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21 August 2009

Our Ref: 973357-v1/AUSSCZ

Mr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Mr Chadwick,

Exclusive Dealing Notification – Gizmo Corporation Pty Limited and Dell Global BV (Singapore Branch)

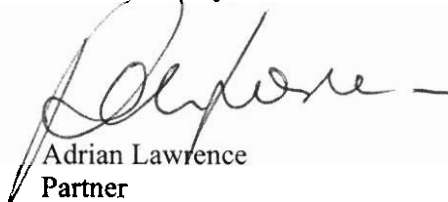
We act for Gizmo Corporation Pty Limited.

We enclose an exclusive dealing notification by Gizmo Corporation Pty Limited (*Gizmo*) and Dell Global BV (Singapore Branch) (*Dell*) pursuant to section 93(1) of the *Trade Practices Act 1974*. This notification is lodged in respect of conduct which may constitute exclusive dealing under sections 47(6) and 47(7) of the Act. This notification is given in the prescribed form and should not be taken as an admission that the conduct would contravene the statutory prohibition.

Pursuant to section 95(2) of the Act, we request that items 3(b)(i) and 3(b)(ii) of the enclosed notification be excluded from the public register as the information contained in those items is commercially sensitive confidential information.

We also enclose a cheque made payable to the Commission in the sum of \$200, being the prescribed lodgment fee for lodgment by each of Gizmo and Dell.

Yours sincerely,



Adrian Lawrence
Partner
+61 2 8922 5204
adrian.lawrence@bakernet.com

Encl

AUST. COMPETITION & CONSUMER COMMISSION
25 AUG 2009

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)

N94102 Gizmo Corporation Pty Limited (ABN 18 117 892 501) (*Gizmo*)

~~Dell Global BV (Singapore Branch) (*Dell*)~~ Invalid

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

Gizmo provides in-home and telephone information technology support services.

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:

Baker & McKenzie
Solicitors & Attorneys
AMP Centre
50 Bridge Street
Sydney NSW 2000
Australia

Telephone: (02) 8922 5204
Facsimile: (02) 9225 1595
Attention: Adrian Lawrence

2. Notified arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:
- In-home and telephone information technology support services.
 - Various computer hardware and software products, including desktop computers, notebooks and servers.
- (b) Description of the conduct or proposed conduct:

Gizmo proposes to enter into an arrangement with Dell whereby Dell will offer (as Gizmo's agent) Gizmo services to Dell's customers. It is proposed that Dell will offer certain Dell products and Gizmo services as a bundle and allow consumers to "deselect" the Gizmo services so as to acquire only the Dell product.

The price of the Dell product will be the same regardless of whether the customer chooses to include or exclude the Gizmo service. The notifying parties do not consider that this constitutes third line forcing pursuant to sections 47(6) and 47(7) of the *Trade Practices Act 1974 (TPA)*, but the conduct is nevertheless notified by Dell to address any potential risk in this regard.

Whilst Gizmo services may be purchased separately, the particular Gizmo services offered to Dell customers may not be available separately and directly from Gizmo in precisely the same format. In addition, Dell customers may be offered Gizmo services at a particular price or with a discount, when bundled with Dell products. The proposed offer may constitute third line forcing pursuant to sections 47(6) and 47(7) of the TPA, as it might be argued that Gizmo is offering to supply services, or is offering to supply services at a particular price or with a particular discount, on condition that the customer acquires a Dell product.

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 and/or Gizmo.

- (b) Number of those persons:

- (i) At present time:

Nil

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

- (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 public benefits created by the conduct include:

- customer convenience and efficiencies in purchasing Dell products together with associated support services in a single transaction;
- assisting to minimise customer difficulties and inconvenience in the set-up and ongoing use of their Dell system by enabling Dell to offer a "complete solution" to its customers;
- customer reassurance in knowing that Dell is affiliated with, and has confidence in the services provided by, Gizmo;
- enabling Gizmo to tailor its support services to Dell products and invest in training staff in respect of Dell systems and procedures; and
- potentially, cost savings to Dell customers if Gizmo is ultimately able to offer its services at a discount to Dell customers because of the volume accessed through its relationship with Dell.

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

In Dell's experience, many customers require some form of assistance in setting-up a new computer system and in "troubleshooting" and rectifying any ongoing issues (that may not be covered by any express or implied warranty). These issues can result in significant frustration and time-wastage for customers. Offering the Gizmo service as a bundle with certain Dell products significantly reduces search costs and risks for consumers in obtaining these support services. In Dell's experience, many customers value the convenience of having the option of obtaining all goods and services associated with a new computer purchase through a single supplier.

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 markets in Australia in which computer hardware, software and accessories and in-home and telephone information technology services markets are supplied to consumers.

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)

The notifying parties do not consider that the proposed conduct will result in or is likely to result in any public detriment as:

- competition in the computer hardware and software and in-home and telephone information technology services markets is vigorous and there are many competitors;
- consumers are under no obligation to acquire products or services from Gizmo or Dell;
- consumers may obtain these products or services from Gizmo without acquiring a Dell product, and may obtain a Dell product without acquiring products or services from Gizmo;
- Gizmo provides services to consumers who purchase hardware and software from vendors other than Dell. Customers who wish to acquire the Gizmo service are free to acquire a hardware and software from any of the large number of alternative hardware and software suppliers in the market; and
- customers who do choose to acquire Dell hardware or software are not obliged to also take Gizmo products or services. Dell customers may instead choose to procure these types of services from any of the large number of alternative suppliers of in-home/ telephone information technology services in the market.

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

See 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:

Adrian Lawrence
Partner
Baker & McKenzie
AMP Centre
50 Bridge Street
Sydney NSW 1223
Australia

Dated 21 August 2009

Signed on behalf of the applicant



.....
(Signature)

Adrian Lawrence
Partner, Baker & McKenzie

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.