

September 5, 2024

Administrative Review – 24-06-013  
Served via email: [REDACTED]

### Administrative Penalty

CROWFOOT H MOTORS GP INC.  
o/a CROWFOOT H MOTORS LP/CROWFOOT HYUNDAI  
700 CROWFOOT CRESCENT NW  
EDMONTON, AB  
T3G 4S3

**Attention: Paul Antony, Azim Lalani and Jeffrey Thorpe**

Dear Paul Antony, Azim Lalani and Jeffrey Thorpe:

**Re: Crowfoot H Motors GP Inc. operating as Crowfoot H Motors LP/Crowfoot Hyundai  
– Provincial Automotive Business Licence No. B2026584**

As the Director of Fair Trading (as delegated) (the “Director”), I am writing to you pursuant to Section 158.1(1) of the *Consumer Protection Act* (“CPA”) to provide you with written notice of the Administrative Penalty issued under that section.

### Facts

The evidence before me in relation to this matter consists of the material contained in an Alberta Motor Vehicle Industry Council (“AMVIC”) investigations department application report (the “Application Report”) prepared by the investigator and the senior manager of investigations. A copy of the Application Report is attached as Schedule “A” to this letter. I have also taken into consideration written representations from the Supplier’s legal counsel dated July 17, 2024 attached as Schedule “B” which were received prior to the scheduled administrative review as well as the information exchanged during the administrative review held via teleconference call on July 23, 2024. The Supplier provided written representations via email on Aug. 27, 2024 (attached as Schedule “D”), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

### *Licensee Status*

Crowfoot H Motors GP Inc. operating as Crowfoot H Motors LP/Crowfoot Hyundai (the “Supplier”) holds an automotive business licence and carries on business as an automotive sales and repair business in the Province of Alberta. The Supplier holds a current AMVIC business licence and is authorized for new and used sales, service station, leasing, wholesale and garage business activities.

### ***Administrative Review***

An administrative review was held on July 23, 2024 at approximately 1 p.m., via teleconference call. Participating in the administrative review were Robin Do, general manager for the Supplier; Andrew Bieg, legal counsel for the Supplier; [REDACTED], AMVIC investigator; [REDACTED], AMVIC manager of investigations south; and G. Gervais, Director of Fair Trading (as delegated) (the "Director").

### ***Previous Enforcement***

On July 18, 2023, conditions were imposed on the Supplier's business licence for a period of 12 months as a result of a consumer complaint in which there were Mechanical Fitness Assessment ("MFA") compliance issues, bill of sale ("BOS") compliance issues, record keeping compliance issues and unregistered salespeople. One of the conditions expressly stated:

*"1. As the general manager, you will ensure the Supplier keeps the peace and is in full compliance with all laws and regulations including but not limited to the CPA of Alberta and the Criminal Code of Canada."*

### ***Recent Relevant History***

An AMVIC investigations Findings Letter dated Sept. 6, 2022 was sent to the Supplier and identified BOS compliance issues, misleading statements, as well as the Supplier misrepresenting optional products as mandatory and failing to comply with all-in pricing legislation.

An AMVIC investigations Findings Letter dated Sept. 8, 2022 was issued for misrepresenting optional products as mandatory, BOS compliance issues and MFA compliance issues.

On Feb. 7, 2023 and March 16, 2023 AMVIC received consumer complaints which were referred to AMVIC's industry standards department as they related to allegations of the Supplier selling vehicles over the advertised price.

On April 19, 2023, an AMVIC inspection was completed as a result of the consumer complaints. The Findings Letter dated April 25, 2023 identified compliance issues with the Supplier's advertisements, vehicles being sold over the advertised price, MFA compliance issues, BOS compliance issues, unregistered salespeople and discrepancies in credit applications submitted to financial institutions.

On Feb. 23, 2024, an AMVIC inspection was completed as a result of the conditions imposed by the Director on July 18, 2023. The Findings Letter dated Feb. 29, 2024 identified the Supplier was selling vehicles over the advertised price, MFA compliance issues, BOS compliance issues and discrepancies in credit applications submitted to financial institutions.

As a result of the Feb. 23, 2024 AMVIC inspection, a Warning Letter was issued to the Supplier on March 1, 2024.

## ***Summary of Investigation***

### Case File 23-12-046

1. On Dec. 5, 2023 AMVIC received a consumer complaint against the Supplier. The consumer ("JG") alleged the Supplier presented product packages to him as mandatory on a 2024 Hyundai Elantra (the "Elantra") which he intended to purchase but did not as a result of his interactions with the Supplier.
2. The AMVIC investigation (case file: 23-12-046) identified two of the Supplier's employees misrepresented a \$999 safeguard package as mandatory to JG.
3. A recorded conversation (the "Recorded Meeting") between JG and the Supplier support JG's claims. Several times during the Recorded Meeting JG questions the Supplier's two employees as to why the safeguard package is mandatory and whether it is something that he can cancel after the purchase. JG is told that *"it is a store policy"* and *"You cannot cancel that because it is part of the mandatory policy that we have to give it to the consumer"*.

## ***Supplier's Representations***

4. At the start of the administrative review, the Supplier's legal counsel advised it was not necessary for the AMVIC investigator to go over all of the details or a full review.
5. During the administrative review, the Supplier indicated they have approximately 60 employees, including 12 salespeople and in 2023 they sold approximately 1,400 vehicles.
6. In advance of the scheduled administrative review, on July 17, 2024, legal counsel for the Supplier submitted written representations to the Director (see Schedule "B"). The written representations indicate:
  - The Supplier accepts that their former salesperson ("MJ"), who is no longer employed with the Supplier, spoke with JG on or around Dec. 4, 2023 and informed him that the safeguard package was mandatory for the purchase of a vehicle.
  - This was an error on the part of MJ and was not in compliance with Section 6(4)(a) of the CPA.
  - The Supplier accepts that their sales manager ("CT") supported MJ's assertion at the Recorded Meeting regarding the mandatory nature of the safeguard package.
  - Immediately following the Recorded Meeting, CT sent JG an email explicitly indicating that no add-on packages were required for the purchase of a vehicle. Further, none of the quotes or offers provided from the Supplier to JG indicated that the safeguard package was mandatory.
  - It is the Supplier's position, that while CT's choice of language was incorrect, his ultimate intent was to negotiate with JG as adduced by CT's repeated statements that he is *"always open to have a conversation"* during the Recorded Meeting.

- The Supplier's general manager ("RD") contacted JG on Dec. 5, 2023 to seek to resolve any concerns JG had regarding purchasing the Elantra.
- RD offered to sell the Elantra to JG for under the advertised price with no accessories or add-ons, however JG declined this offer.
- JG had no intention of buying a vehicle from the Supplier prior to the Recorded Meeting.
- The Supplier showed the AMVIC investigator recent bills of sale without the safeguard package to demonstrate they have changed their business practices.
- The Supplier has provided further training and reminders to their staff that there are no mandatory add-ons for the purchase of a vehicle.

7. In summary the Supplier stated:

*"As discussed the Dealership admits that their staff has breached section 6(4)(a) of the CPA. Despite the foregoing, the Dealership submits the following: (a) it does not engage in mandatory add-ons as illustrated by the Investigator's review of recent bill of sales without safeguard; (b) the primary individual responsible for the said breach, MJ, is no longer employed by the Dealership; (c) CT's comments in the Recorded Meeting viewed in their entirety indicate an intent to negotiate and not deceive; (d) CT immediately attempted to rectify the miscommunication; (e) Mr. Do personally further attempted to rectify the miscommunication; (f) the Dealership has provided further training and reminders to its staff; and (g) the Complainant suffered no loss or damages as a result of the Dealerships actions. As such, the Dealership respectfully requests leniency in any administrative penalty provided and submits that a penalty in the amount of \$999.00, equivalent to the value of a safeguard package, would be an appropriate penalty given the circumstances."*

8. The Supplier expressed that they take this matter seriously and have reviewed this matter with their entire sales team to ensure they are offering all-inclusive pricing, and the customer understands anything else is extra and it is up to the consumer to agree or decline.
9. The Supplier acknowledged the general conduct described in the AMVIC investigation and regrets engaging in the aforementioned activity and strives to do better.
10. The Supplier provided written representations via email dated August 27, 2024 (see Schedule "D"), in response to the Proposed Administrative Penalty.

## Legislation

### **Consumer Protection Act**

#### **Unfair practices**

#### **Section 6**

(4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more consumers or potential consumers:

- (a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;

## **Administrative Penalties**

### **Notice of administrative penalty**

#### **Section 158.1**

- (1)** If the Director is of the opinion that a person
  - (a) has contravened a provision of this Act or the regulations, or
  - (b) has failed to comply with a term or condition of a licence issued under this Act or the regulations,the Director may, by notice in writing given to the person, require the person to pay to the Crown an administrative penalty in the amount set out in the notice.
- (2)** Where a contravention or a failure to comply continues for more than one day, the amount set out in the notice of administrative penalty under subsection (1) may include a daily amount for each day or part of a day on which the contravention or non-compliance occurs or continues.
- (3)** The amount of an administrative penalty, including any daily amounts referred to in subsection (2), must not exceed \$100 000.
- (4)** Subject to subsection (5), a notice of administrative penalty shall not be given more than 3 years after the day on which the contravention or non-compliance occurred.
- (5)** Where the contravention or non-compliance occurred in the course of a consumer transaction or an attempt to enter into a consumer transaction, a notice of administrative penalty may be given within 3 years after the day on which the consumer first knew or ought to have known of the contravention or non-compliance but not more than 8 years after the day on which the contravention or non-compliance occurred.

## **Right to make representations**

### **Section 158.2**

- Before imposing an administrative penalty in an amount of \$500 or more, the Director shall
- (a) advise the person, in writing, of the Director's intent to impose the administrative penalty and the reasons for it, and
  - (b) provide the person with an opportunity to make representations to the Director.

## **Vicarious liability**

### **Section 166**

- For the purposes of this Act, an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred
- (a) in the course of the employee's employment with the person, or
  - (b) in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship.

## **Analysis – Did the Supplier fail to comply with the provisions of the CPA?**

The material which formed the Application Report was the result of a consumer complaint received by AMVIC, investigation case file 23-12-046.

#### A. Unfair Practice - Mislead and Deceive CPA Section 6(4)(a)

The Supplier's salesperson and sales manager both misrepresented that "Safeguard" at a cost of \$999 was a mandatory purchase if the consumer wanted to buy the Elantra and stated that it was a policy of their employer. Members of the automotive industry, both salespeople and businesses, must not mislead a consumer into believing a fee or the purchase of an additional product or service is mandatory or required when it is not. The Supplier is vicariously liable for the actions of its employees or agents as per Section 166 of the CPA.

Optional products are not to be misrepresented as mandatory and no consumer should be forced or pressured to purchase products or services they do not want. JG made it clear on several occasions he did not understand the reason why "Safeguard" was mandatory and did not want to purchase it.

The Supplier admitted to breaching the legislation. According to the Supplier, the general manager later contacted JG and unsuccessfully offered to sell him the vehicle without "Safeguard".

Based on the evidence before me, on a balance of probabilities, the Director finds the Supplier contravened Sections 6(4)(a) of the CPA.

#### B. Other Considerations

AMVIC follows a progressive enforcement model when enforcing consumer protection laws. Administrative action may include a written warning, condition(s) added to the licence, charges under the legislation, Administrative Penalty, Director's Order, Undertaking and suspension or cancellation of a licence as outlined in the CPA. When determining an appropriate enforcement measure, the Director will consider several factors before making his decision to ensure what level of enforcement is appropriate to the contravention.

AMVIC recently imposed conditions on the Supplier's business licence for a period of 12 months as a result of a consumer complaint in which there were MFA compliance issues, BOS compliance issues, record keeping compliance issues and unregistered salespeople. One of the conditions expressly stated:

*"1. As the general manager, you will ensure the Supplier keeps the peace and is in full compliance with all laws and regulations including but not limited to the CPA of Alberta and the Criminal Code of Canada."*

Based on the evidence before me, the Supplier has not been in full compliance with the CPA as they have engaged in business practices that might reasonably deceive or mislead a consumer as determined by the Director above.

In addition to the above recent administrative enforcement action, between September 2022 and March 2024 the Supplier has received education from AMVIC on multiple occasions in relation to

misrepresenting optional products as mandatory, selling vehicles over the advertised price and misleading statements.

The Director gave consideration to other enforcement actions, such as entering into a voluntary Undertaking with the Supplier, however the Director is not satisfied the Supplier has ceased the contraventions given their recent history, the education provided, and recent administrative enforcement by AMVIC which imposed conditions on the Supplier's business licence on July 18, 2023, approximately one year ago.

In advance of the scheduled administrative review, in written representations dated July 17, 2024, the Supplier's legal counsel respectfully requested leniency and an administrative penalty in the amount of \$999, equivalent to the value of the safeguard package, to be imposed or appropriate in the circumstances.

The Director acknowledges the efforts on the part of the Supplier to bring their business practices into compliance, however the recent administrative enforcement action and the relevant education AMVIC has provided the Supplier on numerous occasions cannot be ignored.

The amount of the Administrative Penalty **cannot** be viewed as a cost of doing business but rather as a deterrent for continuing to engage in non-compliant business practices.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the law. As stated in the Supreme Court of British Columbia in *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers, 2014 BCSC 903* addressed the issue of the onus and responsibility the Supplier has when operating within regulated industry. The court at paragraph 59 stated:

*In my view, it is incumbent upon a party that operates within a regulated industry to develop at least a basic understanding of the regulatory regime, including its obligations under the regime, as well as the obligations, and the authority, of the regulator.*

In reviewing all the evidence and determining the contraventions of the legislation, in the opinion of the Director, the Supplier's business practices do not meet the legislative requirements as expected of a business in the automotive industry. A recent Service Alberta Appeal Board rendered a decision (attached as Scheduled "C") and addressed the onus and responsibility of members of the regulated automotive industry. The appeal panel at paragraph 91 stated:

*At the same time, we recognize that AMVIC is not there to hold a party's hand through the administrative process. Nor is it there to train applicants in terms of being administratively efficient. AMVIC is there to protect the public. The onus is on salespersons and car dealerships to remain current with AMVIC and to comply with the regulatory framework in place at any given time.*

The aggravating factors in this matter include the contravention and the non-compliance with the rather straightforward requirements of the legislation of misleading a consumer.

The mitigating factor is the Supplier admitting to the breach of legislation and their attempts to come to a resolution with the consumer. During the administrative review, the Supplier commented they have made changes to their business practices and strive to do better, however did not provide any evidence to the Director to support this claim.

This Administrative Penalty is taking into account the seriousness of the contravention of the legislation found during the investigation as well as the cost of investigating the Supplier's activities; the aggravating and mitigating factors listed above; and the continued non-compliant business practices despite education and enforcement.

### Action

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that Crowfoot H Motors GP Inc. operating as Crowfoot H Motors LP/Crowfoot Hyundai pay an Administrative Penalty. This is based on my opinion that Crowfoot H Motors GP Inc. operating as Crowfoot H Motors LP/Crowfoot Hyundai contravened Section 6(4)(a) of the CPA.

Taking into consideration all the representations made by the Supplier and the representations made by AMVIC's investigations department, the amount of the Administrative Penalty is **\$2,500**.

The amount takes into consideration the factors outlined in Section 2 of the Administrative Penalties (*Consumer Protection Act*) Regulation, AR 135/2013 and the principles referenced in *R v Cotton Felts Ltd., (1982), 2 C.C.C (3d) 287 (Ont. C.A.)* as being applicable to fines levied under regulatory legislation related to public welfare including consumer protection legislation. In particular the Director took into account:

1. The Supplier's history of non-compliance;
2. The seriousness of the contraventions or failure to comply;
3. The degree of willfulness or negligence in the contravention or failure to comply;
4. The mitigating actions taken by the Supplier;
5. The maximum penalty under Section 158.1(3) of the CPA of \$100,000; and
6. The deterrent effect of the penalty.

### The amount of the Administrative Penalty is \$2,500.

Pursuant to Section 3 of the Administrative Penalties (*Consumer Protection Act*) Regulation, you are required to submit payment within **thirty (30) days** of the date of service of this notice. Failure to pay the Administrative Penalty will result in a review of the licence status. Payment may be made payable to the **"Government of Alberta"** and sent to AMVIC at:

Suite 303, 9945 – 50th Street  
Edmonton, AB T6A 0L4.

If payment has not been received in this time period, the Notice may be filed in the Court of King's Bench and enforced as a judgement of that Court pursuant to Section 158.4 of the CPA and further disciplinary action will be considered.

Section 179 of the CPA allows a person who has been served a notice of Administrative Penalty to appeal the penalty. To appeal the penalty, the person must serve the Minister of Service Alberta and Red Tape Reduction

Minister of Service Alberta and Red Tape Reduction  
103 Legislature Building  
10800 - 97 Avenue NW  
Edmonton, AB  
Canada T5K 2B6

with a notice of appeal within **thirty (30) days** after receiving the notice of Administrative Penalty. The appeal notice must contain your name, your address for service, details of the decision being appealed and your reasons for appealing.

Pursuant to Section 180(4) of the CPA, service of a notice of appeal operates to stay the Administrative Penalty until the appeal board renders its decision on the appeal or the appeal is withdrawn.

Under Section 4 of the Administrative Penalties (*Consumer Protection Act*) Regulation, the fee for appealing an Administrative Penalty is the lesser of \$1,000 or half the amount of the penalty. As such, the fee for an appeal of this Administrative Penalty, should you choose to file one, would be \$1,000. Should you choose to appeal this Administrative Penalty, you must send the appeal fee to the Minister of Service Alberta and Red Tape Reduction at the above noted address, made payable to the "Government of Alberta".

Yours truly,

"original signed by"

Alberta Motor Vehicle Industry Council (AMVIC)  
Gerald Gervais  
Director of Fair Trading (as Delegated)

GG/ks  
Encl.

cc: [REDACTED] Senior Manager of Investigations, AMVIC