

Our reference
RJF/CS/DELL13875-9066682

Governor Phillip Tower
1 Farrer Place Sydney NSW 2000
GPO Box 9925 NSW 2001
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**CORRS
CHAMBERS
WESTGARTH**
lawyers

14 December 2009

By email: adjudication@acc.gov.au

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer
Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

Dear Dr Chadwick

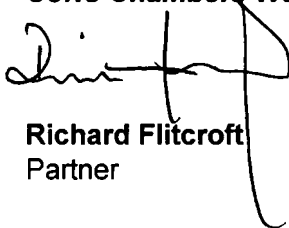
Dell Australia Pty Ltd - Exclusive Dealing Notification

We act for Dell Australia Pty Ltd.

On 27 November 2009, we sent to the ACCC electronically a Form G Notification of Exclusive Dealing pursuant to section 93(1) of the Trade Practices act 1974 (TPA), under cover an accompanying letter (copies **attached**),

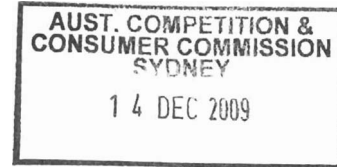
We enclose a lodgement fee of \$100 in respect of that notification.

Yours faithfully
Corrs Chambers Westgarth



Richard Flitcroft
Partner

attachments



Sydney
Melbourne
Brisbane
Perth

Contact
Cicely Sylow (02) 9210 6194
Email: cicely.sylow@corr.com.au

Partner
Richard Flitcroft

FILE No:	
DOC:	
MARS/PRISM:	

Our reference
RJF/CS/CORR4394-8767379

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27 November 2009

By email:

adjudication@accg.gov.au

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer
Commission
23 Marcus Clarke Street
Canberra
ACT 2601

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Email: cicely.sylow@corrs.com.au

Partner
Richard Flitcroft

Dear Dr Chadwick

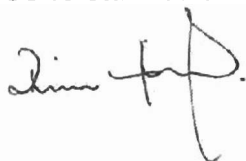
Dell Australia Pty Ltd - Exclusive Dealing Notification

We act for Dell Australia Pty Ltd.

Attached to this letter is a Form G Notification of Exclusive Dealing pursuant to section 93(1) of the Trade Practices Act 1974 (TPA).

The lodgement fee of \$100 will be paid by cheque on Monday at the Commission's Sydney office.

Yours faithfully
Corrs Chambers Westgarth



Richard Flitcroft
Partner

attachments

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.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

N94384 Dell Australia Pty Ltd ACN 003 855 561 (*Dell*)

- (b) Short description of business carried on by that person:
(Refer to direction 3)

Dell and its related bodies corporate supply computer hardware and software products and peripherals and related services directly to business and individual consumers.

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

c/- Corrs Chambers Westgarth
Governor Phillip Tower
1 Farrer Place
SYDNEY NSW 2000

Telephone: (02) 9210 6435
Facsimile: (02) 9210 6611
Attention: Richard Flitcroft

2. Notified arrangement

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

- Certain Dell computer hardware and third party software products supplied by Dell.
- Payment system services in relation to MasterCard branded credit cards and debit cards. MasterCard does not issue credit cards or debit cards. To procure a credit card or debit card, a cardholder has to obtain the card from one of a number of financial institutions which issue MasterCard cards. .

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

- Dell proposes to supply a bundled package (**package**) consisting of a computer and security protection software, incorporating an extended

term on the security protection software, to consumers who pay for the product with a MasterCard branded card.

- Dell will not make an equivalent offer to consumers who pay for the package other than with a MasterCard branded card.
- The proposed conduct may constitute third line forcing as the provision of a free extended term for the security protection software may be argued to constitute a discount, allowance or credit which Dell will refuse to provide to customers who do not hold a MasterCard card.

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)

Future customers of Dell.

- (b) Number of those persons:

- (i) At present time:

None.

- (ii) Estimated within the next year:
(Refer to direction 6)

Unknown.

- (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:
(Refer to direction 7)

The proposed conduct will benefit the public as it will:

- provide additional benefits or reduced costs to eligible purchasers of computer hardware and peripheral software products; and
- promote competition in the markets for computer hardware, software and accessories by exerting downward pressure on prices offered by competitors, encouraging competitors to offer similar and other value added products and services; and
- encourage innovation and improved product offerings in payment card services markets.

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

The proposed conduct results in customers receiving an extended warranty term for a security protection software product when they purchase an eligible Dell product using a MasterCard branded card.

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):

(Refer to direction 8)

The national markets in which computer hardware, software and accessories are supplied.

The markets in which computer hardware, software and accessories are supplied are highly competitive. Computer hardware, software and accessories are supplied by Dell, Apple, Hewlett Packard, Sun, IBM, Acer Computer Australia, Toshiba, Sony, Samsung and numerous other suppliers. Competitors in these markets may be prompted to introduce or extend similar schemes attaching competitive benefits and privileges to their customers. There are a large number of competitive offers available to the public in respect of the provision of computer hardware, software and accessories products and services at any given time.

The national market in which payment card services are provided.

In the markets in which payment card services are provided, customers have a significant number of product options available to them, including charge and credit cards provided by Diners Club and American Express and credit or debit cards offered by financial institutions on the MasterCard and Visa networks.

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)

Dell does not consider that the proposed conduct will result in or is likely to result in any public detriment as:

- consumers are free to acquire Dell products and related peripheral software products without acquiring services from an issuer of MasterCard branded cards;
- consumers are under no obligation to acquire the package from Dell and can continue to acquire separately the products forming part of the package.
- competition in the affected computer hardware, software and accessories and payment services markets is vigorous and there are a large number of alternative suppliers in each affected market.

(b) Facts and evidence relevant to these detriments:

See section 5 above.

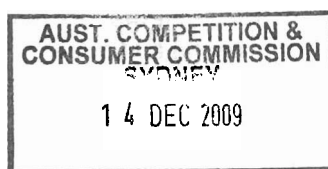
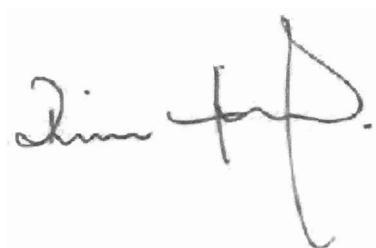
7. Further information

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

Richard Flitcroft
Partner
Corrs Chambers Westgarth
Governor Phillip Tower
1 Farrer Place
SYDNEY NSW 2000
Australia

Dated 27 November 2009

Signed on behalf of the applicant



.....
(Signature)

Richard Flitcroft
Partner, Corrs Chambers Westgarth

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 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.