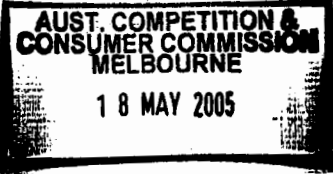


# Freehills



18 May 2005

Phone +61 3 9288 1655  
Email Emma.Gordon@freehills.com  
Matter no 80856063  
Doc no Melbourne\004646746

Mr Scott Gregson  
General Manager, Adjudication  
Australian Competition and Consumer Commission  
470 Northbourne Avenue  
DICKSON ACT 2602

By courier

FILE No:
DOC: DOS/34060
MARS/PRISM:

Dear Mr Gregson

## **Coles Myer Ltd and related companies notifications lodged under section 93 of the Trade Practices Act 1974**

We enclose a number of related notifications in respect of conduct which may raise issues under the third line forcing provisions of the *Trade Practices Act 1974*. The notifications concern proposed conduct of Coles Myer Ltd (Coles Myer) and several related companies involved in retail trade throughout Australia.

We enclose:

- a completed Form G in respect of the notifications; and
- a cheque for \$8,400 being the total relevant fee for lodgement of the related notifications of third line forcing conduct.

The notifications are submitted separately by each of the companies listed in the first part of Form G. Four types of possible third line forcing conduct have been notified by each corporate entity. Accordingly, the fees have been calculated on the basis of \$400 for the 15 proprietary limited companies and \$800 for the 3 other companies.

Please note that confidentiality is claimed for the information provided in items 3(b)(i) and (ii) of the Form G on the grounds that this information is commercially sensitive. We request that this information be excluded from the public register.

We note, for your information, that on 13 October 2003, Coles Myer and the related companies lodged notifications in respect of very similar possible third line forcing conduct, although the notifications were expressed to arise in connection with specifically described Coles Myer branded credit cards, namely the Coles Myer Source Gold™ MasterCard with FlyBuys Points EXTRA FAST and the Coles Myer Source™ MasterCard with FlyBuys Points EXTRA FAST (existing notifications).

Coles Myer and the related companies are lodging these new notifications to ensure that no Trade Practices Act risk arises in circumstances where some aspects of the credit card loyalty program are being revised.

### **Background and submissions**

The possible third line forcing conduct of Coles Myer and its related retailers arises out of arrangements designed to give consumers the option of linking the well known FlyBuys loyalty points scheme to the Coles Myer branded credit card and, as holders of a Coles Myer branded credit card, of receiving additional promotional benefits or privileges including gift vouchers and discount vouchers offered from time to time.

The FlyBuys loyalty program is operated by Loyalty Pacific Pty Ltd and it is free for consumers to join. Members of the FlyBuys program can redeem FlyBuys points for a wide variety of FlyBuys awards, including accommodation, tickets to shows, meals at restaurants, shopping vouchers and many other goods and services.

Currently, the Coles Myer branded credit cards available are known as:

- Coles Myer Source® MasterCard (with FlyBuys®);
- Coles Myer Source Gold® MasterCard (with FlyBuys®); and
- Coles Myer Source® MasterCard.

Holders of a Coles Myer branded credit card will be awarded loyalty points related to eligible transactions made using that card.

Currently, eligible transactions for the purposes of the Coles Myer Source® MasterCard are limited to transactions made at participating Coles Myer outlets (currently being outlets that participate in the FlyBuys program), but are not so limited for the purposes of the Coles Myer Source® MasterCard (with FlyBuys®) and Coles Myer Source Gold® MasterCard (with FlyBuys®).

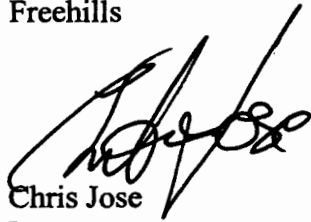
Loyalty programs which award points to consumers associated with credit card use are widespread throughout Australia and around the world. We submit that the notified conduct is likely to result only in:

- benefits of increased choice for persons who wish to obtain a credit card with an associated loyalty program and increased competition in the market for these products;
- benefits to relevant credit card holders of the opportunity to earn and use FlyBuys points and bonus FlyBuys points when using their credit card; and
- benefits to relevant credit card holders of the opportunity to receive periodic promotional benefits and privileges including gift vouchers or discount vouchers.

We submit that, as with the conduct the subject of the existing notifications, there is no conceivable detriment to the public that is likely to result from the conduct. Consumers are completely free to choose whether or not to apply for a relevant credit card from GE Capital Finance Australia, whether or not they wish to link the credit card to the loyalty program, whether or not they wish to use the credit card in eligible transactions in order to accrue loyalty points and whether or not they wish to take up promotional benefits or privileges.

Please feel free to contact me on 03 9288 1416 should you wish to discuss this matter.

Yours faithfully  
Freehills

A handwritten signature in black ink, appearing to read 'Chris Jose', written over the printed name.

Chris Jose  
Partner

Encl.

N40855(1) Coles Myer Limited (2)N91752 (3)N91753 (4)N91754  
 N40856(1) Kmart Australia Limited (2)N91755 (3)N91756 (4)N91757  
 N40857(1) Myer Stores Limited (2)N91758 (3)N91759 (4)N91760  
 N40858(1) Bi-Lo Pty Ltd (2)N91761 (3)N91762 (4)N91763  
 N40859(1) Target Australia Pty Ltd (2)N91764 (3)N91765 (4)N91766  
 N40860(1) Officeworks Superstores Pty Ltd (2)N91767 (3)N91768 (4)N91769  
 N40861(1) Coles Supermarkets Australia Pty Ltd (2)N91770 (3)N91771 (4)N91772  
 N40862(1) Newmart Pty Ltd (2)N91773 (3)N91774 (4)N91775  
 N40863(1) Liquorland (Australia) Pty Ltd (2)N91776 (3)N91777 (4)N91778  
 N40864(1) Liquorland (Qld) Pty Ltd (2)N91779 (3)N91780 (4)N91781  
 N40865(1) ht.com.au Pty Ltd (2)N91782 (3)N91783 (4)N91784  
 N40866(1) Liquorland Direct Pty Ltd (2)N91785 (3)N91786 (4)N91787  
 N40867(1) Charlie Carter (Norwest) Pty Ltd (2)N91788 (3)N91789 (4)N91790  
 N40868(1) Fosseys (Australia) Pty Ltd (2)N91791 (3)N91792 (4)N91793  
 N40869(1) Coles Online Pty Ltd (2)N91794 (3)N91795 (4)N91796  
 N40870(1) Eureka Operations Pty Ltd (2)N91797 (3)N91798 (4)N91799  
 N40871(1) Theo's Liquor Pty Ltd (2)N91800 (3)N91801 (4)N91802  
 N40872(1) Officeworks BusinessDirect Pty Ltd (2)N91803 (3)N91804 (4)N91805

# FORM G

Regulation 9

[Front of Form]  
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(2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d), of that Act in which the person giving notice engages or proposes to engage.

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(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

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

Coles Myer Ltd	ABN 11 004 089 936 (Coles Myer)
Myer Stores Limited	ABN 83 004 143 239
Kmart Australia Ltd	ABN 73 004 700 485
Bi-Lo Pty Limited	ABN 75 002 805 094
Target Australia Pty Ltd	ABN 75 004 250 944
Officeworks Superstores Pty Ltd	ABN 36 004 763 526
Coles Supermarkets Australia Pty Ltd	ABN 45 004 189 708
Newmart Pty Ltd	ABN 67 009 234 039
Liquorland (Australia) Pty Ltd	ABN 82 007 512 414
Liquorland (Qld) Pty Ltd	ABN 57 079 861 626
ht.com.au Pty Ltd	ABN 74 007 870 484
Liquorland Direct Pty Ltd	ABN 81 092 195 134
Charlie Carter (Norwest) Pty Ltd	ABN 68 009 425 209
Fosseys (Australia) Pty Ltd	ABN 89 000 142 665
Coles Online Pty Ltd	ABN 83 092 195 143
Eureka Operations Pty Ltd	ABN 78 104 811 216
Theo's Liquor Pty Ltd	ABN 83 102 914 661
Officeworks BusinessDirect Pty Ltd	ABN 86 061 239 807

(these companies are referred to as the **Coles Myer Retailers** below)

(See Direction 2 on the back of this Form)

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

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

Operation of retail businesses throughout Australia.

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

c/- Chris Jose  
Partner  
Freehills  
101 Collins Street  
Melbourne VIC 3000

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

This notice concerns:

- (1) Loyalty program services to any person (a **cardholder**) issued a Coles Myer branded credit card. The loyalty program services will include:
  - (A) awarding loyalty points to cardholders related to eligible transactions made using a relevant credit card;
  - (B) notifying Loyalty Pacific Pty Ltd (**Loyalty Pacific**) of loyalty points earned by a cardholder;
  - (C) issuing periodic loyalty points statements to cardholders.
- (2) Bonus loyalty points offered or awarded to cardholders as a result of promotional or incentive programs initiated from time to time.
- (3) Additional benefits or privileges including gift vouchers and discount vouchers offered or awarded to cardholders as a result of promotional or incentive programs initiated from time to time.

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

The proposed conduct involves Coles Myer and/or one or more of the Coles Myer Retailers:

- (1) Supplying, or offering to supply, some or all of the loyalty program services to members of the public on the condition that they acquire a relevant credit card and related services from GE Capital Finance Australia.
- (2) Supplying, or offering to supply, some or all of the loyalty program services to cardholders on condition that cardholders become members of the FlyBuys program operated by Loyalty Pacific.
- (3) Supplying, or offering to supply, loyalty points and/or bonus loyalty points to cardholders on the condition that they acquire qualifying goods or services from other parties.
- (4) Supplying, or offering to supply, additional benefits or privileges including gift vouchers and discount vouchers offered or awarded

to cardholders on the condition that they acquire qualifying goods or services from other parties.

(See Direction 4 on the back of this Form)

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

Persons who are or who may become cardholders.

(b) **Number of those persons**

(i) **At present time**

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

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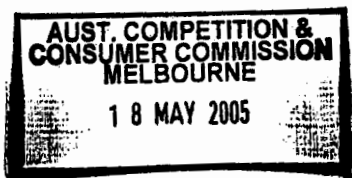
(c) **Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses**

N/A

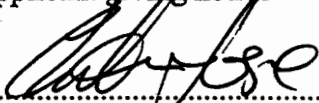
4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice**

Chris Jose  
Partner  
Freehills  
101 Collins Street  
Melbourne VIC 3000

Dated: 18 May 2005



Signed on behalf of the  
applicant giving notice

  
.....  
(Signature)

CHRISTIAN JOSE  
.....  
(Full Name)

SOLICITOR  
.....  
(Description)

[Back of Form]

**DIRECTIONS**

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b) (ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

**NOTICE**

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of sub-section 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under sub-section 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in sub-section 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.



**CONFIDENTIALITY  
GRANTED**

**CONFIDENTIAL ATTACHMENT**

**CONFIDENTIALITY  
GRANTED**