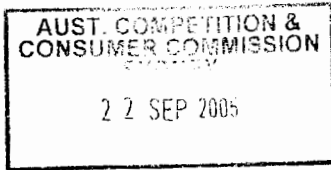


22 September 2005



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Mr Scott Gregson  
General Manager, Adjudications Branch  
Australian Competition & Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

FILE No:	
DOC:	
MARS/PRISM:	

Dear Mr Gregson


**Australian Administrative Services Pty Limited - third line forcing notification**

We act for Australian Administrative Services Pty Limited. Please find enclosed, a notification of conduct constituting exclusive dealing, lodged under section 93(1) of the *Trade Practices Act 1974*, and a cheque for the lodgement fee of \$100.

Please note that Annexure 2 to the notification is confidential.

If you require any further information, please contact Kathryn Conway on (02) 9921 4894.

Yours faithfully  
**MINTER ELLISON**



Ross Patterson  
Partner

Contact: Kathryn Conway Direct phone: +61 2 9921 4894 Direct fax: +61 2 9921 8228  
Email: kathryn.conway@minterellison.com  
Partner responsible: Ross Patterson Direct phone: +61 2 9921 4482

*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 engaged or proposes to engage.

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

Australian Administration Services Pty Limited ACN 003 429 114 (AAS).

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

AAS is a superannuation fund administrator. AAS also provides a superannuation clearing house facility (**SuperClear**) consisting of transaction processing, receipt and allocation of contributions to chosen funds.

AAS is a wholly owned subsidiary of KAZ Group Limited (ACN 002 124 405), an information and communications technology company which is a wholly owned subsidiary of Telstra Corporation Limited (ACN 051 775 556).

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

Andrew Symes  
National Manager, Legal and Compliance  
Australian Administration Services Pty Limited  
Level 12, 126 Church Street  
Parramatta NSW 2150

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

This notice relates to the provision of superannuation clearing house services by AAS through SuperClear to employers in Australia.

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

AAS proposes to supply or offer to supply SuperClear to employers on the condition that where an employee has no chosen fund, the employer will under the *Superannuation Guarantee (Administration) Act 1992 (SSGA)*, make superannuation guarantee contributions to any one of the funds administered by AAS, in respect of that employee.

It is not at all clear to AAS whether the conduct in question will amount to third line forcing. In particular, it is unclear whether an obligation on an employer to contribute to a fund administered by AAS could be characterised

as a requirement on the employer to acquire services from an AAS administered fund. However, this notification is made to remove any uncertainty in this regard.

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

The conduct relates to actual and potential employers wishing to engage AAS to provide superannuation clearing house services in respect of the administration of their superannuation contributions to chosen funds for employees.

(b) **Number of those persons:**

(i) **At the present time:**

18 (including 5 AAS companies)

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

175 employers

(c) **Where the number of persons stated in item 2(c)(i) is less than 50, their names and addresses:**

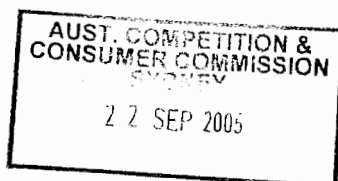
See Confidential Annexure 2

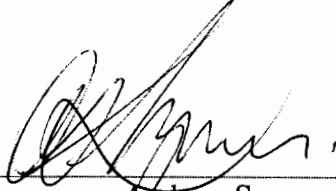
4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:**

Andrew Symes  
National Manager, Legal and Compliance  
Australian Administration Services Pty Limited  
Level 12, 126 Church Street  
Parramatta NSW 2150

**DATED**

**SIGNED** on behalf of the applicant



  
\_\_\_\_\_  
Andrew Symes  
National Manager, Legal and Compliance

**ANNEXURE 1**  
**SUBMISSION BY AUSTRALIAN ADMINISTRATION SERVICES PTY LIMITED**  
**IN SUPPORT OF A NOTIFICATION UNDER SECTION 93(1)**  
**OF THE TRADE PRACTICES ACT 1974**

**1. Background**

- 1.1 AAS is a superannuation fund administrator. It provides administrative and customer services to superannuation and redundancy funds throughout Australia.
- 1.2 AAS currently administers superannuation for more than 165,000 employers and 3.5 million fund members in Australia.
- 1.3 In September 2003, AAS launched its superannuation clearing house facility, SuperClear. SuperClear is an on-line facility which allows employers to remit and pay superannuation contributions. In July 2005, AAS expanded SuperClear, to accommodate 'Choice of Funds', to include additional payment options to enable processing of contributions to multiple chosen funds via a central entity point.
- 1.4 Recent amendments to the *Superannuation Guarantee (Administration) Act 1992* (SGAA) (effective from 1 July 2005), allow employees to choose the superannuation fund into which their employer's superannuation contributions are paid (**chosen fund**). Where an employee has not selected a chosen fund, an employee will need to make the contribution for that employee to a fund which satisfies the legislative requirements in relation to insurance for the employer (**default fund**).
- 1.5 The superannuation clearing house services provided by AAS to employers include:
- identification of the employees' chosen funds and the contribution amounts payable;
  - receipt and allocation of the total amount payable to each chosen fund; and
  - arranging for payment of superannuation contributions by employers.
- 1.6 AAS proposes to supply or offer to supply SuperClear to employers on the condition that where an employee has no chosen fund, the employer will under the SSGA, make superannuation guarantee contributions to any one of the funds administered by AAS, in respect of that employee.
- 1.7 AAS anticipates that this offer will be available indefinitely.

**2. Market**

- 2.1 The market in which the proposed conduct relates is the market in Australia for superannuation clearing house services provided to employers in respect of the payment and allocation of employee superannuation contributions.

**3. Analysis of the Conduct**

- 3.1 It is not at all clear to AAS whether the conduct in question will amount to third line forcing. In particular, it is unclear whether an obligation on an employer to contribute to a fund administered by AAS could be characterised as a requirement on the employer

to acquire services from an AAS administered fund. However, this notification is made to remove any uncertainty in this regard.

- 3.2 The majority of services that trustees of funds provide are to employees who are members of the fund. Once the employer has commenced contributing to the fund for its employees, the employees become a beneficiary of that fund. The fund clearly provides a service to employees in relation to their superannuation monies and it is unlikely that a fund could be said to provide 'services' to employers.
- 3.3 If the conduct in question does amount to exclusive dealing within section 47(6) and 47(7) of the *Trade Practices Act*, AAS submits that there is a significant public benefit to employers and there is no likely anti-competitive effect and, therefore no public detriment, resulting from the conduct described in Form G.
- 3.4 The proposed conduct offers significant benefits to employers in that:
- (a) the conduct provides employers a cost efficient and effective system of distributing an employer's superannuation contributions to a number of different funds through a superannuation clearing house;
  - (b) SuperClear relieves employers of the administrative burden and resources of having to calculate and direct contributions to the appropriate chosen fund; and
  - (c) the obligation on an employer to nominate an AAS administered fund where its employee did not have a nominated fund, allows the employer the opportunity to use SuperClear providing a potential cost benefit and time saving to the employer.
- 3.5 The proposed conduct does not have the effect of substantially lessening competition in any market. AAS administers over 30 funds, including both multi-industry and corporate funds. The number of funds allows the employer to choose the fund on the basis of price and/or quality and provides the funds the opportunity to compete to provide the services.

**EXCLUDED FROM  
PUBLIC REGISTER**

Confidentiality Annexure 2

**EXCLUDED FROM  
PUBLIC REGISTER**