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Australian Competition and Consumer Commission  
Level 3, AAMI Building  
500 Queen Street  
Brisbane, Qld, 4000



ACN 003 377 188

Level 13, 316 Adelaide St  
Brisbane Qld 4000

Tel 07 3170 8199  
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teeny.roberts@flightcentre.com

15 September 2009

Dear Sir or Madam

**FLIGHT CENTRE LIMITED – NOTIFICATION OF THIRD LINE FORCING CONDUCT**

I enclose the following for your reference:

1. Form G – Exclusive Dealing Notification;
2. Annexure 1 in support of Notification; and
3. Cheque for \$100 as payment of the required fees.

If you have any questions in relation to this notification or require further information please contact me.

Yours sincerely

A handwritten signature in cursive script that reads "Teeny Roberts".

Teeny Roberts  
Legal Counsel  
Flight Centre Limited



# 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 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

## 1. Applicant

(a) Name of person giving notice:

N94171 Flight Centre Limited ("**FCL**")  
ACN 003 377 188

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

FCL operates (amongst other things) a retail travel agency service, including an online travel agency service that allows customers to search, compare and book flights with different service providers.

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

Flight Centre Limited  
Legal Services  
Level 2, 545 Queen Street  
Brisbane, Qld, 4000

## 2. Notified arrangement

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

The supply of online travel agency services via FCL's website, [www.flightcentre.com.au](http://www.flightcentre.com.au) (**Flight Centre Services**).

The acquisition of online payment services from PayPal Australia Pty Ltd (ABN 93 111 195 389) (**PayPal**). PayPal provides a payment processing system for online vendors and auction sites which allows payment and money transfers to be made securely through the internet (**PayPal Services**).

(b) Description of the conduct or proposed conduct:

FCL proposes to, from time to time:

(i) supply or offer to supply entry into promotions or competitions to customers who acquire Flight Centre Services; or

(ii) give or allow or offer a discount, allowance, rebate or credit to customers who acquire Flight Centre Services,

on the condition that the customer also acquires one or more PayPal Services.

FCL proposes to refuse, from time to time, to:

- (iii) supply or offer to supply entry into promotions or competitions to customers who acquire Flight Centre Services; or
- (iv) give or allow or offer a discount, allowance, rebate or credit to customers who acquire Flight Centre Services,

for the reason that the customer has not acquired, or agreed to acquire, one or more PayPal Services.

For example:

- (v) FCL proposes to offer entry into a competition or promotion to a customer who acquires Flight Centre Services, on the condition that they also acquire PayPal's payment services to purchase the travel products.
- (vi) FCL proposes a 'cash back' offer to a customer who purchases certain products, e.g. domestic flights through its website, on the condition that they acquire PayPal's payment services to purchase the products.

**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:  
Customers and potential customers of Flight Centre Services.
- (b) Number of those persons:
  - (i) At present time:  
Not available.
  - (ii) Estimated within the next year:  
Not available.
- (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 notified conduct will generate a number of public benefits. Please refer to Annexure 1.
- (b) Facts and evidence relied upon in support of these claims:  
Please refer to Annexure 1.

**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):

Please refer to Annexure 1

**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 notified conduct is not likely to cause any identifiable detriment to the public.  
Please refer to Annexure 1.

- (b) Facts and evidence relevant to these detriments:

Please refer to Annexure 1.

**7. Further information**

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

Teeny Roberts  
Flight Centre Limited  
Legal Services  
Level 2, 545 Queen Street  
Brisbane, Qld, 4000

Dated 15 September 2009

Signed by/on behalf of the applicant

*CG-2009*  
.....  
(Signature)

*CHRIS CARAS-TOFFAT*  
.....  
(Full Name)

*Flight Centre Limited*  
.....  
(Organisation)

*Legal Counsel*  
.....  
(Position in Organisation)

## **Annexure 1**

### **1. Background**

- 1.1 FCL owns and operates (amongst other things) a retail travel agency service, including an online travel agency service that allows customers to search, compare and book flights with different service providers via FCL's website [www.flightcentre.com.au](http://www.flightcentre.com.au) (*Flight Centre Services*).
- 1.2 PayPal provides a payment processing system for online vendors and auction sites which allows payment and money transfers to be made securely through the internet (*PayPal Services*).

### **2. Nature of the proposed conduct**

- 2.1 FCL proposes, from time to time, to offer customers and potential customers, entry into various promotions or competitions when they acquire the Flight Centre Services on the condition that they acquire the PayPal Services.
- 2.2 FCL also proposes to make a 'cash back' offer, or give a discount to customers and potential customers when they acquire the Flight Centre Services on the condition that they use the PayPal Services.

### **3. Notified Conduct**

- 3.1 In order to minimise the risk of contravening sections 47(6) and (7), our FCL wishes to notify the conduct under section 93(1) of the TPA. The conduct is set out in the attached Form G.

### **4. Competition issues**

- 4.1 FCL submits that the Commission should not serve a notice under section 93(3A) of the TPA because:
  - (a) the conduct in question will not adversely affect competition in any relevant market; and
  - (b) the conduct in question will result in public benefits and no identifiable public detriment.
- 4.2 The notified conduct comprises the offer of discounts and benefits on the optional acquisition of services from PayPal as an additional benefit to customers who choose to acquire the online travel agency services from FCL. The conduct in no way limits the genuine choice of customers choosing whether or not to acquire any travel agency services from FCL or whether to acquire PayPal's payment services or any other method of purchasing services online. By retaining the genuine choice of customers, the conduct is not inherently anti-competitive.
- 4.3 In any event, we do not consider that the proposed conduct will have any adverse effect on competition in any relevant market. We consider the markets primarily relevant to the assessment of this notification are the markets for online travel agency services and the market for online payment processing systems.

These markets are highly competitive and characterised by relatively low barriers to entry. There are large numbers of websites that offer travel agency services and online payment service providers competing in the relevant markets. We do not consider that the conduct will create barriers to entry or otherwise harm competition in either of the relevant markets.

### **Public benefits**

- 4.5 Customers and potential customers of FCL's online travel agency services are entitled to a benefit or discount on services purchased from FCL when using PayPal.
- 4.6 The notified conduct is a common form of sales promotion, under which FCL and PayPal are seeking to compete by offering incentives to customers of FCL to use PayPal's payment system.

The notified conduct is pro-competitive and will generate a number of public benefits, as it will:

- (a) provide FCL customers with the opportunity to obtain various benefits and rewards (for example, entry into competitions and promotions);
- (b) provide FCL customers with the opportunity to obtain a number of different products and services at discounted rates or the benefit of cash back offers;
- (c) provide FCL customers with the increased opportunity to use PayPal as a payment method and provide information to customers about the availability and potential benefits of this payment system;
- (d) provide FCL customers with greater convenience when purchasing FCL services and greater flexibility in arranging their financial affairs; and
- (e) encourage competitors of FCL and PayPal to offer similar benefits and therefore promote competition in the relevant market.

### **Public detriment**

- 4.8 We submit that the proposed conduct is not likely to cause any identifiable detriment to the public.
- 4.9 The conduct in no way limits the genuine choice of consumers in choosing whether to acquire travel agency services from FCL rather than other competing suppliers. Customers are not compelled to use the PayPal Services, they are simply presented with the option of obtaining a benefit or discount on FCL's services from time to time, if they choose to use PayPal's payment method. The conduct does not have the necessary element of 'compulsion' and is not inherently anti-competitive.
- 4.10 There is also no restriction on the ability of customers to acquire products from other suppliers of payment processing methods that compete with PayPal, such as credit and debit card providers. These suppliers remain free to compete with PayPal to increase their own sales.
- 4.11 The overall effect of the conduct in the relevant markets, as discussed above, is insignificant and is outweighed by the public benefits.

## **5 Conclusion**

- 5.1 For the reasons set out above, we do not consider the Commission should serve a notice under section 93(3A) of the TPA in respect of the attached notification as the proposed conduct will cause little (if any) identifiable detriment, will generate public benefits and will not adversely affect competition in any relevant market.
- 5.2 Moreover, the Commission has reviewed a number of notifications in relation to similar arrangements in the past between online suppliers and PayPal, such as the application by Webjet Limited and Webjet Marketing Pty Ltd and Jetabroad Pty Ltd, and has allowed the notified conduct to proceed on the basis it is likely to result in a net public benefit.