

21 APR 2006

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20 April 2006

Mr Sam Di Scerni
Regional Director
ACCC Perth
PO Box 6381
East Perth WA 6892

Dear Sam

Notification: Royal Automobile Club of WA (Inc)

I act for the Royal Automobile Club of WA (Inc) (**RAC WA**) and wish to lodge on behalf of RAC WA, a notification in respect of conduct that may constitute third line forcing by RAC WA.

Accordingly, please find enclosed:

- a notification under section 93(1) of the *Trade Practices Act 1974 (TPA)* on behalf of RAC WA;
- a cheque in the amount of \$1000 as payment of the required fees; and
- a submission in support of RAC WA's notification.

Please feel free to contact either myself or Genevieve Ho if you wish to discuss this matter.

Yours sincerely

Iain Freeman
Partner

Encl

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 subsection 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:
Royal Automobile Club of WA (Inc) (A0170007N).
- (b) Short description of business carried on by that person:
Royal Automobile Club of WA (Inc) provides motoring goods and services to members in Western Australia.
- (c) Address in Australia for service of documents on that person:
Iain Freeman
Phillips Fox
Level 19
1 William Street
PERTH WA 6000
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:
RAC Insurance Pty Ltd provides general insurance in Western Australia.
Royal Automobile Club of WA (Inc) carries on the business of motoring organisation in Western Australia.
- (b) Description of the conduct or proposed conduct:
A person who is an existing domestic insurance policy holder with RAC Insurance Pty Ltd or who becomes a domestic insurance policy holder with RAC Insurance Pty Ltd will be provided with membership of the Royal Automobile Club of WA (Inc) in the membership class of "RACI Member". Persons who are named on a domestic insurance policy will also be entitled to become members of the Royal Automobile Club of WA (Inc) in the membership class of "RACI Member". This will be at no direct charge to those RAC Insurance Pty Ltd policy holders named as the primary policy holder of domestic insurance policies issued by RAC Insurance Pty Ltd, or persons named on those policies.
3. (a) Class or classes of persons to which the conduct relates:
All persons who are named as primary policy holders or who are named on the policy of an RAC Insurance Pty Ltd domestic insurance policy.
- (b) Number of those persons?
 - (i) At present time - 0
 - (ii) Estimated within the next year - 180,000
 - (iii) Estimated within the next five years - 355,000
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Name and address of person authorized by the person giving this notice to provide additional information in relation to this notice

Iain Freeman
Phillips Fox
Level 19
1 William Street
PERTH WA 6000

Dated: April 2006

Signed by/on behalf of the person giving this notice



Full name:

GEOFF MATHER.

Description:

CHIEF FINANCIAL OFFICER

AUST. COMPETITION &
CONSUMER COMMISSION
PERTH
21 APR 2006

DIRECTIONS

4. 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.
5. 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.
6. 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.
7. 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.
8. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
9. 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 notification 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 93 (3A) of the Act. The notification comes into force when that decision is made.

If this 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.

SUBMISSIONS IN SUPPORT OF NOTIFICATION OF EXCLUSIVE DEALING

This submission is in support of a notification of the exclusive dealing lodged by Royal Automobile Club of WA (Inc) (**RAC**) with the Australian Competition and Consumer Commission (**Commission**).

In accordance with the Commission's 'Guide to Authorisation and Notification for Third Line Forcing Conduct' (February 1998), this submission identifies the public benefits and detriment likely to result from the notified conduct. It also provides the information on relevant products and markets.

RAC CLUB

The RAC provides motoring and other related goods and services to its members for an annual subscription fee. In 1905 the RAC was founded for the benefit of its members who owned the Club. The RAC Group is a mutual incorporated group, and its ultimate members cannot share in its profits under the provisions of the Associations Incorporation Act and its Rules. It is a non-profit organisation which provides motoring goods and services to its members in return for an annual subscription fee. It operates for the mutual benefit of the ultimate members.

RAC GROUP

The RAC Group's trading and activities are carried on by the subsidiaries, for the mutual benefit of the RAC members and to provide a wider community service. Its subsidiaries have been formed to carry on trading enterprises that provide further services and provide funds to further the provision of benefit to RAC members.

RAC INSURANCE

RAC Insurance Pty Ltd (ACN 094 685 882) (**RAC Insurance**) is a joint venture between RACI Pty Ltd (ACN 008 671 805), a wholly owned subsidiary of the RAC and Vero Insurance Ltd (ACN 005 297 807), a wholly owned subsidiary of the Promina Group Ltd.

RAC Insurance is owned equally by RACI Pty Ltd and Vero Insurance.

NOTIFIED CONDUCT

A person who is an existing policy holder with RAC Insurance or who becomes a policy holder with RAC Insurance will be provided with membership of RAC in the membership class of "RACI Member". Persons who are named on a domestic insurance policy will also be entitled to become members of the Royal Automobile Club of WA (Inc) in the membership class of "RACI Member". This will be at no direct charge to those RAC Insurance policy holders named as the primary policy holder of domestic insurance policies issued by RAC Insurance, or persons named on those policies.

The class of RACI Member will entitle those RAC members to the following entitlements:

- a) *RAC Members* Membership Card;
- b) access to complimentary Touring Advice;
- c) access to complimentary Traffic Advice;
- d) access to complimentary Vehicle Technical Advice;
- e) access to any RAC customer loyalty program and the related features and benefits of such a program;
- f) access to such other discounts on RAC products and incentives on services offered exclusively to RAC Membership Card holders (other than on premiums for RAC Insurance policies) as may be determined by the Chief Executive Officer of RAC from time to time;
- g) subscription to the member magazine;
- h) no entrance fee; and
- i) no annual subscription.

Members of the RACI Members class of membership are not entitled to vote or hold office of the RAC and are not eligible for Roadside Assistance.

The rights and entitlements that attach to the RACI Members class of membership may be varied by the RAC from time to time.

A person who is a member of the RACI Members class of membership may take out a Roadside Assistance membership of the RAC at any time. If they do this they will be entitled to vote and hold office of RAC.

POSSIBLE APPLICATIONS OF THE TRADE PRACTICES ACT

RAC does not believe that the proposed conduct constitutes a breach of the Trade Practices Act 1974 (Cth). However, on one interpretation of the proposed conduct, there is a possible argument that RAC will only offer to supply membership in the RACI Member class of membership to a person on condition that they acquire a policy of insurance with RAC Insurance. Conversely, there is a possible argument that RAC will refuse to allow a person membership of the RACI Member class of membership for the reason that the person has not acquired a policy of insurance from RAC Insurance. Accordingly, it is arguable that sections 47(6) and (7) of the Trade Practices Act 1974 (Cth) may apply.

MARKET

The notified conduct relates to the market for motoring goods and services in Western Australia. The RAC's share of a relevant market in Western Australia is dependent on how broadly or narrowly that market is defined. Currently, the RAC has around 443,500 members in Western Australia.

PUBLIC BENEFIT

The proposed conduct is a competitive response by RAC. RAC believes that the conduct is likely to result in public benefits for the following reasons:

- 1 It will provide many RAC Insurance customers with membership to, and access to a range of the benefits offered by RAC, and the ability to participate in the benefits of membership of the RAC.
- 2 It will promote competition amongst providers of motor vehicle goods and services in the relevant market by encouraging competitors to offer similar discounts and benefits.
- 3 A person who is a member of the RACI Members class of membership will be able to elect to purchase another class of membership from RAC.
- 4 RAC Insurance customers will be afforded greater convenience when dealing with the RAC for both their RAC membership requirements and insurance requirements.

PUBLIC DETRIMENT

RAC believes that there is no detriment to the public likely to arise from the proposed conduct because:

- 1 Consumers are not compelled to pay a fee for RAC membership in the RACI Member class of membership and are under no compulsion to use the services offered by membership or to purchase general insurance products from RAC Insurance.
- 2 Consumers may purchase RAC membership in other classes of membership offered by RAC separately. RAC Insurance policy holders may purchase other classes of RAC membership at no higher cost than any other member of the public. Consumers will retain the freedom to buy products separately from RAC or any of its competitors.
- 3 Competition in the relevant market is vigorous and there are many competitors who are able to provide the relevant products.
- 4 There will continue to be a wide choice open to customers in the purchase of insurance products and services.

MARKET POSITION

Regardless of how the market is defined, RAC does not have sufficient market power in the relevant market to force a member of the public to obtain RAC Insurance products and services or to become a member of RAC.

There is no compulsion on members of the public to obtain their insurance from RAC Insurance or to join RAC, beyond that which can be categorised as a normal exercise of the person's consumer discretion to acquire the most value from his or her consumer dollar.

ASSESSMENT

We submit that the proposed conduct does not amount to a breach of section 47(6) or 47(7) of the Trade Practices Act 1974 (Cth) because the offer of the RACI Member class of membership of the RAC is not on the condition that a person takes out a policy with RAC Insurance. RAC Insurance policy holders have a choice as to whether they wish to become an RACI member of the RAC.

In any event, the conduct alone is not inherently anti-competitive and the proposed conduct falls within the following description of third line forcing noted by the Commission on page 17 of its Guide:

"The Commission is unlikely to be concerned where potential purchasers have a genuine choice, based on quality and price, whether or not to purchase product A alone or to accept the supplier's third line forcing terms for the package of products A and B."

"In particular, third line forcing conduct under which customers can buy the package of products A and B at a real saving on the total price of the products bought separately in competitive markets, has positive benefits in terms and competition and consumer welfare and would not be opposed by the Commission".

For these reasons and based on the information provided in these submissions and the form G notification which supports it, it is submitted that the notified conduct should not be opposed by the Commission.

Dated: ST 21 April 2006

IAIN FREEMAN
PARTNER