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Our ref: 279218-v01\W97\GS4\RWA

Mr John O'Neill
Senior Assistant Commissioner
Adjudication Branch
Australian Competition and Consumer Commission
c/- Level 5, Skygardens
77 Castlereagh Street
SYDNEY NSW 2000



Dear Mr O'Neill

Exclusive Dealing Notification - Sun Microsystems Australia Pty Limited

We act for Sun Microsystems Australia Pty Limited.

We enclose an exclusive dealing notification by Sun Microsystems Australia Pty Limited pursuant to section 93 (1) of the *Trade Practices Act 1974*. This notification is lodged in respect of proposed conduct which may constitute exclusive dealing under sections 47(6) and 47(7) of the Act. This notification is given in the prescribed form and should not be taken as an admission that the proposed conduct would contravene the statutory prohibition.

We also enclose a cheque made payable to the Commission in the sum of \$100, being the prescribed lodgment fee.

Please do not hesitate to contact me should you require any further information or if you have any queries about the notification.

Yours sincerely

Anthony Foley
(02) 9225-0289
Encl

FORM G
COMMONWEALTH OF AUSTRALIA
Trade Practices Act 1974 - Sub-section 93(1)

EXCLUSIVE DEALING
NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(6) or (7) of that Act in which the person giving notice engaged or proposes to engage.

1. (a) **Name of person giving notice**

Sun Microsystems Australia Pty Limited (ACN 003 145 337) ("Sun")

(b) **Short description of business carried on by that person**

Supply of computer hardware and software.

(c) **Address in Australia for service of documents on that person**

Baker & McKenzie
Solicitors & Attorneys
AMP Centre
50 Bridge Street
SYDNEY NSW 1223

Telephone: (02) 9225-0200

Facsimile: (02) 9223-7711

Attention: Anthony Foley

2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice refers**

This notification relates to all computer hardware and software products listed in Sun's Australian price list from time to time which includes Unix hardware, Sun's operating system software (Solaris) and associated hardware and software.

(b) **Description of the conduct or proposed conduct**

See Attachment A

3. (a) **Class or classes of persons to which the conduct relates**

Sun resellers, including value added resellers and other resellers certified by Sun.

(b) **Number of those persons**

(i) **At present time**

Approximately 90 resellers.

(ii) **Estimated within the next year**

Approximately 90 resellers.

(c) **Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses**

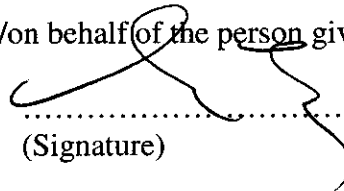
Not applicable.

4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice**

Anthony Foley, Partner, Baker & McKenzie, AMP Centre, 50 Bridge Street, Sydney, New South Wales 1223.

Dated 9 May 2000

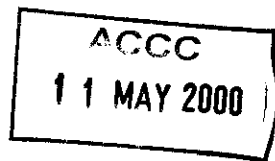
Signed by/on behalf of the person giving this notice



(Signature)

Anthony Joseph Foley
(Full Name)

Partner, Baker & McKenzie
(Description)



Description of the Conduct and Public Benefit

1. Background

- 1.1 Sun Microsystems Australia Pty Ltd ("Sun") is a subsidiary of Sun Microsystems, Inc., which manufactures and supplies computer hardware and software.
- 1.2 Sun distributes its products in Australia through its network of resellers ("the dealers") which accounts for up to 30% of its sales in Australia.
- 1.3 Sun focuses primarily on the sale and marketing of its products rather than the logistics of supply and distribution of its products. Sun also has authorised dealers with which it works closely in the promotion and marketing of Sun products in Australia. Sun had outsourced the distribution logistics and credit management functions by appointing an order fulfilment partner, Alstom Australia Limited (ACN 000 215 092) ("the distributor").
- 1.4 The distributor is an independent third party and purchases the products directly from Sun. The distributor on-sells those products to Sun's dealers. The distributor has a sophisticated distribution centre and other infrastructure and is responsible for handling all issues associated with processing, tracking, fulfilling and delivering dealers' orders of Sun products. It does not have any marketing or promotional responsibilities for Sun products. It is also primarily responsible for all credit issues associated with its sale of the products to the dealers.

2. Relevant Conduct

- 2.1 Sun outsources the task of fulfilling dealers' orders of Sun products. This improves the efficiency with which dealer's orders are processed and shortens the delivery time for products.
- 2.2 To achieve this, Sun requires its dealers to purchase their requirements for Sun products from the distributor.
- 2.3 It is common in dealership agreements for the supplier to require that the dealer purchase all of those dealership products from the supplier in order to ensure product quality and standards.
- 2.4 The requirement that dealers purchase Sun products from the distributor may constitute third line forcing. Subject to the public benefits outlined below, clearly, the only difference between Sun supplying the product itself and the arrangements described above is the identity of the source of the Sun products.

Public Benefit

The conduct specified in paragraph 2.2 is pro-competitive and to the overall benefit of dealers and ultimately consumers. In particular, the conduct gives rise to the following public benefits:

3.1 Product Availability and Business Efficiency

The conduct improves the business efficiency of dealers.

The time between ordering and delivery of products to dealers is significantly shorter if products are sourced from a distributor rather than directly through Sun. This ensures that dealers are able to deliver those products to customers more quickly.

If dealers were to place their orders directly with Sun, those orders would be fulfilled by delivery by Sun which would take considerably longer. The distributor is required to maintain sufficient stock levels and it also has an extensive distribution network which enables dealers and retailers to obtain products more quickly.

In addition, the distributor also performs the following tasks for Sun, which Sun believes increases business efficiency and improves product availability:

- (a) receiving and processing dealers' orders for Sun products;
- (b) maintaining stock of Sun products in its warehouse for the fulfilment of dealers' orders;
- (c) informing dealers and Sun of stock availability;
- (d) tracking and informing dealers and Sun of the current status of dealer orders;
- (e) providing dealers and Sun with the estimated time of arrival of stock;
- (f) arranging for the delivery of Sun products to dealers;
- (g) performing credit checks;
- (h) providing credit to dealers; or
- (i) invoicing dealers and collecting invoice payments.

3.2 Price Competition

Sun offers the distributor an additional discount equal to the amount that Sun has promised under a contract with a dealer (a "dealer discount") payable only if the distributor offers the applicable dealer a discount of no less than the dealer discount to the dealer. In this way, the distributor is encouraged to sell to dealers at or below the price Sun would have charged if it sold to the dealers directly.

The purchase requirement also results in lower prices to the dealers for Sun products because the distributor specialises in distribution and also distributes competing products from other vendors (approximately 35% of its business). These vendors include hardware vendors such as Acer, Hewlett-Packard and NEC, 3Com networking products, and software vendors, such as Oracle, HP Openview, Trend Micro, Attachmate, Cognos and GMT. If Sun distributed the products itself, Sun would not have the benefit of the economies of sale currently enjoyed by the distributor. Sun expects that the current fees paid to the distributor would be less than the cost to Sun to take on the role of distributor itself. If Sun were to take on the role of distributor, the increase in Sun's costs would be likely to result in a decrease in the level of discounts received by dealers.

3.3 Customer Service

The distributor is involved in providing assistance to dealers in configuring hardware which is essential to meet the requirements of the dealer's customers. Sun would be unable to provide the engineers to configure the hardware at a cost effective price. In addition, the distributor maintains a help desk which provides dealers with support on configuring, pricing and ordering.

3.4 Product Quality and Consistency

The requirement that dealers purchase all Sun products from the distributor assists Sun to maintain consistently high standard of product quality in Australia. Dealers and customers are able to be confident that the Sun products sold are genuine Sun products.

3.5 Effect on Competition

Rather than dealers being required to purchase Sun products from Sun itself, they are required to purchase those products from an independent third party. The "forced" Sun products are still manufactured by Sun but simply supplied through a third party.

The conduct does not distort the demand for or the supply of Sun products by dealers. As a result, the conduct is not likely to have an anti-competitive effect on the market for Sun products.

4. Conclusion

4.1 The impact of Sun's conduct is, in our submission, not such that the likely benefit to the public would be outweighed by the likely detriment to the public. It simply involves substituting the distributor in place of Sun in relation to the processing, tracking and filling of dealers' orders of Sun products.

4.2 Overall, the conduct is pro-competitive in that it enables more efficient delivery of Sun products to dealers and provide dealers with additional services designed to facilitate ordering, product records and returns, while maintaining consistency in product quality. Customers of dealers are also likely to benefit from the greater efficiencies associated with these improvements to the supply of Sun products.