

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)

N99631

Mercedes-Benz Australia/Pacific Pty Ltd ACN 004 411 410 (“**MBAuP**”)

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

MBAuP is an importer and distributor of various brands of motor vehicles, parts and accessories into the Australian market, including Fuso, the brand which is the subject of this notification. MBAuP is part of the Daimler group of companies and is ultimately wholly owned by Daimler AG.

The Fuso distribution network is primarily comprised of in excess of 40 independently owned and operated authorised dealerships and service outlets across Australia (“authorised Fuso dealers”).

In addition, MBAuP itself also operates a number of factory-owned commercial vehicle dealerships throughout Australia.

Authorised Fuso dealers have access to specialised equipment and training from MBAuP and/or Mitsubishi Fuso Truck and Bus Corporation being the manufacturer of the Fuso vehicles. Authorised Fuso dealers use genuine Fuso parts and must also meet minimum quality standards which ensure that customers are provided with the assurance that parts and services provided are installed properly and without compromise on quality.

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

Attention: Sasha Trakilovic
Corporate Counsel
Mercedes-Benz Australia/Pacific Pty Ltd
44 Lexia Place
Mulgrave VIC 3170

2. Notified arrangement

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

This notification relates to Fuso genuine spare parts, accessories and the relevant manufacturer's warranties associated with same. The Fuso genuine parts and accessories are sold through the authorised Fuso dealer network and may be installed to a customer's vehicle by:

- i. the same authorised Fuso dealer;
- ii. by an unauthorised dealer of the customer's choice; or
- iii. by the customers themselves.

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

All genuine parts sold by Fuso through the authorised Fuso dealer network are provided with a standard 12 month manufacturer's warranty. This is an express manufacturer's warranty provided to customers and is in addition to any rights and remedies customers may have at law.

MBAuP proposes to provide an additional 12 months' manufacturer's warranty, totalling 24 months, on genuine parts which are both sold and installed/fitted by an authorised Fuso dealer. This 24 month manufacturer's warranty would be provided to customers that specifically purchase and have the parts installed by an authorised Fuso dealer and will be in addition to any rights and remedies the customers may have at law.

(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 proposed conduct relates to customers that purchase Fuso genuine parts and install the parts themselves or have them installed/fitted to their vehicles by non-authorised dealers and/or repairers.

- (b) Number of those persons:

- (i) At present time:

Unspecifiable however, in excess of 50.

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

Unspecifiable however, 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)

MBAuP submits that there is overwhelming public benefit as a result of the conduct however, most notably:

- customers are assured that parts provided to them are genuine;
- there is a consistent level of quality of service provided and the authorised Fuso dealers that install the parts have been provided specialised equipment and training;
- authorised Fuso dealers have specialised knowledge in respect of the parts and Fuso vehicles; and
- the manufacturer is able to provide a longer warranty period on the parts that are fitted by authorised Fuso dealers as it is assured that the installation process has followed a certain standard of quality and has been fitted by trained specialist technicians.

- (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):
(Refer to direction 8)

The relevant market for this notification would be the mechanical repair and spare part installation market. More narrowly, the specific market would be motor mechanics and repairers that specialise or provide servicing to owners of Fuso vehicles. The overall motor mechanic market in Australia is highly competitive with thousands of repairers across the country providing repair and spare part installation services to customers.

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)

MBAuP believes that the public detriment resulting from the proposed conduct will be minimal, if there is any public detriment at all. The conduct does not have any impact on the prices of parts and/or servicing and installation. Customers are free to choose their repairer of choice or install spare parts themselves and will still receive the benefit of a 12 month manufacturer's warranty on those genuine parts. As mentioned above, the conduct does not have any impact and is in addition to rights and remedies customers may have in respect of the parts. MBAuP submits that the proposed conduct does not significantly lessen competition and any detriment, if any exists, is far outweighed by the public benefits listed herein.

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

7. Further information

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

Sasha Trakilovic
Mercedes-Benz Australia/Pacific Pty Ltd
44 Lexia Place
Mulgrave VIC 3170
(03) 9566 9266
Sasha.trakilovic@daimler.com

Dated..... 4 April 2017

Signed by/on behalf of the applicant

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(Signature) 

.....
(Full Name) SASHA TRAKILOVIC

.....
(Organisation) Mercedes-Benz Australia/Pacific Pty Ltd

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(Position in Organisation) Legal Counsel.