



HENRY DAVIS YORK
LAWYERS

9 May 2006

Our Ref RCJ/KEH/3107838

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

FILE No:	
DOC:	
MARS/PRISM:	

Dear Mr Gregson

Notification of Exclusive Dealing

We enclose a notification relating to third line forcing on behalf of Fundcorp Holdings Pty Limited, ABN 33 088 928 296 (**Fundcorp**).

The proposed third line forcing conduct involves rental agreements under which lessees would be required to acquire goods and services from other related entities, in particular, enter into franchise agreements with MACT Franchise Pty Ltd and a rental agreement with another company.

We understand that the ACCC has already considered notifications by other involved parties, which have been placed on the public register, being N31539, N92363 and N92364.

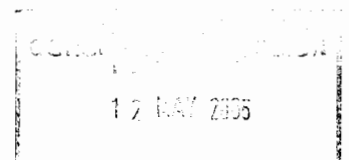
A lodgement fee of \$300 is enclosed.

Yours sincerely
Henry Davis York

Robert Jordan
Partner
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Kelsey Holman
Lawyer
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Encl



N92493-N92494
(NewCo) (MACT)

FORM G

Regulation 9

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 98) (a), (b) or (c) or (9) (a), (b), (c) of (d), of that Act in which the person giving notice engages or proposes to engage.

1. (a) Name of person giving notice:

Fundcorp Holdings Pty Limited ABN 33 088 928 296 (**Fundcorp**)

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

Fundcorp is a finance company specialising in tailored retail financial solutions. Fundcorp offers loans and leasing packages to businesses and private consumers.

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

Robert Jordan
Partner
Henry Davis York
44 Martin Place
SYDNEY NSW 2000

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

The supply of goods under a rental agreement for use as wheelchair-accessible taxis.

(b) Description of the conduct or proposed conduct:

See Attachment A.

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

Persons who wish to enter into a franchise agreement with MACT Franchise Pty Ltd ABN 79 117 212 763 for the provision of taxi services using wheelchair-accessible taxis.

(b) Number of those persons:

- (i) at present time: Nil
- (ii) Estimated within the next year: 180

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

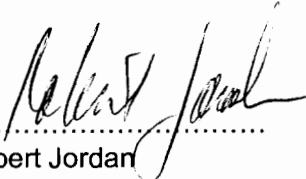
Not applicable

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

Robert Jordan
Partner
Henry Davis York
44 Martin Place
SYDNEY NSW 2000

Date: 9 May 2006

Signed on behalf of the person giving this notice:



Robert Jordan
Partner
Henry Davis York

ATTACHMENT A

1 NOTIFYING PARTY

Fundcorp Holdings Pty Ltd (**Fundcorp**) is a finance company specialising in tailored retail financial solutions. Fundcorp offers loans and leasing packages to businesses and private consumers.

2 PROPOSED CONDUCT

Fundcorp proposes to lease under rental agreements Mercedes Benz Vito 115CDi vehicles which are modified (wheelchair lift installed) and fitted with taxi equipment (e.g. in-taxi dispatch, security equipment, taxi lights, network livery). The wheelchair lift, even though installed in the vehicle, will be separately leased by another party (see below).

The lessees of the taxis will be franchisees under a franchise system established by MACT Franchise Pty Ltd (**MACT**).

As a condition of the rental agreement, a lessee must itself acquire certain goods and services from:

- a new company that is not yet formed (NewCo). NewCo is likely to be a proprietary limited company; and
- MACT.

The goods and services that must be acquired are described below. Fundcorp proposes not to enter into a rental agreement with potential lessees unless they agree to acquire these goods and services from the relevant related entities as described below.

2.1 Rental agreement with NewCo

The modified Mercedes Benz vehicles leased by Fundcorp will need to have a wheelchair lift installed. NewCo will lease the wheelchair lifts to lessees.

2.2 Franchise Agreement

Lessees will be required to enter a franchise agreement with MACT. MACT proposes to supply the following "package" of goods and services to lessees:

- (a) access to a taxi network in Sydney operated by MACT Network Pty Limited ABN 47 116 208 603, in accordance with certain rules;¹
- (b) access to a mobile payments system operated by MACT Payments Pty Ltd ABN 36 117 213 064 to process electronic fare payments made by passengers;

¹ A taxi network must be authorised by the Ministry of Transport under the *Transport Passenger Act 1990* (NSW). Generally, taxi networks provide taxi-cab operators with access to a passenger booking service and other services to facilitate the delivery of taxi-cab services. Examples of existing taxi networks in Sydney include Legion Cabs, Premier Cabs and Silver Service.

- (c) training for lessees; and
- (d) a franchisee operations manual.

It is understood that the lessees may be required under the franchise agreement to enter into agreements with other persons.

It is not proposed that, as a matter of course, a rental agreement will terminate if the lessee terminates the franchise agreement with MACT.

3 PUBLIC BENEFITS AND COMPETITION ISSUES

3.1 Background

Fundcorp relies upon the following background information provided to the ACCC under Notifications N31539, N92363 and N92364.

The NSW Government offers a number of incentives for wheelchair-accessible taxi (WAT) drivers, including cheaper licences. A WAT licence can be leased for \$1,000 per annum whereas the purchase of a standard taxi licence costs approximately \$285,000. A standard taxi licence can be leased from a taxi network for approximately \$20,000 per annum. The Ministry of Transport also offers interest-free loans to country operators for the purchase or conversion on WATs.²

Despite the incentives offered, the uptake of WAT licences has been slow and there appears to be a shortage of WATs in most parts of NSW.³ In September 2004, there were 451 WATs in NSW, 322 of which were in Sydney.⁴ The 451 WATs accounted for approximately 7% of taxi-cabs across the state.⁵

The WAT Taskforce acknowledged that WATs are the only transport option for many people in NSW, particularly the elderly and the disabled community.⁶ Given NSW's ageing population, the need for WATs is likely to increase. Private and other public forms of transport are often not a viable option. This is because the cost of modifying a private car to make it wheelchair-accessible is high and also because some areas may not have accessible public transportation options.

3.2 No lessening of competition

The proposed conduct does not have any anti-competitive impact on consumer choice, nor does it remove existing competitive constraints in relation to the supply of rental finance for WATS.

Concerns regarding the possible anti-competitive effect of bundling do not arise where the goods and services bundles remain independently available. While the proposed conduct involves bundling, it will still be possible for persons who wish to obtain finance for WATs to obtain the finance from other sources.

² See NSW Ministry of Transport website: <http://www.transport.nsw.gov.au/licensing/taxis>.

³ Wheelchair Accessible Taxi Taskforce, *Interim Brief to the Minister for Transport Services*, September 2004, at page 18 (**WAT Interim Brief**).

⁴ WAT Interim Brief, at page 11.

⁵ WAT Interim Brief, at page 17.

⁶ WAT Interim Brief, at page 17.

3.3 Public benefits

The proposed conduct will be of benefit to the public for the following reasons:

- (a) by packaging the rental finance with the franchise system and other goods and services being arranged by MACT, it will be easier for franchisees to start their WAT operation;
- (b) while the price of WATs on the market varies significantly, MACT estimates that the cost of leasing the modified vehicle and in-taxi equipment and renting the wheelchair lift under the franchise system offered by MACT could be 15-20% lower than the cost of obtaining such goods and services on the market; and
- (c) the franchise will help to increase the number of WATs in NSW, thereby offering a service to members of the community, particularly the disabled and the elderly, who require wheelchair-accessible transportation.