

Ms Jaime Martin
Assistant Director
Australian Competition and Consumer Commission
Jaime.martin@accc.gov.au

27 July 2010
Matter 81392730
By email

Dear Ms Martin

Avis Budget exclusive dealing notifications (N94780-N4842) - request for information

We refer to your email dated 19 July 2010. We set out below our clients' responses to your request for information regarding the above matter. The terms used in this response are as defined in Avis and Budget's exclusive dealing notice.

The information highlighted in yellow is information confidential to Avis and Budget. Avis and Budget claim confidentiality in respect of this information on the basis that it is competitively significant or otherwise commercially sensitive to Avis and Budget. Avis and Budget request that this information not be placed on the public register.

Scope of the conduct

- 1 *Can you please outline the processes involved when a customer rents a vehicle that is on Avis and Budget's 'tag white list', including the billing procedures between the RTA, Avis and Budget and the customer.*

The 'tag white list' referred to in the submission supporting the notice is a consolidated, industry-wide list of licence plate numbers that is used by motorway operators to identify vehicles for the purpose of video tolling.

The licence plate of all Avis and Budget vehicles will be placed on the 'tag white list'. This allows the RTA and other motorway operators to recognise Avis and Budget vehicles as vehicles under this scheme where, for example, an e-tag fails to be recognised by the automated payment system on toll roads or a vehicle from a remote area, not fitted with an e-tag, travels on a toll road in Melbourne, Sydney, or Brisbane during its rental.

In remote areas where Avis and Budget vehicles are unlikely to be driven on toll roads (eg a Darwin or Mt Isa based vehicle), no e-tag will be fitted in the vehicles and RTA and other motorway operators will rely on the licence plates being listed on the 'tag white list' should remote vehicles be driven through an automated payment lane on a toll road. If a remote vehicle is driven through an automated payment lane on a toll road, the RTA will send Avis and Budget an 'exception notice' for the remote vehicle requiring Avis and Budget to install an e-tag in the vehicle.

An Avis and Budget remote vehicle which has been placed on the 'tag white list' is dealt with in the same manner and process as if it were fitted with an e-tag device. The process is:

- (a) The customer will be informed, prior to renting the vehicle, of their obligation to pay tolls and a daily administration fee should they drive on a toll road using an automated payment lane.

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- (b) If the customer drives a vehicle that is on the 'tag white list' through an automated payment lane, they will have the toll charges and a \$2.20 per calendar day administration fee charged to their credit card, if credit card details have been provided. [REDACTED]
- (c) Where credit card details are not supplied, the administration fee will be \$5.00 to cover, among other things, the additional administration required to invoice the customer and process cash payments. [REDACTED] (All the above amounts include GST.)

2 *Please explain under what circumstances Avis and Budget would refuse to supply a rental vehicle to a customer. For example, page 2 of the supporting submission states that customers may currently use their own e-tag or obtain an e-pass to use in rental vehicles. Under the proposed conduct, would a customer still be able to use their own e-tag and obtain a rental vehicle from Avis or Budget?*

Customers will not be able to use their own e-tag or e-pass in an Avis and Budget vehicle which contains an e-tag. This applies to all vehicles including remote vehicles on the 'tag white list'. To avoid theft of e-tags, e-tags will be permanently affixed to the vehicle. If a customer wanted to use their own e-tag in the vehicle, both the e-tag in the vehicle and the customer's e-tag would be charged a toll. That is, the customer would be charged two tolls for the one journey.

In addition, vehicles will move between locations so some vehicles at remote locations will have e-tags installed and some vehicles in metropolitan areas will not have e-tags installed. As discussed above, if an Avis and Budget vehicle without an e-tag installed is driven through an automated payment lane on a toll road, the RTA will send Avis and Budget an 'exception notice' for the remote vehicle, requiring Avis and Budget to install an e-tag in the vehicle.

[REDACTED] **EXCLUDED FROM
PUBLIC REGISTER**

Avis and Budget will refuse to supply a rental vehicle to a customer who does not agree to acquire an RTA E-Toll Facility. All Avis and Budget customers must acquire an RTA E-Toll Facility from RTA but will be charged fees only if they drive an Avis and Budget vehicle through an automated payment lane on a toll road.

The administration fees

3 *Under the proposed arrangements, customers will be charged an administration fee (in addition to any toll incurred) for each day the customer drives on a toll road using an automated payment lane. Where the customer supplies a credit card, the administration fee is \$2.20 [REDACTED] Where credit card details are not supplied, the administration fee is \$5.00 to cover the additional fees required to invoice the customer and to process cash payments [REDACTED].*

Can you please provide further information about how each of the proposed administration charges were determined [REDACTED]?

Whilst the administration charge is aimed at cost recovery, it is also a fee for the service provided and is not precisely matched to the costs which:

- have been incurred by RTA and Avis and Budget in setting up this service; and
- will be incurred by RTA and Avis and Budget in providing this service.

Avis and Budget believes this fee is reasonable as there are a number of costs that have been incurred and will be incurred in providing this service to the customer. For example, costs are incurred by RTA in:

- supplying e-tags for Avis and Budget vehicles;
- invoicing the customer (if a credit card is not provided) and pursuing payment of those invoices;
- processing the various transactions;

- procuring, developing and maintaining systems, hardware, and software; and
- maintaining the website and call centre for toll road related enquiries.

Avis and Budget incurs costs in:

- installing and decommissioning the tags in their vehicles;
- updating computer systems with tag details attached to each vehicle;
- printing and distributing the amended customer terms and conditions;
- explaining the system to customers; and
- providing the customer's electronic data to the RTA when a toll road is used.

[REDACTED]

- 4 *Please confirm whether the above administration fees also apply to vehicles on the 'tag white list'? If not, please outline the relevant administrative fees for such vehicles.*

Yes. The above administration fees also apply to vehicles on the 'tag white list'.

- 5 *Please outline how administration fees will be disclosed to customers.*

The particulars of the administration fees will be disclosed:

- in the schedule of fees to the Customer Terms & Conditions;
- through a point-of-sale display at each rental desk;
- on the RTA's website; and
- prominently on the homepage of Avis's and Budget's Australian website and in the FAQ section when using the online booking tool.

Public benefits

- 6 *Page 5 of the supporting submission states that the notified conduct will 'reduce operational costs associated with the photograph and toll notice/infringement process for trips without an e-tag or e-pass while also benefiting customers who will no longer be charged an administration fee as part of the toll/infringement notice process.'*

As noted above, under the proposed arrangements customers will be charged an administration fee by the RTA (and Avis or Budget) for use of the E-Toll Facility. Please outline the administration charges incurred by customers under current toll/infringement notice processes, compared to the proposed administration charges under the notified arrangements.

Each motorway operator has different processes for unpaid tolls. In general, drivers who use an automated payment lane on a toll road without an e-tag or e-pass are required promptly to call the motorway operator to pay the toll over the phone. If the driver fails to pay the toll promptly (usually within 48 hours), the motorway operator or a third party on its behalf will send a toll notice to the registered owner of the vehicle. While the driver is ultimately responsible for payment of the toll, registration records of vehicles only capture the registered owner of the vehicle. Therefore, the registered owner (if he, she, or it was not the driver) must provide a statutory declaration as to who was driving the vehicle at the time the toll was incurred. The motorway operator must then track down the driver.

The driver will be required to pay the toll as well as an administration fee of approximately \$7 to \$10¹ for each toll incurred. If the driver fails to pay the toll notice, some motorway operators send a further notice with a higher administration fee of approximately \$20 for

¹ This amount varies from operator to operator, but the vast majority of operators charge a \$10 administrative fee. An example of a more complex fee can be seen at <http://www.eastlink.com.au/page.aspx?cid=108>.

each toll incurred. If these toll notices are ignored by the driver or registered owner, an infringement notice is issued with varying penalties of over \$100² for each toll incurred.

If you require any further information, please contact Michael Gray on (02) 9225 5286 or Jennifer Sing Key on (02) 9225 5011.

Yours faithfully

Sgd. M.Gray

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² For example, East Link (Melbourne, Victoria) imposes a penalty of \$119 per day of unregistered travel and Connector Motorways (Lane Cove Tunnel and Falcon Street Gateway NSW) imposes a \$145 penalty.