



**Australian
Competition &
Consumer
Commission**

Our Ref: 53699
Contact Officer: Tanya Hobbs
Contact Number: 02 6243 1020

GPO Box 3131
Canberra ACT 2601

20 February 2014

23 Marcus Clarke Street
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Mr Ross McLean
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Dear Mr McLean

Third line forcing notification N97209 & N97210 lodged by Harley-Davidson Australia Pty Ltd

I refer to the above third line forcing notifications lodged with the Australian Competition and Consumer Commission (the ACCC) on 22 January 2014. The notifications have been placed on the ACCC's public register.

Harley-Davidson Australia Pty Ltd (Harley-Davidson) proposes to allow its dealers to participate in its program to market pre-owned Harley-Davidson motorcycles on condition that the dealer enters into agreements with:

- Datamotive, a division of Carsales.com Limited, to acquire website related services related to the marketing and administration of the program; and
- Swann Insurance, in relation to the management and administration of services related to the warranties offered as part of the program.

Legal protection conferred by the notifications commenced on 5 February 2014.

On the basis of the information that you have provided it is not intended that further action be taken in this matter at this stage.

As with any notification, please note that the ACCC may act to remove the legal protection provided by the notifications at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

This assessment has been made on the basis that Harley-Davidson Australia Pty Ltd will disclose all relevant terms and conditions to current and prospective franchisees or dealers. In particular I note that, to the extent that some Harley Davidson dealers may be franchisees, Harley-Davidson Australia Pty Ltd is required to comply with the disclosure requirements of the Franchising Code of Conduct in relation to the notified arrangements. Among other things, these specify that a franchisor must provide information to franchisees in its disclosure document about:

- any restrictions on acquisition of goods or services by the franchisee from other sources

- whether the franchisor or an associate will receive a rebate or other financial benefit from the supply of goods or services to franchisees, including the name of the business providing the rebate or financial benefit and
- whether any such rebate or financial benefit is shared directly or indirectly with franchisees.

More generally I would note that the Franchising Code of Conduct also requires disclosure of:

- ownership by a franchisor or an associate of a franchisor of an interest in any supplier from which the franchisee may be required to acquire goods or services
- any restrictions by a franchisor on the goods or services that a franchisee may supply and
- any restrictions on the persons to whom a franchisee may supply goods or services.

A copy of 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 Tanya Hobbs on 02 6243 1029.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Richard Chadwick', with a long horizontal line extending to the right.

Dr Richard Chadwick
General Manager
Adjudication Branch