

BLAKE DAWSON WALDRON

L A W Y E R S

AUST. COMPETITION &
CONSUMER COMMISSION
MELBOURNE

24 DEC 2003

Australian Competition & Consumer Commission
Level 35, The Tower
360 Elizabeth Street
MELBOURNE VIC 3000

Level 39
101 Collins Street
Melbourne VIC 3000

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Partner
Ayman Guirguis
Telephone (03) 9679 3778

Contact
Daniel Preston
Telephone (03) 9679 3578

Our reference
DANP:1358-5864

24 December 2003

Dear Sir/Madam

Geelong Otway Tourism Inc – Exclusive Dealing Notification

We act for Geelong Otway Tourism Inc and enclose the following on behalf of our client:

1. Notification of Exclusive Dealing (Form G);
2. Submission in support of the notification under s 93(1) of the *Trade Practices Act* 1974 (Cth); and
3. Our cheque for \$1,000 in respect of the filing fee for the third line forcing notification.

In the meantime, please contact Daniel Preston if you have any queries in relation to the attached notification.

Yours faithfully

Blake Dawson Waldron

MELBOURNE
SYDNEY
BRISBANE
PERTH
CANBERRA
LONDON
PORT MORESBY
JAKARTA
SHANGHAI

FILE No:

DOC: D03/48441

MARS/PRISM:

141599584

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 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.

(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)

1. (a) Name of person giving notice.....Geelong Otway Tourism Inc
(See Direction 2 on the back of this Form)
 - (b) Short description of business carried on by that personAssociation representing various municipal councils, responsible for the promotion of Geelong Otway as a tourist destination.
 - (c) Address in Australia for service of documents on that person Roger Grant, Geelong Otway Tourism, 57-59 Brougham Street, Geelong, Vic 3220.
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relatespromotion services.
 - (b) Description of the conduct or proposed conductRequiring tourism operators to acquire membership of a local tourism association prior to having their brochures displayed in an accredited Visitor Information Centre.
(See Direction 4 on the back of this Form)
3. (a) Class or classes of persons to which the conduct relates:
 - Geelong Otway Tourism; and
 - Tourism operators throughout the relevant region

2.

(b) Number of those persons-

(i) At present time approx 1200

(ii) Estimated within the next year approx 1200

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

.....
.....
.....
.....

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice Mr Ayman Guirguis, Blake Dawson Waldron, Level 39, 101 Collins Street, Melbourne, Victoria 3000 Australia .

Dated 24 December 2003

Signed by/on behalf of the person giving this notice

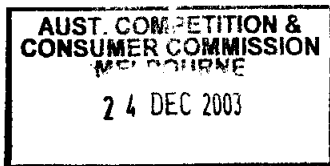

.....
(Signature)

AYMAN GUIRGUIS
.....

(Full Name)

PARTNER, BLAKE DAWSON WALDRON
.....

(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 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.

Submission to the Australian Competition and Consumer Commission
by Geelong Otway Tourism

1. INTRODUCTION

This submission is in support of a notification lodged under section 93(1) of the Trade Practices Act 1974 (Cth) ("the Act") in relation to conduct potentially falling within sections 47(6) or (7) of the Act. Accordingly, the relevant test to be applied by the Commission is set out in section 93(3A) of the Act, whereby the Commission assesses whether the public benefits associated with the relevant conduct outweigh any likely public detriment.

1.1 Geelong Otway Tourism

Geelong Otway Tourism is a Regional Tourism Association incorporated for the purpose of marketing and developing tourism within the municipal districts of the City of Greater Geelong, Surf Coast Shire, Colac Otway Shire, Golden Plains Shire and Borough of Queenscliff in the State of Victoria ("**the Region**").

The role of Geelong Otway Tourism, as a Regional Tourism Association, is to achieve sustainable visitor growth from beyond the Region through effective cooperative marketing and collaboration at all levels in the industry in a responsive and proactive manner.

1.2 Regional Tourism Associations

A Regional Tourism Association has the responsibility of assisting in providing the management, leadership and development of tourism in the relevant region through external marketing, enhanced management and leadership. Critically, its role includes acting as a focal point for all organisations and individuals involved, and interested, in tourism in a region. In carrying out this role, it liaises and co-operates with Local Tourism Associations to identify, promote and best utilise tourism opportunities in a region.

1.3 Local Tourism Associations

Four local tourism associations operate in the Region under the Geelong Otway Tourism "umbrella". They are Geelong by the Bay Tourism, Bellarine Peninsula Tourism, Otways Tourism and Surf Coast Tourism. A Local Tourism Association is primarily a local product-developing and local visitor-servicing organisation that liaises with the community. Local Tourism Associations work closely with relevant Regional Tourism Associations in order to co-ordinate local visitor facilities, services and activities and to seek new ways of upgrading tourism infrastructure in the local areas within a region.

1.4 Visitor Information Centres

Visitor Information Centres provide the opportunity for visitors to obtain local and regional information, make bookings and interact with local people. Visitor Information Centres provide services for visitors both before their visit and during their stay.

The Country Victoria Tourism Council ("CVTC"), the peak body representing local and regional tourism organisations is responsible for implementing and reviewing the Visitor Information Centre Accreditation Program ("VICAP"). VICAP is a component of the Better Business Tourism Accreditation Program, is based on industry developed best practice guidelines and is approved by the Tourism Accreditation Board of Victoria.

The following are the seven official accredited Visitor Information Centres in the Region:

- (a) Geelong Visitor Information Centre
- (b) Geelong - National Wool Museum
- (c) Queenscliff Visitor Information Centre
- (d) Torquay Visitor Information Centre - Surf City Plaza
- (e) Lorne Visitor Information Centre
- (f) Apollo Bay Visitor Information Centre - Great Ocean Road
- (g) Colac Visitor Information Centre

With the exception of the two Geelong facilities which are operated by Geelong Otway Tourism, the staffing, operations and management of these facilities are the responsibility of the respective local councils.

A Memorandum of Understanding ("MOU") between Geelong Otway Tourism and its relevant member municipalities governs the relationship between Geelong Otway Tourism and its municipal council partners. Under the terms of the MOU, Geelong Otway Tourism is responsible for coordinating the implementation of consistent display and distribution policies for all Visitor Information Centres in the Region. Annexed to this submission and marked "GOT-1" is a copy of the MOU.

1.5 Tourism in the Region

Tourism is an important contributor to the regional economy. In 2002, the Region attracted just under 2.146 million domestic overnight visitors and 3.735 million day trip visitors, a 12% share of the total domestic overnight and 13% share of day trip visitors to regional Victoria.

Sixty-five percent of domestic overnight visitors travelled to the region for a holiday (the same as in 2001), 28% to visit a friend or relative (up from 23% in 2001), and 6% for business/conference purposes (up from 4% in 2001). These visitors spent on average 2.8 nights in the region.

2. THE RELEVANT CONDUCT

Geelong Otway Tourism wishes to implement a policy whereby only financial members of a Local Tourism Association affiliated with Geelong Otway Tourism may display their individual brochures in an officially accredited Visitor Information Centre in the Region. There are no impediments to entities choosing to become financial members of Local Tourism Associations (we address the topic of membership fees below). Further, there

are no Local Tourism Associations in the Region that are not affiliated with Geelong Otway Tourism.

Membership of Local Tourism Associations in the Region raises approximately \$233,500 per year. All of these moneys raised are reinvested into the tourism industry, with 60% (approximately \$140,000) going to the regional association (Geelong Otway Tourism), and 40% (approximately \$93,500) remaining with the relevant Local Tourism Associations. Local Tourism Associations also obtain funding from sponsors and through Government funding programs.

Geelong Otway Tourism uses the money to promote the Region pursuant to Geelong Otway Tourism's 3 year business plan. The funds remaining with the Local Tourism Association contribute towards local marketing initiatives and the provision of visitor services locally.

2.1 Association membership fees

Tourism operators that become members of Local Tourism Associations affiliated with Geelong Otway Tourism are charged a membership fee. This fee varies depending on the type of membership taken out, but can range from approximately \$150 to \$1,000 depending on the size of the organisation applying for membership.

Geelong Otway Tourism does not differentiate between the different classes of membership for the purposes of the proposed brochure display policy.

2.2 Reason for the proposed membership requirement

The membership requirement is intended to assist in promoting the Region to the public, both domestically and internationally. The goal of the Regional and Local associations of strengthening the regional tourism industry is assisted by the take-up of membership of Local Tourism Associations within the Region.

The existence of a healthy regional tourism industry requires strong bodies that represent industry views and interests, communicate industry issues and ensure operators are informed of industry trends and practices.

3. PUBLIC BENEFIT

Geelong Otway Tourism submits that the proposed conduct will result in a greater uptake of membership of Local Tourism Associations, and that this in turn will result in the greater promotion of the Region and an increase in the level of services provided to the public by Local Tourism Association members. The increased levels of service will arise directly through the investment into the services provided locally by Local Tourism Associations, and indirectly, through:

- Visitor Information Centres;
- member training; and
- participation in regional and wider marketing initiatives.

The 60% of association membership revenue going to Geelong Otway Tourism supplements its other funding¹, and is used to promote the Region, and comply with its obligations to co-ordinate facilities, services and activities, advise on tourism upgrades and to evaluate marketing programs, visitor satisfaction, upgrading of facilities, product needs and overall tourism growth.

Examples of recent activities undertaken by Geelong Otway Tourism include the production and distribution of regional visitor guides, niche marketing campaigns (backpackers, cycling, mature travellers, incentive travel), journalist/trade familiarisation tours, regional investment strategy and sustainable tourism strategy.

The 40% of association membership revenue retained by Local Tourism Associations is used for more focused spending on visitor services at a local community level such as maintenance of a detailed local product inventory, encouragement of new tourist attractions and upgraded infrastructure, production and distribution of local maps and other related activities.

There are also a number of other public benefits that are created in a more indirect manner. The experience for a visitor in the Geelong Otway region is enhanced by members of a Local Tourism Association that have access to information and experience regarding customer preferences and industry innovations. This enhances and improves the reputation and service delivery of each of the businesses to consumers.

The roles of Geelong Otway Tourism and of the Local Tourism Associations assist in increasing the number of tourism operators involved in Local Tourism Associations affiliated with Geelong Otway Tourism. For the reasons listed above, this will improve the overall standard of tourism services provided to the visiting public and to businesses located within the Region.

4. DETRIMENT

There is no material detriment resulting from the proposed conduct. Approximately 95% of tourism operators in the Region are already members of affiliated Local Tourism Associations.

Further, notwithstanding the proposed conduct, there will remain a broad range and variety of marketing activities and opportunities available to all tourism operators (whether or not they are members of a relevant Local Tourism Association) through alternative mediums, including a range of private sector tourist publications, various web based tourism portals, airline and travel industry wholesale programs, as well as general print media advertising.

5. CONCLUSION

Consumers will benefit from the proposed conduct as the conduct will result in tourism operators having access to the broadest possible range of information regarding issues such as best practices and industry trends and are part of a body that can effectively represent their interests in the public forum. Additionally, the Region will benefit from

¹ Other funding comes from direct industry support, Government funding grants, sponsorship and municipal contributions.

the more co-ordinated marketing approach, and tourists will benefit from a better level of services provided in each local area within the Region.

The proposed conduct will enhance and improve business practices and performance across the industry which is of great economic significance to consumers and to the Region.



Memorandum

of understanding
until the year

MEMORANDUM OF UNDERSTANDING

between

GEELONG OTWAY TOURISM INC.

of 17 Gheringhap Street, Geelong ("G.O.T.")

and

MEMBER MUNICIPALITIES

comprising of

GREATER GEELONG CITY COUNCIL.....30 Gheringhap Street, Geelong
SURF COAST COUNCIL25 Grossmans Road, Torquay
COLAC OTWAY SHIRE COUNCIL2 Rae Street, Colac
QUEENSCLIFF BOROUGH COUNCIL50 Learmonth Street, Queenscliff
GOLDEN PLAINS SHIRE2 Pope Street, Bannockburn

(collectively called "the Councils")

RECITALS

- A. Geelong Otway Tourism is an association incorporated for the purpose of marketing and developing tourism within the municipal districts of the member Councils.
- B. Geelong Otway Tourism has prepared and adopted the attached Business Plan which details the marketing and development initiatives, and performance targets have been established to monitor performance.
- C. The Councils are members of Geelong Otway Tourism. In accordance with the rules of incorporation of Geelong Otway Tourism (the rules), the board of Geelong Otway Tourism fixes the amount of the annual subscription to be paid by the Councils on an annual basis. In lieu of payment of the annual subscription the Greater Geelong City Council meets the accommodation, administrative and staffing costs of Geelong Otway Tourism.
- D. The tourism industry as represented through the local tourist organisations and municipal tourism committees funds the marketing program of Geelong Otway Tourism through annual subscription and direct advertising. The marketing budget is further supplemented by sponsorship and relevant Federal and State Government grants.
- E. In order to achieve greater certainty of Council support for Geelong Otway Tourism over the period 2000 - 2004, and commitment from Geelong Otway Tourism to the implementation of the business plan, the parties have recorded their understanding of the relationship and obligations between the parties.

The parties as signatories to this document understand and record the following:

1. RESOURCING

1. Geelong Otway Tourism will dedicate financial resources to the implementation of the regional marketing and development initiatives as detailed in the business plan.
2. The City of Greater Geelong having regard to its overall budgetary constraints shall continue to provide at its cost, resources to staff, accommodate and allow effective administration of Geelong Otway Tourism.
3. The City of Greater Geelong shall continue to provide dedicated resources to Geelong Otway Tourism to seek, and support major sporting and cultural events and conferences within the municipality.
4. The Councils will continue to provide financial resources to Geelong Otway Tourism via annual subscription to support marketing and development initiatives as detailed in the business plan. The ratio of contribution between each Council shall be maintained on that established in the 2000/01 Financial Year.
5. The Councils will each be responsible for the provision of dedicated staff to further develop and coordinate local tourism whilst recognising that Geelong Otway Tourism will be the primary body promoting the region on behalf of the industry as represented by the local associations and the member Councils.
6. Geelong Otway Tourism will support Councils to attract tourism related investment and tourism infrastructure and where appropriate will work closely with Councils' Economic Development Boards and relevant Council officers.

2. ACCOUNTABILITY & COMMUNICATION

7. Geelong Otway Tourism will present to the Councils an acceptable annual progress report that details performance against key targets established in the business plan and outlines the marketing program and key result areas to be achieved by the board in the forthcoming financial year.
8. Geelong Otway Tourism will provide Council with regular statistical reports relating to the tourism performance of the region.
9. The Executive Director of Geelong Otway Tourism will, consult with Councils' Chief Executive Officers prior to establishing Councils annual subscriptions. To allow for Council budget consideration this will occur by March 31 each year.
10. The Councils recognise the independent role, structure, mission and expertise of Geelong Otway Tourism and understands the function also includes being an independent voice and advocate for the tourism industry in local and national media.
11. Geelong Otway Tourism will on request attend any Council meeting to discuss / present tourism related issues.
12. Geelong Otway Tourism in addition to holding board meetings approximately every six weeks and will regularly communicate with Councils, relevant staff and the industry membership of the local associations.

13. The Councils will encourage local and municipal tourism officers to attend regular designated staff meetings with Geelong Otway Tourism staff, and to communicate with the Geelong Otway Tourism office on a regular basis.

14. Geelong Otway Tourism will instigate and maintain a program of communication with members through local associations that ensures members are fully informed of Board activities and marketing program.

3. VISITOR INFORMATION CENTRES

15. The staffing, management and operations of Local Visitor Information Centres will be the responsibility of Councils, nominated bodies of Councils or Local Associations.

16. The City of Greater Geelong shall continue to provide dedicated resources to Geelong Otway Tourism to coordinate the staffing (volunteers and council staff) and operations of the local and regional Visitor Information Centres located within the municipality.

17. The Councils recognise the regional role of the Geelong Great Ocean Road Visitor Information Centre located at Stead Park Corio.

18. Geelong Otway Tourism will coordinate the implementation of consistent display and distribution policies for all Visitor Information Centres in the region.

19. Visitor Information Centre Co-ordinators from the Geelong Otway Region will meet on a regular basis to co-ordinate training, management and centre operations and to distribute relevant marketing materials.

4. GENERAL

20. Geelong Otway Tourism will not expand its membership base to include new municipal members unless agreed to by the board and all existing municipal members.

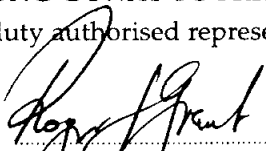
21. Geelong Otway Tourism will coordinate industry training and tourism policy formulation to ensure a consistent approach and application to tourism across the region.

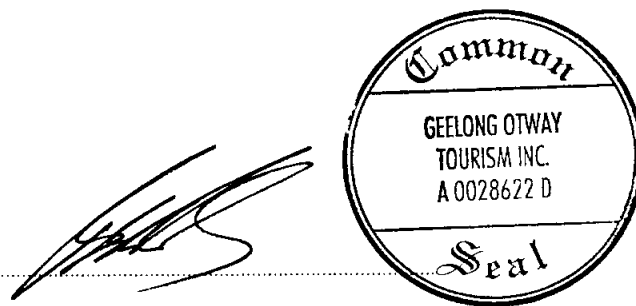
22. If any dispute or difference arises between the parties in carrying out the principles of this memorandum of understanding, the parties will seek bona fide to resolve that difference or dispute between them. Should a Council wish to withdraw its membership of Geelong Otway Tourism then written notice must be given twelve months in advance of ceasing membership. Such notice will allow appropriate modifications to the business plan and budget process.

23. Notwithstanding clause 22, each party maintains the right to exercise its individual powers as it sees fit. This memorandum of understanding lapses three years after the date it is signed and may be renewed or renegotiated by further agreement between the parties.

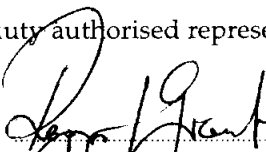
DATED this 15th day of September 2000

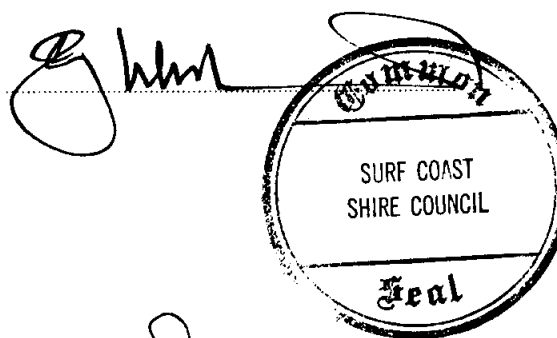
SIGNED on behalf of the)
GEELONG OTWAY TOURISM INC.)
by its duty authorised representative:)


Witness

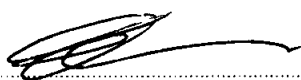


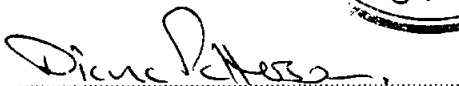
SIGNED on behalf of the)
CITY OF GREATER GEELONG COUNCIL)
by its duty authorised representative:)


Witness

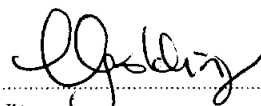


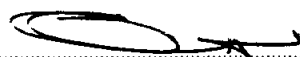
SIGNED on behalf of the)
SURF COAST SHIRE COUNCIL)
by its duty authorised representative:)


Witness




SIGNED on behalf of the)
COLAC OTWAY SHIRE COUNCIL)
by its duty authorised representative:)


Witness

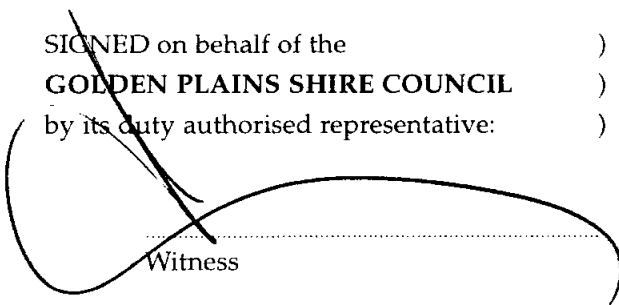


SIGNED on behalf of the)
QUEENSLIFFE BOROUGH COUNCIL)
by its duty authorised representative:)


Witness



SIGNED on behalf of the)
GOLDEN PLAINS SHIRE COUNCIL)
by its duty authorised representative:)


Witness

