



N90860

Form G

Commonwealth of Australia
Trade Practices Act 1974 --- Sub-section 93(1)

EXCLUSIVE DEALING NOTIFICATION

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 sub-section 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.

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice Aerial Taxis Cooperative Society Limited

(See Direction 2 on the back of this form)

(b) Short description of business carried on by that person
Provision of Taxi services in the ACT

(c) Address in Australia for service of documents on that person
Po. Box 22 Lyons ACT 2606

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
In car security camera systems - brand name Sigtec.

(b) Description of the conduct or proposed conduct
see attached

(See Direction 4 on the back of this Form)

3. (a) Class or classes of persons to which the conduct relates
Taxi operators

(b) Number of those persons--
(i) At present time 235
(ii) Estimated within the next year 243

(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses

4. Names and address of person authorised by the person giving this notice to provide additional information in relation to this notice.
Chamberlain's Taxi Firm - Mr Tony Chamberlain
Po Box 252 Deakin West ACT 2600

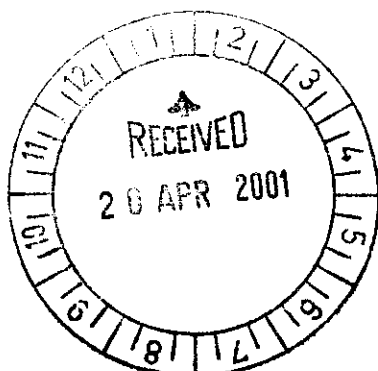
Dated 2/4/2001

Signed by/on behalf of the applicant giving notice


(Signature)

John David Mull
(Full Name)

Chief Executive
(Description)



DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b) (ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9) (d) of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93(7a) of the Act ("the prescribed period") unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

Submission of Aerial Taxis in Respect of Third Line Forcing Notification Application

Summary

In 2000 the Board of Aerial Taxi Cabs Co-Operative Society Ltd ("Aerial") voted to make the installation of security cameras in all taxis a prerequisite to the operation of a taxi on the Canberra Cabs network.

The installation of the cameras will result in a significant public benefit in terms of improved driver safety and less opportunity for fare evasion and other disorderly conduct by passengers and better service by drivers.

However these benefits will only be fully realised if Aerial is able to ensure the quality and compatibility of the equipment to be included and for that reason, is able to mandate the brand and model of camera.

Aerial has conducted significant research into the most appropriate brand of security camera. Trials were conducted in an open and competitive manner. The Board considered all the major competing brands and chose one that offered the best response to its needs including compatibility with existing equipment. The decision to recommend Sigtec is based upon this research and upon the need for an integrated system that operates alongside existing technology and infrastructure.

It is not possible to provide for alternative cameras types without significant modification to cabs and/or the system through which the images are collected and stored.

Aerial acknowledges that the arrangements may have some anti-competitive effect on the market for security cameras and the Operators' ability to choose an alternative competing brand of camera. However it is submitted that the public benefits associated with an effective, efficient and integrated security camera system outweigh these mildly anti-competitive effects in what is, in any event, a very limited market.

Description of Proposed Conduct

The Applicant

Aerial Taxi Cabs Co-Operative Society Ltd (“Aerial”) is a co-operative trading society registered under the Co-operative Societies Act 1939 (ACT) and trading under the name “Canberra Cabs”. The Society’s membership is comprised of persons licensed under the Motor Traffic Act (ACT) to operate motor vehicles as taxis. At the present time there are 235 Taxi Owners associated with Aerial, and these people are referred to herein as “Operators”.

Aerial’s rules state, amongst other things, that Aerial’s objects are:

- to organise and operate a taxi cab service in the Australian Capital Territory; and
- to organise and operate a radio-telephone base station and office in connection with that taxi cab service.

Aerial’s practical role primarily involves taking bookings from customers and the allocating from a radio-telephone base station of such bookings to taxi cabs then on call. The Board also makes a variety of decisions that concern the operation of Taxis in the ACT. It also has the power to make by-laws relating to drives and public safety.

The Aerial Board, as constituted under the Rules, comprises seven directors. These directors are elected by the members of Aerial.

The role of the Board is to manage and control the Co-Operative’s business and operations.

Background to the Conduct

In 2000 and in response to a number of incidents and public and driver demand, the Aerial Board made the decision to install security cameras in all taxi cabs whose operators are members of Aerial.

With the goal of installing cameras in mind, Aerial gave consideration to all three of the known nationally competing brands of security camera. After investigation it was concluded that a single brand of camera, Sigtec, was the most efficient and effective means of providing the services. Further, only the Sigtec camera proved compatible with the existing taxi equipment and infrastructure at Aerial.

Aerial originally intended that all Operators would either purchase the cameras direct from Sigtec or take advantage of leasing arrangements administered by the Co-Operative. However not all Operators accepted this.

Consequently, in February 2001 Canberra Cabs issued a “Notice to Members & Operators” in the following terms:

“As a result of the less than complete response to the camera financing options required by 2 February 2001, and bearing in mind the need to equip all cars in the Canberra Cabs fleet with security cameras within the shortest practicable time frame, the Board has adopted the following measures.

To enable firm planning for equipment installations to proceed it is essential that the all operators demonstrate, by 23rd February 2001,

that they have concluded firm arrangements for the supply of equipment to them.

- For operators who will be leasing through the Co-Operative, individual leasing documents will be available for signature from 14 February 2001. Please attend the base to sign.
- For those operators who will be purchasing through the Co-Operative the GST inclusive full price of \$2,691 including 5 year warranty costs, can be paid at the Base from 14 February 2001.
- For those operators who will be entering into rent, lease or purchase arrangements direct with Sigtec, a copy of that arrangement will be required to be lodged with the Co-operative by 23 February 2001.

In the event that an operator has not complied with the arrangement detailed above by 23rd February 2001, the Co-operative will enter into a purchase order for the equipment from Sigtec, on the operator's behalf. The costs of this arrangement will then be deducted, in full, from the operator's next remittance.

Should this leave insufficient funds in the remittance to meet Base fees, the operator will be required to meet the full costs of those fees in order to continue to receive the booking despatch services.

Aerial subsequently notified its members that it would not enter into a purchase order on their behalf and resolved that it would treat a failure to install cameras as a breach of Aerial's by-laws and, therefore, as a disciplinary issue.

The result is that Operators who wish to avoid disciplinary action and remain members of the Co-operative with full access to the radio system and other administrative services offered by Canberra Cabs must either purchase, lease or otherwise arrange for the installation of a camera.

Aerial realises this arrangement may constitute a technical breach of the prohibition on third line forcing in section 47 of the Trade Practices Act. Aerial also understands that a small number of operators are concerned about their inability to make a choice with respect to the brand of camera on offer. However it is submitted that the benefits and practicality of this arrangement offers benefits to the public that outweigh the mildly anti-competitive detriments.

Rationale for Decision and Public Benefit

This decision to install cameras in all ACT taxis was made with the welfare of taxi drivers and the public in mind.

The most obvious stimulus for the decision was a series of violent attacks on taxi drivers in the course of their work. These attacks made it imperative that something be done to protect drivers. In car cameras were seen as providing both a deterrent and a means by which offenders could be caught. Furthermore, the cameras had the potential to minimising the continual problems of fare evaders and other disorderly passengers. They could also be of benefit to the public by ensure that the taxi drivers themselves acted in a proper and professional manner.

Consequently, the Aerial Board enacted a by-law making the acquisition of cameras compulsory. Unfortunately Aerial has also found that as a matter of practicality, it does not have any practical option but to mandate the type of camera.

The Aerial Board conducted a thorough investigation and gave consideration to all three nationally competing brands of security camera. The investigations were conducted by Aerial on the Operators' behalf and saved them considerable time and expense and included objective trials.

Aerial's research concluded that in order to fulfil the purposes for which they were designed, the cameras in individual taxis must operate as part of a network constituting an image download station. This station must securely store the images in case the Australian Federal Police should require access to them. With this consideration in mind, it was decided that a single brand of security camera system with its own proprietary download software was technically and administratively the most appropriate action to take.

Moreover, the trials indicated that only the Sigtec brand of camera operated without detriment to the other electrical and electronic equipment already installed in the Canberra Cabs. Altering or removing the existing equipment in order to allow drivers the choice of other cameras was not and is not an option because the equipment is integral to the computer dispatch system used by the taxis to communicate with the base.

The result of both these factors is that the public benefits of security cameras, that is, the security advantages to both drivers and customers, will only be met if all drivers purchase the one approved brand of security camera.

Aerial acknowledges that this requirement for uniformity will limit the Operator's right to choose an alternative brand of camera. However the public benefit of having a safe, reliable and effective system of security cameras in cabs outweigh the slight anti-competitive effect on the market for security cameras as a whole.

Aerial also acknowledges that as well as concern over the brand name of the cameras, some operators have objected to the anti-competitive effects of the financing arrangements in place. The Co-operative does not believe that these concerns are justified. Operators who do not want to avail themselves of the lease finance package offered by Canberra Cabs are able to negotiate direct with Sigtec directly or obtain finance from a third party in order to purchase the camera from Sigtec. The financing arrangements on offer through Aerial represent an additional financing option rather than a lessening of competition.

Conclusion

In February 2001 the Board of Aerial Taxis mandated that all Operators of taxis using the Canberra Cabs network to install a Sigtec camera.

The decision to choose Sigtec as the single supplier was necessary to ensure compatibility between camera software and the network that will collect and store images. The decision was made only after the consideration and trial of all the major competing brands. Importantly, these trials indicated that Sigtec is the applicable brand of camera that can be installed without significant modification of existing taxi equipment.

Operators are required to purchase a Sigtec camera. However they have been offered three alternative means by which the purchase the cameras, including the right to make their own financial arrangements.

It is acknowledged that the proposed arrangements do have a slight anti-competitive effect on the market for security cameras. However, it is submitted that any detriment is outweighed by the public benefits of having a effective, efficient and fully integrated network of security cameras in Canberra's cabs.

Contacts

Should you have any further questions please contact one of the following:

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