

- Asia**
- Pacific**
- Bangkok
- Beijing
- Hanoi
- Ho Chi Minh City
- Hong Kong
- Jakarta
- Kuala Lumpur
- Manila
- Melbourne
- Shanghai
- Singapore
- Sydney
- Taipei
- Tokyo

- Europe & Middle East**
- Almaty
- Amsterdam
- Antwerp
- Bahrain
- Baku
- Barcelona
- Berlin
- Bologna
- Brussels
- Budapest
- Cairo
- Dusseldorf
- Frankfurt / Main
- Geneva
- Kyiv
- London
- Madrid
- Milan
- Moscow
- Munich
- Paris
- Prague
- Riyadh
- Rome
- St. Petersburg
- Stockholm
- Vienna
- Warsaw
- Zurich

- North & South America**
- Bogota
- Brasilia
- Buenos Aires
- Calgary
- Caracas
- Chicago
- Dallas
- Guadalajara
- Houston
- Juarez
- Mexico City
- Miami
- Monterrey
- New York
- Palo Alto
- Porto Alegre
- Rio de Janeiro
- San Diego
- San Francisco
- Santiago
- Sao Paulo
- Tijuana
- Toronto
- Valencia
- Washington, DC

27 May 2004

Our Ref: 423889-v1\MA6

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

FILE NO:
DOC:
MARS/PRISM.

Dear Tim,

Tyre Marketers - Motorcharge and Motorpass Campaign

We act for Tyre Marketers (Australia) Limited.

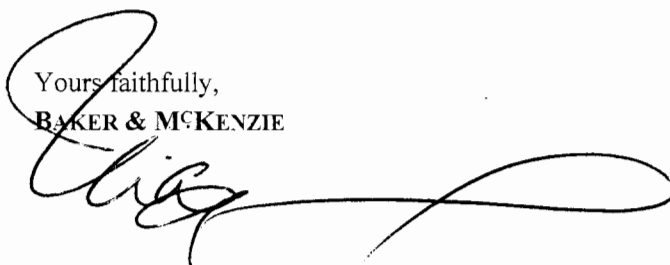
As we explained in our letter dated 7 May 2004 concerning Tyre Marketers' RACV campaign, Tyre Marketers has an active promotional programme. The current promotion involving an offer of a \$50 discount to all Motorpass and Motorcharge cardholders (where they use their card to purchase a set of 4 Dunlop, Olympic or Goodyear branded car or 4-wheel drive tyres) is the latest example of Tyre Marketers' micro-level promotional activity. As was the case with the RACV campaign, this campaign is targeted at a specific section of the Tyre Marketers' customer base. Tyre Marketers will be making similar offers to Motorpass and Motorcharge cardholders in future.

As this raises third line forcing issues, Tyre Marketers has decided to lodge a Notification in respect of this campaign and any other future offers made exclusively to Motorpass and Motorcharge cardholders. We enclose a cheque for \$1,000 in this regard.

In Tyre Marketers' submission, the ACCC should not issue a Notice under section 93(3A) of the TPA. In this regard, Tyre Marketers relies on the arguments presented in our letter of 7 May 2004. In short, the offer (and any future similar offers) is in no way anti-competitive; indeed, it is an aspect of competition in the tyre industry. Moreover, making the offer (and any future similar offers) exclusively to Motorpass and Motorcharge cardholders delivers a real benefit, both to those members and to Motorpass and Motorcharge Retail Decisions plc (or related company). The latter allows Retail Decisions to compete more effectively in the provision of credit services.

If you have any queries, please do not hesitate to contact me.

Yours faithfully,
BAKER & MCKENZIE

A handwritten signature in black ink, appearing to read 'Martin Algie', with a long horizontal flourish extending to the right.

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

Encl

Asia

Pacific

Bangkok
Beijing
Hanoi
Ho Chi Minh City
Hong Kong
Jakarta
Kuala Lumpur
Manila
Melbourne
Shanghai
Singapore
Sydney
Taipei
Tokyo

Europe &

Middle East

Almaty
Amsterdam
Antwerp
Bahrain
Baku
Barcelona
Berlin
Bologna
Brussels
Budapest
Cairo
Dusseldorf
Frankfurt / Main
Geneva
Kyiv
London
Madrid
Milan
Moscow
Munich
Paris
Prague
Riyadh
Rome
St. Petersburg
Stockholm
Vienna
Warsaw
Zürich

North & South

America

Bogota
Brasilia
Buenos Aires
Calgary
Caracas
Chicago
Dallas
Guadalajara
Houston
Juarez
Mexico City
Miami
Monterrey
New York
Palo Alto
Porto Alegre
Rio de Janeiro
San Diego
San Francisco
Santiago
Sao Paulo
Tijuana
Toronto
Valencia
Washington, DC

7 May 2004

Our Ref: 420541-v1\MA6

By email:
tim.grimwade@acc.gov.au

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

Dear Tim,

Tyre Marketers - RACV Campaign

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.

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 – Beaufreaires, 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, trading as Beaufreaires, will provide discounts exclusively to holders of the Motorpass or Motorcharge cards, where they buy a set of Dunlop, Olympic or Goodyear branded tyres using that card.

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

All holders of Motorpass and Motorcharge cards at the time any offer is made.

Retail Decisions Plc (or related company), as the issuer of Motorpass and Motorcharge cards.

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

(i) **At present time:** Approximately 68,000 cardholders (there are approximately 200,000 card holders, but only those receiving a statement will receive the offer – provided by way of an insert with the statement)

(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:**

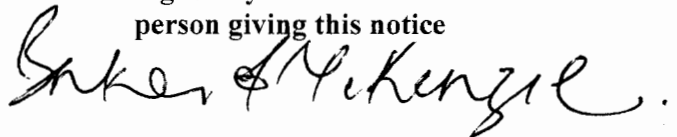
Not applicable

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 27 May 2004

Signed by/on behalf of the
person giving this notice



Signature



Full Name

Description

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.