



**Australian  
Competition &  
Consumer  
Commission**

Our Ref: C2006/2052  
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11 May 2007

Mr Michael Gray  
Partner  
Freehills  
GPO Box 4227  
SYDNEY NSW 2001

Dear Mr Gray

**Re exclusive dealing notification 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**), subsequent correspondence and interested party submissions.

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**). Metcash also proposes to refuse to supply the Data to retailers for the reason that the retailer has not agreed to acquire one of the Software Brands. In its submission accompanying the Notification (**the Submission**) Metcash states that together, the Data and software allow the retailers' electronic cash register and ordering systems to function.

As you are aware, on 10 April 2007 the ACCC wrote to interested parties seeking submissions in relation to the Notification. The ACCC requested submissions be provided by 26 April 2007.

The ACCC has received public submissions from:

- North West Supermarkets
- Le Max Group Supermarkets
- A. C. United Pty Ltd (t/a Ascot Market)



- Kingsbury & Greenbrook Licensed Foodworks
- IGA Plus Liquor Fairfield
- IGA Huntingdale Cellars

Copies of these submissions are attached. All publicly available submissions are also posted on the ACCC internet site at <[www.accc.gov.au](http://www.accc.gov.au)>.

The attachments to one interested party submission have not been placed on the ACCC's public register as they contain commercially sensitive information.

In addition to commenting on any issues raised in interested party submissions please provide further information in relation to the following.

*Effect on retailers without software or relevant software*

How, if at all, will grocery retailers who have different software to the Software Brands, or no software at all, be able to obtain the Data, and/or order stock and receive invoices from Metcash?

*Independent convenience retailers*

Metcash states in its Submission that the vast majority of retailers already run one of the Software Brands and therefore the conduct will only involve approximately 100 retailers that do not already run one of the Software Brands, as well as new retailers who in the future contract with Metcash.

In my letter dated 23 February 2007 I requested the 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.

I note at paragraph 3.1 of Metcash's supplementary submission dated 16 March 2007 (**the Supplementary Submission**) it is stated that the notified conduct will extend to approximately 2,500 independent convenience retailers who are customers of Campbells Cash and Carry (a wholly owned subsidiary of Metcash). Please advise whether these independent convenience retailers were included in Metcash's assessment of the number of retailers that acquire Data from Metcash that do not already run one of the Software Brands. If they were not so included please advise whether they:

- are required to use the Software Brands, and
- if yes, provide details of the relevant retailers who do not currently use one of the Software Brands.

*Foodworks*

Metcash provided the ACCC with a list of 119 retailers who do not currently run one of the Software Brands. Included in that list are a number of independent grocery retailers that appear to trade under the Foodworks banner.

In this respect I refer you to the Supplementary Submission at paragraph 3.2, which states that the Review Process will have no impact on Foodworks bannered retail outlets because Data is provided by Metcash to the Foodworks head office, which in turn repackages the Data and sends it on to its members.

While not expanded upon in their formal submission, one interested party has further advised the ACCC that while AUR Foodworks handle host files from Metcash and on-supplies these to Foodworks retailers, the Foodworks retailers place their orders electronically directly with Metcash and Metcash in turn provides the Foodworks retailers with an electronic invoice.

Please advise whether any Foodworks bannered grocery retailers will be subject to the notified arrangements. Even if they are not subject to the notified arrangements please provide further details in relation to how the notified conduct might affect Foodworks retailers' ability to send orders and receive invoices electronically if they do not use one of the Software Brands.

#### *Further issues*

In addition, the ACCC has received further information which raises serious concerns in respect of the cost to retailers of changing software and possibly hardware, as well as the information flow from a retailer's system back to Metcash which appears may be a function enabled under the software provided by the Software Brands.

#### *Costs*

As part of its public consultation process the ACCC has been provided with an email from Metcash to a retailer in which Metcash indicates it cannot guarantee that the Software Brands will interface with retailers' hardware. Retailers have indicated they have made significant investments in their hardware and therefore the notified arrangement is cause for concern.

In this regard please advise Metcash's estimate of the potential cost to retailers in the event they will also be required to purchase new hardware in order to interface with the required software. Please take into account the necessity for retailers to develop new training materials and retrain staff but exclude depreciation of existing hardware.

Further, has Metcash estimated the cost savings to it from reducing the number of software brands from 40 to eight? If so, please provide details.

#### *Information flows*

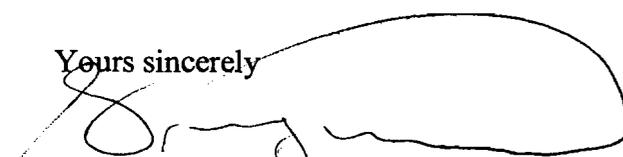
I note in the Supplementary Submission, Metcash advise some of the rationale for the proposed conduct. In particular I refer you to paragraph 2.1(c) in which Metcash advises that *the proposed rationalisation of software providers will enable Metcash to coordinate the extraction of scan data from all IGA retailers.*

Please advise whether this information will be compulsorily retrieved from retailers' systems or whether this will be a voluntary decision by the retailer, who may, if they so choose have this function excluded from the software.

To further assist the ACCC's consideration of this matter I would appreciate your written response addressing the concerns raised and any comments you may care to make in relation to interested party submissions by 25 May 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@accc.gov.au](mailto:gina.dettorre@accc.gov.au), or by telephone on 03 9290 1487.

Yours sincerely



Scott Gregson  
General Manager  
Adjudication Branch