

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)

N99981 BikeRoundOz Pty Ltd ABN 25 605 249 714 (the "Applicant")

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

Motorcycle rental.

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

Selena Thurbon
BikeRoundOz Pty Ltd
183 Parramatta Rd
Annandale NSW 2038

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:**
(Refer to direction 4)

The Applicant proposes to:

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

- (c) 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:

- (d) supply, or offer to supply, rental vehicles to the Applicant's customer;
- (e) supply, or offer to supply, rental vehicles to the Applicant's customer at a particular price; or
- (f) 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**).

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:**

The Applicant expects to hire motorcycles to in the order of 1,500 to 2,000 customers in the year following this notification..

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

See above

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

Not known.

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:**

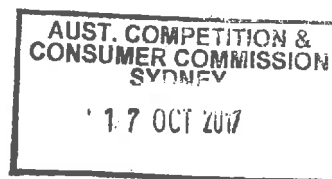
Please refer to the submission in support of this notification at Annexure A.

7. **Further information**

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

Richard Westmoreland
HWL Ebsworth
Level 14, Australia Square
264-278 George Street
Sydney NSW 2000
Phone: (02) 9334 8717
Email: rwestmoreland@hwle.com.au

Dated:



Signed on behalf of the applicant

Handwritten signature of Richard Westmoreland in blue ink.

Richard Westmoreland
Partner, HWL Ebsworth

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 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.

ANNEXURE A

NOTIFICATION OF EXCLUSIVE DEALING: SUBMISSION TO THE ACCC

This submission is made by BikeRoundOz Pty Ltd ABN 25 605 249 714 in support of its Notification of Exclusive Dealing dated 17 October 2017.

1. APPLICANT

The applicant is BikeRoundOz Pty Ltd ABN 25 605 249 714 (the **Applicant**).

2. BACKGROUND

2.1 Toll roads in Australia

Most toll roads in Australia now require cashless payment of tolls. For example, none of Sydney's toll roads accept cash payments.

Instead of cash payment, toll road operators accept payment by electronic tag (**e-tag**)¹ or electronic pass (**e-pass**)² which charge a driver's account when they drive through automated payment lanes. In the case of motorcycles, once an e-tag or e-pass account has been established, it is possible to link a motorcycle's licence plate number to the account. When the motorcycle travels through a toll point its licence plate is photographed, the linked account is identified, and the toll is charged back to that account.

As all toll road operators in Queensland, Victoria and New South Wales do not permit cash payments, the toll road operators essentially require drivers to have an e-tag or an e-pass account to make payment electronically without incurring additional fees or charges, or to make a payment electronically after using the relevant toll road³. Post-paying the toll typically incurs additional charges.

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 epass account) or are restricted to a particular city, such as Sydney.

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 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 travelling on.

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 e.g. 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.

2.2 Problems facing rental vehicle services industry

Customers must either have their own e-tag (which they install in the rented vehicle) or purchase an e-pass from a supplier of electronic tolling services or online and have that e-tag or e-pass installed in the vehicle at the time they travel on a toll road. In the case of a motorcycle, where a tag cannot be readily installed, the customer would need to establish their own e-tag or e-pass account and link that account to the licence plate number of the rental vehicle. This would create obvious concerns that, unless this linkage was removed immediately after cessation of the rental period, a Customer's account could end up being charged for tolls incurred by a subsequent renter of the vehicle.

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 in a foreign jurisdiction for the outstanding amount.

For these reasons, many Customers fail to purchase any type of electronic pass. As 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 using information available to the toll operator to identify the registered owner of the vehicle. The Applicant is the registered owner of its vehicles, so when a toll charge is incurred by one of its vehicles and left unpaid, the relevant toll operator will send the Applicant a toll notice demanding payment for those unpaid tolls (plus any administration fees). If the toll notice is not paid, the toll operator may issue an infringement notice.

Each year, the Applicant receives and processes over 500 toll notices and approximately 50 infringement notices. This is compared to the approximately 3000 rental transactions it engages in per annum.

To correct the toll notice and avoid paying a toll for which the Applicant is not liable, an employee of the Applicant must declare to the toll road operator, by statutory declaration before an authorised witness, that while the Applicant is the registered owner of the vehicle, the toll was incurred by a customer who rented vehicle at the time the toll was incurred. The Applicant also must disclose the identity of the Customer to the toll road operator. Preparing these statutory declarations for each toll notice and infringement notice is a large administrative burden.

If the toll road operator accepts the Applicant's statutory declaration, it will then pursue the Customer for the outstanding amount payable under the notice. This is inefficient, costly and cumbersome for both the toll road operator and the Applicant, particularly since the toll may be only 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 account. The amount of the administration fees varies according to the toll road operator. For example, in Sydney, the Eastern Distributor and Westlink M7 charge a \$10.00 administration fee for each toll notice issued when

there is no e-tag account.⁵ In Victoria, charges for using the EastLink Motorway without an e-tag or e-pass range from \$5.53 to \$11.07 (plus additional "Lookup fees").⁶

If a toll notice is not paid by a specific date, the toll operator may issue an infringement notice. The current fine for each unpaid toll notice is at least \$158.57 in Victoria⁷, and at least \$165.00 in New South Wales⁸.

In addition to the toll operator's fees, the Applicant charges Customers its own administration fee of \$5.00 towards the cost of identifying the relevant customer, preparing the statutory declaration and subsequent correspondence with the toll road operator.

The substantial administrative costs required by the toll road operator and the Applicant to identify and pursue the Customer who incurred the toll causes significant additional cost to both the toll road operator and the Applicant.

2.4 Proposed solution

The Applicant proposes to require that Customers use RMS e-tag accounts for all motorcycles it hires. This account will be charged 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, the Customer will authorise RMS to recover the applicable toll, together with a service fee, from the Customer.

To implement the proposed solution, the Applicant proposes to offer to supply rental vehicle services to its Customers on the condition that each Customer also enters into a contract (**RMS Contract**) with RMS for the provision of E-toll services for the rental period (**the Proposed Conduct**). This conduct may be construed as falling within the definition of "exclusive dealing" set out under 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 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:
 - (i) A Customer will enter into a rental contract with the Applicant which sets out the terms and conditions of the vehicle rental;

⁵ See <http://www.rms.nsw.gov.au/sydney-motorways/toll-notices/index.html>

⁶ The precise amount depends on whether an Overdue Notice is issued and the state the vehicle is registered in. See <https://www.eastlink.com.au/tolling-how-to-pay/fees-charges>

⁷ See <https://www.citylink.com.au/help/toll-invoices/how-do-i-pay/what-happens-if-i-dont-pay-my-toll-invoice>

⁸ See <http://www.rms.nsw.gov.au/sydney-motorways/toll-notices/index.html>

- (ii) The Customer will also 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) The Applicant will provide RMS with the Customer's credit card or Visa or MasterCard debit card details.
 - (c) RMS will pay each toll road operator for any toll fees incurred by the Customer on the respective toll road.
 - (d) Under the RMS Contract, the Customer will be required to pay RMS for the tolls incurred during the rental period. In addition, the Customer must pay a service fee of \$3.30 to RMS for each calendar day that a toll is incurred during the rental period (**Service Fee**). Of the \$3.30, \$1.10 will be paid by RMS to the Applicant.
 - (e) The Service Fee will not be charged 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.
 - (f) The Service Fee will be explained in the RMS Contract.
 - (g) 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 liable to pay the Service Fee and any toll charges incurred and that, by providing their bank account, credit card, Visa or MasterCard debit card details to the Applicant, the Customer accepts that this information will be provided to RMS for the purpose of charging the Customer for these fees and charges. The RMS Contract will include a provision granting RMS authority to deduct the relevant fees and charges from the Customer's payment option.

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

3.2 Alternatives available to potential Customers

If a Customer acquires the Applicant's rental services, the Customer can avoid paying the Service Fee and toll charges by not driving on toll roads.

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 not associated with the RMS E-tolling solution.

3.3 Service Fees

The Service Fee imposed by RMS is intended to recover the cost of providing the E-toll services and RMS's maintenance of the E-toll facility. The Applicant considers that this fee is reasonable.

The Service Fee will be divided between RMS and the Applicant (\$2.20 retained by RMS; \$1.10 passed on to the Applicant). Part of the Service Fee will be retained by RMS for:

- (a) provision of the service to Customers (including maintaining the website for any inquiries);
- (b) invoicing the Customer;
- (c) processing transactions; and
- (d) maintaining the hardware and software which underpin the system.

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

- (e) printing and distributing the amended rental agreement and associated documentation; and
- (f) management of the secure database and transfer of billing data.

4. MARKET DEFINITION

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

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

5. PUBLIC BENEFITS AND DETRIMENTS

For the reasons set out below, 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 outweighed by the benefit to the public.

5.1 Benefits to the public

The Applicant submits that the Proposed Conduct will lead to 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.

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 (or, in the case of motorcycles, an appropriately linked account). If a Customer does not pay the initial notice within the required time, an infringement notice may be issued with substantial fines payable. Furthermore, the Applicant incurs an additional cost of identifying the Customer and making the declaration.

This process occurs for each toll a Customer incurs that is not charged to an e-tag or e-pass account. Over the course of the rental period, this can add up to a significant amount payable by the Customer which can lead to "bill shock" and confusion and give rise disputes between the Applicant and the Customer or to the Applicant absorbing the cost of the tolls.

On occasion, the Applicant also faces additional administrative issues caused by customers who have their own e-pass which is not accepted by all toll road operators. These customers may believe they have paid a toll when in fact they have not. This confusion will be avoided by the Proposed Conduct as the RMS e-tag is accepted by all toll road operators.

Customers

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

- (a) Although Customers will be charged the Service Fee for any days on which they use a toll road:
 - (i) the administration fee that the Applicant would otherwise charge Customers for unpaid tolls (\$5.00) will be completely avoided;
 - (ii) all of the toll operators' administration charges for unpaid tolls will be completely avoided; and
 - (iii) any potential charges resulting from the issuing of an infringement notice will be avoided.⁹
- (b) Customers will experience greater efficiency and increased convenience in paying tolls:
 - (i) Toll roads are exclusively operated by electronic payment systems. Unless the rental vehicle company organises a system to pay tolls,

⁹ This assumes that the Customer does not default or make a late payment under the RMS Contract.

customers must arrange their own e-pass or e-tag and, in the case of motorcycles, link the relevant account to the licence plate number of the rental vehicle.¹⁰ 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, including the toll operator's 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 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 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 (or, in the case of motorcycles, the linked account) can be used on all toll roads in Australia which also assists customers wanting to ride 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 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 Bikescape and EagleRider, for customers seeking to have a pre-arranged e-tag arrangement.

Tables 1 and 2 set out a cost comparison for the different options open to a Customer in a vehicle (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. If the customer fails to pay any tolls upon receiving a toll notice, the costs for the option of travelling without a RMS E-toll facility or toll pass will increase substantially beyond the costs shown in the tables below.

¹⁰ 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 1 - NSW

Charge	RMS E-toll facility	Roam Casual pass	No E-toll facility and no pass
Set up fee	\$0	\$3.30 ¹¹	\$0
Service fee	\$3.30	\$0	\$0
Vehicle matching/ no tag/ image processing fee	\$0	\$1.50 ¹²	\$1.50
Tolls for roundtrip	\$10.23 ¹³	\$10.23	\$10.23
Toll notice administration fee	\$0	\$0	\$20 ¹⁴
Applicant administration fee	\$0	\$0	\$5 ¹⁵
Total	\$13.53	\$15.03	\$36.73

Table 2 - VIC

Charge	RMS E-toll facility	EastLink trip pass	No E-toll facility and no pass
Set up fee	\$0	\$2.92 ¹⁶	\$0
Service fee	\$3.30	\$0	\$0
Vehicle matching/ no tag/ image processing fee	\$0	\$0	\$0.58 ¹⁷
Tolls for roundtrip	\$2.82 ¹⁸	\$6.14 ¹⁹	\$2.82
Toll invoice fee	\$0	\$0	\$11.07
Applicant administration fee	\$0	\$0	\$5 ²⁰
Total	\$6.12	\$9.06	\$19.47

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

¹¹ Or \$1.50 if purchased online.

¹² A Vehicle Matching Fee of \$0.75 is charged at each toll collection point.

¹³ This comprises a \$4 toll on the Sydney Harbour Bridge and a \$6.23 toll on the Eastern Distributor.

¹⁴ \$10 fee is payable in relation to each unpaid toll (see <http://www.rms.nsw.gov.au/sydney-motorways/toll-notice/index.html>)

¹⁵ A \$5 administration fee is payable for each customer for toll notices processed.

¹⁶ A Trip Pass Purchase fee of \$2.92 is payable on every transaction when a customer buys a trip pass (<https://www.eastlink.com.au/tolling-how-to-pay/fees-charges>).

¹⁷ An Image Processing Fee of \$0.29 is charged per trip.

¹⁸ A toll of \$2.82 each way applies for cars. For motorcycles the charge is \$1.41 (see <https://www.eastlink.com.au/tolling-how-to-pay/tolls>).

¹⁹ A one way trip pass is priced at \$6.13 for cars and \$3.07 for motorcycles (see <https://www.eastlink.com.au/tolling-how-to-pay/tolls>).

²⁰ A \$5.13 fee is payable in relation to each unpaid toll. A further toll invoice fee of \$10.26 is payable if the toll invoice fee is not paid within 14 days.

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 550 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 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 550 toll notices and infringement notices received each year is a large administrative burden. Specifically, it requires a combination of human resources, computer and printing services culminating in one staff member spending in the order of two to four hours per week on this activity.

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 50 vehicles (and all of these expected to be included in the Proposed Conduct), the Applicant usually handles approximately 550 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 markets for the supply of rental vehicle services:
 - (i) If customers do not wish to contract with RMS, they may use a variety of other suppliers of vehicle rental services.
 - (ii) The customer can avoid paying the Service Fee and toll charges to RMS by not driving on toll roads.
- (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 70 vehicles in total, the Applicant is not a major supplier of vehicle rental services in NSW.
 - (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.