

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY

22 SEP 2010

Allens Arthur Robinson



22 September 2010

The General Manager
Australian Competition and
Consumer Commission
Level 7, Angel Place
123 Pitt Street
Sydney NSW 2000

By Hand

FILE No:

DOC:

MARS/PRISM:

ABN 47 702 595 758

Level 28
Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000
Australia

T +61 2 9230 4000
F +61 2 9230 5333

Correspondence
GPO Box 50
Sydney NSW 2001
Australia

DX 105 Sydney

www.aar.com.au

Dear Sir / Madam

Form G - Exclusive Dealing Notification

Please find attached a **Form G Exclusive Dealing Notification** and supporting submission in relation to potential third line forcing conduct by Moshtix Pty Limited under the Trade Practices Act 1974 (Cth) (the **Act**). We also enclose the notification filing fee of \$100.

The applicant submits that in relation to the statutory test under section 93(3A) of the Act, no public detriment will result from the conduct but there will be clear public benefits.

If you have further questions in relation to this notification, please do not hesitate to contact the author of this letter.

Yours faithfully

Jacqueline Downes
Partner
Jacqueline.Downes@aar.com.au
T +61 2 9230 4850

Our Ref JODS:CBCS:201290418

cbcs A0115608286v1 201290418 22.9.2010

Bangkok
Beijing
Beijing IP
Brisbane
Hanoi
Ho Chi Minh Ci
Hong Kong
Jakarta
Melbourne
Perth
Phnom Penh
Port Moresby
Shanghai
Singapore
Sydney

22 SEP 2010

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:

N94918 Moshtix Pty Limited, trading as 'Moshtix'

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

Moshtix operates an online ticketing service where it sells tickets to some of Australia's best live music events and dance parties, festivals and theatre via its website, 95 outlets nationwide and its mobile and iphone sites to Australian consumers using the Moshtix.com.au online platform. Customers pay for tickets at fixed prices and have a choice of paying using the following accepted payment methods: Visa, Mastercard, American Express and PayPal.

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

Moshtix Pty Ltd trading as Moshtix
Level 23, 175 Liverpool Street
Sydney NSW 2000
Attention: Adam McArthur

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 tickets services in Australia by Moshtix and electronic payment services supplied in Australia by various suppliers such as Visa, Mastercard, American Express and, PayPal.

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

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:

The persons or classes of persons affected or likely to be affected by the notified conduct are Australian consumers that purchase tickets from the online platform supplied by Moshtix.com.au using electronic payment services.

- (b) Number of those persons:

- (i) At present time:

Substantially in excess of 50.

- (ii) Estimated within the next year:

Substantially in excess of 50.

- (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:

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):

See Attachment A.

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:

See Attachment A.

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

See Attachment A.

7. **Further information**

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

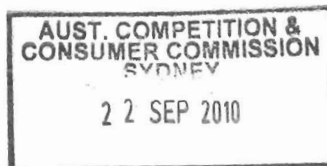
Allens Arthur Robinson, Deutsche Bank Place
Corner Hunter and Phillip Streets, Sydney NSW 2000
Attention: Jacqueline Downes
Phone: 02 9230 4850

Dated. 22 September 2010

Signed by/on behalf of the applicant



Jacqueline Downes
Partner
Allens Arthur Robinson



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.

Attachment A

Description of the proposed conduct

Moshtix proposes to offer promotional benefits, including pricing discounts and cash back offers (**Benefit**), from time to time to its customers in relation to selected tickets conditional on them using specified payment service providers. The initial proposal is that Moshtix will offer a Benefit to customers who pay for tickets using PayPal. Other accepted payment service providers may be specified from time to time in future promotions. These offers would be made under promotional arrangements between Moshtix and the specified payment service provider.

Moshtix's rationale for the proposed conduct is to attract consumers to use Moshtix's services who might not otherwise acquire them.

Moshtix understands that the payment service provider's rationale for supporting the promotion is to attract consumers to the payment service provider who might not otherwise use that payment service provider.

The promotions in relation to a particular payment service provider will not continue for more than one month at a time.

Public benefits and detriment

Moshtix submits that the benefit to the public likely to result from the notified conduct would outweigh any detriment.

Moshtix faces strong competition from a number of competitors, including Ticketek and Ticketmaster, that also offer tickets to live music events and dance parties, festivals and theatre.

The market for the supply of payment services is highly competitive among payment service providers.

There would be no obligation on customers to pay for their tickets using the specified payment service provider.

Those customers that do so, however, will enjoy various promotional benefits offered by Moshtix from time to time, such as pricing discounts, and cashback back offers.

Moshtix's services will be available using other payment service providers in addition to the specified payment service provider. No customer will be under an obligation to accept services from the specified payment service provider using Moshtix's online platform. In addition, customers can purchase tickets over the phone or in person from a Moshtix outlet. Customers who purchase tickets from a Moshtix outlet have additional payment options including by cash or EFPTOS.

Moshtix also believes that its proposed promotional arrangements will encourage its competitors to implement similar promotions for the benefit of their customers, and encourage payment service providers to compete with each other by arranging for consumers to receive similar benefits from other ticketing service and other service providers.

Customers who choose to pay for their selected ticket on the Moshtix website using the specified payment service provider will not pay more than customers using the services of other accepted payment service providers on the Moshtix website or paying in cash or by EFTPOS at a moshtix outlet.