

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.

1. Applicant

(a) Name of person giving notice:

N98264 Honda Australia Motorcycle and Power Equipment Pty Ltd (ABN 96 006 662 862) (**Honda MPE**)

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

Honda MPE imports and distributes, among other things, Honda-branded outboard boat engines, spare parts and accessories.

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

Peter Cash
Partner
Norton Rose Fulbright Australia
Level 15, 485 Bourke Street,
Melbourne, VIC 3000
peter.cash@nortonrosefulbright.com

2. Notified arrangement

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

- After sales servicing of Honda-branded marine engines (**Honda Engines**).
- Extended warranty services to owners of Honda Engines.

(b) Description of the conduct or proposed conduct:

Background

Honda MPE has established a network of (non-exclusive) franchisees in Australia who are authorised to market and sell Honda Engines to end-user customers and to provide after sale servicing, maintenance and repair of Honda Engines (**Servicing**).

In addition to consumer rights and guarantees under the Australian Consumer Law, all new Honda Engines sold in the Australian retail market are supplied with a 5 (domestic use) or 1 (commercial use) year warranty given by Honda MPE (**Limited Warranty**). The Limited Warranty excludes, amongst other things, damage caused by lack of maintenance, improper service or by the installation or use of parts and accessories that are not supplied by Honda MPE or an authorised Honda dealer (**Non Genuine Parts**).

Honda MPE has authorised each of its (marine) franchisees within Australia (**Authorised Service Centres**) to provide Servicing. These Authorised Service Centres are authorised to perform repairs that are covered by the Limited Warranty on behalf of Honda MPE.

Conduct or proposed conduct

Honda MPE is proposing to offer Honda Engine domestic and commercial end use purchasers an additional 2 years of warranty cover (**Extended Marine Warranty**) as a promotional incentive. The Extended Marine Warranty would commence upon the expiry of the Limited Warranty and provide the same warranty coverage as that warranty for an additional 2 year period.

The Extended Marine Warranty will be free of charge.

The proposed conditions for the Extended Marine Warranty (in addition to the terms and conditions of the Limited Warranty) are that:

- (i) the Honda Engine must have been purchased between 1 April 2015 and 31 March 2016 (both inclusive);
- (ii) during the terms of the Limited Warranty and the Extended Marine Warranty:
 - the Honda Engine must undergo all scheduled Servicing;
 - all Servicing must be carried out by an Authorised Service Centre, using parts, lubricants and accessories that are supplied by the Authorised Service Centre (**Genuine Parts**);
 - the owner of the Honda Engine must keep a record of all Servicing in the Service Policy Manual (which is supplied free of charge with the Honda Engine) and must retain the receipts for that Servicing

(Extended Marine Warranty Conditions).

A Honda Engine owner's entitlement to the Extended Marine Warranty would cease upon non-compliance with of any of the Extended Marine Warranty Conditions.

It is proposed that the Extended Marine Warranty would be in addition to the Honda Engine owner's rights under the Limited Warranty.

It is proposed that the Extended Marine Warranty would be transferable to subsequent owners of the Honda Engine, at no cost.

Accordingly, the notified conduct can be formulated as Honda MPE:

- (a) supplying, or offering to supply, extended warranty services to Honda Engine owners on the condition that the Honda Engine owner will acquire after-sales servicing for the Honda Engine from an Authorised Service Centre; and
- (b) refusing to supply, or offer to supply, extended warranty services to Honda Engine owners for the reason that the Honda Engine owner has not acquired, or has not agreed to acquire, after-sales servicing for their Honda Engine from an Authorised Service Centre.

Honda MPE appreciates that the conduct described in paragraph may be construed as falling within the prohibitions contained in section 47 of the *Competition and Consumer Act 2010* (Cth). Accordingly, it wishes to notify the conduct under section 93 of that Act.

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 who purchase a Honda Engine on or after 1 April 2015 and by 31 March 2016.

- (b) Number of those persons estimated within the next year:

Approximately 2,400

- (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:**

Honda MPE considers that the notified conduct will generate a number of public benefits, including the following:

- (i) providing Honda Engine owners with an additional 2 years of warranty cover that will be transferable to the next owner at no extra charge.
- (ii) encouraging Honda Engine owners to acquire servicing from mechanics and technicians at Authorised Service Centres. These service centres employ appropriately qualified and trained service technicians, with a focus on quality and safety. Staff at Authorised Service Centres have the benefit of the following training and information/technology which is not available to other marine engine service centres:
- an electronic servicing tool used for configuration, diagnosis, and for producing customer service reports for Honda Engines. This tool and its corresponding software are supplied exclusively to all Authorised Service Centres. Updates for the software are available only to Authorised Service Centres
 - a training program for service technicians at Authorised Service Centres to ensure all technicians are trained to the standard required by Honda. The training program ensures the technicians have appropriate skills and technical knowledge specific to Honda Engines. The program is tailored to each technician, and allows technicians to build their skills and knowledge in maintenance, diagnostics, repair, and customer care to enhance the level of Servicing provided
 - a technical information reference resource (DVD) supplied exclusively to Authorised Service Centres on an annual basis. The DVD contains technical manuals for all Honda Engines, rigging information, troubleshooting and service bulletins, which equips Authorised Service Centres with the most complete and current information to provide a high level of Servicing
 - an electronic catalogue listing all parts for all Honda Engines, available exclusively to Authorised Service Centres, which enables them accurately to determine correct part number applications.

Authorised Service Centres are also required to be equipped with specialist tools including the latest Honda specific diagnostics equipment, which enables them to diagnose any issues with Honda Engines promptly and efficiently. They have direct access to Honda product experts, the latest Honda technologies and best practices developed by Honda globally.

This ensures that the performance, operational life, and safety of the Honda Engine is maximised;

- (iii) ensuring a consistently high level of customer service. All Authorised Service Centres are required to comply with Honda MPE's customer service policies and procedures, This encourages all Authorised Service Repair Centres to deliver high quality customer service, which ensures maximum customer satisfaction with the performance, operational life, and safety of their Honda Engine;

- (iv) reducing the cost of warranty claims to Honda MPE, thereby allowing it to provide the Extended Marine Warranty free of charge. As the issuer of the Extended Marine Warranty, Honda MPE has a legitimate interest in Honda Engines being serviced by Authorised Service Centres and in only Genuine Parts being used. There is a greater risk of an Honda Engine developing a defect during the period of coverage provided by the Extended Marine Warranty if the Honda Engine has not been correctly serviced or if Non Genuine Parts have been used. Service centres that are not Authorised Service Centres may lack the product knowledge, training, diagnostic equipment and technical support required to properly service an Honda Engine. Similarly, Honda MPE ensures that all of its Genuine Parts are built to Honda's specifications. These Honda Engines are required to perform to high levels in marine environments. Non Genuine Parts may not meet these high standards and lead to failures.

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

Honda MPE provides all of its Authorised Service Centres with the training, technical support (in the form of service manuals, product information and advice) and diagnostic tools required to properly service its engines. The diagnostic tools have been developed by Honda specifically for its Honda Engines.

Furthermore, Honda MPE sets service guidelines and standards for the Authorised Service Centres that are designed to ensure that Honda Engines are correctly serviced. If these guidelines are not met, Honda MPE will provide additional training and support or withdraw its service authorisation.

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):

Honda MPE considers that the markets primarily relevant to the assessment of this notification are the various regional geographic markets for outboard boat engine parts, servicing and repairs, and the market for extended warranty services.

The regional markets for outboard boat engine parts, servicing and repairs are all highly competitive. They are each serviced by a large number of providers, including franchisees of Yamaha Motor Australia Pty Ltd, Suzuki /The Haines Group, Marine Power Australia Pty Ltd, BRP Australia Pty Ltd, and Tohatsu Outboard Australia, as well as a large number of independent workshops and mechanics.

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:*

Honda MPE does not believe that the notified conduct will cause any detriment to the public.

The proposed Extended Marine Warranty would not restrict the Honda Engine owner's ability to choose whether and from whom to acquire Servicing for the Honda Engine. The Extended Marine Warranty merely offers benefits, at no expense, to those Honda Engine owners who choose to have their Honda Engines serviced and repaired at an Authorised Service Centre using Genuine Parts (and who meet the other Extended Marine Warranty Conditions). They have the genuine option, on the normal commercial bases of quality and price, to purchase servicing or repair services from any supplier, or to accept servicing in accordance with the Extended Marine Warranty Conditions and the Extended Marine Warranty. Honda Engine owners are also not required to obtain any additional products or services from the Authorised Service Centre.

Further, in order to qualify for the benefits of the Extended Marine Warranty, Honda Engine owners are not required to obtain servicing from any one particular Authorised Service Centre. They may choose from over 100 Authorised Service Centres. If an Honda Engine owner wishes to take advantage of the benefits of the Extended Marine Warranty by obtaining servicing from an Authorised Service Centre, he or she can choose to deal with any Authorised Service Centre based on the competitive terms (including price) offered by those Authorised Service Centres.

Honda MPE submits that the proposed Extended Marine Warranty should be regarded as conferring benefits on Honda Engine owners who choose to obtain Servicing from Authorised Service Centres, rather than causing detriment to those Honda Engine owners who choose not to obtain Servicing from Authorised Service Centres.

Honda MPE does not believe that the conduct would distort demand, create barriers to entry, or otherwise harm competition in the market.

Honda MPE submits that the Commission should not serve a notice under section 93(3) of the *Competition and Consumer Act 2010* (Cth) because the conduct in question:

- (i) will not adversely affect competition in any relevant market; and
 - (ii) will result in benefits and no identifiable public detriment.
- (b) Facts and evidence relevant to these detriments:

Honda MPE has 104 Authorised Service Centres throughout Australia. None of these Authorised Service Centres have exclusive territories. Accordingly, each Authorised Service Centre is free to compete with all other Authorised Service Centres for Servicing business. Under the proposed Extended Marine Warranty Conditions, a Honda Engine owner would be able to choose any of these service centres to provide servicing in order to enjoy the benefit of the Extended Marine Warranty.

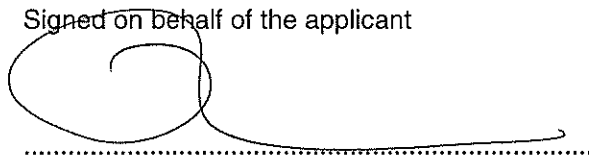
7. Further information

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

Peter Cash
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11 May 2015

Signed on behalf of the applicant



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Peter Edmund Cash
Partner
Norton Rose Fulbright