



**Australian  
Competition &  
Consumer  
Commission**

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Our Ref: N95662 and 96663  
Contact Officer: Tanya Hobbs  
Contact Phone: (02) 6243 1029

12 January 2012

Dear Sir or Madam

**Notifications N95662 lodged by RAC Motoring Pty Ltd & N95662 lodged by Club Assist Pty Ltd - interested party consultation**

The Australian Competition and Consumer Commission (ACCC) is seeking your comments regarding the following conduct notified to the ACCC by RAC Motoring Pty Ltd (RACM) and Club Assist Pty Ltd (Club Assist) on 4 January 2012:

- for two years, Club Assist proposes to supply batteries exclusively to RACM on condition that RACM does not acquire batteries from any other supplier; and
- for two years, RACM will acquire batteries exclusively from Club Assist on the condition that Club Assist does not supply batteries to any retail business without RACM's prior written approval.

For more details please refer to the notifications, which are available on the ACCC's website [www.accc.gov.au/ExclusiveDealingRegister](http://www.accc.gov.au/ExclusiveDealingRegister).

**The role of the ACCC**

The conduct notified to the ACCC by RACM and Club Assist would generally be considered to fall within the definition of exclusive dealing, which is regulated by section 47 of the *Competition and Consumer Act 2010* (the Act). By notifying the conduct to the ACCC, RACM and Club Assist may be able to gain statutory protection from the Act.

The ACCC may revoke the notification at any time if it considers that the public detriment from the conduct outweighs the public benefit. In order to assess the balance of public detriment and benefit, the ACCC may contact interested parties.

**Request for submission**

As a potentially interested party, the ACCC invites you to make a submission on the likely public benefits and effect on competition, or any other public detriment, from the conduct notified by RACM and Club Assist.

If you intend to provide a submission in relation to Club Assist's and RACM's notifications, please do so by **Friday 27 January 2012**. Submissions can be lodged by email to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au), by facsimile on (02) 6243 1212 or posted to GPO Box 3131, Canberra ACT 2601.

Submissions, including oral submissions, will be placed on the ACCC's public register subject to any request for exclusion (guidelines are attached). A summary of the notification process, outlining the ACCC's role in assessing notifications and how to make a submission is attached.

You may wish to forward this letter to any other person you think may wish to make a submission to the ACCC regarding the notifications.

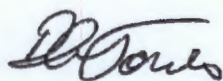
#### **Timetable**

The ACCC will progress its assessment of the notifications in a timely manner. An indicative timetable is set out below for your information.

<b>23 December 2011</b>	Lodgement of notifications and commencement of immunity.
<b>12 January 2012</b>	Public consultation process begins.
<b>27 January 2012</b>	Closing date for submissions from interested parties.
<b>3 February 2012</b>	Club Assist and RACM respond to issues raised in the public consultation process.
<b>February 2012</b>	ACCC decides to take no further action or issues a draft notice to revoke the notifications
<b>February 2012</b>	Public consultation on draft notice (if issued), including any conference if called.
<b>February/March 2012</b>	ACCC decides to take no further action or issues a final notice revoking the immunity afforded by the notifications.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please contact Tanya Hobbs on (02) 6243 1029 or via [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au).

Yours sincerely



David Jones  
Acting General Manager  
Adjudication Branch

## **Interested Parties list**

Australian Battery Industry Association

Auto Masters

Auto One

Autospark

Batteries (WA)

Batteries Plus

Battery King

Battery Mart

Battery Wizard

Battery World

Call-Out Mobile Repairs

Century Batteries

Challenge Batteries WA

Coles – Kmart

Deering Autronics

Exide Batteries

Goodchild Enterprises

Lubemobile

Malz

Marshall Batteries

Power Crank Batteries

Supercheap Auto

Tyrepower

Ultratune

Woolworths



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## Guidelines for excluding information from the public register for authorisation, merger clearance and notification processes

### Public process

The Australian Competition and Consumer Commission (ACCC) is responsible for assessing non-merger authorisation and merger clearance applications and notifications. Successful applicants and notifying parties are protected from legal action under specific competition provisions of the *Competition and Consumer Act 2010* (the Act) (formerly cited as the *Trade Practices Act 1974*). The provision of such legal protection is not taken lightly. The ACCC's assessment of authorisation and merger clearance applications and notifications is therefore conducted openly and transparently with extensive consultation.

### The Public Register

Under the Act the ACCC must maintain public registers of information provided in the authorisation, merger clearance and notification processes.

The purpose of the public register is to enable the authorisation, merger clearance, and notification processes to be as open and transparent as possible, particularly so that claims made by those supporting an application can be tested and interested parties have the opportunity to put their views.

The ACCC endeavours to make all documents placed on the public register available on its website ([www.accc.gov.au](http://www.accc.gov.au)).

### Can information be excluded from the public register?

The Act allows for applicants, notifying parties and interested parties providing information about an authorisation or merger clearance application or notification to ask that the information, or parts of it, be excluded from the relevant public register.

Under the Act, when a request to exclude information from the public register is made, the ACCC must exclude the information from the public register if it contains the details of:

- a secret formula or process
- the cash consideration offered for the acquisition of shares or assets
- the current costs of manufacturing, producing or marketing goods or services.

The ACCC also has discretion under the Act to exclude material from the public register if it is satisfied that it is desirable to do so, either because of the confidential nature of the material or for any other reason.

### How to request information be excluded from the public register

Parties requesting that information be excluded from the public register must do so when they submit the information to the ACCC. Reasons must be provided in support of the request.

The Competition and Consumer Regulation 24 provides that if such a request is made for a whole document or part of a document, the words 'Restriction of Publication Claimed' should appear in red writing near the top of each page. When a request is made for exclusion of part of a document, the regulations state that the words 'Restriction of Publication of Part Claimed' should appear in red near the top of the first page and the part of the document for which exclusion is requested should also be clearly marked in red. If the request concerns a document longer than five pages, a description of the whereabouts of the parts for which exclusion is requested should be provided.

The ACCC asks that you provide a full copy of the document, and a public register version with the information to be excluded from the public register omitted.

You should remove headers claiming 'Confidential communication' from documents (for example, emails and facsimiles) unless they contain information that you want excluded from the public register. If the information is not confidential and the header cannot be removed, you should clearly state at the beginning of correspondence to the ACCC that exclusion from the public register is not requested.

### **Excluding information from a form**

To be valid, an application for authorisation, an application for a merger clearance, or a notification must, among other things, be in a form prescribed by the regulations, contain the information required by the form, and be accompanied by any other information or documents prescribed by the regulations. Therefore, a party is required to answer each question on the relevant form.

The form in its entirety will be placed on the public register. A party may not claim confidentiality over an answer to a question on the form or part thereof.

Where a party has claimed confidentiality over an answer or part thereof to a question on the form, the form will be considered invalid. **In most cases, the party will be provided with an opportunity to rectify the matters that resulted in invalidity and to resubmit the application.** Further information on the ACCC's validity requirements can be found in the Guide to Authorisation, the Formal merger review process guidelines, and the Guide to exclusive dealing notifications publications available on the ACCC's website ([www.accc.gov.au](http://www.accc.gov.au))

It may be the case that a question in a form asks for information that parties may consider to be commercially or competitively sensitive. Parties are encouraged to contact the ACCC in advance of submitting an application or notification to discuss any potential concerns regarding potential confidential information.

### **Confidential supporting submission related to an application or notification**

If a party wishes to provide additional information relating to an application or notification that is confidential, this information should be placed in a covering letter or separate document titled, for example, 'Confidential submission'. This document should not be referred to on the form as an answer, or part of an answer, to any question on the form. When making a confidential submission, a party should expressly request the ACCC to exclude the confidential submission from the public register and provide written reasons stating, in as much detail as possible, why the exclusion is sought.

### **How does the ACCC assess requests to exclude information from the public register?**

Information subject to a request for exclusion will not be placed on the public register while the ACCC assesses the request.

The ACCC will try to respond to requests to exclude information from the public register within one to two business days. The ACCC is generally able to respond much faster if requests are limited to information that is genuinely confidential, if confidential information is clearly marked and if requests are accompanied by a detailed explanation of why it should be excluded from the public register.

When the ACCC agrees to a request, the information will be excluded from the relevant public register. This information may still be used by the ACCC under its powers under the Act. Information withheld from the public register may still be accessed through other legal processes such as under the *Freedom of Information Act 1982*.

In instances where the party applying or notifying has requested the exclusion in a public document (e.g. a covering letter to an application) then the ACCC will place its letter responding to the request on the public register.

Where the request has not been made public, the ACCC may decide to not place its response to the request on the public register.

If the ACCC denies a request because the request is not accompanied by sufficient supporting information or because it considers that the information is not confidential in nature, the ACCC will inform the party making the request of its decision.

If the ACCC denies a request, the information for which exclusion was denied will be considered as withdrawn from the ACCC's consideration—unless the party advises that it wishes to withdraw or amend the request for exclusion. As a general rule, the ACCC will allow the party one to two business days to respond.

If a party chooses to withdraw the information subject to an exclusion request, the ACCC will not take account of the information in its decision-making processes.

Generally speaking, the ACCC will decline a request to exclude information from the public register where that information is necessary to identify the conduct or arrangements for which protection is sought.

### Contacting the ACCC

ACCC staff can provide guidance on preparing an application or exclusive dealing notification and any claim for confidentiality of information you wish to provide. Discussing confidentiality claims, particularly complex ones, with ACCC staff before submitting an application or notification can help you resolve any issues about validity or confidentiality before lodgement.

If you have any questions about excluding information from the public register, please contact the Adjudication Branch at [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au) for applications for authorisation or notifications or the Mergers and Acquisitions Group at [mergers@acc.gov.au](mailto:mergers@acc.gov.au) for merger clearance applications.

#### Checklist for requesting that information be excluded from the public register

- Have you identified the specific sections of the document to which the request relates?
- Have you outlined reasons for requesting that information be excluded from the public register?
- Have you provided a copy of the full document and identified those parts you want excluded?
- Have you provided a public register version of the document and masked or removed those parts you want excluded?
- Are you aware that requests to exclude information from the public register must be submitted at the time the information is provided to the ACCC?

### Related publications

*Access to public registers*

*Merger guidelines*

*Merger review process guidelines*

*Formal merger review process guidelines*

*Guide to authorisation*

*Guide to collective bargaining notifications*

*Guide to exclusive dealing notifications*

### ACCC contacts

Infocentre 1300 302 502

Website [www.accc.gov.au](http://www.accc.gov.au)

For other business information,  
go to [www.business.gov.au](http://www.business.gov.au).

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#### Important notice

The information in this publication is for general guidance only. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law in any jurisdiction. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice if you have any specific concern.

The ACCC has made every reasonable effort to provide current and accurate information, but it does not make any guarantees regarding the accuracy, currency or completeness of that information.

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# Exclusive dealing notification process—the basics

## What is an exclusive dealing notification?

The ACCC is the independent Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive arrangements or conduct, thereby encouraging competition and efficiency in business resulting in a greater choice for consumers in price, quality and service.

Exclusive dealing involves one trader imposing restrictions on another trader's freedom to choose with whom, in what or where they deal. Exclusive dealing is prohibited under the Act in certain circumstances.

For example, the Act prohibits a common form of exclusive dealing known as third line forcing. Third line forcing is the supply of goods or services on condition that the purchaser also acquires goods or services from a third party.

Another form of exclusive dealing is the supply of goods or services on condition that the buyer will not acquire, or will limit the acquisition of, goods or services from a competitor of the supplier. This form of exclusive dealing only breaches the Act when it has the purpose or effect of substantially lessening competition.

Businesses may obtain immunity for conduct that might risk breaching the exclusive dealing provisions of the Act by lodging a notification with the ACCC.

The ACCC may revoke a third line forcing notification if it is satisfied that the likely benefit to the public will not outweigh the likely detriment.

The ACCC may revoke a notification for exclusive dealing, other than third line forcing, if it is satisfied that the conduct has the purpose, effect or likely effect of substantially lessening competition and the likely benefit to the public will not outweigh the detriment.

Before revoking a notification the ACCC will issue a draft of its reasons and provide an opportunity to call a conference.

The Act sets out a public process for assessing exclusive dealing notifications with notifications and related documents placed on a public register. In some cases the ACCC will contact interested parties inviting submissions on the proposed exclusive dealing conduct.

## Making a submission

When preparing your submission, please remember to provide details of the reasons for your views and any supporting materials you may have.

The ACCC encourages submissions in writing; however, oral submissions can also be made. Both written and oral submissions are placed on a public register.

You may request that information included in the submission be excluded from the public register. Submissions that are excluded from the public register may still be taken into account by the ACCC when conducting its assessment of an exclusive dealing notification. The ACCC has prepared guidelines for seeking exclusion from the public register, which are available on its website.

Submissions should be addressed to:

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

They can also be lodged by email to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au) or by facsimile on 02 6243 1211.

## Further information

The ACCC has a number of publications that may assist in answering further queries on the exclusive dealing notification process. The ACCC publications listed below are available on its website and in some cases in hard copy form.

*Guide to exclusive dealing notifications*

*Authorisations and notifications: a summary*

*Guidelines for excluding information from the public register for authorisation, merger clearance and notification processes*

