

BY EMAIL

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Blake Dawson

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Australian Competition and Consumer Commission

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23 December 2011

Exclusive dealing notification

We represent RAC Motoring Pty Ltd (**RACM**).

RACM has instructed us to lodge the **enclosed** notification of exclusive dealing under section 93 of the *Competition and Consumer Act 2010* (Cth) on behalf of it and Club Assist Pty Ltd (the **Notification**).

A cheque for the amount of \$5,000, being the lodgement fee for the Notification in respect of both parties, will be provided separately to the Australian Competition and Consumer Commission at its Perth office today.

We also **attach** a redacted copy of the Battery Supply Agreement to which the Notification relates. We provide this on a strictly confidential basis, and request, under section 95(2) of the Competition and Consumer Act, that it be excluded from the register kept under section 95(1) of the Competition and Consumer Act by reason of the confidential nature of the matters contained in it, which are commercially sensitive and disclose details of the supply arrangements between RACM and Club Assist Pty Ltd.

Yours faithfully

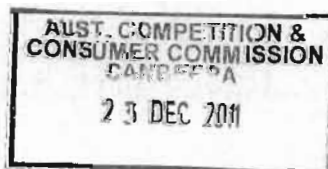


Blake Dawson

Our reference
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Form G

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of person giving notice:

(Refer to direction 2)

N95662

i. RAC Motoring Pty Ltd (ABN 33 009 292 228) (**RACM**), and

N95663

ii. Club Assist Pty Ltd of 237-239 Frankston-Dandenong Road, Dandenong, Victoria 3175 (ABN 48 663 587 119) (**Club Assist**).

(b) Short description of business carried on by that person:

(Refer to direction 3)

RACM is a wholly owned subsidiary of the Royal Automobile Club of Western Australia (Inc) (**RACWA**). Its role is to operate the motoring division of RACWA by providing road-side assistance services to members of RACWA and others in Western Australia. Those services include the sale, delivery and installation of motor vehicle batteries.

In Western Australia, Club Assist is a wholesale supplier of batteries for automotive passenger vehicles, light trucks and commercial vehicles, motor cycles, as well as marine and deep cycle applications (**Batteries**). Club Assist was originally established to support the automobile clubs in each State and Territory of Australia, including RACWA and its related entities. This continues to be a key focus of Club Assist.

As at the date of this notice:

- automobile clubs from across Australia own 80% of the shares in Club Assist, and
- RACWA is a member of a consortium of four automobile clubs that collectively own 20% of the shares in Club Assist. Due to confidentiality undertakings, members cannot be disclosed.

(c) Address in Australia for service of documents on that person:

For service of documents on RACM:

Blake Dawson
ATTENTION: Darren Grondal (Partner) / Justin Jones (Senior Associate)
Level 32 Exchange Plaza
2 The Esplanade, Perth WA 6000

Email: darren.grondal@blakedawson.com / justin.jones@blakedawson.com



For service of documents on Club Assist:

Club Assist Pty Ltd
Attention: Bruce Adams (General Counsel)
237-239 Frankston-Dandenong Road,
Dandenong, Victoria, 3175

Email: Bruce.Adams@clubassist.com.au

2. Notified arrangement

(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

This notification concerns Batteries that are imported by Club Assist and supplied to RACM in Western Australia. Club Assist supplies the Batteries to RACM under the terms of a Battery Supply Agreement.

The Batteries are for use in automotive passenger vehicles, light trucks, commercial vehicles. Club Assist also supplies, to a lesser extent, marine Batteries for recreational boats, Batteries for motorcycles and "deep cycle" Batteries for four wheel drives, caravans and other recreational pursuits.

(b) Description of the conduct or proposed conduct:

(Refer to direction 4)

Under the Battery Supply Agreement:

- Club Assist proposes to supply "RAC Batteries" to RACM on condition that RACM does not acquire Batteries from any other person,
- RACM proposes to acquire RAC Batteries from Club Assist on condition that Club Assist does not supply Batteries to any "**Retail Business**" without RACM's prior written approval. A "Retail Business" is defined as a person who acquires or wishes to acquire a Battery for the purpose of on-selling the Battery to another person in Western Australia (whether or not the Battery is supplied in conjunction with other services), and
- RACM will give Club Assist an intellectual property licence that permits it to use RACWA's trademark and indicia for the sole purpose of supplying Batteries to RACM under the Battery Supply Agreement. The Batteries to which RACWA's trademark and indicia may be applied are referred to as "**RAC Batteries**". All Batteries to be supplied by Club Assist to RACM must be branded as RAC Batteries. RACM has agreed that it will not give any other person the right to use RACWA's trademark and indicia for the purposes of supplying Batteries (except where Club Assist is unable to supply RACM).

A copy of the relevant parts of the Battery Supply Agreement is provided to the Commission on a confidential basis at Annexure 1.

The proposed conduct will take place for the term of the Battery Supply Agreement. The term is two years with automatic extensions of two years, unless either party terminates the arrangement by giving not less than six months' notice.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

(a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

There are two classes of persons that may be affected by the notified conduct. These are:

- Retail Businesses operating in Western Australia, who wish to acquire Batteries from Club Assist, and
- wholesale suppliers of Batteries who wish to supply Batteries to RACM in Western Australia (**Wholesale Businesses**).

The Retail Businesses include:

- generalist retail outlets that sell Batteries as well as other goods (such as supermarkets),
- specialist automotive retail outlets that sell Batteries alongside other automotive products (including specialist automotive retailers, petrol stations, car dealerships, tyre outlets, and retail outlets of automotive supply businesses),
- motor vehicle mechanics that sell and, or, install Batteries,
- generalist road-side service businesses that offer general road-side services, including Battery installation as required (including emergency road-side services), and
- dedicated roadside Battery installation and delivery services.

The Retail Businesses include businesses that form part of RACM's network of approved repairers and road service contractors.

The Wholesale Businesses include a range of businesses that import or, to a lesser extent, manufacture Batteries for supply to Retail Businesses. However, a number of Wholesale Businesses may not be prepared to supply RAC Batteries, as the Batteries that they supply may have their own branding that cannot be replaced or supplemented by RAC Battery branding.

(b) Number of those persons:

(i) At present time:

The number of Retail Businesses is not known, but is estimated to be greater than 50.

The number of Wholesale Battery Suppliers is not known, but is estimated to be between 53 and 57.

(ii) Estimated within the next year:

(Refer to direction 6)

The number of Retail Businesses estimated to be affected in the next year is not known, but is estimated to be greater than 50.

The number of Wholesale Battery Suppliers is not known, but is estimated to be between 53 and 57.

- (c) **Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:**

Not applicable. However, some of the key Retail Businesses that might be affected include Marshall Batteries, Battery World, Supercheap Auto, Auto Masters, Deering Autronics, Beaurepairs, Tyrepower, Malz, Auto One, Battery Wizard, Bob Jane, K-mart Tyre and Auto, and Goodchild Enterprises.

4. **Public benefit claims**

- (a) **Arguments in support of notification:**
(Refer to direction 7)

The notified conduct will deliver a range of public benefits. These include the following:

- (i) reduced Battery costs through:
- volume discounts: Club Assist is able to offer RACM lower unit Battery prices because the conduct means that RACM will acquire all of its Batteries from Club Assist, and
 - reduced contract administration costs: the notified conduct means that Club Assist and RACM are dedicated to each other, and therefore contract administration costs are limited to managing a single Battery Supply Agreement,
- (ii) enhanced business efficiencies: the notified conduct means that Club Assist's and RACM's interests are commercially aligned, which will allow them to work together to ensure that Club Assist is able to deliver Batteries quickly and efficiently, which will lead to improved service levels and lower costs that will benefit end-consumers of Batteries,
- (iii) benefits for end customers: the notified conduct ensures benefits for end customers through:
- reduced costs and increased efficiencies that will have a "flow-on" effect, leading to reduced Battery costs for end customers in a competitive retail market for the supply of Batteries, and
 - effective complaint and warranty claim handling in relation to RAC Batteries through RACM's arbitration and advocacy in respect of defects or complaints regarding Batteries,
- (iv) promoting inter-brand competition in downstream markets by creating value in the RAC Battery brand through:
- guaranteeing product consistency and quality: the notified conduct means that all RAC Batteries will be procured wholesale by Club Assist to RACM specifications so as to ensure quality, reliability and dependability. Club Assist is required to meet these specifications, and imports Batteries manufactured by international manufacturers in order to meet those specifications,
 - focus on the RAC Battery brand: the notified conduct means that RACM's and Club Assist's commercial interests are aligned because both parties will benefit from maximising sales of RAC Batteries (compared to other brands) in Western Australia,
 - avoiding customer confusion and brand damage that could arise if Club Assist was free to supply Batteries with the same specifications as RAC Batteries but without RAC branding to Retail Businesses.

Finally, the parties submit that the conduct will not lessen competition in any market. A further discussion of the relevant markets is contained in the answer to question 5.

(b) Facts and evidence relied upon in support of these claims:

Please see the details above in (a).

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 8)

RACM and Club Assist consider that there are likely to be two relevant markets:

- the market for the wholesale supply of Batteries in Western Australia (**WA Wholesale Battery Supply Market**), and
- the market for the supply of Batteries to retail customers in Western Australia (**WA Retail Battery Supply Market**).

The relevant market in which the goods or services described at 2 (a) will be acquired by RACM is the WA Wholesale Battery Supply Market, and the market in which RACM will on-supply those Batteries is the WA Retail Battery Supply Market.

WA Wholesale Battery Supply Market

The WA Wholesale Battery Supply Market has the following features.

- the market is for the supply of Batteries, which are homogenous products that cannot be readily substituted for other goods or services,
- Wholesale Businesses who wish to supply Batteries to customers in Western Australia need to have a physical presence in Western Australia in order to effectively wholesale quantities of Batteries to customers (for example, a warehouse and distribution infrastructure such as delivery drivers)
- there is vigorous competition between Wholesale Businesses in the market, and
- barriers to entry are low.

WA Retail Battery Supply Market

The WA Retail Battery Supply Market has the following features:

- as with the WA Wholesale Battery Supply Market, the market is for the supply of Batteries, which are homogenous products that cannot be readily substituted for other goods or services,
- retail customers in Western Australia will generally only acquire Batteries from suppliers that are also based in Western Australia,
- as explained in the answer to question 3(a), there are a range of Retail Businesses that supply Batteries in this market in competition with each other, including Retail Businesses that:
 - supply Batteries as a stand alone product to end customers for install themselves

- supply and install Batteries for customers at a retail outlet (eg mechanics, repairers, and some retail outlets), and
- supply and install Batteries for customers at the customer's location or premises (eg road side assistance and battery delivery vans), and
- barriers to entry to the market are low.

6. Public detriments

(a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:

(Refer to direction 9)

There are unlikely to be any public detriments resulting, or likely to result, from the notified conduct. This is because:

- there is vigorous competition in the WA Wholesale Battery Supply Market, which will not be substantially lessened or reduced through the notified conduct—there are a wide range of alternative Wholesale Businesses which can and do supply Batteries to Retail Businesses,
- the notified conduct will promote competition in the downstream WA Retail Battery Supply Market by increasing the value of the RAC Battery brand (which in turn may promote competition in upstream markets), which are sold in competition with Batteries supplied by a range of Retail Businesses,
- the notified conduct will reduce unit costs of RAC Batteries for RACM, which it can then pass on to end consumers,
- there is a large range of Wholesale Businesses and Retail Businesses competing in the WA Wholesale Battery Supply Market and WA Retail Battery Supply Market, and
- there are no significant barriers to entry to either the WA Wholesale Battery Supply Market and WA Retail Battery Supply Market.

(b) Facts and evidence relevant to these detriments:

Please see the details above in (a).

7. Further information

(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Darren Grondal
Partner
Blake Dawson
Level 32 Exchange Plaza
2 The Esplanade, Perth WA 6000

Justin Jones
Senior Associate
Blake Dawson
Level 32 Exchange Plaza
2 The Esplanade, Perth WA 6000

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Bruce Adams
General Counsel
Club Assist Pty Ltd
237-239 Frankston-Dandenong Road,

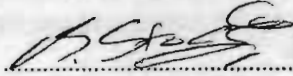
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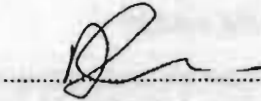
Dated 23 DECEMBER 2011

Signed on behalf of the applicants



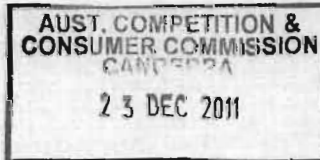
(Signature)

Brendan Stocks
Executive General Manager - Motoring
RACM



(Signature)

Bruce Adams
General Counsel
Club Assist



DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. 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.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.