



Australian
Competition &
Consumer
Commission

Draft Determination

Applications for authorisation

lodged by

Royal Automobile Club of Queensland &
RACQ Approved Repairers

in respect of

reciprocal warranty repair arrangement

Date: 2 May 2013

Authorisation numbers: A91358 & A91359

Commissioners: Sims
Rickard
Court
Dimasi
Walker
Willett

The ACCC proposes to grant authorisation for five years to RACQ to set the labour rate to be charged by RACQ Approved Repairers for reciprocal warranty repairs and to RACQ Approved Repairers to only offer reciprocal warranty repair services to RACQ members.

The applications for authorisation

1. On 20 February 2013 the Royal Automotive Club of Queensland (RACQ) lodged applications for authorisation (A91358 and A91359) with the ACCC pursuant to sections 88(1), 88(1A) and 88(8) of the *Competition and Consumer Act 2010* (the **Act**).
2. RACQ is seeking authorisation for itself and current and future RACQ Approved Repairers to enter into and give effect to a contract arrangement or understanding that fixes, controls or maintains the labour charge that each RACQ Approved Repairer will charge other RACQ Approved Repairers for repair work done to honour a warranty given by the original RACQ Approved Repairer to an RACQ Member.
3. RACQ also seeks authorisation on behalf of all current and future RACQ Approved Repairers to refuse to provide:
 - i. to non-RACQ members the express warranty involving reciprocal repairs
 - ii. warranty repair services at no charge to the customer to non-RACQ members, and
 - iii. warranty repair services at no charge to RACQ members whose original repairs were not performed by another RACQ Approved Repairer.
4. RACQ is seeking authorisation for five years
(together the proposed **Conduct**).

Background

RACQ

5. RACQ is a motoring organisation that provides auto club services to its members. Part of the membership services offered to RACQ members is access to the RACQ Approved Repairers Network. RACQ submits that it enters into standard form approved repairer agreements with businesses that provide automotive repair services to designate them as RACQ Approved Repairers.

RACQ Approved Repairers

6. RACQ submits that the Approved Repairers Network is separate from the networks of 'selected repairers' and accident tow truck operators for insurance claims. Rather, the proposed Conduct relates to the separate issue of scheduled servicing and break downs.
7. RACQ submits there are 260 RACQ Approved Repairers covering a wide range of repair categories including general repairs, automatic transmissions, exhausts, tyres, auto electrical, auto glass, diesel specialists and lock smiths. RACQ submits there are around 5000 business premises providing automotive

repair services in Queensland. Approximately 30 per cent of Queensland drivers have an RACQ membership.

8. The RACQ is seeking to enhance its RACQ Approved Repairers Network by including a requirement that all RACQ Approved Repairers offer a standard express warranty for repair services to RACQ members. Where further repairs are required that are covered by that express warranty, the RACQ member may require another RACQ Approved Repairer to undertake those repairs. Where that occurs, the RACQ member will not be charged for the repair, instead the Approved Repairer undertaking the warranty repair will charge the RACQ Approved Repairer who did the original repair and gave the express warranty, at a fixed labour cost.
9. To facilitate the warranty repair scheme, the RACQ is proposing to include a provision in its standard form agreement requiring RACQ Approved Repairers to charge each other a set labour rate for warranty repairs. Agreements will be entered into individually between RACQ and a repairer.
10. In addition to undertaking warranty repairs at a set hourly labour rate, each RACQ Approved Repairer will agree to notify the original repairer of the work proposed to be done, an estimate of the hours involved and parts required, and agree between them the final contract price to be charged back to the original repairer for the warranty repairs.
11. RACQ submits RACQ members may be concerned that an express warranty for repairs would be of limited utility to them if they need or expect to take the vehicle more than towing distance from the original repairer because many RACQ Approved Repairers are small businesses, usually with only one workshop. RACQ provided the example that someone planning a driving holiday might be concerned about acquiring repairs from a local RACQ Approved Repairer in case warranty repairs are required while they are travelling. The RACQ member may instead opt to have their vehicle repaired by a large chain or franchise repairer (who may have a reciprocal warranty service that can be accessed throughout the state or nationally).
12. In addition, RACQ submits that in order for RACQ Approved Repairers to have the confidence to participate in the scheme it is necessary to fix the labour rate to overcome any concerns that the original repairer may be signing a blank cheque to pay whatever the other repairer chooses to charge for the warranty repairs.

Submissions received by the ACCC

13. The ACCC tests the claims made by the applicant in support of an application for authorisation through an open and transparent public consultation process.
14. The ACCC sought submissions from 50 interested parties potentially affected by these applications, including RACQ Approved Repairers, industry associations, consumer organisations and government. The ACCC received one brief submission from an Approved Repairer in support of the applications.

ACCC evaluation

15. The ACCC's evaluation of the proposed arrangements is in accordance with the relevant net public benefit tests¹ contained in the Act. In broad terms, under the relevant tests the ACCC shall not grant authorisation unless it is satisfied that the likely benefit to the public would outweigh the detriment to the public constituted by any lessening of competition that would be likely to result, and that the conduct will result in such a benefit to the public that it should be allowed to take place.
16. In its evaluation of the effect of the proposed arrangements, and the public benefits and detriments likely to result, the ACCC has taken into account:
- a. a brief submission received in response to the ACCC's initial consultation
 - b. further information provided by RACQ
 - c. the likely alternative future without the conduct. In particular, the ACCC considers that without the proposed Conduct RACQ would not offer a reciprocal warranty scheme
 - d. The relevant areas of competition likely to be affected by the conduct, in particular the localised nature of automotive mechanical repairs:
 - i. RACQ submits that there are a number of different automotive repair services which may not be substitutable for each other (such as automatic transmission repair, air-conditioning repair or fuel injection repair).
 - ii. RACQ notes that while there are a number of repair businesses that have branches throughout Queensland and throughout Australia, including through franchise and dealership arrangements, by their very nature, automotive repair services are essentially local.
 - iii. The ACCC does not consider that it is necessary to precisely identify the relevant areas of competition in assessing these applications. However, the ACCC agrees with RACQ that the relevant areas of competition likely to be affected by the proposed Conduct are those for the localised provision of each kind of specialist vehicle repair service, in which generalist repairers, large chain repairers and vehicle manufacturers' repair networks compete against specialist repairers.
 - e. the five year authorisation period requested.

Public benefit

RACQ

17. Broadly, the RACQ submits that the proposed conduct is likely to result in substantial public benefits for all consumers of vehicle repair services, including RACQ members. In particular, RACQ submits that the proposed conduct will:

¹ Subsections 90(5A) and 90(5B), 90(8). The relevant tests are set out in Attachment A.

- increase consumer choice of provider and product and confidence in the services provided by RACQ Approved Repairers
- increase social welfare through local and timely repair of broken down vehicles, increased RACQ membership and therefore vehicles that are covered by roadside assistance, and increased revenue for RACQ to further its advocacy and safety role
- improve efficiency in automotive repair service delivery by allowing for another repairer to conduct repairs to correct defects under a warranty
- result in transactions cost savings and efficiencies by having all RACQ Approved Repairers bilaterally agree to the warranty arrangements
- increase the competitiveness of RACQ Approved Repairers leading to an overall increase in competition in relevant markets.

ACCC

18. The ACCC considers that the proposed Conduct is likely to result in some public benefit by:

- promoting competition for automotive repairs more generally by enabling small businesses to offer guaranteed repairs which may enable them to better compete against larger network repairers
- providing RACQ members with greater convenience by not having to return to the original repairer
- providing greater confidence that automotive repairs performed by an RACQ Approved Repairer are covered by a warranty that ensures any defects in the original repair work may be performed by another RACQ Approved Repairer at no cost to the member. In particular this is more likely to benefit RACQ members who may have had their vehicle repaired whilst away from their normal place of residence/local repairer and
- reducing the number of mediated disputes between members and repairers. RACQ acknowledges that while the number of disputes between repairers may consequently increase, it is unlikely to increase to the same extent that disputes between customers and repairers decrease. To the extent that this occurs, the ACCC considers this is likely to result in a public benefit.

Public detriment

RACQ

19. RACQ submits that the proposed Conduct will have minimal, if any, impact because the proposed Conduct will only occur in a very narrow set of circumstances and therefore RACQ considers it is difficult to see how any substantial detriment would flow from it.

20. In addition, RACQ submits that setting the price for reciprocal warranty repairs will not affect the price of repair services generally because the volume of work is expected to be too small and the markets are too competitive.

21. RACQ submits that RACQ Approved Repairers must compete with national chains which have a much higher brand awareness amongst consumers and

therefore must compete on price. For these reasons, RACQ submits that the set labour rate would not result in any price signalling.

22. RACQ submits it has taken steps to minimise any detriment by providing that the set labour rate only applies to warranty repair chargebacks and by imposing requirements through bilateral agreements between RACQ and RACQ Approved Repairers so that there is no scope for broader agreements or coordination between RACQ Approved Repairers on price.

ACCC

23. The ACCC considers that the proposed Conduct is likely to result in little, if any, public detriments because:

- the automotive repair industry in Queensland appears competitive and the ACCC notes that price is one of the most important ways in which RACQ Approved Repairers can compete with larger national chains
- as a result, setting a fixed labour rate is unlikely to impact broader prices for automotive vehicle repairs. Should RACQ Approved Repairers set their labour rates above competitive levels they would likely lose market share to other repairers in Queensland
- RACQ Approved Repairers account for approximately 5 per cent of all automotive repairers in Queensland and only 30 per cent of Queensland drivers are members of RACQ
- the number of reciprocal warranty repairs is expected to be very small. RACQ submits that RACQ Approved Repairers aim for mechanical returns of less than 1 per cent and the vast majority of these would return to the original repairer
- the ACCC notes that the labour rate that RACQ will set for warranty repairs will not be paid by consumers but by the original repairer. Given repairers are likely to both pay and be paid at this rate for warranty repairs, it is in RACQ's interest to maintain the labour rate at a reasonable price if they wish repairers to sign up to the RACQ Approved Repairer agreement.

Balance of public benefit and detriment

24. For the reasons outlined in this draft determination, the ACCC is satisfied that in all the circumstances the proposed arrangements are likely to result in a benefit to the public and that the benefit would outweigh any public detriment constituted by any lessening of competition that would be likely to result.
25. The ACCC is also satisfied that in all the circumstances the proposed conduct would be likely to result, in such a benefit to the public that the proposed conduct should be allowed to take place.
26. Accordingly, the ACCC is satisfied that the relevant public benefit tests are met.

Length of authorisation

27. The ACCC proposes to grant authorisation to RACQ and RACQ Approved Repairers for five years.

Draft determination

Conduct for which the ACCC proposes to grant authorisation

28. For the reasons set out in this draft determination, the ACCC is satisfied that the tests in sections 90(5A), 90(5B) and 90(8) are met.² Accordingly, the ACCC proposes to grant authorisation for five years to RACQ and current and future RACQ Approved Repairers to:

- a. to enter into and give effect to a contract arrangement or understanding that fixes, controls or maintains the labour charge that each RACQ Approved Repairer will charge other RACQ Approved Repairers for repair work done to honour a warranty given by the original RACQ Approved Repairer to an RACQ Member.
- b. RACQ Approved Repairers to refuse to provide:
 - i. to non-RACQ members the express warranty involving reciprocal repairs
 - ii. warranty repair services at no charge to the customer to non-RACQ members, and
 - iii. warranty repair services at no charge to RACQ members whose original repairs were not performed by another RACQ Approved Repairer.

29. This draft determination is made on 2 May 2013.

Further submissions

30. The ACCC will now seek further submissions from interested parties. In addition, the applicant or any interested party may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the Act.

² See Attachment A to this Draft Determination A91358.

Attachment A - Summary of relevant statutory tests

Subsections 90(5A) and 90(5B) provide that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:

- the provision, in the case of subsection 90(5A) would result, or be likely to result, or in the case of subsection 90(5B) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(5A) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of subsection 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.

Subsection 90(8) states that the ACCC shall not:

- make a determination granting:
 - i. an authorization under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
 - ii. an authorization under subsection 88(7) or (7A) in respect of proposed conduct; or
 - iii. an authorization under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or
 - iv. an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

- make a determination granting an authorization under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.