



Draft Determination

Application for the revocation of authorisations
A91358 and A91359 and the substitution of
authorisation AA1000408

lodged by

Royal Automobile Club of Queensland Limited

in respect of

its reciprocal warranty repair arrangement

Date: 1 March 2018

Authorisation number: AA1000408

Commissioners: Schaper
Court
Featherston

Summary

The ACCC proposes to re-authorise the RACQ to set the labour rate to be charged by RACQ Approved Repairers for reciprocal warranty repairs provided by them and for RACQ Approved Repairers to only offer reciprocal warranty repair services to RACQ Members.

The ACCC originally authorised this conduct in 2013 until May 2018. RACQ wishes to continue the same arrangements as originally authorised.

The ACCC proposes to re-authorise the conduct for a further ten years.

Next Steps:

The ACCC invites submissions in relation to this draft determination before making its final decision. The applicant and interested parties may also request the ACCC to hold a pre-decision conference to allow oral submissions on the draft determination.

The application for revocation and substitution

1. On 5 December 2017 the Royal Automotive Club of Queensland (**RACQ**) (the **Applicant**) lodged with the Australian Competition and Consumer Commission (the **ACCC**) an application for the revocation of authorisations (A91358 and A91359) and their substitution with authorisation (AA1000408) (re-authorisation). Authorisations A91358 and A91359 are due to expire on 29 May 2018.
2. Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the *Competition and Consumer Act 2010* (the **Act**).¹ In this instance, RACQ is seeking re-authorisation for the conduct as it may involve exclusive dealing and a price agreement, including a cartel provision.
3. The authorisation process recognises that, in certain circumstances, particular conduct may not harm competition or may give rise to a public benefit that outweighs any public detriment. The ACCC conducts a public consultation process when it receives an application for authorisation, inviting interested parties to lodge submissions outlining whether they support the application or not. Before making its final decision on an application for authorisation the ACCC must first issue a draft determination.

The conduct

4. The RACQ is seeking to continue the arrangement where all RACQ Approved Repairers offer a standard express warranty when they carry out repair services for RACQ Members. Where further repairs are required that are covered by that express warranty (within 6 months or before 10,000km), the RACQ Member may require another RACQ Approved Repairer to undertake those repairs. Where that occurs, the RACQ Member will not be charged for the repair. Instead the RACQ Approved Repairer undertaking the warranty repair will charge the RACQ Approved Repairer who undertook the original repair and gave the express warranty, at an agreed labour rate set by RACQ (which can be revised by RACQ during the course

¹ Detailed information about the authorisation process is available in the ACCC's [Guidelines for Authorisation of conduct \(non-merger\)](#).

of the authorisation).

5. To facilitate the warranty repair scheme, RACQ includes a provision in its standard form agreement requiring RACQ Approved Repairers to charge each other a set labour rate for warranty repairs. Agreements are entered into individually between the RACQ and a repairer.
6. In addition to undertaking warranty repairs at a set hourly labour rate, each RACQ Approved Repairer agrees to notify the original repairer of the work proposed to be done, an estimate of the hours involved and parts required, and agree between them the final contract price to be charged back to the original repairer for the warranty repairs.
7. The RACQ submits that RACQ Members may be concerned that an express warranty for repairs would be of limited utility to them if they need or expect to take the vehicle more than towing distance from the original repairer because many RACQ Approved Repairers are small businesses, usually with only one workshop. The RACQ provided the example that someone planning a driving holiday might be concerned about acquiring repairs from a local RACQ Approved Repairer in case warranty repairs are required while they are travelling. Without this arrangement in place, the RACQ Member may instead opt to have their vehicle repaired by a large chain or franchise repairer (who may have a reciprocal warranty service that can be accessed throughout the state or nationally).
8. In addition, the RACQ submits that in order for RACQ Approved Repairers to have the confidence to participate in the scheme it is necessary to fix the labour rate to overcome any concerns that the original repairer may be 'signing a blank cheque' to pay whatever the other repairer chooses to charge for the warranty repairs.
9. In particular, the RACQ is seeking re-authorisation for:
 - a. The RACQ and RACQ Approved Repairers to enter into and to give effect to a contract, arrangement or understanding that fixes, maintains or controls the price that an RACQ Approved Repairer may charge back to another RACQ Approved Repairer for the labour component of any warranty repair work performed on that other RACQ Approved Repairer's behalf
 - b. RACQ Approved Repairers to refuse to:
 - i. provide a reciprocal repair warranty to non-RACQ members,
 - ii. perform repair services under the reciprocal repair warranty arrangement without charge to the customer to non-RACQ members, and
 - iii. provide warranty services at no charge to RACQ members if the original repairs were not performed by another RACQ Approved Repairer.

(together the **Conduct**).

10. This Conduct is the same as that previously authorised by the ACCC (including the labour rate to be charged), and involves a small proportion (0.04%) of repair services carried out by RACQ Approved Repairers.
11. The RACQ has sought re-authorisation for a minimum of 5 years. It seeks re-authorisation to cover current and future RACQ Approved Repairers. The RACQ advises that application for re-authorisation does not involve its network of 'selected repairers' and accident tow truck operators for insurance claims. Rather, the proposed Conduct relates only to scheduled servicing and breakdowns.

Background

The Applicant

12. The RACQ is a motoring organisation that provides auto club services to its members. Part of the membership services offered to RACQ Members is access to the RACQ Approved Repairers Network. The RACQ submits that it enters into standard form Approved Repairer agreements with businesses that provide automotive repair services to establish minimum operational standards. The RACQ submits that RACQ members now exceed 1.6 million drivers.

RACQ Approved Repairers

13. The RACQ submits there are 298 RACQ Approved Repairers (representing 5.8 per cent of total repairers in Queensland) covering a wide range of repair categories including general repairs, automatic transmissions, exhausts, tyres, auto electrical, auto glass, diesel specialists and lock smiths. The RACQ submits there are around 5100 business providing automotive repair services in Queensland.²
14. The RACQ advises that most RACQ Approved Repairers are small businesses, with 65% recording an annual turnover of less than \$1 million.

Previous authorisation

15. On 29 May 2013, the ACCC granted authorisation to the RACQ for the Conduct for a period of five years. The original authorisation expires on 29 May 2018.
16. Further information about the ACCC's original assessment of the likely public benefits and public detriments from the Conduct is contained in the [2013 RACQ final determination](#).

Consultation

17. The ACCC tests the claims made by an applicant in support of its application for authorisation through an open and transparent public consultation process.
18. The ACCC sought submissions from over 50 interested parties potentially affected by this application, including RACQ Approved Repairers, industry associations, consumer organisations and government.

² The Royal Automobile Club of Queensland Limited, Supporting submissions, 1 December 2017, p 2.

19. The Motor Trade Association of Queensland (**MTAQ**) advises that while it will not be making a substantive submission in relation to the application for re-authorisation, it has consulted industry participants who have advised the MTAQ that they are satisfied with the Conduct.
20. The ACCC received one substantive submission, from the Motor Trades Association of Australia (**MTAA**). It submits that it does not necessarily object to or support RACQ's application to re-authorise the reciprocal warranty repair scheme. The MTAA accepts that the Conduct may result in a short term benefit to consumers, however expressed concern with the fixing of labour prices, in particular should these prices be fixed at a level below the cost to the business providing the services.
21. The views of RACQ and interested parties are considered in the assessment section of this draft determination.³

ACCC assessment

22. On 6 November 2017 a number of amendments to the Act came into effect, including changes to the authorisation provisions in Division 1 of Part VII of the Act. Pursuant to section 183(2), these changes apply to applications for authorisation under consideration by the ACCC on or after 6 November 2017.
23. The ACCC's assessment of the Conduct is carried out in accordance with the relevant authorisation test⁴ contained in the Act.
24. In this case, pursuant to subsections 90(7) and 90(8) of the Act, the ACCC must not make a determination granting the substitute authorisation in relation to conduct unless it is satisfied that in all the circumstances that the conduct would result, or be likely to result, in a benefit to the public, and that benefit would outweigh the detriment to the public that would result, or be likely to result, from the conduct.⁵
25. To assist the ACCC's assessment of conduct against the authorisation test, the ACCC identifies the relevant area(s) of competition and compares the benefits and detriments likely to arise in the future with the conduct for which authorisation is sought against those in the future if the conduct did not occur.

Relevant areas of competition

26. To assess the effect of the Conduct, the ACCC may identify the relevant areas of competition likely to be impacted.
27. RACQ submits that there are a number of different automotive repair services which may not be substitutable for each other (such as automatic transmission repair, air-conditioning repair or fuel injection repair).
28. RACQ notes that while there are a number of repair businesses that have branches throughout Queensland and throughout Australia, including through franchise and dealership arrangements, by their very nature, automotive repair services are essentially local.

³ Copies of public submissions may be obtained from the [ACCC website](#).

⁴ Subsections 91C(7), 90(7) and 90(8) of the Act.

⁵ As a cartel provision applies to the Conduct, the alternative test under sub-section 90(7)(a) of the Act does not apply: section 90(8).

29. RACQ submits that there are 5,100 motor vehicle mechanical repairer and maintenance businesses in Queensland. Noting that the four largest industry participants account for less than 40 per cent of industry revenue, RACQ submits that the industry is not highly concentrated and is primarily made up of small and privately owned businesses. The RACQ advises that there are currently 298 RACQ Approved Repairers, which it estimates to constitute approximately 5.8 per cent of the total repairers in Queensland.⁶
30. The ACCC does not consider that it is necessary to precisely identify the relevant areas of competition in assessing this application. However, the ACCC agrees with RACQ that the relevant areas of competition likely to be affected by the Conduct are those for the localised provision of each kind of specialist vehicle repair service, in which generalist repairers, large chain repairers and vehicle manufacturers' repair networks compete against specialist repairers. By its nature the Conduct is intended to provide customers with confidence that they will be able to obtain the necessary repairs regardless of which local area within Queensland they happen to be in when the problem arises.

Future with and without

31. To assist in its assessment of the Conduct, the ACCC compares the likely future with the Conduct for which authorisation is sought and the likely future without the Conduct the subject of the authorisation. The ACCC compares the public benefits and detriment likely to arise in the future where the Conduct occurs against the future in which the Conduct does not occur.
32. In the original authorisation decision the ACCC accepted RACQ's submission that it would not offer a reciprocal warranty scheme without the Conduct. The ACCC considers that this is still the most likely future without the Conduct.

Public benefit

33. The Act does not define what constitutes a public benefit and the ACCC adopts a broad approach. This is consistent with the Tribunal which has stated that the term should be given its widest possible meaning, and includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.⁷

34. The RACQ submits that the Conduct results in the following public benefits:
- a. members have the benefit of having warranty issues addressed without cost at 298 locations in Queensland, reducing the distance required to travel for repairs
 - b. members are able to have their concerns addressed by an alternative repairer where they may have lost trust in the original repairer
 - c. members are not required to manually seek reimbursement from the original repairer for warranty repairs as a result of the repairer to repairer chargeback mechanism. The RACQ submits that this also results in

⁶ The Royal Automobile Club of Queensland Limited, Supporting submissions, 1 December 2017, p 3.

⁷ *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cited with approval in *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677.

reduced transaction costs for consumers who are not required to advance the funds in anticipation of reimbursement and

- d. assisting RACQ Approved Repairers to better compete with larger industry players who have the benefit of integrated or franchised networks.

35. At the end of 2017, the RACQ conducted a survey of its RACQ Approved Repairers to evaluate the operation of the reciprocal warranty scheme during the original authorisation period. The RACQ submits that this data suggests that over the four year period since the Conduct was introduced, approximately 80 reciprocal warranty jobs were undertaken per annum with an average value of between \$75 and \$200. The RACQ submits that the most common reason cited by RACQ Members for attending an RACQ Approved Repairer different to the original repairer is the proximity of the repairer. Other reasons included the specialist skill of the warranty repairer and a loss of trust with the original repairer.⁸

36. The ACCC accepts that the Conduct has resulted, and is likely to continue to result in a number of public benefits, namely by:

- a. promoting competition for automotive repairs more generally by enabling small businesses to offer guaranteed repairs which may enable them to better compete against larger network repairers
- b. providing RACQ Members with greater convenience by not having to return to the original repairer if those repairs have failed
- c. providing RACQ Members with greater confidence that automotive repairs performed by an RACQ Approved Repairer are covered by a warranty that ensures any defects in the original repair work may be performed by another RACQ Approved Repairer at no cost to the RACQ Member
- d. reducing the number of mediated disputes between RACQ Members and RACQ Approved Repairers.

Public detriment

37. The Act does not define what constitutes a public detriment and the ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.⁹

38. The RACQ submits that there is no evidence that the Conduct has resulted in any public detriment during the period of original authorisation. In particular:

- a. The RACQ Approved Repairer network comprises a small part of a highly competitive industry and accordingly there is no evidence of the Conduct having any impact on competitors in the market.

⁸ The Royal Automobile Club of Queensland Limited, Supporting submissions, 1 December 2017, p 5.

⁹ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

- b. The reciprocal warranty scheme relates to a small fraction of work – less than approximately 0.04 per cent of all jobs performed by RACQ Approved Repairers.¹⁰
 - c. The monetary value in question is minor.
 - d. The combined impact of the small number of jobs, monetary value and the fact that the rates are not charged to consumers (rather, only charged back to the original repairer) there is limited opportunity for these rates to impact RACQ Approved Repairers or the broader industry.
39. The MTAA expressed concern with the fixing of labour rates, in particular should these rates be fixed at a level below the cost to the business conducting the services. The MTAA expressed concerns regarding the potential for the Conduct to effectively result in price signalling for services other than warranty repairs and the RACQ's lack of transparency about the methodology for setting the labour rate. Further, the MTAA questioned whether the infrequent occurrence of warranty repairs rendered the Conduct unnecessary.
40. The RACQ notes in its response to the MTAA submission that it has not received any feedback from its network of repairers that the uniform labour rate is inadequate or otherwise not appropriate. Rather, the RACQ submits that it is in its interest to ensure a fair rate is agreed with all participants to facilitate the quick and uncontentious resolution of consumer warranty claims and payment for the reciprocal warranty work. The RACQ submits that while the volume of reciprocal warranty claims is modest, the uniform labour rate facilitates the operation of the reciprocal warranty arrangement between independent repair businesses.
41. The ACCC notes the MTAA's concerns regarding the adequacy of the uniform labour rate for some automobile repair businesses. The RACQ has provided the ACCC with confidential submissions detailing the quantum of the uniform labour rate and the methodology and rationale for its calculation. The ACCC considers the methodology used by the RACQ to calculate the uniform labour rate to be reasonable and the ACCC has not received submissions from RACQ Approved Repairers indicating concerns with the level of the rate used as part of the reciprocal warranty repair scheme.
42. Further, the ACCC considers that setting a fixed labour rate for reciprocal warranty repairs would be unlikely to impact broader prices for automotive vehicle repairs. If RACQ Approved Repairers were to set labour rates above competitive levels they would likely lose market share to other local repairers.
43. Based on the information before the ACCC, the ACCC considers that the Conduct has resulted, and is likely to continue to result in little, if any, public detriment as:
- a. The automotive repair industry in Queensland appears competitive.
 - b. Setting a fixed labour rate for reciprocal warranty repairs is unlikely to impact broader prices for automotive vehicle repairs.
 - c. RACQ Approved Repairers account for approximately 5.8 per cent of all automotive repairers in Queensland and only 30 per cent of Queensland drivers are currently RACQ Members.

¹⁰ The Royal Automobile Club of Queensland Limited, Supporting submissions, 1 December 2017, p 6.

- d. The number of reciprocal warranty repairs is very small (0.04 per cent).
- e. The labour rate that the RACQ sets for warranty repairs is not paid by consumers but by the original repairer. Given repairers were likely to both pay and be paid at this rate for warranty repairs, it is in RACQ's interest to maintain the labour rate at a reasonable level if they intend repairers to sign up to the RACQ Approved Repairer agreement.

Balance of public benefit and detriment

- 44. Broadly, the ACCC must not grant re-authorisation unless it is satisfied, in all the circumstances, that the Conduct for which re-authorisation is sought is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment.
- 45. For the reasons outlined in this draft determination, the ACCC considers the public benefits outweigh the minimal, if any, detriment to the public, including any lessening of competition, likely to result from the Conduct.
- 46. Accordingly, the ACCC is satisfied that the authorisation test is met and proposes to grant re-authorisation.

Length of authorisation

- 47. The Act allows the ACCC to grant authorisation for a limited period of time.¹¹ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
- 48. The RACQ seeks re-authorisation for a minimum of 5 years. The Conduct has been operating since 2013 and there are no proposed changes to the Conduct.
- 49. Given that the Conduct has been operating since 2013 and has resulted in public benefits and minimal, if any, public detriment, the ACCC considers that authorisation for a further period of ten years is appropriate.

¹¹ Subsection 91(1)

Draft determination

The application

50. On 5 December 2017 the RACQ lodged an application to revoke authorisations A91358 and A91359 and substitute authorisation AA1000408 for the ones revoked (referred to as re-authorisation). This application for re-authorisation AA1000408 was made under subsection 91C(1) of the Act.

51. The RACQ seeks re-authorisation for:

- a. The RACQ and RACQ Approved Repairers to enter into and to give effect to a contract, arrangement or understanding that fixes, maintains or controls the price that an RACQ Approved Repairer may charge back to another RACQ Approved Repairer for the labour component of any warranty repair work performed on that other RACQ Approved Repairer's behalf
- b. RACQ Approved Repairers to refuse to:
 - i. provide a reciprocal repair warranty to non-RACQ members,
 - ii. perform repair services under the reciprocal repair warranty arrangement without charge to the customer to non-RACQ members, and
 - iii. provide warranty services at no charge to RACQ members if the original repairs were not performed by another RACQ Approved Repairer.

(together the **Conduct**).

52. Subsection 90A(1) of the Act requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

The net public benefit test

53. For the reasons outlined in this draft determination, the ACCC is satisfied, pursuant to subsections 90(7) and 90(8) of the Act, that in all the circumstances the Conduct for which re-authorisation is sought would result or be likely to result in a public benefit that would outweigh any detriment to the public that would result or be likely to result from the Conduct.¹²

¹² As a cartel provision applies to the Conduct, subsection 90(7)(a) of the Act does not apply pursuant to section 90(8) of the Act. For applications for re-authorisation, section 91C(7) of the Act provides that the ACCC may only revoke an authorisation and grant a substitute authorisation if it is satisfied that the proposed substitute authorisation satisfies the relevant authorisation test.

Conduct which the ACCC proposes to authorise

54. The ACCC proposes to revoke authorisations A91358 and A91359 and grant authorisation AA1000408 in substitution for the ones revoked.
55. Re-authorisation is for the Conduct defined at paragraph 51 and applies to the Conduct in so far as it contains a cartel provision within the meaning of Division 1 of Part IV of the Act or constitutes the practice of exclusive dealing in section 47 of the Act.
56. Under section 88(2) of the Act, the ACCC proposes to extend the authorisation to future RACQ Approved Repairers.
57. The proposed re-authorisation does not specify or endorse any specific labour rate. Rather, the ACCC proposes to grant immunity for the conduct of setting a fixed labour rate for reciprocal warranty repair work only. RACQ has the ability to change the labour rate over the 10 year duration of the proposed authorisation.
58. The ACCC proposes to grant re-authorisation for ten years, from the date the proposed authorisation comes into effect.
59. This draft determination is made on 1 March 2018.

Next steps

60. The ACCC now seeks submissions in response to this draft determination. In addition, consistent with section 90A of the Act, the RACQ or an interested party may request that the ACCC hold a conference to discuss the draft determination.