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7 May 2004

Our Ref: 420541-v1/MA6

**By email:**  
**tim.grimwade@accc.gov.au**

FILE No:
DOC:
MARS/PRISM:

Mr Tim Grimwade  
General Manager -  
Adjudication  
Australian Competition & Consumer Commission  
470 Northbourne Avenue  
DICKSON ACT 2602

Dear Tim,

**Tyre Marketers - RACV Campaign**

10 MAY 2004

We act for Tyre Marketers (Australia) Limited.

As you may be aware, Tyre Marketers wholesales and retails tyres, including tyres under the Goodyear and Dunlop brands. Tyre Marketers' retail network includes Beaufreaires, Dunlop Super Dealers and Goodyear Auto Service Centre outlets.

Tyre Marketers has an active promotional program. It regularly advertises on television and in the press, offering discounts of up to 15% off normal selling prices. Tyre Marketers believes that it can best promote its products by complementing its general offers (which appear regularly) with promotion at a micro level. These campaigns target different sections of its customer base, offering that group a benefit that is often tailored to that group's characteristics. This delivers benefit to the organisation in question. It makes membership more attractive, creating an incentive for that organisation to support the campaign.

The current proposal is the most recent example of this strategy. For the month of June, Tyre Marketers will be offering a \$50 discount to RACV members. Those wishing to claim the discount do not need to prove their membership. They merely need to present a coupon published in the June edition of *Royal Auto*, RACV's official journal. On this basis, it is certainly possible that non-RACV members will receive the \$50 discount; however, Tyre Marketers accepts that most of those people who claim the discount will tend to be RACV members.

There is an argument that offers structured in this fashion raise a technical issue under section 47(7) of the *Trade Practices Act*. On that basis, Tyre Marketers has decided to lodge a Notification in respect of this campaign and any other offers made exclusively to RACV members. We enclose a cheque for \$1,000 in this regard.

We submit that the ACCC should not issue a notice under section 93(3A) of the TPA. As you know, the test is whether the public benefit of the allegedly infringing conduct outweighs the public detriment of that conduct. In our submission, the public benefit is as follows:

- (a) it provides additional value to RACV membership, further encouraging members to join and rejoin the organisation;
- (b) offering the \$50 discount (and any future discounts) to RACV members is a competitive initiative in difficult market conditions; and
- (c) structuring the offer in this fashion makes the promotion more effective by providing the RACV with an incentive to support the campaign more than would otherwise be the case.

The fact that the discount is not promoted to non-RACV members and therefore non-RACV will tend to be excluded from this benefit is in no way anti competitive or discriminatory. Tyre Marketers offers sufficient discounts at other times to other sections of its customer base. In any event, the pro-competitive benefits of an exclusive campaign such as this outweighs any possible detriment that may flow from the exclusion.

If you have any queries, please do not hesitate to contact Martin Algie of this office.

Yours faithfully,  
BAKER & MCKENZIE



Martin Algie  
Senior Associate  
+61 3 9617 4489  
martin.algie@bakernet.com

**COMMONWEALTH OF AUSTRALIA**  
**Trade Practices Act 1974 - Subsection 93(1)**  
**EXCLUSIVE DEALING NOTIFICATION**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 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.

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1. (a) **Name of person giving notice:**

Tyre Marketers (Australia) Limited ABN 86 004 098 346.

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

Tyre Marketers is in the business of wholesaling and retailing motor vehicle tyres, including tyres manufactured by South Pacific Tyres, a business in the same corporate group. The tyres are retailed through three networks of retail outlets that are partly franchised and partly company-owned – Beaurepaires, Goodyear Auto Service Centres, and Dunlop Super Dealers.

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

Baker & McKenzie  
Level 39, Rialto Towers  
525 Collins Street  
Melbourne, Victoria 3000  
Attention: Martin Algie

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

The provision of a discount.

(b) **Description of the conduct or proposed conduct:**

Tyre Marketers will provide discounts exclusively to RACV members.

3. (a) **Class or classes of persons to which the conduct relates:**

All members of the RACV at the time any offer is made.

(b) **Number of those persons-**

(i) **At present time:** Approximately 1.6 million

(ii) **Estimated within the next year:** Unknown

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

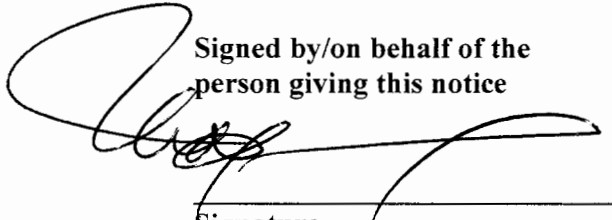
Not applicable

4. **Name and address of person authorised by the person giving the notice to provide additional information in relation to this notice:**

Baker & McKenzie  
Level 39, Rialto Towers  
525 Collins Street  
Melbourne, Victoria 3000  
Attention: Martin Algie

Dated 7 May 2004

Signed by/on behalf of the  
person giving this notice

  
Signature

MARTIN IAN ALGIE

Full Name

BAKER & MCKENZIE  
SOLICITORS FOR TYRE

Description

MARKETERS.

## 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 notice 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 93A(3A) of the Act. The notification comes into force when that decision is made.

If the 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.