

COMMISSION DETERMINATION

Date : 23 November 1978
Members: Bannerman (Chairman)
Gilbert (Deputy Chairman)
McConnell
Pengilley
Haddad
Willis

TRADE PRACTICES COMMISSION
APPLICATION FOR AUTHORIZATION UNDER S.88(1) BY
THE SERVICE STATION ASSOCIATION OF NSW LTD

Registration Nos. A3013, A16204 File Nos. A74,87, A76/29

The Commission prepared a draft determination in this matter dated 17 October 1978. The draft determination and summary of reasons were sent to the applicant (SSA) and other interested parties.

2 A pre-decision conference pursuant to s.90A of the Act was held on 14 November 1978 at the request of the applicant. It was attended by Mr. Blundell, General Secretary of the SSA, Mr. M. Dunlop, General Council Member of the SSA and Mr. Hatton, representing the Motor Traders Association of NSW. The record of the conference has been placed on the public register.

3 Public Benefits Claimed

3.1 At the conference the SSA submitted no new public benefit grounds but merely emphasised and expanded on its previous submissions and said that its only concern with the Commission draft determination was in relation to the price recommendation arrangements the subject of application A3013. In essence the SSA said that its members, in the main, fall into the category of small business, are by background and

nature practical types, work long hours and thereby lack both the time and expertise to be able to keep adequate cost records in order to set appropriate selling prices for the services they provide and the goods they resell. Thus the issuing by the SSA of price recommendations was a public benefit in that these assisted members to remain financially viable thus more members were kept in business than would otherwise be the case.

3.2 In regard to oil products, the SSA said that members were not aware of the wholesale prices of these at the time of delivery because invoices did not accompany deliveries. Therefore, in these cases, it was felt necessary by the SSA for it to issue recommended selling prices because the members did not have a base upon which to apply a markup.

3.3 The SSA referred to the competition faced by members from organisations which discounted prices on automotive products and stated that, without the benefit of recommended prices, members may reduce prices to a level whereby they could not maintain satisfactory services to consumers.

3.4 The SSA drew no distinction between the price recommendations for the goods and services the members sell but stated that all the price recommendations combine to assist in the financial viability of members, with the exception of distillate and kerosene. In the latter case, other organisations were able to purchase the products at lower prices than SSA members and therefore, as a matter of practicality, the SSA had to set lower recommended prices than they would otherwise do in order to compete but that nevertheless these products were still stocked in order to provide a service to the public.

4 Commission Consideration of the Public Benefits

4.1 As set out in para.3 above the Association's claims in respect of the price recommendations are that they are intended to assist members to remain financially viable and thus stay in business. The price recommendations do nothing to improve the efficiency of members either by pointing out to them ways of reducing their costs or providing market information to which members would not otherwise have access. The price recommendations assist the viability of members by maintaining margins and prices at levels higher than would otherwise prevail in the absence of the SSA recommendations. While that may be a benefit to SSA members it is not, in the Commission's view, a benefit to the public. Although the Association claimed that in the absence of the recommended prices the public would be inadequately serviced no evidence was provided to support this claim. Further, indications in the market are that there are currently too many service stations in New South Wales.

4.2 In relation to the Association members' problem of calculating the costs associated with their businesses the Commission's view is that this is not overcome by simply recommending service charges and prices for oil products. This is so because the costs between individual businesses will vary (and probably quite widely) and the price recommendations which may be appropriate for some members could be quite inappropriate for others. Further, even where the price recommendations are set at a level where most members can remain profitable, they in no way encourage members to

ascertain their own costs and endeavour to reduce them.

4.3 For the reasons stated above and in its draft determination the Commission finds no public benefit in the Association's arrangements the subject of Authorization Application A3013.

5 Commission Comment

5.1 The Commission accepts that small businesses like those in the SSA need assistance in the task of cost analysis and the setting of prices appropriate to those costs. In this regard the Association might develop a cost formula for the guidance of members in ascertaining their individual costs. The Association could consider providing public information on prices prevailing in the market whether wholesale or retail together with a range of percentage markups on costs leaving members free to choose those most appropriate to their situation. Commission staff are available to discuss these matters with the Association.

6 Commission Decision

6.1 In respect of Application A16204, no submissions were made by interested parties at the pre-decision conference. Accordingly the Commission now makes its final determination in accordance with the draft determination and gives as its reasons the summary of reasons sent with the draft. The authorization application A16204 is granted.

6.2 In respect of application A3013 the Commission's decision is that the arrangements the subject of the application for the reasons given do not meet the requirements of section 90(7) of the Trade Practices Act 1974 and accordingly the application is dismissed. In regard to the revocation of

the interim authorization, the Association has asked for a period of time to allow for a consideration and implementation of alternative ways to provide assistance to members in the absence of price recommendations. The Association considered an adjustment period of 12 months would be necessary because it needed to prepare alternatives, discuss them with the Commission or seek authorization and to make personal contact with all members about the changes.

6.3 The Commission does not accept there is ground in this case for continuing the interim authorization. The Association can prepare and develop alternatives and discuss them with Commission staff without the necessity for continuing to issue price recommendations.

6.4 Accordingly the interim authorization is revoked.

DRAFT COMMISSION DETERMINATION

AND SUMMARY OF REASONS

APPLICATIONS FOR AUTHORIZATION BY OR ON BEHALF OF
THE MEMBERS OF THE SERVICE STATIONS ASSOCIATION OF NSW LTD

<u>Registration Nos.</u>	<u>File Nos.</u>
A3013	A74/87
A16204	A76/29

1. The Applications

1.1 The abovementioned applications for authorization were lodged on 12 December 1974 and 16 January 1976 respectively under section 88(1) of the Trade Practices Act on behalf of the members of the Service Stations Association of NSW Ltd ("SSA"). The applications relate to:

A3013

- (I) (a) suggested retail prices for automotive lubricants and
- (b) suggested retail price list for distillate and kerosene.
- (II) Suggested charges for certain automotive services.
- (III) The issue of a window emblem for membership of the SSA.
- (IV) The issue of the SSA official journal - "Automotive Service".
- (V) The Memorandum and Articles of Association of the SAA.
- (VI) "Flat Rate Manual for Mechanical Repairs", containing suggested times and charges.

1.2 The Association's "Flat Rate Manual for Mechanical Repairs" which replaced the original "Manual" at 1.1 (VI) above and which contains only suggested times (not charges) for the mechanical operations set out therein.

2. The Association

2.1 Current membership of the SSA numbers 2,874. The February 1978 edition of Automotive Service says that the SSA "was established in 1935 by a group of traders who sought to protect and promote the common interests of service stations...". The SSA Annual Report of the General Council for the 1976-77 year, published in the August 1977 edition of Automotive Service states that the SSA is the only trade association in Australia which is owned by, and works exclusively for, service station operators.

2.2 The February 1978 edition of Automotive Service states that the SSA pursues an active policy of trade improvement by:

- " . Negotiating with Government Departments and their Ministers;
- . Maintaining continuous contact with officials of the oil industry and other suppliers of goods and services to the retail trade;
- . Stabilising repair and servicing charges;
- . Continuing efforts to retain and increase profit margins;
- . Improving standards of technical training and work in co-operation with State Government training authorities and other organisations;
- . Fostering good relationships between members wherever

possible;

- . Keeping the trade in good standing by close liaison with other trading bodies and maintaining good relationships with them all;
- . Taking every opportunity to publicise the services of the trade and the Association through influential publicity media as well as through the Association's journal.

3. Background

3.1 The Commission wrote to the applicant on 30 June 1978 and enclosed copies of

- (a) the Commission's statement of general principles (24 February 1978) regarding price recommendations to members of trade associations of small businesses (A4006);
- (b) the Commission's determination (24 February 1978) dismissing the applications by the Tasmanian Automobile Chamber of Commerce (TACC) for authorization of its practice of recommending margins on the sale of petrol, oil, grease and other lubricating products (A5032 and A5035);
- (c) the Commission's determination (11 June 1976)
 - (i) dismissing an application for authorization by the Victorian Automobile Chamber of Commerce (VACC) for a recommended hourly rate formula for smash repairs (A231);
 - (ii) granting an application for authorization by the Australian Automobile Chamber of Commerce (AACC) for a times manual listing standard times to remove and replace specific parts and panels

during motor vehicle body repairs (A320).

6)

3.2 Insofar as the above determinations relate to trade association price recommendations for goods and services and to times manual listing of standard times for work, the current applications relate to the same classes of matter in the same industry. The Association was invited to consider the decisions and to distinguish its own case.

3.3 The applicant responded to the Commission's letter on 11 July 1978 and 31 July 1978. The Association provided additional information in these letters but did not make any submission which distinguished, in any material way, its circumstances from those associated with the previous Commission determinations. It does not now, however, maintain its application for authorization of suggested charges for repair work (see para. 1.2 above). Consequently the main questions now before the Commission are whether the Association should be granted firstly authorization for recommending prices for goods and maintenance services, and secondly authorization for listing standard times. The Commission's earlier decisions (see para. 3.1(a), (b) and (c)(ii) above) suggest "No" to the first question and "Yes" to the second.

4. Claimed Public Benefits

4.1 The applicant has only submitted very general arguments in support of the applications. The applicant's submissions are shown in the paragraphs below.

4.2 In its submission supporting the lodgement of application A3013 the SSA stated:

- (i) its services are supplied as a basis for

competitive dealing by members and allows a fair assessment in accordance with first class workmanship;

- (ii) the motoring public together with other organisations receive the benefit of stable working conditions and repairs carried out in equipped workshops and service stations;
- (iii) the public and customers receive the benefit of being in a position to receive competitive prices and quotations which can be compared with the Association's recommendations.

4.3 In a submission to the Commission on 18 April 1978 the SSA stated:

- (i) all services are supplied as a basis for competitive dealing and they allow a fair assessment for times of operation in accordance with competent and first class workmanship in the interests of consumers and the trade alike; and
- (ii) organisations such as the NRMA and the Consumer Affairs Bureau use the Association's services for the purpose of adjudication in relation to over-charging or repair disputes.

4.4 The SSA has made two further submissions. In a submission on 11 July 1978 the SSA stated:

"The Association's services and suggested price lists have been supplied only as a guide to members, who have been advised to cost their products and services in accordance with the merits of their workmanship and competitive operating conditions."

In a further submission on 31 July the SSA said in essence:

- (i) the majority of the members consist of small

businessmen, operating their own service stations or motor repair shops, often needing to co-opt the services of their wives and families to make their business viable and each being responsible for only a very small portion of the market in their areas or country towns.

(ii) the flat rate manual introduces efficiency and rational times for complete and satisfactory work. The Association considers that first class work and competitive quotations are essential.

5. Consideration of the Applications

5.1 The arrangements for which the Association has sought authorization are considered below:

A3013

Suggested Retail Prices for Automotive Lubricants

Suggested Retail Prices for Distillate and Kerosene (as published in 'Automotive Service')

Suggested Charges for Certain Automotive Services

5.2 The Association produces suggested retail price lists for lubricants and similar products supplied by the following companies:

- Amoco
- Ampol
- BP
- Caltex
- Castrol
- Esso
- Golden Fleece
- Mobil

Valvoline
Shell and
Total.

Products appearing on the price lists, in addition to oils, include disc brake fluid, detergent, super outboard motor oil, machine oil, shampoo, surfboard wax and petroleum jelly. The Association calculates the recommended retail price of the oil products by taking the wholesale price and adding 50%. Some non-oil lines are marked up by 33 $\frac{1}{3}$ %. According to the General Secretary of the SSA, the oil companies do not recommend reselling prices of their products, and members, not being skilled in the pricing of these products, need the assistance of a recommended price list. The Association contends that this results in time savings for the service station operator.

5.3 The recommended selling prices for kerosene and distillate are published regularly by the Association in its journal "Automotive Service". Petrol prices in New South Wales are subject to price control and the Association publishes the maximum permissible prices for petrol in the journal.

5.4 The list of suggested charges for automotive services includes such things as lubrication service, front wheel alignment and balancing, repairing of tubes and fitting of tyres, towing, wash and polish and steam cleaning. The Association at regular intervals distributes to its members a sheet showing these recommended charges.

5.5 As stated above the Association has lodged only very general public benefit arguments in support of its application. Some of these are discussed below as follows:

5.5.1 "the motoring public together with other organisations receive the benefit of stable working conditions and repairs carried out in equipped workshops and service stations."

The applicant has not made it clear what is meant by "stable working conditions". However, the claimed public benefit of "repairs carried out in equipped workshops and service stations", if in fact this is a public benefit it is not shown to flow from the Association's recommended charges.

5.5.2 "the public and customers receive the benefit of being in a position to receive competitive prices and quotations which can be compared with the Association's recommendations."

It is not necessary to have recommended prices in order to have a standard of comparison. Members could display their own individually determined prices for customers to compare, or they could display Association lists of the range of prices commonly being charged as a result of individual decisions of members and not recommendations. It cannot be a public benefit in any net sense to display recommended prices unless it is a public benefit to have the prices recommended in the first place.

5.6 The real point of the recommended prices and charges is that they help to maintain the margins and profitability of the service stations in accordance with the Association's policy, but that is not a public benefit. Prices are no longer recommended for petrol, and there is certainly price competition in many areas in respect of petrol. Lubricating oil, distillate, kerosene, and routine maintenance services are sold from the same outlets as petrol. It is to be noted that the TACC decision

(see para. 3.1(b) above) related to lubricating oil as well as to petrol. While recognising that price competition may be less volatile in the non-fuel items, it should not be overlooked that the Association's active policy (see para. 2.2 above) is to retain and increase profit margins, and the price recommendations must have that in mind. As stated in the TACC determination, all available information suggests that there are too many service stations in Australia. Insofar as prices maintain actual margins and therefore help to keep a surplus of stations in business, they do so at the expense of the consumer, and that is certainly not a public benefit. If on the other hand the recommended prices have little effect on price levels, then their very ineffectiveness means that they are not producing a benefit.

5.7 The Association has not demonstrated that its price recommendations to members fall within the guidelines set out by the Commission in its Statement of General Principles mentioned in para. 3.1 above. On the information before it the Commission is not satisfied that any public benefit flows from the SSA price recommendations. Accordingly the requirements of section 90(7) of the Trade Practices Act are not met. The application for authorization so far as it relates to recommended prices and charges is dismissed and the relevant part of the interim authorization revoked.

6. Window Emblem for Membership

6.1 This sign merely indicates that the proprietor of the service station is a member of the Association. No public benefit submission has been made by the applicant in relation to the issue of this sign, and the Commission does not see any public

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benefit. Accordingly the requirements of section 90(7) of the Trade Practices Act 1974 have not been met. The application for authorization so far as it relates to this matter is dismissed and the relevant part of the interim authorization revoked.

By no means, however, does the Commission suggest that authorization is necessary for the continuance of the issue of window emblems. There appears to be no risk of breach of the Trade Practices Act 1974 in that respect.

7. The issue of the Association journal 'Automotive Service'

7.1 The official journal of the SSA - Automotive Service - is a joint publication of the SSA and the Motor Body Repairers and Builders Association of NSW Ltd ("MBRBA"). The publication contains two sections - one devoted to the SSA and the other to the MBRBA. This determination deals only with the SSA section of this journal. The MBRBA section will be dealt with as part of MBRBA's application for authorization (A3012).

7.2 The SSA part of the journal contains up-to-date information on all matters affecting service station operators, including:

- (i) recommended prices in relation to distillate and kerosene. (This matter has been dealt with at para. 5);
- (ii) new product and service developments;
- (iii) technical advice;
- (iv) articles of current interest, covering such topics as credit control, management techniques, insurance, apprenticeships, etc.;
- (v) industrial information and advice;
- (vi) industrial awards and award wages (Federal and State).

7.3 The Commission has no objection to a trade association publishing a journal which provides information of general interest to members or which provides information which assists the efficiency of its members. However, the Commission notes that in the past the Association's journal has been used to disseminate information which may have the purpose or effect of fixing, controlling or maintaining the prices for or discounts, allowances or rebates in relation to goods or services supplied or acquired by members. Such conduct by an Association, in the absence of authorization, may be in breach of section 45 of the Act.

7.4 There is no public benefit in the issue of the Association's journal containing recommended prices. Accordingly, the requirements of section 90(7) of the Trade Practices Act are not met, and the application for authorization, so far as it relates to this matter, is dismissed and the relevant part of the interim authorization revoked. If the journal did not include the recommended prices, it could certainly be published without the need for authorization.

8. Memorandum and Articles of Association of SSA

8.1 Shown below are extracts from the SSA Memorandum of Association:

- "3. The objects for which the Association is established are:-
- (b) To protect and conserve the interests of Service Station Proprietors and Garage owners.
 - (d) To protect and conserve the interests of the members.
 - (e) To consider and deal with all questions concerning the motor trade, motor service stations and garages, the retail selling of motor spirit and oils and accessories and kindred lines and any business usually or conveniently carried on in connection therewith.

- (f) To promote support or oppose legislation or other measures affecting the motor trade, motor service stations and garages, and retail selling of motor spirit and oils and any other business and to deal with any restrictions preventing or interfering with the carrying on of such businesses or any other business or businesses akin thereto.
- (i) To form a code or practice whereby the transactions of business relating to such businesses may be simplified and facilitated.
- (p) To do all such acts and things as may be conducive to the extension of the businesses before referred to or any businesses akin thereto and incidental to the attainment of the above objects."

8.2 In respect of applications for membership Clause 6 of the Articles of the SSA states:

"At the next meeting of the General Council after the receipt of any application for membership such applications shall be considered by the General Council who shall thereupon determine upon the admission or rejection of the applicant. In no case shall the General Council be required to give any reason for the rejection of an applicant."

8.3 In respect of cessation of membership, Clause 48 from the SSA Articles is shown below:

"If any member shall wilfully refuse or neglect to comply with the provisions of the Memorandum and Articles of Association of the Association or shall be guilty of any conduct which in the opinion of the General Council is unbecoming of a member or prejudicial to the interest of the Association the General Council shall have power to expel the member from the Association and erase his name from the Register of Members

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.....

expulsion of the member shall be passed by a majority of three quarters of those present and voting (such vote to be taken by ballot) the member shall be expelled and his name removed from the Register of Members."

8.4 The applicant has not made any specific submission in relation to the public benefit associated with its Memorandum and Articles of Association. The Commission does not see any

public benefit in the Association's Memorandum and Articles of Association, and the applicant is reminded that unless some public benefit can be established the Commission cannot grant an authorization. This, however, is not to say that the Memorandum and Articles need authorization and would be in breach of the Act without it. Nevertheless, the Commission is concerned that some clauses of the Association's Memorandum and Articles of Association could be applied in an anti-competitive fashion. The Commission in a previous determination relating to similar matters stated that it has no objection to Associations setting high standards of conduct for its members but the Commission would have to be satisfied that the conduct aimed at is genuinely 'ethical' and not restrictive of competition. (Australian Federation of Travel Agents - Memorandum and Articles of Association - A16164).

8.5 The effect on competition of clauses 6 and 48 cannot be evaluated on the text of the clauses alone. In order to examine the effects on competition, one must look at how the clauses are likely to be used in practice. The Association has not defined what is meant by conduct 'unbecoming' or 'prejudicial' by members as mentioned in clause 48 of the Articles. Further, clause 6 states that "In no case shall the General Council be required to give any reason for the rejection of the applicant". If these clauses are considered in the light of the clauses of the Memorandum of Association listed in para. 8.1 above they may well be used to inhibit or prevent competitive behaviour. For example these clauses in their current form could operate to either keep out of membership or expel from membership any service station operator or repairer who is likely to, or is in fact, discounting on price or margins.

8.6 The Commission's conclusion is that, for the reasons stated, the Memorandum and Articles of Association of the SSA do not meet the requirements of section 90(7) of the Trade Practices Act, and the application for authorization so far as it relates to this matter is dismissed and the relevant part of the interim authorization revoked. The Commission suggests that the clauses referred to above should be redrafted to remove the objections stated. The absence of authorization would then not matter.

9. Flat Rate Manual for Mechanical Repairs (containing suggested times and charges)

9.1 This formed part of the application A3013 lodged on 12 December 1974 and as stated above contains both suggested times and related suggested prices to be charged for mechanical repairs. Since lodgement, the manual has been amended and reissued by the Association and in its amended form it shows only suggested times for the mechanical operations set out therein. The Association has informed the Commission that it does not now issue recommended prices for the various mechanical operations set out in the manual. The amended manual was lodged by the Association on 16 January 1976 (A16204) and this is discussed below.

A16204

10. Flat Rate Manual for Mechanical Repairs

10.1 Interim authorization was granted to the "Manual", the subject of this application on 7 July 1976.

10.2 The SSA Manual in its current form shows suggested times for specific operations of mechanical repair work on all popular makes and models of cars and trucks from 1967 to 1978.

It contains estimated labour times, tune-up data and front wheel alignment figures, and a labour cost calculation covering hourly rates from \$3 to \$20 per hour.

10.3 The introduction in the Manual states that "all times suggested are based on conditions applying in the average workshop equipped with appropriate tools". The Manual under the heading of Extra Charges, states that in the labour times listed no allowance has been made for a variety of faulty materials encountered in the repair work, including faulty screw threads, rust, corrosion or removal of broken or damaged parts.

10.4 The applicant has made a number of submissions in relation to the Flat Rate Manual for Mechanical Repairs as follows:

"Our Flat Rate Manuals we consider are necessary to the industry and the motoring public alike. These manuals introduce efficiency and rational times for complete and satisfactory work in the Automotive Repair Industry."

"All suggested times and prices are shown only as an indication for the guidance of members who are free to quote in accordance with the merits of their work and operating conditions."

"... our services are also made available to organisations such as the NRMA and to the Consumer Affairs Bureau, for the purpose of adjudication concerning overcharging or repair disputes."

The applicant has indicated that these bodies use the recommended times shown in the "Manual" to help in establishing whether a reasonable charge has been made by the repairer.

10.5 The Commission provided the applicant with a copy of its determination granting authorization to the Australian Automobile Chamber of Commerce (AACC) for a times manual listing standard times to remove and replace specified parts and panels during motor vehicle body repairs (see A320).

10.6 The Commission considers that the SSA Flat Rate Manual is similar to the AACC times manual and that the same public benefits which apply to the issue of the AACC manual also apply to the SSA manual (see A320, para. 2(x)). These benefits as applied to the present case may be summarised as follows: Motor repairers may be called upon to quote on the removal and replacement of many hundreds of parts on any one model of car and from a great number of models. Given the large number of differing model vehicles and the types of operations it must sometimes be most difficult for a repairer to judge with any accuracy the time required to remove and replace certain parts. A times manual that lists objectively ascertained standard times would be of benefit to the repairer. If he has an efficient work force he is free to quote a shorter time, particularly if it is a model with which he is familiar. In the case of more exotic vehicles the times manual would be a valuable guide. The benefit results from the repairer having available a guide to times taken for such a wide range of operations, many of which he may not be familiar with. Provided it is used only as a guide, and not as a universally accepted absolute time, the effects on competition would be minimised.

10.7 The Commission is of the view that there is a benefit to the public (outweighing any anti-competitive effect) in the Association's Flat Rate Manual for Mechanical Repairs in its present form, and therefore authorization is granted.

11. Comment on Denial of Authorization of the SSA's Price Recommendations

11.1 The following extract from the Commission's fourth Annual Report may be helpful to the Association in any future

arrangements it may make in the matter of price recommendations to its members and other aspects of the application denied authorization.

"1.41 As to recommended price lists, the Commission issued a statement of general principles during the year, and it has applied the principles in a number of specific cases. It has granted authorization in one case, but denied it in a number of others. This does not of itself mean that the arrangements are in breach of the law (see para. 2.6). However, it seems unlikely that authorization will be other than rare, simply because small businesses, like other businesses, are not entitled to be maintained at the expense of the consumer. This was particularly clear in the case of the Tasmanian petrol stations (para. 2.34); since authorization was refused to their Association application, prices to consumers have come down at many stations.

1.42 The Commission has told numbers of small business trade associations that it is prepared to discuss with them any material they contemplate issuing to their members that would assist them with information on which to set their own prices; desirably it would be more directed towards helping them with costing, which their members need to know if they are to survive. Some associations have taken up this offer."