

3 November 2007

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BY HAND

Attn: Ms Simona Chanclon-Nevado
Mr Scott Gregson
General Manager - Adjudication
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

FILE No:	
DOC:	
MARS/PRISM:	

Dear Sir

Notification of third line forcing conduct

We act on behalf of Subaru (Aust) Pty Ltd (ACN 000 312 792) (**Subaru**). **N93237**

We enclose:

- notification under section 93(1) of the *Trade Practices Act 1974 (TPA)*; and
- a cheque in the amount of \$100 as payment of the required fees.

If you have any questions in relation to this notification or require any further information, please do not hesitate to contact Miranda Noble or Peter George of our office.

Yours faithfully
MINTER ELLISON

Contact: Miranda Noble Direct phone: +61 3 8608 2237 Direct fax: +61 3 8608 1230
Email: miranda.noble@minterellison.com
Partner responsible: Peter George Direct phone: +61 3 8608 2672
Our reference: PAG 303121999

Enclosure

Annexure 1

1. Background

- 1.1 Subaru Australia imports Subaru branded motor vehicles, spare parts and accessories.
- 1.2 Subaru Australia has established a network of authorised retailers (**Subaru Dealers**) and service centres within Australia (**Subaru Service Centres**). Subaru Dealers sell new and used Subaru motor vehicles, spare parts and accessories in the retail market, and also service new and used motor vehicles (predominantly Subaru-branded motor vehicles). The Subaru Service Centres service new and used motor vehicles (again, predominantly Subaru-branded motor vehicles) but do not sell vehicles.
- 1.3 Subaru Australia is proposing to conduct a promotion pursuant to which Subaru Australia will offer a prepaid fuel card to customers who have their Subaru vehicle's 50,000km or 100,000km service conducted at a authorised Subaru service provider, that is, a Subaru Dealer or a Subaru Service Centre (**Subaru Service Providers**). Subaru Australia is proposing to run this promotion from December 2007 until the end of February 2008.

2. Notified Conduct

- 2.1 Out of an abundance of caution, in order to minimise the risk of contravening sections 47(6) and (7), our client wish to notify the conduct under section 93(1) of the TPA. The conduct is set out in Form G.

3. Competition Issues

- 3.1 We submit on behalf of our client that the Commission should not serve a notice under section 93(3A) of the TPA because the conduct in question will not adversely affect competition in any relevant market and the conduct in question will result in public benefits and no identifiable public detriment.
- 3.2 The conduct notified by Subaru Australia comprises the offer of a benefit on the *optional* acquisition of vehicle servicing by consumers from a range of nominated service providers. Customers retain their genuine choice to deal with any service provider on the competitive terms offered by those providers. By retaining consumers' genuine choice, the conduct is not inherently anti-competitive.
- 3.3 In any event, we do not believe that the proposed conduct will have any adverse affect on competition in any relevant market. We consider the markets primarily relevant to the assessment of this notification are the regional markets for motor vehicle servicing, parts and support. These markets are highly competitive and are characterised by a high degree of competition between a large number of providers which include motor vehicle retailers, large independent chains and franchisees (such as Lubemobile, Ultratune and Brakesplus) as well as smaller local providers. Accordingly, we do not consider that the conduct will distort demand, create barriers to entry or otherwise harm competition in the market.
- 3.4 Moreover, the notified conduct is pro-competitive and will generate a number of public benefits, including the following:

- (a) provide consumers with a genuine benefit (in the form of a prepaid fuel card);
- (b) enabling Subaru Australia to offer more competitive products and therefore foster business efficiency; and
- (c) encouraging other distributors and manufacturers of motor vehicles and service providers to offer similar value-added benefits, thereby encouraging competition in the relevant market. These factors will ultimately enhance consumer welfare by reducing the search costs for competitively priced products and consumer benefits.

3.5 We believe that the notified conduct causes little, if any, identifiable detriment to the public. While some consumers may consider that their choice of service provider is limited by the exclusive availability of the prepaid fuel card through having their Subaru vehicle's 50,000km or 100,000km service conducted by Subaru Service Providers, consumers genuine choice to deal with any service provider based on the competitive terms offered by those providers is not restricted. Consumers are also not required to obtain any additional products or services from the Subaru Service Provider. Further, consumers are not required to obtain servicing from any one particular Subaru Service Provider but may choose from a group of over 120 Subaru Service Providers. Overall, the effect of the conduct, discussed above, in relevant markets is insignificant and is outweighed by benefits.

3.6 We submit that the proposed offer of the prepaid fuel card should be viewed as conferring an additional benefit on consumers who choose to have their Subaru vehicle's 50,000km or 100,000km service conducted a Subaru Service Provider, rather than causing detriment to those consumers who choose not to do so.

4. Conclusion

4.1 For the reasons set out above, we do not believe the Commission should serve a notice under section 93(3A) of the TPA in respect of the attached notifications. This is because the notified conduct will cause little, if any, identifiable detriment and will generate public benefits.

Form G

Commonwealth of Australia

Trade Practices Act 1974 - sub-section 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*, 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.

1. Applicant

- (a) Name of person giving notice:

Subaru (Aust) Pty Ltd (ACN 000 312 792) (Subaru Australia)

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

Wholesale supply of new and used Subaru branded motor vehicles, spare parts and accessories, and associated services to authorised Subaru dealers.

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

*C/- Miranda Noble
Minter Ellison Lawyers
525 Collins 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:

*Subaru Australia is proposing to conduct a promotion pursuant to which Subaru Australia will offer a prepaid fuel card to customers who have their Subaru vehicle's 50,000km or 100,000km service conducted at an authorised Subaru dealer or service centre (**Subaru Service Providers**). Subaru Australia is proposing to run this promotion from December 2007 until the end of February 2008.*

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

Subaru Australia supplying, or offering to supply, a prepaid fuel card to consumers on the condition that the consumer will acquire their Subaru vehicle's 50,000km or 100,000km service from a Subaru Service Provider.

Subaru Australia refusing to supply, or offer to supply, a prepaid fuel card to customers for the reason that the customer has not acquired, or has not agreed to acquire, their Subaru vehicle's 50,000km or 100,000km service from a Subaru Service Provider.

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:

Existing Subaru customers

- (b) Number of those persons:

- (i) At present time:

Substantially in excess of 50

- (ii) Estimated within the next year:

Substantially in excess of 50

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

Not applicable.

4. Public benefit claims

- (a) Arguments in support of notification:

We believe the notified conduct will generate a number of public benefits. These are set out in more detail in Annexure 1.

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

Please refer to Annexure 1.

5. Market definition

Please refer to Annexure 1.

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:

We do not believe that the notified conduct causes any identifiable detriment to the public. Please refer to Annexure 1.

- (b) Facts and evidence relevant to these detriments:

Please refer to Annexure 1.

7. Further information

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

Miranda Noble
Minter Ellison Lawyers
Level 23
525 Collins Street
MELBOURNE VIC 3000



Dated 3 December 2007

Signed by/on behalf of Subaru (Aust) Pty Ltd

(Signature)

Peter George

(Full Name)

Minter Ellison

(Organisation)

Partner

(Position in Organisation)

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

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. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 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. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible