

COMMISSION DETERMINATION

APPLICATION FOR AUTHORIZATION

UNDER SUB-SECTION 88(8) OF THE TRADE PRACTICES ACT 1974

BY

SILVER TOP TAXI SERVICE

RELATING TO THE USE OF APPROVED
TAXI HIRING ACCOUNT SERVICES AND
CREDIT FACILITIES

REGISTRATION NO: A40047

FILE NO: A86/21

DATE: 6 February 1987

COMMISSIONERS:

W R McCOMAS (CHAIRMAN)
W J COAD
J McB GRANT

The Application

1.1 Application A40047 was lodged by Silver Top Taxi Service ('Silver Top') of Victoria on 15 September 1986 under sub-section 88(8) of the Trade Practices Act 1974.¹ Silver Top seeks authorization for the following practice:

'Penalizing taxi owners and or drivers for failure to display on their taxis decals approved by the Company in respect of taxi hiring services and credit facilities'.

1.2 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 11 December 1986, Silver Top responded as follows:

'We advise that upon reflection and study of our regulation penalties ... the present penalty of "being off radio until rectified and cleared" for having incomplete or incorrect badges, is adequate, and no additional monetary penalty would be imposed.

A driver who is off radio is not issued with any radio bookings.'

1.3 The TPC has now considered a number of applications from taxi co-operatives and companies seeking authorization for practices similar to that set out in para 1.1 above. In all

¹ The applicant provides the following information:

'...the Silver Top Taxi Service was incorporated under Section 24 of the 1928 Companies Act and the liability of its Members is limited.

It is a Company Limited by Guarantee and has no share capital and by licence of the Attorney-General does not use the word Limited in its Trading Title.'

Cases, it has followed the principles set down in its determination of 25 February 1986 on the application by De Luxe Red & Yellow Cabs Co-operative Trading Society Limited (A30112).²

2. The Statutory Test

2.1 In the De Luxe determination, the TPC characterised the conduct as third line forcing within the scope of sub-section 47(6) or (7). The appropriate test for authorization 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 authorization 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.'

² It should be noted that De Luxe also sought authorization to discipline those cab-drivers who displayed decals or offered credit services other than those approved by the Co-operative. The TPC refused to authorize this particular practice.

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 (see para 1.3 above). Consequently, no further submissions have been sought in relation to this application by Silver Top.

4. TPC Consideration

4.1 In granting authorization 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 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 Silver Top presently seeks authorization.

5. Draft Determination

5.1 On 22 December 1986, the TPC issued a draft determination proposing to authorize the conduct (as set out in

(as 1.1 - 1.2 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 authorization to the following practice by Silver Top:

'Penalizing taxi owners and or drivers for failure to display on their taxis decals approved by the Company in respect of taxi hiring services and credit facilities'

6.2 This authorization is granted on the understanding that 'penalizing' is limited in the manner described in paragraph 1.2 above. Authorization does not extend to the penalizing by the Company of drivers or owners who display the decals of accounting systems or who offer credit services (such as Bankcard) other than those approved by the Company.