

**UNDERTAKING BY DARWIN RADIO TAXI COOPERATIVE LIMITED PURSUANT
TO SECTION 87B OF THE *TRADE PRACTICES ACT* 1974**

BACKGROUND

- A. Darwin Radio Taxi Cooperative Limited ("DRT") is incorporated in the Northern Territory. The principal activity of DRT was and remains the supply of dispatch and support services to taxi cabs.
- B. In a statement of claim filed in proceedings in the Federal Court of Australia, Northern Territory District Registry, (a copy of which is annexed to this undertaking and marked AA) the applicant in the proceedings, the Australian Competition and Consumer Commission ("the Commission") has alleged:
- (i) The Rules of DRT identified in the statement of claim constitute provisions of an agreement between it and its members which have the effect, or likely effect, of substantially lessening competition in the Darwin taxi network services market and taxi services market; and
 - (ii) DRT has given effect to these rules by threatening expulsion of members who used the taxi network services of a competitor and by claiming base fees for services not rendered, as alleged in the statement of claim, as per 1 above, which had the purpose and likely effect of substantially lessening competition in the taxi network services and taxi markets in Darwin. This conduct was in breach of section 45(2)(b)(ii) of the Trade Practices Act 1974 ("the Act"); and
 - (iii) DRT took advantage of its substantial power in the market for taxi network services in Darwin to prevent or hinder members obtaining the taxi network services of its competitors, with the purpose of eliminating or damaging those competitors, deterring or preventing them from engaging in competitive conduct, preventing other competitors from entering the taxi network services market, and deterring or preventing members of DRT and their lessees from engaging in competitive conduct in the taxi services market. This conduct is in breach of section 46 (1) of the Act; and
 - (iv) DRT, through its Board, has induced or attempted to induce its members to require their lessees to obtain taxi network services from DRT as a condition of their lease. This conduct is in breach of section 47 (6) and (7) of the Act.
- C. DRT admits that its conduct as alleged in applicant's statement of claim contravenes sections 45, 46 and 47 of the Trade Practice Act 1974.

UNDERTAKINGS

DRT undertakes that:

Compliance Program

- 1 Prior to 31 July 1997 DRT will implement at its expense, and continue to maintain for a period of three years from the date of this Undertaking, a Trade Practices Compliance Program ("the Program") for its taxi business.
- 2 The Program will include:
 - (a) the appointment of a Compliance Officer;
 - (b) the preparation of an information manual to be distributed to all directors and members which includes a Trade Practices Act Compliance checklist for easy reference; and
 - (c) the education of directors and members through presentations of inhouse seminars, conducted at least annually.
- 3 DRT will keep records and substantiate to the Commission that it has complied with its obligations under paragraphs 1 and 2 above. The records will indicate the content of the seminars and presentations, the names of the person and/or organisations presenting the compliance sessions and the names and the positions in DRT of the people attending the presentations and seminars. After each seminar or presentation has occurred, DRT will provide to the Commission, within 14 days a report of the presentation or seminar providing the details specified above.
- 4 The Program will be compulsory for all directors of DRT.
- 5 The Program should be structured, with a timetable for regular training and follow up refresher courses.
- 6 The Program will contain comprehensive practical training relevant to the business of DRT and the provision of a manual for distribution to all directors and members which includes a Trade Practices Act Compliance checklist for easy reference.
- 7 The Program will have firm goals for management and staff which goals are stated in clear terms. The Program will be designed to ensure that directors and members attain a sufficient understanding of the Act so that: directors, members and staff can avoid obvious contraventions of the Act and can refer potential Trade Practices problems to the Compliance Officer; and the

Compliance Officer can address more complex Trade Practices issues and identify those issues which require referral to the legal advisers of DRT.

- 8 Responsibility for ensuring compliance with the Act will be placed on an identified member of management.
- 9 There will be a formal system of reporting by personnel to the member of management identified in 8 above designated to be responsible for corporate compliance, of all matters which may involve contraventions of the Act.
- 10 There will be a formal system which is put into effect whenever conduct is reported to management which may involve a contravention of the Act. The procedure will include examination of the conduct by a suitably qualified person to determine whether the possible contravention has substance, action to rectify the contravention at an early date and progressive monitoring of the matter to ensure the rectification action is successfully implemented.
- 11 There will be a system of disciplining those who do not comply with the Program and who engage in conduct in contravention of the Act.
- 12 A report on paragraphs 6 to 11 of this Undertaking will be provided to the Commission within 60 days of the giving of this Undertaking.

Notice

- 13 DRT will place, at its expense, notices in the form of the statement annexed hereto and marked "A", in the Northern Territory News, with such newspaper notice :
 - (a) to be of a size no less than 20 cm x 30 cm;
 - (b) to be in text which is in type sizes not less than variously used in Annexure A;
 - (c) to be placed on page 5 of the newspaper;
 - (d) to be published on 3 occasions within 21 days of entering into this undertaking; and
 - (e) to be published on at least one weekend.

ACKNOWLEDGMENTS

- 14 DRT acknowledges that the Commission will make this Undertaking available for public inspection.

15 DRT further acknowledges that the Commission may from time to time publish and publicly refer to this Undertaking at its discretion.

DATED 26 May 1997

THE COMMON SEAL of DRT)
was affixed in the)
presence of, and the sealing is)
witnessed by:)



Secretary
Name (printed)

COLIN GEORGE
BEAUMONT.

Director
Name (printed):

STEPHEN WAYNE HALL

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Trade Practices Act 1974*.

Professor Allan Herbert Miller Fels
Chairperson
Australian Competition and Consumer Commission

APOLOGY

In a settlement of legal proceedings brought by the Australian Competition and Consumer Commission

DARWIN RADIO TAXI COOPERATIVE LTD

acknowledges that it has contravened the Trade Practices Act 1974 by:

- making rules, and using its substantial market power, to prevent members and their lessees joining rival taxi networks;
- sending letters to members threatening to expel them and forfeit their shares if they or their lessees joined a competitors' network;
- sending letters to members threatening to levy "base fees" on all members whether they, or the taxis they leased to others, used the Co-op's network or not; and
- attempting to induce members to force their lessees to use the Co-op's taxi network instead of competitors' networks.

This conduct lessened or hindered competition between the Darwin taxi networks and between taxi drivers. It breached sections 45(2)(b)(ii), 46 and 47(6) & (7) of the Act.

The Co-op acknowledges that the Trade Practices Act has been in force for more than 22 years and accepts that it should have been aware of its provisions. It regrets that this was not so. To redress this the Co-op will implement a compliance education program. Under this program, it will bring its rules up to date, train its executive and staff in the principles governing fair competition and improve the professional quality of its service. The Co-op has also consented to Federal Court injunctions restraining a repetition of this or similar conduct.

The Co-op regrets breaching the Act and apologises for any loss or damage this anti-competitive conduct may have inflicted either on Darwin taxi customers or on its competitors, Taxinet Arafura, Darwin Combined Taxis or Taxinet North (now in liquidation).

IN THE FEDERAL COURT OF AUSTRALIA)
NORTHERN TERRITORY DISTRICT REGISTRY)
GENERAL DIVISION)

No. DG 4 of 1997

BETWEEN:

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
Applicant

AND:

DARWIN RADIO TAXI CO-OPERATIVE LIMITED
Respondent

STATEMENT OF CLAIM

1. This matter is within the original jurisdiction of the Federal Court of Australia being proceedings on behalf of the Commonwealth for the recovery of pecuniary penalties referred to in Section 76 of the *Trade Practices Act 1974* ("the Act"), for injunctions pursuant to Section 80 of the Act and for declarations pursuant to Section 21 of the *Federal Court of Australia Act 1976*.
2. The Applicant is a body corporate established under Section 6A of the Act.
3. The Respondent ("DRT") is and was at all material times a body corporate which was incorporated in the Northern Territory pursuant to the provisions of the *Co-Operative Societies Act (NT)*.

Filed on behalf of the Applicant by: Australian Government Solicitor

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Chan Street, BELCONNEN ACT 2617

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4. In the premises, DRT is and was at all material times a corporation within the meaning of the Act.
5. At all material times, DRT has carried on and continues to carry on in the taxi area specified in paragraph 9 hereof a business, under the business name "Darwin Radio Taxis", the activities of which include supplying taxi network services, as described herein, to its members and to other persons for reward.
6. There are certain motor vehicles ("taxi cabs") which are available for hire by members of the public ("customers") at all times of the day, which may not refuse customers if available for hire, and by which customers can be transported on demand direct to locations specified by the customer on a route chosen by the customer.
7. Such services (hereinafter called "taxi services") can be acquired, by the customer:-
 - (a) attending taxi ranks which are located in areas generally convenient to intending customers, such as airports, business districts and shopping centres;
 - (b) booking or ordering by telephone or other electronic communication means, through a taxi network, the nearest available taxi cab connected to the contracted network to pick the customer up from a location and at a time that is specified by the customer; and
 - (c) hailing passing taxi cabs that have not already been engaged by another customer.
8. The provision of taxi services within the Northern Territory is and was at all material times regulated by and pursuant to the provisions of the *Commercial Passenger (Road) Transport Act 1991*(NT) ("the CPT Act"), the *Taxi Regulations 1992*(NT) and the *Motor Vehicles Act 1949* (NT) whereby:

- (a) a person must not operate or cause or employ another person to drive or operate a motor vehicle to provide taxi services unless that person is the holder of a licence to provide such services ("a taxi licence") granted by the Director of Commercial Passenger (Road) Transport ("the CPT Director"), or is the lessee of a taxi licence and is accredited under the CPT Act to operate a taxi licence;
- (b) a person must not drive a licensed taxi cab unless that person qualifies for and has been granted by the Registrar of Motor Vehicles, a current licence to drive the same;
- (c) separate areas within the Northern Territory are declared by the Minister administering the CPT Act ("the Minister") to be taxi areas;
- (d) each taxi licence issued by the CPT Director is:
 - (i) endorsed with the number plate issued under the *Motor Vehicles Act* of the taxi cab in respect of which the licence is granted (the "licensed taxi cab");
 - (ii) designated a taxi area within which the taxi cab, in respect of which the licence is granted, may be operated for the carriage of customers;
 - (iii) subject to such conditions, if any, as the CPT Director thinks fit and specifies in the licence;
- (e) taxi areas are areas in which only the licensed taxi cabs designated to those taxi areas may operate;
- (f) the maximum number of taxi licences available to be granted by the CPT Director for each taxi area is determined by the Minister;
- (g) the maximum fares and charges that may be charged for the provision of taxi services are determined by the Minister;

- (h) a person shall not use or permit the use of a communications network for the purposes of communicating with or controlling or coordinating licensed taxi cabs without first obtaining written approval from the CPT Director and being subject to any conditions the CPT Director may set.
9. There is and was at all material times an area declared by the Minister in *The Northern Territory Government Gazette No G46, 18 November 1992* to be a taxi area under the CPT Act, which area is contained in and comprised of an area within a 20km radius of the General Post Office of Darwin in the Northern Territory of Australia ("the Area").
10. Within the Area, the following conditions are and at all material times were imposed by the CPT Director on the holders of taxi licences ("licence holders") and the providers of communications networks for licensed taxi cabs:
- (a) a licence holder must join an approved taxi communications network;
 - (b) an approved communications network servicing licensed taxi cabs must not be used for the purposes of communicating with or controlling or coordinating any other type of licensed commercial passenger vehicle.
11. At all material times the maximum number of taxi licences for the operation of licensed taxi cabs available to be granted within the Area pursuant to the CPT Act was determined by the Minister to be 100 and the number of taxi licences granted by the CPT Director for the operation of licensed taxi cabs within the Area was 88.
12. Within the Area licence holders, or where the taxi licences are leased, the lessees of the taxi licences, (hereinafter a licence holder, or where the taxi licence is leased, the lessee of the taxi licence, is referred to as the "operator" of the taxi cab to which the taxi licence relates) supply and at all material times supplied taxi services to customers for reward.

13. Within the Area there is and was at all material times a demand by customers for taxi services.
14. For the purpose of supplying such services, each licensed taxi cab is and at all material times was driven:
 - (a) by the operator exclusively;
 - (b) by a driver engaged by the operator on a commission basis ("a commissioned driver") or by commissioned drivers exclusively; or
 - (c) in sequence, by the operator and a commissioned driver or commissioned drivers.
15. Within the Area, the operators are and at all material times were in competition with each other to provide taxi services to customers.
16. Within the Area, there is and at all material times was a demand by operators for:
 - (a) a communications network system approved by the CPT Director to provide services consisting of the reception and allocation of bookings and requests by customers for taxi services and the electronic communication to operator's taxi cabs of those bookings and requests;
 - (b) other taxi base services, such as Cabcharge and credit card processing, public relations dealings, taxi services promotion and driver standards regulation.

(These services are hereinafter referred to as "taxi network services").
17. DRT has and at all material times had approval to use a communications network for the purposes of communicating with or controlling or coordinating licensed taxi cabs in the Area.

18. At all material times within the Area, DRT supplied taxi network services to operators for reward. DRT supplies and supplied services more cheaply to its members than to non members.
19. From about June 1995, Passenger Transport Systems Pty Ltd ACN 056 302 599 ("PTS") had approval to use a communications network system from the CPT Director and in about July 1995 commenced the supply of taxi network services in the Area to operators for reward, in competition with DRT.
20. In about December 1996, PTS ceased operation.
21. From around December 1996 to date, Hardiman Beechy Pty Ltd, ACN 074 623 046, trading as Taxinet Arafura ("TNA") had approval to use a communications network system from the CPT Director and has supplied and continues to supply taxi network services in the Area to operators for reward in competition with DRT.
22. From about 1990 to date Darwin Combined Taxi Service Pty Ltd, ACN 009 652 279, trading as Darwin Combined Taxis ("Combined") had a communications network system approved by the CPT Director and has supplied and continues to supply taxi network services in the Area to operators for reward in competition with DRT.
23. Taxi network service providers compete by, inter alia:
 - (a) providing or endeavouring to provide services to operators at lower cost;
 - (b) providing or endeavouring to provide better communication and booking services in terms of reliability and timeliness;
 - (c) providing or endeavouring to provide operators with the necessary reception equipment, either as part of the service fee, or by utilising a communications system for which the necessary reception equipment costs

operators less to buy or lease, and to install and operate, than alternative systems; and

- (d) offering or endeavouring to offer a better standard of service to customers by ensuring or endeavouring to ensure a better quality of service by operators in terms of timeliness of arrival, presentation and cleanliness in terms of drivers and their taxi cabs, courtesy of drivers and a wider range of payment or credit facilities, thereby attracting more custom for operators using that provider.

24. Operators compete by, inter alia:

- (a) acquiring taxi network services from the best provider for their purposes thus allowing them an advantage over operators using other providers;
- (b) maintaining standards of courtesy, cleanliness, presentation and assistance to customers;
- (c) providing additional services, such as model and standard of vehicle, mobile phones that allow customers to engage the operator of their choice directly, vehicles for people with disabilities, assistance with packages and luggage, electronic payment and credit facilities; and
- (d) using well-trained, skilled and knowledgeable drivers.

25. There is and at all material times was no close substitute in the Area for:

- (a) taxi services; or
- (b) taxi network services.

26. In the premises, within the Area there is and at all material times was:

- (a) a market for the supply of taxi services by operators to customers ("the taxi market");

- (b) a market for the supply of taxi network services to licence holders and operators ("the taxi network services market").
27. All members of DRT at the time of its incorporation and all new members of DRT since its incorporation have agreed to be bound by the Rules of DRT ("the Rules").
28. The Rules, as amended from time to time, constitute a contract or alternatively an arrangement or understanding, between DRT and its members and between the members inter se.
29. The Rules contain the following provisions:
- | | |
|----------------|--|
| Interpretation | "Society" means the Darwin Radio Taxis Co-Operative Limited" |
| Rule 9(1) | "... Any person who ceases to be a member of the Society for any reason whatsoever shall sell his mobile radio unit to the Society at valuation. This valuation shall be made by the manufacturer and any expenses incurred by the Society shall be borne by the member" |
| Rule 9(5) | "The Board may reject an application for membership and need not assign any reason for its action." |
| Rule 10(10)(a) | The Board shall provide to every member a copy of the Rules. |
| Rule 10(19) | "A person shall, ... , cease to be a member in any of the following circumstances:- |
| | (a) where his share is transferred in accordance with these rules and the transferee is registered as holder in his place; |
| | (b) where his share is forfeited in accordance with these rules; |
| | (e) where he is expelled in accordance with these rules." |
| Rule 10(20) | "Where for any reason whatsoever, except where it is contained herein to the contrary, a person ceases to be a |

member of the Society, he shall surrender his shares to the Society and shall be entitled to be paid not later than fourteen (14) days from the date of surrender of the said shares, the value of such shares shall for the purpose (sic) hereof be fixed at two dollars (\$2.00) per share."

Rule 10(21)

"In the event of a person ceasing to be a member of the society for any reason whatsoever he shall upon cessation of membership offer for sale to the Society his taxi cab or hire car together with all licences and permits at the then current market value and the Society shall have a period of fourteen (14) days in which to exercise (sic) that offer."

Rule 11(3)

"The Board may decline to register any transfer of shares to a person not qualified to be a member or of whom they do not approve."

Rule 12(1)

"The Society may at any General Meeting by special resolution expel any member if:-

- (a) he has failed to discharge his obligations to the Society howsoever arising;
- (b) he has conducted himself in any manner whatsoever which the Society in a General Meeting by a simple majority considers to be detrimental to the interests of the Society;
- (c) he has carried on or has been engaged in any business or businesses in which the Society in General Meeting by a simple majority has forbidden him to carry on or be engaged in, or which the Board has forbidden him to carry on or be engaged in (either directly or indirectly or as employee, agent, partner, director or shareholder or otherwise for monetary return or otherwise) in competition with any business or businesses carried on by the Society or by any other members of the Society in the business of taxi cab or hire car owners or operators."

Rule 12(2)

"The shares of a person who has been expelled from the society shall be forfeited to the Society and whereupon notice of forfeiture shall be sent to the person whose shares are forfeited in accordance with these Rules;"

- Rule 12(3) "Upon forfeiture of the said shares the Society shall offer to pay the person expelled an amount of two dollars (\$2.00) for each share forfeited to the society, and the offer shall be made not later than fourteen (14) days from the date of forfeiture of the said shares ... The person expelled shall not be entitled to receive any other payments for the value of his shares."
- Rule 12(4) "For the proper construction of these Rules the shares forfeited shall be deemed forfeited at the date upon which the resolution to expel a member is passed AND FURTHER the value of the shares shall be deemed to be two dollars (\$2.00)."
- Rule 12(5) "(a) In the event of a person being expelled, that person shall not be readmitted to the Society, nor shall he have the facilities of the Society made available to him, unless a two thirds majority of the total membership of the Co-operative at a General Meeting accept his application for readmission and provided that the conditions set down in Rule 21(2) are complied with;
- (b) In the event of a person being expelled, and that person subsequently selling, transferring or otherwise disposing of his taxi licence (plate) the new owner of such a taxi licence shall not be admitted into the Society, nor shall he have the facilities of the Society made available to him, unless a two thirds majority of the total membership of the Co-operative at a General Meeting accepts his application for membership."
- Rule 14(1) "The business and operations of the Society shall, in accordance with section 51 of the Ordinance, be managed and controlled by the Board, and for that purpose the Board, except as hereinafter provided, shall have and may exercise the powers of the Society as if they had been expressly conferred on the Board by a General Meeting of the Society. The powers of the Board shall be subject to any restrictions imposed thereon by the Ordinance or by these rules."

Rule 21 "All new members of the Society shall pay the sum of ten thousand dollars (\$10,000.00) by way of admission charge except that on the transfer of ownership of taxi business the transfer of the previous member's shares to the new member shall suffice."

Rule 28(1) "Every member shall hold at least ten shares and any member who is a registered owner of more than one taxi or hire car shall in addition be required to hold ten shares for each taxi or hire car in excess of one so owned and serviced by the Society, but no member shall hold more than one fifth of the shares of the Society. In addition to the nominal value of two dollars (\$2.00) per share, the member shall upon the allotment of each further ten shares pay to this Society the sum of \$1,980."

Previous Rule 32
Clause 55A "Owner shall pay all dues, payments and subscriptions to or as directed by the Society notwithstanding that the owner may have ceased for the time being to have the right to the services offered by the Society."

The Rules and amendments thereto are available for inspection by appointment at the offices of the solicitor for the applicant.

30. The admission charges set by the Board under then Rule 24 (now Rule 21) for members joining between approximately 15 September 1963 and 22 September 1963 was 5 pounds, from 23 September 1963 to 28 February 1970 was 15 pounds and from 1 March 1970 to 8 July 1972 was \$500.00.
31. The admission charges set by the Board under Rule 21 for members joining between approximately 9 July 1972 and 26 May 1973 was \$2,000.00 and from 27 May 1973 to 13 September 1973 was \$520.00.
32. The admission charges set by the Board under Rule 21 for members joining between approximately 14 September 1986 and 18 September 1990 was \$5,000.00 and from 19 September 1990 to the present is \$10,000.00.

33. In the case of a new member of DRT acquiring the required shares by transfer from an existing member of DRT, the admission charge is paid by the transferee to the transferor in the amount of the admission charge at the time of transfer.
34. In July 1994 PTS commenced operating three taxis in the Area and in September 1994 commenced operating a further 14 taxis.
35. In the period July 1994 to July 1995, PTS used the taxi network services of DRT.
36. In about July 1995, PTS commenced operations in competition with DRT by supplying taxi network services and seeking to have operators, including operators using the DRT network, acquire their taxi network services from PTS.
37. By July/August 1995, of the approximately 84 taxi licences then issued in the Area, approximately 55 operators were using the taxi network services supplied by DRT, approximately 25 were using the taxi network services supplied by PTS and four were using the taxi network services supplied by Combined.
38. On or about 14 May 1995, the Directors of DRT met and determined to write to all members of DRT advising them that any member who allowed his vehicle to be operated in competition with the DRT network would face expulsion from DRT, forfeiture of that member's shares for the nominal sum of \$2.00 per share and forfeiture of all interest in the assets of DRT including its land and buildings.
39. The Directors further determined at the said meeting to advise members that if the member subsequently wished to rejoin DRT, a further \$10,000.00 admission charge would have to be paid and the approval of a two thirds majority of the then current membership would be required to approve the membership.
40. On or about 5 June 1995, Mr Ross Walters, the then Chairman of DRT, on behalf of DRT, sent to all members a letter advising them of the determinations referred to in paragraphs 38 and 39 hereof. A copy of one of the letters sent to

members is available for inspection by appointment at the offices of the solicitors for the applicant.

41. As at 5 June 1995, the value of each share in DRT greatly exceeded \$2.00 and each member was able to transfer his or her 10 shares to a new member for \$10,000.00.
42. On or about 14 July 1995, DRT purported to withdraw the said threat of expulsion and forfeiture of interests.
43. On or about 12 September 1996, a Special Directors Meeting was held, at which it was resolved that members of DRT whose taxi cabs were not currently using DRT's facilities should nevertheless be sent an account for taxi network service fees, to be claimed from the date the member, or the member's lessee, ceased using the taxi network services of DRT.
44. On or about 16 September 1996, Mr Steven Hall, the then Chairman of DRT, sent a letter to each member who was not then using the taxi network services of DRT advising, inter alia, that such member would be charged fees at the rate of \$148.00 per week, even though such member was not using the taxi network services of DRT, and that such fees would continue to accrue until that member either resigned or was expelled. A copy of one of the letters sent is available for inspection by appointment at the offices of the solicitors for the applicant.
45. The actions of the Directors and the Chairman were subsequently approved by members at an Annual General Meeting of DRT held on 1 December 1996.
46. As at the date hereof, there are approximately 88 taxi licences issued in the Area and approximately 63 operators use the taxi network services supplied by DRT, approximately 20 operators use the taxi network services supplied by TNA and approximately 5 use the taxi network services supplied by Combined Cabs.

47. DRT has and at all material times had substantial power in the market for taxi network services.

Particulars

The Applicant relies upon:-

- (a) The established dominant position of DRT as the principal supplier of taxi network services in the Area.
 - (b) The economies of scale available to DRT.
 - (c) The said Rules and, in particular, the provisions thereof which bind DRT and its members and give DRT the ability -
 - (i) to deter current members from leaving;
 - (ii) to deter current members from using the services of a competitive supplier of taxi network services;
 - (iii) to deter the transfer of a member's licence to any person who is not or who does not become a member;
 - (iv) to acquire the taxi cab licence and radio unit of any member who resigns or is expelled from DRT.
48. The purpose, or a substantial purpose, of DRT, by its directors, making the determinations referred to in paragraphs 38 and 39 hereof, and, by its Chairman, sending the letters referred to in paragraph 40 hereof, was to give effect to the provisions of the Rules so as to impose significant financial sanctions on members acquiring or seeking to acquire or contemplating acquiring taxi network services from other persons and thereby:-

- (a) to eliminate or substantially damage its competitor PTS in the taxi network services market by denying it any operators or a sufficient number of operators to efficiently and economically provide taxi network services;
 - (b) further or alternatively, to deter or prevent PTS or any other competitor, from engaging in competitive conduct in the taxi network services market by denying it any operators or a sufficient number of operators to efficiently and economically provide taxi network services;
 - (c) further or alternatively, to deter or prevent operators who are members of DRT or the lessees of members of DRT from engaging in competitive conduct in the taxi market by denying them the availability and benefit of services provided by a competitive supplier of taxi network services; and
 - (d) further or alternatively, to prevent any other competitor from entering the taxi network services market.
49. The purpose, or a substantial purpose, of DRT, by its directors and members, determining to impose fees for the provision of taxi network services on members not currently using those services, referred to in paragraphs 43 and 45 hereof, and, by its Chairman, in sending the letters referred to in paragraph 44 hereof, was to impose significant financial sanctions on members not currently using taxi network services supplied by DRT to prevent, hinder or deter them and their lessees from acquiring taxi network services from other persons and thereby:
- (a) to eliminate or substantially damage its competitor PTS in the taxi network services market by denying it any operators or a sufficient number of operators to efficiently and economically provide taxi network services;
 - (b) further or alternatively, to deter or prevent PTS or any other competitor from engaging in competitive conduct in the taxi network services market

by denying it any operators or a sufficient number of operators to efficiently and economically provide taxi network services;

(c) further or alternatively, to deter or prevent operators who are members of DRT or the lessees of members of DRT from engaging in competitive conduct in the taxi market by denying them the availability and benefit of services provided by a competitive supplier of taxi network services; and

(d) further or alternatively, to prevent any other competitor from entering the market for taxi network services.

50. In engaging in the conduct referred to in paragraphs 38, 39 and 40 hereof, DRT has taken advantage of its said substantial degree of market power for the purposes referred to in paragraph 48 hereof.

51. In engaging in the conduct referred to in paragraphs 43, 44 and 45 hereof, DRT has taken advantage of its said substantial degree of market power for the purposes referred to in paragraph 49 hereof.

52. In the premises, DRT has contravened Section 46 of the Act.

53. Further, the Rules or alternatively the Rules noted in combination, or alternatively each Rule, has the purpose of, alternatively, has or is likely to have the effect of substantially lessening, preventing or hindering competition:-


(a) in the taxi network services market, and,

(b) in the taxi market.

54. In engaging in the conduct referred to in paragraphs 38, 39 and 40, DRT has given effect to a provision or provisions of a contract, or alternatively an arrangement, or alternatively an understanding, between it and its members, contrary to sub-paragraph 45(2)(b)(ii) of the Act.

55. In engaging in the conduct referred to in paragraphs 43, 44 and 45, DRT has given effect to a provision or provisions of a contract, or alternatively an arrangement, or alternatively an understanding, between it and its members, contrary to sub-paragraph 45(2)(b)(ii) of the Act.
56. Further or alternatively, in engaging in the conduct referred to in paragraphs 38, 39 and 40, DRT induced, or attempted to induce, those members of DRT who lease their taxi licences to other persons to:
- a) lease their taxi licence on condition that the lessee acquire its taxi network services from DRT; or
 - b) refuse to lease their taxi licences to lessees if those lessees did not acquire, or agree to acquire, their taxi network services from DRT,
- contrary to subsections 47(6) and 47(7) and paragraph 76(1)(d) of the Act.
57. Further or alternatively, in engaging in the conduct referred to in paragraphs 43, 44 and 45, DRT induced, or attempted to induce, those members of DRT who lease their taxi licences to other persons to:
- a) lease their taxi licence on condition that the lessee acquire its taxi network services from DRT; or
 - b) refuse to lease their taxi licences to lessees if those lessees did not acquire, or agree to acquire, their taxi network services from DRT,
- contrary to subsections 47(6) and 47(7) and paragraph 76(1)(d) of the Act.
58. The applicant claims the relief specified in the Application.

Dated 14 May 1997


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Australian Government Solicitor
Solicitor for the Applicant