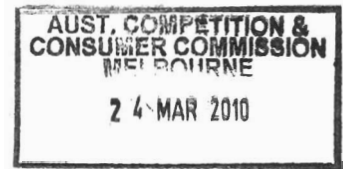


# MALLESONS STEPHEN JAQUES



Regional Director  
Australian Competition and  
Consumer Commission  
Level 35, The Tower  
360 Elizabeth Street  
Melbourne Centre  
Melbourne Vic 3000

24 March 2010

Amanda Bodger  
Partner  
Direct line  
(61 3) 9643 4069

FILE No:	
DOC:	
MARS/PRISM:	

Dear Sir/Madam

## **GM Holden Ltd - Notification of third line forcing exclusive dealing**

We act for GM Holden Ltd (“Holden”).

We enclose for lodgement an exclusive dealing notification on behalf of Holden together with a cheque for the applicable lodgement fees of \$100.00.

Please do not hesitate to contact Mary Syrotynskyj on (03) 9643 4059 should you have any queries or comments.

Yours faithfully

Encls. 1

**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)*

N94574

GM Holden Ltd (ABN 84 006 893 232) (“Holden”)

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

*(Refer to direction 3)*

Holden's main business is the manufacture and distribution of motor vehicles, engines, components and motor vehicle parts.

Holden supports various community and sporting organisations and is currently a sponsor of Netball Australia (and various State and Territory affiliates) and the Australian ANZ Championship teams (“**Netball Australia**”) and Lions Australia Multiple District 201 (“**Lions Club**”).

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

C/- Amanda Bodger  
Mallesons Stephen Jaques  
Level 50  
Bourke Place  
600 Bourke 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:**

Certain Holden branded motor vehicles, namely Barina (excluding 3 door hatch with manual transmission), Astra, Astra Twin Top, Epica, Cruze, Captiva, all Commodore variants (excluding pack variants), Statesman/Caprice Ute, Combo or Colorado models, that are ordered through authorised Holden dealers (“**Eligible Motor Vehicles**”). The list of Eligible Motor Vehicles may change from time to time.

Memberships of Netball Australia and the Lions Club.

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

*(Refer to direction 4)*

Holden proposes to offer Netball Australia members and Lions Club members a \$500 (incl GST) cash back when they purchase an Eligible Motor Vehicle from a Holden dealer and successfully complete and return a claim form during the offer period. The offer will be available until 31 December 2010. The cash back will be paid by way of factory cash back cheque given to the customer after they have purchased their Eligible Motor Vehicle.

Holden proposes to:

- (i) refuse to give or allow, or offer to give or allow, a discount, allowance, rebate or credit (in the form of a cash back) in relation to the supply or proposed supply of goods by Holden for reason that the person has not acquired, or has not agreed to acquire a membership from Netball Australia or Lions Club; or
- (ii) give or allow, or offer to give or allow, a discount, allowance, rebate or credit (in the form of a cash back) in relation to the supply or proposed supply of goods by Holden on the condition that the person to whom Holden supplies or offers or proposes to supply the goods will acquire a membership from Netball Australia or Lions Club.

**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)*

Members of Netball Australia and the Lions Club.

**(b) Number of those persons:**

**(i) At present time:**

Unknown, but expected to be greater than 50.

**(ii) Estimated within the next year:**

*(Refer to direction 6)*

Unknown, but expected to be greater than 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:**

*(Refer to direction 7)*

The conduct in paragraph 2(b) will not lessen competition in the relevant market because:

- (i) it will have pro-competitive effects by lowering prices for consumers and by encouraging other car manufacturers and retailers to make similar offers, including in support of sporting and community activities and organisations;
- (ii) the offer is limited to certain Holden car models;
- (iii) the offer does not represent a substantial discount on a motor vehicle;
- (iv) use of the offer is optional and a member of Netball Australia or the Lions Club is not compelled to use the offer - they remain free to choose other car manufacturers if they want to purchase a motor vehicle; and
- (v) competition in the relevant market is extremely vigorous, with many competitors who retail motor vehicles to customers and who provide or are free and able to provide special offers to customers.

The applicant believes that the benefits from the conduct outlined above will outweigh any possible detriment considered to arise from the conduct.

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

None in addition to those facts already described above.

**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)*

The market for the sale of passenger vehicles to retail customers within Australia, which is characterised by strong and vigorous competition.

**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)*

The applicant does not consider there to be any public detriments resulting from the conduct described in paragraph 2(b) above. The applicant believes that there will be public benefits from the conduct outlined above, as set out in paragraph 4(a).

**(b) Facts and evidence relevant to these detriments:**

None in addition to those facts already described above.


**7 Further information**

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

Amanda Bodger  
Mallesons Stephen Jaques  
Level 50, Bourke Place  
600 Bourke Street  
Melbourne VIC 3000  
Tel: 9643 4069

Dated 24 March 2010

Signed by/on behalf of the applicant

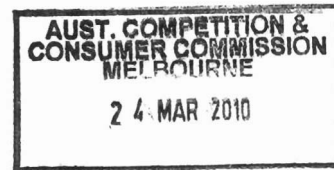


(Signature)

Amanda Bodger  
(Full Name)

Mallesons Stephen Jaques  
(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.