

24 May 2004

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BY COURIER

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

FILE No:

DOC:

MARS/PRISM:

Dear Sir

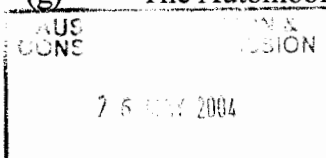
Hertz's participation in the Show Your Card and Save Program

We act for Hertz Australia Pty Limited.

We enclose a notification under section 93(1) of the *Trade Practices Act 1974 (TPA)* and a cheque for \$100 as payment of the required fees.

1. Background

- 1.1 Hertz is proposing to participate in the Show Your Card and Save Program (**SYCS Program**) as the exclusive national partner for the provision of motor vehicle rental services under a National Partner Agreement with AMS Rewards Pty Ltd, the facilitator of the SYCS Program.
- 1.2 The SYCS Program involves the national partners offering discounts and benefits to members of the Australian Motoring Organisations and its affiliated International Motoring Organisations (**Motoring Organisations**). The Australian Motoring Organisations are the:
- (a) Royal Automotive Club of Victoria (RACV) Limited (ACN 004 060 833);
 - (b) Royal Automotive Club of Queensland Limited (ACN 009 660 575);
 - (c) Royal Automotive Association of South Australia incorporated (ARBN 020 0018 07);
 - (d) National Roads and Motorists' Association Limited (ABN 77 000 010 506);
 - (e) Royal Automotive Club of WA Inc (ACN 212 133 120);
 - (f) Royal Automotive Club of Tasmania Limited (ACN 009 475 861); and
 - (g) The Automobile Association of Northern Territory Inc (ABN 134 314 78 529).



- 1.3 Under the draft National Partner Agreement, Hertz agrees to offer motor vehicle rental services to members of Motoring Organisations at the lower of, specified ceiling rates or the lowest retail leisure rate. Hertz would also make available other ancillary services to members defined in the draft agreement as 'Exclusive Member Benefits'. The 'Exclusive Member Benefits' include renter protection services (such as excess reduction), refuelling options, child and booster seats, satellite navigation on selected vehicles in selected locations, state maps and street directories, roadside assistance, participation in the Hertz #1 Awards program and free membership to Hertz #1 Club, Hertz #1 Gold, President's Circle and Five Star Gold (depending on the number of rentals per year) and the benefits that flow from that membership. The Exclusive Member Benefits are also available to consumers who are not members of a Motoring Organisation but some of the benefits are available to members for no fee or at a reduced price.
- 1.4 The National Partner Agreement does not prevent Hertz from offering discounts to other non-members from time to time.

2. Notified Conduct

- 2.1 While we do not consider this to be the better or correct legal interpretation, our client is concerned that the above conduct could be characterised in practice as giving rise to circumstances that could be construed as a technical contravention of sections 47(6) and (7) by Hertz in the manner described below.
- (a) Hertz giving or allowing, or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply of motor vehicle rental services and other ancillary services on the condition that the person will acquire membership services from an Australian Motoring Organisation or an affiliated International Motoring Organisation.
- (b) Hertz refusing to give or allow a discount, allowance, rebate or credit in relation to the supply of motor vehicle rental services and other ancillary services to a person for the reason that the person has not acquired or has not agreed to acquire membership services from an Australian Motoring Organisation or an affiliated International Motoring Organisation.
- 2.2 In order to minimise the risk of contravening sections 47(6) and (7), we wish to notify the proposed conduct described above under section 93(1) of the TPA.

3. Competition Issues

- 3.1 We submit that the Commission should not serve a notice under section 93(3A) of the TPA because:
- (a) the conduct in question will not adversely affect competition in any relevant market; and
- (b) the conduct in question will result in public benefits and no public detriment.
- 3.2 We do not believe that the notified conduct can have any adverse effect on competition in the relevant market. We consider that the market primarily relevant to the assessment of this notification is the Australian market for the supply of motor vehicle rental services to consumers. This market is highly competitive. Accordingly, we do not consider that the conduct will create barriers to entry or otherwise harm competition in

the market. Further information in relation to these markets can be provided to the Commission, if requested.

- 3.3 We believe the notified conduct will generate a number of public benefits. First, consumers will be offered a benefit in the form of discounts on the price of the motor vehicle rental services and other ancillary services supplied by Hertz. Secondly, the arrangement will enable Hertz to offer more competitive products and the Motoring Organisations to offer more benefits to their members. The offer of more competitive products and benefits will give Hertz's competitors the incentive to offer similar rental rates and benefits, and therefore, will promote competition in the motor vehicle rental market. These factors will therefore foster business efficiency and enhance consumer welfare through lower rental prices and the provision of Exclusive Member Benefits.
- 3.4 We believe the notified conduct will have little, if any, public detriment. Hertz is not forcing its customers to purchase membership from the Motoring Organisations in order to acquire its services. It is simply offering to provide a certain level of discount and certain Exclusive Member Benefits to members of those organisations. Consumers can continue to purchase Hertz's rental services without becoming a member of a Motoring Organisation. The discount offered by Hertz to members of the Motoring Organisations is a genuine reduction on Hertz's normal prices.
- 3.5 Although Hertz gives consumers a price incentive to acquire membership from a Motoring Organisation, there is no compulsion to do so. It is likely that consumers will be influenced by other factors when choosing whether to become a member of a Motoring Organisation. Factors such as obtaining emergency roadside assistance will have a more significant impact on a consumer's decision than obtaining a discount at Hertz.

4. Conclusion

- 4.1 For the reasons set out above, we do not believe the Commission should serve a notice under section 93(3A) of the TPA in respect of the attached notifications. This is because the notified conduct will cause little, if any, detriment and will generate significant public benefits in the form of discounts and other benefits to many members of the motoring public.

If you have any questions in relation to this notification or require any further information, please do not hesitate to contact Geoff Carter on (03) 8608 2090.

Yours faithfully

MINTER ELLISON



Contact: Noelia Boscana Direct phone: +61 3 8608 2676 Direct fax: +61 3 8608 1321
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Partner responsible: David Inglis Direct phone: +61 3 8608 2930
Our reference: 30-4543367

Form G

Commonwealth of Australia

Trade Practices Act 1974 - Sub-section 93(1)

EXCLUSIVE DEALING:

NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given in accordance with sub-section 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 engaged or proposes to engage.

1. (a) Name of person giving notice:

Hertz Australia Pty Limited

ACN 004 407 087

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

Motor vehicle rental services

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

6th Floor

10 Dorcas Street

SOUTH MELBOURNE VIC 3205

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

Hertz supplies rental services for self drive motor vehicles including cars and vans. Hertz supplies other services ancillary to motor vehicle rental services such as membership to the Hertz #1 Club Gold and Hertz #1 Awards program, roadside assistance, provision of street directories and child seats.

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

Hertz giving or allowing, or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply of motor vehicle rental services and other ancillary services on the condition that the person will acquire membership services from an Australian Motoring Organisation or an affiliated International Motoring Organisation.

Hertz refusing to give or allow a discount, allowance, rebate or credit in relation to the supply of motor vehicle rental services and other ancillary services to a person for the reason that the person has not acquired or has not agreed to acquire membership services from an Australian Motoring Organisation or an affiliated International Motoring Organisation.

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

Members of an Australian Motoring Organisation or an affiliated International Motoring Organisation. The Australian Motoring Organisations are:

- (i) *Royal Automotive Club of Victoria (RACV) Limited (ACN 004 060 833);*
- (ii) *Royal Automotive Club of Queensland Limited (ACN 009 660 575);*
- (iii) *Royal Automotive Association of South Australia incorporated (ARBN 020 0018 07);*
- (iv) *National Roads and Motorists' Association Limited (ABN 77 000 010 506);*
- (v) *Royal Automotive Club of WA Inc (ACN 212 133 120);*
- (vi) *Royal Automotive Club of Tasmania Limited (ACN 009 475 861); and*
- (vii) *The Automobile Association of Northern Territory Inc (ABN 134 314 78 529).*

- (b) Number of those persons:

- (i) At the present time:

AMS Rewards Pty Ltd estimates that the total number of Australian Motoring Organisation members is approximately 6 million.

- (ii) Estimated within the next year:

AMS Rewards Pty Ltd estimates that approximately 20,000 to 50,000 persons will become new members in the next year.

- (c) Where the 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 this notice to provide additional information in relation to this notice:

Geoff Carter

Minter Ellison Lawyers

Level 16

Rialto Towers


525 Collins Street

MELBOURNE VIC 3000

DATED

24 May 2004

SIGNED by/on behalf of the applicant



(Signature)

Geoffrey Robert Carter

(Full Name)

Partner, Minter Ellison Lawyers

(Description)
(Solicitors for the applicant)