

Deacons

FILE N
DOC:
MARS/PRISM:

RACV Tower
485 Bourke Street
Melbourne Vic 3000
Australia
GPO Box 4592
Melbourne Vic 3001
DX445 Melbourne
Tel +61 (0)3 8686 6000
Fax +61 (0)3 8686 6505
www.deacons.com.au
ABN 32 720 868 049

Other Offices

Brisbane
Canberra
Perth
Sydney

Independent Affiliated Firms

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Indonesia
Malaysia
People's Republic of China
Singapore
Taiwan
Thailand
Vietnam

22 December 2008

Express Post

General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Our Ref: 2657279

Dear Sir

Notification for third line forcing for Isuzu Australia Limited

We act for Isuzu Australia Limited.

Please find enclosed:

1. completed Form G – notification in respect of exclusive dealing; and
2. cheque in the amount of \$100.

Please contact me with any queries in relation to this matter.

Yours faithfully



Greg Hipwell
Partner
Deacons
Contact:
Direct line:
Email:

Allison McLeod
+61 (0)3 8686 6943
allison.mcleod@deacons.com.au



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:

(Refer to direction 2)

Isuzu Australia Limited ACN 006 962 572 N93732

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

(Refer to direction 3)

Isuzu Australia Limited (**IAL**) is a wholly-owned subsidiary of Isuzu Motors Limited (Japan), and is responsible for the marketing, distribution and support of Isuzu Trucks in Australia.

Isuzu Motors Limited (Japan) also coordinates the manufacture of Isuzu branded engines, which are currently imported and distributed in Australia through a number of distribution networks.

IAL intends to commence distributing such engines directly in Australia and proposes to appoint dealers:

- (i) to sell industrial engines (**Industrial Engine Dealers**); and
- (ii) to sell marine engines (**Marine Engine Dealers**).

The Dealers (being all Industrial Engine Dealers and all Marine Engine Dealers) will not be permitted to undertake any modifications to the engines they sell. This condition will be specified in the dealer agreement between IAL and the relevant Dealer. Dealers will sell the Isuzu engines as an adjunct to their existing businesses which may be Isuzu truck dealerships, marine dealerships or other automotive businesses. Dealers will also be required to sell spare parts and provide engine servicing and repair. However, few Dealers will have the engineering skills or resources to modify such engines in accordance with the requirements of customers.

It is anticipated that some customers will need engineering modifications made to their engines to meet the design and functional requirements of the application for which they are intended.

IAL intends to appoint specialist Isuzu Diesel Enhancement Centre dealers (**IDEC Service Providers**) to operate Isuzu Diesel Enhancement Centres and undertake engine modification works. It is intended that IDEC Service Providers:

- (i) will have specialised knowledge in engineering and manufacturing and will be able to provide specialist modification services; and
- (ii) may already operate a garage or workshop offering similar services either independently or under licence from other manufacturers of marine, automotive or agricultural machinery.

Accordingly, in circumstances where a customer requires modifications to an engine that they have purchased from a Dealer, the Dealer will be required to either:

- (i) engage an IDEC Service Provider to make such modifications prior to delivery of the engine to the customer; or
- (ii) refer the customer to an IDEC Service Provider who would be able to provide such services directly to the customer.

Initially IAL will appoint one IDEC Service Provider, however it is anticipated that as the business grows, IAL may need to appoint additional IDEC Service Providers to meet the demands of customers.

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

Greg Hipwell, Partner, Deacons, Level 15, RACV Tower, 485 Bourke Street, Melbourne, Victoria 3000

2. Notified arrangement

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

This notification relates to the supply of engine modification services by IDEC Service Providers.

(b) Description of the conduct or proposed conduct:

(Refer to direction 4)

As specified above, IAL intends to offer and supply engines to Dealers provided that if a customer who purchases an engine from a Dealer requests modifications to the engine, the Dealer either:

- (i) engages an IDEC Service Provider to make such modifications prior to delivery of the engine to the customer; or
- (ii) refers the customer to an IDEC Service Provider who would be able to provide such services directly to the customer.

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:

(Refer to direction 5)

- (i) Dealers
 - (A) Industrial Engine Dealers
 - (B) Marine Engine Dealers
- (ii) IDEC Service Providers

(b) Number of those persons:

- (i) At present time:
 - (i) Dealers
 - (a) Industrial Engine Dealers - 0
 - (b) Marine Engine Dealers - 0
 - (ii) IDEC Service Providers - One

(ii) Estimated within the next year:

(Refer to direction 6)

- (i) Dealers
 - (a) Industrial Engine Dealers - 37
 - (b) Marine Engine Dealers - 8
- (ii) IDEC Service Providers - One

(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:

(Refer to direction 7)

IAL submits that:

(i) the arrangement will ensure that:

- (A) Dealers who have neither the qualifications nor the expertise to modify industrial and marine engines do not undertake such work, but rather are provided with viable alternatives for the completion of such work;
- (B) only IDEC Service Providers with the requisite qualifications and skills are permitted to make modifications to Isuzu industrial and marine engines;
- (C) all modifications requested by customers to new marine and industrial engines are completed in accordance with IAL's standards and specifications so that the engine functions and is used for a purpose for which it is suitable;
- (D) all modifications do not affect the safety of the user or the product or application in which the engine is used; and
- (E) the modified engine complies with all applicable laws and regulations;

(ii) the detriment suffered by customers under the proposed arrangement will be negligible;

(iii) the arrangement will not substantially lessen competition in the market for the supply of engine modification services;

(iv) the engine modification market is a highly competitive market with a substantial number of participants; and

(v) the matters referred to in paragraphs (A) – (E) above are public benefits.

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

IAL submits that the number of consumers of engine modification services affected by the proposed conduct is insignificant compared to the total number of people who require and use such services throughout Australia.

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):

(Refer to direction 8)

IAL submits that the relevant markets are likely to include all engine modification outlets in Australia. IAL submits that there are a large number of participants in this market and the market is highly competitive.

In addition, the broader market for the sale and supply of marine and industrial engines is relevant. However, potential customers of Dealers are free to purchase engines from alternative manufacturers depending on the suitability of a particular engine for a particular application or the ability to modify such engines. There are other, marine and industrial engines available and that are substitutable for Isuzu engines.

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:**

(Refer to direction 9)

(i) Dealers

The proposed conduct may prevent Dealers from referring modification work to their current preferred provider. This is unlikely to result in any public detriment as Dealers will be provided with an alternative which they are assured has knowledge and experience with Isuzu engines and therefore will be able to provide highly satisfactory service.

(ii) IAL customers

The anti-competitive effect on end customers is negligible, as the conduct will not ultimately prohibit customers from comparing prices and services. While Dealers will be required to retain an IDEC Service Provider to make modifications to an engine if requested by a customer, customers are not compelled to obtain such services from Dealers (or IDEC Service Providers). Customers may opt to purchase the engine “as is” and make their own arrangements for modifications. Accordingly, customers will ultimately still have the option to choose who provides the services.

Further, customers may choose to purchase engines from other manufacturers that are substitutable for Isuzu engines.

(iii) Supplier

Engine modification outlets that are not Isuzu Diesel Enhancement Centres may have limited access to IAL customers as modification works will be referred to IDEC Service Providers.

However, the anti-competitive effect on such outlets will be insignificant given the relatively large number of consumers seeking these services and the large number of engine modification outlets already operating in Australia. In addition, there are engines available from other suppliers produced by alternative manufacturers that are substitutable for Isuzu engines. These other suppliers are not subject to the arrangement between IAL and the Dealers that is the subject of this notification.

Further, customers will not be compelled to engage IDEC Service Providers to undertake modification works.

(b) Facts and evidence relevant to these detriments:

IAL does not submit any facts or evidence in respect of the detriments.

7. Further information

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

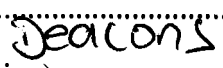
Greg Hipwell
Partner
Deacons
Level 15, 485 Bourke Street
Melbourne, Victoria 3000
Telephone: (03) 8686 6682

Dated.....  22-12-08

Signed by/on behalf of the applicant

.....
(Signature)

GREGORY HUGH HIPWELL
.....
RACV Tower, 485 Bourke Street
Melbourne Victoria 3000
(Full Name) An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004.

.....

(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.