



**Australian
Competition &
Consumer
Commission**

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Our Ref: N93925
Contact Officer: Monica Bourke
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This letter, with
enclosures, was sent
to selected dealers.

MB

14 April 2009

Dear

**Marine Power International Pty Ltd – notification N93925
– interested party consultation**

The Australian Competition and Consumer Commission (the ACCC) has received a notification from Marine Power International Pty Ltd (Marine Power). The ACCC invites you to comment on the notification. Attached is a summary of the notification process including how to make a submission to the ACCC.

The notified conduct by Marine Power International

Marine Power proposes to:

- (a) supply or offer to supply Products to Premium Dealers for resale on the condition that the Premium Dealers will not or will not except to a limited extent resupply products which compete with the Products
- (b) give or allow or offer to give or allow a credit, discount, allowance or rebate in relation to the supply of Product or the proposed supply of Products on the condition that the Premium Dealer will not or will not except to a limited extent resupply products which compete with the Products.

More specifically Marine Power proposes to offer Premium Dealer Agreements to some Mercury dealers. A provision of which will include a restraint which prohibits the dealer from reselling outboard engines which compete with Mercury Outboards except in accordance with the Agreement (the “exclusivity term”). The Premium Dealer Agreement will permit such sales where either:

- (i) the products are noted in the Premium Dealer Agreement as being products sold by the dealer before the Premium Dealer Agreement came into operation and therefore not subject to the exclusivity term or
- (ii) Marine Power consents to the sale. The Agreement provides that Marine Power must not unreasonably withhold its consent where the volume of sales of

competitor products does not exceed 5% of the dealer's quarterly sales target for products.

A copy of the notification is attached. It is also available on the ACCC's website <www.accc.gov.au>.

Request for submissions

The ACCC invites you to make a submission on the likely public benefits and effect on competition, or any other public detriment, from the proposed arrangements.

If you intend to provide a submission in relation to the notification lodged by Marine Power, please do so by **24 April 2009**.

Alternatively, if you would like to provide comments orally, please contact Monica Bourke on (02) 6243 1351 to organise a suitable time.

Submissions, including oral submissions, will be placed on the ACCC's public register subject to any request for exclusion (guidelines are attached).

You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding the notification.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Monica Bourke on (02) 6243 1351.

Yours sincerely



Dr Richard Chadwick
General Manager
Adjudication Branch