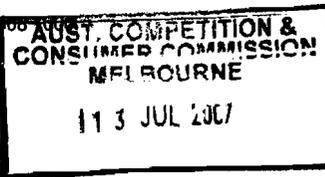


13 July 2007

RIALTO TOWERS 525 COLLINS STREET MELBOURNE
GPO BOX 769G MELBOURNE VIC 3001 AUSTRALIA
DX 204 MELBOURNE www.minterellison.com
TELEPHONE +61 3 8608 2000 FACSIMILE +61 3 8608 2001



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**).

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 Peter George of our office.

Yours faithfully
MINTER ELLISON

Contact: Peter George Direct phone: +61 3 8608 2672
Email: peter.george@minterellison.com
Our reference: PAG 30-5512103

Enclosure

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:

N93063

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/- Peter George
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:

After-sales servicing and support of certain Subaru used motor vehicles (which will be identified as 'Subaru Assured Vehicles') by authorised Subaru dealers and service centres (Subaru Service Providers)

Extended warranty services to owners of Subaru Assured Vehicles (Assured Owners)

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

Subaru Australia plans to offer a comprehensive two-year extended warranty (on terms similar to its existing new car express 'factory' warranty) (Extended Warranty) to owners of Subaru Assured Vehicles on condition that they have their Assured vehicle serviced at a Subaru Service Provider together with any repairs covered by the Extended Warranty.

This conduct can be characterised as Subaru Australia:

- *supplying, or offering to supply, extended warranty services to Assured Owners on the condition that the Assured Owner will acquire after-sales servicing and warranty repair services for their Assured vehicle from a Subaru Service Provider; and*
- *refusing to supply, or offer to supply, extended warranty services to Assured Owners for the reason that the Assured Owner has not acquired, or has not agreed to acquire, after-sales servicing and warranty repair services for their Assured vehicle 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:

Customers of Subaru Assured used vehicles

- (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.

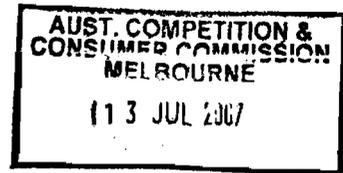
7. Further information

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

*Peter George
Minter Ellison Lawyers
Level 23
525 Collins Street
MELBOURNE VIC 3000*

Dated *13/07/07*

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

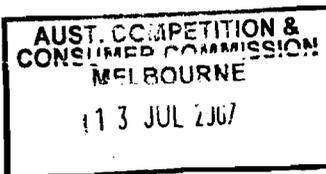
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13 July 2007

Restriction of Publication of Part Claimed- Annexure 1 Paragraph 3.6

BY HAND

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



Dear Sir

Notification of third line forcing conduct – Restriction of Publication of Part Claimed

On behalf of Subaru (Aust) Pty Ltd (ACN 000 312 792) (**Subaru**) we request the information in Paragraph 3.6 of Annexure 1, the text of which is in red font (as required under the *Trade Practices Act Regulations 1974* (Cth) (**Regulations**)) 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* (Cth). The information is commercially sensitive as it is internal Subaru sales forecasts. As required under the Regulations we have provided a full copy of the document with the confidential information identified, and a public register version of the document.

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

Yours faithfully
MINTER ELLISON

Contact: Peter George Direct phone: +61 3 8608 2672
Email: peter.george@minterellison.com
Our reference: PAG 30-5512103

Restriction of Publication of Part Claimed - Paragraph 3.6

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 currently operates a used vehicle program marketed under the name 'Assured'. Used Subaru vehicles that meet specified eligibility criteria (such as limited kms and age) are able to be accredited with 'Assured' status. All such vehicles undergo quality assurance assessments and history checks and are sold as Assured vehicles by the relevant Subaru Dealer (who puts forward the relevant vehicle).
- 1.4 Subaru Assured vehicles currently come with a two-year extended warranty which is underwritten by AON and issued by individual Subaru Dealers.
- 1.5 Subaru Australia is discontinuing its current Assured program.
- 1.6 Subaru Australia is proposing to introduce a '*Subaru Australia*' two-year extended warranty in respect of certain used Subaru vehicles (**Extended Warranty**). This Extended Warranty would be offered by Subaru Australia (that is, it would be 'factory backed') and would be a high quality, comprehensive warranty similar to the Subaru Australia factory warranty offered with new Subaru vehicles (the term of which is 3 years / unlimited km) (**New Vehicle Factory Warranty**),. It would be marketed under the name 'Assured'.
- 1.7 Used Subarus of participating dealers that satisfy certain criteria would be accredited as 'Assured' Vehicles. The Extended Warranty would come with all Assured vehicles. It would not be an optional extra and would not be available separately for purchase.
- 1.8 The Extended Warranty will also be transferable to future owners of the Assured vehicle, at no extra cost.
- 1.9 A purchaser of an Assured vehicle (**Assured Owner**) will be able to obtain the benefit of the Extended Warranty *provided* that they have their Assured vehicle's scheduled services performed by an authorised Subaru service provider, that is, a Subaru Dealer or a Subaru Service Centre (**Subaru Service Providers**). At the time a vehicle becomes an Assured Vehicle, it has already been driven, in some cases for up to 125,000 kilometres over a period of up to 5 years. While Assured Vehicles must first undergo a comprehensive check before qualifying, when compared to a new vehicle, there is a greater risk that there will be a potential defect in an Assured Vehicle, if only because it is a used vehicle. As such, Subaru Australia, as the issuer of the Extended Warranty, has a legitimate interest in ensuring that Assured Vehicles are serviced through high

quality Subaru service providers, using appropriately qualified and trained Subaru service technicians and specialist Subaru diagnostic equipment and tools as this will assist in the early identification and rectification of potential concerns with the vehicles.

2. Notified Conduct

2.1 The notified conduct can be formulated as Subaru Australia:

- (a) supplying, or offering to supply, extended warranty services to Assured Owners on the condition that the Assured Owner will acquire after-sales servicing for their Assured vehicle from a Subaru Service Provider; and
- (b) refusing to supply, or offer to supply, extended warranty services to Assured Owners for the reason that the Assured Owner has not acquired, or has not agreed to acquire, after-sales servicing for their Assured vehicle from a Subaru Service Provider.

2.2 Our client 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

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:

- (a) will not adversely affect competition in any relevant market; and
- (b) will result in public benefits and no identifiable public detriment.

3.2 The conduct notified by Subaru Australia comprises the *optional* acquisition of services by Assured Owners from a range of nominated suppliers (i.e. from any of the 124 Subaru Service Providers). Assured Owners retain their genuine choice to deal with any servicing supplier on the competitive terms offered by those suppliers. They can choose, on the normal commercial basis of quality and price, whether or not to purchase servicing or repair services (normally parts and service) from any supplier, or to accept Subaru Australia's terms for the package of Subaru Service Provider scheduled servicing and the Extended Warranty. By retaining Assured Owners' genuine choice, the conduct is not inherently anti-competitive.

Effect of competition in relevant markets

3.3 In any event, we do not believe that the proposed conduct will have any adverse affect on competition in any relevant market.

3.4 We consider the markets primarily relevant to the assessment of this notification are the regional markets for motor vehicle parts, servicing and repairs, and the market for extended warranty services. These markets are highly competitive.

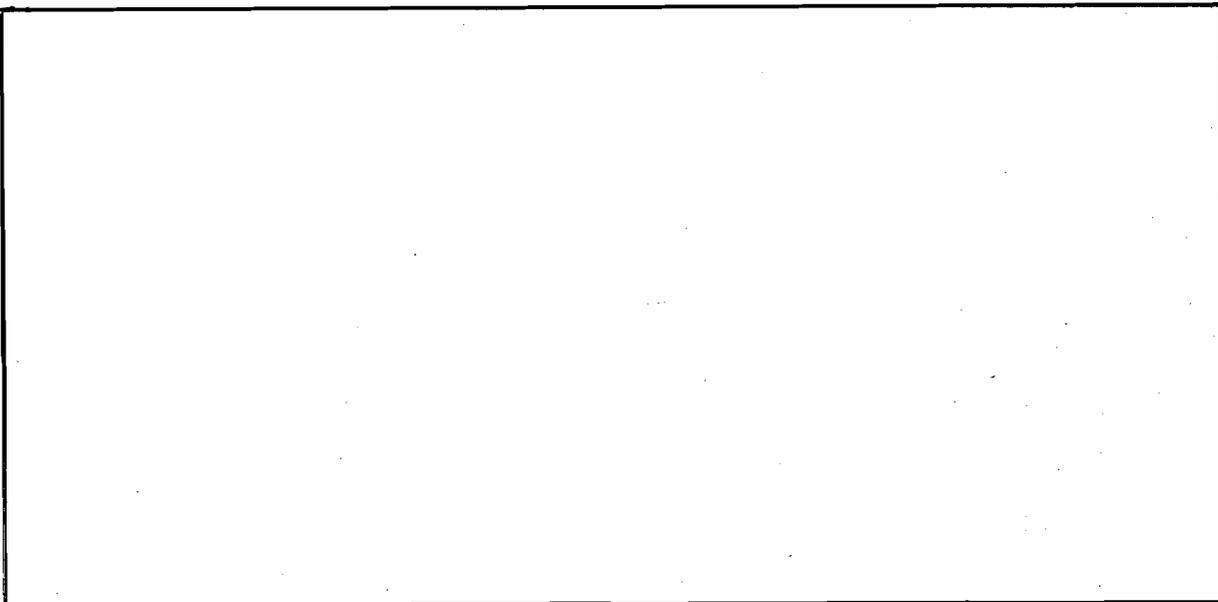
3.5 The regional markets for motor vehicle parts, servicing and repairs are characterised by a high degree of competition between a large number of providers which include motor

vehicle retailers, large independent chains and franchisees (such as Repco, Lubemobile, Ultratune, Brakesplus and Midas) as well as smaller local providers.

Restriction of Publication of Part Claimed – Paragraph 3.6

3.6

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3.7 With respect to the market for extended warranty services, there are many providers of such extended warranty services. These include other motor vehicle manufacturers and importers which offer extended warranties on their own products (including, Mercedes-Benz, Mitsubishi, Volvo, Honda, Nissan, BMW and Mazda amongst others) and numerous finance providers and insurers which offer extended warranty products generally (including Alliance Insurance, Toyota Finance, The Warranty Group (formerly known as AON), Esanda and ASWN Pty Ltd).

3.8 Accordingly, we do not consider that the conduct will distort demand, create barriers to entry or otherwise harm competition in the market. Further information in relation to these markets can be provided to the Commission, if requested.

Public benefits

3.9 Moreover, the notified conduct is pro-competitive and will generate a number of public benefits, including the following:

- (a) Providing Assured Owners with genuine savings. Extended warranty services are available to the general public, at a (sometimes quite significant) cost, from numerous providers. Since Assured Owners will not be required to pay an amount in addition to the price of the Assured Vehicle in order to obtain the Extended Warranty, they will obtain a saving;

¹ Federal Chamber of Automotive Industries, New Vehicle Share by Marque, June 2007.

² Federal Chamber of Automotive Industries, Media Release 4 January 2007 reported that total of 962,521 new motor vehicles were sold in Australia in 2006 and 970,000 were forecast to be sold in 2007. Year to date figures up to May 2007, are 419,279.

- (b) Providing greater choice to Assured Owners. Currently, a number of extended warranty products that are offered are issued by the selling dealer and require that the purchaser obtain servicing from that dealer. This restricts the choice of the purchaser in terms of the entity which services the purchaser's vehicle. The proposed conduct will enable Assured Owners to have their Assured Subaru vehicle serviced from a much wider source of providers (as distinct from being tied to the issuing dealer);
- (c) Providing high quality, specialist servicing with a focus on safety. The proposed conduct will ensure that Assured Owners obtain high quality servicing through specialist Subaru service providers using appropriately qualified and trained service technicians, with a focus on safety. Subaru Service Providers have the latest Subaru specific diagnostics equipment, enabling them to promptly and efficiently diagnose any faults with Subaru vehicles, and are also equipped with specialist tools and knowledge of Subaru specific technologies (such as Subaru symmetrical A WD system and boxer engines). Subaru Service Providers also have direct access to Subaru product experts (being Subaru Australia's technical services team). This will ensure that the performance and safety of the Assured vehicle is maintained;
- (d) Ensuring a consistent high level of customer service. This is because all Subaru Service Providers are required to comply with Subaru Australia's customer service policies, including those which measure the level of service provided by the relevant dealer. This encourages all Subaru Service Providers to deliver high quality customer service, whether selling or servicing Subaru vehicles, including for example by providing loan vehicles to Assured Owners whose vehicles are being repaired under the Extended Warranty.
- (e) Providing a high quality, comprehensive warranty (which operates in addition to their existing statutory rights) and which is 'factory backed'. The Extended Warranty will be easy to understand and operate in a similar way to the New Vehicle Factory Warranty, with the same level of coverage. The claims process will also be substantially similar to that utilised with the New Vehicle Factory Warranty. The Extended Warranty documentation is yet to be finalised, however Subaru Australia would be happy to provide any further information the Commission requires;
- (f) Providing Assured Owners with an Extended Warranty that will 'go with the car', that is, it will be fully transferable to the next owner at no cost. Many of the extended warranties currently available do not allow such a transfer;
- (g) Without the requirement that scheduled servicing be provided by Subaru Service Providers, Subaru Australia would be exposed to an unacceptably high risk, arising from the lack of assurance that the scheduled servicing is being performed by appropriately qualified technicians using the latest technology and equipment. Accordingly, Subaru Australia could not offer the proposed Extended Warranty, on the same beneficial terms without such quality assurance protection;
- (h) 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 costs of competitive products and services.

Public detriment

- 3.10 We believe that the notified conduct causes little, if any, identifiable detriment to the public.
- 3.11 The Extended Warranty will in no way effect the ability of Assured Owners to have their vehicle serviced by any service provider they choose. It merely offers Extended Warranty coverage benefits to those Assured Owners who do choose to have their vehicles serviced at a Subaru Service Provider. Assured Owners are also not required to obtain any additional products or services from the Subaru Service Provider.
- 3.12 Further, in order to enjoy the benefits of the Extended Warranty, Assured Owners 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. If an Assured Owner wishes to take advantage of the benefit of the Extended Warranty by obtaining servicing from a Subaru Service Provider, it can choose to deal with any Subaru Service Provider based on the competitive terms (including price) offered by those dealers. This is likely to lead to increased competition between Subaru Service Providers leading to lower costs to Assured Owners for servicing.
- 3.13 Overall, the effect of the conduct, discussed above, in relevant markets is insignificant and is outweighed by benefits.
- 3.14 We submit that the proposed Extended Warranty should be viewed as conferring an additional benefit on Assured Owners who choose to obtain servicing from Subaru Service Providers, rather than causing detriment to those Assured Owners who choose not to obtain servicing from a Subaru Service Provider.

4. Similar notifications where conduct granted immunity

- 4.1 We note that the Commission has previously permitted the following notifications:
- (a) Subaru Australia (N41001, filed 2 August 2006) – Subaru Australia proposed, as part of its loyalty incentives, to offer purchasers of new Subaru vehicles an extension of their New Vehicle Factory Warranty by two years on the condition that the purchaser had their servicing carried out by a Subaru Dealer;
- (b) Yamaha Motor Australia Pty Ltd (N92930, filed 29 May 2007) – Yamaha proposed to offer an extended warranty to purchasers of new Yamaha outboard motors on the condition that the purchasers have their servicing carried out by a Yamaha dealer; and
- (c) GM Holden Ltd (N41012, filed 1 September 2006) – GM Holden proposed to offer new vehicle owners with complimentary roadside assistance for 3 years. The assistance was complimentary in the first year. For the complimentary service to continue into the second and third years, the vehicle owner is required to acquire servicing in accordance with the vehicle's handbook from an authorised Holden dealer.

(d) Mitsubishi Motors Australia Limited (N60045, filed 3 June 2005) – Mitsubishi proposed to supply roadside assistance program services to Mitsubishi customers on condition that customers acquire servicing from dealers appointed and authorised by Mitsubishi.

4.2 Subaru Australia submits that there are at least, if not more, public benefits associated with its proposed conduct than that notified previously.

5. Conclusion

5.1 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.