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Our ref NJT:PXG:1001437

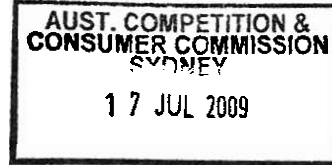


L A W Y E R S

17 July 2009

By hand

Mr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition & Consumer Commission
Level 7
Angel Place
123 Pitt Street
Sydney NSW 2000



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Australia

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Dear Mr Chadwick

Third line forcing notification

FILE No:
DOC:
MARS/PRISM:

We act for Macquarie Bank Limited.

We enclose for lodgement a notification relating to third line forcing and a cheque of \$100 being the required lodgement fee.

Please note that this notification includes a confidential schedule, in respect of which the notifying party claims confidentiality. We believe this confidential material to be non-controversial, given the details provided elsewhere in the notification and supporting documentation, but please advise if the Commission has a different view.

Should you have any questions in relation to this notification, please do not hesitate to contact us.

Yours sincerely

Nick Taylor
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17 JUL 2009

FORM G

Commonwealth of Australia

Trade Practices Act 1974 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

(Regulation 71)

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 in 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)

N94045 *Macquarie Bank Limited ABN 46 008 583 542 (Macquarie)*

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

Macquarie is an authorized deposit taking institution (ADI). It supplies banking products and services to retail and business customers across Australia. Products and services include lending, deposits, business broking and payment services.

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

*Nick Taylor
Gilbert & Tobin
2 Park Street
SYDNEY NSW 2000
Phone: 02 9263 4255*

2 Notified arrangement

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

The notification relates to the supply of a service known as Internet Merchant Services.

Internet Merchant Services will enable merchants to accept credit and certain debit cards to pay for goods and services acquired by customers over the internet.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

See Attachment A.

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)

The conduct affects Macquarie customers who have agreed to acquire the Internet Merchant Services (which is offered as part of Macquarie's suite of merchant acquiring services).

- (b) Number of those persons:

- (i) At present time:

6

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

Unable to be determined at present time

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

See response in the Confidential Annexure.

4 Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

See Attachment A.

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

See Attachment A.

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 relevant market includes merchant acquiring services for internet payments.

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 Attachment A.

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

See Attachment A.

7 Further information

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

Nick Taylor
Gilbert & Tobin
2 Park Street
SYDNEY NSW 2000
Phone: 02 9263 4255

Dated *16 July 2009*

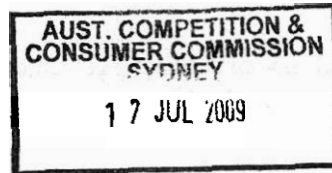
Signed by/on behalf of the applicant

Nick Taylor
.....
(Signature)

Nicolas John TAYLOR
.....
(Full Name)

Gilbert + Tobin
.....
(Organisation)

Partner
.....
(Position in Organisation)



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.

ATTACHMENT A

1 The parties

Macquarie Bank Limited ABN 46 008 583 542 (**Macquarie**) is an authorized deposit taking institution (**ADI**). It supplies banking products and services to retail and business customers across Australia.

2 Background

E-commerce has become increasingly important to merchants and retailers. In order to offer goods and services over the internet, merchants accept non-cash payments made over the internet.

Thus, banks, and other financial service providers offer payment services to merchants that allow the processing of internet payments (which are typically "card not present" transactions). That is, in addition to offering the standard "merchant acquiring service" offered in respect of card present transactions (ie, including things such as card terminals, card authorisation features, and settlement facilities), banks and financial institutions offer merchant acquiring services that operate over the internet and that offer security and safety features appropriate to the level of risk associated with card not present transactions. All major banks in Australia (and a number of minor banks and other companies) offer merchant services that include the processing of card present transactions and card not present (or internet) transactions.

There are a number of entities that offer specialist payment gateway services for internet transactions. These services typically allow the processing of internet transactions, making refunds or reversing transactions, managing direct debit payments, preparing reports and audits, etc. These services are beneficial to both merchants and banks because they ensure that the internet payments processed by the merchant and sent to the bank are properly validated and managed.

3 Description of the relevant conduct

Macquarie intends to offer its customers an internet-only payment processing facility (**Internet Merchant Service**), which may be acquired on its own or in addition to merchant services for card present transactions (depending on the requirements of the merchant).

If a merchant acquires the Internet Merchant Service, Macquarie will require that the merchant also acquire the services of a gateway provider (**Gateway Provider**) to ensure the safety and integrity of the internet transactions to be processed by the merchant. Therefore:

- Macquarie will offer to supply its Internet Merchant Service on condition that the merchant also acquires the services of a Gateway Provider approved by Macquarie; and
- Macquarie will refuse to supply Internet Merchant Services to merchants that have not agreed to acquire the services of a Gateway Provider approved by Macquarie.

At the time of lodging this notification, Macquarie has approved an entity called SecurePay Pty Limited (**SecurePay**) as a Gateway Provider. Macquarie is currently in discussions and negotiations with a number of other payment gateway providers, with a view to commencing due diligence and compliance certification with them over the next few months. Macquarie expects that over time, it will approve a number of Gateway Providers that meet minimum safety, integrity, and quality of service standards.

4 Public benefits of the conduct

Merchants (and end-users) will benefit from the proposed arrangement for the following reasons:

- (a) security – internet gateway providers are entrusted with end-users credit card details and for this reason must meet security standards that comply with industry best practice and are compatible with Macquarie's own security systems. By having only a limited number of approved Gateway providers, Macquarie will ensure that only those gateway providers that meet Macquarie's security standards will be used with its systems;
- (b) increased competition – Macquarie will be able to offer services in competition with the services offered by established merchant acquiring service providers;
- (c) increased economic activity – Merchants will be able to offer a broader range of services to end-users without increased risk to the integrity or safety of the transactions to be processed facilitating competition in downstream markets in which internet sales can compete more effectively with other sales channels; and
- (d) cost (fostering business efficiency) – it is expensive for Macquarie to establish and maintain a secure connection with an internet gateway provider and therefore economically efficient to only establish secure connections with a provider that satisfies the strict industry security standards.

5 Public detriments

No public detriments have been identified.

Although merchants will be required to choose a Gateway Provider from a limited group of approved providers, the fact that Macquarie has done the approval process itself will save merchants from having to conduct their own due diligence process (which is estimated to cost Macquarie approximately \$50,000 to \$100,000).

Macquarie's criteria for approving Gateway Providers will be fair and transparent, primarily focusing on whether the Gateway Provider offers appropriate levels of security, and whether its systems are compatible with Macquarie's own systems.

Although in principle Macquarie has only identified one approved Gateway Provider, it expects to increase that number in the near future.

6 Public benefits significantly outweigh any public detriment

Given the benefits outlined above, and the lack of any discernible detriment, the benefits of the proposed conduct far outweigh any potential detriment.