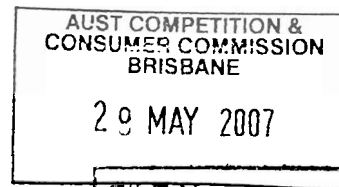


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FILE No.
DOC
MARS/PRISM:

28 May 2007

Australian Competition and Consumer Commission
Level 3 AAMI Building
500 Queen Street
BRISBANE QLD 4000



DIBBS ABBOTT STILLMAN | LAWYERS

Our Ref: BJA:KLV:2301133

Dear Sir

Notification under section 93(3A) of the Trade Practices Act 1974 (Cth)

We act on behalf of Yamaha Motor Australia Pty Ltd (“Yamaha Australia”).

Our client proposes to offer an extension of its Standard Warranty to purchasers of Yamaha-branded outboard motors on certain conditions. The proposed conduct is outlined in detail below.

Our client recognises that the proposed conduct may fall within the prohibitions contained in sections 47(6) and 47(7) of the *Trade Practices Act 1974* (“TPA”). Our client wishes to notify the ACCC of the proposed conduct under section 93(1) of the (“TPA”).

Accordingly, we enclose:

1. a notification of exclusive dealing on behalf of our client;
2. our cheque for the lodgment fee of \$100 (being 1 x third line forcing notification for a ‘Pty Ltd’ company).

About Yamaha Australia

Yamaha Australia imports outboard motors, spare parts and accessories manufactured by Yamaha Motor Co Ltd of Japan (“Yamaha”).

Yamaha Australia distributes these Yamaha branded products using a franchise system and is a franchisor who is subject to the Franchising Code of Conduct. The franchisees are known as Yamaha Dealers. There are 118 Yamaha Dealers across Australia. Yamaha Australia

Contact
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T 61 8 9265 6000
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supplies the Yamaha branded products to the dealer, who then sells the Yamaha branded products to the customer. Yamaha Australia does not sell directly to the public.

All purchasers of new Yamaha branded outboard motors are provided with a standard manufacturer's warranty ("the Standard Warranty") by Yamaha Australia. The Standard Warranty is called the Yamaha Outboard Motor Limited Warranty. The Standard Warranty provides the customer with protection against the expense (parts and labour) of repairs required as a result of defects in materials or workmanship. However, the Standard Warranty will not cover damage as result of misuse, abuse or neglect. The term of the Standard Warranty is:

1. for pleasure use: 2 years and unlimited hours of use;
2. for commercial use: 1 year and unlimited hours of use;
3. for peripheral equipment such as gauges and fuel tanks: 1 year.

The Standard Warranty is in addition to any statutory warranties that may apply by reason of the *Trade Practices Act 1974* ("TPA").

Under the terms of the franchise agreement all Dealers are required to provide after sales service to any and all Yamaha branded outboard motors. All Yamaha Dealers must operate a fully equipped service workshop at their place of business, employ service technicians with appropriate trade qualifications, attend all service training provided by Yamaha (minimum every year), provide quality service and repairs to Yamaha's set service procedures and standards and ensure high levels of customer satisfaction.

Proposed Conduct

Yamaha Australia proposes to offer an extended warranty to purchasers of new Yamaha branded outboard motors on the condition that the purchasers have their serving requirements carried out by a Yamaha Dealer ("the Extended Warranty").

The Extended Warranty will be provided by Yamaha Australia at no cost to such purchasers.

Under the Extended Warranty, the term of the Standard Warranty will be extended as follows:

1. For two-stroke models, a one year extension (to a total of 3 years for pleasure use);
2. For four-stroke models, a two year extension (to a total of 4 years for pleasure use).

The proposed conduct will occasion no public detriment to the consumer while providing a considerable benefit to purchasers of new Yamaha branded outboard motors, details of which are provided in the enclosed notification.

Please contact us if you require further information.

Yours faithfully

DIBBS ABBOTT STILLMAN

A handwritten signature in black ink, appearing to read 'Belinda Atkinson', is written over a light grey rectangular background.

Belinda Atkinson
Senior Associate

Enc

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 sub-section 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in subsection 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

N92930

(a) Name of person giving notice:

Yamaha Motor Australia Pty Ltd ACN 002 556 989 (“Yamaha Australia”)

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

Wholesale supply of imported products manufactured by Yamaha Motor Co Ltd, Japan (“Yamaha”), including outboard motors, spare parts and accessories and associated services, to authorised dealers (“Yamaha Dealers”).

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

Dibbs Abbott Stillman Lawyers

Level 14, 120 Edward Street

Brisbane QLD 4000

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 and support of Yamaha branded outboard motors.

Extended warranty services to purchasers of new Yamaha branded outboard motors

(b) Description of the conduct or proposed conduct:

Yamaha Australia supplying or offering to supply extended warranty services to purchasers of new Yamaha branded outboard motors on the condition that the purchaser will acquire after-sales servicing and support services for their Yamaha branded outboard motor from a Yamaha Dealer;

and

Yamaha Australia refusing to supply, or offer to supply, extended warranty services to purchasers of new Yamaha branded outboard motors for the reason that the owner has not acquired, or has not agreed to acquire, after-sales servicing and support services for their Yamaha branded outboard motor from a Yamaha Dealer.

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:

Persons who acquire new Yamaha branded outboard motors from Yamaha Dealers

(b) Number of those persons:

(i) At present time:

15,000 per year

(ii) Estimated within the next year:

(Refer to direction 6)

16,500 per year

(iii) 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:

The proposed conduct will benefit the public in that:

-
- (i) it will improve and maintain safety standards; and
 - (ii) there will be no lessening of competition.

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

Improve and Maintain Safety Standards

Yamaha branded outboard motors are often used in situations which require high performance and a high level of reliability. Yamaha Dealers are factory trained, have the necessary special tools and up to date information on the latest technologies and best practices developed by Yamaha.

The use of authorised Yamaha Dealers to carry out the required servicing of the outboard motor will therefore assist in:

- (i) maintaining the performance of the outboard motor;
- (ii) improving the operational life of the outboard motor by ensuring that the most up to date serving practices are used for the particular Yamaha branded outboard motor;
- (iii) improving and maintaining high safety standards by ensuring that the outboard motor is maintained in accordance with Yamaha's guidelines; and
- (iv) ensuring greater customer satisfaction with their new Yamaha branded outboard motor.

No Lessening of Competition

Purchasers of new Yamaha branded outboard motors are under no obligation to have their motor serviced at a Yamaha Dealer. The Standard Warranty will still be available to those purchasers who choose to have their Yamaha branded outboard motor serviced by an alternative supplier.

The proposed conduct does not have any anti-competitive impact on the purchaser's choice. Ultimately, purchasers have the opportunity to make an informed decision, based on competitive considerations such as quality and price, as to where they have their Yamaha branded outboard motor serviced. Yamaha

Australia faces competition from a number of other suppliers of outboard motors who offer their own warranty services. These competitors are outlined below.

Under the proposed conduct, only those purchasers who wish to gain the benefit of the Extended Warranty will be required to have their periodic services undertaken by a Yamaha Dealer.

Further, purchasers are not required to have their periodic services undertaken by any particular Yamaha Dealer. Services can be obtained from any one of the 118 Yamaha Dealers across Australia.

5. Market definition

- (a) **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 markets for the purposes of the proposed conduct can be broadly defined as:

- (i) The market for outboard motors; and
- (ii) The market for servicing of outboard motors.

Other manufacturers or importers of outboard marine motors who provide the same or similar services to that of Yamaha Australia include:

- (i) Marine Power Australia Pty Ltd:

Marine Power Australia Pty Ltd imports and distributes, among other products, a large range of Mercury outboard motors and Mariner outboard motors. These products are distributed through its dealer network in Australia.

- (ii) BRP Australia Pty Ltd:

BRP Australia Pty Ltd is responsible for the marketing, promotion and distribution of BRP products in Australia, New Zealand and the Pacific Islands.

BRP Australia Pty Ltd markets and distributes Evinrude and Johnson outboard motors. BRP Australia Pty Ltd has an extensive network of sales and service dealers throughout Australia.

(iii) Honda Australia Motorcycle and Power Equipment Pty Ltd:

Honda imports a range of products, including outboard motors, and distributes these products nationally through an extensive network of dealers across Australia.

(iv) Tohatsu Outboards Australia:

Tohatsu Outboards Australia import and distribute a wide range of two-stroke, four-stroke, and TLDI outboard motors.

(v) The Haines Group:

The range of Suzuki Outboards is distributed in Australia and New Zealand by The Haines Group.

6. Public detriment

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

Yamaha Australia is of the view that there is unlikely to be any detriment to public by the offer of the Extended Warranty.

To the contrary, purchasers who elect to have their Yamaha branded outboard motors serviced at Yamaha Dealers will obtain the benefit of the Extended Warranty at no expense.

Further, the proposed conduct has no anti-competitive effects. In fact, it is anticipated that the proposed conduct will promote competition in the market for outboard motors.

It is submitted that the likely benefit to the public by reason of the proposed conduct will outweigh any detriment to the public.

(b) Facts and evidence relevant to these detriment:

Not applicable

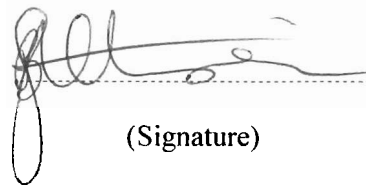
7. Further information

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

Ms Belinda Atkinson, Dibbs Abbott Stillman Lawyers, Level 14, 120 Edward Street, Brisbane 4000.

Dated 28 May 2007

Signed by/on behalf of the person giving this notice



(Signature)

Belinda Atkinson

(Full Name)

Solicitor for the applicant

(Description)