

**IN THE FEDERAL COURT OF CANADA  
(TRIAL DIVISION)**

Ottawa, Ontario, this 27<sup>th</sup> day of March, 2003

**PRESENT: THE HONOURABLE MADAM JUSTICE TREMBLAY-LAMER**

**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**

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**PROHIBITION ORDER  
PURSUANT TO SUBSECTIONS 34(2) AND 34(2.1) OF THE  
*COMPETITION ACT***

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**UPON APPLICATION of the Attorney General of Canada for an order pursuant to subsection 34(2) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, (the "Act") against the Respondent for having done acts or things in furtherance of offences contrary to sections 52(1) and 61(1)(a) of the Act;**

**AND UPON reading the said Application, the Information of the Attorney General of**

Canada and the Agreed Statement of Facts, filed, on consent, herein;

AND UPON reading the consent of the Respondent to the issuance of this Order, filed herein;

AND UPON hearing the submissions of counsel for the Attorney General of Canada and counsel for the Respondent;

1. **THIS COURT DOES PROHIBIT** the continuation by the Respondent of acts or things in furtherance of offences contrary to sections 52(1) and 61(1)(a) of the *Competition Act*.
  
2. **THIS COURT DOES PROHIBIT** the Respondent, including each and every of the Respondents' corporate affiliates, directors, officers and employees, from adopting a policy or engaging in acts, directly or indirectly that:
  - (a) by agreement, threat, promise or any like means, attempts to influence upward or discourage the reduction of the prices of Toyota vehicles, used vehicles, accessories, parts or services offered by the Respondent's unaffiliated dealers including, but not limited to prohibiting the Respondent's unaffiliated dealers from independently setting or advertising prices of Toyota vehicles, used vehicles, accessories, parts or services; and
  - (b) discriminates against the Respondent's unaffiliated dealers because of the low prices charged for Toyota vehicles, used vehicles, accessories, parts or services offered or advertised by these dealers.
  
3. **AND THIS COURT DOES DIRECT** the Respondent to:
  - (a) amend its Access Toyota Participation Agreement with each of its unaffiliated dealers who participate in the Access Toyota program (the

“Access Dealers”) to prohibit Access Dealers from:

- (i) agreeing with and among each other on the prices that they are charging or will charge for Toyota vehicles, used vehicles, accessories, parts or services;
  - (ii) agreeing with and among each other to limit the discounts that they are applying or will apply to Toyota vehicles, used vehicles, accessories, parts or services;
  - (iii) discussing or agreeing with and among themselves on the specific percentage discount to be submitted for the purposes of determining the Access Price of a vehicle; and
  - (iv) making representations to the public that the Respondent prohibits its unaffiliated dealers from selling below pre-determined prices (e.g., Access/Drive-Away Prices); and
- (b) for so long as the Respondent is a party the Access Participation Agreement, establish and implement a mechanism, satisfactory to the Commissioner of Competition (the “Commissioner”), to enforce the contractual provisions referred to (a) above, up to and including termination of an Access Dealer’s continued participation in the Access Toyota Program.

4. **AND THIS COURT DOES DIRECT** the Respondent to provide to each of its directors and officers, to all of its employees responsible for sales or marketing of the Respondent’s passenger vehicles in Canada, to each of the Respondent’s Access Dealers in Canada as of the date of this order, and to each of the Respondent’s unaffiliated dealers prior to such dealer becoming an Access Dealer:

- (a) a copy of this Order;
- (b) a copy of relevant provisions of the *Competition Act* attached in Schedule ‘A’ to this Order; and

- (c) a written statement that it is the Respondent's policy to require compliance with the *Competition Act* and this Order, and that failure to comply may result in sanctions under subsections 34(6) and 35(2) of the *Competition Act*, and that the company's legal advisors are available to confer with its directors, officers and employees about any compliance questions.

5. **AND THIS COURT DOES DIRECT** the Respondent to:

- (a) file with the Commissioner no later than April 30<sup>th</sup> of each year, for the duration of this Order, confirmation that the written communications required to be sent pursuant to paragraph 4 of this Order has been sent;
- (b) within 30 days from the date of this Order, the Respondent provide to the Commissioner an update of all training and promotional material related to the Access Toyota Program for review by the Commissioner and shall make any amendments thereto to the satisfaction of the Commissioner; and
- (c) in any representation made to the public that uses the term "Access Price" or "Drive-Away Price", the Respondent shall include a disclaimer that is clearly legible or audible, as the case may be, indicating that individual dealers may sell the vehicles for less than such "Access Price" or "Drive-Away Price".

6. **AND THIS COURT DOES FURTHER DIRECT** the Respondent to pay the costs incurred by the Commissioner and the Attorney General of Canada with respect to the Commissioner's investigation.

7. **AND THIS COURT DOES FURTHER DIRECT THE RESPONDENT TO:**

- (a) maintain the following records identifying:
  - (i) the Access Price set for each period of time in each geographic region in

- which the Access Toyota Program is implemented;
- (ii) for each vehicle sold in each geographic region in which the Access Toyota Program is implemented, the model number, vehicle identification number, manufacturer's suggested selling price, customer name, address and telephone number;
  - (iii) a record of each complaint relating to sales and marketing under the Access Toyota Program received by the Respondent from a consumer in any manner and, in respect of a complaint from a Toyota dealer, where there is a written record of the complaint, such report to include, where the information is available, the name, address, telephone number, narrative of the complaint and copy of all correspondence sent and received; and
  - (iv) a record of each instance where the enforcement mechanism described in paragraph 3(b) above was exercised in respect of the contractual provisions referred to in paragraph 3(a) above, including all documents in the possession and control of the Respondent relating to the circumstances underlying the breach of contractual provision and all documents in the possession and control of the Respondent relating to the examination and disposition of the breach;
- (b) appoint an individual who shall be responsible for receiving complaints from dealers or individuals and to whom such complaints may be referred; and
  - (c) produce to the Commissioner on ten business days written notice a report under oath containing the information required to be maintained in (a) above and identity of the individual required to be appointed pursuant to (b) above.

**8. AND IT IS FURTHER ORDERED that:**

- (a) this Order shall be binding on the Respondent for a period of five (5) years from the date hereof; and
- (b) that each and every paragraph of this Order that applies to the Respondent shall be binding on the Respondent's corporate affiliates, successors and

assigns, if any.

9. **AND IT IS FURTHER ORDERED** that any notice required to be delivered pursuant to this Order shall be deemed validly delivered if delivered by facsimile transmission or registered mail to:

- (a) The Attorney General of Canada

Place du Portage, Phase I  
22<sup>nd</sup> Floor- 50 Victoria Street  
Hull, Quebec K1A 0C9  
Facsimile: (819) 953-9267  
**Attention: Director, Competition Law Division**

- (b) Commissioner of Competition

Competition Bureau  
Place du Portage, Phase I  
20<sup>th</sup> Floor - 50 Victoria Street  
Hull, Quebec K1A 0C9  
Facsimile: (819) 997-3835  
**Attention: Deputy Commissioner, Criminal Matters Branch**

- (c) The Respondent, Toyota Canada Inc.

Toyota Canada Inc.  
One Toyota Place  
Scarborough, ON M1H 1H9  
Facsimile: (416) 431-8349

**Attention: General Counsel**

with a copy to:

Blake, Cassels & Graydon LLP  
Barristers and Solicitors  
Box 25, Commerce Court West

Toronto, ON M5L 1A9  
Facsimile: (416) 836-2653

Attention: Mark J Nicholson

9. AND THIS COURT SHALL retain jurisdiction over the parties to this proceeding for the purposes of varying or rescinding any of the provisions of this Order, upon the application of either party pursuant to subsection 34(2.3) of the *Competition Act*.

Danièle Tremblay-Lamer  
Judge

I HEREBY CERTIFY that the above document is a true copy of the original filed of record in the Registry of the Federal Court of Canada the 27th day

of March A.D. 20 03

Dated this 27th day of March 20 03

M. Chalifoux  
Registry Officer  
Agent du Greffe