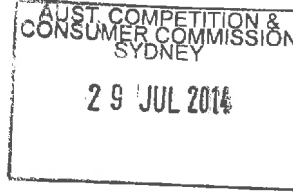


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28 July 2014

BY EMAIL and HAND

FILE No:
DOC:
MARS/PRISM:

Richard Chadwick
General Manager
Adjudication Branch
Australian Competition & Consumer Commission
Level 20
175 Pitt Street
Sydney NSW 2000

Dear Mr Chadwick

Form G – Notifications of exclusive dealing by Roadway Rent a Car and Bargain Rent a Car

We **enclose** on behalf of:

- (a) Nakor Pty Ltd trading as Roadway Rent a Car ABN 62 166 361 020; and
- (b) Yellow Circle Pty Ltd ATF The Yellow Circle Trust trading as Bargain Rent a Car ABN 78 855 977 039,

Form G – Notifications of exclusive dealing, together with submissions in support of each application.

We also **enclose** two cheques for \$100 as payment of the applicable lodgement fees.

If you have any questions in relation to this notification, please contact Ross Zaurrini on +61 2 9258 6840 or John McKellar on +61 2 9258 5694.

Yours faithfully

Ross Zaurrini
Partner

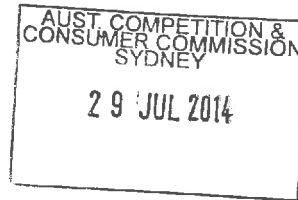
John McKellar
Lawyer

Enc

AUSTRALIA BELGIUM CHINA FRANCE GERMANY HONG KONG SAR INDONESIA (ASSOCIATED OFFICE) ITALY JAPAN PAPUA NEW GUINEA
SAUDI ARABIA SINGAPORE SPAIN SWEDEN UNITED ARAB EMIRATES UNITED KINGDOM UNITED STATES OF AMERICA

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230848141.01



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)

N97615 Nakor Pty Ltd trading as Roadway Rent a Car ABN 62 166 361 020 (the "**Applicant**")

- (b) Short description of business carried on by that person:
(Refer to direction 3)

The Applicant provides vehicle rental services in Queensland.

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

Ross Zaurrini
Ashurst Australia
Level 41, 225 George Street
Sydney NSW 2000

2. Notified arrangement

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

This notification relates to:

- Vehicle rental services supplied by the Applicant; and
- Electronic toll payment services supplied by Roads and Maritime Services ("**RMS**") to the Applicant's customers.

- (b) Description of the conduct or proposed conduct:

The Applicant proposes to:

- supply, or offer to supply, rental vehicles to the Applicant's customer;
- supply, or offer to supply, rental vehicles to the Applicant's customer at a particular price; and

- give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply of rental vehicles to the Applicant's customer
- on the condition that the customer also enters into a contract with RMS for the provision of E-toll services for the rental period ("**RMS Contract**").

The Applicant may also refuse to:

- supply, or offer to supply, rental vehicles to the Applicant's customer;
- supply, or offer to supply, rental vehicles to the Applicant's customer at a particular price;
- give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply of rental vehicles to the Applicant's customer

if the Applicant's customer has not acquired, or has not agreed to acquire, an RMS Contract for the rental period (collectively, the "**Proposed Conduct**").

RMS will supply the requisite e-tags to the Applicant to enable the RMS Contract to have effect.

Approximately all of the Applicant's 10 vehicles will be involved in the Proposed Conduct.

A customer may avoid entering into the RMS Contract by not acquiring the Applicant's services. If the customer does acquire the Applicant's services, the customer can avoid paying fees to the RMS by:

- not driving on toll roads; or
- paying cash for toll charges, where permitted.

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)

The Applicant's customers.

- (b) Number of those persons:

- (i) At present time:

200

- (ii) Estimated within the next year:
(Refer to direction 6)

500

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

N/A

4. Public benefit claims

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

Please refer to the submission in support of this notification at Annexure A.

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

Please refer to the submission in support of this notification at Annexure 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)

Please refer to the submission in support of this notification at Annexure A.

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)

Please refer to the submission in support of this notification at Annexure A.

- (b) Facts and evidence relevant to these detriments:

Please refer to the submission in support of this notification at Annexure 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:

Ross Zaurrini
Ashurst Australia
Level 41, 225 George Street
Sydney NSW 2000
D: +61 2 9258 6840

Dated..... 24 July 2014

Signed by/on behalf of the applicant

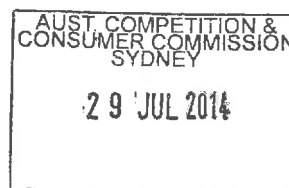
.....
(Signature)

..... Michael Hansen

Nakor Pty Ltd trading as Roadway Rent a Car ABN 62 166 361 020
(Organisation)

..... Director

(Position in Organisation)



ANNEXURE A

NOTIFICATION OF EXCLUSIVE DEALING: SUBMISSION TO THE ACCC

This submission is made by Nakor Pty Ltd trading as Roadway Rent a Car ABN 62 166 361 020 in support of its Notification of Exclusive Dealing dated 24 July 2014.

1. APPLICANT

The applicant is Nakor Pty Ltd trading as Roadway Rent a Car ABN 62 166 361 020 (the "**Applicant**").

2. BACKGROUND

2.1 Toll roads in Australia

Most toll roads in Australia now require cashless payment of tolls. For example, two of Sydney's toll roads (the M2 and Eastern Distributor) ceased accepting cash payments on 30 January 2012 with the M5 in Sydney now being the only toll road in Australia which still accepts cash payments.

In lieu of cash payments, all toll road operators (including the M5) accept payment by electronic tag ("**e-tag**")¹ or electronic pass ("**e-pass**")² which charge a driver's account when they drive through the automated payment lanes.

As all toll road operators in Queensland and Victoria and all but one in New South Wales do not permit cash payments, the toll road operators essentially require drivers to have an e-tag, an e-pass or make a payment electronically after using the relevant toll road³ (post-paying the toll incurs additional charges/fees).

The Applicant considers that short term e-passes which are available for purchase by drivers are inconvenient for customers who rent the Applicant's vehicles ("**Customers**")⁴ and have the major disadvantage that they may only be used on particular toll roads. For example, certain e-passes may be restricted to use on one toll road (such as the Roam e-pass account) or are restricted to a particular city, such as Sydney (see Roam's Visitor e-pass).

By way of comparison, e-tags have the advantage of being accepted by all toll operators in Australia and are therefore often preferred by toll road users. The e-tag issued by Roads and Maritime Services ("**RMS**") is an example of this; it is universally accepted by all current toll road operators in Australia and is suitable for longer periods of use and for Customers who may not know, ahead of time, which toll roads they will be using.

2.2 Problems facing rental vehicle services industry

The trend towards cashless toll roads poses challenges for the Applicant's rental vehicle Customers, particularly overseas visitors who wish to rent a vehicle but may not be familiar with Australian toll road operations. This is because many such Customers will be

¹ An e-tag is affixed to the vehicle and linked to a specific customer's account. An e-tag is generally used over a longer period than an e-pass. See below.

² An e-pass is generally a shorter term payment solution than an e-tag. An e-pass is aimed at temporary users and is limited to a specific area eg the area around Sydney.

³ If a person drives through an automated payment lane without an e-tag or an e-pass, the car is photographed and identified. The toll operator will then issue the vehicle's registered owner with a toll notice (which includes additional charges levied by the toll road operator). If those charges remain unpaid, an infringement notice will be issued.

⁴ The Applicant's Customers may include corporate customers as well as individuals.

unlikely to have a personal e-tag which they can use in the Applicant's rental vehicles or may not be aware that they need one for the roads they will travel on.

Currently, to pay toll charges immediately upon usage, Customers must either have their own e-tag (which they use in the rented vehicle) or obtain an e-pass from a supplier of electronic tolling services. The e-passes may be purchased online.

In the Applicant's experience, many Customers are either unfamiliar with the need to purchase an e-tag or e-pass or have not planned in advance to know which e-pass they require (if any). Alternatively, some Customers may deliberately avoid obtaining an e-tag or e-pass in an attempt to avoid paying tolls, for example, a customer from overseas visiting for a short holiday may avoid paying a toll with the expectation that neither the toll operator nor the Applicant will pursue them for the outstanding amount.

This leads to many Customers frequently failing to purchase any type of electronic pass. As the vast majority of toll operators do not accept cash, if a Customer drives on a toll road they will not have an ability to pay for the toll charges at the time of using the toll road. In most circumstances, Customers may contact the toll operator by telephone and pay the toll but if they do not do this, the default toll collection process will be engaged. The toll collection process involves the toll operator identifying the vehicle and attempting to contact the driver and obtain payment of the toll charges (plus any added fees/charges).

The toll road operator must identify the vehicle and then using information available to the toll operator, ascertain who is the registered owner of that vehicle. As the Applicant is the registered owner of the vehicle, the toll operator will contact the Applicant by sending a toll notice demanding payment for the unpaid tolls (plus an administration fee). If the toll notice is not paid, the toll operator may issue an infringement notice. Each year, the Applicant receives and processes approximately 40 toll notices and 5 infringement notices. This is compared to the 500 rental transactions it engages in per annum.

Once the Applicant receives the notice, the Applicant must confirm which customer rented the vehicle and then an employee of the Applicant is required to prepare a statutory declaration to the toll operator confirming that while they are the registered owner of the vehicle, it was rented to a customer at the time the vehicle utilised the toll road. The Applicant is required to provide the identity of the Customer to the toll road operator. The employee must swear the statutory declaration in front of a Justice of the Peace (or equivalent) and send this to the toll operator. Preparing these statutory declarations for each of the approximately 45 toll notices and infringement notices is a large administrative burden.

Following receipt of this information, the toll road operator must then pursue the Customer for the payment of the notice. This is extremely inefficient, costly and cumbersome for both the toll road operator and the Applicant. This inefficiency is particularly apparent when one considers that in many instances the toll may be as little as a few dollars.

2.3 Administration fees

All toll road operators charge the Customer an administration fee for using a toll road without an e-tag or e-pass. The level of administration fees varies according to the toll road operator. For example, in Sydney, the Eastern Distributor and Westlink M7 each charge \$10.00 administration fees for each toll notice issued, while in Victoria the issue of a toll notice for use of the EastLink Motorway attracts an administration fee of between \$6.81 and \$32.31 (which comprises an "Invoice" fee and a "Lookup" fee).⁵

⁵ The precise amount depends on whether an Overdue Notice is issued and the state the vehicle is registered in.

If the Customer does not pay the toll notice, the toll operator may issue an infringement notice. Current fines for each day of unregistered travel are \$144.00 in Victoria and exceed \$150.00 in New South Wales (when administration fees are included).

Separately to the toll operator's fees, the Applicant charges the Customer its own administration fee to recover the cost of identifying the relevant customer, preparing the statutory declaration and subsequent correspondence with the toll road operator. That fee is currently \$33.00.

It is evident that should a Customer use a toll road and fail to pay the toll (which might be no more than a few dollars), substantial administrative effort is required by both the toll road operator and the Applicant in identifying and pursuing the appropriate individual, thereby causing them to incur significant additional cost. In turn, this process imposes significant additional fees on the Customer.

2.4 **Proposed solution**

The Applicant proposes to place RMS e-tags in all of its 10 vehicles.

The RMS e-tag will be activated when the Applicant's vehicle passes through a toll collection point on a toll road. The toll road operator will automatically bill RMS for the applicable tolls. Under the contract between RMS and the Customer (see 3.2 below), the Customer will authorise RMS to recover the applicable toll, together with a service fee, from the Customer.

To achieve this, the Applicant proposes to offer to supply rental vehicle services to its Customer on the condition that the Customer also enter into a contract with RMS for the provision of E-toll services for the rental period ("**RMS Contract**") (the "**Proposed Conduct**"). This conduct may be construed as exclusive dealing within the meaning of sections 47(6) and/or 47(7) of the *Competition and Consumer Act 2010* (the "**CCA**"). Therefore, the Applicant is notifying the Australian Competition and Consumer Commission ("**ACCC**") of the Proposed Conduct under section 93 of the CCA.

3. **THE PROPOSED CONDUCT**

3.1 **Persons or classes of persons affected or likely to be affected by the notified arrangement**

The Proposed Conduct relates to Customers who acquire vehicle rental services from the Applicant.

The Applicant engages in approximately 500 rental transactions per annum. The number of rentals may include multiple rentals by the same individuals and therefore the number of persons affected by the proposed conduct will be less than the total number of rentals per annum.

3.2 **Giving effect to the Proposed Conduct**

The Applicant and RMS propose to enter into an agreement, pursuant to which:

- (a) Customers will be required to enter into the RMS Contract for the provision of RMS E-toll services at the time of entering into their rental agreement with the Applicant. It is proposed that, in practice:
 - (i) A Customer who wishes to rent a vehicle from the Applicant will be required to enter into a rental contract, which will set out the terms and conditions of rental.

- (ii) The Customer will be required to enter into the RMS Contract, which will set out the terms and conditions under which RMS provides E-toll services to that customer.
 - (iii) The Applicant will act as an agent for RMS in respect of the formation of the RMS Contract between RMS and the Customer.
 - (iv) The Applicant will refuse to supply a rental vehicle to Customers who do not agree to enter into the RMS Contract.
- (b) RMS will supply the Applicant with e-tags for installation in the Applicant's rental vehicles.
 - (c) The Applicant will provide RMS with the Customer's credit card or Visa or Mastercard debit card details.
 - (d) RMS will pay the toll road operator for any toll fees incurred by the Customer.
 - (e) Under the RMS Contract, the Customer will be required to pay RMS for the tolls incurred. In addition, the Customer must pay a service fee of \$3.30 (inclusive of GST) to RMS for each calendar day that a toll is incurred during the rental period ("**Service Fee**"). Of this, \$1.65 will be paid by RMS to the Applicant. Relevantly:
 - (i) the Service Fee will not be incurred on days when the Customer does not incur a toll. If the Customer does not use a toll road during the rental period, no Service Fee is charged.
 - (ii) the Service Fee will be explained in the RMS Contract.
 - (f) RMS will charge the Customer for any toll charges and Service Fees which are incurred by the Customer during the rental period upon receipt of relevant billing information from the Applicant.

The RMS Contract will clearly outline that the Customer is responsible for the Service Fee and any toll charges (if incurred) and that upon providing their credit card or Visa or Mastercard debit card to the Applicant that the Customer accepts that this information will be passed onto RMS. The RMS Contract will authorise RMS to deduct the relevant charges from the Customer's account.

Additional charges may be imposed on Customers by RMS in limited circumstances. These include:

- (a) a processing fee, if a customer requests that RMS provide a summary of the transactions on the Customer's E-Toll facility;
- (b) a dishonour fee, if the Customer's method of payment is dishonoured; and
- (c) other costs incurred by RMS in enforcing its rights (such as charges imposed on RMS by third parties where the Customer has refused or failed to pay an amount owing under the RMS Contract).

The fees that the Customer may incur will be disclosed to the Customer in the RMS Contract. The Applicant may also elect to display a counter brochure outlining RMS' E-tolling solution (including the relevant fees) at the point of sale.

For the avoidance of any doubt, Customers will not be able to use their own e-tag or e-pass in any of the Applicant's rental vehicles which contain the RMS e-tag.

If a customer does acquire the Applicant's rental services, that Customer can avoid paying the Service Fee and toll charges by:

- not driving on toll roads; or
- paying cash for the toll charge, where permitted.

Alternatively, a customer may elect to not rent a vehicle from the Applicant and, instead, acquire services from one of numerous alternative rental vehicle companies.

3.3 **Service Fees**

The Service Fee imposed by RMS is intended to recover the cost of providing the E-toll services and to account for the supply and installation of the RMS e-tag in the Applicant's vehicles and RMS's maintenance of the E-toll facility. The Applicant considers that this fee is reasonable.

The Service Fee will be divided equally between RMS and the Applicant (\$1.65 retained by RMS; \$1.65 passed on to the Applicant). Part of the Service Fee will be retained by RMS for:

- (i) supplying the e-tags;
- (ii) provision of the service to Customers (including maintaining the website for any inquiries);
- (iii) invoicing the Customer;
- (iv) processing transactions; and
- (v) maintaining the hardware and software which underpin the system.

Part of the fee will be remitted to the Applicant to cover the cost of:

- (i) installing the e-tag;
- (ii) removing the e-tag when the vehicle is sold;
- (iii) printing and distributing the amended rental agreement and associated documentation; and
- (iv) any damage or theft (risk in an e-tag passes to the Applicant when it is installed in the Applicant's vehicle).

4. **MARKET DEFINITION**

The relevant markets potentially affected by the Proposed Conduct are the:

- (a) market for the supply of vehicle rental services in Queensland; and
- (b) national market for the supply of electronic tolling services to motorists.

5. **PUBLIC BENEFITS AND DETRIMENTS**

The Applicant submits that the Proposed Conduct will lead to significant public benefits and will be unlikely to lead to any public detriment. In the event that any public detriment may flow from the Proposed Conduct, the Applicant submits that this would be far outweighed by the benefit to the public.

5.1 Benefits to the public

The Applicant submits that the Proposed Conduct will lead to substantial public benefits.

The current arrangements for seeking payment of unpaid tolls is inefficient, cumbersome and costly to all parties involved: the toll operator, the Applicant and the customer. The current arrangements unnecessarily involves the Applicant in the recovery process and this causes delay in the Customer being notified of the amount payable and results in additional fees being charged to the Customer (in circumstances where they may not even have been aware that they owed any amount).

As described at 2.2 above, the current arrangements require the toll operator to identify the registered owner of any vehicle which does not pay the required toll and issue that registered owner with a toll notice. In the case of the Applicant, once it receives a toll notice, it must identify the relevant Customer who rented the vehicle and then draft and make a statutory declaration identifying the Customer. That statutory declaration is provided to the toll road operator who in turn must then attempt to contact the relevant Customer and reissue the toll notice to them. This is an inefficient use of resources to pursue unpaid tolls; particularly as the amount of the original toll may only be a few dollars.

The current arrangements also result in additional fees being paid by Customers as all toll operators automatically charge an administration fee if a vehicle uses a toll road without an e-tag or e-pass. If a Customer does not pay the initial notice within the required time, an infringement notice (with substantial fines) may be issued. Furthermore, the Applicant charges an additional administration fee to cover the cost of identifying the Customer and making the declaration. This occurs for each toll the Customer incurs and can lead to a significant amount payable by the Customer when the amount is totalled for the rental period if they used numerous toll roads.

Customers

Customers will benefit from the Proposed Conduct in the following ways:

- (a) whilst Customers will be charged the Service Fee for any days on which they use a toll road:
 - (i) the current administration fee that the Applicant charges Customers for unpaid tolls (\$33.00) will be completely avoided;
 - (ii) all of the toll operators' administration charges for unpaid tolls will be completely avoided (as to which see Table 2 below); and
 - (iii) any potential charges resulting from the issuing of an infringement notice will be avoided.⁶
- (b) Customers will experience greater efficiency and increased convenience in paying tolls:
 - (i) Toll roads are increasingly moving to cashless payment options. Unless the rental vehicle company organises a system to pay tolls, customers must arrange their own e-pass or e-tag.⁷ If Customers are unaware of this option or are unaware that they will be driving on toll roads and yet incur toll

⁶ This assumes that the Customer does not default or make a late payment under the RMS Contract.

⁷ This assumes that: (1) customers know that the electronic pass/tag option is available and (2) that they will be driving on toll roads and thus require an electronic pass/tag.

charges, they will be unable to pay the tolls at the time of usage. In most circumstances Customers may contact the toll operator by telephone and pay the toll but if they do not do this the default toll collection process will be engaged. This leads to additional costs for the Customer as both the toll operator and the Applicant charge additional fees for managing unpaid tolls.

- (ii) The Proposed Conduct will result in a more direct and efficient toll payment process. This is because the Applicant will be cut out of the payment process. The Customer will agree under the RMS Contract that RMS is authorised to charge their nominated credit card or Visa or Mastercard debit card with any tolls incurred and the Service Fee. RMS will be notified by the RMS e-tag that the Customer has used a toll road (obviating the need for the toll operator to identify the vehicle) and will then deduct this money from the Customer's choice of payment method. This allows the Customer to avoid the additional administrative fees charged by the toll operator and the Applicant under the current arrangements and also allows the customer to avoid the hassle of obtaining their own e-pass/e-tag or attempting to avoid toll roads which only permit electronic payment of tolls.
- (iii) Importantly, the RMS e-tag can be used on all toll roads in Australia which also assists customers wanting to drive over longer distances/interstate.
- (c) The Proposed Conduct will reduce the possibility of conflict between the Applicant and the Customer by avoiding the situation where the Customer receives a toll notice from the toll operator and an invoice for the additional administrative fee from the Applicant after the rental period has expired.
- (d) The Proposed Conduct will likely improve customer choice, as the Applicant will become an additional alternative to other rental companies, such as Avis / Budget, Hertz, Thrifty and Europcar for customers seeking to have a pre-arranged e-tag arrangement.

Tables 1A and 1B set out a cost comparison for the different options open to a Customer in a car (travelling at 8am on a weekday) for a round trip commencing southbound over the Sydney Harbour Bridge to Sydney Airport via the Eastern Distributor and a round trip on the Eastlink motorway from Springvale Road to Ringwood Bypass in Melbourne. As can be seen, the RMS E-toll facility provides a cheaper option for customers than both the casual toll pass options and the option of travelling without a RMS E-toll facility or toll pass. The cost saving differential would increase as the customer incurs more tolls.

Table 1A – NSW

Charge	RMS E-toll facility	Roam Casual pass	No E-toll facility and no pass
Set up fee	\$0	\$3.30 ⁸	\$0
Service fee	\$3.30	\$0	\$0
Vehicle matching/no tag/image processing fee	\$0	\$1.50 ⁹	\$1.50
Tolls for roundtrip	\$10.29 ¹⁰	\$10.29	\$10.29
Toll notice administration fee	\$0	\$0	\$20 ¹¹
Applicant administration fee	\$0	\$0	\$66 ¹²
Total	\$13.59	\$15.09	\$97.79

Table 1B – VIC

Charge	RMS E-toll facility	EastLink trip pass	No E-toll facility and no pass
Set up fee	\$0	\$2.77 ¹³	\$0
Service fee	\$3.30	\$0	\$0
VicRoads Lookup fee	\$0	\$0	\$3.08 ¹⁴
Vehicle matching/no tag/image processing fee	\$0	\$0	\$0.56 ¹⁵
Tolls for roundtrip	\$5.36 ¹⁶	\$11.68 ¹⁷	\$5.36

⁸ Or \$1.50 if purchased online.

⁹ A Vehicle Matching Fee of \$0.75 is charged at each toll collection point.

¹⁰ This comprises a \$4 toll on the Sydney Harbour Bridge and a \$6.29 toll (for cars) on the Eastern Distributor.

¹¹ A \$10 fee is payable in relation to each unpaid toll.

¹² A \$33 fee is payable in relation to each toll notice processed.

¹³ A Trip Pass Purchase fee of \$2.77 is payable where a customer buys one or more trip passes in a single transaction at an over-the-counter location including at the Eastlink customer care centre, an Australia Post office and the BP service centre on EastLink northbound (<http://www.eastlink.com.au/TOLLS>).

¹⁴ A Lookup Fee of \$1.54 is payable at each toll collection point. The Lookup fee for a vehicle with a non-Victorian registration plate is \$4.77 in all other States, except in Tasmania and ACT where it is \$21.77.

¹⁵ An Image Processing Fee of \$0.28 is charged at each toll collection point.

¹⁶ A toll of \$2.68 each way is charged.

¹⁷ A one way trip pass is priced at \$5.84.

Toll invoice fee	\$0	\$0	\$10.54 ¹⁸
Applicant administration fee	\$0	\$0	\$66 ¹⁹
Total	\$8.66	\$14.45	\$85.54

The Applicant understands that many other rental vehicle companies also impose administration fees for identifying the relevant Customer to the toll operator.

Table 2 sets out the likely total cost savings to Customers which would result from the Proposed Conduct. These cost savings assume that on average the Applicant processes 45 toll and infringement notices each year, those toll and infringement notices are all issued in NSW, all of those toll and infringement notices would be avoided by engaging in the Proposed Conduct with respect to the Applicant's fleet of 10 vehicles and that each Customer would be charged approximately \$10.55 in additional fees by the toll operator and \$33.00 by the Applicant. For the purpose of forecasting over the next five years, the calculations assume a CPI of 3%. Conservatively, these estimates have excluded the additional charges associated with infringement notices (over and above toll notices), although such avoided charges and fines would represent significant further cost savings.

Table 2

Year	Additional charges avoided (\$) by the Proposed Conduct compared to the current arrangements
Year 1	\$1,960
Year 2	\$2,019
Year 3	\$2,079
Year 4	\$2,141
Year 5	\$2,206
Total savings over 5 years	\$10,405

The Applicant

Managing inquiries and responding to toll notices issued by toll operators imposes substantial costs on the Applicant and requires significant resources to be devoted to this avoidable process. The Applicant currently receives approximately 45 toll notices and infringement notices each year for unpaid tolls.

The Applicant receives a toll notice/infringement notice for each toll that the Customer has incurred. This means that if a Customer has used 10 toll roads during the rental period, the Applicant will receive 10 separate toll/infringement notices. For each notice the

¹⁸ A \$5.27 fee is payable in relation to each unpaid toll. A further toll invoice fee of \$10.54 is payable if the toll invoice fee is not paid within 14 days.

¹⁹ A \$33 fee is payable in relation to each toll notice processed.

Applicant receives, the Applicant must read the notice and, using their internal database, confirm who rented the vehicle. An employee of the Applicant is then required to prepare a statutory declaration to the toll operator providing the identity of the Customer. The employee must make this statutory declaration in the presence of a Justice of the Peace (or equivalent) and then send it to the toll road operator.

Preparing these statutory declarations for each of the approximately 45 toll notices and infringement notices received each year is a large administrative burden. Specifically, it requires one employee spending approximately 2 hours per month on this activity.

On occasion, the Applicant also faces additional administrative issues caused by customers who have acquired a pass which is not accepted by all toll road operators; leading to a situation where the customer thought that they had paid the toll but in fact had not. This would be avoided by the Proposed Conduct as the RMS e-tag is accepted by all toll road operators.

Avoiding this administration burden, and the costs associated with it, obviates the need for the Applicant to charge an administration fee. This will assist the Applicant in offering competitive prices and will assist the Applicant in achieving good relationships with its Customers (by offering an efficient and clearly explained regime that only costs customers if they actually use a toll road). The Proposed Conduct can also be used by the Applicant in its marketing to potential customers to compete with the larger rental vehicle companies who already offer an equivalent service.

Toll road operators

The Proposed Conduct will benefit toll road operators by removing the cumbersome process of seeking payment of unpaid tolls from the Applicant's Customers. With a fleet size of 10 vehicles (and all of these expected to be included in the Proposed Conduct), the Applicant usually handles approximately 45 toll and infringement notices each year. Pursuing each of these unpaid tolls represents an administrative and financial burden on toll operators which would otherwise be avoided by the Proposed Conduct.

The Proposed Conduct will result in the toll operator being paid directly by RMS for each toll incurred by a Customer. This means that the toll operator does not have to go through the expense of identifying the vehicle and issuing the toll notice corresponding with the Applicant, and then corresponding with the Customer and possibly issuing (and trying to enforce) an infringement notice.

The Proposed Conduct guarantees payment for the toll operators. Under the current arrangements, a Customer may opt to ignore the toll notice and subsequent infringement notices and refuse to pay the tolls assuming that enforcement action is unlikely. For example, it may not be economically practical to pursue an overseas Customer who has returned to their country for an unpaid toll. This potential disadvantage to toll road operators will be obviated by the Proposed Conduct.

5.2 Public detriments

The Applicant submits that the Proposed Conduct will not result in any public detriment.

In particular, the Applicant submits that the Proposed Conduct will not lead to any public detriment in the relevant markets, namely:

- (a) the market for the supply of rental vehicle services in Queensland:
 - (i) If customers do not wish to contract with RMS, they may use a variety of other suppliers of vehicle rental services. These alternatives include Ace Rental Cars, Dave's Car Rental, All Age Car Rentals, Alpha Car Hire or any other of a large number of small rental vehicle suppliers.

- (ii) The customer can avoid paying the Service Fee and toll charges to RMS by:
 - (A) not driving on toll roads; or
 - (B) paying cash for the toll charge, where permitted.
- (b) the national market for the supply of electronic tolling services to motorists:
 - (i) The market for the supply of electronic tolling services to motorists is competitive with national competitors to RMS including Transurban, Interlink, ConnectEast, Go-Via, E-Way, Flow Tolling and Rivercity Motorway.
 - (ii) The Proposed Conduct will not foreclose RMS's competitors from offering their services. The above companies are able to contract with other rental vehicle companies (of which there are many) to provide a tolling solution. With a fleet of only 10 vehicles, the Applicant is not a major supplier of vehicle rental services in Queensland. The Applicant estimates that its share of this market is less than 1% in Queensland.
 - (iii) Electronic tolling services are not only acquired by rental vehicle companies; they are also acquired by companies supplying taxi services, trucking and logistics services, bus services as well as corporate or Government entities which use "company cars", and private individuals. Competitors of RMS are also still able to provide electronic tolling services to customers in those industries.

6. **SUMMARY**

The Applicant submits that the ACCC should conclude that the likely public benefits flowing from the Proposed Conduct will far outweigh any public detriment. The Applicant submits that the Notification should be permitted to stand.

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)

N97616 Yellow Circle Pty Ltd ATF The Yellow Circle Trust trading as Bargain Rent a Car ABN 78 855 977 039 (the "**Applicant**")

- (b) Short description of business carried on by that person:
(Refer to direction 3)

The Applicant provides vehicle rental services in Queensland.

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

Ross Zaurrini
Ashurst Australia
Level 41, 225 George Street
Sydney NSW 2000

2. Notified arrangement

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

This notification relates to:

- Vehicle rental services supplied by the Applicant; and
- Electronic toll payment services supplied by Roads and Maritime Services ("**RMS**") to the Applicant's customers.

- (b) Description of the conduct or proposed conduct:

The Applicant proposes to:

- supply, or offer to supply, rental vehicles to the Applicant's customer;
- supply, or offer to supply, rental vehicles to the Applicant's customer at a particular price; and

- give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply of rental vehicles to the Applicant's customer

on the condition that the customer also enters into a contract with RMS for the provision of E-toll services for the rental period ("**RMS Contract**").

The Applicant may also refuse to:

- supply, or offer to supply, rental vehicles to the Applicant's customer;
- supply, or offer to supply, rental vehicles to the Applicant's customer at a particular price;
- give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply of rental vehicles to the Applicant's customer

if the Applicant's customer has not acquired, or has not agreed to acquire, an RMS Contract for the rental period (collectively, the "**Proposed Conduct**").

RMS will supply the requisite e-tags to the Applicant to enable the RMS Contract to have effect.

Approximately all of the Applicant's 100 vehicles will be involved in the Proposed Conduct.

A customer may avoid entering into the RMS Contract by not acquiring the Applicant's services. If the customer does acquire the Applicant's services, the customer can avoid paying fees to the RMS by:

- not driving on toll roads; or
- paying cash for toll charges, where permitted.

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)

The Applicant's customers.

- (b) Number of those persons:

- (i) At present time:

2,500

- (ii) Estimated within the next year:
(Refer to direction 6)

2,750

7. Further information

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

Ross Zaurrini
Ashurst Australia
Level 41, 225 George Street
Sydney NSW 2000
D: +61 2 9258 6840

Dated..... 24 July 2014

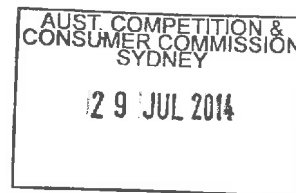
Signed by/on behalf of the applicant

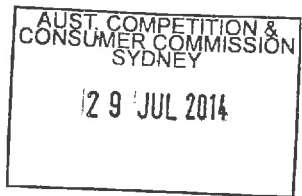
.....
(Signature)

.....
(Full Name)

Yellow Circle Pty Ltd ATF The Yellow Circle Trust trading as Bargain Rent a Car
ABN 78 855 977 039
(Organisation)

.....
(Position in Organisation)





ANNEXURE A

NOTIFICATION OF EXCLUSIVE DEALING: SUBMISSION TO THE ACCC

This submission is made by Yellow Circle Pty Ltd ATF The Yellow Circle Trust trading as Bargain Rent a Car ABN 78 855 977 039 in support of its Notification of Exclusive Dealing dated 24 July 2014.

1. **APPLICANT**

The applicant is Yellow Circle Pty Ltd ATF The Yellow Circle Trust trading as Bargain Rent a Car ABN 78 855 977 039 (the "**Applicant**").

2. **BACKGROUND**

2.1 **Toll roads in Australia**

Most toll roads in Australia now require cashless payment of tolls. For example, two of Sydney's toll roads (the M2 and Eastern Distributor) ceased accepting cash payments on 30 January 2012 with the M5 in Sydney now being the only toll road in Australia which still accepts cash payments.

In lieu of cash payments, all toll road operators (including the M5) accept payment by electronic tag ("**e-tag**")¹ or electronic pass ("**e-pass**")² which charge a driver's account when they drive through the automated payment lanes.

As all toll road operators in Queensland and Victoria and all but one in New South Wales do not permit cash payments, the toll road operators essentially require drivers to have an e-tag, an e-pass or make a payment electronically after using the relevant toll road³ (post-paying the toll incurs additional charges/fees).

The Applicant considers that short term e-passes which are available for purchase by drivers are inconvenient for customers who rent the Applicant's vehicles ("**Customers**")⁴ and have the major disadvantage that they may only be used on particular toll roads. For example, certain e-passes may be restricted to use on one toll road (such as the Roam e-pass account) or are restricted to a particular city, such as Sydney (see Roam's Visitor e-pass).

By way of comparison, e-tags have the advantage of being accepted by all toll operators in Australia and are therefore often preferred by toll road users. The e-tag issued by Roads and Maritime Services ("**RMS**") is an example of this; it is universally accepted by all current toll road operators in Australia and is suitable for longer periods of use and for Customers who may not know, ahead of time, which toll roads they will be using.

2.2 **Problems facing rental vehicle services industry**

The trend towards cashless toll roads poses challenges for the Applicant's rental vehicle Customers, particularly overseas visitors who wish to rent a vehicle but may not be

¹ An e-tag is affixed to the vehicle and linked to a specific customer's account. An e-tag is generally used over a longer period than an e-pass. See below.

² An e-pass is generally a shorter term payment solution than an e-tag. An e-pass is aimed at temporary users and is limited to a specific area eg the area around Sydney.

³ If a person drives through an automated payment lane without an e-tag or an e-pass, the car is photographed and identified. The toll operator will then issue the vehicle's registered owner with a toll notice (which includes additional charges levied by the toll road operator). If those charges remain unpaid, an infringement notice will be issued.

⁴ The Applicant's Customers may include corporate customers as well as individuals.

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

N/A

4. Public benefit claims

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

Please refer to the submission in support of this notification at Annexure A.

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

Please refer to the submission in support of this notification at Annexure 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)

Please refer to the submission in support of this notification at Annexure A.

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)

Please refer to the submission in support of this notification at Annexure A.

- (b) Facts and evidence relevant to these detriments:

Please refer to the submission in support of this notification at Annexure A.

familiar with Australian toll road operations. This is because many such Customers will be unlikely to have a personal e-tag which they can use in the Applicant's rental vehicles or may not be aware that they need one for the roads they will travel on.

Currently, to pay toll charges immediately upon usage, Customers must either have their own e-tag (which they use in the rented vehicle) or obtain an e-pass from a supplier of electronic tolling services. The e-passes may be purchased online.

In the Applicant's experience, many Customers are either unfamiliar with the need to purchase an e-tag or e-pass or have not planned in advance to know which e-pass they require (if any). Alternatively, some Customers may deliberately avoid obtaining an e-tag or e-pass in an attempt to avoid paying tolls, for example, a customer from overseas visiting for a short holiday may avoid paying a toll with the expectation that neither the toll operator nor the Applicant will pursue them for the outstanding amount.

This leads to many Customers frequently failing to purchase any type of electronic pass. As the vast majority of toll operators do not accept cash, if a Customer drives on a toll road they will not have an ability to pay for the toll charges at the time of using the toll road. In most circumstances, Customers may contact the toll operator by telephone and pay the toll but if they do not do this, the default toll collection process will be engaged. The toll collection process involves the toll operator identifying the vehicle and attempting to contact the driver and obtain payment of the toll charges (plus any added fees/charges).

The toll road operator must identify the vehicle and then using information available to the toll operator, ascertain who is the registered owner of that vehicle. As the Applicant is the registered owner of the vehicle, the toll operator will contact the Applicant by sending a toll notice demanding payment for the unpaid tolls (plus an administration fee). If the toll notice is not paid, the toll operator may issue an infringement notice. Each year, the Applicant receives and processes approximately 200 toll notices and 20 infringement notices. This is compared to the 3,000 rental transactions it engages in per annum.

Once the Applicant receives the notice, the Applicant must confirm which customer rented the vehicle and then an employee of the Applicant is required to prepare a statutory declaration to the toll operator confirming that while they are the registered owner of the vehicle, it was rented to a customer at the time the vehicle utilised the toll road. The Applicant is required to provide the identity of the Customer to the toll road operator. The employee must swear the statutory declaration in front of a Justice of the Peace (or equivalent) and send this to the toll operator. Preparing these statutory declarations for each of the approximately 220 toll notices and infringement notices is a large administrative burden.

Following receipt of this information, the toll road operator must then pursue the Customer for the payment of the notice. This is extremely inefficient, costly and cumbersome for both the toll road operator and the Applicant. This inefficiency is particularly apparent when one considers that in many instances the toll may be as little as a few dollars.

2.3 **Administration fees**

All toll road operators charge the Customer an administration fee for using a toll road without an e-tag or e-pass. The level of administration fees varies according to the toll road operator. For example, in Sydney, the Eastern Distributor and Westlink M7 each charge \$10.00 administration fees for each toll notice issued, while in Victoria the issue of

a toll notice for use of the EastLink Motorway attracts an administration fee of between \$6.81 and \$32.31 (which comprises an "Invoice" fee and a "Lookup" fee).⁵

If the Customer does not pay the toll notice, the toll operator may issue an infringement notice. Current fines for each day of unregistered travel are \$144.00 in Victoria and exceed \$150.00 in New South Wales (when administration fees are included).

Separately to the toll operator's fees, the Applicant charges the Customer its own administration fee to recover the cost of identifying the relevant customer, preparing the statutory declaration and subsequent correspondence with the toll road operator. That fee is currently \$33.00.

It is evident that should a Customer use a toll road and fail to pay the toll (which might be no more than a few dollars), substantial administrative effort is required by both the toll road operator and the Applicant in identifying and pursuing the appropriate individual, thereby causing them to incur significant additional cost. In turn, this process imposes significant additional fees on the Customer.

2.4 Proposed solution

The Applicant proposes to place RMS e-tags in all of its 100 vehicles.

The RMS e-tag will be activated when the Applicant's vehicle passes through a toll collection point on a toll road. The toll road operator will automatically bill RMS for the applicable tolls. Under the contract between RMS and the Customer (see 3.2 below), the Customer will authorise RMS to recover the applicable toll, together with a service fee, from the Customer.

To achieve this, the Applicant proposes to offer to supply rental vehicle services to its Customer on the condition that the Customer also enter into a contract with RMS for the provision of E-toll services for the rental period ("**RMS Contract**") (the "**Proposed Conduct**"). This conduct may be construed as exclusive dealing within the meaning of sections 47(6) and/or 47(7) of the *Competition and Consumer Act 2010* (the "**CCA**"). Therefore, the Applicant is notifying the Australian Competition and Consumer Commission ("**ACCC**") of the Proposed Conduct under section 93 of the CCA.

3. THE PROPOSED CONDUCT

3.1 Persons or classes of persons affected or likely to be affected by the notified arrangement

The Proposed Conduct relates to Customers who acquire vehicle rental services from the Applicant.

The Applicant engages in approximately 3,000 rental transactions per annum. The number of rentals may include multiple rentals by the same individuals and therefore the number of persons affected by the proposed conduct will be less than the total number of rentals per annum.

3.2 Giving effect to the Proposed Conduct

The Applicant and RMS propose to enter into an agreement, pursuant to which:

- (a) Customers will be required to enter into the RMS Contract for the provision of RMS E-toll services at the time of entering into their rental agreement with the Applicant. It is proposed that, in practice:

⁵ The precise amount depends on whether an Overdue Notice is issued and the state the vehicle is registered in.

- (i) A Customer who wishes to rent a vehicle from the Applicant will be required to enter into a rental contract, which will set out the terms and conditions of rental.
 - (ii) The Customer will be required to enter into the RMS Contract, which will set out the terms and conditions under which RMS provides E-toll services to that customer.
 - (iii) The Applicant will act as an agent for RMS in respect of the formation of the RMS Contract between RMS and the Customer.
 - (iv) The Applicant will refuse to supply a rental vehicle to Customers who do not agree to enter into the RMS Contract.
- (b) RMS will supply the Applicant with e-tags for installation in the Applicant's rental vehicles.
 - (c) The Applicant will provide RMS with the Customer's credit card or Visa or Mastercard debit card details.
 - (d) RMS will pay the toll road operator for any toll fees incurred by the Customer.
 - (e) Under the RMS Contract, the Customer will be required to pay RMS for the tolls incurred. In addition, the Customer must pay a service fee of \$3.30 (inclusive of GST) to RMS for each calendar day that a toll is incurred during the rental period ("**Service Fee**"). Of this, \$1.65 will be paid by RMS to the Applicant. Relevantly:
 - (i) the Service Fee will not be incurred on days when the Customer does not incur a toll. If the Customer does not use a toll road during the rental period, no Service Fee is charged.
 - (ii) the Service Fee will be explained in the RMS Contract.
 - (f) RMS will charge the Customer for any toll charges and Service Fees which are incurred by the Customer during the rental period upon receipt of relevant billing information from the Applicant.

The RMS Contract will clearly outline that the Customer is responsible for the Service Fee and any toll charges (if incurred) and that upon providing their credit card or Visa or Mastercard debit card to the Applicant that the Customer accepts that this information will be passed onto RMS. The RMS Contract will authorise RMS to deduct the relevant charges from the Customer's account.

Additional charges may be imposed on Customers by RMS in limited circumstances. These include:

- (a) a processing fee, if a customer requests that RMS provide a summary of the transactions on the Customer's E-Toll facility;
- (b) a dishonour fee, if the Customer's method of payment is dishonoured; and
- (c) other costs incurred by RMS in enforcing its rights (such as charges imposed on RMS by third parties where the Customer has refused or failed to pay an amount owing under the RMS Contract).

The fees that the Customer may incur will be disclosed to the Customer in the RMS Contract. The Applicant may also elect to display a counter brochure outlining RMS' E-tolling solution (including the relevant fees) at the point of sale.

For the avoidance of any doubt, Customers will not be able to use their own e-tag or e-pass in any of the Applicant's rental vehicles which contain the RMS e-tag.

If a customer does acquire the Applicant's rental services, that Customer can avoid paying the Service Fee and toll charges by:

- not driving on toll roads; or
- paying cash for the toll charge, where permitted.

Alternatively, a customer may elect to not rent a vehicle from the Applicant and, instead, acquire services from one of numerous alternative rental vehicle companies.

3.3 **Service Fees**

The Service Fee imposed by RMS is intended to recover the cost of providing the E-toll services and to account for the supply and installation of the RMS e-tag in the Applicant's vehicles and RMS's maintenance of the E-toll facility. The Applicant considers that this fee is reasonable.

The Service Fee will be divided equally between RMS and the Applicant (\$1.65 retained by RMS; \$1.65 passed on to the Applicant). Part of the Service Fee will be retained by RMS for:

- (i) supplying the e-tags;
- (ii) provision of the service to Customers (including maintaining the website for any inquiries);
- (iii) invoicing the Customer;
- (iv) processing transactions; and
- (v) maintaining the hardware and software which underpin the system.

Part of the fee will be remitted to the Applicant to cover the cost of:

- (i) installing the e-tag;
- (ii) removing the e-tag when the vehicle is sold;
- (iii) printing and distributing the amended rental agreement and associated documentation; and
- (iv) any damage or theft (risk in an e-tag passes to the Applicant when it is installed in the Applicant's vehicle).

4. **MARKET DEFINITION**

The relevant markets potentially affected by the Proposed Conduct are the:

- (a) market for the supply of vehicle rental services in Queensland; and
- (b) national market for the supply of electronic tolling services to motorists.

5. **PUBLIC BENEFITS AND DETRIMENTS**

The Applicant submits that the Proposed Conduct will lead to significant public benefits and will be unlikely to lead to any public detriment. In the event that any public detriment

may flow from the Proposed Conduct, the Applicant submits that this would be far outweighed by the benefit to the public.

5.1 **Benefits to the public**

The Applicant submits that the Proposed Conduct will lead to substantial public benefits.

The current arrangements for seeking payment of unpaid tolls is inefficient, cumbersome and costly to all parties involved: the toll operator, the Applicant and the customer. The current arrangements unnecessarily involves the Applicant in the recovery process and this causes delay in the Customer being notified of the amount payable and results in additional fees being charged to the Customer (in circumstances where they may not even have been aware that they owed any amount).

As described at 2.2 above, the current arrangements require the toll operator to identify the registered owner of any vehicle which does not pay the required toll and issue that registered owner with a toll notice. In the case of the Applicant, once it receives a toll notice, it must identify the relevant Customer who rented the vehicle and then draft and make a statutory declaration identifying the Customer. That statutory declaration is provided to the toll road operator who in turn must then attempt to contact the relevant Customer and reissue the toll notice to them. This is an inefficient use of resources to pursue unpaid tolls; particularly as the amount of the original toll may only be a few dollars.

The current arrangements also result in additional fees being paid by Customers as all toll operators automatically charge an administration fee if a vehicle uses a toll road without an e-tag or e-pass. If a Customer does not pay the initial notice within the required time, an infringement notice (with substantial fines) may be issued. Furthermore, the Applicant charges an additional administration fee to cover the cost of identifying the Customer and making the declaration. This occurs for each toll the Customer incurs and can lead to a significant amount payable by the Customer when the amount is totalled for the rental period if they used numerous toll roads.

Customers

Customers will benefit from the Proposed Conduct in the following ways:

- (a) whilst Customers will be charged the Service Fee for any days on which they use a toll road:
 - (i) the current administration fee that the Applicant charges Customers for unpaid tolls (\$33.00) will be completely avoided;
 - (ii) all of the toll operators' administration charges for unpaid tolls will be completely avoided (as to which see Table 2 below); and
 - (iii) any potential charges resulting from the issuing of an infringement notice will be avoided.⁶
- (b) Customers will experience greater efficiency and increased convenience in paying tolls:
 - (i) Toll roads are increasingly moving to cashless payment options. Unless the rental vehicle company organises a system to pay tolls, customers must

⁶ This assumes that the Customer does not default or make a late payment under the RMS Contract.

arrange their own e-pass or e-tag.⁷ If Customers are unaware of this option or are unaware that they will be driving on toll roads and yet incur toll charges, they will be unable to pay the tolls at the time of usage. In most circumstances Customers may contact the toll operator by telephone and pay the toll but if they do not do this the default toll collection process will be engaged. This leads to additional costs for the Customer as both the toll operator and the Applicant charge additional fees for managing unpaid tolls.

- (ii) The Proposed Conduct will result in a more direct and efficient toll payment process. This is because the Applicant will be cut out of the payment process. The Customer will agree under the RMS Contract that RMS is authorised to charge their nominated credit card or Visa or Mastercard debit card with any tolls incurred and the Service Fee. RMS will be notified by the RMS e-tag that the Customer has used a toll road (obviating the need for the toll operator to identify the vehicle) and will then deduct this money from the Customer's choice of payment method. This allows the Customer to avoid the additional administrative fees charged by the toll operator and the Applicant under the current arrangements and also allows the customer to avoid the hassle of obtaining their own e-pass/e-tag or attempting to avoid toll roads which only permit electronic payment of tolls.
- (iii) Importantly, the RMS e-tag can be used on all toll roads in Australia which also assists customers wanting to drive over longer distances/interstate.
- (c) The Proposed Conduct will reduce the possibility of conflict between the Applicant and the Customer by avoiding the situation where the Customer receives a toll notice from the toll operator and an invoice for the additional administrative fee from the Applicant after the rental period has expired.
- (d) The Proposed Conduct will likely improve customer choice, as the Applicant will become an additional alternative to other rental companies, such as Avis / Budget, Hertz, Thrifty and Europcar for customers seeking to have a pre-arranged e-tag arrangement.

Tables 1A and 1B set out a cost comparison for the different options open to a Customer in a car (travelling at 8am on a weekday) for a round trip commencing southbound over the Sydney Harbour Bridge to Sydney Airport via the Eastern Distributor and a round trip on the Eastlink motorway from Springvale Road to Ringwood Bypass in Melbourne. As can be seen, the RMS E-toll facility provides a cheaper option for customers than both the casual toll pass options and the option of travelling without a RMS E-toll facility or toll pass. The cost saving differential would increase as the customer incurs more tolls.

⁷ This assumes that: (1) customers know that the electronic pass/tag option is available and (2) that they will be driving on toll roads and thus require an electronic pass/tag.

Table 1A – NSW

Charge	RMS E-toll facility	Roam Casual pass	No E-toll facility and no pass
Set up fee	\$0	\$3.30 ⁸	\$0
Service fee	\$3.30	\$0	\$0
Vehicle matching/no tag/image processing fee	\$0	\$1.50 ⁹	\$1.50
Tolls for roundtrip	\$10.29 ¹⁰	\$10.29	\$10.29
Toll notice administration fee	\$0	\$0	\$20 ¹¹
Applicant administration fee	\$0	\$0	\$66 ¹²
Total	\$13.59	\$15.09	\$97.79

Table 1B – VIC

Charge	RMS E-toll facility	EastLink trip pass	No E-toll facility and no pass
Set up fee	\$0	\$2.77 ¹³	\$0
Service fee	\$3.30	\$0	\$0
VicRoads Lookup fee	\$0	\$0	\$3.08 ¹⁴
Vehicle matching/no tag/image processing fee	\$0	\$0	\$0.56 ¹⁵
Tolls for roundtrip	\$5.36 ¹⁶	\$11.68 ¹⁷	\$5.36

⁸ Or \$1.50 if purchased online.

⁹ A Vehicle Matching Fee of \$0.75 is charged at each toll collection point.

¹⁰ This comprises a \$4 toll on the Sydney Harbour Bridge and a \$6.29 toll (for cars) on the Eastern Distributor.

¹¹ A \$10 fee is payable in relation to each unpaid toll.

¹² A \$33 fee is payable in relation to each toll notice processed.

¹³ A Trip Pass Purchase fee of \$2.77 is payable where a customer buys one or more trip passes in a single transaction at an over-the-counter location including at the Eastlink customer care centre, an Australia Post office and the BP service centre on EastLink northbound (<http://www.eastlink.com.au/TOLLS>).

¹⁴ A Lookup Fee of \$1.54 is payable at each toll collection point. The Lookup fee for a vehicle with a non-Victorian registration plate is \$4.77 in all other States, except in Tasmania and ACT where it is \$21.77.

¹⁵ An Image Processing Fee of \$0.28 is charged at each toll collection point.

¹⁶ A toll of \$2.68 each way is charged.

¹⁷ A one way trip pass is priced at \$5.84.

Toll invoice fee	\$0	\$0	\$10.54 ¹⁸
Applicant administration fee	\$0	\$0	\$66 ¹⁹
Total	\$8.66	\$14.45	\$85.54

The Applicant understands that many other rental vehicle companies also impose administration fees for identifying the relevant Customer to the toll operator.

Table 2 sets out the likely total cost savings to Customers which would result from the Proposed Conduct. These cost savings assume that on average the Applicant processes 220 toll and infringement notices each year, those toll and infringement notices are all issued in NSW, all of those toll and infringement notices would be avoided by engaging in the Proposed Conduct with respect to the Applicant's fleet of 100 vehicles and that each Customer would be charged approximately \$10.55 in additional fees by the toll operator and \$33.00 by the Applicant. For the purpose of forecasting over the next five years, the calculations assume a CPI of 3%. Conservatively, these estimates have excluded the additional charges associated with infringement notices (over and above toll notices), although such avoided charges and fines would represent significant further cost savings.

Table 2

Year	Additional charges avoided (\$) by the Proposed Conduct compared to the current arrangements
Year 1	\$9,581
Year 2	\$9,868
Year 3	\$10,164
Year 4	\$10,469
Year 5	\$10,783
Total savings over 5 years	\$50,865

The Applicant

Managing inquiries and responding to toll notices issued by toll operators imposes substantial costs on the Applicant and requires significant resources to be devoted to this avoidable process. The Applicant currently receives approximately 220 toll notices and infringement notices each year for unpaid tolls.

The Applicant receives a toll notice/infringement notice for each toll that the Customer has incurred. This means that if a Customer has used 10 toll roads during the rental period, the Applicant will receive 10 separate toll/infringement notices. For each notice the

¹⁸ A \$5.27 fee is payable in relation to each unpaid toll. A further toll invoice fee of \$10.54 is payable if the toll invoice fee is not paid within 14 days.

¹⁹ A \$33 fee is payable in relation to each toll notice processed.

Applicant receives, the Applicant must read the notice and, using their internal database, confirm who rented the vehicle. An employee of the Applicant is then required to prepare a statutory declaration to the toll operator providing the identity of the Customer. The employee must make this statutory declaration in the presence of a Justice of the Peace (or equivalent) and then send it to the toll road operator.

Preparing these statutory declarations for each of the approximately 220 toll notices and infringement notices received each year is a large administrative burden. Specifically, it requires one employee spending approximately 2 hours per week on this activity.

On occasion, the Applicant also faces additional administrative issues caused by customers who have acquired a pass which is not accepted by all toll road operators; leading to a situation where the customer thought that they had paid the toll but in fact had not. This would be avoided by the Proposed Conduct as the RMS e-tag is accepted by all toll road operators.

Avoiding this administration burden, and the costs associated with it, obviates the need for the Applicant to charge an administration fee. This will assist the Applicant in offering competitive prices and will assist the Applicant in achieving good relationships with its Customers (by offering an efficient and clearly explained regime that only costs customers if they actually use a toll road). The Proposed Conduct can also be used by the Applicant in its marketing to potential customers to compete with the larger rental vehicle companies who already offer an equivalent service.

Toll road operators

The Proposed Conduct will benefit toll road operators by removing the cumbersome process of seeking payment of unpaid tolls from the Applicant's Customers. With a fleet size of 100 vehicles (and all of these expected to be included in the Proposed Conduct), the Applicant usually handles approximately 220 toll and infringement notices each year. Pursuing each of these unpaid tolls represents an administrative and financial burden on toll operators which would otherwise be avoided by the Proposed Conduct.

The Proposed Conduct will result in the toll operator being paid directly by RMS for each toll incurred by a Customer. This means that the toll operator does not have to go through the expense of identifying the vehicle and issuing the toll notice corresponding with the Applicant, and then corresponding with the Customer and possibly issuing (and trying to enforce) an infringement notice.

The Proposed Conduct guarantees payment for the toll operators. Under the current arrangements, a Customer may opt to ignore the toll notice and subsequent infringement notices and refuse to pay the tolls assuming that enforcement action is unlikely. For example, it may not be economically practical to pursue an overseas Customer who has returned to their country for an unpaid toll. This potential disadvantage to toll road operators will be obviated by the Proposed Conduct.

5.2 Public detriments

The Applicant submits that the Proposed Conduct will not result in any public detriment.

In particular, the Applicant submits that the Proposed Conduct will not lead to any public detriment in the relevant markets, namely:

- (a) the market for the supply of rental vehicle services in Queensland:
 - (i) If customers do not wish to contract with RMS, they may use a variety of other suppliers of vehicle rental services. These alternatives include Ace Rental Cars, Dave's Car Rental, All Age Car Rentals, Alpha Car Hire or any other of a large number of small rental vehicle suppliers.

- (ii) The customer can avoid paying the Service Fee and toll charges to RMS by:
 - (A) not driving on toll roads; or
 - (B) paying cash for the toll charge, where permitted.
- (b) the national market for the supply of electronic tolling services to motorists:
 - (i) The market for the supply of electronic tolling services to motorists is competitive with national competitors to RMS including Transurban, Interlink, ConnectEast, Go-Via, E-Way, Flow Tolling and Rivercity Motorway.
 - (ii) The Proposed Conduct will not foreclose RMS's competitors from offering their services. The above companies are able to contract with other rental vehicle companies (of which there are many) to provide a tolling solution. With a fleet of only 100 vehicles, the Applicant is not a major supplier of vehicle rental services in Queensland. The Applicant estimates that its share of this market is less than 1% in Queensland.
 - (iii) Electronic tolling services are not only acquired by rental vehicle companies; they are also acquired by companies supplying taxi services, trucking and logistics services, bus services as well as corporate or Government entities which use "company cars", and private individuals. Competitors of RMS are also still able to provide electronic tolling services to customers in those industries.

6. **SUMMARY**

The Applicant submits that the ACCC should conclude that the likely public benefits flowing from the Proposed Conduct will far outweigh any public detriment. The Applicant submits that the Notification should be permitted to stand.