

# 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:

N99172 Nissan Motor Co (Australia) Pty Ltd (ABN 54 004 663 156) trading as Infiniti Cars Australia

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

Infiniti Cars Australia is an importer and distributor of Infiniti motor vehicles, parts and accessories into the Australian market.

The Infiniti distribution network currently consists of 6 Infiniti Retail Partners and 2 Infiniti Service Partners and is in an expansion phase. This expansion is targeted at appointing full Infiniti Retail Partners (i.e. full sales, service and parts dealers) and Infiniti Service Partners.

Infiniti Cars Australia is part of the Nissan group of companies and is ultimately owned by NML.

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

**Attention:** Claude Harran  
Senior Legal Counsel  
Nissan Motor Co (Australia) Pty Ltd trading as  
Infiniti Cars Australia  
260-270 Frankston-Dandenong Road  
Dandenong South VIC 3175

## 2. Notified arrangement

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

The proposed conduct relates to the supply of motor vehicle website management services by a third party supplier to Infiniti Cars Australia which will require Infiniti Partners (i.e. Infiniti Dealers) to acquire these

services from a preferred third party supplier. It is proposed that the preferred supplier may provide software updates, training and user support on an as is required basis in the future.

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

Infiniti Cars Australia grants the right to operate authorised Infiniti Centres (Retail and Service Centres) to independently owned and operated partners and supplies services associated with the granting of these rights to its various partners.

As a condition of the grant of the right to operate as an authorised Infiniti Partner, Infiniti Partners are required to utilise particular website management systems and services as prescribed by Infiniti Cars Australia from time to time.

Infiniti Cars Australia intends to prescribe a uniform website platform and service provider across its partner network.

To implement a uniform website platform across its partner network, Infiniti Cars Australia proposes to introduce the preferred third supplier to Infiniti Partners on condition that Infiniti Partners acquire website platform management services from the preferred supplier (or potentially from an alternative supplier approved by Infiniti Cars Australia).

There is a possibility that the above conduct may involve conduct of a kind described in s47(6) and/or s47(7) of the *Competition and Consumer Act 2010* (Cth).

**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:**

Infiniti Retail Partners and Infiniti Service Partners.

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

**(i) At present time:**

As at the time of this notification there are:

- 6 Infiniti Retail Partners; and
- 2 Infiniti Service Partners.

**(ii) Estimated within the next year:**

Infiniti Cars Australia estimates that within the short to medium term, the Infiniti network of partners will increase at a moderate rate.



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

#### INFINITI RETAIL PARTNERS

NEW SOUTH WALES	
<b>Name</b>	<b>Infiniti Centre Sydney</b>
<b>Business address</b>	S.M.A Motors Pty Ltd Level 1, 136 William Street Potts Point NSW 2011
<b>Name</b>	<b>Infiniti Centre Castle Hill</b>
<b>Business address</b>	Castle Hill Autos No.1 Pty Ltd 2A Victoria Avenue Castle Hill NSW 2154
<b>Name</b>	<b>Infiniti Centre South West Sydney</b>
<b>Business address</b>	Peter Warren Automotive Pty Ltd Corner Hume Highway & Todman Road Warwick Farm NSW 2170

QUEENSLAND	
<b>Name</b>	<b>Infiniti Centre Brisbane</b>
<b>Business address</b>	A.P. Motors (No. 1) Pty Ltd 80 McLachlan Street Fortitude Valley QLD 4006

VICTORIA	
<b>Name</b>	<b>Infiniti Centre Melbourne</b>
<b>Business address</b>	Preston Motors Holding Pty Ltd 859 Nepean Highway Bentleigh VIC 3204

WESTERN AUSTRALIA	
<b>Name</b>	<b>Infiniti Centre Perth</b>
<b>Business address</b>	Rocom Pty Ltd 354 Scarborough Beach Rd Osborne Park WA 6017

## INFINITI SERVICES PARTNERS

SOUTH AUSTRALIA	
<b>Name</b>	<b>Infiniti Service Centre North Adelaide</b>
<b>Business address</b>	Adtrans Automotive Group Pty Ltd 75 Main North Road Nailsworth SA 5083

AUSTRALIAN CAPITAL TERRITORIES	
<b>Name</b>	<b>Infiniti Service Centre Canberra</b>
<b>Business address</b>	Richard Rolfe Motors No.1 Pty Ltd 152 Melrose Drive Phillip ACT 2606

#### 4. Public benefit claims

##### (a) Arguments in support of notification:

In preparing this notification under section 93(1) of the Act, Infiniti Cars Australia has taken into account the ACCC's *Guide to Exclusive Dealing Notifications 2011* and the ACCC publication "*Competition issues in franchising supplier arrangements*" of October 2013. The latter publication explicitly acknowledges that "control by franchisors over the way in which franchisees operate is often central to the operation and success of a franchise system". Infiniti Cars Australia submits that this statement applies to these circumstances.

The proposed conduct will benefit the Infiniti Partner network, as Infiniti Cars Australia will be able to seek to acquire a website management platform and services at a competitive rate from an experienced and highly reputable supplier, thereby ensuring standardisation of the networks website systems. In particular:

- **Professionalism and consistency across the Infiniti partner network**

Professionalism and consistency is an important part of the evolution of the Infiniti brand. The Infiniti brand is not just a logo, a trademark or an advertising campaign. It's a promise of value that Infiniti Cars Australia and its partners give to their customers that helps those customers make choices. The Infiniti brand influences Infiniti Cars Australia and its partner's position in the market and adds value to the organisation and its network of partners as a whole. In short, the Infiniti brand is important to every aspect of the Infiniti business.



A strong brand gives the following benefits:

- It drives demand;
- It builds loyalty (encourages repeat buyers and strong word of mouth marketing);
- It develops an emotional connection; and
- It drives aspirational purchases.

Building and maintaining a strong brand requires a number of elements:

- Professionalism and consistency
- Commitment
- Passion

Professionalism and consistency is at the heart of any great product or service and for Infiniti this is no different. Customers see the Infiniti Cars Australia branding, they also see partner (dealership) branding and they see international branding.

**Professionalism and consistency** is what will strengthen the Infiniti brand and what will drive customers to consider Infiniti in a highly competitive automotive market in Australia. All activities, including website platforms, which involve the Infiniti brand should be used in a professional and consistent manner.

The professionalism and consistency of the Infiniti image and the Infiniti message is integral to the operation of the Infiniti Partner Network and will play a large role in whether Infiniti achieves success in Australia. It is of utmost importance that the Infiniti brand is portrayed, depicted and communicated in a professional and consistent manner.

A strong and consistent brand drives demand, loyalty and attracts buyers and will increase the value of the Infiniti network as a whole.

- **Potential for efficient and effective bargaining**

Combining the demand for website management services will result in efficiency and potential cost savings to all Infiniti Partners. By negotiating on behalf of the entire Infiniti partner network, Infiniti Cars Australia, as its network grows, will be able to obtain more favourable pricing and non-pricing related terms than the Infiniti Partners may otherwise have been able to obtain negotiating those terms individually.

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

As above.

## 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).**

Conservatively, the notified conduct concerns the “market” for the supply of website management services. Infiniti Cars Australia considers that scope of the “market” is at least national (if not broader). Infiniti Cars Australia also considers that the market is highly competitive.

## 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:**

Infiniti Cars Australia believes that the public detriment resulting from the propose conduct will be minimal, if there is any public detriment at all.

The only potential detriment may be that the Infiniti Partner network’s choice which website supplier to use will be reduced.

The effect of the reduction of choice, however, is very limited, for the following reasons:

- the platform solution offered by Infiniti Cars Australia will permit the Infiniti partner to tailor certain content on the page to make it unique to the particular Infiniti Partner. This aspect of the website, that is the dealer content component, will be able to be provided by a Infiniti Partner selected supplier. In this way the Infiniti partner can tailor a part of their website to make it unique to them and have a third party Infiniti Partner service provider do this on their behalf.
- The Infiniti Cars Australia platform provides a high quality platform at a competitive price. Infiniti Cars Australia will be able to negotiate improved terms for all Infiniti Partners.
- There will be a negligible effect on competition in the relevant market. The proposed conduct will not have the effect, or be likely to have the effect, of substantially lessening competition in any relevant market. The market for website management services is competitive.
- Infiniti Cars Australia will liaise with its Infiniti Partners in an open and transparent manner.

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

As above.

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**7. Further information**

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

Claude Harran  
Senior Legal Counsel  
Nissan Motor Co (Australia) Pty Ltd Pty Ltd trading as  
Infiniti Cars Australia  
260-270 Frankston-Dandenong Road  
Dandenong South VIC 3175

**Telephone No.:** (03) 9797 4349

**Email:** claude\_harran@nissan.com.au

**Dated**..... 24 June 2016 .....

Signed by/on behalf of the applicant

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**Signature**

Jean Philippe Roux  
\_\_\_\_\_

**Full Name**

Infiniti Cars Australia  
\_\_\_\_\_

**Organisation**

Managing Director  
\_\_\_\_\_

**Position in Organisation**