



**Australian
Competition &
Consumer
Commission**

PO Box 1199
Dickson ACT 2602
470 Northbourne Ave
Dickson ACT 2602
ph (02) 6243 1111
fax (02) 6243 1199
www.accc.gov.au

Our Ref: N92682
Contact Officer: Gina D'Etorre
Contact Phone: (03) 9290 1483

10 April 2007

<<Salutation>>

Notification N92682 lodged by Metcash Trading Limited (Metcash)

I am writing to you as a party that may be interested in providing information to the Australian Competition and Consumer Commission (ACCC) in relation to the above notification.

The notification

Metcash's notification involves, from 1 July 2009, supplying pricing and other host support services (**the Data**) to retailers on condition that each retailer acquires software for reading the Data from one of the eight nominated brands specified by Metcash.

If a retailer does not acquire one of the specified software brands Metcash may refuse to supply the Data to the retailer.

A copy of the notification is attached.

The notification process

The competition provisions of the *Trade Practices Act 1974* (TPA) prohibit certain forms of anti-competitive conduct or arrangements. Section 47 of the TPA 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 TPA prohibit exclusive dealing of the type known as third line forcing. Third line forcing occurs where a corporation supplies goods or services on 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 TPA 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 TPA 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 a notification application has been lodged, 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.

Opportunity to provide information

As a potentially interested party, you are invited to provide a written response to the ACCC regarding the effect this conduct may have on your business.

As noted, the ACCC may act to remove the immunity afforded by the notification at any stage if it is satisfied that the balance of the public benefit and anti-competitive detriment arising from the conduct no longer results in a net public benefit.

The ACCC asks for information to be provided in writing so it can be made publicly available. They are placed on a public register for this purpose. The ACCC may, where it is deemed appropriate, supplement written responses with discussions with relevant parties on a mutually convenient basis.

Persons providing information to the ACCC may request that some or all of the information provided not be placed on any public register. If a request to exclude information from the public register is made in relation to a notification the person seeking to have the information excluded is expected to provide the ACCC with reasons why the information should be excluded. The ACCC will not grant a request for documents which are clearly not of a confidential nature to be excluded from the public register, unless there are compelling reasons to do so. Guidelines for requesting exclusion from the public register are attached for your information.

If you would like to provide information in relation to this notification please address your response to:

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

Information may also be provided by email to adjudication@acc.gov.au.

If you intend to provide information to the ACCC, it would be appreciated if you could do so by **Thursday 26 April 2007**. You can also forward this letter to any other party who may wish to provide information to the ACCC regarding the Metcash notification. In particular, while the ACCC has sought the views of a cross section of retailers, I would encourage you to forward this letter to any retailers not contacted directly by the ACCC that may wish to comment on the notification.

If you would like to discuss any of the issues raised in this letter, please do not hesitate to contact Gina D'Ettorre on (03) 9290 1483.

A copy of this letter has been placed on the ACCC's public register.

Yours sincerely



Gavin Jones
Director
Adjudication Branch