

30 October 2006

BY COURIER

Scott Gregson
General Manager
Adjudication Branch
470 Northbourne Ave
Dickson ACT 2602

FILE No:	
DOC:	
MARS/PRISM:	

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.

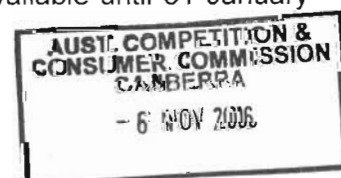
1 Background

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 new Nissan Murano ST, Ti and Ti-L motor vehicles ('Murano'). As part of that arrangement GE Automotive will provide interest free finance for up to 2 years to consumers who purchase a Murano from a GE Automotive accredited Nissan dealer and who pay upfront 50% of the Murano's RRP plus dealer delivery and all on road costs. Nissan and GE Automotive are currently offering consumers the same interest free arrangement in relation to the purchase of new Nissan Maxima vehicles, as advised to the Australian Competition and Consumer Commission by our notification lodged on 3 October 2006 (Notification number N41024).

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 Murano from a Nissan dealer. This offer will only be available until 31 January



2007, but may be ended earlier by agreement between Nissan and GE Automotive.

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 new Nissan Murano 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 a small proportion of Nissan's vehicle range. The Murano makes up 3.7% of Nissan's vehicle sales (equating to 0.2% of the total market for motor vehicles). Combined with Nissan's current offer relating to new Nissan Maxima vehicles (with the Maxima making up 1.4% of Nissan's vehicle sales), this equates to both offers applying to only 0.4% of the total market for motor vehicles.

We also consider that only a minor segment of the overall 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 Murano 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 and finance a new Nissan Murano 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 Murano will encourage competitors to offer similar value added services and therefore promote competition in the relevant markets.

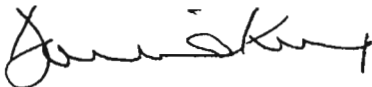
We believe the notified conduct will have little, if any, public detriment as Nissan and GE Automotive are not restricting consumer choice. Potential Murano purchasers remain free to choose whether or not to accept the proposed offer and whether or not to use GE Automotive as their financier or obtain 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 Murano'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 me.

Yours sincerely



David King
EKM legal

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Form G

Commonwealth of Australia
Trade Practices Act 1974 – Sub-section 93(1)
**EXCLUSIVE DEALING
NOTIFICATION**

N92683

To the Australian Competition and Consumer Commission:

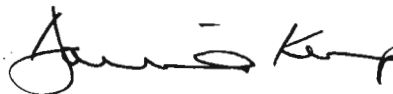
Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(6) or (7) of that Act in which the person giving notice engages or proposes to engage.

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 David King
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 Murano 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 Murano 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 new Nissan Murano 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: 225
- (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:**
David King
EKM Legal
Level 1
38-40 Garden Street
South Yarra VIC 3141

Dated 30 October 2006

Signed on behalf of the applicant giving notice:



DAVID KING

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.