

Our Ref: N70435
Contact Officer: Shashi Sivayoganathan
Contact Phone: (03) 9290 1832

26 October 2005

Dear

**Re: Third line forcing notifications N70435
lodged by Cash Converters Pty Ltd ("CCPL")**

I refer to the above third line forcing notification lodged by CCPL with the Australian Competition and Consumer Commission ("the ACCC") on 6 October 2005. The notification has been placed on the ACCC's public register.

I have enclosed a copy of CCPL's notification and supporting submission.

Broadly, the notification relates to certain conditions imposed by CCPL on existing and future franchisees in relation to the provision of pay day lending¹, personal loans and international funds transfer services to customers. The notified conduct is described in greater detail in CCPL's supporting submission.

The purpose of this letter is to seek your views, as a party that may be interested in the conduct notified, to assist the ACCC in its consideration of the likely effect on competition, or any other public detriment, from the proposed arrangements.

Notification process

As you may be aware, the competition provisions of the *Trade Practices Act 1974* ("the Act") prohibit certain forms of anti-competitive conduct or arrangements. Section 47 of the Act prohibits conduct known as exclusive dealing where it has the purpose or effect of substantially lessening competition. Generally speaking, exclusive dealing involves one business trading with another, imposing restrictions on the other's freedom to choose with whom, or in what, it deals.

Subsections 47(6) and (7) of the Act prohibit exclusive dealing of the type known as third line forcing. Third line forcing occurs where a corporation supplies goods or services on

¹ Pay day lending (referred to in CCPL's submission as "cash advances" or "micro-lending") is the practice of a lender advancing money to a customer until their next pay day in exchange for a fee. Please refer to CCPL's supporting submission for the details pertaining to the exact arrangements proposed by CCPL.

condition the customer acquires other goods or services from another business or refuses to supply because the customer will not agree to that condition. Third line forcing conduct is currently a per se provision, meaning that it amounts to a contravention of the Act regardless of its effect on competition

Businesses wishing to engage in third line forcing conduct can 'notify' the ACCC of the conduct. Notification provides immunity from legal action by the ACCC and any other party for potential breaches of the exclusive dealing provisions of the Act where the conduct is in the public interest.

Under the notification process immunity from third line forcing conduct is obtained automatically 14 days after the date of lodgement, and continues unless the ACCC issues a notice revoking the immunity.

For third line forcing notifications, the ACCC may issue a notice revoking the immunity only if it is satisfied that the likely benefit to the public from the notified conduct would not outweigh the likely detriment to the public resulting from the conduct. Provided it is so satisfied, the ACCC may act to remove the immunity afforded by a notification at any stage.

Current status of notification N70435

CCPL lodged a notification with the ACCC on 6 October 2005. Statutory immunity for the proposed conduct commenced on 20 October 2005.

The proposed third line forcing conduct has been described by CCPL as follows:

CCPL wishes to require the following with respect to franchise offerings outside of South Australia and the Northern Territory:

- (a) that all existing franchisees who wish to offer pay day lending must use the banking system and software developed by Mon-e Pty Ltd ("Mon-e");*
- (b) that all new franchisees who join the Cash Converters system, must offer pay day lending and must use the Mon-e system and may be required by CCPL to offer international funds transfer services as agent for Western Union ("Western Union agency services") and personal loans both secured and unsecured as agent for Safrock Finance Corporation (Qld) Pty Ltd ("Safrock loans"); and*
- (c) That all existing franchisees who wish to offer pay day lending be required by CCPL to also offer Western Union agency services and Safrock loans.*

CCPL wishes to require the following with respect to franchise offerings within South Australia and the Northern Territory:

- (a) that all existing franchisees who wish to offer pay day lending, must use the banking system and software developed by Quickdraw Financial Solutions Pty Ltd ("Quickdraw");*

- (b) that all new franchisees who join the Cash Converters system, must offer pay day lending and must use the Quickdraw system and may be required by CCPL to offer Western Union agency services; and*
- (c) that all existing franchisees who wish to pay day lending may be required by CCPL to also offer Western Union agency services.*

For details on the public benefits and detriments that CCPL claims are likely to result from the proposed conduct please refer to the enclosed supporting submission.

Request for submissions

To assist the ACCC in its consideration of the notification it would be helpful to obtain your comments on the likely public benefits and the likely effect on competition, or any other public detriment, from the proposed arrangements.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the ACCC may request that information included in the submission be treated as confidential and not placed on the public register. If confidentiality is granted in respect of information the ACCC may take it into account, even though it is not publicly available. Guidelines for seeking confidentiality are attached.

If you wish to lodge a submission, please address your submission to:

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Submissions can also be lodged by email to adjudication@acc.gov.au or by facsimile on 02 6243 1211.

Please note that, in considering the notification, the ACCC has not been asked to consider all aspects of pay lending practices. Rather, the ACCC's assessment is limited to considering the pros and cons of the conduct notified, that is, the conditions imposed by CCPL on existing and future franchisees in relation to the provision of pay day lending, personal loans and international funds transfer services to customers.

If you intend to provide a submission in relation to CCPL's notification, please do so by **Monday, 4 November 2005**.

Please inform us if you do not wish to make a submission at this time, but would like to be informed of the progress of CCPL's notification. You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding the notification

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Shashi Sivayoganathan on (03) 9290 1832.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gavin Jones', written over a horizontal line.

Gavin Jones
Director
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the Commission assesses applications for authorisation or notification is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the Commission to maintain a public register in respect of authorisation and notification applications.

Applicants and interested parties can request that a submission, or part of a submission, be excluded from the public register.

The Commission is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or process;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

However, even if a document does not meet these technical requirements, the Commission may still grant confidentiality where, in the Commission's view, it is desirable to do so.

The Commission also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The Commission expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the Commission:

- (a) where the request is that a whole document be excluded, the words "**Restriction of Publication Claimed**" should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words "**Restriction of Publication of Part Claimed**" should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

Applicants, as a matter of course, should remove headers claiming "confidential communication" from all Emails and otherwise, unless they have a particular piece of information that they justify to the Commission deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

If the Commission denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the Commission will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the Commission will return the original material and destroy all associated copies. The Commission will not consider this material when reaching its decision.

If the Commission does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the Commission pursuant to its powers generally under the *Trade Practices Act*.

	Name	Sal	Address1	End
	Mr Robert Booth Chief Executive Officer	Mr Booth	Australian Consumers Association 57 Carrington Road MARRICKVILL E NSW 2204	sincerely
	Ms Karen Cox Manager	Ms Cox	Consumer Credit Legal Centre (NSW) Inc PO Box 538 SURRY HILLS NSW 2010	sincerely
	Ms Su Mahalingham Coordinator	Ms Mahalingham	Consumer Credit Legal Service (WA) Level 1, 231 Adelaide Terrace PERTH WA 6000	sincerely
	Ms Carolyn Bond Coordinator	Ms Bond	Consumers Federation of Australia C/- Consumer Credit Legal Service Victoria 1 st Floor, 11-19 Bank Place MELBOURNE VIC 3000	sincerely
	Ms Heather Neilson	Ms Neilson	Financial and Consumer Rights Council Level 13, 227 Collins Street MELBOURNE VIC 3000	sincerely
	Mr Colin Crossland General Manager	Mr Crossland	Office of Fair Trading PO Box 22 154 Russell Street Bathurst NSW 2795	sincerely

	Name	Sal	Address1	End
	Mr Dennis Fitzgerald Assistant Manager	Mr Fitzgerald	Office of Fair Trading and Business GPO Box 123A Melbourne Vic 3001	sincerely
	General Manager	Sir / Madam	ACT Office of Fair Trading Ground Floor Shopfront 12 Moore St, CFM Building CANBERRA CITY ACT 2601	faithfully
	Mr Matt Miller Commissioner	Mr Miller	Queensland Office of Fair Trading GPO Box 3111 BRISBANE QLD 4001	sincerely
	Mr R Ornerod Director – Consumer Affairs and Trading	Mr Ornerod	TAS Consumer Affairs and Trading GPO Box 1244 HOBART TAS 7001	sincerely
	Mr Chris Field	Mr Field	Consumer Law Centre Level 7, 20 Queens Road ME:BOURNE VIC 3000	sincerely
	Mr Dever Regional Manager	Mr Dever	Department of Tourism, Racing & Fair Trading 209 Bolsover Street Rockhampton City QLD 4700	sincerely
	General Manager	Sir / Madam	SA Office of Fair Trading GPO Box 1719 Adelaide SA 5001	faithfully