



ANDERSON RICE
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AUST. COMPETITION & CONSUMER COMMISSION MELBOURNE
16 NOV 2007

General Manager
Australian Competition & Consumer Commission
Level 35,
Elizabeth Street
MELBOURNE CENTRAL
VIC 3000

PARTNER
John Lancefield
jal@andrice.com.au

Dear Sir,

Notification of third line forcing conduct

We act on behalf of Marine Power International Pty Ltd (ABN 250 031 007).

We enclose:

1. Notification under section 93 (1) of the Trade Practices Act 1974 (full copy with confidential information identified);
2. Notification under section 93 (1) of the Trade Practices Act 1974 (public register version);
3. A cheque in the amount of \$100 in payment of the lodging fee.

Our client requests that the information appearing in red text on page 3 [paragraph 3 (b) (i) and (ii)] and pages 6 and 7 [paragraph 6 (b)] be excluded from the public register by reason of its confidential nature in accordance with Section 89 (5A) (b) of the Trade Practices Act 1974. We are instructed that this information is commercially sensitive as it contains internal Marine Power International sales figures.

If you have any questions in relation to this Notification or our client's application to exclude information from the public register or if you require any more information, please do not hesitate to contact John Lancefield of our office.

Yours faithfully,

Anderson Rice

ANDERSON RICE

JAL-009448-84-7-V1

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RESTRICTION OF PUBLICATION OF PART CLAIMED

Page 3 - Para 3(b)(i) & (ii)

Pages 6 and 7 - Para 6(b)

Form G

Commonwealth of Australia

Trade Practices Act 1974 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

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

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

N93220

Marine Power International Pty Ltd ABN 25 003 100 007

("Marine Power International").

- (b) Short description of business carried on by that person:
(Refer to direction 3)

Marine Power International manufactures, imports and distributes, among other things, Mercury and Mariner branded outboard boat engines (**Engines**), spare parts and accessories.

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

John Lancefield

Partner

Anderson Rice Lawyers

Level 10, 555 Lonsdale Street

Melbourne Vic 3000

2. Notified arrangement

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

After sales servicing of Mercury and Mariner branded engines.

Extended warranty services to owners of Mercury and Mariner Engines.

- (b) Description of the conduct or proposed conduct:

Background

Marine Power International has established a network of Mercury dealers and a network of Mariner dealers in Australia who are authorized to market and sell the respective Mercury or Mariner branded Engines to end user customers and to provide after sale servicing, maintenance and repair of Engines ("Servicing").

All new Engines sold in the Australian retail market are supplied with a three year/unlimited hours factory warranty ("**New Engine Factory Warranty**"). The warranty excludes, among other things, non-recreational use of the Engine and damage caused by lack of maintenance, improper service and the installation or use of parts and accessories that are not supplied by Marine Power International ("**Non Genuine Parts**").

Marine Power International has authorized all of its Mercury dealers and Mariner dealers within Australia to provide Servicing for Mercury and Mariner Engines ("**Authorized Service Centres**"). These Authorized Service Centres are authorized to perform on behalf of Marine Power International repairs that are covered by the New Engine Factory Warranty.

Conduct or proposed conduct

Marine Power International is proposing to offer to qualifying Engine owners an additional 2 years of warranty cover ("**Bonus Extended Warranty**"). The Bonus Extended Warranty would commence upon the expiry of the New Engine Factory Warranty and provide the same warranty coverage as that warranty for an additional period of two years. Marine Power International does not propose to charge for the Bonus Extended Warranty.

The proposed conditions for the Bonus Extended Warranty (in addition to the terms and conditions of the New Engine Factory Warranty) are that:

- (i) the Engine must have been purchased as a new Engine on or after 1 January 2007;
- (ii) during the terms of the New Engine Factory Warranty and the Bonus Extended Warrant;
 - the Engine must undergo all scheduled Servicing;
 - all Servicing must have been carried out by an Authorised Service Centre;
 - all maintenance and Servicing must have been carried out using parts and accessories that are supplied by Marine Power International ("**Genuine Parts**");
 - the consumer must have kept an Outboard Maintenance Log Book service book (which is supplied free of charge to the purchaser of the Engine by Marine Power International) that evidences the above.

("Bonus Extended Warranty Conditions")

It is proposed that Engine owner's entitlement to coverage under the Bonus Extended Warranty would cease upon a breach of one or more of the Bonus Extended Warranty Conditions.

It is proposed that the Bonus Extended Warranty would be in addition to the Engine owner's rights under the New Engine Factory Warranty.

It is proposed that the Bonus Extended Warranty would be transferable to future owners of the Engine, at no cost.

Accordingly, the notified conduct can be formulated as Marine Power International:

- (a) supplying, or offering to supply, extended warranty services to Engine owners on the condition that the Engine owner will acquire after-sales servicing for the Engine from an Authorized Service Centre; and
- (b) refusing to supply, or offer to supply, extended warranty services to Engine owners for the reason that the Engine owner has not acquired, or has not agreed to acquire, after-sales servicing for their Engine from an Authorized Service Centre.

Marine Power International appreciates that the conduct described in paragraph may be construed as falling within the prohibitions contained in section 47(6) and 47(7) of the TPA. Accordingly, it wishes to notify the conduct under section 93(1) of the TPA.

(Refer to direction 4)

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

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

(Refer to direction 5)

Recreational use customers who have purchased the Engine from 1 Jan 2007

- (b) Number of those persons:

- (i) At present time:

[Restriction of Publication of Part Claimed - Paragraph 3(b)(i)]

- (ii) Estimated within the next year:

[Restriction of Publication of Part Claimed - Paragraph 3(b)(ii)]

(Refer to direction 6)

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

Not applicable

**EXCLUDED FROM
PUBLIC REGISTER**

4. Public benefit claims

(a) Arguments in support of notification: (Refer to direction 7)

Marine Power International considers that the notified conduct will generate a number of public benefits, including the following:

- (i) providing Engine owners who qualify for the Bonus Extended Warranty with an additional 2 years of warranty that will be transferable to the next owner at no extra charge. This will in turn encourage other distributors of marine outboard engines to offer similar value added benefits, thereby encouraging competition in the market.
- (ii) encouraging Engine owners to acquire servicing from Authorized Service Centres. These service centres employ appropriately qualified and trained service technicians, with a focus on safety. Authorized Service Centres are required to have the latest Marine Power International specific diagnostics equipment, which enables them to promptly and efficiently diagnose any faults with Engines. Authorised Service Centres are also equipped with specialist tools and knowledge of Marine Power International specific technologies and have direct access to Marine Power International product experts This will ensure that the performance and safety of the Engine is maintained;
- (iii) ensuring a consistently high level of customer service. All Authorised Service Centres are required to comply with Marine Power International's customer service policies, This encourages all Authorized Service Repair Centres to deliver high quality customer service,
- (iv) reducing the cost of warranty claims to Marine Power International thereby allowing it to provide the Bonus Extended Warranty free of charge. As the issuer of the Bonus Extended Warranty, Marine Power International has a legitimate interest in ensuring that the Engines are serviced by Authorized Service Centres and that only Genuine Parts are used. There is a greater risk of an Engine developing a defect during the period of coverage provided by the Bonus Extended Warranty if the Engine has not been correctly serviced or if non-genuine parts have been used. Service centres that are not Authorized Service Centres may lack the product knowledge, training, diagnostic equipment and technical support required to properly service an Engine. Similarly, Marine Power International ensures that all of its Genuine Parts are built to Marine Power International's specifications. These Engines are required to perform to high levels in marine environments. Non-genuine parts may not meet these high standards and lead to failures.

(b) Facts and evidence relied upon in support of these claims:

Marine Power International provides all of its Authorized Service Centres with the training, technical support (in the form of service manuals, product information and

advice) and diagnostic tools required to properly service its engines. The diagnostic tools have been developed by Marine Power International specifically for its Engines.

Furthermore, Marine Power International sets service guidelines and standards for the Authorized Service Centres that are designed to ensure that the Engines are correctly serviced. If these guidelines are not met, Marine Power International will provide additional training and support or withdraw its service authorization.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 8)

Marine Power International considers the markets primarily relevant to the assessment of this notification are the regional markets for outboard boat engine parts, servicing and repairs, and the market for extended warranty services. The regional markets for outboard boat engine parts, servicing and repairs are highly competitive.

The regional markets for outboard boat engine parts, servicing and repairs are serviced by a large number of providers which include dealers of Yamaha, Suzuki, Honda, BRP, Tohatsu as well as a large number of independent workshops and mechanics

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:
(Refer to direction 9)

Marine Power International believes that the notified conduct will not cause detriment to the public.

The proposed Bonus Extended Warranty would not restrict the Engine owner's ability to choose whether and from whom to acquire Servicing for the Engine. The Bonus Extended Warranty merely offers benefits in the form of the Bonus Extended Warranty to those Engine owners who do choose to have their Engines serviced and repaired at an Authorized Service Centre and using Genuine Parts (and meet the other Bonus Extended Warranty Conditions). They can choose, on the normal commercial basis of quality and price, whether or not to purchase servicing or repair services from any supplier, or to accept servicing in accordance with the Bonus Extended Warranty Conditions and the Bonus Extended Warranty.

Engine owners are also not required to obtain any additional products or services from the Authorized Service Centre.

Further, in order to qualify for the benefits of the Bonus Extended Warranty, Engine owners are not required to obtain servicing from any one particular Authorized Service Centre but may choose from a group of over 300 Authorized Service Centres. If an Engine Owner wishes to take advantage of the benefit of the Bonus Extended Warranty by obtaining servicing from an Authorized Service Centre, he or she can choose to deal with any Authorized Service Centre based on the competitive terms (including price) offered by those Authorized Service Centres.

Marine Power International submits that the proposed Bonus Extended Factory Warranty should be regarded as conferring benefits on Engine Owners who choose to obtain servicing from Authorized Service Centres, rather than causing detriment to those Engine owners who choose not to obtain servicing from a Authorized Service Centres.

Overall, Marine Power International considers that the effect of the above conduct, in relevant markets is insignificant and is outweighed by benefits to the public that will result for the Bonus Extended Warranty.

Marine Power International submits that the Commission should not serve a notice under Section 93(3A) of the Trade Practices Act 1974 because the conduct in question:

- (i) will not adversely affect competition in any relevant market; and
 - (ii) will result in benefits and no identifiable public detriment.
- (b) Facts and evidence relevant to these detriments:

Marine Power International has 300 Authorized Service Centres throughout Australia. None of these Authorized Service Centres have exclusive territories. Accordingly all Authorised Service Centre are free to compete with all other Authorised Service Centre for Servicing business. Under the proposed Bonus Extended Warranty Conditions an Engine owner would be able to choose any of these service centres to provide servicing.

[Restriction of Publication of Part Claimed - Paragraph 6(b)]

**EXCLUDED FROM
PUBLIC REGISTER**

7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

John Lancefield

Partner

Anderson Rice Lawyers

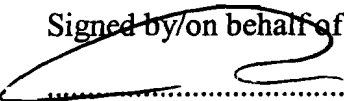
Level 10, 555 Lonsdale Street

MELBOURNE VIC 3000

Telephone: (03) 9672 2666

Dated 15 November 2007.....

Signed by/on behalf of the applicant


.....
(Signature)

JOHN LANCEFIELD.....
(Full Name)

ANDERSON MIKE.....
(Organisation)

PARTNER.....
(Position in Organisation)

**EXCLUDED FROM
PUBLIC REGISTER**

RESTRICTION OF PUBLICATION OF PART CLAIMED