

■ PHILLIPS FOX ■  
LAWYERS

ACCC

14 MAR 2001

PERTH

Our Ref: CRW:IRF:685653  
Your Ref: Jewel Gilbert (ACT)  
N70086 to N70135



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14 March 2001

Adelaide Brisbane Canberra  
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**BY HAND**

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Australian Competition and Consumer Commission  
233 Adelaide Terrace  
PERTH WA 6000  
**Attention: Ms Jewel Gilbert (ACT)**

[www.PhillipsFox.com.au](http://www.PhillipsFox.com.au)

ABN 47 488 578 158

Dear Ms Gilbert

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

We refer to our letter, dated 14 February 2001, enclosing a schedule showing the modifications to the RAC Rewards and Recognition Member Loyalty Program known as attractions ('the Program') effective 1 March 2001.

We **enclose** additional Notifications which arise out of the Program, together with a cheque for \$200 in payment of the lodgement fees. The Notifications pertain to goods and services supplied in Western Australia by the following:

- Fletcher Kipling Pty Ltd trading as the Leather House
- Orica Investments Pty Ltd

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 of Offers, 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.

Should you have any questions, please do not hesitate to contact Claire Whisker on direct line (08) 9288 6927.

Yours sincerely

Iain Freeman  
Partner

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14 MAR 2001

**PERTH**

- Enc. 1. Notifications (x2)  
2. Submissions  
3. Schedule of Offers  
4. Cheque for lodgement fees - \$200

14 MAR 2001

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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 \$33.00, and there is also an annual subscription fee, which is currently \$53.90 for standard cover and \$93.50 for plus cover.
5. At 31 August 2000, the RAC had approximately 402,532 members and provides 24-roadside assistance to approximately 511,000 vehicles nominated by members. It is anticipated that by June 2001, 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****PERTH**

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.

**Promotion of the RAC Rewards Program****PERTH**

16. The primary vehicle for promotion of the RAC Rewards Program is via a 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 28 March 2000, 9 May 2000, 17 July 2000, 19 September 2000, 27 September 2000 and 16 November 2000 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 they have agreed to provide to RAC members. The new Retail Partners will be advertised and commence the provision of offers from 1 April 2001.

**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.

**Possible application of Trade Practices Act****PERTH**

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: 14 March 2001

FORM G

Regulation 9

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

ACCC

14 MAR 2001

PERTH

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:

ORICA INVESTMENTS PTY LTD (ABN 67 000 049 427)

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

Provision of car care and household products

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

1 Gow Street, Padstow NSW 2211

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

Various car care products  
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

(b) Number of those persons?

(i) At present time 402,532

(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 Clarence Anthony of 1 Gow Street, Padstow NSW 2211

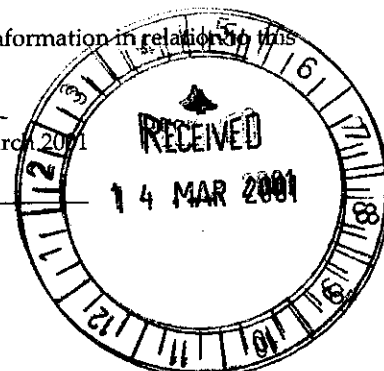
Dated

Signed by/on behalf of the person giving this notice

61769286/685653

PETER JOHN BIRCH

March 2001



## 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 subsection 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 subsection 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 subsection 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 subsection 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.

**ACCC**  
1 MAR 2001  
**PERTH**