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TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B

BY
TAMWORTH RADIO CABS CO-OPERATIVE LIMITED
ABN. 15 484 108 866

BACKGROUND

- (1) Tamworth Radio Cabs Co-Operative Limited (ABN 15 484 108 866) ("Tamworth Radio Cabs") is registered as a co-operative in New South Wales under the Co-Operatives Act 1992 and is licensed by the New South Wales Department of Transport to provide radio network services for taxi cabs within the city of Tamworth and surrounding areas.
- (2) Tamworth Radio Cabs primary activity is the provision of radio network services to drivers and owners of a licence to operate a taxi cab ("taxi operators"). There are approximately 22 taxi cabs operating in this radio network.
- (3) In October 2001, the Australian Competition & Consumer Commission ("the Commission") received a complaint concerning the conduct of Tamworth Radio Cabs in relation to its:
 - roster system;
 - points system for allocating out of town work;
 - not allowing taxi operators to use mobile phones; and
 - prohibiting taxi operators from making private bookings.
- (4) In addition, when examining the Radio Communications Network Rules and Operating Manual & Rules of Tamworth Radio Cabs, further rules were noted as being in breach of the Trade Practices Act 1974 ("the Act"). In particular Radio Communications Network Rules 15 and the Operating Manual & Rules in relation to Fuel Supply.

Roster System

- (5) Tamworth Radio Cabs has in place a roster system. An allegation was made that taxi drivers were not able to work outside their rostered shifts and would not be allocated jobs over the radio network if they were to work outside their rostered shifts.

- (6) Tamworth Radio Cabs stated the intention of the roster was to ensure there were sufficient taxis to service the public adequately during quiet times. Tamworth Radio Cabs assured the Commission no taxi operator had been penalised for working when not rostered on, and by executing this undertaking, agrees that taxi operators who wish to work when not rostered on are able to do so and are able to be allocated jobs from the radio network.

Points System for Out of Town Jobs

- (7) Tamworth Radio Cabs had in place a points system for out of town jobs. The points system was used for jobs in excess of 30 kilometres from the base and was maintained by the Base Radio Operator. In effect points were issued on the basis of the kilometres travelled the points score being adjusted after each job when the driver advised the Base Radio Operator of the kilometres travelled. The taxi having completed the out of town job is then slotted down into the list according to the points accumulated. Out of town jobs were allocated to the taxi with the least aggregate points. Tamworth Radio Cabs stated that this system had been in place for over 40 years and was designed so that out of town jobs were allocated equally amongst taxi operators.
- (8) The Commission considers that a points system for the allocation of out of town jobs is a breach of section 45(2) and/or section 46 of the Act.

Mobile Phones

- (9) The complaint received by the Commission in relation to mobile phones was that Tamworth Radio Cabs discouraged the use of mobile phones by taxi operators and would, if it became aware taxi operators had taken a booking on a mobile phone, penalise those taxi operators by barring them from receiving work over the radio network. Tamworth Radio Cabs acknowledged it disliked taxi operators using mobile phones but denied any taxi operator had been penalised for accepting a booking on a mobile phone.
- (10) The Commission is of the view that barring taxi operators from receiving work over the radio network because of their use of mobile phones to accept bookings is anti competitive and likely to breach section 45(2) of the Act.
- (11) Tamworth Radio Cabs has assured the Commission, and by executing this Undertaking, agrees that no taxi operator has been or will be disciplined or disadvantaged by using a mobile phone to accept bookings.

(12) Private Bookings

By law 13 of the Radio Service By Laws states:

“The member or driver, shall not make private arrangements for the carrying of clients by way of permanent bookings or users who travel at regular known time.”

Operating Manual – Part 6 – Network Rules, Operating Procedure Rule (z) states:

“No Tamworth Radiocabs customer to be kept as a private booking.”

Operating Manual General Radio Rules No. 19 states:

“No Tamworth Radiocabs customer to be kept as a private booking.”

- (13) The Commission considers that the purpose of the provisions set out in paragraph (12) is to prevent the supply of taxi services to those customers who wish to book taxis directly and not through Tamworth Radio Cabs network and the Commission considers these provisions to be in breach of section 45(2) of the Act.

Fuel Supply

- (14) Tamworth Radio Cabs Radio Communications Network Rules - Rule 15 – Fuel Supply states:

“15. It is a condition of supply to a Licensee or member, or providing a Licensee or member with, a radio communication service that licensees and members purchases:

(a) from the Society at or through a Service Station operated by the Society.

(b) from such Service Station or other retail outlets as are nominated by the Society, or

(c) partly from a Service Station so operated and partly from a Service Station or other retail outlet so nominated, motor spirit and other petroleum products.”

- (15) Operating Manual & Rules (printed 2000) on page 58 states:

“FUEL SUPPLY

It is a condition of supply to a mobile, or providing a mobile with a radio communications service that mobiles and members purchase:

(a) from the Society at or through a Service Station operated by the Society,

(b) from such Service Station or other retail outlets as are nominated by the Society, or

(c) partly from a Service Station so operated by and partly from a Service Station of other retail outlet so nominated.

(d) Motor Spirit and other petroleum products. ...”

- (16) The Commission considers that parts (b) and (c) contained in paragraphs (14) and (15) above in relation to Fuel Supply are exclusive dealing in breach of sections 47(6) and (7) of the Act.
- (17) In late 2001, the Commission brought to Tamworth Radio Cab's attention its concerns that some of its rules and practices may contravene the Act. The Commission has obtained copies of Tamworth Radio Cabs Co-operative Limited's:

By Laws;
 Radio Service By Laws;
 Licence Agreement in blank;
 Radio Communications Network Operating Manual & Rules (Printed 2000);
 Radio Communications Network – Rules (printed Oct 2000);
 Rules of Tamworth Radio Cabs Co-Operative Limited dated 21 October 1996;
 Radio Communications Network – Operators Manual & By-Law (1/4/2003).

In March 2003, the Commission advised the solicitors for Tamworth Radio Cabs that in its view the rules and practices referred to in paragraphs (7), (12), (14) and (15) above contravened sections 45(2), 46 and 47(6) and (7).

- (18) Tamworth Radio Cabs admits that its conduct contravened the Act and has now ceased the conduct referred to in paragraphs (7), (12), (14) and (15) above and removed the offending sections from its Radio Communication Network Rules and Operating Manual and Rules.

UNDERTAKINGS

- (19) Tamworth Radio Cabs hereby undertakes for the purposes of section 87B of the Act that it will hereafter, whether by itself, its directors, employees or agents:
- (a) ensure that a taxi operator who operates a taxi when not rostered to do so will not be denied access to the radio network nor otherwise penalised by reason of having operated a taxi when not rostered so to do;
 - (b) ensure that a taxi operator who uses a mobile phone to receive bookings is not disciplined or disadvantaged by using a mobile phone;
 - (c) refrain from operating a points systems for jobs, including jobs in excess 30 kms, and ensure that all jobs are allocated to the nearest available taxi.
- (20) Within 10 days of this undertaking commencing Tamworth Radio Cabs will notify all taxi operators by letter, in terms acceptable to the Commission, of the termination of the points system for out of town jobs.
- (21) Tamworth Radio Cabs will, within 60 days of the date of this undertaking, call and hold a Meeting ("the Meeting") to pass a special resolution to have:
- (a) the rules and by-laws relating to private bookings as set out in paragraph (12) above rescinded; and

- (b) the rules and by-laws relating to Fuel Supply as set out in paragraph (14) and (15) above amended to remove the sections considered to be in breach of sections 47(6) and (7).
- (22) Within 30 days of the date of the Meeting Tamworth Radio Cabs will notify all taxi operators by letter, in terms acceptable to the Commission, of the rescission of the:
- (a) rules relating to private bookings
 - (b) rules relating to fuel supply;
- and that taxi operators will not be penalised or disadvantaged by:
- (c) operating a taxis when not rostered to do so; and
 - (d) using a mobile phone to accept bookings.
- (23) Within three (3) months of this undertaking coming into effect Tamworth Radio Cabs will instruct a solicitor or suitably qualified person to review the:

By Laws;
 Radio Service By Laws;
 Licence Agreement in blank;
 Radio Communications Network Operating Manual & Rules (Printed 2000);
 Radio Communications Network – Rules (printed Oct 2000);
 Rules of Tamworth Radio Cabs Co-Operative Limited dated 21 October 1996;
 Radio Communications Network – Operators Manual (1/4/2003);

and remove all paragraphs that may be anti competitive or relate to rules and by laws rescinded as a result of this undertaking and the Meeting.

Compliance Program

- (24) Tamworth Radio Cabs will within three (3) months of this undertaking coming into effect, develop a Trade Practices Compliance program with the following features:
- (a) Tamworth Radio Cabs will use reasonable endeavours to ensure that the Program is tailored to suit its circumstances having regard to Australian Standard on Compliance Programs AS 3806-1998.
 - (b) the Trade Practices Compliance Program will remain in effect for a minimum period of 3 years from the date on which the Trade Practices Compliance Program is implemented.
 - (c) Within one (1) month of this undertaking coming into effect, Tamworth Radio Cabs will appointment a Trade Practices Compliance Officer. The Trade Practices Compliance Officer will have appropriate knowledge of trade practices law or receive training in trade practices law from a firm of solicitors or compliance professionals with experience in trade practices law.

- (d) Within four (4) months of this undertaking coming into effect, Tamworth Radio Cabs will ensure that a firm of solicitors or compliance professionals with expertise in trade practices law, conduct training concerning Part IV of the Act to the directors, owners and operators of taxis.
- (e) Tamworth Radio Cabs will provide written notification to the Australian Competition and Consumer Commission of having conducted such a trade practice training program within ten (10) days of the training having occurred.
- (f) At the end of the first twelve (12) month period following the commencement of this undertaking, Tamworth Radio Cabs will have a firm of solicitors or compliance professionals with expertise in trade practices law review the program and report to the Commission, on
 - (i) the implementation of the Trade Practices Compliance Program and the achievement over the preceding 12 months;
 - (ii) identify any deficiencies and make recommendations as to any changes to the Trade Practices Compliance Program, if necessary, to ensure the achievement of its objective.
- (g) That it will provide a copy of the auditors report to the Commission within ten (10) days of Tamworth Radio Cabs receiving it. Should the report identify deficiencies in the Program Tamworth Radio Cabs will make the necessary alterations to the Program within three (3) weeks of receiving the auditors report. Such alterations and their implementation are to be notified to the Commission within ten (10) days of implementation.

COMMENCEMENT OF UNDERTAKINGS

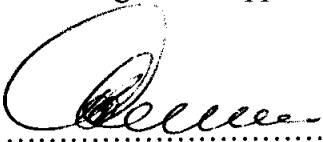
- (25) This undertaking comes into effect when the:
 - (a) undertaking is executed by Tamworth Radio Cabs; and
 - (b) Commission accepts the undertaking so executed.

ACKNOWLEDGMENTS

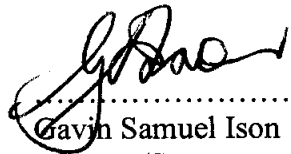
- (26) Tamworth Radio Cabs acknowledges the Commission's right to make this undertaking available to the public including by placing it on a register, publishing it and allowing third parties to publish it.
- (27) Tamworth Radio Cabs further acknowledges that the Commission will from time to time publicly refer to this undertaking.

- (28) Tamworth Radio Cabs further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
- (29) Tamworth Radio Cabs further acknowledges that the report referred to in paragraph (24)(f) above to be prepared on the implementation of a compliance program will be held with this undertaking on the public register.

IN WITNESS whereof this undertaking has been executed by TAMWORTH RADIO CABS CO-OPERATIVE LIMITED (ABN 15 484 108 866) by Brian O'Sullivan and Gavin Samuel Ison, whose signatures appear below:



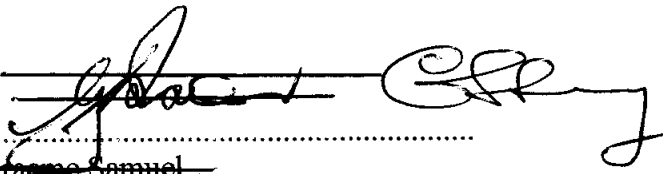
 Brian O'Sullivan
 Director/Secretary



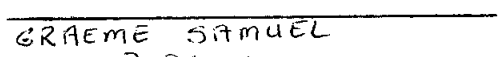
 Gavin Samuel Ison
 Director/Secretary.

This *Twenty fourth* day of *February* 2004

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974



~~Graeme Samuel~~
 Chairperson


 GRAEME SAMUEL
 CHAIRPERSON

~~This *Twenty fourth* day of *February* 2004~~
 THIS *17th* day of *March* 2004