



## Draft Notice

Notification lodged by  
Caravan Trade & Industries Association Queensland  
in respect of  
exclusive dealing conduct whereby a discounted exhibition fee is  
offered to members who exclusively attend its caravan exhibitions

Notification number: N10000505

17 June 2020

Commissioners: Keogh  
Rickard  
Court  
Ridgeway

## Summary

The Australian Competition and Consumer Commission (the **ACCC**) proposes to revoke the exclusive dealing notification lodged by the Caravan Trade & Industries Association Queensland (**Caravanning Queensland**) on 3 October 2019. Under the notification, Caravanning Queensland seeks to establish a “loyalty program” whereby it rewards its members who exhibit exclusively at Caravanning Queensland owned and operated events by offering them a discounted exhibition fee in relation to those events.

When businesses lodge a notification for exclusive dealing arrangements, they receive protection from legal action for those arrangements. Legal protection commences automatically on the day the notification is lodged with the ACCC. The protection will continue unless or until the notification is revoked or withdrawn. The ACCC can only revoke a notification if it is satisfied that the notified conduct:

- has the purpose, effect or likely effect of substantially lessening competition, and
- in all the circumstances, will not result in likely public benefit which would outweigh the likely public detriment.

Caravanning Queensland submits that the conduct will result in public benefits, including an improved customer experience and increased safety for caravan users. Caravanning Queensland submits that retailers and manufacturers of caravans would attend fewer events in order to access the discount, and would therefore be able to put more time and energy into the events they attend. Caravanning Queensland submits that these companies would be subject to a higher standards of safety and compliance checks than when attending non-Caravanning Queensland events. Caravanning Queensland submits that the conduct will not result in public detriments.

The ACCC considers that the conduct is likely to result in some public benefit by providing discounts on exhibition fees to members who choose not to exhibit at competing events.

However, the ACCC is satisfied based on the information it has received that the conduct has the purpose, effect or likely effect of substantially lessening competition for the supply of RV exhibition event services in the South East Queensland region, and possibly more broadly within Queensland. The ACCC is also satisfied that the likely benefit to the public will not outweigh the likely detriment to the public from the conduct, including as a result of the lessening of competition. Accordingly, the ACCC proposes to revoke the notification. The ACCC has received information from a range of market participants, including confidential internal documents of Caravanning Queensland, in support of its assessment.

Although legal protection commenced on the day the notification was lodged, Caravanning Queensland agreed not to engage in the conduct until after the ACCC completes its assessment of the notification.

At the time of this Draft Notice, regulations by the Queensland Government have imposed restrictions on gatherings, travel and the use of caravan parks as a result of the Covid-19 pandemic. The ACCC understands that it is unlikely that large gatherings of people will be permitted in the short to medium term. This means Caravanning Queensland events will not be likely to be occurring for some time yet.

The ACCC will then proceed to make a final decision on whether to revoke the notification.

## The notification

1. Caravan Trade & Industries Association Queensland (**Caravanning Queensland**) lodged an exclusive dealing notification on 3 October 2019. Under the notification, Caravanning Queensland seeks to establish a “loyalty program” whereby it rewards its members who participate exclusively in Caravanning Queensland owned and operated trade show exhibition events for the sale of recreational vehicles (**RVs**) (i.e. caravans, motorhomes, campervans and camper trailers), by offering them a discounted exhibition fee in relation to those events (the **Notified Conduct**). Members who participate in events operated by alternative suppliers will not be eligible to receive the discount.
2. Caravanning Queensland is the peak body for the caravan, manufactured home and camping industries in Queensland. Its members include retailers, manufacturers, hirers and suppliers. Caravanning Queensland participates in advocacy, government liaison, industry marketing, training, education and events.<sup>1</sup> It currently operates four RV exhibitions annually, two in Brisbane, one at the Sunshine Coast, and one at the Gold Coast.
3. Legal protection for the Notified Conduct commenced on the day of lodgement. However, Caravanning Queensland agreed not to engage in the Notified Conduct until after the ACCC completed its assessment of the notification.
4. Caravanning Queensland advised on 1 November 2019 that it intends, once the ACCC has completed its assessment of the notification, to begin by offering members who participate exclusively in Caravanning Queensland owned and operated events a:
  - 50% discount off the total cost of their site fees at the Let’s Go Brisbane Caravan & Outdoor Sale of 29 October – 1 November 2020, and
  - 50% discount off registration fees to the annual conference of the national industry representative body, the Caravan Industry Association of Australia, for up to two people from a member business.<sup>2</sup>
5. Caravanning Queensland submits<sup>3</sup> the Notified Conduct will result in public benefits including: freeing up members to invest more time and resources into their exhibits (through attending fewer shows); and increased safety (through compliance audits at events, and through funding for its free caravan safety check program for caravan owners and educational programs for its members).
6. Caravanning Queensland submits the Notified Conduct will not result in public detriment because the public are free to attend events of their choosing, there is no obligation on members to accept its offered discount, and no penalty imposed on those who attend competing events, and it will have no appreciable impact on competition among suppliers of RV exhibition event services.
7. Caravanning Queensland submits that it intends the exclusivity requirement to apply only to events in South East Queensland (i.e. members will still be eligible for the discount if they attend events operated by competitors of Caravanning Queensland, so

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<sup>1</sup> Source: caravanqld.com.au/about-us/ accessed, 29 May 2020.

<sup>2</sup> Submission by Caravanning Queensland, 1 November 2019.

<sup>3</sup> Notification of Exclusive Dealing N1000505, lodged by Caravan Trade & Industries Association Queensland, 3 October 2019.

long as these are outside of the South East Queensland region). Caravanning Queensland submits that the exclusivity requirement is limited to South East Queensland because it operates events in this region, but not beyond.<sup>4</sup>

8. However the ACCC notes that the Notified Conduct is broadly defined without reference to the size of the discount or the geographic scope, and would allow Caravanning Queensland to grant discounts to any event it runs, on condition that exhibitors do not attend other RV exhibition events in Queensland or even more broadly. The ACCC has assessed the effects of the Notified Conduct as notified.
9. Further information in relation to the notification is available from the ACCC's [public register](#).

## The exclusive dealing notification process and public benefit test

10. In broad terms, exclusive dealing occurs when one person trading with another restricts the other's freedom to choose with whom, in what or where it deals. Exclusive dealing is common in many business arrangements.
11. Exclusive dealing can take a number of forms. Relevantly, it includes:
  - the supply of goods or services, or the supply at a particular price or discount, on condition that the buyer will not acquire, or will limit the acquisition of, goods or services from a competitor of the supplier and
  - refusing the supply goods or services, or to supply at a particular price or discount, because the buyer will not agree to any of these conditions.
12. Exclusive dealing is only a breach of the *Competition and Consumer Act* (2010) (the **Act**) if the restriction is likely to have the purpose, effect or likely effect of substantially lessening competition.
13. The Act allows a business to obtain protection from legal action for exclusive dealing conduct by lodging a notification describing the conduct (under section 93 of the Act) or by obtaining an authorisation for the conduct (under section 90 of the Act).
14. While a notification is in force, the business is able to engage in the exclusive dealing conduct as described in the notification without the risk of breaching the exclusive dealing provisions of the Act. The legal protection provided by an exclusive dealing notification commences automatically on the day a notification is validly lodged. The legal protection remains unless or until the notification is revoked or withdrawn.

### Legal test

15. The ACCC is required to assess an exclusive dealing notification by applying the test in section 93(3) of the Act. The test requires that in order to revoke a notification, the ACCC must be satisfied that the notified conduct:
  - a) has the purpose, effect or likely effect of substantially lessening competition, and

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<sup>4</sup> Submission by Caravanning Queensland, 1 November 2019.

- b) in all the circumstances, will not result in likely public benefit which would outweigh the likely public detriment.
16. If the ACCC considers that notified conduct may have the purpose, effect or likely effect of substantially lessening competition, the ACCC will then go on to assess the likely public benefits and detriments resulting from the conduct.
  17. Common public benefits from exclusive dealing may include: more efficient business operations; improved product quality; and the promotion of competition.
  18. Public detriments from exclusive dealing conduct are not limited to those that relate to a lessening of competition, although in many cases these will be the only identifiable detriments.

### Steps in the exclusive dealing notification process

19. When the ACCC considers that the test to revoke a notification is met, the ACCC may issue a written notice objecting to the notification.<sup>5</sup> Before the ACCC does so, it must:
  - (a) issue a draft notice (such as this one) outlining the reasons why the ACCC proposes to revoke the notification. This draft notice will be sent to the notifying business and interested parties and will be placed on the ACCC's public register;
  - (b) seek submissions from the notifying business and interested parties in response to the draft notice; and
  - (c) invite the notifying business and interested parties to request that the ACCC hold a conference in relation to the draft notice. Any conference request must be made in writing within 14 days from the date nominated by the ACCC. In this case, a conference must be requested no later than **2 July 2020**.
20. If a conference is requested, it must be held no later than 30 days after the expiration of the 14 day period nominated by the ACCC. In this case, if a conference is called the ACCC will hold it by **2 August 2020**. The purpose of a conference is to allow the notifying party or an interested party to put their views to an ACCC Commissioner and potentially respond to other parties' views. If a conference is held, the ACCC will invite the notifying business and all interested parties to attend, and will prepare a record of the main points raised during the conference. Copies of this record, and all written submissions, will be placed on the public register.
21. The ACCC will then decide whether to issue a final notice revoking the notification. If the ACCC decides to issue a final notice to revoke the notification, the legal protection provided by the notification ends 30 days after the ACCC issues the final notice or on a later day specified in writing by the ACCC.
22. When a notification is revoked, the notifying business cannot lodge a further notification in relation to the same conduct or for conduct to like effect.
23. Alternatively, the ACCC may decide not to revoke the notification. If the ACCC decides not to revoke the notification, the legal protection provided by the notification continues.<sup>6</sup>

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<sup>5</sup> Section 93A of the Act.

<sup>6</sup> Section 93(7)(b)(i) of the Act.

## ACCC consideration of exclusive dealing conduct

24. Exclusive dealing can be harmful to competition by effectively excluding actual or potential competitors to such a significant extent that competition in that market as a whole suffers. In this way, the concern is not about exclusion of any individual competitor, but significant exclusion (partial or complete) of competitors from the market as a whole. Where conduct harms competition in a market as a whole, consumers are hurt by the conduct. One way in which this can occur is where exclusive dealing arrangements “lock up” enough of the potential customer base for a service, so as to prevent potential or existing competitors from having access to enough of the remaining market to be an effective competitor. Exclusive dealing arrangements are more likely to have this effect when the firm engaging in the exclusionary conduct has market power or has a product or service that is seen as a “must have” product by suppliers.
25. In some circumstances, exclusive dealing conduct can also be pro-competitive or have a neutral effect on competition. This will depend on the individual circumstances of the arrangement, and is more likely where arrangements cover only small segments of a market. Possible benefits include enhancing the level of competition between brands, and allowing upstream suppliers to more easily and efficiently control distribution quality.

## Caravan events in Queensland

26. The ACCC understands that absent the current COVID-19 restrictions, exhibitions are a very, and increasingly, important method for selling RVs. An increasing number of consumers interested in purchasing RVs attend exhibition events and the ACCC understands that RV retailers are experiencing lower levels of foot traffic through their own caravan retail sale yards.<sup>7</sup>
27. There are significant costs in running a site at any event. The ACCC understands these costs are often shared between RV manufacturers and retailers (exhibitors).<sup>8</sup> Major costs include transport and insurance of RVs to feature at the exhibition, staffing of the exhibit and exhibition fees. Fees for exhibiting vary depending on the event (its size, location and venue type) and the size and type of site (eg. under cover or outdoor, prominence, etc). The ACCC understands that exhibition fees vary between around \$15,000 and \$75,000 or more depending on those factors.<sup>9</sup>
28. Many RV manufacturers place geographic limits on the distribution area each of their retailers is permitted to service.<sup>10</sup> Some of these are quite small regions and others appear to be state-wide. Retailers with these restrictions are only permitted to exhibit at events within the distribution area specified by each RV manufacturer.
29. Caravanning Queensland currently operates four RV exhibitions annually, in Brisbane, the Sunshine Coast, and the Gold Coast. The events primarily feature retailers of RVs but also feature exhibitors selling related accessories and providing tourism information. Caravanning Queensland operates the largest event in Queensland relating to RVs or outdoor pursuits, the ‘Let’s Go Queensland Caravan and Camping Supershow’ (**the Supershow**). The ACCC understands that the numbers of exhibitors

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<sup>7</sup> See for example Submission by Australian Events Marketing Pty Ltd, 1 November 2019, p15.

<sup>8</sup> Submission by Australian Events Marketing Pty Ltd, 1 November 2019, p12.

<sup>9</sup> Submission by Caravanning Queensland, 1 November 2019.

<sup>10</sup> Submission by Australian Events Marketing Pty Ltd, 1 November 2019, p11.

and attendees at the Supershow are significantly higher than the next largest Queensland event.<sup>11</sup>

30. Two other companies also operate exhibitions featuring caravans in the South East Queensland area: Australian Events Marketing Ltd (**Australian Events**), and Exhibitions & Trade Fairs Pty Ltd (**ETF**).
31. Australian Events runs four RV exhibition events in the region annually, encompassing caravans along with various other outdoor pursuits such as camping, boating and fishing. In addition, Australian Events runs caravan exhibitions in other parts of the country (ie far north Queensland, Toowoomba and Newcastle), and a few exhibitions in Queensland unrelated to caravans (related to industries such as agriculture and mining).<sup>12</sup>
32. ETF runs a dozen exhibitions around Australia each year, covering a range of industries including energy, natural gas, packaging, and vintage motoring. It runs two outdoor leisure exhibitions each year, one in Melbourne and one in Brisbane. It describes its Brisbane event as “Brisbane’s biggest combined 4WD, off-road, touring, towing, fishing and boating expo.” ETF reports its consumer surveys indicate that more than 65% of attendees are most interested in seeing RVs at the show.<sup>13</sup>
33. Caravans sold in Queensland are subject to national safety design standards, and state towing safety regulations. Caravans in Queensland must pass a safety inspection each year, and when registration is transferred. Caravanning Queensland and the Department of Transport and Main Roads and Queensland Gas & Petroleum Inspectorate jointly offer safety inspections to Queensland RV owners to ensure owners know how to comply with their obligations and have a compliant set up.

## Rationale for the Notified Conduct

34. Caravanning Queensland submits that its reasons for seeking to engage in the Notified Conduct are:
  - a) to reward Caravanning Queensland members for their ongoing loyalty
  - b) to encourage Caravanning Queensland members to decrease the number of events that they attend so that:
    - i. members can invest more time and resources into their dealerships and other industry businesses, benefitting the consumer
    - ii. members can invest more time and resources into the events they do attend to increase the quality of the exhibits
    - iii. the burden and costs of attending numerous events throughout the year is reduced, and

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<sup>11</sup> Caravanning Queensland reports attendance of 40,000 – 50,000 annually at its Supershow, with around 250 exhibitors. Other events report attendee numbers at about 15,000 and exhibitor numbers at around 100.

<sup>12</sup> Source: [australianevents.com.au](http://australianevents.com.au)

<sup>13</sup> Source: [https://4x4show.com.au/media/3076/17131-4x4-show-2020-brisbane-prospectus\\_v8.pdf](https://4x4show.com.au/media/3076/17131-4x4-show-2020-brisbane-prospectus_v8.pdf)

- iv. consumers can experience a greater degree of quality in their dealings with Caravanning Queensland members, at events and at the member businesses.<sup>14</sup>

## Consultation

35. The ACCC sought submissions from a wide range of interested parties including competitors, tourism organisations and RV retailers. In response it received five public submissions.

### Australian Events

- strongly opposes the Notified Conduct, on the basis that:
  - Caravanning Queensland has an anti-competitive purpose
  - it will prevent or deter competition, and have long term effects on the RV event market
  - the size of the discount and method of subsidising the offer may constitute a significant barrier to entry
  - it would have long term effects on the RV event market, which will allow Caravanning Queensland to charge higher prices
  - the claimed benefits will not arise due to the resulting reduction in competition.

### Exhibition and Trade Fairs

- submits that the Notified Conduct will not result in any of the claimed public benefits, and will significantly reduce competition, particularly because a significant proportion of exhibitors at RV events in Queensland participate in Caravanning Queensland's Supershow – to the extent that ETF considers it a “must have” for RV exhibitors and that this share of the market is non-contestable.
- believes the Notified Conduct may permit Caravanning Queensland to leverage this non-contestable share of the market by imposing exclusivity restrictions on the contestable share of the market
- the reduction in competition likely to result from the Notified Conduct appears to be by design.

### An anonymous RV retailer

- submits that an increasing number of events over time have watered down consumer choice and retailers' profitability, and that smaller retailers cannot afford to attend all shows, which causes customers to believe larger brands are the only ones available
- submits the Notified Conduct would encourage exhibitors to “return to a sensible affordable show calendar.”

### Ozcape Campers

- submits there are too many events, with the result that the public cannot see the full range of products and brands at each show.

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<sup>14</sup> Notification of Exclusive Dealing N1000505, lodged by Caravan Trade & Industries Association Queensland, 3 October 2019.



### Kratzmann Caravans

- submits the Notified Conduct will not result in detriments and will result in the claimed public benefits.

### Caravan Industry Association of Australia

- believes the Notified Conduct is merely a loyalty program, and is highly unlikely to substantially lessen competition or to disadvantage consumers, noting that members are not obliged to participate
  - believes the Notified Conduct is likely to result in benefits through stronger safety measures and greater opportunity for caravan retailers to reinvest due to the savings generated.
36. Caravanning Queensland has provided a number of submissions containing further information responding to interested party submissions and ACCC information requests. The ACCC has also obtained internal Caravanning Queensland documents on a confidential basis to assist its consideration of the Notified Conduct.
37. All public submissions received by the ACCC in relation to the notification are available on the ACCC's public register.

## **ACCC Assessment**

38. In examining whether the Notified Conduct has or would have the purpose, effect or likely effect of substantially lessening competition and whether the Notified Conduct is likely to result in public benefits that outweigh any detriment to the public, the ACCC considered the information provided by Caravanning Queensland and interested parties, including that provided on a confidential basis, as well as information it obtained itself in the course of its inquiries.

## **Future with or without the Notified Conduct**

39. In assessing the likely benefits and detriments of proposed conduct, the ACCC compares the likely future with and without the conduct.
40. The ACCC considers that in the future without the Notified Conduct, it is likely that the status quo would continue – namely that exhibitors would be free to choose which events to attend based on commercial considerations of the costs of attending and expected revenue from sales, in the absence of any incentive not to attend non-Caravanning Queensland exhibition events, and companies organising events would continue to offer incentives to attend their events that do not preclude attendance at other events.

## **Areas of competition**

41. Defining the areas of competition likely to be affected by the Notified Conduct enables the ACCC to assess whether the Notified Conduct would have the purpose, effect or likely effect of substantially lessening competition in a market.
42. Caravanning Queensland submits that the Notified Conduct relates to the RV event market in south-east Queensland (as the region in which Caravanning Queensland currently operates RV events).

43. Caravanning Australia submits that it could be argued that event organisers Australian Events and ETF are not direct competitors to Caravanning Queensland as their events showcase a broader range of products than Caravanning Queensland's RV events.<sup>15</sup>
44. ETF submits that the Notified Conduct will affect competition in the market for the provision of RV trade show services to retailers (exhibitors) and attendees in Queensland. ETF also notes there may be a number of relevant markets within Queensland with varying geographic dimensions.<sup>16</sup>
45. The ACCC notes that the information currently available to it indicates that:
- exhibitions are an increasingly important factor in the sale of RVs, and are therefore important to consumers, retailers and manufacturers of RVs
  - manufacturers and retailers both contribute financially and logistically to attendance at exhibitions
  - most consumers are unlikely to travel large distances to attend RV exhibitions, and
  - retailers of RVs frequently have geographic restrictions imposed on them by manufacturers in relation to the different brands of RVs, with the result that they cannot travel large distances to attend exhibitions.
46. On this basis, the ACCC considers that a number of different areas of competition may be affected by the Notified Conduct, specifically those for:
- the supply of RV exhibition event services, to both retailers of RVs and related products, and consumers exploring whether to buy RVs and related products
  - the retail supply of RVs, and
  - the manufacture, importation and supply of RVs.
47. The ACCC considers that there are likely to be geographic elements to competition for the supply of RV exhibition event services, and for the retail supply of RVs, such that there are a series of local markets within Queensland for the provision of each of these products and services. This is due to the ACCC's understanding that:
- some RV retailers are subject to geographic limitations by some RV brands, and are not permitted to sell outside their appointed region
  - the distance RV retailers need to travel to attend a particular event may affect their decision whether or not to attend due to the costs involved in transporting RVs, and
  - the majority of potential purchasers of RVs are unlikely to travel long distances in order to attend RV exhibition events or caravan yards.
48. The ACCC has focused in particular on the impact of the Notified Conduct on the supply of RV exhibition event services. The ACCC does not consider it is necessary to precisely define the geographic scope of the relevant areas of competition, but has

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<sup>15</sup> Submission by Caravanning Queensland, 31 January 2020, p2.

<sup>16</sup> Submission by Exhibitions and Trade Fairs Pty Ltd, 31 October 2019.

considered the potential impact of the Notified Conduct on competition for the supply of RV exhibition event services in Queensland, and on competition in any regions within Queensland, including South East Queensland where Caravanning Queensland currently operates and intends its loyalty program to apply.

## **Purpose, effect or likely effect of substantially lessening of competition**

49. For the reasons set out below and based on the information currently available to it, the ACCC is satisfied that the Notified Conduct has the purpose, effect or likely effect of substantially lessening competition in the provision of RV exhibition event services in South East Queensland, and possibly more broadly within Queensland. The ACCC has received information from a range of market participants, including confidential internal documents of Caravanning Queensland, in support of its assessment.

### **Purpose**

50. A corporation will have the purpose of substantially lessening competition if that is its actual purpose for engaging in the conduct.<sup>17</sup> This will be ascertained from direct and indirect evidence as to the actual intentions and purposes of the corporation. The Act provides that the relevant purpose must be a substantial purpose but not necessarily the sole purpose.

### *Caravanning Queensland submissions*

51. Caravanning Queensland states that its intent in seeking to engage in the Notified Conduct is as described in the Rationale section above at paragraph 34.
52. Caravanning Queensland states it is not its intention to:
- increase visitor attendance fees to its events
  - increase fees to exhibit in its events
  - reduce the number of trade shows in Queensland (although Caravanning Queensland submits if this were to occur it would benefit the consumer by resulting in higher quality events)
  - restrict members from exhibiting at non-Caravanning Queensland events or to penalise members who choose to do so, or
  - increase its market power.<sup>18</sup>

### *Interested party submissions*

53. Australian Events submits that:
- the Notified Conduct is a penalty imposed upon Caravanning Queensland members and is not a true loyalty scheme
  - it has serious questions regarding Caravanning Queensland's prior conduct and true purpose in undertaking the Notified Conduct, including why the

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<sup>17</sup> *Universal Music Pty Ltd v Australian Competition and Consumer Commission* (2003) 201 ALR 636, at 693.

<sup>18</sup> Submission by Caravanning Queensland, 31 January 2020, p3.

claimed benefit of exhibitors attending fewer events cannot be achieved without the Notified Conduct

- it believes the sole purpose of the Notified Conduct is to prevent, deter or hinder competition in the RV event market, to enable Caravanning Queensland to own the market in Queensland. Other state associations may seek to roll out similar conduct if the Notified Conduct is successful.<sup>19</sup>

54. ETF submits that the Notified Conduct appears to be designed to reduce competition, as its aim is to decrease or eliminate member attendance at non-Caravanning Queensland events.<sup>20</sup>

*ACCC view*

55. The ACCC has considered the intention of the Notified Conduct; specifically, whether Caravanning Queensland has a purpose of substantially lessening competition.

56. The ACCC considers that Caravanning Queensland has the incentive to maximise attendance by exhibitors at its events, because it generates higher income from event attendance. Where retailers and manufacturers are deciding which events to attend, noting there are substantial costs for exhibitors associated with their attendance, Caravanning Queensland can use its membership and “loyalty program” to market its own events over those of competitors. The ACCC notes Caravanning Queensland’s submissions that promoting exclusive attendance at its events is intended to limit attendance at competing events, and the ACCC considers that this purpose may extend to impacting the viability and frequency of those alternative events.

57. Although Caravanning Queensland states its intention is not to reduce the total number of RV events in Queensland, this appears to be inconsistent with encouraging Caravanning Queensland members to decrease the number of events that they attend. Further, Caravanning Queensland’s benefit claims assume it will have more funds available as a result of the Notified Conduct (for example, greater profits to put into safety programs for caravan users). This suggests that Caravanning Queensland expects to have higher revenue from its events in future (either through increased attendance, higher fees from exhibitors and/or attendees, or both) as a result of fewer competing shows or fewer attendees and exhibitors at competing shows – i.e., it appears Caravanning Queensland expects a reduction in competition as a result of the Notified Conduct.

58. The ACCC considers inferences can be drawn from the nature of the conduct as to the likely purpose of Caravanning Queensland. Loyalty programs typically offer rewards to participants for increased attendance/purchases. Rather than offering a reward if its members attend more Caravanning Queensland events, it is offering a discount to its members on condition they do not attend competing events. The ACCC considers that Caravanning Queensland’s stated objectives in the Notified Conduct (outlined at paragraph 34 above) could be achieved through other arrangements which do not require exclusive attendance at Caravanning Queensland events.

59. The ACCC also considers that it is likely to be in the interests of Caravanning Queensland and its members (being RV retailers and manufacturers) for there to be fewer RV events each year operating in their local areas. While there are substantial costs for exhibitors associated with each event they attend (such as transport,

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<sup>19</sup> Submission by Australian Events Marketing Pty Ltd, 1 November 2019.

<sup>20</sup> Submission by Exhibitions and Trade Fairs Pty Ltd, 31 October 2019, p3.

insurance and staffing), these have to be weighed against the opportunity of increasing sales by attending additional events.

60. Additionally, it may be in the interests of some retailers and manufacturers for RV exhibition events to become a less significant channel for the sale of RVs. For retailers and RV brands that have invested extensively in caravan sale yards (with high fixed costs), it may be preferable for there to be fewer RV events providing competition for direct yard sales of RVs.
61. If either of the above are the case, the ACCC considers that there is incentive for Caravanning Queensland – whose membership and board comprises retailers and manufacturers - to employ strategies to reduce the total number of RV events (such as by making non-Caravanning Queensland events unviable due to reduced attendance). Doing this would reduce the overall costs of members by attending less shows, but not have a significant impact on their sales assuming more consumers would attend the remaining events or purchase caravans from sale yards.
62. Based on the information available to it, the ACCC is satisfied that the Notified Conduct is proposed for the purpose of substantially lessening competition for the supply of RV exhibition events in South East Queensland, and possibly more broadly in Queensland. The ACCC considers that the purpose of the Notified Conduct is to reduce attendance at competing events such as to render them unviable through the offering of substantial discounts to its members if they do not attend any events run by competitors.

### **Effect or likely effect**

#### *Caravanning Queensland submissions*

63. Caravanning Queensland submits that the Notified Conduct will not result in detriment on the basis that:
  - a) the general public are free to attend events of their choosing
  - b) there is no obligation for Caravanning Queensland members to accept Caravanning Queensland's offer
  - c) there is no penalty imposed on Caravanning Queensland members who choose to exhibit at non-Caravanning Queensland events, and
  - d) the Notified Conduct will have no appreciable effect on competition among providers of recreational vehicle events, because there is ample competition in the RV event market such that Caravanning Queensland members are free to choose where and when to exhibit.<sup>21</sup>

#### *Interested party submissions*

64. ETF submits that the Notified Conduct is likely to significantly reduce competition for the supply of RV event services because:
  - Caravanning Queensland's Supershow is considered a 'must have' event for a significant proportion of exhibitors. These exhibitors may also exhibit at other

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<sup>21</sup> Submission by Caravanning Queensland, 31 January 2020, p5.

events but competition between event organisers for these exhibitors is focussed on persuading them to exhibit at additional trade shows

- the Notified Conduct permits Caravanning Queensland to leverage this non-contestable share of the market by imposing exclusivity restrictions on the contestable share of the market
- organisers of events competing with the Supershow would struggle to offer similar discounts to exhibitors, as these discounts would need to be substantial enough to address both the competing show, and the foregone discounts on the Supershow
- to the extent the Notified Conduct causes a substantial reduction in exhibitor numbers for non-Caravanning Queensland trade shows, this will in turn reduce the quality and viability of these shows (through reduced exhibitor numbers and reduced attendee numbers as a result). This may in turn reduce the number of events and enhance Caravanning Queensland's market power.<sup>22</sup>

65. Australian Events submits that the Notified Conduct will result in harm to competition between event operators because:

- if each of the manufacturers (in conjunction with their appointed retailers) decide to adopt the discount offered, the only events will be those owned and operated by Caravanning Queensland, because 85% of caravan manufacturers are members of Caravanning Queensland and therefore non-Caravanning Queensland shows will not be competitive in scale and scope
- the size of the discount is unspecified in the notification but may constitute a significant barrier to entry, especially given Caravanning Queensland's membership base and the influence it has over its members
- the Notified Conduct would place Caravanning Queensland in a position to charge higher prices for its exhibition fees and it would have no incentive to maintain or improve its services.<sup>23</sup>

#### *ACCC view*

66. The ACCC notes that the Notified Conduct provides for Caravanning Queensland to offer any level of discount in relation to fees to exhibit at any of its events, on condition that its members do not attend any RV event organised by anyone else. The ACCC has assessed the likely effect on competition on this basis, taking into account the initial framework for the discount proposed by Caravanning Queensland to be offered in the first instance.

67. Caravanning Queensland's Supershow is the largest RV event in Queensland, with upwards of 40,000 attendees and 250 exhibitors. The fees charged for exhibiting at the Supershow are significantly higher than for other shows, at double or triple the price per square metre for outdoor exhibit space, and four or more times the price for indoor space.<sup>24</sup> The Supershow has been described as a "must attend" event for RV retailers

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<sup>22</sup> Submission by Exhibitions and Trade Fairs Pty Ltd, 31 October 2019.

<sup>23</sup> Submission by Australian Events Marketing Pty Ltd, 1 November 2019.

<sup>24</sup> Submission by Caravanning Queensland, 1 November 2019.

in the Brisbane area, because of the importance of sales and exposure gained at the event.<sup>25</sup>

68. Because of the significance and exhibition costs of the Supershow, a deep discount offered to Caravanning Queensland members on their exhibit fees at this event is likely to be significant enough to influence a large number of exhibitors not to attend competing shows in the area over the rest of each year. Significant discounts offered on exhibition fees at smaller Caravanning Queensland events would likely have a similar effect on the choices members make about which shows to exhibit at.
69. The ACCC considers that organisers of smaller RV events in South East Queensland would be unlikely to be able to offer discounts to a sufficient level to persuade a substantial proportion of members to give up discounts offered by Caravanning Queensland and in order to attend competing events. In relation to the Supershow – where exhibit fees are much higher than any other shows – a discount offered on exhibit fees could be of higher dollar value than the total exhibit fees at competing events.
70. The ACCC understands that a substantial proportion of RV exhibitors at events in Queensland are members of Caravanning Queensland, particularly major exhibitors.<sup>26</sup> If a large number of members chose to take up the conditional discount offered by Caravanning Queensland, competing RV events would be unlikely to have sufficient numbers of exhibitors to remain viable.
71. As a result, the Notified Conduct is likely to reduce the number of RV events offered in at least the South East Queensland region, where Caravanning Queensland currently holds its events, and possibly more broadly if Caravanning Queensland introduced events into other regions in Queensland and members ceased attending competing events in those regions as well.
72. The ACCC therefore considers that the Notified Conduct is likely to substantially lessen competition for the supply of RV exhibition event services in the south-east Queensland region, and possibly in Queensland.

## **Public benefits and detriments**

73. Given the assessment that the Notified Conduct has the purpose and likely effect of substantially lessening competition, the ACCC will also assess whether the conduct is likely to result in a benefit to the public, and whether or not that benefit would outweigh any likely detriment to the public including that constituted by any lessening of competition.

## **Public detriments**

74. The views of Caravanning Queensland, interested parties and the ACCC in relation to the likely impact of the Notified Conduct on competition are discussed above in paragraphs 63 - 72.
75. The ACCC considers that the Notified Conduct is likely to result in significant public detriment from a substantial lessening of competition for the supply of RV exhibition event services in the South East Queensland region, and possibly in Queensland. This

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<sup>25</sup> Submission by Exhibitions and Trade Fairs Pty Ltd, 31 October 2019.

<sup>26</sup> Submission by Exhibitions and Trade Fairs Pty Ltd, 31 October 2019, and submission by Australian Events Marketing Pty Ltd, 1 November 2019.

reduction in competitive pressure on Caravanning Queensland is likely to allow it to substantially decrease the quality of its events over time and/or increase the prices it charges to exhibitors and attendees at its RV events.

76. In addition, the ACCC considers the Notified Conduct is likely to result in some detriment as a result of reduced competition in the retail supply of RVs to consumers. It is likely that, as a result of the Notified Conduct, consumers will have less opportunities to attend RV exhibition events. As RV exhibition events provide an opportunity for consumers to easily compare the features and prices of a broad range of RVs, and RV retailers generally offer discounted prices or special deals at RV exhibition events, the prices of RVs are likely to be higher as a result. Fewer events in Queensland is also likely to be detrimental to consumers because they have to wait longer or travel further to attend an event.
77. There are also likely to be some small detriments arising from the reduction in competition to run RV exhibition events in Queensland – for example in renting showgrounds.

### **Public benefits**

78. Caravanning Queensland submits that the Notified Conduct will result in significant public benefits in the form of:
- a) increased safety of caravans
  - b) an improved customer experience
  - c) discounts for Caravanning Queensland members
  - d) encouraging other organisations in the industry to offer similar discounts and promotions, reducing overall costs for members.<sup>27</sup>
79. These claims, and interested party responses, are discussed in the sections that follow.

### **Increased safety of caravans**

80. Caravanning Queensland submits that the Notified Conduct will result in increased safety of caravans, due to the compliance audits by Caravanning Queensland to which participants at Caravanning Queensland events are subject, and caravan safety check and educational programs which are offered to consumers and industry staff, funded by revenue generated from Caravanning Queensland events.
81. ETF submits that the Notified Conduct is not required for this benefit to arise because, even without the Notified Conduct Caravanning Queensland can still use its revenue to create and improve safety programs for its members and consumers, and all RVs must comply with stringent safety requirements, regardless of any safety activities or accreditation undertaken by Caravanning Queensland.<sup>28</sup>

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<sup>27</sup> Notification of exclusive dealing N10000505, lodged by Caravan Trade & Industries Association Queensland on 3 October 2019.

<sup>28</sup> Submission by Exhibitions and Trade Fairs Pty Ltd, 31 October 2019.



*ACCC view*

82. The ACCC notes that caravans in Queensland are subject to various mandatory and enforceable regulations and standards. It is not legal for any caravan to be sold in Australia which does not meet Australian Design Rules.
83. Caravanning Queensland's safety program for caravan users, partially funded by the Queensland Government, provides a benefit to consumers in providing expertise to confirm compliance with mandatory requirements. However, any benefit from expansion of this program as a result of the Notified Conduct would depend on an increase in revenue to Caravanning Queensland as a result of the Notified Conduct. As noted above, Caravanning Queensland has not outlined how it expects providing a discount on event fees to members who exclusively attend its shows will increase its revenue.
84. To the extent that the Notified Conduct did result in increased safety through greater caravan safety compliance audits and educational programs, the ACCC considers this would be a public benefit. However, the ACCC does not have any information to support the submission that an increase in the profits of Caravanning Queensland would be invested in its safety programs. Therefore, the ACCC cannot be satisfied on the basis of the information before it that the Notified Conduct is likely to result in a public benefit through increased safety of caravan use in Queensland.

**Improved customer experience**

85. Caravanning Queensland submits the Notified Conduct will result in an improved experience for customers, due to Caravanning Queensland members choosing to attend fewer events in taking up the discounts offered under the Notified Conduct, and therefore having more time and resources to invest into their exhibits and dealerships.
86. Australian Events and ETF submit that the Notified Conduct will not result in the benefits claimed because:
  - the burden and cost of attending numerous events throughout the year can be avoided by Caravanning Queensland members without the Notified Conduct, simply by choosing not to participate in as many events
  - the Notified Conduct is not directed towards the quantity of events, but rather exclusivity of events
  - the Notified Conduct will result in a reduction of competition between event operators, which will in turn dampen the competitive pressure on exhibitors and event operators to invest to increase the quality of events and exhibits (not increase the quality, as Caravanning Queensland claims)
  - fewer events will not necessarily result in higher quality offerings to attendees, since each event is differentiated and offers different services to consumers.

*ACCC view*

87. While the ACCC accepts that attending fewer events is likely to reduce costs for RV exhibitors, exhibitors can achieve similar cost savings without the Notified Conduct by simply choosing to attend fewer events. Exhibitors are able to make decisions about how many, and which, events to attend, based on what is in their financial interests – i.e. they will choose to attend additional events so long as their expected profits from attending exceed their costs in doing so.

88. The Notified Conduct may result in significant cost savings to exhibitors to the extent it reduces the number of RV events. This outcome would result in savings for exhibitors as they would reduce their costs by not attending some events, while not risking losing sales to competitors by not attending events that still went ahead.
89. In any event, it is not clear that any cost savings to RV exhibitors flowing from the Notified Conduct would result in an improved customer experience as a result of exhibitors increasing the investment in their exhibits and/or caravan yards. To the extent there is a reduction in competition between RV retailers as a result of the Notified Conduct, there may in fact be reduced pressure for RV retailers to improve the quality of their exhibits at events and caravan yards in response to the needs of consumers.
90. Further, any reduction in competition for the supply of RV exhibition event services as a result of the Notified Conduct would be likely to reduce the importance placed on consumer preferences in the organisation of RV events. A subsequent reduction in the number of RV events would also reduce consumer choice in the timing, location, and content of events.
91. The ACCC considers that the Notified Conduct is unlikely to result in public benefits from an improved experience for consumers at RV events and caravan yards.

#### **Discounts for members**

92. Caravanning Queensland submits the Notified Conduct will result in benefits in the form of discounts for Caravanning Queensland members who choose to exclusively attend Caravanning Queensland events.

#### *ACCC view*

93. The ACCC considers that the Notified Conduct is likely to result in some benefit to Caravanning Queensland members who choose not to attend competing events, in the form of cost savings on exhibition fees at Caravanning Queensland events. However the ACCC considers this is unlikely to constitute a significant public benefit and will largely be a transfer of revenue from Caravanning Queensland to its members.

#### **Encouraging competitive response**

94. Caravanning Queensland submits the Notified Conduct will result in benefits by encouraging other organisations in the industry to offer similar discounts and promotions, reducing overall costs for members.
95. ETF submits that competing RV event operators would struggle to offer similar discounts to those Caravanning Queensland is able to offer. This is because Caravanning Queensland's Supershow is the largest event and attendance at it is considered critical by a significant proportion of exhibitors. In order to offer a similarly attractive discount to exhibitors, competing shows would need to offer a discount substantial enough to address both the competing show, and the foregone discounts on the Supershow.<sup>29</sup>

#### *ACCC view*

96. The ACCC considers, given the dominant position of Caravanning Queensland in relation to its membership and the Supershow, it is unlikely any operator of a competing event would be able to offer a discount substantial enough to entice

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<sup>29</sup> Submission by Exhibitions and Trade Fairs, 31 October 2019.

exhibitors to give up a deep discount on exhibition fees offered by Caravanning Queensland. The ACCC therefore considers that the Notified Conduct is unlikely to result in a public benefit by encouraging others in the industry to offer similar discounts.

#### ACCC conclusion on likely public benefits

97. The ACCC considers that the Notified Conduct is likely to result in little, if any, public benefit.

#### **Balance of public benefits and detriments**

98. The ACCC considers that the Notified Conduct is likely to result in significant public detriment including from a substantial lessening of competition for the supply of RV exhibition event services in the South East Queensland region, and possibly Queensland, by disincentivising attendance at competing events and potentially rendering them unviable.
99. This reduction in competition will reduce event services for consumers and is likely to increase prices for RVs.
100. The ACCC considers that the Notified Conduct is likely to result in little, if any public benefit.
101. Accordingly, the ACCC considers that the likely public benefits of the Notified Conduct do not outweigh the likely public detriments of the Notified Conduct.

#### **Conclusion**

102. The ACCC is satisfied based on the information it has received that the Notified Conduct has the purpose, effect or likely effect of substantially lessening competition in the supply of RV exhibition events in South East Queensland, and possibly Queensland.
103. The ACCC considers that the Notified Conduct is not likely to result in public benefits that would outweigh the likely public detriment resulting from the lessening of competition.
104. The ACCC therefore proposes to revoke the notification.

#### **Draft Notice**

105. For the reasons set out in this draft notice, the ACCC, based on the information available and in accordance with section 93(3) of the Act, is satisfied the Notified Conduct has the purpose, effect or likely effect of substantially lessening competition, and that the likely benefit to the public will not outweigh the likely detriment to the public from the Notified Conduct and therefore gives this notice under section 93A proposing to revoke notification N10000505 lodged by Caravanning Queensland on 3 October 2019.

#### **Next steps**

106. The ACCC now invites submissions and further information from Caravanning Queensland and interested parties. In addition, consistent with section 93A of the Act, the notifying party or an interested party may request that the ACCC hold a conference to discuss the draft notice.

107. While there is no statutory timeframe for the next stage of the ACCC's assessment process, the ACCC intends to conclude its assessment in a timely manner and requests any further submissions be provided by **10 July 2020**.
108. Requests that the ACCC hold a conference to discuss the draft notice must be provided in writing by **2 July 2020**. The ACCC will then proceed to make a final decision on the notification.