

FILE No: \

DOC:

MARS/PRISM:



DIBBSBARKER

Level 14 120 Edward Street
Brisbane QLD 4000

GPO Box 67 Brisbane QLD 4001

T 61 7 3100 5000

F 61 7 3100 5001

www.dibbsbarker.com

24 July 2009

Australia Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2001

Attention: General Manager - Adjudication

Dear Sir/Madam

Mr Rental Australia Ltd – Lodgement of Form G Exclusive Dealing Notification under section 93 of the Trade Practices Act 1974.

Our Ref: DCS:WPV:2910867

We act for Mr Rental Australia Ltd ABN 21 095 190 202.

Please find *enclosed* the following:

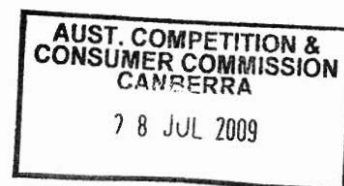
1. Form G Notification of Exclusive Dealing under section 93(1) of the Act; and
2. a cheque in the amount of \$100.00 for lodgement fees for a third line forcing notification.

Accordingly, please note that our client claims confidentiality over the information provided in items 3(b)(i) and 3(b)(ii) of Form G and for the Submissions annexed to Form G, on the grounds that this information is commercially sensitive. Our client requests that this information be excluded from the public register.

Should you have any queries regarding the enclosed notification and submissions, please do not hesitate to contact us.

Yours faithfully
DibbsBarker

Derek Sutherland
Partner
Email: derek.sutherland@dibbsbarker.com
Direct Line: 61 7 3100 5065
Direct Fax: 61 7 3100 5001



11861852 v1 Brisbane 24 07 09

Sydney

T 61 2 8233 9500 F 61 2 8233 9555

Canberra

T 61 2 6201 7222 F 61 2 6257 4011

Perth

T 61 8 9265 6000 F 61 8 9265 6099

The DibbsBarker Legal Group is a national association of independent law firms each trading as DibbsBarker

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:**

N94054 Mr Rental Australia Ltd ABN 21 095 190 202 (“Mr Rental Australia”)

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

Mr Rental Australia operates a network of franchised and corporate rental goods stores that market and rent out to consumers, at locations within a defined territory, household appliances, white goods, electrical goods and other associated rental goods under the name of “*Mr Rental*” (“Mr Rental stores”). Mr Rental Australia acts as the franchisor and enters into franchise agreements with franchisees entitled to operate those Mr Rental stores.

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

C/- Derek Sutherland
Partner
DibbsBarker
Level 14, 120 Edward 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:**

(i) Provision of membership to the Mr Rental Keeping Life Simple Club (“KLS Club”) loyalty program to existing and potential Mr Rental customers who:

- (1) have been approved through the Mr Rental rental agreement process; and
- (2) have entered into a Mr Rental rental agreement for a minimum of 12 months; and

(3) rents eligible goods from the network of individual Mr Rental stores operated by Mr Rental Australia, its related bodies corporate, or its franchisees;

(ii) The establishment of a loyalty program for the allocation of reward points to members of the KLS Club loyalty program when they rent eligible goods from any participating Mr Rental store; and

(iii) The provision of benefits by Mr Rental Australia, its related bodies corporate and/or its franchisees, by providing:

(1) discounts and rewards to members of the KLS Club loyalty program from time to time; and

(2) providing eligible products and services to members upon the redemption of the member's allocated reward points.

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

Please see attached submissions.

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)

Persons who are existing and potential customers who rent goods from any Mr Rental store.

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

(i) **At present time:**

EXCLUDED FROM
PUBLIC REGISTER

[CONFIDENTIAL]

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

EXCLUDED FROM
PUBLIC REGISTER

[CONFIDENTIAL]

(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)

Mr Rental Australia submits that the notified proposed conduct would:

(i) be of benefit to consumers in offering rewards to customers;

(ii) occasion no public detriment; and

(iii) have no anti competitive effect.

Please also see the attached submissions.

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

Mr Rental Australia submits that the allocation of reward points in respect of payments made by members of the KLS Club in relation to the rental of eligible goods as a means of rewarding customer loyalty, will benefit the public by increasing competition in the market for rental goods store related loyalty programs.

Mr Rental Australia believes that the KLS Club loyalty program will enable Mr Rental Australia and Mr Rental stores to compete more effectively with its competitors who may operate similar loyalty programs available to customers who rent household appliances, white goods, electrical goods and other associated rental goods.

Please also see the attached submissions.

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 markets in terms of the proposed conduct under this notification are the:

- (i) market for existing and potential customers of Mr Rental stores who rent household appliances, white goods, electrical goods and other associated rental goods from Mr Rental stores at various locations currently located at the present time in Australia; and
- (ii) market for rental goods store related loyalty programs.

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)

As stated in paragraph 4(a)(ii), the proposed notified conduct under this Notification will not cause any detriment to the public.

(b) Facts and evidence relevant to these detriments:

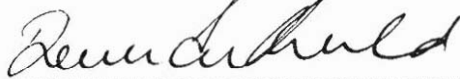
Not Applicable

7. Further information

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

Derek Sutherland
Partner
DibbsBarker
Level 14, 120 Edward Street
Brisbane QLD 4000
Ph: (07) 3100 5000

Dated this ²⁴ day of *July* 2009
Signed on behalf of the applicant



.....
Derek Sutherland
Partner
DIBBSBARKER

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.

Form G

Commonwealth of Australia

Trade Practices Act 1974 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

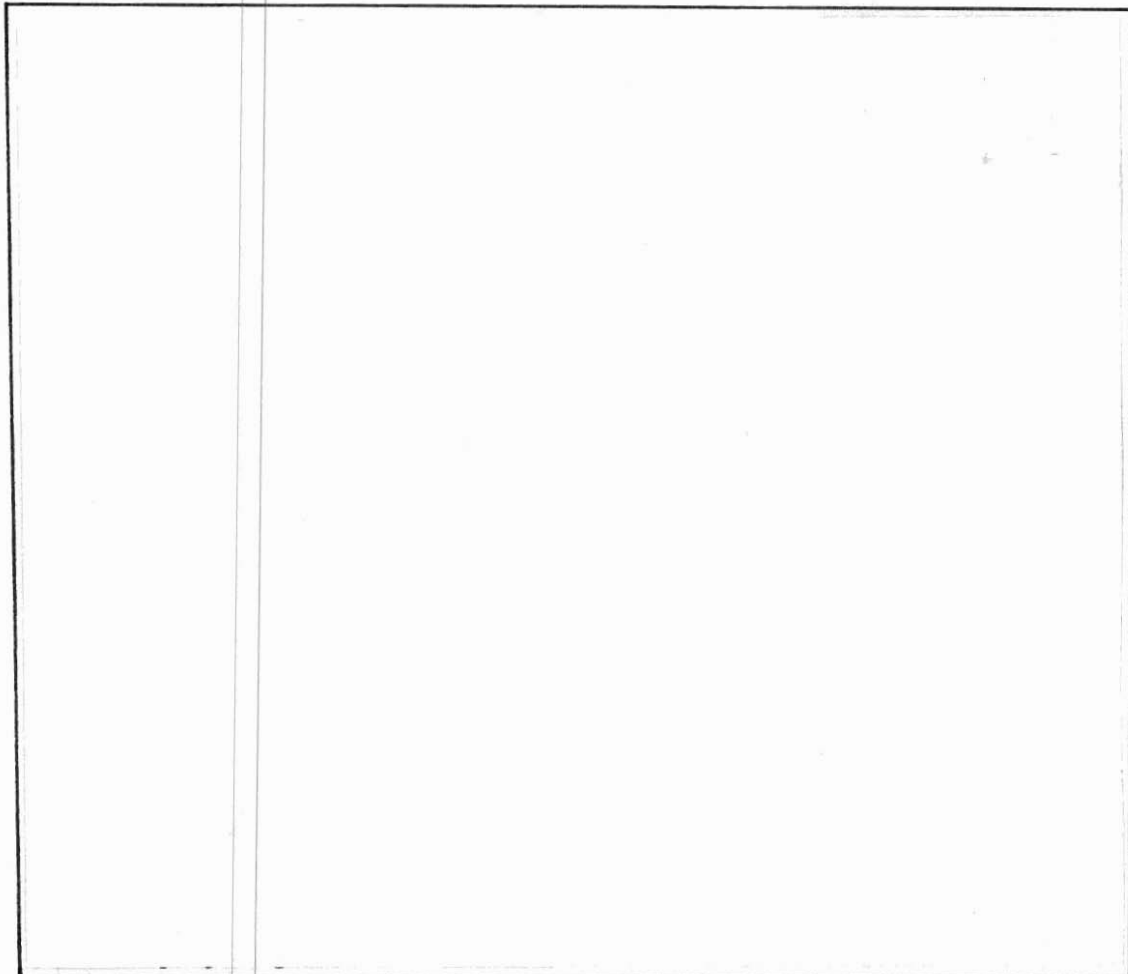
[CONFIDENTIAL]

SUBMISSIONS

This submission is made in support of the attached Form G Notification under section 93(1) of the *Trade Practices Act 1974* on behalf of Mr Rental Australia Ltd ABN 21 095 190 202 ("Mr Rental Australia") in regards to possible Third Line Forcing conduct that may arise under sections 47(6) and 47(7) of the Act.

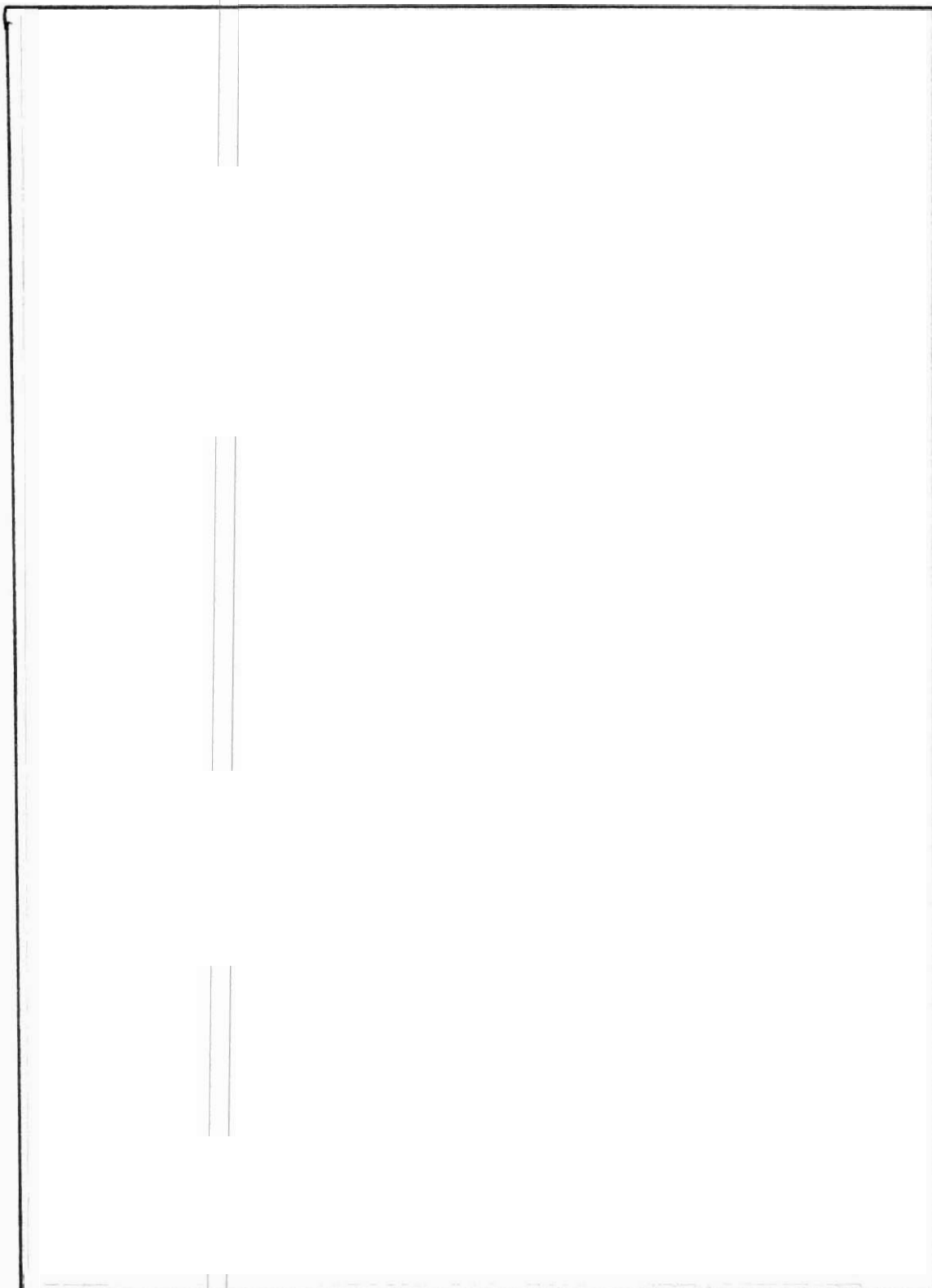
1. Background

- 1.1 Since 2001, Mr Rental Australia has been operating a network of franchised and corporate rental goods stores in Queensland, New South Wales, Victoria, Tasmania, and Western Australia, marketing and renting out to consumers household appliances, white goods, electrical goods and other associated rental goods under the name of "Mr Rental".
- 1.2 As a commitment to encouraging and rewarding the loyalty of its customers, Mr Rental Australia proposes to offer its existing and potential customers of Mr Rental, membership to its new loyalty program, the Mr Rental Keeping Life Simple Club ("KLS Club").



EXCLUDED FROM
PUBLIC REGISTER

EXCLUDED FROM
PUBLIC REGISTER



3. Conduct under section 47(6) and 47(7) of the Act

3.1 It is noted that the above mentioned conduct which Mr Rental Australia is proposing to undertake in relation to the KLS Club loyalty program may be construed as breaching the Exclusive Dealing and Third Line Forcing provisions under sections 47(6) and 47(7) of the Act.

3.2 Such scrutiny may be formed on the basis where Mr Rental Australia will supply KLS Club memberships and allocate reward points to Members on the condition that they are approved to enter into a Mr Rental rental agreement for a minimum period of

12 months to acquire goods of a particular kind or description from a third party in terms of a Member renting eligible goods from a participating Mr Rental store which is operated by an independent franchisee of Mr Rental Australia.

3.3 In light of this, Mr Rental Australia seeks to notify the ACCC of the conduct under section 93(1) of the Act. Accordingly, it is also noted that the relevant test to be applied, in approving this Notification, under section 93(3A) of the Act, must be satisfied in that the likely benefit to the public from the proposed conduct will not outweigh the likely detriment to the public from the proposed conduct.

3.4 It is submitted that the proposed conduct in question:

- (a) would be of benefit to consumers in offering rewards to customers;
- (b) would occasion no public detriment; and
- (c) would have no anti competitive effect.

3.5 Mr Rental Australia submits that the allocation of reward points in respect of rental payments made by Members on the rental of eligible goods as a means of rewarding its customers, will benefit the public by increasing competition in the market for rental goods store related loyalty programs.

3.6 Mr Rental Australia believes that the KLS Club loyalty program will enable Mr Rental Australia and Mr Rental stores to compete more effectively with its competitors who may operate similar loyalty programs available to customers who rent household appliances, white goods, electrical goods and other associated rental goods.

Dated this 24th day of July 2009

Signed on behalf of the applicant

Derek Sutherland

Derek Sutherland
Partner
DIBBSBARKER