

IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34;

BETWEEN:

HER MAJESTY THE QUEEN Upon the Information
of the ATTORNEY GENERAL OF CANADA

Applicant

- and -

TOYOTA CANADA INC.

Respondent

STATEMENT OF FACTS

The Respondent, by its counsel, hereby admits the following facts solely for the purposes of dispensing with their proof in this proceeding under subsections 34(2) and (2.1) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, ("*Act*") and for no other purpose.

THE RESPONDENT

1. The Respondent Toyota Canada Inc. ("TCI") is a corporate entity incorporated under the laws of Canada and is the importer and distributor of Toyota motor vehicles in Canada. TCI is responsible for the creation and implementation of a supply and marketing program for Toyota motor vehicles known as the Access Toyota Program.

THE ACCESS TOYOTA PROGRAM

2. The Access Toyota Program was initially launched in March of 2000 in Manitoba (with the participation of one dealership in Kenora, Ontario), and has since been expanded into Saskatchewan, Alberta, British Columbia and parts of Québec.

3. The Access Toyota Program's aim was to improve customer satisfaction by providing consumers with a more pleasant purchasing experience. The program involved a new Toyota sales process that stressed consumer access to information and a new pricing mechanism.
4. In respect of pricing under the Access Toyota Program, Toyota dealers participating in this program ("Access Dealers") submit price votes by way of a discount off the manufacturer's suggested retail price to TCI on a monthly basis for all of the Toyota vehicle models and options.
5. Using a weighted-average formula, TCI averages the price votes submitted for each local market, and then the averaged prices (known as "Access Prices") for each local market are made available on the Toyota web site. For instance, price votes by Manitoba Access Dealers are used to calculate Access Prices for the Manitoba market, and price votes by Alberta Access Dealers are used to calculate Access Prices for the Alberta market.
6. In addition to Access Prices, TCI's website also employs and displays "Drive-Away Prices" for each local market, which represent Access Prices plus all applicable fees and taxes.
7. Shortly after its introduction in Manitoba, the Access Toyota Program was reviewed by the Competition Bureau. TCI represented to the Competition Bureau that Access Dealers would be free to sell Toyota vehicles for less than the specified Access/Drive-Away Prices and that dealers that sold for less would not be disciplined or discriminated against by TCI. Based on these representations the Competition Bureau advised TCI that the Access Toyota Program did not raise serious concerns under the Act.
8. At that time, TCI had, through its counsel, assured the Competition Bureau that the Access/Drive-Away Prices did not constitute minimum resale prices, as all dealers were free to sell for less and would not suffer in any way should they choose to sell a vehicle below those prices. It was TCI's position at that time that Access/Drive-Away Prices were maximum prices, not minimum prices, that Access Dealers could charge for Toyota vehicles.
9. Moreover, TCI made representations to the public on its internet website that Access Dealers may sell for less than Access/Drive-Away Prices.

CONDUCT DIRECTED TOWARDS COMMISSION OF OFFENCE

10. Paragraph 61(1)(a) of the *Act* prohibits price maintenance. Under this provision, it is an offence for a supplier of a product to use agreements, threats or promises to attempt to influence upward or to discourage the reduction of the price that other independent businesses supply or offer to supply or advertise a product within Canada.

11. In addition, paragraph 52(1) of the *Act* provides that it is an offence for a person, in promoting a business interest, to knowingly or recklessly make representations to the public that are false or misleading in a material respect.
12. TCI became aware that, on occasion, certain Access Dealers were meeting to discuss and agree in advance on the price votes to be submitted by these Access Dealers to TCI that were then used to establish the Access Price.
13. In addition, subsequent to the launch of the Access Toyota Program, TCI monitored and enforced Access Dealers' adherence to the Access Toyota Program.
14. The Commissioner of Competition (the "Commissioner") has informed TCI that his investigation has revealed that the effect of the monitoring and enforcement activities of TCI under the Access Toyota Program caused some Access Dealers to understand that if they sold or leased Toyota vehicles below Access Prices/Drive-Away Prices, or advertised that they sold or leased at the Access/Drive-Away price when the represented price was other than the Access Prices/Drive-Away Price established under the Access Toyota Program, the Access Dealer could be subject to substantial financial penalties.
15. As part of TCI's monitoring and enforcement of adherence of Toyota Dealers to the Access Toyota Program, Toyota developed and intended to implement an "Occurrences and Defaults" policy. The draft Occurrences and Defaults policy, if implemented, would have constituted the commission of an offence under subsections 52(1) and 61(1) because it would sanction negotiations and therefore tend to discourage the reduction of prices at which vehicles were sold. The development of this policy in this form, therefore, constituted conduct directed towards the commission of an offence.

THE INVESTIGATION AND INQUIRY

16. As a result of numerous consumer complaints, representatives of the Commissioner of Competition (the "Commissioner") commenced a preliminary investigation into the conduct of TCI and Access Dealers under the Access Toyota Program. This preliminary investigation led to the initiation of a formal inquiry by the Commissioner on June 10, 2002 pursuant to subparagraph 10(1)(b)(iii) of the *Act*.
17. On application by a representative of the Commissioner, and pursuant to sections 15 and 16 of the *Act*, search warrants were issued on July 10, 2002 by the Honourable Mr. Justice Beaudry in the Federal Court of Canada Trial Division at Ottawa, Ontario. The warrants authorized the entry and search of certain TCI premises in Scarborough, Ontario and Boucherville, Québec. The searches were conducted between July 15, 2002 and August 2, 2002.
18. Subsequently, on application by the Commissioner, and pursuant to paragraph 11(1)(b) of the *Act*, orders were issued by the Honourable Pierre Blais of the Federal Court of

Canada Trial Division at Ottawa, Ontario, requiring 23 Access Dealers to provide relevant business records to the Commissioner.

19. TCI has demonstrated a high level of co-operation in respect of the searches of its premises by, and in providing additional information to, representatives of the Commissioner.

20. TCI has acted expeditiously in:

(a) acknowledging the seriousness of the issues raised by the Commissioner and seeking a resolution that was satisfactory to the Commissioner; and

(b) taking the following measures to ensure that its conduct and that of the Access Dealers clearly complies with the *Act*:

(i) eliminating any examination of negotiating practices in the monitoring and enforcement of the Access Toyota Program and in the further development of the "Occurrences and Defaults" policy;

(ii) reinforcing, both in face-to-face meetings and in writing, that Access Dealers remain free to sell below Access/Drive-Away Prices without fear of discipline from TCI; and

(iii) amending written materials used in connection with the Access Toyota Program so that they could not be interpreted to suggest that price negotiations are not permitted in the Access Toyota Program.

21. In acknowledgement of the seriousness of the issues raised by the Commissioner, TCI has made a voluntary donation totalling \$2.3 million to charitable and/or non-profit organizations dedicated to consumer protection and automobile safety. This donation is over and above any charitable donations budgeted by TCI for the current fiscal year.

22. TCI acknowledges, on the basis of the admissions set out herein, that all constituent elements for the issuance of a prohibition order pursuant to subsection 34(2) of the *Competition Act* have been established.


Dated this 24th day of March, 2003 at the City of Toronto.

TOYOTA CANADA INC.

By: 

Dated this ²² 25 day of March, 2003 at the City of Gatineau, Quebec.

ATTORNEY GENERAL OF CANADA

By: 

Duane E. Schippers

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