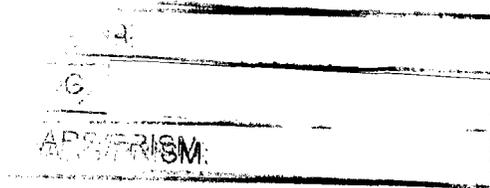


BMW Group Australia



Attention: Ms Sharon Clancy
Mr Scott Gregson
General Manager - Adjudication
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

Your reference
Your message from
Our reference
Telephone Phone: (03) 9264 4031
Fax Fax: (03) 9562 0274
e-mail tim.baird@bmw.com.au
Date 13 August 2007
Subject **Notification of third line forcing conduct: BMW Australia Ltd ("BMW Australia")**

Dear Sir and Madam,

Please find enclosed:

- 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 me.

Yours faithfully


Tim Baird
Company Secretary & General Counsel
BMW Australia Ltd.

Enclosure

Company
BMW Australia Ltd
A.C.N. 004 675 129
A.B.N. 11 004 675 129

BMW Group Company

Postal Address
P.O. Box 745
Mulgrave, Vic. 3170

Company Address
783 Springvale Road
Mulgrave, Vic. 3170

Reception
(+61 3) 9264 4000

BMW Customer
Interaction Centre
Telephone
1800 813 299
Facsimile
1800 350 528

Email
info@bmw.com.au

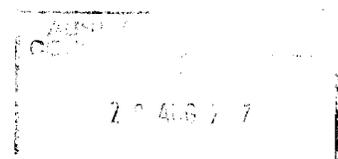
Internet
<http://www.bmw.com.au>
<http://www.mini.com.au>

Chairman
Mr. David Pantor*

Managing Director
Mr. Guenther Seemann

Director - Finance
Mr. Fredrik Altmann

* Germany



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:

BMW Australia Ltd. ABN 11 004 675 129 (BMW Australia) N93097

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

BMW Australia distributes imported BMW-branded and MINI-branded motor vehicles and BMW-branded motorcycles, spare parts, accessories and associated products and services. The products and services are supplied by BMW Australia to authorised BMW dealers and MINI garages (dealers), who resell to consumers at the retail level.

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

*Tim Baird
Company Secretary & General Counsel
BMW Australia Ltd
783 Springvale Road
MULGRAVE VIC 3170*

2. Notified arrangement

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

ANZ Credit Card provided by Australia and New Zealand Banking Group Limited (ABN 11 005 367 522) (ANZ).

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

BMW Australia proposes to have arrangements with ANZ pursuant to which BMW Australia will:

- (i) *supply or offer to supply goods or services on the condition that the consumer acquires credit card services from ANZ and acquires goods or services from a dealer;*

- (ii) *refuse to supply or refuse to offer to supply goods or services for the reason that the consumer has not acquired credit card services from ANZ or has not acquired goods or services from a dealer ;*
- (iii) *give or allow or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply of goods and services to consumers on condition that the consumer acquires credit card services from ANZ and acquires goods or services from a dealer; and/or*
- (iv) *refuse to give or allow a discount, allowance, rebate or credit in relation to the supply of goods and services to consumer for the reason that consumer has not acquired or has not agreed to acquire credit card services from ANZ or has not agreed to acquire goods or services from a 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:

New and existing ANZ Platinum and Gold credit card holders

- (b) Number of those persons:

- (i) At present time:

There are approximately 450,000 ANZ Platinum and Gold credit card holders.

- (ii) Estimated within the next year:

Based on previous experience, ANZ anticipates that the number of ANZ Platinum and Gold credit card holders will increase within the next year to 500,000.

- (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:

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:

*Tim Baird
 Company Secretary and General Counsel
 BMW Australia Ltd.
 783 Springvale Road
 MULGRAVE VIC 3170
 Tel: 03 9264 4031
 Fax: 03 9562 0274
tim.baird@bmw.com.au*

Dated 13 / 8 / 07

Signed by/on behalf of BMW Australia Ltd.



 (Signature)

TIMOTHY R BAIRD

 (Full Name)

BMW Australia Ltd

 (Organisation)

Company Secretary

 (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

Annexure 1

1. Background

- 1.1 BMW Australia distributes imported BMW-branded and MINI-branded motor vehicles, BMW-branded motorcycles, spare parts, accessories and associated products and services to authorised BMW dealers and MINI Garages (together **Dealers**) at the wholesale level.
- 1.2 Australia and New Zealand Banking Group Limited ("ANZ") offers a range of financial services including credit card facilities.
- 1.3 BMW Australia is proposing to offer, from time to time, various benefits and rewards to ANZ credit card holders. By way of example, one benefit proposed to be offered by BMW Australia to ANZ Platinum Card holders is a complementary BMW Driver Training course with the purchase of a new BMW from a Dealer during a nominated period.

The benefits and rewards will vary over time and may include one or a combination of benefits and rewards, including discounts, allowances, rebates or credits on BMW or MINI-branded goods or services.

2. Notified Conduct

BMW Australia is concerned that the above conduct could be characterised in a way which could technically contravene sections 47(6) and (7) of the TPA. Out of an abundance of caution, in order to minimise the risk of contravening sections 47(6) and (7), BMW Australia wishes to notify the conduct described above under section 93(1). The notified conduct is described in the attached Form G.

3. Competition Issues

- 3.1 We submit that the Commission should not serve a notice under section 93(3A) of the TPA because:
 - (a) the conduct in question will not adversely affect competition in any relevant market; and
 - (b) the conduct in question will result in public benefits and no identifiable public detriment.
- 3.2 The notified conduct comprises the offer of benefits and rewards by BMW Australia on the optional acquisition of BMW or MINI-branded goods or services (usually from a Dealer) as an additional benefit to BMW customers who have acquired or choose to acquire credit card services from ANZ. The conduct in no way limits the genuine choice of consumers in choosing whether to acquire any BMW or MINI-branded goods or services or whether to obtain a charge or credit card from ANZ or any other provider of charge or credit cards. By retaining the genuine choice of BMW and ANZ customers, the conduct is not inherently anti-competitive.
- 3.3 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 (i) the market for the provision of charge and credit card services in Australia; and (ii) the retail market for the supply of automotive goods and services. These markets are highly competitive. BMW customers have a significant number of products available to them including charge and credit cards provided by Diners Club; by banks such as National Australia Bank, Commonwealth Bank and Westpac; and by non-bank financial institutions such as Wizard or Virgin Money. There are also various co-branded loyalty or reward cards, such as the Coles Myer card or David Jones card. These charge and credit card providers compete in relation to a broad range of product dimensions including card fees, interest rates, interest free periods, transaction fees, members services and reward/loyalty programs.

In addition, there is significant competition in the supply of automotive goods and services. The maximum impact of the conduct can be considered in proportion to BMW Australia's share of the retail motor vehicle market which is approximately 1.5% (based on the *FCAI new vehicle share by marque*, March 2007). Accordingly, we do not consider that the conduct will create barriers to entry or otherwise harm competition in the relevant markets. Further information in relation to the markets can be provided to the Commission, if requested.

3.4 Moreover, the notified conduct is pro-competitive and will generate a number of public benefits, as it will:

- (a) provide ANZ credit card holders with the opportunity to obtain various benefits on the purchase of BMW or MINI-branded goods and services from Dealers;
- (b) enable BMW Australia and ANZ to offer more competitive products and therefore foster business efficiency; and
- (c) encourage competitors of BMW Australia and ANZ to offer similar benefits and therefore promote competition in the relevant market.

3.5 We do not believe that the notified conduct causes any identifiable detriment to the public. There is no restriction of consumer choice. ANZ card holders are not compelled to purchase BMW or MINI-branded goods or services, or indeed any other goods or services. Consumers who are not ANZ credit card holders remain free to purchase goods and services from the supplier of their choice at regular competitive prices, irrespective of whether the consumer chooses to acquire ANZ credit card facilities. BMW customers also remain free to acquire ANZ credit card facilities without any compulsion to purchase any particular good or service. There is also no restriction on the ability of ANZ to offer benefits, discounts or any other incentives to consumers, whether ANZ credit card holders or otherwise. Consumers also remain free to purchase a motor vehicle or other automotive goods or services from their retailer of choice (including from the Dealers). Overall, the effect of the conduct, discussed above, in the relevant markets is insignificant and is outweighed by benefits.

3.6 We submit that the benefits offered to ANZ credit card holders by BMW Australia as notified should be viewed as conferring additional benefits on consumers who are ANZ credit card holders rather than causing detriment to those consumers who choose not to be an ANZ credit card holder.

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, detriment and will generate public benefits.