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Our ref NLW:JAL:084111

19 June 2009

Ms Monica Bourke  
Australian Competition & Consumer Commission

BY EMAIL: [monica.bourke@accc.gov.au](mailto:monica.bourke@accc.gov.au)

Dear Ms Bourke

**Exclusive Dealing Notification by Marine Power International Pty Limited dated 23 March 2009**

We refer to your email dated 19 May 2009 and thank you for providing us with a copy of the submission dated 11 May 2009 that the ACCC received from Honda Australia Motorcycle & Power Equipment Pty Limited (*Honda*) in relation to our client's exclusive dealing notification.

Our client contends that the relevant markets are competitive and that the notified conduct will promote further promote and benefit consumers.

We note that much of the information set out in the Honda submission has been excluded from the version that has been supplied to us pursuant to a restriction of publication claim by Honda. We request that the ACCC either disclose that information to our client to enable it to respond or disregard that information when deciding our client's notification.

Pending that further information, we are instructed to respond to Honda's submission:

**1. Engine manufacturers and distributors**

Our client contends that:

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- the wholesale industry is highly competitive;
- competition is likely to increase;
- there is no basis for the ACCC to form the view that the proposed exclusivity condition is likely to lessen such competition.

#### *Wholesale market currently competitive*

Our client believes that the small contraction in unit sales among OEDA distributors is due to:

1. adverse economic conditions as noted in the Honda submission;
2. increased supply by non-OEDA suppliers such as Parsun Outboards. These suppliers tend to be based in China and distribute their engines through non-OEDA dealers and via the internet. A list of Parsun outboard dealers in Australia (as published on Parsun's website) is enclosed.

Despite the small reduction in unit sales of outboard engines, there has been no rationalisation of suppliers.

Our client submits that competition in the wholesale market has increased as a result of the competitive pressures being exerted by the recent global financial crises and reduction in consumer demand and increased supply by non-OEDA suppliers. These pressures are being evidenced by:

- suppliers sacrificing profit margins to protect market share by absorbing part or all of cost increases due to rising manufacturing costs and the recent depreciation of the Australian dollar<sup>1</sup>
- some suppliers offering cashback promotions (see attached promotion from BRP for its Evinrude outboard range and Suzuki).

#### *Effect of notified conduct*

Our client submits that the Honda submission presents no proper basis upon which it could be argued that the proposed exclusivity condition could lead to any lessening of competition in the wholesale markets.

## **2. Boat manufacturers**

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<sup>1</sup> [RESTRICTION OF PUBLICATION OF PART CLAIMED]

Our client submits that the Honda submission does not provide any basis upon which it could be argued that the proposed exclusivity condition could have any effect upon boat manufacturers.

Our client notes that:

- the notified conduct does not affect our client's supply agreements with boat builders;
- boats are supplied to dealers with and without outboard engines; as Honda acknowledges, outboard engines are generally substitutable.

Accordingly, our client does not propose to respond to Honda's submissions in relation to boat manufacturers.

### **3. Dealers**

Our client agrees that there has been a small reduction in dealer numbers. However, our client disputes that there is any basis for Honda to contend that this has led to any significant rationalisation in the retail market.

Our client notes that dealers of OEDA supplied products are facing increased competition from resellers of non-OEDA supplied products and internet sales.

Our client also disputes that there are significant barriers to entering the retail market. Our client notes that dealers range from very small one person workshops to very large operations with showrooms and boat yards. Start up costs for the former are relatively modest. Furthermore, a growing area of retail sales which take place via third party auction and other internet sites. Again, the start up costs for those retail operations are relatively modest.

Our client disputes that the exclusivity condition will have any effect on dealer's ability to service boats and engines. The proposed condition does not restrict a dealer from servicing other brands of outboards nor does it prevent any dealer from purchasing the genuine parts and accessories required to service those engines.

Furthermore, as noted in the notification, it is only proposed to offer premium dealerships in competitive retail markets where there will be other dealerships available to service non-Mercury engines.

### **4. Effect on the structure of the industry**

Our client rejects Honda's assertion that the notified conduct would cause substantial change to the structure of the industry and that certain dealers will move from supplying a variety of outboard engines to consumers to only supplying one type of engine to consumers.

*The majority of outboard dealers in Australia are single brand dealerships*

At present, the majority of outboard engine dealers sell only one brand of outboard engines. Our client's research<sup>2</sup> indicates that the following proportion of outboard engine dealerships sell only one brand:

**[RESTRICTION OF PUBLICATION OF PART CLAIMED]**

Our client expects that most, if not all, premium Mercury dealers will already be single brand dealers.

Accordingly, our client rejects the arguments by Honda that the notified conduct will in practice lead to any significant reduction of intra brand competition at dealerships, limitation of choice or restricted resupply substitution.

**5. Effect of the notified conduct on proposed premium dealers**

Our client contends that the notified conduct will in practice have minimal effect on proposed premium dealers selling non-Mercury products.

As set out in our client's notification, the notified conduct will be subject to the following exemptions:

- where the dealer has previously sold non Mercury outboards, those outboards are to be recorded in the schedule to the premium dealer agreement and the dealer will be free to continue to sell those products;
- the dealer will be able to request permission from our client to sell non Mercury outboards and our client cannot unreasonably withhold consent where the volume of such sales does not exceed 5% of the dealer's target for Mercury outboard sales.

Honda contends that the premium dealer's quarterly sales targets will mean that premium dealers will *'have an incentive to push sales of Mercury products and*

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<sup>2</sup> Research involved our client cross referencing the respective dealer lists that are displayed on the websites for each OEDA supplier in late March 2009.

*accordingly, the fact that dealers may continue to supply competing products is inconsequential.'*

Our client does not agree.

Furthermore, our client notes that Honda's complaint is in substance that the reason that dealers will be seeking to 'push' Mercury products is their wish to comply with sales targets in the proposed premium dealer agreement, rather than any restriction on their ability to sell non-Mercury outboards. Honda assert that even where able to sell competitor outboards, the dealer is likely to choose to sell Mercury outboards. If those contentions are correct, the notified conduct will have no effect on outboard sales.

**6. Premium dealers will only be appointed in populated regions where there is strong retail competition**

Our client reiterates that it only intends to appoint premium dealers in major population centres.

Our client's commercial objective for the premium dealer agreement is to encourage specialized Mercury dealers to invest in promoting and supporting sales of Mercury branded outboard engines. The proposed agreement will provide for quarterly sales targets and give our client a right to terminate if those targets have not been met for two consecutive quarters.

It is submitted that our client's commercial objectives will not be met in smaller retail trading regions where there is limited ability for the dealer to grow sales.

Furthermore, our client considers that the proposed premium dealer agreement would not be commercially attractive to dealers trading in smaller retail trading areas. Those dealers have less competition and scope for increasing sales. Our client believes that the premium dealer agreement would offer these dealers minimal benefit over the standard dealer agreement. Accordingly, our client sees no reason why the dealer would accept the proposed restriction and sales targets to become a premium dealer.

As noted above, our client expects that virtually all of the proposed premium dealers will already be exclusively selling Mercury outboards in competitive retail markets.

**7 Term of the proposed premium dealer agreement**

While Honda correctly identifies the term of the proposed premium dealer agreement as 3 years, it overlooks the fact that either party may terminate the agreement without

reason on 180 days written notice. Accordingly, our client rejects any suggestion that the dealer will be locked in for 3 years.

Our client also rejects the assertion by Honda that our client will pressure dealers into becoming premium dealers as unfounded.

As noted above, the wholesale market is very competitive. Our client considers that Honda's suggestion that our client would not continue supply to a major dealer unless it signed a premium dealer agreement is commercially unrealistic.

#### **8. Lack of transparency of engine price in boat and motor packages**

Our client does not accept Honda's submissions that there is low transparency of pricing for engines sold with boat, engine and trailer packages. In any event, our client fails to understand how the notified conduct will have any detrimental effect on transparency.

Our client disputes that dealers' main source of revenue is to sell bundled boat, engine and trailer packages.

In the case of our client's dealers, our client understands that:

#### **[RESTRICTION OF PUBLICATION OF PART CLAIMED]**

In our client's view, Honda fails to provide a proper factual basis for its assertion that there is low transparency of costs of the bundled boat, engine and trailer components. Furthermore, in our client's view, the Honda submission does not suggest any basis upon which it could be argued that the proposed conduct will have any detrimental effect on price transparency. The Honda submission appears to suggest that the notified conduct will have no effect as, irrespective of the proposed restriction on selling new Mercury outboards, the consumer will not generally be provided with information about the competing outboard engines.

Our client notes that for the majority of sales, where the engine is supplied to repower an existing boat, the engine price will certainly be transparent.

#### **9. Substitutability between outboard engines and inboard engines**

Our client disputes that outboard engines do not generally compete directly with inboard engines. Our client also notes that, contrary to the suggestion in the Honda submission, many boats with inboard engines are also trailer boats.

For the above reasons, our client rejects the arguments in the Honda submission as unfounded.

Please do not hesitate to contact the writer if you require any further information or clarification of our client's position.

Yours faithfully

**TressCox**



**John Lancefield**

Email: [john\\_lancefield@tresscox.com.au](mailto:john_lancefield@tresscox.com.au)

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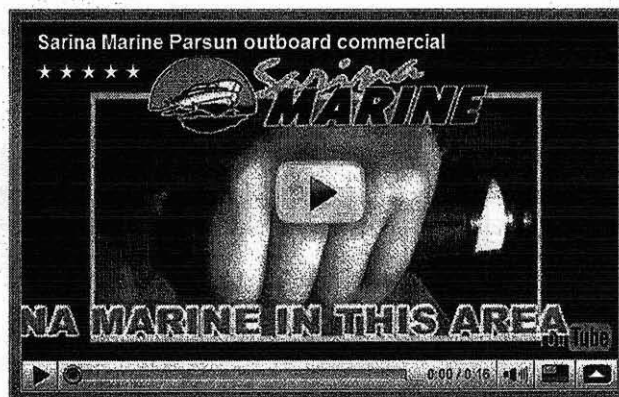
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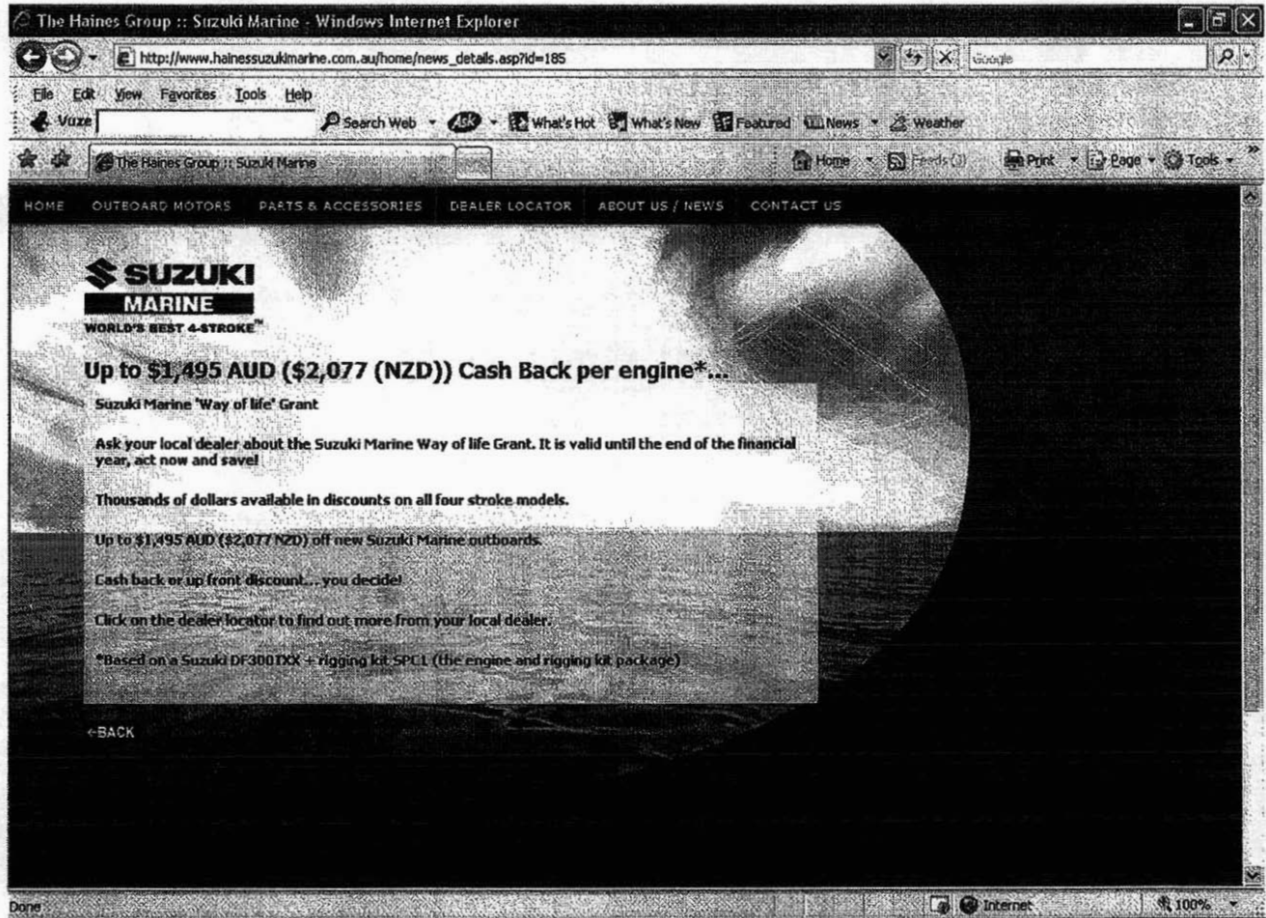
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John Lancefield

**From:** Nicholas Webb [Nicholas\_Webb@mercmarine.com]  
**Sent:** Tuesday, 16 June 2009 4:39 PM  
**To:** John Lancefield  
**Subject:** Suzuki Cash Back Offer details

Details of current Suzuki consumer cash back offer.

<http://www.hainessuzukimarine.com.au/home/default.asp>



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