



Summit Tyres Australia Pty Ltd

A.B.N. 88 154 393 003

Level 1, 650 Mount Alexander Road,
Moonee Ponds, VIC 3039

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By email: adjudication@accc.gov.au

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission

9 May 2014

Dear Dr Chadwick

RE: Summit Tyres Australia Pty Ltd - Third Line Forcing Notification

Please find attached:

1. Form G – Exclusive Dealing Notification;
2. Annexure A to Form G which we request is excluded from the public records and treated as confidential;
3. Annexure B to Form G; and
4. A transaction receipt for the payment of the \$100 lodgement fee.

Please contact Sachi Haga on (03) 9653 1060 or sachi.haga@sumitomocorp.co.jp if you have any queries in relation to the attached.

Yours faithfully

A handwritten signature in blue ink, appearing to read "Sachi Haga", is positioned above the printed name.

Sachi Haga
Corporate Counsel

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:**

(Refer to direction 2)

Summit Tyres Australia Pty Ltd (ACN 154 393 003) (STA).

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

(Refer to direction 3)

Franchisor of "City Discount Tyres" franchises in South Australia and Victoria, "Ian Diffen City Discount Tyres" franchises in Western Australia and "Marks & Wallings City Discount Tyres" franchises in New South Wales (together the **City Discount Tyres Franchises**).

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

c/- Legal Department
Sumitomo Australia Pty Ltd
Level 21, 101 Collins Street
Melbourne Victoria 3000

2. Notified arrangement

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

This notice relates to:

- (i) waste tyre and automotive parts disposal (**Services**); and
- (ii) tyres (**Products**).

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

(Refer to direction 4)

Background

STA franchisees are retailers of tyres and related products via the City Discount Tyres Franchises. Franchisees operate City Discount Tyres

N97402

Franchise retail stores in South Australia, Victoria, Western Australia and New South Wales under the brands specified at 1(b) above.

The normal operation of retail tyre outlets such as the City Discount Tyres Franchises involves (among other things):

- (i) the wholesale acquisition of Products by franchisees for sale in their retail outlets; and
- (ii) the acquisition of Services in order to ensure proper disposal of end of life Products.

In relation to the Services, franchisees are currently responsible for making their own arrangements as to the acquisition of the Services.

In relation to Products, STA requires franchisees to sell certain volumes of core products (**Core Products**). Core Products are types and brands of products that are approved by STA.

STA's standard franchise agreements require that franchisees achieve "Minimum Core Product Quotas" which are quotas of each Core Product to be sold each month by the franchisees as specified in STA's Operations Manual or as otherwise advised in writing by STA. The relevant provisions of the standard franchise agreement are set out in Annexure A.

To facilitate the sale of Core Products, STA enters into supply arrangements with tyre manufacturers or wholesalers pursuant to which STA purchases stock of Core Products for supply to franchisees. The franchisees then either:

- (i) order and are supplied Core Products directly from STA (**STA Core Products**); or
- (ii) order Core Products directly from third party suppliers authorised by STA (**Third Party Core Products**).

In both scenarios, STA is invoiced by, and pays, the supplier and STA separately invoices, and receives payment from, the franchisees.

Franchisees are permitted under the standard franchise agreement to purchase alternative products and services from alternative suppliers subject to STA consent in the specific circumstances set out in clause 10.3.

Proposed Conduct

Conduct in relation to the Services

STA may require franchisees to acquire the Services from a nominated supplier as a condition of granting the franchise to franchisees. To that end, STA may enter into a service or collection agreement with a reputable scrap tyre and automotive waste service provider(s) (**Service Provider(s)**) under which the Service Provider(s) is engaged, likely on a state by state basis to collect, transport and dispose of end-of-life tyres or other waste from all City Discount Tyres Franchises on a negotiated price per unit basis payable directly by franchisees (**Services Conduct**).

Conduct in relation to the Products

STA may, require its franchisees to acquire the products and services from third party suppliers approved by STA as a condition of granting the franchise to the franchisees (**Products Conduct**).

Specifically, STA wishes to:

- (i) include Third Party Core Products as part of the “Minimum Core Product Quota”; and
- (ii) progressively increase the Minimum Core Product Quota from the current 55% up to 80%.

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)

Franchisees

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

- (i) At present time:

30

- (ii) **Estimated within the next year:**
(Refer to direction 6)

Up to 33.

- (c) **Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:**

Please refer to Annexure “B”.

4. Public benefit claims

- (a) **Arguments in support of notification:**
(Refer to direction 7)

- (i) *Environmental benefit arising from Services Conduct*

In relation to the Services, STA is aware of the recent issues with illegal stockpiling and dumping of tyres and the environmental and health and safety risks that such action poses. The consequence of the Services Conduct is that there will be nominated suppliers for the Services to all franchisees. STA will select a Service Provider(s) that it considers will provide the Services at a high standard. This will ensure that waste, particularly tyres, is disposed of responsibly and in accordance with the statutory and regulatory requirements across the City Discount Tyres Franchise network. It is of public benefit for STA to actively promote the sustainable and responsible collection of waste tyres.

(ii) Cost saving benefit arising from the Products Conduct and the Services Conduct

There will be a cost benefit to the Products Conduct and the Services Conduct. Where Products and Services will be acquired by or for all franchisees then there will likely be a volume discount applied. Where there are reduced costs to franchisees then they may pass these costs savings on to consumers.

(iii) Product quality benefits arising from the Products Conduct

Overall the consistency of Products provides benefit to consumers by ensuring that consumers are provided with a consistent retail experience and high quality products at a competitive price. Franchisees experience a more efficient operation and management of the franchise network through a range of approved processes and products that work efficiently at a reasonable cost.

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

By ensuring that franchisees acquire Products and Services from approved suppliers, the following benefits are generated.

- (i) *The environmental benefit:* As waste disposal must be compliant with a range of statutory and regulatory requirements, STA will be able to assist franchisees to comply with these obligations by undertaking the research and selecting a reputable Service Provider who meets these requirements. STA will then be able to offer to the City Discount Tyres Franchisees a standardised procedure in line with statutory and regulatory requirements and occupational health and safety laws.
- (ii) *The costs savings benefit:* STA can take advantage of bulk or volume discount for the supply of Products and Services made available by manufacturers or service providers. This means that

the products and services are normally able to be on sold to franchisee at a lower price who, in turn, are able to supply the tyres at cheaper prices to retail consumers. This would not be available to franchisees if they were to purchase products and services individually. Further, there are cost and time savings for franchisees as they do not need to individually negotiate deals with suppliers.

- (iii) *The product quality benefit:* STA selects a range of Products to franchisees that are of a high quality, dealing with only reputable brands and Products which meet international standards and that are of best value for franchisees. This standard is set across the franchise network ensuring that consumers are offered with high quality Products.

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 relevant markets are:

- (a) the tyre disposal market, in which franchisees acquire the Services; and
- (b) the wholesale tyre market, in which STA acquires the Products.

The tyre disposal services market

There are a number of participants in the tyre disposal services market. They include both small tyre collectors and transporters along with some larger operators. STA does not have current market data for the tyre disposal services market, but is aware of 2001 data that indicated around 70 tyre collection services across Australia¹.

Importantly, the acquisition side of the market is wide. Tyre manufacturers and tyre retailers are all potential acquirers of the Services. Consequently, the impact of the Services Conduct on the tyre disposal services market, if any, would be minimal. This is because the City Discount Tyres Franchises make

¹ Source: "A National Approach to Waste Tyres", Commonwealth Department of Environment, June 2001: <http://www.environment.gov.au/archive/settlements/publications/waste/tyres/national-approach/pubs/national-approach.pdf>

up a very small component of the market for acquisition of the services. Tyre retailers are just one type of potential acquirer of the Services, and the City Discount Tyres Franchises represent less than 3% of the retail tyre market in Australia. The retail market is discussed further below.

Restriction on the supply of the relevant Services would stem from the relevant state and territory statutory and regulatory requirements. Regulation of the waste disposal industry, particularly in relation to tyres is not uniform across the States and Territories.

The wholesale tyre market

The Products Conduct will occur within the wholesale tyre market. That is a market for the wholesale supply/acquisition of Tyres in Australia. The market is large and is not concentrated. STA's acquisition of the Products will not have any significant impact on it. Wholesale suppliers include international and local suppliers, such as:

- Independent National Wholesalers: Australian Tyre Traders, Citic Tyres and Wheels, HTR Marketing Australia, Total Tyres, Transport Tyre Sales, Tyre and Tube Australia, Tyres4U and YHI Australia.
- Independent State Wholesalers: Chapel Corner Service Centre, Cotton Tyre Service, Dowling & McCarthy Tyres, Exclusive Tyres(Cooper), Get a Grip Tyres, Koast Tyre, LD Wholesale Tyres, National Tyre Wholesalers, Neta Tyre Services & Sales, Stamford Tyres, State Tyre Sales, Statewide Tyre Distribution, TopTyres Australia , Tempe Tyres, Ozzy Tyres, Tyremax, Freedom Tyres and Atlas Tyres.
- Integrated manufacturers: Bridgestone Australia, Michelin Australia Pty Ltd, Continental Tyre Australia, Goodyear Dunlop Tyres, Hankook Tyre Australia, Pirelli Tyres Australia, Toyo Tyre & Rubber Australia, Yokohama Tyre Australia.

On the acquisition side of the market, tyre retailers are key acquirers of wholesale tyres. Other significant acquirers are vehicle manufacturers. The retail market is addressed below; there are many participants in the retail market and STA is a small one.

There is no new tyre manufacturing in Australia and there are no restrictions on the supply of new tyres into the Australian market, with tyres being imported from many countries. No duties apply to imported tyres.

The retail tyre market

In each of the wholesale tyre market and the tyre disposal services market, substitutable acquirers will include other tyre retailers. As such it is relevant

to understand the City Discount Tyres Franchises' position in the retail market when considering the impact of the proposed conduct on the markets for the acquisition of the Products or the Services.

The retail market is the Australian "Tyre Retail Market" servicing cars, SUVs, light commercial and 4x4 vehicles. There are a large number of participants in the retail market, all of whom will continue to compete to acquire the Products or the Services regardless of whether STA engages in the conduct the subject of this notification. Competition in the tyre retailing market is strong and is dominated by the following participants:

- Goodyear Australia Pty Ltd (including Beaurepaires): 339 outlets
- Bridgestone Australia Ltd (Bridgestone Tyres): 240 outlets
- Tyrepower Ltd (Tyrepower): 259 outlets
- Wesfarmers Limited (Kmart Tyres): 240 outlets
- Bob Jane Corporation Pty Ltd (Bob Jane T Marts): 138 outlets²

There are currently 30 City Discount Tyres Franchise outlets in Australia, as set out in Annexure B. The remainder of the market is taken up by other operators including small businesses that operate on a local level. Within this segment there are a few core players in the industry who together hold market share of less than 5.0%.³ STA is a small participant in the Australian tyre market and its market share is estimated at less than 3% nationally.

(i) Other affected markets

See above.

(ii) Suppliers and acquirers in this market

See above.

(iii) Substitutes

See above.

(iv) Restrictions on the supply or acquisition of the relevant goods or services

See above.

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

² IBISWorld Tyre Retailing in Australia Dec 12.

³ IBISWorld Tyre Retailing in Australia Dec 12.

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)

STA considers that there will be negligible public detriment flowing from either the Services Conduct or the Products Conduct. The natural consequence of the Services Conduct and the Products Conduct is that franchisees will not compete among one another for the acquisition of the Products or the Services. Where the market for the acquisition of each of the Products and Services is large and the franchisees represent such a small component of the market, the impact of the Services Conduct and the Products Conduct will be negligible.

For this reason and the reasons noted in sections 4 and 5 above, STA's view is that any public detriment arising from the notified conduct is outweighed by the public benefit.

(b) Facts and evidence relevant to these detriments:

The City Discount Tyres franchisees do not account for such a proportion of purchases in any of the markets for the Products or Services that would be capable of generating an anticompetitive effect.

7. Further information

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

David Wilson
Director
Summit Tyres Australia Pty Ltd
Level 1, 650 Mt Alexander Road, Moonee Ponds VIC 3039

Dated..... 9-May-14

Signed by/on behalf of the applicant

.....
(Signature)

.....
(Full Name)

.....
(Organisation)

.....
(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.

Annexure B

3(c) – List of persons, or classes of persons, affected or likely to be affected by the notified conduct:

CITY DISCOUNT TYRES STORE LISTING			
Store Name	Address	Suburb	State
WA			
IDF CDT BALCATTA	98 ERINDALE RD	BALCATTA	WA
IDF CDT BELMONT	27 BELGRAVIA STREET	BELMONT	WA
IDF CDT CANNING VALE	5/255 BANNISTER RD	CANNING VALE	WA
IDF CDT CANNINGTON	1487 ALBANY HWY	CANNINGTON	WA
IDF CDT FREMANTLE	109 SOUTH TERRACE	FREMANTLE	WA
IDF CDT JOONDALUP	6/209 WINTON ROAD	JOONDALUP	WA
IDF CDT KELMSCOTT	2880 ALBANY HWY	KELMSCOTT	WA
IDF CDT MADDINGTON	1/123 BURSLEM DRIVE	MADDINGTON	WA
IDF CDT MALAGA	11 EXHIBITION DRIVE	MALAGA	WA
IDF CDT MIDLAND	199 GREAT EASTERN HIGHWAY	MIDLAND	WA
IDF CDT MORLEY	70 COLLIER RD	MORLEY	WA
IDF CDT MYAREE	81 NORMA ROAD	MYAREE	WA
IDF CDT OSBORNE PARK	65 HOWE STREET	OSBORNE PARK	WA
IDF CDT ROCKINGHAM	CNR READ & ROBINSON	ROCKINGHAM	WA
IDF CDT WANGARA	12 PRINDIVILLE DRIVE	WANGARA	WA
SA			
CDT ELIZABETH	23 ELIZABETH WAY	ELIZABETH	SA
CDT KESWICK	449 SOUTH RD	HILTON	SA
CDT MITCHELL PARK	933 MARION ROAD	MITCHELL PARK	SA
CDT MT BARKER	2 MORPHETT ST	MOUNT BARKER	SA
CDT NAILSWORTH	159 MAIN NORTH ROAD	NAILSWORTH	SA
CDT POORAKA	UNIT 1, 1187 MAIN NORTH ROAD	POORAKA	SA
CDT REYNELLA	147 SHERRIFFS ROAD	REYNELLA	SA
CDT PORT ADELAIDE	321 COMMERCIAL RD	PORT ADELAIDE	SA
CDT RIDGEHAVEN	31 GOLDEN GROVE RD	RIDGEHAVEN	SA
VIC			
CDT GEELONG	1 MERCER STREET	GEELONG	VIC
CDT BUNDOORA	909 PLENTY RD	BUNDOORA	VIC
CDT THOMASTOWN	45 WOOD ST	THOMASTOWN	VIC
CDT MITCHAM	462 WHITEHORSE RD	MITCHAM	VIC
CDT MOORABBIN	626 SOUTH RD	MOORABBIN	VIC
NSW			
MW CDT WEST RYDE	940 VICTORIA RD	WEST RYDE	NSW