

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)

This Notification is made on behalf of the following entities:

- N100016 • Trivett Automotive Retail Pty Ltd, ABN 94 000 806 904.
- N100017 • Trivett Classic Pty Ltd, ABN 35 000 874 706.
- N100018 • Trivett Classic Garage Pty Ltd, ABN 98 072 353 434.
- N100019 • Trivett Pty Ltd (ACN 009 313 982) atf TCH Unit Trust, ABN 36 580 068 845.
- N100020 • Trivett Bespoke Automotive Pty Ltd, ABN 48 125 643 941.
- N100021 • Bespoke Automotive Australia Pty Ltd, ABN 43 076 101 883.
(collectively the **Trivett Group**)

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

The Trivett Group own and operate 23 dealerships (**Trivett Dealerships**) which sell imported motor vehicles, spare parts, accessories and associated services directly to commercial and consumer customers.

The Trivett Group are wholly owned subsidiaries of Inchcape Australia Limited.

- (c) Address in Australia for service of documents on that person:
c/o Peter George
CIE Legal
Level 11 Como Office Towers
644 Chapel Street
South Yarra 6141
pgeorge@cielegal.com.au

2. Notified arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:
- New and used motor vehicles
 - Retail financial products.
- (b) Description of the conduct or proposed conduct:

From time to time, one or more of the Trivett Dealerships will be giving or allowing or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply of motor vehicles on the condition that the customer acquires finance from a financial product provider nominated by the Trivett Dealerships (**Nominated Financier**) (and the corresponding refusal to supply for the reasons that the customer has not so acquired).

(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)
- (i) The Trivett Dealerships; and
 - (ii) Customers acquiring motor vehicles from Trivett Dealerships.
- (b) Number of those persons:
- (i) At present time:
Unknown, likely to be in excess of 50
 - (ii) Estimated within the next year:
(Refer to direction 6)
Unknown, likely to be in excess of 50
- (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:
(Refer to direction 7)

See attached submission.

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:

- the retail market for motor vehicles; and

- the market for retail financial products and services.

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)

See attached submission.

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 George
CIE Legal
Level 11 Como Office Towers
644 Chapel Street
South Yarra 6141
pgeorge@cielegal.com.au
Ph: (03) 99482470

Dated: 26 October 2017

Signed by/on behalf of the applicant

A handwritten signature in blue ink, appearing to be 'Peter George', written over a faint, light blue circular stamp or watermark.

Peter George

CIE Legal

Partner

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.

Submission

Background

1. As at the date of this Notification, entities in the Trivett Group own and operate more than 23 automotive franchise dealerships (**Trivett Dealerships**) which sell the following new vehicle brands: Aston Martin, Land Rover, Bentley, Subaru, McLaren, Volkswagen, Dodge, Rolls-Royce, Honda, Jeep, Chrysler, Dodge, BMW, KIA, Fiat, Fiat Professional, MINI, Mitsubishi, Jaguar and Isuzu.
2. The Trivett Dealerships are predominately located in New South Wales and south east Queensland, with six Subaru dealerships and one Peugeot dealership in Victoria.
3. The Trivett Dealerships sell approximately 25,000 new motor vehicles annually. The total market for new car sales in Australia is approximately 1.1 million.

Proposed conduct

4. From time to time, one or more of the Trivett Dealerships wishes to offer to consumers a 'deposit contribution' promotion. These promotions are common in comparable overseas markets, such as the United Kingdom. They involve a contribution being made by the dealership to the deposit on a new or used motor vehicle, on the condition that the customer finances the purchase of their new or used vehicle through the Nominated Financier.
5. The customer remains able to negotiate with the dealer to get the best price for their vehicle, and is under no obligation to finance the purchase of their vehicle, nor, if they want to finance the purchase, are they under any obligation to finance the purchase through the Nominated Financier. However, if they do not finance the acquisition of the vehicle through the Nominated Financier, the customer will not receive the deposit contribution.
6. The Trivett Dealerships intend to run deposit contribution promotions at various times, with various finance providers and in respect of various vehicle brands and/or models. The amount of the deposit contribution is likely to differ between promotions but in all instances the amount of the contribution will be paid by the Trivett Dealership offering the promotion.
7. The terms and conditions of the finance being offered by the Nominated Financier will be the same, with or without the deposit contribution being made.
8. The same considerations apply to each of the promotions as the only change will be the amount of the contribution, the vehicles to which it applies, the Nominated Financier and possibly the duration of the offer. As such we submit that there should be no need to submit individual notifications for each

promotion. If the Commission wishes, the Trivett Dealerships can provide details of each promotion prior to them being implemented.

Competition issues

9. We do not believe that the proposed conduct will have any adverse effect on competition in any relevant market. We consider that the relevant markets for assessing this notification are the retail markets for new and used motor vehicles and the retail market for financial products. These markets are highly competitive and characterised by relatively low levels of concentration, with a diverse range of services and continuing innovation in product development.
10. The Trivett Dealerships sell approximately 25,000 new vehicles per annum which, in the context of the total Australian market of approximately 1.1 million new vehicle sales (most of which are conducted along the east coast), is a relatively insignificant amount. This is also reflected in the number of dealerships in Australia (around 1,500 new car dealers operating about 2600 new vehicle outlets¹) relative to the Trivett Group's 23 or so dealerships. Likewise, the market for used vehicles and retail financial products is extremely competitive, with many providers operating in the market.
11. Accordingly, we do not consider that the proposed conduct will distort demand, create barriers to entry or otherwise harm competition in the relevant markets.

Public benefits

12. If consumers elect to purchase their motor vehicle using finance from the Nominated Financier, this will result in them paying a lower overall price for the motor vehicle. As such, the proposed conduct will be of particular benefit to customers looking to purchase a motor vehicle using finance.
13. In our view, the proposed conduct will increase competition in an already highly competitive market, as other motor vehicle importers and dealers are likely to follow the proposed conduct and make the same or similar offers available to prospective consumers.

Public Detriment

14. In our view, the proposed conduct has little, if any, detriment to the public. Consumers remain completely free to choose from the many other dealers selling new and used vehicles.
15. If a consumer chooses to buy a vehicle from one of the Trivett Dealerships, they are free to negotiate the price of the vehicle, whether they want to finance the purchase of their vehicle, and if so, through which finance provider.

¹ AADA submission to Consumer Affairs Australia and New Zealand 16 December 2016.