

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)

N98056 Fuchs Lubricants (Australasia) Pty Ltd, ABN 88 005 681 916 (**Fuchs**)

- (b) Short description of business carried on by that person:
(Refer to direction 3)

Fuchs is the Australian subsidiary of a global manufacturer and supplier of oil lubricants, which supplies specialised products in five main areas of lubrication:

1. Automotive (cars and trucks)
2. Industrial (manufacturing)
3. Specialist Applications
4. Mining
5. Private Label

This application relates to the Private Label business whereby Fuchs manufactures lubricants on behalf of General Motors Holden (**GM Holden**) as a GM Holden private label product marketed under the AC Delco lubricant brand name (**AC Delco Lubricant**). GM Holden purchases the lubricants from Fuchs and then sells it to their customer base, which is typically made up of passenger car franchise dealerships. Fuchs is a producer of the AC Delco Lubricant and responsible for delivering all ordered product to the designated dealership address as supplied by GM Holden, but ordinarily has had no direct commercial arrangement with that dealership.

Fuchs proposes to offer independent GM Holden dealerships loan and equipment finance arrangements to fund the acquisition of a lubricant storage facility and associated lubricant equipment.

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

Fuchs Lubricants (Australasia) Pty Ltd, 49 McIntyre Road, Sunshine, VIC 3020. (Attention: Brad Wright)

2. Notified arrangement

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

The supply of:

- loan and equipment finance under Fuchs' Marketing Assistance Program (MAP) to assist GM Holden car dealerships in the purchasing of lubricant storage, pumping and service bay equipment, and building structures, or alternatively, to assist them in the buying out of existing funding arrangements;
- AC Delco Lubricant products by GM Holden to franchised GM Holden dealerships.

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

Fuchs proposes to:

- offer to supply independent GM Holden dealerships with loan and equipment finance under Fuchs' MAP, on condition that the independent GM Holden dealerships acquire AC Delco Lubricant from GM Holden to fund the repayments; and
- refuse to supply independent GM Holden dealerships with loan and equipment finance under Fuchs' MAP, for the reason that the independent GM Holden dealerships had not acquired, or had not agreed to acquire, AC Delco Lubricant from GM Holden.

(Refer to direction 4)

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)

The affected parties are the independent GM Holden franchise dealerships in Australia.

- (b) Number of those persons:

- (i) At present time:

None.

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

Approximately 233 independent GM Holden franchise dealerships across Australia. The offer which is the subject of this notification would likely be made to all such dealerships within two to three years.

- (c) Where the 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 proposed conduct is expected to result in the following public benefits:

- increase the number of competitors and level of competition for the supply of general automotive lubricants to dealerships;
- increase the number of private label branded lubricants in the market and therefore the level of competition with other lubricants;
- increase the number of providers of loan and equipment finance to the automotive dealership industry;
- enable independent GM Holden dealerships to access finance to support the acquisition of facilities and equipment, increasing their volume of automotive lubricants and lowering their operating costs;
- increase consumer choice between branded lubricants (such as Shell, BP, Castrol, Valvoline, Mobil etc) and private label lubricants.

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

Fuchs is a major supplier of private label lubricants including the AC Delco Lubricant to GM Holden in Australia, as well as being a major supplier of its own branded lubricants. Through discussions with GM Holden and independent GM Holden franchise dealerships, Fuchs understands that the AC Delco Lubricant products cannot effectively compete with the lubricants being supplied by other lubricant manufacturers and wholesalers in the absence of offering the AC Delco Lubricants to independent GM Holden franchise dealerships in conjunction with loan and equipment finance to support the purchase and storage of lubricants.

Most dealerships are part of a bigger group, often with multiple sites and locations, and a broad array of automotive brands. The total automotive lubricant needs of the dealerships are therefore considerable and attract significant competition from other lubricant oil companies, most of whom offer equipment financing to increase the attractiveness of securing the contract for supply of the lubricants. Additionally, OEMs including but not limited to GM Holden, Mercedes-Benz, Caterpillar, and Subaru, often compete with these lubricant companies with private label brand lubricants. Depending on the location and operational needs of the dealership groups,

OEMs can at times successfully compete for certain dealerships. The ability to offer loan and equipment finance therefore increases the attractiveness of the offer, as it enables the OEM to fully compete for the entire dealership's volume.

Accordingly, through the proposed conduct, Fuchs' offering facilitates the sale by GM Holden of its own private label AC Delco Lubricant, increasing choice and competition in the Australian market place against existing lubricant manufacturers and retailers (Shell, BP Castrol, Valvoline, and Mobil etc.). GM Holden is not structured to be able to provide marketing assistance or equipment finance programs for lubricant storage, pumping or service bay equipment / structures. By contrast, other key lubricant supplier competitors offer finance as a key sales tool for winning business in the supply of lubricants. Without Fuchs' financial support, GM Holden would find it difficult to make a competitive offer to independent GM Holden franchise dealerships with the result that they would be unable to supply a full service and competitive offer. Fuchs' offering of a MAP to independent GM Holden franchise dealerships increases the attractiveness of AC Delco Lubricants as an alternative lubricant to other competing lubricants offered by oil companies in the marketplace. This is because independently owned GM Holden dealerships are currently unable to secure equipment finance when purchasing AC Delco Lubricant.

In addition, the offering of both automotive lubricants and the equipment financing is appealing to dealerships because with the volume often required, it could mean the lowering of total financing, input and administration costs in having to deal with multiple suppliers.

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)*

(a) The market for the supply of loan and equipment financing

The automotive lubricant dealership market includes the servicing of cars, trucks, buses and vans. Typically, newer vehicles are serviced under warranty in branded franchises or OEM owned dealerships (eg. GM Holden, Mercedes Benz, Ford, Freightliner etc.), while older vehicles are maintained through smaller independent service workshops. It is very common in Australia for a holding company to own a broad range of

franchise dealerships located at one or multiple sites, sometimes in multiple states.

Lubricant companies often offer a MAP to these franchise dealerships so that they can install tanks, hoists, pumps, metering systems and other infrastructure related to the dealership operations. It is also common for dealerships to request this MAP as a key part of their tendering processes. MAP funds are typically paid back based on an agreed rate (included in the purchase price of the products) based on the volume of product purchased from the lubricant supplier with an agreed repayment period. The contract between the lubricant supplier and the dealership would ordinarily set out product pricing, repayment terms and commercial risk.

The market for the supply of loan and equipment finance to dealerships is very competitive. There is significant substitution available as a dealership can invite tenders from up to eight to ten significant lubricant companies, with each one of these organisations having the ability to offer a MAP. With the exception of very remote locations (where there are few dealerships) there is no restriction on the ability of dealerships to access these MAPs. By allowing Fuchs to provide funding to support AC Delco Lubricant products, this array of choice for the dealerships will be increased.

There are no legal impediments or restrictions in the market place that affect a dealership seeking product supply and equipment funding arrangements.

(b) The market for the supply of automotive lubricants

There is significant competition from other lubricant companies in relation to the supply of automotive lubricants to dealerships. In the Australian market, Fuchs competes with Shell, Mobil, Castrol, Valvoline and Caltex for the supply of lubricants for use in passenger vehicles, trucks and vans. The AC Delco Lubricant would be a substitute available for automotive lubricants supplied by these other lubricant companies. As mentioned above, most lubricant companies supplying automotive lubricants to dealerships offer loans and equipment financing as a bundle together with the supply of the lubricants.

Independent GM Holden dealerships could regard generic automotive lubricants to be a viable substitute to the AC Delco Lubricant, and it would be easy for such dealers to switch between suppliers of automotive lubricants. This is so, even if they have existing loans and equipment financing from their existing suppliers, because other suppliers can easily take over the loan and supply the new equipment.

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)

There is unlikely to be public detriments to the proposed conduct that is being notified, as it is unlikely to have any detrimental impact on competition in the markets referred to above.

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

The proposed conduct is unlikely to lessen competition due to the factors referred to in section 4 above. Whilst independent GM Holden dealerships may not be able to obtain loan and equipment finance without also acquiring AC Delco Lubricants, there are many other loan and equipment finance products available. To the contrary, it is expected to result in additional competition in the marketplace by allowing GM Holden to improve the competitiveness of its AC Delco Lubricant product offerings in the Australian automotive lubricant market.

Additionally, the market is presently saturated by many other suppliers of automotive lubricants and equipment finance products. The offering of both the loan and equipment finance and AC Delco Lubricants is intended to provide dealerships with a complete means to cater for their total dealership group lubricant needs whilst minimising administrative costs.

Dealerships would also remain free to acquire AC Delco Lubricants independently of the loan and equipment finance.

7. Further information

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

Bradley Wright at Fuchs Lubricants (Australasia) Pty Ltd. Address is 49 McIntyre Road, Sunshine, VIC, 3020. Mobile number is 0448 019 985

Dated.....19 December 2014.....

Signed on behalf of the applicant

.....
(Signature)
Murray Deakin
Partner, K&L Gates

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 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.

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)

N98057 Fuchs Lubricants (Australasia) Pty Ltd, ABN 88 005 681 916 (**Fuchs**).

- (b) Short description of business carried on by that person:
(Refer to direction 3)

Fuchs is the Australian subsidiary of a global manufacturer and supplier of oil lubricants, which supplies specialised products in five main areas of lubrication:

1. Automotive (cars and trucks)
2. Industrial (manufacturing)
3. Specialist Applications
4. Mining
5. Private Label

This application relates to the Private Label business whereby Fuchs manufactures lubricants for supply to Isuzu Australia Limited ACN 006 962 572 (**Isuzu**) as an Isuzu private label product (**Isuzu Lubricant**). Isuzu purchases the lubricants from Fuchs and then on sells it to their customer base, which comprises, in this instance, franchised truck dealerships. Fuchs is a producer of the Isuzu Lubricant and responsible for delivering all ordered product to the designated dealership address as specified by Isuzu, but ordinarily has had no direct commercial arrangement with franchised dealerships.

Fuchs now proposes to offer franchised Isuzu truck dealers (**Isuzu Franchisees**) loan and equipment finance arrangements to fund the acquisition of a lubricant storage facility and associated lubricant equipment.

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

Fuchs Lubricants (Australasia) Pty Ltd, 49 McIntyre Road, Sunshine, VIC 3020. (Attention: Brad Wright)

2. Notified arrangement

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

The supply of:

- loan and equipment finance under Fuchs' Marketing Assistance Program (**MAP**) to assist Isuzu Franchisees to purchase lubricant storage, pumping and service bay equipment, and building structures, or alternatively, to assist them in the buying out of existing funding arrangements;
- Isuzu Lubricant products by Isuzu to Isuzu Franchisees.

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

Fuchs proposes to:

- offer to supply Isuzu Franchisees with loan and equipment finance under Fuchs' MAP, on condition that the Isuzu Franchisees acquire Isuzu Lubricants from Isuzu.
- refuse to supply Isuzu Franchisees with loan and equipment finance under Fuchs' MAP, for the reason that the Isuzu Franchisees had not acquired, or had not agreed to acquire, Isuzu Lubricant from Isuzu.

(Refer to direction 4)

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)

The affected parties are Isuzu Franchisees in Australia.

- (b) Number of those persons:

- (i) At present time:

None.

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

36 Isuzu Franchisees in Australia. The offer which is the subject of this notification would likely be made to all such dealerships within 12 months.

- (c) Where the 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 proposed conduct is expected to result in the following public benefits:

- increase the number of competitors and level of competition for the supply of general automotive lubricants to franchised dealerships, which may result in lower prices for consumers;
- increase the number of different brands of lubricants in the market and therefore the level of competition with other lubricants;
- increase the number of providers of loan and equipment finance to the automotive dealership industry, which may result in more competitive finance offerings, lower overheads for franchisees and the ability to pass on savings to consumers;
- enable Isuzu franchised dealerships to access finance to support the acquisition of facilities and equipment, increasing their volume of automotive lubricants and lowering their operating costs, allowing them to pass on savings to consumers and engage in more rigorous competition; and
- increase consumer choice between branded lubricants (such as Shell, BP, Castrol, Valvoline, Mobil etc) and private label lubricants.

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

Fuchs is a major supplier of private label lubricants including the Isuzu Lubricant to Isuzu in Australia, as well as being a major supplier of its own branded lubricants. Through discussions with Isuzu and Isuzu Franchisees, Fuchs understands that the Isuzu Lubricant products do not currently compete with other lubricant brands as effectively as the parties would like it to, for the reasons set out below.

Most truck dealerships are part of a bigger group, often with multiple sites and locations, and a broad array of automotive brands. The total automotive lubricant needs of such dealerships are therefore considerable and attract significant competition from lubricant oil companies to secure their business. Most suppliers offer equipment financing to increase the attractiveness of their offer, in order to secure a contract for supply of

lubricants to the dealership(s). Additionally, original equipment manufacturers (OEMs) and importers, including but not limited to Isuzu, Mercedes-Benz, Caterpillar, and Subaru, often attempt to compete with third party lubricant companies by offering private label brand lubricants to their dealership networks. However, unless such OEMs and importers offer subsidies, financing or other benefits, it is very difficult for their lubricants to effectively compete with those of the third parties. The ability to offer loan and equipment finance therefore increases the attractiveness of the OEM's lubricant offer, as it enables the OEM to more effectively compete for the entire dealership's requirements.

Accordingly, through the proposed conduct, Fuchs' offering facilitates the sale by Isuzu of its own private label Isuzu Lubricant, increasing choice and competition in the Australian market place against existing lubricant manufacturers and retailers (Shell, BP Castrol, Valvoline, Mobil etc.). This may result in lower wholesale prices, which dealers may be able to pass onto consumers.

Isuzu is not currently structured to provide marketing assistance or equipment finance programs for lubricant storage, pumping or service bay equipment / structures. By contrast, other key lubricant supplier competitors offer finance as a key sales tool for winning business in the supply of lubricants. Fuchs offering of a MAP to Isuzu Franchisees increases the attractiveness of Isuzu Lubricants, as an alternative lubricant to other competing lubricants offered in the marketplace. This is because Isuzu Franchisees are currently unable to easily secure equipment finance when purchasing Isuzu Lubricant.

In addition, the offering of both automotive lubricants and the equipment financing is appealing to dealerships because with the volume often required, it could mean the lowering of total financing, input and administration costs in having to deal with multiple suppliers.

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)

(a) The market for the supply of loan and equipment financing

The automotive lubricant dealership market includes the servicing of cars, trucks, buses and vans. Typically, newer vehicles are serviced under warranty in branded franchises or OEM owned dealerships (ie. Mercedes Benz, Ford, Freightliner etc.) while older vehicles are maintained through smaller independent service workshops. It is very common in Australia for a holding company to own a broad range of franchised dealerships located at one or multiple sites, sometimes in multiple states.

Lubricant companies often offer a MAP to these franchise dealerships so that they can install tanks, hoists, pumps, metering systems and other infrastructure related to the dealership operations. It is also common for dealerships to request this MAP as a key part of their tendering processes. MAP funds are typically paid back based on an agreed rate (included in the purchase price of the products) based on the volume of product purchased from the lubricant supplier with an agreed repayment period. The contract between the lubricant supplier and the dealership would ordinarily set out product pricing, repayment terms and commercial risk.

The market for the supply of loan and equipment finance to dealerships is very competitive. There is significant substitution available as a dealership can invite tenders from multiple significant lubricant companies (e.g. 8 to 10), with each one of these organisations having the ability to offer a MAP. With the exception of very remote locations (where there are few dealerships) there is no restriction on the ability of dealerships to access these MAPs. By allowing Fuchs to provide funding to support Isuzu Lubricant products, this array of choice for the franchised dealerships will be increased.

There are no legal impediments or restrictions in the market place that affect a dealership seeking product supply and equipment funding arrangements.

(b) The market for the supply of automotive lubricants

There is significant competition from other lubricant companies in relation to the supply of automotive lubricants to dealerships. In the Australian market, Fuchs competes with Shell, Mobil, Castrol, Valvoline and Caltex for the supply of lubricants for use in passenger vehicles, trucks and vans. The Isuzu Lubricant is a substitute available for automotive lubricants supplied by these other lubricant companies. As mentioned above, most lubricant companies supplying automotive lubricants to dealerships offer loans and equipment financing as a bundle together with the supply of the lubricants.

Independent Isuzu dealerships could regard generic automotive lubricants to be a viable substitute to the Isuzu Lubricant, and it would be easy for such dealers to switch between suppliers of automotive lubricants. This is so, even if they have existing loans and equipment financing from their existing suppliers, because other suppliers can easily take over the loan and supply the new equipment.

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)

There is unlikely to be public detriments to the proposed conduct that is being notified, as it is unlikely to have any detrimental impact on competition in the markets referred to above.

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

The proposed conduct is unlikely to lessen competition due to the factors referred to in section 4 above. Whilst Isuzu Franchisees may not be able to obtain loan and equipment finance without also acquiring Isuzu Lubricants, there are many other loan and equipment finance products available. To the contrary, it is expected to result in additional competition in the marketplace by allowing Isuzu to improve the competitiveness of its Isuzu Lubricant product offerings in the Australian automotive lubricant market.

Additionally, the market is presently saturated by many other suppliers of automotive lubricants and equipment finance products. The offering of both the loan and equipment finance and Isuzu Lubricants is intended to provide franchised dealerships with a complete means to cater for their total dealership group lubricant needs whilst minimising administrative costs, and allowing the dealerships to have more competitive offerings at the retail level for the benefit of consumers.

Dealerships would also remain free to acquire Isuzu Lubricants independently of the loan and equipment finance.

Isuzu Franchisees will not be restricted in the brands of lubricant that they can supply, provided that the lubricants meet the quality requirements of Isuzu. Isuzu Franchisees will not be required to stock Isuzu Lubricant, and will be able to continue to stock lubricants that compete with Isuzu Lubricant.


7. Further information

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

Bradley Wright at Fuchs Lubricants (Australasia) Pty Ltd. Address is 49 McIntyre Road, Sunshine, VIC, 3020. Mobile is 0448 019 985

Dated.....19 December 2014.....

Signed on behalf of the applicant


.....
(Signature)
Murray Deakin
Partner, K&L Gates

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.