

FILE No:

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Form G

Commonwealth of Australia
Trade Practices Act 1974 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (6) or (7) of that Act in which the person giving notice engages or proposes to engage.

1. Applicant

(a) **Name of person giving notice:**

Notification is given by the following companies:

N92973
Commonwealth Bank of Australia ACN 123 123 124 of Level 7, 48
Martin Place, Sydney, NSW (the "Bank");

and

the following companies referred together as the "Bonus Partners":

N92974
Optus Mobile Pty Ltd ABN 65 054 365 696 and **Optus Internet Pty** *N92975*
Ltd ABN 14 083 164 532 of 101 Miller St, North Sydney, NSW 2060
("Optus")

N92976
Clive Peeters Limited ABN 52 058 868 018 of 289-311 Bayswater
Road, North Bayswater, VIC, 3153 ("Clive Peeters")

N92977
Sanity Music Stores Pty Ltd ABN 61 072 187 298 of 38-48 Ashford
Avenue, Milperra, NSW 2214 ("Sanity")

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

The Bank provides banking and financial services, including credit card facilities, and holders of credit cards issued by the Bank are offered an optional membership into the Bank's loyalty program, Commonwealth Awards Program ("Program").

Optus is a seller and provider of telecommunications and associated products.

Clive Peeters is a premium electrical & computer retailer with a number of stores across Australia.

Sanity is the largest retailer of movies and music in Australia with over 200 outlets.

(c) **Address in Australia for service of documents on those persons:**

Sarah Goddard-Jones
Executive Manager, Regulatory Policy
Group Compliance – Group Risk Management
Commonwealth Bank of Australia
Level 8, 48 Martin Place
Sydney NSW 2000

2. Notified arrangement

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

The Bank offers credit cards and optional membership into the Program. Members of the Program ("Members") who earn points in the Program may redeem those points for goods, services, vouchers and airline loyalty program points.

The Bonus Partners offer the goods and services described in 1(b) above.

(b) **Description of the conduct or proposed conduct:**

Members earn points in the Program from some use of their Bank issued credit cards. The Bank will provide additional points ("Bonus Points") to Members who purchase goods or services from Bonus Partners.

Members will be offered from time to time through the Program newsletter and collateral marketing material, Bonus Points and other non-cash benefits (for example, the right to enter into a trade promotion, and the provision of additional goods or services at a discounted price or without charge) (referred to from this point as "Benefits") where specific goods and services and specific packages of goods and services offered by individual Bonus Partners are purchased in full or in part by a Member using the Member's credit card linked to the Program.

Bonus Partners propose to give or allow, or offer to give or allow, a discount or allowance in relation to the supply of products and services, or to supply or offer to supply the goods or services at a particular price, or to supply or offer to supply particular goods, services or Benefits in relation to the supply of the products or services, on the condition that a person is either a Member, or that the Member acquires the goods or services in full or in part by using the Member's credit card linked to the Program.

The proposed conduct will be of benefit to the public as it will:

- promote competition amongst credit card and loyalty program providers and prompt competitors of the Bank to provide pro-competitive value added benefits to the benefit of their loyalty program members; and

- promote competition and place downward pressure on pricing for products and services provided by the competitors of the Bonus Partners.

The significant public benefits outlined above outweigh any potential public detriment considered to arise from the conduct.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

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

Members and potential members.

(b) Number of those persons:

(i) At present time:

1.55 million

(ii) Estimated within the next year:

1.60 million

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

Not applicable

4. Public benefit claims

(a) Arguments in support of notification:

The proposed conduct will be of benefit to the public as it will:

- promote competition amongst credit card and loyalty program providers and prompt competitors of the Bank to provide pro-competitive value added benefits to the benefit of their loyalty program members; and
- promote competition and place downward pressure on pricing for products and services provided by the competitors of the Bonus Partners.

The significant public benefits outlined above outweigh any potential public detriment considered to arise from the conduct.

(b) Facts and evidence relied upon in support of these claims:

Award programs in Australia allow members to use their credit cards to purchase goods and services. In return they gain a number of benefits:

- 1) Members earn points for spending on their card and in return can redeem those points for a variety of services and goods including merchandise, vouchers and travel. These points are a form of currency and hold value. Members can then exchange this currency for whatever they feel they would like to redeem for. In essence

Award programs pay members money (in the form of points) for spending on their credit card.

- 2) Members also receive extra bonus points for specific partners in award programs. This is designed so that members can earn extra currency at their favorite stores, where they may shop regularly, which they can then choose to redeem at these partners instead of using cash.
- 3) Members will also on a regular basis be able to take advantage of specific discount offers and special promotional offers i.e. 10% off when you purchase at X store or receive 5,000 points when you purchase x service.

Award programs are very popular. For the Bank's program alone, billions of award points are accumulated and redeemed each year by customers.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2(a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

Most banks in Australia offers an Award program scheme in some form or another as part of their credit card offering. This includes National Bank of Australia, Citibank, ANZ, Westpac and of course the Bank. Banks offer a reward scheme for a number of reasons. The most significant being to encourage loyalty to their brand so that customers engage in the bank's services and products and in return members receive benefits for being in the program. Other factors include Partner affiliations which allow members to purchase goods at selected partners and in exchange earn or be able to redeem points at those partner stores. There is a great deal of competition between banks as they attempt to offer new rewards in order to retain existing customers and acquire new customers.

6. Public detriments

- (a) **Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2(a) above and the prices of goods or services in other affected markets:**

The proposed conduct will have little or no public detriment.

The proposed conduct will not lessen competition in the relevant banking and financial services markets. Competition in the relevant markets is vigorous and consumers will continue to have the choice from a large number of credit card issuers with their associated loyalty programs. As the markets are extremely competitive, any decision by consumers on which credit card and loyalty program to use can be made solely on an assessment of the merits of each issuer's product.

The proposal will also not lessen competition in the industries of the Bonus Partners as each of these industries is highly competitive, which enables consumers to make choices based on the price, value and quality of the products and services offered. Goods and services offered by the Bonus Partners are available for purchase by consumers independent of their membership in the Program.

(b) Facts and evidence relevant to these detriments:

As stated above most major card issuers offer an award scheme to the general population and engage in vigorous competition for new and existing customers. Members have a wide range of goods and services available to them as well as a wide range of card schemes to select from to suit their particular needs and desires. All card issuers offer varied levels of cards so that members can select which type of cards best suit their needs (e.g. some cards offer only selected reward offers while others offer greater variety).

7. Further information

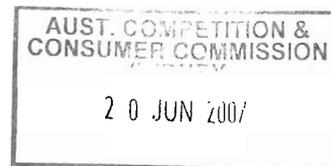
(a) **Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:**

Sarah Goddard-Jones
Executive Manager, Regulatory Policy
Group Compliance – Group Risk Management
Commonwealth Bank of Australia
Level 8, 48 Martin Place
Sydney NSW 2000

Phone: (02) 9378 7993

Dated: 30th May 2007

Signed by/on behalf of the applicant



..... (Signature)

Sarah Goddard-Jones
Executive Manager, Regulatory Policy