

# Mobile phones in taxis

Denis Dalton examines a recent finding by the Trade Practices Commission that the use of mobile phones by taxi drivers is in the public benefit

**T**he Trade Practices Commission has recently ruled on Silver Top Taxi Service's application that it be allowed to prohibit the use of car telephones in members cabs as authorised conduct under the *Trade Practices Act 1975*.

Like other taxi companies operating throughout Australia, Silver Top provides a radio communication network service between the public and taxi operators who are individual owners of taxi licences. Silver Top's application was supported by other taxi companies.

## Submissions

**T**he representatives of the taxi companies strongly argued that the interests of the public were best served by banning car phones because the use of car phones undermined the integrity of their radio networks. It was strongly argued that the maintenance and improvement of the radio networks was in the public benefit. The installation of new equipment to improve this service could only be done if the taxi industry was not fragmented. It was further argued that the use of car phones undermined the effectiveness of the extensive monitoring of the standard of service provided by the taxi companies and that it would subsequently be detrimental to the allocation of the resources of the taxi industry to the public.

The submissions on behalf of the taxi companies also covered a range of matters, including references to the safety of the driver and the passenger, the return of lost goods left in taxi cabs, "bottling up" of jobs by drivers with car phones, the misuse of car phones to cancel jobs of other drivers, that there would be no means of applying pressure to drivers to maintain standards, the drivers would take jobs when not in the area and there would be no recourse against them, the car phone operators would only operate during the busy period, that drivers with car and phones might develop their own clientele.

The submissions made on behalf of the taxi companies were opposed by a number of independent drivers. The independent drivers argued that they were concerned to offer the best possible service and that the use of car telephones was an integral part of providing a service to a range of people who wanted the reliability and cleanliness offered by someone with whom they were familiar. The independent drivers in particular pointed out the benefits to groups such as the elderly and the disabled, who were able to call up the



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driver of their choice for regular trips that they might need to take.

## Determination

**I**n its Determination on 21 September 1990, the Commission made reference to the tests under both Section 90(6) and Section 90(8) of the *Trade Practices Act 1975* concluding on the authority of the Tribunal's decision in *Re Media Council of Australia No. 2* (1987) that the tests under the two subsections were the same. The Commission in applying this test concluded that the proposed conduct was anti-competitive. It did not accept that there were public benefits flowing from such conduct which should cause the Commission to authorise the conduct. On the contrary, the Commission concluded that there were positive public benefits to be seen in allowing the use of telephones in taxis in addition to the public detriments that might arise from preventing their use. The Commission acknowledged that there are public benefits in improving the service offered by the radio networks, that new technology is important to improved service and considered that the taxi industry was setting and achieving standards for itself.

However, the Commission did not accept that the public was best served by supplying the taxi companies with a monopoly on the use of technology. The taxi companies were unable to convince the Commission that there was any difference between a booking taken through a car telephone and one taken from a street hiring from the point of view of monitoring and deploying taxi cabs.

## Public benefits

The Commission concluded that the major public benefit from allowing the use of car

telephones is that it permits passengers or customers, by the use of the most modern technology, to communicate with a driver with whom they wish to deal, rather than customers having to accept the driver that is allocated by the taxi company. The use of a car telephone permits the customer to arrange transport with someone who the customer knows is reliable and offers a good service both in punctuality and cleanliness. The Commission saw these matters as pro-competitive. Under the present system there is little responsibility on particular drivers to offer a good standard of service.

Another benefit that the Commission saw available to the public was that passengers would know when the vehicle was arriving and would be able to change the arrangements. In making its Determination, the Commission concluded that the overall effect of allowing the use of car telephones in taxis would be to provide a benefit to the public in improving the level of service and forcing taxi operators to provide as high a standard as possible.

The Commission also noted that as the provision of mobile telecommunications services may be opened up to competition in the near future, drivers and owners of taxi cabs would be free to have access to whichever service providers may be licensed in the future.

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## ERRATA

In the Winter Edition of the Communications Law Bulletin (Vol. 10 no. 3) the following errors were made:

In the article "*De Garis and Moore v Neville Jeffress Pidler Pty Limited*" by Michael Hall, the statement that "the general rule is that the author owns the copyright in a literary work, notwithstanding that it was written in the course of the employment" is wrong. The general rule is that the author is the owner of copyright in the literary work, but Section 35(6) creates an exception when the work is written in the course of employment. The employer is then the owner of the copyright. Section 35(4) is a further exception to the Section 35(6) rule, as the article then went on to discuss.

Ian Cunliff, the author of the article "EDI: The Legal Fuss", is a solicitor with the Sydney office of Blake Dawson Waldron.