

DETERMINATION

Application for Authorisation

Under sub-section 88(8) of the
Trade Practices Act 1974

by

**Black Cabs and Eastern Group
Taxis Co-operative Limited**

**relating to the use of approved taxi hiring
account services and credit facilities**

Registration no.

A90498

File no.

A89/24

Commissioners:

R Baxt (Chairman)
B Johns (Deputy Chairman)
A Asher (Commissioner)

Date:

1 May 1990



The Application

1.1 Application A90498 was lodged on 23 October 1989 by Black Cabs and Eastern Group Taxis Co-operative Limited ("Black Cabs") under sub-section 88(8) of the Trade Practices Act 1974.

1.2 Black Cabs, a Victorian co-operative, seeks authorisation for the same practice as was initially authorised by the TPC in the case of De Luxe Red & Yellow Cabs Co-operative Trading Society Limited, namely:

'the disciplining of members who do not display radio numbers and/or approved decals of hiring accounts and/or failure of members and drivers to accept those hiring accounts.'

1.3 Further information was sought from the applicant as to the type of penalty it would impose on taxi owners or drivers who failed to comply with the company rule in this respect. In a letter dated 13 February 1990, Black Cabs responded as follows:

"The specific application of penalties for non-compliance with Black Cabs' requirement to display decals and offer the credit facilities of taxi hiring account or credit systems approved by the company will be:

1. Drivers who fail to meet the requirements will be given a warning and allowed a period of 24 hours to comply.
2. If, after the expiration of 24 hours, the requirements have not been met the driver and/or vehicle will be suspended from the radio network until such time that they do comply.

3. Fines will not be imposed for non compliance of requirements relating to decals and credit facilities".

1.4 Following the precedent set by the grant of authorisation to De Luxe (A30112, 25 February 1986), the TPC has authorised the same practice by a number of other taxi companies and co-operatives in NSW and Victoria.¹

2. The Statutory Test

2.1 In its determination on the De Luxe application, the TPC characterised conduct similar to that set out in para 1.2 above as third-line forcing within the scope of sub-section 47(6) or (7). The appropriate test for authorisation was therefore that set out in sub-paragraph 90(8)(a)(iii) as follows:

- ' 90(8) The Commission shall not -
- (a) make a determination granting -
- . . .
- . . .
- (iii) an authorisation under sub-section 88(8) in respect of proposed conduct to which sub-section 47(6) or (7) applies, unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be.'

¹ It should be noted that De Luxe also sought authorisation to discipline those cab-drivers who displayed decals or offered credit services other than those approved by the Co-operative. The TPC refused to authorise this particular practice.

3. Submissions

3.1 The TPC sought and received submissions from a number of parties in relation to the De Luxe application. These submissions are on the public register and the points they raise were fully debated in the TPC's determination of 25 February 1986. Consequently, no further submissions have been sought in relation to this application by Black Cabs.

4. TPC Consideration

4.1 In granting authorisation to that part of the De Luxe arrangements which required its cab-drivers to display decals and offer account systems approved by the Co-operative, the TPC agreed with the applicant that consumers should not be misled as to the credit services offered by individual cabs. The TPC accepted that members of De Luxe should be required to display and offer systems which had been approved by De Luxe, and that such systems should be accepted throughout the Co-operative's network. It also accepted that reasonable requirements to secure this resulted in benefit to the public such that the conduct should be allowed to take place.

4.2 The TPC reaches the same conclusion in respect of the conduct for which Black Cabs presently seeks authorisation.

5. Draft Determination

5.1 On 7 March 1990 the TPC issued a draft determination proposing to authorise the conduct (as set out in paras 1.2 and 1.3 above). No pre-decision conference was requested and no objections were raised to the TPC draft.

6. Determination

6.1 Accordingly, the TPC confirms its draft and grants authorisation to the following practice by Black Cabs:

'the disciplining of members who do not display radio numbers and/or approved decals of hiring accounts and/or failure of members and drivers to accept those hiring accounts.'

6.2 This authorisation does not extend to permit the penalising by the Company of members or drivers who display decals of accounting systems or who offer credit services (such as Bankcard) other than those systems approved by the Company.