

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY
27 JAN 2012



Our ref: GFP/CCW: 214622
REPLY TO SYDNEY OFFICE

25 January 2012

Australian Competition & Consumer
Commission
GPO Box 3648
SYDNEY NSW 2001

Macpherson+Kelley Lawyers
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Sydney NSW 2000
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Dear Sirs

**CAPITAL FINANCE AUSTRALIA LIMITED - LODGEMENT OF FORM G -
NOTIFICATION OF EXCLUSIVE DEALING**

We act for Capital Finance Australia Limited.

We **enclose** for lodgement the following:

1. Form G - Notification of Exclusive Dealing.
2. Cheque for \$100 in favour of the Australian Competition and Consumer Commission on account of notification lodgement fees.

Please feel free to contact us on (02) 8298 9533 should you have any queries in relation to the enclosed Form.

Yours faithfully

Macpherson + Kelley
CHELYN WOON
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encl

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(N-1954783;1)
Queensland

FORM G

Commonwealth of Australia
Competition and Consumer Act 2010 - 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 *Competition and Consumer Act 2010*, 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:

N95688 Capital Finance Australia Limited ABN 23 069 663 136.

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

Supply of retail (consumer and commercial) financial products and services, including through a network of motor dealers authorised by GM Holden Ltd and its affiliates to enable them to offer financial products and services on behalf of the Applicant to customers of such motor dealers ("**Participating GMH Dealers**") who purchase automobiles or light commercial vehicles, vans and other vehicles ("**GMH Vehicles**") manufactured, distributed, marketed or sold by GM Holden Ltd.

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

c/- Lloyds International
Level 27, 45 Clarence Street
Sydney NSW 2000
Attention: Van Gencur, Head of Central Risk
CC: General Counsel & Company Secretary

2. Notified arrangement

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

- GMH Vehicles.
- Retail (commercial and consumer) financial products and services.

(b) Description of the conduct or proposed conduct:

- The Applicant giving or allowing, or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of financial products and services by the Applicant to customers of Participating GMH Dealers on the condition that the customers will acquire GMH Vehicles directly or indirectly from Participating GMH Dealers.
- The Applicant refusing to give or allow a discount, allowance, rebate or credit in relation to the supply of financial products and services by the Applicant to customers for the reason that the customers have not acquired, or have not agreed to acquire, GMH Vehicles directly or indirectly from a Participating GMH 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:

Customers of GMH Dealers.

- (b) Number of those persons:

- (i) At present time:

In excess of 50.

- (ii) Estimated within the next year:

In excess of 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:

Please refer to the **attached** submission.

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

Please refer to the **attached** submission.

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):

Please refer to the **attached** submission.

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:

Please refer to the **attached** submission.

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

Please refer to the **attached** submission.

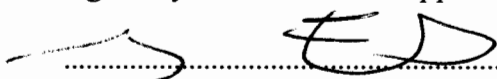
7. Further information

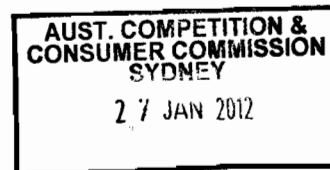
- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Fiona Reed
Lloyds International
Level 27, 45 Clarence Street, Sydney NSW 2000
(02) 8070 4000

Dated..... 20 January 2012

Signed by/on behalf of the applicant


.....
(Signature)



... CRAIG EDWARDS

(Full Name)

... CAPITAL FINANCE AUSTRALIA LTD

(Organisation)

... HEAD OF ASSET FINANCE SALES

(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 *Competition and Consumer Act* 2010 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.

SUBMISSION

Background

GM Holden Ltd ("**GM Holden**") manufactures, distributes, markets and sells (among other things) automobiles, light commercial vehicles, vans and other vehicles ("**GMH Vehicles**"). GM Holden has established a network of authorised dealers within Australia ("**GMH Dealers**"). Under agreements or arrangements between GM Holden and each GMH Dealer, the GMH Dealers sell GMH Vehicles in the retail market.

The Applicant carries on (among other things) the business of providing retail finance to motor vehicle consumers (including commercial purchasers). Under agreements between GM Holden, the Applicant and certain GMH Dealers, such GMH Dealers are authorised to offer financial products and services on behalf of the Applicant ("**Participating GMH Dealers**") to the customers of such Participating GMH Dealers who require finance (including by way of a loan, lease or hire purchase arrangement, term purchase agreement or chattel mortgage) for the purchase of GMH Vehicles. Customers of the Participating GMH Dealers are not required to obtain finance from the Applicant (or any other finance products or services) when purchasing their GMH Vehicles from the Participating GMH Dealers.

Benefits and Rewards for Customers

From time to time, the Applicant proposes to offer a discount or rebate on the rate of interest applicable to finance provided by the Applicant where a customer leases, hires or purchases a GMH Vehicle from a Participating GMH Dealer. GM Holden may reimburse or subsidise the Applicant for the amount of the discount or rebate.

Conduct or Proposed Conduct

The Applicant and GM Holden are concerned that the conduct or proposed conduct described above could be viewed as a technical contravention of sections 47(6) and (7) of the *Competition and Consumer Act 2010* (Cth) (the "**CCA**"). Specifically, the conduct could be viewed as the Applicant giving or allowing, or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of financial products and services by the Applicant to customers of Participating GMH Dealers on the condition that the customers will acquire GMH Vehicles directly or indirectly from Participating GMH Dealers (and the corresponding refusal to give or allow a discount, allowance, rebate or credit for the reason that the customer has not acquired, or has not agreed to acquire, a GMH Vehicle from a Participating GMH Dealer).

While the parties do not necessarily consider that this correctly characterises the conduct or proposed conduct, they recognise that it is open to being characterised in this way. Accordingly, out of an abundance of caution and in order to minimise the risk of contravening sections 47(6) and (7) of the CCA, the Applicant wishes to notify the Australian Competition and Consumer Commission of the particulars of the conduct or proposed conduct under section 93(1) of the CCA. Particulars of the conduct or proposed conduct are set out in the attached Form G.

Competition Issues

The Applicant submits that the conduct or proposed conduct will not adversely affect competition in any relevant market and that the likely benefit to the public from the conduct or proposed conduct will outweigh the likely detriment (if any) to the public from the conduct or proposed conduct.

The Applicant does not believe that the proposed conduct will have an adverse effect on competition in any relevant market. The Applicant considers that the relevant markets for assessing this notification are the retail market for motor vehicles and the retail markets for financial products and services. These markets are highly competitive and characterised by relatively low levels of concentration, with a diverse range of services and continuing innovation in product development.

GM Holden is only one of many suppliers and retailers of motor vehicles. Similarly, the Applicant is only one of a number of providers of retail financial products and services, with other providers including specialist car loan providers and banking institutions providing personal loans and car loans. These markets are likely to remain competitive for the foreseeable future. Accordingly, the Applicant does not consider that the conduct will distort demand, create barriers to entry or otherwise harm competition in the market.

In addition, the Applicant submits that the conduct or proposed conduct is pro-competitive and will generate a number of benefits to the public, including:

- providing customers with the opportunity to obtain competitive rates on vehicle finance in conjunction with their optional acquisition of GMH Vehicles; and
- encouraging the Applicant's competitors to offer similarly priced financial products and services, encouraging competition amongst providers of retail motor vehicle finance. These factors will ultimately lead to further consumer benefits by reducing the cost of motor vehicle finance.

The Applicant submits that the conduct or proposed conduct causes little, if any, identifiable detriment to the public. From a customer's perspective, the conduct or proposed conduct offers a benefit in relation to the optional acquisition of finance in conjunction with their optional acquisition of a GMH Vehicle from a Participating GMH Dealer. While some customers may consider that their choice of dealer or motor vehicle is limited by the exclusive availability of the benefits or rewards through Participating GMH Dealers or that their choice of financier is limited by the exclusive ability of the benefits or rewards through the Applicant, the genuine choice of consumers to deal with any motor vehicle supplier or dealer and any financier based on the competitive terms offered by those particular parties is not restricted. By retaining the genuine choice of consumers, the conduct is not inherently anti-competitive.

Conclusion

For the reasons set out above, the Applicant does not believe that the Australian Competition and Consumer Commission should give a notice to the Applicant under section 93(3A) of the CCA in respect of the attached notification.