

13 JAN 2000

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Our Ref: IRF:JER:635448
Your Ref: Jewel Gilbert (ACT)
N70086 to N70135

FILE No:

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13 January 2000

BY HAND

Australian Competition and Consumer Commission
223 Adelaide Terrace
PERTH WA 6000

Adelaide Brisbane Cairns
Canberra Melbourne Perth
Sydney Auckland Wellington
Hanoi Ho Chi Minh City

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Dear Sir / Madam

**THE ROYAL AUTOMOBILE CLUB OF WESTERN AUSTRALIA (INC)
NOTIFICATIONS OF EXCLUSIVE DEALING – THIRD LINE FORCING
RAC REWARDS AND RECOGNITION PROGRAM**

REQUEST FOR CONFIDENTIALITY

We act for the Royal Automobile Club of Western Australia (Inc) (the 'RAC').

We refer to our letters dated 1 October 1999 and 4 October 1999 and the exclusive dealing notifications lodged with those letters.

We **enclose** additional notifications that arise out of the RAC Rewards and Recognition Program known as attractions (the 'Program'), together with a cheque for \$2,600.00 in payment of the lodgement fees. The notifications pertain to goods and services supplied in Western Australia by Best Western, Baby Zone, Total Eden and the Black Swan Theatre Company (the 'Retail Partners'). The notifications are supported by a set of submissions and an annexed schedule of offers proposed to be made to RAC members pursuant to the Program.

The details of the offers to be made by the Retail Partners to RAC members pursuant to the Program is commercially sensitive information. The RAC in conjunction with the RAC Group and the Retail Partners will promote the offers in accordance with the

marketing objectives of the RAC. If the details of the offers are made publicly available prior to their release by the RAC, competitors to the RAC and competitors to the Retail Partners proposing to make offers to RAC members will receive an unfair advantage and the RAC and the Retail Partners will not achieve their marketing objectives.

To this end, the RAC requests that the annexed schedule detailing the offers proposed to be made pursuant to the Program be kept confidential and not placed as part of the materials that are available for inspection on the public register of notifications lodged with the ACCC.

Letter from the Adjudication Branch

We refer to the letter of the Senior Assistant Commissioner of the Adjudication Branch at the ACCC dated 22 October 1999 confirming that the notifications lodged on 1 October 1999 and 4 October 1999 (N70086 to N70135) will stand.

In due course, we request that the Adjudication Branch send us a similar letter confirming receipt of the enclosed notifications, together with the status of the notifications.

We look forward to hearing from you shortly. Should you have any questions, please do not hesitate to contact Justine Rowe on direct line (08) 9288 6827.

Yours sincerely

Iain Freeman
Partner

Enc Notifications (26), submissions and schedule
Cheque for lodgement fees

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COMMONWEALTH OF AUSTRALIA
Trade Practices Act 1974-Sub-section 93 (1)
EXCLUSIVE DEALING:
NOTIFICATION

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To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93 (1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in subsection 47 (2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d), of that Act in which the person giving notice engages or proposes to engage.

1 (a) Name of person giving notice:

TOTAL EDEN WATERING SYSTEMS PTY LTD (ACN 008 960 209)

(b) Short description of business carried on by that person:

Retail of reticulation systems and components and ornamental pools and pumping systems

(c) Address in Australia for service of documents on that person:

6 Port Pirie Street, BIBRA LAKE WA 6163

2 (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates

Various retail goods and services in the category of reticulation systems and components and ornamental pools and pumping systems.
Membership of the Royal Automobile Club of Western Australia

(b) Description of the conduct or proposed conduct

Under the RAC Reward & Recognition Program, where a person is a member of The Royal Automobile Club of Western Australia (inc) ("the RAC"), he or she will be given an RAC member card, and that card may be presented by the RAC member to third parties known as the Retail Partners or related companies of the RAC. The person giving this notice is a Retail Partner. The Retail Partners will:

- (1) supply or offer to supply;
- (2) supply or offer to supply at a particular price; or
- (3) give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply of, other goods or services to the person on condition that the person will become an RAC member or has acquired RAC membership; and/ or

The Retail Partners may refuse to:

- (1) supply or offer to supply goods or services;
- (2) supply or offer to supply at a particular price; or
- (3) give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply of, other goods or services to the person unless or on condition that the person will become an RAC member or has acquired RAC membership.

3 (a) Class or classes of persons to which the conduct relates: RAC members

(b) Number of those persons?

- | | | |
|------|--------------------------------|---------|
| (i) | At present time | 408,900 |
| (ii) | Estimated within the next year | 412,785 |

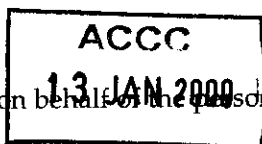
(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses: Not Applicable

4 Name and address of person authorized by the person giving this notice to provide additional information in relation to this notice

Peter Birch c/- of RAC - 228 Adelaide Terrace Perth WA 6000 and
Ian Pitts c/- Total Eden Watering Systems - 6 Port Pirie Street, Bibra Lake

Dated

Signed by/on behalf of the person giving this notice



13th January 2000

PETER JOHN BIRCH

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**SUBMISSIONS IN SUPPORT OF NOTIFICATIONS OF
EXCLUSIVE DEALINGS RELATING TO RAC REWARDS AND
RECOGNITION PROGRAM**

1. This submission is in support of separate exclusive dealing notifications by a number of companies in connection with a member loyalty scheme commenced by the Royal Automobile Club of Western Australia (Inc) ('the RAC') in October 1999.

The RAC Club

2. The RAC Group comprises the RAC, an incorporated association under the WA Associations Incorporations Act, and its subsidiaries RAC Insurance Pty Ltd, RAC Travel Services Pty Ltd, RAC Finance Limited, RAC Insurance Investments Pty Ltd and RAC Glass and Security Services Pty Ltd.
3. The governing body of the RAC is the Council, which comprises 15 councillors elected by the members of the Club. Each subsidiary has a separate Board of Directors comprising senior management and representatives from the Council.
4. Membership of the RAC is open and on joining a member of the public is required to pay one-off joining fee, which is currently \$25.00, and there is also an annual subscription fee, which is currently \$48.00.
5. At 30 September 1999, the RAC had approximately 408,900 members and provides 24-roadside assistance to approximately 511,000 vehicles nominated by members. It is anticipated that by 30 September 2000 the number of members will be 412,785.
6. The RAC is a non-profit organisation, which under the provisions of the Associations Incorporations Act in its Rules cannot trade. It provides motoring goods and services to members in return for an annual subscription fee. Its subsidiaries have been formed to carry on trading enterprises that provide further services and provide funds to further the provision of benefits. The RAC and its subsidiaries ('RAC Group') are a mutual incorporated group the ultimate members of which cannot, under the provisions of the Associations Incorporations Act and its Rules, share in profits. It operates for the mutual benefit of those ultimate members. Its activities and trading are carried on through the subsidiaries, without maximising profit, for the mutual benefit of RAC members and provide a wider community service.

Member Loyalty Program

7. In October 1999, the RAC commenced marketing a member loyalty program known as 'RAC Rewards and Recognition Program' and marketed at 'attractions'.
8. Each member of the RAC has been issued with a new membership card, which entitles them to a range of discounted goods and services supplied by:
 - 8.1 external third parties; and
 - 8.2 the RAC Group.
9. To this end the RAC applied for tenders to interested third parties to participate in the RAC Rewards Program, and who agree to provide a range of discounted goods or services, or special goods or services to RAC members.

Categories of Membership

10. Five different types of cards were issued corresponding to the length of time a person has been a member of the RAC. The categories are Blue Card (0-4 years), Bronze Card (5-9 years); Silver Card (10-24 years); Gold Card (25-49 years) and Life Card (50 years plus).
11. It is anticipated that future offers may distinguish between the different categories of members.

The Terms of the Agreement between the RAC and the Retail Partners

12. Individual agreements have been entered into between the RAC and each of the third parties who successfully tendered for participation in the RAC Rewards Program. These third parties are referred to as Retail Partners.
13. It is a term of the agreements that the Retail Partner will provide certain offers to RAC members.
14. To avoid any negative implications under the Trade Practices Act, it is not a term of the agreements that the Retail Partners must only extend the offer to RAC members.
15. The Retail Partners will be at liberty to provide the special offers to other members of the public.

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Promotion of the RAC Rewards Program

16. The primary vehicle for promotion of the RAC Rewards Program is via an 8 page colour insert in each issue of the bi-monthly publication sent to RAC members called "Road Patrol".
17. In addition the RAC distributes to each of its members a directory of services, which details the Retail Partners, and the special offers that they will extend to RAC members.
18. RAC members, if they choose to elect to purchase goods or services from the Retail Partners provide at the point of sale their membership card as proof of membership of the RAC in order to avail themselves of the offer.
19. The RAC Rewards Program is promoted throughout merchandising at retail outlets of the Retail Partners and within the RAC Group.

Offers made by the Retail Partners pursuant to the RAC Rewards Program

20. We refer to the notifications lodged on 1 October 1999 and 4 October 1999, and the annexures to the notifications. In addition to the current Retail Partners, attached is a schedule of the new Retail Partners and the special offers that they have agreed to provide to RAC members. The new Retail Partners will be advertised and commence the provision of offers from 1 February 2000.

Offers made by RAC Group pursuant to the RAC Rewards Program

21. In addition to offers made by the Retail Partners, the following entities within the RAC Group will continue to offer discounted goods and services to members of the Club:
 - 21.1 RAC Glass and Security Services Pty Ltd;
 - 21.2 RAC Travel Services Pty Ltd; and
 - 21.3 RAC Finance Limited

Spot Promotions

22. It is also anticipated that spot promotions will be run by the RAC Group in which third parties will agree to extend offers to RAC members from time to time, and that these offers will be promoted in the "Road Patrol" and within the RAC Group.

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Possible application of Trade Practices Act

23. On one interpretation of the RAC Rewards Program the offers to be made by the Retail Partners and the RAC Group are conditioned by the requirement that the proposed acquirer of the goods or services must have first acquired membership from the RAC. Hence section 47(6) and (7) of the Trade Practices Act may arguably apply.

Public Benefit

24. We refer to notifications N70086 to N70135. The Senior Assistant Commissioner of the Adjudication Branch of the ACCC held, by letter dated 22 October 1999, that it is unlikely that the detriment to the public from the conduct will outweigh the likely benefit. Accordingly notifications N70086 to N70135 were allowed to stand.
25. For the same reasons as lodged on 1 October 1999, we submit that it is unlikely that the detriment to the public from the conduct will outweigh the likely benefit and request that the enclosed notifications be allowed to stand. Please let us know if you require further submissions.

Market Position

26. Neither the RAC nor any of the Retail Partners have sufficient market power in the markets they operate to force a member of the public to become a member of the RAC. The RAC Rewards Program simply confers additional benefits to membership of the Club. An analysis of the Retail Partners and the discounts offered reveals that there is no actual or practical compulsion on members of the public to join the RAC beyond that which can be characterised as a normal exercise of a person's consumer sovereignty to acquire the most value for his or her consumer dollar.
27. In any event the offers to be extended by the Retail Partners are not exclusive to members of the RAC. There will be no contractual requirement on the Retail Partners that they must refrain from extending the same or similar offers to members of the public generally. A member of the public will be able to negotiate the best deal for him or herself to acquire goods or services from the Retail Partners without the necessity of becoming an RAC member.

Peter John Birch
 RAC
 228 Adelaide Terrace
 PERTH WA 6000

DATE: 11 January 2000

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FOLIOS

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RESTRICTION OF PUBLICATION

CLAIMED 13/1/2000

GRANTED

DECISION PENDING