

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974

Notice pursuant to section 91B

In relation to authorisation A90498
Black Cabs and Eastern Group Taxis Co-Operative Ltd

1. Introduction

- 1.1. The Australian Competition and Consumer Commission (the Commission) is the Commonwealth agency responsible for administering the *Trade Practices Act 1974* (the TPA). A key objective of the TPA is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business. This results in a greater choice for consumers with regard to price, quality and service.
- 1.2. The TPA, however, allows the Commission to grant immunity from legal action for anti-competitive conduct in certain circumstances. One way in which parties may obtain immunity is to apply to the Commission for what is known as an ‘authorisation’.
- 1.3. Broadly, the Commission may ‘authorise’ parties to engage in anti-competitive conduct where it is satisfied that the public benefit flowing from the conduct outweighs any public detriment from any lessening of competition.

Revocation of authorisations

- 1.4. Section 91B of the TPA provides that the Commission may initiate the revocation of an authorisation if it appears to the Commission that:
 - the authorisation was granted on the basis of evidence or information that was false or misleading;
 - a condition of the authorisation has not been complied with; or
 - there has been a material change in circumstances since authorisation was granted.
- 1.5. To initiate the revocation of authorisation the Commission is required to write to interested parties advising them that it is considering the revocation of the authorisation, indicate the basis on which the revocation is being proposed and invite submissions in respect of the revocation.
- 1.6. After considering any submissions received from interested parties in relation to the proposed revocation, the Commission may make a determination in writing revoking the authorisation or deciding not to revoke the authorisation.

1.7. This document is a notice to interested persons pursuant to section 91B of the TPA, informing them that it appears to the Commission that there has been a material change of circumstances in relation to authorisation A90498 since authorisation was granted. Accordingly, the Commission proposes to revoke authorisation A90498.

2. Authorisation A90498

2.1. The Commission's predecessor, the Trade Practices Commission (the TPC) granted authorisation A90498 to Black Cabs and Eastern Group Taxis Co-Operative Ltd (Black Cabs) on 1 May 1990.

2.2. Black Cabs sought authorisation to penalise or suspend from its radio booking system any driver who:

- refused to accept payment by means of the taxi hire account systems approved by Black Cabs; or
- failed to display the decals of those account systems approved by Black Cabs.

2.3. The TPC had granted authorisation for similar conduct to Deluxe Red & Yellow Cabs Co-Operative Trading Society Limited (Deluxe) on 25 February 1986.

2.4. The Commission is not required to be guided by precedent. Although it can accept what has been raised previously and consider whether the issues are relevant.

2.5. The TPC found that the public benefits that applied in respect of Deluxe also applied in respect of Black Cabs.

2.6. A copy of the TPC's determination is available at the Commission's website www.accc.gov.au

3. Material change of circumstances identified by the Commission

3.1. A material change of circumstances includes a change of circumstances that has an impact upon public benefit and/or detriment.

3.2. The Commission is of the view that since authorisation A90498 was granted, some changes have occurred that have had some impact or likely impact upon the public benefit and public detriment resulting from the authorised conduct.

3.3. In coming to this view the Commission has considered the circumstances as they existed at the time authorisation was granted, and considered the circumstances as they existed on the material before the Commission at the time it considered revocation. The Commission accepts that circumstances include all facts, matters and conduct relevant to an authorisation and to a revocation. The circumstances considered by the Commission are indicated below.

Changes in payment systems

- 3.4. EFTPOS (electronic funds transfer at point of sale) was introduced in Australia in 1984. It provides an electronic means of transferring funds from a purchaser of goods or services to the supplier of goods or services by use of a debit card issued by the purchaser's financial institution.
- 3.5. Use of EFTPOS in Australia was initially moderate but grew rapidly in the early 1990s with the acceptance by petrol retailers and with several major retailers joining the network.
- 3.6. Debit and credit card payments as a proportion of non-cash payments has continued to grow significantly. In 1994 there were 20.6 million EFTPOS transactions per month valued at \$1.1 billion. By 2003 this number had increased to 72.5 million EFTPOS transactions per month valued at \$3.9 billion.¹
- 3.7. The increase in credit card transactions and values over the same period has been much more dramatic and far steeper than debit cards. In 1994 there were 19.9 million credit card transactions per month valued at \$1.8 billion. By 2003 this number had increased to 85.6 million credit card transactions per month valued at \$11.7 billion.²
- 3.8. As at July 2003 Australia had the highest rate of EFTPOS terminal penetration of all industrialised nations except New Zealand.³
- 3.9. Although Cabcharge has become entrenched as a provider of payment systems to taxi companies, an increasing number of other businesses are able to provide similar systems.
- 3.10. In particular, some businesses have now developed payment systems that are specifically designed to process taxi fares. For example, Schmidt Electronics now offers a rival system known as 'Taxinet'.

Effect on public benefit/detriment

- 3.11. The TPC considered that the public benefits it found to apply in respect of Deluxe also applied to Black Cabs and that public benefit derives from convenience to the public in that:
 - consumers should not be misled as to the credit services offered by individual taxis; and
 - drivers should be required to display and offer approved account systems, and that such systems should be accepted throughout the network.

¹ http://www.apca.com.au/Public/apca01_live.nsf/WebPageDisplay/Stats_CardVolume

² http://www.apca.com.au/Public/apca01_live.nsf/WebPageDisplay/Stats_CardValue

³ 'The Changing Australian Retail Payments Landscape', Reserve Bank of Australia *Bulletin*, July 2003.

- 3.12. The TPC accepted that reasonable requirements to secure this resulted in a benefit to the public such that the conduct should be allowed to take place.
- 3.13. The significant expansion in the availability and use of electronic payment systems since that time appears to affect the public benefit recognised by the TPC as flowing from the requirement that certain payment systems be offered to consumers.
- 3.14. Now that some credit cards (such as Master Card or Visa) are almost universally accepted and have high rates of recognition and usage amongst consumers, it seems likely that such cards will be accepted by most taxi drivers and that the normal operation of business is likely to ensure that consumers are offered the opportunity to use their preferred method of payment.
- 3.15. Indicative of consumers acceptance of card based payments is the increase in credit and debit card transactions, coupled with an increase in the number of EFTPOS terminals per head of population.
- 3.16. This consumer driven demand for efficient electronic payment methods is likely to result in taxi drivers availing themselves of technology to accept most credit and debit cards, without the need for authorisation. Drivers can be expected to offer the most recognised and widely held credit cards as a matter of course.
- 3.17. Further, the increased use of EFTPOS has secured an additional avenue for electronic payment of taxi fares. All passengers with debit cards are able to access this payment system, regardless of the service provider chosen by the taxi network/driver.
- 3.18. In light of the above, it appears to the Commission that there is no longer any public benefit in requiring taxi drivers/owners to accept certain approved payment systems. Any benefit that may have been achieved by this requirement is now likely to be secured through the commercial choices of taxi drivers/owners.
- 3.19. With regard to the public detriment flowing from the requirement that drivers/owners accept approved electronic payment systems, the TPC noted that such detriment would be limited if drivers/owners were able to accept unapproved systems in addition to those approved systems they were required to accept.
- 3.20. However, the emergence of new electronic payment systems that have been specifically designed to process taxi fares demonstrates that there is some potential for greater competition in this area.
- 3.21. Currently, that potential is somewhat limited as drivers/owners who are required to accept one particular payment system are unlikely to go to the trouble and expense of installing an additional system.

- 3.22. In this respect, it appears that the requirement that drivers/owners accept approved payment systems may be raising the barriers to entry in this particular market.
- 3.23. The capacity for competition amongst the providers of electronic payment systems, particularly with regard to new entrants, is restricted by the conduct that is currently authorised. This seems to impact upon the level of public detriment flowing from the authorised conduct. Public detriment includes anti-competitive detriment.

4. Notice

- 4.1. It appears to the Commission that the matters outlined above constitute a material change of circumstances since authorisation A90498 was granted. Accordingly, pursuant to section 91B of the TPA, the Commission proposes to make a determination revoking authorisation A90498.
- 4.2. Interested parties are invited to make submissions on the Commission's proposal. Any submission should be lodged by **close of business Friday 11 June 2004**.
- 4.3. Submissions should be in writing and addressed to:
- The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602
- 4.4. Submissions may also be lodged by e-mail to adjudication@acc.gov.au or by facsimile to (02) 6243 1211.
- 4.5. Interested parties may choose to address any or all of the following issues:
- changes in electronic payment systems that have affected taxis;
 - changes to public benefit and detriment flowing from the authorisation since it was granted; and
 - any other issues that may be relevant to the Commission's consideration of this matter.
- 4.6. Submissions will be placed on the Commission's Public Register.