

29 JUL 2008

Dr Richard Chadwick  
General Manager  
Adjudication Branch  
Australian Competition & Consumer  
Commission  
GPO Box 3131  
Canberra ACT 2601  
[richard.chadwick@accc.gov.au](mailto:richard.chadwick@accc.gov.au)

29 July 2008  
Matter 81408691  
By email

Dear Dr Chadwick

## **MYOB Australia Pty Ltd notification lodged under section 93 of the Trade Practices Act 1974**

We enclose a notification in respect of conduct which may raise issues under the third-line forcing provisions of the *Trade Practices Act* (the **Act**). The notification concerns proposed conduct of MYOB Australia Pty Ltd (**MYOB**).

We enclose:

- a completed Form G in respect of the notification;
- a cheque for \$100 being the relevant fee for lodgement of the notification by a proprietary limited company; and
- a copy of the current draft of the relevant MYOB Pilot Program Terms and Conditions (**Attachment 1** to Form G).

### **1 Background**

For many years MYOB has been involved in supplying accounting and business management computer software designed specifically for small to medium sized business enterprises.

From in or around August 2008, MYOB proposes to offer a multi-functional web based accounting system (the **Product**) to certain existing customers for an initial pilot period which is expected to be less than 12 months (**Pilot Program**). MYOB also expects to make the Product more broadly available after the Pilot Program.

The Product is a web based accounting tool which records, tracks and manages business finances; electronically captures, allocates and tracks expenses, bills, invoices and payments; and assists in the calculation of business performance and BAS/GST amounts.

A key feature of the Product is its interaction with the user's bank, which offers them the ability to:

- receive and store daily updates of bank account balance and transaction details;
- produce reports based on the stored bank account details; and
- use the stored bank account transaction details for the purpose of automatically creating cash-based accounting entries.

Doc 3.005141475.13

To the extent that the Product continues to be offered after the Pilot Program, MYOB is considering offering additional features, including:

- facilitating payments being made to users of the service via BPAY, POSTbillpay in person, and by credit card; and
- enabling users to make electronic payments to their employees or suppliers and to send remittance advices from their MYOB accounting software.

**2 Potential third line forcing conduct**

The Product potentially involves third-line forcing conduct and is the subject of this notification. The possible third-line forcing conduct arises because the only bank with whom MYOB has agreed terms and conditions for the supply of bank information and related products to support the Product is the Commonwealth Bank of Australia (CBA). MYOB has a long standing commercial relationship with CBA, which has assisted MYOB with the development of the Product.

**3 Benefits of the Product**

During the Pilot Program the Product will be made available to certain existing MYOB customers. If the Product is rolled out after the completion of the Pilot Program, additional existing as well as prospective MYOB customers may also wish to use the new product.

We submit that making the Product available will only result in benefits to those customers who wish to use it.

During the Pilot Program users will not be charged usage or service fees by MYOB and CBA will not levy bank fees on users for the first three months of the program. After this time standard CBA account fees will be charged.

In the event that MYOB offers the Product to customers after the expiration of the Pilot Program, MYOB will apply ordinary commercial charges which are likely to include a monthly access fee, electronic payment fees, invoice processing fees and CBA merchant service fees.

We submit that there is no detriment to competition, or to any person, from MYOB developing this product and making it available to qualifying customers who may find it a valuable service for the efficient operation of their businesses.

Please feel free to contact us should you wish to discuss this matter.

Yours sincerely



**Bob Baxt**  
Partner  
Freehills

+61 3 9288 1628  
+61 411 221 717  
bob.baxt@freehills.com

**Peter McDonald**  
Senior Associate  
Freehills

+61 3 9288 1597  
+61 422 815 933  
peter.mcdonald@freehills.com

# FORM G

Regulation 9

[Front of Form]

COMMONWEALTH OF AUSTRALIA  
*Trade Practices Act 1974 – Sub-section 93(1)*

## EXCLUSIVE DEALING NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d), of that Act in which the person giving notice engages or proposes to engage.

---

(PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM)

### 1. Applicant

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

*(Refer to direction 2)*

MYOB Australia Pty Ltd (MYOB) N93528

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

*(Refer to direction 3)*

The provision of:

- accounting and business management computer software; and
- certain transaction services;

primarily to small to medium business enterprises.

(c) **Address in Australia for service of documents on that person:**

c/- Peter McDonald  
Senior Associate  
Freehills  
101 Collins Street  
Melbourne VIC 3000

### 2. Notified Arrangement

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

MYOB proposes to offer a web based accounting tool (the **Product**) which records, tracks and manages finances; electronically captures, allocates and tracks expenses, bills, invoices and payments; and assists in the calculation of business performance and BAS/GST amounts. Future functionality may include the ability to make and receive payments.

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

The proposed conduct involves MYOB supplying, or offering to supply, the Product on the condition that the customer maintain bank account/s and enter into agreement/s with a financial institution with whom MYOB has arrangements.

The only financial institution that MYOB presently has arrangements in respect of the Product is the Commonwealth Bank of Australia.

*(Refer to direction 4)*

**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:**

*(Refer to direction 5)*

Existing and prospective MYOB customers. These customers are likely to be small to medium sized enterprises.

**(b) Number of those persons:**

**(i) At present time**

The Product is not presently available.

**(ii) Estimated within the next year**

*(Refer to direction 6)*

It is intended that MYOB will offer a pilot version of the Product from around August 2008 for a limited period (expected to be less than 12 months). It is estimated that around 50 people may sign up to use the product during the pilot program period. While MYOB presently intends to offer the Product to additional small businesses after the completion of the pilot program, at this stage the number of businesses is unknown.

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

N/A

**4. Public benefit claims**

**(a) Arguments in support of notification:**

*(Refer to direction 7)*

See attached covering letter.

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

See attached covering letter.

**5. Market definition**

**(a) 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):**

*(Refer to direction 8)*

The proposed conduct is related to markets in which:

- business management software; and
- financial services,

are provided to small and medium enterprises.

The proposed conduct has no anti-competitive impact on either market, however they may be properly defined.

**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;**

*(Refer to direction 9)*

See attached covering letter.

- (d) **Facts and evidence relevant to these detriments:**

See attached covering letter.

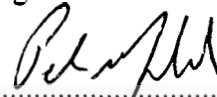
**7 Further information**

- (a) **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice**

Peter McDonald  
Senior Associate  
Freehills  
101 Collins Street  
Melbourne VIC 3000

Dated 29 July, 2008

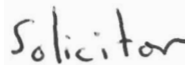
Signed on behalf of the applicant giving notice



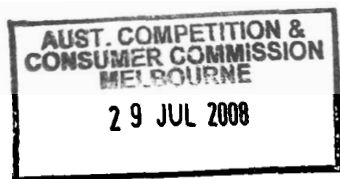
.....  
(Signature)



.....  
(Full Name)



.....  
(Description)



**DIRECTIONS**

**1. DIRECTIONS**

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible

---

## Attachment 1

### Draft pilot program terms and conditions relevant to this notification

---

*To use [the Product] during the Pilot Program Period you will need a computer and an account with the Commonwealth Bank of Australia (CBA). Before opening an account, you will be provided with a Product Disclosure Statement (PDS) issued by CBA. You should consider the CBA PDS carefully prior to making a decision to participate in [the Product].*