Buik, Jessica

From:

Buik, Jessica

Sent:

Friday, 24 February 2012 6:49 PM

To:

Boyd, Kate

Subject:

FW: Senator Bob Brown's Wikileaks enquiry to the ACCC [SEC=IN-

CONFIDENCE]

Attachments:

2182_001.pdf; 2183_001.pdf; 2184_001.pdf

Security Classification:

IN-CONFIDENCE

From: Fleming, Richard

Sent: Thursday, 16 February 2012 5:38 PM

To: Buik, Jessica **Cc:** Gregson, Scott

Subject: FW: Senator Bob Brown's Wikileaks enquiry to the ACCC [SEC=UNCLASSIFIED]

Hi Jess

For the QON

Regards

Richard

Richard Fleming

Deputy General Manager | Executive Office | Enforcement and Compliance Division

Australian Competition & Consumer Commission

23 Marcus Clarke Street Canberra 2601 | http://www.accc.gov.au T: +61 2 6243 1278 | M: +61 437 275 905 | F: +61 2 6243 1047

From: MacFie, David

Sent: Thursday, 16 February 2012 11:02 AM

To: Fleming, Richard

Subject: Senator Bob Brown's Wikileaks enquiry to the ACCC [SEC=UNCLASSIFIED]

Hi Richard,

I understand that you were speaking with Steve Howard about the issue raised by Senator Bob Brown with the ACCC in early January 2011 concerning the withdrawal of international funds transfer services by Visa, Mastercard and Paypal to Wikileaks and whether this potentially constituted a misuse of market power under s.46 of the TPA / CCA. Senator Brown's enquiry was escalated to Hobart Office and Peter Clemes drafted a response letter for CEO Brian Cassidy.

Attached for your information is a copy of Senator Brown's letter to the ACCC of 11 January 2011, a copy of Brian Cassidy's response letter to Senator Brown of 3 March 2011, and a copy of the Trackit for the matter.

Regards,

David

David MacFie

Investigator | Enforcement Operations - Tasmania **Australian Competition & Consumer Commission**Level 3 | 86 Collins Street, Hobart 7000 | www.accc.gov.au

T: +61 3 6215 9304 | F: +61 3 6234 7796

Please consider the environment before printing this email



Bob Brown Australian Greens Senator for Tasmania

FILE No:

MARS/PRISM:

DOC:

11 January 2010

The Regional Director
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

By fax: 02 6243 1199

To the Regional Director,

I refer to the denial of service action taken by Visa, Mastercard and Paypal in relation to international funds transfers to Wikileaks.

It is now public knowledge that these three global payment services have taken the irregular step of stopping their support of funds transfers to Wikileaks.

I am concerned that Australian consumers may be being inappropriately denied the ability to transfer funds to Wikileaks.

Visa, Mastercard and Paypai are dominant amongst global payment services, with many users in Australia. I seek your view on whether their coordinated stoppage of services to Wikileaks constitutes a misuse of market power under the *Trade Practices Act 1974*.

Would you please look into this issue as soon as possible?

Yours sincerely

Senator Bob Brown Australian Greens Leader

Doll A.

AUST. COMPETITION & CONSUMER COMMISSION CANBERRA

1 7 JAN 2011

EXECUTIVE OFFICE





GPO Box 3131 Canberra ACT 2601

23 Marcus Clarke Street Canberra ACT 2601

> tel: (02) 6243 1111 fax: (02) 6243 1199

www.accc.gov.au

Our Ref: 1
Contact Officer: F
Contact Phone: (

1053889 Peter Clemes (03) 6215 9333

3 March 2011

Senator Bob Brown Australian Greens Leader GPO Box 404 HOBART TAS 7001

Dear Senator Brown

Thank you for your letter dated 11 January 2011 concerning the withdrawal of international funds transfer services by Visa, Mastercard and Paypal to WikiLeaks.

You have sought the view of the Australian Competition and Consumer Commission (ACCC) whether the withdrawals in question may amount to a misuse of market power under section 46 of the *Trade Practices Act* 1974 (the Act).

While the ACCC does not have specific information concerning the withdrawal of services to WikiLeaks other than information which has been publicly available, it appears that there was a progressive withdrawal of services by USA-based international funds transfer providers - including Visa, Mastercard and Paypal – commencing from early December 2010.

Section 46 of the Act (now named the Competition and Consumer Act 2010) prohibits corporations with a substantial degree of market power from taking advantage of that power for the purpose of eliminating or substantially damaging a competitor, preventing entry of a person to a market or deterring a person from engaging in competitive conduct in any market.

Given the fund transfer providers you refer to do not appear to be competitors of WikiLeaks, it is most unlikely that conduct has been engaged in to damage a competitor. The ACCC has no further information to form a view on the purpose of the conduct you refer to in order determine whether the remaining limbs of section 46 are relevant.

I should note that the Act also prohibits certain arrangements between competitors to withdraw services. Should there be any information that you are aware of to support the view that the actions you refer to are the subject of agreements between funds transfer providers we would be pleased to consider such.

If you have any further inquiries concerning this or other related matters, I would be pleased to assist you further.

Yours sincerely

Brian Cassidy

Chief Executive Officer

Australian Competition and Consumer Commission MARS Matter Summary for Matter No: 1053889

Branch: Regional Office Office: Hobart Requestor: David MacFie

Item

Description

Matter Id: 1053889

Complainant: Senator Bob Brown

Created Date: 20-Jan-2011

File Reference:

Trader: Visa (Use for all account entries)

Description: Visa (Use for all account entries)

C is Senator Bob Brown. C refers to a decision by T1, T2 and T3 to cease transferring funds to Wikileaks. C believes that Australian consumers are being denied the ability to transfer funds and is seeking further clarification as to whether this behaviour is anti-competitive.

Initial Investigation Details:

Coordinator: Clemes, Peter

Office: Hobart

Branch: Regional Office

Other officer(s):

Corporate Priority:

Actions: 11-Feb-2011; Clemes, Peter; Correspondence written

Link: D11/13759

for CEO's consideration & signature

20-Jan-2011; Corvisy, Emma; Correspondence received

Link: D11/4737

Matter escalated to Hobart office for consideration and response.

Final Outcome: No Breach

Closed: 16-Feb-2011

Matter Last Updated By: Clemes, Peter on 21-Feb-2011

Australian Competition and Consumer Commission MARS Matter Summary for Matter No: 1053889

Branch: Regional Office Office: Hobart Requestor: David MacFie

Item

Description

Matter Id: 1053889

Complainant: Senator Bob Brown

Address: Gpo Box 404 HOBART TAS 7001

Work Phone / Home Phone / Mobile / Fax / E-mail: / / / /

Method of Contact: Letter by Mail

Matter Created By: Corvisy, Emma in Canberra on 20-Jan-2011

Complaint Date: 17-Jan-2011

Ministerial: YES

Trader: Visa (Use for all account entries) -Mastercard Australia Ltd -PayPal Australia Pty Ltd -

Is the Complainant a Small Business? NO

Is the Complaint ABOUT a Small Business? NO

Is the matter about a Franchise? NO

Conduct: IV : General - no breach - including refusal to deal/supply

ANZSIC Code: 6230

Product / Service: Credit card

Matter Description: C is Senator Bob Brown. C refers to a decision by T1, T2 and T3 to cease transferring funds to Wikileaks. C believes that Australian consumers are being denied the ability to transfer funds and is seeking further

clarification as to whether this behaviour is anti-competitive.

Response / Pamphlets Sent: Escalated to Hobart office for response.

Complaint Actions: Under Assessment

Referred: NO

Escalated: Hobart; Clemes, Peter

Is the call from a disadvantaged or vulnerable consumer? NO

Is the call about an on-line trader or e-commerce issue? NO

Matter Type: Complaint

Report Date: 16-Feb-2012 Page: 1