



8 November 2006

The General Manager
Adjudication Branch
Australian Competition and
Consumer Commission
PO Box 1199
Dickson ACT 2602

ABN 47 702 595 758
Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000
Australia
Tel 61 2 9230 4000
Fax 61 2 9230 5333

Correspondence
GPO Box 50
Sydney NSW 2001
DX 105 Sydney
www.aar.com.au

Dear Sir

Notification of third line forcing

We act for Sime Darby Automobiles Pty Limited.

We enclose for lodgement two third line forcing notifications on behalf of our client, together with a supporting submission and a cheque for the applicable lodgement fee of \$200.

If you require any further information regarding any aspect of the notifications, please contact Carolyn Oddie or Emma Marsh on the numbers below.

Yours faithfully

Carolyn Oddie
Partner
Carolyn.Oddie@aar.com.au
Tel 61 2 9230 4203

Emma Marsh
Senior Associate
Emma.Marsh@aar.com.au
Tel 61 2 9230 4136

Encl

Form G
Commonwealth of Australia
Trade Practices Act 1974 – Sub-section 93(1)
Exclusive dealing:
Notification

N92688

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-sections 47(6) and 46(7) of that Act in which the person giving notice engages or proposes to engage.

1. (a) **Name of person giving notice**

Sime Darby Automobiles Pty Limited (ABN 26 000 426 282) (*Sime Darby*)

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

Sime Darby is the holder of a master franchise granted by Automobiles Peugeot, a company incorporated in France, pursuant to which Sime Darby has the right to import and distribute Peugeot motor vehicles in Australia and to appoint motor vehicle dealers within Australia for the purposes of promoting and selling new and used Peugeot motor vehicles and associated products.

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

Allens Arthur Robinson, GPO Box 50, Sydney NSW 2001

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

A bundle of services comprised of:

- administration services;
 - insurance to cover warranties provided to purchasers of used motor vehicles; and
 - roadside assistance services for purchasers of used motor vehicles.
-

(b) **Description of the conduct or proposed conduct**

Sime Darby will supply motor vehicle dealers with the right to sell used Peugeot motor vehicles as part of the Peugeot-approved used motor vehicle program on condition that the dealer acquire the bundle of services described in item 2 (a) from:

- a company selected by Sime Darby to administer certain aspects of the Peugeot-approved used motor vehicle program (the *Administrator*);
 - an insurer selected by the Administrator; and
-

-
- a company selected by Sime Darby to provide roadside assistance services.
-

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

Motor vehicle dealers who enter into an agreement with Sime Darby to sell used motor vehicles as part of the Peugeot approved used motor vehicle program.

(b) **Number of those persons**

(i) **At present time**

Nil

(ii) **Estimated within the next year**

Approximately 40

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

Not applicable

6. **Name and address of person authorised by the applicant to provide additional information in relation to this application**

Carolyn Oddie
Partner
Allens Arthur Robinson
GPO Box 50
Sydney NSW 2001

DATE 8 November 2006.

SIGNED on behalf of the person giving notice by:



Carolyn Oddie

Partner, Allens Arthur Robinson,
who is authorised to sign this
notice on behalf of Sime Darby.

Form G
Commonwealth of Australia
Trade Practices Act 1974 – Sub-section 93(1)
Exclusive dealing:
Notification

N92689

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-sections 47(6) and 46(7) of that Act in which the person giving notice engages or proposes to engage.

1. (a) **Name of person giving notice**

Sime Darby Automobiles Pty Limited (ABN 26 000 426 282) (*Sime Darby*)

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

Sime Darby is the holder of a master franchise granted by Automobiles Peugeot, a company incorporated in France, pursuant to which Sime Darby has the right to import and distribute Peugeot motor vehicles in Australia and to appoint motor vehicle dealers within Australia for the purposes of promoting and selling new and used Peugeot motor vehicles and associated products.

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

Allens Arthur Robinson, GPO Box 50, Sydney NSW 2001

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

Roadside assistance services.

(b) **Description of the conduct or proposed conduct**

Sime Darby will supply the company with the right to use the Peugeot brand in its role as administrator of the Peugeot-approved used motor vehicle program on condition that the company acquires services from a company selected by Sime Darby to provide roadside assistance services to purchasers of used Peugeot motor vehicles.

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

The company selected by Sime Darby to administer certain aspects of the Peugeot-approved used motor vehicle program.

(b) **Number of those persons**

(i) **At present time**

Nil

(ii) Estimated within the next year

One

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

Not applicable

6. Name and address of person authorised by the applicant to provide additional information in relation to this application

Carolyn Oddie
Partner
Allens Arthur Robinson
GPO Box 50
Sydney NSW 2001

DATE 8 November 2006.

SIGNED on behalf of the person giving notice by:



Carolyn Oddie

Partner, Allens Arthur Robinson,
who is authorised to sign this
notice on behalf of Sime Darby.

Sime Darby Automobiles Pty Limited

Submission accompanying exclusive dealing notifications

The proposed conduct

Automobiles Peugeot (**Peugeot**) is a French company which, among other things, manufactures and arranges for the distribution globally of Peugeot motor vehicles. Sime Darby Automobiles Pty Limited (**Sime Darby**) holds a master franchise from Peugeot that gives it the right to import and distribute Peugeot motor vehicles in Australia and to appoint motor vehicle dealers within Australia for the purposes of promoting and selling new and used Peugeot motor vehicles and associated products.

Peugeot has created a Peugeot approved used motor vehicle program (the **Peugeot Program**) worldwide. The Peugeot Program gives consumers added benefits when they purchase a used Peugeot motor vehicle through the program. In order to implement the Peugeot Program in Australia, Sime Darby proposes to enter into arrangements with a number of dealers through whom new Peugeot motor vehicles are already sold to consumers. These arrangements will set out the things that dealers will have to do to participate in, and sell used motor vehicles as part of, the Peugeot Program. Among other things, the arrangements will set out the benefits that dealers will have to offer consumers for all motor vehicles sold through the Peugeot Program. These benefits will include the following:

- A warranty for 2 years for all repairs that are not part of normal maintenance.
- 24 hours a day, 7 day a week roadside assistance cover for motoring emergencies for 12 months from the date of delivery.
- A multi-point mechanical inspection report, which is available to the customer and which is used by the dealer before offering the motor vehicle for sale to ensure that all mechanical and visual defects in the motor vehicle are rectified before the motor vehicle is sold.

All models of used Peugeot motor vehicles will be eligible for the Peugeot Program, although motor vehicles must meet certain standards. Generally, this means that only motor vehicles less than five years old or which have covered less than 130,000 kilometres are eligible to be sold through the program.

Sime Darby will appoint an administrator to administer the 2 year warranty and roadside assistance elements of the Peugeot Program, including the establishment of a claims and complaints handling system and a "goodwill fund". The "goodwill fund" is available for the payment of claims made by consumers whose claim does not fall within the warranty, but where the administrator decides in its discretion that the claim should be satisfied in any event. Sime Darby intends to appoint MotorOne Insurance Pty Limited (ABN 12 098 913 823) (**MotorOne**) as the administrator.

In implementing the Peugeot Program, there are two elements which may involve conduct of the kind described in s 47(6) and s 47(7) of the *Trade Practices Act 1974*:

- As a condition of being able to participate in the Peugeot Program, dealers must buy a package of services from MotorOne in order to provide the benefits of the program to their customers. This package will include administration services from MotorOne, warranty insurance from an insurer selected by MotorOne (which will cover the cost to the dealer of any repairs made to used motor vehicles during the 2 year warranty period) and the right for the dealer's customers to be supplied with roadside assistance by ETI Australia Pty Ltd (ACN 097 227 177), trading as Mondial Assistance (**Mondial**).
- In order to act as administrator of the Peugeot Program, Sime Darby will require MotorOne to enter into an agreement with Mondial by which roadside assistance services will be supplied to customers who purchase used motor vehicles through the Peugeot Program.

MotorOne and Mondial are not related to Sime Darby. In Sime Darby's opinion, MotorOne is the only administrator which provides the type and level of administration services, including a claims and complaints platform and the establishment of a goodwill fund, of the standard and cost necessary to be associated with the Peugeot Program. Mondial currently provides roadside assistance services to customers of new Peugeot vehicles, and provides a complaints platform to customers of new Peugeot vehicles. Sime Darby wishes to ensure consistent service levels across motor vehicles sold as part of its new and used motor vehicle programs and extend to customers who purchase a motor vehicle through the Peugeot Program the ability to make complaints to the Mondial complaints platform.

The public benefit of the proposed conduct

Buying a used motor vehicle can be a difficult process for a consumer; principally because of the fear that something will go wrong with the motor vehicle after it is purchased. The Peugeot Program is intended to reduce the anxiety associated with buying a used motor vehicle by providing the benefits to consumers outlined above. Thus, the value of the Peugeot Program comes from the confidence a consumer will have that the elements of the program are to the standard he or she would expect to be associated with the Peugeot brand. Key benefits to consumers of the Peugeot Program are the 2 year warranty and roadside assistance provided to them when they purchase a motor vehicle. As outlined below, Sime Darby intends to implement these elements in the manner described above to maximise the reputation of the Peugeot Program and the confidence that consumers can have in its benefits.

2 year warranty

Sime Darby intends to require the 2 year warranty to be insured by dealers in order to spread the risk of claims across dealers and to keep the costs of insuring the warranty down. The requirement to insure is also to reduce the consumer risk of a particular dealer being unable to pay a claim (through insolvency, etc) and causing damage to the Peugeot Program and brand, and the goodwill attached to it, because of non-payment.

Sime Darby intends to require all dealers to buy a package of services from MotorOne because it wishes to ensure that claims are handled by one administrator, so that:

- similar claims are dealt with in a similar way and there is consistency in treatment across all claims made for repairs as part of the Peugeot Program;
- one claims process applies to all claims;

- the administrator handles claims in an appropriate way; that is, efficiently and fairly; and
- the "goodwill fund" will be established for the payment of certain claims which fall outside the strict terms of the policies.

MotorOne will select the insurer with which dealers have their policies. Currently, MotorOne intends to select The Hollard Insurance Company Pty Limited.

Having one claims administrator for all dealers will reduce the checks that Sime Darby will have to undertake to ensure the quality and service levels of the insurers are of a standard high enough to be associated with the Peugeot Program. If dealers could have claims handled by, and insurance with, whomever they wished, there would be a myriad of claims processes and service levels which may not be of a sufficient standard to be associated with the Peugeot Program. It may give rise to warranty claims not being dealt with to the standard necessary to be associated with the Peugeot Program. Further, having one administrator and insurer will mean that claims handling is not duplicated and that costs are kept down.

Having one claims administrator will also mean that there will be a centralised complaints handling platform available to all customers who purchase motor vehicles through the Peugeot Program. If dealers handled complaints themselves or outsourced complaints handling to a number of administrators, then different contact details, procedures and customer service standards will apply to customers depending on which dealer they purchase through. This may lead to confusion and to similar complaints being handled differently. It will also make it more difficult for Sime Darby to monitor quality standards and ensure that customers have any complaints they have dealt with to the standard they would expect to be associated with the Peugeot brand.

Roadside assistance

Sime Darby intends to require roadside assistance to be purchased from Mondial so that it can ensure that the roadside assistance provided is of a standard high enough to be associated with the Peugeot Program and consistent with the standard already provided to customers who purchase new Peugeot motor vehicles. Mondial provides roadside assistance for customers who purchase new Peugeot motor vehicles through the Peugeot new motor vehicle program and using the same supplier for used motor vehicles will ensure the same contact details and service levels apply to the roadside assistance provided to all Peugeot customers, regardless of whether they purchase their motor vehicle through the new or the used Peugeot motor vehicle program. If dealers could acquire roadside assistance from whomever they wished, it would give rise to different standards of service across the Peugeot Program and may give rise to roadside assistance being offered that is not of the requisite standard that consumers would expect, with the result that damage is done to the Peugeot brand and the reputation of the Peugeot Program.

Conclusion

Sime Darby submits that the proposed conduct will not have any significant anti-competitive effect in any relevant market, including the insurance and roadside assistance markets in which MotorOne and Mondial supply their services and the markets in which the dealers operate in acquiring and supplying used motor vehicles. The number of dealers that it is anticipated will be involved in the Peugeot Program is around 40. This is an insignificant proportion of the total number of businesses who acquire insurance and roadside assistance services of the type

supplied by MotorOne and Mondial and an insignificant proportion of the total number of motor vehicles dealers in Australia.¹

Dealers can choose whether or not they wish to participate in the Peugeot Program but can pass on significant benefits to consumers if they do so. Consumers are always free to choose to buy a used motor vehicle through the Peugeot Program or one that does not have the added benefits.

Sime Darby submits that the proposed conduct will not result in any detriment to the public.

Sime Darby submits that the proposed conduct will result in clear public benefits to consumers who purchase a used motor vehicle through the Peugeot Program.

In the light of the above, the Commission should allow the two exclusive dealing notifications lodged by Sime Darby to stand.

Allens Arthur Robinson

8 November 2006

¹ According to the Federal Chamber of Automotive Industries, the number of dealers retailing new motor vehicles in Australia is around 3000 (<http://www.fcai.com.au/keyfacts/>). Sime Darby understands that the number of dealers retailing used motor vehicles is greater than this number.