



**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMERCIAL COURT  
GROUP PROCEEDINGS LIST**

S ECI 2020 04789

Case: S ECI 2020 04789

Filed on: 06/04/2022 03:35 PM

**BETWEEN**

BEECHAM MOTORS PTY LTD (ACN 010 580 551)

Plaintiff

-and-

GENERAL MOTORS HOLDEN AUSTRALIA NSC PTY LTD (ACN 603 486 933)

Defendant

**Plaintiff's Reply**

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Date of document: 6 April 2022  
Filed on behalf of: the Plaintiff  
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In reply to the Defence to the plaintiff's Second Further Amended Statement of Claim dated 7 March 2022 (the **Defence**), the plaintiff says as follows:

1. Save for the admissions herein and save for the paragraphs or subparagraphs specifically pleaded to in this reply, the plaintiff denies each and every allegation in the Defence, and joins issue in respect of the matters raised in the Defence.
2. As to paragraphs 24 to 26 of the Defence, the Defendant and the Plaintiff, and the Defendant and each of the Group Members, intended and confirmed that the Defendant had an obligation under the Dealer Agreements to have New Vehicles available for supply, further or alternatively that the Defendant had an obligation under the Dealer Agreements to supply New Vehicles to the Plaintiff and each Group Member, during the Term, by reason that:
  - (a) pursuant to subsections 8(1), 8(3) and 9 of the *Competition and Consumer (Industry Codes—Franchising) Regulation 2014* (Cth) (**Franchising Code**), the Defendant was required to create a disclosure document in the form and order

of Annexure 1 and give it to the Plaintiff and each Group Member at least 14 days prior to entry into the Dealer Agreements;

- (b) by item 10.1(a) of Annexure 1, the disclosure documents were required to set out details of any requirement for the franchisee to maintain a level of inventory or require an amount of goods or services;
- (c) by item 10.1(e) of Annexure 1, the disclosure documents were required to set out details of the Defendant's obligation to supply goods or services to the Plaintiff and each Group Member;
- (d) pursuant to s 51ACB of the *Consumer and Competition Act 2010 (Cth)*, the Defendant must not contravene the Franchising Code;
- (e) the Defendant provided disclosure documents to the Plaintiff and each Group Member, which were in substantially the same form, in or about November 2017 (**Disclosure Documents**);

#### **Particulars**

*Copies of the Disclosure Documents are available for inspection.*

- (f) the Disclosure Documents stated under item 10.1(a):

*... the Franchisee is required to hold sufficient stock of new motor vehicles by line (excluding demonstrators) to meet the number of such motor vehicles that the Franchisee is expected to sell under its applicable Notice of Sales Evaluation Guide, or to meet reasonably anticipated demand in the Area of Primary Responsibility. The Franchisee is also required to hold sufficient stock by line of well-maintained demonstrators to meet reasonably anticipated demand for demonstration by prospective purchasers.*

- (g) the Disclosure Documents stated under item 10.1(e):

*The Franchisor has the obligation to arrange the supply of motor vehicles and parts and accessories for which orders have been accepted by the Franchisor. The Franchisor has the right to determine the allocation of motor vehicles between Franchisees...*

- (h) the Disclosure Documents did not disclose that the Defendant had no obligation to have New Vehicles available for supply, nor that the Defendant had no obligation to supply any New Vehicles, to the Plaintiff and each Group Member, during the Term.

3. As to subparagraph 24(a) of the Defence, the plaintiff says that:
  - (a) by operation of cl 9.1(g) of the Dealer Agreements, the defendant must comply with Holden's Wholesale Standards as contained in the Manual;
  - (b) Holden's Wholesale Standards are contained in cl 7.17 of the Manual;
  - (c) clause 7.1 of the Manual concerns Holden's dealer sales and service standards, not Holden's Wholesale Standards;
  - (d) in the premises, cl 7.1 of the Manual has no presently relevant application.
4. As to subparagraph 25(b) of the Defence, the Plaintiff says that:
  - (a) it refers to and repeats paragraphs 19 and 21 of the Second Further Amended Statement of Claim;
  - (b) the defendant has not purported to exercise its power and does not allege that it has exercised its power under cl 10.4(d) of the Dealer Agreements;
  - (c) further or alternatively, the exercise of the power under cl 10.4(d) of the Dealer Agreements to deny the supply of New Vehicles to the Plaintiff for the duration of the Term would not be an exercise of that power for a proper purpose, and/or would be a contravention of s 6(1) of the Franchise Code.
5. As to paragraph 27(b) and (c) of the Defence, the Plaintiff says that:
  - (a) the offer of compensation was lower than the Plaintiff's and each Group Member's actual losses;
  - (b) the offer of compensation was conditional upon the Plaintiff and each Group Member giving up valuable rights to damages for the losses suffered;
  - (c) the Plaintiff's and each Group Member's refusal of the offer was not a failure to mitigate.
6. As to paragraph 28 of the Defence, the Plaintiff says that:
  - (a) in circumstances where the defendant:
    - (i) has entered into Dealer Agreements for a five-year term with obligations of supply of New Vehicles; and
    - (ii) failed to have in place supply and distribution agreements to ensure its security of supply of New Vehicles for the five-year term of the Dealer Agreements;

- (iii) further or alternatively failed to enforce its supply and distribution agreements to ensure its supply of New Vehicles for their term;
- (b) the failure to have New Vehicles available for supply, and the non-supply of New Vehicles, to the Plaintiff and each Group Member is not an 'event beyond its reasonable control'.

Dated: 6 April 2022

*HWL Ebsworth*

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**HWL Ebsworth Lawyers**  
Solicitors for the Plaintiff