



**Australian  
Competition &  
Consumer  
Commission**

Our Ref: C2004/648  
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31 August 2004

Mr Ian Rosenfeld  
Rigby Cooke Lawyers  
Level 13  
469 LaTrobe Street  
Melbourne Victoria 3000

Dear Mr Rosenfeld

**Notification of Exclusive Dealing by AMS Rewards Pty Ltd (N40707)**

I refer to the above third line forcing notification lodged with the Australian Competition and Consumer Commission (the ACCC) on 28 April 2004 in relation to the "Show Your Card and Save" (SYCS) program proposed by AMS Rewards Pty Ltd (AMS).

Under the SYCS program, members of Australian Motoring Organisations (and affiliated International Motoring Organisations) will be entitled to receive special benefits and discounts from certain retailers and service providers.

As you are aware, businesses may obtain immunity in relation to conduct that might be at risk of breaching the exclusive dealing provisions of the *Trade Practices Act 1974* (the Act) by lodging a 'notification' with the ACCC. Third-line forcing, a specific form of exclusive dealing, involves the supply of goods or services on condition that customers also acquire the goods or services of a third person.

In this case, it may be argued that the retailers and service providers participating in the SYCS program offer benefits or discounts on condition that customers acquire membership of the relevant motoring organisations.

I should note that the notification process is available only to those parties engaging in the conduct at risk under the Act. In this case, the parties engaging in the proposed conduct are the participating retailers and service providers not AMS. For this reason, the notification, as lodged, may not afford the retailers and service providers participating in the SYCS program



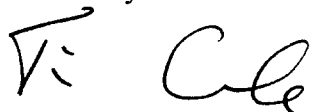
(currently or in the future) the protection sought. In this regard, it is important to note the private right of action that third parties may have under the Act. I note your advice that it is intended that retailers and service providers will notify the ACCC of their involvement once they agree to participate in the program.

This issue aside, I also note that while you have given an example of a possible service provider, you have not identified more widely participating retailers and service providers or the precise nature of the offer that would be made to members of the relevant motoring organisations. In the absence of this information, it is difficult for the ACCC to give complete consideration of the public benefits and detriments claimed. It may even be questionable as to whether any immunity can be afforded to a notification in these circumstances.

Having noted the above concerns, it is not intended that any further action be taken in relation to your notice at this stage. The ACCC will assess any further notifications lodged in relation to the SYCS program as received. As with any notification, please note that the ACCC may act to revoke this notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

This letter has been placed on the ACCC's public register. Should you have any questions or wish to discuss any aspect of the above notification, please contact Scott Gregson of this office on (02) 6243 1107 who would be pleased to provide further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tim Grimwade', written in a cursive style.

Tim Grimwade  
General Manager  
Adjudication Branch