### Buik, Jessica

From:

MacFie, David

Sent:

Monday, 2 April 2012 1:31 PM

To:

Buik, Jessica

Subject:

Re FOI request by Johanna Henry: Hobart Office search result [SEC=IN-

CONFIDENCE]

Attachments:

2252\_001.pdf; 2253\_001.pdf; 2254\_001.pdf; 2255\_001.pdf

**Security Classification:** 

**IN-CONFIDENCE** 

Hi Jess,

The attached docs are all that we could find concerning the Wikileaks matter raised by Senator Bob Brown with the ACCC in January 2011. (I presume that you have already checked TRIM / DORIS for any other docs received or created by other ACCC offices that could relate to Johanna Henry's FOI request - I note that when I had a look in TRIM there appeared to be a few other docs that could potentially be relevant.)

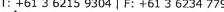
Attached (in no particular order) are:

- 1. Brian Cassidy's letter of 3 March 2011 to Senator Brown.
- 2. Senator Brown's original letter to the ACCC re the Wikileaks matter which is dated "11 January 2010" but the 2010 is a typo by his office, the real date of his letter being 11 January 2011. Senator Brown directed his letter to the ACCC Canberra office but it was then referred to Hobart office to draft a response for Brian Cassidy.
- 3. The Trackit for the matter.
- 4. A draft letter to Senator Brown for Brian Cassidy's signature prepared by the then ACCC Hobart Regional Director Peter Clemes in February 2011. (Note that the final version of the letter signed by Brian Cassidy differs somewhat from the version drafted by Peter Clemes.)

Regards,

#### **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



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### **EXECUTIVE OFFICE**





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Our Ref: 1053889
Contact Officer: Peter Clemes
Contact Phone: (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



# 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 Paypal 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

AUST. COMPETITION & CONSUMER COMMISSION CANEERRA

1 7 JAN 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: 02-Apr-2012

Page: 1

# 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

Our Ref: Contact Officer: Contact Phone: 1053889 Peter Clemes (03) 6215 9333

February 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 (TPA).

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 TPA (or its equivalent provision in the Competition and Consumer Act 2010 for conduct occurring from 1 January 2011) prohibits Australian corporations with substantial market power misusing that power for the purpose of (a) eliminating or substantially damaging a competitor, or (b) preventing or deterring a business engaging in competitive conduct in any market.

While it is clear that the first limb of section 46 would not be applicable in the present case, as the funds transfer providers are not competitors of WikiLeaks, the wording in the second limb may require clarification. In that clause, 'competitive conduct' refers to activities by the target business in competition to the business of the alleged predator. As the fund transfer companies are not competitors of WikiLeaks, it is unlikely that section 46 would apply to the conduct in question. To assist you further in this regard, the ACCC is not currently aware of any contraventions of the TPA relating to the issue you have raised.

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