

Trade  
Practices  
Commission



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PR

COMMISSION DETERMINATION

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

BY

RSL EX-SERVICEMEN'S CABS AND CO-OPERATIVE MEMBERS LIMITED

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

REGISTRATION NO: A90448

FILE NO: A86/14

DATE: 31 AUGUST 1987

COMMISSIONERS

W R McCOMAS  
W J COAD  
D E TURNER  
J H PASCOE

1. The Application

1.1 Application A90448 was lodged on 14 July 1986 by RSL Ex-Servicemen's Cabs and Co-operative Members Limited (RSL Cabs) of Sydney under sub-section 88(8) of the Trade Practices Act 1974.

1.2 RSL Cabs seeks authorization for the same practice as was initially authorized by the TPC in the case of De Luxe Red and Yellow Cabs Co-operative Trading Society Limited, as follows:

'The penalising or suspension from the use of radio booking facilities by the Co-operative of members or drivers of the Co-operative or of members [sic] as a result of the failure by members or drivers to display radio numbers and/or decals of taxi hiring account systems which have been approved from time to time by the directors and/or failure of those members or drivers to accept those hiring account systems in satisfaction of fares for any hirings'.

1.3 Section 21 of the 'RSL Cabs Operating Procedures for Drivers' states:

'21. RSL Door Badges and Numbers

The rules of the Society require that all mobiles operating on the Network must display RSL door badges together with Society approved credit facilities as well as Radio Numbers on both front doors and boot lid.

Any mobile not correctly dressed is liable to suspension'.

1.4 In a letter dated 3 February 1987, the Co-operative explains that the procedure is as follows:

'Upon detection by the Society a member will be warned and given 24 hours to have the mobile properly dressed and presented to the Operations Manager for review. Should the mobile still not be dressed accordingly then the mobile will be refused allocations of radio hiring jobs until the rule has been complied with and the decals displayed.

Leniency is shown to members over weekends and in other instances not under their control eg smash repair work, not dry etc'.

1.5 Following the principles set by the grant of authorization to De Luxe (A30112, 25 February 1986), the TPC has authorized the practice set out in para 1.2 above by a number of other taxi companies and co-operatives in NSW and Victoria. <sup>1</sup>

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 authorization therefore is 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.'

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

<sup>1</sup> 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.

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 RSL Cabs.

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 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 RSL Cabs presently seeks authorization.

5. Draft Determination

5.1 On 5 March 1987 the TPC issued a draft determination proposing to authorize the conduct by RSL Cabs. No pre-decision conference was requested.

5.2 On 24 March 1987 a submission was received from a Mr G Pini raising objections to the conduct the subject of the authorization. Mr Pini had been an interested party in the matter to whom a copy of the draft determination was sent and an invitation given to request a pre-decision conference. Mr Pini did not request such a conference within the prescribed period.

5.3 Mr Pini's submission was referred to RSL Cabs for their comments and a submission was subsequently lodged by them on 10 July 1987. Copies of both the submissions of Mr Pini and the applicants are on the public register.

5.4 The issues raised by Mr Pini are essentially the same as those considered in detail by the TPC as part of the De Luxe application. Accordingly the TPC does not see these matters as affecting its decision to grant authorization to the application before it which involves the same conduct as that considered in the De Luxe application.

6. Determination

6.1 The TPC confirms its draft determination and grants authorization to the following conduct of RSL Cabs:

The penalising or suspension from the use of radio booking facilities by the Co-operative of members or drivers of the Co-operative as a result of the failure by members or drivers to display radio numbers and/or decals of taxi hiring account systems which have been approved from time to time by the directors and/or failure of those members or drivers to accept those hiring account systems in satisfaction of fares for any hirings.

6.2 This authorization is granted on the understanding that "penalising" is limited to the procedure described in paragraph 1.4 above. Authorization does not extend to the penalising by the Co-operative 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 Co-operative.

6.3 This determination is made on 31 August 1987. If no application for a review of the determination is made to the Trade Practices Tribunal, it will come into force on 22 September 1987. If an application for review is made to the Tribunal, the determination will come into force:

- (a) where the application is not withdrawn - on the day on which the Tribunal makes a determination on the review;
- (b) where the application is withdrawn - on the day on which the application is withdrawn.