



## AUTOMOTIVE INDUSTRY GROUP E-NEWS

### **Motor vehicle dealers give undertakings to ACCC**

**Tuesday, 12 January 2010**

The Federal Court in Queensland has handed down a decision in relation to an action commenced by the ACCC against two motor vehicle dealers operating in adjacent PMAs. The ACCC alleged that arrangements made between the two dealers contravened section 45 and 45A of the *Trade Practices Act (TPA)* as they contained exclusionary provisions and had the purpose, effect, or likely effect of fixing, controlling or maintaining prices.

The dealers, who were the respondents in the action, were both Hino truck dealers. They had each been granted non exclusive PMAs which were adjacent (but not overlapping) and it was agreed

that the dealers were in competition with one another. Over an 18 month period the two dealers made a number of arrangements with one another in relation to the supply of Hino trucks. These arrangements included:

1. An agreement not to compete with one another for the supply of Hino trucks to a particular customer located in one of the dealer's PMA.
2. An agreement not to compete within one another by allocating customers to the dealers in whose PMA the customer was located.

The ACCC claimed that these arrangements contained provisions which had the purpose, effect or likely effect of fixing controlling or maintaining the price of the trucks supplied by the dealers. By virtue of section 45A such provisions are deemed to have the purpose, effect or likely effect of substantially lessening competition in breach of section 45.

The dealers were co-operative with the ACCC investigation and one of the dealers admitted that the arrangements were exclusionary provisions in contravention of the TPA. The ACCC and the parties reached agreement as to the appropriate penalties and submitted this to the court. The court considered these submissions but made its own rulings on the appropriate penalties, ordering that:

- (a) the dealers were each to pay \$500,000 (one of the dealers was permitted to make payment by instalments);
- (b) the employees of the dealers that aided, abetted, procured and had been directly knowingly concerned in or a party to the breaches were each to pay \$30,000; and
- (c) the dealers were to make a contribution to the ACCC's legal costs in the amount of \$50,000 each.

Both dealers provided a court enforceable undertaking to develop and implement a trade practices compliance programme. The ACCC also applied for injunctions against the dealers and the relevant employees to stop them from engaging in similar conduct in the future, however, the court found that an injunction was an unnecessary penalty in these circumstances.

This case is a timely reminder of the obligations of dealers under the TPA. Caution should be taken when having discussions with other dealers and no contracts, arrangements or understandings should be made if it is likely to have the effect of lessening competition. The ACCC has wide ranging investigative powers and the penalties under the TPA are significant for both dealers and their employees. The best approach is for every dealer to have a set of guidelines for its employees in relation to TPA issues so that parties are aware of their obligations and can act accordingly.

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**If you have any questions, please contact one of our partners named below.**

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