

8 May 2007

FILE No:

DOC:

MARS/PRISM:

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

Dear Sir/Madam,

TOYOTA MOTOR CORPORATION AUSTRALIA LIMITED – NOTIFICATION UNDER SECTION 93(1) OF THE TRADE PRACTICES ACT 1974

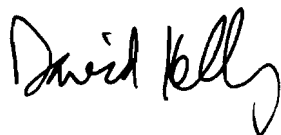
We act for Toyota Motor Corporation Australia Limited (ABN 64 009 686 097) ("TMCA").

We enclose three completed Form G Notices for TMCA in respect of conduct which may constitute third line forcing pursuant to Sections 47(6) and 47(7) of the Trade Practices Act 1974 (Cth).

We also enclose a cheque for \$300 in payment of the filing fees.

If you have any questions in relation to these notifications or require further information, please do not hesitate to contact me on 03 9663 9877.

Yours Sincerely



David Kelly
Director

Kelly Hazell Lawyers
[Email: dkelly@kellyhazell.com.au](mailto:dkelly@kellyhazell.com.au)



Form G

N 92909

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*, 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:

Toyota Motor Corporation Australia Limited ("TMCA")
ABN 64 009 686 097

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

Manufacture, supply and distribution of motor vehicles and associated products and services including spare parts and accessories for motor vehicles.

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

C/- David Kelly
Kelly Hazell Lawyers
PO Box 314
Flinders Lane, Melbourne, VIC 8009

2. Notified arrangement

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

Goods and services comprising rewards and benefits for authorised dealers under dealer incentive programs including achievement points redeemable against travel rewards, cash rewards, trophies, travel benefits, commemorative pins, advertising support and celebratory functions. Motor oil for motor vehicles.

(b) Description of the conduct or proposed conduct:

TMCA has a network of authorised TMCA dealers (“**Dealers**”). To reward successful Dealers and to promote excellence in:

- the provision of TMCA goods and services;
- customer service and satisfaction;
- Dealer business management; and
- Dealer sales performance,

TMCA makes certain rewards and benefits available to Dealers that participate in TMCA’s Dealer awards and incentive programs (“**Award Programs**”).

To determine whether a participating Dealer is eligible to receive a reward or benefit under an Award Program, TMCA assesses the Dealer’s performance against numerous criteria, one of which is the acquisition by the dealer of motor oil from a third party wholesaler nominated by TMCA (“**the TMCA Motor Oil Program**”).

Purchasing motor oil through the TMCA Motor Oil Program by a Dealer may contribute to its eligibility to receive a reward or benefit under an Award Program, depending on the Dealer’s performance as assessed against other key performance indicators. A Dealer may be eligible for rewards and benefits even though it has not purchased through the TMCA Motor Oil Program. Conversely, a Dealer may not be eligible even though it has purchased through the TMCA Motor Oil Program.

Notwithstanding this, it is possible to characterise the conduct as:

- (i) TMCA supplies, or offers to supply, rewards and benefits on the condition that the Dealer will acquire motor oil from a nominated TMCA wholesaler; and
- (ii) TMCA refuses to supply rewards and benefits for the reason that the Dealer has not acquired, or has not agreed to acquire, motor oil from a nominated TMCA wholesaler.

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:

Authorised TMCA dealers (existing and future) being those persons that have entered into a dealer agreement with TMCA allowing them to sell motor vehicles, parts and services.

(b) Number of those persons:

(i) At present time:

218

(ii) Estimated within the next year:

234

(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:

Dealers participating in the TMCA Motor Oil Program will enjoy benefits as to price, terms of trade and service levels in relation to the acquisition of motor oil which Dealers may not otherwise enjoy. Motor oil sold to Dealers as part of the TMCA Motor Oil Program is quality oil blended to TMCA's specifications. TMCA would expect that such efficiency savings will be passed on to consumers and that the TMCA Motor Oil Program will result in improved quality of motor oil and vehicle services to consumers. The conduct described at 2(b) encourages Dealers to participate in the TMCA Motor Oil Program.

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

TMCA is able to leverage its bargaining power as manufacturer, distributor and franchisor to negotiate lower motor oil prices and more favourable terms of trade with motor oil wholesalers. TMCA then makes these benefits available to its Dealers through the TMCA Motor Oil Program.

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):

The relevant market is the Australian wholesale market for the supply of bulk motor oil. This market is characterised by numerous wholesale suppliers of motor oil and a wide range of oil brands available in Australia. The market is highly competitive and there is a high degree of substitutability between oil brands.

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:

TMCA submits that there will be no detriment to the public from the conduct in question.

- (i) Dealers are free to acquire motor oil outside the TMCA Motor Oil Program (i.e. other than from a TMCA nominated supplier) without incurring any penalties from TMCA.
- (ii) TMCA will not require owners of vehicles to purchase a particular brand of motor oil or to purchase motor oil from Dealers. Consumers remain free to choose where to purchase motor oil and which brand of motor oil to use in their vehicle.
- (iii) A Dealer participating in the TMCA Motor Oil Program will be better able to offer competitive motor oil prices and quality motor oil blended to TMCA's specification to consumers who choose to purchase motor oil from a Dealer.
- (iv) The TMCA Motor Oil Program will foster competition between Dealers and other retailers of motor oil and related services in Australia. This will benefit consumers.

(b) Facts and evidence relevant to these detriments:

Not applicable.

7. Further information

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

David Kelly
Kelly Hazell Lawyers
PO Box 314, Flinders Lane
Melbourne VIC 8009
03 9663 9877

Dated..... 8 May 2007

Signed by/on behalf of the applicant

..... David Kelly

(Signature)

.....
(Full Name)

**DAVID KELLY
KELLY HAZELL LAWYERS
Level 6, 175 Collins Street
Melbourne Victoria 3000**

.....
(Organisation)

**An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004**

.....
DIRECTOR
.....

(Position in Organisation)

Form G

N 92910

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*, 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:

Toyota Motor Corporation Australia Limited ("TMCA")
ABN 64 009 686 097

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

Manufacture, supply and distribution of motor vehicles and associated products and services including spare parts and accessories for motor vehicles.

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

C/- David Kelly
Kelly Hazell Lawyers
PO Box 314
Flinders Lane, Melbourne, VIC 8009

2. Notified arrangement

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

Goods and services comprising rewards and benefits for authorised dealers under dealer incentive programs including achievement points redeemable against travel rewards, cash rewards, trophies, travel benefits, commemorative pins, advertising support and celebratory functions. Batteries for motor vehicles.

(b) Description of the conduct or proposed conduct:

TMCA has a network of authorised TMCA dealers (“**Dealers**”). To reward successful Dealers and to promote excellence in:

- the provision of TMCA goods and services;
- customer service and satisfaction;
- Dealer business management; and
- Dealer sales performance,

TMCA makes certain rewards and benefits available to Dealers that participate in TMCA’s Dealer awards and incentive programs (“**Award Programs**”).

To determine whether a participating Dealer is eligible to receive a reward or benefit under an Award Program, TMCA assesses the Dealer’s performance against numerous criteria, one of which is the acquisition by the Dealer of batteries and battery related services from a third party wholesaler nominated by TMCA (“**the TMCA Battery Program**”).

Purchasing batteries or battery related services through the TMCA Battery Program by a Dealer may contribute to its eligibility to receive a reward or benefit under an Award Program, depending on the Dealer’s performance as assessed against other key performance indicators. A Dealer may be eligible for rewards and benefits even though it has not purchased through the TMCA Battery Program. Conversely, a Dealer may not be eligible even though it has purchased through the TMCA Battery Program. Notwithstanding this, it is possible to characterise the conduct as:

- (i) TMCA supplies, or offers to supply, rewards and benefits on the condition that the Dealer will acquire batteries and battery related services from a nominated TMCA wholesaler; and
- (ii) TMCA refuses to supply rewards and benefits for the reason that the Dealer has not acquired, or has not agreed to acquire, batteries and battery related services from a nominated TMCA wholesaler.

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:

Authorised TMCA dealers (existing and future) being those persons that have entered into a dealer agreement with TMCA allowing them to sell motor

vehicles, parts and services.

(b) Number of those persons:

(i) At present time:

218

(ii) Estimated within the next year:

234

(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:

Dealers participating in the TMCA Battery Program will enjoy benefits as to price, terms of trade and service levels in relation to the acquisition of batteries and battery related services which Dealers may not otherwise enjoy. TMCA would expect that such efficiency savings will be passed on to consumers and result in improved quality of service to consumers. The conduct described at 2(b) encourages Dealers to participate in the TMCA Battery Program.

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

TMCA is able to leverage its bargaining power as manufacturer, distributor and franchisor to negotiate lower battery prices and more favourable terms of trade with battery wholesalers. TMCA then makes these benefits available to its Dealers through the TMCA Battery Program.

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):

The relevant market is the Australian wholesale market for the supply of batteries and battery related services. This market is characterised by multiple wholesale suppliers of car batteries and related services, and a wide range of battery brands available in Australia. The market is highly competitive and there is a high degree of substitutability between battery brands.

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:

TMCA submits that there will be no detriment to the public from the conduct in question.

- (i) Dealers are free to acquire batteries and battery related services outside the TMCA Battery Program (i.e. other than from a TMCA nominated supplier) without incurring any penalties from TMCA.
- (ii) TMCA will not require owners of vehicles to purchase a particular brand of battery or to purchase batteries from Dealers. Consumers remain free to choose where to purchase batteries and battery related services and which brand of battery to fit to their vehicle.
- (iii) A Dealer participating in the TMCA Battery Program will be better able to offer competitive battery prices and improved battery services to consumers who choose to purchase batteries or battery related services from a Dealer.
- (iv) The TMCA Battery Program will foster competition between Dealers and other retailers of batteries and battery related services in Australia. This will benefit consumers.

(b) Facts and evidence relevant to these detriments:

Not applicable.

7. Further information

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

David Kelly
Kelly Hazell Lawyers
PO Box 314, Flinders Lane
Melbourne VIC 8009
03 9663 9877

Dated..... 8 May 2007

Signed by/on behalf of the applicant

..... David Kelly

(Signature)

**DAVID KELLY
KELLY HAZELL LAWYERS
Level 6, 175 Collins Street
Melbourne Victoria 3000**

(Full Name) **An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004**

.....

(Organisation)

..... DIRECTOR

(Position in Organisation)

N92911

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*, 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:

Toyota Motor Corporation Australia Limited ("TMCA")
ABN 64 009 686 097

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

Manufacture, supply and distribution of motor vehicles and associated products and services including spare parts and accessories for motor vehicles.

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

C/- David Kelly
Kelly Hazell Lawyers
PO Box 314
Flinders Lane, Melbourne, VIC 8009

2. Notified arrangement

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

Goods and services comprising rewards and benefits for authorised dealers under dealer incentive programs including achievement points redeemable against travel rewards, cash rewards, trophies, travel benefits, commemorative pins, advertising support and celebratory functions. Tyres and tyre related services for motor vehicles.

(b) Description of the conduct or proposed conduct:

TMCA has a network of authorised TMCA dealers (“**Dealers**”). To reward successful Dealers and to promote excellence in:

- the provision of TMCA goods and services;
- customer service and satisfaction;
- Dealer business management; and
- Dealer sales performance,

TMCA makes certain rewards and benefits available to Dealers that participate in TMCA’s Dealer awards and incentive programs (“**Award Programs**”).

To determine whether a participating Dealer is eligible to receive a reward or benefit under an Award Program, TMCA assesses the Dealer’s performance against numerous criteria, one of which is the acquisition by the dealer of tyres and tyre related services from a third party wholesaler nominated by TMCA (“**the TMCA Tyre Program**”).

Purchasing tyres or tyre related services through the TMCA Tyre Program by a Dealer may contribute to its eligibility to receive a reward or benefit under an Award Program, depending on the Dealer’s performance as assessed against other key performance indicators. A Dealer may be eligible for rewards and benefits even though it has not purchased through the TMCA Tyre Program. Conversely, a Dealer may not be eligible even though it has purchased through the TMCA Tyre Program. Notwithstanding this, it is possible to characterise the conduct as:

- (i) TMCA supplies, or offers to supply, rewards and benefits on the condition that the Dealer will acquire tyres and tyre related services from a nominated TMCA wholesaler; and
- (ii) TMCA refuses to supply rewards and benefits for the reason that the Dealer has not acquired, or has not agreed to acquire, tyres and tyre related services from a nominated TMCA wholesaler.

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:

Authorised TMCA dealers (existing and future) being those persons that have entered into a dealer agreement with TMCA allowing them to sell motor

vehicles, parts and services.

(b) Number of those persons:

(i) At present time:

218

(ii) Estimated within the next year:

234

(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:

Dealers participating in the TMCA Tyre Program will enjoy benefits as to price, terms of trade and service levels in relation to the acquisition of tyres and tyre related services which Dealers may not otherwise enjoy. TMCA would expect that such efficiency savings will be passed on to consumers and result in improved quality of service to consumers. The conduct described at 2(b) encourages Dealers to participate in the TMCA Tyre Program.

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

TMCA is able to leverage its bargaining power as manufacturer, distributor and franchisor to negotiate lower tyre prices and more favourable terms of trade with tyre wholesalers. TMCA then makes these benefits available to its Dealers through the TMCA Tyre Program.

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):

The relevant market is the Australian wholesale market for the supply of tyres and tyre related services. This market is characterised by multiple wholesale suppliers of tyres and tyre related services and a wide range of tyre brands available in Australia. The market is highly competitive and there is a high degree of substitutability between tyre brands.

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:

TMCA submits that there will be no detriment to the public from the conduct in question.

- (i) Dealers are free to acquire tyres and tyre related services outside the TMCA Tyre Program (i.e. other than from a TMCA nominated supplier) without incurring any penalties from TMCA.
- (ii) TMCA will not require owners of vehicles to purchase a particular brand of tyre or to purchase tyres from Dealers. Consumers remain free to choose where to purchase tyres and tyre related services and which brand of tyre to fit to their vehicle.
- (iii) A Dealer participating in the TMCA Tyre Program will be better able to offer competitive tyre prices and improved tyre services to consumers who choose to purchase tyres or tyre related services from a Dealer.
- (iv) The TMCA Tyre Program will foster competition between Dealers and other retailers of tyres and tyre related services in Australia. This will benefit consumers.

(b) Facts and evidence relevant to these detriments:

Not applicable.

7. Further information

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

David Kelly
Kelly Hazell Lawyers
PO Box 314, Flinders Lane
Melbourne VIC 8009
03 9663 9877

Dated..... 8 MAY 2007

Signed by/on behalf of the applicant
..... David Kelly

(Signature) **DAVID KELLY**
KELLY HAZELL LAWYERS
..... **Level 6, 175 Collins Street**

Melbourne Victoria 3000
(Full Name) **An Australian Legal Practitioner within the**
meaning of the Legal Profession Act 2004

(Organisation)
..... DIRECTOR

(Position in Organisation)