

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)

N99462
N99535

Honda Australia Motorcycle & Power Equipment Pty Ltd ACN 006 662 862
(Honda MPE)

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

Honda MPE is an importer and distributor of:

- (i) motorcycles;
- (ii) marine motors;
- (iii) power tools;
- (iv) engines;
- (v) accessories;
- (vi) oils and chemicals; and
- (vii) parts for the products referred to in (i)-(iv) above.

These products are branded as 'Honda' products and distributed in Australia through franchisees, dealerships and third-party distributors/retailers.

Honda MPE also supplies motor vehicle training services and clothing/accessory products directly to consumers.

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

Honda Australia
1954-1956 Sydney Road
Campbellfield VIC 3061

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 the supply of motorcycle parts and consumables by Honda MPE to its franchisees. These products are then on-sold by the franchisees to their customers.

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

Honda MPE currently operates a network of dealerships (**Franchisees**). Each Franchisee's operations are governed by a franchise agreement.

Honda MPE requires or proposes to require as a condition of the franchise agreement that each Franchisee acquire only parts or other consumables:

- (i) which are Honda genuine parts or consumables; or
- (ii) which are approved by Honda MPE from time to time for acquisition from a third party supplier

(Approved Products)

where the intended use of those products is with a Honda brand motorcycle.

Honda MPE requires or proposes to require that each Franchisee re-supply only parts or other consumables which are Approved Products, where the intended use of those products is with a Honda brand motorcycle.

The above condition will not be imposed in the circumstance where an Approved Product is not available from Honda MPE, another Franchisee or (where applicable) from an approved third party supplier.

(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) Franchisees.
- (ii) Customers acquiring maintenance services on their Honda motorcycles from a Franchisee.

- (b) Number of those persons:

- (i) At present time:

- (A) 152 Franchisees (subject to change).
- (B) An unspecifiable number of customers of Franchisees, numbering more than 50.

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

- (A) Unknown, but not less than 50.
- (B) Unknown, but not less than 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)

The benefits of the proposed conduct include:

- (i) Allowing Honda MPE to provide a robust warranty claim process for consumers, by ensuring that all parts and consumables that are used for service and repairs of Honda motorcycles under warranty are of sufficiently high quality and are suitable to the calibre and precise specifications of the motorcycle.
- (ii) Increasing the ongoing reliability of consumers' motorcycles after the expiry of the warranty period, by ensuring that all products used by Franchisees to service Honda motorcycles are of sufficiently high quality, and are suitable to the calibre and precise specifications of the motorcycle.
- (iii) Reducing the costs of fault investigation for consumers who use only Franchisees for the servicing of their Honda motorcycles.
- (iv) Ensuring Honda motorcycles can meet the performance standards claimed by Honda MPE in its promotional material, technical material, and otherwise.
- (v) Improving the overall quality of the products provided by Franchisees, and accordingly the quality of the products supplied to consumers of Honda motorcycles.
- (vi) Protecting Honda MPE's goodwill and the Honda motorcycle brand, supporting competition in the supply of motorcycles to consumers.

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

- (i) Honda's review of equivalent products suggests that non-Honda or generic parts and consumables are not as reliable or serviceable when used in Honda motorcycles.
- (ii) Honda's review of equivalent products suggests that non-Honda or generic parts and consumables do not perform as well in Honda motorcycles.
- (iii) For the purposes of a warranty claim, ascertaining whether a fault has in fact been caused by the use of a non-Honda genuine or generic part/consumable can be a time consuming and costly process. The cost and duration of this process can be significantly reduced if only genuine or approved parts and consumables are used by Franchisees when servicing Honda motorcycles.
- (iv) Honda MPE is unable to ensure that Honda motorcycles will perform to the standard that it represents if parts and consumables of a sufficiently high quality are not used in the operation and repair of the motorcycles.

- (v) There is a significant number of products in the market for motorcycle parts and consumables that can be fitted to a Honda motorcycle. These vary significantly, both in their quality and in their suitability for use, as a replacement for genuine Honda products.
- (vi) The Honda brand is a leading brand in the supply of motorcycles and is supported by a reputation for high quality products. The value consumers place on this brand and the price at which Honda motorcycles are sold support competition in the market.

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)

- (i) The wholesale and retail markets for supply of motorcycle spare parts and consumables.
- (ii) The retail market for supply of motorcycle maintenance 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)

- (i) There is little or no identifiable detriment to the public resulting from the proposed conduct.
- (ii) Consumers will remain free to choose whether to use a Franchisee or an alternative mechanic to acquire maintenance services for Honda motorcycles out of warranty.
- (iii) Consumers will still have a significant number of alternative suppliers from whom to acquire parts and consumables for use in Honda motorcycles.
- (iv) The prices charged to consumers by Franchisees for the cost of acquiring the Products will not increase as a result of the proposed conduct.
- (v) The proposed conduct does not decrease or limit competition in the retail market for the supply of motorcycle maintenance services.
- (vi) The proposed conduct does not substantially lessen competition in the wholesale or retail markets for the supply of parts and consumables for use in Honda motorcycles.
- (vii) The proposed conduct does not purport to alter the terms of the warranties provided by Honda MPE on Honda motorcycles.
- (viii) The proposed conduct will not result in longer waiting times for consumers for repair of Honda motorcycles under warranty.

- (b) Facts and evidence relevant to these detriments:
- (i) The services provided by the Franchisees and competing mechanics are directly substitutable. An owner of a Honda motorcycle which is beyond the warranty period is not, and will not be, restricted in their choice of who can perform maintenance services on the motorcycle.
 - (ii) Consumers are able to acquire non-Approved Products for use in their Honda motorcycle from persons other than the Franchisees.
 - (iii) Honda MPE will not raise the prices charged to Franchisees to purchase the Products as a result of the proposed conduct.
 - (iv) The market for non-Honda (aftermarket) parts and consumables is highly fragmented and competition is vigorous. There are approximately 1,200 motorcycle parts and accessory retailers in Australia, excluding group retailers such as Repco, Supercheap Auto and Autobarn.
 - (v) All backorders of products are airfreighted by Honda MPE to its Franchisees. Consumers are provided with a number of options regarding delivery times for special ordering of the Products, ranging from 2 to 60 days.

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
Partner
Norton Rose Fulbright
Level 15, RACV Tower, 485 Bourke Street
Melbourne VIC 3000

Dated. 23 December 2016

Signed on behalf of the applicant



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Peter Cash
Partner
Norton Rose Fulbright



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.