

[RESTRICTION OF PART OF PUBLICATION CLAIMED]

**Metcash Trading
Limited**

31 May 2007

**Further submission to
exclusive dealing
notification**

31 May 2007

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1 Introduction

This submission is provided in response to a letter received from the Australian Competition and Consumer Commission dated 11 May 2007 (**Commission's Letter**). The Commission's Letter notes that it has received six public submissions in relation to the exclusive dealing notification lodged by Metcash Trading Limited (**Metcash**) on 1 November 2006 (**Notification**) and invites Metcash to comment on any issues raised in those submissions. In addition, the Commission has requested further specific information in relation to the notified conduct, which involves Metcash supplying pricing and other host support data (**Data**) to retailers on condition that each retailer acquire software from one of eight software brands (**Software Brands**).

This submission (referred to hereafter as the **Further Submission**) supplements the information provided by Metcash in its submission accompanying the Notification dated 1 November 2006 (**Submission**) and its supplementary Submission dated 16 March 2007 (**Supplementary Submission**).

This Further Submission:

- addresses each of the concerns identified by the Commission in the Commission's Letter;
- comments on the issues raised in the interested party submissions; and
- responds to the Commission's request for specific further information.

2 Concerns raised by the Commission

Set out below is Metcash's response to each of the specific concerns raised in the Commission's Letter.

(a) Effect on retailers without software or relevant software

The Commission's Letter asks 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.

In response, Metcash provides the following information:

- If the retailer has no software at all, then it will continue to have no means of accessing the Data. This is no different to the current situation.
- Retailers using software supplied by non-accredited software vendors will still be able to access host data and/or electronic invoicing. However, the ability of their software to use the data will not be guaranteed or supported by Metcash.

All retailers, including those who have no software system, will continue to be able to electronically order stock from Metcash. This is no different to the current situation. Stock can be ordered using a Metcash supplied PDA (Portable Data Assistant). Further information regarding PDAs is provided in the Supplementary Submission at 4.

(b) Independent convenience retailers

The Commission's Letter asks Metcash to advise whether the 2,500 independent convenience retailers who are customers of Campbell's Cash & Carry Pty Limited (**Campbell's Cash & Carry**) 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.

In response, Metcash confirms that these customers were included. In the Supplementary Submission, Metcash provided a list of all IGA and other independent grocery retailers (which includes Campbells Cash & Carry customers) who acquire Data from Metcash, who do not currently use one of the Software Brands. [RESTRICTION OF PART OF PUBLICATION CLAIMED].

(c) Foodworks

The Commission's Letter asks Metcash to advise whether any Foodworks bannered grocery retailers will be subject to the notified arrangements and to 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.

As stated in paragraph 3.2 of the Supplementary Submission, Metcash provides data to the Foodworks head office, and Foodworks then repackages the data and supplies it to its members. Metcash does not have a direct relationship with Foodworks retailers in relation to the provision of Data, and any rationalisation strategy involving Foodworks retailers would be undertaken by Foodworks at its discretion.

As stated in paragraph 2(a) above, Foodworks retailers will remain able to order stock from Metcash, and will have continued access to host data and/or electronic invoicing.

(d) Costs to retailers

The Commission's Letter asks Metcash to estimate the potential cost to retailers (including the costs of developing new training materials and retraining staff but excluding depreciation of existing hardware) in the event they will be required to purchase new hardware in order to interface with the Software Brands.

In response, Metcash submits that it is impossible to provide an accurate estimate of the potential costs to retailers generally, as each store will need to be assessed on a case by case basis. Many of the Software Brands are able to re-use existing hardware owned by the retailer, and their vendors will therefore only charge retailers a licence fee and billable hours for installation of software and training. [RESTRICTION OF PART OF PUBLICATION CLAIMED] Importantly, every retailer must incur training costs irrespective of whether or not it currently has one of the Software Brands in its stores. Staff IT training is an ongoing cost to independent retailers – it is necessary whenever new modules are released by the software vendor and whenever new staff are employed. Given high staff turnover in the retail grocery industry, the necessity for training is ongoing.

(e) Cost savings to Metcash

The Commission's Letter asks whether Metcash has estimated the cost savings it will achieve through reducing the number of Software Brands used by retailers from 40 to eight.

Metcash has not estimated in any detail the cost savings to it from reducing the number of Software Brands. However, Metcash has not and believes it will not receive any direct cost benefit through the rationalisation process.

As discussed in the Supplementary Submission, Metcash's purpose in implementing this strategy is to strengthen the competitiveness of its customer base by enhancing technology usage. In this regard, the efficiencies to be achieved through the rationalisation of retailer software systems will enable the implementation of the competitive strategies outlined at 2.1 of the Supplementary Submission (which are currently unable to be implemented partly due to the costs involved).

(f) Information flows

[RESTRICTION OF PART OF PUBLICATION CLAIMED]

3 Interested party submissions

The Commission has received public submissions from:

- North West Supermarkets;
- Le Max Group Supermarkets;
- AC United Pty Ltd (t/a Ascot Market);
- Kingsbury and Greenbrook Licensed Foodworks;
- IGA Plus Liquor Fairfield; and
- IGA Huntingdale Cellars.

The submissions address three themes – cost, reduction in competition in the grocery retailers software market, and the exclusion of certain software products from the Software Brands. These themes are considered in detail below.

3.1 Cost

Five interested parties have expressed concerns in respect of the potential cost to retailers of acquiring one of the Software Brands. In particular, the following comments have been made:

- Le Max Group Supermarkets' submission states that it could not justify the cost of changing its hardware and software and modifying all training modules and retraining staff.
- IGA Plus Liquor Fairfield and IGA Huntingdale Cellars' submissions state that "...because of the supermarket chains, independent retailers are forced to keep prices at low profit margins and replacing the store computer systems would put a financial burden on the business."
- North West Supermarkets asks to be compensated for the cost of replacement equipment.
- Ascot Market's submission states that it understands the reasoning behind Metcash's proposed conduct. However, it is concerned that "as a small retailer [Ascot Market] cannot afford, financially or time wise, to carry out such things again". According to its submission, in 2006, Ascot Market purchased a new computer system and software (including new software for point of sale, modem, and new barcode handy terminal) as it was advised by Metcash that it would no longer be accepting orders through the phone line as in the past but rather via the computer line (modem). The submission states that this was extremely costly to Ascot Market due to training and installation costs.

Metcash responds to the above submissions as follows:

- As stated in paragraph 4(a) of the Supplementary Submission, the notified conduct will result in only a relatively small number of retailers being required to change their software system, as the overwhelming majority of retailers currently use one of the eight Software Brands (including 92 per cent of all IGA retailers).
- Irrespective of which brand of software the retailer uses in its store, it will still incur ongoing costs with respect to training, which is necessary whenever new modules are released by software vendors and new staff are employed. See paragraph 2(d) above.
- Metcash has taken into consideration the time and cost a small number of retailers will likely encounter as a result of the notified conduct. In recognition of the switching costs, Metcash has allowed retailers 30 months within which to change their software systems. No change to the status quo will occur until July

2009, allowing retailers to fully depreciate the system they currently use. See section 4(a) of the Supplementary Submission headed "Purchase of additional software licence".

- If the installation of the new software system is properly managed by retailers, then the process should have little or no impact on trading. See paragraph 4(a) of the Supplementary Submission headed "Loss of business caused by disruption".
- [RESTRICTION OF PART OF PUBLICATION CLAIMED]

3.2 Reduction in competition in the grocery retailers software market

Two identical submissions, the IGA Plus Liquor Fairfield submission and the IGA Huntingdale Cellars submission, state that the notified conduct will "stop competition in the market so therefore making it easier for the specific software companies to charge a higher price for maintenance and updates". No further comment is provided.

In response, Metcash submits that the driving rationale for the proposed conduct is increased competition in the retail grocery market through enhanced technology usage by independent retailers. Far from reducing competition in the provision of software to retailers, the notified conduct seeks to encourage and promote development, innovation and price competitiveness by software vendors (through the Accreditation Programme and ongoing monitoring).¹ As stated above, the large majority of independent retailers (over 90 per cent) currently use one of the eight Software Brands, and the providers of these brands will continue to compete to provide retailers with excellent service at a competitive price. This point is addressed in the Supplementary Submission at 4(b).

Further, Metcash's customers compete in the retail grocery sector, which is dominated by Coles and Woolworths, who both have the benefit of a single, homogenous IT platform with which to manage and control their supermarkets and comprehensive marketing offers.

3.3 Software Brands

A number of the public submissions, while not opposed to the notified conduct, request that certain software vendors be included as one of the Software Brands – namely, Fujitsu and POSWORLD.

(a) Fujitsu Australia Limited

Submissions by Le Max Group and North West Supermarkets submit that Fujitsu should be included as one of the Software Brands.

(1) Fujitsu is an industry leader

Le Max Group's submission states that Fujitsu is "one of the largest suppliers of scanning equipment" and is "used by the chain stores in Australia as well as throughout the world."

North West Supermarkets' submission states that:

- Fujitsu is a "well established industry leader";
- "Fujitsu is known as a benchmark product within the supermarket industry";
- Fujitsu systems have been the registers of choice for Safeway and Woolworths supermarkets for the past 10 years; and

¹ Details regarding the Accreditation Programme are provided in paragraph 2.2(7) and Appendix 29 of the Supplementary Submission.

- approximately 68 Victorian supermarkets use Fujitsu's products (including software and hardware), including five Leo Blake stores, 44 Ritchies Stores, nine Fisher's stores, two Boundy stores, five Morgan's stores and the three North West Supermarket stores.

In response, Metcash submits that:

- [RESTRICTION OF PART OF PUBLICATION CLAIMED]
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- [RESTRICTION OF PART OF PUBLICATION CLAIMED]
- The Software Brands currently provide software to over 90 per cent of independent grocery retailers.

(2) Fujitsu completion of self assessment survey

[RESTRICTION OF PART OF PUBLICATION CLAIMED]

(b) POSWORLD

The submissions by Kingsbury & Greenbrook Licensed Foodworks, IGA Plus Liquor Fairfield, and IGA Huntingdale Cellars submit that POSWORLD should be included as one of the Software Brands.

IGA Plus Liquor Fairfield and IGA Huntingdale Cellars submissions state that they are "currently using POSWORLD software and are extremely happy with its performance, it is cost effective and easy to use for its front and back office operations".

Kingsbury & Greenbrook Licensed Foodworks submission states that Metcash has not analysed or compared the software systems, and have not taken into account the needs or requirements of retailers.

In response, Metcash submits that it has conducted a thorough review process of the available software systems, and that this process was primarily motivated by Metcash's desire to ensure that the needs and requirements of its customers (independent retailers) are met. This process is explained in detail in the Supplementary Submission at section 2.

A self-assessment survey was completed by POSWORLD and is provided as Appendix 13 to the Supplementary Submission (listed under EG Business Equipment Pty Ltd). Appendix 25 to the Supplementary Submission lists the 23 software vendors who completed and returned the self-assessment survey and their respective scores and rankings. As set out in the Supplementary Submission, the Retail IT Steering Committee recommended that the top ten ranking vendors be selected for further in-depth assessment. [RESTRICTION OF PART OF PUBLICATION CLAIMED].

4 Conclusion

A very small number of retailers have written to the Commission expressing concerns regarding the notified conduct. These submissions overwhelmingly focus on the perceived cost to that retailer of switching to one of the eight Software Brands. As stated above, Metcash disputes the submissions made by these retailers in respect of cost. While limited costs may be incurred by a small number of retailers, these costs have been significantly minimised by Metcash through its software review process and the delayed implementation of the notified conduct, and are far outweighed by the benefits to all independent retailers that will result from the notified conduct.

Without exception, the interested party submissions fail to raise any significant concerns regarding likely detriment to the public resulting from the notified conduct. Further, it is clear that any concerns that have been raised by individual retailers (to the extent that they are not fully resolved by Metcash in its submissions) are far outweighed by the significant public benefit to be achieved through the conduct – that is, enhanced competition in the retail grocery market. The fact that almost all of the approximately 2,500 independent retailers who currently acquire Data from Metcash have not made submissions opposing the notified conduct is evidence of its overwhelmingly pro-competitive motivation and effect. Further, no software vendors have made public submissions opposing the notified conduct.

Metcash has provided the Commission with several comprehensive submissions outlining the pro-competitive and beneficial nature of its proposed conduct. To Metcash's knowledge, no submissions have been provided to the Commission that seriously contradict the substance of these submissions. Therefore, Metcash submits that the notified conduct should not be of concern to the Commission.

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