



**Australian
Competition &
Consumer
Commission**

Our Ref: C2006/2052
Your Ref: 81027769
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23 February 2007

Mr Michael Gray
Partner
Freehills
MLC Centre
Martin Place
SYDNEY NSW 2001

Dear Mr Gray

Re exclusive dealing notification (third line forcing) N92682 lodged by Metcash Trading Limited

I refer to the above notification lodged by your client, Metcash Trading Limited (Metcash), on 1 November 2006 (the Notification). The conduct the subject of the Notification involves Metcash supplying or offering to supply Data to retailers on condition that they acquire and install one of eight software brands specified by Metcash (the Software Brands).

The ACCC has received correspondence which raises a number of concerns in respect of the notification. One concern raised is in relation to the costs that independent grocery retailers will incur from changing over their current software to one of the Software Brands. It has been suggested that these costs will not only arise from the requirement to purchase new software but also from associated costs with changing over software, including:

- the necessity of replacing Portable Entry Data (PDE) devices, as it is claimed that once a program is installed on a PDE device it is incompatible for use with another software product's programming
- retailers being required to purchase an additional software licence
- loss of income caused by disruptions to the retailer's business while new software is installed, retraining of staff and the need to close while these events occur and/or operate the business at a reduced capacity.



Further, concern has also been raised that the conduct is likely to result in a reduction of competition in the grocery retail software market with a corresponding increase in the price of grocery retail software and a reduction in the development and innovation of such software.

It has also been suggested that retailers have been critical of a number of the Software Brand providers for failing to provide sufficient customer support and also criticised some of the Software Brands for 'critical functional errors' in relation to the system software.

As you may be aware the ACCC may revoke the immunity afforded by a notification involving third line forcing if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

The ACCC has not formed a view in relation to the concerns raised at this stage. However, to assist the ACCC to fully consider the issues, I ask that you comment on the claims made above and provide the following information.

- The name and contact details of all IGA and other independent grocery retailers who require Data from Metcash, who do not currently use one of the Software Brands. In this regard I note Metcash estimates that this is approximately 100 retailers.
- Details of the software brands Metcash assessed prior to determining the Software Brands.
- Details of the efficiency and functionality assessment of each brand assessed.
- Whether Metcash does or will receive any financial or other incentive from any of the providers of the Software Brands.

I also refer you to a letter sent by Metcash to retailers, dated 14 December 2006, wherein Metcash states that the ACCC has allowed the notification to stand. While immunity commences 14 days after the valid lodgement of a notification it is incorrect to state the ACCC allowed the notification to stand as no decision has been made in respect of the notified arrangements at this stage.

I would appreciate your written response by 16 March 2007. Should you wish to discuss any aspect of this letter please do not hesitate to contact Gina D'Ettorre by email at gina.dettorre@acc.gov.au, or by telephone on 03 9290 1487.

Yours sincerely



Scott Gregson
General Manager
Adjudication Branch