

Freehills

FILE No:

DOC

MARS/PRISM:

Mr Scott Gregson
General Manager, Adjudication
Australian Competition and Consumer
Commission
PO Box 1199
Dickson ACT 2602

1 November 2006
Matter 81027769
By hand

Dear Sir,

Exclusive dealing notification

On behalf of our client, Metcash Trading Limited, we enclose the following documents:

1. Form G notification
2. Accompanying submission in support of the notification

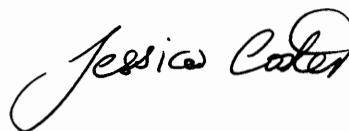
A cheque for \$1000 for the filing fee is also enclosed.

Yours sincerely



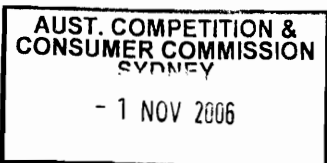
Michael Gray
Partner
Freehills

+61 2 9225 5286
0414 642 068
michael.gray@freehills.com



Jessica Coates
Graduate
Freehills

+61 2 9322 4535
jessica.coates@freehills.com



Doc 2.005163976.1

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:

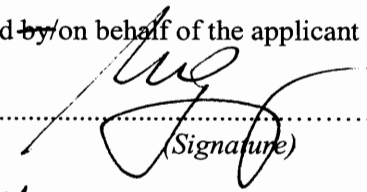
Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d), of that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice
Metcash Trading Limited
(See Direction 2 on the back of this Form)
- (b) Short description of business carried on by that person
Metcash is a wholesaler and distributor of perishable foods, grocery, liquor, general merchandise and health care products to thousands of independent grocery and liquor retailers in Australia. Metcash also provides marketing services to many of these retailers.
- (c) Address in Australia for service of documents on that person
**Freehills
Attention: Michael Gray and Jessica Coates
MLC Centre
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
 - **Supply of pricing and other host support data to be used by retailers (“the Data”)**
 - **Eight brands of software capable of reading the Data (“the Software Brands”)**
- (b) Description of the conduct or proposed conduct
From 1 July 2009, Metcash’s supply, or offer to supply, of the Data to retailers on condition that retailers acquire and install one of the Software Brands (see accompanying submission for details).
(See Direction 4 on the back of this Form)
3. (a) Class or classes of persons to which the conduct relates
All retailers acquiring the Data from Metcash that do not already run one of the Software Brands and any new retailers that acquire the Data from Metcash.
- (b) Number of those persons-
 - (i) At present time
Zero.
 - (ii) Estimated within the next year
Approximately 100 retailers between now and 1 July 2009.
- (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
**Freehills
Attention: Michael Gray and Jessica Coates
MLC Centre
Martin Place
SYDNEY NSW 2000**

Dated... 1 November, 2006

Signed by/on behalf of the applicant giving notice


.....
(Signature)

MICHAEL GRAY
.....
(Full Name)

SOLICITOR FOR THE APPLICANT
.....
(Description)

Submission accompanying exclusive dealing notification

1 Notification

This submission accompanies a Notification given by Metcash Trading Limited (ACN 112 073 480) (**Metcash**) to the Australian Competition and Consumer Commission (**the Commission**). The conduct notified relates to the proposed supply of pricing and other host support data by Metcash (**the Data**) to retailers on condition each retailer acquires from another person one of eight brands of Software capable of reading the Data (**the Software Brands**). Together, the Data and software allow the retailers' electronic cash register and ordering systems to function. Thus, the conduct includes offering to supply, entering into agreements to supply and supply of the Data on the relevant condition. The conduct may also include Metcash's refusal to supply the Data to retailers for the reason that the retailer has not agreed to acquire one of the Software Brands.

A list of the Software Brands is located at **Annexure A**. Metcash has selected the eight brands on the basis of efficiency and functionality and as a result of a rigorous and impartial self assessment and interview process. This process involved no financial relationship between Metcash and these suppliers. The vast majority of retailers already run one of the Software Brands. Therefore, the conduct would only involve approximately 100 retailers that do not already run one of the Software Brands, as well as new retailers who in future contract with Metcash. The condition would not be imposed until July 2009 to ensure these retailers have sufficient time to comply. Metcash proposes to provide retailers with a list of suppliers of the Software Brands, from which retailers will directly acquire the software.

This submission has been prepared to assist the Commission in its consideration of the Notification given under s 93(1) of the *Trade Practices Act 1974* (**the Act**). Metcash will provide any further information the Commission may require.

2 Background and business rationale

Metcash has five wholly owned subsidiaries operating warehouses in Australia. These are:

- IGA Distribution (WA) Pty Limited (ACN 008 667 650)
- IGA Distribution (SA) Pty Limited (ACN 008 193 155)
- IGA Distribution (Vic) Pty Limited (ACN 006 509 280)
- IGA Distribution Pty Limited (ACN 004 391 422)
- Campbells Cash and Carry Pty Limited (ACN 000 226 399)

Customers of these warehouses, i.e. retailers, are offered host support services by Metcash. These services include providing the Data to retailers for a fee.

The Data supplied is usually either an Initial File Load or a Weekly Update. When a new store opens or installs a new Point of Service (**POS**) system, it acquires an Initial File Load which contains the following types of information for different product lines:

- product code

- long description (for the shelf ticket)
- short description (for the register docket)
- standard cost (including taxes)
- suggested sell price
- total cost (including taxes)
- barcode
- units per carton
- minimum order quantity
- commodity structure
- supplier details.

The Initial File Load contains this data for all warehouse products supplied to that particular retailer and can also contain data for "direct" lines delivered directly from a supplier. Typically for a SUPA IGA store, the Initial File Load will contain data for 18,000 different product lines.

Suggested sell prices are determined according to a number of different factors including cost and retail prices of the other large supermarket chains. Retailers are easily able to change prices, and in practice, often request Metcash to tailor their Data according to their requirements, e.g. a 24-hour convenience store may request suggested sell price + 10% on all items or suggested sell price – 5% on bakery.

The Weekly Update Data is generally acquired by retailers directly through their POS system on a weekly basis. It can also be supplied ad hoc, when required. The Weekly Update Data includes:

- barcode changes
- cost changes
- suggested sell price changes and description changes
- promotional data including the start and finish dates of the promotion, promotional costs and promotional suggested sell prices.

These promotional files must change format to accommodate special offers such as 'buy one, get one free' and petrol couponing.

The main reason for the proposed rationalisation of software is that the independent retailers acquiring the Data from Metcash currently use any one of around 40 different brands of software to receive the Data. For each different brand of software, Metcash must work with the software vendor to ensure the Data can be received and interpreted correctly. This is a time consuming process that involves, amongst other things, Metcash supplying Data file specification documents, sample files, a testing environment and specialist staff to work with each software vendor to address the myriad of issues that arise in this process and worth through a range of questions from both the software vendors as well as the retailers who have those brands of software installed. This process involves significant time and expense for Metcash.

By reducing the number of brands supported, Metcash would benefit from significant cost and time savings, and at the same time, continue to allow retailers some choice between software brands.

3 Public benefits and impact on competition

3.1 Public benefits

Metcash considers that the proposed conduct will result in benefits to the public because of the efficiencies arising from the reduced time and expense incurred by Metcash in managing document control and testing regimes for all the different software programs currently in use. This will allow Metcash to maintain retailer computer systems much more easily and efficiently, allowing any disruptions to be addressed more quickly.

Promotional campaigns will also be able to be carried out more efficiently and uniformly, allowing retailers to compete more effectively in the retail grocery market.

Metcash would be able to pass on to retailers the benefits, such as software support, arising from the more efficient supply of the Data. These benefits are able to be passed on by retailers to customers in the form of more efficient and higher quality service.

Metcash's position can be contrasted with its main competitors, Coles and Woolworths, which as fully integrated operations can be expected each to use a single software system, avoiding the duplication and IT support costs that Metcash currently incurs.

The proposed rationalisation of the Software Brands would contribute to making Metcash a more efficient competitor against Coles and Woolworths, thereby reinforcing Metcash's position as a strong third force in the wholesale grocery market.

3.2 Impact on competition

Metcash considers that the proposed conduct will not lessen competition in any relevant market because:

- there are a large number of retailers already using one of the Software Brands;
- retailers affected by the conduct will be able to choose between the eight Software Brands; and
- the increased efficiencies discussed above are likely to have the effect of allowing retailers to compete more effectively in the retail grocery market.

Annexure A – the Software Brands

Software Product	Vendor
"Grocery Manager"	Worldsmart Retech Pty Ltd ABN 53 107 563 511
"Profit Track 2000"	Scanning Systems (Aust) Pty Ltd ABN 93 078 247 873
"RetailTouch"	Adelaide Business Software Pty Ltd ABN 56 008 061 925
"Checkmate"	Lynx Business Systems (Australia) Pty Ltd ABN 45 070 615 843
"Surefire"	Unisys Australia Pty Ltd ABN 31 105 642 902
"BluePrint"	Gap Solutions Pty Ltd ABN 84 057 892 538
"Convenience"	FutureNet Pty Ltd ABN 33 064 023 043
"merlin ESP"	Retail Application Products Pty Ltd ABN 93 057 993 898