interest free offer through those authorised Nissan dealers who have entered into a standard dealer retail agreement with GE Automotive, neither Nissan nor GE Automotive are restricting a consumers genuine choice to deal with any financier (or motor vehicle dealer) based on the competitive terms offered by those financiers (or motor vehicle dealers). Further, the Maxima's purchase price is not impacted by their decision.

### 4. Conclusion

For the reasons set out above, we believe the benefits of the notified conduct will outweigh any possible detriment and the Commission should not serve a notice under section 93(3A) of the Trade Practices Act in respect of this notification.

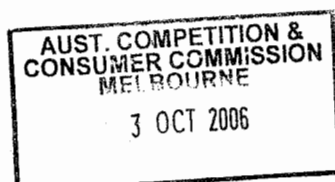
If you have any questions in relation to this notification or require any further information, please do not hesitate to contact Kate Jungwirth on 03 9829 0991.

Yours faithfully



Jennifer McEwan/Kate Jungwirth  
**EKM legal**

Our Ref: WDK 100221  
T. 03 9829 0991 F. 03 9829 0998  
kate.jungwirth@ekmlegal.com



N41024

**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(6) or (7) of that Act in which the person giving notice engages or proposes to engage.

1. (a) **Name of person giving notice:**  
Nissan Motor Co. (Australia) Pty. Ltd. ('Nissan')
- (b) **Short description of business carried on by that person:**  
Nissan is an importer and distributor of Nissan branded motor vehicles, spare parts and accessories.
- (c) **Address in Australia for service of documents on that person:**  
C/o Kate Jungwirth  
EKM Legal  
Level 1  
38-40 Garden Street  
South Yarra VIC 3141
2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**  
Retail finance provided to motor vehicle consumers by GE Automotive Financial Services ABN 80 004 187 419 ('GE Automotive').  
Selected motor vehicles supplied by Nissan.
- (b) **Description of the conduct or proposed conduct:**  
The conduct may be formulated as:
  - (i) Nissan offering to provide, or providing, a discount, allowance, rebate or credit in relation to the supply of a new Nissan Maxima vehicle on the condition that the consumer will acquire retail finance services from GE Automotive for the purchase of that vehicle; or
  - (ii) Nissan refusing to offer to provide, or refusing to provide, a discount, allowance, rebate or credit in relation to the supply of a new Nissan Maxima vehicle for the reason that the consumer has not acquired retail finance services from GE Automotive for the purchase of that vehicle.

Please refer to covering letter for further details.

3. (a) **Class or classes of persons to which the conduct relates:**  
Consumers who wish to purchase a Nissan Maxima vehicle and wish to acquire finance for that purchase.
- (b) **Number of those persons:**  
(i) At the present time: Nil  
(ii) Estimated within the next year: 550
- (c) **Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:**  
Not applicable.
4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:**  
Kate Jungwirth  
EKM Legal  
Level 1  
38-40 Garden Street  
South Yarra VIC 3141

Dated 29 September 2006

Signed on behalf of the applicant giving notice:



**JENNIFER MCEWAN**

**DIRECTOR, EKM LEGAL PTY LTD**

Solicitors for the person giving this notice

## 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 that 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 sub-section 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 sub-section 93(3A) of the Act. This notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in sub-section 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.