

FILE No:

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Jetabroad Pty Limited
ACN 115 848 363

251/813 Pacific Highway
Chatswood NSW 2067

Telephone +61 2 9410 3059
Facsimile: +61 2 9475 4408

andrew.chivers@jetabroad.com
www.jetabroad.com

14 October 2009

Australian Competition & Consumer Commission
GPO Box 3131
Canberra ACT 2601

Dear Sir/Madam,

Notification of third line forcing conduct – Jetabroad and PayPal

I enclose the following for your reference:

- Notification under section 93(1) *Trade Practices Act 1974* (Form G)
- Annexure 1 in support of the Notification
- A cheque in the amount of \$100 as payment of the required fees

If you have any questions in relation to this notification or require any further information, please don't hesitate to contact me.

Yours faithfully,

A handwritten signature in dark ink, appearing to read "Andrew Chivers", written over a light grey rectangular background.

Andrew Chivers
Business Development Coordinator



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:

N94266 Jetabroad Pty Limited (ACN 115 848 363) ("**Jetabroad**")

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

Jetabroad owns and operates (among other things) an online travel agency that allows customers to search for and book flights with different service providers.

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

Jetabroad Pty Limited
251/813 Pacific Highway
Chatswood NSW 2067

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 Jetabroad's websites: www.jetabroad.com.au, www.jetabroad.co.nz, www.jetabroad.co.uk and www.jetabroad.eu ("**Jetabroad 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:

Jetabroad proposes to, from time to time:

- i. supply or offer to supply entry into promotions or competitions to customers who acquire Jetabroad services; or
- ii. give or allow or offer a discount, allowance, rebate or credit to customers who acquire Jetabroad services

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

Jetabroad proposes to refuse, from time to time, to:

- iii. supply or offer to supply entry into promotions or competitions to customers who acquire Jetabroad services; or
- iv. give or allow or offer a discount, allowance, rebate or credit to customers who acquire Jetabroad services

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

For example:

- v. Jetabroad proposes to offer entry into a competition or promotion to a customer who acquires Jetabroad's services, on the condition that they also acquire PayPal's payment services to purchase the travel products.
- vi. Jetabroad proposes a 'cash back' offer to a customer who purchases certain products, e.g. international 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 Jetabroad 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

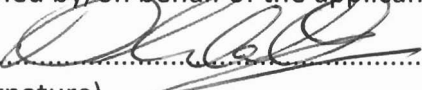
- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Andrew Chivers
Jetabroad Pty Limited
251/813 Pacific Highway
Chatswood NSW 2067

(02) 9410 3059

Dated.....14/10/09.....

Signed by/on behalf of the applicant

..........
(Signature)

Darin Walters
.....
(Full Name)

Jetalbroed Pty Ltd.
.....
(Organisation)

CEO
.....
(Position in Organisation)

Annexure 1

1 Background

- 1.1 Jetabroad owns and operates (among other things) an online travel agency that allows customers to search for and book flights with different service providers.
- 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 Jetabroad proposes, from time to time, to offer customers and potential customers, entry into various promotions or competitions when they acquire online travel agency services via Jetabroad's websites: www.jetabroad.com.au, www.jetabroad.co.nz, www.jetabroad.co.uk and www.jetabroad.eu ("Jetabroad services") on condition that they acquire PayPal's payment services.
- 2.2 Jetabroad also proposes to make a 'cash back' offer, or give a discount to customers, and potential customers when they acquire particular Jetabroad services on condition that they use PayPal's payment services.

3 Notified Conduct

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

4 Competition issues

- 4.1 Jetabroad 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 Jetabroad. The conduct in no way limits the genuine choice of customers in choosing whether or not to acquire any travel agency services from Jetabroad 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.

- 4.4 These markets are highly competitive and characterised by relatively low barriers to entry. There are a large number 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.

5 Public benefits

- 5.1 Customers and potential customers of Jetabroad's online travel agency services are entitled to a benefit or discount on services purchased from Jetabroad when using PayPal.

- 5.2 The notified conduct is a common form of sales promotion, under which Jetabroad and PayPal are seeking to compete by offering incentives to customers of Jetabroad to use PayPal's payment system.

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

- (a) provide Jetabroad customers with the opportunity to obtain various benefits and rewards (for example, entry into competitions and promotions);
- (b) provide Jetabroad 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 Jetabroad 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 Jetabroad customers with greater convenience when purchasing Jetabroad services and greater flexibility in arranging their financial affairs;
- (e) encourage competitors of Jetabroad and PayPal to offer similar benefits and therefore promote competition in the relevant market.

6 Public detriment

- 6.1 We submit that the proposed conduct is not likely to cause any identifiable detriment to the public.

- 6.2 The conduct in no way limits the genuine choice of consumers in choosing whether to acquire travel agency services from Jetabroad rather than other competing suppliers. Customers are not compelled to use PayPal's services, they are simply presented with the option of obtaining a benefit or discount on Jetabroad'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.

6.3 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.

6.4 The overall effect of the conduct in the relevant markets, as discussed above, is insignificant and is outweighed by the public benefits.

7 Conclusion

7.1 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.

7.2 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 applications by Webjet Limited and Flight Centre Limited, and has allowed the notified conduct to proceed on the basis it is likely to result in a net public benefit.